

**Our Need for a Fiqh Suitable to Our Time and Place**  
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**Introduction**

All praise belongs to Allah. We praise him, seek his aid, seek his forgiveness, and turn unto Him in repentance. We seek refuge with Allah from the wicked promptings of our souls and the evil consequences of our deeds. Whomever Allah guides none can set astray; and whomever He sets astray none can guide. I testify that there is no god but Allah alone; he has no partner. And I testify that Muhammad is his slave and messenger. May Allah bless and protect him, his family and companions.

First of all, before beginning my lecture in earnest, I would like to thank the brothers and sisters who have attended this conference and, first and foremost, the organizers of this conference. It brings great pleasure to my heart to be once again with my brothers and sisters in the United Kingdom. This being my second participation at a JIMAS conference here in Leicester having previously been here four years ago.

With that being said, we do have today’s lecture before us and it has been entitled “Our Need for a *Fiqh* Suitable to Our Time and Place.” Now as we take a moment to think about the title of this lecture, even though it is a bit lengthy, it is important that we do not forget the conference theme to which this lecture is one part, specifically, “Establishing Islam in the West in the Way of the Pious Predecessors.” The title lecture and the conference theme are such that they are inseparable.

My lecture is composed of five points.

**1. Fiqh defined**

The first thing we should discuss is the word *fiqh*. What do we mean by the word *fiqh*? What are we saying when we say “Our Need for a *Fiqh* Suitable to Our Time and Place?” What is this *fiqh* that we are looking for and are in need of? And moreover how is this need such that it must be qualified by a specific time and place?

So what is *fiqh*? If we begin with the Arabic language and look at the basic lexical meaning we will find that the word *fiqh* is derived from the verb *faqih*, which means to understand, to comprehend, to know.<sup>1</sup> However, when used as a convention or as a technical term, which is the sense that it is being used in the lecture title, *fiqh* means “knowledge of the secondary regulations of the sharia as known by their evidences from the Qur’an, the Sunna, the consensus, and valid analogy.”<sup>2</sup>

What does that mean? Well knowledge, I am sure we all recognize what knowledge means. The scholars define knowledge as to know something as it is in reality.<sup>3</sup>

What are we trying to know? We want to know the secondary regulations or rulings of the sharia. Well what does that mean? In other words, the sharia, or the religion with which Allah sent the Prophet Muhammad (*sallallahu ‘alaibi wa sallam*) can, in general, be thought of consisting of two large branches.

There are matters of belief, which are held in the hearts. These are called the fundamental issues of the religion or *usul ad-din*. This is belief in Allah, belief in the angels, belief in the scriptures, belief in the messengers, belief in the last day, belief in *qadr*, the good and evil consequences thereof. These represent the fundamentals of our religion. They are matters that exist in our heart.

But there is another branch to our religion and this is the practices of Islam whether dealing with acts of worship, in other words, our relationship between ourselves and Our Creator, Allah (*‘azza wa jall*), or *al-‘ibadat*; or dealing with our relationships with one another. How we deal with one another, or *al-mu‘amalat*. Entering into this second category are matters like buying and selling, marriage and divorce, and other societal concerns like punishments, the administration of justice and so forth. *Fiqh* is the knowledge of the rulings of these matters: the various acts of worship and ways of human interaction.

So for instance, *fiqh* is to know that it is *wajib* (required or obligatory) that a Muslim should pray five times a day. And *fiqh* is to know that in order to complete a valid sale in Islam certain stipulation must be fulfilled like both parties enter into the transaction uncoerced out of their free choice; that the

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<sup>1</sup> See Lane’s Lexicon, Part 6, p. 2429.

<sup>2</sup> See Ibn Sa’di, *Manhaj as-Salikin*.

<sup>3</sup> See al-Juwayni, *al-Waraqat fi Usul al-Fiqh*.

sale is not over something that is in itself forbidden; that no *riba* (usury) is involved; and so forth. This is all *fiqh*.

These rulings (there are five obligatory daily prayers; there are certain stipulations for buying and selling; there are certain stipulations for marriage and divorce) we will take from:

1. The Qur'an, Allah's scripture
2. The Sunna of the Prophet (*sallallahu 'alaihi wa sallam*) meaning his statements, deeds, and tacit approvals.
3. The consensus. This is when the Muslim scholars are all in agreement concerning a specific ruling.
4. Valid *qiyas* or analogy. What does *qiyas* or analogy mean? Well to give a simple illustration: we know that both Allah and His Prophet forbade alcoholic drinks. The scholars have deduced that the reason why alcoholic drinks are forbidden is because of their intoxicating effect. So then we have something like marijuana, which was unknown during the day of the Prophet (*sallallahu 'alaihi wa sallam*). A scholar makes an analogy and reasons that since when consumed marijuana also intoxicates; and since alcoholic drinks are forbidden in the sharia due to their intoxicating effect; therefore marijuana is also forbidden. This is a simple example of a valid analogy.

So to summarize, *fiqh* is therefore knowledge how to worship Allah and knowledge how to deal one another as derived from the four primary sources of Islamic law: the Qur'an, the Sunna, the consensus of the scholars, and valid analogy.

So in the end *fiqh* is about life. *Fiqh* is about living in the sense that *fiqh* addresses how our lives should be in accordance with the sharia. And *fiqh* is the understanding of the sharia. Allah has created us to worship him.

I created the jinn and humankind only that they might worship  
Me. (51:56)

Worship not also includes direct acts of worship: prayer, charity, fasting, pilgrimage, and *jihad*. These acts form what is referred to as *al-'ibadat*, or the acts of ritual worship. Worship also extends to how we conduct ourselves with our own selves and with one another. The former is called *as-suluk*, the latter *al-mu'amalat*.

So therefore the question that we are posing tonight, which we would like to address and understand, is that in order for us to establish Islam in the West according to the way of the earliest Muslims, those whom the Prophet taught, as-Salif as-Salih, we are in need, of a *fiqh* that is suitable to the time we are living and the place we are living. This is an issue that people are discussing throughout the West. All Muslims whether in the United States, Canada, the United Kingdom, Continental Europe, or Australia discuss this issue.

However though, we do not just want to discuss it, in the sense that everyone gives his two cents worth. Rather we seek is to understand this issue in light of the understanding of *as-Salif as-Salih*, in light of the understanding of the best Muslims, those whom the Prophet (*sallallahu 'alaihi wa sallam*) described:

The best of humanity is my generation, then those who followed them, then those who followed them.<sup>4</sup>

We want to understand these pressing issues for Western Muslims in light of the understanding of those people whom Allah praised in His Scripture

Now some of you might find this topic quite odd. Some of you might be thinking, “What are you trying to say, Ali? Are you trying to say that we need to invent a different *fiqh* suitable for our time and place?”

**No that is not what we are trying to say. What we are trying to say that true Islamic *fiqh* takes into consideration time and place.**

## **2. Examples of the *fiqh* of the Prophet’s companions**

Let me provide some examples of this important principle from the lives of the Prophet’s companions. And I will just provide a few.

### 1. What to do with the Arab apostates?

After the Prophet’s death (*sallallahu 'alaihi wa sallam*), the majority of the Arabs apostated forming three groups. One group returned to idolatry. Another group followed false prophets who appeared at the end of the Prophet’s mission attempting to imitate the successes of the Prophet. And a third group of Arabs claimed that the obligatory charity, or *zakat*, is not be given to anyone but the Prophet (*sallallahu 'alaihi wa sallam*) and therefore to give this charity to

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<sup>4</sup> Al-Bukhari.

Abu Bakr, who succeeded the Prophet, is mistaken. This third group said while we will pray, fast, and go on pilgrimage; we will not give our charity (*zakaat*) to the Muslim state. The Prophet's companions were in agreement on how to deal with the first two groups. How to deal with the third group was a source of contention. This is one dilemma that occurred at the death of the Prophet.

## 2. Did the Prophet really die?

Another issue that occurred did the Prophet (*sallallahu 'alaihi wa sallam*) truly die? Some Muslims argued that he had not died but was only in a coma.<sup>5</sup>

## 3. Where to bury the Prophet

At the same time other issues cropped up: where to bury the Prophet (*sallallahu 'alaihi wa sallam*). Should he be buried with the Muslims in the public graveyard of al-Baqi', or in his *masjid*, or in his household?<sup>6</sup>

## 4. Who should succeed the Prophet?

Another issue was who should succeed the Prophet (*sallallahu 'alaihi wa sallam*) in leadership of the community? The *Muhajirun* from the Prophet's tribe of Quraish, those who emigrated from Mecca to Medina, had their vision. The *Ansar*, the inhabitants of Medina had their ideas. Who was to be the successor to the leadership of the *umma* of the Prophet (*sallallahu 'alaihi wa sallam*).

## 5. Should the military expedition prepared for Byzantium sent forth?

The Prophet (*sallallahu 'alaihi wa sallam*) had prepared an army to go forth toward Syria to fight the Byzantine Christians. The army was ready to leave Medina when the Prophet (*sallallahu 'alaihi wa sallam*) died. The question the Companions faced was should the army continue forth or should it be diverted to deal with the apostates.<sup>7</sup>

Yet while all these crises occurred at one time, *as-Salaf as-Salih*, our pious forefathers, found solutions to them and were able to effectively deal with them. Even though with many of these cases there were not direct texts from the Qur'an and the Sunna to show how to deal with these issues. Yes in some

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<sup>5</sup> Ibn Kathir, *al-Bidaya wa n-Nihaya*, 3:253-2256.

<sup>6</sup> Ibn Kathir, 3:279-283.

<sup>7</sup> Ibn Kathir 3:695-696.

cases there were direct texts. Like with the Prophet's death (*sallallahu 'alaihi wa sallam*) there is an indication to the Prophet dying in the Qur'an. So when Abu Bakr recited that *aya* in the Prophet's mosque, some of the Companions remarked, "It was as if we had only heard this *aya* for the first time." Likewise as far as to where to bury the Prophet (*sallallahu 'alaihi wa sallam*) some of his companions, like Abu Bakr, had memorized a specific *hadith* where the Prophet (*sallallahu 'alaihi wa sallam*) had said:

The Prophets are to be buried at the spot where they die.

But there were other issues like dealing with the apostates and whether they should send forth or hold back the army prepared for the Byzantines. To obtain solutions that would lead them out of these crises, the Prophet's companions applied the *fiqh* of the Qur'an and the Sunna.

6. Should the Qur'an be compiled into a *mushaf*?

Another example, during the battles of apostasy many of those who had memorized the Qur'an were killed. In one single battle, seventy of the *qurra'* (those who memorized the Qur'an) were killed. When seeing this, a thought occurred to 'Umar, that if the Qur'an was not compiled in a single *mushaf*, the Qur'an might be lost as those who have committed it to memory might die off. 'Umar said, "O Abu Bakr, take care of this *umma* before it is afflicted with what afflicted the previous nations," whereas as they lost their Scripture. Abu Bakr replied, "Well how can we place the Qur'an in a single *mushaf* while the Prophet did not do such." The Companions discussed this matter and reached the decision that we all know. Namely, the Qur'an was transferred from the various fragments of bone, bark, and hide left by the Prophet into a single unbound *mushaf* of loose sheets.

7. How should the agricultural lands of Iraq be divided?

During the time of 'Umar ibn al-Khattab, when the Muslims conquered the vast, fertile lands of Iraq and Syria, a question arose as to what to do with these lands filled with such great agricultural riches and natural resources. Should they divide these vast lands and apportion them to individual Muslim soldiers? In other words, give an estate to the individual soldiers. 'Umar decided no. He decided that these lands should be left as a common property for the Muslims so that all Muslims may take benefit of these riches until the end of time. This was an issue that was discussed between them. However, 'Umar felt that this was the right decision and so they went in that direction.

### 8. A second *adhan* for *jumu'a*

Another issue that arose many years later during the time of 'Uthman when the city of Medina greatly increased in the number of its inhabitants and as a result those in the market place could not respond to the *jumu'a* prayer as they did before. 'Uthman decided to place a *mu'adhhan* on a certain building in the market place in order to call the people to the prayer before the *adhan* for *salatul-jumu'a* was called in the Prophet's mosque. This is an example of application of *fiqh* for their time and place.

### 9. The *fitna* or civil war

Later on some thirty years after the Prophet's (*sallallahu 'alaihi wa sallam*) death, the Prophet's companions split into two camps due to the *fitna*. One faction selected al-Hasan b. 'Ali to be the *khalifa*. To end the civil war, al-Hasan b. 'Ali decided to step down and relinquish the *khalifa* in order to bring the Muslims together and to stop the bloodshed. This occurred during the year 40 A.H. and this year became to be known as *'am ul-jama'ah*, or the year of unity. Again this was an application of a *fiqh* for their time and place.

So by looking at the lives of the Prophet's companions, we find that they dealt with the challenges of their day by applying the *fiqh* of the Qur'an and the Sunna in a way suitable for the time and the place in which they were living.

## 3. The changing of *fatawa* regarding time and place

Therefore the notion that the application of the sharia takes into consideration the time and place is something well established. The sharia is not something stagnant. Rather it is something that is deeply connected to life. For this reason the scholars have deduced the following principle regarding issues attributed to the sharia. In other words an issue that is not something specifically defined in Allah's law, specifically stated in the Qur'an or the Sunna, but rather something applied or derived. This principle states:

**Every issue that leaves justice for injustice, mercy for its opposite, benefit for harm, wisdom for jest, it is not from the sharia even though it is attributed to the sharia by means of some sort of false reasoning (*ta'wil*).<sup>8</sup>**

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<sup>8</sup> See Ibn al-Qayyim, *I'lam al-Muwaqqq'in*, 3:14.

The scholars provide many examples to illustrate this. One example pertains to commanding the good and forbidding the evil. If you look at the Qur'an and the Sunna, it is very clear that we are ordered to command the good and eradicate the evil. There are many evidences for this. Among which:

And there may spring from you a nation who invite to goodness, and enjoin right conduct and forbid indecency. Such are they who are successful. (3:104)

All of us I am sure have heard the *hadith* of the Prophet (*sallallahu 'alaihi wa sallam*) where he said:

Whoever among you sees a *munkar*, let him change it by his hand; and if he cannot then by his tongue, and if he cannot then at least by his heart. And that is the weakness of faith.

In other words, he should wish for its eradication.

Yet, the scholars have understood that when changing an evil leads to a greater evil, it then becomes impermissible to change that evil. They offer a number of illustrations. One illustration is the application of the *hudud* on the battlefield, like whipping the one who drinks alcohol. We know that the punishment for intoxication is lashing. Yet the scholars have understood that on the battlefield, the *hudud* are not to be applied. Thievery, we cut the hand of the thief, but on the battlefield we suspend that ruling. Why? Not because we are negligent with Allah's sharia; but because the greater benefit dictates otherwise. If you are on the battlefield and attempt to apply the *hudud* on your sinful soldiers; they might out of anger (as they are now an object of punishment because of their crime) decide to go to the ranks of the enemies. If they go to the ranks of the enemies, they might inform them of some military secrets. Were that to happen, the Muslims might lose a battle or perhaps the war. Thus in order to preserve a greater benefit, the *hudud* are suspended on the battlefield.

A similar case is when there is some sort of doubt regarding the cause of the crime. Was that person truly seeking to overstep Allah's boundaries or was he compelled by some extraneous factor to overstep Allah's boundaries if the latter then the *hudud* are not applied. This is what occurred during 'Umar's *khilafa*. During the year of the drought, which occurred in the 18<sup>th</sup> year of the *hijra*, 'Umar suspended the application of the *hadd* for thievery due to the

drought in Arabia.<sup>9</sup> Why? Because there is a possibility that someone stole in order to feed himself; not because he sought to overstep Allah's boundaries; but was forced to do so out of hunger.<sup>10</sup>

Another example pertains to the *zakatul-fitr*, or the charity given at the conclusion of the fast of Ramadan. We know that during the time of the Prophet (*sallallahu 'alaihi wa sallam*) the *zakatul-fitr* was established as expiation for any sins incurred while fasting. During the Prophet's time, Muslims would pay with certain foods that the inhabitants of Medina would eat, like dates, barley, and so forth. Now if we were to come to the Muslims of Leicester at the end of Ramadan and give them a bag of barley, who would benefit from that charity? Who has a mill in his house to grind that barley, so that they can then bake the flour to make bread by hand to feed one's children? But to give Muslims in Leicester something like rice which is a staple food is more beneficial. So here again is an example of the application of *fiqh* for its time and place.<sup>11</sup>

Likewise we know that during the Prophet's time that after answering the call of nature, people would clean themselves with stones. Yet today there exists materials that clean better and are easier to use in terms of their availability and people's comfort with them. Here is another example. We would not tell people when answering the call of nature they should bring three stones along. People can use toilet paper tissue or whatever. This is not only an easier way but also it achieves the aim sought by the sharia, cleanliness, in a better fashion.

Another example pertains to the contracts settled between people, or oaths taken, regarding sales, marriage and divorce. To establish these matters people do so in different ways, in different cultures and during different times. We cannot claim that the wording of the marriage contract is fixed. If someone says, "I offer you my daughter's hand in marriage," and a person replies, "I accept," this is a valid contract. One must not repeat the same wording used during the Prophet's time as this is something that changes. As long as the idea of a proposal and an acceptance is present, then no matter what wording or language the people use, the sharia recognizes its validity.

Again it is important to understand that what we are talking about here is the application of the sharia. We are not talking about taking established rules, like

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<sup>9</sup> Regarding the drought see Ibn Kathir, 4:96-99.

<sup>10</sup> Ibn al-Qayyim, 3:22-23.

<sup>11</sup> Ibn al-Qayyim, 3:23-24.

it is forbidden to drink intoxicants, commit illicit sexual relations, or steal and say this is now permissible; nor are we saying it is no longer incumbent to obey one's parents or pray five times a day – because these matters are not suitable for our given time and place. What we are talking about the application of the *fiqh*.

Given this, let us return to the conference theme, “Establishing Islam in the West.” First we need to come to the realization that what the Muslims today are facing in terms of large number of Muslims living in societies where Allah's sharia is not the dominant law is an aberration in the history of the Muslims. This aberration only occurred once previously during Islamic history and that is during the time of the Mongols who stopped the application of the sharia, and replaced it with Genghis Khan's law instead. Moreover, this occurred only in that part of the Islamic world that fell under Mongol domination. But today's situation where we have the sharia practically nullified throughout the Islamic world except in some small regions and, at the same time, millions of Muslims living under direct non-Muslim rule; this is an aberration in history.

#### 4. Two approaches

The scholars in addressing this aberration have two basic approaches. One is that the *fiqh* for this issue in a category that is known as *fiqhul-fitān*. *Fitān* is the plural of the word *fitna*, In other words, the *fiqh* required when dealing with tribulations, or *fitnan*. This is the weaker opinion and I will not address it. The other opinion is that this issue falls under the category known as *fiqhun-nawāzil*. *An-Nawāzil* is the plural of the Arabic word *nawāzil*, which means a novel event that has not occurred in Islamic jurisprudence. Hence we need to derive a ruling for it from the sources of Islam. This seems to me to be the correct characterization of the problem. Even though between the two (*fiqh al-fitān* and *fiqh an-nawāzil*) there is obviously inter-relatedness.

So what we face then are novel matters that the *umma* has not previously seen and we are thus in need of a *fiqh*, or understanding, based upon the tradition of *as-Salaf as-Salih* to deal with this problem. I will not address the issue of the Islamic world, as we are not residing there, we live in the West.

What I would like to do for the remainder of this lecture is highlight certain issues that we need to straighten out in order for us to establish Islam in the West. We need to know what Allah wants from us with regards to these issues. We need this in order to stop the argumentation, supposition, and ignorance we see in our communities regarding these issues.

Now Muslims in the West in approaching this dilemma, this novel event, have formed two basic approaches.

The majority of Muslims, unfortunately, have attempted to adapt Islam to the prevailing culture. This is a sociological reality that occurs with living under a dominating culture. The dominated people will usually adapt themselves to those who have the upper hand over them. Let me provide an example. A couple of years ago I had the opportunity to go to China to participate in the United Nations 4<sup>th</sup> World Conference on Women. While I was in China, we had one day off. So I decided to take a tour of the city. One of the landmarks I wanted to see was what is known as the Forbidden City. The Forbidden City is that part of the Chinese capital where the kings of China would reside. If anyone were to enter into this area without permission, he would be executed. This was the practice for six or seven centuries until the Communists came into power and ended the monarchy. As I was entering from the back of the king's palace, which is the oldest part of the palace, my eye caught onto something. All the script (Mongolian) was written in Arabic letters. It seems that the Chinese rulers of some 600 or 700 years ago would write their names, their dynasty, their ideas, their philosophies in the Arabic script. Why? Because the Islamic civilization was the dominant culture of the time. The Muslims were the dominant people on earth. Now as you make your way through the Forbidden City and you go through different additions to the palace, new buildings appear and with it the centuries are changing. What happens the Arabic script disappears. Until finally when you come to Tiananmen Square, the central area in Beijing; you find all the signs are in Chinese and English. Why? Because Western civilization, and specifically the British and now the Americans are the dominant culture in the world.

### **Approach one: westernization of Islam**

So returning back to what I am saying, the Muslims have two approaches toward these issues. The first approach, which is a dangerous approach that we are seeing widespread in different manifestations and forms, is to make Americanize or Europeanize Islam. What we do is try to take a little here, put a little there, re-package Islam to fit Western culture. There is a lecture tomorrow wherein which I will address some of the problems when I talk about the Europeanization of Islam. This is a dangerous path that will lead the Muslims to be absorbed in Western society and lose their identity.

## Approach two: blind adherence to the traditional books of *fiqh*

The other approach, which has a few voices, so it is there and we need to address even though it is a minority approach with very few people calling to it argues that we need to take the traditional *fiqh* written in the heyday of Islam as found in the classical books and apply this *fiqh* to our situation. So therefore all we need to do is open up Ibn Quddama's *Mughni*, the great encyclopedia of *fiqh*, or the great Spanish scholar, Ibn Hazm's *Muhalla*. That is what we need. However, if you look at these books you will find that they do not address in sufficient detail the issues that we face as they were written for a people who were the dominant people of their time. They were written for a Muslim society wherein which the sharia was prevalent. This when they address the issues of Muslims living under non-Muslim rule it is only a few issues. Now this was not because those scholars were incapable of addressing these issues, of course not. But because these issues did not exist in their time and since they were men of reason and practicality, they cared to address only the issues of their period.

Let me give an example regarding another topic. As I am familiar with the Hanabli *madhhab*, I will select an example from that legal school. If you look at the classical books produced by the Hanbali *madhhab* regarding the maintenance to be given by husband to his wife, you will find that these books says that a husband of middle means (sort of what we would call middle class) should provide for his wife a daily loaf of bread and yearly an upper garment, a lower garment, and a blanket. That is the minimal amount that a husband should maintain his wife in order to avoid being unjust. Now while perhaps many brothers are saying, "Ok, let us adopt this so we do not have to spend all our money in our wives." In reality if we were to take this point and apply it today at the doors of the 21<sup>th</sup> century, we would be causing a severr injustice to our wives whom Allah has placed as a trust in our hands and regarding this trust we will be asked about on the Day of Judgment. What the scholars gave as an example of fair maintenance was what was compatible with the lifestyles of those days. One cannot compare the lifestyle of Ibn al-Jawzi's 6<sup>th</sup> Islamic century Baghdad with the lifestyle of today's London in the 15<sup>th</sup> century of Islam.

The underlying principle is true that one should show justice to his wife by providing a certain level of income and lifestyle; but obviously the specific details have changed. So my point is not that the scholars were incapable of deducing these issues that we face but they were people living the practicality of their time. So therefore issues regarding *jihad*, how are the shares to be divided between the *mujahidin*. The classical books will discuss the share of a person

riding a horse versus the share of a person on foot deriving those rulings from the Sunna of the Prophet (*sallallahu 'alaihi wa sallam*). But you will not find them discussing the share of a fighter pilot or a person riding in a tank because these issues, of course, did not exist in time. Modern warfare did not exist during those times when they wrote those classical books of *fiqh*.

Another matter we need to realize is that not only terms of the specific examples, do we find the classical books of *fiqh* not applicable for our time and place, but also in terms of the scope. When I first discussed this issue in the United States some nine months ago, I did a quick purview of *al-Mughni* of the issues that deal with Muslims living in the lands of non-Muslims. I found a total of nine or fourteen, the number escapes now, of issues in *al-Mughni*. This out of a total of approximately 6,000 issues of *fiqh*. Now Ibn Qudama's *Mughni* is considered to be the epitome of Islamic *fiqh*.

Was Ibn Qudama incapable of understanding our issues? No, but he addressed his society and the time in which he lived. We should understand that.

Moreover we should understand that in essence the majority of the *fiqh*, the majority of the sharia is still applicable today as was in the time of the Prophet (*sallallahu 'alaihi wa sallam*). Five prayers are still applicable in the Prophet's Medina (*sallallahu 'alaihi wa sallam*) as it is applicable in London of 1997. Five prayers a day, this doesn't change. Fasting of Ramadan does not change. *Hajj* to Mecca does not change. That marriage and divorce is to be conducted in a certain manner does not change.

## 5. Issues of importance for Muslims in the West

But there are specific issues that we need to know what is the Islamic ruling according to the Qur'an and Sunna in order for us to establish Islam in the West. Until we resolve these issues from the Qur'an and the Sunna and the understanding of the scholars of our time we will continue to remain in confusion. This confusion opens the door for those people who seek to Americanize or Europeanize Islam that will result in our eventual loss of identity in Western societies.

So what are these issues that we must come out and find solutions for. **Well, I am not a scholar to tell you that the ruling concerning this issue is such or the ruling concerning that issue is that. I cannot provide you with those answers.** What I am hoping to provide during this last part of my

lecture is at least to bring our minds some of things we should be focusing on, some of things we should be getting answers from the scholars of the *umma*. I have in front of me about twelve or thirteen issues that I would like to go through.

### **The sha'a'it**

The first issue is not strictly an issue of *fiqh*, but it is basically regarding practicing Islam that has not changed. It is part of the sharia that does not change due to time and place. That is the establishment of the *sha'a'ir* of this religion. The Arabic word *sha'a'ir* is a plural of the term *sha'ira*. Allah (*subhanahu wa ta'ala*) in the Qur'an uses it to refer specifically to the rites of hajj. Therefore this term can be understood to refer to those predominant, obvious acts which identify Islam, like the *adhan*, prayer in congregation, the *masjid*, like the prayer of 'id, the *jumu'a*, the fast of Ramadan, the *hajj*; these are all from the *sha'a'ir* of Islam. They are immutable and do not change with time and place. The first thing we need to do to establish Islam in the West is establish these *sha'a'ir*. These are issues that if you look at the classical books of *fiqh* where they would say that if any community, inhabitation of Muslims do not establish these matters then it is permissible for the *imam* to attack and wage war against these people. Why? Because in reality they are not considered to be Muslims. For example, if you look at a book of *fiqh* you will see that any inhabitation of Muslims that do not say the *adhan*, the *imam* of the Muslims is allowed to attack them as non-Muslim people. In order for us to establish Islam in the West we need to establish these *sha'a'ir*. They must be predominant in our communities. Prayer cannot be something secretive, but must be something out there in open, manifested. That does not mean I am saying pray in the middle of the street. But in other words, I am saying our *masajid* need to be predominant and Muslims must be encouraged to attend them. The fast of Ramadan must be something in every single household. The setting forth for *hajj* must be something that is considered something normal for Muslims to do even though it might require a journey thousands of miles away as it is for Muslims in the United States. That is the first issue.

### **The valid parameters for co-existence with non-Muslims**

Now, the second issue that we must understand is that we must establish the valid parameters for co-existence with non-Muslims. The concept of the modern state all of us I would imagine are citizens of one country or another except for one brother who I know does not have a passport. But we are all citizens of the modern state, I am an American, you might be British, the third

person might be a Frenchman, and so forth. The modern state as a political entity is something recent. If you study political science in a university, take political science 101, one of the first things they will tell you is that the modern state as we understand it is something relatively new and it appeared in Europe after the Treaty of Westphalia in 1648. So for Muslims now living in a modern state what does it mean for us to be a citizen of a non-Muslim country. In other words, I am a citizen of the United States, what does that mean Islamically? What does that entail of me so that this citizenship is not something *haram* but rather something that Allah (*subhanahu wa ta'ala*) permits.

Most Muslims either take the opinion well since we are forced into this situation so let us not address it. Others take the other extreme; we are citizens so let us be citizens to the end and slavishly wave the flag Red, White, and Blue. Obviously neither extreme is correct. But rather we must understand these parameters.

If we look at the first *fatawa* that came out when Muslims adopted the citizenship of non-Muslim countries we find that the scholars took the position that to become a citizen of a non-Muslim country would render you an unbeliever. Ibn 'Ashur, the famous Tunisian scholar who lived at the beginning of the century, said that if any Muslim became a citizen of France he became an unbeliever. Why? Well there was an Islamic state of Tunisia, which France attacked and colonized. Citizenship therefore became an issue of belief and unbelief. Obviously that *fatwa* does not apply now. None of us would consider his brother, much less himself, an unbeliever because he holds an American or British passport. And yet that was a *fatwa* that is less than a century old.

The parameters of what is the concept of citizenship in the modern state and how that deals with Islamic *fiqh* is something which is at least in my opinion is something that must be seriously addressed by Muslims. This matter entails a whole host of issues: voting, taxes, being part of the military, being part of the police, entering into the political process, entering into the government. This whole gamut of issues where Muslims have a variety of opinions and sometimes our arguments become heated. We need to have the valid parameters defined.

### **Al-hadi Az-Zahir**

The second issue is what is known as *al-hadi az-zahir*. This is a technical term that refers to the outward appearance of a Muslim. Is it required for a Muslim to wear clothing like I am wearing? In other words, must a Muslim living in the

West adopt Muslim garb or otherwise he will fall into the *hadith* of the Prophet (*sallallahu 'alaibi wa sallam*):

Whoever resembles a people is from them.<sup>12</sup>

Or is it permissible for a Muslim to wear Western attire? And if so is it just permissible, or is it as some argue, like Ibn Taymiya, at times even required. What are the parameters for this matter? And if this applies to the outward appearance of Muslims, then what about the misconceptions some Muslims have that if a man can wear a suit and tie; then why does a Muslim woman have to wear a *hijab*? Even though it should be stated that the garb of a Muslim woman does not technically enter into this issue of *al-hadi az-zahir*. However the confusion that arises in the minds of Muslims when trying to discriminate between these two is there. Therefore to set the clarity of the *fiqh* rulings regarding these matters is something that I believe is an issue we need to address.

### **Celebrations and festivals**

The unbelievers have a number of celebrations: Christmas, Valentine's Day, the Queen's birthday, whatever. What is a Muslim's position toward these celebrations? A large number of Muslims celebrate or commemorate these days. Though perhaps the majority of the audience understands that it is forbidden to take part in the celebrations of the unbelievers; yet. I would venture to say that for most Muslims in non-Muslim lands this is not understood. The majority of the Muslims participate in these holidays in one form or the other whether they are religious holidays like Christmas and Easter or secular holidays like the Fourth of July and Memorial Day in the United States or holidays which have a pagan origin like Halloween. Clarifying this issue to the Muslims is important, essential in my view in order to establish Islam in the West.

### **Financial transactions**

Another matter is clear rulings regarding typical transactions of buying and selling. If we look at the *hadith* of the Prophet (*sallallahu 'alaibi wa sallam*) we find a large number of *hadith* grouped under a book known as *Kitab al-Buyu'*, or the Book or Transactions: Buying and Selling. And if you look at the books of *fiqh*, you find in any manual of *fiqh* the two largest sections are regarding prayer and

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<sup>12</sup> Abu Dawud.

transactions of buying and selling. Moreover, when the Prophet (*sallallahu 'alaibi wa sallam*) arrived at Medina he addressed the financial transactions of the Medinan society, which was an agrarian society unlike Mecca, which was a city of commerce. We this find *hadith* regarding the *muzabana* sale. We also find the Prophet (*sallallahu 'alaibi wa sallam*) address certain pagan practices of buying and selling like *mulamisa* and *munabidha* transactions. We find clear *hadith* dealing will all the financial transactions common during that time. Therefore the Muslims of Medina knew how to buy and sell in a *halal* way.

Now, most Muslims do not know the basics regarding financial transactions that must deal with daily in Western society at the end of the 20<sup>th</sup> century. Most Muslims do not know the ruling regarding credit card use, is it *halal* or *haram*? Most Muslims do not know the rulings regarding different types of transactions performed on the stock market, or the different forms of insurance. Moreover, they hear a multitude of opinions. Those who want to fear Allah are confused, and those who want to follow their desires can easily find an opinion to suit them. The straightening out of these contemporary financial, in terms of knowing the *halal* and the *haram* of these transactions is essential for establishing Islam in the West. Indeed, this step precedes the establishment of independent Muslim financial institutions. For how can we establish financial institutions unless we know what is permissible from what is impermissible? The confusion has reached such a degree, that I remember a number of years ago there was a concern in England if using paper money was permissible? The brothers who we can say were all seeking Allah pleasure determined it was not so they wanted to only deal with coined money. The confusion has reached such degrees.

## **Inheritance**

Another issue that Muslims need to address in order to establish Islam in the West and bring an applied *fiqh* suitable for our time and place. Many Muslims are confused regarding the regulations of inheritance. This is because Muslims fail to differentiate between *al-irth* and *al-wasaya* (inheritance and legacies). Therefore for many Muslims especially those who come into the religion, how can they inherit, how is this to be established, and moreover to have the mechanism that when one of us dies to have his inheritance distributed according to the sharia and the state does not intervene into the distribution of his estate is something necessary for establishment of Islam in the West.

## **Leadership**

Issues of *imama*, or leadership of the Muslim community are important to resolve. You know the Prophet (sallallahu ‘alaihi wa sallam) commanded that if three people set out on a journey, they should choose an *amir* amongst them. The scholars have deduced from this, that if the Prophet (sallallahu ‘alaihi wa sallam) required for three Muslims, which is the smallest number of a *jama‘a*, who would be together only for a short period of time must have a leader; then that is more so required when you have Muslims living together for a permanent or extended period of time. Now do not misunderstand me that I am saying we should elect an *amir* tonight following the end of the lecture. That is not the issue. The issue is that we need to define the idea of leadership in our communities. What are the bounds for that leader? How is that leadership to be formed? Who is to be adopted as leader? What is the relationship between that leader and Muslims as a whole? This is an issue that must be addressed, and studied, and applied.

### **Judgments and arbitrations**

Likewise issues of judgment, issues of arbitration need to be resolved. If we look at any book of *fiqh*, you will find *Kitab al-Qada’*. In it you will find that it says, the *imam* is required to establish a judge in every locale of the Muslims. However, if you look at the commentaries, you will see it also says and if the *imam* is incapable of doing so, then people of that local are required to establish a judge between them. Why? Simply, because people dispute. So if this is the case when the *imam* is incapable, obviously this becomes more so when there is no *imam* in the first place. Therefore for Muslims to have avenues for arbitration that are recognized by the laws of the country through which disputes regarding marriage and divorce, financial transactions can be solved is something that is necessary for establish Islam in the West.

Also what is to be done if we cannot establish this in our own halls of arbitration, that is if the state does not allow us (as it differs from country to country how much arbitration is allowed) and we find ourselves compelled to go to the non-Muslims for arbitration? What is the *fiqh* and the scope for that?

You find some Muslims say if you go to court, you become an unbeliever! Why? Because you are judging to *taghut* and did not Allah (*subhanahu wa ta‘ala*) say:

Hast thou not seen those who pretend that they believe in that which is revealed unto thee and that which was revealed before thee, how they would go for judgment (in their disputes) to *taghut*

when they have been ordered to abjure them? Satan would mislead them far astray. (4:60)

So a Muslim will say brother if you go to court to resolve your dispute you are an unbeliever.

Others will adopt the other extreme rather than attempting to resolve the dispute between themselves; they will as soon as they have a problem with a fellow Muslim file a suit against that Muslim and take him to court. Both extremes exist. Thus the issue of arbitration, the boundaries for that, and what should we do when we are required to go outside of that arbitration this is part of the *fiqh* that we need establish for our time and place, that we may establish Islam in the West.

Finally, in conclusion, as the time for this lecture is drawing to an end, I would like to stress the point so I am not misunderstood as I have given this lecture twice before and I have been misunderstood which is probably a reflection of the intricacy of the topic and my inability to express myself clearly. My lecture is not calling for the reinterpretation of the Islamic sharia. Rather it attempts to draw to attention issues that we as Muslims need to solve in light of the Islamic sharia. The majority of the issues of the sharia are immutable and will not change irrespective of the time and place we live. With that I draw an end to this lecture.

I seek Allah's forgiveness for myself and you. Glory and praise be to the Allah, I bear witness there is no god but Thee, I seek your forgiveness and I turn unto you in repentance.

May Allah's peace, mercy, and blessings be upon you.

### **Some questions and answers**

Question: You mentioned that certain issues need to be addressed to avoid the confusion. It seems difficult to envision that confusion and differences will decrease when these issues taxes or joining governments are addressed. Rather as there are many opinions and loyalties to various scholars, addressing these issues will lead to more factionalism. Will it not lead to lesser *fitna* to avoid these issues so to avoid any further disputation?

Well I respect the comment but let us try to think about it. By trying to avoid these issues will we actually live as Muslims? These issues touch our lives. When a Muslim now casts a vote in the ballot box, he will be asked on the Day of Judgment regarding that action. In the same way, when he buys something with his credit card, he will be asked by Allah on the Day of Judgment. So therefore we cannot escape these issues. We are part and parcel of this society. Unless the alternative is that we live some sort of ascetic lifestyle in the mountains. If that is the solution that is being suggested and we cut ourselves out of society; then well maybe the argument that we just close our minds and tune ourselves out of the world. But that is not practical. Because the way the world is today even if you were to go to the highest mountain peak, the world is going to come to your corner. That is the way the world is now we cannot run away from these issues. Therefore those who discard *fiqh* of our contemporary circumstances, *fiqh al-waqi'*, they do not want to live. Rather they want to live in some sort of fantasy or delusion. I don't know what it is. Allah (subhanahu wa ta'ala) sent this sharia:

He it is Who hath sent His messenger with the guidance and the Religion of Truth, that He may cause it to prevail over all religion, however much the idolaters may be averse. (9:33)

Muslims have been put on this earth to worship Allah and to engage society, to engage civilization. We are not an *umma* that recedes and retracts and puts up the barriers and stick our head in the sand and live the life of an ostrich. This is not the *umma* of Muhammad (*sallallahu 'alaihi wa sallam*). Rather the *umma* of Muhammad is one that challenges the status quo and changes it so that it submits to Allah's law and submits to worship Allah. That is the *umma* of Muhammad (*sallallahu 'alaihi wa sallam*). It is dynamic. It engages life. It is not retreating, weak, cowardly, and ostrich-like. That is not Islam. And that definitely not the way of *as-Salaf as-Salih* even there are some who try to portray that way. So with my respects to the person making the comment. Yes, not everyone is going to agree. But let us not forget that when solutions are taken from the Qur'an and the Sunna they agree with the *fitra*, the natural state because Islam is *dinul-fitra*. Islam agrees with common sense because religion and revelation do not disagree, do not conflict with common sense and straight thinking. When solutions are taken from the Qur'an and Sunna, you find many Muslims naturally gravitating toward them. Yes, people will still disagree, and some people will not like what we adopt, but that is there business we cannot guide everyone on the face of the earth.