Intragroup Discourse on Intragroup Protections in Muslim-Majority Countries

Asma T. Uddin

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INTRODUCTION

Many Muslim-majority countries do not provide adequate protection for dissent of any sorts—religious, social, or political. In the realm of religious dissent, these countries persecute not just non-Muslims, but in fact, the persecution is harshest and most frequent against Muslims who dissent from the state's interpretation of Islam. The results are profound: regular incidents of arson, murder, and harassment, and on a broader scale, spiritual and intellectual stagnation.

In looking for ways to protect dissent generally, the starting point is to protect *intragroup* dissent, with the "group" defined as the Muslim community. Protecting the right of Muslims—who pose the greatest threat to a state bent on using Islam to serve its political ends—to disagree with the state's interpretation and misuse of Islam will pave the way to protection of minority religious rights. And Muslim themselves are key to this effort to protect dissent by other Muslims—outside influences from non-Muslims will be perceived, and rejected, as not just irrelevant, but threatening.

This paper contributes to a growing legal literature about the ways that dissenters within Muslim communities contest dominant interpretations of Islam.[1] It does so by focusing particular attention on intra-Muslim disagreement about the proper scope of religious freedom.

In Part I, this paper will explore the widespread persecution of intragroup dissenters in Muslim-majority countries, with case examples from three of the worst global offenders: Pakistan, Indonesia, and Egypt. It will

1. *E.g.*, Hassan El-Menyawi, *Same-sex Marriage in Islamic Law*, 2 WAKE FOREST J.L. & POL'Y 375 (2012); Nusrat Choudhury, Comment, *Constrained Spaces for Islamic Feminism: Women's Rights and the 2004 Constitution of Afghanistan*, 19 YALE J.L. & FEMINISM 155 (2007); Madhavi Sunder, *Piercing the Veil*, 112 YALE L.J. 1399, 1433-57 (2003); Abdullahi An-Na'im, *Human Rights in the Muslim World*, 3 HARV. HUM. RTS. J. 13 (1990). *Also see generally* Holning Lau, *The Language of Westernization in Legal Commentary*, 61 AM. J. COMP. L. 507 (2013) (discussing reforms spurred by internal dissent in non-Western parts of the world).

examine the relationship between government restrictions on religion and social hostilities, and will argue that, if a government seeks public order, it must give its citizens broad freedoms. In Part II, the paper will examine intragroup discourse on religious freedom, and make a case for why and how intragroup actors are essential to reforming the persecutory laws.

I. GOVERNMENT RESTRICTIONS AND SOCIAL HOSTILITIES

A recent report by the Pew Research Center's Forum on Religion and Public Life, titled *Arab Spring Adds to Global Restrictions on Religion*, shows that a staggering 5.1 billion people, roughly three-quarters of the world's population, live in countries where religious freedom is severely limited, either by the government or by private social actors.[2] Of the twenty-five most populous countries in the world, Muslim-majority countries (Egypt, Pakistan, and Indonesia) constitute three of the four worst offenders with the most restrictions on religion.[3] Moreover, the situation in these countries does not show signs of improvement: in 2013, Egypt and Pakistan both recorded the highest scores for government restrictions and social hostilities, respectively, of any country in the five-year history of the study.[4]

The *Global Restrictions* study measures restrictions on religion in 198 countries and territories using two indexes: The Government Restrictions Index (GRI) "measures government laws, policies and actions that restrict religious beliefs or practices,"[5] while the Social Hostilities Index (SHI) "measures acts of religious hostility by private individuals, organizations and social groups."[6] It also categorizes the levels of government restrictions and social hostilities in each country by percentiles; as the benchmark, it uses the results from the baseline year (the year ending in

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2. BRIAN J. GRIM ET AL., PEW RESEARCH CENTER, ARAB SPRING ADDS TO GLOBAL RESTRICTIONS ON RELIGION, 10 (June 2013), *available at* http://www.pewforum.org/files/2013/06/RestrictionsIV-web.pdf;
see also TEDxTalks, *The Numbers of Religious Freedom: Brian J. Grim at TEDxViadellaConciliazione*, YOUTUBE (Apr. 26, 2013), http://www.youtube.com/watch?v=cQvDUTOOkiI [hereinafter Religious Freedom at TEDx]. Here, "severely limited" translates to living in a country with a mark of "high" or "very high" restrictions on religion.

3. GRIM ET AL., *supra* note 2, at 11.

4. *Id.*

5. *Id.* The GRI is comprised of 20 measures of restrictions, including efforts by governments to ban particular faiths, prohibit conversions, limit preaching or give preferential treatment to one or more religious groups.

6. *Id.* This includes religion-related armed conflict or terrorism, mob or sectarian violence, harassment over attire for religious reasons and other religion-related intimidation or abuse. The SHI includes 13 measures of social hostilities.

mid-2007).[7] Scores in the top 5% on each index in mid-2007 were categorized as "very high."[8]

Over the five years studied, eleven countries have crossed the threshold into "very high" levels of government restrictions (as delineated by the top five percent of the 2007 index)—ten of these countries have Muslim majorities.[9] Muslim-majority representation in the "very high government restrictions" category is now sixteen out of twenty.[10] Looking at trends in the other index, five of the seven countries where social hostilities reached "very high" levels were also home to Muslim majorities, taking the total count of Muslim-majority countries with "very high" social hostilities to ten, out of fourteen.[11]

Breaking the world up into regional units uncovers more evidence of the Muslim world's religious intolerance. The Middle East-North Africa region, almost exclusively Muslim, had the largest share of countries with increases of one point or more (30%) on either the government restrictions or social hostilities index, and the largest share of countries showing any increase (75%).[12] The *Global Restrictions* report specifically notes that government restrictions on religion remained high or very high in the countries that participated in the 2011 Arab Spring revolutions.[13]

Among the world's twenty-five most populous countries, Pakistan was the only one in which government restrictions increased by one full point or more.[14] Meanwhile, social hostilities increased by one point or more in four countries—two of these countries, Indonesia and Pakistan, have large Muslim majorities.[15]

All these data paint a picture of a Muslim world that has tremendous difficulty guaranteeing religious freedom to its citizens. This is the case, despite the fact that the Quran, the bedrock text of the Islamic faith revered by 1.6 billion Muslims as the ineffable word of God, provides unwavering scriptural support for religious freedom: Students of Islam are familiar with the Qur'anic exhortation "There is no compulsion in religion,"[16] and in one

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7. *Id.* at 54.
8. *Id.*
9. *Id.* at 13.
10. *Id.*
11. *Id.* at 14.
12. *Id.* at 9.
13. *Id.* at 9, 12.
14. *Id.* at 25 n.10.
15. *Id.* at 27 n.14.
16. *Translations of the Qur'an, Surah 2: Al-Baqara (The Cow)*, CENTER FOR MUSLIM-HEWISH ENGAGEMENT, http://www.usc.edu/org/cmje/religious-texts/quran/verses/002-qmt.php#002.256 (verse 002.256) (last visited Jan. 28, 2014).

of the most commonly memorized passages for recitation in daily prayer, God instructs his believers to "Say: O you who reject faith, I do not worship what you worship, nor do you worship what I worship. . .To you be your religion, and to me be mine."[17] Yet this original commandment clearly does not correlate with the on-the-ground situation in Muslim-majority countries. Saudi Arabia, Pakistan, and Iran top the list of countries with the overall highest levels of restriction on religion.[18]

At the core of the problem are the laws of these countries. Many have blasphemy and other anti-religious freedom laws on the books, which the government as well as private actors apply in a discriminatory and abusive manner. Many Muslim-majority countries stifle intra-religious dissent—dissent on social and theological matters internal to the religious community—at the expense of individual human rights, claiming that restrictions on religious expression are necessary to the maintenance of public order. In fact, the opposite seems true. The Pew Forum research shows that greater legal restrictions lead to greater social hostilities, which, when manifested through violence and aggression, create tremendous public *dis*order. This paper digs deeper to uncover why the two are correlated.

In the remainder of Part I, this paper will first explore why social hostilities and government restrictions often go hand-in-hand, and, in Section B, will provide examples of several Muslim-majority states where the law has helped create a culture of impunity. Section C will look at how restrictive laws prevent both spiritual and intellectual flourishing, and Section D will connect these laws to radicalism.

A. Why Do Social Hostilities Correlate with Government Restrictions?

As defined in the *Global Restriction*s report, the term "social hostilities" refers to restrictions on an individual's free exercise of religion that are enforced by private, not governmental, actors: individuals, organizations and social groups.[19] These include mob violence against minority religions or sects and acts of religion-related terrorism. They also include more subtle hostilities such as workplace discrimination and propagation of anti-religious speech. Although these subtle machinations of repression are almost certainly more widespread and pervasive, the most intense, destructive, and measurable hostilities manifest as religion-related terrorism and

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17.   *Translations of the Qur'an, Surah 109: Al-Kafiroon (The Disbelievers, Atheists)*, CENTER FOR MUSLIM-JEWISH   ENGAGEMENT,   http://www.usc.edu/org/cmje/religious-texts/quran/verses/109-qmt.php#109.001 (verses 109.001-006) (last visited Jan. 28, 2014).

18.   GRIM ET AL., *supra* note 2, at 72, 75.

19.   GRIM ET AL., *supra* note 2, at 11.

violence between religious groups. These latter acts of social hostility provide measurable data. Yet an appreciation of the damage caused by both varieties is essential to a full understanding of the scope and breadth of the problem of religious intolerance.

The *Global Restrictions* data show a positive correlation between the level of government restrictions on religion and the level of social hostilities towards religion in a country. While correlation does not imply causation, one particular aspect of this correlation seems to be illuminating: by far, the type of government restriction with the greatest predictive power in terms of producing high levels of social hostility is a government policy that clearly favors one religion, to the detriment or exclusion of another.

What might explain this relationship? The answer is twofold:

1. By using the power of the law to condemn a religious minority group, states empower a vigilante attitude among adherents of the dominant and favored religion.

2. By denying disfavored religious groups access to the free and open "marketplace of ideas" that represents mainstream discourse, states contribute to the alienation, depression, and radicalization of some members of their society, while recklessly neglecting (or actively stifling) invaluable opportunities for organic beneficial social reform.

The following sections will examine these two in turn.

B. The Erosion of Law and Order: Incentivizing Violence Through Inaction

1. Pakistan

Pakistan has the most extensive blasphemy provisions in the world. These laws are widely abused, encompassing more than religious statements—Pakistan's blasphemy laws are often used to settle vendettas and property disputes. And people have been sentenced to long jail terms on extremely weak evidence, some of which cannot even be examined in court for fear of repeating the alleged blasphemy.[20]

Even mere criticism of the blasphemy laws is met with violence. In January 2011, Salman Taseer, the former governor of Pakistan's most populous province and a public critic of the blasphemy laws, was gunned down by a member of his security detail. Many of Pakistan's most influential religious leaders and a majority of its religious population hailed his mur-

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20.   *Id.* at 82.

derer a hero. His crime: speaking out in favor of tolerance and against the tyranny of the blasphemy laws.[21]

This continuing violence shows how anti-religious freedom laws help create a climate of impunity—murderers are not only left unpunished, but are in many cases celebrated. The government, afraid of retribution by extremist groups, refrains from punishing these criminals, while religious minorities and dissidents continue to be arrested and jailed merely for practicing their faith.

The problem extends beyond assassinations. In Pakistan, systematic persecution of religious minorities is alarmingly well documented, and the Ahmadiyya Muslim community is arguably its greatest victim. Ahmadis consider themselves Muslims although Sunni and Shia Muslims disagree because of the group's variant belief about the finality of Prophet Muhammad's prophethood.

In February 2012, Abdul Qudoos, a schoolteacher and the president of a chapter of the Ahmadiyya Muslim Community in Rabwah, was illegally detained and spent forty-six days in custody.[22] Police brutally tortured Qudoos to force him to confess to a murder he did not commit. No charges were ever brought against him for this murder, nor was there any evidence connecting him to the crime.[23] He was also pushed to implicate the Ahmadiyya leadership in other invented crimes,[24] despite the complete lack of evidence they were involved in any such activity. While in custody, police hung him upside down to beat him, before pinning him to the floor as they pressed a weighted wooden roller over him.[25] After forty-six days of this brutality, Qudoos was released without charge. He died soon after, a result of internal injuries suffered at the hands of murderous policemen.[26]

Qudoos suffered the punishment that his community is long used to. In May of 2010, gunmen entered two Ahmadi mosques during Friday pray-

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21. *Pakistan Minorities Minister Shot Dead in Islamabad*, TIMES OF INDIA (Mar. 2 2011), http://articles.timesofindia.indiatimes.com/2011-03-02/pakistan/28646082_1_blasphemy-liberal-pakistanis-and-rights-minorities.

22. *Pakistan: In a Hate Campaign Against the Ahmadis the Police Tortured to Death an Innocent School Teacher*, ASIAN HUMAN RIGHTS COMM. (Apr. 3, 2012), http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-057-2012.

23. Usman Ahmad, *A Murder Most Foul: How Master Abdul Qudoos was Tortured and Killed*, PAK TEA HOUSE (Apr. 2, 2012), http://pakteahouse.net/2012/04/02/a-murder-most-most-foul-how-master-abdul-qudoos-was-tortured-and-killed/.

24. *UK: Shaheed Master Abdul Qudoos Death by Torture Matter Raised during Parliamentary Q&A*, AHMADIYYA TIMES (Apr. 30, 2012), http://ahmadiyyatimes.blogspot.com/2012/04/uk-shaheed-master-abdul-qudoos-death-by.html.

25. *Id.*

26. *Id.*

er in Lahore, Pakistan and attacked the assembled worshipers.[27] The gunmen used grenades, shot AK-47s and detonated suicide vests, claiming 94 lives and injuring more than 100 people.[28]

Sadly, Pakistan holds no monopoly on intra-Muslim persecution of those deemed a "danger" to Sunni Islam, as defined by the State.

2. Indonesia

The world's most populous Muslim country is no stranger to religious strife. For an Ahmadi, it might be the only country in the world less hospitable than Pakistan. In Indonesia, society categorically bans the Ahmadiyya from public life.[29] Persecution against Christians also remains a problem. The country grapples with the continued threat of religiously-motivated violence as well as the implementation of Shariah law.

Like Pakistan, Indonesia imposes severe restrictions on the Ahmadiyya community. On June 9, 2008, the Government announced a joint ministerial decree freezing the activities of the Ahmadiyya Qadiyani and prohibiting vigilantism against the group.[30] The decree was short of the outright ban called for by hard line groups and the Coordinating Board for Monitoring Mystical Beliefs in Society (Bakor Pakem), a government-appointed Islamist body which sits in the Attorney General's office.[31] The Attorney General's Office, the Ministry of Religion, and the Ministry of Home Affairs signed the decree.[32]

Even before the government passed the decree, Bakor Pakem had recommended government dissolution of the Ahmadiyya. On April 16, 2008, Bakor Pakem's recommendation declared the Ahmadiyya heretical and deviant, citing a 1965 presidential instruction on the "prevention of misuse and disgrace of religion."[33]

Private Sunni Muslim groups also contributed to the effort. The Indonesian Council of Ulamas (MUI) released a number of fatwas (religious

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27.   BANYAN, *State Persecution and Pakistan's Ahmadi Sect: We Decide Whether You're Muslim or Not*, THE ECONOMIST (June 10, 2010), http://www.economist.com/blogs/banyan/2010/06/state_persecution_and_pakistans_ahmadi_sect.

28.   *Pakistan: Massacre of Minority Ahmadis*, HUMAN RIGHTS WATCH (June 1, 2010), http://www.hrw.org/news/2010/06/01/pakistan-massacre-minority-ahmadis.

29.   FREEDOM HOUSE, POLICING BELIEF: THE IMPACT OF BLASPHEMY LAWS ON HUMAN RIGHTS 48-49 (2010), *available at* http://www.freedomhouse.org/sites/default/files/Policing_Belief_Full.pdf.

30.   U.S. DEP'T OF STATE: SEC'Y FOR CIVILIAN SEC., *Indonesia: International Religious Freedom Report 2008*, U.S. DEP'T OF STATE, http://www.state.gov/j/drl/rls/irf/2008/108407.htm (last visited Mar. 7, 2014).

31.   *Id.*

32.   *Id.*

33.   *Id.*

decrees) in recent years on the issue of "deviance" from mainstream Islam, including recommendations to ban the Ahmadiyya, which were influential in enabling official and social discrimination against the Ahmadiyya and other minority religious groups during the reporting period.[34]

The Joint Decree was the product of the culture of fear created, perpetuated, and legitimized by the Blasphemy Act. The Act enables and encourages such persecutory measures by inviting the violation of religious freedom and free speech in the name of preventing so-called "religious defamation"—that is, denigrating language about religions. Though proponents of such defamation prohibitions offer the pretense of balancing religious freedom and free speech on one hand, with respect for religious persons on the other, the actual effects of such policies are unambiguously discriminatory, belying their proponents' pretense to evenhandedness. The Blasphemy Act promotes not respect, but religious intolerance, which has devastating repercussions for dissenters and adherents of minority faiths. The intolerance is also detrimental to the development of a democratic culture guided by pluralist values and respect for different faiths. In the absence of such a civic culture, the struggle for democratic legal procedures faces a difficult future.

3. Egypt

Egypt has recently proven a constantly changing state, given the Arab Spring and the recent overthrow of the democratically-elected Mohammed Morsi. Morsi's reign as President saw a repetition of the same kind of Sunni-preferential behavior consistent with that described in Pakistan and Indonesia and it continued a pattern of oppression that existed under Mubarak.[35]

During Mubarak's regime, Article 98(f) of the Egyptian penal code prohibited acts that "exploit[ed] religion in order to promote or advocate extremist ideologies by word of mouth, in writing or in any other manner with a view to stirring up sedition, disparaging or belittling any divinely-revealed religion or its adherents, or prejudicing national unity or social harmony."[36] "Divinely-revealed religion" referred to Islam, Christianity,

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34. *Id.*

35. Mohamed Elmenshawy, *Sectarianizing Egypt's Foreign Policy*, AL-MONITOR (Mar. 19, 2013), http://www.al-monitor.com/pulse/originals/2013/03/morsi-egypt-sectarian-foreign-policy-muslim-borterhood.html#.

36. Civil and Political Rights, Including the Question of Torture and Detention, Comm'n on Human Rights, Working Group on Arbitrary Detention, Opinion No. 7/2002 (Egypt), Sept. 3, 2001, U.N. Doc. E/CN.4/2003/8/Add.1, 59th Sess., Item 11(b) (Jan. 24, 2003), *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/105/53/PDF/G0310553.pdf; Asma T. Uddin, *Blasphemy Laws in*

and Judaism, the three religions recognized in Egypt. The statute mandated a fine and up to five years' imprisonment. Article 178, which allowed up to two years' imprisonment, penalized such violations of "public morality" as "immoral songs, shouting, or speeches."[37] Other sections prohibited the printing of unofficial religious texts, public ridicule of religious groups, or incitement to hatred of religious groups.[38]

These statutes were used to stifle dissent even among Egypt's majority Sunni community if those in power perceive their religious or political stances as threatening the political status quo. Al-Azhar professor and Qur'an scholar Nasr Hamid Abu Zayd, who advocated for a historically contextual interpretation of the Qur'an that tended to improve women's rights,[39] found himself in perhaps a unique situation: the Cairo Appeals Court declared him an apostate[40] and then issued a mandatory divorce because an apostate cannot remain married to a Muslim.[41] He and his wife subsequently fled to Europe.[42]

The government has also harassed the minority Shi'a community. In 2009, Shi'a cleric Hassan Shehata Moussa was arrested on charges of "using Friday sermons in promoting his Shiite ideals, recruiting foreign elements, leading a banned group, receiving financial support from foreign governments, [and] possessing books defaming the Sunnis."[43] The Egyptian authorities questioned his ties to Iran and refused to allow defense lawyers or human rights groups to attend parts of the investigation.[44] He was released in March 2010; eight of the eleven arrested with him remain in prison.[45]

Egyptian authorities have also harassed the Qur'anists for decades. Basing themselves on the belief that the Qur'an is the only valid sacred text, as opposed to the majority Muslim belief that both the Qur'an and the

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Muslim-Majority Countries, REV. OF FAITH & INT'L, AFF. no. 2, 2011, at 47, 51 (2011), *available at* http://www.tandfonline.com/doi/full/10.1080/15570274.2011.571423#.UxobuvldU8I.

37.   Uddin, *supra* note 36, at 52.

38.   *Id.*

39.   Nadia Abou El-Magd, *When the Professor Can't Teach*, AL-AHRAM WEEKLY (June 15, 2000), http://weekly.ahram.org.eg/2000/486/eg6.htm.

40.   *Id.*

41.   *Id.*

42.   *Id.*

43.   Amro Hassan, *Egypt: Cleric Backed by Iran Charged in Egypt*, L.A. TIMES (July 19, 2009, 12:33 PM), http://latimesblogs.latimes.com/babylonbeyond/2009/07/egypt-security-detains-12-accuses-hundreds-of-spreading-shiism.html.

44.   *Id.*

45.   U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, ANNUAL REPORT (2011), *available at* http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf.

hadith are the core sacred texts,[46] this minority refuses to affiliate with either the Sunnis or the Shi'as.[47] Egypt's government-funded religious orthodoxy,[48] such as Sheikh Mohamed Sayed Tantawi (former Grand Sheikh of al-Azhar), who argued that "the law clearly places limitations on matters of faith" and that the state's security forces should be permitted to arrest those who tarnish Islam's image,[49] has endorsed the government's restrictions. In 1985, the Qur'anists' leader, Dr. Ahmed Subhy Mansour, was forced out of his assistant professorship in Muslim history at al-Azhar; in 2002, he sought asylum in the United States.[50]

Since that event, the government has harassed those who hold beliefs similar to those of the Qur'anists, who form a loose community, "a school of thought, not a movement or a group."[51] For example, blogger Reda Abdelrahman was arrested October 5, 2008, just weeks after five other imprisoned Qur'anists were released,[52] for expounding upon his religious beliefs concerning the Qur'an and the illegitimacy of *hadith*.[53] He was beaten, deprived of food, and subjected to electric shocks until he gave up his personal email account's password, and made false confessions.[54] Questioned

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46.   *About Us*, INT'L QURANIC CENTER, http://www.ahl-alQur'an.com/English/aboutus.php (last visited Jan. 7, 2014)).

47.   *Id.*

48.   Sarah A. Topol, *Cairo's Revered Al-Azhar University Now Overshadowed by TV Imams*, CHRISTIAN SCI. MONITOR (Apr. 9, 2010), http://www.csmonitor.com/World/Middle-East/2010/0409/Cairo-s-revered-Al-Azhar-University-now-overshadowed-by-TV-imams.

49.   Karim El-Khashab, *Matters of Faith*, AL-AHRAM WEEKLY (July 5, 2007), http://weekly.ahram.org.eg/2007/852/eg12.htm; Sheikh Tantawi passed away in 2010, and his successor Shaikh Ali Tayyeb has recently endorsed a proposal for a more secular, tolerant Egyptian state. Mostafa Ali, *Al-Azhar's Grand Imam Declares Support for a Constitutional, Democratic State*, AHRAMONLINE (June 20, 2011), http://english.ahram.org.eg/NewsContent/1/64/14672/Egypt/Politics-/AlAzhars-Grand-Imam-declares-support-for-a-constit.aspx. The proposal, the Al-Azhar Document, attracted criticism from both the conservatives who say it abandons Islam, and liberals who say it does not sufficiently protect minorities. Heba Fahmy, *Scholars Call for Inclusion of All Beliefs in Azhar Document as Others Slam It*, DAILY NEWS EGYPT (July 14, 2011), http://thedailynewsegypt.com/people/scholars-call-for-inclusion-of-all-beliefs-in-azhar-document-as-others-slam-it.html. The document only names Muslims, Jews, and Christians as explicitly protected; it is unclear whether the protections afforded Muslims will extend in practice to Qur'anists who are not considered Muslim by other mainstream groups. Ali Tayyeb did, however, disapprove of those "who use religion to incite sectarian strife or those who accuse others of religious apostasy simply based on political disagreements." Ali, *supra* note 49.

50.   Salonaz Sami, *Newsreel: Spare the Children*, AL-AHRAM WEEKLY (June 28, 2007), http://weekly.ahram.org.eg/2007/851/eg8.htm.

51.   Michael Slackman, *Arrests in Egypt Point Toward a Crackdown*, N.Y. TIMES (June 15, 2007), http://www.nytimes.com/2007/06/15/world/africa/15egypt.html.

52.   Almasry Alyoum, *The Egyptian Initiative for Personal Rights Requests the Release of the Qur'anist Detainee*, AHL-ALQUR'AN, http://www.ahl-alQur'an.com/English/show_news.php?main_id=3896 (last visited Jan. 28, 2014).

53.   *Id.*

54.   Noha Atef, *Egyptian Qur'anist Blogger Released*, GLOBAL VOICES ADVOCACY (Jan. 30, 2009), http://advocacy.globalvoicesonline.org/2009/01/30/egyptian-Qur'anist-blogger-released/.

twice about his Qur'anist ideas and charged with "contempt for the Muslim Faith," he was freed on January 23, 2009.[55]

Government restrictions on religious freedom—often justified as necessary to maintain public order in a Muslim majority society—are very often contributing factors to public *dis*order, because they incentivize private violence against religious minorities. Although anti-blasphemy statutes are often faith-neutral on their face, purporting to protect all religions from public denigration or "defamation," in practice, these laws are rarely if ever enforced against the locally predominant sect of Islam. They are only enforced against religious minorities, including Muslim subgroups, often to the exclusion of any minority right to free exercise.[56] Under the color of these laws, private individuals can often act with violent impunity against perceived transgressors, as any slight to a Muslim's personal dignity can be recoded *post facto,* presented in court as an instance of blasphemy against Islam. A sales call turned sour can result in a charge of blasphemy against the minority businessman who threw the salesman's card in the trashcan, just as easily as a heated exchange between squabbling neighbors, coworkers, or classmates can quickly land both in court.

In scenarios repeated across the Muslim World, from domestic arenas in places like Pakistan, Indonesia, and Egypt, to broader efforts like the Organization of the Islamic Conference Defamation of Religions resolution, a dysfunctional understanding exists as to the necessary and sufficient components of social order. Contrary to the prevailing belief in these countries, the data shows that a government acting (or refraining from action) to encourage homogenous adherence to the dominant creed at the expense of minority groups and individual rights is not an effective policy, if public order and social cohesion are the ultimate goals. Quite the contrary, in Pakistan, Indonesia, and Egypt, the state-guaranteed freedom of security from violence, a hallmark of any ordered society, is not extended to all who believe in a faith outside of the particular vision of Islam sanctioned by the state. This environment encourages private actors to enforce religious norms through violence, intimidation, or other coercive and destructive means.

C. Over-Regulating the "Marketplace of Ideas": Dangers of Stagnation

The violence that exists in the Muslim world does much to stifle the development of original religious thought, but the rioting mob is not the

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55.   *Id.*
56.   Uddin, *supra* note 36, at 2.

only agent of violence. There is a "soft violence" delivered by the institutions and the academy to those thinkers who give voice to ideas outside the established boundaries of debate, a violence on free thought in the form of rejections of tenure, denials to influential posts, and the passing over of otherwise viable candidates for promotions. Left unchecked, this phenomenon contributes to a society's intellectual stagnation.

Theorists no less prominent than Adam Smith have noted the relevance of a free marketplace of ideas to authentic religious practice. In 1776, he wrote:

> The teachers of [religion] . . . in the same manner as other teachers, may either depend altogether for their subsistence upon the voluntary contributions of their hearers; or they may derive it from some other fund to which the law of their country may entitle them . . . Their exertion, their zeal and industry, are likely to be much greater in the former situation than the latter . . . The clergy of an established and well-endowed religion frequently become men of learning and elegance . . . but they are apt gradually to lose the qualities, both good and bad, which gave them authority and influence with the inferior ranks of people . . . . Such a clergy . . . have no other resource than to call upon the magistrate to persecute, destroy, or drive out, their adversaries, as disturbers of the public peace.[57]

Nothing better illustrates this than the story of Dr. Nasr Abu Zayd's struggle with Egypt's religious establishment. Dr. Abu Zayd was a professor at Cairo University, a progressive Qur'anic thinker and one of the foremost liberal theologians in Islam, famous for his development of a humanistic Qur'anic hermeneutics. He criticized the political manipulation of Islam, and argued that the Qur'an was not just a religious text but a literary one as well.[58] This view clashed "with the mainstream Islamic idea that the holy book is the final revelation of God."[59] Abu Zayd's argument was that Islam "should be understood in terms of its historical, geographic, and cultural background," that "'pure Islam' did not exist and that the Koran was 'a collection of discourses.'"[60]

After Abu Zayd applied for promotion to the rank of full professor, the evaluation committee's critical reports on his work led to religious denunciations.[61] Religious scholars across Egypt denounced Abu Zayd; one

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57. ADAM SMITH, THE WEALTH OF NATIONS 740-741 (Modern Library Edition, Random House 1937) (1776).

58. *Nasr Abu Zayd, Who Stirred Debate on Koran, Dies at 66*, N.Y. TIMES (July 6, 2010), http://www.nytimes.com/2010/07/06/world/middleeast/06zayd.html?_r=0 [hereinafter *Abu Zayd*].

59. *Id.*

60. *Id.*

61. CLINTON BENNETT, MUSLIMS AND MODERNITY: CURRENT DEBATES 77 (2005).

imam even accused him of "spreading 'cultural AIDS.'"[62] Muslim scholars who contested the religious legitimacy of Abu Zayd's academic claims initiated a trial against him[63] and an Egyptian court declared him an apostate in 1993.[64]

As a result of being declared an apostate, Abu Zayd was also declared divorced from his wife, Cairo University French Literature professor Dr. Ibtihal Younis.[65] The basis of the divorce decree under Sharia law was that since it is not permissible for a Muslim woman to be married to a non-Muslim man, and since Zayd was an apostate, he therefore could not remain married to his wife. This decision, followed by a death threat from Ayman Al-Zawahiri's Islamic Jihad organization, caused him to flee his homeland and take up a professorship in the Netherlands.[66]

Abu Zayd was not alone in his persecution. In 1992, Islamist militants assassinated secular activist and author Faraj Fawda after Al-Azhar University accused him of blasphemy.[67] In 1994, a member of an Islamic militant group stabbed Nobel laureate, Naguib Mahfouz, in the neck.[68]

In Kuwait in 1996, Ahmed al-Baghdadi, a journalist and political science professor, was imprisoned for making insulting statements about the Prophet Muhammad.[69] In 2000, two of Kuwait's most prominent female authors, Laila al-Othman and Dr. Aliya Shoeib, and publisher Yahya al-Rubayan, stood trial for allegedly denigrating Islam in their novels.[70] In Lebanon in 2003, Marcel Khalife, a well-known Lebanese singer, faced up to three years imprisonment after "Beirut's newly appointed chief investigating judge reopened a case" that accused him of insulting Islam in 1996, and again in 1999, by singing a verse from the Qur'an in one of his songs.[71] He was found innocent.

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62. *Id.*

63. *Id.* at 78.

64. *Id.*

65. *Abu Zayd*, *supra* note 58.

66. *Id.*

67. Ana Belén Soage, *Faraj Fawda, or the Cost of Freedom of Expression*, 11 MIDDLE EAST REV. OF INT'L AFF., no. 2, June 2007, at 26, 30-31.

68. ABDALLA F. HASSAN, REUTERS INSTITUTE FOR THE STUDY OF JOURNALISM, CHANGING NEWS, CHANGING REALITIES: MEDIA CENSORSHIP'S EVOLUTION IN EGYPT 100 (2013), *available at* https://reutersinstitute.politics.ox.ac.uk/fileadmin/documents/Publications/fellows__papers/2009-2010/Changing_News_Changing_Realities.pdf.

69. Mona Eltahawy, *Lives Torn Apart in Battle for the Soul of the Arab World*, THE GUARDIAN (Oct. 19. 1999), http://www.theguardian.com/world/1999/oct/20/1.

70. *Id.*

71. *Id.*

D. Extremism: Suppressed Speech and Radical Thought

Governments that suppress the free exercise of religion do more than just erode law and order and over-regulate the free market of ideas. They can also contribute to the radicalization of marginalized minority groups. As observers of the State Department's latest annual Country Reports of Terrorism (CRT)[72] have noted, state actions designed to hinder the growth of violent religious ideologies can themselves represent human rights violations, with a high potential for unintended consequences.[73]

> In the 2012 Country Reports on Terrorism, six country chapters—those on Azerbaijan, Saudi Arabia, Tunisia, Tajikistan, Turkmenistan, and Uzbekistan—go further by explicitly citing a linkage between government efforts to counter terrorism and limitations on religious freedom. The Azerbaijan chapter reports on restrictive government policies and how they risk increasing violent religious extremism; it concludes, "Critics claimed that by driving the practice of religion underground, these governmental policies could ultimately contribute to the growth of violent extremism."[74]

This phenomenon can be understood by looking at a historical example. In Egypt in the 1950's and 60's, the autocratic presidency of Gamal Abdul Nasser saw numerous opposition groups, including the early Muslim Brotherhood, suffer brutal crackdowns as the pan-Arab leader sought to consolidate all power in Egypt through the systematic elimination of his political adversaries.[75] Although the Brotherhood was initially set up to serve religious and social causes (preaching Islam, teaching the illiterate, setting up hospitals), their influence among the Egyptian populace grew quickly enough to concern secular rulers such as Nasser.[76]

After a failed attempt on Nasser's life by one embittered Brother gave the leader an ideal pretext, he outlawed the existence of the Brotherhood outright.[77] Thousands of its members were imprisoned, many being tortured and held for years in prisons and concentration camps.[78] The Brotherhood's experiences under this repression gave birth to the ideological

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72. U.S. DEP'T OF STATE, COUNTRY REPORTS ON TERRORISM 2012 (May 2013), *available at* http://www.state.gov/j/ct/rls/crt/2012/index.htm.

73. Knox Thames, *Combating Religion Based Terror*, GEO. J. INT'L AFF, (June 29, 2013), http://journal.georgetown.edu/2013/06/29/combating-religion-based-terror-by-knox-thames/.

74. *Id.*

75. ANNE ALEXANDER, NASSER 66 (2005).

76. *See* Robert Leiken & Steven Brooke, *The Moderate Muslim Brotherhood*, 86 FOREIGN AFFAIRS, Mar-Apr 2007, at 107, 107, *available at* http://www.foreignaffairs.com/articles/62453/robert-s-leiken-and-steven-brooke/the-moderate-muslim-brotherhood.

77. *Id.*

78. *Id.*

roots of militant Islamic networks such as Al-Qaeda and Islamic Jihad.[79] Sayyid Qutb, considered the founding father of militant anti-Western Islamism, developed his radical ideologies while he, along with the rest of the Brotherhood's leadership, was in prison under Nasser's regime.[80]

II. POSSIBILITIES FOR REFORM

Muslims must be part of the process of creating legal (as well as social and political) protections for intragroup dissent in Muslim-majority countries. Outside interference in the process will be perceived as irrelevant and even threatening.[81] Therefore, Muslims reformers must rely primarily on intragroup texts—that is, not on international treaties or even the secular laws of the country, but on the foundational texts of Islam—as intragroup resources can underscore the religious authenticity of the reform effort.[82]

A. Spiritual Flourishing through Religious Freedom: American Muslims as Ambassadors

In stark contrast to the conditions in Muslim majority countries abroad, Muslims in the United States enjoy unparalleled freedom in matters of religion. The free and open discourse on religion that occurs in the United States has contributed to the development of a uniquely authentic brand of American Islam. The American model presents an intriguing case study in the evolution of Islamic thought, free from the burdens and restraints of Muslim political regimes. It can provide an exemplary model for Muslims around the globe.

Although economic opportunity and advancement have been the primary concerns for many immigrant Muslims,[83] the social and political

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79. *Id.*; *see also* Barbara Zollner, *Prison Talk: The Muslim Brotherhood's Internal Struggle during Gamal Abdel Nasser's Persecution, 1954 to 1971*, 39 Int'l J. Middle East Studies 411, 411 (2007).

80. *Id.*

81. *See* Asma Uddin, *Blasphemy in a Secular Democracy: The Case of Indonesia*, *in* PROFANE: SACRILEGIOUS EXPRESSIONS IN A MULTICULTURAL AGE (Christopher S. Grenda et al., eds.,forthcoming Sept. 2014).

82. *See* An-Na'im, *supra* note 1, at 46 (arguing that, to protect human rights in the Muslim world, advocates must advance alternative intepretations of the Qur'an and Sunna); Lau, *supra* note 1, at 532, 535 (showing that reform efforts in non-Western parts of the world are vulnerable to being derided as the products of Western cultural imperialism).

83. "A strong job market and economy are at the forefront of Americans' minds, and that concern is exaggerated in the Muslim American population." GALLUP CENTER FOR MUSLIM STUDIES, MUSLIM AMERICANS: A NATIONAL PORTRAIT 39 (2009), *available at* http://www.gallup.com/strategicconsulting/153572/report-muslim-americans-national-portrait.aspx. Thirty-five percent of Muslims in the United States classify themselves as African Americans while twenty-eight percent categorize themselves as

benefits of religious freedom have also played a significant role in the collective American Muslim experience.[84] As this community has grown, more of its members have become comfortable with political activism and many of them have adopted and integrated the American values of democracy, individualism, and religiosity into their traditional Islamic values. Sharia plays an important role in American Muslim discourse; even though it is often narrowly understood by both Muslims and non-Muslims as a legal code, Sharia involves the broader process of discerning divine directives and prohibitions.[85] Muslims believe that Islam's fundamental text, the Qur'an, is the word of God revealed to the Prophet. Since it commands them to follow his example, the relevant body of literature (the Sunnah) is also viewed as a normative "text."[86]

Historically, Islamic jurisprudence has based itself upon these two textual sources and built on subsequent scholarly works and interpretive writings. Eventually, distinct legal traditions or schools of thought (*madhahib*) developed and became enshrined in popular Islamic practice. After several centuries, however, *ijtihad* (the process of interpreting divine law) stagnated as Muslims fell in line with the established schools' legal interpretations. The existing legal system, therefore, is far more attuned to a medieval socio-historical context than to a modern one.

Contemporary Muslim intellectuals, including some American Muslim scholars, have taken it upon themselves to reevaluate traditional sources and to devise new interpretations that are relevant to the modern world. This fusion of the Islamic values of scholarship and divine law with the modern secular values of individual thought and expression has led to the development of a unique and dynamic brand of scholarship that is both truly Islamic and truly American. Arguing for religious freedom from within the Islamic tradition will enable American Muslim scholars to gain legitimacy within the international Muslim community and, perhaps, to acquire a major socio-political influence abroad.

The rise of extremist ideologies, particularly in the decade since 9/11, has led to an increased awareness of the need for American diplomats to

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White (which could include those of European and Middle Eastern descent), eighteen percent categorize themselves as Asian, and another eighteen percent as other. *Id.* at 20-21.

84.   John Musselman, *American Muslims: A (New) Islamic Discourse on Religious Freedom*, 9 REV. OF FAITH AND INT'L AFF., no. 2, 2011, at 17, 17-19 (2011).

85.   Sally Steenland, *Young Muslim American Voices: Setting the Record Straight on Sharia, An Interview with Intisar Rabb,* CENTER FOR AMERICAN PROGRESS (Mar. 8, 2011), http://www.americanprogress.org/issues/religion/news/2011/03/08/9263/setting-the-record-straight-on-sharia/.

86.   Asifa Quraishi, *Interpreting the Qur'an and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence*, 28 CARDOZO L. REV. 67, 69-71 (2007).

promote religious freedom. The work of the American Muslim thinkers mentioned above may in fact help advance the concept of religious freedom within Muslim societies both on theoretical and practical levels.

Abdelaziz Sachedina, who has written extensively on Islamic theology and jurisprudence as well as on the intersection of Islam, democracy, and human rights, argues that freedom of religion is both fundamental for "democratic pluralism" and deeply rooted within the Qur'anic paradigm of religious life in and of itself.[87] He also contends that in order to realize true religious freedom—the freedom to choose and change one's faith—the exclusivist theological frameworks of the past must give way to more in-clusivist ones. According to him, if the Qur'an is taken to be a universal moral guide for humanity and each individual has the inherent God-given ability to discern right from wrong; its message transcends the bounds of religious distinction. In other words, a universal morality trumps all particular differences related to practice and spirituality and grants salvation to all, "regardless of formal religious affiliation."[88] Within this framework, recognizing the religious "other" as a spiritual equal is the key to establishing true religious freedom. He therefore states, "Muslim thinkers working on human rights must engage in Islamic theology rather than Islamic law."[89]

Many American Muslims who have adopted very similar notions of religious freedom work alongside non-Muslims on the grounds that mutual recognition and cooperation advance common morality in the public square. Muslims are engaging in interfaith activities and creating bridges between their religious communities nationwide in the name of social justice. This particular brand of Islam is the result of synthesizing the American values of democracy, citizenship, and spirituality with Islamic values.

Umar Faruq Abd-Allah of the Chicago-based Nawawi Foundation calls this process the "cultural imperative," the absolute need to develop "a sound Muslim American cultural identity."[90] He points out that "[i]t was a matter of consensus among Islamic legal thinkers that the legal judgments of earlier times had to be brought under constant review to insure that they remained in keeping with the times" and that early scholars renounced the "mechanical application" of Islamic law.[91] In addition, Abd-Allah asserts

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87. ABDULAZIZ SACHEDINA, THE ROLE OF ISLAM IN THE PUBLIC SQUARE: GUIDANCE OR GOVERNANCE? 13-14 (2006).

88. *Id.* at 15.

89. ABDULAZIZ SACHEDINA, ISLAM AND THE CHALLENGES OF HUMAN RIGHTS 87 (2009).

90. UMAR FARUQ ABD-ALLAH, ISLAM AND THE CULTURAL IMPERATIVE 2 (2004), *available at* http://www.nawawi.org/wp-content/uploads/2012/01/Articles3.pdf.

91. *Id.* at 6.

that American Muslims are duty-bound to transcend anachronistic laws so that they can take affirmative action to *produce* culture: "A successful Muslim American culture must provide psychological space for all constituents of our highly heterogeneous community"[92] and "[c]ultural development must be intentional and proactive, focused on clear and valid goals with a concrete vision of how to attain them."[93]

True to Abd-Allah's prescription, American Muslims have created multiple forms of authentic American Islamic culture. Ranging from a wide array of art and media, including, among others, the author's own web magazine, Altmuslimah.com, to a broad reevaluation of scriptural texts, American Muslims have actively negotiated the relationship between their faith and their lived realities. By allowing space for critical thinking, the broad, unparalleled religious freedoms granted by the U.S. Constitution have facilitated a spiritual flourishing.

The process of culture-creation is an ambitious undertaking. Honesty requires the community to adopt religious freedom norms not just when doing so benefits itself, but consistently and for everyone. As beneficiaries of their country's constitutional protections, American Muslims must also embody those ideals and work to actualize them for non-Muslims as well.

B. Defending Authenticity: Rooting Reform in Sacred Texts

If the concept of religious freedom is to truly take root within traditional Muslim societies, it must be expressed in Muslim terms and argued from a Muslim perspective based on traditional Islamic texts. In other words, one does not have to dismiss traditional Islamic thought and jurisprudence to stress the importance of freedom of belief. Fathi Uthman, a well-known Islamic scholar from Egypt, states: "No power of any kind in the Islamic state may be employed to compel people to embrace Islam. The basic function of the Islamic state, in this regard, is to monitor and prevent the forces which might seek to deny the people their freedom of belief."[94] His words are far from exceptional, as even Prophet Muhammad persuaded people to embrace Islam solely on its rationality and truth. In fact, all scholars have agreed that any involuntary or compelled confession of faith is invalid.[95]

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92.   *Id.* at 9.

93.   *Id.* at 10.

94.   *See* Mohammad Hashim Kamali, Freedom of Expression in Islam 87 (1997) (quoting the original work of Fathi Uthman, Huquq al-Insan bayn al-Shari'ah al-Islamiyyah wa'l-Fikr al-Qanuni al-Gharbi).

95.   Kamali, *supra* note 95, at 88.

At a very fundamental level, sincere religious practice is incompatible with imitation or coercion of any sort. The Qur'an and traditions of the Prophet (*hadith*) speak volumes about Islam's respect for personal freedom and the human intellect.[96] The individual's freedom to decide what appeals to his/her spiritual needs honors each person's true nature, that of being endowed with dignity, honor, and the ability to discern between right and wrong.[97] The attempts of contemporary Muslim states to ban proselytization and education about other religions clearly violates the Qur'an 88:21: "You cannot compel them to believe."

Muhammad, in his dual capacity as prophet and statesman, provided the inhabitants of his state with an environment of tolerance, acceptance, and intellectual stimulation. Imposing particular beliefs stifles its very purpose. Speaking to this point, Qur'an 2:170 states:

> When it is said to them: "Follow what God has revealed," they say: "No, we follow the ways of our fathers." What! even though their fathers understood naught and were not rightly-guided?

Scholars Ali Abd al-Wahid Wafi (1901-1991) and Mohammed Abduh (1849-1905), interpreting this verse, conclude that:

> [T]houghtless imitation which lacks wisdom and correct guidance is the hallmark of the disbelievers. A man can hardly be called faithful or a believer (*mu'min*) unless he thinks about his faith and satisfies himself as to the veracity of his belief.[98]

The well-known Egyptian scholar Abdel Qadir Awdah goes even further: not only is one obligated to pursue a faith that comports to what his/her mind and heart believes, but one is required to protect his/her ability to believe in his/her own truth.[99] He states, "[I]f the person [who cannot practice his/her faith freely] is able to migrate and he does not do so, then he would have committed an injustice against himself."[100] His finding is based on a Qur'anic verse that rejects the "attitude of those who do not exert themselves, if necessary, to migrate, in order to safeguard the integrity and freedom of their consciences."[101]

Wafi and Awdah articulate three specific methods by which Islam ensures freedom of belief:[102] (1) the Qur'an asserts that true faith is rooted in

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96.   Abdullah Saeed, *The Islamic Case for Religious Liberty*, 217 FIRST THINGS, Nov. 2011, at 33, 33, *available at* http://www.firstthings.com/article/2011/11/the-islamic-case-for-religious-liberty.

97.   *Id.*

98.   KAMALI, *supra* note 95, at 105 & n.215 (quoting ALI Abd al-Wahid Wafi Huquq al-Insan fi'l-Islam 124 (Cairo, 1967); M.R. Rida, *Ta'rikh al-Ustadh al-Imam Muhammad 'Abduh*, II 207; Al Manar (Cairo, 1931); Abu Habib, Darasah 642).

99.   KAMALI, *supra* note 95.

100.   *Id.*

101.   *Id.*

102.   *Id.* at 104.

personal conviction and acceptance, as opposed to imitation and coercion.[103] As opposed to being just a "random" concept, it is a theme that occurs throughout the Qur'an; (2) since Islam stresses each individual's freedom to follow a religion that appeals to his/her rationale and reasoning,[104] proselytization and education about other religions should be allowed;[105] and (3) Qur'an 2:256 clearly prohibits forced conversion. History shows that most Muslim rulers adhered to this principle and permitted their subjects to continue practicing their own religion, as long as they obeyed the laws and paid the relevant military service and *zakat*-exempting poll-tax (*jizyah*).[106]

Modern Muslim states have formally incorporated this principle, albeit in a very flawed manner, into their foundations. For example, in 1952 Pakistan[107] announced at its 1952 *ulama* convention "The Basic Principle of an Islamic State," which included the following clause: "The citizen shall be entitled to all the rights . . . he shall be assured within the limits of the law of . . . freedom of religion and belief, freedom of worship."[108] In 1957, Malaysia adopted a similarly worded article in Article II of its constitution: the "Freedom of Religion" clause states that (1) every person has the right to profess and practice his religion and that (2) no person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.[109] These provisions reflect a basic understanding that the principle of religious freedom is both part of Islamic theory and meant to be respected by Muslim states.

These principles, however, are often not translated into reality. For example, as described earlier, Pakistan, Indonesia, and Egypt have draconian blasphemy laws on the books that are regularly enforced against intragroup dissenters and religious minorities. Malaysia, too, practices institutionalized religious discrimination in violation of the Qur'an's injunctions. Article 153 of its constitution has been interpreted to privilege Muslim Malays over Chinese and Indian Malaysians as well as other ethnic/religious

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103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.* at 89.
108. *Id.*
109. *Id.*

groups[110] and to justify discrimination in government employment, university admissions, and obtaining government licenses and contracts.[111]

Apostasy is a particularly contentious issue in Muslim countries. Abdullah Saeed and Hassan Saeed's *Freedom of Religion, Apostasy, and Islam* lays out many of the commonly used theological and legal arguments against religious liberty and then outlines alternative interpretations of traditional texts in order to support broad religious freedom.[112] They start their discussion by distinguishing apostasy from related pre-modern and modern Islamic concepts, such as apostasy (*riddah*), blasphemy (*sabb Allah* or *sabb al-Rasul)*, heresy (*zandaqah)*, hypocrisy (*nifaq*), and unbelief (*kufr*). Although these terms' particular definitions contain much overlap and ambiguity, traditional pre-modern Islamic legal sources state that all of them were punishable by death.[113]

Many early jurists used *hadith*s (traditions of the Prophet Muhammad) to justify the death penalty. Modern Muslim thinkers have relied on Qur'anic verses as well, such as Qur'an 5:33:

> The recompense of those who make war on God and his apostle and spread corruption on earth shall but be that they shall be slain, or crucified, or that their hands and feet be cut off on opposite sides, or that they shall be banished from the land: such shall be their ignominy in this world.

This verse, however, refers only to apostates who take up arms against God and the Prophet; it has nothing to say about those who do not do so. Saeed and Saeed refer to Muhammed al-Shawkani, a well-known nineteenth-century Qur'anic interpreter from Yemen who argues that Qur'an 5:33 applies to anyone who "spread[s] corruption on earth," which he considers to include crimes against property and human life. According to this definition, personal belief has very little to do with the matter.[114]

Saeed and Saeed cite numerous Qur'anic verses to back up their point. They note that the textual basis for the death penalty for apostasy is very weak and more evidence exists within the Qur'an to support religious freedom. The Qur'an consistently reaffirms the concept of personal responsibility in discerning between right and wrong. In addition, many verses

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110. Christopher Rodney Yeoh, *Malaysia, Truly Asia? Religious Pluralism in Malaysia*, *in* THE PLURALISM PROJECT AT HARVARD UNIVERSITY 2 (2006), *available at* http://www.pluralism.org/reports/view/42.

111. *Id.*

112. *See generally* ABDULLAH SAEED AND HASSAN SAEED, FREEDOM OF RELIGION, APOSTASY AND ISLAM (2004).

113. *Id.* at 35-49.

114. *Id.* at 57-58.

support the idea that belief is an individual decision and cannot be compelled, among them Qur'an 17:15:

> Whoever chooses to follow the right path, follows it but for his own good and whoever goes astray, goes astray but for his own hurt; and no bearer of burdens shall be made to bear another's burden.

Since belief is authentic and sincere only if it originates within one's self, Islam considers hypocrisy more offensive to God than unbelief. In the Qur'anic chapter devoted to the *munafiqun* (hypocrites), God refers to them as evil and rebellious transgressors against Himself.[115] In Qur'an 4:138, He promises them a "grievous suffering" in the Afterlife.

For the most part, neither the Qur'an nor the Prophet made any legal distinction between hypocrites and apostates, and neither source mandated the execution of hypocrites. Later Islamic jurists, however, differentiated between the two. Many modern-era Muslim thinkers have actually turned away from those post-Prophetic legal traditions that require capital punishment for apostasy, arguing that they do not accord with the spirit of Islam or the *hadith* literature[116] and that its socio-historical connotations have fundamentally shifted, as discussed above. These sorts of academic findings are crucial to the protection of dissent in Muslim-majority countries.

As in any religious debate, Muslims argue from all angles both for and against religious freedom. Some try to reconcile Islamic theology with modern standards of human rights, while others adhere to pre-modern legal positions. Given the rapid rate of globalization and intercultural exchange, as well as the need for all Muslims to have broad freedom, contextualizing and reevaluating the relevant traditional texts is both morally and prudentially necessary.

CONCLUSION

The ability to dissent constructively provides American Muslims with the tools necessary to protect similar dissent among their co-religionists living abroad. The widespread persecution of dissent in Muslim-majority countries demands a response—and the solution lies in intragroup reformers relying on intragroup resources.

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115. *Translations of the Qur'an, Surah 63: Al-Munafiqoon (The Hypocrites)*, CENTER FOR MUSLIM-JEWISH ENGAGEMENT, http://www.usc.edu/org/cmje/religious-texts/quran/verses/063-qmt.php (verses 063:001-006)(last visited Jan. 28, 2014).

116. *See generally* MOHAMMED S. EL-AWA, PUNISHMENT IN ISLAMIC LAW (1982); MOHAMMAD HASHIM KAMALI ISLAMIC LAW IN MALAYSIA (2000); *see also Interview on Apostasy with Dr. Hasan Al-Turabi*, WITNESS PIONEER, http://www.witness-pioneer.net/vil/Articles/shariah/interview_on_apostasy_hasan_turabi.htm (last modified Nov. 5, 2004).