Legal Maxims (*qawāʿid fiqhiyya*) in Yūsuf al-Qaraḍāwī's Jurisprudence and Fatwas

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Subsequent to the crystallization of the legal schools, Muslim jurists felt the need to consolidate the massive corpus of legal opinion in order to aid students and practitioners of the law. The result was legal maxims (*qawāʿid fiqhiyya*), concise theoretical statements that captured the objectives of the Sharia. An example is *al-ḍarar yuzāl* ("Harm must be removed"), which is based on the hadith *lā ḍarar wa-lā ḍirār*. This article analyzes the role of legal maxims in Yūsuf al-Qaraḍāwī's (b. 1926 in Egypt) jurisprudence and fatwas, as found in his numerous books and articles. Its preliminary assumption is that Qaraḍāwī uses legal maxims to control and systematize the use of considerations of public welfare (*maṣlaḥa*), especially in the field of "the jurisprudence of reality" (*fiqh al-wāqiʿ*). Because this *fiqh* deals mainly with political topics on which there are hardly any guidelines in scripture, and stems therefore from mostly nontextual benefits (*maṣāliḥ mursala*), it is an area vulnerable to undisciplined use of utilitarian considerations by jurists. Legal maxims then come in handy when weighing the relevant benefit and harm related to each topic.

Definitions, Purposes, and Historical Development of Legal Maxims

According to the common definition, attributed to the Shafiʿi jurist Tāj al-Dīn [ibn] al-Subkī (d. 1370), a *qāʿida* is "a general rule which applies to all or most of its related particulars."[1] Legal maxims (*qawāʿid fiqhiyya*) are therefore "theoretical abstractions in the form usually of short epithetic statements that are expressive, often in a few words, of the goals and objectives of *Sharīʿah*."[2] Since the mention by Wolfhart Heinrichs and Wael Hallaq, approximately two decades ago, that the genre of legal maxims and similar genres had yet to be examined,[3] a number of studies have appeared on the historical development of this genre in general or in a certain legal field[4] or on the development of a particular maxim.[5] Studies on the application of legal maxims in premodern fatwas or court decisions hardly exist, if at all, while research dealing with the modern period, written mainly by Muslim legal academics,

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1. Kamali 2008: 143. Musa (2014: 330) recommends accepting the definition of Shihāb al-Dīn al-Ḥamawī (d. 1687), according to which a *qāʿida* is "a mostly valid rule that applies to most of its particular cases so that their legal determinations will be known from it." In addition, she notes (p. 326) that the use of the term *qāʿida* in the sense of legal rule or principle became dominant during the fourteenth century; the more common term until then was *aṣl*.

2. Kamali 2008: 142. Cf. Musa (2014: 331), who defines *al-qawāʿid al-fiqhiyya* as "general legal rules that provide the rationale behind the *aḥkām* of particular cases that fall under the rubric of the *qāʿida*."

3. Heinrichs 2000: 333, 340; Hallaq 2001: 119 n. 89.

4. Musa 2014: 343–57; Mohammed 2005: 195–97; Zakariyah 2015.

5. Rabb 2010, 2015, which treat the maxim "Avoid the quranic punishments in cases of doubt" (*idraʾū l-ḥudūd bi-l-shubūhāt*); Zakariyah 2012a, which discusses the maxim "Custom is authoritative" (*al-ʿāda muḥakkama*).

has a practical character, proposing ways by which nation states, following the example of the Ottoman Mejelle (drafted between 1870 and 1877 and applied by the Ottoman courts since 1879; on which more below), and muftis can use legal maxims to address the challenges posed by modern science, medicine, and technology.[6] The current study seeks to fill a gap by analyzing the role that legal maxims play in the methodology and fatwas of the well-known Egyptian jurist and mufti Yūsuf al-Qaraḍāwī (b. 1926).[7]

The interrelatedness between legal maxims and the objectives (*maqāṣid*) of the Sharia that is implied by the above definition explains why numerous jurists have included in their writings a discussion of maxims in the chapters dealing with the Sharia objectives. Other related genres of legal literature are *ḍawābiṭ* (rules controlling a particular legal topic), *al-ashbāh wa-l-naẓāʾir* (similar cases), *furūq* (differences), and the modern genre of *naẓariyyāt fiqhiyya* (general legal theories).[8] All these genres developed after the crystallization of the doctrines of the legal schools (*madhāhib*) in the tenth century, with the aim to consolidate the huge corpus of jurisprudence (*fiqh*) for the benefit of students and practitioners of Islamic law. Put differently, the need to compensate for the casuistic, atomistic, fragmentary, and textual character of *fiqh*, which focused on the interpretation of the Quran and Prophetic custom (Sunna), drove the jurists from the tenth century (but mainly during the thirteenth and fourteenth centuries) to a continuous effort to structure and systematize *fiqh* by narrowing it down to abstract declarations of principles.[9]

The explosion of the maxim genre during the thirteenth and fourteenth centuries, especially in the Shafiʿi school, is explained by the fact that the genre of legal theory (*uṣūl al-fiqh*) of that school (unlike in the Hanafi school), as developed from the eleventh century and onward, became enigmatic and inseparable from theological, logical, and linguistic debates. As a result, creative legal thinking (*ijtihād*) became complicated for the Shafiʿis and low-level jurists refrained from issuing fatwas. The social distress caused by the scarcity of muftis and fatwas forced the thirteenth-century Shafiʿis to lower their qualifications for *ijtihād* and to revive the genre of maxims (in the form of works of similar cases), in which they were the most active during the fourteenth century.[10] In other words, the desire for simplicity in the creation of legal rules brought about the flourishing of the maxim genre, aiming to encourage low-level jurists to find solutions to novel legal questions by applying a basic

6. Shettima et al. 2016 exemplifies how legal maxims are used to address developments in the fields of economy, commerce, and medicine. Shettima 2011 recommends the use of the legal maxim "No harm and no counter-harm" in legislation that aims to prevent environmental damage created by polluting industries. Zakariyah 2012b demonstrates the relevance of the five basic maxims for legally justifying the taking out of interest-carrying loans by British Muslims for the purpose of purchasing a house, while Zakariyah 2012c discusses the use of maxims to achieve justice in criminal law.

7. For an intellectual biography of Qaraḍāwī, in addition to current research on him, see Shaham 2018: 4–9.

8. Kamali 2008: 141. Musa (2015: 339) claims that the discipline of *al-ashbāh wa-l-naẓāʾir* is the science of the legal maxims: each maxim includes identical cases (*ashbāh*), while the *naẓāʾir* are similar cases that are excluded from the maxim, even if they look at first sight to be included in it. In her opinion, *al-ashbāh wa-l-naẓāʾir* and *al-furūq* belong to the same discipline.

9. Kamali 2008: 141–42, 152–53, 157–58. See in this context Sherman Jackson's definition (1996: 92): "Legal precepts are essentially broad-based rules or tests deduced from the aggregate of opinions of the early Imāms. Their basic function was to enable a jurist to screen unprecedented questions without having to memorize scores of individual rules and without having to refer back to scripture for specific proof-texts for each individual case. Where a question could be subsumed under an existing precept, there remained neither cause nor justification to investigate it any further."

10. The three exemplary maxim works are those of the above-mentioned al-Subkī, of the Shafiʿi Jalāl al-Dīn al-Suyūṭī (d. 1505), and of the Hanafi Ibn Nujaym (d. 1562).

legal methodology, while circumventing the legal theory literature.[11] Works of maxims from that period, unlike legal theory works, did not include any speculative inferences or dialectical discourse. They contained the cases (*masāʾil*) classified under each maxim, including the conflict of opinion (*wujūh*) within the school, the exceptions, and sometimes a polemic against the opinions of other schools.[12]

The five leading maxims, which are the most general and inclusive (*al-qawāʿid al-fiqhiyya al-aṣliyya* or *al-qawāʿid al-fiqhiyya al-kulliyya al-kubrā*) and "grasp between them the essence of the *Sharīʿah*"[13] are (1) "Harm must be eliminated" (*al-ḍarar yuzāl*), (2) "Acts are judged by intentions" (*al-umūr bi-maqāṣidihā*), (3) "Certainty is not superseded by doubt" (*al-yakīn lā yuzāl bi-l-shakk*), (4) "Hardship begets facility" (*al-mashaqqa tajlibu al-taysīr*), and (5) "Custom is the basis of judgment" (*al-ʿāda muḥakkama*). There are secondary maxims that complement each of these five leading ones. Maxims are of two types. The first type is made up of maxims that are based on a clear text from either the Quran, hadith, or consensus (*ijmāʿ*) of the Companions, and therefore enjoy high authority among all the legal schools.[14] The leading maxims of the first type are the first one, based on the hadith "No incipient or retaliatory injury" (*lā ḍarar wa-lā ḍirār*); the second, based on the identically phrased hadith; and the fourth, based on Q 2:185 and Q 5:6. The second type of maxims, about which scholars are less agreed, is made up of extractions from *fiqh* works by jurists by way of *takhrīj*[15] which are then paraphrased, e.g., the above-noted third leading maxim.[16]

Modern jurists do not believe that the maxims constitute a legal theory that is intended to cover a complete legal field. They contend that since the maxims are only epistemologically probable or predominantly valid, they do not bind the jurist and may not serve as a basis for legal determination in new cases, but can serve only as a source of inspiration and as a general guideline in the processes of *ijtihād* and adjudication.[17] In contrast, a number of premodern jurists held that a jurist proficient in the maxims could use them as a basis for legal assessments. The Shafiʿi Imām al-Ḥaramayn al-Juwaynī (d. 1085), considering the possible extinction of jurists able to form legal judgments on their own (sing. *mujtahid*), argued that maxims that are "precise, limited, enumerable, bounded," and easily known from the Quran and hadith, reflect the core values of the Prophet's generation and therefore can be relied upon for adapting the law to novel situations.[18] Similarly, Sayf al-Dīn al-ʿĀmidī (d. 1233), from the same *madhhab*, claimed that a jurist operating within the framework of a particular school (*mujtahid fī l-madhhab*) might issue fatwas if he knows the differences between similar and different cases.[19]

11. Musa 2014: 359–65.

12. Musa 2014: 356, 360.

13. Kamali 2008: 144–45.

14. A number of modern jurists claim that such textually based maxims are "legislative maxims" (*qawāʿid tashrīʿiyya*) that bind all Muslims, while the rest of the maxims are *qawāʿid fiqhiyya* (Musa 2014: 342).

15. *Takhrīj* is a process by which a more limited jurist derived a legal norm based either on a particular text of his legal school founder or on a revealed text, according to the principles and methodology established by the founder. See Hallaq 2001: 43–56; Hurvitz 2007: 16.

16. Kamali 2008: 142–45. According to Musa (2014: 340–42), it is possible that the five basic maxims existed as early as the seventh or eighth century.

17. Musa 2014: 358.

18. Rabb 2013: 154–56, translating *maẓbūta*, *maḥṣūra*, *maʿdūda*, and *maḍūda*. See also Hasan 2004: 67–68, who argues that maxims based on the Quran and hadith texts may be relied on as sole sources in *ijtihād* and in issuing fatwas.

19. Musa 2014: 362. This was also the opinion of Ibn Nujaym (p. 361).

The Maliki jurist Shihāb al-Dīn al-Qarāfī (d. 1285), who possessed an "uncommon ability to construct and manipulate legal precepts and propositions,"[20] ascribed to the maxims a binding authority, and ranked the universal ones, on par with the sources of Islamic jurisprudence (*uṣūl al-fiqh*), as sources of Islamic law (*uṣūl al-sharīʿa*). He claimed that a jurist who had expert knowledge of *fiqh* through the study of the maxims did not need to remember most of the particular cases since they were included in the universal principles. Al-Qarāfī evidently held that a jurist could rely on the maxims to justify his rulings in novel cases.[21] If it was required to consult the revealed sources in order to solve a case without precedent, the maxims ensured that the jurist's interpretation did not contradict the *madhhab*'s founder's method. In other words, observance of the maxims was ultimately designed to ensure a genetic relationship between novel interpretations and the views of the schools' founders and ancient authorities.[22]

According to al-Qarāfī, the supreme level of creativity under the regime of adherence (*taqlīd*) to a particular legal school was possessed by the "master-jurisconsults," who solved complicated cases by consulting the sources of Islamic jurisprudence alongside the maxims.[23] A novel legal norm that resulted from *ijtihād* could be considered a legitimate opinion within a school if it did not contradict (1) a revealed text (*naṣṣ*), (2) consensus, (3) a fortiori analogy (*qiyās jalī*), and (4) established maxims.[24] It seems that the prohibition to contradict a maxim in the framework of *ijtihād* was accepted during the thirteenth century.[25] As for the judicial process, al-Qarāfī held that a judge's decision in a case without precedent could not be overturned provided it did not contradict the maxims.[26]

The science of legal maxims is still relevant in the modern period. Moreover, they have gained new significance in the context of codifications by the modern state, because the specific rules of a code are expected to emerge from a theory that comprehends an entire field, e.g., a theory of contracts or criminal theory. The earliest appearance of codification is the nineteenth-century Ottoman Mejelle, a code of civil transactions based on Hanafi law. Per the Mejelle, the ninety-one maxims that make up articles two to one hundred are meant only to facilitate the understanding of the law; a judge's decision is not to be based on them unless they are directly extracted from the Quran or the hadith or supported by alternative evidence.[27] Nevertheless, maxims have great significance currently, as evidenced by the fact that in many Faculties of Sharia in the Islamic world, classes on the maxims, along with classes on legal theory and on positive law, are obligatory and a requirement for obtaining a position in the judicial system.[28] Indeed, according to the Syrian jurist Muṣṭafā Aḥmad al-Zarqā (d. 1999), without the legal maxims "the *fiqh* rulings would have remained as scattered cases, outwardly discrete without any ideational connection between them."[29]

20. Jackson 1996: 3.
21. Musa 2014: 358.
22. Jackson 1996: 92, 94.
23. Jackson 1996: 91.
24. Jackson 1996: 107.
25. Jackson 1996: 94.
26. Jackson 1996: 168–69.
27. Kamali 2008: 142–43, 147–48.
28. Mohammed 2005: 191.
29. Ibid.

LEGAL MAXIMS IN QARAḌĀWĪ'S JURISPRUDENCE

Qaraḍāwī has not dedicated any specific study to legal maxims, but he refers to them sporadically in his writings. His use of terminology to refer to them is varied. He often employs "maxims of Islamic law" (*qawāʿid sharʿiyya*; *qawāʿid al-sharʿ*, and *qawāʿid al-sharīʿa al-ʿāmma*) as a synonym of "jurisprudential maxims" (*qawāʿid fiqhiyya*). Other terms he uses are "the universal maxims" (*al-qawāʿid al-kulliyya*),[30] "the general maxims" (*al-qawāʿid al-ʿāmma*), "the basic maxims" (*al-qawāʿid al-asāsiyya*), and "the decisive maxims" (*al-qawāʿid al-qaṭʿiyya*).

In Qaraḍāwī's middle-of-the-road (*wasaṭī*) legal method, the reliance on maxims is connected to the lenient character he ascribes to Islamic law.[31] In *fiqh*, he argues, there is a balance between stability and flexibility: the *fiqh*'s general principles are immutable, yet its specific rules are flexible. Allāh, who left a wide legal field for human consideration, grants that flexibility. The majority of the Quran and hadith texts discuss general principles and not details.[32] As for the detailed texts, the majority of them are prone to various interpretations, due to linguistic problems and different exegetical views. It is an accepted principle that law adapts to changing times, places, circumstances, and social customs. Finally, *fiqh* takes into consideration necessities, excuses (*aʿdhār*, sing. *ʿudhr*), and exceptional circumstances.[33]

Qaraḍāwī asserts that if the Muslim believer is in dire need of something that is forbidden by a text, Islamic law treats this problem according to three principles. The first, which enjoys consensus because it is revealed in five quranic verses, is "Necessities make the prohibited permissible" (*al-ḍarūrāt tubīḥ al-maḥẓūrāt*). The second, completing the first, reads "The extent of permitting a prohibited act must not exceed the scope of the necessity" (*mā ubīḥa li-l-ḍarūra yuqaddar bi-qadrihā fa-lā natawassaʿ fī l-ibāḥa illā bi-qadr al-ḍarūra*). The third principle is that to prevent continuous suffering or difficulty, "A genuine need becomes a necessity" (*al-ḥāja tanzilu manzilat al-ḍarūra*) and therefore makes the prohibited permitted.[34] The jurists established these principles (*aṣṣalahā al-fuqahāʾ*) by deriving them from the revealed texts and by looking into the rules of the Sharia (*istiqrāʾ aḥkām al-sharīʿa*).[35]

A key term for Qaraḍāwī in situating the use of maxims in his theory is "the jurisprudence of priorities" (*fiqh al-awlawiyyāt*), which embraces both the "jurisprudence of the revealed texts" (*fiqh nuṣūṣ al-sharīʿa*) and the universal objectives (*al-maqāṣid al-kulliyya*) of the

30. In one place (Qaraḍāwī 1996: 68), he indicates that the term *uṣūl* is not unique to legal theory (i.e., *uṣūl al-fiqh*) but is used also for *al-kulliyyāt*, i.e., *al-qawāʿid al-kulliyya*.

31. Wasaṭism (literally, centrism) as a legal trend claims to be moderate and balanced, taking the revealed sources seriously while at the same time developing a deep understanding of the objectives of the Sharia. See Shaham 2018: 6–7.

32. E.g., Qaraḍāwī argues (2000: 424) that the Quran as a constitution on governing (*dustūr al-ḥukm*) includes only general principles, such as the duty of consultation in political and social issues (*shūra*), justice, and preparing an armed force for jihad. The establishment of the details of these principles and their application are left to the believers' discretion. Another principle drawn from the Quran is the duty of wealthy believers to donate a part of their wealth to the poor (Qaraḍāwī 1996: 46–47). As for the hadith texts, Qaraḍāwī states (1988: 25) that the maxims are one of the means of differentiating between the legal and the nonlegal materials within the hadith corpus.

33. Qaraḍāwī 1999: 83–86.

34. Al-Khaṭīb 2009: 311–12. Ahmed Fekry Ibrahim (2018: 256) notes that the maxim *al-ḥāja al-ʿāmma tanzilu manzilat al-ḍarūra al-khāṣṣa* appears for the first time in the work of the Shafiʿi al-Juwaynī. Ibrahim argues that the term "the general need" in this maxim stands for local custom, which is not a formal source of the law. This maxim "opened the door wide for customary practices to modify the law" during the postclassical period of Islamic law. He further argues that "contemporary Muslim jurists have not attempted to endow custom with independent legislative power, relying instead on exigency" (p. 257). This conclusion seems to be applicable to Qaraḍāwī, who does not rely on custom in his fatwas.

35. Qaraḍāwī 2007: 151–52.

Sharia and the general maxims.[36] This hierarchy of legal sources—first the revealed texts, then the objectives of the Sharia, and lastly the maxims—is very significant in Qaraḍāwī's *ijtihādī* method. The joining of the objectives and the maxims—the maxims being secondary to the objectives—appears a number of times in his writings.[37] It is important to note that, epistemologically, maxims that draw on clear texts from the Quran or the Sunna are, in Qaraḍāwī's view, definitive (*qaṭʿī*) legal proofs, equally to the Quran, hadith, and consensus.[38]

Qaraḍāwī explains that the general principle with respect to priorities can be drawn from the Quran and the Sunna: Q 9:19–20 states that belief in Allāh and jihad in his name are valued more highly than performing the pilgrimage; Q 9:71 ranks the act of forbidding wrong higher than praying and paying alms (*zakāt*). Sunna ranks the approximately seventy parts of the Islamic creed according to order of importance and it is also reported that the Companions often asked the Prophet which line of action was more favorable to Allāh.[39]

In balancing harm, the jurist must rely on the priorities set by Sharia objectives—for example, harm caused to one of the benefits that are essential for human existence (*ḍarūriyyāt*) is graver than harm caused to one of the "needed" benefits (*ḥājiyyāt*) or the "enhancing" benefits (*taḥsīniyyāt*).[40] In addition, jurists established guiding principles for balancing harm. Thus, *fiqh* prohibits the causing of harm, the retribution of harm by causing harm, and preventing a given harm by inflicting an equal or greater one. If causing harm cannot be avoided, it must be the least possible. If there is a clash between a benefit and a harm, the greatest benefit and the least harm must be chosen and the averting of harm is preferred to bringing about a benefit (*darʾ al-mafāsid muqaddam ʿalā jalb al-maṣāliḥ*).[41] Other relevant principles applied by jurists in cases of such a clash are that causing a small harm is forgiven if a great benefit is secured; a temporary harm is bearable if a permanent benefit is guaranteed; and a secured benefit must not be given up for fear of an imagined harm.[42]

Defending the claim of the Maliki jurist Ibrāhīm ibn Mūsā al-Shāṭibī (d. 1388) that knowledge of the objectives of the Sharia is a condition for *ijtihād*, Qaraḍāwī argues that the classical theorists pointed to the need of the *mujtahid* to be familiar with the general maxims and to grant them precedence over the specific legal rules (*juzʾiyyāt*).[43] Qaraḍāwī also finds support for this approach in al-Subkī, who regarded knowledge of the maxims, by way of which the jurist understands the intentions of the divine legislator, as an independent condition for *ijtihād*.[44]

Practically speaking, the reliance on maxims is relevant to the two types of *ijtihād* in Qaraḍāwī's system, the selective (*intiqāʾī*) and the creative (*inshāʾī*). Selective *ijtihād* is usu-

36. Qaraḍāwī 1995: 27.

37. E.g., Qaraḍāwī 1996: 96, where he claims that modern *ijtihād* must focus on novel topics, based on the revealed texts, the objectives of the Sharia, and the general maxims.

38. Qaraḍāwī 1996: 68.

39. Qaraḍāwī 1995: 7–9, 15–16.

40. On the theory of the *maqāṣid*, see Shaham 2018: 24–34.

41. E.g., Q 2:219 states that there is a great sin in wine and some benefit to men, but the sin outweighs the benefit; thus, drinking wine is forbidden altogether.

42. Qaraḍāwī 1995: 20–22.

43. As a negative example for preferring a narrow textual approach to reliance on the legal maxims, Qaraḍāwī mentions (1996: 46–47) the opinion of the Zahiri Ibn Ḥazm (d. 1064), supported by modern hadith scholars, who exempted commercial goods from the *zakāt*, in the absence of any text that imposes the *zakāt* on such goods. According to Qaraḍāwī, this opinion contradicts the quranic principle that the rich must share a part of their property with the poor.

44. Qaraḍāwī 1996: 44–45.

ally resorted to with regard to "old" topics, on which there is a conflict of opinion in *fiqh*. In addition, selective *ijtihād* is the basis for the codification of *fiqh* that must inform state legislation. Qaraḍāwī holds that selecting the appropriate opinion must consider, in the following order, current needs, the instructions of the Quran and the Sunna, the general maxims, the spirit of Islam, the example of the ancestors (*salaf*), and the adoption of leniency.[45]

The drafting of codified law must be preceded by classifying *fiqh* (*tanẓīr al-fiqh* or *taʾṣīl al-fiqh*) according to broad categories (*naẓariyyāt kulliyya ʿāmma*) that will function as the general principles (*al-uṣūl al-jāmiʿa*) from which the specific rules must be derived. Such classification is similar to the approach of Western law and to some extent also to the establishment of the general maxims by the premodern jurists.[46] Qaraḍāwī finds support for his position in a fatwa by the modern Salafi scholar Rashīd Riḍā (d. 1935), who argued that if state legislation accords with the authenticated revealed texts, the sources of Islamic jurisprudence, and the maxims derived from them—e.g., justice, the curbing of prejudice, and the bringing about of benefit—then this legislation fits the details of Islamic law.[47]

As for creative *ijtihād*, it operates in the context of novel cases on which the revealed texts are silent and therefore the reliance on consideration of the public good (*maṣlaḥa*) is dominant. Qaraḍāwī emphasizes that the use of textually unattested public good (*maṣlaḥa mursala*) as support is conditional on it not contradicting a clear text or a definitive maxim; otherwise, such *maṣlaḥa* is void.[48]

LEGAL MAXIMS IN QARAḌĀWĪ'S FATWAS

The reliance on maxims is typical of the *maqāṣidī* approach of the modern Salafiyya, which Qaraḍāwī follows. An early illuminating example of this reliance is the interpretation of Muḥammad ʿAbduh (d. 1905) of "the polygyny verses" (Q 4:3, 129), where, in the context of the social harm afflicted by polygynous marriages, he said, as transmitted by his student Riḍā:

> The religious scholars must discuss this issue, especially the Hanafis, whose legal school is the authoritative one [in Egypt]. They should not ignore that religion was given in the people's interests (*maṣlaḥa*) and for their benefit, and that prevention of harm and of counter-harm is among the tenets of religion. If something [a legal permission] causes harm that it did not cause in the past, there is no doubt that the law must be changed and applied to the present situation, based on the principle "Prevention of harm has a priority over the attainment of benefits." He [ʿAbduh] said, "We therefore learn that polygyny is strictly forbidden (*muḥarram qaṭʿan*) whenever there is fear of the absence of equality between the co-wives."[49]

45. Qaraḍāwī 1999: 58–59.

46. Qaraḍāwī 1999: 31–32. Qaraḍāwī gives as an example ʿAbd al-Razzāq al-Sanhūrī (d. 1971), the author of the 1949 Egyptian Civil Code, who argued that it is possible to extract from *fiqh* materials an Islamic general theory of contracts.

47. Qaraḍāwī 2007: 223. Similarly, Qaraḍāwī cites (pp. 248–55) a fatwa by al-Zarqā, who argued that if state legislation is in line with the maxims, the objectives of the Sharia, and the general and specific revealed texts, then from an Islamic perspective it is considered an "applied readjustment" (*tanẓīm taṭbīqī*) of the maxims and the objectives, in accordance with the changes required by time.

48. Qaraḍāwī 1996: 157–58.

49. ʿAbduh 1910, 4: 348–51 (my translation). The Islamist Sayyid Quṭb (d. 1966), writing on the same topic (Quṭb 2000: 3: 29–38, 326–34), claims that there are three ways to handle the issue. The first is to maintain monogamy. However, when the male-female demographic ratio is unbalanced, the consequence will be that many women will not have a chance to marry and have children. The second is to allow men to have short-lived relationships with women outside of marriage, as is common in the West. This, however, is an immoral solution, since it involves adultery, which is a severe offense against Allāh. The third is to allow polygyny, conditional, of course, on equal material

This section analyzes the legal fields and topics that command the most use of maxims by Qaraḍāwī, based on his fatwas,[50] and the way he integrates maxims with the other legal tools that form part of his methodology.

As might be expected because rules of worship seldom require *ijtihād*, Qaraḍāwī's use of maxims in the realm of worship is rare. The only case that I have come across is his fatwa on the stoning ceremony (*ramy*) in Mina, which is part of the annual pilgrimage. In recent years the crowding of pilgrims in a narrow place has caused quite a few deaths, which has driven jurists to find a solution to the problem. A minority premodern legal opinion permitted the stoning ceremony to be conducted between dawn and noon (*qabla l-zawāl*),[51] to prevent overcrowding. Qaraḍāwī holds that adopting this opinion is a practical necessity, citing the above-noted maxims "Necessities make the prohibited permissible," "No incipient or retaliatory injury," and "Hardship begets facility."[52]

There are two fields in which Qaraḍāwī makes frequent use of maxims (especially "Necessities make the prohibited permissible"). The first is "the jurisprudence of Muslim minorities" (*fiqh al-aqalliyyāt al-muslima*)[53] and the second is international politics, especially in questions involving Israel. For example, in his fatwa on the legality of Muslim participation in the politics of the Western countries in which they live, Qaraḍāwī cites the maxim "The need becomes a necessity." He explains that if there is a necessity or a need for a Muslim minority community to have someone who will defend its rights and if, in this context, potential Muslim political activists fear transgressing prohibitions—e.g., by swearing to respect the secular constitution of that country—the prohibition is set aside because of that necessity or need. Citing another maxim, "Means that are necessary for accomplishing a religious duty become a duty in themselves" (*mā lā yatimm al-wājib illā bihi fa-huwa wājib*), Qaraḍāwī claims that if Muslims in the West are unable to protect their livelihood and achieve their aims without political participation, the latter becomes a religious duty.[54]

Perhaps more surprising is the fatwa in which Qaraḍāwī permits the Muslim Brothers to become involved in politics in their Middle Eastern countries, although local governments (e.g., the Egyptian) do not apply Islamic law.[55] In this fatwa, Qaraḍāwī's starting point is to state that in principle (*aṣl*) such participation is forbidden, because the Quran demands from

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treatment of the wives. This may not be the optimal solution, especially from the perspective of the first wife and her children, but, compared to the other options, it is the lesser evil, the most moral, and hence a suitable solution to the problem. On preferring the lesser of two evils as a principle among reformist Salafis, see Nafi 2004: 94–95.

50. For a list of the fatwas, and the sources from which they have been taken, see the appendix below. Page references in the following notes refer to Qaraḍāwī's four-volume *Min hudā l-Islām: Fatāwī muʿāṣira*.

51. The majority opinion holds that the stoning ceremony must be conducted before sunrise or after sunset, to prevent the implication of sun worship.

52. Fatwa 2.

53. Other fatwas issued in the realm of "the jurisprudence of Muslim minorities" in which Qaraḍāwī relies on the maxim "Necessity makes the prohibited permissible" is one in which he permits financing the purchase of a house (for dwelling only, not for commercial dealings) by taking out a bank loan that includes interest, when Islamic banking is unavailable (Fatwa 30; analyzed in Caeiro 2004), and another in which he permits the burial of a Muslim in a Christian cemetery when a Muslim burial place is unavailable (Fatwa 32). In addition, he permits female students to take part in gymnastic classes that require them to take off some of their Islamic attire (Fatwa 39).

54. Fatwa 34. Qaraḍāwī cites the same maxim in his fatwa on "collective Islamic activity" (Fatwa 38). He explains there that if the duty to establish a true Islamic community, one that follows Islamic creed and law, is attainable only by collective activity, then the means to the end become a duty. See also Fatwa 20, in which he claims that since democracy is the only means to realize the Islamic values of consultation, justice, and the prevention of tyranny, the establishment of democratic regimes in the Muslim world becomes a duty in itself.

55. Fatwa 22.

the believer obedience to all sayings of Allāh and the Prophet, not just some.[56] In addition, the Quran places the responsibility for deviating from the Sharia not only on the tyrannical ruler but also on all who collaborate with him and render him services.[57] Immediately after stating this, however, Qaraḍāwī provides three legal reasons for deviating from it. The first is that "harm must be eliminated as much as possible," which is composed of the maxim "Harm must be eliminated" and Q 65:7, which states that Allāh does not burden a believer beyond his ability. In addition, Qaraḍāwī claims that the philosophy of "everything or nothing" (*kull shayʾ aw lā shayʾ*) is incompatible with both the Sharia and reality (*marfūḍa sharʿan wa-wāqiʿan*). The second consideration that Qaraḍāwī provides is the maxim "If causing harm is required, it must be the least possible." This maxim is based on the quranic episode of the golden calf, which testifies to the permissibility of temporarily making peace with evil, fearing the occurrence of a greater evil,[58] and on a Prophetic hadith. According to Qaraḍāwī, in the case of the Muslim Brothers, refraining from participation in politics will cause them greater harm than would occur by their collaborating with governments that apply secular law. The third consideration is "to relinquish the ideal in the face of the necessities of real life." Here Qaraḍāwī cites four maxims: "Necessities make the prohibited permissible," "Hardship begets facility," "No incipient or retaliatory injury," and "Relief from distress." He supports his position for the lenient approach of Islam with evidence from the Quran and the hadith, as well as examples from *fiqh*.

Qaraḍāwī then concludes his argument by claiming that the current weakness of Muslims requires the providing of relief. Since it is impossible at the moment for the Muslim Brothers to govern their countries, which is the ideal, it is necessary to compromise with the reality and to cooperate with non-Islamic governments if the Islamic nation benefits from that. In support of his opinion, he adds two more elements. The first is the norm of gradual progress (*sunnat al-tadarruj*), according to which, as with natural developments, the Muslim community is forced to realize the purposes of the law gradually because it is not always possible to achieve their entirety immediately.[59] The second element is made up of two legal opinions by exemplary premodern jurists: ʿIzz al-Dīn ibn ʿAbd al-Salam (d. 1262), who permitted acceptance of the decisions of a judge nominated by the conquering infidels if he serves the interests of the Muslims; and Ibn Taymiyya (d. 1328), who permitted a Muslim to take an administrative position within the apparatus of an evil state if he succeeds with his activity to reduce evil and corruption.[60] According to Qaraḍāwī, these two opinions are based on the "jurisprudence of balancing and setting preferences" (*fiqh al-muwāzanāt wa-l-tarjīḥāt*) between harm and benefit, a jurisprudence that requires both the "jurisprudence of legal rules and evidence" (*fiqh al-aḥkām wa-l-adilla*, including specific revealed texts and the universal intentions of the Sharia) and the "jurisprudence of reality" (*fiqh al-wāqiʿ*).[61]

56. E.g., Q 2:85: So do you believe in some parts of the Scripture and not in others? The punishment for those of you who do this will be nothing but disgrace in this life, and on the Day of Resurrection they will be condemned to the harshest torment." Quran translations are taken from Abdel Haleem 2004.

57. Qaraḍāwī cites (p. 439) a number of quranic verses that relate to the religious deviations of the peoples of Noah, Hūd, and the Pharaoh, e.g., Q 28:8, where "the Pharaoh, Haman, and their armies" are culpable.

58. Q 20:93–94, where Aaron explains that he did not prevent the people of Israel from constructing the calf while Moses was absent on Mount Sinai because he thought that it would cause a greater evil, i.e., civil strife.

59. As examples, Qaraḍāwī mentions the cautious practice of the Umayyad caliph ʿUmar ibn ʿAbd al-ʿAzīz (r. 717–720) and the gradual prohibition on wine in the Quran.

60. Qaraḍāwī also cites another text by Ibn Taymiyya, in which he recommends the position of moderates (*mutawassiṭūn*) who take into consideration both the positive and the negative aspects of each issue.

61. See also Fatwa 25 (p. 493), where he states that the principle of balancing between benefits and harm is a "basic jurisprudence" (*fiqh asāsī*) in the realm of governance in accordance with Sharia (*al-siyāsa al-sharʿiyya*).

Applying the maxim "The extent of permitting a prohibited act must not exceed the scope of the necessity" without citing it explicitly, Qaraḍāwī posits, in the spirit of Ibn Taymiyya's opinion, four conditions for cooperation with a non-Islamic government. First, the Muslim who works for such a government must have real, not merely symbolic, power, so that he is able to combat evil in his work. Second, if this government is extremely evil and oppressive, he must not work for it. Third, he must be able to resist anything that clearly contradicts Islamic values, going so far as to resign his job if necessary. Fourth, Muslims who participate in a non-Islamic government must review their accomplishments from time to time to see whether they justify continuing their cooperation.[62]

Exceptionally for Qaraḍāwī's legal opinions, here the maxim of balancing between harm and benefit outweighs clear revealed texts, which in Qaraḍāwī's hierarchy of sources must come first. This is evidenced also in his fatwa on the legality of suicide terror attacks by Palestinians on Israelis, where he sets aside the Islamic principle of avoiding intentional killing of noncombatants (especially old people, women, and children) on the grounds of the maxim "Necessities make the prohibited permissible." He explains that because Israeli society is militaristic, with women serving in the army and children becoming future soldiers, the possibility of their being killed by suicide attacks is tolerable. It is important to note that here Qaraḍāwī does not base his opinion exclusively on the above-mentioned maxim. Rather, he summarizes both premodern legal opinions—by Muḥammad b. Jarīr al-Ṭabarī (d. 923), the Hanafi Aḥmad ibn ʿAlī al-Jaṣṣāṣ (d. 981), the Shafiʿi Fakhr al-Dīn al-Rāzī (d. 1210), the Maliki Muḥammad ibn Aḥmad al-Qurṭubī (d. 1273), the Hanbali Ibn Taymiyya, and Ismāʿīl Ibn Kathīr (d. 1373)—and the modern ones of Muḥammad al-Shawkānī (d. 1834) and Riḍā. These opinions stem from cases, from the Prophetic era and afterward, in which Muslim fighters risked their lives in battle. The bottom line is that if risking one's life in battle has any chance to cause harm to the enemy, and thus support the Muslim cause, a Muslim's death constitutes a worthy martyrdom and not a suicide.[63] These two topics—Islam in Europe and Israel—are treated differently by Qaraḍāwī because of the dire need he ascertains to facilitate the success of Islamic propaganda in the West, as well as to restore Islamic dominion over the sacred land of Palestine, usurped by the Zionist movement from its legal owners.

The balancing between harm and benefit that has led Qaraḍāwī to allow Muslims to become involved in the politics of their Middle Eastern and Western countries, although those governments do not apply Islamic law, brought an opposite result in the case of Israel. Qaraḍāwī prohibits Israeli Palestinians to stand for office in the Israeli parliament.[64] He admits that, at first glance, it might be beneficial for Palestinians to become members of the Knesset, since it enables them to fight for their rights as a national minority. However, a more

62. Another fatwa in which Qaraḍāwī emphasizes the maxim "The extent of permitting a prohibited act must not exceed the scope of the necessity" is Fatwa 17. It was issued in respect to a Muslim engineer who wished to found a company with an American partner and sought permission to take out a loan with interest from an American bank after failing to raise the money from Islamic banks. In response, Qaraḍāwī sets three criteria for measuring the existence of necessity in the case and advises the questioner to opt for the loan with interest only as a last resort. In Fatwa 9, Qaraḍāwī criticizes Maḥmūd Shaltūt (d. 1963), the rector of al-Azhar in the late 1950s, for permitting saving accounts by defining the existence of necessity too lightly. During the first Gulf War in 1991, Qaraḍāwī authorized the Muslim coalition forces to be assisted by foreign armies on the ground of necessity, conditional upon their evacuation immediately after the goal was achieved (Qaraḍāwī 2009: 703–13). In Fatwa 6, he permits the use of modern technology to select the gender of the fetus by parents only in cases of necessity, since this procedure is a violation of Allāh's capacity as the sole creator in the universe. In addition, initiated abortion of a diseased fetus is forbidden on similar grounds unless the mother's life is in danger (Fatwa 19).

63. Fatwa 26.

64. Fatwa 25.

thorough calculation makes clear that in the end such participation will bring about more harm to the Palestinians than the immediate benefit that it reaps. This is because Palestinian participation in the Knesset is an implicit recognition of the legitimacy of the Israeli state and of its right to remain in this territory.[65] In support of his argument, Qaraḍāwī cites four maxims: "The removal of harm is preferred to bringing about a benefit"; "A universal benefit is preferable to a partial benefit"; "A general benefit is preferable to a particular benefit"; and "A lasting benefit is preferable to a short-lived benefit." Finally, he implies that if there exists a specific necessity, it might justify such participation, yet necessities must be dealt with according to their level of emergency, without expanding the permission, to ensure that the exceptional does not become the guiding principle.

Balancing between harm and benefit requires expertise in various fields of knowledge (e.g., political, scientific, technical, and medical) that are not part of the standard training of the mufti and which Qaraḍāwī calls "the *fiqh* of reality." Worth mentioning in this respect is his dispute with the Saudi Chief Mufti, ʿAbd al-ʿAzīz Bin Bāz (d. 1999), concerning the Oslo Accords, signed between Israel and the PLO in 1993. Bin Bāz supported the agreement, on the grounds of Q 8:61: "But if they incline towards peace, you [Prophet] must also incline towards it and and put your trust in God." He claimed that if the Palestinian leaders concluded that the agreement was in the interests of their people, they were fully entitled to sign it. While paying respect to the stature of Bin Bāz as jurist, Qaraḍāwī differed, emphasizing that the debate between Bin Bāz and himself was not legal in nature but focused on the incorrect analysis of the international and political situation by Bin Bāz. To make a long story short, Qaraḍāwī held that Israelis did not truly incline to peace so that the verse was not applicable to the case and jihad against them had to continue until they gave back the territories they had usurped.[66]

The combination of the "jurisprudence of balancing" and reliance on expert knowledge serves Qaraḍāwī well in dealing with scientific-medical innovations. Here he puts to use the maxim "Harm must be eliminated to the best of one's abilities," or, in another wording, "No incipient or retaliatory injury." He supports the donation of human organs to help sick people recover. However, the donation is permitted only if the donor does not become handicapped (e.g., the donation of an eye, hand, or leg is prohibited, while the donation of a kidney is allowed) on the grounds of the maxim "Preventing a given harm by inflicting an equal or greater one is prohibited" (*al-ḍarar lā yuzāl bi-ḍarar mithlihi aw akbar minhu*).[67] The mapping of the human genome may be used for preventive treatment of hereditary diseases, based on the maxim "The removal of harm is preferred to bringing about a benefit."[68]

65. See also Fatwa 23, in which Qaraḍāwī on similar grounds prohibits Muslim tourists from visiting al-Aqsa Mosque in Jerusalem.

66. Fatwa 24. In Fatwa 35, Qaraḍāwī, following the proverb "my enemy's enemy is my friend," is in favor of supporting Hezbollah in its fight against Israel, unlike other Sunni jurists who hold that, as a Shiʿi—and thus heretical (*rāfiḍī*)—organization, Hezbollah must not be supported. In Fatwa 36, Qaraḍāwī calls on the Taliban to postpone demolishing the Buddha idols in Afghanistan, because the doubtful profit gained by this act is considerably outweighed by the potential harm of stirring up the enmity of the entire Western world against them. In addition, this act will jeopardize the lives of Muslim minority communities living among Buddhist majorities in Southeast Asia.

67. Fatwa 18. See also Fatwa 6, in which Qaraḍāwī prohibits surrogate motherhood because the future benefit for the childless mother involves the causing of harm to the surrogate, who will not be able to enjoy her biological child. Qaraḍāwī uses a similar maxim—"If causing harm is required, it must be the least possible"—to support his opinion (Fatwa 40) that conducting violent acts to "forbid wrong" (*al-nahy ʿan al-munkar*) is legitimate only if the harm caused by these acts is not greater than the harm against which they are conducted in the first place.

68. Fatwa 28. See also Fatwa 37, in which Qaraḍāwī cites this maxim (as well as "Harm must be eliminated") in support of the duty of parents to vaccinate their children against polio, in refutation of a fatwa signed by a few

Cloning of animals is permitted if scientific experts determine that its benefits are real and not imaginary (*mutawahhama*) and no harm to the animal takes place.[69] The permissibility of smoking tobacco is an "old" legal question on which there was a conflict of opinion among the jurists of the legal schools. Qaraḍāwī reconstructs the arguments underlying the premodern debate and concludes that smoking is prohibited on the grounds of modern research, which has proved beyond any doubt that physical harm is caused by smoking, and of the maxim "No incipient or retaliatory injury."[70]

Preventing harm and balancing between it and benefit inform a number of opinions in which Qaraḍāwī legitimizes the intervention of state authorities in the public sphere, aimed at bringing about justice. Thus, the state is welcome to intervene in fixing the rates of workers' salaries and the rental fees of apartments.[71] The state may dig out an old cemetery if it needs the land to construct a building project that is beneficial to the community.[72] Similarly, the state may demolish the tomb and the mosque constructed on the grave of a person (probably a local "holy" man) who was buried on private land without the owner's authorization. In this last instance, the harm caused to the deceased by having to resettle his bones in another grave is outweighed by the harm suffered by the landowner whose property rights were violated.[73]

The leniency of Qaraḍāwī's legal methodology is reflected in his adopting the premise, phrased as a maxim, that "Any human transaction is permitted unless specifically shown by the revealed texts to be forbidden" (*wa-l-aṣl fī umūr al-ʿādāt wa-l-muʿāmalāt al-ibāḥa illā mā jāʾa fī manʿihi naṣṣ ṣaḥīḥ ṣarīḥ*). This premise puts the onus of proof on the person claiming that the transaction is prohibited. In his fatwas on the legitimacy of women being elected to parliament, for example, he uses this maxim as his starting point, followed by a systematic refutation of all the textual and other pieces of evidence produced by those who oppose women's participation in politics.[74] Qaraḍāwī adduces the same maxim to legitimize nonviolent political demonstrations, provided they are in the interests of Islam;[75] listening to songs, provided their content is moral;[76] and women working outside the home.[77] Based on the same premise, women may uncover their faces and they cannot be forced to wear a *niqāb* (a veil that covers all but the eyes), because such a demand in the context of modernity is a rigidity that is incompatible with the permissive nature of Islam.[78] Interestingly, in his fatwa on smoking, Qaraḍāwī had to deal with the claim countering this premise: that smoking,

Nigerian jurists who forbade it on the grounds that the immunization material included impure hormones that may cause female infertility. In addition, he cites this maxim in his opinion of the marriage between a Muslim husband and a non-Muslim wife (Fatwa 4, and below).

69. Fatwa 27. Qaraḍāwī has a more lenient opinion of animal cloning than of human cloning, in principle because cloning uses existing bodily materials and thus does not pose a theological problem of imitating God's creation, whereby he does not view it as creation of life. But because it interferes with the diversity of creation, prevents determining the relation of the cloned to the original, and infringes on the pattern of creating things in pairs, he prohibits categorically the cloning of an entire human body. He does permit the cloning of specific parts of the human body, such as heart and kidneys, for the purpose of treatment, which he contends is recommended and rewarded by Allāh.

70. Fatwa 10.

71. Fatwas 7, 8.

72. Fatwa 12.

73. Fatwa 1.

74. Fatwas 15, 16. For a detailed analysis of this fatwa, see Shaham 2018: chap. seven.

75. Fatwa 33.

76. Fatwa 11.

77. Fatwa 13.

78. Fatwa 14.

being a human act, is permitted unless proven otherwise. He rejected this claim, explaining that the premise refers only to beneficial acts and not to injurious ones.

A second maxim that projects leniency is "Something [a legal impediment] that is overlooked at the beginning [i.e., upon signing of the contract] is excused in continuance [i.e., for the sake of continuing the contract]" (*yughtafar fī l-baqāʾ mā lā yughtafar fī l-ibtidāʾ*).[79] Qaraḍāwī makes innovative use of this maxim in his fatwa in which he permitted a Western female convert to Islam to remain married to her non-Muslim husband, in expectation of his future conversion, in apparent contradiction to the predominant ruling that the spouses in such a scenario must be separated immediately. Qaraḍāwī's explanation is that although the legal impediment for a marriage between a non-Muslim male and a Muslim female would void their marriage contract, if the marriage was concluded when both were not Muslims and the impediment was created in the course of the marriage (by the conversion of the wife to Islam), then it could be excused to prevent the dismantling of a viable conjugal home.[80]

Another premise that relates to human transactions and is phrased as a maxim is "Actions are judged by intentions," based on the Prophetic hadith. Qaraḍāwī resorts to this maxim in his fatwa on the permissibility of a woman traveling without being accompanied by a male relative (*maḥram*). In his view, if the purpose of the travel is legitimate and respectful, there is no justifiable reason to prohibit it.[81] Although the majority of early jurists prohibited it, a minority opinion was that if the road was safe or other trustworthy women accompanied the woman in her travel, it was permitted; and it is reported that ʿUmar ibn al-Khaṭṭāb permitted the Prophet's widows to go on the pilgrimage accompanied by unrelated male companions and no one objected to his decision at that time, which constituted a consensus of the Companions. Qaraḍāwī further justifies his opinion by noting that the legal prohibition on female solitary travel was for preventive means (*sadd al-dharīʿa*), namely, to protect the woman's honor and prestige, which may suffer from immoral mixing with unrelated males. Qaraḍāwī cites the maxim "An act that was prohibited for its own sake is permitted only in a case of necessity and an act that was prohibited as a preventive means is permitted if there is a need (*mā ḥurrima li-dhātihi lā yubāḥ illā li-l-ḍarūra wa-mā ḥurrima li-sadd al-dharāʾiʿ fa-yubāḥ li-l-ḥājāt*).[82] He explains that modern travel conditions provide the utmost personal security

79. This maxim is derived from the example of the Prophet, who did not annul existing marriage contracts of new converts to Islam although these contracts were void from an Islamic legal perspective since they were conducted without the presence of a marriage guardian and just (*ʿadl*) witnesses. See http://www.islamtoday.net/fatawa/quesshow-60-121535.htm (accessed October 31, 2018).

80. Fatwa 29. See also Fatwa 21, in which Qaraḍāwī, supported by the same maxim, permits the marriage between the husband of a wet nurse and a female whom she breastfed to continue if there is a good cause to continue it. The legal principle underlying the impossibility of this, which is highly debated in *fiqh*, is *laban al-faḥl* ("the milk of the stallion"), meaning that because the husband is the cause of the mother having milk and a relationship through breastfeeding is equivalent to blood ties, every unrelated baby who suckles at her breast becomes the husband's son or daughter. See https://fatwa.islamonline.net/2575 (accessed November 21, 2018).

81. Fatwa 3. Qaraḍāwī cites this maxim also in Fatwa 34 on the participation of Western Muslims in politics. He specifies that a Muslim who wishes to partake in politics to defend the liberties of his coreligionists and their civil rights, their cultural identity, and their communal interests, as well as to contribute to the entire society, is blessed in the eyes of Allāh and worthy of the praise of his brother Muslims. See also Fatwa 5, in which Qaraḍāwī prefers the legal ruling that repudiation by an intoxicated husband is void on the grounds of lack of intention on the part of the husband. In addition, Qaraḍāwī permits listening to songs on the condition that their intention is good—in other words, their content is moral and in line with Islamic values (Fatwa 11).

82. A similar phrasing of the last part of this maxim is "an act that was prohibited as a preventive means is permitted if there is a preponderant benefit (*maṣlaḥa rājiḥa*) or a need." According to one explanation, this maxim is based on two accepted maxims: "It is permissible to remove a great evil by causing a lesser one" and "If there is a clash between an evil and a preponderant benefit, the latter is preferred." This maxim is arguably derived from

to a woman traveling on her own, so that there is no justification for preventing her from doing so if she needs to attend to her business or make the pilgrimage, which is a religious duty to believers who can afford it.[83]

There are cases, however, in which Qaraḍāwī applies the mechanism of "preventive means" in the opposite direction, i.e., to prohibit a legally permitted act, because such an act brings about harm. A representative example is his prohibiting the marriage of a Muslim male to a non-Muslim female (usually a Christian or a Jew), which is permitted by Q 5:5 and has been an oft-occurring practice in Islamic history. Qaraḍāwī argues that modern conditions, particularly in the West but in Islamic countries as well, make such a marriage dangerous for the future of Islamic communities—for example, because the rise in women's social status weakens the control the husband has over his educated wife whereby she is able to bring up her children in her religion. Qaraḍāwī concludes that such marriages should therefore be disallowed as a preventive means, to be permitted only in cases of unavoidable necessity or a dire need.[84] One notes that in this case, unlike in the majority of his opinions, Qaraḍāwī bases his opinion exclusively on legal maxims, without mention of the Hanafi opinion, which places such a marriage between the moral categories of abhorred and prohibited (*karāha taḥrīmiyya*) on the same grounds indicated by Qaraḍāwī.[85]

CONCLUSION: MAXIMS VS. TEXTS

According to Qaraḍāwī's legal methodology, maxims are supposed to be relied on primarily with respect to novel legal questions on which there are no direct revealed texts but only texts that define relevant general principles, at the most. Indeed, in thirty-two of his fatwas in which I have come across a resort to maxims (I excluded the cases of *fiqh al-aqalliyyāt al-muslima*), Qaraḍāwī cites maxims mainly to answer contemporary political topics or ques-

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Q 24:30: "[Prophet], tell believing men to lower their glances and guard their private parts: that is purer for them." Ibn Taymiyya and his student Ibn Qayyim al-Jawziyya (d. 1349) explain that the requirement that a male not gaze at the intimate parts of the female's body is because it leads to illicit sex. However, this prohibition does not apply in the case of the potential bridegroom, because his need to see the contours of the bride's body before marrying her is greater. In addition, this maxim is supported by two cases from the hadith. The first concerns the solitary travel of Umm Kulthūm, the Prophet's daughter, from Mecca to join the Prophet in Medina to save herself from idolatry, and the second concerns the Prophet commissioning the Companion Ṣafwān ibn al-Muʿaṭṭal to search for Muḥammad's wife, ʿĀʾisha, who was lost in the desert, and bring her back to camp. See http://majles.alukah.net/t111825/ (accessed October 31, 2018) and the sources mentioned there. Qaraḍāwī uses this maxim differently than Ibn Taymiyya and Ibn Qayyim. He does not emphasize the preponderant benefit acquired by the woman traveling on her own as outweighing the potential harm to her chastity. Rather, the safety of modern travel conditions precludes the occurrence of such harm in the first place. I thank the *JAOS* peer-reviewer for pointing out the Ibn Qayyim reference.

83. Qaraḍāwī cites the same maxim in Fatwa 30 concerning the purchase of a house in the West. He explains that the usurer is the one who gains, while the borrower loses. The Islamic prohibition on interest is meant on account of the usurer, while the borrower is included in the prohibition only as a preventive means. When there is a distinct necessity, however, the prohibition on taking out a loan may be set aside.

84. Fatwa 4. Qaraḍāwī's opinion on female genital mutilation (Fatwa 31) is another case in which he prohibits an act permitted by all Sunni legal schools, on the grounds of the maxims "No incipient or retaliatory injury" and "Preventing the permissible to achieve a benefit." His opinion is informed by modern medical and psychological expertise, which has substantiated the severe physical and mental suffering caused to young females because of this procedure.

85. https://www.saaid.net/Doat/ahdal/43.htm (accessed November 1, 2018). The author of this research, ʿAbdallāh Qādirī al-Ahdal, reviews the opinions of a number of Hanafi jurists, e.g., Muḥammad al-Shaybānī (d. 802), Muḥammad ibn Aḥmad al-Sarakhsī (d. 1090), Muḥammad Amīn Ibn ʿĀbidīn (d. 1836), and those of the contemporary scholar Wahba al-Zaḥīlī.

tions of public policy (fourteen cases), new medical topics (six cases), or old ones on which modern science throws new light (three cases). Less frequently, they are deployed in questions concerning family law (four cases), female modesty (two cases), bank interest (one case), worship (one case), and morality (one case).

The absence of clear texts having to do with most of the current political questions allows Qaraḍāwī to formulate his position based on weighing the benefit and harm in every case, according to his analysis of the problem and its circumstances (i.e., "the *fiqh* of reality" required of the contemporary mufti). If a relevant revealed text is available, the realization of goals that he values particularly highly (e.g., returning Palestine to Muslim governance and promoting Islamic propaganda in the West) brings Qaraḍāwī to issue innovative opinions, by setting aside prohibitions or permissions. Thus, on the one hand, he permits Muslims, against quranic proscriptions, to participate in a government that is not committed to Islamic law; on the other hand, he forbids Muslims to visit al-Aqsa Mosque, which an authentic Prophetic hadith recommended, on the grounds of the potential harm of such a visit to the Palestinian political cause—the same underlying reason for his forbidding Israeli Palestinians, unlike their Western counterparts, to take an active part in (Israeli) government.

The voiding of a legal permission despite its being based on a definitive revealed text calls for a comparison between two of Qaraḍāwī's cases. In the one, he opposes any restriction of polygyny; in the other, he voids the permission granted to a Muslim male to marry a woman "from the People of the Book," i.e., (usually) a Christian or Jew. The reason for the apparent contradiction between the two cases seems to be Qaraḍāwī's reading of "reality," which was also at the center of his conflict with Bin Bāz over the legitimacy of the Oslo Accords. In the case of polygyny, Qaraḍāwī insists, unlike ʿAbduh, that it does not cause any social harm but provides a balanced solution to the unequal numbers of males and females in society, as well as to the danger of illicit sexual relations. In contrast, a marriage between a Muslim male and a non-Muslim woman, even if "from the People of the Book," is injurious, especially in the West, in light of the growing influence of the educated mother on the family's children, which exposes them to the danger of deserting Islam. This potential danger justifies invalidating the permission. Thus, one could argue that, generally speaking, weighing the benefit and harm in every case, according to each mufti's analysis of "reality," intensifies the conflictual character of contemporary Islamic law.

In the absence of relevant clear text, Qaraḍāwī examines novel medical questions in light of general theological principles (e.g., the prohibition to imitate the creative acts of Allāh in the universe), in addition to calculating benefit and harm based on the knowledge provided by modern science. When such knowledge offers fresh perspectives on old legal questions that have been disputed by jurists, Qaraḍāwī adjusts the traditional position. Thus, he prohibits both female genital mutilation and smoking, which the majority of premodern jurists permitted, based on the certain knowledge that modern science provides regarding the mental and physical harm that they cause. Alternatively, he permits conducting an abortion even after the passage of 120 days from the beginning of pregnancy if a reliable medical test establishes that the mother's life is in danger.

Except for the above-mentioned unusual cases, in which necessity or a dire need to prevent highly probable harm supersedes a textual indicator, in the majority of cases the clash between a revealed text and maxims is avoided. This is because of Qaraḍāwī's claim that the relevant text is not certain and is disputed, and therefore a maxim may supersede it (e.g., Fatwas 20, 22, 31).

We recall that, according to Qaraḍāwī's legal methodology, a selective *ijtihād* takes place with respect to older legal topics that are not covered by clear-cut revealed texts, namely,

choosing a jurist's opinion (even a minority one), that, judged inter alia in light of maxims, is most suited to modern conditions and best serves the welfare of Muslims. Faithful to his method, in most of these cases Qaraḍāwī integrates his application of maxims with a reconstruction of the relevant legal debates and opinions. In some cases, he has found that the maxim is in line with the predominant opinion, or that there was no one dominant opinion (e.g., Fatwas 26, 40). In other cases, the maxim suited minority opinions (Fatwas 2, 3, 22, 30).

In conclusion, since Qaraḍāwī's methodology assumes that the number of older legal questions on which there is consensus is low, and since there are rarely any revealed textual texts with regard to novel questions of law, a wide area of topics available for *ijtihād* is open to him. Qaraḍāwī's use of legal maxims to deal with these many topics is a powerful tool, which makes it possible for him to enlarge the scope of his legal opinions to all aspects of the believer's life, including current political issues, based on weighing benefit and harm. The resort to maxims allows him to conduct this calculation in a systematic and intelligent manner. Because premodern jurists extracted the leading maxims from revealed texts, which makes the maxims an integral part of the Sharia, Qaraḍāwī is able to demonstrate that his opinion-making is not arbitrary or purely utilitarian, but is anchored solidly in divine law.

APPENDIX: FATWAS BY QARAḌĀWĪ

Unless indicated otherwise, all fatwas are taken from al-Qaraḍāwī, *Min hudā l-Islām: Fatāwī muʿāṣira*, 4 vols. (Beirut: al-Maktab al-Islāmī, 2000–2003 [vols. 1-3]; Cairo: Dār al-Qalam, 2009 [vol. 4]).

1. Erecting a tomb and a mosque on private land without getting the permission of its owners (*bināʾ ḍarīḥ wa-masjid fī arḍ mamlūka bi-ghayr idhn aṣḥābihā*). 1: 155–61.

2. On the repeated disasters at the ceremony of stoning [during the pilgrimage] (*ḥawl al-kawārith al-mutakarrira fī ramy al-jamrāt*). 1: 271–80.

3. A woman going on pilgrimage unaccompanied by a male relative (*ḥajj al-marʿa bi-lā maḥram*). 1: 364–68.

4. The marriage between a Muslim man and a non-Muslim woman (*zawāj al-muslim bi-ghayr al-muslima*). 1: 490–505.

5. Divorce by a drunk husband (*ṭalāq al-sakrān*). 1: 550–56.

6. The *fiqh*'s opinion on surrogate motherhood and selecting the sex of the baby (*raʾy al-fiqh fī ʿamaliyyāt shatl al-janīn wa-ikhtiyār jins al-mawlūd*). 1: 595–613.

7. The state's intervention in determining workers' salaries (*tadakhkhul al-dawla li-taḥdīd uǧūr al-ʿummāl*). 1: 617–25.

8. The Muslim government's right to determine housing rent if required by the public good (*ḥaqq al-ḥukūma al-muslima fī taḥdīd ījārāt al-masākin idhā iqtaḍathu al-maṣlaḥa*). 1: 626–34.

9. The banks' interest (on money) (*fawāʾid al-bunūk*). 1: 642–45.

10. The rules on smoking in light of the revealed texts and the legal maxims (*ahkam al-tadkhīn fī ḍawʾ al-nuṣūṣ wa-l-qawāʿid al-sharʿiyya*). 1: 694–710.

11. Listening to songs (*samāʿ al-aghānī*). 1: 729–34.

12. The permissibility of desecration of an old graveyard for a benefit (*jawāz nabsh al-maqbara al-qadīma li-maṣlaḥa*). 1: 772–76.

13. Woman's work [outside of the home] (*ʿamal al-marʾa*). 2: 330–33.

14. Is [wearing] the *niqāb* a duty (*hal al-niqāb wājib*)? 2: 340–67.

15. The nomination of women as parliament members between permission and prohibition (*tarshīḥ al-marʾa li-l-majālis al-niyabiyya bayna-l-ijāza wa-l-manʿ*). 2: 409–20.

16. Disputing a fatwa that prohibits the political rights of women (*munāqashat fatwā bi-taḥrīm al-ḥuqūq al-siyāsiyya ʿalā-l-marʾa*). 2: 421–28.

17. Seeking wealth by way of what is prohibited (*ṭalab al-ghinā bi-ṭarīq al-ḥarām*). 2: 456–59.

18. On organ transplants (*hawl zarʿ al-aʿḍāʾ*). 2: 583–94.

19. An abortion based on a diagnosis of the fetus's malady (*al-ijhāḍ bināʾan ʿalā tashkhīṣ maraḍ al-janīn*). 2: 595–604.

20. Islam and democracy (*al-islām wa-l-dīmuqrāṭiya*). 2: 704–21.

21. The prohibition on marriage between the wet nurse's husband and the babies [not her children] that she breastfed (*al-riḍāʿ al-muḥarram wa-laban al-faḥl*). 3: 310–43.

22. Participation in non-Islamic governance (*al-mushāraka fī ḥukm ghayr islāmī*). 3: 437–54.

23. Traveling to visit al-Aqsa Mosque (*al-safar li-ziyārat al-masjid al-aqṣā*). 3: 474–77.

24. Defensive jihad is an individual duty and the Jews are hostile and do not incline to peace (*jihād al-dafʿ farḍ ʿayn wa-l-yahūd muʿtadūn wa-la yajnaḥū li-l-silm*). 3: 485–91.

25. Participation in the Knesset of Muslims living in the occupied territory (*dukhūl muslimī l-arḍ al-muḥtāla fī l-Kineset*). 3: 492–95.

26. The legality of suicide attacks in occupied Palestine (*sharʿiyyat al-ʿamaliyyāt al-istishhādiyya fī Filasṭīn al-muḥtalla*). 3: 518–26.

27. Is cloning of human beings permissible (*al-istinsākh: hal yajūz fī l-bashar*)? 3: 539–47.

28. Mapping the human genome and the position of Islam (*iktishāf kharīṭat al-jīnāt al-basha-riyya wa-mawqif al-islām*). 3:548-52.

29. The wife's conversion to Islam without her husband. Must they be separated (*islām al-marʾa dūn zawjihā: hal yufarraq baynahumā*)? 3: 623–42.

30. Taking out a loan with interest for purchasing a house (*al-qarḍ bi-l-ribā li-shirāʾ maskan*). 3: 645–50.

31. The rule of Islamic law concerning female genital mutilation (*al-ḥukm al-sharʿī fī khitān al-ināth*). 4: 507–23.

32. Burial of a Muslim in a Christian cemetery (*dafn al-muslim fī maqbarat al-naṣārā*). 4: 679–81.

33. Is it legally permitted to carry on nonviolent demonstrations (*hal yajūz sharʿan tasyīr al-muẓāharāt al-silmiyya al-iḥtijājiyya*)? 4: 819–30.

34. Islamic minorities entering into politics in the West (*inkhirāṭ al-aqalliyyāt al-islāmiyya fī l-ḥayāt al-siyāsiyya al-gharbiyya*). 4: 843–46.

35. Refutation of Ibn Jabrīn's fatwa prohibiting support for Hezbollah and wishing it well in its fight against Israel (*al-radd ʿalā fatwā Ibn Jabrīn allatī tuḥarrim munāṣarat Ḥizb Allāh wa-l-duʿāʾ lahu fī ḥarbihi maʿa Isrāʾīl*). 4: 877–85.

36. The Buddhist idols in Afghanistan—is it required to demolish them without delay (*al-tamāthīl al-budhiyya fī Afghānistān wa-hal yajib hadmuhā fawran*)? 4: 803–18.

37. Vaccinating babies against polio (*taṭʿīm al-aṭfāl bi-l-laqāḥ al-wāqī min al-shalal*). 4: 903–9.

38. Collective Islamic activity (*al-ʿamal al-islāmī al-jamāʿī*). https://www.al-qaradawi.net/node/4096 (accessed May 7, 2020)

39. al-Qaraḍāwī and gymnastic classes for female students in the West (*al-Qaraḍāwī wa-ḥiṣaṣ al-riyāḍa li-l-fatayāt fī l-gharb*) http://www.youtube.com/watch?v=SSCbdItYbsE (not available anymore)

40. The steps needed for changing what is wrong and when force may be used to bring it about (*marātib taghyīr al-munkar wa-matā yajūz al-taghyīr bi-l-quwwa*). 2: 754–66.

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