



PRESERVING THE FREEDOM FOR FAITH

Reevaluating the Politics of Compulsion

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Both the First Amendment of the US Constitution and Article 18 of the Universal Declaration of Human Rights acknowledge that the freedom of religion and conscience are fundamental civil and human rights due to all persons. A similar declaration was made in the Qur'an over 1400 years ago in Arabia, "*There can be no compulsion in religion. Right action is clear from error*" (Q 2:256). This remarkable trend in both secular and religious formulations offers many reasons to marvel, but past and current history suggests that humans have a natural proclivity toward intolerance for ideological dissent. One particular characteristic shared by these documents is that they all were born in the spirit of liberation from tyranny and the aim to popularize justice. In other words, each had arisen during a time when members of their respective communities were being subjected to persecution by another imperial or governmental entity that denied specific freedoms. Judaism, Christianity, and Islam were all born out of religious persecution. The US Constitution was born after the American Revolution that led to independence from Great Britain. The Universal Declaration of Human Rights resulted from the atrocities of World War II and in particular the unfortunate incident of the Jewish holocaust. The great paradox of each tradition is that while beginning in a spirit of openness to others, members of each tradition have

developed a penchant for religious and ideological bigotry quite often.

The global economy, travel, and the ubiquitous social media have shrunk the world while at the same time facilitating unprecedented intercultural exchange that can lead to greater understanding and/or more effectively accomplish neocolonial "civilizing" ambitions. Hence, it would seem that this new world is an imperialist's fantasy especially when imperialistic interests are so many and in competition with one another. It has become commonplace for members of proselytizing traditions, like Christianity, Islam, or Capitalist-Democracy, to set a threshold of tolerance for personal conscience, thought, and religion. This particular essay ventures into the legalistic and historical foundations for demarcating the validity or invalidity of such a threshold in the Islamic tradition. To this aim, we intend to see how it may be possible to reconcile between the aforementioned Qur'anic declaration of freedom of religious conscience and the apparent contradiction this has with ancillary injunctions found in the prophetic tradition, like the statement, "Kill whoever changes his religion."¹ If Islam promotes tolerance for diverse religious understanding, would not such an injunction clearly contradict the Qur'anic ideal expressed above? We hope to find a sufficient answer to this question in what follows.

Apostasy & High Treason

Freedom of thought and conscience are perhaps the only true and absolute civil liberties, since each of us enjoys them whether or not a government, system, or institution approves of them. Public acknowledgement of such rights is intended to merely emphasize, not institute them. As for the freedom of religious practice, this liberty is slightly different from the other two inasmuch as it can mean the right to openly express and practice one's faith without interference. Its practice, however, is limited by aspects of one's national constitution with which it may or may not directly contravene. Hence, the right to religious practice—understood as the freedom to act on one's conscience—is not

absolute. In other words, one has the right to believe whatever s/he desires about God and may openly express those beliefs to others without fear of prosecution if that belief differs from one's governors'. One is also free to institute any liturgical and devotional practices that clearly distinguish one's religious tradition. But when the teachings of a religion suggest alternate ways for governing the actions and behavior of society and utilizes the executive powers of government to enforce such behavioral norms, Western democracies deem it appropriate to regulate society in a way so as to ensure that the influence of that particular religious ideology does not cancel out the authority of the broader constitution.

If that is so, negotiation, then, becomes an inescapable element of the religious compromise for one's request for naturalization into a particular polity which demands an acceptance that ultimate executive, legislative, and judicial authority belongs to the nation to which one seeks citizenship. It is to accept that one's religious experience is to remain personal even if living in a collective, and that the chief administrative power is the sole entity with the right and authority to set and enforce behavioral standards. This acceptance is a pact that one enters into. For this reason, as in the religious experience, governments demand an oath of allegiance; an oath to uphold the constitution and to defend it from enemies, both foreign and domestic. Such an oath transforms a foreigner into a citizen in the same way that a testimony of faith in proselytizing religions transforms a person from nonbeliever to believer who is afforded certain rights that outsiders are denied. When a person violates that oath by committing the high crime of treason, as before and during medieval times, one might be subjected to the harshest punishment the law has to offer, which many times meant death by execution. I say all of this in the hope that one does not merely see it as a defense of the traditional Islamic punishment for apostasy (death) any more than one is led to better understand the context wherein such laws were born.

The plain truth is that while Islam is a tradition that takes pride in the promotion of the exercise of conscience for outsiders, for insiders it sets boundaries in light of this willful decision to adopt Islam's moral constitution. For example, the Prophet Muhammad—God's mercy and peace on him—said, "It is lawful to take the lives of only three kinds of Muslims: a fornicator who loses innocence through marriage; one who takes another's life, and one who abandons his religion who disengages from the community."² This last category has been interpreted by Islamic jurists historically as being a reference to the apostate.

Many things lead to apostasy in Islam. Among them are blasphemy against God or His messenger; a denial of the miraculous nature of the Qur'an, prostrating to an idol, or even adorning the distinct attire of the clergy of another faith.³ In other words, both statements and actions can lead to apostasy, although the essential element for a genuine act of apostasy is for the heart to turn away from God. Statements and actions are merely the outward (when unequivocal) indicators of what is found in one's heart. When a person commits an outward act of apostasy, the traditional view of Islam has been that such Muslims are to be executed in violation of the oath they took to keep faith in God.

Such a view would seem to fundamentally contradict the nature of faith, since genuine faith can be neither coerced nor institutionalized. Therefore, what practical use can there be in threatening a person with the interruption of life if one's outward reconversion merely leads to living a life of hypocrisy? The Andalusian magistrate, Qadi Abu Bakr b. al-'Arabi, preempted this objection stating that,

"If it is asked: "How could it be justified in the religion to compel another to follow the truth when the one compelled ostensibly does not believe in what he outwardly professes?" I would respond that God—Glory to Him—sent his messenger, Muhammad—God's mercy and peace on him—inviting people to Him, illuminating the path for them, alerting them to proofs, and bearing persecution and debasement on the path

of propagation and clarification until God's authority was established. He, then, chose His friends and expanded their breasts to accept the truth. Thereafter, the squadron of Islam and the hearts of the people of faith came into harmony with one another. He, then, transferred His prophet from a state of persecution to one of divine protection and from debasement to glory. He gave him strong supporters and ordered him to invite with the sword, since an amount of time had passed sufficient enough to establish proof; just as sufficient warning had been given that

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In other words, there are two justifications for coercing the apostate back to outward faith: i) because education or reeducation is needed in order to remove the mental barriers that led to the loss of faith; and ii) it is hoped that the experience of community with virtuous people will result in a strengthening of one's convictions. We could summarize this by saying that the loss of faith can only be healed by time spent in a community of knowledge, faith, and virtue. While this was the accepted understanding during medieval times, those of us living today who have experienced the fragrant aroma of liberalism and liberty could not possibly share Qadi Abu Bakr's wisdom; for if faith is not sincere, it is not faith at all. So, the hope that faith will be instilled in a person's heart is not reason enough to deny him/her personal autonomy, prerogative, or to exercise one's freedom to show indifference to God.

It would be disingenuous to claim that Islamic jurists historically have argued for commuting the sentence of an apostate based on certain societal factors. I, however, venture to argue—without any suggestion that scholars have misunderstood the matter of apostasy for nearly 1400 years⁵—that the earlier transmitters of our sacred history have neglected to transmit along with these troubling reports a particular context wherein they were to be understood through the ages. What I mean by this is that it is my educated belief that the injunction to execute apostates during the Prophetic era was introduced into the legal parlance as a way to

justified [military action]. A second response would be that such people are taken forcefully first, but once the religion becomes manifest, they intermix with the Muslims, and the message becomes widespread, a strong intention and belief are formed within them due to witnessing the others consistently act virtuously, which leads to them developing a sincere love for the religion if God so graces them. Otherwise, we deal with them according to their outward states, and their reckoning is with God.”

discourage defection from the Muslim military forces in order to join the opposition. In other words, only those who joined the enemies to take up arms against the Muslim forces were to be made the object of this order to, “Kill anyone who changes his religion.” Before it is suggested that I am introducing a completely novel idea into this discussion, know that some modern day Islamic authorities support this rationale. For instance, Shaykh Ali Gomaa, grand mufti of Egypt says after listing a number of incidents illustrating that the Prophet—mercy and peace on him—did not execute certain apostates,

“All of these incidents that happened during the period of divine legislation have made Muslim jurists understand the issue of executing the apostate not to be an issue related to the freedom of religion or thought, nor related to oppression. In addition, they have led them to understand that the scriptural texts that are harsh in that regard no more are a reference to one's departure 'from' Islam than they mean the departure 'against' Islam, which is considered a crime committed against the public order in a polity. Similarly, it is an act of rebellion against the governors of the religion whose legitimacy is acknowledged by the nation. Hence, it is deemed synonymous with the crime of high treason that all sacred law codes, constitutions, and laws criminalize.”⁶

What supports this understanding also is the statement in the earlier tradition that includes as a description of the one who abandons his religion, one “who disengages from the community.” Some scholars consider mention of this qualifier as

nothing more than emphasis of the initial description of abandoning the religion. Others, however, hold the view that the characteristic of ‘disengagement from the community’ adds a second qualifier that justifies the execution of an apostate.⁷ If that is so, it would suggest that the major consideration involved with the execution of apostates is open rebellion and the attempt to overthrow or disturb the established order. For this reason, we find another version of the aforementioned hadith that says,

“The blood of a Muslim who testifies there is no God except Allah and that Muhammad is the messenger of God is only lawful with respect to three people: a person who fornicates after losing innocence through marriage. Such a person is to be stoned; a person who goes out waging war against God and His messenger. Such is to be killed, crucified, or banished from the land; and one who kills an innocent soul. Such is to be killed because of it.”⁸

Unless we take open rebellion against the state as the major consideration in apostasy laws, how do we explain the fact that the lives of known hypocrites who do not disengage from the community—despite being unbelievers or apostates themselves—were spared by the Prophet—God’s mercy and peace on him—who said when asked to order the execution of the chief hypocrite of his time, ‘Abd Allah b. Ubayy, “It shall not be said that Muhammad kills his companions”?⁹ What further corroborates this understanding is the fact that the Qur’an says of the hypocrites, “They have taken their oaths as a shield” (Q 63: 2). Qur’anic exegetes say that what they shield themselves against is execution (qatl). This can only mean that as long as one outwardly expresses faith but does not disengage from the community in rebellion, one’s life is to be spared. Furthermore, it means that as long as one openly expresses disbelief but who accepts to live under the protection of the Islamic state without disengaging to set up an outpost to attract and abet the enemies of the Islamic state, one is also spared. For this reason, Islam makes a

distinction between non-Muslims living under the authority of Muslims (dhimmi), and those living in nations hostile to the Muslim polity (harbi). The former is protected, while the latter is exposed to significant danger. For this same reason, the Prophet—God’s mercy and peace on him—expelled the Jewish tribes of Medina once they acted treacherously and later waged war against the remainder who set up an outpost against the Muslims in the town of Khaybar.¹⁰ Similar to this also is that the Prophet—God’s mercy and peace on him—did not kill the false prophet, Musaylimah, while Abu Bakr al-Siddiq waged war against him and others once they took up arms against him during the apostasy wars.

Another factor involved in this matter that further emphasizes and confirms the claim of this essay is that only men were obliged to serve in Muslim armies, while women were to be protected. The consequence of this legally is that every able bodied man became a member of the Muslim army by default, obliged to follow the orders of its commander-in-chief. Women were only to be killed in battles if they took up arms against the army of faith, even though they are never to be killed in the view of Hanafi jurists. Hanafis even go further to uphold the view that even though a male apostate is to be killed, a woman apostate is never to be killed.¹¹ This is also the view expressed in the jurisprudence of Imam Ja’far b. Muhammad al-Sadiq upheld in the Shiite Twelver tradition.¹² If this is so, it would mean that according to these two schools apostasy is not a general category that is applicable to everyone. This suggests that there is some other consideration that dictates this gender distinction, which I argue is that men who defect to the opposing armies pose a greater danger to the national security of an Islamic polity. Interestingly, Ibn Rushd captions one section in a chapter dedicated to apostasy with the question, “What is to be done with the apostate if seized before he wages war?” He also places the discussion of apostasy under the chapter related to punishments for organized bandits (hiraba), which implies a connection between rebellion and apostasy.¹³

In the Ja'fari tradition we also find that a distinction is made between an apostate who is born to Muslim parents (murtadd fitri) and another who is born to non-Muslim parents (murtadd milli). While it is somewhat troubling that Ja'faris would make such a distinction while upholding the judgment that an apostate is to be killed even if he repents unless he was originally a non-Muslim adult when he converted,¹⁴ this highlights the confusion that surrounded and still surrounds scholarly discussion on the aims and reasons for upholding apostasy laws. Perhaps, the factor that drives both the Hanafi ruling not to kill women and the Ja'fari decision to execute the apostate under all circumstances even if he repents is to ensure that men do not abandon the duty to protect the Islamic polity and, in the latter's case, to minimize hypocrisy in the ranks. All of these facts, nevertheless, emphasize the strength of the argument that only treacherous rebels are to be subjected to the injunction to "Kill anyone who changes his religion."

Are Apostasy Laws Immutable?

In Islamic jurisprudence, there is a discussion of two fundamental injunctions: i) those that are immutable (thawabit); and ii) those that are mutable (ghayr thawabit). That is to say, there is an understanding that some injunctions are not subject to change or cancellation at any time, while others are subject to change in accord with the change of time or circumstance. In reality, practically all Islamic legal injunctions have a mutable character from the regard of reflection on and consideration of those that have been determined to have a *ratio legis* ('illa) or from the regard of consideration of their prerequisite validating qualifiers (shurut, asbab, mawani'). For this reason, legal theorists posit that, "There is no basis for denying that judgments change in accord with the change of times, places, and circumstances."¹⁵ They also say that, "The applicability of a judgment is influenced by the existence or non-existence of its operative *ratio legis*."¹⁶ What this means, for example, is that

while none can deny the immutable obligation of a Muslim to pray five times a day, when a person has access to neither water nor a valid substitute to carry out wet or dry luminations (tahara) the immutable obligation is commuted in the view of many jurists to a mutable judgment which now removes the original obligation to pray.¹⁷ Another example is that the prohibition against eating swine is considered an immutable Qur'anic injunction. It, however, is rendered mutable if a person is starving and finds nothing more than swine to eat for one's survival. It was such an understanding that led the second caliph, 'Umar b. al-Khattab, to order a stay of execution on the punishment for legal theft (sariqa) during a time of famine even though the Qur'an explicitly states, "The thief, male and female, cut off their hands" (Q 5:38).

In reality, in each of these cases, there is another consideration that has been utilized to override the authority of the *ratio legis*. It is the consideration of the stated interests (masalih) of Islam which consist in the protection of one's religion (din), life and physical well-being (nafs), sanity ('aql), progeny (nasl), and wealth (mal).¹⁸ In the view of many jurists, whenever the stated interests conflict with one another, the interest with the higher priority is to be given preference. For instance, if the interest of protecting the religion conflicts with the interest of protecting one's physical well-being, the religion is to be sacrificed for the sake of protecting physical well-being. This is captured in the maxim, "The protection of physical well-being is preferred to the protection of the religion" (hifz al-abdani muqaddamun 'ala hifzi al-adyan). For this reason, it is permitted for a person to eat pork during times of starvation when no other food is available, even though the *ratio legis* for the prohibition of eating pork is still existent. This was the same matter that led 'Umar—may God be pleased with him—to not execute the punishment for theft, even though the operative *ratio legis* (theft) was still present. In other words, the thief was compelled by circumstance to steal, which rendered him guiltless of sin since "necessity makes what is unlawful lawful."¹⁹ On the other hand, the right of the person who was the

victim of theft raised only a consideration of the interest of the protection of wealth; a much less important interest than the interest of the protection of life and physical well-being. The act of theft, which is the *ratio legis* required for cutting off the hand of the thief, occurred in these circumstances, which would make it an obligation to execute this injunction. But since the over-arching interests of Islam are more important to preserve than to enforce its positive law, the spirit of the law was placed over the letter of the law, since the law is only intended to promote that same spirit. If this is so, Muslim jurists would need to consider what interests there may or may not be in the current situation globally that would demand that we continue to uphold the punishment for apostasy. They should then weigh that consideration against any other interests that perhaps conflict with efforts to remain strict positivists who insist on blindly enforcing the letter of the law without reflection on the harms that would result from doing so.

It would be much easier to settle this matter by merely claiming that the hadith, “Kill whoever changes his religion,” is abrogated by the Qur’anic injunction prohibiting forced conversion and the limitation of conscience. However, the overwhelming majority of scholars hold that claims of abrogation cannot be made merely based on fancy without historical evidence. It is a reasonable assumption, though, based on historical information that the injunction to kill apostates was subsequent to the emigration from Mecca to Medina.²⁰ This is because the permission to fight back against the polytheists (Q 22:39) was not given until the Muslim community made its exodus. If that is so, it is clear that Muslims were not expected to execute any apostate during their sojourn in Mecca, since it logically follows that if one is deemed not fit to fight, he is even less suited to be asked to kill. In addition to these considerations, there is not nor was there any religious obligation to execute apostates. Otherwise, we would find it difficult to explain why the Prophet—God’s mercy and peace on him—did not kill a number of apostates during

his time. A man by the name Qurra b. Maysara, for instance, apostatized from Islam, but the Messenger—God’s mercy and peace on him—sent no assassin after him. ‘Abd Allah b. Sa’d b. Abi al-Sarh also apostatized during his time, although he later repented before the Prophet’s death, but he was also not killed.²¹ The same is the case of Al-Ash’ath b. Qays who apostatized and only returned to Islam during the reign of the first caliph, Abu Bakr al-Siddiq.²² Also, a man by the name Dhu al-Khuwaysira al-Tamimi, after accusing the Prophet—God’s mercy and peace on him—of unjustly dividing the spoils of war, was let go to live the remainder of his life free of harm.²³ If there was some religious obligation to kill apostates under all circumstances, we would have seen the Messenger himself seek them out. The truth, however, is that because such people posed no danger to the cohesiveness and stability of the new Islamic polity, the Prophet—God’s mercy and peace on him—allowed them to follow their conscience that led them to adopt other metaphysical understandings.

Who Has the Authority to Execute an Apostate?

The enforcement of law and implementation of punishment are considered to be the sole rights of government administration in an Islamic society. Anarchy is not to be tolerated, nor is vigilantism condoned. What this means is that a civilian has no right to independently judge and enforce what s/he believes to be an Islamic duty when all duties fall to those who have the capacity to execute them, not those who cannot.²⁴ The Prophet Muhammad—God’s mercy and peace on him—said, “Whoever of you sees a wrong let him change with his hand. If he is unable to, then change it with his tongue, and if he is unable to do that, change it with his heart. And that is the weakest of faith.”²⁵ Now, this does not mean that there is not a certain limited executive authority granted to common citizens, like the right that parents have to discipline their children, for instance. The point is that when

matters require an overwhelming force or pressures in order to rectify wrongs; this is typically assumed to be the sole right and responsibility of government. With consideration of this prophetic instruction, only a government is competent enough to rectify injustices and provide assurances that the restoration of rights will not lead to a greater wrong or evil in light of their military and paramilitary prowess which all in society willfully succumb to and acknowledge. This being the case, only a government needs to be concerned with the applicability and the effectiveness of a policy that promotes the execution of people who leave the religion of Islam. It should not be the concern of the common Muslim. Rather, the common Muslim's view should echo what is broadly accepted by the peoples of the world that all should enjoy the freedom to choose their religion and to follow one's conscience. This must be our view also, since it would be hypocritical of us, living in a democratic land where we are at liberty to demand religious freedom, to insist that we have both the hope that more people in the West become Muslims while denying people the freedom to choose their faith upon their acceptance of Islam.

A Noteworthy Concern

Some may object by saying, "Well, if we are to not execute apostates, how do we handle the fact that many of them today not only leave Islam. They also start campaigns that attempt to smear the Muslims and Islam by writing books and supporting other enemies of the religion against us? Surely, that concern is equal to the concern that the scholars historically have had even according to your own logic." My response to this is, yes, it is legitimate for Muslims to be concerned about the negative propaganda of former Muslims and the institutions that support them; just as it is a duty of every Muslim to defend Islam. But, what type of defense does it require? I would argue that killing an apostate does not improve the image of Islam. It actually gives credence to the claims of those who say Islam is an intolerant religion that does not

allow for diversity of opinion or freedom of conscience. I also do not agree that this concern is exactly the same as the concern that scholars of the past working to protect the cohesiveness of the nation had. For them, defection to the other side meant the possibility of the enemy becoming privy to information that could undermine the solidarity and collectivity of the Muslim polity, which would lead to mass confusion and murder, total chaos, starvation, and anarchy. The propaganda of apostates today and institutions that demonize Islam does not dissolve unity nor disturbs the stability of an established administrative order *per se*, since there is no established order nor any unified collective to start with. Therefore, the harms that would result from the efforts of apostates today are far fewer than they could have been in the past. This is not to say that there is no longer anything to defend. My only argument is that we have to choose the appropriate methods of defense, among which killing should not be considered.

There are two models I believe are best for Muslims to adopt today found in the example of the Prophet's approach to personal antagonism—God's mercy and peace on him. Both approaches were utilized after the Battle of Hunayn in year 8 after the Hegira subsequent to the Conquest of Mecca. The Battle of Hunayn against the tribes of Hawazin was not only a military challenge for the Muslims. It was also a moral and spiritual challenge due to the great booty acquired from it. The Prophet—God's mercy and peace on him—chose to give the chiefs of Mecca, many of whom had recently accepted Islam, more of the booty than his most trusted companions and helpers. There were many complaints coming from both those who were known as sincere Muslims as well as others considered weak in their faith. Among the latter group, we find two in particular. The first was Al-'Abbas b. Mirdas, and the second was the aforementioned Dhu al-Khuwaysira.

Al-'Abbas b. Mirdas was so disturbed by not being given a larger portion of the spoils that he started to compose verses of poetry that scolded the Prophet—God's mercy and peace on him—for not

giving him what he felt he rightfully deserved. Upon hearing the words of Al-‘Abbas, the Prophet—God’s mercy and peace on him—ordered his companions saying, “Go and cut his tongue off from me.” His companions then went to give him more of the spoils and kept giving him until he was content.²⁶

Dhu al-Khuwaysira, on the other hand, came and stood over the Prophet—God’s mercy and peace on him—while he was dividing the spoils, and then said, “O Muhammad! I have seen what you have done on this day.” The Prophet responded, “Indeed. And how do you judge my actions?” Dhu al-Khuwasira responded, “I have not seen you do justice.” The Prophet—God’s mercy and peace on him—became angry and said, “Mercy on you! If justice is not from me, then from whom shall it come?” ‘Umar b. al-Khattab witnessing this said to the Prophet, “O Messenger of Allah! Shall I kill him?” He said to ‘Umar, “No, leave him! For surely there shall arise from him a faction who shall become so absorbed in the religion that they will exit from it the way that an arrow is extracted from the game. One looks at the arrowhead and finds nothing. Then, [he looks] at the shaft and finds nothing. Then, [he looks] at the tail and finds nothing preceding any excretion or blood.”²⁷

The policy employed in the case of Al-‘Abbas b. Mirdas was a pragmatic one that entailed merely addressing the complaints of the accuser by catering to his psychological and economical needs. In other words, the Prophet looked at the reason for his abuse instead of focusing on the fact that he was being verbally abusive. In the case of Dhu al-Khuwaysira, we find the Prophet utilizing a policy of verbal persuasion (though unsuccessful) saying to him, “Mercy on you! If justice is not from me, then from whom shall it come?” In many ways, apostates today have legitimate concerns and justifications for expressing their discontent with some Muslims. The major mistake is that they typically equate the abuse of oppression they suffer in their cultural homelands with Islam. Islam does not oblige people to mutilate female genitalia nor does it authorize or condone honor killings. Those are cultural realities

that people confuse with the religious teachings of Islam. The biggest problem with many apostates is that they have opted to eschew pursuing a proper Islamic education. Therefore, Muslims should take such matters into account before deciding to respond with verbal or physical violence as well as considering the effectiveness of both.

The Qur’an tells us, “*Good is not equivalent to evil. Respond with that which is more appealing*” (Q 41: 34). Worthy of note is that in the case of Dhu al-Khuwaysira, the Prophet—God’s mercy and peace on him—chose not to exercise the option to execute him even though this was well into the Medinan period and immediately after the Conquest of Mecca. If he had saw any utility in executing Dhu al-Khuwaysira or at the least compelling him to openly repent for his blatant disrespect of the Messenger—God’s mercy and peace on him—he might have done so.

For those of us who insist that apostates should be executed under all circumstances along with those who suggest that a country can only be considered Islamic once it is implementing the corporal penalties (hudud) for certain crimes, the only message we send to the rest of the world is that unless you are inflicting some physical harm or pain on another, you cannot be considered a good Muslim. My hope is that I do not need to explain how outrageous such a mindset is from a religious standpoint.

The Futility of Compelling Faith

What one can glean from the Islamic legal tradition is that a major responsibility of government is to aid in the preservation of societal moral well-being as well as regulating dissent and religious diversity. The maintenance of moral cohesion in the Islamic empire did not seem to be a matter of interest for the first Islamic monarchical dynasty, Banu Umayya. It was this lack of interest that provided much of the fuel for the Abbasid rebellion that led to the overthrow of the former. The Abbasids (Banu ‘Abbas) ran a popular campaign against the

Umayyads highlighting that the latter did not have much concern for maintaining the moral cohesiveness of the struggling nation. Consequently, the Abbasids achieved their objective of overthrowing the Umayyad rulers (although through immoral means: assassination). The Abbasids, however, were left with a challenge to follow through on their promise to rule differently than their predecessors by making religion—and Islam in particular—a primary concern of the government. Unfortunately, this only led to what some refer to as the Islamic ‘Inquisition’, known in Arabic as the *Mihna*. The difference in this case, though, was that non-Muslims were not being forced to accept Islam. Rather, Muslims were being compelled to profess the belief in things that ran contrary to mainstream Islamic teachings, like the utterance that the Qur’an is created, and that the beatific vision of God in the Afterlife is impossible. Because of this threatening policy, a number of scholars were driven to practice a form of dissimulation (*taqiyya*); to the extent that it is related that one of them when asked whether or not the Qur’an is created held up his four fingers and said, “The Qur’an, the Torah, the Gospel, and the Psalms: These four are all created.”²⁸ While it was apparent that the scholar was making reference to the four books, he was in fact referring to his four fingers.

There is neither space in this essay to speak about the relative importance of the discussion on the createdness or uncreatedness of the Qur’an nor is that its focus. What is important is that this highlights the medieval practice of forced conversion in the Islamic tradition rooted in the mistaken belief that a person has committed apostasy in not adopting the government’s official position on a particular religious matter. Those who refused to make the official utterance or expressed a contrary belief would be jailed and sentenced to be executed as in the popular case of Imam Ahmad b. Hanbal who spent fifteen years in prison for his refusal to make the utterance.²⁹ If this is true that scholars and governments can have a mistaken interpretation of what constitutes apostasy, it would

seem that the better thing to do would be to stay the execution of apostasy laws in the current age, especially if we take into consideration the circumstances that led to their rules as have already been stated above. If not for those reasons, let it be because the execution of an apostate has no moral or strategic goal. The only message that it sends is that Islam does not tolerate unbelief (*kufr*).³⁰ If that is so, we are now forced to defend Islam’s decision to allow marriages between Muslim men and Christian and Jewish women. It also forces us to explain why there is nothing wrong with a non-Muslim living under Islamic rule while freely practicing their faith. If unbelief cannot be tolerated, then the most logical assumption must be that no non-Muslim should be alive on the planet. The vast majority of Muslims, though, share a different understanding in this regard.

The Qur’an tells us,

“There is to be no compulsion in religion. Right action is clear from error. So, whoever rejects faith in the false god and believes in Allah has taken hold of the firmest handle that does not break” (Q 2: 256).

The fact that the verse says one has taken hold of “the firmest handle” suggests that other handles exist. One, however, takes hold of the firmest handle when s/he willfully accepts God into his/her life.

Similarly, the Qur’an says,

“If your Lord had so pleased all of those in the Earth would have faith. Would you then compel the people to become believers when it is only for a soul to believe by God’s permission? Just as He places dismay upon those who have no understanding. Say: “Look at what is in the heavens and earth.” But, neither the signs nor warners will avail a people who believe not. Do they but wait to happen the same as did happen to those who came before them? Say: “Wait! For I am also waiting with you.” (Q 10: 99-102)

In this series of verses we notice that Allah calls the messenger to use persuasion as opposed to compulsion in order to inspire faith. He says, “Say: *“Look at what is in the heavens and earth.”*” If this is the case, it would seem that Muslims should be more inclined to pursue a similar path and to abandon the pointless policy of compelling faith. The execution of the apostate serves no legitimate strategic or moral aim for Muslims today. Additionally, it does not achieve its goal of discouraging apostasy. Rather, it only outrages the apostate’s conscience. It can, in fact, encourage more to apostatize and even alarm the hearts of common Muslims who have grown thirstier for living lives with greater autonomy and freedom.

Conclusion

Legal theorists of the Hanafi tradition hold that the consequence of certain transactions and sins committed in non-Muslim countries are different from those same acts committed in Muslim lands. This view is the result of the Hanafi division of the world into two realms: *Dar al-Islam* (The Abode of Islam) and *Dar al-Harb* (The Abode of Warfare). Scholars of the Maliki and Shafi’is schools, however, view the world as only one single realm, all owned by God. Consequentially, Islamic legal judgments do not change in applicability based on a person’s presence in or outside of Muslim lands.³¹ It is reasonable to ask in these times whether or not rulings that developed and were upheld throughout the ages are still applicable in a globalized world where an ideal Islamic polity along with the ever-present hostilities from outsiders perhaps no longer exists. On the other hand, it might be appropriate to ask if the rational justifications for compelling outward piety were contextually reasonable for most of Islam’s history; justifications that portray a nation constantly at war or under the threat of aggression from its non-Muslim neighbors. The fact is that the rationale behind the distinction of legal rulings in Muslim lands and those in non-Muslim lands finds its crux in the assumption that there is greater and broader Islamic awareness in Muslim

lands than there are elsewhere. The current state of affairs of Muslims, however, reveal to anyone educated in the Islamic tradition who has lived in the Muslim world that times have changed greatly and Islamic identity and consciousness rooted in the theological, legal, and spiritual traditions is far worse in many Muslim countries than it is in Western lands. For this reason, it is my belief that no valid recourse can be taken to the Hanafi distinction between rulings in Muslim and non-Muslim lands in this age that is used by some to justify things like the sale of pork, wine, gambling, and unfettered transactions of interest.

These factors are also important in reflecting on Abu Bakr b. al-‘Arabi’s justifications for forced outward adherence to piety. In other words, if the society wherein the apostate is forced to lived is neither one of a broad Islamically religious consciousness nor is it characterized by popular virtue, then to force an apostate to return to an outward practice and profession of what s/he does not truly believe at heart in such a society, there is a guarantee—following Abu Bakr’s logic—that faith will never return to the heart unless by a sheer act of God.

The truth is that faith is itself a divine act that is beyond the permanent influence of human actors. If anything, experience has taught us this, since the doors through which many reach faith are many and fundamentally dissimilar. Apostasy is no more of a crime against society than it is a crime against God. Being a crime against God demands that one be left to reconcile one’s self to God; not forced to say that one has faith when the heart silently speaks to the contrary. The consequence of my thesis is that while the execution of defectors may still have its uses in the current age, to continue to characterize defection as apostasy or to judge that apostasy necessarily means defection would be inappropriate. Physical repulsion back to faith needs to be reconsidered. Similarly, practices of excommunication, boycott, embargo, and peer-pressure should be abandoned too. Every Islamic injunction has a wisdom and an aim that it seeks to

realize. When the tactic we use does not realize the desired outcome, we are merely acting aimlessly. Aimless behavior is characteristic of people stricken with madness. Islam has a proud legalistic tradition. Muslims would do well to highlight that it is also one that is moralistic. But let us not stop there. The same that applies for Muslims should also apply for the secular and positivist humanist as well as the gay activist. If one believes that s/he bears a universal truth, let others reach a similar realization, but by conviction, not by compulsion.

*WE THE PEOPLE DO SOLEMNLY
DECLARE OUR FREEDOM TO HAVE
FAITH*

¹ *Sahih al-Bukhari*

² Yahya b. Sharaf al-Nawawi, *Sharh al-Arba'in al-Nawwawiya*. Casablanca: Dar al-Furqan, 1998, p. 41. It is reported by both Bukhari and Muslim.

³ Al-Qadi 'Ayyad al-Yaysubi, *Al-Shifa' bi Ta'rif Huquq al-Mustafa*. Beirut: Dar al-Kutub al-'Ilmiya, 1420/2000, 2/170-186

⁴ Qadi Abu Bakr b. al-'Arabi, *Ahkam al-Qur'an*. Beirut: Maktabat Dar al-Bazz, 1416/1996, 1/311

⁵ While the Tabi'i scholar, Sufyan al-Thawri, held apostasy to be a crime, it has been related that he demanded that no time limit be set on how soon the apostate is obliged to repent. This understanding suggests that his view was that an apostate is not to be killed. See Ibn Juzayy al-Kalbi, *al-Qawanin al-Fiqhiya*. Beirut: Dar al-Kutub al-'Ilmiyyah, 1418/1998, p. 269

⁶ Ali Gomaa, *Al-Bayan lima Yashghalu al-Adhhan*. Cairo: Al-Muqattam li al-Nashr wa al-Tawzi', 1425/2005, p. 80

⁷ Muhammad Ashraf b. Amir says while commenting on this hadith,

“As for the statement, “one who disengages from the community”, that is the one who abandons the community of Muslims, departs from their collectivity, and becomes isolated from their affair through apostasy. So, his saying: “one who disengages from the community” is an emphatic description of the one who abandons the religion.”

Later he says while commenting on another version of the hadith that mentions “one who goes out waging war against Allah” instead of “one who abandons his religion who disengages from the community,”

“That is to say that he goes out against the Muslims in a state of war against God.”

When both narrations are read together along with this commentary, it becomes clear that what is intended by “the one who abandons his religion who disengages from the community” is “one who goes out waging war against God” i.e. the community of the faithful, since war cannot be waged against God.

Muhammad Ashraf b. Amim al-'Azim Abadi, *'Awn al-Ma'bud 'ala Sunan Abi Dawud*. Amman: Bayt al-Afkar al-Dawliyyah, p. 1889-1890

⁸ *'Awn al-Ma'bud*. p. 1890

⁹ Isma'il b. Kathir, *Tafsir al-Qur'an al-'Azim*, Beirut: Mu'assasat al-Kutub al-Thaqafiyya, 1416/1996) p. 370, 372

¹⁰ 'Abd al-Malik b. Hisham, *Al-Sira al-Nabawiya*. Beirut: Mu'assasat al-Ma'arif, 1425/2004, p. 558; Dr. Muhammad S. R. al-Buti, *Fiqh al-Sira*. Beirut: Dar al-Fikr, 1414/1994, p. 224

¹¹ Muhammad b. Ahmad b. Muhammad b. Ahmad b. Rushd al-Qurtubi, *Bidaya al-Mujtahid wa Nihaya al-Muqtasid*. Beirut: Dar al-Kutub al-'Ilmiya, 1418/1997, 2/673

¹² Muhammad Jawad Magniyya, *Fiqh al-Imam Ja'far al-Sadiq*. Qum: Mu'assasat Ansariyyan, 1425/2005, p. 303

¹³ *Bidyat al-Mujtahid*, 2/673

¹⁴ *Fiqh al-Imam Ja'far al-Sadiq*, 6/303

¹⁵ Azzat 'Ubayd al-Da'ash, *al-Qawa'id al-Fiqhiya ma'a al-Sharh al-Mujaz*. Homs: Maktaba al-Ghazali, 1390/1970, p. 42

¹⁶ Abu Hamid al-Ghazali, *Asas al-Qiyas*. Riyadh: Makataba al-'Abikan, 1413/1993, p. 43

¹⁷ Muhammad al-'Arabi al-Qarawi, *Al-Khulasa al-Fiqhiya*. Casablanca: Dar al-Rashad al-Haditha, 1420/1999, p. 64

¹⁸ Abu Ishaq Ibrahim al-Shatibi, *al-Muwafaqat fi Usul al-Shari'a*. Beirut: Dar al-Kutub al-'Ilmiya, 1: 2, p. 8

¹⁹ *Al-Qawa'id Al-Fiqhiya ma'a al-Sharh al-Mujaz*, p. 33

²⁰ It is also important to note that verse 256 of Sura al-Baqara that discourages religious compulsion was also revealed during the Medinan period.

²¹ 'Abd al-Ghani al-Ghanimi al-Maydani, *Sharh al-'Aqida al-Tahawiya*. Damascus: Dar al-Fikr, 1988, p. 124

²² Ahmad b. 'Ali b. Hajar al-'Asqalani, *Kitab Tahdhib al-Tahdhib*, Beirut: Dar al-Fikr, 1415/1995, p. 369

²³ *Al-Sira al-Nabawiya*, p. 651

²⁴ *Sharh al-Arba'in al-Nawawyya*, p. 74

²⁵ Yahya b. Sharaf al-Nawawi, *Sahih Muslim bi Sharh al-Imam al-Nawawi*. Beirut: Dar al-Fikr, 1415/1995, 1:2/19

²⁶ *Sira Ibn Hisham*, p. 649-650

²⁷ *Ibid.* p. 651-652

²⁸ Abu Bakr b. al-'Arabi, *Ahkam al-Qur'an*, 3/161

²⁹ Muhammad Abu Zahra, *Ibn Hanbal: Hayatuhu wa 'Asruhu - Ara'uhu wa Fiqhuhu*. Cairo: Dar al-Fikr al-'Arabi, 1367/1947, p. 42

³⁰ While the popular view in the school of Imam Shafi'i is that the justification for waging preemptive Jihad is to eradicate unbelief (kufr) from the world, in practice the school allows for other faiths to maintain most religious freedoms in an Islamic polity. Shaykh 'Ali Gomaa quotes the late Shaykh of Azhar, Shaykh Shaltut, as saying,

“The basis of reflection upon the matter could change, since it has been observed that many scholars hold the view that corporal penalties (hudud) cannot become part of legislation on the basis of reports that have not been indisputably corroborated (khabar al-wahid), and that unbelief alone does not give one license to violate another's blood. Rather, what gives one license is when one wages war against the Muslims, transgresses against them, and attempts to seduce them away from their religion. Also, the outward indications of the Qur'an in many of its verses refuse any compulsion in religion.” (Al-Islam 'Aqida wa Shari'a: p. 103)

Shaykh 'Ali also quotes from Ibn Taymiyyah's work, *al-Sarim al-Maslul* (p. 368), where he points out that the only time the Prophet—God's mercy and peace on him—executed an apostate, was when some other crime was committed in addition to apostasy, while those who were only guilty of apostasy were spared. He also states that he accepted the repentance of many of those who returned to Islam. (See *Al-Bayan* of Shaykh 'Ali Gomaa: p. 80-81)

³¹ Ahmad b. Muhammad al-Quduri, *Mukhtasar al-Quduri fi al-Fiqh al-Hanafi*. Beirut: Dar al-Kutub al-'Ilmiya, 1427/2006, p. 197; Muhammad al-Rugi, *Qawa'id al-Fiqh al-Islami mn Khilaf Kitab al-Ishraf 'ala Masa'il al-Khilaf lil-Qadi 'Abd Al-Wahhab al-Baghdadi*. Damascus: Dar al-Qalam, 1419/1998; Jeddah: Majma' al-Fiqh al-Islami, p. 264-265