Islamic Studies 58:1 (2019) pp. 107–125

Issues of Muslim Minorities in Non-Muslim Societies: An Appraisal of Classical and Modern Islamic Legal Discourses with Reference to *Fiqh al-Aqalliyyāt*

MUNAZZA AKRAM[*]

Abstract

The theory of fiqh al-aqalliyyāt *(*fiqh *for minorities) that has appeared in the recent history of Islamic jurisprudence is novel yet controversial. It was propounded by scholars like Yūsuf al-Qaraḍāwī (b. 1926) and Ṭāhā Jābir al-ʿAlwānī (1935–2016) in 1990s. The* fiqh al-aqalliyyāt *aims at providing plausible solutions to the religious-cum-legal issues faced by Muslims living in predominantly non-Muslim societies, especially in the West. However, there are several technical and juristic issues that haunt this theory. The present article looks into the history and development of the idea of* fiqh al-aqalliyyāt *and shows that though it has won approval of a substantial number of scholars and Muslim jurists, the criticism it has received cannot be ignored either. Even the use of term* "fiqh" *in this context has been questioned by some scholars. Particularly, the way the proponents of* fiqh al-aqalliyyāt *deal with the classical juristic opinions and texts is problematic. Therefore, the article maintains that the challenges faced by Muslim minorities living in non-Muslim lands today can be addressed within the parameters set by the classical Muslim jurists and without downplaying their valuable contributions. However, there is no denying that certain insights underlying the contemporary discourse on* fiqh al-aqalliyyāt *can be meaningfully utilised without challenging the foundations of classical* fiqh.

Keywords

fiqh al-aqalliyyāt, jurisprudence of minorities, Muslim minority law, classical *fiqh*, Islamic jurisprudence, Muslim minorities.

Introduction

The theory of *fiqh al-aqalliyyāt*[1] propounded by scholars like Yūsuf al-

[*] Lecturer, Department of Law, Mirpur University of Science and Technology (MUST), Mirpur, Azad Jammu and Kashmir (AJ&K), Pakistan.

Qaraḍāwī (b. 1926) and Ṭāhā Jābir al-ʻAlwānī (1935–2016) in 1990s[2] appears novel. However, legal issues of Muslim minorities were also addressed by classical Muslim jurists at length. A glance at the Muslim juristic heritage demonstrates that the classical jurists comprehensively dealt with the religious-cum-legal issues related to Muslim individuals living in the lands under the jurisdiction of non-Muslim rulers, which they generally term as *dār al-ḥarb*. The present paper takes stock of the classical Muslim juristic heritage on the subject at hand before analysing the doctrine of *fiqh al-aqalliyyāt* that has appeared in the modern history of Islamic jurisprudence. The notions of *hijrah*, *amān*, and legal obligations that Muslim Minorities owe to non-Muslim societies where they live as well as to the Muslim *ummah* are also discussed in the light of traditional jurists of various schools of thought (*madhāhib*). Moreover, the article examines contemporary *fiqh al-aqalliyyāt* discourse, specifically focusing on the views of Tariq Ramadan (b. 1962), Ṭāhā Jābir al-ʻAlwānī, and Yūsuf al-Qaraḍāwī.

An Analysis of Classical Islamic Law regarding Muslim Minorities

Though the legal and religious issues faced by Muslim minorities have been discussed by the classical Muslim jurists, they disagreed a lot and it can be suggested that their discourse is dispersed, complicated, and ambivalent.[3] Major scholarship on the topic was produced by jurists living in *dār al-Islām*. *Fatwā*s and writings of jurists residing in *dār al-ḥarb* are extinct and not properly preserved.[4] Keeping in mind these two points, this research will examine the classical juristic opinions on the issues of Muslim minorities.

The most important issue linked with the residence of Muslims in the non-Muslim lands is the notion of *dār al-Islām* and *dār al-ḥarb*.[5] How did the

[1] *Fiqh al-aqalliyyāt, fiqh* for minorities, *jurisprudence of minorities,* and *Muslim minority law* are terms used interchangeably.

[2] Shammai Fishman, *Fiqh al-Aqalliyat: A Legal Theory for Muslim Minorities* (Washington: Hudson Institute, 2006), 1.

[3] 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, no. 2 (1994): 159.

[4] Ibid., 182. Also see Abou El Fadl, "Striking a Balance: Islamic Legal Discourses on Muslim Minorities," in *Muslims on the Americanization Path?* ed. Yvonne Yazbeck Haddad and John L. Esposito (Oxford: Oxford University Press, 2000), 49.

[5] *Dār al-Islām* and abode of Islam will be used interchangeably in this article. There might be some technical differences between *dār al-kufr, dār al-ḥarb*, and abode of unbelief. However, they will be used here interchangeably. For the technical difference in the definitions of these term, see Muhammad Mushtaq Ahmad, "The Notions of *Dār al-Ḥarb* and *Dār al-Islām* in Islamic Jurisprudence with Special Reference to the Ḥanafī School," *Islamic Studies* 47, no. 1 (2008): 9.

classical jurists identify this division of the world into the *dār al-Islām* and *dār al-ḥarb* (also known as abode of Islam and abode of unbelief) needs to be clarified. The division is often neglected by the contemporary scholars and the idea behind this division is misunderstood. The following section first discusses the concept of *dār* and then the issue of Muslims' residence in *dār al-ḥarb*.

The Concept of *Dār*

The concept of *dār* is central to many debates of Islamic law. This concept serves as the base of many other juridical ideas and notions. This division of the world was proposed by the classical jurists but still in the contemporary world one needs to rethink and revisit the idea rather than altogether rejecting it on the assumption that it was relevant only in the past. This revisiting may help to understand many historical and contemporary issues and challenges associated with this dichotomous division.

This division is misunderstood due to its connection with the nature of relationship between Muslims and non-Muslims.[6] The scholars usually discuss three notions in the same ambit namely the cause of war, the nature of relationship between Muslims and non-Muslims, and the division of the world into two abodes, that is, *dār al-Islām* and *dār al-ḥarb*. According to one view, the nature of relationship between Muslims and non-Muslims is hostile. This means acceptance of infidelity as the cause of war. The acceptance of this view gives rise to another theory, which divides the world into two abodes.[7] This implies that if the nature of relationship between Muslims and non-Muslims no more remains hostile, and aggression instead of infidelity is considered the cause of war, then there is no need for the division of the world into *dār al-Islām* and *dār al-ḥarb* or at least this division is not of a permanent nature.[8]

Contrary to this idea, another view regarding this division is that dichotomy of the world is permanent and it has nothing to do with the nature of relationship between Muslims and non-Muslims. Instead, this division rests on the principle of territorial jurisdiction expounded by Muslim specially Ḥanafī jurists.[9] The issue of Muslim minorities and the Islamic law, wherever discussed, directly started from the issue of residence in *dār-al-ḥarb* without giving due consideration to the concept of *dār*.[10]

---

[6] Muhammad Munir, "Public International law and Islamic International Law: Identical Expressions of the World Order," *Islamabad Law Review* 1, nos. 3–4 (2003): 372.

[7] Ibid., 372, 403.

[8] Ibid., 409.

[9] Ahmad, "Notions of *Dār al-Ḥarb* and *Dār al-Islām*," 6–7.

[10] Many Western scholars believe in the hostile relationship of Muslims and non-Muslims and

The concept of *dār* is itself controversial for some scholars. It is often suggested that this concept should be abandoned.[11] However, if we refer to the writings of Ḥanafī jurists, the situation is less complicated. According to this view, the sword verses[12]—quoted as an argument of the opinion that the reason of war (*ʿillat al-jihād*) is infidelity (*kufr*)—were time-place specific. The relationship between Muslims and non-Muslims is rather based upon *sūrat al-Baqarah*'s verses[13] according to which the reason of war is aggression (*muḥārabah*).[14]

Now if the relationship between Muslims and non-Muslims is based on peace and the division of the world into two abodes is just for affirmation of territorial jurisdiction of Islamic courts, the issue becomes less complicated. However, the point is that even if the relationship between Muslims and non-Muslims is based on peace and has nothing to do with the dichotomous division of the world, is it permissible for Muslims to reside in *dār al-ḥarb* or non-Muslim lands? If they are allowed then what about the obligation of *hijrah*? Moreover, the purposes of *jihād* need to be discussed in this context. A detailed discussion of these two issues is not within the purview of this research. However, the analysis of the issue of residence outside *dār al-Islām* will shed light on the views regarding *hijrah*.

The Question of Residence outside *Dār al-Islām* and Related Issues

Classical juristic opinions are diverse on the issue of residence in *dār al-ḥarb*. The issue of *hijrah* (migration) is also linked with the legality of residing outside *dār al-Islām*. Along with this, this paper will explore the status of the Muslims living outside the territory of Islam in the context of Muslim *ummah* and see how jurists have identified (or differentiated) the laws applicable to these Muslim minorities.[15]

---

link this nature of relationship with the division of the world into two abodes. See Ahmad "The Scope of Self-defence: A Comparative Study of Islamic and Modern International Law," *Islamic Studies* 49, no. 2 (2010): 156; Abou El Fadl, "Islamic Law and Muslim Minorities," 142.

[11] Wahbeh Al-Zuhili, "Islam and International Law," *International Review of the Red Cross* 87, no. 858 (2005): 278–79; Munir, "Public International law and Islamic International Law," 403–09.

[12] Qur'ān 9:5, 29, 33.

[13] Ibid., 2:256.

[14] For a scholarly analysis of this issue, see Ahmad, "Notions of *Dār al-Ḥarb* and *Dār al-Islām*," 23–26.

[15] For an excellent review of historical analysis of juristic opinions on the issues of Muslim Minorities, see Abou El Fadl, "Islamic Law and Muslim Minorities"; Abou El Fadl "Muslim Minorities and Self-Restraint in Liberal Democracies," *Loyola of Los Angeles Law Review* 29 (1996): 1525–42; Abou El Fadl "Striking a Balance"; Abou El Fadl, "Legal Debates on Muslim

Mālikī School of Thought

According to early jurists of the Mālikī school, the residence of Muslims in non-Muslim lands is not allowed, as Muslims, in that case, will be subjected to non-Muslim laws.[16] Mālik b. Anas (d. 93/795) disapproved entrance of Muslims to non-Muslim lands even for trade purposes.[17] Mālikī position became more inflexible after the fall of Toledo in 1085 CE. Before the fall, the Mālikī jurist Ibn ʿAbd al-Barr al-Qurṭubī (d. 463/1071) viewed that it was generally not allowed for Muslims to reside in non-Muslim lands but they might temporarily do so if they were safe and could protect their faith.[18] However, after the fall of Toledo, which resulted in a number of defeats of Muslims in al-Andalus, the Mālikī school of thought became stricter with regard to Muslims' residence in non-Muslim lands. The Mālikī jurist Muḥammad b. Aḥmad b. Rushd[19] (d. 595/1198) was of the opinion that Muslims should not reside in non-Muslim lands and that they were not allowed to travel to *dār al-ḥarb* even for trade. He doubted the credibility of Muslims residing in the non-Muslim lands, considered their testimony unacceptable in the courts of law, and declared that they were not allowed to lead the prayers.[20] However, this is not an agreed upon view of the Mālikī school, as another Mālikī jurist Muḥammad b. ʿAlī al-Māzarī (d. 536/1141) was of the opinion that the Muslims were not allowed to reside in *dār al-ḥarb* but one should not question their credibility as the circumstances might justify their residence.[21]

The established position of the Mālikī school after sixth/twelfth century became inflexible. For Mālikī jurists, Muslims must not reside in *dār al-ḥarb* except when the necessity demands. However, they must immediately leave the territory of war once the necessity is removed. Two *fatwā*s issued by Mālikī jurist Aḥmad b. Yaḥyā al-Wansharīsī (d. 914/1508), who condemned the acceptance of Mudéjar status by the Muslims, explained the Mālikī

Minorities: Between Rejection and Accommodation," *The Journal of Religious Ethics* 22, no. 1 (1994): 127–62.

[16] Abū Bakr b. al-ʿArabī, *Aḥkām al-Qur'ān* (Cairo: Dār Iḥyā' al-Kutub al-ʿArabiyyah, 1957), 11:484.

[17] Mālik b. Anas, *al-Mudawwanah al-Kubrā* (Beirut: Dār al-Fikr, 1991), 3:278.

[18] Yūsuf b. ʿAbd Allāh b. Muḥammad b. ʿAbd al-Barr, *al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1987), 210.

[19] For an introduction to his life and works, see Dominique Urvoy, *Ibn Rushd (Averroes)*, trans. Olivia Stewart (New York: Routledge, 2016).

[20] Muḥammad b. Aḥmad b. Rushd, *al-Muqaddimāt al-Mumahhidāt* (Beirut: Dār al-Gharb al-Islāmī, 1988), 2:153.

[21] Aḥmad b. Yaḥyā al-Wansharīsī, *al-Miʿyār al-Muʿrib wa 'l-Jāmiʿ al-Mughrib ʿan Fatāwā ʿUlamā' Ifrīqiyā wa 'l-Andalus wa 'l-Maghrib* (Beirut: Dār al-Gharb al-Islāmī, 1981), 2:133–34.

position.[22] However, this view itself was contested within the school as the *fatwās* were sometimes influenced by the historical and geographical background of the jurists.[23]

The Mālikī position on the question of relationship between the Muslims residing in *dār al-ḥarb* and those living in *dār al-Islām* is not simple. As far as Muslim minorities in the context of Muslim *ummah* are concerned, all schools of juristic thought are agreed upon the fact that no matter where the Muslims reside, they form a part of Muslim *ummah*.[24] This question is more of a theological rather than legal nature. But when one turns to the legal dimensions of this issue, the jurists are not unanimous. On the question whether the person and property of Muslim minorities are protected, the jurists of each school come up with a different view, relying on religious texts (*nuṣūṣ*) and other evidences of Islamic law.

The Mālikī school is agreed upon the inviolability of a Muslim residing in *dār al-ḥarb* as person. But whether the inviolability of his/her property is protected or not is contested. Al-Wansharīsī argued that Mālik agreed with Abū Ḥanīfah's (d. 150/767) view of territorial protection in case of property. But according to Ibn Rushd, Mālik differentiates between the inviolability of person and that of property, which means that Islam protects the person but not the property.[25] According to Muḥammad b. ʻAbd Allāh b. al-ʻArabī (d. 543/1148), Mālikī jurists are divided on this issue and did not deal this question systematically.[26]

As for the question of the applicability of Islamic law, Mālikī school is of the view that Islamic law applies to all Muslims no matter where they live.[27]

---

[22] See Leonard P. Harvey, *Muslims in Spain, 1500 to 1614* (Chicago: University of Chicago Press, 1990), 56–63.

[23] For the different views within the Mālikī school, see Aḥmad b. Muḥammad al-Ṣāwī, *Bulghat al-Sālik li Aqrab al-Masālik* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1952), 1:361; ʻAlī b. Aḥmad al-Ṣaʻīdī and ʻAlī b. Muḥammad al-Manūfī, *Ḥāshiyat al-ʻAdawī ʻalā Sharḥ Abī 'l-Ḥasan li Risālat Ibn Abī Zayd* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1995), 2:4.

[24] See, Jocelyne Cesari, *When Islam and Democracy Meet: Muslims in Europe and in the United States* (New York, NY: Palgrave Macmillan, 2004), 91–92; Muḥammad b. Aḥmad al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Maʻrifah, 1986), 10:61. For the study of *ummah*'s concept in *fiqh al-aqqalliyyāt,* see Said Fares Hassan, *Fiqh Al-Aqalliyyāt: History, Development, and Progress* (New York: Palgrave Macmillan, 2013), 143–44. For the understanding of the concept of *ummah* in European context, see Tariq Ramadan, *To Be a European Muslim* (Leicester: Islamic Foundation, 2005), 153–62, 73–75.

[25] Abou El Fadl, "Islamic Law and Muslim Minorities," 168.

[26] Ibid., 169.

[27] Mālik, *al-Mudawwanah*, 4:425; ʻAbd Allāh b. Aḥmad b. Muḥammad b. Qudāmah, *al-Mughnī* (Beirut: Dār al-Kutub al-ʻIlmiyyah, n.d), 10:162.

Ḥanafī School of Thought

Ḥanafī jurist Muḥammad b. al-Ḥasan al-Shaybānī (d. 189/805) wrote that Abū Ḥanīfah disapproved the residence of Muslims in non-Muslim lands.[28] However, there are reports quoted in Hanafī manuals, which indicate that the compulsory migration (*hijrah*) was abolished after the conquest of Makkah in 8 AH. However, the later position of Ḥanafī school was that the legality or illegality of the residence of a Muslim in non-Muslim lands depended upon the circumstances and situations.[29]

On the relationship between Islamic polity and Muslims in non-Muslim lands, Ḥanafī school argues that theologically Muslims living in non-Muslim lands are part of the *ummah* but as far as their inviolability is concerned the answer is different. For them, the source of inviolability is territory of Islam. Hence, even though morally inviolable, the Muslims residing outside the territory of Islam do not afford protection.[30]

As to the applicability of Islamic law to the Muslims living in non-Muslim lands, Ḥanafī jurists again categorise the situation into legal and moral. For them, the prohibitions prescribed by Islam are universally applicable to all Muslims but that application is in the moral sense only. Islamic courts do not have legal jurisdiction over crimes committed outside the territory of Islam. Therefore, if a murder is committed by a Muslim in *dār al-ḥarb*, the murderer will be liable to its punishment in the life hereafter but cannot be punished by the Islamic courts of *dār al-Islām*.[31]

Shāfiʿī School of Thought

Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820) addressed the issue of Muslims' residence in non-Muslim lands differently. According to him, the residence of Muslims outside the lands of Islam during the life of the Prophet (peace be on him) was with his permission. Therefore, a Muslim may reside under the non-Muslim rule if he does not have fear of getting away from Islam.[32] ʿAlī b. Muḥammad al-Māwardī (d. 450/1058), however, has reported another opinion of the Shāfiʿī school. According to him, if Muslims are able to manifest their religion in a non-Muslim land, that land will become *dār al-Islām* and Muslims are supposed to stay there rather than migrating to *dār al-Islām*.[33] Like Ḥanafī

---

[28] Majid Khadduri, trans., *The Islamic Law of Nations: Shaybānī's Siyar* (Baltimore, MD: Johns Hopkins University Press, 2001).

[29] Abou El Fadl, "Islamic Law and Muslim Minorities," 159, 164.

[30] Ahmad, "Notions of *Dār al-Ḥarb* and *Dār al-Islām*," 9, 12.

[31] Khadduri, *Islamic Law of Nations*, 171.

[32] Muḥammad b. Idrīs al-Shāfiʿī, *Kitāb al-Umm* (Beirut: Dār al-Maʿrifah, 1973), 4:161.

[33] Abou El Fadl, "Islamic Law and Muslim Minorities"; Abou El Fadl "Muslim Minorities and

jurists, Shāfiʿī jurists opine that legal status of migration to *dār al-Islām* depends upon the circumstances.

On the question of relationship between Muslim minorities and *dār al-Islām*, Shāfiʿī jurists hold that the inviolability of person and property of Muslims are due to Islam and not territory. Therefore, wherever the Muslims are, they are theologically part of Muslim *ummah* and have the right of protection.[34] The Shāfiʿī school holds the opinion of universal application of the Islamic law to all Muslims irrespective of where they live.[35]

Ḥanbalī School of Thought

The Ḥanbalī jurists hold that it is not obligatory for Muslims to migrate from *dār al-ḥarb* to *dār al-Islām* if they can manifest their religion and reside in a non-Muslim land without fear of any loss and harm. However, they are recommended to migrate so that they may not contribute to the strength of non-Muslims.[36] Unlike other schools of thought, the Ḥanbalī school of thought did not discuss this issue in detail. However, it developed a compromise, which states that the residence in *dār al-ḥarb* may not be considered a sin and that Muslims residing there may still be considered of good moral character.[37]

The Ḥanbalī school conceded that Muslim minorities were a part of Muslim *ummah*. The inviolability of Muslim minorities has also been accepted by Ḥanbalī jurists. On the application of Islamic law, Ḥanbalī school has an argument similar to that of the Mālikī school, which states that the Islamic law is universally applicable to all Muslims and that if someone violates it, the courts of *dār al-Islām* have legal jurisdiction to give a verdict no matter where it was violated.[38]

This overview provides a wider picture of the views of classical jurists regarding the issues relevant to Muslim minorities. They dealt the question of residence in *dār al-ḥarb*, the status of Muslims living outside the territory of Islam in the context of *ummah* and the applicability of the Islamic law. The opinions discussed above highlight the fact that the discourse is dispersed, complicated, and ambivalent. Within the same school, jurists held different views, which resulted in diversity and variety of opinions. The diversity of

---

Self-Restraint in Liberal Democracies"; Abou El Fadl "Striking a Balance"; Abou El Fadl, "Legal Debates on Muslim Minorities," 127–62.

[34] Aḥmad b. ʿAlī b. Ḥajar al-Haytamī, *Fatḥ al-Jawād bi Sharḥ al-Irshād* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1971), 2:346.

[35] Al-Shāfiʿī, *al-Umm*, 4:354–55.

[36] Ibn Qudāmah, *al-Mughnī*, 10:380–82.

[37] Abou El Fadl, "Islamic Law and Muslim Minorities," 163.

[38] Ibid., 173.

juristic opinions is an opportunity to seek the answers to the issues of Muslim minorities in the changing contexts. The fact that this classical discourse was developed by the jurists residing in *dār al-Islām* and that the ambiguity was found in certain issues, could be a starting point for the contemporary scholars to further explore and give practical solutions to the problems of Muslim minorities in the present era.

Contemporary Scholars on the Issues of Muslim Minorities

Muslim jurists who elaborated the Islamic law during the classical and medieval times worked in a very different situation. The contemporary scenario of Muslims in the modern world is a unique situation. Nevertheless, this changing of facts and circumstances should not undermine the importance of the classical works of Islamic law. One should critically engage with them in order to provide solutions to modern challenges faced by Muslims in general and Muslim minorities in particular.[39]

Many contemporary Muslim scholars addressed legal issues of Muslim minorities in modern non-Muslim societies. ʻAbd al-Majīd al-Najjār (b. 1945), a Tunisian scholar who is also a member of European Council for Fatawa and Research (ECFR),[40] emphasises the permanent nature of Muslim minorities that *fiqh al-aqalliyyāt* (*fiqh* for minorities) strives to preserve. For him, the *fiqh* for minorities is a tool that can answer questions such as their role in the West in light of their settlement project.[41] ʻAbd Allāh b. Bayyah (b. 1935), a Mauritanian scholar, advocates need of a special *fiqh* to respond to Muslim minorities' special circumstances.[42] Given space limitations, the present research discusses only the views of three prominent Muslim scholars who extensively wrote on Islamic law and issues of Muslim minorities, namely Yūsuf al-Qaraḍāwī, Ṭahā Jābir al-ʻAlwānī, and Tariq Ramadan. The following sections will highlight their ideas and contribution and expound main characteristics of their theories.

Tariq Ramadan and European Islam

Tariq Ramadan (b. 1962), a Swiss Muslim academic, philosopher, and writer,

---

[39] On the topic of reform in Islamic thought see, Mazheruddin Siddiqi, *Modern Reformist Thought in the Muslim World* (Islamabad: Islamic Research Institute, 1982); Fazlur Rahman, "Islamic Modernism: Its Scope, Method and Alternatives," *International Journal of Middle East Studies* 1, no. 4 (1970): 317–33.

[40] http://www.e-cfr.org/, assessed February 2, 2017.

[41] Dina Taha, "Muslim Minorities in the West: Between *Fiqh* of Minorities and Integration," *Electronic Journal of Islamic and Middle Eastern Law* 1 (2013): 21.

[42] Ibid., 22.

focuses on the issues of Muslims living in the West. He comes up with the idea of reform and (re)reading the original texts of Islam. Ramadan has authored a number of books. Among them, *To be a European Muslim* and *Western Muslims and Future of Islam* have mainly been consulted for review of his ideas in this paper.

To be a European Muslim is a systematic exploration of Islamic sources and discussion of their significance in the European context. Ramadan expounds the concept of European *sharīʿah* or—to be more precise—of European Islam and discusses the Islamic law and its implementation in the European context.[43] He elaborates his views, which can be materialised in the European context. *Western Muslims and the Future of Islam*[44] is yet another attempt by Ramadan to explain his point of view and respond to the criticism directed to his ideas presented in his previous work.

For him, the Islamic law is not rigid and even not dependent on traditional sources other than the Qur'ān and *sunnah*, which are the primary sources of Islamic law. He opines that Islamic law is compatible with all the situations and provides solutions to the problems faced by its adherents regardless of time and space.[45] For him, the religion is often embedded with cultural norms pertaining to the specific circumstances and geography in which it is followed. Believers need to separate religion from customary elements. Therefore, European Muslims can have true faith only by understanding the two sources, namely the Qur'ān and *sunnah*, and the context in which they are living.[46] According to Ramadan, Western Muslims should directly approach the primary sources of Islamic law, the Qur'ān and *sunnah*, without resorting to the localised traditions of their immigrant ancestors.[47] He supports a "fresh reading of Islamic sources, interpreting them for a western context and demonstrating how a new understanding of universal Islamic principles can open the door to integration into western societies."[48] His understanding of redefining the Islamic teachings in the European context involves the concept of "public interest" (*maṣlaḥah*) and the theory of the "purposes of *sharīʿah*."[49] He rejects the division of the world into

---

[43] Ramadan, *To Be a European Muslim*, 4.

[44] Ramadan, *Western Muslims and the Future of Islam* (New York: Oxford University Press, 2004).

[45] Ibid., 75.

[46] Ibid., 80.

[47] Ramadan, *To Be a European Muslim*, 116.

[48] Ramadan, *Western Muslims and the Future of Islam*, 3.

[49] Public interest (*maṣlaḥah*), is a characteristic feature of the late nineteenth and early twentieth-century Islamic modernist thought and the theory of the "purposes of the sharīʿah also known as *maqāsid al-sharīʿah*, is a controversial discourse within premodern Islamic jurisprudence,

two abodes and holds that this conceptual division of the world is no longer appropriate.[50] He opines,

> *Dār al-Islām* and *dār al-ḥarb* are two concepts which cannot be found either in the *Qur'ān* or in the *Sunna.* They actually do not pertain to the fundamental sources of Islam whose principles are presented for the whole world (*lil-ʿālamīn)*, over all time and beyond any geographical limitation.[51]

It is important to note that Ramadan challenges the term *fiqh al-aqalliyyāt*. He claims that the term contains negative connotations. It seems as if the Muslims' presence in the West is abnormal. According to him, it is not appropriate to consider them outsiders rather they are citizens and a part of the European society.[52] However, he stresses the need of a new juristic methodology for the contemporary world. This methodology includes juristic sources and techniques of collective *ijtihād*, selective *ijtihād* (*takhayyur*), *maṣlaḥah*,[53] and contextual analysis (*fiqh al-wāqiʿ*).[54] He advocates that the Islamic law is not a static law. Rather it is a dynamic set of rules. Though he challenged the term *fiqh al-aqalliyyāt*, however, his understanding of Islamic legal theory corresponds to the methodology of the *fiqh* for minorities.[55] However, Ramadan's disregarding the classical jurisprudence, refusing the division of the world into two abodes,[56] and putting everything under the head of *ẓann,* except for the five pillars of Islam, which are obviously under the head of *thābit,* is problematic.[57] His works reflect a degree of scepticism about the practicability of the classical Islamic law, characterising it as outdated.

Yūsuf al-Qaraḍāwī and Theory of Fiqh al-Aqalliyyāt

Yūsuf al-Qaraḍāwī (b. 1926), a Qatar-based prominent contemporary scholar associated with the ECFR and International Union of Muslim Scholars

---

which argues that Islamic law can be derived not only from textual interpretation but also from conjecture about basic aims and interests of God, which He intends to protect through law. See Andrew F. March, "Reading Tariq Ramadan: Political Liberalism, Islam, and Overlapping Consensus," *Ethics & International Affairs* 21, no. 4 (2007): 407.

[50] Ramadan, *To be a European Muslim*, 125–131.

[51] Ibid., 123.

[52] Ramadan, *Western Muslims and the Future of Islam*, 6.

[53] Ramadan, *To Be a European Muslim*, 91–97.

[54] Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 101.

[55] Alexandre Caeiro, "The Power of European Fatwas: The Minority Fiqh Project and the Making of an Islamic Counter Public," *International Journal of Middle East Studies* 42, 3 (2010): 435–49.

[56] Ramadan, *To Be a European Muslim,* 123.

[57] Ibid., 43.

(IUMS),[58] is an influential Muslim Sunni scholar, who has made noticeable contribution to the development of *fiqh al-aqalliyyāt* in modern times.[59]

Al-Qaraḍāwī is not a proponent of dividing the world into two abodes, namely *dār al-ḥarb* and *dār al-Islām*. For him, there is only *dār al-ʿahd* (due to the social contract between Muslims and their host countries) and he advocates introducing new terms and notions to replace the classical division of the world into two abodes.[60] He not only rejects the prohibition of residence in the non-Muslim lands but considers it an obligation for Muslims to perform *daʿwah*.[61]

According to al-Qaraḍāwī, *fiqh* is a science that aims at providing appropriate solutions to the problems, which Muslims face in their lives. For him, the protection of and firmness in faith are more important than restricting the legal rulings. The internal aspects of faith and purification of heart, he argues, are the primary concerns and more significant than the external application of *sharʿī* rulings to one's life.[62]

The *fiqh* for minorities is a part of the general *fiqh* and both have the same sources, namely, the Qur'ān, *sunnah*, *ijmāʿ* (consensus), and *qiyās* (analogy).[63] However, the *fiqh* for minorities is flexible and due regard is given in it to the context and circumstances while drafting a ruling or *fatwā*.[64] The *sharʿī* rules for the Muslim minorities should be derived and issued keeping in view their vulnerability in the non-Muslim societies. The vulnerability of Muslims in the non-Muslim societies is the basic line of argument in the theory of *fiqh al-aqalliyyāt* proposed by al-Qaraḍāwī.[65] The most important principle of *fiqh al-aqalliyyāt* is universality of Islam. Linked with this principle of universality is that of the gradual application of the *sharīʿah*. These both principles are frequently quoted in the literature of *fiqh al-aqalliyyāt*.[66]

According to al-Qaraḍāwī, the *fatwā*s issued by the Muslim scholars living in the Muslim-majority societies cannot comply with the situation of Muslim minorities due to their insufficient awareness of Muslim minorities' situation.[67]

---

[58] http://iumsonline.org/, assessed February 2, 2017.

[59] For his biography and complete list of *Fatwā*s and publications, visit www.qaradawi.net.

[60] See Yūsuf al-Qaraḍāwī, *Fiqh al-Jihād: Dirāsah Muqārinah li Aḥkāmihi wa Falsafatihi fī Ḍaw' al-Qur'ān wa 'l-Sunnah* (Cairo: Maktabat Wahbah, 2009).

[61] Al-Qaraḍāwī, *Fī Fiqh al-Aqqaliyyāt al-Muslimah* (Cairo: Dār al-Shurūq, 2001), 33.

[62] Ibid.

[63] Christopher G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (Hampshire: Macmillan, 1988), 31.

[64] Al-Qaraḍāwī, *Fī Fiqh al-Aqqaliyyāt al-Muslimah*, 35.

[65] Ibid., 78.

[66] Hassan, *Fiqh Al-Aqalliyyāt*, 76.

[67] Al-Qaraḍāwī, *Fi Fiqh al-Aqqaliyyat al-Muslimah*, 29.

For him, a *fiqh* is required which is based on the reality of Muslim minorities' conditions, the divine text, and the legal rules of jurisprudence.[68]

The sources of *fiqh al-aqalliyyāt* are the same as those of general *fiqh,* that is, the Qur'ān, *sunnah*, *ijmāʿ*, and *qiyās*. Besides these are contested sources such as *istiṣlāḥ* (consideration of public interest), *istiḥsān* (ruling based on jurists' discretion without a legal proof), *sadd al-dharā'iʿ* (ruling based on precaution to block the means for an unlawful act), and *ʿurf* (ruling based on custom).[69]

Al-Qaraḍāwī emphasises that whenever an issue arises the solution is to be sought from the *fiqh* manuals. If the solution exists there, then an elective *ijtihād* will be exercised by the jurist so that the best solution for the situation can be suggested. Elective *ijtihād* refers to the selection of the best option available in *fiqh* manuals that corresponds to the present reality.[70] However, it is not necessary for the solution to be agreed upon by the jurists. The proposed solution might be of a contested nature. If the solution does not exist, then a creative *ijtihād* will be exercised keeping in view the jurisprudential principles and legal maxims. For al-Qaraḍāwī, the creative *ijtihād* means practicing *ijtihād* by taking certain legal methods selectively in order to meet the changing needs of Muslim minorities. This would lead to some appropriate solution to the issue resulted from the contemporary situation.[71] Al-Qaraḍāwī stresses that *ijtihād* is not a reform or innovation in the religion rather a duty to comply with the religion in the face of changing situation.[72]

Along with this, al-Qaraḍāwī emphasised the principle of *taysīr* (facilitation) while dealing with the issues related to the Muslim minorities.[73] According to this principle, whenever there is any hardship there will be facilitation or concession.[74] He also upholds the principle of *talfīq* or eclecticism. *Talfīq* can be explained in the following terms: If following the opinion of a particular school of thought on a particular issue results in experiencing hardship, then one should have recourse to more accommodating opinions of other schools.[75] According to al-Qaraḍāwī, if one is free from

[68] Ibid., 35, 36.
[69] Ibid., 37–39.
[70] Ibid., 40–41.
[71] Ibid.
[72] Ibid., 41.
[73] Hassan, *Fiqh Al-Aqalliyyāt*, 78.
[74] "Hardship is to be alleviated" (*al-mashaqqah tajlib al-taysīr*), see Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008),142.
[75] ʿAbd al-Karīm ʿUthmān, "Talfīq aur Dūsrē Madhhab par Fatvā: Ḥudūd-o Żavābiṭ," *Fikr-o Nazr* 48, no. 3 (2011): 98.

following a particular *madhhab,* this will help the Muslim minorities to abide by the rules and principles of their religion in a better way. Due to this approach, al-Qaraḍāwī would select any opinion from any legal school, which he believes to be better suited to the issue or situation at hand.[76]

Even though the discourse of *fiqh al-aqalliyyāt* was once considered an ambiguous set of rules and principles, it has become now subject of academic debate thanks to the *fatwā*s and contributions of scholars like al-Qaraḍāwī. However, still being a developing discipline, no one has succeeded in giving a convincing methodology. The methodology introduced by al-Qaraḍāwī is also open to many criticisms. First, the use of maxims, which can create ease,[77] is lawful but practically their application raises a number of questions. For instance, according to al-Qaraḍāwī, the application of *taysīr* must not contradict the clear-cut texts of the *sharīʿah*. But what is meant by clear-cut texts? Who will define this? How long legal rulings based on *taysīr* can survive?[78] The principle of *taysīr* derived from legal maxims such as "hardship begets facility" is to be applied in exceptional situations and the level of hardship is supposed to be unusual.[79] Second, al-Qaraḍāwī's *talfīq* (eclecticism) approach, is problematic.[80] Adherence to a particular school of thought is necessary for the sake of having consistency in rules and principles. Selection of favourable opinions from various schools of thought is a problematic issue within the theory of al-Qaraḍāwī. Even Ṭāhā Jābir al-ʿAlwānī, a leading proponent of *fiqh al-aqalliyyāt*, was not convinced by the eclecticism approach.[81] Last, the creative *ijtihād* as proposed by al-Qaraḍāwī, will result in multiple *ijtihād*s and multiple rulings. Creative *ijtihād* means a number of *ijtihād*s keeping in view the individual's needs. Individual's needs change from one group of minority to another. The advocates of *fiqh al-aqalliyyāt* propose case-to-case study for issuing of *fatwā*s. This is problematic as one of the goals of *fiqh* is to provide rulings that unite people. However, *fiqh* will be individualised in minority situations.[82] Al-Qaraḍāwī has addressed the criticism regarding creative *ijtihād* by stating that Muslim minorities should be

---

[76] Yasmin Hanani Safian, "The Contribution of Yusuf Qaradawi to the Development of Fiqh," *Electronic Journal of Islamic Law and Middle Eastern Law* 4, no. 47 (2016): 47.

[77] Maxims deployed to create ease include: Hardship require easiness, Matters are judged with their objectives, Islam forbids people to cause detriment to themselves or to others; An opening must be found when a matter becomes very difficult. See, al-Qaraḍāwī, *Fī Fiqh al-Aqqaliyyāt al-Muslimah*, 42–44.

[78] Hassan, *Fiqh Al-Aqalliyyāt: History, Development, and Progress*, 79.

[79] Kamali, *Shari'ah Law*,146–49.

[80] See ʿUthmān, "Talfīq aur Dūsrē Madhhab par Fatvā," 91–126.

[81] Taha Jabir al-Alwani, *Issues in Contemporary Islamic Thought* (Herndon, VA: Internationals Institute of Islamic Thought, 2005), 10.

[82] Hassan, *Fiqh Al-Aqalliyyāt*, 78.

considered the same as an individual in a collective sense. But still this open nature of *fiqh* proposed by al-Qaraḍāwī may make the jurisprudence subject to amendment and alteration of the principles related to *ijtihād* altogether. Also it is important to note that al-Qaraḍāwī considers the Western society as "other society." Ramadan criticises this concept in his book *Western Muslims and the Future of Islam* as follows:

> To think of our belonging to Islam in the West in terms of Otherness, adaptation to limitations, and authorized compromise (rukhas) cannot be enough and gives the impression of structural adjustments that make it possible to survive in a sort of imagined borderland but that do not provide the means really to flourish, participate in, and fully engage in our societies. In his book *On Law and the Jurisprudence of Muslim Minorities*, Yusuf al-Qardawi adds a telling subtitle: The Life of Muslims in Other Societies. In his mind, Western societies are "other societies" because the societies normal for Muslims are Muslim-majority societies.[83]

Al-Qaraḍāwī advocates the binding nature of the *sharīʿah* and claims that it is applicable to all Muslims no matter where, when, and how ever they live. He calls for *fiqh al-aqalliyyāt* whose basic tenants are eclecticism and *taysīr*. He puts forward the vulnerability of Muslim minorities as a basis for the application of the principle of *taysīr*. He seeks to empower Muslim minorities but through emphasising weakness, necessity, and exception.[84] In sum, one may conclude that al-Qaraḍāwī attempts to build a discourse of normative Islam from within, focusing on the *sharīʿah*, *ijtihād*, and reality.[85]

Ṭāhā Jābir al-ʿAlwānī and the Theory of Fiqh al-Aqalliyyāt

Ṭāhā Jābir al-ʿAlwānī (1935–2016) is famous for his project of Islamisation of knowledge, which is presented as a model in the shape of *fiqh al-aqalliyyāt*.[86]

According to al-ʿAlwānī, Islamisation of knowledge is the only solution to the downfall of the Muslim *ummah.* Most of his writings, interviews, and lectures relate to the concept of Islamisation of knowledge.[87] Working on the project of Islamisation of knowledge, al-ʿAlwānī introduced his controversial reading of Islamic sources.[88] He also presented the methodology of knowledge,

---

[83] Tariq Ramadan, *Western Muslims and the Future of Islam*, 53.
[84] Hassan, *Fiqh Al-Aqalliyyāt*, 78.
[85] Ibid., 85.
[86] Ibid., 98.
[87] For a compilation of al-ʿAlwānī's writings on the issue of Islamisation of knowledge, see al-Alwani, *Issues in Contemporary Islamic Thought*.
[88] Hassan, *Fiqh Al-Aqalliyyāt*, 89.

which claimed to combine religious and social sciences.[89] He advocated that Muslims needed to develop a new methodology for reading the Book of Allah. He argued that earlier interpreters understood the Qur'ān within their cultural and intellectual spheres, which were drastically distinct in nature from the contemporary civilisational paradigms.[90]

Central to the project of Islamisation of knowledge is combination of two factors, namely Islamic goals and scientific tools/production processes. According to al-ʻAlwānī , the Islamisation of knowledge is an output of three elements: unseen (i.e., faith), universe (which symbolises material and substance), and man (who is an agent and intellect).[91] He firmly believes that in order to have a balanced life and ease the hardships one needs to adopt a dual-reading approach, that is, reading the *waḥy* (the Qur'ān) along with *wujūd* (universe). For him, if the Qur'ān is read in the context of the universe, the laws and existence can be better understood. An isolated reading of one can neither produce effective results nor was this intended.[92]

He considers *sunnah* a source of illustration of the *sharīʻah* rather than a source of legislation.[93] His approach to the *sunnah* came under criticism. He, as an expert of Islamic law, discusses different functions, roles, and kinds of the *sunnah* in Islamic law. However, Said Fares Hassan maintains that al-ʻAlwānī did not sufficiently clarified what he meant by the term *sunnah* in his thesis.[94] His ambivalent position on the Islamic *turāth* also attracted criticism. While he rejects the idea of consulting the *asbāb al-nuzūl* and *al-nāsikh wa 'l-mansūkh*, he at the same time, advocates the contextual application of the rulings of the Qur'ān and *sunnah*.[95] However, the generalisation made in al-ʻAlwānī's methodology received criticism. Instead of elaborating his methodology and taking the *sunnah* and *turāth* as his starting point, al-ʻAlwānī presented his thesis of Islamisation of knowledge in the model of *fiqh-al-aqalliyyāt*. This was done after receiving criticism for the idea of reform in the knowledge, which included Islamic jurisprudence as well. Islamisation of knowledge received less criticism when it was discussed in the context of *fiqh-al-aqalliyyāt*.

In mid-1980s, al-ʻAlwānī compiled a list of questions, which he believed American Muslims frequently asked but the *fatwā*s about these questions lacked consistency. He sent that list to Islamic Fiqh Academy in Jeddah, emphasising the urgency and importance of the matter. The reply to these

---

[89] Ibid.

[90] Al-Alwani, *Issues in Contemporary Islamic Thought*, 38.

[91] Ibid., 5.

[92] Ibid., 33–34.

[93] Ibid., 39.

[94] Hassan, *Fiqh Al-Aqalliyyāt*, 96–97.

[95] Al-Alwani, *Issues in Contemporary Islamic Thought*, 42.

questions contained the *fatwā*s issued by seven *muftī*s.[96] The *fatwā*s and their reasoning further convinced al-ʻAlwānī of the need of *fiqh* for minorities.[97]

Al-ʻAlwānī in his *fatwā* about Muslims' participation in American secular politics in 1994, distinguished the countries that had Muslim majorities from those where Muslims were in minority. This *fatwā* aroused a controversy among Muslim scholars. The Syrian Shaykh Muḥammad Saʻīd Ramaḍān al-Būṭī (1929–2013) rejected al-ʻAlwānī's proposal of jurisprudence of minorities as a plot to divide Islam.[98] Al-ʻAlwānī attempted to define and explain the *fiqh* for minorities in following words:

> In defining the *fiqh* for minorities, we have attempted to highlight the most important aspects of *fiqh* theory and its methodological limitations which require special attention, without overlooking our rich *fiqh* legacy, upon which we aim to build and develop further. The theory of the *fiqh* for minorities does not ignore the reasoning of the science of *fiqh* or the rules of extrapolation. It is exercised within the established rules of ijtihad, or those of interpretative analysis. What we aim to do is deploy the techniques and tools of ijtihad in a way that is compatible with our time and the new explosion in knowledge, the sciences and means of learning, and restore the role of *Shariah* in modern life. There is no doubt that the role of ijtihad is to regulate and guide man's actions to accomplish his role as the vicegerent of God on earth, as God intended. If this is achieved, the end will be positive and conducive to man receiving the appropriate reward.[99]

Due to a number of reasons, al-ʻAlwānī advocated his theory of *fiqh al-aqalliyyāt*. First, the presence of Muslims in non-Muslim lands in modern times is significantly different from the one existed in old times. Now they are not the "others" rather they are part of the non-Muslim lands where they need to integrate and develop an identity of their own. This situation calls for the need of *fiqh* for minorities considering their non-transient presence in non-Muslim lands unlike the old times.[100]

Second, al-ʻAlwānī states that other than the nature of presence of the Muslims in non-Muslim lands, the legislation is influenced by the culture and geography in which it is developed.[101] Therefore, the jurisprudence and laws

---

[96] Hassan, *Fiqh Al-Aqalliyyāt*, 98–99.

[97] See Taha Jabir al-Alwani, *Towards a Fiqh for Minorities: Some Basic Reflections*, trans. Ashur A. Shamis (London: International Institute of Islamic Thought, 2003), xi–xii.

[98] Tauseef Ahmad Parray, "The Legal Methodology of *fiqh al-aqalliyyāt* and Its Critics: An Analytical Study," *Journal of Muslim Minority Affairs* 32, no. 1 (2012): 100.

[99] Al-Alwani, *Towards a Fiqh for Minorities*, 12–13.

[100] Ibid.

[101] Ibid., xiv–xv.

created for the Muslims by the jurists living under majority-Muslim rule are inadequate to meet the needs of Muslim minorities living under non-Muslim rule.[102]

In *Naẓarāt Ta'sīsiyyah,* al-'Alwānī devotes a paper to what he calls "the great questions in this *Fiqh*." Among these questions are: How should the mufti of a minority answer these 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 in terms of population, culture, economics, and politics? What role do institutes, organisations, or leaders play in the life of the minority? Do they shed more light on and emphasise 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?[103]

The integral part of al-'Alwānī's theory of *fiqh al-aqalliyyāt* is the non-applicability of the Islamic heritage to the contemporary situation of Muslim minorities. He is of the opinion that the sources of *fiqh* should be re-evaluated and that the Qur'ān is the only source of Islamic legislation. He considers the *sunnah* only an illustration of rules and principles of the Qur'ān in the era of the Prophet (peace be on him). He holds that the Islamic legal heritage is based on the medieval geopolitical map as well as on the dichotomous division of the world. But now there is a need to focus on the universality of Islam and consider the changing factors and challenges.[104] He emphasises the need of the *fiqh* of co-existence contrary to the old times, which stressed on the *fiqh al-ḥarb*.[105]

Muhammad Khalid Masud while pointing out the shortcomings of *fiqh al-aqalliyyāt* stated that the advocates of this theory had to answer complicated and complex questions. These questions are related to the term "minority," non-Muslim Minorities in Muslim countries, and the different situations of Muslim minorities in Western and non-Western countries.[106]

Criticism received by *fiqh al-aqalliyyāt* from the Muslim community can be categorised in two types. Some reject the entire concept of *fiqh al-aqalliyyāt* and dismiss the call for the jurisprudence of minorities while others criticise specific and selective lenient rulings adopted in *fiqh al-aqalliyyāt* theory.[107] Asif

---

[102] Ibid.

[103] Parray, "Legal Methodology of *fiqh al-aqalliyyāt* and Its Critics," 91.

[104] Al-Alwani, *Towards a Fiqh for Minorities*, 9–10.

[105] Hassan, *Fiqh Al-Aqalliyyāt*, 138.

[106] Muhammd Khalid Masud, "Islamic Law and Muslim Minorities," *The International Institute for the Study of Islam in the Modern World* 11 (2002): 17.

[107] Parray, "The Legal Methodology of *fiqh al-aqalliyyāt* and Its Critics," 100.

Khan refuted not only the call for a new *fiqh* for Muslim minorities but also criticised the political participation and integration claimed by advocates of the *fiqh* for minorities.[108]

Conclusion

The analysis of classical Islamic law concerning Muslim minorities reveals that classical jurists dealt with the legality of residence in non-Muslim lands and other related issues. However, there are ambiguities and difference of opinion, which can be researched further. An absence of clear-cut rulings may help modern Muslim jurists to come up with the solutions, which are compatible to the contemporary world order.

The present article also reviewed the ideas of three prominent Muslim scholars of modern times. Having distinct methodologies and approaches, all three have dealt with the issue of Muslim minorities and the challenges they are facing. This analysis aims at producing a broader picture for the reader to understand how the modern scholars perceive the issues of Muslim minorities and what they propose to resolve them. However, it is clear that the criticism received by the concept of a new *fiqh* for Muslim minorities is neither baseless nor unjustified. The need to address the legal challenges of Muslim minorities cannot justify the rejection of classical juristic works. A reform that is done in the light of classical Islamic law is expected to be more acceptable and more appropriate than innovating a new *fiqh* in which one has to answer whether it is a *fiqh* in the real sense of the term.

[108]Taha, "Muslim Minorities in the West," 7–8.