

'Islamic Law between Originality and Renewal': Yūsuf al-Qaraḍāwī's Theory of the Renewal of Islamic Law¹

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Abstract

The Sunni Muslim scholar, Mufti and preacher, Yūsuf al-Qaraḍāwī (b. 1926), is one of the most prominent Muslim figures and religious authorities in contemporary time. His legal opinions (*fatwāwā* sg. *fatwā*) count as an important reference point for questions of religious practice among many Arabic and European Muslims as well. The present article aims to present his views on *tajdīd al-fiqh* and shows the strategy he used to renew the Islamic law. I am also interested in probing what is behind his endeavor of *tajdīd al-fiqh*.

Key words: Qaradawi, renewal (*tajdīd*), Islamic law (*fiqh*), independent reasoning (*ijtihād*)

1. Introduction

The debate on the transformation or the 'renewal of Islamic law' (*tajdīd al-fiqh al-islāmī*) follows in fact a long tradition in Islamic legal history. It goes back already to Muhammad b. Idrīs al-Shāfi'ī (d. 820), whose legacy on juridical matters led to the development of the Shāfi'ī school of law. After moving from Baghdad to Egypt, he updated many of his legal opinions and methods in response to changed circumstances.³ In the course of time the question of *tajdīd* became increasingly, pressing and it engaged several Muslim scholars such as al-Juwaynī (d. 1085), al-Ghazālī (d. 1111) and al-Shāṭibī (d. 1388).⁴ More recently, in the light of 19th century and due to the European colonialism, almost every aspect of public and private life has been changed in the Middle East. Science and technology continue to transform life. These changes have led to the emergence of new questions and challenges. In response, reform thinkers and jurists try to reinvigorate and reform Islam from within as a way to counter the perceived weakness and decline of Muslim societies. They deal with reforming Islam in general and the renewal of its law system in particular. Again, in the last century, discussions about *tajdīd al-fiqh* have intensified, especially with the rise of political Islam since the mid-1970s. They discuss whether the teachings of Islam and its legal system can be reconciled with modernity, development, human rights, secularization, and democracy. They try to answer how can an ancient system of law confront the new world and provide solutions for new problems.⁵

¹ This paper is based partially on the in German written Ph.D thesis of the author, entitled: 'Mit Tradition in die Moderne: Yūsuf al-Qaraḍāwī's Methodologie der Fiqh-Erneuerung in Theorie und Praxis' (in German).

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³ Yūsuf, al-Qaraḍāwī: *Madkhal li-dirāsāt ash-sharī'a al-islāmīya* (Cairo: Mu'assasat ar-Risāla, 1993), p. 271.

⁴ See for more details Moosa, Ebrahim/Sherali, Tareen: 'Revival and Reform', in: Bowering, Gerhard et.al. (ed.): *The Princeton Encyclopedia of Islamic Political Thought* (Princeton, NJ: University Press, 2013), pp. 462-470, Haj, Samira: *Reconfiguring Islamic Tradition: Reform, Rationality, and Modernity* (Stanford: Stanford University Press, 2009).

⁵ See for example al-Turābī, Ḥasan: *Qaḍāya at-tajdīd: Naḥwa manhaj uṣūli* (Khartum: Ma'had al-Buḥūth wa-d-Dirāsāt al-Ijtīmā'īya, 1990), idem.: *Tajdīd uṣūl al-fiqh* (Khartum: Maktabat Dār al-Fikr, 1980), Ramadan, Tariq: *Radical Reform: Islamic Ethics and Liberation* (Oxford: University Press, 2009) and al-'Alwānī, Tāhā Jābir: *Naḥwa at-tajdīd wa-l-ijtihād: Murāja'at fi al-manẓūma al-ma'rifiya al-islāmīya: Aulūm al-fiqh wa-uṣūlub* (Cairo: Dār at-Tanwīr li-n-Nashr wa-t-Tawzī', 2008).

One of the best-known and most controversial figures of Sunni Islam today who deals with the question of Islam, modernity and the renewal of Islamic law is Yūsuf al-Qaradāwī (born 1926).⁶ He is the cofounder and president of the *International Union of Muslim Scholars* (IUMS). He also heads the *European Council for Fatwa and Research* (ECFR). Through one of the most popular broadcasts of *al-Jazeera* TV channel, *ash-Sharī'a wa-l-ḥayāt* ("Sharia and Life"), he has become an influential authority among Muslims worldwide.⁷ Furthermore, he has his own Arabic-language website (*qaradawi.net*) and has long supervised the popular website Islam Online. He is extraordinarily prolific, and has written over 160 books on different disciplines such as Islamic law, finance system, Theology, education and Islamism. In short, al-Qaradāwī is one of the most prominent Muslim jurists in contemporary time, whose *fatwas* count as an important reference point for questions of religious practice among many Muslims in East and West.⁸

The present paper aims to investigate al-Qaradāwī's theoretical approach to *tajdid al-fiqh*. It attempts to answer the following questions: What does al-Qaradāwī mean by *tajdid al-fiqh*? How does he understand the relation between the juristic legacy and modernity? Why does he advocate the idea of *tajdid* of Islamic law at all? In his book *al-Fiqh al-islāmī bayna l-aṣāla wa-t-tajdid* ("Islamic Law between Originality and Renewal") he discusses the main theoretical strategies of renewal. This treatise serves as a primary source for the present study.⁹ Since he depicts his desired renewal in the above mentioned treatise only in general terms, his other writings provide more details on *tajdid al-fiqh*. These will be considered as well.¹⁰

There are numerous Arabic studies and popular scientific literature dealing with *tajdid al-fiqh* in general. They discuss the meaning, roots, history, trends and characteristics of *tajdid al-fiqh*. In this concoction of writing, a large number of Islamic scholars such as al-Juwaynī, al-Ghazālī, Ibn Taimīya (d. 1328), al-Shāṭibī and al-Shaukānī (d. 1834) are designated as protagonists of the renewal of *fiqh*.¹¹ There is, similarly a sizeable body of literature devoted to the question of reform of Islam among Western scholars.¹² However, studies on the theme of *tajdid fiqh* are still in their earliest stage.

⁶ See for example Zarzūr, 'Adnān M.: "Yūsuf al-Qaradāwī al-mujaddid al-muwaffaq ... faqih al-'aṣr", in: Yūsuf al-Qaradāwī: *Kalimat fi takrīmih... wa-buḥḥith fi fikrih wa-fiqhih. Muḥdat ilayih bi-munasabat buḥḥith as-sab'in* (Cairo: Dār as-Salām (ed.), 2003), vol. 1, pp. 482 and at-Tarkāwī, Ibrāhīm Ḥasan: *Juhūd al-tajdid ad-dīnī 'inda sh-Shaykh Yūsuf al-Qaradāwī. Dirāsa taḥlīliya muqarīna* (Cairo 2006, unpublished Master thesis at Dār al-'Ulūm University), pp. 163-184.

⁷ See for more details Skovgaard-Petersen, Jakob: „The Global Mufti“, in: Schaebler, Birgit/Stenberg, Leif (eds.): *Globalization and the Muslim World. Culture, Religion, and Modernity* (Syracuse: Syracuse University Press 2004), pp. 153-165. Al-Qaradāwī's last appearance on the show *ash-Sharī'a wa-l-ḥayāt* was on 25/08/2013. Specific reasons for the discontinuation of this program are not known. However, it can be assumed that this is due to the political context in Egypt: al-Qaradāwī's support of the Muslim Brothers and his opposition against the government of as-Sisi, what he often articulated on al-Jazeera, led to an end of the program after as-Sisi won Saudi Arabia's and the United Arab Emirates' support. See al-Qaradāwī/'Uthmān, 'Uthmān: „*al-Auḍā' fi miṣr wa-sūriya*“ (21.07.2013), <http://www.aljazeera.net/programsarchive?resourcesId=eccb426-19b6-46a9-abc9-155819fb2912&year=2013> (18/04/2015).

⁸ Ana Belén: „Shaykh Yusuf al-Qaradawi: Portrait of a Leading Islamist Cleric“, in: MERIA Journal 12 (2008) 1, pp. 51-68 and Gräf, Bettina: "Yūsuf al-Qaradāwī. State of research", in Gräf, Bettina/Skovgaard-Petersen (eds.): *Global Mufti: The Phenomenon of Yūsuf al-Qaradāwī*. (London: Hurst & Co., 2009), pp. 17-25.

⁹ Al-Qaradāwī, Yūsuf: *al-Fiqh al-islāmī baina al-aṣāla wa-t-tajdid* (Cairo: Maktabat Wahba, 1986). For more details see section 2 of this paper.

¹⁰ In this respect, the most quoted works al-Qaradāwī's are: *al-Ijtihād fi sh-sharī'a al-islāmīya ma'a nazarat taḥlīliya fi al-ijtihād al-mu'aṣir* (Kuwait: Dār al-Qalam, 42011, 1st edition 1985); idem.: *Sharī'at al-islām ṣāliḥa li-t-taḥbiq fikull z'mān wa-makān* (Cairo: Maktabat Wahba, 1997, 1st edition 1973) and idem.: *Fi fiqh al-aqalliyāt al-muslima. Ḥayāt al-muslimin wasaṭ al-mujtama' at al-ukbrā* (Cairo: Dār ash-Shurūq, 12001).

¹¹ 'Abd al-Karīm, 'Abd al-Salām b. Muḥammad: *at-Tajdid wa-l-mujaddidūn fi uṣūl al-fiqh* (Cairo: al-Maktaba al-Islāmīya, 32007, 1st edition 2003), p. 116 and Blāji, 'Abd al-Salām: *Taṭawwur 'ilm uṣūl al-fiqh wa-tajadduduh* (Beirut: Dār Ibn Ḥazm, 12010), p. 8 and p. 116. For al-Shaukānī as renewer see Bokrosha, Ḥalīma: *Ma'ālim tajdid al-manhaj al-fiqhī. Unmudaj al-Shaukānī*. (Doha: Kitāb al-Umma, 2002) and Haykel, Bernard: *Revival and Reform in Islam: The Legacy Of Muhammad al-Shaukānī* (Cambridge: Cambridge University Press, 2003).

¹² For example Voll, Jahn O: „Renewal and Reform in Islamic History: Tajdid and Islah“ in: Esposito, John L. (ed.), *Voices of Resurgent Islam* (Oxford: Oxford University Press, 1983) and Vogt, Kari et al.: *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition* (New York: I.B. Tauris & Co Ltd, 2008).

For example, Mallat offers an overview of the idea of *tajdid* in the thinking of one of the most popular Shia scholar – Muḥammad Bāqir aṣ-Ṣadr. He shows how Sadr's activities played an important role in the Iranian revolution of 1979.¹³ Monica Corrado focuses in her German-published dissertation on al-Azhar institution whereby she touches upon the question of *fiqh* renewal.¹⁴

As for the study of al-Qaraḍāwī, there are numerous Arabic works that deal with his character and works.¹⁵ Due to his visibility in social media, he has received academic attention not only from Arabic, but also from Western researchers. He has become a highly popular scholar and a controversial figure at the same time. Research related to his person and works by Western researchers is only beginning, in comparison to the vast attention given to him in Arabic academic studies. The anthology *Global Mufti: The Phenomenon of Yūsuf al-Qaraḍāwī*, published in 2009, is the first work in English, which presents comprehensive biographical details about his life, thinking and activities.¹⁶ Previous to this study, there were other contributions, for instance, by Gudrun Krämer and Ana Belén Soage who provided a short biography about al-Qaraḍāwī.¹⁷ Besides a wide range of articles giving an overview of his career and works,¹⁸ Wenzel-Teuber discusses the relevance of Islamic ethics to al-Qaraḍāwī's understanding of Islamic political movements and the so-called Islamic solution (*al-ḥall al-islāmī*).¹⁹ Bettina Gräf focuses on al-Qaraḍāwī's media *fatwas* and the popularization of knowledge concerning Islamic law in the 20th century.²⁰ There are also a number of articles in various European languages on al-Qaraḍāwī's views on minority's law in Islam, Islamic political discourse and his media activities.²¹ Even if some of his works have been examined in different ways, his theory of *tajdid al-fiqh* has not yet been sufficiently explored. The present article aims to contribute to this specific theory of al-Qaraḍāwī.

2. Al-Qaraḍāwī's motivation for *tajdid al-fiqh*

From al-Qaraḍāwī's point of view, Islam is synonymous with Shari'a and as such is a universal message to all humanity. Islam's system of law has an absolute and universal validity. It is applicable to every place in every age. Regardless of whether the Muslim is governor or governed, he must abide by the Shari'a.²² Supporting his position, he refers *inter alia* to the Qur'ānic verse (5:49): "And judge, [o Muḥammad], between them by what God has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what God has revealed to you."²³

Al-Qaraḍāwī further argues that Shari'a law has ruled over many centuries and in different locations. A fair investigation of Islamic history will show according to him that whenever it was correctly understood and used, it provided a state of stability and peace in the society generally. Shari'a establishes justice between all human beings and guarantees the interests and welfare of all. It realizes a harmony between rights and duties of the people and between this world and the hereafter.

¹³ Mallat, Chibli: *The Renewal of Islamic Law. Muhammad Baqer as-Sadr, Najaf and the Shi'i International* (Cambridge: University Press, 1993).

¹⁴ Since the focus of this article is on al-Qaraḍāwī's understanding of *tajdid al-fiqh*, the state of research on the renewal question in general should not be executed here. For further reading see for example: Corrado, Monica: *Mit Tradition in die Zukunft: Der tajdid-Diskurs in der Azhar und ihrem Umfeld* (Würzburg: Ergon-Verl., 2011), pp. 38-45, pp. 245-272.

¹⁵ See for example al-Khaṭīb, Mu'tazz: *Yūsuf al-Qaraḍāwī Jaqīb aṣ-ṣaḥwa al-islāmīya: Sira fikriyya taḥlīliyya* (Beirut: Markaz al-Ḥaḍāra li-Tanmīyat al-Fikr al-Islāmī, 2009) and Abū Zaid, Waṣfī' Āshūr: *Ri'āyat al-maqāṣid fī manhaj al-Qaraḍāwī: Ru'ya istiqrā'iyya taḥlīliyya taḥbiyya* (Cairo: Dār al-Baṣā'ir, 2011).

¹⁶ Gräf/Skovgaard-Petersen (eds.): *Global Mufti*.

¹⁷ Krämer, Gudrun: "Drawing Boundaries. Yūsuf al-Qaraḍāwī on Apostasy", in Gudrun Krämer and Sabine Schmidtke (eds.), *Speaking for Islam. Religious Authorities in Muslim Societies* (Leiden: Brill, 2006), pp. 181-214 and Soage: *Shaykh Yusuf al-Qaradawi*, pp. 51-68.

¹⁸ See for example Stowasser, Barbara: "Old Shaykhs, Young Women, and the Internet: The Rewriting of Women's Political Rights in Islam", in: *The Muslim World* 91 (2001), pp. 99-119 and Kursawe, Janet: "Yūsuf Abdallāh al-Qaraḍāwī", *Orient* (44) (2003) 4: pp. 523-530.

¹⁹ Wenzel-Teuber, Wendelin: *Islamische Ethik und moderne Gesellschaft im Islamismus von Yusuf al-Qaradawi* (Hamburg: Dr. Kovač, 2005).

²⁰ Gräf, Bettina: *Medien-Fatwas@Yusuf al-Qaradawi. Die Popularisierung des islamischen Rechts* (Berlin: Klaus Schwarz Verl., 2010).

²¹ See for example Wardeh, Nadia: *Yūsuf al-Qaraḍāwī and the „Islamic awakening“ of the late 20th century*. (Montreal: Institute of Islamic Studies, McGill University 2001), Gräf, Bettina: "Sheikh Yūsuf al-Qaraḍāwī in Cyberspace", *Die Welt des Islam* 47 (2007) 3-4: pp. 403-421, idem.: "IslamOnline.net: Independent, interactive, popular", in: *Arab Media and Society*, (January 2008). For more details see Gräf, Bettina: "Yūsuf al-Qaraḍāwī. State of research", in Gräf/Skovgaard-Petersen (eds.): *Global Mufti*, pp. 17-25.

²² Al-Qaraḍāwī: *Shari'at al-islam*, pp. 11.

²³ Al-Qaraḍāwī: *Madkhal*, p. 250.

Therefore, God equipped this *Shari'a* with a remarkable flexibility so that it can be applied to and confront every situation. By contrast, whenever *Shari'a* was not applied and ignored, Muslim society was humiliated and subjugated by its enemies from both East and West.²⁴ In this regard, al-Qaraḍāwī writes: "[...] the success of this community (*umma*), its strength and dignity depend together on how it abides by the *Shari'a*. It [the *umma*] will be surrounded by evil, if it turns away from it."²⁵

As a comprehensive and infallible system of law, *Shari'a* regulates, according to al-Qaraḍāwī's understanding, all aspects of life, political, social, and economic; it must be considered as a way of life.²⁶ Due to the increasing challenges of Western modernity, particularly spreading with the aid of European colonialism, Muslims are today confronted with new questions. They are faced on the one hand by scientific and technological sophistication of the West, and, on the other hand, with socio-political and economic problems in Muslim societies. Economic, political and social challenges pose significant legal difficulties in different aspects. Science and technology continue to transform life conditions. These require, according to al-Qaraḍāwī, the transformation, and renewal of the Islamic law system, in order to be able to handle such new challenges.²⁷ The following sections are devoted to the main features of his aspired *fiqh* renewal vis-à-vis the above-mentioned challenges.

3. Al-Qaraḍāwī's writings on *tajdid al-fiqh*

Since the 1970s al-Qaraḍāwī has been dealing with the subject of the renewal of *fiqh* and the development of a program to implement *Shari'a* rules in order to regulate all aspect of life. This concern for renewal is prominent in his writings on the "Islamic solution" (*al-ḥall al-islāmī*). In his book, titled "The *Shari'a* of Islam is valid for implementation at any time and in every place" (*Shari'at al-islām ṣāliḥa li-t-taṭbiq fikulli ḡamān wa-makān*), he discusses his intended strategy for the application of *Shari'a*. In this regard, he speaks of two elementary conditions to fulfill this aim: On the one hand the modification of legal opinions based on a contemporary *ijtihād*. On the other hand, he calls to "a return to a holistic Islam" (*al-'aḍa ilā l-islām kullih*); that means the practical enactment of Islamic teachings as a holistic system.²⁸

In addition, he has published 1975 a two-part article entitled *al-Fiqh al-islāmī bayna l-aṣāla wa-t-tajdid* ("Islamic Law between Originality and Renewal"), where he discusses the theoretical foundations of his renewal of *fiqh*.²⁹ These two articles were reprinted with the same title in 1986.³⁰ Al-Qaraḍāwī deals with *tajdid al-fiqh* not only theoretically, but also practically; that means that he also endeavors to orientate legal opinions (*fatāwā*) towards renewal. As such, he has written four-volume multi-thematic *fatwa* collection entitled with *Min hadī l-islām: Fatāwā mu'aṣira* ("From the Right guidance of Islam: Contemporary Legal Opinions"). Here, he treats over 598 Islamic questions, where he attempts at giving suitable answers to modern questions.³¹

In his writings on *tajdid*, al-Qaraḍāwī establishes a strong connection between the *ṣaḥwa* movement and the idea of *tajdid*.³² *Ṣaḥwa* is one of the most important Islamic movements of the twentieth century; it calls for the unity of Muslims under one Islamic state. *Ṣaḥwa* is not restricted to one particular race; rather, it includes all Muslims worldwide regardless of gender, social status, or race. The main concern of *ṣaḥwa* for al-Qaraḍāwī is to bring Islamic principles back to lead and guide the Islamic community. It emphasizes the power of Islamic values as a response to Western and secular trends.

²⁴ Ibid., pp. 15.

²⁵ Ibid., p.38.

²⁶ This conviction of al-Qaraḍāwī has been emphasized several times in his writings. See for example *al-Fiqh al-islāmī*, pp. 10, idem.: *Shari'at al-islām*, pp. 28 and idem.: *Madkhal*, pp. 122.

²⁷ Al-Qaraḍāwī: *Shari'at al-islām*, p. 6, 43, 49 and idem.: *al-Fiqh al-islāmī*, pp. 20.

²⁸ Al-Qaraḍāwī: *Shari'at al-islām*, pp. 76 and 133.

²⁹ Al-Qaraḍāwī, Yūsuf: „*al-Fiqh al-islāmī baina al-aṣāla wa-t-taḡdid*“, in: *Mijallat al-Muslim al-Mu'aṣir*, (3/4) (1975).

³⁰ Al-Qaraḍāwī: *al-Fiqh al-islāmī*.

³¹ Al-Qaraḍāwī, Yūsuf: *Min hadī l-islām: Fatāwā mu'aṣira* (Kuwait: Dār al-Qalam vol. 1, ¹2011, vol. 2, ⁵2005, vol. 3, ³2003, vol. 4, ²2012. (1st edition 1979, 1993, 2001 and 2009).

³² For more details on *ṣaḥwa* from al-Qaraḍāwī's point of view see Wardeh: Yūsuf al-Qaraḍāwī and the „Islamic awakening“, pp. 63.

Accordingly, al-Qaraḍāwī evaluates a return to a holistic Islam as the solution for the ills of Islamic societies.³³ This call is supported with a number of books and treatises relating to the guidance (*tarshīd*) of *ṣaḥwa* such as his "Series of Guidance of the *ṣaḥwa* Movement" (*Silsilat tarshīd aṣ-ṣaḥwa*).³⁴ He sees that the *ṣaḥwa* movement needs guidance from those with proper qualification and knowledge of what is right and what is wrong. By and large, he argues that the Islamic movement emerged "to renew Islam and to return with it to the guidance of life again [...]."³⁵ He further describes his vision of an Islamic *ṣaḥwa* in respect of *tajdīd* as follows:

"It belongs to the characteristics of our desired thinking that it is a renewing thinking. It is not satisfied, when it is just locked in the cage of the old approaches, venerates the inherited matters, and solidifies the known [traditional] methods. It is a thinking which believes on independent interpretation and adopts the renewal. It rejects imitation and dependency. It considers the inflexibility (*jumūd*) as a death. Rather, it accepts renewal in law, education, politics, and all different areas."³⁶

Al-Qaraḍāwī justifies his renewal appeal, on the one hand, with the prophet saying: "God will raise for this community (*umma*) at the beginning of every century someone who will renew (*yujaddid*) its religion for it."³⁷ Even if this narration is not mentioned in the six books containing collections of hadith (*al-kutub al-sittā*), al-Qaraḍāwī considers it as authentic (*ṣaḥīḥ*). He argues that this hadith is mentioned in many other Hadith collections, such as the *Sunan* of Abū Daūd (d. 889), *al-Mustadrak 'alā ṣ-ṣaḥīḥain* of al-Ḥākim (d. 1014), *Ma'rifat as-sunan wa-al āthār* of al-Baihaqī (d. 1066) and *Tarikh Baghdad* of al-Khaṭīb al-Baghādāī (d. 1071) as well.³⁸ Furthermore, he argues repeatedly, on the other hand, that the rulings of the Shari'ā have a universal and comprehensive validity. Since it covers all aspects of life and is valid in every time and at every place, so it should be renewable according to the different circumstances in order to be able to treat new emerging problems.³⁹

4. Al-Qaraḍāwī's theory of *tajdīd al-fiqh*

Al-Qaraḍāwī underlines that the renewal of *fiqh* does not mean the unconditional modification of Shari'ā law in accordance with the requirements of modern life or the blind transfer of foreign elements coming from Western legal systems. He criticizes the type of scholars who, awed by the West, unquestioningly try taking Western legal elements into the system of Islamic law.⁴⁰ His desired renewal should consider new life conditions, on the one hand, and the foundations and basic principles of Islamic legal system as well as the juristic legacy – what he calls *aṣāla* ("authenticity") –, on the other hand. He deems the legacy of the past as an immense wealth of jurisprudence that illuminates the way for the contemporary scholars, so they can build a legal framework to treat the problems of this age, while taking into account the change of time, place, and human conditions. There should be no blind following of the juristic legacy, but with an eye opened for contemporary needs. Therefore, he criticizes the second type of jurists who follow blindly a certain legal school and accept its obsolete precepts on different subjects.⁴¹ The renewal which al-Qaraḍāwī calls for must be carried out from within Islam, using its legal instruments and adopting new elements at the same time. In this regards he writes:

³³ Al-Qaraḍāwī, Yūsuf: *Aulawiyāt al-ḥaraka al-islāmīya fī l-marḥala al-qadīma* (Cairo: Maktabat Wahba, 1990), p. 2 and idem.: *Aulawiyāt al-'amal al-islāmī fī ḡill al-mutaḡbaḥīrāt ad-daulīya ar-rābīna* (Cairo: Maktabat Wahba, 2011), p. 5.

³⁴ See for example al-Qaraḍāwī: *aṣ-ṣaḥwa al-islāmīya wa-bumūm al-waṭan al-'arabi wa-l-islāmī* (Cairo: Maktabat Wahba, 1997, 1st edition 1988), idem.: *Min ajli ṣaḥwa rāshīda tujaddīd ad-dīn wa-tanḥaḍ bi-d-dunīya* (Cairo: Dār ash-Surūq, 2001, 1st edition 1988) and idem.: *Bayyināt al-ḥall al-islāmī wa-shubūḥāt al-'almanīyīn wa-l-mutaḡbarribīn* (Cairo: Maktabat Wahba, 2003, 1st edition 1987).

³⁵ Al-Qaraḍāwī: *Aulawiyāt al-ḥarka*, p. 4.

³⁶ Ibid., p. 24.

³⁷ as-Sijistānī, Abū Dāwūd: *Sunan abi Dāwūd*. Al-Arna'ūtī, Shu'aib (ed.) (Damaskus: Dār ar-Risāla al-'Ālamīya, 2009), vol. 6, p. 349.

³⁸ Al-Qaraḍāwī: *Tajdīd ad-dīn al-laḍī nanshiduh* (Cairo: Maktabat Wahab, 2011), p. 4.

³⁹ Al-Qaraḍāwī: *al-Ijtihād*, p. 6f and 124 and idem.: *Sharī'at al-islām*, pp. 76f.

⁴⁰ Al-Qaraḍāwī: *al-Ijtihād*, p. 232.

⁴¹ Ibid., p. 230.

"The intended renewal is not the absolute unconditional adjustment of the Islamic law according to Western, positive laws (*qawānīn waḍ'īya*) such as the Latin, Germanic, capitalist or socialist. This has nothing to do with the renewal. This is rather a distortion and falsification [of the Islamic law]. The true renewal is the development of the Islamic law from within and with its own methods, whereby its basic properties and its exceptional nature must continue to exist."⁴²

In order to perform his intended renewal, al-Qaraḍāwī proposes three strategies: 1) the renewal of the content of *fiqh* (*tajdīd al-maḍmūn wa-l-muḥtawā*), 2) the renewal of its framework and form (*tajdīd al-īṭār wa-sh-shakl*) and 3) the practical application of its rules (*ḥayāt al-fiqh bi-ta-ṭbīqih*).⁴³ The next three sections present these three aspects with particular emphasis on the first aspect.

a. Content-related renewal

Al-Qaraḍāwī understands the renewal of the content of *fiqh* to be the modification of the traditional legal opinions according to the demands of the modern age, paying attention to the contemporary treatment of newly emerging issues within the framework of Shari'a at the same time. This means that the first and most important condition for a successful reestablishment of the Shari'a is independent reasoning for the contemporary age (*ijtibād mu'aṣir*). Therefore, he dedicates himself to the formulation of a corresponding *ijtibād*.⁴⁴ According to him, *ijtibād* is the essential medium of renewal that enables *fiqh* to be used and integrated into the daily life of Muslims.⁴⁵ In his treatise on *ijtibād*, he consequently distinguishes between two models of *ijtibād*: first, an appraising selective *ijtibād* (*tarjihī intiqā'ī*), which should maintain the relationship with the traditional heritage of Islamic law; and second, a productive creative *ijtibād* (*ibda'ī inshā'ī*), entrusted with the task of finding adequate solutions for new emerging questions.⁴⁶ What follows is an overview of these two types of *ijtibād*.

Selective *ijtibād*

In the context of the first type, *ijtibād tarjihī intiqā'ī*, jurists or muftis do not undertake a new *ijtibād* or give a new opinion. They review the Islamic juristic legacy and choose from it the opinion that is suitable for contemporary life conditions. That does not mean, according to al-Qaraḍāwī, that jurists should take a random choice or let themselves be swayed by public opinion. Rather, they must not select or pick whatever is easiest, without regard to its correctness or the strength of its evidence. Not all opinions of past jurists are of the same quality or could be compatible with present life circumstances. Their decisions may be given according to a specific situation or location or may be the result of the use of analogies, consideration of public welfare or local customs. Traditional views as well as legal theory passed down by earlier scholars should be re-examined in a very critical light based on the Qur'an and Sunna.⁴⁷

Selecting from the legal heritage without examining their evidences is in al-Qaraḍāwī's point of view a prohibited *talfīq* ("unexamined selection of rules from material of various schools of law"). The selection he strives after should be based on the re-examination of the evidences on which the quoted opinions are based. Al-Qaraḍāwī calls this process *ijtibād tarjihī* ("selective reasoning") or *ijtibād juz'ī* ("partial reasoning").⁴⁸ However, he does not explain how and to what extent the re-examination should take place. Al-Qaraḍāwī underlines that the *mujtahids* who exercise *ijtibād tarjihī* should not only pick from the inherited statements and views of the four known Sunni legal schools – Ḥanafīya, Mālikīya, Shāfi'īya, and Ḥanbalīya. They should consider all other Islamic schools of law such as Ja'farīya, Zaidīya, Ibādīya and Zāhirīya.

⁴² Al-Qaraḍāwī: *al-Fiqh al-islāmī*, p. 28.

⁴³ *Ibid.*, pp. 30 and pp. 75.

⁴⁴ *Ibid.*, p. 41.

⁴⁵ *Ibid.*, pp. 39-64

⁴⁶ Al-Qaraḍāwī: *Shari'at al-islam*, p. 78 and *idem.*: *al-Ijtibād*, p. 142.

⁴⁷ Al-Qaraḍāwī: *Taisir al-fiqh li-l-muslim al-mu'aṣir. Nahwa fiqh muyassar mu'aṣir. Fi usūl al-fiqh al-muyassar. Fiqh al-'ilm* (Cairo: Maktabat Wahab, 2008, 1st edition 1999), pp. 30, *idem.*: *Fi fiqh al-aqalliyāt*, pp. 57 and *idem.*: *Bayināt al-ḥall al-islāmī*, pp. 113.

⁴⁸ Al-Qaraḍāwī: *Taisir al-fiqh*, p. 32.

In addition, they should pay attention to the legal opinions of previous scholars and jurists as well, especially if they had made important contributions in the field of Islamic law; for example, Sufyān al-Thaurī (d. 778), al-Laith b. Sa'd (d. 845) and aṭ-Ṭabarī (d. 923).⁴⁹ *Ijtihād trajihī* should by and large be based on all the traditions of Islamic jurisprudence and follow the strongest evidence that is compatible with the objectives of the Shari'a (*maqāṣid ash-shari'a*) and public interest (*maṣlahah*), with particular attention to new life conditions. Al-Qaraḍāwī's strategy in this regards what he calls *taḥarrur madbbahī* ("emancipation from belonging to a specific school of law") of course has precedence in the writings of medieval scholars such as Ibn Rushd (d. 1198) and al-Ghazālī.⁵⁰

Al-Qaraḍāwī justifies this independent recourse to all traditional legal opinions with the remark that it is neither in the interest of the Shari'a nor of Muslims to stick rigidly to a particular view or school of law (*madhhab* pl. *madhāhib*). The schools of law had given different rulings on the same issue: While one of the *madhāhib* could have given a simple answer, the other may have given to the same question a difficult practicable decision. A blind belonging to one *madhhab* causes only difficulties and hardships which could and should be avoided. The Qur'ān says (2:185): "God desires ease for you, and He does not desire hardship for you [...]"⁵¹ The emancipation from an intellectual binding to a specific school of law enables the choice of an appropriate and easily applicable fatwa from the results of all schools.⁵² The classical scholars reversed many of their own opinions themselves because of a change in conditions, a change in time, a change of custom, or a change of situation. This is why accounts of their sayings varied and sometimes seem to contradict one another. Moreover, al-Qaraḍāwī argues, all schools of law never required the belonging to a specific legal authority of any one of them. Rather, they had accepted in some cases other opinions and revised their own opinions, if the other opinion seemed better justified.⁵³

Accordingly, al-Qaraḍāwī emphasizes that he only means by this approach the removal of the boundaries between the different schools of law and the emancipation of any rigid ideological obligation to one of them. By no means should it be understood as a call for relinquishment or giving up the juristic legacy in order to make a new beginning.⁵⁴ He ultimately stressed the need to knowledge of earlier generations. Today's scholars should learn from and take note of the ideas and legal theories of the companions and the early scholars. In this way, they will be in a position to apply this knowledge in accordance with their current problems. Their understanding and interpretation should consider the new issues with which Muslims are confronted to produce suitable rulings on them.⁵⁵ In the case of being confronted with new emerging issues, they have to exercise *ijtihād inshā'ī* which is outlined below.

Creative *ijtihād*

Al-Qaraḍāwī tries to point out the flexibility and the universality of the Shari'a as based on *ibdā'ī inshā'ī*, the second type of *ijtihād*. This type of *ijtihād* is utilized to find suitable answers for newly emerging issues, which have not been regulated previously in the tradition. Al-Qaraḍāwī argues that many things have changed dramatically in the contemporary age. These changes have led to the emergence of new questions and challenges for Muslims as well as for jurists. The only way to deal with the changes and challenges is, in his view, through this new *ijtihād*. It is an obligation (*fariḍa*) of the community to have a sufficient number of qualified scholars who can deal with this concern.⁵⁶ The *ijtihād* that al-Qaraḍāwī strives after should take place within a committee of experts that includes highly competent jurists who can exercise collective reasoning (*ijtihād jamā'ī*). Al-Qaraḍāwī believes that this would foster a greater spirit of unity and consensus among Muslims.

⁴⁹ Al-Qaraḍāwī: *Fī fiqh al-aqalliyāt*, pp. 57f. and idem.: *Fatāwā mu'asira*, vol. 2, pp. 111.

⁵⁰ IbnRushd, Abū al-Walīd Muḥammad IbnAḥmad: *Sharḥ bidāyat al-mujtahidwa-nibāyat al-muqtaṣid*. al-'Abādī, Abdallāh (ed.) (Cairo: Dār as-Salām, 1995), passim and Saïd, Yazeed: Ghazālī's Political Context. (London: Routledge, 2013), p. 73.

⁵¹ Al-Qaraḍāwī: *Taisīr al-fiqh*, p. 14.

⁵² Ibid., pp. 30 and idem.: *Fī fiqh al-aqalliyāt*, pp. 57.

⁵³ Al-Qaraḍāwī: *Fatāwā mu'asira*, vol. 2, p. 112.

⁵⁴ Al-Qaraḍāwī: *Taisīr al-fiqh*, p. 13.

⁵⁵ Al-Qaraḍāwī: *al-Ijtihād*, pp. 54.

⁵⁶ Ibid., pp. 95 and p. 114.

He further argues that there is a great need nowadays for unity on issues that could be covered more effectively through collective *ijtihad*.⁵⁷ The proposed collective *ijtihad* should ideally take place in an academy which is completely independent of any influence, especially of political governing institutions.⁵⁸ Furthermore, the expertise of various competent experts and specialists in different disciplines should be taken into consideration. For instance, the opinion of an economic expert should be considered when exercising *ijtihad* relating to economic questions in order to offer adequate solutions.⁵⁹

Al-Qaraḍāwī justifies the necessity of this new *ijtihad* by referring to the universal validity of the Shari‘a. A blind compliance with the traditional juristic opinions and an abandonment of independent reasoning may cast the universal and comprehensive validity of Shari‘a law in doubt. He even explicitly warns against a general disappearance of the rulings of Shari‘a from the daily life of Muslims, if jurists continue to blindly follow the traditional statements of other authorities.⁶⁰ He argues that the inherited legal opinions have been time-specific and location-dependent. Nowadays, there are a lot of new questions that occurred through modern life. There is no way for Muslims to meet these challenges except by exercising their independent reasoning to discover new solutions.⁶¹ As a main characteristic of this aspired *ijtihad*, al-Qaraḍāwī repeatedly mentions the recourse to the Qur’an and Sunna, the consideration of *maqāṣid ash-shari‘a* (“objectives of law”), *maṣlaḥa* (“public interests”) and the principle of *taisir* (“facility”).⁶² From his point of view, the Shari‘a rules guide people toward achieving benefits and averting damages. Their main goal is to protect and maintain the interests of human beings (*maṣlaḥat al-khalq*) in this world and the next. Based on this conviction, he holds the consideration of public interest as the most effective method of handling non-textual issues. It plays an essential role in his theory of renewal in general and in finding new regulations for new questions uncovered by any primary sources in particular. In his point of view, *maṣlaḥa* enables jurists to give time-specific or location-dependent legal opinions that take different life situations into account, since the interests of the people could differ from place to place and from time to time.⁶³

This juristic reasoning has concrete boundaries. Al-Qaraḍāwī differentiates between two types of Shari‘a provisions: The first category includes fixed and unalterable Shari‘a rules. It represents a series of doctrines and legal issues which are in al-Qaraḍāwī’s view not modifiable. They are context-independent valid in all time and at every place. Al-Qaraḍāwī divides this category into three aspects: “doctrines of belief” (*‘aqida*), “worship rules” (*‘ibadat*) and “moral obligations” (*akblaq*). The first, *‘aqida*, implies the foundational doctrines of the faith (*arakan al-iman*) such as the belief in God, His angels, His prophets and His holy scriptures. The second, *‘ibadat*, comprises the five pillars of Islam (*arkan al-islam*) such as prayer, fasting, alms-giving and the pilgrimage. The *akblaq*-genre encompasses moral values such as purity, honesty, trustworthiness, chastity, patience and justice, or prohibitions such as homicide, theft, adultery, backbiting and slander etc.⁶⁴

Furthermore, al-Qaraḍāwī adds to this category of unchangeable basic regulations another legal issue and considers it as immutable and eternally valid as well. This sub-category includes the regulation of marriage, divorce, inheritance and criminal law (*hudud*).⁶⁵ All of these mentioned constitute from al-Qaraḍāwī’s point of view the principles of Islam, which must remain fixed and immutable, independent of context. No human authority may change any one of them.⁶⁶ His decisive criteria of this – so-called “closed zone” (*minṭaqa mughlaqa*) or “the definitive” (*al-qaṭ‘ ḡyūṭ*) – are the evidences given in the Qur’ān and/or verified by the Sunna.

⁵⁷ Al-Qaraḍāwī: *al-Ijtihad*, pp. 126 and idem.: *al-Fiqh al-islami*, pp. 41

⁵⁸ Al-Qaraḍāwī: *Shari‘at al-islam*, pp. 132.

⁵⁹ Al-Qaraḍāwī: *Fī fiqh al-aqalliyāt*, p. 45 and idem.: *al-Fiqh al-islami*, pp. 42.

⁶⁰ Al-Qaraḍāwī: *al-Fiqh al-islami*, p. 57.

⁶¹ Al-Qaraḍāwī: *al-Ijtihad*, pp. 96.

⁶² Al-Qaraḍāwī: *Taisir al-fiqh*, pp. 33 and idem.: *al-Ijtihad*, pp. 43.

⁶³ Al-Qaraḍāwī: *Madkhal*, pp. 53 and idem.: *al-Fiqh al-islami*, pp. 14

⁶⁴ Al-Qaraḍāwī: *Tajdid ad-din*, p. 26.

⁶⁵ Al-Qaraḍāwī: *Min ajli ṣaḥwa rashida*, pp. 44.

⁶⁶ Al-Qaraḍāwī: *Tajdid ad-din*, p. 26 and idem.: *Min ajli ṣaḥwa rashida*, p. 28.

They must be *qaṭ'ī th-thubūt* and *qaṭ'ī d-dalāla*. This means both of their authenticity as well as meaning have to be certain clear and without any shadow of doubt.⁶⁷ Such rock-solid foundations and principles ensure in al-Qaraḍāwī's understanding the survival of the Muslim community (*umma*). Those aspects should not only preserve the internal social stability of the *umma* but also protect it from becoming fragmented into smaller potentially rival groups and from assimilation into alien societies.⁶⁸ He writes: "Among the most dangerous temptations (*a'zam al-fitan*) is the replacement of the definitive law regulations to presumptive [...]. There is a great danger if we carelessly follow the destroyers, who make all questions of religion – even the fundamental principles and the imperatives – to an object of an investigation and discussion [...]."⁶⁹

The second category includes variable norms, which are subject to re-interpretation according to life changes. Al-Qaraḍāwī refers to this area as *zannīyāt*, because their Qur'anic or prophetic references are presumptive (*zannī*) in term of their authenticity (*ath-thubūt*) and/or their meaning (*ad-dalāla*).⁷⁰ In this regard, he emphasizes that the scope of the *zannīyāt* is larger than *qaṭ'īyāt*, since the most evidences from the Qur'ān and the sayings of the prophet are non-definite or indecisive (*zannī*); this means they are open for *ijtihād*. The interpretation and understanding of these evidences is the task of the professional scholars. It is their duty to deduce from these references adequate solutions in compliance with contemporary life circumstances.⁷¹

It should be noted at this point that this differentiation between *thawābit* and *mutaghayyirāt* has medieval precedents such as the work of Ibn Qayyim al-Jawzīya (d. 1350). He speaks in his book *Ighāthat al-lahfān* of two categories of Sharī'a norms: those which are immutable and eternally valid and those which are flexible and subject to interpretation depending on location and time.⁷² Whilst al-Qaraḍāwī cites him on other topics such as *maṣlahā* and the changeability of legal opinions (*taghayyur al-fatwā*),⁷³ he does not refer to him when talking about these two categories. In order to make *ijtihād* fruitful in his theory of *tajdid al-fiqh*, al-Qaraḍāwī requires the renewal of *uṣūl al-fiqh* ("methodology of the Islamic law") as well. The following section presents his point of view on this issue.

Tajdid uṣūl al-fiqh

At the beginning of his discussion on *tajdid al-uṣūl*, al-Qaraḍāwī points out that the sources and principles of the new desired *fiqh* do not distinguish between the general legal sources of law. However, they are characterized by their profound renewal-oriented views (*waqafāt mujaddida*), which enable the consideration of contemporary needs in the framework of Islamic law, far away from a blind devotion to the traditional legal heritage or the uncritical adoption or a fascination of all new laws. *Uṣūl al-fiqh* includes according to his understanding all the sources, methods and principles upon which Islamic jurisprudence is based.⁷⁴

He lists the four main sources that by and large are recognized by the four Sunni schools of law namely the Qur'ān, verified Sunna, consensus (*ijmā'*) and analogical reason (*qiyās*). In matters that are not clearly spelled out or not covered in the first three sources, Muslim jurists developed other methods. In this context, al-Qaraḍāwī mentions the following methods – he calls them ways (*turuq*) – to derive interpretative rules: analogy, juristic preference (*istiḥsān*), unregulated interest of public welfare (*maṣlahā mursala*), consideration of custom (*'urf*), pre-Qur'anic scriptural injunctions (*shar' man qablana*), and the legal opinions of the Companions of the Prophet (*qaul aṣ-ṣaḥābi*).

⁶⁷ Al-Qaraḍāwī: *Sharī'at al-islam*, pp. 105.

⁶⁸ "Imād al-wiḥda al-tiqādiyya wa-l-fikriyya wa-l-'amaliyya li-l-umma." Al-Qaraḍāwī: *al-Ijtihād*, p. 91.

⁶⁹ Al-Qaraḍāwī: *Sharī'at al-islam*, p. 106.

⁷⁰ Ibid., p. 108.

⁷¹ Al-Qaraḍāwī: *Tajdid ad-dīn*, pp. 26, and idem.: *Sharī'at al-islam*, pp. 111.

⁷² For more details see Ibn Qayyim al-Jawzīya, Abī 'Abdallāh Muḥammad b. Abī Bakr b. Aiyūb: *Ighāthat al-lahfān fī maṣā'id ash-shai'an*. Shams, Muḥammad 'Azīz (ed.). (Jidda: Dār 'Ālam al-Fawā'id, 1432/2011), vol. 1, pp. 570.

⁷³ See for example Ibn Qayyim: *I'lām al-muwaqqi'im 'an rabb al-'ālamīn*. Āl Sulaimān, Abū 'Ubaida Mashūr b. Ḥasan (ed.). (Dammam: Dār b. Al-Jauzī, 1423/2002), vol. 6, p. 192 and al-Qaraḍāwī: *Mujibat taghayyur al-fatwā fī 'aṣrīnā* (Cairo: Dār ash-Shurūq, 32011, 1st edition 2008).

⁷⁴ Al-Qaraḍāwī: *Taisir al-fiqh*, p. 41.

Subsequently, he notes that jurists do not always agree about the validity of the results obtained by these methods.⁷⁵ In respect of the question of *tajdid uşul al-fiqh*, he discusses it very briefly in his treatise on *ijtibād*. From his perspective *uşul al-fiqh* is "a purely Islamic science" (*'ilm islāmī şirf*), which has been established by Muslim scholars and which should be renewed exclusively by Muslims as well. Not only the science of *uşul* is opened for renewal, but also all Islamic disciplines. He articulates this claim as follows: "All Islamic sciences are renewable: *fiqh* and its fundamentals, Qur'ān exegesis, theology and mysticism [...]."⁷⁶ Regarding his position to *tajdid al-uşul*, he differentiates between two positions: Scholars such as al-Baqillānī (d. 1013) support the renewal of *uşul*, others such as al-Shāṭibī do not. Al-Qaraḍāwī refutes the claim of non-amenability of *tajdid* to *uşul* and argues that making *ijtibād* fruitful requires the renewal of its methods and principles. It is essential, especially when the existing body of *uşul* does not yield the desired results. Furthermore, *uşul al-fiqh* comprise human constructs founded and developed through different jurists.⁷⁷ He, furthermore, holds the rejection of renewability of *uşul* as unhistorical: As mentioned above, the Sunna advocates the idea of *tajdid*. There are also a number of Muslim scholars, such as Imam al-Shāfi'ī, al-Ghazālī, al-Shaukānī etc. who were regarded as *mujaddid* due to their renewal activities in the field of *uşul*.⁷⁸

Even if al-Qaraḍāwī supports the idea of *tajdid uşul al-fiqh*, he limits its possibility to the *zanniyāt*. He talks of two types of *uşul* in terms of *tajdid*: (1) definitive principles (*al-uşul al-qat'iyā*), which are not renewable such as the Qur'ān and Sunna as well as the basic maxims derived from it such as *al-Umūr bi-maqāṣidihā* ("Matters shall be judged by their objectives") and *Lā ḍarar wa-lā ḍirār* ("No injury or harm shall be inflicted or reciprocated"). (2) Renewable *uşul* that are *ijtibād*-accessible, called "presumptive origins" (*al-uşul az-zanniyā*). This category includes for al-Qaraḍāwī consensus, analogy, preference, unregulated interests, reports of the Companions, norms of those before us.⁷⁹ These secondary methods are derived from the activities of previous legal scholars and represent the results of their efforts. Not all of these methods are based on text proofs but *maşlahā* or *'urf* etc. where there were no explicit primary texts of the Qur'ān and Sunna.⁸⁰ Since the focus of this article is on al-Qaraḍāwī's renewal theory of *fiqh*, the question whether he practically renews or adds new elements in these above-mentioned *uşul zanniyā* cannot to be answered here.⁸¹ At this point, his other strategies of *tajdid al-fiqh* should be briefly presented.

b. The formal renewal

Formal renewal of *fiqh* for al-Qaraḍāwī means that Shari'a rulings should be drafted into orderly, numbered and organized codes. This would make Islamic law more accessible for use; not only for the judges and lawyers but also for the citizens. He argues that written provisions help to define the relationship between the rulers and the ruled, restrict government power and protect civil liberties.⁸² He explicitly speaks of *taqnin al-fiqh* ("the codification of Islamic law"). As a condition for the *taqnin*, he mentions "the theorization of Islamic law" (*tanẓir al-fiqh*). By this he means that the particular judgments of different issues should be systematized in *fiqh* books, in the form of "general comprehensive theories" (*naẓariyāt kullīya 'amma*).

These then form the basis from which the rulings and answers for new questions can be derived. As a procedure, he proposes that this should be performed as part of a comparative process between the various traditions of jurisprudence. The theorization should either stick to a specific school of law, nor to a single opinion. It should include the whole juristic legacy. He holds the different opinions in the Islamic traditions as a wealth which bears witness to the flexibility of Shari'a. As mentioned above, his appeal to so-called *at-taḥarrur al-madhbabī* should not be restricted to the four orthodox legal schools.

⁷⁵ Al-Qaraḍāwī: *Madkhal*, pp. 35 and idem.: *'Awāmil as-sa'a wa-l-murūna fi sh-shari'a al-islāmīya* (Cairo: Dār as-Şaḥwa, 1992), pp. 13.

⁷⁶ Al-Qaraḍāwī: *Fatāwā mu'aşira*, vol. 2, p. 142 and idem.: "*Tajdid uşul al-fiqh baina l-ithbāt wa-l-inkār*" (12.01.2015), <http://www.qaradawi.net/new/all-fatawa/6346-2012-12-11-05-53-27> (20.04.2015).

⁷⁷ Al-Qaraḍāwī: *al-Ijtibād*, p. 90.

⁷⁸ Ibid., p. 90, idem.: *Madkhal*, pp. 22, pp. 153. and idem.: "*al-Ijtibād*" (21/07/2001), <http://qaradawi.net/new/Articles-623#> (29/01/ 2016).

⁷⁹ Al-Qaraḍāwī: *Taisir al-fiqh*, pp. 41, idem.: *al-Ijtibād*, pp. 88 and idem.: *al-Fiqh al-islāmī*, pp. 42.

⁸⁰ Al-Qaraḍāwī: *al-Ijtibād*, p. 90.

⁸¹ See for more details El-Wereny: *Mit Tradition*.

⁸² Al-Qaraḍāwī: *al-Fiqh al-islāmī*, p. 33 and 49.

The theorization should be based on all legal opinions and rulings of the Companions, their followers and former jurists. All legal traditions are according to al-Qaraḏāwī equal in their relation to the Shari‘a, so long as they do not contradict the Qur’ān and Sunna.

Additionally, Islamic law should be compared within the realms of theorization with other positive law systems (*qawānīn waḏ‘īya*) such as Roman, German or French.⁸³ This comparison is to highlight the flexibility, justice and stability of Islamic law in relation to other legal systems.⁸⁴ Further main features of this formal renewal include general measures such as the publication of a contemporary easily understandable encyclopedia of Islamic law (*mansū‘a fiqhīya mu‘aṣira*), the edition of juristic books (*al-ikbrāğ al-‘ilmi li-kutub al-fiqh*) and manuscripts (*nashr al-makhṛūṭat al-fiqhīya*) as well.⁸⁵

c. The practical implementation of Shari‘a

Based on the conviction that the Shari‘a rules are applicable to all times and places, al-Qaraḏāwī represents the daily practice-oriented implementation of the Shari‘a rulings as the last measure of his desired renewal. Since Shari‘a sets limits and conditions that must be observed in each dealing and defines practices that must be avoided, everyday life according to its rules bring consequently new issues and challenges. Dealing with these questions would promote the renewal of *fiqh*, because new questions require new answers.⁸⁶ Al-Qaraḏāwī considers the practical enactment of Shari‘a rules as the solution (*al-ḥall*) to solve the current problems of Muslims: The progress of Muslims depend – politically, socially, economically as well as intellectually – alone on the correct and full implementation of Shari‘a rules. It has always been a source of guidance, a milestone on the road to betterment, and a deterrent to corruption and tyranny. Shari‘a offers genuine solutions for problems such as social unrest, political instabilities and poverty etc.⁸⁷

Since the current life situation and the state systems of Islamic countries do not allow a complete and consistent application of Shari‘a law, this process of an entire implementation of Shari‘a rules in all aspects of life should take place gradually.⁸⁸ As a first step on this way, al-Qaraḏāwī proposes that all fundamental problems of the society should be firstly solved:

“The Islamic solution for which we plead [...] emphasizes that the problems of the society must be firstly solved before the application of Shari‘a law. Especially problems of the weak and crushed layers, problems of unemployment, poverty, ignorance, disease, marriage issues, housing, price increase, disasters and the enormous disparity between the miserable poverty of some on the one hand and the monstrous wealth of others on the other hand.”⁸⁹

In this regard, al-Qaraḏāwī points out that the targeted application of Shari‘a law should not be reduced to the *ḥudūd* punishments. Shari‘a covers all aspects of life: It encompasses not only topics such as crime, politics, economics, marriage contracts and trade regulations. It covers also personal matters such as faith, worship, thoughts, feelings, morals and values of the Muslim. Criminal law remains just a secondary part.⁹⁰

An extensive and comprehensive implementation of Shari‘a rules cannot happen overnight, but must be carried out gradually. Al-Qaraḏāwī understands gradualness (*at-tadarruj*) as a step-by-step method to induct the regulations of Shari‘a in the daily life of people, just as God had created the world gradually in several steps and not in an instant. He also had not imposed all religious duties and prohibitions at once but gradually and with many steps. Similarly, jurists should proceed slowly and take the weakness of the people into account.

⁸³ Ibid., pp. 32.

⁸⁴ Ibid., pp. 32.

⁸⁵ Ibid., p. 66.

⁸⁶ Al-Qaraḏāwī: *al-Fiqh al-islāmī*, pp. 75.

⁸⁷ Al-Qaraḏāwī: *Bayyināt al-ḥall*, pp. 5 and idem.: *Madkhal*, pp. 239.

⁸⁸ Al-Qaraḏāwī: *al-Fiqh al-islāmī*, pp. 75.

⁸⁹ Al-Qaraḏāwī: *Bayyināt al-ḥall*, p. 185.

⁹⁰ Al-Qaraḏāwī: *Madkhal*, pp. 10 and pp. 247.

Rapid and radical changes through sudden implementation of the Shari'a rulings could frighten the people or cause their abandonment of Islam.⁹¹ Thus, al-Qaraḍāwī strives for a comprehensive enactment of Shari'a, but shifts it to an indefinite time and reduces it to the individuals, until the main problems of the society are solved.

5. Conclusion

Al-Qaraḍāwī's strategy to renew Islamic law includes three steps: First, the modification of traditional juristic legacy and the renewal of the content, which has been the focus of this article; second, the renewal of the form of *fiqh* based on the theorization and the codification of the legal judgments; and third, the implementation of Shari'a rules in daily life. His main concern for renewal in general is the practical application of Shari'a law in the daily life of Muslims. He emphasizes that the renewal of *fiqh* does not mean that the juristic legacy should be thrown overboard and a completely new start should take place. Rather, the desired renewal should maintain the foundations of the Islamic *fiqh* system and all traditional judgments. In this regard, he tries to create continuity between the tradition which he calls (*aṣāla*) and modernity (*mu'āṣara*). This is based on his understanding of the heritage of Islamic law as a historical subject of divine origin, which possesses a timeless continuity. He considers juristic traditions as adaptable to the different environments and requirements according to the political, economic or social situation. Accordingly, the juristic legacy of Islamic law does not only belong to the past, but also to the present, and the future.

Al-Qaraḍāwī's required renewal should concurrently consider all new issues emerging with modern life and enable the adoption of new elements to cover all new questions. Therefore, he suggests two models of *ijtihad*: the first one is *intiqa' i tarīḥi* that preserves the connection to the Islamic tradition. For *tajdid* to effectively take off, he proposes the observance of the juristic legacy with the view of choosing what is suitable for contemporary life from that legacy. This should not occur arbitrary by patching up of the different views (*talfiq*) but should be undertaken by making an examination of the used evidences and making a choice from among the existing views on disputed issues. The choice should be based on *taisir*, *maqāṣid ash-shari'a* and the consideration of different life circumstances.

The second *ijtihad*-model that so-called *insbā' i ibdā' i* concerns the creation of new solutions to new challenges and problems. Since the Shari'a from al-Qaraḍāwī's point of view is eternally valid, independent of place and time, it considers the new emerging circumstances and allows the implementation of changes in its rules in order to preserve its originality and at the same time have a durable continuity. In this correlation, however, al-Qaraḍāwī draws clear boundaries between permanent aspects of the Shari'a, (*thawābit*), and changeable Shari'a rules (*mutaghayyirāt*). He consciously or unconsciously transfers the concept of medieval jurists such as Ibn Qayyim's and presents it in today's world as valid for ever, without paying any attention to new life's circumstances. Due to this demarcation, his answers to numerous controversial issues such the *hudūd* punishments and inheritance issues between men and women belong in his view to the closed zone which is nonrenewable. Consequently, his theory of renewal still conflicts with values of modernity such as human and equal rights. Accordingly, al-Qaraḍāwī remains eclectic and conservative in this approach of *tajdid al-fiqh*, particularly when compared to other theories of contemporary scholars such as Abdullahi An-Na'im and Wael Hallaq.⁹²

⁹¹ Al-Qaraḍāwī: *Fi fiqh al-aqalliyat*, pp. 53 and idem.: *Madkhal*, pp. 248.

⁹² With reference to his teacher Mahmoud M. Taha (d. 1985), An-Na'im argues for a clear distinction between the Qur'an verses revealed during the Mecca period (610–622) and those included in the Medina phase (622–632). While earlier revelations represented the universal message of Islam, the latter ones should be considered as specific responses to historical context of human societies at this time. For more details see An-Na'im, Abdullahi: *Islam and the Secular State: Negotiating the Future of Shari'a*. (Cambridge: Harvard University Press, 2008), pp. 134 and idem.: *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law*. (Syracuse: Syracuse University Press, 1990). Wael Hallaq considers the re-establishment of an "Islamic state" as al-Qaraḍāwī wishes as impossible and inherently self-contradictory. He argues that modern state and Islamic governance engender contradictory subjectivities in their respective subjects. For more details see Hallaq, Wael B.: *The Impossible State: Islam, Politics, and Modernity's Moral Predicament*. (New York: Columbia University Press 2013), pp. 98.