# The Issue of Apostasy in Islam

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*The Shari'ah consists of some laws that remain the same regardless of changing circumstances and others that change with them. Most of the Shari'ah is up to individual Muslims to follow in their own lives. Some are for judges to implement in courts. Finally, the third set of laws is for the ruler or political authority to implement based on the best interests of society. The Shari'ah ruling on Muslims who decide to leave Islam belongs to this third group. Implemented in the past to protect the integrity of the Muslim community, today this important goal can best be reached by Muslim governments using their right to set punishments for apostasy aside.*

One of the most common accusations leveled against Islam involves the freedom of religion. The problem, according to critics: Islam doesn't have any.

This criticism might strike some as odd since it has been well established that both the religion of Islam and Islamic civilization have shown a level of religious tolerance that would make modern Americans blush. So what are these critics talking about? What they are referring to is not the issue of tolerating those who follow other religions. They are talking about the traditional Islamic punishment for Muslims who leave their own religion. Known as *ridda* or *irtidād* in Arabic, this is usually translated as *apostasy* in English (the generic act of renouncing or leaving one's religion).

Like the issues of stoning and hand chopping, apostasy in Islam can only be understood if one is willing to look beyond provocative headlines and delve into the nature of how jurisprudence developed in the pre-modern world and in Islam in particular. As with these harsh punishments (see Yaqeen's publication on the *Hudud* punishments here), modern confusion over apostasy in Islam has less to do with some basic flaw in Islam's scriptures and more to do with a major development in human history, namely the greatly diminished role of religion in the law and governance of modern societies.

Though we'll refer to *ridda* as apostasy for the sake of convenience, as in so many cases, the heart of the matter lies in the simple act of translation. In the time of the Prophet Muhammad ﷺ and the early Muslim community, the Arabic noun *ridda*

and the verb for engaging in it were understood not as meaning a personal choice of changing one's religion but as the *public act of political secession from the Muslim community*.

Interestingly, this dimension of apostasy as *betraying and opposing* one's community, missing in the normal usage of the English word 'apostasy,' is actually recovered in sociological studies of apostasy. Many studies looking at those who leave religious groups as well as communities defined by secular ideologies show that what distinguishes apostates from those who simply leave is that apostates become active opponents of their previous identity, more renegades than mere dissenters.[1] Along the same lines, the problem with *ridda* in Islam was not that a person was exercising their freedom of conscience and choosing to no longer follow the religion. The problem was when such a decision became a public act with political implications.

## Religion in the Pre-Modern World

As far back as the first complex societies in Mesopotamia, human society saw religion as essential. It secured the relationship of individuals and communities to some reality above and beyond the superficial world around them. It also transcended the personal and communal. Whether the rule of Pharaoh in ancient Egypt, Confucius's 'order under heaven' or the divine right of European monarchs, religion underpinned the political and social order within human communities and the states they established. Roman emperors required all inhabitants of their empire to offer token sacrifices for the emperor's divine guidance not because they were oppressive or intolerant; people could worship whatever gods they wanted. But they had to help maintain the *pax deorum* (the peace of the gods), the intermingled divine and earthly order that brought peace and prosperity to all. The Old Testament law of the Children of Israel reflected this overlap of religious affiliation and affirmation of a tribal and even state identity; those Jews who forsook the God of Israel to take up the worship of other deities were condemned to stoning (Deuteronomy 13:8-9; 17:2-7).

[1] See Simon Cottee, *The Apostates: When Muslims Leave Islam* (London: Hurst, 2015), 13-16.

The Muslims who built up Islamic civilization inherited and affirmed this ancient assumed role of religion. Muslim political theorists wrote that a widely-adhered-to religion and a stable state were the two most important pillars of worldly prosperity.[2] "Religion and earthly sovereignty were twins," went a common refrain.[3]

In Islamic civilization, the order of the world under heaven was simple. Muslims believed that God had revealed His final message to mankind. Unlike previous prophets, this last prophet had been sent to all communities, and his message rectified the errors that had crept into the revealed teachings brought by earlier prophets. What was best for human beings was clear: the worship of the one God and following the religion of Muhammad ﷺ, which would promote "felicity in both abodes (*al-saʿāda fī al-dārayn*), "both this world and the next. But the Qur'an and the Prophet ﷺ also gave people the right to reject this path and continue practicing their religion under Muslim rule. As Muslim scholars and rulers understood it, their mission was clear: extend the rule of Islam and God's law as far as possible not so that everyone could be forcibly converted to Islam (this hardly ever occurred) but so "the word of God would be supreme" (a famous *Hadith*)[4] and so that as many people as possible could live within God's final order under heaven.

The order of this world was clear to the scholarly and political elite who shaped and ruled it. As the Prophet ﷺ said, "Islam is exalted. It is not exalted over."[5] Non-Muslims, who were for many centuries and in some cases permanently the majority in Islamic civilization, could continue to live by their own religions and

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[2] Abū al-Ḥasan al-Māwardī, *Adab al-dunyā wa'l-dīn*, ed. Muḥammad Ḥasan Sulaymān (Cairo: Dār al-Fārūq, 2008), 183-4.

[3] The *ʿAhd Ardishīr* was produced in the late Sassanid period; Beate Dignas and Engelbert Winter, *Rome and Persia in Late Antiquity* (Cambridge: Cambridge University Press, 2007), 211. See also Iḥsān ʿAbbās, ed., *ʿAhd Ardishīr* (Beirut: Dār Ṣādir, 1967), 30.

[4] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-ʿilm*, *bāb man sa'ala wa huwa qā'im ʿāliman jālisan* ; *Ṣaḥīḥ Muslim*: *kitāb al-imāra*, *bāb man qātala li-takūna kalimat Allāh hiya al-ʿulyā'*...

[5] This *Hadith* does not appear in any of the main *Hadith* collections, but it has been considered weak by some scholars like Ibn Ḥajar and *ḥasan* or *ṣaḥīḥ* by others. See ʿAbd Ra'ūf al-Munāwī, *Fayḍ al-qadīr sharḥ al-Jāmiʿ al-ṣaghir*, ed. Ḥamdī al-Damardāsh Muḥammad, 13 vols. (Mecca: Maktabat Nizār Muṣṭafā al-Bāz, 1998), 5:2547.

religious laws.[6] Anyone who wanted could convert to Islam and join the ruling class of Muslims. (This raises interesting questions about which system is more discriminatory, one in which a religious group rules but is totally open to entrants, or one in which only the citizens of a nation state enjoy full (or any) rights there, and where acquiring citizenship is mostly difficult or impossible). But encouraging, publicizing, or even allowing, movement in the opposite direction, downward out of the ruling class, was a different matter.

In the logic of this order, questioning Islam's primacy was to undermine the societal order itself. As a result, all pre-modern Muslim schools of law considered apostasy to be a serious crime. The majority of Muslim scholars considered it among the *Hudud* crimes (leading voices in the Hanafi school of law were exceptions to this), albeit with some important distinctions.[7]

That apostasy was understood primarily as a threat to an overarching political order and not as a crime in and of itself is clear from how Muslim jurists described it. Apostasy differed from other serious crimes, such as fornication and murder, because on its own it did not transgress the rights of others. As a result, unlike other crimes, if someone who had left Islam decided to recant, the crime of apostasy vanished and no punishment followed. For a crime like murder, on the other hand, even if the perpetrator deeply regretted his act, the harm had been done and the victim and their family had a right to justice. Leaving Islam and embracing unbelief are great offenses, said the famous Hanafi jurist al-Sarakhsī (d. circa 1096 CE). "But they are between the human being (lit. the slave) and his Lord," he added. Their punishment lies in the Hereafter. "What punishments there are here in this world [for apostasy]," he continued, "are policies set down for the common good of human beings (*siyāsāt mashrūʿa li-maṣāliḥ taʿūdu ilā al-ʿibād*)." Someone who repeatedly and insistently proclaimed their apostasy from Islam was akin to a violent criminal threatening public safety, al-Sarakhsī explained. The common

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[6] For example, even 230 years after the Islamic conquests, only 50% of Iraq was Muslim and only 40% of Iran; Richard Bulliet, "Conversion to Islam and the Emergence of a Muslim Society in Iran," in Nehemia Levtzion, ed., *Conversion to Islam* (New York: Holmes & Meier, 1979), 31; idem, *Conversion to Islam in the Medieval Period* (Cambridge, MA: Harvard University Press, 1979), 85.

[7] See Wahba al-Zuḥaylī, *Mawsūʿat al-fiqh al-islāmī*, 14 vols. (Damascus: Dār al-Fikr, 2010), 5:714-15.

good that apostasy threatened was the *Shari'ah* itself and the rights that it pledged to protect for *all* its subjects, Muslim or not: rights to physical integrity, property, religion, reason, family, and honor (*ʿirḍ*).[8]

The word that al-Sarakhsī used to indicate 'policy,' *siyāsa*, is crucial for understanding the functioning of Islamic law in general and issues like apostasy in particular. *Siyāsa* can be translated as politics, governance, administrative law, and even criminal law. Its functions varied, but what unified them is that, while most of Islamic law was applied by independent Muslim judges (in fact, it was jealously guarded by them in part out of fear of political abuse), *siyāsa* fell under the purview of the ruler/political authority.[9] *Siyāsa* included areas that clearly belonged to an executive political authority, such as foreign policy, military organization, dealing with non-Muslim minorities in a Muslim state, and mundane administrative laws (think: traffic laws). Other issues, like taxation, would come under *siyāsa*, provided the ruler didn't exceed certain limits.

Finally, there were areas of criminal law like violent theft or premeditated murder that Muslim jurists understood to be left to the ruler for final decision. According to al-Sarakhsī and many other Muslim legal theorists, this is where the topic of apostasy belonged. *Siyāsa* was still very much part of the *Shari'ah*, but it was applied by the temporal ruler, not the Muslim scholars/judges (though, on issues like criminal law, Muslim scholars formulated much of the law that the political authorities applied and they were almost always present in the criminal courts). So when a judge in mid-tenth-century Egypt ruled that an apostate should be executed, he had to ask the caliph's permission to have the execution carried out. A few years earlier, when the governor of Egypt had been presented with a Muslim who had

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[8] Shams al-Dīn al-Sarakhsī, *al-Mabsūṭ*, 30 vols. (Beirut: Dār al-Maʿrifa, n.d.), 10:110. I'm indebted to Ramon Harvey for this insight. See https://ramonharvey.com/category/islamic-jurisprudence/

[9] One fascinating case occurred in Egypt in the mid 700s CE. A group from the tribe of Banū ʿAbd Kulūl protested before the judge Ibrāhīm al-Ruʿaynī (d. 771) that a man had married one of their women, but that they, as her kinsmen (*awliyā'*), objected. They wanted the judge to annul the marriage. The judge responded that he would not prohibit what God had allowed and that, if the woman's guardian (*walī*) had approved, then the marriage stood. The men appealed the case to the governor, who ordered the judge to annul the marriage. He refused. See Muḥammad b. Yūsuf al-Kindī, *Kitāb al-Wulāt wa kitāb al-quḍāt*, ed. Rhuvon Guest (Beirut: al-Ābā, 1908 and Leiden: Brill, 1912), 367.

converted to Christianity, the judgment could only occur with a judge's consultation.[10]

In all aspects of *siyāsa*, Muslim scholars affirmed the basic principle that the ruler's policies "regarding [his] subjects are conditioned on [pursuing] the common good."[11] As we'll see, apostasy differed from other *Hudud* crimes and crimes like murder in at least one important way. Once someone was found guilty of general *Hudud* crimes, the ruling authority *had to* carry out the punishment (based on the Prophet's statement that he would even punish his own daughter if she were guilty).[12] If a murder occurred, the ruling authority could not refuse to punish the guilty party if the victim's relatives wanted that, since this was their right.[13] Our discussion here will show that dealing with apostasy, by contrast, fell wholly within the ruling authority's discretion.

## The New Role for Religion in the Modern & Global West

Following Martin Luther's challenge to papal authority (five hundred years ago this year), Western Europe was plunged into over a century of horrendous religious warfare. This finally came to an end when the battling monarchs agreed that the ruler of each state would choose which sect of Christianity it would follow. So exhausting had been the bloodshed and destruction wrought by religious demands violently put forth to the public that a gradual move began towards making religion a private matter. The Dutch Republic was in the lead. In the late sixteenth century it decided that, though its different component states each had official churches, dissenting individuals could not be discriminated against or persecuted for their beliefs.

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[10] Ibn Ḥajar, *Rafʿ al-iṣr ʿan quḍāt miṣr*, ed. ʿAlī Muḥammad ʿUmar (Cairo: Maktabat al-Khānjī, 1988), 275-76, 283.
[11] *Al-taṣarruf ʿalā al-raʿiyya manūṭ bi'l-maṣlaḥa*; ʿAbd al-Karīm Zaydān, *al-Wajīz fī sharḥ al-qawāʿid al-fiqhiyya* (Beirut: Mu'assasat al-Risāla, 2001), 120-23.
[12] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-ḥudūd*, *bāb karāhiyat al-shafāʿa fī al-ḥadd idha rufiʿa ilā al-sulṭān*.
[13] ʿAbd al-Wahhāb al-Shaʿrānī, *al-Mīzān al-kubrā* (Cairo: Maktabat Zahrān [no date]. Reprint of 1862 Cairo edn. from Maktabat al-Kastiliyya), 2:159.

These developments took place alongside a growing sense amongst Protestant theologians (e.g., the American Puritan Roger Williams [d. 1683] and the Enlightenment philosopher John Locke [d. 1704]) that coercing individuals into religious conformity, whether by a government or by fellow citizens, was both hateful to God and philosophically nonsensical. How could you 'force' someone to believe something?, Locke wondered.

Despite fits, starts, and efforts by some to retrench the public authority of religion and its links to government, by the mid 1800s many of the nations of Western Europe had dramatically restricted the extent to which their laws and political systems drew lines or granted rights according to religion. The First Amendment to the US Constitution committed the federal government (and eventually state governments too) to neither favoring any one religion nor restricting religious exercise, though such a line has always been difficult to walk. This separation of church and state found its most extreme form in France's system of *laïcité* (über secularism), which was formalized in 1905 and promised not only to end religious discrimination in the public sphere but also to drive religion out of it entirely.

Of course separating religion and government or just ensuring that government is neutral in matters of religion are both tall orders. Laws and policies grow out of and reflect the cultures that create them, and cultures are deeply influenced by religion. As Matthew Hale (d. 1676) wrote, "Christianity is part of the laws of England."

Even when governments were limited in their ability to formally allow religion to shape laws and policies, religion's role was still evident. A man who had publicly uttered anti-Christian statements in New York in 1818 was not convicted of blasphemy, since such a crime could not be enforced in a state that upheld religious freedom. But he was convicted of offending public sensibilities.[14]

[14] Sarah Barringer Gordon, "Religion in United States Law," in *Oxford International Encyclopedia of Legal History*, ed. Stanley Katz (Oxford: Oxford University Press, 2009), 5:115.

Even today, laws in Western Europe that ban Muslim women wearing face veils in public, 'burkini' bathing suits on the beach, or headscarves in schools all because they violate 'public order' can be seen as vestiges of how tradition influences even secular states to discriminate on religious grounds. There is nothing inherently dangerous about the headscarf or face veil. Millions of Muslim women in dozens of countries wear them every day, and neither they nor their governments feel any threat to their public order. Moreover, even in Western countries some nuns cover their hair and dress modestly—even on the beach (as was publicized by private citizens irked by the hypocrisy of the 2016 French burkini ban). And then there are secular face coverings such as balaclavas in cold weather. As one scholar of French law has observed, in the ongoing French drama over headscarves and burkinis, 'public order' has mutated from a reasonable desire to protect peace, health, and public safety to a tool "used to justify and legitimate restrictions to freedom of religion."[15]

As religion waned as a formal force in the official life of Western Europe and its colonial offspring, the nation-state took its place. By the mid 1800s, the primary form of identity being advocated for Western Europeans was no longer Christianity or even an allegiance to a locality or regional culture. It was as the citizen of a nation, whose borders were as least aspirationally coterminous with a homogenous national people (France was where French people lived), a national language (local dialects and non-French languages had to go), and—shudder—a national destiny. All citizens of these nation-states were notionally equal, as it was national identity and not any other category that granted legal and political meaning. Even Europe's Jews, long an internal 'other' deprived of basic rights, were 'emancipated' and granted full citizenship at least formally in the mid to late 1800s. That women were denied meaningful legal rights, such as married women owning property, or the right to political participation until the late 1800s and even until the mid 1900s (Swiss women received the right to vote in federal elections only in 1971), was seen as only natural. It was not seen as contradictory to the new order of the nation-state.

[15] Rim-Sarah Alouane, "Freedom of Religion and the Transformation of Public Order in France," *The Review of Faith & International Affairs* 13, no. 1 (2015): 32.

What this meant was that religion was an increasingly—even exclusively—private matter. Either there was supposed to be no place for it in the public square (à la France), or it should not be controlled or supported by the public organs of the state (USA). Either way, religion was supposed to have no bearing on one's public rights. In fact, allowing religious identity to affect how the state viewed the rights of its citizens became anathema to a national identity that supposedly had the ultimate claim on how citizens understood their duties and their place in the world.

The rest of the world soon followed Western Europe's lead, beginning with Egypt in the mid-nineteenth century, and followed by the other nation-states that the Great Powers carved out of multinational states like the Ottoman Empire or tethered together in new 'nations' like India (Churchill famously said India was only a geographical term). This new world of nation-states, in which religion either had no role (theoretically) outside of private life, or was visibly subordinated to a national identity, was the complete inverse from the pre-modern 'order under heaven' of Islamic civilization and Christendom alike.

## The Punishment for Apostasy in the Islamic Juristic Tradition

In the public and cosmic order of the 'Abode of Islam,' that grand fabric of diverse kingdoms and peoples bound together by a belief in Islam's legal order and in belonging to the community (*umma*) of Muhammad ﷺ, it's not surprising that the official punishment for apostasy was severe. In part this was because, as we have made clear elsewhere, pre-modern legal systems relied on severe punishments to make up in deterrence effect what was lacking in effective policing and law enforcement. But mainly what shaped the Muslim juristic tradition's position on apostasy from Islam was how it understood order and identity. This influenced the rules on apostasy more than any clear prescription in the Qur'an or the Prophet ﷺ's teachings.

In all the classical schools of Sunni and Shiite Islam, the punishment for a Muslim apostate (*murtadd*) was death. The jurists also agreed that only the ruler could

order this punishment carried out and that vigilantism would be punished (just as only a court or qualified judge can declare someone an unbeliever). The ruling on apostasy was based primarily on three *Hadiths* in *Sahih al-Bukhari*. First, the Companion Ibn ʿAbbās reported that the Prophet ﷺ said, "Whoever changes their religion, kill them."[16] Second, Muʿādh bin Jabal told another Companion, Abū Mūsā al-Ashʿarī, that executing the apostate was the ruling of God and His Messenger.[17] And third, the Prophet ﷺ said that a Muslim could only be executed for the crimes of murder, adultery, or apostasy.[18]

These reports provide excellent examples of how *Hadiths* must be read in light of external evidence. First, the command of the Prophet ﷺ to 'kill anyone who changes their religion' cannot be taken on its face, since it's obvious that people changing their religion *to* Islam was not a crime. It was laudable. And changing religions from Christianity to Buddhism, for example, was of no consequence. So the *Hadith* must be understood as warning only those who *leave* Islam.[19]

Similarly, it was not a crime to outwardly renounce Islam out of fear for one's safety as long as one still believed in one's heart, as is clearly stated in the Qur'an (16:106). Finally, apostasy is only considered if the person doing it is of sound mind, an adult, and, for the Hanafi school of law and several opinions in the other schools, sober.[20]

Such qualifications might seem obvious, but once it's clear that statements like the above *Hadiths* should not be taken categorically or according to their evident meaning, a host of interpretive possibilities are opened up. For example, Muslim scholars agreed that authorities should only concern themselves with *external* expressions of apostasy, not people's private religious practice. This was clear from the overall *Shari'ah* principle that the law does not seek to know what is in people's hearts. The Prophet ﷺ had warned Usāma bin Zayd that he could not

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[16] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-jihād wa'l-siyar*, *bāb lā yuʿadhdhabu bi-ʿadhāb Allāh.*
[17] *Ṣaḥīḥ al-Bukhārī*: *kitāb istitābat al-murtaddīn wa'l-muʿānidīn wa qitālihim*, *bāb ḥukm al-murtadd wa'l-murtadda*.
[18] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-diyāt*, *bāb qawl Allāh taʿālā inna al-nafs bi'l-nafs…*; *Ṣaḥīḥ Muslim*: *kitāb al-qasāma wa'l-muḥāribīn…*, *bāb mā yubāḥu bihi dam al-muslim*.
[19] *Muwaṭṭa'*: *kitāb al-aqḍiya*, *bāb al-qaḍā' fī-man irtadda ʿan al-islām*.
[20] Al-Zuḥaylī, *Mawsūʿat al-fiqh al-islāmī*, 6:174-182.

know if someone's conversion was sincere unless he could "open up his heart."[21] The Prophet ﷺ himself is reported to have said, "I have not been commanded to search in the hearts of men or to open them up."[22] Imam al-Shāfiʿī (d. 820) noted that the Prophet ﷺ dealt with people according to their external professions of faith even when he *knew* they were apostates or unbelievers in their hearts. Even when God had given the Prophet ﷺ direct knowledge of someone's hidden apostasy, that person's external adherence to Islam made their life and property inviolable.[23]

This principle became enshrined in the scholarly maxim that, "The rulings of the *Shari'ah* concern the evident and outward, and God concerns Himself with what is in the heart (*innamā al-aḥkām bi'l-ẓāhir wa Allāh yatawallā al-sarā'ir*)."[24] Purposefully overlooking the condition of individuals' private faith fit under the larger *Shari'ah* principle of respecting privacy, avoiding *tajassus* (seeking out offenses done in private that don't infringe on others' rights), and providing *satr* (finding excuses for, or turning a blind eye to, private misconduct as long as it doesn't violate the rights of others). These concepts were rooted in the Qur'an, which forbids *tajassus* (Qur'an 49:12), and the *Sunnah*, where the Prophet ﷺ repeatedly ignores a man trying to confess to having violated one of the *Hudud*.[25] "If you seek out a people's secret or shameful areas," the Prophet ﷺ warns, "You'll ruin them."[26] None of this meant that Islam did not value sincerity or people's outward conduct stemming from their inner faith. But from the perspective of the law, it was only outward performances of faith that could be measured. Anything else is impossible to assess with any certainty.

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[21] *Ṣaḥīḥ Muslim*: *kitāb al-īmān*, *bāb taḥrīm qatl al-kāfir baʿd an qāla lā ilāh illā Allāh*.
[22] Abū Bakr al-Bayhaqī, *al-Sunan al-kubrā*, ed. Muḥammad ʿAbd al-Qādir ʿAṭā, 11 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1999), 8:341.
[23] Al-Bayhaqī, *Sunan*, 8:343.
[24] Al-Shāfiʿī states that punishment for apostasy can only operate on the basis of outward expression, instructing us, "Know that [the judge's] ruling is based on external reality (*al-ẓāhir*), and he is not making licit what God has prohibited. But God rules on what is internal (*al-bāṭin*), because God most high is master of what is internal"; al-Shāfiʿī, *Kitāb al-Umm*, ed. Rifʿāt Fawzī ʿAbd al-Muṭṭalib (Mansoura: Dār al-Wafā', 2001), 7:416.
[25] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-muḥāribīn min ahl al-kufr wa'l-ridda*, *bāb idhā aqarra bi'l-ḥadd wa lam yubayyin hal li'l-imām an yasturaʿ alayhi*; *Ṣaḥīḥ Muslim*: *kitāb al-tawba*, *bāb qawluhu taʿālā inna al-ḥasanāt tudhhibna al-sayyi'āt*.
[26] *Sunan* of Abū Dāwūd: *kitāb al-adab*, *bāb fī al-nahy ʿan al-tajassus*.

Muslim scholars have disagreed on two other details of apostasy. The Hanafi school differs with the other schools of law in holding that women apostates are not killed but only imprisoned. They base this on a *Hadith* considered reliable by Hanafis in which the Prophet ﷺ banned killing women who left Islam. The majority of Muslim scholars, however, consider this *Hadith* to be unreliable and instead follow the principle that men and women are treated equally in *Hudud* punishments.[27]

Second, scholars disagreed on whether a Muslim who had renounced their religion should be given a chance to repent. Three Sunni schools of law required giving them a chance, and the Hanafis considered it recommended.[28] The vast majority of Muslim scholars held that this opportunity to recant should be given, based on a set of *Hadiths* in which the Prophet ﷺ mentioned giving apostates a chance to change their minds, as well as on the precedent of the caliph Umar. Most legal scholars gave a period of three days or three chances, and Ibn Ḥanbal (d. 855) and Abu Ḥanīfa (d. 767) gave opinions that the accused person should be given a month to repent. The famous scholar Ibn Ḥazm (d. 1064) reports one opinion that the apostate should be asked if they want to recant until… forever *(yustatābu abadan wa lā yuqtalu)*, on the basis of a statement by Umar and a ruling by the early jurist al-Nakhaʿī (d. 717; though al-Nakhaʿī probably meant that a repeat apostate should be given a chance to repent every time).[29]

## Apostasy and the Practice of the Early Muslim Community

The way that the early Muslim community seems to have understood apostasy differs strikingly from the decisive rulings of the later schools of law. This is most clear in the rulings of the Prophet ﷺ himself. There is no reliable evidence that the Prophet ﷺ ever executed anyone for apostasy, as was observed by the

[27] For a discussion of these *Hadiths*, see Ibn Ḥajar, *al-Dirāya fī takhrīj aḥādīth al-Hidāya*, ed. ʿAbdallāh Hāshim al-Yamānī (Beirut: n.d.), 2:136-8; idem, *Lisān al-mīzān*, 6 vols. (Hyderabad: Dā'irat al-Maʿārif al-ʿUthmāniyya, 1330/[1912]), 3:323.
[28] *Al-Mawsūʿa al-fiqhiyya* (Kuwait: Wizārat al-Awqāf, 1983), 3:175.
[29] Ibn Ḥazm, *al-Muḥallā* (Beirut: Dār al-Āfāq al-Jadīda, n.d.), 11:191; al-Bayhaqī, *Sunan*, 8:343.

famous scholar of Cordoba, Ibn al-Ṭallāʿ (d. 1103).[30] When one of the Companions, ʿUbaydallāh bin Jaḥsh left Islam and became Christian while the Muslims were seeking refuge in Ethiopia, the Prophet ﷺ did not order him punished.[31] The Treaty of Ḥudaybiyya, which the Prophet ﷺ concluded with the Quraysh, stated that if anyone decided to leave the Muslim community in Medina no harm would befall them. There was no mention of a punishment for apostasy. In fact, when a man who had come to the Prophet ﷺ just the day before to pledge his loyalty to Islam wanted to be released from his oath, the Prophet ﷺ let him go.[32] Imam al-Shāfiʿī himself notes how, during the Prophet ﷺ's time in Medina, "Some people believed and then apostatized. Then they again took on the outer trappings of faith. But the Messenger of God did not kill them."[33]

This is equally clear in the conduct of the early caliphs. When six men from the Bakr bin Wā'il tribe apostatized during a campaign in southern Iran, the leaders of the army had them killed. When the caliph Umar was informed of this, he upbraided the commanders. Had he been making the decision, the caliph explained, he would have offered the men "a way back in from the door they took out," or he would have put them in prison.[34] When the pious Umayyad caliph ʿUmar bin ʿAbd al-ʿAzīz (d. 720) was told that a group of recent converts to Islam in northern Iraq had apostatized, he allowed them to revert to their previous status as a protected non-Muslim minority.[35]

Even the worst examples of patience and tolerance in the early Islamic period, the Kharijite extremists, seem to have been at least partially misunderstood by later

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[30] Muḥammad bin Faraj al-Qurṭubī Ibn al-Ṭallāʿ, *Aqḍiyat Rasūl Allāh* (often known as *al-Aḥkām*), ed. Fāris Fatḥī Ibrāhīm (Cairo: Dār Ibn al-Haytham, 2006), 24.

[31] This report appears in the *Sīra* of Ibn Isḥāq, the *Tārīkh* of al-Ṭabarī and the *Mustadrak* of al-Ḥākim. For a useful breakdown of this material, see http://www.ahlalhdeeth.com/vb/showthread.php?t=5614

[32] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-aḥkām*, *bāb man nakatha bayʿatan*.

[33] Al-Bayhaqī, *Maʿrifat al-sunan wa'l-āthār*, ed. ʿAbd al-Muʿṭī Amīn Qalʿajī (Cairo and Aleppo: Dār al-Waʿī, 1991), 12: 250.

[34] This report is found in *Sunan* of Saʿīd bin al-Manṣūr, ed. Ḥabīb al-Raḥmān al-Aʿẓamī (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), vol. 3, pt 2 pp. 226-7. It is also found in the *Sunan* of al-Bayhaqī, 8:337-41. Yūsuf al-Qaraḍāwī argues that Umar did not approve of the execution not because he did not consider death the appropriate punishment for apostasy but because such punishments should not be carried out in an army on campaign (due to the necessity of war, *ḍarūrat al-ḥarb*); Yūsuf al-Qaraḍāwī, *al-Ḥurriyya al-dīniyya wa'l-taʿaddudiyya* (Beirut: al-Maktab al-Islāmī, 2007), 46.

[35] Abd al-Razzāq al-Ṣanʿānī, *al-Muṣannaf*, ed. Ḥabīb al-Raḥmān al-Aʿẓamī, 11 vols. (Beirut: al-Maktab al-Islāmī, 1403/1983), 10:171.

scholars on the apostasy issue. Their policy of killing any other Muslims whom they saw as having committed grave sins is usually explained by them having concluded that these people were apostates (their supposed reasoning: if sinners really believed in God, would they commit sins?). But according to an early Kharijite source, the Kharijites seem to have done so more because they viewed their opponents as having egregiously defied God's law than because they were seen as apostates pure and simple.[36] After the Muslim armies conquered the city of Bukhara in 673-4 CE, its inhabitants kept converting to Islam and then returning to their previous faith of Zoroastrianism as soon as the Arab armies left town. The army had to keep returning to reestablish discipline. At no point was anyone killed for this.[37]

Of course, some people were executed for apostasy in the early Islamic period. Yet, in instances where details are provided, what stands out is their public nature. The apostasy occurs not in private but comes with a very public announcement by the person in question. This is exemplified in the famous story of the caliph Ali (ra) reportedly executing a man named al-Mustawrad al-ʿIjlī for converting to Christianity. Although reports of this event overall are unreliable according to most Muslim scholars, what seems to have condemned al-Mustawrad was not converting but rather rubbing this in Ali's face publicly.[38]

A recent study of books in which Arab Christians detailed the heroic exploits of Christian saints under Muslim rule bolsters the impression that apostasy was punished only when it was perceived as a threat to public order. These Christian 'lives of saints' works tell of a number of Muslims who embraced Christianity in the early Islamic period. According to these stories, each apostate/saint made a public confession of his new faith, and each was subsequently executed. The one story in which the apostate was not executed, a case in tenth-century Egypt, was a man who was told by the monks he joined that he had to repudiate Islam publicly.

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[36] Patricia Crone and Fritz Zimmermann, *The Epistle of Sālim ibn Dhakwān* (Oxford: Oxford University Press, 2001), 90, 93-4.

[37] Abū Bakr Muḥammad bin Jaʿfar al-Narshakhī, *Tārīkh Bukhārā*, ed. Amīn ʿAbd al-Majīd Badawī (Cairo: Dār al-Maʿārif, 1960), 73.

[38] This report appears in the *Muṣannaf* of ʿAbd al-Razzāq al-Ṣanʿānī, and al-Albānī declared it weak. See Muḥammad Nāṣir al-Dīn al-Albānī, *Silsilat al-aḥādīth al-ḍaʿīfa wa'l-mawḍūʿa*, 13 n. 1 (Riyadh: Maktabat al-Maʿārif, 2004), 13:1:942-3 .

He did not, however, and he was never executed (despite his own father writing to the caliph asking to have his son put to death). In fact, the man lived out his life as a monk, establishing a monastery and even writing Christian criticisms of Islam that survive until today.[39]

How Muslim states dealt with apostasy throughout the pre-modern era shows a similar concern with apostasy only when it became a public matter. A renowned Arab poet, Abū al-ʿAlā' al-Maʿarrī (d. 1058), was openly skeptical about prophecy and formal religions, mocking the Hajj and writing, 'There are two types of people in the world: people with brains and no religion, or people with religion and no brains.' Al-Maʿarrī died of natural causes, as did numerous other famous 'free thinkers' in the medieval Islamic world.[40]

Similar findings come in a recent study of sixty cases in which people were executed for apostasy or other types of heresy during the Mamluk period (1260-1517). Those who were executed for declaring their apostasy were mainly Christians who had converted to Islam and then made a public show of renouncing it, as in the case of two Coptic Christians in 1383 and a whole group in 1379. In the latter case, they were given numerous chances to recant their apostasy before being punished.[41] Later, in the Ottoman Empire, a Muslim who had converted to

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[39] Christian Sahner, "Swimming against the Current: Muslim Conversion to Christianity in the Early Islamic Period," *Journal of the American Oriental Society* 136, no. 2 (2016): 280-2.

[40] P. Smoor, "al-Maʿarrī," in *Encyclopaedia of Islam*, 2nd ed., P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs, eds. Consulted online on 29 April 2017. http://dx.doi.org.proxy.library.georgetown.edu/10.1163/1573-3912_islam_COM_0599; First published online: 2012. In one poem, al-Maʿarrī wrote:

> I marvel at Chosroes and his followers
> Who wash their faces with cows' urine;
> And the Jews who speak of a God,
> Who loves the splatter of blood and the smell of burnt offerings;
> And at the Christians' belief in a God who is humiliated, persecuted cruelly, but does not retaliate;
> And at a people who journey from the ends of the earth,
> To cast pebbles and kiss the Stone (i.e., the black stone in the Kaaba).
> How startling are their beliefs!
> Are all men, then, unable to see the truth?

See Majid Fakhry, *A Short Introduction to Islamic Philosophy, Theology and Mysticism* (Oxford: Oneworld, 1997), 36.

[41] Amalia Levanoni, "*Takfīr* in Egypt and Syria during the Mamlūk Period," in *Accusations of Unbelief in Islam*, ed. Camilla Adang, Hassan Ansari, Maribel Fierro and Sabine Schmidtke (Leiden: Brill, 2015), 156, 163-65, 170.

Christianity and become a monk was brought to court to repent before a judge. When the judge offered the man coffee (presumably Turkish), he threw it in the judge's face and began cursing Islam. The judge decided the man was insane. Only after he publicly insulted Islam three more times was the man executed.

## Reconsidering Apostasy in the Modern Period

The tremendous changes in how the role of religion is viewed in societies strongly influenced by nationalism and Western secularism have led some Muslim scholars to investigate the *Shari'ah* heritage on apostasy. The notion that the crime of apostasy in Islam was more a matter of protecting a state and social order than of policing individual beliefs was articulated in the 1940s by the South Asian Muslim activist intellectual Abul Ala Mawdudi (d. 1979). Modern scholars such as the Egyptians Maḥmūd Shaltūt (Shaykh al-Azhar, d. 1964) and Yūsuf al-Qaraḍāwī, as well as the late Iraqi-American scholar Ṭāhā Jābir al-ʿAlwānī (d. 2016), have reconsidered how apostasy should be viewed in contexts in which religious identity is not a state matter.[42] They have concluded that what was criminal about apostasy was its public dimension and the threat it posed to a public order built on confessional identity. It is this public element, they argue, not the question of a person's private decision to follow their conscience in changing their religion, that Islamic law should focus on.

Far from being hidden or unrealized in Islamic legal history, it was precisely this aspect of apostasy-as-public-threat that explained why Muslim jurists and states had so little interest in people's private religious choices. It also explains why centuries of Muslim jurists all affirmed a ruling that seems to clash so clearly with the Qur'an's repeated statements on the freedom of religious choice. The Qur'an warns those who abandon Islam after embracing it that their good deeds will mean nothing in this life or the next (Qur'an 2:217). It mentions no worldly punishment. Even "those who believe, then disbelieve and then (again) believe, then disbelieve, and then increase in disbelief" are not given any earthly punishment by the Qur'an.

[42] See Taha Jabir Alalwani, *Apostasy in Islam* (Herndon, VA: International Institute of Islamic Thought, 2011), 25-41.

Instead, God warns only that He "will never pardon them, nor will He guide them unto a way" (Qur'an 4:137). The Qur'anic verse that strikes the most stridently dissonant note with the death penalty for apostasy is the declaration that, "There is no compulsion in religion. Wisdom has been clearly distinguished from falsehood" (Qur'an 2:256).

The choice by Muslim jurists of where to place the topic of apostasy in books of law further reveals that what concerned them was the public nature of apostasy and how they saw it affecting the political order. A foundational textbook in the Shafi'i school of law (the *Muhadhdhab* of Abū Isḥāq al-Shīrāzī, d. 1083) listed *ridda* not under criminal punishments (*Hudud*) but under the chapter on dealing with rebellion (*al-Bughāt*). Famous jurists of the Hanafi school including al-Sarakhsī, Ibn Humām (d. 1457) and Ibn al-Sāʿātī (d. 1295) dealt with apostasy in the chapter on interstate politics (*kitāb al-siyar*), not alongside criminal punishments. Ibn Humām spells this out clearly when he explains, "It is necessary to punish apostasy with death in order to avert the evil of war, not as punishment for the act of unbelief, because the greatest punishment for that is with God."

Shaltūt and the other scholars found strong confirmation for their thesis in the very same *Hadiths* that had long been used as evidence for punishing apostasy with death. What the Prophet ﷺ considered punishable by death was not the personal decision to cease believing in and practicing Islam but rather the betrayal of the Muslim community by joining the ranks of its enemies. One of the main pieces of evidence for the death penalty for apostasy is the *Hadith* narrated by Ibn ʿAbbās that the Prophet ﷺ ordered "Whoever changes their religion, kill them." This *Hadith* is invoked by Ibn ʿAbbās in the context of a group of Muslims who had rejected Islam and then began preaching and even setting down in writing "heretical" ideas (these apostates are described as *zanādiqa*, or heretics), seeking to challenge the caliph Ali.[43] The Arabic word used to describe what they had done, *irtaddū*, was understood in the early Islamic period to be a public act of political secession from or rebellion against the Muslim community. Hence the famous two years of the Ridda Wars fought during the caliphate of Abū Bakr (632-34 CE), the

[43] *Musnad Aḥmad Ibn Ḥanbal* (Maymaniyya print, 1:282); *Ṣaḥīḥ al-Bukhārī*: *kitāb istitābat al-murtaddīn wa'l-muʿānidīn wa qitālihim*, *bāb ḥukm al-murtadd wa'l-murtadda*.

very name of which shows the conflation of *ridda* as apostasy with *ridda* as rebellion and secession from the Muslim polity (in *Hadiths* the word was used with both meanings).[44]

The second main piece of *Hadith* evidence for the apostasy ruling leaves a similar impression. When the Prophet ﷺ says that a Muslim cannot be killed except as punishment for murder, adultery or leaving Islam, he qualifies the apostate here as one who "leaves his religion and *forsakes the community (al-tārik li-dīnihi al-mufāriq li'l-jamāʿa)*."[45] Or, in another version, one who "makes war on God and His Messenger."[46]

The only *Hadith* evidence that does not include a specific political dimension for the crime of apostasy is the discussion between the Companions Abū Mūsā al-Ashʿarī and Muʿādh bin Jabal over a Jewish man who had converted to Islam and then left it. But this is only because the report has no real contextual information at all. Moreover, there is evidence that the caliph Umar was later informed about Abū Mūsā's and Muʿādh's decision and expressed his displeasure. "Could you not have imprisoned him for three days, fed him each day a loaf of bread, and asked him to repent?," asked Umar. "He might have repented and returned to the command of God."[47]

Looking at this evidence, Shaltūt explained that Islam does not punish disbelief (*kufr*) with death. What is punishable by death, he concluded, is "fighting the

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[44] *Ṣaḥīḥ al-Bukhārī*: *kitāb aḥādīth al-anbiyā'*, *bāb wa'adhkur fī kitāb Maryam*…; and the *Musnad of* Ibn Ḥanbal, 2:528 for examples of this.

[45] *Ṣaḥīḥ al-Bukhārī*: *kitāb al-diyāt*, *bāb qawl Allāh taʿālā inna al-nafs bi'l-nafs*…; *Ṣaḥīḥ Muslim*: *kitāb al-qasāma wa'l-muḥāribīn*…, *bāb mā yubāḥu bihi dam al-muslim*.

[46] In the case of this second narration, found in *Sahih al-Bukhari*, it is the Successor Abū Qilāba stating that the Prophet ﷺ did not kill anyone except for these three reasons, in effect interpreting 'forsaking the community' as 'making war on God and His Messenger.' See *Ṣaḥīḥ al-Bukhārī*: *kitāb al-tafsīr*, *bāb sūrat al-mā'ida – innamā jazā' alladhīna yuḥāribūna Allāh*…; *kitāb al-diyāt*, *bāb al-qasāma*; *Sunan* of Abū Dāwūd: *kitāb al-ḥudūd*, *bāb al-ḥukm fī-man irtadda.* Al-Tirmidhī has one version that just has the wording *al-tārik li-dīnihi*, but that is just his own summary of the *Hadith* at the end of a discussion. The main narrations of this *Hadith* in the *Ṣaḥīḥayn* and other books all have the wording *al-tārik li-dīnihi al-mufāriq li/il-jamāʿa* or *al-mufāriq li-dīnihi al-tārik al-jamāʿa*. Some narrations of this *Hadith* that are both less reliable and less common instead contain the wording "for unbelief after Islam" and "for apostasy after Islam." The narrations with these wordings are found in the *Sunan* of Abū Dāwūd: *kitāb al-diyāt*, *bāb al-imām ya'muru bi'l-ʿafw fī al-dam*; *Jāmiʿ al-Tirmidhī*: *kitāb al-fitan*, *bāb mā jā'a lā yaḥillu dam imri' illā bi-iḥdā thalāth*.

[47] *Muwaṭṭa'*: *kitāb al-aqḍiya*, *kitāb al-qaḍā' fī-man irtaddaʿan al-Islām*.

Muslims, attacking them and trying to split them away from their religion."[48] Scholars like Yūsuf al-Qaraḍāwī have therefore compared the punishment for apostasy to the modern crime of treason.[49] Al-Qaraḍāwī explains that there is no punishment for an individual's decision to stop believing in Islam, since the Qur'an makes clear that "there is no compulsion in religion" (Qur'an 2:256). Only those who combine their leaving Islam with a public attempt to undermine the stability of the Muslim community can be punished for *ridda*. Al-Qaraḍāwī introduces the distinction between 'transgressive apostasy (*al-ridda al-mutaʿaddiyya*)' and 'non-transgressive apostasy (*al-ridda al-qāṣira*).' The former, in which a Muslim renounces their faith in a way that actively encourages others to do so or that undermines stability, is subject to the apostasy punishment. One who simply leaves Islam or embraces another religion privately is left alone.[50]

## How Should Muslims Think about Apostasy Today?

In an important sense, the question of how Muslims should tackle the issue of apostasy shows how much 'Muslim' issues are really global, human issues. Over half a century ago the Universal Declaration of Human Rights stated that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, ... either alone or in community with others and in public or private…" (Article 18). Yet Article 29 of the same declaration mandates that the human rights it sets forth can be restricted for purposes of "meeting the just requirements of morality, public order and the general welfare in a democratic society." Religious freedom is incredibly important, but it can be restricted. How does one know when this would be allowed, and how will differences in culture, political systems, and religious tradition affect this decision?

What is surprising is that from a broad, theoretical perspective, the pre-modern Islamic tradition and the modern human rights vision are structurally similar; they both view the preservation of public order and morality as a just basis for *some*

[48] Maḥmūd Shaltūt, *al-Islām ʿaqīda wa sharīʿa* (Cairo: Dār al-Shurūq), 281.
[49] See al-Qaraḍāwī, *al-Ḥurriyya al-dīniyya*, 36-37, 46-53.
[50] Al-Qaraḍāwī, ibid.

restriction on religious liberty. In the case of the *Shari'ah*, both public order and morality are themselves clearly derived from religious (specifically Islamic) sources. But because public order and morality in the West were historically contoured by Christianity, and because that influence continues to a certain extent to this day, this means that in many Western countries justifications for restricting religious liberties are often biased. They draw on notions of public order and morality that are shaped by Western Christian mores.

We can see this in the U.S. in cases such as the right of Mormons, Muslims, and others to practice polygamy. The 1890 U.S. Supreme Court case Davis v. Beason introduced the principle (surprising today) that someone could face legal consequences for their religious *beliefs* even if they never acted on them. The Court rejected the notion that Mormons should be protected from legal discrimination because they believed in polygamy even if they didn't practice it. Justice Field wrote, "Bigamy and polygamy are crimes by the laws of the United States… and by the laws of all civilized and Christian countries, and to call their advocacy a tenet of religion is to offend the common sense of mankind." Polygamy was so culturally abhorrent in the US that even *believing* in it was effectively punishable.

In U.S. history, such restrictions on fundamental rights found their place under what has been known as 'police powers,' or the rights of states to protect public order, safety and—yes—even morality. Much like the New York case referenced above, this meant that U.S. courts have "upheld the power of states to prohibit gambling, the consumption of alcohol, prostitution, doing business on the Sabbath, and other types of activities that did not violate the rights of others."[51] In Europe this can be seen in the extent to which the European Court of Human Rights grants states a 'margin of appreciation,' or the right of a state to restrict human rights on the grounds of particular national concerns or local context.[52]

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[51] Randy E. Barnett, "The Proper Scope of the Police Power," 79 *Notre Dame Law Revue* 485 (2004).

[52] See http://www.echr.coe.int/Documents/FS_Freedom_religion_ENG.pdf, in particular the cases Larissis and Others v. Greece 1998 and Kosteski v. "The former Yugoslav Republic of Macedonia" 2006. For even more visible applications of the margin of appreciation, see the issue of hate speech at http://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf. For more on the margin of appreciation, see this resource from the Council of Europe, especially on how the European Court of Human Rights decided that measures

Of course, there is a big difference between restrictions on rights such as assembly or marriage, on the one hand, and sentencing someone to death for apostasy on the other. But the rulings of the Prophet, of the caliphs Umar and Umar bin ʿAbd al-ʿAzīz, and the way that apostasy was conceptualized, certainly in the Hanafi school, show that the penalty for apostasy was not automatic. What the punishment should be and whether or not it should be applied was fundamentally a policy decision, and as such, it fell to the discretion of the ruler after weighing the best interests of all involved.

What are the best policies today, and what are the best interests of Muslims? For Muslims living in states whose laws provide protection for freedom of religion, this issue is simple. It is thanks to such legal protections that Muslims have come to reside in these countries and to enjoy the protection of their laws. It would be totally unacceptable to violate the pact, implicit or explicit, made by our residence in these states by working to undermine the freedom of religion of other citizens.

As for Muslim-majority countries, are there grounds for legislating some legal restriction on converting out of Islam or punishing someone who does so? From the perspective of human rights law, almost certainly not, considering how essential that body of law views the right to choose one's religion. It's important to remember, however, that this perspective on human rights is very much tied to the Western Enlightenment experience and its decision to relegate religion to the private sphere and to remove the state from the business of religious control.

But what about countries that have not made the Western move to separate religion and state? Countries like Morocco, Saudi Arabia, and Pakistan, for example, declare themselves constitutionally Islamic states. And what about states that view religious belief, practice or expression as closely tied to concerns of public order,

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taken by the governments of Turkey and Switzerland to restrict the wearing of headscarves were legitimate because they fell under "*protecting the rights and freedoms of others*, and in the case of Sahin, *maintaining public order*." The report states, "In both cases, the Court applied a broad margin of appreciation because there was little or no consensus within the community as to whether to wear a veil was included in the protection afforded by Article 9. Applying the proportionality test on different factors, the Court reached the same conclusion: the lack of a core European consensus on how to treat the wearing of religious symbols justifies the actions of the State authorities, they being granted with a wide margin of appreciation." In the U.S., freedom of religion cases have shown that what matters is not whether a specific practice is recognized as part of a religion by some religious authority but whether the person in question feels it is religiously compelling.

such as Russia? (One reviewer wrote that the country's rulers "see faith not as a personal matter but as a public phenomenon, vital to national identity and security. Citizens, they believe, need protecting from the vagaries of individual choice").

To further muddy the waters, what if we consider a case of apostasy that is not simply a person making a private religious choice but rather engaging in a very public declaration of why they had chosen to do so? Here the issue becomes more complicated. If the apostate publicly argues for leaving Islam or denigrates it, then the question grows from the realm of freedom of religion to that of the freedom of speech as well. Taking the European Court of Human Rights as an indicator, there has been a greater margin of appreciation granted to states to restrict the freedom of speech than the freedom of religion.

We should also remember that the separation of church and state, and the stripping of religion from core notions of order and security are not biological stages in human evolution that affect all societies equally. The resurgence of Orthodox traditionalism in Russia, a triumphant China's hostility to 'universal values', and decades of the ubiquitous 'Islam vs. the West' tension demonstrate that this evolution reflects a particular Western Enlightenment experience. It's not universal.

Neither is it consistent. As recently as 2015, the U.K. government was mulling laws punishing religious extremism, by which it meant "the vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs." So could a Muslim country pass laws restricting conduct that it viewed as opposing its 'fundamental values'? If the U.K. government views Muslims publicly calling on people not to vote as something worthy of legal sanction, what about a citizen in a Muslim country calling on others not to pray or not to honor the Prophet ﷺ? What if a citizen actively touting their apostasy from Islam and calling others to join them were seen as an 'extremist' act comparable to those worrying the British government? If all states can pass laws to protect the

fundamental values of their societies, could a Muslim state pass a law against apostasy to do so?

Malaysia provides an interesting case of a country that has tried to embody Islamic concerns over apostasy in a modern legal framework. The country's official religion is Islam, but its constitution guarantees that other religions may be practiced "in peace and harmony" (about 40% of Malaysians are not Muslim). Though they are controversial in a country in which race, religion and politics are all tensely interlinked, some of Malaysia's states have enacted their own approaches to dealing with apostasy. In the Malaysian state of Malacca, apostasy earns one up to 180 days of detention for rehabilitation. The Malaysian state of Negeri Sembilan has taken another approach: those who want to leave Islam apply for permission. After they have been interviewed to determine their seriousness, and counseled to try to convince them otherwise, they are allowed to apostatize (between 1998-2013, 17% of applications were accepted).[53]

## The Consequences of Apostasy Law

What global policies should Muslims advocate today? Debates over freedom of religion are so contentious because different sides proceed from very different premises. The liberal ideal, so influential in the West, is that it's wrong for governments to interfere in the question of what people believe for two reasons. First, because Europe's bloody history shows that this all too often leads to tremendous violence. Second, because religious belief is seen as something that cannot really be forced on the private interior of a person's heart, and God doesn't want faith if it's coerced anyway. It must be freely and sincerely offered.

The Islamic perspective differs because it views religious identification as both a public category and an internal belief. Certainly, the faith and intentions by which God judges us are housed in our hearts. They cannot be coerced and are meaningless if not sincere, hence the Prophet ﷺ's declaration that, "Deeds are judged but by intentions." But an appropriate social and political environment is

[53] Mohd. Al Adib Samuri and Muzammil Quraishi, "Negotiating Apostasy: Applying to 'Leave Islam' in Malaysia," *Islam and Christian-Muslim Relations* 25, n. 4 (2014): 513-14.

essential in order for people to live lives oriented towards God, good deeds, and justice and away from unbelief and sin. And this social and political environment is fashioned by people's outward conduct. So encouraging public displays of individuals' private, internal upheavals of conscience or loss of faith doesn't promote sincere faith within a community. It risks tearing the threads of that community apart.

The themes of human rights and civil liberties are compelling to many around the world. But they are not necessarily compelling to those who do not share some of their premises or who disagree on how they should be implemented. Even if everyone in the world agreed that the freedom of religion was a basic right, there would be (and there is) significant disagreement over how that right should be balanced against concerns of public order and morality. Moreover, many outside the West dismiss demands for respecting human rights as proxies for Westernization and Western imperial ambition. It's no coincidence that this is inevitably the opinion of those Muslims who uphold the death penalty for apostasy in Islam. For all these reasons, arguments framed in human rights discourse are unlikely to move the very Muslims whose opinions they are trying to change.

It may be more useful to argue based on premises accepted by all involved. The horrific violence unleashed by ISIS against any who oppose it is repugnant in and of itself from the perspective of Islamic law and human rights law alike. But, beyond this, the consequences for the very priorities that Islam seeks to protect have also proven dire. The harsh punishments enacted by ISIS on those it declares apostates has engendered disgust globally among non-Muslims and Muslims alike. Anecdotally, I have heard of many Muslims, both in Muslim-majority countries and in the West, who have experienced crises of faith or even lost it entirely due to the violence done in the name of Islam. Things like ISIS's execution of apostates often top the list of what has led to these crises.

In the *Shari'ah*, the aim of punishing apostasy from Islam is to protect the communal faith and social order of a Muslim state. If punishing apostasy severely is driving Muslims away from their religion, then this policy is undermining its

own purpose. It's not clear what 'order under heaven' maintaining harsh punishments for apostasy would be upholding in our troubled world.