

## **Introduction**

# **Minorities as Subjects and Minorities as Producers of Islamic Law: Past and Present\***

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### **1. Introduction: definitions of minority**

The concept of ‘minority’ has proven to be a difficult one to define. Indeed, to quote Ulrike Barten, ‘Decades of discussions have not led to a legally binding definition of the term “minority”.’<sup>1</sup> Even when, in 1992, the United Nations adopted the ‘Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’, and even though a number of rights were guaranteed to minorities and to persons belonging to these minorities, a clear definition of ‘minority’ was never given. Similarly, a definition is not given in the *Framework Convention for the Protection of National Minorities* adopted in 1995 by the Council of Europe.<sup>2</sup>

Indeed, there have been different attempts in international law to define such a concept. The first attempt in this field was by Pablo de Azcárate, at that time director for the Minorities Questions Section at the League of Nations. In a study entitled *League of Nations and National Minorities – an Experiment*, de Azcárate proposed a definition of ‘national minority’ that, according to him, refer to ‘a more or less considerable proportion of the citizens of a state who are of a different “nationality” from that of the majority’.<sup>3</sup> He went on to say that ‘what in the last resort constitutes the distinctive and characteristic features of a national minority is the existence of a national consciousness, accompanied by linguistic and cultural differences’.<sup>4</sup> While the focus of this definition is clearly on national minorities, as the title of his study shows, it is interesting to note that de Azcárate mentions language and culture as distinctive elements that a national minority should have to distinguish itself, together with, obviously, a feeling of national consciousness. Language is also mentioned

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\* Carlo De Angelo is the author of paragraph no. 2. Serena Tolino is the author of paragraphs nos. 1, 3 and 4. The conclusion has been written by both the authors. The Arabic transliteration system we used for this special dossier is ISO 233. Terms that are included in the Merriam Webster dictionary have been not transliterated. – We would like to thank Pat FitzGerald for her careful copy-editing of the special dossier.

1 BARTEN 2015b: 162.

2 COUNCIL OF EUROPE 1995.

3 DE AZCÁRATE 1945: 3.

4 Ibid.: 4.

in the definition that, some years later, would become the standard definition of minority for international law.

This definition was proposed in 1979 by Francesco Capotorti, at that time UN Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in relation to Art. 27 of the International Covenant on Civil and Political Rights (ICCPR),<sup>5</sup> which mentions ethnic, religious or linguistic minorities without defining them. According to Capotorti's definition, a minority is:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.<sup>6</sup>

This definition mentions linguistic characteristics, as does de Azcárate's. However, instead of cultural differences, here ethnic and religious characteristics are mentioned. Moreover, it is clearly mentioned that this group should constitute a 'numerically inferior group'. A similar definition was proposed few years later, in 1985, by Jules Deschênes, at the time head of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. He defined a minority as:

A group of citizens of a state, constituting a numerical minority and in a non-dominant position in that state, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and law.<sup>7</sup>

The main difference with Capotorti's definition here is the reference to the 'collective will to survive', with the aim of achieving 'equality with the majority in fact and law'. Even though these three definitions are slightly different, they all agree on some aspects: the fact that a minority should be as such also from the numerical point of view, and the solidarity between its members.<sup>8</sup> It is also clearly stated, at least in Capotorti's and Deschênes's definitions, that to be a minority it should be in a 'non-dominant position': clearly, a minority in a dominant position would be not defined as a minority, but as an elite instead.

This is also the approach taken by sociologists. For example, in 1945 the American sociologist Louis Wirth defined a minority as:

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5 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.'

6 CAPOTORTI 1979: 96, par. 568.

7 DESCHÊNES 1985: 30.

8 Another issue that has often been discussed in the literature is whether membership of a minority is somehow automatic or is decided by choice, and whether a minority should have citizenship or not in order to be qualified as such. See BARTEN 2015a: 171 and EIDE 1999: 1.

a group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment and who therefore regard themselves as objects of collective discrimination.<sup>9</sup>

Wirth focused not so much on the fact that a minority should also be a numerical one, as this is not even mentioned, but more explicitly on the different possibilities that a minority has to have access to power. The people in question are singled out because of physical or cultural characteristics. The American sociologist Richard A. Schermerhorn speaks more generally of 'diversity', stating that:

This analysis of minority groups begins with the observation that they are sub-forms of a wider classification which, for the sake of convenience, can be termed cultural subordinates. Such cultural subordinates are groups in any society set off from the rest of the population by the two dimensions of cultural distinctiveness on the one hand and some form of subjection on the other. The first is the dimension of diversity while the second is the dimension of power. These are quite disparate analytic elements since the first refers to internal qualities or characteristics while the second is wholly relational. Yet both categories are necessary to delimit the meaning of cultural subordinates.<sup>10</sup>

Even though several decades have passed since these attempts to define what constitutes a minority, a definitive definition is still missing. However, in the meantime research on minorities has proceeded in several directions and minority studies have become an independent field of study, especially with regard to ethnic minorities. Nevertheless, as both scholars and activists have demonstrated, the differentiation between a dominant group and a minority can be based not only on race and ethnicity, but also on other characteristics, like for example gender, religion, language, sexuality, wealth and health. In this special issue we decided to focus primarily on how Islamic law deals with religious and/or sexual minorities.

## 2. Muslim and non-Muslim minorities

The word minority is rendered in Arabic with the term *aqalliyya* (pl. *aqalliyyāt*), which derives from the root *qalla*; this root means 'to be or become little, small, few'. The terms *qilla* and *qalīl* also derive from *qalla*. *Qilla* is translated with the nouns 'smallness, paucity, scarceness', while *qalīl* (pl. *aqillā* or *qilāl*) is rendered with the words 'small, few, scarce, scant', used as adjectives or indefinite pronouns. Some examples of the term *qalīl* used in this way are found in the Quran: '[...] And you will still observe deceit among them, except a few of them [*qalīlan*]' (V,13); 'And remember when you were few [*qalīlun*] and

<sup>9</sup> WIRTH 1945: 347.

<sup>10</sup> SCHERMERHORN 1964: 238.

oppressed in the land [...]’ (VIII,26); ‘[...] And few [*qalilun*] of My servants are grateful’ (XXXIV,13).<sup>11</sup>

Generally, a minority is defined as such when its members constitute a small group of people who, on the level of culture, ethnicity, religion, language, etc., share the awareness of differentiating themselves from the majority of population of the state in which they live, and who express, implicitly or explicitly, the desire to preserve their distinctive traits. Compliance with the criteria of numerical inferiority and the possession of specific characteristics is not sufficient to attribute minority status to a community of individuals. To acquire minority status, in fact, it is necessary for this community to hold a non-dominant position.<sup>12</sup>

This general definition of minority seems to be accepted by some Muslim scholars.

Yūṣuf al-Qaraḍāwī believed, for example, that ‘minority’ is to be understood by that group of people who live in a particular country and who differ from the majority of the population of the latter as regards religion (for example, Christian minorities in Syria, Egypt, Iraq, etc.), ethnicity (for example, Berbers in Algeria and in Morocco or Kurds in Iraq, Iran, Turkey and Syria), language (for example, the French-speaking minority in Canada), or the juridical school (*madhhab*) to which it refers to, etc. The small number of members of this community is the reason why, in most cases, it is weak and consequently fails to oppose the majority that imposes choices on it that take into account only its peculiarities.<sup>13</sup>

Likewise, ‘Abd al-Mağīd al-Nağğār argued that the term minority refers to those small communities of individuals who do not share certain features of their identity with other members of the population to which they belong.<sup>14</sup>

In the same vein are the thoughts of Sulaymān Muḥammad Tūbūliyāk, according to whom a minority consists of a group of people who live within a state, a territory or a region, who differ from the majority of the other inhabitants by their culture, language or religion, and who make every effort to preserve these peculiarities, thus avoiding assimilation attempts made by the majority.<sup>15</sup>

The list of these authors should also include the name of Ṭaha Ğābr al-‘Alwānī who, not unlike his colleagues, argued that the meaning to be attributed to the term minority is that offered by international custom, that is a group or groups of citizens who differ from the majority of the population in their linguistic, religious and racial affiliation.<sup>16</sup>

‘Abd al-Mağīd al-Nağğār argued that by applying the general concept of minority to the followers of Allah it is possible to elaborate the definition of Muslim minority; this expression indicates that group of people who have accepted submission to Islam and who constitute, on a numerical level, the component minority of a society in which the majority do not profess the Islamic religion. However, this definition of Muslim minority raises some ques-

11 The English translation of these verses is taken from *The Qur’ān – English Meanings*.

12 CAPOTORTI 1992: 107-108.

13 AL-QARAḌĀWĪ 2001: 20-24.

14 AL-NAĞĞĀR 2004: 202.

15 TŪBŪLIYĀK 1996: 28.

16 AL-‘ALWĀNĪ 2004: 70.

tions: Is it possible to consider the Muslim minority as such if it has the power to apply Islamic law to all members of society? Can the definition of Muslim minority be applied to that group of Muslims who, although representing the majority of the population, do not hold power, which is instead managed by non-Muslims who apply non-Islamic laws to all members of society?

In order to answer these questions, it is necessary to consider that Islam has a characteristic that differentiates it from other religions. In fact, it claims that its rules govern every aspect of a Muslim's life, private and public. Consequently, compliance with these rules constitutes the fundamental criterion by which to evaluate the effective adherence of the Muslim to the dictates of his/her religion. The law that applies in the society in which the minority lives is therefore a fundamental component of the elaboration of the definition of the concept of Muslim minority. This last expression refers to that group of Muslims living in a society in which a non-Islamic legal system is applied by a non-Islamic governmental authority, or in which non-Islamic customs are in force. For this reason, it is possible to argue that Muslims who represent the majority of the population of a society in which there is no room for Islamic law should be considered a minority. Instead, the concept of Muslim minority is not applicable to that group of believers who, although constituting a small portion of the population, have the power to apply Islamic law in the society in which they live. In the same way, those Muslims who, despite constituting the majority of the population and having the power to apply, partially or totally, Islamic law voluntarily decide not to do so, cannot be considered a minority.<sup>17</sup>

According to Tübüliyāk, the Muslim minority is represented by that group of people who differ from the majority of the population of the society in which they live because of the faith they profess and their desire to preserve it. From this last statement some scholars have inferred that Muslims are obliged to have an effective organization (to build mosques, to offer Arabic classes, to offer imam training courses, to appoint leaders, etc.); in fact, this organization is the only instrument by which they can safeguard their faith and their culture. In the absence of such organization, the minority loses the strength that comes from being composed of people who share the same characteristics, and turns into a multitude of individuals separated from each other who are destined, over time, to be assimilated by the majority.<sup>18</sup>

Al-Qaraḏāwī subdivides Muslims into two groups, depending on the countries (*awṭān*, sing. *waṭan*) in which they live. The first group includes all the followers of Allah who live in the *dār al-islām* (abode of Islam). By *dār al-islām* is meant the set of states in which the majority of the population is composed of Muslims who openly and publicly live their belonging to Islam, at least as regards everything related to the exercise of religious worship (the call to prayer, fasting, reciting the Quran aloud, the construction of mosques, the authorization to make pilgrimage, etc.), and personal status, the discipline of which is governed by the rules of Islamic law. The second group of Muslims is constituted by those believers who live outside the *dār al-islām*. This group is further divided into two categories, natives and immigrants. With the first category, al-Qaraḏāwī refers to those believers

17 Al-NAĞĠĀR 2004: 203-204.

18 TÜBÜLIYĀK 1996: 29.

who were born and raised in the non-Islamic countries where they live and where they constitute, in fact, a minority. The size of this minority varies from state to state: from one hundred and seventy million Muslims in India to the few millions of North American and Eastern European countries. The second category, that of immigrants, is composed of all those followers of Allah who have left the *dār al-islām* to emigrate to non-Islamic countries, looking for a job or for study reasons, etc., who have obtained a valid residence permit or, sometimes, citizenship, acquiring, in the latter case, the rights and duties that the relevant State assigns and imposes to all citizens. Consider, for example, the Maghrebians who migrated to France, the Turks who moved to Germany and the Muslims from South-east Asia who settled in Britain.<sup>19</sup>

Mahmoud claimed that the expression Muslim minorities is used in relation to those followers of Allah who live in a non-Islamic country. In his opinion, among the various criteria that can be used as parameters to define an Islamic country, the most reliable is the numerical one: a state defines itself as Islamic when the inhabitants who profess Islam represent a quota higher than 50% of the population. Conversely, a state has a Muslim minority when the Muslims who live there represent less than 50% of the population.<sup>20</sup>

We can see that there are a number of opinions when arriving at the definition of minority, not only in international law but also among Muslim scholars. All in all, though, and especially considering the nature of this special issue, it seems obvious to us that religion plays a key role in the definition of a minority. Therefore, a part of this issue focuses on religious minorities as subjects of Islamic law. With this concept we refer on the one hand to non-Muslims living as minorities in the Muslim world, and on the other to Muslims living as minorities in non-Muslim countries.

As regards the first aspect, one of the first things that comes to mind is the special institution of the *ḍimma*. According to the classical theory, the people of the Book who live in territories ruled by Muslims enjoy a special protected status, the *ḍimma*, and in exchange for this protection they should pay a poll-tax, the so-called *ḡizya*. Paola PIZZO's article looks at how this classical institution has been reinterpreted by contemporary scholars, focusing on the example of the so-called *wasafīyya* scholars, the self-defined 'moderate' or 'midstream' Islam. In her article, Paola Pizzo tackles how contemporary scholars belonging to this stream, like Yūsuf al-Qaradāwī, Ṭāriq al-Biṣrī, Salīm al-'Awwā and Fahmī Huwaydī, discussed the issue of 'religious minorities' in relation to the modern state. In her article she shows how these scholars consider that the relationship between citizens and the state is nowadays based on the principle of a citizenship that is shared by all members of the society: in this sense, the concept of citizenship becomes a modern variation of the concept of the pact of the *ḍimma*.

The second aspect to be analysed is that of Muslims living in non-Muslim countries as a minority. According to SHAVIT, a plurality of minority Muslim groups exists in Europe. One such group is the Salafis. Shavit's paper focuses on the different strategies adopted in European Salafi discourse in an effort to disassociate *salafīyya* from al-Qaeda, ISIS and other Jihadi-Salafi movements. Shavit analyzes the diverse set of arguments invoked by

19 AL-QARADĀWĪ 2001: 15-20.

20 MAHMOUD 1987: 39-40; TŪBŪLIYĀK 1996: 29.

Salafis to defend their opposition to violent attacks on Western soil, including the religious duties to abide by contracts, respect Islamic rules of warfare and the regulations on initiating jihad and avoiding harming the interests of Muslims and of Islam in Europe.

Carlo DE ANGELO's article looks at the presence of Muslim minorities in the West from the viewpoint of Islamic rules elaborated by contemporary Muslim jurists who live or have lived in Islamic lands. It is possible to divide these *fuqahā'* into two main groups. The first main group consists of those jurists who have adopted an integrationist/ interactionist approach. In fact, they developed a set of rules that govern the conditions of Muslims living in non-Islamic contexts (*fiqh al-aqalliyāt*), whose aim is to discipline the behaviour of Muslims so as to safeguard their identity, and to review the modes of relating to the non-Islamic State in which they live by encouraging them to develop a sense of belonging and respect for it. Such a development is, according to these jurists, an essential step towards ensuring that Muslims think of themselves and behave as active citizens of the countries in which they live. The second main group consists of those jurists who belong to the Salafi purist current. Because of their interpretation of *al-walā' wa'l-barā'* doctrine [loyalty (to Muslims) and dissociation (from non-Muslims)], they have adopted a separatist approach. Indeed, these *fuqahā'*, no differently from their colleagues who propose the integrationist/interactionist perspective, identify Western countries as places of moral and spiritual perdition, with the difference, however, that they, in contrast to the former, believe that Muslims should not live in them. In fact, some Muslims turn to the Permanent Committee for Scholarly Research and Fatwas, whose members belong to the Pietist current of the Salafi movement, to learn if the migration they have undertaken to Western countries can be considered licit (*ḥalāl*) or not, under Islamic law. Carlo De Angelo's analysis shows that, according to this Committee, a Muslim is obliged to reside exclusively in an Islamic territory (*dār al-islām*), and forbidden to migrate to the West, because it is considered the land of the disbelievers (*dār al-kufr*). However, the Committee has accepted some exceptions to this rule: for example, a Muslim is allowed to migrate to non-Islamic territories to spread the word of God (*da'wa*), to study or to work.

Nijmi EDRES analyses a case that is puzzling for different reasons: that of the Muslim Palestinian minority living in Israel. While *fiqh al-aqalliyāt* usually deals with Muslims migrating to Western countries, the Palestinian example is particularly fascinating, as it includes an indigenous population and not a migrating community. Moreover, in Israel sharia courts are allowed, even though Israel would be considered as belonging to the *dār al-harb* from the classical perspective of Islamic law. However, notwithstanding their independence, these courts are under the control of the Israeli authorities (the qadis, for example, are nominated by the Knesset): this poses a question of legitimization. Moreover, any attempt to reinterpret Islamic law in this context would be perceived as a form of 'Israelization' of sharia and Muslim identity, notwithstanding the long tradition of *iğtihād* in Islamic law.

### 3. Sexual minorities and Islamic law

The inclusion of sexual minorities in discussions on minorities is quite recent. As regards international law, as we have seen, the classical and standard definitions of the concept of minority do not take into account sexuality.

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While it has been convincingly demonstrated that in many respects women can also be somehow considered a minority,<sup>21</sup> we decided to focus in this issue only on LGBTQI (lesbian, gay, bisexual, transsexual, queer and intersexual) people and Islamic law.

International law has hitherto largely neglected the issue of sexual orientation and gender identity.<sup>22</sup> This changed recently, in particular thanks to the work of activists and of the International Commission of Jurists.<sup>23</sup> The first official contribution to this debate was constituted by a joint meeting held by the Commission together with the International Service for Human Rights, which took place in November 2006 in Yogyakarta,<sup>24</sup> Indonesia. The most important result of this meeting was the publication of the *Yogyakarta Principles*, or *The Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*, officially launched in Geneva in 2007.<sup>25</sup> The *Yogyakarta Principles* are not legally binding *per se* from the perspective of international law, as they do not constitute a covenant or a treaty. Rather, they are a set of principles on sexual orientation and gender identity that have been deduced from existing international covenants and treaties. Following the adoption of these principles, the International Commission of Jurists also initiated a series of studies, including a *Practitioners Guide on Sexual Orientation, Gender Identity and International Human Rights Law*, that, drawing on different sources of international law and jurisprudence and on comparative national law and practice, had the aim of clarifying

the existing international legal framework to deal with abuses of certain rights on the grounds of sexual orientation and gender identity and illustrate how the legal arguments for human rights protection are properly developed and sustained.<sup>26</sup>

An interesting point for also including sexual minorities in the debate was brought up by Desmond Tutu, Nobel Peace Prize Laureate in 1984 and an Anglican archbishop, who on occasion of the 2007 World Social Forum in Nairobi stated:

To penalize someone because of their sexual orientation is like what used to happen to us; to be penalized for something which we could do nothing [about]—our eth-

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21 See for example MAYER HACKER 1951.

22 INTERNATIONAL COMMISSION OF JURISTS 2009: 3.

23 The Commission is an independent human rights non-governmental organization, with a central office in Geneva and sections in different countries. Established in 1952, it is constituted by internationally recognized jurists (senior judges, attorneys and academics) who work to ensure the respect for human rights.

24 INTERNATIONAL COMMISSION OF JURISTS 2009: 4.

25 Ibid.

26 Ibid.



nicity, our race. I would find it quite unacceptable to condemn, persecute a minority that has already been persecuted.<sup>27</sup>

This affirmation should be contextualized within the Anglican Church's on-going discussion on homosexuality. However, what is important for our purposes is that, including sexual orientation into the concept of minority, Desmond Tutu aimed at enlarging the status of protection that is nowadays internationally recognized for ethnic and racial minorities also to LGBTQI people.

This is why we believe that a discussion on minorities in Islamic law cannot but include sexual minorities. We are aware of the challenges that using categories such as sexual orientation or LGBTQI can pose when going 'beyond the West'. However, earlier research has shown the usefulness of these categories of analysis when looking at contemporary Arab-Islamic discourse.<sup>28</sup> In particular, the articles included in this part of the special issue analyse how contemporary Muslim jurists address homosexuality, transgenderism, transsexuality and, to a minor extent, intersexuality.

Serena TOLINO's discussion of transgenderism, transsexuality and sex-reassignment surgery in Islamic law, which also touches upon the issue of intersexuality, shows that sex-reassignment surgery is mostly regarded by Muslim jurists as permitted in cases of intersexuality but forbidden in case of transgenderism. If at first sight one might argue that in the first case what makes this surgery allowed is the fact that it is considered as a treatment for an illness while in the second case it is understood as a change in God's creation, the paper also shows that there is a more profound reason that animates both supporters and opposers of sex-reassignment surgery. Indeed, the discussion is driven by an essentialized perception of the sex/gender binary and the roles assigned to men and women. Sex-reassignment surgery is permitted only when it allows the sex/gender binary to work better, not when it aims at challenging it.

Bettina DENNERLEIN focuses on the neo-conservative discourse of the Egyptian scholar Yūsuf al-Qarāḏāwī to demonstrate how his discourse on homosexuality should be read in conjunction with his understanding of notions of marriage and the family. As Dennerlein demonstrates, Qarāḏāwī's discussion of homosexuality is interconnected with one of the pillars of his *wasatiyya* discourse, namely his approach to the Islamic family. Interestingly, even though the mononuclear family is a modern product of the national state, in Qarāḏāwī's discourse it is essentialised and becomes the typical and ideal Islamic family. This allows him to almost sacralise the family, and to subtract the debate on it, and the related debate on sexuality, from the realm of politics and from human-rights discourse, and to make it a proper object of religious discourse. Dennerlein's article also shows how, once a discourse on a 'proper' sexuality is constructed in religious terms, the space for a (secular) discussion on it from a human-rights perspective<sup>29</sup> is certainly reduced.

27 VALENZA 2010.

28 The situation is different when using these modern categories in reference to the past. However, this is not only something that applies to Middle Eastern Studies. The a-historical application of the category 'homosexuality' before its 'invention' would be as problematic in reference to 'the West' as it is in reference to the Islamicate world. There is extensive literature on the topic. See for example SCHMITT 2001-2002; el-ROUAYHEB 2005; NAJMABADI 2006 and 2008; TOLINO 2014, particularly 74-78.

29 As it is, for example, in the Yogyakarta Principles.

Interestingly, both papers show how, while Muslim jurists were ready to embrace the definition of minority as elaborated in international law, they are not ready to do so when it comes to discussion of gender and/or sexuality.

#### 4. Minorities as actors ‘producing’ law

We have seen how minorities have been and are subjects of Islamic law. However, minorities can also produce Islamic law: verdicts of the sharia courts in Israel, for example, are a clear example of how a minority (the Palestinian minority in Israel) can produce Islamic law. Also LGBTQI people who provide queer-friendly interpretations of Islamic law are actors who produce it in order to reconcile their religious with their sexual identity. To a certain extent, people living in non-Islamic countries asking for opinions on Islamic law are producing (or at least stimulating the production of) Islamic law. Antonella Straface, Edmund Hayes and Agostino Cilaro focus even more closely on minorities as productive legal actors. In particular, Straface and Hayes looking at how Shi‘i scholars have produced law, providing their own interpretations of a central aspect of Islamic ritual such as the ‘pillars of Islam’.<sup>30</sup>

Antonella STRAFACE’s paper focuses particularly on the 10<sup>th</sup> century’s Ismaili *dā‘ī* Abū Ya‘qūb al-Siġistānī’s approach to prayer, and especially on ritual ablution (*wuḍū‘*) and cultic purity (*ṭahāra*), showing how these obligatory duties, whose performance al-Siġistānī fully recognized and supported, are re-interpreted in an ‘Ismaili’ way, as concealing an inner (*bāṭin*) meaning that only an initiate could understand.

Edmund HAYES’s chapter focuses on *zakāt* in the Twelver tradition, showing how tackling the Twelver conception of *zakāt*, and specifically looking at those who were entitled to collect, distribute, but also *receive zakāt*, can give us interesting insights to better understand the ideal characteristics of the Twelver community and the way it has maintained boundaries with other communities.

Finally, Agostino CILARDO’s paper focuses on the divergences between the Twelvers and the remaining law schools on the lawfulness of the temporary marriage (*nikāḥ al-mut‘a*). The subject matter of his paper does not concern the legal polemics about *mut‘a*, rather it exclusively aims at highlighting the interpersonal relationships between the scholars involved, such as the most preeminent representatives of the Twelvers, namely Abū ‘Abd Allāh Ġa‘far al-Šādiq and Abū Ġa‘far, and their Ḥanafī opponents, namely Abū Ḥanīfa and his disciple Zufar.

<sup>30</sup> The concept, in Arabic *arkān al-islām*, refers to five acts that are considered mandatory and that constitute the foundation of Islamic life. Sunni and Shi‘i Muslims, even though they do not always agree on the details, basically agree on their substance. They are the *šahāda*, or profession of faith, which consist in the declaration that there is only one God and that Muḥammad is his messenger; the *ṣalāt*, or ritual prayer, which refers to the five daily prayers that a Muslim is requested to do according to Sunna; the *zakāt* (literally purification), or alms-giving, which a Muslim should pay every year; the *ṣawm*, the fasting during the month of Ramadan; and the *ḥaġġ*, the pilgrimage to Mecca that every Muslim who can afford it should do at least once in his/her life.

## 5. Conclusion

As we have seen, the concept of minority is a debated one. The most accepted definitions of the term from the perspective of international law considers minority with a focus on the one hand on the numerical aspect (minority as ‘a group numerically inferior to the rest of the population of a State’)<sup>31</sup> and on the other on its position of non-dominance. However, only ‘ethnic, religious or linguistic characteristics’<sup>32</sup> were mentioned. This definition also shares its fundamental characteristics with the definitions proposed by sociologists. More recent developments, as confirmed by the *Yogyakarta Principles*, seem to demonstrate that the legal protection guaranteed to religious, cultural, ethnic and racial minorities should also be extended to sexual minorities. As regards Islamic law, Muslim jurists defined a minority as that group of people who live in a particular country and who differ from the majority of the population of that country as regards religion, ethnicity, language, etc. This definition, though, does not include sexual minorities. It seems clear that traditionalist Muslim jurists were open to embracing the definition of minorities presented in international law. However, the inclusion of sexual minorities represents a step towards a different and less patriarchal vision of the society that, up to now, traditionalist Muslim jurists have not tackled. Certainly *iğtihād* could open ways to do so. We shall see whether in the future jurists will take up the challenge.

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