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## WHITHER MINORITY JURISPRUDENCE? THE CASE OF *FIQH AL-AQALLIYAT* IN AUSTRALIA

Shaheen Whyte\*

**Abstract:** This study explores the notion of *fiqh al-aqalliyat* (minority jurisprudence) in Western societies with a focus on Australian Muslims. It argues that, despite enabling Western Muslims to formulate a context-specific jurisprudence to their newly adopted homelands, *fiqh al-aqalliyat* remains fiercely debated in Islamic studies. Critics of minority *fiqh* reveal several contention points relating to its lack of applicability in certain social and political contexts; exploitation of legal maxims relating to easing hardship for Muslims; and its overly integrationist mentality. Proponents of minority *fiqh*, on the other hand, argue these very facets are circumstantial and designed to help Muslims appropriate Islamic teachings to new and unfamiliar settings. This study therefore looks at the socio-political and situational circumstances of the minority population in question, whether it is a well-established migrant community in the West or one that holds a less favourable minority status elsewhere. It assesses these contexts in light of the scholarly and juristic arguments at hand, before moving into how minority *fiqh* issues are deliberated and contested in Australia.

**Keywords:** *Australia, minority, fiqh al-aqalliyat, Sharia, Islamic law*

### INTRODUCTION

The large migration and influx of Muslim migrants and refugees to Western lands has prompted Muslim jurists to renew traditional methods of deducing Islamic law in minority contexts. The notion of *fiqh al-aqalliyat* or *fiqh* of minorities is the product of two highly influential and classically trained Muslim jurists: Taha Jabir al-Alwani (d. 2016) and Yusuf al-Qaradawi.<sup>1</sup> Both these scholars constructed a minority *fiqh* during the 1990s as part of a broader strategy to address the needs of Muslims living in the West. By doing so, they elucidated material from Islam's foundational sources, the Qur'an and *sunna*, together with well-established legal maxims to legitimise the production of context-specific and needs-based rulings for Muslim minorities living in the West.

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<sup>1</sup> Taha Jabir al-Alwani, *Towards a Fiqh for Minorities: Some Basic Reflections* (London, The International Institute of Islamic Thought, 2003); Yusuf al-Qaradawi, *Fiqh of Muslim Minorities* (Cairo: Al-Falah Foundation, 2003), Accessed March 8, 2017, <http://www.usislam.org/pdf/fiqh-of-muslim-minorities.pdf>.

Notwithstanding its strongest advocates from the European Council for Fatwa and Research<sup>2</sup> (ECFR) and the Fiqh Council of North America, of which al-Qaradawi and al-Alwani served respectively, opponents of minority *fiqh* question its necessity and whether it jeopardises the chances of Muslim minorities to fully integrate into the cultural mosaic of Western democracies. Tariq Ramadan challenges the “minority” status associated with *fiqh al-aqalliyat* arguing that European Muslims should advocate for a more embedded and civic-identification with Europe, as does Mohamed Mestiri, with his preference for a “*fiqh* of citizenship.”<sup>3</sup> The case of persecuted Muslim minorities also raises distinct questions around the applicability of minority *fiqh* in non-Western contexts. Meanwhile, in Australia, minority *fiqh* remains somewhat of an unknown quantity, generally overshadowed by dubious calls to implement Sharia as a literal extraction of Qur’anic laws.

This paper brings clarity to the arguments posed by proponents and opponents of *fiqh al-aqalliyat* in different minority contexts. Although the sentiments of minority *fiqh* in Europe and America closely resemble Australian experiences, the institutional specificities and demographics of Australian Muslims vary in the deliberation of *fiqh* issues. Before going into the finer details of how these issues are negotiated and debated, we must first explore the concept of minority jurisprudence within the broader methodological framework of *usul al-fiqh* (foundational principles of Islamic law).

## THE JUSTIFICATION OF *FIQH AL-AQALLIYAT*

The necessity of developing a new form of *fiqh* emerged from the increasing needs and demands placed on Muslims living in the West as religious minorities. As a response, al-Alwani called for a renewed *fiqh* for minorities to address the unique experiences following the mass migration of Muslims to the West after World War II.<sup>4</sup> In his view, the constitutional protections and religious freedoms in Western democracies allowed for Muslims to practice their religion freely under state laws and provisions.<sup>5</sup> Proponents of this view consequently envisage the West as abodes of peace (*dar al-salam*), treaty (*dar al-sulh*) and religious testimony (*shahada*) in contradistinction to medieval notions of war (*dar al-harb*) held during the classical period of Islam.<sup>6</sup> Al-Qaradawi similarly holds that Muslim lands can be divided

<sup>2</sup> *Fiqh al-aqalliyat* became official policy of the ECFR in 2004 (resolution 12/5). See Shammai Fishman, “*Fiqh al-Aqalliyat*: A legal theory for Muslim minorities,” *Hudson Institute* 1, no. 2 (2006), 12.

<sup>3</sup> Tariq Ramadan, *Western Muslims and the Future of Islam* (New York: Oxford University Press, 2004), 53; Mohamed Mestiri, “From the *Fiqh* of Minorities to the *Fiqh* of Citizenship: Challenges of Conceptualization and Implementation,” in *Rethinking Islamic Law for Minorities: Towards a Western-Muslim Identity*, ed. Jasser Auda (London: Association for Muslim Social Scientists, 2016), accessed April 17, 2017, [https://www.jasserauda.net/new/pdf/kamil\\_fiqh\\_alaqalliyat.pdf](https://www.jasserauda.net/new/pdf/kamil_fiqh_alaqalliyat.pdf).

<sup>4</sup> Tauseef Ahmad Parray, “The Legal Methodology of ‘*Fiqh al-Aqalliyat*’ and its Critics: An Analytical Study,” *Journal of Muslim Minority Affairs* 32, no. 1 (2012), 89.

<sup>5</sup> Al-Alwani, *Towards a Fiqh for Minorities*, xxii.

<sup>6</sup> Khaled Abou El Fadl considers the United States as part of the Muslim abode where Muslims are allowed to practice their religion freely and openly. See Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists* (New York, Harper One, 2007), 228. Tariq Ramadan similarly introduces the idea of *dar al-shahada* or *alam al-shahada* (area or world of testimony) as an abode of choice where Muslims can

into three main territories: lands governed by Muslims; lands with diplomatic or peaceful ties with Muslim states; and lands of war or hostility.<sup>7</sup> Al-Alwani, by contrast, does not subscribe to territorial distinctions between believers and non-believers based on the lack of textual evidence provided in the Qur'an on such divisions.<sup>8</sup>

Al-Alwani's justification of minority *fiqh* is grounded in traditional methodologies of Islamic jurisprudence. He seeks to merge the higher objectives of Sharia (*al-maqasid al-shari'a*) with universal conceptualisations of Islam as a global and inclusive faith.<sup>9</sup> Al-Alwani proposes the need of a "specialist *ijtihad*" where Muslims can appropriate their practices in accordance with Western and Islamic values.<sup>10</sup> He argues, within minority contexts, Muslims face new situations that go beyond basic religious practices like seeking halal food, sighting of the new moon or marriage to non-Muslim women.<sup>11</sup> As such, the debate for al-Alwani has turned to much deeper sensibilities relating to Muslim identity, the role of Muslims in their new polity and their relationship with the broader Islamic world.

Like al-Alwani, al-Qaradawi justifies minority *fiqh* as a logical extension to previous forms of medical, economic and political *fiqh*.<sup>12</sup> Al-Qaradawi's theological rationale behind minority jurisprudence is grounded in universal and pan-Islamic notions of the *umma* (community). Within this paradigm, he asserts "a Muslim minority is an integral and inseparable part of the whole Muslim nation as well as being a part of its indigenous non-Muslim community..."<sup>13</sup> Al-Qaradawi additionally speaks about the importance of having an Islamic presence in the West for purposes of proselytisation, which departs from al-Alwani's more integrationist thought.<sup>14</sup> Another point of differentiation between the two scholars is al-Qaradawi's mass popularity in the Muslim and Western worlds as an influential theologian and cyber mufti, who widely disseminates his views and religious edicts (*fatwas*) online.<sup>15</sup>

## THE RULE OF NECESSITY

*Fiqh al-aqalliyat* is often strengthened in its practical application due to a number of legal maxims that limit hardship placed on Muslims living in new and unfamiliar surroundings. The consideration of necessity (*darura*) is generally applied in Islamic law to Muslims facing physical, social, financial and emotional hardship. The rule is derived from the Qur'anic

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fulfil their religious duties in unison with their roles as active citizens. See Ramadan, *Western Muslims and the Future of Islam*, 77.

<sup>7</sup> Iyad Zahalka, *Shari'a in the Modern Era: Muslim Minorities Jurisprudence* (UK: Cambridge University Press, 2016), 30.

<sup>8</sup> Ibid.

<sup>9</sup> Parray, "The Legal Methodology of 'Fiqh al-Aqalliyat,'" 89.

<sup>10</sup> Al-Alwani, *Towards a Fiqh for Minorities*, 6

<sup>11</sup> Parray, "The Legal Methodology of 'Fiqh al-Aqalliyat,'" 91.

<sup>12</sup> Al-Qaradawi, *Fiqh of Muslim Minorities*, 3.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid, 4.

<sup>15</sup> Al-Qaradawi's *fatwas* and religious verdicts are frequently shared on IslamOnline.net and aired on Al-Jazeera television programs. For more information about al-Qaradawi, refer to his biography: Jeffrey R Halverson, "Yusuf al-Qaradawi," in *Oxford Bibliographies Online*, May 25, 2011, accessed July 15, 2017, doi: 10.1093/OBO/9780195390155-0098.

injunction: “And strive for God as He should be striven for. He has chosen [for] you – and has placed no hardship for you in the religion” (22:78).<sup>16</sup> The legal jurist Mohammad Hashim Kamali aligns this with other Qur’anic verses alleviating hardship (5:6; 4:28).<sup>17</sup> Scholars use *darura* to exempt Muslims from conducting traditional religious practices that would otherwise contradict state laws or deprive them of the opportunity to actively participate and contribute to the public good (*maslaha*).<sup>18</sup> Examples in the West include obtaining interest-based home loans, adjusting fasting and prayer times, political participation and military service – some of which will be revisited later.

Ihsan Yilmaz, similarly, advocates the legal maxim: “necessity lifts prohibition” (*al-darura tubihu al-mahzurat*) to permit individual Muslims to derive their own rulings in times of hardship and necessity.<sup>19</sup> Yilmaz explains the possibility of legal eclecticism (*takhayyur*) and inter/intra *madhhab* (legal school) surfing to navigate appropriate rulings in times of necessity. He argues a Muslim has the right to choose an appropriate *madhhab* in times of hardship becoming “his/her own ‘micro-mujtahid,’” enabling them to make swift decisions to resolve minor issues.<sup>20</sup> For example, Muslims from other *madhabs* sometimes invoke the Shafi’i ruling of combining missed prayers as a result of travelling or sickness in efforts to ease hardship. For Yilmaz, the renewal of *fiqh*-related issues implies the practice of *ijtihad*, which requires regulation through an assembly of qualified *mujtahids* to avoid post-modern fragmentation and exploitation of *madhab* issues.<sup>21</sup>

## OPPOSITION TO MINORITY FIQH

The concept and application of minority *fiqh* comes with its opponents. The European and Oxford scholar Tariq Ramadan challenges the minority disposition of *fiqh* in his book *Western Muslims and the Future of Islam*. Ramadan acknowledges the development of minority *fiqh* as an important step in the establishment of Muslims in the West.<sup>22</sup> Notwithstanding its achievements, Ramadan claims minority *fiqh* can lead Muslims into traps of “minority thinking” and “integration-thought” framed in terms of assimilation and adaptation.<sup>23</sup> On the rule of necessity, Ramadan claims such exemptions relinquish Muslim efforts to engage

<sup>16</sup> The Qur’anic verses used throughout this paper are adapted from Seyyed Hossein Nasr, Caner Karacay Dagli, Maria Massi Dakake, Joseph E.B. Lumbard and Mohammed Rustom (eds), *The Study Quran: A New Translation and Commentary* (New York, Harper Collins, 2015).

<sup>17</sup> Mohammad Hashim Kamali, *Shari’ah Law: An Introduction* (UK: Oneworld Publications, 2008), 35.

<sup>18</sup> Hashim Kamali states a *mufti*, judge or jurist must take time, context and public interest into consideration in their rulings. See Ibid, 50. See also Abdallah Bin Bayyah, “On the *Fiqh* of Muslim Minorities,” *The Official Website of his Eminence Shaykh Abdallah Bin Bayyah*, n.d., accessed June 29, 2017, <http://binbayyah.net/english/on-the-fiqh-of-muslim-minorities/>.

<sup>19</sup> Ihsan Yilmaz, “Micro-Mujtahids and Implementation of *Fiqh al-Aqalliyat*,” in *Rethinking Islamic Law for Minorities: Towards a Western-Muslim Identity*, ed. Jasser Auda (London: Association for Muslim Social Scientists, 2016), accessed April 17, 2017, [https://www.jasserauda.net/new/pdf/kamil\\_fiqh\\_alaqalliyat.pdf](https://www.jasserauda.net/new/pdf/kamil_fiqh_alaqalliyat.pdf).

<sup>20</sup> Ibid, 81.

<sup>21</sup> Ibid.

<sup>22</sup> Ramadan, *Western Muslims and the Future of Islam*, 53.

<sup>23</sup> Ibid.

wholeheartedly with Western society.<sup>24</sup> Like Ramadan, Mohamed Mestiri calls for a departure from minority *fiqh*, which he believes is tied to an “immigrants mind” towards a “*fiqh* of citizenship.”<sup>25</sup> Mestiri is critical of obsessions with the “culture of *fatwas*” and the reduction of Islam to mere *fiqh*.<sup>26</sup> He insists *ijtihad* can only flourish if Muslim experts surface from a range of intellectual disciplines to inform critical debate on issues impacting Muslim citizenship in the West.<sup>27</sup>

Opponents further question the conceptual and universal applicability of minority *fiqh*. Muhammad Khalid Masud, for instance, turns the focus away from monolithic understandings of “Muslim minorities” by addressing its status in non-Western contexts.<sup>28</sup> He adds the concept of minority *fiqh* is further weakened at a sub-national level due to the division of Muslims into different linguistic and ethnic groups.<sup>29</sup> This argument is well-supported if one takes Australia’s population into consideration, which consists of Muslims from around 183 different nationalities, making it one of the country’s most diverse religious groups.<sup>30</sup> In addition, Muslim communities inside Australia come from a host of different sects including Shi’a, Ahmadiyya, Alawis and non-denominational Sufis, with profoundly different theological, cultural and legal dispositions of *fiqh*. Even within the Sunni tradition, theological orientations vary between Wasatis, Salafis and Secularists, making it hard to reach consensus on key methodological and *fiqh* issues.<sup>31</sup>

Outside the West, Muslims minorities might find themselves under governments with far less freedoms and poor human rights records. Mohanad Mustafa and Ayman K. Agbaria relate this to the indigenous minority status of Palestinian Muslims living in Israel.<sup>32</sup> Minority *fiqh* in their view is fixated on integrationist methods favouring Western Muslims who are already granted with constitutional and equal rights, whereas in the Palestinian situation Muslims are confronted with Israeli policies exerting control, segmentation and economic dependence over its population.<sup>33</sup> This can be extended to other countries like India and Myanmar, where indigenous Muslim groups are subject to systematic persecution and discrimination.<sup>34</sup> Minority

<sup>24</sup> Ibid, 53-55.

<sup>25</sup> Mestiri, “From the *Fiqh* of Minorities to the *Fiqh* of Citizenship,” 34.

<sup>26</sup> Ibid, 38.

<sup>27</sup> Ibid, 39-40.

<sup>28</sup> Muhammad Khalid Masud, “Islamic Law and Muslim Minorities,” *ISIM Newsletter*, 11 (2002), 17.

<sup>29</sup> Ibid.

<sup>30</sup> Riaz Hassan, *Australian Muslims: A Demographic, Social and Economic Profile of Muslims in Australia*, (Adelaide: University of South Australia, 2015), 14.

<sup>31</sup> Uriya Shavit defines the Wasati approach as a more accommodative juristic approach concerned with the four Sunni legal schools and liberal application of *maslaha* (public interest). Salafism, by contrast, is defined as a stricter approach to perceived innovations, imitations and customary practices in the West. See Uriya Shavit, “The Wasati and Salafi Approaches to the Religious Law of Muslim Minorities,” *Islamic Law and Society* 19, no. 4 (2012).

<sup>32</sup> Mohanad Mustafa and Ayman K. Agbaria, “Islamic Jurisprudence of Minorities (*Fiqh al-Aqalliyat*): The Case of the Palestinian Muslim Minority in Israel,” *Journal of Muslim Minority Affairs* 36, no. 2 (2016): 197.

<sup>33</sup> Ibid, 192.

<sup>34</sup> United States Commission on International Religious Freedom, *Suspended in Time: The Ongoing Persecution of Rohingya Muslims in Burma* (Washington, DC: United States Commission on International Religious Freedom, December 2016), accessed July 9, 2017, <https://www.uscirf.gov/sites/default/files/Suspended%20in%20Time.%20The%20Ongoing%20Persecution%20of%20Rohingya%20Muslims%20in>

*fiqh* is thus considered an incomplete and contextually limited legal apparatus for minorities living under state-controlled religious institutions.<sup>35</sup>

## THE SHARIA DEBATE IN AUSTRALIA

Debates in Australia about the use of *fiqh* are often conflated with unfounded fears and suspicions about Sharia law. This is increasingly problematic as *fiqh* represents the human interpretation of Sharia, and is therefore quite distinct from Sharia as God's divine and immutable law.<sup>36</sup> Although these two concepts are intrinsically connected, the practice of *fiqh* deals with the practical and methodological issues of how to interpret, contextualise and apply Islamic law in different social, political and economic conditions. Despite this realisation, Australian media outlets and anti-Islamic groups are sceptical of Sharia due to its manifestation in ultra-conservative and conflict-torn societies where the *hudud* (penal laws) are readily invoked and justified.<sup>37</sup>

The media's rather selective and inhospitable definition of Sharia ignores the reality that many Australian Muslims have actually fled from the same oppressive treatment these so-called "Islamic laws" have inflicted upon them.<sup>38</sup> As a result, Muslims have tried to distinguish between oppressive and militant definitions of Sharia to more normative and universally accepted notions of Islamic law that are consistent with human rights, democracy and religious freedom. Melbourne University Professor Abdullah Saeed states the majority of Australians are not actually advocating the implementation of Sharia law.<sup>39</sup> This follows opportunistic calls from certain sectors of the Muslim community to implement a dual or parallel legal system in Australia that considers Islamic marital and inheritance laws.<sup>40</sup> Prominent Muslim voices like academic Jamila Hussain (d. 2016) have dismissed such claims, stating Muslims are happy to abide by the laws of the land.<sup>41</sup> Western Sydney University lecturer Jan Ali adds Australian

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<sup>35</sup> %20Burma.pdf; John Sifton, "The Plight of Religious Minorities in India," *Human Rights Watch*, April 4, 2014, accessed July 9, 2017, <https://www.hrw.org/news/2014/04/04/plight-religious-minorities-india>.

<sup>36</sup> The Palestinian case of minority *fiqh* shows mixed results in producing renewed approaches to Sharia court rulings, at times, benefitting local Muslims and in other cases forfeiting its autonomy as a means to cooperate with Israeli state laws. For a more detailed discussion on minority *fiqh* issues in Israel, see Zahalka, *Shari'a in the Modern Era*; Mousa Abou Ramadan, "The *Shari'a* in Israel: Islamization, Israelization and the Invented Islamic law," *UCLA Journal of Islamic and Near Eastern Law* 5 (2005).

<sup>37</sup> Shaheen Whyte, "The Foundations of International Humanitarian Law in Islamic Tradition," *Journal of Islamic State Practices in International Law* 10, no. 1 (2014): 11.

<sup>38</sup> Mohamad Abdalla, "Sacred Law in a Secular Land," *Griffith Law Review* 21, no. 3 (2012): 672.

<sup>39</sup> Ann Black and Kerrie Sadiq, "Good and Bad Sharia: Australia's Mixed Response to Islamic Law," *The University of New South Wales Law Journal* 34, no. 1 (2011): 397.

<sup>40</sup> Abdullah Saeed, "Reflections on the Establishment of *Shari'a* Courts in Australia," in *Shari'a in the West*, eds. Rex Ahdar and Nicholas Aroney (New York, Oxford University Press, 2010), 231.

<sup>41</sup> AAP, "'Broad support' for Australian Sharia law," *The Australian*, March 8, 2010, accessed July 5, 2017, <http://www.theaustralian.com.au/news/latest-news/broad-support-for-australian-sharia-law/news-story/34d23cedc2e3bb4306940cbbc223db6e>.

<sup>41</sup> "Sharia Council an Option for Australia: Academic," *ABC News*, February 8, 2008, accessed April 17, 2017, <http://www.abc.net.au/news/2008-02-08/sharia-council-an-option-for-australia-academic/1036566>.

Muslims could not even agree on what constituted Sharia, given the Muslim communities' diverse and selective viewpoints on the matter.<sup>42</sup>

Following the law of the land does not necessarily mean complete exclusion of other peaceful and religious practices that are not in conflict with Australian laws. For example, the provision of halal food, establishment of mosques and Islamic schools fall under Australia's pluralistic and democratic framework. In the case of Islamic banking, academics Ann Black and Kerrie Sadiq note the readiness of the Australian government to embrace Sharia-compliant financial products through amendments to tax legislation and licencing standards.<sup>43</sup> Some of these amendments have now actualised under the Turnbull government.<sup>44</sup> This is an interesting observation as Australian Muslims tend to work within the parameters of Australia's legal system to advocate for their religious needs.

What is even more intriguing is the willingness of secular institutions and universities to create inclusive programs to educate Muslims and non-Muslims about Islamic law. In fact, the majority of Australia's largest universities offer Islamic law courses in their curriculum as part of comparative law and religious programs.<sup>45</sup> This is despite efforts from certain media outlets and politicians to castigate universities for supposedly promulgating Sharia law.<sup>46</sup> In July 2017, Sydney University responded to an article in the *Daily Telegraph* suggesting the university was "pushing for recognition of Sharia Law, polygamy and young marriage in [the] Australian legal system" under the course content taught by Associate Professor Salim Farrar and Dr Ghena Krayem.<sup>47</sup> Sydney University expressed its disappointment at the *Daily Telegraph* for its failure to accurately report the answers provided by the university to the *Telegraph* reporter.<sup>48</sup>

<sup>42</sup> Jan Ali, "Sharia: Why a Dual Legal System will not Work in Australia," *The Conversation*, February 29, 2012, accessed April 19, 2017, <http://theconversation.com/sharia-why-a-dual-legal-system-will-not-work-in-australia-5281>.

<sup>43</sup> Kerrie Sadiq and Ann Black, "Embracing *Sharia*-Compliant Products through Regulatory Amendment to Achieve Parity of Treatment," *Sydney Law Review* 34, no. 1 (2002).

<sup>44</sup> Patrick Durkin, "Sultans Swing into State Asset Sales," *Australian Financial Review*, May 8, 2016, accessed April 17, 2017, <http://www.afr.com/business/infrastructure/sultans-swing-into-state-asset-sales-20160506-goo9cb>.

<sup>45</sup> Courses in Islamic law are offered at Melbourne University, Monash University, the University Sydney, University of New South Wales, University of Technology in Sydney, University of Queensland, Charles Sturt University, Griffith University and the Australian Catholic University. The University of Newcastle also provides a religious law course that covers the legal traditions of the Abrahamic faiths, including the Jewish Halakha, Christian Canon Law and Islamic Sharia.

<sup>46</sup> Jack Houghton, "Sydney University Wants Recognition of Sharia Law," *The Daily Telegraph*, July 14, 2017, accessed December 28, 2017, <https://www.dailytelegraph.com.au/news/nsw/sydney-uni-adopts-law-courses-pushing-for-sharia-law-in-australian-legal-system/news-story/2a7fc86e24920b10164945b50e5ed5ae>. Former Australian politicians Jeff Kennett and Mark Latham also appeared on Seven's *Sunrise* program criticising Australian universities for teaching courses on Islamic law. See "Sydney Uni Teaching how Sharia Law could be Integrated into Aussie Law," *Yahoo 7 News*, July 14, 2017, accessed December 26, 2017, <https://au.news.yahoo.com/nsw/a/36373595/sydney-university-course-teaching-sharia-law-benefits/>.

<sup>47</sup> "Daily Telegraph article on alleged teaching of Sharia Law," The University of Sydney, July 14, 2017, accessed December 26, 2017, <https://sydney.edu.au/news-opinion/news/2017/07/14/daily-telegraph-article-on-alleged-teaching-of-sharia-law.html>.

<sup>48</sup> Ibid. Rivalling media outlets and commentators also scrutinised the *Daily Telegraph* for its reductive and ill-informed claims about the content and text associated with the Islamic law course offered by the University of Sydney. See Randa Abdel-Fattah, "What's Islamic Law Doing at Sydney University? An



The press release issued by Sydney University stated “Units on Islamic law and legal systems are a commonplace and legitimate part of any comparative legal systems curriculum...”<sup>49</sup> Fortunately, most of Australia’s universities have worked hard to incorporate Islamic courses and recruit academics well-trained to undertake the task of teaching Islamic law in Western contexts. Such courses help enrich and diversify Australia’s educational landscape, and strengthen the academic process of sharing and debating ideas.

## MINORITY *FIQH* AND THE USE OF *FATWAS* IN AUSTRALIA

Unlike Britain and Europe, Australia does not have Sharia courts or *fiqh* councils with trained legal experts. It does, however, maintain a National Board of Imams with multiple online religious organisations issuing religious edicts (*fatwas*) for its constituents.<sup>50</sup> Collecting evidence from Islamic organisational websites and databases, Nadirsyah Hosen and Ann Black explore the high demand of online *fatwas* in the daily activities of Australian Muslims.<sup>51</sup> They compare Australia’s *fatwa* experiences to Europe’s development of *fiqh al-aqalliyat* and the contextualisation of an English-based Sharia (*angrezi shariat*) system in Britain, alluding to the possible emergence of a “distinctively Australian *fiqh*.”<sup>52</sup>

*Fatwas* consist of responses to personal or public inquiries dealing with matters of worship (*ibadat*), civil transactions (*mu’amalat*) and theology. A *fatwa* does not carry any binding or statutory authority in Islam.<sup>53</sup> It can only become binding if the state decides to transform it into statutory legislation; otherwise, it remains largely a persuasive instrument used to facilitate religious debate. *Fatwas* are generally issued by *muftis* (legal specialists) or clerics with qualifications in Islamic law.<sup>54</sup> In most cases, *muftis* offer free legal counsel to Muslims,<sup>55</sup> although some imams (religious leaders) may offer extensive counselling, private mediation or tuition at a cost. In Australia, *fatwas* are issued by leading imams and *muftis* from local mosques and Islamic organisations. These include the Australian National Council of Imams (ANIC),

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Open Letter to the Daily Telegraph,” *ABC Religion and Ethics*, July 21, 2017, accessed December 26, 2017, <http://www.abc.net.au/religion/articles/2017/07/21/4705910.htm>.

<sup>49</sup> Ibid.

<sup>50</sup> See Nadirsyah Hosen and Ann Black, “Fatwas: Their Role in Contemporary Secular Australia,” *Griffith Law Review* 18, no. 2 (2009).

<sup>51</sup> Ibid, 422.

<sup>52</sup> Ibid, 419.

<sup>53</sup> Mohammad Hashim Kamali states a *fatwa* is based on a juristic opinion and not binding on anyone. He thus distinguishes between a *fatwa* and actual judicial ruling (*qada*) made by a court. See Kamali, *Shari’ah Law*, 175.

<sup>54</sup> There remains debate about the certification of Muslim clerics in Australia. In December 2015, the Assistant Minister for Multicultural Affairs, Concetta Fierravanti-Wells, wrote about the need to produce more Australian-born and reared imams in Australian institutions. See Concetta Fierravanti-Wells, “We need Mellow Muslims and Moderate Imams,” *The Australian*, December 16, 2015, <http://www.theaustralian.com.au/opinion/we-need-mellow-muslims-and-moderate-imams/news-story/5be27b95e55b5e3f485f978d2348827c>. While some Muslims share the same sentiments as the assistant minister, others feel overseas imams are more than qualified to teach and preach in Australia. See Ismail Albayrak, “Friday Sermons and the Question of Home-Trained Imams in Australia,” *Australian e-Journal of Theology* 19, no. 1 (2012): 32.

<sup>55</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (New York, Cambridge University Press, 2009), 9.

Islamic state councils, local imams and online organisations such as Darulfatwa and Darul Ifta as well as overseas *fatwa* databases.

Interestingly, given there is a limited supply and availability of muftis in Australia, Muslims tend to go to other countries for *fatwas* that accommodate their needs. This phenomenon is commonly referred to as ‘*fatwa shopping*’ or ‘*inter-madhab surfing*,’ where Muslims navigate the web to find *fatwas* that meet their personal or immediate needs.<sup>56</sup> Indeed, the different *fatwas* issued from muftis indicate the diversity in opinion between Muslim scholars with some rulings emerging as a direct manifestation of minority contexts. The most contentious issues in the West relate to the permissibility of obtaining interest-based loans for house mortgages, military service and organ transplantation.

### ***Interest-based house mortgages***

Classical Islamic jurisprudence considers any form of interest that increases a loan to constitute *riba* (usury).<sup>57</sup> Regarding the issue of taking out a home loan to buy a first house, Australia’s Darulfatwa Islamic High Council affirmed its impermissibility on the grounds it constituted usury or *riba*.<sup>58</sup> The question accumulated 6,728 views on its website. No sheikh or mufti (legal expert) signed the *fatwa* and it failed to elaborate the judicial grounds of its refusal, simply stating it was impermissible in the Sunni *madhhabs*.<sup>59</sup> Darul Ifta Australia’s website contains a more detailed explanation behind its refusal, citing Qur’anic and hadith references ruling against usury.<sup>60</sup> Its rulings do not elaborate any alternative legal sources or methods, preferring to focus on literal readings of the Qur’anic text.

As mentioned above, Muslims have the opportunity to explore alternative *fatwas* online that yield more lenient and favourable rulings. The ECFR, for instance, declared it was permissible to borrow an interest-based loan for a house mortgage.<sup>61</sup> This was justified on the grounds, although buying a house was not an absolute “life or death matter” it remained an essential need (*hajah*) for Muslims living in the West.<sup>62</sup> *Fiqh* commentator Adil Salahi reinforces this view by claiming scholars traditionally identified five areas in Islamic law that must be preserved to advance human life: the self, intellect, religion, family and property.<sup>63</sup> The

<sup>56</sup> Hosen and Black, “Fatwas,” 421.

<sup>57</sup> Abdullah Saeed, “Reflections on the Development of the Discourse of *Fiqh* for Minorities and Some of the Challenges it Faces,” in *Applying Shari’ah in the West*, ed. Maurits S. Berger (Leiden: Leiden University Press, 2013), 251.

<sup>58</sup> Islamic High Council of Australia, “Question about buying a house,” Darulfatwa, n.d., accessed April 19, 2017, <http://www.darulfatwa.org.au/en/question-about-buying-a-house/>.

<sup>59</sup> Ibid.

<sup>60</sup> Riza Faizal, ‘Is it Permissible to take an Interest Bearing Loan to Buy your First Home?’ *Darul Ifta Australia*, September 21, 2011, accessed June 26, 2017, <http://www.fatwa.org.au/taking-interest-loan-to-buy-house.html>.

<sup>61</sup> Ruling European Council for Fatwa and Research, “Buying Houses with mortgages,” *Islamic Mortgages*, n.d., accessed April 17, 2016, <http://www.islamicmortgages.co.uk/index.php?id=259>.

<sup>62</sup> Shahrul Hussain, “Riba-Based Mortgages in Dar al-Harb: An Issue of Modernist Application of *Fiqh al-Aqalliyat* for Muslim Minorities,” *Journal of Muslim Minority Affairs* 36, no. 3 (2016): 372.

<sup>63</sup> Adil Salahi, “Buying a House on Mortgage,” *Arab News*, October 23, 2002, accessed April 17, 2017, <http://www.arabnews.com/node/225202#>.

necessity of property is therefore understood as the underlying rationale for this ruling as it ensures the stability and livelihood of Muslim communities.

### ***Military service in a non-Muslim army***

*Fatwas* on military service in non-Muslim armies remain a sensitive topic for Muslims living in the West and abroad. This was intensified in 2001 when al-Qaradawi jointly issued a controversial *fatwa* declaring the permissibility of American Muslims to fight in Afghanistan for their host country.<sup>64</sup> Al-Qaradawi et al. stipulated a Muslim citizen of a state or member of a regular army,

...has no choice but to follow orders, otherwise his allegiance and loyalty to his country could be in doubt. This would subject him to much harm since he would not enjoy the privileges of citizenship without performing its obligations.<sup>65</sup>

Despite the emphatic tone of the 9/11 *fatwa*, a counter *fatwa* was issued in 2003 advising American Muslim troops against fighting enemy Muslim combatants.<sup>66</sup> In this *fatwa*, al-Qaradawi et al. advised American Muslims to request leave or temporary exemption from the military to avoid fighting fellow Muslims.<sup>67</sup> In cases where a Muslim has no choice but to participate in combat, al-Qaradawi notes it should be limited, avoiding face-to-face confrontation.<sup>68</sup>

The honorary solicitor for ANIC, Hyder Gulam, cites several sources supporting al-Qaradawi's rationale.<sup>69</sup> He claims there is an urgent need in Australia to provide Muslims guidance on serving in the military without feeling the need to compromise their religious beliefs.<sup>70</sup> Gulam draws on Egypt's former Grand Mufti Sheikh Ali Gomaa's reference to the Muslim immigration to Abyssinia from Mecca as an earlier invocation of minority citizenship. In this example, history shows Muslims fought for the Abyssinian and non-Muslim Emperor Negus in exchange for protection and freedom to practice Islam.<sup>71</sup> Gulam also refers to Christian Bleuer's case study on the loyalty and performance of Muslim soldiers in non-Muslim militaries to dismiss any fears of treason, doubt or poor performance in combat.<sup>72</sup>

Notwithstanding theoretical endorsements, Australian Muslims remain underrepresented in Australia's armed forces. Luke Wessell's study on the lack of Muslims in the Australian

<sup>64</sup> Charles Kurzman, "Qaradawi et al, 'Fatwa against 9/11,'" September 27, 2001, accessed July 5, 2017, <http://kurzman.unc.edu/islamic-statements-against-terrorism/qaradawi/>. According to Kurzman, this English translation was translated from the original Arabic, authorised and approved by statement's authors.

<sup>65</sup> Ibid.

<sup>66</sup> Yusuf al-Qaradawi et al., "Ulama's Fatwas on American Muslims Participating in U.S. Military Campaign," *Islam online*, n.d., accessed June 18, 2017, <https://archive.islamonline.net/?p=1334>.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Hyder Gulam, "Fiqh for Military Service: Guidance for the Muslim Minority in Australia," *Media Syariah* 15, no. 2 (2003): 228-240.

<sup>70</sup> Ibid, 228.

<sup>71</sup> Ibid, 233.

<sup>72</sup> Ibid, 237. See also Christian Bleuer, "Muslim Soldiers in Non-Muslim Militaries at War in Muslim Lands: The Soviet, American and Indian Experience," *Journal of Muslim Minority Affairs* 32, no. 4 (2012), 501.

Defence Force reveals the risks of long-term segregation from the country's leading security and defence forces.<sup>73</sup> He underlines a host of factors contributing to low levels of participation and recruitment in the Australian Defence Force, including racism and Islamophobia, unwillingness to undergo security vetting and theological dilemmas over participation.<sup>74</sup> On the issue of theology, Wessell contends religious leaders in the Muslim community must either adopt a position similar to al-Qaradawi's *fatwa* or dismiss it altogether if they fear the status and reputation of Australian Muslims would be jeopardised.<sup>75</sup> For Wessell, the onus is on Australia's Muslim leaders and scholars to advocate a position, rather than staying silent to government calls urging Muslims to join security forces.<sup>76</sup>

### ***Organ transplantation***

The most prominent *fatwa* in Australia on organ transplantation was issued by the Grand Mufti of Australia, Ibrahim Abu Mohamed.<sup>77</sup> It permits organ donation on the premise of the Qur'anic proclamation, "whoever saves one [a human life] – it is as if he had saved mankind entirely" (5:32).<sup>78</sup> The *fatwa* lists several conditions that validate the ruling, which include: obtaining consent freely from the donor without any coercion; confirming the donor is clinically deceased by at least two independent doctors (a requirement under Australian law); and making sure reproductive organs are not donated due to the intermixing of lineages.<sup>79</sup> Unlike other *fatwas* issued online in Australia, the Grand Mufti's Office consulted a number of specialists – medical professionals, surgeons, lawyers and policy officers from the Organ and Tissue Authority of Australia – prior to making the final ruling.<sup>80</sup> The inclusion of different specialists has been earmarked in the past as an important step towards generating rulings consistent with Australian laws and conditions.<sup>81</sup>

*Fatwas* in different countries offer rulings with varying degrees of permissibility, while some clerics reject organ transplantation altogether on the premise it is *haram* (forbidden). Opponents of organ transplantation often cite Qur'anic references referring to God's ownership of the human body to negate any violation of it.<sup>82</sup> Despite this, a growing number of jurists and

<sup>73</sup> Luke Wessell, "Muslims in the Military: A Cause or a Solution for Issues of National Security," *Australian Journal of Islamic Studies* 2, no. 1 (2017): 1.

<sup>74</sup> *Ibid.*, 31-32.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

<sup>77</sup> The Grand Mufti is also a part of the Executive Committee of the Australian National Imams Council (ANIC). He is elected by ANIC members.

<sup>78</sup> Ibrahim Abu Mohamed, "Islamic Ruling on Organ Transplantation," Australian Government Organ and Tissue Authority, n.d., accessed May 10, 2017, <http://www.donatelife.gov.au/sites/default/files/Arabic%20fatwa%20for%20web.pdf>.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Mohamad Abdalla, "Do Australian Muslims need a Mufti? Analysing the Institution of *Ifta* in the Australian Context," in *Law and Religion in Public Life: The Contemporary Debate*, eds. Nadirsyah Hosen and Richard Mohr (Oxon: Routledge, 2011), 227.

<sup>82</sup> Ann Black, "Fatwas and Surgery: How and why a Fatwa may Inform a Muslim Patient's Surgical Options," *ANZ Journal of Surgery* 79, no. 12 (2009): 866–871. The Egyptian Sheikh Muhammad Mutwali al-Sha'rawi famously ruled against organ donation in the 1980s, declaring "one cannot donate something that one does not own; in that case the donation would be invalid. The human being does not own his whole

religious authorities endorse organ transplantation. A 2011 government report by the Ministry of Health in Malaysia lists a host of *fatwas* from local and overseas legal councils in Saudi Arabia, Singapore, Kuwait and India approving organ donation with varying opinions on which organ parts and medical procedures are considered legitimate.<sup>83</sup> Major factors contributing to the growing permissibility of organ donation include greater emphasis on the Qur'anic injunction of saving a life (5:32), applying the rule of necessity to alleviate hardship on a patient's life, as well as the moral value of judging deeds through their intentions; that is, to save a patient's life through organ donation.<sup>84</sup>

Meanwhile, al-Qaradawi's *fatwa* provides a refutation to the frequently quoted *hadith* that declares it impermissible to mistreat or violate dead corpses.<sup>85</sup> The mutilation of corpses was a common war tactic used during pre-Islamic times to humiliate enemy combatants and was subsequently prohibited by the Prophet.<sup>86</sup> Al-Qaradawi refrains from literal readings of this particular *hadith* by applying analogical reasoning (*qiyas*) to argue that operating on a deceased body is no different to operating "...on those who are alive, that is with care, meticulousness and respect."<sup>87</sup> He also emphasises the permissibility of organ donation to non-Muslims and strictly prohibits the practice of organ trading.<sup>88</sup>

## OPPOSITION TO MINORITY *FIQH* IN AUSTRALIA

There are of course fringe movements outside the religious mainstream that remain critical of *fiqh al-aqalliyat*. In Australia, the group Hizb ut Tahrir delivered a seminar on *fiqh al-aqalliyat* arguing its conformist tendencies deprived Muslims their ability to challenge the status quo of Western democracies.<sup>89</sup> The movement criticised Australia's previous models of integration by using the experience of Aboriginal Australians to show how British authorities wiped out their cultural practices and languages.<sup>90</sup> It also denounced some of the above-

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self and does not own some or parts of his self (*dhatihi*)." See Sherine Hamdy, "Rethinking Islamic Legal Ethics in Egypt's Organ Transplant Debate," in *Muslim Medical Ethics*, eds. Jonathan E. Brockopp and Thomas Eich (Columbia: The University of South Carolina Press, 2008), 81.

<sup>83</sup> Ministry of Health Malaysia, *Organ Transplantation from the Islamic Perspective* (Malaysia: Ministry of Health Malaysia, 2011), accessed July 6, 2017, [http://www.moh.gov.my/images/gallery/orga/edu/awam/Organ\\_TransmEN.pdf](http://www.moh.gov.my/images/gallery/orga/edu/awam/Organ_TransmEN.pdf).

<sup>84</sup> Ibid.

<sup>85</sup> The Prophet is reported to have said: "To break a dead person's bone is like breaking the living person bone." See Abu Dawud, "Book 014, Hadith Number 3201," *Hadith Collection*, n.d., accessed July 8, 2017, <http://hadithcollection.com/abudawud/246-Abu%20Dawud%20Book%2014.%20Funerals/17334-abudawud-book-014-hadith-number-3201.html>.

<sup>86</sup> Office of the Mufti Strategic Unit, *Organ Transplant in Islam: The Fiqh of Organ Transplant and its Application in Singapore* (Singapore: Majlis Ugama Islam Singapura, 2007), accessed July 6, 2017, <https://www.muis.gov.sg/-/media/Files/OOM/Resources/Muis-kidney-book-ENG.pdf>.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Nahda Productions II, *The Fiqh of Minorities: Muslims Living in the West. Identity | Tradition | Rules and Exceptions*, YouTube video, 1:41:48, May 28, 2012, accessed April 22, 2017, [https://www.youtube.com/watch?v=O6\\_OZzlcFLY](https://www.youtube.com/watch?v=O6_OZzlcFLY)

<sup>90</sup> Ibid.

mentioned *fatwas* on the grounds they divided Muslims, preferring instead to draw attention to a “one-size fits all” notion of *fiqh* for Muslims.<sup>91</sup>

Such a position is thwarted with contradictions and fears of Western societies. First, Western Muslims are able to advocate for their rights to practice Islam freely without recourse to persecution or discrimination. Second, as al-Alwani states, minority *fiqh* represents an extension of classical methodological principles used to help Muslims practice their religion with confidence and without hardship.<sup>92</sup> Such a position can also be applied in Muslim-majority countries if their jurists choose to exercise reform and appropriate their laws to meet new economic, political and social challenges.

Hizb ut Tahrir’s failure to provide a balanced argument acknowledging Australia’s move from integration to multiculturalism remains a continual feature of its selective discourse. Its criticisms are painfully ironic, given the movement enjoys many of the benefits of Western democracies, such as religious freedom, free speech and economic independence. Yet, it remains persistent in its calls to reinstitute classical doctrines of *dar-al Islam* (abode of Islam) and *dar al-harb* (abode of war) to distinguish Muslims from non-Muslims.<sup>93</sup> This goes against the increasingly pluralistic trend of Muslim communities in Europe, Britain and Australia who have been developing notions of identity and homeland (*watan*) consistent with Islam.<sup>94</sup>

## ESTABLISHING A CENTRALISED *FIQH* COUNCIL IN AUSTRALIA

There is discussion about establishing a *fiqh* council like North America and Europe in Australia, but Australian Muslims would have to carefully evaluate their environment to see if it is in the best interests of Muslims in the community. Would it have enough resources and qualified experts in areas of *fiqh* and theology to successfully run as a council? Is ANIC’s organisational structure fit enough to transform into a *fiqh* council? Alternatively, should Australian Muslims work on educating religious leaders through secular institutions and community organisations?

Since its restructure in 2006, ANIC has established itself as a national organisation with state and territory councils. With over 200 registered imams, ANIC looks like the primary candidate to establish such an institution in Australia. Its website speaks about establishing a Council of Jurisprudence (*fiqh*) to rule on “new and emerging issues” with an Australian focus.<sup>95</sup> Aside from issuing media statements and *fatwas* on social, political and religious issues, ANIC engages broadly with the Muslim and non-Muslim community, state and federal

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<sup>91</sup> Ibid.

<sup>92</sup> Taha Jabir al-Alwani, *Towards a Fiqh for Minorities*, 12-13.

<sup>93</sup> Ibid.

<sup>94</sup> Salih Yucel, “Do Muslims see Australia as their Homeland? The Notion of Watan al-Asli and Watan al-Sukna in Islam,” *Journal of Muslim Minority Affairs* 35, no. 2 (2015); Rachel Woodlock, “Being an Aussie Mossie: Muslim and Australian Identity among Australian-born Muslims,” *Islam and Christian-Muslim Relations* 22, no. 4 (2011).

<sup>95</sup> “Our Services,” Australian National Imams Council, n.d., accessed July 7, 2017, <http://www.anic.org.au/all-services/>.

governments, facilitates open mosque days for the public and frequently speaks out against terrorism and domestic violence.

ANIC communicates most of its messages through media releases and public statements on Facebook and its website.<sup>96</sup> Interestingly, ANIC relies more on conventional media statements to preach its views, rather than issuing traditional *madhab*-based *fatwas*. Even the Grand Mufti's organ donation *fatwa* reads much like a statement without any extensive references to primary Islamic sources or juristic opinions. This may be an indication of ANIC's intention to produce more simplistic and *madhab*-free statements to reach wider audiences. Likewise, in 2015, members of ANIC provided a blueprint positioning Islam's place in the Australian context in regards to citizenship, loyalty to the state and treatment of non-Muslims as well as refuting extreme interpretations of religious terms such as Sharia and *jihad*.<sup>97</sup> The document is explained in clear English and contains limited scriptural content, making it easily accessible for Muslims and non-Muslims.

Despite ANIC's noble attempt to garner consensus on these issues, the organisation has been criticised by different segments of the Muslim community. Such controversies include accusations of mistreatment among its imams, ill-advised *fatwas* and lack of organisational inclusivity. For example, in 2008, the Victorian Board of Imams (now a state subdivision of ANIC) came under scrutiny after a report from the Islamic Women's Welfare Council of Victoria accused it of "...condoning rape within marriage, domestic violence, polygamy and welfare fraud..."<sup>98</sup> Furthermore, in 2012, controversy sparked when Lakemba mosque issued a *fatwa* against Christmas, warning adherents it was a 'sin' to wish people a merry Christmas, although this was later rebuked by senior clerics as irresponsible and not in line with Islamic sentiments about Christmas.<sup>99</sup> Almost a decade on, ANIC's overall composition still appears to exclude female and Shi'a representatives on its board – a theme prevalent in Australian Muslim organisational politics.<sup>100</sup>

## THE FUTURE OF AN AUSTRALIAN *FIQH*

Preliminary research and findings on Australian Muslims indicates growing interest in the field of minority *fiqh*. The following section outlines four key points to consider when looking at the possibility of establishing a local and context-specific *fiqh* in Australia:

<sup>96</sup> See ANIC's Facebook account to view its public statements and press releases: <https://www.facebook.com/anico.org.au/>.

<sup>97</sup> National Imams Consultative Forum, *An Australian Muslim Perspective on some Key Contemporary Concerns* (Victoria: University of Melbourne, 2015), accessed April 20, 2017, [http://arts.unimelb.edu.au/\\_data/assets/pdf\\_file/0005/2159807/NICF-Statements.pdf](http://arts.unimelb.edu.au/_data/assets/pdf_file/0005/2159807/NICF-Statements.pdf).

<sup>98</sup> Barney Zwartz, "Local Muslim Clerics Accused," *Sydney Morning Herald*, November 21, 2008, accessed May 6, 2017 <http://www.smh.com.au/national/local-muslim-clerics-accused-20081120-6ctp.html>.

<sup>99</sup> Natalie O'Brien, "No Merriness Here: Mosque puts Fatwa on Christmas," *Sydney Morning Herald*, December 23, 2012, accessed July 7, 2017, <http://www.smh.com.au/nsw/no-merriness-here-mosque-puts-fatwa-on-christmas-20121222-2bsk2.html>.

<sup>100</sup> Irfan Yusuf, "How and why Shiites are Sidelined from Australian Public Life," *Crikey*, September 1, 2014, accessed April 20, 2017, <https://www.crikey.com.au/2014/09/01/how-and-why-shiites-are-sidelined-from-australian-public-life/>.

1. **Determining hardship and necessity:** The assessment of hardship and necessity varies between different juristic schools and theological orientations of Muslim scholars. Uriya Shavit distinguishes between liberal applications of juristic methods of *ijtihad*, public interest and customary practice (*urf*) to be a product of the Wasati approach, in comparison to the stricter and more literalist approaches of Salafi groups, who equate Wasati approaches as mere “Westernisation” or “nationalisation” of Muslim values.<sup>101</sup> There is no doubt Australian Muslims are already debating these issues on a regular basis, with some polarised on topics such as the permissibility of sending children to non-Islamic or Christian schools, interest-based loans and liquor licences to maximise the marketability of restaurants to non-Muslim consumers.
2. **Religious authority:** The second consideration is linked to the first in terms of acquiring well-informed religious advice on lawful Islamic practice. This entails incorporating *fiqh* and *fatwa* councils with trained and qualified religious experts familiar with Australian laws and conditions. Given there is no single religious authority in Islam, Muslim organisations can build on civil and democratic models of inclusivity and pluralism to enable their institutions to reach far wider audiences. For instance, greater inclusion of women, sub-minority Muslim groups and English-speaking imams enhance an organisation’s representative and legitimate status.
3. **Collective and institutional *ijtihad*:** The principle of collective *ijtihad* is strongly advocated in the modern period. Hosen considers collective *ijtihad* or “collective *fatwa*” as a viable tool to institute social, political and economic change.<sup>102</sup> The process includes wider consultation with religious and field experts on the deliberation of *fiqh* issues. The Grand Mufti’s *fatwa* on organ donation is the first real sign of informed communal consensus on a ruling. The inclusion of different voices and arguments from the community not only enriches juristic considerations, but also brings legitimacy to the overall consultation process.
4. **Training and funding of Australian imams:** There is a steady move towards acknowledging the value of training home-grown and overseas imams in Australian institutions. Presently, the training and funding of imams is generally viewed with suspicion, given some imams and institutions are funded by international donors and governments.<sup>103</sup> This is not easy to circumvent, although greater transparency and less overseas dependence will reduce suspicions of ideological and political alliances. In fact, Islam historically encouraged the establishment of indigenous philanthropic institutions or charitable endowments (*awqaf*) to safeguard the independence and autonomy of religious institutions. This could play a greater role among second and third generation Australian Muslims eager to build self-sustainable institutions. In addition, high profile Muslim leaders, academics and professionals could easily become

<sup>101</sup> Shavit, “The Wasati and Salafi Approaches to the Religious Law of Muslim Minorities,” 419.

<sup>102</sup> Nadirsyah Hosen, “Nahdlatul Ulama and Collective *Ijtihad*,” *New Zealand Journal of Asian Studies* 6, no. 1 (2004): 26.

<sup>103</sup> For a more detailed discussion on state sponsorship of imams in Australia, see Shahram Akbarzadeh, “Investing in Mentoring and Educational Initiatives: The Limits of De-radicalisation Programmes in Australia,” *Journal of Muslim Minority Affairs* 33, no. 4 (2013).



part of the organisational structure of *fatwa* and mosque committees on a part-time or voluntary basis to boost morale and nullify any fiscal concerns.

## WHITHER MINORITY JURISPRUDENCE?

The application of minority *fiqh* has been a game changer in terms of accelerating robust debate in Western Muslim societies. Its nostalgic connection with Islam's long-standing juridical tradition challenges Muslims to re-position their faith in new and unfamiliar contexts. Needless to say, minority *fiqh* needs to be exercised by qualified jurists and representatives to ensure social and political harmony is not compromised between Muslims and non-Muslims. Indeed, the danger of falling into a "minority" or "isolationist" mentality, as Ramadan upholds, remains something to be taken seriously, but engaging in intellectual debates about the application of Islam for minorities can be equally beneficial for the advancement of ideas in *fiqh* and the social sciences.

*Fiqh al-aqalliyat* is certainly not bulletproof. It cannot act as a dual legal system or offer rulings that are contrary to state laws. For it to work, Muslim minorities must be able to reconcile their individual, cultural and familial ideas of Islam with new rulings consistent with legal and customary practices of their host community or state. This has been achievable for many Muslims in Western democracies, particularly in Australia, where they have worked within the parameters of Australia's legal and multicultural framework to lobby and advocate for their rights and religious services as equal citizens. Fears and anxieties about appropriating or imparting "non-Islamic" content from Western societies neglect well-established legal norms and maxims enabling Muslim communities to instigate change and reform.

In any case, minority *fiqh* continues to be a contentious topic for Muslims ubiquitously. Whether directly or indirectly, it is having a profound influence and interaction with social and political theories, pushing Muslims and non-Muslims to conjure new ideas about how minority groups should be received and understood. The future of this discourse can potentially help steer, even determine, the direction and articulation of Islam in the West.

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