

13 Reflections on the Development of the Discourse of *Fiqh* for Minorities and Some of the Challenges it Faces

Abdullah Saeed

This chapter examines the context of and debate surrounding *fiqh al-'aqalliyyat* (*fiqh* for Muslim minorities, hereafter named '*fiqh* for minorities'). After defining and outlining the concept of *fiqh* for minorities, the concept is then examined in relation to its historical development in classical Islamic law. As there is a substantial amount of debate about *fiqh* for minorities, some of its assumed benefits are examined, along with the objections that various critics have made to it. Finally, some observations are made with regard to the nature of the challenges it faces today.

Defining *Fiqh* for Minorities

Fiqh for minorities has been defined as 'a specific discipline which takes into account the relationship between the religious ruling and the conditions of the community and the location where it exists.'¹ This *fiqh* consists of a contextual application of the rules and principles of the primary sources of Islamic law, and is rooted in a recognition and appreciation of the specific conditions facing Muslims who are living as minorities.² In particular, this approach appears to reinterpret those elements of classical Islamic law (*fiqh*) that, owing to historical changes in Muslims' circumstances, have become largely obsolete.³

Fiqh for minorities aims to address the problems that arise every day for millions of Muslims living in the West or in similar minority situations, particularly where conflict arises between the culture and values of the host society and the rules and the framework provided by classical Islamic law.⁴ Shaykh Abdullah bin Bayyah, vice-president of the Qatar-based International Union of Muslim Scholars and a proponent of *fiqh* for minorities, has indicated that in situations that are defined as being of 'a problematic nature' or involving 'hardship,' *fiqh* for minorities outlines the minimum that is expected of a Muslim liv-

ing in minority.⁵ According to another opinion, *fiqh* for minorities is shaped by the broader aims of shari'a (*maqasid al-shari'a*), in the sense that shari'a 'permits all that is good and wholesome and forbids what is harmful,' and hence is 'aimed at making life easier and more convenient.'⁶ In terms of its scope, *fiqh* for minorities addresses personal law related issues as well as matters of ritual and worship (*ibadah*). In this way, it covers a wide spectrum of issues relating to daily life.

The term *fiqh al-aqalliyyat* was only recently introduced into the discourse. It was first used in the 1990s by two prominent Muslim religious figures: Shaykh Taha Jabir al-Alwani (who was then based in the us) and Shaykh Yusuf al-Qaradawi (who lives in Qatar).⁷ Al-Alwani appears to have used the term *fiqh al-aqalliyyat* for the first time in 1994 when the *Fiqh Council of North America*, under his presidency, issued a legal opinion (*fatwa*) declaring that American Muslims are permitted to vote in American elections.⁸ Despite the many subsequent contributions to this area by a range of scholars, al-Alwani remains, in my view, its most important contemporary theoretician: he continues to contribute not only *fatwas*, but also a range of concepts and methodological tools. He is also at the forefront of those who are arguing for a more principled approach to *fiqh* for minorities.

Muslim Residence in Non-Muslim Territory in the Prophetic Period

While the status of Muslim minorities residing in non-Muslim territory has been the subject of Muslim juristic debate since at least the second century of Islam,⁹ it appears that the issue of Muslims living under non-Muslim 'rule' arose among Muslims earlier, and initially during the time of the Prophet Muhammad. The Qur'anic verses view the presence of Muslims among non-Muslims in Mecca during the time of the Prophet (610-622 CE) as normal. It was only after the Prophet Muhammad had established a 'Muslim territory' in Medina (following his migration from Mecca in 622 CE) that the Qur'an asked the Meccan Muslims to migrate to Medina¹⁰ as a way of consolidating and strengthening the Muslim community there. However, this instruction did not appear to be a general command for Muslims to migrate from a 'non-Muslim' territory to Muslim lands as such.

On a number of occasions, the Qur'an appears to indicate that what matters is not whether Muslims live in predominantly non-Muslim territories, but whether they are free from oppression and persecution and able to practise their religion in such places. The Prophet Muhammad

even encouraged his followers to flee persecution in Mecca and to seek refuge with a Christian ruler in Abyssinia where they had the freedom to practise their religion. When his teaching spread across Arabia, the Prophet seems to have accepted the fact that individual Muslims would live amongst predominantly non-Muslim communities, as was the case with Muslims who converted to Islam but preferred to live in their own non-Muslim tribes.

Muslim Residence in Non-Muslim Territory Under Classical Islamic law

Although Muslims lived in non-Muslim majority contexts from the earliest times of Islam, there was no systematic treatment by jurists of the issue of Muslims living under non-Muslim rule between the seventh and eleventh centuries CE, probably because such presence on a large scale was not regarded as 'normal'.¹¹ However, some opinions were expressed by early jurists that were later taken up by other jurists in the development of their positions on the issue. Imam Malik (d. 769), who represented the most strict school of law with regard to Muslim residence under non-Muslim rule, believed that Muslims should not reside in non-Muslim territories. He disapproved of Muslims travelling to non-Muslim lands, even for business.¹² Other scholars were more flexible: Abu Hanifa (d. 767) permitted residence for Muslims in non-Muslim territory as long as it was not permanent. Shafi'i (d. 820) allowed Muslims to reside in non-Muslim territories if there was no danger of their being enticed away from their religion. The Hanafi jurist Shaybani (d. 805) argued that Muslims were not obliged to migrate from a non-Muslim territory to a Muslim one. Tabari (d. 923) held that a Muslim's ability to practise his religion was the key consideration in any discussion about the permissibility of residence. For the Jāfaris (Shi'a), it might even be better to reside in a non-Muslim territory in some cases, because that territory might be free from persecution and oppression.¹³

Dar al-Islam and Dar al-kufr

Related to the issue of residence is the question of the kind of 'abode' (*dar*) in which a Muslim may reside. While various 'abodes' are recognized in juristic literature, much of the discussion surrounds *dar al-islam* (abode of Islam) and *dar al-kufr* (abode of unbelief), the latter sometimes referred to as *dar al-harb* (the abode of war or enemy ter-

ritory). While jurists distinguished between the two abodes and often believed that it was not acceptable to reside outside *dar al-islam*, there was no agreed upon conception of what could be considered the *dar al-Islam* or abode of Islam. For the Hanafi jurist al-Kasani (d. 1191), *dar al-islam* was where shari'a was manifest and implemented. For Shafi'i scholars, 'territorial control' determined whether the place was *dar al-islam*.¹⁴ Other scholars argued that in addition to territorial control, Muslims should be living in security for the territory to be considered the abode of Islam.¹⁵

While it was preferable for Muslims to live in *dar al-islam* (however defined), living in *dar al-kufr* or *dar al-harb* was often discouraged, if not outright prohibited. In the pre-modern context there was a predominant belief that it was only possible for a Muslim to live an identifiably 'Islamic' life under the rule of shari'a. This, in turn, could only occur within the context of an Islamic polity dedicated to its application.¹⁶ Thus, jurists saw a clear dichotomy between the abode of Islam, where shari'a ruled, and the abode of unbelief, where shari'a had no place.¹⁷ There were also other reasons for this discomfort. By residing in the abode of unbelief, a Muslim could be perceived as inadvertently strengthening the 'enemy' and they might acquire Islamically unacceptable or undesirable values or norms from the predominantly non-Muslim context.¹⁸

Equally, the notion of the 'supremacy of Islam' over other religions (a belief that was then widely held in Islamic theology and law) could not be maintained in such an environment. In addition, Muslims might not be able to practise their religion as they should, and there was a chance that Muslims might convert to the dominant religion, thus leading to the spread of apostasy (*riddah*). Moreover, at a social level, non-Muslim norms and customs in many contexts were considered somehow inappropriate for Muslims. Thus for most jurists, the idea of Muslims living outside the abode of Islam was problematic. It was therefore generally presumed that Muslims living in *dar al-kufr* would migrate back to the *dar al-islam*. In the meantime, it was understood that these 'displaced' Muslims would preserve their religious and cultural identity by isolating themselves from their host societies.¹⁹

Development of the Discourse on *Fiqh* for Minorities

While it was easy to hold and maintain such views up to the eleventh century CE or so, this began to change as the political and military dominance of Muslims began to be challenged and large areas formerly

under Muslim rule came under non-Muslim governance. Although the situation varied from place to place and from time to time, in Spain under Christian rule, for example, as Christians reconquered parts of Islamic Spain, the freedom to practise Islam gradually deteriorated, particularly from the thirteenth century CE. In many cases, Muslims had to live under severe restrictions or were forced to convert to Christianity. Muslims living under such conditions had to seek *fatwas* as to what they should do. At that time, some scholars argued that they should migrate to Muslim lands where they would have the freedom to practise their religion; while others argued they should stay in Spain and practise their religion as much as possible.

As large numbers of Muslims came under non-Muslim rule, not only in Spain, but also in Sicily, and even in predominantly Muslim majority lands, such as those that came under Mongol rule during the thirteenth century CE, Muslim jurists had to address the situation and deal with legal issues in a more systematic manner. A number of scholars today highlight this fundamental change to the jurisprudential discourse. For example, after the loss of Toledo in Spain in 1085 CE, while Muslims had previously experienced territorial losses,²⁰ the resulting geopolitical changes were matched by a documented juridical response by Muslim scholars. A rich body of *fatwa* literature related to these changing circumstances was gathered, for instance, by the North African Maliki scholar, Ahmad al-Wansharisi (d. 1508), among others.²¹

Such *fatwas* and other juristic views were issued to guide the Muslims who were then living under such conditions. However, the need to develop jurisprudence to address the context of living in a minority has become even more crucial over the past two centuries. The second half of the twentieth century is particularly important in this regard, given the large number of Muslims who willingly migrated to non-Muslim lands, particularly in Europe and North America. It is this Muslim presence that has led to the current discourse of *fiqh* for minorities.

The Modern Discourse of *Fiqh* for Minorities

In the modern period, *fiqh* for minorities has identified that Muslim minorities, especially those residing in the West, require a specific legal discipline to address their unique religious needs, which differ from those of Muslims residing in Muslim majority countries.²² According to al-Alwani, the purpose of *fiqh* for minorities is not to recreate Islam, but to provide a set of methodologies that govern how a jurist should work within the existing flexibility of the religion to best

apply it to particular circumstances.²³ For al-Alwani, *fiqh* for minorities is essentially derived from the general *fiqh* of Islam as a whole, but it focuses on issues that affect Muslim minorities living among non-Muslim majorities who are endeavouring to preserve their identities under somewhat different customs, legislation and laws.²⁴ As such, Muslim minorities are living under particular conditions and they have special needs that may not be appropriate for other communities.²⁵ This therefore requires a discipline, with input from specialists from different social and religious disciplines, so that problems can be articulated accurately and solutions found based on a common approach, broadly based on the universally accepted fundamentals of the Qur'an and Sunna.²⁶

In comparison to al-Alwani's approach, most modern Muslim jurists still appear to treat the situation of Muslim minorities as a highly exceptional case that requires special consideration.²⁷ They tend to approach the range of questions relating to laws about food, dress, marriage, divorce, co-education and relations with non-Muslims in terms of expediency. Consequently, the interpretations are often varied.²⁸ A wide range of concepts from Islamic jurisprudence, including the common good, the objective or spirit of law, convenience, common practice, necessity and prevention of harm have also gained significance in this discourse.²⁹

Advantages of a Separate Branch of *Fiqh* for Minorities

Proponents of *fiqh* for minorities argue that developing a specific branch of jurisprudence for minorities has a number of advantages. They claim that the approach will help address the daily problems that arise for millions of Muslim individuals living in the West or in similar minority situations.³⁰ One advantage claimed for *fiqh* for minorities is that it will ensure that the religious life of the Muslim minority is protected on both a personal and a collective level.³¹ In this regard, al-Alwani has pointed out that the key challenge faced by Western Muslims (and Muslim minorities elsewhere) today is how to ensure their integration into these societies without losing their religious identity.³² *Fiqh* for minorities is believed to be of benefit to Muslims in majority contexts as well.

Although some of the problems addressed by this branch of jurisprudence may appear to be urgent for Muslims in the West, ultimately, the whole of the Muslim world will have to respond to the issues that are being raised (such as gender equality, for instance)³³ as the world

becomes more globalized and as Muslim-majority societies are increasingly faced with the influence of modernity. Another advantage claimed for *fiqh* for minorities is that it may improve relations with non-Muslims on a cultural and international level, by creating a clear framework for mutual understanding. *Fiqh* for minorities may also bring benefits for the discipline of *fiqh* itself, by allowing issues of law to be understood from a new perspective.

Despite these potential benefits, this project has been heavily criticized by a number of influential Muslim scholars. The American Shaykh Nuh Keller and the Syrian Shaykh Buti are among the best known critics of *fiqh* for minorities. Shaykh Nuh Keller's objections are twofold. Firstly, he rejects the idea that 'exceptions' should be created for Muslim minorities. He argues that exceptions have already been built into shari'a, case-by-case, and that each situation should be decided based on its own merits,³⁴ not by a wholesale generalization. In his view, the approach adopted by *fiqh* for minorities is a form of 'sloppy thinking' and it results in 'bad *fiqh*.'³⁵ Secondly, he argues that *fiqh* for minorities creates two sets of standards: one for Muslims in Muslim-majority countries, and another for Muslims in Muslim-minority contexts. For Keller, this means that, 'anybody who is in a minority... has an excuse to behave [differently] than [those in] countries where Muslims are a majority.'³⁶ On the other hand, Shaykh Buti posits that there are no such things as minorities and majorities in Islamic legal thought. He argues that shari'a, as a system of law, is only applied in *dar al-Islam*, not *dar al-kufr*.³⁷

For these critics, there is nothing specific to the situation of minorities that justifies a different treatment in law; they argue that the entire project of *fiqh* for minorities should be rejected on this basis. Although adherents to this view acknowledge that the application of Islamic law should take context into account to a certain extent, they emphasize that Islam is one religion and that there is no justifiable reason for a separate project of Islamic law for minorities. For them, *fiqh* for minorities is an unnecessary departure from the classical conception of Islamic law. They argue that personal juridical reasoning (*ijtihad*) should be used to solve these problems, bearing in mind specific circumstances, rather than adopting a whole new *fiqh*.³⁸ For them, there is no need to develop a separate branch of jurisprudence for minorities.

There are other criticisms of *fiqh* for minorities as well. One is that *fiqh* for minorities is a form of innovation in religion (*bid'ah*) that must be rejected. Legal positions and views that came to be accepted as 'standard' in classical Islamic law are, from this perspective, to be respected and maintained. Proponents of *fiqh* for minorities may

respond by noting that there have been differences of opinion among the jurists on practically every single Islamic legal problem, and that the so-called standard views are frequently challenged by other jurists. In their view there is no 'innovation' in *fiqh* for minorities, as far as the substance and content are concerned. The only innovation is the new label that is being used.

Fiqh for minorities can also be criticized because it appears to be based on somewhat subjective considerations, rather than clear principles of jurisprudence and rules of interpretation. This arguably makes *fiqh* for minorities extremely subjective and therefore of questionable legitimacy. *Fiqh* for minorities can also be seen as a discourse that appears to adopt a somewhat paternalistic attitude towards Muslims living in minority contexts. By focusing on solutions that aim to make life more convenient or easier for Muslims in minority contexts,³⁹ *fiqh* for minorities appears to present the view that Muslims in minority contexts are less able to fulfil the same obligations as Muslims who live in majority contexts. A related idea is that by permitting certain practices that are considered prohibited (*haram*) in Muslim-majority contexts (based on the legal maxim that necessity justifies such practices), *fiqh* for minorities promotes the perception that a diluted approach to Islam is generally acceptable in minority contexts.

Naturally, proponents of *fiqh* for minorities have responded directly to such criticisms, although despite the contributions of figures like al-Alwani, many supporters of *fiqh* for minorities still appear to be uninterested in asking fundamental questions about Islamic law, principles of jurisprudence, or the interpretation of texts as they issue *fatwas* relating to Muslim minority concerns.

Towards a More Principled Approach?

Much of *fiqh* for minorities is based on the idea that the positions developed in classical Islamic law (and upon which there is broad agreement among jurists) must be seen as the standard for Muslims today. However, in the case of minorities, where there is some flexibility in the legal tradition (for instance, in the form of differing opinions among the jurists or different interpretations of a particular text), this can be used to provide a more lenient view, opinion or a *fatwa*. The underlying position of the proponents of *fiqh* for minorities, with very few exceptions, seems to be that there is no need to rethink, in any fundamental way, principles of jurisprudence or rules of interpretation. Two examples are noted here.

EXAMPLE 1: A MUSLIM WOMAN'S MARRIAGE TO A NON-MUSLIM

Classical Islamic law is reasonably clear that a Muslim woman may not remain married to a non-Muslim man. For Muslims living in the West, this classical legal position has become difficult to maintain, especially because of the circumstances in which some conversions take place. Some proponents of *fiqh* for minorities have therefore proposed, based on certain minority views in classical Islamic law, that it is acceptable for a non-Muslim man and woman to remain married, even if one of the spouses becomes a Muslim. In what follows, this famous *fatwa* on this issue, while recognizing the difficulties posed by the almost unanimous position in Islamic law that a Muslim woman may not marry or remain married to a non-Muslim man, accommodates the present situation (particularly in Western contexts):⁴⁰

The Council also recognizes and acknowledges the conditions in which new Muslim sisters in the West find themselves when their husbands choose to retain their religion. The Council affirms and repeats that it is forbidden for a Muslim female to establish marriage to a non-Muslim male. This has been an issue of consensus throughout the history of this nation. However, in the case of marriage being established prior to the female entering the fold of Islam, the Council has decided the following:

First: If both husband and wife revert to Islam and there is no shari'ah objection to their marriage in the first place, such as blood or foster relations, which deem the very establishment of marriage unlawful, the marriage shall be deemed valid and correct.

Second: Assuming that the marriage is properly contracted in the beginning, if the husband reverts to Islam alone, while his wife remains a Jew or a Christian, then the marriage shall maintain its validity, i.e. it will not be affected by the husband's conversion to Islam.

Third: If the wife reverts to Islam while her husband remains on his religion, the Council sees the following:

- 1) If her reversion to Islam occurs before the consummation of marriage, then they must immediately separate.
- 2) If her reversion to Islam occurs after the consummation of marriage, and the husband also embraced Islam before the expiry of her period of waiting [*'iddah*], then the marriage is deemed valid and correct.

- 3) If her reversion to Islam occurs after the consummation of marriage, and the period of waiting expires, *she is allowed to wait for him to embrace Islam even if that period happens to be a lengthy one*. Once he does so and reverts to Islam, then their marriage is deemed valid and correct [emphasis added].
- 4) If the wife chooses to marry another man after the expiration of the period of waiting, she must first request a dissolution of marriage through legal channels.

Fourth: According to the four main schools of jurisprudence, it is forbidden for the wife to remain with her husband, or indeed to allow him conjugal rights, once her period of waiting has expired. *However, some scholars see that it is for her to remain with him, allowing him to enjoy full conjugal rights, if he does not prevent her from exercising her religion and she has hope in him to revert to Islam* [emphasis added]. The reason for this is to consider the case of women who would find it difficult to embrace Islam with the condition of being separated from their husbands and deserting their families. Those scholars based their view upon the ruling of Umar b. al-Khattab, may Allah be pleased with him, in the case of the woman from al-Hira who reverted to Islam while her husband remained on his religion. According to the authentic narration of Yazid b. Abd Allah al-Khatmi, Umar b. al-Khattab made it optional for the woman to leave her husband or to stay with him. They also cite, in supporting their view, the opinion of Ali b. Abi Talib concerning the Christian woman who embraced Islam while still married to a Christian or a Jew. Ali said that her husband's conjugal right was still inalienable, as he had a contract. This is also an authentic narration. It is also known that Ibrahim al-Nakha'i, al-Sha'bi and Hammad b. Abi Sulayman had the same view.

Thus this *fatwa* is relying on a minority position in *fiqh* to provide some flexibility for women who embrace Islam while their husbands remain non-Muslim. The justification is based on the opinions of major figures like Umar b. al-Khattab and Ali b. Abi Talib, even though these views have not been adopted in classical Islamic law.

While this *fatwa* is addressing an important issue for contemporary Muslim women in particular, relying on certain minority views in *fiqh*, one wonders whether it would not be more appropriate to ask some fundamental questions regarding women and Islamic law, in particular in relation to what is often referred to as the 'status of women' and the interpretation of a range of texts in the Qur'an and Sunna in the light of that 'status' in the past. Such an approach will require rethinking the

role of women in society and coming to terms with the idea of equality of men and women before the law. There is a range of Qur'anic texts, as well as Hadith, that can be used to support this idea of equality. However, because of the perceived immutability of laws relating to women and family in classical Islamic law, most Muslim jurists today (including most proponents of *fiqh* for minorities) are not prepared to adopt the approach suggested. Naturally, when examining *fatwas* related to women, proponents of *fiqh* for minorities still seem to maintain the same view of women that was maintained by classical Islamic law. The sustainability of this classical legal view today is questionable, and perhaps should be open to challenge.

EXAMPLE 2: INTEREST-BASED MORTGAGES

Another example that demonstrates the utilization of minority views to support practices that could otherwise be regarded as prohibited under classical Islamic law can be found in the area of finance. *Fiqh* for minorities appears to permit interest-based mortgages on the basis of necessity (*darura*), despite the fact that classical Islamic law considers any form of increase over and above the principal in a loan to be *riba* and therefore prohibited. This *fatwa* issued by the European Council for Fatwa and Research⁴¹ on the permissibility of applying for a loan to buy a house typifies the reasoning on this issue. Having stated that *riba* is forbidden (and that bank interest is also *riba*), this *fatwa* goes on to encourage Muslims in Western countries to establish Islamic mechanisms for lending or borrowing money without interest, and to work with existing financial institutions to develop such mechanisms. If all of this fails, the Council recommends the following:

If all the above suggestions are unavailable, the Council, in the light of evidence and juristic considerations, see no harm in buying mortgaged houses if the following restrictions are strictly observed: (a) the house to be bought must be for the buyer and his household; (b) the buyer must not have another house; (c) the buyer must not have any surplus of assets that can help him buy a house by means other than mortgage.

As the *fatwa* is built on the principles of extreme necessity (*darura*) or need (*hajah*, which is treated in a similar manner to *darura*), the Council stresses that there is another rule, which governs and complements the rule of extreme necessity and need. This rule states that whatever has been made permissible due to extreme necessity must be

handled with great care; it should be restricted to the category of people who are in real need of a house. The *fatwa*, therefore, does not cover taking out a mortgage to buy a house for commercial reasons, or for purposes other than buying a house for someone who does not have one.

However, a fundamental question in this area is whether classical Muslim jurists and contemporary jurists were correct when they interpreted the Qur'anic notion of *riba* simply as interest in all of its forms, without looking at the ethical dimension of the prohibition, which is clearly spelt out in the Koran as injustice (*zulm*). Instead of creating one stratagem after another to circumvent the prohibition, why not ask the fundamental question: are all forms of interest *riba*? Much like their seeming reluctance to question how classical Islamic law views women, proponents of *fiqh* for minorities do not seem to be interested in asking this fundamental question about the interpretation of *riba*.

Concluding Remarks

Classical Islamic law faces many problems in the contemporary world, and the situation of minorities highlights the need for a rethinking of key areas of classical Islamic law. Solutions are not going to be found by making minor adjustments here and there or by declaring exception after exception to general rules (for example, by declaring that it is acceptable to borrow money on interest in one part of the world but not in another, or by giving women certain rights in minority contexts but not in majority contexts). Only by undertaking a rethinking of classical legal positions can authentic solutions be found to the issues that classical Islamic law is facing as it engages with the modern world.

For *fiqh* for minorities to move beyond its current limits, it must be repositioned within the broader debate on the reform of classical Islamic law. This requires that temporary and ad hoc solutions be replaced with a more principled discourse of reform, leading to real change and new understandings of how Muslims should practise Islam in today's world, regardless of where they are located. I am not suggesting that context is unimportant; rather, that *fiqh* should be reconsidered to account for the specific social, political, cultural, and economic contexts in which Muslims live, regardless of their minority or majority status. To achieve this, proponents of *fiqh* for minorities are required to have the courage to ask deeper and more fundamental questions about the application of law, as well as principles of jurisprudence, ethics, and morality in the contemporary context. They should seek to develop a

methodological framework within which such questions can be asked and the responses evaluated. They should be prepared to ask hard questions about how Islamic law was constructed in the first three centuries of Islam (as a human construct based on divine guidance) and to consider how its social, political, and historical contexts have impacted this process.

As a result, a whole range of concepts, including *dar al-harb* and *dar al-Islam*, Muslim and non-Muslim relations, the perceived inequality of men and women, the role of law in being Muslim, and the scope of what may be considered permissible (*halal*) and impermissible (*haram*), may need to be reconsidered. These new ideas are just as crucial for Muslims living in majority contexts as they are for Muslim minorities. In short, this will involve a fundamental rethinking of the classical Islamic legal tradition and its foundations. Those ideas and practices that are no longer justifiable must be set aside, so that new ideas can be developed in relation to what it means to be Muslim today.

Notes

- 1 Mahbubur Rahman (ed.), 'The Case for the "Fiqh of Muslim Minorities"', online article at *The Message International.org*, 12 January 2011, available online at <http://messageinternational.org/the-case-for-the-%E2%80%9Cfiqh-of-muslim-minorities%E2%80%9D/> (accessed on 14 October 2012).
- 2 Rahman, *The Case for the Fiqh of Muslim Minorities*, 2011.
- 3 Ameer Ali, review of Andrew March, *Islam and Liberal Citizenship* (2009) Oxford and New York: Oxford University Press, in *Journal of Muslim Minority Affairs* 30(2) (2010), p. 350.
- 4 Rahman, *The Case for the Fiqh of Muslim Minorities*, 2011.
- 5 Interview What is Minority Fiqh? al-'Allamah Sh. Bin Bayyah on SuhaibWebb.com, 27 March 2008. (Video clip, available at <http://www.suhaibwebb.com/islam-studies/islamic-law/what-is-minority-fiqh-al-allamah-sh-bin-bayyah/> Accessed 14 October 2012).
- 6 Rahman, *The Case for the Fiqh of Muslim Minorities*, 2011.
- 7 Shammai Fishman, *Fiqh al-Aqalliyyat: A Legal Theory for Muslim Minorities*. Center on Islam, Democracy, and the Future of the Muslim World, Research Monograph No. 2 (2006). Available online at <<http://www.currenttrends.org/research/detail/fiqh-al-aqalliyyat-a-legal-theory-for-muslim-minorities>>.
- 8 Muhammad Khalid Masud, 'Islamic Law and Muslim Minorities,' *ISIM Newsletter*, 2002 (Vol. 11, No. 2), pp. 17-18.
- 9 Khaled Abou El-Fadl, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries,' *Islamic Law and Society*, 1994 (Vol. 1 No. 2), p. 141.
- 10 Koran 2:218; 4:89.

- 11 Abou El-Fadl, 'Islamic Law and Muslim Minorities', 1994, p. 136.
- 12 Sherman A. Jackson 'Muslims, Islamic Law and Public Policy in the United States' in Ali A. Mazrui, Sherman A. Jackson, Aminah McCloud (eds.), *American Public Policy and American-Muslim Politics*, Chicago: International Strategy and Policy Institute, 1999 (online publication, n.p.) available at <http://www.ispi-usa.org/policy/policy4.html>.
- 13 For these views see Abou El-Fadl, 'Islamic Law and Muslim Minorities', 1994, pp. 134-5. See also Abdullah Saeed, 'Muslims under Non-Muslim Rule: Evolution of a Discourse', in Anthony Reid and Michael Gilsenan (eds.), *Islamic Legitimacy in a Plural Asia*, London and New York: Routledge, 2007, pp. 14-27.
- 14 Haitham al Haddad, *A Critical Analysis of Selected Aspects of Sunni Muslim Minority Fiqh with particular reference to Contemporary Britain* (PhD Thesis), University of London, School of Oriental and African Studies, 2010, p. 102.
- 15 Al Haddad, *A Critical Analysis*, 2010, p. 90.
- 16 Abou El-Fadl, 'Islamic Law and Muslim Minorities', 1994, p. 141.
- 17 Abou El-Fadl, 'Islamic Law and Muslim Minorities', 1994, p. 142.
- 18 Andrew Wheatcroft, *Infidels: The Conflict between Christendom and Islam*, Sydney: Random House, 2005.
- 19 Masud, *Islamic Law and Muslim Minorities*, 2002, p. 17.
- 20 Al Haddad, *A Critical Analysis*, 2010, p. 130, citing Abou El-Fadl, 'Islamic Law and Muslim Minorities', 1994, pp. 149-150.
- 21 Al Haddad, *A Critical Analysis*, 2010, p. 131.
- 22 Fishman, *Fiqh al-Aqalliyat*, 2006, p. 1.
- 23 Taha Jabir al-Alwani, *Fiqh of the Muslim Minorities*, online article at *The Message International.org*, 12 January 2011, available online at <http://messageinternational.org/fiqh-of-the-muslim-minorities/> (Accessed on 2 February 2012).
- 24 Al-Alwani, *Fiqh of the Muslim Minorities*, 2011.
- 25 Al-Alwani, *Fiqh of the Muslim Minorities*, 2011.
- 26 Al-Alwani, *Fiqh of the Muslim Minorities*, 2011.
- 27 Masud, *Islamic Law and Muslim Minorities*, 2002, p. 17.
- 28 Masud, *Islamic Law and Muslim Minorities*, 2002, p. 17.
- 29 Masud, *Islamic Law and Muslim Minorities*, 2002, p. 18.
- 30 Yoginder Sikand, review of Taha J. Al-Alwani, *Towards A Fiqh For Minorities: Some Basic Reflections*, Richmond, UK: International Institution of Islamic Thought, 2003. Available online at <http://www.milligazette.com/Archives/2004/16-30Apr04-Print-Edition/1604200454.htm>.
- 31 Sheikh 'Abd Allāh b. Bayyah, *Introduction to the Fiqh of Minorities [Part One]* (2010). Available online at <http://islamicstudies.islammesssage.com/MinoritiesArticle.aspx?aid=237>. (Accessed on 2 February 2012.)
- 32 Sikand, book review, *Towards A Fiqh For Minorities*.
- 33 Masud, *Islamic Law and Muslim Minorities*, 2002, p. 2.
- 34 Al-Miftah, *Islam Not a Cereal: Shaykh Nuh Keller, UK Suhba 2007 on Modernism and Fiqh Al-Aqaliat* online article at *Al-Miftah* (3 September 2007). Available at <http://al-miftah.blogspot.com.au/2007/09/islam-not-cereal-shaykh-nuh-keller-uk.html>. (Accessed on 2 February 2012.)
- 35 Al-Miftah, *Islam Not a Cereal*.

- 36 Al-Miftah, *Islam Not a Cereal*.
- 37 Interview *What is Minority Fiqh?* al-'Allamah Sh. Bin Bayyah, Suhaib Web, 2008.
- 38 Gavin Picken, 'Fiqh Today: Muslims as Minorities' at 5th Annual AMSS (UK) Conference', *Journal of Qur'anic Studies*, (2004 (Vol. 6, No. 1), p. 151.
- 39 Interview *What is Minority Fiqh?* al-'Allamah Sh. Bin Bayyah, Suhaib Web, 2008.
- 40 Fatwa: 'I want to Embrace Islam: But Can I Keep My Marriage?' 24 September 2002. Available online at efenem.files.wordpress.com/2009/06/qaradawis-16.doc. (Accessed on 2 February 2012.)
- 41 European Council for Fatwa and Research, 'Permissibility of conventional mortgage under necessity,' Resolution: Fourth Ordinary Session [27-31 October 1999]. Available online at http://www.globalwebpost.com/farooqm/study_res/i_econ_fin/ecfr-fatwa_mortgage.htm. (Accessed on 2 February 2012.)

