

Difference, diversity and variation among human beings, both as individuals and groups, and hence, the presence of the different *Other* together with the *Self* have always been one of the main expressions and ramifications of the original identity and essential unity of the human species. Unity in diversity, or *vice versa*, is one of the wonders of the creation exemplified in the creature that has been given pre-eminence and glory in the cosmos as God's trustee and vicegerent on earth. Whatever the manifestations of difference and forms of diversity and plurality obtaining in and among human societies might be, they in no way obliterate human original identity and essential unity emanating from a God-fashioned original nature or *fiṭrah*. Imbued with this cosmic truth highly celebrated by the Qur'an as an expression of the unfathomable divine wisdom in the creation, the emerging new Islamic discourse of *fiqh al-aqalliyyāt*, or jurisprudence of minorities, is in search of a comprehensive approach and well-grounded systemic *ijtihād* combining knowledge of Text and Context to address the multiple and complex issues pertaining to minorities and affecting human relations at all levels in Muslim majority countries including non-Muslim minority groups and non-Muslim majority countries with Muslim minority presence. The present volume fairly reflects the theoretical and practical concerns of an increasingly growing world community of Muslim scholars, researchers and activists who strive to come to grips with an area of human relations that is prone to all kinds of misunderstanding, misrepresentation and manipulation, locally, regionally and globally. It is hoped it will consolidate and enrich the voices of wisdom on the path of promoting peaceful coexistence and positive interaction among majorities and minorities of all types.

Mohamed El-Tahir El-Mesawi is academic staff at the Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia, IIUM. He has published over a dozen of books in Arabic, English and French and many articles in peer-reviewed journals. He was the editor of the quarterly Arabic journal *Islāmiyyāt al-Ma'rifah* published by the US-based International Institute of Islamic Thought (1995-1999) and has been the editor of IIUM flagship biannual *at-Tajdid* since 2004.

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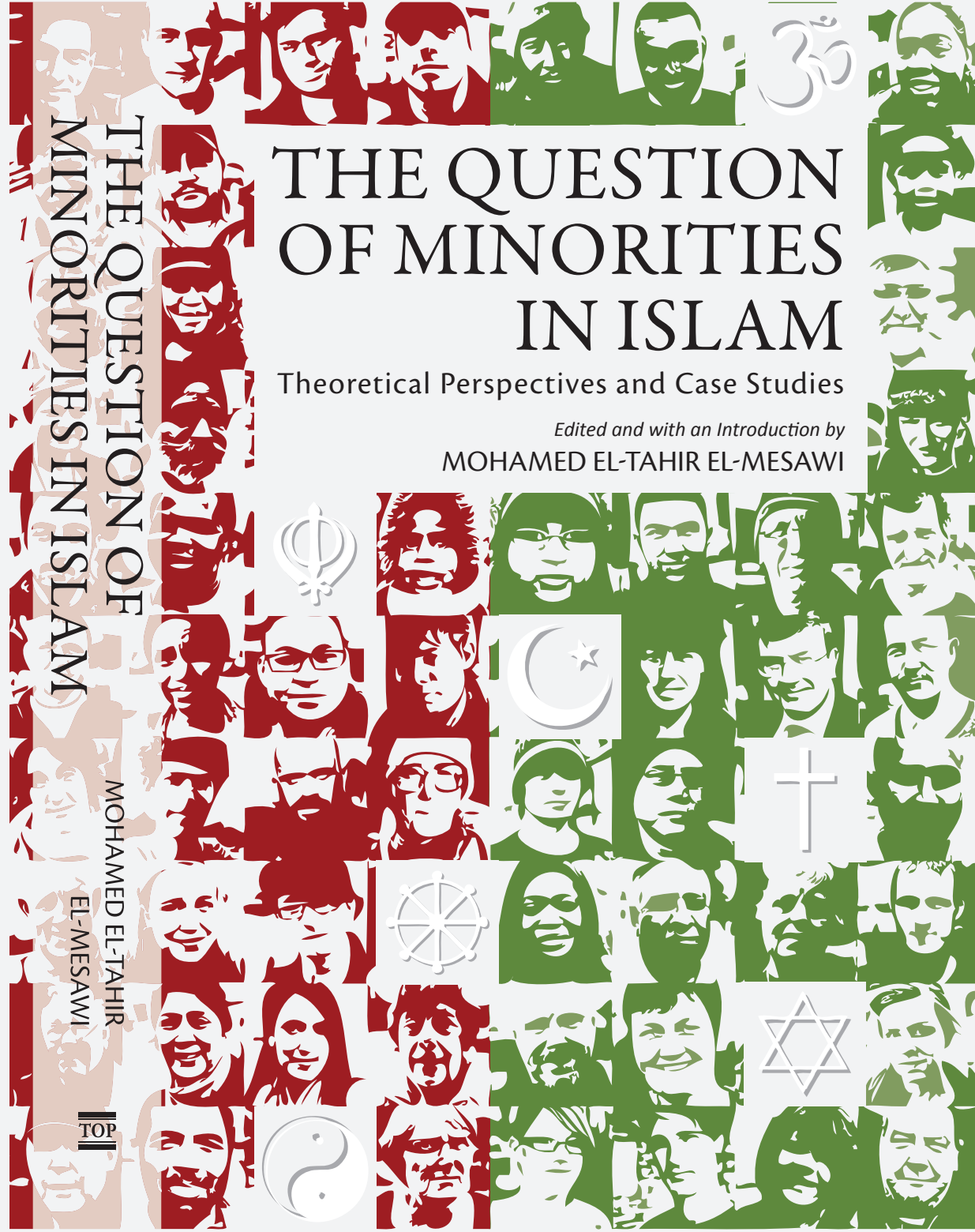
MOHAMED EL-TAHIR EL-MESAWI

TOP

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Theoretical Perspectives and Case Studies

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FOREWORD

In the wake of globalization humanity is living in a new world and facing new socio-cultural and politico-economic circumstances affecting people's lives so profoundly. Increasing close social contacts and immediate cultural interactions among individuals and peoples previously far away from each other are the rule rather than the exception thanks to the unprecedented speed of means of transportation and the radical revolution in communications and information technology. In a world that has literally become a global village, new forces of influence and novel modes of human co-existence and interaction have emerged that face all nations and countries in the world with new challenges and problems. In the forefront of these challenges and problems are issues of how increasingly interconnected individuals and communities of different belief-systems and religious faiths are would be able to live together peacefully. A very central question is how majorities and minorities of all kinds, especially religious ones, can cope with their differences and discover common grounds that would allow them to cooperate for the benefit and wellbeing of all and each and every one in their respective societies. It is with this general context in view that the Muslim World League (MWL) has been involved in intellectual, cultural and social activities in which issues related to Muslim minorities in the world have been at the centre of focus.

Like other social and cultural groups, Muslim minorities in many countries of the world have been experiencing serious changes in their lives and status resulting as much from their internal developments as from the evolution of their relationships with the other components of their societies be they majorities or minorities. There are different factors that contribute to the shaping of those relationships both positively and negatively. One im-

portant factor that requires special attention pertains to the perception of Islam by both Muslims and non-Muslims and the understanding of what it stands for in relation to other religions and civilizations. This is more so in view of the ongoing debate that has been sparked by clash of civilizations thesis over the last few decades.

The problems and challenges facing Muslim minorities in the world are of a complex nature involving social, cultural, economic, legal and political aspects, and requiring a comprehensive approach in handling them systematically by taking the special context and circumstances of those groups into consideration. It has been one major goal of the Muslim World League to assist Muslim minority groups by different means in overcoming the challenges and problems facing them. While undertaking this task, special attention has been given to striking a happy balance between the preservation and consolidation of their Islamic identity and positive integration into the societies to which they belong.

However, the concern of the MWL about minorities has not been confined to Muslims only. Rather, and in line with the teachings of Islam and the historical experience of Islamic civilization, non-Muslim minorities living in Muslim countries have also been of increasing interest in its discourse and reach-out activities. It is indeed our view that the problems relating to Muslim and non-Muslim minorities can only be properly addressed and resolved when approached from the perspective of a unified systematic intellectual and methodological framework deeply grounded in Islamic jurisprudence. Such a framework, we believe, is provided by what has been described as jurisprudence of minorities or *fiqh al-aqallīyyāt*.

It was in this spirit that MWL deemed it necessary to dedicate at least one international conference to studying and examining the question of minorities from different angles. Thanks to the collaboration with the International Islamic University Malaysia (through International Institute of Islamic Thought and Civilization, ISTAC and the Department of Fiqh and Usul Fiqh), it has been possible to coordinate our efforts and organize the 2009 international con-

ference on “Jurisprudence of minorities in the Light of the objectives of Islamic Law (*Maqāṣid al-Sharīʿah*): Identity and Integration”. The publication of the present book consisting of selected papers from the conference proceedings is a most welcome contribution to an area of Islamic thought that is in need of more in-depth scholarly efforts.

I pray to Allah *subḥānahu wa-taʿālā* to make this effort a fruitful one that will benefit Islam, Muslims and mankind at large.

Prof. Dr. Abdullah bin Abdul Mohsin al-Turki

Secretary General
Muslim World League
Makkah

INTRODUCTORY

Fiqh al-Aqalliyāt:

Its Meaning, Purpose and Scope

Mohamed El-Tahir El-Mesawi

As far back as history can teach us, human societies have never been monolithic closed and static entities that are absolutely homogeneous in all existential aspects of their lives, be they essential or otherwise. Indeed, the contrary has been mostly true. Mobility, openness, and diversity have always been characteristic features of dynamic historical societies in contradistinction with ‘primitive’ human groups that are assumed by some anthropologists and ethnologists and other social scientists to have been ‘monolithic’, ‘homogeneous’ and ‘stagnant’, and hence ahistorical. Likewise, processes of adoption, adaptation, assimilation, inclusion and exclusion have been and continue to be part and parcel of the dynamics of human societies’ development, sustainability and self-regeneration in a continuous process of interaction with, and adaptation to, their natural and human environment, thus being guided by a certain view of the world and set of values and ideals regulating their individual and collective conduct.

Likewise, what is always described as the minority-majority question cannot be seen in a proper relief outside and beyond this universal pattern governing mankind since it emerged on the scene of the world history as a distinct species leading a collective life and forming groups and societies. Rather, the minority-majority question is none other than one of the manifestations of those characteristics and processes of the human socio-historical condition. The presence of the *Other* who might be different ethnically, linguistically, religiously, culturally or otherwise seems therefore to be concomitant with the existence of the *Self* that is

assumed to be monolithic and homogenous. This, in fact, is a reflection of a cosmic law governing human socio-historical existence ever since its early beginnings on earth, a truth of human association (to use Ibn Khaldūn's terminology) which the Qur'an has cast in a picturesque manner. Thus we read:

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all-knowing, all-aware. (49: 13)

And among His wonders is this: He creates for you mates out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who think! And among his wonders is the creation of the heavens and the earth, and the diversity of your tongues and colours: for in this, behold, there are messages indeed for all who are possessed of [innate] knowledge! (30:21)

Hence, difference, diversity and variation among human beings and the presence of the different *Other* together with the *Self* are no novel discoveries in human history; instead they have always been an expression and ramification of the fundamental identity and essential unity of the human species that set it apart from other beings on earth. Unity in diversity or vice versa, then, is but one of the wonders of the creation exemplified in the creature that has been given pre-eminence and glory over other beings as God's trustee and vicegerent on earth (Q., 2:30, 17:55 & 33:72). Therefore, whatever the manifestations of difference and forms of diversity and plurality occurring in and among human societies might be, this should not in any way blur or make us forget that fundamental identity and essential unity.

Indeed, it has been an aspect of the Divine creative will and scheme of human existence that difference should persist among human beings hand in hand with their original unity deriving from their original common nature. Hence, the Qur'an clearly states that "had thy Sustainer [God] so willed, He could surely have made all mankind one single community, but [He willed it otherwise, and so] they continue to hold divergent views." (Q., 11:117). In other words,

besides those aspects of natural diversity of tongues and physical posture, the unceasing differentiation among human beings pertaining to their views and persuasions “is not incidental but represents a God-willed, basic factor of human existence;” the great and fathomless wisdom lying behind this fact is that if “God had willed that all human beings should be of one persuasion, all intellectual progress would have been ruled out.”¹

It is therefore natural that human beings, both as individuals and groups, will not behave and act merely out of the necessity of their instinctual drives and natural physical needs, but most importantly in accordance with their persuasions and intellectual visions. In other words, the singularity of human beings in contrast with other species on earth is that they act in order to shape their destinies by making decisions on the basis of ideals and goals deriving from their views and persuasions. Likewise,

The very existence of different individuals and groups that have this characteristic virtually guarantees that there will be conflicts among them. And yet it is also human to want to find common ground with others. When individuals or groups emphasize their differences, the result is conflict; when they find common ground, cooperation becomes possible. However, even when it appears that cooperative efforts have resolved the sources of conflict, not all conflict will disappear. Conflict is a natural part of all human interaction. Both conflict and cooperation exist simultaneously. All social phenomena can ultimately be reduced to the question of how these two human characteristics are reconciled and allowed to coexist on the same plane.²

Put differently, it is the greatest test of humans (again as individuals and communities) to discover and embrace time and again the eternal truth of their essential unity and to discover and recover the “common ground” amongst them through and beyond

¹Muhammad Asad, *The Message of the Qur'an* (Kuala Lumpur: Islamic Book Trust, 2011), p. 402.

² Kazuko Hirose Kawaguch, *A Social Theory of International Relations: International Relations as a Complex System* (Dordrecht: Springer Science + Business Media, 2003), p. 5.

the multiple forms and diverse manifestations of their socio-historical existence, and to transcend their localities and temporalities in order to uphold the universality of their being. In fact, an important aspect of the Divine wisdom in human differentiation is to test human beings on how to appreciate, individually and collectively, their differences and overcome them by ascending towards higher truths and sublime deeds on the path of what is good and beneficial to all. Otherwise, they will remain imprisoned to all types of socio-cultural and legal configurations whose actual value should not be more than being means to enable them to realize their potentials and fulfill their needs.

In light of the above, and regardless of the socio-cultural and political context in which the terminology of minority versus majority appeared and where and when it first came into circulation, the question of minority-majority relations is but an existential corollary and natural expression of that unceasing differentiation among human beings. Without delving into the historical dynamics of the minority-majority question and how different societies and civilizations have dealt with it over the ages, it would suffice to just point out that it has become one of the persistent and most explosive issues in contemporary politics and international relations with far-reaching social, cultural and political consequences, nationally, regionally and globally. Increasing tensions and conflicts are on record in the world wherein minority-majority relationships are among their main causes if not the main cause. Military intervention justified by the rescue or protection of minorities is not an uncommon fact in modern history. International official and non-official organizations and bodies have been in existence whose mission or part of it is to oversee the cause of minorities in the world and promote their rights and interests. There is no country or society in today's world, one would venture to proclaim with much certainty, which does not face the question of minority-majority relationship one way or another. In a globalized or globalizing world, minority related issues, whatever their geographical locality or national boundaries, have become a matter of universal concern of humanitarian, cultural, economic, social, political and legal implications, regardless of their genuineness or artificialness. Discourses have been formulated, posi-

tions taken and laws promulgated all in the name of minorities. Social, political and media campaigns have been staged for the sake of minorities or simply on their behalf. Countries and governments have been pressurized and individuals or groups prosecuted also in the name of this or that minority.

Islam and Muslims have been increasingly criticized by many, especially Western, writers and activists on account of allegedly poor records in relation to the respect and protection of non-Muslim minority groups living in the midst of Muslim majority societies. Thus, over many decades throughout the twentieth century many Muslim scholars and thinkers devoted a good deal of effort to respond to those criticisms and clarify Islam's position concerning non-Muslim minorities both theoretically (as enshrined in Scripture) and practically (as borne out by Muslims' historical experience). A considerable body of literature has accumulated under titles like the *dhimmīs* (*ahl al-dhimma*), non-Muslims (*ghayr al-Muslimīn*) or citizenship (*muwāṭanaḥ*) in Islamic Law or under the Islamic state or in Muslim societies. However, this is only one side of the question of minorities for Islam and Muslims; another side has increasingly caught the attention of many people both within and without the abode of Islam. Unlike the classical and medieval periods when Muslims used to live exclusively under Islamic rule except for limited cases of individuals or very tiny groups or under radical circumstances such as after the fall of Granada in Muslim Spain, modern times, mainly since the beginning of the twentieth century as most of Muslim countries had fallen under colonial rule, have witnessed the growing presence of Islam and Muslims outside that traditional abode, notably in the Euro-American Northern sphere. Many factors lie behind this remarkably growing Islamic presence, whose enumeration and analysis is beyond our purpose here.

Over the last two to three decades mainly, Muslim-minority related issues have come to the forefront and become the concern of increasing numbers of Muslims and non-Muslims alike due to their complex religious, moral, social, legal and political dimensions and to the tensions they might create or have created in the relationship between Muslims and the societies in the midst of which they live.

For non-Muslims, especially in the West, their concern regarding Muslim minority communities stems from the fact of what is considered as a worrisome rebirth and rise of religion and religious self-assertion and identification in a supposedly secular or secularized world, where belonging and identity would rather be determined by mundane values and ideals and governed by state-regulated citizenship based on secular man-made laws. Religious commitment and religion-based socio-political membership and action in the public sphere of conceivably secular modern states thus look as an aberrant development detracting the almost taken for granted linear and irreversible process of universal progress and evolution in which the secularization of life and the world is looked at as an essential and determining phenomenon in the evolution of human society and culture. Extreme views and positions of triumphalist secularists and puritan nationalists notwithstanding, the question of Muslim minorities for concerned thinkers, politicians and law-makers in many Western countries is a serious matter requiring careful treatment to arrive at appropriate strategies of accommodation and/or assimilation in a manner that would not destabilize or alter the nature and features of the existing socio-political and cultural system.

On the Muslim side, this concern over the conditions of Muslims living in non-Muslim majority countries derives from the fact that a Muslim's destiny and salvation depends on the extent to which one submits to God's will by conducting one's life according to His decrees and realizing the ethical values of truthfulness and goodness in all spheres of life as taught by the Qur'an, exemplified by the Prophet, and elaborated by Muslim scholars over the ages. This is no easy task indeed, and more so when the Muslim finds him/herself facing a socio-cultural and political reality with its own compelling norms, symbols, systems and priorities that may be indifferent to his/her preoccupations, to say the least, and suspicious if not hostile and aggressive, to say the most. Thus, between the two limits of Muslim minority groups' self-assertion and struggle to live up to the principles and ideals taught by their religion on the one hand, and the suspicion and/or aggressiveness of the non-Muslim majority societies in whose midst they exist, a wide spectrum of in-

creasing individual and collective problems arise that press for immediate solutions of spiritual, moral, creedal, socio-economic and political nature.

A great challenge is thus posed to Muslim minority groups and their leaders in the first place and to Muslim scholars and Islamic institutions at large in the second place to find the Islamically right answers and efficient means to overcome those problems. This situation has given rise to a new kind of discourse that has been taking shape ever since and in the shaping of which many Muslim scholars, thinkers and activists are involved. Aimed at developing a theoretical and methodological framework whereby those issues could be addressed systematically, one of the features of this new discourse is the uneasiness and critical attitude its promoters express vis-à-vis the *traditionalist* approaches followed by many contemporary Muslim jurists and official and non-official religious bodies in handling such issues. On the one hand, such jurists and religious bodies are criticized for lack of holistic view of Islamic teachings as a comprehensive integrated system as well as for deficiency in taking account of the core values and higher goals of the Sharī'ah (*maqāṣid al-sharī'ah*) underlying those teachings. On the other hand, they fail to understand the Muslim minorities connected issues as part of dynamic socio-cultural and politico-economic interrelated realities. Hence, they would simply lean on juristic formulations and verdicts of past Muslim scholars of the different guilds and apply them mechanically in disregard of both the socio-historical context wherein they had been developed and the present context surrounding Muslim minorities.

Realizing the complexity and sensitive nature of the question of minorities, the contributors to the above-mentioned new discourse seem to be one on describing it as jurisprudence of minorities (*fiqh al-aqallīyyāt*), that should have its own specific subject matter and methodology, though not situated beyond or outside the general framework of Islamic jurisprudence. Its purpose is to develop the necessary theoretical and methodological means and formulate the appropriate practical tools that would help in solving the problems facing Muslims living in non-Muslim countries and enable them to

preserve their Islamic identity and subscribe to Islam's beliefs and values without alienation or estrangement from the general socio-political and cultural context surrounding them. Not only that; the exponents of this new branch of Islamic jurisprudence also aspire to equip Muslim minority communities intellectually and morally in such a way as would make them active participants in their societies and positive contributors to their overall wellbeing.

This double-sided nature of the question of minorities as depicted above constitutes the theme to which the "International conference on Jurisprudence of Minorities in the Light of the Objectives of Islamic law (*maqāṣid al-sharī'ah*): Identity and Integration" had been devoted.¹ This conference was specifically meant to assess the current status of the Islamic discourse on minorities and open new vistas for further reflection and research that should be guided by *Maqāṣid al-Sharī'ah* seen as a necessary fundamental framework for revitalizing the creative practice of *ijtihād* and coming to terms with contemporary problems and challenges.

The present volume consists of thirteen chapters (9 in English and 4 in Arabic) the original versions of which were selected from the thirty-three papers presented at the conference. The selection was based on a set of criteria, including relevance to the main theme of the conference, variation and topicality of issues treated, appropriateness of methodology and approach, coherence of presentation, originality of ideas, clarity and soundness of argument, substantiality and informative character of content, and complementary relationship among the papers. In light of these criteria and considering the general thematic unity of the material, the chapters have been arranged in such a way that they would constitute a coherent whole despite the diversity of issues discussed and variation of methods employed, this having also been observed within each of the two (English and Arabic) sections of the book.

¹Organized by the International Institute of Islamic Thought, ISTAC, the Department of Fiqh Usul al-Fiqh (both at the International Islamic University Malaysia, IIUM) and the Muslim World League, Makkah, the three-day conference was held on 9-11 November 2009 (21-23 Dhu al-Hijjah 1430) at Renaissance Hotel, Kuala Lumpur and was officiated by IIUM Constitutional Head Sultan Haji Ahmad Shah, the Sultan of Pahang.

As is the general practice in introducing a book of this kind, I shall here present an overview of each chapter, especially as the contents of the Arabic section may not be easily accessible to all the readers who might be interested in this book. Generally speaking, the three first chapters by Muddathir ‘Abd al-Rahim, Muhammad Sammak and Hishem A. Hellyer respectively may be said to be of particularly theoretical nature. Likewise, they set out a general framework that provides the philosophical and moral foundations for the rest of the book.

In his paper which constitutes the first chapter, ‘Abd al-Rahim highlights the metaphysical and ethical foundations of religious pluralism in Islam. In his view, the cornerstone of those foundations consists of “the contrasting positions in Islamic theology and worldview of the oneness and uniqueness of God on the one hand, and the diversity of His creation – animate and inanimate, human and non-human – on the other.” Accordingly, while absolute oneness, uniqueness and inimitability can only be attributed to God, diversity, variety, and plurality are characteristic properties of human beings, not only physically, ethnically and linguistically, but also, more importantly, “in matters of faith and belief: up to, and including, disbelief”, and this by the will of God Himself, their Creator.

Only by having this in view will one be able to appreciate and explain that historical phenomenon characterizing Islamic civilization that caught the attention of many scholars since the time of John Locke and aroused their admiration at the same time. This phenomenon consists of the fact that, as the German philosopher Adam Mez put it, multi-ethnic and multi-religious communities lived “side by side in an atmosphere absolutely unknown to medieval Europe.” Thanks to the original pluralistic vision of the human world enshrined in the Qur’an and exemplified in varying degrees throughout Muslim history, Christian and Jewish communities living in Muslim society “formed a state not only within a state, but beyond the state,” as pointed out by ethnographer and historian Shelomo D. Goitein. According to ‘Abd al-Rahim, this Islamic pluralism is sanctioned by the Qur’anic “principle of inadmissibility of compulsion in matters of faith”

and “respect for the dignity and integrity of all human beings – of whatever faith or origin they may be.”

Sammak further elaborates in the second chapter some of the basic principles underlying Islam’s view and approach in dealing with human affairs which he summarizes in the formula “unity in diversity”. Unwavering and manifest as the Qur’an’s insistence on the common origin and essential unity of human beings is, its emphasis on diversity and plurality amongst them is as equally certain and unambiguous. Its “frequent mentioning of diversity and plurality amongst mankind is meant to teach people to take it as a fact of life and natural phenomenon so as to be tuned to realize what it entails in terms of difference and variation in thinking, beliefs, values, conduct and lifestyles.” But, as Sammak cautions, Islam’s acknowledgement of diversity and difference amongst human beings as “part and parcel of God’s cosmic scheme of creation” is not intended to make individuals and societies fall in the ‘narcissism of differences’, as Freud would have it. Rather, “open and enlightened dialogue becomes a pillar of human understanding and mutual respect and cooperation among peoples and nations.”

From an overview of the changing world religious map since the end of the nineteenth century, Sammak observes that a great religio-demographic transformation has taken place whereby Islam and Muslims have come into close contact with almost all the major religions of the world, especially Christianity with which Islam is in a stiff competition notable in Asia and Africa, while it is making inroads into Europe and America. In his view, this unprecedented global situation requires “an updated Islamic jurisprudence to deal with the new realities of co-living” among people of different religious denominations. The purpose of this new jurisprudence, according to Sammak, is to strike balance and equilibrium among multiples interests or set them up in order of priority based on profound analysis and understanding of all aspects of reality as “manifested in the external world,” from matters related to food and nutrition to politics and political relations. Taking Lebanon as a miniature of globalized and interconnected world of religious communities, the writer argues that religious differences in this country “are not so

much disputes about doctrine as about history and power-sharing.” After many years of conflict and strife, the realization of this fact has enabled the different components of Lebanon to develop a model of democracy that is typically Lebanese: not ideal, not theoretically perfect, but “compatible with the fundamental requirements of national unity.”

In his paper on religious diversity and multiculturalism which constitutes the third chapter Hellyer takes up number of theoretical issues which have been at the centre of discussion mainly in Europe over the last two to three decades. Starting by some conceptual clarification, he states that being a multi-cultural country does not necessarily mean that a country is multiculturalist, meaning that the adjective ‘multiculturalist’ is rather “a normative label that would be a judgment on the policies of the countries involved rather than an expression of fact about the realities ‘on the ground’.” For Hellyer, multiculturalism as a school of thought with its distinctive theoretical and methodological framework has been mainly concerned about ethnicity as “the most contentious form of identity in Europe,” for which reason little notice was taken of religious identities. And when this happens, especially in the case of Muslims, it is to portray them “as ethno-cultural minorities,” an expression that almost obliterates the typically defining character of religion in shaping Muslim identity. However, “in the context of discussing the Muslim presence in Europe, it is rather difficult to get around an engagement with multiculturalism,” no matter how different positions its theorists may take.

Crucial to the multiculturalist debate on minorities are the issues of fairness, equity and citizenship. The basic question that is raised is: “are the claims of minority groups just, justice being the root attribute that every state should aspire to uphold?” In this respect, Hellyer points out the secularist tensions and biases of the multiculturalist school when it approaches matters related to religion and religious communities including Islam and Muslims, as clearly manifested in the position of Will Kymlicka, one of its outstanding mouthpieces. This multiculturalist theorist “excludes

religious groups without even any comprehensive justification, although they are certainly relevant in Europe and North America.” Despite that, Hellyer believes, “multiculturalism remains the school where the issues arising from a multi-faith community are best discussed, particularly in Europe where many minority faith communities are also minority ethnic ones.” At this juncture, he reminds the reader that whatever the possibilities and tools that multiculturalism may provide to handle minority-religious groups related issues such as those of rights, accommodation, citizenship, and assimilation into the wider national communities in Europe and North America, the fact remains that this will depend on the historical experience and the type of political culture and brand of secularism prevalent in each country. Finally, the author concludes by stating that,

Like Muslim juridical theorists who are trying to take into account the effect of modernity on their jurisprudence, European political philosophers are recognizing that traditional conceptions of identity and belonging are no longer valid in a Europe defined by new circumstances. The dynamics of immigration, EU integration and globalization have raised new questions surrounding what is meant by the ‘European identity’, and the debate is still very much open.

In this context, he reminds us, the “major barrier to be overcome in this regard is the requirement that the minority and the majority consider themselves interchangeable in terms of their civic responsibilities. The majority must view itself as individual citizens of the overall community, and the minority must do the same; in other words, as *citizens*.” But this should not mean that minorities do not have to defend their rights and status as minorities.

Consciously or unconsciously building on some or all of the general philosophical and ethical principles described above, the next ten chapters rather deal with more specific topics and practical cases, though from different perspectives. In the following account we shall attempt to synthesize as much as possible their contents based on unity or proximity of issues raised and approach followed. Hence, Mohammad H. Fadel, Sayed S. Shah

Haneef, Muhammad Amanullah and Kamal al-Saeed Habeeb devote their papers to discussing different issues pertaining to non-Muslim minorities in Muslim majority states. Conversely, Ramadan Ma Qiang, Abdul Rajiq Sohn Ju-young, Zaleha Kamaruddin, Abdelmajid al-Najjar, Ahmed Jaballah and Mahmud Zuhdi Abdul Majid deal with matters concerning Muslim minorities living in non-Muslim majority states.

In chapters 4 and 5, Fadel and Haneef reflect on the non-Muslims' status in terms of citizenship in an Islamic state from the perspectives of *fiqh al-aqallīyyāt* and constitutional thinking respectively. In Fadel's opinion, the concern of Islamic law about the rights and obligations of non-Muslims living in the territory of an Islamic state went hand in hand with its concern with the rights and obligations of Muslims living outside such territory. This concern goes back to the very early moments of the establishment of the Islamic state by the Prophet, and was manifestly expressed in the Madīnah Charter that provided the constitutional framework for governing the social groups making up the emerging Muslim society. This charter "set out a system of mutual rights and obligations that bound the people of Madīnah together on certain common pursuits, regardless of their religion, while reserving only particular obligations to those Madīnese who were Muslims."

In this context, Muslim jurists pondered the question as to whether non-Muslim subjects of the Islamic state should be held "liable *in this world* for breaching the substantive obligations of Islamic law," especially with respect to the penal code be it the form of *ḥudūd* or *ta'zīr*. According to Fadel, in struggling to resolve this issue which preoccupied Islamic legal thinking from its early days, "Muslim jurists recognized that the application of Islamic law to non-Muslims required a different kind of justification than that underpinning its application to Muslims," for whom its application is "simply derivative of their acceptance of Islam as being true." However, in his opinion, there is a common basis on which Muslim jurists elaborated their legal formulations of the rights and obligations of Muslims living as subjects of non-Muslim state and non-Muslims living under the authority of Islam-

ic state. That is, “because of the absence of shared belief, the relationship must be built on the terms of an agreement (*‘aqd*). Just as the relationship of *dhimmah* was contractual and included mandatory and permissive terms, so too the agreement of security pursuant to which Muslims could legitimately live in a non-Islamic state had to meet certain minimum conditions.” The legal tradition of addressing the status of Muslims living in non-Muslim territories, Fadel argues, “has formed the basis of *fiqh al-aqallīyyāt*.” This, in his view, should be equally relevant to non-Muslims living in Islamic states. That is, there is a great possibility of developing, within the framework of *fiqh al-aqallīyyāt*, an Islamic political and legal discourse cutting across and complementing with modern thinking on citizenship; a defining feature of it being that “it creates a relationship that is not only vertical in the sense that it is between the individual and the state, but also horizontal extending to other citizens through a relationship of equality and shared responsibility.” This tunes quite well with Muslim jurists’ conceptualization of the relationship of non-Muslims to the Islamic state: “because of the absence of shared belief, the relationship had to be built on the terms of an agreement (*‘aqd*).”

Drawing on the sanctioning by contemporary Muslim jurists and political thinkers of citizenship as a basis for Muslim minority individuals and communities to live under non-Islamic governments, Fadel further argues that the *fiqh al-aqallīyyāt* discourse “provides substantial normative justification” for “generating a modern system of Islamic law that is able of winning the support of all citizens, whether Muslim or non-Muslim.” For him, any theoretical and practical treatment of the question of minorities based on *fiqh al-aqallīyyāt* must take into account both terms of the equation: Muslim and non-Muslim minorities. Hence, “if we accept the conclusion of the emerging discourse of *fiqh al-aqallīyyāt* that democratic political life is sufficient to protect the interests of Islam and Muslims where they are a minority,” so too “consistent application of the principles espoused in the *fiqh al-aqallīyyāt* discourse requires their application also to states in which Muslims form the majority.” That is to say, non-Muslim minorities living in Muslim

majority countries should enjoy equal rights and protection with their Muslim co-citizens on the same basis. Put differently, to “the extent that we accept *fiqh al-aqallīyyāt* as representing a legitimate interpretation of the Shari‘ah for Muslims living as minorities, it would seem that Muslim majorities should also be required to treat non-Muslims with the same level of equality that they demand of non-Muslims when Muslims are minority.”

In his critical assessment of the issue of non-Muslims’ citizenship in Islamic law, Haneef identifies at the outset of chapter 4 three different approaches or positions: “traditionalist, apologetic and revisionist.” His purpose from engaging with these positions is to free the discourse on minorities in Islamic lands from its paradoxes so as to pinpoint “the constitutional jurisprudential foundations of an equality project within the parameters of Islamic law.” To undertake this task, the author analyzes the different and, at times, contradictory interpretations that have been given to the concept of *dhimmah* by a number of modern Muslim and non-Muslim writers, which has added much confusion to an already problematic situation due to the difference of episteme within which each writer moves.

According to Haneef, the conflicting positions of Muslim traditionalists and apologists are plagued with inconsistency and contradiction as a result of “their atomistic and out-of-context of the Islamic legislation on *dhimmah*” and *jizyah*, their failure to realize the constitutional principles underlying it, and inability to consider the changing socio-historical circumstances that have brought Muslims to the unprecedented realities of the modern nation-state and international relations engulfing Muslim societies themselves. In contradistinction to these two positions stands the third one to which Haneef personally subscribes. Dubbing it as revisionist and constitutionalist, he believes that by advocating citizenship for non-Muslims under Islamic law, this third stance “has the strength of moving ahead with modernity” thanks to its consistency with the objectives of the Shari‘ah and to its “being grounded in general egalitarian principles of the Qur’an and Sunnah.” However, he both counsels and warns. On the one hand, the advocates of the

constitutionalist approach need to refine their methodological tools by taking stock of Islamic legal theory (*uṣūl al-fiqh*), as citing “textual provisions of general import without *uḥūlī* argumentation would hardly advance the cause of renewal in Islamic law.” On the other hand, they must be clear “that their alternative concept of *muwāṭanah* does not imply wholesale borrowing of the liberal concept of citizenship” whose underlying philosophy looks at humans as mere “natural beings without regard to religious values.”

If these conditions are satisfied, the notion of non-Muslims’ citizenship and nationality in the Islamic context, according to Haneef, “should not be bound by the parameters of the *jizyah* and *dhimmah*, but should instead be grounded in some universal ethical framework, such as respecting the other’s religious sensitivity, upholding the principle of public morality, avoiding subversion of the established social order, being faithful to the cause of social harmony for the good of all the citizenry.”

In his paper entitled “The Issues of minorities in the Islamic system: A *maqāṣid*-informed view” (chapter 10; the first in the Arabic section) Habeeb also discusses the status of non-Muslim minorities in Islam by adopting an historical and constructive approach based on the theory of Shari‘ah objectives, *maqāṣid al-shari‘ah*. At the outset, he observes the recentness of the terms *minority* and *minorities* in the social sciences which have been shaped mainly by modern Western culture. In his opinion, these terms express the somewhat tensioned relationship in Western nation-states between the dominant larger communities making up the ‘national bulk’ of those states and the smaller groups standing outside the borders of that ‘bulk’ as different ethnicities. In the Islamic context, however, other terms with convergent connotations were used to refer to the socio-cultural and religious variation in Muslim society. They include such terms like *ahl al-kitāb* (people of the book), *ahl-dhimmah* (people of covenant), *ghayr al-muslimīn* (non-Muslims), *ahl al-milal* (people of different faiths), etc., and they their usage is well-rooted in the fundamental sources of Islam.

For Habeeb, the widespread use of such terms in Islamic sources over the ages reflects one important feature of Islamic

civilization, namely the recognition and acknowledgement in Islam of those individuals and groups who chose to be different from the predominantly Muslim community and keep up with their non-Islamic religious beliefs and traditions, be they based on Divine revelation or not. As such, he maintains, they indicate the objective realities on the ground and do not carry discriminatory valuation. Thus pinpointing the diverse socio-cultural and religious components of Muslim societies, these and other similar terms may be seen as a clear expression of the pluralistic view that has characterized Islamic civilization over the centuries. Likewise, he further argues, Muslim history has never knew the idea of ‘melting-pot’ that would harness all people into one overwhelming oppressive social model, neither did it harbor systematic racial and religious extermination, nor even entertain the temptation of forcing others to convert to Islam.

In tandem with the Qur’an’s pluralistic vision of human beings and coping with the diverse and dynamic nature of Islamic society, Muslim jurists applied themselves to interpreting the textual sources of the Shari’ah so as to derive from them the rules of human conduct in all areas of life. They particularly labored to develop the legal framework that would define the rights and duties of the different groups and govern their relationships as partners in the same society and subjects of the same political authority, whether Muslim or non-Muslim and regardless of their particular ethnic or religious belonging or loyalties, so far as their ultimate belonging and loyalty are to the wider *ummah* and the higher authority of the caliphate. As the study of the Ottoman experience in dealing with non-Muslim groups clearly shows, it was never part of the Islamic tradition of governance to resort to the notion of “divide and rule;” an opposite maxim was observed instead, that is “unite and rule.” This is because Islam does not deny the particular and primary loyalties, communal values and specific rights of such groups out of principled observance of the values of dignity, justice and equality.

According to Habeeb, this situation, generally speaking, did continue under Ottoman rule until the late nineteenth century. Howev-

er, drastic changes occurred mainly in the political realm with the division of the Muslim *umma* into separate nations and the advent of the territorial nation-state as the main political entity and key player, thus putting both Muslims and non-Muslims in the Muslim world face to face with new socio-political realities and challenges. The time-old equation that governed the relationship among the different groups almost totally collapsed and the political formulations and legal formulas underlying it, such as *dhimmah* covenant, could no longer offer a sustainable framework to come to terms with the new realities and challenges. A new political mind emerged, and new political concepts and modes of governance came about that mainly revolve around the sovereignty of the nation-state and the idea of equal citizenship as defining factors of socio-political life. Hence, reconsideration and reconstruction of Islamic politico-legal categories have become necessary in which the theory of *maqāṣid al-sharīʿah* should be the ultimate guiding frame of reference, by virtue of the holistic and dynamic spirit with which it imbibes our thinking on human interest and socio-political affairs, especially with regard to the fundamental rights and duties of both individuals and groups.

On his part Amanullah sets out in chapter 8 to deal with a rather more specific and practical aspect of the question of non-Muslim minorities; he reflects on, and assesses, the extent to which the situation of non-Muslims of a particular Muslim majority country and their treatment under its laws are in line with *maqāṣid al-sharīʿah*, or objectives of the Sharīʿah, as being the embodiment of the philosophy and universal values of Islamic law. Following a brief exposition of the meaning and taxonomy of *maqāṣid al-sharīʿah* which encompass “all human interests” whatever their level of importance and “reflect the hierarchical scheme of values Islam has set up for human social life and existence,” the author turns to the more practical and ‘empirical’ aspect of his topic. His task is then to discuss “the implications of the doctrine of *maqāṣid al-sharīʿah* for non-Muslim minorities living in a Muslim majority country, by taking Malaysia as an example.”

According to Amanullah, profound reflection on the implications for non-Muslim minorities of *maqāṣid al-sharīʿah* (as exempli-

fied in the five universals protected by Islamic law, i.e., religion, life, intellect, offspring and property) reveals “that the Islamic system is the most suitable of all socio-political systems to such minorities.” This is because “what Islam recognizes and legislates as rights and obligations of human beings are not the result of mere political arrangement, nor simply a matter of practical expediency.” On the contrary, human rights as recognized by Islam apply equally to Muslims and non-Muslims by virtue of being derivative of its worldview which itself is “an embodiment of its fundamental values which are grounded in its view of the original human nature and dignity as fashioned by God Himself.” In light of the above, Amanullah examines more closely Malaysian law in an attempt to establish parallels between it and the Islamic Sharīʿah with regard to the five universals constituting the fundamentals and foundation of human rights. He finally concludes that, by and large, “non-Muslim minorities in Malaysia are able to enjoy their basic rights to achieve the higher goals necessary for the dignified preservation of their survival.” However, he suggests, there is need to remove some ambiguities in the Malaysian law pertaining to the issues discussed in the paper.

Turning now to the other group of contributions dealing with Muslim minorities, we shall start with al-Najjar and Jaballah due to the strong interrelatedness of their contributions, especially with regard to the geographical and socio-political context which they address. Both of them focus on Muslim minority communities in (especially Western) Europe, subscribe to a *maqāṣid-al-sharīʿah* based perspective, and are concerned with closely similar issues. Yet, al-Najjar exhibits a strong penchant to systematic intellectual and methodological theorization taking the experience of the European Council for Ifta and Research (ECFR) based in Dublin as a practical model. As a background to his discussion, al-Najjar points out that the relatively recent but fast-growing Muslim presence in Europe has undergone a great transformation over the years. He identifies two main stages which that presence has gone through: incidental or temporal (*ʿaraḍiyyah*) and normalcy or stability (*istiqrār*). The first stage concerns Muslim immigrants (usually married or

unmarried individuals leaving behind their families) who moved to certain European countries for temporary purposes, such as study or work, not for permanent stay. As time went by, a new trend appeared where increasing numbers of those immigrants started building families and settling down in their host countries and ended up not only with becoming permanent residents, but with acquiring full citizenship; this marks second stage which is still in the making. Likewise, by the coming of the new millennium, many countries of Western Europe had at least the first generation of their locally-born Muslim citizens, including many of European descent. These new generations are involved in various aspects of the social, economic, cultural and even political life.

This transformation gave rise to a new awareness among Muslims in Europe of communal belonging that transcends their ethnic origins and inspires them to express their Islamic identity practically in matters of personal conduct and social dealings. In other words, Muslims became more seriously concerned about their religious commitment in their day-to-day life, and this led to an increasing interest in the knowledge of Islamic teachings to meet that concern. According to al-Najjar, these psycho-spiritual and socio-cultural developments among Muslim minorities in Europe were expressed in organizational and institutional forms aimed at giving their self-assertion and religious identity a more systematic character. Learned *fatwa* (Islamic legal opinion or advice) based on combined knowledge of the scriptural sources and scholarly juristic tradition of Islam as well as of the concrete realities of the specific socio-political and cultural context surrounding those communities thus became necessary. It was in response to such need that the European Council for Ifta and Research was set up with a view to establishing a European-based juristic authority that would satisfy those requirements in order to cater for the specific needs of European Muslims based on systematic research and collective decision making in the process of *fatwa* issuance.

But what kind of methodology should be adopted to fulfill such a task? To answer this question, al-Najjar differentiates, for methodological purposes, between two phases in the second stage

of Muslim presence in Europe: the transitory phase that is still going on moving Muslims from a temporary incidental existence whose main agents are scattered individuals and not well-connected groups, and a settled and well-rooted permanent existence that is taking shape and whose main agents are more organized communities connected via a growing network of institutions and socio-economic interests both among themselves and with the rest of the societies in the midst of which they live. Each of these interlaced phases requires, according to al-Najjar, a special methodology of *fatwa* issuance that should take account of the specific problems, interests and goals each phase entails. Since in most of the cases issues arising from the transitory phase are of individual, immediate and exceptional character whereby Muslims are faced with pressing problems pertaining to personal, economic or family matters, the issuance of *fatwa* would generally tend towards consideration of license and indulgence, hence the notion of *fiqh al-tarkebi* (license-based jurisprudence).

Differently from this, issues pertaining to the second phase of permanent existence based on citizenship and increasing integration with the rest of the society require what al-Najjar calls *fiqh al-ta'sīs*, that is, a constitutive jurisprudence which is more comprehensive and holistic in approach and more compelling in terms of the observance of firm Shari'ah injunctions (*'azīmah*). Furthermore, this constitutive jurisprudence needs to be futuristic, meaning that it has to consider in its *fatwa* production the possible future developments of the Muslim presence in Europe based on acquaintance with both the trends of evolution emerging within Muslim minorities at the present and the external national and ultra-national factors and circumstances in Europe that might favour or disfavour one trend or another.

What al-Najjar is suggesting is a scholarly engagement of individual jurists and institutions undertaking the task of *fatwa* for Muslims in Europe based on serious systematic research. For him, the two kinds of jurisprudence for Muslim minorities mentioned above are not mutually exclusive, but complementary, and might go hand in hand in the near future at least. However, reliance on

fiqh al-tarkhīṣ should be gradually receding while reliance on *fiqh al-ta'sīs* should be overtaking in tandem with the consolidation of Muslim presence in all aspects of life towards normalcy, stability and firmness. A set of methodological rules are outlined that must govern the process of *fatwa* issuance to address European Muslims' needs. Both these two types of *fiqh*, al-Najjar clearly insists, must operate within the framework of an overall strategy for the future development of Muslims in Europe as original civilizational partners and active participants in the building and wellbeing of their societies.

In his turn, Jaballah indicates at the beginning of his paper "Issues of *fatwa* for Muslim minorities in Western Europe between practical needs and *maqāṣid*-based directives" (chapter 12) that the minorities' demand in many Western European countries for equality of civic and political rights with the majority is not a demand for something not warranted by the existing laws. What is at stake is the actual realization of such rights on the ground. More importantly, the struggle by Muslim and non-Muslim minority groups in those countries for their civic and political rights is not driven by a minority-versus-majority logic, but is rather informed and supported by the law which guarantees such rights, including the recognition of religious identities and values in increasingly plural and multicultural societies. In Jaballah's view, the concern about Islam and Muslims in European countries today is not about something out there, or about some individuals and groups standing on the periphery, but about an essential component of Europe's present that will continue to be so in the future. Statistically bordering some 50 million people, Muslim presence and status is of equal interest to both Muslims and non-Muslims in Europe, especially as far as their integration in their respective societies is concerned.

In this connection, Jaballah points out a major difference in the situation of Muslims in the western and eastern parts of Europe that has a direct bearing on *fatwa* issuance for Muslim minorities. Since Islam in East-European countries has made its presence for many centuries, Muslims there have developed local institutions looking after their religious education and guidance. On the con-

trary, Muslims in Western Europe lack such institutions due to their recent appearance as visible communities that are conscious and assertive of their religious identity. This means that West-European Muslims do not have any established juristic tradition on which to rely for fulfilling their needs. Over the many past decades of Muslim presence in Western Europe those needs were attended to either by reference to scholars from the Muslim world or by reliance on some individuals or small groups (such as *imams* in mosques or council members of Islamic centres) whose knowledge of Islam and its scholarly tradition is mostly limited. Likewise, in his view, the founding of the European Council for Ifta and Research is a landmark in the evolution of Muslims there. In this respect, the author indicates four major areas that represent priority needs for the majority of European Muslims, namely, family matters, rituals, economic and financial dealings, and social relationships with non-Muslims.

In addressing issues arising in these areas, Jaballah suggests that a number of considerations should be observed in *fatwa* issuance. Informed by a clear sense of priorities deriving from the doctrine of *maqāṣid-al-sharīʿah*, these considerations include the following rules:

1. To strike a balance between immediate needs and pressing necessities on the one hand, and the need to lay down solid foundations for Muslims that will enable them to preserve their Islamic identity and convey the values and ideals of Islam to their fellow citizens.
2. To strike a balance between preserving Muslims' religious and cultural identity and their positive integration with their societies as European citizens who should not be alienated from the rest of the people.
3. To exert self-control and balance in expressing themselves with high visibility by exhibiting their religious symbols, in order to avoid provoking or clashing with the general mentality prevailing in their societies.
4. To be attentive to the dominant way of life that does not care about religion and may even be hostile to it.
5. To give special attention to the preservation and strengthening of the family.
6. To look for common grounds between Islamic jurisprudence and the laws of the land and build *fatwas* thereupon whenever possible.
7. To foresee the implications of *fatwa* for the image of Islam and Mus-

lims in the eyes of non-Muslims. These rules are to a great extent a summary of the methodological tenets explicated by al-Najjar.

Moving from Europe to Asia we are presented with two cases of Muslim minorities: China and South Korea. In his ethno-anthropological study based on empirical research in five cities in northwest, south and central China, Ma Qiang examines the transformation that the lives of many Chinese Muslims have undergone due to immigration from rural to urban areas. The phenomenon of internal immigration by Chinese Muslims from their traditional rural 'habitat' to the urban world of metropolitan cities happened mainly in the 1990s as a result of China's policy of opening-up to the external world in the process of its rising as a world economic power. Although this immigration movement availed Muslims of many opportunities of economic enrichment and social betterment at the personal level, it faced them with "many difficulties and dilemmas" that can be described in general terms as socio-cultural dislocation. This situation required them to make strenuous efforts in order to adapt to the new socio-cultural and economic environment. According to Ma Qiang, this adaptation process affected almost all aspects of those Muslims' lives, especially religious rituals and activities, food and accommodation, work and occupation, and marriage and community relations.

The findings of Ma Qiang's study reveal not only a drastic and radical change reflecting the disintegration of traditional community life of Muslims in urban China and the fading away of its attendant religious education, but also the rise of a new phenomenon in Chinese Muslim life that he describes as the "emergence of moving communities." Differently from the social organization based on homogeneous and stable traditional community that used to characterize Chinese Muslim life, a new composition of the Muslim population in urban China is in the making which consists of "diverse ethnic groups" including "both national and international immigrants." This new socio-ethnic composition of Muslims in urban China is accompanied by something quite unprecedented in recent Chinese history, which is manifested in the emergence of religious groups subscribing to the teachings of well-known Islamic move-

ments in the Muslim world, such as the *Salafyyah*, the *Jamā'at al-Tabligh* and some kinds of new *Sufism*. The function of such groups, one would think, may be seen as filling the religious and spiritual void created by the dislocation pointed out earlier. In Ma Qiang's view, while the emergence of such religious and socio-cultural tendencies among Chinese Muslims turns them into a more globalized community, they ultimately will have to undergo what he describes as a *Sinization* process if they were to be embedded "into local society in China."

As for Korea, Ju-young's purpose in chapter 7 is to "correct the misunderstanding of the cultural image of the Muslim minority" there. His contribution provides a comprehensive historical account of Korea's Muslim community since its inception in the early 1950s throughout all stages of its evolution up to the present. It also offers a detailed description of its demographic and organizational structure, highlighting its educational, missionary, social, and welfare institutions and activities, mostly maintained under the auspices of the Korea Muslim Federation, KMF. In his report-like portrait, Ju-young is equally informative as to the external and internal factors that have contributed to the spread of Islam and growth of Muslims on the *Land of the Morning Calm*, as the Korean peninsula is usually described. Of those factors he singles out "the support of a number of Islamic countries and organizations, such as Malaysia, Saudi Arabia, the Muslim World League and OIC" as well as the meaningful "cooperation and special solicitude of the Korean government." However, some major barriers still remain on the way; they consist of misconceptions by the Korean people about Islam and Muslims that are mainly due "to the heavy influence of Western Christian culture and media" and "Western educational philosophy."

As a community "in its sprouting season", Muslims in Korea seem to enjoy, according to Ju-young's exposition, an incomparable status when seen in the wider context of other non-Muslim majority countries in Asia. Even its diversity into different ethnic and religious groups does not seem to have created serious internal tensions or conflicts that may jeopardize its holding together and smooth development. An important phenomenon characteristic of

the Korean society may be invoked to explain this situation. As indicated by Ju-young, “Koreans are a religious people,” the “religious scene is vividly pluralistic” and religious groups “are quite liberal and tolerant,” thus allowing many religions and religious denominations (such as Buddhism, Christianity, Protestantism, Catholicism, Confucianism and Islam), to coexist peacefully. Not only that; it so happens that some individuals embrace “more than one religion” at the same time, perhaps out personal expediency!

According to Ju-young, the supremacy of the right to “freedom of religion” in the Korean constitution, “defined as the freedom of a person to believe in the way he or she wishes,” has enabled “religious groups to flourish and build churches and temples” without interference or constraint from the state authorities. In the context of this highly diversified religious map, the author believes that the advancement of Islam in Korea is in need of “a well-thought out strategy and systematic approach for *da‘wah* activities with clear priorities and sound understanding of the needs and problems of the Korean society.” This requires “professional *da‘wah* workers who have sound knowledge of Islam and good understanding of the Korean society and culture together with a sense of the needs and priorities of the Muslim community.” At the government level, he advocates the need for setting up “a general policy” and “new regulations” on religious matters, “in a systematic, well-thought out and balanced manner.”

Let us now move to Zuhdi’s reflections on the question of minorities in the context of Malaysia. At the beginning of his paper which bears the title “The Malaysian experience in the light of *fiqh al-aqalliyāt*” (chapter 13), he discusses the concept and meaning of minority in order to pave the ground for his main thesis. From his study of contemporary Muslim scholars’ works, he concludes that the term minority refers to two things: 1. A group of people that is numerically smaller than the majority community outnumbering it, and 2. Such a group is ethnically, racially, religiously, linguistically, etc., different from the majority. In Zuhdi’s opinion, this delimitation of the meaning of minority takes the numerical or statistical aspect as the defining factor of the status of minority groups, while

considering other aspects, such as economic poverty, socio-political marginalization and other forms of weakness in relation to the majority, as simply a corollary of the minority status.

However, according to Zuhdi, this understanding of the meaning of minority based merely on numerical or statistical criteria is not the only one, though it represents the majority view held by Muslim thinkers. Another view is that, however numerically small, a certain group (or groups) may be economically and politically powerful, dominate over a majority and impose its will on it in such a way that the numerical or statistical majority will suffer all kinds of exploitation and marginalization. A case in point that can be mentioned here is that of South Africa under the Apartheid regime. Therefore, the author suggests, there is real need to revise our thinking and way of evaluation regarding the question of minorities by relying simply on statistical considerations.

Following a detailed discussion of the meaning, scope and methodological rules of *fiqh al-aqalliyyāt*, Zuhdi turns his attention to the Malaysian scenario. Thus, he observes that Muslims make up about 60.4% of the country's total population and have a lion's share in government and administrative positions. Yet, their economic and financial power and social strength does not in any way reflect their demographic weight. On the contrary, it is numerically and statistically minority groups that actually control the country's economic wealth, thus holding sway over the numerical majority and subsequently influencing all aspects of life in society. In Zuhdi's view, the Malaysian experience presents us with a case of majority turned into an actual minority in terms of real power and impact.

Last but not least, we come to Kamaruddin's particularly focused study in which she looks at a more specific issue relating to Muslim minorities in the USA and UK, namely violence against women. Distinguished from other forms of violence by the domestic or private context in which it takes place as well as by its perpetrators and victims, violence against women comes under the purview of "the laws and legal administration of family relations." Although gender-based violence is a global phenomenon, it should be

of special concern for Muslims since, as the author argues, “Islam abhors violence, and women are to be regarded as *amānah* under men’s responsibility.” Leaning on instructive survey and analysis of a large body of literature and ample statistical data concerning ethnic minority groups of Asian, African and Middle Eastern roots, it has been an important task of Kamaruddin to locate violence against women within Muslim communities in the wider context of this phenomenon as it has been experienced in those two countries, especially among minority groups. One important aspect of the usefulness of the comparative perspective she adopted is that it has enabled her to assess to what extent Islam has affected the issue at hand in contrast with non-Muslim minority communities.

However, due to the paucity of systematically collected information on Muslim minority families in the USA and UK that can provide precise statistical evidence on the causes of domestic violence, the writer has seen the almost similar backgrounds of the Muslim communities in these two countries as acceptable justification for combining the causes of domestic violence amongst them. In her view, there “are many factors responsible for domestic violence among Muslim minorities, although they are not diametrically different in that from the larger society.” As research works have demonstrated, “Muslim families also experience social and personal problems like the rest of the American society,” including “increase in divorce rates, separation, domestic violence, child abuse, elder abuse, intergenerational conflict, and teenage pregnancies.” As far as violence against women is concerned, not less than 75% of Muslim minority women, who are mostly Afro-American converts, suffer from violence at the hands of their Muslim spouses. In the UK, where Muslims constitute 3.3% of the total population, apart from socio-economic problems facing the Muslim community in general, such as low education, unemployment, poor working conditions and overcrowded households, Muslim women particularly are victims of forced marriage, ‘honour killing’ and domestic violence, especially within Muslim communities of Asian origins.

In Kamaruddin’s opinion, the causes of domestic violence against women in Muslim minority communities in the USA and

UK are traceable to external and internal cultural roots. On the first level, Muslims have not been immune to the general cultural atmosphere of their societies. As noticed by social scientists, “the American society is becoming increasingly violent, aggressive, self-destructive, narcissistic and uncaring towards those who are less fortunate, including members of the immediate family.” In the UK, it has been found from some surveys that “one in five young men and one in ten young women thought violence against women was acceptable. One of four young men thought it acceptable to hit a woman if she had ‘slept with someone else’; one of five young men considered it acceptable to force a woman to have sex if she was one’s wife.” In a survey of 1,300 schoolchildren it was found “that one in three boys thought violence against women was acceptable.” These are some of the indicators of growing socio-cultural trends in the wider context that are affecting women in particular.

On the second, that is, specific internal, level of Muslim communities, cultural distortions of religious texts have led to using them as a ground “to suppress and oppress women.” Debates in Muslim religious centres across America and England continue as to “the justification for a husband to hit his wife.” Although domestic violence is “generally condemned,” women experiencing “violence in their lives are told to be patient and to give in,” because of the misinterpretation and confusion in the understanding of certain Qur’anic statements. The impact of this religious factor is further augmented by ethnic and racial considerations that still hold sway on many Muslims.

Despite this gloomy picture, Islamic organizations and religious and cultural centres have been carrying out “impressive activities” to educate, counsel, assist and guide large numbers of Muslim families and individuals to overcome the endemic problem of domestic violence. In the face of extremely individualistic values promoting mere egoistic concerns, many Muslims are discovering in the teachings of Islam the significance of “meaning in group success, community development, interdependence, and consensus.” For African American Muslim women who are largely converts to Islam, “the significance of the *ummah*” has been edifying and they found in Islam a

“safe social space” from the racial, gender, and religious inequalities they experienced in the larger culture.”

Having provided this overview of the contents of the present volume, a few words need to be said on three counts. Firstly, this volume and the 2009 conference from which it ensued are the outcome of a fruitful cooperation between the Makkah-based Muslim World League (*Rabitah*) and the International Islamic University Malaysia (represented by International Institute of Islamic and Civilization and the Department of Fiqh and Usul al-Fiqh). The League’s moral and financial support and the personal interest of its Secretary General Prof. Dr. Abdullah bin Abdul Mohsin al-Turki in the theme of the conference were indeed very crucial to the success of the conference and its fruition as exemplified in the contents of the present work.

Secondly, notwithstanding my limited acquaintance with the growing body of literature addressing various aspects of the minorities question, the present volume will easily secure its prominent place in a worldwide discourse on minorities which I claim is developing, especially among Muslim and non-Muslim intellectual circles engaged in religious and civilizational dialogue. Two reasons support this aspiration. On the one hand, the positions and outlooks expressed in the book’s different chapters reflect to a great extent the large spectrum of views and approaches that characterize the emerging new Islamic discourse on minorities. On the other hand, a distinctive feature of this book is its combining of theoretical, methodological and practical concerns with a high level of grounded and balanced rationality, away from any tendency to sentimentalize or oversimplify the issues discussed.

Thirdly, getting the volume to where it now is has indeed been taxing. The selection of the papers making up its chapters was not in any way easy. It required careful reading and re-reading of all the 2009 conference proceedings to ensure that the set of criteria mentioned earlier are fully or at least reasonably met in deciding which should be in and which would be out. Once the selection had been made, then came the tedious task and process of streamlining the selected papers and setting them in a logical arrangement manifest-

ing their overall thematic unity based on serious inter-textual examination of their interrelatedness in terms of generality and specificity, theoretical and methodological orientation, etc. Likewise, the thirteen chapters have been arranged in such a way that all of them as whole as well as within each section (English and Arabic) would constitute an integrated entity whose units complement one another both methodologically and content-wise. All chapters were then subjected to comprehensive and exacting editing to ensure coherence of style, consistency of language, and smooth flow of ideas.

Finally, I must thank all the authors of the chapters of the book for their kind cooperation and understanding. Their seriousness in revising their contributions according to the remarks provided to them made my work much easier. I should also express my gratitude to the successive deans of ISTAC (Ibrahim M. Zain, Hassan Ahmed Ibrahim and Mahmud Zuhdi Abdul Majid) for entrusting me with the task of looking into the proceedings of the 2009 conference and preparing this volume for publication. Special thanks are equally due to the Research Management Centre at IIUM for the research grant that enabled me to work on the project. The assistance of my *at-Tajdid* assistant and doctoral supervisee Dr. Muntaha Artalim Zaim has been very instrumental in enabling me to cope with the technical requirements of this work, right from typing and computing up to index generating and assorting. Any shortcomings, however, remain solely mine.

May Almighty God, our ultimate Sustainer and Guardian, shower His blessings on us and guide our steps on the path of truth and justice in both thought and action.

CHAPTER 1

The Metaphysical and Ethical Foundations of Religious Pluralism in Islam*

Muddathir ‘Abd al-Rahim

Introduction

One of the most striking features of Muslim societies and states down the ages – one which until recent times continued to be distinctive of Islamic civilization and, as such, aroused the wonder and admiration of such early modern Western thinkers as John Locke – is that they were almost always multi-religious and multi-ethnic. For, as the distinguished German Orientalist Adam Mez noted many years ago, within the borders of Muslim societies unlike Christian Europe there lived a large number of peoples of faiths other than Islam and that all these peoples, in Mez’s words, lived “side by side in an atmosphere absolutely unknown to medieval Europe.”¹

* This chapter is based on material briefly considered in different parts of the author’s book, *The Human Rights Tradition in Islam*, which constitutes volume 3 of the five volume series *Human Rights and the World’s Major Religions*, edited by Prof. William H. Brackney, published by Praeger, in the US and the UK, 2005. An insightful and critical review of the book was published by Dr. Murad Hofmann in *The Muslim World Book Review*, 28/3/2008.

¹ Adam Mez, *The Renaissance of Islam* (London: Luzac & Co, 1937), p. 32. For a review of the situation in Europe see the present author’s articles: “Muslim Minorities in Western Societies – The Medieval Scene,” *Al-Shajarah*, Vol. 8, No. 1, 2003 and “Muslim Minorities in Western Societies; Under Tsars and Commissars,” *Al-Shajarah*, Vol 9, No. 2, 2004.

Particularly intriguing for many was the question as to how a state or civilization which was based on a particular religion (in this case, Islam) – instead of doing its utmost in order to coerce others into conforming to the dominant faith, as had often been done, and continues to be done, elsewhere – evidently went out of its way to guarantee those others extensive rights which made it possible for them not only to live, work and own property but also to freely exercise their religious faith under the protection of the ruling state and its laws. In order to effectively approach this question it is suggested here that we need to look, first of all, at the roots of pluralism (here used as a synonym of diversity) in Islam's worldview and theological perspective and, secondly, at the specific teachings of the *Shari'ah* about the rights of non-Muslims in Muslim societies. The principal features of the actual life experience of non-Muslim minorities in history are then briefly reviewed.

To take the first point first, we need to consider in particular the sharply contrasting positions in Islamic theology and worldview of the oneness and uniqueness of God on the one hand, and the diversity of His creations – animate and inanimate, human and non-human – on the other. With regard to the oneness and uniqueness of God the Qur'an states categorically and unequivocally (and humans, individually and collectively, are called upon to testify) as follows:

Say: He is the One God, God the Eternal, the Uncaused Cause of all that exists. He begets not, and neither is He begotten; and there is nothing that could be compared to Him. (Qur'an, 112:1-5)

And again:

The Originator [He is] of the heavens and the earth. He has given you mates of your own kind – just as [He has willed that] among the beasts [there be] mates – to multiply you thereby: but there is nothing like unto Him, and He alone is All-hearing, All-seeing. (Qur'an, 42:11)

It is thus repeatedly and categorically stated that God is One, Unique, Eternal, Absolute, Creator of heavens and the earth and of all that is in existence, All-hearing, All-seeing.

To those who claim that they do believe in Him, but persist in believing also that there are other gods or deities besides Him, the

Qur’an addresses a variety of uncontestable logical arguments as well as some serious warnings and admonitions:

... [H]ad there been in heaven or on earth any deities other than God, both [those realms] would surely have fallen into ruin. (Qur’an, 21:22)

Verily, God does not forgive the ascribing of divinity to aught beside Him, although He forgives any lesser sin unto whomever He wills: for he who ascribes divinity to aught beside God has indeed contrived an awesome sin. (Qur’an, 4:48)

By contrast with the categorical and uncompromising assertion, again and again, of the Creator’s Oneness, Omnipotence and Uniqueness, His creatures – be they animate or inanimate, humans or animals – are seen and described in the Qur’an as being always numerous, diverse and varied:

Art Thou not aware that God sends down water from the skies, whereby We bring forth fruits of many hues – just as in the mountains there are streaks of white and red of various shades, as well as [others] raven-black, and [as] there are in men, and crawling beasts, and in cattle, too, many hues? Of all His servants, only such as are endowed with [innate] knowledge stand [truly] in awe of God: [for they alone comprehend that,] verily, God is almighty, much-forgiving. (Qur’an, 35:27-28)

And among His wonders is the creation of the heavens and the earth, and the diversity in your tongues and your colours: for in this, behold, there are messages for all who are possessed of [innate] knowledge. (Qur’an, 30:22)

But the diversity and variations which God has vested in his terrestrial creatures as signs of Himself along with the creation of the heavens and the earth are not limited to mountains, animals, plants and the variation in the colours and languages of men. Even more significantly and directly in relation to the subject under consideration is the fact that God tells us in several passages in the Qur’an that the said diversity and variation applies also to matters of faith and belief:

He It is who has created you: and among you are such as deny this truth, and among you are such as believe [in it]. And God sees all

that you do. (Qur'an, 64:2)

And again, and perhaps even more clearly and more emphatically:

Unto every one of you have We appointed a [different] law and way of life. And if God had so willed, He could surely have made you all one single community: but [He willed it otherwise] in order to test you by means of what He has vouchsafed unto you. Vie, then, with one another in doing good works! Unto God you all must return; and then He will make you truly understand all that on which you were wont to differ. (Qur'an, 5:48)

Whereas the oneness, uniqueness and inimitability are distinctive attributes of God the Creator, variety, multiplicity and plurality are attendant characteristics of all created beings – animate and inanimate, human and non-human.

In so far as human beings are concerned, the variety and plurality that has been vested in them by their Creator is not limited to such matters as language, pigmentation and ethnicity only. It is also and more importantly manifested – by the will of the Creator Himself – in matters of faith and belief: up to, and including, disbelief.

It is in this profoundly and divinely ordained pluralistic worldview that non-Muslims in Muslim societies and states were granted and guaranteed such rights and privileges that they were, as a rule, able not only to exist and survive, but also to prosper and participate in the economic, social, cultural and even political and diplomatic life of the Islamic states and societies in which they lived. And it is to these rights and rules that we now turn.

Of cardinal importance for the treatment of non-Muslims among the basic values and principles enshrined in the Qur'an is the ruling evidently unparalleled in the scripture of any other religion that: "There shall be no coercion in matters of faith." (Qur'an, 2:256) This categorical statement forbids Muslims, be they individuals, groups or states, from trying to impose their faith on any person by force. Compulsion therefore is not only a sin; it is also a crime punishable by the *Shari'ah* law, the punishment under the Ottoman Empire, being death – an injunction derived from the Qur'anic precept that "oppression is even worse

than killing.” (Qur’an, 2:190)

Other Qur’anic directives buttress and elaborate on the principle of inadmissibility of compulsion in matters of faith indicating that the call to Islam must be directed to the intelligence, conscience and sensibilities of men and women; that respect for the dignity and integrity of all human beings – of whatever faith or race they may be – is essential; and that compassion and courtesy should be observed in all circumstances.

This brings us to another basic principle relating to the treatment of minorities and non-Muslims in Islam. It is stated in Chapter 60 of the Qur’an:

God forbids you not with regard to those who fight you not for [your] faith or drive you out of your homes from dealing kindly and justly with them; for, God loveth those who are just. (Qur’an 60:8)

In other words, Muslims are not only to refrain from oppressing others or forcing them to embrace a faith which they may not freely wish to accept (an essentially negative ruling, though a very important one indeed). Muslims are expected and called upon to be positively kind and just to all those non-Muslims who do not persecute them or commit acts of aggression against them, all those who are peaceful and law abiding citizens.

The Status of non-Muslims in the Islamic Historical Experience

The founder and head of the first Islamic state, Prophet Muhammad (peace be upon him), confirmed and elaborated on the Qur’anically prescribed manner of just and kindly dealing with non-Muslims not only verbally and in words, but also through his actions and practice: and this in both his personal life and in his management of public affairs. Thus, he unhesitatingly engaged in business transactions with non-Muslims. Indeed, he parted this world leaving his armor pawned to a Jew. More intimately, he took two wives, of whom one was of Jewish, the other of Christian (Coptic) backgrounds.

Politically, furthermore, he endeavored, not without success,

to establish what came to be the first characteristically multi-ethnic and multi-religious Islamic state. Thus not only were the *Anṣār* and the *Muhājirūn* welded, in the Charter of Madīnah, into “an *ummah* distinct from all other people in the world”, but the Jewish clans who had then allied themselves with the Prophet were described in the Charter of Madīnah as “an *ummah* (i.e. community) along with the Believers,”¹ while each, of course, continued to practise its own faith and culture.

Relations with non-Muslims beyond the realm of Islam too, the Qur’an directs, should be peaceful and amicable unless aggression is committed against Muslims:

And fight in God’s cause against those who wage war against you, but do not commit aggression. (Qur’an, 2:190)

Even when thus fighting in self-defence furthermore, Muslims are instructed to observe certain rules and rights of enemy subjects and not to engage in indiscriminate destruction of life and property. “Whenever the apostle of God sent forth an army or a detachment,” it has been reported, “he charged its commander personally to fear God, the Most High, and he enjoined the Muslims who were with him to do good [i.e., to conduct themselves properly]..... Do not cheat or commit treachery nor should you mutilate anyone or kill children.”²

Following the Prophet’s example, Abū Bakr later instructed fighters who were about to proceed against the Byzantines in Syria: “Do not commit treachery, nor depart from the right path. You must not mutilate, neither kill a child or aged man or woman. Do not destroy a palm-tree, nor burn it with fire, and do not cut any fruitful tree. You must not slay any of the flock or the herds or the camels, save for your subsistence. You are likely to pass by people who have devoted their lives to monastic services;

¹ Muḥamad Ḥamidullah, *Majmū‘at al-Wathā’iq al-Siyāsīyyah li’l-‘Ahd al-Nabawī wa’l-Khilāfah al-Rāshidah* (Beirut: Dār an-Nafāes, 7th ed., 1422/2001), pp. 59-62.

² Cited by al-Shaybani at the beginning of his classic *Kitāb al-Siyar* translated by Majid Khadduri with the title: *The Islamic Law of Nations: Shaybānī’s Siyar* (Baltimore: John Hopkins University Press, 1966), pp. 75-76.

leave them to that which they have devoted their lives.”¹

Another important directive is enshrined in the Qur’an. It goes as follows:

And if any of these who ascribe divinity to aught beside God [mushrikūn] seeks thy protection, grant him protection, so that he might [be able to] hear the word of God [from thee]; and thereupon convey him to a place where he can feel secure. (Qur’an, 9:6)

In his classic commentary on the Qur’an, Fakhr al-Dīn al-Rāzī says that the essential meaning of the said passage is that any one from among the enemy forces who seeks protection should, together with his property, be fully and effectively protected by Muslims and must thereafter be conducted to a place where he would feel safe and secure.²

Likewise, prisoners of war are not to be killed, tortured or humiliated. On the contrary, they should be well treated and safely kept until a final settlement of conflict is reached. In that regard, the Qur’an, having commanded Muslims faced by injustice and aggression to stand up and fight as best as they can, then says: “But if they [the enemies who fight you] incline to peace, incline thou to it as well and place thy trust in God: verily, He alone is all-hearing. And should they seek but to deceive thee [by their show of peace] – behold, God is enough for thee!” (Qur’an, 8:61). Thus Muslims are commanded, once their enemies indicate a desire to make peace, to unhesitatingly also go for peace – even if they thereby happened to run the risk of being tricked by their enemies.

In the light of what has already been said regarding the attitudes of the Qur’an and the Prophet towards other faiths and peoples, in conditions of both war and peace, it should not be surprising that the predominantly Christian peoples of Egypt and

¹ Ibn ‘Abd Rabbih, *al-‘Iqd al-Farīd* (Beirut: Dār al-Kitāb al-‘Arabī, 1983), Vol. 4, p. 247.

² Fakhr al-Dīn Muḥammad ibn ‘Umar al-Rāzī, *Tafsīr al-Fakhr al-Rāzī*, known as *al-Tafsīr al-Kabīr* and *Mafātīḥ al-Ghayb* (Beirut: Dār al-Fikr, 1401/1981), Vol. 15, p. 235. See also, Muddathir ‘Abd al-Rahim, “Asylum: A Moral and Legal Right in Islam,” *Refugee Survey Quarterly*, Vol. 27, No. 2 (2008), pp. 15-23; also: *Islam and International Relations: Peace, Conflict and Diplomacy* published in A-R Baginda (ed.), “Malaysia and the Islamic World,” (London: ASEAN Academic Press, 2004), pp. 1-16.

Syria, who were followers of Eastern churches and, as such, had been subjected to discrimination and persecution by their Orthodox Byzantine rulers, welcomed the conquering Muslim Arabs as liberators from their oppressive co-religionists. The people of Iraq, who had been similarly oppressed by dominant Zoroastrians, reacted to the Muslim Arab conquest in a way not unlike that of the Syrians and the Egyptians. Even as far away as the Iberian Peninsula, the theologically sanctioned policies of repression and forced conversion which were followed by the Roman Catholics of Spain induced the Jews to welcome and aid the Muslim conquerors as liberators.¹

Two more points are worth noting at this juncture. First amongst these is that the term ‘tolerance’ which is often used with reference to the normally accommodating attitude of Muslims towards others does not accurately reflect the nature of the Muslim attitude in question. This was not only because ‘tolerance’ often implies a grudging or reluctant willingness to ‘put-up’ or coexist with others – which is quite different from the attitude with which we are now concerned, but also because it misses the reality that the Muslim commitment to respect and protect the rights of non-Muslims who are willing to live in peace with them is, in essence, an act of worship and religious devotion. Failing to uphold the said rights is a sin as well as a crime punishable in law. Upholding and protecting them, on the other hand, is an act of piety and religious devotion through which Muslims, individually and collectively, hope to merit divine approval and heavenly reward. This is the psychological bedrock upon which the whole system is so firmly anchored – a crucially important point that has eluded many commentators including some who have expressed great admiration for its actual working and practical results.²

Under Islamic law, non-Muslim residents, were traditionally

¹ Norman A. Stillman, *The Jews of Arab Lands: A History and Source Book* (Philadelphia: The Jewish Publication Society, 1979), p. 54.

² For more elaboration on this point, see Muhammad al-Tahir Ibn Ashur, *Uṣūl al-Niẓām al-Ittimāʿī fī al-Islām*, ed. Mohamed El-Tahir El-Mesawi (Ammān: Dār al-Nafaes, 2001), pp. 353-362.

described as *dhimmīs* or *ahl al-dhimma*, literally ‘people of the pact or agreement’ in reference, that is, to the perpetual pact or agreement in accordance with which Muslims, individually and collectively, have undertaken since the days of the Prophet to respect and protect the rights of non-Muslims to life, property, religious belief and practice, movement, marriage and the right to bring up their children according to their respective faiths.

In addition, the *dhimmīs* enjoyed a substantial degree of autonomy or self-government which enabled members of each religious community [better known under the Ottomans as *Millet*s] to manage their own affairs and to settle their internal disputes in accordance with the rules and traditions of their respective faiths. If they were dissatisfied with their own communal justice, they had the right to seek justice and settlement of disputes in Islamic courts – but that was an option which, it was always clearly understood, they could take or leave as they saw fit.

Commenting on the latitudinous extent of the degree of self-government that Jews and Christians in particular enjoyed under the banner of Islam, the late Princeton University professor S. D. Goitein began and concluded the second volume of his magisterial study of the Jewish communities of the Arab world as portrayed in the Cairo Geniza by highlighting the fact that the said Christian and Jewish communities living under Islam during the High Middle Ages actually “formed a state not only within a state but beyond the state, because they owed loyalty to the heads and to the central bodies of their respective denominations, even though these were found in a foreign, or even hostile country ... while [they] shared with their Muslim compatriots their language, economy and most of their social notions and habits, their communal life was left mainly to their own initiative.”¹

It was in the light of such considerations that, some two centuries earlier, the renowned English philosopher and political theorist John Locke, one of the chief architects of modern West-

¹ S.D. Goitein, *A Mediterranean Society* (California: California University Press, 1971), Vol. 2: *The Community*, p. 1 & 407.

ern liberal thought, urged his compatriots and coreligionists to emulate the way Muslims tolerated Christians and Jews and made it possible for their various denominations to worship freely as they saw fit.¹ Pointing out the absurdity of the fact that Calvinists and Armenians, for example, could thus freely practise their religions in Constantinople but not in Christian Europe, Locke then warned in his classic *Letter Concerning Toleration* (1689) that “the Turks [would] meanwhile silently stand by and laugh to see with what inhuman cruelty Christians thus rage against Christians.”²

More recently, and from a wider comparative perspective, the Special Rapporteur of the UN’s Commission on Prevention of Discrimination and Protection of Minorities, succinctly stated that, while in Western societies the protection of minorities within the framework of municipal law “was achieved gradually and fairly slowly from the eighteenth century onwards [...] in The Muslim countries the various Christian churches and Jewish communities already enjoyed very considerable tolerance under the Caliphs. Later, the Muslim states adopted the ‘millet’ system which granted to non-Muslim religious communities complete independence in the management of their affairs.”³

Conclusion

To be sure, the said system did not always run smoothly and sectarian conflicts did occur sometimes.⁴ But these were essentially aberrations in a situation where minorities⁵ - whose protection, in

¹ Nabil Matar, “John Locke and the ‘Turbaned Nations’,” *Journal of Islamic Studies*, Vol. 2, No. 1 (1991), p. 72.

² John Locke, *A Letter Concerning Toleration*, edited and with introduction by Patrick Remanell (New York: Bob Merrill, 1955), p. 25, cited in *Ibid*. See also *The Works of John Locke – A New Edition* (Aalen, Germany: Scientia Verlag, 1963), Vol. 6, p. 18.

³ Francesco Capotori (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), *Study On The Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN, Doc E/CN.4/Sub 2 384/Rev 1, New York, 1979.

⁴ Cf. Muddathir ‘Abd al-Rahim, *The Human Rights Tradition in Islam* (op. cit), Chap. 3, “The Interplay of Theory and Practice – Questions of Gender and Minorities.”

⁵ It should be remembered that, historically speaking, minorities in Muslim societies comprised Hindus, Janes and others as well as Christians and Jews of various denominations.

accordance with Islam's worldview clearly and coherently reflected in the ethical and juridical injunctions of the *Shari'ah*, was a fundamental spiritual and ethical obligation of individual Muslims as well as Muslim societies and states – were able, not only to survive through even the hardest times until the present day, but also to participate and prosper, sometimes in remarkably prominent fashion, in the economic, social, cultural and even political life of the larger Muslim community.¹

¹ For the life experience of minorities in Muslim Societies see chapter 3 of the aforementioned book, *The Human Rights Tradition in Islam*.

CHAPTER 2

Islam and Minorities: The Lebanese Experience

Mohammad Sammak

Introduction

There are many principles upon which pluralism in Islam is based. Three of them can be considered to be major ones, namely human dignity, diversity in unity among peoples, and difference of opinion. Human dignity is grounded in Divine will and decree. Thus the Qur'an (17: 70) says: "*Verily we have honored the children of Adam.*" The honor bestowed by God on mankind, male and female, is to be understood in an absolute sense.

The human being is divinely honoured whether he – or she – is a believer or a disbeliever in God, and whether he – or she – submits to God or renounces Him. Thus, honour is not restricted to one group of people to the exclusion of others. Human dignity, which is derived from God's will and benevolence, embraces all peoples regardless of race, color, language or even faith and belief. God is not the Lord of the Jews alone, or the Christians alone, or the Muslims alone, or any other religious denomination. God is the Lord of all worlds, the Creator of all peoples.

Mankind: Unity in Diversity

Human beings emanate from one common and single source, being created by God "out of one living entity." (Qur'an, 4: 1) Thus they belong "to one human family, without any inherent

superiority of one over another.”¹ To this effect, the Prophet of Islam is reported to have said in his sermon of the Farewell Pilgrimage (*ḥajjat al-wadāʿ*), “O people, verily, your Lord is one and your father Adam is one; there is no merit for an Arab over a non-Arab nor for a non-Arab over an Arab, neither for a white person over a black person nor for a black person over a red person, except by God-consciousness (*taqwā*).”²

However, the common origin and essential unity of mankind do not imply total sameness and absolute conformity among its components, be they individuals or groups. The Qurʾan rather asserts the opposite to be true. It has been God’s will to make human beings “into nations and tribes” (Qurʾan, 49: 13). It is further stated that if God had so willed, “He could surely have made all mankind one single community.” (Qurʾan, 11: 118) Again the Qurʾan (10: 19) says: “And [know that] all mankind were but one single community, and only later did they begin to hold divergent views.”

This entails that diversity among human beings with regard to their “tongues and colours is” considered among God’s “wonders in the creation,” next to the wonders of the heavens and the earth (Qurʾan, 30: 22). Behind mankind’s plurality in the form of nations and tribes and diversity in terms of races, ethnicities, tongues and beliefs, lies one of God’s great wise purposes in the creation of human beings clearly spelled out in the Qurʾan (49: 13), “so that you [human beings] might come to know one another.” As Muhammad Asad rightly put it, “men’s evolution into nations and tribes is meant to foster, rather than to diminish, their mutual desire to understand and appreciate the essential human oneness underlying their outward differentiations.”³

The Qurʾan’s frequent mentioning of diversity and plurality amongst mankind is meant to teach people to take it as a fact of

¹ Muhammad Asad, *The Message of the Qurʾan* (Kuala Lumpur: Islamic Book Trust, 2011), p. 951, note 16.

² Shuayb al-ʿArnaʿut (chief-editor), *Musnad al-Imām Aḥmad ibn Ḥanbal* (Beirut: Muʾassasat al-Risālah, 2001), ḥadīth No. 23489, vol. 38, p. 474; Abū Bakr Aḥmad ibn al-Ḥussain al-Bayhaqī, *al-Jāmiʿ fi Shuʿab al-Īmān* (Riyadh: Maktabat al-Rushd, 2003), ḥadīth No. 4774, Vol. 7, p. 132.

³ Asad, *The Message of the Qurʾan*, p. 951, note 16.

life and natural phenomenon so as to be tuned to realize what it entails in terms of difference and variation in thinking, beliefs, values, conduct and lifestyles. Hence, as the Qur'an has clearly indicated on different occasions, the only way to deal with these differences and see through them and appreciate the essential unity and commonness of humanity is through nurturing the desire and predisposition for dialogue, rational argument and mutual understanding (Qur'an, 3: 64; 16: 125; 29: 56).

Accordingly, ethnic differences do not constitute the basis for either priority or inferiority. It is a difference in the totality of human nature. One should respect the other as he is and as a different creation of God.

Sensibility towards others' ethnicities and cultures is an essential value and principle governing Muslim religious behaviour. Respect of others' religions and beliefs is respect of freedom of choice, and of the principle of non-coercion in matters of religion clearly enunciated in the Qur'an (2: 256) which also states that "*For every community faces a direction of its own, of which He [God] is the focal point.*" (Qur'an, 2: 148) In fact, though the Qur'anic message is the last Divine revelation to mankind thus representing "the culminating point of all revelation" and offering "the final, perfect way to spiritual fulfillment," this does not, however, "preclude all adherents of earlier faiths from attaining to God's grace."¹ Thus the Qur'an (5: 48) announces that:

Unto every of you We appointed a [different] law and way of life. And if God had so willed, He could surely have made you all one single community, but (His willed it otherwise) in order to test you by means of what He has vouchsafed unto you. Vie, then, with one another in doing good works!

Thus, as mentioned above, Islam considers differences in opinion and belief as a human and natural reality, and it treats it as such. During the Prophet's era in Madīnah, cooperation was established between Muslims and believers and adherents of other revealed religions (*People of the Book*), and they formed one na-

¹ Asad, *The Message of the Qur'an*, p. 148.

tion. The document of the Prophet acknowledged the belief of the others and warranted their protection. The Madinan society was based on the principle of embracing all diversities, not ignoring it or trying to eliminate it. The Prophet conversed with the Christian tribe of Najran in his home at Madīnah and welcomed them. And when the time came for them to perform their prayer, the Prophet welcomed that and took no offense, according to an authoritative tradition, to perform their prayer inside his home which is now the great mosque of Madīnah.¹ Faith and belief in Islam depend on internal conviction and acceptance and compliance not on external compulsion. The Qur'an (2: 256) says, "There shall be no coercion in matters of faith." Hence, God addresses the Prophet saying, "Dost thou, then, think that thou couldst compel people to believe?" (Qur'an, 10: 99)

Faith can never be whole and sincere if it is forced upon men. Based on this founding principle, acceptance of freedom of belief in the first state in Islam, we understand that Islam is not narrowed by the different religious beliefs, nor does it believe in ethnic purity. Moreover, the need for humanity to be one and united is duly emphasized in the Qur'an which is explicit about the fact that the existing differences (in whatever form they may manifest themselves) will never negate or undermine the fact that we are one family belonging to the one and only Creator. It also affirms that our unity is based on our differences and not on our similarities, because human differences reveal God's wisdom and testify to His greatness.

This unity is based on our differences and not on our conformities and sameness; human differences reveal and bear witness to the greatness of the Creator at the same time. This means that accepting and respecting plurality as God created us, is in itself an expression of believing in God.

The Islamic rule enunciated in the Prophet's statement quoted above means that ethnic differences do not form a base of

¹ Ibn Qayyim al-Jawziyyah, *Zād al-Ma'ād fī Hady Khayr al-'Ibād*, ed. Shu'ayb al-Arna'ūt and Abdul Qādir al-Arna'ūt (Beirut: Muassasat al-Risālah, 1418/1998), vol. 3, pp. 549-550 & 558.

preference or non-preference. It rather means that these differences are part of the nature of human unity, a fact that imposes the doctrine of respecting the other as he is, as God created him, and as he chooses to be.

If respecting others as they are in culture and ethnicity is considered a pillar of Islamic doctrine and, consequently, a fundamental principle of Islamic behaviour and conduct governing Muslims' relations and dealings with them. Respecting their beliefs and religious doctrines is in a way respect to the principle of freedom that God bestowed on all humans and is respect to the principle of "no coercion". The Qur'an (2: 148; see also the preceding verse No. 145) says:

[E]very community faces a direction of its own of which He [God] is the focal point. Vie, therefore, with one another in doing good works.

This means that human differences in ethnicities and in languages and cultures are a manifestation of God's will and scheme of creation . It was within the nature of God's mercy that the Lord afforded mankind with different divine laws and out ways. In this the Qur'an (5: 48) says:

Unto every one of you have We appointed a [different] law and way of life. And if God had so willed, He could surely have made you all one single community: but [He willed it otherwise] in order to test you by means of what He has vouchsafed unto you. Vie, then, with one another in doing good works! Unto God you all must return; and then He will make you truly understand all that on which you were wont to differ. (Qur'an, 5:48)

And again it states (3: 55),

In the end, unto Me you all must return, and I shall judge between you with regard to all on which you were wont to differ.

The unity of race, colour or language is not an inevitable necessity without which mutual understanding cannot be achieved. It is therefore necessary in order to establish relations built on the basis of love and respect to engage in dialogue based on the acknowledgement and realization of these differences which are part and parcel of God's cosmic scheme of creation, and which Freud

called “the narcissism of differences,” no matter how small they are, as they are one aspect of the core of our personality.

Here, it is worth mentioning that the Qur’an calls for holding fast to God’s bond and not falling apart when it says (3: 103), “And hold fast, all together, unto the bond of God, and do not fall apart from one another.” It did not say “do not differ”, because holding fast to God’s bond can be achieved with differing but not with falling apart because falling apart is one thing and differing is something else.

In a multi-ethnic, multi-religious, and multi-sectarian world, continuous open and enlightened dialogue becomes a pillar of human understanding and mutual respect and co-operation between peoples and nations. For dialogue cannot be except with the other who differs; otherwise it will become a monologue, i.e. a dialogue with oneself. The other can only be different, or else there is no need for him or for dialogue. Therefore, the first condition for dialogue is accepting both facts of life: plurality and difference. This acceptance is one of the characteristics of Islamic jurisprudence.¹

The Need for New Islamic Jurisprudence

According to official statistics:

1. About 1/3 of Muslims live in non Islamic countries, or among a majority of non-Muslims (USA, India, EU, China, etc.).

2. In 1900, the beginning of what American Protestants described “The Christian Century”, 80% of Christians were either Europeans or North Americans. Today 60 percent are citizens of the two-thirds of the world - Africa, Asia and Latin America. The center of Christianity has thus shifted southward.

As a result, for the first time in its history, Christianity has become a religion mainly of the poor, the marginalized, the powerless and – in parts of Asia and the Middle East – the

¹ For more elaboration on the issues discussed above, see Mohammad al-Sammak, *Maqālāt fī al-Ḥimār al-Islāmī al-Masīḥī* (Jounieh/Lebanon: al-Maktabah al-Paulsiyyah, 2007), pp. 23-75.

oppressed. Its face has also changed. Christianity is no longer a white man's religion. For most Asians, however, what makes Jesus attractive is his identification with the poor and the suffering.

If any continent holds the future of Christianity, many Christian missionary experts believe, it is Africa. There they see history doing a second act: just as Europe's northern tribes turned to the church after the decay of the Roman Empire, so Africans are embracing Christianity in face of the massive political, social and economic chaos.

As is well known, Islam is already deeply rooted in Asia and in Africa. And, at the same time Islam is also a new comer to the West (Europe and USA). This means that we should expect more religious friction between the two religions unless bridges of mutual understanding, recognition and respect are erected.

These religio-demographic changes in globalized communities require an updated Islamic jurisprudence to deal with the new realities of co-living. To do this we should entertain the following points:

First, Islamic jurisprudence and its fundamentals focus so far on two pivots: a) the relationships among Muslims themselves, and b) the relations of Muslims with non-Muslims in Islamic states. This means that the compendium of Islamic jurisprudence puts down the rules of conduct either to a pure Muslim society or a society with a Muslim majority.

Second, there is a dire need for developing a new jurisprudence of conduct for the new situation: that is, the existence of Muslim minorities in non-Islamic societies. Classical jurisprudence does not contain any sufficient number of precedents that can serve as founding ground for contemporary new Muslim realities.

Third, Muslim minorities in non-Islamic states and societies are of two categories: a) formations made up of the indigenous and native people who converted to Islam, b) formations made up of immigrants who left their Islamic countries for economic, social, cultural, or political reasons, and not for religious reasons.

Fourth, Islamic jurisprudence provides a wealth of jurisprudential principles and practices on rights and duties of non-Muslims living as citizens in Muslim countries. On top of these rights stand the right of religious freedom, both theoretical and practical, and the right to follow and adjudicate one's religious law and regulations on personal matters, such as marriage, divorce, inheritance, religious holidays, and so forth.

Non-Muslim citizens can even produce wine for their own use, though Muslims are prohibited from doing that – sometimes these principles are violated. However, when non-Muslims exercise such rights, they are supposed to respect the feelings and sensitivities of Muslims.

Fifth, there is a great difference between religion as a law and jurisprudence, on the one hand, and customs and traditions, on the other. Social customs, for instance, are not part of religion, and adhering to them is not equivalent to adhering to religion. Every society has its own customs and traditions about food and etiquette, and ceremonies of birth and death and sorrow and joy. Also, different societies love diverse kinds of music, singing, drawing, literature and other human arts and crafts. Thus, what a Muslim may appreciate well in Bangladesh may not be appreciated at all by a Muslim in Malaysia. Or, what a Muslim in Pakistan loves may be very disliked by a Muslim in Somalia.

Sixth, when Muslims migrate to non-Islamic states such as Western Europe, Canada, USA, Australia, etc., it is natural that they find themselves in an alien culture that has its own features, religions, customs and traditions, and even social priorities.

The lack of that branch of Islamic jurisprudence that regulates the behaviour of Muslims in non-Muslim societies goes back to the end of Islam in places like Spain and Sicily. It is correct to say that the courts of inquisition were persecuting, oppressing, and sentencing Muslims to death. But it is also true that after the passage of that period Muslims who stayed there and lost power did not develop a jurisprudence that reorganized their relations as minorities living with Christian majorities.

Perhaps the main factor in liquidating the presence of Muslims in Europe's Mediterranean shores was the Muslims' view of the necessity to migrate back to *dār al-Islām* (abode of Islam), in an attempt to emulate the historic deed of the Prophet's migration from Makkah to Madīnah. Again, such a view spread again when Europeans, French and Italian, invaded the southern shores of the Mediterranean (Libya, Tunisia, Algeria and Morocco): Calls for migration to *dār al-Islām* spread since Muslims were not the rulers and were subjected to Western (Christian) colonialism. Similar calls in India under the British occupation were spread but were less effective. Fortunately, the same did not happen in Palestine, or else no Muslims were to be found in the Holy Land.

Early in the eleventh century, a new transformation of the world balance of power took place, leading to turning Muslims from rulers to ruled, and from majorities to minorities in Southern Europe. Today, the dawn of the twenty-first century is witnessing a new radical transformation of that equation, including globalization that interconnects states' interests and peoples and subjects all to the same economic, cultural, political and social influences. The number of Muslims living in Europe is on the rise, from Scandinavia in the north to Italy, France and Spain in the South. Also, increasing numbers of Muslims have migrated to the United States, Canada, Latin America, and Australia. But differently, the world is witnessing a reverse and voluntary migration: from *dār al-Islām* to the non-Islamic world.

The question now is how Muslims should behave and act within these new non-Muslim societies which they migrated to. To answer this question, we must not forget that any Muslim, or for that matter any individual, who wants to enter a foreign state usually obtains a visa. So what does that visa mean and symbolize, and what does it entail? The mere fact that a person applies for a visa indicates that person's willingness to respect and to abide by the laws of that state. The granting of the visa means that that state trusts the applicant's commitment to abide by and respect its laws. Thus, the application for and the granting

of the visa constitute the agreement of two committed parties to a solid contract between the applicant and the state. When the applicant is a Muslim, such a contract becomes a source of diverse duties that should be upheld and could not be ignored. For no default on such duties would constitute a breach of a substantive principle of the Qur'an, that is to fulfill one's contract and commitment.

In addition to the individual contract, there is a contract between the state that the individual is leaving and the state he is migrating to. The mutual political and diplomatic recognition is a recognition of state sovereignty and legitimacy of its laws all over its land and over people residing on it, whether natives or immigrants. A passport commits the individual to abide by the mutual contracts between the states and respect its traditions. The Qur'an asks the Muslims to fulfill their commitments with all parties, Muslims or non-Muslims, even at times of war. To this effect, it (8: 72) says,

Those who believe, and have migrated and struggled for God's sake with their property and persons, as well as those who have given them asylum and support, [will find] some of those are friends of one another. You do not owe any protection to those who believe and have not migrated, until they become refugees. If they should plead for support however from you concerning religious matters, you must support them except against any folk with whom you have made a treaty. God is Observant of anything you do.

This also means that fulfilling a contract between Muslims and non-Muslims precedes even another commitment that is to fight with other Muslims who call for support from their fellow Muslims. The Qur'an also prohibited even killing the hypocrites who claimed to be Muslims if there was a contract, the Qur'an (4: 89-90) says:

They would love for you to disbelieve just as they disbelieve, so you will be exactly like them. Do not adopt sponsors from among them until they migrate along God's way. If they should ever turn against you, then seize them and kill them wherever you may find them. Do not adopt any sponsor nor supporter from among them, except those who join a folk with whom you have a treaty or who come to you because their breasts shrink from fighting you or fighting with their own people.

If God so wished, He would have given them authority over you so that they would have fought you. Yet if they keep aloof from you and do not fight you, and they propose peace to you, God does not grant you any way against them.

Therefore, Muslims' respect for contracts with non-Islamic states to which they migrate is a sacred obligation and thus should not be violated. Islamic jurisprudence has considered such a contract as the instrument that turns a non-Islamic state into *dār al-ʿabd* or *al-muwādaʿah* (abode of contract or friendship). All of this requires that the immigrant respects the security, laws, beliefs, and customs of such non-Islamic countries.

On one level, such a commitment to a non-Islamic state still poses for the individual Muslim a clash between his Islamic social traditions with the new ones, as well as the notions of what is prohibited in Islam and allowed in non-Islamic states. The Muslim immigrant should give up some of his socially inherited customs that are not related to the religious creed and values. Such an act allows the Muslim to easily adapt to his/her new environment and to positively contribute to the new society as well as to bring forth a positive image about himself and other Muslims.

However, Muslims cannot and should not give up or compromise any precept of their religious faith and values. Therefore, if a Muslim migrates to a country where he has to give up his/her faith, such a migration is legally and religiously forbidden. Economic success has no value if it means giving up what one believes in.

For plural societies, either the notion of diversity or the goal of integration must give way. After all, safety and prosperity is in the diversity of these societies. The nation state has not led to a homogeneous culture, and it will not.

After all, cultures, as the anthropologist Ernest Geller has pointed out, are not our "choice" but our "fate". Changing choices might be easy or difficult, but it is always possible. But changing fate is something else. It is like changing ethnicity which is beyond normal or surgical capabilities.

It is obvious from all that preceded that there is an urgent need to update Islamic jurisprudence to deal with issues of interest to Muslim immigrants to non-Muslim countries, and to non-Muslim immigrants to Muslim countries, so that wisdom and dialogue, as Islam commands, prevail.

Therefore, the agreement of Muslim scholars over what is called the jurisprudence of “balances” and jurisprudence of “reality” is of utmost importance. The jurisprudence of balances creates equilibrium among multiple interests or prioritizes them. The jurisprudence of reality sets out to profoundly analyze and comprehend all aspects of factual realities as manifested in the external world. An example of the jurisprudence of balances could be what happened during the peace treaty of Ḥudaybiyah. The Prophet gave priority to the real solid interests of the community over people’s religious zeal and anger. The people considered the treaty as unjust and degrading to Muslims because of its stipulation to not start the treaty with “In the name of God” and to not describe Muhammad as the Prophet. Here the Prophet accepted the practical interest vis-a-vis religious references.

However, the other jurisprudence, the jurisprudence of reality, rests on choosing the lesser evil, when it is faced with two evils or more, like the Prophet’s alliance with an infidel tribe to fight another tribe. Lesser evil is tolerated and legalized to prevent greater evil. Thus in prioritizing different realities, this jurisprudence gives more weight to the practically most important. Sheikh Yusuf al-Qaradawi notes that the problem with many Islamic movements is that they do not follow the jurisprudence of prioritizing realities and cannot distinguish between fundamentals and particulars and the clear and the ambiguous.

When the great jurist Ibn Qayyim al-Jawziyya discusses the best form of work, and whether it is the most difficult or the most beneficial, he concludes that there is no absolute best but the best depends on place and time. In time of famine, for instance, food would be the best; in war, fighting the aggressor; and when scholars are rare, the best is study and innovation.

Thus, Muslim minorities in non-Muslim societies are in need to benefit from the jurisprudence of balance and reality in order to make its survival possible while adhering to its religious principles. And it is natural that Muslim minorities face diverse and different complications, ranging from *Halal* food, veiling, bank interest, to education, marriage, divorce, and inheritance. The general rule agreed upon by religious scholars is that harm must be lessened as much as possible, and that harm should not be eliminated by another similar or greater harm. And a Muslim must put up with the lesser harm in order to prevent the greater, and with the private and individual to prevent the public and common.

The Case of Lebanon¹

It is almost impossible to talk about Lebanon regardless of the Middle East, or to talk about the Middle East regardless of Lebanon. Lebanon is a mini Middle East in the sense that almost all religious communities of the region are in Lebanon and they together form the Lebanese community of communities. The co-existence of these communities makes Lebanon different. This difference is behind the belief of H. H. John Paul II that Lebanon is more than a country, it is a message.

This message is needed not only to safeguard Lebanese national unity, but is needed as a basis for Arab-Muslim-Christian dialogue, which in its turn forms the axis for a better Christian-Muslim understanding on the international level.

Lebanon has 18 different religious communities. In this little more than 10,000 square kilometers, the destiny of the people as well as their choice is to live together. Lebanon is a special case in the Middle East, in the sense that it is a free country with a free press, free economy and free speech. Because of the multiplicity of communities, it is impossible to survive without freedom, in particular freedom of religion, not only of belief but also of practising religion openly and freely.

¹ For a more detailed discussion on the Lebanese diological religious experience and the author's thereof, see al-Sammak, *Maqālāt fī al-Ḥiwār al-Islāmī al-Masīḥī*, pp. 115-223.

That is why, in a sense, Lebanon is a human laboratory where religious social scientists are eager to prove that it is possible for a plural society, for a multi-religious society to live together. It is in Lebanon that pluralism in the Middle East is credited as a future way of life where one can live with the different in respect, harmony and love; to build one nation where the rights of the individual as well as the rights of the communities are recognized in the constitution and in the national entente.

Sometimes the Lebanese do not succeed; but they do most of the time. Success here is a matter of daily challenge. It is a way of life. There is a common belief among the Lebanese that their small country of 4 million people is entitled to play a major and important role in the making of a more harmonious and peaceful Middle East, in trying to prove that a plural society can survive and flourish. There is no future for the Middle East without it. The success of the Lebanese way of life or dream is extremely important not only for the Lebanese themselves, but also for all the peoples of the ME, Christians, Muslims, Jews, Arabs, Kurds, and Berbers. It is only through dialogue that such dream becomes reality. I believe that dialogue is the art of searching for truth in the point of view of the other.

To be different does not mean to be against, or to be an enemy. Differences in opinion, culture, religion, race, language, etc. are part of the human heritage; they are expressions of God's greatness as the Creator. We have to accept and to respect all these differences the way we believe in God and respect His will.

Truth is not on one-sided. To believe that you are right; does not mean that the other is necessarily wrong.

There are many forms of dialogue:

a. Dialogue of life, meaning to take care of the other, and to understand his background and to recognize his special characteristics and then to build a common living with him on the basis of understanding, recognition and respect.

b. Dialogue of action, meaning to work together socially, economically and educationally. This will help in building relations on the basis of intermingled interest.

c. Dialogue of discussion, not with the intention to unite religion, but to make it transparent to the others, and to reveal common factors in morals and ethics.

d. Dialogue of experiences, including religious experiences. Not with the intention to worship God like the other, but to realize the fact that it is possible to worship God, the same God, differently.

Religious and national education should focus on the necessity of the disengagement between historical conflicts and religious ethics; between day to day politics and everlasting foundations of common belief.

The relation between religion and politics can be defined in many different ways; I shall focus on two contradictory ways:

One, ignoring the frontiers between man's inner life and his public actions.

Two, on the contrary, proving that religion can (or even should) be the force that persuades people to rediscover a connection between day-to-day life and moral order. The idea of articulating the essential principles of morality, a global ethic that can apply to everybody everywhere, is spreading with increasing insistence. It is the other side of the awareness, often aggrieved, that globalization of economics and technology is no longer a contentious thesis but an irresistible reality with concrete effect on people's lives.

Political, social, and cultural expectations and demands are dragged along in this vast new transformation, impersonal forces of the market are rocketing societies out of control. The constraints of religion and tradition are here shattered, with nothing solid to replace them, there asserted with aggressive, mindless violence in the attempt to cope. It turns out that it is a lot easier to recognize evils that are universal than the universal good to which all should feel committed.

The definitions of religion and politics are at odds. Religion is the belief in the sacred; religious teachings are absolute. On the

other hand, politics, as President Chirac of France once said, “is not the art of the possible, it is the art of making possible what is necessary.” Politics is the work of men, while Religion is the work of God who created man. That is what makes religious politics dangerous in the sense that political decisions are figured as orders from God.

When religious leaders are part of the decision making in any country, or when they influence the process of decision making, they do so not as representatives of the people, but as representatives of God. This means that opposing them is an opposition to the sacred and to the holy. In Lebanon, with its eighteen religious leaders, opposition to the sacred and the holy comes also from the sacred and the holy. And in both cases, what is really at stake is simply day to day politics.

Religious differences in Lebanon are not so much disputes about doctrine as about history and power-sharing. The Taif National Agreement of 1989, sought to rewind the history of co-living in order to bring brotherhood and unity to the people of Lebanon, and to balance religious and confessional interests rather than eradicating them.

Each one of the eighteen religious communities on its own was weak enough to start or stop a war meant to be a Middle-Eastern war by proxy. Regional and international powers were strong enough to pull the legs of this or that Community to this or to that side of the war. Financing a war for more than fifteen years was beyond the economical capabilities of Lebanon and the Lebanese people. Hard currency and advanced armaments and ammunitions poured into Lebanon from different sources - Israel, Arabs and non-Arabs. Just after the fire was ceased and, foreign assistance consequently stopped, the Lebanese economy almost collapsed.

Rebuilding Lebanon was impossible without rebuilding the national unity among the Lebanese people. This is not a simple story of peacemakers versus bigots. It is also about aid donors, who help shape the conditions that await the return of the displaced and crucially those who are likely to respond as much to economic signals as to political ones. All of these groups have

mixed feelings. The return of the displaced so far has been all “push” with no “pull”. The “pushers” are mainly official and non-governmental organizations believing in co-living as the only way to a unified and prosperous Lebanon.

As for the pull, it is clear that all displaced Lebanese want, by all means, to return to their original homes, but traumatized families on the receiving end are far from being brain-washed to stretch a well-come hand.

The national reunification of Lebanon seeks to subdue without conquest, to brainwash without force, to accomplish social evolution without a common historical memory. The Lebanese have to get to know one another better and to discuss ways and means of managing our disagreements with greater civility.

In politics, civility is an overrated virtue. It is desirable, of course, that political debate be conducted in a spirit of mutual respect rather than enmity. But too often these days, the plea for more “civility” in politics is a high-minded way of pleading for less critical scrutiny of illicit campaign contributions or other misdeeds.

From families and neighborhoods to cities and towns to schools, congregations and trade unions, the institutions that traditionally provided people with moral anchors and a sense of belonging are under siege, not only in Lebanon but almost in every other democratic country.

Taken together, these forms of community are sometimes described as the institutions of ‘civil society’. A healthy civil society is important not only because it promotes civility (although this may be a welcome by-product), but also because it calls forth the habits, skills and qualities of character that make effective democratic citizens. Above all, civil society institutions pulled the Lebanese out of their private, self-centered interests and concerns and engaged them in the habit of attending to the common good.

A century and a half ago, Alexis de Tocqueville praised America’s vibrant civil society for producing the “habits of the

heart” on which democracy depends. If de Tocqueville were right, there is reason to worry about the health of civil society, even beyond its effect on the manners that people display in stores and on the streets.

For if families, neighborhoods and schools are in ill repair, they will most probably fail to produce the active, public-spirited citizens a successful democracy requires regardless of his or her religion. Lebanon is a country of four seasons. Seasons teach us two lessons that both steady and chastise: all things must pass, and all things shall return.

They tell us that every new beginning brings us closer to an end, and every elegy has within it the echo – and the promise – of a future celebration.

Happy peoples have a little or no history, as the French philosopher Montesquieu said. In this sense, the Lebanese as a people have a long history. The Lebanese have learnt many lessons from their experiences. They learned that there is no favorite wind for those who do not know their destination. They learned too that mistakes are sometimes better teachers than achievements. But maybe the most important lesson they learned is this: When they want, they can.

Democracy in Lebanon, one could say, is very Lebanese. It is not ideal nor is it theoretically perfect, but it is compatible with fundamental requirements of national unity. Democratic politics properly conducted is filled with controversy. It is desirable, of course, that political debate be conducted in a spirit of mutual respect rather than enmity. But too often these days the plea for more civility in politics is a high-minded way of pleading for less critical scrutiny of illicit campaign contribution or other misdeeds. With respect, love, and understanding, a society of eighteen religious communities of Christian and Muslim denominations can function like an orchestra; each community playing its part, while attending to a common score. A society with a sense of seasons has greater respect for the old and clearer sense of tomorrow.

The Lebanese have now a clear sense of their situation in the Middle East, which seems to be that they are like that great Gericault picture (the Raft of the Medusa) that they are on this huge piece of floating wreckage. It is not going to sink, but they have the choice of cooperating with one another with the scarce resources on this piece of floating wreckage or of eating one another. They can no more follow the un-sacred rule of politics, where "one man's hope is another man's fear." They have to learn and to behave in accordance with a sacred rule, where "one community's dream is not necessarily another community's nightmare."

Isaac Newton said: "If I have seen further, it is by standing on the shoulders of countless ordinary humans, even of pygmies."¹ Lebanon can see further by standing on piles of accumulated miscalculations and disappointments. It can see that the trick in a successful society is for minority citizens to be able to feel that they are more than one thing at once: to be able to feel Arab and Christian, Lebanese and Muslim.

It is not that multi-ethnic societies are impossible; it is just that they are often rather delicate. Divisions of race, of language, of class, of religion can be accepted, tolerated and even enjoyed: They add to the complexities and the possibilities of life. But they also make a society more vulnerable, especially when the divisions all line up the same way, and one group can be racially, religiously and economically distinguished from another. Societies with such internal divisions do not seem to stand up well to external shocks. Unless we give people of diverse religious backgrounds a sense of belonging, unless we give them a sense that their identity and heritage are valued threads in the tapestry of the Lebanese society, real community is impossible.

The Lebanese learned, and are still learning, to oppose a notion of diversity that becomes a substitute for neighborhood and community, where Maronites, Sunnīs, etc. have their corners,

¹ The correct statement of the great physicist is rather: "If I have seen further, it is by standing on the shoulders of giants," in a letter to Rober Hooke dated 5 February 1675. H.W. Turnbull (ed.), *The Correspondence of Isaac Newton: 1661-1675* (Cambridge/New York: Cambridge University Press, 1959), vol. 1, p. 416.

equal but separate. Diversity without a spirit of community leads to tribalism. Community without a spirit of diversity leads to alienation for all groups.

It is difficult to feel the tension if you live in your separate corner or walled community. And it is difficult to feel the tension if the majority so overwhelms the minority that it is brought into silence.

You will only feel the tension when groups are rubbing against each other, trying to express their unique religious (or ethnic or linguistic) identities, and at the same time trying to keep those identities sufficiently in check to maintain the common bonds of community. That is the hard work of nation-building.

The question that imposes itself is: Is Lebanon now in the stage of nation-building? Posing this question is as helpful as using a mechanical typewriter to access the Internet. Yet, if we look at the latest developments, it is easy to notice that Lebanon came out from the trenches of war in the year 1989, and started its march towards national reconciliation – a process that does not stop, and should never stop.

Lessons from the Past and Requisites for the Future

Religion is the Word of God. God is the complete and absolute truth. What comes from God is complete and absolute knowledge. God taught man and preferred him over most of His creatures, even over the angels. In spite of this, human knowledge is partial, meaning that it is part of God's whole knowledge. The part cannot cope with the whole, and cannot include it, and cannot fully understand it, so how can he/she criticize it?

When man tries with his partial knowledge to interpret or explain the scripture, the word of God (The Torah, the Bible, or the Qur'an), this interpretation – or explanation – is and should be subjected to the common rules of criticism like any other human text. Because human understanding is open to being right or wrong, and consequently, criticizing this understanding and criticizing the human behaviour based on it, is a sort of correcting

what is thought to be wrong, and re-adjusting what is considered to be improper behaviour. Criticism here is of great importance, because its intention is to readjust the interpretation of God's word, towards what is hoped to be closer to the whole truth embodied in God's word.

From here on, we deal with the human understanding of religion, and not with religion itself, i.e., we deal with the human touch on the religious scripture and not with the whole and complete truth of the Word of God. Criticism here, and self-criticism, opens the door to a process of continuous understanding, interpretation, and transcendence of what is human in order to come closer to God's original intentions. Therefore, religious scripture (the word of God) is sacred and holy, permanent, and absolute. But the interpretation of the scripture (as a human endeavour), like any other human thinking, is neither sacred nor holy; it is changeable, and relative.

It is always possible to misunderstand the meaning of the scripture, and consequently it is always possible to behave religiously incorrectly. The first step towards correcting the misunderstanding and misbehaviour, is to revise and to reconsider the interpretation of the scripture, and this in itself requires a process of continuous criticism and self-criticism. In Islam this is one of the missions of innovation (*ijtihād* and *tajdīd*) not reformation.

Through innovation, understanding the religious scripture is subjected to a process of evolution by which religion can, and should go, side by side, and hand in hand with the changing personal and social priorities and developments.

Early religious Muslim leaders practised openly religious self-criticism. Here I will refer to two cases: The first is the case of the first caliph (Ruler) Abū Bakr al-Ṣiddīq. He confessed that he had committed three mistakes:

1. That he accepted to be nominated as caliph. "But I am not sure that this is what the Prophet Muhammad really wanted." The prophet used to say to us, "Ask me before you miss me." We did not ask him.

2. I condemned a multi-murderer to be burnt to death. "God only punishes with fire."

3. I ordered a share from a family heritage to a grandson less than what he deserves. I should have corrected myself and ordered a share for him equal to that of the father.

Here we see that the caliph practised self-criticism in three respects: 1. in politics as a political leader; 2, in justice as a judge; and 3, in interpreting a religious text, that is as a scholar.

The second case is of the second caliph 'Umar Ibn al-Khaṭṭāb who was known for being just, and for his self-esteem, and self-confidence. 'Umar was lecturing in a mosque about the negative social consequences of the high financial burdens of marriage. He said that a man should not pay more than a thousand *dirham* (the currency unit at that time) to the bride. A woman interfered from the floor saying: "O leader of the believers, you have forbid people from exceeding four hundred *dirhams* in women's dowry; didn't you hear what God sent down in the Qur'an which says,

But if you desire to give up a wife and to take another in her stead, do not take away anything of what you have given the first one, even if it be a qintar [however much it may have been]. (Qur'an, 4: 20)

Then, Omar said: "O God, forgive me, all people are more knowledgeable than Omar," and revoked his decision.¹

Religious criticism was founded after that on two major principles. The first principle says: My point of view is right, but it might be wrong. And the point of view of the other is wrong, but it might be right. This means that,

1. A point of view (any interpretation of the religious scripture) is open to be right or wrong.

2. Nobody has the right to acclaim that he possesses (or that he knows) the whole truth.

3. Nobody has the right to exclude a point of view different from his, as completely and absolutely false and wrong.

¹ Ahmad Muhammad Shakir, *Mukhtaṣar Tafsīr Ibn Khathīr* titled 'Umdat al-Tafsīr (al-Mansourah/Egypt: Dār al-Wafā', 2003), vol. 1, p. 478.

4. Seeking the truth requires a dialogue with the other, who has a different opinion, either to convince him or to be convinced by him. If not, then there is no other way but to accept and to respect the other as he is, with his beliefs, and as he wants himself to be.

The second principle says: “He who interprets, if he is right, deserves two rewards from God: one for his effort of interpretation, the other for being right. And he who interprets and turns to be wrong, he deserves one reward only, that of interpretation and he will not be punished for being wrong.” This means that,

1. Interpretation is a must.
2. Encouraging interpretation by God’s rewards and by not punishing – even with good intention – for being wrong.
3. Interpretation is open to be right or wrong. Discovering the truth requires criticism. One way to criticism is openness to the different views of the other i.e. to dialogue with the other, on the basis that the art of dialogue is to search for truth in the point of view of the other.

Conclusion

I would like to conclude by making the following remarks:

1. Interpretation in Islam is a process of understanding the religious scripture. This interpretation is not a sacred religious text, i.e. it does not deal with the principles of the doctrine of belief, to change this doctrine completely or partially.
2. Criticising the results of interpretation is a criticism to a human contribution; not to God’s words. Also, to criticise scholars themselves is a criticism to human beings, not to super-humans.
3. Sometimes the religious scripture, and the human interpretation of this scripture, are confusingly considered sacred of the same degree. The real distance between the sacredness of the first and the desecration of the second is demolished by simple minded, innocent believers.

These people become staunch followers to certain scholars; they behave as if siding with these scholars - is siding with God and with his message which is not. I am afraid that this is the starting point of manipulating religion. Jurisprudence is not and should not lead to manipulation. The first responds to the needs of the *Ummah*, while the second reflects selfish aspirations that harm the noble message of God.

CHAPTER 3

Religious Diversity and Multiculturalism: Theoretical Issues

H.A. Hellyer

Introduction

At the moment, it is taken for granted by most observers that the countries of the European Union, EU are multi-cultural; this is not a value judgement, but a descriptive statement of fact. There is no state within the EU (or, indeed, anywhere in the world) that is truly mono-cultural; there exist a number of different cultural groups within each of them.¹

A multi-cultural country is one where there is more than one culture; a multiculturalist country is something rather different. Nazi Germany might have been a multi-cultural country, but it certainly was not multiculturalist; that is a normative label that would be a

¹ The Commission on the Future of Multi-Ethnic Britain (CFMB), in its report *The Future of Multi-Ethnic Britain*, outlined five possible models that states could emulate in order to cope with diversity: 1. Procedural: the state is neutral vis-à-vis culture, and only a few basic procedures are common in society. 2. Nationalist: the state promotes a single culture, and those who do not assimilate into it are second-class. 3. Liberal/constitutional patriotism: there is a uniform political culture in public life, which provides for cohesiveness, but diversity in private life. 4. Plural: in the public and private spheres, there is both unity and diversity; the public realm is 'continually revised to accommodate cultural diversity in society at large'. 5. Separatist: the state permits and expects each community to remain separate from others, confining itself to maintaining order and civility. No state is composed of only one of these models, whether in the past or present, but rather, shares features from all of them in different ways. CFMB, *The Future of Multi-Ethnic Britain* (London: Profile Books Ltd, 2000).

judgement on the policies of the countries involved rather than an expression of fact about the realities 'on the ground'.

Theorists of the multiculturalist school have taken up the issues that emanate from this reality in light of the needs of states and communities in the twenty-first century. They have recognized that the needs and rights of ethno-cultural minorities must be highlighted in order to ensure that they are not marginalized in modern societies. Ethnic identity and ethno-cultural identity are used here as synonyms, perhaps with the epithet 'ethno-cultural' being more exact, but they refer generally to the same concept: an identity that is assumed by a particular group of people who associate themselves with a particular ethnicity. Ethnicity in this context is defined as something that is, presumably, inherited, rather than assumed. Religion, in the manner defined here, is not ordinarily an ethnic identity, although it may be reinterpreted to construct one, as will be discussed below, and even if it is not reinterpreted to construct one, it may still be considered relevant for multiculturalism, which we will also discuss.

Though the approach we follow is broadly within the school of multiculturalism, this does not however mean that all the positions suggested below are always, or even commonly, held by multiculturalist theorists. Indeed, there are points where questions are raised on topics that many multiculturalists do not: for example, on secularism, or on the need for a national identity. The discussion below is designed to raise some of those questions, and point out some of the challenges facing European societies in the twenty-first century.

It is not, however, designed to be an exhaustive or encyclopedic discussion; that would require another work entirely. Nevertheless, in the context of discussing the Muslim presence in Europe, it is rather difficult to get around an engagement with multiculturalism, and a critical assessment of what the challenges posing it are. Two main reasons may be invoked for this here. The first is that Muslims as immigrants and descendants of immigrants are prime candidates for recognition under multiculturalism; in fact, they are *the* prime candidates in most parts of Europe. The majority of eth-

nic minority communities in many (if not all) European states are Muslim by religion. So, for practical reasons, multiculturalism is definitely a subject we must engage with.

The second reason is philosophical. Most of the discussions on multiculturalism in the late twentieth-century were primarily (although not exclusively) concerned with what was the most contentious form of identity in Europe at the time: ethnicity. As such, the debates and analysis took little notice of *religious* identities, which were not viewed as important in the context of mid-twentieth-century history. That has caused a number of political philosophers to attempt to examine the issues involved through the prism of ethnic relations, by portraying Muslims, or other religiously-defined minorities, for purposes of theoretical debate, as ethno-cultural minorities. They *had* to discuss Muslims, because Islam is, as mentioned above, the religion of the largest communities that are the prime candidates for recognition by multiculturalism today. Other political philosophers refuse to regard them as candidates for recognition by the state altogether: these are philosophical tensions that also have to be dealt with, as we see the growth of Muslim communities in Europe (both the 'old' and the 'new') that are *not* ethnic minorities but part of the ethnic majority through conversion (either recent or historical).

It is clear that the mere presence of Muslims has added to the multicultural climate in the EU, and it has precipitated a number of developments. As one might expect, multiculturalism debates in Europe have often been centred on Muslims and the 'difficulties' of integrating them into the EU, and their presence has forced the issue with growing momentum.¹ It does not appear that this is going to change anytime soon; on the contrary, the signs are that the debate will deepen in the coming years. The fact that Islam has a long-running history in Europe, with many European identities having been formed at least partly in contradistinction to Islam,² makes the

¹ Stefano Allievi, "Relations and Negotiations: Issues and Debates", in Brigitte Marechal *et al.* (eds.), *Muslims in the Enlarged Europe: Religion and Society* (Leiden: Brill, 2003), p. 364.

² Timothy J. Winter, *British Muslim Identity: Past, Problems, Prospects* (Cambridge: Muslim Academic Trust, 2003), pp. 6-10.

challenge even more complex. To put it another, somewhat ironic, way, to discuss about Muslims in Europe today in a practical fashion, we have to discuss multiculturalism. To discuss multiculturalism in Europe today in a theoretical fashion, we have to discuss Muslims. They are, whether we like it or not, joined at the proverbial hip.

The Multiculturalist Debate: Fairness, Equity and the Citizen

One must be careful at this early juncture to be clear as to the nature of multiculturalism as an idea. It is not a mere political philosophy, as that might imply; it is a comprehensive theory of politics.¹ Modood's most recent work is perhaps the most explicit piece of evidence that multiculturalism is a project that is constantly developing itself in light of new circumstances, and certainly not a comprehensive political philosophy.² Neither those who attack the school, nor those who reject it, do themselves any service by failing to recognize this fact. Nor does it belong squarely and solely within liberal political philosophy, although it is undeniable that liberalism has instigated some of the institutions which multiculturalism seeks to influence. It is a project, or a school of thought. The basic question that theorists of this school pose to themselves is relatively simple: are the claims of minority groups just, justice being the root attribute that every state should aspire to uphold?

If we were to view this school and its antecedent thinkers some decades ago, we might see the answers to that question neatly dividing the 'multiculturalists' and their opponents. The multiculturalists would answer 'yes'; and their opponents would answer 'no'. Critics of multiculturalism would insist that justice demanded that the state be 'colour-blind' and, by extension, treat every single individual precisely the same way, with no regard – positive or negative – for the individual's unique attributes. Any other course of action would be considered to be necessarily discriminatory and, hence, unjust. These criticisms would generally

¹ Tariq Modood, *Multiculturalism: A Civic Idea* (Bristol: Polity Press, 2007), p. 7.

² Ibid.

belong to the nationalist and, to a greater degree, a particular view on the liberal theory of governance.¹

The multiculturalists have also formulated support for their position in the language of justice, and insist that differential treatment is sometimes not only permitted by the concept of 'justice', but also *demanded* it. Perhaps to differentiate this concept of 'justice', we might call it 'equity' or 'fairness': a more nuanced and sophisticated form of justice. To treat every single individual precisely the same way would necessarily result in occasional injustice. The multiculturalists noted that, in fact, no state institution is remotely 'procedural' (i.e. culturally neutral); rather, they are all actually favourable to the majority group, consciously or unconsciously, and might therefore discriminate against minority groups, even if unintentionally. The standard multiculturalist position noted that with the growth of diversity in terms of language, identity and culture in modern states, the notion of 'justice' *must* take seriously the possibility that 'blind' justice might create injustice. Thus, 'real' justice must be fair and equitable, which necessarily must take into account the specifics of those that justice is supposed to serve.²

However, as the political philosopher Kymlicka insightfully notes, the debate has shifted. Few thinkers, if any, in contemporary western political philosophical thought, promote the idea that justice can be achieved through 'difference-blind rules'.³ Critics have generally accepted that injustice is likely if notice of pluralism is not taken, but they now focus "on the way that the general trend towards multiculturalism threatens to erode the sorts of civic virtues, identities and practices which sustain a healthy democracy."⁴ The burden of proof has, in fact, shifted dramatically, to the point where it is assumed that the status quo, if it does not consider minority groups, is discriminatory and unjust. Hence, the proponents of multiculturalism have, to date, ef-

¹ CFMB, *The Future Multi-Ethnic Britain*, pp. 42-45.

² Ibid., pp. 42-45

³ Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 2002), pp. 355-366.

⁴ Ibid., p. 366

fectively made their case, and it is now the second phase of discussion that is underway, even though die-hard opponents to multiculturalism still continue to complain about their failure to counteract that first phase.

The last ten years have witnessed a remarkable upsurge of interest in two topics amongst political philosophers: the rights and status of ethno-cultural minorities in multi-ethnic societies (the ‘minority rights-multiculturalism’ debate), and the virtues, practices and responsibilities of democratic citizenship (the ‘citizenship-civic virtue’ debate).¹

To put it another way: if fairness and equity are to be the basis of the state, then *who* and *what* gets to define fairness and equity?

This is, in reality, leading to the question as to ‘what is the real basis of citizenship’, for it is the collective body of enfranchised citizens that gets to define fairness and equity in a state. Other authors argue that this in itself is a sign that multiculturalism is being pushed back, particularly as many commentators frequently attack ‘multiculturalism’ in the public sphere by name. Yet, even while many figures do in fact attack ‘multiculturalism’, they accept, in spite of themselves, many of the key doctrines that the multiculturalist school argued for in the 1990s. There may be fears, particularly as some commentators linked terrorism to the failure of multiculturalism after the London bombings in 2005, but these fears have caused neither actual government policies nor political theory to simply do away with the principles of that school. Modood disagrees with Cesari’s assertion that “multiculturalism is now the ruling idea of Western cities”² (and this author would tend to agree), but both Modood’s writings and political events seem to indicate that multiculturalism is still at the core of how policy is developed in modern Western societies. One might wonder why the name is not simply replaced by something else: a discussion still ongoing in multiculturalist circles.

At this point, we now reach the citizenship-civic virtue debate,

¹ Ibid.

² Modood, *Multiculturalism*, p. 15.

and this is where the Muslim presence is creating the most practical and philosophical tension for multiculturalism. Before, the two debates operated in parallel; now, they could be mistaken for the same debate, inextricably linked together. Any debate where multiculturalism becomes discussed leads to the citizenship-civic virtue discussion, and any debate where an inclusive citizenship is proposed inevitably discusses multiculturalism. The ‘citizenship-civic virtue’ and ‘minority rights-multiculturalism’ debates are precisely where the rights of the minority over the majority, and vice versa, are discussed in today’s world.

The Next Phase of the Discussion: the Citizenship-civic Virtue Debate, and defining the Multiculturalist Society

The ‘citizenship-civic virtue debate’ has two opposing models that are offered to societies and states to implement, each of which emphasizes certain rights, and which both find their theoretical ancestors within the debate surrounding multiculturalism before it:

1. The right to assimilate to the majority or dominant culture in the public sphere, and toleration of ‘difference’ in the private sphere alone.
2. The right to have one’s ‘difference’ (minority, ethnicity, etc.) recognized and supported in the public and private spheres.¹

One could argue here that there is sufficient evidence to say that the following definition I propose here of a tolerant and just society is one of consensus now:

A just society is one where society as a whole removes unfair and unnecessary barriers to access, respecting reasonable pluralism without unrestricted relativism, and where the individual is freely able to become an integral part of it, identifying the said society as the main field of participation.

This definition places most of the onus of ‘integration’ squarely on society as a whole, even while leaving the specifics

¹ See, Tariq Modood, “Multiculturalism, Muslims and the British State,” 2000. http://www.theamericanmuslim.org/2003may_comments.php?id=134_0_20_0_C (Visited on 21/01/2004).

open to fruitful debate. The pursuit to become 'integral', however, is an interest of the integrated subject, whether individually or communally, as will be discussed later in the final pages of this work; here we are generally interested in possible philosophies for the state, not civil society from an internal perspective. These are two wholly different spheres of activity.

To repeat an observation: there is an important shift towards multiculturalist principles in the above definition. That is a rather bold assertion to make, particularly after the 7th July (2005) bombings in London, which marked the beginning of the end of multiculturalism as a viable political philosophy in the public sphere. And yet, it is one that is hard to deny. Multiculturalism did not succeed in converting everyone to a new political philosophy, which it never was in the first place, but it did succeed in ensuring certain basic principles became part of the mainstream establishment.

The first model is generally portrayed as the inheritor of the 'assimilationist' model, while the latter could be perceived as the 'integrationist' model. This is certainly oversimplifying matters, but it establishes the basic parameters, and shows how the debates have shifted, while also showing where the new 'battleground is'. Classical assimilationist thought prior to the success of multiculturalism would assume that even in private spaces, a degree of assimilation should take place. Yet in this newer debate, both models recognize that those who are different from the majority may be accepted by the mainstream, but they differ on what this might mean in practice. How far must the minority go before being accepted? What differences should the majority accept? What sort of compromises should each side make, and on what bases should they be made? In other words, what are the bare requirements of citizenship?

Here, the lines begin to blur. Both models are unrecognizable without recalling classic liberal political thought, even though they might be slightly different on that corpus of ideas. Both models (if we adhere to the formulation of multiculturalism as per multiculturalists such as Modood or Parekh) can also assume that participation in the public or national culture is necessary for the effective exercise of citizenship (although multiculturalists might

also make the case that equal treatment does not mean assimilation to the national culture in all things, and the national culture should gradually change to incorporate the culture of ethnic minorities as time goes on).

Even those theorists who would be considered nationalists no longer demand full assimilation of their minority groups; they are, at the very least, tolerated, if not equally considered. The old multiculturalists, the ‘pluralistic-integrationists’, now tend to favour a cosmopolitan definition of citizenship in order to facilitate the incorporation and integration of ethno-cultural minorities. Their old critics, the ‘neo-assimilationists’, stand as the proponents of a strong, narrowly-defined national identity that is the basis of citizenship, *while still respecting difference*.

While I respect ‘difference,’ and submit that coping with it is an essential element of tolerance and pluralism, I also maintain that it is unacceptable to stop at simply acknowledging difference, as cultural relativists do, without providing prescriptions for how to deal with it.¹

The above is written by an author who is generally a neo-assimilationist, but it is clear that on an abstract level, he also accepts certain basic principles that multiculturalism sought to make integral to the public sphere. Neither of the protagonists in the ‘citizenship-civic virtue debate’ rejects the idea of ‘toleration’, including the neo-assimilationists. Indeed, it is often part of the equation for neo-assimilationists. But where the lines are still clearly drawn is the interpretation of ‘equality’:

Grounding equality in uniformity also has unfortunate consequences. It requires us to treat human beings equally in those respects in which they are similar and not those in which they are different.²

Now, precisely what does that mean in our discussion? For

¹ Bassam Tibi, “Muslim Migrants in Europe: Between Euro-Islam and *Ghettoization*,” in Nezar AlSayyad and Manuel Castells (eds.), *Muslim Europe or Euro-Islam: Politics, Culture, and Citizenship in the Age of Globalization* (Oxford: Lexington Books, 2002), p. 31.

² Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (London: Palgrave Macmillan, 2000), pp. 239-240.

what we are interested in is clearly this: how do we construct the public culture of diverse societies? And in that question lies another question, for the answer is surely “the ‘how’ is to be defined by the citizen”: on what basis is one considered a citizen? What is the basis of citizenship?

Both sides in this debate uphold tolerance: the terms of how that toleration is to manifest itself are quite distinct, however. Neo-assimilationists insist that the predominant culture has the right of continual dominance, as it is the most viable candidate to ensure social stability and cohesion: as such, citizenship refers to only the majority, and not the minority, and the minority becomes more of a full citizen by becoming more like the majority. For the pluralistic integrationists, on the other hand, the emphasis is not only on the right of the minority to remain different, but also for those differences to be recognized, and even publicly declared, by the mainstream.

Nevertheless, even in the modern age, the concept of citizenship is a disputed ground, which is perhaps why multiculturalists are not yet quite ‘there yet’ in terms of constructing a theory. When citizenship is spoken of, it is in reference to integration; full integration in the Western meaning of the word means full rights of citizenship. Conversely, without citizenship, full integration in the Western idiom is impossible.

For now, we should ask: how have the different models of citizenship manifested themselves in practice? The answer to that question is what defines the difference for current multiculturalists; and to really understand what that means in practice, we must move beyond theory, and into a case study which history will likely record as one of the key theoretical tests for multiculturalist citizenship. It is not at all surprising, as we will see time and time again below, that the test involves Muslims and Islam.

Multiculturalism and Muslims: Secularist Tensions

From the outset, before moving on to what multiculturalism generally posits itself with regards to Muslims, it is relevant to say where it generally does *not* posit itself. Multiculturalism has predominantly been concerned with cultural groups *per se*; not specifically religious groups. Where religious groups have been considered, they have been viewed through the prism of culture and designated as cultural groups. For this reason, the question whether Muslims are truly candidates for designation as a cultural group remains either misunderstood or misinterpreted. For some reason, even Kymlicka (one of multiculturalism main theorists) excludes religious groups without even any comprehensive justification, although they are certainly relevant in Europe and North America; a bias that Modood refers to as possibly a “secularist bias”¹ in one place, and an “ignorance-cum-prejudice about Muslims that is apparent amongst even the best political philosophers” in another.²

Some Western trends of thought do identify Muslims in the way Jews were identified in the nineteenth century – as an ethnic group. This primarily ethnic identification reached the point where it was possible to begin speaking of an atheist Jew. This, it might be said, is the ethnicisation of spirituality, where a politicization of an essentially spiritual commitment creates an ethnic identity. This new, startlingly modern identity is not a development that Muslim intellectuals have noted without some unease:

In the universe of Islam, the same transposition of the vocabulary of faith into the vocabulary of identity is well underway. What would Averroes have made of the common modern practice of defining the Hajj as the ‘annual conference of the Muslims’? Why do social scientists increasingly interpret the phenomenon of veiling in terms of the affirmation of identity? Why does congregational prayer sometimes suggest a political gesture to what is behind the wor-

¹ Modood, *Multiculturalism*, p. 27.

² Tariq Modood, “The Recognition of Religious Groups”, in Will Kymlicka and Wayne Norman (eds.), *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000), pp. 187-188.

shippers, rather than to what lies beyond the qibla wall?

The instrumentality of religion has changed, in important segments of the world faiths. God is not denied by the sloganeers of identity; rather He is enlisted as a party member. No such revivalist can entertain the suggestion that the new liberation being recommended is group liberation in the world that marginalizes the more fundamental project of an individual liberation from the world; but his vocabulary nonetheless steadily betrays him.¹

Having elaborated on that, there is an important proviso to be made here. While one may have some philosophical sympathy for those who are apprehensive of what they deem to be 'identity politics' masquerading as religion, it does not necessarily follow that such an apprehension must automatically result in the exclusion of religious groups in the discussion of multiculturalism. While it is very true that, for many, religion is simply and solely 'pietistic' (which might therefore be rather inconsequential to any political multiculturalism), for many others it is a deep component of identity which serves to inform their ethics, morals, values and how they participate in society at large. The diversity they adhere to might be a different *type* of diversity, but they are still appropriate, and distinct, candidates for inclusion in this discussion of multiculturalism.

Some feel uncomfortable about this, as contemporary Western societies, particularly in Europe, are secular, and have a history with religion and religious institutions which define how they relate to religion. They are also generally liberal, not particularly conservative, and this may also serve to show why they are reluctant to allow the incorporation of religious groups that hold less liberal views. This is not entirely justifiable either, however. To be consistent, we would have to similarly marginalize other religious groups (including Christians), and put the same questions about values to all groups. We uphold gender as a worthwhile candidate, even though there might be some trends in feminist thought

¹ Abdel-Hakim Murad, "Muslim loyalty and belonging: some reflections on the psychosocial background", in Seddon, M.S., Hussain, D. and Malik, N. (eds.), *British Muslims: Loyalty and Belonging* (Leicester: Islamic Foundation, 2003).

that the majority might find distasteful; the same can be said for some militant Black nationalists in the African-American communities of North America. But we do not use such examples as a reason to exclude the larger communities; why then for the Muslim communities of Europe? A respect for that different type of diversity, specifically religious, has to be considered.

In the United Kingdom, a number of problems arose after anti-discrimination legislation did not take account of the difference between considering Muslim populations as faith communities or as 'ethno-cultural minorities'. Converts to Islam are not considered to be ethno-culturally different from the majority; thus, they are unprotected since they are not considered racial minorities under race relations laws. With what justification then are the issues emanating from a multi-faith society considered in the context of multiculturalism?

[W]e must not be too quick to exclude religious communities from participation in the political debates etc. of a multicultural state. Secularity should not be embraced without careful consideration of the possibilities for reasonable dialogue between religious and non-religious groups.¹

Most discussions about multiculturalism focus on 'ethnicity'. As a side effect, the recognition of religion and religious identity is marginalized or not considered, yet research shows that religion 'still' plays a significant role in groups' relations among each other and the society at large.²

These are not inconsequential abstract issues. If the point of multiculturalism was to combat racism and ensure that unfair discrimination be removed from communities in their efforts to create just societies, then we must now also realise that bigotry and discrimination now certainly encompasses religious communities as religious communities. Perhaps once it was the 'Paki' who was targeted; but now, certainly, the 'Muslim' will do, at least in many

¹ Tariq Modood and Colin Buchanan, "Should the Church of England Be Disestablished?" *theguardian.com*, Saturday debate, 15 April 2000.

² Martin Baumann, cited in Sophie Gilliat-Ray, *Religion in Higher Education: the Politics of the Multi-Faith Campus* (Aldershot: Ashgate, 2000), p. 4.

parts of Europe, and increasingly, in North America.

One could add another aspect to this, which is that both secularism and religion should be properly understood in their own contexts, and a healthy co-operation should exist between them. Religion is religion, secularism is secularism, and neither should dictate what the other means. But it does not follow that they should not co-operate, and indeed, this is part of where the tension lies. The priests need not run the state, but if the state needs expert advice on what Christianity means to its adherents in order to properly accommodate them in the state (for example, days off on religious holidays), should the state not consult with the priesthood? And should the priesthood not co-operate with the state in such a consultation? Or should the state simply decide, and arrogate itself to be the voice of religion? The same logic might apply equally to Muslims, although Islam has different modes of constructing religious authority, which we shall also come to.

None of this should be interpreted to mean that there is a monolithic, homogenous community of Muslims who reside in Europe. There are numerous communities within the entire Muslim population of Europe; different according to sex, race, age and so forth. In this sense, there are certainly several Muslim communities in Europe, but insofar as all these communities exist in Europe, they also simultaneously constitute a single 'community', distinct from other Muslims outside of Europe, or non-Muslims in Europe, defined according to their religious identity as Muslims, regardless of their practice.

But in so far as they represent a common religious community, there is a need to entertain a particular application, which may be quite close to liberal theories of multiculturalism, but with a corrective lens placed upon the viewpoint that eschews focusing on religion. Kymlicka discusses the 'rights' of minority groups in relation to public policies, legal rights and constitutional provisions, which are 'sought by ethnic groups for the accommodation of their cultural differences'. These, apparently, are the main areas of concern; if these are settled, then the barriers of the mainstream to their incorporation are removed.

These issues, i.e., the ‘rights’ that groups outside of the mainstream have in relation to ‘public policies, legal rights and constitutional provisions’, are similar to a certain degree for all demographic minority groups. From a political philosophical perspective, multiculturalism remains the school where the issues arising from a multi-faith community are best discussed, particularly in Europe where many minority-faith communities are also minority ethnic ones. What is *not* the same is the different ways these communities view themselves in relation to each other on an individual level, but this is more a sociological affair rather than a political philosophical one. If there is anything to be discussed, it is whether we can authentically describe this school as ‘multi *cultural*’ rather than some other label that would not take for granted the concept that religion is a ‘culture’.

If we return to the original debates of ‘multiculturalism’ and ‘citizenship-civic virtue’, adopting Kymlicka’s model for ethnocultural groups, there emerges an intriguing route that can be taken, which should be examined more closely. There are two important features common to all minority rights; if we apply them to religious minority rights claims in general, and Muslims in particular, keeping the above considerations in mind, the following can be noted: these rights go beyond the familiar set of common civil and political rights of individual citizenship which are protected in all liberal democracies, and they are adopted with the intention of recognizing and accommodating the distinctive needs of religiously-defined groups. What religious minority rights advocates aspire to do is to reach a point whereby existing legal rights, public policies and constitutional provisions accommodate and facilitate their community’s religious practices in the same way that liberal multiculturalists might do for ethnic communities.

There are a number of general characteristics about Muslim minorities that can be noted from the outset. In general, like other religious minority groups within the EU, Muslims are not concerned with territorial separatism (which might interest some demographic minority groups). Their debate is how one should integrate with the mainstream; the alternative to incorporation of

any sort for the Muslim minority is exile – a position some take in theory but seldom practise. Nor are they to be counted among isolationist religious groups according to one definition, which describes members of groups such as the Amish in America and the Hutterites in Canada¹ as ‘partial’ citizens’ due to their voluntary waiving of rights and responsibilities in the country. While some Muslim groups, as well as other religious minorities, may shy away from participating in voting and holding office² – as the Amish do – Muslims generally support active participation in society, but on terms sometimes different from the mainstream. They are considered a ‘non-isolationist religious group’ to continue using an analogized version of Kymlicka’s terminology, as they seek to participate ‘without having to compromise their beliefs for the sake of an arbitrary regulation’.

Within the British context, which is perhaps the ‘flag-bearer’ of a style of secularism which is sensitive to the idea of co-operation between religion and state, a pertinent episode recently took place. The leader of the established Church (but a type of establishment which generally seeks to assist minority religions without necessarily relativizing the truth of the message of the Church) delivered a speech to an assembly of lawyers on the issue of ‘*shari‘ah* courts’. Now, the lawyers appear to have generally understood the Archbishop of Canterbury’s statements within the context of arbitration law, which allows any two parties to voluntarily submit to the ruling of a third party, as long as such a ruling did not break any law. One cannot seriously cast doubt on the legal validity of this: yet, the public reaction was one that indicated it could be invalid in terms of the public political culture.

This can only be explained if we take seriously the claim that some types of secularism are unequal to others, for at no point did the Archbishop’s statements go against the laws of the UK. One understandable objection is that such ‘*shari‘ah* courts’ (which are not courts at all, but arbitration contracts) will reify Muslim identity

¹ Kymlicka and Norman, *Citizenship in Diverse Societies*, pp. 22–23.

² A trend which seems to be losing ground as *Shari‘ah* experts are advocating active participation, thus removing the ‘religious impediment’.

in a way that will subject all Muslims, whether they like it or not, to particular interpretations of Islamic jurisprudence. But while this objection is understandable, it is not justifiable. These arbitration contracts are only entered into properly if *voluntarily*: Muslims, or any other group, can choose not to enter into them, or enter into them on their own terms. That is a type of secularism that no secularist objects to.

The above discussion outlines some reflections on the question of secularism that any workable system multiculturalist citizenship will have to deal with. Now, we should turn our attention to how some of these abstract and theoretical issues actually play out in the two models for citizenship in Europe today. That leads us to our next topic, which is entirely relevant, practical, and highly controversial: the *hijab* or the Muslim headscarf.

The challenge of the *Hijāb* and two models of citizenship

In the EU specifically, there are currently two main expressions of citizenship, with some variations. A good example of the first expression (descended from the assimilationists) is found in the dominant French paradigm, which has found its most recent and poignant manifestation in the *l'affaire du foulard* in September 1989. For those who demanded that Muslim school-girls take off their headscarves, France was 'a single and indivisible nation based on a single culture'. The state was to positively and aggressively pursue a policy of assimilation; differences were to be accepted only if they were not judged to be against the principles of French culture, which are claimed to be universal. To follow a different path would be to deny the universal nature of French culture and, further, to threaten it. In practice, this meant the French state would ban 'ostentatious symbols' being worn in school; what 'ostentatious' referred to, however, was well-known. Yet, until December 2003, individual schools were given the freedom to choose or not to choose to enforce this particular interpretation; the French state then formally decided to ban the

headscarf¹ in public schools, with ten federal states in Germany following suit shortly thereafter.

Theoretically, from a particular standpoint (that of the majority), the idea of ‘sameness’ or ‘blind justice’ might seem like the perfect basis upon which to base educational policy. What the French in particular were offering was indeed ‘equality’, but on the basis of uniformity – a typical assimilationist model. Practically, however, as the pluralistic critique emphasizes (more evident in the second model of the ‘citizenship-civic virtue debate’), the world is most certainly not uniform. Were the world, the EU or a single state homogenous in every way, equal treatment would involve identical treatment; yet, in every state, not least the EU, there are differences according to sex, ethnicity and religion, as well as a number of other characteristics. Once this is taken into account, identical treatment does not result in equal treatment; rather, it provides for a situation where certain members are ‘more equal than others’, even if wholly unintentionally.

Let us come back to the practical example, and see how the mainstream political establishment justified its logic. As far as they were concerned:

1. The French state (the Republic) is based on French culture;
2. French Republican cultural values are universal;
3. Anything opposing universal values must be proscribed;
4. The subjugation of a gender (women) is in opposition to universal values;
5. The headscarf is a symbol of female subjugation; and
6. The headscarf must be proscribed.

Put simply, this logic permeated most of the discussions relating to the headscarf – even if the content was sometimes altered to include the scarf as a symbol of political activity against the secular republican state – in France and elsewhere, including

¹ Other religious symbols were similarly proscribed, but it was clear from the history of the debate what was being targeted. For a thorough examination of this issue, see John R. Bowen, *Why the French Don't Like Headscarves: Islam, the State, and Public Space* (Princeton: Princeton University Press, 2007).

Turkey and Germany.

It can best be described as a 'liberal' model of governance with some 'nationalist' elements, and it also accounts for the historical reasons why the UK and other European countries would not fund Muslim schools. Until recently, the UK government had consistently rejected funding Muslim schools, although thousands of Anglican, Catholic and Jewish schools were so funded. Some of those that defended this disparity insisted that the state should not be funding religious schools in general, or that funding Muslim schools would provide support to a reactionary religion that would then attack the state. Furthermore, they argued that while other religious schools managed to find a balance between secular and religiously-inspired knowledge after a long struggle, Muslim schools would not be able to do so. It is important to note that in most of these and other similar cases, students of Muslim background were not forbidden education. On the contrary, they were enthusiastically invited to participate in education, but only on the terms acceptable to the authorities. They might look different and behave differently in their private capacities, but in the eyes of the state, they would be the same as their non-Muslim counterparts and be treated 'equally'.

Those who made such arguments often thought they were being fair, as they did not ask the minorities to pursue a course they themselves would not be willing to pursue. In the UK, this argument was slightly different, for there the positions were based on a particular discriminatory attitude; non-Anglican schools had been funded for many years, so it was not merely a question of the narrow vision of the national culture. Pluralism did exist for Catholics and Jews, but not for Muslims.

Yet the assumptions articulated therein are far from proven. A number of questions arise here: were the French legislators correct in assuming the headscarf was a symbol of female subjugation? If they were correct to oppose it on moral principle, would this moral abhorrence be justifiable in terms of universal validity such that it would necessitate a ban? Even if the headscarf was against the emancipation of women, a key concept of

French Republican thought, was it the jurisdiction of the French state to proscribe it? Are French, German, or for that matter, Western values truly universal, to be upheld at any cost? If these suppositions are correct, the headscarf should have been banned completely and not simply in schools. Moreover, if the suppositions were correct in the British case, then the privately funded Muslim schools should also have been banned.

The issue at hand that cannot be overlooked is what constitutes the basis of French political tradition. The French state is the expression of the French nation, and the French citizen is simultaneously integrated into the French state and the French nation by an act of will to embody and protect French culture, which just happens to be universal in its validity. In this manner, the French 'nation' and French 'citizenry' are identifiably the same, and both partake of 'universal values'.¹

It is undeniably the case that many women who wear the headscarf are mistreated. Some wear it out of choice, some wear it out of fear; but women and men alike are often mistreated, often do things out of choice, and often do things without choice. The question is: is there a direct correlation between the donning of the headscarf and oppression? Where is the evidence to that effect, particularly when it is obvious that the women who were struggling to wear the *hijab* during protests in the run-up to the law were not struggling to remain in the home under the proverbial thumbs of their husbands? Rather, the evidence suggests that these women were at least seeking to interact with mainstream society, whether in education or in public service, while remaining true to their Islamic obligations. Indeed, one of the greatest arguments against the ban is that it will create a *de jure* exclusion of devout Muslim women from mainstream life; a measure which is discriminatory on the basis of religion and of sex, hindering integration, as opposed to aiding it. Symbols are simple articles representing complex concepts; it is important to understand what the latter are before banning the former. A scarf does not always mean female subjugation and a beard does not always express

¹ Parekh, *Rethinking Multiculturalism*, pp. 6-7.

political rebellion.¹

If, however, it is accepted that the correlation is genuine, it does not necessarily follow that the state would be justified in imposing a ban. The French state justified its actions in the manner followed by most liberal anti-multiculturalists: using the fear that social cohesion will fall apart when communities are given too much recognition by public institutions. In contrast, the commission^{2*} advising the French President Jacques Chirac that endorsed the ban on headscarves seemed to think that it was a measure that would aid integration rather than work against it. To this end, within the same report, Chirac was advised to add Muslim and Jewish festivals to the calendar of observed public holidays and introduce *Halāl* and *kosher* meals for Muslim and Jewish students, respectively. In addition, discreet symbols, such as medallions, small crosses, Stars of David or *small Qur'ans* would not be banned.

Such advice, however well-intended, demonstrates some awed thinking, even among the experts advising the President of France. Providing *halāl* food for Muslims and designating Muslim holidays as public ones might very well be a welcome reflection of the influence that Muslims have in French society. However, if one views these measures from within the French Muslim community, the importance of these measures compared to the banning of the headscarf is questionable. Under Islamic law, the eating of food that is not prepared by Muslim butchers under the correct procedures might be sinful, but there might be certain dispensations, especially

¹ Admittedly, this is not the case in the EU at the moment, but the same logic applies.

² The headscarf issue in France is deeply complex and cannot be discussed in sufficient detail here. For further information see, Dominic McGoldrick, *Human Rights and Religion: the Islamic Headscarf Debate in Europe* (Oxford, UK: Hart Publishing, 2006); Joan Wallach Scott, *Politics of the Veil* (Princeton, NJ: Princeton University Press, 2010); and Bowen, John R. *Why the French Don't Like Headscarves? Islam, the State, and Public Space* (Princeton, NJ: Princeton University Press, 2007).

* Reference is here made to the Satsi commission formed by the French government in July 2003 under the name *Commission de Reflexion sur l'Application du Principe de Laïcité dans la République* to look into the "intrusion of religion in public life." Its 67-page report provided the ground for banning Muslim females from wearing the headscarf in public institutions. - Editor.

in the Mālikī school of Islamic law which many French Muslims follow. Moreover, the observance of Muslim holidays is strongly recommended but it is not a mandatory religious obligation.

The wearing of the *Ḥijāb*, however, is recognized by all traditional schools of Islamic jurisprudence to be a religious obligation for all Muslim women past the age of puberty, except within certain company.¹ Thus devout Muslim women who consider it obligatory to wear the *Ḥijāb* would be faced with a choice: disregarding a religious obligation (which would not take them out of the faith, but which devout Muslim women might consider to be sinful), or disregarding their education. If the French state embarks on such a course of 'secular fundamentalism' as the French interior minister characterized an outright ban on headscarves, why would Muslim French citizens favour it over their religion?

It is rather difficult to view the report's recommendations without seeing a reflection of the interior minister's fears, as well as a deep misunderstanding of what certain similar symbolism means for different communities. The report identifies Islam as almost an Arabic version of Christianity and, as long as it remains in that mould, it is acceptable, just as Christianity is acceptable. Hence, Arabic language is to be taught, Muslim chaplains are to be recruited into the armed forces, prisons and hospitals, and so on. However, just as the Catholic Church prescribes what Catholicism is and is not for its followers, Islam has certain mechanisms which delineate what is vital and what is optional for its own followers. There remains an urgent need, and not simply in such large-scale issues, to understand what values and symbols of a particular context mean to people of that context before 'translating' them into our own. It is not enough to recognize what the headscarf is as *we* understand it; rather, the understanding of those who wear it must be understood first.²

¹ This has become a subject of some debate in recent years.

² The headscarf issue in France is deeply complex and cannot be discussed in sufficient detail here. For further information, see Dominic McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (Oxford: Hart Publishing, 2006); Joan Wallach Scott, *Politics of the Veil* (Princeton: Princeton University Press, 2007); and Bowen, *Why the French Don't Like Headscarves*, op. cit.

Without addressing these two concerns, any sort of citizenship project is likely to fail and cause a great deal of damage in the process. Such concerns arose as a reaction to the ‘head-scarf affair’ in France, as articulated by Madame Mitterrand – who ‘saw no reason for banning the *Hijab* and advocated the right to be different and the concomitant celebration of plurality’¹ – and others. Whether they realized it or not, such calls meant that the French state would have to take the step of recognizing that this narrow version of French culture was not universal, and that the state did not have to battle against any difference with the ‘mainstream’ interpretation of that culture. The French political elite were unwilling to admit either and, thus, the headscarf affair continues to reappear in France and in other EU states every so often. The objective truth of the matter is quite simple: there is no neutrality here at all. Rather, one party has a symbol (the headscarf), with a meaning it holds quite sincerely as a matter of faith (modesty and piety in front of God), with another party objectifying that symbol with quite a different meaning (a form of aggression, as the President Jacques Chirac said in 2003).

The fact that this commission argued for a variety of typically multiculturalist measures only shows that some multiculturalist values have truly become embedded in public life. Twenty years ago, such a commission would never have argued for these types of measures, on the basis that it was not the business of the French state to recruit Muslim chaplains into the armed forces, for example. But the logic of the commission was certainly *not* multiculturalist, for it still tried to interpret the minority (Muslims) through the prism of the majority (Christians). Christians need chaplains, so do Muslims. But since pious Christian women do not need to cover their hair, why should Muslims? Obviously, they should not, unless they are trying to proselytize and create public disorder, or so it is claimed. The second model of citizenship, which we might call ‘multiculturalist citizenship’ with more of an emphasis on pluralism and with its own problems emanating from its structural peculiarities, is represented by the current British example.

¹ Parekh, *Rethinking Multiculturalism*, p. 250.

Generally, although not entirely, this type of paradigm does not include an invasive assimilation process, and has more of a resemblance to pluralistic and separatist models than nationalistic ones. It is here that we can see more practical evidence as to why multiculturalism in Britain is still, even after the 7th July bombings in London, a reality. The subsequent fear relates to social cohesion and whether the concept of citizenship is constructed strongly enough to sustain a stable and cohesive society, the bare minimum requirement of any real civil society as mentioned above.

Two examples illustrate this system at work: the exemption for Sikhs from wearing crash helmets, and the funding of faith schools. In 1972, the British Parliament empowered the government to legally require motorcyclists to wear crash helmets; however, this meant that Sikhs would have to remove their turbans, a measure they were reluctant to take. Four years later, the Parliament amended the law, allowing Sikhs to keep their turbans, but they did not use the principle of 'cultural pluralism' to exempt Sikhs from the measure. Rather, they decided that since the primary concern of the law was to ensure safety for the driver, and that the turban was a sufficient substitute from a safety perspective, it would be permissible from that standpoint to allow turban-wearing Sikhs to drive motorcycles. Such a solution was not theoretically too problematic: the purpose of the law was safety and Sikh turbans were sufficient substitutes. In 1989, however, the Employment Act exempted Sikhs from wearing safety helmets on construction sites, with the proviso that, should any injury occur, the injured party should accept responsibility for any additional injury that occurred because of the lack of a helmet. This solution took the standpoint of 'safety' to a new level, one that created a situation whereby "[t]he burden of additional injury is borne by those who for cultural reasons choose to meet the minimum requirement in their own different ways."¹

The law took the position that in a limited fashion, the individual might choose to place his or her own health in jeopardy in

¹ Parekh, *Rethinking Multiculturalism*, p. 244.

order to safeguard his or her ethnic identity. It is important to note that the law did not allow this as an absolute right; this solution would likely never have been endorsed had the turban not provided some substitute protection.

We should also recall the argument that led to the British Government finally funding Muslim-faith schools from the public treasury. Currently, a limited number of Muslim schools are funded by the UK on a basis similar to Catholic, Jewish and Anglican schools; however the risk of the spread of ‘fundamentalist Islam’ is being cited as a reason for withholding funds. At best, this claim is an exaggeration and, at worst, a fallacy. As mentioned previously, if it were true, non-state funded Muslim schools would have been closed down a long time ago. The state, however, carried out its policy on a basis of equal opportunity in recognition of difference. The principle was to provide for a good education that would allow students to pursue their lives in the UK on par with the majority, while still providing for variations according to their chosen belief system. The curriculum would be set according to certain standards which are sufficiently universal enough for both the mainstream and the Muslim minority to agree upon – a situation that would satisfy all parties involved. Some actors within the state are now questioning how best to carry this philosophy out, and at the time of writing this chapter, the UK’s Department of Communities and Local Government were beginning a review of training for faith leaders in the Muslim community, but the fundamental principles hopefully remain the same.

The UK approached its diversity issues in these two cases according to the following principles:

1. Equality was to mean ‘equality of opportunity’, which meant respecting differences *to a point*, and not insisting upon complete uniformity. Hence, safety and education were the red lines, but within them, allowances were made. A good example of seeing how the British legal establishment viewed this principle can be found within the case surrounding Shabina Begum in Luton; her right to wear a headscarf was never questioned, although her freedom to dress as she

pleased was curtailed in other ways.¹

2. Where it was accepted that the state did have a role to play,² it was to be based on a position that displayed a certain ‘neutral standpoint’. There was to be a very basic ‘minimum requirement’ which could then incorporate a great deal of diversity, but past that line, the state would not budge. As such, had the schools insisted on teaching a curriculum that would have resulted in students being unable to compete in the general market, the state would likely have rejected funding. Such a rejection would not have been unequal, as the other schools did meet that criterion.

3. But we are still left wondering: what is a ‘neutral standpoint’? Are to assume something is ‘neutral’ just because it is claimed to be so? Or do we have a system by which we can argue it to be so? If we do, in order for it to be consistent, will it not have to be based on some sort of set of principles? In which case, is it still neutral?

And here, we find the same weakness of many multiculturalists as mentioned before, for while they identify the key falsehood (there is no such thing as ‘neutrality’), they have nothing to provide in its place that can be sustained. It is not sufficient to deconstruct lies: the establishment of truth must also be provided. This is the job of the next generation.

Multiculturalist citizenship: the next generation of multiculturalism

Kymlicka notes, quoting other philosophers, “Policies which increase the salience of ethnic identities act ‘like a corrosive on metal, eating away at the ties of connectedness that bind us together as a nation’.”³ Kymlicka himself, a multiculturalist *par excel-*

¹ McGoldrick, *Human Rights and Religion*, pp. 180-204.

² The concept that the state *did not* have a role to play does not appear to have been a serious point of contention in this particular instance, although it would have been a pertinent point to raise; this reflects a fundamental ‘liberal’, and to some extent ‘nationalist’, point of view.

³ Kymlicka, *Contemporary Political Philosophy*, p. 366.

lence, admits that this is a “serious concern.”¹ Whether it is the salience of ethnic identities or religious identities, the fear is that it will displace and make irrelevant the common identity that is the basis of citizenship, leaving the state to crumble into a “spiral of competition, mistrust and antagonism.”² In this sense, Kymlicka’s liberalism overrides his pluralism, and justifiably so: but still a multiculturalist liberal.

We have discussed above how the analysis of the multiculturalist school has been generally correct, but that there is a key weakness. In its desire to properly deconstruct that which is unjustifiable, it has left out one key task: the construction of that which is justifiable. And here, plainly speaking, the de-reification of the ‘national identity’ by the multiculturalist school has left a huge gaping hole where national identities used to be.

We do not live in a world where identities have been made completely irrelevant, and indeed, it does not follow that a stable society really needs that to happen. On the contrary, identities are the means by which values are sustained and morals are passed on to individuals who become citizens. As yet, nothing better than the overall concept of ‘national identity’ has really been proposed – perhaps, just as democracy ‘is the worst form of government, except for all those other forms that have been tried from time to time’ (Winston Churchill), so ‘national identity’ is our best alternative.

The question is: who gets to define that national identity?

Now, obviously, not everyone in the world is going to be able to. On the contrary, if that were the case, then we would stop to see countries and cultures. It does not make sense that Chinese who live in Beijing are able to define the culture of London, for example.

On the other hand, what about Chinese who live in Beijing who want to migrate to the UK? This seems like a simple enough question. If they come, under the law, then they should be able to

¹ Ibid.

² Ibid.

come into a country that allows them rights and responsibilities and if, over time, they contribute and so on, they will become citizens and then become part of the story of the UK.

But there are two things here that are also questions, which we do not always see. The first is: who gets to have the ‘original blessing’ (opposite of original sin) of setting the parameters of that national story (that defines the national identity)? And if one asks, why is this important? The answer is predictably: because we must start from *somewhere*. To repeat the point again, there is no such thing as neutrality in this regard. There is *always* going to be an inbuilt kind of preference, even in things like public holidays being on some days (owing to historical, cultural or religious reasons). So, who gets to do it? The second is a corollary question: are all people in any given country ‘equal’ in terms of community capital to define the national story?

Now, the standard assumption is: the majority gets to decide that national story. But this is not particularly good enough. Who will protect the minority from the tyranny of the majority? Also, what sort of majority are we talking about? Is it demographic majority? Political and economic majority (which can also be in the hands of the minority)? These are questions to be pondered on.

If we admit that today’s pluralistic world *requires* that each nation state have some kind of multicultural citizenship, we can move beyond that to talk about *who* gets to formulate the public political culture of that multicultural society. For me, it is rather self-evident that we need one – if we do not have one, we run the very real risk of ethnic and civil strife, the likes of which we have seen so far in the world through genocide and ethnic cleansing (and lesser destructive forces). So we get to: who gets to formulate that? Any sustainable public political culture must be underpinned by values, and values come from historically based national cultures that already have stories behind them.

Note: *one* political culture, but *plural* values, and also in terms of historically based national cultures *as well* as stories, both within the same culture, groups of cultures and complete distinct cultures. This is the point of the multiculturalism process – that we

have respect for those different stories, and that each of those different stories can provide us with values for the public political culture. Multiculturalism without that public political culture, that single, national story, is just a process without any sustainable output. It is like a factory line that keeps on running, but with no product actually in sight – because no one knows what the final product is supposed to remotely look like.

Those different stories are characterized by a historical identity that relates to values. This is perhaps the most important thing. I would not limit it to ethnic groups, but also to religious groups, as well as gender – it is not sufficient that there are simply a number of people. They have to have a history, because history is the test that a culture is actually a sustainable set of ideas. This presupposes, incidentally, that each community that relates to each of those stories is actually sure of itself. It is insufficient having a community that just labels itself, without knowing its history and what has actually produced them in terms of their past. Otherwise, how can they promote their values, and what makes them special (just as special as anyone else) in this family of peoples and individuals? This applies, for example, to the Malays in Malaysia and to the English in Britain – they do not have the same sense of ‘self’ that the Chinese in Malaysia and the Scots in Britain do. They certainly have an identity and a story that should be part of the national story of each of their countries (Malaysia and Britain), but if they do not know it and educate themselves in those identities and stories, how can they properly engage in a process of creating and recreating the nation, which should be a continuous process in any society?

But this still does not get us to the final query: who gets to define the public political culture?

If we assume that:

a) the public political culture should be based on cultures (whether ethnic, religious or whatever else in terms of what is based in a set of ideas encased in history), b) each of those cultural groups have to be sure of themselves and their own stories, and c) the cultural groups have to be resident within the countries themselves then, d) does it follow that all of those groups become

a part of that process of defining the public political culture?

Yes, with a sense of proportion, and with an awareness of *how* those groups came to be there: proportion meaning that the *starting position* (and there is a starting point, that is not neutral, no matter what we try to fool ourselves into believing) of the public political culture belongs *first* to the original inhabitants of the land. Then, it becomes a point of democratic inclusion of the later arrivals – and those later arrivals should have a legitimate arrival point. Otherwise, their ‘nation-capital’ (i.e., their ‘wealth’ in creating the national culture) is diminished.

Let us make the point clear with a fictitious example: Stan is a country of Stanians. They have a fully active historical memory as Stanians, although they (like pretty much everyone in this world) have known diversity as a natural way of life. In their history, there are plenty of records to suggest that many Nonstanians came into the country, and settled there, adding to the diversity of the country. The Nonstanians generally kept to their identity as Nonstanians, but Stanian culture was sufficiently tolerant that it allowed them to gently and organically become part of the story of Stan. Now, Stanians are the majority, and rightfully so; they did not kill off the indigenous inhabitants, even if through time they changed religions and thus affected the culture. Nonstanians are the minority, but if not for the fact that they are demographically the minority, they would have as much right as Stanians to define the story – they also did not come except with the permission of the inhabitants.

But then, for example, Stan is invaded by *Imperium*. *Imperium* then brings in a huge amount of Antistanians, who then begin to demand the right to define the public political culture of the country.

Now, if the Antistanians became the majority, this becomes a moot, academic discussion. After all, this is what happened to the United States – the majority of present citizens originate in settlements which did not have the welcome (let alone the permission) of Native Americans. That is the unfortunate reality of the Native American story – it essentially disappeared as a powerful reality in its own land. But as long as the Antistanians are not the majority, then, I would argue, the Stanians have the moral and strategic right

to resist the changes to their public political culture due to invasion. If, for example, G.W. Bush had settled millions of Americans in Iraq, I would argue multiculturalism would reject any accommodation of them or their symbols in the national story. Their 'nation-capital' is by force of arms – and that cannot be the basis for a just and sustainable nation, for as long as is humanly possible.

Now, how does that apply in Europe? Does it apply to the 'demographic invasion' of Muslim communities? Is the fear of Eurarabia a justifiable one, and should European countries consider themselves similar to Stanians before being invaded by *Imperium*, or Iraqis in the above scenario?

I would argue that Europe is more in the former category. If the Muslim communities of Europe were actually white, Christian and well-off, and we should be honest, none of this talk about 'identity crisis' and 'Eurarabia' would even be a subject of discussion, even if they did originate in Arabia or Timbuktu for that matter. The real issues occur because of a historical relationship with Islam as a powerful neighbouring civilization (which sometimes did come into conflict with non-Muslim parts of Europe), and lack of capacity in European societies in terms of dealing with racial diversity (which it never has before, although many other societies have done very well in this regard in history) and because of the fact that most of the communities that arrive from the Muslim world are poor, which creates a grassroots backlash from indigenous people who lose their jobs in this free-market economy of competitiveness.

In the European situation, the invasion occurred the other way around. Had colonialism never taken place, it is doubtful that more than a fraction of migrant Muslims would have come to Europe. One can look at the numbers right now: most migrants in Europe in general are themselves or their descendants an outcome of colonial subjects. Take them away, and you have very homogenous societies in Europe. Beyond that, and this is also important, these communities were *welcomed* to come to Europe because Europeans wanted them to fill in the gap with regards to cheap labour. Put these two factors together, and it is rather unconscionable for indigenous Europeans to now remove the right

of migrants and their descendants to play a role in the construction of the national story and the public political culture based on that national story, even while indigenous Europeans have the historical right of defining the 'starting position'.

Thus, one key thing remains for our discussion. What is the 'mainstream' basis of? Who decides what the basic values of the state actually are? We no longer live in a certain moral universe, where the Church can lay down those limits (or any other religion); such an approach simply no longer applies in this time and certainly not in post-Christian Europe. But we cannot be fooled into thinking that there is not some sort of void there; it exists and if any political philosophy is to go beyond theory and exist as action, it has to take that into account.

As Olssen notes regarding the fourth principle of the Parekh Report on multi-ethnic Britain (the first being 'equal worth', the second identifying citizens as both individuals and members of communities, and the third affirming the principle of 'difference'):

But, just as diversity is important, so, a fourth principle asserts, every society needs to be cohesive, 'and must find ways of nurturing diversity while fostering a common sense of belonging and a shared identity among its constituent members'.¹

European societies have generally, through a variety of historical processes, found a way by which this social cohesion can be accomplished. The liberal concept of the 'citizen', as a way to ensure a formalized link between two completely different types of individuals in a particular territory, is the latest stage. This concept is taken seriously all over the EU and affects every institution in some way or another. In institutions in France, the 'liberal state' *par excellence*, it means that citizens are treated as individually equal, in the sense that they are the 'same', without note to difference or differential treatment (save in some instances vis-à-vis gender and age). This is in contrast to the type of citizenship in other EU states (such as the

¹ Mark Olssen, "From the Crick Report to the Parekh Report: Multiculturalism, Cultural Difference and Democracy: The Re-Visioning of Citizenship Education," *British Journal of Sociology of Education*, Vol. 25, No. 2 (2004), p. 184.

UK where the concept is not yet fully developed). It is the driving force, for example, behind the *Hijab* issue, but it is also the impetus behind the duty in French law that a citizen is legally liable to help another citizen when his life is in danger.

The citizen is the basis of society and, thus, fraternity between citizens is demanded, although in different ways than it is in other communities. In general, the liberal definition of a good citizen as an individual that seeks the promotion of his own interests without infringing upon the rights of any other citizen holds water in Europe. If the citizen is the basis of the community, then likewise, the full member of a community is a citizen.

Therefore, the logical and necessary next step, as identified by the progression of the classical multiculturalist discussion to the citizenship-civic virtue debate, is to identify what it means to be a citizen. It is not sufficient to declare that justice demands that differential treatment be employed in certain cases for it to occur; the central axiom of liberal concepts of citizenship requires adjustment. In his academic work on the issue, Olssen cites the scholar Young¹ saying:

[T]he ideal of universal citizenship embodied in the social democratic conception incorporates a sense of universality as (a) generality, and (b) equal treatment.²

‘Generality’ in Young’s thought means ideals that transcend the differences of the groups; what those ideals are remains contested. Indeed, it is doubtful that any final answer can be unequivocally reached; different contexts refer to different things. Some answers refer to institutions. For example, the final test of a citizen in the United States is his or her acceptance of the American Constitution. Even murderers and rapists remain citizens; but a person who rejects the constitution is, theoretically, no longer a citizen. In the EU, the basis of citizenship is very much a topic of discussion.

¹ Iris Marion Young (1949–2006) was Professor of political science at the University of Chicago and affiliated with the Center for Gender Studies and the Human Rights programme there. Her research covered contemporary political theory, feminist social theory and normative analysis of public policy. – Editor.

² Ibid., p. 181.

As noted elsewhere, a recent Charter of Rights is designed to set the baseline by which an individual can be judged a European citizen. What this baseline is or should be remains a subject of great debate: what values are truly European?

In a world where geography has become less and less descriptive of culture and belonging, where communication over vast distances has become ever more instantaneous, and where cultural borrowing and replication has exponentially increased (and not, as some might erroneously say, just begun), the world may be in dire need of those minimum standards to be drawn, whether globally or regionally.¹ As Olssen states, "Certain common provisions, then, must underpin difference."²

However, while it might be relatively easy to arrive at consensus on procedural values (i.e. basic preconditions for democratic dialogue), substantive values are not so easily agreed upon; hence, Olssen's criticism that the Report did not identify in detail *what* those values are.³ The French and German ban of the *Hijāb* in certain areas of public life may be unjust, but the French, in particular, would disagree; obviously there is a problem with using the idea of justice in abstraction if it means quite different things to different peoples. A national identity, built on common values, is a vital necessity for a sustainable theory of multiculturalist citizenship.

This is particularly relevant for our context in European societies, where the far-right is gaining prominence again, in part *precisely* because there has not been an adequate alternative provided for the narrow national vision that the inheritors of the assimilationist perspective have provided as the basis for citizenship. That is why multiculturalist citizenship has to take into account the need for a national identity for the majority: for the minority, it also provides them with something to integrate *into*. Without such a national vision that properly incorporates both the minority and the majority, we find minority communities at a bit of a loss in terms of

¹ Olssen notes Andrew Sharp's thought in this regard. Olssen, "From the Crick Report to the Parekh Report", p. 186.

² Ibid., p. 186.

³ Ibid., p. 185.

satisfying their need for belonging in their society.

This search for common values is already underway in many quarters;¹ the *Crick Report* notes that it is a 'main aim' of the whole British community² and presumably for all societies that seek social cohesion on a liberal pluralistic platform. In this truly difficult task, the minority and the majority often meet as equal partners, as they should. Without equal access for all sectors of society to contribute, the search for common 'civic values' becomes a public relations exercise of the dominant segment of society; each group must have the power to contribute to the discussion in order for it to be authentic and credible.

This is predicated, however, on the assumption that not only should the majority recognize the rights of the minority, but the minority should also consider the duties it owes the majority. Or to put it another way, a consideration for the stability and cohesiveness of the community must be balanced by respecting difference and diversity; otherwise, social disorder is likely and, in such a situation, respect itself becomes irrelevant. The two concerns do go together; they cannot exist without each other; the difficulty, which we must all admit from the outset, is deciding what those concerns actually entail in real life. From this author's standpoint, the least negative way to do this is to increase democratic participation, so that all voices can be heard, but that all voices are given the power to speak, and to speak in the way that they choose to speak, without being forced to sound like someone else. This is not semantics, but a very real and fundamental issue; the power to be heard in the public sphere as a representative of a national vision is currently held by a very select few in society.

It is at this point that multiculturalist citizenship has to make a choice: it either becomes the process by which that national vision can be arrived at *or* it can contain within it the philosophy behind that national vision. On the other hand, even if multiculturalist citizenship stops at the demand for a national vision behind a national

¹ See *ibid.*, for an attempt to locate a thoroughly multiculturalist approach to a liberal citizenship educational curriculum.

² Cited in *ibid.*, p. 183.

identity without actually formulating some thoughts for that vision, one can still offer some thoughts of their own in that regard as food for thought. That national vision cannot simply be a list of legal requirements: it must be something that can satisfy the human need, displayed so many times in history, and no less today, for belonging to a story larger than themselves. One could argue that here, religion in general does in fact have a pertinent role to play, with religion fairly widely defined. Religion, historically, has been the repository of core values which all civilizations have had. This is, ironically, what many assimilationists have been saying all along: belief in religion may not be necessary, but some of the values of religion (in the European context, pre-eminently displayed in the idea of 'love of neighbour') are virtues that are not meant to be kept solely within the church, the synagogue, the mosque or the temple, and are not discriminatory towards non-believers, or even rejecters of faith altogether.

What is required in that national vision is a *weltanschauung*: a worldview that is rooted in the story of the country; that is no small demand, and we have to be cognizant of that. Modernity has successfully managed to kill the idea of a *weltanschauung* based on some set of sacred values in some way, and post-modernity has provided the burial casket.¹ But now it is difficult to ignore that there is a void in its place, and which has provoked a reaction among philosophers in the West and the Muslim world.²

That void is not about to be filled overnight, but one might posit a way forward in that regard. At present, not in the UK, nor anywhere else in the European Union, has any continuous or permanent institution been set up for precisely the purpose of elaborating upon a world view that is suitable for a European country in this day and age. There is no reason why such an institution could not be established, whether on the national level or on the Euro-

¹ Syed Muhammad Naqib Al-Attas, *Prolegomena to the Metaphysics of Islam: An Exposition of the Fundamental Elements of the Worldview of Islam* (Kuala Lumpur: International Institute of Islamic Thought, ISTAC, 1995), pp. 25-27.

² See the works of Al-Attas for an Islamic representation (ibid.) and Guenon for a more Western reaction (Guenon, *Crisis of the Modern World*), although Guenon died a Muslim.

pean level. In the UK, the heir to the throne and thus the head of the Church of England, Prince Charles, has already announced that he would prefer to be the 'defender of faith' rather than 'defender of *the* faith', indicating his pluralistic attitude as the heir-apparent to the British head of state. Now, leaving aside what this might mean for Anglicanism (and one can imagine it would have some effects which should be accounted for), perhaps such a figure could preside upon the foundation of some sort of institution that would bring together humanist philosophers and theologians of various persuasions committed to the idea of a national identity. One would hope there would be enough common ground to come to something of a worthwhile philosophy behind a national identity. Such an effort would not suddenly turn the UK into a theocracy, but it would add a voice, that would be plural in nature, in the discussion around the question of 'what does it mean to be (fill in European country identity of choice).'

One might argue that both the idea of a national identity, as well as the thoughts above that might underline the philosophy of the national identity, go against many multiculturalist theorists, particularly those with a 'secularist bias'. That would be true: many do indeed argue, both in support of multiculturalism and as evidence of how awed the school is, that multiculturalism's final victory is the creation of a post-national (i.e., the absence of a national identity) state. But just as culture itself is made through change, the same can be said (even more so) for multiculturalism. The project of multiculturalism is not revelation or revealed religion: it is interpretation and reason, and as such continues to be developed. This in itself is no sign of weakness, but of strength, if it has a sense of continuity. So far, it shows that continuity in the writings of the multiculturalist school as shown above.

Not too many years ago, multiculturalism was concerned with critiquing the traditional demand directed at ethnic minorities to culturally assimilate: no more is that the emphasis. Multiculturalism used to focus its energies on finding a space within liberalism for the consideration and recognition of groups: that is no longer required as much as it was before. Now, the main chal-

lenge for multiculturalism is finding a space within the concept of citizenship for multiculturalism, and within multiculturalism the space for the concept of citizenship, which might be called the struggle for ‘multiculturalist citizenship’.¹

A Framework for Multiculturalist Citizenship

In light of all of the previous discussions, it is clear that three fundamental questions must be posed in order to come to an appropriate theoretical framework: 1. Should states be multiculturalist? 2. If so, how should they be multiculturalist, in light of the diversity of the multiculturalist school? 3. If the state is multiculturalist, what is the basis of citizenship?

On the first question, it seems there is little in the way of an alternative at hand for the modern age in Europe. Multiculturalism is, to date, the most developed framework in European societies for managing this diversity, and the current trend is heading firmly in that rather broad direction: the idea of a narrow and forced assimilation process is no longer entertained as a viable option in the EU. Even the historical detractors of multiculturalism have to make their arguments in the contemporary arena within the broad tradition of multiculturalism. To put it another way, multiculturalism in principle is not under debate; what is under debate is precisely what sort of multiculturalist political framework should be employed, even if we no longer refer to ‘multiculturalism’ as a name. When commentators advocate the ‘end of multiculturalism’, they will not get further than the reinterpretation of multiculturalism, which is already happening from within the multiculturalist school.

But we cannot go further without understanding *how* these states should be multiculturalist. We have discussed above how it is

¹ Modood has argued for the term ‘multicultural citizenship’ which essentially means the same thing in his terminology: see, Tariq Modood, “Multiculturalism and Groups”, *Social and Legal Studies*, vol. 17, no. 4, 2008, p. 549. Nevertheless, I choose to use ‘multiculturalist citizenship’ for two reasons: it is grammatically more consistent with my usage of ‘multiculturalist’ and ‘multicultural’ above, and it also distinguishes it from the ‘multicultural citizenship’ proposed by other authors who do not share the view of secularism outlined here.

rather impractical to consider that religiously inspired identities are not suitable for inclusion in the considerations of a plural society. Individuals are not made up only of certain types of identities; they have several, co-existing identities, on different levels. Any identity that might affect the cohesion of the community must be considered. The only question, therefore, is whether or not religiously-inspired identities are important enough with regard to the individual. If they are negligible, then neither justice nor social cohesion demands they be considered in any event. Otherwise, secularism need not be so reactionary to exclude them; that is neither fair nor equitable. Certainly, it may be necessary to oppose and reject some types of diversity; 'tolerance' of difference is not an absolute human right. In all things there are excesses, and respect for diversity must be balanced by a concern for the cohesiveness of the community upon certain common and consensual values that provide for a stable and secure society. This includes, in the medieval era, the killing of baby girls (because of the desire to have sons), or, in the modern world, forced marriages (without consent, as opposed to arranged marriages with consent). Such differences are not tolerable, and do justify state intervention, but in this we are fortunate, because in general, such extremes are extremely rare.

The 'eight ways' scheme of the philosopher Jacob Levy¹ is a useful example of how the more pluralistic branch of the liberal tradition can be employed in order to ensure that the distinctiveness of all communities is respected within a concept of citizenship. This scheme includes: 1- exemptions from those laws which penalize or burden their religious practices; 2- assistance in doing things the majority does unassisted; 3- self-government for certain types of communities (including national minority groups); 4- external rules restricting non-members' liberty in order to protect members' culture; 5- internal rules for members' conduct that are enforced by ostracism and excommunication; 6- incorporation and enforcement of traditional or religious legal codes within the dominant legal system; 7- special representation within government institutions; and 8- symbolic recognition of the group within the

¹ Kymlicka and Norman, *Citizenship in Diverse Societies*, pp. 25-30.

larger state community.

The European and Muslim context in this effort provides certain examples. Legal exemptions have already been provided to some groups, the most commonly quoted being special consideration for Jewish shopkeepers with regards to Sunday-closing laws. Some Muslim groups have also requested exemptions from certain educational regulations, in order to raise their children in an educational setting that is not against their religion.

Muslim groups around the EU often seek assistance, particularly with regard to education and the establishment of faith schools. Some scholars, such as Callan,¹ support such policies on the ground that public funding only for secular schools is discriminatory, and that the current ethos of 'common schools' (i.e. non-religious secular state schools) may promote bigotry vis-à-vis minority groups. In his work, Callan quotes the Swann Report, which suggested that in the UK, existing state schools should include a pluralistic religious ethos, so that Muslim children would have no reason to go to separate schools. To this end, another academic, Haldane, ripostes that "if the host society has so little respect for its own culture as no longer to require transmission of its religious traditions and the associated system of values, might one not doubt the seriousness of its regard for Muslim and other essentially religious immigrant cultures?"²

However, Callan's suggestion can easily counter Haldane's objections in an appropriate manner, which do not really have much resonance unless there is no role whatsoever for the state in education. As it stands, there are minimum curricula imposed on all schools funded by the state, regardless of whether they are 'state' or 'faith' schools, in order to ensure certain minimum standards of education. This can continue to be the case, without detriment, even if the emphasis on certain subjects differs from school to school, provided that *all* children have realistic and equal access to any school that possesses state funding. This al-

¹ Eamonn Callan, "Discrimination and Religious Schooling", in Kymlicka and Norman, *Citizenship in Diverse Societies*, pp. 45-67.

² Cited in *ibid.*, p. 57.

ready exists, in part, in the Indian educational system, where if there is partial funding of the school, there can be no discrimination vis-à-vis entry requirements, and no compulsory religious education; the caveat, however, is that the more the state funds, the less religious education is permitted.

If the middle ground means, as scholars such as McConnell suggest,¹ that there would be partial funding from the state only financing the non-religious classes (such as mathematics), then so be it; but such a policy would have to be applied across the board, both to 'secular' and 'religious' schools. The importance of ensuring that children are well-educated, as McConnell notes, is great. Such an arrangement would, however, absolve the religious schools from any responsibility to focus the religious education in a manner that assists social participation rather than marginalization.

Other scholars, including Borrows,² argue that assistance is not only justified on the basis of the existence of racism or historical disadvantages, but also on the ground that such policies might enhance the sense of citizenship among minority groups, thereby making integration easier. Again, this is a reasonable position provided that the minority groups ensure that they use their particular and specific agenda to further integration into the mainstream or, at a minimum, do not advocate the reverse. In this way, the concern that 'minority rights will crowd a common citizenship identity' may be alleviated.

How all of this will progress in the future is uncertain. It is certainly not beyond imagination that a single political entity will have a plurality of legal systems in some cases. Some regulations that apply to women (e.g. maternity leave) do not apply to men and, more directly analogous, Israel and India differentiate personal status laws according to religious affiliation. This is how religious diversity has been accommodated in those states to some degree, but not without difficulty: in Israel for example, one

¹ Cited by E. F. F. Spinner-Halev, "Extending Diversity: Religion in Public and Private Education", in Kymlicka and Norman, *Citizenship in Diverse Societies*, pp. 80-82.

² John Borrows, "Landed Citizenship: Narratives of Aboriginal Political Participation", in Kymlicka and Norman, *Citizenship in Diverse Societies*, pp. 326-342.

of the most poignant points of friction in the Jewish community is the objection of secular Jews to the near total control of the Orthodox Rabbinate over personal laws for Jews, regardless of individual religious commitment or following.

Special representation within government institutions for particular communities, Levy's 'seventh way', is a particularly controversial measure, which finds opposition in various forums. The Cypriot case takes community identification as the basis of all government, following as it does from British colonialism and the Ottoman state system. In its modern form, such identification means that, at present, there is no place for non communal citizens in the state structure. Muslims as a religious community, and other religious communities in the EU, are not calling for similar quota-based political representation in democratically-elected bodies. However, where appointed bodies are also a part of the system, such as the House of Lords in the UK, in order to reflect the makeup of society as a whole (rather than only those who come out to vote), a number of entities have called for Muslim representation. Modood suggests that such a measure may not necessarily be damaging; on the contrary, it may be 'more conducive to social stability and intergroup harmony' in certain cases. Various groups have already sought political representation by sectional representation in existing political parties or institutions, in the same way that other groups, such as women, Jews and Africans have attempted.¹

Less difficult measures to recognize religious communities in order to induce social cohesion are also wide open. Going beyond Europe and looking at the Coptic community in Egypt, for example, reveals a community that has long had the right to take their religious festivals as additional days off from employment – the bare minimum, some might say, that a state that respects and appreciates its pluralistic citizenry can do. Recently, however, the Coptic festivals were designated as national holidays, further recognizing Copts not only as a tolerated minority, but as an integral

¹ Modood and Buchanan, "Should the Church of England be Disestablished?" p. 187.

part of Egyptian society. The effect measures such as these may have on the enthusiasm of minority communities to participate in the mainstream should not be underestimated, as they serve a dual purpose: getting the mainstream to appreciate the minority, and getting the minority to accept itself as part of the mainstream.

In order to remain consistent to what has already been written here about the need for a national story, one could and, indeed should, assume the need for a national identity based on a national story. The 'ninth way', thus, is a prescription about how to include (and not exclude or ignore) the full participation of minorities in the continual construction, and reconstruction, of the national story. That national story must be based on inclusion, as well as fairness, which brings together majorities and minorities, and it should also assume that this story is necessary for both the majority and the minorities: this is the mechanism by which societies in crisis are stabilized. And if we have learnt anything from our discussion, it is that societies in modernity are indeed in crisis. The security discussion only goes to show how the concerns can be made even more manifest in a time of a crisis.

Conclusion

Like Muslim juridical theorists who are trying to take into account the effect of modernity on their jurisprudence, European political philosophers are recognizing that traditional understandings of identity and belonging are no longer valid in a Europe defined by new circumstances. The dynamics of immigration, EU integration and globalization have raised new questions surrounding what is meant by the 'European identity', and the debate is still very much open.

In general, the multiculturalists have 'won' the first argument: there is almost a consensus that there should be genuine respect for diversity in societies. The second phase is now underway: how *much* respect should be given, and how does this relate to the need for a common citizenship? On what is that common citizenship, a component of a cohesive society as far as Europe is concerned, to be based? Such questions are certainly relevant for Muslim communi-

ties which are diverse in and of themselves, and which often pose the greatest challenges to the debate through their various ethnic origins and also their value systems. We have here considered the application of a form of liberal pluralism, whereby a useful interpretation of multiculturalism is used to uphold the principle of respect for diversity, as well as a concern for a sustainable common citizenship, necessary for the cohesiveness of modern European societies. The deeper question of *what* that common citizenship should be based upon, however, has been left unanswered. Nor have we chosen to go far beyond what states and politicians should do. The civil and social roles in this regard are not our specific concerns here.

At this point in the debate, however, some observations can be made. First: societies are, at once, collectives of citizens *and* collectives of communities. Classical liberalism addresses the former, whereas pluralism addresses the latter; hence, a combination of the two may be most appropriate in European societies. This would mean there is both unity and diversity in both public and private life, but a single, national political culture in the public sphere that is nevertheless drawn from a consensus of societies' many communities. In the final analysis, the concept of 'minority' relates to power, not numbers, and at present, every citizen is a minority, and the state, as it has power, is the majority. The progression towards a citizen-based polity within the EU, as European citizens, but also as citizens of individual member states, provides an opportunity for full Muslim integration into the European sphere. For there is, if properly deployed, a concurrent point of agreement between Islamic principles, as illustrated by Muslim intellectuals and scholars, and between constitutional provisions of civic commitment, as exemplified by European scholars and intellectuals. Tariq Ramadan, the Swiss academic, proposes that by deriving a 'civic ethic' from the teachings of Islam, Muslims will not only find workable agreement with the mainstream, but also be able to go far beyond that.¹

It is difficult to see what alternative to some sort of type of national identity actually exists, which is essentially what we are

¹ Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2004), p. 168.

discussing here. For some small minorities, other concepts may serve to hold sway, such as some sort of abstract cosmopolitanism, but for the wider group of people in any given society, these are not going to be given wide credence.

The major barrier to be overcome in this regard is the requirement that the minority and the majority consider themselves interchangeable in terms of their civic responsibilities. The majority must view itself as individual citizens of the overall community, and the minority must do the same; in other words, as *citizens*. This is important to note, for it is all too easy for communities to go only half way; to become engaged voices in their societies, but only on behalf of their particular groups. Such usage of citizenship is often abusive, designed to perpetuate the estrangement of such groups from society using other means.

It is true that all minorities must sometimes defend their rights in a group fashion, for otherwise their concerns, as groups, may be ignored. Within limits, this is not only acceptable, but mandatory. In a world where globalization is redesigning cultural expression in societies every day, one cannot expect social mainstreams to adjust without representation of some sort from groups who require accommodations. These adjustments are often the subject of misunderstanding or misinterpretation, but the need exists nonetheless. The risk is that these exceptions may be exploited to the point that a *ghettoization* effect takes place, reducing the citizenship-based identity to a mere convenience, recognized rarely, if at all. One side of the equation seldom solves the problems of communitarianism, sectarianism and 'identity politics'; both the majority and the minority should contribute to its resolution.

Likewise, full integration should not be about groups as groups *or* individuals as individuals, but rather about both. But even this paradigm is not necessarily sufficient for a truly healthy civil society. In coming to an understanding about such a resolution, whether from the point of view of the state or civil society, it is necessary to understand the theoretical framework underpinning the approach of both the majority and the minority to the situation. The reader will probably understand by now that the author's perception of how

these issues are dealt with is fundamentally pragmatic; there are no grandiose programs outlined here for monumental shifts and changes in policy. Nor do I intend here to create one; the interest I have here is a political type of multiculturalism.

All that can really be said of that is that an appreciation of both approaches is appropriate, necessary and valuable for the demographic majority as well as the demographic minorities. The plural of 'minority' is not meant as a throwaway; there are different approaches for different minorities, and no one size fits all in these equations. But all of those equations have to be able to fit into a wider idea of multicultural citizenship which incorporates difference, under a common, national umbrella.

CHAPTER 4

The Implications of *Fiqh al-Aqallīyyāt* for The Rights of non-Muslim Minorities in Majority Muslim Countries

Mohammad H. Fadel

Introduction: When can non-Muslims be Bound by Islamic Law?

Islamic law has shown concern with the rights and obligations of Muslims living outside the territory of an Islamic state from the very moment the Prophet (peace be upon him) established a city-state in Madīnah. The Qur'an (8: 72), for example, stated that the Muslims of Madīnah did not have any *political* obligations toward Muslims who had not performed hijrah, unless those Muslims sought their help on account of religious persecution. Even in that case, however, the Muslims of Madīnah were excused from such an obligation if they were bound by a treaty of peace to the tribe that was guilty of persecuting Muslims in their midst.

Conversely, Islamic law was also concerned with the rights and obligations of non-Muslims living in the territory of an Islamic state, a concern that also began with the establishment of the Islamic state in Madīnah. Thus the Charter of Madīnah set out a system of mutual rights and obligations that bound the people of Madīnah together in certain common pursuits regardless of their religion, while reserving only particular obligations to those Madinese who were Muslims.¹ It is important to note in this re-

¹ Ali Bulaç, "The Medina Document," in Charles Kurzman (ed.), *Liberal Islam: a Reader* (New York: Oxford University Press, 1998), pp. 169-178.

gard that the Charter of Madīnah pre-dates the concept of *dhimmah* in consideration for payment of a tax, *jizyah*, which is alluded to in *Surah al-Tawbah* (Qur'an, 9: 29).

Whether considering the obligations of Muslims in an Islamic state toward Muslims living in a non-Islamic state, or the obligations of non-Muslims to an Islamic state, Islamic law deemed the existence of a compact, or agreement, to be decisive. This distinction, i.e. between individuals who are governed by a compact and individuals who are simply governed by Islamic law on its own terms, gave rise to the historical conceptions of the *dār al-islām* and *dār al-ḥarb*, the former being a territory in which Islamic law applies of its own by virtue of the existence of a Muslim community possessing control over a certain territory with the ability to defend it against hostile invaders. By virtue of a combination of their political independence and moral commitment to Islam, a legitimate basis is given to enforcing law on Muslims.¹

But what about non-Muslims who reside in that territory?

On what basis could Islamic law legitimately apply to them? While they could in principle enjoy the political benefits of residence in an Islamic state, they could not, because of their failure to be Muslims, share in its moral commitments, and accordingly, their commitments to following Islamic law were necessarily *political* rather than moral, meaning, their obligation to follow Islamic law was an incident to the terms of the political agreement they entered into with the Islamic state. To be clear, non-Muslims were morally obliged to obey Islamic law in the sense that God would hold them culpable for failing to adhere to Islam in general,² but we are concerned here with another issue: to what extent did Muslim jurists believe it legitimate to hold non-Muslims liable *in this world* for breaching the substantive obligations of Islamic law?

As evidenced by the controversies among Muslims jurists re-

¹ Mohammad Fadel, "International Law, Regional Developments: Islam," in Frauke Lachenmann *et al.* (eds.), *The Max Planck Encyclopedia of Public International Law* (Oxford: Heidelberg and Oxford University Press, 2010), p. 10.

² See Badr al-Dīn Muḥammad b. Bahādur ibn 'Abdallāh al-Zarkashī, *al-Baḥr al-Muḥīṭ*, edited by Muhammad Muhammad Tamir (Beirut: Dār al-Kutub al-'Ilmiyya, 2000), vol. 1, p. 36.

garding the extent to which non-Muslims residing in an Islamic state were bound by the substantive rules of Islamic law, it was clear that non-Muslims were subject to only *some* rules of Islamic law, but not all. The general answer given by Muslim jurists was that non-Muslims could legitimately be expected to obey those rules of Islamic law which were not based exclusively on an assumption of belief in Islam. Accordingly, non-Muslims could not be held liable for failing to perform Islamic rituals. Likewise, the application of *ḥudūd* to non-Muslims was controversial: some, like Imām Mālik, exempted non-Muslims from the *ḥadd* on *zīnā* (fornication and adultery) on the grounds that the main purpose of this *ḥadd* was repentance, and accordingly it would be nonsensical to apply it to someone who does not accept Islam as true. Others permitted applying the *ḥadd* on *zīnā* to non-Muslims such as Christians and Jews on the grounds that adultery was forbidden to them under their own religions, and accordingly, they were being punished for conduct that they themselves held to be immoral pursuant to their own beliefs.

As for ordinary discretionary criminal law – *taʿzīr* – I know of no dispute that this body of law applied equally to non-Muslims and Muslims. So robust was the conviction that *taʿzīr* applied to Muslims and non-Muslims alike that Imām Mālik, despite his argument that non-Muslims were not subject to the *ḥadd* for adultery, held they could be punished for adultery under the principle of *taʿzīr*. Similarly, Imām Mālik treated the *ḥadd* punishments for *sariqah* and *ḥirābah* as forms of *taʿzīr* in order to apply them to non-Muslims, arguing that these punishments are necessary for the protection of property and life, an interest binding both Muslims and non-Muslims. Likewise, civil law – property, contract and tort – applied equally to Muslims and non-Muslims although tort law, according to all the Sunnī *madhhabs* other than the Ḥanafīs, provided different levels of compensation in cases of wrongful death where the victim was a non-Muslim.¹

¹ Mohammad Fadel, “The True, the Good and the Reasonable: The Theological and Ethical Roots of Public Reason in Islamic Law,” *Canadian Journal of Law and Jurisprudence*, Vol. 21, No. 1 (2008), pp. 61-65.

I provide this brief background simply to point out that the question of the extent to which non-Muslims in an Islamic state are politically subject to Islamic law is a question that has preoccupied Muslim jurists from the earliest days of Muslim legal thinking, and Muslim jurists recognized that the application of Islamic law to non-Muslims required a different kind of justification than that underpinning its application to Muslims. Application of Islamic law to Muslims was simply derivative of their acceptance of Islam as being true. For non-Muslims, the justification had to be more complex, and accordingly, Muslim jurists struggled in formulating principled limits to the application of Islamic law to non-Muslims. And while they generally proceeded to analyze this problem using a case-by-case method, it is clear that they sought out a rationale that would be legitimate from the perspective of non-Muslims. In other words, they articulated reasons for the application of Islamic law to non-Muslims which they thought non-Muslims could reasonably accept for their own reasons.

Accordingly, non-Muslims could legitimately be expected to be subject to Islamic civil law because pursuant to those doctrines they receive the benefits of trade and protection from assault; they were exempt from Islamic ritual law because it would be absurd to ask someone to pray in a fashion whose format they subjectively reject as false; they were subject to the *ta'zīr* rules of Islamic criminal law because *ta'zīr* rules, unlike *ḥadd* rules, are based on the public interest, not solely the vindication of the claims of God, and thus does not imply any belief in Islam as such; and, they were exempt from Islamic requirements of marriage formation and dissolution since they had their own *beliefs* that governed the legitimacy of marriage formation and dissolution. In short, Islamic law strove to provide shared justifications for the application of Islamic law to non-Muslims in circumstances where shared belief in Islam could not provide the basis for legitimacy.

Muslims Living in non-Muslim Territory, *Fiqh al-Aqallīyyāt* and Democratic Citizenship

Muslim jurists, just as they articulated theories for binding non-

Muslims to a subset of the rules of Islamic law, also theorized the conditions under which Muslims could live in a non-Islamic state, or put differently, what were the conditions that rendered emigration from a non-Islamic state to an Islamic one obligatory. This too was a question that entered Muslim juristic discourse from the earliest days of Islam. As was the case with the question of the extent to which Islamic law could bind non-Muslims, so too Muslim jurists differed on the question regarding the conditions on which a Muslim could live in a non-Islamic state. Some jurists articulated a strong rule prohibiting it outright, e.g. the Mālikīs, while others, e.g. the Ḥanafīs and the Shāfiʿīs, produced a more nuanced position which permitted Muslims to continue living in a non-Islamic state if certain minimum conditions were satisfied regarding the ability of Muslims who are resident there to manifest Islam (*iẓhār al-dīn*).

Muslim jurists conceptualized the legal basis on which Muslims would live in a non-Islamic state using concepts similar to that which they used in analyzing the relationship of non-Muslims to the Islamic state: because of the absence of shared belief, the relationship had to be set forth pursuant to the terms of an agreement (*ʿaql*). Just as the relationship of *dhimmah* was contractual and included mandatory and permissive terms, so too the agreement of security pursuant to which Muslims could legitimately live in a non-Islamic state had to meet certain minimum conditions, i.e. the ability to express Islam, but it could go beyond that as well. In the pre-modern period, however, Muslim jurists were mainly concerned with ascertaining whether the minimum conditions for the security of Muslims and the practice of Islam were satisfied so that the Muslim community in question could remain where they were or whether they were under an obligation to migrate to a territory more hospitable to the practice of Islam.¹

In the modern period this historical tradition of analyzing the status of Muslims living in non-Islamic territories has formed the basis of the *fiqh al-aqallīyyāt* – the jurisprudence of Muslim minori-

¹ Khaled Abou el Fadl, "Islamic Law and Muslim Minorities: the Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries," *Islamic Law and Society*, Vol. 1, No. 2 (1994), pp. 141-187.

ties.¹ It is my belief that the doctrinal developments being articulated in the domain of the *fiqh al-aqallīyyāt* – at least with regards to Muslim minorities living in democratic states – should be increasingly relevant to Muslims’ understandings of the rights of non-Muslims in Islamic states.

At the outset it should be understood that the modern relationship of citizen is radically different from the relationship of security which dominated pre-modern Islamic conceptions of the relationship between Muslims and a non-Islamic state. In the latter relationship Muslims promised the non-Islamic state to refrain from violence and obey the non-Islamic states law in exchange for an undertaking by the non-Islamic state to recognize the inviolability of Muslims’ religion, lives and property. So too, the contract of *dhimmah* that Islamic law offered to non-Muslims is extremely circumscribed in scope relative to the modern conception of citizenship. Thus, pursuant to the relationship of *dhimmah*, the Islamic state agreed to protect the non-Muslim for outside aggression as well as to grant her all the substantive protections of Islamic law internally in exchange for the *dhimmī*’s undertaking to obey Islamic law to the extent that it applied to him.² Because neither the Muslim living in a non-Islamic state nor a *dhimmī* living in an Islamic state had any political rights to participate in the government, however, the relationship described by pre-modern Muslim jurists of the Muslim to a non-Islamic state, and of a *dhimmī* to an Islamic state, resembles modern discussions of alienage more than it does citizenship.

The defining feature of citizenship is that it creates a relationship that is not only vertical in the sense that it is between the individual and the state, but also horizontal extending to other citizens through a relationship of equality and shared responsibility for collective governance of the state. A Muslim living in a non-Islamic state pursuant to a grant of security, by way of contrast, was in a subordinate position relative to the legal order

¹ See Andrew F. March, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (New York: Oxford University Press, 2009).

² Fadel, “International Law, Regional Developments: Islam,” pp. 12-13.

there. So too a *dhimmi* in the Islamic state was subordinate because he suffered numerous political disabilities: not only was a *dhimmi* ineligible for public office, but even in areas of civil law he suffered certain forms of inequality, at least according to some Muslim schools of law.

As a citizen of a non-Islamic state, however, the minority Muslim is now an equal and not only enjoys equal rights but is also bound by the same legal duties as those that apply to the non-Muslim majority. Likewise, the non-Muslim *dhimmi*, once he becomes a citizen of the Islamic state, is assumed to be in a position of equality with the majority Muslim population. Or, to put it differently, in a modern state, the concept of citizen is *non-sectarian*, and accordingly, rights and duties apply to all citizens simply by virtue of their status as citizens without regard to their religious beliefs.¹

It is the defining feature of democratic citizenship that because of the relationship of equality inherent in the idea of citizenship, laws must respect the equality of the citizens, with the consequence that laws, to be legitimate, must be of such character that they are capable of being justified to the citizens in terms they can understand and accept as individuals having an equal share of public sovereignty. Again, to contrast this feature of modern citizenship to the pre-modern relationship of protection, becoming a “citizen” of the non-Islamic state would have required the Muslim to abandon Islam, because in states such as Catholic Spain, Catholicism defined the state. Likewise, for a *dhimmi* to be an equal to a Muslim, he would have to abandon his religion and become a Muslim. In dem-

¹ Humayun Kabir, the great post-independence Indian Muslim politician, observed that “In Muslim political thought... lawgivers had allowed for two kinds of situations, a situation in which there is a Muslim ruler and a large number of non-Muslim subjects and also the situation in which there is a non-Muslim ruler and Muslim subjects. But Muslim political thought had not provided for the situation which developed in India today, the situation in which *Muslims are citizens in a secular State*. In this situation, they are neither the sole rulers nor merely the ruled. We can put it another way and say that that they are the rulers and ruled simultaneously... There are not merely ruled, but neither are they merely rulers. They are rulers and the ruled at the same. Further they are not rulers by themselves; they are rulers in association with people of many different religions.” Humayun Kabir, “Minorities in a Democracy,” in Kurzman, *Liberal Islam*, p. 150.

ocratic citizenship, however, such requirements are deemed to be impermissible because it is believed that it is impossible to justify adherence to one religion on grounds that are inconsistent with the equality of the citizens, meaning it is impossible for the state to provide compelling reasons that all citizens can accept to make them adhere to the same religion, unlike, for example, a law that regulates their secular well-being, as is the case with legislation pertaining to traffic laws or laws regulating the market.

Democracy then requires a basis for *shared* justification as a condition for laws to be legitimate. This condition – the need for shared justification – places limits on the kinds of laws democracies can legitimately promulgate. This desire for a shared basis of justification provides an important point of overlap between modern democratic conceptions of legitimacy and pre-modern Islamic conceptions of legitimacy. I have already discussed the limitations Muslim jurists placed on the application of Islamic law to non-Muslims and how that should be understood as a resolution of the problem of legitimacy: on what grounds is it legitimate to require non-Muslims to adhere to Islamic conceptions of justice? The answer Muslim jurists gave was that it is just to hold them to Islamic standards when those standards are comprehensible to them without regard to the truth of Islam. In a similar fashion democratic legislation is considered to be just – even as against the minority who rejected the legislation at issue – because it is limited to matters which all citizens can reasonably accept regardless of whether they profess the truth of certain controversial metaphysical doctrines, e.g. the truth of Christianity.

Accordingly, the possibility of democratic citizenship – rather than mere protection, i.e. alienage – presented Muslim communities living in democratic societies both new possibilities and new challenges. On the positive side of the ledger, the prospect of democratic citizenship offered them the possibility to share positively in the governance of their societies on a basis of equality with non-Muslim citizens. Democratic citizenship also made Muslims' position within non-Islamic states more secure: as citizens instead of aliens, they en-

joyed inviolable rights that could not be compromised, e.g. they could not be deported. At the same time, however, their obligations to non-Islamic states would correspondingly increase: whereas under a regime of alienage they were freer to negotiate what specific commitments they would make to their host state, whether in terms of service in national armies or even the right to apply Islamic law to their family disputes (often times effected through doctrines of private international law), as citizens they would be treated as any other citizen and would only be entitled to exemptions from national law to the same extent as other non-Muslim citizens enjoyed such exemptions.

Muslim Reactions to the Demands of Democratic Citizenship

Because democratic citizenship is a richer relationship than the mere protection contemplated by Muslim jurists in the pre-modern period, whether Muslims could in good faith accept the offer of citizenship raised novel issues in Islamic law. These issues have occupied the attention of a good many Muslim jurists since the early part of the 20th century. The most fundamental issue is that of loyalty (*walā'*) to the non-Islamic state. It was certainly a settled doctrine in the pre-modern period that a Muslim could not give *walā'* to a non-Islamic state, and that doing so was a virtual repudiation of Islam. On the other hand, in the pre-modern period states were not democratic, and many in fact were organized around adherence to a specific religion, e.g., Catholicism, or after the Reformation, a national church, e.g. The Church of England.¹

Given this reality, it is easy to understand why Muslim jurists would conclude that a Muslim who pledged loyalty to such a state necessarily repudiated Islam. That this should also be the case for democratic citizenship does not appear to be clear: a democratic state makes no *religious* demands on its citizens in the sense that it does not require citizens to profess one faith or even faith in general. Accordingly, and unlike the case of Hapsburg Spain, Muslims

¹ See generally, Andrew March, "Islamic Foundations for a Social Contract in Non-Muslim Liberal Democracies," *American Political Science Review*, Vol. 101, No. 2 (2007), pp. 235-252.

could become citizens and retain their adherence to Islam, at least in a *prima facie* sense. The pre-modern discourse, however, was concerned with more than just the ability to maintain the name of Islam; it also was desirous of protecting the dignity (*ʿizzah*) of Muslims and Islam, and was concerned that by living in a non-Islamic state, a Muslim would subject himself to humiliation (*dhull*) because the legal system of the non-Islamic state would not protect his dignity. Finally, there was the concern that by living under the protection of a non-Islamic state, a Muslim would become subject to the “rules of infidelity” (*aḥkām al-kufr*), something that would entail both humiliation and injustice.

In analyzing whether it is permissible for Muslims to be citizens of democratic states, Muslim jurists writing in the field of *fiqh al-aqalliyyāt* have had to analyze these three issues in the light of two concerns: the first is determining what was the purpose (*maqāṣid*) of the various rules of Islamic substantive law which either prohibited or discouraged residence in non-Islamic states, and the second is determining the nature of kinds of claims democratic states can legitimately make upon Muslims, and whether a Muslim could accept those obligations consistently with his Islamic commitments.

Starting with the first question, that of *walāʾ*, Muslim jurists developed a distinction between *walāʾ* as a political concept and *walāʾ* as a religious one. They argued that what Islam prohibits is expressing loyalty to falsehood.¹ Accordingly, a Muslim could not have loyalty to a Catholic State anymore than he could have loyalty to the Roman Catholic Church, because in both cases he would be endorsing falsehood.

Democratic constitutions, however, do not require loyalty in this sense. Rather than requiring loyalty to a specific religious doctrine, citizenship requires loyalty to a set of principles that are accepted as just and which form the basis of the state’s legal system, most notably, its constitution. This kind of loyalty is acceptable because it does not contradict loyalty to Islam as a religious doctrine.

¹ Ibid, p. 249.

In other words, loyalty to a system of law that is not derived from a false metaphysical doctrine but is instead limited to just principles of law does not require Muslims to reject their belief in Islam or their continued religious solidarity with the Muslim community and accordingly is consistent with Islamic commitments. So too the kind of love and affection that arise between Muslims and non-Muslims living together in a just society is also permitted because it is love and affection that is civic in nature and born of mutual cooperation for one another's welfare; it does not require or imply acceptance or recognition of the legitimacy of whatever false views non-Muslims hold about God.¹ The terms of democratic citizenship, however, do far more than simply allow Muslims to be citizens without renouncing Islam. The inherent limits of legislation in a democratic state ensure that Muslims, at a minimum, will be permitted to fulfill certain fundamental Islamic obligations, specifically the open fulfillment of the most fundamental ritual obligations of Islam (*sha'ā'ir*) as well as open teaching of Islamic doctrines to both Muslims and non-Muslims (*da'wah*).

Norms of democratic legitimacy are also responsive to Muslim concerns about dignity. Because democratic states respect the norm of equality in legislation, Muslims can be assured that they will not be singled out for a set of specific norms intended to stigmatize them as separate from, and as less worthy than other non-Muslim citizens.

Finally, democratic legislation does not result in Muslims' submission to *ahkām al-kufr* because the rules governing a democratic state are the product of the deliberative assemblies of the citizens who apply their collective reasoning as citizens to questions of the public good, not questions of religious belief. Such assemblies therefore are not the equivalent of an ecclesiastical council promulgating rules for their followers pursuant to false religious doctrines. In other words, because democratic citizenship does not make claims on a Muslim that require him to repudiate Islam, whether explicitly or implicitly; pledging loyalty to a democratic

¹ Ibid., p. 250.

state as embodied in the terms of democratic citizenship does not constitute a repudiation of Islam in a way that pledging loyalty to a Catholic regime or a Communist regime, for example, might. Two observations are in order here.

First, implicit in this theoretical justification of Muslim citizenship in democratic states are several assumptions. Perhaps the most fundamental is that Islam cannot only survive, but also flourish in a pluralist regime simply by virtue of its inherent appeal as a rational doctrine. Accordingly, a Muslim community in a democratic state will be able to pass on Islam to future generations by teaching them about Islam using methods of rational persuasion. The survival of the Muslim community in a democratic state therefore does not depend on the threat of coercive state sanctions to deter Muslims from exiting the community. Not only is the inherent appeal of Islamic teachings assumed to be sufficient to preserve the Muslim community over time, so too Muslim jurists assume that they are sufficient to attract non-Muslims to Islam on condition that Muslims are in fact given a fair opportunity to present their beliefs to non-Muslim society, a condition guaranteed by democratic society.

Second, Muslim jurists assume the existence of a certain kind of justice that is not derivative of religious conceptions, including Islamic conceptions, but instead can be derived from rational deliberation. This assumption is implicit in the justification of democratic politics as a legitimate kind of lawmaking in contrast to false claims of other religions which claim an ability to disclose the will of God to human beings, e.g., the Catholic Church. Yusuf al-Qaradawi, for instance, refers to such a non-sectarian conception of justice in a *fatwā* of his in which he explains how it is possible for Muslims to engage in *political co-operation* with non-Muslims despite the fact that non-Muslims entertain false beliefs about God.¹ Al-Qaradawi gives many reasons, some of which amount to explaining why difference in belief does not constitute an obstacle as such to political cooperation, but he also explains that it is the Muslims' love of justice (*qist*)

¹ Yusuf al-Qaradawi, *Fatāwā Mu'āshirah* (Beirut: al-Maktab al-Islāmī, 2003), Vol. 3, pp. 189-191.

which motivates them to cooperate productively with non-Muslims, despite the latter's adherence to false doctrines.¹

While al-Qaradawi does not explain what he means by justice in that *fatwā*, it can safely be assumed that it must entail a form of justice that is autonomous of revelation, or else it would not form a common basis for cooperation with non-Muslims. At the same time, however, its autonomy from revelation does not mean that is repugnant to revelation. Rather, this system of non-sectarian, rational justice must in a certain sense be consistent with Islamic conceptions of justice or else Muslims could not appeal to it.

What then would be the relationship of this autonomous version of justice to Islamic conceptions of justice that derive directly from our knowledge of God's will as revealed in the Qur'an and Sunnah?

It seems that the answer is that it *supplements* the non-sectarian conception of justice which is common to human beings regardless of their religious (or non-religious) commitments. In the first instance, this supplementary knowledge binds Muslims in their interactions with one another because they have shared knowledge of these additional (religious) obligations. Obviously, this includes such requirements of Islamic law as ritual law and rules regarding the etiquette of intra-Muslim personal relationships. Negatively, this places limits on the kinds of demands non-sectarian justice can make upon Muslims, in particular, it cannot claim to compel Muslims to disobey God.

What is significant about these arguments is that they go beyond narrow utilitarian-based justifications for Muslim citizenship in non-Islamic (but democratic) states. A utilitarian argument would run along the lines of the following: it is distasteful or even prohibited for Muslims to accept citizenship in a democratic state because it requires them not only to tolerate a non-Islamic state, but also to support it actively. Nevertheless, these harms are outweighed by the benefits accruing to Muslims from living in a democratic state, at least until such time as Muslims are present there in large enough numbers that would allow them to Islamize the host regimes' legal

¹ Ibid.

systems more thoroughly so as to make them more systematically compatible to Islamic substantive law. In other words, the kinds of justifications recently articulated by Muslim jurists in connection with the concept of *fiqh al-aqallīyyāt* go well beyond a justification that rests on a conception of necessity that is, at least conceptually, only temporary and will be revised once the circumstances giving rise to the necessity (the minority condition) are resolved, i.e. Muslims become a majority of the population or otherwise obtain political power.

Non-Muslims in Modern Muslim-majority States

If democratic states fulfill a certain moral ideal of political society that is compatible with Islamic commitments in a non-contingent manner, however, the question arises as to whether the justifications for Islamic endorsement of democratic citizenship set out in the *fiqh al-aqallīyyāt* discourse are not applicable to states with Muslim majorities? While Muslim states, as a matter of their national legal systems, have made much progress in creating legal systems based on equal citizenship, they can still be criticized for retaining substantial elements of sectarianism in their legal systems that are substantially inconsistent with the democratic ideal of *equal* citizenship. The most obvious traces of sectarianism in the legal systems of Muslim states are constitutional declarations that the state's religion is Islam, a statement that immediately gives the polity a sectarian character; other instances of *de jure* sectarianism in Muslim states include rules imposing religious tests for certain public offices, e.g. that the president or the prime minister must be Muslim; and, provisions in a state constitution affirming that the Islamic Shari'ah is "a" or "the" principal source of the state's legislation.

Less controversial, but still problematic, are the existence of sectarian-based personal status laws pursuant to which the applicable rules of family law are determined by the sectarian identity of the citizen rather than his status simply as citizen. (In other words, many Muslim states lack a law of personal status that applies to all of its citizens, and instead, applies different laws to its citizens de-

pending on how the state classifies their sectarian identity.) While this is often times in conformity with the wishes of the non-Muslim minority, it can often be inconsistent with the equal citizenship rights of non-Muslims. Thus, a non-Muslim woman who otherwise cannot obtain a divorce because of her sectarian identity has an incentive to convert to Islam solely to obtain the benefit of a divorce, which might be immediate if her husband refuses to convert to Islam as well during her *'iddah*, or deferred in the event of his conversion by petitioning for a judicial divorce as a Muslim woman. The ideals of equal citizenship in this circumstance would appear to require recognition of a right to a judicial divorce simply on the grounds of her status as a citizen without regard to her sectarian affiliation which, as a matter of her subjective belief, she may or may not accept.

Another way to understand this point is that the concept of equal citizenship requires a positive conception of toleration, not simply a negative one. While pre-modern Islamic law accepted a negative concept of toleration, meaning that it would allow non-Muslims to preserve many aspects of their ways of life even though Muslims believed them to be erroneous, Islamic law did not contemplate positive tolerance of non-Islamic ways of life in a manner that the views of non-Muslims in the Islamic state should be included in formulating the laws of the Islamic state. Another way of putting this is that under traditional Islamic conceptions of toleration of non-Muslims, non-Muslims did not have any right to formulate the terms of the general rules of society, and to that extent, they were completely objects of the law rather than its subjects. This is evidenced by numerous rules of pre-modern Islamic law, e.g. the bar on non-Muslims serving as witnesses in court (*shubūḥ*); the prohibition on non-Muslims being judges; and, the prohibition on Muslims serving as a policy-making minister (*wazīr tafwīd*). Even the right to grant security to a non-Muslim from a hostile state – a right guaranteed to even Muslim slaves, women and minors – was denied to non-Muslim *dhimmīs*.

The political marginalization of non-Muslims eventually led to

severe problems in historical Islamic states such as the Ottoman Empire, most prominently in the form of a sectarian consciousness that allowed outside powers to manipulate one group against another to further its own imperialist interests, even leading to extension of the infamous capitulations to non-Muslims who were nominally citizens of Islamic states.¹ For this reason, one of the main objects of legal reform in the Ottoman Empire was to create a more unified legal system that would be in greater conformity with the ideal of equal citizenship with the goal of creating national solidarity that transcended sectarian affiliation, something that was deemed necessary if Islamic states were to resist (or liberate themselves from) imperialist encroachment. Throughout the 19th century, haltingly at first, and then more systematically, Muslim governments took steps to narrow the distinction between Muslims and non-Muslims in their legal systems. Mehmet Ali Pasha in Egypt, for example, after introducing universal conscription quickly decided to impose that obligation on Egypt's Christians as well as its Muslims. The Ottomans, through the Tanzimat reform, likewise enshrined legal equality for Muslims and non-Muslims throughout its territories and also began to require non-Muslims to serve in its armies.²

While the political reforms of the nineteenth and twentieth centuries were often driven by practical necessity and had a certain ad hoc character to them, a more systematic approach to this problem of reconciling Islamic commitment to justice with a non-sectarian conception of justice was one of the driving factors behind the new Egyptian civil code. According to Abd al-Razzaq al-Sanhuri, Egypt could not be genuinely independent unless its legal system had an organic tie to its indigenous legal system, i.e. the Shari'ah. At the same time, however, its legal system had to be modern and thus required a recasting of the substantive values of historical Islamic law that would make them workable for the

¹ Fadel, *supra* note 80 at p. 35 and pp. 41-43.

² See, for example, Butrus Abu-Manneh, "The Islamic Roots of the Gülhane Rescript," *Die Welt des Islams*, Vol. 34, No. 2 (1994), pp. 173-203.

needs of a modern Islamic state. Significantly, al-Sanhuri believed that non-Muslim jurists were equally competent in working out the details of a modernized Islamic civil code. This was because, in al-Sanhuri's opinion, Islamic law was a universal legal system that had to be able to justify its rules to both Muslims and non-Muslims.¹

Its rules regarding the interactions of citizens, however, had to be revised to make them compatible with modern life, both substantively and in terms of their justifications. One of the methodological innovations al-Sanhuri introduced in the course of his attempt to develop a modern Islamic legal code was the principle that, because Islamic law is universally valid, it was capable of adopting any principle of law that was not repugnant to its fundamental commitments. This principled accommodation of non-Muslims in the juristic project of a modern Islamic code is reminiscent of justifications offered by Muslim jurists as to why Muslims can accept the terms of democratic citizenship in good faith: because democratic commitments do not require Muslims to affirm articles of faith, for example, that are repugnant to Islam, its results are substantially equivalent to Islamic conceptions of justice. Al-Sanhuri's desire to include non-Muslims in his project of a renewed and modernized Islamic legal system, however, was also in his view good practical politics. He recognized the danger to national independence that alienated religious minorities posed, and accordingly, he believed that those elements within the Egyptian religious establishment who opposed full integration of the Copts into the structure of the Egyptian state were just as dangerous to the future of Islam as those Egyptian intellectuals who had become secularists in the mould of Kamal Attaturk.²

¹ For more on Sanhuri and his contributions to modern Islamic law, see Enid Hil, "The Place and Significance of Islamic Law in the Life and Work of Abd al-Razzaq al-Sanhuri Egyptian Jurist and Scholar", Parts I and II, *Arab Law Quarterly*, Vol. 3, No. 1 (1988), pp. 33-64 and *Arab Law Quarterly*, Vol. 3, No. 2 (1988), pp. 182-218, and Amr Shalakany, "Between Identity and Distribution: Sanhūrī, Genealogy and the Will to Islamise," *Islamic Law and Society*, Vol. 8, No. 2 (2001), pp. 201-244.

² See, for example, Nadiya al-Sanhuri and Tawfiq al-Shawi, *al-Sanhuri min Khilāl Awraqih al-Shakhṣiyya* (Cairo: Dār al-Shurūq, 2002), pp. 134-135 and pp. 150-151.

Implications of *Fiqh al-Aqalliyāt* for Non-Muslims in Muslim Majority States

Al-Sanhuri, despite his brilliance as a scholar of comparative law and his substantial expertise in Islamic law, in the final analysis lacked the Islamic scholarly credentials to carry the day, and as is well-known, there continues to be substantial controversy whether al-Sanhuri's code is sufficiently Islamic. What is significant from the perspective of this chapter, however, is that the current discourse of *fiqh al-aqalliyāt* provides substantial normative justification for al-Sanhuri's project of generating a modern system of Islamic law that is able to win the support of all citizens, whether or not Muslim. Just as al-Sanhuri imagined an abstract body of substantive Islamic law that he described as universal and immutable but whose practical and detailed manifestations could change based on time and place, so too jurists involved in the practice of *fiqh al-aqalliyāt* go beyond the particular historical rulings of Islamic law and try to derive from them abstract rules that allow them to argue that the principles protected by these abstract rules are in fact being satisfied by democratic principles.

So, the question naturally arises: if it is permissible to argue that the fundamental goals of Islam are met in a democratic society, why should democratic constitutions be limited to non-Muslim states? Isn't it the case that if Muslim-majority countries adopted legal orders that satisfied standards of democratic legitimacy that such polities would be equally capable to satisfy the requirements of Islam for a just order, if not more so? The concluding part of this chapter will make the case that indeed, just as Muslim jurists have argued that democratic states satisfy the goals of Islam with respect to political organization, so too would a democratic legal order satisfy Muslims' obligations even in contexts where they are majorities.

The first step in making this case is that the distinction between the obligations of Muslims in a minority context and when they are in a majority context ought not to be relevant from the perspective of what Islam deems to be the minimum conditions required for a state to earn the political loyalty of Muslims. Giving

too much weight to the empirical fact that Muslim minorities are politically weak at the present time reflects the continued influence of the juristic division of the world between *dār al-Islām* and *dār al-ḥarb*, a classification that has come under increasing criticism by Muslim jurists in the post-World War II era. As Wahba al-Zuhayli argued in his book *Islam and International Law*,¹ the fact that contemporary international law guarantees the most valuable rights in the eyes of Islam – namely, the right to preach Islam peacefully without active opposition by governments who are to take an officially neutral position vis-à-vis Islam – means that offensive *jihād* is no longer an Islamic requirement. He goes on to argue that the spread of norms of peaceful relations among states, religious freedom, the self-determination of peoples and the prohibition against aggressive war means that the world has become the equivalent of one territorial jurisdiction (*dār*), implying that law (at least public law) ought to be universal. Accordingly, what is significant to *fiqh al-aqallīyyāt* arguments is not the numbers of Muslims in a given non-Islamic state, for if that were the case their obligations would vary depending on the percentage of Muslims in the general population; rather, what is significant is whether the legal order of the state itself guarantees the security of Muslims and guarantees their ability to practise, teach and call to Islam. Once those conditions are satisfied, Muslims are *Islamically* bound to maintain their ties of loyalty to that state even if they gain numbers and thus become politically more powerful.

The same argument applies to states in which Muslims comprise a majority of the population: if the state provides the same guarantees then the interests of Islam are sufficiently protected and there is no need for the state to be structured expressly as an instrumentality for the protection of Islam or Muslims. Just as Zuhayli argued that the need for offensive *jihad* has been rendered obsolete because of the realities of the post-World War II international order, namely, its protection of the independence and sovereignty of states, its commitments to human rights, and govern-

¹ Wahba al-Zuhayli, *al-ʿAlāqāt al-Duwalīyyah fī al-Islām Muqāranah bi-l-Qānūn al-Dawli al-Ḥadīth* (Beirut: Muʿassasat al-Risālah, 1981).

ments' neutrality with respect to Islam,¹ it would seem that the need to have a state dedicated to the protection of Islam would also be obsolete. Ironically, this argument is confirmed by various rules that in the pre-modern period prohibited non-Muslims from exercising power (*wilāyah*) over Muslims.

The juristic assumption motivating this rule was that the non-Muslim would rule based on his or her (false) conceptions of religion, not that he would be applying just law. This would imply that where a non-Muslim citizen is applying or enforcing the rules of what is a just legal system, the mere fact that its officials are non-Muslims does not transform the legal system into an unjust order. The fact that the disbelief of legal officials is not relevant to the justice of the non-Islamic legal order is obvious in the case of western democracies which despite the fact that the overwhelming majority of its political decision makers are not Muslim, the jurists who have developed the *fiqh al-aqallīyyāt* discourse have not allowed that fact to derogate from the normative justness of these countries' political and legal institutions. There is also a pre-modern Islamic precedent in support of this approach: while al-Māwardī holds that non-Muslims are not eligible to serve as *wazīr tafwīd*, they are eligible to serve as *wazīr tanfīdh*. The reason is that the former exercises discretion in the name of the Muslim community, whereas the latter simply enforces rules that Muslims themselves have already made.

The same analysis applies to non-Muslim citizens of a democratic state; whether Muslims are majority or minority of that population, all officials are bound to enforce a law that applies to all citizens and that is the product of their collective deliberation. Such an official, whether he is Christian, Jew, Hindu or Buddhist, is bound to apply this body of democratic law and is not permitted to apply his or her own religious conception of what is true or right. If such an official did so, it would constitute an *abuse* of power for which the law would provide a remedy. In short, a democratic state provides protections against the threat that non-Muslims would use their po-

¹ Fadel, *supra* note 80, pp. 46-48.

litical power to discriminate against, dominate, or persecute Muslims. If that fact can be relied upon to legitimate Muslims' residence in democratic states in which they are the minority, it applies *a fortiori* to states where Muslims are the majority since minoritarian religious communities would be extremely concerned, from a practical perspective, to do anything that would suggest they wish to use their political power to oppress Muslims.

In short, if we accept the conclusion of the emerging discourse of *fiqh al-aqallīyyāt* that democratic political life is sufficient to protect the interests of Islam and Muslims where they are a minority, then *a fortiori* it is sufficient to protect them in circumstances where they constitute the majority. In this latter situation they are even in less need of special privileges from the state to maintain the health of the Muslim community, teach Islamic doctrines, and call others to it.

Not only does consistent application of the principles espoused in the *fiqh al-aqallīyyāt* discourse require their application also to states in which Muslims form the majority, so too does prudent politics. Muslim-majority states should recognize that the existence of flourishing and prosperous Muslim communities in the developed world is in the interests of Muslim-majority countries. Yet, the failure of Muslim-majority countries to adhere to the equality requirements of democracy serves to undermine the ability of Muslim citizens of non-Muslim states to exercise fully their rights as citizens.

Elements of those countries hostile to Islam and Muslims use the persistence of political discrimination against non-Muslims and rules criminalizing or penalizing apostasy are used to argue that Muslims are not morally committed to the prevailing democratic order and therefore are not entitled to its protections. Even though such an argument reduces Muslims to a group rather than treating them as individuals, and as such represents a violation of democratic commitments to equality, this argument has gained and is continuing to gain attraction, especially in Europe. Indeed, the European Court of Human Rights in two decisions, *Refah Party v. Republic of*

*Turkey*¹ and *Shahin v. Turkey*,² has essentially taken the position that Islam is inherently anti-democratic and therefore governments are permitted to take steps to regulate it that would not be permissible with respect to other religions or associations. Recently, a prominent Oxford-based philosopher of law, John Finnis, has begun to make open calls for European governments to create incentives for Muslims to leave Europe, again based on the argument that Islam is inherently opposed to democratic politics.³

Public discussion of such policies, even if they are not adopted in the short-term, are extremely dangerous, not just for the long-term interests of Muslim communities living in the west, but also for international relations. To the extent that jurists like al-Zuhayli have argued that doctrines such as *dār al-ḥarb* and offensive *jihād* are obsolete, it was based on the notion that non-Islamic states are capable of treating their Muslim citizens with respect and equality. To the extent non-Muslim states adopt laws that are overtly hostile to Islam and Muslims, however, al-Zuhayli's argument concerning the secure place of Islam in today's world will appear less and less convincing to Muslims who might begin to listen to more radical voices.

Given the fact that the underlying logic of *fiqh al-aqalliyyāt*'s justification of democracy also applies to Muslim-majority states, and the importance of diffusing even the appearance of a conflict of civilizations, it appears critical that Muslim-majority states take decisive steps to incorporate their non-Muslim citizens into the decision making structure of their states in a manner consistent with democratic norms of equality. The Islamic movements in Muslim states too should make this one of their own priorities. Many individuals in Islamic movements have benefitted from the freedoms of liberal democracy; they should have the unique combination of theory and practice to carry the day against ele-

¹ *Refah Partisi (The Welfare Party) and Others v. Turkey*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, CHR 2003-II – (13.2.03) (Feb. 13, 2003).

² *Layla Sabih v. Turkey*, no. 44774/98 (Nov. 10, 2005).

³ John Finnis, "Endorsing Discrimination between Faiths: A Case of Extreme Speech?" (2008), available at <http://www.ssrn.com/abstract=1101522>.

ments in the Islamic movement who would wish to continue, if not enhance, the marginalization of non-Muslims for the domestic politics of Muslim-majority states.

Conclusion

Islamic law, from the earliest days of the Prophet's migration to Madīnah, has been careful to distinguish between rules that are applicable in Muslim territory and non-Muslim territory. Islamic law permitted Muslims to live in a non-Muslim territory provided certain conditions were met, specifically that Muslims could manifest their religion. Conversely, Islamic law allowed non-Muslims to live permanently in Islamic territory as protected persons provided they agreed to abide by the non-religious elements of Islamic law.

In the post-World War II era, with the spread of international law, human rights and global norms of governance, the rights of individual citizenship have supplemented the rights of communities. Accordingly, Muslims living outside of Islamic territory enjoy, theoretically at least, rights equal to those of their non-Muslim countrymen. In return, however, Muslims are expected to bear equally the duties of citizenship in the non-Muslim state.

The new circumstances, in which Muslim minorities find themselves, particularly in Western democratic countries, have given rise to a new juristic discourse known as *fiqh al-aqalliyyāt* or jurisprudence of minorities. This body of jurisprudence has attempted to normalize the relationship of Muslim minorities as citizens to their states of citizenship, even though the majority of the population is non-Muslim. Significantly, jurists engaged in this discourse have stressed the fact that the array of rights guaranteed in democracies are sufficient to ensure that Muslims live with honour and dignity, and the right to express Islam, including, by calling others to it. On this basis, they have agreed that the presence of Muslim minorities as citizens of democratic states is religiously permissible.

On the other hand, the same logic these jurists have used to legitimate the presence of Muslim citizens in non-Muslim countries implies that even in Muslim-majority situations, a democratic state

that is religiously neutral, provided it is otherwise just, ought to sufficiently protect the honour and dignity of Muslims, and their right to manifest Islam and call others to it.

This calls into question the need for an explicitly Islamic state to protect Muslims' interests as Muslims. To the extent that we accept *fiqh al-aqallīyyāt* as representing a legitimate interpretation of the Shari'ah for Muslims living as minorities, it would seem that Muslim majorities should also be required to treat non-Muslims with the same level of equality that they demand of non-Muslims when Muslims are minority.

Not only is this demand normatively just, at least in light of the claims of *fiqh al-aqallīyyāt*, it is also a good policy in today's interconnected world, which some jurists have said ought really to be deemed one legal jurisdiction (*dār*). It undermines the security and well-being of Muslim minorities for Muslim majority jurisdiction to claim a right to subject non-Muslim minorities to discriminatory legislation – such as qualifications for public office or access to divorce – while demanding that the Muslim minorities enjoy the same rights as their non-Muslim majority co-citizens.

While this would represent a departure from the traditional logic of the relationships of *dhimma*, it would nevertheless be consistent with the higher goals (*maqāṣid*) of Islamic law which seek to maintain peaceful co-existence with non-Muslims who are prepared to live in peace and mutual respect with Islam.

CHAPTER 5

Non-Muslims' Citizenship in Islamic Law: A Critique from a Constitutional Perspective

Sayed Sikandar Shah Haneef

Introduction

The discourse on the position of non-Muslims in an Islamic state has been one of the most contentious issues for no less than one century now. Two factors have triggered this. First, both traditionalists and some non-Muslim researchers insist that non-Muslims in a Muslim state are *ipso facto dhimmis* (or second class citizens). Second, the fear that attempts by some Islamists at reinstating the *Shari'ah Law*,¹ will inevitably involve the restoration of *dhimmi* status to non-Muslim inhabitants in Muslim states. To unlock this mystery, the recent literature embodies three divergent approaches, traditionalist, apologist and revisionist. Consequently,

¹ In his preface to Ye'or's book, the French Christian philosopher Jacques Ellul expressed this fear when he said: "Half a century ago the issue of non-Muslim status as *dhimmi* was one of historical discussion of interest for the specialists... Muslims had no power, extremely divided and many of them were subjected to European colonialism...but the failure of secular states and the rise of Muslim revivalist with slogans, such as Islam as 'alternative' or 'a solution'...the question is how to stop this..." Bat Ye'or, *The Dhimmi: Jews and Christians under Islam*, translated from French by David Maisel (London/Toronto: Associated University Press, 1985), pp. 25-28. Feldman was apprehensive when he stated: "No matter how much of a dead letter the concept of *dhimmi* has become, in practice during times of weakness in the Islamic world, this doctrine of Islamic supremacism was never reformed or rejected." J. Esposito & N. Feldman, "Is There a Role for Shari'ah in Modern States?," <http://www.jihadwatch.org/2008/10/jobn-esposito-noah-feldman-working-to-make-the-world-safe-for-shariah.html> (accessed 29/10/2009).

beyond religio-political rhetoric, the discourse needs to move from the divisive communalist versus universalist¹ squabble to that of constitutional discussion in Islamic jurisprudence. The chapter represents an attempt to articulate the traditional paradigm of the issue, to delineate the alternative construct for advocating equal citizenship to non-Muslim minorities in modern Muslim majority states, and to critically unpack the paradoxes which have tainted the whole discourse on the issue with the ultimate end of pointing to constitutional jurisprudential foundations² for equality project within the parameters of Islamic law.

The Traditionalists' Conceptualization

Within this paradigm we can place the vast majority of pre-modern, modern and contemporary Muslim jurists. They are of the view that non-Muslim minorities are protected people who cannot be treated equally with Muslims not only as a symbol of Muslim political superiority over them, but also for religious reason as enshrined in authoritative texts of the Qur'an and Sunnah. For instance, the Qur'an (2:110) declares Muslims as superior to any other religious groups by virtue of being the followers of Islam: "*You are the best community that has been raised up for mankind.*" To give effect to such a different treatment, the Qur'an explicitly imposes a tribute poll tax known as *jizyah* on non-Muslim groups under Islamic rule: "*Fight against those who have been given the scripture and... follow not the religion of truth until they pay the tribute readily, being brought down.*" (Qur'an, 9:29) The following Prophetic tradition reiterated the same principle when it stated:

¹ This problem has been incidentally seen as such by Senturk. See Recep Senturk, "Sociology of Rights," in Abdul Aziz Said *et al.* (eds.), *Contemporary Islam* (London and New York: Routledge, 2007), pp.138-139.

² This dimension represents a complex question, which, if not tackled, the traditional understanding of the issue will continue to reign the juridical landscape. This intellectual hurdle was sensed by Mokhtari when she presented her critical review of the book under the title, *Islam and the Challenge of Human Rights*, authored by Abdulaziz Sachedina. See Shadi Mukhtari's book review, "Islam and the Challenge of Human Rights by Abdulaziz Sachedina," *American Journal of Islamic Social Sciences*, 2010, Vol. 27, No. 4 (2010), p. 92.

*Fight in the name of God and in the way of God. Fight against those who disbelieve in God. Make jihād; do not embezzle the spoils; do not break your pledge; and do not mutilate (the dead) bodies; do not kill the children. When you meet your enemies who are polytheists, invite them to three courses of action. If they respond to any one of these you also accept it and withhold yourself from doing them any harm. Invite them to (accept) Islam; if they respond to you, accept it from them and desist from fighting against them.... If they refuse to accept Islam, demand from them the jizyah. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay the tax, seek God's help and fight them.*¹

Accordingly, this pattern of articulation of the issue has been a major theme not only in classical juristic treatises but also features prominently by way of reproduction by jurists of the same genre and tendency up to our time. Two major issues detailed by these jurists include non-Muslims' duties and rights in a Muslim state. As for duties, the most highlighted restrictions² imposed on non-Muslim subjects include wearing of distinctive dress and sounding of bells discreetly, which allegedly initially were legislated for the Christians of Syria by caliph 'Umar Ibn al-Khaṭṭāb, by a virtue of an alleged pact known as *al-shurūṭ al-'umariyyah* ('Umar Ibn al-Khaṭṭāb's terms).³

As regards rights, it is however, argued that non-Muslim sub-

¹ Fazlul Karim, *Mishkāt al-Maṣābiḥ* (Delhi: Islamic Book Service, 1994), vol. 2, p. 389.

² The books on Islamic international relations list a number of other discriminatory laws against non-Muslim minorities, which are out of the ambit of this study to be delineated. But one instance is a report by Ibn Khathīr who reported that the Christians who made this pact with 'Umar said: "We made a condition on ourselves that we will neither erect in our areas a monastery, church, or a sanctuary for a monk, nor restore any place of worship that needs restoration nor use any of them for the purpose of enmity against Muslims." Sobhi Mahmasani, *al-Qānūn wa al-'Alāqāt al-Dawliyyah fī al-Islām* (Beirut: Dār al-'Ilm li al-Malāyīn, 1982), pp. 101-102.

³ In spite of controversy surrounding the authenticity of this document by 'Umar, both classical and modern conservative jurists have detailed them in their works. For details see, Muḥammad ibn Abū Bakr Ibn Qayyim al-Jawziyah, *Aḥkām Ahl al-Dhimmah*, edited by Sobhi al-Salih and with a foreword by Muhammad Hamidullah (Beirut: Dār al-'Ilm li al-Malāyīn, 1983), Vol. 1, p. 121; Mahmasani, *ibid.* For criticism of 'Umar's terms see, Muḥammad ibn Aḥmad al-Dhahabī, *al-Mughnī fī al-Du'afā'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), Vol. 2, p. 524.

jects of an Islamic state enjoy full protections in terms of their life, property, faith and worship, trade, and personal law. For instance, modern conservatives such as Abd al-Karim Zaydan proudly state that:

When non Muslim citizens live under Islamic sovereignty, they enjoy a special status and are known along with other minorities as *ahl al-dhimma* (*dhimmīs*). *Dhimma* in Arabic means safety, security, and contract. Hence, non-Muslims are called *dhimmīs* because they have agreed to enter into a contract of protection by God, His Messenger and the Islamic community, which grants them security. This security granted to *dhimmīs* is like the citizenship granted by a government to an alien who abides by its constitution, thereby earning all the rights of a natural citizen. Thus, upon the preceding basis, a *dhimmī* is a citizen of the Islamic state, as described by Muslim jurists.¹

To some researchers outside the Islamic faith, the above perspective is monolithically paradigmatic of the Islamic stand on non-Muslim minorities *which has to be feared and deplored*.²

To call a non-Muslim *dhimmī* citizen (a protected person) by itself is not only unoriginal but also a misnomer as it implies that the *dhimmī* has never been prosecuted or maltreated “except acci-

¹ Abdul Karim Zaydan, *Ahkām al-Dhimmiyyin wa al-Musta'minin fi'l-Islām* (Beirut: Mu'assasat al-Risālah, 1985), pp. 49-51 & 63-66. Other noted modern scholars from the Arab world adopting the same approach include Abbas Shuman, *al-'Alāqāt al-Dawliyya fi'l-Sharī'ah al-Islāmiyyah* (Cairo: Dār al-Thaqāfah, 1999), pp. 37-38; Subhi Mahmasani, *al-Qānūn wa al-'Alāqāt al-Dawliyyah fi al-Islām*, pp.101-102; Shawkat Muhammad Ulyyan, *al-Niẓām al-Siyāsī fi al-Islām* (Beirut: Dār al-Fikr, 1998), p.163; Muhammad Sadiq Afifi, *al-Islām wa al-'Alāqāt al-Dawliyyah* (Beirut: Dār al-Rā'id al-'Arabī, 1986), p. 293

² One of the most well-known authorities among them is Bat Ye'or in a number of works, especially her book *The Dhimmis: Jews and Christians under Islam*. Esposito described her as “the great historian of *jihad* and *dhimmitude*.” See John Esposito & Noah Feldman, “Is There a Role for *Shari'ah* in Modern States?” in <http://www.jihadwatch.org/2008/10/john-esposito-noah-feldman-working-to-make-the-world-safe-for-shariah.html> (accessed 29/10/2009). Nevertheless, sympathetic voices within Orientalism, such as Thomas Arnold and Gustave Lebon, who saw the institution of *dhimma* in a somewhat positive light, could be regarded as faint voices. See T.W. Arnold, *The Preaching of Islam: A History of the Propagation of Muslim Faith* (London: Constable & Company Ltd., 2nd ed., 1913); Gustave Lebon, *Hadarat al-Arab*, translated from the French by Muhammad Adel Zuaytar (Cairo: Hindawi Foundation for Education and Culture, 2013).

dentially.” For instance, in his preface to Bat Ye’or’s book, Jacques Ellul maintains that such an assertion is dubious on many grounds, including the following:

1. Etymologically a “protected person” is a concept which existed in ancient Rome. A protected person was called a *client* or *protégé*. This applied to the alien who was had always under the fear of aggression that any Roman citizen could commit against him, unless he became a protégé of a patron from among the influential Roman citizens.

2. Juridically, the *dhimmī* status accorded to the non-Muslim residents by virtue of a treaty (*‘aqd al-dhimma*) between him (and his group) and Muslims by itself was a “concessionary charter.” As such it, was both arbitrary and inequitable in its purport; arbitrary in the sense that only the grantor could decide what to concede in it and when to rescind it. Inequitable as well, as it supplanted “the natural rights of non-Muslims as humans “to those defined and timed by the charter. Accordingly, legally speaking, the rights enjoyed by non-Muslims in a Muslim state were “conceded rights” (in contradistinction to fundamental rights).¹

Claiming to analyze the issue from the *dhimmī* vantage point, and not as “how his master saw him,”² Ye’o starts her premise by coining her own operational definition of *dhimmī* as being “the non-Arab and non-Muslim nations and communities that were subjected to the Muslims’ domination after the conquest of their territories by the Arabs.”³ She went on to say that *dhimmīs* were the victims who were vanquished by force, after a war or after a defeat and tolerated in their own homeland of which they were dispossessed. The *dhimmah* status in short represented the behavioural pattern and way of thinking that the “conquerors” displayed towards the “conquered.”⁴ To her, the *dhimmī* contract “represented the institutionalization of oppression by a military organization”⁵

¹ Ye’or, *The Dhimmis*, pp. 30-31.

² Ye’or, *The Dhimmis*, p.38.

³ Ibid., p. 35.

⁴ Ibid., pp. 37-38.

⁵ Ibid.

or “a formal expression of a legalized persecution.”¹

Furthermore, Ye’or dismisses the idea that the *dhimmi* pact in terms of protection of rights has been specific to Islam. To her, such privileges were copied from Roman and Greek emperors who accorded them to the Jews but the clergy endeavoured to curtail them.²

To Esposito and Feldman, modern Islamic apologists, however, commit gross factual error when mentioning the Qur’an’s recognition of Jews and Christians as distinct religious communities in order to equate the stipulations of Islamic law with modern-day notions of freedom of thought and tolerance.³ Non-Muslims were in fact decidedly second-class citizens as mentioned in the Qur’an (9: 29): “to humiliate the non-believers.”⁴ In the Shari’ah such a state of submission is known as the *dhimmah* (under the protection of the Muslims) and those within it are *dhimmīs* (protected (or guilty) people).⁵

To support this conclusion, they marshal the views of most famous classical authorities on the subject, such as Ibn Kathīr. To them, Ibn Kathīr maintained that the *dhimmīs* must be “disgraced, humiliated and belittled. Therefore, Muslims are not allowed to honour the people of *dhimmah* or elevate them above Muslims, for they are miserable, disgraced and humiliated.”⁶ Likewise, they

¹ Ibid.

² Ibid. See also, *Dhimmi*, <http://www.readingislam.com> (accessed 22/03/2010).

³ Ibid.

⁴ More often than not, the portion of the verse in question is taken out of context and then all types of interpretation and extrapolation are made. The immediate context of the verse and its text, however, make it clear that the alleged “humiliation of non-believers” is actually qualified by being the outcome of Muslims’ victory of them in war. The verse thus reads: “[And] fight against those who – despite having been vouchsafed revelation [aforetime] – do not [truly] believe either in God or the Last Day, and do not consider forbidden that which God and His Apostle have forbidden, and do not follow the religion of truth [which God has enjoined upon them] till they [agree to] pay the exemption tax with a willing hand, after having been humbled [in war].” Even under such circumstances, according to interpretations by outstanding exegetes, only people of financial ability (*yad*) “are liable to the payment of *jizyah*.” Asaad, *The Message of the Qur’an*, p. 315. – Editor.

⁵ Esposito & Feldman, “Is There a Role for Shari’ah in Modern States?”

⁶ Ibid.

quoted al-Suyūṭī who held that the verse “to humiliate the non-believers” is a clear proof that the *jizyah* should be taken in a humiliating way from *dhimmīs*, namely the taker sits and the *dhimmī* stands with his head bowed and his back bent. The *jizyah* is placed in the balance and the taker seizes his beard and hits his chin. He concedes, however, that al-Nawawī dissented by saying that “This manner of taking *jizyah* from non-Muslims is invalid.”¹ Nevertheless, the tolerant *dicta* by al-Nawawī cannot carry any weight which was also refuted by eminent Qur’anic exegetes like al-Zamakhsharī, who argued that the *jizyah* should be collected “with belittlement and humiliation.”²

Nevertheless, others like Bernard Lewis³ have taken somewhat a positive view of the concept by criticizing Ye’or and similar exponents of sheer generalization, exaggeration of persecution incidents and ignoring the highest levels of cultures that non-Muslims achieved under Muslim rule.⁴

However, such sympathetic voices are dismissed by branding them as “glamorizers” of the past and refuting them as selective and failing to understand the juridical implication of *dhimmīs* as people with ‘conceded rights’. Even in terms of right to profess their own religion or economic rights, *dhimmīs* were not different from the slaves in the first century AD, who also held position and made personal achievements.⁵

The quasi-Revisionist Model

This camp encompasses apologists from both human rights advocates particularly those from outside the seminaries,⁶ and their ju-

¹ Ibid.

² Ibid.

³ Others who criticized Ye’or include S. D. Goitein and N. Stillman. See Ibid, p. 32.

⁴ Ibid.

⁵ Ibid. p. 33.

⁶ By way of example see, Saeed Ismail Sieny, *Muslim and Non-Muslim Relation* (Riyadh: yadh: King Fahd National Library, 2005), pp. 28-29; Report of Seminar held in Kuwait, December 1980, *Human Rights in Islam* (Kuwait: University of Kuwait, 1982), p.17; Muhammad Taqi Jafari, *A Comparative Study of the Two Systems of Universal Human Rights* (Tehran: ALHODA International Publishers, 1999), pp.284-285; Abdulaziz Othman Altwaijiri, *Islam and Inter-religious Coexistence on the Threshold of*

rist's counterparts from the *fiqh* community. The shared core of their methodology is their "back projection" of human rights notion into the Islamic framework but with varied approaches. For instance, the human rights' strand of this approach, being ignorant of the complexity of the issue in question, *tends to make absolutist claims*, such as 'Islam guarantees equal rights to all of its citizens irrespective of their creeds'. The *fiqh* literate ones, on the other hand, struggle to negotiate between the traditional notion of *dhimmah* and modern concept of citizenship. In this process of accommodation, they have no choice but to be apologetic by emphasizing the *dhimmis'* rights by purposely avoiding or downplaying the hard question of *dhimmis'* obligations in a majority Muslim state. For instance, Suzanne Haneef as a representative of the absolutists' camp states:

Islam does not permit discrimination in the treatment of other human beings on the basis of religion or any other criteria... it emphasizes neighborliness and respect for the ties of relationship with non-Muslims ... within this human family, Jews and Christians, who share many beliefs and values with Muslims, constitute what Islam terms *Ahl al-Kitāb*, that is, People of the Scripture, and hence Muslim have a special relationship to them as fellow upholders of Scriptures.¹

To Haneef, the word *dhimmah* (pl. *dhimam*) literally means "protection, care, custody, covenant of protection, compact, responsibility, answerableness, financial obligation, liability, debt, inviolability, security of life and property, safeguard, guarantee, security."² Technically, people designated as *ahl al-dhimmah* consist of "the free non-Muslim subjects living in Muslim countries who, in return for paying the capital tax, enjoyed full protection and safety."³

Conversely, apologists, by and large, are defensive by contending that the *dhimmah* status is more privileged than citizenship fastered by man-made constitutions. For instance, Jamal Badawi

the 21st Century (Riyadh: Manshūrāt al-Munazzamah al-Islamiyah wa-al-'Ulūm wa-al-Thaqāfah (ISESCO), 1998), pp.19-25.

¹ Suzanne Haneef, *What Everyone Should Know about Islam and Muslims* (Lahore: Kazi Publications, 1979), p. 173.

² Ibid.

³ Ibid.

argues that *dhimmah*, means covenant and *dhimmi* a covenanted person, and that the *dhimmi* is more protected than a citizen whose rights could be violated as a minority by the majority in Western societies. The reason is that the *dhimmi* has a covenant with God, His messenger and the community of believers; hence his rights are stipulated in the primary sources of Islamic law, namely the Qur'an and the authentic Sunnah.¹ The fact that *dhimmīs* have to pay *jizyah* does not make them second-class citizens as it is commensurate with the obligation of *zakāh* which Muslims have to pay. The reason is that *dhimmīs* enjoy social security provided by the state on the same footing as Muslims. To Badawi, "the term *jizya* literally comes from the word *jaʿā*', which means something in return for something, i.e. services, defense and social security in return for financial contribution."²

However, being aware of the controversy over the concept of *dhimmah*, he acquiesces that historical instances of religious dissonances were warranted by political hostilities which some caliphs took on the basis of *al-siyāsah al-sharʿiyyah* (Sharīʿah-based policy); they were circumstantial decisions and cannot be regarded as part of basic and sustained legislation in Islam.³

Joining him al-Zuhayli maintains that the *jizyah* non-Muslims pay corresponds to the *zakāh* (enjoined upon Muslims) as a return for protection that state accords to them; it is wrong to assume that *dhimmīs* become second-class citizens on this account and by virtue of some other restrictions placed on them. It is natural for every state to impose restrictions on some of its citizens if the situations warrant so. Nevertheless, being conscious of the restrictive notion of *dhimmah*, he advances the view that *dhimmīs* in fact *enjoy several rights* and not full protection as enjoyed by Muslim citizens of an Islamic state.⁴

In an attempt to harmonize the *dhimmah* concept with the modern notion of citizenship, al-Qaradawi suggests that the *jizyah*

¹ "Dhimmi" <http://www.islamonline.net/livedialogue/english/Browse.asp?bGuestID=fjKTq9> (accessed 22/03/2010).

² Ibid.

³ Ibid.

⁴ Wahba al-Zuhayli, *al-Islām wa Ghayr al-Muslimīn* (Beirut: Mu'assasat al-Risālah, 1981), pp. 139-142.

could be replaced by some other taxes as 'Umar called it charity (*ṣadaqah*) instead of *jizyah* in the case of the *dhimmīs* of Banū al-Muṣṭaliq,¹ who disliked its name.² However, he is constrained by his traditional episteme which makes him fall back on apology by submitting that the term *dhimmah* is the name given for non-Muslim nationals similar to the concept of constitutional citizenship in modern times. The *jizyah* imposed on *dhimmīs* is neither a symbol of humiliation nor a penalty for non-conversion to Islam as skeptics try to conceive. Instead, it is a substitute for not paying the *zakāh* and not taking part in *jihād*.³

One may not necessarily agree with the analogy between the obligation of Muslims to pay *zakāh* and the imposition of *jizyah* on non-Muslims on one obvious ground: that the former is an act of worship while the latter's *ratio legis*, according to classical jurists, lies in the fact that it serves as a fee in return for the exemption of *dhimmīs* from military service. Moreover, al-Qaradawī's interpretation may not offer any reform proposal to reformulate the law of *dhimmah*.

Another quasi-renewal attempt was made by some revivalists like Mawdudi who considered the natural born non-Muslim subjects as a distinct category from *dhimmīs* (conquered ones). He maintained so when answering to an interlocutor as to whether *jizyah* can be imposed upon the non-Muslims of Pakistan. Mawdudi asserted that "since they (natural born ones) have neither been conquered nor made subjects as a result of a treaty, therefore, they form a different class."⁴

The Equal Citizenship Legislative Construct

This group represents those who call for a fresh thinking of the non-Muslims' *fiqh* of nationality in a Muslim state albeit their variant frame works, which is hailed and lauded as alternative ap-

¹ Yusuf al-Qaradawī, *Ghayr Muslimīn fī al-Mujtama' al-Islāmī* (Cairo: Maktabat Wahbah, 1992), pp.7-64. Also see his *al-Aqallīyāt al-Dīniyyah wa al-Ḥall al-Islāmī* (Beirut: al-Maktab al-Islāmī, 1998), pp.13-33.

² Ibid.

³ Ibid.

⁴ See *Dhimmi*. http://islamicworld.net/slamicstate/non_muslim.htm (accessed 23/03/2010).

proach by some modern thinkers.¹

The thrust of the arguments proffered by this group is that all the textual evidences detailing the legislation on *dhimmah* are contextual and situational, hence representing contingent Islamic laws in a historical setting which no longer exists today. Stressing this, Javed Ahmad Ghamidi says:

Certain directives of the Qur'an were specific only to the Prophet Muhammad against peoples of his times, besides other directives. The campaign involved asking the polytheists of Arabia for submission to Islam as a condition for exoneration, others for jizyah... Therefore, after the Prophet and his companions, there is no concept in Islam obliging Muslims to wage war for propagation or implementation of Islam.²

Taking note of the historicity of the concept, Fathi Osman, also pointed out that:

The precepts relating to *Ahl al-Dhimmah* or the non-Muslim inhabitants of the Muslim state are very advanced in terms of achieving justice and good treatment, in case they are placed within their historical context, and compared with what was happening in the major states at the time. However, our age has witnessed democracy, which affirms complete equality between the citizens, and the Islamists should espouse the political rights of non-Muslims, and not only the rights traditionally given to *Ahl al-Dhimmah*.³

Ahmad Kamal Abu al-Majd also expressed similar view by saying that there no doubt about the *dhimmah* being a historical expression of rights and duties guaranteed by the founding sources of Is-

¹ Nielson maintains so. See Jorgen S. Nielson, "Contemporary discussions on Religious Minorities in Muslim Countries", *Muslim-Christian Relations*, Vol. 14, No. 3 (2003), p. 29. However, Saeed still regards this voice as apologetic which we discuss later. See Abdullah Saeed, "Rethinking Citizenship Rights of Non-Muslims in an Islamic State: Rashid al-Ghanushi's Contribution to the Evolving Debate," *Islam and Christian-Muslim Relations*, Vol. 10, No. 3 (1999), p. 319.

² *Dhimmi*. <http://readingislam.com> (accessed 22/03/2010).

³ Fathi Osman, *Sharia in Contemporary Society* (California: Multimedia Vera International, 1994), p. 73.

lamic law but today the “conditions originally necessary for this institution no longer exists. Thus a constitution which today guarantees full civil and religious rights to all would be fully in harmony with the Shari‘ah.”¹

Giving force to this aspect, Amman’s Royal Academy for Islamic Civilization Research Report concluded that,

The *dhimmi* covenant should be looked upon in a different light today, for the systems that define and organize relations have changed and are now governed by international law. Moreover, those who were once called *dhimmīs* are nowadays an integral part of their country’s whole population. They participate in defense of their country on equal footing with Muslims and pay the various taxes imposed under the new systems by modern states which supersede the *jizyah*.²

In defending this perspective, El-Erian argues, in his introduction to Ghannushi’s book, that the normative and permanent position of Islam as embodied in the unity of mankind, justice, equality and other egalitarian principles does not discriminate between Muslims and non-Muslims in matters of nationality.³ This is lucidly clear from many textual evidences including the following verses and Prophetic traditions:

1. *Let there be no compulsion in religion: truth stands out clear from error* (Qur’an, 2: 256), and: *Wilt thou (Muhammad) then compel mankind, against their will, to believe!* (Qur’an, 11: 99).
2. *He who unfairly treats a non-Muslim who keeps a peace treaty with Muslims, or undermines his rights, or burdens him beyond his capacity, or takes something from him without his consent; then I am his opponent on the Day of Judgment.*⁴

¹ Quoted in Nielson, “Contemporary Discussions on Religious Minorities in Muslim Countries,” p. 300.

² Amman Royal Academy for Islamic Civilization Research, *Treatment of non-Muslims in Islam* (Jordan: Albait Foundation, 1992), p. 28.

³ Rashid Ghannushi, *The Right to Nationality Status of Non-Muslim Citizens in a Muslim Nation*, trans. M.A. El-Erian, (New York: Islamic Foundation of America, 1990), pp. 11-12.

⁴ Karim, *Mishkāt al-Maṣābiḥ*, Vol. 2, p. 404.

3. *He who harms a non-Muslim who keeps a peace treaty with Muslims has harmed me, and he who harms me has harmed God.*¹

4. *He who kills a non-Muslim who keeps a peace treaty with the Muslims will not smell the scent of Heaven, though its scent can be traced to as far as a march of 40 years.*²

This position was fully taken into account by sensible voices among classical jurists like al-Qarāfī when he emphatically said, “He who transgresses against them (*dhimmīs*) – even with a mere word of injustice or backtalk – has jeopardized the covenant with God and His Prophet (*SA*) and the covenant of the religion of Islam.”³

El-Awa is more constitutionally methodological when he states that,

The basic principle of citizenship was founded by the Prophet when he declared a collective concept of citizenship for both Muslims and non-Muslims in the Constitution of Medīnah, i.e., Muslims and the Jews of Medinah are one single community with no place for second-class citizens. This together with the general Qur’anic commands on kind treatment of people irrespective of their religious affiliation represents the *de jure* position of Islamic law on this point. Hence, specific injunctions sanctioning unjust treatment were meant to cater for specific circumstances. Modern nation-states represent a new kind of Islamic sovereignty to which much of traditional jurisprudence cannot apply. Reasoning based on *ijtihād* must be used to deduce a new system. The modern Muslim state is the result of a joint struggle for independence and nation building in which Muslim majority and non-Muslim minority both have participated. In this way, it differs sharply from the early Muslim imperial state that was based on conquest. Now the discourse has changed from the contract of protection (*‘aqd al-dhimma*) to one of constitution (*dustūr*) and

¹ Ibid., p. 403.

² Ibid., p. 494.

³ Aḥmad ibn Idrīs al-Qarāfī, *al-Furūq* (Beirut: Dār al-Gharb al-Islāmī, 1994), Vol. 3, p. 14.

from *dhimmah* to citizenship/nationality (*muwāṭanah*).¹

He continues by asserting that

[t]he *dhimmah* was a contract (*‘aqd*) and not a posited rule (*ḥukm* / immutable law). Every contract, unlike the popular belief, is amenable to nullifications. *‘Aqd al-dhimmah* as such was repudiated with the demise of the state which formulated it, namely the Prophetic state and subsequent Islamic Caliphates. The nation-states of today are not the successors of the founding Islamic state (established by the Prophet). Its continuation was disrupted by colonization. Post-colonial Muslim states were established on the basis of a joint struggle by all the citizens, Muslims and non-Muslims alike, on the basis of a social contract (*‘aqd ijtimā‘ī*) unknown to our ancient jurists.²

In juxtaposing the traditional status of protected community with the concept of modern citizenship, Fahmi Huwaydi stated that,

The term *dhimmah* in spite of being regarded as originating from the Prophet’s usage was part of the vocabulary of pre-Islamic Arab tribes in their tribal relations. Thus, its use by the Prophet could not add any juridical connotation to it except that he employed it with a great sense of trust and accountability. But it lost its sense of responsible use in treating non-Muslims in the course of history. As such, he does not see any reason for adhering to its name in relation to non-Muslims today.³

In a series of sermons delivered in 1984 at the mosque of his Burj al-Roumi prison in Tunis, Rached al-Ghannouchi also joins Huwaydi in considering the *dhimmah* concept as an historical

¹ Muhammad Salim El-Awa, *Fī al-Niẓām al-Siyāsī Li’l-Dawlah al-Islāmiyyah* (Beirut: Dār al-Shurūq, 1989), pp. 255-258. See also his account of the historical utility of *‘aqd al-dhimmah* in protecting the *dhimmīs*’ rights in countries like Palestine and Egypt, “Non-Muslim Citizens in an Islamic State,” <http://www.arabnews.com/?page=5§ion=0&article=25871&d=8&m=5&y=2003&pic=islam.jpg&category=Islam> (accessed, 24/03/2010).

² El-Awa, *Mabādī’ al-Niẓām al-Siyāsī al-Islāmī*, pp. 255-258.

³ Fahmi Huwaydi, *Muwāṭinūn lā Dhimmīyūn* (Beirut: Dār al-Shurūq, 1990/1410), pp. 110-111.

expression of Muslims' relations with non-Muslims which is no longer valid. He, like other scholars, expounds his view on the basis of a number of Qur'anic provisions stressing justice, unity of mankind, non-compulsion in religion, etc. For instance, God commands justice to all:

God enjoins justice, and the doing of good, and generosity towards [one's] fellow-men; and He forbids all that is shameful and all that runs counter reason, as well as arrogance. (Qur'an, 16: 90)

Quoting the great theologian Fakhr al-Dīn al-Rāzī, al-Ghannouchi asserts that this Qur'anic provision is the key principle for which the rest of the Qur'an is a commentary and explanation. The Qur'an (49: 13) also declares humans as one single race:

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another.

It (2: 256) also unambiguously establishes the principle of 'no compulsion in religion':

There shall be no coercion in matters of faith. Distinct has now become the right way from [the way of] error.

In light of the above, al-Ghannouchi suggests that these general laws should be taken as the *de jure* position of Islam in the context of present day situation to accord equal citizenship to all residents of a Muslim state. On the issue of *jizyah*, he maintains that the Qur'anic ruling that it should be collected "with submission" is linked to one particular event (Jews of Khaybar). Even if we universalize it, its *ratio legis* was that it was paid in lieu of military service. Since the modern state is one of shared citizenship, military duty could be shared by all, in which case the requirement to pay the *jizyah* definitely falls away.¹

By analyzing the constitution of Madīnah in which the Prophet declared Muslims together with the Jews as one *millah* or *ummah*, Muhammad Imara sheds a new light onto the issue. To him, communities and states are founded on shared belongings,

¹ Rached al-Ghannouchi, *Huqūq al-Muwāṭānab: Huqūq Ghayr al-Muslim fī al-Mujtama' al-Islāmī* (Herndon, Va: International Institute of Islamic Thought, 1993), pp. 30-53 & 101-102.

which include creed, family, tribe, ethnic group, locality, etc. Non-Muslims can equally be full citizens though they do not share with Muslims in one element, namely the creed which they have their own.¹

In a nutshell that, the core of the arguments by this group is that in the absence of “reasons for the existence of circumstances defining *dhimmah* conditions originally necessary for it,” the modern concept of citizenship is the option and is in harmony with Islamic law because: first, key constitutional principles of justice, oneness of mankind, dignity of humans, religious diversity, equitable treatment, no forced conversion to Islam, etc., as embodied in the Qur’an and the Sunnah do not recognize such dichotomy; second, constitutional precedent of the Prophet (known as *wathīqat* or *ṣaḥīfat al-Madīnah*), predating the law of *dhimmah* is an *ipso facto* evidence of the original position on non-Muslims’ equal nationality status in Islam.

Critical appraisal: Towards an Alternative Paradigm

The above conflicting perspectives by traditionalists and apologists are suffer from many contradictions and paradoxes pursuant to their atomistic and out-of-context application of the legislation on *dhimmah*. Like others, they have failed to appreciate the following foundational constitutional principles necessary for the application of *dhimmah* and *jiḥyah*.

1. The Qur’an (9: 29) clearly declares that *dhimmah* is a direct consequence of *jihād*:

[And] fight against those who – despite having been vouchsafed revelation [aforetime] – do not [truly] believe either in God or the Last Day, and do not consider forbidden that which God and His Apostle have forbidden, and do not follow the religion of truth [which God has enjoined upon them] till they [agree to] pay the exemption tax [jiḥyah] with a willing hand, after having been humbled [in war].

Any insistence squarely on the *dhimmah* institution without ad-

¹ Quoted in Nielson, “Contemporary discussions on Religious Minorities in Muslim Countries,” p. 301.

vocating a policy of armed force engagement with others is not only unwarranted but also *ultra vires* in the Qur'an unless and until the orthodoxy concedes that this legislation was situational suitable for a set of circumstances which were radically different from ours.

It may be contended without hesitation that the legislation of *dhimmah* was circumstantial in many respects. First, the novice state of Madinah was besieged by hostile forces and the local non-Muslims were collaborating with them;¹ the law of *dhimmah* as postulated by the orthodoxy was designed to contain such betrayals on the part of *enemy insiders*. Second, in those days communal differences were resolved by means of violence; there was no effective global body to establish dialogue and mediate between the warring tribes or nations hence every community had its own law of war so had Muslims. In the global world of interconnectedness the whole world including Muslim nations have committed themselves to abide by moral visions of co-existence as stipulated in the provisions of international law² on matters of civil rights; resorting to violence is no more a norm, thus any attempt to preserve such a concept is not only futile but impractical and unrealistic.

2. Another stark reality neglected by the traditional school is the fact that *dhimmah* was a type of nationality anchored in a kind of political form of the government which was established by the Prophet, and *replicated under different configurations, such as caliphate, sultanate etc by the subsequent Muslim rulers*. Modern Muslim nation-states, some with constitutional monarchies others with republican forms of political system or even Islamic democratic forms of governments, have emerged as totally different types of political landscapes to which many features of the traditional Caliphate System

¹ The Jews in Madinah would hurl Muslims with "death upon you" greetings (*al-sāmu 'alaykum*), instead of saying to them "peace be upon you" (*al-salāmu 'alaykum*). The Christians built the mosque of mischief making (*masjid dīnār*) with the intention of luring the Prophet to come and assassinate him.

² The nation states of today, among others, are under an international obligation to accord equal citizenship to their nationals and not to discriminate against them on account of their religious beliefs by virtue of articles 15 and 18 of the *Universal Declaration of Human Rights*, 10 December 1948. For details see, Jack Donnelly, *International Human Rights* (Boulder: West view Press 1998), p. 6.

do not apply. For instance, with the exception of a few countries, the public laws of most Muslim states consist of either Anglo-British Common law or French Civil law. Moreover, most of these states have embraced the idea of an elected government via popular voting system which perforce binds them to the idea of human rights, fundamental liberties, etc. In the context of entwining principles of international laws and institutions in a village-like globe, an Islamic state does not have the *locus standi* to re-impose *dhimmī* laws on its non-Muslim citizens.¹ Practically speaking, according to Abdullah Laroui, the re-establishment of an Islamic State within the frame of modern territorial states cannot be regarded (constitutionally) as reinstatement of Islamic Caliphate, mainly because of the non-existence of one of the two essential pillars of such a traditional political structure, namely solidarity (*‘aṣabiyyah*) of the pledgees (*mubāyi‘n*) as stipulated by Ibn Khaldūn.²

Realizing the new and changing realities of the present, Abu al-Majd and El-Awa are methodologically consistent when they conclude that the *dhimmah* law is fixed at the level of its textual proof, but elastic (open to *ijtihād*) at the level of its application. This is a point which the conservative jurist fails to capture. Al-Shāṭibī rebuked such an approach to *fiqh* when he said: “Any attempt at understanding a textual proof and its application without regard to its context for application would be counterproductive.”³

Likewise, the Islamophobia which has led some non-Muslim scholars to present a demonic picture of Islam and Muslims by co-opting the orthodox version of *dhimmah* though understandable cannot be accepted as an authentic position on two grounds. First, it

¹ Emphasizing this point, Evans rightly pointed out that to reproduce constitutional protections while being oblivious of their ineffectiveness in today’s context will not provide a framework for negotiating between religious values and principles of human rights. Carolyn Evans, “Religion, Law and Governance: Comparative and Human Rights Perspectives,” a paper read at *International Conference on Religion, Law and Governance in South East Asia*, Kuala Lumpur: 29, January 2010, pp. 1-2

² Khaled Ziyadeh, book review of Abdullah Laroui’s “Mafhūm al-Dawlah”, *Majallat al-Ijtihād* (published by Dār al-Ijtihād, Beirut), Vol. 15, No. 16 (1992), p. 359.

³ Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt* (Beirut: Dār al-Ma‘rifa, 1999), Vol. 4, p. 98.

eternally fixes a juridical concept which Muslims themselves are not unanimous. Stressing this, Edward Said indicates that one may question the Orientalists' notion not only as selective, namely drawing on most orthodox voices among the array of interpretations based on 'denominational schisms', but also on sociological ground of continued attempt to paint Islam as anti-modern since the era of Western imperial colonization of the Muslim lands.¹ Such an antagonistic presentation cannot be sustained if problematized against the backdrop of divergence of perspectives² among the legal scholars which is too obvious to negate. Second, it tends to revive historical scores which not only gives rise to suspicion of *malice afore thought* on their part but also renders it less contemporary. Or else the *dictum* that "objectivity cannot be claimed in humanities" may hold true in their case as well.

The new approach, dubbed as advocating *muwāṭanah* for non-Muslims has the strength of moving ahead with modernity. Being consistent with the purposes of the Shari'ah; and being grounded in general egalitarian principles of the Qur'an and the Sunnah, it is a sensible approach but with some qualifications. It has to improve on its methodological sophistication in terms of Islamic legal theory. Citing textual provisions of general import without *uṣūlī* argumentation would hardly advance the cause of renewal in Islamic law. Some of such principles which may be invoked in its support include: 1- consistence with the spirit and goals of the Shari'ah (objectives of Islamic law) as it reconciles the Shari'ah with contemporary constitutional norms and removes prejudices against Islam, 2- consideration of consequences (*i'tibār al-ma'ālāt*) whose neglect *results* in reckless *ijtihād*, and 3- prevention of drawing fallacious analogies from situations with different circum-

¹ Heristchi quotes one of the most vocal critics of the Orientlist tradition, namely Edward Said (1993-1995). See Claire Heristchi and Andrea Teti, "Rethinking the Myths of Islamic Politics," in Jeff Haynes (ed.) *Religion and Politics: A Survey* (London: Europa-Routledge, 2006), p. 2.

² Claire and Andrea were conscious of this fact when they pointed that since the scriptural texts are subject to a variety of constructs by different sects and contemporary religious thoughts, to conclude that Islam presents unified system of values and a monolithic vision on politics and civilization is untenable. *Ibid.*, p. 4.

stances (*tanqīḥ al-manāṭ*).¹

It is to be noted, however, that what distinguishes most this approach is its time-spatial appreciation of the issue of *dhimmah*, a dimension which has been universally agreed by reform-minded thinkers of variant orientation. For instance, Abd al-Wahhab Khallaf pointed out that with the exception of clearly defined text proofs and consensus anchored on them, the bulk of the legal corpus was formulated in the light of requirements and conditions of the past, hence today's jurist must reconsider them in the light of their own needs and requirements.² Even a most authentic Prophetic tradition can be followed only if it is concomitant with public interest (*maṣlaḥa*). In the same vein, AbdulHamid AbuSulayman pointed that to ignore the time-space factors of *fiqh* and Sunnah would be an exercise in wrong abstraction which is likely to lead to flawed conclusion.³ To him to avoid such reckless legal hermeneutics, the *fiqh* legacy has to be understood within its historical and social context. Mohammad S. Ashmawi, a contemporary Egyptian writer, emphasized that it is paramount to consider the dialectical relationship between divine text and context, a reality which was not grasped by pre-modern jurists fully.⁴ To conclude this point, the conservative camp failed to acknowledge the structural transformation (this epistemic element) which has changed the discourse from one of the two camps constantly at war to that of constitutional states bound inextricably to a set of global legal frameworks unknown to tribal sub-structures of medieval times.

Its advocates must explicitly indicate that their alternative concept of *munwāṭanah* does not imply wholesale borrowing of the liberal concept of citizenship as intended by its exponents without being bound by 'non-negotiable' parameters of the *Shari'ah*, as

¹ Al-Shāṭibī, *al-Muwāfaqāt*, vol. 4, p. 46.

² Abdelwahhab Khallaf, *Maṣādir al-Tashrī' al-Islāmī fīmā lā Naṣṣa fih* (Cairo: Dār al-Fikr al-'Arabī, 1987), p. 7.

³ AbdulHamid A. AbuSulayman, *Towards an Islamic Theory of International Relations: New Directions for Islamic Methodology and thought* (Herndon, Va.: International Institute of Islamic Thought, 1993), p. 5.

⁴ Muhammad Saeed Ashmawi (1932-), quoted in Wael B. Hallaq, *Shari'a: Theory, Practice Transformation* (Cambridge/New York: Cambridge University Press, 2009), p. 523.

Scott pointed out.¹ Advocating liberal equation of Islamic notion of nationality with that of Western model of citizenship has far-reaching implications for Muslims since the underlying philosophy behind it is unbridled liberty of humans as natural beings without regard to religious values. This is evident from one standard definition of citizenship which reads:

A social relationship that arises between individuals and the political community 'state' whereby the state provides economic, political and social protection for the individuals by means of the law and constitution which equalize between the individuals as natural human entities, while the individuals owe allegiance to the state and take recourse to its law to get their rights.²

The immediate implication, therefore, is that all individuals are equal "before the law and the constitution irrespective of their religious, sectarian, ethnic and class affiliations."³ As such from the very inception, its *raison-d'être* lied in its unifying denomination for preventing religious dissention arising among various groups on account of "dissipation of the authority by Catholic Church in Europe during seventeen century" and to subsequently serve as a vehicle for social integration and laying down "the foundation for democratic systems."⁴ As a launching pad for creating public consciousness among the citizenry, it "transcends the obstacles spawned by traditional pre-citizenship affiliations," such as religious, ethnic etc. towards national integration.⁵

¹ See Rachel M. Scott, "Contextual Citizenship in Modern Islamic Thought" at <http://www.alwasatparty.com/modules.php?name=News&file=article&sid=314> (access ed 10/05/2010). Esack dubs uncritical borrowing of such modern concepts as citizenship as a kind of "ad hoc accomodotionist response" to placate Empire (Western Powers). Farid Isack, "The Contemporary Democracy and the Human Rights Project for Muslim Societies," in Abdul Aziz Said *et al.* (eds.), *Contemporary Islam: Dynamic, not Static* (London/New York: Routledge, 2006), p.118.

² Abdul Kareem Qasim Saeed, *Citizenship and the Issue of the State in Islamic Thought* (published online in PDF form by The Women's Forum for Research and Training, n.d.), p. 9.

³ Ibid., p. 17.

⁴ Ibid., p.18.

⁵ Ibid.

To Bernard Lewis and Mohammad Arkoun, Islam and citizenship are averse to each other as to the latter “the concept of political community in Islam is devoid of any attempt for development of citizenship as a prerequisite for not only the emergence of the rule of law, but for the emergence of civil society which can dominate the authority of the state.”¹ Abdullahi An-Na‘im concedes such discrepancy between the two nations when he opines that the notion of *dhimmah* as evolved historically was a ‘personal’ concept of citizenship and it has to be replaced by a ‘territorial’ concept of citizenship. He says:

Whereas the personal concept of citizenship would confer this status on the basis of some personal attribute or quality such as religion or ethnicity, the territorial conception of citizenship, which has now become the norm, the territorial one confers the benefits and burdens of citizenship on all those born and permanently resident within the territory of the state, as well as those naturalized under the relevant provisions of the law of the land. It is morally repugnant and politically inexpedient, I submit, to deny a full citizenship to any person who was born and permanently resident within the territory of the state unless such person opts for and requires the citizenship of another state.²

However, representing the advocates of full adoption of the concept, Qasim Saeed maintains that there are ample textual evidences in primary sources of the Qur’an and the Sunnah which supports the idea of oneness of human race, creation of Ummah, a political community based contracts between citizens of varying religious affiliations as was exemplified in the *Ṣaḥīfat al-Madīnah* (the Madīnah covenant/constitution) between the Muslims and the Jews.³

¹ Ibid., p. 19.

² Abdullahi Ahmed An-Na‘im, *Toward an Islamic Reformation* (New York: Syracuse University Press, 1996), p. 84. See also Abdullahi Ahmed An-Na‘im, “A Theory of Islam, State and Society,” in Keri Vagt *et al.* (eds.), *New Directions in Islamic Thought* (London: I.B. Tauris, 2009), pp. 159-160.

³ *Ṣaḥīfat al-Madīnah* was a document drawn up by Prophet Muhammad immediately after the establishment of the state of Madīnah. Its essential feature was that it was

Nevertheless, this primary meaning of *ummah* as a political community could not be sustained and ended up being limited to a specific religious community or group (the Muslims) due to the Jews' breach of the Madīnah covenant.¹ In Saeed's view, the original message of Islam provides enough space for the notion of citizenship, but it was the logic of history which constrained its juridical evolution.² He went on further rationalizes his stand by saying that the underlying assumption behind this concept of citizenship is that it derives its legitimacy from the theory of social contract between people and rulers as propounded by European Enlightenment thinkers during the 1770s.³ In this legal parameter, the individual rights are paramount from which the state derives its sovereignty. To Qasim Saeed, this notion of citizenship entrenched in the tripartite of social contract, state of human nature, and dutifulness to the law is in harmony with Islamic principles of *bay'ah* (pledge of allegiance to state authority).⁴

The point made by Qasim Saeed appears to be valid in spite of his flawed analogy between *bay'ah* and theory of social contract, while conceding that over individualism implied in the concept cannot be acceptable in the Islamic framework. Otherwise, this project would be regarded as another apologetic stance, for which reason it has been criticized by Abdullah Saeed for whom,

The apologetic discourse also applies to Ghannoushi as well, who sees the concept of equal citizenship rights as de-

contractually agreed between Muslims and Jews. It, among others, stipulated that the believers and Muslims from among the tribe of Quraysh and Yathrib and their followers and those who strive with them, are a single community, while the constitution of Madīnah recognized the signatory parties as multiple social covenants, such as the Jews "and those who follow us from amongst the Jews we shall support them...", "the Jews of Bani 'Auf are a nation from amongst the believers", "to the Jews is their religion and to the Muslims is their religion." See Saeed, *Citizenship and the Issue of the State in Islamic Thought*, pp.19-20 & 70-71.

¹ Ibid., pp. 20-21.

² Ibid.

³ Ibid., p. 10.

⁴ He proffers historical evidence where people bound themselves to abide by command of rulers through *mubāya'ah* (pledge taking), Prophetic statement of wholesomeness of humans upon birth and al-Fārābī's formula of moral perfection through social interactions. Saeed, *Citizenship*, pp. 12-13.

rived from Islamic heritage (*turāth*). Thus, it is argued that seemingly Western notions would be considered to have antecedents that are essentially Islamic: they appear to come from the West, but are not necessarily Western, and emphatically do not represent a '*succumbing*' to the West.¹

One may agree with Scot that the wholesale adoption of the concept of citizenship leads to a frontal clash with perennial values which Muslims endear and are not prepared to compromise. For instance, to her, Christian Copts in Egypt are never prepared to accept the idea of interfaith marriages or apostasy, a sensitivity which Muslims also share with respect to apostasy in particular and partly with regard to interfaith marital ties. To Scot the alternative framework, therefore, is a contextual idea of citizenship, as people of different faiths will not bow to universalization of the Western model of citizenship. However, she left us without any clarification out as to what would the Muslim formula be if not *dhimma* in the changed situation of a globalized landscape.²

The notion of non-Muslims' nationality should not be bound by the parameters of the *jizya* and *dhimma*, but should instead be encapsulated within some universal ethical framework, such as respecting the other's religious sensitivity, upholding the principle of public morality, avoiding subversion of the established social order, being faithful to the cause of social harmony for the good of all the citizenry etc. These are restrictions which all the modern states impose on their subjects, irrespective of their status whether citizens or ordinary residents. This proposition somewhat supports Bryan Turner's thesis when he criticized the obsession by some Orientalists with issues like *dhimma* in the context of today's globalized world and cultural milieu of post-modernist discourse as futile. The reason is that ethnic diversification and multicultural politics of the present day, defy subordination of local diversity to the brute power of nation-states. In effect, the discourse has now shifted from that of national ethnic cohesion (citizenship) to that

¹ Saeed, "Rethinking Citizenship Rights," p. 319.

² See Rachel M. Scott, "Contextual Citizenship in Modern Islamic Thought," *Islam and Christian-Muslim Relations*, Vol. 18, No. 1 (2007), pp. 1-18.

of minority protection.¹

Conclusion

The central idea emerging from the foregoing discussion is that the question of *dhimmah* in terms of its expanded juridical construction unlike the popular belief represents the mutable part of Muslim juridical legacy. Irrespective of its origin, a Muslim configuration of minorities within the historical abode of Islam (*dār al-Islām*) or an offshoot of protégé of the Roman empire as claimed by orientalists, from the *fiqh* standpoint it was a policy-oriented mechanism of relating to others in the context of the binary division of the world into two hostile camps in the ancient time. It was justified as a matter of expediency and *de facto* arrangements to treat minorities differently in *dār al-Islām* particularly when they subscribed to a way of life which was upheld by Muslims' adversaries from the hostile abode (*dār al-ḥarb*). With the collapse of that kind of binary geographical division of the world, the replacement of The Caliphate system with that of nation states; and the emergence of radically different norms in relations between nations, insistence on the replica of the ancient time would be fatalistic.

The *de jure* position as embodied in the universal message of the Qur'an, such as unity of mankind, mercy, justice, and as expressed by the Sunnah through the Prophet's egalitarian treatment of the Christians of Najran and Jews of Madīnah, prior to the law of *dhimmah*, does not recognize such a dichotomous notion of citizenship for the inhabitants of a Muslim state at present time. In order to establish a case for such a re-interpretation of this notion and the attendant juristic rules, its advocates must rise above simplistic approach by addressing the issue from constitutional jurisprudential episteme. The traditionalists also need to wake up from their slumber to the present realities of contemporary life so as to avoid the folly of

¹ Bryan S. Turner, *Orientalism, Postmodernism and Globalism* (London/New York: Routledge, 1994), p. 201.

abstract identification of historical concepts such as *dhimmah* with certain politically loaded concepts such as citizenship. However, it is conceded that among the *fiqh* community the juristic discourse is heavily tilted towards maintaining the traditional *status quo*, the deconstructionist project on citizenship rights of non-Muslim minorities, however, practically may prevail, thanks to the pragmatic electoral alliance of Muslim revivalists with non-Muslim political parties in several countries including that of Muslim Brotherhood in Egypt since 1987.¹

¹ The Muslim Brotherhood unequivocally and expressly declared that the Coptic Christians in Egypt, and the 'People of the Book' in general, are full citizens in an Islamic state, and that they have the same rights and obligations as Muslims. Saeed, "Re-thinking Citizenship Rights," p. 320.

CHAPTER 6

Muslim Immigrants in Urban China Between Confrontation and Adaptation

(Ramadan) Ma Qiang

Introduction

After the Chinese government launched its reformation policy of “opening-up to the outside world” in the 1980s, more and more Muslims immigrated to cities and urban centres which are not traditionally Muslim residential areas. The commercial cities like Shenzhen and Guangzhou of Guangdong province, and Yiwu of Zhejiang province have become the most attracting places for Muslims to establish companies, export goods, open restaurants, start small *Halāl* food stores, and manage small shops to sell Muslim commodities, etc. There are also cultural and technological attractions for foreign Muslims to study Chinese language, Chinese medicine, engineering, manufacturing and other disciplines in Chinese universities, or work with factories and companies in different provinces in China.

Immigration to metropolitan centres or economically and technologically prosperous cities emerged as a significant phenomenon, particularly since 1990s. Being strangers to the original Han Chinese societies, the immigrants are confronted with many dilemmas and difficulties in the process of embedding into such a heterogeneous social milieu. This study focuses on these confrontations they encountered and adaptations they adopted, which mainly manifested in their religious activities,

Ḥalāl food, accommodation, occupations, communities, marriage, inhabitation, etc. and analyze their cultural tactics in these occasions accordingly.

Since 1990s China has experienced a rapid process of urbanization, prompted mainly by a spirit of reform and opening to the outside world and a series of political and economical reform programmes that originated in 1980s. As ethnic minority groups in China, Muslims consist of ten ethnic groups numbering more than twenty million¹ people who have clearly benefited from this historic period. However, this quick process of change and modernization, though offering Muslim good opportunities, has faced them with many difficulties. For urban Muslims particularly, these difficulties can be ascribed to many factors.

These factors can be summarized in the following things: 1- Immigration domestically and internationally in the process of urbanization; 2- Closer connections and communication between China and Islamic world; 3- The attractions of thriving and prosperous commodities of some cities; 4- Rapid development of all sorts of high quality but low price markets alongside the coastal areas, especially, in the earliest open cities, such as Guangzhou, Shenzhen, both of them are near Hong Kong and Macao, etc.

Urbanization has become a complex and important issue that requires to be studied on many accounts. This chapter, however, is not concerned with the phenomenon of urbanization itself in China; it rather focuses on the influence of urbanization on Muslim communities and organizations based on the writer's many years of fieldwork on urban Muslim society in China.

¹ This figure is most probably based on official statistics provided by the Chinese authorities, which are known for their tendency to downplay the size of minorities, especially with regard to Muslims. Due to severe restrictions on academic research on ethnic and religious groups, it is quite difficult to get an accurate estimate of the size of Muslim population in mainland China. Some attempts, however, have estimated that size at no less than 40 million based on the number of mosques calculated by the China Islamic Association. – Editor.

Background to the Study

There are many anthropological, sociological and ethnographical works published in China which focus on Chinese Muslim communities. The research on urban Muslim Chinese can be summed up as follows.

1. *Urban Muslim communities in Northwest China*

Zhang Zhongfu and Gao Zhanfu cooperated in studying the Hui Muslim *Halāl* food enterprises, religious practices, marriage relationships, cultural renaissance, the Shaykh's tomb and religious rituals in Lan Zhou and Lin Xia of Gan Su province. Their work can be regarded as the earliest anthropological research on urban Chinese Muslims. Gao Yongjiu, who also did research on minority communities in northwest China, focused on China eastern cities. Ma Huilan has studied one of the Hui Muslim communities in Yin Chuan, the capital of Ning Xia Hui autonomous region. Zang Xiaowei did sociological research on Hui Muslim community in Lan Zhou, the capital of Gan Su province. Yang Wenjong selected Lan Zhou, Xi An, Xi Ning and Yin Chuan as his fieldwork sites in order to take a comparative study on the Muslim communities in northwest China, laying emphasis on issues of community, ethnic identity, and the impact of geographical location on ethnic relationships and identity.

Ding Kejia carried out his doctoral research on Xi Ning (capital of Qing Hai province), Lin Xia (a famous Muslim city in Gan Su province) and Wu Zhong (in Ning Xia), in which he mainly addressed Islamic issues specific to these areas. Shu Xihong dealt with the situation of Hui community in northwest China and its encounter with modernization. Yang Zhijuan focused on Hui Muslim's marriage, particularly on intermarriage in the cities of northwest China. Zhang Jianfang studied Islamic culture change in Wu Zhong. Zhou Chuanbin studied on Hui Muslim communities in Yin Chuan and Shi Zui Shan of Ning Xia.¹

¹Ding Kejia, "Micro and Macro Aspects of Observed Phenomena in the Contemporary Hui Nationality: Issues of Research Approaches in Three Recent Works in Ethnographic Studies," *Journal of Hui Muslim Minority Studies*, No. 2 (2003), pp. 60-65; "Rethinking the

2. *Chen Dai Hui Muslim community of Quang Zhou city in Fu Jian province*

This is a Muslim community that is very much assimilated with the local Han Chinese. Therefore, Pan Hongli studied its acculturation from an anthropological perspective; he has demonstrated that the cultural identity of the Hui people, including Muslims, has been considerably shaped by common historical memories, differently from the Muslims living in northwest China who clearly and simultaneously profess a double identity: Muslim and Chinese. Lan Jiongxi focused on issues population, land, market and enterprise in the same region. Fan Ke devoted his doctoral research to the question of Hui identity in Chen Dai and Bai Qi of Quan Zhou.¹

study and attitude towards the problems of urban Hui nationality: An interactive viewpoint on 'community' and 'modernization'," *Proceedings of the Fourteenth National Symposium on the Hui Nationality*, 2003, pp. 618-626; Taiwan National Chengchi University, Department of Ethnology, "Muslims in the Loess Plateau: A Field Investigation Report on Northwestern Chinese Muslim Communities," 2004 (Internal data); Gao Yongjiu, "Urbanization Research on Northwest Minority Areas," Lan Zhou University Press, 2003; Gao Yongjiu & Zhang Xiaolei, "The Analysis of the Situation of Different Social Groups' Religious Life in Tian Mu community," *Journal of Hui Muslim Minority Studies*, No. 1 (2007), pp. 69-74; Ma Huilan, "The Urbanization Process among the Hui community: A Case Study of the Bei Ta village of Hong Hua township in the Suburbs of Yinchuan," *Journal of the Second Northwest University for Nationalities*, No. 2 (2004), pp. 53-57; Zang Xiaowei, "Ethnic Differences in Neighboring Behavior in Urban China," *Social Focus*, vol. 36 (2003), pp. 197-218; Yang Wenjiong, *Interaction, Adaptation and Reconstruction: The Hui Communities of the Northwest cities of China and Research on their Culture Change* (Beijing: The Ethnic Publishing House, 2007); Ding Kejia, "Islamic Research in the Process of Contemporary Urbanization in the Provinces of Gansu Ningxia and Qinghai," (Ph. D. dissertation, Central University of Nationalities, (Beijing, 2006); Su Xihong, *News Explorations on Modern Practices of Northwest Hui Community* (Beijing: The Commercial Press, 2004); Yang Zhijuan, "Research on Urban Inter-marriage among the Hui nationality in Ningxia," *Journal of Hui Muslim Minority Studies*, No. 1 (2002), pp. 39-47; Zhang Jianfang & Wang Lihong, "Adjustment and Development of the Hui Islamic culture in the Context of Urbanization: A Case Study of Wuzhong city in the Ningxia Hui Autonomous Region," *Journal of Hui Muslim Minority Studies*, No. 1 (2007), pp. 60-68; Zhou Chuanbin, "Urbanization in the Hexi region of Ningxia and Social Change among the Hui community: The Case of the Yingchuan and Shi Zuishan cities," *Journal of The Second Northwest University for Nationalities*, No. 2 (2007), pp. 5-12.

¹ Pan Hongli, "A Study on the Acculturation of the Huis in Quranzhou Chendai," in *Studies on Chen Dai's history of Huis* (Beijing: China Social Sciences Press, 1991), pp. 258-273; Lan Jiongxi, "On the Process of Urbanization among the Hui community in Fujian: A Case Study of Seven Hui Villages in Jingjian city," *The Fourteenth National symposium on*

3. *Studies on Guang Zhou (Guang Dong province) and San Ya (Hai Nan province)*

Based on several years of fieldwork, Ma Jianzhao studied the Hui communities in San Ya from both a historical and anthropological perspective. Sun Jiuxia carried out his work by focusing on ethnic identity and ethnic relationship. Ma Qiang studied the history of the Muslim community in Guang Zhou, by examining the processes of socio-cultural change, the multi-ethnic character of the different groups constituting it, the concept of *jamā'ah* and its relationship with the universal ummah as perceived by the Guang Zhou Muslims, theoretical issues of spiritual communities, etc.¹

4. *Works on Bei Jing*

Zhou Chuanbin and Ma Xuefeng took Bei Jing as a case study, and discussed the structure of Muslim community there. Liang Jingyu, selected one of the famous Muslim community, namely, Niu Jie in Bei Jing, undertook anthropological research.²

5. *Studies on Nan Jing (capital of Jiang Su province) and Shang Hai*

Bai Youtao studied the Qi Jia Wan Hui community in Nan Jing, through the analysis of social and cultural activities and functions in the context of urbanization. He carried out a sociological study on the Muslim communities in Shang Hai, Hang Zhou (in Zhe Jiang province), and Yi Wu (in Zhe Jiang province) on the issue of succession, and compared his findings with simi-

the compilation of Hui nationality, 2003, pp. 79-87 (internal data); Fan Ke, *Identity Politics in South Fijian Hui Communities*, (Ph. D. dissertation, University of Washington, 2001).

¹Ma Jianzhao, "The Historical Origins and Social Change among the Hui nationality in Hainan: A Historical and Anthropological survey on two Hui ethnic villages of Yanglan township in Sanya, Hainan," *Journal of Hui Muslim Minority Studies*, No. 4 (2001), pp. 27-33; Sun Jiuxia, "Ethnic Identity and Relationships in the Modern Context: The Case of the Hui nationality in Fenghuang township of Sanya, Hainan," *Ethno-National Studies*, No. 3 (2004), pp. 61-67; Ma Qiang, *The Flow of Spiritual Community: A Study of Guangzhou Muslim groups from an Anthropological Perspective* (The Social Sciences Press, 2006).

²Zhou Chuanbin & Ma Xuefeng, "A Paradigm Discussion on Social Structure of Urban Hui Muslim Minority: As the Case of Beijing," *Journal of Hui Muslim Minority Studies*, No. 3 (2004), pp. 33-39; Liang Jingyu, *Niu Street: The Vicissitudes of an Urban Hui Community* (Ming Zu University of China Press, 2006).

lar studies done on Muslims of northwest urban China.¹

6. *Research on other cities*

Shui Jingjun studied on Shui Nan Guan Hui community of Qin Yang city in He Nan province, in which she combined methodology of Sociology and Anthropology. Ma Shourong investigated Shun Cheng Street community in Kun Ming of Yun Nan province. Yang Wenjiong also studied on the scattered urban Muslim communities in eastern China. Dru Gladney selected four communities as his research fields in Bei Jing (2), Yong Ning (in Ning Xia) and Quangzhou, from which he induced all of Muslim communities in urban China in such four stereotypes that can not include the diversity of urban Chinese Muslim communities practically.²

We can classify the above-mentioned studies into two categories. The first category mainly focused on cities in northwest and southwest China, where traditional and major Muslim communities are located, such as Xi An, Lan Zhou, Lin Xia, Yin Chuan, Wu Zhong, Xi Ning and Kun Ming. The second category focused on the issues related to Muslims in the eastern cities, such as Bei Jing,

¹ Bai Youyao & Pan Gengcao, *The Hui Community in the Context of Urban Modernization* (Ningxia people's Publishing House, 2005); Bai Youtao & Chen Yunchang, "Migrant Muslims and Metropolitan Hui Community in Nanjing: A Case Study of Shanghai," *Journal of Hui Muslim Minority Studies*, No. 4 (2007), pp. 77-84; Li Xiaoyu & Bai Youtao, "A Study on Social Adaptation among Migrant Muslims in China," *Journal of Qinghai Nationalities Institute*, No. 1 (2009), pp. 80-84.

² Shui Jingjun, "The development and cultural change of Shui Nanguan village of Zhong Yuan region," *Journal of Hui Muslim Minority Studies*, No. 2 (1999), pp. 41-47; Ma Shourong, "Cultural Change in the Social Structure of Urban Hui Muslim Minority: The Case of the Hui community of Shun Chen street in Kun Ming city," *Journal of Hui Muslim Minority Studies*, No. 4 (2003), pp. 33-38; "The religious Life and Cultural Identity of Urban Ethnic Communities: A Study on the Hui community of Shun Chen street," *Thinking*, No. 4 (2003), pp. 89-92; "The change of the economic activity of ethnic communities in the process of urbanization: A Case Study of the Hui Ethnic Community of Shuncheng Street of Kunming City," *Journal of Yunnan Nationalities University*, No. 6 (2003), pp. 52-55; Yang Wenjiong & Fan Ying, "On the Regional Differences of Hui Ethnic Group Culture and Dislocation of Ethnic Identity: An Investigation into Hui People in Lianyungang, Jiangsu," *Journal of The Second Northwest University for Nationalities*, No. 2 (2009), pp. 30-35; Dru C. Gladney, *Ethnic Identity in China: The Making of a Muslim Minority Nationalism* (Florida: Wadsworth Publishing, 1997); Wadsworth Publishing (Chicago: The University of Chicago Press, 2004).

Shang Hai, Quang Zhou, Guang Zhou and San Ya, etc. Comparatively speaking, Muslim issues of cities in central China are still out of observation from the scholars.

These works mainly dealt with the changes taking place among Hui communities, their religious and economic life, cultural identity, marriage, education, and employment and adaptation of immigrants, etc. This kind of academic preference indicates that the eastern cities, especially the coastal and commercial ones, especially traditional Muslim communities and new Muslim immigrants to cities, are confronted with many dilemmas and difficulties of religious nature because of the rapid development and high degree of opening to the outside world. The western cities where Muslims live in special areas are also confronted with such dilemmas, though to a lesser degree. Actually, these urban-related issues in the western cities have stimulated by China's rapid development of urbanization opening up to the outside world over the last 30 years, which has led to great changes amidst the Muslim communities in this country.

Methodology

I have been involved in the study of Chinese Muslim urban communities since 1999. I focused my fieldwork on five cities, namely, Lan Zhou and Xi An in northwest China, Guang Zhou and Shen Zhen in south China, and Yi Wu (famous as international small commodities market) in central China. These five urban Muslim communities reflect different lifestyles of urban Muslims in China. Lan Zhou and Xi An belong to the category of steadily vanishing traditional cities where old communities still exist but face dislocating and agonizing perplexity.

Guang Zhou can be regarded as a representative city where the features of traditional Muslim community have disappeared in the process of modernization and urbanization in the coastal cities in China. Shen Zhen and Yi Wu are the new commercial cities attract more and more Muslims both from China and outside world to do business, and consequently, new communities have already emerged in both cities. Most of the data and conclusions are the

result of my participatory observation during my field research. The ethnographic data I collected was mostly gathered through the interviewing of Imams, students of the masjids, preachers, workers, members of management committees of masjids, residents of the community, Arabic interpreters, managers of companies, transient workers, different employers, government officers, and immigrants came from different countries, etc. I have also used official government statistical data, communiqués, and other official documents as well as ethnographic and sociological research works conducted by other scholars.

Empirical Findings

1. Disintegration of traditional Muslim communities in urban China

This is a prominent phenomenon that emerged in the process of urbanization, and constitutes a principal factor behind dilemmas of religion in the city. But what are the factors that caused the community disintegration? The following two factors may account for this situation.

A. Decrease in the population size of the community due to political campaigns, urban renewal, migration, welfare-oriented public housing distribution system, the construction of the multi-storey buildings, the decline of economic attraction, traffic problems, housing conditions, etc.

B. Decline of the community functions. This is related to the decrease in the size of population, which undermines the sense of identity among the community members because of inconvenience and heterogeneity caused by urban development, thus affecting the traditional functions that used to be fulfilled by the community. Likewise, religious education has declined or even faded away, and Muslim individuals can no longer get religious education and exhortation that imbibes them with the sense of belonging and identity with the community. Thus they have to find new ways to communicate with other Muslims by migrating to other areas in the city.

2. Classification of the Muslim urban communities in China today

A- From the perspective of resident patterns, we can classify

as multi-site compact community, scattered region and congregational compact community.

B- From a historical and development perspective, we can classify communities as traditional and emerging communities.

C- From an ethnic point of view, they can be classified as multi and mono ethnic communities.

Table 1: Classifications of Muslim communities in China

<i>Item</i>	<i>Type</i>	<i>Name of city</i>
<i>Classification 1</i>	- Multi-site compact community	- Bei Jing, Lan Zhou and Tian Jin, etc.
	- Scattered community	- Guang Zhou, Shen Zhen, Shanghai Ha, Hong Kong and Yin Chuan, etc.
	- Congregational compact community	- Xi An Hui Quarter, Dong Guan District of Xi Ning, Guan Cheng Hui District of Zheng Zhou, and Hui District of Hohhot, etc.
<i>Classification 2</i>	- Traditional community	- Xi An Hui Quarter, Niu Jie of Bei Jing, Nan Guan and Xi Guan of Lan Zhou, and Shun Cheng Street of Kun Ming, etc.
	- New community	- Yi Wu and Shen Zhen, etc.
<i>Classification 3</i>	- Multi-ethnic community	- Hong Kong, Guang Zhou, Shen Zhen, Yi Wu, Shang Hai and Bei Jing, etc.
	- Mono-ethnic community	- Xi An Hui Quarter, Guan Cheng Hui District of Zheng Zhou, and Hui District of Hohhot, etc.

3. Emergence of moving communities

A moving community is one of the most remarkable outcomes of the rapid urbanization process underlying the instability of Muslims in cities and the tactics they have adopted to face these challenges. It is also a temporary community formed by immigrants in their new living areas inside or outside most of the cities to which they migrate, such as Shen Zhen and Yi Wu. It is different from the traditional community in many facets.

A. In terms of population, most of these emergent communities consist of both national and international immigrants.

B. They are diversified ethnic groups, involving almost all Muslim ethnic groups in the world. The feature is distinctive of Muslim immigrant cities.

C. They include diversified doctrinal inclinations, such as Sunnīs and Shīʿīs, as well as *Sufi* suborders (*Men Huan* in Chinese).

D. Different geographical characteristics accompanied with ethno-cultural elements that display the heterogeneity in Islamic culture.

E. Mobility and instability owing to urbanization and development.

Islamic Movements and the Concept of Religious Denomination

1. The *Salafīyyah* movement, which mainly originated from Saudi Arabia and spread throughout and outside the Arab world since the late nineteenth century, is still a new phenomenon in most of the traditional Muslim communities in China. Therefore, instances of disharmony among old denominations and the innovative groups are consequently being reported. As a movement, the *Salafīyyah* is primarily confined to one specific school of Islamic jurisprudence, the Ḥanbalī madhab. Some of the Arabī Muslims and Chinese students coming back from Arab countries, mainly Saudi Arabia, strive to spread the notion of purgation and purification meant to eradicate what they perceive as non-Islamic elements in Chinese Islam. Because of different jurisprudential interpretation methods between the Ḥanafī School, which prevails among Chinese Muslims, and the Ḥanbalī School, the appeal for detachment by the *Salafīs* seems to be inevitable, and it would naturally result in a kind of segregation of Muslims from one another and the undermining of their unity as one integrated whole *ummah*.

2. The second movement is *Jamaat al-Tabligh* which originated from India in 1920s. It seeks to intensify and purify the practice of Islamic teachings, and has mainly spread throughout Chinese urban areas. It aims at transforming individuals' lives from secular materialist lifestyles to more spiritual and ascetic life by reforming people's character through personal contact and the role

models of its missionaries. It emphasizes Islamic identity and superiority. Ultimately, *Jamaat al-Tablīgh* is committed to the goal of revitalizing the faith of a born Muslim; of promoting the good and eradicating the unjust. This teaching is mostly diffused by its active adherents from China, and is occasionally supported by small international groups. The city offers a relatively liberal space for such missionary activities.

3. The third movement is new *Sufism* (mysticism). Unlike traditional Sufi brotherhoods which specially emphasize the practice of meditation and personal self-discipline, the new *Sufi* movement pursues social agendas besides personal obligatory duties to God. Although most of these movements carry out their activities in the name of traditional denominations which are familiar to Chinese Muslims, they have anti-traditional characters both theoretically and practically, to some extent. These small groups recruit their followers in the city and practise their rituals secretly, and aspire to gain more understanding and support by other Muslims.

Chinese Muslims began to realize the diversity of Islamic culture and differences among Muslims around the world. Many of them started understanding Islam as a whole, and gave up narrow-minded views on religious rituals and practices that had disturbed Chinese Muslims for many years. Thanks to intercommunication between Chinese Muslims and foreign immigrants, and seen the fact that increasing numbers of Chinese Muslims travel to Makkah for pilgrimage (*Hajj*) every year as well as the growing number of graduates coming back home after completing their studies in Islamic countries, Muslims' perceptions of Islamic teachings and their practice thereof are undergoing great changes.

Urban Islamic issues and their potential resolutions

1. Development and innovation among the community

It mainly refers to the traditional Muslim community. The innovative works on traditional communities should be based on considering their belief and economic life, and try to keep the entity of *Jamaat* sufficiently, in order to avoid such phenomenon that the geographical community being demolished in some cities without re-

spect the Muslim living traditions, which bring about more complex problems and difficulties in their life. Some Muslim places have already become world cultural heritage which should be protected when planning for city development. More investigation should be conducted by local Islamic associations and related government offices in the community. Furthermore, the innovative works should be discussed with the representatives selected by the community and be carried out gradually.

2. Immigrants and their life

It includes domestic moving population and international immigrants. Some of the immigrants have bought apartments and become the permanent inhabitants of the city. But most of immigrants are still transient populations whereas urban religious problems emerged accordingly, such as Exotic Street in Yi Wu city, where Muslim businessmen concentrate from all over the world, namely Arab, Indian, Pakistani, Malay, African Muslim, Afghan and other central Asian nationalities, etc. Being a famous trade fair, Guang Zhou Fair attracts nearly all of the Muslim ethnic groups to find economic and trade opportunities in Guang Zhou; hence Yearning Prophet Masjid (Huai Sheng Si) and the sanctified shrine of Sa'd ibn Abi Waqqās have become the main Friday prayer places and tourism sites that receive tens of thousands of guests from around the world.

The moving of domestic immigrants has such characteristics as: A- From west to east, to coastal cities particularly; B- From rural or underdeveloped areas to developed cities; C- From traditional Muslim communities to non-Muslim areas; D- From small and medium-sized cities to metropolitans.

The majority of immigrants are Hui Chinese Muslims besides a small quantity of Uyghur migrated from Xin Jiang Uyghur Autonomous Region. They are managing *Ḥalāl* food and restaurant, leather and fur, native products and trade companies, and so forth. The most salient occupation is Arabic interpreter who graduated from Islamic universities abroad, or from Islamic institutes and Arabic schools, plays a connecting role between Arab businessman and local factories. Actually, the new religious

community is always constructed by these immigrants who have acquired Islamic knowledge in different ways.

The dilemma is how to manage these moving communities in order to provide a convenient religious life for Muslims in the city. Some of the small prayer sites and masjids have been approved by the government, and certain amount of financial support and assistance has been obtained too, but this procedure is always delayed because in most of the cities such issue is completely a new one in the process of urbanization.

The other problem concerns children's education of immigrants. In China, the system of nine-year compulsory education is implemented even in remote rural areas. But the problem is the native places of immigrants are not in the city where they are living, and confronted foreigners in particular; so they are confronted with such difficulty that they cannot get equal opportunities for their children's education like city residents. Even when they get the opportunity for education by paying extra fees eventually, they still have difficulties in offering *Halāl* food to their children. Obviously, the educational cost of Muslim immigrants is higher than city residents. It should be brought to the close attention from the government to eliminate the dilemma in order that the immigrants can take root in the city and cooperate with other people conveniently.

3. Religious activity and its management

This can be elaborated from two perspectives. One is of the local government, the other is for the management committee of the masjid, which actually is the real leadership of Muslim community.

The religious issues need the relevant government office to contact with the local residents, immigrants, and Islamic associations, and to discuss the probable resolutions when difficulties emerge. The quality and attitude of the service and management provided by the government determines the activity of Muslims.

Local Islamic associations need to improve the quality of their services relying on the assistance by the Muslims they represent. The masjid should pay more attention to select the members of the management committee in order to provide good services

to the Muslims involved. Selecting members of the management committee should be in accord with the spirit of Qur'an and Hadith. They must be pious Muslims with honesty, equality, ability, and well-behaved. Once the committee is set up, its members should take counsel together according to the teachings of the Prophet, and select the excellent Imam and *Ustaẓ* to develop education and the practice of religious rituals.

4. *Islamic thought and movement*

International Islamic movements such as *Jamaat Tabligh*, Salafiyyah and new Sufism, will certainly exert great influence on Chinese Muslims in such a globalized world. For Chinese Muslims, no one can keep away from these movements if only one is living in this globalized world because of convenient media and network. But the question is how could we reply to these movements and thoughts? Generally, each movement will be *Sinicized* or localized when it enters into local society in China. We should wait for this process of localization finished and then give a precise judgement in the future; it is too early to criticize or acknowledge these movements hastily when it is still in the course of *Sinization*.

In terms of the complex of ethnicity and diversity of Islamic theology and Jurisprudences, the urban Muslim community in China is undoubtedly representative of these pluralities. All the Muslims ought to have known that the universalism of Islam intends to transcend ethnic, local, or national boundaries and teach the believers to express their membership and brotherhood adherent to Muslim *Ummah*. If only one confesses to abide by the teachings of the Qur'an, he (or she) should be regarded as the member of *Ummah*, and should be cared for by other members respectively, because Prophet Mohammed emphasized such kind of solidarity and brotherhood.

5. *Halāl food*

This is a serious problem in most of cities in China with the development of population, geographical periphery and markets. Not only because of shortage of *Halāl* food factories and supplies, but

the supervisory works by the government also need to be improved. Actually, most of ethno-religious conflicts between Muslims and non-Muslims in China originated from disrespect to Muslims' diet habits because of ignorance and misunderstanding by non-Muslims, regardless of history and reality.

6. *Religious education*

In most of Chinese cities, the traditional education attached to the masjid has already stopped or degenerated during these years. This situation can be ascribed to such factors as the development of civil education, secularization, and vanishing of traditional Islamic education in the masjids. But the problem in some cities is that, the young Muslim generations know little about Islam, and their activities and beliefs are different from their parents, which caused problem of intergenerational identity. Some of the children are segregated from the Imam's religious exhortation for a long time, they begin to pursuit the anti-Islamic fashions and undertake activities forbidden in Islam. Studying Qur'an or attending school became a contradiction for urban Muslims.

7. *Female mosques (madrasas) and other woman issues*

Female masjid is a particular phenomenon in China, which originated in central China as early as the late Ming (1368-1644) and the beginning of Qing dynasty (1644-1911). This emergency of female masjid has become prevalent since 1990s due also the process of urbanization. It is a special issue which I discussed in another work. The question here is: can we male Muslim, especially the Imams, management members of the masjid, and worldly elites of the community understand and be tolerant to special female masjids (or *madrasahs*, and give them more opportunities to express their religious appeal, though in some areas, this kind of renewal is still a controversial topic?

Being a place of social activity for diffusing basic knowledge about Islam and make it convenient for female Muslims to fulfill their prayer and communicate with each other in the rapid development of urbanization, female masjid (or *madrasah*) gives women a separate space to learn from each other, exchange information,

and communicate among themselves what they may not be to do otherwise. It can be looked as a tactic for those pious female Muslims to fight against dissimulation, discrimination and alienation incurred against them by modernization, whereas it is an aspect of strength for urban Muslims to preserve their traditions vis-a-vis female attitudes, and change the situation whereby these males monopolize the religious resources for a long time.

8. Maintenance of faith and acculturation in the society

How to maintain their Muslim identity and adapt to city life simultaneously is a severe question for urban Muslims in China. Urban community and urban life are different from rural areas in that the members are strange to each other where Muslims are a different from Han Chinese and vice versa. Because of their special food needs and religious activity, some of the opportunities cannot be obtained in their daily life. For example, the majority of Muslims are doing small businesses, small trades and peddlers, or specialized in *Halāl* food supplies and Arabic interpreters, they can seldom get chance to study handicraft or technology in factories managed by non-Muslims. Even for businessman, how to deal with the profit of banks, and how to use loans from banking institutions to enhance their careers is still a critical issue.

Thus urban vagrants are confronted with many difficulties in practicing Islam, such as how to recite Islam in their daily prayers when it is difficult to find a mosque or take ablution on prayer time, let to get the opportunity to learn more about Islam. Such pressing needs require to be attended to by people who have reliable knowledge of Islamic Jurisprudence. As a consequence, the author believes that there is urgent need to identify all the related questions of Muslim minorities and organize a special committee by Muslim scholars in the world to give interpretations and provide *fatwās* to be communicated through the internet or any other efficient means. This will help Muslim minorities who are living in different countries to take a reference instead of being confused by the random explanations from local interpreters blindly.

Conclusion

Over the last 30 years since the Chinese government started implementing its policies of reform and opening to the outside world, Chinese Muslims have succeeded in seizing this opportunity to make important achievements in many areas and their life has undergone significant changes. Urban migration can be seen as the most significant aspect of that process of change in their conditions. After 1990, many international Muslim immigrants came to China from different places in the world; they were attracted by the fast-growing markets and affluent economic life. Though they live in cities that are totally strange to them in many respects, they have managed to cope with the new environment.

Notwithstanding the opportunities available to them, both Chinese and foreign Muslims in China are confronted with serious difficulties and challenges. Their success or otherwise in dealing with the challenges and difficulties of Chinese complex urbanization process depends on whether or not they will acculturate with city culture harmoniously.

CHAPTER 7

The Muslim Community in Korea: Organization and Activities

(Abdul Rajiq) Sohn Ju-young

Introduction

This chapter is aimed to help correct the misunderstanding of the culture and image of the Muslim community in Korea. This will be accomplished through surveying the structure and role of Korea Muslim Federation (KMF), the research and educational activities related to Islam in Korean universities and institutes, and the Korean government policies and regulations pertaining to matters of religion.

Although Muslims in Korea are a minority, they possess many characteristics that make them quite unique compared to followers of other religions with whom they coexist peacefully. Korea Muslim community is still in its sprouting season. It has enjoyed the support of a number of Islamic countries and organizations such as Saudi Arabia, the Muslim World League and OIC. In addition to these factors behind this growth, the cooperation and the special solicitudes of the Korean government are meaningful. The Korean government donated land to the KMF for the establishment of an Islamic university, as well as the Seoul Grand Mosque, even during the Oil Crisis of 1973/1974.

The major barriers facing the propagation and spread of Islam in the Korean society is the Korean people's ignorance, misunderstanding, and negative preconceptions about Islam. This is

mainly due to the heavy influence of Western Christian culture and media. Modern education in Korea was greatly inspired and moulded by by western culture and educational philosophy. In most cases, it was the westerners or Western Christians who taught Islam to Koreans until quite recently.

The biggest issue facing Muslim activities to promote the cause of Islam and reach out to the different components of the Kaorean society is shortage of financial means and knowledgeable and skilled Muslim missionaries. Certainly, Islamic *da'wah* activities benefited from the support of some rich Muslim countries, especially during the 1980s. But such external assistance cannot be always guaranteed nor should it be relied upon unendlessly, and the Muslim community in Korea needs to develop its own self-generated and continuous resources. Until we reach a status of financial self-reliance to carry out our activities and execute our *da'wah* and outreach programmes to enlighten people on the truth of Islamic teachings, the support of Muslim majority countries and Islamic organizations will continue to be crucial for the sustainability of the Islamic mission in Korea. It is necessary to set up a long term strategy for the call to Islam. This involves a well organized system and team work. Although Islamic *da'wah* has a limited experience, it is crucial that we have enough, capable, well trained, and good *da'wah* workers. We need devout missionary workers who can dedicate their lives to Islamic propagation in Korea just as Christian missionaries have done and still continue to do. In connection with this, it is hoped that Islamic countries would invite young Muslim students to study Islamic knowledge and *da'wah* methodology for the purpose to cultivate qualified missionary workers for the future.

Rise and Formation of the Muslim Community in Korea

Islam is a new religion in Korea. In Jun 1950/1369, when the Korean civil war broke out, the UN, consisting of the USA and 16 other countries, dispatched a multi-national army to the Korean peninsula. This multinational force included Turkey, a Muslim country, which helped form today's modern Muslim community in Korea. The first Muslim who devoted himself to the propaga-

tion of Islam was Adul Gafur Karaismailoglu, an imam of the Turkish brigade that took part in that multi-national army. Under his guide, the first generation of Korean converts came to the Islam faith. Umar Jingyu Kim, Muhammad Duyoung Yoon and Abdulla Yoodo Kim established the Korea Islamic Society in October 1955/1375 and began to propagate Islam after erecting a masjid and setting up a temporary office with 3 tents donated by the Turkish army at Imundong Dongdaemun, Seoul.

In early propagation activities, Korean Muslims became active when the young *Imam* Zubeyr Koch came to the Turkish brigade as a new *Imam* in Jun 1956/1375. He built a temporary *mosque* with a big military tent and a minaret that became the first masjid in Korea. There were 208 Korean Muslims worshipping there when he left Korea a year after.¹

Muslim majority society in Malaysia showed interest in Korea from the beginning. In September 1961/1381, a group of religious representatives from Malaysia visited Korea for 15 days to assess the situation of Islam in Korea. They promised to support the education of 11 Muslim students from Korea, to study for 6 months at the Islamic College of Klang, Malaysia. In November 1962/1382, Tun Abdul Razzaq, the deputy prime minister, and Dato Haji Noah, the speaker of Malaysian parliament visited Korea. The outcome was a donation worth of one hundred thousand Malaysian dollars was made to support the activity of Islamic *da'wah* in Korea. This Financial assistance confirmed to the Muslims in Korea the sincerity and brotherhood of Islam among Muslims. This encouraged them to work harder for the propagation of Islam. Hence, Malaysia lined up other Muslim countries to support the Muslim minority in Korea.

In 1966/1385, Sabri Junggil Seo, Sulayman Hwasik Lee, and Muhammad Duyoung Yoon led a group of Muslims in Korea to establish the Korea Muslim Federation, KMF. The Federation still bears this name and is the sole Muslim organization that ex-

¹ Korea Muslim Federation, *Islam in Korea* (1955-1995/1374-1415), Special Issue in Conjunction with the 40th Anniversary of Islam in Korea (Seoul: KMF, 1996/1416), p. 15.

ists in Korea and is legally acknowledged by the government.

The Federation established a temporary masjid with office rooms at Wonhyoro Yongsangu, Seoul and resumed *da'wah* activities. At this critical period, Mr. Maulana Sayyid Jamil, president of the Association for Qur'an in Pakistan came to Korea. He was the chief supporter of the Korea Muslims including Imam Muhammad Duyoung Yoon, while living at the humble house of KMF. He arrived in October 1966/1386 and stayed for two months. He visited Korea in five consecutive years and exerted his most effort in propagation of Islam and education of Muslims in Korea. He made a great contribution towards the development of Islam in Korea; for this he has been regarded as 'the father of the Korean Muslims.'

The year 1967/1386 was a historic moment for the Korea Islam Foundation (KIF). Islam was officially recognized as a legal religion in Korea and KIF was registered as a legal organization under Korean national law. In March of that year, KIF received donations (5,000 pounds) from the Ministry of Religious Affairs in Kuwait. Though this was not a big donation, it was meaningful in laying down a foundation for Islam in Korea. Brother Sulayman Hwasik Lee was elected as the first president of the KIF. Since that time the religious society for Islam in Korea became an official legitimate religious body, like Buddhism and Christianity, and began to propagandize. Islam is not well known in Korea even though it is known as one of the major religions in this world, but the KIF now raises its torch to shed the light of truth in Korea.

Since June 1967/1387, the KMF has been publishing the Korea Islam Herald, a bi-monthly and bi-lingual (Korean-English) newspaper, by which *da'wah* activities are described and conveyed home and abroad. After the transfer of the temporary masjid to Namyongdong, Yongsangu, Seoul, the federation accelerated its *da'wah* movement through lectures and the distribution of booklets. While the federation sent Korean Muslim students to Islamic countries in order to foster Muslim leaders for the future, it made efforts to construct a masjid and an Islamic center that would be the basis for Islamic outreach or *da'wah Islāmiyah*.

The dream of the Korean Muslims of building a grand mosque in Korea came true under the auspices of the Korean government in September 1970/1390. Thanks to Jeong Hee Park, the president of the Republic of Korea, the Korean government donated 5,000 square metres of land located at Hannamdong Yongsangu, Seoul, Korea, to KMF for the construction of a grand mosque in Korea. From the 1970s, the Korean government has paid full attention to the importance of the Islamic countries, particularly after the first oil crisis. With donations of land by the Korean government and 400,000 US dollars, contributed by Islamic countries including Saudi Arabia, Libya, Kuwait, Qatar, Morocco, UAE, and Malaysia, the Seoul Central Grand Masjid and Islamic center had a historical grand opening ceremony on 21st of May 1976/1396. This was a turning point in the development of the Muslim minority society in Korea.

In fact, from the mid 1970s till the mid 1980s/1400s, Islam in Korea became more prosperous. With the urban boom in the Middle East, especially in the Gulf countries, many Korean construction workers, including technicians, went to the Islamic countries. They witnessed the religious life of Arab Muslims directly. They became interested in Islam, and many of them finally embraced it. For instance, the KMF had built the branch of the Islamic center at Jeddah, with a help of a Saudi Arabian business man named Shaikh Omar Abdullah Kamal, in March 1978/1398. Through this centre 8,000 Korean workers embraced Islam. And in July 1979/1399 in another branch of KMF, at Zaharah camp of Samho Construction Co., in Kuwait, about 3,000 Korean workers embraced Islam. A branch of KMF was also opened in Indonesia in 1982/1402.¹

During this period, domestic activities for the propagation of Islam became very active. *Da'wah* workers from the World Muslim League (*Rabitah*) and the Ministry of *Hajj* and *Dār al-Iftā'* in Saudi Arabia, the Islamic Call Society came to Korea. They produced 17 booklets on the teachings of Islam, for example, 'Way to be Muslim' was published in Korean language. The glorious

¹ Ibid., p. 27.

Qur'an was translated into Korean by Professor Othman Yongsun Kim to help the Muslim minority to read the Words of God in the Korean language. In addition to these activities, propagation activities in other parts of Korea resulted in building many branches of the KMF with their own Mosques in Busan, Gwangju, Jeonju and Anyang.

However, since the middle of the 1980s, the propagation activities of the Muslim minority in Korea have become slow. Interest in the Middle East and the Islamic world and on trade dwindled away. It is true that this setback is due to outside influences such as the Iran-Iraq war and the Gulf war, but there are also domestic causes like the lack of leadership from KMF, especially after the first Korean Muslim generation Doyoung Yoon, Jeonggil Seo, and Hwashik Lee passed away. Today there are 340,000 Muslims in Korea. KMF manages a central Grand Mosque in Seoul with 8 branches: 5 Mosques and 3 temporary praying places for propagation of Islamic faith and values.

Although Muslims in Korea are a minority, they possess many important features that make them quite unique compared to the followers of other religions. Korea is a very religious society and tolerant and open towards other religions. And none of the world religions have seized a superior position in Korean culture and society. However, all of world leading religions like Confucianism, Buddhism and Christianity co-existed in Korean society peacefully. This is the focal point of this chapter: the role and task of the Muslims in Korea – how to expand, and how to develop its forces in Korean society.

Structure and Role of KMF

A. Structure

A specific feature of the Muslim minority in Korea is that it has a uniform structure for the propagation of Islam. Consisting of 7 executives and 2 auditors, the Executive Board of the Korea Islam Federation, is approved by the Ministry of Culture and, likewise, it is the highest legislative organ. The Board approves financial matters

and plans future projects of the Fedearation. The president of the Board represents the Islamic brotherhood in Korea.

KMF has three major departments: 1. department for administration and secrertariat, 2. department for the propagation of Islam, and 3. department for maintenance. The first department part looks after the general management and running of the affairs of the Islamic brotherhood in Korea: accounts, correspondence and cooperation with government and other agencies and institutions, and the management of the Foundation's funds. The second department takes care of the call to Islam and propagation of its teachings: planning and carrying out various lectures on Islamic articles of faith, education programmes, public relations, publications, supervision, supporting and managing the branches' activities, propagation, organizing and assisting foreign Muslims, religious affairs (marriage, divorce, register, *Halāl* and *Harām*, etc.) and providing information for visitors. The third department is responsible for the maintainance of the buildings and properties of KMF main office and the chapters.

B. KMF Chapters and their Activities

1. *Grand Mosque of Seoul*

As described above, the construction work of the Grand Mosque in Seoul, started work in October 1974/1394, and inaugurated in May 1976/1396 as it was the first Grand Mosque in Korea.

The Grand Mosque complex includes: the head quarter's office of KMF, a grand conference hall, a reception room, *Imam's* office at the first level, a main prayer service hall for 427 men on the second level, and a women's prayer room on the third level. It can accommodate about 600 people. The Islamic Centre and attached buildings of the Grand Mosque, is a two-story building erected on 1, 362 square metres. In July 1990/1410 the Jeddah based Islamic Development Bank gave 350 million won (US\$ 291,000) for the construction of a three-story building that was completed in November 1991/1412. It houses the Institute for Islamic Culture, *Madrassa Amir Sultan bi Abdul Aziz*, the Advisory Committee, a training center for the Arabic language, the Student's Association, the womenfolk cir-

cle, and a Muslim charity unit. The major entities and activities of the Grand Mosque consist of the following matters.

1. Muslim Charity Circle: It is established by senior Muslims to promote mutual friendship among the circle's members and to provide assistance in case of any mishappenings and disasters occouring at home and abroad. For instance, they raised relief funds worth of US\$ 5,000 when the Turkey earthquake occurred in 2000/1420 and another US\$ 5,000 for Iraqis displaced by the Iraq war this year. This circle is consisted of 25 members who help themselves in marriage and funeral ceremonies and also help poor people next door to the mosque.

2. Students' Association: This is a student body of Korea Muslim university students. The purpose of this association is as follows: a) to promote mutual friendship, to foster brother and sisterhood with Muslim students, to help youths at home and abroad, and to enhance Islamic knowledge and beliefs. Under the association, there are several activities such as: propagation, study, publication, cooperation, social sports, and language. They hold regular meetings on Saturdays; athletic sessions and an outing in the spring; a summer camp in the summer; and an exhibition for Islamic culture in the winter season. All members work on Arabic language courses for non-Muslims; lecture on the Islamic creed; and work at the World Assembly of Muslim Youth (WAMY) Summer Youth Camp organized by the KMF. Since 1983, under the auspices of WAMY, a youth camp is held every summer in Korea. Through these activities the youth increase their Islamic knowledge and way of life.

3. Womenfolk Circle: The members visit Muslim families to provide assistance in family and other matters, such as marriage and funerals. After Friday prayer, they serve coffee other refreshemnts to foreign Muslim brothers, and provide lunch meals to Korean Muslims to promote mutual friendship.

2. KMF Chapter at Busan (Al-Fatab Mosque)

This is the second Mosque, after the Seoul Grand Mosque, located at Geumjeonggu Busan city, the largest port city in south-

ern Korea. The main building and attached structures were constructed under the auspices of Dr. Ali Fellagh, then Minister of Finance of Libya. More than 50 delegates from Islamic countries attended the inaugural ceremony of this mosque. The plottage of *al-Fatab Mosque* is 2,087 square metres (about 600 pyung) and *Mosque* building is 210 square metres, Islam center is 1334 square metres and can accommodate about 250 people.

Presently, Yasir JongYeuk Lee is the chairman and *imam*. In past, there were 3 Thai *Da'wah* workers for the propagation of islam, but presently there is no one. The major activities include: exhibition on Islamic culture, courses on Arabic language, lectures on Islamic faith, values and code of conduct, Qur'an recitation, various activities for Islamic propagation via mass media in Busan area, and an athletic sessions, etc. The Muslim students' association also carries out many activities led by students from the Arabic department of the Pusan University of Foreign Studies. They launch propagation of Islam projects at the 5 local universities during festive seasons. They also opened a public lounge room of Islamic culture for the local people. They conduct Arabic and English language classes and lecture on the Islamic creed continuously. On the occasion of 2002/1423 World Cup and Asian Games, a butchery centre was launched to produce *halal* meat to meet the needs of the Muslims in Busan area.

3. KMF Chapter in the Gwangju Province (*Gwangju Mosque*)

This is the third mosque in Korea. In May 1979/1399, Sheikh Muhammad Nasir al-Hamhan al-Utaibi, Deputy Minister of Awqaf and Islamic Affairs of Kuwait, visited Sang-Yong ri 'The Muslim village' and encouraged the newly converted Muslims. After his return to Kuwait, Sheikh Muhammad Ibrahim al-Sagabi, a judge from Kuwait, also visited the village and arranged to provide funds for the construction of the Mosque and Islamic Centre. Muslims from Kuwait, led by Br. Abdul Aziz al-Reeys, the editor of *Al-Banna* newspaper, donated 126,675 American dollars. The land was donated by Br. Wi Sik Ha, a devoted Korean Muslim in the village. The inaugural ceremony of this mosque was held in July 1981 (1401 H) and witnessed by more than 40 delegates from various Islamic countries. All

the population of this small village, totalling 700 people, embraced Islam in 1979/1399.

The Gwangju Mosque is situated in an 856-square-metres area with its premises occupying 99 square meters. As of February 2003/1423, it was frequented by around 735 people (male 450, female 285). In March 2001/1421, the KFMA was formed; it provides assistance and guidance to 1,500 foreign Muslims who are mainly workers from Pakistan, Bangladesh, Indonesia, India, Uzbekistan, Ghana, Burkina Faso and Iran. KFMA helps in making pleas to the Ministry of Labor in cases of delayed pay; industrial disasters; and solving compensation problems with Korean employers. They made a contract with the Association of Medical Doctors in Gwangju city for 50% off on medical charges to Muslim workers. They also work with the police station there for their safety.

4. KMF Chapter at Jeonju (Abū Bakr al-Ṣiddīq Mosque)

This chapter at Jeonju was opened in November 1986, with a support of US\$ 265,000 by Br. Abdul Latif al-Shari who visited Korea in April 1985. Abū Bakr al-Ṣiddīq Mosque is located on a site of 1,066 square metres. It consists of lecture rooms, an office and *wudū'* room on the first level of the building and a prayer hall (83 square metres) for men on the second level, and prayer hall for women on the third level with a capacity for about 250 people.

Abū Bakr Ṣiddīq Mosque is indeed a piece of art. Because Jeonju city is considered a traditional folk site, this mosque was constructed with the Korean traditional tiled roof and Islamic dome style for a beautifully harmonized building. A Syrian Muslim, Dr. Abdul Wahab Zahid Haq, who joined this chapter in 1986, is the Imam of the mosque since its opening. The special programme, comprised of the introduction to Islamic culture and creed during the summer and winter vacations, has received a great response from schools and institutions and the public in this area.

5. KMF Chapter in Anyang (Rābiṭah Mosque)

This mosque is a remodeled Christian church building purchased with private funds of 50 million Won by the late Br. Hussein Changsik Yoo, it opened in April 1986/1406. Originally, it was a

double story building with children's housing and a lodging house on the first floor, and a prayer hall at the second floor. In 1990s, when many foreign Muslim workers came to this area, the prayer hall at the second floor became too small to accommodate all of the foreign Muslim workers. They had to build a 3rd floor with their charity fund of 100 million Korean Won which made it possible to rebuild the current prayer hall with a 100 people capacity.

The Anyang Mosque had its name changed to the Rabitah Mosque in December 1985/1406 as the funds for remodeling and management of the Mosque was donated by the World Muslim League (*Rabitah*) in Saudi Arabia. However, the Mosque has experienced many difficulties with its management. The financial problems were solved by funds raised from the council for the mosque management – comprised mainly of labour workers from Bangladesh.

Br. Najmul Hak had been taken charge of the services as an *imam* of this Mosque after the late Imam Changsik Yoo passed away in December 1999/1420. The wife and family of the late *Imam* Yoo proceeded to sell the mosque premises. Meanwhile the council for the Mosque management made decision to stop the sale of the Mosque and has collected 150 million won through fund raising. They continue to keep good relations with KMF by talking with the late Imam Yoo's family to resolve this crisis.

6. KMF Chapter in Jeju (Islamic Centre of Jeju Island)

The Islamic Centre in Jeju Island opened on June 1, 2002/1423 with the purpose of providing a prayer place for Muslims who visit this island located in the Southern part of the Korean peninsula and also to propagate Islam to the people there. Currently, the Friday prayer is led by Br. Bashir Dayyong Kim who just returned from Qatar where he lived for 12 years. Professor Bashir Kim, is engaging in lecture on the science of tourism at the Jeju Halla University. He is putting his utmost efforts and energies for Islamic propagation while managing directly the 'Open Forum' to give a better understanding of Islam to university students and youths in Jeju area.

7. KMF Chapter at Ansan (*Islamic Centre of Ansan city*)

A prayer venue was established at Ansan area, Wongokdong Ansan city, Gyunggi province, for Muslim labour workers there. KMF purchased a three-story building for 350 million Korean Won. Being managed by Br. Hussein Dinar from Bangladesh, this chapter is the cradle of the religious life of approximately one and half million Muslims living around Ansan Banweol industrial complex.

8. KMF Chapter at Pocheon (*Islamic Center for Songwoori*)

In May 2000/1421, the KMF opened a *Muṣallā* (prayer venue) at the heart of Soheuleub Pocheongun costing 10 million Won. In Songwoori about 1,500 foreign Muslims convened around this small *Muṣallā* and launched a campaign to raise 200 million Won for developing it into a full-fledged mosque. In January 2003/1423, a piece of land expanding over 589 square metres was purchased for the construction of the mosque. Then the KMF designed the plan of the building. A cornerstone-laying ceremony took place in June 2003/1424. The plan also includes the construction of an Islamic centre on a 225-square-metre area with 150 million Won (US\$ 125,000). The fund raising campaign for building this mosque is on going at KMF in Seoul.

KMF Affiliated Major Bodies and Institutions

1. Korea Institute of Islamic Culture (KIIC)

The KIIC was established in August 1997/1418 with the following aims: 1. to carry out comprehensive and systematic research on Islamic culture; 2. to provide relevant and correct information related to Islam to academic, religious, industrial circles and to the media and government agencies, and 3. to counter prejudices and misunderstandings on Islam and promote mutual understanding and respect between Muslims and non-Muslims. It also emphasizes the promotion of cultural exchanges between Korea and Islamic countries; public relations efforts to correct the Korean perception of the Islamic world; and enhance people-to-people or popular diplomacy.

Scholars who studied in Islamic countries such as Saudi Arabia, Iran, Turkey, Pakistan, Indonesia, etc. undertake research

works under the slogan ‘Making a good institute.’ Since 1997/1417 they have published five volumes of the *Korean Journal of Islamic Culture* in English, Arabic and Korean. Among their major activities is the reorganizing and expansion of language classes at KMF. They teach languages of Islamic countries (Arabic, Persian, Turkish, Malay-Indonesian and Urdu) and also deliver special lectures on Islam for the public.

They conduct domestic seminars and participate in international symposia where they present their papers to be published in various learned journals. They give special lectures on Islam upon invitation from major public institutions and groups. An introductory book on Islamic beliefs and the Muslim world¹ became a bestseller in Korea for several months after the September 11 events in the USA. The institute considers contents, related to Islam described in the textbooks of the middle and high schools in Korea and learned journals from all angles. They also correct misinformation on Islam spread in newspapers, magazines, broadcasting, etc. Currently Dr. Wonsam Lee, a SunMoon University professor, is in charge of this institute.

2. *Madrasah Amir Sultan bin Abdul Aziz al-Islamiya*

In October 2000/1421, Sultan Bin Abdul Aziz, Saudi minister of defense visited the KMF and met delegations who conveyed to him of the need to establish an Islamic educational institute in Korea. He laid down the cornerstone for Islamic education for Muslim children in Korea by donating 300,000 dollars for building a *Madrasah*. In November 2001/1422, the KMF opened the *Madrasah* with this fund. The multi-media room was built from the conference room of the Seoul Grand Mosque, the *Madrasah* classes were classroom remodeled from the classrooms of the Islamic centre. This is a supplementary education for children from 7 pm to 9 pm, 4 days a week, after regular school. They are teaching Arabic, English, Qur'an, Islamic creed, and the practice of the creed as a major subject. 25 Muslim children from 5 countries,

¹ Bearing the title *Islam*, the book was written by Cheong A. and published in 2001/1421.

including Libya, are attending. The teachers of this school are Br. Juwha Lee, a director of the propagation section, and 4 foreign Muslims.

3. Institute of Arabic Language

After the oil crisis of the early 1970s, when the Middle East construction boom was at height, many of Korean workers had an ardent desire to learn Arabic language. To meet this demand, the KMF founded the Institute of Arabic Language in 1976/1396 in order to propagate Islam. Afterwards, this institute carried out not only Arabic education, but also taught Islamic culture and basic Islamic teachings as a bridgehead of Islamic propagation. Thanks to this institute, many people were converted to Islam, and got jobs at industrial sites in the Middle East. Many of the Muslim converts of that time are very devoted people who are now active at various mosques.

When the KIIC was established in 1997/1417 under the auspices of KMF, the task of teaching the Arabic language was passed over to it.

4. Advisory Committee

The Advisory Committee propagates Islam in Korea. It was established in April 1998/1418 by leading figures from Islamic countries who took the lead in propagating Islam in Korea.

They meet every 3 months at the Advisory Committee room of the KMF where they discuss various issues important to the Muslim minority in Korea. They give advice on the propagation plan and strategy of the KMF and contribute to the development of Islam in Korea.

5. Social Welfare Committee

There are about 100,000 foreign Muslim workers living in Korea. The KMF manages the Social Welfare committee to help them in their difficulties; to aid them with adapting to Korean society; and promoting and securing their welfare.

This committee has two major tasks: The first is a special programme to secure getting free medical examinations and treatment services for poor foreign Muslims. Medical examinations and treat-

ment services take place, on the last Sunday of every month, at the big conference room attached to the KMF. Currently, Dr. Seokwon Kim from Sacred Heart Hospital of Gangdong, Seoul and 2 physicians from the Korean/Chinese medical school provide free medical treatments for 100 foreign Muslim workers. In the near future, the KMF's plan is to set up a standing clinic at the Seoul Grand Mosque for foreign Muslims with the goal to give free medical services.

The second task is to set up a Muslim lounge at the KMF. This lounge will be created to help foreign Muslims facing difficulties caused by Korean employers, i.e., unpaid or delayed wages, victims of accidents or unsafe situations. The KMF, through this lounge programme, will provide relevant legal consultations to foreign Muslims and will speak on their behalf in making a plea or asking for cooperation from arbitrator of Ministry of Labor and the Bureau of Police and the Immigration Bureau of Korea respectively.

Meanwhile this social welfare committee has many plans to establish an orphanage, a shelter for single mothers, an old people's home, and a poor relief place managed in the Islamic way.

6. Committee for the Establishment of the Islamic College

In May 1977/1397, Br. Abdullah Ali al-Mutawa, the chairperson of 'The Committee of Muslims' Foreign Aid in Kuwait, visited Seoul Central Masjid and proposed to establish an Islamic college. Encouraged by him, the Muslim leaders of KMF approved the Islamic College plan and formed the "Committee for the Establishment of the Islamic College". The plan took concrete shape when HRH Prince Naif bin Abdulaziz, the Interior Minister of Saudi Arabia, visited Korea in July 1979/1399 and promised to support a financial fund and gave his approval to the plan.

In May 1980/1400, H.E. Choi Kyu Ha, then president of Korea, paid an official visit to Saudi Arabia and a joint communiqué was issued in which the two countries agreed to cooperate in establishing an Islamic college in Korea. After this visit, and as a first step in that direction, a site of 430,000 square metres, located in Yong In, 50 km away from Seoul, was donated by the Korean government.

According to the communiqué, the two countries would organize a “Joint-Committee for the Establishment of an Islamic College,” and in December 1982/1403, the joint committee discussed the projects. It was decided that the cost of construction and management for this projects should be contributed by the Saudi Arabian government.

Even though we had the ground breaking ceremony for the Islamic College, with the participation of more than 80 Muslim leaders from various Islamic countries, the Islamic College plan is still behind the original schedule.

Major Centres and Activities for the Propagation of Islam by Foreign Muslims in Korea

1. *International Muslim Students Association of Korea*

This is a gathering of foreign Muslim students studying at Seoul National University and the KAIST (Korea Advanced Institute of Science and Technology). There are about 300 members currently. It started with various activities since 1999/1419 aiming at propagating Islam in Korea and strengthening friendship among members. They publish booklets and pamphlets on basic Islamic creed and distribute them to the general public. In the early 2003/1424, they made Islamic calendars for free distribution, and because of the positive response, they launched in Korean language the publication of a monthly magazine the named *Beautiful Islam*, which has contributed a great deal to introducing Islam to the Korean society.

2. *Turkish Muslim Students Association in Korea*

Though not a formal establishment as a propagation organization, it is a gathering of Turkish Muslims in Korea who follow the teachings of Bediuzzaman Saeed Nursi. It was started by 3 students from Turkey, in the early year of 1990s, but has 20 student members who managing it actively. This association has a good relationship with the KMF since Br. Faruk Zunbul, a missionary at the Seoul Grand Mosque, leads the gathering. They are mainly devoted to *Da'wah* activities to propagate the teachings of Islam - through their friendship network. They are very popular

among Koreans because of their good Korean speaking abilities.

3. *Ikatan Keluarga Muslim Indonesia, IKMI*

This is a meeting of Muslim workers from Indonesia that has been in place since 1996. They meet once a month to promote friendship among members and propagate Islam in Korea. There are about 250 members who live near Seoul. They have minor organizations at Busan and other local cities.

4. *Jamā'at al-Tabligh*

This organization consists of workers from Pakistan and Bangladesh. Its headquarters is located in India. The real aim of this organization is to show the Islamic way of life directly through practicing the propagation method of early Islam. There are in this organization Muslims who agree to follow this aim and activities of the *Tabligh Jamaat*. They meet every Thursday at the Grand Mosque where they make plans for the week and month and review past activities.

They usually visit *Muṣallā* (temporary prayer place) with other members. They stay several days or months for propagating activities including direct practice, of the model life, of Muslim *Tabligh Jamaat* in Korea. They also work together with *Tabligh Jamaat* from other countries, who visit Korea 2-3 times a year, to help their propagation activities.

5. *Da'watu al-Islamiya*

Da'watu al-Islamiya is an Islamic organization for the propagation of the message of Islam in Korea, with its headquarters in Bangladesh. It consists of foreign Muslim workers living in the Anyang area. Established in 1994, this organization, which comprises 500 members who are mainly from Bangladesh, is centered on the Anyang Mosque. They organize annual events such as a prayer on the occasion of the Prophet Muhammad birthday, special lectures by Muslim leaders, and a revival service for propagation of Islam. They have a special fund of 150 million Korean Won allocated to the activities and maintenance of the mosque. They hold regular monthly meetings to discuss matters relating to life and wellbeing of the group.

Islamic Education and Research Institutes in Korea

A. The Study of Islam in Universities

In 1965/1384, Hankuk University of Foreign Studies (HUFS) opened the department of Arabic to teach the Arabic language and literature and Middle East and Islamic studies. The aim of HUFS is to produce Korean experts and specialists in Arab and Middle East affairs. Since its inception it has produced about 2,500 graduates and its annual intake is roughly 90 students (50 Seoul campus and 40 at the Yong In campus). It offers courses on the history of Islam, introduction to Islamic teachings and culture, Qur'an and Hadith, etc. Other departments were also established to focus on Turkish (1973), Iranian (1976), and Malay-Indonesian (1964) studies.

HUFS also launched a Masters' degree programme in Arab and Middle East Area Studies and a doctoral programme in international relations in 1966/1385, a Masters' programme in Arabic language and literature in 1976/1396, and a doctoral programme in Arabic language and literature in 1982/1402. These programmes offer courses such as the following: history of Islamic thought and culture, Qur'anic studies, Islamic law, Islamic theology, and history of Islamic revivalist movements. The Graduate School for International Area Studies at HUFS teaches languages of the Muslim world and and other Islam-related courses.

The Myongji University opened its department of Arabic language and literature in 1976/1396. In 2000/1420 its name was changed to the Department of Arab Area Studies. It offers courses such as understanding of Qur'an & Hadith, and Islamic living custom. Its graduate school established a Masters' programme in Arabic literature.

Pusan University of Foreign Studies (PUFS) and Chosun University in Kwangju also established departments for Arabic language in 1983 and 1985 respectively. The latter university offers courses on Islam that are very similar to those taught at HUFS. In March 1997/1417, the Chosun University also set up a Masters' pro-

gramme in its department of Arabic and Islamic studies. It offers courses on topics such as Arabic & Islamic history, studies in Arabic-Islamic classical texts, and conducts a seminar on modern Islamic studies.

Seoul National University and Seogang University have departments of Religious Studies and teach several courses related to Islam. The former offers a course on introduction to the religion Islam, while the latter has history of the religion Islam as a main course.¹

The real centre for research and education on Arab, Middle East and Islam is the Graduate School at HUFS. It has produced most of the Korean scholars on the Middle East and Islamic studies. From 1975/1395 to February 2003/1423, they have published 48 Masters' theses and 6 doctoral dissertations of which 19 theses and 2 dissertations deal with topics related to Islamic studies.

Since 1975 the total number of Korean Masters and doctoral graduates specialized in Muslim area and Islamic studies has reached 211, including HUFS (with 200 MAs and 11 PhDs).²

B. Islamic Research Institutes and Major Activities

1. *Korea Association for Islamic Studies (KAIS)*

KAIS was founded after a series of lectures on "Understanding of Islamic World" had been launched on June 18, 1987/1407. It lasted almost 2 years at the seminar hall of the Daewoo Foundation which had been very supportive of these unfamiliar but important fields of study and knowledge in Korea. It was, indeed, a place to exchange earnest opinions for the improvement of Islamic studies. Covering different Islamic topics, such as "Muhammad, Who is He?", "Jesus in the Qur'an", "fundamentals of Islamic doctrine", "Sufism: understanding Islamic Mysticism", these lectures take place every month. All lectures have been very successful and have attracted many people.

¹ For further details see, Sohn Joo Young, "Introduction to Present Situation of Islamic Studies in Korea," *Korea Journal of Islamic Culture*, Vol. 1, No. 1 (1997).

² Republic of Korea: National Assembly Library, 2003, *Books: Ph D dissertations, MA Theses of Republic of Korea*.

The most significant result of this series of lectures is that it gave a great momentum to interest in Islam that culminated in the founding of KAIS in February 1989/1409 at the end of the final session of those lectures. Professors Kim Yong Sun, Kim Jong Wee, Han Duk Kyu and Jung Su Il then came to the conclusion that it was necessary to study Islam with a renewed perspective and to systematically spread knowledge about it. Thus KAIS leads Islamic studies in Korea; it holds two symposia and one international conference. It has published 86 papers in all fields of Islamic studies by 150 regular members from 25 universities in an annual journal. Out of 171 articles that have been published in different journals produced by these universities, 103 are related to Islamic studies.¹

The most remarkable activity of KAIS is the programme of Islamic Texts Reading (ITR). In addition to meetings, members are strengthened in unity and friendship and share academic achievements. The meetings are mainly streamed towards the methodology of colloquium and ITR. For instance, from 1993/1413 to 1995/1415, it tried to translate and annotate the Qur'an into the most appropriate Korean format.² In 1996/1416, the third project of ITR, a joint research project, published the book 'The Formation Process of the Islamic Sects and Their Present Situation'.³ 'Research of Islamic World' the proceedings of a colloquium held over in 1997-1998/1417-1418, and 'The Religion of Islam', by M. Muhammad Ali, the ITR text in 1990-1992, are now under preparation for publication. 'The Wars Unended' dealing with the factional conflict in the Islamic world was published at end of the last year under the name of KAIS.⁴

¹ Korean Association of the Islamic Studies (KAIS), 1990-2003, *Annals of KAIS*, No.1, pp. 1-13.

² KAIS, *Annals for Korean Association of the Islamic Studies*, No. 3, pp.285-296 and No. 4 pp. 324-330 (Korean translation of the meanings of the Qur'an, Chapters 81-114).

³ Sohn Joo Young, Kim Jung Wi, Lee Hee Soo, Hwang Byung Ha, & Kim Young Kyung, *The Formation Process of the Islamic Sects and their Present Situation*, Acanet, 2000.

⁴ KAIS, *The Wars Un-ended: The Factional Conflict in the Islamic World*, Cheong A, 2002 (H.1423).

2. *Korea Association for Middle East Studies (KAMES)*

The oil shock of 1973/1974 was the historical turning point in diplomatic and economic relations between Korea and the Middle East countries. It made the need of studying this region urgent. The oil crisis directly motivated the establishment of the KAMES (Korea Association for Middle East Studies). The KAMES was founded in March 1976/1976 with 54 members. Now there are 250 KAMES members including scholars, diplomats, and experts on area studies. They hold regular conferences and seminars, international symposia, and publish *The Korean Journal of the Middle East Studies* (KAJMES) annually. The latest issue of the journal is No. 23-2. The total number of the articles published in this journal is 335, of which 56 (16%) are related to Islam.¹

3. *Institute of Middle East Studies, HUFs and Other Institutes*

Another major institute of Islamic studies is the IMES (Institute of the Middle East), an ancillary institution of HUFs which founded in January 15, 1976/1976. This institute was established with big expectations and support from the Korean government. The purpose of this institute was to build a better relationship with the Middle East countries by doing research on politics, diplomacy, economics, society, religion, and culture of this region. It has invited many distinguished scholars and experts from inside and outside for special lectures and seminars. The IMES has published a collection of materials, a research series, and a number of books. The total number of articles published in its journal is 228, of which 66 (29%) deal with in Islamic studies subjects.²

Besides the institute described above, there are a couple of other major institutes, such as the Korea Institute of Islamic Culture (KIIC) under the KMF and the Institute of Islamic Studies (IIS) attached to Ewha Woman's University. The latter institute was established in September 1992/1992 with the aim of developing propagation methods of Christianity in the Islamic world. The scholars belonging to this institute are mainly

¹ Korea Association of the Middle East Studies (KAMES), 1980-2003, *Journal of KAMES*, No. 1.

² Institute of the Middle East Studies (IMES) of HUFs, 1980-2002, *Journal of IMES*, No. 1.

Christians who are engaged in research on Islam. They have published four series of books titled *Journal of Islamic Studies* including an article entitled "How do Muslims Identify Jesus?"¹

The Religious Situation in Korea and Government Official Policy on Religion

The Religious Scene in Korea

A. Religious Features of Korean Society

Historically, various religions have coexisted in Korean society: Koreans are a religious people. Not only Christianity, Buddhism, and Islam exist in Korea, but also hundreds of new religions and common beliefs which form spiritual communities are visibly present in the Korean scene. Also groups of sorcerers have organized themselves into certain structures, though they have been censured for their superstitious and irrational inclinations.² All of these belief systems are part of the religious map in the Korean society. Their cultural elements have influenced, more or less, the Korean public. Therefore, the religious scene in Korea is vividly pluralistic.³ According to the statistics released by the Korean Statistic Bureau in 1994/1414, the number of religiously affiliated people in Korea is 33,772,552, 77.7% of the total population (44,453,000). However, this percentage could be much higher when we add to it the followers of new unregistered religions that were not included in this statistics.⁴

This data clearly reflects the Korean society's general attitude towards religion. In other words, it means that individual members have more than one religion: in fact the religious population would be more than the absolute number of the Korean population.⁵ Certainly, the religious population of Korea would be greater than

¹ Institute of Islamic Studies (Chun Chae Ok): *The 1995 Yeyong Communication*.

² Ministry of Culture & Tourism, *Religious Affairs, A Handbook for Religion of Korea* (Seoul: Kyemoonsa, 2001), p. 79.

³ Yoon E Heum, *Religions of Korea at the transition era* (Seoul: National University and Research Center for Religion and Culture, Jeepmundang, Department of Religion, 1986), p.16.

⁴ Kim Sangho, *A Study on Religious policy in Korea*, 1996, p. 16.

⁵ Ministry of Culture & Tourism and Religious Affairs, *A Handbook for Religion of Korea*, p. 397.

the absolute population number if we include the numerous shamans among the people at the lower levels of society.

In this way Korea is remarkable in that it never broke apart in the name of any religion even though ruling kingdoms, in its history, changed religious affiliation. The Korean society has continuously existed as a multi-religious society for more than 1600 years, since Buddhism was introduced to it. Entering the 20th century, many nations fell under colonial rule; they were forced to divide into many states. In Korea, however, during the independence movement launched in March 1, 1919/1337, various religious groups joined hands to save the state and the nation.¹ This shows that religions in Korea are rather tolerant and cooperative in their relations with one another. It is easy to see Korea's religious pluralism and respect, if not appreciation, of different beliefs and value systems clearly reflected in its national public holidays.

Secondly, religious communities in Korea are quite liberal and tolerant. As seen in the religious population, Korea is a multi-religious society; the people get along with various religions and, in fact, some belong to more than one religion. Also, it is a common feature of Oriental culture to have a generous attitude towards other religions.² From a historical viewpoint, it can be said that the tolerant Korean attitude towards religion is due to the fact that the people's social and personal life in Korea has been influenced and moulded by the creeds and values of different religions at same time. In this context, the Korean is Confucian in human affairs, Buddhist in his view of life, Christian in caring for neighbors, and Shaman in his view of destiny.³

In other words, the Korean society has a natural disposition and original receptivity to religious beliefs and values. This fact is very much in favour of Islam which the Qur'an has proclaimed as the religion of human nature (*din al-fitrah*), thereby attaching high

¹ The March 1 movement is a national representative movement that fought against the Japanese invasion. It was led by prominent religious figures from Cheondoism, Buddhism, and Christianity.

² Yoon Eheum, *Development of Society and Role of Religion, State and Society*, (Institute of Religions Domestic and Abroad, 1984), p. 26

³ Yoon Eheum, *ibid*, p. 26

consideration to a number of major human values, such as love of mankind, brotherhood, family belonging, and human destiny. The religious system of Islam and the exemplary model of Prophet Muhammad may thus be said to be very much in consonance with the Korean people's view of life and cultural values which have been deeply rooted in Shamanism since very old times.¹

B. Religions in Korea

The religious situation in Korea can be described as basically an amalgam of historical world religions, native religions, arising new religions, and Shaman local beliefs. A brief description of the religious map is provided in the following paragraphs.

1. Historical Religions

Buddhism: It flourished during the Koryo dynasty when it came to Koguryo in 372 via China. Although it began to decay after the Chosun dynasty, it was, at that time, at its zenith. Buddhism is the oldest foreign religion that settled in the Korean peninsula.² This religion has greatly influenced the Korean spirit and culture of living. There are two major sects, Jogaejong and Taegojong, with 40 sects and 12,004 registered temples, 3,500 unregistered temples, 25,598 monks and about 22,700,000 followers, thus accounting to approximately 40% of total population.³

*Confucianism:*⁴ It came during the same period as Buddhism. Its ideology has influenced politics and education. It reached its heyday under the Chosŏn dynasty (1392-1910) which "implemented harsh measures in order to diminish the institutional power of Buddhism" and promote Confucianism "as the philosophy of state

¹ Kim Seongkwang, *A Study of Religious Education of the Korea Christian Mission Schools under Influences the Religious Pluralism*, 1993, pp. 11-12.

² Yoo Dongsik, *Korean Religions and Christianity* (Seoul: Korea Christian Book Press, 1982), pp. 59-63.

³ *According to Korean Statistics in Nov. 1, 1995, the total population of Korea is 44,554,000.* – Author. *According to 2012 records, the total population in South Korea has reached 50 million people.* – Editor.

⁴ It is debatable whether Confucianism can be classified as a religion, but it is customarily regarded so.

governance.”¹ Since then Confucianism has become the source of values and morality for the Korean society. In the modern era its power has declined rapidly, and barely maintains its slender existence under the basis of civic code of conduct.² There is only one sect with 234 local schools annexed to the Confucian shrine, 18,240 teachers and 10,000,000 followers. However, the number of followers is very doubtful.

Catholicism: The Catholic Church became a centre of Western learning among the intelligentsia when Lee Seunghoon was the first to be baptized into the Christian faith. It suffered persecution severely for a century and was viewed as a harmful creed to Confucian society during the Chosun dynasty which emphasized the absolute power of kingship and ancestor worship. After the Korea-France treaty in 1886/1303, Catholicism was allowed to be propagated in Korea for the first time. Currently there are 2,369 clergymen, 5,000 sisters, and 1,657 churches and 3,578,113 believers.

Protestantism: Protestantism arrived to Korea one century after Catholicism. It has celebrated its centennial anniversary. It has been very successful in expanding with securing enormous power and number of believers. There are 132 sects, 48,256 churches, 52,312 ministers, and 15,055,609 followers.³

Islam: Islam, as we have already seen, is a late comer to Korea, barely more than half a century since it was first introduced to Koreans in 1950/1369. The number of its followers is about 33,640.

2. Rising New Religions

Contrary to historical religions whose truths and systems have been established, a rising new religion can be defined as one that is still experimenting and searching for its truths and substance. While historical religions in Korea came mainly from the outside, arising new religions are homegrown creations. Presently, there are 240

¹ Choi Mihwa, “State Suppression of Buddhism and Royal Patronage of the Ritual of Water and Land in the Early Chosŏn Dynasty”, *Seoul Journal of Korean Studies*, Vol. 22, No. 2 (Seoul: Kyujanggak Institute for Korean Studies, December 2009), pp. 181-182.

² Yoo DongSik, *Folk Religion and Korean Culture* (Seoul: Modern Thought Co., 1978), pp. 262-263.

³ Ministry of Culture & Tourism, *Religious Affairs*, pp. 30-39.

newly risen religions in Korea, although only 26 of them are active and registered as corporate bodies with the Ministry of Culture and Sports. They have 26 places for gathering, 36,450 ministers, and 5,654,970 followers. The major representative religions of this category are Cheondogyo, Won Buddhism and Daejonggyo.

Cheondogyo: It was created by the Donghak movement in 1860.¹ In a short time, it developed into a national religion with a big sacrifice of one million people in the name of fighting to save the nation and to inspire a national movement for modernity. There are 1,200,000 followers, 150 parishes, and 4,907 ministers.

Won Buddhism: This Buddhist sect emerged around 1900/1317, under rapidly changing circumstances.² It has some 1,230,000 followers and 500 temples in Korea, the United States of America, Canada, Germany, and Japan, with 9,800 ministers. Its followers run three universities, including Wonkwang University, 7 middle and high schools, 96 preschools and kindergartens, and 34 charity and medical centres.

Dae Religion: The founder of this religion is Tangun, the founding father of the Korean nation. It is a five-thousand-year-old native religious tradition. There are 89 shrines in the country, 271 ministers and 470,100 believers belonging to this tradition.³

3. Local Religions of Korea

By the term 'local religions' refers to primitive religious traditions with no specific originator or well-defined creed and belief system, but they have religious characteristics, with incantation, and adopt the local folk beliefs. Shamanism, which mainly teaches the

¹ Literally, Cheondogyo, also known as Cheondoism, means "Religion of the Heavenly Way". It is a 20th-century Korean religious movement based on the 19th century Donghak Confucian movement founded by Choe Je-u (1824-1864) and codified under the Korean nationalist and independence activist Son Byeong-hui (1861-1922). Cheondoism has its origins in the peasant rebellions which arose in 1812 during the Chosŏn dynasty. Cheondoism is essentially Confucian in origin, but incorporates elements of Korean nationalism, Taoism and Buddhism. It places emphasis on personal cultivation, this-worldly social welfare, and rejects any notion of an afterlife. – Editor.

² Ministry of Culture & Tourism and Religious Affairs, *A Handbook for Religion of Korea*, p. 102

³ *Ibid.*, p. 397.

pursuit of good fortune, is representative of this type of religion.¹ Since such local religions do not form into groups, it is not easy to find their religious demographics, but it is safe to add that there are uncountable numbers of followers that belong to these local religions in Korean society.

C. Korean Official Policy and Regulations on Religion

1. General Principles of Korean Policy on Religion

Article 20 of the Korean Constitution stipulates that “All people have the freedom of religion.” It does not recognize a state religion; but there is a separation between religion and politics. This means that Korea’s policy on religion is based on two main pillars: principles of the freedom of religion and separation of church and state.

Here freedom of religion is defined as the freedom of a person to believe in the way he or she wishes. That includes not only active freedom of belief: religious ceremony, religious gathering, association and missionary activities, but also passive freedoms, i. e. not having any religion at all, not taking part in religious ceremonies, and propagation activities. This is supported by article 11 of the constitution which states that “All people are equal in view of the law, not allowed to be discriminated against by gender, religion or social status relate to all spheres of political, social and cultural life.”

Freedom of religion, defined as a human right rather than the right of a nation, is not only for the natives but also for foreigners and stateless persons. The supremacy of this right has allowed religious groups to flourish and build churches and temples.²

The principle of the separation of church and state is based on the idea that the state is only concerned with the mundane life of people and does not interfere with their religious and spiritual life. The principle’s basic elements: denial of state religion and neutrality of state concerning religious matters.

¹ Sik, *Folk Religion and Korean Culture*, p. 268.

² Kim Sangho, *ibid*, p.16.

- *No Recognized State Religion*: In pre-modern Korean society religion was not separated from the state; Buddhism developed under the auspices of the royal family in Koryo dynasty (918-1392). Politics was part of the life of most revered monks. Confucianism in the Chosŏn dynasty greatly influenced not only politics but also people's social life thanks to the policy implemented by the state to promote Confucianism. Even after the end of this dynasty, a systematic policy separating religion and the state was not undertaken, though there were some leaders who upheld the idea of the separation of religion and state under the influences of western thought.

Later, such a stand was clearly upheld by the Constitution promulgated in July 17, 1948 when the Republic of Korea was established. Thus, Articles 19 and 20 underscore "freedom of conscience" and "freedom of religion" to all citizens, while Article 20(2) indicates that "No state religion shall be recognized, and church and state shall be separated".¹

- *Neutrality of the State towards Religion*: The state is not allowed to give preferential treatment to any particular religion, nor shall it perform or support financially special religious ceremonies. One of the manifestations this neutrality towards religion is Article 5 of the Education Law which states that "The state and the public school cannot do any religious education for a particular religion."

Yet, the controversy over religious interference in politics is far from being settled. The Grand Court of Korea, under the Yooshin constitution of the 3rd Republic Government,² ruled that a critical sermon on politics is regarded as a political speech and is guilty of violating martial law.³ However, there is no regulation of positive law restricting the political activities of religious persons or religious bodies. If such law is enacted in the future, such a move

¹ *Constitution of the Republic of Korea*, pp. 6-7. See also Park Jongsu, *Analysis on the Change of Relationship of State and Religion Emphasizing on the religious policy in 1st - 6th Republic of Korea*, p. 200.

² *Daepan*, 1973, 5, 23, pp. 73-525.

³ Yanggun, *Legal Study on the relationship of State and Church: Issues in the Modern Legal Science* (Seoul: Park Young Sa, 1983), pp. 592-593.

will, in fact, be a violation against the freedom of religion.¹

There are two positions regarding the issue: It is possible to organize and work for a religious party in Korea in the same manner as Christian democratic parties in some Western countries, like Germany, do. Hence, the organization of religiously-based parties should not be banned from politics; their political activities should rather be protected by the law. The second position is that it is undesirable, by virtue of the principle of the separation of church and state enshrined in the Korean Constitution, to allow the formation of political parties based on any particular religious creed in a multi-religious society like Korea.² Most Korean intelligentsia today subscribe to the second view. There is yet great concern that this situation might develop into a serious crisis affecting order and stability the Korean society.

Nevertheless, the constitution of Korea guarantees the freedom of religion. Hence, it regulates the registration of religious groups under civil law. Article 32 of the Civil Code guarantees "The establishment and permission of non-profit organizations" permits associations or foundations with aims of academic, religious, charitable, social and other non-profitable nature and activities to form corporate bodies with permission of the regulating authority. In addition, various laws related to taxation also determine the tax status of religious organizations, charity requirements for such bodies, and the regulation of benefit of religious organizations to their receptors.

2. Religion-related Laws

The laws and regulations related to religion could be divided into three categories. The first category pertains to the protection of Buddhism, and is known as the "Law for Traditional Temples Reserves". The second one concerns Confucianism, and consists of the "The law of religious property". By law Buddhist temples and Confucian shrines, which are annexed to local schools, must have their historical value and cultural significance protected as

¹ Ibid.

² Han Sangbum, *Basic Human Rights* (Seoul: JeongEumSa, 1985), pp. 172-173.

part of the heritage of national culture. The third category includes general laws regulating religious matters.

As we have described above, all religious organizations in Korea are established and managed as non-profit organizations according to Article 32 of the Korean Civil Code (the establishment and permission of non-profit organization). There are 398 religious organizations registered with the Ministry of Culture and Sports as of December 2001: Buddhism (90), Protestantism (188), Catholicism (73), Confucianism (21), Islam (1), and others (25).¹ As already mentioned, Islam in Korea was legally registered as a foundation in 1976/1396.

Religious education is only possible at private schools under Article 5 of the Education Law. The most important factor for the fast growth of Christianity is the indirect method of propagation of its teachings through education: Christian middle and high schools and universities. For example, the Catholic Church manages various projects on education: kindergartens (215), primary schools (6), professional colleges (3), middle schools (26), high schools (35), universities (9), and theological seminaries (5). They also provide social service to the people through different means, such as hospitals (30), old people's homes (25), and leper colonies (25). Islamic organizations, however, have none of such institutions related to educational, cultural and welfare programmes.

Currently private schools and social welfare organizations are established under special laws. Education foundations are established by the Private School Law (Law No. 1362, June 26, 1963/1383). Social welfare foundations are established by the Social Welfare Projects Law (Law No. 2191, January 1, 1971/1390). In addition, there was a strong request by religious organizations to establish a religious law to promote good relationships among religions.

Korean law protects religious ceremonies and places of worship. Article 158 of the Criminal Code stipulates that "one who

¹ Ministry of Culture & Tourism, Religious Affairs, *A Handbook for Religion of Korea*, pp. 353-374.

intends to obstruct funerals, feasts, prayers or sermons will be fined not exceeding fifteen thousand won.” Article 149 of the Criminal Procedure Code states that “a person who holds a religious position or has it in past can deny the testimony in regards to his religious position.” Article 286 of the Civil Procedure Code also stipulates the right of a religious man to deny the testimony: “one who holds a religious position or held it in past, has the right to deny the testimony if he does not want that position known.” The Labor Union Act No. 11 stipulates, “A member cannot be discriminated against with regard to race, religion, sex, (political) party, or rank.” The Labor Standards Act No. 5 also gives equal treatment, stipulating that “the labor condition cannot be discriminated against nationality, belief or social rank.” The Law of Conscription Affairs No. 50 and the Law for Military Personnel Affairs, section No.5, No. 8 and No.12 provides rules relating to religious military personnel and religious officers and specifies standard rules concerning such acts as sarcasm, mockery, hatred of religious beliefs, religion or disrespect for religious ceremony.

Conclusion: Future Prospects of Islam in Korea

Religious policy of Korea is based on the freedom of religion and the principle of separation of church and state. However, regarding the religious policy of Korea, two major issues must be pointed out here.

Firstly, Korea needs to work out a general policy on religious matters. As has been indicated by one researcher, there is no comprehensive policy on religion adopted by the government; handling of religious affairs is subject to ad hoc initiatives and suffers from much inefficiency and lack of unified and consistent regulations.¹ Therefore, there is urgent need for new regulations on religious matters and organizations to be set up in a systematic, well-thought and balanced manner.

Secondly, in addition to the shortage of official experts on reli-

¹ Tak Myung Hwan, *A Study on the Religious Policy of Korea* (Seoul: Gukjong publication, September 9, 1980).

gious matters, the authority looking after such matters is under the auspices of the Ministry of Culture and Sports, which does not seem to be the right state organ that should handle such sensitive issues as those pertaining to religion. Without underestimating the efforts done under the current administrative regime to solve arising conflicts and foster mutual understanding, harmony and cooperation among the different religious communities and organizations, and seen the complexity and sensitivity of the religious issues and matters involved, it is high time that a special department be established under the Korean government to look after matters of religion.

Today, no religion holds a dominant position in Korea, but Buddhism and Confucianism comparatively enjoyed a strong position before the 1950s, when Islam came. Christianity has registered considerable growth after 1960s when Korea put much effort into the industrial development with reconstruction projects supported by the United States of America after the Korean War in 1950. The followers of both Catholicism and Protestantism constitute about 40% of the total population. This is mainly due to the great and multifarious efforts made for the propagation of Christianity in Korea by the 132 Christian organizations which are the most well-organized religious bodies in the country. These organizations sponsor and support numerous educational institutions (including primary, middle, and high schools), social welfare centres, hospitals, orphanages, old people homes, etc.

Meanwhile, Korea's Muslim community is still in its sprouting season. Despite its short history, it has shown startling growth with solid foundation in the major cities of Seoul, Busan and Jeonju. This work has been supported by Islamic countries like Saudi Arabia and Islamic organizations such as the Muslim World League and OIC. The cooperation and special solicitudes of the Korean government have also been meaningful to foster that growth.

The major obstacles facing the spread of Islam among the Korean people have to do mainly with negative preconceptions and misunderstandings due especially to Western and Christian influences. The modern educational system of Korea was established on Western cultural and its intellectual lines. Most Koreans

have learnt about Islam and the Muslim world and culture through Western academic and mediatic channels. Until quite recently, it was Westerners and Christians who taught Koreans about Islam. Moreover, Christianity in Korea has deviated from its original phase and has become increasingly exclusive towards other religions, especially Islam about which it spreads negative images among the people.

In order to face this situation, the first thing we have to do, for the proper propagation of Islam in Korea, is to remove the misunderstandings and correct the perception of Islam in Korean minds. In this connection, it is noticeable that after the 9.11 crisis there has been a great increase in the volume of serious and academic publications on Islam in both Korean and English, including translations of original Islamic sources. This is a very important and encouraging phenomenon. In the near future, the KMF will embark on a special project of systematic spread and publishing of information on Islam and Islamic thought and culture for the general public. International Islamic organizations can surely help in this and other similar projects.

Our age is one of professional journalism and advanced media technologies that have become essential means for any efficient communication and reachout. This is more so for any organization embracing a message and mission to be conveyed to the people and to whole world. That is why we find that many Korean religious groups and bodies have launched their TV cable networks. Buddhism, Catholicism, and Protestantism now run their own TV broadcasting stations.

One of the biggest problems facing the propagation of Islam by specialized Islamic organizations in the world is the shortage of funds. The Korean case is no exception. Call-to-Islam activities in Korea started in the 1980 thanks to financial support of some Arab-Islamic countries. The Muslim community in Korea has not been able to attain financial independence as it has not been able to develop sustainable economic resources enabling it to embark on more systematic and long-term programmes for the propagation of Islam. It is hoped that Muslim majority countries and international Islamic

organizations would consider the situation of Islam and Muslims in Korea as part of their concerns and future plans regarding the cause of Islam in the world.

What is of utmost necessity for the advancement of Islam in Korea is a well-thought out strategy and systematic approach for *Da'wah* activities with clear priorities and sound understanding of the needs and problems of the Korean society. This requires, in addition to financial means, capable, well-trained, and dedicated *da'wah* workers. We need professional *Da'wah* workers who have sound knowledge of Islam and good understanding of the Korean society and culture and a sense of the needs and priorities of the Muslim community in Korea. Muslims in Korea can actually find a good example in the systematic way Christian missionaries and organizations are carrying out the call to Christianity. One essential need that has to be satisfied on the way toward this goal is to provide opportunities for Korean Muslim students in Islamic universities in Muslim countries so that they get equipped with profound and sound knowledge of Islam both in its fundamental sources and teachings and its development as culture and civilization.

I am quite sure that the future of Islam in Korea will be brighter compared to other Muslim minority groups in the region and perhaps the world over. The following factors will, I believe, make this possible.

Firstly, there is considerable similarity of orientation between many Islamic teachings and rituals and elements of Korean traditional culture.

Secondly, there is basic commonality between Islam and Korean education consisting in the central place given to ethics and morality.

Thirdly, the Korean government keeps good relationships with many Islamic countries. It is necessary for Islamic organizations to enhance such relationships for more mutual understanding and cooperation.

Fourthly, many religious and non-religious people in Korea are very disappointed at the existing religious institutions that are

complacent with regard to exploitative capitalism, unfettered hedonism, increasing immoral trends and negative cultural influences of Western civilization. An increasing number of the Korean intelligentsia have become critical of Christian organizations due to their fanatic and exclusivist attitudes towards other religions.

As pointed out above, Koreans are very open and receptive to religions and religious values; they are quite generous, tolerant and friendly towards the different religions. It will not take too long to witness Islamic Korea sending its bright light all over the Korean peninsula, the *Land of the Morning Calm*.

CHAPTER 8

The *Shari'ah* Objectives and their Implications for non-Muslim Minorities: The Case of Malaysia

Muhammad Amanullah

Introduction: An Overview of *Maqāṣid al-Shari'ah*

Islam provides a comprehensive code of life. Its teachings and commands cover all aspects of human conduct and activities at the individual as well as the collective levels. Its code of life, expressed by the all-inclusive term *Shari'ah* which denotes among other things watering source (i.e. source of life), right way or straight path, revolves around the realization and promotion of fundamental values which embody human good and well-being both in this world and in the hereafter. Described as *Maqāṣid al-Shari'ah*, these goals and objectives are a reflection of the Islamic worldview and values according to which human needs are indentified and judged in a descending hierarchical order from the most important and indispensable to the least important and most ancillary.

In other words, the injunctions of the *Shari'ah*, which consist of rules governing human acts and conduct in terms of prescriptions and proscriptions and what lies in between, are not instituted for their own sake; they are rather intended for the realization of benefit (*maṣlaḥah*) and prevention of harm (*mafsadah*) for human beings. Likewise, the doctrine of *Maqāṣid al-Shari'ah* aims at attaining goals that consist of three main categories as have been classified by Muslim legal theorists.

1. The *ḍarūriyyāt*: this term refers to indispensable things that constitute essential needs for human beings both individually and collectively. Human social life and collective existence will suffer greatly if such things are affected and the severity of human suffering will increase depending on the degree of harm and violation they undergo. Hence their realization, protection and promotion is of utmost concern in the *Shari'ah*. According to the majority of Muslim legal theorists and jurists, these indispensable things consist of religion (*dīn*), life (*nafs*), intellect (*‘aql*), offspring (*nasl*) and property (*māl*). They constitute the core values for human individual and collective existence and any harm or violation affecting them wholly or partly means the violation or destruction of society's fundamentals. In fact, as Muslim scholars assert, the protection and promotion of these five fundamentals is consequential not only for human worldly life, but more importantly for the life to come.

2. The *ḥājjiyyāt*: this category includes all things that are needed for the proper and smooth functioning of society and attainment of the *ḍarūriyyāt*. Although they are not indispensable, their absence will cause hardship and severity in human life. Alternatively, their realization brings comfort and alleviates distress and difficulty in people's life.

3. The *taḥsīniyyāt*: it includes all that leads to splendor, perfection and peace in human life. It thus bestows graciousness and beauty on people's conduct, relationships and transactions, and improves their life conditions in all aspects of their existence.¹

Covering all levels and aspects of human life and exemplifying all kinds of human interests from the most fundamental to the least important, these three categories of the *Shari'ah* objectives actually reflect the hierarchical scheme of values Islam has set up for human

¹ For more details, see Abū Ishāq al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Shari'ah*, edited by Abdullah Draz (Beirut: Dār al-Kutub al-Ilmiyyah, n. d.), vol. 2, pp. 7-10; Muhammad al-Tahir Ibn Ashur, *Treatise on Maqasid al-Shari'ah*, trans. Mohamed El-Tahir El-Mesawi (Herndon, VA: The International Institute of Islamic Thought, 1427/2006), pp. 117-125; Wahbah al-Zuhayli, *Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 1996), vol. 2, pp. 1020-1024; Ibrahim Muhammad Salqini, *Al-Muyassar fī Uṣūl al-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 2nd ed., 1996), pp. 412-419.

social life and existence. Likewise, they concern all people, Muslims and non-Muslims alike, and constitute the basis for human rights in the Islamic framework. Accordingly, non-Muslim minorities living within majority Muslim societies and under Islamic rule should be enjoying the same interests embodied by those objectives. The following section of this chapter discusses implications of the doctrine of *Maqāṣid al-Sharī'ah* for non-Muslim minorities living in a Muslim majority country, by taking Malaysia as an example.

The *Sharī'ah* Objectives and their Implications for non-Muslim Minorities

1. *Protection of Religion and Its Implication for Non-Muslim Minorities*

One of the basic and higher objectives of the *Sharī'ah* is to protect religion, for which a number of obligatory rulings have been provided by the *Sharī'ah*. For a Muslim, an important obligation is to continue with his correct faith, which comprises its six pillars. Likewise, he must perform five pillars of Islam. He is not allowed to abandon his faith. If he does so, he will be punished by death for his apostasy, unless he repents and comes back to the fold of believers again.

However, a non-Muslim is not obliged to accept Islam or convert to it. Islam provides him full freedom to continue with his own faith. In this regard, Islam is so flexible that it allows a male Muslim to marry a woman of the People of the Book and also allows her to remain non-Muslim within a family of Muslims. Her Muslim husband is not allowed to compel her to accept Islam. Likewise, a non-Muslim is not obliged to perform the Islamic rituals of devotional worship nor any other matters that are specific to the Islamic faith. Rather, a non-Muslim is free to follow and practice the teachings of his religion as pertaining to faith, ritual worship and most of other aspects of personal and devotional life.¹ In

¹ Salih bin Husayn al-Ayid, *Huquq Ghayr al-Muslimin fi Bilad al-Islam* (Riyadh: Dār Ishbilyā li'l-Nashr wa al-Tawzi', 2001), p. 25. According al-Qaradawi, since the time of righteous caliphs Jews and Christians performed their worships and held their services and celebrations with freedom and security, just as was prescribed in the covenants of

this respect, the Qur'an (2:256) clearly states that,

There shall be no coercion in matters of faith.

Moreover, God addresses the Prophet in the strongest terms to the effect that it is not part of his mission to force people to convert to his message:

And [thus it is:] had thy Sustainer so willed, all those who live on earth would surely have attained to faith, all of them: dost thou, then, think that thou couldst compel people to believe? (Qur'an, 10:99)

These Qur'anic verses teach that compelling non-Muslims to accept Islam against their will is not allowed. Likewise, any type of oppression to convert non-Muslim minorities living among Muslim majority society into Islam is not allowed. In fact, belief is an aspect that is so strongly connected with the heart and mind of everybody that force cannot change it unless he or she willingly changes it and accepts another belief system, which in this case is Islamic system. Moreover, this type of forced conversion is against the sincerity of a person and thus it is not accepted by God. Any conversion to Islam, therefore, must be the result of understanding, rational conviction, and personal decision. While it protects the dignity and religion of non-Muslim minorities, this principle also serves to protect Islam from superficial converts who might turn into hypocrites.

2. Protection of Life and Its Implications for Non-Muslim Minorities

Another important higher objective of the *Shari'ah* is to protect human beings' life, for which many commands are found in the Qur'an. Thus, God says:

... and do not take any human being's life — [the life] which God has declared to be sacred — otherwise than in [the pursuit of] justice: this has He enjoined upon you so that you might use your reason. (Qur'an, 6:151; see also 17:33).

Likewise, He says:

A believer should not kill another believer except by mistake. (Qur'an, 4:92).

Abū Bakr and 'Umar, such as the treaty between 'Umar and the people of Īlīyā' (Jerusalem). See Yusuf al-Qaradawi, *Al-Aqallīyyāt al-Dīniyyah wa al-Ḥall al-Islāmī* (Beirut: Al-Maktab al-Islāmī, 3rd ed., 1998), p. 13.

All these verses of the Qur’an prove that intentional and illegal killing in Islam is forbidden. Forbidding killing, the Prophet said in his speech at ‘Arafah during his last pilgrimage: “Indeed your blood and souls are sacred like the sacredness of this day of this month at this place.”¹ It means that nobody is allowed to kill others. As a matter of justice, if anyone commits this crime, he should be killed in retaliation unless the guardian of the victim forgives the criminal. In this regard, God says:

Just retribution is ordained for in cases of killing. (Qur’an, 2:178)

Again we read:

And We ordained for them in that [Torah]: A life for a life. (Qur’an, 5:45)

In addition to the ḥadīth cited above, the inviolability of human life has been reiterated by many other Prophetic traditions; a few more will be enough to highlight this principal value. Thus, we read, “The most hated people to God are three: (1) A person who deviates from the right conduct, i.e., an evil doer, in the Ḥaram (sanctuaries of Makkah and Madīnah); (2) a person who seeks to revive the traditions of the *jāhiliyyah* in Islam, (3) and a person who seeks to shed somebody’s blood without any right.”² Describing the gravest sins a person must avoid committing, the Prophet is reported to have said: “The biggest of the great sins (*ḥabā’ir*) are; associating partners with God, murder a human being, to be undutiful to one’s parents, and to make a false statement,” or said, “to give a false witness.”³ Again, he said, “A faithful believer remains at liberty regarding his religion unless he kills somebody unlawfully.”⁴

If a non-Muslim intentionally kills a Muslim, all Muslim jurists agree that the culprit must receive just retaliation. Since all religions forbid intentional and illegal killing including Judaism

¹ Muslim b. al-Ḥajjāj al-Naysābūrī, *Ṣaḥīḥ Muslim*, ed. Muhammad Fuad Abd al-Baqī (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, n. d.), ḥadīth No. 1679, Vol. 3, p. 1305.

² Abū ‘Abd Allāh Muḥammad b. Ismā‘īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Riyadh: Dār al-Salām / Damascus: Dār al-Fayḥā’, 1419/1999), “Kitāb al-Diyāt”, ḥadīth No. 6882, p. 1186.

³ Ibid., ḥadīth No. 6871, p. 1184.

⁴ Ibid., ḥadīth No. 6862, p. 1183.

and Christianity clearly, this punishment for a non-Muslim killer is not considered to be unfair. However, Muslim jurists differ over the issue of whether a Muslim who kills a non-Muslim should receive just retaliation by capital punishment or not. According to the majority of jurists, a Muslim, who kills intentionally a non-Muslim, should not receive just retaliation by death punishment, while the Ḥanafīs maintain that this Muslim killer should be retaliated by death punishment. Considering public interest and the objective of protecting the life of non-Muslim minorities, and for the sake of justice, the Ḥanafī view should be preferred in this regard. Supporting the Ḥanafī view, the contemporary jurist and lawyer Muhammad S. El-Awa says:

One cannot deny that the law of *qisās* is based on equality, but equality in what? This is the question. The Hanafi School rightly holds that equality here means that both the killer and the victim must be human beings; therefore, any human being who kills another human being is liable to *qisās* disregarding the religion of the victim.¹

An alternative punishment for intentional and illegal killing is the payment of indemnity.² According to Muslim jurists, if a Muslim kills another Muslim, the defender of the deceased person's right (*walī*) is allowed to forgive the offender and settle the issue by receiving the indemnity; he is allowed to receive its full amount, i.e., one hundred camels or the equivalent value, or whatever amount is agreed upon by the both parties.³ However, they differ over the issue of the amount of indemnity for a non-Muslim victim.

¹ Mohamed S. El-Awa, *Punishment in Islamic Law* (Indianapolis: American Trust Publications, 1993), p. 79.

² According to some scholars, payment of indemnity is not considered to be a ruling that protect objectives of *ḍarūrīyyāt*; rather, it protects objectives of *ḥājīyyāt*. Since this rule is relevant to the protection of the life of non-Muslim minorities I have decided to discuss it here regardless of its relevance to either category of objectives.

³ However, there is difference of opinions among the Muslim jurists whether the payment of blood money in the case of forgiveness from intentional killing is obligatory or not. According to Abū Ḥanīfah and Mālik, it is not obligatory. However, if the offender pays it satisfactorily, the guardian of the victim is allowed to receive it. On the other hand, according to al-Shāfiʿī and Aḥmad ibn Ḥanbal, if the guardian of the victim forgives the offender, the latter must pay the blood money to the former.

According to Mālik Ibn Anas, indemnity for the People of the Book is one half of that of Muslims, and for Magians (*majūs*) it is eight hundred *dirham*; whereas according to al-Shāfi'ī, indemnity for the People of the Book is one-third of that of the Muslims, and for Magians it is eight hundred *dirham*. On the other hand, the Ḥanafī School of Law maintains that the indemnity for all non-Muslim victims regardless of their religions should be equal to the that of Muslim victims. Again, the researcher would like to maintain that considering the interest and objective of protecting the life of non-Muslim minorities, and for the sake of justice, the Ḥanafī view should be preferred in this regard.

3. Protection of Progeny and Its Implication for Non-Muslim Minorities

A third higher objective of the Shari'ah is to protect the progeny. In order to protect the progeny, Islam encourages marriage. Thus, God says:

And if you have reason to fear that you might not act equitably towards orphans, then marry from among [other] women such as are lawful to you – [even] two, or three, or four: but if you have reason to fear that you might not be able to treat them with equal fairness, then [only] one. (Qur'an, 4:3)

On the other hand, Islam discourages its followers from divorce. The Prophet thus says: "Divorce is the permissible thing that God hates most."¹ Islam provides elaborated rules for both marriage and divorce to regulate the matrimonial life of Muslims which lead to maintain an important objective of the *Shari'ah*, i.e. comfortable and stable family life, which has very close relationship with the higher objective of protecting progeny and offspring.

Many aspects of family life which are forbidden in Islam may not be forbidden in other religions; rather, they are lawful for them. Islam, however, does not interfere into these customary family laws of the people of other religions. On the contrary, it al-

¹ Abū Dāwūd Sulaymān b. al-Ash'ath al-Sijistānī, *Sunan Abī Dāwūd*, edited by Muhammad Abdulaziz al-Khalidi (Beirut: Dār al-Kutub al-'Ilmiyyah, 2010), "Kitāb al-Ṭalāq", ḥadīth No. 2178, p. 347. See also Walī al-Dīn Muḥammad bin 'Abd Allāh al-Khaṭīb al-Tabrizī, *Mishkāt al-Maṣābiḥ* (Lahore: Maktaba'i Mustafā'i, n.d.), p. 283.

lows them to follow their own customs. Being uncertain about why the People of the Book were allowed to be different from Muslims in terms of their social affairs, 'Umar Ibn 'Abd al-'Azīz asked al-Ḥasan al-Baṣrī in a letter: "Why the righteous caliphs left the people of the Book to continue to marry *maḥārim* (forbidden women), drink alcohol and eat pork?" Al-Ḥasan al-Baṣrī replied that "they pay *jizyah* so that they would be left with whatever they practise and believe. You should follow this precedent of the righteous caliphs, and avoid making innovations."¹

Furthermore, in order to preserve legitimate, pure and dignified progeny, Islam forbids adultery and fornication. Thus, we read:

As for the adulteress and the adulterer flog each of them with hundred stripes. (Qur'an, 24:2)

According to Muslim jurists, the punishment mentioned in this verse is for fornication committed by unmarried people. The punishment for adultery committed by married individuals is stoning to death, which was instituted by the Prophet. A number of authentic *aḥādīth* have been transmitted to this effect. One of them is:

The blood of a Muslim who confesses that there is no deity but God and that I am His Apostle, cannot be shed except in three cases: life for life [in case of murder], a married person who commits illegal sexual intercourse, and the one who reverts from Islam (apostate) and leaves the community of Muslims.²

Therefore, if a Muslim male commits fornication with a Muslim female, and all the conditions are fulfilled, he and she should be punished by one hundred lashes. On the other hand, if any Muslim male commits adultery with a Muslim female he and she are stoned to death. Likewise, Islam allows the people of the book to implement their own rule regarding adultery, i.e. death by stoning.

¹ Abu al-A'la Al-Mawdudi, *Ḥuqūq Abl al-Dhimmaḥ fī al-Dawlah al-Islāmiyyah* (Jeddah: al-Dār al-Sa'ūdiyyah li'l-Nashr wa'l-Tawzī', n.d.), pp. 20-21; al-Ayid, *Ḥuqūq Ghayr al-Muslimīn fī Bilād al-Islām*, p. 34.

² *Ṣaḥīḥ al-Bukhārī*, "Kitāb al-Diyyāt", ḥadīth No. 6878, p. 1185.

Thus Islam encourages People of the Book to protect their progeny by not committing this sin and by implementing the punishment in the case of violation. Leading Muslim jurists of the different schools have upheld two different views on the condition of being a Muslim, in order to inflict the punishment of stoning to death for adultery. Abū Ḥanifah and Mālik Ibn Anas maintain that adulterer must be a Muslim in order to be punished with stoning to death. On the other hand, Abū Yūsuf of the Ḥanafī guild, al-Shāfiʿī and Aḥmad ibn Ḥanbal maintain that Islam is not a condition for this punishment.¹ The researcher maintains that the second view for the people of the book should be given preference because their religion has the same ruling of stoning to death although they are not Muslims. However, for the people of other religions, the punishment for adultery should be inflicted according to the laws of their religious tradition and teachings.

4. Protection of Intellect and Its Implication for Non-Muslim Minorities

A fourth higher objective of the *Sharīʿah* is to protect intellect. In order to protect this intellect, Islam encourages Muslims to acquire knowledge. To some extent, it makes religious knowledge obligatory for every Muslim. The Prophet says: “Seeking knowledge is obligatory for every Muslim.”² Likewise, Islam has made deep understanding and expert knowledge of Islamic teachings obligatory on some people, so that they teach and educate other fellow Muslims. God says:

With all this, it is not desirable that all of the believers take the field [in time of war]. From within every group in their midst, some shall refrain from going forth to war, and shall devote themselves [instead] to acquiring a deeper knowledge of the Faith, and [thus be able to] teach their home-coming brethren, so that these [too] might guard

¹ Abd al-Qadir Auda, *Al-Tashrīʿ al-Jināʿī al-Islāmī Muqāraran bi al-Qānūn al-Waḍʿī* (Beirut: Muʾassasat al-Risālah, 7th ed., 1986), Vol. 2, p. 393.

² Abū al-Ḥasan al-Ḥanafī al-Sindī, *Sunan Ibn Mājah bi-Sharḥ al-Sindī*, ed. Khalil Maʾmoun Shiha (Beirut: Dār al-Maʿrifah, 1416/1996), ‘Kitāb al-Sunnah’, hadīth No. 224, Vol. 1, p. 146. The hadīth has been transmitted by Ibn Mājah on the authority of the companion Abū Hurayrah.

themselves against evil. (Qur'an, 9:122)

Moreover, knowledge of other disciplines is obligatory in Islam for some Muslims.

In Islam, the door to knowledge is open for Muslims and non-Muslims alike. Islamic history bears witness to the fact that many non-Muslims were educated under the supervision and guidance of Muslim scholars at higher institutions of learning in Spain and Baghdad as it testifies to the opposite. Non-Muslim students also were boarded and lodged in hostels at the cost of the state.¹

In order to protect and promote intellectual capacity, Islam prohibits the consumption of intoxicating liquors. If any Muslim commits this sin, and all relevant conditions are fulfilled, he or she is punished by eighty lashes. However, this rule is not applicable to non-Muslims. They can consume such substances and likewise they are allowed to do business on them among themselves because their religions do not forbid them to do so. However, in order to respect the feelings of the Muslim majority and in order to protect them from indulging into this sin, non-Muslims have to observe certain rules, i.e., they are not allowed to drink liquor publicly and they are also not permitted to trade in it with Muslims.

5. Protection of Wealth and Its Implication for Non-Muslim Minorities

A fifth higher objective of the *Shari'ah* is to protect wealth. Islam encourages Muslims to earn and collect wealth through lawful means, such as business, employment, investment, etc. Non-Muslim minorities living among Muslim majority are allowed to do business unless they are not forbidden by Islam. They are also allowed to be employees in Islamic government institutions. History bears witness that many non-Muslims under Islamic caliphates were employed by successive governments in different offices.²

In order to protect wealth from being stolen, Islam prescribes

¹ Muhammad Marmaduke Pickthall, *Cultural Side of Islam (Islamic Culture)* (Lahore: Sh. Muhammad Ashraf, 1979), pp. 91-92.

² See Fahmi Huwaydi, *Muwāṭinūn lā Dhimmīyyūn* (Cairo: Dār al-Shurūq, 1985), pp. 69-73.

the punishment of the cutting of the hands of a thief. God says:

As for thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime. (Qur'an, 5:38)

This punishment is applicable for both Muslims and non-Muslims because the verse does not qualify the thief with the condition of being a Muslim.¹ On the other hand, if Islam is considered to be a condition for inflicting this punishment injustice will be committed when a non-Muslim thief is exempted from it, but a Muslim thief will not be exempted; rather, will be punished. Moreover, theft is forbidden by many religions and Judaism prescribes the same punishment of cutting off the hand for this crime. Therefore, this punishment should not be opposed by non-Muslim minorities. Thus Islam protects wealth of Muslims and non-Muslims alike through legislating this penalty and prescribing other rulings to this regard.

Concluding our reflections on the implications of the higher *Sharī'ah* objectives for non-Muslim minorities, we may ascertain that the Islamic system is the most suitable of all socio-political systems to such minorities. This assertion is based on the fact that what Islam recognizes and legislates for us rights of human beings is not the result of mere political arrangement nor simply a matter of practical expediency. Rather, what Islam considers as human rights applying to Muslims and non-Muslims alike stems from its worldview and is an embodiment of its fundamental values which are grounded in its view of the original human nature and dignity as fashioned by God Himself. Thus while many areas pertaining to personal and life are left to be regulated according to non-Muslims' beliefs and traditions, those areas which come under the preview of the *Sharī'ah* are dealt with according to the rules of justice applying equally to Muslims and non-Muslims alike. This is God's decree to all who have subscribed to His message:

O you who have attained to faith! Be ever steadfast in your devotion to God, bearing witness to the truth in all equity; and never let hatred of anyone lead you into the sin of deviating from justice. Be just: this is

¹ Muhammad Abu Hassan, *Ahkām al-Jarīmah wa'l-'Uqūba fī al-Sharī'ah al-Islāmiyyah: Dirāsah Muqāranah* (Al-Zarqa/Jordon: Maktabat al-Manār, 1987), p. 277.

closest to being God-conscious. And remain conscious of God, God is aware of all that you do. (Qur'an, 5:8)

Likewise, an Islamic state is not allowed to assimilate or eradicate its non-Muslim minority citizens. Rather, it should allow them to exist as independent communities with their own religion, culture, and customs. Thus, any non-Muslim living among Muslim majority is considered to be a subject or citizen of the Islamic state and he or she is also an active member of his or her own religious community. This is way an Islamic state is considered to be a pluralistic state.

A *Maqāsid*-based Overview of the Malaysian Law on Non-Muslim Minorities

1. *Protection of Religion and Freedom of Faith*

According to the Malaysian Constitution, although Islam is considered the country's state religion, Malaysian Law does not compel non-Muslim minorities to accept Islam. Rather, they are free to continue with their own belief systems. Likewise, they are free to worship according to their rituals in their churches and other places of worship. In terms of establishing their new churches or worshipping places, they are allowed to do so. Kuala Lumpur city is a good example where many Hindu and Chinese temples are highly visible in almost every corner.

2. *Protection of Life*

According to Malaysian Penal Code, intentional and illegal homicide is forbidden. No doubt this law helps the protection of life of both Muslims and non-Muslim minorities in this country. This code also forbids hurting others. It states:

S. 323. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death,... shall be punished with imprisonment for a term which may extend to three years, or with fine, or with whipping, or

with any two of such punishments.¹

Every human being living in this country, whether he or she is a Muslim or not, wants to be free from being hurt or being threatened by anyone. The above clause helps to fulfill this objective. However, in its present formulation this clause does not make clear distinction between those bodily hurts which are serious and those which are slight.²

In another clause, adding the phrase “grievous hurt,” this penal code tries to make distinction between serious and slight hurts. It indocates:

S. 326. Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, ...shall be punished with imprisonment for life, or with imprisonment for a term which may extend to ten years, and shall also be liable to fine or to caning.³

Beside the phrase “grievous hurt,” the mention of maximum time of imprisonment, i.e. ten years or life time indicate that this clause has been prepared for serious hurts. However, the ambiguity still remains in terms of the criterion of serious or grievous hurt because this last clause does not mention any amount of hurt and also mentions instruments of same type that are found in the previous clause. However, there is no doubt that this punishment will help to protect the safety of the life of both Muslims and non-Muslims in this country.

3. *Protection of Progeny*

Marriage and divorce have an important role to preserve the appropriate progeny, and to protect it from being damaged or defective. In the past, i.e. the period that extends until February 1982, non-Muslim Chinese and Indians of Malaysia used to depend mostly on their own customary family laws for the purpose

¹ Koh Kheng Lian and Molly Cheang, *The Penal Code of Singapore and Malaysia* (Singapore: QUINS PTE. Ltd., 1976), p. 259.

² Ibid, p. 260.

³ Ibid, p. 264.

of their marriage and divorce. During this period, non-Muslims especially women were unable to receive fair judgment for their marriage and divorce related problems. Likewise, they had to face the problem of polygamy, which was still recognized. However, according to Dr. Zaleha Kamaruddin, on 1 March, 1982 when the Law Reform (Marriage and Divorce) Act (LRA), 1976 came into force, it introduced a social revolution for the non-Muslims. According to her,

This act provides for monogamous marriage and consolidates the law relating to divorce... Its provisions are applicable generally to all non-Muslim persons domiciled in Malaysia with the exception of any native of the States of East Malaysia and aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom.¹

Following the commencement of LRA, a number of important additions occurred. Firstly, registration of marriage became compulsory. Before this, it was not compulsory; rather, it was up to the couple to register their marriage.² Secondly, polygamy was abolished. Thirdly, a minimum age of marriage was fixed at 18 years. Fourthly, customary divorces were no more recognized and decree of divorce can only be granted by a court of competent jurisdiction.³

Although LRA is considered to be in favour of non-Muslim minorities of Malaysia, its implementation for Muslims should be modified because to some extent this act goes against God's clear command allowing capable Muslims to marry up to four women, as mentioned earlier. Likewise, Islam does not interfere with the customary family laws of non-Muslims. Therefore, imposing some rulings on non-Muslims which are against their customary family laws is not permitted in Islam. Hence, there should be provision of following the customary laws, if any non-Muslim wants willingly to do so even if it goes against LRA.

¹ Zaleha Kamaruddin, *Divorce Laws in Malaysia: Civil and Shariab* (Kelana Jaya: Malaysian Law Journal Sdn Bhd, 2005), p. 62 & 64.

² Ibid., p. 63.

³ Ibid., pp. 66-67.

4. *Protection of Intellect*

In order to increase their knowledge, the Malaysian government allows non-Muslim minorities to establish their own schools. Likewise, they are allowed to enter all higher learning institutions of this country including International Islamic University Malaysia to receive their higher education. Additionally, they are allowed to contribute in the field of knowledge by being members of teaching staff and researchers in the universities.

In order to protect their intellect, Muslims are not allowed to drink intoxicating liquors. However, this rule is not applicable for non-Muslim minorities of this country. They can drink these liquors but they should not do it publicly.

5. *Protection of Wealth and Property*

In order to increase their wealth, non-Muslims in Malaysia, like Muslims, are allowed to earn money through lawful businesses, employment, investments, etc. They are even allowed to invest their money through Islamic investment institutions. Additionally, they are also allowed to be government employees and members of the parliament. In terms of protecting public and private wealth, although Malaysian government does not implement the *Shari'ah* punishment for theft, it has some man-made laws that are beneficial for both Muslims and non-Muslims alike. Thus, the first clause of S. 403 of the Malaysian Penal Code stipulates that, "Whoever dishonestly misappropriates or converts to his own use movable property, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both."¹

Another clause: S.408 concerning breach of trust, stipulates that, *Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.*²

¹ Lian and Cheang, *The Penal Codes of Singapore and Malaysia*, p. 354.

² *Ibid.*, p. 362.

This rule is applicable to both Muslims and non-Muslims. Both groups can get benefit out of it when they appoint anyone in their offices and find him or her guilty of breach of trust. Likewise, individuals from both groups are liable to the same punishments mentioned above, when committing such a crime.

Concluding this section, the researcher would like to point out that, with only a few exceptions, the Malaysian law is in favour of non-Muslim minorities in most of the aspects discussed above. However, the Internal Security Act (ISA), itself a legacy of the British colonial rule based on the British Internal Security Act, has been subject on increasing criticism by different quarters in Malaysia. Procedures before and following the arrest of anyone under this act have been criticized by many observers locally and internationally.¹

To some extent, these procedures stand against the personal safety and security and comfort of individuals arrested under it and their family members, which is considered to be one of the basic objectives of Islamic *Shari'ah*. On the other hand, we should appreciate the Malaysian government that at least this act was not utilized against individuals because of their affiliation with religions other than Islam. Accordingly, it is not appropriate to say that this act was utilized against non-Muslim minorities of this country because practically it had been utilized against both Muslims and non-Muslims alike when the government needed to do so. However, responding to public criticism, Malaysian government has abolished ISA and replaced it by another modified version of act which is considered to be better than ISA.

Conclusion

At the end of this chapter, we would like to reiterate the following points.

1. Muslim jurists have different views on whether a Muslim is justly killed if he intentionally and illegally kills a non-Muslim.

¹ See Kehma-s, *The Rule of Law and Human Rights in Malaysia and Singapore*, A Report of the Conference held at the European Parliament, 9 & 10 March 1989, organized by: Kehma-s (The European Committee for Human Rights in Malaysia and Singapore) and The Rainbow Group, European Parliament.

The majority of jurists maintain that this Muslim offender should not be killed. On the other hand, Ḥanafī jurists maintain that this Muslim must be killed. Considering the public interest, justice, and equal system of maintaining the higher objective of protecting life for Muslims and non-Muslim minorities alike, the researcher prefers the view of Ḥanafī School.

2. Likewise, Muslim jurists differ on whether a non-Muslim victim is allowed to receive full blood money like Muslims or not. By and large, majority of jurists maintain that a non-Muslim victim is not allowed to receive full blood money, while Ḥanafī jurists maintain that he should receive full blood money. Again the researcher prefers the Ḥanafī view, in order to preserve the public interest, justice and the higher objective of protecting life equally for both Muslims and non-Muslim minorities.

3. Moreover, Muslim jurists have different views on whether Islam is a condition for inflicting the punishment of stoning to death for adultery. Abū Ḥanīfah and Mālīk ibn Anas maintain that it is a condition, while Abū Yūsuf of the Ḥanafī guild, al-Shāfiʿī and Aḥmad ibn Ḥanbal maintain that it is not a condition. The researcher prefers the second view for the People of Book because their law also prescribes the same punishment for maintaining the higher objective of protecting the proper progeny for them. However, for maintaining the higher objective of protecting proper progeny for non-Muslims other than the People of the Book, their own customary laws should be applied for this sin.

4. Under the Islamic system non-Muslim minorities can receive dealings and treatments from an Islamic government, which are considered to be far better than that of modern secular system, which is headed by the USA. Under an Islamic state, non-Muslims can be members of two different entities, i.e. members of their own religious communities and subjects or citizens of the state so that they will be able to maintain a dignified and just life in a majority Muslim country by establishing all the higher objectives for them.

5. By and large, non-Muslim minorities in Malaysia are able to receive their proper rights to protect all the higher objectives that are necessary for their dignified and just survival in this country.

The researcher would like to make the following suggestions:

1. Malaysia government is requested to review its LRA 1982 for the purpose of implementing it for Muslims because to some extent it goes against the Qur'an. Likewise, to some extent, it goes against the Islamic policy of not interfering into the customary family laws of the people of other religions.

2. An amendment should be made to remove ambiguity from the clause no. S. 324 on "hurt" and clause no. S. 326 on "grievous hurt" of the Penal Code of Malaysia because these clauses do not specify the amount of hurt for anyone of them.

CHAPTER 9

“Living in Hell”: A Comparative Analysis of Domestic Violence against Women in Muslim Minority Communities in the US and UK

Zaleha Kamaruddin*

Introduction

Domestic violence is one of the numerous forms of violence against women that have been identified worldwide.¹ The United Nations defined the term “violence against women” in a 1993 declaration as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”² The declaration further notes that violence against women can occur within the family or within the general community. And that it may be condoned or perpetrated by government officials.³ Having included domestic violence as a form of violence against women, the United Nations further explained that,

The term ‘domestic violence’ is used to describe actions and

* The author would like to acknowledge the contribution of Bro. R. K. Salman to Part One of the research project on which this chapter has been based.

¹ Johanna Bond & Robin Phillips, “Violence against Women as a Human Rights Violation: International Institutional Responses”, in Claire M. Renzetti *et al.* (eds.), *Sourcebook on Violence Against Women* (London: Sage Publications, 2001), pp. 481- 482.

² *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, U.N. GAOR, 48th Sess., art. 1, Supp. No. 49, at 217, UN Doc. A/48/49 (1993).

³ *Ibid*, Article 2.

omissions that occur in varying relationships. The term is used narrowly to cover incidents of physical attack, when it may take the form of physical and sexual violations... The result of such physical violence can range from bruising to killing; what may often start out as apparently minor attacks can escalate both in intensity and frequency (...) ‘Domestic violence’ ... [also] includes psychological or mental violence, which can consist of repeated verbal abuse, harassment, confinement and deprivation of physical, financial and personal resources.¹

Domestic violence has also been defined as “violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law ... It is nearly always a gender-specific crime, perpetrated by men against women.”² It is distinguished from other forms of gender violence by the context in which it occurs (the domestic or private sphere) and the relationship between perpetrators and victims (familial). When violence occurs within the context of the family, it raises questions about the laws and legal administration of family relations.³ Ela Gridinic has highlighted that “gender-based violence”, such as domestic violence which involves some form of physical assault or intrusion. As a result, these forms of violence inherently violate the rights, physical integrity and security of the person⁴ and are prevalent in almost all parts of the globe.⁵

The pervasiveness of impunity is evident in the fact that domestic violence is reported as “common” in almost all countries,

¹ United Nations Office at Vienna, Centre for Social Development and Humanitarian Affairs, *Strategies for Confronting Domestic Violence: A Resource Manual* 6 (1993).

² Coomaraswamy, Radhika. “Further Promotion and Encouragement of Human Rights and Fundamental Freedoms for Women,” Report to the UN Commission on Human Rights. E/CN.4/1996, p. 35

³ Lisa Hajjar, “Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis” *Law and Social Inquiry*, Vol. 29, No. 1 (2004), p. 2.

⁴ Ela Gridinic “Application of the Elements of Torture and Other Forms of Ill-Treatment, as Defined by the European Court and Commission of Human Rights, to the Incidents of Domestic Violence” 23 *Hastings Int’l & Comp. L. Rev.* 217, 232 (2000).

⁵ Andreea Vesa, “International and Regional Standards for Protection of Domestic Violence,” *American University Journal of Gender, Social Policy and Law*, Vol. 12, No. 2 (2004), p. 5.

although estimated rates vary.¹ Impunity suggests a reluctance or resistance to recognizing and dealing with intra-family violence as violence. This assertion is buttressed by the UNFPA reports, that worldwide, one in three women has been beaten, coerced into unwanted sexual relations, or abused - often by a family member or acquaintance. The report further states that at the start of the 21st century, violence kills and harms as many women and girls between the ages of 15 and 44 as cancer. The costs to countries - in increased health care expenditures, demands on courts, police and schools and losses in educational achievement and productivity - are enormous. In the United States alone, the figure adds up to some \$ 12.6 billion each year.²

It is interesting to note that a common type of violence is family violence. The reason for this violence is remotely connected with the culture, poverty, religion and lack of adequate laws to protect women.³ The questions which readily come to mind are: Is intra-family violence legally permitted or prohibited? In practice, is it tolerated or penalized by the authorities? Are civil remedies available to victims? In contexts where intra-family violence is not prohibited by law (i.e. criminalized), perpetrators enjoy legal impunity. In contexts where it is prohibited but the laws are not enforced, perpetrators enjoy social impunity.⁴

The Vienna World Conference on Human Rights in 1993 marked the culmination of a long struggle to secure international recognition of women's rights as human rights. It was a turning point for both the international women's rights movement and the human rights movement. The final document that emerged from Vienna acknowledged that, partly as a result of the artificial line drawn between the public and private sphere, certain gender-

¹ Joni Seager, *The State of Women in the World Atlas* (London: Penguin Books, 1999), p. 29. The few countries where domestic violence is not reported as "common" include Cote D'Ivoire, Djibouti, Laos, Madagascar, and the Maldives.

² UNFPA, *State of World Population 2005, The Promise of Equality: Gender Equity, Reproductive Health, and the Millennium Development Goals* 5 (2005).

³ Vesa, "International and Regional Standards for Protection of Domestic Violence."

⁴ Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 1993, 6 HARV. HUM. RTS. J. 87

specific issues had been left out of the human rights arena.¹ Governments around the world acknowledged that women, too, were entitled to enjoy fundamental rights. These include full and equal participation in political, civil, economic, social, and cultural life at the national, regional, and international level.² In addition, the document brought about a significant change in human rights law: the recognition of women's human rights in the private sphere.³ A broad spectrum of harms occurring in the sphere of the family was rendered open to human rights scrutiny.⁴ The document challenged the public/private distinction along which human rights had traditionally operated and increased awareness of the fact that power operates in multiple arenas.

The women's rights movement at the international and regional levels and the official recognition of women's rights appear to have focused primarily on the issue of violence against women and their victimization in this context. Immediately after the Vienna conference, the UN General Assembly passed a *Declaration on Violence Against Women*.⁵ The declaration stated that it would strengthen and complement the process of effective implementation of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW). It recognized that violence against women "is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women." It reiterated the consensus reached at Vienna: that violence against women covers "gender-based violence... whether is

¹ Ibid.

² *Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights*, U.N. GAOR, at 25, U.N. Doc. A/CONF/157/23, (1993)

³ Part 1 Article 18 Vienna Declaration states: "The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community."

⁴ Part 2, Article 38, the Vienna Declaration.

⁵ The Declaration also set the basis for the appointment of a U.N. *Special Rapporteur on Violence against Women* to cover aspects of violence against women, including its causes and consequences. *Declaration on the Elimination of Violence against Women*, G.A. Res. 104, U.N. GAOR, 48th Sess., 85th Plenary Meeting, Supp. No. 49, at 217-19, U.N. Doc. A/48/49 (1993).

occurring in public or in private life.”¹ Subsequent to this, Dr. Radhika Coomaraswamy was appointed in 1994 as the UN Special Rapporteur on Violence Against Women² and since then, she has submitted a series of annual reports to the UN General Assembly addressing the issue of violence against women.³

Consequently, the focus on violence against women has had some extremely important and beneficial consequences for women. The women's human rights movement drew attention to the lack of domestic governmental response to women's demands for more effective rape laws, laws against child sexual abuse, and domestic violence laws. The violence against women campaign has been overwhelmingly successful in translating very specific violations experienced by individual women into a more general human rights discourse.⁴

In 1995, the United Nations Fourth World Conference on Women held in Beijing proposed a platform for action,⁵ which

¹ Ibid, p. 217 Under Article 2: violence against women includes violence in the family, marital rape, female genital mutilation, and other “traditional” practices that are harmful to women. It also covers similar violence in the community, including harassment at work and violence perpetrated or condoned by the state, wherever it occurs.

² The United Nations Economic and Social Council endorsed the resolution of UN Commission on Human Rights to appoint a special Rapporteur on violence against women for a three-year term. U.N. ESCOR, 42d plen. mtg., U.N. Doc. E/DEC/1994/254 (1994)

³ These reports include *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, U.N. ESCOR Hum. Rts. Comm., 53d Sess., Provisional Agenda Item 9(a), E/CN.4/1997/47 (1997) (concerning violence in the community); *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Hum. Rts. Comm., 54th Sess., Provisional Agenda, Item 9(a), E/CN.4/1998/54 (1998) (concerning violence against women as perpetrated and/or condoned by the state); *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, U.N. ESCOR Human Rights Commission, 55th Sess., Provisional Agenda, Item 12(a), E/CN.4/1999/68/Add.3 (1999) (concerning violence against women in the family); *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, U.N. ESCOR Hum. Rts. Comm., 56th Sess., Provisional Agenda Item 12(a), E/CN.4/2000/68 (2000) (concerning trafficking in women, women's migration, and violence against women).

⁴ The campaign on reproductive rights has also acquired a certain degree of visibility. However, it has not translated into effective policies or actions by state parties. See U.N. *Report of the International Conference on Population and Development*, UN, GAOR, 49th Sess., UN Doc. A/CONF/171/13 (1994).

⁵ Report of the fourth World Conference on Women, Beijing, 4-15 September 1995 Annex

was adopted by its member countries to have its own monitoring and implementation review process through the Commission on the Status of Women. It was designated by the Economic and Social Council following the Beijing Conference to have “a central role in the monitoring of the implementation of the Platform for Action.”¹ This central role includes the authority to “assist the Economic and Social Council in monitoring, reviewing and appraising progress achieved and problems encountered in the implementation of the Beijing Declaration and Platform for Action at all levels,” and to advise the Council thereon.²

Specifically, the Beijing Platform for Action called on member states of the United Nations to draw up national action plans to improve the promotion and protection of women’s rights and to create an institutional framework for implementation of the commitments made in the Platform for Action.³ These “national machineries” were to be established “at the highest political level” with appropriate staffing and a broad mandate.⁴ The Platform for Action has given new impetus to the reform of violence against women laws and the implementation of CEDAW.⁵

The international dimension it takes to address domestic violence against women and other forms of discrimination is a pointer to the fact that domestic violence is a global problem. The World Health Organization (WHO) in 2006 concluded that domestic violence against women is universal and pervasive.⁶ In

nex III, U.N. Doc. A/CONF.177/20/Rev.1, U.N. Sales No. 96.IV.13 (1996)

¹ G.A. Res. 203, U.N. GAOR, 50th Sess., Supp. No. 49, P 25, U.N. Doc. A/RES/50/203 (1995)

² *Report of the Economic and Social Council for the Year 1996*, U.N. GAOR, 51st Sess., Supp. No. 3, at 98, U.N. Doc. A/51/3/Rev.1 (1997).

³ *Beijing Declaration and Platform for Action*, in 1 Report of the Fourth World Conference on Women, Beijing, 4-15 September, 1995, U.N. Doc. A/CONF.177/20/REV.1, U.N. Sales No. 96.IV.13 (1996) [hereinafter *Platform for Action*] p. 230

⁴ Jessica Neuwirth, “Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action” Spring 2005, 18, *The Harvard Human Rights Journal*, p. 8

⁵ *Ibid.*

⁶ World Health Organisation (WHO), *The WHO Multi-country Study on Women’s Health and Domestic Violence Against Women* vii (2005), available at

fifteen nations studied by WHO, fifteen percent to seventy-one percent of women in intimate relationships reported having been physically assaulted by an intimate male partner.¹

All the above information serves generally as a background to defining and understanding the problem and the long struggle to secure international recognition of women's rights as human rights and commitment made by international bodies to reduce if not eliminate problems relating to violence against women regardless of their religion. Domestic violence is acknowledged at national, regional and international level as a deeply rooted problem that exists in every country in the world and its consequences are devastating to women and society.

In the context of this research project, since Islam abhors violence and women are to be regarded as amanah, special focus especially those living in non Muslim communities need to be made. One of the reasons for it is, although Muslim leaders have acknowledged that domestic violence exists, the breath and depth of this problem in the context of Muslim minorities in non-Muslim societies has never been analyzed in detail. Inadequate data on violence occurring in these communities further impede informed policymaking and analysis.

Islam should not only be seen as upholding justice but ensuring that justice is done. Although there exists gap between Islamic theories and general Muslim practices, the same Muslim community which should serve as a safety haven for women, should not be seen as a breeding ground for such violence. The most effective approach to solve the problem is, its existence needs to be acknowledged away from the private domain. It should be treated in the public sphere so that it will not remain to be accepted as part of a cultural norm of that community.

Using this approach, the following two sections will survey data relating to domestic violence and its prevalence in the United

http://www.who.int/gender/violence/who_multicountry_study/summary_report/en/ Last visited on 28 April, 2009.

¹ Valorie K. Vojdik, "Conceptualizing Intimate Violence and Gender Equality: a Comparative Approach," January, 2008, *Fordham Int'l L. J.* 487, p. 10.

States and the UK. Specific focus on Muslim women could not be made due to the disaggregated data in both countries. However, some common trends could be identified and specific patterns of violence have emerged from those informations which will be discussed subsequently in the analysis of causes of domestic violence in those communities.

Domestic Violence in the USA

1. *Nature and Extent*

Domestic violence is a serious problem that cuts across all background. Researches show that in the United States, as many as four million women are assaulted severely by male partners in average 12-month period, and nearly one-eighth of the husbands carry out one or more acts of physical aggression against their wives.¹ Moreover, more than half of women on welfare in the United States are current or past victims of domestic violence.² In the United States, one in every four women experiences domestic violence in her life.³ An estimated 1.3 million women are victims of physical assault by an intimate partner each year. The majority of these family victims are female and the abuse inflicted by their spouse.⁴ By state statistic, in 2006 there were 49,980 reported cases of domestic violence in Washington. While 2,672 cases of forcible rape were reported in Washington in 2005.⁵ It is reported that 16 children were killed in Washington between June 2006 and January 2007 as a result of domestic violence. And in 2006, 47% of domestic violence homicides occurred after the victim had left, divorced, separated or was

¹ Murray A. Strause & Richard J. Gelles, *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families* (New Brunswick: Transaction Publishers, 1990), p. 12.

² K. Rogers, "Violence Puts Women on the Welfare Track," *The New York Time*, June 4, 1996, p. 10.

³ Patricia Tajden & Nancy Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence*, Research Report (Washington DC: U.S. Department of Justice, 2000), p. iii.

⁴ U. S. Department of Justice, "Family Violence Statistic," Bureau of Justice Statistic, June 2005.

⁵ Washington Association of Sheriffs and Police Chiefs, "Crime in Washington Annual Report," 2006.

planning on breaking up with the abuser.¹

In Washington, the cost of intimate partner violence exceeds "\$5.8 billion each year, \$4.1 billion of which is for direct medical and mental health services."² As is the case in most states, Washington State would require increased funding and shelter programme in order to adequately meet the emergency shelter needed for all domestic victims. Washington's domestic violence programmes currently do not provide chemical dependency treatment to domestic violence survivors and Washington Coalition against Domestic Violence is advocating for the creation of these programmes to better serve victims.³

The situation is not different in New Mexico. There are 26,940 domestic violence incidents reported to law enforcement authorities in New Mexico in 2004, a rate of 15.3 per 1,000 persons.⁴ 75% of the 17,793 victims of domestic violence identified in 2004 were women and their abusers were their spouses.⁵ New Mexico recorded 36 homicides as a result of domestic violence in 2004. As of 2003, New Mexico was ranked 3rd in the country for incidents of domestic violence. Interestingly, the rank dropped to 9th in the nation for highest prevalence of domestic violence.⁶ Although intimate partner violence affects members of all races, rates of fatal intimate partner violence are high among African American Asian/Pacific American than among Anglo or Hispanic women.⁷

Domestic violence in Alabama is also high. In 2005, there

¹ Washington Coalition Against Domestic Violence (WCADV), "Washington State Domestic Violence Fatality Review," December 2006.

² Department of Health and Human Services *et al*, *Costs of Intimate Partner Violence Against Women in the United States* (Atlanta, GA, March 2003), p. 2.

³ Washington Coalition Against Domestic Violence (WCADV), "Washington State Domestic Violence Fatality Review," December 2006.

⁴ Caponera Betty, "Incidence and Nature of Domestic Violence in New Mexico: An Analysis of 2004 Data from the New Mexico Interpersonal Data Central Repository," New Mexico Coalition Domestic Violence," <http://www.health.state.nm.us/finalreport> (visited on May 6, 2009).

⁵ Ibid.

⁶ Ibid.

⁷ *New Mexico Injury Data Book 2004*, <http://www.uvnm.org/information/domesticviolence.htm>, visited on May 6, 2009.

were 26,051 domestic assault and 1,564 forcible rapes committed. There were 27 homicides due to domestic violence in 2005.¹ It is reported that there were 57,176 shelters night provided for adults and children in Alabama Shelters in fiscal year 2006. Again, on one day in November 2006, Alabama Shelter Programme reported that 5,157 requests for victims' services from adult and children went unmet due to a lack of resources.²

The situation is the same in the state of Delaware. This is because, in 2003, there were 27,776 criminal and non-criminal domestic violence incidents. There were 16,921 criminal domestic violence incidents.³ In 2003, Delaware Family Courts processed 2,967 Protection from Abuse Petitions and issued 2,851 orders. In the same token, 147 cases were returned to Family Courts on a charge of Civil Contempt of a Protection from Abuse Petition. Civil contempt orders were entered in 62 of those cases.⁴ In 2002, 2002, 19 women died as a result of domestic violence. In 3 of those cases, children witnessed the murder of their mother.⁵ The story is the same in almost all other states of the United States. It is, however, sad to note that on the aggregate, more than seventy-five per cent of the minority Muslim women experience domestic violence from their minority Muslim husbands.⁶ The question then is, who are these minority Muslim women?

2. *Muslim Minority Women in US*

Muslims (men and women) are all over United States: majority of these Muslims are the African Americans and South/Southeast Asia immigrants. At this juncture it is important to understand their background (to know the origin of and why this

¹Alabama Coalition Against Domestic Violence, *ACADV Annual Report 2007*, at <http://www.acadv.org/acadvreport>, visited on 6 May, 2009.

² Ibid.

³ *Domestic Violence Coordinating Council 2004 Annual Report*, www.dvcc.state.de.us, (visited on may 6, 2009).

⁴ Ibid.

⁵Domestic Violence Coordinating Council, *2004 Fatal Incident Review Report*, available at www.dvcc.state.de.us/documents/2004_FIRT, visited on May 6, 2009.

⁶ See Strause & Gelles, *Physical Violence in American Families*.

group is predominantly Muslims) so that we could appreciate the problems that they are facing.

African Americans

Africans or Black Americans make up approximately 12% of the total US population and constitute its largest racial minority. Although largely descendants of tribes along the West coast of Africa, many also have American Indian and European ancestry.¹ Unlike other immigrants, African Americans entered the United States via the slave trade. Their 200 year history of enslavement was characterized by forced separation of families, beatings, loss of language, and alienation of culture.² Following slavery, discrimination took the form of de facto segregation.³ Substantial societal gains have been made; nevertheless, Blacks have not achieved economic, employment, and educational parity with Anglo Americans. For example, one in three African Americans currently lives in poverty.⁴ Despite social and economic injustices, African American families have developed cultural strengths and coping strategies including, adaptability of family roles; strong kinship bonds; emphasis on work, education, and achievement; religious values; and a humanistic belief system that stresses concern for others and spontaneous interactions.⁵

On the whole, approximately 30 percent to 40 percent of Muslims in the United States are African Americans, making African Americans the largest single cultural group in the Islamic

¹ Carolyn M. West, *Partner Violence in Ethnic Minority Families*, (New Hampshire: Family Research Laboratory, University of New Hampshire, 2000), p. 1.

² Ibid, p. 2.

³ W. R. Hammond, & B. R. Yung, "African Americans," in L. D. Eron & J. H. Gentry (eds) *Reason to hope: A psychological Perspective on Violence and Youth* (Washington DC: American Psychological Association, 1987), p. 138.

⁴ US Bureau of the Census, "Statistical Abstract of the United States," Washington DC, 1992.

⁵ B. Greene, "African-American Women," in L. Comas-Diaz & B. Greene (eds.), *Women of colour: Integrating Ethnic and Gender Identities in Psychotherapy* (New York: Guilford Press, 1994), p. 12.

community.¹ Although the ‘Nation of Islam’, headed by Louis Farrakhan, is often portrayed in the media as representative of black Muslims, it speaks for only a small portion of African American Muslims. The ‘Nation of Islam’ is widely considered by other Muslims to be outside the bounds of mainstream Islam and has an estimated membership of 10,000 to 50,000.² Almost all African American Muslims are mainstream Sunnis.³

Asian Americans

Asian/Pacific Island Americans represent 2.9% (7.27 million) of the total U.S. population. There are three predominant Asian groups residing in the United States. The first group can trace its origins to mainland Asiatic culture (Chinese, Vietnamese, Japanese, and Koreans) and the second to Southeast Asia (Filipinos, Indonesians, Malaysians, Cambodians, and Laotians). While the third group, Pacific Islanders (Hawaiians, Samoans, and Guamanians), are considered “natives” rather than immigrants.⁴ The experience of Asian Americans differs greatly by immigration and generational status. Immigrant-descendent families, such as Chinese, Japanese, and Korean Americans, can trace up to four or more generations in US. In general these groups are highly acculturated, that is, they have adopted the norms and behaviours of U.S. society. Immigrant American families, in which the parents are foreign born and the children are American born, sometimes experience cultural and generational conflicts as the family tries to manage both traditional and new norms and values. Nevertheless, these families are often able to pool their resources and achieve relatively high levels of educational and economic success.⁵ Due to the prosperity of these

¹ P. Scott Richards, & Allen E. Bergin, *A Spiritual Strategy for Counseling and Psychotherapy* (Washington DC: American Psychological Association, 1997), p. 22. See also Jane I. Smith, *Islam in America* (New York: Colombia University Press, 1999).

² Jonah Blank, “The Muslim Mainstream,” *U.S. News*, 20/7/98, www.jannah.org/articles/usnews.html.

³ J. Gordon Melton *et al.*, *The Melton's Encyclopedia of American Religions* (Farmington Hills, MI: Gale, Cengage Learning, 8th ed., 2009), pp. 950-952.

⁴ A. Okamura *et al.*, “Asian, Pacific Island, and Filipino Americans and Sexual Child Abuse” in Lisa Aronson Fontes (ed.) *Sexual Abuse in Nine North American Cultures: Treatment and Prevention* (Thousand Oaks, CA: Sage Publications, 1995), p. 70.

⁵ *Ibid.*

two family constellations, Asians have been dubbed "model minorities." This stereotype minimizes the poverty that exists among other Asian American groups, which is almost twice the rate for Anglos, with recently arrived immigrant/refugee families being most impoverished. Despite their diverse backgrounds, as a group Asians emphasize family loyalty, responsibility, respect, and cooperation.¹

Of all Asian groups in America, the South Asian is unique. This is because; this group has the highest number of Muslims.² Since 1965, with changes in the US immigration laws, the number of Muslim immigrants from South Asia has been steadily increasing. Muslim immigrants from South Asia bring with them very strong cultural and religious beliefs. Islam plays a very important and positive role in the lives of South Asian Muslim immigrants. South Asia includes the countries of Pakistan, India, Bangladesh, Sri Lanka, Nepal, and Bhutan. Seventy-five percent of all South Asian people live in India, 10% in Pakistan, 11% in Bangladesh, and the remaining 3% in the countries of Bhutan, Nepal, and Sri Lanka.³ Numerous Islamic Centres have been established in America by this group. These centres act as religious and community centres to meet the growing community's needs.⁴

People from the South Asian countries have been immigrating to the United States since 1875. In the earlier years their numbers were small, they came in search of better economic conditions. Most were labourers, uneducated and unskilled workers. In 1965, the US immigration laws were changed to accommodate the needs of the market and the immigrants' ability to suit the job market. This change in the immigration laws led to an increase in the number of South Asian immigrants to the United States. The new immigrants were mostly educated and fluent in English. They came not just to make money and return to their

¹ Carolyn, *Partner Violence*, p. 2.

² Ruksana Ayyub, "Domestic Violence in the South Asian Muslim Immigration in the United States," *Journal of Social Distress and the Homeless*, Vol. 9, No. 3 (2000), p. 237.

³ W. D. Jacob, *World Book Encyclopaedia* (London: World Book Inc., 1999), p. 279.

⁴ Haddad, *The Muslim World Today*, p. 12.

countries, but also to establish themselves in America and to participate in the American dream.¹ The majority of South Asians from Pakistan and Bangladesh are Muslims. Immigrants from India, Sri Lanka, Bhutan, and Nepal, on the other hand are Hindus, Buddhists, Christians, or Muslims.

Although most major cities have Muslim populations, the largest concentrations are in New York City, Los Angeles, Chicago, Houston, Boston, and the Detroit-Toledo corridor.² Whereas almost every state has a Muslim population of some size, there is particularly heavy concentration in California and New York, with roughly a quarter of Muslims living in the former state and a fifth living in the latter.³ Excluding African Americans, it is estimated that some 75 percent of adult Muslims in the United States are foreign born.⁴ Changes in immigration policies in the 1960s placed an emphasis on the needs of the labour market, resulting in a substantial increase in immigration. Although recent immigrants originate from diverse regions around the globe, most have come from Middle East/North Africa and South/Southeast Asia, where Muslims predominate. The combination of these groups formed a Muslim community in United States with basic values and common features.

Community is a fundamental Islamic value.⁵ Rooted in the belief that all people are equal before God, Muslims tend to emphasize benevolence, care for others, cooperation among individuals, empathy, equality and justice between people, the im-

¹ See Judy Galens & Rudolph J. Vecoli *et al.*, *Gale Encyclopaedia of Multicultural America* (New York: Gale Group, 1995).

² M. F. Denny, "Islam in the Americas," in Jhon L. Esposito (ed.), *The Oxford Encyclopaedia of the Modern Islamic world* (New York: Oxford University Press, 1995), Vol. 2, p. 298.

³ Barry A. Kosmin & Seymour P. Lachman, *One Nation under God* (New York: Harmony Books, 1993), p. 70.

⁴ Yvone Yazbeck Haddad, "Make Room for the Muslims," in Walter H. Conser Jr & Summer B. Twiss (eds.), *Religious diversity and American Religious History* (Athens: University of Georgia Press, 1997), p. 231.

⁵ Alphonso W. Haynes, Mohamed M.I. Eweiss, Lobna M. Abdel Mageed & Douglas K. Chung, "Islamic Social Transformation: Considerations for the Social Worker", *International Social Work*, Vol. 40, No. 3, 1997, p. 265.

portance of social support, and positive human relatedness.¹ Relationships are usually based on the principle of consultation, and the welfare of the community, the ummah, is to be safeguarded by all. A relationship is generally understood to exist between individual freedom and the community's responsibility to the individual. In other words, individual freedom is circumscribed so as not to harm other members of the community, for it is this community that protects and empower the individual.² Thus, Western individualistic values, such as personal success, self actualization, self-reliance, and personal autonomy, hold somewhat less attraction for Muslims, who tend to find meaning in group success, community development, interdependence, and consensus. Byng's qualitative research with African American women revealed the significance of the ummah for Muslims. These women, largely converts to Islam, reported finding a "safe social space" from the racial, gender, and religious inequalities they experienced in the larger culture. The community mediated the discrimination they experienced by providing a resource for constructing a salutary internal self-definition, essentially empowering them to "transform their life, identity, and consciousness."³

The basic social unit for Muslims is the family.⁴ However, "family" is often conceptualized broadly to include relatives or even the whole Islamic community. It is the family, most specifically the husband and wife that is understood to be responsible for reproducing spiritual and social values. Thus, family, both nuclear and extended, is essential to the spiritual and social health of the broader ummah.⁵ Marriage, rather than a joining of two indi-

¹ Eugene W. Kelly, Aany Aridi, & Laleh Bakhtiar, "Muslims in the United States: An exploratory study of universal and Mental Health Values," *Counselling and Value*, Vol. 40, No. 3, 1996, p. 210.

² Mumtaz F. Jafari, "Counselling, Values and Objectives: A Comparison of Western and Islamic Perspectives", *American Journal of Islamic Social Sciences*, Vol. 10, No. 3 (1993), p. 326.

³ Byng, M. D. "Mediating discrimination: Resisting oppression among African American Muslim Women," *Social Problems*, 45, 1998, p. 486.

⁴ Elizabeth Warnock Fernea, "Family," in J. L. Esposito (ed.), *The Oxford Encyclopaedia of the Modern Islamic World*, vol. 1, p. 458.

⁵ Haynes (ed.) *Religion and Politics*, p. 267.

viduals, tends to be seen as a union of two extended families, with partners frequently selected by the respective families. Husbands and wives are held to be of equal worth but to have different complementary roles.¹ Generally, women have the primary responsibility for maintaining the home and raising the children, and men are responsible for the material provision and the leadership of the family. This structured arrangement has been seen as promoting peace, less conflict and more harmonious relationships with associated benefits to the broader community, such as fostering a stable nurturing environment for raising children and caring for the elderly population.²

It is important to note that women are not necessarily precluded from working outside the home. However, employment is held in tension with providing proper care for the family. Children are considered a blessing, and large families are usually encouraged. A secure mother-child attachment is considered critical to the child's future well-being and consequently the well-being of the larger community.³ The determining factor is the provision of a stable family unit, which enhances the unity of the community. The sexual commodification of people is believed to facilitate the breakdown of the family and community.⁴ Accordingly, modesty is an important spiritual and cultural value for many Muslims, especially in a liberal US society in which sexuality plays an increasing role in the public arena. Outside the immediate family system, many Muslims choose not to mix socially with members of the opposite gender. Women may adopt Islamic dress, including the practice of veiling, or *Hijāb*, as a proactive way of expressing modesty, as well as for other reasons.⁵

¹ J. M. Corbett, *Religion in America* (Englewood Cliffs, NJ: Prentice Hall, 2nd ed., 1994), p. 7.

² M. Daneshpour, "Muslim families and family therapy," *Journal of Marital and Family Therapy*, 24, 1998, p. 355.

³ David R. Hodge, "Social Work and the House of Islam: Orienting Practitioners to the Beliefs and Values of Muslims in the United States" April 2005, *Social Work*, vol. 50, no. 1, p. 116.

⁴ BY Altareb, "Islamic spirituality in America: A Middle Path to Unity," *Counselling and Values*, vol. 41, No. 1, 1996, p. 30.

⁵ Hodge, "Social Work and the House of Islam ...," p. 120.

To nurture vital communities, Muslims have created a significant number of institutions and organizations to support the ummah in the United States. There are more than 2,300 Muslim institutions throughout the nation. Included in this total are more than 100 private Islamic schools, a home-school association, the Bachelor of Arts – granting American Islamic College located in Chicago, and the School of Islamic and Social Sciences in Leesburg, Virginia, a graduate program specializing in Islamic studies.¹ Most institutions, however, are mosques or Islamic centres. There are more than 1,300 mosques and Islamic centres in the United States, with almost 80 percent of these built since 1980.²

Traditionally, the mosque has not performed the same function in Islam as the church does in Christianity. The use of mosques for religious services is optional in America. It is not a requirement for the expression of faith, as seen in the delineation of the five pillars.³ It is estimated that only 10 percent of Muslims in the United States are regular attendees at mosque religious services, although a much larger percentage typically attend special holidays such as the feast at the end of fasting during the month of Ramadan.⁴ In North America, numerous mosques have added to the services they offer, changing their characters substantially, to provide a greater degree of social support to the Islamic community. In traditional Muslim countries, mosques tend to be a place where Muslims have the option of gathering for prayer, especially Friday prayers. In the United States, these institutions have frequently evolved into diverse centres that provide Muslim communities with an extensive array of services, both religious and cultural.⁵ In addition to traditional prayer services, mosques may offer education for children and adults, day care, libraries, and social and

¹ Yvone Yazbeck Haddad & Jane I. Smith, "United States of America," in Jhon L. Esposito (ed.), *The Oxford Encyclopaedia of the Modern Islamic World*, Vol. 4, p. 278.

² J. I. Smith, *Islam in America* (New York: Columbia University Press, 1999), p. 70.

³ Dale F. Eickelman, *The Middle East and Central Asia* (Upper Saddle River, NJ: Prentice Hall, 3rd edn. 1998), p. 12.

⁴ Yvone Yazbeck Haddad, *The Muslim World Today* (Washington DC: American Institute of Islamic Affairs, 1986), p. 280.

⁵ Corbett, *Religion in America*, p. 9.

sporting activities.¹ Consequently, mosques can be important centres of social support.²

Muslims have also formed a number of organizations.³ The largest organization is the Islamic Society of North America (ISNA).⁴ ISNA attempts to foster a degree of commitment and community among Muslims in the United States, both through its own actions and by facilitating a large number of locally based organizations throughout the country. ISNA activities are diverse and address most dimensions of Muslim life in the United States. Services include provision of instructional material, journals, regular workshops, library facilities, housing assistance, a *Zakat* fund, women's services, and a marriage bureau that operates a computerized database for matching partners. Although ISNA attempts to serve all segments of the Muslim population, it tends to be perceived as an organization tailored primarily to meet the needs of immigrants.

ISNA grew out of the Muslim Student Association (MSA), the largest Muslim student organization in the United States. According to the former president of MSA, more than 500 chapters exist in the United States.⁵ These chapters offer religious and cultural services, including, perhaps most important, social support to the hundreds of thousands of Muslims enrolled on campuses in the United States. A number of publications have been inaugurated to keep Muslims informed of issues from an Islamic perspective, in addition to the products of ISNA and the MSA; more than 100 mosques publish their own journals.⁶ Largely locally based, these publications cover social, cultural, economic,

¹ Ibid.

² Z. Hedayat-Diba, "Psychotherapy with Muslims" in P. Scott Richards and Allen E. Bergin (eds.) *Handbook of Psychotherapy and Religious Diversity* (Washington, DC: American Psychological Association, 2000), p. 290.

³ Sulayman S. Nyang, *Islam in the United States of America* (Chicago, ABC International Group, 1999), p. 62.

⁴ Denny, "Islam in the Americas," p. 299.

⁵ Syed Arshad Husain, "Religion and mental health from the Muslim perspective," in Harold G. Koenig (ed.), *Handbook of Religion and Mental Health* (New York: Academic Press, 1998), p. 280.

⁶ See Nyang, *Islam in the United States of America*, *op. cit.*

and political issues of interest to Muslims and can be an important means of maintaining contact with the larger Islamic community. Notwithstanding these impressive activities, domestic violence committed by male partners is rampant among the women of these minority communities. This is not surprising, domestic violence is endemic within the globe. The causes of this phenomenon shall be discussed later.

Domestic Violence in the United Kingdom

1. Nature and Extent of Domestic Violence in UK

The scale and impact of domestic violence in modern-day Britain can be judged, to some degree, by the size of the government's proposed investment: it was announced that at least £6 million is to be made available from Crime Reduction Programme to front-line agencies tackling domestic violence in 1999.¹ The figure rose tremendously in 2004 to £23 billion.² The figure can be broken down thus- The cost of domestic violence to the criminal justice system (CJS) is around £1 billion a year. This is nearly one-quarter of the CJS budget for violent crime. The largest single component is that of the police. Other components include: prosecution, courts, probation, prison, and legal aid. The cost to the NHS for physical injuries is around £1.2 billion a year. This includes GPs and hospitals. Physical injuries account for most of the NHS costs, but there is an important element of mental health care, estimated at an additional £176 million.

Expenditure on emergency housing includes costs to Local Housing Authorities and Housing Associations for housing those homeless because of domestic violence; housing benefit for such emergency housing; and, importantly, refuges. This amounts to £.16 billion a year. Civil legal services cost over £.3 billion, about half of which is borne by legal aid and half by the individual. This

¹ Chris Bazell and Bryan Gibson, *Domestic Violence and Occupation of the Family Home* (Winchester: Waterside Press, 1999), p. 11.

² See Sylvia Walby, *The Cost of Domestic Violence*, (UK: National Statistics & Women and Equality Unit, September 2004).

includes both specialist legal actions such as injunctions to restrain or expel a violent partner, as well as actions consequent on the disentangling of marriages and relationships such as divorce and child custody.¹ Lost economic output accounts for around £2.7 billion a year. This is the cost of time off work due to injuries. It is estimated that around half of the costs of such sickness absences is borne by the employer and half by the individual in lost wages. An additional element is the human and emotional cost. Domestic violence leads to pain and suffering that is not counted in the cost of services. This amounts to over £17 billion a year. Including all costs, the total cost of domestic violence for the state, employers and victims is estimated at around £23 billion.²

The first reliable and representative ‘dark figure’ studies regarding the extent of domestic violence originated in the United States.³ The extent and nature of domestic violence in the UK became a substantial part of the British Crime Survey (BCS) from 1999 onwards. Domestic violence accounts for around 16 per cent of all violent crimes in Britain at a cost in excess of £23 billion a year.⁴ British studies have revealed that domestic violence incidents claim the lives of two women each week and that it is the largest cause of morbidity worldwide in women aged 19-44; greater than war, cancer or motor vehicle accidents. It is also noted that domestic violence affects one in four women in their lifetime.⁵ Public interest in domestic violence in the UK increased with the publica-

¹ Ibid.

² Ibid.

³ See, Murray A. Straus, Richard J. Gelles & Suzanne K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (New York: Anchor Press, 1980); M. A. Straus, “Physical assaults by women partners: A major social problem,” in Mary Roth Walsh (ed.), *Women, Men and Gender: Ongoing Debates* (New Haven: Yale University Press, 1997), pp. 210-221. See also M.A. Straus, ‘Physical aggression in the family’, in Manuela Martinez (ed.), *Prevention and Control of Aggression and the Impact of its Victims* (New York: Kluwer Academic/Plenum Publishers, 2001), pp. 1-20.

⁴ Home Office, *Crime in England and Wales 2004/2005* (London 2005); see also: Home Office, *Domestic Violence: National Report* (2005) www.crimereduction.gov.uk/domesticviolence (last visited May 7, 2009).

⁵ E.A. Stanko, D. Crisp, C. Hale and H. Lucraft “Counting the Costs: Estimating the Impact of Domestic Violence in the London Borough of Hackney,” *Crime Concern* (Swindon 1998).

tion of a groundbreaking research into the effects of domestic violence by Betsy (Elizabeth) Stanko.¹ Stanko and her research team found that one in four women had experienced domestic violence at least once in their lifetime. Her research firstly concentrated on the United States, later in Britain, and linked domestic violence with direct and indirect costs to society.² Stanko further estimated that the London Metropolitan Police ('the Met') would receive a distress call from a victim every minute of the day. More recently, research has addressed 'risk factors' resulting from domestic violence incidences.

Nearly one million children in the UK could be living with domestic violence, according to a 2006 report by the United Nations Children's Fund, UNICEF. The Report estimates that between 240,000 and 963,000 children in the UK annually witness violence against a parent or caregiver. And the effects on children could range from poor exam results to them becoming violent themselves. The Home Office³ and Children's Society research studies⁴ focused on children as victims of domestic violence. The 'Safe on the Streets Research Team' of the Children's Society found that 100,000 British children run away from home every year in the UK, and that four out of five children who run away from home said that they did so to escape family conflict, violence or domestic abuse. The 2004 survey highlighted drink and drug abuse as linked to domestic violence and some 12 per cent of youngsters described themselves as 'maltreated' at home. Re-

¹ Ibid

² See E. A. Stanko, 'Hidden Violence Against Women', in M. Mauire and J. Pointing, (eds) *Victims of Crime: a new deal* (Milton Keynes 1988); see also E. A. Stanko, *Everyday violence: how women and men experience sexual and physical danger* (London 1990) and D. Crisp, C. Hale and E. Stanko, *A measure of pain: the social and economic cost of domestic violence. The Children's Report. The Children's Society* (London 1998).

³ Home Office, *Domestic Violence: findings from a new British Crime Survey self completion questionnaire* (London 1999), C. Mirrlees-Black, HORS Study 191. See also: Metropolitan Police Service (MPS), *Understanding and Responding to Hate Crime*. MPS Domestic Violence Strategy (2001)

⁴ The Children's Society, *Safe and sound. Making England safe for young runaways* First and second national survey of young runaways 'Still running'. Parts I and II (London 1999 and 2005), accessible at www.the-childrens-society.org.uk/media/pdf/Campaigns/StillRunning2Final (visited on May 7, 2009).

search linked children on the UK Child Protection Register to direct and indirect domestic violence. It was discovered that among victims of child abuse, 40 per cent of the children interviewed reported domestic violence in the home. It was further established that of one-third of children on the 'Child Protection Register' in the London Borough of Hackney, their mothers were also known to be being abused.¹ Their sample of 1,888 child protection referrals across several local authorities in England found that in 27 per cent of cases, domestic violence was an issue in the family.²

A 1998 survey by the British 'Zero Tolerance Charitable Trust' found that of 2,039 young people (13-19 years old), one in five young men and one in ten young women thought violence against women was acceptable. One in four young men thought it acceptable to hit a woman if she had 'slept with someone else'; one in five young men considered it acceptable to force a woman to have sex if she was his wife. A 2000 survey by the same trust of 1,300 schoolchildren found that one in three boys thought violence against women was acceptable.³ The BCS 2002 found that domestic violence incidents made up nearly a quarter of all violent crime (499,000 cases of domestic violence incidences in 2002). The BCS 2004 further estimated that one in five women experienced at least one incident of non-sexual domestic violence or force since the age of 16. 24 per cent of women had experience some form of sexual victimisation since the age of 16.⁴ Of this entire figure, it is estimated that about sixty per cent minority Muslim women experienced domestic violence.⁵ Who are the minority Muslim women in UK?

¹ C. Humphreys and A. Mullender, *Children and domestic violence: a research overview of the impacts on children*. Research in Practice Press Darlington, 2005, p. 12.

² Ibid.

³ See "Hitting Home Factfile 2000" http://www.bbc.co.uk/pressoffice/pressreleases/stories/2003/01_january/17/hitting_home_facts (visited on May 7, 2009).

⁴ Home Office, *Domestic violence, sexual assault and stalking: findings from the British Crime Survey*, S. Walby, and T. Allen, HORS Study 276, London, 2000.

⁵ Helmut Kury and Ursula Smartt, "Domestic Violence: Resent Development in Germany and English Legislation and Law Enforcement" *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 14/4, 2006, p. 382-407.

Minority Muslim Women in United Kingdom

The Muslims' presence in Britain can be traced back over 300 years to the sailors from the Indian subcontinent that were employed by the British East India Company. More arrived following the opening of the Suez Canal in 1869 and the subsequent recruitment of sailors from Yemen into the merchant navy.¹ Significant Muslim communities developed in port cities such as London, Cardiff, Liverpool, Hull and South Shields, the oldest of which is the Yemeni community.² The British Nationality Act 1948 gave members of the Commonwealth the right to freely enter, work and settle with their families in the UK. Migration of Muslims to the UK increased significantly from 1960 onwards as a result of labour shortages in the post-World War II period. Britain invited citizens of the Commonwealth to fill vacancies, resulting in many of today's British Muslims having South Asian descent.

A clear demonstration of the growth of British Muslims since the 1960s is the rise in the number of mosques. In 1963 there were only 13 mosques registered in Britain. The number grew to 49 in 1970 and doubled in the space of five years to 99 in 1975, and again to 203 in 1980 and almost doubling yet again to 338 in 1985.³ An author describes the large scale Muslim settlement to Britain as occurring in two broad phases: firstly 1945 to the early 1970s; and then the second phase from 1973 to the present.⁴ Lewis, however, describes four phases, 'first the pioneers, then what is known as "chain migration" of generally unskilled male workers, followed by migration of wives and children and finally the emergence of a British born generation.'⁵ Hussain

¹ J. Sherif, "Historical Roots of Islam in Britain," in *The Quest for Sanity: Reflections on September 11 and the Aftermath* (London, Muslim Council of Britain, 2002), p. 165.

² Fred Halliday, *Arabs in Exile: Yemeni Migrants in Urban Britain* (London: Tauris, 1992), p.35.

³ S. Vertovec, "Religion in Migration, Diasporas and Transnationalism." *Research on Immigration and Integration in the Metropolis*, University of British Columbia, 2002, Working Paper February 2007. Available at <http://www.riim.metropolis.net>, visited last on May 6, 2009.

⁴ H. Ansari, *The Infidel Within: Muslims in Britain since 1800* (London: Hurst and Co., 2004), p. 7.

⁵ P. Lewis, *Islamic Britain: Religion, Politics and Identity Among British Muslims* (London: I. B. Tauris, 2002), p. 22.

suggests that a three-fold division is more useful. First, the period from 1945 to approximately 1970, this is characterised by the arrival of young male migrant workers. Secondly, the period from around 1970 to approximately 1990 with family formation and the establishment of a generation born in Britain. A third section covers those who arrived from the 1990s as asylum seekers and refugees rather than economic migrants.¹

In the late 1960s and early 1970s, East African Asians began arriving under pressure from the 'Africanisation' policies in Kenya and Tanzania, and in the case of Uganda, as a result of forced expulsion.² The East African Asians were highly skilled urban middle-class professionals and entrepreneurs; they tended to settle in London and the Midlands. Their experience of living in urban centres combined with their business and professional background ensured faster integration into economic and social structures. It is estimated that 20,000 of the group of 150,000 East African Asians were Muslims, mainly with family roots in Pakistan or the Indian state of Gujarat.³

While Muslims from South Asia constitute 68 per cent of the Muslim population in the UK, there are other significant Muslim populations in Britain. However, there is limited research and literature focusing on these groups. There are for example, estimated to be around 120,000 Turkish Cypriots and 80,000 mainland Turkish and Kurdish people in the UK. These three groups, while connected, have very different migration histories. The earliest to settle in the UK were the Turkish Cypriots. Tensions between Turkish and Greek communities in Cyprus created pressure for migration in the early 1960s. Turkish migration from Turkey of largely male migrant workers started from the late 1960s and early 1970s and family reunions began in the late 1970s. Finally, Kurds arrived

¹ S. Hussain, *A Statistical Mapping of Muslims in Britain*, unpublished doctoral thesis (University of Bristol, 2005), p. 79.

² R. Hansen, *Citizenship and Immigration in Post-War Britain* (Oxford: Oxford University Press, 2000), p. 45.

³ The Runnymede Trust, *Islamophobia a Challenge For Us All* (London: The Runnymede Trust, 1997), p. 23.

mainly as political refugees in the late 1980s and early 1990s.¹

Muslims from the Middle East in Britain appear to have a much more diverse profile, coming from various national and class backgrounds. There were Arabs who had taken advantage of their financial gain from the oil crisis of 1973–4 and invested in property and businesses in Britain seeing it as a safer option than their home countries, which were undergoing uncertain political developments and regime changes. In addition to this, Muslim professionals in states experiencing political unrest took advantage of employment opportunities in their fields in Britain to work and settle there.² As described above, Muslim settlement in Britain occurred periodically, in that different communities arrived in higher concentrations according to the pull-push factors facing them at any given time. This has resulted in communities being formed along ethnic lines that have come to be concentrated in different parts of Britain. Clearly, chain migration played a key role in the development of ‘pockets’ of communities and the reproduction of village and kin networks. These have further been strengthened by trans-national marriages where spouses are often from the area of original migration.³

The absence of an agreed figure for the number of Muslims in the UK was a key reason for Muslims campaigning for the inclusion of a question on religious affiliation in the 2001 Census.⁴ The Census statistics provide an important baseline of data on Muslims in the UK. It provides the most comprehensive data on the size, settlement pattern, demographics and some aspects of employment for Muslims in the UK. But important areas were outside the scope of the Census, for example, experiences of education, policing, domestic violence and criminal justice. While the Census pro-

¹ P. Enneli, T. Modood, and H. Bradley, *Young Turks and Kurds: A Set of ‘Invisible’ Disadvantaged Groups* (York: Joseph Rowntree Foundation, 2005), p. 34.

² C. El-Solh, “Arab Communities in Britain: Cleavages and Commonalities,” *Islam and Christian-Muslim Relations*, Vol. 3 (2), 1992, p. 14.

³ Roger Ballard, “Riste and Ristedar: The Significance of Marriage in the Dynamics of Transnational Kinship Networks,” University of Manchester, CASAS, 2004. Available at <http://www.arts.manchester.ac.uk/casas/papers/pdfpapers/ristedari> (visited on May 6, 2009).

⁴ See Hussain, *A Statistical Mapping of Muslims in Britain*.

vides a baseline of information from which data collection in these areas could be developed, for the moment, most data in these areas are disaggregated by ethnicity alone and do not cover religion.

There have been numerous attempts, using various methods of calculation and sources to estimate the figure of Muslims not only in Britain, but also in Europe.¹ Muslims are often stated to be the largest 'minority religious group' in Britain and various sources have estimated the Muslim population to fall between 550,000 and 3 million. In the early 1990s, figures over 1.5 million were normally mentioned by Muslim organisations. However, the most common estimate of the Muslim population was 1 million. The heterogeneous nature of British Muslims makes it particularly difficult to calculate their numbers. British Muslims, other than being Muslim had no other common denominator with regards to identifiers such as ethnicity or language. Despite this, the most common methods used to estimate the number of Muslims in Britain has been from minority groups' countries of birth and from data on ethnicity.

Prior to 1991, when the Census introduced, for the first time, a question on ethnic identity, data from large surveys such as those conducted by the Policy Studies Institute and the Labour Force Survey, relied on country of origin data to provide data on British Pakistani and Bangali Muslims.² Hai conducted research on the size of the South Asian Muslim population in Britain, and inferred a figure by taking into account the percentage of Muslims in the country of origin, for each ethnic group. He acknowledged that 98 per cent of the population of Pakistan are Muslim, compared with 85 per cent of the population of Bangladesh and 11 per cent of that of India. However, he argued against using percentages of Muslims in the country of origin as the basis for estimations of Muslims within a

¹ See M. Anwar, *Muslims in Britain: 1991 Census and Other Statistical Source* (Birmingham: The Centre for the Study of Islam and Christian-Muslim Relations, Selly Oaks Colleges, 1993).

² M. Brown, "Religion and Economic Activity in the South Asian Population," *Ethnic and Racial Studies*, vol. 23 (6), 2000, p. 17.

particular ethnic group in the UK.¹

The 2001 Census provides the most comprehensive and accurate data source on Muslims to date. All the tables on religion to be released by the Office for National Statistics are now available. Hussain's introduction to *Muslims in the Census* provides an overview of the demographic profile of Muslims in England and Wales.² According to the data, there are just over 1.5 million Muslims in England and Wales. In addition to this, the 2001 Census for Scotland found that there are 42,600 Muslims in Scotland. Muslims constitute 3 per cent of the total population of Great Britain (57.1 million). Muslims are the largest minority religious groups, they represent over half the non-Christian religious population. The Census also reveals that, in terms of age structure, Muslims have the youngest demographic profile as a religious group in England and Wales. Over 60 per cent of all Muslims are under the age of 30. At the opposite end of the scale, Muslims have the lowest proportion of elderly people when compared with all other groups.³

Clearly, migration processes contribute to the age structures of groups, since the majority of migrants arrived as young adults and have only recently approached retirement ages. Although this migration pattern is true as argued, for Muslims there has been a second and more recent phase of migration which has not been mirrored by these other communities. Approximately half of the Muslims living in England and Wales were born in the UK.⁴ Despite their concentration in the younger age cohorts there are proportionately less Muslims born in the UK than Sikhs. This may be the consequence of later family reunion in the Bangladeshi community, combined with more recent arrival of Muslims as refugees from

¹ N. Hai, "Britain's South Asian Muslims: A Statistical Profile," Department of Sociology, Manchester Metropolitan University, 1999, p. 12.

² S. Hussain, "An Introduction to Muslims in the 2001 National Census," Paper presented on 7 September 2004 at *The Muslims in Britain Network Meeting*, Selly Oaks, University of Birmingham, 2003. http://www.bristol.ac.uk/sociology/ethnicitycitizenship/intromuslims_census.pdf (visited on May 6, 2009).

³ Ibid.

⁴ See Office of Chief Statistician, *Analysis of Religion in the 2001 Census: Summary Report* Edinburgh: Scottish Executive, 2005.

Eastern Europe and East Africa.¹ The Census data demonstrated that there are Muslims in every local authority in the UK except the Isle of Scilly; however, some local authorities have counts as low as 10 such as Berwick-upon-Tweed. The results showed some expected clusters in and around London, the West Midlands, Lancashire and West Yorkshire. They also reveal some unexpected clusters in the North East (for example, Middlesbrough and Newcastle) and at the opposite end of the country in the South West (Gloucester and Bristol).² The Muslim population in the UK may now number as many as 2 million. The updated Whitehall estimate confirms the position of Islam as the second largest religious community after Christianity, and means that Muslims now make up 3.3% of the UK population.³

Despite the notable improvement in the living and educational standards of the first generation Muslims, on the whole, British Muslims continue to suffer from unemployment, poor working conditions, poverty, poor and overcrowded housing, poor health, and low educational qualifications.⁴ More than two-thirds of the entire Muslim women population remain economically inactive, the highest number in any religious group. Facing what can be described as the 'double-minority' syndrome; many Muslim women face pressures of compliance with the community norms of traditions upbringing and social behaviour. Muslim women face substantial health crisis; while middle age women suffer from long-term debilitating problems and women of all ages face persistent neglect and lack of adequate medical treatment.⁵ Forced marriage, 'honour killing' and domestic violence phenomenon has a presence within the Asian and in particular

¹ Serana Hussain and Tufyal Choudhury, "Muslims in the EU: Cities Report, United Kingdom, Preliminary Research Report and Literature Survey", 2007, p. 14.

² Ibid., p. 15.

³ Jacqui Smith (British Home Secretary), "Officials Think UK's Muslim Population has Risen to 2m," *The Guardian*, Tuesday 8 April 2008.

⁴ Javaid Rehman, "Religion, Minority Rights and Muslims of the United Kingdom" in Javaid Rehman and Susan S. Breau eds., *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Boston: Martinus Nijhoff Publishers, 2007), p. 528.

⁵ Ibid.

Pakistani and Bangali communities.¹

The Causes of Domestic Violence among Muslim Minorities

As previously stated, the paucity of research on Muslim families as minorities in non Muslim countries makes it difficult to provide specific statistical evidence. Since it appears that Muslims in the USA and the UK seem to have similar backgrounds, it is expedient to take causes of domestic violence among these communities together. There are many factors responsible for domestic violence among Muslim minorities; although they are not diametrically different from that of larger society. Some factors that are unique are analysed below. However, it should be stressed that these factors are findings of many research works on domestic violence rather than empirical study of this work.

Wahida Christi Valiante's² personal practice as a family counselor over the last 18 years and data collected from different sources, indicate that Muslim families also experience social and personal problems like the rest of the American society. There is marked increase in divorce rates, separation, domestic violence, child abuse, elder abuse, intergenerational conflict, and teenage pregnancies. Barring violence or psychological abuse in the family, seeking solutions through negotiations is the Islamic norm. Marriage requires collaboration, commitment, and above all a sense of responsibility towards oneself, one's partner, family, and the society.

In addition, a significant number of young Muslims are marrying outside the community. One of the major hurdles facing young Muslims to find someone to marry from within the diverse Muslim community is the question of ethnicity and culture. Cultural and racial diversity instead of being a positive factor, as the Qur'an tells us (49:13), is becoming a dividing factor, since every Muslim group wants to preserve its own ethnic and culture puri-

¹ Ansari, *The Infidel Within*, p. 4.

² Wahida Christi Valiante is a psychotherapist, specializing in Family Counseling. She has made numerous presentations on treatment of families from an Islamic perspective to academic institutions and professionals both in Canada and the US. See www.crescentlife.com/familymatters/challenges-facing-muslim-families (accessed on April 23, 2009).

ty. This limits the pool of young (male and female) to choose from. Also, increasing numbers of young Muslim parents, both father and the mother, are choosing to work outside the house, primarily for economic reasons, and are relegating the care and nurturing of their children to daycare centers and elderly parents. Both arrangements are inherently insufficient because daycare by its very nature lacks individualized emotional, spiritual, and intellectual care the child needs. Also, the social environment of daycare is predisposed to producing conformity through the process of socialization and leaves very little room for developing an independent religious or social identity. Although more equipped to provide emotional, spiritual and nurturing environment, grandparents, too, lack the physical vigour to cope with the demands of growing children. In numerous instances, language is also a barrier putting both under undue stress.

The above social trends in Muslim families point to various degrees of assimilation, or adaptation to existing societal values. This has serious implications for the future of the Muslim families. In Islam, family is central to creating a stable society and ultimately civilization itself. Therefore, if family as a social system fails to provide sound religious and social values for the total physical and psychological growth of a human being, then society will suffer greatly as is evident from the malaise affecting western society. According to social scientists, the American society is becoming increasingly violent, aggressive, self destructive, narcissistic and uncaring towards those who are less fortunate, including members of the immediate family.

The Qur'an, which was revealed to the Prophet in order that that he "*might lead mankind out of the depth of darkness into light*" (15:1), provides numerous examples of what happens to nations, peoples and individuals who exceed the limits prescribed by God:

Have they not traveled in the earth and seen how evil was the end of those who were before them? And they were stronger than they in power. (Qur'an, 35:34)

If Muslim families are to survive the current social and structural changes in the USA and the UK, they must actively initiate

social changes in the society in which they live. Humanity is told that it is to act as a vicegerent of God (Qur'an, 2:30). It is under moral obligation to reform its own thinking and behaviour in order to create a just and morally balanced self and society. (Qur'an, 3:110)

Other factors cited which relate to domestic violence among the minority Muslim women is the misconception of Islamic religion. More than fourteen hundred years ago, Islam was revealed to Prophet Muhammad (SAW) in Makkah. The first person with whom he shared God's revelations to him was his wife Khadījah, thereby acknowledging the status and value of women.¹ The Islamic religion offered women rights they had never had before, like the right to choose their marriage partner, the right to divorce, and the right to inheritance.² The Prophet, many times, admonished the believers to treat their wives kindly. This is depicted in his last sermon (*khutbat al wadā'*) in which he said,

Be good to women; for they are powerless captives in your households. You took them in God's trust, and legitimated your sexual relations with the words of God, so come to your senses people, and hear my words.

He further admonished them:

*Let not one of you whip his wife like a slave, then move near her bed at the end of the day.*³

This admonition is in line with the Qur'anic injunction which says;

And among His signs is this; that He created for you mates from among yourselves, so that you may dwell in tranquillity with them, and He has put love and mercy between your (hearts): Verily in that are signs for those who ponder. (Qur'an, 30: 21)

Over the years, however, through cultural distortions, the religion itself has been used to suppress and oppress women. Today, in Muslim religious centres across America and England, like

¹ K. Siddique, *The Struggle of Muslim Women* (MD: American Society for Education and Religion, 1983), p. 12.

² Fatimah Mernissi, *Beyond the Veil: Male-female Dynamism in Modern Muslim Society* (Bloomington: Indiana University Press, 1987), p. 30.

³ Ibn Mājah, *Sunan Ibn Majah* (Beirut: Dār al-Kutub al-Ilmiyyah, 2009), Vol. 1, p. 638.

many other Muslim countries, debates continue around the justification for a husband to hit his wife. This is based on the 'chastisement principle' that evolves from misinterpretation of a verse of the Qur'an. This verse seems to permit husbands to chastise their wives as a last resort when they failed to obey God's commands; thus we read,

As to those women on those you fear admonish them first, then abandon them in bed, and last hit them lightly; and if they obey you, seek not against them means of annoyance or harm, for God is most high, and Great. (Qur'an, 4: 34)

Some scholars interpret the verse as allowing a symbolic beating of a wife if she disobeys. Others cling to a more literal meaning. This selective preference of one verse from the Qur'an over many other verses that stresses on kindness and justice toward women has created an atmosphere that tolerates and allows violence toward women. As a result of misinterpretation of this verse, women who experience violence in their lives are told to be patient and to give in. No clear stand is taken against a man who is violent. Violence in marriage is generally condemned but when it does happen the religious community gives no clear consequences for the violent behaviour. Furthermore, the religious community condemns any woman who seeks legal protection from an abusive spouse. Rather, her actions are considered as disloyal and bringing shame to the husband and the family. The message given to women is to be patient and accept. A religion meant to bring about peace in the lives of all mankind is then involved in a limited way in preventing violence toward women.¹

Another major factor responsible for domestic violence among minority Muslim women is the culture. The minority Muslim women, as mentioned earlier, comprise many of different cultural and ethnic groups, each with its own unique background, history, language, customs, and traditions. Variations exist within the same group across different social class lines. But the cultures are basically the same. Most cultures are traditional and patriar-

¹ Siddique, *The Struggle of Muslim Women*, p. 18.

chal. At the head of the system is invariably the father figure followed by his brothers, other male relatives, sons, and older women. At the bottom of the hierarchy are women of the household. In such a system, the power positions of members are very clearly and rigidly maintained. An individual's desires and needs are put aside in the interest of the group. What is in the interest of the group is based upon the judgment of the head of the family. Members of the extended family are expected to have faith and believe that any decision the head of the family makes is in their best interest and to accept it. The roles that traditional, patriarchal values have played in engendering violence toward women in this regard are enormous.¹

Again, these cultures resist the development of a strong sense of individual identity. Individuals are socialized to define themselves as part of a larger familial group. A person's identity is described in terms of the family he/she belongs to and the relationships the person has in the family. Thus, the South Asian Indian woman's identity, for example, is more specifically based upon her role as mother, daughter, niece, sister, and so on. Identities outside of these relationships may seem inconceivable to her.² The culture respects and supports women who can fit into these prescribed roles. However, respect and support is not often given to those women who do not fit traditional roles (e.g., single women, battered women, and divorced women). The family tries to meet the needs of all members of the family within its rigid and strict rules. Few allowances are made for individual needs or differences.

Maintenance of the order of hierarchy is important; women at the bottom of this hierarchy face the most rigid controls. In addition, the burden of maintaining the system also falls on them. The system is sustained through the magnification of concepts of honour and shame. Women bring honour to the family if they comply and maintain their prescribed role; any deviation by them

¹ Ruksana, "Domestic Violence in the South Asian Muslim Immigration in the United States," p. 243.

² Jayakar, K., "Women of the Indian Subcontinent," in L. Comaz-Diaz & B. Greene (eds.) *Women of colour: Integrating Ethnic and Gender Identities in Psychotherapy* (New York: Guilford Press, 1995), p. 22.

not only brings dishonour to them but also shame to the entire family system. Women are encouraged to maintain the traditional role of wife and mother. They are supposed to be protected only by their husbands, brothers or their fathers. A single woman is seen as someone at risk of being abused. Such beliefs fail to take into account the statistics that indicate most women face violence not from strangers but at the hands of men they love and who are supposed to be their protector.¹

This focus on marriage and belittling of most other roles for women has a tremendous impact on the socialization process of women. Many young women are pressured by their parents to marry. Parents themselves feel the stress of messages ingrained in them that requires them to marry off their daughters as soon as possible. Many women delay higher education in pursuit of marriage. Many drop out in the middle of their studies because of pressure from parents. Those who stay on and complete their studies face an escalation in pressure to marry. There is very little tolerance of a grown woman who is working, independent, and single. The Muslim family system perceives a single woman as leading to *fitnah* or social disorder.² Women are encouraged to be in passive dependent roles. Once married, the message ingrained in them by parents, friends, and clergy is that the marriage be maintained. No price a woman might pay would be greater than the shame she would bring on the family if she chose to end the marriage. Therefore, many women, even in the face of extreme domestic violence, continue to stay in the marriage because leaving would bring shame to their family. Such beliefs are so strongly embedded in the cultures and the minds of the people, that its abusiveness almost becomes invisible.

A parent pressuring a woman to stay in a violent marriage is not seen as abusive to her, but as trying to help her and prevent her from taking an impulsive decision based on her interest alone. A traditional view of a decent and virtuous girl was one who walks slowly, never runs, never laughs out loud, and never ever

¹ Leonore E. A. Walker, *The Battered Women Syndrome* (New York: Springer Publishing Company, 1984), p. 34.

² Mernissi, *Beyond the Veil*, p. 33.

takes care of her needs before that of the family. The interest of the group has to be remembered above all. If anyone has to be sacrificed for the maintenance of the family system, it is the woman. She is expected to sacrifice herself willingly and without complaints. She is reminded of the rewards that will follow her after death for being a patient and tolerant wife.¹

The 1960s brought a wave of educated single males Muslims from their countries. Most of them went back to their home countries in search of a bride. Because they were educated, they choose women who were educated as their wives. As they settled in to married lives with wives and children, there was a very clear effort to recreate the old family system in America. Life in America, which looked very attractive from their home countries, created stresses. The freedom in the American culture that had first attracted them now scared them. Men accustomed to a patriarchal family system now found it difficult to share power with their wives. As their children grew, concern about the impact of the American culture on them grew. Accustomed to total submission and compliance vis-à-vis their own parents when growing up, these immigrants were totally unprepared for their children questioning them. Freedom of expression, open sexuality, and 50% divorce rate in American society became their biggest fears. The men demand total power and control for themselves over their family. Men expect their wives not only to submit to their control but also to the control of their mothers and other family members. Even in situations where the wife works, the husband has deciding power over how and where she spends her money.² Efforts are made by the man to recreate the patriarchal system and to resist sharing decision-making with his wife. Any attempt to correct this anomaly by women leads to domestic violence.³

Apart from this, family of origin is another factor which encourages domestic violence. This is, however, peculiar to Asian countries in general and South Asian countries in particular. This

¹ Ruskana, "Domestic Violence in the South Asian Muslim Immigration in the United States," p. 244.

² Jayakar, "Women of the Indian Subcontinent," p. 23.

³ Ibid.

may look similar to cultural factor discussed above, interestingly, they are not the same. In Asian countries, women tend to idealize their family of origin in general and their fathers in particular. Whether it is the exaggerated way in which the father is described as a generous and loving parent, or the mother is described as indulged and respected by the father, the overlying theme is always how wonderful things were in the parental home before the marriage. Most of these women describe an awareness of the harshness and cruelty toward women in their culture. They were aware that in Asian society the place of the women was a few steps behind the man. They had grown up hearing stories of other women being abused by husbands, by in-laws, or others, and who had no options to escape. They describe themselves as lucky that they did not have to face the suppression of women, and invariably they owed it to their family's generosity. Thus, they felt protected from the unfairness of society, not by their own strength, but by the strength of the parent and the family. Therefore, the self that emerged was a self, dependent upon an authority figure for rights and grants.¹

The women were allowed to pursue education and career because it made the parents look good. It also had the added benefit of enabling the parents to find a better match for them. An educational degree could offset mediocre looks and a not-so-hefty dowry. The goal of the education was to attract a marriage partner.² However, the degree to which a girl is allowed an education or job opportunities is influenced more by the family rules than by her individual interests and desires. Women's education is to enhance the reputation, first, of her original family and, then, the position, honour and material well being of her in-laws. For those facing conflict or violence in the marriage, parents expect the young women to tolerate and totally submit to the authority of the spouse and his family. They are encouraged to accept it as their fate. After having invested money and family resources in raising and then

¹ See Ruskana, "Domestic Violence in the South Asian Muslim Immigration in the United States."

² Ayesha Jalal, "The Convenience of Subservience: Women and the State of Pakistan," in Deniz Kandiyoti (ed.), *Women, Islam and the State* (Philadelphia: Temple University Press, 1991), p. 40.

marrying their daughters, the parents are often the most resistant in letting even a bad marriage come to an end. The young women themselves report strong feelings of obligations toward the family and suffer from guilt on letting down their parents who had been good providers. Invariably, many women live with the abuse. To the outside world they appear educated and like professional women; independent minded and strong. Inside themselves they carry remnants of their family origin concept that demands women to maintain a marriage at all costs.¹ Apart from these factors which are peculiar to minority Muslim women, other factors enhance or contribute to domestic violence.

The challenge in the next millennium for Muslim women is not from the external environment; it is from within. Islam has a lot to offer to the ongoing debate on the future and status of these victims. The practical implications of the answers found in the Qur'an for those who advocate stability of the family and society are immense.

Solutions and Remedies

Both the United States and United Kingdom have tried to reduce domestic violence to the barest minimum. Apart from whopping sum of money invested, various legal frame-works were put in place. These include (1) legalistic remedy, i.e. various laws and procedure to curb and enforce orders against domestic violence; (2) social remedy, e.g. instituting refugee camps and shelters for victims of domestic violence; and (3) Government policy, e.g. offer of domestic violence courses for men convicted of criminal violence, public awareness campaign and mediation and conflict resolution scheme and funding of statutory bodies and private organizations. As plausible as these initiatives are, domestic violence has not reduced to the expected level. This is shown by the recent statistics of domestic violence between 2002 and 2007² as well as the huge sum the scourge

¹ Ibid.

² Sundari Anitha, "Neither Safety Nor Justice: The UK Government Response to Domestic Violence Against Immigrant Women," *Journal of Social Welfare and Family Law*, vol. 27, No. 2, 2008; Amnesty International and Southall Black Sisters, No Re-

engulfed. All over the world, individual countries are trying within their limit to curb domestic violence, yet extra efforts need to be exerted. It is against this backdrop that the following recommendations and suggestions are made.

First, the problem of domestic violence must be transferred from private to public domain. It is only when it is approached from this perspective that more efforts will be directed towards solving the problem. Akin to this, it is suggested that each nation should internationalise domestic violence problem by strictly complying with conventions, regional and international instruments relating to domestic violence signed and domesticated. This is because domestic violence standards have become part of customary international law, which is binding in nature. Such conventions and instruments include, among others, the International Bill of Human Rights (e.g. ICCPR, ICESCR, UDHR); the United Nations Campaign for Women's Rights; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Inter-American Convention on Violence against Women; the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT); the African Charter on Human and People's Rights; and the European Convention for the protection of Human Rights and Fundamental Freedom. All these, in one way or the other protect women against domestic violence; and as such must be actualised.

Another suggestion is that early identification of abusive men must be incorporated in any intervention mechanism. Further, in order to change their conception of gender role of masculinity, intervention measures must not challenge their manhood or be an intrusion into their rightful role as family heads. Otherwise, they will continue to ignore and will remain dangerous to their families. Along this line, intervention measures should be culturally sensitive

course - no Safety: The UK Government Failure to Protect Women from Violence (London: Amnesty International, 2008); and Home Office, "Control of Immigration Statistics, United Kingdom 2005," presented to Parliament by the Secretary of State for the Home Department, August 2006. <<http://www.official-documents.gov.uk/document/cm69/6904/6904>> (visited on May 7, 2009).

and consistent with the norms of the victim's culture. In addition, use of support groups of non-violent men will have a positive modelling effect on abusive men. While making policies and measures, preventive measures should address cognitive, emotional, and behavioural effects on children and adolescents who witness adult violence. Witnessing violence in their homes, boys later as adults may themselves practise physical aggression against female partners and girls, and may become insensitive to male violence.

In the same token, social institutions and professional organisations, insensitive to male violence against women, should be made aware of their obligation to stop this social injustice by developing prevention and intervention strategies against male violence. Efforts of national publicity of the plight of battered women, their increased empowerment and legislation prohibiting assault against women have already been initiated in many countries. However, community watch and sanctions, practised effectively in some countries, could be more realistic, practical, and effective deterrents to domestic violence than change in the religious precepts or legal system.

Medically, documentation and validation of assault histories and observed consequences are essential components of both short and long term mental health interventions. Such efforts must be confidential for the personal safety of victims and their family members. Neuropsychological assessment is essential whenever a woman complains of being hit on the head, being shaken, or being choked into unconsciousness repeatedly. Also, responses to post-trauma are important for diagnosis and treatment planning but such efforts must not over examine the victim for demonstrating the effects of trauma. Male therapists working with women survivors of violence should develop an attitude of trust, support, and alliance in order not to trigger inadvertently fears of male violence and dominance.

Lastly, Sarla has rightly proposed¹ using multiple approaches

¹ Sarla Sharma, "Domestic Violence Against Minority Women: Interventions, Preventions and Health Implications," *Equal Opportunities International*, vol. 16, No. 2, 1997.

to reinforce the message that violence against women is inhumane, abominable, illegal, and intolerable. Despite the gains from existing societal and legislative reforms, the rates of violence and lethal crimes against women remain high. Hence, public policy initiatives should encompass accelerated research, prevention, and intervention efforts as well as legislative reforms. In addition, there should be an aggressive and resolute enforcement of the laws to encourage personal freedom, economic opportunity, and formation of support groups to combat victimisation of women. Further, development of additional policies; continued monitoring of crime victimization survey database; national media campaign to condemn domestic violence; research for innovative techniques to increase arrests, prosecution, and conviction; and legal protection for women victims of domestic violence should be the top priority in all societies.

Conclusion

Awareness of the presence of domestic violence in the Muslim minority community is slowly increasing. Different cultural groups that may never have dealt with the case of domestic violence in their home countries are springing up and trying to help their own populations. Women are utilizing these resources. They are finding strength to break the cycle of violence and oppression. They are questioning the wisdom of saving a marriage at all costs. The 50% divorce rate in Europe does not appeal to them neither does the continuation of 25% of marriages with ongoing violence in Asia and Africa.

Domestic violence hurts the whole family. It hurts the victim at the physical, emotional, and psychological levels. It causes pain and suffering to the victim. It also hurts the perpetrator of the violence by creating distance between him and his family and by destroying any possibility of close comforting relations. Most of all, domestic violence hurts the children by taking away a sense of safety and security they need while growing up. Being a witness to violence in the home also teaches our children to resort to violence themselves. Studies show that boys growing up in violent homes are more likely to resort to violence as they grow up. For

life to be fulfilling and satisfying to all family members, this cycle of violence has to stop. Women have always depended on their families and religion for support. Even now, when facing domestic violence women turn to their religion and families for answers. For a woman trying to overcome domestic violence, it is very comforting to know that her religion supports her.

But when religious leaders, family, and friends discourage such a woman, it adds to the oppression in her life. The questions then arise, what can be done to help such a woman? How can these same institutions be utilized to help the women? The first step toward resolution of any problem is acceptance of the problem. Some Muslim women have tended to deny the existence of the problem of domestic violence. Involving resources at various levels can increase awareness of domestic violence. Community leaders, religious leaders, and professionals mental health field all need to get together to tackle this problem by demonstrating the willingness to help and support.

Mental health professionals need to educate the community about the damage caused by domestic violence, not just to the woman but the whole family. Information on resources and supportive services need to be made easily accessible to women, while religious rules and regulation surrounding marriage, divorce, separation, and custody need to be further clarified. Women who utilize these resources need to be supported and encouraged. Religious and community leaders need to express a clear stand on violence against women. One recent trend that offers a very hopeful sign is the work by scholars who are trying to remove the cultural distortions from the religion and trying to help women re-establish equality, dignity, and respect in their lives.

There is need to change our parenting styles in order to enable our next generation to face the next millennium with a strong sense of self and to have an awareness of who they are, what they desire, and their goals. Our children need to learn to survive on their own and to become aware of their own strength for survival. Children have to be allowed to make choices, to learn from their mistakes, and grow from their life experiences. Such child-

rearing behaviour is difficult for most parents, who feel they have to be overprotective. In addition, girls and boys are raised differently as there continues to be extra pressure on daughters to behave in socially prescribed ways. Such beliefs will have to change if we want our children to develop into strong independent human beings and experience life free of violence.

CHAPTER 10

قضايا الأقليات في المنظور الإسلامي: رؤية مقاصدية

كمال السعيد حبيب

مقدمة

"الأقليات" مصطلح جديد في الفقه الإسلامي والحضارة الإسلامية، فلم يعرف الفكر الإسلامي بمجالاته المختلفة مصطلح "الأقلية" بمعناه الشائع في العلوم الاجتماعية ذات النشأة الحديثة في الغرب والذي يشير إلى مكانة أدنى في التراتب الاجتماعي مستندة إلى أسباب متصلة بمخالفة الأقلية للأغلبية في أحد المقومات الطبيعية أو الثقافية. ويؤدي هذا الاختلاف إلى تعرض الأقلية عادة للتمييز ضدها من قبل الأغلبية، الأمر الذي يدفع أفرادها إلى التضامن فيما بينهم لمواجهة ذلك التمييز وما ينجر عنه من نتائج، وهو ما يؤدي في كثير من الأحيان إلى حدوث توتر العلاقة بين الأقلية والأغلبية في المجتمع.¹

¹ حول تعريف الأقلية والمصطلحات المختلفة التي تستخدمها العلوم الاجتماعية كالجماعة الإثنية. راجع: سعد الدين إبراهيم: تأملات في مسألة الأقليات (القاهرة: دار سعاد الصباح، 1992)، ص 64. وتستخدم سميرة بحر عبارة "الأقليات الإثنية". سميرة بحر: المدخل لدراسة الأقليات (القاهرة: مكتبة الأنجلو المصرية، 1982)، ص 64. كما تستخدم مصطلح الأقلية، وتتنقد مصطلح "الجماعة الإثنية". نيفين عبد المنعم مسعد:

ومع حداثة مصطلح "الأقليات" في السياق الإسلامي، إلا أن الفكر الإسلامي قد استخدم مصطلحات أخرى مختلفة للتعبير عن معناه بدلالات متقاربة، مثل أهل الكتاب، وأهل الذمة، وأهل الملل، وغير المسلمين. ويعد مصطلح "الأقليات" من المصطلحات الشائعة في العلوم الاجتماعية اليوم، كما أصبح شائعاً في الخطاب السياسي والاجتماعي لجهات متعددة - أفراداً ومؤسسات - تعبيراً عن أحد الموضوعات الحساسة في العلاقات الاجتماعية والسياسية على المستويات المحلية والإقليمية والعالمية. فلا مناصَ إذن للفقه الإسلامي عامة والفقه السياسي منه خاصة من التعامل مع هذا المصطلح، والتبصر بما يرتبط به من قضايا وإشكالات. ولذلك يحاول هذا البحث النظر في هذا المصطلح وتحديد مفهومه ودلالاته وأبعاده المختلفة بما يتسق مع منطق الحضارة الإسلامية وفي ضوء مقاصد الشريعة الكلية وقيمها العليا وقواعدها العامة التي يحتل فيها تكريم الإنسان ونبذ الإكراه في التعامل مع مسائل العقائد والأديان مكانة أساسية. وسيقتصر البحث على الأقليات غير المسلمة في المجتمع الإسلامي.

وتمهيداً لذلك نقرر أن الإسلام لا يعرف التمييز بين الناس على أساس الاختلاف في المقومات والخصائص الطبيعية، من اللون أو الجنس أو العرق، لقوله تعالى: ﴿يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا﴾ (الحجرات: 13). ولذا عرفت التجربة التاريخية الإسلامية مصطلحات مختلفة تعبر عن الطبيعة الحضارية لها مثل "أهل الكتاب"، و"أهل الذمة" و"أهل

الملة"،¹ وهو تمييز يقوم على أساس الكتاب والذمة والملة، أي أن التمييز هنا يقوم على أساس مخالفة الدين الإسلامي أو التمايز عنه. ومن هنا فإن الإسلام هو الذي يميز بين الذين يلتحقون به وأولئك الذين يبقون على دينهم، سواء أكان هذا الدين سماوياً كاليهودية والنصرانية بمذاهبهما ومللهم المختلفة، أو أديان الوثنيين الذين يتبعون أدياناً لا أثارة لها من وحي إلهي. فمصطلح غير المسلمين الذي يعد مصطلحاً حديثاً في التعبير عن ظاهرة الأقليات في الفكر الإسلامي يحمل دلالة حضارية تعني غير المسلمين بالمعنى الواسع الذي يضم أقواماً يتبعون ديناً سماوياً كما يشمل غيرهم.² فمعيار التمييز ليس عرقاً أو لوناً أو إثنية، وإنما هو معيار ديني عقدي يجعل التمييز قائماً على أساس المسلمين/غير المسلمين.

ومن هنا فإن أبناء القوميات المختلفة في نظام الاجتماع السياسي الإسلامي مثل الكرد والترك والأمازيغ البربر وغيرهم ممن يختلفون في أرومتهم العرقية أو أصولهم اللغوية، لا يعتبرون أقليات إذا كانوا مسلمين، كما أن العشائر وأفخاذها وبطونها والأسر وتعبيراتها ذات الطابع الانشقاقي لا تعتبر أقليات طالما كانت تدين بالإسلام. فالحضارة الإسلامية قامت على أساس التنوع والتعدد ولكن في إطار وحدة الانتماء للأمة الإسلامية، فلم تعرف الحضارة الإسلامية حقبة أنكر فيها على مواطنيها المسلمين حقهم في الانتماء لعشائرتهم أو قومياتهم أو قبائلهم، كما لم

¹ حول المصطلحات المختلفة لغير المسلمين في الفقه السياسي الإسلامي راجع: كمال السعيد حبيب، الأقليات والسياسة في الخبرة الإسلامية من بداية الدولة النبوية وحتى سقوط الدولة العثمانية (القاهرة: مديبولي، 2002)، ص 36-42.

² يوسف القرضاوي: غير المسلمين في المجتمع المسلم (بيروت: مؤسسة الرسالة، ط 4، 1985)، ص 7. وانظر كذلك: فهمي هويدي: مواطنون لا ذميون، موقع غير المسلمين في مجتمع المسلمين (القاهرة: دار الشروق، ط 1، 1985/1405)؛ محمد سليم العوا: في النظام السياسي للدولة الإسلامية (القاهرة: دار الشروق، ط 7، 1989/1410).

تنكر أي دولة إسلامية على مواطنيها غير المسلمين حقهم في العيش آمنين داخل حدودها لهم ما للمسلمين وعليهم ما عليهم. ولم يعرف التاريخ الإسلامي تقاليد بوتقة الصهر (melting-pot)، أو ممارسات الاستئصال العرقي أو الديني التي حفلت بها التقاليد الغربية والقومية العلمانية.¹

وكان قبول التعدد والتنوع يفرض على الدولة الإسلامية صيغاً توحيدية، فالدولة ذات الطبيعة التعددية تفرض دينامية خاصة تجعل من التعدد مصدراً لقوتها، بحيث توسع من القاعدة الاجتماعية للدولة فينتهي الجميع إليها بما في ذلك غير المسلمين أنفسهم. وهنا يعد معيار عدم الامتناع على النظام السياسي أو تحديه ومشاقته على مستوى الهوية أو الاستقرار السياسي، ثم معيار الولاء للدولة الإسلامية، من المعايير المهمة التي يبنى عليها مفهوم المواطنة بمعناها المعاصر.²

فماذا يعني أن تكون مواطناً في دولة؟ أي أن تكون هناك علاقة تعاقدية بينك وبينها؟ إنه في إطار هذه العلاقة يتم تبادل الحقوق والواجبات بينك وبينها بحيث تؤدي إليها واجب الولاء والانتماء وواجب الطاعة، أي القبول بالنظام السياسي وقواعده القانونية والسياسية التي تنظم الفضاء العام في المجتمع، وتؤدي هي إليك كل الحقوق الواجبة عليها بداية من توفير الأمن، فالحد الأدنى للحقوق الاقتصادية والاجتماعية التي لا يمكن للحياة أن تقوم إلا بها، مثل توفير المسكن الملائم والعمل المناسب للقدرات والكفاءات التي تم تأهيلها لها، وتيسير أسباب الحياة مثل النظافة والمواصلات والبيئة النظيفة وغيرها، ثم الحقوق السياسية التي تتمثل في الحق في المشاركة السياسية والحق في تكوين الجمعيات والأحزاب وحق النقد والتعبير، والحقوق القانونية التي تكفل المساواة وعدم التمييز على أسس طائفية أو عرقية بما في

¹ حبيب، الأقليات والسياسة، المقدمة.

² المرجع نفسه (في مواضع متفرقة).

ذلك الحق في حرية اعتناق دين مختلف عن دين الدولة أو الأغلبية المسلمة وفقاً لما قرره القرآن في قوله تعالى: ﴿لَا إِكْرَاهَ فِي الدِّينِ﴾ (البقرة: 256)، أي لا يكره غير المسلم أن يدخل في دين الإسلام وهو كاره أو غير راغب.

إشكالات معاصرة حول مسألة الأقليات

هناك عدد من الإشكالات التي تواجه الباحث في مسألة الأقليات من منظور إسلامي والتي لا بد من الوقوف عندها وتبين أبعادها الحقيقية لإحسان التعامل مع هذه المسألة. وفيما يلي محاولة لرصد تلك الإشكاليات دون توسع كبير في تحليلها مما يتجاوز حدود هذا البحث. وأولى تلك الإشكالات - وليس أهمها - ما أثّرناه من أن الحضارة الإسلامية لم تعرف المصطلح وكان لديها مصطلحاتها الخاصة على البعد الديني الحضاري. فالحضارة الإسلامية حضارة قائمة في جوهرها على الدين، فكل العلوم والتقاليد والخبرات استندت إلى القانون الإسلامي الأساسي (الشرعية الإسلامية في القرآن والسنة النبوية) والفقهاء الإسلاميين، أي الاجتهاد أو الفهم الذي قدمه الفقهاء لنصوص القرآن والسنة الصحيحة. ويمكننا القول إن هناك علاقة قوية بين طبيعة الاجتماع الإسلامي والفقهاء، ففقهاء الأقليات المتعلقة بتنظيم أوضاع غير المسلمين في الدولة المسلمة نشأ في ظل أوضاع سياسية واجتماعية كان المسلمون فيها هم الحضارة الغالبة، وكان الفقهاء يؤسس لأوضاع غلبة المسلمين وعلوهم على المستوى السياسي. فمعظم البلدان التي دخلت في نظام الإسلام تم فتحها من قبل الدولة الإسلامية، ومن ثم كانت لهم السلطة العليا والحاكمة النهائية، وكان ذلك منشأ مصطلح "دار الإسلام"، أي تلك التي تحكمها سلطة سياسية إسلامية لا ينافيها في السلطة سواها وتكون المرجعية القانونية فيها للشرعية الإسلامية. ومن ثم اجتهد الفقهاء لدار الإسلام بشكل رئيس لتكييف الأوضاع والعلاقات الناجمة عن ذلك، فتحديثوا عن البلدان التي

فتحها المسلمون عنوة وتلك التي فتحت صلحاً، وتحدثوا عن البلدان التي مَصَّرَها المسلمون كالكوَفة وواسط في العراق والفسطاط في مصر والقيروان في تونس وغيرها، وتحدثوا عن البلدان القديمة وأحكام الكنائس فيها وغيرها. فتبلورت في ضوء ذلك وبالتفاعل معه مجموعة الأحكام الفقهية كانت وظيفتها وغايتها التنظير لنظام اجتماعي وسياسي مختلف عن ذلك الذي نعيشه اليوم.¹

أما الإشكال الثاني فيتمثل في أن المسلمين اليوم يواجهون نظاماً اجتماعياً وسياسياً جديداً ومختلفاً، ليسوا هم قاداته وصانعيه وإنما صانعوهم عالم الغرب (أمريكا وأوروبا واليابان والكيان الصهيوني)، والصين والهند (حوالي ربع العالم من حيث عدد السكان)، ومعظم دول الإسلام تعرضت للاستعمار. فقد أثار النظام السياسي المعبر عن المؤسسة السياسية لعالم الإسلام وهو "الخلافة الإسلامية"، وسادت الدولة القطرية لما بعد الاستعمار (post-colonial state)، وهي دولة علمانية في أغلب توجهاتها، وإن أشير في وثائقها الدستورية إلى الإسلام والشرعية.

وليست هذه الدولة الحديثة نتاجاً لحركة فتح قام بها المسلمون أو تغلب حققوه وسيادة بلغوها، وإنما هي نتاج لوضع قانوني وسياسي جديد هو جزء من نظام دولي وقانوني عالمي مهيم يجعل التعامل مع مصطلح "الأقليات" أمراً لا مفر منه. وهذا الوضع يجعل المصطلحات الإسلامية القديمة غير مقبولة أو على الأقل غير مفهومة اليوم؛ لأنها في وعي الأقليات غير المسلمة التي تعيش داخل البلدان الإسلامية تشير إلى نوع من التمييز الذي يجعلها في وضع أدنى من حيث المكانة الاجتماعية، ومن ثم فهم يصفون أنفسهم بأنهم أقليات، وأن

¹ المرجع نفسه، ص 81.

العلاقة التي تربطهم بدول ما بعد الاستعمار هي علاقة المواطنة.¹ وهنا تبرز صعوبة التأسيس والاجتهاد لوضع جديد ربما يكون غير مسبوق في عالم الإسلام وفي تراثه الفكري والفقهية، ويحتاج لتخريج فقهي وسياسي مختلف عن ذلك الذي عرفته الخبرة الإسلامية السابقة، وهو ما يجعلنا نقبل أيضاً بعلاقة المواطنة بين هذه الأقليات وبين الدول التي تحكم عالم الإسلام.²

وثالث الإشكالات هو أن العالم لم يعد منفصلاً عن بعضه كما كان من قبل، ومن ثم فإن الحديث عن دار الإسلام ودار الكفر ودار الحرب ودار العهد والصلح لا يكفي لمواجهة هذه الأوضاع الجديدة، فكل تلك التصنيفات إنما هي تخريجات للفقهاء القدامى كانت تعبر عن طبيعة النظام السياسي الدولي في ذلك الوقت ولا تفي بذلك الآن، فنحن نعيش اليوم في عالم واحد يتداخل فيه المسلمون وغيرهم، كما أن طبيعة التداخل المعقدة بين المصالح والدول أصبحت قوية بدرجة قد يصعب - إن لم يتعذر تماماً - الفصل والتمييز فيها، وخاصة بالنسبة لنشاط الشركات العابرة

¹ من ذلك ما حدث مثلاً في مصر إذ اضطرت الدولة تحت ضغوط أقباط المهجر والداخل أن تضمن المادة الأولى من الدستور ما يشير إلى المواطنة بوصفها رابطة سياسية تجمع بين الدولة والنظام السياسي، ذلك أن المواطنة تعني في ذهن أولئك نزع السمة الإسلامية عن الدولة.

² أشار العلامة محمد حميد الله في مقدمته لكتاب "أحكام أهل الذمة" لابن القيم بتحقيق صبحي الصالح إلى أن الباكستان حين ألغت لجنة لوضع دستورها عام 1368/1949 لم تشأ أن تفرض الجزية على غير المسلمين بإجماع آراء أعضاء اللجنة، حيث "لوحظ أنها فكرت طويلاً - لدى بحث الجزية - في أمر المسلمين المعاصرين الساكنين في دول نصرانية ويهودية وبوذية وبرهمانية واشتراكية وغيرها من دول العالم، وخشيت - إن نحن فرضنا الجزية على أهل ذمتنا من ملل تلك الدول - أن تعدد هذه إلى إجراءات انتقامية تعسفية تفرضها في مقابل الجزية على سكان بلادها من أبنائنا المسلمين، ولا نظن أن تلك اللجنة أخطأت روح الإسلام السمع في تخليها عن الجزية، بل أدركت - في اعتقادنا - ما تؤثره مرانة الإسلام من علاج واقعي منطقي لبعض الحالات في بعض البيئات والظروف. ابن قيم الجزية، أحكام أهل الذمة، تحقيق صبحي الصالح وتقديم محمد حميد الله (بيروت: دار العلم للملايين، ط3، 1983)، ج1، ص92.

للقارات والأسواق وحركة المنتجات والبشر والأفكار، والتفكير حول وحدة المصير الإنساني فيما يتصل بالحفاظ على كوكب الأرض. وفي هذا السياق فإن هناك أقليات مسلمة تعيش في الغرب وهذه الأقليات تمثل حدوداً جديدة لدار الإسلام هناك، ومن ثم فهي تحتاج للحماية والحفاظ على كيائها ووجودها، ويثور الحديث اليوم عن "فقه الأقليات المسلمة" — أي الأقليات التي تعيش في أمريكا وأوروبا وفي غيرها من بلدان العالم كروسيا والصين والهند والعديد من دول إفريقيا. ولا تكاد توجد دولة في العالم إلا وللإسلام والمسلمين فيها وجود يتفاوت حجمه وتأثيره، ولكنه وجود لا تحطئه عين المرء سواء كان مالياً أو معادياً.

وهنا يبرز إشكال التعامل مع تلك الأقليات بمنطق مختلف عن ذلك الذي صاغه الفقه الإسلامي في عصور كان العالم الإسلامي فيها يكاد يعيش منفصلاً عن بقية دول العالم، وكان الفقه التقليدي يحاذر من الإقامة والسفر واصطحاب القرآن الكريم إلى "دار الكفر"، ومن باب أولى التوطن والإقامة فيها. ولم تكن وسائل الاتصال والتنقل قد تطورت على النحو جعل العالم اليوم كله في تقديرتنا داراً واحدة، ولم يعد تقسيم الدار على أساس الإسلام/الكفر أو الحرب/العهد والصالح، وإنما على أساس أمة الإجابة/الدعوة. ولم تعد الدار هي التي تحمي وتحفظ الإسلام، وإنما يحافظ عليها المسلمون الذين يحملون أمانة التمسك بما يدينون ويعتقدون، ويحافظ عليها ما يمكن أن نطلق عليه "كارزما" الإسلام أو قوته الذاتية باعتباره الدين الجاذب والبديل لحيرة الإنسان المعاصر.¹

¹ هناك دراسات كثيرة عن الحركات الاجتماعية في الغرب تتحدث عن تحرير الإنسان مما يطلق عليه ماكس فيبر "القفص الحديدي" من أجل أن تجد ذاته المجال للتعبير عن نفسها. وقد عبر عن ذلك المفكر وعالم الاجتماع الفرنسي تورين بمصطلح "الذات الفاعلة". انظر: ألان تورين، نقد الحداثة، ترجمه عن الفرنسية أنور مغيث (القاهرة: المجلس الأعلى للثقافة، 1998). ومن المنظور الإسلامي فإن الذات الفاعلة المسلمة هي

أما الإشكال الرابع فهو أن العالم الإسلامي أصبح جزءاً من نظام دولي تمثله الأمم المتحدة ومؤسساتها المختلفة، وينظم العلاقة بين الدول معاهدات واتفاقيات وفق ما يستند إليه من منظومة قانونية دولية. وهناك ما يمكن أن نطلق عليه شرائع حقوقية ذات طابع دولي تجعل من حقوق الأقليات موضوعاً رئيساً لها، كما تجعل من قضية الأقليات سبباً للتدخل من أجل حمايتها والتأثير في القرار السياسي للدول التي تعيش فيها تلك الأقليات. وتوجد جماعات ضغط كبيرة في الغرب تدعم تلك الأقليات وتوجه القرار السياسي لدول الغربية وغيرها، وتؤثر فيه كما هو الحال مثلاً بالنسبة لأقباط المهجر في مصر، وكما هو الحال بالنسبة لجماعات الضغط اليهودية والمسيحية التي ما فتئت تصب الزيت في مشكلة دارفور بالسودان، وكما هو الحال بالنسبة لمسألة الأرمن في تركيا. فحدود الأوطان الإسلامية أصبحت مهددة تحت الضغط الغربي بسبب مشكلة الأقليات، وهناك سيناريوهات حول تقسيم تلك الأوطان والدول لحساب تلك الأقليات أو باسمها، كما هو الحال في العراق اليوم مثلاً. ولا نستثني من ذلك دول الخليج ومصر، كما أن هناك مساعي غربية لاستحداث أقليات، كما هو الحال بالنسبة للآمازيغية في الجزائر مثلاً.

ومن هنا فإن الناظر في الاجتماع الإسلامي يجد نفسه أمام مشكلات كبيرة، وهي أننا نواجه بأقليات ذات طابع استراتيجي لا يقتصر تأثيرها على الداخل، وإنما هو تأثير متجاوز للحدود ومتدثر بمنطق الحضارة الغربية المهيمنة التي تغلب الرؤية العلمانية التي تركز على قيمة الحرية بدون قيود وتجعل من الإنسان مرجعية ذاته، فلا توجد مرجعيات دينية عليا كما هو الحال في الحضارة

التي تحمل أمانة الإسلام حتى لو غابت المؤسسة التي تمثله، كما هو الحال في البلدان التي يعيش فيها المسلمون كأقليات في أوروبا وأمريكا وغيرها.

الإسلامية. فمعظم التقارير الحقوقية الغربية - وخاصة الأمريكية - تتحدث عن اضطهاد غير المسلمين في البلدان المسلمة وفق المنظورات الفكرية العلمانية الغربية، فهي تدعو مثلاً لبناء كنائس في السعودية رغم أن ذلك محرم في الشريعة، وتدعو لحرية الشواذ مثلاً والدفاع عن الفئات المهرطقة التي تهدف إلى إزاحة مرجعية الشريعة، واستحداث أقليات وطوائف غير موجودة في الواقع كما هو الحال بالنسبة للبهائيين في مصر مثلاً.

والإشكال الخامس الذي يواجهها هو أن الحضارة الغربية في تعاملها مع مسألة الأقليات تنزع إلى التجزئة والتفتيت، على نهج فرعون: ﴿إِن فِرْعَوْنَ عَلَا فِي الْأَرْضِ وَجَعَلَ أَهْلَهَا شِيَعًا﴾ (القصص: 4)، حتى أصبح الحديث يدور حول النساء بوصفهن أقلية، وهي هنا ليست مسألة مرتبطة بالعدد وإنما بما يطلق عليه النسويون الهيمنة والتسلط الذكوري. فالفكر الغربي بمقولاته ومناهجه في التعامل مع القضايا الإنسانية والاجتماعية ينزع إلى زرع بذور الصراع والتفتيت، واعتبار الفرد لا الجماعة هو الوحدة الاجتماعية الأساسية، ومن ثم ما يريده الإنسان الفرد غاية في ذاته، والحرية هي القيمة العليا في الحضارة الغربية بينما يعتبر الإسلام وحدة التحليل هي الجماعة التي ينتمي إليها الفرد والقيمة العليا فيه هي العدل.

وتشير دراستنا للخبرة العثمانية في التعامل مع غير المسلمين إلى أنها قامت بما أطلقنا عليه "وحد واحكم" (unite and rule)، بينما يقوم في منطق الحضارة الغربية على المبدأ المعروف "فرق تسد" (divide and rule). فالحضارة الغربية من منظور علماني تقدس الفرد وتجعله غاية في ذاته، بينما الإسلام يعترف بالولاءات الأولية لكل الأقوام والشعوب والممل بما في ذلك غير المسلمين بالطبع، فلهم حق الملكية والعمل والبر والعدل والمساواة، ولهم قوانينهم وأحوالهم الشخصية ومعابدهم، فقط هو

يرفض الامتناع على الدولة سواء على مستوى الاستقرار أو الهوية. ومن المؤكد أن النموذج الغربي ذا الطابع الفردي الحداثي يكتسح العالم الإسلامي، ويثير نزوات التمرد والالتحاق بالنموذج الغربي، وهو ما يهدد وحدة البلدان الإسلامية.

المنهج المقاصدي في التعامل مع قضايا الأقليات

وفي ضوء ما سبق يمكن أن نضع تعريفاً إجرائياً لمصطلح الأقليات فنقول: "الأقلية هي الجماعة التي تعيش داخل الدولة المسلمة على سبيل الاستقرار (الدوام) ولها حكم شرعي مختلف عن أحكام الجماعة المسلمة، أو التي فارقت الجماعة المسلمة بتأويل ديني لا يسوغ". وبهذا الاعتبار فالأقليات وما يتصل بها هي من المسائل المتغيرة، وهذه المسائل المتغيرة تحتاج دائماً لاجتهاد يعتمد على القواعد الكلية التي أقرها الإسلام وفي الوقت نفسه يراعي طبيعة العصر والعالم وأوضاع الاجتماع السياسي الجديدة، وهذا الاجتهاد الجديد ينبغي أن يتوافق مع أصول الشريعة العامة وأن يكون محققاً لمقاصدها.

وعلى سبيل المثال فإن قول الله تعالى: ﴿لَا إِكْرَاهَ فِي الدِّينِ﴾ (البقرة: 256)، آية محكمة ترقى إلى مستوى القاعدة الكلية وتتسق مع مقصد الشريعة في حفظ الدين الإسلامي أن يدخله مكره عليه يعث به أو يتلاعب بمقدراته، كما حدث لكثير من المنافقين الذين دخلوا الإسلام ووصلوا إلى مراتب عليا في مؤسسات المجتمع المسلم جرى توظيفها ضد مقاصد الشرع ومصالح الأمة. يقول الشيخ عبد الله دراز في مقدمته لكتاب "الموافقات" للإمام الشاطبي إن "هذه الشريعة المعصومة ليست تكاليفها موضوعاً حيثما اتفق، لمجرد إدخال الناس تحت سلطة الدين، بل وضعت لتحقيق مقاصد الشارع في قيام مصالحهم في

الدين والدنيا معا".¹

وحيث اقتضت حكمة الله تعالى وإرادته أن يكون البشر مختلفين في مللهم وعقائدهم كما جاء في قوله تعالى: ﴿وَلَوْ شَاءَ رَبُّكَ لَجَعَلَ النَّاسَ أُمَّةً وَاحِدَةً وَلَا يَزَالُونَ مُخْتَلِفِينَ﴾ (١٨) إِلَّا مَنْ رَّحِمَ رَبُّكَ وَلِذَلِكَ خَلَقَهُمْ (هود: 118-119)، فإن في ذلك ابتلاء للمسلم بوجود مخالف له في الملة والاعتقاد لاختبار قدرته على العدل معه كما أمر الله تعالى، ومن ثم فأى نصوص تحتل في دلالتها طابع الإكراه في علاقة المسلمين بغيرهم لا بد من فهمها في ضوء قاعدة ﴿لَا إِكْرَاهَ فِي الدِّينِ﴾، التي يعصدها قول الله تعالى: ﴿لَا يَنْهَكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقِنُواكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوا مِنْ دِينِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ﴾ (الممتحنة: 8)، حيث أرست هذه الآية قاعدة كلية أخرى في شأن معاملة المسلمين لغير المسلمين، فإذا وجدنا في بعض النصوص أو التأويلات أو الممارسات ما يعارض مثل هاتين القاعدتين مما قد يوحي بجواز استعمال الإذلال والإهانة والتعذيب في التعامل مع غير المسلم، فإن ذلك ينبغي أن تُحكم فيه مثل هذه القواعد الكلية لا العكس.

وفي حالة عدم وجود نص أو تبدل مناطات الأحكام لمواجهة إشكاليات جديدة بالنسبة لموضوع الأقليات، مثل القبول بمبدأ المواطنة حيث يقف كل منتسبي الدار والبلاد على قدم المساواة أمام القانون، أو إسقاط الجزية أو تولي غير المسلمين لبعض الولايات مثل القضاء والوزارات أو غيرها، فإننا هنا نستدعي منهجية الاجتهاد التي تتوسع في تقدير الواقع وتأخذ بأدوات القياس والمصلحة ومراعاة العرف والعادة والاستحسان وقواعد مراعاة المآلات وسد الذرائع وفتحها، والأخذ بقواعد السياسة الشرعية. وتلك هي الأصول والأدوات التي تسعف

¹ أبو إسحق إبراهيم موسى الشاطبي، الموافقات في أصول الشريعة، تحقيق عبد الله دراز (بيروت: دار الكتب العلمية، 2001/1422)، ج 1/1، ص 3.

المجتهد في القضايا ذات الطابع المتغير، وقد قرر ذلك ابن القيم حيث قال: "أما الأحكام المتغيرة، فهي التي روعي فيها عوائد الناس وأحوالهم وأعرافهم"، وبالتالي فإن علة المصلحة فيها متغيرة فتدور مع المعلول وجوداً وعدمًا، وهذه أطلق عليها "سياسة جزئية" تختلف باختلاف الأزمنة فظنها من ظنها شرائع عامة لازمة للأمة إلى قيام الساعة وقال: "هذه السياسة التي ساسوا بها الناس هي من تأويل القرآن والسنة، ولكن هل هي من الشرائع الكلية التي لا تتغير بتغير الأزمنة أم من السياسات الجزئية التابعة للمصالح فتتغير بها زماناً ومكاناً".¹

إن المصطلحات التي شاع استعمالها في الخبرة الإسلامية للتعبير عن مفهوم الأقليات عديدة وأهمها مصطلحا "أهل الكتاب"، و"أهل الذمة". فأهل الكتاب مصطلح وضع لتحديد النطاق البشري والإنساني الذي يدخل تحت هذا المعنى أو يأخذ حكمه قياساً عليه. ونلاحظ أن الفقه الإسلامي كان يوسع الفئات التي تدخل في معنى أهل الكتاب قياساً عليهم كلما اتسعت دار الإسلام والفتوحات الإسلامية، فالبعض تحدث عن أن أهل الكتاب هم فقط الذين يمكن معاهدتهم على الجزية واعتبارهم جزءاً من مواطني دار الإسلام يخرج منهم العرب ثم أدخلوهم فيهم، ثم أدخلوا المجوس باعتبار أن لهم شبهة كتاب، ثم أدخلوا الوثنيين في معنى أهل الكتاب وقاسوهم عليهم وإن كانت هناك فوارق فيما يتصل بأحكام الزواج والطعام معلومة معروفة باعتبار أن أهل الكتاب أخف كُفراً من الوثنيين.

وقد عبر الشيخ عبد الله دراز عن هذه الحركية والقدرة الاستيعابية اللتين تتسم بهما الشريعة الإسلامية من خلال الاجتهاد القائم على اعتبار المقاصد، حيث قرر أن المسائل التي بسطها الشاطبي في شأن علم المقاصد تجلي "كيف كانت الشريعة

¹ انظر تفصيلاً عن استخدام أدوات الأصول الاجتهادية، كما قررها ابن القيم وغيره من العلماء في:

مبنيةً على مراعاة المصالح، وأنها نظام عام لجميع البشر دائم أبدي، لو فرض بقاء الدنيا إلى غير نهاية؛ لأنها مراعى فيها مجرى العوائد المستمرة. وأن اختلاف الأحكام عند اختلاف العوائد ليس اختلافاً في الخطاب الشرعي نفسه، بل عند اختلاف العوائد ترجع كل عادة إلى أصل شرعي يحكم به عليها" في إطار من الرفق والسماحة.¹ ومن ثم فما طورته الاجتهاد الفقهي الإسلامي من صيغ لتوسيع قاعدة الداخلين في معنى مواطني دار الإسلام إنما هو في الحقيقة تعبير عن موقف عقدي وشرعي ذي طابع إنساني كوني متصل بالاستخلاف وإقامة العمران الإنساني والاجتماع البشري على أساس العدل والأخوة الإنسانية.

ومن ثم لا يعقل في ميزان الإسلام وشرعية القرآن وسنة الرسول ﷺ الذي أرسله الله تعالى رحمة للعالمين أن يكون الموقف من هؤلاء الملايين من البشر الذي ييقون على سابق عقائدهم ويقبلون أن يعيشوا تحت سلطة الدولة الإسلامية هو إعمال السيف فيهم وإبادتهم، فمثل هذا الموقف مناف قطعاً لسماحة شريعة الإسلام وكونها صالحة لحل مشكلات الإنسان في كل زمان ومكان. ومن ثم كانت هناك صيغة توفيقية تقوم على فتح الذريعة لهؤلاء لكي يبقوا على دينهم، وسد الذريعة على المسلمين بأخذ الجزية منهم والحفاظ على آدميتهم وحياتهم، فخير الجزية هو موقف متصل ببقاء العمران واستمرار استقرار العالم والحفاظ على مادته الإنسانية بحفظ حياة البشر والمعنوية بالتبشير بعالم جديد يسود فيه دين الرحمة وهو الإسلام.

أما مصطلح أهل الذمة فهو تعبير قانوني يقوم على علاقة تعاقدية بين الدولة الإسلامية وأهل البلدان المفتوحة يتضمن إقرار غير المسلمين على دينهم بشرط بذل الجزية والتزام أحكام الملة، وهو عقد مؤبد يكفل لهم الأمان والحماية

¹ الشاطي، الموافقات، ج 1/1، ص 5-6.

والحرمة، وبه يصيرون من أهل دار الإسلام. وأهل الذمة هم المعاهدون من اليهود والنصارى وغيرهم ممن يقيمون في دار الإسلام على سبيل التأييد. وبينما يشير مصطلح أهل الذمة إلى التطبيق العربي، فإن مصطلح "نظام الملل" يشير إلى الخبرة العثمانية. والآن لا يمكننا استخدام هذه المصطلحات؛ لأن عوائد الناس وعلاقاتهم قد تغيرت، ومن ثم فنحن نستخدم بدلاً منها مصطلحات أخرى، مثل المواطنة، والأقليات، والجاليات، والسكان الأصليين، إلخ.

والجزية هي الأخرى لم تعد مصطلحاً سائغاً اليوم بسبب تغير أحوال الناس وعوائدهم ونظام العمران والعالم، وبسبب صورتها في أذهان غير المسلمين بكونها عنواناً على الوضاعة الاجتماعية والصغار، ومن ثم فإننا لا نستخدمها في العلاقة مع غير المسلمين اليوم. ذلك أن للجزية في الفقه الإسلامي تطبيقات متعددة، فهناك حالات تم فيها إسقاطها كما هو الحال مع نصاري "بني تغلب"، وفي العديد من المعاهدات بين الدولة الإسلامية والبلدان المفتوحة كانت الجزية تسقط إذا شارك المعاهدون في القتال.

ويذهب أغلب الفقهاء المسلمين إلى أن الجزية كانت تؤخذ من غير المسلمين مقابل إسقاط واجب الدفاع عن البلاد في حالة الحرب، لذا فإن غير القادرين على القتال لا تؤخذ منهم الجزية. وكذلك فإن الجزية كانت تؤخذ من أهل الذمة في مقابل أن تتكفل الحكومة الإسلامية بحمايتهم وأمنهم في أنفسهم وأموالهم وسائر أحوالهم الاجتماعية، فإن لم تستطع فإنه لا جزية عليهم.¹ ومن ثم فمشاركة غير المسلمين للمسلمين في الجيش والضرائب يمكن الاستناد فيها إلى قاعدة "لهم

¹ ابن القيم، أحكام أهل الذمة، ص8. وقد ذكر في الموضع نفسه أن سويد بن مقرن كتب لأهل دهستان وسائر أهل جرجان في زمن عمر: "إن لكم الذمة، وعلينا المنعة"، كما كتب خالد بن الوليد لصلوبا بن نسطونا وقومه: "إن منعناكم فلنا الجزية، وإلا فلا حتى نمنعكم".

ما لنا وعليهم ما علينا".¹

وقد أوضحتُ في دراسة سابقة كيف أن تمسك فقهاء الدولة العثمانية بفرض الجزية على غير المسلمين بينما يقوم المسلمون بالحرب والجهاد والدفاع، أدى إلى ازدهار عالم الأقليات في الدولة العثمانية، بينما كانت أعداد المسلمين تتناقص بسبب القتل في ساحات الحروب. وللأسف فقد صاحب ازدهار الأقليات تحول الكثيرين من أبنائها إلى وكلاء وقناصل لطلائع موجات الاستعمار الأوروبي في عالم الإسلام،² ومن ثم كان عامل إضعاف للدولة العثمانية. وحين ألغيت الجزية سنة 1857 وفرض التجنيد الإجباري أو الخدمة العسكرية، ترك القانون الباب مفتوحاً للبدلية المالية لمن لا يريد المشاركة في القتال، والتي كانت الكنائس تتهرب منها، فكان ذلك معادلة مناسبة لمن يريدون افتداء أنفسهم بالمال.³

وبالنسبة لمسألة حدود مشاركة غير المسلمين في السلطة السياسية، فإنها أيضاً من القضايا المتغيرة، ذلك أن تطور مفهوم مشاركة غير المسلمين في السلطة السياسية للدولة الإسلامية لم يتخذ مساراً واحداً، وإنما اتخذ أشكالاً مختلفة وفق تطور طبيعة الدولة الإسلامية ذاتها وتطور مفهوم الولاية الذي حكم ممارسة السلطة وشروط من يقوم على أمرها حتى لو كان مسلماً. فمفهوم الولاية يعني صلاحية الاستقلال بالتصرف والتدبير يشترط أن يكون القائم بتلك الولاية مسلماً

¹ انظر هذه القاعدة في: علاء الدين أبو بكر بن مسعود الكاساني، بدائع الصنائع في ترتيب الشرائع (القاهرة: مطبعة شركة المطبوعات العلمية بمصر، ط1، 1329)، ج7، ص100.

² كمال السعيد حبيب، "نموذج تطبيق الاقتراب الأصولي الشرعي في التعامل مع غير المسلمين في الدولة الإسلامية المعاصرة"، منبر الشرق، مارس 1994/رمضان 1414، العدد 12، ص78.

³ انظر مزيداً من التفاصيل في: حبيب، الأقليات والسياسة في الخبرة الإسلامية، ص435-455. وراجع أيضاً: السير هاملتون جب وهارولد بوين، المجتمع الإسلامي والغرب، ترجمة عبد المجيد حبيب القيسي (دمشق: دار المدى للثقافة والنشر، ط1، 1997).

بالإضافة طبعاً للعدالة والخبرة، ويشترط مفهوم الولاية الإسلام فيمن يقوم بها باعتبار أن طبيعة بنية الولايات في تلك المرحلة من مراحل تطور الدولة الإسلامية كانت ولايات دينية. ولذا فإن كتابي أبي يعلي والموردي عن "الأحكام السلطانية" اسمهما الكامل "الأحكام السلطانية والولايات الدينية"، فالولايات في الكتاب هي ولايات دينية، ومن ثم فإن شرط متوليها أن يكون مسلماً، فالخلافة والحرب والجهاد والقضاء ولايات دينية في التنظير الفقهي الإسلامي.

ويشرح ابن خلدون في "المقدمة" التحولات التي حصلت في طبيعة الولايات في الدولة الإسلامية وبنيتها فيقرر أن هناك خططاً دينية تختص بالخلافة وأخرى يسميها بالخطط "الملوكية السلطانية"، أي التي يقتضيها السلطان والملك أياً كان، ثم يقول: "اعلم أن الخطط الدينية الشرعية من الصلاة والفتيا والقضاء والجهاد والحسبة كلها مندرجة تحت الإمامة الكبرى التي هي الخلافة، فكأنها الإمام الكبير والأصل الجامع. وهذه كلها متفرعة عنها داخلية فيها لعموم نظر الخلافة وتصرفها في سائر أحوال الملة الدينية والدنيوية، وتنفيذ أحكام الشرع فيها على العموم".¹ ويختم ابن خلدون كلامه في هذا الشأن بقوله: "هذا آخر الكلام في الوظائف الخلفية، وبقيت منها وظائف ذهبت بذهاب ما ينظر فيه وأخرى صارت سلطانية؛ فوظيفة الإمارة والوزارة والحرب والخراج صارت سلطانية".²

وإذا كان الموردي (370-450هـ) وأبو يعلى (380-458هـ) - وهما ينتميان للقرن الرابع والخامس الهجري حتى منتصفه - قد نظرا إلى الولايات كلها على

¹ عبد الرحمن بن محمد ابن خلدون، مقدمة ابن خلدون، تحقيق درويش الجويدي (صيدا/بيروت: المكتبة العصرية، ط2، 1996/1416)، ص202. وانظر القول فيما سماه الخطط الملوكية السلطانية في ص217-237.

² المرجع نفسه، ص209.

أنها ولايات دينية، فإن ابن خلدون الذي ينتمي للقرن الثامن وأوائل التاسع (722-808هـ) - يرى أن طبيعة الولايات تغيرت، وهذا يعني أن الولايات في الدولة الإسلامية لم تأخذ مساراً واحداً في تطورها، فضلاً عن أن تثبت على نمط واحد، وإنما اختلفت طبيعتها باختلاف مراحل التطور التاريخي للدولة وطبقاً لمدى تمثلها لقيم الدين وسعيها لتحقيق مقاصد الشريعة. وهكذا فتحديد طبيعة الولاية ومداها هو مما يتغير بتغير الزمان والأحوال والعوائد.

ويمكن القول إن المنصب الأعلى المتمثل في الرئاسة العليا للدولة التي أغلب أبنائها مسلمون هو إشارة إلى ولاية لا يمكن لغير المسلم أن يتولاها باعتبارها عنوان الدولة ورمزاً لسيادتها وتعبيراً عن هوية الأغلبية فيها. وبالطبع هناك مؤسسات مثل الإفتاء والقضاء الشرعي ومؤسسات القرار الاستراتيجية المتصلة بالحرب والسلم هي مما يعبر عن التوجهات العامة للدولة، أما المناصب ذات الطابع التنفيذي وتلك التي ليس لها طابع ديني خاص فإن شرط الإسلام فيها لا يكون واجباً، ويبقى شرط الولاء للدولة قائماً بالنسبة لغير المسلم كما تشترط العدالة بالنسبة للمسلم. وفي هذا الصدد يشير ابن خلدون إلى أنه كان من عوائد دولة الترك في مصر أن يكون وزير الجباية والتصرف والتولية والعزل في سائر العمال المباشرين لهذه الجباية والتنفيذ على اختلاف مراتبهم وتباين أصنافهم من "القبط القائمين على ديوان الحسبان والجباية لاختصاصهم بذلك في مصر منذ عصور قديمة".¹ وقد نص الماوردي من قبله على جواز أن يكون وزير التنفيذ من

¹ المرجع نفسه، ص222.

أهل الذمة، وإن لم يجز أن يكون وزير التفويض منهم.¹

وهناك اجتهادات متعددة حول حدود مشاركة غير المسلمين في السلطة السياسية ما داموا مؤهلين ذوي كفاية، وكلها تقول بحقهم في المشاركة في السلطة ذات الطابع غير الديني، أي في غير ما يعطي للدولة هويتها ويحدد توجهها الاستراتيجي العام؛² والأمريكيون يبدو أنهم يسيرون على هذا المبدأ إذ يتحدثون عن "حكم الأغلبية وحقوق الأقلية" (majority Rule and minority Rights). فالاستثناءات التي ترد على مبدأ المساواة والتي تنظمها الدولة الإسلامية بالنسبة لمشاركة غير المسلمين في تولي المناصب العامة في الدولة تفترض أن طبيعة الدولة بما هي دولة قائمة على عقيدة الإسلام التي توجب أن يكون القائمون على التوجيه والتخطيط فيها أفراداً ينتمون لعقيدة الدولة، وهذا لا يعد تمييزاً ولكنه تصنيف يتم على أساس اختلاف مواطني الدولة في بعض الأوصاف.³

إن المواطنة كما يشير "معجم العلوم الاجتماعية" هي مشاركة الأفراد الذين ينتمون إلى دولة معينة في الحقوق والواجبات، والحقوق هي التي ترى الدولة أنه المناسب منحها لبعض الأفراد الذين هم من أهاليها بمقتضى قوانينها الأساسية، وهي تشير في القانون الدولي إلى الجنسية. ويرى الفقه السياسي الإسلامي أن غير المسلمين جزء من أهل دار الإسلام، وأنهم يشتركون مع المسلمين في الحقوق والواجبات. ولذا عدد الفقهاء ما لهم من حقوق وأفاضوا في ذكرها، وأهمها: الحرية

¹ أبو الحسن علي بن محمد بن حبيب الماوردي، الأحكام السلطانية والولايات الدينية، تحقيق أحمد مبارك البغدادى (الكويت: مكتبة دار ابن قتيبة، ط1، 1409/1989)، ص36-37. وانظر مزيداً من التفصيلات والإحالات في: حبيب، الأقليات والسياسة، ص72-76.

² طارق البشري، المسلمون والأقباط في إطار الجماعة الوطنية (القاهرة: دار الشروق، 1408/1988)، ص686-688. وهناك آراء عديدة أخرى مثل ما قرره عبد الكريم زيدان ورضوان السيد وغيرهما.

³ هويدي، مواطنون لا ذميون، ص155.

الشخصية التي تتضمن حرية غير المسلم في الحركة والتنقل وعدم جواز القبض عليه أو حبسه أو معاقبته إلا بمقتضى القانون، وحرية في التنقل داخل الدولة وخروجه منها وعودته إليها، ثم حرمة المسكن، وحرمة العقيدة حيث تضمنت عقود المواطنة لأهل الذمة مع الدولة المسلمة تركهم وما يدينون به.

وكذلك فإن لغير المسلم حق التمتع بمرافق الدولة وحرية العمل والتعبير عن الرأي والاجتماع والتعليم. ويذهب الشيخ عبد الكريم زيدان إلى أنه ليس في نصوص الشريعة الإسلامية وقواعدها ما يمنع الذميين من حرية إبداء الرأي والاجتماع؛ فلهم إبداء الرأي فيما يخص شؤونهم والشؤون العامة للدولة في حدود النظام العام، ولهم حق الحماية من الاعتداء الخارجي والظلم الداخلي، ولهم حق حماية الدماء والأبدان والأموال والأعراض، ولهم التأمين عند العجز والشيخوخة والفقر.¹

وفي هذا السياق تبرز قضايا مثل حرية التدين والعقيدة، أي حق غير المسلمين في ممارسة شعائرتهم، ويتصل بذلك قضية الكنائس والمعابد والبيع وحدود القواعد التي تنظم عملية تحديد ما تهدم من بنائها أو استحداث جديد لم يكن وهذه القضية في اعتقادنا هي قضية اجتهادية تقوم على المصلحة والعرف والعادة وحجم أعداد غير المسلمين وتوزعهم وحاجتهم إلى إقامة دور للعبادة وتقدير ما يترتب على ذلك من مصالح ومفاسد. وإن المعايير التي وضعها الفقه الإسلامي لمعالجة موضوع بناء الكنائس راعى فيها قضية الأمن القومي للدولة الإسلامية والحفاظ على طابعها العمراني العام الذي يحترم الأغلبية المسلمة ويحترم النظام العام للدولة. وبالنسبة لتكافؤ دم المسلم وغير المسلم من مواطني الدولة الإسلامية فالفقه الحنفي والدولة العثمانية أخذتا بتكافؤهما، فكانت تقتص للمعاهد الذمي من المسلم، وفي كل

¹ السعيد، الأقليات والسياسة، ص 78-80.

الأحوال فإن نفس غير المسلم مصونة وقتله محرم لورود الأحاديث التي تحرم ذلك.¹ وهكذا تبدو العلاقة قوية بين فقه المقاصد الذي يقوم على أعمال المبادي الكلية ومراعاة قواعد الاجتماع الإنساني وسنن الاستخلاف وعمارة الأرض، كما يقوم على فقه الواقع وإدراك وجوه المصالح والمفاسد فيما يتطلب فيه من أوضاع فيستند في ذلك على جملة من القواعد والأصول كمراعاة المصلحة المرسلة ونظم التعاهد والعقود، واعتبار المآلات وقواعد العرف والعادة والاستحسان وسد الذرائع وغيرها من الوسائل والمناهج الشرعية التي تقود في النهاية إلى المقاصد الكلية للشرعية والتي تتمثل في الضروريات الخمسة، وهي حفظ الدين والنفس والعقل والنسل والمال. ولنقرر أن من عظمة شريعة الإسلام أن اعتبرت تلك الضروريات قائمة في كل ملة وأمة، وأنها ضروريات تشمل أيضاً غير المسلمين في الدولة الإسلامية، فحفظ دينهم بعدم إكراههم على تغييره بل وتهيئة الظروف للتمسك به والقيام عليه² وكذا نفوسهم ونسلهم، كل ذلك مما تقتضيه قيم الشريعة الإسلامية العامة ومقاصدها الكلية.

مفهوم الأقليات في السياق الإسلامي: رؤية مقاصدية

وردت كلمة "الأقلية" في مفردات اللغة العربية والفقه الإسلامي تعبيراً عن الاستثناء

¹ وذلك وفقاً لقوله ﷺ فيما رواه عبد الله بن عمرو: «من قتل معاهداً لم يرح رائحة الجنة، وإن ريحها ليوجد من مسيرة أربعين عاماً». صحيح البخاري (الرياض: دار السلام، ط2، 1419/1999)، «كتاب الجزية والمواذعة»، الحديث 3166، ص527؛ «كتاب الديات»، الحديث 6914، ص1191؛ وقوله: «لا يقتل مؤمن بكافر، ولا ذو عهد في عهده». أبو عبد الله الحاكم النيسابوري، المستدرک علی الصحيحین (بيروت: دار الحرمين، ط1، 1417/1997)، «كتاب قسم النفي»، الحديث 2680، ج2، ص167-168.

² في بعض التفاسير لقوله تعالى: ﴿وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفُتَّتْ صَوَابُكُمْ وَبَعِثَ لَكُمْ رَسُولًا﴾ (الحج: 40)، أي لو لا دفاع المسلمين عن غير المسلمين لتهدمت أماكن عبادتهم. وراجع ابن القيم: أحكام أهل الذمة، ج1، ص21.

والجزئية أو مباينة الغالب والكثرة. وتشير معاجم اللغة إلى مادة "قلل" التي اشتقت منها كلمة الأقلية، فلسان العرب يقول: "القلة خلاف الكثرة"، وقليلون يكون ذلك في قلة العدد ورقة الجثة وقوم قليل أيضاً، كما في قوله تعالى: ﴿وَأَذْكُرُوا إِذْ كُنْتُمْ قَلِيلًا فَكَثَرَكُمْ﴾ (الأعراف: 86). والقليل من الرجال القصير من الرجال الدقيق الجثة، والقل من الرجال الحسيس الدين، ويقال هو قل بن قل أي لا يعرف هو ولا أبوه، ويقال قدم علينا قلل (بضم القاف) من الناس إذا كانوا من قبائل شتى متفرقين، وقلة كل شيء رأسه، والقلة أعلى الجبل، وقلة كل شيء أعلاه، وخص بعضهم به أعلى الرأس والسنام والجبل،¹ ويشير معجم القرآن الكريم إلى أن الكلمة في القرآن تشير إلى النقص كقوله تعالى: ﴿كَمْ مِّنْ فِتْنَةٍ قَلِيلَةٍ غَلَبَتْ فَتْنَةٌ كَثِيرَةٌ بِإِذْنِ اللَّهِ﴾ (البقرة: 249)، وقوله تعالى عن فرعون: ﴿إِنَّ هَؤُلَاءِ لَشِرْذِمَةٌ قَلِيلُونَ﴾ (الشعراء: 54)، فالمادة التي اشتقت منها كلمة "أقلية" تنير بعض الدلالات اللغوية فهي تعبر عن دلالة كمية في مقابل الأكثر كما في قوله تعالى: ﴿وَأَذْكُرُوا إِذْ كُنْتُمْ قَلِيلًا فَكَثَرَكُمْ﴾ (الأعراف: 86)، وأنها تستخدم للتعبير عن دلالة كيفية لا تجعل العدد معياراً لها كما في حديث عبد الله بن مسعود رضي الله عنه: «الربا وإن كثر فإن عاقبته تصير إلى قل»،² وقد تكون تعبيراً عن حالة كيفية خالصة، كما في تفسير القلة بأعلى الشيء كما في قوله تعالى: ﴿حَتَّى إِذَا أَقَلَّتْ سَحَابًا ثِقَالًا﴾ (الأعراف: 57)، أي حملت وارتفعت. وتشير الكلمة إلى تجمع الأشتات المتفرقين من أصول عرقية متعددة، وهي الدلالة نفسها التي يشير إليها المصطلح في العلوم الاجتماعية، وهذا واضح جداً في قوله: "قدم علينا قلل من الناس، إذا كانوا من قبائل

¹ ابن منظور، محمد بن مكرم، لسان العرب، تحقيق عبد الله علي الكبير وزملائه (القاهرة: دار المعارف، بدون تاريخ)، ج 5، ص 3726-3729.

² الحاكم النيسابوري، المستدرک، "كتاب البيوع"، الحديث 2317، ج 2، ص 47.

شتى متفرقين".¹

يبد أن التأمل في السياق القرآني يفتح لنا آفاقاً أوسع لفهم هذا المصطلح، ففي القرآن الكريم نجد أن المادة استخدمت أكثر من مرة، كما في قوله تعالى: ﴿ثُلَّةٌ مِّنَ الْأَوَّلِينَ ۖ وَقَلِيلٌ مِّنَ الْآخِرِينَ﴾ (الواقعة: 13-14)، فهي ذات دلالة كمية في سياق كفي، فالقلة هنا لا تعني النقص وإنما تعني التميز والارتقاء والسبق، وألحق بها ما يزيد بياها بحالة اجتماعية وسياسية تعبر عن الاستضعاف في قوله تعالى: ﴿وَأَذْكُرُوا إِذْ أَنْتُمْ قَلِيلٌ مُّسْتَضْعَفُونَ فِي الْأَرْضِ﴾ (الأنفال: 26)، وتقدم عليها ما يزيد بها بياناً وهي كلمة "شرذمة" في سياق اجتماعي وسياسي يعكس أكثر الحالات تعبيراً عن مفهوم الأقلية، كما تذهب إليه الدراسات الاجتماعية الحديثة، وذلك في قوله تعالى حكاية عن فرعون في وصفه لقوم موسى بعد أن خرجوا من مصر: ﴿إِنَّ هَؤُلَاءِ لَشِرْذِمَةٌ قَلِيلُونَ ۖ وَإِنَّهُمْ لَنَا لَغَائِطُونَ﴾ (الشعراء: 54-55). ويميل الباحث إلى افتراض أن عبارة "شرذمة قليلون" في هذا السياق تعكس الدلالة السياسية والاجتماعية لما يشير إليه مصطلح "الأقلية السياسية" من وجهة نظر الأغلبية (السلطة الحاكمة)، وأن مصطلح "الاستضعاف" - وهو مصطلح قرآني - هو الأكثر تعبيراً عن مصطلح "الأقلية"، ولكن من حيث رؤية هذه الأقلية لنفسها تجاه الجماعة الغالبة التي توصف عادة في القرآن بالاستكبار حين يكون الصراع بين الأقلية والأغلبية حول المبدأ.²

ولئن كان القرآن الكريم يستخدم لفظ القلة للتعبير عن النقص العددي، إلا أنه لا يجعل منه مثاراً للاحتقار أو التقليل من الشأن، بل الغالب أن القلة تستخدم في السياق القرآني للتعبير عن المدح والتقدير، وهذا ما يؤكد أن التصور القرآني لا يجعل

¹ حبيب، الأقليات والسياسة، ص 52-53.

² المرجع نفسه، ص 54-55.

من مجرد البعد العددي مقياساً لترتيب أوضاع اجتماعية وسياسية واقتصادية متميزة باعتبار أن هذا التمييز هو تعبير عن الحق الذي تمثله قيم الإسلام.

ومن وجهة النظر الإسلامية فإن الأقلية تعني "الجماعة التي تعيش داخل المجتمع الإسلامي على سبيل الاستقرار (الدوام)، ولها حكم شرعي مختلف عن أحكام الجماعة المسلمة أو التي فارقت الجماعة المسلمة بتأويل ديني لا يسوغ، فإنه لا يُعدُّ أقلية من وجهة نظر الفكر السياسي الإسلامي المستأمنون الذين يدخلون دار الإسلام لضرورات تفرضها طبيعة العلاقة بين البلدان المسلمة وبقية بلدان العالم، وينظم العلاقة بين الجماعة المسلمة والأقلية **الحكم الشرعي المعياري** لا مفهوم الكثرة أو القلة العددية، ويقصد بالحكم الشرعي اجتهد المؤسسات الدينية والقانونية في تحديد طبيعة الأوضاع المنظمة لتواجد غير المسلمين في المجتمع المسلم بما لا يتعارض مع المقاصد العامة للشرعية أو نصوصها القطعية وقواعدها ثابتة.¹

وبعد أقلية من فارق الجماعة بتأويل ديني لا يسوغ، أي لا تجيزه قواعد اللغة أو الشريعة، وهذه تسمى الجماعات المخالفة لإجماع الأمة. ويدخل ضمن هؤلاء الدروز والإسماعيليون والبهاثيون والقاديانيون، فهؤلاء ينتسبون للإسلام وإن كان هناك من يرى أنهم أحق بوصف الردة. والتأويل الديني الذي لا يسوغ (أي الذي لا تحتمله قواعد اللغة العربية وقواعد الأصول في فهم الشريعة) هو ذلك التأويل الذي يؤدي إلى انتهاك معنى النص والخروج عن مقصوده، كما في تأويل المرتدين لقوله تعالى: ﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً﴾ (التوبة: 103) أنها خاصة بالنبي ﷺ وحده فلا يدفعونها للخلفاء من بعده، وتأويل الخوارج "الحكم" في قوله تعالى: ﴿إِنَّ أَلْحَكُمُ إِلَّا

¹ المرجع نفسه، ص 56.

﴿اللَّهُ﴾ (الأنعام: 57) بأنه يعني نفياً للحكم للبشر تماماً، وإن كان هناك أدلة على ذلك كما قوله تعالى: ﴿فَأَبَعَثُوا حُكَمَاءَ مِّنْ أَهْلِهِ وَحُكَمَاءَ مِّنْ أَهْلِهَا﴾ (النساء: 35)، وكما في قوله تعالى: ﴿يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِّنكُمْ﴾ (المائدة: 95).¹

ولكن ما المعايير التي تجعلنا نقول عن فرقة معينة إنها خارجة عن إجماع الأمة، وبالتالي تعد من الأقلية من وجهة النظر الإسلامية؟

ذكر عبد القاهر البغدادي أنه لا يتناسب لأمة الإسلام كلٌّ من قال لا إله إلا الله، فالذين يعتقدون إلهية الأئمة أو بعضهم، والذين يعتقدون مذاهب الحلول وتناسخ الأرواح، والذين يبيحون نكاح البنات أو البنين، أو الذين يقولون بنسخ شريعة الإسلام في آخر الزمان، ومن أباح ما نص القرآن على تحريمه، أو حرم ما أباحه القرآن نصاً لا يحتمل التأويل، فليس هو من أمة الإسلام ولا كرامة له! وفرق البغدادي بين الفرق التي ظهرت قبل الإسلام وبعده فقرر أن الفرق التي ظهرت بعد الدولة الإسلامية فلا يجوز أخذ الجزية من أهلها؛ لأن حكمهم حكم المرتدين عن الدين، لا تحل ذبائحهم ولا يحل نكاح المرأة منهم. ويضع البغدادي هنا شرطين:

أولهما: فهم النصوص القرآنية فهماً يتفق وقواعد اللغة والأصول، فلا يذهب إلى حد إباحة الحرام أو تحريم المباح أو مخالفة لما يعرف بالمعلوم من الدين بالضرورة في العقائد والأحكام.

وثانيهما: هو زمن ظهور الفرقة، فإن ظهرت بعد دولة الإسلام فإنها تصير مرتدة، وربما يذهب لذلك باعتبار أن دولة الإسلام قد أقامت الحجة على الناس خاصة فيما يتصل بشعائر الدين الإسلامي ومبادئه، وبالتالي فلا عذر لهذه الفرق

¹ المرجع نفسه، ص 57.

فيما ذهبت إليه إلا مجرد اتباع خطوات الشيطان وضلالات الأهواء.¹

وإذا كان عبد القاهر البغدادي ذكر هذه المعايير مجردة، ولم يتعرض للواقع الذي تطبق فيه الأحكام أو ما يسمى بفقہ التنزيل (تنزيل هذه الأحكام على الواقع)، فإن ابن تيمية خطأ خطوة مهمة في هذا الاتجاه فتحدث عن تعامل الدولة الإسلامية مع هذه الفرق من خلال ما أسماه "الطائفة الممتنعة"، وهو يجعل الامتناع العضوي - بمعنى عدم التزام أحكام الدولة الإسلامية والخضوع لها - سبباً في عدم إقرارهم في الدولة، وأنهم يقاتلون كما يُقاتل الكفار. ومفهوم الامتناع يعني ثلاثة أشياء هي: الاجتماع، والتحيز، ورفع راية العصيان. فوجهة نظر ابن تيمية ركزت على الاستقرار السياسي للدولة، بينما ركزت وجهة نظر البغدادي على هوية الدولة. ويرى الباحث - ومن منظور مقاصدي - أنه يمكن قبول هذه الجماعات الخارجة على إجماع الأمة في المجتمع المسلم إذا لم يحدث منها "امتناع عضوي" أو "امتناع ثقافي"، وتبقى المصلحة الشرعية العليا هي المعيار الحاكم لاجتهاد الدولة في كيفية التعامل معهم.²

بل إن ما أطلق عليه الشاطبي - جرياً على قواعد الفقه المالكي - قاعدة مراعاة الخلاف "يمكن تطبيقها هنا حيث يراعى الخلاف، ويؤخذ في الاعتبار بعد وقوع الأمر عنه قبل وقوع الخلاف، لذا فإنه بعد تكون هذه الجماعات داخل الدولة الإسلامية بعهود طويلة فإن استئصالهم وفقاً لأحكام الردة لا يتفق وقواعد السياسة الشرعية الصحيحة مع القطع بأن فعالية الوظيفة العقيدية للدولة يمكن أن تحولهم ناحية الفهم الشرعي الصحيح. ولنا أن نؤكد أن غياب مفهوم

¹ أبو منصور عبد القاهر بن طاهر بن محمد البغدادي، الفرق بين الفرق وبيان الفرقة الناجية منهم، تحقيق محمد عثمان الخشت (القاهرة: دار ابن سينا، د. ت)، ص 30-31؛ وانظر كذلك حبيب، الأقليات والسياسة، ص 64.

² حبيب، الأقليات والسياسة، ص 65.

واضح للأمن القومي للمجتمع يقوم على تبني المفهوم الإسلامي للسلطة الذي يركز على مفهوم العدالة كان أحد الأسباب الجوهرية التي أدت إلى اختراق هذه الفرق للدولة الإسلامية وتهديدها فكرياً وعضوياً. فخطر هذه الفرق يمكن وصفه بأنه خطر سياسي وثقافي ممتد، ويكفي لتأكيد هذه الحقيقة أن نعلم أن بدايات التجزئة في الجسد الإسلامي حدثت بسبب استقلال أقلية بجزء من أطراف الدولة فيما نطلق عليه الدولة الأقلية. وفي حالات تعرض الدولة الإسلامية للخطر الخارجي، فإن هذه الفرق قد تتعاون مع أعداء الدولة الخارجيين إلى حد أن استدعاء التتار للعالم الإسلامي من قبل أحد الوزراء المنتمين للروافض الباطنية، وهو ابن العلقمي الذي اعتقد أن هولاء سيعود من حيث أتى بعد قتل المعتصم، وعندئذ تنتقل الخلافة إلى العلويين.

خاتمة

يمثل الفقه المقاصدي مقارنة مهمة في التعامل مع قضية الأقليات وما يتفرع عنها في المجالات الاجتماعية والسياسية والفكرية، سواء على مستوى قبول المصطلح باعتباره مصطلحاً حادثاً في الفقه السياسي الإسلامي، ولكنه يبقى مصطلحاً مفيداً إذا ما نظر إليه في إطار علم اجتماع إسلامي، أو على مستوى توحي الحكم الشرعي المناسب الذي يميز بين الجماعة المسلمة وغيرها. وبالنسبة للمسائل الكثيرة المتصلة بالأقليات، كمسألة المواطنة والمشاركة وحرية العقيدة والدين وغيرها مما ناقشه هذا الفصل أو أشار إليه، فإن الفقه المقاصدي يمكننا من خلال استخدام أدواته العلمية والمنهجية واعتبار إنسانية الإنسان وتكريم الله له وبقاء العمران واستمرار الحياة والاستخلاف والتعامل بالمثل، من أن تطور اجتهادات جديدة لا تتعارض مع المقاصد الكلية للشريعة وقواعدها العامة أو نصوصها القطعية، بحيث نحسن التعامل مع قضية الأقليات، فلا تهدد وحدة الأوطان، ولا

تفتح الباب للتدخل الخارجي، كما يمكننا حل مشكلات تلك الأقليات وتلبية حاجاتها ومطالبها في إطار من التوافق الاجتماعي والتعاون الإنساني الداخلي بما لا يخل بأسس الدولة على مستوى الهوية ولا بالاستقرار السياسي والاجتماعي.

ومن المناسب أن نختم هذا البحث بذكر ما قرره الدكتور علي جمعة عند النظر في مقاصد الشريعة بوصفها الإطار الذي يمكن أن تُدار من خلاله علاقات المسلمين بغيرهم في الداخل والخارج حيث قال: "ترتيب الكليات الخمس على نحو ما قرناه: النفس، العقل، الدين، النسل، المال، هو ترتيب منطقي وله اعتبار، حيث إنه يجب المحافظة أولاً على النفس التي تقوم بها الأفعال، ثم على العقل الذي به التكليف، ثم نحافظ على الدين الذي بها العبادة وقوام العالم".¹ ويترب على ذلك أن علاقة المسلمين مع الآخرين "مبنية في الداخل على الرعاية، وفي الخارج على الدعوة"، وبذلك يكون خطاب المسلمين قائماً على ما يمكن أن تُقام به حضارة، وعلى ما يمكن أن تعمّر به الأرض، وكذلك على ما يمكن أن يعبد به الله سبحانه وتعالى، ويطيع أوامره تفصيلاً لا إجمالاً، ومن ثم تكون الدولة الإسلامية التي ترعى مقاصد الشريعة "دولة تحافظ على الناس" ويتحقق فيها المناخ المناسب للتعدد الديني والاجتماعي والتعايش بين المسلمين وغيرهم من أصحاب الأديان الأخرى على أساس المواطنة.²

¹ علي جمعة محمد، المدخل إلى دراسة المذاهب الفقهية (القاهرة: دار السلام، ط1، 1424/2004)، ص317.

² المرجع نفسه، ص318 وما بعدها.

CHAPTER 11

فقه الأقليات بين الترخيص والتأسيس: المجلس الأوروبي للإفتاء والبحوث أنموذجاً

عبد المجيد النجار

تمهيد

إذا كان الوجود الإسلامي بالغرب عموماً يتطور على نسق سريع في كمّ وكيفه، فإنّ الأهداف المطروحة عليه والآمال المستقبلية التي يستشرّفها سوف يطالها هي أيضاً التغيّر والتطور، فتلك الأهداف والآمال لما كان هذا الوجود يتمثّل في عدد قليل من المسلمين ولم يكن للأسر وللجيل الناشئ حضور كثيف ليست هي ذات الأهداف والآمال حين أصبح هذا العدد يُعدّ بعشرات الملايين من بينهم العدد الكبير من الأسر والأجيال الناشئة. وكذلك فإنّه لما كان هذا الوجود الإسلامي يعتبر نفسه وجوداً عارضاً غايته العودة إلى بلاد المنشأ، لم تبق تلك الغاية هي ذاتها لما أصبح هذا الوجود يعتبر نفسه وجوداً مواطناً ثابتاً يشكّل مكوناً أساسياً من مكونات المجتمع الأوروبي.

إنّ هذا التطور في أهداف الوجود الإسلامي بالغرب وآماله يستلزم بالضرورة تطوراً في الفقه الإفتائي له ليكون وجوداً محققاً لتلك الأهداف والآمال وفق أحكام الدين ومقاصده. فطبيعة الإفتاء للأقليات المسلمة باعتبارها أفراداً يقف طموحهم عند حدّ المحافظة على دينهم في ذوات أنفسهم خلال وجودهم

في مجتمع غريب عنهم ريشما يعودون إلى بلادهم الإسلامية ولم ينقص من دينهم شيء ليست هي طبيعة الفقه الإفتائي لأقليات مسلمة مواطنة في المجتمع الأوروبي بصفة جماعية، ترنو إلى أن يكون لها شأن حضاري في ذلك المجتمع، فذلك إفتاء ذو طبيعة جزئية تعتمد إلى حد كبير على منزع الترخيص لما يعالج من وضع صفته الاستثنائية، وهذا إفتاء ينبغي أن يكون ذا طبيعة كلية تأسيسية لما يعالج من وضع ينزع إلى الاستقرار والديمومة.

وإذا كان الاختلاف في طبيعة الإفتاء بين هذا وذاك اختلافًا قائمًا على اختلاف الأحوال والأوضاع، فإنه باعتبار تداخل تلك الأوضاع والأحوال في المرحلة الانتقالية التي تمرّ بها الأقليات المسلمة بأوروبا على وجه الخصوص قد يقع هو أيضاً في بعض التداخل، فيفتي إذن للمرحلة الجديدة بما حقّه أن يفتي به للمرحلة القديمة والعكس صحيح، وهو ما من شأنه أن يحدث ارتباكاً في التوجيه الشرعي للأقلية المسلمة بحسب مقتضيات الحالين المتداخلتين، ومن شأنه أن ينعكس سلباً على الأهداف والآمال في المرحلة الجديدة.

وهذا الأمر يدعو أهل الذكر إلى التوفر على رؤية واضحة لما يتصدون له من إفتاء للأقليات المسلمة، فيأتي إفتاؤهم بحيث يساعدها على تحقيق أهدافها، ويواكب تطوّرات تلك الأهداف حتى لا تبقى الفتاوى في واد الماضي والأهداف والآمال المستشرفة للمستقبل في واد آخر متشعب في الحاضر، فتتعلّل بذلك مسيرة تلك الأقليات في تطوّرها من حال إلى ما هو أفضل منها إذا ما وقفت عند الفتاوى الموضوعة للحال الأولى، أو تتطوّر إلى ما تستشرفه من مستقبل ولكن على غير هدي ديني تكفل الإفتاء بأن يكون هو هدفه المبتغى.

وبالنظر إلى هذا الوضع الذي يجد أهل الذكر أنفسهم مفتين فيه لأقليات مسلمة في الغرب هي في حال تطوّر من مرحلة إلى أخرى، فإنه أصبح من

الضروري أن تكون القرارات والفتاوى الفقهية مستهدية بخطة كبرى (استراتيجية) تأخذ بعين الاعتبار هذه المرحلة الانتقالية فيما هي مشدودة فيه إلى وضع سابق، وما هي مستشفة إياه من وضع مستقبلي، ليكون الهدي الديني الذي يتصدى له المفتون في شأن الأقلية مساعداً لها على هذا الانتقال بما يحقق أهدافها المتطورة دونما اضطراب أو انحراف.

وفي ضوء ما تقدم فلعل السؤال المهم الذي يثار في بناء استراتيجية الفقه الإفتائي للأقليات المسلمة هو: كيف يمكن إقامة معادلة صحيحة لبناء فقه للأقليات المسلمة في أوروبا بين ما تقتضيه المرحلة العرضية من فتوى تميل إلى الترخيص بحكم الطبيعة الاستثنائية لتلك المرحلة، وما تقتضيه مرحلة المواطنة من فتوى تميل إلى التأسيس بحكم طبيعتها المستقرة؟ إنَّ الجواب على هذا السؤال يقتضي شرحاً أوفى لطبيعة المرحلتين في أبعادهما المختلفة، وبياناً لطبيعة ما تقتضيه كلٌّ منهما من الفقه الإفتائي، حتى يتم بعد ذلك بناء المعادلة بين فقه الترخيص وفقه التأسيس خطأً أساسياً من خطوط الاستراتيجية الهادية لفقه الإفتاء في شأن الأقليات المسلمة.

الأقليات المسلمة في أوروبا بين عهدين

إنَّ الوضع الذي يمرُّ به الوجود الإسلامي بأوروبا هو وضع انتقالي بين مرحلتين: مرحلة عرضية سابقة، ومرحلة مستقرة لاحقة. ولا تخطئ عين الدارس لهذا الوضع الانتقالي مظاهرَ وتمثّلات لهما بين المرحلتين، تؤل المتعلّقة منهما بالمرحلة الأولى إلى التناقض شيئاً فشيئاً، لتحلَّ محلّها المظاهر المتعلّقة بالثانية. وكما هي السّنة في هذا الشأن، فإنَّ بين المنصرف والمقبل نزاعاً يضيف للمشهد عنصراً جديداً ينبغي دوماً أخذه بعين الاعتبار في التشخيص، ليؤخذ بعين الاعتبار في العلاج.

أ- مرحلة العرضية

لما بدأ المسلمون يتوافدون إلى أوروبا في الهجرة التي هم فيها الآن لم يكن يخطر ببالهم إلا أن يأتوا إليها من أجل قضاء مأرب وقتي، هو تحصيل مكسب اقتصادي في الأكثر أو علمي في الأقل، ثم العودة إلى بلادهم الإسلامية التي وفدوا منها بغنائمهم المكتسبة ليؤسسوا حياتهم وحياة أبنائهم في ظروف أفضل. وحتى أولئك الذين طال بهم المقام في الديار الأوروبية كانت العودة إلى بلادهم هي الحلم الأكبر الذي حالت دونه في الغالب ظروف قسرية، فكانت أجسامهم في أوروبا وآمالهم وأشواقهم معلقة ببلادهم الأصلية.

وعلى أساس ذلك فإن حياة هؤلاء المهاجرين انبنت على أساس الظرفية في كل مجالاتها. ومن ذلك أن هجرتهم لم تكن تشمل الأسر إلا على سبيل الندرة، إذ الأسرة هي عنوان الاستقرار، والاستقرار المأمول إنما يكون في البلاد الأصلية، فكان معظم المهاجرين يعيشون في أوروبا عزاباً من العمال والطلبة والمضطهدين السياسيين. وكانت الأعمال التي كانوا يتعاطونها أعمالاً ذات طابع ظرفي في أغلبها، وهي لا تعدو أن تكون إجارة ليد العاملة في الأكثر، أو أنشطة مهنية في الأقل. ولم يكن تملك البيوت أو المتاجر داخلاً في حسابان المهاجرين إلا نادراً؛ إذ هو من مقتضيات الاستقرار الذي لم يكن مطروحاً عليهم.

وقد أدى هذا النمط الظرفي من حياة المهاجرين إلى أن يكون البعد الجماعي في علاقاتهم ببعضهم بوصفهم مسلمين بعداً ضعيفاً إلى درجة كبيرة، إذ الشعور السائد بينهم هو الشعور بأنهم مسلمون أفراداً وليسوا جماعة، فكانت العلاقات الجارية بينهم تقوم في أغلبها على ذلك الأساس؛ ولهذا السبب فإن المؤسسات والهيئات التي تشير إلى البعد الجماعي لم يكن لها وجود يتجاوز العدد القليل من المصلّيات التي يقتصر دورها تماماً على أداء صلوات يتفرق المسلمون بعدها أفراداً.

وكذلك فقد كانت علاقتهم بالمجتمع الأوروبي الذي يعيشون فيه محدودة جداً، لا تكاد تتجاوز المعاملات المتعلقة بإجراءات الإجارة التي كانت عمل أغلب المهاجرين. أما الشوائع الاجتماعية والثقافية والاقتصادية فضلاً عن السياسية، فقد كان غير وارد على المهاجرين أن ينخرطوا فيها، بحكم ما يحملونه من شعور بظرفية وجودهم في المهجر، فلم يكن لها إذن وجود في الواقع إلا على سبيل الندرة.

هكذا كانت إذن أوضاع الأقليات المسلمة بأوروبا منذ بدأت الهجرة إليها قبل ما يقارب القرن، وقد ظلت على ذلك النحو ما يقارب ثلاثة أرباع القرن: هجرة فردية، مرتبة على أساس أنها ظرفية محكومة بالتوق إلى العودة، متخففة من كل مقتضيات الاستقرار في ممارسة الأعمال وفي الوضع الأسري، ومنطبعة بالطابع الفردي الذي يخلو أو يكاد من الشعور بالوجود الجماعي للحالية المسلمة، ومحدودة إلى درجات كبيرة في تفاعلها مع المجتمع الذي تعيش فيه على مختلف أوجه الحياة.

ب- مرحلة الاستقرار

إنّ مرحلة الظرفية الآنفه البيان بدأت تغزوها منذ ما يزيد على العقدين من الزمن مرحلة أخرى مقابلة لها، وهي مرحلة الوجود المستقرّ الثابت للمسلمين المهاجرين؛ إذ قد بدأ كثير منهم يرتب أمره على أساس أن يكون هذا المهجر هو مستقرّ الحياة، ودار القرار، وعلى أنّ البلد الأصلي الذي هاجروا منه أو هاجر منه آبائهم لم يبق إلاّ ذكريات بعيدة لا يتجاوز التوق إليها زيارتها على سبيل السياحة أو التواصل مع ما بقي فيها من ذوي الأرحام. وما فتئت أعداد هذا الصنف من المسلمين تزداد يوماً بعد يوم حتى أصبحت تراحم أعداد أولئك المنتسبين للمرحلة الظرفية.

وفي هذه المرحلة أصبح العدد المتزايد من المسلمين يوجّه حياته تحقيقاً للاستقرار نحو بناء أسري بدل العزوبة، حتى امتدت الأسر إلى جيل ثان وطلائع لثالث، ويوجّهها نحو أعمال دائمة بتعاطي ضروب من التجارة وتأسيس

المقاولات والشركات بدل أعمال الإجارة الظرفية، بل بدأ يوجّها نحو تملك العقارات والمنشآت بيوتاً وأبنيةً وأراضين وحقوقاً تجاريةً، وذلك مؤشّر على الاتجاه القوي نحو الاستقرار بدل العبور والعرضية.

وقد صاحب ذلك نموٌّ سريعٌ للشعور بالمعنى الجماعي للمسلمين، وهو شعور بدأ يدفع إلى تحقّقات عملية تمثّلت في تكاثر المؤسسات التي يلتقي فيها العدد الكبير منهم لممارسة حياتهم الجماعية، وتدارس مشكلاتهم والبحث لها عن حلول فيها، وهو ما تجاوز تأسيس الأعداد الكبيرة من المساجد إلى تأسيس المراكز والنوادي والجمعيات والمدارس والمعاهد الجامعية وما هو شبيه بها، وكلّها محاضن لحياة جماعية بدأت تتّجه إليها الأقلّية المسلمة على مستوى شعوري ثقافي، وعلى مستوى ممارسة فعلية.

وبدأت العلاقة بالمجتمع تنحو في طالع هذه المرحلة منحى التواشج في مستويات متعدّدة، فقد انخرط كثير من المسلمين في الدورة الاقتصادية تجارةً وأعمالاً، وانخرط آخرون في مؤسسات ومنظمات اجتماعية مختلفة، وأصبح جيل بأكمله من المسلمين يؤمّنون المدارس والجامعات العامّة، ويتخرجون منها بثقافة المجتمع الأوروبي، وهناك طلائع من المسلمين بدأت تنخرط في العمل السياسي في مستويات متعدّدة. وهكذا بدأ المسلمون في دورة من الاندماج في المجتمع بدل ما كان سائداً من مسلك التمايز منه والابتعاد عنه إلاّ بمقدار ما تحتّمه الضرورة من قضاء حاجات آنية.

وإذا كانت هذه المرحلة قد بدأت في مظهر عملي هو أقرب إلى أن يكون عفويّاً، إلاّ أنّها منذ بعض الزمن بدأت تبحث لها عن سند نظري تأصيلي، وتتخذ شعارات معبرة عنها، بل ترسم أهدافاً وغايات تسعى إلى أن تنتهي إليها. ومن ذلك ما أصبح يروج من مصطلح "الاندماج" المقصود به تفاعل المسلمين مع مجتمعاتهم الأوروبي تفاعلاً يكونون به جزءاً منه ومكوّناً من مكوّناته، وليسوا

مفصولين عنه واقعين على هوامشه وأطرافه. وما أصبح يروج أيضاً من مصطلح "المواطنة" المقصود به أن يصبح المسلمون في المجتمع الأوروبي مواطنين فيه، لهم ما لسائر المواطنين من الحقوق وعليهم ما عليهم من الواجبات، وأن يكونوا مخلصين لوطنهم الأوروبي، غيورين عليه، عاملين على تحقيق مصالحه، ودفع الضرر عنه.

ولعلّ من أهمّ الأهداف التي أصبحت مطروحة اليوم على الوجود الإسلامي في مرحلته الجديدة هو هدف الشراكة الحضارية، وهو هدف يعني أنّ المسلمين في أوروبا ينبغي أن يكون وجودهم فيها غير مقتصر على الاستهلاك في ميدان الإشباعات المادية، والإشباعات العلمية والمعرفية، وإنما يجب أن يكونوا مساهمين في تطوير المجتمع وترشيده ومعالجة مشكلاته، وفي دفع مسيرته الحضارية نحو الازدهار والتقدم، وذلك من جهة كونهم مسلمين يتوفّرون على مدد ثري فيما يتعلّق بالقيم الروحية والأخلاقية والاجتماعية. وإذا كان هذا الهدف لم يحتلّ بعد في وعي الأقلّية المسلمة موقعاً واسعاً عميقاً، إلّا أنه يبدو أنه يتّجه نحو أن يكون هو الموجه الأساسي لهذه المرحلة من الوجود الإسلامي بأوروبا بأكملها.

ج- المرحلة الانتقالية

إنّ التغيّر في المجتمعات لا يحدث بصفة حدّية تتمايز فيها المراحل بالمفاصلة، وإنما يتمّ فيها الانتقال من مرحلة إلى أخرى بالتداخل، بحيث تحدث بينهما مرحلة انتقالية تأخذ من هذه ومن تلك حتى يتمّ الانتقال بصفة قاطعة أو شبه قاطعة. ووضع الوجود الإسلامي بأوروبا هو اليوم يمرّ بهذه المرحلة الانتقالية منذ ما يقارب العقدين من الزمن، إذ هو يجمع الواقع فيه بين مشاهد من مرحلة الوجود الظرفي، ومشاهد من الوجود المواطن المستقرّ أو النازع إلى الثبات والاستقرار.

ففي هذا الوجود الإسلامي في وضعه الراهن قسم من الناس ما زالوا يعتبرون أنفسهم مهاجرين لظرف مؤقت، ويرتّبون حياتهم على أساس العودة إلى

مواطنهم الأصلية؛ ولذلك فإنَّ صلتهم بالبلاد التي يقيمون فيها صلة محدودة، وتفاعلهم مع المجتمع بما فيه المكوّن الإسلامي من مكوّناته تفاعل ضعيف. ومنه قسم آخر أكثرهم من الشباب ربّوا حياتهم على أن أوروبا هي موطنهم، وكثير منهم لا يعرفون لهم موطنًا غيرها؛ ولذلك فإنّهم قطعوا أشواطاً مهمّة في الاندماج الاجتماعي والثقافي، واتّخذوا من أسباب الاستقرار جملة مقدّرة: أعمالاً ثابتة، وملكيّات متنوّعة، ومؤسّسات اجتماعية وثقافية وسياسية، ومن مجموع ذلك أصبحوا يتصرّفون على أنّهم مواطنون مثل سائر المواطنين الأصليين.

وهذا التداخل في الفترة الانتقالية بين مظاهر من مرحلة سابقة ومظاهر من أخرى لاحقة من شأنه أن يجعلها متفاوتة في الخصائص، غير منضبطة في التوصيف. فالمرحلة الانتقالية في الحياة الاجتماعية تتمخّض دوماً عن تعقيدات، وتنطوي على ملاسبات قد تبلغ درجة الأزمات، وذلك على غير الوضع الذي تكون عليه المراحل العادية، وهو ما من شأنه أن يولّد صعوبة إضافية فيما يتغيه الفقهاء من إفتاء للأقليات المسلمة كي تتوفّق أوضاعهم لمقتضيات الدين؛ فما تكون به الفتوى لوضع ينتمي إلى المرحلة الظرفية قد لا يكون مناسباً لما تكون به الفتوى للمرحلة التي تستشرف المواطنة والاستقرار، بل قد يكون مناقضاً له أحياناً.

ولعلّ هذه الصعوبة تمثّل أحد أكبر التحدّيات التي تواجه المتصدّين للإفتاء خلال المرحلة المقبلة، فكيف يمكن للإفتاء أن يواجه هذا التحدّي؟ وكيف يمكنه التوفيق في الفتوى بين ما تتطلبه هذه الفترة الانتقالية بمراحلتيها المتداخلتين لتمضي حياة الأقلّية المسلمة في أوروبا مستهدية بالهدي الديني فيما هي منتقلة منه وضعاً ظرفياً إلى ما هي صائرة إليه استقراراً مواطناً؟

سابقة الفتوى للأقليات في أوروبا

عندما تأسّس المجلس الأوروبي للإفتاء والبحوث لم يكن للأقليات المسلمة بأوروبا

مرجعية أوروبية ذات صفة جمعية أكاديمية للإفتاء، وإنما كانت الفتوى تمارس من قبل أفراد من الفقهاء هم في أغلبهم من أئمة المساجد، مع ورود فتاوى أحياناً من البلاد الإسلامية. ولم يكن ذلك كله يتم إلا في نطاق ضيق من مجالات حياة المسلمين، كما أنه كان يكاد يقتصر على الفتوى للأحوال الفردية. فكانت الفتاوى في معظمها مطبوعة بطابع الجزئية دون تعرض للظواهر الكبرى في حياة المسلمين، وخاصة منها تلك التي تمثل مشكلات عويصة، أو تلك التي تتطلب نظراً اجتهادياً عميقاً.

فلما قام المجلس الأوروبي للإفتاء والبحوث¹ وباشر عمله بالفتوى للأقليات المسلمة أصبح يمثل مرجعية للمسلمين في أوروبا ذات صفة جمعية فقهية، فتصدى للفتوى بمنهج غير المنهج الذي كان سائداً؛ إذ نظر في حياة المسلمين بأوروبا نظرة شاملة، تناولت جميع مجالاتها الاقتصادية والاجتماعية والسياسية والأسرية، وتناولت المشكلات المتعلقة بتلك الجوانب كلها ليفتي فيها بما هو أعمق نظراً وأدق تحقيقاً مما كان يُفتى به من قبل. وذلك ما تشهد به البحوث المستفيضة التي تعدّ مسبقاً لتبني عليها الفتاوى، حتى إن الفتوى التي قد لا تتجاوز الصفحة أو الصفحتين قد توقّف على إجراء بحوث تستغرق مئات الصفحات، ومثال ذلك الفتوى المتعلقة بالمرأة التي تسلم ويبقى زوجها على دينه، فقد خصّص لها عددٌ كامل من المجلة العلمية للمجلس بمئات الصفحات.²

لقد كان أمام المجلس واقع للأقليات المسلمة تشغله النوازل الجزئية التي تجري بها

¹ عقد اللقاء التأسيسي للمجلس الأوروبي للإفتاء والبحوث بمدينة لندن في بريطانيا في الفترة: 21-22 من ذي القعدة 1417هـ الموافق 29-30 من شهر آذار (مارس) 1997م بحضور ما يزيد عن خمسة عشر عالماً. وكان ذلك تلبية لدعوة من قبل اتحاد المنظمات الإسلامية في أوروبا. وفي هذا اللقاء تم إقرار مسودة الدستور لهذا المجلس (النظام الأساسي)، انظر: http://www.e-efr.org/ar/index.php?cat_id=005

² راجع العدد الثاني من المجلة العلمية للمجلس سنة 2003؛ وانظر عبد الله يوسف الجديع، إسلام أحد الزوجين ومدى تأثيره على عقد النكاح (بيروت: مؤسسة الريان، ط2، 2008/1429).

الشؤون اليومية، ما تعلق منها بالحياة الأسرية، أو بالكسب والمعاش، أو بالعبادات بالمعنى الخاص، أو بالأشربة والأطعمة والألبسة، أو بالأخلاق والآداب. وإذا كانت تلك كلها تمثل هماً آنياً للقطاع الأكبر من المسلمين، فقد خصّص المجلس شرطاً كبيراً - إن لم يكن الأكبر - للإفتاء فيها، جواباً على استفتاءات خاصة ترد عليه، أو إفتاء في ظواهر عامة يراها متفشية بين المسلمين على غير الحكم الشرعي الأبين.

ومع الإفتاء في هذه القضايا الجزئية الخاصة والعامة، فإن المجلس كان بين الحين والآخر يتجاوز ما هو جزئي من مناطات الفتوى في شأن الأقليات إلى بعض من قضاياها ذات البعد الشمولي الجامع، أو ذات الأثر الواسع في حياتها، أو ذات الإشكالات العويصة من الناحية الفقهية، ومن ذلك ما خصّص من بحث واسع وقرارات فقهية شاملة لموضوع الأسرة المسلمة في المجتمع الأوروبي، وموضوع القروض المصرفية لشراء البيوت، وموضوع الزوجة التي تسلم ويبقى زوجها على دينه.

إلا أن الناظر في المسيرة الإفتائية للمجلس خلال مرحلته السالفة يجد أن ما أصدر فيها من قرارات وفتاوى كان مستجيباً في معظمه للحاجات العاجلة التي تتطلبها حياة المسلمين في المجتمع الأوروبي، وبما أن تلك الحياة تتوسع كما بتزايد عدد المسلمين بصفة متسارعة، وكيفاً بتوسعها وتعقدتها نتيجة التزاكم والمضي في الاندماج، فقد كانت الحاجات اليومية تلاحق المجلس بالاستفتاء، وتكاد تستبد به، دون أن تترك له الفرصة ليمتد بنظره الفقهي إلى ما هو من قضايا المسلمين الأوروبيين أكبر منها حجماً، وأخطر أثراً في مستقبل وجودهم بأوروبا، وعلى تحقيق أهدافهم المتجددة فيها.

وإذا كان الشأن اليومي في حياة الأقليات المسلمة بأوروبا سوف يبقى على الدوام شأنًا قائماً، وذلك بالنظر إلى التطور السريع لتلك الحياة، والتشابك المتوسع الذي تمتد به مما يتطلب من الفتاوى ما هو ذو طابع جزئي آني، فإن

المتصدّين للإفتاء في شأن المسلمين بأوروبا - وعلى رأسهم المجلس الأوروبي للإفتاء والبحوث - آن الأوان في نظرهم الإفتائي كي يتجهوا فيه أيضاً إلى الإفتاء في القضايا الكبرى المتعلقة بالوجود الإسلامي بأوروبا، وهي تلك القضايا ذات التأثير الاستراتيجي في مستقبل هذا الوجود، وفي الرسالة التي هو مدعو لأدائها في المجتمع الذي قام فيه.

وإذا كان الإفتاء في عموميه إنما يقوم على ذات القواعد والأسس الشرعية سواء ما تعلّق منه بالقضايا الجزئية أو بالقضايا الكلية، إلّا أنّ المنهج الإفتائي قد يختلف نوعاً اختلافاً بين هذه وتلك، وذلك على الأقلّ من حيث ما يتطلبه كلّ منهما من توسّع في البحث واستجماع لمادّته، ومن استكشاف للمقاصد واستشراق للمآلات. ومن البين أنّ هذا الاختلاف في المنهج يستتبع اختلافاً في الاستعدادات التي تتطلبها الفتوى، وفي طرق العمل التي تقتضيها، وإن يكن ذلك متّجهاً في أغلبه إلى الدرجات وليس إلى الأنواع.

والوضع الانتقالي للوجود الإسلامي بأوروبا - كما شرحناه سابقاً بما يتداخل فيه من مرحلة الظرفية بمرحلة المواطنة والاستقرار - يكاد يواطئ هذه الداعية التي تدعو المفتي إلى التطوّر في نظره الإفتائي من الإفتاء الجزئي إلى الإفتاء الكلي، ومن الإفتاء للآني إلى الإفتاء للمستقبل؛ ذلك لأنّ المرحلة الظرفية العرضية تحمل في طبيعتها معنى الآنية والجزئية، في حين أنّ مرحلة الاستقرار والاستمرار تحمل معنى الكلية والمستقبلية، وإن يكن ذلك على وجه العموم وإلاّ فإنّ كلاّ منهما تحمل بعضاً من خصائص الأخرى.

وبناء على ذلك فإنّ الإفتاء في مرحلته المقبلة مدعو إلى أن تكون خطّته الإفتائية خطّة مزاجية تستمدّ من طبيعة المرحلة الانتقالية في جمعها بين مرحلة ظرفية تتطلّب من الفتوى ما طابعه العامّ طابع جزئي، ومرحلة استقرار ومواطنة

تتطلب من الفتوى ما طابعه الكلية والمستقبلية. وربما اقتضى ذلك بادئ ذي بدء تحريراً جديداً لدلالات الفتوى يمكن من استيعاب هذه المزاوجة، ليستبين بعد ذلك طرفا الإفتاء في قضايا المرحلتين، والخصائص التي يختص بها كل منهما، والقواعد والأصول التي ينبنيان عليها.

طبيعة الإفتاء في شأن الأقليات

لعلّ مفهوم الإفتاء قد كان متأثراً من حيث تحديده بالوضع الإسلامي الذي نشأ فيه وتطور واستمرّ، وهو الوضع الذي كان يسود فيه الإسلام نظاماً للمجتمع، ويوجّه مختلف مناحي الحياة فيه، فالإفتاء إنّما كان إفتاء للمسلمين في مجتمعهم الإسلامي الذي يحتكم إلى الشريعة الإسلامية، وذلك بأن يوفّق مظاهر الحياة الفردية والاجتماعية، ونوازله الطارئة بتغيّر الظروف إلى الأحكام الدينية، كي تبقى مستهدية بهدي الدين الذي التزمته من حيث الأساس نَحْجاً لها وموجّهاً لمسارها.

وبهذا المعنى فقد نشأ الإفتاء وتطور فيما يشبه أن يكون حارساً للمجتمع الإسلامي كي لا يحيد عن أحكام الشرع في خضمّ مناشطه المختلفة، وفي مستجدّات حياته وطوائرها، انطلاقاً من كون هذا المجتمع هو مجتمع ارتضى أن يكون إسلامياً في أساسه، محتكماً إلى توجيهات الشرع. ولذلك فقد انطبعت الفتوى على وجه العموم بطابع الجزئية والتفصيل، استجابة لنوازل الحياة التي لا تقع إلا عينية، وهو ما تشهد به دواوين النوازل والفتاوى التي هي في أغلبها إجابات شرعية على تساؤلات في أحداث وقعت أو يُراد أن تقع بما يوجّهها الوجهة الشرعية الصحيحة.

وإذ كان الإفتاء كما هو معهود في الفقه الإسلامي موجّهاً في ستمه العام إلى الإجابة الشرعية على نوازل واقعة أو يُعتمَر إيقاعها فيما تتطلبه من معالجة شرعية، وإذ كانت تلك النوازل في معظمها ذات طابع جزئيّ إمّا من حيث متعلّقاتها من

الأشخاص أو من حيث مناطاتها من الأفعال، فإن البعد الكلّي في الفتوى الذي به يقع تناول القضايا الكبرى للمجتمع لم يكن سمّاً ظاهراً فيه على وجه الغلبة، وكذلك فإن الاستشراق المستقبلي لما ينبغي أن يتجه إليه المجتمع من مسارات ينبغي أن يحافظ فيها على الصفة الإسلامية لم يكن ملحوظاً فيه على نحو بارز. بل إنّ تلك النزعة الافتراضية في الفتوى التي تؤسّس للمستقبل بفتاوى مسبقة لم تكن تحظى بالقبول في الثقافة الفقهية، وكانت توسم - على سبيل الاستنقاص - بالنزعة "الأرأيتية"، اشتقاقاً من استعمالها لصيغة متكرّرة هي: "أرأيت لو...". ويبدو أنّ الإفتاء في سمته هذا كان يوكل المصير المستقبلي للمجتمع في خطوطه الأساسية الكلية إلى قوّة التدبّر الذي هو متأسّس عليه، والذي يشكّل هويته ويوجّه مساره.

والسؤال الذي يطرح نفسه على الإفتاء للأقليات المسلمة في أوروبا هو: هل الإفتاء لهذه الأقليات الذي ندب نفسه للنهوض بها يقتصر مفهومه على ذات المفهوم المأثور في التراث الفقهي، ويختصّ بذات خصائصه ويتّصف بذات صفاته؟ والحال أنّ هذا الإفتاء هو إفتاء لأقليات مسلمة تعيش ضمن مجتمع غير مسلم، وتخضع لسلطان قوانين غير إسلامية، ويهدف وجودها إلى أهداف قد لا تكون مقتصرة على ذات الأهداف التي يسعى المجتمع المسلم إلى تحقيقها!

إذا كان من شروط الإفتاء في إصدار الأحكام التي تعالج النوازل أن تكون تلك الأحكام مبنية على الواقع المفتى فيه، فإنّ مفهوم الإفتاء ذاته ينبغي أن يكون مبنياً على ذلك أيضاً، ليس على أساس التغيرات في المفهوم، ولكن على أساس التوسّع في مشمولاته، أو التنوّع في منهجه، أو التوجيه في مناطاته، وذلك من أجل أن يستصحب الإفتاء وظيفته في حفظ الحياة المفتى فيها على أساس شرعي، وتوجيهها نحو ما يحقّق أهدافها التي قد تتفاوت من وضع إلى وضع، ومن زمن إلى زمن.

إنّ وضع الوجود الإسلامي في أوروبا الذي هو موضوع الإفتاء للمجلس الأوروبي وضعٌ مخالف للوضع الذي كان عليه المجتمع الإسلامي، وهو الوضع الذي نشأ من أجله الإفتاء وتوسّع وتطوّر. فالمجتمع الإسلامي خاضع لسلطان الشريعة في الأساس، وهو مجتمع فيه من القوة الذاتية للدفع الديني ما يضمن استصحابه للسمت الديني العام وعدم الحياد عنه إلاّ أن تكون أحداث محدودة يمكن أن تُجرّ بالفتوى، وهو أيضاً مجتمع لئن كان معنياً بالشهادة الدعوية على الناس إلاّ أنّها شهادة تندرج ضمن الشهادة العامة للأمة عليهم، وذلك في غير انحصار في فئة محدّدة أو في وضع معيّن.

ولكنّ الوجود الإسلامي بأوروبا الذي هو موضوع الإفتاء للمجلس الأوروبي إنما هو وجود إسلامي في مجتمع غير إسلامي. إنّه وجود يقوم في أغلبه على هشاشة في تكوينه اجتماعياً؛ إذ هو متأسّس على المعنى الفردي أكثر ممّا هو متأسّس على المعنى الجماعي، والمجتمع الذي هو فيه مجتمع غلاب من الناحية الحضارية، فهو إذن لا يملك من قوّة الدفع الديني ما يضمن أن ينحفظ به كيانه الإسلامي، وإنّما هو عرضةٌ للغواية التي قد تنتهي به إلى الاندثار. ثمّ إنّ هذا الوجود الإسلامي وجودٌ ملقاةً عليه مهمّة الشهادة الدعوية على المجتمع الذي يعيش فيه بصفة عينية مباشرة، إذ هذا المجتمع يرقب عن كثب ذلك الوجود بصفته الإسلامية فيما سيكون عليه مآله من نجاح أو خسر، وسيكون لذلك المآل التأثير البالغ في مستقبل الإسلام نفسه في الديار الأوروبية من رفض أو قبول.

وإذا ما أضفنا إلى هذه الاعتبارات ما بيّناه سابقاً من ظروف المرحلة الانتقالية التي يمرّ بها هذا الوجود الإسلامي بأوروبا، والتي تتداخل فيها مرحلتان مرحلة ظرفية متناقضة، ومرحلة مستقرّة متنامية، فإنّ صورة الاختلاف بين الوضعين تظهر جليّة بيّنة، فيتبعها إذن توسّع في مفهوم الإفتاء للأقليات المسلمة

بأوروبا بالنسبة للإفتاء المأثور في المجتمع الإسلامي، وتوسّع أيضاً في مناطات الفتوى وفي أهدافها وفي منهجها.

وباعتبار الازدواجية في الوضع الذي عليه الوجود الإسلامي بأوروبا المتمثلة في مرحلتين متداخلتين، فإنّ إفتاء المجلس الأوروبي - كما نقدّر - ينبغي أن يكون هو أيضاً إفتاء مزدوجاً في مناطاته وأهدافه، فيتّجه قسم منه إلى معالجة ما يتعلّق بالمرحلة العرضية من حياة المسلمين بأوروبا من مشكلات هي في معظمها ذات طابع جزئيّ ظرفي، فتقتضي من الفتوى ما هو من ذات ذلك الطابع، ويتّجه قسم آخر إلى معالجة ما يتعلّق بمرحلة الاستقرار والمواطنة من أوضاع ومن أهداف هي في معظمها ذات طابع كلّيّ مستقبلي، فتقتضي من الفتوى ما هو من ذات ذلك الطابع أيضاً.

إنّ المرحلة العرضية للوجود الإسلامي بأوروبا في خصائصها التي وصفناها سابقاً بما هي طارئة به على المجتمع الغربي انتقالاتاً مهاجراً من المجتمع الإسلامي في أبعاد فردية، وبما هي مبنية عليه من ظرفية، ومتحفّزة إليه من استقرار، فإنّها مطبوعة على وجه العموم بطابع الفردية والاستثناء والانتقالية؛ ولهذا فإنّها ربما يناسبها من الفتوى ما هو أميل إلى الجزئية والتفصيل، وما طابعه العام طابع التيسير، وما منهجه منهج الترخيص.

وأما المرحلة المستقرّة المواطنة التي أخذت تزاحم بشدّة المرحلة العرضية وتحلّ بالتدرّج محلّها، فإنّها بخصائصها التي عرضناها، بما هي نازعة إليه من الثبات والاستمرارية، ومتّجهة فيه إلى الترابط والجماعية، ومدعوّة إليه من الشهادة الدعوية، تكون الفتوى المناسبة لها إنّما هي تلك الفتوى التي توجّه الأقلّية المسلمة إلى السير بحياتها في سبيل تأسيس وجود إسلامي مواطن مستقرّ، مسهم في مسيرة التنمية للمجتمع الأوروبي، ومنتج لأنموذج حضاري إسلامي شاهد على الناس، وذلك بما تناوله من القضايا الكلية الكبرى المتعلّقة بهذا المسار، والمؤدّية

فيه إلى تحقيق أهدافه. ويمكن أن نطلق على هذه الفتوى اسم فتوى التأسيس في مقابلة ما ذكرناه آنفاً من فتوى الترخيص.

الإفتاء بفقهاء الترخيص

مبدأ الرخصة في الشريعة مبدأ معتبر، فكثير من الأحكام جاءت على وجه الاستثناء من الأحكام الأصلية العامة، وهي أحكام العزائم، وذلك لسبب من الأسباب اقتضى ذلك الاستثناء. وتبنى أحكام الترخيص على أساس أن الحكم العام قد يكون تنزيهه على مناه في ظرف من الظروف غير مؤدٍ إلى تحقيق مقصده، بل قد يكون مؤدياً إلى عكس ذلك المقصد من الضرر أو الحرج الشديد، فيكون حكم الترخيص إذن مؤدياً إلى تحقيق تلك المقاصد باستثناء مناهاتها من أن ينطبق حكم العزائم عليها.

وقد يكون الترخيص حكماً منصوباً عليه مثل الترخيص في التيمم عند تعذر الوضوء، أو الترخيص في قصر الصلاة عند السفر، وقد يكون غير منصوب عليه ولكن يستحدث بالاجتهاد وفق قواعد فقهية مقررّة، مثل الرخص التي تقتضيها قاعدة "الضرورات تبيح المحظورات"؛ ولذلك فإنّ مجال الترخيص في الشريعة مجال واسع، وفقه الرخص فقه دقيق يستلزم من النظر جهوداً مضاعفة، ولذلك شاعت بين الفقهاء تلك المقولة المأثورة عن الإمام سفيان الثوري: "إنما الفقه الرخصة من ثقة، أما التشدد فيحسنه كلّ أحد".¹

أ- مسوغات فقه الترخيص

السمت العام لفقه الترخيص هو سمت الاستثناء، إذ هو في عموم

¹ أبو عمر يوسف بن عبد الله ابن عبد البر النمري القرطبي، جامع بيان العلم وفضله، تحقيق أبو عبد الرحمن فواز أحمد زمري (بيروت: مؤسسة الريان - دار ابن حزم، ط1، 1424/2003)، ج2، ص77.

تخصيص أحكام شرعية بمفردات من أعيان الأشخاص أو الأحوال استثناءً لها من الأحكام الشرعية العامة المتعلقة بأجناس تلك المفردات، وذلك بسبب ملابسات تعلّقت بها تجعل المقصد من الحكم الشرعي العام لا يتحقق فيها، فيُترخّص فيها إذن بحكم آخر يتحقّق به مقصد الشريعة، وذلك هو مراد الإمام الشاطبي في قوله: "إذا اعتبرنا العزائم مع الرخص وجدنا العزائم مطّردة مع العادات الجارية، والرخص جارية عند انخراق تلك العوائد".¹

وبناءً على ذلك فإنّ فقه الترخيص إنما تشتدّ الحاجة إليه في الظروف التي تكون استثناء من مجرى الحياة العادية، كالحروب والمجاعات والقحط وما شابهها، فتلك الظروف يختلّ فيها كثير من الأنساق العادية لأحوال الناس فرادى وللعلاقات بينهم جماعات، فيكون للرخص مجال واسع لمعالجة تلك الأحوال والعلاقات الطارئة على المجرى العادي للحياة توحياً لما تقصده الشريعة من رفع الحرج والمشقة على المكلفين، وتسهيلاً عليهم أن يمحضوا في التدين بما تُيسره الرخص حذر أن ينكصوا عنه بما تسببه العزائم من الشدّة في تلك الظروف المستثناة من النسق العادي للحياة.

ولو تأملنا في وضع الأقليات المسلمة بأوروبا فإننا نجد وضعا يحمل من الاستثنائية قدراً كبيراً؛ فأحكام الشريعة يتّجه معظمها بالخطاب إلى المسلمين في المجتمع الإسلامي، وهو المجتمع الذي يخضع لسلطان القانون الشرعي، وتسود فيه الثقافة الإسلامية، وتبني فيه العلاقات على أسس دينية، أما الأقليات المسلمة فهي خاضعة لسلطان قانوني غير إسلامي، وتعيش في مناخ ثقافي واجتماعي مخالف في أكثر أحواله للمقتضيات الدينية، وتعرّض كلّ يوم لتحديات شديدة في تدينها

¹ أبو إسحاق إبراهيم بن موسى بن محمد الشاطبي، **الموافقات**، تحقيق أبي عبيدة مشهور بن حسن آل سلمان (الخبر/السعودية: دار ابن عفان، ط1، 1417/1997)، ج1، ص541.

معتقدات وسلوكًا بسطوة إعلامية قاسية، وبالزمامات قانونية نافذة، وقد تتعرض أحياناً لأنواع من الهجوم ذات طابع عنصري وتميز ديني.

وإذا كان هذا الوجه من الاستثنائية لوجود الأقليات المسلمة بأوروبا ناشئاً عن كونها تعيش مرحلة هي فيها منتقلة في أغلبها من البلاد الإسلامية إلى مهاجرها الجديدة، وهو ما كانت به قلقه في وضعها أقليات في مجتمع غير إسلامي، فإنَّ وجهاً آخر من هذه الاستثنائية ناشئ من كونها تعيش في تلك المرحلة حالة من الظرفية والعرضية لما هي متحفزة إليه من الدخول في مرحلة جديدة هي مرحلة المواطنة والاستقرار، فجمعت بذلك بين استثنائية من حيث مبدأ وجودها، واستثنائية من حيث صيرورته، وهو ما ينبغي أخذه بعين الاعتبار في النظر الفقهي المتعلق بهذه الأقلية.

وفضلاً عن ذلك فإنَّ وضع الأقليات المسلمة بما هو وضع جماعي أو نازع إلى أن يكون جماعياً، وبما أنَّ المطالب التي يطلبها هي مطالب جماعية في الكثير منها، فإنَّ حاجاته قد ترتفع من كونها حاجات إلى كونها ضرورات؟ إذ الحاجة إذا كانت جماعية تُنزل منزلة الضرورة في وضع الأفراد، وذلك ما قرره العزَّ ابن عبد السلام في قوله: "المصلحة العامة كالضرورة الخاصة"، وأقره وشرحه شرحاً وافياً ابن عاشور في كتابه "مقاصد الشريعة الإسلامية"¹، وهو ما يقوى به معنى الاستثنائية في وضع الأقليات المسلمة.

وقد كان المجلس الأوروبي شديد الوعي لهذا الوضع الاستثنائي للأقليات المسلمة بأوروبا، فكانت الفتاوى والقرارات الفقهية التي أصدرها في شأنها قائمة في شطر كبير منها على فقه الترخيص، وخاصة ما كان متعلقاً بالأوضاع التي

¹ راجع: محمد الطاهر ابن عاشور، مقاصد الشريعة الإسلامية، تحقيق محمد الطاهر الميساوي (عمَّان: دار النفائس، ط2، 2001/1421)، ص299.

تسبب حرجاً شديداً لأفراد المسلمين أو لجماعتهم. وفي هذا السياق يندرج الإفتاء بالترخيص بقيود وضوابط محددة في القروض بفوائد لأجل شراء السكن، والترخيص للزوجة التي تسلم دون زوجها بالبقاء زوجة له، والترخيص للمسلم في وراثة أبويه غير المسلمين، وغيرها من الفتاوى الكثيرة المدرجة ضمن فقه الترخيص.¹ وإذا قد قيل إنما الفقه الرخصة من الثقة فقد بذل المجلس جهوداً مضنية في البحث العلمي من أجل تقرير هذه الفتاوى على أصول شرعية معتبرة، وقد قوبل بعضها باعتراضات شديدة من قبل من كان يظن أنها تدخل في باب العزائم التي لا ترخيص فيها، وهو ظن يندرج في إطار الشرط الثاني من تلك المقولة، وهو أن التشدد يحسنه كل أحد.

وبما أن الحال الاستثنائية للأقليات المسلمة ستظلّ حالاً مستصعبة على مدى أجيال، فإنّ فقه الترخيص في شأها سيظلّ أيضاً مستصعباً طيلة ذلك المدى، ولكنه فيما نقدّر ينبغي أن يكون ذلك الفقه متناسباً في حجمه وفي كيفه مع حجم الاستثنائية وكيفها في تلك الحال، فوجود الأقليات المسلمة بأوروبا ولن كان في مبدئه طارئاً بالمجرة ذات الطابع الفردي فإنه بعد مرحلة كان فيها يتّصف بالظرفية والعرضية بدأ يدخل - كما أشرنا سابقاً - في مرحلة أخرى أصبح يتّصف فيها بالمواطنة والاستقرار، وحجم الاستثنائية وطبيعتها في هذه غير حجمها وطبيعتها في تلك، وهو ما يدعو إلى إعادة النظر بين الفينة والأخرى فيما تقوم عليه منهجية فقه الترخيص المعتمدة في الإفتاء لتواكب التحوّل الواقع في الاستثنائية التي هو المبرر الأكبر للترخيص.

ومع توفيق المجلس في اعتماده فقه الترخيص في فتاواه خلال المرحلة السابقة،

¹ راجع: قرارات وفتاوى المجلس الأوروبي للإفتاء والبحوث (القاهرة: دار التوزيع والنشر الإسلامية، 2002).

فإنه فيما نحسب ينبغي أن يراجع أمره في هذا الشأن، وذلك بالأخص من حيث ما ينبغي عليه أن يرسم من منهج بين لهذا الفقه لا يبنى فقط على الأدلة الشرعية المعتبرة المحوزة للترخيص، وإنما يبنى أيضاً على الاعتبارات الواقعية التي يشهد فيها وضع الأقليات تغيرات في استثنائته، وعلى الأخص منها التغير الذي يشهده هذا الوضع متمثلاً في الانتقال من المرحلة الظرفية إلى مرحلة المواطنة. كما يبنى أيضاً على مراجعة تقييمية لما صدر عن المجلس من فتاوى ذات صفة ترخيصية خلال المرحلة الماضية، فيما عساها أن تكون قد أحدثت من أثر واقعي في حياة المسلمين يتناسب مع المقصود الشرعي منها أو يختلف عنه.

ب- منهجية فقه الترخيص

بناء على ما تقدّم يمكن أن تتأسس قواعد منهجية عامّة في فقه الترخيص الذي يعتمده الإفتاء في المرحلة المقبلة. ولعلّ من بين ما يصلح أن يُدرج ضمن تلك القواعد ما يلي:

أولاً: تأصيل الفتوى: وهو القاعدة التي جرى عليها الإفتاء بالترخيص فيما أصدره المجلس الأوروبي من فتاوى. ونعني بالتأصيل أن يكون لكلّ رخصة يُفتى بها أصل تستند إليه من أصول الاجتهاد، نصاً من الوحي، أو ما هو عائد إليه من طرق الاستنباط. وإذا كان النصّ ظنيّاً فإنّ للاجتهاد من أجل الترخيص فسحة بشرط أن يكون التأويل معتبراً تحييزه قوانين اللغة، وتدعمه قواعد الشريعة ومقاصدها.

وإذا كان الإجماع هو الخطّ الأحمر الذي ينبغي للاجتهاد من أجل الترخيص أن لا يتجاوزه، فإنّ اجتهادات الفقهاء في المذاهب المعتبرة تصلح أن تكون جميعاً محلّ نظر من أجل الاستفادة منها في الترخيص، سوى أنّ الإجماع كثيراً ما كان يُدعى في العديد من القضايا ويتبين بالبحث أنّه ادّعاء زائف، وهو ما يستدعي جهداً من التقصي لتمييز ما هو مجمع عليه مما هو ليس كذلك في القضايا العارضة

لشؤون الأقليات المسلمة.

وإذا ما استبعد ما هو مجمع عليه من أن يطاله الاجتهاد من أجل الترخيص، فإنّ اجتهادات الفقهاء فيما له علاقة بالقضايا المطروحة ينبغي أن تُعرض جميعاً للنظر الإفتائي، دون استبعاد لأيّ منها بسبب تعصّب مذهبي، أو خلاف عقدي، أو عدم تداول وشهرة. وحينما يكون السند العلمي لأيّ اجتهاد فقهي سنداً معتبراً، فإنّ الترخيص يمكن أن يكون بتفضيل المرجوح على الراجح، والمغمور على المشهور، وما قال به الآحاد على ما قال به الجمهور، فإنّ في تراثنا الفقهي كنوزاً مخفية غمرها التعصّب، وغيّبتها المرجوحية، وطمسها التناسي، وناهيك في ذلك باجتهادات أئمة عظام من أمثال الطبري وابن حزم.

إنّ كثيراً من هذه الاجتهادات إذا كانت غير مناسبة لحلّ مشكلات عصرها لملايسات تختصّ بها فطالها النسيان والإهمال، فإنه عند المراجعة يتبيّن أنّها أصبحت صالحة لمعالجة قضايا حدثت في عصرنا بملايسات أخرى غير تلك التي استبعدتها في الماضي، فينبغي الاستفادة منها في فقه الترخيص في شأن الأقليات ما تبين أنّ في ذلك مصلحة معتبرة. وفي الآراء الفقهية المتعلقة بإسلام المرأة مع بقاء زوجها على دينه مثال بيّن لذلك، وهو ما استفاد منه المجلس في فتواه في هذه المسألة.

ثانياً: استثنائية الطابع: حينما يقع الإفتاء في شأن الأقلية على أساس فقه الترخيص ينبغي فيما نحسب أن تكون الفتوى حاملة في ذاتها لمعنى الاستثنائية التي هي مسوّغ الفتوى بها من الوضع الواقعي الذي وقع فيه الإفتاء، بحيث يستقرّ في ذهن المسلم أنّ تلك الفتوى إنما هي متعلّقة بالوضع الذي هو فيه من وجوده في أوروبا، وليست متعلّقة بذلك الوجود في ذاته بصفة مطلقة، فإذا ما تغيّر ذلك الوضع فإنّ تلك الفتوى يمكن أن تفقد مشروعيتها ليحلّ محلّ الفتوى بالترخيص الفتوى بالعزيمة حتى وإن استمرّ الحال على الوجود كأقلية ولكن بتغيّر

الأوضاع في ذلك الوجود.

ويمكن أن يُشرب هذا المعنى المتمثل في روح الاستثنائية في صياغة الفتوى ذاتها، أو في توجيهات تتخلّلها، أو في تنبيهات تصحبها أو في تذييلات تعقبها، وذلك كلّ من أجل أن لا تنبني حياة المسلمين في أوروبا نفسياً وواقعياً على أساس الرخص، وتستمرّ ذلك وتستمرّ عليه، فيصبح الترخيص القائم على الاستثناء هو الأصل، والحال أنّ الأصل هو أن تجري الحياة على العزائم لا على الرخص.

إنّ وجود الأقليات المسلمة بأوروبا لئن كان في وضعه الحالي يحتاج إلى أن يُعالج في كثير من قضاياها بفقهِ الترخيص بالنظر إلى استثنائية أوضاعه، فإنّه ينبغي أن يكون متّجهاً نحو التخفّف من تلك الاستثنائية شيئاً فشيئاً، وحينئذ فإنّ الاتجاه في معالجته الفقهية ينبغي أن يكون هو أيضاً ناحياً منحى عزائم الأحكام. وإذا ما سادت في حياة المسلمين ثقافة الترخيص، وجرت حياتهم على استمرائها، فإنّ ذلك سوف يدفعهم إلى التقاعس عن العمل من أجل تطوير حياتهم في اتجاه الاستقرار بديلاً عن الاستثنائية، وفي ذلك ضرر بأهدافهم المستقبلية كما شرحناها سابقاً.

إنّ فقهِ الترخيص ينبغي أن يؤطّر بإطار الظرفية، وأن يحمل في ذاته ما يمكنه به أن يتجاوز نفسه لينتهي إلى فقهِ العزيمة، فيكون له ذلك منهجاً يقيه من الوضع الذي يصبح فيه هو الأصل المستقرّ فيعيق حياة الأقليات عن التطوّر. فإذا أُفتي مثلاً على سبيل الترخيص بجواز القرض بالفائض من أجل شراء البيوت، فإنّ ذلك يجب أن يكون استثناءً مقترناً بوجوب أن يسعى المسلمون سعياً حثيثاً إلى استحداث المؤسسات التي تقرض على أساس غير ربوي. وإذا أُفتي ترخيصاً بجواز التأمين في بعض الصور التي يكون فيها الغرر، فينبغي أن يكون ذلك مشروطاً بالسعي في استحداث المؤسسات التي تؤمّن بغير غرر. وهكذا تتربّى الأقلية على أنّ فتوى

الترخيص إنما هي مشروطة بالسعي في إزالة أسبابها من الظروف التي ألجأت إليها، ومن شأن هذه الثقافة أن تكون عامل تطوير لحياتها في سبيل تحقيق أهدافها.

ثالثاً: اعتبار المآل: إنَّ الفتوى بالترخيص للأقليات المسلمة لئن كانت مبنية على مقصد تيسير الحياة ورفع الحرج الناشئ من ظروفها الاستثنائية، فإنه ينبغي أن يُنظر فيها بدقّة إلى المآل الذي تؤوّل إليه، بحيث لا يكون ذلك المآل مناقضاً لما ابتغي منها من مقصد. فإذا ما علّم بأغلب الظنّ على الأقلّ أنّها قد تنتهي إلى ذلك التناقض، فرمّا وقع العدول عنها إلى الإفتاء بالعزيمة اعتباراً للمآل كي لا يعود على المقصد بالبطلان.

ويستلزم هذا الاعتبار للمآل أن يكون الإفتاء بالترخيص جارياً وفق خطة تقوم على استشراف للمستقبل في وضع الأقليات من حيث ما هو متطورّ إليه من مصير، وما هو مرسوم له من أهداف، فيكون إذن مستهدياً بخارطة مستقبلية تستبين فيها المسارات الصحيحة التي تؤدّي إلى الهدف المقصود، فإذا ما تبين بذلك الاستشراف ومن خلال تلك الخارطة أنّ الترخيص في قضية ما من القضايا قد ينتهي إلى مصير يخالف ذلك الهدف عدل عن الرخصة إلى العزيمة دفعاً لأقوى المفسدتين أو جلباً لأقوى المصلحتين. والإفتاء بالرخصة بصفة تلقائية عفوية لا تنظر إلا إلى الوضع الراهن، ولا تستهدف بالخارطة المستقبلية، من شأنه أن يوقع وجود الأقليات في إرباك ينعكس سلباً على مسيرته المستقبلية.

وإذا كان وجود الأقليات المسلمة بأوروبا قد وضع هدفاً له أن يُصبح وجوداً مواطناً مستقراً يُسهم في المسيرة الحضارية للمجتمع الأوروبي إسهاماً حقيقياً باعتباره أصبح مكوّناً من مكوّنات المواطنة فيه، فإنّ الإفتاء بالترخيص يجب أن يضع نصب عينيه هذا الهدف، ويكون مستهدياً به، وذلك حتى لا يقع هذا الإفتاء في ترخيصات من شأنها أن تناقضه وتهدره، بما تفضي إليه من تكريس دائم لحالة الظرفية والاستثنائية

من حيث كان المراد هو تحقيق المواطنة والاستقرار والشرابة الحضارية.

وعلى سبيل المثال لقد كان الاتجاه في مسألة اللحوم إلى الإفتاء بعزيمة الذكاة، وهو ما جرى عليه الأمر منذ عقود، ويبدو أنّ المجلس الأوروبي ماض فيه أيضاً، وكان يمكن أن يُفتى فيها بالرخصة لتوفّر أسبابها الواقعية والفقهية، وقد تبين أنّ الإفتاء فيه بالعزيمة كان هو الأصوب؛ إذ قد نشأت منه في أوروبا سوق كبيرة للحلال من اللحوم أسهمت بقدر كبير في فوائد اقتصادية للمسلمين، كما أسهمت في الحفاظ على شخصيتهم وهويتهم الثقافية والاجتماعية.¹

وفي مقابل ذلك فإنّ البعض يرون جواز الإفتاء بالترخيص في بيع المحرّمات من خمر وخنزير وغيرها في البلاد الأوروبية بناء على قول بعض الفقهاء بجواز التعامل بالعقود الفاسدة في البلاد غير الإسلامية، فهذا الإفتاء من شأنه أن يجعل المسلمين يسهمون في إفساد المجتمع لا في إصلاحه، وهو ما يتناقض مع هدفهم في المواطنة الصالحة والأنموذجية الحضارية الداعية. وهكذا يتبين أنّ الإفتاء بالترخيص ينبغي أن ينظر إلى المال المتعلّق بالهدف المستقبلي للوجود الإسلامي بأوروبا، فيترتب الإفتاء على أساس ما يقتضيه ذلك الهدف من رخصة أو عزيمة.

رابعاً: المعادلة بين الفردية والجماعية

إنّ الأقليات المسلمة في أوروبا هي أقلّيات تمثّل جماعة من المسلمين لا مجرد أفراد مشتّتين، وهم يتواصلون فيما بينهم بروابط اجتماعية ذات خصوصية بالنسبة للمحيط الذي يعيشون فيه. وهذا البعد الجماعي يتأكّد يوماً بعد يوم بتوسّع الأقلّيات وتناميها، وبنزوعها إلى وضع الاستقرار والمواطنة. وكذلك فإنّ هذه الأقلّيات تعيش ضمن مجتمع أوروبي تتفاعل معه تفاعلاً يومياً، وتطمح إلى أن

¹ راجع في ذلك: راشد الغنوشي، "مسألة اللحوم ومصير الأقلّية المسلمة في الغرب"، المجلة العلمية للمجلس الأوروبي للإفتاء والبحوث، العدد 2، 2003.

تندمج فيه مستقبلاً اندماجاً إيجابياً بحيث تصبح واحداً من مكوناته الفاعلة، فالوجود الإسلامي بأوروبا هو إذن وجود جماعي على مستوى ذاته وعلى مستوى موضوعه، وهذه الخاصية علامة فارقة بين الأقليات المسلمة والعديد من الأقليات الأخرى، إذ ثمة عدد من الأقليات اقتحمت المجتمع الأوروبي بصفة الفردية التي لا يرتبط فيها الأفراد برابطة ذات شأن، فظلت الفردية خاصيتها، وانتهى أمرها أو سينتهي إلى ذوبانها أفراداً في المجتمع، وينسى وجودها في صفة الأقلية الجماعية.

ولكن مع هذا البعد الجماعي للأقلية المسلمة، فإنها أقلية متكونة من أفراد. وبالرغم من انخراط هؤلاء الأفراد في الجماعة المسلمة، فإن معنى الفردية قائم فيهم، وهو ذلك المعنى الذي يجعل بعض الأفراد ينفرد بمشكلات خاصة قد لا تكون هي مشكلات الجماعة، أو يجعل البعض الآخر لا تمثل مشكلات الجماعة مشكلات له. وهكذا فإننا نجد أنفسنا أمام مستويين في ظاهرة الأقلية المسلمة: مستوى يتعلّق بالأفراد، ومستوى يتعلّق بالجماعة.

وهذه الازدواجية التي تنبني عليها الأقلية المسلمة ينبغي أن تؤخذ بعين الاعتبار في معالجة شؤونها بفقه الترخيص؛ ذلك لأنّ شأن الجماعة يختلف عن شأن الأفراد إذا لم تكن تربطهم رابطة جماعية مهما يكن من اشتراكهم في الانتماء إلى ذات الدين أو الثقافة أو العرق. فربّ نازلة أُفتي فيها بترخيص لأفراد ولا يُفتى فيها بذلك للجماعة، والعكس صحيح؛ لأنّ الفتوى بالرخصة أو بالعزيمة للأفراد باعتبارهم أفراداً لا تتعدّى آثارها ذوات أولئك الأفراد، بينما الفتوى بذلك للجماعة جماعة تمتدّ الآثار فيها إلى أفرادها وإلى الروابط التي تربط بينهم.

ولذلك فإنّ فقه الترخيص الذي نحن بصددّه ينبغي أن يكون شديد المراعاة لهذين المستويين، فلا يُفتى برخصة ذات بعد جماعي في نازلة هي من خصوصيات فرد أو جماعة قليلة من الأفراد، كما لا يفتى بالترخيص لفرد بفتوى

يقصرها عليه والحال أنّ النازلة التي تطلبها هي نازلة جماعية. وإذا لم تقع مراعاة ذلك، فإنّ الفتوى بالرخصة قد لا تصيب هدفها، بل قد تصيب هدفاً غير هدفها فتسبب إرباكاً كبيراً، ولنا أن نتصور مقدار ذلك الإرباك على سبيل المثال لو عمّم الترخيص بالزواج العرفي الذي قد يُفتى به في حالات نادرة تستوجبه، أو لو خُصّص الترخيص بتطليق القاضي غير المسلم ببعض الحالات الفردية، إذ تعميم الأول يفضي إلى فوضى عارمة في أحوال الأسرة، وتخصيص الثاني يفضي إلى الحرج الشديد.

وربما يكون من الأجدر بوضع الأقليات أن يميل الإفتاء بالترخيص فيه نوعاً ميل نحو الجانب الاجتماعي، فيؤلّى الأهمية الكبرى في هذا الشأن، وترجّح فيه الفتوى بالرخصة على الفتوى بما فيما يتعلق بالأفراد إذا كان بينهما تعارض؛ وذلك في سبيل تدعيم الكيان الجماعي للوجود الإسلامي بأوروبا ليكون قادراً على النهوض بأهدافه التي لا يقدر على النهوض بها الأفراد بصفتهم الفردية. فلو أُفتي بالترخيص للجمعيات الإسلامية في شراء المدارس والمراكز والمساجد بقروض الفوائد دون الأفراد، لكان ذلك إفتاء موفقاً فيما نقدّر؛ إذ هو غلب المصلحة التي تحصل لجماعة المسلمين على ما قد يحصل للأفراد منها.

ويندرج ضمن هذا البعد الاجتماعي في فتوى الترخيص المجتمع الموسّع الذي يعيش فيه المسلمون والذي يضمّ مسلمين وغير مسلمين، فهذا المجتمع ينبغي أن لا تناله فتاوى الترخيص بضرر بدعوى ما يحصل منها من مصلحة للمسلمين، وما أقبح تلك الفتاوى التي يصدرها بعض الأغرار الجهلة بالترخيص في استحلال أموال غير المسلمين، أو بالترخيص في مخالفة القوانين المنظمة لشؤون المجتمع، أو غير ذلك من التراخيص المخلة بالمجتمع الموسّع الذي يعيش فيه المسلمون.

هذه بعض القواعد العامة التي ينبغي فيما نقدّر أن توجه الاجتهاد في فقه

الترخيص الذي به تصدر الفتاوى والقرارات القائمة على الترخيص، وذلك من أجل أن يكون هذا الفقه مناسباً للوضع الذي عليه الأقلية المسلمة في واقعها الراهن من حيث صفته الاستثنائية، ومن حيث ما هو متحوّل إليه من مصير الاستقرار والثبات، فتتبع فتاوى الترخيص إذن على محالّها من القضايا، وتحقّق فيها مقاصدها، ضمن الغايات والمقاصد التي يتطوّر إليها الوجود الإسلامي بأوروبا، دون أن يحدث ارتباك في المسير إلى تلك الأهداف بسبب الميل في فقه الترخيص إلى غير مقاصده.

خامساً: الإفتاء بفقه التأسيس

أشرنا سابقاً إلى أنّ الوجود الإسلامي بأوروبا يمرّ بمرحلة انتقالية من وجود ظرفي عرضي إلى وجود مستقرّ مواطن، وهذه المرحلة التي هو نازع إليها ومتقدّم فيها تقتضي مقتضيات وترتب واجبات والتزامات غير تلك التي تقتضيها وترتبها المرحلة العرضية المتناقضة لفائدة مصير الاستقرار والمواطنة؛ إذ حينما يصبح المسلمون مكوناً أساسياً من المكونات المواطنة بأوروبا، فإنّ ذلك يقتضي أن يكون الوجود الإسلامي مسهماً حقيقياً في الحركة الحضارية للمجتمع الأوروبي، يعطي كما يأخذ، ويفيد كما يستفيد، ويرشد المسار الحضاري العام، ويشترك في حلّ مشكلاتها وأزماتها.

وهذا المصير الذي سينتهي إليه الوجود الإسلامي، والذي هو الآن متّجه إليه بسرعة، وما يقتضيه من مقتضيات ويترتب عليه من واجبات يستلزم من الإفتاء أن يتعامل معه بنظر فقهي غير النظر الفقهي الذي يتعامل به معه في مرحلته الظرفية التي هي الآن المظهر الأبين في حياته، والتي يبدو أنّ الإفتاء قضى السنوات الماضية في معالجة قضاياها ومشكلاتها بفقه تغلب عليه فتاوى الترخيص تناسباً مع صفتها الظرفية من ظرفي البداية والنهاية.

وبما أنّ هذا الوجود الإسلامي بأوروبا آيل إلى المواطننة والاستقرار، فإنّ النظر الفقهي في شأنه ينبغي فيما نحسب أن يتّجه في ذات اتجاهه، فيكون فقهاً سمّته العام هو سمت التأسيس لوجود إسلامي مواطن مستقرّ، بدل ذلك السمت العام الذي طبع فقه المرحلة السابقة بطابع الترخيص تلاؤماً مع طبيعة المرحلة الظرفية، علماً بأنّ هذه التقسيمات تحمل شيئاً من الاعتبارية، إذ المراحل متداخلة، والاستثنائية في حياة الأقلّية سوف يبقى قسط منها قائماً حتى في حال المواطننة والاستقرار. وذلك ما يترتّب عليه أن فقه الترخيص سوف يكون له استمرار في تلك الحال، فيكون المقصود إذن بمقارنتنا هذه هو أن يتّجه الإفتاء في المرحلة المقبلة إلى نظر فقهي مؤسّس للوضع الإسلامي المواطن، مع استصحاب الإفتاء بالرخصة فيما سوف يبقى من مظاهر الحياة يتّصف بصفة الاستثنائية.

أ- مدلول فقه التأسيس

وفي شرحنا لمفهوم فقه التأسيس نستدعي ما كنّا قد قدّمناه من اقتراح بتوسيع مدلول الفتوى من مدلول يغلب عليه معنى الجزئية والظرفية إلى مدلول يتّسع ليشمل الإفتاء في كبريات القضايا التي تتعلّق بمصير المسلمين في مجتمعاتهم الأوروبي، ومنهجهم في التفاعل معه، وانخراطهم في حركته الحضارية الشاملة، وإسهامهم في تطويره وترشيده اجتماعياً وأسرئياً وروحياً وبيئياً، ووصلهم بينه وبين العالم الإسلامي من أجل التعارف الحضاري، وتحقيق السلام والأمن بين الشعوب والأمم.

هل يمكن أن تكون هذه القضايا وأمثالها مما هو متعلّق بمستقبل المسلمين في أوروبا مناطاً للإفتاء الفقهي، فيكون هذا الإفتاء متّجهاً إذن إلى فقه يؤسّس لذلك المستقبل؟ أم أنّ هذا الدور يبقى محصوراً في إفتاء فقهي يتصدّى لمعالجة النوازل الجزئية وشبه الجزئية التي تجري بها الحياة اليومية للمسلمين؟ إنّه فيما نرى

إذا كان الإفتاء فيما تجري به الحياة اليومية من النوازل أمراً لا مناص من أن يكون مستمرا لتجدد تلك النوازل باطراد، فإن المسلمين فيما هم متجهون إليه من مصير المواطنة المستقرّة ينتظرون من دوائر الإفتاء - وعلى رأسها المجلس الأوروبي - أن تفتيهم أيضاً في هذه القضايا المصيرية الكبرى التي هم مقبلون عليها، والحال أن المجلس هو مرجعيتهم الكفيلة بأن توجههم إلى ما ينبغي أن يصيروا إليه وفق مقاصد الدين، وليكن معنى الإفتاء إذن معنى موسّعاً يشمل معنى الإفتاء الحضاري العام إلى جانب معنى الإفتاء في النوازل الجزئية وشبه الجزئية، وليكن الفقه الذي يتجه إليه المجلس في هذه المرحلة هو فقه التأسيس.

ولا شك أن المجلس كان يستبطن الحاجة إلى هذا الفقه منذ تأسيسه، وهو ما يدلّ عليه تصديده لبعض القضايا من ذلك الصنف المشار إليه، مثل قضية مستقبل الأسرة الإسلامية في أوروبا،¹ وقضية المشاركة السياسية للأقليات المسلمة.² ولكن حاجة تلك الأقليات للإفتاء في نوازلها الآنية المتراكمة كانت ضاغطة عليه كي يوجّه شطراً كبيراً من جهده للجواب عليها، وقد آن الأوان بعد مرور ما يزيد على عقد من العمل الجاد أن يوجّه المجلس شطراً مهماً من جهده نحو فقه تأسيسي لمستقبل المسلمين بأوروبا مع استصحاب الإفتاء في النوازل الظرفية الطارئة. وهكذا تتكامل الحلقات الفقهية التي تفتي للأقليات المسلمة بين ما يعالج قضاياها المتعلقة بوجودها الظرفي التي ينفسج فيها مجال لفتاوى الترخيص، وما يعالج قضاياها المتعلقة بمصيرها مكوّناً وطنياً أوروبياً فاعلاً، وهو ما ينفسج فيه مجال واسع لفقه التأسيس.

¹ راجع البحوث المنشورة في المجلة العلمية للمجلس، العدد 7، 2005.

² انظر البحوث المنشورة في المجلة العلمية للمجلس، العددان 10-11، 2007.

ب- منهج فقه التأسيس

قد تكون التوجّهات المنهجية للإفتاء التأسيسي تختلف بعض الاختلاف عن تلك التي تتعلّق بالإفتاء الترخيصي، وذلك لاختلاف الوضع الذي يقع الإفتاء له. فحينما يكون الوضع المفتى فيه وضعاً ظرفياً، ونوازل نوازله جزئية، فإنّ منهج الإفتاء الذي يناسبه هو المنهج الذي وصفنا بعض خصائصه آنفاً فيكون متّجهاً وجهة التيسير بالرخصة، والتفصيل بالتجزئة، والاهتمام بالنوازل الفردية مع الجماعة. وأمّا حينما يكون الوضع الذي يُراد الإفتاء له هو وضع المصير العام للمسلمين، ووضع المواطنة الفاعلة المنتظرة منهم، والتي هي هدف وجودهم المستقبلي، فإنّ الإفتاء لهذا الوضع قد يقتضي منه ذلك أن يكون متّجهاً في منهجية الإفتاء وجهة أخرى تتفق مع الوجهة الأولى في بعض الخصائص، وتنفرد بخصائص أخرى لعلّ من أهمّ عناصرها ما يلي:

أولاً: التوجّه المستقبلي: إنّ الوجود الإسلامي بأوروبا هو وجود شديد النزوع للمستقبل، فهو كما ذكرنا سابقاً يضع هدفاً له أن يكون مكوناً أساسياً من مكونات المجتمع الأوروبي، ومساهماً من المساهمين في مصيره. ولذلك فإنّه لئن كان يتحسّس حاضره ليعالج فيه المشكلات الآنية الناجمة عن وضعه الظرفي، وليواجهه الابتلاءات التي تفرزها الحياة اليومية، فإنّه يرنو إلى ذلك المستقبل الذي سيكون له فيه شأن في الشراكة الحضارية مع سائر المكونات الأوروبية، وهذا ما أصبح اليوم ظاهراً في خطاب طلائع الدعاة والمفكرين المسلمين بأوروبا، ويبدو أنّ هذا الأمر أصبح يتقدّم بسرعة في وعي الأقليات المسلمة، وفي الأجيال الجديدة منها على وجه الخصوص.

والمجلس الأوروبي لئن كان هو أيضاً منشغلاً خلال الفترة السابقة بالإفتاء الفقهي لما يشغل حاضر الأقلية من الهموم، وما يعرض لها من النوازل، فإنّه فيما

نقدّر ينبغي أن يواكب هذه الأقلية في آمالها المستقبلية، وفي أهدافها التي تقتضيها المواطنة، وذلك بأن يمتدّ نظره الفقهي إلى المستقبل أيضاً ليكون له فتاوى في شؤون تتعلّق به وإن لم تكن مطروحة في الحاضر.

إنّ التفكير في الوضع المستقبلي للأقليات المسلمة في أوروبا لئن كان في وجوبه يشمل أصنافاً من المهتمّين بالوجود الإسلامي ربما يكون على رأسهم المفكّرون الاستراتيجيون وعلماء المستقبل، إلّا أنّ المجلس الأوروبي ينبغي أن يكون مواكباً لهذا التفكير بصفة أساسية؛ وذلك لأنّ الأوضاع المستقبلية التي ستؤول إليها الأقليات المسلمة ينبغي أن تكون أوضاعاً محكومة بأحكام الشرع ومحقّقة لمقاصده، وأن تكون مبنية على ذلك في مقدّماتها التي هي الآن قيد التشكّل، فتتّجه إذن منذ نشأتها على سمت شرعي، وهذه مهمّة لا يمكن أن يقوم بها إلّا المجلس الأوروبي للإفتاء، فينبغي إذن أن ينخرط فيها بفقّه يؤسّس فيه للمستقبل الذي ينشده المسلمون في هذه البلاد.

وليس من شأن هذا الفقه أن يكون "أرأيتياً" نظرياً على نحو ذلك الجدل الذي حدث في تاريخ الفقه الإسلامي، وإنّما هو نظر فقهي في قضايا المستقبل التي هي ناشئة بداياتها في الحاضر، ليكون فيها توجيه شرعي يواكبها في سيرورتها، ويعصمها من الانحراف الذي تكثّر مغرباته وأسبابه.

كيف ستكون المشاركة السياسية للمسلمين في المستقبل، بل كيف ستكون مشاركتهم في الحكم إذ هو أمر وارد؟ وكيف سيكون وضعهم وأثرهم غداً في نطاق الوحدة الأوروبية الشاملة التي هي قيد التشكّل الآن؟ وكيف سيكون المسلمون الأوروبيون حلقة وصل متينة فاعلة بين أوروبا والعالم الإسلامي؟ وكيف سيكون اندماجهم في المجتمع الأوروبي اندماجاً يقوم على معادلة دقيقة بين الحفاظ على هويتهم والتفاعل مع المجتمع؟ تلك نماذج من القضايا المستقبلية التي يمكن أن يكون

للإفتاء فيه توجيه فقهي مؤسس لمستقبل المسلمين.

ثانياً: **التأسيس على العزائم**: بما أن المرحلة التي هي محلّ الإفتاء بفقهِه التأسيس هي مرحلة للوجود الإسلامي بأوروبا تنزع إلى الاستقرار والاستمرار، فإنّ الفقه المناسب لها لعلّه يكون الفقه الذي يغلب عليه منزع العزائم من الأحكام بديلاً من ذلك المنزع الترخيصي الذي كان يغلب على الإفتاء تناسباً مع مرحلة الوجود العرضي كما شرحناه؛ وذلك لأنّ الوجود المستقرّ للمسلمين كمواطنين يجعلهم يؤسسون حياتهم على حال طبيعية أو أقرب إلى الطبيعية، سواء في أعمالهم أو في أسرهم، أو في علاقاتهم بالدولة ومؤسسات المجتمع، فتكون إذن تلك الحياة راسية في كلّ وجوهها أو في أغلبها على وضع من التمتع بحقوق المواطنة والتكليف بواجباتها.

وهذا الوضع لئن كان معنى الاستثنائية فيه قائماً باعتبار إسلاميته الخاضعة لقانون غير إسلامي، إلّا أنّ مساحة الأحكام بالعزائم فيه من المناسب أن تتسع شيئاً فشيئاً على حساب مساحة الرخصة لما هو متّجه فيه إلى صيرورة الدوام، فالحالات التي تستمرّ على وضع عادي أخرى أن تعالج بالعزيمة، بينما تُعالج الحالات التي تنخرق فيها العادات بالرخصة كما أشار إليه الشاطبي في مقولته الأنفة الذكر. فكّلما آلت الأوضاع إلى مستقرّ العادة كانت العزائم بها أليق، وكّلما آلت إلى انخراطها كانت الرخص بها أليق، وبما أنّ وضع الأقليات المسلمة بأوروبا متّجهة إلى المواطنة العادية، فإنّ الاتجاه بالفقه الذي يعالجه إلى العزيمة يكون هو الأنسب له.

وعلى سبيل المثال فإنّ الترخيص بالقرض الربوي لشراء البيوت إذا كان مناسباً للمرحلة التي تكون فيها الأقلّية في ظروف عرضية، فإنّه في مرحلتها المقبلة التي هي مرحلة الاستقرار ينبغي أن يتّجه الإفتاء الفقهي إلى البحث عن الصور التي يتمّ بها

شراء البيوت بطرق غير ربوية، وتقدم مقترحات في ذلك قائمة على حكم العزيمة بمنع الربا. وفي نفس هذا الاتجاه ينبغي أن يتجه الإفتاء لما هو متأكد أشد التأكيد مما يتعلق بالتمويل من أجل التجارة وإقامة المشاريع التجارية، وذلك بأن تُقدم مقترحات تقوم على فقه يؤسس لبدائل غير ربوية تلبي هذه الحاجة المؤكدة للأقليات المسلمة دون الاكتفاء بموقف الإفتاء بالمنع والوقوف عنده.

وعلى سبيل المثال أيضاً، فإنه إذا كان التقاضي في أحوال الأسرة رخص فيه أن يكون تقاضياً إلى قاض غير مسلم، فإنه ينبغي البحث عن صور أخرى يرجع الأمر فيها إلى العزيمة، كالتحكيم الذي تجيزه بعض البلاد الأوروبية ويتم من خلاله التقاضي على الوجه الشرعي عزيمة في غير مناقضة للقانون. وهكذا يكون النظر الفقهي مدعواً إلى أن يساعد الأقلية المسلمة في حلول مشكلاتها بتجاوز موقف إجازة الرخصة، أو موقف الاكتفاء بمنعها تمسكاً بالعزيمة، إلى موقف آخر يتمسك بالعزيمة ولكنه يبيّن سبلها، ويقترح الأشكال التي تتم وفقها، فيكون إذن مشرعاً لفقه تأسيسي يقوم على عزائم الأحكام بدل التراخيص.

ثالثاً: التوجه المؤسسي: إذا كانت الفتوى في شؤون الأفراد من المسلمين والحالات الخاصة من حالاتهم سيكون لها استمرار باعتبار تعلقها بتجدد الحياة اليومية وابتلاءاتها فإن الحياة التي سينخرط فيها المسلمون في مستقبل وجودهم سوف تكون حياة تأخذ فيها المؤسسة حيزاً كبيراً منها؛ ذلك لأن المجتمع الأوروبي مجتمع يقوم على المؤسسات اقتصادياً على وجه الخصوص واجتماعياً وسياسياً، ففعالية الفرد في المجتمع إنما تمرّ بانخراطه الفاعل في المؤسسة، إذا كان سياسياً ففي الأحزاب، وإن كان اقتصادياً ففي الشركات، وإن كان مثقفاً ففي المؤسسات العلمية الثقافية، وهكذا تكون المؤسسة هي المحرك الأكبر لحياة المجتمع، والفرد إنما يفعل من خلالها.

وليس بوسع المسلمين أن يكون لهم دور في المجتمع إلا إذا انخرطوا في آليته الكبرى التي تحركه وهي آلة المؤسسة، سواء كانت مؤسسة ذات خصوصية إسلامية من مراكز ثقافية وشركات تجارية ومنظمات اجتماعية وغيرها، أو مؤسسة عامة تجمع جميع المواطنين كالأحزاب السياسية والمنظمات الإنسانية والحقوقية، والشركات الاقتصادية والخدمية وغيرها. فمن خلال هذه المؤسسة يمكن أن يقوم المسلمون بدورهم المطلوب منهم في مآلهم من الاستقرار والمواطنة.

إنَّ انخراط المسلمين في النظام المؤسسي للمجتمع الأوروبي سيجعلهم يواجهون أوضاعاً ويمارسون معاملات لم يكن لهم بها عهد من قبل؛ وذلك لأنَّ الثقافة الاجتماعية في البلاد الإسلامية لم تكن قائمة على المؤسسة، وقد استصحبوا ذلك في مجتمعهم الأوروبي في مرحلتهم الظرفية، ولكنَّ اندماجهم المجتمعي الذي هم متجهون إليه سيجعلهم في مواجهة مع تلك الأوضاع في التعامل المؤسسي.

وهذا الوضع يقتضي من جهات الإفتاء وعلى رأسها المجلس الأوروبي أن تتجه في فقه الأقليات وجهة تتناول بالفتوى فيها المعاملات المؤسسية التي ستواجه المسلمين بكثافة في المرحلة المقبلة، والتي ستستغرق شطراً كبيراً من مناشطهم، والتي أيضاً ستوقّف عليها إلى حدٍّ كبير فعايلتهم الاجتماعية، ومشاركتهم في التنمية، وذلك بالإضافة إلى نجاحهم في أنموذجيتهم الإسلامية المرصودة من قبل المجتمع.

كيف سيشارك المسلمون في العمل السياسي ضمن المنظمات السياسية؟ وكيف سيتعاطون مع هذه المؤسسات؟ وكيف سينخرطون في المؤسسات الاقتصادية ويمارسون أعمالهم من خلالها؟ وكيف سيتصرفون في المؤسسات والشركات الخاصة بهم سواء باعتبارهم شركاء أو باعتبارهم مديرين ومسيرين؟ وهكذا سوف تظهر

أسئلة كثيرة في هذا الشأن تتطلب كلها أجوبة فقهية من شأنها أن تكون فتاوى مؤسسة لوجود إسلامي يتجه وجهة الاستقرار على حياة تشغل المؤسسات شطراً كبيراً من مناشطها، وتتوقف النجاعة إلى حد كبير عليها.

وإنما يتحقق الفقه التأسيسي في هذا الشأن بأن يستحضر الفقيه أمّهات القضايا فيه، استرواحاً من الواقع، واستشراً لما يكون للمسلمين فيه إسهام فاعل، ويقع درسها الدرس المستفيض، ثم تقرّر فيها الأحكام الفقهية التي من شأنها أن تجعل المسلمين عند الأخذ بها يتقدمون في تنمية كيانهم الإسلامي، وتنمية المجتمع بأكمله من خلال ذلك. وما إخال تخصيص المجلس الأوروبي لدورتين من دوراته للبحث في مؤسسة الأسرة، وتخصيص دورة أو أكثر للبحث في العمل السياسي وهو في مجمله عمل مؤسسي إلاّ نتيجة لوعي مبكر منه لأهمية التأسيس الفقهي للعمل المؤسسي.

رابعاً: الشراكة الحضارية: ذكرنا سابقاً أنّ المسلمين في أوروبا باتوا يهدفون في وجودهم المستقبلي إلى أن يكونوا شركاء حضاريين لمكونات المجتمع الذي يعيشون فيه بما أنّهم أصبحوا مواطنين من مواطنيه، وهو ما يعني أنّه كما من حقهم أن يستفيدوا من المقدّرات الماديّة والمعنوية الموفّرة في هذا المجتمع فإنّ من واجبهم أن يكونوا مساهمين فيه بالتطوير والتنمية والترشيد وحلّ المشكلات ما استطاعوا إلى ذلك سبيلاً.

وهذه الشراكة الحضارية أخذاً وعطاءً إذا كانت أمراً مطلوباً، وهي أمر مقدور عليه من حيث الإمكان، فإنّها من حيث الإنجاز تتعلق بها وجه شرعي يحتاج إلى اجتهاد فقهي تستبين به الوجوه المشروعة ديناً والمجدية فعلاً، إذ قد تختلط فيها السبل بين جائز في الدين وممنوع، سواء في طرف الأخذ أو في طرف العطاء، وذلك مثل المضيّ في الاستفادة من المجتمع بكلّ الطرق التي هي جائزة

في قوانينه وهي ممنوعة في أحكام الشريعة من معاملات ربوية، وتأمينات قائمة على الغرر وما شابه ذلك، ومثل المضي في إفادة المجتمع بذات تلك الطرق من انخراط في مواقف معادية للأمة الإسلامية أو لغيرهم من المستضعفين في الأرض، أو ما شابه ذلك من القضايا.

ولهذا فإن الإفتاء يكون مطلوباً منه أن ينير السبيل للمسلمين فيما تقتضيه هذه الشراكة الحضارية المطلوبة منهم في طرفي الأخذ والعطاء من التزام فيها بأحكام الشريعة، فيجتهد إذن في القضايا المندرجة فيها ليقرر أحكاماً هادية يستنير بها المسلمون في مسيرتهم المستقبلية في هذه الطريق، مفرقاً في وضوح بين ما هو من القوانين التي ارتضاها المجتمع نظاماً لحياته موافقاً لأحكام الشرع فيمارسون الشراكة الحضارية من خلالها، وبين ما هو مناقض له فيجتهد في التعامل معه بما لا يخل بالمقتضيات الدينية.

ومن البين أن الاجتهاد الفقهي في هذا الشأن سوف يكون متجاوزاً ما فيه مصلحة المسلمين بصفة مباشرة إلى ما فيه مصلحة المجتمع الأوروبي بصفة عامة، إذ المسلمون مطلوب منهم أن يقدموا لمجتمعهم ما فيه صلاحه، والنظر الفقهي مطلوب منه أن يرشد بالفتوى الفقهية ذلك العطاء، فيكون هو أيضاً منخرطاً في التشريع لما فيه خير لذلك المجتمع بصفة مباشرة، وربما يكون هذا المنحى مطلباً لنظر فقهي غير ما كان معهوداً من إفتاء يتعلّق بجماعة المسلمين ويحلّ مشكلاتهم الخاصة مهما يكن من أن ذلك يتعدى صلاحه إلى كافة المجتمع، فيكون إذن هذا الفقه معنياً بمصلحة المجتمع الأوروبي، وذلك باعتبار أن هذه المصلحة هي همّ من هموم المسلمين المطلوب منهم العمل لأجل مصلحة مجتمعهم بوصفهم شركاء حضاريين فيه، والإفتاء إنما انتصب لترشيد همومهم ما تعلّق منها بوجودهم كمسلمين، وما تعلّق بوجودهم كمواطنين.

ماذا وكيف على المسلمين أن يقدموا لمجتمعهم الأوروبي في مجال الابتكار والريادة العلمية، وفي مجال الترابط الأسري والاجتماعي، وفي مجال الإشباع الروحي، وفي مجال العلاقة مع العالم الإسلامي والاستفادة من مقدراته، وفي مجال مقاومة العنف والمخدرات والإجرام، وفي مجال معالجة الأزمة البيئية، وفيما يشبه ذلك من القضايا؟ ما فتى المجلس الأوروبي في كل دورة من دوراته ينصح المسلمين بأن يكونوا في صالح مجتمعهم، ويعظمهم بذلك ويوجههم إليه، ولكن الأمر ينبغي أن لا يقف عند ذلك الحد، بل لا بد أن يتعداه إلى إفتاء فقهي عميق في جوانب كثيرة من تلك القضايا من شأنه أن يتأسس عليه الوجود الإسلامي في مرحلته المقبلة.

إنّ هذه الخصائص المنهجية نحسب أنّ الإفتاء للأقليات ممثلاً بالأخص في المجلس الأوروبي ينبغي أن يأخذها بعين الاعتبار في خطته المستقبلية، وذلك من أجل أن يساعد المسلمين بأوروبا على تأسيس حياتهم المستقبلية تأسيساً إسلامياً واعياً، يستجيب لوضع المواطنة الذي هم مقبلون عليه، والذي يقتضي منهم أن يكونوا متفاعلين مع المجتمع تفاعلاً إيجابياً، ينتفعون منه ويقدمون له المنافع، وذلك من خلال حياة مستقرّة يوجهها فقه تأسيسي لا يقتصر على معالجة النوازل اليومية الطارئة بإفتاء ذي طابع جزئي، وإنما يضيف إلى ذلك إفتاء في كبريات القضايا المتعلقة بمستقبل الأقليات المسلمة، ودورها المستقبلي في أوروبا.

ج- مقتضيات الفقه التأسيسي

إنّ هذا الفقه التأسيسي المطلوب من الإفتاء أن يمضي فيه يتطلّب فيما نقدّر من المقتضيات أكثر مما كان يتطلّبه الفقه الترخيصي الذي كان سمة سائدة في المرحلة السابقة؛ وذلك بالنظر إلى كونه يتناول قضايا ذات أبعاد متنوّعة قد تكون لها صلة بعلوم أخرى غير فقهية، وهو ما يستلزم توسيعاً في مجال البحث

من أجل الإفتاء، كما يستلزم استعداداً مادياً أكبر مما جرى عليه العمل، وذلك بالإضافة إلى ضبط خطة عملية للإنجاز يراعى فيها التوازن بين المتابعة لما هو آني من حاجات المسلمين، وما هو مستقبلي تأسيسي منها.

فحينما نتحدث عن فقه تأسيسي للأقليات المسلمة فإن أول ما يتبادر إلى الذهن هو القضايا التي ينبغي أن يتناولها هذا الفقه بالإفتاء، والتي تمثل بحق أركاناً تأسيسية لحياة المسلمين المستقبلية في أوروبا، سواء فيما يتعلق بالتأسيس الذاتي لجماعة المسلمين، أو ما يتعلق بالتفاعل مع المجتمع التفاعل المنتج الذي يحقق أهداف الوجود الإسلامي وفق رؤية شرعية. ونورد تالياً نماذج من تلك القضايا نراها تندرج ضمن ما يستحق أن يشملها النظر الفقهي التأسيسي:

. المشاركة السياسية للأقليات المسلمة في أوروبا.

. الدور الاقتصادي للأقليات المسلمة.

. الاندماج المسلمين بأوروبا في المجتمع.

. العقول المسلمة ودورها في التنمية بأوروبا.

. دور المسلمين الأوروبيين في مقاومة العنف والانحراف في المجتمع.

. دور المسلمين الأوروبيين في معالجة الأزمة البيئية.

. دور المسلمين بأوروبا في العلاقات الأوروبية الإسلامية.

. المسلمون بأوروبا بين الولاء الوطني والولاء للدين والأمة.

. كيف يستفيد المسلمون من المجتمع الأوروبي

إنّ تناول مثل هذه القضايا بالإفتاء الفقهي يستلزم جهوداً بحثية كبيرة؛ ذلك لأنها قضايا ذات امتدادات متعددة، اجتماعية وسياسية واقتصادية وثقافية، ولا يمكن التوجيه الفقهي فيها إلا بناء على معطيات علمية تتعلق بتلك الجوانب كلّها. ولذلك فإنه ينبغي في سبيل الإفتاء فيها أن تتوسّع دائرة البحث الممهّد للإفتاء،

استعانة بباحثين من تخصصات متعددة، وإقامة لندوات ومؤتمرات علمية متخصصة تتعلق بالقضايا المطروحة، ودعمًا ماليًا لتوفير متطلبات البحث ونشر نتائجه، وتخطيطًا لمناهجه ومساراته.

وبما أنّ الكثير من هذه القضايا لها علاقة بعلوم غير فقهية، فإن ذلك يستلزم الاستعانة بخبراء فيها. وإذا لم يعتمد الإفتاء للأقليات بعد هذا المنهج بما هو كاف، فإنّ هذا الفقه التأسيسي يستلزم انتداب بعض الخبراء في مجالات اهتمامه من صنف الاقتصاديين والقانونيين، والاجتماعيين، والاستراتيجيين، وعلماء المستقبلات، لينظموا إلى دوائر الإفتاء بصفة ما من الصفات المؤقتة أو الدائمة، استعانة بهم في المداولات التي تقع في شأن الإفتاء، فتلك ضرورة لترشيد الاجتهاد الفقهي في مثل هذه القضايا.

خاتمة

إذا كان النظر الفقهي قطع مرحلة مهمّة في الإفتاء للأقليات المسلمة بفقه ينحو في طابعه العامّ منحى الترخيص لمعالجة الوضع الاستثنائي لهذه الأقليات، فإنّه في المرحلة المقبلة يجدر به أن يضيف إلى ذلك منهجاً يقوم على الإفتاء بفقه تأسيسي ينحو منحى العزائم، ويتناسب مع تطوّر وجود الأقليات الذي أصبح يتّجه نحو المواطنة المستقرّة، فيعمل على معالجة قضايا هذه المواطنة ومقتضياتها، وهو ما يتطلّب اجتهاداً فقهيّاً يؤسّس لهذه الأقليات في وضعها الجديد أن يكون لها دور فاعل في المجتمع الأوروبي، تصبح فيه شريكاً حضارياً في هذا المجتمع، تستفيد من كسبه، وتسهم في تنميته وتطويره وترشيده. والله ولي التوفيق.

CHAPTER 12

قضايا الإفتاء للأقليات المسلمة في أوروبا الغربية بين الاحتياجات العملية والمُوجّهات المقاصدية

أحمد جبالله

مقدمة

إن مطالبة الأقليات بالمساواة مع الأغلبية في الحقوق المدنية والسياسية في العديد من دول أوروبا الغربية ليست من قبيل المطالبة بأمر غير حاصل من الناحية القانونية، إذ إن القوانين لا تميز بين المواطنين مهما اختلفت أصولهم وأديانهم، وإنما هي مطالبة من الناحية الواقعية والاجتماعية تحتاج إليها كل مجموعة حديثة في المجتمع حتى تتمكن فيه وتندمج في نسيجه. وبالتالي فإن ما نجده من نضال لنيل المساواة في الحقوق لا ينطلق من منطلق الأقلية، وإنما ينطلق من منطلق المواطنة وما تقتضيه من العدل والتساوي بين أبناء المجتمع الواحد. ومع نمو حجم الوجود الإسلامي في دول أوروبا الغربية وبروز أهميته السياسية والاقتصادية في تلك الدول بأقدار مختلفة، فإن الأقليات المسلمة وغيرها من الأقليات بالاعتراف لها بحق التميز في الدين والقيم أمر لا ينطلق بالضرورة من وضع الأقلية من حيث هي، وإنما ينطلق من منطلق الحقوق المكفولة لكل مواطن في المحافظة على خصوصياته الدينية والثقافية وقد أصبح الجميع اليوم يسلّم بأن المجتمعات الأوروبية الحديثة هي مجتمعات متعددة دينياً وثقافياً.

وفي ضوء ذلك فقد أصبح من الضروري إعادة النظر في مصطلح الأقليات الذي نريد أن نعرّف به المسلمين في أوروبا، فهم وإن كانوا أقلية من حيث العدد، إلا أنهم لا ينطلقون من منطلق الأقلية للمطالبة بحقوقهم والمحافظة على خصوصياتهم، فكيف يمكننا إذن أن نعرّف الوجود الإسلامي بأوروبا اليوم؟ يمكننا القول بأن المسلمين في أوروبا هم مواطنون يمثلون أقلية باعتبار انتمائهم الديني، وبالتالي فإن من حقهم أن يطالبوا باحترام مميزاتهم في إطار الوحدة الوطنية التي تربطهم بغيرهم من مواطني بلدهم الأوروبي. وإن الانطلاق من هذا المنطلق هو التكييف الأسلم للحضور الإسلامي بأوروبا؛ لأن الأقلية التي تركز في مطالبتها على عناصر الاختلاف مع الأغلبية دون أن تؤكد انتماءها للمجموعة الوطنية تثير نوعاً من الخوف والريبة لدى الأغلبية التي تنظر إليها على أنها أقلية تريد أن تغير الموازين وتزعزع عناصر الوحدة والانسجام في المجتمع، ويجب أن نعترف بأن هذا التخوف هو أمر طبيعي في كل مجتمع بشري تربط أفراداه عناصر من التوحد يحرص على بقائها ضماناً لانسجامه وحماية لنفسه من التصدع.

مفهوم الأقليات

إن موضوع الأقليات المسلمة التي تعيش في مجتمعات غير إسلامية، يُعدّ اليوم من القضايا التي تستقطب أنظار العديد من الباحثين والدارسين؛ وذلك لأن وجود العديد من المسلمين كأقليات في بلاد كثيرة يعتبر ظاهرة جديدة، ولم يكن لها في تاريخ المسلمين سوابق قديمة، إذا ما استثنينا الوجود الإسلامي في آخر العصر الأندلسي. ولعله لهذا السبب لا نجد في كتب الفقه بحثاً من الناحية الفقهية يتصل بأوضاع المسلمين عندما يعيشون أقلية في مجتمعات غير إسلامية، في حين أن أوضاع غير المسلمين في المجتمع الإسلامي والأحكام المتعلقة بهم، مما تعرض له الفقهاء في كتبهم.

إن الأقليات المسلمة في أوروبا تبلغ في تقدير بعض الباحثين ما يزيد عن خمسين مليون نسمة بين مواطنين أصليين ومهاجرين، وهم بهذا أصبحوا يشكلون وجوداً اجتماعياً هو اليوم محل اهتمام الدارسين وأصحاب القرار وعموم الرأي العام في المجتمعات الأوروبية، ويعود هذا الاهتمام إلى عدة أسباب من أهمها:

1. أن الوجود الإسلامي مرشح للنمو العددي بحيث أنه سيصبح مكوناً ديموغرافياً واجتماعياً هاماً في العديد من المجتمعات الأوروبية.
2. أن المسلمين، بما يحملونه من خصوصيات دينية وثقافية، يمثلون في نظر الأوروبيين عنصراً جديداً في تركيبة مجتمعاتهم التي هي مجتمعات مسيحية التدين والثقافة.

3. أن ما يشهده موضوع الإسلام والمسلمين في العالم من اهتمام في الإعلام ولدى رجال السياسة والفكر، تجعل الوجود الإسلامي بأوروبا من القضايا الحساسة التي تشغل المجتمعات الأوروبية، فلم يعد الإسلام أمراً خارجياً بعيداً عن هذه المجتمعات، وإنما قد أصبح جزءاً من واقعها، وإن الاعتراف بالوجود الإسلامي الفعلي أصبح اليوم من المسلمات الواضحة التي لا تحتل الجدل. ولعله من المفيد قبل أن نخوض غمار البحث أن نُحدّد بإيجاز المقصود بمصطلح الأقليات، فهي كما عرفها طه جابر العلواني: "مصطلح سياسي جرى في العرف الدولي، يقصد به مجموعة أو فئات من رعايا دولة من الدول تنتمي من حيث العرق أو اللغة أو الدين إلى غير ما تنتمي إليه الأغلبية. وتشمل مطالب الأقليات . عادة . المساواة مع الأغلبية في الحقوق المدنية والسياسية، مع الاعتراف لها بحق الاختلاف والتميز في مجال الاعتقاد والقيم."¹

حدّد هذا التعريف أربع قضايا تهمّ الأقليات:

¹ طه جابر العلواني، "مدخل إلى فقه الأقليات"، إسلامية المعرفة، العدد 19، 1999، ص 10.

الأولى: أن الأقلية هي مجموعة من الأفراد ينتمون إلى دولة غير بلد الإقامة
 الثانية: أن هذه الأقلية تختلف في العرق أو اللغة أو الدين عن أغلبية أهل البلد.
 الثالثة: أن الأقلية تطالب بالمساواة في الحقوق المدنية والسياسية مع الأغلبية.
 الرابعة: أن الأقلية تطالب بحقوقها في التمييز في الدين والقيم.

ولكن المتأمل في واقع الأقليات المسلمة بأوروبا الغربية ومن باب أولى مسلمي أوروبا الشرقية، يجد أن عناصر التعريف السابق لا تنطبق عليها تماماً، وذلك للأسباب التالية:

1. إن المسلمين في أوروبا الغربية وإن كان القسم الكبير منهم هم من الجيل الأول الذين قدموا من دول إسلامية مختلفة، فإنه من العسير اليوم أن نربط المسلمين بدول أجنبية، وذلك لأن المهاجرين قد استوطن العديد منهم إما تجسراً وإما إقامة دائمة، وبذلك أصبحوا من مواطني هذه البلاد، حتى لو كانوا لا يحملون جنسيتها. ولذلك فإن هناك من الدول الأوروبية من يمنح حق الانتخاب في الانتخابات المحلية للمقيمين بحكم إقامتهم المستمرة فيها وإن كانوا أجنباً، وأما الأجيال الجديدة من أبناء هؤلاء المهاجرين، فإنه لا يمكن اعتبارهم بأي حال من الأحوال رعايا دول أجنبية، وإنما هم مواطنون أوروبيون؛ لأن البلد الذي نشأوا فيه ويشعرون بالانتماء إليه هو البلد الأوروبي الذي ينسبون إليه.

2. إن الاختلاف في العرق أو اللغة أو الدين ليس بالضرورة دائماً من محددات الأقلية؛ إذ أن الناظر في تركيبة المجتمعات الأوروبية الحديثة يجد أنها تنتمي من حيث العرق إلى أعراق متنوعة ومتداخلة، وهي من حيث اللغة تجمعهم لغة واحدة، وهي من حيث الدين ينقسم أهلها إلى انتماءات دينية متعددة وإن وجد دين غالب بينهم. وإن ما تعيشه أوروبا اليوم من انفتاح ديني جعلها ساحة مفتوحة أمام كل الأديان، وأمام تراجع التأثير الديني في هذه

المجتمعات أصبح أتباع الديانات المختلفة كلهم يمثلون أقليات، بل إن بعض الأديان العريقة في أوروبا مثل الديانة البروتستانتية لا تحتل في كثير من الدول الأوروبية إلا المرتبة الثالثة بعد الكاثوليكية والإسلام، على حداثه وجوده في أوروبا. ومهما كان الأمر، فإن الاختلاف في العرق أو اللغة لا يمكن أن يُشكل كياناً متميزاً لأقلية في مجتمعات تحصر على دمج أفرادها وإن اختلفت أصولهم العرقية واللغوية. وأما اختلاف الدين فليس من خصوصية أقلية دون أخرى، ولكنه أمر يتعلق تقريباً بسائر الأديان بقطع النظر عن حداثه أو عراقه وجودها في المجتمع.

3. إن مطالبة الأقليات بالمساواة مع الأغلبية في الحقوق المدنية والسياسية في العديد من دول أوروبا الغربية ليس من قبيل المطالبة القانونية لأمر غير حاصل؛ إذ إن القوانين لا تميز بين المواطنين مهما اختلفت أصولهم وأديانهم، وإنما هي مطالبة من الناحية الواقعية والاجتماعية تحتاج إليها كل مجموعة حديثة في المجتمع حتى تتمكن فيه وتندمج في نسيجه، وبالتالي فإن ما نجده من نضال لنيل المساواة في الحقوق لا ينطلق من منطلق الأقلية، وإنما ينطلق من منطلق المواطنة وما تقتضيه من العدل والمساواة بين أبناء المجتمع الواحد.

4. وأما مطالبة الأقليات بالاعتراف لها بحق التميز في الدين والقيم، فهذا الأمر لا ينطلق بالضرورة من وضع الأقلية، وإنما ينطلق من منطلق الحقوق المكفولة لكل مواطن في المحافظة على خصوصياته الدينية والثقافية، وقد أصبح الجميع اليوم يسلم بأن المجتمعات الأوروبية الحديثة هي مجتمعات تعددية دينياً وثقافياً.

وفي ضوء هذه الاعتبارات جميعاً فإنه من الضروري إعادة النظر في مصطلح الأقليات الذي نريد أن نعرّف به المسلمين بأوروبا، فهم وإن كانوا أقلية من حيث العدد إلا أنهم لا ينطلقون من منطلق الأقلية للمطالبة بحقوقهم والمحافظة على خصوصياتهم، فكيف يمكننا إذن أن نعرّف الوجود الإسلامي بأوروبا اليوم؟ يمكننا القول بأن المسلمين في أوروبا هم مواطنون يمثلون أقلية باعتبار انتمائهم الديني،

وبالتالي فإن من حقهم أن يطالبوا باحترام مميزاتهم في إطار الوحدة الوطنية التي تربطهم بغيرهم من مواطني بلدهم الأوروبي. وإن الانطلاق من هذه القاعدة هو التكييف الأسلم للحضور الإسلامي في أوروبا؛ لأن الأقلية التي تركز في مطالبها على عناصر الاختلاف مع الأغلبية دون أن تؤكد انتماءها للمجموعة الوطنية تشير نوعاً من الخوف والريبة لدى الأغلبية التي تنظر إليها على أنها أقلية تريد أن تغير الموازين وتزعزع عناصر الوحدة والانسجام في المجتمع. ويجب أن نقرّ بأن هذا التخوف هو أمر طبيعي في كل مجتمع بشري تربط أفرادها عناصر من التوحد يحرص على بقائها، ضماناً لانسجامه، وحماية لنفسه من التصدع.

ولا بد من الإشارة إلى أن الانتماء إلى أقلية دينية ليس بالضرورة علامة على ضعفها؛ إذ إن هناك أقليات دينية لها من النفوذ والتأثير ما يفوق الأكثرية الكاثرة في المجتمع.

ولعله من المهم أن نشير أيضاً إلى أن القوانين الأوروبية تتحدث عن حماية حقوق الأقليات، إلا أنها لم تحدد تعريفاً واضحاً للمقصود بالأقليات، وهو ما ذكره تقرير "معهد المجتمع المفتوح" الذي تناول موضوع حماية الأقليات في المجموعة الأوروبية، حيث يقول: "إن المجموعة الأوروبية باعتبارها منظمة تطالب بوضوح باحترام الأقليات وحمايتها من قبل الدول، وتشترط على الدول الأعضاء الجدد التعهد بذلك، فإن الانسجام داخل المجموعة يقتضي منها التركيز على تعريف موحد لمفهوم "الأقلية" في الوسط الأوروبي، وعليها أن تشجع كل الدول الأعضاء لوضع تشريع وسياسات لحماية الأقليات، ويجب أن يكون هذا التعريف قابلاً للمراجعة الدورية، وتُجرى عليه التقييمات التي تسمح بأن يؤخذ بعين الاعتبار كل مجموعات أقلية جديدة، فيتمّ على ضوء ذلك تدقيق التعريف".¹

¹ تقرير "حماية الأقليات في الوحدة الأوروبية" الصادر عن معهد المجتمع المفتوح - Open Society Institute - 2002

الأقليات المسلمة في أوروبا

تشير التقديرات الإحصائية إلى أن المسلمين في أوروبا يفوق عددهم الخمسين مليوناً، وهم يشكلون أقليات في البلاد التي يقطنون فيها، ولكن هؤلاء المسلمين تختلف طبيعة وجودهم وأوضاعهم بين أوروبا الغربية وأوروبا الشرقية، وذلك بالنظر إلى الاعتبارات الآتية:

1. المسلمون في أوروبا الشرقية هم من سكان البلاد الأصليين، وبالتالي فإنهم يتمتعون بصفة المواطنة، وهذا اعتبار مهم من نواحي عدة، فهم يسكنون بلدًا ليسوا غرباء فيه، وهم يعرفون تاريخه وظروفه، ولا يُطرح عليهم أمر الاندماج في مجتمع جديد مخالف لما عهدوه في بيئتهم الأصلية. كما أن المسلمين في القسم الشرقي من أوروبا يعيشون في دول عاشت ردحاً من الزمن تحت النظام الشيوعي، ثم هي الآن تمر بمرحلة انتقالية تتحول فيها إلى النظام الليبرالي على النمط الغربي.

وإذا نظرنا إلى الوضع الديني للمسلمين فيما يتصل بمسألة الإفتاء، فإن دول أوروبا الشرقية لها دوائر إفتاء رسمية تشرف على الشؤون الدينية في البلاد، وهي التي تعتبر رسمياً المرجعية التي تستفتى في الشؤون الإسلامية.

2. أما المسلمون في أوروبا الغربية، فهم في أغلبهم من المهاجرين الذين قدموا أو استقدموا لأوروبا من عدد من الدول الإسلامية، ولئن كان قدومهم في البداية في إطار هجرة مؤقتة إلا أن الأمر تحول بعد ذلك إلى استقرار دائم، وأصبح هذا الاستقرار أكثر وضوحاً مع نشوء الأجيال الجديدة من أبنائهم الذين يعتبرون أنفسهم مواطنين في البلاد التي نشأوا وتعلموا فيها، ويضاف إلى هؤلاء أعداد متزايدة من المسلمين الأوروبيين الذين يعتنقون الإسلام. إن طبيعة الوجود الإسلامي في أوروبا الغربية الذي يعود أساساً إلى هجرة أجنبية، اقتضت طرح إشكالية الاندماج، خصوصاً بالنسبة للمهاجرين المسلمين الذين وجدوا أنفسهم

في مجتمعات تختلف عنهم في الدين والثقافة واللغة والعادات.

ومن مميزات الوجود الإسلامي بأوروبا الغربية ما نشاهده من تحوّل في طبيعة التركيبة البشرية بين من يُطلق عليهم بالجيل الأول الذين جاؤوا ومعهم رصيد من المعرفة بالدين والالتزام بأحكامه الأساسية على تفاوت بينهم في ذلك، وبين الأجيال الجديدة التي نشأت في مجتمعات غير إسلامية وبالتالي نجد الكثير منهم مفتقراً حتى إلى معرفة البديهيات من المعلوم من الدين بالضرورة، إلا من كانت نشأته في أسرة محافظة أو من تيسر له تلقّي دروساً دينية في مسجد أو جمعية.

ولئن كان النشاط الإسلامي في توسع دائم، حيث يصل تأثيره اليوم إلى أعداد غير قليلة من أبناء المسلمين، إلا أن العديد منهم يفتقر إلى المعرفة البسيطة بدينه فضلاً عن الالتزام به، وهذا يطرح تحدياً كبيراً على المؤسسات الإسلامية ويحملها مسؤولية ثقيلة من أجل الحفاظ على هذه الأجيال وتأسيس انتمائها الإسلامي دون عزلها عن المجتمع.

ومن المهم أن نذكر أن المسلمين في أوروبا الغربية حيث لا توجد دوائر دينية رسمية في الدولة تتولى مسؤولية الإشراف على الشأن الديني الخاص، فإن تنظيم أوضاعهم الدينية العامة يتم من خلال هيئات إسلامية تمثلية يختارها المسلمون، ولا تتدخل هذه الهيئات غالباً في مسألة الإفتاء التي يتولاها الأئمة والهيئات الشرعية.

قضايا الإفتاء لمسلمي أوروبا الغربية

سنقصر الحديث عن مسلمي أوروبا الغربية لمعرفةنا القرينة بواقعهم، ولأن أوضاعهم - كما سبق أن ذكرنا - تختلف من حيث احتياجاتهم عن أوضاع مسلمي أوروبا الشرقية. ولنبدأ أولاً بالجواب عن سؤال التالي: هل هناك فقه خاص للأقليات؟

أ. فقه الأقليات

برز مصطلح فقه الأقليات في السنوات الأخيرة لدى المهتمين بأمر الفتوى الموجهة للمسلمين الذين يعيشون أقليات في مجتمعات غير إسلامية وخصوصاً مسلمي الغرب، وبينما تبني هذا المصطلح بعضُ الفقهاء والباحثين، توقف بشأنه آخرون. أما الذين يرون أن هناك فقهاً للأقليات فهم يقصدون بذلك فقهاً منطلقاً من الكتاب والسنة ومن التراث الفقهي الموروث، ولكن مع العناية بخصوصيات الواقع الغربي وما يقتضيه من مراعاة لحالات الضرورة والاستثناء التي قد تحكم ظروف المسلمين وهم يعيشون أقليات في مجتمعات غير إسلامية. ويؤكد مشروعية هذه النظرة أن العلماء المجتهدين قد أقرروا قاعدة العرف، وقرروا أن الحاجة والضرورة مما يجب أخذه بعين الاعتبار عند الفتوى.

ويقابل هذا الاتجاه نظرة احترازية لبعض العلماء الذين لا يرون مُسوِّغاً للحديث عن فقه للأقليات، إذ إن الفقه الإسلامي بما تضمنه من أسس وقواعد يمكنه أن يقدم حلولاً وأجوبة للمسلم مهما كانت الظروف التي يعيشها. ولعلمهم يخشون أن التأصيل لفقه الأقليات قد يجعل بعض المجتهدين يقعون في نوع من التساهل والترخص باسم مراعاة أوضاع الأقليات.

وإذا أردنا الجمع بين الرأيين فإنه بإمكاننا القول إنه طالما أننا نُعْمَلُ القواعد المتصلة بالعرف وبالضرورة والحاجة، فإن المقصود بمراعاة تنزيل الفتوى على الواقع الغربي قد حصل. ولكن نعتقد أن الأمر لا يقتصر فقط على الأخذ بالقواعد الاجتهادية المشار إليها، وإنما يعود إلى ضرورة الانطلاق من نظرة كلية لواقع المسلمين في الغرب يجب أن تُستصحب في الفتوى الشرعية في شؤونهم، وهذا ما يمكن إلحاقه بمسألة تحقيق المناط التي يجب أن يراعيها المجتهد في اجتهاده والملفتي عند إفتائه.

ومن الجوانب التي يجب أخذها بعين الاعتبار في هذا الباب:

1. كون المسلمين أقلية في المجتمع، ووضع الأقلية يختلف عن وضع الأكثرية من حيث ما تتعرض له من الظروف الصعبة؛ إذ أن الحياة الاجتماعية تشكلت على أسس وعادات لا تنسجم دائماً مع المطالب الدينية والثقافية للأقلية، وقد يظهر هذا في بعض الجوانب التي قد تبدو بسيطة ولكن لها أثرها الذي لا يستهان به، ولنضرب على ذلك مثالين: الأول يتعلق بسماع الأذان في المجتمعات الإسلامية ووجود المساجد في مختلف الأماكن مما يجعل المسلم قادراً على أداء صلاته حيثما كان، في حين لا يعلن الأذان غالباً في المجتمعات الغربية إلا داخل المساجد، وما لذلك من أثر في ربط المسلم بشعيرة الصلاة وتعميق ذلك الأثر خاصة في نفوس الناشئة.

والمثال الثاني يتعلق بمسألة الاحتفال بالأعياد الدينية التي تعتبر أمراً عاماً في المجتمعات الإسلامية في حين يعيش المسلمون أعيادهم في البلاد الغربية في دائرة خاصة بهم لا يشاركون فيها المجتمع الكبير الذي يحيط بهم.

2. إن المسلمين في أوروبا يعيشون في مجتمعات مفتوحة تحكمها أنظمة علمانية تقوم على فصل الدين عن شؤون الحياة، وتعتبر أن الدين هو من الشؤون الخاصة التي يجب تجنب إظهارها في الوسط العام. وهذا قد يجعل المسلمين يواجهون صعوبات نفسية وعملية أحياناً عند إبرار بعض مظاهر دينهم، وما المشكلات التي يواجهها النساء المسلمات في عدد من الدول الغربية بسبب ارتداء الحجاب الإسلامي إلا مثالاً على هذا الأمر.

3. إن طبيعة النظام الاجتماعي والسياسي تجعل القيام على الشؤون الدينية عائداً إلى المجموعات الدينية، وبالتالي فإنه بقدر ما تكون المجموعة الدينية منظمة ولها إمكانيات مادية مُريحة، يكون وضعها الديني منتظماً ومستقراً. وأما إذا

كانت المجموعة الدينية - كما هو الحال الأغلب للمسلمين - تعاني من صعوبات مادية وتنظيمية، فإن ذلك ينعكس سلباً على ظروفها، وليست هناك جهة رسمية يمكن أن يرجع إليها عند الحاجة إلا ما هو موجود من هيئات عامة لتمثيل المسلمين التي لا تملك سلطة رسمية، وما الخلاف الذي يعرفه المسلمون في أوروبا عند تحديد بداية الصيام وانتهائه إلا مثال على الصعوبات التي تعرفها الجاليات المسلمة عند غياب مرجعية دينية ملزمة.

وينبغي القول إن هذا الوضع على الرغم مما يحمله من جوانب ضعف، إلا أنه لا يخلو من جانب إيجابي يتمثل في الحرية الدينية التي تتمتع بها المجموعات الدينية بعيداً عن التدخل السياسي في شؤونها الخاصة.

4. لا يزال الوجود الإسلامي ضعيف الأثر في البيئة الأوروبية، والمسلمون ينتمون في أغلبهم إلى الشرائح الاجتماعية الضعيفة، وهذا ينعكس سلباً على قدرتهم على الدفاع على مصالحهم في إطار مجتمعات تمارس فيها المجموعات الضاغطة دوراً واضحاً في حماية حقوقها من خلال الثقل السياسي والاجتماعي الذي تمثله.

5. لا بد عند النظر للوضع الإسلامي في أوروبا من مراعاة التوازن الضروري بين الحفاظ على الهوية وبين مقتضيات المواطنة والاندماج الإيجابي في المجتمع، إذ إنه لا يمكن أن ننظر إلى المسلمين في أوروبا على أنهم كيان منعزل عن المجتمع، وإنما هم جزء منه يتفاعلون معه تأثراً وتأثيراً.

إذن إن المشتغل بفقهاء المسلمين في أوروبا أو بفقهاء الأقليات المسلمة في أوروبا يحتاج إلى أن ينظر إلى جميع الاعتبارات السابقة حتى يكون فقهه منصّباً على الواقع وليس مجانباً عنه.

ب- الحاجة إلى الفتوى لدى مسلمي أوروبا الغربية

إن الناظر في واقع المسلمين في الغرب عموماً يدرك حاجتهم الماسة للفتوى

في شؤون دينهم المختلفة، وما نراه من إقبال هؤلاء المسلمين على الاستفتاء في البرامج التلفزيونية المخصصة للفتاوى دليل واضح وقوي على هذه الحاجة. ويمكننا أن نفسّر هذا الأمر بعوامل عدة، نذكر من بينها:

اختلاف الواقع: لا شك أن المسلم الذي يعيش في مجتمع غير إسلامي يتعاطى مع واقع مختلف عن واقع المجتمع الإسلامي، ولذلك فإن المسلمين الذين هاجروا من بلاد إسلامية وجاؤوا لهذه البلاد وهم يحملون زاداً من الثقافة الإسلامية كثيراً ما يجدون أنفسهم أمام مشكلات جديدة لا عهد لهم بها مما يحوجهم إلى طلب الفتوى فيها، وقد لا يدرك البعض اختلاف الظروف فيصطدم بالواقع. من هذا المنطلق كان لا بد للمتصدي للفتوى في البلاد الغربية من أن يكون على قدر كاف من الإلمام بالواقع وخصوصياته حتى لا تكون فتاواه تحمل من التعسف أو سوء التقدير ما يجعلها مستحيلة التنزيل.

واقع متغير: إن من خصوصيات الواقع الإسلامي في أوروبا أنه في حالة تحوّل دائم؛ إذ إن تركيبة الجالية المسلمة نفسها تختلف طبيعتها من جيل إلى جيل. ففي حين كان أبناء الجيل الأول من المهاجرين تكثّر أسلّتهم في باب الفتوى عن المسائل المتعلقة بالشعائر التعبدية، نجد أن الأجيال الجديدة، المتصلة بالمجتمع أكثر من جيل الآباء، تتعلق أسلّتهم بما ينتج عن احتكاكهم بغير المسلمين في مجال الدراسة والعمل، هذا فضلاً على اختلاف المستوى التعليمي واختلاف طريقة التلقي للفتوى بين الجيلين.

ولن يتوقف التغير عند هذا الحد، وإنما ستكون للأجيال القادمة مشكلات أخرى قد تختلف عما هو مطروح اليوم، وهذا التحول هو سنة الله تعالى في المجتمعات عموماً، ولكن وتيرة التغير في المجتمعات الأوروبية أكثر سرعة، وهذا يستدعي من المفتي أن يكون فطناً يقظاً مدركاً لما يجري حوله من التغيرات، سواء

في واقع المسلمين أو في واقع المجتمعات التي يعيشون فيها، إذ إن العلاقة بين الجانبين علاقة وطيدة.

قلة المؤهلين للفتوى: إن من أهم الإشكالات التي يتعرض لها المسلمون في أوروبا قلة المؤهلين للفتوى ممن درسوا العلوم الشرعية وأحاطوا بمعرفة الواقع، وأصبحوا بذلك قادرين على إجابة المستفتين فيما يعرض لهم من قضايا. ولئن كان هناك تحسن نسبي بسبب وجود عدد من ذوي الكفاءة في العلوم الشرعية في السنوات الأخيرة، إلا أن عددهم لا يكافئ الحاجة المتزايدة لدى المسلمين للتعليم والفتوى. وهذا الوضع يجعل الناس يتجهون إلى من يتوقعون منه العلم والتفقه وهو ليس بكفاء، فيجيب عن أسئلتهم ويفتيهم على غير صواب، كما أن بعض المسلمين يلجأون في طرح أسئلتهم إلى البرامج التلفزيونية أو الاتصال ببعض الأرقام الهاتفية لبعض المفتين، أو من خلال شبكة الإنترنت. وقد لا يكون المفتي ملماً بواقع المستفتي، فيجيبه بناء على المعطيات التي استفادها من السؤال، ولكن لو توفرت له معرفة بالواقع ربما كان جوابه مختلفاً.

ج- من هم المتصدون للإفتاء في أوروبا؟

يمكننا أن نصنف المتصددين للإفتاء في أوروبا الغربية إلى الفئات الآتية:

1. **أئمة المساجد:** ينقسم الأئمة الذين يؤمّون الناس في الصلاة إلى قسمين: فمنهم أئمة متطوعون ليسوا متفرغين للإمامة وإنما يحضرون إلى المسجد في أوقات فراغهم ويقومون بخطبة الجمعة، وهناك مساجد أخرى توظف أئمة متفرغين.¹ ولكن الأئمة عموماً منهم الذي له دراسة للعلوم الشرعية تمكنه من أن يفتي الناس

¹ مع ملاحظة أن توظيف الأئمة من قبل الجمعيات ليس توظيفاً جزئياً من حيث الراتب الذي يدفع للإمام والحقوق الاجتماعية التي يحصل عليها عادة العامل والموظف في ميادين العمل المختلفة، وهذا يعود من جانب إلى ضعف إمكانيات الجمعيات الإسلامية وإلى عدم الوعي بأن الإمامة يجب أن تكون وظيفة تامة.

خاصة في مسائل العبادات ومسائل المعاملات العادية. فإذا عرض للإمام سؤال صعب يحتاج إلى نظر واجتهاد، فإنه يعتذر عن الإجابة ويحوّل السؤال على الجهة المؤهلة التي يمكنها أن تجيبه. ولكن هناك من يقحم نفسه في الرد على كل ما يسأل فيه ولو كان علمه محدوداً، ويخشى أن يكون بذلك ممن يضلون الناس بغير علم.

2. **المختصون في العلوم الشرعية:** هناك في عدد من الدول الأوروبية بعض الخريجين من الجامعات الإسلامية من الذين وفدوا إلى أوروبا، إلى جانب بعض الخريجين من الشباب الذين ولدوا في أوروبا والذين درسوا في بعض الجامعات الإسلامية في العالم الإسلامي، أو الذين تخرجوا من مؤسسات التعليم الشرعي في أوروبا. ومن بين هؤلاء هناك مؤهلون للفتوى يجيبون على أسئلة المستفتين، ولكنهم نادرة، ويؤمل أن يزداد عدد المؤهلين بزيادة أعداد الخريجين من مؤسسات التعليم الشرعي.

3. **مجالس محلية للأئمة:** توجد في بعض الدول الأوروبية مثل بريطانيا وفرنسا وبلجيكا وهولندا مجالس محلية للأئمة، أو مجالس شرعية تسهم في الفتوى خاصة في الأمور العامة، مثل تحديد مسألة تحديد أوقات الصلوات، أو موضوع بدء الصيام، أو مسألة الأضاحي، إلى غير ذلك مما يحتاج فيه المسلمون إلى رأي فقهري عام ينظم شؤونهم ويوحد مواقفهم. ويعتبر وجود هذه المجالس أمراً مهماً؛ لأنه يساعد على السداد في الفتوى وعلى الحد من دائرة الخلاف في المسائل العامة التي يتعرض لها جميع المسلمين.

4. **على طريق التعاطي المنهجي مع قضايا الفتوى:** المجلس الأوروبي للإفتاء والبحوث: أمام حاجة المسلمين الشديدة للفتوى في شؤونهم المختلفة في مواطن وجودهم بأوروبا، وبسبب قلة أهل الاختصاص في العلم الشرعي، ونظراً لتعدد الآراء الفقهية حول غير قليل من القضايا، وهي آراء قد يصدر بعضها

عن أشخاص غير المؤهلين، ومع الحاجة إلى اجتماع المسلمين في القضايا العامة على رأي موحد مثل تحديد أوقات الصلوات وتحديد بدء الصيام، لكل تلك الاعتبارات كان لا بد من التفكير في مجلس عام يجمع عدداً من أصحاب الاختصاص الشرعي ليتعاطوا مع هذا الوقع بمعالجات شرعية منهجية رصينة.

لذلك كانت مبادرة اتحاد المنظمات الإسلامية في أوروبا في سنة 1997 لتأسيس المجلس الأوروبي للإفتاء والبحوث، الذي يتخذ من المركز الإسلامي في دبلن في أيرلندا مقراً له. ويعقد المجلس دورات سنوية يتناول فيها ما يُعرض عليه من قضايا وما يصله من أسئلة، إضافة إلى المسائل الشرعية المهمة التي يحتاج فيها المسلمون في أوروبا إلى فتوى وتوجيه شرعي. ويضم المجلس أكثر من ثلاثين عضواً بعضهم من العلماء المعروفين في العالم الإسلامي وعدد من الشرعيين المتصدرين للفتوى في البلاد الأوروبية المختلفة. ويصدر المجلس بياناً ختامياً في نهاية كل دورة يتضمن ما اتخذته من قرارات وفتاوى، كما يقوم بطبع الفتاوى في كتب باللغة العربية وبعدد من اللغات الأوروبية تعمم على المساجد والمراكز الإسلامية في أوروبا. ويصدر المجلس مجلة علمية فصلية تتضمن بعض البحوث التي يتم إعدادها للمجلس وكذلك ما يكتبه بعض الباحثين من غير أعضاء المجلس حول القضايا التي يتناولها بالدراسة، كما أن للمجلس موقعاً على الشبكة العنكبوتية يتضمن قراراته وفتاواه، وللمجلس أيضاً لجان للفتوى عبر الهاتف تتلقى أسئلة المستفتين في أوقات محددة وتجييب عليها.

ويعمل المجلس على التواصل مع الجامع الفقهي وهيئات الفتوى الرسمية في العالم الإسلامي، وكثيراً ما يتبنى ما يصدر عنها من قرارات، خصوصاً أن بعض أعضائه هم في الوقت نفسه أعضاء في تلك الجامع. وقد استطاع المجلس خلال السنوات العشر التي مرت منذ تأسيسه أن يصبح مرجعاً للعديد من الهيئات

الإسلامية ولعموم المسلمين، كما أنه أصبح محط اهتمام الدارسين والباحثين من المسلمين وغير المسلمين، وصدرت بشأنه كتب ومقالات، كما قُدمت حوله رسائل جامعية في عدد من الجامعات الأوروبية.

د - المسائل التي يكثر فيها الاستفتاء

من خلال تتبع الأسئلة عموم المسلمين في أوروبا الغربية التي يطرحونها على المفتين، يمكننا أن نصنف هذه الأسئلة بحسب كثرة ورودها على المجالات التالية:

أولاً: مسائل الأسرة: إن العديد من المستفتين تشغلهم أسئلة تتعلق بالأحوال الشخصية، وربما يعود ذلك إلى إحساسهم بأهمية الأسرة المسلمة في مجتمعات غير إسلامية، وإدراكهم أن خصوصيات الأسرة المسلمة مما يجب أخذه بعين الاعتبار، وهو أمر لا يلتفت إليه كثيراً في المؤسسات الاجتماعية الغربية، ومن القضايا التي تثار في هذا المجال:

1. سلطة الولي على البنت، وخصوصاً عند اعتراضه على زواجها ممن ترغب في الزواج منه بسبب يعود إلى اختلاف الجنسية الأصلية للأسرتين، وهل يجب على البنت أن تلتزم بطاعة الوالدين أم أن الإسلام يعطيها الحق في الزواج بالمسلم الكفء ولو اعترض الولي؟

2. حكم الزواج العرفي، أو ما يسميه الشباب المسلم في الغرب بـ "الزواج الحلال" ويقصدون به الزواج بقراءة "الفاحة" من قبل الإمام، دون اللجوء إلى البلديات ودوائر الأحوال المدنية المخولة رسمياً بإبرام عقود الزواج، ويظن البعض أن الذهاب إلى الدوائر الرسمية لإجراء عقود الزواج لا يجوز، مع أن كل أركان الزواج معتبرة ما عدا تسمية المهر الذي يمكن أن يتم تحديده بين الزوجين، ولو كان القانون لا يلزم بذلك.

3. الخلافات الزوجية وما تؤدي إليه من خصومات تصل إلى المحاكم المدنية

التي تتدخل لمحاولة الإصلاح، وفي حال تعذر تصدير الحكم بالطلاق، وقد يستغرق ذلك سنوات عديدة، وخصوصاً إذا لم يكن الطلاق بالتراضي بين الزوجين، وهو ما يؤدي بالمرأة خاصة إلى حرمانها من الزواج لفترة طويلة انتظاراً لصدور حكم الطلاق المدني، في حين أن الزوج قد يفني لنفسه أو يفق له فيتزوج زوجاً عرفياً بغيرها.

ثانياً: فقه العبادات:

تأتي أسئلة المستفتين في هذا المجال فيما يتصل بأداء العبادات المفروضة، وتبرز بعض الأسئلة مما يعترض المسلم في حياته اليومية، مثل:

1. كيفية أداء الصلاة في العمل لمن لا تنتهياً له الظروف لأدائها بالشكل المعتاد، وهل يحل له أن يؤديها واقفاً أو جالساً؟
2. مسألة الجمع بين الصلوات لمن يتعذر عليه أدائها في الوقت.
3. مسألة الاختلاف في بعض البلاد في بعض أوقات الصلاة بسبب اختلاف الاجتهادات بين الرزنامات.

ثالثاً: فقه المعاملات:

من القضايا التي يكثر فيها السؤال في هذا المجال:

1. القروض المصرفية من أجل شراء منزل السكن لوجود محفزات اجتماعية في هذا المجال، مع صعوبة تحصيل السكن أحياناً وارتفاع الإجازات العقارية. وكذلك القروض الاستثمارية لمن يريد إقامة مشروع اقتصادي يكون مورد رزقه، خصوصاً مع انتشار البطالة في أوساط المسلمين.
2. الزكاة وما يتصل بأحكامها وتقديرها وإخراجها في مصارفها في داخل أوروبا أو نقلها خارج أوروبا.
3. أحكام الاستثمار في الأسهم وقواعده وضوابطه، خصوصاً مع وجود

شركات تعرض على العاملين فيها الحصول على أسهم فيها بامتيازات خاصة؟
 4. العمل في مؤسسات تتعامل بالحرام جزئياً، كالعمل في مطاعم تقدم بعض الأطعمة المحرمة، أو العمل في مجال النقل والتعرض أحياناً إلى نقل بضاعة محرمة كالخمر.

رابعاً: مجال العلاقات الاجتماعية:

من القضايا التي تطرح في هذا المجال:

1. مسألة التهنة بأعياد غير المسلمين، وخصوصاً أولئك الذين تربطهم بالمسلم علاقات زمالة في العمل أو صداقة في الدراسة.
2. حضور جنازة غير المسلم، خاصة لبعض معتقي الإسلام الذين لهم أقارب غير مسلمين، وكذلك لبعض المسلمين الذين تربطهم علاقات صداقة مع غير المسلمين من جيرانهم أو زملائهم.
3. حكم التوارث بين المسلم وغير المسلم، وهو ما يطرح على معتقي الإسلام.
4. تناول طعام غير المسلم، ومدى انطباق صفة أهل الكتاب عليه، والتعرض أحياناً لخرج وجود الخمر على مائدة الطعام للمسلم الذي يزور أهله أو أصدقاءه غير المسلمين؟

هذه القضايا وغيرها مما يكثر طرحه في أسئلة الناس، وقد أجاب المجلس الأوروبي للإفتاء والبحوث على العديد من هذه الأسئلة. ومع صدور فتاوى عامة، إلا أنه لا بد من تقدير الحالات الخاصة التي تعترض الأفراد، وتستوجب أخذها بعين الاعتبار عند إفتائهم.

موجهات مقاصدية للإفتاء لمسلمي أوروبا

إن المفتي عند تناوله للمسائل والنوازل الفقهية التي تعرض عليه لا بد أن يجمع بين

مراعاة قواعد الفتوى من حيث النظر الفقهي ومناهج الاستدلال وفق ما هو مقرر في قواعد الإفتاء، وبين مراعاة خصوصيات الواقع الأوروبي وما يستلزمه من تقدير يستصحب المآلات ويتجنب مواطن الحرج والضيق على المستفتين فيما يمنحهم فيه الشرع فسحة وتيسيراً. وهذا الذي نقصده بالموجهات المقاصدية في التعامل مع قضايا المسلمين في أوروبا في مجال الاجتهاد التنزيلي في تقدير الفتوى، وهي موجّهات تنطلق من رعاية الواقع في ضوء مقاصد الشريعة ومبادئها العامة.

وفيما يلي نذكر عدداً من الموجهات المقاصدية العامة التي تهدي التي نرى أن مراعاتها ضرورية لترشيد الفتوى وجعلها أنجع في معالجة مشكلات الوجود المسلم في البلدان الأوروبية.

أولاً: الموازنة بين مقتضيات الضرورة والحاجة ومقتضيات التأسيس لوجود إسلامي يحافظ على هويته ويقدم القيم الإسلامية للمجتمع

إن من الأمثلة التي يمكن أن نذكرها في هذا الباب ما أصدره المجلس الأوروبي للإفتاء والبحوث بخصوص شراء البيوت عن طريق القروض المصرفية، وتوصيته للمسلمين بالاجتهاد في إيجاد مؤسسات إسلامية تمويلية تتعامل وفق الضوابط الشرعية. ولكن في حال تعذر وجود مثل هذه المؤسسات، يمكن اللجوء استثناء إلى القروض المصرفية لتمويل السكن الرئيسي مراعاة للحاجة.

ولقد ظهر في واقع المسلمين في أوروبا اليوم توجه نحو إنشاء مؤسسات مالية إسلامية أصبحت اليوم محط أنظار المهتمين بالشأن الاقتصادي في ظل هذا الاهتمام المتزايد بالمالية الإسلامية. وفي نفس الوقت رأينا توجهاً كبيراً لتملك البيوت بالقروض المعمول بها إلى أن يصبح البديل الإسلامي منتشراً وميسراً للجميع؛ إنه من الضروري أن نراعي المعادلة الدقيقة بين فقه الترخيص فيما

يحتاج إلى الرخصة رفعا للحرَج وتحقيقاً للمصلحة، وبين تأسيس التجارب الإسلامية التي ستساهم مع الوقت في صياغة كيان إسلامي يحمل إضافة للمجتمع في الجوانب المختلفة.

ثانياً: الموازنة بين المحافظة على الهوية والمواطنة والاندماج الإيجابي في المجتمع

إن المفتي تتنازعه في كثير من القضايا مراعاة الحفاظ على الهوية الإسلامية وتأكيد عناصر التميز العقدي والسلوكي من جانب، وبين عدم انعزال المسلم عن محيطه الاجتماعي باسم المحافظة على خصوصيته؛ إذ إن محافظة المسلم على حقوقه في الالتزام بدينه تقتضي أن يكون له وجود فاعل في المجتمع.

وإن من الأمثلة التي يمكن إيرادها في هذا المجال الفتاوى الصادرة بخصوص جواز التهنة بأعياد غير المسلمين من أهل الكتاب مع مراعاة الضوابط الشرعية في ذلك، مع تأكيد أن المسلم لا يمكن أن يحتفل احتفالاً دينياً إلا بأعياده الإسلامية، فمن ناحية لا بد من تأكيد التميز في الاحتفال بأعيادنا وعدم التساهل في الاحتفال بغيرها، ومن ناحية أخرى لا بد من مراعاة ما من شأنه أن يحقق التواصل الاجتماعي في المجتمع بتهنئة غير المسلم بعيدِه.

ثالثاً: الموازنة بين إظهار شعائر الدين وعدم مصادمة الذهنية العامة في المجتمع

تنظر المجتمعات الأوروبية في عمومها إلى الدين باعتباره شأناً خاصاً يجب على الفرد أن لا يعتمد إظهاره أمام الآخرين تحجباً للدعاية الدينية. وهذه النظرة للدين إنما هي أثر من آثار الفلسفة العلمانية التي يسعى أصحابها لتضييق مساحات ظهور الدين في حياة المجتمع؛ وإن كانت الدول الأوروبية تتباين في هذا الشأن بحسب تجاربها التاريخية والثقافة السائدة فيها.

ولئن كان المسلم مطالباً بأن يظهر شعائر دينه فيما لا يملك إخفاءه، مثل

التزام المسلمة بحجابها، ومثل حرص المسلم على أداء صلواته اليومية في أوقاتها قدر الإمكان، وكذلك امتناعه عن مقارنة المحرمات في الأكل والشرب وغير ذلك، إلا أن هذا الالتزام لا يسوغ التوسع في إظهار المخالفة حتى فيما لم يلزمنا الشرع فيه بالمخالفة؛ إذ أن توسيع دائرة التميز مع الآخرين فيما هو غير مطلوب من شأنه أن يباعد بين المسلمين وغيرهم.

ومثال ذلك الحرص على نمط معين في اللباس المغاير لعادات المجتمع، مثل حرص بعض الرجال المسلمين على ارتداء أقماع من اللباس مغايرة لما هو سائد في المجتمع، أو حرص بعض المسلمات على نمط معين من اللباس الشرعي منقول من بيئات مختلفة بينما هناك إمكانية في أن تلبس المسلمة لباساً تتحقق فيه المواصفات الشرعية مما هو متوافر في بلدها الأوروبي دون أن تصادم مشاعر غيرها. وهذا التصرف من شأنه أن يقرب هيئة المسلم وهو يلتزم بدينه من الوضع الاجتماعي المألوف. ولقد وجدنا في الهدي النبوي كيف كان رسول الله ﷺ يراعي أعراف الناس، ولا يعتمد مخالفتهم فيما لم يأتي الأمر الشرعي فيه بالمخالفة.

رابعاً: مراعاة مقتضيات تنظيم الحياة في مجتمعات لا تراعي الدين في نظمها

إن المجتمعات الأوروبية قد جعلت تنظيم شؤونها قائماً على مراعاة قواعد عامة، قد يكون لبعضها جذور دينية ولكنه لا يأخذ مرجعيته العملية من الهيئات الدينية، مثل ما يتعلق بتحديد أيام العطل للموظفين والطلاب. فإن العديد من هذه المجتمعات تراعي إلى جانب العطل الرسمية العامة لجميع المواطنين الخصوصيات الدينية للمجموعات الدينية المختلفة فيما يتعلق بأعيادهم المهمة، ليس من قبيل التسليم بالبعد الديني للعيد، وإنما من قبيل تمكين أصحاب الأديان من حرية ممارسة شعائهم.

ولكن الذي يثور بخصوص المسلمين هو عدم قدرتهم على التحديد المسبق لأعيادهم باعتمادهم على رؤية الهلال في تحديدها، ومن هنا كانت الفتوى في ترجيح الأخذ بالحساب مما يساعد على تحديد مسبق للأعياد وبالتالي تمكين المسلمين في وظائفهم ومدارسهم من التمتع بعطلهم، ولكن الإصرار على الأخذ بالرؤية لإثبات الشهور القمرية قد يؤدي إلى صعوبة اعتماد هذه الأعياد مسبقاً.

خامساً: مراعاة مقصد الحفاظ على كيان الأسرة في فتاوى الأحوال الشخصية

إن الدور المناط بالأسرة المسلمة في المجتمعات الأوروبية أمرٌ في غاية الأهمية؛ إذ إن الأسرة توكل إليها مهمة رعاية الأجيال والقيام على تنشئتها وتحسينها وبناء شخصيتها، وهي لا تكاد تجد على أداء هذه المهمة مساعداً لها إلا ما تقوم به بعض المؤسسات الإسلامية من أنشطة تعليمية وتربوية. وما دامت الأسرة تواجه هذه التحديات الكبيرة، فإن الواجب على المفتي أن يراعي في فتواه ما يساعد على تحقيق مقصد استقرارها. من ذلك مثلاً التأكيد لضرورة توثيق عقود الزواج، وعدم التساهل في الزواج العرفي الذي يمارسه اليوم عدد من المسلمين في أوروبا بحجة أنه الزواج الحلال، بينما الزواج الذي يكفل الحقوق هو الزواج المدني.

وقد رأينا الآثار السلبية للزواج العرفي الذي كثيراً ما يعرض العلاقة الزوجية إلى الاختلال والانهيار، وكذلك فيما يتعلق بأمر الطلاق وضرورة ضبطه منعاً للتساهل والفوضى في هذا الجانب، كالأخذ بالرأي الفقهي الذي يشترط الإشهاد في إيقاع الطلاق وضرورة صدور الطلاق المدني من الجهات القضائية المخولة بذلك لإنهاء الزواج.

سادساً: مراعاة ما تقتضيه القوانين الجارية في المسائل التي تتناولها الفتوى

قد تُعرض على المفتي مسائل يكون للفقهاء الإسلامي فيها رأي، ولللقانون الوضعي

المعمول به في البلد رأي آخر. ولا بد للفقهاء أن يجد للمستفتي قدر الإمكان مخرجاً يجعله يلتزم بالأمر الشرعي دون الوقوع في مصادمة القوانين، كالسؤال المتعلق مثلاً بمسألة التأمين، وكثير من أنواع التأمين كالتأمين على السيارات وعلى البيوت يُعدّ من التأمين الإجباري، ومع وجود الرأي الفقهي الذي يمنع التأمين التجاري، فإنه من الضروري مراعاة ما تُلزم به القوانين، ولعل الفتاوى التي ترشد المسلمين إلى التعامل مع شركات التأمين التعاوني هي محاولة لإيجاد مخرج في هذا الباب.¹

سابعاً: مراعاة الأثر الدعوي فيما يصدر من فتاوى للمسلمين

لقد أصبح الإسلام في أوروبا اليوم محطّ أنظار الكثير من المراقبين والباحثين من غير المسلمين، وبالتالي فإنه من الصعب اعتبار أمر من الأمور التي تخص المسلمين فيما يتصل بشؤون الدين مخصوص بهم ولا يهمّ غيرهم. نعم إن المسلمين يملكون حرية ممارسة الدين كما يملكونها غيرهم، ومن حقهم أن يسألوا عما يبدو لهم من القضايا التي تعرض لهم. ولكن المسلم يهمل أيضاً أن لا تكون الصورة التي يعبر عنها، أو يظهر بها أمام المجتمع مُؤدّية إلى الالتباس وسوء الفهم. من ذلك مثلاً أن العديد من الدارسين من غير المسلمين الذين اطلعوا ودرسوا ما يصدر من فتاوى للمسلمين في أوروبا² يستغربون أحياناً من تناول بعض المجالس الفقهية لمسائل جزئية يعتبرونها من قبيل الحريات الشخصية وليس لمجلس فقهي أن يصرف وقته في مناقشتها. وقد وجدنا مثلاً لبعضهم هؤلاء استغراباً لفتوى صدرت للإجابة عن سؤال يتعلق بالحكم الشرعي في قص المرأة

¹ مع أن هناك رأياً فقهيّاً يميز التأمين بسائر أنواعه.

² لقد تناول العديد من الباحثين في الجامعات الأوروبية في نطاق أبحاثهم الجامعية بالدراسة والتحليل المجلس الأوروبي للإفتاء والبحوث وما أصدره من قرارات وفتاوى فقهية، وقد أصبحت مادة الفتوى مادة تدرّس لطلاب الدراسات العليا في قسم الدراسات الإسلامية في جامعة ليدن بهولندا.

شعرها دون إذن زوجها؛ حيث رأى أن مثل هذه الأمور ليس من شأن مجلس فقهي أن يخوض فيها وهي مسائل في ظنه ينبغي أن لا يسأل فيها.

ولذلك فإن المجلس الأوروبي للإفتاء والبحوث قد أصبح من منهجه أن لا يتناول بالبحث المسائل الجزئية،¹ وإنما يُحيلها على لجان الفتوى الفرعية حتى يصرف اهتمامه للقضايا الكلية والنوازل المهمة؛ وقد يكون من المناسب أيضاً في صياغة الفتوى ربطها بالسياق العام الذي تنزل فيه، بما يساعد على فهمها في إطارها.

¹ مما يلاحظ على العديد من المسلمين أنهم كثيراً ما ينشغلون في استفتاءاتهم بالمسائل الجزئية على حساب القضايا الكلية، وقد يكون أحدهم مقصراً في أمور هامة ويتساءل عن أمور أخرى دونها أهمية.

CHAPTER 13

التجربة الماليزية في ضوء فقه الأقليات

محمود زمدي عبد المجيد

مقدمة

يتناول هذا المقال موضوع فقه الأقليات لينظر من خلاله إلى التجربة الماليزية تحليلاً وتقويماً. فبعد استعراض مصطلحي "الأقليات" و"فقه الأقليات" باعتبارهما من المصطلحات الحادثة في الخطاب الفقهي الإسلامي. يناقش المقال أولاً المعايير والاعتبارات المعتمدة في تحديد معنى الأقلية، ثم يبين قصورها من حيث أنها تقف عند المظاهر الخارجية (كالقلة العددية وما إليها من الخصائص التي أصبح الكلام عليها شائعاً في الكتابات السياسية والاجتماعية عن الأقليات) ولا تعكس صورة واقعية متكاملة عن الأقلية، فضلاً عن أن تكون عادلة في توصيف علاقات القوة بين الأقلية والأغلبية.

وفي ضوء ذلك يقدم المقال رؤية جديدة أو قراءة مغايرة لمفهوم الأقلية والأغلبية من خلال التجربة الماليزية يسعى من خلالها الكاتب إلى ملامسة الواقع العيني المتشخص للأشياء الذي يقتضي مراجعة ما هو سائد من معايير واعتبارات في تحديد معنى الأقلية والأغلبية باعتبارهما طرفي المعادلة الاجتماعية والسياسية للمجتمعات التي تتعايش فيها مجموعة ذات كثرة عددية ومجموعة أو مجموعات ذات قلة عددية. ومن ثم يقترح المقال ضرورة مراعاة الجوانب النوعية

أو الكيفية (كالنفوذ الاقتصادي والسيطرة الإعلامية) التي قد تجعل الأغلبية العددية في مقام المغلوبة.

الأقليات مصطلحاً ومفهوماً

إن مصطلحي "الأقليات" و"فقه الأقليات" من المصطلحات الحديثة في الفقه الإسلامي، ويعود رواجهما وشيوعهما في الخطاب الإسلامي إلى عهد قريب. وهما مصطلحان محملان بدلالات سياسية، واجتماعية، وقانونية ناجمة عما حدث في الواقع الإنساني العالمي في العصر الحديث بصورة خاصة من اختلاط بين الأمم والشعوب نتيجة هجرات كثيفة للأفراد والجماعات عبر البلدان والقارات، وما حصل بسبب ذلك من تشارك الوافدين مع المجتمعات الأصلية في جوانب الحياة ومرافقها المختلفة. ولا شك أن تحدث في أثناء تلك المشاركة والمعايشة صور من الاحتكاك تنتج عنها اضطرابات وتوترات في العلاقات تتطلب حلولاً قانونية، واجتماعية، وسياسية، واقتصادية، لكي لا تتحول إلى صراع واحتراب بين الجماعات المختلفة.

ونظراً لحداثة مثل هذه المصطلحات في الخطاب العلمي للفقهاء والمفكرين المسلمين، فإن الحوار حول الأقليات مصطلحاً ومفهوماً لا يزال - كما يقول الدكتور عبد المجيد النجار - "قائماً في سبيل الانتهاء فيها إلى مفاهيم بينة، بل في سبيل الانتهاء فيها إلى إقرار بمشروعيتها مبحثاً علمياً ذا خصوصية. فيتوارد عليها النظائر والباحثون إذن على سواء في البسط والاحتجاج، ويتقدم العلم فيها درجات ثمرة لا ينقض بعضها بعضاً".¹

وفي هذا المقال محاولة لرصد بعض أهم الآراء والمواقف بشأن موضوع

¹ عبد المجيد النجار، "نحو تأصيل فقهي للأقليات المسلمة في الغرب"، <http://www.onislam>

الأقليات وما يستوجبه من نظر فقهي لمعالجة ما يتصل به وينشأ عنه من قضايا ومشكلات، تمهيداً لتناوله في سياق واقع ماليزيا، وتجربتها في ترتيب العلاقات بين المسلمين وغير المسلمين.

يراد بمصطلح الأقليات عند الفقهاء المعاصرين المجموعات البشرية التي تعيش في مجتمع تكون فيه أقلية من حيث العدد في مقابل الأغلبية التي تفوقها من حيث هذا الاعتبار، وتكون متميزة من بين سائر أفراد المجتمع الآخرين ببعض الخصوصيات الجامعة بينها، كأن تكون عرقية، أو ثقافية، أو لغوية، أو دينية، وقد تجتمع هذه الخصائص كلها أو بعضها. يقول الدكتور يوسف القرضاوي: "ويراد بالأقليات كل مجموعة بشرية في كل قطر من الأقطار، تتميز عن أكثرية أهله في الدين، أو المذهب، أو العرق، أو اللغة، أو نحو ذلك من الأساسيات التي تتمايز بها المجموعات البشرية بعضها عن بعض".¹

ويظهر من كلام القرضاوي أن الأقلية أو الأكثرية العددية هي المعتبرة، وأنه لا دخل للأمور السياسية والاقتصادية فيها. ومعنى ذلك أن الأقلية ينظر إليها دائماً من حيث العدد، ولا يلتفت إلى ما وراء ذلك من الاعتبارات سياسية كانت أم اقتصادية أم اجتماعية أو ثقافية. وبذلك يظهر أن هذا المصطلح يشير إلى عنصرين أساسيين في تحقق وصف الأقلية، هما: القلة العددية لمجموعة ما تعيش في مجتمع أوسع، والتميز دون سائر ذلك المجتمع بخصوصيات أصلية من الدين، أو الثقافة، أو العرق، أو اللغة، سواء تحققت فيها كل تلك الخصائص أم بعضها فقط.

ويرى القرضاوي أن القوة والضعف بالمعنى الاجتماعي، والاقتصادي، والسياسي هي من اللوازم، حيث يقول: "ومن لوازم الأقلية أنها تكون عادة ضعيفة

¹ يوسف القرضاوي، في فقه الأقليات المسلمة (القاهرة: دار الشروق، 2001)، ص 15.

أمام الأكثرية. فالكثرة تنبئ عن القوة، والقلة تنبئ عن الضعف.¹ ويستدل على مقالاته هذه بالقرآن الكريم حيث يقول إن القرآن يحدثنا عن الكثرة في معرض الامتنان والتذكير بالنعمة، وذلك على لسان شعيب عليه السلام الذي قال لقومه: ﴿وَاذْكُرُوا إِذْ كُنْتُمْ قَلِيلًا فَكَثَرَكُمْ﴾ (الأعراف: 86). ونحو ذلك قوله تعالى في الامتنان على المهاجرين بعد غزوة بدر: ﴿وَاذْكُرُوا إِذْ أَنْتُمْ قَلِيلٌ مُسْتَضْعَفُونَ فِي الْأَرْضِ تَخَافُونَ أَنْ يَخَطَفَكُمْ النَّاسُ فَتَأْوِنَكُمْ وَآيِدُكُمْ بِبَصَرِهِ﴾ (الأنفال: 26).²

ويعلق القرضاوي على ذلك بأن القلة العددية كثيراً ما تؤدي بالأقلية إلى أن تلقى الظلم والاضطهاد من الأكثرية، وخصوصاً إذا غلب على الأكثرية التعصب والاستعلاء على الآخرين. وبناء على ذلك فهو يصنف المسلمين من حيث الأكثرية والأقلية إلى صنفين:

الصنف الأول: الأكثرية، وهم الذين يعيشون داخل ما سماه الفقهاء بدار الإسلام، أو بتعبيرنا المعاصر داخل المجتمعات الإسلامية، أو البلاد الإسلامية. ويعني بها: البلاد التي أغلبية سكانها مسلمون معلنون إسلامهم، على الأقل في إقامة الشعائر الدينية مثل الأذان، والصلاة، والصيام، وتلاوة القرآن، وإقامة المساجد، والسماح بالحج ونحو ذلك، ويمارسون أحوالهم الشخصية من الزواج والطلاق ونحوهما وفق أحكام دينهم.

الصنف الثاني: الأقلية، وهم الذين يعيشون خارج "دار الإسلام" بعيداً عن المجتمعات الإسلامية أو عن "العالم الإسلامي". وهذا الصنف يشتمل على

¹ المرجع نفسه، ص 15.

² المرجع نفسه، ص 16.

نوعين: يتمثل أولهما في أهل البلاد الأصليين الذين أسلموا من قديم، ولكنهم يعتبرون أقلية بالنسبة لمواطنيهم الآخرين من غير المسلمين. أما الثاني فيتمثل في المهاجرين الذين قدموا من البلاد الإسلامية إلى البلاد غير الإسلامية للعمل فيها أو للإقامة، أو للدراسة، أو غير ذلك من الأسباب المشروعة، وحصلوا على إقامة قانونية بهذه البلاد، وبعضهم حصل على جنسيتها، وأصبح له حق المواطنة والانتخاب وغير ذلك مما تقرّه دساتير هذه الأقطار.¹

وفي مقابل ذلك يعتقد الأستاذ عمر عبيد حسنة أن الكلام عن قضايا الأقليات ومشكلاتها إزاء الأكثرية، أو الحديث عن فقه الأقلية والأكثرية، أمر يحتاج معالجته إلى قدر عالٍ من الضبط والدقة، ولذلك يقول: "فكم من أكثرية لا قيمة لها، ولا نفوذ، ولا قرار. وكم من أقلية تمتلك إدارة الأمور والتشريع لها. فالقضية قضية واقع، أو حالة حضارية، أو ثقافية يمكن أن تلحق بالأكثرية أو بالأقلية، تحتاج إلى فقه ونظر واجتهاد، وليست قضية محصورة بفقه الأقلية بالشكل المطلق."²

وزيادة على ذلك يرى الأستاذ حسنة أن موضوع الأقلية وما يتصل به قضية نسبية تختلف فيها معايير النظر والحكم، ومنطلقات التقويم، وما ينجم عن ذلك من نتائج، ومن ثم فالأمر لا يمكن القول إن الحكم فيه مبني على مجرد "عدد الرؤوس، أو الكم المهمل أو ما يمكن أن يسمى الكل المعطل الذي لا يأتي بخير أينما توجهه، بمقدار ما يحكمه الكيف والنوعية والفاعلية."³

وبناء على ذلك يؤكد الأستاذ حسنة أن معيار التفاضل والكرامة والإنجاز لم

¹ المرجع نفسه، ص 16-17.

² انظر: عمر عبيد حسنة في تقديمه لكتاب خالد محمد عبد القادر، من فقه الأقليات المسلمة (الدوحة:

وزارة الأوقاف والشئون الإسلامية، ط 1، 1418/1998)، ص 22.

³ المرجع نفسه، ص 16.

يكن أبداً منوطاً بالكم من حيث الكثرة والقلة، وإنما يتحقق بمقدار العطاء ونوعية العطاء. فالأكرم هو الأتقى، وليس الأكرم الأقل، ولا الأكثر. والتقوى المقصودة في الآية بوصفها معياراً للتفاضل هي جماع الأمر كله. ذلك أن التقوى بأبعادها المتعددة تعني امتلاك الميزان الحق والتحلي بالقيم الصحيحة؛ لاستيعاب الحياة بكلّ مجالاتها وكيفيات التعامل معها. فقد تكون المحصلة فرداً يعدل أمة كاملة، ويكون أمة فعلاً بما يمثل، وما يحقق. قال الله تعالى: ﴿إِنَّ إِثْرَهُمْ كَأَنَّمَّةٌ﴾ (النحل: 120)، والرسول ﷺ يقول: «تجدون الناس كإبل مائة، لا يجد الرجل فيها راحلة».¹

وقد استند الأستاذ حسنة فيما ذهب إليه إلى القرآن والسنة، حيث قرر أن "القرآن الكريم يحذر من الانخداع بالغثاء، والكثرة القائمة على غير الحق والعدل، والتي يمكن أن تشكل عبئاً يسوده روح القطيع الذي يحرك الإنسان دون دراية وإرادة، يقول تعالى: ﴿وإن تَطَّعَ أَكْثَرُ مَنْ فِي الْأَرْضِ يُضِلُّوكَ عَنْ سَبِيلِ اللَّهِ﴾ (الأنعام: 116). والضلال يعني الضياع وعدمية الحياة، وغياب المقاصد، والانسلاخ في القطيع دون فحص واختبار ومعرفة للوجهة. وأما الرسول ﷺ فقد حذر من الوهن الذي يصيب الأمة الإسلامية بسبب من الحالة الغشائية المؤدية بها إلى مرحلة القصعة التي تسود مراحل النكوص، والتخلف فيتحول الناس إلى مستهلكين بدلاً من أن يكونوا منتجين، فيقول: «يوشك الأمم أن تداعى عليكم كما تداعى الأكلة إلى قصعتها». فقال قائل، ومن قلة نحن يومئذ؟ قال: «بل أنتم يومئذ كثير ولكنكم غثاء كغثاء السيل، ولينزعن الله من صدور عدوكم، وليقذفن في قلوبكم الوهن».

¹ المرجع نفسه، ص 16-17. والحديث أخرجه مسلم عن عبد الله بن عمر. القشيري النيسابوري، أبو الحسين مسلم بن الحجاج، **صحيح مسلم** (بيروت: دار الكتب العلمية، ط 1، 1421/2001)، "كتاب فضائل الصحابة ﷺ"، الحديث 2527، ص 988.

فقال قائل، يا رسول الله، وما الوهن؟ قال: «حبّ الدنيا، وكرهية الموت».¹ فالمعيار يبقى دائماً هو الكرامة المتولدة عن التقوى والعطاء والفاعلية، وليس عدد الرؤس أو مساحة القطيع المتحرك بلا رؤوس أو ذي الرأس الواحد.²

ويضيف الأستاذ حسنة أنه يمكننا أن نفهم من قوله تعالى: ﴿كَم مِّنْ فِتْنَةٍ قَلِيلَةٍ غَلَبَتْ فِئَةً كَثِيرَةً بِإِذْنِ اللَّهِ﴾ (البقرة: 249) أنه لا ينبغي الاختصار في تقدير الغلبة على الجانب العسكري. ذلك أن ميدان الغلبة والظهور، والصراع والحوار الحضاري ليس فقط ساحة المعارك العسكرية، وإنما هو الحياة بكلّ مجالاتها ومستوياتها العسكرية، والسياسية، والاقتصادية، والثقافية، والاجتماعية، والتنمية. فلئن كان سبب نزول هذه الآية هو ذكر معركة طالوت مع جالوت التي قص الله تعالى علينا حكايتها لتحقيق العبرة من تاريخ النبوة، إلا أن العبرة - كما قرر علماء الأصول والفقه والنظر - إنما هي بعموم اللفظ لا بخصوص السبب. ولذلك نجد القرآن الكريم والنبى ﷺ يؤكدان في أكثر من مناسبة أهمية - بل أولوية - العنصر النوعي أو الكيفي في مقابل الجانب العددي وكيف أن الأول يكون هو الحاسم. وفي هذا الصدد يذكرنا الأستاذ حسنة بالسياق المحيط بنزول سورة التوبة عندما كان المسلمون - في السنة التاسعة من الهجرة - يستعدون لمواجهة غزوة تبوك التي سميت بغزوة العسرة وسمي جيشها بجيش العسرة، وكان وقوعها في أشد الظروف الطبيعية قسوة وزاها شدة تحاذل من تحاذل من المسلمين عن المشاركة في الجهاد، ومع ذلك كان النصر والغلبة للقلة

¹ أخرجه أبو داود عن ثوبان. السجستاني، أبو داود سليمان بن الأشعث، سنن أبي داود، نشره بعناية محمد عبد العزيز الخالدي (بيروت: دار الكتب العلمية، ط4، 2010)، "كتاب الملاحم"، الحديث 4297، ص675.

² حسنة، مرجع سابق، ص17-18.

بما توفر لها من خصال في العطاء والتضحية، ضاعفت آثار العدة المادية المحدودة، وهو ما عبر عنه الرسول ﷺ بقوله: «سبق درهم مائة ألف درهم». قالوا: يا رسول الله، وكيف؟ قال: «رجل له درهman فأخذ أحدهما فتصدق به، ورجل له مال كثير فأخذ من عرض ماله مائة ألف فتصدق به»،¹ فالأمر لا يعاير بالقلة والكثرة".²

وفي ضوء ذلك يقرر الأستاذ حسنة أنه مهما كانت المواقف من مسألة الأقليات، "فإنها من الأمور الاجتهادية" التي تحتاج إلى بحث ونظر للوصول إلى الحكم الشرعي المناسب لها. وهذا يتطلب - فضلاً عن فقه النصّ وتحديد دلالاته ومعانيه في ذاته - "النظر إلى الواقع البشري وتقويمه من خلال النظر للنصّ، وكيفيات تنزيله في ضوء هذا الواقع البشري".³ ويضيف الكاتب نفسه أن الدقة والتحري في بيان الحكم، وتحقيق صوابيته في عصر معين، أو في واقع معين، وتنزيله على موضوعه في ظل ظروف ذلك العصر أو الواقع ومشكلاته ومعطياته "لا يعني بالضرورة صوابيته لكل واقع متغير. وذلك أن فقه الواقع بكل مكوناته وتعقيداته واستطاعاته هو أحد أركان العملية الاجتهادية إلى جانب فقه النص المراد تنزيله على هذا الواقع. فتغير الواقع وتبدل الحال يقتضي بالضرورة إعادة النظر بالاجتهاد أو بالحكم الاجتهادي. ولا ضير في ذلك، بل الضرر

¹ أخرجه النسائي والحاكم عن أبي هريرة. أبو عبد الرحمن أحمد بن شعيب النسائي، سنن النسائي، نشرة بعناية أحمد شمس الدين (بيروت: دار الكتب العلمية، ط2، 2005/1426)، "كتاب الزكاة"، الحديثان 2524-2525، ص415؛ أبو عبد الله الحاكم النيسابوري، المستدرک علی الصحیحین (القاهرة: دار الحرمين، ط1، 1997/1417)، "كتاب الزكاة"، الحديث 1519، ج1، ص575.

² حسنة، مرجع سابق، ص18-19.

³ المرجع نفسه، ص12-13.

والضير في الجمود على الأحكام الاجتهادية مهما تغيرت وتبدلت الظروف. وبذلك تتحول الأحكام الاجتهادية من كونها حلاً للمشكلات ليصبح تطبيقها وتنزيلها على غير محلها هو المشكلة الحقيقي¹.

وبناءً على ذلك خلص الأستاذ حسنه إلى أن الكثير من الأحكام الاجتهادية التي توصل إليها العلماء في عصر من العصور السابقة لمواجهة مشكلات معينة "ليست ملزمة لسائر العصور إذا تبدلت تلك المشكلات، وأنها في معظمها قابلة للفحص والاختبار والنظر في مدى ملاءمتها للواقع الذي عليه الناس، حيث لا بدّ من العودة والتلقي من النص الأصلي الخالد المجرد عن حدود الزمان والمكان، والنظر في كيفية تنزيله على الواقع والحال." وهذا أمر تقتضيه سنن التطور الاجتماعي وأصول الفقه الشرعي، حيث إننا نجد كثيراً من الفقهاء قد غيروا أحكاماً اجتهادوا في استنباطها هم أنفسهم وليست من اجتهاد غيرهم، وذلك بسبب ما لاحظوه من تغير الأوضاع والظروف عبر الزمان أو المكان، أو بسبب ما اطلعوا عليه من نصوص ووقائع جديدة لم تكن معلومة لديهم في اجتهادهم الأول، أو لما أدركوه من حكم الأحكام وعللها الدقيقة وعدم انطباقها على الحالات المشابهة التي اجتهادوا بشأنها من قبل، أو لما قدروا أن تطبيقه بنفس الصور القديمة المعهودة لهم "قد يؤدي إلى فوات مصلحة شرعية وحصول مفسدة محققة" حتى وإن اتحد الموضوع. ولذلك فإن "الاجتهادات الكثيرة التاريخية والتي يمكن تصنيفها في إطار الموروث أو التراث هي اجتهادات لزمانها ومشكلاته وأنها غير ملزمة. ولا يعني ذلك إلغاؤها أو عدم معاودة الاستفادة منها عند تشابه الحال، وإنما يعني استصحابها والاستئناس بها [...]؛ لتكون

¹ المرجع نفسه، ص 13-14.

عوناً على النظر الذي يقتضيه تبدل العصر وتغير مشكلاته".¹

وتصدق هذه الاعتبارات أكثر ما تصدق على "الفقه الاجتماعي والدولي والاقتصادي والدستوري" الذي شهدت مجالاته وموضوعاته تغيراً كبيراً وتطوراً واسعاً لا نكاد نجد للقضايا والنوازل التي يواجهها بها ما يشبهها من المسائل التي عاجلها الفقهاء القدامى في عصورهم المختلفة. ويعتبر موضوع الأقليات وما يتصل به من القضايا والمشكلات وما يتطلبه من نظر لتكييفه واستنباط ما يناسبه من أحكام من أبرز مظاهر ذلك التغير والتطور، ومن ثم فهو "يشكل محلاً لتنزيل الأحكام مختلفاً كثيراً عما سبق أن اجتهد فيه العلماء القدامى من قضايا الفقه الاجتماعي والسياسي".²

ولا يختلف الدكتور عبد الحميد النجار مع القرضاوي وحسنة كثيراً فيما ذهب إليه من تحديد عام لمعنى الأقلية، فهو يقرر أن مصطلح الأقليات المسلمة "حينما يندرج في المصطلح العام للأقليات يكون دالاً على مدلول عددي، ومدلول تميز ثقافي. فيصبح المعنى المقصود بالأقليات المسلمة تلك المجموعة من الناس التي تشترك في الدين بالإسلام وتعيش أقلية في عددها ضمن مجتمع أغلبية لا يتدين بهذا الدين".³ إلا أن النجار يثير جملة من الأسئلة المهمة التي لا بدّ من الوقوف عندها إن كنا نريد أن تكون معالجتنا لإشكالية الأقليات متكاملة النظر شاملة الرؤية. ومن تلك الأسئلة: "هل تعتبر من الأقليات المسلمة تلك الأقليات العددية التي قد تكون هي النافذة في مجتمع غير مسلم، بحيث يكون بيدها السلطان

¹ المرجع نفسه، ص 14-15.

² المرجع نفسه، ص 15-16.

³ انظر في هذا الصدد: عبد الحميد النجار، "مآلات الأفعال وأثرها في فقه الأقليات"، المجلة العلمية للمجلس الأوروبي للبحوث والإفتاء، العددان الرابع والخامس، حزيران 1425/2004، ص 177.

السياسي الذي تحقق به سيادة القانون الإسلامي على عموم المجتمع؟ وهل تعتبر من الأقليات المسلمة تلك المجموعة المسلمة التي هي من حيث العدد أكثرية ولكنها تعيش في مجتمع تكون فيه مجموعة أخرى غير مسلمة هي النافذة بحيث تسيطر على الحكم وتطبق من خلاله قانوناً غير إسلامي على سائر المجتمع؟¹

إن هذه الأسئلة تضع المعيار العددي في تحديد معنى الأقلية أمام إشكال كبير لا مجال للفرار من مواجهته، وهو إشكال يتعلق بأحوال أو صفات في الأقليات هي إلى اللوازم أقرب منها إلى العوارض. ولذلك يرى الأستاذ النجار أن الإجابة عن هذه الأسئلة بالنسبة للأقليات المسلمة تقتضي الأخذ بعين الاعتبار "طبيعة الصفة الإسلامية في خصوصيتها من بين سائر الأديان"؛ ذلك أن المسلم لكي تتحقق صفته الإسلامية لا بد له من تحكيم الإسلام في جوانب حياته الفردية والاجتماعية كلها. وهذا الاعتبار يثير مسألة أساسية بشأن علاقة المسلم بالقانون العام الذي ينظم الحياة ويجعل مدى توافق ذلك القانون مع القيم والتعاليم الإسلامية "ميزاناً أصلياً في تحقق الصفة الإسلامية أو عدم تحققها، بينما غير المسلمين يمكن أن يتحققوا بصفة دينهم إذا ما تدينوا به في خاصة النفس مهما يكن القانون العام الذي يطبق عليهم".²

وبناءً على هذا الاعتبار للقانون المنظم للحياة العامة معياراً في النظر إلى الأقلية وتقدير وضعها في إطار المجتمع الذي تعيش في كنفه يخلص النجار إلى أنه يدخل في مفهوم الأقلية "تلك الأكثرية المسلمة [التي تعيش] في مجتمع يخضع لقانون وثقافة غير إسلامية إذا كانت تلك الأكثرية مغلوبةً على أمرها في ذلك

¹ المرجع نفسه.

² المرجع نفسه.

النمط من الحياة، ومن باب أولى أن تدخل فيه الأقلية الخاضعة لنظام غير إسلامي. وعلى هذا الاعتبار أيضاً يخرج من مفهوم الأقلية المسلمة تلك الأقلية التي يكون لها نفوذ يسود به القانون الإسلامي والثقافة الإسلامية في المجتمع التي تعيش فيه. كما يخرج منه أيضاً المسلمون الأكثرية إذا كانوا يخضعون لحكم من قبل أنفسهم، ولكن لا يطبق فيهم القانون الإسلامي إن جزئياً أو كلياً¹، كما هي أوضاع الكثير من البلاد الإسلامية اليوم.

فقه الأقليات: معناه وأصوله ومجالاته

إذا كان مصطلح الأقليات - كما سبق أن ذكرنا - حديثاً في الخطاب الفكري والفقه الإسلامي، فإن مصطلح فقه الأقليات هو الآخر أكثر حداثة في ذلك الخطاب. فلا يكاد تاريخ استعماله لأول مرة يتجاوز الخمسة عقود، أما شيوعه بين العلماء والباحثين بوصفه تعبيراً عن مجال محدد من القضايا والنوازل التي تحتاج إلى اجتهاد خاص فرمما امتد إلى عقدين ونصف أو ثلاثة عقود على أكثر تقدير.² ويتفق الكثيرون على أن نشأة هذا المصطلح ترجع إلى بروز الجاليات الإسلامية في البلدان الغربية بوصفها مجموعات ذات كيانات جماعية تتميز به عن الأغلبية السائدة في تلك البلدان. فلما تكاثرت هذه الجاليات في أوروبا وأمريكا، وأخذت مظاهر حياتها في التوسع وعلاقاتها في التشعب، وبدأت تشعر بكيانها الجماعي ذي الخصوصية الدينية والثقافية الإسلامية التي تميزها عن مجتمع الأغلبية غير المسلم الذي تسود فيه ثقافة وقوانين غير إسلامية، عندها بدأت

¹ المرجع نفسه، ص 177-178.

² انظر في ذلك: العلواني، طه جابر، "مدخل إلى فقه الأقليات"، المجلة العلمية للمجلس الأوروبي للبحوث والإفتاء، العددان الرابع والخامس، حزيران 1425/2004، ص 39-40؛ عبد الله بن الشيخ المحفوظ بن بيه، صناعة الفتوى وفقه الأقليات (جدة: دار المنهاج، ط1، 1428/2007)، ص 163.

تلك الجاليات تتوق وتسعى إلى تنظيم حياتها الفردية والجماعية على أساس من قيم الإسلام وتعاليمه.

وفي إطار هذا الوعي لدى الجاليات المسلمة لهويتها الخاصة، وسعيها لإدارة شؤون حياتها وفق مقتضيات الشريعة الإسلامية، تبين لها أو للكثيرين من أبنائها أن كثيراً من المشكلات التي تواجهها - كما يقول الأستاذ عبد المجيد النجار - "لا يفي بتوفيقها إلى أحكام الدين ما هو متداول معروف من الفقه المعمول به في البلاد الإسلامية، إما لأنه لا يناسب أوضاعاً مخالفة للأوضاع الموجودة بالبلاد الإسلامية، أو لأنه لا يغطي أوضاعاً انفردت بها حياتهم بالمهجر، فأصبحت هناك ضرورة لفرع فقهي جديد يختصّ في معالجة حياة هذه الأقلية أطلق عليه اسم فقه الأقليات".¹

وهذه المشكلات التي تواجه الأقليات المسلمة كثيرة ومتنوعة، بعضها سياسي، وبعضها اقتصادي، وبعضها ثقافي، وكثير منها ذو طابع فقهي ناشئ من رغبتها "في التمسك بهويتها الدينية، وعقائدها الإسلامية، وشعائرها التعبدية، وأحكامها الشرعية في الزواج والطلاق وشؤون الأسرة، ومعرفة الحلال والحرام في أمور المطعومات، والمشروبات، والملبوسات، وسائر المعاملات وشتى العلاقات بين الناس وخصوصاً غير المسلمين: هل ينزلون عنهم أو يندمجون فيهم؟ وإلى أي حد يجوز الاندماج؟"²

وبعبارة أخرى إن القضية الكبرى التي تتشعب منها المشكلات التي تواجه الأقليات المسلمة في مجتمعات الأغلبية التي تعيش بين ظهرانيها يمكن صياغتها كما يلي: كيف يحيا أبنائها - أفراداً وجماعات - حياتهم ويديرون شؤونهم وفق أحكام

¹ النجار، "مآلات الأفعال وأثرها في فقه الأقليات"، ص 178.

² القرضاوي، في فقه الأقليات المسلمة، ص 24.

شريعتهم وتعاليم دينهم، ويحافظون على عقائدهم الدينية وهويتهم الإسلامية في إطار علاقات طبيعية مع محيطهم الإنساني والاجتماعي بمعطياته الثقافية، والسياسية، والقانونية ذات المرجعية غير الإسلامية (واللادينية في كثير من الأحوال)؟ لقد سبق أن ذكرنا ما لاحظته النجار من قصور في الفقه الإسلامي الموروث والسائد في البلدان الإسلامية عن الوفاء بما تتطلبه معالجة مشكلات الأقليات المسلمة من حلول شرعية، ونزيد الأمر هنا بياناً وتوضيحاً. إنّ جانب التنظير للعلاقة بين المسلمين وغيرهم في ذلك الفقه على الرغم مما يتسم به من غناء وتنوع في الاجتهاد، إلا أنه "قد ارتبط أغلبه بالواقع التاريخي الذي أنتج فيه، وصار جزءاً من ذلك الواقع التاريخي بحيث يتعذر تطبيق جزئياته على واقع آخر" يختلف عن ذلك الواقع التاريخي اختلافاً نوعياً.¹

ويقدم النجار شرحاً وتحليلاً مهمين لإدراك هذه الظاهرة التي لا بدّ من مراعاتها عند النظر إلى الفقه وحركة الاجتهاد، حيث يرى أن الفقه الإسلامي عندما نشأ وتوسع وتطور انبنى بوجه عام على معالجة الحياة الواقعية للمسلمين فيما كان يسعى إليه من تديرها في مستجدات أوضاعها ومنقلبات أحوالها بأحكام الشريعة المنصوص عليها، أو المستنبطة بالاجتهاد، لذلك "جاء في أنواع قضاياه ومستنبطات أحكامه وفي منهجه وروحة العامة يعكس إلى حدّ كبير واقع الحياة الإسلامية فيما يطرأ عليها من أطوار، وما تنقلب فيه من الأحوال، فيصوغ لكل تلك الأطوار والأحوال أحكاماً شرعية من صريح النصّ، أو من أصول الاجتهاد. ولم تكن الأحكام الافتراضية فيه إلا جارية على سبيل المرن التعليمي،

¹ العلواني، "مدخل إلى فقه الأقليات"، ص 53.

بل كانت منكورة عند بعض أئمة الفقه من كبار المجتهدين".¹

وفضلاً عن ذلك، فإن واقع الوجود الإسلامي خلال العقود التي ازدهرت فيها حركة الاجتهاد الفقهي في مجالات الحياة المختلفة لم يعرف "جماعات واسعة من المسلمين تعيش في مجتمعات غير إسلامية يخضعون بها في علاقاتهم الاجتماعية العامة لسلطان غير سلطان دينهم. وقصارى ما كان يحصل في هذا الشأن وجود أفراد من المسلمين أو جماعات صغيرة منهم في مجتمعات غير إسلامية وجوداً عارضاً في الغالب بسبب ضرب في الأرض أو إيمان بالدين ناشئ لم تتوسع دائرته؛ ليصبح سلطانه غالباً، فلم يكن إذن ذلك الوجود للأقليات المسلمة ظاهرة بارزة ضمن الوجود الإسلامي العام." وبسبب هذا السياق التاريخي الذي نشأ فيه الفقه، وتبلورت مدارسه ومذاهبه نجد أن الاجتهاد الفقهي خلال تصديده "حلّ مستجدات الواقع بأحكام الشريعة لم يتناول بشكل عميق موسع هذه الحال من أحوال الوجود الإسلامي بما هي ظاهرة غير ذات شأن بين في واقع المسلمين، وربما تناول قضايا جزئية محدودة منها، كانت تعرض للمجتهدين بين الحين والآخر فيصدرون فيها فتاوى وأحكاماً في غير ما اهتمام شمولي عام بما كحالة من أحوال المسلمين ذات الوزن الواقعي المهم".²

وهذا يعني أن التصدي لواقع الأقليات المسلمة واستيعاب قضاياها كما ونوعاً في نظام القيم والأحكام الشرعية لا يمكن الاقتصار فيه على نادر السوابق الفقهية، ومتفرقات فتاوى النوازل وتطبيقها على مجرد الحالات الفردية لأعيان الأشخاص الذين تتكون منهم تلك الأقليات، وإنما لا بد فيه من رؤية كلية لواقعها الذاتي

¹ عبد المجيد النجار، فقه المواطنة للمسلمين في أوروبا (بيروت: إصدارات المجلس الأوروبي للإفتاء والبحوث - الكتاب الرابع، بدون تاريخ)، ص132.

² المرجع نفسه، ص132-133.

وللواقع العام الذي يحيط بها.¹ وهذا يعني كذلك أن هناك حاجة إلى فقه خاص واجتهاد جديد يعالجان مشكلات تلك الأقليات، فقه واجتهاد يراعيان ظروفها وأوضاعها الخاصة زماناً ومكاناً،² ويتوخيان ما يحقق مصالحها ويدراً عنها المفسدات في ظلّ الواقع الذي تعيش فيه على نحو يمكنها من تحقيق المعادلة الدقيقة في "المواءمة بين التمسك بقيمها والتكيف والانسجام مع محيطها".³

ويؤكد العلماء الداعون إلى تأسيس فقه الأقليات وتطويره إلى أنه ليس فقهاً منقطع الصلة بالفقه الإسلامي العام أو خارجاً عن مرجعية القرآن والسنة أو مستمداً من مصادر أخرى غيرهما، "وإنما هو فرع من فروعها يشاركه ذات المصادر والأصول، ولكنه يبنى على خصوصية وضع الأقليات فيفتح إلى التخصص في معالجتها في نطاق الفقه الإسلامي وقواعده، استفادةً منه وبناء عليه وتطويراً له فيما يتعلق بموضوعه، وذلك سواء من حيث ثمرات ذلك الفقه من الأحكام أو من حيث الأصول والقواعد التي بنيت عليها واستنبطت بها".⁴ إن هذا الفقه الخاص بالأقليات المسلمة "يقوم على اجتهاد شرعي قويم، يراعي زمانها وظروفها الخاصة، وأنها لا تملك أن تفرض أحكام شريعتها على المجتمع الذي تعيش فيه، وأنها مضطرة أن تتعامل وفق أنظمة ذلك المجتمع وقوانينه، وبعض هذه الأنظمة والقوانين تخالف شريعة الإسلام".⁵ وتصويراً لواقع الأقليات المسلمة الذي لا يفي الفقه الإسلامي الموروث بالمعالجة الناجعة لكل مشكلاته،

¹ العلواني، "مدخل إلى فقه الأقليات"، ص52؛ النجار، فقه المواطنة للمسلمين في أوروبا، ص72.

² العلواني، "مدخل إلى فقه الأقليات"، ص53؛ القرضاوي، في فقه الأقليات المسلمة، ص30.

³ ابن بيه، صناعة الفتوى وفقه الأقليات، ص164.

⁴ النجار، "مآلات الأفعال وأثرها في فقه الأقليات"، ص178.

⁵ القرضاوي، في فقه الأقليات المسلمة، ص30.

ذهب بعض العلماء إلى حد القول بأن "أوضاع الأقليات المسلمة في ديار غير المسلمين يمكن أن توصف بأنها أوضاع ضرورة بالمعنى العام للضرورة"¹.

وفي ضوء ما سبق أكد غير واحد من المهتمين بفقه الأقليات ضرورة تأصيل هذا الفقه وبيان منهجيته وتقرير أصوله، لكي لا يكون قائماً على مجرد الفتاوى الانتقائية والمعالجات الجزئية. فهذا الفقه — كما يبين عبد المجيد النجار — لا بد أن يكون مستنداً إلى "منهج علمي هو منهج التأصيل الذي تُبنى فيه الأحكام والفتاوى [المتعلقة بالوجود الإسلامي للأقليات المسلمة] كي يثمر ثماره الخيرة على أصول وقواعد من أصول الاجتهاد وقواعده، توجهها وتسدها نحو أهدافها على اعتبار خصوصية الوضع الذي تعالجه بالنسبة لعموم الوضع الإسلامي الذي جاء النظر الفقهي العام يعالجه وفق الأصول والقواعد العامة في الاجتهاد."² ولذلك فإن هذا الفقه أو الاجتهاد الجديد الخاص بالأقليات المسلمة يجب أن ينطلق — حسب الدكتور طه جابر العلواني — "من كليات القرآن وغاياته وقيمه العليا ومقاصد شريعته ومنهاجه القويم، ويستنير بما صح من سنة وسيرة الرسول ﷺ في تطبيقاته للقرآن وتنزيله لقيمه وكلياته في واقع عصر النبوة"³. أما ما جاء في مدونات الفقه الإسلامي من أحكام واجتهادات ذات صلة بقضايا الأقليات، "فلا بد من اعتباره سوابق فقهية يتم النظر فيها، واستيعابها والعمل على تجاوزها، بعد أخذ الدرس منها والبناء على الأصول التي ساعدت فقهاء الأمة في الماضي على إنتاج ما أنتجوا"، ذلك أن تلك السوابق الفقهية التي اجتهد في بيان أحكامها أولئك الفقهاء من شأنها أن "تثري قدرات الفقيه وتنمي ملكته الفقهية،

¹ ابن بيه، صناعة الفتوى وفقه الأقليات، ص 165.

² النجار، فقه المواطنة للمسلمين في أوروبا، ص 136.

³ العلواني، "مدخل إلى فقه الأقليات"، ص 53.

وتريه جوانب قد لا تظهر له بغير ذلك، ولكن لا ليأخذ الفتوى حرفيا منه فيقع في خطأ القياس على الثابت بالقياس أو الاجتهاد.¹

وإذا كان فقه الأقليات المسلمية إنما يستند بصورة عامة إلى الأصول التي بني عليها الاجتهاد الفقهي عبر أطواره المختلفة كسائر فروع الفقه ومجالاته، فقد حاول عدد من العلماء إبراز القواعد والأسس المنهجية التي يقوم عليها هذا الفقه، والتي يمكن أن نلخصها فيما يأتي:

أولاً: قاعدة "تغير الفتوى بتغير موجباتها" التي تقتضي مراعاة الأوضاع والظروف المحيطة بالمكلف وما ينجم عنها من أثر في تشخيص موضوع الحكم، وتحقيق مناطه، وكيفية تنزيله على موضوعه بما يحقق المقصد منه.

ثانياً: الكليات الشرعية القاضية برفع الحرج وتنزيل أحكام الحاجات على أحكام الضرورات، ومراعاة التيسير والتخفيف بما يناسب أحوال الأقليات وخصوصياتها، وما يكتنفها من مظاهر الضعف، وعدم التمكين في مجتمعاتها دون تهاون أو تفريط في ثوابت الشرع الأساسية ومقاصده الكلية.

ثالثاً: مراعاة سنة التدرج في تطبيق أحكام الشريعة على الأقليات حسب ما تطيقه أوضاعهم وتسمح به ظروفهم وفق أولويات حياتهم بما لا يؤدي إلى خلق توتر بينهم وبين محيطهم.

رابعاً: التركيز على فقه الجماعة، وعدم الإغراق في الفقه المنحصر في قضايا الأفراد من منطلق رؤية كلية لحاجات الأقليات المسلمة، ومصالحها، وعلاقاتها بمكونات المجتمعات التي تعيش فيها.

خامساً: عدم الانغلاق في مذهب معين من المذاهب الفقهية المعهودة في

¹ المرجع نفسه.

تاريخ الفقه الإسلامي والتركيز على الأسس الكبرى الجامعة، والقيم العليا التي تشمل المسلمين جميعاً في كيان واحد يتجاوز الحدود الضيقة للمذاهب المختلفة.

سادساً: قاعدة اعتبار المآلات في الأفعال والتصرفات أداءً، وفي الأحكام إجراءً وتطبيقاً، والموازنة بين متعلقاتها من المصالح والمفاسد عند التزاحم والتعارض على أساس مراعاة القضايا الاستراتيجية، والمقومات الكبرى التي يرتبط بها نمو الوجود الإسلامي واستمراره في المستقبل بحيث تكون تلك الأقليات قوة فاعلة، ومؤثرة في واقعها الاجتماعي وبيئتها الحضارية.¹

وبناءً على هذه القواعد وما يمكن أن يلحق بها من قواعد أخرى، يسعى فقه الأقليات إلى تحقيق جملة من المقاصد التي تمكن الأقليات المسلمة من تحقيق معادلة الموازنة بين مقتضيات عقيدتها وقيمها وهويتها الإسلامية من ناحية ومتطلبات واقعها ذي المرجعية الثقافية والقانونية غير الإسلامية من ناحية أخرى، دون توتر ولا تفريط أو إفراط. ويمكن حصر تلك المقاصد في النقاط الآتية:

أولاً: تمكين تلك الأقليات المسلمة على أن تحيا بإسلامها حياة ميسرة بلا حرج في الدين ولا إرهاب في الدنيا، على مستوى الفرد والجماعة سواء بسواء.

ثانياً: مساعدة الأقليات المسلمة على المحافظة على كيانها الثقافي والاجتماعي وشخصيتها الإسلامية المتميزة بعقائدها وشعائرها وقيمها وأخلاقها وآدابها ومفاهيمها المشتركة.

ثالثاً: إعانة الأقليات المسلمة على أداء واجباتها المختلفة؛ الدينية والثقافية

¹ انظر تفاصيل القواعد المذكورة وشروط إعمالها في: القرزاوي، في فقه الأقليات المسلمة، ص 40-60؛ النجار، "مآلات الأفعال وأثرها في فقه الأقليات"، مرجع سابق، ص 175-176 و 187-200؛ وله كذلك: فقه المواطنة للمسلمين في أوروبا، ص 155-180؛ ابن بيه، صناعة الفتوى وفقه الأقليات، ص 173-268.

والاجتماعية وغيرها دون عوائق ذاتية أو خارجية.

رابعاً: تمكين الأقليات المسلمة من القدرة على أداء واجب تبليغ رسالة الإسلام العالمية لمن يعيشون بين ظهرانيهم بلسانهم الذي يفهمونه انطلاقاً من فهم علمي دقيق لأوضاع مجتمعاتهم، وثقافتهم، ومشكلاتهم، وبناء جسور الثقة والتواصل والتفاهم بينهم وبين مواطنيهم من ذوي الأغلبية.

خامساً: تمكين الأقليات المسلمة من تجاوز حالة الانشطار النفسي، والعقلي، والانكماش على الذات التي تعيشها؛ لتتفتح على مجتمعاتها وتتفاعل مع واقعها تفاعلاً إيجابياً بحيث تتحول إلى شريك فاعل في تلك المجتمعات تسهم في إصلاحها وتوجيهها نحو ما هو أفضل في مجالات القيم، والمصالح والسلوك.

سادساً: أن يسهم في تثقيف هذه الأقليات وتوعيتها، بحيث تحافظ على حقوقها وحرياتها الدينية والثقافية والاجتماعية والاقتصادية والسياسية، حتى تمارس هذه الحقوق المشروعة دون ضغط ولا تنازل.¹

التجربة الماليزية: في ضوء فقه الأقليات

إذا نظرنا إلى التجربة الماليزية في ضوء ما سبق تقريره بشأن فقه الأقليات وحاولنا تطبيق بعض مفاهيمه وقواعده على وضع المسلمين فيها، فإن هناك بعض الأسئلة الأساسية التي تواجهنا بشأن المعيار العددي في تحديد معنى الأقلية وحجمها، وهي ذات الأسئلة ذاتها التي أثارها الدكتور عبد المجيد النجار في مناقشته للموضوع. ولا بأس من التذكير بها هنا: "هل تعتبر من الأقليات المسلمة تلك الأقليات العددية التي قد تكون هي النافذة في مجتمع غير مسلم، بحيث يكون بيدها السلطان

¹ انظر مزيداً من التفصيل لهذه المقاصد في: العلواني، "مدخل إلى فقه الأقليات"، ص40؛ القرضاوي، في فقه الأقليات المسلمة، ص34-35؛ ابن بيه، صناعة الفتوى وفقه الأقليات، ص168-169.

السياسي الذي تحقق به سيادة القانون الإسلامي على عموم المجتمع؟ وهل تعتبر من الأقليات المسلمة تلك المجموعة المسلمة التي هي من حيث العدد أكثرية، ولكنها تعيش في مجتمع تكون فيه مجموعة أخرى غير مسلمة هي النافذة بحيث تسيطر على الحكم وتطبق من خلاله قانوناً غير إسلامي على سائر المجتمع؟

إن هذه الأسئلة - كما سبق أن ذكرنا - تضعنا أمام إشكال كبير بشأن اعتبار الجانب العددي الإحصائي معياراً في تحديد معنى الأقلية، وهو إشكال لا مجال للفرار من مواجهته. فليست مظاهر القوة أو الضعف في الجوانب الاجتماعية والاقتصادية والسياسية مجرد عوارض كما ذهب إلى ذلك الشيخ القرضاوي، بل إنها قد تكون حاسمة لا فقط بالنسبة للمجموعات الصغيرة الحجم القليلة العدد في مقابل الأغلبية العديدة، وإنما كذلك بالنسبة للمجموعات التي تكون أغلبية بالمعيار العددي مما يجعلها في الحقيقة في موضع المستضعف المهيمن عليه إزاء الأقلية النافذة المسيطرة.

وفي ضوء ذلك نرى أن الوضع الراهن للمسلمين في ماليزيا الذين يشكلون الأكثرية من الناحية الإحصائية، ويمسكون بزمام الحكم والسلطة السياسية، إلا أنهم أضعف ما يكونون في مجال الاقتصاد والاجتماع. فعلى الرغم من بلوغ عدد السكان المسلمين في البلاد نسبة 60.4% من الحجم الكلي للسكان، إلا أن نفوذهم في عالم الاقتصاد لا يكاد يبلغ 30%، ولم تصل وضعيتهم في الأمور الاجتماعية إلى مستوى مرضٍ يناسب حجمهم العددي.¹ ذلك أن التأثير والنفوذ الحقيقيين يقعان في أيدي مجموعات هي أقلية بالمعيار العددي الإحصائي. إن مجموع السكان في ماليزيا يتكون من أربعة طوائف أساسية: المواطنون الملايويون

¹ انظر: 1-2: <http://ms.Wikipedia.org/wiki.pp.1-2>, "Demografi Malaysia,"

المسلمون وهم الأغلبية وتنضم إليهم مجموعات صغيرة من المسلمين الهنود والصينيين، والمواطنون غير المسلمين من الصينيين البوذيين والهنود الهندوسيين، وإلى جانب هاتين الطائفتين مجموعات من المسيحيين هي أقل حجماً. وبذلك يكون المسلمون من الناحية الإحصائية هم الأغلبية، وتلك المجموعات هي الأقلية.¹

وتبعاً للنظام الديمقراطي الليبرالي المعمول به في ماليزيا، والمؤسس على التصويت في انتخابات دورية عامة، فإن المسلمين هم الذين يمسكون بزمام السلطة السياسية وإدارة الحكم في إطار تحالف يضم قوى سياسية من الطوائف الأخرى، على أساس من المشاركة في توزيع المناصب، وتقاسم السلطة بينهم بنسبة معينة حسب الظروف. أما القانون العام الذي يحكم شؤون البلاد أفراداً وجماعات ومؤسسات فليس مستمداً من الشرع الإسلامي، بل هو قانون ذو مرجعية علمانية واضحة.²

هذا من ناحية، ومن ناحية أخرى فإن القدر الأكبر من الثروة في البلاد ليس في أيدي المسلمين، بل في أيدي غير المسلمين والصينيين منهم على وجه التحديد، فهم الذين يمسكون زمام الاقتصاد الوطني، وخصوصاً القطاع الخاص منه.³ أما المسلمون فلا يزالون في بداية الطريق يحاولون الخروج من بقايا الميراث الاجتماعي والاقتصادي الذي ورثهم إياه عهد الاستعمار الإنجليزي عندما كان المستعمرون يفضلون جلب العمال من الخارج — وخاصة من الصين والهند، للقيام بالأعمال

¹ المرجع نفسه.

² انظر مزيداً من التفاصيل في:

Nik Abdul Rashid: "The Malaysian Parliament", in Tun Mohamed Suffian *et al.*, *The Constitution of Malaysia* (Kuala Lumpur: Oxford University Press, 1997), pp. 136-162.

³ انظر في ذلك مثلاً:

Kerajaan Malaysia, *Rancangan Malaysia Ke Sembilan 2006-2010*, Kuala Lumpur: Percetakan Negara, p. 11.

التي لها علاقة بالاقتصاد في الصناعة والتجارة بدلاً من التعامل مع المواطنين الأصليين، أعني المسلمين الملايويين. وقد نتج عن تلك السياسة الاستعمارية أن تدرب المستجلبون من الصينيين والهنود غير المسلمين على أفضل السبل في الحصول على الثروة في مجالات التجارة والصناعة، وفي حين بقي المسلمون على أوضاعهم البدائية القديمة في الفلاحة والزراعة دون إرشاد أو تطوير يذكر.

وقد شملت تلك السياسة الاستعمارية كذلك الحرفَ ولمهن المختلفة، ففي عهود الاستعمار وبضعة عقود بعد الاستقلال كان التفوق في الجامعات والنسبة الأكبر من خريجها لغير المسلمين، وخصوصاً في مجالات العلوم المهنية كالطب، والهندسة، والمحاسبة، والحقوق، الأمر الذي أدى إلى قلة عدد المسلمين بصورة ملحوظة حتى اليوم مقارنة بغيرهم من الطوائف الأخرى.¹

ومن هنا تظهر أهمية الإشكال الذي سبق أن أثرناه في هذا البحث، وهو ما إذا كان المسلمون بالنظر إلى كثرة عددهم وغلبتهم الإحصائية يعتبرون أغلبية أم أن الأمر على العكس من ذلك، أي أنهم في حكم الأقلية واقعاً بسبب ما هم عليه من ضعف وقلة في المجال الاقتصادي وما ينتج من إمكانيات التوجيه والتأثير في مجالات الحياة الأخرى، وخاصة المجال السياسي والقانوني. وبقطع النظر عما رأيناه من اختلاف بين الفقهاء المعاصرين بشأن المعيار الأول في تحديد معنى الأقلية، فإن ما يهمنا هنا هو النظر في التجربة الماليزية في محاولتها التغلب على هذا الوضع الذي نعتبره مخالفاً للعدالة الاجتماعية التي تعتبر من المبادئ الإسلامية الأساسية التي تستند إلى نصوص الشريعة ومقاصدها.

لئن كان مصطلح "العقد الاجتماعي" غربي النشأة،² إلا أن معناه ومفهومه

¹ المرجع نفسه، ص 354.

² انظر: موسوعة ويكيبيديا الحرة على الشبكة العنكبوتية تحت العنوان "عقد اجتماعي".

أصيل في الشريعة الإسلامية والتجربة التاريخية للمسلمين، وقد جسدته خير تجسيد صحيفة المدينة التي وضعها النبي ﷺ؛ لتحقيق التوافق والتوازن بين المجموعات المكونة لمجتمع المدينة من مسلمين، ويهود، ومشركون.¹ ويعتقد الكثيرون في ماليزيا أنه قد حصل فعلاً ما يمكن اعتباره عقدًا اجتماعيًا بين القاطنين فيها، سواء كانوا مواطنين أصليين أو غير مواطنين، مسلمين وغير مسلمين، فكان ذلك أساساً للتشارك بين الطوائف المختلفة في الحياة السياسية، والاجتماعية، والاقتصادية فيها.²

ذلك أنه قبل الاستقلال عام 1957م ما كان هؤلاء الصينيون والهنود وغيرهم من النازحين من الخارج مواطنين في هذه البلاد. إلا أنهم كانوا عنصراً أساسياً من واقع الحياة، وخصوصاً في المجالات الاقتصادية، والاجتماعية، وكذلك السياسية، وذلك نظراً لتأثيرهم في تلك المجالات منذ أيام الاستعمار وحتى أثناء الكفاح من أجل الاستقلال.

فكان من باب الاعتراف بهذا الدور والأثر، قبول المواطنين الأصليين في البلاد - وهم المسلمون - بمنح هؤلاء النازحين حق المواطنة بشرط أن يكون لهم مقابل ذلك بعض الحقوق الخاصة للمسلمين وخصوصاً فيما يتعلق بوضع الإسلام بوصفه الدين الرسمي للدولة،³ وكون السلاطين الملايويين حكاماً على ولاياتهم،⁴ واللغة الملايوية باعتبارها اللغة الرسمية للدولة، إلى جانب بعض

¹ انظر: بسيوني محمود شريف، الوثائق الدولية المعنية بحقوق الإنسان (القاهرة: دار الشروق، 2003)، ج2، ص67.

² انظر: [http://ms.wikipedia.org/wiki'kontrak_sosial_\(Malaysia\)](http://ms.wikipedia.org/wiki'kontrak_sosial_(Malaysia))

³ انظر: <http://mission-not-accomplish.blogspot.com/2009/01/islam-sebagai-agama-rasmi.html>

⁴ انظر: <http://novandri.blogspot.com/2008/05/apa-kedudukan-raja-raja-melayu-di-sisi.html>

الامتيازات الاقتصادية المحدودة.¹

وضمناً لهذه الحقوق كلها سواء أكانت للمسلمين أو لغير المسلمين، فقد تضمن الدستور الماليزي فصلاً واضحة تقرها وتؤكدّها.² وتبعاً لذلك فقد أنشئت مؤسسات عامة متخصصة للتغلب على الضعف الاقتصادي والاجتماعي للمسلمين، وقد أثمر ذلك الكثير من الإنجازات التي أمكن بها تضيق الفوارق الاقتصادية والاجتماعية بين المسلمين وغيرهم، مما يستطيع الدارس ملاحظته اليوم.³ إلا أن هذه الإنجازات لا يمكن اعتبارها كافية، نظراً إلى أن الفوارق، وخصوصاً الاقتصادية، ما زالت قائمة وقد تزيد اتساعاً.

إلا أنه في الآونة الأخيرة ظهرت بعض الأصوات التي تعارض هذه الحقوق الخاصة للملايوين المسلمين وتعارض عليها بحجة أنها تتعارض مع مبدأ المساواة في الإسلام، وأن غير المسلمين في هذه الدولة باعتبارهم من أهل الذمة يستحقون الحصول على الحقوق المقررة للأقليات غير المسلمة كما هو مبين في الكتب الفقهية.⁴ وبناء على ذلك فإن الحقوق الخاصة بالملايوين المسلمين، تبعاً لهذه الفكرة ما هي إلا نتيجة للعصبية العنصرية التي تتعارض تماماً مع فكرة الوحدة والمساواة الإنسانية في الإسلام.⁵

وبدلاً من ذلك فقد دعا أصحاب هذا الرأي إلى الاعتماد على مبدأ الجدارة، حيث يفتح المجال أمام كل فرد مسلماً أكان أو غير مسلم، ملايوياً أم صينياً أو هندياً

¹ انظر: http://wikipedia.org/wiki/bak-bak_istimewa_orang_Melayu

² انظر:

<http://bigdogdotcom.wordpress.com/2009/08/23/banya-orang-melayu-sabaja-disebut-dalam-perlembagaan/>

³ انظر: <http://belajarsejarah.blogspot.com/2007/10/peranan-mara.html>

⁴ انظر: <http://wanpaiye.blogspot.com/2009/09/salah-ke-bak-istimewa-orang-melayu.html>

⁵ انظر: <http://seratab.blogspot.com/2009/07/unmo-masih-dituduh-asabiab.html>

أو غير ذلك،¹ «فلهم ما لنا وعليهم ما علينا».² إلا أن المحافظين³ الذين ما زالوا يدافعون عن الفكرة القديمة لا يسعهم إلا أن يتمسكوا بالمبادئ العامة كالسياسة الشرعية ومقاصد الشريعة.⁴ ومن بين الحجج التي استندوا إليها ضد مبدأ الجدارة الحجة القائلة بأن المسلمين في هذه البلاد وإن كانوا أغلبية من حيث العدد والكم، إلا أنهم من حيث القوة الاقتصادية والاجتماعية - أي من حيث الكيف - يعتبرون أقلية يسري بحقهم ما ينطبق على الأقليات المسلمة.⁵

خاتمة

إن مسألة الأقليات من حيث البعد الكيفي أو النوعي ينبغي أن تكون لها أهميتها في فقه الأقليات المسلمة الذي يحاول الفقهاء المعاصرون إرساءه بوصفه فرعاً خاصاً من فروع الفقه العام ومجالاً متخصصاً من مجالاته. فهي قضية تواجهها مجموعات كثيرة من الأمة الإسلامية في العالم تبعاً لوضعهم السياسي أو الاقتصادي أو الاجتماعي، فهم وإن كانوا كثيرين عدداً وأغلبية من الناحية الإحصائية، إلا أنهم واقعون تحت سيطرة أنظمة سياسية وقانونية غير إسلامية، فضلاً عن كونهم يعانون القلة في الشؤون الاقتصادية والمالية والضعف في الأحوال الاجتماعية والثقافية.

إن هذا الفقه وإن كان في نشأته الأولى نابعاً من ظروف الجاليات

¹ انظر: <http://kidpieces.wordpress.com/a-life-in-your-hands/melayu-usman-awang/meritokrasi>

² الكاساني، علاء الدين، بدائع الصنائع في ترتيب الشرائع (بيروت: دار الكتاب العربي، 1982)، ج6، ص111.

³ انظر: <http://syekbry.blogspot.com/2007/05/menjawab-serangan-golongan-konservatif.html>

⁴ انظر: <http://www.scribd.com/doc/7856037/Bab-6-Siasah-Syariah-Maqasid>

⁵ انظر: <http://www.wangxtra.com/artikal/melayu-masib-lemah-sistem-kewangan.html>

الإسلامية وخاصة في أوروبا وأمريكا، إلا أن المقاصد الشرعية التي تدور حولها الأحكام المقررة في هذا الفقه تنطبق كذلك على المجتمعات الإسلامية ذات الأكثرية العددية ولكنها تعاني من القلة والضعف في المجالات السياسية والاقتصادية والاجتماعية والثقافية. فإذا كانت الأقليات المسلمة التي تعيش في البلدان غير الإسلامية تحتاج إلى شيء من التكيف الجديد لإزالة الضغط على حياتها، فإن الأكثرية المسلمة التي تعيش في مجتمع يسيطر فيه غير المسلمين على مرافق الحياة الأساسية تحتاج كذلك إلى شيء من ذلك التكيف الفقهي.

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