

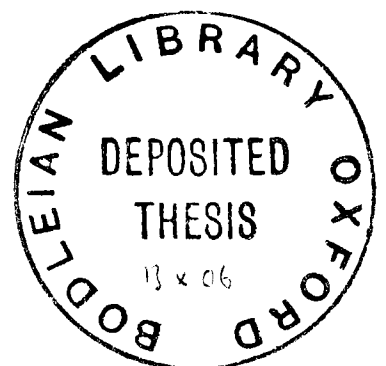
Islamic Doctrines of Citizenship in Liberal Democracies: The Search for an Overlapping Consensus

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A dissertation submitted in partial fulfilment of the degree of DPhil in Politics.

I attest that this work is my own and original except where acknowledged in the
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Abstract

This thesis examines whether Muslims *qua Muslims* can regard as legitimate the demands of citizenship in a non-Muslim liberal democracy. This involves asking whether requirements such as living in and being loyal to a non-Muslim state, regarding non-Muslims as political equals with whom one might co-operate socially and politically, contributing to non-Muslim welfare and participating in non-Muslim political systems can be regarded as legitimate practices. It is an exercise in what John Rawls referred to as 'conjecture', or the attempt to examine and argue for the existence of an overlapping consensus between a liberal political conception of justice or citizenship and a particular comprehensive ethical doctrine.

Chapter One examines the status of conjecture in political theory and the place of the idea of an overlapping consensus in liberal justification, followed by a proposal for a methodology for this type of comparative political theory. Chapter Two deals with the precise demands liberalism places on citizens, and the particular concerns of Muslims living in non-Muslim states. I show that before we can discuss the central liberal concerns of justifying state neutrality and individual freedoms to revise one's conception of the good, it is necessary to look at a series of questions related to Muslim belonging, loyalty and solidarity in a non-Muslim state. I then present and defend a conception of liberal citizenship in response to certain challenges and concerns of Islamic political ethics.

Chapters Three through Five then deal with the range of Islamic responses to the demands of liberal citizenship as I presented them. Chapter Three considers the question of residence in a non-Muslim state and whether the most common justifications for such residence can be considered compatible with liberal conceptions of a well-ordered society. Chapter Four examines the problems of political obligation and loyalty – whether Muslims can in good faith meet their obligations of loyalty to both the global community of fellow believers and their state of citizenship. Chapter Five deals with questions of recognition and solidarity – whether Muslims can recognise non-Muslims as political equals, form relationships based on justice, contribute to their welfare and participate in a common political system. All three chapters demonstrate that very strong and authentically Islamic arguments exist for accepting all of the above demands of citizenship, many being found even in medieval works of Islamic jurisprudence. Crucially, Islamic arguments shown to support the idea of an overlapping consensus also vindicate many of the claims of Rawlsian political liberalism to be a more appealing form of liberalism to non-liberals precisely because of its abstention from claims to metaphysical truth.

To my parents.

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Chapter One

Political Liberalism: The Search for Overlapping Consensus through Conjecture

In *Political Liberalism*, John Rawls writes: 'There are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime.'¹ And further on: 'Here I shall suppose – perhaps too optimistically – that, except for certain kinds of fundamentalism, all the main historical religions admit of such an account and thus may be seen as reasonable comprehensive doctrines.'² How optimistic indeed is Rawls being here? Can a political conception of justice based on the values of individual freedom and civic equality be affirmed by those believing in revealed conceptions of truth and justice which allow – indeed require – that the community uphold extensive, paternalist forms of authority? Can individuals who believe in the truth of their ethical doctrines recognise the authority of governments not founded with the express purpose of advancing those doctrines? Does recognition of a purely political conception of justice require that believers bracket their religious beliefs or that they find within their religious beliefs affirmation of values which can underpin the political conception?

These questions have, at times, been answered in the affirmative in relation to the ethical pluralism to be found in Western constitutional democracies. Many Christians of various sects and denominations, for example, have found ways of both upholding the truth claims of their religion and adopting the political values required to recognise the legitimacy of constitutional democracy. A yet stronger claim is that the liberal political values which support constitutional democracy, particularly individual autonomy and civic equality, are generally embedded in Western political culture and to be found even in those 'comprehensive ethical doctrines' which are not otherwise forms of liberalism. That is, not only do many Christians, for example, as heirs to a broader Western political tradition, believe in civic equality *in addition to and apart from* their religious beliefs, but they also draw precisely on those religious beliefs in order to affirm the distinctively political values necessary for democratic legitimacy.

¹ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 169.

² *Ibid.*, p. 170.

Increasingly, however, Western political communities are composed of citizens endorsing doctrines and beliefs other than those drawn from, sustained by or shown to be compatible with Western political traditions, including ones based on Islam and other non-Western traditions. Does this fact add a new dimension to our attempts to deal with ethical pluralism in Western societies? Any arguments for the legitimacy of political liberalism based on the existence of a common post-Reformation or post-Enlightenment shared tradition of secularism and political liberties (separate from attempts to show a theological basis for these values) would, for one, seem to be inapplicable. Beyond this, however, in the face of an increasingly complex cultural and ethical pluralism are we at all compelled to ask how the specific doctrines held by citizens of a liberal state might overlap with our conceptions of justice? It is the object of this introduction to argue for the importance of such an avenue of inquiry, clearing the way to answer over the rest of the thesis a question adapted from the assertion by Rawls with which I opened: Is there an interpretation of Islamic ethics, one not in great conflict with orthodox, Sunni³ Islam, by which Islam may be considered amongst the doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime? Can there be an Islamic doctrine of citizenship in liberal democracies?

³ A major methodological cum ethical question confronting this thesis is the selection of sources and what this implies about my judgements about what counts as orthodox, or even 'Islamic.' This question is addressed in the second section of this chapter where I discuss the general problem of locating orthodoxy and what types of texts or arguments I am interested in analysing. This problem of orthodoxy can be constructed along many axes (juridical vs. philosophical, traditional vs. reformist, etc.) but the most ancient way of constructing it goes back to the dispute over succession to the Prophet, a dispute which eventually lead to the general division of the Islamic community into the Sunni and Shiite sects. My decision to draw mostly on Sunni texts does not constitute a judgement on my part that they have a more legitimate claim to orthodoxy, but is rather based on more banal considerations: the vast majority of Muslims consider themselves Sunnis, and limiting my research to Sunni sources is more manageable and will pre-empt the problem of considering the authority of arguments from one tradition for Muslims of the other. Also, as even a prominent (and politically engaged) Shiite cleric concedes, 'while Shiite jurisprudence is still crawling where the problem of Islamic minorities is concerned, we find a great Sunni historical tradition in this area.' (Muḥammad Ḥusayn Faḍl Allāh, *al-Hijra wa al-ightirāb: ta'sīs fiqhī li mushkilat al-lujū' wa al-hijra* (Beirut: Mu'assasat al-ʿĀrif lil-Maṭbūʿāt, 1999), p. 79.) This all does not mean that I am uninterested in Shiite sources, but when I draw from them, largely the above book, I will restrict myself to arguments potentially accessible to non-Shiite Muslims. Arguments that are grounded in an exclusively Shiite metaphysics or conception of justice could only be footnotes to our main inquiry.

I. The Place of Comparative Political Theory

Contemporary political philosophy is awash with theories of ethical and cultural pluralism. Critics of liberalism claim that it fails to take seriously the claims of culture in general and minority cultures in particular (C. Taylor, B. Parekh, I. M. Young). Liberals claim that multiculturalism and group rights fit comfortably within a liberal framework, while differing on just how accommodating liberal political systems should be of non-liberal minorities as well as what features of liberalism make it fair to cultural minorities (W. Kymlicka, S. Benhabib, W. Galston, B. Barry). The substantive values of non-liberal perspectives, for their part, are usually assumed, variously, to be either excluded or subsumed by 'liberal universalism.' But treatments of their specific claims and their own attempts to relate to liberal norms and expectations tend not to be the fare of political theory.

The emphasis on 'comprehensive doctrines' to be found in Rawls's later work does not characterise much of the literature on multiculturalism and minority rights. In addition to the type of conflict emerging from the type of pluralism envisaged by Rawls – that of groups seeking to use the state to impose a vision of the good life derived from a relatively elaborate philosophical or religious doctrine – contemporary political philosophy has also grappled with the demands of less philosophically grounded pluralism. While Rawls seems to imagine a more or less symmetrical conflict between world views,⁴ the broader literature on multiculturalism and group rights is concerned with various asymmetrical power relationships and the ways in which the interests of women, racial minorities, sub-national ethnic and linguistic groups, native populations and religious minorities may not be fully protected by traditional liberal conceptions of equal citizenship on an individual basis. The themes of asymmetry and power permeate the multiculturalism debate: critics of universal citizenship seek to point out the asymmetries in power held by various groups; many liberals concede this while refusing to neglect the concurrent asymmetry between those minority groups and their individual members.

⁴ Sometimes symmetrical in a literal sense. Rawls's understanding of the historical provenance of political liberalism is largely that it emerged from the stalemate of the post-Reformation religious wars.

Theories of liberal neutrality and multiculturalism have thus developed as a way of preserving universal, equal citizenship in the conditions of both religious/ethical pluralism and the group demands of minority or oppressed 'cultural' groups. The fact of 'reasonable ethical pluralism' leads to a liberalism which seeks to justify basic political institutions without reference to any single controversial doctrine. The fact of cultural pluralism leads to calls for policies to assist the survival of minority groups, to offer group-based representation, to provide exemptions from public duties, to alter traditional conceptions of the cultural basis of political communities, to establish forms of differential treatment or simply to 'recognise' the particularity of various group experiences.

The practice of Islam within liberal democracies intersects all of these philosophical, ethical and social debates insofar as *Islam* is a (Rawlsian) comprehensive ethical doctrine and *Muslim communities* constitute cultural, and often racial and linguistic, minority groups. Moreover, the practice of Islam represents a textbook illustration of both the appeals and the challenges of liberal neutrality. On the one hand, liberals would claim that Muslim minorities benefit from the religious neutrality of secular, liberal democracies. Muslims in the West do not face the stark choice between economic opportunities and the practice of their religion. As a minority community, Muslims enjoy protections against certain majority impositions. On the other hand, the practice of Islam free from the state imposition of Christianity, atheism or another doctrine directly incompatible with Islamic truth claims is balanced by the protection of individual Muslims from communal authority. Muslims in liberal democracies enjoy rights deriving from the value of individual autonomy that do not figure in traditional elaborations of Islamic law, particularly the right to freedom of conscience (including apostasy), the right to free speech (including blasphemy) and the right of free marriage (including for women). Similarly, liberal neutrality may not provide Muslim communities with all rights and protections which they may find desirable, such as protection from offensive speech. Furthermore, there are questions related to Muslim citizenship in liberal democracies which are particular to Islamic legal and ethical discourses and rarely considered by liberal political philosophers. The very questions of living in a non-Muslim country, co-operating with non-Muslims and exhibiting loyalty to non-Muslim authorities

are all very much contested within Islamic legal-political thought. It is clear that Muslim citizenship in liberal democracies faces not only all of the cultural, social and political problems faced by all cultural and racial minorities in the West, but on top of these, problems of a distinctly philosophical and doctrinal nature.

The aim of this thesis is thus to examine whether Muslims *qua Muslims* can regard as legitimate the demands of citizenship in liberal democracy. This involves asking whether requirements such as living in and being loyal to a non-Muslim state, regarding non-Muslims as political equals with whom one might co-operate socially and politically, and allowing fellow Muslims to practice or not practice their religion as they see fit, can be regarded as legitimate practices. At worst, one would look for attitudes, values and proclamations that regard such concessions as necessary evils given the minority status of Muslims in liberal democracies, but one day perhaps to be overcome in the conditions of a pious majority. At best, one would look for statements that portray co-operation with non-Muslims and freedom of conscience for Muslims as values sanctioned or even encouraged by Islamic texts, that is, as *Islamic* values. Thus, this is primarily a search for a religiously-based ethical *doctrine*. By contrast, the liberalisation of individual Muslims or of whole societies, whether that means the abandoning of religious belief or the enrichment of one's repertoire of beliefs with liberal values expressly regarded as new or exogenous to religion, is properly regarded as a sociological phenomenon. That process may be more historically important, sociologically interesting or politically reliable as a path to the stability of liberal institutions, but it is not the object of this inquiry.

This type of inquiry is a form of *comparative political theory*. What is comparative about it is the attempt to pose similar questions across philosophical and ethical traditions with the aim of identifying the possible grounds for consensus. It differs from the traditional concerns of hermeneutics, discourse analysis or intellectual history to the extent that it is concerned with a particular form of normative argumentation. Comparative political theory (what I will later refer to as 'conjecture,' following Rawls) on my understanding does not pretend to be disinterested or value-neutral. It is openly concerned with vindicating certain normative principles from different philosophical, ethical or religious foundations.

The need for this type of comparative political theory is not necessarily assumed by Western political theorists. A liberal might ask the following questions: Given that the liberal political conception of justice is derived and justified independently of those doctrines, what need does it have to be justifiable within them? Why should we care whether Muslims (or the Amish, or Southern Baptists, or Mormons) have the resources *within* their religious doctrines to become the kinds of citizens that political liberalism requires them to be? Shouldn't non-liberals simply be asked to accept the principles of justice (if they are to be reasonable, that is)? What if we discover that there is no foundation for an overlapping consensus between political liberalism and a given 'comprehensive doctrine'? Would that detract at all from our liberal commitment to human rights and individual liberties? Would it lead to any meaningful conclusions about the status of the holders of that doctrine as citizens? Furthermore, isn't the whole inquiry a bit contradictory: Isn't it the very point that these are *non-liberal* doctrines which by definition prioritise the right over the good? Aren't theories of justice supposed to be independent of the accommodation of power or considerations of popularity? Isn't that what makes them theories of *justice* rather than prudence, social stability or political decision making?⁵

Other theorists (perhaps various communitarians, multiculturalists or other sceptics of liberalism) might object to the liberal bias in the methodology. After all, isn't it assumed here that it is liberal values that we are trying to find the foundation or justification for in non-liberal doctrines and not the other way around? Isn't there an assumption here that for various doctrines and traditions to be treated with respect (as 'reasonable' in Rawls's terms) that they must be able to find the resources to become certain types of liberals? Isn't this approach just another form of intellectual imperialism designed to undercut minority traditions by more subtle means?

⁵ Thomas Nagel poses similar questions rhetorically by way of entry into a consideration of the meta-ethical approach of contractualists such as Rawls or Scanlon: 'Why should I care whether others with whom I disagree can accept or reject the grounds on which state power is exercised? Why shouldn't I discount their rejection if it is based on religious or moral or cultural values that I believe to be mistaken?' ('Moral Conflict and Political Legitimacy,' *Philosophy and Public Affairs*, Vol. 16, No. 3 (Summer 1987), p. 222.) Joshua Cohen presents an elaboration of the objection (said to be from a conversation with G.A. Cohen) that these concerns represent a concession to de facto power arrangements and not considerations of justice. ('Moral Pluralism and Political Consensus,' in David Copp, Jean Hampton and John E Roemer, eds., *The Idea of Democracy* (Cambridge: CUP, 1993), p. 271).

Rephrasing the above, there might be at least three important objections to comparative political theory:

1. Theorising across existing doctrines is based on nothing more than historical contingency and thus has *no justificatory force*. The moral force of intersubjective agreements is that they are not based merely on self-interest or strategy but that they can be justified from the standpoint of all human beings. Merely pointing out that a value or a norm can be found also in another ethical tradition does not advance this universalist moral claim. The approach is either 'anthropological' or 'sociological' (in that it may be of empirical or historical interest), or else 'political' (in that it may represent a path to social stability or accommodation), but is of no inherent philosophical or ethical interest. *We have nothing to learn, as it were, about how we should organise our societies from studying, for example, Islamic texts, insofar as we cannot take their claims literally or seriously consider adopting them as our own.*

In addition to these concerns, it is not clear that, where one might aspire to a normative consensus or a deliberative outcome between citizens, one is looking for a consensus between *doctrines*. Part of the aspiration of discourse ethics, deliberative democracy, public reason and political constructivism, is that citizens will be able to appeal to each other *qua* citizens and not merely *qua* liberals, Christians, Muslims, etc. We aspire towards agreement precisely based on arguments that one can endorse whether or not they are grounded in one's more controversial beliefs. Thus, when we do engage intellectually with non-liberal cultural or religious groups over a particular policy dispute (such as the Rushdie affair, abortion, or school prayer) and are willing to examine our received beliefs in light of the views advanced by them, what is important to us are not the arguments put forward from within their ethical traditions (i.e., arguments that presume the veracity of those traditions in order to be accessible) but only arguments that can be 'translated' into a form of public reason. For example, we are willing to consider how far our defence of freedom of speech can be carried in the Danish cartoons affair, but only in relation to other publicly accessible political values, like protection against offence or respect for beliefs and not, for example, Qur'anic or doctrinal injunctions against insulting the Prophet. We are willing to debate Christians on the morality of

abortion but only in terms of whether it is reasonable for us to consider a first-trimester foetus as a human and not whether it is divinely ordained for us to do so. Thus, seeking to ground the ethical values that support a commitment to public reason, discourse ethics or deliberative democracy in comprehensive doctrines, as opposed to public reason, may be something that we actually want to avoid.

2. To the extent that one of the purposes of comparative political theory is to find consensus, the project is *implausible*. It is chimerical to assume that one will always be able to arrive at similar enough conclusions (even about how to disagree) from different first principles. Furthermore, such intersubjective agreement between parties based on different comprehensive values or principles will be inherently unstable and unreliable, if not purely tactical on the part of actors.⁶ Finally, even if an overlapping consensus can be shown between *some* doctrines, short of all non-(politically-)liberal doctrines disappearing, we are no closer to understanding what to do about such ‘unreasonable’ pluralism.

3. ‘Comparative’ political theory is really a form of *cultural imperialism* with a human face. The assertion is that minority cultures are obliged to become liberal to a certain extent in order to enjoy equal citizenship or recognition as valuable expressions of human experience. This reveals the inherent paradox in liberal claims to ‘neutrality’ or universality: On the one hand political liberalism claims to be a doctrine that tolerates non-liberal forms of life and conceptions of the good, yet on the other requires that doctrines, associations or communities eligible for this toleration already exhibit enough liberalism to be able to share in this project of mutual toleration. This objection is put forcefully by Bhikhu Parekh:

A widespread consensus among comprehensive doctrines then might not be available and yet it is badly needed to make political liberalism viable. Rawls’s society has no choice but to *create* one. Since liberal values are embodied in the basic structure of society and enjoy enormous power and prestige, Rawls hopes that all, or at least most, comprehensive doctrines would over time adjust to and be informed by political liberalism. Since the latter is grounded in comprehensive liberalism, this would mean the dominance of the

⁶ See Brian Barry, ‘How not to defend liberal institutions,’ in *Liberty and Justice: Essays in Political Theory 2* (Oxford: Clarendon Press, 1991), pp. 23-39.

latter over other comprehensive doctrines. Rawls's political liberalism is, or could be seen by some as, not a principled and self-limiting moral position but a political device with a large hidden agenda.⁷

It is clear from the above criticisms that this type of theorising is open to criticism from both flanks: that, in carefully testing liberalism's appeal to non-liberals, it is too agnostic about liberal foundations and that, in searching for resources to 'liberalise' non-liberal doctrines, it is too uncritical of them. There may not be a fully adequate response to much of the above. This author is, in fact, largely sympathetic to the first two normative objections. Nonetheless, even if direct and final refutations of these concerns may be lacking, one can still call into question the extent to which they are important and argue for other values and purposes of theorising that are neglected by the above objections. In what follows I will examine the place for theorising across ethical doctrines in Rawlsian political theory and then summarise the reasons why, and to what extent, liberal political theorists should be interested in the comprehensive views of non-liberal fellow citizens.

Rawlsian constructivism and the overlapping consensus

The later work of John Rawls is defined by a concern to defend a liberal conception of justice that is not only neutral between conceptions of the good in the political sphere, but in its very justification of such neutrality. Rawls's earliest formulation of his theory of justice had been subjected to criticism that not only were the principles of justice arrived at in his original position not neutral in their effect on various conceptions of the good life, but that the very reasons that Rawls gave for even arriving at principles of justice from behind a 'veil of ignorance' presume a commitment to a particular conception of human well-being based on individual autonomy and equality between persons. Given that not all conceptions of value and human well-being presume that a good life must, or can, be freely chosen to be good, Rawls's theory was denounced as excessively controversial and thus 'sectarian'. His response to this charge was to concede the basic charge that it is not enough for the state to not act on the basis of

⁷ Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge, Mass: Harvard University Press, 2000), p. 88.

the explicit evaluation of life choices, but that public justification itself must be accessible to all reasonable persons.

This is not the place to examine the contours or success of Rawls's theory of a 'political conception of justice', something which I will do in a limited fashion in the next chapter. The question to be addressed here is the extent to which Rawls's talk in his later work of justifying principles of justice in a plural society (which all free societies will inevitably be⁸) through the demonstration of the possibility of an 'overlapping consensus' between comprehensive ethical doctrines requires an actual hermeneutic examination of whether the principles of a political conception of justice (and the values through which they are arrived at) are, in fact, the subject of an overlapping consensus between actually existing ethical doctrines in a society. Does it matter how, or whether, justice 'fits into' or is supported by this or that doctrine? What if there is a failure of compatibility?

There is considerable ambiguity on these issues in *Political Liberalism*, with some statements asserting that the overlapping consensus is between *doctrines* (suggesting the need for an inquiry into the content of those doctrines) and some asserting that it is between *citizens* (suggesting the appeal to a universal human reason). Opening his lecture on the idea of an overlapping consensus Rawls writes that 'in such a consensus, the *reasonable doctrines* endorse the political conception, each from its own point of view. Social unity is based on a consensus on the political conception; and stability is possible when the doctrines making up the consensus are affirmed by society's politically active citizens and the requirements of justice are not too much in conflict with citizens' essential interests as formed and encouraged by their social arrangements.'⁹ Shortly after

⁸ The 'fact of reasonable pluralism' is Rawls's main political assumption. This thesis holds that 'the diversity of reasonable comprehensive religious, philosophical, and moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away; it is a permanent feature of the public culture of democracy.' These reasonable doctrines 'are not simply the upshot of self- and class interests, or of peoples' understandable tendency to view the political world from a limited standpoint. Instead, they are in part the work of free practical reason within the framework of free institutions.' (*Political Liberalism*, pp. 36-7). And since 'we are to recognise the practical impossibility of reaching reasonable and workable political agreement in judgement on the truth of comprehensive doctrines' (63) we are also forced to concede that 'a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power.' (37)

⁹ Rawls, *Political Liberalism*, p. 134. (Emphasis added.) The idea that doctrines (not citizens' reason) are the components of an overlapping consensus is repeated elsewhere: 'An enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of its political active citizens. This means that to serve as a public basis of justification for a constitutional regime a political conception of justice must be

that he seems to assert the opposite: 'Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may be reasonably expected to endorse in the light of principles and ideals acceptable to their common human reason;'¹⁰ 'political liberalism tries, then, to present an account of these values as those of a special domain – the political – and hence as a freestanding view. We hope that by doing this we can in working political practice ground the constitutional essentials and basic institutions of justice solely in those political values, with these values understood as the basis of public reason and justification.'¹¹ Other statements seem to navigate a middle course: 'While we want a political conception to have a justification by reference to one or more comprehensive doctrines, it is neither presented as, nor as derived from, such a doctrine applied to the basic structure of society, as if this structure were simply another subject to which that doctrine applied;'¹² 'citizens individually decide for themselves in what way the public political conception all affirm is related to their own more comprehensive views;'¹³ 'it is up to each comprehensive doctrine to say how its idea of the reasonable connects with its concept of truth.'¹⁴

What exactly, then, does the overlapping consensus require? Are the principles of justice common ground because they are correct ('reasonable'), or do they have normative force only because they are in fact common ground? Does the political conception of justice, which is independent of the comprehensive doctrines, have to be justifiable through resources purely internal to those doctrines or is it precisely its ability to appeal to reasons neutral between, and indifferent to, comprehensive doctrines, that provides it with its justificatory force? If the conception is independent of comprehensive doctrines then why do we care whether they can be seen as compatible with them? If the

one that can be endorsed by widely different and opposing though reasonable comprehensive doctrines.' (38) 'All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds in provides. The fact that people affirm the same political conception on those grounds does not make their affirming it any less religious, philosophical or moral, since the grounds sincerely held determine the nature of their affirmation.' (148)

¹⁰ Ibid., p. 137.

¹¹ Ibid., p. 140

¹² Ibid., p. 12.

¹³ Ibid., p. 38.

¹⁴ Ibid., p. 94.

overlapping consensus is one between doctrines, then what is the role of universal (if only politically applicable) human reason?

There are three possible answers to the above questions:

1. Political liberalism relies on its compatibility with other doctrines for its normative justification.
2. Political liberalism relies on its compatibility with other doctrines for its prospects for success at providing a democratic society with stability and legitimacy.
3. Political liberalism relies on its compatibility with other doctrines for determining their reasonableness and how society should treat adherents of those doctrines.

I think it is clear that, despite some assertions to the contrary, Rawls has (2) (and by implication (3)) in mind: he intends the overlapping consensus – understood as the endorsement of the principles of justice by the major religious and ethical doctrines in a given society – to address the question of the *stability* of the conception of justice, in other words, its political appropriateness for a given society and its capacity to generate support. The first-order normative justification of the principles is derived from their ability to appeal to citizens' universal reason independent of controversial comprehensive doctrines (and thus, since the principles are reasonable, and if many existing doctrines endorse them, we are able to make the judgement (alluded to in my third possibility above) that doctrines dissenting from them are simply being unreasonable). The key to understanding this, and Rawls's ambivalence, lies in a number of distinctions he makes between various stages of establishing an overlapping consensus, and between justification and stability.

Rawls suggests that a political conception of justice will be worked out in two stages. In the first, principles of justice are worked out (presumably in something like the original position) without reference to any comprehensive doctrine. They are seen as free-standing and, if they can be shown to appeal to impartial human reasoning about political co-operation, fair (there is a *pro tanto* justification for them). This stage, however, does not resolve the question of the stability of this conception of justice, of how it is *possible* for 'the values of the special domain of the political – the values of a subdomain of the realm of all values – [to] outweigh whatever values may conflict with them? How can we affirm our comprehensive doctrine and yet hold that it would not be

reasonable to use state power to gain everyone's allegiance to it?'¹⁵ The first answer to the question of stability is that the political values on which the conception of justice is based (equality, liberty, fair equality of opportunity, economic reciprocity, mutual respect) are 'very great values' and hard to override. According to Rawls's moral psychology, persons growing up in and benefiting from a liberal constitutional regime will come to internalise the moral principles that ground it.

The second answer is that, while 'it is left to citizens individually to settle how they think the values of the political domain are related to other values in their comprehensive doctrine', 'the history of religion and philosophy shows that there are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political. This makes an overlapping consensus possible, thus reducing the conflict between political and other values.'¹⁶ The long-term demonstration of stability is 'that those who affirm the various views supporting the political conception will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant. The political conception will still be supported regardless of shifts in the distribution of political power. Each view supports the political conception for its own sake, or its own merits. The test for this is whether the consensus is stable with respect to changes in the distribution of power among views.'¹⁷ This indicates that the overlapping consensus is not merely a *modus vivendi* but a moral consensus between citizens.

This seems fairly clear and reasonable. The principles of justice are not derived from comprehensive ethical doctrines, but the application of those principles will be stable and possible when holders of those doctrines see the two as compatible or at least not mutually exclusive. However, it is not clear that it resolves our fundamental question: Of what interest is it to us whether or not a given doctrine is able to endorse the political conception of justice? It would seem based on the above that it would be primarily of political interest. Especially if many doctrines (and many more citizens without elaborate doctrines) endorse the principles, it would appear that we would be justified in treating

¹⁵ Ibid., p. 139.

¹⁶ Ibid., p. 140.

¹⁷ Ibid., p. 148.

holders of a dissenting doctrine (say the Amish) as a potential political problem but not an ethical or conceptual one (i.e., the bare fact of Amish dissent does not force us to go back and consider revising our constitutional essentials because we now think we may have got them *wrong*). This view is supported by Rawls's repeated concern that the principles of justice not be considered political 'in the wrong way,' that is, merely concessions to existing biases or power arrangements: 'the content [of the principles of justice] is not affected in any way by the particular comprehensive doctrines that may exist in a society.'¹⁸ However, he complicates this conclusion with statements such as the following: 'Unless [justice as fairness is sufficiently stable], it is not a satisfactory political conception of justice and it must be in some way revised.'¹⁹ The clear implication here is that stability *is not* merely a political or historical concern, but a normative one: 'The problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it, by workable sanctions, if necessary, as if the task were to find ways to impose that conception once we are convinced it is sound. Rather, *justice as fairness is not reasonable in the first place* unless in a suitable way it can win its support by addressing each citizen's reason, as explained within its own framework.'²⁰ But it is important to keep in mind here that at this (second) stage of justification a citizen's moral doctrine *is part of* his reason. How else could he have good reason to reject an otherwise reasonable conception of justice? If it is purely out of obtuseness or self-interest then we don't care about his rejection. Only if he has good reason (of which adherence to a moral doctrine is one) to reject a conception of justice do we bother to concern ourselves with him.

We thus seem locked in a circular argument: The principles of justice are reasonable ('correct') for reasons *independent* of moral doctrines. Their reasonableness, however, does rely also on their *stability*. If they are unstable they are unreasonable. Their stability, in turn, relies both on their ability to inculcate a particular moral psychology amongst citizens and on their capacity to be endorsed by multiple comprehensive doctrines. If reasonableness relies on stability, and stability on

¹⁸ Ibid., p. 141.

¹⁹ Ibid., p. 141.

²⁰ Ibid., p. 143. Emphasis added.

compatibility with moral doctrines, then doesn't it follow that reasonableness relies partially on compatibility, which seems to be excluded by the first premise?

There are two Rawlsian responses to this. The first is an argument that is essentially historical in nature and relies on a distinction between a 'constitutional consensus' and an overlapping consensus. A constitutional consensus ends with agreement on constitutional principles and may be little more than a *modus vivendi*: 'these principles are accepted simply as principles and not as grounded in certain ideas of society and person of a political conception, much less in a shared public conception. And so the consensus is not deep.'²¹ At this point Rawls recognises that the constitutional consensus may be derived from, merely compatible with or fully incompatible with the various comprehensive doctrines. Yet with the passage of time lived under a constitutional consensus, 'the liberal principles of justice, initially accepted reluctantly as a *modus vivendi* and adopted into a constitution, tend to shift citizens' comprehensive doctrines so that they at least accept the principles of a liberal constitution. To this extent citizens' comprehensive views are reasonable if they were not so before: simple pluralism moves toward reasonable pluralism and constitutional consensus is achieved.'²² This may or may not be a plausible sociology of ideological transformation,²³ but what concerns us here is how this fits with his previous statement that 'the problem of stability is not that of bringing others who reject a conception to share it, or to act in accordance with it, by workable sanctions, if necessary.' At least at the stage of the constitutional consensus he seems to think that people may be going along with it against their will. But, as we will see, the later emergence of a deeper overlapping consensus is the historical by-product of this original coercion.

Rawls thinks that allegiance to the constitutional consensus depends as much on people having vague or loose doctrines as on the principles of justice being derived from fully comprehensive doctrines. They thus affirm the principles without considering the connection one way or another. 'It is possible for citizens first to appreciate the good

²¹ Ibid., p. 158.

²² Ibid., p. 163-4.

²³ This overly optimistic sociology also informs *A Theory of Justice*, where Rawls writes, concerning the question of tolerating intolerant sects, that 'the liberties of the intolerant may persuade them to a belief in freedom. This persuasion works on the psychological principle that those whose liberties are protected by and who benefit from a just constitution will, other things equal, acquire an allegiance to it over a period of time.' (Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard, 1971), p. 219.)

those principles accomplish both for themselves and those they care for, as well as for society at large, and then to affirm them on this basis. Should an incompatibility later be recognized between the principles of justice and their wider doctrines, then they might very well adjust or revise these doctrines rather than reject those principles. These adjustments or revisions we may suppose to take place slowly over time as the political conception shapes comprehensive views to cohere with it.²⁴ Possibly. Hopefully. But why does he not even consider the other alternative – that people will judge their comprehensive ethical doctrines, especially when religious, to trump the public conception of justice? His assumption is that there will be certain factors pushing citizens over generations from a mere constitutional consensus to an overlapping consensus. The factors include the need in the new political realm for people to appeal to other groups through public reason, and this requires them to move out of their own views and develop political conceptions of justice. If, over time, a conception of justice does not enjoy the support of wide-ranging interests and groups (even if it is the *correct* conception for a democratic society) then it will not be stable and an overlapping consensus cannot be achieved. So we are left with the same problem: if people persist in resisting liberalism then the constant political attempts to undermine it will render it unstable.

Rawls's response is to hope that new traditions will emerge through the practice of liberalism that force people to become liberal by abandoning, reinterpreting or limiting the hold of their (non-liberal) comprehensive doctrines. This is not an implausible political strategy, but Rawls's mistake seems to be his tendency to conflate issues of stability with issues of justification. A constitution that would have banned slavery and extended equal citizenship rights to all in America would have been reasonable and justifiable long before it was a politically viable proposition, but Rawls's suggestion that stability (which includes the wide-spread endorsement of justice) is not only a political matter but a question of reasonableness (or, justification) would seem to dilute this commonsensical claim if we are forced to argue that the lack of an initial overlapping consensus makes the conception of justice *in some way* unreasonable. But if we don't want to assign this level of importance to an overlapping consensus then what work is it doing?

²⁴ Ibid., p. 160.

This confusion is clarified somewhat by the second Rawlsian account of the relationship between justice and its compatibility with existing doctrines. The second Rawlsian response is that the conception of justice does indeed need to be endorsed by the major doctrines in a society in order to be appropriate,²⁵ but only by those doctrines that are themselves *reasonable*. As we will see, this line of argumentation is equally circular for the simple fact that what determines whether a given doctrine is reasonable is whether it is able to endorse the basic principles of justice that emerge from the first stage of formulation, most critically the principle that it is unreasonable to use state power to impose a conception of good, welfare or truth on persons one regards as political equals. Remember that Rawls is equally concerned to avoid the charge of unprincipled accommodation to power or contingent realities as he is the charge of sectarianism. The response to this charge is based on the distinction between ‘the simple fact of pluralism’ and ‘the fact of reasonable pluralism’. The latter holds that free institutions will over time allow the development and flourishing of multiple views on value, well-being and the good which can continue to be held upon the attainment of new information and critical reflection. The pluralistic consensus test (part of the second stage of justification) ‘requires that the values and principles used to authorize the exercise of power by the state must be restricted to those that are compelling to the different reasonable moral views adhered to in the society.’²⁶ This restriction allows those who believe in the truth of their views (in this case, liberals) to regard the content of an overlapping consensus as including reasons that are genuine moral reasons, that is, as containing some *truth*. We also consider it to be part of our moral beliefs that if some divergence in value or judgement is reasonable then it would be clearly unreasonable to force others to adopt our position on a question which admits of multiple reasonable positions. Such an attitude would be akin to imposing what must appear, from the viewpoint of people we recognise

²⁵ Joshua Cohen refers to this as the ‘pluralistic consensus test’. Cohen suggests three possibilities for the relevance of the outcomes of such a test: ‘(1) It is *necessary* that the correct account of justice satisfy the pluralistic consensus test; (2) satisfying the test is not necessary though it does provide *some support* for a conception of justice; or (3) satisfying the test is a *desideratum* that has *no bearing on the correctness* of an account of justice.’ (Cohen, ‘Moral pluralism and political consensus,’ in David Copp, Jean Hampton and John E. Roemer, eds., *The Idea of Democracy* (Cambridge: CUP, 1993), p. 273. I consider Cohen’s (1) and (2) to be sub-sets of my (1) above (‘Political liberalism relies on its compatibility with other doctrines for its normative justification.’) and my (2) to be a form of his (3).

²⁶ *Ibid.*, p. 283.

as reasonably disagreeing with us, as nothing more than our beliefs and not truth as such. As long as we restrict our justification to values that are held in common by such reasonably divergent moral doctrines, the Rawlsian position claims, we can avoid both the charge of sectarianism and accommodation.

What qualifies, however, as a reasonable doctrine? There are two conditions of reasonableness according to Rawls. The first is the willingness 'to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so.'²⁷ The second aspect is recognising the 'burdens of judgement' which are crucial to explaining why sincere, moral persons arrive at different moral judgements. The sources of such disagreement include inconclusive evidence, differential assignations of weight to facts, the indeterminacy of concepts, the influence of personal experience on judgement and the occasional incommensurability of values.²⁸ The important thing to note about the burdens of judgement argument is that these sources of disagreement are not to be confused with bias, self-interest, insincerity, stupidity or blindness. These all play their role, of course, but the point of the burdens of judgement observation is that all moral judgements emerging as a result of the 'burdens of reason' are sufficiently reasonable in nature. Acknowledging this does not involve claiming that one's own judgements are no more plausible or better reasoned than someone else's; it merely involves acknowledging that that person can hold those views and still be moral or reasonable (even if he's wrong). It also involves recognising that even when he is wrong, the imposition of a particular moral view will seem *to him* like the imposition of a mere belief, which the reasonable person regards as an unjustifiable reason (i.e., not a reason at all) for coercion given his basic reasonableness.

What follows from these two conditions is that anyone who acknowledges them will 'think it unreasonable to use political power, should [one] possess it, to repress comprehensive views that are not unreasonable, though different from [one's] own. This is because, given the fact of reasonable pluralism, a public and shared basis of justification that applies to comprehensive doctrines is lacking in the public culture of a

²⁷ Rawls, *Political Liberalism*, p. 49.

²⁸ *Ibid.*, pp. 56-7.

democratic society.²⁹ Since the only moral reason to use state power in this way is the claim to truth, but all holders of reasonable doctrines can equally make this claim, ‘when we make such claims others, who are themselves reasonable, must count us as unreasonable ... and so [we] endorse some form of liberty of conscience and freedom of thought.’³⁰ Note that this excludes as unreasonable *from the outset* all forms of religious fundamentalism which would use state or, indeed, any coercive power to impose beliefs about morality or virtue.

And here we are tempted to say that Rawls’s work is done and that the concept of an overlapping consensus does no normative work at all. For what real normative work is being done by demonstrating the possibility of an overlapping consensus on a conception of justice when that consensus only needs to be demonstrated between doctrines that are reasonable, i.e., that are already compatible with the main part of that conception? To the extent that the ‘pluralistic consensus test’ seems to require only that a conception of justice emerging from the first stage of deliberation be the subject of agreement by those doctrines that can agree to it, it seems entirely superfluous philosophically. The passing of this test is already guaranteed by the definition of ‘reasonableness’

Instead, the overlapping consensus seems in the end to be a sociological concept and a device for normatively evaluating moral doctrines that might be held in a society. Thus, to return to our slavery example: Rawls would be expected to retort that in that case an overlapping consensus on the principles of justice did not obtain because of the strength in society of a very unreasonable comprehensive doctrine indeed. There were deeply unjust views prevalent in America at that time which prevented the endorsement of a conception of justice. Perhaps the imposition of justice at that time would have been unrealistic and, *to that extent*, unreasonable. But our judgement that such practices are not only unjust, *but were unjust even then*, is not changed.³¹ It doesn’t seem, therefore, that the demonstration of an overlapping consensus empirically is a necessary condition for

²⁹ Ibid., pp. 60-1.

³⁰ Ibid., p. 61.

³¹ ‘It must be emphasized that ... we are not letting anything about justification turn on the mere fact of current consensus. In fact, it is never the case – not in the gesture to current understandings of value, and not in the requirement of overlapping consensus – that de facto agreement itself plays a role in justification.’ (Cohen, ‘Moral pluralism,’ p. 281.)

evaluating a conception of justice. But, then, neither is social stability to the extent that social stability is partially a function of the existence of an overlapping consensus.

Whether we are bothered by the idea that Rawls's theory over-determines the range of moral pluralism acceptable in a society by his relatively thick conception of the 'reasonable', or by the fact that it seems to fail in its attempt to provide a purely political justification of justice, is not to be addressed here. It suffices to say that it is not my intention to suggest here that these facts alone constitute grounds to disregard Rawls's conception of justice in its substantive aspects, nor that any appropriation of the idea of an overlapping consensus is incoherent. We may continue to speak of a search for an overlapping consensus in a political society as long as we do not advance confusing and self-contradictory claims about the independent normative force of such a consensus. We are not concerned with *any* consensus; as Rawls and Cohen make clear, we are interested in a consensus between 'reasonable doctrines'. For those (I presume most liberals) who are not uncomfortable about defending as reasonable minimal protections of individual choice, the value of honesty ought to compel us to concede at least that we see the search for an overlapping consensus as a political project. Liberalism surely has the resources to defend itself against any charges of unfair exclusion arising from this acknowledgement.³²

Seeing the overlapping consensus as a political or sociological concept does not deprive it of moral significance. What we are, in effect, asking is: Does our conception of justice (which we hold to be at least 'reasonable', if not, true) have the *capacity* to be the

³² Note Cohen's remarks: 'In the case at hand, the exclusion is of a special kind. It does not amount to a deprivation of liberties or of what are conventionally understood to be the advantages of social cooperation. Instead, exclusion lies in the fact that the arguments used to justify the exercise of power depend on norms, values, and ideals that are rejected by some people whose views will as a consequence not belong to an overlapping consensus.' ('Moral pluralism,' pp. 285-6.) But is this exclusion arbitrary and thus unfair? One group most likely to be subject to it are 'nonrationalist fundamentalists' who are not interested in defending their views on rationalist grounds but simply assert that the fact of the truth of their beliefs entitles them to enforce them. 'Faced with nonrationalist fundamentalists, it will not do to state the case for the idea of reasonable pluralism; they know that case, celebrate the limited competence of reason as a guide in human affairs, and lament the self-imposed disabilities of those who insist on proceeding within its narrow compass. Still, what they are prepared to do is to impose on those who are outside the faith in a way that – so far as others can tell – is indistinguishable from the concededly irrational practice of imposing in the name of their beliefs. To resist such imposition is not simply to affirm a disagreement with the nonrationalist fundamentalist. Instead, it is to complain about this fundamental form of unreasonableness. And finding them unreasonable in this way is sufficient to show that the exclusion is not arbitrary.' (Ibid., p. 287.)

object of moral consensus? Consider Joshua Cohen's explanation of the value of such a moral consensus (he calls it no less than a 'fundamental good'):

First, the likelihood that social order will stably conform to the conception is increased by the existence of a moral consensus on it. Second, the existence of a moral consensus supports a variety of specific values of considerable importance. It increases social trust and harmony, supports social peace, reduces the complexity of decision making, encourages a willingness to cooperate and so reduces the costs of monitoring and enforcement, and – assuming the consensus is reflected in public debate and decisions – reduces alienation from public choices because citizens embrace the norms and ideals that guide those choices. Third, a consensus on norms of justice provides a way to reconcile the ideal of an association whose members are self-governing with an acknowledgement of the central role of social and political arrangements in shaping the self-conception of citizens, constraining their actions, channelling their choices, and determining the outcomes of those choices. For when a consensus on norms and values underlies and explains collective decisions, citizens whose lives are governed by those decisions might nonetheless be said to be self-governing because each endorses the considerations that produce the decisions as genuinely moral reasons and affirms their implementation.³³

We are now in a position to answer the question of this section: Of what interest is it to Rawlsian liberals the way existing doctrines in a society relate to our conception of justice – whether or not different groups of citizens can endorse the same values for different reasons? It is of interest to the extent that three conditions obtain: 1) that it matters to holders of comprehensive doctrines how their doctrine relates; 2) that citizens' judgements on 1) have an effect on the goods named above, namely social order, trust, harmony, efficient decision making, social integration, political legitimacy and autonomy; 3) that liberals care about the goods listed in 2). The results of an inquiry into the possibility of an overlapping consensus between our conception of justice and x comprehensive doctrine might serve in two ways: 1) as part of our evaluation of the likelihood of realising the above fundamental social goods in a given society and 2) as part of our marshalling of resources for their realisation.

In defence of comparative political theory

I believe that this brief survey of Rawls's attempt to provide liberal foundations and the importance it gives to the search for compatibility with non-liberal doctrines allows us to return now to the hypothetical objections posed to such a search. In what

³³ Ibid., pp. 274-5.

follows I summarise and add to the points developed above in defence of a comparative political theory dedicated to the search for moral consensus.

1. That comparative political theory has no justificatory force: This may be true on certain essentials. No engagement with Islamic ethics is going to lead to a concession on the right to life for apostates. Our basic commitment to civil and human rights, and basic democratic institutions is not likely to be deeply shaken by the revelation that some people don't share it. Nonetheless, the idea that we have nothing to learn about how to organise our societies from the study of political and ethical traditions which rely on the acceptance of the authority of a particular revelation for their normative force (rather than purely on a form of direct reason, public or other), might not be as entirely true as it is intuitive. For example, we may find arguments on the just conduct of war derived from Christian just war doctrine ultimately convincing or appealing on rational grounds, without accepting them on authority. If we had not already arrived at such arguments independently, then they clearly would have enriched our ethical perspective due to their rational or intuitive appeal.

Another, perhaps more relevant and more plausible, area in which the substantive moral content of non-liberal 'traditional' doctrines matters is from within the contemporary liberal debate on which exemptions from public duties, norms or standards citizens and groups of citizens might be entitled to. Contemporary liberal thought extends across a spectrum of attitudes towards non-liberal ways of life, with 'accommodationist,' 'pluralist' or 'neutralist' theorists more sympathetic to the rights of communities to maintain non-liberal ways of life and 'perfectionist,' 'transformative' or 'universalist' theorists more insistent on the need to encourage a unitary set of civic virtues and principles. However, just as a liberal theory of multiculturalism must be critical towards the coercive power of communities over their individual members, so must a liberal theory of common values be critical of state coercion of non-liberal groups or individuals where the latter's actions do not violate clear boundaries of individual freedom or public order. No liberal is for complete communal authority and no liberal is opposed to all

culturally- or religiously-based exemptions from common duties.³⁴ Thus, much of the debate over multiculturalism obscures a ‘multicultural plateau’ arrived at not merely through accommodation of historical contingency but through a wide range of core liberal principles.

Now, what if a minority community’s recognition of a political (‘pluralist,’ ‘multicultural,’ etc.) form of liberalism depended on the extent to which that liberal regime allowed for the free practice of its religion? Community *c*, not normally known for its respect for individual autonomy, is induced to find the resources from within its authoritative texts to see individual freedom as justifiable because of the myriad other benefits offered within a free society. But the free practice of religion requires, in the case of community *c*, the freedom to engage in practice *p* or refrain from action *a* which in turn requires a certain form of exemption from public duties. Our consideration of whether the exemption is justifiable will certainly not hinge merely on community *c* wanting it, but in the event that we find such an exemption innocuous enough to grant, our appreciation for the importance of that exemption will undoubtedly alter our conception of the proper balance between church and state, religious liberty and civic equality, communal solidarity and individual freedom. We might, in essence, end up understanding the minimum or proper demands of citizenship in a new way because of the *specific* exemption required by a specific community.

The point here is that the process by which we decide whether or not to change long-standing rules or offer exemptions from them cannot be decided (whether legally or politically) merely by examining the fact of a community or individual *desiring* the change or the exemption alongside the objective *costs* to others in bringing it about. Both a deliberative (‘political’) approach and a legal approach (such as the principle of searching for a ‘least restrictive alternatives’ to a uniform law) might require the cultural minority in question to publicly defend the authoritative or binding character of the act or omission they seek protection for, as well as to demonstrate the relative importance, or ‘centrality,’ of a given practice to a religious tradition. Our sense of what limits a liberal

³⁴ Even Brian Barry does not ‘wish to rule out the possibility that there will be cases in which both the general law and exemption are defensible. Usually, though, either the case for the law (or some version of it) is strong enough to rule out exemptions, or the case that can be made for exemptions is strong enough to suggest that there should be no law anyway.’ (Brian Barry, *Culture and Equality* (Cambridge, Mass: Harvard University Press, 2000), p. 39).

society ought to place on communal authority is thus not entirely divorced from an inquiry into the internal discourses of minority traditions. To cite two examples: The case of the Amish and their requests to be exempt from laws requiring them to put reflective triangles on their carriages 'seems to invite an inquiry into the extent to which reflective triangles on the backs of those buggies are really a threat to the Amish way of life.'³⁵ Such an inquiry can only be carried out with some contribution from internal Amish discourses. Similarly, while our determination not to allow female circumcision on any grounds is not likely to be tempered by any demonstration of the religious nature of the practice, the fact that there is so little authoritative textual foundation for the practice (from the Qur'ān or *ḥadīth*) gives us a further argument against the continuation of it on the part of Muslims. In this case, we are arguing not only from our own moral beliefs but also those of our contemporaries. I believe that my discussion in the fourth chapter of the duty of patriotism, loyalty and military service in relation to Islamic concerns is a further such example of this process. These examples demonstrate that there are good reasons to be interested in the internal discourses of non-liberal traditions both in the case of moral conflict within civil society as well as at the level of the normative justification of the basic constitutional structure that creates civil society.³⁶

2. That comparative political theory is primarily anthropological or historical: This is partly true but not a profound criticism. Comparative political theory represents an effort to infuse political theory with more explicitly political content. It is the study of the dialectical creation of political traditions from diverse sources and through means of discourse that are politically or socially (in addition to intellectually) important. In other words, political philosophy must take an interest in the political conditions of its

³⁵ Barry, *Culture and Equality*, p. 185.

³⁶ Even Bhikhu Parekh, in some areas a critic of liberalism's claim to universal validity over minority sub-cultures, argues for a similar form of public presentation of one's own reasons for desiring a particular law or exemption on the part of non-liberal groups: 'Adherents cannot hide behind God's authority and must accept responsibility for what they say and do in His name. It is never enough for them to say that they must do such and such things because God or the Bible or the Koran says so. The divine will is a matter of human definition and interpretation, and requires them to show why they interpret their religion in one way rather than another and why they think that their interpretation entails a particular form of behaviour. Religiously minded citizens are never excused from a rational discussion of their politically relevant beliefs and practices. Political life recognises no infallible truths, only those capable of carrying conviction with the democratic community of citizens.' (*Rethinking Multiculturalism*, p. 334)

reception. Even if some of the universalist claims of liberal political philosophy are true, the question of their transmission to non-liberals is not resolved. The universalist claims of liberalism (given that they are in their dominant strand today based on some form of intersubjectivity or consensus) are strengthened by evidence that they can be made intelligible through other vocabularies and do not make unreasonable demands on non-liberals. The argument is put more strongly from within discourse ethics: 'The [constitutional rights and principles] must be enduringly linked with the motivations and convictions of the citizens, for without such a motivational anchoring they could not become the driving force behind the dynamically conceived project of producing an association of individuals who are free and equal.'³⁷

Let us not forget also that mainstream political philosophy has reached into history and culture for its own justification. Rawls's work is the best recent example of this: he justifies the use of certain values as foundations not only because of their objective value but also because of this historical occurrence and dominance. This existing consensus functions for him as a form of justification: 'One is to imagine that, for the most part, [citizens] find on examination that they hold these ideals [of the person and of social co-operation], that they have taken them in part from the culture of their society.'³⁸ Perhaps the most famous and prestigious example of such an examination is Locke's *Letter Concerning Toleration*, which grounded the separation of church and state in scripture. From this example, Stephen Macedo has recently argued that 'liberalism needs the support of private beliefs and practices that are at least congruent with liberal politics. Liberalism depends, after all, on a certain ordering of the soul. ... Creating a certain religious homogeneity – at least in the sense of encouraging all religions to support shared political values and virtues – is crucial and legitimate political work that liberals must hope is performed somehow.'³⁹ It would follow then that the justification of liberal conceptions of justice is at least consistent with attempts to show their compatibility with various ethical traditions, and perhaps a political necessity.

³⁷ Jürgen Habermas, 'Struggles for Recognition in the Democratic Constitutional State,' in Amy Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton: PUP, 1994), p. 134..

³⁸ Rawls, 'Kantian Constructivism in Moral Theory,' *Journal of Philosophy* 77 (1980), pp. 568-9.

³⁹ Stephen Macedo, 'Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism,' *Political Theory*, Vol. 26, No.1, p. 64-5.

The practice of comparative political theory is also democratic to the extent that we have 'moral contemporaries' and 'moral partners' from different ethical traditions. Arguing from multiple traditions and exhibiting an openness to multiple languages in the public sphere is one way in which we extend recognition to co-citizens. Even if we are obliged not to tolerate certain practices, we may be obliged to foster a certain attitude of respect towards fellow citizens. One of the aspects of this attitude of respect is to cultivate a preference for cultural or intellectual change from within the resources of the culture in question.⁴⁰ The neutralisation of oppressive aspects of an illiberal culture through the appeal to other values held in that culture carries the possibility of being more legitimate (in the short-term particularly), more politically stable, more respectful and, therefore, of generating fewer negative side-effects flowing from the resentment caused by rapid, coerced cultural, moral or intellectual change.

3. That comparative political theory is implausible and a form of cultural imperialism: In fact, comparative political theory presumes a more enlightened sociology than theories of the essential incompatibility of liberal individualism and non-Western traditions. It resists the essentializing, or ossification, of cultural and intellectual traditions by refusing to believe, in this case study, that there is 'one Islam' any more than there is 'one liberalism' defined once and for all in the 17th century. There is a certain self-contradiction in relativist critiques of liberalism and their charge that liberal constraints on cultural systems creates a form of inauthenticity: If all value systems are constructed historically, what meaningful objections on grounds of 'inauthenticity' can be levelled (by relativists) against historically determined processes of reinterpretation from within ethical traditions? Here, even Parekh finds himself in some sympathy with Rawls: 'Rawls suggests that public institutions including the state should actively encourage citizens to reinterpret their comprehensive doctrines in the light of the political conception of justice. He is right to point to the inevitable and desirable interplay between public principles and comprehensive doctrines. This is how the Koran is currently reinterpreted, as the Bible

⁴⁰ 'Each [culture] can be improved in a way consistent with its own spirit and out of its own resources.' (Joseph Raz 'Multiculturalism: A Liberal Perspective,' in *Ethics in the Public Domain* (Oxford: Clarendon Press, 1994), p. 168.)

once was, in the light of the democratic principles of equality of the sexes and freedom of conscience.’⁴¹

Note that if we take seriously the claim that there are no objectively true foundations for liberal principles and norms that all humans are compelled to accept on the grounds of universal reason regardless of their social interests or cultural/religious beliefs, but remain committed for whatever reason to the defence of liberal human rights⁴², then comparative political theory may be *unavoidable*. In other words, if our beliefs are merely historically contingent and there is no neutral, non-circular way to defend our most fundamental intuitions, then we are faced with a choice between arguing directly for our values at the expense of rival systems (but without access to the claim to universality) or investigating the ways in which these fundamental values may have resonance in other ethical systems. On this view, the boundary between political philosophy and history or anthropology blurs. If we are forced to admit that liberal justification rests on a limited set of *substantive* (rather than procedural) and *controversial* (rather than ‘neutral’ or ‘universal’) beliefs (usually equality and some respect for individual choice) then one must be clear that justification is about examining the presence of these values in other doctrines if one is concerned with liberal legitimacy amongst holders of those doctrines.

II. On Conjecture: The Ethics of Comparative Ethics

Having made an argument that political liberalism must be interested in its compatibility with other doctrines, I now address the question from the other side: What is the methodology by which this compatibility is tested and who is entitled to engage in it? The process of defending a certain set of public institutions from within someone else’s ethical tradition (‘comprehensive doctrine’), even if adherents of that tradition have not yet done so, is referred to by Rawls as ‘conjecture’ and included as one of his acceptable forms of public reason. He defines conjecture as arguing ‘from what we believe, or conjecture, are other people’s basic doctrines, religious or secular, and try[ing] to show them that, despite what they may think, they can still endorse a reasonable

⁴¹ Parekh, *Rethinking Multiculturalism*, p. 88.

⁴² Such as the position of Richard Rorty in *Contingency, Irony, Solidarity* (Cambridge: CUP, 1986).

political conception that can provide a basis for public reasons.’⁴³ As to the guidelines for this procedure, Rawls says simply that ‘it is important that conjecture be sincere and not manipulative. We must openly explain our intentions and state that we do not assert the premises from which we argue, but that we proceed as we do to clear up what we take to be a misunderstanding on others’ part, and perhaps equally on our own.’ Although this thesis proceeds largely on this invitation by Rawls, his brief thoughts on conjecture provide insufficient guidance for one wishing to engage in it. Furthermore, we may not be comfortable accepting all of what he does suggest, especially the notion of correcting contemporaries on the implications of their own doctrine. In the rest of this section I set out to develop a set of principles to govern the process of what may be called comparative political theory, conjecture, or comparative ethics.

The first virtue of comparative political theory is not, as Rawls said of systems of thought, truth, but ‘plausibility’. We are aspiring to the most plausible interpretation of an ethical or cultural tradition, in the sense of preserving what are generally held to be the most constitutive elements of that tradition – what makes that tradition *that* tradition and not another one, which still allows us to arrive at some sort of consensus. If the dialectical process of comparative ethics results in, particularly in the case of revealed religions, an exegetical free-for-all with little regard for the continuity of doctrinal and methodological traditions then we would not be engaging in a process for which we could expect a wide range of interlocutors.⁴⁴ Plausibility is, of course, a relative virtue. It can obtain in greater or smaller quantities. Ultimately, it can only be measured in terms of the reception of a given claim by the discursive community towards which is directed. In this case, our ‘claim’ is directed at multiple discursive communities each of which will have different standards for determining plausibility and will apply those standards with different levels

⁴³ Rawls, ‘The Idea of Public Reason Revisited,’ in *The Law of Peoples* (Cambridge: Harvard University Press, 1999), p. 156.

⁴⁴ ‘Such an exercise [of reinterpreting religious texts in the light of modern values] has its dangers. It can easily violate the integrity of the texts and the tradition, charter them in the service of political and ideological fashions, encourage the government directly or indirectly to influence scholarly inquiries, and create a climate hostile to intellectual dissent. The ethos of political liberalism could easily penetrate religious and philosophical doctrines, pressure them to understand and articulate themselves in standard liberal idioms, and all but eliminate nonliberal forms of thought. Locke did this when he turned Christianity into a “reasonable” doctrine by stripping it of its theological mysteries, reducing its highly complex ethic to a simplified morality of bourgeois reciprocity, and turning churches into voluntary associations. J.S. Mill did the same with Christianity and indeed religion in general. Rawls’s thought offers little protection against this persistent liberal tendency.’ (Parekh, *Rethinking Multiculturalism*, p. 88.)

of rigour. The communities that might be expected to evaluate the plausibility of a claim about the possibilities for an overlapping consensus between Islamic ethics and political liberalism include liberal philosophers, Muslim religious authorities, non-Muslim experts on Islam and lay Muslims. The plausibility of a proposal for an overlapping consensus will be the relative acceptance of such a proposal by members of each of those four main discursive communities, each of which will not only have different standards of acceptability but, possibly, mutually conflicting standards.

All of the above might be said to be 'agent-neutral' It applies equally to whether a claim about the possibilities for an overlapping consensus between Islamic ethics and political liberalism are made by a non-Muslim or a Muslim. In reality, of course, it matters greatly who is saying what. There is a weak and strong way in which this might be the case. In the 'weak' way, one might say that it is not the business of outsiders to 'conjecture' on possible reinterpretations of another community's ethical tradition. Particularly when dealing with the interpretation of religious texts, the charge can be easily made that non-believers will always lack the spiritual commitment, faith and, most of all, good will to participate in dialogue about their ethical meaning. This 'lack of authenticity' charge is quite reasonable and, indeed, outsiders should to the extent possible limit their arguments to the analysis of exegesis already produced by insiders. It is only partially offset by the fact that one the 20th century's great Muslim scholars dissented from this view: 'The method of Qur'anic hermeneutics that I am talking about is concerned with an understanding of its message that will enable those who have faith in it and want to live by its guidance – in both their individual and collective lives – to do so coherently and meaningfully. In this purely cognitive effort both Muslims and, in certain areas, non-Muslims can share, provided the latter have the necessary sympathy and sincerity. Pure cognition and emotive faith can be practically separated.'⁴⁵

Yet as reasonable as it is for adherents of a tradition to be uninterested in, or even offended by, outsiders' speculations as to what they might be induced to think, there is reason for those outsiders not to be overly daunted by this. To the extent that discourse ethics relies on having willing interlocutors, it assumes that there will be those unwilling

⁴⁵ Fazlur Rahman, *Islam and Modernity: The Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982), p. 4.

to be interlocutors. Those dogmatically opposed to ethical dialogue with outsiders are not compelled to engage in it or to read what outsiders have to say about their ethical traditions, just as they are free to ignore various modes of Orientalist scholarship. The worst that the conjecturer has to fear from the 'lack of authenticity' charge is that a target audience will not read his work, a possibility that any prudent scholar would be well-advised to come to terms with as early as possible in his career.

However, there is a strong way in which it might matter who is saying something, and this way depends on the target audience actually reading (or at least skimming) the text in question. For when dealing with cross-cultural dialogue, particularly involving religious differences in the context of background political conflict, the fact of an *outsider* asserting something about one's tradition may be good enough reason to reject the assertion. This is really a variation on the observer's paradox, where the fact of outside observation (in this case proposition) is itself an independent variable on the outcome. On this view, conjecture is simply a more refined form of George Bush and Tony Blair quoting from the Qur'ān to assert that Islam is the 'religion of peace'. The danger here is not merely being rejected or ignored but actually delegitimizing the proposed grounds for an overlapping consensus: 'If this unbeliever says my religion allows me to believe x, I better believe y and all the more fervently at that.' (This is, of course, not to belittle the task of the internal reformer, which is infinitely more dangerous. Alien conjecturers face the danger of being counter-productive; internal reformers face the danger of being shot.)

What, then, is the way to minimise all of these concerns? I propose the following methodological and ethical principles for those interested in engaging in conjecture:

1. Theorise out from more orthodox sources to less; or: 'canon first'. Religious and intellectual traditions always have a wide range of views and interpretations on record but not all of them can equally claim to be representative of the views of the majority of adherents of a given tradition. Epistemic communities develop more and less authoritative bodies of doctrine and outside interpreters should strive to conjecture first from within the more authoritative sources. There are moral and pragmatic reasons for this assumption. The moral reasons concern our proper attitude towards contemporaries

from different traditions. This attitude should not only be one of respect and sympathy, but one of humility. We should strive to make arguments based on sources, values and principles that our interlocutor is most likely to regard as authoritative because this takes her tradition more seriously than if we *first* referred to sources or values she would likely have less trust in. Second, one must have humility before the traditions of inquiry and standards of authority in the intellectual corpus one is studying. One must assume that no outsider understands an ethical tradition as well as an insider and no insider as well as learned experts. Authoritative doctrines may indeed serve to legitimate particular interests, but one must also assume that they represent the most concerted and sincere intellectual effort to understand, in this case, texts considered divinely revealed. Where a consensus exists that a certain corpus speaks for an ethical tradition in a particularly authoritative way, one cannot refuse to refer to it without acknowledging that one is doing so and offering some form of justification. These moral concerns are simply the more earnest face of the pragmatic concerns: One presumably has an interest in a meaningful and effective exchange with moral contemporaries and that is best achieved by mastering their ethical language *in the way they speak it* rather than referring to more eccentric dialects. The point is easily illustrated if we turn the tables: An American liberal would presumably feel more respected and be more inclined to engage with a non-liberal who was sincerely trying to make the argument that liberalism ought to respect a particular practice by referring to Warren-era Supreme Court decisions or the writings of John Rawls than by referring to pre-Reconstruction Supreme Court decisions now superseded or the writings of Chandran Kukathas or Charles Taylor. In this thesis, my main focus will thus be on the tradition of Islamic jurisprudence (*fiqh*), both classical and contemporary, and the answers that it contains to the specific questions posed by this thesis. In particular, I will focus on the growing body of ‘law of Muslim minorities’ (*fiqh al-aqalliyyāt al-muslima*), which addresses directly the ethical aspects of Muslims living in non-Muslim states.

The difficulties associated with this are obvious, however, and referred to above (section one) as the ‘implausibility’ objection to comparative political theory. After all, the point of comparative political theory is to find a common ground between ethical traditions, a venture only worth making if there is the experience of significant

disagreement. This might be called the *paradox of comparative ethics*: On the one hand we begin with *different* ethical traditions that have *disagreements* and on the other we are trying to find ground for *agreement*. If, on the one hand, there is no disagreement worth bridging then the venture is uninteresting and pointless; yet if there is no bridging of disagreements, then the venture is futile. As a further twist, the 'conjecturer' is compelled at the same time to emphasise both sides of the paradox: she wants enough disagreement to be interesting but enough flexibility to be constructive. This implies, of course, the concurrent threat of self-contradiction: one might begin by observing the existence of deep disagreement only to finish by emphasising the possible grounds for agreement.

The principle of 'canon first' only complicates the way out of this paradox. One feels compelled to begin with the more traditional and authoritative voices, but it is precisely these voices (particularly in the Islamic tradition, where they are likely to be medieval or earlier) that are least likely to offer anything promising in the way of an 'overlapping consensus' with modern, liberal concerns. It is, of course, the illiberal nature of traditional doctrines in general, and their most common interpretations in particular, that creates the disagreement in the first place. Nonetheless, one must first examine and present the more 'orthodox' views first, if only to better understand the contours of the ethical dispute. In the event that these sources happen to contain within them views that are conducive to an overlapping consensus, as will indeed be shown to be the case for most of the questions considered in this thesis, then the conjecturer's project can only be regarded as that much more plausible.

However, it is expected that the more orthodox sources will often fail to provide the resources for an overlapping consensus. At this point one ought to retreat to 'internal dissenters', to those from within an ethical tradition who are arguing for positions more conducive to an overlapping consensus. What interests us in this shift is the way in which intellectuals use authoritative texts and traditional methodologies of interpretation and argumentation to support certain norms or principles. As outsiders we ought not impose overly rigid preconceptions of what substantive beliefs can be derived from authoritative texts, but we are certainly obliged to read texts by Muslim authors with the objective of critically analysing the evidence they give for their reinterpretations and how these interpretations measure up to previous ones. Thus, while the conjecturer is 'engaged' or

‘interested’ in the results of the inquiry, he ought not to neglect the concerns of a more disinterested, value-neutral hermeneutic tradition. The conjecturer is both an ideologue (as a proponent of a theory of justice) and a student of ideologies.

To this point, the work of the conjecturer might be characterised as ‘synthesis’, which captures its position in between normative theorising and interpretation. The conjecturer is, of course, concerned to defend a particular thesis – in this case the proposition that certain liberal norms can be justified from the standpoint of Islamic values – but his position as an outsider to a tradition limits the extent to which he can freely argue from original sources (engage in his own exegesis). Thus, he sees his task as critically analysing attempts by insiders to answer the specific questions he is interested in, where such attempts exist, and, where they do not, to attempt to piece together (hence, ‘synthesis’) what such answers might be on the basis of existing scholarship.

2. Transparency. This sensitivity to the preponderance of intellectual resources able to be deployed *against* strategies of compatibility or consensus, as well as to the ever-present mistrust of both external and internal ‘reformers’, needs to be uppermost in the mind of the conjecturer. One response to these challenges is not to exaggerate the authority or intellectual hegemony of evidence one finds in favour of compatibility, but just the opposite: to be rigorous in citing evidence to the contrary, or being ‘transparent’ in one’s recognition of the contingent nature of consensus and the loss involved.⁴⁶ One must keep in mind that ‘many of these cultural communities are not averse to self-criticism and change, but they do so in a spirit of humility rather than self-creation, and in terms of the central values and principles of their culture rather than some allegedly transcultural norms autonomously derived by an unanchored and self-sufficient reason.’⁴⁷ Recognising this requires that one consistently identify (to the best of the outsider’s knowledge and understanding) how authoritative or central one’s source or interpretation is, what alternative sources and arguments exist, and what types of departures or breaks are involved in adopting a given position.

⁴⁶ This is quite different from what Rawls means by ‘transparency’, which is essentially the public assertion that one does not argue from within the tradition in question. This notion of transparency I take for granted.

⁴⁷ Parekh, *Rethinking Multiculturalism*, p. 107.

3. Sympathy. Clearly, the purpose of searching for an overlapping consensus is to find one. One of the dangers in assuming that one is there to be found is to treat the authoritative texts of an alien tradition in too instrumental of a manner, only searching for commonality. This endeavour may come at the expense of a loss of the spirit in which members of a tradition read those same texts. One should have, thus, ‘sympathy’ for the community in question, not in the sense of approving of the substantive ethical directives, but in trying to ‘enter sympathetically into the latter’s world of thought, tease out its insights and deeper concerns and anxieties.’⁴⁸ This is related to the principle of transparency, but goes beyond simply citing contrary evidence or acknowledging that one cites from a minority tradition. The principle of sympathy requires that, for these purposes, we assume that our interlocutors or sources (particularly the ones not conducive to our purposes) are sincere in their defence of their values and that specific positions or maxims are part of an overall conception of value. The principle of sympathy requires thus that we display an understanding of the context in which statements of value or norms are made, the relative importance of various norms and the necessity of using language in different ways. Above all, this principle will require us to reflect critically on what will count as compatibility or ‘overlapping consensus’, what reasons or statements we will accept from contemporaries as sufficiently ‘moral’. (This theme is taken up below.)

4. Restraint. One runs the risk of making a great many mistakes simply by being too eager to establish the possibility of consensus. In keeping with the principles of transparency and sympathy, one of the legitimate outcomes of comparative political theory (discourse ethics, etc.) might simply be a better understanding of the unbridgeable. One should be willing to say that intersubjective consensus would only come at the cost of neglecting or sacrificing beliefs which, *at this time at least*, are constitutive of what it means to be a member of a given ethical community. One should be aware from the outset of the *professional interest* one has as a comparative political theorist (conjecturer, etc.) in arriving at a certain set of results and thus also be sensitive to the ways in which

⁴⁸ Parekh, ‘Barry and the Dangers of Liberalism,’ in Paul Kelly (ed.), *Multiculturalism Reconsidered: Culture and Equality and its Critics* (Oxford: Polity, 2002), p. 145.

this professional interest might lead to shoddy methods. But, if one accepts from the outset that 'negative results' as it were are also a form of results and that much can still be gained from the process of achieving them, then perhaps one's relative credibility can be preserved. This point relates to my above assertion that the conjecturer is both ideologue and student of ideologies. He would certainly wish for 'positive results' for any number of defensible reasons. But as student of ideologies, he is also interested in analysing the patterns of thought and the process by which traditions are negotiated and reinvented. Here the interest is not merely in advocating a particular party within a tradition but in analysing the rhetorical techniques of the various parties and their relative over-all intellectual coherence.

III. The Overlapping Consensus: What Counts as Compatible?

Despite the anxieties revealed in the above section about locating orthodoxy and entering into religious discourses as an unbeliever, it must be said that the main work of the conjecturer (at least for the questions addressed in this thesis) comes not in locating compatible arguments or assertions, but in analysing them from a comparative ethical standpoint. Much of my analysis of the Islamic sources consists in answering the question: What types of reasons for accepting liberal constraints on the pursuit of the good qualify for the overlapping consensus? We return to the theme raised by the 'paradox of comparative ethics' discussed above, here emerging in a slightly different form: On the one hand political liberalism, or liberal neutrality, wants to defend liberal principles without recourse to controversial metaphysical principles which various conceptions of the good might not be able to affirm. Thus, Rawls wants non-liberals to be able to endorse political liberalism without necessarily professing a belief in individual ethical autonomy as a necessary component of the good. On the other hand, he wants those same citizens to accept the constraints imposed by liberalism (most importantly the duty of restraint towards others) on grounds of principle and not mere political necessity. The dilemma here is to find good reasons for affirming citizenship in a liberal democracy that are derived neither from autonomy, scepticism or value pluralism, nor fear of punishment, a desire for social peace or exhaustion from conflict. As when we considered

the philosophical or moral status of the overlapping consensus in the first section, it is possible to detect an ambiguity rooted in this dilemma in Rawls's own work.

For Rawls it is crucial that the overlapping consensus is not a mere political compromise. That it is not is shown by the fact that the endorsement of the political conception of justice consists in a public affirmation of its specific moral underpinnings: 'How deep does the consensus go into citizens' comprehensive doctrines? And how specific is the conception agreed to? The consensus goes down to the fundamental ideas within which justice as fairness is worked out. It supposes agreement deep enough to reach such ideas as those of society as a fair system of cooperation and of citizens as reasonable and rational, free and equal.'⁴⁹ Furthermore, not only are citizens affirming these moral conceptions, but they are doing so on grounds of principle: The 'overlapping consensus... is affirmed on moral grounds, that is, it includes conceptions of society and of citizens as persons, as well as principles of justice, and an account of the political virtues through which those principles are embodied in human character and expressed in public life. All those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical, and moral grounds it provides.'⁵⁰ If the principles to be affirmed from the standpoint of a comprehensive doctrine include, for example, the protection of individual autonomy (even to some extent in the private sphere), and this affirmation must be of a moral nature, it would seem to follow that the overlapping consensus requires that each comprehensive doctrine include individual autonomy as one of its core values. Rawls's assertions that this value is limited to the political sphere are of dubious relevance given the extent of the limitations this sphere imposes on the private. However, is it not precisely this type of demand of profession that the entire project of political liberalism is designed to avoid?

Thus, we find certain vague statements in a slightly different direction. 'Justice as fairness is to be understood ... as a free-standing view that expresses a political conception of justice. It does not provide a specific religious, metaphysical, or epistemological doctrine beyond what is implied by the political conception itself. The political conception is a module that *in different ways* fits into and can be supported by

⁴⁹ Rawls, *Political Liberalism*, p. 149

⁵⁰ *Ibid.*, p. 147.

various reasonable comprehensive doctrines that endure in the society regulated by it.’⁵¹ ‘Even if we do not, say, hold some form of the doctrine of free religious faith that supports equal liberty of conscience, our actions nevertheless imply that we believe the concern for salvation does not require anything incompatible with that liberty. ... For many the true, or the religiously and metaphysically well-grounded, goes beyond the reasonable. The idea of an overlapping consensus leaves this step to be taken by citizens individually in line with their own comprehensive views.’⁵² If we take these statements seriously we are committed to considering for inclusion in the overlapping consensus comprehensive doctrines which do not preach a form of Lockean theology but manage to avoid rejecting the secular, liberal system. Given that it is inevitable that patterns of thought inhabiting this ambiguous terrain will have some overlap with *modus vivendi* reasons for endorsing liberal systems, we are in need of a set of principles which help us determine when an argument from within a fully comprehensive ethical tradition is eligible for the overlapping consensus and when it is insufficiently principled for such inclusion.

Rawls’s own considerations are not likely to be sufficient for these purposes not only because of the ambiguous nature of his statements, but also because he chooses not to address directly the question of the endorsement of the political conception by fully comprehensive doctrines with alternative conceptions of justice. Rather, where he does address the question of citizens who may not have previously seen themselves as holding a comprehensive doctrine which leads to the political conception of justice, he limits his considerations to citizens with only partially, and generally unsystematic, comprehensive doctrines. In his ‘model case of an overlapping consensus’ he thus cites three doctrines: a religious one with a (Lockean) doctrine of free faith, a comprehensive liberal doctrine and a ‘pluralist’ doctrine that is not ‘systematically unified’ This latter doctrine is seen to contain a large number of non-political values as well as the capacity for various political ones. This unsystematic nature allows for the development of a free-standing adherence to the political conception of justice on its own merits, rather than as a ‘consequence of that doctrine’s nonpolitical values.’ This unlinking of a doctrine’s public and private

⁵¹ Ibid., p. 145. Emphasis added.

⁵² Ibid., p. 153.

values allow the former to 'outweigh whatever values oppose them, at least under the reasonably favorable conditions that make a constitutional democracy possible.'⁵³

However, it will not do for our purposes to limit ourselves to such cases, as doing so avoids our main political interest in the prospects for engagement with fully comprehensive doctrines and our methodological interest in how the political values *themselves* need to be grounded in comprehensive doctrines. What types of theologically-grounded arguments are we hoping to find, then? Rawls himself does not go further into religious doctrines than citing Locke's *Letter Concerning Toleration*. Does inclusion in the overlapping consensus require a similar overt and robust endorsement of autonomy from within one's comprehensive doctrine, or is there some space for doctrines to find other ways of describing their relationship to liberalism?

There are good reasons to expand the overlapping consensus by endorsing the weaker version of the requirements for qualification. First, if we are serious about not imposing theological burdens on believing citizens and allowing them to pursue illiberal lives, it follows that we must be consistent in not over-specifying the reasons they may have for endorsing the political requirements of citizenship. Otherwise, given that Rawls does not significantly alter the substantive aspects of his theory of justice from *Theory* to *Political Liberalism* (i.e., illiberal minorities are still subject to the same legal constraints on their treatment of family and community members), what would be the point of presenting certain values as merely political rather than comprehensive?⁵⁴ It seems to me that the only possible virtues in retreating from the more comprehensive assumption in *Theory* are, one, to show that it can be done, that one does not have to be a comprehensive liberal to be in favour of liberal political freedoms (i.e., that it is not 'sectarian') and, two, to avoid requiring citizens to *profess* belief in something they do not believe. Given that autonomy is one of those possible beliefs, it follows that asking

⁵³ Ibid., p. 155.

⁵⁴ This is not to say that there are no important policy disputes between comprehensive and political liberals. An important area is public education, where political liberals would advocate restraint in terms of the values and beliefs that can be taught to future citizens, limiting themselves to only those values crucial (not merely desirable) to producing good citizens (not persons). Some liberals, by contrast, would endorse a variation of Dewey's conception of the proper scope of public education, which extends to inculcating more robust rationalist and critical beliefs. This is a good example of how, for the political liberal, the duty of restraint in the public sphere extends to his own possible conceptions of value. (See Stephen Macedo, 'Liberal Civic Education and Religious Fundamentalism'.)

them to endorse the requirement that faith be *treated as* voluntary because they believe that God believes that this is the (only) *true* way of believing or the *best* way to treat people or that freedom to change one's beliefs *as such* is an important human value is unreasonable. As Rawls says, 'it is up to each comprehensive doctrine to say how its idea of the reasonable connects with its concept of truth.'⁵⁵ It would be a bit much to read this as suggesting that all holders of religious doctrines *must* regard the political values as somehow true, leaving to them (obviously) to work out the scriptural exegesis for themselves. Rather, I read this as suggesting there is a range of ways citizens can come to accept the requirements of liberalism.

Second, in addition to the problem of making unrealistic substantive theological demands such as a profession of the value of ethical autonomy, over-determining the ways in which citizens relate to the demands of liberalism may result in unreasonable rhetorical and discursive requirements. One of the common features of traditional moralities is that they often rest on a body of cumulative tradition which they take as authoritative, rather than a set of first principles which can either be rethought or reconfigured. Not all comprehensive doctrines present themselves as ideological clusters of concepts that can be contested, redefined and rearranged, even if it is possible to derive such concepts and values hermeneutically. By way of asking, 'Is this value an Islamic one?' Muslims might ask instead, 'Am I allowed to do this?' or 'What is this analogous to in Islamic law?' Thus, in addition to self-aware works addressing the practice of Islam in the West systematically, or ambitious tracts seeking to rethink Islam comprehensively for the modern era, we might find useful resources in less sophisticated tracts, pamphlets and religio-legal *responsa* (*fatāwā*) dealing with what Muslims ought to do in specific cases of conflict between traditional Islamic norms and liberal constraints. These texts may not self-consciously describe themselves as attempts to assert compatibility or 'overlapping consensus,' but in piecemeal form may offer answers to specific problems which might add up to a pattern of compatible attitudes. Importantly, when doing so these texts have the rhetorical advantage of conservative authority ('if even they say so...') often lacking in more reformist discourses.

⁵⁵ Rawls, *Political Liberalism*, p. 94.

Third, it must be remembered that there are a variety of paths to these values and constitutional essentials *for liberals*. Not all liberals are Kantians or Millians in their non-political values. Rather, the defining feature of a liberal is a commitment to specific policies or rights, which can be arrived at from various ethical and philosophical commitments. What *all* liberals (and many non-liberals) agree on are the limits of cultural authority and diversity. It is these limits in the form of constitutions and laws that non-liberals (Muslims as well as Christian fundamentalists) encounter as potentially problematic, not primarily the metaphysics or epistemology behind them. They have no good reason to be mollified by a set of institutions that has a perfectly neutral justification, rather than the same set of institutions with a perfectionist foundation, except, to repeat, insofar as the perfectionist foundation would require non-liberals to publicly profess belief in something they cannot. Thus, we do better to restrict our emphasis to the policies that all liberals agree on and are largely in force in really existing liberalism rather than the various paths that lead to them. After all, it is precisely an *Islamic foundation* for these policies that we are looking for, and not another inquiry into liberal foundations or multiculturalism from a liberal perspective.

Fourth, it must be remembered that the search for an overlapping consensus derives from a very specific school of philosophical thought, namely that *political* philosophy has the burden, not shared by other branches of ethics, of concerning itself with the conditions of its reception and its prospects for promoting both social stability and social unity. One consequence of this view is a certain flexibility in assessing the justice of existing conditions (remember Rawls's use of the phrase '*a more or less* just constitutional democracy' as a legitimate and sufficient aim of a liberal society⁵⁶) as well as a certain patience with non-liberal citizens that do not actively disrupt the liberal order (remember the scenario of a gradual transition from a *modus vivendi* to a constitutional consensus to an overlapping consensus). This suggests that assessments of the existence of or prospects for an overlapping consensus with any given comprehensive ethical doctrine may admit of a range of qualified responses. Kurt Baier, for example, suggests that consensus takes place on three dimensions: a) 'level,' or degree of specificity, b) the 'extent' of support among the population, and c) the 'intensity' of agreement by those not

⁵⁶ Rawls, 'The Idea of an Overlapping Consensus,' *Oxford Journal of Legal Studies* 7 (1987), p. 22.

opposing the regime.⁵⁷ Baier's suggestion that citizens holding various comprehensive doctrines can endorse political liberalism with various levels of intensity is consistent with my present argument that we must not, from the outset anyway, over-determine the types of reasons citizens must invoke from their authoritative texts by way of reconciling themselves to the restraint required of them in a liberal society.

Thus, we do not want to be open to the charge of completely begging the question of compatibility by failing to regard as qualifying any doctrines but those expressly committed to a fully privatised, fully personal, quasi-protestant theology. While conceding that liberalism can never be fully neutral either in effect or in justification, and arguing that Rawls may beg the question of justification and the 'pluralistic consensus test' (to use Joshua Cohen's phrase) by building into his definition of 'reasonable' various liberal assumptions, we are committed to a certain flexibility in considering how Muslims come to terms with the requirements of liberal citizenship in their own language. What I wish to suggest, or speculate on, from the outset is that we can expect a range of responses to liberal constraints. There may be multiple Islamic doctrines of citizenship in liberal democracies, and multiple incompatible responses. Let us take as an example, what I will not end up addressing in this thesis, the conception of individual autonomy in a liberal society. Here I present five possible Islamic responses to the requirement of restraint towards errant Muslims and consider how they relate to the overlapping consensus.

1. The deepest possible consensus would involve the endorsement of freedom of conscience on principle (through some articulation of autonomy, 'free faith', etc.), and thus which sees no conflict *at all* between liberal constraints and Islamic conceptions of the good. The latter would thus be presented as *best* achieved privately and voluntarily. This would be an example of multiple comprehensive doctrines achieving an overlapping consensus not merely on the political level but on the level of metaphysics. Here we would find Muslim intellectuals not only justifying liberal constraints, but seeing those constraints as following equally from values constitutive of their conception of the good. In other words, the endorsement of the political conception of justice is in some way a consequence of the non-political, metaphysical values.

⁵⁷ Kurt Baier, 'Justice and the Aims of Political Philosophy,' *Ethics* 99 (July 1989), pp. 776-7.

Demonstrating the existence of such doctrines, even intellectually sophisticated and serious ones, would not suffice for our purposes unless it could be also demonstrated that these doctrines are widely held or widely regarded as authentic. I thus want to consider three ways in which Muslims might not be happy as such about liberal constraints (i.e., the intensity of their agreement will be less), but try to make a virtue out of necessity or to not see liberal constraints as a final violation of something necessary to the achievement of salvation. In these cases, the endorsement or acceptance of the political conception is not a consequence of the non-political, metaphysical levels, but can be reconciled with them. The reason why the inclusion of these types of doctrines in the overlapping consensus needs to be defended is that the arguments they advance for complying with liberal constraints include tactical ones. ('It is okay Islamically to do x, but don't do it here. You'll go to jail.') My argument for their inclusion is essentially that their engagement with liberal constraints is not *merely* tactical. There is a sincere effort to make sense of life lived within liberal constraints, take those constraints seriously, or at least as permanent, and to describe as Islamic the space that remains.

2a. One category of arguments might be those that do not endorse freedom of conscience as an absolute principle of justice, but accept the protection of it because of the many other benefits arising from such a general scheme of rights. For example, Muslims might point to the reciprocal freedoms or toleration enjoyed in liberal democracies, the greater welfare or human flourishing obtaining in freer societies, the social peace and stability offered by liberal democracies, the lesser fear or hypocrisy in a society not governed tyrannically, or the safeguards against corruption and the abuse of power. Here, what we want to see is some textual grounding of these subsidiary values as Islamic ones that compensate for the loss of communal authority to punish sinners. I would call such consequentialist arguments in favour of compatibility 'strategies of compensation'

2b. Another category might be those arguments that, again, do not posit freedom of conscience as an absolute principle of justice but nonetheless see some Islamic virtue in the adoption of 'the Straight Path' voluntarily. Without openly rejecting the traditional claim of Islamic law to punishment, coercion or restriction on the promulgation of non-Islamic faiths, Muslims may find other ways to inculcate virtue that can be regarded as

Islamic. Free choice might be seen as a value which, although not strong enough to outweigh the legitimacy of coercion in a majority society, can be elevated and emphasised in conditions which do not allow that coercion. Here we are arguing for compatibility because liberal demands of omission do not prevent Muslims from doing something they *must* do at all costs.

2c. The inverse of the above category are those attempts to find other ways to chastise or punish sinners that, in these conditions of pluralism, can be regarded as Islamic. Liberalism does not force people to accept others for private association. There can be no laws as such against shunning, symbolic punishments, vocal condemnation, expulsion, boycotts, shaming or excommunication. Again, without openly and unequivocally forswearing the Islamic legitimacy of coercion in all contexts, can Muslims see the 'forbidding of the wrong' through means that do not violate liberal civil rights as sufficient for living a just life?

Categories 2a, 2b and 2c all raise the question of *da'wa*, or proselytising ('calling' to Islam). Concerning the arguments from 2a, the general freedoms aspired to in a liberal society include the freedom to proselytise and, thus, one might find the open space guaranteed for *da'wa* to be one of the 'compensatory' freedoms used to legitimate life in the West or other liberal democracies. Concerning the arguments from 2b and 2c, Muslims might argue that while Islamisation is an avowed social goal, it can be pursued by the purely peaceful means of *da'wa*. In both cases, life in liberal democracies is legitimated from an Islamic standpoint in terms of the possibilities it creates for conversion, both of non-Muslims and insufficiently pious Muslims.

The question of converting non-Muslims as a motivation for social co-operation in non-Muslim societies will be a theme central to all three of the chapters in this thesis based on Islamic sources and requires some comment. While the entire liberal strategy of the privatisation of religion and other pursuits of the good presumes that there is nothing wrong with the attempt to win others over to one's way of life by legal and moral means, one might argue that there is nonetheless something inconsistent with political liberalism in the failure to regard differences over the good as permanent, i.e., in the failure to hold some version of Rawls's 'fact of reasonable pluralism' to be true. Consider an attitude that accepts liberal freedoms not only out of necessity but because they give a group

(particularly a minority) the space to recruit adherents to an illiberal world-view. We might regard such an endorsement of political liberalism as too tactical to qualify for the overlapping consensus particularly if the illiberal world-view in question includes a political vision and does not exclude *in principle* the imposition of its precepts through the state if its social position were to allow it.⁵⁸ Such is an imaginable attitude on the part of Muslims living in a liberal democracy who see a virtue in liberalism in that it allows for *da'wa* by peaceful means but at the same time aspire to a future dominance in society resulting in, for example, the Islamisation of the legal system. This position becomes then analogous to that of politically active groups holding anti-democratic ideologies who seek to use democratic means to achieve power but maintain no categorical commitment to democratic constraints thereafter.

There may appear here to be a conflict of value commitments on the part of liberals. The first commitment is to the freedoms of religion, speech and association, all of which ground the right to proselytisation by peaceful means. The second is to the limitation on what social majorities can do even by democratic means. In fact, the right to proselytisation and the requirement of self-restraint in what one wishes to bring people over to flow from the same value commitment. There is no inconsistency in affirming the right to proselytisation while at the same time requiring that such proselytising groups constrain their political aspirations by a permanent commitment to the institutions which ground this right in the first place. The right of any particular group to proselytise is nothing more than the right of all individuals or groups to do so, and thus the only way in which this commitment can be stably and consistently maintained is through the requirement that all such groups likewise regard the right as permanent and not contingent upon their attaining a social majority. It is perhaps difficult to identify with precision what types of statements or professions on the part of proselytising groups this ideological requirement consists in. It is best characterised as the attitude that while it is natural to see others as potential converts to one's most cherished ideals, one obligation of citizenship is that we do not regard citizens as *merely* potential objects of conversion

⁵⁸ For Rawls, one of the main proofs of the overlapping consensus not being a mere *modus vivendi* is its demonstration of stability. 'This means that those who affirm the various views supporting the political conception will not withdraw their support of it should the relative strength of their view in society increase and eventually become dominant. The political conception will still be supported regardless of shifts in the distribution of political power.' (Rawls, *Political Liberalism*, p. 140.)

but also as self-authenticating sources of valid claims. In the case of the Muslim literature on *da'wa* in non-Muslim societies, the question is how such authors envisage the outcomes of successful *da'wa* and how they regard the possibility that *da'wa* alone will not result in fully Islamicised societies.

3. This is not to say that all attitudes short of advocating revolution or the breaking of the law will be seen as compatible. It might be helpful here to characterise the types of attitudes or statements that do not constitute violations of any laws, but are also not endorsements of the legitimacy of life lived under liberal constraints. Incompatibility begins with the advocacy of complying with laws in a liberal democracy, but *purely* for tactical and self-regarding reasons. Persons advocating such doctrines see liberal restraints as illegitimate, consider the practices not tolerated by liberalism to be obligations of faith, would violate liberal principles if they had the chance and might even be working towards this. According to such doctrines, liberal regimes are just as hostile to Islam as communist or militantly secular ones, but are more naïve in allowing Muslims to organise against them. Here liberal civil liberties are only valued as means to non-liberal ends. Any restraint demonstrated in practice is justified as a temporary evil in the conditions of 'oppression'.

Throughout this thesis I will examine Islamic arguments in favour of *behaving* in accordance with the various demands of liberal citizenship with this methodology, asking whether the reasons given are principled, whether they constitute an affirmation of the reasonableness of the demands themselves and whether they suggest overall attitudes consistent with the general aims of a liberal political order.

Having now made an argument for the importance of comparative political and ethical theorising, and suggesting a number of moral and methodological guidelines for doing so, I turn now in the following chapter to liberal treatments of moral and cultural pluralism and the question of what is demanded of non-liberals in a liberal polity. How can one continue to be illiberal in a liberal polity and must one agree with the present answers to that question in order to meet the requirements of citizenship? What precisely are we looking for in an Islamic doctrine of citizenship in liberal democracies?

Chapter Two

Liberal Citizenship and the Overlapping Consensus: The Case of Muslim Minorities

The previous chapter raised the problem of the compatibility between liberal regimes and non-liberal conceptions of the good, and demonstrated a series of circumstances in which this compatibility, or the lack thereof, might interest political theorists. The essence of the argument is that, while philosophical justification of a conception of justice does not rely on the demonstration of compatibility or consensus with other moral doctrines, the political problem of popular support for the institutions that follow from that conception does in fact largely depend on the extent to which citizens do not see an irreconcilable conflict between their conceptions of value and virtue, and the extent to which they are allowed to pursue those conceptions. In addition to arguing for the fairness of liberal rights through demonstrating that they extend equal treatment towards all religious traditions, or that any non-secular foundation for laws would not meet the burdens of reason in a post-traditional society, the case for liberalism is strengthened by demonstrating that its most basic propositions – the demands of profession, commission, and omission it places on citizens – can be justified or shown to be compatible with other moral traditions.

While important debates persist about liberal justification, as well as on what liberal principles require from and towards minority communities, I intend to present here what I consider to be the main demands of liberal citizenship as they relate to Islamic doctrinal concerns. Although much of what I discuss may appear banal to political theorists, it leaves plenty to be justified in a doctrinal and theoretical manner from the Islamic perspective. I submit first that a comprehensive Islamic doctrine of citizenship in a non-Muslim liberal democracy will consist of a conception of *society*, a conception of *the other* and a conception of *the individual*. Elaborating on these conceptions, and translating and clarifying them in terms of how they may relate to Islamic discourses, are the tasks of this chapter.

For Rawls, the project of political liberalism expresses ‘the fundamental idea of a well-ordered society as a fair system of co-operation between reasonable and rational citizens regarded as free and equal’⁵⁹ and requires that agreement on the part of all

⁵⁹ Rawls, *Political Liberalism*, p. 103.

citizens go at least that deep. For Rawls and most liberal theorists, by far the most crucial element of the overlapping consensus is the conception of the individual, the shared view that

as citizens [individuals] are seen as capable of revising and changing this conception [of the good] on reasonable and rational grounds, and they may do this if they so desire. As free persons, citizens claim the right to view their persons as independent from and not identified with any particular such conception with its scheme of final ends. Given their moral power to form, revise, and rationally pursue a conception of the good, their public identity as free persons is not affected by changes over time in their determinate conceptions of it.⁶⁰

Liberalism not only requires that the state not be used to impose a vision of the good life, and fulfils this requirement by guaranteeing basic rights and liberties, it also imposes constraints on what we can do individually or severally to coerce others privately towards acting in concert with a conception of the good. Just as one's treatment by the state – the rights and duties one derives from the relationship with the state – is not linked to one's membership in a particular cultural group, one's right to the protection of these freedoms in civil society by the state also cannot depend on cultural membership. There is very little disagreement amongst liberals (or even Western political theorists critical of liberalism) about what this entails and what types of practices non-liberals are expected to endorse through their doctrines: sub-state groups cannot draw on religious or cultural authority to prevent individuals from leaving a group,⁶¹ cannot prevent children from becoming aware of other forms of life in the society and from gaining the skills to survive in it,⁶² cannot force family members to marry against their will,⁶³ cannot do

⁶⁰ Rawls, *Political Liberalism*, p. 30.

⁶¹ See Brian Barry, *Culture and Equality*, p. 124, 128; William Galston, *Liberal Pluralism* (Cambridge: CUP, 2002), p. 104, 122; Joseph Raz, 'Multiculturalism: A Liberal Perspective,' p. 166; Chandran Kukathas, 'Are There Any Cultural Rights?' *Political Theory* 20.1, p. 117, 126-8; Parekh, *Rethinking Multiculturalism*, p. 218.

⁶² 'Political liberalism will ask that children's education include such things as knowledge of their constitutional and civic rights so that, for example, they know that liberty of conscience exists in their society and that apostasy is not a crime, all this to ensure that their continued membership in a religious sect when they become of age is not based simply on ignorance of their basic rights or fear of punishment for offences that do not exist.' (Rawls, *Political Liberalism*, p. 199.) See also Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), p. 153-4; Galston, *Liberal Pluralism*, pp. 93-109; Barry, *Culture and Equality*, p. 124; Raz, 'Multiculturalism: A Liberal Perspective,' p. 166; Parekh, *Rethinking Multiculturalism*, p. 203; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: OUP, 1996), p. 82; Amy Gutmann, 'Civic Education and Social Diversity,' *Ethics* 105 (April 1995), pp. 557-579; Stephen Macedo, 'Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?' *Ethics* 105 (April 1995), pp. 468-496; Richard Arneson

certain things to their children that are physically harmful (like female genital mutilation or depriving children of urgent medical attention),⁶⁴ and cannot punish members (in certain ways) for dissenting from or criticising communal authority.⁶⁵ Simply put, liberalism establishes a certain range of civil rights and liberties for all citizens and does not recognise the right of any cultural or religious authority to deprive its members of these rights any more than it does the state:

The legal order must regulate men's pursuit of their religious interests so as to realise the principle of equal liberty; and it may certainly forbid religious practices such as human sacrifice, to take an extreme case. Neither religiosity nor conscientiousness suffices to protect this practice. If a religion is denied its full expression, it is presumably because it is in violation of the equal liberties of others. In general, the degree of tolerance accorded opposing moral conceptions depends upon the extent to which they can be allowed an equal place within a just system of liberty.⁶⁶

The defining feature of liberal democracy is its protection of certain basic freedoms, particularly those of religion, conscience, speech and association. This means that minority religious groups will not face outright threats to their religious traditions and will have their survival guaranteed against deliberate incursions from the majority. The right of minority religious groups to survival,⁶⁷ however, cannot imply the right to impose what Kymlicka has termed 'internal restrictions' on individual members of their groups by denying them the same rights that the majority extends to the group as a whole. Just as religious groups have the rights to proselytisation and from forced conversion, so do individuals have the right to heresy and apostasy. The main requirement of citizenship

and Ian Shapiro, 'Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v. Yoder*,' in Shapiro, *Democracy's Place* (Ithaca: Cornell University Press, 1996).

⁶³ See Parekh, *Rethinking Multiculturalism*, p. 275; Barry, *Culture and Equality*, p. 158; Kymlicka, *Multicultural Citizenship*, p. 41.

⁶⁴ See Parekh, *Rethinking Multiculturalism*, p. 276-7; Barry, *Culture and Equality*, p. 124; Kymlicka, *Multicultural Citizenship*, p. 41.

⁶⁵ See Kymlicka, *Multicultural Citizenship*, p. 158; Parekh, p. 321.

⁶⁶ Rawls, *A Theory of Justice*, p. 370.

⁶⁷ This is not a commitment to taking special measures to preserve any *particular* life form or culture if it is losing adherents over time because of the appeal of other life forms: 'It has to be admitted that liberal multiculturalism is not opposed in principle to the assimilation of one cultural group by others. In some countries, some of the constituent cultures may lose their vitality and be gradually absorbed by others. So long as the process is not coerced, does not arise out of a lack of respect for people and their communities, and is gradual, there is nothing wrong in it. The dying of cultures is as much a part of normal life as the birth of new ones.' Joseph Raz, 'Multiculturalism: A Liberal Perspective,' p. 167.

in liberal democracies is thus that the group recognise the rights of individuals from within their own community to a form of political autonomy.

Rawls's political conception of autonomy for the individual is closely connected to his general conception of liberal society as 'a fair system of co-operation between reasonable and rational citizens regarded as free and equal'. Rawls's conception distinguishes society from both a community and an association, which are defined in relation to 'final ends' ('religion and empire, dominion and glory; and the rights and status of individuals and classes have depended on their role in gaining those ends') or shared moral doctrines. A democratic society, rather, has certain limited, constitutionally specified ends ('a more perfect justice, the blessings of liberty, the common defence') which fall under a political conception of justice.⁶⁸ These comments essentially articulate the modern liberal notion of civil society: 'that form of human association in which human beings are united not in any common purpose but instead by their subscription to an authoritative body of non-instrumental rules,'⁶⁹ i.e., that the entire apparatus of the state is not used to co-ordinate collective action towards a single common purpose based on a sectarian conception of value and virtue. On this view the public sphere (here limited to the institutions of the state) is the sphere of co-ordination of necessary collective action (areas in which society must act), the pursuit of public goods and common interests (security, general welfare, etc.), and the protection of rights. 'The good' – that which gives life meaning – is something to be determined by individuals on their own or severally and pursued in society largely free from the interference of authoritative law-making bodies. The notion that a) there might exist a single form of well-being valid for all humans, or multiple forms all commensurable and unified within an over-all morality, b) that this conception of well-being requires communal expression and general compliance, and c) that the state can, if necessary, be enlisted in the pursuit of this compliance, is the comprehensive political world-view (or the general structure of a family of such world-views) against which political liberalism positions itself. Liberalism abandons the search for 'a more comprehensive philosophical outlook [that] would let us hold self-creation and justice, private perfection and human solidarity, in a single

⁶⁸ Rawls, *Political Liberalism*, p. 41.

⁶⁹ John Gray, 'What is dead and what is living in liberalism?' in *Post-liberalism: Studies in political thought* (London: Routledge, 1993), p. 288.

vision.⁷⁰ As such, liberalism does not require that citizens all subscribe to an individualist, rationalist or sceptical conception of the meaning of life, but simply that they view coercion as an inappropriate mechanism for bringing other citizens' actions into harmony with standards of virtue and personal morality derived from controversial views about human nature. In simpler terms, Rawls's jargon is way of expressing both the simple notion that laws ought not to be derived from religious texts, and also that they not rely for justification on metaphysical principles that directly negate religious beliefs.

As is well-known, this conception of society is not the one advanced by most religious doctrines. It is, of course, *designed* to be opposed to the traditional conceptions advanced by such doctrines, while being at the same time 'fair' and accessible to their adherents. As is also well-known, Islam contains, amongst world religions, perhaps the most unequivocal claim to a political vision, the most elaborate body of legal answers to social, political and economic questions, and the most explicit emphasis on the collective, social requirements for living a pious life.

It would be tempting to begin an inquiry into an Islamic doctrine of citizenship in liberal democracies, or Islamic support for an overlapping consensus on the terms of social cooperation, with these problems of liberal rights and freedoms and secular authority: How can believing Muslims, whose religious doctrine has, in its traditionally authoritative manifestations, called for upholding severe restrictions on social liberties as a matter of religious obligation, draw from their comprehensive beliefs to support liberal freedoms? More generally, how can believing Muslims regard as just and be loyal to any forms of governance which are not based on upholding divine law or religious aims, and, what's more, ground that loyalty precisely on religious reasons? These are the deepest legal and theological challenges to Islamic support for liberal institutions. What, then, could possibly be meant by the 'Islamic endorsement' of the conception of society required by political liberalism?

One way of reducing the enormity of this challenge is to stage our inquiry in a special political context: that of Muslims living as minorities in existing liberal democracies. As will be seen, while one possible Muslim response to life as a minority is the demand that internal Muslim affairs (especially family law and education) be

⁷⁰ Rorty, *Contingency, Irony, Solidarity*, p. xiv.

managed along *sharī'a* lines, the assumption that Muslims are living in a society where Islamic law cannot be generally applied requires Muslim legal and political theorists to think about political life outside of the normal assumptions, categories and debates of Islamic political and legal discourses. The staging of our inquiry within this political context makes it slightly more plausible. We assume, by positing that we are dealing with a community that is a minority, that using the state to impose a conception of the good is not generally part of the political imagination of the community in question. What follows is that it is precisely the aspiration to neutrality of liberal constitutions that may be appealing to Muslim minorities. They are not forced to abandon most religious practices, to convert, to culturally assimilate, or to profess something that essentially requires the repudiation of basic Islamic beliefs.⁷¹ They benefit (at least from the perspective of the outside observer) from a system which does not see society primarily as people united in a single common purpose but rather as the just management of multiple private purposes, insofar as a public philosophy of shared ends and values would most likely be more antagonistic to Islam than a public philosophy of neutrality.

This staging also means, since we are using it to moderate the most traditional Islamic attitude (that the state should be a vehicle for the general application of *sharī'a*), that many of Rawls's concerns need not be ours and we must clarify what those might be instead. If the original meaning of the Rawlsian requirement to endorse what I am calling a 'conception of society' is the requirement to not see the state as a vehicle for the imposition of one's conception of the good, and I begin my inquiry by *positing* that this is not something the adherents of the comprehensive doctrine in question generally imagine as an immediate political objective, then what more do we need to find in the Islamic sources by way of compatibility with this conception?

⁷¹ This I take to be the source of the concern (in, for example, Rawls's shifts from *A Theory of Justice* to *Political Liberalism*) to find a truly neutral foundation for liberal institutions. As has been widely noted (see Kymlicka, *Multicultural Citizenship*, p. 164), for all of Rawls's retreats, none of them comes in the area of the substantive content of justice. He keeps all the same rights, liberties and basic goods, while altering the reasons for having them. There is clearly a diagnostic element to this concern (we want to *know* that we are not being unfair to non-liberals and one way to do so is to show that we could arrive at the same rights and liberties without assuming a liberal metaphysic), but I assume the concern with *that*, given that citizens are not treated any differently from one theory to the next, is that we think one way in which we might be unfair is to ask someone to affirm the truth of something (like the ultimate importance of individual autonomy) that they don't – can't – believe.

Here it is necessary to complement our Rawlsian interest in justice with the concerns of citizenship and, more importantly, the idiosyncratic language of Islam. For Islamic doctrine, there are two broad problems with citizenship in non-Muslim liberal states: one, in those states being *non-Muslim* in character, both socially and politically; two, in those states being *liberal* in character. The latter we have been discussing; what is important to realise is that for Islamic legal and political doctrines, a series of ethical problems are raised also by the former. Once we recognise that for the ethical community in question, shaping general legislation in one's own image is not the only concern, we become sensitive to other political attitudes that might also fall outside of an overlapping consensus. Now it is not only domination that we are concerned with from a liberal perspective but some form of internal retreat or communal secession from state authority. The first requirement of citizenship in liberal democracies for minority communities is, thus, not the recognition of neutrality and secularism as a constraint upon their own use of government machinery, but the recognition of the legitimacy of the political community in which they live and of their own membership in it. In the case of minority groups defined by their commitment to a particular ethical or religious doctrine, the political community must be one in which the group can feel it has an equal stake and towards which it can feel loyal. To some extent a group of individuals freely associating in a liberal society must be integrated into the general political community, and to some extent such a group must be loyal to the political community in conflicts with other states, nations or political communities. This is primarily what I have in mind when I speak of Muslim citizens in non-Muslim states adopting a certain 'conception of society.'

Similarly, whilst Rawls's political conception of autonomy (what I referred to as the 'conception of the individual') is meant as a general attitude for citizens to adopt towards the problem of coercive authority and individual freedom, it obscures the ways in which doctrines might regard the differences between fellow-citizens as important in constructing various sub-state communities and the ways in which individuals might have different expectations from fellow-citizens depending on whether they are seen to belong to a given community of shared ends. To illustrate this: for Rawls, the liberal requirement that religious groups not seek to use the state to force others – those not sharing their metaphysical commitments – to comply with the moral precepts flowing from those

commitments, and the liberal requirement that religious groups not use non-state coercion to prevent members from leaving the group (from ‘revising their constitutive ends’), both flow from the same conception of the person as free and equal. This is consistent and coherent (in addition to elegant and parsimonious) from a liberal perspective, but not necessarily so from non-liberal ones. In Islamic ethical and legal theories, it is only Muslims who are seen as objects of compulsion on moral or religious grounds; non-Muslims cannot be forced to adopt Islamic beliefs or practices, but they can be marginalised and discriminated against, and generally regarded as unequal to Muslims or outside the relationship of solidarity. What this all means for our purposes is that one implication of Rawls’s conception of the person – that we should not seek to force fellow-citizens to adopt our conception of the good – is not intelligible to Muslims unless we specify whether those fellow-citizens are Muslims or non-Muslims. Thus, we have to break down Rawls’s requirement to view others as ‘reasonable and rational citizens regarded as free and equal’ into two distinct conceptions: that of ‘the other’ and that of ‘the individual’. From the Islamic perspective, the intellectual challenge regarding non-Muslims is not their right not to be Muslim (this is widely acknowledged), but their recognition as equals and as potential objects of solidarity. This is what I have in mind when I speak of Muslim citizens in non-Muslim states adopting a certain ‘conception of the other.’

Thus, it is crucial to emphasise that this thesis concerns itself explicitly with Islamic thought related to Muslims living as minorities in non-Muslim states and societies – their status, their rights, their loyalties, their duties and their well-being – and how Islamic doctrine on these questions corresponds to liberal conceptions of citizenship. It is these questions on which we first seek an overlapping consensus. In the rest of this chapter I present what I believe to be the most reasonable liberal demands of membership, belonging, loyalty and recognition in light of the specific concerns of Islamic doctrine, and then outline the contours of the subsequent three chapters.

I begin by emphasising two distinctions. The first is between requirements of justice and requirements of citizenship. There are many ways in which an individual or a community can at the same time adhere to requirements of justice without actually fulfilling any duties of citizenship. This is particularly salient for the present investigation

into doctrines and the possibility of an overlapping consensus, where we are not only concerned with behaviour but also beliefs and reasons. One meets requirements of justice merely by not breaking just laws; one only affirms a *doctrine* of citizenship by giving certain types of reasons for not breaking them, as well as affirming one's commitment to a *particular* society and political system.

The second distinction which will be crucial for this thesis is that between a citizen and a resident alien. The notion of a resident alien, or an 'alienated citizen', refers to someone who lives within a state, accepts some benefits of social cooperation and renders the legal duties required of him, but does not seek to share political sovereignty with his compatriots, does not identify with the political system and resents or is indifferent to the contribution he makes to society's welfare and security.⁷² As Michael Walzer notes, some critics of liberalism argue that this is all that any member of a liberal society is, or, rather that 'the modern state breeds aliens, whereas older political societies could only import them.'⁷³ Such a critique is based on a comparison with classical republicanism and reflects a yearning for a very thick conception of citizenship. Obviously, political liberalism is going to call for a comparatively thin conception of citizenship, but even within liberalism there is a distinction between not breaking just laws and affirming one's citizenship. The attributes of citizenship include an affirmation of the legitimacy of the political community as it is constituted, of one's contribution to its welfare and that of fellow citizens as a result of social cooperation, and of one's willingness to participate politically. This is an understanding of citizenship, whatever disagreements persist about its precise minimum requirements, as a moral choice rather than legal status.

This thesis will examine the grounds for such affirmation, for an Islamic social contract with a non-Muslim liberal democracy, in three parts: residence, loyalty and recognition/solidarity.

⁷² This distinction is ubiquitous in Western political theory. See, in particular, Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, MA: Harvard University Press, 1970), pp. 226-7: 'the alienated citizen receives whatever protection the state provides and lives every day with his fellows in the shadow of that protection. But he does not participate at all in political life; he chooses not to participate. He thinks of the state as an alien though not necessarily as a hostile force, and he wants only to live in peace under its jurisdiction.'

⁷³ Walzer, 'Political Alienation and Military Service,' in *Obligations*, p. 100.

Residence in a non-Muslim State

The affirmation of citizenship in a non-Muslim liberal democracy faces in classical Islamic doctrine a challenge at a very basic level. Classical Islamic law has dealt at length with the problem of Muslims residing in non-Muslim states, both in the sense of states with non-Muslim majority populations and states run by non-Muslim law. The question in the Islamic sources takes the form of whether it is lawful for a Muslim to reside in the non-Muslim world (what is often referred to as *dār al-ḥarb* (the “abode of war”) or *dār al-kufr* (the “abode of unbelief”)) or whether a Muslim is obligated to migrate (perform *hijra*) to the “Abode of Islam” (*dār al-Islām*). Thus, when speaking of Muslim citizens of liberal democracies, the debate over citizenship begins with whether a Muslim may even regard a non-Muslim majority society run by non-Islamic law as a place where she may reside.⁷⁴

There is a tradition in Islamic law of regarding such residence as impermissible. In classical jurisprudence, this position was advanced mostly by the Māliki school of law (predominant in North Africa) but in the modern period it has been advanced by Saudi adherents of the Wahhabi doctrine as well as some fundamentalist thinkers not adhering to any single school, such as the Egyptian Sayyid Qutb.⁷⁵ While these authorities often claim that there is a categorical divine command to migrate from spheres of non-Muslim rule based on two Qur’ānic verses⁷⁶ and a number of reports of Prophetic speech

⁷⁴ See Yūsuf al-Qaradāwī, *Fī fiqh al-aqalliyyāt al-muslima* (Cairo: Dār al-Shurūq, 2001), p. 25, where he lists the question of the legality of residing in a non-Muslim state as the first of the “juridical” problems facing Muslim minorities. For the best existing survey of the treatment of this problem in Islamic law, see Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries,” *Islamic Law and Society* 1:2 (August, 1994).

⁷⁵ See Chapter Three for an extensive discussion of this literature.

⁷⁶ Q. 4:97-100: ‘Those whom the angels gather in death while in a state of sin against themselves they will ask: “What was your plight?” They reply: “We were oppressed on earth.” The [angels] will say: “Was not God’s earth vast enough for you to migrate within it?” They will have their refuge in hell and how evil is such a destiny, except for those truly oppressed, those men, women and children who cannot find any means and have not been shown the way. For these there is hope that God will forgive them, for God is Forgiving and Merciful. Anyone who migrates in the path of God will find in the Earth many an abundant refuge. Whoever leaves his home in migration towards God and his Messenger, and death overtakes him, his reward with God is guaranteed, for God is Forgiving and Merciful.’ And, Q. 8:72: ‘Those who believed and migrated and struggled in the path of God with their property and their souls and those who sheltered and supported them, and friends and supporters of one another. Those who believed and did not migrate,

(*ḥadīth*),⁷⁷ more interesting for comparative political theory are the substantive arguments in favor of, or explanations of, this divine command. Muslim thinkers who regard residence in a non-Muslim polity as unlawful generally advance six types of rational arguments: (1) that Muslims must not be subject to non-Muslim laws or authority, (2) that Islam and Muslims must not be put in a position of inferiority to non-Muslims, (3) that Muslims must avoid aiding or increasing the strength of non-Muslims, (4) that Muslims are forbidden from forming bonds of friendship or solidarity with non-Muslims, (5) that Muslims are required to avoid environments of sin or indecency, (6) and that in non-Muslim environments it will be more difficult to prevent the loss of religiosity in subsequent generations.

What is important for our purposes is that the reasons given for prohibiting residence are precisely objections to relationships with non-Muslims characteristic of bonds of citizenship. Thus, there is something crucial to emphasize for anyone wishing to explore the possibility of an overlapping consensus: that it is not only necessary to find Muslim scholars disagreeing with the idea of a prohibition on residence in a non-Muslim state, but the justifications and conditions for such residence must also address the above underlying objections in a way consistent with liberal terms of social cooperation; we are interested in residence in a society to which one can *belong*. To be sure, liberalism clearly does not preclude the forming of sub-national communities (based on religion, culture, national origins, class, occupation, ideology, region, lifestyle, etc.). However, while these sub-state communities may claim a more profound or sublime sense of loyalty than the state or wider society, they should not claim predominance in the political sphere to the extent of denying the legitimacy of political arrangements which seek to protect the rights of all individuals constituting the political community, and by asserting a parallel political authority. The response of ‘internal retreat’ violates liberal requirements of citizenship once it includes the claim to communal political-legal authority over members at the expense of the generally binding legal system. While liberal pluralism is committed

you have no duty of protection towards them until they migrate. But if they seek your support in religion, you owe them this support, except against a people with whom you have a treaty. God sees all that you do.’
⁷⁷ E.g., ‘The *hijra* will not come to an end until repentance comes to an end and repentance will not come to an end until the sun shall rise from its place of setting.’ ‘I am innocent of [I disown] any Muslim who lives with the polytheists. For you will not be able to tell them apart.’ ‘Do not live with and associate with the polytheists. Whosoever lives with them and associates with them is like them.’

to providing certain conditions for the survival of minority groups and protecting the right to association, these conditions cannot exclude general exemptions from all basic duties which apply to all citizens equally, including the duty to pay taxes and obey the same laws.

A natural demand for the Islamic political imagination is for some such form of Muslim communal autonomy within individual non-Muslim states characterized, in the first order, by the application of Islamic family law for Muslims, and perhaps any other areas of the Islamic social code⁷⁸ that concern purely internal Muslim relations. For example, classical Muslim jurists who permitted Muslim residence in non-Muslim states were adamant that this was only under the condition that Muslims were secure in their persons, faith and property and that they had the freedom to ‘manifest their religion.’ However, there is an inherent ambiguity here as to whether ‘manifesting one’s religion’ refers to something like the religious liberties protected by a liberal state or to communal autonomy. Some jurists argue for the more demanding condition of communal autonomy, while some are clearly content with private religious liberties. The role of the conjecturer in this case is to rigorously examine the arguments advanced (usually advanced in a very different context than that of a modern liberal state) and seek to test whether the nature of the conditions for accepting a certain demand are compatible with political liberalism.

A further question relates to the realm of ends which communities seek to advance within liberal democracies. The crucial example here is the emphasis placed by Muslim thinkers on the duty of proselytizing (‘*da‘wa*,’ or ‘calling,’ in Arabic). As will be seen in the next Chapter, Muslim jurists from the Middle Ages to the present have seen residence in non-Muslim lands as a desideratum precisely because of the opportunities it gives for spreading the Islamic message. Clearly, liberalism cannot object to a group’s wish to win adherents through peaceful missionary activities. There is no question of a violation of justice here. In fact, there is an element to this justification which is *deeply affirmative* of a liberal social order, insofar as it refers to a benefit accruing to Muslims which is a core value in liberal societies, namely religious freedom (both to proselytize and to convert). However, the conjecturer may see in this a motivation which in fact

⁷⁸ Islamic law is divided between the ‘*ibādāt*’ (matters pertaining to individual worship and rituals) and ‘*mu‘āmalāt*’ (matters pertaining to interpersonal and social relations).

violates the spirit of citizenship if a doctrine justifies residence and belonging in a society *merely* on the grounds that it helps advance the group's communal aims. The concerns liberals have about such a justification are that: one, it risks seeing non-Muslims only as potential converts and not as free and equal citizens; two, it does not preclude the Islamization of the state if the group someday finds itself a majority; and, thus, three, it may reveal a shallow commitment to the society and state as (potentially permanently) pluralistic and secular. The general concern is that any acceptance of liberal institutions or constraints will be purely tactical, rather than grounded in a principled acknowledgment of the fact of reasonable pluralism. Contrast the justification of residence from *da'wa* with a justification which points to a benefit accruing to Muslims from core liberal policies which is not merely a potential *consequence* of those policies but *intrinsic* to them, say the inherent goodness of living in a society where one is unafraid of the arbitrary exercise of power.

Thus, there is another way in addition to seeking to assert parallel or contradictory political authority in which a minority community could fail to affirm its citizenship within a political community, and that is by passively accepting a state's political authority but seeking to avoid any meaningful contribution to it. Loyal resident alienage is a very plausible Islamic response to living in a non-Muslim society. The response would consist in justifying residence and basic political obligation, but would call for no meaningful engagement with the society, contribution to its self-defense or welfare, or participation in its political system. It would also place a great emphasis on the conversion of non-Muslims and eventual transformation of the society and political system. There would be no call for breaking existing laws, but certainly for their ultimate Islamization. The inevitable insistence that such doctrines would result in 'law-abiding citizens' is irrelevant; the underlying reasons and comprehensive beliefs are not contributing to support for social cooperation on liberal terms, that is, to the overlapping consensus.

To be clear: groups that choose not to integrate themselves culturally, economically, socially or politically into the wider society in order to pursue a collective vision of the good (such as the Amish, Dukhobors, or Haredim ubiquitous in the multicultural liberalism literature) are not, by virtue of their rejection of the wider society

and its public sphere, violating any particular requirement of justice. While I am required as a citizen to regard my share of collective sovereignty as *no more* than equal to everyone else's, I am not required (by justice) to regard my own share with any great sentimentality. I am not in most liberal democracies required to vote. I am not required to regard my political community (nation) as my most *precious* loyalty or even one which trumps others in *all* contexts. I am not required to cultivate a range of specific and demanding civic virtues. This is not to suggest that ghettoization might not be a political problem or something to be addressed by liberal governments. It is also not to suggest that the desire to enhance social solidarity, integration or a civic ethos is an inappropriate object of political action or education, merely that it is difficult to assert that a group consciously turning its back on modern society and choosing to live solely in pursuit of the good is, *in this alone*, violating a requirement of justice.⁷⁹ However, this paper argues that an overlapping consensus can be sought not only on requirements of justice, but on conceptions of citizenship. There is clearly an overlap to the extent that one is a citizen of a political system, and each political system is founded on a conception of justice, but as I have shown there is a wide range of questions that relate to membership and belonging which are not covered by justice. The need to examine these questions is particularly strong in the case of communities which – unlike the Amish, Dukhobors, or Haredim – see themselves as adhering to a universal, proselytizing faith.

Thus, the first area in which the conjecturer would seek consensus is on the terms for legitimating residence in a non-Muslim state. She is not looking merely for Muslim scholars who permit such residence, but who do so for reasons compatible with the aims of a liberal political order, reasons which would give the Muslim citizen authentic and principled reasons for regarding his state of residence as a place he can live along the terms liberalism prescribes. Based on my reading of the treatment of this question in Islamic sources, I submit that a stable and compatible doctrine of residence in a non-Muslim state would require affirmation of the following positions:

R1: *The authoritative texts cited in favor of the prohibition on residence do not necessarily dictate the conclusions advanced by those jurists; there are other*

⁷⁹ 'Justice as fairness honors, as far as it can, the claims of those who wish to withdraw from the modern world in accordance with the injunctions of their religion, provided only that they acknowledge the principles of the political conception of justice and appreciate its political ideals of person and society.' Rawls, *Political Liberalism*, p. 200.

authoritative texts which lead to contradictory rulings and there are reasons to regard these as more authoritative than the texts cited by pro-hijra jurists.

R2: *It may be possible to fulfill the basic duty to 'manifest one's religion' even in the absence of sovereign Muslim political authority and under non-Muslim political and legal authority.*

R3: *While great benefits to Islam, including its possible spread and the strengthening of Muslim communities, can be gained by living in non-Muslim lands, this is not the only way in which Muslims are permitted to regard their life in those societies.*

Chapter Three begins this inquiry by examining arguments for and against residence in a non-Muslim state from the perspective of political liberalism and the interest in an overlapping consensus on the terms of social cooperation.

Loyalty to a non-Muslim State

Residing in a non-Muslim state, even on the 'right' terms and for the 'right' reasons, alone does not establish a doctrine of citizenship. A second aspect of the affirmation of belonging required of minority ethical or religious communities is the question of competing loyalties between the state of citizenship and other states or communities. The questions that we are interested in here are what it means to be loyal to one's state, what other loyalties may be consistent with that loyalty, and for what reasons it is legitimate to refuse to fight. This also requires some elaboration with special reference to Islamic concerns. These questions have traditionally been addressed in response to the pacifism of certain Christian sects, to refusal in the vein of Hobbesian individualism, and to liberal humanist or cosmopolitan objections to injustice against other humans. The Islamic case is special, however, since objections to fighting come not from pacifism, individual self-preservation or cosmopolitanism, but rather from a doctrine of loyalty to the global political community of fellow Muslims (the *umma*). The concern arises that refusal may point to nothing more than a rejection of civic commitment to a non-Muslim society.

Given that there has been a debate amongst jurists about whether Muslims are even permitted to reside permanently in non-Muslim states, it is understandable that rendering loyalty to them will be particularly controversial from an Islamic standpoint. It

is instructive to note the sections in the books of law under which Muslim scholars discuss questions of residence and behavior in non-Muslim lands: those on *jihād*. While it is indeed too simplistic to assume that all juridical discussions of non-Muslim polities and communities can be reduced to a blanket justification of aggression or antagonism, it is certainly the case that jurists view the Islamic political community as an entity towards which Muslims have ethical obligations (even when it is not constituted as a state). This political community is one with universal aspirations and is assumed to be, at the very least, in a state of competition with other communities. Given this basic assumption, it is not surprising that the idea of service in a non-Muslim army is considered aberrant. The Western analogue is not Christian or secular doctrines of *jus ad bellum* or *jus in bello*, but rather perennial state-centered expectations of civic loyalty. It is akin to asking: Are there doctrines of nationalism, patriotism or republicanism which can themselves provide justificatory reasons for serving a foreign state? The question either meets with baffled silence or complete hostility.

Muslim citizens thus have traditional doctrines prohibiting service in a non-Muslim army and discouraging identification with the interests of a non-Muslim state. In the interests of being systematic, I present the following five specific points of Islamic doctrine as covering the range of potentially incompatible positions on the question of civic loyalty to a non-Muslim state.⁸⁰

1. *A Muslim may never kill another Muslim, especially in the service of unbelievers.*
2. *A war for the sole purpose of expanding the space ruled by Islam and Islamic law is a just war, a legitimate form of jihad.*
3. *It may be the duty of every individual Muslim, even those residing outside of the Islamic polity to contribute to a legitimate jihad, if so called by the imam.*
4. *A Muslim may not advance the cause of unbelievers or uphold non-Islamic rulings and truth-claims.*
5. *A Muslim may not sacrifice his life for other than certain causes.*

⁸⁰ The Islamic context for all of these positions will be discussed in greater detail in Chapter Four.

Without making any assumptions about the popularity of these above positions amongst any present-day Muslim community, it is plain that there is a very explicit doctrinal background which could cause a Muslim to doubt the legitimacy of her loyalty to a non-Muslim state. From the perspective of political liberalism, the most problematic views are the following: that a Muslim may not recognize his non-Muslim state's unqualified right to existence, that he may not regard himself as under any personal duty of restraint towards his state of citizenship, and that he may not feel he can defend his state of residence, even against a non-Muslim aggressor, solely because of the non-Islamic character of that society's political system. What then would a Muslim citizen have to proclaim in order for it be said that that he is balancing both his loyalties to his community of fellow believers and his duty to his state of citizenship?

Two obvious, or near-obvious, positions can be immediately established:

L1: Hostilities on the part of Muslim forces against a non-Muslim state are justified only in self-defense or to counter aggression and not to facilitate the spread of Islam or to change the government of a state in which Muslims are not oppressed.

I will argue below that there is considerable scope for reasonable disagreement on just war theory; however, there can be no question that a citizen who holds that it may be just for another state to invade his state for the sole purpose of changing its political system, when that political system does not oppress him, is not being reasonable, in the most basic sense of proposing and being willing to abide by fair terms of social cooperation. Of course, the fundamentalist may feel that merely in being forced to live under non-Islamic law she is being 'oppressed.' But this is not inconsistent with her acknowledging that she enjoys equal civil rights and liberties to those of all other citizens. She may feel that her *non-Muslim* fellow citizens are oppressed *as well* in being 'forced to live under man-made law.' It is also not inconsistent with her recognizing that being denied equal liberal rights (to property, fair trial, freedom of religion, freedom of expression, etc.) would be an additional and different form of oppression. Thus, it is understood that L1 refers to a situation in which Muslims are treated as free and equal citizens within a secular political regime. Controlling for what the Muslim and the liberal

would both regard as 'oppression' (unequal civil rights), the reasonable Muslim citizen regards the fact of secular legislation as insufficient grounds for forcible regime change.

Note that L1 excludes from an overlapping consensus the following variation on the above position (2): (2a) *A war for the sole purpose of expanding the space ruled by Islam and Islamic law is a just war, a legitimate form of jihad. However, not every single Muslim is required to join in such efforts or regard his participation as an individual duty. Muslims residing in non-Muslim states are required to uphold their tacit or express promise to those states not to harm them.*⁸¹ While asserting (2) or (2a) need not qualify as a crime, there is no question that the views in those statements characterize doctrines well outside the most flexible and inclusive possible overlapping consensus. In terms of a doctrine of citizenship, our understanding of the requirement that religious or cultural minorities see their membership a liberal society as legitimate would obviously imply the principled condemnation of violence used against it, not just personal abstention from such violence.

A second principle of loyalty thus follows:

L2: *In conflicts between a non-Muslim state in which Muslims live and a Muslim force, a Muslim may forswear on grounds of principle any active aid to the Muslim force and promise to engage in no violent activities against their non-Muslim state.*

My phrasing of this principle is neutral as to the cause and moral status of the war. That is, should the Muslim or non-Muslim state be regarded as the aggressor, a Muslim citizen should regard a liberal state of citizenship as inviolable in this way. From the Islamic perspective, this in fact involves two separate positions: that a Muslim need not contribute to the fulfillment of the collective duty to expand the realm of Islam, and that a Muslim need not discharge his individual duty to contribute to the self-defense of Muslim lands by attacking his state of residence or citizenship. It is clearly the latter that is more problematic from an Islamic standpoint (although, as cited above, even many of the more radical Islamist groups operating in Western countries affirm it). However, even from a liberal perspective it requires justification and clarification.

⁸¹ This is the position, for example, of the British group 'al-Muhajiroun' ('The Migrants') which supports terrorist attacks against the UK and the US, but only by Muslims not legally residing in those countries. See Shaykh Muhammad Afifi al-Akiti, *Defending the Transgressed by Censuring the Reckless against the Killing of Civilians* (UK: Aqsa Press, 2005), p. 17.

Consider a citizen who feels that his state is waging an unjust war or maintaining an unjust law. Liberalism holds that political obligation does not always require obedience in these cases.⁸² Refusal to fight in an unjust war or to obey an unjust law is thus not generally considered a rejection of one's citizenship in what is otherwise a liberal democracy. Two questions then confront us: on what grounds may a citizen regard a war (or law) as unjust, and what forms of opposition to these injustices in addition to refusal are consistent with affirmation of one's citizenship in such a state?

On the first question, the first observation from the liberal perspective is that while the burdens of judgment will result in reasonable pluralism about the moral status of certain wars, some objections to war will be clearly unreasonable, or incompatible with the basic moral reasoning of other citizens. For example, a common Islamic response to the wars in Afghanistan and Iraq is that they are unjust simply because of the religious identities of the parties – a Muslim must oppose these wars simply because they are *non-Muslims* attacking *Muslims*. This view makes no distinctions based on cause, war aims or conduct within war. The view is that a Muslim may not regard his non-Muslim state's use of force against any Muslim as legitimate for any reason, even self-defense. This form of reasoning is thus outright unreasonable in failing to recognize fellow citizens as enjoying a basic moral status. Thus, any further reasoning about the permissibility of various forms of resistance to 'unjust wars' already rests on premises which reveal a basic unreasonableness and, thus, a lack of affirmation of liberal citizenship.

However, this form of unreasonableness need not be the case. First, it may be the case that there is reasonable disagreement on the actual motives and necessity of a given war.⁸³ Thus, an unreasonable citizen says the US acted unjustly in responding to the

⁸² 'A person may conscientiously refuse to comply with his duty to enter the armed forces during a particular war on the ground that the aims of the conflict are unjust. It may be that the objective sought by war is economic advantage or national power. The basic liberty of citizens cannot be interfered with to achieve these ends. And, of course, it is unjust and contrary to the law of nations to attack the liberty of other societies for these reasons. Therefore a just cause for war does not exist, and this may be sufficiently evident that a citizen is justified in refusing to discharge his legal duty.' Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 381.

⁸³ This is of course a nuance not raised by Rawls, who assumes that it is 'may be sufficiently evident' whether the war is just. But this is a genuine problem and one not caused only by the plurality of comprehensive doctrines in a society. When does a country proclaim a war to be about economic advantage or national power and fail to provide a justification that is persuasive to many of its citizens? But in present

September 11 attacks by invading Afghanistan because a non-Muslim state may never attack Muslims. There is no disputation here that the September 11 attacks were the work of an entity in Afghanistan, or that military response would be an effective prevention of future attacks, or even that a military response would involve unjust collateral damage. A reasonable citizen, on the other hand, might say that the US acted wrongly in invading because it was not necessary or effective for preventing future attacks, or that it could not be done without intolerable collateral damage. We may regard this citizen as wrong or as not demonstrating to a sufficient degree that his position proves the invasion unjust, but concede that he advances reasons which are consistent with recognizing his fellow citizens' legitimate rights.

Also, it may perfectly well *be* the case that a domestically liberal state acts illiberally, even unjustly, abroad. There might be a consensus between various just war doctrines that *in this case* the war was unprovoked, or disproportionate, or motivated by some other purpose such as power, glory, domination, economic gain or territorial expansion. Even if a Muslim citizen who advances this objection is largely motivated by the fact that of *Muslim suffering* (she does not raise similar objections or skepticisms about her state's wars against non-Muslim states, or not so vociferously), she may still be supported by a range of comprehensive doctrines in her view that the war is unjust, just as some Black Nationalists in the 1960s may have been largely motivated by particularist sentiments but still correct in their condemnation of racist policies.

So let us grant that a Muslim citizen may regard one of her state's wars as unjust, and may be strongly supported in this view by other just war doctrines. The question then arises what forms of disobedience or opposition are compatible with support for liberal citizenship. (Again: the question is not simply what ought to be *permitted* in a liberal society, but whether we think a citizen who *believes* that Φ is justified is capable of giving support to liberal terms of social cooperation.) The most plausible argument that one could take up violent action against their liberal state of citizenship yet still not be

circumstances this assumption is unwarranted. Consider the rise in wars of intervention that claim a humanitarian justification, a justification based on the need to fight non-state terrorism, or a justification based on the need to prevent future threats from states. These wars are deeply disputed as to their nature, purpose and necessity in ways that both wars of self-defense after a direct invasion and open military adventures are not.

advancing a general doctrine incompatible with citizenship in that state would be something like the following:

I. To view something as unjust may be reasonably interpreted as to will it to cease. To will something to cease must also imply that some actions taken towards that end are willed. Unjust actions may thus be countered with actions designed to stop them.

II. Such actions, to be morally permissible, must be necessary, proportionate and directed at the morally responsible agents.

III. Many unjust actions involve violence. Peaceful acts of resistance may be either ineffectual or impose further unbearable costs on those already transgressed against. Violent acts may thus be more effective than non-violent ones and, if proportionate to the original injustice and directed only at morally responsible agents, not instances of a further injustice.

Let us pause here. What I think is fairly uncontroversial is that a loyal citizen may wish for his state's unjust actions to cease and recognize that certain countervailing actions may be necessary. In the case of an unjust war of aggression, he may also recognize the right of other peoples to resist, just as he claims this right for himself. Thus, I see no incoherence or disloyalty in his recognizing that the violence directed against his state's military forces by other forces legitimately resisting is legitimate. In this recognition, he is merely expressing his wish for his liberal state to act more justly.

However, our question deals with such a citizen taking a further step and actively helping the resistance to injustice, specifically through direct violent action. The argument would thus have to involve something like:

IV. All moral agents have a duty to advance justice. If violent action in resistance to initial aggression is deemed to be justified in principle, no autonomous moral agent's action in support of this justified resistance can be deemed unjustified, as long as it remains within the bounds of proportionality and is directed at morally responsible agents.

The argument here is essentially that if the liberal state of citizenship acts so unjustly in the first place, it surrenders any legitimate expectation of loyalty. An apposite example is that of John Brown (or, rather, 'John Brown,' since I do not wish to be responsible for complete accuracy or nuance in historical interpretation). Can it be said that 'John Brown' in violently attacking agents of slavery when the responsible political authorities had failed to do so is thereby demonstrating adherence to a comprehensive doctrine incompatible with liberal citizenship? That is, why is an ideal-typical position 'I pledge loyalty to my political community and promise to defend it against aggressors but make no commitment to supporting or even tolerating in its own injustices' so different from the position 'I consent to obey the laws of my society legitimately enacted so long as they do not violate fundamental principles of justice'? And if the former is not *obviously* of a different nature morally from the latter, could we not imagine that an ideal-typical Islamic position something like the following would meet similar standards of reasonableness: 'I pledge loyalty to my non-Muslim state of residence so long as it respects my rights, provides me with security and does not transgress egregiously against my brother Muslims'?

In order to understand why something like L2 is still required, we must accept certain beliefs about the relationship that is formed by citizenship and the nature of democratic commitment. To be committed to citizenship in a liberal democracy is, perhaps, to be committed primarily to realizing certain values and principles. That is why loyalty to a state or nation can never be absolute, because such a state or nation is only worthy of loyalty as much as it itself is loyal to those principles over a long period of time. However, an affirmation of citizenship, rather than a commitment to justice, is not just an affirmation of those principles in the abstract, but an affirmation of a particular long-term project of realizing those principles. Moreover, political community, however intimately defined in terms of principles of justice, is also an exercise and a practice of pursuing many other things besides justice, such as welfare, solidarity and prosperity, and all of this in the real cauldron of history and through the actions of real people with the normal range of human motivations.

Thus, the tradition liberal justification of civil disobedience and the refusal to fight presumes a certain stance of 'loyal opposition' where the citizen disobeys or refuses

not out of either selfishness or rejection of her membership in the political community, but precisely in affirmation of that membership. The citizen who disobeys out of principle does not do so lightly or in response to every policy with which she disagrees. Furthermore, she often expects and accepts punishment for this disobedience, not just resignedly or even for propagandistic effect, but to express her over-all commitment to the rule of law and the democratic community which sustains it. This stance also draws on (but in turn is limited by) the belief in the capacity of democratic institutions to (eventually) rectify injustices and in the citizen's long-term commitment to the community's development in the direction of justice.

By contrast, violence represents an exit from the community and disavowal of the democratic process which disobedience and refusal (including, say, a refusal to pay the proportion of one's taxes which support an unjust war) do not. This is not to say that such exit may never be a morally reasonable response. It may. But it is not 'citizenship.' It is not a commitment to sustaining, supporting and reforming the institutions of a political system which one endorses. It is not a commitment to a long-term relationship that may at times disappoint, but in balance satisfy more than any other. Of course a political system may prove itself over a sufficiently long period of time to be too corrupt or too indifferent to its historical ideals. But with exit via the resort to violence in such a case it is no longer clear that we are dealing with our central concern: endorsement of reasonable terms of social cooperation in a liberal democracy. This may be the case with my above reference to 'John Brown.'

To return to our specific inquiry, I will use a current example. A Muslim citizen who regards the present US occupation of Iraq as unjust would not be advancing an unreasonable view. Furthermore, Islamic doctrine gives this citizen far more resources for defending this view than the simplistic 'non-Muslims may never attack Muslims' attitude I presented earlier. She may give reasons similar enough to those non-Muslim citizens may offer: the war was unprovoked, it has resulted in intolerable civilian casualties, and the US is not obviously materially disinterested. These views could result in the reasonable position that violent resistance against this occupation is morally justified (which is not to say that it is the only or the most reasonable position). As I argued above, this conclusion is susceptible to the further argument that, therefore, any

moral agent is justified in aiding this just resistance, even violently. On this view, it is the unjust war, not the citizen's unreasonable comprehensive doctrine, which has produced this situation.

According to my reasoning above, the response of the political liberal can only be that this person has given up on the capacity of democratic communities to correct their mistakes, and has demonstrated a certain disinterest in her own long-term investment in the community's moral progress. And this, to be clear, all presumes the *charitable* interpretation of the citizen's reasoning: that it is based on considerations of justice which are potentially part of an overlapping consensus, and not a cruder form of Muslim communalism or in-group solidarity. We thus defend L2 on these grounds: if a Muslim citizen regards a war waged by his state of citizenship as unjust for reasons which are potentially reasonable or principled, then his decision to oppose this war through violent action reflects, if not itself injustice, then a repudiation of the long-term relationship which characterizes citizenship; if this citizen regards a war waged by his state of citizenship as unjust for reasons which reflect rather a basic lack of recognition of that state's legitimate rights, then his comprehensive doctrine is not reasonable to begin within in the way required by political liberalism.

We come now to a much more complicated set of questions about when it becomes unreasonable for Muslim citizens to fight in or otherwise support the self-defense efforts of the society which has guaranteed them security and equal rights and liberties, and in general provided for the conditions of their daily life. Let us begin by assuming that affirming the right of one's political community to defend itself against aggression (L1) is both a necessary and *sufficient* just war doctrine for a citizen to hold. That it is sufficient suggests that this is all a citizen must proclaim; a citizen who refuses to fight in an unjust war abroad cannot be accused of holding a doctrine incompatible with liberal citizenship. I accept as established the traditional liberal right to conscientious refusal to fight in wars that can be regarded as unjust from a moral perspective.⁸⁴ Even a citizen who refuses to fight in a war that may be just but not one of

⁸⁴ An individual 'can maintain that, all things considered, his natural duty not to be made the agent of grave injustice and evil to another outweighs his duty to obey.' Rawls, *A Theory of Justice*, p. 380.

self-defense – think of humanitarian invasions or preventative wars – can hardly be accused of denying that his society enjoys the basic right to self-defense.

Thus, whether requests for conscientious objection may be part of a comprehensive moral doctrine compatible with liberal citizenship can only be problematic if the war is one of self-defense and if the reasons which motivate certain citizens to so refuse reflect an underlying unwillingness to propose and abide by fair terms of cooperation and lack of recognition of their political community's basic legitimate rights.⁸⁵ The concern in the case of Islam as a comprehensive doctrine is that since it commands believers to defend their Muslim-majority political community, their unwillingness to fight for their non-Muslim political community may reflect an indifference, lack of commitment or, in the worst case, contempt for that community's legitimate interests.

Let us begin with the most difficult situation from an Islamic perspective, when a Muslim may be required to defend a state of citizenship against a Muslim force. Based on the original Islamic positions (1) and (2) we might encounter the following position:

(1') No Muslim is permitted to fight in a non-Muslim army, even to defend a territory in which he lives and is not oppressed, when the opposing force is a Muslim one.

Here we pick up where our discussion in defense of L2 left off. This position seems to strain the boundaries of tolerance, and appear analogous to an ethnic or national minority during a war between his state of citizenship and the country of his co-ethnics. What distinguishes the two cases, however, is that in the national minority case we have a *simple* clash of loyalties between national communities: the minority would prefer to live with its co-ethnics and makes no pretence of membership in another *nation*. In the Muslim case, however, we might be dealing with a religious obligation never to kill another Muslim. He might not reject the host community as such, and might be willing to defend it against non-Muslim aggressors, but faces a conflict of obligations and prefers not to shed certain kinds of blood. He seems not to have clearly chosen his fellow citizens over his fellow Muslims, but it is also not yet clear that he has done the reverse.

⁸⁵ 'There are likely to be moments when all residents, aliens and citizens alike, are morally obligated to defend the state that defends their everyday social life. ... The existence of borderline cases does not call the original distinction into question.' (Walzer, 'Political Alienation and Military Service,' in *Obligations*, p. 105-6.)

If he proclaims himself unwilling to kill fellow Muslims, but also unwilling to aid them or damage his fellow citizens by any acts of commission (i.e., he affirms L2), we may just be willing to recognize this neutrality as a sufficient declaration of civic loyalty. To even consider a position like (1') for inclusion in an overlapping consensus, we would first require that it be combined with L2 in something like the following way:

(1a) No Muslim is permitted to fight in a non-Muslim army, even to defend a territory in which he lives and is not oppressed, when the opposing force is a Muslim one. However, if the Muslim has been given security, treated fairly and allowed to manifest his religion in that territory, he may not join the forces of the invading Muslim army and may not engage in any acts of sabotage or obstruction of the non-Muslim state's efforts to defend itself.

What we are specifically looking to establish is that the citizen does no harm to the society's vital interests by any of his actions or refusals to act, and that he is committed to no declaration of the illegitimacy of the acts performed by his fellow citizens (i.e., he also affirms L1). The latter requirement refers again to the *reasons* used by a citizen to justify positions such as (1') or (1a). We want to know both that the citizen seeks exemption because of a specific divine imperative not to kill fellow Muslims (rather than out of a desire to see his state of citizenship conquered) and that his promise to engage in no acts of sabotage or betrayal are advanced for *principled* reasons (rather than a desire to avoid punishment).

Thus, the following statements might support the claim that a citizen can assert (1') and (1a) and still be holding a doctrine eligible for the overlapping consensus:

(1b) No Muslim is permitted to fight in a non-Muslim army, even to defend a territory in which he lives and is not oppressed, when the opposing force is a Muslim one because the Qur'ān and ḥadīth have proclaimed it a sin for a Muslim to kill a fellow Muslim.

This position makes it clear that he fears angering God by doing something rather than supports the efforts of an invading Muslim force to conquer a non-Muslim state. Similarly, we prefer an elaboration of (1a) along the following grounds:

(1c) If the Muslim has been given security, treated fairly and allowed to manifest his religion in that territory, he may not join the forces of the invading Muslim army and may not engage in any acts of sabotage or obstruction of the non-Muslim state's efforts

to defend itself because he has to that point accepted the protection and benefits of living in that state and thus contracted himself not to harm it.

This addendum to (Ia) makes it clear that the Muslim citizen feels a certain moral obligation to the non-Muslim society and his non-Muslim fellow citizens, insofar as he considers the duty not to violate contracts or promises a moral obligation derived from religion. He not only fears worldly punishment for acting against the interests of his state, but divine punishment for committing a sin. For our purposes, this demonstrates that he is capable of proposing and abiding by fair terms of social cooperation.

However, let us consider that the liberal state has enacted a policy of *conscription* for the war of self-defense. The argument might be made then that what the dissenting citizen is requesting is an unfair exemption from the duty to perform an act that all citizens have the obligation to perform, like paying taxes. Why should a citizen's personal conscience not be grounds for an exemption from all demands of commission? What is additionally problematic is that the citizen has not declared certain acts as unjust *per se* but only when done to certain people. It might thus be claimed that the individual does not in fact have a conscientious objection at all because he does not assert universal principles applying to the conduct of war but rather arbitrary principles depending on the identity of the agent and the object. Our question is, thus, whether this privileging of a claim of another community over the claim of one's fellow citizens is a violation of the duties of citizenship.

I want to consider the idea that it depends on the precise weight of each claim. If one's moral claim to an individual whom he regards as a fellow member of a special community of humans is not to kill him or do him grave damage, and the claim to another political community (in which he enjoys protection and freedom) is that of discharging his individual share of a collective duty that does not rely for success on his individual performance, then our specifically *liberal* conception of citizenship ought to tolerate exemption on these grounds. By contrast, declaring that one's lack of recognition of the political community (even one in which one is not oppressed) forbids one from contributing to its welfare through the paying of fair taxes demonstrates an indifference to the community and its legitimate interests in a way that refusing to kill for it does not. The point here is that the (Islamic) duty not to kill fellow Muslims is not symmetrical to

the (civic) duty to discharge one's share of a collective obligation. The former is far weightier than the latter. What I believe this suggests is that holding specifically the above position (1b) does not commit the Muslim in question to the position that he has no obligations to his state of citizenship or that *any* duty to fellow Muslims (no matter how trivial) outweighs *any* duty to fellow citizens (no matter how weighty). Thus, what is determinant in this case are three factors: a) that the duty to fellow Muslims is particularly weighty in a moral sense (the duty not to kill), b) that his exemption from a collective duty will itself not result in the society's inability to achieve a legitimate and necessary goal, and c) that he has not proclaimed the *illegitimacy* of a non-Muslim society's efforts to defend itself, even against Muslim forces. Thus, we may say that a Muslim citizen who affirms L1 and L2, who explains his support for L2 through a statement like (1c) (i.e., that his promise not to harm his political community is *principled*) and who explains his request for exemption through a statement like (1b) (i.e., that it is based on a desire to avoid sin and next-worldly punishment, not a desire for the defeat of his political community) is affirming reasonable views about the rights of his political community and his duties towards it.

This discussion has, however, revealed the precise limits of the balancing act between the two competing loyalties. The preceding discussion assumes that the reasonable Muslim citizen is making an earnest effort to discharge both his civic and religious obligations, and that there may be an equilibrium where he does no vital harm to either community. This equilibrium is disturbed, however, when it is imagined that the self-defense efforts of a society require for success the contribution of all adult citizens. Let us also suppose that he regards non-combatant service as impermissible, say, according to the *ḥadīth*: 'he who kills a believer by even half a word will meet God with no hope of His mercy written on his face.' However improbable this may be given modern warfare, let us suppose that a Muslim community does vital damage to its political society even by remaining passive, and does so for no other reason than the narrow one of wishing not to kill fellow Muslims. Only here does it become clear that the failure to choose between communities becomes, in fact, a choice. The Muslim may assert no wish for his society to be conquered (L1) but is in fact wishing for this *less* than

he wishes to obey God, as he imagines God requires. Here he joins the class of semi-citizens/semi-aliens along with all committed pacifists.

From the perspective of political liberalism, the most blatantly problematic request for exemption is when a non-Muslim state is seeking to defend itself against the aggression of another *non-Muslim* force. We can synthesize the sentiments expressed in the Islamic positions (4) and (5) from above into the following plausible statement:

(4') No Muslim is permitted to fight in any non-Muslim army, even to defend a territory in which he lives and is not oppressed, even when the aggressing force is not a Muslim one.

This case appears to represent the repudiation of citizenship in this state, and perhaps even the form of loyal resident alienage which Walzer discusses. It is enough to say that a doctrine that declares it impermissible for Muslims to help defend a society in which they live, are not oppressed and are not facing a conflict of loyalties to be a failure to recognize the legitimacy of the political community and its reasonable interests. What is decisive in this case is that the Muslim citizen seems to have no absolute doctrine of pacifism and no conflicting moral or religious obligation to another community or agent that is being violated in the act of aiding the legitimate self-defense of the community. The weakness of the reasons for refusal seems to suggest a simple failure to regard the community in which he lives as one in which he has a stake and the welfare and security of which is of crucial importance to him, both attitudes that are foundational to the spirit of citizenship.

However, even this case may be more complicated than it appears. The crucial factor in determining whether a Muslim can assert (4') and still be said to hold a doctrine of citizenship compatible with that of political liberalism are the types of reasons cited in defense of it. Consider the following synthesis of the earlier quotations supporting position (4):

(4a) No Muslim is permitted to fight in any non-Muslim army, even to defend a territory in which he lives and is not oppressed, even when the aggressing force is not a Muslim one because it is impermissible for him to advance the cause of unbelievers or to uphold the laws of unbelief.

In this case the reasons advanced in support of a refusal to contribute do, in fact, reveal an utter lack of solidarity with fellow citizens, and something approaching an attitude of contempt. Non-Muslims cannot be supported no matter what their treatment of Muslims, simply because of their comprehensive doctrine. However, consider:

(4b) No Muslim is permitted to fight in any non-Muslim army, even to defend a territory in which he lives and is not oppressed, even when the aggressing force is not a Muslim one because his life has been made sacred and it is impermissible to expose oneself to danger except for the purpose of exaltation of the Word of God, and the glorification of religion, which are not present in this case.

This justification seems at first glance similar if one understands “the exaltation of religion” as a euphemism for fighting for Muslim communal interests. However, what if one understands it to be a divine imperative not to expose something sacred and inviolable (a Muslim’s own life) to mortal danger except in a few expressly delineated cases? We might interpret the Muslim invoking (4b) as saying: ‘Strictly speaking, we can’t die for this cause because God has not permitted it and it would thus be a sin to do so; however, under the terms of citizenship we are not allowed to violate your legitimate interests through any form of betrayal and we are allowed to contribute in non-combatant capacities.’ Here it becomes clear that the reasons invoked for exemption: a) are sincerely held and of a principled nature, b) are not grounded in indifference or contempt for one’s non-Muslim fellow-citizens, and c) are not incompatible with contributing to the state of citizenship in non-violent ways also on principled grounds. In fact, as with the above case of refusing to fight against an aggressing Muslim force when the survival of the society depends on such contribution, the Muslim citizen whose *only reason* for refusing to fight is his belief that God has not allowed him to die for this reason is approaching the traditional grounds for refusal advanced by Quakers or other Christian pacifists. In such a case, we might judge that (4b) represents a doctrine compatible with political liberalism but creating a hybrid citizen/alien doctrine, whereas (4') alone and (4a) are blatantly incompatible.

If this is correct, and if it is also correct that a Muslim’s abstention from a war of self-defense against an aggressing Muslim force is reasonable when he has affirmed L1

and L2, and explained his abstention according to (1b) and (1c), then the only additional principle of civic loyalty required from Islamic sources would be the following:

L3: *In conflicts when the non-Muslim state in which Muslims live is under attack by another non-Muslim force, and thus no conflict of loyalty or theological imperative is at stake, it is permissible to contribute in some substantive way to the self-defense efforts of the non-Muslim state.*

Leaving the meaning of ‘substantive contribution’ vague enough to include both combatant and non-combatant service, I submit that this position represents an equilibrium between the concerns of political liberalism and those of Islamic doctrine. Note that it is always possible that a Muslim could affirm on principled, Islamic grounds such non-combatant service even against an aggressing Muslim force (especially if he asserts L1), which would represent a more robust version of this position.

Chapter Four is devoted to Islamic rejections and affirmations of these three broad positions.

Recognition of and Solidarity with Non-Muslims

Rawls’s conception of society is that it is composed of ‘reasonable and rational citizens regarded as free and equal’. This requires unpacking. By ‘reasonable’ Rawls means that ‘persons are not moved by the general good as such but desire for its own sake a social world in which they, as free and equal, can co-operate with others on terms all can accept. By contrast, people are unreasonable in the same basic aspect when they plan to engage in co-operative schemes but are unwilling to honour, or even propose, except as necessary public pretence, any general principles or standards for specifying fair terms of co-operation. They are ready to violate such terms as suits their interests when circumstances allow.’⁸⁶ The reasonable citizen is not altruistic (impartial) but accepts ‘the fact of reasonable pluralism’ (that reasonable disagreement can persist amongst sincere, fair individuals as a result of the ‘burdens of judgement’) and is willing to bear the consequences of it. By contrast, whereas reasonableness is a public value and essentially refers to an individual’s commitment to acting fairly, the rational may be

⁸⁶ Rawls, *Political Liberalism*, p. 49.

purely private. Just as we pursue our self-interest, based on our conception of what is good in life, we recognise the rights of others to do as well, within the constraints of the reasonable. We are not willing to burden others through the pursuit of our self-interest more than we would be willing to be likewise burdened. One type of such an unreasonable burden is forcing others to refrain from their pursuit of the good, not because it requires resources that are due to me, but because I disagree with their conception of what is good. In Bruce Ackerman's words, my reason for forcing you to do something or to refrain from doing something cannot be that 'my conception of the good is better than yours' or that 'I am better than you' ⁸⁷ This is what is meant by 'free and equal'

Rawls thus sees political liberalism as requiring holders of comprehensive ethical doctrines to be able to regard individuals as politically autonomous (as opposed to ethically autonomous). This conception of political autonomy has three elements: 1) 'As citizens they are seen as capable of revising and changing this conception [of the good] on reasonable and rational grounds, and they may do this if they so desire. As free persons, citizens claim the right to view their persons as independent from and not identified with any particular such conception with its scheme of final ends. Given their moral power to form, revise, and rationally pursue a conception of the good, their public identity as free persons is not affected by changes over time in their determinate conceptions of it.'⁸⁸ In other words, one's rights and duties as a citizen are not linked to one's affiliation in a particular cultural group. One *may*, of course, associate oneself with such groups, see this membership as anything but a rational choice, and fail to imagine one's selfhood in terms other than those of this membership, but political liberalism accords this conception of the self no permanent political status. 2) Citizens are also free in that they view themselves as 'self-authenticating sources of valid claims.' This opposes an authoritarian conception in which their claims 'have no weight except insofar as they can be derived from the duties and obligations owed to society, or from their

⁸⁷ Bruce Ackerman, *Social Justice in the Liberal State*.

⁸⁸ Rawls, *Political Liberalism*, p. 30.

ascribed roles in a social hierarchy justified by religious or aristocratic values.’⁸⁹ 3)

Finally, they are viewed as free in that they can take responsibility for their ends.

Rawls’s conception of the person is intended as a general attitude that citizens are expected to adopt towards all fellow-citizens. However, as we discussed above, because of the nature of Islamic conceptions of individual duty and communal authority, we have to break down Rawls’s requirement to view others as ‘reasonable and rational citizens regarded as free and equal’ into two distinct conceptions: that of ‘the other’ and that of ‘the individual’. From the Islamic perspective, the intellectual challenge regarding non-Muslims is not their right not to be Muslim or have Islamic standards of morality imposed upon them (this is widely acknowledged), but their status as equals.

Implicit in the preceding discussions of residence and loyalty was an attitude not only towards a particular space or government, but towards the other citizens living in that society. While liberalism is characterised by its protection of a more or less autonomous civil society in which individuals are free to form a variety of allegiances and bonds of solidarity along any lines they choose (race, class, religion, culture, hobbies, etc.), it also envisions a public sphere in which citizens act as equals. This translates into a requirement that, whatever bonds of solidarity and association an individual may hold, she regards all fellow citizens as particular kinds of equals. Here we are concerned with one’s regard of what we might refer to as the ‘moral other,’ or those whom we do not regard as sharing in our most cherished and important final goals and ends. While I may regard myself as a Catholic first, second and third in terms of what I consider to be my most constitutive identity, may limit virtually all of my social and personal contacts to fellow Catholics, and may regard non-Catholics as moral aliens in a profound sense, at the political level I must recognise non-Catholics as persons entitled to the same rights as myself and persons with whom I might co-operate and feel solidarity. This is not a requirement to consider their final ends and values as equally worthwhile to mine, as equally correct in an absolute sense, but simply to regard others as having an equal share in the exercise of collective political authority.

Note that this does not require *excessive* solidarity. I am not required to put this political conception of equality in a position of absolute priority over my other

⁸⁹ Ibid., p. 32.

conceptions of solidarity. The moral other can be one whom – in our own mind – we simply suffer ungladly. I am not required to want him as my neighbour, my business partner or my son-in-law. I am not required to regard his metaphysical beliefs as equally true as mine or his values as equally worthy. I am not required even to take his errant ways as a given and forgo the hopes of persuading him of the error of his ways, as long as I don't regard him as a potential object for coercion in matters that do not harm me in certain ways, and do not regard him socially as *merely* a potential object of conversion. In the Islamic context, this involves examining the treatment of non-Muslims as groups with whom one might make contracts, co-operate and form common goals. Ideally, there would be some way in which non-Muslims were 'equal' to Muslims or conditions in which they could be so regarded.

Note that this does not require liberals to be indifferent to or uninterested in more sociological concerns about the prospects for democracy and solidarity in a society in which such attitudes of disdain, avoidance or mistrust are widely and intensely held, and cohere around a limited number of cleavages. Just as we might be concerned about the effects of cultural pluralism on solidarity, that is, when many citizens hold the above-described attitudes of mistrust and alienation towards fellow citizens who differ racially, ethnically or linguistically, we might observe neutrally that a society in which most citizens are divided into groups based on conceptions of the good which merely *tolerate* each other publicly but do not generally interact privately is a society which will lack the levels of interpersonal trust and deep commitment to the public conception of justice necessary for surviving political conflict. For our purposes, however, we are forced to say that such private attitudes are not in themselves a violation of any ideological requirements of citizenship in liberal democracies. Here I am interested in a certain conceivable Islamic attitude of avoidance with non-Muslim fellow citizens. A Muslim might not want to convert non-Muslims or transform the state, but limit all potentially corrupting contact with them for himself and his family. He might see non-Muslims as moral inferiors, perhaps even hell-bound, ritually unclean, etc. I am interested in how far such attitudes of avoidance can go before departing from the overlapping consensus, which must be divorced from sociological concerns about the possible consequences of the generalisation of such attitudes. I believe the liberal position to be that a liberal

society can tolerate such private attitudes so long as there is no articulation of a doctrine of the impossibility of sharing in a certain limited number of public ends, including the common defence, social order and public welfare.

This question of the moral other (or the differentiation between out-group and in-group moral others) is more of a concern of Continental political thought, where it is often treated in terms of the Hegelian concept of 'recognition'. It is an important theme, for example, in Habermas's discourse ethics and Charles Taylor's neo-Hegelian communitarianism, both of whom consider that the rights-based approach of Rawls, Dworkin, Ackerman and others, indeed the whole legalistic approach to the management of social conflict, is necessary as far as it goes but is not sufficient to ground the totality of our moral obligations to others in a society, many of which are present more in informal relations than formal ones. These theorists are sensitive to the ways in which institutions in both the public sphere and civil society are paramount in the creation of socialised human 'selves.' Taylor writes:

Our identity is partly shaped by recognition or its absence, often by the *misrecognition* of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being. ... Misrecognition shows not just a lack of due respect. It can inflict a grievous wound, saddling its victims with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need.⁹⁰

Benhabib:

We should view human cultures as constant creations, recreations, and negotiations of imaginary boundaries between "we" and the "other(s)" The "other" is always also within us and is one of us. A self is a self only because it distinguishes itself from a real, or more often than not imagined, "other". Struggles for recognition among individuals and groups are really efforts to negate the status of "otherness," insofar as otherness is taken to entail disrespect, domination, and inequality. Individuals struggle to attain respect, self-worth, freedom and equality while also retaining some sense of selfhood. I argue that the task of *democratic equality* is to create the impartial institutions in the public sphere and civil society where this struggle for the recognition of cultural differences and the contestation for cultural narratives can take place without domination.⁹¹

⁹⁰ Charles Taylor, 'The Politics of Recognition, in Amy Gutmann (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton: PUP, 1994), pp. 25-6.

⁹¹ Benhabib, *The Claims of Culture*, p. 8.

When dealing within the context of multiculturalism, the obligation to extend 'recognition' to 'the other' is primarily the obligation of the social majority or dominant group. To the extent that 'American selfhood' has been constructed as 'white' or, at least, 'not-black,' the duty of recognition consists in negating this construction. To the extent that French selfhood is defined as 'not-Muslim,' or 'not-Arab,' theorists of recognition will see a duty to redefine such selfhood in terms that do not result in the inherent marginalisation that consists in the original imaginary. These concerns lead to a constant sensitivity to the informal, subtle and often disguised attempts to assert a 'universal selfhood' around particular and local characteristics.

It is these insights that lead to the frequent emphasis in cultural and social movements not merely on rectifying legal injustices but on altering social attitudes towards marginalised and over-burdened groups. It is crucial to this thinking that altering such attitudes or images is not instrumental, or functional, to securing the more 'fundamental' political and economic rights. Thinking on 'recognition,' 'voice,' 'presence,' etc., has emphasised the ways in which domination can persist even after the equalisation of formal-political rights, as well as the *inherent* harm in failing to recognise the experiences and perspectives of certain groups.

It would be too much to say that these are themes entirely ignored or belittled by Rawlsian or other rights-based approaches. Rawls, for example, includes 'the social bases of self-respect' amongst his primary goods, which might be an analogue to the concept of 'recognition.' Raz writes that since, 'for most people, membership in their cultural group is a major determinant of their sense of who they are ... slighting one's culture, persecuting it, holding it up for ridicule, slighting its value, etc., affect members of that group. Such conduct hurts them and offends their dignity.'⁹² Furthermore, the rigorous emphasis on equality and the exclusion of 'morally arbitrary' characteristics from amongst the legitimate reasons for distributing social goods unequally, give 'rights liberals' a certain language for talking about recognition and informal oppression, although critics such as Iris Marion Young are correct in saying that this language is deeply resistant to altering the basic scheme of rights, freedoms and duties to take social

⁹² Joseph Raz, 'Multiculturalism: A Liberal Perspective,' p.163.

differences into account⁹³ (which is not to say that she is correct is saying that we should do). It is perhaps best to see the two traditions as complementary with different priorities and emphases ('the social bases of self-respect' is, after all, fifth in a list of five primary goods). Rights only go so far, but it is important to remember that it is precisely our *liberal value commitments* that make us concerned not only about formal freedoms but the value of those freedoms, not only about formal equality but substantive equality of opportunity, and so on.

There is, thus, a wide range of moral obligations *towards* Muslim minorities grounded in the duty of 'recognition', in addition to the legally protected freedoms of speech, religion and association, that liberals are willing to acknowledge. For example, to the extent that public space is used at the moment for cultural and religious expressions by the majority (nativity scenes, etc.) it should also be open to minorities for this use.⁹⁴ Media outlets, as well as political institutions, should not only take into account the interests and perspectives of cultural minorities (or oppressed groups as such, which do not have to be a minority), but should be open to those groups to speak publicly for themselves in the most authentic way possible. Steps should be taken to counter aggressive and unfair portrayals of groups in the media. And so on.

To which points the liberal makes two qualifications. The first, is that there are clear limits to recognition. The legal aspects of this I discuss more directly in the following section (under 'a conception of the individual'), but the obvious limits on our tolerance of *practices* ('No free exercise for Aztecs' as William Galston likes to say⁹⁵) implies a similar limit on our duty to refrain from public criticism. Our duty not to stigmatise, perpetuate harmful stereotypes or treat an entire civilisational tradition as

⁹³ See Iris Marion Young, 'Polity and Group Difference: A Critique of the Ideal of Universal Citizenship,' *Ethics* 99 (January 1989).

⁹⁴ Note that the principle of neutrality might also require this. However, neutrality might also require that *all* religious or sectarian expressions be excluded from public space. Theorists of recognition or discourse ethics might agree with this in some cases (say schools or courts) but would be more sensitive to the ways in which this 'neutralisation' of public space might advance a false neutrality or universalism that actually serves to marginalise and stigmatise various 'others' even more. This might be the critique of the French policy of *laïcité* (including the ban on head scarves in schools and other public spaces) from the difference/recognition perspective, while from the liberal perspective such a critique is grounded in the commitment to the specific values of freedom of worship and self-expression.

⁹⁵ William Galston, *Liberal Pluralism*, p. 23, and 'Who's a liberal?' *Public Interest*, Summer 2001, p. 104. The reference is to the Aztec practice of human sacrifice, which Galston takes for granted would be a practice banned in a liberal democracy.

worthless cannot constitute a taboo on intercultural comparisons or criticism. As mentioned in my introduction, a multicultural *liberal* is someone not only sensitive to the asymmetries in power between dominant groups and subaltern groups, but also to those between individuals within groups, and is unimpressed by arguments that members of socially privileged groups are doing wrong by criticising internal practices of minority groups that may involve the oppression of vulnerable members within them. Liberal value commitments to equality of opportunity, neutrality, freedom of association and toleration help ground a liberal multiculturalism, but liberals will hold ‘that appeals to “cultural diversity” and pluralism under no circumstances trump the value of basic liberal rights.’⁹⁶ The requirement to recognise the value of cultures and other experiences is not an obligation to abstain from intercultural comparisons of value⁹⁷, or an obligation to the cultural products of a given tradition, but primarily an obligation to persons. One of the ways in which we treat them equally and with respect is to try to enter into their system of cultural production with sympathy and not to assume that their equality is contingent upon their conversion to our cultural system, but given that this is a commitment to *persons* (and not cultures as such) we may have other commitments to those same persons that trump that of cultural recognition.

The second is that the requirement of recognition goes both ways. While it is usually the majority or the dominant group that has failed to recognise the groups it has oppressed (and thus rather absurd to talk about an obligation on the part of African-Americans or women to ‘recognise’ the white, male experience), in certain cases the demand of mutual recognition might not be absurd. One is when a group might be weak and oppressed in a certain context but powerful in another, or when the powerful, dominating group is in some way threatened by the other. Thus, to take three examples,

⁹⁶ Barry, *Culture and Equality*, p. 133.

⁹⁷ ‘While [liberal multiculturalism] respects a variety of cultures, it refuses to take them at their own estimation. In particular multiculturalism urges respect for cultures which are not themselves liberal cultures – very few are. As we shall see, it does so while imposing liberal protection of individual freedom on those cultures. This in itself brings it into conflict with the cultures it urges governments to respect. The conflict is inevitable because liberal multiculturalism recognises and respects those cultures because and to the extent that they serve true values. Since its respect of cultures is conditional and granted from a point of view outside many of them, there is little surprise that it finds itself in uneasy alliance with supporters of those cultures, sometimes joining them in a common front while at others turning against them to impose ideals of toleration and mutual respect, or to protect the members of those very cultures against oppression by their own group.’ Raz, ‘Multiculturalism: A Liberal Perspective,’ p. 168.

Protestants in Northern Ireland, Jews in Israel and whites in South Africa all constitute dominant groups who have been the subject of resistance to their superior position by their respective 'others'. But in each case, the stronger group's position of dominance and policy of oppression conceals (or is the open response to) an inherent insecurity usually caused by their own non-native status and 'the other's' demographic superiority and national aspirations. A group may be wealthy, politically hegemonic, and militarily unassailable, but still lack something it needs for a secure, confident existence that only the other can give. A group may be poor, politically dispossessed and left with limited means of resistance, but possessed of a certain cultural authenticity or demographic confidence. It is thus not absurd or unreasonable in these cases for the three groups in question, while conceding rights or rectifying past injustices, to demand from their respective weaker 'other' some form of recognition of *their* right not only to live where they do securely but of the authenticity of their legitimate experiences and desires.

The second context in which mutual recognition might not be an absurd demand is when the community is defined not in contingent, cultural terms but in religious, doctrinal terms. There are groups that see their continuity (their definition of what makes them *that* community rather than another) precisely in terms of commonly-held, authoritatively-articulated beliefs about value, truth and the good. One such belief about which a religious community *might* have the resources to issue guidance on is what attitude a believer should adopt towards heretics: whether a believer can legitimately reside in the same state with them and regard them as having independent moral value.⁹⁸ Islam is such a religion and, I have tried to show above, liberalism is such a doctrine of social justice that requires particular answers to these questions. Thus, it is not absurd or unfair in a liberal society, while extending 'recognition' to Muslim communities (and Islam as such) to require a form of mutual recognition from those communities in the form of authoritative or intellectually formalised statements in favour of joint citizenship with non-Muslims.

⁹⁸ As Rousseau asserted pessimistically: 'Those who distinguish between civil and theological intolerance are mistaken, in my opinion. Those two types of intolerance are inseparable. It is impossible to live in peace with those one believes to be damned. To love them would be to hate God who punishes them.' (Jean-Jacques Rousseau, *The Social Contract* Book IV, Chapter VIII, in *The Basic Political Writings* (Indianapolis: Hackett), p. 227.

Such statements would not only take the form of recognising religious pluralism, affirming tolerance towards non-Muslims and calling for relations of 'justice' between Muslims and others, but also more positive forms of solidarity. Rawls has referred to liberal society as a 'fair system of co-operation,' that is, as one based on *reciprocity* as opposed to mutual advantage, impartiality, mere socially co-ordinated activity, a fixed natural order or a system of traditional hierarchy justified by religious authority or aristocratic values. For Rawls, *reciprocity* is the idea that 'all who are engaged in co-operation and who do their part as the rules and procedure require, are to benefit in an appropriate way as assessed by a suitable benchmark of comparison,'⁹⁹ a conception which lies between both *impartiality* (being moved by the general good) and *mutual advantage* (everyone benefiting with respect to each person's present or expected future situation). We are not concerned here to vindicate a particular conception of distributive justice but merely the basic ideas of citizenship as social cooperation: of contributing to the welfare (directly and indirectly) of fellow citizens (including those who do not share your conception of the good), and of sharing political sovereignty. One cannot speak of a comprehensive doctrine as affirming citizenship in a society where it at the same time resents or is indifferent to the welfare of fellow citizens merely because they do not share a conception of truth or of the good. This willingness to so contribute is what I have in mind by 'solidarity'.

After residence, loyalty and solidarity, a final aspect of citizenship relates to sharing political sovereignty. With this question of political participation we reach a hinge between the two broad problems with citizenship in non-Muslim liberal states which I identified earlier: one, in those states being *non-Muslim* in character, both socially and politically; two, in those states being *liberal* in character. It is readily conceivable that a Muslim could affirm residence on liberal terms, forswear any assistance to aggressive foreign powers (including Muslim ones), recognise the acceptability of religious pluralism and even gladly contribute to the secular welfare of non-Muslims, yet find it impermissible to contribute to the formulation of non-Islamic legislation. Even if this person disavowed any interest in using political institutions to impose an Islamic conception of government, one would still have to say that his

⁹⁹ Rawls, *Political Liberalism*, p. 16.

comprehensive doctrine is not fully supportive of an overlapping consensus because of the failure to recognise the legitimacy of political institutions, for 'to be a citizen is to be committed to a political system, not merely to the survival of the society that system organizes, but to the survival of the particular organization and also to all those purposes beyond survival that the organization sets for itself. Residence alone cannot and does not generate such a commitment.'¹⁰⁰

Yet, when speaking of the legitimacy of political institutions, we immediately enter into very deep and complex questions of justice. The question from the Islamic perspective immediately becomes whether any non-Islamic forms of rule can be just. That none can is not an obvious or universally accepted Islamic position. To be sure, any reconstruction of a comprehensive Islamic doctrine of citizenship in a liberal democracy (Muslim-minority or not) would require addressing this; however, doing so satisfactorily would require exceeding the constraints of the present inquiry. Nonetheless, there is an important way in which we can address this question here, and that is in the context of solidarity with non-Muslims. (Thus, my reference to political participation as a 'hinge' issue.)

While a citizen need not consider political participation as part of his conception of the good in order to be regarded as holding a doctrine of citizenship, he should at least regard it as *permissible* in relation his conception of the good, and if he in fact does not participate, then his reasons should be such that they do not constitute rejection of or ingratitude towards what other citizens do when they perform the necessary task of political participation. Furthermore, his reasons for participating must be such that they do not undermine or reject the liberal terms of social cooperation.¹⁰¹ Clearly, examples of the latter would be various long-term strategies to 'Islamise' political institutions which include political participation in the present institutions as an acceptable tactic. More ambiguous attitudes would be those which reveal a certain unease with liberal institutions but justify political participation as a means of securing certain benefits for Muslims. As long as the benefits in question are themselves compatible with liberal conceptions of

¹⁰⁰ Walzer, 'Political Alienation and Military Service,' in *Obligations*, p. 105.

¹⁰¹ For example, it is possible to argue for political participation in a state which one would not wish to defend or even to see exist. (Such might be the position of some Irish Republicans in Northern Ireland or Israeli Arabs.) Similarly, it is possible to argue that one has a duty to defend one's state and to pay taxes, but that active political participation is for whatever reason unnecessary or unvirtuous.

public goods, then my argument is that such a justification is compatible with liberal citizenship. To demonstrate this, consider the two following positions:

1. 'My conception of the good is based on the pursuit of purely private happiness. I have no objection to the political order around me – it provides me with all the security and freedom I need to be happy – but nor do I feel the need to be a part of it. Should this political order be threatened by forces which would replace it with one more hostile to my interest in security and freedom, I would have no objection to defending it, but otherwise I am happy to let others handle the administration of things.'
2. 'My conception of the good is based on the pursuit of salvation, which I think can be best achieved through government on the basis of a divine law. I understand that in this society the majority of the population does not share my understanding of what divine law requires. This society gives me the security, freedom and dignity to follow my most important religious practices and, thus, I would defend it against harm and destruction. I do not begrudge my unbelieving fellow citizens their worldly happiness and I do not resent my contribution to their welfare. However, while I will obey all laws of this society which do not oppress me, I do not feel any need to contribute to the making of those laws. For me, political participation is only justified to pursue social benefits for fellow Muslims, which may or may not overlap with the interests of non-Muslims.'

Both of these statements are expressions of non-participation based on one's conception of the good which, I believe, are nonetheless affirmations of citizenship (as opposed to mere resident alienage) because of the way they affirm the legitimacy of what other citizens do when they participate in political life (and even a certain gratitude for it). If we can assume that many citizens of contemporary liberal democracies hold conceptions of the good conforming to the first template, then an Islamic argument which views non-participation as the norm and participation justified only to pursue Muslim self-interest is equally compatible with liberal citizenship *if it presumes an argument something like the second template as the underlying Islamic position*, rather than a position of gradual Islamisation or an even more indifferent attitude to non-Muslims. This argument presumes that the individual in question is also affirming all the previously-mentioned beliefs about the permissibility of loyalty, recognition, tolerance and contributing to non-Muslim welfare.

For the purposing of posing precise question to the Islamic sources on the questions of living with non-Muslims as fellow-citizens, treating them as 'self-

authenticating sources of valid claims' (i.e., that they can be treated as ends in themselves and not merely as means), and forming bonds of solidarity with them, including contributing to their welfare and sharing political power, we might summarise the above as requiring something like the following positions:

RP: Religious disagreement is an inevitable feature of human life, perhaps divinely-ordained. While a Muslim has a duty to make the Islamic message known and to call to it, it is understood that not all unbelievers will hear or heed this call. It is permissible to live in societies even where there is little or no prospect of Islam becoming a majority religion, and it is permissible to maintain civic relationships with unbelievers even after they have heard and failed to accept the invitation to Islam.

J: Relations between Muslims and non-Muslims are governed by standards of justice, rather than the ethics of war. Minimal standards of justice require civic equality and procedural impartiality towards all persons regardless of their religious identity.

CW: It is permissible for a Muslim to form common social, economic and civic goals with non-Muslims. It is understood that in sharing social and political space Muslims benefit from this and in turn contribute to the material welfare of non-Muslims, to which there is no Islamic objection.

PP: It is permissible for a Muslim to participate in a political system not based on Islamic justice or public justification. Such participation is an appropriate way to advance certain interests of Muslim communities, particularly in worldly matters, interests which may overlap with non-Muslim fellow citizens.

To conclude, the following three chapters will focus on the problems arising from life in a non-Muslim political community. Chapter Three, 'Residence in a non-Muslim State,' will address the question: Can Muslims live permanently in non-Muslim states or is there a duty of migration (*hijra*)? Chapter Four, 'Loyalty to a non-Muslim State,' will address the question: When can Muslims exhibit loyalty to non-Muslim states, particularly through contributing to their self-defence? The fifth and final chapter, 'Recognition of and Solidarity with Non-Muslims,' will address the question: Can Muslims regard non-Muslims as political equals, contribute to their welfare and join them

in common civic purposes, including through political participation? While we will not have time or space to address satisfactorily the central liberal questions of whether Muslims can regard any non-Islamic forms of governance as substantively just, and whether liberal regimes can be so regarded, and how Muslims can justify the liberal requirement of self-restraint towards fellow Muslims whilst encouraging Islamic conceptions of virtue and morality, the concerns of political liberalism are omnipresent throughout the following three chapters. This is the case primarily in three ways: first, in addressing the non-Muslim nature of societies in which Muslims live as minorities, the emphasis is always on the terms of association required by political liberalism; second, in addressing the reasons that Muslim scholars give for accepting those terms of association, the emphasis is always on the nature of those reasons and their compatibility with my understanding of the overlapping consensus; third, the question will be paramount throughout whether political liberalism fulfils its ambition to earn the loyalty of non-liberal groups over other forms of liberalism or other forms of non-Islamic governance. These discussions will go a long way towards suggesting how Muslims may indeed regard liberal principles of justice as overlapping with the most important concerns of Islamic conceptions of justice – the successful demonstration of which would point to a genuine and very deep overlapping consensus – but they will not establish the case entirely.

Chapter Three
Residence in a non-Muslim State
Can Muslims live permanently in non-Muslim states or is there a duty of *hijra*?

It is significant that Year One in the Islamic tradition is not the year of Muhammad's birth, his first revelation, his conquest of Mecca or of his death, but rather of his flight from persecution in his native Mecca to the city of Yathrib (later, Medina) 12 years into his prophecy and 10 years before his death. For Muslims, this migration, known as the *hijra* (sometimes rendered *hegira* in Western languages), marks the point at which Muslims first constituted themselves as an autonomous political community and at which Islam can be said to have emerged as a comprehensive social, economic, military and political system. It is symbolic of something enduring in Muslim self-understanding that the Islamic era begins precisely with this political birth rather than one of the myriad other events in the Prophet's life of theological or even political significance.

In addition to symbolising the Islamic unification of personal salvation and communal solidarity, of religious truth and political authority, the centrality of the *hijra* has posed a rather significant doctrinal problem throughout the ages. For Muhammad's migration to Medina was accompanied by an injunction upon his followers to do the same: 'When God had given permission to fight¹⁰² and this clan of the Anṣār [the 'helpers'; those Muslims living already in Medina] had pledged their support to him in Islam and to help him and his followers, and the Muslims who had taken refuge with them, the apostle commanded his companions, the emigrants of his people and those Muslims who were with him in Mecca, to emigrate to Medina and to link up with their

¹⁰² Islamic doctrine holds that Q. 22:39-40 ('Permission is given to those who fight because they have been wronged. God indeed has the power to help them, those who have been driven out of their houses without right only because they said "God is our Lord". Had God not used some men to keep back others, cloisters and churches and oratories and mosques wherein the name of God is constantly mentioned would have been destroyed. Assuredly God will help those who help Him, for verily God is the Most Powerful, Almighty.') are the first verses to address the problem of war and the first to give permission to Muslims to defend themselves. It is commonly held that these verses were revealed at the end of the first Meccan period at the time when Muhammad was preparing to depart for Medina. See Abū Ja'far al-Ṭabarī (d. 310/923), *Jāmi' al-bayān fī ta'wīl al-Qur'ān* (Beirut: Dār al-Kutub al-'Ilmiyya, 1999), v. 9, pp. 160-166. He relates, for example, on the authority of 'Ibn 'Abbās that in relation to verse Q. 22:39 ('Permission is given to those who fight because they have been wronged. God indeed has the power to help them'), Abū Bakr said: 'It was known that there would be fighting and this was the first [such] verse to be revealed.' (p. 161).

brethren the Anṣār.’¹⁰³ While it was still some time before the Muslims were joined by Muhammad and his closest companions in Medina, it has been often argued that this Prophetic injunction to migrate to the Islamic state inaugurated a general and permanent duty for Muslims to reside in lands ruled by Islam and to migrate from non-Islamic lands however they may find themselves there. In the synopsis of an important contemporary scholar of Islamic law, ‘it has often been argued that a just life is possible only if lived under the guidance of the Sharī‘a which, in turn, is possible only if there is an Islamic polity dedicated to the application of the Sharī‘a. That is to say, a just life is possible for a Muslim only if lived in an Islamic polity that dutifully applies the Sharī‘a. Consequently, a certain dichotomy results. On the one hand there is the abode of Islam (*dār al-Islām*) where it is possible to live an ethical life under the guidance of the Sharī‘a. On the other hand, there is the abode of unbelief (*dār al-kufr*, *dār al-ḥarb* or *dār al-shirk*) where the Sharī‘a is not applied and Islamic justice does not prevail.’¹⁰⁴ In what follows I survey the positions of various Muslim thinkers on this problem with an emphasis on extracting the range of arguments and justifications for the permissibility or impermissibility of residing in a non-Muslim polity.

Incompatible Doctrines

Juridical arguments that *hijra* from *dār al-ḥarb* to *dār al-Islām* is a categorical duty for Muslims tend to rely on a certain set of Qur’ānic verses and *ḥadīth* reports. The most oft-cited Qur’ānic verses are

Those whom the angels gather in death while in a state of sin against themselves they will ask: ‘What was your plight?’ They reply: ‘We were oppressed on earth.’ The [angels] will say: ‘Was not God’s earth vast enough for you to migrate within it?’ They will have

¹⁰³ Ibn Hishām, *al-Sīra al-Nabawiyya* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1936), v. 2, p. 111. English translation: Alfred Guillaume, *The Life of Muhammad: A Translation of Ishāq’s Sīra Rasūl Allāh* (London: OUP, 1955), p. 213.

¹⁰⁴ Khaled Abou El Fadl, ‘Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries,’ *Islamic Law and Society* 1:2 (August, 1994), pp. 141-2.

their refuge in hell and how evil is such a destiny, except for those truly oppressed, those men, women and children who cannot find any means and have not been shown the way. For these there is hope that God will forgive them, for God is Forgiving and Merciful. Anyone who migrates in the path of God will find in the Earth many an abundant refuge. Whoever leaves his home in migration towards God and his Messenger, and death overtakes him, his reward with God is guaranteed, for God is Forgiving and Merciful. [Q. 4:97-100]

and

Those who believed and migrated and struggled in the path of God with their property and their souls and those who sheltered and supported them, and friends and supporters of one another. Those who believed and did not migrate, you have no duty of protection towards them until they migrate. But if they seek your support in religion, you owe them this support, except against a people with whom you have a treaty. God sees all that you do. [Q. 8:72]

In addition, Muslim jurists point to a set of Prophetic *ḥadīth* which proclaim the permanence of the duty of *hijra*:

‘The *hijra* will not come to an end until repentance comes to an end and repentance will not come to an end until the sun shall rise from its place of setting.’¹⁰⁵

‘I am innocent of [I disown] any Muslim who lives with the polytheists. For you will not be able to tell them apart.’¹⁰⁶

‘Do not live with and associate with the polytheists. Whosoever lives with them and associates with them is like them.’¹⁰⁷

‘The *hijra* will not come to an end as long as the enemy is fought.’¹⁰⁸

¹⁰⁵ Supposedly related by the Umayyad Caliph Mu‘āwīya. Recorded in Abū Dāwūd, *Sunan Abī Dāwūd*, *Kitāb al-Jihād* (9), *Bāb fi’l-hijra hal inqata‘at* (2), 2379 (Beirut: Dār Ibn Ḥazm, 1997), v. 3, p. 8; Aḥmad Ibn Ḥanbal, *al-Musnad*, 1671 (Cairo: Dār al-Ma‘ārif, 1950).

¹⁰⁶ Muhammad is reported to have said in this in justification of his commanding that only half the blood-price be paid for Muslims killed while in prayer by a squadron of his own troops. The slaughtered Muslims were living at the time amongst non-Muslims. Abū Dāwūd, *Sunan Abī Dāwūd*, *Kitāb al-Jihād* (9), *Bāb al-nahy ‘an qatl man a‘tasima bi’l-sujūd* (105), 2645; al-Nasā’ī, *al-Sunan al-Kubrā*, *Kitāb al-qasāma* (65), *Bāb al-qawad bi’ghayr ḥadāda* (25), 6972 (2) (Beirut: Dār al-Kutub al-‘Ilmiyya, 1991); al-Tirmidhī, *al-Jāmi‘ al-Ṣaḥīḥ*, *Kitāb al-siyar* (22), *Bāb mā jā’ fi karāhiyat al-muqām bayn aẓhar al-mushrikīn* (42), 1604 (Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.), v. 4, p. 132.

¹⁰⁷ Abū Dāwūd, *Sunan Abī Dāwūd*, *Kitāb al-Jihād* (9), *Bāb al-iqāma bi-arḍ al-shirk* (182), 2787, v. 3. P. 152; al-Tirmidhī, *al-Jāmi‘ al-Ṣaḥīḥ*, *Kitāb al-siyar* (22), *Bāb mā jā’ fi karāhiyat al-muqām bayn aẓhar al-mushrikīn* (42), 1605, v. 4, p. 133.

¹⁰⁸ Ibn Ḥanbal, *al-Musnad*, 1671.

Pointing to these authoritative sources, many Muslim jurists and exegetes from the earliest stages of Islam to the present have argued that migration from non-Islamic lands to Islamic ones is, indeed, a permanent religious obligation for believers. One of the most famous pronouncements on the subject (undoubtedly more for its length and rhetorical energy than for any general consensus it represents or for the authoritativeness of its author) is a *fatwā* by an Andalusian-North African Mālikī jurist, Aḥmad ibn Yahya al-Wansharīsī (d. 914/1508), writing at the time of the loss of Islamic lands in Spain. Before discussing at great length the moral status of Muslims who prefer to reside in non-Muslim lands, and the various operative factors (*'ilal*) which explain his position, he pronounces simply in the first line of his ruling: '*Hijra* from the land of disbelief to the land of Islam is a duty until the Day of Resurrection, as is *hijra* from lands of sin and those negated by injustice or sedition.' This matter is decisively settled for him by Q. 4:98:

'Except for those truly oppressed, those men, women and children who cannot find any means and have not been shown the way. For these there is hope that God will forgive them, for God is Forgiving and Merciful.' God Almighty does not accept their excuses [for not migrating], for he demonstrated that they were capable of migration in some way. Rather, the weak and oppressed who are forgiven by God for their incapacity are only those who are incapable in every way ... and for whom there was truly no path or means open to them, such as invalids (*al-muq'ad*), prisoners (*al-ma'sūr*), the seriously ill or the very weak. Only then is forgiveness due to them, for they become like the one who is coerced into pronouncing disbelief. But even then it is necessary that they have the abiding intention to perform *hijra* if only they were able. As for him who is capable of migrating in any way or means, he is not forgiven and is unjust towards himself [i.e., in a state of sin].¹⁰⁹

A similar decisiveness based on a literal reading of the authoritative texts – in this case one of the above-cited *ḥadīth* – is advanced by a prominent jurist of the Ḥanafī school, who advised anyone travelling to non-Muslims lands for purposes of trade not to

¹⁰⁹ Aḥmad ibn Yahya al-Wansharīsī, *al-Mi'yār al-Mu'rib wa al-jāmi' al-mughrib 'an fatāwā ahl Ifrīqiya wa'l-Andalus wa'l-Maghrib*, ed., Muḥammad Hajjī (Rabat: Ministry of Religious Endowments and Islamic Affairs, 1981), pp. 121-2. We still find an identical judgement rendered on virtually the same grounds, and in virtually the same language, by a nineteenth-century Egyptian Mālikī. See Muḥammad ibn Aḥmad 'Ulaysh (d. 1882), *Faṭḥ al-'alī al-mālik fī-al-fatwā 'alā madhhab al-Imām Mālik* (Cairo: Dār al-Fikr, 1937), v. 1, pp. 375-6.

have intercourse with his wife or slave girl abroad ‘out of fear of begetting children there because it is forbidden to settle in the abode of war, [for the Prophet] said: “I am innocent of any Muslim living with the polytheists.”’¹¹⁰ This view is echoed in the interpretation of Q. 4:97-100 by twentieth-century exegete Sayyid Quṭb: ‘This ruling remains valid until the end of time, transcending that particular case which the text addresses in a particular time and environment. It remains a general ruling incumbent upon all Muslims subject to pressure and persecution in any land aimed at turning them away from their faith, and yet who stay where they are in order to look after their possessions and interests or to be with their relatives and friends or because of their unwillingness to undertake the hardships of migration. Once there is a place on earth, any place, which belongs to Islam and where one can feel secure declaring one’s faith and fulfilling one’s religious duties, then one must migrate in order to live under the banner of Islam and enjoy the sublime standard of life Islam affords.’¹¹¹

However categorical some jurists find these verses alone, al-Wansharīsī and others go beyond mere scriptural citation to derive from the texts the following series of arguments (‘*ilal*, or ‘operative factors’) that explain and substantiate the prohibition of residence (*iqāma*) in non-Muslim lands. Rather than track the historical development of juridical opinions on the duty of migration, it is more useful for our comparative purposes to account for the range of arguments that are invoked by jurists in justification of their interpretations of specific verses, or their preference for some verses or *ḥadīth* reports over others.¹¹²

The first explanation advanced in defence of the ban on residence in non-Muslim lands is the least flexible or subject to qualification: Muslims may not legally live in non-Muslim states because they will be subject to non-Muslim laws or authority (*tajrī*

¹¹⁰ Muḥammad Ibn Aḥmad al-Sarakhsī (d. 483/1090), *Kitāb al-Mabsūṭ* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2001), v. 10, p. 84.

¹¹¹ Sayyid Quṭb, *Fī Zīlāl al-Qur’ān* (Beirut: Dār al-Shurūq, 1979), v. 2, pp. 745. English translation: *In the Shade of the Qur’ān*, Adil Salahi and Ashur Shamis, trans. and eds., (Leicester: The Islamic Foundation, 2001), v. III, p. 286.

¹¹² In tracking the range of positions in the classical sources I am deeply indebted to Abou El Fadl’s article, ‘Islamic Law and Muslim Minorities,’ which provides a succinct yet thorough survey.

'*alaihim aḥkām al-kuffār*).¹¹³ Most of the jurists who advance this argument do not tend to consider the variety of circumstances in which Muslims may live as minorities. That is, the possibility that some non-Muslim states may grant Muslims a form of communal autonomy (including the internal application of Islamic law) does not appear to have made a difference on their reasoning. Indeed, these jurists tend to debate not whether having Muslim judges governing internal Muslim relations in a minority context mitigates the misfortune of living as a minority, but rather whether the rulings of such judges are even valid and whether those judges themselves retain their credibility.¹¹⁴ Thus, for example, we find another Andalusian Mālikī jurist, al-Māzarī (d. 536/1141), suggesting that 'there is no doubt that one residing in the abode of war, if he is coerced into living there, does not lose his credibility [*lā yaqdaḥ fī 'adālatihi*], nor if his interpretation [of his religious duty] is correct, such as residing in the abode of war to plead for the rightful guidance of the people there and their deliverance from error, or for the release of prisoners. However, if their residence relies on a wrongful ruling and a deliberate forsaking of [the correct interpretation] then this does violate his credibility.'¹¹⁵ Despite the fact that al-Māzarī's position is clearly that only compulsion can justify residence under non-Muslim rulers, al-Wansharīṣī still finds fault with it on the grounds that Muslim judges may not accept appointments from infidel rulers.¹¹⁶ Thus, it is clear that for these (largely Mālikī) jurists the status of living subordinate to and at the mercy

¹¹³ This is a view particularly popular amongst jurists of the Mālikī school of Islamic law. See 'Abd al-Salām ibn Sa'īd Ṣaḥnūn (d. 240/854), *al-Mudawwana al-Kubrā* (Cairo, Dār al-Fikr, n.d.), v. 3, p. 278 and Abū al-Walīd Muḥammad b. Aḥmad Ibn Rushd (d. 520/1122), *al-Muqaddimāt al-Mumahhidāt*, ed. Sa'īd Aḥmad A'rāb, (Beirut: Dār al-Gharb al-Islāmī, 1988), v. 2, p. 151. Ibn Rushd (the grandfather of the philosopher known in the West as Averroes), citing Ibn Qāsim, a contemporary of Mālik on whose questions Ṣaḥnūn's *Mudawwana* is based, reports that Mālik 'strongly abhorred travel to the lands of war for trade by land or by sea [where] one is subject to their laws. And the grounds for his abhorrence of it is that God has made *hijra* to the lands of the Muslims obligatory for anyone who converts in the lands of disbelief so that he might be subject to the laws of Islam.' He proceeds to invoke the above-cited Q. 8:72 and 4:97-98 by way of proof. This view is repeated by al-Wansharīṣī (p. 124).

¹¹⁴ Islamic law uses the term '*adāla* (lit.: 'justness') to refer to a Muslim's piety and uprightness, the judgement of which determines such things as whether he can testify in court, lead prayer or occupy public offices.

¹¹⁵ *Fatwā* of al-Māzarī quoted in al-Wansharīṣī, *al-Mi'yār al-Mu'rib*, pp. 133-4.

¹¹⁶ *Ibid.*, p. 134.

of non-Muslim laws and political authority is a sufficient condition for prohibiting such residence, regardless of what rights and freedoms Muslims may have individually or as a community.

Similarly, jurists disposed towards this view are dismissive of the idea that Muslims may nonetheless be given the freedoms to practice their religion by non-Muslim rulers. As will be seen below, those (generally non-Mālikī) jurists open to seeing migration as less than fully obligatory do so on the assumption that Muslim minorities are in a position to ‘manifest their religion’ (*iẓhār al-dīn*). Al-Wansharīsī, for example, rejects this idea not only because the full expression of Islam requires either political power or state support for Islamic law, but because even the five basic pillars of Islamic worship are such that they cannot be fully upheld in a position of subordination to unbelievers. For al-Wansharīsī, residence in non-Muslim lands causes ‘the loss and abandonment of prayer, fasting, paying of the *zakāt*, *jihād*, the exaltation of the word of God, bearing witness to the Truth and protecting it from the scorn of the infidels and the derision of the immoral.’ For him, life outside an Islamic polity is synonymous with exposure to ‘impurities, filth, religious corruption and earthly scandals’ that degrade the performance of even private worship.

The first duty of a Muslim is to proclaim the *shahāda* [‘witness’ or ‘attestation’; sometimes ‘*shahādātāin*’ or, the ‘two attestations’ because of the dual content of the proclamation] – the belief that ‘There is no God but God and Muhammad is his Messenger.’ While holding this creed may seem impervious to coercion, the supreme act of private worship, for al-Wansharīsī ‘one of the goals of the Revelation is that the word of Islam and the declaration of its truth rest upon their open exaltation [*ẓuhūruha al-‘āliya*] above all others, far from scorn and the symbols of disbelief. Yet cohabitation with the [infidels] in a position of shame and submission requires that this noble, exalted and lofty Word be debased and not exalted, scorned and not protected, and surely this is plenty by way of opposition to the laws of Revelation for one to refuse to bear or witness for any period of his life except by necessity and compulsion.’ Similarly, the second

pillar of Islam, prayer, 'which follows the bearing of witness in open and conspicuous grace, glorification and exaltation, cannot be performed or even be imagined except in total openness and grandeur, and escape from scorn and disdain. Yet in cohabitation with the unbelievers and close contact with the licentious and the debauched, prayer is exposed to neglect, scorn, ridicule and mockery.' The third pillar, *zakāt*, or alms-giving, is also void for 'it is well known to all men of discernment and knowledge that *zakāt* is paid to the imam and where there is no imam there is no payment for lack of one of the necessary conditions and thus there is no *zakāt* for the lack of a deserving beneficiary. Thus, this pillar of Islam is toppled by friendship with infidels which involves rather payment to those who ask for help *against* Muslims. So it is clear what kind of direct opposition to the lawfully required practices of worship in their entirety is involved in [living in non-Muslim countries].' A pious Muslim is not even in a position to fast in non-Muslim lands for 'it is conditional upon seeing the crescent moon at its first and last appearances. And in most cases the sighting is confirmed with a formal attestation, which can only be issued by an imam or his deputies. But where there is no imam and no deputy, there can be no attestation attesting to the month and thus first and final doubts enter into this religious matter.' With no doubt remaining that even private, voluntary acts of worship are nullified in the abode of disbelief, al-Wansharīṣī concludes by wondering how 'any jurist, even the most cautious and restrained, could hesitate in forbidding residence [in non-Muslim countries] with its necessary violation of the entirety of our noble Islamic principles?'¹¹⁷

The above arguments, still grounded in the general explanation of the prohibition on Muslim residence in non-Muslim lands based on their unlawfully becoming subject to non-Muslim laws, suggest a second type of operative clause. It is clear that for some Muslim thinkers, a just political order does not only require certain collective religious practices, nor even that Muslims be governed collectively by divine law, but that Islam and Muslims enjoy a certain predominance over non-Muslims. It was related above that according to al-Wansharīṣī, 'one of the goals of the Revelation is that the word of Islam

¹¹⁷ All quotations from this paragraph in *ibid.*, p. 138-9.

and the declaration of its truth rest upon their open exaltation [*zuhūruha al-‘āliya*] above all others, far from scorn and the symbols of disbelief. Yet cohabitation with the [infidels] in a position of shame and submission requires that this noble, exalted and lofty Word be debased and not exalted, scorned and not protected,’ and that prayer, ‘which follows the bearing of witness in open and conspicuous grace, glorification and exaltation cannot be performed or even be imagined except in total openness and grandeur.’ While one recalls that Muslims of his day were subject to all manner of degradations and indignities, one also senses that al-Wansharīsī is not aspiring to a status for Muslim minorities of benign neglect where Muslims are left in relative peace and security, albeit in the shadows of church steeples, nor for a status of ‘mutual recognition’ or ‘parity of esteem’ that would be found in contemporary discourses.

Consider his substantiation of his view that ‘as to those immigrants who curse and slander the abode of Islam and wish to return to the abode of idolatry, amongst other vile and depraved obscenities, theirs is the disgrace of this world and the next. It is necessary to seize them and bring down upon them harsh punishments, to make a humiliating example of them by beatings and imprisonment, until they no longer oppose God’s law.’ While al-Wansharīsī began his *fatwā* in a deontological vein content to quote Q. 4:97-100 and supportive *ḥadīth*, note the litany of consequences he now associates with residence in non-Muslim lands: ‘For the desire for friendship with the polytheists and co-habitation with the Christians, the determination to reject *hijra*, reliance upon unbelievers and contentment to pay taxes to them, the rejection of the glory of Islam, rightful obedience to the guardians of religion, and loyalty to the rulers, their degradation and the triumph of Christian power over them, are great abominations and mortal blows, nigh akin to disbelief, may God protect us.’¹¹⁸ What is noteworthy in this passage is the predominance of concerns for the balance of power between Islam and Christendom. Minority status – absolutely regardless of rights or freedoms guaranteed – is an *inherent* injustice for it embodies the inversion of the rightful relationship of glory and domination: ‘God, the One and the Victorious, has created humiliation and abasement for the accursed unbelievers, and placed chains and shackles around their necks that they might travel

¹¹⁸ Ibid., p. 132.

throughout the lands and cities in them manifesting the might of Islam and the honour of its chosen Prophet. And whoever of the Muslims, whom God has preserved and made abundant, would try to shift these chains and shackles to his own neck puts himself in violation of God and His Messenger and subjects himself to the scorn and anger of the Glorious, the Almighty, and is deserving of being inverted by God with them in the fire, “For God has written: ‘I shall certainly prevail, I and my Apostles!’ Verily God is powerful, almighty!” [Q.58:21]¹¹⁹

This concern cannot be dismissed as a medieval anachronism from the time when Muslim states rivalled or eclipsed non-Muslim ones in power and prestige. It is also echoed, for example, in contemporary *fatāwā* issued by the Saudi Standing Committee for Scientific Research and Fatwa (the highest Saudi religious authority), in which they explain that their prohibition on accepting the citizenship of a non-Muslim country is partially due to ‘what is involved by way of submission to [unbelievers] and falling under their rule.’¹²⁰

A third explanation of the prohibition on residence in non-Muslim lands is the possibility that it will add to the strength of unbelievers. This expression (in Arabic: (*takthīr sawād al-kuffār/al-mushrikīn*, etc.¹²¹) appears throughout the juridical literature across the various legal schools and is closely linked to the original context in which Muslims believe the verses 4:97-100 were revealed. Qur’ānic exegetes are unanimous in holding that the verses refer to the group of Muslims who remained behind in Mecca after Muhammad’s *hijra* to Medina.¹²² Some of these Muslims were tempted to return to

¹¹⁹ Ibid., p. 137-8.

¹²⁰ Ṣāliḥ ibn Muḥammad al-Shithrī, *Ḥukm al-lujū’ wa’l-iqāma fī bilād al-kuffār* (Riyad: Dār al-Ḥabīb), p. 13.

¹²¹ The word ‘*sawād*’ according to Lane (Edward William Lane, *Arabic-English Lexicon* (New York: Frederick Ungar Publishing, 1872), Book I, Part 4, p. 1462), while derived from the root for ‘blackness’, can refer to a ‘collection, company, or collective body, of men’

¹²² See, for example, al-Ṭabarī, *Jāmi’ al-bayān*, v. 4, pp. 235-236; Ḥusayn Ibn Mas’ūd al-Baghawī (d. 516/1117), *Ma’ālim al-Tanzīl* (Beirut: Dār al-Ma’rifa, 1987), v. 1, p. 469; al-Zamakhsharī (d. 528/1144), *al-Kashshāf* (Beirut: Dār al-Kitāb al-‘Arabī, n.d.), v. 1, p. 555; Abū ‘Abd Allāh al-Qurṭubī (d. 671/1273), *al-Jāmi’ li aḥkām al-Qur’ān*, ed. ‘Abd al-Razzāq al-Mahdī (Beirut: Dār al-Kitāb al-‘Arabī, 1997), v. 5, p. 328; Ismā‘īl ibn ‘Umar Ibn Kathīr (774/1373), *Tafsīr al-Qur’ān al-‘Azīm* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1998), v. 2, p. 343; Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī (d. 911/1505) *al-Durr al-manthūr fī tafsīr al-*

the pagan religion of the Arabs and a number of them actually fought with the Meccans at the Battle of Badr (2/624), thus prompting the above accusation of increasing the numerical strength of the Prophet's enemies. Many jurists have extrapolated from this original case a general concern with living where one might aid a polity that could be in conflict with a Muslim one, as was seen in al-Wansharī's above denunciation of such things as paying taxes to non-Muslim states. This is a particular feature of jurists disposed towards seeing *hijra* as no longer obligatory (*wājib/fard*) but rather recommended (*mustahabba*; see below). The Ḥanbalī jurist Ibn Qudāma suggests that one of the factors for migration still being recommended even when Muslims enjoy religious freedom is the benefit of 'avoiding increasing the [numbers of] the unbelievers.'¹²³ Fellow Ḥanbalī jurist Ibn Taymiyya does not use the expression '*takthīr al-sawād*' but advances a stronger form of the same argument. Migration is merely recommended by Ibn Taymiyya, but as to those who choose not to leave, 'their helping the enemy of the Muslims by their persons or their property [*musā'adatuhum li 'adū al-muslimīn bi'l-nafs wa'l-amwāl*] is forbidden and they must avoid it by any means

ma'thūr (Beirut: Dār al-Kutub al-'Ilmiyya, 1990), v. 2, p. 365. All of these exegetes use the expression '*takthīr sawād al-kuffār*' or something similar to describe the effect of the failure of certain Muslims to perform *hijra* to Medina. Modern exegesis: Muhammad Rashīd Riḍā, *Tafsīr al-Qur'ān al-ḥakīm al-shahīr bi-tafsīr al-manār* (Beirut: Dār al-Ma'rifa, 1973), v. 5, p. 353; Sayyid Quṭb, *Fī Zilāl al-Qur'ān*, v. 2, pp. 738-39; *In the Shade of the Qur'ān*, v. III, p. 276.

¹²³ Muwaffaq al-Dīn Ibn Qudāma (d. 620/1223), *al-Mughnī* (Cairo: Hajar, 1990), vol. 13, p. 151. This identical position is also found in the Shāfi'ī and Ḥanafī schools. See: Abū Ishāq al-Shīrāzī (d. 476/1083), *al-Muḥadhdhab fī fiqh al-Imām al-Shāfi'ī* (Beirut: Dār al-Fikr), v. 2, p. 227; Abū Zakariyyā' al-Nawawī (d. 676/1277), *al-Majmū' Sharḥ al-Muḥadhdhab* (Beirut: Dār al-Fikr, 2000), v. 21, p. 5 and (Ḥanafī) al-Buhārī (d. 1051/1641), *Kashshāf al-Qinā'*, v. 5, p. 44.

possible, whether through absence, intimation¹²⁴ or cajoling, and if [avoiding helping the enemy of the Muslims] is only possible through migration then it becomes a duty.¹²⁵

We find a similar sentiment expressed in the modern period by Quṭb: 'Nor does Islam tolerate that some hypocrites should be described as believers, simply because they have made the verbal declaration that there is no deity other than God and that Muhammad is His Messenger, but, at the same time, remain in the land of unfaith, *giving their support to the Muslims' enemies*. Such tolerance is, in fact, not tolerance at all but indulgence.'¹²⁶ Like al-Wansharīsī (but categorically unlike the two above-cited Ḥanbalīs¹²⁷ and even other Mālikīs¹²⁸), Quṭb's stance is that the performance of migration is something on which one's status as a Muslim may depend, placing it within the most serious category of actions. Crucially, while there is some ambiguity as to whether 'increasing the numbers of the unbelievers' or the general notion of strengthening them requires direct participation in a war effort against Muslims, Quṭb makes it clear that one's very residence constitutes helping the enemies of Islam and al-Wansharīsī helpfully includes such actions as paying general taxes amongst the sins one commits by residing in non-Muslim states.

¹²⁴ *Ta'rīd*, which can refer to speaking or suggesting something in an oblique, indirect or ambiguous manner. It might include statements which are technically not lies but designed to fulfil the purpose of misleading an interrogator. Contemporary Ibn Taymiyya scholar Yahya Michot has understood this to be rather a suggestion of bribery or subornation. See Yahya Michot, *Mardin: Hégire, fuite du péché et «demeure de l'Islam»* (Beirut/Paris: al-Bouraq, 2004), p. 66.

¹²⁵ Aḥmad Ibn Taymiyya (d. 682/1283), *Majmū' fatāwā Sheikh al-Islām Aḥmad Ibn Taymiyya* (Rabat: Maktabat al-Ma'ārif, 1980), v. 28, p. 240.

¹²⁶ Sayyid Quṭb, *Fī Zilāl al-Qur'ān*, v. 2, pp. 732-33; *In the Shade of the Qur'ān*, v. III, p. 264. Emphasis added. Note that in Quṭb's text the phrase is no longer '*takthīr sawād al-kuffār*' but the less obscure '*yunāshirūn a'dā' al-muslimīn*.'

¹²⁷ However, it is noteworthy that in the modern context the most prominent Saudi Ḥanbalī jurists have advanced the more uncompromising position that *hijra* is a categorical duty and that adopting the citizenship of a non-Muslim country may constitute disbelief. The phrase 'increasing the strength/numbers of the unbelievers' (*takthīr sawād al-kuffār*) figures consistently in *fatāwā* issued by the Saudi Standing Committee for Scientific Research and Fatwa amongst their explanations for this ruling. See al-Shithrī, *Ḥukm al-lujū'*, pp 4, 10.

¹²⁸ A later Egyptian Mālikī made precisely the point that if a Muslim becomes subject to the laws of unbelievers he should migrate. Failing to do is a sin, but not apostasy. See 'Alī al-Ṣa'īdī al-'Adawī (d. 1775), *Hāshiya 'alā Kifāyat al-Ṭālib al-Rabbānī* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1952), v. 2, p. 4.

A fourth argument against residence refers not to the legal status of the land as such, but rather the prohibition on forming bonds of friendship and solidarity with non-Muslims. As noted, this question is the primary subject of the fourth and fifth chapters, so here I will only briefly note that certain jurists have used it to explain the impermissibility of residence in non-Muslim lands. A number of Qur'ānic verses pronounce against a variety of alliances and bonds with non-Muslims, including:

Let not the believers take the infidels for their allies in preference to the believers – for who does this has nothing to do with God – unless it be to protect yourselves from them in this way. God warns you about Himself and the final goal is to God. [Q. 3:28]

Oh you who have believed! Do not take for your intimates other than your own kind. They will continually cause you turmoil and love anything that will distress you. Loathing has already come forth from their mouths and what is concealed in their breasts is even greater. We have made the signs clear to you if you will use your reason. [Q. 3:118]

O you who have believed, do not take Jews and Christians as friends (patrons) for they are friends to each other. And who becomes friends with them becomes one of them. Verily God does not guide a wrong-doing people. [Q. 5:51]

O you who have believed! Do not take My enemies and your enemies as friends, offering them affection while they have denied what Truth has come unto you, driving away the Messenger of God and yourselves because you believe in God your Lord. If you have gone forth to struggle in my cause and longing for my blessing do you secretly hold affection for them? For I know all that you may conceal as well as what you do openly. And who does so has erred from the path. [Q. 60:1]

The suggested prohibition on residing in a certain territory has been linked to the suggested ban on forming friendships with non-Muslims by jurists including Wansharī¹²⁹ and modern (Saudi) Ḥanbalī jurists.¹³⁰

A closely related, fifth, argument is that it is sinful for Muslims to live in lands where Islam, the Prophet and his companions are scorned and vilified, and where sin and permissiveness are manifest. Ṣaḥnūn reported that Mālik strongly disapproved of Muslims travelling to lands where the Companions of the Prophet are vilified.¹³¹ The emphasis on the Companions suggests that Mālik was referring to Sunni-Shiite

¹²⁹ al-Wansharī, *al-Mi'yār al-Mu'rib*, pp. 123-24.

¹³⁰ al-Shithrī, *Hukm al-lujā'*, pp. 3-4, 28-30.

¹³¹ Ṣaḥnūn, *al-Mudawwana*, v. 3, p. 278.

antagonisms, but the argument is that if even vilification of the Companions is grounds for *hijra*, then it must hold *a fortiori* for the vilification of the Prophet and the Qur'ān, which Muslims might fear in non-Muslim lands. This duty to disassociate oneself from slander of Islam is grounded in a more general Islamic duty to disassociate oneself from any sin and evil that one is incapable of correcting. If it presumed that an entire society is governed by un-Islamic morals, and that as a minority in such a society Muslims will not be in a position to purify it, then it has often been argued that it is a duty to remove oneself from the entire sinful environment. Consider Wansharīst's statement that 'living amongst the unbelievers, other than *dhimmi*s or servants, is not allowed for one moment out of the day because of what will be encountered by way of impurities, filth, religious corruption and earthly scandals throughout one's life.'¹³² This argument is, if anything, more prominent today, when it is common for Muslim scholars and religious authorities to associate liberal societies with social permissiveness and moral laxity. Even scholars inclined towards permitting residence in non-Muslim states emphasise that it is conditional upon avoiding 'the temptations that exist there [and the] permissiveness protected by their laws.'¹³³

The duty to avoid association with sin is usually linked to a concomitant duty to promote virtue and morality. The bare minimum required by this positive duty is to guarantee that one's children will be raised in an Islamic environment and that they are not in danger of straying from religion. A concern with the sustainability of Islam over generations in a non-Muslim environment is the final objection to living in such societies. It is not a purely contemporary concern; the 11th century Ḥanafī jurist al-Sarakhsī (quoted above) argued that a primary reason for not settling in *dār al-ḥarb* is that one's 'children

¹³² al-Wansharīst, *al-Mi'yār al-Mu'rib*, pp. 137-38.

¹³³ Muhammad Salih al-Munajjid, 'Living in a non-Muslim Country Seeking a Better Life,' <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID+110859>. See also al-Shithrī, *Ḥukm al-Lujū*, pp. 4-5; al-Majlis al-Urubbī l'il-Iftā' wa'l-Buḥūth, *Fatāwā al-majmū'a al-ūlā* (Cairo: Maktabat al-Īmān, 1999)/European Council for Fatwa and Research, *First Collection of Fatwas* (Cairo: Islamic Publishing, 1999), p. 25; al-Qaraḍāwī, *Fī fiqh al-aqalliyāt*, p. 25; Sulaymān Muḥammad Tūbūlyāk (transliteration from Bosnian of 'Sulejman Topoljak'), *al-Aḥkām al-siyāsiyya li'l-aqalliyāt al-muslima fī'l-fiqh al-Islāmī* (Beirut: Dār al-Nafā'is, 1997), p. 49.

might acquire the morals of non-Muslims.¹³⁴ Obviously, this is a theme which also figures frequently in contemporary discussions of the permissibility of settling in a non-Muslim state: 'It is not recommended for Muslims to migrate to the lands where their next generations' religion might be at risk, unless they make every effort to safeguard [it]. Without such efforts it will be *makrūh* (reprehensible) and in some cases even *ḥarām* (forbidden) to migrate to such lands.'¹³⁵ At times, the argument is not only that social mores and cultural practices will be more permissive than in Muslim societies, but that the problem lies precisely in the liberal legal protections for those who would revise their conception of the good: 'But even more dangerous than [exposure to sin] is that the children many of these Muslims living amongst the unbelievers have deviated and they look at this and find that they are unable to do anything about it because the system of these unbelieving states permits sons and daughters to do as they please; indeed it is the norm that the third generation of Muslims in these countries apostatise from Islam.'¹³⁶

This preceding survey should suffice for demonstrating that residence in non-Muslim states has itself been frequently regarded by Muslim jurists and thinkers as something impermissible or at least deeply problematic. The Qur'anic and Prophetic texts cited are often regarded as unambiguous and timeless injunctions against residing outside of a Muslim polity. They are further explained by the six types of rational arguments presented above: that Muslims must not be subject to non-Muslim laws or authority, that Islam and Muslims must not be put in a position of inferiority to non-Muslims, that Muslims must avoid aiding or increasing the strength of non-Muslims, that Muslims are forbidden from forming bonds of friendship or solidarity with non-Muslims, that Muslims are required to avoid environments of sin or indecency, and that in non-Muslim environments it will be more difficult to prevent the loss of religiosity in subsequent generations. These positions, however, by no means exhaust the treatment of this

¹³⁴ al-Sarakhsī, *al-Mabsūṭ*, v. 10, p. 84.

¹³⁵ Muzammil H. Siddiqi, 'Immigration to a non-Muslim Country,' <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID+77860>. See also Syed Abul Hasan Ali Nadwi, *Muslims in the West: The Message and Mission* (Leicester, UK: The Islamic Foundation, 1983), pp. 113-14; Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 55; al-Majlis al-Urubbī l'il-Iftā' wa'l-Buḥūth, *Fatāwā*/European Council for Fatwa and Research, *First Collection of Fatwas*, p. 25, al-Qaradāwī, *Fī fiqh al-aqalliyāt*, p. 25.

¹³⁶ al-Shithrī, *Ḥukm al-lujū'*, p. 5.

problem. The vast majority of Muslim jurists have viewed residence in non-Muslim states as permissible in certain circumstances¹³⁷; it is to these traditions that I now turn.

Compatible Doctrines

The first argument of those jurists who do not believe that migrating from a non-Muslim polity is a categorical and permanent duty for all Muslims rests on a contextualisation of verses 4:97-100. The basic juridical position is best summed up by canonical *ḥadīth*-collector Abū Dāwūd:

Hijra was at the beginning of Islam recommended but not obligatory, and this is based on Q. 4:100: "And whoever migrates in the cause of God will find in the earth many an abundant refuge." This verse came down when the oppression of the polytheists against the Muslims was intensifying and thus the Prophet migrated to Medina and the Muslims were commanded to migrate as well to be in his presence that they might be with him and help one another should something befall them, and that they might learn their religion and come to understand it from him. There was great fear at that time of the Quraysh, but when Mecca was conquered and submitted, this same meaning [of *hijra*] was retained and the obligation of migrating was lifted and it returned to being recommended and preferred. There are thus two *hijras*; the one that has ended is the obligation and the one that remains is the recommendation.¹³⁸

It is this position that one finds consistently endorsed by most non-Mālikī jurists and exegetes.¹³⁹ To the point that the duty to migrate was abrogated after the conquest of Mecca, jurists cite a number of *ḥadīth* which contradict or dilute the implications of the ones cited by the pro-*hijra* jurists:

¹³⁷ In addition to Abou El Fadl's survey, see Khālīd 'Abd al-Qādir, *Fiqh al-aqalliyāt al-Muslima* (Tripoli: Dār al-Īmān, 1998), pp. 119-135.

¹³⁸ Abū Dāwūd, *Sunan Abī Dāwūd*, v. 3, p. 8.

¹³⁹ For example, al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar*, Khadduri, trans., p. 187; al-Ṭabarī, *Jāmi' al-Bayān*, v. 4, pp. 147-51; al-Khaṭṭābī and al-Baghawī in al-Nawawī, *al-Majmū'*, v. 21, p. 7; al-Kāsānī, *al-Fatāwā al-Hindiyya*, v. 2, pp. 232, 311-12; v. 3, p. 584; Muḥammad ibn 'Abd al-Wāḥid al-Sīwāsī Ibn al-Humām, *Sharḥ faṭḥ al-qadīr* (Beirut: Dār al-Fikr, n.d.), v. 5, p. 445. Modern jurists: Muḥammad Rashīd Riḍā, *Fatāwā al-Imām Muḥammad Rashīd Riḍā* (Beirut: Dār al-Kitāb al-Jadīd, 1980), ed. Ṣalāḥ al-Dīn al-Munajjid and Yūsuf Q. Khūrī, v. 2, pp. 774-5; Jād al-Ḥaqq 'Alī Jād al-Ḥaqq, 'Fatwā fī ba'd aḥkām tata'allaq bi'l-aqalliyāt al-muslima fī ghayr diyār al-muslimīn,' *Majallat al-Azhar*, v. 63, no. 6, 1991, p. 618; Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, pp. 52-3; al-Qaraḍāwī, *Fī fiqh al-aqalliyāt*, p. 38.

‘There is no migration after the conquest [of Mecca] but rather *jihād* and intent. And if you are called out to fight, then do so.’¹⁴⁰

‘Aisha is reported to have said: “There is no *hijra* today. Before, a believer had to flee with his religion to the Messenger of God, fearing seduction away from his religion. But from today God has made Islam manifest and a believer can worship his Lord wherever he may be.”’¹⁴¹

‘Umar [the third Caliph] is reported to have said: “There is no migration after the death of the Prophet.”’¹⁴²

‘A man came to the Prophet and said: “I want to give my allegiance to you by performing *hijra*.” The Prophet responded: “The *hijra* has ended with those who performed it [before the conquest] but you can give allegiance through submitting to God, *jihād* and good deeds.”’¹⁴³

Furthermore, in adjudicating between the implications of the two sets of *ḥadīth*, some scholars have cast doubts on the authenticity of some of the pro-*hijra* *ḥadīth*. Abū Dāwūd, for example, argues that ‘the *isnād* of the *ḥadīth* of Ibn ‘Abbās [‘there is no *hijra* after the conquest’] is uninterrupted, whereas the *isnād* of the *ḥadīth* of Mu‘āwiya is interrupted (*mursal*).’¹⁴⁴ As part of the contextualisation and historicisation of the sources used by the pro-*hijra* jurists, it is also often argued that the verses and *ḥadīth* reports both

¹⁴⁰ Reported to have been the response of the Prophet to a number of companions who inquired into the status of migration after the conquest, related by the Prophet’s uncle, Ibn ‘Abbās. See Aḥmad Ibn Ḥanbal, *al-Musnad*, 1991, 2396, 2898, 3335, 11184; Abū Dāwūd, *Sunan Abī Dāwūd. Kitāb al-Jihād, Bāb fi’l-hijra hal inqā’a’at*, 2380, p. 8; al-Nasā’ī, *al-Sunan al-Kubrā, Kitāb al-bay’a* (73), *Bāb dhikr al-ikhtilāf fi’-nqitā’ al-hijra* (18), 7792 (2), v. 4, p. 426; al-Tirmidhī, *al-Jāmi’ al-Ṣaḥīḥ, Kitāb al-siyar* (22), *Bāb mā jā’ fi’l-hijra* (33), 1590, v. 4., p. 126; Muslim, *Ṣaḥīḥ Muslim, Kitāb al-Imāra* (33), *Bāb al-mubāya’a ba’d fath Makka* (20), 85 (1353), (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n.d.), v. 3, p. 1487; al-Bukhārī, 1834, 2783, 3077, 3080 in Ibn Hajar al-‘Asqalānī, *Fath al-Bārī sharḥ Ṣaḥīḥ al-Bukhārī* (Dār al-Kutub al-‘Ilmiyya, 1989), v. 4, p. 58.

¹⁴¹ Bukhārī, 4312 in Ibn Hajar, v. 8, p. 32.

¹⁴² al-Nasā’ī, *al-Sunan al-Kubrā, Kitāb al-bay’a* (73), *Bāb dhikr al-ikhtilāf fi’-nqitā’ al-hijra* (18), 7794 (4), p. 427.

¹⁴³ Muslim, *Ṣaḥīḥ Muslim, Kitāb al-Imāra* (33), *Bāb al-mubāya’a ba’d fath Makka* (20), 83 (1863), v. 3, p. 1487.

¹⁴⁴ Abū Dāwūd, *Sunan Abī Dāwūd*, v. 3, p. 8. One finds this argument repeated by other scholars including Khaṭṭābī, Baghawī, Nawawī, Qaraḍāwī and the other jurists on the European Council for Fatwa and Research.

refer to a situation in which Muslims were at war with the *specific* non-Muslims in question¹⁴⁵, and in a context in which an Islamic state existed that claimed the right to protect all Muslims. On a purely technical-pragmatic note, then, it is not rare to find jurists and other thinkers arguing that in a period of history where no Caliphate or obvious successor Islamic state exists, nor one which could possibly accommodate all Muslims actually living as minorities or in non-Islamic states (including those with majority Muslim populations), the duty of migration cannot possibly be regarded as practicable. This view is pronounced parsimoniously by one of the pre-eminent Saudi jurists of recent years, Ibn ‘Uthaymīn, (whose colleagues were quoted above as pronouncing the duty to migrate as absolute): ‘If we say it is haram [forbidden] for them to settle amongst non-Muslims, then where is the Islamic state that will accept them and allow them to settle there? Indeed there is none.’¹⁴⁶ However, it should be noted that this pragmatic argument is consistent with a variety of positions incompatible with the liberal conception of citizenship, mainly that an obligation to migrate could obtain should a successor to the Caliphate come into existence, that Muslims may have an obligation to bring an Islamic state into existence even in Muslim-minority lands, and that Muslims are always required to support other Muslims during hostilities no matter what the cause of war.

The crucial conditions underlying the above technical arguments for the permissibility to reside in a non-Muslim land are, of course, the Muslim’s security, his lack of fear of seduction away from Islam, and his freedom to ‘manifest his religion.’ In fact, many jurists and exegetes do not see the freedom to practice religion as a mitigating factor on a general ban supposedly implied by Q. 4:97-100, but rather read these verses themselves as only requiring migration because of the oppression experienced in Mecca. The argument is that those verses refer to Muslims who were oppressed (‘*kunnā*

¹⁴⁵ Qaraḍāwī: ‘Also, even if the [*ḥadīth*] are authentic, it is clear that they are set in a context when the polytheists were at war with Islam. Finally, the *ḥadīth* refers to the paying of the blood price not a general ruling on co-habitation during peacetime.’ (*Fī fiqh al-aqalliyāt al-muslima*, p. 38)

¹⁴⁶ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID+110859>. See also: Muhammad Khalid Masud, ‘Being a Muslim in a Non-Muslim Polity: Three Alternative Models,’ *Journal of the Institute of Muslim Minority Affairs* 10:1 (Jan, 1989); Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 54.

mustad‘afīn fi‘l-arḍ), harried, and constantly being induced to abandon Islam.¹⁴⁷ Thus, the obligation to migrate is only for those who find themselves in this condition. For all others, jurists arrive at a variety of recommendations. Some argue that residence in non-Muslim lands where one is safe and can ‘manifest one’s religion’ [*izhār al-dīn; iqāmat al-dīn*, etc.] is permitted, but that migration is still preferred [*mustahabba*] in order to avoid the negative consequences of such residence already discussed, such as increasing the strength of non-Muslims.¹⁴⁸ Other jurists, however, go so far as to argue that residence in non-Muslim lands, given the conditions of security and freedom, is even *recommended*,¹⁴⁹ in rare cases *required*,¹⁵⁰ or that ‘if a Muslim is able to manifest his religion (*izhār dīnihi*) in one of the unbeliever’s countries, this country becomes a part of *dār al-Islām*.’¹⁵¹ The argument in these cases is invariably that Muslims residing in non-Muslim lands may be the cause of the eventual return of Islam (in the cases of conquered lands) or of its spread, grounded in the belief that Islam is a universal religion, that the entire earth belongs to God, and that Muslims have the duty of ‘calling’ (*al-da‘wa*) to

¹⁴⁷ In fact, the argument has been made since al-Shāfi‘ī that even during the Medinan period the duty to migrate was less than absolute, as evidenced by the Prophet’s permission to certain Muslims to stay in Mecca or to live in other non-Muslim lands as long as they were protected and did not fear enticement away from their religion [*‘idhā lam yakhāfū al-fitna fī al-dīn*]. See al-Shāfi‘ī, *Umm*, v. 4, p. 161 and Tūbūlyāk, *al-Ahkām al-Siyāsīyya*, p. 50-1.

¹⁴⁸ Abū Dāwūd, *Sunan Abī Dāwūd*, v. 3, p. 8; al-Ṭabarī, *Jāmi‘ al-Bayān*, v. 4, pp. 147-51; al-Zamakhsharī, *al-Kashshāf*, v. 1, p. 555; Ibn Qudāma, *al-Mughnī*, vol. 13, p. 151; al-Nawawī, *al-Majmū‘*, v. 21, p. 5; Ibn Taymiyya, *Majmū‘ al-fatāwā*, v. 28, p. 240; Ibn al-Humām, *Fath al-Qadīr*, v. 5, pp. 445; al-Buhārī, *Kashshāf al-Qinā‘*, v. 5, p. 44;

¹⁴⁹ al-Māwārdī, in al-Nawawī, *al-Majmū‘*, v. 21, p. 7; al-Kāsānī, *al-Fatāwā al-Hindiyya*, v. 2, pp. 232, 311-12, v. 3, p. 584; Ibn ‘Abidīn, *Radd al-Muhtār*, III, 252-53.

¹⁵⁰ Nawawī: ‘If one hopes that by remaining Islam might spread in his place of residence, then it is obligatory that he reside there and not migrate, as well as if it is hoped that Islam might prevail there in the future.’ (*al-Majmū‘*, v. 21, p. 5) Also: Ibn Hajar al-Haythamī (Sh, d. 974/1566-67), *al-Fatāwā al-Kubrā al-Fiqhiyya*, v. 4, pp. 52-3; al-Ramlī (Sh, d. 1004/1595-96), *Nihāyat al-Muhtāj*, v. 8, p. 82.

¹⁵¹ al-Māwārdī, in al-Nawawī, *al-Majmū‘*, v. 21, p. 7.

Islam. Given this paramount duty, how is it possible that residence in non-Muslim lands could be forbidden, ask contemporary Muslim jurists.¹⁵²

These texts leave two important questions for our comparative purposes and methodology. The first concerns what Muslim jurists mean when they refer to freedom from seduction from religion [*al-fitna fī al-dīn*] and the freedom to manifest [*izhār*] or practice/uphold [*iqāma*] one's religion. Do these discourses include a conception of practising one's religion that is consistent with liberal restraints on communal and paternal authority over group and family members, or do they presume some form of communal autonomy within non-Muslim states where certain areas of Islamic law will be applied? Second, what type of argument is the argument from *da'wa*? Is the justification of residence in non-Muslims lands based primarily on the duty to call to Islam a justification compatible with the liberal conception of citizenship?

Izhār al-dīn

Muslim jurists have expressed the condition of enjoying religious freedom in a non-Muslim polity in a number of ways, including *izhār al-dīn* (manifesting religion) *iqāmat al-dīn* (practising/upholding religion), *izhār sharā'i' al-Islām* (manifesting the prescriptions of religious law), *izhār sha'ā'ir al-Islām* (manifesting the rituals of Islam), *al-qiyām bi-wājibāt al-Islām* (performing the duties of Islam), with the first two being the most common. The majority of these jurists do not specify what these terms require. Indeed, Abou El Fadl remarks that 'there is no consensus among jurists with regard to the level of freedom necessary for Muslims in a non-Muslim territory. Perhaps the vagueness of their expressions on this point indicates that the jurists did not wish to articulate a fixed, non-negotiable rule that might be difficult to apply to specific situations, especially situations in which Muslim territory is occupied by non-Muslims.'¹⁵³ Even scholars who

¹⁵² Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 53; Qaraḍāwī, *Fī fiqh al-aqalliyāt al-muslima*, pp. 33-4; Ṣāliḥ ibn Fawzān ibn 'Abd Allāh al-Fawzān, *Muḥāḍarāt fī al-'aqīda wa al-da'wa* (Riyadh: Dār al-'Āṣima, 1992), p. 236.

¹⁵³ Abou El Fadl, 'Islamic Law and Muslim Minorities,' p. 159.

refer in some way to a duty to 'live according to the Sharia' in non-Muslim lands do not always discuss whether this requires coercive political authority or indeed whether present freedoms guaranteed by liberal states permit such a life.¹⁵⁴ The essential question in Islamic juridical terms is whether the duty to manifest or practice religion is satisfied by the rituals of worship (*'ibādāt*) or only by some quasi-political authority applying the laws of social relations (*mu'āmalāt*).

The concern, within our inquiry into an Islamic doctrine of citizenship in a non-Muslim state compatible with the liberal conception, is that Muslim jurists will insist that religious freedom for Muslim communities entail some form of communal autonomy with sub-state institutions of authority competent to enforce Islamic family, commercial and certain criminal codes. Indeed, a number of jurists have suggested this more or less explicitly. A later Mālikī jurist qualified the standard position of his school by arguing that migration is not necessary if the laws of Islam are applied to Muslims.¹⁵⁵ Similarly, a number of Ḥanafīs are on record advancing a similar condition, stricter than their school is known for.¹⁵⁶ Helpfully, the prominent Shāfi'ī al-Nawawī distinguishes between levels of religious freedom by contrasting the conditions of self-protection [*al-imtinā'*: related to refusal, abstention, forbearance, etc.] segregation [*al-i'tizāl*: related to self-seclusion, withdrawal, disassociation, etc.]. For al-Nawawī, the second more demanding condition is clearly analogous to some form of parallel political authority, as demonstrated by his expectation that such a community will be in a position to challenge the wider non-

¹⁵⁴ For example, one finds a certain Sheikh Muhammad al-Hanooti, a member of the North American Fiqh Council, responding to the question of migration in the following way: 'The goal [of a Muslim] to take this worldly life as a place for arrangements to enter paradise. If one can accomplish this goal wherever in the world, it is legitimate for him/her to be there. If not, then one should move to another territory where he/she can have a better investment to go to Paradise. Therefore, immigration to a non-Muslim country is allowed on the contingency that the Muslim should be able to maintain his way of life and practice Islam within the Shariah laws and rules.' (<http://www.islam-online.net/fatwa/english/FatwaDisplay.asp?hFatwaID+77860>) He declines to specify whether 'practising Islam within the Shariah laws and rules' is a matter of personal ethics and worship or upholding rules related to family and punitive law. This failure to specify any obvious clashes with the liberal system, and the implication that the final judgement is to be made by the individual believer, might be read optimistically as a compatible position.

¹⁵⁵ Aḥmad al-Ṣawī (M, d. 1241/1825), *Bulghat al-Sālik* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1952), v. 1, p. 361.

¹⁵⁶ Ibn al-Humām, *Fatḥ al-Qadīr*, v. 8, p. 131 and Ibn 'Abidīn, *Radd al-Muḥtār*, v. 3, pp. 252-53.

Muslim polity. He writes that if ‘they are capable of self-protection and segregation, then it is obligatory that they reside in *dār al-ḥarb* because its [legal] status is actually *dār al-Islām*, and if they were to migrate then it would then become *dār al-ḥarb* which is forbidden. And while living there it is necessary for them to call the polytheists to Islam by argumentation or by fighting.’¹⁵⁷ It is al-Nawawī’s position on a condition *without* this form of communal autonomy that we have quoted above: ‘And if they are capable of self-protection but not [complete] segregation or calling for fighting, then *hijra* is not obligatory. In fact, if one hopes that by remaining Islam might spread in his place of residence, then it is obligatory that he reside there and not migrate, as well as if it is hoped that Islam might prevail there in the future. Yet, if one is weak in *dār al-kufr* and is not able to manifest one’s religion then one’s residence there is forbidden.’

It is clear that for al-Nawawī at least the preferred position is the former, one clearly incompatible with liberal norms, while the second, one potentially compatible, is still permitted. It is to be expected that such a preference will be present also in contemporary Muslim discourses. Indeed certain semi-liberal states with Muslim minorities, such as India and Israel, have preferred a system whereby at the very least family law is administered on a communal-sectarian basis rather than one of universal civic equality. It is thus not surprising that such preferences should be present also amongst the largely-immigrant Muslim populations of the West. Most often, this is expressed as an anxiety about the religion of future generations: ‘If you do not take full care to safeguard your religious life and arrange for the religious education and upbringing of your children and make sure that your future generations remain true to Islam, then your living in this country is a sin and you are in grave danger. For us Muslims it is permitted to live only in a country where we can live with our distinctive qualities and observe our duties. If it is not possible in this environment or you feel you cannot carry out your religious obligations, it is not permissible for you to stay. It is your duty to see that you live here distinctly as Muslims. You should build your own society

¹⁵⁷ Al-Nawawī, *al-Majmūʿ*, v. 21, p. 5.

and ensure that your children will remain Muslims after you.’¹⁵⁸ This quotation does not mention political authority or Islamic law specifically, but as has been noted political liberalism is hostile to the idea that communities have a right to *ensure* that subsequent generations will adhere to the same conception of the good as any present generation, because such guarantees can only come at the expense of the equal rights and freedoms of those subsequent generations. It may be argued in defence that Nadwi does not necessarily have in mind anything in the way of coercive authority; however, it suffices to respond that where liberal institutions are committed to protecting any individuals seeking to revise their conception of the good, it is to be expected that a certain number of any generation will, in fact, be ‘seduced’ away from the Islam of their parents or other figures of authority, just as a certain number will convert to Islam as a result of Muslims’ legitimate proselytisation. To be fair, Nadwi’s statement is laden with ambiguities; however, it is clear that at the very least there is a deep ambivalence, if not hostility, to the fact that Muslims are required to yield a certain measure of paternal and communal authority over family and group members in liberal states.

However, in addition to those thinkers who see the practice of Islam complete *only* when it comprises an entire way of life including some manifestation of communal power, there is a parallel tradition of speaking specifically about ‘duties of religion’ (*wājibāt al-dīn*), ‘to fulfil the obligations of religion’ (*iqāmat al-dīn*) or even simply worship (‘*ibāda*’) in the minority context.¹⁵⁹ For example, analysing Ibn Taymiyya’s usage of ‘*iqāmat al-dīn*’ as the condition for not migrating, Yahya Michot acknowledges the ambiguity in the phrase but argues that the jurist is operating with an individual rather than collective understanding of its requirements: ‘Certes, le concept n’est pas très précis et pourrait impliquer beaucoup plus qu’une simple pratique de l’Islam – on aimerait dire: “en bon père de famille”. Ce qui par contre est indubitable, c’est que, dans le fetwa de Mardin, Ibn Taymiyya parle de la chose au singulier, pas au pluriel. De cette mise en

¹⁵⁸ Syed Abul Hasan Ali Nadwi, *Muslims in the West: The Message and the Mission* (Leicester, U.K.: Islamic Foundation, 1983), pp. 113-14.

¹⁵⁹ al-Shirbīnī al-Khaṭīb, *al-Mughnī al-Muḥtāj*, v. 4, p. 239, Ibn Qudāma, *al-Mughnī*, v. 10, pp. 381, 513-5; Ibn Kathīr, *Tafsīr*, v. 1, p. 427, ‘Abd Allāh ibn Aḥmad al-Nasafī (d. 710/1310), *Tafsīr al-Nasafī: Madārik al-tanzīl wa ḥaqā’iq al-ta’wīl* (Beirut: Dār Ibn Kathīr, 1998), v. 1, p. 342.

œuvre de la religion, il fait donc d'abord une affaire individuelle, personnelle, non pas collective ou communautaire.¹⁶⁰

Particularly helpful here is the previously-quoted *fatwā* of 20th-century Syrian jurist and exegete Muḥammad Rashīd Riḍā, which was his response to a questioner (*mustaftī*) from Bosnia inquiring into whether *hijra* was required from the Muslims of Bosnia after that territory's incorporation into Hapsburg Austria. This fatwa is important because Riḍā actually specifies what constitutes seduction away from religion ('*al-fitna min al-dīn*'), the condition which virtually all jurists agree mandates emigration, unlike most of the classical jurists. Riḍā writes: '*Hijra* is not required for those who are able to practise their religion [*iqāmat dīnihi*] free from seduction away from it, that is, coerced abandonment of religion or the prohibition on performing religious duties. And this is akin to what Aisha is reported to have said in al-Bukhārī when she was asked about *hijra*: "There is no *hijra* today. Before a believer fled with his religion to God and His Messenger out of fear of temptation away from it, but today God has made Islam manifest and a believer may worship his Lord wherever he may be."¹⁶¹ Further on, he denies arguments that worship and marriage are invalid under non-Muslim rule: 'There is no difference between the worship and marriage of a Muslim in *dār al-kufr* and a Muslim in *dār al-Islām* but only in the ordinances of political, civil and military relations.'¹⁶² The implication of Riḍā's justification of life lived in these conditions is that the latter ordinances are not prerequisites for living a just life or securing salvation.

A more satisfactory treatment of this problem would involve a much deeper investigation of plausible Islamic arguments for strictly non-coercive maintenance of Islamic ideals of virtue and the good. Since such an investigation goes beyond the more narrow task set for this thesis, I will limit this present discussion of what jurists mean when they speak of freedom from 'seduction away from religion' and freedom to

¹⁶⁰ Michot, *Mardin*, p. 18.

¹⁶¹ Riḍā, *Fatwa* 290, 'al-Hijra wa ḥukm muslimī al-Būsna fiha', *Fatāwā*, v. 2, pp. 773-4. Emphasis added.

¹⁶² *Ibid.*, p. 778.

manifest one's religion to the above demonstration that most jurists prefer vagueness to precise descriptions of conditions, and that within those texts which are less vague there is a range of positions which include both calls for communal authority and for satisfaction with freedom of worship and practice. I believe this is sufficient at this point for demonstrating that we are not proceeding based on a radical misunderstanding of some obvious and universally-held conception of manifesting, practising or upholding religion.¹⁶³

Da'wa

The invariably concomitant justification of life lived in a non-Muslim society is that Muslims will be in a position to help the spread of Islam through their numbers and their proselytising: 'Residing in [one of the unbeliever's countries] is better than migrating because it is hoped that others will convert to Islam through him.'¹⁶⁴ The desire to proselytise and win adherents to one's way of life is clearly itself not something to which a liberal can object. In fact, one might argue that the very purpose of liberal institutions is to protect action on this desire. Furthermore, I believe that the Muslim literature on *da'wa* is a potential source for the implicit acceptance of liberal constraints because of its emphasis on private, non-coercive means for converting both non-Muslims and wayward Muslims to an Islamic conception of virtue and the good.

Nonetheless, there are a number of potential ways in which a justification of residence in non-Muslim states based on the duty to proselytise could be seen to conflict with the liberal conception of citizenship. As argued in the previous chapter, the concerns liberals have about such a justification are that: one, it risks only seeing non-Muslims as

¹⁶³ For example, when discussing the expressions 'manifesting religion' or 'manifesting the signs of Islam,' Bernard Lewis writes: 'For the modern Westerner, religious freedom is defined by the phrase "freedom of worship," and means just that. But the practice of Islam means more than worship, important as that may be. It means a whole way of life, prescribed in detail by the holy texts and treatises based on them. Nor is that all. The primary duty of the Muslim as set forth not once but many times in the Qur'ān is "to command good and forbid evil." It is not enough to do good and refrain from evil as a personal choice. It is incumbent upon Muslims also to command and forbid – that is, to exercise authority. The same principle applied in general to the holy law, which must be not only obeyed but also enforced.' (Bernard Lewis, 'Legal and Historical Reflections on the Position of Muslim Populations under Non-Muslim Rule,' *Journal of the Institute of Muslim Minority Affairs* 13:1 (Jan. 1992), p. 10.) I have shown that the sources demonstrate a much wider range of conceptions of the degrees of religious obligation and the manners in which they can be fulfilled than Lewis concedes.

¹⁶⁴ al-Māwardī, in al-Nawawī, *al-Majmū'*, v. 21, p. 7.

potential converts and not as free and equal citizens; two, it does not preclude the Islamisation of the state if the group someday finds itself a majority¹⁶⁵; and, thus, three, it may reveal a shallow commitment to the society and state as (potentially permanently) pluralistic and secular. The general concern is that any acceptance of liberal institutions or constraints will be purely tactical, rather than grounded in a principled acknowledgement of the fact of reasonable pluralism.

For example, consider the position of Syed Abul Hasan Ali Nadwi (quoted above): ‘Your stay here is correct; not only justified but an act of worship if it is a source of preaching and propagation of faith. But if not, then I have great misgivings.’¹⁶⁶ Like the previous statement of his, this one is deeply ambiguous. Optimistically, one could read it as merely reminding Muslims that they have a duty to call to Islam no matter where they find themselves. However, it could easily be read also as a warning against accepting liberal systems for what they are, against accepting pluralism as a permanent fact of social life, and especially against developing moral commitments to these societies. The notion of parallel commitments as a citizen and as a propagator of one’s conception of the good does not seem to figure. In (slight) contrast note the wording of Canadian-Muslim scholar Sheikh Ahmad Kutty who also describes residence in non-Muslim countries as ‘worship’: ‘The economic migrants living in the West can transform their *hijrah* into an act of *‘ibadah* (worship) if they change their intention and dedicate themselves to be ambassadors of Islam in their new home.’¹⁶⁷ Here Kutty first argues that the duty to migrate ended with the conquest of Mecca and residence in non-Muslim lands is permitted as long as Muslims enjoy security and the freedom to practice religion. The function of *da‘wa* for him is not the primary (or sole) justification of residence, but an act which transforms residence from something merely permitted to something sacred. There would appear to be space in such a construction for disentangling one’s commitments to a

¹⁶⁵ The notion that residence and integration in Western societies is desirable primarily as a means of influencing these societies to the political benefit of Muslims or in order to transform them into ‘Islamic societies’ is not rare in Islamic discourses about the Muslim minorities in the West. See also Faḍl Allāh, *Al-hijra wa al-ightirāb*, p. 86, where he discusses Muslim immigration to the West in terms of the ‘control over Western society in its entirety achieved by the Jews through their immigration and residence there.’

¹⁶⁶ Nadwi, *Muslims in the West*, pp. 113-14.

¹⁶⁷ Sheikh Ahmad Kutty, ‘Is *Hijrah* (emigration) still necessary?’ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID+99040>.

country of citizenship and the duty to promote one's conception of the good, by making the second – the act of 'worship' – into a more sublime, but not exclusionary, reason.

Another ambiguous position is that of Yūsuf al-Qaraḍāwī:

There can be no questioning of the permissibility of residing in a non-Muslim country, or in "*dār al-kufr*," as it is referred to by the jurists, for if we were to forbid it, as some scholars imagine, we would close the door to the call to Islam and its spread throughout the world. [Had this been done] then the Islam of old would have been restricted to the Arabian peninsula and not left it. For if we read history and reflect upon it properly we find that the spread of Islam into the lands that we today refer to as the Arabic and Islamic worlds occurred through the influence of individual Muslims, merchants, Sufis and others like them, who migrated from their countries to those lands in Asia and Africa and mixed with the local people, worked together with them and in turn were liked by them for their good morals and sincerity, as was their religion which had implanted these virtues in them. Thus people entered our religion en masse and individually.¹⁶⁸

As with Nadwi's statement, there is nothing in this that explicitly rejects pluralism and liberal constitutions, but Qaraḍāwī's analogy of Muslim emigration to Europe to early migration to 'lands we today refer to as the Islamic world' raises questions about the level of principled and authentic commitment to non-Muslim-majority societies. Qaraḍāwī, and others who speak of the Islamisation of Western societies, is willing to recognise. What if there were no guarantee of mass conversion or of the eventual predominance of Islam in these lands? Would Qaraḍāwī still be content with the vision of Muslims living indefinitely in a pluralist society and a neutral state? What if Muslims were to eventually achieve a social majority in one of these states, in no small measure thanks to present liberal freedoms? Would Qaraḍāwī argue that Muslims have an obligation to preserve a liberal, neutral state that guaranteed to other citizens the freedoms from which Muslims benefited? The least that can be said is that the juridical framework in which Qaraḍāwī operates does not tend to pose these sorts of questions to the Islamic sources (ignoring any other political and ideological commitments that may also explain the silence). His jurisprudential (*fiqhī*) discourse is committed to the slightest possible departure from traditional rulings and beliefs compatible with the 'pragmatism'

¹⁶⁸ al-Qaraḍāwī, *Fī fiqh al-aqalliyāt al-muslima*, p. 33-4.

and innovative reasoning (*ijtihād*) which he claims are the centrepieces of his 'minority *fiqh*'

By contrast consider the vision of *da'wa* presented by Swiss-Muslim philosopher Tariq Ramadan. For Ramadan, *da'wa* is the duty to 'present Islam, explain the content of this Faith and the Islamic teaching as a whole'¹⁶⁹ and 'must not be confused with either proselytism or efforts to convert: the duty of the Muslim is to spread the Message and to make it known, no more no less. Whether someone accepts Islam or not is not the Muslim's concern for the inclination of every individual heart depends on God's Will. The notion of *da'wa* is based on one principle which is the right of every human being to make a choice based on knowledge and this is why Muslims are asked to spread the knowledge of Islam among Muslims as well as non-Muslims.'¹⁷⁰ This articulation is clearly grounded in the public values of political liberalism: mutual recognition, restraint and individual freedom. In fact, these values are partially derived from his comprehensive commitments: *da'wa* is actually a moral responsibility to increase knowledge and the range of choice in society for the good of others and of truth; the Sunnī doctrine of Divine will is turned into an argument for restraint.¹⁷¹

Similar to Nadwi's, Kutty's and Qaraḍāwī's argument that fulfilling the obligation of *da'wa* transforms residence in non-Muslim lands into a form of worship and those lands themselves into a *particularly* virtuous place to be, Ramadan offers a vision of how living in the West is not a compromise or something to be compensated for, but a *particularly* Islamic form of living. This he does through his linking of the concept of *da'wa* with that of *shahāda*, bearing witness. In the narrow sense, *shahāda* refers to the first pillar of Islam, bearing witness that 'There is no God but God, and Muhammad is His Messenger.' For Ramadan, however, it signifies a Muslim's full and comprehensive expression of himself as a moral being. It is the duty to publicly bear witness that transforms life in the West into an act of worship: 'Wherever a Muslim, saying the

¹⁶⁹ Tariq Ramadan, *To be a European Muslim* (Leicester, UK: The Islamic Foundation, 1999), p. 147.

¹⁷⁰ Ibid., p. 134.

¹⁷¹ Although Ramadan is silent on whether he sees a contradiction between his statements that 'the inclination of every individual heart depends on God's Will' and that it is 'right of every human being to make a choice based on knowledge.'

shahāda, is in security and is able to perform his/her fundamental religious duties, he/she is *at home*, for the Prophet taught us that the whole world is a mosque. This means that Muslims living in Europe, individuals as well as communities, can not only live in Europe, but that they uphold a great responsibility for they provide their societies with a testimony based on Faith, spirituality, values, a sense of limits and a permanent human and social commitment.¹⁷² This differs from the narrow, proselytising arguments of Nadwi and Qaraḍāwī in its insistence on mutual responsibility and the emphasis on the expression of one's values universally in the public sphere in the conditions of pluralism.

But in addition to this general injunction to bear witness, both Qaraḍāwī and Ramadan see the West as a particularly crucial arena for this mission. Again, however, there is a marked difference in emphasis and justification. For Qaraḍāwī the West is too powerful to forgo attempts to influence it: 'It is necessary for Muslims – with their distinguishing virtue of possessing a universal message – to have a presence in the West, considering that it is the West that has come to lead the world and direct it politically, economically and culturally.' The implications of this for Qaraḍāwī are twofold: that Muslims need to be in the West to help other Muslims already living there (and to call to Islam), and also to influence it to the benefit of Muslims, rather than 'leaving this powerful and influential West to the penetration of the Jews.'¹⁷³ Ramadan also begins by emphasising the centrality of the West in the world and the urgency of Muslim influence there: 'Muslims settled in the West are at the *centre*, at the *heart*, at the *head* of the system which produces the symbolic apparatus of Westernisation. In this very specific space, at the *centre*, and far more exactly still than at the *periphery*, Muslims must *bear witness*, they must be *witnesses* to what they are and to their own values. Indeed, the whole world is a *land of testimony* [*dār al-shahāda*] but there is a specific space, bearing an incomparable symbolic charge, which is the heart of the whole system and in which millions of Muslims now live. At the centre, more than anywhere else, the axial principle

¹⁷² Ramadan, *To be a European Muslim*, pp. 144-5.

¹⁷³ Qaraḍāwī, *Fī fīqh al-aqalliyāt al-muslima*, p. 33.

of *shahāda* takes on its full meaning.’¹⁷⁴ By contrast, however, Ramadan emphasises not merely the need to maximise Muslim interests in the West, but rather the Muslim duty to participate in it dialectically out of a sense of belonging and responsibility:

the European environment is a *space of responsibility* for Muslims. This is exactly the meaning of the notion of “*space of testimony*” [*dār al-shahāda*] that we propose here, a notion that totally reverses perspectives: whereas Muslims have, for years, been wondering whether and how they would be accepted, the in-depth study and evaluation of the Western environment entrusts them, in light of their Islamic frame of reference, with a most important mission. ... Muslims now attain, in the *space of testimony*, the meaning of an essential duty and of an exacting responsibility: to contribute, wherever they are, to promoting good and equity within and through *human brotherhood*. Muslim’s outlook must now change from the reality of “protection” alone to that of an authentic “contribution.”¹⁷⁵

Furthermore, when he expounds on the content of the Islamic duty to ‘enjoin justice’ or ‘promote good and equity,’ this takes on a particularly political (in the Rawlsian sense) cast: he understands the Muslim’s duty to bear witness to Islamic values as a duty to be involved in society in the areas of ‘unemployment, marginalisation, delinquency, reform of legal, economic, social and political systems’, etc., that is, precisely the sort of civic goals appropriate in a politically liberal regime.

Unlike the more traditionally-minded Islamic scholars, Ramadan is self-consciously engaged in a search for overlapping consensus. If anything, Ramadan’s position might be more liberal than is required by political liberalism, for I submit that that there is nothing incompatible in wanting to convert others as such to one’s conception of the good and of truth, merely that one’s attachment to one’s political community, and one’s recognition of fellow citizens, should not be *limited* to one’s desire to convert them. Also, while I have been critical here of some of the aspects of the more traditional, juridical approach represented by Qaraḍāwī and others, I do not mean to rule out these sources as potentially giving support to an overlapping consensus. This question will only be fully answered through the discussions in the next chapter on Islamic arguments for being loyal to non-Muslim states in the way that is required by political liberalism, and in the fifth chapter on recognition of non-Muslims. Here I merely wish to

¹⁷⁴ Ramadan, *To be a European Muslim*, pp. 148.

¹⁷⁵ *Ibid.*, p. 150.

elaborate on the tensions inherent in *da'wa*-based justifications for residence in non-Muslim lands and to show that they can be expressed in forms that are both compatible and incompatible with the demands of citizenship, and that it is not always apparent from the *da'wa*-based arguments alone whether a given thinker is articulating a compatible doctrine.

Before finishing this discussion, it is necessary to mention a final approach to the question of *hijra* in which Muslims may find a justification for living in non-Muslim lands. This position differs radically from the above approaches in that it does not limit the discussion of the duty to migrate to a purely geographic or political context, but rather sees *hijra* as a spiritual concept, grounded in the individual duty to avoid sin. A number of Prophetic Traditions are used to justify this identification, including the following:

'A bedouin came to the Messenger of God and asked him: "O Messenger of God, inform us about the *hijra*. Is it to you wherever you might be or to a specific land? And when you die does it lapse?" The [Prophet] said: "*Hijra* is migration from all abominations whether manifest or hidden and that you maintain the prayer and render the *zakāt*, and then you are an emigrant.'¹⁷⁶

'The Messenger of God was asked: "Which *hijra* is superior?" He said: "That you migrate from [avoid] that which your Lord has abominated.'¹⁷⁷

'The emigrant is one who flees from [shuns, avoids/*hajara*] that which God has prohibited.'¹⁷⁸

'Be devoted to God wherever you are.'¹⁷⁹

For the richest and most elaborate exemplar of this argument, we turn to a remarkable series of *fatāwā* by the 13th and 14th century Ḥanbalī jurist Ibn Taymiyya, in which he consistently and exclusively addresses the question of migration from the abode of war in terms of the Islamic duty to avoid sin and sinners wherever they may be. In these texts, Ibn Taymiyya relies on the shared etymological derivation of *hijra*

¹⁷⁶ Ibn Ḥanbal, *al-Musnad*, 7096.

¹⁷⁷ Ibn Ḥanbal, *al-Musnad*, 6792, 6813, 6837.

¹⁷⁸ Ibn Ḥanbal, *al-Musnad*, 6515.

¹⁷⁹ al-Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, 1987; Ibn Ḥanbal, *al-Musnad*, 5/153, 158, 177.

(migration) and *hajara* (avoidance, abandonment, ignoring, ostracising) from the root h-j-r to suggest in general that the concepts are linked spiritually and even juridically, and specifically to advance the argument that the former is in fact a derivative duty of the latter.¹⁸⁰ Thus, when asked about the duty of migration, Ibn Taymiyya responds, ‘And on the question of migration (*hijra*) from the abode of war and perversion to the abode of Islam and faith, this is avoidance (*hajr*) on the part of one living amongst unbelievers and hypocrites who do not allow him to do what God commanded him to do.’¹⁸¹ Elsewhere: ‘As to the question of the migration of a Muslim from the abode of war, what is meant by this is that a Muslim must avoid evil things and those who engage in them, whose company harms him, except in the case of an overriding need or interest [for remaining with them].’¹⁸² Rather than elaborate on the specific social or political conditions which might actually require a physical migration, he instead develops his views on the forms and functions of avoidance, which include educating and rebuking sinning or lax Muslims. In a subsequent *fatwā* he elaborates on the connection between migration and the repudiation of sin:

Hijra is a form of rebuke, and punishment is a form of *hijra*, which is in fact the renouncing and repudiation of evil. For the Prophet said: “The emigrant (*al-muhājir*) is one who avoids (*hajara*) evil” and [elsewhere] “...one who avoids what God has forbidden him.” This is the devotional migration/repudiation (*hijrat al-taqwā*). And there is also migration/repudiation as rebuke (*hijrat al-ta’zīr*) and migration/repudiation as *jihād*, as in the migration/repudiation of the three who hung back from the *jihād* where [the Prophet] commanded the Muslims to avoid them (*amara bi-hajrihim*) until repentance was granted to them. Thus, migration is at times a form of devotion and piety, if it consists in avoiding sin. To this we have the words of the Almighty: “When you meet those who indulge in talk about Our verses, turn away from them until they begin to talk of something else. And if Satan should make you forget this, then once you remember again remain no longer in the company of the unjust. For those who are devoted to God are in no way accountable for them except to remind them [of God, and] perhaps they will turn again to Him.” [Q. 6:68-69] And at other times it is a form of *jihād*, commanding the right and forbidding the wrong and the imposing of sanctions, and consists in punishing those who transgress and are unjust.¹⁸³

¹⁸⁰ In English, the link might be expressed through the word ‘flight’: one flees a town and one flees sin or people. In the translations, however, I will avoid using a single term.

¹⁸¹ Ibn Taymiyya, *Majmū’ al-fatāwā*, v. 28, pp. 204-6.

¹⁸² Ibid., pp. 216-17.

¹⁸³ Ibid., pp. 210-11.

The unavoidable conclusion of his linking the question of migration from a non-Muslim society to that of dealing with sin in any society is that the objective political, institutional or even demographic facts cannot be regarded as absolutely determinant. The objective situation that matters for Ibn Taymiyya is the presence of sin or corruption whether in a Muslim or non-Muslim society.¹⁸⁴ The Muslim's duty is to avoid, repudiate, rebuke or overturn this state of affairs depending on his relative strength¹⁸⁵ and the chances that his actions will result in a worse state of affairs.¹⁸⁶ Furthermore, the subjective factor that ultimately determines the Muslim's justness is the intention behind his deeds.¹⁸⁷ Therefore, if a Muslim is in a position in which the most he can achieve is to personally avoid the company of sinners, rather than publicly rebuke them or otherwise forbid their actions, then he is clearly preserving his moral status in the way possible given his circumstances and the concern for his general interests. Given that we have seen elsewhere that Ibn Taymiyya explicitly permits residence in non-Muslim lands where Muslims have the freedom to practise their religion, it is a plausible reading of the present texts that they are less concerned with a Muslim always residing in Muslim-majority lands than with his consistency in disassociating himself personally from sin. A contemporary Muslim might regard this as a relatively apolitical requirement which can be fulfilled or neglected in both Muslim and non-Muslim societies.¹⁸⁸

¹⁸⁴ He is resolute that what determines the status of a place – a building, a city or a country – is the present and actual behaviour of its inhabitants, rather than some essential, permanent or formal quality: 'That a territory might be an abode of unbelief or of faith of sinners is not a necessary attribute, but rather a contingent attribute depending on its inhabitants. Any territory in which the inhabitants are believers and pious is at that moment the abode of the Friends of God. And any territory in which the inhabitants are unbelievers is at that moment the abode of unbelief. And any territory in which the inhabitants are sinners is at that moment the abode of sin. And so it is with any others we have not mentioned that their habitation of a territory makes it their abode.' (*Majmū' al-fatāwā*, v. 18, pp. 281-82.)

¹⁸⁵ 'Punishing and rebuking the wrong-doer is conditional upon the capability [to do so]. Thus, the judgement of the Law has differentiated between the two kinds of *hijra* for the capable and the incapable, as well as between the paucity or abundance of the innovating wrong-doers, and their strength or weakness.' (*Majmū' al-fatāwā*, v. 28, p. 211.)

¹⁸⁶ 'And when doing it [rebuking sinners] results in attainment of the good and the repulsion of evil, then it is prescribed. Yet if it results in greater corruption than that caused by the original sin, then it is not prescribed.' (*Majmū' al-fatāwā*, v. 28, p. 217.)

¹⁸⁷ Ibn Taymiyya, *Majmū' al-fatāwā*, v. 18, p. 279-80.

¹⁸⁸ In his *fatwā* on the Muslims of Bosnia, Rashīd Riḍā makes a similar point in response to the Mālikī position that it is a duty to flee from corruption and sin. The duty, he argues, is to 'uphold truth and goodness' which is possible in a wide variety of conditions. Only if one is not able to do this must one

Conclusion

Muslim jurists and exegetes have thus advanced roughly six arguments for the legitimacy of living permanently in a non-Muslim state: First, that the authoritative texts cited in favour of a ban do not necessarily dictate the conclusions advanced by those jurists; second, that there are other authoritative texts (namely, other *ḥadīth* reports) which directly lead to contradictory rulings and that there are reasons to regard these as more authoritative than the texts cited by pro-*hijra* jurists; third, that it may be possible to fulfil the basic duty to ‘manifest one’s religion’ even in the absence of sovereign Muslim political authority; fourth, that even if there were reasons to believe that *hijra* is a religious duty, it is practically infeasible for masses of Muslim communities to migrate from one country to another and, moreover, it is not obvious to which country they would migrate today in the absence of an Islamic caliphate or imamate; fifth, that great benefits to Islam, including its possible spread and the strengthening of Muslim communities, can be gained by living in non-Muslim lands; and, sixth, that the duty to migrate can be understood as a spiritual duty to avoid sin and sinners in one’s own life rather than merely as a duty to live in a certain state.

Establishing the permissibility of residing in a non-Muslim state, however, does not exhaust the demands of the conception of society as introduced in the previous chapter. In addition to the reservations discussed above about some of the arguments for residence in non-Muslim lands, it was argued that the conception of society required by liberalism, particularly of minority communities, involves not only the toleration of the political community but also affirmation of one’s membership in it. Affirming the legitimacy of one’s (potentially permanent) physical presence in such a space – the problem addressed by the juridical discourse on *hijra* and *iqāma* – is only a prerequisite to endorsing such a conception.¹⁸⁹ As we will see, some thinkers that were used above to

migrate, but this was not the case for early 20th century Bosnians, living under Austrian rule. (*Fatāwā*, v. 2, p. 777.)

¹⁸⁹ Note, however, Abou El Fadl’s comment on the failure of classical jurists to satisfactorily resolve the tensions and ambiguities involved in living in non-Muslim lands, including the degree to which Islam must be ‘manifested’ and the duty to obey the laws of a host country while not violating the Sharī‘a: ‘Perhaps the evasiveness of Muslim jurists on the issue of a conflict between the demands of Islamic law and the

demonstrate favourable attitudes towards residence are explicitly opposed to Muslims fulfilling duties of citizenship such as military service, or even adopting the citizenship of these countries in the first place.¹⁹⁰ Like the question of *hijra*, the question of contributing to the self-defence of a non-Muslim state relates to the problem of balancing loyalties between a state of residence and the global community of believers, and will thus serve as the complement to the above discussion of residence in a non-Muslim state. It is to that question that we now turn.

demands of the *amān* [promise of security from a host state which obligates a Muslim to respect its laws and security] indicates that the only real issue to be decided is residence. Once Muslims were allowed to reside in non-Muslim territory, practical compromises were inevitable, and Muslim jurists may have realized that any attempt to control or regulate behavior was bound to be ignored by Muslim minorities living in different historical situations.' (Abou El Fadl, 'Islamic Law and Muslim Minorities,' p. 178.)

¹⁹⁰ Tūbūlyāk: 'We can say that it is not permissible for a Muslim to adopt the citizenship of a non-Muslim state, and this may be akin to apostasy in normal circumstances if there is no legitimate justification for it.' (*al-Aḥkām al-siyāsiyya*, p. 79.) Rashīd Riḍā also expressed himself vehemently against the acceptance of French citizenship on the part of North Africans under French rule, although we will discuss below whether his reasoning would apply as well to native-born or immigrant citizens of non-Muslim states. (Riḍā, *Fatāwā*, v. 5, pp. 1748-61.

Chapter Four

Loyalty to a non-Muslim State

'Fulfil the Covenant of God when you have entered into it and do not break your oaths after you have affirmed them for you have made God your guarantor and God knows all that you do.'
[Qur'ān, *Sūrat al-Naḥl* (16):91]

'It is not righteousness to turn your faces towards East or West, but rather righteousness is ... to fulfil the contracts which you make.'
[Qur'ān, *Sūrat al-Baqara* (2):177]

When can Muslims exhibit loyalty to non-Muslim states, particularly through contributing to their self-defence?

It is appropriate here to summarise my discussion from the second chapter of what political liberalism might regard as the proper demands on citizens in terms of patriotism and contributing to a state's self-defence. It will be remembered that traditional liberal justifications of conscientious objection to unjust wars, or general exemption from fighting in the case of committed pacifists, will not apply in the case of believing Muslim citizens. In their case, a reluctance to fight may be the consequence of their solidarity with a community of fellow believers across citizenship boundaries or, inversely, even when hostilities do not concern Muslims on either side, their unwillingness to form deep bonds of solidarity with non-Muslims at all. I argued that neither position *necessarily* results in a doctrine contrary to the demands of citizenship from the perspective of political liberalism because communal solidarity is one of those components of a conception of the good towards which it prescribes neutrality. If a conception of the good involves a commitment to special concern for a certain community of fellow believers, then political liberalism object to this only insofar as this special concern prescribes attitudes or actions which violate the legitimate *political* rights and needs of the community of citizenship. I thus argued that Muslim citizens of liberal democracies can avoid this violation by endorsing on principled grounds the following positions:

1. *'In conflicts when a non-Muslim state in which Muslims live is under attack by a Muslim force, even if a Muslim finds it morally impermissible by divine imperative to kill a fellow Muslim, it is nonetheless legitimate for a Muslim to forswear on grounds of*

principle any active aid to the Muslim force and promise to engage in no activities damaging to their non-Muslim state's activities of self-defence.' (L3)

I argued that, so long as their contribution to the war efforts in the form of participation in combat are not indispensable to the success of those efforts, such a position constitutes part of a doctrine of loyalty compatible with liberalism.

2. *'In conflicts when the state in which Muslims live is under attack by a non-Muslim force, and thus no conflict of loyalty or theological imperative is at stake, it is permissible to contribute directly to the self-defence efforts of the non-Muslim state.'* (L2)

If, however, a Muslim considers it a sin to sacrifice his life for a cause other than one specified in holy texts, then political liberalism would at least require him to regard it as permissible to contribute to the self-defence efforts in other ways. The concern from the standpoint of liberalism in the event that a Muslim citizen prefers not to engage in combat is that the reasons for this be grounded in some theological imperative not to commit an act which may be a double effect of serving the non-Muslim state, and not an indifference or contempt for the legitimate interests of that state.

3. *'Hostilities on the part of Muslim forces against a non-Muslim state are justified only in self-defence or to counter aggression and not to facilitate the spread of Islam or to change the government of a state in which Muslims are not oppressed.'* (L1)

Our concept of a doctrine of citizenship does not perfectly overlap with our conception of what is legitimately punishable in society. There may be acts that are legitimately punishable in a liberal democracy which at the same time do not constitute an *ideological* rejection of citizenship in a liberal democracy. (It will be obvious, for example, that my position reserves for the citizen the space to exempt himself from a draft or conscription during virtually any war conducted outside the homeland not directly required for self-defence without being accused of general civic disloyalty. I do not wish at this point to answer the subsequent question of whether, therefore, a state acts unjustly when it punishes citizens for disobeying generally binding legislation enacted through democratic procedures. I merely wish to argue that from the standpoint of political liberalism it cannot be said that a citizen who prefers not to kill or be killed except when the survival or safety of his state are at stake and his personable contribution

through violent action is required is the bearer of a *doctrine* which violates the overlapping consensus sought by liberalism.) Similarly, there may be acts which are not legitimately punishable in a liberal democracy which at the same time do constitute such a rejection. It might be unjust to punish a citizen who simply *proclaims* a doctrine of *jihād* which holds that any violent action undertaken by Muslim forces against a non-Muslim state for the purposes of advancing Islam or Muslim interests is legitimate, or which commands absolute solidarity with any Muslim in all cases of conflict between Muslims and non-Muslims, yet does not directly incite violence against his state of citizenship. Nonetheless, such a doctrine would clearly indicate that this citizen does not affirm a comprehensive ethical doctrine which gives support to a liberal conception of justice or citizenship.

Understanding that my position may be more lenient than other doctrines of political obligation, I will show in what immediately follows how even the above three demands are problematic within Islamic sources.

Incompatible Doctrines

Given that there has been a debate amongst jurists about whether Muslims are even permitted to reside permanently in non-Muslim states, it follows that rendering loyalty to them will present an even more demanding ideological requirement. Indeed, as seen above, even jurists who permitted residence in non-Muslim states, such as Nawawī, preferred that Muslims enjoy some form of self-seclusion (*i'tizāl*) and did not take issue with the argument advanced by the pro-hijra jurists that friendship with unbelievers is generally undesirable if not prohibited. This dilemma is partially symbolised by the sections in the books of law under which Muslim scholars place treatments of migration, residence and behaviour in non-Muslim lands: those on *jihād*. The implications of this association are obvious: While it is indeed too simplistic to assume that all juridical discussions of non-Muslim polities and communities can be reduced to a blanket justification of aggression or antagonism, it is certainly the case that jurists view the Islamic political community both as a state and as an entity towards which Muslims have ethical obligations. This political community is one with universal aspirations and it is

assumed to be, at the very least, in a state of competition with other communities. A just life for a Muslim, thus, does not only consist in performing acts of worship or avoiding sin, but in serving the community of believers in any way required of him, including (perhaps especially¹⁹¹) in war for the cause of Islam (precisely which cause will be the subject of discussion below). Given this basic assumption, it is not surprising that the idea of service in a non-Muslim army is considered aberrant. The western analogue is not Christian or humanist theories of *jus ad bellum* or *jus in bello*, but rather perennial state-centred expectations of civic loyalty. It is akin to asking: Are there doctrines of nationalism, patriotism or republicanism which can themselves provide justificatory reasons for serving a foreign state? The question either meets with baffled silence or complete hostility.

That a Muslim is not allowed to kill brother Muslims in the service of a non-Muslim army is traditionally amongst the most uncontroversial positions in Islamic political and ethical thought. There is direct scriptural foundation for this aversion. The Qur'ān proclaims:

'Never should a believer kill a believer; but (if it so happens) by mistake (compensation is due) ... Whosoever slays a believer intentionally his reward is Hell forever, and the wrath and curse of God are upon him, and a dreadful penalty is prepared for him.' [Q. 4:92-93]

'Do not take life which God has forbidden except for a just cause.'¹⁹² [Q. 17:33]

What is a just cause for taking Muslim life is provided by a well-known *ḥadīth*:

'The blood of a Muslim who proclaims that there is no god but God and that I am the Messenger of God may not be legally spilt other than in one of three [instances]: a life for

¹⁹¹ Q. 4:95: 'Not equal are those believers who sit [at home] and receive no hurt, and those who strive and fight in the cause of God with their goods and their persons. God has granted a grade higher to those who strive and fight with their goods and persons than to those who sit [at home]. Unto all has God promised good, but those who strive and fight has He distinguished above those who sit [at home] by a special reward.'

¹⁹² The question raised by this verse is whether 'life which God has forbidden' includes all innocent human life or is a specific reference to inviolable Muslim life. Either way, it covers Muslim life for sure. See next footnote for a *ḥadīth* which restricts the death penalty to those who kill fellow Muslims.

a life¹⁹³, the married person who commits adultery, and one who forsakes his religion and abandons his community.’¹⁹⁴ Other *ḥadīth* reinforce the general ban on killing between Muslims: ‘Whoever carries arms against us is not one of us.’¹⁹⁵ ‘Cursing [*sibāb*] a Muslim is sin and fighting him is unbelief.’¹⁹⁶ ‘If two Muslims meet with their swords then both the killer and the killed are in the fire [for] the killed was eager to kill his opponent.’¹⁹⁷ ‘None of you should point your weapon towards a brother Muslim for you do not know, perhaps Satan will tempt you to hit him and you will fall into a pit of fire.’¹⁹⁸ ‘Every Muslim is inviolable to all other Muslims – his blood, his property and his honour.’¹⁹⁹ A further *ḥadīth* would seem to have implications for even non-combatant service in a non-Muslim army engaged in combat with Muslims: ‘Whoever assists in killing a believer even by half a word will meet God with no hope of God’s mercy written on his face.’²⁰⁰

Finally, amongst the rules established by Muḥammad for governing the various tribal and religious communities in Medina (known collectively as *al-wathīqa*, or the ‘Constitution of Medina’) was included the following: ‘A believer shall not slay a

¹⁹³ It should be noted that according to the law of just retaliation (*qiṣās*) a Muslim is to be killed only for killing a fellow Muslim, not an unbeliever, according to a *ḥadīth* to be found listed under the book of blood-money (*kitāb al-diyāt*) in Bukhārī’s *Ṣaḥīḥ*. This does not preclude that a non-Muslim family may have the right to other compensation for the unlawful killing of a member.

¹⁹⁴ Al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-diyāt. Also in Muslim, *Ṣaḥīḥ*, Kitāb al-qasāma wa al-muḥāraba, wa al-qiṣās wa al-diyāt.

¹⁹⁵ Al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-diyāt.

¹⁹⁶ In al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-fitan. It is this *ḥadīth* and the next that Qaraḍāwī relies on to justify his ruling that it is not permitted to serve in a non-Muslim army against Muslims: ‘Islam has prohibited a Muslim to fight his fellow Muslim brother to the extent that indulging in such a fight is considered a form of disbelief or *kufr* and a behaviour pertaining to jahiliyya. The Prophet is reported to have said: “Cursing the Muslim is lewdness and killing him is disbelief.” [And:] “If two Muslims meet with their swords then both the killer and the killed are in the fire [for] the killed was eager to kill his opponent.”’ (See: www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=52014)

¹⁹⁷ Al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-fitan. Also in Muslim, *Ṣaḥīḥ*, Kitāb al-fitan wa ash-rāṭ al-sā’a.

¹⁹⁸ Al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-fitan.

¹⁹⁹ Ibn Mājah, *Sunan*, Kitāb al-fitan.

²⁰⁰ Ibid.

believer for the sake of an unbeliever, nor shall he aid an unbeliever against a believer. Believers are friends one to the other to the exclusion of outsiders.’²⁰¹

These citations form the most explicit textual foundation for the prohibition against serving in a non-Muslim army engaged in hostilities with Muslims. Muslim jurists have extrapolated from these sources not only a clear prohibition against helping non-Muslims in combat against Muslims (whatever the cause) but often the ruling that doing so constitutes apostasy. The possibility that Muslims might be in a position of serving in non-Muslim armies against Muslims seems to have occurred to most classical jurists only in the context of Muslim prisoners acting under coercion. The consensus opinion is that these prisoners must submit to torture and execution rather than raise swords against fellow Muslims on behalf of non-Muslims.²⁰²

With the modern period and the colonisation of Muslim lands by European powers, however, the service of Muslim civilians in non-Muslim armies became a very real prospect indeed. Rashīd Riḍā considered this situation to be the most abhorrent aspect of the offer of French citizenship to North African Muslims. He found subservience to French laws which permit acts prohibited by Islam and vice-versa to be unconscionable for a Muslim, ‘but the gravest affliction of all is that Muslims are now compelled into military service in the enemy’s army and to fight Muslims, humiliate them, force them into submission and to arrest anyone who does not respect and preserve this treaty of subjugation (*dhimma*)’ and concluded that ‘if the situation is as described, then there is no disagreement amongst Muslims that the acceptance of citizenship is a clear case of apostasy and exit from the Islamic community.’²⁰³ Not surprisingly, this was also the position taken by the Ottoman government in respect to Muslim subjects of Allied states during the First World War:

Question: If the states mentioned that are fighting against the Islamic government compel and force their Muslim population by threatening to kill them and even to exterminate all members of their families, is it even in this case according to the *sharī’a* absolutely

²⁰¹ Guillaume, *The Life of Muhammad*, p. 232.

²⁰² For example, Ibn Taymiyya, *Majmū’ al-fatāwā*, v. 28, p. 539. Present-day scholars ‘Abd al-Qādir and Topoljak (Tübulyāk) both cite this as the consensus opinion.

²⁰³ Riḍā, *Fatāwā*, v. 5, p. 1749-50.

forbidden for them to fight against the troops of the Islamic countries and do they [by transgressing this prohibition] deserve the hell-fire, having become murderers?
Answer: Yes.²⁰⁴

That this may indeed constitute apostasy is the position of a number of contemporary thinkers as well, including prominent cleric Yūsuf al-Qaradāwī.²⁰⁵

This might be considered sufficient to demonstrate incompatibility with a theory of civic loyalty which tolerated no exemption whatever from the duty to contribute to any of one's state's wars when called upon to do so. The Muslim aversion to killing fellow Muslims, however, was an assumption of our discussions of the liberal demands of loyalty from Muslim citizens and held to be reasonable in principle. Yet even the three positions which I regard as necessary for a doctrine of minimal civic loyalty to a non-Muslim state encounter opposition in some Islamic doctrines. I will briefly present the grounds on which a Muslim might reject each before devoting more critical attention to how Islamic sources might provide support for them.

1. The first principle requires Muslim citizens to restrain themselves from joining Muslim forces engaged in hostilities against their state of citizenship. The assumptions of the case are designed to make it the morally least demanding situation possible involving Muslim and non-Muslim forces: the conflict is assumed to take place on non-Muslim soil and Muslims are not required to engage in actual combat against co-religionists. This requirement would hold both in cases of clear aggression (i.e., in cases when a neutral, disinterested observer could not regard Muslim hostilities as just) as well as in cases when Muslim forces are, or claim to be, responding to aggression by the non-Muslim state. Yet note that unlike position three, this demand does not require any declaration on the part of the Muslim citizen of the unjustness of the Muslim cause. It merely requires a declaration of the permissibility of his not aiding the hostile forces on some principled grounds.

²⁰⁴ Ottoman Jihad Fatwa of 11 November, 1914, translated in Rudolph Peters, *Jihad in Classical and Modern Islam* (Princeton: Markus Wiener, 1996), p. 57.

²⁰⁵ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID==49987. See also Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 122, where he calls it 'amongst the greatest sins and most abominable crimes.'

What rejecting this demand requires from the Muslim perspective is a very specific interpretation of the doctrine of *jihād*: It requires not only believing that in certain ideal circumstances an Islamic state led by a recognised imam is entitled (or obligated) to engage in armed *jihād* against non-Muslim states for the purposes both of defending existing Muslim communities and of enlarging the space ruled by Islam, but also that it is the individual obligation (*farḍ 'ayn*) of every Muslim in all places to contribute to this war effort if asked to do so. That is, that he or she sins or acts unvirtuously by failing to help Muslim forces to subdue or to do harm to a non-Muslim state in which he or she lives.

The mainstream position is that the type of *jihād* described is at the discretion of the imam and is a collective obligation (*farḍ 'alā al-kifāya*), meaning that it is an obligation upon the Muslim community as a whole and it is discharged when a sufficient number of the community engage in it.²⁰⁶ Only when Muslim lands are under attack does (defensive) *jihād* become an individual obligation on all able-bodied, sound-minded Muslims.²⁰⁷

In the latter case, some jurists have argued explicitly that Muslims living in non-Muslim states under an *amān*²⁰⁸ have obligations to aid their brethren. Sarakhsī, for example, argued that if this non-Muslim state attacks a Muslim state and takes Muslim

²⁰⁶ See, for example, (Shāfi'ī) Nawawī, *al-Majmū'*, v. 21, p. 3-9; (Ḥanbalī) Ibn al-Qudāma, *al-Mughnī*, v. 13, pp. 7-10; (Mālikī), Ibn Rushd (Averroes), *Bidāyat al-Mujtahid wa nihāyat al-muqtaṣid* (Beirut, Dār al-kutub al-'ilmiyya, 1996), v. 3, pp. 407-9.

²⁰⁷ Some jurists give a more pragmatic interpretation of the *farḍ 'ayn* in the case of defensive *jihād*. Al-Qurtubī, for example, writes that when a Muslim land is attacked, it is the duty of all residents of *that* land to go out and fight. 'And if the residents of that land are unable to repel their enemy, then it becomes incumbent on their immediate neighbours to go out in accordance with what was made incumbent on the residents of that land until they know that they have enough strength to repel the enemy and defend the Muslims. A similarly, it becomes a duty for anyone who is aware of the weakness of the Muslims vis-à-vis their enemy and is able to help them to go to them.' (*al-Jāmi' li Ahkām al-Qur'ān*, v. 8., p. 97.)

²⁰⁸ An *amān* is a guarantee of safety offered to aliens visiting or residing in a territory. A person under an *amān* is a *mustā'min*. The terms of Muslims living under an *amān* (*al-muslimūn al-mustā'minūn*) in a non-Muslim state will be explored in the next section as a possible authentic Islamic resource for justifying obligations to non-Muslim states.

prisoners then the Muslim *mustā'min* is required to renounce his *amān* and fight to free the prisoners.²⁰⁹

A particularly apposite historical example of the invocation of the universal duty to contribute to the *jihād* is the famous Ottoman *jihād fatwā* of 1914 quoted above. In it, the conflict between the Allied and Central powers is presented as aggression directly against the Islamic caliphate and thus from the Muslim perspective a defensive *jihād* to which all Muslims have a duty to contribute:

Question: When it occurs that enemies attack the Islamic world, when it has been established that they seize and pillage Islamic countries and capture Muslim persons and when His Majesty the Padishah of Islam thereupon orders the jihad in the form of a general mobilization, has jihad then, according to the illustrious Qur'anic verse: 'Go forth light and heavy! Struggle in God's way with your possessions and yourselves; that is best for you did you know?' (9:41), become incumbent upon all Muslims and has it become an individual duty for all Muslims in all parts of the world, to hasten to partake in the jihad with their goods and money?

Answer: Yes.

Question: Now that it has been established that Russia, England, France and the governments that support them and are allied to them, are hostile to the Islamic Caliphate, since their warships and armies attack the Seat of the Islamic Caliphate and the Imperial Dominions and strive (God forbid) for extinguishing and annihilating the exalted light of Islam, is it, in this case, also incumbent upon all Muslims that are being ruled by these governments, to proclaim jihad against them and to actually attack them?

Answer: Yes.

Question: If some Muslims, now that the attainment of the aim [the protection of the Ottoman empire] depends on the fact that all Muslims hasten to partake in the jihad, refrain from doing so (which God forbid), is this then, in this case, a great sin and do they deserve Divine wrath and punishment for their horrible sin?

Answer: Yes.²¹⁰

This position that expansive *jihād* is legitimate and that it may be an individual obligation on all believing Muslims is, naturally, the view adopted by the ideologists of the contemporary radical Islamist movements. The operative source is Q. 9:38-41:

O you who believe! What is the matter with you that, when you are asked to go forth in the cause of God you cling heavily to the Earth? Do you prefer the life of this world to the Hereafter? But little is the comfort of this life, as compared with the Hereafter. Unless

²⁰⁹ Al-Sarakhsi, *al-Mabsūt*, v. 10, 106.

²¹⁰ Ottoman Jihad Fatwa in Peters, pp. 56-7.

you go forth He will punish you with a grievous penalty and put others in your place but Him you would not harm in the least. For God has power over all things. (Even) if you do not help God has helped him. ... Go ye forth, lightly or heavily, and strive and struggle with your goods and your persons in the cause of God. That is best for you if you but knew.

Commenting on these verses Abul 'Alā Mawdūdī writes that 'this verse formed the basis of a legal ruling issued by the jurists regarding *jihād*. They concluded that as long as the Muslims as a whole, or the Muslims of a particular area or a section thereof, have not been summoned to *jihād*, it would remain merely *farḍ bi-al-kifāya*. However, if the Muslims are called upon by their leader to make *jihād* [it] would become obligatory on every Muslim who has been so called upon. The matter is of such vital importance that if those who fail to perform this duty without any legitimate excuse claim to be Muslims, such a claim will not be entertained.'²¹¹ While not specifically mentioning Muslims living in a non-Muslim state, the argument that a legitimate Islamic ruler would have to be obeyed by any Muslim whom he calls to arms regardless of domicile is advanced so categorically that it is hard to imagine any space for justifying ethical obligations to non-Muslims.

2. One also finds in juridical sources a frequent antipathy to Muslims helping non-Muslims when it is viewed that the cause is the advancement of a non-Islamic faith or conception of truth. The roots of this antipathy are manifold: not only might such help be seen as directly detracting from the Islamic cause, but even if there is no direct harm to Islam or Muslims, advancing the cause, increasing the strength, or upholding the rule of unbelievers is something prohibited to Muslims: 'It is necessary that Muslims intend by engaging in such fighting only to bring about benefit to Muslims, and to elevate the word of God, without intending to bring about the strengthening of the unbelievers, befriending them or elevating the word of unbelief.'²¹² As discussed in the above survey of the positions on migration, Muslim jurists often advance a total ethical stance according to which actions are judged partially according to whether they are beneficial for Islam and

²¹¹ Sayyid Abul 'Alā Mawdūdī, *Towards Understanding the Qur'ān* (Leicester, UK: The Islamic Foundation, 1990), v. III, pp. 209-10.

²¹² Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 117.

Muslims. It will be remembered that in the Mardin *fatwā* quoted in the previous chapter, Ibn Taymiyya proclaimed that ‘helping those who depart from the Islamic *sharī‘a* is forbidden, whether it is the people of Mardin or others.’²¹³ This wording seems to leave him indifferent to the status of relations between such people and Muslims. In addition, there is also a clear divine command at stake here: Muslims have the obligation to preserve their own lives which are made inviolable by God; to expose themselves to harm or potential death is something that is licit only in certain circumstances. Helping unbelievers is not to be found amongst the legitimate grounds for sacrificing one’s life.²¹⁴ Furthermore, it has been argued that if *any* interest can be discerned for the Muslim state in Muslim minorities of non-Muslim states refusing to fight, then this trumps any duties that might be thought owed to the state of citizenship. The Ottoman *jihād fatwā* quoted above again gives an appropriate historical example:

Question: Is it in this case for the Muslims that are in the present war under the rule of England, France, Russia, Serbia, Montenegro and their allies, *since it is detrimental to the Islamic Caliphate*, a great sin to fight against Germany and Austria which are the allies of the Supreme Islamic Government and do they deserve a painful punishment?
Answer: Yes.

What is noteworthy from the above (not forgetting of course that state-issued rulings are problematic as an exemplar of the Islamic juridical methodology) is that this forbids fighting against non-Muslim states allied with the Sultan regardless of the attitude of the aggressor states towards the Muslim populations in question, with the reason being simply that it is not in Ottoman state’s political interest, with no other consideration of justice.

Two quotations from prominent Ḥanafī jurists I believe encapsulate the consensus juridical opinion on this question from the classical sources:

‘I asked: If some Muslims were in the *dār al-ḥarb* under an *amān* and that territory were attacked by people of *another territory of war*, do you think it would be lawful for those Muslims to fight on their side?

²¹³ Ibn Taymiyya, *Fatāwa*, v. 28, p. 240.

²¹⁴ See the Sarakhsī quotation below. See also ‘Abd al-Qādir, *Fiqh al-aqallīyyāt al-muslima*, p. 170, quoting Mālik.

'He replied: No ... because the jurisdiction of the unbelievers prevails there and the Muslims cannot enforce Muslim rulings.

'I asked: If the Muslims were fearful of their own persons from the enemy, should they fight in defence of themselves?

'He replied: If the situation were thus, there would be no harm to fight in defence of themselves.'²¹⁵

If there is a group of Muslims under an *amān* in the abode of war and that country is attacked by another non-Muslim country, then the Muslims are not allowed to fight, for fighting involves exposing oneself to danger which is only allowed for the purpose of exaltation of the Word of God, may He be glorified, and the glorification of religion, which are not present in this case. Because the laws of idolatry are dominant over them Muslims are not able to rule by the laws of Islam, and thus any fighting on their part would take the form of exaltation of the word of idolatry and this is not permitted unless they fear for their lives from the invaders, in which case there is no sin incurred in fighting to defend themselves rather than fighting to exalt the word of idolatry.²¹⁶

From the Islamic perspective, thus, even in the least demanding circumstance for the Muslim conscience – when two non-Muslim states meet in battle with no direct bearing on any Muslim community or polity – almost all classical jurists are still reluctant to permit Muslims to fight in defence of a state in which they reside under an *amān*.²¹⁷ If they are to join such efforts, it is because of the need to do so for their own sake and not because of any solidarity with the non-Muslims or even recognition of their interests. In addition to the need to protect themselves and their property, other benefits include gaining necessary military training and expertise with the purpose of putting them to use at some point in the service of Muslims or the *jihād*.²¹⁸

Topoljak (Tübülyāk) gives four specific cases in which it is permitted to fight on behalf of non-Muslims against other non-Muslims but which may not be grounded on compatible reasons: 1. If Muslims are compelled to do this on pain of death. This is from

²¹⁵ Al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar*, Khadduri, trans., p. 193. Emphasis added.

²¹⁶ Al-Sarakhsī, *al-Mabsūṭ*, v. 10, p. 106. This view is also to be found in Ibn al-Humām, v. 6, p. 18; Zayn ibn Ibrāhīm ibn Muhammad Ibn Nujaym, *al-Baḥr al-rā'iq* (Beirut: Dār al-Ma'rifa), v. 5, p. 107.

²¹⁷ See 'Abd al-Qādir, *Fiqh al-aqallīyyāt al-muslima*, pp. 621-2.

²¹⁸ In a *fatwa* on Russian Muslims serving in the Russian army during the Russo-Japanese war, Rashīd Riḍā outlines an argument for serving in non-Muslim armies based on the Islamic obligation to acquire military knowledge and skills, and to present an image of strength. (This *fatwa* will be discussed at length below as a possible compatible doctrine. See Riḍā, *Fatāwā*, v. 2, pp. 565-6.) Topoljak makes a similar point, with greater emphasis on the categorical duty to prepare for *jihād* which for some Muslims may only be possible in non-Muslim armies. (See Tübülyāk, *al-Aḥkām al-siyāsiyya*, p. 112-3.)

the *fiqh* principle of necessity (*darūra*) and thus akin to drinking wine or eating carrion. This is obviously not intended to serve as a justification for doing so voluntarily or out of duty. 2. If they are defending themselves, their families and their property from the same attacking non-Muslims. 3. 'It is permitted for Muslim minorities to fight with an infidel commander if he respects the Muslims, grants them their rights and if they fear that he may be defeated by someone who will oppress them, such as when the Muslims co-operated with [Ethiopian king] al-Najjāshī.' The *fiqh* principles which ground this argument are the general quasi-utilitarian ones of pursuing the greatest benefit and avoiding the greatest damage or perversion. 4. If Muslims fear a greater enemy then they can co-operate with a smaller enemy. (He gives the example of Muslim forces aiding Byzantium against Persia.) In conclusion: 'Muslims living as a minority in a non-Muslim state are permitted to participate with infidels in a war against their fellow-infidel enemies if there is a benefit for them in this, such as gaining their rights or improving their situation, if doing so does not result in any harm to Muslims, or if they are coerced to do so. In all other circumstances it is not permitted for them to join them in their battle against other infidels, and God knows best.'²¹⁹

There is some question as to whether points 2-4 might be approaching a compatible position. The reason for thinking so is that Topoljak allows for the possibility of identifying Muslim interests with those of the non-Muslim majority, and with the consideration that a Muslim would naturally prefer the state which practices the least oppression towards them. It is, of course, central to liberal justification that the rights it gives citizens, particularly minorities, give those citizens reasons to support and be loyal towards liberal institutions. Furthermore, there are prominent liberal theories of political obligation (radical individualist theories from Hobbes to Nozick) which presume that the 'citizen' (if he can be so called) will be interested in the fate of his state and fellow citizens no further than it concerns his own safety and welfare. And I have, of course, argued above that political liberalism cannot require as part of a doctrine of citizenship any robust or emotional attachment to one's community of citizenship, or principled altruism, beyond what is necessary to secure the equal rights of all. Thus, there is an

²¹⁹ Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 119-21.

argument to be made that even if Muslims are fighting an invading force only to defend their *own* property, families and persons, that that is all some theories of citizenship assume *any* citizen is doing.

The potential difference between Topoljak's reasoning and that of individualist theories of political obligation, however, lies in the distinction between initial motivations for endorsing a social contract and subsequent reasoning in society. A social contract may appeal to individual (or group) self-interest (whether in the form of appeals to *reciprocity* or *mutual advantage*) as a justification for the general structure of rights and duties, but cannot allow that every discrete demand made by the state be accepted or rejected *in situ* by the individual according to some self-regarding utility calculus. This latter scenario seems to be precisely what Topoljak has in mind: that Muslims residing in non-Muslim states (let us presume that they enjoy the security and freedom he refers to in point 3) can adopt a stance towards a war of aggression against their state depending on whether it *directly* threatens them and their interests or whether they have more to gain by their state preserving itself or being conquered. That is, there is no suggestion of general moral duties towards a state which has fulfilled the needs of protection, respect of rights and welfare provision, nor of the independent rights and interests of non-Muslims except when and where they align with those of Muslims. There is no question but that this justification of serving a non-Muslim state does not indicate the existence of an overlapping consensus as it stands in Topoljak's present formulation.

3. Position one dealt with the obligations of individual Muslims towards the Muslim community when it is engaged in a conflict which may be declared by some to be a *jihād*.

The position was phrased in such a way as to restrict it to consideration of the individual Muslim's *behaviour* within, rather than *beliefs* about, the conflict. I believe there is also a further requirement, however, to hold certain beliefs about the rights of his community of citizenship and to be able to condemn on principled grounds certain hypothetical acts of violence on the part of Muslim forces. Specifically, there is a requirement to share certain aspects of a doctrine of when war is justified. Even if a Muslim asserts his lack of direct participation, he holds a doctrine incompatible with liberal citizenship if he holds that a war to facilitate the spread of Islam or to change the government of a state in which

Muslims are not oppressed might in some circumstances be justifiable. In effect, he must assert that hostilities on the part of Muslim forces against a non-Muslim state are only justified in self-defence or to counter aggression.

This requirement is that citizens hold some universal standard for judging the justness of a war which involves more than gauging it in light of the interests of one's political community or solidarity group. Ideally, one should be able to say when one's own community errs or acts unjustly even when acting in its self-interest. This requirement strikes at the heart of interpretations of the meaning of *jihād* in Islamic discourses. In contemporary Islamic polemics the question of *jus ad bellum* is often posed in terms of whether *jihād* is for the purpose of spreading Islam, removing barriers to its reception and erasing disbelief (in which case it becomes extremely difficult to see how any non-Muslim violence against Muslims, even in self-defence, or indeed any claim by a non-Muslim polity to non-interference on a permanent basis can be accepted as legitimate by a Muslim), or merely for the purpose of self-defence against oppression and tyranny directed against Muslims (in which case a Muslim argument for self-restraint towards non-Muslims, and the existence of absolute rights to non-interference for them, can begin to be made). Alternatively it is sometimes asked whether the 'basis' or 'basic principle' (*al-aṣl*) of interaction with non-Muslims is war or peace.

The classical sources give support almost exclusively for the former, incompatible, position.²²⁰ As was mentioned in the previous chapter, one of the primary constructs of Muslim political geography was that of the non-Muslim world as *dār al-ḥarb*, 'the abode of war.' Consequently, non-Muslim residents of such countries are usually referred to as '*ḥarbīs*', the ascriptive adjective of the noun 'war'. The theological-juridical basis for this ascription is clearly the view that, even if a constant state of actual warfare is not assumed, the basic status of relations between the abodes is one of war and permanent non-recognition.²²¹ In the classical period, all Sunni schools 'thought of the

²²⁰ See 'Abd al-Qādir, *Fiqh al-aqalliyāt al-muslima*, p. 38.

²²¹ See Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955), p. 145; Bassam Tibi, 'War and Peace in Islam,' in Sohail Hashmi, ed., *Islamic Political Ethics* (Princeton: PUP, 2002), p. 176.

jihad as a war for the expansion of Islamic territory – i.e., the sphere where the norms prescribed by the Shari‘a would be paramount.²²² The application of this doctrine at the theoretical level varied depending on the non-Muslim community. For polytheists the legitimate imam was to give the choice between conversion to Islam and war.²²³ For ‘people of the book’ (Christians, Jews and Zoroastrians) the choice was between conversion to Islam, submission to Muslim authority through paying the poll tax (*jizya*), and war. Classical jurists also imposed strict limits on the legitimate duration of a peace treaty, refusing to justify permanent guarantees of security to non-Muslim states regardless of the balance of power between them and Muslim forces. Underpinning these specific positions was the general point of doctrine that the object of human history is for the entire world to eventually become *dār al-Islām* either through voluntary conversion or, if necessary, war led by a legitimate imam. Thus, ‘from the jurists’ perspective, non-Muslims had no right to resist Islamic military expansion, and the rules for treating the conquered peoples reflect the jurists’ premise that in refusing to submit to Islam, they were doing a wrong that justified harsh treatment.’²²⁴ It is clear that articulating a compatible doctrine of just war will require for Muslim citizens of liberal democracies a more radical departure from the range of opinions articulated in the classical tradition than have the questions presented to this point.

While modernists of varying stripes have articulated a new doctrine of *jihād* as ‘defensive’ war (which will be discussed in the following sections on compatible doctrines), it is, of course, a reaffirmation of the letter of the classical doctrine that characterises the more radical contemporary Islamist movements. These groups see *jihād* as war to eradicate man-made barriers to the implementation of Islamic law. Their doctrine receives its most famous articulation, of course, in the writings of Sayyid Qutb.

²²² Abdulaziz Sachedina, ‘The Development of *Jihad* in Islamic Revelation and History,’ in James Turner Johnson and John Kelsay, eds., *Cross, Crescent and Sword: The Justification and Limitation of war in Western and Islamic Tradition* (London: Greenwood, 1990), p. 44.

²²³ ‘All the jurists, perhaps without exception, assert that polytheism and Islam cannot exist together; the polytheists, who enjoin other gods with Allah must choose between war or Islam.’ (Khadduri, *War and Peace in the Law of Islam*, p. 75.)

²²⁴ Ann Elizabeth Mayer, ‘War and Peace in the Islamic Tradition and International Law’ in John Kelsay and James Turner Johnson, eds., *Just War and Jihad: Historical and Theoretical Reflections on War and Peace in Western and Islamic Traditions* (Westport, Conn.: Greenwood, 1991), p. 198.

In the following passage Quṭb argues that verses in the Qur'ān which speak of peace or co-existence with unbelievers [e.g., Q. 8:61, 60:8, 2:190, 3:64] were temporary, provisional rulings abrogated by the final ruling revealed in *sūra* 9²²⁵:

If Muslims today, in their present situation, cannot implement these final rulings, then they are not, now and for the time being, required to do so. For God does not charge anyone with more than he or she can do. They may resort to the provisional rulings, approaching them gradually, until such a time when they are able to implement these final rulings. But they may not twist the final texts in order to show them as consistent with the provisional ones. They may not impose their own weakness on the divine faith, which remains firm and strong. Let them fear God and not attempt to weaken God's faith under the pretext of showing it to be a religion of peace. It is certainly the religion of peace, but this must be based on saving all mankind from submission to anyone other than God. [Islam's] advocates must not be ashamed of declaring that their ultimate goal is to destroy all forces that stand in its way of liberating mankind from any shackle which prevents the free choice of adopting Islam.

When people follow human codes and apply man-made laws to regulate their lives, every doctrine and code has the right to live in peace within its own area, as long as it does not entail aggression against others. In this case, coexistence of difference creeds, regimes and social orders should be the norm. But when there is a divine code requiring complete submission to God alone, and there are alongside it human systems and conditions that are man-made, advocating submission to human beings, the matter is fundamentally different. In this case, it is right that the divine system should move across barriers to liberate people from enslavement by others. They will then be free to choose their faith in a situation where people surrender themselves to God alone.²²⁶

Elsewhere, Quṭb makes clear that the classical doctrine of non-recognition of non-Muslim polities ought to be revived by Muslims as part of the renewal of their religion: 'No peace agreement may be made [with Christians and Jews] except on the basis of submission evident by the payment of a special tax which gives them the right to live in peace with the Muslims. ... Never will they be forced to accept the Islamic faith. But they are not given a peaceful status unless they are bound by covenant with the Muslim community on the basis of paying the submission tax.'²²⁷ Other scholars, such as 'Abd al-

²²⁵ 9:5: "When the forbidden months are past, then fight and slay the pagans wherever you find them. Seize them, beleaguer them, and lie in wait for them in every stratagem of war. But if they repent and establish regular prayers and practice regular charity, then open the way for them. For God is Oft-Forgiving, Most-Merciful." 9:29: "Fight those who believe not in God nor in the Last Day, nor hold forbidden that which God and His Messenger have forbidden, nor acknowledge the religion of truth, from among the People of the Book until they pay the *jizya* and feel themselves subdued."

²²⁶ Quṭb, *Fi Zilāl al-Qur'ān*, v. 3, p. 1582; *In the Shade of the Qur'ān*, Salahi trans., v. VIII, p. 28.

²²⁷ Quṭb, *Fi Zilāl al-Qur'ān*, v. 3, p. 1620; *In the Shade of the Qur'ān*, Salahi trans., v. VIII, pp. 101-2.

Qādir, directly address the clear conflict between the affirmation of the classical doctrine and recognition of the United Nations and the present state system, arguing that Islam cannot recognize the United Nations charter as permanently binding, that it can only be honoured conditionally and because of necessity, that the exchange of ambassadors does not imply any guarantee of peaceful relations between countries, and that the enduring conflict between faith and unbelief results necessarily in an Abode of Islam and an Abode of War.²²⁸

Thus, insofar as our third position requires permanent recognition of the status and rights of non-Muslim political communities, it is important to note here that there are both classical and contemporary doctrines which reject such a possibility theoretically on the basis of a reading of what the authoritative texts require by way of advancing the spread of Islam and obedience to Islamic law in this world. There are ample reasons for a Muslim to say that he or she cannot affirm on a potentially permanent basis the right of non-Muslim communities to resist military actions by a legitimate Islamic state led by a legitimate ruler undertaken with the purpose of introducing Islamic rule.

Compatible Doctrines

By focusing on the political and communitarian nature of the demand of loyalty, we have come up against a series of Islamic injunctions and values which appear to be incompatible with citizenship in a non-Muslim state. However, regardless of how loudly or consistently these previous statements are proclaimed, they are not the sole or final words on the subject. The nature of Islamic legal discourses indeed necessitates a certain conservatism, and in this case we should not expect to find in either classical or contemporary texts adhering to the juridical tradition bold statements affirming the virtue of aiding unbelievers or parity between their interests and those of Muslims, but nonetheless in the details of certain *fiqh* micro-discourses one finds that 'it creatively responds to the socio-political dynamics of society placed within a specific historical context. ... This creative process is expressed primarily through the subtleties of language, and hence, unless one focuses on the details of the juridical linguistic practice,

²²⁸ 'Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, p. 185.

one would not be able to notice, much less appraise, the dynamics of the legal discourse.²²⁹ In what follows, I will argue that one finds in one such micro-discourse, namely that on the strictly-held Islamic obligation to uphold oaths, promises and contracts, including with non-Muslims, an important resource for grounding the level of loyalty to a non-Muslim state required of non-Muslims.

The most prominent contemporary advocate of the notion that Muslims can fully and without contradiction embrace their citizenship in European countries has written that 'contracts determine our status, fix our duties and rights and direct the nature and scope of our actions. Once agreed, the terms of a covenant should be respected and if there is a point which seems to work against Muslim rights – or even their conscience as Believers – this has to be discussed and negotiated since Muslims are, unilaterally, not allowed to breach a treaty.'²³⁰ Ramadan argues further that 'millions of Muslims have tacitly or explicitly recognised the binding character of the constitution or the laws of the country they enter into and then live in. By signing a work contract or asking for a visa, they acknowledge the validity and authority of the constitution, the laws and the state all at once.'²³¹ He concludes from this a robust and principled position of political obligation to non-Muslim states of citizenship:

One can then see that it is clearly in the name of faithfulness to the Islamic teachings of *Sharī'a* and *fiqh* that Muslims can live in the West, and that it is their duty to respect the law of the country. In other words, Islamic law and jurisprudence *order* a Muslim individual to submit to the framework of positive law in force in his country of residence in the name of the tacit moral covenant which already underlies his very presence. To put it differently again, *implementing the Sharī'a*, for a Muslim citizen or resident in Europe, is explicitly to respect the constitutional and legal framework of the country in which he is a citizen. Whereas one might have feared a *conflict of loyalties*, one cannot but note that it is in fact the reverse, since faithfulness to Islamic teachings results in an even more exacting legal *implementation* in the new environment. *Loyalty to one's faith and conscience requires firm and honest loyalty to one's country*: the *Sharī'a* requires honest citizenship within the frame of reference constituted by the positive law of the European country concerned.²³²

²²⁹ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: CUP, 2001), pp. 322-3.

²³⁰ Ramadan, *To be a European Muslim*, p. 162.

²³¹ *Ibid.*, p. 164.

²³² *Ibid.*, p. 171-2. Emphasis in original.

In what follows, I examine further this idea of contract in classical and contemporary juridical works. The question to be addressed here is to what extent the duty to uphold contracts can ground compatible responses to the specific demands of civic loyalty as I characterise them.

1. The *amān*: Foundation for a Social Contract of Civic Loyalty

A series of Qur'ānic verses exhort Muslims to honour any contract (usually '*ahd*' or '*aqd*', sometimes *mīthāq*) into which they enter:

'It is not righteousness to turn your faces towards East or West, but rather righteousness is ... to fulfil the contracts which you make.' [2:177]

'O you who have believed! Fulfil all contracts.' [5:1]

'Fulfil God's covenant when you have entered into it and break not your oaths after asserting them, for you thereby make God your guarantor.' [Q. 16:91]

'Fulfil every contract for contracts will be answered for [on the Day of Reckoning].'
[Q.17:34]

'It is those who are endued with understanding that receive admonition, those who fulfil the covenant of God and do not violate their agreements.' [13:19]

There is also a famous *ḥadīth* reported through multiple chains (*ḥadīth mutawātir*) and in multiple forms about the sinfulness of breaching contracts: 'When God gathers all earlier and later generations of mankind on the Day of Judgement he will raise a flag for every person who betrays a trust (*ghādir*) so it might be said that this is the perfidy of so-and-so, son of so-and-so.'²³³

In addition to these texts which deal generally with the status of promises and contracts there are a number of revelatory texts which apply this duty to the context of military conflict with non-Muslims. Verse 8:72 (discussed also in the previous chapter on migration) speaks of those who failed to join the Islamic community through migration:

²³³ Muslim, *Ṣaḥīḥ*, Kitāb al-jihād wa al-siyar.

‘If they [Muslims living amongst non-Muslims] seek your aid in religion, it is your duty to help them, except against a people with whom you have a treaty.’

A *ḥadīth* reported in Muslim’s *Ṣaḥīḥ* (but apparently not in Bukhārī) applies the principle of upholding promises provides to non-Muslims not to fight them to a personal level. It is reported that a Companion of the Prophet, Ḥudhaifa ibn al-Yamān said, ‘nothing prevented me from being present at the Battle of Badr except this incident: I came out with my father Ḥusail to participate in the Battle but we were caught by some Qurayshi unbelievers. They said: “Do you intend to go to Muḥammad?” We said: “We do not intend to go to him but we wish to go back to Medina.” So they took from us a covenant in the name of God that we would turn back to Medina and would not fight on the side of Muḥammad. So when we came to the Messenger of God and related the incident to him he said: “Both of you proceed to Medina. We will fulfil the covenant made with them but seek God’s help against them.”’,²³⁴

Although the episode does not deal with a contract with non-Muslims arising as a consequence of legal residence, it seems a perfect example of the justification of some Muslims refraining from fighting non-believers because of a promise made to them. The fact that the *ḥadīth* is situated during the lifetime of Muḥammad (when there can be no question about a Muslim’s fealty to the leader of the community and his obligation to participate in *jihād*) can only add to its potency as a guide for Muslim behaviour in non-apostolic times.²³⁵

Jurists from across the Sunni schools are quite clear that contracts made with non-Muslims are as morally binding as those made with Muslims. Muslim behaviour in a non-Muslim state is generally treated in relation to the legal concept of *amān*, the formal

²³⁴ Muslim, *Ṣaḥīḥ*, Kitāb al-jihād wa al-siyar, bāb al-wifā’ bi-al-‘ahd.

²³⁵ Note however that Nawawī does not consider this *ḥadīth* to be constitutive of a general rule about keeping promises to desist from *jihād*, but rather an isolated pragmatic decision taken by the Prophet so that it wouldn’t be said about his companions that they don’t keep contracts. (Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (Beirut: Dār al-Qalam), v. 6, p. 386.) Note also that there is extensive juridical discussion about expiating oaths and also about the invalidity of oaths or contracts to perform something forbidden or desist from something obligatory.

guarantee of security from a potentially hostile entity which is a form of contract imposing obligations on both sides. Jurists are unanimous in holding that the enjoyment of *amān* imposes on the Muslim certain moral and sometimes legal obligations to the non-Muslim entity in question.²³⁶ Sarakhsī declared that ‘it is abhorred for a Muslim who requests an *amān* from them [by swearing] on his religion to deceive or betray them, for treachery [*ghadr*] is forbidden in Islam. The Prophet said: “He who betrays a trust will have a flag stuck in his anus on the day of judgement so that his betrayal may be known.”’²³⁷ The Ḥanbalī Ibn Qudāma agrees with, and in fact goes beyond, the Ḥanafī position:

Whoever enters the land of the enemy under an *amān* shall not cheat them in transactions. [This] is forbidden, because they only gave the *amān* under the condition of refraining from deceit or betrayal, and of his [guarantee of] security to them from himself. Even if this [contract] is not explicitly pronounced it is still binding because it is presumed. For this same reason, whoever comes to one of our lands from one of theirs under an *amān* and betrays us thereby violates his contract. So if this is established then it is not permitted [for a Muslim] to betray them, because this is deceit [*ghadr*], which is not permitted in our religion. The Prophet said: “Muslims are bound by their terms.” [*Al-muslimūn ‘inda shurūṭihim.*] If a Muslim under an *amān* steals, cheats or borrows something from a non-Muslim and then flees to *dār al-Islām* then if the non-Muslim goes there under an *amān* Muslim authorities are obligated to provide for the return of his property as if he had taken it from a Muslim.²³⁸

Note a number of additional elements to this basic position, most importantly: (like many Western doctrines of political obligation) a recognition of tacit agreements, the usage of parity and reciprocity as operative ethical values, as well as the legal point that Muslim authorities may in fact enforce the rights of non-Muslims.²³⁹

²³⁶ See ‘Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, p. 160.

²³⁷ Al-Sarakhsī, *al-Mabsūṭ*, v. 10, 105.

²³⁸ Ibn Qudāma, *al-Mughni*, v. 13, 152-153.

²³⁹ The Ḥanafī school is known for putting a greater emphasis on territoriality than other schools. They will often argue that Muslims are bound morally by the principles of Islamic law and ethics, but that Islamic courts can not claim jurisdiction over what happens in non-Muslim lands. This means that, unlike the Ḥanbalī position quoted here, most Ḥanafī jurists will not hold Muslims legally (as opposed to morally) responsible for what they do in non-Muslim countries. Thus, betrayal or fraud is a sin but not a crime, and Sarakhsī says it is ‘abhorred’ for a Muslim to act in this way but refuses to prescribe an earthly punishment.

For most contemporary Islamic scholars, the question of general political obligation to a non-Muslim state falls under the rubric of the duty to uphold contracts, including the duty to obey laws relating to war. Once a Muslim has accepted the security of a non-Muslim state he is bound to follow all of its laws, including paying taxes that contribute to general social welfare.²⁴⁰ In one fatwa, a scholar responds that Muslims should continue to obey the law and pay taxes to the American government even during a war against a Muslim country because there is a general obligation to abide by the laws of one's country, and because 'falling in trouble with the law is worse than the fact that part of your taxes is used by the government to display some sort of anti-Islam campaigns, such as giving full and blind support to the Israeli atrocities in Palestine.'²⁴¹ There are at least two interpretations of such a position: On one reading, it could be seen as part of the Sunni tradition of quietism developed as an ideology of political obligation to tyrannical regimes during centuries of unjust rule in Muslim countries. This tradition is summed up by the popular proverb: 'Better one hundred years of tyranny than one day of civil unrest [*fitna*].' This first interpretation gives a Muslim reasons to act in accordance with his civic duties, but not reasons to *choose* or *endorse* such duties as a liberal regime would impose. Furthermore, it is not clear that the reason for obeying laws stems from a recognition of the moral status of other citizens, of the rights of the wider society or of the legitimacy of the regime. It is consistent with a purely instrumental, self-regarding attitude of judging what is in the best interests of the Muslim community.

On a different reading, it could be seen as an attempt to balance ethical obligations, concluding in this case that the duty to uphold a contract is greater than the duty not to contribute proportionally to an unjust policy. This is akin to another traditional Sunni position, a rival to the above one: 'There can be no obedience to man

Interestingly, and importantly for the question of justifying liberal freedoms for Muslims, they also apply this attitude to the enforcement of the penal code for moral crimes: 'they are not bound by the laws of Islam while in the abode of war' (al-Sarakhsī, *al-Mabsūṭ*, v. 10, 105).

²⁴⁰ This principle, however, as strong a genuinely ethical motivation as it is as for acting in accordance with liberal laws, should not be mistaken for a genuine affirmation of those laws, for it is equally binding in conditions of injustice. In fact, the argument often surfaces in discussions of how Muslims should respond to injustice in their host countries, for example American support for Israel or its own wars in Muslim countries. 'Are Muslim citizens of these countries allowed to pay taxes that go towards such activities?' is a common question to muftis. That many 'neo-traditional' scholars (such as those cited by the popular Islam Online website) argue they are is no indication of an overlapping consensus on substantive questions of justice.

²⁴¹ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=70581.

[lit: a created being] in disobedience to God [lit: the Creator].’ This second interpretation invites a certain interrogation of one’s political regime in light of one’s other, metaphysically-derived, ethical commitments, not dissimilar from the form of comparative political theory developed in this thesis. Thus, in another fatwa, Qatari scholar ‘Alī Muḥyī al-Dīn al-Qara Dāghī argues that the duty not to lie obligates a Muslim to pay taxes to a non-Muslim state, but that the duty ‘to abide by the laws of the country [only holds] so long as they do not contradict the Laws of God. If there is such a contradiction, no one should be obeyed at the expense of disobeying God.’²⁴² This approach, when resulting in the endorsement of performing civic duties, is obviously more indicative of a genuine overlapping consensus than the above quietist approach because it involves a judgement that those duties are either reasonable or at least not objectionable from an Islamic standpoint. Of course, this position results in problems of its own, namely that Muslims will not endorse liberal citizenship as such but rather assume a ‘line-item’ approach of picking and choosing which laws do not involve ‘disobedience to the Creator’

This is not a problem that can be resolved definitively. While liberal doctrines of civil disobedience might support Muslim refusal in some cases – say refusing to comply with the French or Turkish headscarf ban – such doctrines do not constitute a general acquiescence to a private veto over every law. But we should not be distracted at the moment by this wider question of political obligation. Part of what we are seeking to establish by addressing liberal citizenship question by question in this thesis is whether any individual basic obligation of citizenship involves such ‘disobedience to the Creator.’ What I believe the Islamic insistence on adherence to contracts shows, however, is precisely that justice in general applies across religious differences: in principle, Muslims are required to regard duties arising out of contracts with non-Muslims as binding unless the duties involve performing a prohibited act; paying taxes²⁴³ and in general following

²⁴² www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=35886.

²⁴³ The question of paying taxes arises here as an example of following the laws of a state and regarding the other as worthy of justice, for example, by not cheating or deceiving the state simply because the state is non-Muslim. Arguments for paying taxes because they contribute to good civic ends will be discussed in the chapter on recognition and solidarity.

the laws of a non-Muslim state which protect the rights of non-Muslims are not presumed *in themselves* to involve disobedience to the Creator.

On this chapter's narrower question of loyalty in wartime, however, Muslim jurists are able to speak more precisely. It is quite clear for the majority that this duty to honour contracts (*al-wifā' bi-al-'aqd*) and to abide by conditions freely endorsed (*al-muslimūn 'inda shurūṭihim*) overrides for many jurists any general duty to contribute to an Islamic polity's military efforts against a state of residence. Indicative here are the juridical treatments on the behaviour of Muslim prisoners. Note how seriously (the Shāfi'ī) Nawawī takes the act of agreeing to conditions:

If they capture [a Muslim soldier] then he is obligated to flee as soon as he can. If they free him without condition then he is obligated to try and kill them because they are unbelievers with no guarantee of security. But if they free him on the condition that he is under a guarantee of security [*amān*] from them, then they are also under a guarantee of security from him. If they guarantee his security and ask for a guarantee from him then it is forbidden for him to kill them or steal their property on the basis of what the Almighty has said: "O you who have believed! Fulfil all contracts." [5:1] But if they violate their guarantee to him then he may do so as well to them. If they free him under a guarantee of safety but without asking for one themselves, then even in this case the majority say that they are still under such a guarantee on his part because of their placing him under a guarantee.²⁴⁴

Ibn Qudāma advances a similar position with the addendum that even the condition to remain in the country rather than return to the Islamic polity must be honoured, again 'for the Prophet said: "Muslims are bound by their conditions." [*al-muslimūn 'inda shurūṭihim*]' ²⁴⁵ While the jurists in question do not seem to address directly the obligations of Muslims residing or visiting non-Muslim countries for other purposes than war towards the war effort of a Muslim polity, the only reasonable interpretation is that if the above applies to prisoners during wartime then how much more so to non-prisoners and non-combatants who reside or enter there willingly under an *amān*? The duty to honour contracts, even tacit ones, is binding on all Muslims, and entering a non-Muslim

²⁴⁴ Al-Nawawī, *al-Majmū'*, v. 21, p. 130. 'Abd al-Qādir also reports this position as an object of general consensus in Sunni fiqh. (*Fiqh al-aqallīyyāt al-muslima*, p. 167.)

²⁴⁵ Ibn Qudāma, *al-Mughni*, v. 13, 184-5.

land is only done under *amān*, which is regarded as a contract including amongst its conditions the obligation to do no harm to non-Muslim interests. If a Muslim decides that it is his duty to serve in a *jihād* or otherwise advance Muslim interests over non-Muslim ones then jurists (as we saw with the Sarakhsī quote in the previous section) require that he first renounce his *amān* as a way of advising non-Muslims honourably of his intentions.

This value, articulated deeply and widely in the classical legal tradition, is the most common Islamic justification for honouring non-Muslim interests while residing in non-Muslim lands. The European Council for Fatwa and Research

prescribes adherence to what has been demonstrated in the texts of the Book and the sunna and has been agreed upon by the jurists by way of loyalty to the terms of the contract of *amān* and the conditions of residence and citizenship in the countries of Europe in which they live. Amongst the most important things which are required of them are: 1. That they consider the lives, property and honour of non-Muslims to be inviolable according to the requirements of the contract under which they entered these countries and remained residing in them, for God has said: "Fulfil every contract for contracts will be answered for [on the Day of Reckoning]." [17:34] [and] 2. That they respect the laws of these countries which have sheltered them, and protected them and have made it possible for them to enjoy all the guarantees of a dignified life, for God has said: "Is there any reward for good but good?" [55:60],²⁴⁶

The vice-chairman of this Council in another text refers to the contemporary system of visas and naturalisation as the legal and moral equivalent of the former *amān* and exhorts fidelity to their terms.²⁴⁷

In fact, Mawlawī and Qaraḍāwī extract from the duty to honour contracts an even more robust position than my original wording, which refers only to a Muslim's behaviour when his state of citizenship itself is under attack. Qaraḍāwī argues that even when the duty of *jihād* does obtain it can be discharged in a variety of ways: 'As for

²⁴⁶ European Council for Fatwa and Research, *Fatāwa al-majmū'a al-ūla*, pp. 19-20. Prominent Lebanese Shiite jurist Grand Ayatollah Muḥammad Ḥusayn Faḍl Allāh provides a similar argument in *Al-Hijra wa al-ighṭirāb*, p. 80-1.

²⁴⁷ Faṣṣal Mawlawī, 'al-Mafāhīm al-asāsiyya li al-da'wa al-islāmiyya fī bilād al-gharb,' in Majdī 'Aqīl Abū Shamāla, ed., *Risālat al-muslimīn fī bilād al-gharb* (Irbid, Jordan: Dār al-Amal, 1999), p. 222.

Muslims living beyond the territories, they are required to back the wronged with all means possible. Thus, *jihād* is not confined to fighting in the battlefield. There are many forms of support. A Muslim can give out charity, boycott the products of the enemy, etc.²⁴⁸ Referring to the 2003 invasion of Iraq, a war which Mawlawī refers to as ‘aggression’ and thus potentially a situation of defensive *jihād* contribution to which would then be an individual obligation on all Muslims (*fard ‘ayn*), he writes that ‘Muslims are bound by conventions they concluded with these [non-Muslim invading] countries, such as nationality or residence. Therefore, they are exempted from fighting along with the Iraqi people, for Allah says “...if they seek help from you in the matter of religion then it is your duty to help them except against a folk between whom and you there is a treaty” [Q. 8.72]’; and that while Muslims may in no circumstances participate in that war on the non-Muslim side, ‘they are not [even] allowed to evade taxes [in their host countries] because of the conventions they concluded with these countries. Also, they are not allowed to attack the military institutions.’²⁴⁹ Thus, according to Mawlawī, not only do Muslim citizens of non-Muslim states have no right to sabotage their states’ efforts of self-defence, but they are not even allowed to damage the interests of their state of citizenship when it is engaged in what is regarded as a war of aggression against a Muslim country.²⁵⁰

²⁴⁸ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=51564>

²⁴⁹ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=97351>

²⁵⁰ It must be noted here, however, that his use of Qur’ānic evidence is rather creative. The verse in question reads in full: ‘As for those who have believed but have not migrated towards you, you owe no duty of protection to them until they have migrated. Yet, should they seek help from you in the matter of religion then it is your duty to help them except against a folk between whom and you there is a treaty.’ In other words, the verse refers to precisely the opposite circumstance from the one Mawlawī discusses: the duties of a Muslim state towards Muslims living amongst non-Muslims rather than Muslim minorities towards fellow Muslims in the abode of Islam. This verse has been traditionally read to impose upon the Islamic polity a duty of restraint towards non-Muslim states harbouring Muslim subjects if there is a treaty between them. The verse is uniformly read as relating to the Muslims who stayed behind in Mecca or remained Bedouins rather than migrate to Medina with the Prophet. See, for example, Fakhr al-Dīn al-Rāzī (d. 544/1149), *Mafātīḥ al-ghayb* (Beirut: Dār al-kutub al-‘ilmiyya, 1990), v. 8, pp. 165-168; al-Qurṭubī (d. 671/1273), *al-Jāmi‘ li aḥkām al-Qur’ān*, v. 8, p. 37; ‘Alī ibn Muhammad Khāzin al-Baghdādī (d. 741/1341), *Lubāb al-ta’wīl ma’ānī al-tanzīl* (Beirut: Dār al-kutub al-‘ilmiyya, 1995), v. 3, p. 69; Ibn Kathīr (774/1373), *Tafsīr al-Qur’ān al-‘Azīm*, v. 4, pp. 84-86; Quṭb, *Fī Zīlāl al-Qur’ān*, v. 3, pp. 1558-9; *In the Shade of the Qur’ān*, Salahi trans., v. VII, pp. 212-3.

Mawlawī, Qaraḍawī and the European Council for Fatwa and Research represent what we might refer to as the 'neo-classical' strand of contemporary Islamic ethical thought, insofar as they seek to articulate their positions as much as possible within the framework of the classical juridical tradition and thus claim a certain conservative authority and authenticity. As I have previously argued, the articulation of compatible positions from within such conservative or canonical discourses represents particularly strong evidence of a plausible overlapping consensus. In this case it seems quite clear that there are very stable Islamic foundations for a principled, religiously-grounded affirmation of our first statement of loyalty, the abstention from and repudiation of any acts damaging to one's state of citizenship when it is engaged in conflict even with a Muslim force or entity.

2. Defending a non-Muslim State

Because Muslims do not proclaim a general doctrine of pacifism, and because national defence is a legitimate state activity to which all citizens must in general be willing to contribute, I argued above that an Islamic doctrine of loyalty to a non-Muslim state would include the justification of direct contribution to self-defence efforts when the aggressing force is a non-Muslim one. Such a position was not generally advocated by the classical jurists, who held that it is generally impermissible to contribute to the military strength of non-Muslims, and is on that basis often rejected by contemporary Muslim scholars such as Topoljak or those following fundamentalist schools. A rare exception was the early (8th century) jurist al-Thawrī who argued that it was permissible for Muslim prisoners of non-Muslims to fight the non-Muslim enemies of their captors, since all non-Muslims were enemies anyway.²⁵¹

It is not rare, however, for contemporary neo-classical scholars – some of whom hold that fighting fellow Muslims on behalf of non-Muslims constitutes apostasy – to assert that there is no moral dilemma in serving in non-Muslim armies against other non-Muslim armies. The closest that the authoritative texts come to addressing such a situation are the reports on the experiences of the Muslim community living in exile in

²⁵¹ 'Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, p. 170.

Abyssinia before Muḥammad's migration to Yathrib/Madina. This precedent we have seen introduced earlier in relation to the permissibility of residing in and submitting to the authority of non-Muslim states. The Christian king of Abyssinia, al-Najjāshī (the Negus), is often used as the paradigmatic non-Muslim but just ruler whom Muslims are commanded to honour with their loyalty. The canonical account of the Prophetic biography (the *sīra* of Ibn Ishāq) reports that during the Muslim stay in Abyssinia, 'a rebel rose to snatch his kingdom from him, and I never knew us to be so sad as we were at that, in our anxiety lest this fellow would get the better of the Negus, and that a man would arise who did not know our case as well as he did. We prayed to God to give the Negus victory over his enemy and to establish him in his own country. [When he was victorious] we lived in the happiest conditions until we came to the apostle of God in Mecca.'²⁵² While the Muslims in Abyssinia did not join the Abyssinian army and contribute directly to defence efforts, the implication is clearly that Muslims may form deep sympathies (expressed here through active prayer) with just non-Muslim states and rulers (the latter of which we may be tempted to compare to political systems), particularly in their conflicts with aggressors.

Yet, the contemporary statements permitting actual military service are not generally based on *positive* textual evidence of the permissibility of this, and are usually satisfied with noting the various restrictions on such service. In his book devoted entirely to Muslim minority issues, Qaraḍāwī simply remarks: 'Muslims are confronted with the question of mandatory military service in these countries, and there is no objection to this unless such a country declares war against a Muslim country.'²⁵³ In an internet fatwa (in response to a question posed by this author) he elaborates on this, naming three conditions on joining a non-Muslim army: '1. One should not take part in a war that goes against his belief and religion. 2. One should adopt Islamic morals of justice and equity and not to transgress against others. 3. One should practice da'wa (preaching Islam)

²⁵² Guillaume, *The Life of Muhammad*, p. 153. The sources hold that the same king later converted to Islam on the invitation of the Prophet.

²⁵³ Qaraḍāwī, *Fī Fiqh al-aqalliyyāt*, p. 25.

whether among his colleagues or among the soldiers of the enemy.’²⁵⁴ In the same response was included the view of another scholar, the Canadian Muslim Sheikh Ahmad Kutty, who likewise emphasized not the Muslim or non-Muslim character of the state but the ethical status of the war:

Muslims who are citizens are definitely allowed to serve in the armies of their own country, regardless of whether it is a Muslim country or predominately non-Muslim country. They are also allowed to fight wars that are legitimate and ethical. But they are not allowed to fight in a war of aggression; for all wars of aggression are unlawful in Islam. War in Islam is sanctioned only either in self-defense or to remove oppression and tyranny. So Muslim soldiers cannot fight in wars which are considered unjust and unethical. They can excuse themselves on grounds of moral conscience.

These positions represent a significant break with the juridical tradition they are supposed to represent both in content and methodology. As has been shown in this and the previous chapter, classical jurists were anything but indifferent to the identities of the various parties in a conflict or political situation; it was in fact largely this which determined the ethical status of wars and governments. Further, the classical doctrine of *jihād* allowed, even required, wars which would by today’s standards of international law be regarded as wars of aggression. The position that one’s willingness to participate in a war depends on the ethical status of that war, while tacitly suggesting that non-Muslim countries may be justified sometimes in engaging in war, seems to be approaching a suggestion that the Islamic doctrine of just war should not be expected to conflict greatly with non-Islamic ones. These views will be discussed in more detail in the following section.

The methodology developed in this thesis largely involves analysis of the types of reasons advanced for a position, that is, the methodology by which Islamic scholars arrive at positions. In the case of the positions here, the primary reason for holding that it is permissible to serve in a non-Muslim army is merely that this is not one of the things *specifically* forbidden by the revelatory texts. Thus, one can do whatever is not specifically forbidden, which in this case includes fighting brother Muslims, contributing to a war of aggression (i.e., violating a principle of *jus ad bellum*) or aggressing within war (i.e., violating a principle of *jus in bello*). The response to the variety of arguments against serving in a non-Muslim army – that it is wrong to add to the strength of

²⁵⁴ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp>

unbelievers, that one is not allowed to befriend or associate with them at all, that one cannot uphold the law of unbelief, that war is only just when it is to advance the cause of Islam, etc. – is one of silence rather than direct engagement or refutation. An explanation for this might lie in the fact that the scholars seem to see this question resolved by their broader understandings of just war and *jihād*. For scholars who genuinely assert an Islamic just war doctrine more reflective of contemporary international law than the classical Islamic doctrine, the question of serving in a non-Muslim army is obviously not as thorny as for those seeking to rehabilitate the classical doctrine. The specific arguments against serving in a non-Muslim army in any context are all pre-empted by the modernist rethinking of the *jihād* doctrine. In any event, regardless of the connection to wider beliefs on war, legitimating service in a non-Muslim army simply on the grounds that nothing in Islam forbids it is an acceptable form of the type of argument we are looking for: it is an Islamic argument (rather than an argument grounded in public reason), and it is principled. The only potential question relates to its plausibility: if we are aware of Islamic arguments against such service which rely on authoritative texts, then the Muslim believer looking for guidance may not be satisfied with anything less than direct refutation of the incompatible positions or at least similar citation of evidence.

There have been other attempts to deal with this question. In 1907 Rashīd Riḍā issued a fatwa on Russian Muslims participating in the Russo-Japanese War in which he did ‘not consider that fighting on behalf of the Muslims of Russia against Japan is disobedience to God [sin] nor forbidden by *sharī‘a*, and in fact may be one of the things rewarded by God if engaged in with the correct intention.’²⁵⁵ He proceeds to outline two different rationales for fighting in the Russian army which would qualify as correct intention. These qualify as Islamic arguments which we can analyse in terms of compatibility. The first is most obviously constitutive of a compatible position: ‘His obedience to the state protects his brothers from amongst the state’s subjects from any oppression or evil that may befall them if the state is an oppressive, autocratic one; it makes them equal to any other citizen in rights and privileges if it is a representative, just

²⁵⁵ Riḍā, *Fatāwā*, v. 2, 565.

state; and it benefits them in other ways if the state is in between.’ The concerns in this statement all relate to benefits that accrue to the Muslim community from participating in the war, and have nothing to do with either the rights or interests of the state of citizenship or the justness of the war in question. A concern with advancing the interests of Muslim communities is also central in the justifications of many contemporary scholars of Muslims serving in non-Muslim armies. The argument is that there may be a certain general communal interest (*maṣlaḥa*) in the performance of otherwise forbidden acts. In the fatwa cited earlier in which Qaradāwī declares fighting fellow Muslims on behalf of non-Muslims ‘unbelief,’ he goes on to say that Muslims should be willing to accept non-combatant positions to avoid *accusations* of ‘high treason’ which would ‘pose a threat to the Muslim community and also disrupt the course of *da‘wa*’ and that ‘individuals should not set their conscience at ease and refuse to participate in the war, if this will endanger the whole Muslim community. This is based on the juristic rule, which states that the lesser harm may be borne to prevent a greater harm, the private harm may be borne to prevent a general one and the right of the group takes precedence over that of the individual.’²⁵⁶ This *fatwā* is not directly relevant to our present discussion (since it deals with fighting Muslims which is uniformly held to be impermissible) but it serves as a more crude and obvious example of justifications for performing certain acts which are not actually arguments for an overlapping consensus because they still hold the acts to be wrong and unjust.

Thus, the concern is that Riḍā’s rationale might be read as implying more problematic positions, including: one, that if none of the benefits here described will in fact accrue to Muslims then there is no justification for aiding non-Muslims; two, that if the benefits accrue then Muslims are permitted to engage in whatever acts secure them, including unjust wars; and, three, that even if Muslims are permitted to join non-Muslim armies to secure benefits for themselves, there is no suggestion that the cause of the non-Muslim state is in itself just or reasonable. Thus, there might be a reading of Riḍā’s first

²⁵⁶ <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=52014>

rationale that sees it as either insufficiently principled or principled in the wrong way (i.e., only concerned with the interests of Muslims).

The case for the compatibility of Riḍā's rationale with a liberal conception of citizenship rests in his recognition of some states as 'representative and just'. This statement alone constitutes a major step towards an overlapping consensus in its suggestion that states might be at the same time non-Muslim and just, quite a break indeed from the implications of some jurists and thinkers we have encountered which equated non-Muslim states' unjustness precisely with their non-Muslimness. More specifically, however, he seems to be accepting the desirability of a social contract in which Muslims enjoy equality with non-Muslims in exchange for sharing the same duties. Even if his comprehensive motivations are the welfare of a given sub-state community, his longer-term means for increasing that welfare is precisely the greater integration of the Muslim population as citizens in a non-Muslim state. In terms of our interest in the specifically Islamic grounding of the desirability or acceptability of this type of social contract, we can infer a similar type of 'negative' or 'no prohibition [*adam al-tahrīm*]' justification that we found with Kutty and Qaraḍāwī: if there is nothing specifically contrary to Islamic requirements in a given act then it is in that way the object of an overlapping consensus. Note that this argument would also resolve the dilemma of dealing with the *fatwā* on its utilitarian interpretation from the previous paragraph: it doesn't matter if the jurist is advancing utilitarian or unprincipled reasons for doing something if he does not think that these are reasons for doing something that would otherwise be impermissible or sinful, as is the case with Qaraḍāwī's justification for taking non-combatant positions in wars against Muslim forces. The utilitarian justification can simply be an added benefit to one's conception of the good, but the legitimation of the act consists in the statement that nothing in the conception of the good contradicts it.

Riḍā also offers a second rationale for serving in a non-Muslim army which requires separate analysis:

The knowledge and practice of war remain amongst the most important facets of social life for human beings. Thus, if they are forbidden for a certain people then that people is weakened, and the weak are never but humiliated and degraded. It is thus better for Muslims who are subjects of those states that they participate like the ordinary people of those nations in the basic elements of social life, strengthened by their strength and made proud by their pride, rather than being weak and degraded by their religion, for Islam does not permit that its adherents chose weakness and subjugation over strength and pride. Thus, if they chose the latter [by not serving in the Russian army] they are incapable of preserving their religion. ... [We] advise Muslims to choose pride over humiliation whatever the source of pride and strength may be over weakness and consider that preserving Islam outside of its abode requires this.

The question to be addressed here is whether Riḍā's emphasis on strength and pride for Muslims, as well as military knowledge, is a questionable justification for discharging a civic duty. I noted earlier (in the section on incompatible responses to this question) the response of Topoljak, which is that 'participation in the army of a non-Muslim country with the intention of training and gaining fighting skills is permitted, even required.'²⁵⁷ He gives the examples of those Muslims who had been trained in non-Muslim armies but later helped used those skills in the wars in Bosnia and the Caucasus, and in fact cites this *fatwā* by Riḍā. What is problematic about Topoljak's argument are the auxiliary beliefs by which they are legitimated: namely, that Muslims ought not be citizens of a non-Muslim country if the Islamic state exists, that there is a duty to prepare for *jihād* in the classical sense and that Muslims are not supposed to strengthen non-Muslims if they can help it. For Topoljak, serving in a non-Muslim army is justified by the principle of necessity (*ḍarūra*) as the only way of acquiring the skills to discharge a duty which is directly hostile to the interests and rights of a non-Muslim state, analogous perhaps to Marxists arguing that workers may serve in a capitalist army as the means of acquiring skills and knowledge necessary for revolution, and even a further step away from compatibility from Qaraḍāwī's principle of utility/interest (*maṣlaḥa*).

For Riḍā, despite some similar use of language, it appears that the benefit in question is quite different. He speaks generally in terms of 'strength' (*quwwa*) and 'pride' (*'izza*) without referring, as does Topoljak, to *jihād* or to the acquisition of these qualities

²⁵⁷ Tūbūlyāk, *al-Aḥkām al-siyāsiyya*, p. 113.

at the expense of non-Muslims or in order to use military skills against them. Thus, his understanding of these qualities does not seem to be incompatible with the aims of a liberal democratic society, if enjoying a status of equality in relation to non-Muslims constitutes 'strength' and 'pride'. It is likely that given his historical context, the alternative for him was a situation of hostility, marginalisation and suspicion. Countering this potentially destructive majority-minority dynamic through insisting on full inclusion and full participation is precisely the response that liberalism prefers minority communities to articulate.

There is another way in which comprehensive doctrines can articulate compatible responses, and that is by pointing out the benefits that accrue to a conception of the good as a double-effect. Like the 'utilitarian' interpretation of Riḍā's first acceptable intention behind joining a non-Muslim army, this justification piggy-backs on the 'no prohibition' or 'no contradiction' justification. A holder of a comprehensive doctrine can first assert that there is no contradiction between a given demand and the comprehensive doctrine, or even articulate a compatible affirmation of the reasonableness of the demand, and then show how other benefits also accrue to the holder's pursuit of his private conception of the good as a double-effect of the given civic duty in question. Even though the citizen is affirming a civic duty for a different set of reasons than the ones for which it is required by the state, as long as these private motivations are not contradictory to or undermining of the legitimate rights and interests of the state (as is the Topoljak *jihād*-preparation motivation), there is no reason not to regard them as legitimate private, supplementary justifications for a citizen.

For example, there may be certain motivations for joining an army derived from individualist conceptions of the good, including the desire to achieve high physical fitness, the desire to develop or operate cutting-edge technology, the desire to enjoy the solidarity of a cohesive organisation, the desire to achieve a certain self-image or self-esteem, the desire to acquire martial skills, the desire to exercise authority over other people, the desire to acquire for free skills for application later in the labour market, or the desire for a challenging and gratifying career. One can also see how the activities of a military may advance the values of a range of comprehensive ethical doctrines. A rather bizarre but apropos case recently occurred within the Royal Navy, which in October 2004

allowed one of its technicians to be officially registered as a Satanist and enjoy the right to engage in certain religious rituals while on board ship. According to the individual in question, his decision to enter the armed forces was a direct consequence of his comprehensive beliefs: he found that service in the military was one way of acting on his comprehensive belief in vengeance.²⁵⁸ Communitarian conceptions of the good may also provide citizens who belong to minority groups with motivations for joining their state's military forces. Minority communities in the United States and Israel, for example, have found military service as a path to acceptance by the wider national community and a means of communal advancement. While the goods aspired to should be the unconditional right of citizens rather than conditional upon (especially voluntary) military service, this is another example of a non-public reason which is clearly compatible with the demands of citizenship.

The motivation of serving one's country may co-exist with all of these private motivations in a variety of ways – from benign indifference to unquestioned affirmation to equal fervour – but the liberal state can hardly insist that it is a basic civic duty to perform other basic civic duties for the sole reason that they are duties or for the same reasons that make them duties. In all of these cases, citizens find that the activities they engage in as citizens are activities they want to engage in *anyway*, and thus can affirm the demands of a liberal state as acceptable from within their comprehensive doctrines. Given that they find the general aims of the military, and the internal rules and practices, not in contradiction with any of their comprehensive beliefs, and that their aims do not contradict those of a well-ordered society, one might say that this is a possible path to an overlapping consensus. I wish here to suggest a clear analogy between these motivations and Riḍā's three justifications of service in a non-Muslim army: as something which might earn Muslims equal treatment in a non-Muslim democracy, as a way of acquiring the military knowledge which Islam prescribes, and as a path to communal strength and pride. They are compatible motivations because, even though there is no direct consideration of the interests of the non-Muslim community, all of these goals are themselves consistent with the aims of a liberal society (i.e., a Muslim can both pursue these aims without violating any of the legitimate interests of a non-Muslim society and

²⁵⁸ See news.bbc.co.uk/1/hi/uk/3948329.stm.

he can hold these motivations *alongside* a recognition of non-Muslim rights without incoherence or self-contradiction), and because they presume the desirability of integration into that community.

Perhaps the objection can still be made that a true overlapping doctrine on the question of contributing to the self-defence of one's state must include (whatever else it includes by way of supplementary beliefs) the belief that one's fellow citizens' interests are legitimate and important to the person in question, and that this is, at least partially, *why* he serves in a military. This belief was accounted for to a certain extent in the discussion on contracts. A fuller account will require entering into the more complex area of Islamic doctrines of just war. This is, as noted above, precisely where many contemporary Muslim jurists place the present question – in the context of their general views on just war. For many of them, serving a non-Muslim army is not a discrete technical question, as it may have been for the classical jurists, but related to their modernist doctrine of *jihād* as a purely defensive war. This shift to a more universal just war doctrine based on conditions which apply to both Muslims and non-Muslims, is a far more stable and substantive foundation for an overlapping consensus than a technicality.

3. Permanent Recognition of non-Muslim States

Verse 8:61 of the Qur'ān reads: 'If they incline towards peace, then incline to it as well and place your trust in God.' The precise character of the ideological demand made by liberalism on Muslim citizens is summarised in a virtuoso way in Sayyid Quṭb's commentary on this verse:

I have dwelt rather extensively on the provisional nature of the rule outlined in this verse, which requires the Prophet and the Muslims to reciprocate any inclination to peace by the unbelievers. My aim is to clarify a certain aspect of confusion that arises from the spiritual and intellectual defeatism reflected in the work of many of those who write about Islamic *jihād*. Such people feel the pressure of modern values that prevail in international relations. Lacking a clear understanding of Islam as they are, they find it too much for the divine faith to adopt a single and permanent approach towards all humanity, giving all people a choice between three alternatives: acceptance of Islam, payment of *jizya* or being at war with Islam. ... Such writers try to impose a different interpretation on Qur'ānic statements and *aḥādīth* so that they can be seen to be in line with the situation in our present world with all its pressures on contemporary Muslims. They find the single approach of Islam and the three choices it offers too hard to swallow. Such

writers often interpret statements that have a provisional nature or qualified application as final, permanent and having general and universal application. When they tackle the final statements they interpret these in the light of those provisional ones to which they have applied a final import. Thus, they come up with the idea that Islamic *jihād* is merely a defensive operation to protect Muslim people and their land when they are attacked, and that Islam will always accept any offer of peace. To them, peace is merely a state of non-belligerence which, in practical terms, means that the other camp will not attack the land of Islam. According to their understanding, Islam should shrink inside its borders at all times. It has no right to call on others to accept its message or to submit to God's law, unless such a call takes the form of a speech, statement or bulletin. When it comes to material forces, Islam has no right to attack the ruling forces in *jāhiliyyah* societies unless it first comes under attack, in which case Islam is right to defend itself.²⁵⁹

Affirming the 'defeatist,' 'defensive' interpretation of the Islamic doctrine of *jihād* according to which non-Muslim states have the right to equal recognition with Muslim states is precisely what is required for a Muslim citizen of a liberal democracy in order for it be to be claimed that her conception of the good provides her with reasons to endorse the liberal conception of citizenship in a plural society. This topic of Islamic theories of international relations really requires separate monographic treatment on its own, but in what follows I will attempt to discuss briefly the grounds on which a Muslim citizen might affirm the legitimate rights of self-defence of her non-Muslim state of citizenship.

There is no lack of verses in the Qur'ān which exhort believers to adopt an attitude of mutual tolerance and non-aggression with unbelievers. In addition to the verse quoted above, one finds:

'Fight in the cause of God those who fight you, but do not transgress limits, for God does not love transgressors.' [2:190]

'And fight them until there is no more tumult or oppression and there prevail justice and faith in God, but if they cease let there be no hostility except to those who practice oppression.' [2:193]

'If they withdraw from you but fight you not and (instead) send you (guarantees of) peace, then God opens no way for you (to war against them).' [4:90]

'Do not say to him who offers you a greeting of peace, "You are not a believer," seeking the chance goods of the present life.' [4:94]

²⁵⁹ Quṭb, *In the Shade of the Qur'ān*, Salahi trans., v. VII, pp. 190-1; *Fī Zilāl al-Qur'ān*, v. 3, p. 1546-7.

'God does not forbid you, with regard to those who do not fight you for your faith nor drive you from your homes, from dealing kindly and justly with them. For God loves the just.' [60:8]

Whereas the classical doctrine articulated no absolute right to recognition for non-Muslim polities, 'modernist authors underline the defensive aspect of *jihād*, and hold that *jihād* outside Islamic territory is only permitted when the peaceful propagation of Islam is being hindered or when Muslims living amongst unbelievers are oppressed.'²⁶⁰ The main questions for our purposes relate to the types of arguments advanced by these 'modernist' or 'reformist' Muslim jurists and ideologues in favour of a doctrine of *jihād* as defensive war: whether any of the doctrines articulated by these thinkers do in fact overlap with modern standards of permanent recognition, and whether the reasons given for restraint and tolerance meet the ethical standards which I have been developing in this thesis.

The most frequent argument for a 'defensive' conception of *jihād* is in two parts: First, that the vast majority of Qur'anic verses on fighting and warfare prescribe a doctrine of defensive war and that the more 'aggressive' verses are best understood in the context of the hostility faced by the first generation of Muslims from the pagan Arabs rather than a general attitude to non-Muslims or the higher stage of God's revelation on the ethics of war, abrogating the chronologically-previous 'peaceful verses'. Second, that the basic 'positive' duty underpinning *jihād* is not the duty to eradicate unbelief or remove non-Islamic forms of rule, but rather the duty of *da'wa*, i.e., to call non-Muslims to the universal message of Islam. Thus, should the right to proselytise be unmolested in non-Muslim lands and there be an accord of mutual non-aggression, then there are no grounds for aggression against such non-Muslim states.

It was noted above that the modern fundamentalist argument for a Qur'ānic foundation to 'offensive' *jihād* as expounded by Quṭb, Mawdudi and others, rests on the theory of *marḥaliyya*, that is, of successive stages to God's injunctions on war with later verses establishing the final guidelines on war and relations with unbelievers and in the

²⁶⁰ Rudolph Peters, *Jihad in Classical and Modern Islam* (Princeton: Markus Wiener, 1996), p. 122.

process abrogating the previous, temporary verses. In contrast, modernist scholars tend to examine all of the verses on a particular subject matter and attempt to arrive at an interpretation based on consideration of all of them together in their textual as well as historico-revelatory context.²⁶¹ Following this methodology, a wide range of Islamic scholars in the modern period have been swayed by the large number of verses, such as those cited above, which enjoin restraint, reciprocity, and faithfulness to contracts, and declare that the basic principle (*al-aṣl*) of relations between Muslims and non-Muslims is peace and invitation to Islam.²⁶² The argument is usually advanced not that there is a conflict between the verses which needs to be explained or mitigated, but rather that they (and the historical behaviour of the Prophet and his successors²⁶³) all affirm the same essential message, especially when the more 'aggressive' verses are read not in isolation but as part of longer passages: that violence is only justified in response to aggression, oppression or treachery, such as that faced by Muḥammad and his followers from the pagan Arabs and Byzantine and Persian empires.

In relation to the verses from *sūra* 9, modernist authors are quick to point out that the entire chapter clearly deals with the specific antagonism between the early Muslim community and the pagan Arabs, as the classical exegetical tradition unambiguously asserted, and in particular the pagans' violation of existing treaties with the Muslim

²⁶¹ See Maḥmūd Shaltūt, *al-Qur'ān wa al-qitāl* (Beirut: Dār al-Fatḥ, 1983), pp. 29-30, for this characterization of the preferred method of Qur'anic exegesis, which he refers to as '*tafsīr mawḍū'ī*' (thematic exegesis).

²⁶² Shaltūt, *al-Qur'ān wa al-qitāl*, p. 89; Muḥammad Shadīd, *al-Jihād fī al-Islām* (Cairo: Mu'assasat al-Maṭbū'āt al-Ḥadītha, n.d.), p. 119; Muḥammad Abū Zahra, *al-'Alaḳāt al-duwāliyya fī al-Islām* (Cairo: al-Qawmiyya, 1964), p. 47; 'Alī 'Alī Maṣṣūr, *al-Sharī'a al-Islāmiyya wa al-qānūn al-duwālī al-'ām* (Cairo: Lajnat al-khubarā', 1971), p. 378; 'Uthmān al-Sa'īd al-Sharqāwī, *Sharī'at al-qitāl fī al-Islām* (Cairo: al-Zahrā', 1972), p. 33; Wahba al-Zuhaylī, *al-'Alaḳāt al-duwāliyya fī al-Islām* (Beirut: Mu'assasat al-risāla, 1981), p. 93; Louay Safi, *Peace and the Limits of War* (London: IIIT, 2003), p. 27; 'Abd al-Qādir, *Fiqh al-aqallīyyāt al-muslima*, p. 36.

²⁶³ Some theorists cite the example of Yemen which did not oppose the Islamic call and to whom the prophet sent missionaries rather than armies. 'The relationship of the Abode of Islam with any society which has an opposing doctrine but opens a space for invitation to Islam, and does not obstruct its missionaries or the freedom to choose Islam, is a political stance preferred over one of aggression.' ('Abd al-Qādir, *Fiqh al-aqallīyyāt al-muslima*, p. 43).

polity.²⁶⁴ Even within this context, Muslims are still exhorted to observe the standards of restraint and reciprocity called for in chronologically previous chapters. Verse 9:4 declares that '(The treaties are not dissolved) with those pagans with whom you have entered into an alliance and who have not subsequently betrayed you, nor aided anyone against you. So fulfil your obligations with them until the end for God loves the righteous.' The surrounding verses are replete with descriptions of the pagans' perfidy (9:8: 'If they get the better of you, they will not observe towards you any bond or treaty.') and excesses (9:13: 'Will you not fight a people who violated their oaths, plotted to expel the Messenger, and were the first to attack you?') in such a way that both treats this as the ultimate *casus belli* and not the pagans' mere paganism (9:12: 'If they break their oaths after their covenant and revile your religion, *then* fight the leaders of unbelief so they may desist.'). and clearly gives the passages a contextual and contingent character. Arguing, as the fundamentalists do, that this *sūra* establishes a *basic* principle of antagonism between believers and unbelievers requires not only extracting verses from their unambiguous context but, in certain cases, citing only half or partial verses. The general principle of mutual restraint and recognition between Muslims and others is, thus, according to the modernists, the manifest implications of the entirety of revelation on the subject of fighting, including verses from *sūra* 9 and other chapters.

The modernist doctrine of just war, however, is not quite so simple as a bare doctrine of mutual non-aggression. For the Qur'ān-based arguments for restraint are often embedded within a broader argument about the universal nature of the Islamic mission and the duty of Muslims to proselytise. For these theorists, their emphasis on the importance of *da'wa* exempts them from any charge of passivity, defeatism or insularity. For not only do they match the 'fundamentalists' in their insistence on bringing the message of Islam to unbelievers in all places and at all times, but 'protecting the right to

²⁶⁴ Shaltūt, *al-Qur'ān wa al-qitāl*, p. 89; Shadīd, *al-Jihād fī al-Islām*, p. 129; Abū Zahra, *Al-'Alaḳāt al-duwaliyya*, p. 90; al-Sharqāwī, *Sharī'at al-qitāl*, p. 43; Muḥammad al-Būfī, *Jihad in Islam: How to Understand and Practise It* (Damascus: Dār al-Fikr, 1995), pp. 93-7; Zuḥaylī, *al-'Alaḳāt al-duwaliyya*, pp. 95-6; Safī, *Peace and the Limits of War*, p. 10; 'Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, p. 36.

call to Islam' figures as a legitimate *casus belli* for some of these writers.²⁶⁵ There is enough ambiguity in the formulation and use of this expression to call for its examination in terms of the aims and methodology of this thesis, which I do below. First, however, it is important to show how relating the ethics of war to the duty to proselytise enables modernist theorists to argue for a defensive conception of *jihād*.

The argument advanced is that *da'wa*, rather than some categorical duty to overturn man-made laws or systems of rule, is the value ultimately behind the offensive *jihād* doctrine from which modernist theorists are eager to distance themselves. Once this is asserted, then it is further argued that the crucial variable in determining the stance toward a non-Muslim polity is its policy towards Islamic missionaries. Protection of the freedom to preach the Islamic message guarantees it absolute immunity from hostility.²⁶⁶ More importantly, it is an article of faith for modernist theorists that *da'wa* is a strictly non-coercive enterprise by its very nature and essence.²⁶⁷ These theorists further argue, therefore, that if the ultimate value and goal is the spreading of the Islamic message, then all political acts and state policies must be judged in terms of their impact on this project. It is thus frequently pointed out that not only is coercion strictly antithetical to the nature of religious conversion, but that proselytizing flourishes best in an atmosphere of peace and charity, and that a posture of hostility towards non-Muslim communities can only harm the long-term interests of *da'wa* if it serves to alienate non-Muslims from the essentially just and peaceful Islamic message.²⁶⁸ Reciprocating recognition is thus both a

²⁶⁵ Shaltūt, *al-Qur'ān wa al-qitāl*, p. 89; Zuḥaylī, *al-'Alāqāt al-duwaliyya*, p. 31; 'Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, p. 44.

²⁶⁶ 'Islam, after the spread of its call around the world and the reaching of its message to all mankind, does not forbid in reality the establishment of nations and states with a variety of legal systems, if they preserve a posture of neutrality towards the Islamic call, or made treaties of friendship and peace with Muslims, and of non-aggression with Muslim states. These states enjoy *absolute* freedom and the right to exist with whichever legal systems they want: because the Qur'ān recognizes the existence of multiple communities [“*‘ālamīn*”]: “Blessed is he who revealed the Proof/Discernment [Qur'ān] to his servant that he may be a Warner for all people.” [25: 1] and forbids Muslims to take oaths through deception in order to violate contracts, and to fall into injustice, indecency, wickedness and sin through fearing the proliferation of nations or forbidding that one nation should become more numerous than another.’ (Zuḥaylī, *al-'Alāqāt al-duwaliyya*, p. 18.)

²⁶⁷ Zuḥaylī, *al-'Alāqāt al-duwaliyya*, p. 94.

²⁶⁸ 'Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, pp. 37-44.

categorical duty based on divine command as well as in the enlightened self-interest of Islamic communal aims.

About this method of argumentation for a principle of behaviour through Qur'anic exegesis and derivation from an important religious value and objective (in this case, *da'wa*), there is no question of its general ethical nature or 'sincerity'. Rather, what is left to be examined is whether what is understood by 'self-defence' is more or less that which is understood in international law or whether the Islamic modernist notion of 'defending the Islamic mission' opens the way for justifying wars which are not strictly speaking defensive. The question is essentially whether there is a genuine distinction between the notion of *da'wa* as non-coercive employed by the modernists and that employed by fundamentalists such as Sayyid Qutb, for whom 'defending the Islamic mission' and 'protecting freedom of religion' serve as euphemisms for overturning secular political systems.²⁶⁹

It is quite clear that most of these authors are not, in fact, developing a 'crypto-fundamentalism' which uses 'defending the Islamic mission' as a euphemism for establishing an Islamic social order. Most of them are, in fact, anxious to compare the 'true' *jihād* doctrine to international law.²⁷⁰ Zuḥaylī in particular seems anxious to avoid any ambiguity in his just war doctrine and how it differs from classical ones:

²⁶⁹ Qutb, for example, writes that 'Islam never seeks converts through compulsion or threats or pressure of any kind. It deploys facts, reasoning, explanation and persuasion,' yet he maintains this view only by not considering the imposition of an Islamic legal-political order to be a form of coercion, but rather the liberation of man from the tyranny of man-made laws: 'Modern man has been deprived of the right to choose and live other than according to what is dictated by the state, using the full force of its colossal machinery, laws and powers. People are today given the choice only to adhere to the secular state system, which does not allow for a belief in God as the Creator and Master of the world, or to face annihilation.' Further on: 'Islam also advocates *jihād* to guarantee the right and freedom of expression and propagation of the faith. In order for individual human beings to make the choice of whether they believe in Islam or not, nothing should stand between them and God's Message or in any way prevent them from having full and free access to it. Of the many obstacles that stand between Islam and people, foremost are the tyrannical political regimes that oppress and persecute religious believers. An objective of *jihād* is to establish the Islamic social order and defend it. It is an order that frees man from the tyranny of other men, in all its forms, by urging the submission of all to the one supreme Master.' (Qutb, *In the Shade of the Qur'ān*, Salahi and Shamis, trans., v. I, pp. 325, 329.)

²⁷⁰ 'All three of these circumstances which are demanded in order to protect the Islamic mission do not depart in practice from the rights of states recognized in modern international law, including the right to exist, the right to legitimate self-defence, the right to equality, the right to freedom, and the right to mutual respect.' (Zuḥaylī, *al-'Alāqāt al-duwaliyya*, pp. 32-3)

As for a non-Muslim nation which did not initiate hostilities, did not obstruct Islamic missionaries, and left them free to present their religion to whomever wishes: it is not permissible to fight them nor to sever peaceful relations with them. The guarantee of security [*amān*] between it and Muslims is firm [*thābit*], not based on a payment of money or a specific treaty, but because the basic principle [of relations with non-Muslims] is peace. The basic principles of international relations in Islam do not allow for war to be considered as a foundation of these relations, for this is not consistent with the sublimity of the Islamic mission and its universal inclination which is not realized except through peace.²⁷¹

Whether individual thinkers see defensive *jihād* as analogous to modern international standards, however, is not really the point. Let us assume that the thinkers in question are advancing a doctrine whereby a liberal state which protects the freedom of Muslims to call non-Muslims to Islam is immune from hostility. Thus, Muslim citizens of such states can refer to these doctrines and the Qur'anic verses on which they are based to justify their recognition of the right to exist of their specific states of citizenship. The problem to be discussed is that these doctrines would seem to justify in theory wars which respond to a non-Muslim state's actions against the Islamic mission which fall short of both aggression against another state as well as serious oppression against a domestic population. Such wars would thus not be wars of self-defence, wars of humanitarian intervention or even wars of Islamic revolution, but some under-determined fourth kind which seeks to create a space for the freedom to practice and proselytise Islam.²⁷² 'Abd al-Qādir, for example, uses a variety of expressions to describe actions or policies which nullify the state of mutual non-aggression, some of which are vague:

²⁷¹ Zuhaylī, *al-'Alāqāt al-duwaliyya*, p. 102. Further on (at p. 107) he makes explicit that this recognition is not based on the payment of some form of tribute, like the classical *kharāj* or *jizya*, which on my reading serves to ground his doctrine of recognition as a doctrine of *equal* recognition.

²⁷² It is not clear to me, however, that an individual Muslim believer must hold this belief as a concomitant pillar of a doctrine of *jihād* as defensive war. That is, while modernist theorists advance this belief consistently enough to warrant this discussion of it as part of a general modernist just war doctrine, it seems clear that a) their Qur'ānically based justification for reciprocating non-aggression is robust and categorical enough to provide sufficient grounds for Muslims wishing to recognize the existence of their non-Muslim state of citizenship; and b) the freedoms of worship and proselytizing guaranteed by liberal democracies can figure prominently in an Islamic justification of residence and integration in a non-Muslim state without the absence of those freedoms in another society necessarily resulting in a policy of belligerence.

‘seduction away from religion’ (*‘al-fitna ‘an al-dīn’*²⁷³), ‘barring missionary activities’ (*‘al-ṣadd ‘an al-da‘wa’*), ‘hostility towards religion or the Islamic state’ (*‘al-i‘tidā’ ‘alā al-dīn aw ‘alā al-dawla al-islāmiyya’*), or ‘violating treaties’ (*‘al-naqḍ li’l-‘uhūd’*). War can legitimately be waged for the purposes of ‘aiding the oppressed’ (*‘naṣrat al-mustaḍ‘afīn’*) or ‘removing those who do evil’ (*‘izālat al-ṭawāghīt’*²⁷⁴). Thus, for ‘Abd al-Qādir, while ‘it is the duty of the state to provide [missionaries] with everything which work in the field of proselytizing demands, including the preservation of peaceful relations between Muslims and others,’ he declares that ‘the country in question calls for war either by attempting to seduce these missionaries from their religion or to block their missionary activities. Then it is necessary to fight them for seduction away from religion is an assault on the holiest thing in human life.’²⁷⁵ A literal reading of this passage would seem to render a wide range of societies, such as the former Communist countries, vulnerable to hostility for reasons which liberalism would not regard as sufficient for hostile action. Thus, in this sense there is no shared conception of *jus ad bellum* with liberalism, but a shared notion that liberal democracies should be inviolable. Does this count for an overlapping consensus?

One might find troublesome about such a position two possible implications of it: first, that it might seem to imply certain fundamental attitudes towards non-Muslim societies which are in the long run incompatible with other professed attitudes of tolerance and recognition; second, that it might result in principled support for the policies of other (Muslim) states which contradict the aims of one’s (liberal) state of citizenship. The first concern is, more specifically, that this doctrine enshrines an inequality between Muslim and non-Muslim societies. Nowhere (in my reading) is there the suggestion that the right to proselytise is a universal right which would be guaranteed to non-Muslim missionaries in Muslim-majority societies. Similarly, while liberalism

²⁷³ ‘*Fitna*’ is a notoriously difficult concept to translation. It can mean trial or temptation, but also tumult, turmoil or sedition. In referring to Muslims living in non-Muslim states, it most likely invokes interference in the practice of Islam by non-Muslim authorities or majorities with the aim of seducing Muslims away from Islam or preventing them from practicing it in peace and security.

²⁷⁴ ‘*Ṭawāghīt*’ is the plural form of a noun which can mean evil, tyranny or even Satan.

²⁷⁵ ‘Abd al-Qādir, *Fiqh al-aqalliyyāt al-muslima*, p. 44.

would certainly be committed to the freedom to proselytise as a general principle, no liberal would consider military action as a proportionate response to the failure to guarantee such a freedom. Thus, the second concern that a Muslim citizen of a liberal democracy adhering strictly to the letter of the modernist *jihād* doctrine would find herself bound to support a *jihād* for the purpose of ‘opening’ a non-liberal, non-Muslim state to Islamic missionary activity, regardless of how this might affect the particular interests of her state of citizenship or the general interests of preserving international law.

Ultimately, however, I think these concerns, however reasonable it may be to press them vis-à-vis these doctrines *qua* doctrines of international relations (rather than doctrines of citizenship), go beyond what can be legitimately built into the relationship between a citizen and his state. For one, the concerns all relate to a Muslim citizen’s attitude towards *other* political communities; yet the wider principles of international relations are themselves controversial, vague and underdetermined. It is not obvious either what general principles of international relations a liberal state should be committed to or what specific policies are justifiable. A liberal state might choose to advance international principles of justice which diminish its own sovereignty; it might choose ad hoc alliances with other states for its own welfare; or it might prefer a policy of strict neutrality and isolation. Reasonable disagreement about these policies is the norm rather than a shared principle of citizenship. Beyond a concern with protecting its own vital interests, it is not clear why a state should concern itself with its citizens’ attitudes towards other states’ security as a necessary element of the basic social contract.²⁷⁶

Pressing the objection to a citizen supporting a war to open another, non-liberal, state to Islamic missionary activity would require doing so consistently. As I discussed earlier, the special identification of Muslim citizens with the global Islamic community

²⁷⁶ This discussion is separate from such problems as enforcing laws related to funding terrorist groups or international extradition agreements. For one, we are only dealing at the moment with *beliefs* related to just war, not specific actions in an armed conflict. Second, let us assume that laws which allow a state to punish a citizen for aiding a foreign terrorist group are legitimate; it is not obvious that what a person guilty of such a crime has done is violate his social contract with his specific state of citizenship or that it is either the liberal or non-Muslim character of this state which generates the conflict of loyalties for the citizen in question. Third, many Muslim theorists derive from the duty to abide by contracts with non-Muslim states a general duty to obey all the laws of that state and argue for a general exemption from the duty to join a *jihād*. Furthermore, the general obligation to aid beleaguered Muslims is often argued to be limited by verse 8:72: ‘If believers seek your aid in religion it is your duty to help them except against a people with whom you have a treaty of mutual alliance.’

can be treated as analogous to both the special bond ethnic or cultural minorities may feel with their co-members in other states, as well as the solidarity felt by communities joined together by shared ideological or moral commitments. Regarding an Islamic belief in the legitimacy of this type of *jihād* as something which negates an (otherwise) overlapping consensus, might require a similar judgement on American citizens who support national, ethnic or religious movements for the altering of governments or borders in such places as Ireland, Israel and the Balkans, or who have held sympathy for the replacement of oppressive foreign regimes with new ones (whether Marxist, democratic, or other) through force. It is thus quite clear that modernist doctrines of *jihād* which argue for the absolute recognition of states which allow for unrestricted missionary activities and do not aggress against Muslim communities provide sturdy and principled foundations for loyalty to a non-Muslim state of citizenship which concomitant arguments for the lack of similar inviolability for states without the freedom to proselytise do not render void or insufficient.

Conclusion

In this chapter we have built on the discussions of permanent residency begun in the previous one. Whereas the discussion of residence established the permissibility of living under the authority of a regime which guaranteed Muslims religious freedom, the discussions of contract and just war in this chapter have sought to add a further dimension of moral obligations towards a state of citizenship. Alone, neither of the discussions is sufficient for an Islamic affirmation of the conception of society required by political liberalism. The first discussion on *hijra* and residence leaves the possibility of Muslims residing as permanent resident aliens. This latter discussion on contract, loyalty and recognition leaves the possibility of justifying only temporary, ad hoc contracts with non-Muslim states. However, articulating all of the individual positions examined in the past two chapters in tandem, as part of a single, coherent doctrine, brings us a considerable distance towards a *general* social contract with a non-Muslim state. What we have shown to this point is that there are firm, religiously-grounded values and principles, some with deep roots in the classical juridical tradition, for affirming

residence in a liberal democracy and recognizing the legitimate rights to existence and security of such a state which meet the requirements of an overlapping consensus.

Much of what we have already encountered in Islamic discourses seems richer and more comprehensive than the conclusions I have allowed myself to draw from them. The treatment of contract on the part of some Islamic theorists seems to allow for much more than pacts of mutual non-aggression, and our brief look at the modern discourse on *jihād* seems to go much deeper than principles of international relations since modern theorists treat *jihād* as a problem of how to fulfil Islam's inherent universalism and how to deal with error and falsehood in the world. Yet what would be consistent with all that I have demonstrated in the previous two chapters is also arguing against the political integration of Muslims into a non-Muslim state and the formation of meaningful bonds of civic solidarity with non-Muslim fellow citizens. The relationship established to this point, while contributing to a thicker doctrine of citizenship, is best described as one of clientage between a non-Muslim state and its Muslim subjects. Such a relationship is not without its moral duties and bonds, but lacks any commitment to positive common civic purposes with non-Muslim fellow citizens separate from attempts to convert them. In my second chapter, I referred to a certain 'conception of the other' based on recognition of fellow citizens who do not necessarily share one's comprehensive metaphysical beliefs as requisite for a true affirmation of citizenship in a liberal democracy. I now turn to address what an Islamic affirmation of such a conception might require.

Chapter Five

Recognition of and Solidarity with Non-Muslims

‘Let not the believers take the infidels for their allies in preference to the believers – for who does this has nothing to do with God – unless it be to protect yourselves from them in this way. God warns you about Himself and the final goal is to God.’
[Qur’ān, Sūrat Āl ‘Imrān (3): 28]

‘It may be that God will grant love and friendship between you and those whom you know hold as enemies for God is All-Powerful, and God is Oft-Forgiving, Most-Merciful. God does not forbid you from dealing justly and equitably with those who do not fight you for your religion nor expel you from your homes, for God loves the equitable.’
[Qur’ān, Sūrat al-Mumtaḥana (60): 7-8]

Can Muslims regard non-Muslims as political equals, contribute to their welfare and join them in common civic purposes?

Much of what was argued in the previous chapter implied an attitude of recognition on the part of Muslims towards non-Muslims, insofar as we found Muslim jurists arguing that contractual bonds between Muslims and non-Muslims bestow upon the latter strict claims against the former. Affirmation of the inviolability of non-Muslim property, honour and life as a basic religious duty arising from contract between two parties goes a long way towards grounding the recognition of equality in the public sphere, which is a basic requirement of citizenship in a pluralist society. The topics covered in the previous chapter do not, however, necessarily lead to a doctrine of civic solidarity, understood as a willingness to contribute to common social and political goals in a condition of equality. Such willingness, I argue, would suggest a more robust recognition of the other as a civic equal than does the mere recognition of the society/state as having valid claims on subjects enjoying its protection. The latter could conceivably be achieved under a rubric of relations between distinct communities or polities, as it has indeed traditionally been conceived in Islamic juridical and political theories. Most of what I argued in the previous chapter could be coherently advanced alongside a view that Muslims in non-Muslim liberal democracies are something akin to resident aliens rather than citizens. This would certainly be the best characterization of the assumptions of the classical jurists we surveyed in that chapter. It is thus clear that a satisfactory affirmation of the ‘conception of the other’ for which I argued in the second chapter must include recognition of the validity of justice across groups in a plural

society and the acceptability of contributing to the general welfare of such a society through such acts as paying taxes and participating in non-Islamic governments. It is important to note here, however, that while I am attempting to collapse the problem of recognition into concrete, almost technical questions, my belief is that these questions are the best way of revealing which concrete political practices are consistent with more abstract ethical, even metaphysical, beliefs about the other.

My discussion of recognition and solidarity will be broken down in the following way: I will first examine the recognition of difference as such in Islamic discourses. A general doctrine of recognition I argue would consist of two main pillars: first, recognition of a right not to be Muslim and some acceptance of pluralism and difference as a potentially permanent feature of social life; and, second, an affirmation of the application of justice across communities. Together, these two pillars would contribute towards a positive conception of recognition and respect for non-Muslims, beyond mere tolerance in the 'negative' sense. Building on this, a doctrine of solidarity with a non-Muslim polity further requires an affirmation of the legitimacy of Muslims actively contributing to the welfare of such societies and participating in their political life. To avoid confusion, it is not my argument that the belief must be held that such contribution and participation are part and parcel of an Islamic conception of the *good life*, or that they are aspects of virtue. Such assertions would be a very thick instance of an overlapping consensus; but what the comparative theorist in this case is interested in establishing is merely an Islamic foundation for the belief that contributing to the welfare of non-Muslim societies and participating in their political life are permissible and not in conflict with any core Islamic conception of the good or of justice. This is sufficient to demonstrate a 'conception of the other' compatible with liberal conceptions of citizenship.

Incompatible doctrines

We have encountered in the previous two chapters the view that Muslims should not contribute to the strength, wealth or well-being of non-Muslim societies and polities, nor should they make alliances or friendships with them. This view, often thought to be an injunction based on a number of Qur'anic verses and *ḥadīth* reports, has been used to

ground the positions that Muslims should not reside in non-Muslim countries, or if they must that they should not contribute to such countries' self-defence, even against other non-Muslims. Such a view is the precise antithesis of the doctrine of recognition and civic solidarity that concerns us in this chapter. 'Abd al-Qādir, for example, points to verse 5:51 ('O you who have believed, do not take Jews and Christians as friends (*awliyā'*: friends, allies, patrons) for they are friends to each other. And who becomes friends with them becomes one of them. Verily God does not guide a wrong-doing people.') and objects to professional and specialist employment in the West for 'work amongst the transgressors'²⁷⁷ constitutes strengthening them, supporting them, preserving and upholding what they believe in, which is truly the very meaning of loyalty²⁷⁸, which God forbade [in 5:51].'²⁷⁹

Other Qur'anic verses are often used to the same effect. *Sūra* 60 (*al-Mumtahana*) deals entirely with relations with non-Muslims and the first verse has been used in tandem with 5:51

O you who have believed! Do not take My enemies and your enemies as friends, offering them affection while they have denied what Truth has come unto you, driving away the Messenger of God and yourselves because you believe in God your Lord. If you have gone forth to struggle in my cause and longing for my blessing do you secretly hold affection for them? For I know all that you may conceal as well as what you do openly. And who does so has erred from the path. [60:1]

Other similar verses can be found in *sūras* 3, 4, and 5, the latter of which is held by Islamic scholars to be amongst the final revelations, which gives it greater authority for the adherents of the theory of progressive revelation (*marḥaliyya*):

'Let not the believers take the infidels for their allies in preference to the believers – for who does this has nothing to do with God – unless it be to protect yourselves from them in this way. God warns you about Himself and the final goal is to God.' [3:28]

²⁷⁷ *Al-mukhālifūn*, signifying those who diverge, oppose or transgress, is his standard epithet for non-Muslims, rather than *kuffār/kāfirūn* or *mushrikūn*.

²⁷⁸ *Muwālāh*, meaning friendship, loyalty or patronage.

²⁷⁹ 'Abd al-Qādir, *Fiqh al-aqaliyyāt al-muslima*, p. 154.

‘Oh you who have believed! Do not take for your intimates other than your own kind. They will continually cause you turmoil and love anything that will distress you. Loathing has already come forth from their mouths and what is concealed in their breasts is even greater. We have made the signs clear to you if you will use your reason.’ [3:118]

‘Those who take unbelievers as friends rather than believers: Are they looking for honour amongst them? All honour is with God.’ [4: 139]

‘O you who have believed! Do not take as friends unbelievers rather than believers. Do you want to give God a clear proof against you?’ [4:144]

‘Can you see many of them allying with those who disbelieve? So vile indeed is what their passions make them do that God has condemned them and in suffering shall they remain. For if they truly believed in God and the Prophet and all that was bestowed on them from on high they would not take unbelievers for their allies, but many of them are iniquitous.’ [5:80-81]

The precise scope of the concept of *muwālāh* [friendship, patronage, alliance, loyalty] used in most of these verses is inherently vague. Does it cover all aspects of amicable relations between Muslims and non-Muslims or is it limited to very specific legal or political arrangements which might come at the expense of the Muslim community? Are these general injunctions [*aḥkām ‘āmma*] for all times and places, or to be read in their revelatory context [*asbāb al-nuzūl*] of Muḥammad’s struggles with non-Muslim communities and polities in the 7th century? These are subtle scholarly questions, but what is clear is that Muslim writers in various times and places clearly have seen these verses as ruling generally on the question of forming bonds of solidarity with Muslims in a non-Muslim state. Exegetes such as al-Qurṭubī and Ibn Kathīr spend very little time in specifying the range of relationships covered by the verses prohibiting *muwālāh* with non-Muslims. If they do it is usually by way of enumerating synonyms or other general concepts like ‘keeping company’ (*muṣāḥaba*), ‘befriending’ (*muṣādaqa*), ‘mutual consultation’ (*munāṣaḥa*) or ‘revealing the intimate concerns of believers to them’ (*ifshā’ aḥwāl al-mu’minīn al-bāṭina ilayhim*).²⁸⁰ Modern commentators (as well as Muslim Qur’ān translators) also treat the term generally and as a synonym for loyalty and

²⁸⁰ See Ibn Kathīr, *Tafsīr al-Qur’ān al-Azīm*, v. 2, p. 390.

friendship. ‘Abd al-Qādir, who attempts to appropriate the classical jurists, defines the concept in terms of ‘affection,’ ‘help,’ ‘alliance,’ ‘friendship,’ ‘following,’ ‘being neighbours,’ ‘proximity,’ etc.²⁸¹

Treating these verses and this concept as bearing on the question of citizenship would thus indeed appear to have some justification from our standpoint since our understanding of citizenship and solidarity covers the range of meanings of *muwālāh*: we are concerned with both the legal and political agreement to accept a non-Muslim state’s protection and patronage, and the bond of mutual concern between fellow citizens, which we might indeed consider to be a form of alliance or civic friendship.

For those that read the *muwālāh* verses as having both a literal and a general application, and thus discouraging all forms of solidarity with non-Muslims, these verses are underpinned, clarified or explained primarily by three ethico-political principles. The first is that putting one’s trust in unbelievers is a form of rejection of God and His promises. This is one of the interpretations of 3:28 given by Sayyid Quṭb:

In these verses we have a statement confirming the denunciation of those who have been given a share of God’s revelations, but who have nevertheless turned their backs and refused to submit their disputes for arbitration according to God’s book which lays down God’s code for human life. They have rejected the Divine code which regulates the life of the universe as well as human life. [There is] a stern warning in the current passage against the believers forging an alliance with the unbelievers. Since the unbelievers have no power to control the universe, and since all power belongs to God, He alone is the guardian of the believers and their allies. How, then, can a believer be justified in forming an alliance with the enemies of God? True faith in God cannot be combined with an alliance with, or patronage of, the enemies of God. Hence, we have this very stern warning in verse 28, making it absolutely clear that a Muslim disowns Islam if he forgoes a relationship of alliance or patronage with someone who refuses to acknowledge God’s revelation as the arbiter in life. He has cut himself off from God.²⁸²

In effect, Quṭb thus views this question as covered by the general injunction to ‘rule by what God has sent down’ (5:45), which includes for him and his Islamist disciples the duty of Islamising all political institutions through the implementation of Islamic law. Living willingly in a state dominated by non-Muslim laws and seeking protection and

²⁸¹ ‘Abd al-Qādir, *Fiqh al-aqaliyyāt*, p. 626.

²⁸² Quṭb, *In the Shade of the Qur’ān*, Salahi and Shamis, trans., v. II, pp. 62-3.

welfare from it is a rejection of God's sovereignty and power whether that state consists of a Muslim or non-Muslim majority. For a ruler or ruling class to implement laws other than what God has revealed can only be a rejection of those laws and the God who revealed them; similarly, for individual Muslims to intentionally seek out the protection and friendship of those who so reject God, particularly when an Islamic alternative exists, can only be such a rejection. It will be remembered here from the third chapter that these very verses (3:28, 3:118, 5:51, 60:1) were viewed by Mālikī and modern Wahhabi jurists as ruling also on the question of residence for the very reasons given here: Living in a state implies accepting its protection and thereby committing oneself to certain duties of restraint towards it, as well as the inevitable contribution to its welfare. If one views these as an impermissible form of *muwālāh* with unbelievers, then all three aspects of citizenship addressed in this study (residence, loyalty and solidarity) are struck down by a single principle and set of verses.

The second principle derived from these verses is that alliance and friendship with unbelievers is a betrayal of Muslims and the Islamic community on earth. This theme is particularly salient given the generally accepted context for the revelation of the verses in question, which is the betrayal of the Islamic community by the 'hypocrites,' those who pretended to be Muslim before the fall of Mecca but in fact maintained loyalties and allegiances with their Christian, Jewish and erstwhile pagan brethren.²⁸³ Given our discussions in the previous two chapters of doctrinal opposition to Muslims aiding or strengthening non-Muslim polities, particularly at the expense of a Muslim one, this theme does not need to be dwelled upon here.

The third principle is that unbelievers are inherently untrustworthy and will ultimately seek to subvert Muslim faith. This explanation for the prohibition on friendship and solidarity with non-Muslims is advanced on the basis of verses 3:118²⁸⁴ and 5:51 in particular. Ibn Kathīr says simply, commenting on 5:51, that Jews and Christians are the enemies of Islam and its adherents, and allies of one another in this.

²⁸³ See Riḍā, *Tafsīr al-Manār*, v. 3, pp. 276-7, for a summary of the various theories of the context of revelation for 3:28 and 60:1.

²⁸⁴ See Qutb, *In the Shade of the Qur'ān*, Salahi and Shamis, trans., v. II, pp. 179-181.

Ultimately their promises and treaties are untrustworthy.²⁸⁵ Naturally, the liberal rejoinder is that the neutral, liberal state which does not seek to use state power to advance a conception of truth will pose less of a threat to Muslim aims than states committed to a doctrine of truth in direct opposition to Islamic claims. This argument is convincing to many Muslims²⁸⁶, but certainly not to all. Some contemporary scholars do not regard the modern freedoms guaranteed by liberal regimes, and especially the aspiration to neutrality of some liberal states, as a mitigating factor on non-Muslim hostility to Islam. In fact, it is coherently argued that liberal states may in fact be worse for Muslims than avowedly Christian or Jewish states because they relegate religion to the private sphere, banish God from public morality, and give protection to immoral acts, or because of the special regard for 'the people of the Book' accorded Christians and Jews in the Qur'an.²⁸⁷ These discourses point towards an interest in an overlapping consensus with other conservative, religious doctrines in modern secular societies on either general inclinations (more religion in public) or specific points of doctrine and policy (resistance to legal protection for homosexuality, opposition to abortion, securing funding for religious schools, etc.), given the belief that secularism poses a greater threat to Islam than other faiths.²⁸⁸ This latter position is in fact a mid-way position between the various liberal ones and that of Quṭb, who naturally rejects the entire idea of shared interests with non-Muslim believers:

²⁸⁵ See Ibn Kathīr, *Tafsīr al-Qur'ān al-Aẓīm*, v. 3, p. 120.

²⁸⁶ See Khaled Abou El Fadl, 'Muslim Minorities and Self-Restraint in Liberal Democracies,' *Loyola Law Review* 29.4 (1996), pp. 1525-1542, where he argues for the superiority of liberal institutions for Muslim minorities. His argument proceeds on the basis of public reason and Muslim self-interest, so is not an example of 'Islamic reason' providing grounds for an overlapping consensus. Rāshid al-Ghannūshī, a Tunisian Islamist opposition leader in exile in Britain, also frequently makes the point that it is secularism and liberalism which have made the West hospitable to Muslims and not Abrahamic fraternity. (See al-Ghannūshī, 'al-Islām fi'l-gharb wa 'alāqātuhi bi-al-anẓima al-gharbiyya,' in *Risālat al-muslimīn fī bilād al-gharb*, p. 90, 115.)

²⁸⁷ In addressing the question of whether secular, 'post-Christian' societies are no longer subject to the regard doctrinally due them as 'Scripturary' (*kitābī*) societies, 'Abd al-Qādir argues interestingly that the secular nature of the political system is irrelevant because Moses and Jesus were only sent with temporary and partial messages anyway, so the abandoning of them is not something to worry about from an Islamic perspective: 'Jesus was not sent to fix relations between rulers and the ruled, or to bring a law or identify the lawful and the prohibited.' Thus, present-day secularism is not a departure from Christianity but a consequence of it. ('Abd al-Qādir, *Fiqh al-Aqaliyyāt*, pp. 23-5.)

²⁸⁸ See remarks by Qaradāwī in www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=8514.

A Muslim is required to show tolerance in dealing with the people of earlier revelations, but he is forbidden to have a relationship of alliance or patronage with them. His path to establish his religion and implement his unique system cannot join with theirs. No matter how kind he is to them, they will never be happy to implement his faith and establish his system. Nor will it stop them from entering other alliances to scheme against and fight the Muslims. It is too naïve to think that we and they can ever join forces to support religion in general against unbelievers and atheists. For whenever the fight is against Muslims, they join forces with the unbelievers and atheists.²⁸⁹

What both positions share, however, is a view that both the general society and the state are the locus for the implementation of the Islamic good life in a way which requires a particular form of cooperation and trust with others. The trust sought is not a form of mere promise-keeping, but a shared commitment to upholding substantive moral values and combating behaviours which contradict them. The radicals and the conservatives differ primarily in terms of the comprehensiveness of consensus they demand. For Qutb, such a level of consensus on the meaning and requirements of the Qur'ān is required that very few actual Muslims, and almost no Muslim states, are worthy of solidarity. For the traditionalist conservatives, their Islamic project overlaps sufficiently with the aims of many non-Muslim conservatives to see them as trustworthy allies, at least against some forms of secularism. Thus, we have a family of positions which caution against solidarity with non-Muslims on the basis of a liberal social contract: a) non-Muslims will ultimately always seek to oppress and undermine Muslims when they have the chance and are thus untrustworthy; b) true solidarity requires a shared commitment to eradicating unbelief and un-Islamic forms of power and thus only true Muslims are trustworthy; c) a Muslim must live in a social environment where immorality is actively discouraged and divine authority can be acknowledged and thus only non-Muslims who share these beliefs can be trusted.

Compatible doctrines

There is an inherent tension, even in the most orthodox sources, between the above refusal to form close bonds and relationships with non-Muslims, and the Islamic

²⁸⁹ Qutb, *In the Shade of the Qur'ān*, Salahi and Shamis, trans., v. IV, p. 144. 'Abd al-Qādir also insists that the tolerance and decent treatment required towards Jews and Christians does not imply the possibility of a 'single front to resist atheism.' (*Fiqh al-Aqaliyyāt*, p. 646.)

inclination to universalism, which involves seeing all non-Muslims as potential Muslims. Indeed, this tension between antipathy and openness is generated by a single belief, that of the superiority of Islam. Thus, even apart from specific ideological and legal elaborations on the duty of 'tolerance' or on the precise political guarantees to non-Muslims within a single state, it is obvious that because of the centrality of *da'wa* to Islamic discourses an attitude of mere mistrust, antipathy or indifference towards non-Muslims will never be a fully Islamic position. Or as Fayṣal Mawlawī demands: 'Can you call someone [to Islam] while harbouring feelings of hatred towards him?! Or making plans to fight him?'²⁹⁰

As alluded to in the introduction to this chapter, I will construct an Islamic doctrine of recognition of and solidarity with non-Muslims in two parts. A doctrine of recognition, I submit, would itself consist of at least two beliefs: a) that religious difference is a normal, tolerable social condition and thus that there is a right not to be Muslim, and b) that there are obligations of justice which apply across this difference. I will conclude this section with a discussion of role of *da'wa* in legitimating an attitude of recognition towards non-Muslims, as well as alternative interpretations of the Qur'anic verses (3:28, 3:118, 5:51, 60:1, what I call the '*muwālāh* verses') encountered above. The second pillar, a doctrine of solidarity, will at this point – after our discussions of loyalty during wartime, the legitimacy of religious difference, and the bindingness of contracts – have a substantial foundation on which to build. Here I will focus on the permissibility of contributing to the general welfare of non-Muslims and the permissibility of participating in the political system of a non-Muslim society, which together I will regard as sufficient to establish an attitude of civic solidarity with non-Muslims.

1. Recognition

1. a. The inevitability of religious disagreement

Two points of Islamic doctrine are frequently invoked to imply a general Islamic doctrine of recognition of the other but are, in fact, insufficient for the requirements of citizenship in a liberal democracy. The first theme which will prove a red herring for us is the Islamic doctrine of ethnic, racial, tribal, national and linguistic equality. It is a

²⁹⁰ Mawlawī, 'al-Mafāhīm al-asāsiyya,' in *Risālat al-muslimīn fī bilād al-gharb*, p. 199.

mainstay of Islamic doctrine that no such differences of origin between believers are to be recognised. Verse 49:13, for example, proclaims ‘O mankind! We created you from a single pair of male and female and made you into nations and tribes that you may know each other. The most honoured amongst you in the eyes of God is the most righteous and pious. Verily God is all-knowing and informed of all things.’ The problem of course is that this position does not preclude a strict doctrine of inequality for non-Muslims.²⁹¹ The duty to ‘know one another’ does not extend necessarily to other religions or ethical doctrines, which would indeed provide a very powerful – almost Millian – argument for liberal institutions. In fact, it is clear how the verse might be enlisted for the justification of radical *inequality* between believers and unbelievers, albeit across ethnic divisions: ‘The most honoured amongst you in the eyes of God is the most righteous and pious.’ To be sure, liberal citizenship does indeed require the racial, ethnic and linguistic blindness that Islam exhorts, and thus we might expect believing Muslims to be particularly faithful adherents to liberal principles of racial and ethnic equality, but it requires more.

A second theme frequently surfacing in Muslim apologetic literature is Islam’s recognition of prior revelations and prophets in the Abrahamic tradition. A significant number of Qur’anic verses speak of the duty to recognise the practices of scripturary communities and such verses are frequently used to point to an Islamic tradition of religious pluralism and tolerance.²⁹² A frequent citation is verse 5:48:

And unto you we have revealed this Scripture in truth, confirming the scripture that came before it and guarding it in safety. So judge between them according to what God has revealed and do not follow their errors about what has come to you by way of truth. To each among you have We prescribed a law and a way. And if God had so willed he would have made you a single people, but (His Plan is) to test you in what He has given you; so strive to outdo one another in all virtues. The goal of you all is to God; it is He that will show you the truth of the matters in which you dispute.

The context for this verse, and others which speak of the inevitability of diversity within the Abrahamic family (2:62, 2:213, 4:163, 5:43, 5:47), is the Muslim response to the competing truth claims of the three monotheistic religions towards the end of

²⁹¹ Qaraḍāwī uses this verse to argue that Islam is open to all nations and peoples. He is silent, however, on whether this obligation extends to religious and ethical pluralism. (Qaraḍāwī, ‘al-Infitāḥ ‘alā al-gharb: muqtaḍayātuḥu wa shurūṭuḥu,’ in *Risālat al-muslimīn fī bilād al-gharb*, p. 13.)

²⁹² See in particular Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford: OUP, 2001).

Muḥammad's prophecy. Islamic law later extended privileges of limited self-government to Jewish and Christian communities, deemed Jewish and Christian women permissible in marriage to Muslim men, and, as noted in the previous chapter, allowed scripturaries to avoid war or conversion through paying tribute or the *jizya* poll-tax. By medieval standards, such policies constitute a tradition of relative inter-communal tolerance. Our problem, of course, is that it is not enough to establish a doctrine of merely *religious* pluralism that would ground recognition and tolerance on a common belief in God or, more narrowly, seek a coalition with 'the People of the Book' referred to in Islamic scripture.²⁹³ Such arguments are clearly insufficient within a liberal context which seeks to establish solidarity on the basis of shared citizenship independent of controversial metaphysical beliefs. Solidarity with non-Muslim but believing fellow-citizens in a liberal democracy not only says nothing about non-believing citizens but may in fact contribute to a coalition within a liberal democracy opposed to liberal institutions.

What is required is some reason to affirm tolerance towards non-Muslims entirely regardless of their religious beliefs, whether by identifying separate verses or by arguing that the verses which enjoin tolerance to fellow scripturaries or 'getting to know one another' across ethnic difference somehow imply the same for all humans, including unbelievers.²⁹⁴ A number of verses, particularly from the pre-*hijra*, Meccan period, speak of religious diversity in a way that does not presume religious belief or a monotheistic revelation in the Abrahamic tradition as a condition for recognition:

'If it distresses you that those who deny the truth turn their back on you, why then if you can go down deep into the earth or ascend a ladder to heaven and bring them a [more convincing] message [then do so, but remember] if God had so willed then he surely would have gathered them all under His guidance. So do not be one of the ignorant.' [6:35]

²⁹³ Consider 3:64: 'O people of the book! Come to that belief which we have in common that we may not worship none but God and not ascribe divinity to aught but him and that we shall not take human beings for our lords beside God.'

²⁹⁴ An example of this latter possibility is 'Abd al-Qādir's argument, introduced above, that the secularism of Western states does not negate the regard due them as Christian (or Jewish) since those prior revelations were not intended to provide for political and legal systems in the first place. Others cite 49:13 in the context of summoning to Islam in non-Muslim societies with the implication that they are content to understand the duty to 'get to know one another' as extending to religions or worldviews. (For example, Aḥmad Jā'illāh, 'Qawā'id al-ta'āmul bayna al-muslimīn wa ghayrihim fi'l-mujtama'āt al-awrubīyya,' and Mawlawī, 'al-Mafāhīm al-asāsiyya,' both in *Risālat al-muslimīn fī bilād al-gharb*, pp. 41-2.)

'The final evidence of all truth lies with God alone and had He so willed, He would have guided you all to truth.' [6:149]

'Had your Lord willed all those who live on the Earth would surely have attained to faith, so could you then compel the people to believe, despite the fact that no one can attain to faith except by God's leave and that He leaves this evil upon those who do not use their reason.' [10:99-100]

'If your Lord had willed he could have made mankind a single people, but they do not cease to disagree, except for those whom God has bestowed his mercy. And for this He has created them.' [11:118-119]

'Say: "O unbelievers! I do not worship what you worship and you do not worship what I worship. And never will I worship what you have worshipped, and never will you worship what I worship. You have your religion and I have mine!"' [109:1-6]

Other verses, often but not exclusively Meccan, refer again to differences between Muslims, Jews and Christians but speak of judgement belonging only to God in a way that could possibly apply to religious disagreement in general:

Because of this [the doubts amongst holders of prior revelations], call [to God] and stay on the straight path as you have been commanded and do not follow their whims, but say: "I believe in whatever revelation God has bestowed from on high and I have been ordered to bring about equity between you. God is our Lord as well as yours. We shall account for our deeds and you for yours. Let there be no contention between us. God will bring us together and to him is our final goal. [42:15]

Unto every community We have appointed ways of worship, which they ought to observe. Thus do not let them draw you into disputes but summon them all to your Lord. And if they try to argue with you say: "God knows best of what you do and God will judge between you on the Day of Resurrection with regard to that on which you were wont to differ." [22:68-69]

The Qur'an, in particular the chapters revealed before the *hijra* to Medina, during the first Meccan period, is indeed filled with verses describing Muḥammad as 'not a warden' or 'only a warner' to mankind (e.g., 4:80, 6:66-67, 6:106-7, 34:28, 42:48, 88:21-24), proclaiming that no one shall bear another's burden in the afterlife (6:164, 17:15, 34:25, 35:18, 39:7, 53:38), and that God will be the judge of matters on which mankind disagrees (3:55, 16:92, 16:124, 22:69, 39:3, 39:46, 3:55, 5:48, 6:164, 10:93, 16:124, 32:25, 45:17, 2:113, 4:141, 7:87).

The relationship of the Meccan verses to the entirety of the Islamic message is the subject of particular ideological controversy in Islamic polemics. On one extreme, at least one modern school of thought has based a theory of Islamic reformation for the modern era on the more spiritual and metaphysical, as well as socially accommodating, nature of the earlier Meccan verses.²⁹⁵ The more orthodox view, of course, represented in its most doctrinaire form by Quṭb's theory of *marḥaliyya*, is that God revealed the Islamic message to Muslims progressively and thus in the event of contradiction between Qur'anic verses, later revelations are presumed to have greater authority than, and will often be said to abrogate, earlier ones. Thus, the Medinan revelations which give guidance to Muḥammad as a statesman represent God's true intentions for Muslims as a political community, with all that that entails.

What makes the Meccan verses of particular interest for this thesis is not only that they are generally held to be more supportive of 'reformist' doctrines, but that they address life lived by Muslims in a minority context where access to state-coercive power is not expected. Furthermore, whereas the Medinan verses address inter-communal relations in a context where the dominant non-Muslim communities are Christian or Jewish, the Meccan verses address a situation where Muslims are dealing with polytheists with whom no religious affinity whatsoever is to be had. Thus, one need not adopt the controversial 'second message' doctrine of Ṭāha (which posits that the Meccan verses reveal the true nature of Islam as such) to entertain the idea that the Meccan revelations show a path to an authentic Islamic life in certain circumstances.

²⁹⁵ See Abdullahi an-Na'im, *Towards an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse: Syracuse University Press, 1990) and Mohamed Khalil, *Islam and Democracy: Religion, Politics, and Power in the Middle East* (Washington, DC: USIP, 1992), both of whom adopt the theory of a 'second message of Islam,' developed by the late Sudanese reformer Maḥmūd Ṭāha. This theory holds that the Meccan revelations, far from being superseded and abrogated by later verses, actually represent the highest and purest manifestation of Islam, to which Muslims are supposed to return after the need for the 'doctrinal' phase represented by the Medinan verses has passed. Importantly, these views are based partially on an interpretation of the legal theories of the 14th-century Mālikī jurist al-Shāṭibī, whom we shall discuss below in relation to the question of political participation. On Ṭāha's ideas see Mohamed Mahmoud, 'Mahmud Muhammad Taha's Second Message of Islam,' in John Cooper, Ronald L. Nettler and Mohamed Mahmoud, eds., *Islam and Modernity: Muslim Intellectuals Respond* (London: I.B. Tauris, 1998), pp. 105-128.

This seems to be the position of Yūsuf Qaradāwī, for example, who sees the ‘Meccan Qur’ān’ as containing the purest statement of Islam’s universal aspirations and thus openness to unbelievers.²⁹⁶ In addressing the question of Muslim residence in the West he cites 11:118 and comments that ‘whoever would wish to group all mankind into one religion or one sect it is as though he opposes divine will.’ He further cites 42:15 and 22:68-69 to justify his claim that ‘Islam takes an interest in all people without regard for their religion, whatever it may be.’²⁹⁷ Importantly, this concern is not grounded in a presumption of the *other’s* monotheism but exclusively in the *Muslim’s* monotheism: all souls belong to God and are thus subject to a certain regard and respect; the pious Muslim wants these souls to be saved but knows that their infidelity or belief, and ultimate judgement, is God’s will.

A believing Muslim, in short, has authentic and powerful reasons for regarding religious disagreement as a natural, divinely-ordained state of affairs, and for regarding pluralistic societies as the field of some of his most important religious activities, namely bearing witness to the Islamic message, summoning unbelievers to Islam, defending Islam’s virtues through reason and in good-will, and standing for justice. Clearly, such beliefs have been held to be compatible with a variety of political arrangements. Acknowledging that God may have ordained that some people will not believe and that there will always be communities of unbelievers in any society is not inconsistent with preferring a political system based on religious doctrines and giving social advantages to believers. The ‘pluralism as divine injunction’ alone is not a strong enough belief to result in a doctrine of liberal equality, particularly in a Muslim-majority society. However, in a Muslim-minority society, where liberal freedoms already exist and provide advantages to Muslim communities, the belief that living with non-believers is both God’s will and a prerequisite for performing certain acts vital to a virtuous life (calling to Islam, defending it in a rational manner, advocating justice) is an important pillar of a doctrine of citizenship in such a society.

²⁹⁶ Qaradāwī, ‘al-Infītāḥ ‘alā al-gharb: muqtaḍayātuḥu wa shurūṭuḥu,’ in *Risālat al-muslimīn fī bilād al-gharb*, p. 8.

²⁹⁷ Ibid., p. 28.

1. b. Justice across communities

That Muslims have reason to believe that sharing social space with non-Muslims is a permanent condition to be tolerated, or a necessity out of which virtue can be made, implies very little about the nature of relations between communities in that social space. It certainly does not imply that members of different communities have the same moral standing or that they are entitled to the same standards of treatment. Thus, as a second building block of our doctrine of recognition of the other, we are interested in exploring Islamic reasons for regarding relations with non-Muslims in a single society as relations of justice between equals.

The notion inherent in the last chapter's semi-technical discussion of contract is often addressed in Islamic discourses in a much more explicit, general and theoretical way. Numerous Qur'anic verses exhort believers to uphold justice (*'adl*) and equity (*qist*) in all cases, including with unbelievers:

Believers, be steadfast in upholding equity, bearing witness to the truth of God, even if it be against yourselves, or your parents and kin. Whether the person be rich or poor, God's claim takes precedence over the claims of either of them. Do not then follow your own whims lest you swerve from justice. If you distort the truth or decline to do justice, God is aware of all that you do. [4:135]

Believers, be steadfast in your devotion to God, bearing witness to the truth in all equity. Never allow your hatred of a people to lead you astray from justice. Be just, this is closer to righteousness and be God-fearing for surely God is aware of all you do. [5:8]

It may be that God will grant love and friendship between you and those whom you know hold as enemies for God is All-Powerful, and God is Oft-Forgiving, Most-Merciful. God does not forbid you from dealing justly and equitably with those who do not fight you for your religion nor expel you from your homes, for God loves the equitable. [60:7-8]

This is a general position that is universally affirmed, even by theorists whom we have used as exemplars of incompatible doctrines on other questions. Quṭb, quoting 4:135, remarks that 'the trust [Muslims] have been assigned is to maintain justice, in its absolute sense, in every situation. It guarantees justice between people, giving everyone, Muslim or non-Muslim, their rights. In their entitlement to justice, all people, believers and unbelievers, are equal in God's sight, as we have seen in the incident involving the

Jewish man in Madina.²⁹⁸ This view (or at the very least, rhetoric) is consistent with classical exegesis. Ṭabarī writes on verse 60:8 that ‘it is correctly stated that towards all peoples and religions you must treat them justly and equitably. God has made this a general ruling in this verse and He did not later make it merely applicable in specific cases and did not abrogate it. God loves the just and those who give people their rights.’²⁹⁹ Similarly categorical is Ibn Taymiyya’s commentary on the same verse: ‘No one is permitted to treat anyone else unjustly, even if he is an unbeliever.’³⁰⁰

Obviously, authors such as Ṭabarī, Ibn Taymiyya and Quṭb are operating with a different substantive conception of justice than will be enforced in a liberal regime. An additional problem with the fundamentalist or orthodox claim that Islam ‘guarantees justice between people, giving everyone, Muslim or non-Muslim, their rights,’ is that according to classical Islamic civil law these are not *equal* rights.³⁰¹ ‘In their entitlement to justice, all people, believers and unbelievers, are equal in God’s sight’ in the same way the all citizens of Plato’s republic are equal with their radically unequal rights and duties.

Once again, in the Muslim minority context there is reason to believe that this question about the type of justice Muslim jurists or ideologues would extend to all

²⁹⁸ Quṭb, *In the Shade of the Qur’ān*, Salāḥ and Shamis, trans., v. III, p. 344. The ‘Jewish man’ refers to an episode in Medina during which a Muslim who had stolen a shield from one of the Prophet’s companions placed it in the home of a Jewish citizen of Medina and falsely accused him. When the plot was revealed the Prophet insisted that the man be fully exonerated, at a time when the Muslim community was engaged in a wider struggle with Medinan Jews. In relation to this episode, verse 4:112 declares ‘He who commits a fault or a sin and then throws the blame therefore on an innocent person, burdens himself with both falsehood and a clear sin.’ For Quṭb, God choose to teach the nascent Muslim community the lesson that justice must be done regardless of the identity of the parties not in spite of the enmity between Jews and Muslims at the time but precisely because of it: ‘The immediate objective was to purify the newly-emerging Muslim community, to treat the elements of human weakness that affected it and to eradicate narrow ties of affiliation in all their forms and guises. ... The Muslim community needed to be seriously tested so as to purge itself of evil, weakness and ignorant practices. Its standard of justice needed to be unblemished by any worldly consideration so that it implemented justice between people regardless of any consideration of immediate interest or prejudice. God, in His wisdom, deliberately chose this particular incident at that particular time, involving as it did a Jew belonging to a community continuously scheming against the Muslims and aiming to undermine the religion of Islam.’ (v. III, pp. 299-300.)

²⁹⁹ al-Ṭabarī, *Jāmi’ al-bayān*, v. 28, p. 43. He notes that some had claimed that the verse had originally referred only to the Meccan pagans who did not take part personally in persecuting Muslims but was later abrogated by ‘the verse of the sword’ (9:5): ‘Slay the pagans wherever you find them.’

³⁰⁰ Quoted in ‘Abd al-Qādir, *Fiḥ al-aqaliyyāt al-muslima*, p. 647.

³⁰¹ For example, the testimony of non-Muslims in court was not regarded as equal to the testimony of Muslims, non-Muslims were not allowed to proselytise or build new houses of worship, there was often a requirement of special dress to distinguish them in public and, of course, there was the *jizya* poll-tax described by many classical jurists as serving to mark symbolically non-Muslims’ subjugation.

subjects of the state is less of a concern. Clearly, as discussed above, the potential for severe dispute over what justice requires even where Muslims are a minority exists³⁰², but what these texts show is that what is *not* likely to be a matter of dispute amongst serious Islamic thinkers is that the demands of justice apply equally to non-Muslims, that justice is the proper standard for dealing with all fellow citizens. The common Islamic and liberal commitment to procedural justice reveals a shared powerful resource for grounding a doctrine of recognition, despite obvious differences on what sorts of actions should be liable for punishment. A famous story, for example, has Ibn Taymiyya defending the right of a Christian accused of insulting the Prophet on the grounds of insufficient evidence, without of course questioning the rule that insulting the Prophet merits punishment.³⁰³

In a contemporary context, consider the views of Lebanese Ayatollah Muḥammad Faḍl Allāh on the situation that 'some [Muslim thinkers] look at Western institutions as a form of prey or booty which one ought to gain as much from as possible even through dishonourable means such as fraud, forgery and deceit, and some consider that stealing from unbelievers is permissible based on certain *fatāwā*.'³⁰⁴ Faḍl Allāh's response articulates precisely the attitude of recognition that we are seeking to establish in this section:

Through our studies of Islamic ethics we find that they are not divided into various parts, for example, one way of dealing with Muslims and another with non-Muslims such that it is permissible to lie to a non-Muslim and mandatory to tell the truth to a Muslim, for the question does not relate to the identity of the other but to the integrity of the person himself. For there is a *ḥadīth* that says: 'He who is not trustworthy has no religion, even if he fasts and prays.' Thus, Islamic ethics represent the values which emanate through the Muslim person, whether the morality which relates to his personal state or to his

³⁰² For example, during the Rushdie and Danish cartoon affairs, the call to limit or ban 'offensive,' 'scandalous' or 'blasphemous' speech.

³⁰³ Cited in Majid Khadduri, *The Islamic Conception of Justice* (Baltimore: Johns Hopkins University, 1984), pp. 180-1.

³⁰⁴ Ghannūshī, Mawlawī and others also report the prevalence of the view in some Western Islamic circles that, this being the Abode of War, the relation to non-Muslims is one of war and the situation of Muslims one of *jihād*, non-Western goods and property are licit as booty, it is permissible to file false claims for social assistance and it is not necessary to pay taxes. (Ghannūshī, 'al-Islam fī al-gharb wa 'alāqātuḥu bi-al-anzima al-gharbiyya,' p. 112, and Mawlawī, 'al-Mafāhīm al-asāsiyya,' p. 220, both in *Risālat al-muslimīn fī bilād al-gharb*.)

relations with the other, because Islam wants the Muslim person to respect the other (except in the case of war, which has its own ethical rules). For the person remains a person in your treatment of him and your respect for him. Thus, we reject any unethical behaviour towards non-Muslims in a state of peace with you, based on the words of the Almighty [quoting 60:8]. Equity is giving each his right and on this basis you are not allowed to violate his right, or to treat him in such a way as you have no right to do, such as stealing his money, violating a contract you have with him, or harming him in any circumstance.³⁰⁵

What is crucial about this passage – which I take to be characteristic of a generally-held Islamic attitude – is that the recognition of the rights of non-Muslims in a given society is not based merely on a specific promise or contract, but rather a general, divinely-ordained attitude of recognition and respect for the dignity of the other. In fact, the moral force of any contract is based on these deeper values of respect for self (for lying and deceit is a negation of one's own moral nature) and recognition of the other. We will return to and expand this discussion of justice across communities below, in the final section on participating in non-Islamic governments.

1. c. *Da'wa*

It is impossible to discuss the Islamic ethics of recognition and co-existence without discussing the question of proselytising (*da'wa*). Some contemporary scholars – using the linguistic template of the classical debate on whether the ‘basic principle’ (*al-aṣl*) of relations with non-Muslims is peace or war – hold that the obligation of *da'wa* today characterises the very essence of relations with non-Muslims, i.e., that the ‘basic principle’ of relations with non-Muslims is *da'wa*.³⁰⁶ We discussed in the chapter on residence some of the basic problems with reducing the legitimisation of peaceful co-existence in non-Muslim states to the possibility for winning new adherents to Islam, namely that, one, it risks seeing non-Muslims only as potential converts and not as free and equal citizens; two, it does not preclude the Islamisation of the state if the group someday finds itself a majority; and, thus, three, it may reveal a shallow commitment to the society and state as (permanently) pluralistic and secular. The general concern is that

³⁰⁵ Faḍl Allāh, *al-Hijra wa al-ightirāb*, pp. 97-99. Ghannūshī responds in the same way, referring to such practices as ‘criminal in the judgment of Islam.’

³⁰⁶ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=49756.

any acceptance of liberal institutions or constraints will be purely tactical, rather than grounded on a principled acknowledgement of the fact of reasonable pluralism.

The converse of this is that *da'wa* implies a non-coercive approach to the inculcation of belief and virtue, that it involves recognising the common humanity and potential for salvation of all humans, and that it requires a certain integration into and concern for the wider non-Muslim society. Here I would like to focus on the way the ethics of *da'wa* reveal certain values of recognition of the other crucial to citizenship in a pluralist democracy.

Three Qur'ānic verses in particular are used by scholars when discussing the way in which *da'wa* should be carried out:

'Call to your Lord's path with wisdom and kindly exhortation, and argue with them in the most kindly manner, for, behold, your Lord knows best who strays from His path, and best knows who are the rightly-guided.' [16:125]

'Say [O Prophet]: "This is my way. I am calling you all to God with the power of reason and discernment, I and all who follow me."' [12:108]

'There is no coercion in religion. Truth stands out clearly from falsehood.' [2:256]

In discussing these verses and the methodology of *da'wa* in non-Muslim lands, Muslim thinkers frequently emphasise a number of themes and values which are ripe for appropriation into a doctrine of recognition. Four in particular stand out, which I organise here around phrases and terms found in the above verses: 1. Good-willed exhortation [*al-maw'iza al-ḥasana*]. 2. Argumentation [*jadal*]. 3. Non-coercion [*Lā ikrāh*]. 4. Wisdom [*ḥikma*].

The phrase *al-maw'iza al-ḥasana*, found in Q. 16:125, translatable as 'kindly exhortation' or 'good-willed warning,' has been used by exegetes and scholars as calling for a posture of good will, friendship, patience and sincerity towards non-believers, as well as engagement with and commitment to one's wider society. Faḍl Allāh describes such a form of exhortation, warning and preaching as a mode of inviting to Islam which allows the addressed to feel as though 'your role is one of friend and giver of good

advice, who seeks that which will benefit him and make him happy'.³⁰⁷ He points to a number of other Qur'ānic verses which corroborate this view that disagreement and opposition which fall short of aggression can be met with patience and restraint: 'Repel evil with that which is kindlier. Then there will be friendship and affection between you and him in place of enmity.' [41:34] 'Tell my servants that they should only say those things which are best, for Satan sows dissent amongst them and is a clear enemy to man.' [17:53] 'And if they [non-Muslims] greet you, you should respond with an even kinder greeting or one just as kind.' [4:85]

Similar views on the part of prominent contemporary cleric Fayṣal Mawlawī have already been encountered in our discussion of war and loyalty. It will be recalled that Mawlawī summarised the modernist position on whether the basic principle of relations between Muslims and non-Muslims ought to be a state of peace or of aggression by challenging: 'Can you call someone [to Islam] while harbouring feelings of hatred towards him?! Or making plans to fight him? Under such conditions can you call him with wisdom and good-willed warning [*al-maw'īza al-ḥasana*]?' However, he derives from the duty to invite to Islam in a spirit of 'good-willed warning' much more than a position of mutual non-aggression. He speaks, in fact, of '*āṭifa*' for non-Muslims, which has a literal meaning of attachment, sympathy, affection, liking, etc., but when transferred to a social, inter-communal context can be understood as analogous to our concept of civic solidarity, or at least as providing a foundation for accepting it. He asks 'How can a Muslim be a caller of humanity to Islam when he is reluctant to even initiate a greeting, or speak to him a kind word, to the point that non-Muslims suspect that in the Muslim's heart there is no affection [*āṭifa*] for them. ... If there does not exist a form of affection or respect or good will between you and non-Muslims, then you will never succeed in calling to Islam.'³⁰⁸ This concern of his with whether a Muslim may feel 'love' or 'affection' for non-Muslims merits some dwelling on.

³⁰⁷ Faḍl Allāh, *Uslūb al-da'wa fī al-Qur'ān* (Beirut: Dār al-zahrā', 1986), p. 62.

³⁰⁸ Mawlawī, 'al-Mafāhīm al-asāsiyya,' p. 200, 211-2.

The need for justifying such sentiments was shown earlier in this chapter, where verses 3:28, 3:118 and 4:144 and their interpretations were introduced. Mawlawī's response to this dilemma is to argue that what is forbidden are two specific states: having affection for those who fight Muslims because of their faith, and, concerning peaceful non-Muslims, loving them *on account of* their unbelief; 'but if there is an unbeliever who does not fight God and His Apostle and displays certain positive characteristics and esteemed values then there is no harm in appreciating these characteristics or values in him because they are drawn from the store of his God-given nature, and thus they are acceptable from a religious standpoint.'³⁰⁹ There are two distinct ideas in operation here which constitute powerful, religiously-grounded reasons for recognising and forming bonds of solidarity with non-Muslims.

The first is that there is a sphere of social interaction where humans form bonds of trust and affection separate from religion. Such bonds and feelings are clearly inferior to the bonds formed by religion or shared moral purposes, but are legitimate within their own sphere, and a Muslim can be sincere in valuing them. These bonds may be based on common interests, shared experiences or secular virtues. 'There cannot be love in your heart for a non-Muslim because of his unbelief, but there may be for other considerations. He may be honest, and you can love him for his honesty. He may be faithful to contracts and you love him for this ... or for his morals, wisdom, reason, or your closeness and shared interests. It is only blameworthy if it involves something explicitly forbidden.'³¹⁰ He refers to this as *ḥubb fiṭrī*, or natural (instinctive, innate) love, to be distinguished from *ḥubb 'aqā'idī*, 'creedal love,' the affection between persons who share religious beliefs. All humans are endowed with a common instinctive nature (*fiṭra*) and thus share certain basic needs, passions and inclinations. The common pursuit of these can result in love, affection and solidarity across creedal lines.³¹¹ Mawlawī is even willing to refer to these bonds as a form of brotherhood. Contrary to the belief that brotherhood is only

³⁰⁹ Ibid., pp. 212-3.

³¹⁰ Ibid., pp. 210, 215-6.

³¹¹ 'Abd al-Qādir sees a similar path to recognition: 'Islam recognises [non-Muslim] societies by recognizing in a realistic [*wāqi'*] way their human nature.' ('Abd al-Qādir, *Fiqh al-aqaliyyāt*, p. 37.)

religious³¹², Mawlawī argues that there are various forms of brotherhood, including 'human brotherhood, national brotherhood, familial brotherhood and Islamic brotherhood, which exceeds all others in strength if it is present. And if Islamic brotherhood is absent, then there remain all these other forms.'³¹³ As to the verse 49:10 ('Only believers are brothers'), 'it means that believers can be but brothers to one another, but it does not restrict brotherhood to believers. For brotherhood between believers and unbelievers has other reasons, such as shared nationality, humanity or interests. The strongest bond of religious brotherhood is not the only kind nor does it forbid one of these other kinds developing between me and a non-Muslim.'³¹⁴

There is clearly a close parallel between these ideas and the liberal conception of solidarity between citizens. His bifurcation of solidarity based on shared interests, secular values and proximity and that based on shared metaphysical beliefs closely mirrors the understanding of solidarity according to the Rawlsian form of political liberalism. Political liberalism conceives of political community as organised precisely around common principles of justice and such common goals as can be justified by purely political, worldly and social needs. This seems to be the exact understanding of the type of community and solidarity which can develop between Muslims and non-Muslims according to Mawlawī. A further commonality between the liberal and the Islamic conceptions is their shared universality: the bonds of shared interest or *ḥubb fiṭrī* can develop amongst humans anywhere and without regard to cultural, racial or ethnic differences. Some of the claims of political liberalism appear to be vindicated here. Rawls believed that political liberalism's main virtue was that, in excluding metaphysical claims and goals from the political, more citizens with a wider range of comprehensive ethical doctrines could affirm its claims to political validity. Here, Mawlawī seems to be saying something similar: Islam would prefer to be expressed through a community

³¹² Based on a reading of Q. 49:10: 'Only believers are brothers.'

³¹³ Mawlawī, 'al-Mafāhīm al-asāsiyya,' p. 218. To establish this he first points to a series of verses (7:65,73,85) in which previous Abrahamic prophets were referred to as the 'brothers' of their unbelieving, sinning and unjust kinsmen, and also a verse (58:22) which refers to the non-Muslim 'brothers' of the first Muslims. There is virtually an identical position articulated in Qaraḍāwī, 'al-Infītāḥ 'alā al-gharb: muqtaḍayātuḥu wa shurūṭuḥu,' in *Risālat al-muslimīn fī bilād al-gharb*, pp. 8-12.

³¹⁴ Ibid., p. 219.

where politics and metaphysics are fused. But given the reality of sharing political space with non-Muslims, it is preferable to limit solidarity and political power to that which all humans have in common. Were non-Muslim states to make wider claims to metaphysical truth then it might be more difficult for Muslims to affirm citizenship within them.

This solidarity based on shared needs is complemented by a second idea implicit in Mawlawī's understanding of *da'wa* through 'good-willed warning.' Consider the following statements: 'We conclude that there can and must be affection and love towards a person whom you wish to call to God and that this affection is a small piece of the affection that God wills be directed towards him. This is the foundation which is considered to be stronger and weightier than all that which opposes it.' While it is natural for bonds of love and affection to arise amongst neighbours and co-citizens, 'this affection has nothing to do with [shared] faith, but rather is connected exclusively to religious considerations as far as we Muslims are concerned. For God has commanded us to bestow mercy on all mankind as a part of faith.'³¹⁵ This statement helps alleviate some of our general concerns about the compatibility of the aims of *da'wa* with citizenship in a pluralist society. On this view, *da'wa* is not merely motivated by the aim of winning adherents to one's way of life, but rather by a desire to extend to the other a good (perhaps the greatest good) unconditionally. This motivation reflects a very authentic and deeply sincere form of recognition of the moral status and importance of the other.

The second important theme in the *da'wa* literature is that of argumentation [*jadal*]. Q. 16:125 instructs Muslims to 'argue with them in the most kindly manner' [*jādilūhum bi-al-atī hiya aḥsan*]. The second part of this injunction has been dealt with above; here we are concerned with how the very command to argue can imply an attitude of recognition. A central feature of the Muslim understanding of *da'wa*, and of Islam itself, is the belief that faith need not conflict with reason. Faḍl Allāh, in discussing the methodology of *da'wa*, goes so far as to compare *da'wa* to the scientific method: he

³¹⁵ Ibid., pp. 214-5.

emphasises the need to erase all preconceptions and prejudices, to present evidence and proofs, and to follow the rules of deduction and logical inference.³¹⁶

For our purposes we are not so concerned with Islamic beliefs about the precise relationship between faith and reason, or doctrines of the rational proof of Qur'ānic inimitability, as with the ethical implications of the commitment to rational debate. Not unlike some of the principles of discourse ethics and deliberative democracy (a comparison to which return below), the Islamic commitment to invite to Islam through reason and proof is a commitment to transparency, honesty, respect, and a position of discursive equality between inviter and invitee. Faḍl Allāh writes that 'this is the call which lays out its message clearly and openly without confusion, obscurity or distortion.'³¹⁷ Also not unlike theorists of discourse and deliberation, many Islamic thinkers reject an antagonistic, conflictual, zero-sum form of *da'wa* and debate in favour of something more collaborative and open-ended.³¹⁸ This commitment to transparency, simplicity and honesty reflects a belief in the manifest truth and superiority of the Islamic message, but applied to the methodology of *da'wa* reflects also a commitment to an attitude of respect and recognition towards non-Muslims.

The attitude suggested by the requirement of open, rational argumentation is enhanced by the rejection of coercion in proselytising. In addition to Q. 2:256 cited above, Q. 10:99 reads: 'If it had been your Lord's will then all on earth would have believed. Will you then compel them until they believe?' It is a staple of Islamic discourses that *da'wa* must be undertaken free from any spirit of aggression or coercion, that the only faith which counts with God is that which is sincere and freely adopted, and that the moral value of acts or beliefs is derived only from their intent.

The subject of coercion clearly demands a more technical philosophical discussion about what precisely constitutes coercion and free will. What is clear is that a

³¹⁶ Faḍl Allāh, *Uslūb al-da'wa*, pp. 74-5.

³¹⁷ Ibid., p. 164.

³¹⁸ Ibid., p. 72. See also Khurram Murad, *Da'wah among non-Muslims in the West* (Leicester: The Islamic Foundation, 1986), p. 21; and in the in *Risālat al-muslimīn fī bilād al-gharb* collection of essays: Aḥmad Ja'billāh, 'Qawā'id al-ta'āmul bayna al-muslimīn wa ghayrihim fī'l-mujtama'āt al-awrubīyya,' pp. 45-9; 'Abdallāh al-Jadī', 'Risālat al-muslim fī bilād al-gharb, p. 130; and 'Iṣṣām al-Bashīr, 'al-Ḥiwār sabīlunā'.

theological belief in the existence of free will, or a belief in morality requiring right intentions or motivations, does not necessarily result in the endorsement of any particular kind of political institutions. There is no necessary intellectual contradiction in believing that faith must be voluntary and sincere, while also believing that the state is called on to advantage a particular doctrine or way of life. There is also no necessary intellectual contradiction in believing that faith must be voluntary and sincere for it to count with God, and believing that society is justified for punishing behaviour or thought that violates divine command. Islamic thinkers are usually quite clear on this. Faḍl Allāh, for example, in discussing the implications of Q. 2:256, writes that, *da'wa* 'leaves others to take responsibility for themselves. For mankind is in the first and last reckoning responsible for its faith or unbelief.' But quickly adds that 'all of this is within the bounds of *da'wa* in its specific purview when the conflict is between ideas or doctrines as such. However, when *da'wa* shifts to the realm of the state which organises the affairs and lives of people according to a particular doctrine, and the conflict shifts to a war between the Islamic entity and the entity of unbelief or a conflict between two states, the position of *da'wa* then also shifts. The method changes and the matter takes on a new direction, focusing now on protecting the Islamic entity and the state of truth.'³¹⁹ For classical and classically-minded Islamic thinkers, the question of religious tolerance and freedom of choice is never merely about individuals' right to believe what they wish and seek out information about various ways of life; the discussion almost always assumes such concepts as an Islamic 'public order' or an Islamic 'entity' which there is an obligation to preserve and defend. This results in such positions as a ban on non-Islamic propagation within Islamic polities, punishment for any heresy or 'slander' of Islamic beliefs, punishment for 'sins against oneself' or against God, or Quṭb's position, introduced in the previous chapter, that true religious liberty consists in removing all barriers to obeying God's law (namely any non-Islamic legal and political systems) so mankind can be 'free' to choose Islam. The implication is often that the Qur'ānic phrase '*lā ikrāh fī al-dīn*' is almost a descriptive statement: it is simply a matter of fact that faith cannot arise out of coercion; coercion cannot *cause* faith and save the unbeliever, but acts which in the

³¹⁹ Faḍl Allāh, *Uslūb al-da'wa*, pp. 164-5.

liberal tradition might be referred as coercion may have other justifications, like upholding Islamic honour or public order.

Once again, we must emphasise our focus on the minority political context, where the standard rejection of coercing faith based on Q. 2:256 and 10:99 may yet result in certain values or orientations supportive of liberal institutions. What is clear is that the recognition that coercion cannot cause belief, and the concomitant belief that one then ought not to try to cause belief through coercion, is not sufficient to result necessarily in the endorsement of liberal institutions. However, what we are considering at the moment are precisely Islamic beliefs about how to cause faith, how to bring about faith in others. This is what *da'wa* involves, rather than (at least directly) defending an Islamic public order or an Islamic polity. Thus, insofar as Muslim thinkers regard residence in non-Muslim liberal democracies largely as a space for *da'wa*, for inviting to Islam, it is deeply significant for our interest in recognition that these efforts are universally regarded by Muslim thinkers to proceed entirely free from any inclination towards force, deception or coercion. While such an understanding may be insufficient to ground support for liberal neutrality in Muslim-majority societies, it contributes towards a respect for the autonomy, equality and intellect of the non-Muslim other in a society already governed by liberal institutions.

A fourth concept, wisdom [*hikma*], also comes from Q. 16:125. According to most commentators, the injunction to 'call to your Lord's path with wisdom' essentially involves adapting one's methods and approaches according to time and place. Faḍl Allāh refers mostly to the need to understand one's circumstances and realities, to be more flexible in addressing non-Muslims in order to be more relevant and effective.³²⁰ The question raised by this notion relates to the motivations implied by this interest in appropriateness, flexibility and efficacy: Is this simply a tactical imperative, grounded not in any concern about the genuine needs or interests of the other, but merely in a desire to win as many adherents to Islam as possible? Note that the same concern applies to the duties to preach and argue in a kindly manner. Is the injunction to approach non-Muslims

³²⁰ Ibid., p. 58.

with kindness, openness and respect valid or compelling simply because alienating non-Muslims is counter-productive to the aims of *da'wa*? At one point Faḍl Allāh suggests that one must make the addressed '*feel as though* you are a fellow-traveller on a journey towards truth, and that you respect him and his ideas,' not that one must indeed be so, and describes arguing in the best manner as 'the best practical method to arrive at that goal' [of winning adherents to Islam].³²¹

Without denying the possibility that some may approach *da'wa* without a genuine respect for or recognition of the other, there are a number of possible responses to this challenge. The first is one we have suggested before in other contexts: that what is crucial here is not the explanation or justification given by certain exegetes of a divine injunction, but the mere fact that the action or attitude in question *is a command*. The attempt to explain why the command might be there may reveal tactical considerations, preferences or inclinations, but the justification and reason for acting in such a way lies in the command itself, not in the explanation. If the result is to produce an attitude of recognition and tolerance in the political sphere, than the religiously authoritative nature of the command can be deemed sufficiently ethical for the demands of Rawlsian political liberalism.

There is a further, more interesting, reason for thinking that the command to call to Islam with 'wisdom' might be constitutive of a genuine attitude of recognition, even on its more pragmatic, tactical interpretation. To the extent that 'wisdom' is understood as inviting to Islam in a way appropriate for one's social surroundings, it is a call for *knowing the other* and *integrating with the wider society*, which are inclinations to both recognition and solidarity. It is largely in the name of *da'wa* that Muslim thinkers call for this. Mawlawī, for example, writes that the preliminary forms of relations between Muslims and non-Muslims (before attaining the stage of *ḥubb fiṭrī* discussed earlier) crucial for *da'wa* are mutual knowledge (*al-ta'ārruf*), co-existence and co-operation, adding that 'we are a part of the society in which we live: Although a Muslim feels a part of the Islamic community...when he chooses to live in the West and chooses to be a part of this society in which he lives, then he must also think about this society – its issues,

³²¹ Ibid., p. 64.

worries and problems – from his Islamic perspective. This is what requires him to look into the matters of the Islamic call in the West.³²² This is a common sentiment in Islamic writings on *da'wa* and living in non-Muslim countries.³²³ We have argued that a minimal conception of citizenship, as opposed to what we have been referring to as 'resident alienage', requires some affirmation of positive relationships to fellow citizens and a willingness to contribute to common welfare; it is clear that the Muslim understanding of the means and aims of *da'wa* contains powerful motivations for such integration and involvement.

As alluded to earlier, some comparison to Habermasian discourse ethics and theories of deliberative democracy might be in order here. Briefly, Habermas believes that the actual pragmatics of communication and argumentation commit participants to certain substantive normative presuppositions, namely equal respect, the rejection of coercion, the freedom to form opinions, the intersubjective validity of reasons, trust and honesty. Simply by engaging in discourses based on argumentation, participants acknowledge the incoherence of claims to normative validity achieved through coercion, lies or exclusion, and thus implicitly endorse various principles of recognition.³²⁴

To be sure, there are important differences between discourse and *da'wa* in their assumptions and motivations. Chief among them is that discourse ethics is presented by its advocates as the *search* for truth; ethical knowledge is not posited before hand. Islamic *da'wa* obviously presumes the result and the norm sought before contact with the other. Second, unlike discourse or deliberation, *da'wa* is not necessarily reciprocal. Habermas discusses empathy and putting oneself in the other's shoes, but this is not something to be called for in *da'wa* except in the most tactical way. While *da'wa* theorists do speak of listening to and getting to know the other, this is either purely instrumental to the aim of conversion, or sincere but unrelated to the search for truth. The

³²² Mawlawī, 'al-Mafāhīm al-asāsiyya,' p. 196.

³²³ See also, Jā'billāh, 'Qawā'id al-ta'āmul,' p. 53 and al-Ghannūshī, 'al-Islām fi'l-gharb,' p. 113, where he writes that 'a foreign plant such as Islam cannot lay down its roots as long as it doesn't interact with its environment, as long as it doesn't establish cooperative relations and connections with the elements of this environment.'

³²⁴ See Jürgen Habermas, 'Discourse Ethics: Notes on a Program of Philosophical Justification,' in *Moral Consciousness and Communicative Action* (Cambridge, Mass: MIT Press, 2001).

idea cannot be seriously entertained by Muslims that the actual process of debate and dialogue might result in greater ethical knowledge or a change of heart by Muslim 'callers'. Quite the opposite: the *da'wa* literature is replete with admonitions about who is allowed to engage in *da'wa*, on the moral and intellectual preparations they must make in advance in order to be immune to the inevitable opposition they will face, and even against engaging in too much arguing with non-believers, lest one get bogged down in obscurantist debates.³²⁵

Yet, while *da'wa* is strategic in a certain sense, or at least there is certainly the possibility for strategic thinking or motivations, the ethics of *da'wa* do in some sense incline towards the values of discourse ethics and deliberative democracy. While *da'wa* may call for a certain cultivation of the other in order to create a positive identification with Islam and Muslims, this cannot be compared to strategic action proper which uses the promise of threats and rewards to motivate action by the other. Just as in communicative action where 'one seeks *rationally* to *motivate* another by relying on the illocutionary binding/bonding effect of the offer contained in his speech act'³²⁶ the aim of *da'wa* is to genuinely motivate the other towards accepting Islam for the right reasons. Just as the 'structure of communication rules out all external or internal coercion other than the force of the better argument and thereby also neutralizes all motives other than the cooperative search for truth,'³²⁷ *da'wa* forbids coercion or threats as a motivating tactic and nullifies any motive for either spreading or accepting Islam other than the search for truth and salvation. Conversion must be voluntary, sincere and for the right reasons. One cannot lie or deceive in order to bring about conversion. Just as in discourse and deliberation everyone is allowed to question all assertions, introduce any assertions, express attitudes, desires and needs, *da'wa* does not presume that the non-Muslim must be silent and passive. It is true that the Muslim is not looking to the non-Muslim for truth, but his confidence in Islam's perfection allows him to welcome any concerns, objections or (mis-)perceptions of the other. Finally, like in both discourse and deliberation, the

³²⁵ Verses 22:67-69 are often cited against entering theological disputes with non-Muslims: 'To every People have We appointed rites and ceremonies which they must follow, let them not then dispute with you on the matter, but do invite (them) to your Lord: for you are assuredly on the Right Way. If they do wrangle with you, say, "God knows best what it is you are doing. God will judge between you on the Day of Judgment concerning the matters in which you differ."'

³²⁶ Habermas, 'Discourse Ethics: Notes on a Program of Philosophical Justification,' p. 58.

³²⁷ Ibid., p. 89.

process of *da'wa* itself has a certain value. *Da'wa* proponents do not expect everyone to convert, but there is a value placed on merely engaging with the other and presenting Islam to him. A Muslim 'caller' (*dā'iya*) can discharge his obligation merely by engaging with non-Muslims, which he cannot through a conversion brought about by ignoble means. The attention that Muslim theorists devote to the methodology and procedure of *da'wa* reveals the value placed on merely exposing others to Islam in a way that preserves the dignity of both parties.

In short, *da'wa* does not share the epistemic ambitions of discourse ethics or the community building ambitions of deliberative democracy, but in the social context there is a shared result of recognising the other. Good will, transparency, honesty, sincerity, reason, freedom of choice, non-coercion, patience, openness to getting to know the other and respect are all *da'wa* values that might be interpreted as comparable to Habermas's, revealing certain implicit attitudes of recognition.

1. d. The *muwālāh* verses

We opened this chapter with a section on a series of verses seeming to forbid friendship or alliance (*muwālāh*) with unbelievers, which was regarded as a doctrine potentially obstructive of bonds of recognition and solidarity between Muslims and non-believers. In this section, before turning to the second part of this chapter in solidarity, we will examine interpretations of the *muwālāh* verses on which they are not seen to forbid the types of relationships required between citizens in a liberal democracy.

In his exegesis of the Qur'ān, Rashīd Riḍā says that only 'those who are without knowledge and interpret the Qur'ān whimsically claim that verse [Q. 3:28] does not permit Muslims to ally themselves or come to agreement with others, even if this is in their interest and despite the fact that the Prophet himself made alliances with certain polytheists. In fact, some religious zealots claim ignorantly that this verse forbids any cooperation or association with them, or trusting them in any matter at all.'³²⁸ In

³²⁸ Riḍā, *Tafsīr al-Manār*, v. III, p. 277.

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³²⁸ Riḍā, *Tafsīr al-Manār*, v. III, p. 277.

opposition to this view Riḍā argues that there are three elements to a proper interpretation of the ban on *muwālāh*. The first is that, as with the verses on war and fighting, they refer strictly to those non-Muslims who aggress against and fight Muslims, emphasising that the circumstances of revelation (*asbāb al-nuzūl*) of this and the other *muwālāh* verses are the betrayal of the Muslim community by members to Meccan pagans in active combat with Muslims. Decisive for him in this judgement are verses 60:7-8 ('...God does not forbid you from dealing justly and equitably with those who do not fight you for your religion nor expel you from your homes, for God loves the equitable.') and the fact that the Prophet himself established bonds of friendship, trust and alliance with various non-Muslim individuals and states both before and after his migration from Mecca. The second, related, point that Riḍā emphasises is that Q. 3:28, 4:139 and 4:144 all refer to taking non-Muslim allies rather than or in preference to believers: *min dūn al-mu'minīn*. Thus, what becomes forbidden is allying with them at the expense of Muslims and Muslim interests. Finally, Riḍā understands the reference to *muwālāh* as approving of non-Muslims' unbelief and allying with them in pursuit of these aims. Encapsulating these latter two points, he quotes his mentor Muḥammad 'Abduh, who argued that what is forbidden is anything which results in subjugation or defeat (*khidhlān*) for religion, harm (*īdhā'*) to its people, or damage (*iḍā'a*) to their interests. 'But what opposes this, such as trade or *other social interactions of a secular nature*, is not included amongst that which is forbidden because it does not involve any opposition to God and His Apostle or any opposition or resistance to their religion.'³²⁹

These views find a slightly more systematic elaboration in 'Abd al-Qādir's work on Muslim minorities. He concurs with Riḍā that the *muwālāh* verses are not absolute in the sense of applying to both peaceful and warring unbelievers, but that 'God has prescribed hostility and antagonism only to those who fight God, His Apostle and the believers. There is no prohibition on friendship with unbelievers who do not harm

³²⁹ Ibid., p. 288. Emphasis added.

believers.’³³⁰ He arrives at this position for reasons identical to Riḍā’s: the verses all emphasise non-Muslim aggression and the idea of befriending them ‘in exclusion of the believers’; the Prophet himself turned to non-Muslims for help; and other generally held rulings, such as the permissibility of marrying Christian and Jewish women, show that the ban on befriending non-Muslims cannot be general in application.

‘Abd al-Qādir’s efforts are interesting, however, because he makes more of an effort to consider what forms of alliance are permitted and to apply these views to a contemporary political context. Therein, we encounter what are by now rather familiar views. In terms of alliance between political entities, he writes that there must be an overwhelming need for this and the ‘word on unbelief’ may not be dominant, but that alliance is ‘not *muwālāh* unless it is to the benefit of the unbelievers and their word is ascendant. Such a situation is humiliation for religion and its adherents.’ Non-Muslim lands are permissible as refuges if Muslims are in danger and no other Muslims are in a position to help, as with the case of those whom Muḥammad sent to Abyssinia during the first Meccan period. Within this context it is permissible to co-operate with them in the spheres of economics, science/knowledge, and even military ‘co-ordination’ (*tansīq*) under the supervision of Muslim authorities. This covers also treating unbelievers with kindness (*al-iḥsān*, *bi-al-luṭf*), tolerating them, being charitable, hospitable and equitable towards them, exchanging gifts, loaning and borrowing, visiting them, etc.³³¹

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

³³⁰ ‘Abd al-Qādir, *Fiqh al-aqaliyyāt al-muslima*, p. 630.

³³¹ For this paragraph see *ibid.*, pp. 634-5.

The first (a) involves associating too intimately with them on a *religious* basis, ascribing truth to their doctrine or seeing no difference between it and Islam in regards to their respective truth-claims. 'This includes approving of their doctrines or religious rituals, or ascribing truth to them, as well as aiding them in ways which strengthen and affirm them in their unbelief. This results in a defeat for religion and belief.' He refers to this, quoting Ibn Taymiyya, as '*muwālāh bi-al-qalb*' – 'allying oneself through the heart' – and emphasises that the only hatred a Muslim feels is towards what the unbeliever holds by way of error and idolatry, not towards him personally.³³² However, various forms of special consideration, approval and recognition of unbelievers with good characters/morals, or personal relations with unbelieving children, wives, or other relatives, do not constitute *muwālāh*.

The second (b) involves not merely forming bonds of trust with unbelievers, but being pliable or submissive to them, flattering them, being obsequious, etc., as well as asking them for help or allying with them against Muslims, imitating them, or aggrandizing them and spreading their doctrines and ideas.³³³ The crucial element for him and others is clearly how intimately linked the political and the religious are in a given alliance or friendship. For 'Abd al-Qādir, 'tolerance consists in inter-personal treatment, not in the doctrinal concept or in the social system. Good treatment does not mean loyalty or assistance in religion, or recognition that the religions revealed before Muḥammad's prophecy are accepted by God and that Islam can stand with them in a single front against atheism.'³³⁴ Others have also recently interpreted the ban to refer to adopting unbelievers' characteristics related to their religion, doctrines, beliefs or rituals, not as neighbours or citizens.³³⁵

Is this understanding of the permissible forms of friendship with unbelievers compatible with bonds of citizenship in general and with the conception advanced by political liberalism in particular? The area of ambiguity which remains is whether living

³³² Ibid., p. 637.

³³³ Ibid., pp. 638-9.

³³⁴ Ibid., p. 646.

³³⁵ Muṣṭafā al-Ṭaḥḥān, 'al-Muslim al-dā'iya yaḥsun al-ta'āmul ma' al-muslim wa ghayr al-muslim,' in *Risālat al-muslimīn fī bilād al-gharb*, p. 283, citing al-Qaraḍāwī.

under a political order which advances other values than Islamic ones constitutes a form of subordination, subservience or 'defeat' for religion forbidden by even the modernist theorists. Amongst the conditions under which Muslims may forge alliances with non-Muslims, 'Abd al-Qādir lists that the 'word of Islam' must be ascendant over (*zāhira 'alā*) that of unbelievers. Such a term suggests that he has in mind alliances between states (for how could even Muslim jurists expect that the word of Islam will be ascendant in a non-Muslim state?), but to the extent that citizenship is a form of formal alliance or contract, it is reasonable to ask whether the ascendance of non-Islamic aims or doctrines might render bonds of citizenship similarly unacceptable.

Does the liberal nature, specifically the *politically* liberal nature, of a non-Muslim state have any bearing on this discussion? On one reading, if living as a minority under a non-Islamic government is *in itself* the form of subordination or subservience deemed to be forbidden then it doesn't particularly matter what form of government exists in such a country.³³⁶ Yet, we already have Riḍā, 'Abd al-Qādir, Qaraḍāwī and others on record permitting residence in such states. So either they are only justifying a form of resident alienage according to which Muslims would reside in such states but seek to avoid any form of political integration, or they are open to the possibility that the terms of citizenship in certain states may not result in a form of *muwālāh* which they reject. There are at least two very strong reasons for arguing that a politically liberal regime comes as close as possible to avoiding the conditions which modernist theorists find unacceptable.

The first main condition which was seen to constitute the unacceptable form of *muwālāh* was the forming of political alliances to the exclusion of (*min dūm*) and in opposition to fellow Muslims. Muṣṭafā al-Ṭaḥḥān, for example, was cited above as having no objection to living with non-Muslims as neighbours and citizens, but (citing

³³⁶ Indeed, it is not uncommon in certain Islamic discourses for non-Muslim liberal democracies to be compared to non-Muslim dictatorships or tyrannies, not so much in terms of the conditions Muslims face but in terms of how actively they should participate in non-Muslim political life. See M. Amir Ali, 'A Case for Muslim Political Participation,' *Muslim Public Affairs Committee UK*, <http://www.mpacuk.org/content/view/376/101/>; and Abduljalil Sajid, 'Joining Political Parties in non Muslim Countries: according to Islamic Shariah,' *Muslim Public Affairs Committee UK*, <http://www.mpacuk.org/content/view/211/>.

Qarāḍāwī's authority) 'it is necessary that a Muslim's loyalty not be to another community at the expense of his own.' The second condition was if Muslims were required to ally with non-Muslims in expressly religious or doctrinal matters, advancing the aims or prominence of another creed.

Political liberalism can advance a case that it requires neither of these from Muslim citizens. The last chapter explored in some detail the requirements of loyalty to a non-Muslim liberal democracy. We took seriously a Muslim's concern not to find himself betraying the welfare or interests of fellow Muslims simply because it is in the interest of his non-Muslim state or political community. In cases where a Muslim entity or force was clearly the aggressor against a Muslim's state of citizenship, we showed that the Muslim citizen has very strong religious reasons for opposing such actions and contributing to the non-Muslim state's efforts of self-defence in a civilian capacity. In turn, I argued that the liberal state can in good conscience accommodate the Muslim citizen's desire not to kill fellow Muslims.

As to the second condition, we again have reason to point to the advantage of political liberalism's commitment to neutrality and 'epistemic abstinence.' In disavowing any claim to metaphysical truth as the basis for justice, in requiring of citizens no such affirmations in order to participate politically, and in establishing no collective goals which require adherence to a controversial metaphysical doctrine, political liberalism can retort that it requires of Muslim citizens no statement whatsoever about the truth or superiority of any one religion, doctrine or way of life. Given that Muslim jurists are prepared to allow residence even in states which exhibit no such restraint, their very discourse on *muwālāh* reveals Islam-specific reasons why Muslims should be more willing to take a step beyond resident alienage towards citizenship in a politically liberal state than in any other non-Muslim regime.³³⁷

³³⁷ This interpretation of how the Islamic conception of loyalty bears on the question of citizenship is, in fact, quite commonplace amongst the better-known neo-traditional scholars active in the west.

2. Solidarity

2. a. Contribution to non-Muslim welfare

To this point, most of our questions have been negative in character: whether Muslims can *refrain* from migrating or betraying a state of residence, for example. Even our discussion of recognition to this point has focused largely on passive acceptance of non-Muslims' unbelief. To speak of a doctrine of citizenship, however, rather than a state of resident alienage, suggests certain basic positive duties as well towards fellow citizens. What these are is obviously fiercely contested in liberal political theory; here I do not seek to vindicate a particular conception of social justice or civic duty, but rather the very idea that Muslims may find themselves contributing to the welfare of non-Muslims, even indirectly and involuntary through taxation or as a double-effect of pursuing one's own interests. In this section we examine Islamic arguments for the permissibility of such contribution.

The first thing to be re-emphasised is that the general notion of charity, contributing to the welfare of others, and sacrificing for the sake of one's political community is central to Islamic religious ethics. This is best exemplified by the obligation, one of the five basic pillars of religious practice, to render *zakāh*, often translated as 'alms-tax'. This will not establish our case, however, as the *zakāh* has very specific religious understandings and implications, and it cannot be argued that the forms of contribution a Muslim makes to the welfare of a non-Muslim society are equivalent to the *zakāh*.³³⁸ In addition to this specific obligation, however, numerous Qur'ānic verses urge believers towards charity and responsibility for the welfare of others, including

It is not righteousness that ye turn your faces towards East or West; but it is righteousness to believe in God, the Last Day, the Angels, the Book, and the Messengers; to spend of

³³⁸ Verse 9:60 lists the proper recipients of *zakāh*: 'Alms are for the poor and the needy, for those who gather them, for those whose hearts have been reconciled, for those in bondage, and in debt, for those [fighting] in the path of God, and for the wayfarer.' The phrase 'those whose hearts have been reconciled' is interpreted as those who have recently converted to Islam, thus possibly leaving an existing solidarity community and in need of support. Thus, the aims of *zakāh* are exclusively religious in nature and non-Muslims are not generally held to be appropriate recipients.

your substance out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practise regular charity, to fulfil the contracts which you have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the God-fearing. [2:177]

Serve God, and make not any partners with Him in His divinity. Do good to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer and those whom your right hands possess: for God loves not the arrogant, the vainglorious. Nor join those who are miserly or enjoin others to miserliness, or hide the bounties which God has bestowed on them. [4:36-37]

Truly man was created very impatient...Not so those devoted to prayer ... and those in whose wealth there is a claim for the needy and the indigent. [70:19-25]

In considering the Islamic value of charity in the context of citizenship, what is relevant is that in a non-Muslim liberal democracy, contribution to the welfare of others may be enforced by state structures and that it cannot be limited to members of one's sub-state moral community.

The idea of such contribution being enforced by state structures as an obligation of political justice is itself not objectionable from a Muslim standpoint. As discussed in the third chapter, the collection of the *zakāh* has traditionally been regarded as one of the duties of a legitimate ruler.³³⁹ In a more modern framework, speaking about the general duty to be charitable, Sayyid Quṭb for example notes that that the 'Islamic view of social organisation' entrusts social security to 'government machinery when the smaller, more directly involved machinery of the family becomes incapable of meeting the challenge.'³⁴⁰ This is, of course, in relation to a Muslim-majority society but it serves to demonstrate that the idea of the state intervening to secure a certain pattern of wealth distribution should itself not pose an ideological challenge for Muslim citizens of non-Muslim states.

Bearing in mind some of the statements we encountered in the third chapter on avoiding contributing to the strength of unbelievers, what requires more explicit justification is the idea of making such contributions to a non-Muslim society or political community. Thus, this section will focus on the cross-communal nature of social

³³⁹ This was part of Wansharist's case that even the five pillars of Islamic worship cannot be upheld in non-Muslim societies.

³⁴⁰ Quṭb, *In the Shade of the Qur'ān*, v. III, p. 146, commenting on verse 4:36.

obligations in a liberal democracy. Furthermore, as argued in the previous chapter³⁴¹, we do not regard general calls to obey the law of any state in which one lives in relative security and freedom as endorsements of active citizenship or participation in any such society. We are thus interested in positive reasons for regarding the substantive requirements of life in a liberal democracy as reasonable or acceptable.

Nothing in the above-quoted verses limits the obligation of charity to fellow believers and exegetes have not tended to read in such a restriction. Even Quṭb, in commenting on 4:36-7, interprets the verses as 'an order to extend charity to certain groups of one's immediate family and of the human family at large.'³⁴² Some classical exegetes in fact interpreted the phrase 'neighbours who are near, neighbours who are strangers' from 4:36 as referring to Muslims and non-Muslims respectively, a reading which expressly includes non-Muslims within the sphere of social obligation.³⁴³ There is even a tradition which holds that the Caliph 'Umar, in assigning an allowance from the public treasury for poor non-Muslims, interpreted the two expressions from Q. 9:60 (cited above as the authoritative verse on the allocation of the *zakāh*) for 'poor' and 'needy' (*al-fuqarā'* and *al-masākīn*) as referring in turn to Muslims and non-Muslims.³⁴⁴

A particularly categorical and unambiguous treatment is that of the 13th century Mālikī jurist and exegete al-Qurṭubī who writes (on Q. 4:36): 'The instruction of good treatment of neighbours is recommended whether they be Muslims or unbelievers. This is the correct reading. "Good treatment" [*al-iḥsān*] has the meaning of charity [*al-muwāsāh*], good relations, refraining from harming them, and protecting them from harm.'³⁴⁵ He notes further that all scholars are of the consensus that no part of this verse is abrogated by subsequently revealed verses. Thus, in this vein, in addition to the 'political obligation' justification for paying taxes to a non-Muslim state, some

³⁴¹ Fn. 244 and 247.

³⁴² Quṭb, *In the Shade of the Qur'ān*, v. III, p. 145.

³⁴³ Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, v. 2, p. 261.

³⁴⁴ See Ismā'īl al-Badawī, *Da'ā'im al-ḥukm fī al-sharī'a al-islāmiyya wa al-nuḥum al-dustūriyya al-mu'āṣira* (Cairo: Dār al-Fikr, 1980), p. 525.

³⁴⁵ Al-Qurṭubī, *al-Jāmi' li aḥkām al-Qur'ān*, v. 5, p. 120.

contemporary scholars refer directly to the goodness of the purposes to which they are put.³⁴⁶ Qatari scholar ‘Alī Muḥyī al-Dīn al-Qara Dāghī, for example, responds to a question about the permissibility of paying taxes to a non-Muslim state which may adopt some anti-Muslim policies, that ‘we should bear in mind that income taxes bring about benefit to society, as they may be spent on different legitimate ways such as refugees, the needy, infrastructure, etc.’³⁴⁷ He further cites Q. 5:48, which concludes by exhorting Jews, Christians and Muslims to all ‘compete with each other in good works.’³⁴⁸

A number of other values and orientations serve to give this exhortation to charity a more comprehensive philosophical foundation for affirming solidarity and mutual concern with non-Muslims. We have already encountered in the discussions on *da‘wa* and *muwālāh* certain views on contributing to non-Muslim welfare. The *da‘wa* discourse revealed both a weak and a strong form of solidarity with non-Muslims. The weak form held that *da‘wa* requires a certain integration into and concern for the wider non-Muslim society. On this view, *da‘wa* is the higher value and objective, but a certain concern for non-Muslims and their societies – which we are assuming here to validate non-voluntary contributions to such societies – may be not only compatible with, but even supportive of or necessary for the aims of *da‘wa*. This sentiment is comparable to what we are regarding as the mainstream understanding of permissible and impermissible forms of *muwālāh*: The verses in question are held to permit co-operation and friendship with non-Muslims in civil and secular matters. When one adds to this the general Islamic call for charity and generosity, without any strong reason for thinking it restricted to Muslims,

³⁴⁶ Much more frequently, the question is put to scholars whether the obligation to pay taxes is binding when they are put to evil purposes. The most common answer is the one we have encountered, that so long as

one is party to the social contract the duty to render loyalty (including taxes) is binding. Alternatively, a consequentialist argument is sometimes given, namely that one risks doing more harm to oneself and the Muslim community by breaking the law than by one’s proportional contribution to evil ends.

³⁴⁷ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID==35886.

³⁴⁸ In discussing this question, many other contemporary Muslim scholars point to 5:48, which reads in full: ‘For every one of you We have prescribed a path and a way. If God had willed He would have made you all one community, but [He has not done so] that He may test you in what has come to you. So compete with each other in good works.’ However, classical exegesis seems to have read the final phrase, which some contemporary thinkers cite in the context of cross-communal solidarity, as merely exhorting each community to implement their own laws and forms of worship, not to extend charity or welfare to one another. See Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*, v. 3, p. 118; al-Qurṭubī, *al-Jāmi‘ li aḥkām al-Qur’ān*, v. 6, 137.

one has a strong reason for expressing the form of solidarity required with non-Muslims in a liberal state. Mawlawī describes ‘co-operation’ as one of the basic stages of relations with non-Muslims (resulting in the stage of ‘affection’ (‘*āṭifa*) or ‘love based on shared instinct’ (‘*ḥubb fiṭrī*’)), pointing out the numerous occasions when the Prophet joined with non-Muslims to advance just secular causes. He marvels that ‘one may find it difficult to bear after these juridical questions that you can advance your own interests and at the same time the interests of non-Muslims,’ even giving a remarkably Rawlsian argument: ‘If there are certain matters which we consider legal or ordained [*shir‘iyya*], and non-Muslims adopt them *for different reasons* then we can co-operate with them towards the realisation of them as long as they are considered legal for us.’³⁴⁹

It is also common for Muslim scholars to situate the question of contributing to non-Muslim societies as an aspect of the Islamic duty to ‘command the right and forbid the wrong.’ The logic here is very similar to that of *da‘wa* and the arguments for co-operating in secular matters with non-Muslims, to the extent that the basic question is how Muslims can bring about Islamically desirable ends in non-Muslim lands.³⁵⁰ An article on the *IslamOnline* website justifies contribution to non-Muslim societies and active social engagement within the context of this duty: ‘We Muslims are commanded to improve the societies we live in, to enjoin the good and forbid the wrong. It’s not enough to do that just among ourselves. We have to be an active part of our societies, not only to gain our own rights, but to see that right and justice prevail. The important thing is to work with the non-Muslims around us to improve society (and to try to gradually shape it to our standards).’³⁵¹

³⁴⁹ Mawlawī, ‘al-Mafāhīm al-asāsiyya,’ pp. 203–4. Emphasis added. Note also the views of British Muslim scholar Abduljalil Sajid: ‘Considering the issue of *walā’* [loyalty], it is evident that there’s nothing wrong Islamically in having some sort of such cooperation between Muslims and non-Muslim as regards worldly affairs. According to the articles of the Madinah constitution, the residents of Madinah would cooperate in establishing justice, supporting one another in combating aggression and help one another do righteous acts. It’s clear that mutual cooperation in worldly affairs goes far to encompass all citizens who share a common destiny, neighbourhood and sometimes kinship. This may be extended to include economic and commercial fields.’ (Abduljalil Sajid, ‘Joining Political Parties in non Muslim Countries,’ www.mpacuk.org/content/view/211/)

³⁵⁰ One might argue that *da‘wa* is one of the acceptable means of ‘commanding and forbidding’ (jurists speak about commanding and forbidding ‘by hand, by tongue or by heart,’ i.e., through coercion, admonishment or silent disapproval).

³⁵¹ www.islamonline.net/english/introducingislam/Tolerance/article02.shtml.

Of course, as the final parenthetical statement suggests, these are all the same arguments given for co-operating with non-Muslims in the pursuit of non-liberal aims.³⁵² For the purposes of our wider inquiry into support for liberal institutions, this needs to be borne in mind. At the moment this need not concern us, however, for the understanding here is that the sorts of goods Rawls has in mind as 'political' are what Mawlawī and others refer to as 'social' or 'secular', and that they can be legitimately pursued with non-Muslims. The point is that the goods Muslims are commanded to pursue include a wide range of secular goods, including education, economic prosperity, public health, public order, etc., as part of the general Islamic conception of welfare. Whilst the aims of *da'wa* and 'commanding right and forbidding wrong' can justify the pursuit of non-liberal aims in a non-Muslim society, this does not detract from the strength of their support for the pursuit of *other* aims compatible with political liberalism.

There was also a stronger view, likewise attributable to Fayṣal Mawlawī, which held *da'wa* itself to be one way of discharging a yet higher duty. For, in Mawlawī's words, 'God has commanded us to bestow mercy on all mankind as a part of faith.' Here the focus is not only on the non-Muslim's ultimate duty to save himself, and all mankind's duty to God, but on what is due him in this world: 'We conclude that there can and must be affection and love towards a person whom you wish to call to God and that this affection is a small piece of the affection that God wills be directed towards him. This is the foundation which is considered to be stronger and weightier than all that which opposes it.'³⁵³ The foundational belief for *da'wa* is, of course, Islamic universalism which itself presumes certain commonalities amongst all humans, including a common origin, nature and purpose. This is a common theme in contemporary Islamic

³⁵² 'Muslims should stand together along with other faith groups to rescue humanity from those who call for atheism, promiscuity, materialism, abortion, homosexuality, unisex marriages, bloodshed, misappropriation of others' property as well as those groups which enhance materialistic trends in man at the expense of his spiritual elevation.'

(www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=8514)

³⁵³ Note also the views of Pakistani-British Muslim scholar Khurram Murad: 'We should be kind and compassionate, just and fair, to everyone, irrespective of one's faith, race, colour, or social status, and in all situations. God has commanded us to be just and kind. Deep involvement in human welfare and service to mankind is basic to Islam and of central importance to Da'wah. The Qur'ān places these values and conduct on a par with faith in God and His worship (68:27-37; 74:42-6; 107:1-7). Why should Muslims be indifferent to the uncared for, the lonely, the old, the hungry, who live in their societies?' (Khurram Murad, *Da'wah among non-Muslims in the West* (Leicester: The Islamic Foundation, 1986), p. 23.

treatments of living in a shared political space with non-Muslims. Scholars often point to the numerous Qur'anic verses which are addressed to mankind in general (including 2:21, 4:1, 4:174, 10:57, 34:28) as well as those which speak of God's beneficent intentions for mankind, amongst the most popular being Q. 17:70: 'We have honoured the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favours, above a great part of Our creation.'³⁵⁴ The beliefs that the message of Islam is directed towards all humanity, that all mankind shares a common origin, nature and purpose, and that God's creation was an act of love for mankind, are often reduced by contemporary scholars to the simple formula that 'Islam seeks to bring benefit and improvement to all people and all races.'³⁵⁵ While the 'benefit to humanity' implied is, of course, comprehensive in nature³⁵⁶, and 'controversial' in the Rawlsian sense, the argument of contemporary scholars is that it is un-Islamic to regret one's own proportional contribution to the welfare (material, *inter alia*) of people whom God wishes to bless.

2. b. Participating in non-Islamic governments

Our earlier discussion of the permissibility of residence in non-Muslim states touched on the problem of submitting to non-Muslim rule or legislation. For those who were seen to view residence as impermissible, it was this condition which was held to explain the ban most convincingly. Conversely, it was shown that a large number of jurists have held that residence is permissible even without Muslim self-rule on Islamic lines. Our subsequent discussion of loyalty to a non-Muslim polity focused on the Islamic

³⁵⁴ While this verse is cited by many contemporary scholars to argue that all mankind deserves a certain quality of treatment from Muslims, most classical exegetes seemed to read it as a declaration of man's superiority over animals and his claim to the earth's natural resources. (See, for example, the commentaries of Ṭabarī and Zamakhsharī on this verse.) By the 19th century, however, exegete Maḥmūd al-Alūsī (d. 1854) read the verse as teaching that 'everyone and all members of the human race, including the pious and the sinner, are endowed with dignity, nobility and honour.' (See al-Alūsī, *Rūḥ al-ma'ānī fī tafsīr al-Qur'ān al-'Aẓīm* (Cairo: Dār al-Turāth, n.d.) v. 15, p. 117.)

³⁵⁵ Mohammed Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Cambridge, UK: The Islamic Texts Society, 1999), p. 7.

³⁵⁶ This attitude, of course, has multiple possible implications, including a belief in the justness of subsuming non-Muslims into a Muslim political or social order, for the belief that 'Islam seeks to bring benefit and improvement to all people and all races' is hardly a formula which obviously leads to an doctrine of political restraint or religious neutrality for the state.

duty to adhere to contracts, including the tacit conditions implied by accepting a state's protection. Some Muslim scholars extract widely from this duty, arguing not only that one may not betray one's state in wartime but also that one must obey all the laws of a land in which one accepts security. The argument from contract is thus the most frequently-invoked justification (along with, of course, the principle of 'necessity making the forbidden permissible') for obeying non-Muslim, and un-Islamic, political and legal authority.³⁵⁷

This is obviously not the same thing as arguing that such authority may be just, may act justly or, differently put, that a Muslim would have reasons to choose or voluntarily endorse such authority. Living in a non-Muslim land, recognising its right to security, and accepting the unbelief of fellow citizens are all crucial components of a doctrine of citizenship in a non-Muslim state. None them suggests, however, any belief in the justness or acceptability of the political institutions of such a state, which is required if Muslims are to affirm their own citizenship within such states (as opposed to mere contribution to a society). It is obvious that the more orthodox juridical sources which we are privileging in this work are not likely to ground a Muslim's fealty to such political systems on the general acceptability or justness of their being un-Islamic. It would in fact be folly to ignore the reserve with which contemporary Muslim neo-classical thinkers treat secular, liberal politico-legal systems, even outside of the Muslim world. Is a doctrine of loyal resident alienage thus as far as these sources can be pushed?

Here I think much depends on the questions one poses to the sources. While I believe that there is important work to be done on how Muslim jurists understand the general purposes of the *sharī'a* (*maqāṣid al-sharī'a*), in particular the five essential interests which it exists to protect (*al-ḍarūriyyāt al-khamsa*),³⁵⁸ and whether these purposes can be shown to be fulfilled by non-Islamic legal systems, thus rendering them in some way 'just', demonstrating this with sufficient rigour would exceed the bounds of the present discussion. However, a frequent question in Islamic treatments of the minority condition is whether it is permissible to participate in non-Islamic governments, either through voting or accepting appointments. This topic bears directly on the question of

³⁵⁷ See, for example. Faḍl Allāh, *al-Hijra wa al-ightirāb*, p. 88-91.

³⁵⁸ Faith, life, property, intellect, lineage.

solidarity and recognition. While it may allow us a brief glimpse at how Muslim theorists might regard the actions of a non-Muslim liberal regime as substantively just, the question of immediate interest concerns political participation as a indication of Muslim willingness to share political sovereignty with non-Muslims. Thus, we are operating with a fine distinction between the political system of a non-Muslim liberal democracy *qua* liberal democratic political system and *qua* non-Muslim political system. Yet, while we are for the moment focusing primarily on the latter dimension, the former nonetheless remains our standard for evaluating the compatibility of arguments for participation. The question of political participation is thus a hinge issue between the aspects of citizenship relating to living in a non-Muslim political space and those relating to political justice.

The ultimate inseparability of addressing political participation as an issue of recognition/solidarity and as an issue of justice is obvious once we begin to examine Islamic arguments for participation. Not surprisingly, many contemporary Muslim scholars respond to fundamentalist arguments that participation in a non-Islamic system is a sin³⁵⁹ by pointing out the need to advance the Islamic conception of good by all legitimate means. Just as *da'wa* requires a certain integration into a non-Muslim society, so can political participation, including through coalitions with non-Muslim religious groups, be a legitimate means for advancing illiberal aims. One scholar, echoing American right-wing Christian claims, even mentions the rulings of the US Supreme Court under Chief Justice Earl Warren as something which Muslim political participation might eventually undo: 'The Warren Court in the 1950s began to turn the constitution into anti-religion until it became what it is today, supportive of all kind of evils. If Muslim justices sit in that position, the same constitution has the potential (theoretically speaking) of being supportive of Islamic rules and values. Non-participation of Muslims in the political process is saying that "I do not care and I will let the opportunity of Islamization pass by". How would you answer Allah? Actually, the alternative is even

³⁵⁹ The main arguments against participation are the following: 1) it involves taking non-Muslims as patrons in the way proscribed by the Qur'ān; 2) it involves 'inclining towards' those who do wrong ('And incline not to those who do wrong, or the fire will seize you; and you have no protectors other than God, nor shall you be helped.' (11:113)); 3) it involves accepting and legitimating the status quo of non-Islamic rule and man-made legislation; and 4) it will result in assimilation to non-Muslim society. (See M. Amir Ali, 'A Case for Muslim Political Participation,' <http://www.mpacuk.org/content/view/376/101/> and Taha Jaber Al-'Alwani, 'Muslims' Participation in the US Political Life,' www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=4743)

worse, that is, indifference and complacency to the evils.’³⁶⁰ This quotation exemplifies a species of arguments which justify political participation as part of a long-term strategy of general Islamisation or as the best available means of ‘commanding right and forbidding wrong,’ where the wrongs intended to be confronted largely include acts protected as matters of personal liberty by liberal regimes.³⁶¹ Thus, while in one sense certain arguments for participation in a (heretofore) non-Muslim political system can be construed as a position of solidarity *qua* concern for non-Muslim souls, such arguments do not affirm civic solidarity within liberal constraints. These are not justifications of sharing political sovereignty and collective responsibility but rather a weighing of relative evils;³⁶² they are invariably presented as consistent with the complete rejection of democracy as a system which Muslims might *choose* for themselves.³⁶³

Even without exploring the possibility of a more comprehensive overlap between liberal and Islamic conceptions of political justice alluded to above, there are currents of Islamic thought which focus on the permissible forms of political cooperation between Muslims and non-Muslims within liberal constraints. The dominant strategy of justification hovers between two arguments: that there is no prohibition (‘*adam al-*

³⁶⁰ Ali, ‘A Case for Muslim Political Participation.’

³⁶¹ Michael Cook, in his magisterial study of how Muslims have understood the duty to ‘command the right and forbid the wrong’ throughout history, argues that the dominant interpretation is that ‘right refers to *all* that God and His Prophet have commanded, wrong to *all* they have forbidden.’ (Michael Cook, *Forbidding Wrong in Islam* (Cambridge: CUP, 2003), p. 22.) To emphasise the point that this duty cannot be confused with modern, liberal notions of harm, Cook’s summary of the Ḥanbalī sources (representing the most vigorous treatments of the duty) is that ‘the most commonly encountered forms of offence in the responsa [*fatwas*] were making music and drinking liquor – in that order. These are followed at some distance by sexual misconduct and a scatter of minor offences. On the whole, the menu is simple and repetitive.’ (Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge, CUP: 2000, p. 90.)

³⁶² One of the principles of Islamic jurisprudence is the consequentialist maxim to choose the act which will cause the least harm (*aqall al-dararayn*). Arguments such as the one advanced here by M. Amir Ali are essentially that participating in a non-Muslim political system is a lesser evil than failing to exert oneself towards the removal of other evils.

³⁶³ British-based cleric Sheikh Haytham bin Jawwad al-Haddad explains the belief that voting in democratic elections to be unbelief (*kufr*) as arising from ‘the inability to distinguish between establishing a democratic system in which people vote for one of a number of systems, and voting to select the best individual amongst a number of candidates within an already-established system imposed upon them and which they are unable to change within the immediate future. There is no doubt that the first type is an act of Kufr, as Allah says, “Legislation is for none but Allah. He has commanded that you worship none but Him.” [Qur’an, 12:41] and He says, “And whosoever does not judge by what Allah has revealed, such are the Kafirun (disbelievers).” [Qur’an, 5:44] Secondly: not realising that voting for a candidate or party who rules according to man-made law does not necessitate approval or acceptance for his method; this is a crucial point.’ (Sheikh Haytham bin Jawwad al-Haddad, ‘An Advice To British Muslims Regarding The Coming Elections,’ www.islamicawakening.org/viewarticle.php?articleID=1150&)

tahrīm) on collaborating with unbelievers in secular matters, and that pursuing secular forms of welfare and justice is itself a religious injunction. While these arguments are advanced by scholars who may be highly conservative, even ‘fundamentalist’ on some readings³⁶⁴, they differ from their intellectual brethren who call for using political freedoms to advance Islamic conceptions of morality in focusing primarily on using non-Islamic institutions towards secular aims.

A particularly popular Qur’ānic story for scholars seeking to justify participation in a non-Muslim political system is that of Joseph (Yūsuf) in Pharaonic Egypt who, according to verse 12:55 (‘Appoint me over the storehouses of the land. I am a capable guardian and know things well.’), accepted appointment as a minister of the pagan Pharaoh of Egypt. An American Muslim scholar cites the example of Joseph to argue that ‘cooperating with non-Muslims in worldly affairs is permissible as long as that will bring benefits to Muslims and will help establish justice or ward off injustice. Hence, there is nothing prohibited in Muslims’ participating in elections run in non-Muslim countries, especially when such participation accrues benefits to Muslims or wards off harm.’³⁶⁵ Two features of this position are particularly noteworthy. The first is that scholars citing the story of Joseph do not limit their conception of welfare and of the good to the spiritual and the moral, but focus more intensely on secular and political aspects of welfare. The second is that, bearing in mind the interest in benefiting Muslim communities, the notion of benefiting or cooperating with non-Muslims is affirmed. Shanqiti thus writes that ‘Muslims who participate in the US elections should not have selfish objectives in doing so; that is, they should not aim at achieving the welfare of the Muslim minority only. Rather, they should aim at rescuing the whole American nation ... in the same way that Prophet Yusuf saved a pagan people from famine.’

This reading of the story of Joseph is supported by traditional exegesis. Some exegetes merely note in relation to the verse that it provides ‘evidence of the

³⁶⁴ In fact, many of these scholars echo the incompatible positions encountered above, which call for the use of democratic institutions for non-liberal aims and even the eventual ‘Islamisation of society.’ Our point here is that they advance other arguments as well, often prioritising them over the ‘Islamisation’ arguments.

³⁶⁵ Sheikh Muhammad Al-Mukhtar al-Shanqiti, ‘Muslims’ Participation in US Elections,’ (<http://www.islam-online.net/fatwaapplication/english/display.asp?hFatwaID=106769>).

permissibility of accepting appointments from an unbeliever if one knows that this is the only means of establishing justice and moral policies.³⁶⁶ The question of accepting appointment from an unjust or unbelieving ruler receives more detailed treatment in the exegesis of Shāfi‘ī scholar al-Māwardī:

If the authority in question is unjust then scholars are divided as to the permissibility of taking appointments from him into two positions: the first is that it is still permitted if one acts justly in what he has been assigned, because Joseph was appointed by Pharaoh³⁶⁷ and because the consideration is of the justness and validity in his deeds and not in the deeds of others. The second position is that this is not permitted because of what it entails by way of loyalty to the unjust and support for them, and absolving them by executing their plans. This camp gives two explanations for Joseph’s appointment by Pharaoh: first, that this Pharaoh was upright [*ṣāliḥ*] whereas the Pharaoh of Moses was tyrannical. Second, that the consideration for him was over [the king’s] dominions and not his actions, and he [Joseph] was thus free from subservience to him. The more correct application of these two positions is to separate and classify what he is being assigned from the unjust into three categories: first, what one is allowed to do because it does not involve discretionary judgement in its execution, such as the collection and distribution of charity. Second, what one is not allowed to perform alone because it requires authoritative judgement, such as the distribution of war booty; thus one may not accept such appointments from the unjust ruler because he will administer [such goods] unlawfully and will apply his discretionary judgement over that which he has no right. Third, what one may accept appointment over if it involves some discretionary authority, such as judging cases and making rulings, and the duty to obey [the unjust ruler] is removed. Thus, if it is a matter of carrying out a ruling between two conflicting parties or mediating between two subjects, then it is permitted; however, if it is a matter of [merely administering] an imposed decision then it is not permitted.³⁶⁸

There are three main themes and points which stand out from Māwardī’s synopsis of the range of legal disputation (*ikhtilāf*).³⁶⁹ The first is that non-Muslim rulers, and by

³⁶⁶ al-Bayḍāwī, *Tafsīr anwār al-tanzīl wa asrār al-ta’wīl*.

³⁶⁷ Presumably the point here is that Pharaoh was an otherwise unjust ruler.

³⁶⁸ al-Māwardī, *Tafsīr al-nukat wa al-‘uyūn*.

³⁶⁹ Writing roughly two centuries later, the Mālikī scholar al-Qurṭubī can still quote Māwardī word for word as having encapsulated the crucial juridical questions and range of responses. Qurṭubī’s own position (recalling from chapter three that the Mālikīs were the most hostile to residence in non-Islamic lands) was that ‘this verse permits a virtuous man to work for a wicked man or an unbelieving ruler on the condition that he is given authority over his task and is not opposed or interfered with in it, and what is asked of him is useful and appropriate. However, if his work depends on the choices and whims of the wicked man then it is not permitted.’ He rejects the view that ‘this was a particular [dispensation] for Joseph and is not permitted today.’ (al-Qurṭubī, *al-Jāmi‘ li aḥkām al-Qur’ān*, v. 9., p. 14.) This latter view is not infrequent within contemporary ‘Salafī’ discourses on participating in democratic elections in non-Muslim states. The argument is that Joseph was a prophet before the advent of Islam and thus his example is not perfectly

extension non-Muslim political systems, can be 'just' or 'upright' or can act justly even whilst being non-Muslim. The confusion here arises because of the frequent overlap in the conceptions of 'justice' and 'belief.' Believing, submitting to God, and performing one's religious obligations are crucial aspects of justice. Contemporary Shiite Ayatollah Muḥammad Faḍl Allāh addresses this problem directly by suggesting that there are (applicable here) two kinds of injustice: direct infringement on people's rights in society and, second, the very act of opposing or neglecting God's law, or being an unbeliever. Non-Muslims can be just in this sense of not oppressing people or depriving them of their social rights while still being unjust towards themselves and God.³⁷⁰ Crucially, even the party referred to by Māwardī as not permitting loyalty to or support for unjust rulers allows that the pagan Pharaoh of Joseph may have been 'upright' or 'virtuous' [*ṣāliḥ*] and we have seen that the Christian king of Abyssinia (al-Najjāshī/the Negus) is often referred to as 'just' [*ādil*] even before his conversion to Islam.

Along this line, Rāshid al-Ghannūshī, while not addressing in detail which substantive aspects of justice non-Muslims may exemplify, advances a particularly explicit non-utopian vision of how Muslims may pursue the Islamic conception of justice in a non-Muslim state: 'An Islamic government is based on a number of values which is accomplished in their totality would result in a perfect or near-perfect system. But it may not be possible for all such values to be implemented, and therefore some must suffice in certain circumstances in order for a just government to exist. A just government, even if not Islamic, is considered very close to the Islamic one, because justice is the most important feature of an Islamic government, and it has been said that justice is the law of God.'³⁷¹ Ghannūshī's views are largely based on the jurisprudential doctrine of 14th century Andalusian scholar al-Shāṭibī, in particular the view – introduced above – that divine law has been revealed to protect the five basic human interests of faith, life,

applicable to Muslim conditions. See Sajid, 'Joining Political Parties in non-Muslim Countries' for this argument.

³⁷⁰ Faḍl Allāh, *al-Hijra wa al-ighṭirāb*, pp. 88-9.

³⁷¹ Rachid Gannouchi, 'Participation in Non-Islamic Government,' in Charles Kurzman, ed., *Liberal Islam: A Sourcebook* (Oxford: OUP, 1998), p. 92.

property, intellect and lineage. While beginning from these precepts does not preclude substantive disagreement about even the basic demands of justice (for example, does the basic human interest in having faith protected result in liberal freedoms of conscience or in curtailments on the right to blasphemy and scandalous speech?), in this case it is clearly a strategy designed to encourage Muslims to focus on the broadest conception of human needs and welfare rather than the desire to rule by everything ‘which God has revealed’ (or which Islamic legal scholars have derived). For his part, Ghannūshī refers to ‘preventing the evils of dictatorship, foreign domination, or local anarchy’ as ‘aims of the *sharī‘a*’ which can be attained in non-Muslim states.

The second suggestion in the above treatments is that one can pursue just actions within a non-Muslim regime. The ambiguity here is whether justice is defined in exclusively Islamic terms and whether a requirement for acting justly is having complete autonomy to implement Islamic rulings. Al-Alūsī, for example, writes that one may request appointment³⁷² from an unjust ruler if ‘the supplicant is one who is able to uphold justice and implement the rulings of the *sharī‘a*.’³⁷³ The conditions of the Joseph example, however, and the above point about how non-Muslims may act justly, make it obvious that the jurists are not restricting participation to such ideal conditions as complete control over the legal system. Sunni scholar ‘Abd al-Qādir, like his Shiite compatriot Faḍl Allāh, seeks to confront directly the disjunction between the vagueness of the classical sources and the clarity of contemporary realities. He notes that most classical scholars regard serving under a non-Muslim ‘sultan’ as permissible if the person is able to uphold justice and ‘implement the rulings of the *sharī‘a*, if that is the only way to bring about rights, and if this enables him to benefit the worthy and protect them from harm.’³⁷⁴ He does not answer whether ‘implementing the rulings of the *sharī‘a*’ means acting in the broad outline or intent of Islamic law, merely acting justly, not violating any

³⁷² Verse 12:55 raises two other questions for exegetes in addition to the problem of serving a non-Muslim ruler: whether one may request appointment at all, even from a Muslim ruler (there is a Prophetic *ḥadīth* against this), and whether one may praise oneself as Joseph does in the verse.

³⁷³ In al-Alūsī, *Rūḥ al-ma‘ānī*, v. 13, pp. 5-6.

³⁷⁴ ‘Abd al-Qādir, *Fiqh al-aqaliyyāt al-muslima*, p. 611.

express religious injunctions or prohibitions, or implementing Islamic law in its specificity (*furū'*). He, quite accurately, acknowledges that today, however, all states have their own legal systems and do not allow people to apply whatever legal codes or conception of justice they please. He notes that some hold that it is thus not permissible for a Muslim to accept the appointment of an unbeliever in order to uphold and apply non-Islamic laws and judgements, but that acting in civil or secular matters where one is in the position to bring about justice and welfare (particularly to Muslims) is permissible. What is important for such scholars is that one is able to separate the fact of being a *mutawālī* (appointee, client, etc., with its implications and intonations of subservience) from the actual actions performed; one does certain things within a non-Muslim state to advance the cause of justice or bring about benefits to Muslims, not to advance unbelief or injustice.³⁷⁵

Perhaps the most direct and remarkable statement approaching what liberal jurisprudence refers to as 'self-restraint' on the part of legislators or state officials is Ibn Taymiyya's discussion of the Abyssinian king al-Najjāshi (the Negus). As mentioned briefly in the previous chapter, Muḥammad sent a group of followers to Abyssinia to escape persecution in Mecca 'for the king there will not tolerate injustice and it is a friendly country.'³⁷⁶ We have seen this example used already as justifying residence in non-Muslim lands, loyalty to a non-Muslim state, support for a non-Muslim state's self-defence efforts, and regarding it as 'just.' Islamic tradition holds that this king later converted to Islam on the invitation of the Prophet³⁷⁷ but was unable to rule 'according to the Qur'ān' because of the majority sentiments of his Christian population. Ibn Taymiyya comments on this in the following way: 'We know definitely that he could not implement the law of the Qur'ān in his community because his people would not have permitted him to. Despite that, the Negus and all those who are similar to him found their way to the pleasure of God in eternity although they could not abide by the laws of Islam, and could

³⁷⁵ Ibid., p. 617.

³⁷⁶ Guillaume, *The Life of Muhammad*, p. 146.

³⁷⁷ Ibid., p. 657.

only rule using that which could be implemented in the given circumstances.³⁷⁸ Obviously, one wants to be cautious in deriving too much from a statement such as this. Clearly, any Islamic legal scholar would see the Negus's restraint as an unfortunate necessity rather than a position of principle, and something to gradually disappear. However, the notions that one can personally live a just life and attain salvation, can act justly in a political context, and can be sensitive to the sensibilities of a majority non-Muslim population, all while ruling and acting by other than 'the law of the Qur'ān' are powerfully and unambiguously expressed here by a scholar often associated with the most utopian and uncompromising doctrines of political ethics.

The third implication of the Joseph story is that acting justly can consist in service to a non-Muslim³⁷⁹ people, such as acting to save the pagan Egyptians from famine. This is emphasised much more strongly in the contemporary sources. Tariq Ramadan, for example, writes that 'to defend justice cannot be to defend Muslims only: the best witness of the excellence (*iḥsān*) of the Islamic way of life lies in respecting the ideal of justice over and above the failings of Muslim believers.'³⁸⁰ Qaraḍāwī justifies political participation on grounds of pursuing welfare for both Muslims and others: 'What urges a Muslim to engage in politics is the fact that he is required to show care for others and concern himself with the problems of his Muslim brothers.'³⁸¹ Shanqiti emphasises in the above-cited *fatwā* 'issues related to public welfare, which a Muslim is enjoined to participate in achieving, whether for the favor of Muslims inside or outside America, or even in relation to non-Muslims.' These comments complement our previous discussions on justice across communities and on contributing to non-Muslim welfare by showing that such contribution is not only permitted, but is itself an independent argument in favour of political participation.

³⁷⁸ Ibn Taymiyya, *Majmū' al-fatāwā*, v. 19, pp. 218-9.

³⁷⁹ Islamic doctrine regards all pre-Islamic prophets as 'Muslim' in the general sense of worshipping God and submitting to His will. The behaviour of these prophets is treated as exemplary for Muslims.

³⁸⁰ Ramadan, *To Be a European Muslim*, p. 22.

³⁸¹ Qaraḍāwī, 'Muslims' Participation in the US Political Life,'

<http://islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=4743>.

Scholars drawing from the example of Joseph in order to justify political participation also cite examples from the life of the prophet Muḥammad which support the practice of cooperation in secular matters. ‘Abd al-Qādir raises another dilemma of political participation, that of voting for non-Muslims who otherwise hold non-Islamic aims or beliefs. He writes that this is permissible in order to gain rights or other benefits for Muslims on the basis of a number of examples of the Prophet accepting the support, intervention and protection of non-Muslims.³⁸² These examples include treaties with pagan Arabs as well as Jews and Christians both before and after his migration to Medina. Another popular example is that of the *‘ḥilf al-fuḍūl’* a pact amongst pre-Islamic Arabic tribes in Mecca to ‘support the wronged, maintain close relations with relatives and take good care of them. The Prophet did witness the signing of the alliance prior to his prophethood and said afterwards that if he were to be invited to a similar alliance in Islam he would have accepted without reservation. He further stressed that any good and noble contract made in the pre-Islamic era is automatically endorsed by Islam.’³⁸³ Ghannūshī extracts from this not only that the ‘community of believers may participate in an alliance aimed at preventing injustice and oppression,’ but goes on to speak of ‘serving the interests of mankind, protecting human rights, recognizing the authority of the people and rotating power-holding through a system of elections. The faithful can pursue all these noble objectives even with those who do not share the same faith or ideology.’ One does not need to see the surplus of meaning in this comment of the Prophet that Ghannūshī does in order to observe its affirmation of recognising and participating in non-Muslim authority in the service of overlapping conceptions of public good.

For contemporary scholars, two considerations in particular are thus central in discussing the permissibility of political participation in a non-Muslim state (whether through voting or accepting political appointments): the range of acts one may engage in or support, and the types of benefits for Muslims which one is in a position to pursue.

³⁸² ‘Abd al-Qādir, *Fiqh al-aqaliyyāt al-muslima*, p. 619. M. Amir Ali and others also make this point.

³⁸³ Ghannouchi, ‘Participation in Non-Islamic Government,’ p. 92.

The discussions surrounding the former question are particularly supportive of the view that a politically liberal regime is best placed to gain the support of non-liberal communities. While we have encountered the view that the secularism of liberal states poses a challenge for Muslim loyalty to those states, a more frequent view – introduced above in the discussion of the ‘*muwālāh* verses’ – is that the religious neutrality of liberal political institutions alleviates Muslim concerns about offering loyalty to non-Islamic comprehensive, metaphysical doctrines.

In the *fatwā* by American Muslim scholar Shanqiti which we have been discussing, he writes that

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

Sheikh Muhammad Al-Hanooti, a member of the North American Fiqh Council, echoes these views: ‘In the US, religion is not a priority in politics. On the contrary, politicians are secular in demonstrating what they are targeting. Of that secularism, we have perhaps more than 60% of our welfare and interests to be run through a polling system. Schooling, sanitation, zoning, social services, police, court, medication, finance, business, sports, recreation, etc. are run by people that are elected to office. Are you going to tell me that I am loyal or giving allegiance to the *kuffar* (non-Muslims) because I want to lead myself in the way that can get a school for my children, good sanitation for my neighborhood or good cooperation with the police to protect me?’³⁸⁴ This is also the official position of the European Council for Fatwa and Research, which uses the above cited examples of the Prophet’s behaviour to argue that ‘it is permissible for Muslims to engage with non-Muslims in commercial transactions, peace treaties and covenants

³⁸⁴ Muhammad Al-Hanooti, ‘Voting in a Majority non-Muslim Country,’ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=14795.

according to the rules and conditions prevalent in those countries. Mutual cooperation in worldly affairs goes far to encompass all citizens who share a common destiny, neighbourhood and sometimes kinship. This may be extended to include economic and commercial fields.’ Furthermore, as to the application of this principle to democratic elections, ‘elections in the modern world systems have become a means through which people choose candidates and judge the programmes they adopt. Muslims living in such societies enjoy rights and are bound to uphold certain duties. If they fail to uphold those duties they are no more entitled to receive the rights, for the rights meet the duties. Thus, Muslims’ participation in elections is a national duty; in addition it falls under cooperation on that which is good and righteous for society and warding off harms from it.’³⁸⁵ This awkwardly articulated position in fact probably goes well beyond the most common liberal conceptions of civic duty in the direction of positive participation.

Although this form of argument is designed to show merely that there is no prohibition on participating in non-Muslim political systems, scholars attempt to place it within broader Islamic juridical and ethical theory. In this case, it is a matter of arguing that the pragmatic pursuit of *part* of the Islamic conception of the good or of secular welfare, or the balancing of costs and benefits are *general* principles of Islamic jurisprudence. We opened this discussion with a quote that rejected democracy as a principle, but allowed that certain Islamic objectives might be advanced through democratic means. Such justifications of political participation in a non-Muslim society are obviously not supportive of liberal institutions when the idea of shared ends with non-Muslims is tolerated merely as a necessarily evil, when the objectives to be pursued are illiberal ones, and the when the idea of ultimately introducing Islamic forms of rule is advanced. However, liberal political theory obviously cannot exclude all reasons for fulfilling civic duties which are based on benefits to a given sub-state community or to a given conception of the good. Thus, in addition to the forms of rhetoric we encountered earlier, there are a number of related arguments for political participation which emphasise the possible benefits for Muslims in such participation, but may be regarded as supportive of the liberal political order.

³⁸⁵ ‘Elections in non-Muslim Countries: Role of Muslims,’
www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID==78491.

The first such argument is the one we have seen articulated by Rāshid al-Ghannūshī based on his reading of Shāṭibī's jurisprudence. This argument basically holds that the Muslim's duty is 'to work towards preserving whatever can be preserved of the aims of shari'a' understood broadly as the five basic human interests of life, faith, property, intellect and lineage. This emphasis on the ultimate purposes of Divine law serves to deflect attention from both particular, technical rulings of Islamic law and the un-Islamic forms of behaviour permitted in non-Muslim states. Instead, non-Islamic governments can be seen as *sufficiently* just because of the general human interests which they protect (such interests include for Ghannūshī, both in Muslim majority and minority political contexts, 'independence, development, social solidarity, civil liberties, human rights, political pluralism, independence of the judiciary, freedom of the press, or liberty for mosques and Islamic activities'), possibly realising a legitimate form of governance which he calls 'the government of rationale' as opposed to 'the government of shari'a.' The crucial measure of Ghannūshī's doctrine of how to share political space with non-Muslims, is how he addresses the question of social coalitions with non-Muslims. Here, he sides firmly with liberal secular groups over other non-liberal religious ones: 'Can any Muslim community afford to hesitate in participating in the establishment of a secular democratic system if it is unable to establish an Islamic democratic one? The answer is no. It is the religious duty of Muslims, as individuals and as communities, to contribute to the efforts to establish such a system.'³⁸⁶ This goes for Muslim minorities in particular, who have no hope of establishing Islamic rule. 'The best option for such minorities is to enter into alliances with secular democratic groups. They can then work towards the establishment of a secular democratic government which will respect human rights, ensuring security and freedom of expression and belief – essential requirements of mankind that Islam has come to fulfil.'³⁸⁷

Like Tariq Ramadan, Ghannūshī is articulating a more self-consciously liberal doctrine of citizenship. The more conservative juridical tradition, however, also contains powerful resources for similar forms of pragmatism. Speaking about Muslim-majority

³⁸⁶ Ghannouchi, 'Participation in Non-Islamic Government,' p. 92.

³⁸⁷ Ibid., p. 94.

societies, Yūsuf al-Qaradāwī argues that the basic principle (*al-aṣl*) is that it is forbidden to participate in a non-Islamic government, but that there are certain grounds for exception: a) reducing evil and injustice to the extent one can, b) committing the lesser of two evils (*akhaḥḥ al-ḍararayn*), and c) descending from the higher example to the lower reality.³⁸⁸ These three grounds for participating are linked to certain general principles of Islamic jurisprudence (principles which jurists refer to when arriving at a ruling that is not resolved by the authoritative sources³⁸⁹), including: 'necessity makes the forbidden permissible' (*al-ḍarūra tubīḥ al-maḥẓūrāt*); 'toil brings about relief' (*al-mashaqqā tajlib al-taysīr*); 'do no injury nor as a penalty for an injury' (*lā ḍarar wa lā ḍirār*); and 'relieve difficulties' (*raf' al-ḥaraj*). The conditions which Qaradāwī imposes on such participation are illuminating. They include: a) that there be some responsibility, independence and authority, rather than merely being the executor of another's will; b) that the regime not be characterised by injustice and tyranny, and known for its antagonism to human rights. This means that a Muslim may not participate in dictatorial regimes which tyrannise their populations, but 'only in a regime based on democracy which respects human faculties.' c) That there be the right to oppose everything which contradicts Islam in a clear way, or at least to refrain from it.³⁹⁰

The first condition we encountered in Māwardī's discussion of the Joseph example. It is not entirely clear what is meant by 'responsibility, independence and authority,' but if the form of political participation in question is voting or even serving in legislatures, then one enjoys autonomy equal to that of any similarly-placed citizen. As for administration or bureaucratic positions, one could easily imagine this condition being invoked in favour both of a Muslim citizen applying her specialist or technical talents to social or civic purposes, and also of resigning a position where one feels compelled towards acting contrary to personal conscience. Combined with the third condition, one sees emerging an Islamic doctrine of how to deal with un-Islamic aspects of a political

³⁸⁸ Qaradāwī, *Min fiqh al-dawla fī al-Islām* (Cairo: Dār al-Shurūq, 1997), p. 180.

³⁸⁹ See Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), pp. 40-47.

³⁹⁰ Qaradāwī, *Min fiqh al-dawla*, pp. 184-5.

system to which one is otherwise loyal and committed. While this is not exactly a strict doctrine of liberal self-restraint (Qaraḍāwī would presumably not oppose certain illiberal laws supportive of Islamic values or interests), it points towards how a Muslim may remain loyal to a system which is 'sufficiently just' in terms of the rights and freedoms it protects but also tolerates behaviour forbidden by Islam. Qaraḍāwī's second condition on political participation also offers another strong indication that liberal regimes may be regarded as more just than other non-Islamic regimes.³⁹¹

This pragmatic position has deep roots in Islamic legal thinking. While those (such as Ghannūshī or Ramadan) seeking to argue for the justness of non-Islamic regimes generally quote Shāṭibī, those (such as Qaraḍāwī, Zuḥaylī or 'Abd al-Qādir) arguing for a more modest pragmatism refer to the authority of Ibn Taymiyya, namely his view that 'the *sharī'a* came to bring about and perfect welfare, and to reduce and negate corruption.'³⁹² Qaraḍāwī refers to this basic consequentialist form of thinking as '*fiqh al-muwāzanāt*,' or 'the law of balancing [costs and benefits].'³⁹³ The application of this methodology to our present question results in the fairly anodyne recommendation to Muslim minorities to develop a 'disciplined openness and flexibility so that they do not become cramped, isolated and withdrawn from their societies, but rather contribute to them positively, give them the best they have to offer and take from them the best they have to offer. Thus the Islamic community achieves that most difficult balance: preservation without obscurity and participation without assimilation.'³⁹⁴

This form of justifying political participation in non-Muslim states emphasises two main themes: the duty to command and forbid, suppress evil, combat injustice etc.,

³⁹¹ He is not affirming the same position as Ghannūshī, however. One can imagine him preferring a non-Muslim political system which is broadly democratic but favours religious conceptions of the good over non-religious ones.

³⁹² Ibn Taymiyya, *Majmū' al-fatāwā*, v. 20, p. 55.

³⁹³ See his *Priorities of the Islamic Movement in the Coming Phase* (Swansea: Awakening Publications, 2000), pp. 47-55, 243-252.

³⁹⁴ Qaraḍāwī, *Fī fiqh al-aqaliyyāt*, p. 35.

and the possibility of securing benefits (*maṣāliḥ*, sing.: *maṣlaḥa*³⁹⁵) for Muslims. As for the first, there is little more to add to our previous treatment. While there are secular evils to be stamped out and some scholars are apt to emphasise them over morality questions, there is no avoiding the fact that most conservative or traditionalist Muslim scholars (and many pious lay believers) would regard illiberal legislation passed by a non-Muslim parliament which bans certain behaviour noxious to a Muslim sensibility as a clear-cut political victory. ‘Abd al-Qādir writes that a Muslim can be elected to a non-Islamic legislature, but may not agree to anything which contradicts the law of his Lord and must demand that which that law requires.³⁹⁶ Yet, within this broad consensus, there are important differences of priority and emphasis; that one can justify participating for *other* reasons and that one can justify participating even when a regime fails to suppress certain ‘evils’ are the reasons for not regarding a scholar’s interest in ‘forbidding wrong’ as definitively incompatible with liberal citizenship.³⁹⁷

‘Abd al-Qādir also gives a particularly succinct summary of the second theme, the argument from *maṣlaḥa*: ‘working within the institutions of unbelief is permissible if it be in defence of basic needs and necessities, or if it be to advance the interests of Islam and Muslims, for example, to combat injustice or to bring about some advantage to the Muslim community within a given country. But if it be to advance a private interest or individual ambitions then it is impermissible.’³⁹⁸ He invokes another principle of jurisprudence, citing Ibn Taymiyya: ‘That by which something required (or recommended) is only realised by it, is itself required (or recommended).’ (*Mā lā yatimm*

³⁹⁵ *Maṣlaḥa* in Islamic jurisprudence suggests ‘public interest’ and gradually developed into a source for legal decisions, particularly in the works of al-Ghazālī (Sh.: d. 505/1111), Najm al-Dīn al-Ṭawfī (Hnb: d. 715/1316) and Abū Iṣḥāq al-Shāṭibī (d. 790/1388).

³⁹⁶ ‘Abd al-Qādir, *Fiqh al-aqaliyyāt al-muslima*, p. 618

³⁹⁷ It is important to bear in mind that we are not concerned with whether any given scholar who has sought to address Muslim minority questions systematically and comprehensively, such as ‘Abd al-Qādir or Qaraḍāwī, himself holds comprehensive views which would in their entirety make him a good citizen of a liberal state, unless views which we are using to demonstrate compatibility are only coherent or applicable if one accepts other, incompatible, ones. It is highly unlikely that all of a scholar’s views will support a liberal political order (unless they are clearly elaborated with this intent, such as the writings of Tariq Ramadan and some of Ghannūshī’s texts), even on some very basic questions.

³⁹⁸ *Ibid.*, p. 609.

al-wājib (al-mustaḥabb) ilā bihi huwa wājib (mustaḥabb).) The obvious question raised by this statement is what sorts of interests or benefits these scholars imagining being advanced by political participation. There is strong reason to believe that the reference to *maṣlaḥa* generally signifies an interest in secular, public goods. It was al-Ghazālī who introduced the concept in its mature form, defining its substance as everything which helps mankind preserve the five necessary interests of life, religion, intellect, property and lineage.³⁹⁹ Shāṭibī in turn writes: 'I mean by *maṣlaḥa* that which concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him.'⁴⁰⁰ The use of *maṣlaḥa* as an ethico-legal concept obviously requires much more rigorous and technical treatment than there is space for here.⁴⁰¹ However, what is important to establish at this point is that the largely secular implications of the concept of *maṣlaḥa*⁴⁰² help answer one of our two main concerns about its use as a justification for political participation. That concern is that the conception of welfare advanced by Muslim scholars might involve aims which are themselves incompatible with a liberal political order. As opposed to the use of concepts such as 'commanding right and forbidding wrong' or 'reducing evil in society,' the reliance on *maṣlaḥa* generally signifies a pragmatic approach to the public sphere and an emphasis on goods compatible with a liberal political order.

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

³⁹⁹ See Felicitas Opwis, 'Maṣlaḥa in Contemporary Islamic Legal Theory,' *Islamic Law and Society*, Vol. 12, No. 2, 2005, p. 188.

⁴⁰⁰ Abū Iṣḥāq al-Shāṭibī, *al-Muwāfaqāt* (al-Khubar, Saudi Arabia: Dār Ibn 'Affān, 1997), v. 2., p. 20.

⁴⁰¹ See, in addition to Khadduri, Opwis and Abou El Fadl, Wael Hallaq, *History of Islamic Legal Theories* (Cambridge: CUP, 1997) and Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law* (Islamabad: Islamic Research Institute, 1995).

⁴⁰² Opwis argues that the post-Ghazālī legal theorists, most importantly Fakhr al-Dīn al-Rāzī, Shihāb al-Dīn al-Qarāfī, Najm al-Dīn al-Ṭūfī and of course al-Shāṭibī, all made important methodological and epistemological contributions to clarifying the place of *maṣlaḥa* in Islamic legal theory, but 'the constituent elements of the concept did not actually change after al-Ghazālī defined them at the end of the 5th/11th century.' Similarly, modern polemics have focused on questions of epistemology and juristic methodology rather than the basic substantive meaning of *maṣlaḥa*. (Opwis, 'Maṣlaḥa in Contemporary Islamic Legal Theory,' p. 197.)

‘they must protect their lives, their properties and their rights to live in peace. In order to protect their own rights and to promote the good things in the society, if it is necessary for them to participate in the political system of non-Islamic states, then it is their duty to do so.’⁴⁰³ It is also common for scholars to speak about the possibility of using political participation to change specific policies of non-Muslim states. The foreign policy of Western states towards the Islamic world is obviously a common theme.⁴⁰⁴ True, it cannot be said (at this point) that most of the scholars we are quoting would in any way object to some political outcomes which are incompatible with a liberal political order, such as the forms of ‘internal restrictions’ discussed by Kymlicka which set limitations on exit from or criticism of one’s community. Getting non-Muslim states to recognise Muslim personal law or ban offensive, scandalous or blasphemous speech would without a doubt be regarded as enormous victories by the likes of ‘Abd al-Qādir or Qaradāwī.

However, there are two countervailing considerations: that these scholars do not limit the benefits they seek to secure through participation to such incompatible aims, and they do not speak of these incompatible aims as conditions on residence or political participation. For the most part, they have in mind either general conceptions of human welfare (as evidenced above by the emphasis on the secular as the appropriate domain for cooperation with non-Muslims) or Muslim-specific aims which are nonetheless compatible with competitive democracy. For example, there is nothing about using democratic means to direct social spending towards eligible Muslim communities, to secure recognition for religious schools, or even to support foreign policies beneficial to the welfare of Muslims in Muslim-majority countries, which suggests an illegitimately tactical attitude to democracy. Furthermore, in addition to specific policies or outcomes, there is a more interesting tendency to speak of the *inherent* benefit of being a community which participates politically. ‘Abd al-Qādir endorses Qaradāwī’s sentiments quoted above (‘that Muslims do not become cramped, isolated and withdrawn from their societies’), and argues that not participating leads to ‘marginalization and remaining in

⁴⁰³ Muzammil Siddiqi, ‘Muslims Participating in the US Local Councils,’ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=62236.

⁴⁰⁴ This is obviously a theme of countless texts, but Monzer Kahf’s *fatwā* is interesting because it uses the question of US foreign policy to emphasise civic involvement. (‘Refusing to Pay Taxes to the US Due to its Anti-Muslim Policy,’ www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=70581)

darkness.’⁴⁰⁵ Thus, the focus on Muslim welfare goes beyond mere checklists of desired policies or reforms.

The other possible theoretical concern with justifying political participation on the basis of the pursuit of Muslim welfare is that it might suggest a certain sectarianism or egotism, that is, an exclusive concern with Muslim welfare and seeking to limit (or even merely regretting) the corollary benefits which accrue for those outside one’s particular community. As seen above, ‘Abd al-Qādir justifies political participation ‘if the goal is to advance the interests of Islam and Muslims’ but claims that if there are no such benefits than he has not encountered a jurist who has permitted it.

The argument that participation is only permitted if it produces some benefit for Muslims is certainly problematic for our interest in participation as a feature of recognition and solidarity, but I submit that it is not an obviously incompatible reason for civic engagement. For one, political participation is not required in a liberal democracy. While a thicker conception of citizenship might assert that one must take up one’s share of collective sovereignty and responsibility in order to be a true citizen, other conceptions may be more appropriate for a complex, large and impersonal political community. Consider the two following positions, introduced at the end of Chapter Two:

1. ‘My conception of the good is based on the pursuit of purely private happiness. I have no objection to the political order around me – it provides me with all the security and freedom I need to be happy – but nor do I feel the need to be a part of it. Should this political order be threatened by forces which would replace it with one more hostile to my interest in security and freedom, I would have no objection to defending it through voting or speaking out, but otherwise I am happy to let others handle the administration of things.’

2. ‘My conception of the good is based on the pursuit of salvation, which I think can be best achieved through government on the basis of a divine law. I understand that in this society the majority of the population does not share my understanding of what divine law requires. This society gives me the security, freedom and dignity to follow my most important religious practices and thus I would defend it against harm and destruction. I do not begrudge my unbelieving fellow citizens their worldly happiness and I do not resent my contribution to their welfare. However, while I will obey all laws of this society which do not oppress me, I do not feel any need to contribute to the making of those laws.’

⁴⁰⁵ ‘Abd al-Qādir, *Fiqh al-aqaliyyāt al-muslima*, p. 614.

Both of these statements are expressions of non-participation based on one's conception of the good which, I believe, are nonetheless affirmations of citizenship (as opposed to mere resident alienage) because of the way they affirm the legitimacy of what other citizens do when they participate in political life (and even a certain gratitude for it). If we can assume that many citizens of contemporary liberal democracies hold conceptions of the good conforming to the first template, then an Islamic argument for participation based solely on Muslim self-interest is equally compatible with liberal citizenship *if it presumes an argument something like the second template as the underlying Islamic position*, rather than a position of gradual Islamisation (as seen in the M. Amir Ali piece) or an even more indifferent attitude to non-Muslims.

Thus, our second point: some theories of democracy presume that all any individuals or groups seek when they participate in politics is to benefit themselves. That is, many citizens hold a conception of the good something along the lines of the first template and only enter political life to secure goods and benefits for themselves and others like them. Egotistical motives are presumed on the part of all sorts of social actors; those motives themselves are not indicative of an uncivic attitude unless they involve the two features discussed above: the pursuit of goods incompatible with a liberal political order, or the hostility to the welfare of other citizens 'on principle' We have shown that Islamic justifications for political participation can but do not need to display these two features; the understanding of 'Islamic interests or welfare' does not necessarily involve results contradictory to the wider aims of the liberal society, and does not necessarily resent or regret any benefits also accruing to non-Muslims.

This is an important difference between arguments for participation based on the methodology of *fiqh al-muwāzanāt* and the pursuit of *maṣlaḥa*, and the arguments we encountered at the beginning of this section based on the duty to forbid the wrong. In addition to the wider and more flexible nature of the concept of 'welfare,' the crucial thing about the argument from *maṣlaḥa* or 'balancing' (*al-muwāzanāt*) is that one is responding to existing conditions. One is finding benefits within certain known parameters. Thus, while one may not necessarily hold a comprehensive belief in liberal democracy as the most just form of government, one's arguments for participating within it are not necessarily part of a strategy for undermining it, as with the M. Amir Ali text.

We thus make a distinction between (1) a person's wider beliefs about long-term political objectives or justifiable policies and (2) his arguments given for voting here and now: (1) can be incompatible while (2) might not be; nor does (1) necessary imply (2). A person can hope for an Islamic political system in general (or even someday in the West), but at the same time give reasons for voting that are not dependent on that wish and are not in themselves incompatible with liberal citizenship: we have seen a range of motivations for political participation which are compatible with liberal democracy, either permissible egotistical aims or collective ones overlap with secular conceptions of justice or the good.⁴⁰⁶ The assumption of the comparative political theorist is that the sincere, lay Muslim may in good faith take compatible arguments for political participation (or any of the other questions we have examined in this thesis) without necessarily subscribing to the wider, possibly incompatible views.

Conclusion

In this chapter we have built on the discussions of permanent residency and civic loyalty begun in the previous two. I argued at the end of the previous chapter that affirmations of residence and civic loyalty could be consistent with arguing against the political integration of Muslims into a non-Muslim state and the formation of meaningful bonds of civic solidarity with non-Muslim fellow citizens. In this chapter we have shown that powerful, authentically Islamic arguments exist for a thicker doctrine of citizenship. These include arguments for accepting ethical pluralism in society, insisting on standards of justice across religious and moral communities, forming bonds of friendship and commitment with non-Muslims, contributing to non-Muslim welfare and,

⁴⁰⁶ Consider the following quotation: 'It has long been my position that any type of participation in democracy is a type of approval of that system. I have no doubt that democracy is antithetical to Islam. However, being faced with the reality of a growing Muslim population here in the UK, who for all intents and purposes consider this their home, it has become clear to me that we must participate in every aspect of society as much as possible to ensure our rights and continued existence and well being in this society. This participation most certainly includes voting for whichever party or candidate best serves the needs and interests of the UK and indeed world wide Muslim population. This does not mean approval or acceptance of the ideal of democracy, but the intention is to use the means and avenues available to benefit Muslims. The Prophet did not approve of the system of tribalism in Arabia, in fact he condemned it, but this did not stop the Prophet from accepting the protection of his uncle and the tribe of Banu Haashim. In addition to that it seems to me that the evil of participation is far less than the evil that will befall the Muslims if we do not, and the Shariah teaches us always to choose the path of lesser evil.' (Shaykh Aurangzeb Khan, 'Joining Political Parties in non Muslim Countries: according to Islamic Shariah,' <http://www.mpacuk.org/content/view/211/>.)

finally, participating in non-Muslim political systems. Crucially, not only have the terms of friendship, cooperation and political participation with non-Muslims been shown to overlap with political liberalism's conception of public and social (i.e., secular) goods, but some Islamic scholars have been seen to view liberalism's restriction of the political sphere to such secular goods as the main legitimating factor in permitting civic bonds with non-Muslims and integration into non-Muslim social and political life. This chapter has thus demonstrated both an Islamic foundation for the recognition of and solidarity with non-Muslims, as well as evidence of political liberalism's claim to be able to be supported more easily by non-liberal doctrines than other forms of liberalism.

Chapter Six Conclusion

This thesis began by noting Rawls's assumption in *Political Liberalism* that 'there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with, political values as these are specified by a political conception of justice for a democratic regime' and that 'except for certain kinds of fundamentalism, all the main historical religions ... may be seen as reasonable comprehensive doctrines.' The preceding chapters can be understood as an attempt to take up the invitation implicit in this statement and in Rawls's belief that liberal democratic regimes partially rely for their stability on the existence of an 'overlapping consensus' of such reasonable doctrines on certain basic questions of justice and social co-operation, that is, as an exercise in what Rawls refers to as 'conjecture'

Yet, the first consequence of opening an inquiry into the compatibility of a given comprehensive doctrine with a liberal political order is an exposure to the unique concerns, aims and demands of that doctrine. This is likely to result in an additional set of questions, above and beyond the central question of how adherents of a comprehensive doctrine can find reasons from within it for supporting a political regime which does not privilege that, or any other, doctrine. In the case of Muslim minorities, a wide range of questions exists about the permissibility of residing in non-Muslim states, being subject to their laws, being loyal to them, and forming bonds of solidarity with their other residents. These questions, taken together, bring us into a domain of political thought with perhaps as long a tradition as thought on the problem of justice, namely, the problem of citizenship.

The question of citizenship is, above all, a question of belonging, loyalty, solidarity, and participation. There is, I have repeatedly emphasised, an overlap with questions of justice. There is no obligation grounded in justice *to desire to belong* to this or that political community, but if you do wish to belong, then liberal justice prescribes belonging on certain terms. There is no obligation grounded in justice to be loyal to this or that political community, but liberalism holds that it is unjust to deny to others the same rights to security which they have provided for you. Yet, despite this overlap – which we might say is a necessary consequence of the fact that all citizenship is loyalty to

a political system, and all political systems proclaim a conception of justice – there is a difference of emphasis between the two clauses of each of the two previous sentences. The first clauses relate to the identity of the community in question; the second to its terms of cooperation. Most of this thesis has focused on questions related to the first clauses: Are there Islamic reasons for legitimating belonging, loyalty, solidarity to *non-Muslim societies* in the first place? Time and again, this inquiry into the possibilities of citizenship has brought us up against the deeper questions of liberal justice, but for various reasons, that conception of justice (on my understanding of it) has figured as a constraint on Islamic reasons for belonging, rather than as a direct object of Islamic justification itself. The feasibility of such deferral reached its limits in our final discussion on Islamic arguments for participation in non-Muslim governments. We referred to that question as a ‘hinge issue’ because it is the final question to be discussed as a problem of citizenship, yet can only be fully treated as a problem of justice since the question of political participation is infused with the question of the legitimacy of non-Islamic rule as such.

This wider justification of accepting a non-Islamic form of rule as *legitimate* or *just* will have to wait. I have thus been very clear from the beginning that a comprehensive doctrine of citizenship in liberal democracies would require a few pieces missing from this study, chiefly an argument for the *substantive justness* of liberal orders despite their being un-Islamic and a justification of the liberal duty of *self-restraint* towards errant, sinning Muslims. In addition, some more detailed treatment of the range of Islamic conceptions of the good life and how they can be lived outside of Islamic political authority would thicken such a doctrine of citizenship.

The results of our investigation into Islamic foundations for citizenship in non-Muslim states give us surprisingly strong reasons to be optimistic about the prospects for such a doctrine. Here I wish to summarise the arguments surveyed in the previous three chapters, then comment briefly on some of the general aims and questions of this thesis, including our hermeneutic and historical interest in how Islamic scholars present their arguments as relating to Islamic tradition, and finally our interest in the basic claim of political liberalism to appeal more to non-liberal citizens than other forms of liberal justification and, thus, to be more appropriate for a diverse society.

Our third chapter examined debates over residence in non-Muslim states. It was shown that a certain tradition in Islamic law declared such residence to be impermissible, both on the claim that there exists a divine prohibition to this effect, and also, more interestingly for our purposes, because residence involves other prohibited conditions, including subordination to non-Muslim law and contribution to the strength of non-Muslim polities or the welfare of non-Muslim communities. This tradition denies that basic religious freedoms can be enjoyed in such states, or that a pious Muslim can live a good or just life while under non-Muslim political authority and surrounded by moral laxity.

Contrary to this position, a more dominant tradition within Islamic jurisprudence rejects the claim that a clear divine prohibition on residence in non-Muslim lands exists. This tradition asserts that if certain conditions are met, residence is permissible. The central condition is that the freedom to 'manifest one's religion' must exist. It was noted that there are good reasons to suspect that Islamic conceptions of what constitutes religious practice differ from liberal notions of religious freedom. Indeed, numerous Muslim jurists were cited as calling for forms of political autonomy which would not normally be acceptable from a liberal standpoint. However, while the demand for the application of some areas of Islamic law within Muslim minority communities is frequently invoked, both classical and modern scholars have argued that such communal autonomy is not a necessary condition for residence. That is, while the expression 'to manifest one's religion' remains (perhaps deliberately) vague, we cited evidence that it is not unambiguously a reference to sub-state political authority over Muslim communities. Scholars arguing along these lines also frequently invoke the possible benefits to Muslims in living in non-Muslim states. The benefit we primarily concerned ourselves with was the freedom to proselytise, or to engage in '*da'wa*'. The concern – omnipresent in this thesis – is that while peaceful proselytising surely violates no requirements of justice, a justification of residence and obedience simply on the grounds that it will facilitate the spread of Islam may reveal a purely tactical affirmation of the demands of citizenship, including support for democratic institutions and recognition of non-Muslim fellow citizens. I concluded by noting that certain conceptions of *da'wa* (most notably that of Tariq Ramadan) put less emphasis on conversion than on bearing witness to one's

moral standards, and that even the emphasis on conversion need not contradict the aims of a liberal political order.

Chapter Four dealt with the problem of loyalty towards a non-Muslim state of citizenship, both in terms of obeying its laws and contributing to its self-defence. Again, we began by introducing doctrines which deny that such a duty could ever be accepted from an Islamic standpoint. The essence of such incompatible doctrines is to be found in the Islamic conception of community. Islam, for all Muslim legal scholars, is more than a theology or even a moral code; it must be embodied in certain communal relationships, ideally culminating in political authority. This view entails a very strict code of loyalty to all brother Muslims and legitimate Muslim polities, and rejects all forms of loyalty or subordination to non-Muslims. This general view attains its purest form in the classical doctrine of the *jihād*, which legitimated war for the purpose of bringing new territories into the orbit of Islamic authority.

Yet, equally entrenched in Islamic jurisprudence is the duty to uphold contracts, even with non-Muslims. Medieval scholars assumed that Muslims visiting or residing in non-Muslim states would be doing so under a mutual guarantee of security, or an *amān*. Both medieval and modern Muslim scholars have argued that a Muslim who accepts the security of a non-Muslim state finds himself with a very strict set of duties towards that state, duties which can be argued to fulfil liberal demands of civic loyalty, including a duty to avoid harming or betraying it (even during a legitimate war against that state) and to obey laws which do not require manifest rebellion against God. Like many liberal contract theorists, Muslim jurists have argued that such duties can arise from even tacit consent, demonstrated by one's willingness to benefit from a state's security, public order and welfare. Crucial to a genuine doctrine of loyalty, modern Islamic reformists have also revised the doctrine of the *jihād*, arguing now that war is only justified in self-defence or to defend oppressed Muslim communities, a view which allows Muslim citizens to regard their non-Muslim state of citizenship as immune to aggression and entitled to defend itself, even against Muslim forces. Once again, central to this reformulation is the emphasis on *da'wa*. Numerous contemporary scholars insist that a general attitude of hostility or aggression towards non-Muslims is entirely inconsistent with and subversive

of the Islamic interest in saving non-Muslim souls, which, they argue, is the actual value underpinning the classical *jihād* doctrine.

Chapter Five dealt more explicitly with relationships between citizens, namely the duty to recognise the equality of citizens who do not share one's own conception of the good, and to accept the bonds of solidarity arising from social cooperation, which may include participating in political processes. Again, we began by demonstrating the existence of doctrines which reject the equality of non-Muslims and the very idea of demonstrating 'loyalty' (*muwālāh*) towards them, contributing to their welfare or participating in their political system.

Our construction of a contrary doctrine consisted of two parts: recognition and solidarity. Recognition was held to consist in turn of two views: a) that religious difference is a normal, tolerable social condition and thus that there is a right not to be Muslim, and b) that there are obligations of justice which apply across this difference. Both views were shown to have deep support from the most traditional and conservative Islamic sources. Here, we found the inevitable emphasis on the role of *da'wa* to be unambiguously constructive. *Da'wa*, on its modern understanding, invokes a number of values and insists on certain practices – good will, transparency, honesty, sincerity, reason, freedom of choice, non-coercion, patience, openness to getting to know the other and respect – which reveal certain implicit attitudes of recognition. A refutation of the view that 'loyalty' (*muwālāh*) towards non-Muslims is prohibited was found in the views of a wide range of Muslim scholars that the operative Qur'anic verses which seem to prohibit such loyalty all refer strictly to those non-Muslims who aggress against and fight Muslims, emphasising that the circumstances of revelation (*asbāb al-nuzūl*) of this and the other *muwālāh* verses are the betrayal of the Muslim community by members to Meccan pagans in active combat with Muslims.

Our conception of solidarity focused on the general idea of contributing to the welfare of non-Muslims, and the more specific idea that this might take the form of sharing political sovereignty. Both were shown to have support in Islamic juridical discourses. Crucial to the acceptance of such solidarity, for Muslim scholars, was the restriction of the scope of solidarity and political activity to strictly secular areas. While it

is not rare for Muslim scholars and intellectuals to speak of the possibility of a coalition with Christian religious groups in the pursuit of illiberal aims, far more predominant was the insistence that Muslims not be drawn into contributing to religious or doctrinal aims directly contrary to Islamic ones. The Rawlsian ideal of restricting political action to the procurement of common, 'political' goods was frequently echoed in Islamic discourses.

Thus, in all the areas which this thesis set out to investigate the possibility of an overlapping consensus, Islamic views compatible with liberal conceptions of the demands of citizenship were found. Furthermore, there was surprisingly strong support from classical, conservative jurisprudence, particularly on questions relating to the terms of residence, loyalty to a state of residence, recognition of religious difference and contribution to non-Muslim welfare. It will be remembered that in the first chapter, I argued that conjecture has a preference for demonstrating compatibility with the most orthodox possible views. Despite the existence also of incompatible views and doctrines on all the questions surveyed, it is highly significant that the core demands of a social contract in non-Muslim states are capable of receiving support from the most orthodox of Islamic jurisprudential sources.

This is, of course, not to deny that some areas required departure from the classical sources. Serving in a non-Muslim army, integration into a non-Muslim polity and sharing aims with non-Muslims were all either practices ignored by classical jurists or rejected by them. Yet, not only self-conscious 'reformers' but also what I have termed 'neo-classical' jurists found grounds for legitimating these practices. The particular grounds or arguments have been surveyed at length; here I wish merely to note three general ways in which contemporary scholars dealt with either contradiction with or the silence of the classical sources.

The first pattern is that of broad, general, conservative statements followed by clarification or qualification. The works of 'Abd al-Qādir and Topoljak (Tübülyāk) are good examples of this. Both scholars were quoted at some points as broadly rejecting the very idea of citizenship in or loyalty to a non-Muslim polity. However, these statements were often followed by more detailed treatments of specific practices or situations which strongly diluted the initial rejection. Often, the subsequent, more detailed discussion involved not merely legitimising compromise with or accommodation of reality, but an

argument that specific demands or practices do not actually equate to the practices covered by the general ban. Khaled Abou El Fadl suggests that this is very much in keeping with the traditional practice of Islamic law, which ‘creatively responds to the socio-political dynamics of society placed within a specific historical context. ... This creative process is expressed primarily through the subtleties of language, and hence, unless one focuses on the details of the juridical linguistic practice, one would not be able to notice, much less appraise, the dynamics of the legal discourse.’⁴⁰⁷ That is, the pattern of bold, ostentatious proclamations of fealty to tradition, followed by quieter, more subtle attention to detail is very much in keeping with Islamic juridical tradition.

The second pattern is the reference to general substantive principles of Islamic law and ethics (such as the ‘necessary goods’ or ‘*ḍarūriyyāt*’), without necessarily claiming that this constitutes or necessitates a general rethinking or reworking of *sharī‘a*, a la Abdullahi an-Na’im. Rāshid al-Ghannūshī and Tariq Ramadan are the main exemplars of this practice surveyed in this thesis. Both Ghannūshī and Ramadan present their arguments as flowing from the corpus of classical Islamic doctrine, but this they do not define merely in terms of the specific rulings (*aḥkām*) reached by the legal schools but also in terms of the ‘purposes [*maqāṣid*] of *sharī‘a*’ which are what ground (and thus trump) specific rulings. This methodology allows them to be practical in relation to the concrete circumstances in which Muslims live, but also to claim for this practicality a traditional foundation. The jurisprudence of classical Islamic theorist al-Shāṭibī is the lodestar for these scholars.

The third pattern is a slightly less self-conscious, less bold version of the second. This consists in a general claim about the inherent flexibility, pragmatism and eudemonism of *sharī‘a*, without necessary invoking the general doctrine of the ‘purposes of *sharī‘a*’. Here, the emphasis is on cost-benefit analysis (or ‘the *fiqh* of balancing’) for each individual practice, where the potential ‘benefits’ can be either the material welfare of Muslims or advancing an Islamic conception of the good. Yūsuf al-Qaraḍāwī and other

⁴⁰⁷ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge: CUP, 2001), pp. 322-3.

popular jurists are the prime examples of this. They exhort a pragmatism and flexibility that is sensitive to the dangers of conflict, without developing a doctrine of the good life independent from the classical rulings. Ibn Taymiyya is the classical jurist often invoked to justify this approach.

What is clear for all of these (often overlapping) approaches is that their task of making the life of Muslims in non-Muslim states palatable and legitimate is made significantly easier when one assumes that the non-Muslim state in question proclaims a public philosophy similar to Rawls's political liberalism. While some critics of the later Rawls have claimed that his retreat in the area of liberalism's demands of 'profession' (i.e., its interest in grounding public conceptions of justice in a claim to truth in a way which would require all citizens to endorse this claim in order to fully embrace citizenship), is superficial and unlikely to appease groups who are bothered by actual policies rather than metaphysical foundations, Islamic law constitutes an ethical doctrine which appears to be able to compromise much less on areas of public profession than on areas of actual policy. Very often, it is precisely what states ask Muslims to *proclaim* that scholars are concerned about. What political liberalism's 'epistemic abstinence' allows Muslim scholars to do is to redescribe situations in such a way that make them permissible from an Islamic perspective, bearing in mind Abou El Fadl's point about Islamic law's capacity for creativity being 'expressed primarily through the subtleties of language.' Here, we have a concrete instantiation of how the aims of political liberalism intersect the concerns of one particular comprehensive ethical doctrine.⁴⁰⁸

Thus, when Muslim scholars can say that serving in a non-Muslim army, co-operating with non-Muslims, paying taxes to a non-Muslim state or participating in a non-Muslim political situation do not require 'advancing the word of unbelief' or rejecting Islamic truth claims, those practices take on an entirely different ethical significance than if they took place in a state which proclaimed a perfectionist doctrine. Muslim jurists are able to describe these practices in exactly the way a Rawlsian liberal

⁴⁰⁸ Another implication of our emphasis on the plurality of Islamic responses is the notion, often raised by Rawls, that formal doctrine alone does not explain the extent to which citizens accept a public conception of justice. People have motivations derived from a variety of sources. What can explain why a Muslim chooses the incompatible over the compatible doctrine, or one strand within the range of compatible doctrines? I have not attempted to answer this question, but will say here that I find it obvious that people's reasons for finding one doctrine or another more appealing will be partly exogenous to the doctrine itself.

would: as necessary or reasonable demands of social co-operation, rather than duties arising from a shared conception of truth or virtue. While some Muslim scholars object to the liberal state's non-religious foundation, and claim to prefer to live as a minority in a Christian state, far more prefer – if the state is not going to be founded on Islam – that it only be active in 'political' matters, rather than spiritual ones. These jurists seem to be making the precise calculation that Rawls suppose either parties in the original position or citizens living under a 'constitutional consensus' will: that most reasonable and rational response to ethical pluralism is to limit the range of political co-operation to secular, civil areas and to prefer state neutrality on questions of truth.

Yet, it would be a mistake to assume, therefore, that all of these Islamic scholars are approaching citizenship in non-Muslim liberal democracies from a purely defensive posture – while holding their noses, as it were. Surely, this is the case for the likes of 'Abd al-Qādir, Topoljak and perhaps even Qaraḍāwī. However, the responses of other scholars seemed to suggest an intellectual accommodation of the spiritual purposes of life and political reality in a way perfectly compatible with Rawlsian political liberalism. Tariq Ramadan's concept of Western states as an 'abode of witness' (*dār al-shahāda*) and a place where life can be *particularly* virtuous is one such view.⁴⁰⁹ Similar is Fayṣal Mawlawī's insistence on the necessity for 'innate love' (*ḥubb fiṭrī*) towards non-Muslims and his conclusion that 'there can and must be affection and love towards a person whom you wish to call to God and that this affection is a small piece of the affection that God wills be directed towards him. This is the foundation which is considered to be stronger and weightier than all that which opposes it.' Such views lead us away from the fear that political liberalism may be 'political in the wrong way' by suggesting that a pious Muslim may see a non-Muslim political community as a place where his deepest and most important aims may be fulfilled and as a 'community with whose moral unity or participatory politics he can beguile himself.'⁴¹⁰

⁴⁰⁹ Ramadan, *To be a European Muslim*, pp. 144-5. See above, Chapter Three, pp. 107-9.

⁴¹⁰ Walzer, 'The Problem of Citizenship,' in *Obligations*, p. 217.

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