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FREEDOM OF RELIGION IN ISLAMIC LAW

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FREEDOM OF RELIGION IN ISLAMIC LAW

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One of the manifestations of personal liberty is the freedom of the individual to profess the religion of his or her own choice without compulsion. The individual must also have freedom to observe and practice his or her faith without fear of interference from others. Freedom of religion in its Islamic context thus implies that non-Muslims are not compelled to convert to Islam, nor are they hindered from practicing their own religious rites. Both Muslims and non-Muslims are entitled to propagate their own religion and to defend it against attack or seditious provocation (*fitnah*),¹ regardless of whether such an attack is launched by their coreligionists or another group.²

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1. The Arabic word *fitnah* has several meanings, but it frequently occurs in the Qur'an in the sense of persecuting a person for the sake of his faith, that is, for embracing a particular faith, with a view either to punish him for what he has done or compel him to renounce it. In this way, all oppressive methods that aim at denying the individual his freedom of religion partake in seditious provocation as it could incite conflict, violence, and hostility among the followers of different faiths.

Fitnah also means seditious speech or conduct which challenges the authority of the lawful government or seeks to bring it into public contempt and disrepute. Of the two major events in the history of Islam which are known as "the great *fitnahs*," one was the assassination of the fourth Caliph Uthmān (d. 35/656), which led to a series of conflicts and confrontations among Muslims and the consequent emergence of religious and political factions such as the Kharijites and Shi'ah. The second instance of *fitnah*, also referred to as 'inquisition,' occurred under the Abbasid Caliph Ma'mun (c. 833) in the early 3rd/9th century over the nature of divine revelation and whether the Qur'an was the created or uncreated speech of God. The issues involved are somewhat complex, but it is referred to as *fitnah* because many *ulema* and scholars were imprisoned for the sake of the views they held on the matter.

2. MUHAMMAD ABU ZAHRAH, *TANZĪM AL-ISLAM LI AL-MUJTAMA'* 190 (Cairo, Maṭba'ah Mukhaymar); 'ABD AL-HAKĪM ḤASAN AL-ĀLĪ, *AL-ḤURRIYĀT AL-ĀMMĀH* 330 (Cairo, DĀR AL-FIKR 1403/1983).

Freedom of religion acquires special significance in the *Sharī'ah*,³ a system of law which recognizes no clear division between legal and religious norms. Since the creed of Islam lies at the root of many a doctrine and institution of the *Sharī'ah*, the freedom to embrace and practice Islam is at once the most sensitive and probably the most controversial of all areas of individual liberties.⁴ However, this alone does not necessarily change the basic meaning and character of the freedom of belief. It matters little whether one speaks of freedom of belief in the context of an Islamic or any other legal system. The basic idea of freedom here is not amenable to impositions of any kind on the personal choice of the individual. The citizen of an Islamic state need not be distinguished in this regard from the citizen of a secular state. The Islamic context of freedom, like freedom in any other context, is inherently individualistic in the sense that it is designed first and foremost to defend and protect the basic dignity of the human person against imposition by the society and state. Freedom of belief, like all other freedoms, operates as a safeguard against the possible menace of oppression that emanates from superior sources of power. This is essentially true also of the Islamic concept of freedom, as observed by Fathi Uthmān: "No power of any kind in the Islamic state may be employed to compel the people to embrace Islam. The basic function of

3. *Sharī'ah* (Islamic law) refers primarily to the clear injunctions, commands, and prohibitions that are found in the Qur'ān, and the teachings of the prophet Muhammad, addressed to mankind, pertaining to their conduct in this world and salvation in the next. Many jurists have described the *Sharī'ah* as "God's commandments related to the activities of man." We also note that Islam has often been considered as a nomocracy, or law-centered religion. This has led commentators like Joseph Schacht to describe the *Sharī'ah* as "the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself." In contradistinction with *fiqh*, which is another term for "Islamic law," the *Sharī'ah* is closely identified with divine revelation, that knowledge which could not be obtained but from the Qur'ān and Sunnah. *Fiqh*, on the other hand, is the legal science which has largely been developed by jurists and consists of rules that are mainly founded in human reasoning. *Sharī'ah* is thus the wider circle, and it embraces in its orbit all human actions, whereas *fiqh* is narrower in scope and addresses mainly what is referred to as practical legal rules. For further detail, see Mohammad Hashim Kamali, *Source, Nature and Objectives of Sharī'ah*, 33 ISLAMIC QUARTERLY 215-36 (1989).

4. FATHI UTHMĀN, HUQŪQ AL-INSĀN BAYN AL-SHARĪ'AH AL-ISLAMĪYYAH WA AL-FIKH AL-QĀNŪNĪ AL-GHARBĪ 97 (Beirut, Dār al-Shurūq 1402/1982).

the Islamic state in this regard is to monitor and prevent the forces which might seek to deny the people their freedom of belief.⁵

From a historical perspective, we also note that the Holy Prophet of Islam began his mission among the pagans of Mecca, whom he invited to the new faith despite their hostile attitudes and responses. The nature of this situation lends support to the conclusion, as al-Ḥīlī has pointed out, that Islam subscribes to the freedom of belief, since Islam itself began by inviting and persuading the people to embrace it on the merits of its rationality and truth. The creed of Islam, in other words, must uphold the freedom of belief in order to remain true to its own beginnings.⁶ This is precisely the stance that the *ulema*⁷ have adopted and upheld: "The doctors of theology and *tawḥīd*"

5. *Id.* at 91.

6. Al-Ḥīlī, *supra* note 2, at 330.

7. *Ulema* or *Ulama* (men of learning). It is the plural of *'alim*, one who is learned especially in the legal and religious sciences of Islam. In its plural form, the word is used in reference to the body of learned scholars both within and without the state hierarchy. It refers to a loose fraternity of scholars who were, in some Muslim countries, headed by the Shaikh al-Islam, the latter having the authority to issue an opinion, or *fatwa*, in legal and religious matters. The *ulema* are the nearest body of individuals to what is known as clergy in the Christian Church; the main difference between them being the absence of any institutional hierarchy or organization for the *ulema* (there is in Islam no institution equivalent to the Christian Church). The *ulema* are basically private individuals and members of the community who distinguish themselves in learning and, consequently, acquire the title *'alim* or *ulema* in recognition of their status in the community. An *'alim* may or may not be engaged in official duties, but even if he is engaged in duties, such as that of prayer leader (*imam*) in the mosque, teacher, or judge, he may still be referred to as a *'alim* or a member of the loose fraternity of *ulema*.

8. *Tawḥīd* (unicity, oneness) refers to belief in the oneness of God, or monotheism, which is central to the dogma and belief structure of Islam. Its influence on the law and moral tenets of Islam is far-reaching, so much so that *tawḥīd* manifests itself in ritual devotion and personal piety, in theology and law, in politics and economics, indeed, in the whole of the value structure of Islam. God created the universe, and every part of it is reflective of the unity of its source: every part of God's creation is synchronized with other parts. From this perspective, *tawḥīd* sets forth an ontology, cosmology, and psychology of its own in its concept of the oneness of being. Consequently, Islam and its *Shari'ah* do not admit of divisions between the various facts of human life. Religion is basically inseparable from politics, morality, and economics, just as human personality cannot be compartmentalized into religious, political, and economic segments.

(monotheism) are in agreement to the effect that confession to the faith (*īmān*)⁹ is not valid if it is not voluntary. In the event, therefore, where confession to the faith is obtained through compulsion, it is null and void."¹⁰ Ibn Qudāmah, the renowned Hanbali jurist and theologian, has written,

It is not permissible to compel a disbeliever into professing Islam. If, for example, a *dhimmi* [non-Muslim citizen] or a *musta'man* [person of protected status] is forced to accept Islam, he is not considered a Muslim unless it is established that his confession is a result of his own choosing. If the person concerned dies before his consent is known, he will be considered a disbeliever. . . . The reason for the prohibition of duress here is the words of God Most High that "there shall be no compulsion in religion."¹¹

The Qur'anic text that Ibn Qudāmah has quoted in the foregoing passage is of central importance to our discussion, and I shall have occasion to return to it later. At this point, however, I shall proceed with a general characterization of freedom of religion in the works of some modern writers. These works draw substantially the same conclusions from the evidence in the sources as did the earlier works. The only difference of note between the classical and modern works on religious freedom is that some of the earlier writers were persuaded by the dubious argument that many of the Qur'anic passages which affirm the freedom of religion have subsequently been abrogated or superseded by other passages of a more restrictive type.

The modern Muslim opinion tends to dismiss this rather weak argument. A representative modern opinion on the subject of freedom of religion can be found in the statement issued by a recent

9. (*īmān*) (faith), according to Muslim jurists and theologians, is the belief of the heart and confession by words of mouth to the truth of the religion of Islam. Faith is of two kinds: 1) (*īmān mujmal*), or the simple expression of faith in the teachings of the Qur'an and the prophetic traditions (i.e. the Sunnah); and 2) (*īmān mufassal*), or profession in detail, which consists of a declaration of belief in the six articles of the Muslim creed: 1) in God; 2) the angels of God; 3) the Book of God, namely the Qur'an; 4) the Prophets of God; 5) the Day of Judgment; and 6) predestination to good and evil.

10. *Id.* at 356 (quoting XI MUHAMMAD RASHID RIDĀ, *TAFSĪR AL-MANĀR* 484 (Beirut, Dar al-Ma'rifah 1324 A.H.)).

11. VIII IBN QUDAMĀH AL-MAQDISI, *AL-MUGHNĪ* 144 (Riyad, Maktabah al-Riyad al-Hadithah 1401/1981).

International Conference held between the leading scholars of Saudi Arabia and Europe on Islamic law. In pertinent part, the statement reads, "The individual is free in regards to the creed he wishes to embrace, and it is unlawful to compel anyone to embrace a religion." The statement goes on to quote the authority for this to be the Qur'anic text, which declares that "there shall be no compulsion in religion," and also the Qur'anic passage in which the Holy Prophet emphatically proclaimed, "Had thy Lord willed, every one on the face of the earth would have professed the faith. Are you then forcing people to become believers?" (Al-Baqarah, 2:256; Yunus, 10:99).¹²

The second of these passages is a Makki text which was revealed at an early stage of the advent of Islam. This was later followed and confirmed, after the Prophet's migration to Madinah, by the passage in Sura al-Baqarah (2:256). Freedom of belief has thus been consistently enunciated as a norm of *Shari'ah* (*asl al-tashri*) regardless of considerations of time and circumstance.¹³

The substance of these Qur'anic provisions has also been upheld in the 1952 convention of the *ulama* of Pakistan. This convention drafted a statement entitled "The Basic Principles of an Islamic State," which includes the following provision: "The citizen shall be entitled to all the rights . . . [he] shall be assured within the limits of the law of . . . freedom of religion and belief, freedom of worship. . . ."¹⁴ The Universal Islamic Declaration of Human Rights issued by the Islamic Council of Europe similarly provides, "Every person has the right to freedom of conscience and worship in accordance with his religious beliefs."¹⁵

Provisions of this kind have now become a regular feature of the constitutions of many modern Islamic countries, including Malaysia and Pakistan. The 1957 Federal Constitution of Malaysia, which is currently in force, declares, in its section entitled "Freedom of Religion,"

- (1) Every person has the right to profess and practice his religion, and subject to clause (4) to propagate it.

12. NADWAH AL-RIYAD, NADWAH 'ILMIYYAH HAWL AL-SHAR I'CAH AL-ISLAMIYYAH 33 (Beirut, Dār al-Kitāb al-Lubnāni 1973).

13. 'ĀYESHAH 'ABD AL-RAHMĀN BINT AL-SHĀTĪ', AL-QUR'ĀN WA QADĀYĀ AL-INSAN 96 (Beirut, Dār Al-'Ilm li al-Malāyīn 1982).

14. The full statement issued by this convention appears in S.A.A. MAUDUDI, ISLAMIC LAW AND CONSTITUTION 333 (Lahore, Islamic Publication Ltd., 1979 Reprint).

15. UNIVERSAL ISLAMIC DECLARATION OF HUMAN RIGHTS (Salim Azzam ed., London, Islamic Council of Europe 1981).

- (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.¹⁶

The text goes on to declare, under clause three, that every religious group is entitled to manage its own religious affairs, to establish religious and charitable institutions, and to acquire and own property for such purposes. Clause four provides that the law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

In *Minister Home Affairs v. Jamaluddin bin Othman*,¹⁷ the Supreme Court of Malaysia has interpreted the constitutional clause on freedom of religion in its fullest sense by dismissing a plea made by the Minister of Home Affairs that conversion to Christianity by a Muslim was a punishable offense. In this case, the respondent, Jamaluddin, was detained by the Minister of Home Affairs under the Internal Security Act of 1960, section 8(1), for what really amounted to apostasy but was prosecuted as an internal security offense. The respondent was detained "for acting in a manner prejudicial to the security of Malaysia." The allegations which led to Jamaluddin's detention were that he had himself converted from Islam to Christianity, propagated Christianity among the Muslims of Malaysia, participated in a work camp and seminar for such purposes, and, as a result of these activities, converted six Malays to Christianity. On an application by the respondent for writ of *habeas corpus*, Justice Anuar, the trial judge in the High Court of Kuala Lumpur, took the view that "the Minister had no power to deprive a person of his right to profess and practice his religion, his act will be inconsistent with the provision of Art. 11 and therefore an order of detention would not be valid." The judge consequently ordered the release of the respondent from detention. The Minister for Home Affairs appealed to the Supreme Court in Kuala Lumpur.

The Supreme Court, Criminal Appellate Division, dismissed the appeal and stated the grounds of its decision:

The sum total of the grounds for detention in this case was the supposed involvement of the respondent in a plan or programme for the dissemination of Christianity among the Malays. . . . We do not think that mere participation in meetings and seminar can make a person a threat to the security of the country. As regards the alleged conversion of

16. CONST. OF ISLAMIC REP. OF PAKISTAN ART. 11.

17. 1 MALAYAN LAW JOURNAL 368-70, 418-20 (1989).

six Malays, even if it were true, it cannot be of itself, in our opinion, regarded as a threat to the security of the country.¹⁸

While dismissing the appeal, the court added that the grounds for detention in this case, when read in the proper context, were insufficient. The court held that the guarantee provided by Art. 11 of the constitution, that is, the freedom to profess and practice one's religion, must be given effect unless the actions of a person go beyond what can normally be regarded as professing and practicing one's religion.

In a similar vein, the 1973 Constitution of the Islamic Republic of Pakistan, which is currently in force, proclaims in its section on Fundamental Rights and Liberties that

subject to law, public order, and morality

- a. every citizen shall have the right to profess, practice, and propagate his religion; and
- b. every religious denomination and every section thereof has the right to establish, maintain and manage its religious institutions.¹⁹

The Constitution of Pakistan also forbids discrimination against religious communities regarding taxation,²⁰ educational policies,²¹ and the allocation of funds and concessions that the state may make to religious communities or institutions.²²

Mutawalli has characterized the main thrust of the Qur'anic teaching on religious freedom in the following manner: religious belief should be founded in conviction and considered choice; religious belief should not merely imitate or conform with the views and beliefs of others. The *Shari'ah* forbids compulsion in religion, as it is incompatible with the courteous and elegant methods of persuasion that the Qur'an prescribes for propagating the faith. Mutawalli also documents and supports the historical observation that Muslim rulers and governors have, on the whole, exercised tolerance in the treatment of non-Muslim subjects, particularly regarding their religious beliefs. Mutawalli discredits the conclusion reached by

18. *Id.*

19. CONST. OF ISLAMIC REP. OF PAKISTAN art. 20.

20. *Id.* at art. 21.

21. *Id.* at art. 22.

22. *Id.* at art. 38.

Thomas Arnold (that Islam was imposed on its believers by the sword) by proclaiming that Arnold's opinion is tainted with prejudice and far from the truth. Certainly, any acts of oppression which might have soiled the primarily tolerant record of Muslim rulers are mainly attributable to political factors which find little support in the principles of Islamic law. The practice of the early leaders of Islam, particularly the Pious Caliphs, was consistently guided by the Qur'anic norms which seek to protect the integrity of the individual conscience. Mutawalli and Abu Zahrah, among others, have agreed on this point.

According to Abu Zahrah, "the early Muslims have shown great care and sensitivity not to compel any one in the matter of religion." Abu Zahrah also tells of an incident in which an elderly Christian woman came as a supplicant to the Caliph Umar b. Al-Khattab, who met her request with favor. Afterwards, the Caliph invited her to embrace Islam, but she refused. This made the Caliph anxious, fearing that his invitation had amounted to compulsion. He expressed his remorse by uttering this invocation: "O my Lord, I have not intended to compel her as I know there must be no compulsion in religion, . . . righteousness has been explained and distinguished from misguidance." The Caliph thus expressed the point that only God Most High can turn the hearts and minds of people toward righteousness.²³ The precedent and attitude of the Pious Caliphs is reflective of the correct understanding of the norms of the *Shari'ah*, which clearly recognize the freedom of religion and proscribe all oppression and violation of the integrity of this freedom.²⁴

Notwithstanding the relative clarity of the Qur'anic proclamations on the freedom of religion, the subject has become controversial. This is due, in part, to certain other passages in the Qur'an which have been interpreted by some in a manner casting doubt on the subject. Indeed, some commentators have drawn the drastic conclusion that the Qur'anic passages which validate holy war (*jihad*) and fighting against disbelievers abrogate the Qur'anic message of respect and tolerance for other religions. The controversy has been exacerbated by the provision in the Sunnah, which authorizes the death penalty for apostasy.

Although a full inquiry into these issues would fall beyond the scope of this study, much of the subject has already been investigated at length in books and articles in the English language. The reader

23. ABU ZAHRAH, *supra* note 2, at 199.

24. 'ABD AL-HAMID MUTAWALLI, *MABADI NIZAM AL-HUKM FI AL-ISLAM* 287 (Alexandria, Mansha'at al-Ma'arif 1974).

would do well to examine these works.²⁵ My discussion, accordingly, shall focus upon some of the conclusions drawn therein without paying undue attention to many of the details.

In his monograph *The Punishment of Apostasy in Islam*, S.A. Rahman examines the Qur'an and Sunnah in detail, drawing attention to the fact that the Qur'an is silent on the question of imposing death as punishment for apostasy, despite the occurrence of this subject no less than twenty times in the Holy Book. Rahman traces the chain of transmission of the *Hadith* (saying of the Prophet) which proclaims, "Whoever changes his religion shall be killed." This being a solitary (*Āhād*) *Hadith*, Rahman finds weaknesses in its transmission (*isnād*). His conclusion here is bolstered by other evidence, such as the fact that neither the Holy Prophet himself nor any of his Companions ever compelled anyone to embrace Islam or convicted anyone to death for mere renunciation of the faith.²⁶ In light of this, it is not surprising to find a number of prominent *ulema* across the centuries who have subscribed to the view that apostasy is not a punishable offense. Ibrāhīm al-Nakha^{ṣī} (died 95 A.H./715 A.D.) and Sufyan al-Thawri (died 162 A.H./783 A.D.) have held that the apostate should be invited to Islam and should never be condemned to death. The Maliki jurist al-Bāji (died 494 A.H./115 A.D.) also observed that apostasy is a sin which carries no prescribed (*hadd*) penalty, and that a sin of this kind may only be punished under the discretionary punishment of *ta'zīr*.²⁷ The renowned Hanbali jurist Ibn Taimiyyah is categorical on the point that apostasy is punishable only by the discretionary punishment of *ta'zīr*.²⁸

Mahmud Shaltūt, the late rector of Azhar University, comes to a similar conclusion. After analyzing the relevant evidence in the Qur'an, he finds that apostasy carries no temporal punishment, as the

25. See generally S.A. RAHMAN, *THE PUNISHMENT OF APOSTASY IN ISLAM* (Lahore, Institute of Islamic Culture, 2d ed. 1978); MUḤAMED SELIM AL-AWA, *PUNISHMENT IN ISLAMIC LAW* (Indianapolis, American Trust Publications 1982); A.A. ABU SULAYMAN, *THE ISLAMIC THEORY OF INTERNATIONAL RELATIONS: NEW DIRECTIONS FOR ISLAMIC METHODOLOGY AND THOUGHT* (Herndon, VA, International Institute of Islamic Thought 1987).

26. RAHMAN, *supra* note 25, at 63; AL-^ṢĪLĪ, *supra* note 2, at 339.

27. TAQI AL-DĪN IBN TAYMIMIYYAH, *AL-SĀHĪM AL-MASLŪL* ^ḤALĀ SHĀTIM AL RASŪL 318 (Muḥammad Muḥayy al-Dīn ^ḤAbd al-Hamīd ed., Beirut, Dār al-Kitāb 1389/1978); II ^ḤABD AL-WAḤĪB AB AL-SĤĀ^ṢR ĀNI, *KITĀB AL-MĪZĀN AL-KUBRĀ* 134 (Cairo, Maṭba^Ḥah al-Ḥusayniyyah 1329 A.H.); El-Awa, *supra* note 25, at 55.

28. TAQI AL-DĪN IBN TAYMIMIYYAH, *AL-SIYĀSAH AL-SĤĀ^ṢRIYYAH FĪ IḤLĀḤ AL-RĀ^ṢĪ WA AL-RĀ^ṢĪYYAH* 124 (Cairo, Dār al-Kitāb al-^ḤArabi, 2d ed. 1951).

Qur'an speaks only of punishment in the Hereafter. Shaltūt thus writes,

As for the death penalty for apostasy, the jurists have relied on the *Hadīth* reported by ibn 'Abbas in which the Prophet has said *man baddala dinahu faqtuluh*. This *Hadīth* has invoked various responses from the ulama, many of whom are in agreement to the effect that the *hudhud* [prescribed] penalties cannot be established by the *Āhād* [solitary] *Hadīth*, and that unbelief by itself does not call for death punishment. The key factor which determines the application of this punishment is aggression and hostility against the believers and the prevention of a possible *fitnah* [oppression and lawlessness] against religion and state. This conclusion is sustained by the manifest meaning of many of the passages in the Qur'an which proscribe compulsion in religion.²⁹

Commenting on the same Qur'anic evidence, Zafarulla Khan observes that "apostasy by itself, however condemnable as a spiritual offense, entails no temporal penalty. This is the essence of the freedom to change one's religion and the Qur'an is explicit on it."³⁰

Shabbir Akhtar reaches the same conclusion when he states that the sacred scripture of Islam does not prescribe any penalty for apostasy alone. It condemns those who "turn their backs on guidance" as sinning against God, and states that the works of renegades are in vain and Hell is often their destination (Al-Baqarah 2:217). According to Akhtar, apostasy is punishable by death only if it is aggravated by treachery in a military context.³¹

Selim el-Awa discusses the issue of apostasy at length, declaring that "there is an urgent need to reinterpret the principles contained in the Qur'an and Sunnah." He cites the fact that the Qur'an is completely silent on death punishment for apostasy and that the evidence in the Sunnah is open to interpretation.³² El-Awa elaborates that the death penalty in the Sunnah is not designed for apostasy *per se* but for high treason, or *hirabah*. *Hirabah* occurs when apostasy is

29. MAHMUD SHALTUT, AL-ISLAM 'AQIDAH WA SHARI'AH (Kuwait, Mata'ibī' Dār al-Qalam).

30. MUHAMMAD ZAFRULLA KHAN, HUMAN RIGHTS IN ISLAM 116 (London, Higgenson 1967).

31. SHABBIR AKHTAR, BE CAREFUL WITH MUHAMMAD: THE SALMAN RUSHDIE AFFAIR 71 (London, Bellow Publishing 1989).

32. EL-AWA, *supra* note 25, at 55.

accompanied by hostility and rebellion against the community and its legitimate leadership. The *Hadīth*, which proclaims "whoever renounces his religion shall be killed," is a general (*amm*) command which is in need of specification (*takhsis*). In its general form, it would apply equally to cases that manifestly fall outside of its intention: its punishment would apply not only to a Muslim who converted to another religion, but to a Christian or a Jewish person as well.

Al-Shawkani adds to the foregoing that the general applicability of this *Hadīth* has been specified in the Qur'an as regarding a person who changes his religion outwardly under duress but remains faithful to it otherwise.³³ Al-Shawkani also criticizes the rulings of some Shafi'i scholars, who have followed the apparent and general meaning of the *Hadīth* in question and erroneously held that the death penalty therein applies equally to a non-Muslim who converts from one religion to another. He states, "My response to this is that the apparent meaning of the *Hadīth* has been abandoned (*matruk al-zahir*) in regard to a disbeliever who embraces Islam."³⁴

The Hanafis have specified the general import of this *Hadīth* in yet another respect. A woman apostate is not punished by death but only by imprisonment. According to the rules of interpretation, as expounded in *usul al-fiqh* once a decisive (*qat'i*) ruling of a text has been specified in some respect, the part which remains unspecified becomes speculative (*zanni*) and, as such, becomes open to further interpretation and specification (*takhsis*). It is thus suggested that the *Hadīth* in question may be further qualified, and the death penalty therein may be reserved for apostasy accompanied only by high treason (*hirabah*).³⁵

The preceding analysis also applies to the other *Hadīth* that is often quoted in support of death punishment for apostasy. This *Hadīth* states, "The life of a Muslim may be taken in three cases only, in the case of an adulterer, one who has killed a human being, and one who has abandoned the religion, while splitting himself off from the community (*mufariq li al-jama'ah*)." It is of note that this *Hadīth* is explicit on the point that the apostate must also be a *mufariq al-jama'ah* (one who boycotts and challenges the community and its legitimate leadership) in order to be subjected to the punishment of death.³⁶

33. VII YAHYĀ IBN 'ALĪ AL-SHAWKĀNĪ, *NAYL AL-AWṬĀR SHARH MUNTAQA AL-AKHBĀR* 218 (Cairo, Mustafa al-bābī al-Ḥalabī).

34. *Id.* at 219.

35. *Id.* See also EL-AWA, *supra* note 25, at 55.

36. EL-AWA, *supra* note 25, at 52.

The Qur'anic text specifies a three-fold punishment culminating in death for *hirabah* (al-Ma'idah, 5:33-34). Ibn Taymiyyah, in an attempt to reconcile the terms of this *Hadith* to the Qur'an, observes that the crime referred to in the *Hadith* is that of high treason (*hirabah*) and not apostasy as such.³⁷ This observation is supported by the fact that the Prophet never put anyone to death for apostasy alone. Indeed, there were cases in which the Prophet did not order the death penalty, or any penalty at all, for individuals who became apostates after professing Islam. Affirmative evidence on this point is found in the recordings of al-Bukhari and Muslim of the following incident:

A Bedouin Arab came to the Holy Prophet and professed Islam. Then he became ill with fever while he was still in Madinah. So he came again to the Prophet and said "give me back my pledge," but the Prophet refused. Then he came again the following day and asked the Prophet "give me back my pledge," which the Prophet refused again. The Bedouin did the same thing the next day and the Prophet refused.³⁸

This is a clear example of apostasy in which the Prophet made no reference to any punishment at all. The Bedouin, despite his persistent renunciation of Islam, was left to go unharmed.³⁹

The following passage of the Qur'an is in complete harmony with the purpose of *Hadith* under discussion and provides, once again, a strong argument against punishment by death for apostasy: "Those who believe then disbelieve, then believe again, then disbelieve and then increase in their disbelief, such are those whom God will never forgive nor guide to the path" (al-Nisa', 4:137). The renegade could hardly enjoy the benefit of repeated belief and disbelief if capital punishment had been prescribed for the initial act of apostasy. To be sure, this text could be interpreted alternatively to be simply indicative of the limits of repentance and divine forgiveness. Yet, as Shabbir Akhtar confirms, such a rendering does not preclude the more obvious interpretation "that even repeated apostasy, let alone apostasy, is not punishable by death."⁴⁰

The question has often been raised whether Islam permits war as a means of its own propagation. Many scholars have reached the

37. IBN TAYMIYYAH, *supra* note 27, at 52.

38. MUHAMMAD B. ISMA'IL AL-BUKHARI, *JAWAHIR SAHIH AL-BUKHARI* 150 (Izz al-Din Sirwan ed., Beirut, Dar al-Ihya' 1407/1987).

39. EL-AWA, *supra* note 25, at 54.

40. AKHTAR, *supra* note 31, at 72.

conclusion that Islam permits war in order to protect the freedom of belief and prevent oppression. The Qur'an forbids sedition (*fitnah*) in religion, as well as the persecution of people for their religious beliefs. It is this *fitnah*, as Abu Zahrah observes, which the Qur'an declares to be a menace greater than murder. Thus the Qur'an permits waging war in order to prevent tyranny and *fitnah* of this kind. "And fight them (the oppressors) until persecution is no more and the religion is for Allah alone. But if they stop then there is to be no hostility against anyone except the oppressor" (al-Anfal, 8:39). From this and other similar Qur'anic passages, Abu Zahrah draws the conclusion that "fighting is only permissible in order to defend the freedom of belief and prevent oppression in religion."⁴¹ Abu Zahrah also quotes the following Qur'anic passage in support of this statement: "Fighting has been permitted for those against whom war has been waged because they have been wronged; God is most powerful to help them. They are those who were expelled from their homes for no cause other than saying that 'God is our Lord'" (al-Hajj, 22:39).

Commenting on the first of these two Qur'anic passages, Rashid Rida stated the following:

This verse reaffirms the one which occurs in Sura al-Baqarah (2:256) and both proscribe compulsion in religion. Both of these passages proclaim and uphold that people are free to pursue religious beliefs of their own choosing. No one is to be compelled to abandon the religion he professes nor must any one be exposed to punishment and torture for the sake of religion.⁴²

By far, the most explicit of the Qur'anic declarations on the freedom of religion is the one in Sura al-Baqarah. The fuller version of this text is as follows: "There is to be no compulsion in religion. Surely the right direction has been made clear and distinct from error. He who rejects false deities and believes in Allah has grasped a firm handlehold which will never break" (al-Baqarah, 2:256).

This passage was revealed on the occasion when some of the Companions among the Helpers (*ansar*) asked the Prophet for permission to compel their relatives to profess Islam. Some of these relatives had practiced Christianity or Judaism since early childhood:

41. ABU ZAHRAH, *supra* note 2, at 192.

42. RIDA, *supra* note 10, at IX, 665.

The Banu Nadir of Madinah had children who were related to the Companions, but who were brought up by Jewish parents and were considered Jews. When the Prophet issued orders for the Banu Nadir to move out of Madinah in order to prevent clashes between themselves and the Muslims, some of the Companions sought instead to force their relatives into Islam. It was at this juncture that the text under discussion was revealed. Accordingly, the Prophet ordered his Companions not to compel any of the people, but to give them the choice to decide what religion they wished to follow.⁴³

Commentators of the Qur'an, such as Ibn Kathir and Rashid Rida, consider the important message of this passage to be the absolute prohibition of compulsion in religion. No one must be compelled to embrace Islam, for it would serve no useful purpose for a person to profess Islam while his mind and heart are closed to enlightenment and guidance. Rashid Rida adds that faith (*iman*), which is the pillar and essence of religion, implies willful submission of the self. Faith cannot be attained through coercion and duress; it must be attained through conviction and reasoning. Force, therefore, has no place in the matter of belief. Rida argues that the subsequent portion of the text endorses the general message of the passage under discussion. In Islam there is guidance and light. The call to the faith, therefore, should be through explanation. Once the people are shown the right path, it is their choice whether to take it. Rida completes this line of reasoning as follows:

We are ordered to invite the people to the path of God with wisdom and good exhortation. . . . This would explain the place of *jihād* in Islam. *Jihād* is not of the essence of religion or any of its goals. It is only a protective shield and it is resorted to as a matter of political necessity. The common hysteria and its misguided instructors who assume that faith is established by the sword merit no attention whatsoever.⁴⁴

Some commentators have attempted to qualify the general import of the text at issue (al-Baqarah, 2:256) by showing that it was initially in force but later abrogated when Islam gained victory. The former

43. *Id.* at III, 37; Al-^ḥīli *supra* note 2, at 333-34.

44. ^ḥIMĀD AL-DĪN ABU AL-FIDA IBN KATHĪR, ^ḥTAFSĪR AL-QUR'ĀN AL-^ḥAZĪM 310 (Cairo, Matba^ḥah al-Istiḥqamah, 3d ed. 1956); Riḍā, *supra* note 10, at III, 37-39.

Chief Justice of Pakistan, S. A. Rahman, responds to this argument in the following manner:

There is no warrant for such a conclusion to be found in any Qur'anic verse, and indeed the ethical plane of such argumentation is too obvious to require comment. . . . Furthermore, there is no indication in the text that the words are to be understood in a restricted or qualified sense, nor would the *shan-i-nuzul* (occasion of revelation) reports justify that course.⁴⁵

Rahman characterizes al-Baqarah 2:256 as one of the most important verses in the Qur'an. He expresses regret and perturbation that Muslim scholars have attempted to whittle down its broad humanistic meaning by imposing limitations on its scope which have been dictated by historic theological controversies.⁴⁶

Another aspect of the Qur'anic evidence that relates to our discussion is the explicit recognition in the Qur'an of other great religions which already existed at the time of the advent of Islam. A number of Qur'anic passages declare the validity and divine provenance of other faiths and are highly complimentary of their teachings. The Qur'anic evidence is explicit on the unity of the origin and purpose of all the revealed faiths.

Thus we read in Sura al-Ma'idah (5:46), "We revealed the Torah in which there is guidance and light." The text then continues to expound and confirm some of the laws of the Torah, particularly the law of just retaliation, which became an integral part of the *Shari'ah* of Islam. A subsequent passage in the same Sura further confirms both the Torah and the Bible. Referring to the aforementioned passage, the text continues,

And in their footsteps We sent Jesus the son of Mary confirming the law that was revealed before him; We sent him the Gospel in which there is guidance and light and it confirms the law that had come before him, a guidance and admonition to those who fear God. Let the followers of the Gospel judge by what God has revealed therein, and whoever refuses to judge by what God has revealed are transgressors. (Al-Ma'idah, 5:49-50).

45. RAHMAN, *supra* note 26, at 21.

46. *Id.* at 16.

This passage is followed by an affirmation addressed to the Prophet Muhammad. "We sent to you the scripture with the truth therein and it confirms and safeguards that which has preceded it" (Al-Ma'idah, 5:51).

The Qur'anic recognition of the truth and essential unity of the revealed religions is not limited to Christianity and Judaism. It extends to all the Prophets who preceded Moses and Jesus and their teachings. The Qur'anic text on this matter clearly states that belief in all of them is an integral part of the Muslim faith: "Say: We believe in God and in what has been revealed to us and what was revealed to Abraham, Ishmael, Isaac, Jacob and the Tribes, and in the scriptures that God sent Moses and Jesus and the Prophets. We make no distinction between them" (Al-Imran, 3:84).

This is one of the major themes of the Qur'an, and it recurs in several other places in the text. These textual references consistently confirm that Islam does not deny the followers of other faiths the freedom to practice and retain the religion of their choice, whether these persons are located inside or outside of the territorial domain of Islam.⁴⁷

The commentators have drawn precisely this conclusion from the totality of the Qur'anic evidence. Referring to the Qur'anic textual sources, Fathi Uthmān writes that "Islam rejects compulsion even if it be the only way to Islam itself . . . for worshipping God and the enforcement of His law cannot properly be achieved unless man is free from fear."⁴⁸ The Qur'an repeatedly expresses the dignity and nobility of man, both individually and as a community. Man's dignity is intimately related to his freedom, particularly his freedom of conscience. The Qur'anic passages affirming the freedom of religion are, therefore, consistent with the concept of the inherent dignity of the human race. The Qur'an fully supports the conclusion that the objectives of the *Sharī'ah* cannot properly be fulfilled without granting the individual the freedom of belief and the liberty to express it.

Another pertinent Qur'anic theme is the idea that religion is a matter of conviction and belief which requires individual decisions. Individuals may only be invited to Islam by persuasion and advice. The following address concerning unbelievers, made to the Prophet Muhammad, casts light on the Holy Prophet and the methods he was to

47. Note in particular Sura al-Baqarah (2:91 & 97); al-Nisā' (4:46); Fāṭir (35:31); and al-Aḥqāf (46:30).

48. ^cUTHMĀN, *supra* note 4, at 27-28; MUHAMMAD SALĪM AL-GHAZAWI, AL-HURRIYYĀT A-^cAMMAH FI AL-ISLAM 69 (Alexandria, Mu'assasah Shib'āb al-Jāmi^cah); BINT AL-SHĀṬĪ, *supra* note 13, at 97.

follow in calling others to the new faith. "If they embraced Islam, they would have found guidance, but if they turned their backs on it, then your only duty is to convey the message" (Al-Imran, 3:20). Several other passages confirm this point:

Remind them, for you are a reminder, not a holder of power over them (al-Ghashiyah, 88:21).

And if they turn away, then we have not sent you as a guardian over them. Your duty is no other than conveying the message (al-Shura, 42:48).

Obey God and obey the Messenger and beware (of evil, probably referring to wine drinking and gambling, which occur in the preceding passage). But if you turn back then know that our Messenger's duty is to proclaim (the message) (al-Ma'idah, 5:95; see also 5:102 for a message to the same effect).

Yet another recurrent Qur'anic theme is that invitation to the faith must be wisely made with courteous advice. It must be based upon sound reasoning and elegant persuasion. By implication, this precludes resorting to compulsion, tyranny, or force in the propagation of Islam. The meaning of the Qur'an is clear on this point. Any ideas adding to or subtracting from this clear meaning, whether they be in the name of *jihad* or enlightenment, should therefore be strongly discouraged. *Jihad* is abused when it is implemented to impede the Qur'anic principle of the freedom of belief.

Both Wafi and 'Awdah have concluded from the evidentiary sources that Islam protects the freedom of religion in at least three ways. First, as the Qur'an clearly proclaims, in Sura al-Baqarah 2:256, no one may be compelled to abandon his religion and embrace Islam. Muslim rulers and conquerors have generally abided by this principle and allowed their subjects to continue practicing their own religions, provided they paid the *jizyah* (poll tax) and obeyed the government in power. Those who paid the *jizyah* were thereby excused from military service, for which the tax was a substitute. The second Islamic protection of religious freedom is the right of the individual to propagate the religion of his following through sound reasoning and argumentation. The Muslims are required by the Qur'an to attract others to Islam through persuasive and courteous reasoning, and to permit the practitioners of other religions to employ the same techniques (al-Nahl, 16:22; al-'AnKabut, 29:46; al-Baqarah, 2:111). The third protection for religious freedom offered by Islam is

the norm, validated by the Qur'an, that correct faith (al-*iman al-sahih*) stems from certitude and conviction, not mere imitation and adherence to forms. The Qur'an denounces those practices of earlier religions that promoted blind imitation of one's ancestors while neglecting independent thought and personal conviction. "When they were told to follow (the truth) that God has revealed they would say, 'Nay we shall follow the ways of our fathers,' even though their fathers did not think and were lacking in guidance" (al-Baqarah, 2:170).⁴⁹

On the subject of these Qur'anic passages, Wafi refers to the conclusions of 'Abduh. "[T]houghtless imitation which lacks in wisdom and correct guidance is the hallmark of the disbelievers. A man can hardly be called a *mu'min* [faithful] unless he thinks about his faith and satisfies himself as to the veracity of his belief."⁵⁰ 'Awdah concurs in this conclusion but adds that the *Shari'ah* also obligates one who is faithful to protect and safeguard his belief. 'Awdah states that when a person is exposed to oppression on account of his belief, and lacks the means to protect his freedom, he should migrate to a place where he can safeguard his belief and self-respect. 'Awdah completes this thought by saying of such a person, "If he is able to migrate and he does not do so, he would have committed injustice unto himself." 'Awdah bases this conclusion on the Qur'anic text of al-Nisa 4:97-98, which denounces the attitude of those who do not exert themselves even to migrate, if necessary, in order to safeguard the integrity and freedom of their consciences.⁵¹

CONCLUSION

This discussion has emphasized the fact that the Qur'an explicitly declares freedom of religion to be one of the principles of Islam. The Qur'anic declaration to this effect, found in Sura al-Baqarah 2:256, is consistently endorsed and substantiated in numerous other contexts in the Holy Book. Unfortunately, there are those who have promoted a misleading and politically motivated discourse, which declares that Islam denies the freedom of religion, and that the Qur'anic passages which advocate this freedom were subsequently abrogated and

49. 'ABD AL-WAHID WAFI, *HUQUQ AL-INSAN FI AL-ISLAM* 122-23 (Cairo, Matba'ah al-Risalah).

50. *Id.* at 124.

51. 'ABD. AL-QADIR 'AWDAH, *AL-TASHRI' AL-JINAI AL-ISLAMI MUQARRINAN BI AL-QANUN AL-WADI* 31-33 (Cairo, Matba'ah al-Madani).

overruled by its other provisions on the subject of *jihād*.⁵² The proponents of this view have used abrogation, itself a highly controversial issue,⁵³ as their primary tool in an attempt to whittle away at one of the cardinal principles of the Qur'an. The warlike outlook espoused by this group may have had sympathizers among the conquerors and military strategists of history, but this view has never commanded general acceptance or support. This school of thought lacks sound reasoning and has been less than convincing in its attempt to overshadow the essence of the Qur'anic message concerning the freedom of conscience. The unequivocal recognition of this freedom in the constitutions of the present day Muslim nations bears testimony to a decisive movement in favor of the basic rights of the individual, including the freedom to follow the religion of his or her choice. A consensus of opinion has thus emerged among the Muslims of the twentieth century in support of the universal validity of the freedom of religion in the *Sharī'ah* and contemporary constitutional law.

52. For an exposition of the problem as to how military and political interests on the subject of *jihād* have influenced the writings of medieval Muslim jurists, see ABU SULAYMAN, *supra* note 25.

53. For a discussion of the theory of Abrogation and its impact on Islamic law, see MOHAMMAD HASHIM KAMALI, *PRINCIPLES OF ISLAMIC JURISPRUDENCE* ch. 7 (Cambridge, U.K., The Islamic Texts Society, 2d ed. 1991).