

Legal Debate

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In 1994, Husayn Ali Qambar, a Kuwaiti Shi'i, abandoned Islam and joined the Evangelical Church. The news of his conversion caused quite a sensation in Kuwait, as such an event is practically unheard of in the Arabian Peninsula. Instead of keeping a low profile, as is the custom amongst converts in the Middle East, Qambar self-confidently stood up to the storm of reactions. He agreed to meet with the press and appeared in photos wearing a small silver cross around his neck and holding a Bible in his hand. To the question of why he had decided to become Christian, Qambar candidly answered 'I have found God elsewhere'.

When it became clear that he would not withdraw his decision, Qambar was sued for apostasy. The case was tried in the Shi'i Court of First Instance, and in May 1996 Qambar was officially declared an apostate. By then, he had already lost his family, his home and his income. Qambar appealed against the ruling, but shortly before the appeal was to be reviewed, he was granted a visa to the USA and was flown out of Kuwait.

*Irtidad* or conversion from Islam, also known as apostasy, has always been a serious offence in the Middle East.<sup>1</sup> According to tradition, the apostate is to be executed; pending execution, he/she is deprived of the right to remain married to his/her Muslim spouse, to retain guardianship over his/her Muslim-born children and to inherit or hold possessions. Within the personal status laws of several Middle Eastern countries, these civil sanctions are codified and spelled out explicitly. The apostasy law thus strips the apostates of their most basic rights.

The scientific literature on apostasy is limited. Discussions centre almost exclusively on whether the death penalty is required by the Qur'an. While of great scholarly interest, they have no practical relevance since in most Muslim countries today conversion is no longer punishable by death. What remains in force are the civil sanctions, which violate several basic rights and freedoms. Yet there is a perceptible reluctance in Middle Eastern societies, including within liberal circles, to discuss this form of punishment. What are the reasons behind this reluctance?

### Liberalism East and West

According to Bryan S. Turner,<sup>2</sup> orientalists, in their attempt to imagine the Muslim world as the radical Other of the West, depict Islam as a 'cluster of absences'. Possibly the deficiency most widely and persistently associated with Islam in the Western imagination is the absence of liberal thinking.

Within the past two centuries, liberalism has acquired a wide range of meanings, all of which do not necessarily correspond to the ideas of the doctrine's founding fathers. Liberalism is increasingly understood as the equivalent of democracy. Indeed, many Westerners would argue that liberalism is found only in the West, and they would disagree with talk of liberalism in the Middle East, let alone the Arabian Peninsula. A discussion of this view would have to be carried out elsewhere. What is important to point out here is that as a philosophical doctrine liberalism contains several basic tenets, not all of which are equally focused upon in practice. Different societies choose to define liberalism by laying stress on one or some particular tenet(s). Among the principles that liberal thought characteristically emphasizes are autonomy of choice, the primacy of the individual over the collective, and reason over faith. The first two tenets have given rise to the centrality of individual rights and liberties; the third one has led

# Apostasy and the Liberal Predicament

to the association of liberalism with secularism, politically expressed through the separation of religion and state.

In the Kuwaiti context liberalism is primarily understood in the latter sense. While rights and liberties are also important, it is not their embracement *per se* that makes a Kuwaiti liberal. Rather, it is the embracement of the third tenet, the separation between *din* and *dawla*. As the term is used here, a liberal is a person who looks upon religion as a personal matter and the public sphere as a religiously neutral space. 'Liberal' is therefore commonly used in opposition to 'Islamist', the latter term referring to people for whom religion pervades and shapes every aspect of social life. Everywhere in the Middle East these days, Islamists and liberals differ in their views on the relationship between religion, public life and politics. Kuwait is no exception. When it comes to apostasy, however, a strong consensus can be found across the liberal/Islamist divide. Most people reacted with anger and dismay at Qambar's conversion; even local human rights activists perceived it as an offence that called for some form of punishment. While there were only few demands for the death penalty, most people accepted unquestioningly the implementation of the civil sanctions.<sup>3</sup>

### Protecting the significant community

It may be tempting for Westerners to see in the apostasy law yet another instance of the incompatibility between the illiberal Muslim East and the liberal West, or indeed the ultimate vindication of the orientalist 'absences' thesis. To assess the situation in such terms is to miss the point. What we are dealing with here is not so much the clash between liberal and illiberal cultures as a political and ethical challenge common to all modern societies: How can the political community be protected against real or perceived threats while infringing as little as possible on basic individual rights? From this perspective, the difference between Muslim and Western societies lies in the definition of the community under threat rather than in the measures they evolve to thwart this threat.

All communities – whether ethnically, religiously or nationally defined – depend for their existence on the allegiance of their members; they are therefore keen to watch their boundaries and the movements across such boundaries. Not all large-scale communities achieve the same degree of significance, nor are they all mutually exclusive. To many in the Middle East, the most significant large-scale community is the *umma*. Elsewhere, for example in Europe, it is the nation-state. As a universal spiritual community, the *umma* throws its doors wide open to incoming members but severely restricts the right to exit. By contrast, nation-states generally tend to be lenient on the right to exit while keeping a particularly vigilant eye on the admission of new members. When confronted with acts construed as betrayal of the significant community, reactions everywhere tend to be rather similar. Thus nation-states deal with individuals

found guilty of treason by stripping them of their freedom, and/or citizenship rights; in case of high treason, they may even be sentenced to death.

### The politics of recognition

A further parallel can be drawn if we approach apostasy within the framework of the politics of recognition. The most remarkable feature of the case under study is not Qambar's conversion in itself, but the self-confidence with which he faced his society's criticism. Qambar publicly defended his decision by invoking the Kuwaiti constitution and the UN Universal Declaration of Human Rights. From insights gained through interviews with the convert, the conclusion can be drawn that he sought to assert not only his right to choose his own faith but also his right to be accepted for who he is and belong in the Kuwaiti community on his own terms. In other words, Qambar was seeking not merely toleration but recognition.

Anyone familiar with developments in Western societies within the past two to three decades realizes that this is the same demand that lies at the core of the multiculturalism debate, which is raging these days on both sides of the Atlantic. In this debate, which has split the liberal camp, more than one Western liberal have rejected the cultural minorities' right to difference on the grounds that such recognition would fragment the national community and undermine its value consensus. On the opposite side, liberal defenders of minority groups do not hesitate to assert the primacy of certain collective rights at the expense of important individual rights. For example, Charles Taylor<sup>4</sup> has argued in favour of the Quebec language legislation, which among other things forbids French-speaking Quebecois to send their children to English-language schools. Although this law clearly infringes on the parents' freedom of choice, Taylor finds it justifiable because it guarantees the continued existence of the French-speaking minority of Canada. Taylor and other Western political philosophers question not only the classical liberal tendency to defend individual rights at all costs, but also the liberal Kantian conception of justice that does not presuppose any particular conception of the good life. As Michael Sandel<sup>5</sup> puts it: 'The fundamental question is whether the right is prior to the good.' I believe Sandel articulates here the concern of the majority of Kuwaiti liberals for whom rights may not, or not always, be an end in themselves. The reason that liberal informants could not bring themselves to support Qambar's freedom to convert may be seen as related to their conviction that the virtue of rights lies in the fact that they promote an end presumed to be good. Islam being in their eyes the ultimate religion, they regard the apostasy law, which prevents Muslims from making the mistake of leaving the community's fold, as a good law. The end it promotes is more important than the restrictions it places on freedom of choice, which if exercised may lead Muslims astray.

The implementation of the apostasy law in several Middle Eastern countries is viewed by human rights experts as a major

problem. In my opinion, the severity of the law justifies both concern and criticism. It is meanwhile important to bear in mind that neither the rationale behind the law nor the reluctance of Muslim liberals to put an end to its implementation is unique and peculiar to Islam or Muslim societies. Rather, it illustrates a predicament common to all political communities. If we wish to argue against the law, we should start from this commonality of dilemmas and concerns and not from the rhetoric of difference between a liberal (read: morally superior) West and an illiberal Muslim world.

### Notes

1. Elsewhere in the Muslim world, e.g. Southeast Asia, apostasy is treated with greater leniency.
2. Turner, Bryan S. (1994), *Orientalism, Postmodernism and Globalism*, London: Routledge.
3. I have given a detailed account of some of the liberals' reactions in my article entitled 'Apostasy, civil death and the liberal predicament' (forthcoming).
4. Taylor, Charles (1994), 'The Politics of Recognition', in *Multiculturalism: A Critical Reader*, Theo Goldberg (ed.), Oxford: Blackwell, pp. 75-106.
5. Sandel, Michael (1988), *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press.

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