

APOSTASY in ISLAM

لَا إِكْرَاهَ فِي الدِّينِ

*A Historical &
Scriptural Analysis*

TAHA JABIR ALALWANI

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A Historical and Scriptural Analysis

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Based on the original Arabic translated by
Nancy Roberts



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FOREWORD



Of knowledge, we have none, save what
You have taught us. (The Qur'an 2:32)

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (IIIT) presents this scholarly work on the topic of *al-riddah* (apostasy in Islam) to cast new light on the issue. The author Taha J. Alalwani is an internationally known scholar and expert in the fields of Islamic legal theory, jurisprudence (*fiqh*), and *usul al-fiqh*.

The subject of apostasy is arguably one of the most controversial to have afflicted the Muslim world throughout its history. What is the legally prescribed penalty, if any, for apostasy, and how does this relate to the demand for religious tolerance as stipulated in verse 2:256 of the Qur'an "There shall be no compulsion in matters of faith"? As the historical debate between Muslim scholars drags on, so the controversy drags on, with Islamic jurisprudence being accused of a flagrant disregard for human rights and freedom of expression. Apostasy continues to be the focus of much damaging media coverage today.

The book examines debates surrounding the issue in careful detail. Disputing arguments put forward by proponents of the death penalty, the author contends that evidence from the Qur'an and the Sunnah does not support the implementation of a capital punishment for the sin of *al-riddah*. Rather, textual study points to freedom of belief including the act of rejecting the faith. Furthermore, it is only within a specific and politically charged, particularly in terms of national security, context that the question of a penalty arises, because at this point the act of apostasy becomes a crime in addition to being a sin.

As well as rigorously examining the Qur'an and the Sunnah, the author also investigates the standpoint of the various juristic schools of thought, analyzing their views on apostasy and the evidence cited in support of punishment; important because those Muslim jurists who have claimed that the apostate should be put to death have done so based not only on their own understanding of the verbal Sunnah of the Prophet (SAAS)[§] but also on "scholastic consensus". The author makes clear that there has in fact been no such consensus concerning the existence of a legally prescribed punishment, set down in the Qur'an and clarified in the Sunnah, for apostasy in the sense in which we are using this term today. What becomes quickly apparent is that analysis and debate have become confused with the idea of a politicised exit, such that the nature of the crime which jurists often cite is in fact not the one we are solely concerned with – one of the pure sin of apostasy or the rejection of Islam after having accepted it. In fact their discussions primarily centre around a compound crime involving political, legal and social elements, such that an apostate's change of religion or religious belief has adverse affects on his/her actions toward the security and well being of Muslim society and the systems and laws under which it operates. Likewise, the author does not advocate allowing the apostate to gather about him/herself a community of like-minded people striving to effect damaging change to the tenets and principles of the Islamic faith, that is within the Muslim society. The whole issue then becomes one of context, such that when apostasy threatens harm to the Muslim community and/or plots to destabilize society, it then moves into the realms of an offence akin to treason, and subject to capital punishment.

Islam teaches that human beings possess the freedom to choose the religion by which they wish to worship God. It is a freedom which, the author emphasizes, Allah (SWT)^{§§} has entrusted us with, and which serves as the basis for human responsibility; and it is a choice which will be judged in the hereafter, not in this life. One of the most interesting aspects to which he points as evidence that punishment for the sin of apostasy (in the afterlife) rests with God is that of repetition:

[§] (SAAS) – *Salla Allahu 'alayhi wa sallam*. May the peace and blessings of God be upon him. Said whenever the name of Prophet Muhammad is mentioned.

^{§§} (SWT) – *Subhanahu wa Ta'ala*: May He be praised and may His transcendence be affirmed. Said when referring to God.

Behold, as for those who come to believe, and then deny the truth, and again come to believe, and again deny the truth, and thereafter grow stubborn in their denial of the truth – God will not forgive them, nor will He guide them in any way. (4:137)

A study of this kind requires a clear methodology and a strong analytical, evidence-based approach. The author takes into consideration traditional approaches to the study of the Islamic textual sciences and other fields of knowledge, giving primary importance to the Qur'an, followed by the Sunnah, the actions of the *Sahabah*, and finally scholastic interpretation.

It is hoped that this work widens discourse, stimulate debates, and hopefully paves the way for further research. Doubtless readers may agree with some of the issues raised, and disagree with others, but it is hoped that overall they will benefit from the issues explored and the perspectives offered.

Where dates are cited according to the Islamic calendar (hijrah) they are labelled AH. Otherwise they follow the Gregorian calendar and labelled CE where necessary. Arabic words are italicized except for those which have entered common usage. Diacritical marks have been added only to those Arabic names not considered contemporary.

The IIIT, established in 1981, has served as a major center to facilitate serious scholarly efforts based on Islamic vision, values and principles. The Institute's programs of research, seminars and conferences during the last thirty years have resulted in the publication of more than four hundred titles both in English, Arabic and other major languages.

We would like to express our thanks to the translator Nancy Roberts for the quality of her work, as well as to the editorial and production team at the IIIT London Office. They include Shiraz Khan, Dr. Maryam Mahmood and Tahira Hadi. Special thanks go to Dr. Iqbal Unus for his critical reading and careful abridgment of the original manuscript. Dr. Unus' guiding hand proved invaluable in producing a clearly focused and condensed text for which he takes full credit.

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INTRODUCTION

This present study is based on a more extensive study on this important subject and includes two discussions of particular importance. One of these is a chapter which deals with the words spoken by the Prophet as transmitted to us in relevant Prophetic hadiths and traditions*¹ attributed to his Companions. This discussion serves as a follow-up to the preceding chapter about apostasy in the practice-based Sunnah, that is, in the Prophet's actions. In this way, all of the evidence taken together serves to evaluate if there is or there is not a clearly specified, legally prescribed punishment in Islam for the crime of altering one's religious beliefs so long as no other criminal action is associated with it.

One section of the book is devoted to a discussion of the various juristic schools of thought, particularly in view of the fact that the majority of Muslim jurists have based their claim that the apostate must be put to death on the verbal Sunnah and consensus. For this reason, it is necessary to examine these schools of thought one by one and gain a detailed familiarity with their claims, as well as the evidence on which such claims are based. Upon closer examination, it became apparent that the crime with which these jurists were dealing was not the one with which we are concerned here. That is to say, they were discussing a compound crime which involved political, legal and social elements such that an apostate's change of religion or religious belief was the outcome of a change in his attitude toward the Muslim community, and hence, toward the society, the political leadership, and the systems and laws which the community

had adopted. In short, it was the result of a complete change of affiliation and loyalty.

In discussing the claim to a consensus concerning the necessity of putting the apostate to death, this study aims to make clear that there has, in fact, been no consensus concerning the existence of a legally prescribed punishment, set down in the Qur'an and clarified in the Sunnah, for apostasy in the sense in which this term is being used. Rather, in Islam, human beings possess the freedom to choose the religion by means of which they will worship God. It is a freedom with which God Almighty has entrusted us, and it is this freedom which serves as the basis for human responsibility. After all, someone who has no choice is outside the realm of accountability and bears no responsibility for what he or she does. To the extent that one's freedom of choice is diminished, one's responsibility is likewise diminished. Hence, everything that God has enjoined upon human beings or forbidden to them, He has bound to their God-given abilities, potentials and freedom of choice: "God does not burden any human being with more than He has given him – [and it may be that] God will grant, after hardship, ease" (65:7).

God Almighty has thus made what human beings seek subject to their free wills:

And say, "The truth [has now come] from your Sustainer; let, then, him who wills, believe in it, and let him who wills, reject it." Verily, for all who sin against themselves [by rejecting Our truth] We have readied a fire whose billowing folds will encompass them from all sides; and if they beg for water, they will be given water [hot] like molten lead, which will scald their faces; how dreadful a drink, and how evil a place to rest! (18:29)

As such, He has made the human will fully effective in the realm of choice:

Unto him who cares for [no more than the enjoyment of] this fleeting life, We readily grant thereof as much as We please, [giving] to whomever it is Our will [to give]; but in the end We consign him to

[the suffering of] hell, which he will have to endure disgraced and dis-owned! But as for those who care for the [good of the] life to come, and strive for it as it ought to be striven for and are [true] believers withal – they are the ones whose striving finds favor [with God]! (17:18–19)

In the realm of human responsibility, God Almighty has made a distinction between the punishment merited by an error and that which is merited for a deliberate act, just as He draws a distinction between an error resulting from negligence and one that results from a conscious intention, and between persisting in an error and continuing to commit it, and turning away from it and repenting of it. All these things, among others, confirm the freedom enjoyed by human beings with respect to their wills, intentions, thoughts, expressions and actions. This will become increasingly clear in the course of this study, which is presented here as an example of the type of serious review needed in order to purify our heritage of the accretions with which it has become burdened over the course of certain historical periods and due to a variety of causes.

METHODOLOGY

The methodology most appropriate to this study is one which combines the conventional philosophical approach, the analytical approach, and the inductive, historical approach, yet without disregarding the traditional approaches to the study of Islamic textual sciences and other fields of knowledge which have been adhered to since the era in which the Islamic sciences first began to be recorded.

In the realm of Qur'anic interpretation, this study relies on what has been established by Muslim scholars who specialize in this field based on its particular principles and methods. Similarly, in weighing and judging hadiths, it adheres to the methods used by hadith scholars. In the realm of basic principles and foundations, it deals with the Qur'an as the foundational source for all rulings: "Judgment rests with God alone" (12:40). In other words, the principle of the authority of Scripture is considered paramount. The

Sunnah it is treated as the source which clarifies the meaning of the Qur'an in a binding manner. At the same time, claims to the existence of a consensus on matters concerning which it has been established that there was disagreement among the Companions are not accepted. After all, 'consensus' is the consensus of the Companions.

In seeking to determine the meanings of linguistic terms which appear in the Qur'an, the first criterion will be the Qur'an's own usage of such terms. The second criterion will be the Prophet's explanatory statements in the Sunnah, and the third will be the Arabs' customary usage of such terms in their various dialects, literary styles and rhetoric. By following this order of priority, one ensures that Arabs' linguistic usages of terms are not allowed to determine the meanings of the Qur'an. More broadly speaking, this study observes the governing values and intents of Islamic law in their capacity as universals, that is, as sources of light by which the path is illumined for those seeking the truth in their attempts to determine the meanings of particular texts.

THE STUDY'S LIMITATIONS AND FUNDAMENTAL PURPOSE

When jurists engage in the practice of independent interpretation, or *ijtihād*,* they generally begin by extracting (a) the basis of the legal ruling to be determined, (b) isolating or distinguishing this basis from other possible bases, and then (c) verifying this basis (*tahqiq al-manat*). When the issue of concern is one around which controversy or disagreement exists such that there are relevant texts from the Islamic written corpus which appear to be contradictory or in opposition to one another, such scholars begin by "clearing the playing field", as it were, that is, by clarifying what their purposes are, and what they are not.

The fundamental issue addressed in this study is individual apostasy, that is to say, a change in an individual's doctrinal beliefs and whatever modification to which this change leads in thought, conceptions and behavior. In such a case, the individual concerned has not associated the act of changing his doctrinal beliefs with rebellion

against the community or its statutes, nor against its legitimate leadership, whether political or religious. He has not engaged in highway robbery or taken up arms against the community; nor has he joined the community's enemies or betrayed the community in any way. All he has done is to change his doctrinal position as a result of uncertainties and factors which have led him to doubt the community's overall doctrine or some of its pillars or foundations. Unable to resist such doubts and suspicions, he has succumbed to them and allowed them to influence him. Yet rather than becoming a public advocate of his newly adopted position, he has kept his apostasy to himself.

Granting that such an individual has indeed committed apostasy and denied the truth of Islam, the question is: Has God established death as the legally sanctioned punishment for such a person, with or without the community's first having urged him to repent? And is it, therefore, the duty of the Muslim community, represented by its rulers, to carry out this penalty by putting him to death for no reason but that he has changed his beliefs? And is this the case even if the change in this person's beliefs has not been accompanied by any other crime such as those we have mentioned? If some member of the Muslim community were to kill this individual, would he be exempt from punishment or retaliation for anything other than having taken the law into his own hands? Similarly, is it the Muslim community's duty to compel this person and others like him to return to Islam by force? Or does the Qur'an deny the legitimacy of such compulsion? Further: Has there been unanimous agreement since the dawn of Islam that it is the Muslim community's duty to put the apostate to death? Or has this view been the subject of disagreement that has not been brought sufficiently to light?

If one accepts the view that the apostate must be put to death, does this mean that the mere denial of Islam is sufficient legal cause for carrying out the death penalty? In other words, is apostasy to be viewed as a mere departure from Islam, or as an act of aggression against it? Do the majority of those who support the death penalty for apostasy view it as a political crime, or as belonging to the category of felonies, in which case its punishment will take on the character of a legally prescribed penalty? Moreover, assuming that it is a

legally prescribed penalty and that, as is stated explicitly in authoritative Islamic texts, the legally prescribed penalties serve to atone for a person's sin, then is the death penalty for apostasy to be considered a form of purification or atonement?

These are the basic questions addressed in this study. In so doing, this study adheres to the methodology outlined above, asking the Most High for guidance to the most truthful point of view, for it is He alone who grants success.

The aim of this study is to provide a model for the type of revision by means of which one can place Islamic tradition under the authority of the Qur'an, thereby bringing it into full conformity with Qur'anic teachings.

I

IS APOSTASY A CAPITAL CRIME?

The majority of Muslim scholars have closed the door to discussion of this question with the sword of ‘consensus’. The claim to such a consensus was adopted long ago as a means of preventing the review of certain critical issues, such as this one, despite the existence of disagreement over the Islamic legal ruling on apostasy (*al-riddah*) during the first three centuries after the dawn of Islam. Yet despite this lack of consensus during the early days of Islam, those who maintain the existence of a legally prescribed death penalty for apostasy in Islamic law have claimed that such a consensus existed. Is so doing, they have sought to divert attention from the fact that ‘Umar ibn al-Khattab, Ibrahim al-Nakh‘i, Sufyan al-Thawri and others did not support such a penalty. In this way they have sought to forestall any rethinking of this penalty on the part of later thinkers. After all, who would dare to reconsider a legal ruling on which all the scholars of the entire Ummah are in agreement?

Is apostasy to be classified as an expression of one’s personal opinion, or as an act of aggression against the community and its collective rights? Is there really a consensus on the necessity of killing someone who apostatizes from Islam? In dealing with acts of apostasy, should priority be given to the individual’s right to express his personal views and beliefs, or to the community’s right to preserve and protect those things it holds most sacred?

APOSTASY IN THE NEWS

In the year 2006, the eyes of the entire world were riveted on a case of open apostasy involving an Afghani citizen by the name of Abd

al-Rahman Abd al-Mannan. After going to work for a Christian relief agency operating in the city of Peshawar, Pakistan in 1990, this man had been influenced by his coworkers to become a Christian. In 1993 Abd al-Rahman traveled to Germany in an unsuccessful attempt to obtain political asylum there. He then sought political asylum in Belgium, again without success, after which he returned to Afghanistan in 2002. During this period of time, his Muslim wife had asked for a divorce due to his conversion, which was her undisputed right, and her request was granted.

Abd al-Rahman did not deny his conversion, and there ensued disputes between both he and his former wife over custody of their daughters, with the wife claiming that Abd al-Rahman was incompetent to raise them for fear that he might convert them to Christianity. A number of evangelistic tracts and books, in addition to copies of the New Testament, were found in his house, and in February, 2006, protracted litigations between him and his wife ended with his being imprisoned. No sooner had he been incarcerated than the world media transformed him into a long-awaited saint who was about to be martyred for Christ. This was followed by intervention by US President George Bush, Secretary of State Condoleezza Rice, Italian Prime Minister Silvio Berlusconi and others, who pressured Afghani President Hamid Karzai to release him and send him to safety in Italy, where rightist Berlusconi was facing the most important electoral challenge in his political career against the leftist alliance. Karzai pressured the court to release Abd al-Rahman on the pretext that he was mentally deranged and not fit to stand trial for his actions. He was released on March 27, 2006 and arrived in Italy on March 29, where Berlusconi granted him political asylum, thereby to appear before his voters as the protector of liberty, humanity and the holy cross.¹

CONSTANTS AND VARIABLES

Every nation on earth has a set of constants or unchanging values which it is careful to preserve and which it attempts to hedge about with a wall of guarantees and protections lest they be violated,

altered, distorted, mocked or ridiculed. Perhaps the most important shared value that all nations acknowledge as a constant and which they do their utmost to protect is that of national identity. The identity of a nation is its very being, and as such, it is something it can never relinquish, and concerning no aspect or component of which it can be tolerant or lax. The identities of nations may differ in their elements and components. Hence, what one nation views as part of its identity may not be viewed thus by another nation. However, that which every nation shares in common with all other nations is the necessity of respecting that nation's identity and preserving it with all its component elements. It follows, then, that every nation sees it as its duty to spare nothing, however precious, for the sake of preserving its identity with all that goes to make it up.

Prior to the age in which we live, nearly every nation considered its religion to be the most vital component element of its identity. This included even pagan nations such as the Roman Empire both before and after the adoption of Christianity,² the Babylonians, and other civilizations and nations, particularly those whose existence, structure and identity were tied up with their having adopted and identified themselves with a specific religion.³ This being the case, Muslim scholars were not far from the mark when they counted religion among the five essential human needs, viewing it as the basis for numerous important rulings in Islamic law; foremost among such rulings was that concerning jihad, which is viewed as a means of defending and protecting the Islamic religion on the national level.

The legally prescribed punishment for apostasy, according to some, applies on both the individual and collective levels, since it is said to be based on the need to protect the religion from those who would seek to do it harm, manipulate it, or rebel against it. In issuing rulings to this effect, Muslim scholars have perceived no contradiction between the unanimously recognized principle of religious freedom as enshrined in the Qur'an's declaration that "There shall be no coercion in matters of faith," and their affirmation of a death penalty for apostasy. Through the various periods of our Islamic history, this affirmation has constituted the prevailing point of view. Consequently, the views of prominent early scholars who disagreed

with the overwhelming majority – including individuals of weight and influence the likes of the Companion ‘Umar ibn al-Khattab (martyred in the year 23 AH/644 CE), Ibrahim al-Nakh‘i (d. 196 AH/811 CE), and Sufyan al-Thawri (d. 161 AH/777 CE), as well as other illustrious figures – did not receive publicity or wide circulation. Given this fact, it was easy for the transmitters of Islamic jurisprudence to promote the claim that there was a ‘consensus’ concerning the ruling which had been adopted by the majority of fiqh scholars, namely, that the apostate must be compelled to return to Islam on pain of death. The perceived purpose behind this ruling was to protect the religion from attempts to undervalue it or to undermine its function as the foundation on the basis of which the Muslim nation came into being, the foundation of the state’s legitimacy, and the source of Islamic doctrine, law, and all related life systems within the Muslim state. It comes as no surprise, then, that this ruling has come to be widely accepted as one of the unchanging, agreed-upon legally prescribed punishments, and that as a consequence, the thought of discussing it has been rejected out of hand by many. After all, how can one open up for reconsideration something that has been the subject of unanimous agreement among Muslim scholars?

Were it not for the challenges of contemporary civilization, which has opened up virtually everything to critique, revision and analysis, no conversation would ever have opened up on this topic. Given the fact that this ruling conflicts with the human right to choose the doctrine in which one will believe and the religion one will profess, and to express one’s beliefs freely without compulsion, a discussion of it was originally opened by reformers Jamal al-Din al-Afghani, Muhammad Abduh, Rashid Rida⁴ and others. These reformers had become aware of the concern of who said: Since Islam teaches the necessity of forcing an apostate to return to Islam on pain of death, this means there is compulsion in Islam and a disregard for the freedom of belief and expression. The reformers’ responses to this concern were varied. Al-Afghani wrote his famous book, *Al-Radd ‘ala al-Dahriyyin* as an affirmation of the need for Muslims to obey the Qur’anic injunction to debate peaceably with those who disagree

with them, respond to their claims, and confute the doubts or arguments they raise with Islamic proofs and evidence.

However, the matter was not settled at that time. On the contrary, it remained a matter of controversy over which tempers flared whenever anyone raised it anew or even made reference to it. Some contemporary scholars spoke in a whisper of points of view that went against the prevailing perspective, according to which the death penalty for apostasy was a matter of consensus. Such scholars also expressed their doubts concerning the evidence others had cited in support of the prevailing view as a means of making the issue appear to be settled and no longer open to discussion. It was reported, for example, that Shaltut (d. 1963 CE) was among the skeptics, followed by Muhammad Abu Zahrah (d. 1974 CE) and others.⁵ However, these scholars did not go public with their point of view. Rather, they chose to remain silent, or to content themselves with speaking in a whisper and repeating what their forebears had said before them, namely, “I know things which, were I to speak of them, such-and-such and such-and-such would be my lot ...” Thus it was that the file remained open, yet closed. This phase was followed in 1985 by the execution of Mahmud Muhammad Taha in the Sudan when Jafar Numayri, president of the Sudan at that time, announced the enforcement of the rulings laid down in Islamic law. At that time, Dr. Hasan al-Turabi – who holds a point of view on the legally prescribed punishment for apostasy which is well-known among his students, supporters and close associates, but which he had not declared publicly at that time – was the Sudan’s public prosecutor. The Sudanese court, headed at that time by Judge al-Kabbashi, issued a verdict condemning the 79-year-old man to death, and the execution was carried out without any objections being raised.

When Faysal ibn Musaid murdered his paternal uncle, King Faysal in 1974, he was sentenced to death by the sword “as the penalty for apostasy.” The man had confessed to the crime of premeditated murder, which was sufficient in and of itself to justify his execution. Hence, scholars and judges connected to the case had no need to cite any other crime on the basis of which to put him to death; even so, mention was made of his apostasy as being among

the legal reasons on which the verdict had been based. At that time there was not much debate over the issue of his apostasy and whether it was to be considered the principle crime, or a secondary crime to that of murder. Apparently, no mention of this question was made in the court's verdict.

This was followed by the Salman Rushdie affair, the resulting debate, and the various fatwas that were issued in this connection, including the famed fatwa handed down by Imam Khomeini (d. 1989) declaring it lawful to take Rushdie's life. This case entered the international spotlight, and talk circulated in the West about how human rights are not respected in Islam and among Muslims, including the right to free expression and to the choice of religious belief and profession. In short, Islam was declared hostile to the highest of all values in the contemporary West, namely, freedom.⁶ Many of the fatwas and books that came out in this connection were reminiscent of the positions that had been taken by Muslim jurists in the past, and the arguments and evidence they had cited in support of the claim that according to Islamic law, the apostate must be put to death.

Then came the case surrounding the murder of Farag Fawdah at the hands of a number of youths belonging to Islamic groups in Egypt. Their lawyer summoned Egypt's most moderate shaykh at that time, namely, Muhammad al-Ghazali, may he rest in peace (d. 1996), who felt himself obliged to confirm the teachings of the prevailing schools of Islamic jurisprudence on this matter, namely, the necessity of putting the apostate to death. Declaring Farag Fawdah an apostate who had deserved death, al-Ghazali maintained that all these youths had done was to carry out Islamic law as it applies to someone who may be killed with impunity, and whose blood is no longer sacred nor of any value. The state, he said, should have killed him itself, or by means of its organs, and since it had failed to do so, these youths had taken the law into their own hands and carried out the penalty that the state should have carried out itself.

Al-Ghazali's statements sparked a huge uproar in Egypt. Heated discussions ensued between Muslim scholars, lawyers, human rights activists, journalists and other liberals, and the issue produced an

unprecedented split in Egypt's educated elite. The documents that were published and circulated in the course of discussing the issue in the press came to approximately nine large volumes. Yet the door was not closed, and the debate was not resolved. Then, hardly had the dust on this case settled when another, similar, case emerged, namely, that of Dr. Nasr Hamid Abu Zayd. Dr. Abu Zayd had been accused of apostasy and someone had brought suit against him, claiming that he should be separated from his wife and treated as an apostate. The file was thus opened once again, with people exchanging arguments and counter-arguments until the documents published in connection with the ensuing debate had swelled to around five large volumes. Add to these the books written by the accused himself, the most important of which is *Al-Tafkir fi Zaman al-Takfir* (Thought in the Age of Charging Others With Unbelief), not to mention his radio interviews and television debates. Inundated with offers of teaching posts in European and Western universities, Dr. Abu Zayd was thus transformed into another of freedom's symbols, and he and Muhammad Arkoun became consultants for a major Western encyclopedic work, overseen by the University of Leiden, dealing with the Qur'an.

Before the ink had dried on Abu Zayd's case, still another case was opened, this one related to one Dr. Hasan Hanafi, who faced the same accusation. However, it appears that Azhar University and some other institutions thought it wise to contain the furor this time. Hence, not long after the attack was made on Dr. Hasan, he was granted the honor of declaring his allegiance to Islam. Yet even after this, the United Nations, its satellite institutions, and other organs of the new world order continued launching offensives on Islam. They claimed, for example, that Islam is one of the most hostile religions in the world to freedom and human rights, as evidenced by the fact that it has continued to cling to the notion of apostasy as a crime punishable by death.

How, then, one may ask, can Muslims deal with this difficulty which continues to plague them, and which has become a means of alienating people from Islam and bringing it under attack? In 2002, Egypt's attention was focused on the case of Nawal al-Sadawi and

the suit that was brought against her demanding that she be separated from her husband after she had made statements which were published in a certain magazine and in which she spoke somewhat derisively of certain juristic rulings. In this connection, one may note two public stances taken by Dr. Nawal al-Sadawi, one of them in Morocco and the other in the United States during an academic gathering held in Washington, DC in 1994 at the invitation of the Middle Eastern Studies Association where she came to Islam's defense before hundreds of professors with specializations relating to Middle East studies. Somewhat summarized she said, "You Western professors encourage us to violate our religion and rebel against our culture and civilization, claiming that Islam is hostile to women and their rights. I have witnessed many things among you that bespeak discrimination, prejudice, and condescending attitudes toward other peoples. However, we have nothing comparable to any of this in our religion, our culture, or our traditions."

Apostates most certainly do exist, and there are, undoubtedly, Muslims who have chosen to disassociate themselves from Islam; in this way Islam is purified of its dross. However, one may ask: If this penalty had been carried out completely and consistently throughout the various periods of our history, would the phenomenon of apostasy have ceased to occur? Would Muslim societies today be free of those who have adopted godless intellectual trends and the like, disregarding their Islamic identities and doctrines? Put another way: If the death penalty for apostasy were applied throughout the Muslim world, would those who have spent significant periods of their lives as Marxist-Leninists, secularists, nihilists, or existentialists, then returned to Islam of their own accord, thereby rediscovering their identities and adopting anew the Islamic way of life, be alive today and doing what they are doing to defend Islam: refining and purifying its heritage and traditions, promoting its principles and making its light visible for all to see?

THE CONCEPT OF *HADD* IN THE QUR'AN
AND ISLAMIC JURISPRUDENCE

In keeping with the custom of Muslim jurists, this study uses the term *hadd*⁷ throughout this discussion even though the simple term '*uqubah*' ('punishment', 'penalty') would have been more fitting, since what is meant by the term *hudud* (the plural of *hadd*) in the Qur'an is not 'punishments', but, rather, 'God's laws and rulings.' The Arabs have tended to use the linguistic term *hadd* in the sense of a barrier between two things, something which prevents two entities from mingling with each other; however, this is based on their own agreed-upon use of the language. As for the Qur'an, it has its own language, or 'tongue', as it were. An earlier study by this author entitled *Lisan al-Qur'an wa 'Arabiyyatuhu*,⁸ has sought to make clear what is meant by 'the Qur'anic tongue' and its distinguishing features, as well as the points of resemblance and contrast, or agreement and disagreement, between this 'Qur'anic tongue' and 'the Arabic tongue' overall. The terms employed by Muslim jurists and scholars of the fundamentals of jurisprudence have tended to be dominated not by 'the Qur'anic tongue' but, rather, by 'the Arabic tongue.' A salient example of this may be seen in the use of the term *hadd* and its plural, *hudud*. This term occurs in fourteen verses of the Qur'an. In two of these, it is used in the sense of 'God's law and commands'; the first reads:

These are the bounds set by God (*hudud Allah*); do not, then, offend against them – [for] it is thus that God makes clear His messages unto mankind, so that they might remain conscious of Him. (2:187)

It is clear from the preceding verses (183–186) that what is meant here by "the bounds set by God" is His laws as they relate to fasting and breaking of fasts, and what is permitted and not permitted during a fast.

In the same surah and elsewhere, the term *hadd/hudud* is used nine times in connection with God's laws pertaining to marriage and divorce:⁹

A divorce may be [revoked] twice, whereupon the marriage must either be resumed in fairness or dissolved in a goodly manner. And it is not lawful for you to take back anything of what you have ever given to your wives unless both [partners] have cause to fear that they may not be able to keep within *the bounds set by God (hudud Allah)*. Hence, if you have cause to fear that the two may not be able to keep within *the bounds set by God*, there shall be no sin upon either of them for what the wife may give up [to her husband] in order to free herself. These are *the bounds set by God*; do not, then, transgress them; for they who transgress *the bounds set by God* – it is they, they who are evildoers! And if he divorces her [finally], she shall thereafter not be lawful unto him unless the first takes another man for husband. Then, if the latter divorces her, there shall be no sin upon either of the two if they return to one another – provided that both of them think that they will be able to keep within *the bounds set by God*; for these are *the bounds of God* which He makes clear to those of innate knowledge. (2:229–230, *italics added*).

The term appears two times in the first verse of *Surah al-Talaq*, where we read:

O Prophet! When you [intend to] divorce women, divorce them with a view to the waiting-period appointed for them, and reckon the period [carefully], and be conscious of God, your Sustainer. Do not expel them from their homes; and neither shall they [be made to] leave unless they become openly guilty of immoral conduct. These, then, are *the bounds set by God* – and he who transgresses *the bounds set by God* does indeed sin against himself. [For, O man, although] thou knowest it not, after that [first breach] God may well cause something new to come about. (65:1, *italics added*).

It appears twice in connection with God's laws as they pertain to inheritance. God declares:

These are *the bounds set by God*. And whoever pays heed unto God and His Apostle, him will He bring into gardens through which

running waters flow, therein to abide; and this is a triumph supreme. And whoever rebels against God and His Apostle and transgresses *His bounds*, him will He commit unto fire, therein to abide; and shameful suffering awaits him. (4:13–14, *italics added*).

In *Surah al-Mujadalah*, the term occurs once in the verse which deals with the atonement required of a husband who has been guilty of the practice of *zihar*:¹⁰

However, he who does not have the wherewithal [to free a slave from bondage]¹¹ shall fast [instead] for two consecutive months before the couple may touch one another again; and he who is unable to do it shall feed sixty needy ones; this, so that you might prove your faith in God and His Apostle. Now these are *the bounds set by God*, and grievous suffering [in the life to come] awaits all who deny the truth. (58:4, *italics added*).

Lastly, the term occurs in the same sense in two separate verses from *Surah al-Tawbah*:

[The hypocrites among] the Bedouins are more tenacious in [their] refusal to acknowledge the truth and in [their] hypocrisy [than are settled people], and more liable to ignore *the ordinances which God has bestowed from on high (hudud ma anzala Allah)* upon His Apostle – but God is All-Knowing, Wise. (9:97, *italics added*).

...and forbid the doing of what is wrong, and keep to *the bounds set by God*. And give thou [O Prophet] the glad tiding [of God's promise] to all believers. (9:112, *italics added*).

These are all of the verses in which the word *hudud* occurs. However, in none of them is it used to refer to a punishment, be it one which is specifically defined within authoritative Islamic texts or one which is left to the discretion of a judge. Rather, in all of the instances cited, the word is used in affirmation of the necessity of adhering to God's ordinances and laws. More specifically, it is used

by way of commentary on divine ordinances in relation to which people may be prone to grow lax, since they affect areas of life that are colored by human passions and desires and which could be subject to disagreement and potential conflict. Hence, the only thing that can preserve people and protect them from falling into various types of excess, violations of their own or others' rights, or the abyss of conflict and strife, is obedience to the relevant laws and rulings that God has set forth.

MUSLIM JURISTS AND THEIR USE OF THE TERM *HUDUD*

The above discussion establishes what is meant by the term *hadd* or *hudud* in the language of the Qur'an, namely, God's laws and ordinances in a general sense. Moreover, a total of eleven out of the fourteen verses in which the term is used, stress the importance of adhering to God's laws having to do with family-related issues. Hence, one wonders how Muslim jurists shifted the use of this Qur'anic term in such a way that its meaning came to be restricted to the realm of the penal system. The term *hadd*, linguistically, means prevention or prohibition. Hence, both a doorman and a prison guard may be referred to as a *haddad*, the former because he prevents people from coming in, and the latter because he prevents people from coming out. Similarly, it has been said that that which defines the essence of something is referred to as a *hadd* due to the fact that it prevents the 'entry' [of foreign meanings] and the 'exit' [of relevant significations or features]. God's *hudud* are His prohibitions; as He declares in the passage quoted above in connection with matters relating to fasting, "These are the bounds set by God (*hudud Allah*): do not, then, offend against them" (2:187).¹² They have said:

The term *hadd*, based on agreed-upon usage, refers to a specified penalty which must be exacted based on a right due to God. Similarly, the term is defined by the Shafi'i and Hanbali schools as a specified penalty for a sin which must be exacted from the offender based on a right due to God, as, for example, the punishment for

sexual misconduct, or offenses which violate both a divine right and a human right, such as a false accusation of sexual misconduct. Such penalties do not include discretionary punishments, which are not laid down specifically in authoritative Islamic texts. Nor do they include penalties meted out based on the law of retaliation (*al-qisas*), which has to do with the violation of a solely human right. However, some Muslim jurists define the term *hadd* as any penalty which is specified by the Lawgiver Himself, and which therefore includes the law of retaliation.¹³

Based on the foregoing, it may be seen that everything stated in the Qur'an has been excluded from the definition of this Qur'anic concept! A process of blatant despoliation has taken place, as the entire concept has been reduced in such jurists' thinking to nothing more than specified punishments. And this seems utterly amazing.

Virtually none of the penalties mentioned in the Qur'an for theft, sexual misconduct and falsely accusing someone of unchastity is referred to with the term *hadd*, and this despite the fact that these punishments are clearly specified. So, why this departure from the language of the Qur'an? After all, do they not say, "An agreed-upon term is incontestable"? And if so, why should this principle not apply to the Qur'an, concerning which no dissension or disagreement is permitted? What lies behind this blatant contravention of Qur'anic usage?

The motive force behind such a violation may lie in the fact that a ruler looks upon the penal system as the most important means of imposing order, commanding respect, and achieving his aims, since it is through the penal system and its associated deterrents that he ensures state security. The most formidable penal system is one whose authority can be attributed to God, since it is through this type of system that the ruler can reap the greatest number of benefits for his regime. At the same time, he will attribute as many of the system's negative aspects as he can to God, despite the fact that any negative aspects which people observe are due not to God's law itself, but, rather, to God's law's having been distorted or incorrectly applied.

Consequently, pious scholars such as Imam Malik, Abu Hanifah, al-Shafi'i, Ahmad ibn Hanbal, al-Hasan al-Basri, Sufyan al-Thawri, and others frequently denounced the ways in which rulers would take the penal system off track, exploiting it for their own tyrannical and capricious ends. One finds such denunciations clearly enunciated in their sermons and exhortations to rulers, as well as in their epistles, lessons, and juristic writings. The written corpus of Muslim heritage thus includes missives penned to rulers by the proponents of justice and the affirmation of God's oneness in which rulers were taken to task for their misuse and arbitrary application of the penal system. Indeed, it has been seen in our own age how some proponents of what has come to be known as 'political Islam' reduce Islam and Islamic law in their entirety to this system alone. Consequently, one finds that when many such individuals speak of applying Islamic law, what they mean by 'Islamic law' is nothing but its associated penalties. Likewise, some regimes are quick to apply certain penalties in order to demonstrate their religious rigor and their commitment to the Shari'ah even when, in reality, the only share they may have in the Shari'ah is these penalties and nothing more.

The foregoing discussion aims to have made clear some of the differences between the purity of the religion itself and the distortions which come about as a result of human religiosity and ways of understanding the religion. Such distortions involve a despoliation of the religion's concepts, which are emptied of their legitimate content and given other meanings.

God declares that the reason He has sent His messengers is in order that people might not have any argument against Him. He states, "[We sent all these] apostles as heralds of glad tidings and as warners, so that men might have no excuse before God after [the coming of] these apostles; and God is indeed, Almighty, Wise" (4:165). In so saying, the majestic Creator is affirming that He has given human beings the capacity to protest and argue and the instinctive desire to seek evidence and proof. Not only this, but God has granted human beings permission to seek these things first and foremost from Him, as well as from His apostles and prophets. How much more, then, is one entitled to seek evidence and proof from

others? Even so, half-educated, would-be seekers of knowledge and the general populace merely accept and follow what is proposed to them without question or critical reflection, their minds inoperative and their souls in a state of passivity. Hence, despots and proponents of falsehood play them for fools and wrest obedience from them, while they in turn support such rulers in their deceit and besiege those who would strive for reform and call others to the truth.

The seal of the prophets, Prophet Muhammad, has come, of this there is no doubt for anyone who believes in prophecy, with the exception of the Qadyaniyyah* and others who do not acknowledge the seal of the prophets and continue to await a final prophet, represented among Christians by the final coming of Christ and, among the Jews, by the Messiah. Meanwhile, the Qur'an has remained absolute and unchanging despite the vicissitudes of time and place. The Qur'an thus gives Islam horizons that renew themselves with the passing of the ages; it provides firm grounding for Islam's ageless doctrine and clarifies the principles of its law. Islam is the divinely-inspired religion which God has commanded humankind to profess from the time when revelation was bestowed on the first prophet until the arrival of the seal of the prophets, who brought it anew with a more inclusive, universal meaning, and with a constantly evolving understanding of the Qur'an, the Book of God, the Infinite and Eternal. Taken as a whole, the life and example of the Messenger of God exemplify a way of following the truth as it ought to be followed and a model for understanding and emulation based thereon rather than a kind of blind, superficial imitation. Islam, with its final rules and principles as enshrined in the Qur'an, is the religion of God, as a result of which there is no other religion that God will accept from His creatures. This, moreover, requires that the Qur'an be given supremacy over all else. After all, no human understanding, from whatever age or generation it arises, can encompass all the meanings of the Qur'an or place them in set, final molds that allow for no other understanding. Otherwise, the Qur'an would lose its absolute, all-inclusive nature and be transformed, instead, into a relative, historically bound text with relevance only to its own time and place, whose meanings can be manipulated through explanations and

human interpretations subject to the vicissitudes of time, place, human caprice, events, customs, cultures and traditions.

For this reason, the Messenger of God did not restrict or qualify the meanings of the Qur'an with a final interpretation or exegesis of his own.¹⁴ Rather, through his obedience to the Qur'an, his teaching, his life and his example, he embodied the contents of the Book and its ordinances in a way that set forth what might be termed 'the methodology of emulation and obedience' which God has commanded people to adhere to. This applies to the verses which contain legal rulings, and which come, at the most, to one out of every twelve verses in the Qur'an. As for what remains of the Qur'an, it consists for the most part of unqualified verses which encompass all times and places, with the result that those living in any and every age can benefit from their meanings to the extent that God opens up to them their hidden content through openhearted contemplation. Thus, in those aspects that do not touch upon legal rulings and the necessary, direct explication of verses from the Qur'an, particularly in its practical aspect, the Sunnah constitutes an application of the Qur'an that reflects the highest, most accurate degree of understanding thereof. In its confirmatory* and verbal aspects, the Sunnah represents the most precise possible elucidation of the verses of the Qur'an next to the Qur'an's elucidation of itself. In sum, then, the Sunnah, taken as a whole, offers the methodology of emulation of the Prophet. Hence, we need to realize the major differences between emulation and obedience on the one hand, and imitation and uncritical acceptance on the other. Emulation and obedience are processes that rest upon the authoritative nature and persuasiveness of the evidence and one's knowledge and understanding thereof. As for imitation and uncritical acceptance (*al-taqlid*), they are a kind of unthinking mimicry unpreceded by any examination of or reflection on relevant evidence.

Seen against the backdrop of the absoluteness and conclusiveness of the Qur'an, our entire heritage may be said to fall within the domain of the relative, which is subject to the influence of temporal and geographical factors and the specific cultural and intellectual environment of the person engaging in the process of interpretation. When one realizes this fact and come to appreciate the unique

features of Islam's eternal, final message and the religion's governing values, legal intents and spiritual aims, one will be able to discover a great many areas of weakness in our heritage along with a great many areas of strength.

EXEGESIS, THE SCIENCES OF INTENTS, AND EXTERNAL INFLUENCES

One of the distinctive features of Islamic law is that it involves a coupling of *'aql*, that is, evidence based on reason, with *sam'*, or evidence based on authoritative texts; similarly, it consists of *shar'*, that is, explicit ordinances and *ra'y*, or human interpretations of such ordinances. It is by drawing on all of these, both individually and taken together, that we are guided along the right path. Ijtihad, or independent reasoning, reform, and resistance to innovations which represent a departure from Islam's intents and teachings, are not exceptional measures to which one resorts only when absolutely necessary. Rather, they are basic, essential measures concerning which the Muslim community was addressed at the time when it first received the Islamic revelation. This is a vital fact to which attention needs to be drawn if we are to overcome a certain long-held erroneous notion, namely, that ijtiḥād is a process to which a scholar resorts only when he finds no explicit text in either the Qur'an or the Sunnah that rules on the question or incident with which he is concerned. For although a jurist will, in fact, resort to ijtiḥād in such a situation, it should be remembered that reflection on the Sunnah as that which clarifies, explicates and applies the Qur'an likewise requires ijtiḥād, and to the very same degree.

The sharing and mingling of culture and knowledge, by whatever terms we choose to refer to this phenomenon, is a process that takes place naturally among nations and peoples. After all, the earth is a vast, extended home for the human family just as the human family itself is a single, extended entity. As for differences of climate, terrain, language, skin color and so forth, these have been brought into being in order for each group of people to recognize its own realm and in order to build up, within this realm, the type of civilization

best suited to its disposition and needs, since these are the things that set one group of people apart from every other. It comes as no surprise, then, that interaction and intermingling have taken place during the various phases of history on the levels of thought, knowledge, culture and civilization. The establishment of boundaries is an illusory process that people undertake in an attempt to set their own territories apart from those of others, to enjoy a sense of uniqueness, to satisfy their need for a sense of ownership, and to see the fruits of their efforts within a delimited sphere. And in so doing, one society or group of people moves others to do as they have done and to strive to achieve the same degree of development and prosperity in their own territories.