
Reckoning with the Minority Status: On Fiqh al-aqalliyyat al-Muslema (Jurisprudence of Muslim Minorities)¹

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1 Introduction

The terrorist and/or violent events that swept across Western Europe, North America, and Australia in the past one and a half decades have triggered heavy debates on the integration of Muslims in those countries. A visibly present element in such debates is a perception that the integration of Muslim immigrants in western liberal democracies is particularly problematic and in most cases unlikely. The reasoning behind such a perception finds its most articulate form in the European debates, and is expressed in the form of four axiomatic statements: (1) Muslim immigrants tend not to integrate into host societies; (2) this lack of integration is the product of a conscious decision; (3) this decision is made because the goal of Muslim immigrants is to dominate, rather than to blend into, Western societies; and (4) there are no variations within Muslims, no extremist-moderate and no conservative-liberal distinctions (for an elaborate discussion of these views, see Saunders, 2012). While the most explicit, and sometimes superficial, version of the above line of reasoning is found in political circles, some subtle and more sophisticated variations of it could also be found among academics (see Bernard Lewis's works, among others).

Missing in this line of reasoning and the resultant body of scholarship is an incredible host of identity debates that is happening within and among Muslims who are living in the West. At the heart of these debates is a quest for possible religious and theological grounds that would facilitate a peaceful coexistence with non-Muslim majority populations in immigrant-receiving countries. Implicit in these efforts is the belief that, for such coexistence to materialize, there is a need

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for Muslims to revisit and revise some of the fundamentals of their beliefs, or at least the beliefs that have been considered fundamental till now.

A very important and interesting development among these theorization efforts is a new jurisprudential approach, known as *fiqh al-aqalliyyat al-Muslema* (the *jurisprudence of Muslim minorities*). This title refers to a growing body of Islamic juristical rulings and conceptualizations that emerged in the latter half of the 1990s, thanks to the contributions of Muslim scholars such as Yusuf al-Qaradawi and the late Taha Jabir al-Alwani, and aimed at addressing the particular challenges faced by Muslims who were living in non-Muslim countries. The basic premise of this new school of thought is that the realities of the lives of the Muslims living in non-Muslim countries are so fundamentally different from those of the Muslim-majority nations that the traditional Islamic jurisprudence cannot offer meaningful solutions to their problems. There is, therefore, a need to establish an entirely different jurisprudential approach as the basis for the solutions to the problems faced by Muslim minorities.

In the following pages, I will outline the main tenets of this jurisprudential approach and its implications for the integration of Muslim minorities in the West. I will also offer an argument, based on Canadian data, that the discussions on *fiqh al-aqalliyyat al-Muslema* could benefit from and be furthered by incorporating the implications of the social-psychological body of research known as the contact theory.

2 The Context

As a social phenomenon, the presence of Muslims in non-Muslim lands is not new. There are at least two well-known cases that date back to the time of Prophet Muhammad himself: a group of Muslims who migrated to the Christian Abyssinia (Ethiopia) and resided there permanently; and, another group who stayed behind in the non-Muslim Mecca after the Prophet and the rest of his followers migrated to the nearby city of Medina to establish an Islamic state. Also, during the era of the expansion of the Islamic Caliphate, there were large numbers of Arab Muslims who were sent to the newly conquered frontier territories for the purpose of setting up colonies and changing the demographic composition of those lands.

In all of these cases, the particularity of the situation of those Muslim minorities was readily acknowledged, and the need for special instructions for them and about them was warranted. For example, with regards to the responsibility of the newly established Islamic state in Medina towards their fellow Muslims who chose to stay behind and live as a minority in Mecca, the Quran provided – in Anfal (8):72 – a

three-part set of instructions: a) no initial responsibility; b) a recommended (not required) responsibility to help them if they ask for it in order to retain their faith; c) but even that responsibility is void, if you have signed a peace treaty with the non-Muslim rulers of that land (for a discussion of this, see Mohammed 2013). Interestingly, even in these Quranic verses, a clear preference is expressed for this group of Muslims not to remain in their minority situation. An exception to the above rule, however, was the case of the Muslim colonies in the frontiers of the Islamic Caliphate. Having had the mission of carrying the message of Islam and expanding the territories of the Caliphate, the early Muslims were encouraged to migrate to the far lands and establish themselves there. Unlike the first group of Muslim minorities, this latter group was viewed as the extension of the Islamic society and as its ambassadors and warriors. While they, too, had special instructions as to how to conduct themselves away from the centre of the Muslim power, they were mostly the author of their new rules.

Despite all these historical precedents, however, the 20th century gave the presence of Muslims in non-Muslim lands an entirely new facelift: larger numbers, immigrating voluntarily, mostly in search of economic opportunities, coming from many different origins, going to a variety of destinations. In the last quarter of that century all those trends intensified significantly, and that at a time that the relationship between Muslims and non-Muslims became a very sensitive issue. There was another fundamental difference between the old and the recent Muslim minorities: while the former groups were minority only in a demographic and not in a power sense, the latter ones were minorities in terms of both. The distinct nature of the experiences of new, immigrant, Muslim minorities brought about distinct challenges and new questions.

The initial juristic responses to these new challenges were relatively superficial ones. As a default, the Muslim presence in non-Muslim countries was largely viewed by the Muslim jurists as undesirable and temporary, requiring only some correspondingly temporary measures and minor adjustments. The underlying goal was to come up with solutions that would temporarily ease off the pressures on Muslim minorities until they go back to the Muslim land. Towards that goal, such Muslim minorities were expected to maintain their distinct identities – and their distance – from the non-Muslim majority residents, in order to remain loyal to their religious beliefs and principles. Never in this perspective was there room for the notion of long-term residence in a non-Muslim country, nor was there a trace of any kind of responsibility or moral obligation towards the non-Muslim populations among which the Muslim minorities were living.

With the significant increases in the number of Muslim immigrants, their prolonged stays in non-Muslim countries and, particularly, with the emergence of

2nd and 3rd generation Muslims, this initial response started losing its relevance to the lives of Muslim immigrant minorities. The challenges faced by this new wave of Muslim immigrants generated an increasingly long list of requests for religious expert views on many issues, ranging from mundane daily problems related to food and drink to much larger problems related to the country's politics and role in international conflicts.

The inadequacy of the traditionally-informed responses by traditional religious scholars created a sense of dissatisfaction among ordinary Muslims towards their religious leaders (see, for instance, Karim, 2008; Laurence and Vaisse, 2006). Al-Qaradawi (2005, p. 29) illustrates this inadequacy by saying that: "Some of our scholars are very knowledgeable, but lack an understanding of the conditions of those Muslim minorities; it is not enough that the scholars give those Muslims instructions merely on the basis of what is in the religious references, without enough knowledge of their situations and adequate research on their needs and necessities." The traditional approach of such scholars, according to al-Qaradawi, has led some of them to simply "discourage Muslims from living in non-Muslim countries" (p. 33) as opposed to engaging with the realities of their lives there. A change, therefore, was in order; and some Muslim scholars found the solution in the development of a new jurisprudential branch, known as *fiqh al-aqalliyyat*.

There are many qualities that distinguish the contents of this new jurisprudential branch from the past rulings related to Muslims living in non-Muslim lands. First, it took the presence of Muslims in such environments as a relatively permanent settlement that cannot, and in some cases even should not, be undone. Second, the scope of the rulings generated within the framework of this new branch covered is much wider than that of previous rulings, which were more concerned with providing Muslim immigrants with some practical advice on how to conduct their personal lives and daily routines, such as the issues like proper meat, hijab, banking, etc.; the new rulings incorporated much larger and institutional issues, such as participation in political processes, serving in the army, responsibilities toward the non-Muslims, etc. The latter point has been so strongly present in these rulings that March (2009, p. 34) has considered the main goal of this framework to be providing "an Islamic foundation for a relatively thick and rich relationship of moral obligation and solidarity with non-Muslims". Third, the point of departure for this new framework was not an effort to extend the existing rulings and apply them to a new case/situation but a revision in the guiding concepts and principles. What makes the last endeavor even more incredible is that, according to March (2009), it is taken on by not necessarily the most reform-minded Muslim scholars but by some of the most conservative and traditionally-oriented ones.

Despite the unprecedented nature of many defining elements of *fiqh al-aqalliyat*, the overall project is merely another example of the long history of the dynamic relationship between Text and Context. Many of the current debates on Muslims – whether on local or international issues – have an implicit or sometimes explicit assumption that Muslims’ conduct is a direct product of their religious beliefs and the teachings of Islam. In doing so, such arguments overlook two important dynamics. First, they ignore the influences on Muslims’ conduct that are coming from other, non-textual sources, such as economy, politics, class, gender, race, ethnicity, education, etc. Second, they remain oblivious to the possible yet crucial influence of Context on Text. The emergence of *fiqh al-aqalliyat* is indeed a classic example of the latter, in that a change in the demographic, socio-economic, political, and institutional environments under which Muslim minorities live has resulted in a change in the ways in which the Text is understood and interpreted.

Considering the potential influence of Context on Text as a real possibility, one can find many examples of this throughout history. Besides the example given earlier on the different codes of conduct for Muslims living in Medina under the Islamic state and those living in the non-Muslim environment in Mecca, one can think of the following additional examples:

1. The Shia/Sunni jurisprudential schools: The Shia/Sunni split in the early Islam assigned Shias to almost permanent minority status – with some sporadic yet notable exceptions in Iran, Iraq, and North Africa, and Arabia. This minority status, which had important implications for their relationships with states, greatly influenced the theological orientation adopted by their theological leaders, so much so that the Shia theology served as an opposition ideology throughout most of the history of the Muslim world.
2. Muslims in India/Pakistan: The change in the status of Muslims who remained in India after its independence and lived as a minority, versus those who decided to leave the country and form the independent Muslim-majority Pakistan resulted in the formation of very different schools of thought among these two groups of Muslims, illustrated by the differences between Abul Kalam Azad and Abul Ala Maududi.
3. Shia theology in post-revolutionary Iran: The 1979 Islamic Revolution in Iran brought the Shia clergy to state machinery and shifted the status of the country’s Shia population from being a demographic majority but a power minority into being a majority in both domains. This resulted in major changes in the theological approaches of the Iranian Shia establishment.
4. Shia theology in Iraq: The fall of Saddam Hussein in 2003 allowed Iraq to follow a path somewhat similar to that of post-revolutionary Iran. While the relative

recency of this development and security challenges in the country make it too early for a deeper theological change to come about, even within the 1.5 decades since the fall of Saddam Hussein some drastic changes can be observed in the ways in which the high-ranking Shia clergy (such as Ayat. Sistani) is operating with regard to socio-political issues.

5. Shia minority in Lebanon: The Shia population in Lebanon provides a very unique situation in which they constitute a demographically sizable minority whose political power and influence is much greater than their share of the population. This unique combination has resulted in implications for the general features of the theological approaches among the high-ranking Shia clergy in that country (e.g., late Mohammad Hussein Fadlallah).
6. *Mudejar* Muslims in Spain: This refers to the Muslims who remained on the Iberian Peninsula after the region was taken back by Spaniards through the *reconquista*. Having had experienced the unique combination of being a part of a Muslim majority – both in demographic and political power terms – and then becoming a minority on both fronts, the Mudejars developed an orientation towards the relationships with non-Muslims – mostly Christians at the time – that is unique to them. The Maliki school of jurisprudence, which has the most strict approach in terms of the permissibility of contacts between Muslims and non-Muslims, remained the most influential school of thought among the Mudejars.
7. Jewish theology after the formation of the state of Israel: A similar dynamic has also been reported for the Jewish theology as a result of the formation of the State of Israel as a Jewish state, which allowed the Jews to shift their statuses from being a minority in other countries to being a part of the Jewish majority in Israel.

The dynamic connection between Text and Context in the case of *fiqh al-aqqalliyyat* could be best observed in the scope of the issues and problems that its promoters and key leaders are trying to address. This will be discussed in the next section.

2.1 The Scope of *fiqh al-aqqalliyyat*

There are many web sites created by the various Fiqhi councils in Europe and North America that could be consulted with in order to develop a sense of the issues of concerns for the theologians and muftis associated with *fiqh al-aqqalliyyat*. The most articulate roster of these issues, however, could be found in a book (in Arabic) by Yusuf al-Qaradawi (2005), an Egyptian Muslim scholar who is now living in Qatar. Some of the questions that he addresses in this book are as follows:

- Questions related to the larger issue of living in non-Muslim countries and what it might require: “Is the presence of Muslims in western countries religiously justifiable or not? Is it allowed for Muslims to live in the non-Muslim countries, or not? If yes, how could this be reconciled with the religious teachings that imply otherwise? What is the religious verdict for such Muslims, who are concerned with the integrity of their faith, or that of their children, due to living in non-Muslim or non-moral environments? How about adopting the citizenship of those countries? [if that is allowed] Would it be against Islam to take the citizenship oath, in which Muslims have to declare their respect for the law and the system of the host countries? What is the religious instruction on compulsory military service in the armies of those countries, especially when they declare war against a Muslim country - should such Muslims disobey the state, or fight against their own Muslim brothers?” (al-Qaradawi 2005, 25)
- Questions related to the practical challenges of everyday lives, such as: “[Given the required Islamic slaughtering method,] what is the religious instruction on the meat that Muslims purchase in the market, or those served in restaurants? Should a Muslim inquire about them actively, or should they consider those kinds of meat to be fine and usable without asking? (al-Qaradawi 2005, 25-26)
- Questions related to working in places in which pork and alcohol are served, or opening a business that would have to sell those products, or accepting invitations to attend parties in which pork and alcohol are consumed. (al-Qaradawi 2005, 26-27)
- Questions related to civic matters such as marriage and divorce. For example, should they be conducted through the legal system of the host societies or through Islamic organizations? What is to be done in situations in which there is a conflict between the civic law and Sharia law, as is the case with polygamy or heredity? Is it permitted for Muslims to marry non-Muslims? (al-Qaradawi 2005, 27)
- Questions related to working with banking systems that charge and give interest, such as: Is it permitted to have saving accounts with them or use their mortgages? (al-Qaradawi 2005, 27-28)
- And, finally, questions related to participating in the political life of host countries, such as: Is it permissible to become members of the political parties and/or to support them? Or to form political parties and/or simply nominate people and/or vote for them? (al-Qaradawi 2005, 28)

The answers given to the above, and many more questions of similar nature, by the mufti promoters of *fiqh al-aqalliyat* have not come about as a series of ad-hoc decisions. Rather, such muftis have started their thinking processes by re-visiting some of the fundamental assumptions and concepts of Islamic jurisprudence, and

have proceeded with creating a new structure on that foundation. Many of these concepts are not new, but they have been re-interpreted in radically different ways.

3 The Fundamental Concepts

Two key jurists that have initiated this new line of thinking since the late 1990s are: the late Taha Jaber al-Awlani, an Iraqi-born jurist who was living in the United States until he passed away in March of 2016; and Egyptian-born Yusuf al-Qaradawi who is now living in Qatar. Trying to give the outline of his approach, Taha Jabir Alalwani argues that, to be able to offer advice for Muslim minorities, a jurist “must not only have a strong background in Islamic sciences, but must be well versed in sociology, economics, politics, and international relations (Jabir-al-Alwani, 2012).” The first step to be taken by a jurist in his dealing with a question raised by Muslims in minority statuses is to “redefine the question to deal with the core issue involved (Jabir-al-Alwani, 2012).” Secondly, a jurist should not merely rely on the prior rulings by early scholars. This is partly because those scholars had been giving instructions for an entirely different set of living circumstances; for example, “Muslims were not under conditions such that they had to escape to non-Islamic countries seeking lost rights or escaping from persecution (Jabir-al-Alwani, 2012).” It is also because the bases for many of the early rulings are not adequately known, as many of the early scholars “did not thoroughly document how they arrived at rulings (Jabir-al-Alwani, 2012).”

In order to introduce a well-integrated system of *fiqh al-aqalliyyat*, al-Qaradawi suggests that Muslim scholars concerned with the issues of Muslim minorities should base their work on the following principles: (1) engage in creative thinking (*Ijtihad*), as opposed to simply following the instructions of previous religious scholars; (2) pay attention to the actual living conditions of Muslim minorities; (3) focus on the needs of Muslim communities, as opposed to thinking merely about individual Muslims; (4) try to find solutions that would make life easier, rather than more complicated, for Muslims; (5) reduce the religious requirements and expectations of Muslims who might live in “unfavourable conditions”; (6) realize an Islamic lifestyle “gradually” rather than all at once; (7) attend to human needs and reduce religious requirements accordingly. According to al-Qaradawi, relying on these principles will allow for adequate flexibility and an increased level of pragmatism in the lives of Muslim minorities.

Given the above approach, the jurists of Muslim minorities utilize a wide range of concepts, some newly created, others are existing concepts that are re-interpreted. The main conceptual building blocks used by the promoters of *fiqh al-aqalliyyat*

seem to be the following: *tayseer* (leniency/facilitation), *tabshir* (gradual pleasant treatment), *maslaha* (expediency, or a pragmatically-defined common good), *ta-wala* (loyalty)/*tabarra* (disavowment), *dar ul-Islam* (abode of Islam)/*dar-ul-harb* (abode of war). Below, each of these concepts are introduced and briefly discussed.

3.1 ***tayseer* (leniency/facilitation), *tabshir* (gradual pleasant treatment)**

According to Shavit (2015:29), al-Qaradawi's ideas were based on two concepts: "*taysir*, or facilitation, and *tabshir*, or the spread of Islam through pleasant and gradualist means... *al-taysir fi al-fatwa wal-tabshir fi al-da'wa*", where "[taysir] is a religious duty because Islam is fundamentally a religion that makes things easier rather than harder, one that spreads through pleasant and gradual means (*tabshir*) rather than by generating animosity and rejection (*tanfir*)" (quoted in Shavit 2015:30)." This, according to Qaradawi is not only the responsibility of religious scholars but also that of ordinary Muslims: "...to spread Islam is the duty of all Muslims, not only religious scholars. One can fulfill this duty by writing books and by giving lectures and sermons, and also by saying a good word, being a good friend, setting an example, or donating money to proselytizing activities (Shavit 2015:32)."

One thing obvious in the above statements by Qaradawi is his effort to frame the two concepts of *tayseer* and *tabshir* in the context of proselytizing non-Muslims. We will come back to this later in the paper, but here it is important to highlight another aspect of his position, that is, the understanding that proselytizing non-Muslims can happen indirectly and through showing good conduct and setting good examples. Indeed, this has happened many times in history, which serves as the basis for the relevance of such an approach among the jurists of Muslim minorities. One historical example of this could be found in the encounters between Muslims and non-Muslims in the 16th century Europe, during which many Christians converted to Islam after being impressed by what they considered to be good qualities among Muslim Turks who were conquering their lands. Discussing the context for Martin Luther's ideas, Francisco (2007:88-90) documents this phenomenon in the following:

"Luther thought that there were many reasons one might convert to Islam. In spite of some contemporaneous reports, for the most part, he did not think that the Turks forced Christians to become Muslims. Instead, he favoured other explanations. He believed that Christianity had for so long been led astray by papal innovations that Christians were duped into thinking external appearances (rites, piety, customs, etc.) were the marks of true religious. So when a Christian accustomed to the papal religious encountered Islam whether as a prisoner, slave, or free person they became

mesmorised by the great display of religiosity. ... He also remarked that the underlying theology of Islam appealed to men and women since its doctrines, unlike the Christian teaching on the incarnation and Trinity, presented no offence to reason. Other explanations were also given... many Christians ... see that they are unlucky, but that the Turks are very prosperous. And yet another reason was that those from the 'wild crowd' were attracted to what he perceived as permissive sexual promiscuity." (Francisco 2007: 88-90).

3.2 ***maslaha* (expediency, or a pragmatically-defined common good)**

The history of jurisprudential thought shows that there has always been a tension between a strict attachment to the principle as defined within the framework of religious thought and a more lenient approach in allowing some socially- and politically-defined considerations to serve as the guiding principle. While the first approach has led to a stronger orthodoxy and literalism, the latter has given room for flexibility and pragmatism. This is the product of the fact that incorporating *maslaha* in jurisprudential reasoning "provides jurists with vast discretion in accommodating religious laws. It extends the purposes of the law to almost any aspect of human activity, grants that not only cases of necessity should affect fatwas, and demands that jurists engage in constant evaluations of the repercussions of applying specific religious laws (Shavit 2015:39)."

In the context of *fiqh al-aqalliyyat*, an incredible theoretical development is the introduction of proselytizing as a new *maslaha*. This, according to Shavit (2015:115) is "[t]he most innovative and audacious contribution of ... *fiqh al-aqalliyyat al-Muslima*", which "justifies the suspension of the prohibited (Shavit 2015:115)." Once the allowance is given to include *maslaha*, and to give it some kind of veto power over the conventional and customary Islamic teachings, a great degree of flexibility is introduced in the thinking and reasoning about the possible rulings, as in new circumstances new *maslahas* can be introduced.

3.3 ***tawalla* (loyalty)/*tabarra* (disavowment)**

These two terms – and their specific content – inform the nature of the relationships that Muslims could or should have with non-Muslims. While the traditional understanding of these two terms was that of loyalty to Islam and to Muslims, and disavowal of other religions and non-Muslims, the words have found new interpretations in the hands of jurists of Muslim minorities. Instead of prohibit-

ing the friendship with non-Muslims, the Muslims are expected to “interact with non-Muslims in a tolerant, just and kind manner (Shavit 2015:48).”

While acknowledging the existence of some Quranic verses that directly suggest that Muslims should avoid non-Muslims, al-Qaradawi argues “that these verses should not be understood as applying to all non-Muslims... [and] should be interpreted as applying exclusively to those who are hostile to Islam and who fight against Muslims. Those enemies, as opposed to infidels in general, are not to be assisted or taken as confidants (Shavit 2015:49).”

3.4 *dar ul-Islam (abode of Islam)/dar-ul-harb (abode of war)*

This is an area that has probably witnessed the most visible proliferation of conceptual innovations. While the conventional understanding of the two terms of *dar al-Islam* and *dar al-harb* provided a very simply and binary structure, consisting of the Muslim land and that of their enemies, the new suggestions under *fiqh al-aqalliyyat* have provided a much more crowded scene, with a large number of possible abodes in between the two initial ones (e.g., *dar al-solh*, *dar al-ahd*, *dar al-da’awa*, *dar al-mowallat*, etc.) and new interpretations offered for the initial ones.

According to al-Alwani, for instance, “any land in which a Muslim can practice his religion becomes *dar al-Islam* (Shavit 2015:107).” He also argued that “much has changed in international relations between the past and present; today, minorities’ rights are protected by international law, the relations between states are not governed by force, and the world has been transformed, almost in its entirety, into a global village. The culture of conflict, which was the context in which the works of the past jurists like Ibn Taymiyya were written, no longer exists (Shavit 2015:107).”

Along the same lines, Mohammed (2013) argues that the different territories (abodes) should be defined not merely on the basis of the populations’ beliefs but also on the basis of the nature of their relationships with Muslims. Using this as his point of departure, he suggests the following diagram that combines the two dimensions and creates four different possibilities. Two of these combinations are particularly interesting: the *dar al-Islam* in which Sharia is not applied; and *dar al-sulh*, defined as “any state in which Muslims are free to practice the tenets of their faith and law and are in a position to invite others to Islam”. He then concludes that, on this basis, “Western countries are *dar al-sulh*” (Mohammed 2013:147).

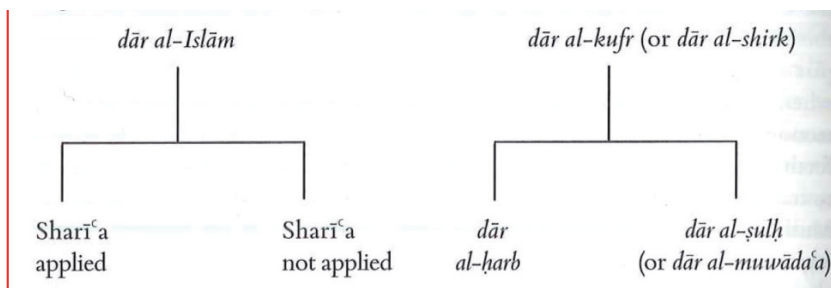


Fig. 1 Relationship between the Political-legal Jurisdiction

Along the same lines, Jabir al-Alwani takes this style of reasoning one step further by arguing that Muslims should drop the old concepts and, instead, “consider all land to be for God (Jabir-al-Alwani, 2012).” By doing so, indeed, he removes the minority status of Muslim immigrants as a special feature requiring a special treatment; rather, such status becomes just one of many ‘special’ sets of circumstances that are present as the context for any question or challenge faced by Muslims. Viewed this way, it seems that al-Alwani is trying to reintegrate the *fiqh al-aqallīyyat* back into the mainstream of the traditional *fiqh* and, through that, into the mainstream of the global Muslim population.

4 From Text back to the Context

It should be clear from the above review of the main themes of the *fiqh al-aqallīyyat* that one obvious function of this line of jurisprudential reasoning is that it allows – and sometimes even encourages – the settlement of Muslim immigrants in non-Muslim countries, it promotes a pleasant treatment of the non-Muslim populations by Muslim minorities, and it facilitates the integration of Muslims in the host societies. Also, as mentioned earlier, the presence of vast numbers of Muslims in non-Muslim societies served as a force that triggered this school of thought.

However, it should be noted that the mere presence of Muslims in non-Muslim countries does not automatically result in a similar theoretical development. As March has argued, there are many countries in the world with sizable Muslim minority populations but with no strong sign of the presence of *fiqh al-aqallīyyat* (e.g., in China, Russia, India, etc.). In addition to the demographic factor, it seems that another necessary element is the presence of a desire among Muslim minor-

ities to remain in their new countries and to integrate into it. Indeed, the genesis of *fiqh al-aqalliyyat* could be traced back to new needs, questions, and demands among ordinary Muslims in such countries, which then led to the emergence of new responses and innovative religious rulings on the part of their religious leaders:

It [*fiqh al-aqalliyyat*] was constructed by Muslims in the West no less than it was constructed for them. [Masud et al.] observed that is Islamic law, the *mustafti*, or the person who presents a query, largely determines the field of response by the formulation of the question... The initial interest of jurists based in the Arab world ... developed in direct response to queries presented by individuals and communities in the West. Muslims who migrated to the West were not motivated by religious ambitions, and it is unlikely that lack of juristic legitimization would have terminated their stay. The legitimization offered by jurists for their continued stay... was thus a retroactive rationalization of a reality which jurists realized they could not reverse. The quantity of queries by individual Muslim *mustaftis* on specific issues, the levels of distress conveyed in them, and the *maslahas* they pointed to, focused jurists' efforts and established the main polemics of the discourse. *Mustaftis* often masked their queries in concerns for the welfare of the Muslim nation or Muslim communities in order to encourage the application of *maslaha*, but their requests originated, quite naturally, in experiences of personal hardships (Shavit 2015:80-81)."

In other words, the process for the formation of a *fiqh al-aqalliyyat* style of thinking looks something like this: first, a sizable number of Muslim immigrants arrive in a non-Muslim country; second, these Muslims do not face a major hurdle on their way of integrating into their new countries; third, the inclusiveness of the receiving environment allows these Muslims to develop a positive attitude towards the host population and the institutional environment in the host country; fourth, in their effort to engage with the new society, they may encounter some conflicts between the traditional religious rulings and the demands of life in their new environment; fifth, they approach their religious leaders with questions and queries to receive advice on how to resolve those conflicts in such a way that is both compatible with the principles of their Islamic faith and practical given the necessities of life in a non-Muslim land; sixth, in response to these new needs and demands, some religious leaders feel the need to come up with innovative responses and rulings along with the line with what the jurisprudence of *aqalliyyat* is offering.

It should be noted that the above development occurs not as a mechanical process at a superficial level but more as an organic one at a deeper epistemological level. This is a process that is at work in any cognitive field – whether it is *fiqh*, physics, or sociology – along the lines with what Thomas Kuhn (2012[1962]) suggested in his *The Structure of Scientific Revolutions*. The process starts with the accumulation of questions for which satisfactory answers are not found within an existing

paradigm; hence, the scientists start looking for new paradigms. This scheme is perfectly applicable to the *fiqhi* developments described above – with *fiqh al-aqalliyat* being a new paradigm, the questions being the queries of the *mustaftis*, the *fatwas* being the answers given to those questions, and the satisfactory answers being those that are practical within the parameters of a Muslim immigrant life. Not every Muslim immigrant and every religious leader, however, goes through such a development. In this process, there are two potential ‘casualties’: 1) the religious leaders who insist on operating within the older paradigm(s), in which case they lose much of their relevance; and, 2) the Muslim immigrants who find even the new rulings unsatisfactory and impractical and, hence, leave the faith or subscribe to a minimalist version of the faith; in this case, religion still remains relevant and influential, but only in a shrunk scope of life. Both of these two groups fall outside the discussion about *fiqh al-aqalliyat*.

If the above-mentioned conjecture is valid, an important component in this process is the treatment of Muslims by, and their attitudes towards, the host countries and their populations. This will bring us to a discussion about a body of social-psychological research known as the ‘contact theory’, to which we will turn to in the next section.

5 Contact Theory and *fiqh al-aqalliyat*

The recent debates about multiculturalism (MC) have strengthened the position of those who opposed the adoption of it as a policy since its inception. The main argument of this group is that, by acknowledging and legitimizing the cultural differences, such a policy does indeed push cultural groups towards their own distinct and exclusivist identities and make them feel no need for adoption of, or exposure to, other cultures. Viewed this way, MC does not only fail to contribute to the formation of more inclusive identities, but it actually discourages such a development. The solution, so the argument goes, is to abandon MC; and, many countries have already started doing so.

The above proposition, however, is based on an incomplete understanding of the identity formation dynamics. Here, the implications of the social-psychological body of research known as the ‘contact theory’ are particularly helpful. The main argument of the studies in this field of research is that increased contacts between people of different backgrounds would generally result in the shattering of the negative stereotypes that they hold towards one another. While the bulk of these studies is American and focused on people of different racial origins, it has also

been shown that a similar dynamics can easily be found in other contexts, including the relationships among immigrants and native-born citizens, or among Muslims and non-Muslims, etc., with the end result being the blurring of the lines between in- and out-groups (see Allport 1979 [1954]; DeYoung et al. 2005; Dixon 2006; Emerson, Kimbro, and Yancey 2002; Marschall and Stolle 2004; McLaren 2003; Moody 2001; Pettigrew 1998; Powers and Ellison 1995; Sacerdote and Marmaros 2005; Sigelman et al. 1996; Sigelman and Welch 1993; Stein, Post, and Rinden 2000; Verkuyten 2005, 2007; Verkuyten and Kinket 2000; Verkuyten and Martinovic 2006; Verkuyten and Thijs 2002; Yancey 1999).

Such identity transformations occur through four possible mechanisms: (1) learning about the out-group and the correcting of misperceptions; (2) changing behaviours among the members of the groups involved, which, in turn, can modify their previous attitudes; (3) development of emotional and affective ties; and (4) weakening of ethnocentric views (Pettigrew 1998). Initial studies emphasized that such processes materialize only in situations marked by four key conditions: equal group status within the situation; common goals; inter-group cooperation; and the support of authorities, law, or custom.

The significant positive impact that social contacts can have on the creation of bonds between people of diverse backgrounds is clear in Putnam and Campbell's (2010) study of religion in the United States. Trying to explain how American society has solved what they called "the puzzle of religious pluralism – the coexistence of religious diversity and devotion" (550), Putnam and Campbell arrive at two interesting findings. First, the co-existence of religious diversity is attained through a high degree of "bridging" – that is, through including people of different faiths in one's social network. They believe that this kind of network leads to "a more positive assessment of other religious groups, even those that were not added to the friendship network" (532). They refer to this as the 'spillover effect': "perhaps upon realizing that you can be friends with ... a member of a religious group you once viewed with suspicion, you come to reevaluate your perception of other religious groups too" (ibid.).

Second, Putnam and Campbell (2010) found that their respondents, in the process of shattering stereotypes concerning 'others' as a result of increasing their level of contact with them, not only ignored scriptural teaching but also displayed a wide gap between their beliefs and the beliefs of their clergy – the guardians of the official interpretation of scripture. This is an extremely important finding, and it shows that the theological contents of a faith are not the only determinant of the behaviours of that faith's followers; rather, such contents could undergo transformation as a result of the development of social relationships with 'others'. For this reason, an attempt to fix the relationship between two faith communities cannot start with

a call for a reinterpretation of their respective holy scripts; rather, it should start with changing the nature of the social relations that could inspire a believer to feel the need for such a reinterpretation. Trying to overcome this problem of cognitive dissonance, people may find it necessary not only to reinterpret parts of their faith but also to question and/or ignore certain elements of their scriptural teachings, all in favour of more moderate and inclusive teachings.

Figures 1 through 4 provide a partial illustration for the above argument. Figure 1 shows that, with an increase in the frequency of contact, native-born Canadians' impression of Islam becomes increasingly positive. The strength of this correlation is so high that, between those Canadians with no contact and those with frequent contact, there is an almost 40 percent difference in the percentages reported.

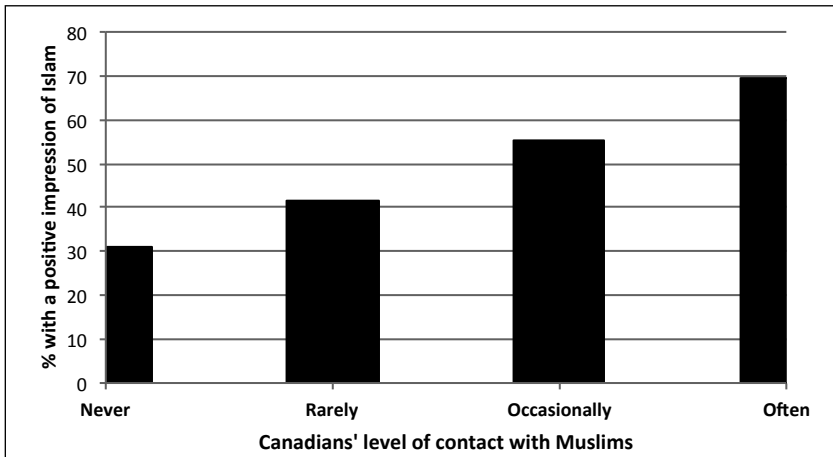


Fig. 2 Proportion of non-Muslim Canadians who have a positive impression of Islam, by their level of contacts with Muslims

Source: Environics Institute, Survey of Canadian Muslims, 2006

Figure 2 illustrates another aspect of this process, by reporting that, with the increase in the level of contact with Muslims, there is an increase in the proportion of native-born Canadians who hold a favorable attitude towards Arabs. The strength of the trend is quite noteworthy as, with every increase in the level of contact with Muslims, there is a corresponding increase of about 10 percent for those who report favorable opinions towards Arabs.

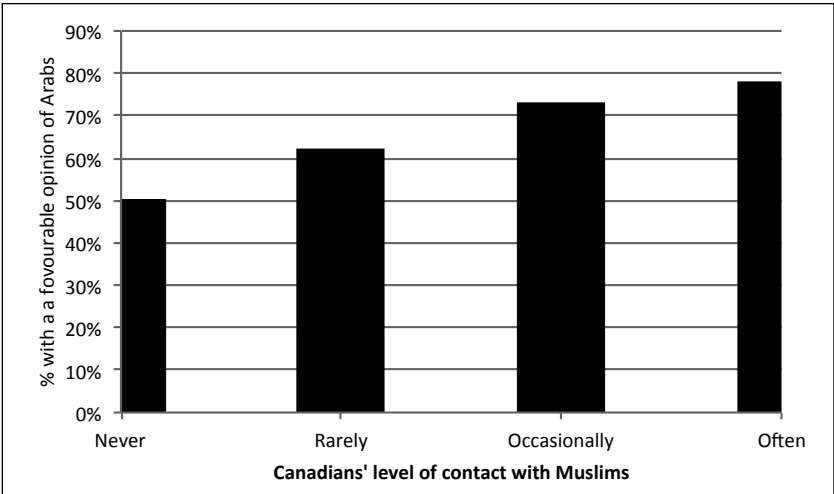


Fig. 3 Proportion of non-Muslim Canadians who have a “somewhat/very favorable” opinion of Arabs, by their level of contacts with Muslims

Source: Environics Institute, Survey of Canadian Muslims, 2006

There is an even more interesting aspect at work here, which is illustrated in Figure 3; that is, an increased exposure of Muslims to other Muslims results in a more positive attitude towards non-Muslims among them. Reporting the relationship between Muslims’ participation in religious services and their beliefs about Canadians’ impression of Islam, this graph shows that, with an increase in the level of participation, a higher proportion of Muslims seem to develop a feeling that native-born Canadians view Islam in a generally positive light.

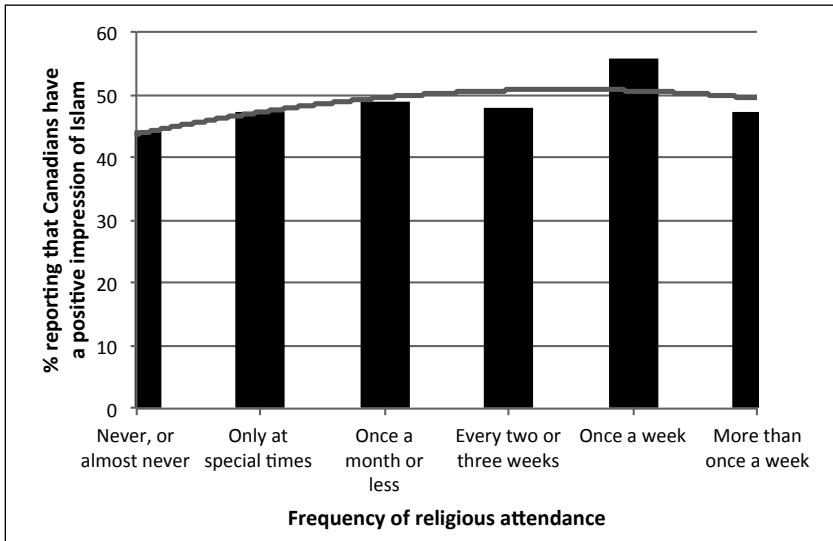


Fig. 4 Proportion of Canadian Muslims who believe that non-Muslim Canadians have a positive impression of Islam, by frequency of their religious attendance

Source: Environics Institute, Survey of Canadian Muslims, 2006

A similar, but perhaps more convincing, piece of evidence may be found in the trends in Muslims' levels of trust towards the general population. As is highlighted in the social capital literature, the presence of a general trust in unknown others serves to lubricate the social and economic machinery, making cooperation and collaboration possible. It is therefore important to examine the extent to which such trusting views prevail among Muslims. Figure 4 reports the percentage of Muslims with a high trust in the general population according to their level of participation in religious services. The data show that a higher degree of attendance in religious functions generally leads to a higher level of trust. This is a finding that, again, is contrary to social capital research, which suggests that an increase in bonding tends to weaken bridging.

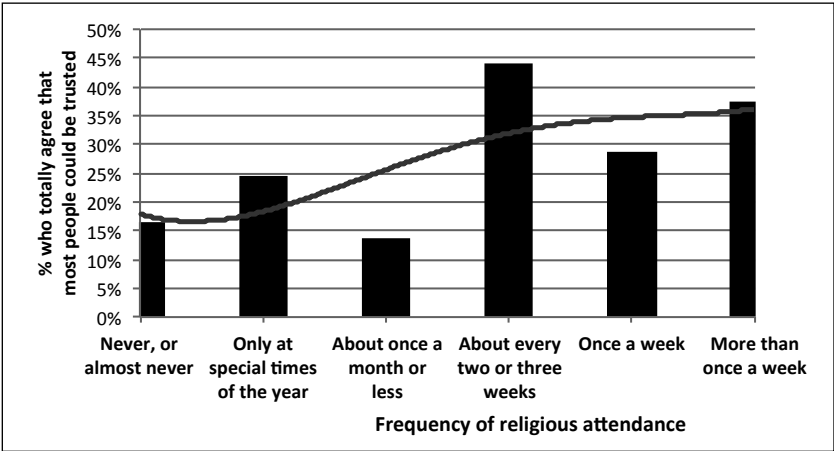


Fig. 5 Proportion of Canadian Muslims who “totally agree” that most people could be trusted, by frequency of religious attendance

Source: Environics Institute, Survey of Canadian Muslims, 2006

Taken together, the above figures show that the existence, frequency, and nature of social contacts among people of different backgrounds – religious, ethnic, racial, etc. – have unmistakable implications for their views towards each other and towards the broader population. A higher level of pleasant interaction result in the shattering of the initial stereotypes and the creation of more optimistic outlooks towards the society one lives in. In the case of Muslim immigrants, such optimistic outlooks could add to the pressures on Muslim leaders to come up with the kind of interpretations of religious texts that would facilitate the integration of Muslims living as minorities in other countries.

6 Summary

Uninformed about the incredible intellectual vitality among Muslim minorities, the popular debates on the place of such minorities in Western liberal democracies that operate under simplistic – if not false – assumptions: a) that Muslim minorities tend not to integrate into their new homes; and, b) that the main reason for this is the particular teachings of Islam that prohibit or discourage such an integration. Putting the obvious essentialism and reductionism involved in such arguments

aside, this study focused on a recent and very important intellectual development within the Muslim communities, that is, a new school of thought within Islamic jurisprudence known as *fiqh al-aqalliyyat al-Muslema* (the jurisprudence of Muslim minorities).

The basic premise of this new school of thought is that the realities of the lives of those Muslims who are living in non-Muslim countries are so fundamentally different from those of the Muslim-majority nations that the traditional Islamic jurisprudence cannot offer meaningful solutions for their problems; there is, therefore, a need to establish an entirely different jurisprudential approach centered around the lives of the Muslim minorities. The purpose of the bulk of jurisprudential theorization efforts in this line of reasoning is to facilitate the lives of Muslim minorities among non-Muslim populations and in non-Muslim countries; as well, they aim to create a foundation for the moral obligations of Muslims towards non-Muslims in such environments.

The mechanics of how such outcomes result seem to follow a process like this: first, a sizable number of Muslim immigrants arrive in a non-Muslim country; second, these Muslims do not face a major hurdle in their way of integrating into their new countries; third, the inclusiveness of the receiving environment allows these Muslims to develop a positive attitude towards the host population and the institutional environment in the host country; fourth, in their effort to engage with the new society, they may encounter some conflicts between the traditional religious rulings and the demands of life in their new environment; fifth, they approach their religious leaders with questions and queries to receive advice on how to resolve those conflicts in such a way that is both compatible with the principles of their Islamic faith and practical given the necessities of life in a non-Muslim land; sixth, in response to these new needs and demands, some religious leaders feel the need to come up with innovative responses and rulings in line with what the jurisprudence of *aqalliyyat* is offering.

A key stage in the above process is the interface between the Muslim communities and their religious leaders. The pressure from below forces those at the top to change their mode of thinking and style of reasoning. What is crucial in such dynamics is the eagerness of Muslim minorities to live in their new homes and side-by-side with their non-Muslim fellow citizens. The empirical information about Canadian Muslims presented above shows the significance of social contacts between Muslims and non-Muslims in the creation of more accepting attitudes and a more peaceful coexistence of the members of the two sub-populations. This social component is also what is missing in the existing conceptualizations of multiculturalism. Rather than a mere focus on the recognition of cultural differences, multiculturalism should also promote inter-group contacts and relationships. Such contacts have

the potential to give various groups an impetus for revising their initial images, stereotypes, and even religious beliefs, all in favor of a more inclusive social environment and a more responsible notion of citizenship.

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