

# Textual Challenges to the Death Penalty for Apostasy in Islam and the Question of Freedom of Religion

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## Abstract

This paper emphasizes the need for Muslims to move away from the classical Islamic law of apostasy (*riddah*) and the death penalty associated with it and toward a concept of religious freedom that accords with contemporary understandings of religious freedom. It argues that neither the Qur'an nor the Prophet's *actual practice* provide any strong support for such a punishment. This penalty developed in classical Islamic law during Islam's early centuries and functioned as an important mechanism to suppress the Muslims' religious and intellectual freedom, particularly in relation to theological debates. Given this inherent weaknesses, I assert that Muslims now need to challenge this position by relying on the Qur'an, the Prophet's actual practice, and the views of a range of early and modern scholars, as well as support the understanding of religious freedom as expressed in such major international human rights documents as the Universal Declaration of Human Rights (UDHR).

## The Concept of Religious Freedom

Any discussion of religious freedom needs to refer to a standard with which Muslims, Christians, Jews, Buddhists, Hindus, and others are generally comfortable. One such standard appears to be provided by Article 18 of the United Nations' Universal Declaration of Human Rights (UDHR):

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>1</sup>

This article emphasizes several aspects of this right: to have or adopt a religion, to change religion, to practice a religion, and to teach a religion. These elements, by and large, appear to be similar to the rights emphasized in the Qur'an and demonstrated in the Prophet's actual practice in relation to religious freedom.

Muslims have historically been reasonably tolerant of religious minorities in their midst, and even of theological differences among themselves. From the time of the Prophet, they have lived in multi-religious societies and their interactions with non-Muslims (e.g., Christians, Jews, Buddhists, or Hindus) have been accepted as normal. Both the Qur'an and the Prophet recognized the need to allow people to choose their own religion and to prohibit forced conversion. For example, the Qur'an recognized that Jews and Christians were "People of the Book," and the Prophet and his political successors allowed them to follow their religious traditions, norms, and laws under Muslim rule. These same provisions were extended to the Zoroastrians<sup>2</sup> and Hindus with whom the Muslims came into contact, which reveals how the latter viewed the question of religious freedom even in Islam's early days.

Many examples also exist of the tolerance of "unorthodox" views in the midst of Muslim societies: The famous poet Abu al-Ala' al-Ma'arri (d. 1058) attacked key religious beliefs and practices in his poetry, yet remained unharmed and died a natural death. Among his sayings critical of religion include:

They all err—Muslims, Jews,  
Christians, and Zoroastrians:  
Humanity follows two world-wide sects:  
One, man intelligent without religion,  
The second, religious without intellect.<sup>3</sup>

His attacks on religious practices can also be easily discerned here:

O fools, awake! The rites you sacred hold  
Are but a cheat contrived by men of old,  
Who lusted after wealth and gained their lust  
And died in baseness—and their law is dust.<sup>4</sup>

The free-thinking philosopher, physician, and alchemist Muhammad ibn Zakariyyah al-Razi (d. 925 or 935) also publicized his equally unorthodox (and some would say "heretical") views and was not harmed. Even a figure like al-Ghazali (d. 1111), whose ideas were controversial during certain peri-

ods of his later life, remained unharmed. These are only a few of the many examples of tolerance in early Muslim societies. More importantly, mainstream Muslim “creeds” adopted this tolerant approach toward Muslims who, in their view, did not follow mainstream positions in theological matters. The famous Creed of Imam Tahawi says:

We do not declare anyone among the people of our *qiblah* a disbeliever for any sin, as long as he does not deem it lawful...<sup>5</sup>

People of mortal sins among the community of Muhammad (peace be upon him), will not abide in the Fire forever, as long as they are monotheists...<sup>6</sup>

We do not specify anyone among them to be in either Paradise or in the Fire. We also do not accuse any of them of disbelief, idolatry, or hypocrisy, as long as none of that manifests from them.<sup>7</sup>

The religious tolerance that characterized many pre-modern Muslim societies, moreover, seems to have been more widespread than in many non-Muslim-majority countries during that same period of time. The history of Christian Europe, particularly between the twelfth and sixteenth centuries, for example, includes many inquisitions and forced conversions of large numbers of Muslims and Jews in Spain and elsewhere,<sup>8</sup> a practice Muslim jurists and theologians held to be incompatible with Islam.

## The Importance of Religious Freedom

Religion, one of the most important aspects of humanity, has always been part of human history. In fact, few communities have been without it. Religious identity, furthermore, remains one of the most important aspects of an individual’s identity. Religion and faith are ingrained in the human psyche, and religious tradition is an integral aspect of the lives and identities of the vast majority of human beings.

For these reasons, freedom of religion is now considered a fundamental and universal right according to the Universal Declaration of Human Rights (UDHR) and similar documents, such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), as well as such Islamic human rights documents as the Cairo Declaration on Human Rights in Islam.<sup>9</sup> Some recent Muslim thinkers, among them Sayyid Qutb (d. 1966), argue that this freedom is perhaps the most important right for any human being and that denying it to anyone is like stealing one’s humanity.<sup>10</sup>

Restricting religious freedom can have negative individual and collective consequences that can lead to conflict, rebellion, instability, and a lack of social cohesion. Without such freedom, most contemporary multi-religious societies, which encompass many religious traditions, could not function harmoniously. On the other hand, religious freedom tends to be associated with a range of positive social benefits, including gender equality, low military spending, a strong economy, and good health.<sup>11</sup> Although one cannot argue that it is the cause of such benefits, their association with religious freedom is significant.<sup>12</sup>

### **The Reality in Muslim-Majority Countries Today**

Unfortunately religious freedom, as described in Article 18 of the UDHR, is seldom apparent in many Muslim-majority countries, many of which restrict it to a similar extent as do China, Russia, North Korea, Myanmar/Burma, and several others.<sup>13</sup> Some Muslim-majority countries impose severe restrictions on Muslims by criminalizing what their religious establishments consider to be blasphemy, heresy, apostasy, and even criticism of the dominant orthodoxy. In such countries, non-Muslims also face a range of restrictions as regards proselytization; the possession or importation of religious materials, which can lead to the confiscation of personal religious items; the public practice of non-Muslim religions; placing strict limits on building or renovating non-Muslim places of worship; government monitoring of religious activities; raiding private services; and sometimes harassing or even imprisoning non-Muslim religious leaders or believers. All of this continues to occur despite the tradition of Muslim societies, which have historically tended to be remarkably open and tolerant toward non-Muslims.<sup>14</sup>

Many Muslims have difficulty with the modern understanding of freedom of religion, as expressed in Article 18 of UDHR, which includes the freedom to change one's religion, based on the belief that Islam prohibits apostasy (*riddah*) and punishes it with death. Despite this, at the state level most Muslim-majority countries have ratified the International Covenant on Civil and Political Rights (ICCPR), which includes its own Article 18 on religious freedom:

Everyone shall have the right to freedom of thought, conscience and religion.  
This right shall include freedom to have or to adopt a religion or belief of his choice.

Responding to the problem of endorsing the freedom to change one's religion, several Muslim-majority countries that have ratified this document

have lodged reservations against this article, stating that it conflicts with their understanding of Islam and the Shari‘ah. Bahrain’s reservation includes the statement “as not affecting in any way the prescriptions of the Islamic Shari‘ah,”<sup>15</sup> and Pakistan declares that its “provisions... shall be so applied to the extent that they are not repugnant to the Provisions of the Constitution of Pakistan and the Shari‘ah laws.”<sup>16</sup>

Despite such reservations, Muslims have been and continue to participate in human rights debates at the international level, including those dealing with freedom of religion. For instance, during the debate over the UDHR’s draft of Article 18 and prior to its adoption in 1948, Lebanon’s Christian delegate insisted on including a phrase that affirmed the freedom to change one’s religion. The Pakistani delegate, an Ahmadi, saw no problem with the phrase. The Saudi delegate, however, objected on the grounds that it violated Islamic principles.<sup>17</sup>

### **Sensitivities Surrounding Apostasy**

Many contemporary Muslims believe that apostasy and its associated penalty is a fundamental aspect of Islam that cannot be changed. They perceive those who argue for any form of religious freedom that includes such a freedom as being against Islam, the Shari‘ah, and fundamental Muslim values.

Given the issue’s sensitive nature, Muslim scholars who write about apostasy and argue for freedom of religion often face difficulties in Muslim societies. When Shaykh Taha Jabir al-Alwani, for example, completed his *Lā Ikrāha fī al-Dīn (There Is No Coercion in Matters of Religion)*, some of his colleagues at the International Institute of Islamic Thought (IIIT) advised him not to publish it. As he was at that time the institute’s president, they warned him that the book could have a significant negative impact on both the institute and how other Muslims perceived it. Listening to their advice, he published it only after his term had ended.<sup>18</sup> Although he is a well-known traditionally trained scholar, one who is well-respected internationally for his scholarship in Islamic jurisprudence and was living in the United States at that time, al-Alwani was very aware that he could potentially experience a backlash for challenging this particular traditional perspective.

Unsurprisingly, the challenges for Muslims in Muslim-majority countries are even greater. When Salman Taseer, then governor of Pakistan’s Punjab province, questioned the country’s blasphemy law, which functions like an apostasy law as far as Muslims so accused are concerned, he was assassinated by one of his own bodyguards in January 2011.<sup>19</sup> In Pakistan, the murderer

was widely praised for standing up in defense of "Islam." Fatwas were issued that condemned Taseer and supported his assassin.

Publications critical of apostasy laws can easily be banned. My own book (co-authored with Hassan Saeed), *Freedom of Religion, Apostasy, and Islam*, was banned in the Maldives in 2008. Again, this is indicative of the kind of consequences faced by Muslims who choose to challenge the status quo in regard to apostasy law.

## Understanding Apostasy

In classical Islamic law, apostasy means reverting from Islam to unbelief in Islam, whether by intention; by an action that removes one from Islam; or by a statement, be it in the form of mockery, stubbornness, or conviction.<sup>20</sup> Classical Islamic law has many definitions for apostasy, among them<sup>21</sup> denying God's existence or attributes; denying a particular messenger or that he is truly a messenger; or denying one of the fundamentals of religion, for instance, that there are five obligatory prayers (*ṣalāt*) in a day or declaring prohibited (*ḥarām*) something that is clearly permissible (*ḥalāl*) or vice versa; or worshipping an idol.<sup>22</sup> Although these ways are clear as regards the person's intention, many statements and actions that are not so clear can nevertheless be used to accuse a Muslim of committing apostasy.

The Qur'an refers to apostasy several times but provides no specific worldly punishment. Instead, it suggests a severe punishment in the next life. Some *aḥādīth*, however, mention it and seem to specify the death penalty. Moreover, early Sunni and Shi'i jurists were in general agreement about what apostasy broadly entailed and that it should be punished by death.

## Key Textual Challenges

Despite this long-held traditional position, several scholars today, myself included, now argue that apostasy laws carrying the death penalty need to be reconsidered. While a great deal of evidence supports this position, this paper only focuses on three: (a) the Qur'an's silence, (b) hadith texts and the question of reliability, and (c) problems with the claim that this punishment is based on consensus.

### *The Qur'an's Silence*

The Qur'an condemns apostasy in no uncertain terms, but specifies no worldly penalty for it. Apostasy is mentioned in several verses (e.g., Q. 2:217, 5:54,

and 16:106); however, none of them stipulates a penalty for it in this life despite condemning the apostate in very harsh and unequivocal terms.<sup>23</sup>

S. A. Rahman, former chief justice of Pakistan, in his excellent *Punishment of Apostasy in Islam*, points out this Qur'anic silence despite the fact that it mentions apostasy no less than twenty times.<sup>24</sup> Selim el-Awa, a well-known jurist from Egypt who discusses apostasy at length, agrees, citing this complete silence and stating that the evidence contained within the Sunnah is open to interpretation.<sup>25</sup> Mahmud Shaltut analyzes the relevant Qur'anic evidence and concludes that apostasy carries no temporal penalty because it speaks only of punishment in the hereafter.<sup>26</sup>

Moreover, verses like Q. 2:217 and 3:86-97 clearly envisage a natural death for the apostate.<sup>27</sup> The following passage seems to offer a strong argument against the death penalty for apostasy:

Those who believe, then disbelieve, then believe again, then disbelieve and then increase in their disbelief – God will never forgive them nor guide them to the path. (Q. 4:137)

The implication here is unmistakable. The text would hardly entertain the prospect of repeated belief and disbelief if death were the prescribed punishment for the initial act.

### *Hadith Texts and the Question of Reliability*

Given that the Qur'an is Islam's most important and authoritative text, the fact that it provides no support for the death penalty, despite referring to apostasy, is significant. Evidence to support such a penalty therefore has to be found elsewhere. Jurists usually found it in the Hadith corpus, which contains such *ahādīth* as "Whoever changes his religion, kill him"<sup>28</sup> and several similar texts. A number of these are found in those Hadith collections that Sunnis consider authentic, such as those compiled by al-Bukhari (d. 870) and Muslim (d. 875). Many contemporary Sunnis usually do not allow the authenticity of these *ahādīth* to be questioned, although both past and recent scholars have questioned the authenticity of at least some of them.

In the following pages I will present several arguments in relation to the *ahādīth* that have been advanced by scholars who support freedom of religion as expressed in the UDHR's Article 18, particularly with regard to the issue of death penalty for apostasy.

Those *ahādīth* that appear to support such a penalty and are attributed to the Prophet seem to contradict many Qur'anic verses on religious freedom.

The Qur'an is particularly clear that religious choice is individual and personal and that people can choose to follow God's way or not. Most importantly, it clearly prohibits any coercion in matters of faith. Some Muslim scholars, including many classical jurists, have argued that those verses that support religious freedom have been "abrogated." However, close to 100 verses are broadly supportive of religious freedom. How can such a large number of them be abrogated by one or two verses that may or may not be relevant to the issue at hand, or by a small number of *aḥādīth* (such as "Whoever changes his religion, kill him")? The abrogation argument is hard to support, and emphasis should be placed, in my view, on the broad thrust of the verses that support religious freedom, individual choice, and non-coercion.

The *aḥādīth* most often quoted in support of the death penalty are problematic in other ways as well. For example, the hadith "Whoever changes his religion, kill him" is notably general and ambiguous. If one were to take it literally, anyone who converts from any religion can be killed, such as a Christian who converts to Islam. Such a position is obviously absurd.

Classical jurists frequently encountered such ambiguity in the Qur'anic and hadith texts; they were often quite comfortable with sidelining certain texts in favor of others, and interpreting or reinterpreting them. This ambiguity enabled them to interpret texts in specific ways and thereby extend Islamic law beyond the texts themselves or restrict the scope of meaning of particular texts.

Prominent jurists, among them Abu Hanifah, Malik, and Shafi'i, sometimes had to lay aside certain texts and rely on others in their legal decisions. As a result, certain ambiguous texts had to be clarified or interpreted<sup>29</sup> and certain general texts also had to be particularized. The concept of textual ambiguity has been central to the development of Islamic law. In fact, some of the earliest jurisprudential works, like Shafi'i's *Risālah*, rely heavily upon it. This accounts for his analysis of *bayān* (roughly translated as "making clear the meaning" of the substance of Qur'anic communication<sup>30</sup>) and the methodological insights he provides. The Islamic legal tradition provides tools to deal with such questions. But while they are useful, some contemporary Muslim scholars argue that we need to develop them further. This is an area to which contemporary Muslim scholars have much to contribute.

While *aḥādīth* are a critically important part of Islam's tradition, they need to be approached with care and some degree of caution. Although hadith collectors and scholars have provided us with the results of their work in determining these accounts' authenticity and reliability, Muslims today perhaps also need to build on this and develop further ideas and methodological tools.

In some cases, questions about the long-accepted authenticity of some *aḥādīth* may have to be asked afresh. For instance, although “Whoever changes his religion, kill him” exists in Bukhari’s collection, there are questions about the reliability of certain people in its chain of transmission, at least in the best known version. This is the one attributed to Abd Allah ibn Abbas (d. 687), the Prophet’s cousin, by his slave/student Ikrimah (d. 723), although it seems to have been widely circulated by Ayyub al-Sakhtiyani (d. 749), one of Ikrimah’s students in the second Islamic century.<sup>31</sup>

In hadith scholarship, Ikrimah’s role as a key source raises some questions. Some notably senior scholars who were his contemporaries considered him to be a liar. For example, Ali ibn Abd Allah ibn Abbas, the son of Ibn Abbas, to whom Ikrimah attributed it, accused Ikrimah of lying about his father. Similarly, Sa‘id ibn Jubayr viewed Ikrimah unfavorably, as did Sa‘id ibn al-Musayyab, who apparently told his slave, “Do not tell lies about me, as Ikrimah tells lies about Ibn Abbas.”<sup>32</sup> Although Bukhari accepted *aḥādīth* narrated by Ikrimah, Muslim, the other equally important hadith scholar, did not. Thus there is evidence to suggest that Ikrimah was unreliable and that his hadith can be questioned. Admittedly this hadith has several versions, but many are considered “weak.”<sup>33</sup> In other words, the authenticity of the hadith most frequently quoted to support the death penalty for apostasy can be placed under considerable suspicion, at least as far as the best known version is concerned. Al-Alwani’s examination of it and its different versions is particularly helpful in this regard.<sup>34</sup>

Another issue is that hadith (as *sayings* attributed to the Prophet) used to support his penalty contradict Prophet Muhammad’s *actual practice*. Apostasy or conversion out of Islam existed in the Prophet’s time. In fact, several Muslims left Islam immediately after his famous “Night Journey” to Jerusalem and then to heaven (known as *isrā’* and *mi‘rāj*, respectively): they questioned how the Prophet could go to Jerusalem and return to Makkah in one night when such a journey usually took several weeks. Similarly, some of the Muslims who migrated to Abyssinia when persecution became unbearable became Christians.<sup>35</sup> The Qur’an also makes many references to hypocrisy (*nifāq*) and the hypocrites (*munāfiqūn*) in Madinah who were, for all practical purposes, apostates. Interestingly, none of them were executed. No evidence suggests that the Prophet considered such a punishment or, more importantly, that he actually ordered it applied to those who simply changed their faith.

Assuming that “Whoever changes his religion, kill him” and other similar hadith are reliable and authentic, one must understand the *context* in which the Prophet may have said them. Admittedly some contemporary Muslim

scholars object strongly to “context” when interpreting Qur’anic or hadith texts, arguing that the text’s dictates should be followed literally.<sup>36</sup> Others argue that understanding the “context” is essential for a proper understanding. Such debates are, of course, nothing new. Classical commentators on the Qur’an, for example, addressed context in a somewhat limited way, such as through the occasions of the revelation (*asbāb al-nuzūl*). Similar limited attempts were made in relation to hadith literature as well. Although jurists considered “context” to some extent, their conception of it was often limited. Modern debates on context, including the socio-historical context, are comparatively sophisticated and are likely to have, in the future, a significant impact on the interpretation of texts like the hadith in question.

Al-Alwani noted that “Whoever changes his religion, kill him,” if authentic, was probably associated with a range of conspiracies against Muslims at the time. For example, certain sections of the People of the Book in Madinah were encouraging Muslims to return to their former religions in order to undermine the community. He suggested that these apostates and their associated conspiracies would have provided the specific context for such a saying.<sup>37</sup>

Although this explanation is plausible, the context in which the Prophet and the Muslims were living should be considered as well. The Muslims were based largely in Madinah, and the Prophet was attempting to establish the first Muslim community there despite various internal and external threats to its existence. As far as he was concerned, people were divided into two clear groups: (a) Muslims and their allies from among the People of the Book, and (b) their enemies, largely from outside Madinah. Given that this division was based primarily on one’s religious identity, a Muslim who returned to the religion of the “enemy” would be required to leave the community and join the enemy. Conversion would not allow much space in which an ex-Muslim could function as a normal member of the community because at the time one’s religious identity was deeply connected to one’s political identity. Given the existing state of war, an apostate would also have to take up arms and fight the Muslims. If so, killing an enemy combatant would be perfectly legitimate based on the norms of that time. If the Prophet urged the killing of apostates, the above saying would most likely have been uttered in this context.

One hadith attributed to the Prophet, also considered authentic, is directly linked to this communal division. It refers to those who leave their religion and separate themselves from their community.

The Prophet, peace be upon him, said: “The blood of a Muslim who confesses that there is no god but Allah and that I am the messenger of Allah, cannot be

shed except in three cases: a life for life; a married person who commits illegal sexual intercourse; and the one who turns renegade from Islam (apostate) *and leaves the community of Muslims* [author's emphasis]."<sup>38</sup>

Indeed, in their discussions about this hadith, apostasy, and the death penalty, a number of jurists have identified a close connection between leaving Islam and fighting the community. For example, al-Marwadi discussed apostasy in the context of fighting rebels.<sup>39</sup> The Hanafi jurist Sarakhsi (d. 1096) also argued that female apostates should not be put to death because they do not take up arms and fight the community.<sup>40</sup>

The context has changed significantly in our times, however, for in a modern nation-state there does not need to be a conjunction between one's religious identity and political identity. In multi-religious societies like the United States, for example, people of different faiths can live side-by-side and be citizens regardless of their religion. Given the constitutional guarantee of religious freedom, conversion is easy and is not necessarily tantamount to rejecting citizenship.

### *Problems with the Claim That This Punishment Is Based on Consensus*

The second most important argument is the supposed consensus (*ijmā'*) among Muslim jurists for the death penalty.<sup>41</sup> The belief is that if such a consensus exists, then contemporary Muslims have no authority to challenge it. In challenging this argument, three points can be noted.

First, no scholarly consensus about what actually constitutes "consensus" exists. Muslim jurists have proposed many conceptions of it and how it should be reached. Some believe that only the Companions' consensus should be considered authoritative, others believe that it is the consensus of scholars, and still others believe that it is the consensus of the entire Muslim community. Other related issues, such as when and how consensus should take place, are also subject to heated debate and controversy.

Second, even if one accepts that consensus cannot be challenged, there is no consensus on the death penalty for apostasy. Even the Companions did not agree on this. Umar ibn al-Khattab was informed at least once that a provincial governor had killed one or more apostates. He did not support this action; rather, he said that the transgressors should have been fed and imprisoned in the hope that they might return to Islam.<sup>42</sup> Umar did not indicate that the governor had applied a punishment of God and the Prophet. Instead, he distanced himself from what the governor had done. Similarly, two key scholars, Ibrahim

al-Nakha'i (d. 726) and Sufyan al-Thawri (d. 778) also advocated that apostates be encouraged to return to Islam forever. This indicates that they envisioned no worldly punishment, and certainly not the death penalty, for apostasy.<sup>43</sup>

Third, there is no agreement on whether the death penalty is a prescribed (*ḥadd*) or discretionary (*ta'zīr*) punishment under Islamic law. While some schools consider it a *ḥadd* punishment, others believe it should be left to the ruler's discretion.<sup>44</sup> These views indicate a lack of consensus about apostasy, even concerning the nature of the punishment. It also raises the question of why jurists supported it so strongly, given the absence of a Qur'anic text, any strong basis for it in the Prophet's actual practice, and the problems with the hadiths used to support it.

### The Influence of the Sociopolitical Context

At this stage, it is important to return to the context in which the jurists of the first three Islamic centuries were functioning. Capital punishment was apparently common in early Islam after 660, when the last of the Prophet's first four political successors died. It was particularly apparent under Mu'awiyah ibn Abi Sufyan (d. 680), Yazid ibn Mu'awiyah (d. 683), and Abd al-Malik ibn Marwan (d. 705). In fact, under them capital punishment for political crimes seems have to become the norm. For example, when Abd al-Malik sent al-Hajjaj ibn Yusuf (d. 714) in 694 as a governor to pacify the rebellious Iraqis, who were agitating against the state and challenging his authority, al-Hajjaj went to the mosque, summoned the people of Kufa, and told them:

A lot of turbans and beards are visible here but very soon they are going to be wet with blood. Many heads are present in this assembly, which will soon be chopped off. Amir al-Mu'minin Abdul Malik examined his quiver and selecting the hardest and the most deadly arrow, shot it at you, in other words, he imposed me on you as your ruler. I will remedy all your ills and lack of discipline and straighten you out completely.<sup>45</sup>

This threat to kill any anti-state agitator and challenger of the caliph's authority was addressed to all Muslims, including scholars and the pious. Moreover, numerous reports describe the bloodshed that occurred during and immediately after the Abbasids' rise to power in the mid-eighth century.

This was also the period during which Islamic law was taking shape, *aḥādīth* were being collected, and Islamic disciplines were being developed. Jurists were exploring principles of the law and how they were going to de-

velop it. All of these developments were occurring in an environment in which capital punishment for political crimes was common and often ordered by rulers without the involvement of a judge (*qāḍī*).<sup>46</sup> These jurists would have found it perfectly natural to accept the overall ethos of their time. Of course, they would have been deeply concerned about killing people for political crimes, but they would have considered it natural to take a firm line on issues like apostasy, which they seem to have viewed as a religious and a political crime, and to apply the death penalty.

This was also the period during which Muslims developed the idea that Islam was superior to all other religions, an idea that became particularly evident in the creeds that developed during the fourth, fifth, and sixth Islamic centuries. Scholars saw a need to make a clear separation between Muslims and non-Muslims (including the People of the Book) and to highlight Islam's superiority. This appears to have led to the reasoning that any challenge to its superiority through apostasy would result in dishonoring the Muslims and thus should be punished with death.

## Support for Religious Freedom in Islamic Tradition

Rethinking the death penalty should start with what the Qur'an actually has to say: People have free choice in matters of faith. Examples of this include:

The truth [has now come] from your Sustainer: let, then, him who wills, believe in it, and let him who wills, reject it (Q. 18:29)

and,

Whoever chooses to follow the right path, follows it but for his own good; and whoever goes astray, goes but astray to his own hurt; and no bearer of burdens shall be made to bear another's burden. (Q. 17:15)

These verses affirm that accountability is personal and individual as opposed to a group, community, or state matter.

According to the Qur'an, everyone will stand alone before God on the Day of Judgment, a day on which every person will be concerned only with oneself. The Qur'an even reminded the Prophet that he was not responsible for the decisions of others:

To me [shall be accounted] my doing, and to you, your doings: you are not accountable for what I am doing, and I am not accountable for whatever you do. (Q. 10:41)

Forced conversions are therefore counter to the Qur'anic understanding of personal freedom. The Qur'anic verses "There is no coercion in matters of faith" and "whoever wants to believe, believe" negate the very idea of coercion.

Strong historical evidence also supports the tolerance of religious or theological difference. As noted earlier, history has produced many examples of Muslims who refused to follow the orthodox line and of non-Muslims who refused to enter Islam. It appears that Muslims generally left such people alone and tolerated them. More importantly, little evidence exists to support the idea that past Muslim governments were concerned about this penalty or had implemented it on a large scale, despite the fact that apostasy has always existed. Only a relatively few high-profile cases of alleged apostasy are widely known (e.g., the case of the mystic Mansur al-Hallaj [d. 922] and the Mughal prince Dara Shikoh [d. 1659]). Often one can see that political considerations were behind such cases, with the label of "apostasy" given to justify the killing. The core concern of many Muslim governments was to ensure their population's stability and manageability, and at times they used the law of apostasy to remove those who they perceived as threats to these goals, rather than simply because of their alleged apostasy.

## Conclusion

Given the difficulties associated with the issues surrounding the meaning, authenticity, and context of the texts under discussion, it is important to take into account certain considerations and principles when reading those texts that have a bearing on our understanding of religious freedom.

First, the Shari'ah's broader objectives (*maqāṣid al-Sharī'ah*) may need to be redefined and reworked to be suitable for our contemporary context. Indeed, as protecting religion is one of its objectives, this concept should be broadened to include understandings of religious freedom that fit contemporary expectations. Second, there is a need to retain a clear sense of the hierarchy of texts. The Qur'an must remain the first authority, followed by the Hadith literature, not the other way around. Third, although a linguistic analysis of texts provides a starting point for understanding their meaning, this should not be the end of the process. Many jurists and scholars have only analyzed key texts linguistically and undertaken no further analysis, an approach that perhaps causes them to miss important messages contained in the text. Clearly, understanding why the Qur'anic and hadith texts exist plays an important role in our understanding of them. The broader social, historical, in-

tellectual, and cultural contexts in which they were revealed or produced can be taken into account when trying to determine their meaning.

Fourth, there is a need to critically evaluate the hadiths' chains of transmission to determine their reliability. Equally important is that the texts' proposed meanings must make sense, be reasonable, and be based on what we know about the Prophet. Fifth, the difficulties associated with consensus suggest caution when determining the meaning based on any claims of consensus in the Islamic legal tradition.

There are many other reasons why the law of apostasy (including the death penalty) should be reconsidered: It is counterproductive and serves no useful religious, spiritual, ethical, or moral purpose; it reduces belief and religion to a political act that is devoid of spirituality; it generates religious hypocrisy wherever it is enforced; it kills Muslim creativity; and it allows authoritarian regimes to support establishments that curtail Muslims' intellectual and political freedom and their ability to discuss vital Islamic issues all in the name of protecting Islam. Such restrictions conflict with contemporary understandings of universal human rights and damage the reputation of both Islam and Muslims. They also conflict with the conception of religious freedom rooted in the Qur'an, one that was proclaimed 1,400 years ago, well before the UDHR.

## Endnotes

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3. Humanistic texts, "al-Ma'arri," n.d., [http://www.humanistictexts.org/al\\_ma%27arri.htm](http://www.humanistictexts.org/al_ma%27arri.htm).
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5. Hamza Yusuf, *The Creed of Imam Al-Tahawi* (Berkeley: Zaytuna Institute, 2007), 64.
6. Ibid., 68.
7. Ibid.
8. Khalid Baig, "On Religious Tolerance" (April 27, 2001), <http://articles.young-muslims.ca/outreach-and-invitation/on-religious-tolerance/>.
9. "Cairo Declaration on Human Rights in Islam," adopted at the Islamic Conference of Foreign Ministers, Cairo, 1990, <http://www.unhcr.org/refworld/publisher/ARAB,,,3ae6b3822c,0.html>.
10. Sayyid Qutb, *Fī Zīlāl al-Qur'ān* (Cairo: Dar al-Shuruq, 1996), 1:291.

11. See B. J. Grim, "God's Economy: Religious Freedom and Socio-Economic Well-being," in *Religious Freedom in the World*, ed. P. Marshall (Lanham, MD: Rowman and Littlefield Publishers, 2008), <http://crf.hudson.org/articledocs/GodsEconomy.doc>.
12. Ibid.
13. Theodore Malloch, "Free to Choose: Economics and Religion" (paper presented at the World Trends in Religious Freedom conference, the Hudson Institute, July 9, 2007), <http://crf.hudson.org/articledocs/FreetoChoose.doc>, p. 1.
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15. Reservation lodged with the Secretary-General on December 4, 2006 by Bahrain, following its accession to the Covenant on September 20, 2006. See "United Nations Treaty Collection, Status of Ratifications: International Covenant on Civil and Political Rights (2011)," [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).
16. Ibid.
17. Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: Westview Press, 1991), 164. See also the discussions in Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, (Philadelphia: Pennsylvania University Press, 1999), 24-25 .
18. Taha Jabir al-Alwani, *Lā Ikrāha fī al-Dīn*, 2d ed. (Herndon, VA: International Institute of Islamic Thought, 2006), 12.
19. See news reports, e.g., "Death Sentence for Killer of Pakistan Governor," ABC News, October 1, 2011.
20. Abd al-Rahman al-Jaziri, *Min Kitāb al-Fiqh 'alā al-Madhāhib al-Arbā'ah* (Beirut: Dar al-Fikr, n.d.), 5:422-23; Wahbah al-Zuhayli, *Al-Fiqh al-Islāmī wa Adillātuhu* (Damascus: Dar al-Fikr, 1997), 6:184; Abu Bakr al-Jaza'iri, *Minhāj al-Muslim* (Cairo: Maktabat al-Kulliyat al-Azhariyyah, 1979), 535.
21. Zuhayli, *Al-Fiqh al-Islāmī*, 6:183; Jaza'iri, *Minhāj al-Muslim*, 535; Jaziri, *Min Kitāb al-Fiqh*, 5:422-27.
22. Abu Muhammad Ali ibn Ahmad ibn Sa'id ibn Hazm, *Al-Muḥallā*, ed. Ahmad Muhammad Shakir (Cairo: Maktabat Dar al-Turath, n.d), 11:408-16.
23. Subasi, "The Apostasy Question," 2. (Citing S. M. Zwemer, *The Law of Apostasy in Islam* [London: 1924].)
24. Mohammad Hashim Kamali, *Freedom of Expression in Islam* (United Kingdom: The Islamic Texts Society, 1997), 91.
25. Mohamed Selim El-Awa, *Punishment in Islamic Law* (Indianapolis: American Trust Publications, 1982), 54-55.
26. Kamali, *Freedom of Expression*, 91. Citing Mahmud Shaltut, *Al-Islām: 'Aqīdah wa Sharī'ah* (Kuwait: Matabi' Dar al-Qalam, n.d.), 292-93; Nu'man Abd al-Raziq al-Samara'i, *Ahkām al-Murtadd fī al-Sharī'ah al-Islāmīyah* (Beirut: Dar al-Arabiyyah, 1968), 114.
27. Rudolph Peters and Gert J. J. de Vries, "Apostasy in Islam," *Die Welt des Islams*, New Series 17, no. 1 (1976-77): 14.

28. Abu al-Abbas Shihab al-Din Ahmad al-Qastallani, *Irshād al-Sārī lā Sharḥ Saḥīḥ al-Bukhārī* (Beirut: Dar al-Fikr, 1990), 14:396.
29. See relevant sections in Muhammad Baltaji, *Manāḥij al-Tashrī' al-Islāmī fī al-Qarn al-Thānī al-Hijrī* (Cairo: Dar al-Salam, 2004).
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31. Al-Alwani, *Lā Ikrāha*, 123.
32. *Ibid.*, 127.
33. *Ibid.*
34. *Ibid.*, 123-39.
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37. Al-Alwani, *Lā Ikrāha*, 118.
38. Bukhari, *Saḥīḥ al-Bukhārī: The Translation of the Meanings of Saḥīḥ al-Bukhārī*, Arabic-English trans. Muhammad Muhsin Khan, rev. ed. (Ankara: Hilal Yayinlari, 1976), 1012. Also see Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy, and Islam* (Aldershot, UK: Ashgate Publishing, 2004), 59.
39. Al-Mawardi, *The Ordinances of Government*, tr. Wafaa H. Wahba (Reading, UK: Garnet Publishing, 1996), 60-71.
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43. Kamali, *Freedom of Expression*, 91.
44. Saeed and Saeed, *Freedom*, 56. Citing al-Jaziri, *Min Kitāb al-Fiqh*, 5:8.
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## General Discussion

- Some people are forced to feign apostasy: “except for him who is coerced but his heart is full of faith” (Q. 16:106). *Lā ikrāha fī dīn* was revealed in the following context: A young man was converted by some Christian oil merchants from Syria. His father asked the Prophet if he would be held accountable for not preventing this event. The hadith in question is Abbasid propaganda against the Alawis and should not be considered a hadith at all. The alternative hadith gives only three cases in which capital punishment is authorized; moreover, it does not use any cognate of *riddah*.
- The Uraynah tribe is a complicating factor. Were they killed for apostasy or *ḥirābah* (war on society)? Bukhari has a chapter on *ḥirābah* but not on *riddah*. There is also the following account: Muʿadh ibn Jabal once found a Jew who had converted to Islam and then apostatized. He insisted that this person should be killed on the spot. Umar ruled that he should have been given three days to repent and then be killed if he did not do so.

- What is the downside of religious freedom? Most of the Ten Commandments are religious prescriptions that limit religious freedom. For Evangelists, religious freedom means the right to proselytize anywhere in the world.
- Zaffarullah Khan was Pakistan's representative during the debate on the declaration of human rights. Jamil Barudi, a Lebanese Christian, represented Saudi Arabia.
- In her Freiberg Lecture, Patricia Crone said that Muslims love to talk about these things but have yet to implement them.
- Rather than speculate on why the jurists accepted this hadith, we should ask what they are trying to achieve when they incorporate it into their *fiqh*.
- The Qur'an is clear about God's punishment of apostasy on the Day of Judgment. The only question is whether it is punishable by people in this life.
- Umar used to beat an unrepentant alcoholic who converted to Christianity. Later on he exiled him. The man joined the Byzantine army, and Umar swore he would no longer exile people. Thus there is no doubt that he was defending the death penalty against traitors.
- Having the freedom to convert is better than encouraging hypocrisy. This was the case in Madinah, and the Prophet is the best example for us.
- Both Shafi'i and Maliki jurists said this hadith is vague, as it seems to require killing Christians who become Muslims. We need to address the other hadith, because it does suggest that an apostate could be killed.
- The Prophet punished treason rather than apostasy.
- A new book by IIIT on authenticating hadith may be very helpful. Bukhari focused only on the chains of transmission, which at that time was the primary concern.
- Historically, the hadith were peripheral compared to the emphasis we find today.
- Bukhari and Muslim are really *fiqh* manuals organized topically.
- There was a hadith movement in early Islam with tension between its adherents and other jurists, but over time they came to dominate. The question is the confusion between hadith and Sunnah.
- The distinction between hadith and Sunnah was addressed in a previous IIIT summer institute. Imam Malik was concerned with the living Sunnah, the practice of the people of Madinah, rather than with hadith *per se*. His book is not one of the *Sittah* (viz., the six Sunni hadith collections).
- How should legislators in Muslim countries deal with converts to Christianity who become propagandists against Islam?
- What do we think about hegemonic discourses? How do questions of religious freedom connect with geopolitical concerns?
- Was the punishment for *riddah* or for actions by the apostates, not just as combatants, but as spies?
- A hypocrite makes a better spy than an apostate.
- There is a hadith that the blood of Muslims can be spilled in only three cases: a married person who commits adultery, a murderer, and one who forsakes his religion and the community to take up arms against Allah. There are two categories

of those who forsake Islam: one who is born Muslim and a convert. The Zaydis believe that both classes should be killed immediately; however, the Ibadis say the woman must be sentenced to life in prison so that she might repent.

- Although the so-called *riddah* wars are used as evidence for killing apostates, it is a misnomer. Umar disagreed with Abu Bakr's decision to fight these wars, for some rebels were renegades while others were simply tax resisters.
- We love freedom of religion when we are the minority, less so when we are the majority. Without religious freedom, the authorities control everything in the name of religion; however, the advice that the Prophet received from God was only to communicate His message. Reciprocity and freedom of belief should be for all.
- Contemporary debates are colored by how Muslims see their position vis-à-vis the rest of the world. It is about our pride, not just simply a theological or legal matter. It was heavily political even in the historical debates.
- Apostasy may well be about treason or other political acts, particularly in the early period of Madinah, but not so much later on.
- Imam Malik distinguishes the Sunnah from hadith in clear terms. Shafi'i takes the hadith as the clear statement of the Sunnah.
- The Qur'an uses the term *īmān* for belief and makes a clear distinction from Islam. This is about freedom. The lack of freedom is the problem we confront in the Muslim world.