



Center on Islam, Democracy,  
and the Future of the Muslim World

*Fiqh al-Aqalliyyat:*  
A Legal Theory  
for Muslim  
Minorities

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Research Monographs  
on the Muslim World

Series No 1, Paper No 2  
October 2006

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# *Fiqh al-Aqalliyyat*: A Legal Theory for Muslim Minorities

SHAMMAI FISHMAN

**F***iqh al-Aqalliyyat* (the *fiqh*, or jurisprudence, of Muslim minorities) is a legal doctrine introduced in the 1990s by two prominent Muslim religious figures, Shaykh Dr. Taha Jabir al-Alwani of Virginia, and Shaykh Dr. Yusuf al-Qaradawi of Qatar. This doctrine asserts that Muslim minorities, especially those residing in the West,<sup>1</sup> deserve a special new legal discipline to address their unique religious needs, which differ from those of Muslims residing in Islamic countries. Al-Alwani coined the term *fiqh al-aqalliyyat* and used it for the first time in 1994 when the *Fiqh* Council of North America, under his presidency, issued a *fatwa* (legal opinion) allowing American Muslims to vote in American elections.<sup>2</sup>

While Muslim minorities have lived under non-Islamic rule throughout Islamic history,<sup>3</sup> the immigration of Muslims to Europe and America over the last hundred years, particularly during the second half of the twentieth century, has created an unprecedented situation: Today, large Muslim communities live under non-Islamic Western rule and culture. Ahmad Rawi, chairman of the Union of Islamic Organizations in Europe (UIOE),<sup>4</sup> estimates that approximately 15.84 million Muslims live in Western Europe and comprise 4.43 per cent of its total population. In France alone, there are 5.5 million

Muslims in a population of almost 56.6 million; in Germany, 3.2 million out of 79.1 million. The Council on American Islamic Relations (CAIR) puts the number of Muslims in the United States at 6-7 million.<sup>5</sup> Other researchers, however, make more modest claims. According to Yvonne Yazbeck Haddad and Jane I. Smith, there are approximately 10 million Muslims in Western Europe—3 million in France, 2 million in Britain and 2.5 million in Germany.<sup>6</sup> As for North America, they estimate that there are about 6 million Muslims in the United States and a half million in Canada.<sup>7</sup>

Ideally, Muslims live according to *sharia* (Islamic law) as embodied in *fiqh* (jurisprudence). Shaykh Muhammad al-Mukhtar al-Shinqiti, director of the Islamic Center of South Plains in Lubbock, Texas, is a prominent figure in *fiqh al-Aqalliyyat*. Al-Shinqiti answers questions about *fiqh* for Muslim minorities on the “Live Fatwa” sessions on Islamonline.net. In explaining the relationship between *sharia* and *fiqh*, he has said, “*sharia* refers to the revealed religion as a whole, while jurisprudence refers to how the rules of *sharia* are to be applied from the points of view of the jurists.”<sup>8</sup> *Fiqh al-aqalliyyat* deals with the daily problems that arise for millions of Muslim individuals living in the West. It tries to resolve conflicts with the culture and values of the host societies

from within the framework of Islamic jurisprudence. Its goal is to reshape and reinterpret Islamic concepts, such as *dar al-Islam* (land of Islam), while not appearing to be a religious reform movement that breaches orthodoxy.

The theory of *fiqh al-aqalliyat* is most easily clarified by discussing its founders and *muftis* (jurists who issue *fatwas*)—their reasons for endorsing a special jurisprudence system for Muslim minorities, their religious views regarding non-Muslim territory, and their methodological tools. *Fiqh al-aqalliyat* is based on two fundamental premises: the territorial principle of *'alamiyyat al-islam* (Islam as a global religion) and the juristic principle of *maqasid al-shari'a* (ruling according to the intentions of Islamic law). The first provides the rationale for permitting the very existence of permanent Muslim communities in non-Islamic lands. The latter enables the jurists of *fiqh al-aqalliyat* to adapt the law to the necessities of Muslim communities in the West, which in practice means allowing legal leniencies so that these communities are able to develop.

## The Founders of *Fiqh al-Aqalliyat*

The first books about *fiqh al-aqalliyat* were published in 2001. Since then powerful institutions and popular websites have developed, advocated and promoted this doctrine. The founder of *fiqh al-aqalliyat*, Shaykh Dr. Taha Jabir al-Alwani, serves as president of the Graduate School of Islamic and Social Sciences in Ashburn, Virginia (now part of the Cordoba University), and is the founder and former president of the *Fiqh* Council of North America. In 2001 he published in Arabic the booklet *Nazarat Ta'asisiyya fi Fiqh al-Aqalliyat* (“Foundational Views in *Fiqh al-Aqalliyat*”) on Islamonline.net in which he describes the basic outlines of his theory.<sup>9</sup>

Born in 1935 to a Sunni family in Iraq, al-Alwani studied at Al-Azhar University in Cairo, where he received his doctorate in 1973 in legal methodology or *usul al-fiqh* (literally, the “roots” of Muslim jur-

isprudence), which is the best field for qualifying as a *mufti*. From 1963 to 1969, al-Alwani served as a chaplain and lecturer in the field of Islamic Studies at the Iraqi Military Academy,<sup>10</sup> and from 1975 to 1985, he taught Islamic law at Al-Imam Muhammad Ben Sa'ud University in Riyadh, Saudi Arabia. He subsequently moved from this Wahhabi stronghold to the United States, where he engaged in a variety of intellectual activities. This remarkable transition was indicative of al-Alwani's open attitude toward the West, which is reflected in his call for American Muslims to “take the best of American society.”<sup>11</sup> He is a member of the International *Fiqh* Council in Jeddah, which acts as a central authority for *fiqh* councils around the world (including the North American *Fiqh* Council), and is subordinate to the Organization of the Islamic Conference (OIC). For many years al-Alwani has served as president of the International Institute of Islamic Thought, which has branches all over the Muslim world.

The co-founder of *fiqh al-aqalliyat* is Shaykh Dr. Yusuf al-Qaradawi. A remarkable personality in the Islamic world, al-Qaradawi has written more than one hundred books on a variety of Islamic subjects and is considered the leading figure of the international Muslim Brotherhood movement. In his *fatwas* he expresses support for violent acts against Israel and against Americans in Iraq.<sup>12</sup> Al-Qaradawi made world-news headlines with his controversial visit to London where he announced the establishment of the International Council of Muslim Clerics (*ulema*).<sup>13</sup>

Born in 1926 in the village of Saft-Turab in Egypt, al-Qaradawi also studied at Al-Azhar University, where he received his doctorate in 1973. He worked as both a preacher and a teacher in mosques, and as a government official in Egypt's Bureau of Religious Endowments (*awqaf*). In 1961 he moved to Qatar, where he developed and led various Islamic educational institutions.<sup>14</sup> In 1997 al-Qaradawi founded the European Council for Fatwa and Research (ECFR) for the purpose of providing Europe's Muslim minorities with Islamic legal guidance. In *Fiqh al-Aqalliyat al-Muslima—Hayat al-Muslimin Wasat al-Mujtama'at al-Ukhra* (“*Fiqh* of Muslim

Minorities—Life of Muslims in the Midst of Other Societies”), al-Qaradawi outlines the general legal rules for *fiqh al-aqalliyyat* and provides examples of its application. As a media personality, he regularly participates in a television show on the al-Jazeera network called “*Al-Shari’a wal-Hayat*” (“Islamic Law and Life”). In addition to his own website, qaradawi.net, he takes part in running the important and popular website Islamonline.net.

## The Purposes of *Fiqh al-Aqalliyyat*

In *Nazarat Ta’asisiyya*, al-Alwani describes the new, special circumstances of the large Muslim immigrant communities in many non-Muslim countries that justify the creation of a special system of jurisprudence. The need for such a special system arises from various dilemmas facing Muslims abroad that do not confront their co-religionists who live in Muslim countries. On a superficial level, there are problems concerning permitted food (*halal*) and eating with non-Muslims, the dates of holidays (the position of the moon), and marriage to non-Muslim women.<sup>15</sup> And on a deeper level, Muslims must deal with such questions as Islamic identity, the message of the Muslim in his new place of residence, his link to the Muslim *Umma* (“nation” founded by the Prophet in Medina<sup>16</sup>) and the future of Islam beyond its current borders.<sup>17</sup>

In these latter areas the dilemmas are of greater consequence. They include the need to override the Islamic obligation to emigrate (perform *hijra*) from any place ruled by infidels to a country ruled by Islam, the issue of community organization and enforcement of *sharia* on the Muslim communities, allegiance to the country of adoption (or birth if the Muslim was born there), requesting citizenship, exercising the right to vote and the considerations that should guide a Muslim in voting, and the conflict of interests when the adopted country is involved in a war with a Muslim country.

A special branch of *fiqh* is therefore necessary to

facilitate the relationship between the Muslim minority and the non-Muslim majority. It is also necessary to unify the Muslim communities and enhance their particular identities vis-à-vis the majority. In *Nazarat Ta’asisiyya* al-Alwani devotes a chapter to what he calls “the great questions in this *fiqh*.” Among these questions are:

- How should the *mufti* of a minority answer exactly... these two questions: Who are we? What do we want?
- What is the political regime under which the minority is living: Is it democratic, monarchic or military?
- What is the size of the minority for whom a jurisprudential study is desired, on several levels: Number of people, culturally, economically and politically?
- What role do institutes, organizations or leaders play in the life of the minority? Do they shed more light on and emphasize their cultural identity?
- How will it be possible to develop joint activities between the majority and the minority? What levels should be taken into account in these aspects?<sup>18</sup>

These questions clearly demonstrate that al-Alwani views *fiqh al-aqalliyyat*, not only as a simple system for answering personal questions in jurisprudence, but also as a framework for political and social interaction between the majority and the minority populations in non-Muslim lands, as well as within the Muslim minority itself.

Al-Qaradawi, meanwhile, emphasizes the fact that Muslims bear a message to non-Muslim nations and are obliged by their faith to spread Islam through *dawa*, an important Islamic concept. Its original meaning is “call” or invitation. In the Quran, it is applied to the call to the dead to rise from their tombs on the Day of Judgment. *Dawa*

also means an invitation to a meal with guests. In the religious sense *dawa* is the invitation that God and the prophets address to the people to believe in Islam, the true religion. Islam is the religion of all of the prophets and each prophet has his *dawa*. The mission of Mohammed was to repeat the call and invitation to the people of Mecca. According to the laws of *jihad* (holy war), those who had not received the *dawa* had to be invited to embrace Islam before the Muslims began the war.<sup>19</sup>

Al-Qaradawi links the growth of Muslim communities around the world with the general process of Islamic awakening that, according to his analysis, takes place in seven stages: the stage of feeling identity, of arousal, of movement, of gathering, of building, of settlement and, lastly, of interaction. Al-Qaradawi claims that the seventh stage of this process—namely, the stage of interaction with non-Muslim society—has been reached. He contends that Muslim minorities are now standing on a solid ground, proud of themselves, able to express their identity, protect their existence, and present their cultural message to humanity.<sup>20</sup>

## Territorial Terminology: Is the West “Dar al-Harb?”

One of the two fundamental issues that *fiqh al-aqalliyat* addresses is the “territorial question,” or how Muslims should regard the territories of their non-Muslim countries of residence. Traditionally, Islam divides the world into two territories: *dar al-Islam* (land of Islam) and *dar al-Harb* (land of war). *Dar al-Islam* is the territory in which the law of Islam prevails, characterized by the unity of a community of the faithful, the unity of the law and the guarantees assured to the members of the *Umma*. The *Umma* also guarantees the faith, persons, possessions and religious organization of the *dhimmi* (the protected minorities, who may be the followers of Judaism, Christianity and Zoroastrianism).<sup>21</sup> In classical Islamic teaching, everything that

is outside *dar al-Islam* belongs to *dar al-Harb*. There are, nevertheless, historical examples that indicate the permissibility of truces (*hudna, sulh*) concluded with the sovereigns of neighboring territories. These areas preserve their internal autonomy in exchange for tribute. Such lands are designated as *dar al-'ahd* (land of the covenant) or *dar al-sulh* (land of the truce).<sup>22</sup>

Such teachings confront the founders of *fiqh al-aqalliyat* with several questions: Is the West *dar al-Harb*? Is it permissible at all for a Muslim to live in—let alone to emigrate to—*dar al-Harb*? If a Muslim lives in such a country, the question of *hijra* (migration) must be addressed. Traditionally, according to Islamic law, a Muslim is not allowed to live in a country not ruled by Islamic law. Generally, when a Muslim country has been conquered by non-Muslims, the Muslim inhabitants must relocate or emigrate (*hijra*) to a Muslim land.<sup>23</sup> Advocates of *fiqh al-aqalliyat* face the challenge of finding a legal Islamic formula that allows Muslims to live in Western countries.

*'Alamiyyat al-Islam*, the principle in *fiqh al-aqalliyat* that declares Islam to be a global religion meant to encompass the entire world, provides the basis for answering these questions. The world is divided into two parts, separated only by time: the lands under Muslim rule and those which will eventually receive the Islamic *dawa* and come under Muslim rule. Muslims who live in non-Muslim countries, therefore, should not be obligated to migrate back to a Muslim country. They are allowed to live in non-Muslim countries, albeit for the purpose of being the bearers the religious call and inviting others to Islam.<sup>24</sup>

In his book *Maqasid al-Sharia* (“Intentions of Islamic Law”), al-Alwani presents a new, well-constructed theory of the division of territory:

The former of our men of knowledge proposed sources and attempted to justify this division through the Quran. Of the most notable and in agreement with *'alamiyyat al-Islam* are the statements of Imam Fakhr al-Din al-Razi (d. 1210/606)<sup>25</sup> quoted in his great exegeses in

the name of al-Qaffal al-Shashi (d. 976/365)<sup>26</sup>: It is possible to go beyond the territorial division of *dar al-Islam*, *dar al-Harb* and *dar al-'ahd* familiar to the jurists, to another division which complies with the effectiveness of Islam its internationality [*'alamiyya*] and the details of its law and methodology. The division that he proposed was to split the land into two territories: *dar al-Islam* and *dar al-dawa*. *Dar al-Islam* is where the majority of its inhabitants belong to the Muslim religion, and the word of Allah is exalted. *Dar al-dawa* is the land to which the Muslims send their message, and bring their *dawa*. The nations of the world and peoples are divided into two nations: those who respond to the call of Islam, namely the Muslim nation, and the nation of *dawa*, which includes the rest of the nations.”<sup>27</sup>

It is noteworthy that al-Alwani uses an authentic classical source as the basis for his theory. He refers to the words of al-Qaffal al-Shashi, quoted in the exegeses of Fakr al-Din al-Razi, where al-Qaffal uses the phrase “*ummat al-dawa*” to refer to the “people of the religious call”:

Al-Qaffal, may Allah have mercy on him, said: The original meaning of the word *Umma* [nation] is a group which agrees upon one thing. The nation of our prophet, may Allah have peace and prayer upon him, are the group described as believers in him and confirm his being a prophet. All of those gathered by his religious call [*dawa*] are called his nation. If the word nation is mentioned on its own, it means the first meaning [the nation of the prophet]. Don't you see that, whenever it is mentioned that the nation agreed about something, the first meaning is to be understood. And he [the Prophet] said, may peace and blessing be on him, “My nation cannot agree on an error.” It has been transmitted that he, may peace and blessing be on him, will say on the day of resurrection, “My Nation! My Nation!” and the word nation in these and similar places is

understood as those who confirm His religious call. As for the people of his religious call [the non-Muslims addressed by the call], they are called the nation of the religious call [*ummat al-dawa*] and the word “nation” is used for them only on that condition.<sup>28</sup>

Historically, it is understandable that al-Shashi, who lived in central Asia during the period that the Turkmen tribes were gradually converting to Islam, would view the people who had not yet converted as future Muslims.

In an interview that appeared in the newspaper *Al-Sharq al-Awsat*, al-Alwani offered another explanation for permitting Muslim residence in Western countries. He argued that *dar al-Islam* is wherever Muslims can worship freely: “The council [North America *Fiqh* Council] will strive to direct the Muslims to the approach wherein the identity of the American Muslim is to be loyal to his place of residence [*watan*], America, due to his obligations towards it as a citizen, because the place of residence for the Muslim is considered *dar al-Islam* [land of Islam] for him as long as he is able to observe his religious rituals therein.”<sup>29</sup>

There is at least one instance, however, in which al-Alwani uses territorial terminology in a manner that contradicts his own definition as stated above. Following a meeting in Chicago with a group of Spanish-speaking converts to Islam, al-Alwani speculated that if al-Andalus (Muslim Iberia) had not fallen, the Muslims might have launched the voyages of discovery, and the New World would have belonged to Islam:

Had our forefathers there [in al-Andalus] been able to see truth and follow it, and recognize what is false as false and stay away from it, and understand the task of the Muslim in the world for its true merits, the Islamic presence in al-Andalus would remain until today. Who could know? Perhaps some of them would have been the ones who discovered America, not someone else, and America could have possibly been today among the lands of the

Muslims [*diyar al-muslimin*, or dwellings of the Muslims]. But the divisiveness and the contention, the love of this earth and the abhorrence of death [and the afterlife], the distraction from the mission and the fact that we did not remember the mission brought our Islamic presence in al-Andalus to an end in 1492, the very year America was discovered by the messengers of the Christian Spaniards. One can deduce, therefore, that if our predecessors had bared their souls, had realized their essence and had fulfilled their duties as Muslims, what had happened in Spain would not have happened. Would America look as it does today? Would Europe look like it does today? Absolutely not. But this is what Allah wanted and he acted in the way he did.<sup>30</sup>

## The Jihad Question

At this point it is important to examine the approach of *fiqh al-aqalliyyat* to *jihad* and violent activities carried out by Muslims in the name of Islam. According to al-Alwani, Muslims are commanded to introduce Islam in a peaceful way, as in Quran (16:125): “Invite (all) to the Way of thy Lord with wisdom and beautiful preaching; and argue with them in the way that is best: for thy Lord knoweth best, who have strayed from His Path, and knoweth best who receive guidance.”

Al-Alwani views the parts of the world not ruled by Muslims as *dar al-dawa* and questions the primacy of the “verse of the sword,” one of the Quranic verses commanding *jihad*, (9:5): “But when the forbidden months are past, then fight the Infidels wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish prayers and practice charity, then set them free: for Allah is Oft-forgiving, Most Merciful.” Al-alwani asks how this verse can abrogate nearly two hundred other holy verses that encourage *dawa* through wisdom, exhortation, piety, and dealing with others in a fair and just manner.<sup>31</sup> In theory, *fiqh al-aqalliyyat*

clearly rejects the idea of *jihad* against the Western countries where Muslims are settling.

In practice, the 2005 Muslim uprisings in France indicated some ambivalence on the part of institutions associated with the ideology of *fiqh al-aqalliyyat*. It took a few days of rioting and pressure from the French government before the Union des Organisations Islamiques de France (UOIF) issued a *fatwa* that did, in fact, strongly condemn the damage to private and public property and to people’s lives.<sup>32</sup> The tenth resolution of the closing paper of the meeting of Qaradawi’s International Union for Muslim Scholars (November, 11 2005) also rejected the violence:

It is the right of anyone who is deprived to express his deprivation in peaceful ways which the valid laws in France and in other Western countries provide. As the union is strongly sorry about the existence of a great sector of marginalized people in that country, deprived in health and education, subject to racial discrimination and great cruelty being directed against them, being described in phrases which contradict human dignity and their religious symbols and mosques being attacked; the union encourages them to avoid sliding into any destructive activities, using the reason of demanding justice, from those who deprived their rights and from those who deprived the oppressed such as them. The property, lives and dignity are protected by the protection of God, and God’s Messenger, may God’s blessing and peace be upon him, had forbidden destruction of property. God almighty had forbidden spreading mischief through the earth and destroying crops and offspring. The union calls them to integrate into their societies, not to isolate themselves from them and to always to consult and ask assistance from the religious scholars and the people of *dawa*. At the same time it calls the governments of those states, of which they obtained their citizenships from or born there or living in them, to strive to protect their humanity, solve their social and econom-

ic problems, improve their economic situation and make their integration into their societies easy.”<sup>33</sup>

Although this resolution describes at length the suffering of the Muslim minorities, it does strongly forbid violence on the basis of a Quranic reference (2:205): “When he turns his back, his aim is to spread mischief through the earth and destroy crops and offspring. But Allah loveth not mischief.”

It is significant that the Union also calls upon Muslims “to always consult and ask assistance from the religious scholars and the people of *dawa*.” This charge is probably directed primarily at Muslim youth, who do not necessarily listen to the religious leadership. While the French Muslim website *oumma.com* did declare its opposition to violence, for example, it also decried the way that the government “uses” Muslim religious figures in a manner similar to the days of colonialism. *Oumma.com* emphasizes the social motives of the rioters as opposed to the Islamic one, and finds fault with the use of Quranic verses by UOIF.<sup>34</sup>

Although *fiqh al-aqalliyat* is a non-violent movement, the founders have expressed different opinions regarding violent activities in the Middle East. When asked in an interview about the Palestinians’ suicide bombings, al-Alwani responded, “We think that the Palestinian people have the right to defend themselves in the way they view as suitable and we will back it and support it.”<sup>35</sup> Al-Qaradawi holds a similar point of view, and he offers an Islamic explanation when asked if the Western countries are *dar al-‘ahd wal-dawa* or *dar al-Harb*:

There are those who divided the territory [of the world] into three: *dar al-Islam*, *dar al-Harb* and *dar al-dawa wal-‘ahd* or *dar al-‘ahd*. If we divided the world now we shall find either *dar al-Islam*, which includes the Islamic countries, or *dar al-‘ahd*. Most of the world is *dar al-‘ahd* for the Muslims except those [countries] which war was declared upon such as Israel, the Serbs and the Yugoslavs. As for the rest, each has between itself and the

Muslims diplomatic links and ties. This diplomatic representation is a type of a covenant between them and the Muslims.<sup>36</sup>

## The Legal Methodology of *Fiqh al-Aqalliyat*

The legal methodology (*usul al-fiqh*) of *sharia* consists of four sources of Islamic law: the Quran and the prophetic tradition (*hadith* or *sunna*), which make up the two material sources; analogical deduction (*qiyas*), derived on the basis of the Quran and *sunna*; and consensus (*ijma’*) of the jurists of each of the four schools of law (*madhahib*), which substantiates the new rulings.<sup>37</sup> In addition, the ECFR recognizes “other sources of legislation which are not entirely agreed upon,” mainly public interest not based on text (*maslaha mursala*) and custom (*‘urf*).<sup>38</sup>

In the last chapter of *A History of Islamic Legal Theories*, Wael B. Hallaq outlines the developments in Islamic legal methodology throughout the twentieth century. After noting that his study does not include secularists such as Faraj Fuda, or puritan traditionalists such as those dominating the Saudi regime, he divides those occupying the middle ground into two main camps: religious utilitarians and religious liberals.<sup>39</sup> The goal of both groups is to reform legal theory in a manner that successfully synthesizes the basic religious values of Islam with substantive law able to address the needs of a modern changing society.<sup>40</sup> Religious liberals differ from the utilitarians in that they insist on creating a new methodology rather than merely adding juristic devices.<sup>41</sup>

*Fiqh al-aqalliyat* is squarely in the utilitarian camp and the tradition of the *salafiyya*<sup>42</sup> movement of the Egyptian jurists Muhammad Abduh (d. 1905) and Rashid Rida (d. 1935). Rather than leaving the traditional legal methodology based on four sources, the ECFR added new devices, such as public interest as a source of law. Hallaq discusses, for example, the legal theory of the Egyptian utilitarian jurist Abd al-Wahhab Khallaf (d. 1956), who

stressed that a *sunna* applicable to an issue in the time of revelation is not binding on succeeding generations if it does not serve the public interest.<sup>43</sup> Hallaq also cites Hasan Turabi of Sudan who argues that, if reasoning based on texts produces extreme hardship, the public interest must be consulted.<sup>44</sup>

The crucial question is to what extent these newer, secondary legal sources, such as public interest, prevail in *fiqh al-aqalliyat* over the four traditional ones. Examining four of the legal tools and sources used by *fiqh al-aqalliyat*—*ijtihad*, *maslaha* (public interest), *taysir* (making *fiqh* easy) and *urf* (custom)—can shed light on the matter.

### IJTIHAD

*Ijtihad* is an Islamic legal concept that refers to an acceptable independence of thought vis-à-vis religious rulings and to the right of a learned scholar to make rulings, not only on the basis of precedents, but also on his own understanding of the texts. The literal translation of the term *ijtihad* is “effort” or “diligence.” According to Joseph Schacht, the right to exercise *ijtihad* was restricted after the tenth century (4th century AH) and scholars are expected to rule on the basis of the other tools. This resulted in the “closing of the gate of *ijtihad*.”<sup>45</sup> Hallaq, on the other hand, contends that the “gates of *ijtihad*” were never closed.<sup>46</sup>

For many years al-Alwani has been advocating the use of *ijtihad*, especially in cases where modern Western knowledge must be taken into consideration. Al-Alwani calls for the “Islamization of knowledge”; he wants to “Islamize” such scientific fields as economics and medicine by finding links between modern science and the Quran, as well as the other traditional sources. A reference to *ijtihad* appeared on Islamonline.net, for instance, when a group of *muftis* replied to a question about artificial insemination. Dr. Muzammil Siddiqi, former president of the Islamic Society of North America (ISNA), stated:

Indeed, artificial insemination is one of the new issues on which Muslim scholars have recently done some *ijtihad* in the light of some

basic principles and values of the Quran and *sunna*. Artificial insemination for conceptual purpose is generally needed in the situation when the husband is not able to deposit his semen inside his wife’s genital tract. This procedure is allowed in Islam as long as it is between legally married couples during the life of the husband. The jurists have emphasized that under the *sharia*, a wife is not allowed to receive the semen of her ex-husband after divorce or after his death.<sup>47</sup>

Al-Alwani’s pronouncement on stocks and bonds is another example of *ijtihad*. He prohibits Muslims from dealing in bonds because he views bonds as a means of profiting from the forbidden practice of usury. He condones the buying and selling of stocks, however, because he considers it to be constructive business. Al-Alwani bases this ruling on the Quranic verse (2:275) that reads: “Those who devour usury will not resurrect except as one, whom the Devil has harmed by his touch. That is because they say: ‘Trade is like usury,’ but Allah hath permitted trade and forbidden usury . . . .” He states:

Non-Religious economists maintain that restricting interest could destroy the economy. The Quran, in a stand against this threat, claims that even when the devil threatens to impoverish a Muslim who does not charge interest, he is promised Allah’s [future] blessing. Allah’s promise has been confirmed empirically if one considers that investing in the stock [of product companies] is much more lucrative than purchasing bearer bonds [where the profit is from interest]. For example, according to data [provided by] Ibboston Associates, a dollar invested in bearer bonds in 1926 is worth \$33.73 today [1997]. In contrast a dollar invested in the New York stock market in 1926 is worth \$1370.95 today.”<sup>48</sup>

Al-Shinqiti also relied on *ijtihad* when asked if Muslims could hold governmental positions in non-Muslim countries. He based his answer on the

Quranic verse (12:55) in which Yusuf asks the king of Egypt: “Place me [in authority] over the treasures of the land, surely I am a good keeper, knowing well.” Al-Shinqiti compares Yusuf’s working for the king of Egypt to the current situation of Muslims in the West in order to allow them to take governmental jobs.<sup>49</sup> Tariq Ramadan, the famous European Muslim activist, makes the same analogy.<sup>50</sup>

### MASLAHA (PUBLIC INTEREST) AND DARURA (NECESSITY)

An important concept used to justify legal leniency in matters concerning Muslim minorities is *maslaha* or public interest. When a jurist applies this concept despite the lack of a textual basis for his decision, it is called *maslaha mursala*. And in this case, the concept of public interest prevails over the four sources of Muslim legal methodology (*usul al-fiqh*).

The classical scholar Abu Hamid al-Ghazali (d.1111/505) stated that, in a wider context, *maslaha* represents the ultimate purpose of the *sharia*, which is to maintain religion, life, offspring, reason and property. Whatever furthers these aims should be defined as *maslaha*. Al-Ghazali divided *maslaha* into three categories: *al-darurat* (necessities), *al-hajiyyat* (needs) and *al-tahsinat* (improvements). The first category of *darurat*, moreover, independently constitutes a basis for legal decision without the use of textual reference by means of *qiyas*.

Historically, the first important case that used the idea of public interest as a basis for a legal decision took place at the time of the Caliph ‘Umar (d. 644/12). He decreed that southern Iraq should become state land and that a land tax should be imposed, rather than leaving it as private property for the warriors. He argued that putting the land under state control would benefit the believers.<sup>51</sup>

Al-Alwani openly calls for the elevation of *maslaha* in *fiqh*. In the introduction to *Maqasid al-Sharia*, the Shiite Sheikh ‘Abd al-Jabbar al-Rifa’i refers to *maslaha* as an essential component in any legal deliberation and emphasizes that it should not be considered only as an additional tool to be used when all else fails:

It has become common among the jurists that legal judgments are subject to interests of injuries [*mafsada*, the opposite of *maslaha*]. There cannot be legislation without a foundation which represents its spirit and essence, until they said: the legal judgment revolves around the foundation for approval or disapproval, and where there is a foundation there is a legal judgment, and where the foundation disappears the legal judgment disappears.

In the same introduction, al-Rifa’i offers more evidence of the important role *maslaha* has played in the history of Islamic jurisprudence.

A practical example of a *darura*-based *fatwa* in *fiqh al-aqalliyyat* may be found in al-Shinqiti’s response to a Muslim couple’s question about whether to adopt a child. In Islam, Western-style adoption does not exist, as the child continues to be viewed as the offspring of his or her biological father and bears his name. This principle is based on a Quranic verse that abolished pre-Islamic adoption (33:5).<sup>52</sup> In the couple’s country of residence, however, the law required that the child be officially registered with the name of the adopting parents. Al-Shinqiti’s answer illustrates how “necessity” can at times prevail over a Quranic verse:

As for giving the adopted child your last name, it is not allowed in principle, for the Quran says: “Call them after their fathers” (33:5). However, it is considered sometimes a case of *darura* (necessity), especially in non-Muslim countries, to give the adopted child your last name in order to avoid many legal complications. Therefore, some contemporary Muslim scholars have permitted giving the adopted child your last name in case of necessity.<sup>53</sup>

Another case in which the term “necessity” appears deals with the burial of Muslims in a non-Muslim cemetery. Al-Qaradawi was asked, “What is the rule regarding the burial of a dead Muslim in a Christian cemetery when there is no Muslim cemetery, or there is a cemetery for Muslims, but it

is far away from the family of the deceased and it is not easy for them to visit their dead as easily as they wish ?” He answered:

There have been decisions based on *sharia* rules regarding the case of the death of a Muslim, such as washing, wrapping and praying for him, and then burying him in a Muslim cemetery. Thus, Muslims have their own way of burying and preparing graves, by the manner of laying down [the deceased] and facing the *qiblah* [towards Mecca], and avoiding behaving like the polytheists, like those who live in luxury and the like.

It is known that members of every religion have their cemeteries. Jews have their cemetery, Christians have their cemetery and pagans have their cemeteries. Therefore, it should not be a surprise that the Muslims also have their cemeteries. Every group of Muslims in non-Islamic countries should strive, with inner solidarity, to prepare separate cemeteries for Muslims, and to make an effort to convince those in charge to do so, if they can.

If Muslims cannot maintain their own cemetery, at least they should have a special lot on one side of a Christian cemetery, where they may bury their dead.

If neither [solution] works for the Muslims, and a Muslim dies, they should transfer him to another city which has a Muslim cemetery, if possible, and if not, they should bury him in a Christian cemetery, if they can, in accordance with the rules of necessity.”<sup>54</sup>

### TAYSIR AL-FIQH (MAKING FIQH EASY)

The concept of *taysir al-fiqh* is a pivotal element in *fiqh al-aqalliyat*. Al-Qaradawi discusses it at length in his work *Taysir al-Fiqh li-Muslim al Mu’asir fi Daw’ al-Qur’an wal-Sunna* (“Making Fiqh Easy for Contemporary Muslims in the light of Quran and Sunna”). The book is divided into three main parts: “towards easy contemporary *fiqh*,” “the methodol-

ogy of easy *fiqh*” and “*fiqh* of knowledge”—or the information one must have in order to make rulings.

The opening section, which describes and analyzes easy *fiqh*, is subdivided into two main chapters entitled “Making *fiqh* More Easily Understood” and “Making *fiqh* Easy in Practice and Implementation.”<sup>55</sup> The first chapter explains how *fiqh* can be made more comprehensible to Muslims who are burdened with daily tasks and, in the age of computers, flooded with information. Al-Qaradawi stresses his commitment to “Greater *fiqh*”—the view that *fiqh* encompasses all fields of life, as can be found in the ideology of the Muslim Brotherhood, and that the spirit of *fiqh* requires more than mere allegiance to precedents established in previous generations.<sup>56</sup> He also argues that *fiqh* books today should omit issues that are no longer relevant, such as laws on slaves and slavery, and proposes that new branches of law be introduced. In the “laws of companies,” for example, *zakat* (charity) might be paid from company profits rather than from sheep and camels.<sup>57</sup>

The second chapter of *Taysir al-Fiqh* focuses on the rules of jurisprudence in different fields in a manner designed to enable Muslims to observe their religion more easily. Al-Qaradawi stresses that easy *fiqh* aspires neither to create a new *sharia* nor to permit that which is forbidden. He quotes two sayings from the Prophet, however, that support giving *rukhsa* (concessions) for leniency based on the fact that not all Muslims are on the same religious level: “Allah would rather that concession be given on His behalf and hates to be disobeyed,” and “Truly, Allah desires that His concessions be carried out [just] as He desires His injunctions to be observed.”<sup>58</sup> When confronted with a choice between strictness and leniency, al-Qaradawi calls for the latter and quotes a saying attributed to ‘Aisha, the wife of the Prophet: “Allah’s messenger never had to choose between two things without choosing the more lenient way if no transgression would take place.”<sup>59</sup> He points out, furthermore, that the jurisprudence of the generation of the Prophet’s companions tended toward leniency rather than toward the strictness characteristic of the succeeding generations.<sup>60</sup>

Al-Qaradawi’s supports leniency for members of

Muslim minorities in non-Muslim lands because he views such groups, unlike Muslims living in Muslim countries, as being in a condition of weakness. He compares their situation to that of a sick person as opposed to a healthy one, or a traveler as opposed to permanent resident. The poor should be treated more leniently than the rich, the needy more leniently than the non-needy and the handicapped more leniently than the able-bodied.

A good example of a lenient ruling given in order to help Muslims fit into the general, non-Muslim society in which they live and work can be found in a *fatwa* regarding dietary restrictions. The *fatwa* responded to this question: “As we are living in North America...sometimes we have to attend the business meetings/trainings and...there are different kinds of edibles that are available such as...cake, bread, pastries etc....[C]an we eat these bakery products because we don’t know the exact ingredients of these products? I have also heard that in some kinds of cakes/pastries they use wine too.” Al-Shinqiti answered as follows: “We don’t have to dig deep in searching the exact ingredients of these products that are commonly known to be wine-free. Even if wine is used in production, and it has been chemically transformed, then it should no longer carry the same ruling of the prohibition as it cannot be called wine in that case. But if the wine is added to the flavor without being transformed, then it cannot be eaten.”<sup>61</sup>

#### ‘URF (CUSTOM) AND CHANGES IN RULINGS ACCORDING TO TIME AND PLACE

In his book *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period*, Gideon Libson explores the historical development of the status of custom in Islamic law. He concludes:

The formal status of custom, rejected in classical literature, re-emerged in post-classical and modern periods. This development reached its peak in the introductory articles of the *Mejelle* [Ottoman legal codex], several of which (arts. 36-45), devoted to custom, were culled from

early and late *fiqh* literature; the consolidation of these articles in a single act of legislation reflects the evolution of custom in Islamic law from a material source toward recognition as a formal source.<sup>62</sup>

Ibn Qayyim al-Jawziyya (d. 1350/751), a classical scholar highly respected within the *salafiyya* movement and a disciple of Ibn Taymiyya (d. 1328/728), explains what custom is and writes at length about “the changing of the ruling with the changing of custom.” The meaning of the word *dabba* (riding animal), for example, may change from place to place according to custom. If *dabba* refers only to donkeys in one’s place of residence, therefore, one is allowed to swear that he did not ride a *dabba* if he rode a horse or a camel. In that case, he is not swearing falsely. Ibn Qayyim al-Jawziyya states that “legal rules in any country are made according to the custom of its inhabitants.”<sup>63</sup>

Following the lead of al-Jawziyya, al-Qaradawi devotes an entire chapter of *Taysir al-Fiqh* to changing *fiqh* in accordance with time and place. And in his work *Fi Fiqh al-Aqalliyyat*, he draws attention to an example that al-Jawziyya cites of how a change of place resulted in a change of law: “The Prophet had forbidden amputation of arms [as a punishment for theft] during an attack.” This divine law was cancelled in order to prevent “the failure or lateness of the Muslims while pursuing the infidels.” In this case, a change of place led to the creation of a new and different legal ruling, and it was agreed that punishments could not to be carried out on enemy soil.<sup>64</sup> Al-Qaradawi points out the contemporary parallels to this situation:

The greatest difference possible as a result of change of location is the difference between *dar al-Islam* and that which is not *dar al-Islam*. This is a deeper and wider difference than the difference between a city and a village, the settled and the nomads and the people of the north and the people of the south. That is so because *dar al-Islam*, with its limitations and deviations, helps the Muslim fulfill the commandments of Islam

and to abstain from the prohibitions in Islam, as opposed to being outside of *dar al-Islam* where this advantage does not exist.<sup>65</sup>

Alexandre Caeiro, a scholar of European Islam, calls a July 2001 ruling of the European Council of Fatwa and Research at a meeting in Valencia, Spain, an example of “European ‘urf.” The question addressed was whether a married woman who converts to Islam may remain with her non-Muslim husband if he maintains his original faith. Classical Muslim jurisprudence requires that a wife be formally separated from her infidel husband once she becomes a Muslim.<sup>66</sup> It is not permissible for an infidel to own a Muslim slave, nor is it permissible for him to have a Muslim wife.<sup>67</sup>

But the ECFR ruling allows women who become Muslims to remain married to their non-Muslim husbands so as “not to frighten women who wish to embrace Islam.” It is a case of *maslaha*, in which public interest—that is, increasing the number of female converts—prevails over traditional law. And, according to Ahmad al-Rawi, chairman of the Union of Islamic Organizations in Europe, it is a case of “European ‘urf” as well, because “the *fatwa* is possible only in the West where the woman is respected, and this is crucial.” Finally, Caeiro notes that the ruling is also faithful to the principle of *taysir*, making law easy for Muslims in the West.<sup>68</sup>

## The Critics of *Fiqh al-Aqalliyyat*

*Fiqh al-aqalliyyat* receives two types of criticism from within the Muslim community. Some reject the entire concept of *fiqh al-aqalliyyat*, that Muslims in the West should have a special system of *fiqh*; others condemn specific lenient rulings of institutions that have adopted *fiqh al-aqalliyyat*. Not all members of the ECFR even agreed about *fiqh al-aqalliyyat* initially.<sup>69</sup> Only in January 2004 did *fiqh al-aqalliyyat* become the official policy of the ECFR (resolution 12/5).<sup>70</sup>

A question asked on Islamonline.net neatly summarizes the debate between the proponents and critics of the concept:

There is a scholarly difference these days with regard to *fiqh al-aqalliyyat* or the *fiqh* of Muslim minorities. Some scholars regard it as an innovation that manipulates Allah’s religion, and others consider it a lawful necessity. What is your point of view on that issue with special reference to the concept of *fiqh al-aqalliyyat* itself? What is the nature of the scholarly difference in that regard?<sup>71</sup>

The response by a group of *muftis*, who included al-Alwani, opens by saying that Muslims in countries where they are a minority and not under the authority of Islamic governments face particular problems that must be addressed in order for their lives to run smoothly. These challenges differ radically from those common in Muslim countries, and *sharia* is central to providing solutions to these problems and in meeting new needs. *Fiqh al-aqalliyyat* neither transforms the basic principles of the religion nor changes the pillars of Islam. Those who live as members of a minority, for example, must continue to pray. Al-Alwani states that it is important to consider *fiqh al-aqalliyyat* as a major branch of jurisprudence; it must be placed within a suitable framework so that it can give guidance to Muslims living in non-Muslim countries who need rulings not yet clarified in *sharia*. He adds that whoever deals with *fiqh al-aqalliyyat* must be knowledgeable in the fields of sociology, economics, politics and international relations.

The most serious criticism, however, is that *fiqh al-aqalliyyat* is “an innovation that manipulates Allah’s religion.” The word innovation refers to the Islamic term *bida’*, which is usually considered bad or blameworthy.<sup>72</sup> One of the respondents, al-Shinqiti, dismissed this charge by downplaying the innovative nature of *fiqh al-aqalliyyat*: “Thus, the *fiqh* of Muslim minorities is not an innovation. The earlier books of jurisprudence have tackled many rulings peculiar to the Muslims who live in coun-

tries that do not adopt Islam. It is only the term given to such rulings, i.e. “*fiqh* of Muslim minorities” that is innovated, and there is nothing wrong in changing terms.”<sup>73</sup> Given that al-Shinqiti allowed Western Muslim parents to change the name of their adopted son on the grounds of necessity, however, this claim is surely somewhat misleading. He is aware that *fiqh al-aqalliyat* is not merely a title or name, but a theory that introduces new jurisprudential tools.

Another major criticism not raised by the question that prompted the *fatwa* but implicit in the response is that *fiqh al-aqalliyat* undermines the allegiance of Muslims in the West to the *Umma* because it obligates them to obey the laws of non-Muslims. This duty potentially subjects them to conflicts caused by dual allegiance. Shaykh Muhammad Nur Abdullah, president of the *Fiqh* Council of North America, refers to this criticism indirectly when he discusses the acceptability of voting:

Voting for political parties in Muslim countries is completely different from non-Muslim countries, because in the former case, Muslims have Islamic parties as an option, whereas in the latter, they do not exist. Therefore, some Muslims may become confused [and think] that this may come under the category of taking non-Muslims as patrons in a way that is not sanctioned by Islam.

Under *fiqh al-aqalliyat*, however, this matter may be interpreted in a different sense, namely, that Muslims should vote for the party which best serves their issues.<sup>74</sup>

Prominent among the critics of specific rulings made by *fiqh al-aqalliyat* figures are hardline Saudi Wahhabi shaykhs. Caeiro and Nafi cite the negative reactions to the *fatwa* allowing a woman who converted to Islam to remain with her non-Muslim husband; the *fatwa* allowing Muslims to take mortgages, which can be viewed as usury; and the *fatwa* allowing American Muslim soldiers to fight in Muslim countries.<sup>75</sup>

## Conclusion

*Fiqh al-aqalliyat* uses legal tools, such as *maslaha* (public interest), that reflect the approach of the *salafi* utilitarians. In Hallaq’s view, “the reliance on the concepts of *istislah* [*maslaha*] and necessity, the two major ingredients in the theories espoused by the school of religious utilitarianism, amounts to nothing short of subjectivism . . . .”<sup>76</sup> Caeiro concurs: “By putting the emphasis on the individual responsibility and by basing the *fatwas* on rational consideration such as public interest or necessity, the ECFR leads indirectly to the replacement of sacred law by an individual (and therefore subjective) rationalization . . . .”<sup>77</sup>

Subjectivism is taken here as meaning that any *mufti* of *fiqh al-aqalliyat* can choose to give any legal opinion he wishes and base its legitimacy on public interest or the intentions of the law (*maqasid al-sharia*). But is such an understanding valid? *Fiqh al-aqalliyat* does not, in fact, promote legal anarchy in which every *mufti* determines what the public interest is on the basis of his personal judgment. The public interest or the intention of the law is strictly defined in *fiqh al-aqalliyat*. The system attempts to remain within the orthodox framework while granting leniencies based on the principle of ‘*alamiyyat al-Islam*—leniencies allowed for the sake of continuing and developing the Muslim presence and *dawa* in every corner of the world. Muslims can adopt children, female converts to Islam can stay with their husbands, and Muslims can take bank mortgages in order to purchase, rather than rent, homes so as to strengthen the presence of Muslims in the West. It is a combination of *maqasid al-sharia* and ‘*alamiyyat al-Islam* that makes a new *fiqh* for Muslim minorities.

The proponents of *fiqh al-aqalliyat* define it as a nonviolent movement that seeks to expand Islamic influence in the ways of *dawa*. In judging *fiqh al-aqalliyat*, United States officials should read the section of al-Alwani’s *Maqasid al-Sharia* (pp. 55-58) in which he establishes his new territorial theory—*dar al-Islam* and *dar al-dawa*. It is a unique, pioneering attempt to cause a revolution within *salafi*

Islamic ideology and to pave the way for the peaceful existence of Muslim minorities in the West. It should be noted, however, that in practice—while it is highly unlikely that a *mufti* belonging to *fiqh al-aqalliyat* would ever actively support violence in a Western country—Muslim youth do not necessarily listen to their religious leaders, as was seen in France.

*Fiqh al-aqalliyat* has a strong political dimension. It calls on Muslim minorities to interact with the non-Muslim majority. It allows Muslims to vote in elections, urges them to obey the law of the state, and permits Muslim soldiers to fight in Muslim countries. It strives to promote the economic security and social solidarity of Muslim minorities so that they achieve a standing not unlike that of the Jewish community.<sup>78</sup> Al-Alwani's intention in creating *fiqh al-aqalliyat* was, not only to found a system of jurisprudence, but also to give Muslim minorities a tool for increasing their internal social bonds and enhancing their political influence within the general public. The founders of *fiqh al-aqalliyat* wish to establish institutions that become the exclusive legal authorities for Muslim minorities<sup>79</sup> and thus unite the Muslim community politically. The ECFR is especially intent on achieving this goal.

One reason for making *fiqh al-aqalliyat* a somewhat lenient doctrine is to attract more Muslims within minority communities to follow *sharia* law. For Muslims in the West, following *sharia* depends on individual choice and free will,<sup>80</sup> especially as Western regimes have determined that giving Muslims legal autonomy, especially in family law, is extremely problematic. In Europe only Greece does so.<sup>81</sup> Recently, there was a heated debate on this matter in the Canadian province of Ontario, which concluded by rejecting the idea of founding autonomous Muslim courts for family law.<sup>82</sup>

Many Westerners seek ways of reconciling Islam and the West among secularist Muslims. But being a deep and well-thought-out theory, *fiqh al-aqalliyat* might prove that the circles of the *ulema* are able to provide a more effective solution—and one that, by staying within the boundaries of *sharia*, enjoys more legitimacy among the Muslim masses. Many Muslims and non-Muslims put high hopes in *fiqh al-*

*aqalliyat*. It can live up to those hopes if the Muslim public in the West accepts the religious leniencies as legitimate *sharia* rulings, even though the doctrine faces strong criticism from Wahhabi hardliners. It will take a few more years to assess whether *fiqh al-aqalliyat* is successful in getting more members of the Muslim minorities to follow *sharia*, in gaining more Christian converts to Islam, in becoming a politically uniting force for the Muslims minorities, and—most important—in establishing an Islamic method that supports the peaceful coexistence of Muslims and non-Muslims within non-Muslim societies. ■

*Shammai Fishman wishes to thank Prof. Isaac Hasson, Prof. Yohanan Friedmann, Prof. Aharon Layish (Hebrew University), Prof. David Johnston (Yale), Dr. Alexandre Caeiro (International Institute for the Study of Islam in the Modern World-ISIM), Dr. Shmuel Bar (Herzliya Interdisciplinary Center) and his father Dr. Joel Fishman.*

# Endnotes

1. *Fiqh al-aqalliyat* was developed as a means of assisting Muslim minorities in the West. It may, however, also be applied in other parts of the world with large Muslim minorities, such as India. Shaykh Dr. Taha Jabir al-Alwani, founder of *fiqh al-aqalliyat*, gave a video lecture at a “Jurisprudence Workshop” held in New Delhi ([www.asharqalawsat.com](http://www.asharqalawsat.com), 14 February 2004). Dr. Yoginder Sikand, an Indian Muslim intellectual, regularly includes articles about *fiqh al-aqalliyat* in his e-journal *Qalandar* (see: <http://www.islaminterfaith.org/dec2004/article4.htm>).
2. Muhammad Khalid Masud, “Islamic Law and Muslim Minorities,” *ISIM*, 11 (2002): 17 (<http://www.isim.nl/files/news11.pdf>).
3. See Khaled Abou El Fadl, “Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries,” *Islamic Law and Society*, 1, 2 (1994): 141-87; and Basheer M. Nafi, “Fatwa and War: On the Allegiance of the American Muslim Soldiers in the Aftermath of September 11,” *Islamic Law and Society*, 11, 1 (2004): 83-90.
4. Ahmad al-Rawi, “Islam, Muslims and Islamic Activity in Europe: Reality, Obstacles and Hopes,” <http://www.islam-online.net/arabic/daawa/2003/12/ARTICLE05A.SHTML>
5. <http://www.cair.com/asp/populationstats.asp>.
6. Yvonne Yazbeck Haddad and Jane I. Smith, “Introduction” in Yvonne Yazbeck Haddad and Jane Idelman-Smith (eds.), *Muslim Minorities in the West Visible and Invisible* (Walnut Creek, California: Atamira Press, 2002), p. vi.
7. Ibid.
8. <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=107972>. See also “Shari’a” (Anderson, Coulson), *Encyclopedia of Islam*, 2nd ed. (Leiden: E.J. Brill, 1960-2002).
9. <http://www.islamonline.net/arabic/contemporary/politic/2001/article1.shtml>. This manuscript was also published as a chapter of his book *Maqasid al-Sharia* (Beirut: Dar al-Hadi, 2001). An English translation was published under the title *Towards a Fiqh for Minorities: Some Basic Reflections* (Occasional Paper Series, 10), International Institute for Islamic Thought, London-Washington, 2003.
10. Biographical information taken from: [www.usc.edu/dept/MSA/law/alalwani\\_usulalFiqh/taha.html](http://www.usc.edu/dept/MSA/law/alalwani_usulalFiqh/taha.html); [http://www.siss.edu/faculty/frameset\\_faculty.html](http://www.siss.edu/faculty/frameset_faculty.html); [www.weforum.org/site/knowledgenavigator.nsf/Content/Alalwani%20Taha%20Jabir](http://www.weforum.org/site/knowledgenavigator.nsf/Content/Alalwani%20Taha%20Jabir).
11. [www.asharqalawsat.com](http://www.asharqalawsat.com), 21 July 2002.
12. MEMRI, *Special Dispatch Series – No. 794* (6 October 6 2004), <http://memri.org/bin/articles.cgi?Page=archives&Area=sd&ID=SP79404>.
13. MEMRI, *Special Report – No. 30* (8 July 2004), <http://memri.org/bin/articles.cgi?Page=archives&Area=sr&ID=SR3004>.
14. [http://www.qaradawi.net/site/topics/article.asp?cu\\_no=2&item\\_no=1221&version=1&template\\_id=190&pare](http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=1221&version=1&template_id=190&pare), Nafi, 97-99.

15. *Nazarat Ta'asisiyya*, Chapter 2.
16. See "Umma" (F. M. Denny), *Encyclopedia of Islam*.
17. *Nazarat Ta'asisiyya*, Chapter 2.
18. *Nazarat Ta'asisiyya*, Chapter 4.
19. See "Da'wa" (M. Canard), *Encyclopedia of Islam*.
20. Yusuf al-Qaradawi, *Fi Fiqh al-Aqalliyyat al-Muslima—Hayat al-Muslimin Wasat al-Muitama'at al-Ukhra* (Cairo: Dar al-Suruq, 2001), p.23.
21. See "Dar al-Islam" (A. Abel), *Encyclopedia of Islam*.
22. Ibid. Muhammad Bushari, president of the National Federation of Muslims in France, gives the same explanation, expressing the view that for Muslims France is *dar al-'ahd* (land of the covenant): "And throughout long discussions we reached [the conclusion] that we are not in *dar al-Harb* because we enjoy freedom in carrying out our religious matters, therefore we are in *dar al-'ahd*, and *dar al-'ahd* means that we have rights and duties" ([www.muslimworldleague.org/paper/1767/articles/page3.html](http://www.muslimworldleague.org/paper/1767/articles/page3.html)).
23. Khalid Abou El Fadl gives examples of different legal decisions from the period when Muslim Iberia was being taken over by Christian forces. Basheer Nafi adds more examples.
24. The term for migration is *hijra*, a term that refers to the migration of the Prophet from Mecca to Medina in the year 622 AD. The Prophet migrated to Medina with his followers because it was difficult to fulfill the commandments of the new religion in hostile surroundings. When referring to this issue, al-Alwani compares the situation of the Muslim minorities in the West today to the situation of the Prophet's companions who emigrated to Abyssinia a few years before the *hijra* of 622. He concludes that, just as the Muslims in the time of the Prophet were allowed to stay in Abyssinia because they were treated well by the king al-Najashi (the Negus), the Muslims who live in the West are allowed to remain there because they are treated well (*Nazarat Ta'asisiyya*, Chapter 6).
25. Theologian and philosopher, author of "the great exegesis." See "Fakhr al-din al-Razi" (G. C. Anawati), *Encyclopedia of Islam*.
26. Al-Qaffal means the locksmith. The city of Shash is modern Tashkent. Al-Shashi was a famous jurist of the Shafi'i school of law.
27. *Maqasid al-Sharia*, pp. 55-58.
28. Fakhr al-Din al-Razi, *Al-Taksir Al-Kabir* (Beirut, Dar al-Kutub al-Ilmiyya, 1990), vol. 8, p. 156 (commentary on Quran 3:110).
29. [www.ashaqalawsat.com](http://www.ashaqalawsat.com), 21 July 2002.
30. [www.asharqalawsat.com](http://www.asharqalawsat.com), 23 November 2001
31. *Maqasid al-Sharia*, p. 57.
32. <http://www.uoif-online.com/modules.php?op=modload&name=News&file=article&sid=414>, and Alexandre Caeiro, "Pourquoi une fatwa en France?," *Le Monde*, 11 November 2005. (I would like to thank Dr. Caeiro for sending me this material). Caeiro also refers to this *fatwa* in "An Anti-Riot Fatwa," *ISIM*, 17 (2006): 17, [http://www.isim.nl/files/Review\\_17Review\\_17-32.pdf](http://www.isim.nl/files/Review_17Review_17-32.pdf). At the end of the article, he mentions the term "public Islam." This term and its use in research and in Islamic materials are worthy of further scrutiny.
33. <http://www.islamonline.net/Arabic/news/2005-11/12/article04.shtml>.
34. [http://oumma.com/article.php3?id\\_article=1759](http://oumma.com/article.php3?id_article=1759) .

35. [www.asharqalawsat.com](http://www.asharqalawsat.com), 6 June 2003.
36. [http://www.qaradawi.net/site/topics/article.asp?cu\\_no=2&item\\_no=41&version=1&template\\_id=105&parent\\_id=16](http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=41&version=1&template_id=105&parent_id=16).
37. Aharon Layish, "The Transformation of the Shari'a from Jurists' Law to Statutory Law in the Contemporary Muslim World," *Die Welt des Islams*, 44/1 (2004): 86.
38. <http://www.e-cfr.org/eng/article.php?sid=47>.
39. Wael Bahjat Hallaq, *A History of Islamic Legal Theories* (Cambridge University Press, 1997), p. 213.
40. *Ibid.*, p. 214.
41. *Ibid.*, p. 231.
42. Salafiyya is a neo-orthodox brand of Islamic reformism, originating in the late nineteenth century and centered in Egypt; it aim was to regenerate Islam by returning to the tradition of represented by the "pious forefathers—*al-salaf al-salih*." See "Salafiyya" (P. Shinar), *Encyclopedia of Islam*.
43. Hallaq, *History*, p. 223.
44. *Ibid.*, p. 229.
45. Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), pp. 69-75.
46. Wael B. Hallaq, "Was the Gate of Ijtihad Closed?," *IJMES*, 16 (1984): 3-41.
47. <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=76500>.
48. Al-Alwani, "Ijtihad in the Regulation and Correction of Capital Markets," *AAISS*, 14/ 3 (1997): 54.
49. <http://www.islamonline.net/livefatwa/english/Browse.asp?hGuestID=tK8q9Z>.
50. Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford University Press, 2004), pp. 164, 247 n21. (I would like to thank Dina Lisnyansky, who is writing a thesis on Tariq Ramadan at the Hebrew University, for pointing this out to me.)
51. See "Maslaha" (Madjid Khadduri), *Encyclopedia of Islam*.
52. Schacht, p. 14 n1, p. 166.
53. <http://www.islamonline.net/livefatwa/english/browse.asp?hGuestID=QIu5P2>.
54. *Fi Fiqh al-Aqalliyyat*, p. 83.
55. Al-Qaradawi, *Taysir al-Fiqh li-Muslim al-Mu'asir fi Daw' al-Qur'an wal-Sunna* (Beirut: Muasasat al-Risala, 2000), pp. 17-18.
56. *Ibid.*, p. 8.
57. *Ibid.*, pp. 20-21.
58. *Ibid.*, pp. 28-29. The translation for this tradition was taken from M.J. Kister's article about *rukhsa* in early Islamic sources (M.J. Kister, "On 'Concessions' and Conduct – A Study in Early Hadith," in M.J. Kister, *Society and Religion from Jahiliyya to Islam* (Aldershot, Hampshire: Variorum, 1990) XIII, pp. 1-37.
59. *Ibid.*, p. 32.
60. *Ibid.*
61. <http://www.islamonline.net/livefatwa/english/Browse.asp?hGuestID=d3FM3e>.

62. Gideon Libson, *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period* (Cambridge: Harvard University Press, 2003) p. 79.
63. Ibn Qayyim al-Jawziyya, *I'lam al-Muwaqqi'in 'An Rabb al-'Alamin* (Mecca: no publisher or year given), vol. 3, pp. 64-65.
64. *Fi Fiqh al-Aqalliyyat*, p. 51; Ibn Qayyim al-Jawziyya, vol. 3, p. 8.
65. *Fi Fiqh al-Aqalliyyat*, p. 52.
66. Such a case was discussed by Yohanan Friedmann, *Tolerance and Coercion in Islam* (Cambridge University Press, 2003), pp. 163-164.
67. *Ibid*, p. 162.
68. Alexandre Caeiro, "The European Council for Fatwa and Research," Paper presented at the Fourth Mediterranean Social and Political Research Meeting, Florence & Montecatini Terme, 19-23 March 2003, organized by the Mediterranean Programme of the Robert Schuman Centre for Advanced Studies at the European University institute, p. 28. (I wish to thank Dr. Caeiro for sending me this article.)
69. *Ibid*, p. 9.
70. [http://www.qaradawi.net/site/topics/article.asp?cu\\_no=2&item\\_no=3259&version=1&template\\_id=187&parent\\_id=18](http://www.qaradawi.net/site/topics/article.asp?cu_no=2&item_no=3259&version=1&template_id=187&parent_id=18).
71. <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=107972>.
72. See "Bida'a" (J. Robson) in *Encyclopedia of Islam*.
73. <http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?hFatwaID=107972> .
74. *Ibid*.
75. Caeiro, "The European Council for Fatwa and Research", 23, 29; Nafi, 108-113.
76. Hallaq, p. 231.
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78. *Nazarat Ta'asisiyya*, Chapter 1.
79. Caeiro, "The European Council for Fatwa and Research," 2.
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81. Caeiro, "The European Council for Fatwa and Research," 16.
82. See <http://islamonline.net/English/News/2005-09/09/article02.shtml>; <http://islamonline.net/English/News/2005-09/12/article04.shtml>; and Daniel Pipes, "Enforce Islamic Law in Canada?," *New York Sun*, 27 September 2005, <http://www.danielpipes.org/pf.php?id=2989>.



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