Introduction

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A principle concern of the authors in this collection of papers is how Islamic ethical and legal traditions can contribute to current global debates on the dilemmas of migration and displacement. Can the Muslim tradition provide an alternative international moral and legal paradigm where others have proven inadequate? Abou El Fadl, in this volume, argues that the Muslim tradition is replete with “powerful virtuous ethical impulses that could make substantive contributions to the field of forced migrants and displacement.” The ethics of *mu‘ākhā* (brotherhood), *diyāfa* (hospitality), *ijāra* (providing protection and support), *amān* (providing safety), *jiwār* (neighborliness), *sutra* (protection, esp. in case of marriage), *kafala* (to guarantee someone) among others, may provide common ethical grounds with other religious traditions, moral philosophies and social customs that can go beyond the technical applications and procedural standards of international law. The argument that these moral principles or “ethical potentialities and trajectories” are only entitled to fellow Muslims and not applicable to non-Muslims, contradicts the general historical trajectories and normative understanding in Islam. These ethics, according to the authors of this volume, are inclusive and not context-specific. They present “a normative imperative for Muslims that would apply whenever there is an obligation to escape oppression or injustice,” and represent “purposeful construction of social and political virtues” (Abou El Fadl, Chapter One).

Unfortunately, post-colonial Muslim scholars have been more occupied with the apologetic discourse of either reinterpreting classical concepts (such as the division of the world into *dār al-Islām* and *dār al-ḥarb*) to relate to the political conceptualization of contemporary nation states, or proving an essential compatibility and reconcilability between Islamic theology and international law. The better task is to turn the moral imperatives inherited from the Islamic tradition into significant theological and ethical engagements with modern discourses on human rights and dignity.

This volume provides scholarly attempts to achieve this task by reviewing questions of migration, residence, naturalisation and citizenship from multi-sided perspectives, thus more broadly defining the Islamic tradition to cover not only theology but to also encompass ethics, customs and social norms, as well as modern political, humanitarian and rights discourses.

1 Movement/Migration

The movement of people—individuals, families, tribes and entire communities—has shaped and transformed the history of humankind. Groups of people have migrated for many reasons: economic, religious, political, as well as for education and cultural exchange. Masses have also migrated to escape conflict, persecution, natural disaster and harsh living conditions. The scholarly field of migration studies has been developing for over a century, primarily in the English speaking West in both colonial and post-colonial contexts, but primarily within established social science disciplines such as Sociology, Anthropology, Politics and Demography, but also in Labour Economics, Industrial Relations and International Relations. Migration studies also include forced migration and refugee studies with a proliferation of university departments and research centers in the last few decades teaching and researching migration issues—but rarely, perhaps never, from an Islamic ethical and juridical perspective.

This is a curious phenomenon since a large proportion of global migration and refugee movements are related to Muslim-majority states—as origin, transit and destination countries (Castles et al. 2014). For example, as of 2015, the majority (65%) of the 21.3 million refugees worldwide were Muslim (including 5.2 million Palestinian refugees). Almost 40 per cent of the 65.3 million classified as forcibly displaced (that includes internally displaced persons), were hosted in the Middle East and North Africa. Excluding Palestinians, around 54 per cent of registered refugees were from 3 Muslim countries—Syria (4.9 mill), Afghanistan (2.7 mill) and Somalia (1.1 mill) (UNHCR 2015). As of June 2016, most Syrian refugees were being hosted by the neighbouring countries of Turkey (2.8 million), Lebanon (1.02 million), Jordan (655,000), and Iraq (230,000). Around 900,000 Syrians filed asylum claims in Europe, while resettlement countries have taken relatively few—USA (18,000), Canada (40,000), Australia (12,000) (Migration Policy Centre, 2016). The GCC states (excluding Oman) have admitted around 620,000 Syrians since 2011, although there are claims of having taken more. The GCC countries do not, however, classify them as “refugees,” partly because they are not signatories to the 1951 UN Refugee Convention (see De Bel Air 2015; Jureidini and Reda 2017).

In the same way that it has shaped many communities across the globe, migration also shaped the history of Islam from its very beginnings. Indeed, the question of the legality of Muslims residing in a non-Muslim state was the first of the “juridical” problems facing Muslim minorities.

Hijra in the Islamic tradition has been seen as the starting point of Muslim civilization and set the foundations for an Islamic society. It was one of the

defining elements that revolutionized the conception of unity among the nascent Islamic community, not only among the Meccan supporters of Prophet Muhammad, later known as “the migrants” (*al-muhājirūn*), but also between them and the hosting community in Medina, later known as “the helpers” (*al-anṣār*). Unity meant solidarity between the *muhajirun* and the *anṣār*. Thus, Islamic teachings associated with *hijra* have contributed to the ethical principles relating to the treatment of foreign or migrant communities. It is seen as “a source of ethical norms and social behaviour” associated with brotherhood, economic cooperation, protection and social integration.

In modern Arabic *hijra* also means “migration” in a general sense. In Islamic jurisprudence it has a specific meaning, namely, the duty to migrate from a surrounding of unbelief towards a society where Islamic rules are prevalent, following the example of the Prophet and his Companions, who migrated from infidel, polytheistic Mecca towards Yathrib which, with the support of the *anṣār*, was to become the City of the Prophet, the basis of the historical body politic of Islam. So we see *hijra*, before anything else, being discussed by religious scholars as a religious principle to be performed as a duty under certain conditions. Throughout Islamic legal history, a doctrine of *hijra* was established, not only questioning the movement of people but also investigating the movement of converts, traders, and preachers.

More recently, Muslim political groups have referred to *hijra* in other ways. To give just a few examples: (1) in opposition to colonial rule; (2) those leaving Russia and the Balkan states in the 1800s; (3) Indian Muslims moving from British-controlled India to Afghanistan in the 1920s; (4) Muslims emigrating from India to the newly created state of Pakistan. These follow a pattern in that they all discuss whether Muslims were obliged to leave areas ruled by “infidels” (Muslims in medieval Christian Spain, colonized areas, Russia and the Balkans, India towards Afghanistan or India towards Pakistan, etc.) and if so, under what conditions. These discussions were very closely related to issues of jihad.

In addition, post-World War II Muslim migration to Europe was of great historical importance, as it formed the basis of a fundamental change of concepts in Islamic normative thought. It developed what became known as a reverse *hijra*, that is, an unprecedented number of Muslims emigrating voluntarily from Muslim lands to non-Muslim countries. After the Second World War, with the introduction of the United Nations and the formation of Muslim minority communities in Western Europe, Muslim political, legal and religious scholars reached a new interpretation of the peaceful relations between the Muslim and non-Muslim world, rejecting the traditional dichotomy of *dār al-Islām* (abode or land of Islam) and *dār al-Kufr* (abode or land of disbelief)

as anachronistic. This paved the way for an Islamic acceptance for residence, naturalisation and citizenship of Muslims in non-Muslim nation states under certain conditions (such as freedom of religion).

This acceptance became the basis for a new branch of Islamic Law that was developed in the 1990s and 2000s, namely *fiqh al-aqalliyyāt*. In less than two decades, *fiqh al-aqalliyyāt* shifted the legal discourse from *fiqh al-hijra* to *fiqh al-muwāṭana*, the Islamic law of citizenship. However, this does not mean that citizenship, nationality and integration of more than 15 million Muslims in the European Union was accepted by Muslim scholars overall. There are still certain countries, circles and traditions where this is rejected and where Europe continues to be seen as part of *dār al-Kufr*. The process of re-interpretation of Islamic thought concerning this vital political issue has not yet been completed. These circles normally allowed Muslim residence in other parts of the world for specific, temporary reasons, but not for the purpose of settling (Ramadan 1999; Aldeeb Abu-Sahlieh 1996).

2 Settlement/Citizenship

Normative ethico-legal discussions include rights in contemporary Islamic ethical thought, including, but not exclusive to, fatwas on migration and refugees. This requires critical, analytical and comparative analyses of the normative ethical frameworks in both Muslim countries and the West. Early discussions of citizenship and naturalisation largely began in the late Ottoman period around issues of conversion to Islam as a precondition for citizenship. A stream of fatwas and debates followed on naturalisation and nationality during the colonial era (especially in North Africa).

Islamic discourse around migration and settlement, along with idealizations of a generalized Islamic community has, however, been historically “burdened” by the jurisprudence around the dichotomy of *dār al-Islām* and *dār al-ḥarb*. This has prevented the development of a deeper understanding of contemporary citizenship within nation states that did not exist during early Islamic history and the foundational texts of the Qurʾān and Hadith. From the late Ottoman period, the nation-state has been seen, by those who define the *ummah* as the body politic of all Muslims, as oppositional to or contradicting the conceptualization of a universal Muslim community. Thus, many contemporary questions can be raised as to the application of normative Muslim principles to current practices—such as non-Muslim rights in Islamic states or the naturalisation of Muslims in non-Muslim states.

In the Gulf States, citizenship rights are based on *Jus sanguinis*, or the right of blood; that is, citizenship is granted to offspring if one or both parents are citizens. However, gender issues arise where personal status laws do not give the right for women to confer citizenship to their children or husbands. This is distinguished from the right of citizenship for a person born in a particular country (*Jus soli*, right of soil).

The above issues are addressed by the various chapters in this book that makes for a multidimensional and multidisciplinary set of conceptualizations and empirical research.

3 Background to the Book

The chapters in this book were first presented over three days at an internal seminar, 28–30 January 2018. The seminar was entitled “Migration and Islamic Ethics: Issues of Residence, Naturalisation and Citizenship” and was held at the Center for Islamic Legislation and Ethics (CILE) in the College of Islamic Studies at Hamad Bin Khalifa University, Doha, Qatar.

We sought scholarly papers that would explore multi-dimensional approaches to Islamic ethics as applied to various forms of inward and outward migration, in both contemporary contexts and historically, whether forced or voluntary, and how issues of citizenship, integration and assimilation are/were viewed from an Islamic perspective.

Studies on migration usually takes two directions. One direction is to focus on a geographical region (e.g. Eastern Europe, the Middle East, etc.), analyzing migration patterns, causes and effects that such migration may have on the (re)structure of territories and demographics, and socio-economic and political organization of the region. A second direction is to go thematic with a specific methodological approach, adopting social science theories or relying generally on a humanitarian orientation, or method. Both directions yield qualitative and quantitative results on their own. However, bringing both directions together in one volume and even going beyond them may reveal other ways of thinking about the phenomenon of migration in a Muslim world. If these other ways of thinking are taken into consideration, we will be better informed of the phenomenon, not only in terms of who, why and what happened, and not only in terms of numbers, locations, time and space, but also we can have a perspective on the moral, ethical, emotional and religious factors at play. For example, studying a phenomenon like the impact of the practice of *kafala* (chapter 6) on migration movement from this perspective reveals that it is not only about economic control of the labour migrants or about

humanitarian exploitation, but also ethical (e.g. Islamic contractual moral assumptions like that of sound intention) and religious factors (e.g. fatwa issuance) can have an impact on the application of the practice and real life situations.

As editors, we could have asked our contributors to confine their chapters to certain themes or to adopt certain methodological frameworks, but we did not opt to do this. We did not want to provide a regular-analytical text that could have been produced elsewhere. Our objective is to show the over-complexity of the subject matter, and that it cannot be studied only by counting numbers, or providing statistics, or drafting laws, but as every subject dealing with humans, a comprehensive multi-layer perspective and interdisciplinary approach are needed. Such an approach may result in better understanding of the subject under investigation, provide informative analysis, and lead to better workable solutions.

We understand that this approach may result in a volume that seems to lack a unified thinking paradigm, but a closer look will not only reveal the interconnectedness of the chapters but also opens new venues of thinking about the subject among researchers in the field. One anonymous reviewer of the manuscript's original draft noted that the book chapters "collectively, are original to the extent that the new conditions of rapid and uncontrolled migration originating in Muslim countries allowed the contributors to see old events in a new light and state a case that a new condition has developed that requires an Islamic ethics of migration, aside from a global one."

4 Chapters in the Book

The chapters are loosely divided into three themes; the first, addressing theorizations and conceptualizations using contemporary examples, mainly in the treatment of asylum-seekers, refugees and other forcibly displaced; the second, containing empirical analyses of contemporary case studies; and third, historical accounts of Muslim migratory experiences.

After this introductory chapter, the book begins with the chapter by Khaled Abou El Fadl, distinguished professor of Law at the University of California Los Angeles School of Law. We could not have wanted more for an opening chapter to this book than Professor Abou El Fadl's powerful and eloquent overview of Islamic ethics, human rights and migration. He uses the idea of "Islamic moral impulses" as a means for addressing migration and forced displacement issues. These moral impulses are comprised of concepts of counter-*istid'āf*, countering oppression and powerlessness (between Muslims themselves and with

“the other”) through mobility and accessibility; as well as the ethics of *mu'ākhā* (brotherhood), *diyāfa* (hospitality), and *ijāra* (asylum). The chapter touches on almost all of the issues focused upon in the subsequent chapters, without having been privy to their content—from classic Islamic scholars of the text to contemporary critiques of the sorry state of affairs in global migration and refugee movements, particularly in relation to Muslim migrants and refugees and the responses or lack of responses from the more powerful and affluent states. In a most encouraging passage for further pursuit, Abou El Fadl states:

The values of brotherhood and hospitality provide fascinating normative precedents that could have been developed by contemporary Muslims into a significant inspirational ideation or an aspirational moral direction. Hospitality and brotherhood, added to migration as a normative response to a state of powerlessness; all of that, plus the ethic of mobility as an essential component of human dignity, is a promising ethical baggage that could be seen as trajectories that could be employed in the purposeful construction of social and political virtues.

In the third chapter, Abbas Barzegar looks at the Muslim practice and discourse of humanitarianism in relation to refugees. He refers to a “theologically informed universal humanitarianism” that he identifies as a “living *fiqh*,” invoked by Muslim communities that transcends or overcomes “religious sectarianism, ethno-nationalism and political ideology” that burden contemporary migration crises. Along with the living *fiqh* is Muslim custom (*ʿurf*) in relation to humanitarian principles and aid. The author provides illuminating examples from his study of Syrian refugees in Turkey in a reflective ethnography of both Turkish and Syrian aid workers, or humanitarian activists.

He asserts that living *urf* practices go beyond the limitations of textual justification set forth by experts and academics. In these social spaces of interaction and encounter among people, practical theology brings in new precepts that may be further explored for potential ethical developments. These provide much needed concrete examples of cooperative ethics and practical solutions to pressing problems faced by the victims of forced displacement and the resultant impact on questions concerning the place of Islam and Muslims in the contemporary world.

In chapter four, Tahir Zaman looks closely at Muslim brotherhood and hospitality by drawing upon his ethnographies of the lived realities of refugees (Palestinian, Syrian, Sudanese, and Iraqi) in countries of asylum, particularly Turkey and Syria (before 2011). He takes the traditional notion of *jiwār*, or neighbourliness, in an understanding of the care and protection of others that

transcends the nation state in the sense of independence from state governance over asylum-seekers and with the idea of “self-settlement.” In the neighbourhood, “the open-ended possibility of everyday mundane social interactions that take place in parochial spaces generates an ethos that invites the stranger.” The Turkish state, it is argued, expresses good intentions but this political intention remains ambiguous and ambivalent in actual everyday life.

Zaman provides an example of how a tradition maintains its ongoing relevancy to the present world through negotiation, adaptation and accommodation. This discursive power allows successive generations to find meanings for themselves. The ethical *jīwār* principle creates a space of acceptability, accessibility, and conviviality, not only to the neighbor next-door, but also generally to the fellow-refugee in need. This example stresses again the internal mechanism of the Islamic tradition to recall its ethical and moral properties and relate them to living practices of people that push against individualization, self-interest and state-interest principles dominating political and philosophical discourses.

In chapter five, Dina Taha provides a sometimes heart-rending account of Syrian refugee widows with children in Egypt who seek and are sought by Egyptian men to marry under the principle of *Sutra*, or “protection marriage.” Using three case studies, the author far from presents the women as hapless victims, but provides them with agency by identifying quite different experiences, motivations and actions that take place. Invoking the idea of a Muslim “jurisprudential culture,” the analysis of the three case studies is viewed from both feminist and post-colonial perspectives. The examples also provide evidence of how moral virtues can be manipulated and exploited for personal gain.

Chapter six, by Ray Jureidini and Said F. Hassan, takes a more innovative evaluation of the infamous *kafala* system of migrant labour management in the Gulf States. They canvas the traditional historical applications of *kafala* as an Islamic trusteeship mechanism whereby a person acts as a guarantor (*kafil*), taking responsibility for someone else (*makfūl*)—whether a stranger, an orphan, a debtor or someone who must attend court or a business meeting. From the mid-twentieth century, this system was applied to the management and control of the increasingly large foreign workforce required to develop these countries following the sudden riches that flowed from oil and gas production. The chapter concludes that the human rights and Islamic ethics violations that have received much critical publicity over the past decade has not been so much a function of the *kafala* per se, but the lack of compliance to the traditional principles. A key example is given regarding the fundamental principle that a *kafil* (guarantor) should not receive any remuneration or profit in that

role and that this principle has been sustained as evidenced by fatwas, laws and prosecutions.

In chapter seven, Sari Hanafi conducts a content analysis of 74 recent academic articles in Arabic, English and French dealing with the question of migration and religion in the context of Muslim immigrant communities. Intriguingly, he starts his investigation by posing the controversial questions on the nature of knowledge production of social studies: is it universalistic (i.e. hard core science) or normative (i.e. having morals and conscience)? Where does the social scientist stand? He argues for a dual approach where social scientists, at least in migration studies, combine a Weberian ethic of conviction (defined as liberal, multiculturalist with a neo-enlightenment framework) and an ethic of responsibility. Hanafi aims in this chapter, as well as in his other publications, to establish collaboration between social science and religious ethics where each can be informed by the other. Social scientists combine ethics of conviction and ethics of responsibility, while Islamic ethicists would provide what would be a constant and primordial in Islam that should be taken into account in this normative moment. These different ethics will enter into tension that should be resolved through dialog, mutual learning and beyond a mere legalism or rationalism.

With this conviction, Hanafi examined his collection of articles to prove that a great deal of researchers in social science who deal with migration issues constitute an epistemic community that negotiates both ethics of conviction and responsibility while not necessarily being in conflict with Islamic ethics. By that he means they do not reject revelation, nor do they make mention of it. This resulted in a paradigmatic shift in the policies of migration: from a paradigm that forces migrants into assimilation/integration into another country to a paradigm that acknowledges the migrants' lived experiences, their diversity, and the role of religion in their day-to-day lives.

Chapter eight, by Radhika Kanchana, switches focus from legal and social responses to the questions of migration to Muslim state policies of naturalisation. The objective here is to investigate contemporary Muslim states' practice (18 states) in terms of how "open" is the gate of citizenship to the outsider, considering the impact of Islamic doctrine, existing international norms and contemporary practice. Studying these practices reveals that there is a general similarity in naturalisation provisions toward resident foreigners. Most Muslim states are inclined to the *Jus sanguinis* practice, but they do not take a uniform path. This, however, indicates political considerations in the discrimination or strategy, rather than a rigid formula inspired from religion.

Focusing more on the Arab-Gulf nations' citizenship policies, Kanchana notes the discrepancy between the legal text on the conditions of granting

naturalisation and the application in practice. She argues that the policies involve ambiguous provisions, a matter that gives authorities the space to apply them in an instrumental way. To what extent the legal text is Islamic and to what extent the application is ethical are questions that are raised in this debate and still require more in depth investigation.

Chapter nine, by Rebecca Ruth Gould, touches upon one of the basic features of living traditions in Islam—the internal ability to de-and-re-construct meanings and concepts to accommodate with various historical, political and social settings. We see in this chapter an example of “how certain concepts now regarded as foundational to Islam were revived in modernity after having undergone centuries of relative marginalization.” Gould takes us on a journey through space and time, demonstrating how the event of the *hijra* of the Prophet Muḥammad in 623–3 AD had turned from an historical moment into a religious doctrine that changed people’s world view and the perception of their role in their communities and in the larger society of the *umma*.

Gould examines the *hijra* narrative in the context of the people of the Caucasus, explaining how it shaped the local histories and formed the diasporic identities of Caucasian Muslims forced out of their homes in the nineteenth and twentieth centuries. *Hijra* served as

a reminder that “salvation lay in going forth for heroic ventures,” and as a response to persecution, *hijra* increasingly became a discourse on the condition of being Muslim in a non-Muslim world, and a commentary on the extent to which the Islamic community (*umma*) could be spatially imagined and materially mapped.

The intriguing phenomenon in this context is that “*hijra* doctrine” is not established only through the legal theological narrative but it became part of the literary and cultural history in the Caucasus. The *hijra* literature is found in novels, poetry, autobiography and other literary forms—in official languages and in the vernacular. In the last part of the chapter, Gould turns to a couple of historical novels from the twentieth century to provide readers with another perspective on how the *hijra* story is being acted out repeatedly.

In chapter ten, Mettursun Beydulla informs us about a different *hijra* experience—the Chinese Xinjiang Uyghur Muslim *hijra* to Turkey and the United States. Based on field work and more than 200 interviews conducted between 2013 and 2017 with diasporan Uyghurs in Istanbul, Ankara, and Kayseri in Turkey as well as Washington, New York and Boston in the US, Beydulla demonstrates modes, causes and effects of this forced migration experience. It is a comprehensive treatment focusing upon theological, legal, social and political

dimensions not only of the immigrants themselves, but also of both the homeland and host countries.

A particularly salient point in the author's analysis is that the Uyghur refugees' relationships with Turkey and the US can be analyzed within a context of Turkish and US multiculturalism. This implies on the one hand as democracy and tolerance and, on the other hand, exclusion, inferiorization and "otherness." Regardless of their formal status, Uyghurs in the US, and to some degree in Turkey, are considered as "other" and are thereby subject to unfair treatment, being ignored, ridiculed or treated differently. They are not viewed or treated as equals socially or culturally, hence, there is a gap between formal and "substantive" citizenship. As for the relationship of the Uyghur migrant community with their origins, the author's fieldwork showed that they have maintained intense social and emotional bonds to their homeland in Xinjiang.

Chapter eleven, by Abdul Jaleel P.K.M., concludes the volume by reminding us that scholars in the field of migration, especially those studying Muslim migration experiences, should go beyond simple generalizations and taken-for-granted assumptions such as the argument that the process of "naturalisation" of immigrant Muslims in modern nation states should be understood from within the Islamic legal parameters drawn by Muslim scholars in the heartlands of Islam. Conversely, the peripheral context, as in the case of Arab immigrants to the Indian Ocean, can provide a better understanding of the process of naturalisation in non-Muslim lands. In other words, the author argues that the legal-ethical demarcations of habitats by classical Muslim scholars into *dār al-Islām* and *dār al-ḥarb* were mostly de-contextualized general assertions that did not correspond to the real experiences of naturalisation that Islam and Muslims have experienced in these countries.

To prove his case, Abdul Jaleel P.K.M. provides a comparative review of historical and legal critical texts (Ibn Ḥajar's *al-Fatāwā al-Kubra*, al-Ma'barī's *Tuhfat al-Mujāhidīn*, al-Makhdūm al-Ṣaghīr's *Fath al-Mubīn*) from both spheres, the heartland (Mecca and Cairo) and the periphery (Malabar). Such a comparative analysis raises the important question of what to focus upon while studying Islam and Muslims as an historical phenomenon. Should it be textual traditions or human practices, the integration of both as part of a discursive tradition, or as a hermeneutical engagement with the Pre-Text, Text and Con-text?

The answer to this question reveals itself in different places in this collection. To explore Islamic Ethics in the context of migration, one needs to engage not only the legal texts or the moral principles, but also the philosophical assumptions, the historical experience and the social setting. It is a multi-layer process that should engage all these elements together to produce a better understanding of migration.

The uniqueness of this book is threefold. First, the authors combine theoretical, legal and philosophical perspectives to the sociological and anthropological approaches that provide grounded, real-life observational analyses to the empirical sites of their subject matter. Second, common to most contributions is the tension between Western thinking paradigms about immigration and the Muslim tradition. There was reference to the plight of Muslims trying to manage with Western thinking paradigms of post-colonialism and their need to look inside to their own tradition that provides healthier alternatives to the problems of migration and displacement. In all chapters, the analyses draw upon the rich scholarship of Islamic ethics that provide a dimension to migration studies that has not been addressed previously. Third, the selection of papers provides a broad geographical coverage with case studies from many corners of the Muslim world, and addressing many specific actors—men, women, religious leaders, political authorities, non-governmental organizations, social and humanitarian activists.

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