

# FIQH TODAY

## MUSLIMS AS MINORITIES

5<sup>th</sup> ANNUAL AMSS (UK) CONFERENCE

21<sup>st</sup> - 22<sup>nd</sup> FEBRUARY 2004

*Organized by*

THE ASSOCIATION OF MUSLIM SOCIAL SCIENTISTS (UK)

*in cooperation with*

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (UK)

THE MUSLIM COLLEGE

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# *Advancing Muslim Scholarship*

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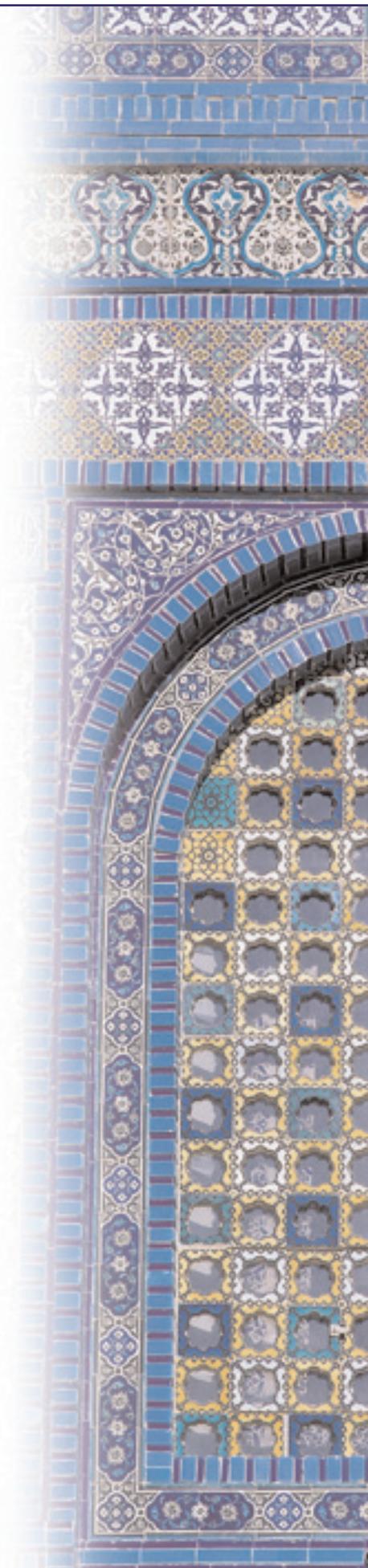
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*5th Annual AMSS (UK) Conference*

FIQH TODAY:  
MUSLIMS AS MINORITIES



21–22 FEBRUARY 2004  
UNIVERSITY OF WESTMINSTER, LONDON



*Conference Booklet*

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Michèle Messaoudi  
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## CONFERENCE INTRODUCTION

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Of all the Islamic sciences, Fiqh has always been the most versatile, dynamic and inventive. Masters versed in this field have always understood the need for balance between the universal and the particular, the permanent and the variable. The claimed objective of Fiqh (literally, “understanding”) has always been to decide what the laws of the Shari‘ah are and to show how those laws are to be applied to practical cases.

What must be clear is that Fiqh is a process - not a goal. And that it is a recognition and realisation that previous forms or structures of Fiqh need to be urgently reviewed in order to address contemporary contexts and diaspora requirements.

Concerning oneself with matters pertaining to Islam is the duty of every Muslim, applying the Shari‘ah in detail to newly created situations is a question of Fiqh that should be dealt with by the *fuqahā*’ in conjunction with those who are specialists on the relevant issues.

For the last few decades Muslim communities in the West have been grappling with the problem of context and relevancy. Life in post-faith societies prone to bouts of secular fundamentalism raises many challenges in both public and private life. A mechanism to deal with the resulting uncertainties needs to be put into effect if we are to avoid regressing further from a situation of dozens of *madhhabs* to scores of internet and cafe-made *fatawas*.

Therefore, amongst the challenges facing Islam and Muslim communities – especially those living in the West today – is to develop a mechanism that can, at the same time, reclaim and rediscover the processes and strategies that can reassert the pertinence of the faith within and without.

The emergence of a Fiqh that is a lively and dynamic system of strategies and tools that can address and be applied to differing contexts and situations Muslims experience within the non-Muslim world, is the challenge we hope our Conference this year will contribute towards. And to this end we are blessed in having some of the most forward thinking intellectuals on Fiqh bring their expertise, practice, knowledge and critical intellectual traditions to this year’s Conference. They will debate topics as diverse as definitions of fiqh, the need for the development of a fiqh for minorities, issues of citizenship, pluralism and the applications and limits of Islamic laws in non-Islamic countries.

During the Conference we will have the pleasure to present two important awards: the annual *AMSS 2003 Lifetime Achievement Award* to Edward Said, in recognition of his outstanding scholarly contributions and intellectual engagement; and the *AMSS 2003 Building Bridges Award* to writer and historian, Karen Armstrong, in recognition of her contribution towards promoting inter-faith dialogue and understanding.

We hope that the discussions and debates raised by the Conference will represent something of a

contribution not only to Muslim diasporas but also to the rest of the Muslim world. We also hope that these debates will be of value to the non-Muslim societies in which we live because they demonstrate that Muslims are not only taking on board some of the serious concerns evident within our societies, but are exploring the development of structures and solutions stemming from Islam that could be of benefit to society at large.

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# CONFERENCE PROGRAMME

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DAY I • SATURDAY 21ST FEBRUARY 2004

09:00-10:00 REGISTRATION

12:45-14:00 *Break & Prayer*

10:00-10:15 *Recitation of the Qur'an*

14:00-16:00 **SECOND SESSION**

*Opening Remarks*

**Dr. Anas S. Al-Shaikh-Ali**

CHAIR

**Dr. Anas S. Al-Shaikh-Ali**

10:15-10:45 **KEYNOTE ADDRESS**

SPEAKERS

**Dr. Zaki Badawi, OBE**

The General Principles of Fiqh

**Dr. Taha J. Al-Alwani**

Minority Fiqh: Between Macro and  
Micro Fiqh

10:45-12:45 **FIRST SESSION**

CHAIR

**Dr. Mehmet Asutay**

16:00-16:30 *Break & Prayer*

SPEAKERS

**Dr. Louay Safi**

Muslim Minorities and Universal  
Worldview: The Role of Muslim  
Social Scientists in Differentiating  
the Universal from the particular

**Dr. Mohamed Mestiri**

From the Fiqh of Minorities to the  
Fiqh of Citizenship: Challenges of  
Conceptualisation and  
Implementation

**Dr. Bustami Khir**

Islamic Juristic Views on the  
Political and Legal Status of  
Muslims in Non-Muslim  
Countries

16:30-18:30 **THIRD SESSION**

CHAIR

**Laith Kubba**

SPEAKERS

**Dr. Fadhil Al-Milani**

Diversity of Opinions in  
Islamic Law

**Muhammad Brich**

Fiqh for Minorities and Maqasid  
Al-Shari'ah

**Dr. Abdul Majid Al-Najjar**

The Group Dimension in a Fiqh  
for Minorities

## DAY 2 • SUNDAY 22ND FEBRUARY 2004

### 10:00-11:30 FOURTH SESSION

CHAIR

**Fauzia Ahmad**

SPEAKERS

**Dr. Soumaya Pernilla Ouis**

Marriage Strategies Among Young Muslims in Europe

**Dr. Ahmad Al-Katib**

The Problem of Sexual Relations Among Muslim Youth in the West and its Solutions

11:30-12:00 *Break*

### 12:00-14:00 FIFTH SESSION

CHAIR

**Fouad Nahdi**

SPEAKERS

**Charles Le Gai Eaton**

Fiqh for Minorities:  
What Should We Do?

**Shaikh Rashid Ghannoushi**

The Political Role of Muslim Minorities in the West

14:00-15:00 *Break & Prayer*

### 15:00-16:30 SIXTH SESSION

CHAIR

**Mohammed Siddique Seddon**

SPEAKERS

**Asmat Ali**

Pluralism: Islamic and Non-Islamic Laws – A Problem of Definitions

**Dilwar Hussain**

The Need for a European Fiqh and the Normalisation of Islam in Europe

16:30-17:00 *Break & Prayer*

### 17:00-18:30 SEVENTH SESSION

CHAIR

**Asim Siddiqui**

SPEAKERS

**Ahmad Thomson**

Incorporating Muslim Personal Law into UK Domestic Law

**Dr. Ihsan Yilmaz**

Micro-Mujtahids and Implementation of Fiqh Al-Aqalliyat

18:30-18:40 **Closing Remarks**

18:40-19:00 **AGM**

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## CONFERENCE SPEAKERS

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*Profiles of contributors are listed in alphabetical order by surname.*

**Asmat Ali** studied Mathematics and Logic at the University of Leeds. After working for many years in IT management consultancy, she returned to academia to pursue Islamic Studies. She has an MA from SOAS, London, and is currently completing a PhD at Birkbeck College, University of London, on Qur'anic ethics and legal theory. She is also a qualified and experienced teacher of Mathematics and Islamic Studies to 'A' level.

**Dr. Taha J. Al-Alwani** is a graduate of Al-Azhar University, Cairo. He is President of The Graduate School of Islamic and Social Sciences (GSISS), USA; President of The Fiqh Council of North America; Member of the OIC Islamic Fiqh Academy; and former President of The International Institute of Islamic Thought (IIIT), USA. He is also the author of numerous works including: *Towards a Fiqh for Minorities*; *The Ethics of Disagreement in Islam*; *Ijtihad*; and *The Qur'an and the Sunnah: The Time-Space Factor*.

**Dr. Zaki Badawi, OBE** is Principle of the Muslim College in London. He is also Chairman of the Imams and Mosques Council, UK. He began his studies at Al-Azhar in Cairo and obtained a PhD from the University of London and has taught at Al-Azhar in Cairo, King Abdul Aziz University in Jeddah, Ahmadu Bello University in Nigeria, and also at the University of Malaya in Singapore. He frequently writes and broadcasts on Muslim affairs. He is Chairman of the Forum Against Islamophobia and Racism (FAIR).

**Muhammad Brich** is a specialist in futuristic and strategic studies and development of Islamic thought. He is former Director of the Islamic Centre in Brussels, Academic Advisor of IIIT Morocco, and Coordinator of Educational Work in Europe for the Moroccan Ministry of Expatriates. He is currently Director General of Prince Abdul Muhsin bin Jalawi Centre for Research and Islamic Studies in the UAE. He is also the author of a number of articles and papers in Arabic and French.

**Charles Le Gai Eaton** was born in Switzerland and educated at Charter House and Kings College, Cambridge. He worked for many years as a teacher and journalist in Jamaica and Egypt (where he embraced Islam in 1951) before joining the British Diplomatic Service. He retired early to take up an appointment as Consultant to the Islamic Cultural Centre in London. He is the author of many well-known publications including *Islam and the Destiny of Man* and *Remembering God*. He writes, lectures and broadcasts on religious topics.

**Shaikh Rashid Ghannoushi** was born in 1941 in Tunisia. After successful secondary studies, he obtained a BA in philosophy from Damascus University. He started with a group of Muslim youth ‘*al-Jamā‘a al-islamiyyah*’ which became the Islamic Trend Movement in the early eighties and now *en-Nahda* of which he is now the Chairman. Shaikh Ghannoushi sits on the Fiqh Council of Europe.

He has contributed to a number of Arabic journals and has published many books and essays. His books include: *Our Way to Civilisation*, *The West and Us*, *The Right to be Different and the Duty of Unity*, *The Palestinian Issue at the Crossroads* and *The Status of Women between the Qur’an and the Reality of Muslims*. His essays include: “The Rights of Citizenship in the Islamic State,” “Public Liberties in the Islamic State,” “Issues in Secularity and Civil Society” and “The Islamic Movement and the Question of Change.” Some of his books have been translated into other languages.

**Dilwar Hussain** is a Research Fellow based at the Islamic Foundation focusing on Community Cohesion and Citizenship and also completing his PhD on Muslim Communities in Western Europe. In addition to numerous book reviews, his publications include: “The Holy Grail of Muslims in Western Europe: Recognition, Representation and Relationship with the State” in Esposito and Burgat, *Modernizing Islam: Religion and the Public Sphere in the Middle East and Europe?*, and *British Muslims: Loyalty and Belonging*. He has also written on “British Muslim Identity” as well as “Muslims’ Engagement in Politics in the UK”, in *British Muslims between Assimilation and Segregation*.

**Ahmad Al-Katib** was born in Karbala, Iraq, in 1953 and attended the Qur’an School in Karbala, after which he joined the College of Religious Sciences (al-Ḥawzah al-‘Ilmiyyah) in the same city. In the 1970s he went to Kuwait where he studied *fiqh* and the origins of Islamic jurisprudence at the Prophet’s school. He followed up these subjects at al-Qaim’s School of Religious Sciences in Tehran in the 1980s. He then specialised in writing about the imams of *Ahl al-Bait* and Shi’a political thought. His controversial work *Shi’a Political Thought: from Shura to Wilayat al-Faqih* tackled the theory of the primacy of the imam, the necessity of the presence of the 12th imam and *wilayat al-faqih*. His latest book is entitled *An Analytical Study in Wahabi Political Thought*.

**M. S. Khilkhali** is currently Director and Minister of Religion at the Imam al-Khoei Islamic Centre, London.

**Dr. Bustami Khir** qualified in Politics and Economics, Khartoum University; LL.B. Law (Islamic Law), Khartoum University; MA Islamic Studies, King Saud University, Riyadh; PhD, Edinburgh University, Islamic Law. He worked as a secondary school teacher in Sudan; an Assistant lecturer at Imam Bin Saud University, Riyadh; an Assistant lecturer at the Islamic University, Medina; an Imam of the Central Mosque, Edinburgh; a Postdoctoral Fellow, at the

Department of Islamic and Middle Eastern Studies, University of Edinburgh. He is currently Senior Lecturer of Islamic Studies, University of Birmingham, UK. His publications include: *Mafhum Tajdid al-Din* (Islamic Revivalism); *The Concept of Sovereignty in Modern Islamic Political Thought*; and *The Development of Islamic Political Thought: A Reader and Guide*.

**Dr. Mohamed Mestiri** holds a PhD in Islamic Ethical Philosophy from the Sorbonne. He is currently Professor of Usul and Contemporary Islamic Thought at the Institut des Sciences Islamiques, Paris, France as well as Director of the research institute, The International Institute of Islamic Thought in France. He is also the editor of *Roua*, a bimonthly magazine focussing on intellectual issues.

**Dr. Fadhil Al-Milani**

*This profile was not available at time of going to press.*

**Dr. Abdul Majid Al-Najjar** studied at al-Zaituna University, Tunisia, from which he obtained a BA. He holds an MA and a PhD from al-Azhar University. He has taught at al-Zaituna University, al-Amir Abdelkader Islamic University, Algeria, the UAE University and Qatar University. He is currently the Director of the Centre for Research and Studies at the European Institute of Islamic Sciences in Paris. He has participated in many academic conferences worldwide and is a member of the Fiqh Council of Europe, a member of the Board of Governors of Islam-On-Line and of the al-Quds Council, in addition to being an advisor in various academic fields. He has been awarded the Ali Ben Abdallah Prize and has authored 25 books and a large number of papers.

**Soumaya E. Pernilla Ouis** did her PhD thesis, ‘Nature as Power, Practice and Place: Modernity and Environment in the United Arab Emirates’ at the Department of Ethnology, Lund University, Sweden. She has published articles on Islam and ecology, modernisation and gender issues and is the former editor of *Salaam* (a Swedish Islamic magazine) and a member of the Swedish Islamic Academy.

**Dr. Louay M. Safi** has a PhD in Political Science and is currently Visiting Professor at George Washington University, USA, as well as President of the Association of Muslim Social Scientists (USA). He serves on the board of several leading Muslim organisations and is former Director of Research at the International Institute of Islamic Thought (IIIT), as well as former Editor of the *American Journal of Islamic Social Sciences* (AJISS). He is the author of several books including *Peace and the Limits of War*; *The Challenge of Modernity*; *The Foundation of Knowledge*; and *Tensions and Transitions in the Muslim World*. He is also the author of a number of research articles including “Understanding Islam: Challenges to Democracy and Diversity,” “Islam, World Peace, and Terrorism Discourse,” and “US Foreign Policy and National Security.”

**Ahmad Thompson** was born in Chipata, Zambia. He commenced his formal education in

Zimbabwe and completed it in England. He embraced Islam in 1973. He is a member of Gray's Inn and was called to the Bar in 1979, he is a practising barrister, working as a sole practitioner, specialising mainly in Islamic, Charity, Employment and Discrimination Law. He is currently deputy-chairman of the Association of Muslim Lawyers (UK) and a member of Muslim Lawyers. Ahmad Thomson is the author of several books including *The Difficult Journey*, *The Way Back*, *Making History*, the revised editions of *Jesus, Prophet of Islam* and *Blood on the Cross* (in two volumes, *For Christ's Sake* and *Islam in Andalus*), *The Last Prophet* and co-author with Hajj Abdalhaqq Bewley and Aisha Bewley of *The Islamic Will*.

**Dr. Ihsan Yilmaz** holds a degree in Political Science from Bogazici University in Istanbul, Turkey, and a PhD in Law from the School of Oriental and African Studies, University of London.

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## CONFERENCE ABSTRACTS

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*Abstracts of papers are listed by surname in alphabetical order.*

### **Pluralism: Islamic and Non-Islamic Laws—A Problem of Definitions**

ASMAT ALI

The Qur'an contains the notion of a succession of prophets sent to various communities of old. Each prophet brought the same universal theology and often also new and different laws governing human behaviour. Muslims have traditionally held that the Prophet Muhammad (SAAS) concluded the series with a final body of law, better than that which had gone before and fully complete in that it required no amendments for the rest of time. Consequently only that which includes this law can be considered Islamic. This paper examines the Qur'an for the concept of 'Islamic law', and shows that the conventional view, that the law brought by Muhammad (SAAS) supersedes all previous laws, cannot be logically deduced from it. Instead, the Qur'anic text points to a wider, more purposive definition of 'Islamic law' and asserts the inevitability of a plurality of laws, all equally 'Islamic'.

### **Minority Fiqh: Between Macro and Micro Fiqh**

DR. TAHA J. AL-ALWANI

Minority fiqh is part and parcel of 'fiqh' in its general sense. This means "knowledge of the practical legal rulings that are based on detailed evidence." Generally speaking, this fiqh does not exceed much the scope of micro fiqh. However, important changes have occurred in modern life, which have shed light on basic differences between the issues covered by the inherited fiqh and the increasingly numerous issues faced by Muslims today. Admittedly, Muslim minorities worldwide live in situations of interrelationships with non-Muslims and in direct contact with dominant cultures, civilisations, forms of governance and laws which Islam and the Muslims did not know before. These situations have imposed on Muslim minorities catastrophic constraints which, in general, never occurred to the ijihad specialists in the past. Such catastrophies cannot possibly be measured against events of the past. Whence the necessity of establishing a 'Muslim minority fiqh' that governs the situation of Muslim minorities, protects their identity and allows *da'wa* in a way that highlights the possibilities offered by the Shari'ah to enhance the quality of life and human values.

### **The General Principles of Fiqh**

DR. ZAKI BADAWI, OBE

*Al-Qwa'id al-Kulliyah al-Fiqhiyyah* is the foundation of the body of rules known as "Muslim Law". The Muslim jurist has to observe them in issuing a fatwa (legal opinion) or a *hukm* (a

judgment) as issued by a judge. There is a need to examine these maxims to assess their relevance to the Muslim jurist in present day society. It should be noted that these principles do not always cover all instances that come under its statement. There may be exceptions to the rule, nevertheless these exceptions confirm rather than undermine it. The suggested examination aims at testing the validity of these rules in terms of the spirit of Muslim law as well as the scriptural texts. In addition a ranking of the principles in terms of our current perceptions of the legal issues affecting the Muslim communities is imperative. The renewal of Muslim law depends on a comprehensive reappraisal of all aspects of the principles of Muslim jurisprudence. This paper seeks to open the debate about the procedure followed by the jurists in arriving at a judicial opinion or decision.

### **Fiqh for Minorities and Maqasid Al-Shari'ah**

MUHAMMAD BRICH

The paper defines three concepts – Muslim minorities, jurisprudence, and aims or purposes (*maqasid*) – before delving into the exploration of the key question on the need of minorities for a particular jurisprudence that is derived from the Qur'an and the Sunnah, and that is articulated within the framework of a reality that has its own peculiarities and features. Does the formulation of such jurisprudence and the theorizing underpinning it require a renewed interpretation of the *maqasid* of Shari'ah which in its turn addresses such a reality?

The paper also raises another issue relating to the dynamic of Fiqh and its role in terms of responding to the needs of Islamic communities. There are those who regard jurisprudence relating to minorities as a novelty in Islamic fiqh and a cleavage in its structure which may render licit that which is forbidden without there being a necessity. As such are the *maqasid* of the Shari'ah fixed principles whose alteration due to changes in circumstances, historical era and location is not amenable to discussion, or could they be subject to prioritization and reformulation?

### **Fiqh for Minorities: What Should We Do?**

CHARLES LE GAI EATON

Muslim minorities in the West are, in effect, pathfinders for the Ummah as a whole. Muslims everywhere find themselves living in a world shaped by Western culture. There is a practical distinction between Shari'ah and Fiqh, and the situation requires Ijtihad. But who is competent to perform ijihad? We have 13 centuries of philosophy, speculation and deep thought on the truths of Islam as our heritage. The past may offer keys to facing the future. A thousand years of stability anchored in Fiqh followed by disintegration through external challenges as well as through fossilisation; and rigidity and the enervation of conscience; those who demand past answers to modern problems; the issue of certainty and false certainties; severith of early jurists to emigration from *Dar al-Islam*. Those who have emigrated have a duty and a responsibility to achieve thorough understanding of host cultures.

## **The Political Role of Muslim Minorities in the West**

SHAIKH RASHID GHANNOUSHI

Muslims in the West are a sizeable minority. What motivated their migration and what do we suggest that they do? Islam is spread far and wide. Over 50 million Muslims live in the West, and Islam is numerically the second religion after Christianity. But Muslims do not consist of immigrants only. They include indigenous Muslims as well as the offsprings of immigrants who were born and bred in the West and with no non-Western nationalities.

Muslims must shun extremism and violence and their advocates who unwittingly helped the enactment of the Terrorism Act. Muslims should give the image of Islam as a mercy for mankind, as it truly is, not that of Islam as a violent and dangerous religion. They should not give their ill wishers any opportunity to isolate them or curtail their contribution to society. They need to open up if they want to interact with and be included in the wider society. They must show efficiency and set examples for others. On the whole, providing mosques and education is a basic requirement, but Muslims should also contribute positively to life in their adopted society. The democratic system has the scope for Muslims to achieve what they need with no harm to themselves. Therefore, does this mean that Muslims have to participate in the electoral system?

## **The Need for a European Fiqh and the Normalisation of Islam in Europe**

DILWAR HUSSAIN

Islam is not of Europe; Muslim communities have lived in Europe in varying shape and form since soon after the time of the Prophet Muhammad (SAAS). Yet the contemporary Muslim presence in Europe and in the West is seen as the archetypal 'Other'. The reasons for this stem partly in the history of confrontation between European Christendom and the Muslim world, and then secular European nation states and the Muslim world through a host of theological, intellectual, cultural and military encounters and stand offs. It has been argued that as a result of this Europe has traditionally defined itself against the Muslim world.

Some also argue that a key factor in re-enforcing the notion of Muslim Otherness is the lack of creative and dynamic Muslim thought in dealing with the changes that have occurred in the world over the last few centuries. The challenge that modernity confronts not only Islam but all religious traditions is a hotly debated subject and has created a spectrum of responses. This paper will look, not directly at that debate or at modernity itself, but at some of the changing socio-political conditions among Muslims of Europe that may, or indeed may not, necessitate the emergence of a new fiqh for minorities, a European fiqh.

## **The Problem of Sexual Relations Among Muslim Youth in the West and its Solutions**

AHMAD AL-KATIB

This paper tackles the difficult circumstances Muslim youth live through in the West and gives an overview of the various practical solutions proposed such as early marriage, 'marriage with the intention to divorce' and 'the marriage of friends', before focussing on 'temporary marriage'

(*zawaj al-mut'a*). Regarding *zawaj al-mut'a*, the study exposes the evidence of its permission and its prohibition among the Sunnis and the Shi'a who differed about it from the early times of Islam. The author underlines Caliph Umar Ibn al-Khattab's ban of temporary marriage, exploring whether this ban amounted to a new absolute ruling or was rather an administrative, specific ban of a temporary nature, an act of *ijtihad* in the evolving circumstances of that time. By so doing, Ahmad Al-Katib attempts to focus attention on this especially in the stringent circumstances Muslim youth live through in the West and which compel us to re-examine the Sunni view of this law, far from the historical divisions about it.

**Title not available**

M.S. KHILKHALI

*This abstract was not available at time of going to press.*

**Islamic Juristic Views on the Political and Legal Status of Muslims in Non-Muslim Countries**

DR. BUSTAMI KHIR

Various historical circumstances have led to the residence of Muslims in non-Muslim countries since the early centuries of Islam. In response, an interesting juristic discussion of such residence has emerged in both classical and modern literature. Undoubtedly the question is multifaceted and a number of issues are considered in relation to it. One of the significant principles that had evolved in the course of these discussions is the delegation of political and legal authority to Muslim scholars in the absence of an Islamic rule. The legal term used for this principle is *wilāyat al-<sup>ʿ</sup>ulamā'*, which is rendered into English as the governance of the scholars. The present paper examines the origins of the principle of *wilāyat al-<sup>ʿ</sup>ulamā'* (the governance of the scholars), its evolution in Sunni schools of law and its historical applications by Muslim minorities in places such as Spain. In particular, the relevance of the principle to modern Muslim minorities is highlighted with an examination of possible applications in areas such as how can Muslim minorities apply Islamic family and commercial law and how can they have a unified leadership.

**From the Fiqh of Minorities to the Fiqh of Citizenship: Challenges of Conceptualisation and Implementation**

DR. MOHAMED MESTIRI

Islam in the West continues to consider itself as a factor of immigration or more as a minority element, despite its evolution to citizenship. In Islamic ethical and legal heritage, the status of Islam as a minority has not been visible and conceivable enough. Islamic civilization has been the representation of a majority culture and the conception of minority has been developed to integrate 'the others' into the Islamic citizenship system. The first Islamic constitution, called *sahifa*, has illustrated the Islamic perception of minorities, not as private or marginal elements but as completely associated in the citizenship charter.

The new attempts of contemporary ijihad on minority fiqh need to be made within the philosophy of citizenship in Islam, in order to preserve contemporary Islam from the risk of 'communalism' and 'ghettoisation'. The concept of integration is more powerful in Western culture than the recognition of minority rights, except in the American society model based on multiculturalism. Integration is a value conditioned by historical culture. Secularism and Judaeo-Christian culture could be considered as the conditions for positive integration in Western citizenship. The respect for the majority is conditioned by the respect for Western cultural identity. The authority of the majority is the result of the rule of democracy, but within this cultural identity, and could not have its legitimacy from an absolute citizenship.

The concept of minority needs to be evaluated and criticized in the face of the new challenges posed by the dialogue between civilisations and coexistence in a plural space. Also, a critical Islamic approach to the concept of citizenship and its relationships with majority and minority status seems to be a prerequisite for the understanding of the future of 'Muslim citizenship' in the West, and its implications on the religiosity and rights of Muslims.

### **Diversity of Opinions in Islamic Law**

DR. FADHIL AL-MILANI

*This abstract was not available at time of going to press.*

### **The Group Dimension in a Fiqh for Minorities**

DR. ABDUL MAJID AL-NAJJAR

The fiqh we have inherited generally deals with the individual more than the community. This is illustrated by the proliferation of worship-oriented works to the detriment of works devoted to *al-siyasa al-shar'iyah* and social welfare fiqh, not to mention the reasons that lead to this situation. There is a concern that the minority fiqh which has been propounded for some time might take the same course and be established on the existing fiqh solutions aimed at the individuals of Muslim minorities. Today, Muslims in the West represent important minorities whose ambition is to become influential civilizational actors. This dictates that the fiqh governing their affairs should be established on considerations that help achieve such a goal. Yet this can only be attained primarily with a community-oriented fiqh. This paper will deal with the community dimension as a basis for a future fiqh of Muslim minorities in the West.

### **Incorporating Muslim Personal Law into UK Domestic Law**

AHMAD THOMSON

The *Human Rights Act* 1998 incorporates the European Convention of Human Rights into UK domestic law and guarantees Muslims the right to believe and live as Muslims and to educate their children as Muslims. The government is under a legal duty to secure these rights by providing a legal remedy if a Muslim's religious rights are violated. This duty also includes the incorporation of Muslim personal law into UK domestic law, including the legal recognition of Muslim marriages, divorces and inheritance. This will inevitably require the setting up of civil

Shari‘ah courts whose judgements are recognised by and enforceable in the UK civil courts.

### **Micro-Mujtahids and Implementation of Fiqh Al-Aqalliyat**

DR. IHSAN YILMAZ

In these difficult times, some young people have developed adaptive strategies to cope with the challenges of modern life. These young Muslims navigate at the *madhhab* level across unofficial Muslim law. The legal pluralism inherent in Islamic jurisprudence helps them to find answers to their everyday life dilemmas. They select, eclectically and also pragmatically, a convenient answer from one of the mainstream, that is, Sunni *madhhabs*. By employing this kind of modern individual *takhayyur*, a Muslim “becomes his/her own *mufti*,” or a micro-*mujtahid*, making sometimes swift decisions in the face of a minor but instant problem.

It is obvious that at the end of the day this approach will lead to millions of *madhhabs* and there will be a post-modern fragmentation. The leading fiqh expert of Turkey, Professor Hayrettin Karaman, points out that if there are no clear answers to contemporary questions, then Muslims may be confused and follow un-Islamic ways. To prevent this, a solution is required that will respect the tradition but will also satisfy the demands of Muslims who live as minorities, especially in the West.

The issue is no longer whether the gate of *ijtihad* is open or not but which *ijtihads* are necessary and which ones are to be followed. Many people and institutions claim a right to exercise *ijtihad* and indeed do practise *ijtihad*. Whether these are legitimate in the eyes of the people or not is another issue. The problems of doctrinal authority, legitimacy, and post-modern fragmentation will still need to be dealt with.

If a state makes *ijtihad*, it could end in civil disobedience as in the case of Pakistan. If the *ijtihad* is civil then some people will freely adopt it and some not. However, at this point we encounter the problem of post-modern fragmentation as a result of activities of post-modern Muslim surfers on the inter-*madhhab*-net and micro-*mujtahids*.

In addition, it is more essential to implement new discourses and *ijtihads* with effective organizations, followers and sympathizers, rather than to produce them. To prevent any possible post-modern fragmentation but at the same time implement new changes and *ijtihads* without confronting civil disobedience, it seems that leaders of civil, faith-based and faith-inspired movements with effective organizations to implement their ideas, have a role to play.

### **Marriage Strategies Among Young Muslims in Europe**

DR SOUMAYA PERNILLA OUIS

Various problems of sexual frustration, forced marriages and honour violence among Muslims are gaining much attention in the Western media. The structure of traditionally arranged marriages is increasingly no longer accepted by the European Muslim youth, but on the other hand this structure is not being replaced with the ‘Western ways’ of finding suitable partners either. Many Muslims find it therefore difficult to marry, and an emerging ‘Islamic dating industry’ is

trying to deal with the problem. Based on extensive fieldwork, this presentation discusses these new forms of meeting a marriage partner, and discusses the legality of these 'strategies' in Islam. The often used three categories of love, arranged and forced marriages, should be supplemented with the category of an 'Islamic marriage'. How can Islamic principles on sexuality and gender be re-interpreted to deal with the problem of finding a suitable marriage partners among young Muslims in the West today?

