

Buffalo Human Rights Law Review

Volume 8

Article 2

9-1-2002

The Role of Compulsion in Islamic Conversion: *Jihad, Dhimma and Ridda*

Donna E. Arzt
Syracuse University College of Law

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/bhrlr>



Part of the [Human Rights Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Donna E. Arzt, *The Role of Compulsion in Islamic Conversion: Jihad, Dhimma and Ridda*, 8 Buff. Hum. Rts. L. Rev. 15 (2002).

Available at: <https://digitalcommons.law.buffalo.edu/bhrlr/vol8/iss1/2>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Human Rights Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

THE ROLE OF COMPULSION IN ISLAMIC CONVERSION: *JIHAD, DHIMMA AND RIDDA*

Donna E. Arzt*

INTRODUCTION

The Qur'anic pronouncement, "there is no compulsion in religion" (Sura 2, verse 256), is as succinct a statement as any of the principle of freedom of religion. This freedom has been said to encompass not only the freedom to hold theistic beliefs as well as the freedom to hold non-theistic beliefs, but also the freedom to *change* one's religion or belief or to *refuse* to change one's religion or belief, all without coercion or discrimination.¹ In other words, an assertion of non-compulsion is put to the test when confronted by instances of conversion to and from the religion in question.

Yet how truly free is religious freedom as delineated by Islam? Consider the cry of *jihad*, popularly (mis)translated as "holy war against non-Muslims," or the *fatwa* (decree) of death for "apostates" such as Salman Rushdie of England or Taslima Nasrin (known as "the female Salman Rushdie") of Bangladesh. These are words that evoke among non-Muslims the images of ancient desert battles led by sword-yielding horsemen or, in contemporary form, suicide bombers on commercial aircraft, anthrax-tipped missiles, or assassins' bullets targeted at authors and their publishers and translators.² Clearly, in none of these cases, is the target of

* Bond, Schoeneck & King Distinguished Professor of Law and Director, Center for Global Law and Practice, Syracuse University College of Law. This paper was principally prepared for the Working Group on Legal Cultures of Islamic Societies and Human Rights, Project on Universality and Particularity of Human Rights, Institute for Interdisciplinary Research ("FEST"), Heidelberg, Germany, prior to September 11, 2001.

¹ See Oldrich Andrysek, *Non-believers: A New Aspect of Religious Intolerance?* 2 CONSCIENCE AND LIBERTY 15, 22 (1990), (citing Report of the Special Rapporteur on Intolerance and Discrimination in Matters of Religion or Belief of the U.N. Commission on Human Rights, U.N. ESCOR, 46th Sess., Capital Provisional Agenda Item 24, Committee on Human Rights, at 60, ¶ 113, U.N. Doc. E/CN.4/1990/46 (1990)).

² During the decade since the Ayatollah Khomeini issued his *fatwa* of death against Salman Rushdie, one of the novelist's translators has been killed and another seriously wounded, while other Muslim authors have been murdered in Egypt, Algeria and Saudi Arabia. See FOR RUSHDIE: ESSAYS BY ARAB AND MUSLIM WRITERS IN DEFENSE OF FREE SPEECH (Anouar Abdallah ed., 1993). See also Eric Weiner, *Bangladesh Writer Draws Death Threat*, CHRISTIAN SCIENCE MONI-

the decree or attack seen as free to choose whether to accept or reject its initiator's entreaties.

Since September 11, 2001, dozens if not hundreds of commentators in the U.S. media have pondered whether the perpetrators of the World Trade Center and Pentagon attacks were motivated by pure theological hatred against the secular Western infidel or other, more geopolitical factors.³ The term *jihad*, in particular, has been invoked repeatedly, whether in direct reference to Osama bin Laden's 1998 pronouncement on behalf of the World Islamic Front for Jihad Against the Jews and the Crusaders,⁴ or to question whether violence against non-combatant civilians is ever sanctioned by Islam.⁵ What, however, if most of the popular media commentary is based on misunderstandings — or worse, ignorance manipulated by militant propagandists — about Islam's basic principles and obligations in regard to the treatment of non-Muslims and former Muslims?

The only way to be certain is to look to the theological and historical underpinnings of the religion (as well as literature that is not subjec-

tor, April 1, 1994, at 8 (discussing Nasrin). Nasrin, who remains a Muslim, has been accused of blasphemy, not apostasy.

³ A small sampling includes John F. Burns, *America Inspires Both Longing and Loathing in Arab World*, N.Y. TIMES, Sept. 16, 2001, at A4; Hillel Fradkin, *Why Do They Hate Us? The Muslim World Has Fallen Behind*, AMERICAN ENTERPRISE, December 1, 2001, at 26; Sohail Hashmi, *The Terrorists' Zealotry is Political Not Religious*, WASHINGTON POST, Sept. 30, 2001; Mark Juergensmeyer, *Terror in the Name of God*, CURRENT HISTORY, November 2001; Salman Rushdie, *Yes, This is About Islam*, N.Y. TIMES, Nov. 2, 2001; Stephen W. Bosworth et al., *Why Do They Hate Us?*, BOSTON GLOBE, September 16, 2001, at D1, D2. A Lexis-Nexis search conducted in the NewsGroup file for the dates 9/11/01 to 1/18/02 produced 98 items containing the phrase "Why do they hate us?" (A handful of these concerned sports rather than the terrorist attacks.)

⁴ The declaration stated: "To kill Americans and their allies, both civil and military, is an individual duty of every Muslim who is able, in any country, where this is possible, until the Aqsa Mosque [in Jerusalem] and the Haram Mosque [in Mecca] are freed from their grip and until their armies, shattered and broken-winged, depart from all the lands of Islam." Hendrik Hertzberg & David Remnick, *The Trap*, NEW YORKER, Oct. 1, 2001, at 37.

⁵ See, e.g. Roy Mottahedeh, *Islam and the Opposition to Terrorism*, N.Y. TIMES, Sept. 30, 2001; Jeffrey L. Sheler, *Alive in the Presence of Their Lord*, U.S. NEWS & WORLD REPORT, Oct. 1, 2001, at 38. To gauge the Western media's fixation with the term *jihad*, consider that for the four month period between 5/10/01 and 9/10/01, the Lexis-Nexis NewsGroup file contains 277 items with "jihad" in the headline, whereas for the four month period between 9/11/01 and 1/11/01, the same file contains over 1000 such headlines, too many for the search to be completed.

tively influenced by traumatic recent events). It is therefore one purpose of this article to explore the classical origins of the concepts of *jihad* and apostasy in Islam, along with the related concept of *dhimma*, which deals with the relationship between the Muslim community and certain minority religious communities. A second purpose is to examine whether modern Muslim spokespersons and *fatwa*-issuers are speaking in terms consistent with the classical traditions of Islam when they invoke these classical doctrines and apply them in certain contemporary contexts involving non-Muslims, former Muslims and heterodox Muslims.⁶ Due to limitations of source material and space, this article focuses on the fundamental tenets of Islam as a whole, not on the nuances and variations of particular schools of theology or sects, such as the Saudi-based Wahhabi movement to which Osama bin Laden and his al-Qaeda followers adhere.⁷

Because of the controversial nature of *jihad*, the Islamic prohibition on apostasy, and other aspects of conversion to and from Islam, full disclosure of an author's own viewpoint on these issues is appropriate. As a specialist in contemporary international human rights, and an American law school-trained, non-Muslim, non-Arabic speaking, Jewish non-cleric at that, I am inherently suspicious of actions which involve coercion or other interference with individual freedom of belief. (Moreover, I have spent the last 30 months closely following the trial of two Libyans for the bombing of Pan Am 103 from the perspective of the survivor families.⁸) My own perspective is reflected in the U.N. Human Rights Committee's 1993 General Comment on Freedom of Religion or Belief (interpreting Article 18 of the International Covenant on Civil and Political Rights):

[F]reedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including, *inter alia*, the right to replace one's current religion or belief. [International law] bars coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanc-

⁶ For purposes of this paper, the term "classical" in the context of Islam refers to the period from 622 C.E., when the Prophet Muhammed and his followers left Mecca to establish the first Islamic community in Medina, until the middle of the 10th century, with the "closing of the door of *ijtihad*," the post-Qur'anic reasoning and creative interpretation of Islamic law which epitomized Muslim thought after the death of Muhammed in 632 C.E. through the religion's first three centuries.

⁷ See Neil MacFarquar, *Bin Laden Adheres to Austere Form of Islam*, N.Y. TIMES, October 7, 2001, 1B at 7.

⁸ See Donna E. Arzt, *The Lockerbie Trial ~ Families Project Web-site: Victim Assistance Goes Online*, 29 SYRACUSE J. INT'L L. & COM. 121 (2001).

tions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.⁹

While such a point of view may, on first impression, appear hostile to Islam as it is popularly perceived in the West, closer examination will reveal that *jihad* as a militaristic method of proselytizing is but one version, for there are multiple interpretations¹⁰ of the *Qur'an's* injunctions to struggle in God's cause. Similarly, the nature of the classical Islamic punishment for apostasy is open to interpretation. As seen below, a multiplicity of viewpoints applies both to the case of conversion *to* Islam and conversion *from* Islam.

The body of this article is divided into four main parts: Part I describes the "vocabulary of *jihad*" during the first few centuries after Muhammed. Part II looks at the rights of non-Muslim monotheists (*dhimmis*) during this same time frame, while Part III discusses the classical prohibition on apostasy (*ridda*). Part IV, which is subdivided into sections on *jihad*, *dhimma* and *ridda*, describes some contemporary cases which individually and collectively serve to test whether the treatment of non-Muslims, apostates and heterodox Muslim sects is consistent with the understanding of these concepts within classical *Shariah* law. Part IV is preceded by a short coda which attempts to summarize the previous three parts and bridges the article's theme of coercion versus choice.

I. THE VOCABULARY OF *JIHAD*

Universality is a predominant theme within both Sunni and Shi'ite Islam, given their fundamental teaching that Islam is the primordial faith that began with Adam and Eve, the first humans, developed through Abraham and his son Ishmael, modified by Jesus and finally came to revealed fruition with Muhammed.¹¹ Thus, anyone, of any race, can become Muslim,

⁹ U.N. Human Rights Committee, General Comment on Article 18, ICCPR, ¶ 5, U.N. Doc. CCPR/C/48/CPR.2/Rev.1 (1993). See also BAHYYIH TAHZIB, FREEDOM OF RELIGION OR BELIEF: ENSURING EFFECTIVE INTERNATIONAL LEGAL PROTECTION 325-327 (1996).

¹⁰ See Donna E. Arzt, *The Treatment of Religious Dissidents Under Classical and Contemporary Islamic Law*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES 408-410 (John Witte, Jr. and Johan D. van der Vyver eds, 1996) on the variety of streams of thought within Islam.

¹¹ "He hath ordained for you that religion which He commended until Noah, and that which We inspire thee (Muhammed), and that which We commended unto Abraham and Moses and Jesus, saying: 'Establish the religion, and be not divided therein.'" (*Qur'an* 42:13). See also T.W. ARNOLD, THE PREACHING OF ISLAM 30-

simply by consciously submitting to God by reciting the *Shahadah*, the profession of faith, which is the first of five “pillars” of Islam which every Muslim, regardless of location or school of jurisprudence, shares: “There is no God but Allah, and Muhammad is his Prophet (or Messenger).”¹² Conversion requires no other initiation ritual such as a baptism. “Assent to these two simple doctrines is all that is demanded of the convert. . . . Unencumbered with theological subtleties, it may be expounded by any, even the most unversed in theological expression.”¹³

Shari’ah is the “Whole Duty of Mankind,” not merely of the Muslims. “But it is nothing less than a Message to all the world.” (*Qur’an* 68:52)¹⁴ “We have sent thee not, except to mankind entire, good tidings to bear, and warning.” (34:27) Its ethical, moral and spiritual norms are intended for all; concomitantly, Islam is a world-wide religious, cultural and spiritual community that disregards race, nationalism and territory.¹⁵ Many passages of the *Qur’an* are accordingly addressed to “humankind” and the “Children of Adam,” or refer to Muhammed’s message to “all creatures” or

31 (1914). During the second century after Muhammed’s death, a variety of schools of jurisprudence developed which began to diverge in their interpretations of *Qur’an* and *Sunna*. But these divisions are not of major significance regarding the question of proselytizing. Even between orthodox *Sunni* and heretical *Shi’ite* jurists, interpretations over the obligation of *jihad* primarily differed only over whether or not the head of the Muslim community, who would lead the *jihad*, must be a divinely appointed *Imam*. The obligation to undertake the struggle was held in common. See also Abdulaziz A. Sachedina, *The Development of Jihad in Islamic Revelation and History*, in CROSS, CRESCENT AND SWORD: THE JUSTIFICATION AND LIMITATION OF WAR IN WESTERN AND ISLAMIC TRADITION 40-41 (James Turner Johnson and John Kelsay eds., 1990).

¹² The other four pillars are 1) daily prayer at dawn, noon, mid-afternoon, evening and night; 2) fasting during the month of Ramadan; 3) alms-giving (*zakat*); and 4) the pilgrimage to Mecca (*Haj*) for all who are capable. GEDDES MACGREGOR, DICTIONARY OF RELIGION AND PHILOSOPHY 251-252 (1989).

¹³ Arnold, *supra* note 11, at 418. See generally RICHARD C. BULLIET, CONVERSION TO ISLAM IN THE MEDIEVAL PERIOD: AN ESSAY IN QUANTITATIVE HISTORY (1979).

¹⁴ This is the Yusufali translation, with which Shakir (“it is nothing but a reminder to the nations”) closely concurs. By contrast, in the Pickthall translation (“it is naught but a Reminder to (His) creatures”), the universality is lost, at <http://www.usc.edu/dept/MSA/quran/>. Unless otherwise noted, this article uses the Pickthall translation of the *Qur’an*. See MARMADUKE PICKTHALL, THE GLORIOUS KORAN: A BI-LINGUAL EDITION WITH ENGLISH (1976).

¹⁵ See MAHMOOD AHMAD GHAZI, THE HURAH: ITS PHILOSOPHY AND MESSAGE FOR THE MODERN MAN 51-59 (1981).

“the peoples.”¹⁶ Muslims therefore have a duty to propagate the *Qur'an's* message to the rest of humanity, in order to establish a universal civilization.

Although Islam accepts both the Jewish and Christian Testaments as books of revelation, albeit inferior to the *Qur'an*, it does not adopt their use of the term “proselyte” as either “a resident alien in the land” or one who has left her religious community and converted to another religion.¹⁷ The more positively connoted term “evangelical” is, similarly, of Christian origin, while “missionary” is associated by Muslims with Western colonialism and “Orientalist” thinking. “Conversion,” too, evokes images of the Crusades.¹⁸

The Arabic word *tabligh* roughly translates as “proselytization,” while *al-Da'wah* is “the Call to Preaching.” But these are used much less often than *jihad*, which itself is frequently misunderstood by non-Muslims when translated as “Holy War.” According to contemporary scholar Abdulaziz Sachedina, this misconception is due in part to the writings of individual 8th to 10th century Islamic scholars who sought to provide a “religious legitimation for the territorial expansion of the Muslim rulers,” overlooking the *Qur'an's* uses of an entirely different term, *qital*, for military action, and *harb* for military war.¹⁹

Jihad is perhaps best translated as the duty to “struggle” or “sacrifice” in the path of God, based on the Qur'anic use of the term as a means to “make Allah's cause succeed.”²⁰ The struggle can be personal and internal, as against cravings and temptations that prevent one from behaving virtuously, or it can be communal and external, which requires combating evil, establishing a just political order, and spreading the cause of Allah among the unbelievers. “Ye should believe in Allah and His messenger, and should strive for the cause of Allah with your wealth and your lives.” (*Qur'an* 61:11) In this verse, the word *jihad* takes the place of “strive for the cause of Allah” in the original Arabic. But in other passages, the Muslims are directly authorized to fight — in defense against those who aggress

¹⁶ See e.g., Qur'anic verses 13:38, 21:107, 31:33, and 68:52.

¹⁷ Eugene P. Heideman, *Proselytism, Mission and the Bible*, 20 INTERNATIONAL BULLETIN OF MISSIONARY RESEARCH 10, 12 (January 1996).

¹⁸ Betty Beard, *Antioch Conversion Tactics Rile Muslims*, ARIZONA REPUBLIC, August 19, 1995. See generally EDWARD W. SAID, ORIENTALISM (1979); EDWARD W. SAID, CULTURE AND IMPERIALISM (1983); EDWARD W. SAID, COVERING ISLAM: HOW THE MEDIA AND THE EXPERTS DETERMINE HOW WE SEE THE REST OF THE WORLD (1981).

¹⁹ Sachedina, *supra* note 11, at 36-38.

²⁰ *Id.* at 36.

against them, or who breach an armistice. "Fight in the way of Allah against those who fight against you, but begin not hostilities. Lo! Allah loveth not aggression." (2:190) "Sanction is given unto those who fight because they have been wronged." (22:39) It is unclear in these passages whether being "wronged" and "aggrieved against" are generic provocations or refer specifically to being attacked militarily; other verses indicate that provocations include, for instance, "persecution."²¹

Even in the most militant versions of *jihad*, unbelievers were not to be attacked outright without first receiving a summons (*da'wah*) either to convert or to submit to the *jizya* tax²² that *Shari'ah* imposed on non-Muslims. Two passages in the *Qur'an* support this doctrine:

Call unto the way of thy Lord with wisdom and fair exhortation, and reason with them in the better way. Lo! thy Lord is best aware of him who strayeth from His way, and He is best aware of those who go aright. (16:125) We never punish until we have sent a messenger. (17:15)²³

These are further supported by a *hadith*, "the invitation to Islam is essential before declaring war."²⁴ According to modern Islam scholar Rudolph Peters, "the function of the summons is to inform the enemy that the Moslems do not fight them for worldly reasons, like subjecting them and taking their property, but that their motive is a religious one, the strengthening of Islam."²⁵

Like any great book, the *Qur'an's* 114 *Suras* contain verses that support a variety of, even contradictory, perspectives, more militant versions of *jihad* as well as more passive and defensive ones. Contrast harsh

²¹ "Tell those who disbelieve that if they cease (from persecution of believers) that which is past will be forgiven them; but if they return (thereto) then the example of the men of old hath already gone (before them for a warning). And fight them until persecution is no more, and religion is all for Allah. But if they cease, then lo! Allah is Seer of what they do." (8:38-39).

²² See Part II of this paper concerning the taxes imposed on non-Muslims. See also ALBERT HOURANI, *A HISTORY OF THE ARAB PEOPLES* 35 (1991); DANIEL C. DENNETT, *CONVERSION AND THE POLL TAX IN EARLY ISLAM* (1950).

²³ Pickthall. Yusufali translates this as "nor would We visit with Our Wrath until We had sent a messenger (to give warning)," at <http://www.usc.edu/dept/MSA/quran>. See also 22:67 which instructs to "summon thou unto thy Lord."

²⁴ LARRY POSTON, *ISLAMIC DA'WAH IN THE WEST* 14 (1992) (citing a *hadith* recorded by Bukhri).

²⁵ RUDOLPH PETERS, *ISLAM AND COLONIALISM: THE DOCTRINE OF JIHAD IN MODERN HISTORY* 18 (1979), cited in POSTON, *supra* note 24.

passages such as, "But those who did wrong changed the word which had been told them for another saying, and We sent down upon the evil-doers wrath from heaven for their evil-doing," (2:59) with one that recommends tolerance: "If ye punish, then punish with the like of that wherewith ye were afflicted. But if ye endure patiently, verily it is better for the patient. Endure thou patiently (O Muhammad)." (16:126-127)²⁶ Other passages indicate that it is Allah, not the Muslim armies, who are to inflict punishment: "Whoso disbelieveth the revelations of Allah (will find that) lo! Allah is swift at reckoning." (3:19) "The duty of the messenger is only to convey (the message). Allah knoweth what ye proclaim and what ye hide." (5:99) Even the most harsh verse above, from Sura 2, indicates that wrath comes later, from heaven, not from Muslims in the here-and-now. "And whoso seeketh as religion other than the Surrender (to Allah) it will not be accepted from him, and he will be a loser in the Hereafter." (3:85).

Yet classical Islam saw the world as a battleground where Muslim believers and unbelieving infidels waged war. The jurists accordingly divided it into two parts: the territory under Islamic rule, called *dar al-Islam*, and the rest of the world ruled by non-Muslim powers, called *dar al-Harb*, the territory of war, or *dar al-Kufr*, the sphere of unbelief. There was no such state as that of neutrality. A *harbi*, or member of the *dar al-Harb*, was an unsubjected unbeliever and by definition, an enemy of Islam. According to 20th century scholar Majid Khadduri: "The territory of war was the object, not the subject, of Islam, and it was the duty of the *Imam* [or *Khalifah*], head of the Islamic state, to extend the validity of its Law and Justice to the unbelievers at the earliest possible moment."²⁷

But only overtly hostile infidels had to be vanquished; thus, *jihad*, according to some schools of jurisprudence, was only to be invoked defensively. Early scholars such as Abu Hanifa and Shaybani, who stressed tolerance toward non-believers, "made no explicit declarations that the *jihad* was a war to be waged against non-Muslims solely on the grounds of disbelief." However, another early scholar, Shafi'i, formulated the doctrine that *jihad* was to be waged on unbelievers for reason of their disbelief, not only

²⁶ This call for patience is reinforced by proximity. It appears immediately after the passage quoted earlier that requires a summons to the unbelievers and reasoning with them.

²⁷ MAJID KHADDURI, *THE ISLAMIC CONCEPTION OF JUSTICE* 163, 164 (1984). *Imam* is the term used by *Shi'ites*, *Khalifah* (caliph) by *Sunnis*, to refer to the community's leader. The *Shi'ites* require their *Imam* to be a descendent of Ali, Muhammad's son-in-law.

when they openly fought Muslims.²⁸ Sa'id Hawa, a member of the modern Muslim Brotherhood movement in Syria, has derived five varieties of *jihad* from the *Qur'an* and *hadith*: jihad through language; jihad through learning; jihad through body and mind; political jihad; and financial jihad.²⁹ These varying interpretations are further complicated by the linguistic confusion between the words "surrender" and "convert," as the Arabic for "surrender" or "submit," *aslamu*, is related to the word Muslim ("one who submits").³⁰ Clearly, *some* of the people who "submitted," the *dhimmi* "People of the Book" (discussed more thoroughly in the next section of this paper), did *not* also convert.

Intended to protect the welfare of the Muslim community against enemies, *jihad* might be analogized to the modern concept of "national security" as a justification for state action and all it entails.³¹ Like "national security," which realistically may be needed to protect the state, or in German constitutional jurisprudence, the similar need for "defense of democracy," the concept of "strengthening Islam" could also be abused in the form of imperialism abroad and human rights violations at home, particularly given that dying in battle has always been considered the highest form of witness to Allah, for which one will attain paradise in the hereafter.³²

²⁸ See *id.* at 165-166. After the classical period, when Islamic power began to decline, some scholars construed *jihad* as only a defensive duty, dormant until actual danger loomed. *Id.* at 168-170.

²⁹ See Ibrahim Malik, *Jihad — Its Development and Relevance*, 2 PALESTINE-ISRAEL JOURNAL 32, 33 (Spring 1994).

³⁰ BULLIET, *supra* note 13, at 124. Bulliet quotes a *hadith* about Muhammed's stipulation that a group of people should surrender/convert (*aslamu*): "He sent them his emissaries and governors to familiarize them with the laws of Islam and his practices and to collect their alms and the poll tax on those of them who remained Christians, Jews or Zoroastrians." Bulliet then comments: "But the language does not allow the reader to disentangle the meanings 'surrender' and 'convert.' This raises the question as to whether these meanings were actually raised in the minds of the actors. After all, the notion of religious conversion as a moral or spiritual act that could be taken independently of other political or social action may not have been widespread in seventh-century Arabia." *Id.*

³¹ Joan Fitzpatrick, *Protection Against Abuse of the Concept of 'Emergency,'* in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY 203-228 (Louis Henkin and John L. Hargrove eds. 1994).

³² JOHN ESPOSITO, THE ISLAMIC THREAT: MYTH OR REALITY 33 (1992); see Abdulaziz A. Sachedina, *Freedom of Conscience and Religion in the Qur'an*, in HUMAN RIGHTS AND THE CONFLICT OF CULTURES: WESTERN AND ISLAMIC PERSPECTIVES ON RELIGIOUS LIBERTY 84 (David Little, et al. eds., 1988); Khadduri, *supra* note 27, at 164-170 (1984). Note that all three translators, Pickthall, Yusufali

Once force is justified in the name of a greater good, it is a short step to using force arbitrarily and disproportionately. Moreover, it is easy to bootstrap a legitimate justification, used in an appropriate context, into another altogether illegitimate setting.

Jihad, along with its corollary, *hijrat*, meaning migration,³³ has historically served as a rallying cry for territorial expansion of Islamic rule. “[M]igration has been a persistent and recurring feature in the Islamic faith, and its successful evolution and propagation. Migration was intended to protect the faithful from further persecution, weaken the society of ‘non-believers,’ and enable them to take part in the creation of a new Islamic community.”³⁴ Some Islamic jurists have argued that the only legitimate reason for Muslims to remain outside the *dar al-Islam* (sphere of believers), that is, outside their own states, is *da’wa*, proselytization.³⁵ Indeed, the first *hirja* was that of Muhammed and his followers who left Mecca for Medina in 622 C.E. It was then that Muhammed engaged in armed battles with the Quraysh tribe, thereby launching the expansion of his power, territory and claim to a universal message, directed not only to the Arabian peninsula but to the whole world.³⁶

The twentieth century scholar H.A.R. Gibb believed that the earliest conversions within Arabia occurred on three different levels: i) a small group of total converts, who inwardly accepted Islam’s laws and principles; ii) a group of formal adherents, mainly merchants, who accepted Islam’s easy outward prescriptions and duties because of the economic advantage of conversion, but who did not assimilate the new faith on a spiritual level; and iii) the pagan tribes whose adherence was enforced by threat of military

and Shakir, use the word “fight” in the verse beginning “Fight those who do not believe in Allah. . .” (9:29), available at <http://www.usc.edu/dept/MSA/quran>.

³³ Most verses of the *Qur’an* which employ the derivative form of *hijra*, *hajaru* (“they migrated”), are paired with *jahadu* (“they waged war”), thus implying a close relationship between *hijra* and *jihad*. See Muhammad Khalid Masud, *The Obligation to Migrate: The Doctrine of Hijra in Islamic Law*, in *MUSLIM TRAVELERS: PILGRIMAGE, MIGRATION AND RELIGIOUS IMAGINATION* 32 (Dale F. Eickelman and James Piscatori eds., 1990).

³⁴ See *Human Rights, Migration and Asylum: The “Three Traditions” in Middle Eastern-Islamic Civilizations* 4 (paper prepared by a group of unnamed Islamic scholars for the United Nations High Commissioner on Refugees) [hereinafter *Human Rights, Migration and Asylum*]. See also Sami A. Aldeeb Abu-Sahlieh, *The Islamic Conception of Migration*, 30 *INT’L MIGRATION REV.* 37 (1996).

³⁵ See Eickelman and Piscatori, *supra* note 33, at 37, 259, citing ISMAIL R. FARUQI, *THE HIJRAH: THE NECESSITY OF ITS IQAMAT OR VERGEGENW’ ARTIGUNG* (1985).

³⁶ See HOURANI, *supra* note 22, at 18, 22.

sanctions.³⁷ By contrast, outside of Arabia, non-Arab polytheists converted to Islam with such alacrity that they far out-numbered the ruling Arab class and often caused fiscal crises by becoming exempt from the poll taxes.³⁸

Nevertheless, despite Muhammed's proclamation that "all Muslims are brothers," non-Arab converts were not always received wholeheartedly. Although often well educated, they were rarely accepted socially and had to attach themselves to an Arab family or tribe as clients (*mawali*). In Spain, the *mawali* eventually became Arabicized, causing the term *mawali* itself to disappear by the 8th century. But in the eastern part of the empire, the Arabs were ultimately absorbed by their subjects, and while Islam remained the dominant religion, Iranian, Turkish, Berber and Indian culture prevailed.³⁹

II. THE RIGHTS OF NON-MUSLIMS

While Muslims have a duty to propagate Islam among non-Muslim infidels, *Shari'ah* prohibits non-Muslims living under Muslim rule from propagating their faith among Muslims and from preventing one of their own from converting to Islam.⁴⁰ However, "recognition of the right of non-Muslims to live according to their convictions and at the same time in peaceful harmony and close cooperation with Muslims was one of the Prophet's prominent achievements," according to a contemporary commentator.⁴¹

Non-Muslims in the *dar al-Islam* were treated differently depending on whether or not they were "People of the Book," those whose faith was based, like that of Muslims, on revealed scripture (*ahl al-kitab*). Islamic law granted the protected status of *dhimma* (contract or guarantee) to communities of the other scriptural monotheisms, Christianity, Judaism and Zoroastrianism. Freedom to practice their religion, including freedom from pressure to convert, was one of the traditional privileges of *dhimmis* (also

³⁷ H.A.R. GIBB, *STUDIES ON THE CIVILIZATION OF ISLAM* 5 (1969).

³⁸ See BULLIET, *supra* note 13, at 132.

³⁹ See Maan Z. Madina, *The Disruption and Decline of the Arab Empire*, in *THE COLUMBIA HISTORY OF THE WORLD* 271, 267-279 (John A. Garraty & Peter Gay, eds., 1972); see also HOURANI, *supra* note 22, at 30.

⁴⁰ Conversely, for Muslims, submission to foreign domination is a religious crime; actual conversion to another religion was traditionally a capital offense. See ABDULLAHI A. AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION: CIVIL LIBERTIES, HUMAN RIGHTS AND INTERNATIONAL LAW* 88-91, 144-149 (1990). See also Abdullahi Ahmed An-Na'im, *Civil Rights in the Islamic Constitutional Tradition: Shared Ideals and Divergent Regimes*, 25 J. MARSHALL L. REV. 267, 289 (1992).

⁴¹ Human Rights, Migration and Asylum, *supra* note 34, at 5.

known as *kitabīs*).⁴² This freedom also included protection from desecration of their holy sites and autonomy in appointment of religious leaders, as well as juridical autonomy in civil matters and equality with Muslims of punishment and restitution in criminal matters.⁴³ Muhammed had decreed that the People of the Book be treated with tolerance. "Lo! those who believe, and those who are Jews, and Sabaeans, and Christians — whosoever believeth in [God]⁴⁴ and the Last Day and doeth right — there shall be no fear come upon them, neither shall they grieve." (*Qur'an* 5:69) The justification was that monotheistic, revelatory religions which originated before Islam were embryonic, incomplete and flawed if not distorted versions of Islam itself, but deserving of at least a limited tolerance.

The *Sunna* reports the Prophet as stating: "Whoever wrongs a [*dhimmi*] or lays on him a burden beyond his strength, I shall be his accuser on the Day of Judgment."⁴⁵ Muhammed guaranteed to the Christians of Najran and the neighboring territories that:

[T]he security of God and the pledge of his Prophet are extended for their lives, their religion and their property — to the present as well as the absent and others besides; there shall be no interference with [the practice of] their faith or their observances; nor any change in their rights or privileges; no bishop shall be removed from his bishopric; nor any monk from his monastery; nor any priest from his priesthood, and they shall continue to enjoy everything

⁴² See Donna E. Arzt, *Heroes or Heretics: Religious Dissidents Under Islamic Law*, 14 WIS. INT'L L. J. 349, 381-383 (1996); see also BERNARD LEWIS, *THE JEWS OF ISLAM* (1984).

⁴³ See C.G. WEERAMANTRY, *ISLAMIC JURISPRUDENCE* 90-91 (1988). See also RAPHAEL PATAI, *THE SEED OF ABRAHAM: JEWS AND ARABS IN CONTACT AND CONFLICT* 45-46 (1986), 45-46; BAT YE'OR, *THE DHIMMI: JEWS AND CHRISTIANS UNDER ISLAM* 57-67 (1985). However, scholars disagree as to whether *dhimmis* were free to engage in practices which conflicted outright with Islam, such as the consumption, sale and production of alcohol. See Arzt, *supra* note 42, at 382 n.134.

⁴⁴ Pickthall translates "God" in this verse as "Allah," as do Yusufali and Shakir, *at* <http://www.usc.edu/dept/MSA/quran/>. But the sense of the verse is that the People of the Book worship God, the same God as the Muslims, albeit of a different name, *at* <http://www.usc.edu/dept/MSA/quran/103.qmt.html>. The third *Khalifah*, Umar, added the Zoroastrians of Persia to the "People of the Book" classification; Mandaeans and others were added later.

⁴⁵ WEERAMANTRY, *supra* note 43, at 86. Another *hadith* reports that Muhammed lodged several members of the tribe of Thaqif, who were non-scriptural "unbelievers," in his own mosque. *Id.*

great and small as heretofore; no image or cross shall be destroyed; they shall not oppress or be oppressed; they shall not practice the rights of blood vengeance as in the Days of Ignorance; no tithes shall be levied from them nor shall they be required to furnish provisions for the troops.⁴⁶

Nevertheless, *dhimmi*s were conquered peoples who had agreed to submit to Muslim rule. The benefits of the *dhimma* contract carried concomitant burdens, the badges of *dhimmi*s' second-class status. *Dhimmi*s could not hold political or judicial office outside their local community structure and could not testify in litigation involving Muslims. They could not marry Muslim women and were forbidden to carry arms, to ride horses or mules, to walk in the middle of the street, to sell their books or religious articles in marketplaces, to raise their voices during worship, or to build churches or synagogues, tombs or houses higher than those of Muslims. *Dhimmi*s were also required to wear distinctive clothing and hair styles, which set them apart from Muslims, and to stand in the presence of Muslims.⁴⁷ As already noted, they were not to convert Muslims to their religion nor prevent one of their own from converting to Islam. Moreover, if the People of the Book refused the *dhimma* compact, they had only the choice of death or conversion to Islam — either before or after their defeat in war.

The other class of non-Muslims who were not *dhimmi*s were slaves, the fate of polytheists and idolators who had been captured as prisoners of war rather than slain in or after battle. They had the choice only of slavery, conversion to Islam, or death; no special communal contract allowed them to quietly or even humbly practice their religion. "Then, when the sacred months have passed [when a treaty with idolators has expired], slay the idolators wherever ye find them, and take them (captive), and beseige them, and prepare for them each ambush. But if they repent and establish worship and pay the poor-due [i.e. convert], then leave their way free. Lo! Allah is Forgiving, Merciful." (*Qur'an* 9:5).

⁴⁶ *Id.* at 85-86, (citing to SAYED AMEER ALI, *THE SPIRIT OF ISLAM* 273 (1981)).

⁴⁷ Non-indigent, able-bodied *dhimmi* males paid the *jizya* poll tax in exchange for avoiding military conscription, in addition to property taxes (*kharaj*). See LAW IN THE MIDDLE EAST 363-364 (Majid Khadduri and Herbert J. Liebesny eds, 1955). See also PATAI, *supra* note 43, at 45-46; AN-NA'IM, *supra* note 40, at 88-91, 144-149. Hence, modern scholars such as An-Na'im consider the *dhimma* contract to constitute coerced submission rather than a charter of rights. *Dhimmi*s were treated in a discriminatory manner, which sometimes rose to the level of outright persecution, such as when they were massacred or subjected to forced conversions. See YE'OR, *supra* note 43, at 60-61 (citing examples in Armenia in the years 704-705 and 852-855, and numerous similar examples after the classical era).

The Islamic toleration of slavery offered various advantages — to Muslims: “economically, through the profitable slave trade, socially through the institution of concubinage and the harem, and politically as individual slaves gained power as favorites, bodyguards, and rulers.”⁴⁸ But like the *dhimma* compact that established a *de jure* segregation of Muslims and non-Muslims, with clearly inferior status for the latter, it could also be justified on theological grounds:

Since the Islamic state is basically an ideological state, only those persons are to be primarily entrusted with its administration who believe in its ideology, are conversant with its spirit, and have dedicated themselves to the promotion of the objectives of the state. . . . This does not mean that the Islamic state taboos the utilization of non-Muslims in the service of the state. This only means that while availing of the services of non-Muslims, due care should be taken that the Islamic character of the state is not compromised and the ideological demands are not sacrificed on the altar of so called “tolerance”.⁴⁹

A further explanation for slavery, which also accounts for the second-class status accorded *dhimma* religions, may expose Islam’s defensive attitude about its own potential apostates, a subject to be explored below. The *Qur’an* warns: “Oh ye who believe! If ye obey a party of those who have received the Scripture, they will make you disbelievers after your belief.” (3:100) “O Ye who believe! Choose not for guardians such of those who received the Scripture before you, and of the disbelievers, as make a jest and sport of your religion. But keep your duty to Allah if ye are true believers.” (5:57) These passages may reflect a concern that “the Bedouin [Arab tribes who staffed the Muslim foreign legions], many of whom had recently converted from paganism to Islam, could have been attracted by the civilizations of the conquered peoples among whom they were a minority,” particularly given that the indigenous religions were more established. “Thus the abasement of the other religions, no less than the privileges of the conquerors, served to reinforce the Muslim Arabs’ feelings of superior-

⁴⁸ Madina, *supra* note 39, at 271.

⁴⁹ AMIR HASAN SIDDIQI, NON-MUSLIMS UNDER MUSLIM RULE AND MUSLIMS UNDER NON-MUSLIM RULE 2 (1969). The author also notes that non-Muslims “got more than their due share in government service. In such lucrative occupations as banking, large commercial ventures, linen trade, land ownership, medical profession etc., the Christians and Jews were well represented and firmly established.” *Id.* at 8-9.

ity.”⁵⁰ Or perhaps, their feelings of insecurity in relation to older monotheisms?

III. THE PROHIBITION ON APOSTASY

Because orthodox Muslims consider Islamic law to constitute, comprehensively, the Whole Duty of Mankind, and to be divine, eternal, correct and immutable, any allegation that all or any aspect of it is less than ideal would inevitably be seen not only as an affront, but as a disloyal act of treason against Allah and against the unity and eternal values of the believing community. Such allegations must, therefore, be resisted and punished, in order to protect believers not only from injury but also from the possibility of change, which challenges to immutability represent.

Accordingly, in classical Islam, those Muslims who renounced their belief in Islam — who “disbeliev[ed] after having believed”⁵¹ — were considered apostates. On the basis of the Qur’anic verse, “Whoso judgeth not by that which Allah hath revealed: such are disbelievers,” (5:44) some Islamic scholars placed any Muslim who refused to judge or be judged by *Shari’ah* into that category.⁵² “Apostasy in Islamic law is a much worse offense than the Christian notion of heresy because Islam perceives itself as a political community, not just a religious community. It follows that apostasy is a form of treason against a very basic and all-encompassing group identity and loyalty. . . .”⁵³ Apostasy (*ridda*) was one of the seven *hudud* offenses against God, the mandatory punishment for which involved physical pain. (The six others were theft, armed robbery, drinking alcohol, adultery, slanderous claims of unchastity, and armed rebellion against the leadership). Apostasy could be committed by word (blasphemy),⁵⁴ by deed, or by omission of a duty, so long as the offender intended the word, act or

⁵⁰ YE’OR, *supra* note 43, at 57-58.

⁵¹ Abdulaziz A. Sachedina, *Context for the Ayatollah’s Decree: The Religious and Political in Islam*, in THE RUSHDIE FILE 223 (Lisa Appignanesi and Sara Maitland eds., 1990).

⁵² Abdullahi Ahmed An-Na’im, *The Islamic Law of Apostasy and Its Modern Applicability: A Case From the Sudan*, 16 RELIGION 197, 213 (1986). Some scholars insisted that such rejection of *Shari’ah* must be based on the belief that non-Islamic rules are better and more just than Islamic rules. *Id.*

⁵³ KANAN MAKIYA, CRUELTY AND SILENCE: WAR, TYRANNY, UPRISING AND THE ARAB WORLD 90 (1993).

⁵⁴ Technically, Islam has no precise equivalent to the term blasphemy, which is derived from the Greek “to hurt” and “to speak” and used as the opposite of “euphemy,” the source of “euphemism”. See DAVID LAWTON, BLASPHEMY 14 (1993). See also Arzt, *supra* note 42, at 374 n.99.

omission with awareness of the penalty, death.⁵⁵ The *hudud* crimes were those acts that infringed not only on religion but also threatened community interests in public order, thereby requiring state control. For instance, the *Qur'an* calls for the death, mutilation or expulsion of those who take up arms against Allah, "create discord on earth and strive after corruption." (5:33).

However, no passage of the *Qur'an* actually specifies any penalty *per se* for apostasy. The closest approximations state: "And for those who disbelieve in their Lord there is the doom of hell, a hapless journey's end." (*Qur'an* 67:6) "And whoso seeketh as religion other than the Surrender to Allah (*Islam*), it will not be accepted from him, and he will be a loser in the Hereafter." (*Qur'an* 3:85). Numerous other verses cajole the Muslim into adhering to the faith, to avoid the temptation, ostensibly posed in particular by the People of the Book, to convert, but the exhortation is moral, not penal. Moreover, during his lifetime, Muhammed is said never actually to have executed persons who, once having adopted Islam, later renounced it.

Nevertheless, conversion to another religion was considered apostasy and may in practice have carried the death penalty. The *Qur'an* orders those who "turn back" (to enmity) to be slain, "wherever you find them." (4:89). This verse may have justified Muhammed's victory over pagan tribes when he returned to conquer Mecca between the years 624 and 630. More directly, Muhammed is reported to have said that "he who changes his religion must be killed," unless he repents.⁵⁶ This *hadith* was first compiled during the wars of apostasy after Muhammed's death, when some of the previously converted Arab tribes in Medina renounced Islam by refus-

⁵⁵ See Aly Aly Mansour, *Hudud Crimes*, in THE ISLAMIC CRIMINAL JUSTICE SYSTEM 195, 197 (M. Cherif Bassiouni ed., 1982). See also Taymour Kamel, *The Principle of Legality and Its Application in Islamic Criminal Justice*, in THE ISLAMIC CRIMINAL JUSTICE SYSTEM 150, 163-166 (M. Cherif Bassiouni ed., 1982). Some jurists omit rebellion from the list of seven *Hudud* offenses, while others also omit wine drinking and apostasy, as neither the *Qur'an* nor *Sunna* prescribed specific penalties for them. Ahmad Abd al-Aziz al-Alfi, *Punishment in Islamic Criminal Law*, in THE ISLAMIC CRIMINAL JUSTICE SYSTEM 227 (M. Cherif Bassiouni ed., 1982).

⁵⁶ MAJID KHADDURI, WAR AND PEACE IN THE LAW OF ISLAM 150 (1955). The *Hanbali* school put apostates to death immediately, while the other three *Sunni* schools of jurisprudence gave apostates three days to reconsider, after which, if they refused to retract their apostasy, they were executed. The *Hanafis* did not execute women apostates, presumably because women would not engage in war against Muslims. See Mohammed Talbi, *Religious Liberty: A Muslim Perspective*, in RELIGIOUS LIBERTY AND HUMAN RIGHTS 182-183 n.16 (Leonard Swidler, ed., 1986).

ing to pay the alms tax. The first *Khalifah*, Abu Bakr, who was keen on legitimizing his authority as successor, violently subdued the tribes after reminding them of their agreement with God's prophet. He may have relied as precedent on Muhammed's order to dismember and slowly kill a band of apostates who murdered Muslim herdsmen and stole their cattle.⁵⁷ But Muhammed's original order may have been imposed for murder and theft, not apostasy. Alternatively, it is possible that the early Muslim leaders and jurists were confused over the Qur'anic tension between religion and politics, thereby improperly treating disobedience, communal betrayal, murder, theft and perhaps mere breach of contract as apostasy.⁵⁸ As the apostates in the original situation had taken up arms against the Muslims, the death penalty could also be considered an act of self-defense in wartime, rather than a criminal punishment during peacetime.⁵⁹

The Qur'anic statement quoted in this article's opening, "There is no compulsion in religion" (2:256), is often cited to support the view that death was not an authorized punishment for conversion. However, the remainder of that same verse implies that the non-coercion rule applied only to those who convert *to* Islam, not those who leave it:

There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejecteth false deities and believeth in Allah hath grasped a firm handhold which will never break. Allah is Hearer, Knower.

This would constitute a double standard. Although conversion to Islam must be freely chosen, without fear and without coercion, "it is practically impossible," it is often acknowledged, "once inside Islam, to get out of it."⁶⁰

Regardless of the actual punishment rendered, about which there may have been no consensus, it is fair to conclude that conversion to a religion other than Islam was treated as apostasy, a definite crime. And if

⁵⁷ See An-Na'im, *supra* note 52, at 211-212.

⁵⁸ Some modern scholars, however, believe that Abu Bakr was committing a political act of counter-rebellion for which a *Hudud* sanction was invoked collectively and which was not intended to be applied to "pure" cases of individual apostasy. See KHADDURI, *supra* note 27, at 238.

⁵⁹ See Talbi, *supra* note 56, at 183. Therefore, it should not even be cited as a case of apostasy, though it often is. See also Sachedina, *supra* note 32, at 80-82; Abdulaziz A. Sachedina, *Al-Bukhari's Hadith on 'Killing Those Who Refuse to Fulfill the Duties Enjoined by God and Considering Them Apostates*, in HUMAN RIGHTS AND THE CONFLICT OF CULTURES: WESTERN AND ISLAMIC PERSPECTIVES ON RELIGIOUS LIBERTY 97 (David Little, et al. eds., 1988).

⁶⁰ Talbi, *supra* note 56, at 182 n.15.

the apostasy was deemed to constitute an outright act of rebellion or sedition, it could, with Qur'anic sanction, be punished by death. Short of physical death, apostates who did not repent suffered various elements of "civil death," including suspension of the right to dispose of property and to inherit property. Marriage contracts were dissolved upon the apostasy of either spouse and their children were declared illegitimate.⁶¹

Coda: Coercion or Choice?

It is difficult to summarize a body of legal principles that is so open to pluralistic interpretation as those of *jihad*, *dhimma* and *ridda*. Did the Qur'anic principle, "no compulsion in religion," apply to all non-Muslims, or only to *dhimmis*?⁶² Did it apply only to persons seeking to convert from another religion to Islam, but not vice versa? Assuming that non-scriptural peoples of the *dar al-Harb* were not formally compelled to convert to Islam, if their only choices were to die in battle, serve as a slave for their rest of their lives, or convert, wouldn't the third choice necessarily have been coerced? And if death was, at least under some interpretations, the punishment imposed on Muslims who renounced Islam, is it any surprise that conversion to other religions was generally a rare occurrence? More broadly, if to become — and to remain — a Muslim meant, quite literally, to "submit," how would one know if a case of new or continued "submission" were a voluntary act?⁶³

To understand how these questions would have been answered in the first few centuries of the Islamic era — if, indeed, they are not entirely anachronistic questions — one needs to avoid thinking in twentieth century terms, that is, from an individualistic perspective, which tends to interpret religious creed as an entirely personal matter. For what if "conversion to Islam in the early Islamic period was more a matter of social behavior than of religious belief?"⁶⁴ Or if, to most of the peoples who came under Muslim

⁶¹ See An-Na'im, *supra* note 52, at 212. See also ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS 178 (1991), on the "civil death" of Baha'is in present-day Iran.

⁶² At least two Islam scholars, al-Tabari and al-Razi, concluded that non-coercion in the matter of religion was to be afforded only to the People of the Book — Jews, Christians and Zoroastrians — implying that others could be coerced into converting to Islam. Others, such as al-Zamakhshari, believed that all human beings, not only the People of the Book, were entitled to exercise free volition regarding religion. See Sachedina, *supra* note 32, at 67-68.

⁶³ BULLIET, *supra* note 30, for a linguistic commentary on the confusion between the meaning of "surrender" and "convert."

⁶⁴ BULLIET, *supra* note 13, at 128.

rule, "it did not much matter whether they were ruled by Iranians, Greeks or Arabs," and in fact, they had good reasons for *not* being ruled by Iranians or Greeks?⁶⁵

The *Qur'an* required but three things of converts: to repent, to pray, and to pay alms. (9:5)⁶⁶ To become, or remain, a Muslim in the classical era of Islam was more a matter of outward appearance than a question of either spiritual faith or existential identity, two concepts that perhaps did not even come into play until a later period of human history. If we can understand this, we should also be able to understand how a sacred book which was recorded in the 7th century C.E. could be reinterpreted in a myriad of ways one, two or three and even thirteen centuries later. The following contemporary cases illustrate some of these possible reinterpretations — if not misinterpretations.

IV. JIHAD, DHIMMA AND RIDDA TODAY

Approximately one billion people practice Islam today; Muslims constitute the majority of the population in over forty countries.⁶⁷ Thus, a short survey of contemporary examples of religious freedom in the Islamic world is naturally selective — if not vulnerable to accusations of invidious selection — and unavoidably influenced by the filter of sensationalism which Western media wield for their readers' consumption. The following cases are, inevitably, among the most notorious, and therefore not necessarily "typical." Nevertheless, when viewed collectively rather than in isolation, they do reveal trends if not outright patterns which illustrate how the concepts of *jihad*, *dhimma* and *ridda* can be abused in the name of state or societal security.

⁶⁵ HOURANI, *supra* note 22, at 23.

⁶⁶ Of the Five Pillars of Islam, the latter four are behavioral, and even the first, the *shahada*, is a public recitation, though it was meant to be fully believed. (Fasting on Ramadan and the Haj were added after the Qur'anic itemization.) Contrast the Judaic version of "Pillars," Maimonides' Thirteen Articles of Faith, each of which begin, "I believe with perfect faith. . . ." ABRAHAM E. MILGRAM, *JEWISH WORSHIP* 420-423 (1971).

⁶⁷ These 40-plus countries include the Arab states of the Middle East and North Africa such as Libya and Oman; the non-Arab Middle Eastern states of Turkey and Iran; sub-Saharan African states such as Sudan, Djibouti and Nigeria; Asian states such as Pakistan, Malaysia and Indonesia; Central European countries such as Albania and Bosnia-Herzegovina; and recently independent Caucasian and Central Asian states of the former Soviet Union such as Tajikistan and Azerbaijan.

Jihad

The current use of this term is most familiar in the context of militantly anti-Israel Palestinian organizations, such as "Islamic Jihad," which has frequently claimed responsibility for violent attacks not only on Israelis but also against Palestinians alleged to have collaborated with Israel. The more general "*jihad* movement" was established in Egypt, Syria, Jordan and various other Middle Eastern states, growing out of the ideological divisions which evolved among certain Muslim fundamentalists before and after the 1967 Arab-Israeli war, as those countries attempted to deal with their military defeat and the challenge posed by the continuation of Israel's occupation of the Palestinian territories.⁶⁸ Whether the Arab-Israeli conflict is perceived by Muslim groups as a *jihad* depends on the group's orientation. While the P.L.O. has traditionally addressed Israelis in their nationalist rather than religious capacity, Islamic fundamentalist groups such as the Muslim Brotherhood "make no distinction between Jews, Zionists, and Israelis. Insistence on using the terms 'Jews' reflects the underlying religious nature of the conflict as defined by the Brotherhood."⁶⁹

The term *jihad*, moreover, has been used as a rallying cry against "infidels" other than Jews or Israelis. For instance, complaining about a U.S. ambassador's efforts to reconcile North and South Yemen and similar American interventions, Libya's Muammar Qaddafi asserted in 1994:

Is it logical to see a Christian reconcile among the Muslims, solve their problems, send their forces, protect Muslims and their mosques? For us this is unacceptable. This is our revolution, this is the true *jihad* for which we were born and for which we are prepared to die. . . . Libya defies the Christians and Jews which will harm Islamic sanctities, the dignity and honor of Islam. We defy them even if we have to sacrifice millions of people; it will not matter because this is a historic battle.⁷⁰

⁶⁸ See ZIAD ABU-AMR, *ISLAMIC FUNDAMENTALISM IN THE WEST BANK AND GAZA: MUSLIM BROTHERHOOD AND ISLAMIC JIHAD* (1994). See also *Under Islam's Banner*, *THE ECONOMIST*, Feb. 20, 1993, at 39; Malik, *supra* note 29. The "troops" which carry out violent attacks on behalf of these organizations are called *mujahidin* ("holy warriors").

⁶⁹ ABU-AMR, *supra* note 68, at 26. On the recent increase in synagogue arson and other anti-Semitic attacks in Europe, see Eric Silver, *Target: Jews*, *THE JERUSALEM REPORT*, May 6, 2002, at 32.

⁷⁰ *Al-Qadhdhafi Blames Christians, Jews for Problems*, *MIDDLE E. INTELLIGENCE REPORT*, Feb. 16, 1994 (translated from Arabic from Tripoli Libyan Television Net-

Now used to connote virtually everything from moral self-scrutiny to agricultural transformation to an analogy to the Protestant ethic⁷¹ to outright genocide, the word *jihad* and its very ambiguity have been exploited for maximum propaganda use, most effectively when directed at two or more audiences simultaneously. For instance, while in South Africa for Nelson Mandela's inauguration, Yasser Arafat told an audience in a mosque: "*Jihad* will continue. . . . You must come to fight, to begin the *jihad* to liberate Jerusalem." While opponents of the Israeli-P.L.O. accords — both Jewish and Palestinian — took it to mean that Arafat still intended to conduct a military battle over the city, Arafat himself claimed that he used the term in a religious and peaceful sense.⁷²

Perhaps the most peculiar case of *jihad* today is directed against a group which proclaims itself to *already* be Muslim: the one million member Ahmadi sect of Pakistan, which was founded as an Islamic revivalist movement in India in 1889 by Mirza Ghulam Ahmad, who claimed to be the messiah and whose followers treat as a prophet. That is anathema to orthodox Muslims, who fervently believe that Muhammed was the Final Messenger of God. Themselves opposed to the use of violence, the Ahmadis were the target of a 1953 pogrom incited by Muslim clerics. In 1974, Pakistani Prime Minister Zulfikar Ali Bhutto agreed to amend the constitution to declare the Ahmadis non-Muslims. A 1984 decree made it criminal for Ahmadis to call themselves Muslims and their places of worship mosques, to use Islamic terminology or the Muslim call to prayer, to proselytize their beliefs or merely to say the name of the Prophet Muhammed.⁷³ Over 100

work)(Passage omitted in original). See also *Muslim Group Threatens Algerian Schools*, N.Y. TIMES, Aug. 7, 1994, at 21; *Somalia: SSNM Interim Chairman Says SNA is Ready for Dialogue to End Conflict with UNOSOM*, BBC SUMMARY OF WORLD BROADCASTS, Aug. 2, 1993.

⁷¹ In a creative twist, Sudanese religious leader Hassan al-Turabi refers to transforming Sudan from near-famine to self-sufficiency in food, "when people are taught that agriculture is their *jihad*, their holy struggle." *As the World Turns: The Islamic Awakening's Second Wave*, 9 NEW PERSPECTIVES Q. 52, 53 (1992). Although to "the rich West that may sound strange," he asks, "[W]hat role did Puritanism play in carving America out of the wilderness? What role did the Protestant ethic play in the development of the European economies? Religion is the motor of development." *Id.*

⁷² See *Documents and Source Material*, 24 J. OF PALESTINE STUD. 131-132 (Autumn 1994). See also '*Jihad*' Not Necessarily a Call to Religious War, NPR ALL THINGS CONSIDERED, May 18, 1994; *The Happiest Jihad*, NEW REPUBLIC, June 13, 1994, at 8.

⁷³ See *Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance XX of 1984*, in MAYER, *supra* note 61, at

Ahmadis, including a baby, have also been arrested and subjected to death sentences under the Pakistani blasphemy law. These official acts have inspired harassment by vigilantes such as the "Finality-of-the-Prophet Youth Force," forcing many Ahmadis into exile in the U.S. and Canada.⁷⁴

Dhimma

Somewhat less politicized today, or at least less notorious than *ji-had*, is the term *dhimmi*. Only in the formally Islamic states of Saudi Arabia, the Sudan, Iran and Oman are non-Muslim minorities afforded an officially unequal status under law; distinctions between *dhimmi* and non-*dhimmi* minorities are also lawful in these countries. In more secularized Muslim countries, as in most other societies in the post-apartheid era, religious discrimination tends to be *de facto* rather than *de jure*.⁷⁵ Non-Muslims are now eligible for citizenship in every Muslim state except Saudi Arabia, although with the exception of the occasional Tariq Aziz of Iraq or Boutros Boutros-Ghali of Egypt (both Christians who rose to prominence in their respective foreign ministries), non-Muslims rarely share in political power or social influence.

Whether on account of the *dhimma* (and *millet*)⁷⁶ systems, or purely for purposes of political expediency, non-Muslims still serve as scapegoats

159-160. The decree was challenged in the Federal Shariah Court by group members who had been sentenced to three years imprisonment and heavy fines. In a peculiar analogy to trademark law, the Court held that the law was not contrary to the *Qur'an* or *Sunna*, nor that it violated the rights to freedom of religion and to equality. Only one judge viewed the decree as violating fundamental human and constitutional rights. *Id.* at 160. See also Robert F. Drinan, *Pakistan Falls Short On Religious Freedom*, CHRISTIAN SCIENCE MONITOR, Jan. 5, 1994, at 23; Mujeeb-ur-Rehman v. Federal Government of Pakistan, PLD FSC 136 (1984).

⁷⁴ See *Pakistan: Asia Watch Says Drive to Islamicize Hurts Rights*, INTER PRESS SERVICE, Sept. 19, 1993. See also *Ahmadi Muslims Suffering at Hands of Pakistanis: Reports*, MONTREAL GAZETTE, Feb. 6, 1993, at 17; Rashid Ahmad Chaudhry, *Persecution in Pakistan*, ECONOMIST, Oct. 24, 1992, at 6.

⁷⁵ While no less invidious, religious persecution which is not officially sanctioned by state law allows governments to disavow responsibility, blaming such acts on ostensibly eradicable, ancient, culturally based prejudices. See e.g. ROBERT A. GOLDWIN ET AL., *FORGING UNITY OUT OF DIVERSITY: THE APPROACHES OF EIGHT NATIONS* (1989); TED ROBERT GURR, *MINORITIES AT RISK: A GLOBAL VIEW OF ETHNOPOLITICAL CONFLICTS* (1993).

⁷⁶ The classical *dhimma* system had been given reinforcement in the 15th century when the Ottoman Empire, under Muhammed II, introduced the *millet* system, which confined Orthodox Christians, Armenian Christians and Jews in communities more segregated and hermetically sealed than they had been under the

in parts of the Muslim world, such as when Mummar Qaddafi blamed "Christians, non-believers and Jews" for a war in Afghanistan in which Muslims killed fellow Muslims during the holy month of Ramadan.⁷⁷ Recent reports of persecution of Christians and Jews, both official and vigilante-based, come from Iran, Indonesia, Saudi Arabia, and Pakistan, as well as Egypt and the Sudan. For instance, Bishop Haik Hovsepian-Mehr, leader of the Assemblies of God Christian community in Iran, was tortured and murdered after protesting the closure of evangelical churches and the Bible Society of Iran, refusing to sign a government-drafted declaration that non-Muslims were not oppressed in Iran, and after working to save from execution a Muslim who had converted to Christianity. In Indonesia, Christians as well as Buddhists and Hindus must officially register with the government.⁷⁸ Most recently, thirteen Jews, including rabbis and teachers, from two rather remote Iranian towns have been sentenced to death for allegedly serving as Israeli and American spies.⁷⁹

Non-Muslim worship, both public and private, is completely forbidden in Saudi Arabia. Hundreds of Christians, including women and children as well as men, have been arrested there, mostly without charge or trial, often leading to deportation. Christians have also been sentenced under Pakistan's blasphemy law, one man reportedly when he refused to support a Muslim League candidate in local elections. Another Pakistani

Khalifahs. The religious leaders of these non-Muslim groups were held responsible for all acts and activities, both secular and religious, of their members, none of whom were eligible for civilian office on the imperial level. The *millet*s were not abolished until 1856, by which time their cultural influence was established in what would become modern-day Turkey, Syria, Lebanon, Israel, Iraq, Iran, Jordan, Egypt, all of North Africa, Greece and the other Balkan states, and parts of India and Russia. It was at this same time in the mid-19th century that the *jizya* tax, paid by *dhimmi*s in lieu of military service, was abolished in Egypt. However, another 1856 Egyptian decree prohibited any building or renovation of Christian churches without presidential permission, which has never been readily granted. See William Soliman Kilada, *Christian-Muslim Relations in Egypt*, in *THE VATICAN, ISLAM AND THE MIDDLE EAST* 254 (Kail C. Ellis ed., 1987). See generally HAIM GERBER, *STATE, SOCIETY AND LAW IN ISLAM: OTTOMAN LAW IN COMPARATIVE PERSPECTIVE* (1994); J.J. SAUNDERS, *THE MUSLIM WORLD ON THE EVE OF EUROPE'S EXPANSION* (1966).

⁷⁷ See *Al-Qadhdhafi Blames Christians, Jews for Problems*, *supra* note 70.

⁷⁸ See Bernard Levin, *Martyred For His Faith*, *LONDON TIMES*, Feb. 15, 1994. See also Chris Hedges, *Persecution of Christians Mounts in Iran*, *INTERNATIONAL HERALD TRIBUNE*, Aug. 2, 1994; Harvey Shepherd, *In the Name of God; Human-Rights Group Reports Religious Persecutions*, *MONTREAL GAZETTE*, Feb. 20, 1993, at K6.

⁷⁹ See A.M. Rosenthal, *Waiting for the Noose*, *N.Y. TIMES*, June 18, 1999.

Christian was murdered after posters appeared at his workplace accusing him of blasphemy. Local police officers reportedly congratulated his killer.⁸⁰ In Egypt, some Islamist fundamentalists seek to revive the most demeaning of the *dhimma* rules by calling on Muslims to shun Christians and to refuse to shake their hands, wish them well on Christian holidays or walk on the same sidewalk.⁸¹

Of the one dozen separate Christian denominations that reside in the Middle East today, the largest and most consistently persecuted are the two Coptic Churches, found in both Catholic and Christian Orthodox forms. Constituting about 10% of the population of Egypt, with smaller communities in Ethiopia and the Sudan, the Copts are extremely endogamous, insisting on a separate existence in order to maintain their pre-Muslim, non-Arab, ancient Egyptian lineage. In 1981 President Anwar Sadat exiled the Coptic pope, censored the Coptic press and held Coptic bishops and priests under house arrest after they defended their community from violence incited by Islamic militants.⁸² In the last few years, Islamist militants have attacked and killed numerous Egyptian Copts, publicly harassed them and prevented

⁸⁰ See *Saudi Arabia: Religious Intolerance: The Arrest, Detention and Torture of Christian Worshippers and Shi'a Muslims*, AMNESTY INTERNATIONAL, Sept. 14, 1993; see also *Pakistan: Asia Watch Says Drive to Islamicize Hurts Rights*, INTER PRESS SERVICE, Sept. 19, 1993.

⁸¹ See Youssef M. Ibrahim, *Fundamentalists Impose Culture on Egypt*, N.Y. TIMES, Feb. 3, 1994, at A1.

⁸² Before the arrival of Muslims in about the year 640, Egypt was a Christian province of the Byzantine Empire. Early Muslim-Coptic relations there were mutually respectful. Centuries later, Copts supported Egyptian nationalist movements which sought independence from British and French colonial rule. Muslim Egyptians began to resent the Copts for what was perceived as favoritism by the Western imperial powers. In the early 18th century, waves of Coptic refugees were forced to flee Egypt for the Sudan. More recently, Egyptian Copts have been the targets of Islamic revivalists and other militants, beginning with the breakdown of pluralistic Egyptian life in the 1950's, under President Nasser and later under Sadat. In 1957 the Coptic community formally protested against restrictions on the building of churches and discrimination in housing, land distribution and the holding of public office. In 1972 planned provocations against the Copts were publicly announced by the Egyptian Ministry of Religious Affairs. See COLBERT C. HELD, *MIDDLE EAST PATTERNS: PLACES, PEOPLES AND POLITICS* 88, 91, 364-365 (1994). See also Abdullahi Ahmed An-Na'im, *Religious Freedom in Egypt: Under the Shadow of the Islamic Dhimma System*, in *RELIGIOUS LIBERTY AND HUMAN RIGHTS* 43, 51-52 (Leonard Swidler, ed., 1986); Kilada, *supra* note 76; NADIA RAMSIS FARAH, *RELIGIOUS STRIFE IN EGYPT: CRISIS AND IDEOLOGICAL CONFLICT IN THE SEVENTIES* (1986).

them from performing religious rituals and celebrating social events. Copts have also been harassed and tortured by Egyptian state security forces for attempting to convert Muslims to Christianity.⁸³

The case of the Baha'is of Iran is perhaps the most enigmatic of all.⁸⁴ Baha'is, who today number over five million in more than 232 countries and dependent territories,⁸⁵ believe that their 19th century religious

⁸³ In 1992, at least 18 Copts were killed by Islamists in Egypt, including a physician murdered in his clinic. See *The Copts: Passive Survivors Under Threat*, AFRICA WATCH, Feb. 10, 1993, at 2. See also HUMAN RIGHTS WATCH, *Middle East, "Egypt: Violation of Freedom of Religious Belief and Expression of the Christian Minority*, Nov. 1994. U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993 1171 (1993). Similarly, in Pakistan, Christians may convert non-Muslims, but not Muslims. See Joseph Cardinal Cordeiro, *The Christian Minority in an Islamic State: The Case of Pakistan*, in THE VATICAN, ISLAM AND THE MIDDLE EAST 279, 282 (Kail C. Ellis ed., 1987). Ninety-nine percent of Pakistani Christians are Pakistani-born. *Id.* at 288.

⁸⁴ The Baha'i faith was founded in Persia in 1863 by Baha'u'llah, a follower of the Bab, who two decades earlier had prophesized the coming of Islam's "Twelfth Imam," who would prepare humanity for the universal divine Messenger that is anticipated by all the major scriptural religions. Baha'u'llah, who claimed to be God's messenger, preached that humanity is a single race and a single religion which should be unified into one global society, organized through a world federal system. His other principles included: the elimination of all prejudice; gender equality; elimination of extreme poverty and wealth; universal education; the harmony of science and religion; and a sustainable balance between nature and technology. The faith would have no clerics or individually powerful leaders; all decisions would be made by democratically elected, collective assemblies. Baha'is, moreover, would be obedient to civil government but forbidden to engage in partisan political activity. These teachings were very popular in 19th century Persia and therefore threatening to both the secular and religious authorities, particularly given the direct challenge to *Shiism* over determination of the Twelfth Imam. Baha'u'llah was accordingly imprisoned and then banished, while the Bab and 20,000 followers were executed as apostates. See Mayer, *supra* note 61, at 157-158. See also BAHA'I INTERNATIONAL COMMUNITY, *THE BAHA'I QUESTION: IRAN'S SECRET BLUEPRINT FOR THE DESTRUCTION OF A RELIGIOUS COMMUNITY: AN EXAMINATION OF THE PERSECUTION OF THE BAHA'IS OF IRAN 1979-1993* 10-12 (1993); BAHA'I INTERNATIONAL COMMUNITY, *THE BAHA'IS: A PROFILE OF THE BAHA'I FAITH AND ITS WORLDWIDE COMMUNITY* 17-23 (1992).

⁸⁵ The faith claims adherents from over 2,100 different ethnic and tribal groups around the world. Of the over five million Baha'is, only 350,000 live in Iran, but they constitute that state's largest religious minority. See *THE BAHA'I QUESTION*, *supra* note 84, at 6. Although the Baha'is living in Iran are mainly fifth or sixth generation descendants of Muslims and of the same Persia ethnicity as the majority

leaders, Bab and Baha'u'llah, are the latest in a series of God's messengers, who have included Abraham and Moses, Krishna, Buddha, Jesus and Muhammed. To Muslims, this is heretical and blasphemous, as they consider Muhammed to be "the Seal of the Prophets," God's final messenger. Moreover, Baha'i egalitarianism challenges the *Shariah's* strict notions of gender differences, not to mention *Shiite* Islam's formal hierarchy of clerical power. However, while acknowledging that the faith originated in Persia among Muslims, Baha'is claim theirs to be an independent religion, not a sect of Islam.⁸⁶ This makes their case a kind of mirror image of the persecuted Ahmadi Muslims of Pakistan, whom Islamic authorities treat as an independent religious minority, not a sect. Both Ahmadis and Baha'is follow a prophet who post-dates Muhammed, without, however, denying or denigrating his teachings. Regardless of their own respect for Muhammed, each group risks being treated as apostates from or blasphemers of Islam — despite their claims to heterodoxy, in the case of the Ahmadis, or to being non-Muslims, in the case of Baha'is.

The 1979 Iranian constitution formally recognizes Jews, Christians and Zoroastrians but makes no mention of Baha'is, who constitute Iran's largest religious minority,⁸⁷ even though, as a scriptural monotheism, the Baha'i faith should be entitled to *dhimma* status. There is little doubt, however, that Baha'is are the most persecuted minority in Iran. Since 1978, more than 200 Baha'i administrative officials or teachers have been executed (including two teenage girls), sometimes after summary trials in absentia, or otherwise stoned or burned to death. Hundreds of others have been imprisoned and tens of thousands have been dismissed from civil service jobs and universities and deprived of pensions and businesses. Baha'i administrative structures have been banned and holy places and cemeteries destroyed, confiscated or vandalized.⁸⁸ In 1993, a secret document surfaced

of Iranians, on a global basis few Baha'is of today have such origins. It is among the fastest growing of the world's independent religions. See THE BAHAI'S, *supra* note 84, at 14.

⁸⁶ "Today, religious specialists recognize that [referring to the Baha'i faith as a 'sect' of Islam] would be equivalent to calling Christianity a 'sect' of Judaism, or referring to Buddhism as a 'denomination' of Hinduism." See THE BAHAI'S, *supra* note 84, at 10, (citing to historian Arnold Toynbee in support of the independent status of the faith).

⁸⁷ IRAN CONST. art. 13.

⁸⁸ See MAYER, *supra* note 61, at 158. See also THE BAHAI'S, *supra* note 84, at 59; ODIO ELIZABETH BENITO, ELIMINATION OF ALL FORMS OF INTOLERANCE AND DISCRIMINATION BASED ON RELIGION OR BELIEF 10 (1989), (citing to the U.N. Special

which confirmed that these acts were all officially sanctioned by Iranian President Rafsanjani and the state's religious leader, Ali Khamenei.⁸⁹

Iranian officials have been inconsistent in the justifications employed in their campaign to "block" Baha'i "progress and development," the language used in the secret document. Sometimes overtly religious grounds are used, as when the words, "Enemy of Islam" were found written on the leg of a Baha'i executed in 1981, or when the Attorney General said about death penalties carried out that same year: "The Quran recognizes only People of the Book as religious communities. Others are pagans. Pagans must be eliminated."⁹⁰ Before execution, Baha'is are often pressured to recant as apostates — another indication of the religious basis of their persecution. On the other hand, the Iranian government has also charged Baha'is with supporting the late Shah's regime and collaborating with his secret police; engaging in prostitution, adultery and immorality; and serving as agents of Zionism. In actuality, Baha'is were also persecuted by SAVAK and the Pahlavi regime. The criminal charges stem from the government's refusal to recognize Baha'i marriages and from the mixed seating at Baha'i gatherings, and from the coincidental location in Israel of the Baha'i World Center, even though it was established in the 19th century at the instructions of the exiled Baha'u'llah.⁹¹

Ridda

While the notorious case of Salman Rushdie is the best known example of punishment for apostasy in contemporary Islam, his is by no means a singular instance. Recent legislation in Yemen and the Sudan penalize apostasy as well as blasphemy. In Yemen, the 1990 Law on the Press and Publications bans any publication which, *inter alia*, "prejudices the Islamic faith and its lofty principles or belittles religions or humanitarian creeds. . . [and which] "distort[s] the image of the Yemeni, Arab or Islamic heritage."⁹² While capital punishment for apostasy was first introduced by coup-leader Nimeiri in 1983, article 126 of the post-Nimeiri 1991 Sudanese Penal Code now authorizes the death penalty for any non-repenting Muslim

Representative's report); Mark Jolly, *Too Good for Hanging*, LONDON TIMES, June 26, 1993; THE BAHA'I QUESTION, *supra* note 84, at 14-23.

⁸⁹ See THE BAHA'I QUESTION, *supra* note 84, at 36-41.

⁹⁰ *Id.* at 25, 17.

⁹¹ See *Id.* at 24-26; MAYER, *supra* note 61, at 169, 178. See also *Iran Dismisses U.N. Report of Rights Abuses*, REUTER LIBRARY REPORT, NOV. 26, 1993, reporting, "Iranian officials say that the Baha'is who were executed were convicted of specific charges, usually spying, and were not killed because of their beliefs."

⁹² *Yemen: Steps Toward Civil Society*, MIDDLE E. WATCH, NOV. 1992, at 8.

who "advocates the rejection of Islamic beliefs or announces his own rejection of Islam by word or act." Although recent converts are by law to be treated more leniently, many fear prosecution should they revert to their original religion, as they tend to be Christians and animists as well as Ethiopian refugees who nominally converted to Islam or took Muslim names in order to receive relief, avoid discrimination, or marry Muslims.⁹³

In a recent case illustrating the potential reach of this law, Sudan's justice minister as well as its government-controlled press attacked a human rights investigator reporting to the U.N. Commission on Human Rights. For his report, which described Sudan's slave trade and noted that its criminal code authorizes punishments such as amputation and crucifixion, Gaspar Biro, a Hungarian law professor, was called "satanic" and "an enemy of Islam" guilty of "blasphemy."⁹⁴

In Saudi Arabia, two newspaper editors were sentenced to prison and to hundreds of lashes for printing a comic strip from the syndicated series "B.C.," which facetiously questioned the existence of God, while in Iran, a cartoonist and his magazine editor were similarly sentenced for a drawing of a soccer player adjudged to resemble the late Ayatollah Khomeini.⁹⁵ These latter cases illustrate not only how the doctrine of *ridda* can be used to punish opponents of state policy; it can also be taken to ridiculous lengths to entrap the wholly inadvertent and innocent antagonist.

Even more disturbing are nonofficial vigilante cases, which often result in brutal assassinations, ordered without trial by Islamic revivalists in

⁹³ See *Sudan: New Islamic Penal Code Violates Basic Human Rights*, AFRICA WATCH, April 9, 1991, at 7-8. While the Penal Code only applies in Northern Sudan, many non-Muslim Southern Sudanese now live in the North.

⁹⁴ Ken Ringle, *The Next Rushdie? Gaspar Biro Spoke Out. Sudan's Government Condemned Him*, WASH. POST, Mar. 26, 1994, at D1; see also Paul Lewis, *Sudan Calls UN Official a Blasphemer*, INT'L HERALD TRIB., Mar. 9, 1994. In a similar case involving Malaysia, the International Court of Justice rendered an advisory opinion that official communications by U.N. personnel are immune from prosecution or civil damages. See *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, 1999 I.C.J. 62 (April 29, 1999).

⁹⁵ See Garry Trudeau, *Drawing, Dangerously*, N.Y. TIMES, July 10, 1994, at E19. On the soccer example and others from Iran, including a sewing pattern said to contain a profile of Khomeini in the folds of a dress, see *Guardians of Thought: Limits on Freedom of Expression in Iran*, MIDDLE E. WATCH (Aug. 1993). Apostasy and blasphemy charges are not the only method of government censorship. An Iranian author was arrested on charges of espionage and drug abuse for criticizing the clerical leadership, a move protested by 150 Iranian writers. See also *Iranian Writers Ask for an End to Censorship*, N.Y. TIMES, Nov. 1, 1994, at A10.

countries where they threaten government stability. While militants in Egypt and Algeria have killed government officials, foreign tourists, religious minorities and average Muslim civilians in the course of their struggles for power, when they target intellectuals they often rely on *ridda* as a rationale. For instance, Farag Fouda, one of Egypt's leading secular intellectuals and a vocal critic of militant Islamists as well as the Egyptian government, was murdered in June 1992, his teenage son also wounded in the attack. A statement by the group al-Gama'a al-Islamiya, which took responsibility, justified the killing because Fouda was an apostate, an advocate of separation of religion and state, and an opponent of the use of *Shariah* as Egyptian law.⁹⁶ His murderers were defended by a senior theologian, Sheik Ahmad Ghazali, who stated in court that Fouda and "secularists" like him are apostates who should be put to death by the government. If the government failed to carry out that "duty," the Sheik testified, individuals were free to do so.⁹⁷

Other Egyptian writers, such as Nobel Prize winner Naguib Mahfouz, have been subject to relentless attacks as "corrupters of youth" and "the filth of the artistic community." Mahfouz, who had publicly denounced the death warrant against Rushdie and supported Anwar Sadat's peace accord with Israel, was "excommunicated" by the *fatwa* of Sheik Omar Abdul Rahman, who demanded that the author denounce his own 1959 novel, *Children of Gebelawi*. The author was later stabbed in the neck by a militant.⁹⁸ In Algeria, the poet and teacher Youssef Sebti was found with his throat cut in his office in an Islamic militant-controlled region in

⁹⁶ See *Egypt: Grave Human Rights Abuses Amid Political Violence*, AMNESTY INTERNATIONAL 11 (May 1993); see also Farag Foda, *A Murdered Writer's Prophecy*, N.Y. TIMES, Nov. 10, 1993, at A27. Sheik Omar Abdul Rahman, the spiritual leader of the militant group that took responsibility for Fouda's killing, was also the lead defendant in the second World Trade Center bombing conspiracy case.

⁹⁷ See Youssef M. Ibrahim, *supra* note 81, at A1, A10. A similar anti-secular sentiment was voiced by Tunisian Sheik Rashid el-Ghanoushi. Asked why Arab and Muslim intellectuals must be murdered, he responded: "Some of these secularists are the devil's advocate, they are Pharaoh's witches. The educated who put their brains and their talent in the service of an oppressive regime have made their own decisions. They must bear the responsibility of their choice." See also Youssef M. Ibrahim, *As Islamic Fundamentalist Abroad Talks Freely on Limits on Freedom*, N.Y. TIMES, Jan. 9, 1994, at E7.

⁹⁸ See Karim Alrawi, *Goodbye to the Enlightenment*, 23 INDEX ON CENSORSHIP 112, 113 (May/June 1994). See also *Fires of Hell*, 23 INDEX ON CENSORSHIP 118 (May/June 1994); Chris Hedges, *Novelist's Unwitting Role: Sword Against Militants*, N.Y. TIMES, Nov. 15, 1994, at A4. The Egyptian government has ended its ban on *The Children of Gebelawi*, which has now been reissued there for the first

December 1993, while in May of that year, Algerian writer Tahar Djaout was murdered.⁹⁹ A university professor was shot after he refused to start his classes with readings from the *Quran*.¹⁰⁰

CONCLUSION

In so many of the above-described contemporary cases, religious themes, doctrines and rationales are intertwined with political slogans, motivations and objectives. Often, a traditional religious veneer serves to camouflage a politically motivated or radically violent core. Because Islam makes no real distinction between state and religion, or between community politics and *Shar'iah* law, it may be impossible to separate out these influences. The power of state-sanctioned legislation and judicial decision-making (or, as in the case of al-Qaeda, *fatwa*-issuing clerics) can be used to accomplish dual purposes: both spiritual supremacy and physical domination. Yet Muslim history also teaches that Islam is simultaneously capable of both sectarian diversity and sectarian intolerance. All religions — and all schools within a religion — have the right to define their own terms of membership. But while threats to public order may, in appropriate cases, justify a limitation on the public expression of heretical religious views, an Islamic regime or “network” of any size or purpose that uses a religious rationale to silence its political enemies abuses both human rights and its Muslim cultural heritage.

time since 1959, but given the continuing threats against Mahfouz, publication may constitute “a second assassination attempt.” *Id.*

⁹⁹ See *Algerian Poet Slain in Muslim Militant Area*, N.Y. TIMES, Dec. 29, 1993, at A5. Egypt and Algeria are not the only sites of such vigilante murders of writers. For instance, the Saudi Arabian poet, Sadiq Melallah, was decapitated. See also FOR RUSHDIE, *supra* note 2 (unpaginated Publisher’s Statement). This book, created by over 100 intellectuals from a dozen countries, was first published in French in 1993 in order to draw attention to the threats and assassinations by Islamic extremists against numerous writers, not only Rushdie; see Alan Riding, *Muslim Thinkers Rally for Rushdie*, N.Y. TIMES, Nov. 4, 1994, at C17.

¹⁰⁰ See *Human Rights Abuses in Algeria: No One is Spared*, MIDDLE E. WATCH 59 (Jan. 1994). About 60 foreigners and 4,000 Algerians were killed in the crossfires of the two-and-a-half-year armed struggle between Islamicists and the military government, which caused thousands more, including many intellectuals and professionals, to flee to France and other Arab countries. See also Lynn Terry, *Islamic Fundamentalists Murder Thousands of Algerians* (NPR Morning Edition, Aug. 10, 1994) (Transcript No. 1408-5). See *Between Two Fires*, 23 INDEX ON CENSORSHIP 135 (Sept./Oct. 1994) (a collection of essays by censored Algerian authors).