

## Contemporary Islamic Legal Discourse on the Notion of Territoriality

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### Abstract

*This study focuses on the evolution of various dimensions of the concept of dār and territoriality among Muslim jurists, theologians, and social scientists. It begins with the introduction of the research that explains the concept and nature of Islamic legal discourse. The framework of the enquiry about the territorial boundaries is also included in this introductory section. The following section describes emergence of Islamic state and society. It also discusses effects of this development on the socio-political and religious landscape of pre-Islamic Arabia. The debate related to dār al-Islām, dār al-ḥarb, and other related concepts is included in the next part of the study, which not only discusses lexical and terminological constructions of the concepts but also highlights the historical circumstances in which these notions were evolved. The study in the next part examines the approaches of some Western scholars to the classical debate of dār. Then the article deals with the issue of legitimacy or otherwise of the Muslims' residence in the non-Muslim territories. This section starts with opinions of classical jurists and culminates with the opinions of the contemporary scholars. In sum, the article discusses the legal status of territorial borders and the related issues with reference to varied schools of Islamic law.*

### Keywords

*dār al-Islām, dār al-ḥarb, dār al-'ahd, dār al-shahādah, territories, boundaries, hijrah, West.*

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## Introduction

### *Islamic Legal Discourse*

Specific use of language with particular habits to discuss matters related to law is called legal discourse.<sup>1</sup> Legal texts differ from other types of writings in terms of internal and external characteristics. The diversity of law is reflected in variety of these texts. The acquaintance with the style of legal language can help in understanding the special model of the text and the functions of legal discourse.<sup>2</sup> The functions, features and structures of various legal writings contribute to the evolution of different genres of legal texts, which in turn contribute to the realization and formulation of legal discourse. This study aims at reviewing and analyzing the genres of legal writings of Islamic law related to territoriality. During this process, specific features of classical *nuṣūṣ* and criteria of their construction into genres of Islamic law have also been discussed. The Islamic legal discourse not only deals with legal dimensions in the narrower sense, but also includes religious, ethical, and practical dimensions of the *sharīʿah* in the wider sense.<sup>3</sup>

### *Framework of Enquiry*

The study examines views, opinions, and rulings of classical Muslim jurists as well as contemporary scholars from the Islamic and Western worlds. It also analyzes and discusses the ways in which contemporary intellectual and academic discourse on territoriality and its relation with Muslims in the West is going on. Another issue that is included in this study is the interpretation and application of rulings of the *sharīʿah* on Muslims living in the West. The study also discusses development of Muslim religious authority and protection of religious identity in the West. Though this research mainly concentrates on a discourse among contemporary scholars, but it is not confined to the analysis of modern scholarship alone. Rather it takes into account the historical context in which classical authors framed and articulated their views—assuming

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<sup>1</sup> For details, see John Gibbons, ed., *Language and the Law* (London: Longman, 1994); Peter Goodrich, *Legal Discourse* (Houndmills: Macmillan, 1992); Jørgen S. Nielsen and Lisbet Christoffersen, eds., *Shariʿa as Discourse: Legal Tradition and the Encounter with Europe* (Farnham: Ashgate, 2010).

<sup>2</sup> See Natalia Lisina, “Stylistic Features of Legal Discourse: A Comparative Study of English and Norwegian Legal Vocabulary” (PhD diss. Department of Literature, Area Studies and European Languages, University of Oslo, 2013).

<sup>3</sup> Sarah Albrecht, *Dār al-Islām Revisited: Territoriality in Contemporary Islamic Legal Discourse on Muslims in the West* (London: Brill, 2018), 1.

that the current discussion about how and where to locate *dār al-Islām* heavily draws upon the centuries-long Islamic legal discourse on territoriality.

### ***Defining Territorial Boundaries***

The territorial boundaries fix and identify the limit of the land in which persons, groups, or societies have sovereignty.<sup>4</sup> The ancient civilizations were aware of the importance of defining boundaries.<sup>5</sup> The existence of territorial boundaries is a necessary condition for the promotion of economic and social activities.<sup>6</sup> During the age of nation states, defining territorial boundaries and jurisdiction of states is not difficult. However, this task becomes difficult when one attempts to reach at moral and religious perspectives. Is it possible to evaluate the situation of territorial boundaries in the nation state's era on ethical values, which are described as “the learning of right, virtue and good in worldly matters of human life?”<sup>7</sup>

The concepts of *dār al-Islām*, *dār al-ḥarb*, *dār al-'ahd* etc. were used by Muslim jurists to explain the nature and variety of territories and extend the jurisdiction of Islamic law to them.<sup>8</sup> Calasso and Giuliano observe that classical Arabic dictionaries instead of treating these notions together treated them within the more general framework of different Islamic categories.<sup>9</sup>

Generally identified with the “Muslim world,” *dār al-Islām* is often presented as a monolithic bloc that poses a potential threat to the “Western world,” which is accordingly identified with *dār al-ḥarb*, the object of Muslim aggression and invasion. This is a catchword along with others such as *fatwā* (“death *fatwā*”) and *sharī'ah* (“creeping *sharī'ah*”) to be imbued with negative and threatening connotations in the Western media. Whether implicitly or explicitly, these territorial notions are frequently used to draw the symbolic demarcation lines between “us”

<sup>4</sup> M. Raquibuz Zaman, “Islamic Perspectives on Territorial Boundaries and Autonomy,” in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*, ed. Sohail H. Hashmi (Princeton, NJ: Princeton University Press, 2002), 80.

<sup>5</sup> Khaled Ali Beydoun, “Dar al-Islam Meets ‘Islam as Civilization’: An Alignment of Politico-Theoretical Fundamentals and the Geopolitical Realism of This Worldview,” *UCLA Journal of Islamic and Near Eastern Law*, 4 (2004-2005): 148.

<sup>6</sup> Raquibuz Zaman, “Islamic Perspectives on Territorial Boundaries and Autonomy,” 81.

<sup>7</sup> William S. Sahakian and Mable Lewis Sahakian, *Realms of Philosophy* (Cambridge, MA: Schenkman Publishing Company, 1965), 75.

<sup>8</sup> Giovanna Calasso and Giuliano Lancioni eds., *Dār al-Islām/Dār al-Ḥarb: Territories, People, Identities* (Leiden: Brill, 2017), 2.

<sup>9</sup> *Ibid.*

and “them” and between “Western civilization” and “Islam.” While presented as an innately “Islamic” concept of the world, this notion of diametrically opposed “worlds” is, paradoxically not only in harmony with the dualist views of some Islamist groups, such as the self-proclaimed “Islamic State,” but also supports the idea of the “clash of civilizations” predicted by Samuel Huntington and his followers.<sup>10</sup>

A serious challenge of this debate is to classify the modern world within the territorial paradigm that had shaped Islamic legal discourse over the centuries. Muslim immigrants in the West are trying hard to contribute to their new countries without compromising on their religious identity and faith-based values. As a result, many new questions have arisen, such as: Are these notions of medieval period still valid in the age of nation-states? Do the territories governed by non-Muslims lie outside *dār al-Islām*? Are the Muslims living in the non-Muslim countries part of *dār al-ḥarb*? How else can they be classified from an Islamic legal perspective? Can they be considered part of *dār al-‘ahd*? To what extent these traditional categories are of any relevance to a world of modern territorial states? This study responds to these and other related questions.

### Emergence of Islamic State and Society

The existence of states in human history is as ancient as are human beings themselves. No doubt, methods of governing the states have been changed and now sophisticated statecraft requires complicated skills, but the basic functions of executing the authority are almost centuries old. Scholars have discussed the origin of the state authority and its limits throughout history. Some of them traced this authority to the will of political entities and others traced it to divinity.<sup>11</sup> The need for living a common life constitutes the basis of a community. Its focus is communal social life. The laws of the cosmos—physical, biological, and psychological—are used to facilitate living together. This type of communal living contributes to the construction of shared characteristics, manners, cultures, and modes of communication.<sup>12</sup> The state, on the other hand, is a political entity having a determinate higher authority presiding over the organized ways of imposing its will on the

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<sup>10</sup> Albrecht, *Dār al-Islām Revisited*, 4.

<sup>11</sup> Muhammad Hamidullah, *Muslim Conduct of State* (Lahore: Sh. Muhammad Ashraf, 1945), 73.

<sup>12</sup> Robert Morrison MacIver, *Community: A Sociological Study* (London: Macmillan, 1928), 22.

members of the community. The state can be created or abolished. However, society may be transformed but cannot be eliminated.<sup>13</sup>

Before the advent of Prophet Muḥammad (peace be on him), the available political institution in Arabian Peninsula was the tribe. In theory, it was based on blood and kinship. Injury done from outside to a member was considered violation against the whole tribe and any member of the tribe was eligible to take its revenge.<sup>14</sup> Several tribes might take an oath and form a confederation for a limited purpose such as defending or fighting against a similar alley of tribes. In spite of difference in kith and kin, an individual or a family might, for practical purposes, change the membership of a tribe. For strengthening or changing tribal alignments, Arabs used to have various traditions in pre-Islamic period. They used to make tribal confederations through *ḥilf*. The change of belonging to a tribe was possible through the tradition of protected neighborhood *jiwār* or *muwālāh*. Like political organization, social organization and protection also revolved around a tribe. The life was tolerable for a man only when he acquired the membership of a sovereign and independent political entity i.e., the tribe. However, this attachment demanded unconditional loyalty from the members.

The pre-Islamic Arabs were acquainted with the Byzantine, Abyssinian, and Persian empires. They also had some idea of kingship, which they did not appreciate.<sup>15</sup> There was no formal legal code for controlling the actions of the individuals and functions of the tribes. Their actions were regulated by the customs or the practice of their ancestors called *sunnah*. The authority was derived from the customary practices of the ancestors, which were regarded as precedents for formulation of public opinion. The tribal *majlis* was its outward symbol and its sole instrument.<sup>16</sup> Islam, however, changed this situation and reorganized Arabs into a new union based on faith and not on kinship.<sup>17</sup> After migration to Medina, the foundation of this faith-based community was laid down. The Qur'ān described this community as nation,<sup>18</sup> its

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<sup>13</sup> Manzooruddin Ahmed, "The Classical Muslim State," *Islamic Studies* 1, no. 3 (1962): 83.

<sup>14</sup> Bertram Thomas, *The Arabs: The Life Story of a People Who Have Left Their Deep Impress on World* (London: Thorton Butterworth, 1937), 125.

<sup>15</sup> William Montgomery Watt, *Muhammad at Medina* (Oxford: Oxford University Press, 1956), 238–39.

<sup>16</sup> Bernard Lewis, *The Arabs in History* (Oxford: Oxford University Press, 2002), 25.

<sup>17</sup> Ahmed, "The Classical Muslim State," 85.

<sup>18</sup> Qur'ān 2:213.

members as the *mu'minūn* (believers),<sup>19</sup> and Islam as the religion of this community.<sup>20</sup>

In the modern sense, the term “nation” refers to a sizable human population having same ancestry, culture, history, or language and residing in a specific country or territory. The *Cambridge Dictionary* defines it as “a large group of people living in one area with their own government, language, traditions, etc.”<sup>21</sup> The *Merriam-Webster Dictionary* defines it as “a community of people composed of one or more nationalities and possessing a more or less defined territory and government” or “a territorial division containing a body of people of one or more nationalities and usually characterized by relatively large size and independent status.”<sup>22</sup>

The Arabic equivalent to the term “nation” is not one. However, “nation” being a phrase of politics interpreted as *qawm* in contemporary Arabic. However, this term has not been used in the Qur'ān in the modern sense of “nation.” Rather, the Qur'ān uses it sometimes to mean a group of people and usually as a synonym of the word *ummah*, which in the Qur'ān refers to a faith-based community.<sup>23</sup> Montgomery Watt is of the view that this term is used for the community, which accepts the Messenger and his message.<sup>24</sup> The Islamic concept of community originates in the fact that all humanity is a single community comprising of the progeny of Adam. Another characteristic of this concept is its ethical basis, which differentiates a righteous community from perverted transgressors.<sup>25</sup> The membership of this community is not restricted to kith and kin. Complete surrender to Allah by anyone makes him entitled to its membership.<sup>26</sup>

The concept of *ummah* brought important changes to society. Instead of blood, the faith became the source of social bond. The pre-Islamic badges of identity such as tribe, idols, and cults were abandoned. The formation of a new *ummah* was based on an identity grounded in the religious directives of Prophet Muḥammad rather than in traditional

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<sup>19</sup> Ibid., 2:143; 7:168.

<sup>20</sup> Ibid., 5:3.

<sup>21</sup> *The Cambridge Dictionary*, s.v. “nation,” <https://dictionary.cambridge.org/dictionary/english/nation>, April 17, 2020.

<sup>22</sup> *Merriam-Webster Dictionary*, s.v. “nation,” <https://www.merriam-webster.com/dictionary/nation>, April 17, 2020.

<sup>23</sup> Ahmed, “The Classical Muslim State,” 84.

<sup>24</sup> William Montgomery Watt, “Ideal Factors in the Origin of Islam,” *The Islamic Quarterly*, 11, no. 3 (1955): 161–74.

<sup>25</sup> Qur'ān 3:110.

<sup>26</sup> Ibid., 2:128.

tribalism. The authority was transferred from public opinion to God, who delegated it to Muḥammad as His Apostle. This change shaped the future of Islam and Muslim political thought. The concept of *ummah* on one hand was a political reality, which replaced tribalism and on the other it was a construction of the faith-based community, which was headed by Muḥammad as its spiritual and political leader.<sup>27</sup>

The concept of *dār* was later used to define territorial jurisdiction of the Islamic state. Watt mentions various events of the life of the Prophet after *hijrah* and describes the formation of his administration. His administrative appointments tell the nature and extent of his authority. It was based on a system of allies who obeyed his orders. Although the men whom he assigned various duties were not former officials of any impersonal state but they were showing complete compliance to his orders. They worked more by persuasion than by coercion. Watt concludes that the structure was more firmly constructed than it appeared and was less dependent on his presence. The later events proved that it was ably advanced as the administration of an empire.<sup>28</sup>

During the lifetime of Prophet Muḥammad, the question of political headship of society did not exist, as he himself was its founder and spiritual and temporal chief. After his demise, this question raised, since he had not clarified the issue of his succession. He left this matter to be decided by the community according to their reasonable approach.<sup>29</sup> The Muslim community took this responsibility and consensually selected their head as the successor of the Prophet. This is how this early state-community evolved into a state.<sup>30</sup>

### Debate on Classical Notions of *Dār al-Islām* and *Dār al-Ḥarb*

Division of land into geo-religious territories has invited wide range of attention in the academic and popular discourses about Islam particularly in the West. The notions of *dār al-Islām* and *dār al-ḥarb* are frequently used in debate about Islam and Muslims. They are generally mentioned in the context of *jihād* and Muslims' relations with the non-Muslims. Various dimensions of these notions were not only discussed in classical writings of Muslim jurists, theologians, and political and social

<sup>27</sup> Jonathan P. Berkey, *The Formation of Islam: Religion and Society in the Near East, 600–1800* (Cambridge: Cambridge University Press, 2003), 69.

<sup>28</sup> Watt, *Muhammad at Medina*, 238.

<sup>29</sup> Anwar Chejne, *Succession to the Rule in Islam: With Special Reference to the Early 'Abbasid Period* (Lahore: Sh. Muhammad Ashraf, 1960), 25; Muhammad Nazeer Kaka Khel, "Succession to Rule in Early Islam," *Islamic Studies* 24, no. 1 (1985): 13–26.

<sup>30</sup> Ahmed, "Classical Muslim State," 86.

scientists, but also appeared in the academic work of contemporary scholars. Some Western scholars explain these notions with relation to extremists and radicals and consider these notions the symbols of Muslims' aggression and invasion. The outcome of this literature is the anti-Muslim populist discourse, which is advanced on the footsteps of Samuel Huntington.<sup>31</sup> Gregory M. Davis,<sup>32</sup> Bernard Lewis,<sup>33</sup> Tilman Nagel,<sup>34</sup> Hans Kruse,<sup>35</sup> and Hiroyuki Yanagihashi<sup>36</sup> are representatives of this inaccurate but tendentious discourse of Islamic legal tradition.<sup>37</sup> The views of these scholars have been challenged by a growing body of studies that demonstrated multifaceted periodical development of the issue.<sup>38</sup>

<sup>31</sup> See Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Touchstone, 1996).

<sup>32</sup> See Gregory M. Davis, *Religion of Peace? Islam's War against the World* (Los Angeles: World Ahead Publishing, 2006).

<sup>33</sup> Bernard Lewis, *The Political Language of Islam* (Chicago: Chicago University Press, 1988).

<sup>34</sup> See Tilman Nagel, *Das islamische Recht: Eine Einführung* (Westhofen: WVA Skulima, 2001).

<sup>35</sup> See Hans Kruse, *Islamische Völkerrechtslehre: Der Staatsvertrag bei den Hanefiten des 5./6. Jahrhunderts d. H. (11./12. Jh. n. Chr.)*, 2nd ed. (Bochum: Studienverlag Dr N. Brockmeyer, 1979), 57.

<sup>36</sup> Hiroyuki Yanagihashi, "Solidarity in an Islamic Society: 'Aṣaba, Family, and the Community," in *The Concept of Territory in Islamic Law and Thought*, ed. Hiroyuki Yanagihashi (London: Kegan Paul, 2000), 51.

<sup>37</sup> Albrecht, *Dār al-Islām Revisited*, 4–9.

<sup>38</sup> For instance, see Yāsir Luṭfī al-'Alī, *Arḍ Allāh: Al-Taqsīm al-Islāmī li 'l-Ma'mūrah* (Beirut: Mu'assasat al-Risālah, 2004); J. Harris Proctor, ed., *Islam and International Relations* (London: Pall Mall, 1965); John Kelsay and James Turner Johnson, eds., *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions* (Westport: Greenwood, 1991); John Kelsay, *Arguing the Just War in Islam* (Cambridge: Harvard University Press, 2007); Ridwan al-Sayyid, "Dār al-Harb and Dār al-Islām: Traditions and Interpretations," in *Religion between Violence and Reconciliation*, ed. Thomas Scheffler (Würzburg: Ergon, 2002), 123–133; and Anke I. Bouzenita, "The Siyar—An Islamic Law of Nations?" *Asian Journal of Social Science* 35 (2007): 19–46. For an overview of the territory and boundaries in Islamic legal thought, see Sohail H. Hashmi, "Political Boundaries and Moral Communities: Islamic Perspectives," in *States, Nations, and Borders: The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003), 181–213; Khaled Abou El Fadl, "The Unbounded Law of God and Territorial Boundaries," in *States, Nations, and Borders. The Ethics of Making Boundaries*, ed. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003), 214–27; Hiroyuki Yanagihashi, ed., *The Concept of Territory in Islamic Law and Thought* (London: Kegan Paul, 2000); Brennon Wheeler, *Mecca and Eden: Ritual, Relics, and Territory in Islam* (Chicago: University of Chicago Press, 2006); Manoucher Parvin and Maurie Sommer, "Dar al-Islam: The Evolution of Muslim Territoriality and Its Implications for Conflict Resolution in the Middle East," *International Journal of Middle East Studies*, 11, no. 1 (1980): 1–21; Alan Verskin, *Oppressed in*



The concepts related to territoriality in Islamic tradition originated in the pre-Islamic concept of *dār*, which was used to describe limits. However, after Muslims' migration to Medina and establishment of the first Islamic state, the concept of *dār* was developed into *dār al-Islām* and *dār al-ḥarb* to describe the boundaries of the Islamic state and jurisdiction of its law. These concepts were used in Islamic political and legal thought to distinguish territories in terms of implementation of the *sharī'ah*.<sup>39</sup>

Ḥanafī scholars have defined *dār al-Islām* as “the territory in which Islamic rules are applicable.” Abū Ḥanīfah holds that *dār al-Islām* is a territory in which its Muslim and non-Muslim inhabitants live in peace without any fear.<sup>40</sup> Mālikīs also consider the territory where Islamic rules are obeyed *dār al-Islām*.<sup>41</sup> Some Shāfi'īs have used this term to denote the territory which is under the rule of Muslims even though non-Muslims also reside.<sup>42</sup> The Shāfi'ī scholar Ibrāhīm b. 'Alī al-Shīrāzī has used the term of “*bilād al-Islām*” and “*bilād al-Muslimīn*” to describe the notion of *dār al-Islām*.<sup>43</sup> Zāhirī scholars opine that *dār al-Islām* is a land where Islamic authority is dominated and is responsible for implementation of its rule.<sup>44</sup> Among the contemporary scholars, Wahbah al-Zuḥaylī has defined *dār al-Islām* as a country that is governed by Muslims and the power to do and not to do is rested with Muslims.<sup>45</sup> These definitions reflect the plurality of the views on the territoriality in Islamic legal tradition.<sup>46</sup>

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*the Land? Fatwās on Muslims Living under Non-Muslim Rule from the Middle Ages to the Present* (Princeton, NJ: Markus Wiener, 2013); Verskin, *Islamic Law and the Crisis of the Reconquista* (Leiden: Brill, 2015); Verskin, “Early Islamic Legal Responses to Living under Christian Rule: Reconquista-Era Development and 19th-Century Impact in the Maghrib” (PhD diss., Princeton University, 2012); and Yahya Michot, *Muslims under Non-Muslim Rule: Ibn Taymiyya* (Oxford: Interface Publications, 2006).

<sup>39</sup> Juan E. Campo, ed., *Encyclopedia of Islam* (New York, NY: Facts on File, 2009), 182.

<sup>40</sup> Abū Bakr b. Mas'ūd al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1986), 7:131.

<sup>41</sup> Muḥammad b. Aḥmad b. Rushd, *al-Muqaddamāt al-Mumahhadāt*, ed. Sa'īd Aḥmad A'rāb (Beirut: Dār al-Gharb al-Islāmī, 1988), 1:341.

<sup>42</sup> 'Abd al-'Azīz b. Mabruk al-Aḥmadī, *Ikhtilāf al-Dārayn wa Āthāruhā fī Aḥkām al-Sharī'ah al-Islāmiyyah* (Medina: al-Jāmi'ah al-Islāmiyyah, 2004).

<sup>43</sup> Ibrāhīm b. 'Alī b. Yūsuf al-Shīrāzī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfi'ī* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.), 3:270.

<sup>44</sup> 'Abd Allāh b. Sa'īd b. Ḥazm al-Andalusī, *al-Muḥallā* (Beirut: Dār al-Fikr, n.d.), 7:311.

<sup>45</sup> Wahbah al-Zuḥaylī, *al-'Alqāt al-Duwaliyyah fī 'l-Islām* (Damascus: Dār al-Maktabī, 2000), 53.

<sup>46</sup> Muḥammad 'Amīm al-Iḥsān al-Mujaddadī, *al-Ta'rīfāt al-Fiqhiyyah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1986/1424), 93.

### *Emerging Islamic Thought on the Concept of Dār al-Islām*

The pre-Islamic concepts of nomadism and urbanism also contributed to the development of doctrine of *dār al-Islām*, since Islam developed with the expansion of Arab culture and civilization.<sup>47</sup> Moreover, the concept of *jihād* and *hijrah* also contributed to the evolution of the notion of *dār*, as *hijrah* was described as moving away from idolatry and oppression to *dār al-hijrah* i.e., watershed of Islam. This movement, which is named *hijrah*, brought the idea of frontier that implied in the *dār al-Islām-dār al-ḥarb* dichotomy.

The regular use of *dār al-Islām-dār al-ḥarb* binomial originated in the second half of the eighth century AH.<sup>48</sup> It appears that the concept of *dār al-Islām* was an extension of what was conceived as *dār al-hijrah*.<sup>49</sup> In spite of numerous occurrences of the verb *hājara* in the Qur'ān, the term *hijrah*, is not found in it. It is not necessarily related to *jihād*. In the early history of Islam, the representation of the two *dārs* was none other than Mecca and Medina and the Prophet declared Medina “the first abode of the Muslim community.” The later jurists derived this notion from this first *dār al-Islām*. Al-Sarakhsī says, “Only the city of Medina had indeed the legal status of *dār al-Islām*, where the Messenger of God lived along with the Muslims.”<sup>50</sup>

Muslim Geographers explicitly mention frontiers and frontier lands as *āfāq*, *ḥudūd*, *tukhūm*, and *thughūr*.<sup>51</sup> Treatises on the merits of *jihād* mostly include the verbs *dakhala* (to go in) and *kharaja* (to go out) with reference to *dār al-Islām* and *dār al-ḥarb*. This draws a close web of movements across the frontier between an “inside” and an “outside,” having legal consequences.<sup>52</sup> During early periods of Islam, jurisdiction of the Islamic state was huge and extensive, consequently the concept of

<sup>47</sup> Parvin and Sommer, “Dar Al-Islam,” 10.

<sup>48</sup> Ibid., 27–28.

<sup>49</sup> Giovanna Calasso and Giuliano Lancioni, “Constructing and Deconstructing the Dār al-Islām/Dār al-Ḥarb Opposition: Between Sources and Studies,” in *Dār al-Islām/Dār al-Ḥarb: Territories, People, Identities*, ed. Giovanna Calasso and Giuliano Lancioni (Leiden: Brill, 2017), 27.

<sup>50</sup> Muhammad b. Aḥmad b. Abī Sahl al-Sarakhsī, *Kitāb al-Mabsūt* (Beirut: Dār al-Maʿrifah, 2009), 10:18.

<sup>51</sup> Michael Bonner, “The Naming of the Frontier: ‘Awāṣim, Thughūr, and the Arab Geographers,” *Bulletin of the School of Oriental and African Studies*, 57, no. 1 (1994): 17–24. For a more extensive treatment of the topic, see Ralph W. Brauer, “Boundaries and Frontiers in Medieval Muslim Geography,” *Transactions of the American Philosophical Society* 85, no. 6 (1995): 1–73.

<sup>52</sup> Calasso and Lancioni, “Constructing and Deconstructing the Dār al-Islām/Dār al-Ḥarb Opposition,” 29.

*dār al-Islām* was firm and genuine, since Islamic state was a means to promote Islamic faith with the expansion of Muslim territory.<sup>53</sup>

The discussion related to the concept of *dār al-Islām* is not limited to the manuals of *fiqh*. It has been found in various types of sources such as juridical texts, *ḥadīth* collections, travelogues, geographical and historiographical works, and Arabic lexicons. Therefore, this dual classification of the world as elaborated by the classical Muslim jurists should be reassessed. It is interesting to compare the terms of geographical texts with those of Islamic law.<sup>54</sup> Muqaddasī explicitly states that he will focus on the “kingdom of Islam” (*mamlakat al-Islām*), ignoring “the kingdom of the infidels” (*mamlakat al-kuffār*), for neither he have travelled to those regions, nor does he believe they are worth talking about.<sup>55</sup>

Muslim jurists gave their rulings in the early period of Islam about Muslim’s relations with non-Muslims living in *dār al-Islām* and outside. Muḥammad b. al-Ḥasan al-Shaybānī was the pioneer who regulated the relations of Muslims with non-Muslims of combatant land or those with whom the believers made treaties.<sup>56</sup> He comprehensively examined and consolidated the most pressing areas of the international law of Islam.<sup>57</sup> Al-Shaybānī’s focus on transnational treaties, political relations, and war between Muslims and non-Muslims are main areas of interest for modern learning.<sup>58</sup>

Safeguarding the unity of Muslims has always been the prime concern of Muslim scholars, even after the division of Muslim world into many independent political states.<sup>59</sup> Early political philosophers like Abū Yūsuf (d. 798 CE), al-Baghdādī (d. 1037 CE), al-Māwardī (d. 1058 CE), and Abū Ya’lā (d. 1065 CE), emphasized the social amalgamation of Muslims which would be workable, in their opinion, within the framework of political and legal unity. Moreover, for the protection of unity as a

<sup>53</sup> ‘Abd al-Raḥmān b. Muḥammad b. Khaldūn, *The Muqaddimah: An Introduction to History*, trans. Franz Rosenthal (New York: Pantheon Books, 1958), 1:295.

<sup>54</sup> Calasso and Lancioni, “Constructing and Deconstructing the Dār al-Islām/Dār al-Ḥarb Opposition,” 24.

<sup>55</sup> Muḥammad b. Aḥmad al-Muqaddasī, *Aḥsan al-Taḳāsīm fī Ma’rifat al-Aqālīm*, ed. Michael Johan de Goeje, 2nd ed. (Leiden: Brill, 1906), 9.

<sup>56</sup> Majid Khadduri, trans., *The Islamic Law of Nations: Shaybānī’s Siyar* (Baltimore, MD: Johns Hopkins University Press, 2001).

<sup>57</sup> *Ibid.*, 57.

<sup>58</sup> Beydoun, “Dar al-Islam Meets ‘Islam as Civilization,’” 152.

<sup>59</sup> ‘AbdulḤamīd A. AbūSulaymān, *The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought* (Herndon, VA: International Institute of Islamic Thought, 1987), 29.

nation, Muslims often had to tolerate unjust regimes.<sup>60</sup> The struggle between political power and legal power for administration and legislation started during Umayyad period and continued down to the medieval period. The development of Islamic law was adversely affected when the Muslim jurists of Abbasid dynasty reduced legal restructuring in order to avert political interference.

Literary works of Muslim intellectuals of medieval ages exemplify Islamic precepts although the world's realities have been drastically changed. Doctrines of statehood articulated by Muslim political thinkers like al-Māwardī influenced Muslim political thought until the colonial occupation of Muslim territories in the eighteenth and nineteenth centuries. During the colonial period, Muslim political activist Jamāl al-Dīn al-Afghānī (d. 1897) asked Muslims to act vigilantly to reverse Western advances on Muslim lands. For this purpose, he urged Muslims to study science and reasoning and reconstruct Islamic ideas to harmonize them with the requirements of the day. His exclamation ultimately restored the idea of one nation and he realized the need of constitutional governments to curb Western influence. However, he denounced nationalism founded on race, language, or culture, as it would ultimately turn into secularism. His ideas were reflected in the literary writings of other modern Muslim thinkers, for instance, Sayyid Ahmad Khan of India (d. 1898) and Muḥammad 'Abduhu of Egypt (d. 1905).<sup>61</sup> Some Muslim intellectuals of present era have also endeavoured to adapt and adjust Islamic precepts in line with current political scenarios. The idea of one nation or *ummah*, according to some scholars, is still applicable to Muslim countries through adoption of fundamental principles of Islam for serving their people on equal basis regardless of their religious affiliation.<sup>62</sup>

Islamic law accepts the presence of non-Muslim societies, whether residing with Muslims in *dār al-Islām* or outside Islamic lands. For instance, Jews and other non-Muslims were granted protection under the provisions of the Constitution of Medina. The same tradition

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<sup>60</sup> Manzooruddin Ahmed, *Islamic Political System in the Modern Age: Theory and Practice* (Karachi: Saad Publications, 1983), 73.

<sup>61</sup> Beydoun, "Dar al-Islam Meets 'Islam as Civilization,'" 89. Also see Fazlur Rahman, *Islam & Modernity: Transformation of an Intellectual Tradition* (Chicago: University of Chicago Press, 1982); Fazlur Rahman, *Islam* (Chicago: University of Chicago Press, 1979); William Montgomery Watt, *Islamic Philosophy and Theology* (Edinburgh: Edinburgh University Press, 1962); Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968).

<sup>62</sup> Ann K. S. Lambton, *State and Government in Medieval Islam* (New York: Oxford University Press, 1981), 203.

continued in later periods. Minorities that were secured and protected by the Ottoman Turks were known as *millet*.<sup>63</sup> The term *millet* or *millah* can also be used for other religious societies. Nevertheless, historically Muslim lands included Christian, Jewish, Zoroastrian, Sabian, Buddhist, and Hindu religious minorities, in addition to Muslims. Ismā'īl al-Fārūqī states, “Islamic jurisprudence equally recognizes those people who opt for non-religious identification provided they have a legacy of laws (even if secular) by which they wish to order their lives. The only group which may be barred from membership is that whose law is anti-peace. Islamic jurisprudence thus enables one to affirm today that any group claiming itself to be a millah on whatever grounds is entitled to membership.”<sup>64</sup> Non-Muslim minorities residing in *dār al-Islām*/Islamic state rightfully deserve to be given the protection of all their fundamental rights and interests, since they come under the liability of Muslim state.

### ***The Concept of Dār al-Ḥarb***

The notion of *dār al-ḥarb* is a conventional concept that relates to Islamic law of nations. It is traced back to the Medinan period of the Prophet particularly his practices of dealing with the territories bordering the lands of Islam. He sent his envoys and ambassadors to these states, communities, and tribes and invited them to embrace Islam.<sup>65</sup> Later on when Muslims waged wars against these non-Muslim neighbours, they were designated as *ḥarbī* or *ahl al-ḥarb*. Classical sources of Islamic law explain that those non-believers who refused to accept Islam after being properly invited by the believers as well as rejected the authority of Islamic state came under the category of combatant, against whom war was permitted by the Qur'ān.<sup>66</sup> Originally, enforcement of Islamic law and safety of Muslims and *dhimmīs* in any territory determine the status of the land as abode of Islam or abode of war, since historically many monarchs of *dār al-ḥarb* were anarchist.

### ***The Concept of Dār al-'Ahd or Dār al-Muwāda'ah***

As per classical understanding, *dār al-'ahd* or *dār al-muwāda'ah* is an outcome of a peace treaty that requires ceasefire between Muslims and

<sup>63</sup> See William Montgomery Watt, *The Majesty That was Islam* (London: Sidgwick and Jackson, 1974), 46–49.

<sup>64</sup> AbūSulaymān, *Towards an Islamic Theory of International Relations*, 25–26.

<sup>65</sup> Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-jihād wa 'l-siyar, Bāb du'ā' al-Nabī ṣallā Allāh 'alayhi wa sallama al-nās ilā 'l-Islām wa 'l-nubuwwah.

<sup>66</sup> Qur'ān 9:29.

their enemies. Consequently, *dār al-ḥarb* changes into *dār al-'ahd*. The term *muwāda'ah* refers to a peace agreement signed by Muslims and non-Muslims. The nature of this treaty can be temporary or permanent. According to the Ḥanafī jurists, the time duration in such a pact is not obligatory. As per the conditions of such agreement, Ahl al-Muwāda'ah are granted their rights and entitled to *'iṣmah* (protection).<sup>67</sup> However, *'iṣmah* is legally granted to those who come under the territorial jurisdiction of *dār al-Islām* regardless of their faith.<sup>68</sup>

According to some Muslim jurists, *dār al-'ahd* was regarded as a provisional or interim land between *dār al-Islām* and *dār al-ḥarb*. It is also named as *dār al-ṣulḥ*. Al-Shāfi'ī has named such territory as *bilād ahl al-ṣulḥ*.<sup>69</sup> Yaḥyā b. Ādam and al-Māwardī reported many examples of such territories in the early history of Islam.<sup>70</sup> Māwardī is of the view that the lands which are acquired by Muslims through agreement are called *dār al-'ahd*. In such territories, the ownership of the properties is left to their owners against the payment of tax. However, violation of any terms of the agreement turns their land into *dār al-ḥarb*.<sup>71</sup> In spite of disagreement of classical jurists on the status of *dār al-'ahd*, its existence is undeniable reality of Islamic history.<sup>72</sup>

During the reign of Mu'āwiyah b. Abī Sufyān, the prince of Armenia entered into peace agreements with Muslims, in order to protect his autonomous rule, in return for the payment of *kharāj*. A *dār al-ṣulḥ* (abode of truce) was acknowledged by Shāfi'ī scholars, where harmonious terms with non-Muslim states were permitted on the condition of payment of taxes by them to Muslim sovereigns. Similarly, some Muslim jurists instructed inhabitants of the land that Muslims lost to enemies to either fight to regain their land or migrate to *dār al-Islām*. Mālikī jurists suggested the same to the Muslims of Andalusia, which was invaded by the Christian forces during the Reconquista. The same view was expressed by some leaders of resistance movements in colonial India. The followers of Ṭarīqah-i Muḥammadiyah movement headed by

<sup>67</sup> Al-Sarakhsī, *al-Mabsūt*, 10:94–100; al-Kāsānī, *Badā'ī al-Ṣanā'ī'*, 7:131.

<sup>68</sup> Muhammad Mushtaq Ahmad, "The Notions of *Dār al-Ḥarb* and *Dār al-Islām* in Islamic Jurisprudence with Special Reference to the Ḥanafī School," *Islamic Studies* 47, no. 1 (2008): 9.

<sup>69</sup> Muḥammad b. Idrīs al-Shāfi'ī, *Kitāb al-Umm* (Beirut: Dār al-Ma'rifah, 1990), 4:192.

<sup>70</sup> Yaḥyā b. Ādam, *Kitāb al-Kharāj*, ed. Aḥmad Muḥammad Shakīr (Beirut: Dār al-Ma'rifah, n.d.), 40–50; Alī b. Muḥammad al-Māwardī, *al-Aḥkām al-Sulṭāniyyah wa 'l-Wilāyāt al-Dīniyyah*, ed. Aḥmad Jādd (Cairo: Dār al-Hadīth, 2006), 258.

<sup>71</sup> Al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, 258.

<sup>72</sup> Halil Inalcik, "Dār al-'Ahd," in *The Encyclopaedia of Islam*, ed. B. Lewis, Ch. Pellat, and J. Schacht, 2nd ed. (Leiden: E. J. Brill, 1991), 2:116.

Sayyid Aḥmad Barailvī (d. 1831) were also of the same view.<sup>73</sup> Some jurists hold that if a state provides Muslims with protection of life and freedom to practice their religion, they can welcome that rule and consider themselves living in *dār al-Islām*.<sup>74</sup>

One finds more evidences on such lands in the agreements of Ottoman sultans. They signed particular agreements named as “*ahdnāmahs*” to extend the status of *dār al-‘ahd* to the territories of tributary Christian princes on the condition of obedience and payment of annual tax (*kharāj*). In return, these territories were provided peace and security by the Sultan’s forces. In such treaties, it was usually specified that the dependent states would follow the foreign policies of the principal state. In return, they were ensured peace, protection from enemies, liberty of religion, laws, and customs etc.<sup>75</sup>

### **Changes in the Status of Dār**

Like the concept of *dār*, its legal status is also not static and one category of *dār* can change into another category. *Dār al-Islām* can be converted into *dār al-ḥarb* and vice versa. Similarly, *dār al-ḥarb* can be changed into *dār al-muwāda‘ah* or *dār al-‘ahd*. According to Abū Ḥanīfah, a territory of *dār al-Islām* can possibly be converted into *dār al-ḥarb*, if it is conquered by non-Muslims, with following three conditions: 1) if Islamic law is replaced by non-Muslim laws; 2) it has formed alliance with *dār al-ḥarb*; (3) or protections provided to Muslims and their non-Muslim *dhimmi*s ceases to exist.<sup>76</sup> Abū Yūsuf says that *dār al-kufr* (abode of unbelief) will exist until its rules exist. Al-Kāsānī holds that *dār al-Islām* and *dār al-kufr* are linked with Islam and unbelief respectively. However, Abū Ḥanīfah dissociated *dār* from Islam and unbelief and associated it with peace and fear. He is of the view that any place where Muslims have peace and live comfortably is *dār al-Islām* for them and any place where they feel fear and insecurity that place is *dār al-kufr*.<sup>77</sup>

The aforementioned conditions are crucial as some hold that application of even one rule of Islamic law in any territory is enough for

<sup>73</sup> Campo, *Encyclopedia of Islam*, 182.

<sup>74</sup> Ibid.

<sup>75</sup> Inalcik, “Dār al-‘Ahd,” 2:116; Hamidullah, *Muslim Conduct of State*.

<sup>76</sup> Muhammad Amīn b. ‘Ābidīn, *Radd al-Muḥtār ‘alā ‘l-Durr al-Mukhtār* (Beirut: Dār al-Fīkr, 1992), 4:176; al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 7:130–31; 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, no. 2 (1994): 162, doi: 10.2307/3399332.

<sup>77</sup> Al-Kāsānī, *Badā‘i‘ al-Ṣanā‘i‘*, 7:130–31.

rendering it *dār al-Islām*. When a country of non-believers enters into the state of war with Muslims, it was changed from *dār al-kufr* to *dār al-ḥarb*.<sup>78</sup> Conversely, a peace treaty with *dār al-Islām* converts the status of *dār al-ḥarb* to *dār al-muwāda‘ah* or *dār al-‘ahd*.

### Approaches of Western Scholars to *Dār al-Islām* and *Dār al-Ḥarb*

Sarah Albrecht has thoroughly studied various Western approaches to the *dār*-related concepts. She remarks that classical concepts are used to define Muslim-non-Muslim relations. She observes that these terms are among the catchwords along with other terminologies, such as *fatwā* and *sharī‘ah* in the Western media. These terminologies ring a bell of the interested public and many of them consider them as threatening connotations.<sup>79</sup> Such connotations are used to prove the idea of the “clash of civilizations” predicted by Samuel Huntington.<sup>80</sup>

Extremism and islamophobia in the West and the USA can be seen in many academic and media outlets. One example of this anti-Islamic rhetoric is anti-Muslim website *jihadwatch.org*. The section “Islam 101,” of this website defines *dār al-Islām* as under:

It is incumbent on dar al-Islam to make war upon dar al-harb until such time that all nations submit to the will of Allah and accept Sharia law. Islam’s message to the non-Muslim world is the same now as it was in the time of Muhammad and throughout history: submit or be conquered. The only times since Muhammad when dar al-Islam was not actively at war with dar al-harb were when the Muslim world was too weak or divided to make war effectively. . . . For the past few hundred years, the Muslim world has been too politically fragmented and technologically inferior to pose a major threat to the West. But that is changing.<sup>81</sup>

Sarah, after quoting above-mentioned text, observes that this text presents threatening posture and advances an everlasting conflict among Muslims and nonbelievers. She holds that by ignoring the various aspects of Muslim and non-Muslim relations, this opinion misrepresents

<sup>78</sup> Ahmad, “The Notions of *Dār al-Ḥarb* and *Dār al-Islām*,” 9.

<sup>79</sup> Albrecht, *Dār al-Islām Revisited*, 4; Albrecht, “Relocating *Dār Al-Islām*,” in *Locating the Sharī‘a: Legal Fluidity in Theory, History and Practice*, ed. Sohaira Z. M Siddiqui (Leiden: Brill, 2019).

<sup>80</sup> Muhammad Zia ul Haq, “Muslims’ Participation in Interfaith Dialogue: Challenges and Prospects,” *Journal of Ecumenical Studies* 49, no. 4 (2014): 636.

<sup>81</sup> Gregory M. Davis, “Islam 101,” <http://www.jihadwatch.org/islam-101>, September 4, 2017.



the doctrines of *dār al-Islām* and *dār al-ḥarb* as static and unchangeable. She observes that such obsolete depictions of Islamic notions are, however, not limited to popular anti-Muslim propaganda, but can also be found in the Western academia on Islamic law and its history.<sup>82</sup> Bernard Lewis is one of such examples. He explains *jihād* as timeless obligation to convert people to Islam or at least subjugate them to the Islamic state. He further states,

Until that happens, the world is divided into two: the House of Islam (*dār al-Islām*), where Muslims rule and the law of Islam prevails; and the House of War (*dār al-Ḥarb*) comprising the rest of the world. Between the two there is a morally necessary, legally and religiously obligatory state of war, until the final and inevitable triumph of Islam over unbelief. According to the law books, this state of war could be interrupted, when expedient, by an armistice or truce of limited duration. It could not be terminated by a peace, but only by a final victory.<sup>83</sup>

More than two decades later, in 2012, in an interview Lewis reiterated that the tussle between Islam and the West is in fact between *dār al-Islām* and *dār al-ḥarb*. He observes that the present West is *dār al-ḥarb* according to classical classification.<sup>84</sup>

The German Orientalist Tilman Nagel has deep influence on right-wing populist anti-Muslim discourse. He ponders that the nature of Muslim/non-Muslim relations has to be understood under the division of the world between *dār al-Islām* and *dār al-ḥarb*. While neglecting historical debate on the issue, he insists that this irreconcilable division is based on Qur'ānic verses.<sup>85</sup> Therefore, territorial paradigm in Islamic law is unchanged.<sup>86</sup> He claims that this situation untimely gives legitimacy to Muslims in the non-Muslim states to violate laws of these countries.<sup>87</sup>

Commenting on the views of Nagel, Sarah identifies that he dismissed all diversified opinions related to these concepts and without any substance accused the Western Muslim immigrants for trying to undermine Western constitutional democracies. His hostility can be seen through his efforts to apply medieval terminologies on the

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<sup>82</sup> Albrecht, *Dār al-Islām Revisited*, 05.

<sup>83</sup> Lewis, *Political Language of Islam*, 73.

<sup>84</sup> Albrecht, *Dār al-Islām Revisited*, 05.

<sup>85</sup> Qur'ān 9:29.

<sup>86</sup> Nagel, *Das islamische Recht*, 104, 111.

<sup>87</sup> *Ibid.*, 102–03.

contemporary situations, while referring to Muslims living in non-Muslim countries as “*musta’minūn*.”<sup>88</sup> German Orientalist Hans Kruse emphasized that the categorization of the world into *dār al-Islām* and *dār al-ḥarb* was the result of the “perpetual hostility between Muslims and unbelievers.”<sup>89</sup> Similarly, Hiroyuki Yanagihashi claims that *dār al-Islām* is ruled by the Muslim community, which is at least latently in conflict with other religious communities.<sup>90</sup>

Summing up these views, Sarah remarks that these writers attempt to reconstruct technical terms of *dār al-Islām* and *dār al-ḥarb* into somewhat ideological terminologies. Through anachronistic and politicized approaches, they misrepresent Islamic legal debates of territoriality.<sup>91</sup> Some other authors simply identify *dār al-Islām* with the “Islamic state.”<sup>92</sup> Others insist to reconstruct contemporary meanings on the basis of rich diversity of definitions of *dār al-Islām* over the course of history.<sup>93</sup>

## Residence of Muslims in the Non-Muslim Territories

### *Classical Debate Regarding Obligation of Migration to Islamic Lands*

The debate on the classification of the world relates to the question of permission to reside in a particular land or migrate (*hijrah*) to *dār al-Islām*. This question leads to another question about the conditions in which it is permissible for a Muslim to live in non-Muslim-majority countries. Since the opinions of the Muslim scholars on classification of territorialities vary, one finds different answers to these questions as well.<sup>94</sup>

Before the conquest of Mecca, migration to Medina was one of the most important obligations of the Muslims. Certain Qur’ānic verses<sup>95</sup> required Muslims to leave infidels’ territory and join newly established community of Muslims in Medina if they afforded this. This migration strengthened the Muslims and weakened the infidels. This is the reason that phrases such as “believers,” “migrants,” and “strivers in the path of

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<sup>88</sup> Ibid.

<sup>89</sup> Kruse, *Islamische Völkerrechtslehre*, 57.

<sup>90</sup> Yanagihashi, “Solidarity in an Islamic Society,” 51–67.

<sup>91</sup> Albrecht, *Dār al-Islām Revisited*, 7.

<sup>92</sup> M. Ali Kettani, *Muslim Minorities in the World Today* (London: Mansell, 1986), 258.

<sup>93</sup> Albrecht, *Dār al-Islām Revisited*, 8.

<sup>94</sup> Albrecht, *Dār al-Islām Revisited*, 63–64.

<sup>95</sup> Qur’ān 4:89; 4:100; 8:72; 9:20.

Allah” were used together in the Qur’ān.<sup>96</sup> The Prophet also introduced a legal framework for social reconstruction of the post-migration Medina through *mīthāq al-Madīnah*, an agreement between the immigrants and the *anṣār* (helpers) among the Muslims and Jews living in Medina.<sup>97</sup> Through the new communal system, the disadvantaged were provided financial incentives. A part of war’s spoil was given to the immigrants.<sup>98</sup> Through the post-migration steps, the Prophet established a fraternity between all Muslims.<sup>99</sup> However, the Prophet abrogated the obligation of migration after the conquest of Mecca in 630 CE.<sup>100</sup>

However, the question of migration and related debates continued to attract scholarly attention. In early centuries of Islam and the medieval ages, the issue was discussed with reference to those who embraced Islam and lived in the areas ruled by non-Muslims. During the colonial period when many Muslim lands fell to the colonial powers, many new dimensions were added to the issue and new interpretations of *dār al-Islam* and *dār al-ḥarb* emerged. After the settlement of many Muslims in Europe and the USA, new Muslim minorities emerged in various Western countries. The assessment of their situation in the light of classical interpretations of *dār al-Islam*, *dār al-ḥarb*, *dār al-‘ahd*, and *hijrah* led to a new discourse particularly among scholars living in the West.

Abou El Fadl has evaluated opinions of the classical legal experts on the question of obligatory migration to Muslim lands. He explored the juristic opinions from the first five Islamic centuries and concluded that their positions were not unsystematic. He further elaborated,

Well-formulated, recognizable schools of thought on the problem of Muslims in non-Muslim territory emerged only after the sixth/twelfth century. As always, these schools of thought manifest a richness of diversity and many minor variations. Each school adopted a cohesive position which it applied, at times, with compulsive rigidity.<sup>101</sup>

The focus of these early scholars was on the legal status of migration of the Muslim converts living in non-Muslim territories. Sometimes

<sup>96</sup> Ibid., 2:218; 8:72, 74, 75; 8:20; 16:110.

<sup>97</sup> Muḥammad Ḥamīd Allāh, *Majmu‘at al-Wathā‘iq al-Siyasiyyah li ‘l-‘Ahd al-Nabawī wa ‘l-Khilāfah al-Rāshidah* (Beirut: Dār al-Nafā‘is, 1985), 59.

<sup>98</sup> Qur’ān 59:8–10.

<sup>99</sup> Ibid., 49:10; 3:103; 9:11.

<sup>100</sup> Aḥmad b. ‘Alī al-‘Asqalānī b. Ḥajar, *Fatḥ al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Ma‘rifah, 1379 AH), 4:47.

<sup>101</sup> Abou El Fadl, “Islamic Law and Muslim Minorities,” 153.

scholars of one legal tradition held different views regarding this issue. It is reported from Abū Ḥanīfah that staying in non-Muslim territories is not approved and migration from non-Muslim territory to Islamic rule is obligatory. However, al-Shaybānī differs with this opinion. In spite of this diversity of opinions among the Ḥanafī jurists, they generally discouraged permanent settlement in non-Muslim territories. However, they allowed temporary residence for diplomatic or business purposes. The early Mālikī scholars such as Mālik b. Anas (d. 796) and Saḥnūn b. Saʿīd al-Tanūkhī (d. 854) prohibited Muslims from travelling to and permanently staying in the non-Muslim territories. However, some later Mālikī jurists like Ibn ʿAbd al-Barr al-Qurṭubī (d. 1071) permitted temporary stay of Muslims in non-Muslim lands as long as they felt safe and hoped to dominate the non-Muslims in future.<sup>102</sup> Contrary to these opinions, al-Shāfiʿī holds that Muslims are permitted to stay in non-Muslim area until they “did not fear enticement away from their religion.” He argues that the legal status of migration to Islamic land has to be decided on case-to-case basis. Similar to the general views of Ḥanafī and Mālikī scholars, majority of Shīʿah scholars opposed residence of Muslims in non-Muslim territories. They feared that in such situation Muslims would not be able to practice their religion. However, similar to the opinion of al-Shāfiʿī, Jaʿfar al-Ṣādiq (d. 765) held that Muslims could live in any territory where they would have access to justice and knowledge.<sup>103</sup> Muslim jurists who allowed believers to settle in non-believers’ territories (permanently or temporarily) generally maintained that this permission was conditioned on the provision of security or safe-conduct. In this regard, signing formal treaties is not necessary but implicit permission to reside in that land is sufficient.<sup>104</sup>

The political and strategic situation of the Muslim territories changed after the loss of Muslim territories in favour of Mongols in the East and Christians in the West after the eleventh century CE. After the conquest of vast Islamic territories by non-Muslims, the question of residence in the occupied territories became more pressing. It was a new phenomenon in Muslim history, as large Muslim populations had to

<sup>102</sup> Ibid., 149; Albrecht, *Dār al-Islām Revisited*, 65.

<sup>103</sup> Abou El Fadl, “Islamic Law and Muslim Minorities,” 145–49; Abou El Fadl, “Striking a Balance: Islamic Legal Discourse on Muslim Minorities,” in *Muslims on the Americanization Path?*, ed. Yvonne Yazbeck Haddad and John L. Esposito (Oxford: Oxford University Press, 2000), 50–51.

<sup>104</sup> See Abou El Fadl, “Islamic Law and Muslim Minorities,” 175–76; Andrew F. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (Oxford: Oxford University Press, 2009), 185–86; Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins Press, 1955), 163–73; Albrecht, *Dār al-Islām Revisited*, 66.

reside under the non-Muslim rule. This situation led to the development of systematic but more rigid juristic positions on the matter. Muslims lost their authority of enforcing Islamic law after their territories were detached from *dār al-Islām*. Majority of Mālikī jurists responded to the loss of Islamic lands of Iberia through endorsing a resolute and rigid position. They adopted the uncompromising position of the post-eleventh century Mālikī jurists, such as Ibn Rushd (d. 1126), Abū Bakr b. al-‘Arabī (d. 1148), and Muḥyī ‘l-Dīn Ibn al-‘Arabī (d. 1240) and instructed the Muslims residing in the conquered lands to migrate to Muslim lands. They even asked terminate temporary trade visits to non-Muslim lands.<sup>105</sup> When the city of Marbella was lost in 1445, large number of Muslims were forced to convert to Christianity. To address this situation Aḥmad b. Yaḥyā al-Wansharīsī (d. 1508) issued a *fatwā* in which he again emphasized the necessity of migration. He was of the view that Muslims in new subordinate position will not be able to live in accordance with Islamic teachings

Dwelling among the unbelievers, other than those who are protected and humbled peoples (*ahl al-dhimmah wa al-ṣaghār*), is not permitted and is not allowed for so much as an hour of a day. This is because of the filth, dirt, and religious and worldly corruption, which is ever-present [among them].<sup>106</sup>

The Mālikī jurist Abū ‘Abd Allāh Muḥammad al-Māzarī (d. 1141) holds that decision of the Muslims to inhabit in the lands of non-believers is not necessarily unethical, as it might result from an erroneous interpretation. He further elaborates that Muslims may reside in non-believers’ territories if they work for the renaissance of Islamic rule or preaching of Islam.<sup>107</sup> Certain Mālikīs relaxed the laws relating to migration of Muslims from lands fell to the control of non-Muslims. The Mālikī scholar Aḥmad b. Abī Jum‘ah al-Maghrāwī al-Wahrānī (d. 1511) issued a *fatwā* for the Muslims in Granada after the city was conquered by the Christians. He advised them to profess their faith secretly if they wanted to stay in Granada. He also permitted them to offer prayers without following their prescribed timings. He even allowed them to omit the prescribed kneeling and prostration in the prayer. He also gave

<sup>105</sup> See Abou El Fadl, “Islamic Law and Muslim Minorities,” 148; Verskin, *Islamic Law and the Crisis of the Reconquista*; Albrecht, *Dār al-Islām Revisited*, 66.

<sup>106</sup> Quoted in Verskin, *Oppressed in the Land?*, 22. Also see Abou El Fadl, “Islamic Law and Muslim Minorities,” 154–56.

<sup>107</sup> Abou El Fadl, “Islamic Law and Muslim Minorities,” 151; March, *Islam and Liberal Citizenship*, 107; Albrecht, *Dār al-Islām Revisited*, 67.

them concessions in consuming pork and alcohol or to exercise usury if it could help them in escaping from persecution.<sup>108</sup>

In response to new situations emerged after the conquest of the eastern Islamic lands by the Mongols and the Reconquista of Andalusia by the Christians, Ḥanafī and Shāfi'ī jurists revisited their views on the question of residing in the infidels' lands. Unlike most Mālikī jurists, they argued that Islam must exist in the territories that Muslims lost to the non-Muslims. They maintained that these territories were not part of *dār al-kufr*, therefore, it was not obligatory for Muslims to migrate from them. The majority of Shāfi'ī jurists maintained that such occupied territories remained *dār al-Islām*, considering that some Muslims were residing there. Al-Māwardī suggested that Muslims should continue to stay there. He observed, "Settling in such a country is preferable to moving away from it, as others would be likely to convert to Islam."<sup>109</sup> Other Shāfi'ī jurists such as al-Nawawī, Ibn Ḥajar al-'Asqalānī, and Aḥmad al-Ramlī endorsed the opinion of al-Māwardī.<sup>110</sup> Nawawī further advanced the idea and said, "If one hopes that, by remaining, Islam might spread in his place of residence, it is obligatory for him to reside there and not migrate. Moreover, the same is the case if it is hoped that Islam might prevail there in the future."<sup>111</sup> In reply to a question related to the situation of Muslims after the Reconquista, al-Ramlī contended that this territory was *dār al-Islām* because of Muslims' residence therein and it was not obligatory upon them to migrate as they were practicing their religion in new situation. He reminded the Muslims that Prophet Muḥammad already permitted Muslims to live in infidels' land if it would lead others to embrace Islam. However, he concluded that this territory would be changed into *dār al-ḥarb* if Muslims left it.<sup>112</sup> The opinions of Shāfi'ī jurists were gradually developed. The contribution of the jurists of the tenth/sixteenth century is considered well formulated. Abou El Fadl is of the opinion that the juristic writing of the fifth century AH did not manifest the same refinement.<sup>113</sup>

The position of Ḥanafīs is different from both the Mālikīs and Shāfi'īs. Unlike Mālikīs, they allowed to stay in the territory that came

<sup>108</sup> Albrecht, *Dār al-Islām Revisited*, 70.

<sup>109</sup> Reported by Aḥmad b. 'Alī b. Ḥajar al-'Asqalānī, *Fath al-Bārī* (Cairo: al-Bābī al-Ḥalabī, 1959) 7: 230.

<sup>110</sup> Albrecht, *Dār al-Islām Revisited*, 68.

<sup>111</sup> Abū Zakariyyā al-Nawawī, *al-Majmū' Sharḥ al-Muḥadhdhab* (Beirut: Dār al-Fikr, 2000), 22, 5.

<sup>112</sup> Quoted in Verskin, *Oppressed in the Land?*, 31–33. Also see Abou El Fadl, "Islamic Law and Muslim Minorities," 159–60; Albrecht, *Dār al-Islām Revisited*, 68.

<sup>113</sup> *Ibid.*

under the non-Islamic rule. Similarly, unlike Shāfi'īs they do not declare staying in such land obligatory. Jurists like al-Kāsānī and Ibn 'Ābidīn asked Muslims not to leave these areas if they are capable of living peacefully and following their faith.<sup>114</sup> Ḥanafīs are of the view that an area that is governed by non-believers can even be considered equally a portion of *dār al-Islām* as long as the *sharī'ah* is practiced there. They further stated that a part of Muslim territory will not change automatically into *dār al-kufr* merely due to its occupation by infidels. They maintain that areas occupied by Mongols or Christians are Islamic territories as long as Muslims are allowed to offer prayers and their disputes are resolved by the Muslim judges. Some Ḥanafī jurists say that a territory will remain a part of *dār al-Islām* even if a single law of Islam exists there. Consequently, Muslims are under no obligation to migrate and are encouraged to stay there if they feel safe.<sup>115</sup>

Ḥanbalī and Shī'ī jurists have a compromising view. They state that a practicing Muslim may desire to live in a non-Muslim community. However, Ḥanbalī jurists particularly stressed on the superiority of Muslim land even in worst conditions and discouraged Muslims to live in *dār al-ḥarb*.<sup>116</sup> Shī'ī jurists are concerned with the issue of Muslims' residence in a territory whose inhabitants are indulged in sins, even if this land is officially classified as *dār al-Islām*.<sup>117</sup> The reason for adopting intermediary position by Ḥanbalī and Shī'ī jurists was that they confronted less occupation of their lands compared to the Mālikī, Ḥanafī, and Shāfi'ī jurists of the fifth/thirteenth century. Similarly, the territorial circumstances were not same for Mālikī, Ḥanafī, and Shāfi'ī jurists. Both Ḥanafī and Shāfi'ī jurists belonged to the regions that were attached to the main Muslim land. This affected their approach. They differentiated between Islam and lands of Islam. Therefore, they reached the conclusion that Islam could exist in any territory even if it is ruled by non-Muslims. For them, it is morally imperative for believers to uphold Islam in infidels' lands. Moreover, they do not hold that a land conquered by infidels necessarily turns to be a non-Muslim land.<sup>118</sup>

<sup>114</sup> See al-Kāsānī, *Badā'ī' al-Ṣanā'ī'*, 7:130; Abou El Fadl, "Islamic Law and Muslim Minorities," 159, 162, 172; Albrecht, *Dār Al-Islām Revisited*, 68.

<sup>115</sup> Abou El Fadl, "Islamic Law and Muslim Minorities;" Ibn 'Ābidīn, *Radd al-Muḥṭār*, 3:252–53.

<sup>116</sup> Abou El Fadl, "Islamic Law and Muslim Minorities," 159, 162, 172; Steven Gertz, "Permission to Stay in 'Enemy' Territory? Ḥanbalī Juristic Thinking on Whether Muslims must Emigrate from Non-Muslim Lands," *The Muslim World*, 103, no. 1 (2013): 94–106; Albrecht, *Dār al-Islām Revisited*, 69.

<sup>117</sup> Albrecht, *Dār al-Islām Revisited*, 68–69.

<sup>118</sup> Abou El Fadl, "Islamic Law and Muslim Minorities," 164.

### ***Current Discourse on the Residence of Muslims in the West and North America***

Similar to the classical debate on the nature of *dār*, the discourse on the Muslims' residence in Western countries is characterized by diversity of opinions. This discourse was intensified in the late 1980s when the question of Muslims' living in the West became a burning issue. The centuries-old question of residence of Muslims in the non-Muslim lands was contextualized in the perspective of growing emigration of Muslims to the West and North America. This question closely relates to some other questions such as: Does the *sharī'ah* permit to stay permanently in a territory of unbelievers? And how to interpret Islamic norms for Muslims living in Europe? Contemporary scholarship holds diverse views on these questions. It is important to note that territorial concepts continue to play a significant role in how contemporary intellectuals, activists, and scholars respond to these questions.<sup>119</sup>

The prominent Muslim reformer Rashīd Riḍā held that residence in non-Muslim countries was permissible provided Muslims were allowed to practice their faith. His approach was pragmatic and he developed it when majority of Muslim lands were under the control of non-Muslim rule. He drew upon the views of many classical Muslim scholars who held that it was not obligatory for Muslims to migrate from these territories as long as they had the liberty to practice their faith. He articulated this view in a *fatwā* he issued in 1909 in reply to a question from a Bosnian official about the legitimacy of Muslims' stay in the Bosnian territory after its occupation by Austro-Hungarian rule. The same question was earlier sent to an Ottoman jurist, who urged Muslims to migrate from Bosnia to any other Ottoman territory.<sup>120</sup> Riḍā drew support for his view from the opinion of Māwardī who held that any "territory of unbelief" where a Muslim could practice his faith would change into a "territory of Islam" by his adopting it for residence.<sup>121</sup> For him, the purpose of migration is to flee from evil and sins to righteousness and virtue. Similar to Ibn Taymiyyah, he was of the view that this might be achieved through spiritual migration.<sup>122</sup>

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<sup>119</sup> Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: Brill, 1998), 263–348.

<sup>120</sup> Rashīd Riḍā, *Fatāwā 'l-Imām Muḥammad Rashīd Riḍā* (Beirut: Dār al-Kitāb al-Jadīd, 1970/1971), 2:772–79. For an English translation, see Verskin, *Oppressed in the Land?*, 118–27.

<sup>121</sup> See Riḍā, *Fatāwā al-Imām Muḥammad Rashīd Riḍā*, 2:775.

<sup>122</sup> See *ibid.*, 2: 777; Albrecht, *Dār al-Islām Revisited*, 101.



In response of the Algerian students' question about travelling to and staying in Europe, a Moroccan scholar 'Abd al-'Azīz b. al-Ṣiddīq al-Ḥasanī al-Ghamārī (d. 1993) wrote his famous study on the legitimacy of living in Europe.<sup>123</sup> This study was first published in 1985 but was not cited widely until another Moroccan scholar 'Amrānī briefly mentioned it in his work.<sup>124</sup> Al-Ghamārī holds that travelling to and residing in Europe are permissible. He is of the view that in case of persecution in Muslim countries the stay in West became obligatory. He does refer to the West as the land of unbelievers but also praises them for granting religious liberty and protection to Muslims. Though al-Ghamārī was a Mālikī jurist but his views about the legitimacy of residence in the West were based on the opinions of Shāfi'ī jurists who allowed Muslims to stay wherever they found safety, protection, and liberty to practice their faith. Relying on the opinion of al-Māwardī, he says, "The land of unbelief becomes *dār al-Islām* if Muslims are able to practice their religion" and concludes, "Today's Europe hence constitutes *dār al-Islām*."<sup>125</sup>

Another study titled *Fiqh al-Jinsiyyāt* (Islamic law of nationality) by an Egyptian scholar Aḥmad Ḥamad Aḥmad was published in 1986. The author attempted to harmonize traditional Islamic concepts and International law.<sup>126</sup> Along with books and research papers, the academic councils of scholars also tried to reconstruct traditional Islamic views of territoriality. During the conference of "Union des Organisations Islamiques en France" (UOIF), in Lyon in 1986, renowned Lebanese intellectual Fayṣal Mawlawī (d. 2011) suggested revisiting the traditional territorial concepts considering the context in which they were developed. He was of the view that the conceptions such as *dār-al-Islām*, *dār al-kufr*, and *dār al-ḥarb* did not have any canonical grounds. Therefore, they can be changed through *ijtihād* to respond to historical circumstances.<sup>127</sup> The leader of Tunisian Ennahda movement, Rached Ghannouchi discussed this issue in UOIF's annual meeting in Le Bourget in 1989. He stressed that the permanent presence of Muslims in the West presented a radically new situation that necessitated a reconsideration of the *dār al-Islām/dār al-ḥarb* binary and suggested that France could

<sup>123</sup> 'Abd al-'Azīz b. al-Ṣiddīq al-Ḥasanī, *Ḥukm al-Iqāmah bi Bilād al-Kuffār wa Bayān Wujūbihā fī Ba'd al-Aḥwāl*, 2nd ed. (Tangier: Maṭābi' al-Būghāz, 1996).

<sup>124</sup> Muḥammad al-Kadī al-'Amrānī, *Fiqh al-Urah al-Muslimah fī al-Muhājar: Hūlandā Namūdhajan* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2001), 1:119–21.

<sup>125</sup> Al-Ḥasanī, *Ḥukm al-Iqāmah bi Bilād al-Kuffār*, 41–42; Albrecht, *Dār al-Islām Revisited*, 114.

<sup>126</sup> Aḥmad Ḥamad Aḥmad, *Fiqh al-Jinsiyyāt: Dirāsah Muqāranah fī al-Sharī'ah wa 'l-Qānūn* (Tanta: al-Jāmi'iyah, 1986).

<sup>127</sup> Fayṣal Mawlawī, *al-Usus al-Shar'iyyah li 'l-'Alāqāt bayna al-Muslimīn wa Ghayr al-Muslimīn* (Beirut: Dār al-Rashād al-Islāmiyyah, 1987); Albrecht, *Dār al-Islām Revisited*, 115.

nowadays indeed be considered as part of *dār al-Islām*.”<sup>128</sup> In the same year, the “Conseil de Réflexion de l’Islam en France” (CORIF) declared France as *dār al-Islām*.<sup>129</sup> UOIF held another important seminar on “Muslims in the West” at Institut Européen des Sciences Humaines (IESH) in Château Chinon in July 1992. In this seminar, a milestone was achieved through conceiving the idea of “European Council for Fatwa and Research (ECFR)” and the Western Muslims first time explicitly discussed the concept of territoriality.<sup>130</sup> These new studies and intellectual gatherings contributed to the institutionalization of Islamic life in the Europe. They not only started establishing new mosques and Islamic centres but also started addressing specific legal challenges.<sup>131</sup>

To this debate, a remarkable contribution is of Mannā’ al-Qaṭṭān (d. 1999). In his work *Iqāmat al-Muslim fī Balad ghayr Islāmī* (Residence of a Muslim in a non-Islamic country),<sup>132</sup> he discussed the demographic factor that was invoked by Abū Zahrah and Wahbah al-Zuhaylī and concluded that all Muslim countries were *dār al-Islām*. He was of the view that Western countries were neither *dār al-ḥarb* nor *dār al-Islām*. He placed the West in a third domain by virtue of international treaties and membership of the United Nations. His point of view was supported by scholars including Yūsuf al-Qaraḍāwī (b. 1926) who agreed that *dār al-Islām/dār al-ḥarb* binary did not reflect contemporary situation and that it would have to be addressed considering the new realities of Muslim communities in Europe.<sup>133</sup> The need for Muslims’ integration in and contribution to the Western societies generated emerging Islamic debate on the applicability and adequacy of traditional concepts. The existence of millions of Muslims in the West in the second half of the twentieth century required changing traditional territorial classification in favour of contemporary demographic and political conditions.

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<sup>128</sup> Albrecht, *Dār Al-Islām Revisited*, 115.

<sup>129</sup> *Ibid.*

<sup>130</sup> Lena Larsen, “Islamic Jurisprudence and Transnational Flows: Exploring the European Council for Fatwa and Research,” in *From Transnational Relations to Transnational Laws*, ed. Anne Hellum, Shaheen Sardar Ali, and Anne Griffith (Surrey: Ashgate, 2011), 142. Also see Alexandre Vasconcelos Caeiro, “Fatwas for European Muslims: The Minority Fiqh Project and The Integration of al-Islām in Europe,” (PhD diss., ISIM Leiden University, 2011), 60–61.

<sup>131</sup> Albrecht, *Dār al-Islām Revisited*, 117.

<sup>132</sup> Tariq Ramadan, *To be a European Muslim: A Study of Islamic Sources in the European Context* (Markfield: Islamic Foundation, 1999), 126–28; Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2004), 66–67.

<sup>133</sup> Albrecht, *Dār Al-Islām Revisited*, 117.

### ***Contesting Traditional Views***

The declaration of “Conference of Heads of Islamic Centers and Imams in Europe” held on June 13–15, 2003 at Graz, Austria, constituted a paradigm shift. The participants showed their concerns about traditional binaries of classification of the world. They considered these notions obsolete and irrelevant to the contemporary world.<sup>134</sup> Similarly, Murad Wilfried Hofmann (d. 2020) emphasizes that he can assure that the non-Qurānic medieval conceptual pair of *dār al-Islām* and *dār al-harb* does not play any role in the thinking and discourse of contemporary Muslims. He further elaborates, “These are categories to which Orientalists adhere, which bear, however, no relation to Muslims’ everyday reality.”<sup>135</sup>

In contrast to the opinions of contemporary scholars from the other parts of the world, the European Muslims asked for abandoning the traditional territorial concepts instead of demanding to revisit them. Their views were seconded by many other contemporary scholars who received their formal education from Canadian and European universities and spent considerable period in the West.

Tariq Ramadan advocates reformation through re-reading of Islamic theology and law. He suggests that revisiting the Qur’ān and classical Islamic legal texts is a prerequisite for a “radical reform” of the *sharī’ah* law.<sup>136</sup> For him, the classical concept of *dār* and dividing the world mainly into two zones may not work in this globalized world due to transformation of geopolitical realities. The classical concept of *dār* requires the existence of fully independent states, which can hardly exist now due to economic and political interdependence of the states.

Some contemporary scholars argue that the safety and protection of Muslims and their faith were the main reasons for declaring any territory *dār al-Islām*. However, presently majority of the Muslim countries unfortunately fail to provide protection to Muslim citizens.<sup>137</sup> The West, on the contrary, provides protection to Muslims. The concept of *dār al-‘ahd* held by al-Shāfi‘ī also fails to provide a solution to the problems of the contemporary world.<sup>138</sup> It signifies temporary or permanent harmonious and conflict-free state of affairs with non-Muslim states through peace treaties. *Dār al-‘ahd* must also fulfil the

<sup>134</sup> Albrecht, *Dār al-Islām Revisited*, 282.

<sup>135</sup> Murad Wilfried Hofmann, *Den Islam verstehen, Vorträge 1996–2006* (Istanbul: Çağrı Yayınları, 2007), 270; Albrecht, *Dār al-Islām Revisited*, 282.

<sup>136</sup> Ramadan, *Western Muslims and the Future of Islam*, 63.

<sup>137</sup> For details, see Calasso and Lancioni, *Dār al-Islām/Dār al-Ḥarb*.

<sup>138</sup> Ramadan, *Western Muslims and the Future of Islam*.

criteria set by the Muslim scholars for an independent *dār*. However, a fully independent country that concludes any treaty without any political influence hardly exists in the contemporary world.<sup>139</sup> Moreover, Muslim minorities residing in *dār al-‘ahd* would feel that they do not belong to that society, rather they live in it on certain terms and conditions. The idea of social contract is quite different from that of *dār al-‘ahd*, as in the former people have the membership of society, which allows them to fully integrate and participate in it. For Ramadan, the essential elements for determining the status of any country—for instance, its population, ownership of the territory, style of government, and nature of laws enforced in the country—are no longer relevant in the modern globalized world.<sup>140</sup> He emphasizes that one should go back to the sources of Islam to become a good Muslim and find solutions to the problems of contemporary Muslims. For him, centuries-old concepts of *dār* are neither based on the Qur’ān and *sunnah* nor are they appropriate to be applied to the current political scenario.<sup>141</sup> Religious identity of Muslims living in the West is fundamental but they also have an identity as European or American.<sup>142</sup> Muslim minorities in the West are fighting for their representation in the pluralist Western society.<sup>143</sup>

Fayṣal Mawlawī argues that the West is either *dār al-‘ahd* or *dār al-da‘wah*. If the classical notion of Islamic law is applied to it, it is considered *dār al-‘Ahd*. Otherwise, it is considered *dār al-da‘wah* similar to Mecca before migration to Medina.<sup>144</sup> Since Muslims were living in Mecca as minority, they were bearing witness to their faith before the people of Mecca. The responsibility of Muslims in the Western secular societies is similar to the responsibility of Meccan Muslims. Muslims must play their role and make the West realize what they have lost in their lives. He urges Muslims not to surrender to that atmosphere and to continue living there and carry on their work.

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> Ramadan, *Western Muslims and the Future of Islam*, 63–77; Siddiqui, *Locating the Sharī‘a*, 205–15.

<sup>142</sup> For details, see Ramadan, *Western Muslims and the Future of Islam*; Ron Geaves, *Islam and the West Post 9/11* (Aldershot: Ashgate, 2004); Ṭāhā Jābir Fayyāḍ ‘Alwānī and A. A. Shamis, *Towards a Fiqh for Minorities: Some Basic Reflections*, new rev. ed (Surrey: International Institute of Islamic Thought, 2010).

<sup>143</sup> For details, see Albrecht, *Dār al-Islām Revisited*; ‘Alwānī and Shamis, *Towards a Fiqh for Minorities*.

<sup>144</sup> Fayṣal Mawlawī, *al-Usus al-Shar‘iyyah li ‘l-‘Alāqāt bayna al-Muslimīn wa Ghayr al-Muslimīn* (Paris: UOIF, 1987), 104; Ramadan, *To be a European Muslim*, 9–10.

Ramadan proposes the notion of *dār al-shahādah* contrary to the traditional concepts of *dār al-Islam* and *dār al-harb*. For him, *Shahādah* is the only concept that can truly protect the identity of Muslims and demands from them to fulfil their responsibilities as Muslims in a society.<sup>145</sup> He argues that modern world is not confined to houses or abodes. Rather, it is an open world. Muslims live in religiously and culturally diversified societies.<sup>146</sup> *Dār al-shahādah* may be a new idea about the status of Muslims in Europe as it declares European society a valid place of living for Muslim minorities. Ramadan highlights the importance of political and economic changes that affect human life all over the globe. Millions of Muslims left their countries for economic or security reasons. Globalization has transformed the world into a complex system where binary division no longer exists. This situation demands a fresh look into the ground realities and study the fundamental sources of Islam anew to find answers to the contemporary problems. Islam and its teachings are universal. The classical theories of *dār* drew upon security concerns. Ramadan argues that fidelity with regard to faith and religion, demands allegiance and devotion to one's land. Similarly, Islam makes it obligatory for Muslims to follow the rules and principles of citizenship, and not to violate law of the land.<sup>147</sup>

Muslims living in Europe are confused about their status from the *sharīah* perspective. They still require answers to many of their questions. Ramadan addresses some of them. He believes that Muslims must follow the European laws if they do not force them to do things contrary to their faith. However, in case of clash between secular law and faith, the former would prevail due to the "social contract." He attempts to develop a European Islam<sup>148</sup> and argues that though European legal system is secular, Muslims are free to follow their religious laws individually because no one is forced to commit sinful acts.<sup>149</sup> In the globalized modern world, person-to-person relationship has become more important due to religious and cultural diversity. In the West, Muslim minorities bear testimony to their moral, ethical, and

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<sup>145</sup> Mariella Ourghi, "Tariq Ramadan: From a Mere Co-Existence to an Authentic Contribution of Europe's Muslims," *Journal of Religion in Europe* 3, no. 2 (2010): 285–309, doi: 10.1163/187489210X501545.

<sup>146</sup> Ibid.

<sup>147</sup> Ramadan, *To be a European Muslim*, 9–10.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

legal norms.<sup>150</sup> They are enjoined to dynamically involve in the construction of that society by bearing witnesses to their principles.<sup>151</sup>

The concept of *shahādah* (testimony) refers to two fundamental aspects of Islam. The first is Islamic identity through faith in the oneness of Allah (*tawhīd*) and in his last revelation to the Prophet Muḥammad. The second is realization of Muslims' responsibility to invite the people to Allah's message. For this, their actions and conducts must be in accordance with the dictates of Islam to set examples for non-Muslims.<sup>152</sup> A Muslim who bears *shahādah* and has security and freedom to practice his religion is at home wherever he lives. Ramadan proposes constructive study of the concepts such as *maṣlaḥah*, *ijtihād*, *sharīah*, *fatwā*, *dār al-ḥarb*, and *dār al-Islām* in the context of Muslim minorities in the West. He concludes that the faith of a Muslim requires him to fight for justice, protection of civil rights, advancement of pluralism, and condemnation of all bad economic and social practices.<sup>153</sup>

## Conclusion

The study is an effort to address some contemporary questions about the notion of *dār*. The classification of the world into geo-religious borders such as *dār al-Islām* and *dār al-ḥarb* are among the issues that are discussed by academia, politicians, and media persons. There are many illusions that create misperception and misunderstanding about Islam and Muslims in the West. One of these illusions is that "Muslim world" or *dār al-Islām* is often described as a uniform bloc always ready to invade the West or *dār al-ḥarb*. Apparently, these views are used to ignore mainstream Islam and consider radicals and extremists such as the self-proclaimed "Islamic State" the normative Islam. This situation is worsened by the opinions of scholars who believe in permanent hostility between Muslims and non-Muslims. Bernard Lewis and other scholars held that Muslims and non-Muslims were in permanent state of war and presented it as a normative Islamic legal view. Contrary to this, many Muslim scholars questioned the appropriateness of these notions in the contemporary world. They are of the view that these notions are not directly based on the Qur'ān or *sunnah* nor are they suitable for the modern age. The new situation demands to revisit the sources of Islamic law considering the current global situation. New economic and political

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<sup>150</sup> Ourghi, "Tariq Ramadan."

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

approaches need to be adopted to address the challenges of a complex and diversified world.

Muslims in the West are secure and have the freedom to practice their religion. However, protection of spiritual life in a secular society which rejects any demonstration of religion in public spaces is a great challenge for Muslims. Moreover, many political events and incidents around the globe distorted the image of Islam and Muslims and created problems for Muslims living in the West. Islam and its teachings are universal. For Ramadan, the concept of *shahādah* establishes identity of a Muslim who believes in God, His Prophets, His angels, His books, destiny, and the Day of Resurrection. Muslim identity requires Muslims to perform religious duties and follow regulations related to permitted and prohibited things/acts. They are also under obligation to fulfil their promises, treaties, contracts, and pledges. They hold this *shahādah* in front of other people to explain Islam to them. Ramadan urges the Western society to provide Muslims with opportunities to revisit their classical sources and revive their religious thought. This, he hopes, would lead to the improvement of Western society as well.<sup>154</sup> He believes that Western Muslims are not inferior to other Muslims. Rather they possess more powerful place than the Muslims of Islamic world, as they have entered into the abode of testimony to project justice and morals. For this, they need to understand their importance in terms of *ummah*. The research suggests that classical territorial concepts are not timeless demarcations, which must be followed by Muslims in all ages. The study further shows that many Western scholars also have the tendency of following literalist approach and consequently hold that Islamic law does not allow Muslims to live in the West. However, besides these extremist views, many classical and contemporary scholars accept or even insist on revisiting classical territorial concepts of Islamic law to make them contribute to the individual and collective lives of Muslims living in the West.

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<sup>154</sup> Ibid.