

Defection from Islam in context: A disturbing human rights dilemma

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Abstract

After many years of nearly complete silence in Western media and politics, the issues of religious freedom and apostasy have finally raised attention. Especially in the 1980s and the beginning of the 1990s countries like Egypt have seen a growing flood of court charges against intellectuals, theologians, feminists, authors, secularists and converts, some of whom were later murdered in broad daylight in the streets of Cairo, Teheran and elsewhere. While many Muslims condemn such deeds with deepest conviction, others have vigorously applauded and claimed that Sharia law demands the death penalty for anybody who leaves Islam. What does Sharia really teach about apostasy? How does society perceive a conversion? Which consequences are potentially awaiting the convert? The article outlines the teaching of the Koran and the Hadith (tradition) as well as the opinions of the leading Muslim theologians of the formative period of Islam and today's practical implications for people turning their back on Islam.

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The discussion of human rights flares up when Muslims in an Islamic country convert to Christianity and are threatened with death, as happened a few years ago in Afghanistan and as happens from time to time in other Muslim countries. In the West we immediately regard this as an attack on human rights and a restriction of the freedom of religion, but, in fact, almost all of the Islamic countries signed the United Nations Universal Declaration of Human Rights of 1948, and they regard their actions as consistent with their understanding of human rights.¹ Obviously we face a huge divergence of opinions on the nature of human rights and what it means to protect them, but what is the source of such fundamentally different ways of thinking?

1. Legal frameworks

1.1 Islamic human rights declarations under the preamble of the Sharia

The foundations for the widely divergent conceptions of human rights between Islamic countries and the West are ultimately to be found in the Sharia, which is the totality of laws and rules for life which are taken from the Koran and the Muslim tradition under the interpretation of authoritative Muslim theologians. Some Islamic organizations have written human rights declarations in recent decades, though these were not accepted by all Islamic states. Muslim human rights declarations differ foundationally from western human rights declarations in so far as they allocate to the Koran and to the Sharia the highest rank in deciding what rights are allocated to humans. The countries that attempt at least partially to orient their civil law around the Sharia allow human rights officially to be defined and defended only in light of the boundaries provided by the Koran and the Sharia, even if some human rights organisations in these countries fight for more rights. For example, the Cairo Declaration on Human Rights in Islam (1990), article 24, states, “All the rights and freedoms stipulated in this Declaration are subject to the Islamic Sharia.” And article 25 continues, “The Islamic Sharia is the only

¹ Saudi Arabia is an exception; the country did not sign this human rights declaration.

source of reference for the explanation or clarification of any of the articles of this Declaration.”² Clearly this emphasizes the “historical role of the Islamic Ummah which God made the best nation which has given mankind a universal and well balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith.”³

This high rank of the Koran and Islamic law means that within Islamic countries in which the legal system is based on the Sharia, human rights in themselves, separated from the values of the Islamic revelation, cannot be demanded or at least are contested by the majority of Muslim theologians, unless such demands occur within the framework of the Koran and the Sharia and their interpretation in the local legislation of a specific Islamic country. People whose way of thinking is shaped by secularism, the enlightenment, and the separation of church and state have difficulty fathoming the practical implications of the Sharia for law, politics, and the entirety of public life. The extent to which social or political life is shaped by the Sharia varies from country to country. With the exception of Turkey, all the core Islamic countries (such as Afghanistan, Egypt, Saudi Arabia, or Iran) have anchored their constitutions in the Sharia alone, even though in practice this varies significantly.

1.2 Human rights for Muslims and non-Muslims

Islamic human rights declarations generally give priority of reference to the claim that God claims rights in relation to human beings, that humans have duties in relation to God. Humans have the duties to submit to the will of God and perform the five “Pillars” of Islam (Testimony, Prayer five times per day, Alms, Fasting during Ramadan, and Pilgrimage to Mecca). Human rights, whether in relation to God or to society, are subordinate to these duties.

Islam is usually the official state religion in Islamic countries, and Islam is considered to be the religion of all or most of the citizens. According to the Sunni conception, the government theologically and traditionally receives its legitimation only by means of making possible life according to the Sharia. Whenever an Islamic opposition group has attempted to overthrow a government, they have

² www.religlaw.org/interdocs/docs/cairohrislam1990.htm

³ Preamble to the Cairo Declaration.

held the opinion that the current regime was failing in this, its central task, and therefore had lost its legitimacy. A good example is the murder of President Anwar al-Sadat (10 October 1981) by a militant split-off of the Egyptian Muslim Brotherhood. Their war cry of “Death to the Pharaoh,” used at the time of the murder, indicated that they thought he had lost his claim to be an Islamic leader by signing a peace agreement with Israeli President Menachem Begin at Camp David, and therefore he should be treated as an unbeliever (Arabic: *kafir*) imposing illegitimate political goals on an Islamic people. A godly leader, they thought, would never have signed a peace agreement with their deadly enemy, Israel, the Jewish state.

In an Islamic state, “Religion is the principle that forms the State. This makes the State the bearer of a religious idea and therefore a religious institution . . . which has the duty of promoting proper worship, religious instruction, and the propagation of the faith.”⁴ President al-Sadat was perceived to have denied the fundamental religious purpose of the state.

Therefore, whoever lives as a Muslim in an Islamic state has a different social and in a theological sense even different legal status from that of the person who is not a Muslim. To repeat: the situation with regard to human rights within an Islamic state is significantly different for Muslims than it is for non-Muslims, especially in countries like Iran or Saudi-Arabia. By means of the practice of their faith, Muslims demonstrate loyalty to the state and are therefore worthy of the full protection of the state. In contrast, non-Muslims, by means of their “unbelief,” demonstrate that they may not be truly loyal to the state and therefore not entitled to claim the full protection of the state in all cases. For this reason within an Islamic state Muslims enjoy a much stronger status than do non-Muslims with regard to civil rights; this is especially true in regard of non-accepted religious minorities like the Baha’i in Egypt. Thus, for example, non-Muslims will in most cases not be able to receive an inheritance from a Muslim, may in several countries have serious obstacles to admission to a university, may not be allowed into the military or become a higher ranking officer, or may be prevented from promotion to higher levels within the government.

⁴ O. Spies and E. Pritsch, “Klassisches Islamisches Recht, 1, Wesen des Islamischen Rechts,” in *Handbuch der Orientalistik*, Abt. 1. Erg.bd. 3, *Orientalisches Recht* (Leiden: E.J. Brill, 1964), pp. 220-343; here p. 220.

1.3 Religious conversion as treason

Being a Muslim means being a good citizen with all the rights of citizenship. The person who is not a Muslim cannot in all cases claim the full rights of citizenship. The person who actively turns away from Islam has in the eyes of many Muslim theologians and Muslim citizens thereby renounced his loyalty to the State and is guilty of treason or betrayal of his country. According to a research project conducted by the “Pew Research Center for the People and the Press”, Washington D.C., in 2010 with a total number of 8,000 Muslims interviewed in their home countries, 84% of all Muslims in Egypt, 86% of all Muslims in Jordan and 76% of all Muslims in Pakistan favor the death penalty for apostates (whereas 91% in Turkey, 86% in Lebanon and 64% in Indonesia disapprove of such a punishment).⁵ At the same time there are far more educated and well versed Muslim advocates of religious freedom in Muslim countries today. But traditionally, Islam is “a necessary component of the foundation of the State.”⁶ If a Muslim citizen renounces his faith, he attacks this foundation and threatens the security and “the stability of the society to which he belongs.”⁷ Martin Forstner summarized the problem: “Only the person who believes in God, accepts his revelation in the Koran, and follows the Sharia, can be publicly regarded as a citizen in good standing, whereas the godless are regarded as enemies of society. The constantly repeated demand for a public testimony, especially by the required prayers five times per day and fasting during Ramadan, are means for maintaining public morality. For this reason, the confession of faith in the true religion is intrinsically tied to the rights of citizenship within an Islamic state.”⁸

Because of the role of the state in guaranteeing and protecting the religion of its subjects, if the Sharia is strictly followed, in spite of any human rights declarations, no Muslim can have the right to change his religion. If a Muslim commits treason, as it is defined by

⁵ <http://pewglobal.org/2010/12/02/muslims-around-the-world-divided-on-hamas-and-hezbollah/> (06.12.2010).

⁶ Martin Forstner, “Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem der islamischen Staaten,” in *Kanon, Kirche und Staat im christlichen Osten*. Jahrbuch der Gesellschaft für das Recht der Ostkirchen (Wien), Jg. 10/1991, pp. 105-186; here, p. 116.

⁷ Forstner, p. 116.

⁸ Forstner, p. 138.

the Sharia, the divine law demands the death penalty. At the same time, non-Muslims within an Islamic state enjoy only those rights which are recognized by the Koran and Islamic law (for example, a very limited right to religious practice within the private confines of one's own religious congregation).

From the Muslim point of view, the change of a person's religion (for example, a conversion to Christianity) is not seen by the family or by the society as a private matter; this is regarded as a public, political act. For this reason, the primary accusation stated against converts, in addition to the shame brought to the family, is that they have betrayed their people and their fatherland.

2. Christians in an Islamic society

Christians have a distinct position within Islamic societies. On the one hand, they enjoy certain rights because the classical Islamic point of view regards them as a type of partial believer, in contrast to followers of religions other than Christianity and Judaism, whom the Koran and classical Islamic theology regard as complete unbelievers (Arabic: *kafirun*, or in the case they venerate a number of gods like Hindus, also as *mushrikun*). On the other hand, Christians are compelled to accept significant limitations on the practice of their religion.

2.1 Statements of the Koran about Christians and Christianity

Already in the Koran, Christians and Jews were recognized "People of the Book" (or "People of the Scripture") (e.g., Sura 5:77). Muhammad regarded both groups as people who had received a previous revelation. In this way, he drew a fundamental contrast between them and the members of the Arab tribes of the peninsula who practiced an animistic polytheism and were therefore regarded as "unbelievers" (Arabic: *kafirun*) by Muhammad. At the beginning of his transition from Mecca to Medina (A.D. 622), he hoped that Jews and Christians would recognize him as a true prophet of God. His early evaluation, especially of Christians, was quite positive: Sura 5:82 praises the way the Christians loved the Muslims and also commends their modesty. Sura 3:110 maintains that there are some "believers" among Christians, and Sura 5:66 assures us that Christians will enter into Paradise, if they are faithful to their revelation, the gospel.

Over the course of several years, Muhammad's evaluation of both Christians and Jews began to change because they rejected his message and his claim to be a prophet. Thereby they disappointed his hope that they would join his Islamic community. Wherever the Christian point of view contradicted his message, he concluded that these "recipients of scriptures" had falsified the revelation they had received from God. From this time, soon after his arrival in Medina in 622, at the very latest from 624 on, his evaluation of Jews and Christians became essentially much more negative. While he implemented his confrontation with Jews in a military manner, driving the three Jewish tribes from Medina and killing the men of military age of at least one of the three tribes, he implemented his confrontation with Christians in a predominantly theological manner, since the Christians were numerically much smaller and not organized militarily. He concluded that their faith in the crucifixion, the Trinity, and the deity of Jesus was false (Sura 4:157-159; 2:116; 5:72, 73; 9:30) and that they had "darkened the truth with lies and deception" (3:71). At this time, the Koran begins to warn Muslims not to become friends of Christians (5:51). Additionally, the Koran contains the repeated demand (e.g., 4:89) that Muslims "kill" those who disbelieve (Arabic: *kama kafaru*), whereby the question remains open as to who must be regarded as "those who disbelieve"; quite naturally, this question receives various answers.

Within this historical background, we see both recognition and rejection, both positive and negative statements, in relation to Christians and to the Christian faith. But the predominant statements are negative because they are the later statements within the Koran, for Muslim theology regards later statements within the Koran as having a higher and concluding status as divine revelation.

The religious status assigned by the Koran to Christians and Jews, that of partial believers, led to them receiving a distinctive legal status in the previously Christian lands of North Africa and the Middle East during the time of the rapid military expansion of Islam in the first decades after the death of Muhammad. They were regarded as "protected" (Arabic: *dhimmi*). They were not forced on pain of death to convert to Islam, but in recognition of the authority of Islam (especially Sura 9:29) they were required to pay a head tax and sometimes a special property tax, neither of which had to be paid by Muslims. On the one hand, their conversion may not have always been

really desired, but motivated by the higher taxes they paid; on the other hand, Jews and Christians were repeatedly invited to convert to Islam by the offer to repeal the special taxes and to gain a better status in society. Christians in Muslim lands usually suffered legal disadvantages and remained barely tolerated second-class citizens who had to accept limits on the public expression of their faith, a lower social position, and various types of public humiliation. This included matters such as prohibition of carrying weapons, riding horses, or practicing certain professions, as well as not ringing church bells or building houses taller than those of their Muslim neighbors.

2.2 The Christian minority today

This history is still echoing in the Islamic world. Christian minorities are generally tolerated (with the exception of Saudi Arabia, where possession of a Bible or attending a Christian prayer group is a punishable crime), but they suffer very significant restrictions on the public practice of their religion, which are imposed in various ways in the different Islamic countries. Under these restrictions, traditional Christian congregations can in most cases exist, groups of converts officially in most cases can not. There may be a requirement for a building permit to make needed repairs to a church building, but that permit may be denied for years (or even permanently), so that a church building falls into total disrepair and cannot be used. There may be no allowance for theological schools that would train local candidates for the clergy and also no allowance for foreign-born clergy to serve these churches. Christian congregations may not be allowed to buy real estate, but also not be allowed to meet in private homes.

In Muslim countries there are often insults, discrimination on various levels and sometimes serious attacks on Christians and Christian organizations. This may be occasioned by an “offence” of Christians against a Muslim or the Muslim state, though a mere rumor of an offence will sometimes suffice. In some cases, churches or Christian schools may be attacked or even destroyed as representatives of Christianity or “the West”, in retaliation for the supposed suppression of Muslims in Palestine or “insults” to Islam in the West (e.g., the Danish cartoon conflict).

In a narrow sense, neither the Koran nor orthodox Muslim theology or tradition would legitimate such attacks on Christian

minorities, but the breadth of possible interpretations of statements in the Koran and the tradition provides the conditions in which individual Muslims or political groups can use their religious tradition and nationalistic feelings to legitimate such violence. An example that immediately comes to mind is the duty to “defend” Islam, which is derived from the principle of imitating Muhammad, which can be applied either in a peaceful or a violent manner. Additionally, Islam divides humanity into three categories: (1) unbelievers (Arabic: *kafirun* or *mushrikun*), including the heathen and polytheists; (2) recipients of scripture, meaning Jews and Christians; and (3) Muslims, who are religiously, legally, and socially superior to other groups of people. Such an idea does not necessarily lead to violence against Christians, but it can easily be used in a manner which supports such violence.

This is part of the background needed to understand the problem of a lack of proper law enforcement when crimes “only” have an impact on Christians; the Christian minority does not have equal rights in a society and legal system shaped by Islamic norms. Accusations made by Christians against Muslims are at the most only partially accepted, and the resulting criminal proceedings are often prosecuted half-heartedly and in many cases come to nothing. To be sure, many Islamic states are taking serious steps to restrain the threats arising from Islamistic groups, but those steps tend to be much less decisive when the threat from Islamists’ movements “only” extends to the under-privileged Christian minority and does not hit the State in itself. To its credit, in recent years Egypt, after numerous attacks by Islamists, seems to be extending more protection to its Christian citizens, though this may be mostly a side effect of the Egyptian attempt to restrain Islamic radicals who are also seen as a threat to many other facets of Egyptian life.

2.3 Borders of religious freedom for non-Muslims

Although the constitutions of several Muslim countries affirm the right to free exercise of religion, non-Muslims face difficulties when practicing their religions because of the role of Islam as the official state religion. The fact that Christians and Jews are not forced to convert to Islam and are allowed to maintain their religions is regarded as a sign of tolerance and religious freedom within a Muslim context. True tolerance according to a western definition would mean legal equality, which is never the case among Muslims and non-Muslims

within a Muslim country. In contrast, Christians have to put up with continual pressure to convert to Islam, which comes through prejudicial treatment in the realms of education, work, and social life. Every year a few thousand Coptic Christians in Egypt can no longer endure this pressure and convert to Islam. In addition, marriage laws substantially reduce freedom of religion, as they apply to religiously mixed marriages. A Christian man is legally allowed to marry a Muslim woman only if he converts to Islam, providing a distinctive reason for conversion to Islam for some men. A marriage between a Christian woman and a Muslim man is possible in principle, but the children resulting from such a union are legally Muslims and have to be instructed in the Islamic faith, causing a further reduction of the Christian minority of the population.

Contact between Muslims and Christian congregations for example by attending Christian worship services, is in most cases forbidden or strongly disapproved of by means of social proscription or may in other cases even be restricted or punished by the state. Extremely few Muslims have the opportunity to receive unprejudiced firsthand information about the Christian faith. In contrast, Muslim children growing up in a Muslim land frequently grow up with an antagonistic image of Christianity, that Christians are an underprivileged, despised minority with a falsified faith worshipping three Gods. This negative image of Christianity is all too often reinforced by instruction in the Koran, by the media, by Islamic schoolbooks, or by sermons in the mosques. It is no wonder that the chasm between Christians and Muslims is so large in many Islamic societies.

In many Muslim lands, there is no legally acceptable way of publicly proclaiming the Christian faith, whereas “it is expected that the Muslim citizen will not be exposed to any assault on his religion against which he might have to defend himself.”⁹ The criticism and devaluation of Islam, the Koran, and Muhammad are expressly forbidden to non-Muslims, and according to the Islamic conception these offences would automatically occur if there were public access to the Bible, Christian books, or Christian gatherings. For example,

⁹ Martin Forstner, “Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem der islamischen Staaten,” in *Kanon, Kirche, und Staat im christlichen Osten*. Jahrbuch der Gesellschaft für das Recht der Ostkirchen (Wien), Jg. 10/1991, pp. 105-186. Here, p. 114.

the criminal law of Morocco prescribes a jail sentence of six months to three years, in addition to a fine of 200 to 500 Dirham, for anyone who attempts to convert a Muslim away from Islam, and any discussion of matters of faith between a Christian and a Muslim can be the grounds for a legal accusation coming from a Muslim.¹⁰

3. Defection from Islam in the Koran, Sunna and Sharia

Although the Christian minority may be tolerated with limited rights, the legal situation is entirely different for the person who has been a member of the Muslim society and has, for example, converted to Christianity. In the western world with its separation of church and state, matters of church membership and personal faith remain private issues which are understood as individual issues of conscience. Joining or leaving the membership of any church or religious fellowship is always legally possible. But within the Islamic world, faith and religion are essentially public, community matters with great societal significance. Where Islam is the state religion, a foundational pillar of public order, and the guarantor of the common good for the entire society, religious defection is seen as subversive to an orderly, healthy society. To be regarded as a good citizen one must also be a Muslim; a change of religion is therefore an act of defection from that society and an attack on that society.

3.1 Defection from Islam “in a state of sound mind”

Apostasy (Arabic: *ridda* or *irtidad*) is understood to be the documented, intentional turning away from Islam by a person who was born a Muslim or who had previously converted to Islam. This defection occurs when a person no longer recognizes God and Muhammad as his prophet, while a person is in full possession of his mental powers, while not under compulsion, and while not under the influence of alcohol. Children and the mentally handicapped are not capable of such a defection, and women can only commit this crime under limited circumstances, about which the various Islamic schools of law have differing opinions.

But in practice the conception of what constitutes defection from the faith is not crystal clear. The Koran warns against defection in a more general context, but it does not give a precise definition. The

¹⁰ Forstner, p. 114.

tradition gives clearer formulations; for example, whoever intentionally and consistently neglects the duty of daily prayer is regarded as someone who has given up faith. (It is only normal sin, not apostasy, when the offence is not against one of the five pillars of Islam.) But even the person who consciously and consistently neglects the five pillars will probably not be legally accused of defection; this normally happens only when a member of the Muslim community joins another religion.

3.2 The Koran regarding defection: Wrath and punishment

Unbelief (Arabic: *kufir*) in itself is regarded as a serious sin, since the unbeliever will not submit himself to God. But the person who once submitted himself to God and then turns away again commits a much more serious sin. The Koran addresses the problem of defection from the faith in multiple places and in multiple terms: 482 times the Arabic root *k-f-r* is used; in 19 verses apostasy or turning away from the faith is meant by it. But the Koran never uses the term *ridda* or *irtidad*; furthermore the evil-doers (Arabic: *fasiqun*) are mentioned as well as the hypocrites (*munāfiqīn*) without giving a definition of either of the terms.

“They desire that you should disbelieve as they have disbelieved ... seize them and kill them wherever you find them, and take not from among them a friend or a helper” (4:89).¹¹ Respected Muslim theologians take this verse as a direct reference to apostasy from Islam, a crime so serious that it always requires persecution and the death penalty. For example, the famous Cairo theologian, Muhammad Abu Zahra (1898-1974), who is often quoted in matters of defection from Islam, emphasized a well-known tradition of early Islam that there are three crimes for which a Muslim must be sentenced to death: apostasy, sexual unfaithfulness after entering a legal marriage, and murder which was not a revenge or honour murder.¹²

¹¹ M. H. Shakir. The Koran (translation). Elmhurst, New York: Tahrike Tarsile Qur'an, 1983.

¹² Muhammad Abu Zahra, *al-jarima wa-l-'uquba fi l-fiqh al-islami* (Cairo: part 1 about 1955; part 2, 1965). This citation is from part 1, page 172. See also Ibrahim Ahmad al-Waqfi, *tilka hudud Allah* (Qatar: Islamic year 1397; A.D. 1977), p. 269. Cf. *Der Koran. Arabisch-Deutsch. Übersetzung und wissenschaftlicher Kommentar von Adel Theodor Khoury*. (Gütersloh: Gütersloher Verlagshaus Gerd Mohn, 1991), Vol. 2, p. 94.

Sura 16:106 depicts God's "wrath" and "powerful punishment," which apostates must expect. Sura 2:217 urgently warns against leading Muslims to apostasy, since this crime is "worse than murder." Sura 3:86-91 characterizes the "payment" of the rebellious as receiving the curse of God, mankind, and the angels (Sura 9:68), leaving no possibility of redemption, intercession, or help for the recipients of this curse. Even God will not forgive traitors under any circumstances, for they are unbelievers (Arabic: *kuffar*) and inhabitants of the fires of hell. But even though the Koran describes such punishment in the afterlife, it does not prescribe any particular means of accusation, conviction and punishment in this life.

3.3 The tradition regarding defection: Prison and death

The demand that defectors are to be punished with death primarily arises from the Islamic tradition, not from the Koran itself. Here one finds demands such as, "Whoever changed his Islamic religion then kill him," (Arabic: *man baddala dinahu fa-qtuluhu*).¹³ and "He who secedes from you shall die."¹⁴ According to the reports in the tradition, Muhammad himself crippled and killed some rebels against Islam who had killed some of his people and chased away some of their camels; and he is reported to have done this in a lawless manner. There are also other traditions according to which, in the later part of his life, after the capture of Mecca, his ancestral home, Muhammad killed two apostates, one of whom had killed a Muslim; but the other was guilty of nothing more than apostasy.¹⁵

After Muhammad's death (A. D. 632), there arose a rebellion among some Arab tribes who regarded themselves as loyal to Muhammad but not to his successors; this rebellion (Arabic: *ridda*) was totally crushed with military means on the basis of this understanding of religious apostasy. According to available sources, it appears that the death penalty was applied to people who turned away from Islam in the era after the death of Muhammad.¹⁶ And even today the four Sunni schools of law agree with the Shiite school of law in

¹³ According to the account of one of the most important chroniclers of the tradition, Bukhari. *The Translation of the Meanings of Sahih al-Bukhari* (New Delhi: Kitab Bhavan, 1997), Vol. 9, p. 45.

¹⁴ Schacht, Katl, in *Encyclopedia of Islam*, Vol. IV (Leiden: E.J. Brill, 1990), p. 771.

¹⁵ Schacht, p. 771.

¹⁶ *Der Koran. Arabisch-Deutsch. ... von Adel Th. Khoury*. Vol. 2, p. 95.

demanding the death penalty for people who commit apostasy, blasphemy, or ridicule of Muhammad and the angels; of course, a complete legal process seldom precedes the implementation of such penalties.

3.4 Falling away from Islam in word and deed

Apostasy occurs when a previous testimony of faith is retracted, when a copy of the Koran is publicly defamed, or when “the ninety-nine most beautiful names of God” are ridiculed.¹⁷ Apostasy can also include any type of magic (though in popular Islam, the borders here are quite flexible) or the admiration of pictures of physical objects in a manner to be construed as idol worship. Belief in the migration of souls is also a type of apostasy according to most theological definitions, since such a belief implies disbelief in the resurrection and final judgment. Visiting a church or studying the Bible may also be defined as apostasy.¹⁸ Additionally, whoever suggests that Muhammad had a physical deformity, was incomplete in his knowledge, or denies the sufficiency of his virtue and morality is also considered to be apostate; or at least this is the official opinion of orthodox legal scholars.¹⁹ In the everyday practice of Islam, there are numerous exceptions, so that people are rarely officially accused of apostasy for matters such as neglect of the five pillars, intercessory prayers at the graves of the saints, or taking recourse to magic in a search for healing from illness.

Three of the Sunni legal schools, the Shafi’i, the Maliki, and the Hanbali, claim that women are as equally legally liable as men in matters of apostasy, whereas the more lenient Hanafi school of law (within the Sunni tradition) thinks only men should receive the death penalty for apostasy. The Hanafi and the Shiite schools of law argue (by analogy of Sura 24:2 with Sura 4:15) that a fallen woman (into apostasy) should be convinced of her sin by means of beatings or prison,²⁰ or perhaps even the sale of the fallen woman into slavery.²¹

¹⁷ See ‘Abd al-Rahman al-Djaziri, *kitab al-fiqh ‘ala l-madhahibi l-‘arba’a* (Cairo: 1934/1987-8). Also Ishak Ersen (pseudonym), Arabic to German translator, *Die Strafen für den Abfall vom Islam nach den vier Schulen des islamischen Rechtes* (Villach: Licht des Lebens, 1991), pp. 11-12.

¹⁸ See ‘Abd al-Rahman al-Djaziri, *kitab*, Vol. 5, pp. 422-440, cited by Ersen, p. 12.

¹⁹ ‘Abd al-Rahman al-Djaziri, *kitab*, Vol 5, cited by Ersen, pp. 13-14.

On the theoretical level, there is substantial agreement about the legal requirement of death for apostates; nevertheless in the different Muslim lands there is a wide divergence of concrete practices in regard to converts from Islam to Christianity. In some situations, these converts will come under such pressure that they cannot continue to live in that social environment; in other situations the pressure will not be so severe. But converts always have to fight against pressure, legal disadvantages, difficulties, discrimination, and the bending of the law against them, which exhausts them and can lead to despair, forcing them to “re-convert” back to Islam against their own convictions, as the only apparent way out of their difficulties. These so-called “pretence re-conversions,” in which converts from Islam are reported to have converted back to Islam, and which are sometimes used as evidence against these people when they apply for asylum in a western country, require special attention. In some cases converts seeking for asylum in the West were even told to officially return to Islam in their Islamic country of origin pretending to be Muslims again while keeping their Christian faith deep in their heart. This is an indication of cynicism and a lack of regard for individual decisions of conscience.

3.5 Defection and repentance

A lack of unity reigns among Muslim thinkers regarding all the questions related to warning defectors to return to the Muslim faith and to exactly how Muslim spiritual leaders must perform their duties. The majority of theologians and legal scholars affirm giving a warning and a designated amount of time (e.g., three days) during which the defector has the opportunity to show repentance (Arabic: *tauba*). But once again one encounters the principle that the Muslim who does not allow the defector time to repent should not face legal punishment, since defection from the faith and society is a sin of such extraordinary gravity. The Maliki school of law forbids beating the prisoner during this time for him to reflect on his sin; it also refuses burial in a Muslim cemetery for defectors from the faith who receive a death sentence.²² However, if the defector repents, he is once again to be treated as a Muslim. The question becomes much more difficult if a

²⁰ *Der Koran. Arabisch-Deutsch. Übersetzung und wissenschaftlicher Kommentar von Adel Th. Houry*, Vol. 2, p. 96.

²¹ Schacht, *Katl.* p. 771.

person has defected from the faith multiple times and has repented multiple times. The Maliki and the Hanbali schools of law demand the death penalty on unconditional terms, regardless of a possible additional repentance, whereas the Shafi'i legal scholars are willing to accept any renewed repentance from defection as real repentance.²³

There is also disunity in Muslim theology regarding the question of whether or not a distinction must be made between a defector from the faith who was born a Muslim and the person who defected after converting to Islam. There is also disagreement on the question if repentance for defection should really cause the death penalty to be rescinded. According to the standard Shiite opinion, the death penalty for defectors cannot be rescinded on the basis of their repentance.²⁴ This is one of the reasons why Salman Rushdie's death sentence, which was issued by the leader of the Islamic Revolution in Iran, Ayatollah Khomeini, in the form of a *Fatwa* (legal opinion) on 14 February, 1989, in response to Rushdie's book *The Satanic Verses*, could not be rescinded after Rushdie's public repentance and apology for his writing. Rushdie was born a Muslim (in Bombay) and raised as a Muslim (in England), which according to Shiite theology and legal theory, means that he may never defect from Islam or express himself in a disparaging manner regarding Islam, the Koran, the angels, or Muhammad. If he does, he is guilty of falling into a state of legal apostasy which must be punished by death without exceptions or the possibility of pardon.

²² Abd al-Rahman al-Djaziri, *Kitab*, Vol. 5, pp. 422-440. Cited by Ersen, *Strafen*, pp. 17, 18.

²³ Abd al-Rahman al-Djaziri, *Kitab*. Vol. 5, pp. 422-440. Cited by Ersen, *Strafen*, p. 52.

²⁴ Abdoljavad Falaturi, "Abfall vom Islam," in *Lexikon der Islamischen Welt*, Klaus Kreiser and Rotraud Wielandt, editors (Stuttgart: W. Kohlhammer, 1992), pp. 17, 18.

4. Persecution and punishment: When Muslims become Christians

Although the Sharia unequivocally calls for the death penalty for every apostate, this is only seldom carried out in legal practice. But it can happen in Saudi Arabia, Iran, Pakistan, Yemen, Sudan, Qatar, Mauritania and Afghanistan. In the other Muslim lands, converts will probably face social consequences, not convictions in a court of law.

4.1 Persecution by the family

Even if the problem of apostasy is not addressed by a court of law, the defector will often be expelled from the family and have to flee abroad to avoid an honour killing in which the family seeks to cleanse itself from the “shame” of defection from the family and treason against society. If a case of apostasy comes before a court of law, the crime generally has to be confirmed by two male witnesses.²⁵ In order to evaluate the guilt or innocence of the accused, the judge can simply require the defendant to confess the Muslim creed (“There is no God except Allah, and Muhammad is his prophet.”). A refusal to confess this creed can be accepted as legal proof of guilt. But in order for this refusal to confess the Muslim creed to count as legal proof of apostasy, the person must be “in a state of sound mind.” Sometimes converts to Christianity are declared to not be of sound mind, so that they receive a status of being “mentally impaired.” Obviously this is not what we mean by “freedom of religion” in the West, but it may spare the life of the accused.

The convert must not have been under compulsion or under the influence of alcohol at the time of his desertion from Islam; otherwise his legal culpability is reduced. Children and the mentally impaired cannot be accused of apostasy, and women can be accused only under limited circumstances. Three of the main Sunni schools of law, the Shafi’i, the Maliki, and Hanbali, do not draw a principal distinction between the religious defection of a woman and that of a man. The Maliki school of law demands a postponement of sentencing for a woman who is guilty of religious defection if she happens to be pregnant or nursing at the time of conviction. This postponement lasts until the child is two years old. The Hanafi, which is the fourth Sunni

²⁵ Khoury, Vol. 2, pp. 95-96.

school of law, demands the death penalty in the case of religious defection only for male Muslims.

When Muslims become Christians, they mostly have to fear punishment from their own family (or from neighbours), since this punishment can easily come as soon as they announce their Christian faith, well before any legal hearing or public trial can occur. Additionally, public legal hearings attract undesired negative attention from the West in a way that is avoided by private executions, which are only reported as a murder statistic. Of course, an apostate is supposed to receive a fair trial, but in practice, a loyal Muslim who murders an apostate before the person has the opportunity to repent or to receive a public trial is not regarded as guilty of murder. He will only very rarely be officially accused of murder, even though he has broken the law. The “felt sense of justice” requires the death of the apostate; for that reason, the attacker could at most be criticized for excessive haste and for not waiting for an orderly application of the due process of law; but he will not be accused of murder, since killing an apostate is not a crime in itself.²⁶ At his own discretion, a judge can give the killer a legal warning or a minor penalty,²⁷ but this is only in theory; in practice, the killer is usually free from any criminal charges and will not have to be accountable for his actions in a court of law.²⁸

The situation can come to a similar resolution when an apostate person is brought to court but is not sentenced to death. It is not uncommon for converts to be murdered after they have been acquitted in a court of law; one of the relatives, or perhaps even an unrelated person, sees himself as obligated to carry out the prescriptions of the divinely given Sharia if human authorities have “falsely” set the apostate free. And in the opinion of many Muslim religious and legal authorities, the murderer of an apostate, even after the acquittal of the apostate, is only carrying out the demands of justice and is therefore

²⁶ According to Shaheed, the Maliki school of law is the only exception to this generalization. They regard the quick, private execution of apostates as a serious crime that requires payment of a fine. See Abdul Qader ‘Oudah Shaheed, *Criminal Law of Islam*, 3 volumes (New Delhi: International Islamic Publishers, 1991), vol. 2, p. 258.

²⁷ See Erwin Graf, “Die Todesstrafen des islamischen Rechts,” in *Bustan* (Wien), Volume 4/1962, pp. 8-22; and Volume 1/1965, pp. 9-22. Here, p. 15.

²⁸ This is confirmed by the Islamic legal dogmatician Shaheed. See his *Law*, Vol. 2, p. 257.

not guilty of a crime. For example, the Islamic legal theorist Abdul Qader ‘Oudah Shaheed emphasizes that the implementation of the death penalty for apostasy is not only a general law but also a duty of every Muslim which cannot be abrogated.²⁹ *In legal theory only the state (in the person of the judge) is entitled to take the life of the offender, but in practice the life of the apostate can be easily taken by anybody holding the conviction that Sharia law must be followed under every circumstance.*

In spite of this clear legal determination coming from the Sharia, many converts away from Islam are not executed. They may be able to flee from the impending punishment, or they may live in a societal situation in which those threatening the punishment are not implementing the punishment (perhaps because of fear of the other family, because of outside political pressure, or because they do not want to take the law into their own hands). But in spite of escaping execution, the convert may have to endure significant social consequences.

4.2 Loss of family, home and possessions

Regardless of the possible eventual execution of the convert, there are almost always other serious steps which are taken against him. The confiscation of his possessions is one possibility. The different schools of Muslim law present different opinions on what to do if the person is not executed; for example, should the person forfeit all his possessions or only those possessions acquired after the former Muslim became an apostate?³⁰ And according to the Hanafi system of law, the apostate should have his possessions restituted if he converts back to Islam. Three of the schools of law say the convert’s possessions must go to the state at the time of his death.³¹ Usually the betrayer of the faith and community will be fired from his job before any legal trial, since social pressure will require that no one employ him. The family of the convert will seek to lead the person away from his new faith by means of conversation, threats, beatings and magic. As a second step, a Muslim spiritual leader (a sheikh) may be summoned, who will seek to convince the person to reconvert back to Islam. On the one hand, financial incentives for re-conversion may be offered; on the other hand, failure

²⁹ Shaheed, *Law*, Vol. 2, pp. 258, 259.

³⁰ Shaheed, *Law*, Vol. 3, p. 59.

³¹ Abd al-Rahman al-Djaziri, *Kitab*. Vol. 5. Cited by Ersen, *Strafen*, p. 23.

to return to Islam may lead to a diagnosis of psychiatric illness and assignment to a psychiatric clinic. But if the convert endures or evades all of this “treatment” without returning to Islam, he may have to flee or be sent abroad and will probably be expelled from the family. The family may declare the person to be dead and forbid all further contact.

If the convert is married, his marriage is automatically annulled, since marriage to an apostate is an illegal marriage. By changing his religion, a man is suddenly guilty of adultery with his own wife, and if she does not quickly separate from him, she may be accused, or according to Sharia law, even stoned for her adultery, since a Muslim woman may not be married to a non-Muslim man. If he returns to Islam, it will be necessary for them to remarry with a new and legal wedding ceremony. The convert from Islam automatically forfeits his children, since a non-Muslim may not raise Muslim children. Further important but less consistent results may also occur with regard to the loss of inheritance rights and the loss of property for the defector.³² Normally a convert from Islam is stripped of his property, since the legal system proceeds on the principle that no non-Muslim may keep Muslim property or receive an inheritance from a Muslim. The person is regarded as dead within his homeland, and therefore his assets are assigned to his heirs.³³

4.3 Execution of apostates

Muslim theologians demand that the apostate must simply be decapitated with a sword, without any additional torture or affliction, once his guilt is proven. However, the death penalty may also be carried out in another manner, for example, by means of crucifixion. A tradition which is said to originate from Muhammad’s favorite wife, Aisha, prescribes that apostates should be killed, crucified, or exiled.³⁴ The second Caliph ‘Umar is reported to reputedly tie apostates to a post and then run them through with a lance.³⁵ Otto Spies mentions

³² Koran, Khoury translation, vol. 2, pp. 97-98.

³³ Gräf, *Todesstrafen*, p. 21.

³⁴ For detailed citations see Otto Spies, “Über die Kreuzigung im Islam,” in *Religion und Religionen: Festschrift für Gustav Mensching zu seinem 65. Geburtstag* (Bonn: Ludwig Röhrscheid Verlag, 1967), pp. 143-156; here especially p. 145. The sources cited by Spies include Nasa’i, *tahrim ad-dam*, Book 2, p. 169; *Qasama*, Book 13; and Abu Dawud, *Hudud*, Book 1.

³⁵ Spies, *Kreuzigung*, p. 145.

examples of crucifixion being practiced by Muslims. The most famous of these crucifixions is the execution of the mystic al-Hallaj, who was executed in Baghdad in A.D. 922 for heresy because of his unorthodox opinions.³⁶

However, crucifixion is not only to be used for apostates. Muslim law also prescribes this method of execution for crimes such as felony street robbery which occurs outside a town or village (Arabic: *qat' at-tariq*) if the robbery is conjoined with a murder. And rebels, rioters and heretics should be crucified.³⁷ But there is a difference of opinion among legal authorities about whether the criminal should first be executed and his body displayed publicly as a deterrent, or whether the criminal should be executed by means of being crucified while still alive.

Islamic legal theory assigns the heretic (Arabic: *zindiq*) to a position very similar to that of the apostate; according to the Islamic legal definition, the heretic is the person who pretends to be a Muslim but in reality is not a believer. The Maliki and Hanbali schools of law demand his execution, and that without offering the criminal the opportunity to repent and independent of whether or not he came to repentance before his execution; they regard the heretic as equivalent to the “hypocrite” (Arabic: *munafiq*), who is very specifically condemned by the Koran. In this sense, the punishment of the heretic is more severe than that of the apostate. However, if the heretic repents before his execution, he has the privilege of burial in a Muslim cemetery as a believer, for he is then regarded as a believer who was executed for the sacrilege of acting like a “hypocrite”, not for being an unbeliever.³⁸ The Hanafi and Shafi'i schools of law teach that the heretic should not be executed if he repents.³⁹

5. Moderate Muslim conceptions

Along with the generally applicable assertions on the topic of human rights in the Islamic world, there is one development that must not be

³⁶ Spies, *Kreuzigung*, p. 145 ff.

³⁷ Examples from Arabic literature are provided by Spies, *Kreuzigung*, p. 150 ff.

³⁸ ‘Abd al-Rahman al-Djaziri, *kitab*, Vol. 5, pp. 422-440. Cited by Ersen, *Strafen*, p. 25.

³⁹ ‘Abd al-Rahman al-Djaziri, *kitab*, Vol. 5, pp. 422-440. Cited by Ersen, *Strafen*, p. 27.

neglected; within the Islamic world, there is an intensive discussion underway which is hardly perceived in the western world. It is pertinent that within the Muslim lands there is also a more modern or secular perspective on human rights which is sometimes heard. This point of view would allow a greater harmonization with western conceptions of human rights and, to some degree, begin to regard matters of faith as an individual matter of conscience that does not have so much societal significance that defectors and apostates must be judged by the society or the state. Of course, officially and openly representing such a liberal or modern point of view is especially difficult within a society ruled by the Sharia, for the Sharia is most explicit about demanding the death penalty for those guilty of apostasy, and the public rejection of the death penalty for apostasy can itself be regarded by Islamists as an act of apostasy worthy of the death penalty. Such a modern or western conception of human rights implies the rejection or criticism of the full application of the Sharia.⁴⁰ The person who supports western notions of human rights may be regarded as a western anti-Islamic advocate or even a heretic himself.

It is also extremely difficult for moderate Muslim theologians and legal scholars to honestly combine two points of view which seem to most to stand in total contradiction. On the one hand, they must accept the unlimited application of the Koran, the authoritative Muslim tradition, and the Sharia in order to properly maintain the foundational consensus of the Muslim world; on the other hand, they must try to derive an expanded view of human rights from those authoritative texts and traditions. The extreme difficulty of this intellectual effort arises because of the quite detailed and explicit instructions regarding punishment for apostasy (as well as other human rights concerns such as the treatment of women) in all three authoritative sources, the Koran, tradition, and the interpretation of legal scholars of the 7th to the 10th century A.D., which form the Sharia. These authoritative sources allow very limited room for more liberal or flexible interpretations or applications of their foundational beliefs. At the present time, it would appear that these moderate

⁴⁰ On this topic see Lorenz Müller's discussion of "Muhammad al-Ghazali im Zusammenhang mit dem Prozeß über die Ermordung des berühmten ägyptischen Literaten Faraj Fouda" in *Islam und Menschenrechte: Sunnitische Muslime zwischen Islamismus, Säkularismus, und Modernismus* (Hamburg: Deutsches Orient-Institut, 1996), p. 150. These distinctions are those of Lorenz Müller.

Muslim points of view will at least not quickly gain wide acceptance within the Muslim world. Quite to the contrary, there is very noticeable and growing influence of rigorous Islamists in several countries and institutions, partly because of support from some countries and well-financed organizations whereas more and more advocates of human rights and religious freedom live and teach at universities in western countries. The very strict and politically applied interpretation of the Koran and the Sharia seems to be increasing at the present time, while there are also a considerable number of human rights activists and movements which at the same time fight for secularly defined human rights in Muslim countries.

6. Comments

It is difficult to escape from some very worrying conclusions after this review of Muslim thought on human rights. It is surely better to honestly confront these significant intellectual problems and not try to avoid them. Understanding may help reduce the practical societal and political problems that can cause so much suffering.⁴¹

1. There is a massive gulf between the classical Sharia position and western notions of human rights, and the Islamic conception of rights is so deeply rooted in the Koran, the tradition, and the Sharia, that any significant and rapid rapprochement is hard to imagine.
2. The differences between Sharia-defined and western notions of human rights are particularly clear in matters of freedom of religion, specifically the freedom of a person to change his or her religious beliefs and affiliation. According to any standard western notion, this right is fundamentally denied by classical Islamic theology and legal theory to any Muslim who wishes to change to a different religious loyalty.
3. When Muslim regimes come under diplomatic pressure to follow western definitions of religious freedom, they may perceive this as pressure to act as if they are not Muslims. When their political leaders give in to such pressure, they may be perceived by their people as being compromisers with western standards or hypocrites, a clearly

⁴¹ I thank Prof. Dr. Thomas K. Johnson, Prague, for his contribution to these comments.

defined religious category of sinners, who are themselves subject to serious threat.

4. As long as the history of Islam, Muhammad's example and the Sharia will not become a subject of a critical discourse, the attempt to develop a form of democracy which fully protects human rights within a land with a Muslim majority and tradition will face extreme difficulties, since much of the population will regard the government as disrespecting Islamic law because it does not meet the traditional Islamic definition of a legitimate government by not promoting the Sharia and thus enabling Muslims to live a life according to religious law.
5. If the punishments for apostasy and hypocrisy which are demanded by the Koran, the authoritative Muslim tradition, and the Sharia are not imposed by a court of law, these punishments can sometimes be expected to be imposed by the family or other members of the society affected. To outside observers, this may appear to be an unsolved murder.
6. Western human rights organizations which want to protect the rights of individuals within Muslim societies may need to give more serious consideration to assisting "apostates" from Muslim societies to relocate into other countries. Whether these people simply emigrate or officially receive asylum, some can expect to be regarded as "dead" to members of their families and to others from their original community.
7. Countries like Turkey and Indonesia, which have very large Muslim populations, but are attempting to maintain a separation of religion and state as part of a modern democracy will face significant long-term challenges.
8. When demographic transitions within the western democracies result in a very large Muslim population, very serious educational efforts will be required to successfully communicate a western understanding of human rights in order to gain acceptance by immigrants.

The human rights dilemma we face is significant. A western understanding of human rights leads us to affirm that orthodox Muslims have a moral and legal right to the full practice of their religion within western democracies or anywhere in the world. This includes the public, social practice of their belief system. Yet the full

practice of orthodox Islam includes a negation of one of the most basic human rights, that of the freedom to change one's religion. And the enforcement of the demands of the Sharia by Islamists within western democracies will be carried out within but also outside the framework of established courts, in a manner that will be understood by non-Muslims as a crime; this already occurs within Muslim countries. If the Muslim portion of a population in a non-Muslim country grows significantly, the western societies should be prepared to defend their case as there are already some voices of Muslim groups which claim the application of Sharia law in western societies. The dilemma is easy to state; solving it may not be so easy.

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