and problems, and flash-points inevitable among them, East Asia is still like nineteenth century Europe.” And right now you can see this between Japan and China, Japan and Korea, China and India.

ASEAN must aspire to respond to the challenge that Henry Kissinger put to us three decades ago. That is, we must build a system, an institutional process, an organisation to handle the differences between ourselves and the rest around us. Failing that, we are not going to be a part of the twenty-first century or the Pacific Century that seems to be emerging, but rather under threat and in danger of being derailed because of all these problems that are now before us. As such, ASEAN is an instrument that is expected to help spearhead this effort; because the others could not do it, because they have too much historical baggage among between them, territorial or otherwise. You cannot expect the Chinese and the Japanese to spearhead a process of building up a system, a forum, an organisation to solve these problems, or to at least contain them. Neither do you expect the Japanese and the Koreans, nor do you expect the Chinese and the Indians to do it; it is only us – ASEAN.

So, Excellencies, Ladies and Gentlemen, we have to shift gears, change modes, and accept the challenge as ours. And I think we can do it. I hope next year, these issues will also be part of the consideration under the Chairmanship of Malaysia as the “midwife,” the “*tok bidan*,” bringing this baby – ASEAN – into the world.

Thank you very much. *Ma’assalamah*.

The *Fiqh Al-Aqalliyāt* (Jurisprudence of Minorities) in Light of the Higher Objectives (*Maqāṣid*) of Shariah

*Mohammad Hashim Kamali & Ahmad Badri Abdullah**

Muslim minorities living in the West face the challenges of a secular law and culture as well as issues of identity and citizenship that have taken a turn for the worse since the aftermath of 9/11. However, compared to Muslim minorities elsewhere, those living in the West enjoy greater freedom to practice their religion. Some of the challenges they face are unprecedented and the rules of Islamic law concerning them have also remained relatively under-developed. This would explain the emergence of a new branch of Islamic jurisprudence under the rubric of the still developing *fiqh al-aqaliyyāt* (jurisprudence of minorities) in recent decades.

The *fiqh* tradition has engaged – in considerable detail – with the status of non-Muslim minorities living in Muslim majority societies, but not with the position of Muslim minorities residing in non-Muslim majority countries. The large scale migration of Muslims to Western countries is a twentieth century post-colonial phenomenon for the most part, prompted partly by greater demands for labour as well as by the desire of migrants to improve their lives and working conditions.

There were Muslim minority groups living in the West and elsewhere even earlier with a set of outstanding challenges and issues in their relations with the indigenous populations of their host communities. Some Muslim minorities had deep roots in the histories of these countries and contributed significantly to the indigenous cultures of those nations. As a result of early historical mobility and more recent large scale migrations, Muslim minorities living in non-Muslim majority countries now constitute about one-third of the world Muslim population. The issues they face are therefore not marginal by any means and merit the earnest attention of scholars, politicians and law-makers to address the challenges they face through consultative and collaborative efforts with all those involved.

Broadly, Muslim minorities are expected to observe the ethical guidelines of Islam and the essentials of the faith as well as the guidelines of the Qur'an and Sunnah concerning their relations with the followers of other religions; they must accordingly cultivate mutual respect and friendship with their host communities. The same holds true with regard to the treatment of religious minorities living in Muslim majority communities. It is also important that texts and scriptures are read and interpreted in light of historical and contemporary developments. Many Muslim scholars of standing have subscribed to the view that Muslims living in non-Muslims majority countries must live as law-abiding citizens. They are also expected to be honest and trustworthy, and remain open to beneficial changes that help them live in peace and harmony.

Fiqh al-aqalliyāt is widely regarded as a new field of study, yet many scholars who have spoken on the subject have considered it as an extension of the rich edifice of *fiqh*. Yusuf al-Qaradawi has thus observed that *fiqh al-aqalliyāt* should retain its nexus with traditional *fiqh* as both draw support from the same sources (*maṣādir*) that are known to the Islamic juristic tradition. Nevertheless, the objectives of *fiqh al-aqalliyāt* are somewhat more specific due to the new conditions and challenges faced by Muslim minorities. When tackling newly emerging issues among minorities in a quest to respond to the challenges they face, the jurist is advised to pay attention to considerations of public interest (*maṣlahah*) that include the interests of these groups as well as the communities and nations in which they reside. Muslim scholars may be faced with situations where they have to weigh the relative merit of two conflicting benefits (*maṣālih*),

and demerits of two harms (*mafsadah*); or between benefits and harms in situations of conflict between them.

The Muslim jurist may be called upon at times to take recourse to the less preferred (*marjūh*) opinions of scholars within a specific school or even from different schools of *fiqh*. It is also acknowledged that some of the issues faced may need to be addressed in a wider context, even outside the scopes of *fiqh* and law due to the need to move abreast with the dynamics of political and economic developments affecting the lives of Muslim minorities. In sum, *fiqh al-aqalliyāt* would be unable to meet its desired objectives without a degree of openness to the influence of other disciplines and non-*fiqh* sources, such as sociology, economics, medicine, law, and political science.

To meet these challenges, Muslim scholars and researchers are similarly advised to take into consideration the higher goals and purposes (*maqāṣid*) of *Shariah*, and also the legal maxims of *fiqh*.

The *maqāṣid al-Shariah* is itself a relatively new and a burgeoning field of study and has invited renewed scholarly interest in recent decades. This is due largely to the inherent dynamism of the *maqāṣid* in the observance of values such as the sanctity of life, and the protection of religion, rationality and human intellect, progeny, and property. These are for the whole of humanity and should not be advocated in ways that may be detrimental to some at the expense of others.

Fiqh al-aqalliyāt can also benefit from the resources of *qawā'id al-fiqhiyyah* (Islamic legal maxims) that provide general as well as specialised juristic guidelines on a variety of issues. Legal maxims offer well digested yet incisive understanding of the data of the Qur'an and Sunnah along with the cumulative juristic wisdom of leading scholars and imams of the past.

Fiqh of minorities should aim then – according to several leading maxims – at bringing ease and relief to the minorities to enable them to overcome their difficulties. Muslim minorities should be able not only to preserve their religious identity, but also to perform their civic duties as good citizens of their respective countries. It is imperative then to vindicate justice and fair dealings as the higher objectives of Islam and as the pillars of peace and honourable living for all those who wish to coexist in peace and harmony.

Lastly, while endorsing the numerous UN Conventions on the rights of minorities, Abdullah b. Bayyah considered the case of Muslim minorities in non-Muslim majority countries, from the juridical viewpoint, as a situation of necessity, even emergency (*awda' darurah wa idtirar*). This would justify recourse to concessionary rulings, and indeed the development of a special jurisprudence that takes into account the prevailing conditions of each country and community. In saying this, Ibn Bayyah echoes a legal maxim of *fiqh*, which tersely says that “necessity makes the unlawful lawful – *al-darurat tubih al-mahzurat*.”

These are some of the ways *fiqh al-aqalliyāt* may be able to provide balanced positions through innovative *ijtihad* as well as observance of the textual dispensations of *Shariah* and its higher purposes.

Notes

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How the Qur'an Rejects Extremism

*Stephen B Young**

There is no Qur'anic justification for the murders, barbaric beheadings, and the maimings executed by supposedly faithful Muslims like ISIS loyalists, the Tsarnaev brothers in Boston, the Kouachi Brothers in Paris, or by the followers of Osama Bin Laden on September 11, 2001.

The crux of the Qur'anic case against such taking of life in the name of Islam is the wrongful appropriation of God's (Allah's) right and power, and committing murder and mayhem in the name of His religion. The Qur'an assigns death by retaliation to all cases of murder (2:178). It also provides "One who kills a human being without the latter being guilty of murder or corruption in the land, it would be as if he has killed the whole of humankind." (5:35). This clear enough, yet the wrong committed by these Sunni extremists also has an ideological dimension: it is idolatry, the worshipping of false gods and idols, in particular the putting of a person such as Al-Baghdadi or Osama Bin Laden, or oneself, in God's place as the arbiter of who should live and who deserves to die.

In Islamic terms the idolatry is called *shirk*.

God does not forgive those who serve other gods besides him. The Qur'anic guidance for this rule is found at Surah 4, at verse 48, and Surah 2 at verse 22.

The other month I tested my application of *shirk* to Islamic extremists with a Somali taxi driver taking me to the airport. He was a bit surprised to have an obviously non-Muslim turn the conversation to Qur'anic exegesis but readily agreed that the behavior of Islamic terrorists was, in his words, "very shirky."

I have been studying Qur'anic guidance for political action for some ten years now with highly reputed scholars at the International Islamic University,