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*Ideological Extremism & the Abuse of Religion:
'Punishment of Apostasy' as a Rationale for Religious Violence by State and
Non-State Actors*

Ben Clarke¹

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Abstract

This paper critiques the phenomena of religious violence in Arab and Islamic States from a human rights perspective. It highlights the tendency of Islamists who engage in violence to justify their actions by reference to the religious doctrine of 'apostasy'. The inherent conflict between the notion that apostasy is a punishable crime and universal human rights norms (such as freedom of conscience and religion) is explored. It is argued that one way out of the cycle of religious violence and sectarian hatred is for Arab and Muslim States to adopt non-discriminatory laws modelled on the *Covenant on Civil and Political Rights* (which most of these States have ratified). By moving towards a universal human rights based approach to law and punishment, religion becomes a matter of personal conscience and belief. In time the danger of violent abuse of religion by State and non-State actors is likely to recede as there is a cultural shift away from the justification of violence by reference to religion. The thesis advanced below may not appeal to everyone. However so long as the status quo prevails, religious minorities and others will continue to be exposed to discrimination and in some cases violence from religious extremists - be they State or non-State actors - who justify their actions by reference to religious laws that permit violent punishment of 'apostates' and 'heretics'.

Keywords: apostasy, freedom of religion, terrorism, human rights, non-discrimination.

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Introduction

This paper explores a dichotomy that many Westerners, particularly those with little awareness of the tenants of Islam or the politics of the Islamic world, have pondered since the terrorist attacks of 11 September 2001. This dichotomy may be summarised as follows:

Proponents of militant *jihad*, including the perpetrators of the terrorist attacks of 11 September 2001, justify their use of violence by invoking Islamic law. In video recordings preceding acts of religious violence, suicide bombers have recited verses of the Quran, Hadith and sources of Islamic jurisprudence including the views of Islamic scholars. These sources are presented as evidence that the killing of those deemed 'kafirs' and 'apostates' is permissible under Islam, even where such persons are unarmed civilians.² According to this narrative, those who deliberately target unarmed persons who have been condemned as 'kafirs' and 'apostates' are not terrorists. Instead they are noble *mujahedeen* engaged in a heroic Islamic struggle. Their actions are justified as necessary measure to halt injustice or oppression; end Non-Muslim occupation; or restore a historic Islamic caliphate (The fact that most victims of Islamic militancy are Muslims is usually ignored by advocates of these struggles.)

By contrast, Muslim governments and organisations across the world have condemned such attacks as 'extremism', although an exception is often made when it comes to attacks against Israeli civilians. The latter situation is often characterised as 'lawful armed resistance to occupation' However for many Muslims, particularly those living in the West, all violent attacks upon civilians (whether by Muslims or otherwise) constitutes terrorism *regardless of the context* Muslims in the West often complain that violence acts by Muslims undermine efforts to persuade non-Muslims that Islam is:

- (a) A religion of tolerance, peace and moderation; and
- (b) Compatible with religious pluralism, democracy and modernity

They claim that extremists who promote or engage in terrorism are *not* waging a legitimate militant *jihad* and *neither are they Muslims*. In short, many Muslims reject any suggestion of a nexus between terrorism and the religion of Islam.

This dichotomy is presented on the nightly news on TV networks across the world. Unfortunately, it is often the message of extremists that is deemed newsworthy, as sensational stories increase network ratings. The fact that most Muslims have not embraced the path of religious violence and extremism has not been appreciated in some States. Consequently, in the post-9/11 era, xenophobia remains a problem for many Muslims in Western countries. This manifests itself in many ways. For example, an application by an Islamic organisation for approval to build an Islamic school in country New South Wales (Australia) was recently rejected by the local council, which cited prevailing public opinion against an Islamic college in the area. The media highlighted community fears about the social impact of Islamic institutions.³ Such fears include the spread of extreme ideologies that promote violence, or are otherwise incompatible with Australian values. These fears appear exaggerated given that the Muslim population in Australia is insignificant (1.7% of the population)⁴ and the threat of home-grown terrorism by radical Islamists is not high.⁵ However, a number of terror cells comprised of Australian Muslims have been recently detected. Some alleged cell members are currently on trial.⁶ It is therefore prudent for local authorities in Australia

² See 'Al Qaeda Fatwa: World Islamic Front against Jews and Crusaders', published in *al-Quds al-Arabi* (London UK), 23 February 1998, 3. Critics of Islam also point Islam's sacred texts as the source of religious violence. See Ayaan Hirsi Ali, *Infidel: My Life* (2007, Free Press), 169-92.

³ 'Australia Muslim school rejected' BBC News (Online), 27 May 2008. Available at <http://news.bbc.co.uk/2/hi/asia-pacific/7420907.stm>

⁴ According to the 2006 Australian Census, there were approximately 340,400 Muslims in Australia, comprising 1.7% of the population. Source: *Perspectives on Migrants, 2007* Compiled on 25/02/2008 Australian Bureau of Statistics www.abs.gov.au

⁵ According to the Australian National Security website, 'the current level of alert for Australia is medium' at 24 June 2008. Available at: www.nationalsecurity.gov.au/

⁶ See *R v Abdul Nacer Benbrika & ors* Vic SC (February 2008 - present). See also *Thomas v Mowbray* [2007] HCA 33

and elsewhere to enquire into Islamic sects or organisations seeking approval to open religious facilities. These inquires should focus on: the ideology of the group; its track record in other countries; its sources of funding; its purpose and proposed activities; and curriculum content. However exaggerated public fears about radical Islamists means that both ordinary Australian Muslims and the extremists are sometimes being 'tarred with the same brush'. It is hoped that such stereotyping will recede as government agencies deport, prosecute or proscribe (as the case may be) individuals and organisations that promote religious extremism, whilst welcoming those who embrace the values that underpin Australian society.

The dichotomy presented above leads to some obvious jurisprudential questions: Is the targeting of unarmed civilians justified in any circumstances under Islamic law?⁷ Is it, for example, justified under the Islamic law of war? Are those waging an armed struggle against occupation of Islamic lands entitled to target civilians of the occupying power, or indeed civilians belonging to the occupied population who are deemed to be collaborating, in some fashion, with the occupation?⁸ These issues have been explored elsewhere and are not the focus of this paper. Suffice it to say, such methods of resistance violate international humanitarian law. If committed during armed conflict, they constitute war crimes under the laws of war. At other times, they constitute domestic crimes, such as murder, under municipal criminal law. They may also reach the threshold of crimes against humanity,⁹ or constitute 'treaty crimes' under various international treaties on terrorism.¹⁰

The dichotomy presented above leads to further questions: 'how did this dichotomy come about?' Why has religious violence reached such levels in Muslims States and Societies? How can the situation be remedied? A detailed analysis of these matters would require consideration of a complex array of issues

⁷ See Shaheen S. Ali, and Javaid Rehman, 'The Concept of Jihad in Islamic International Law' (2005) 10(3) *Journal of Conflict and Security Law* 321-343; Hilmi Zawāfi, *Is Jihād a Just War? War, Peace, and Human Rights Under Islamic and Public* (2001)

⁸ The Arab League and Organisation of the Islamic Conference offer no clear answer to this question. Their conventions on terrorism simply declare an exception for peoples struggling against *inter alia*, foreign occupation. See: *Arab Convention on the Suppression of Terrorism*, opened for signature 22 April 1998, (deposited with the Secretary-General of the League of Arab States) preamble, art 2(a) (entered into force 7 May 1999); *Convention on the Organization of the Islamic Conference on Combating International Terrorism*, opened for signature 7 January 1999 (annexed to Resolution No 59/26-P of the OIC), art 2 (not yet in force). See also: Ali Khan, *A theory of international terrorism: understanding Islamic militancy* (2006); Javaid Rehman, *Islamic state practices, international law and the threat from terrorism: a critique of the 'clash of civilisations' in the new world order* (2005); and Troy S Thomas, 'Jihad's Captives: Prisoners of War in Islam', US Department of Defense (2005)

⁹ See *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002) Article 7. Most Arab and Muslim States are yet joined the ICC. Exceptions include Afghanistan, Jordan, Tajikistan, Iraq, Libya, Qatar, and Yemen voted against the Rome Statute (as did Israel, the United States, and China). Bahrain, Bangladesh, Iran, Israel, Kuwait, Kyrgyzstan, Oman, Syria, Thailand, United Arab Emirates, Uzbekistan and Yemen have signed but not ratified the ICC statute. Iraq and Israel eventually signed the Rome Statute, although in 2005 the Iraqi Transitional Government reversed a decision to ratify the treaty (possibly due to US pressure)

¹⁰ See: *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents*, opened for signature 14 December 1973, 1035 UNTS 167 (entered into force 20 February 1977); *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, opened for signature 14 September 1963, 704 UNTS 219 (entered into force 4 December 1969); *Convention for the Suppression of Unlawful Seizure of Aircraft*, opened for signature 16 December 1970, 860 UNTS 105 (entered into force 14 October 1971); *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, opened for signature 23 September 1971, 974 UNTS 177 (entered into force 26 January 1973); *Convention on the Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents*, opened for signature 14 December 1973, 1035 UNTS 167 (entered into force 20 February 1977); *International Convention against the Taking of Hostages*, opened for signature 17 December 1979, 1316 UNTS 205 (entered into force 3 June 1983); *Convention on the Physical Protection of Nuclear Material*, opened for signature 3 March 1980, 1456 UNTS 124 (entered into force 8 February 1987); *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* opened for signature 24 February 1988, 1652 UNTS 499 (entered into force 6 August 1989); *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, opened for signature 10 March 1988, 1678 UNTS 221 (entered into force 1 March 1992); *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, opened for signature 10 March 1988, 1678 UNTS 304 (entered into force 1 March 1992); *Convention on the Marketing of Plastic Explosives for the Purpose of Detection*, opened for signature 1 March 1991, 39 SD 28 (entered into force 21 June 1998); *International Convention for the Suppression of Terrorist Bombings* opened for signature 15 December 1997, 2149 UNTS 284 (entered into force 23 May 2001); *International Convention for the Suppression of the Financing of Terrorism*, opened for signature 9 December 1999, 2178 UNTS 229 (entered into force 10 April 2002); *International Convention For The Suppression Of Acts Of Nuclear Terrorism* opened for signature 14 September 2005, UN General Assembly Resolution 59/290, Entry into Force 7 July 2007

spanning foreign interference in States, poverty, poor governance, nepotism, and autocracy in numerous Arab States. These questions have received detailed study elsewhere.¹¹ Instead this paper explores an issue that has received less attention: the abuse of religious doctrines and symbols by extremists in ways that ferment religious violence. Particular attention is paid to the Islamic doctrine of *riḍḍah* (apostasy). Two competing trends will be critiqued:

1. The use of religious doctrine (including *riḍḍah*) by terrorists to justify their extreme ideologies and their violent methods; and
2. International human rights norms that are at odds with the very doctrines that underpin the ideologies of religious extremists

In this context, an argument is presented for: (a) greater respect for fundamental human rights by Arab and Islamic governments, and (b) the abolition of discriminatory religious crimes including 'apostasy' that are currently being abused by both State and non-State actors

Extreme Ideologies versus Human Rights based Social Orders

Before examining the abuse of religion by violent extremists, it is necessary to note that extremists usually embrace some international human rights whilst rejecting others. For example, both radical Islamists and those who oppose them, demand an end to: autocratic rule; disregard for the rule of law and corruption in Muslim States and societies. They criticise Arab and Islamic governments for their lack of political transparency and respect for basic human rights. However there is a sharp divide between radical Islamists and other opposition groups over the *nature and scope* of human rights. Some radical Islamists take an ultra-conservative view, rejecting, for example, liberal notions of gender equality, religious pluralism (i.e. freedom of conscience and belief for religious minorities), freedom of speech (i.e. criticism of the State ideology), and freedom of association. For *Al Qaeda* and its ilk, these norms are rejected as western notions incompatible with their interpretation of Sharia. Indeed growing demands across the Arab and Islamic world for democracy, human rights, and transparency in government are a direct challenge to *Al Qaeda's* vision of a pan-Islamic caliphate where Sharia is strictly enforced and conflicting western ideas and practises are outlawed.

Extreme Ideologies & Religious Violence

Al Qaeda has often been successful in exploiting local grievances including: foreign interference in sovereign nations; corrupt regimes; authoritarian rule; repression of opposition Islamist parties. However, in recent times, its willingness to wage bloody sectarian war within Muslim States and societies has undermined its popularity.¹² While its ideology remains attractive to some young, angry and alienated Muslims, it has failed to mobilise and organise its supporters so as to achieve their ultimate goal: the toppling of 'apostate' governments. Even among ultra-conservative Sunni religious communities (Saudi Arabia & Yemen) and occupied Muslim lands (Iraq & Afghanistan) *Al Qaeda* and its affiliates were unable to prevail. This reflects, *inter alia*:

1. Horror at the internecine nature of sectarian violence in Iraq (which has achieved little more than mass civilian casualties);
2. The incompatibility of extreme ideologies with the complexities of the modern world;
3. The growing revulsion at where extreme ideologies lead (e.g. arbitrary divisions within societies along sectarian lines, the branding of 'the other' as 'apostates', and *tit for tat* killings by sectarian dead squads);

¹¹ See 'The United Nations Global Counter-Terrorism Strategy' (UN General Assembly Resolution 60/288) and the annexed Plan of Action: UN Doc A/RES/60/288, adopted on 8 September 2006. See also: Benjamin Clarke 'Terrorism Causes & Cures: An International Law Approach' in Robert Imre, I Brian Mooney, Benjamin Clarke, *Responding to Terrorism: Political, Philosophical and Legal Perspectives* (2008), 19-56

¹² See Nibras Kazimi 'The Jihadists Admit Defeat in Iraq' 15 May 2008, <http://talismangate.blogspot.com/2008/05/fascinating-jihadists-admit-defeat-in-iraq.html>. Kazimi has posted 'Brief Study on the Consequences of the Division [Among] the [Jihadist] Groups on the Cause of Jihad in Iraq' 'Dir'a limen wehhd' which was displayed by *Al-Ekhlaas* website (one of *Al-Qaeda's* chief media outlets) on 12 May 2008. See: <http://www.aekhlaas.net/forum/showthread.php?t=146840>

4. A growing rejection of politico-religious violence, under the cloak of religious doctrine (including *riddah*) by both non-State actors (*Al Qaeda* and *Al Qaeda in Iraq*) and States (that have failed to halt the flow of jihadists through their territory to engage in religious violence in Iraq and elsewhere).

Freedom of Religion and the Crime of Apostasy

Recognition of basic rights in the Middle East stretches back to antiquity. After conquering Babylon in 539 BC, Cyrus the Great issued a declaration of rights. The Cyrus Cylinder records what may be the first human rights document. Cyrus declared that citizens of the empire would be allowed to practice their religious beliefs freely. This right was confirmed just over 1000 years later in the Koran ('Let there be no compulsion in religion' [Quran, Surah 2:256]). Nonetheless, Islam (and a number of monotheistic faiths) condemn 'apostates' (i.e. persons who depart from their religion). The tension between these apparently conflicting norms has not been resolved by Islamic scholars. While the principle of freedom of religion was recognised under international law [through the *Universal Declaration of Human Rights* (1948) and *The International Covenant of Civil and Political Rights* (1966)], the right to discriminate against, or punish, 'apostates' was not. Whilst freedom of conscience and religion (including the freedom to change ones religion) is now firmly established under international human rights law, the principle is not universally embraced. To this day, the doctrine of *riddah* (apostasy) is invoked in some States and societies to justify the killing of those who leave Islam, while similar punishments are demanded for persons who criticise or defame the religion. The punishment of 'apostasy' is not unique to Islamic tradition, as the following glimpse at the history of religion demonstrates.

The Concept of Apostasy

The word 'apostasy' is derived from the Greek word *αποστασία*, meaning *a defection or revolt*. The term is generally used to describe the formal renunciation of one's religion. The theological concept may be traced back to antiquity.¹³ The notion that apostasy is a punishable religious crime is most evident in religious texts of two of the Abrahamic faiths, Judaism and Islam. The status of apostasy in a number of contemporary world religions is now considered.

Buddhism

Buddhism, whether understood as a religion, or a set of philosophical beliefs and practices, emphasizes the oneness of all humanity. It contains no concept of apostasy. One of the basic precepts of Buddhism is the obligation to refrain from killing living beings.¹⁴ Unsurprisingly, there is no concept of punishment, let alone killing, of those who reject the Buddhist religion.

Hinduism

The notion of abandonment is recognised under some Hindu Scriptures. Chapter 18 of the *Bhagavad Gita*, starting from verse 66, has been interpreted as expressing abandonment of the *Dharma* (an individual's religious and moral rights and duties).¹⁵ Such behaviour is regarded as sacrilege, disobedience of God, and falling from the right path and even treachery to tradition and revelation.¹⁶ However, Hinduism does not require that those who depart from the faith receive any earthly punishment for doing so. (Nor does Indian law recognise the legality of such punishment.) Indeed the concept of punishment of apostasy, appears antinomious to the Hindu belief in non-violence (*ahimsā*) and respect for all life.¹⁷

Judaism

The *Torah* states that 'if thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, says let us serve other gods thou shalt surely kill him' (Deuteronomy 13:6-10). While

¹³ See Stephen G. Wilson, *Leaving the Fold: Apostates and Defectors in Antiquity* (2004)

¹⁴ See **Bhante Gunaratana** (2007) *Taking the Eight Lifetime Precepts* "Bhavana Society" 3 June 2008 http://www.bhavanasociety.org/resource/taking_the_eight_lifetime_precepts/

¹⁵ 'Apostasy' *Indopedia* 4 June 2008 http://www.indopedia.org/Apostasy.html#Apostasy_in_Hindusim

¹⁶ *Ibid*

¹⁷ See generally: Unto Tähtinen, *Ahimsa. Non-Violence in Indian Tradition* (1976) (Note: The belief in non-violence is also embraced by Buddhism and Jainism.)

Israel is predominantly a Jewish State, it also embraces liberal democracy and purports to comply with its obligations under international human rights law. Rabbinical law is not imposed by the State. Apostasy is not a punishable crime under Israeli criminal law.

Christianity

The *New Testament*, the cornerstone of Christian theology, does not refer to punishment of those who depart from the Christian religion. However the *Old Testament* (which includes the *Torah*) forms part of the Christian Bible. In medieval Europe, the doctrine of apostasy provided a justification for punishment of those deemed 'apostates' and 'heretics'. Up until the Reformation, most of Europe was part of the Holy Roman Empire. The geographic area covered by this empire was known as *Christendom*. Persons suspected by local authorities to be 'apostates' and 'heretics' were often subjected to brutal methods of punishment. Trials against alleged 'apostates' were often little more than political show trials by petty tyrants, or lynchings by ignorant and superstitious people.

Religious Violence in Medieval Europe

(1) The Witch Trials

Superstition and abuse of religion were common aspects of life in Medieval Europe. During the witch craze thousands of 'witch trials' were conducted. In some instances, religious violence became an instrument of statecraft. The European witch craze is recorded in the *Malleus Maleficarum* (the 'Hammer of Witches'), produced between 1487 and 1669, where witchcraft is defined as the most abominable of all heresies.¹⁸ Thousands of women were killed for crimes that were impossible to commit, namely engaging in super natural practices ('witchcraft'). Most witch trials occurred in rural areas. Acquittal rates were low although not all of those found guilty were put to death. The conviction and execution rate was around 90%. It is estimated that many hundreds of thousands of women were executed as witches over a 250 years period in Europe.¹⁹ Witch hunting courts persecuted women in a misguided attempt to protect from Christendom a conspiracy against it which did not exist. While the Catholic Church condemned such courts, these trials continued into the 17th century. In Salem, Massachusetts, young women were put to death after hysterical witch trials in 1692. Under Massachusetts law (1641), witchcraft was punishable by death.²⁰

The trial of alleged witches and others for supposed heresies is now regarded as a barbaric chapter in European history. In similar fashion, the notion of punishment of blasphemy and apostasy is regarded as anachronistic. Such laws were used for political purposes to deal with critics, opponents and others considered a threat. On reflection, prosecutions of political opponents under such laws demonstrated the hypocrisy of religious officials and political leaders. They offer a powerful illustration of how religious laws can be abused by government officials to suit their own purposes.²¹

These concepts were powerfully critiqued in a famous American play called *The Crucible* by Arthur Miller, about the Salem witch trials. The fascinating thing about those trials is that the judges later apologized for having wrongly convicted and sentenced to death the hapless girls. Miller's play was an allegory about the excesses of McCarthyism in the 1950s when the United States was terrified of Communism's influence. Lives and careers were ruined for the mere insinuation that someone was a communist or supported that ideology. Communism was the new witchcraft, the new apostasy.

¹⁸ See Geoffrey Burton Russell, *Witchcraft in the Middle Ages* (1972) 233

¹⁹ Geoffrey Parrinder, *Witchcraft: European and African* (1963), 35

²⁰ Geoffrey Parrinder *Witchcraft: European and African* (1963), 32

²¹ Interestingly, Iran's 2008 law governing apostasy also deals with witchcraft. It declared that those who practice "witchcraft" shall be "sentenced to death." George Conger, 'Iran introduces law that imposes death penalty on converts' 8th February 2008 <http://www.religiousintelligence.co.uk/news/?NewsID=1591>

(2) European Wars of Religion

From 1562-1598, France experienced a series of religious wars fought by opposing Christian armies. Catholic and Protestant forces waged a series of sectarian battles as they struggled for power.²² A century later, the 30 Years War was waged in Germany in the 'dying days' of the Holy Roman Empire. It is estimated that at least 15-20% of the German population starved, died of disease, or were killed.²³ This calamity proved to be a defining moment in European history. Millions had lost their lives over religious schisms and the struggle for power upon the decline of imperial authority. The scale of the horrors inflicted in the name of sectarian belief contributed to the emergence of liberal thinking and the Enlightenment. In time, these influences shaped the emergence of liberal democracy. Today, Western European polity is dominated not by religious ideology but a common desire to maximize the benefits of closer social, economic and political cooperation and integration.²⁴

Islam

The notions of apostasy and blasphemy are recognised in Islam.²⁵ Apostasy or *riddah* ('turning back' from Islam) is considered by Muslims to be a profound insult to Allah. A person born of Muslim parents that rejects Islam is called a *murtad fitri* ('natural apostate'). A person that converts to Islam and later rejects the religion is called a *murtad milli* ('apostate from the community').

Islam & Punishment of Apostasy

The question of punishment of apostasy is one of the biggest challenges for those seeking to harmonize international human rights law (IHRL) and Islamic law. The position under IHRL is clear: the punishment of individuals for changing their religion is a breach of their human rights. More specifically, it violated their right to freedom of conscience and religion. The position is less clear under Islamic law.²⁶ While the notion of punishment of apostasy is addressed in the Quran, the question of *earthly* punishment of apostasy is not. Stated differently, whilst the Koran condemns apostasy as a sin, it does not mandate a penalty. Whether early punishment of apostasy is justified (or required) under Islam has been debate for centuries. This debate is of fundamental importance to the fate of 'apostates' in some Muslim States and societies. The intricacies of the debate are addressed elsewhere.²⁷ They are beyond the constraints of this paper. Only a few of the opposing view points can be noted here.

The Moderate View

After reviewing applicable Koranic verses, Bederin notes that 'apostasy *simpliciter*, in the sense of an individual denouncing Islam without more, whenever mentioned in the Qur'an does not stipulate any worldly punishment but is only described as attracting severe punishment in the hereafter'.²⁸ A number of Muslim States and Islamic scholars have taken the view that:

it is not the changing of ones religion simpliciter that is prohibited under Islamic law but its manifestation in a manner that threatens public safety, morals and freedom of others, or even the existence of the Islamic State itself.²⁹

²² See Mack Holt, *The French Wars of Religion* (1995)

²³ **Thirty Years' War — Casualties and disease** Retrieved 24 June 2008 www.spiritus-temporis.com

²⁴ In a number of contemporary Arab and Islamic States, sectarian wars have also been waged by rival factions in the quest for power. Some have been internecine in character. In recent years, sectarian conflicts have scarred Lebanon, Algeria, Gaza and Iraq. It is hoped that the sheer scale and horror of sectarian violence will lead to a shift away from politico-religious ideologies and towards political philosophies that promote pluralism, tolerance, and most importantly, non-discrimination on grounds of religious creed.

²⁵ As to the separation of blasphemy and apostasy in Islam see Kamali H M, *Freedom of Expression in Islam* (1997), 217.

²⁶ See Shaikh Abdur Rahman, *Punishment of Apostasy in Islam* (2007)

²⁷ See for example Mashood A Baderin, *International Human Rights Law and Islamic Law* (OUP, 2003), 123-125; Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (2004)

²⁸ As to differences among scholars of traditional Islamic law see Baderin, above n 25, 123-4. For religious sources, see notes 395-403

²⁹ Baderin, above n 25, 125

In their recent monograph *Freedom of Religion, Apostasy and Islam* (2004), Saeed and Saeed raise a number of arguments against the punishment for apostasy. Firstly they claim that is no justification for temporal punishment of apostasy in the Koran.³⁰ They also note the potential for misuse of apostasy laws. An example would be the arbitrary use of these laws to eliminate opponents and thereby sure up authoritarian regimes. Saeed and Saeed contend that these laws developed from isolated (ahad) *hadith* and interpretations of these *hadith* on the basis of analogy (*qiyas*) and *ijtihad*.³¹ As these sources and their interpretation do not guarantee certainty of knowledge (*ilm qati*) as understood in Islamic jurisprudence, these authors contend that Muslims in the modern period have the opportunity to re-think these laws.³²

Others have argued that the *hadith* which states 'Whosoever changes his religion, Kill Him', is about treason rather than apostasy. The early Muslim community in Medina was on occasions - according to Islamic historical accounts - fighting for its very existence. Its unity was threatened at various times by defection and treachery. Such conduct was as much political as religious betrayal. The unwillingness of many Muslim States to prosecute individuals who leave Islam appears to reflect this distinction between treason (which is a threat to the government) and apostasy (which is not). In Qatar apostasy remains a capital offense, however no executions have been reported for this crime. It has also been argued that imposing the death penalty for apostasy is *against* Islam because it, *inter alia*, promotes hypocrisy.³³

The Conservative View

Islam's five major schools of jurisprudence, the Madh'hab, currently hold that converts from Islam must be executed.³⁴ While this view prevails among classical scholars of Islamic law and jurisprudence, it is one grounded exclusively upon Islamic sources of law. Such orthodoxy fails to recognise the emergence of *non-derogable* norms of international law, such as fundamental human rights. They include the freedom of the individual to leave a religion and adopt another (or none).³⁵

A Legal Harmonisation Approach

Can these competing approaches be harmonised? One way to do so is by ensuring that all laws within a State, whether religious or otherwise, conform to fundamental human rights. This may be done by State organs, including official religious institutions, or religious schools acting of their own initiative and independently of government. The Turkish Department of Religious Affairs (TDRA), a constitutionally mandated body that regulates relations between religious communities and the Turkish government, is undertaking a project that reflects the former approach. This is of great interest given the wave of religious conservatism that has swept through Turkey over the last decade. The TDRA is conducting a review of *hadith* of dubious authenticity, with a view to removing ideas and practices that have no sound basis in Islam.³⁶ To the extent that Islam may be presented as a religion compatible with pluralism and basic human rights, this project will be supported by advocates of democracy and human rights. However those same supporters are likely to have reservations about State involvement in any review of the authenticity of religious texts. It is hoped that all States, including Muslim Majority States, will move towards complete separation of religion and State, for reasons outlined below.³⁷ In the case of conservative Islamic States,

³⁰ Abdullah Saeed and Hassan Saeed, *Freedom of Religion Apostasy and Islam* (2004), 167

³¹ Ibid, p167

³² Ibid p168

³³ Dr. Ahmad Shafaat, 'The Punishment of Apostasy in Islam Part I: The Qur'anic Perspective' (February, 2006) www.islamicperspectives.com/Apostasy1.htm accessed 2 June 2008

³⁴ George Conger, 'Iran introduces law that imposes death penalty on converts' 8th February 2008 <http://www.religiousintelligence.co.uk/news/?NewsID=1591> accessed 2 June 2008

³⁵ See page 15 below

³⁶ See Brian Whitaker, 'Islamic Newspeak' *The Guardian* (Online) 26 February 2008 at www.guardian.co.uk

³⁷ At least 11 Muslim majority States have enshrined secularism within their constitutions. Turkey is a famous example. Under the Turkish civil code, Muslim women are free to exercise basic human rights recognised under international law. They may, for example, marry a non-Muslim man and change their religion without interference from the State. See Tad Stahnke and Robert C Blitt *The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the*

such reform must emanate from within established schools of Islamic jurisprudence *acting together*. This will only occur through a commitment to religious unity, and a robust application of the doctrine of *ijtihad*.³⁸

Harmonization is obviously enhanced by State ratification of human rights treaties and implementation of treaty norms under domestic law and policy. However, as Baderin notes, under IHRL the right of freedom of religion, as expressed in Article 18(3) of the ICCPR, is not absolute.³⁹ In the case of the freedom to manifest one's religion or beliefs, these rights may only be subject to such limitations as are prescribed by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

In its second periodic ICCPR report, Sudan stated that conversion from Islam is not an offence in Sudan *per se*, but only the manifestation of such conversion in a manner that adversely affects public safety. Nonetheless, this argument demonstrates Sudanese non-compliance with the Covenant because Article 18(3) only permits restrictions on freedom to manifest religion or belief if limitations are prescribed by law – *which Sudan had not done*.

Moreover, the right of States to punish those who change religion is at odds with the peremptory character of human rights. The UN Human Rights Committee, in General Comment 24, recognised that fundamental human rights are peremptory norms.⁴⁰ It declared that ‘... a State may not reserve the right to ... deny freedom of thought, conscience and religion.’ This approach reflects the prevailing view among legal scholars, namely that in the case of peremptory norms of international law, there can be no derogation by States.⁴¹ In any case, *no Muslim State entered a reservation to the ICCPR citing a profound religious view that apostasy is punishable by death*.⁴²

Manifestations of Religious Violence

Invocation of religion to justify judicial or extra-judicial violence can be broken down into a number of categories:

1. Punishment of Individuals by State and non-State actors

Individuals deemed to have committed crimes against religion (including changing religion, marrying outside their religion, abandoning religion or defaming a religion)⁴³ continue to be the victim of violent punishment by State and non-State actors in various parts of the world.

2. Religious Violence against Governments

At a national level, so-called ‘apostate regimes’ are being targeted by State and non-State actors seeking to topple governments.

3. Suppression of Political Dissent through Religious Laws

Some regimes use religious laws to silence critics of government, including those who speak out against autocracy, nepotism, corruption, abuse of religion by the State, poor governance and

Constitutions of Predominantly Muslim Countries (Washington: United States Commission on International Religious Freedom, March 2005)

³⁸ *Ijtihad* is the reinterpretation of religious texts by Muslim scholars through a process of critical reasoning and taking into account modern developments in science and other areas of human knowledge and advancement. See ‘*Ijtihad* Reinterpreting Islamic Principles for the Twenty-first Century’ USIP Special Report No 125 August 2004 at <http://www.usip.org/pubs/specialreports/sr125.html>

³⁹ Baderin, above n 25, 124

⁴⁰ *General Comment No 24 Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto or in relation to declarations under article 41 of the Covenant* : 04/11/94 CCPR/C/21/Rev 1/Add 6, General Comment No 24

⁴¹ *Ibid*. See also: B G Ramcharan, *The Right to Life in International Law* (1985), 133.

⁴² Rosalyn Higgins, *Problems & Processes. International and How We Use It* (1994) 98

⁴³ The notion that a person may be prosecuted or punished for defaming a religion has no basis in human rights law. See Julian Rivers ‘The Question of Freedom of Religion or Belief and Defamation’ (2007) 2 *Religion & Human Rights* 113

failure to guarantee the fundamental human rights of all citizens. In some instances, governments are too weak to resist those who promote ideological extremism and abuse religion for their own purposes. In other cases, government exploit religious sentiment for their own purposes. A quintessential example is the case of Faraj Fawda which is considered in the conclusion of this paper.

International Human Rights Law & the Punishment of Apostasy

The preceding discussion raises two fundamental questions:

1. Can the crime of apostasy under Islamic law, and the punishment of the same, ever be reconciled with international human rights law?
2. Are States Parties to the ICCPR automatically in breach of their treaty obligations if apostasy remains a crime against the State?

The Human Rights Committee's⁴⁴ General Comments on the *International Covenant on Civil and Political Rights* (1966) provides clear answers to these questions. It states that all human beings, regardless of who they are and where they live, have the right to:

... choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views [...] Article 18.2 (*Covenant on Civil and Political Rights* [1966]) bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert

The Committee has also made clear that the Covenant:

does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference from the State.

Moreover the Committee confirmed that '... no one can be compelled to reveal his thoughts or adherence to a religion or belief.' For these reasons, States Parties to the Covenant (who include almost all Muslim States) have a responsibility to protect persons who choose to change their religion. Laws which permit the punishment of those who leave Islam or any other religion or ideology for that matter, are in clear violation of the Covenant. This is evident from the following comment by the Committee:

*the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.*⁴⁵ (Italics added)

In the following section, the law and practice in a number of Muslim States and societies is critiqued to highlight a widespread lack of conformity (by State and non-State actors) with the norms and practices advocated by the UN Human Rights Committee.

State Practice

Today, State sanctioned punishment of apostasy only takes place in nations that have an Islamic tradition. In some Muslim States, *takfir* (charging one with blasphemy) and *zandaqa* (charging one with heresy) takes place under Sharia. In others, it occurs through the application of provisions of national criminal codes (In some States *both* systems may be used to pursue apostasy charges.) Afghanistan, Iran, Nigeria,

⁴⁴ Hereinafter 'The Committee'

⁴⁵ The Committee goes on to note that Article 18.2 of the Covenant bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. See also: Ibn Warraq, 'Apostasy, Human Rights, Religion and Belief' Panel Discussion 60th Session of the UN Commission on Human Rights in Geneva (7 April 2004)

Pakistan, Saudi Arabia and Sudan are examples of States that recognise apostasy as being punishable by death under their legal systems. However not all Muslim States or societies recognize apostasy as a crime. Some recognize such a crime but do not prosecute alleged apostates. Among those that do prosecute 'apostates', punishments vary. The following survey of relevant State practice provides a glimpse of recent approaches adopted in a number of States

Kuwait

In late 1995, Hussein Ali Qambar, a Shi'a Kuwaiti businessman, converted to Christianity. Qambar's conversion became publicly known during a custody dispute when his wife refused to give him access to his children. This event, which was practically unheard of in the Arabian Peninsula, caused a sensation. By January 1996, when it became clear that Qambar would not change his decision, popular anger against him began to rise. Anh Nga Longva offers a detailed account of what happened next:

In the National Assembly an Islamist deputy called for legal actions to be taken against the convert. Not long after, an Islamist lawyer sued Qambar for apostasy. ... Meanwhile, the home of the convert was vandalized, he was entirely barred from seeing his children, and when his father passed away, he was forbidden from receiving his share of the inheritance. Gradually, the number of people suing Qambar for apostasy grew. At the same time, he found no lawyers willing to defend him. In May 1996 the judge in the Shi'a lower court issued a ruling that officially declared Qambar an apostate and recommended that the death penalty be pronounced against him. Qambar appealed against the apostasy ruling. His appeal was to be reviewed in September 1996. One month before that date, the authorities issued Qambar a passport and he left Kuwait for the USA.⁴⁶

By November 1997, Qambar had reconverted to Islam and returned to Kuwait. Anh Nga Longva's description of the episode is compelling and deserves lengthy recitation:

I had the opportunity to observe the Kuwaitis' reactions to the conversion... what struck me most was the unanimity of the condemnations. ... I found a surprisingly strong consensus across the liberal/Islamist divide. Practically everyone agreed that Qambar's conversion was a serious crime and as is the case with all crimes, it had to be punished. They also agreed that depriving him of all his civil rights was an adequate punishment. The only topic which gave rise to some disagreement and a subdued sense of unease within some circles was the question of the death penalty.

Those who opposed it based their position on the Qur'anic verse (2:257) that says '*no compulsion is there in religion*'. But more often than not, the same verse was quoted in front of me to show that precisely because Islam is such a tolerant religion, there are no possible excuses for apostasy. Mostly for this reason, apostates are traditionally considered insane unless there is irrefutable evidence that they were in their right mind when they apostated. This explains why some people in Kuwait, when they did not want to see Qambar condemned to death, argued that the man was insane, and called him a 'lunatic', 'a case for psychiatry'.

There was a remarkable discrepancy between the discourse of Qambar and that of the society around him. Qambar's frame of reference was art. 18 of the Universal Declaration of Human Rights which calls for freedom of religion, and several articles of the Kuwaiti constitution, especially article 29 on universal equality before the law and article 35 which guarantees freedom of belief. This article reads: 'Freedom of belief is absolute. The state protects the freedom of practicing religion *in accordance with established customs, provided that it does not conflict with public policy or morals*' (emphasis added).

Faced with the barrage of criticisms and condemnations, Qambar made no attempt to hide his conversion, showed no remorse and acted as if he was convinced not only of doing the right thing but also of having world opinion on his side. ... several Christian organizations around the world

⁴⁶ Anh Nga Longva, 'The apostasy law in the age of universal human rights and citizenship: Some legal and political implications' The fourth Nordic conference on Middle Eastern Studies: The Middle East in globalizing world, Oslo, 13-16 August 1998

mounted a campaign on Qambar's behalf and his story became something of a *cause célèbre* on the Internet. The case also provided the basis for sharp criticism against the state of Kuwait at the United Nations in the fall of 1997.

By contrast to Qambar's (human rights) discourse, the discourse of those who condemned him was framed in particularistic terms of communal and regional belonging. The majority of the Kuwaitis reacted with anger. Anger against Qambar for betraying the Muslim umma, the Arab nation and the Kuwaiti community, but also anger against the Western Christian world who, it was claimed, had engineered this whole episode. People were enraged that Qambar so willingly accepted to be a tool in the Westerners' plot against his own people. When, in an attempt to de-dramatize the event I once suggested that Qambar's conversion may be due to purely personal reasons, people dismissed my view at best as naive, at worst as bordering on bad faith. Even my friends looked at me with suspicion and darkly allude to outside forces working for the demise of Islam.

It seemed as if each and everyone in Kuwait experienced Qambar's conversion as a personal affront.⁴⁷

Afghanistan

In 2006, an apostasy case in Afghanistan (which bore a striking resemblance to Qambar's case) attracted international publicity. It involved Abdul Rahman, an Afghan citizen who converted from Islam to Christianity. Rahman was arrested in February 2006. His case put President Karzai in a very difficult position. Reliant upon both internal and external supporters, Karzai, then as now, had to strike a delicate balance between: (a) the conservative, traditional and religious concerns of tribal leaders who dominate the Afghan parliament; and (b) the interests of the government's US and NATO backers. President Bush came to power with the support of the conservative Christian lobby who were concerned that their taxes were being used to support a State that not only prohibits conversion to Christianity but permits the death penalty in such cases.⁴⁸ Meanwhile, many Afghans were calling for the death penalty to be imposed.⁴⁹ Once again there was a widespread view that Rahman must be insane, and should therefore be spared the death penalty.

Article 130 of the *Constitution of Afghanistan* ('the Constitution') allows for the prosecution of crimes that are punishable under 'Hanafi jurisprudence'. This branch of Islamic jurisprudence recognises the crime of apostasy and its punishment by execution. However Article 129 of the Constitution states that the death penalty is only to be carried out with the approval of the president. Rahman avoided trial and punishment. This outcome was probably the result of pressure from donor countries and a contradiction in the Constitution. While it recognizes the Hanafi school of Islamic jurisprudence, the Constitution also recognizes a limited form of freedom of religion under Article 2. The presiding judge appears to have acknowledged as much in a statement on 26th April 2006. ('The case, because of some technical as well as legal flaws and shortcomings, has been referred back to the prosecutor's office.'⁵⁰) Three days later Italian Prime Minister Silvio Berlusconi announced that Rahman had been granted asylum already arrived in Italy.⁵¹

⁴⁷ Anh Nga Longva, 'The apostasy law in the age of universal human rights and citizenship: Some legal and political implications. The fourth Nordic conference on Middle Eastern Studies: The Middle East in globalizing world, Oslo, 13-16 August 1998.

⁴⁸ Julie Rawe, 'A Convert's Plight' 26 March 2006 Time/CNN <http://www.time.com/time/magazine/article/0,9171,1176990,00.html>

⁴⁹ 'Rice Calls Karzai on Christian Convert's Fate' 23 March 2006 Fox News <http://www.foxnews.com/story/0,2933,188936,00.html>

⁵⁰ 'Hundreds protest reports Afghan convert to be freed' 27 March 2006 http://www.cnn.com/2006/WORLD/asiapcf/03/27/afghan_convert/index.html

⁵¹ Elisabetta Povoledo, 'Afghan Christian Convert Granted Asylum in Italy' 29 March 2006 *New York Times* http://www.nytimes.com/2006/03/29/international/asia/29cnd-afghan.html?_r=1&oref=slogin

Malaysia

Under Article 160 of the *Constitution of Malaysia*, a 'Malay' citizen is 'a person who professes the religion of Islam'. By implication, those who leave Islam are, at law, no longer Malay citizens.⁵² On 8 May 2008, an Islamic court in Malaysia allowed a convert to Islam named Siti Fatimah Tan Abdullah (Tan Ean Huang), to return to Buddhism.⁵³ The judgment detailed 'the meaning of *mutad* (apostate) and *kafir* (non-believer) and how Islam dealt with such issues'.⁵⁴ It is doubtful that the decision will be accepted as a precedent throughout Malaysia, as religion is a state (rather than a federal) matter under the *Constitution of Malaysia*, and the decision has aroused protests.⁵⁵

Iran

One of the main concerns about apostasy laws is their misuse for ideological reasons, including the punishment of minorities, dissidents and others who fall out of favour of the ruling elite. The persecution of the Bahai in Iran, and the execution of Bahais for refusing to renounce their faith is a classic example.⁵⁶

In 1997, a world report on freedom of religion and Belief, endorsed by the Abdelfattah Amor (University of Tunis), UN Special Rapporteur on Religious Intolerance, noted that scale of persecution of Bahai in Iran:

The Baha'i community in Iran has been virtually annihilated. Over two hundred of its leaders are known to have been executed in government prisons after long periods of torture. An unknown number have been killed by mobs. Others have emigrated and the bulk of the laity have been driven underground or forcibly converted. Dozens languish in gaols under extreme conditions.⁵⁷

The plight of Bahai's and other minority groups in Iran since the 1979 revolution attests to the clear danger to the rule of law, and the integrity of the legal process where religious laws are invoked by governments to target those who do not subscribe to the prevailing ideology.

Recently the Iranian government took steps to codify the crime of apostasy under national law. In February 2008, a *Proposed Bill for Islamic Penal Law (Penal Code)* was placed before the Iranian Parliament.⁵⁸ The draft legislation mandates the death penalty for apostates from Islam (Article 225-8). It also declares that the legislation would have extra-territorial effect (Article 112).⁵⁹

In May 2008, at least 8 Bahai leaders were arrested and detained by Iranian authorities.⁶⁰ This served as a chilling reminder of mass arrests and executions of Bahai in the 1980s. The plight of the Bahai in Iran and Egypt was recently raised in the Human Rights Council.⁶¹

⁵² Article 160 is problematic, from a human rights perspective, for other reasons. For example, it excludes Malaysian born Christians and Indians who are not Muslim from obtaining citizenship in their home State.

⁵³ Mike Rosen-Molina, 'Malaysia Islamic Court Allows Reconversion from Islam' *Jurist*, 8 May 2008 <http://jurist.law.pitt.edu/paperchase/2008/05/malaysia-islamic-court-allows.php>

⁵⁴ Sharanjit Singh 'Syariah court allows convert to renounce Islam' *New Straits Times* (Malaysia) 9 May 2008 http://www.nst.com.my/Current_News/NSI/corpabout.htm

⁵⁵ Malaysian woman can leave Islam BBC, 8 May 2008 <http://news.bbc.co.uk/2/hi/asia-pacific/7389874.stm>; 'Protest against syariah court ruling' *New Straits Times* (Malaysia) 17 May 2008 http://www.nst.com.my/Current_News/NSI/Saturday/National/2242733/Article/index.html

⁵⁶ See Statement of the SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF CONCERNED ABOUT TREATMENT OF FOLLOWERS OF BAHÁ'Í FAITH IN IRAN (20 March 2006) accessible at <http://www.unhcr.org> accessed 1 June 2007

⁵⁷ Kevin Boyle & Juliet Sheen (eds) *Freedom of Religion and Belief: A World Report* (1997, Routledge) 424 (Muslims who kill Bahai have been freed without punishment by Iranian judges applying shariah)

⁵⁸ 'Draft Iranian Penal Code Legislates Death Penalty for Apostasy' The Grieboski Report (The Institute on Religion and Public Policy) 4 February 2008 <http://grieboskireport.blogspot.com/2008/02/draft-islamic-penal-code-legislates.html> Accessed 3 June 2008

⁵⁹ Ibid

⁶⁰ See 'Iran arrests Bahai leadership' BBC Online 19 May 2008 at http://news.bbc.co.uk/2/hi/middle_east/7409288.stm

⁶¹ See for example Human Rights Council, 7th Session (13 & 14 March 2008)

Pakistan

Article 20 of *The Constitution of the Islamic Republic of Pakistan* (1973) guarantees every citizen the right to profess, practise and propagate his religion, subject to law, public order and morality. However on 9th May 2007 a draft *Apostasy Act* (2006) was tabled before Pakistan's National Assembly. This bill proposed the death sentence for male apostates and imprisonment until penitence, or death, for female apostates. The government did not oppose the bill and sent it to the relevant standing committee. Section 5 of the bill states that the court should give a proven apostate at least three days or a month at the maximum to return to Islam. Those who refuse face the death penalty.⁶²

The danger of abuse of such laws was recently highlighted by the Human Rights Commission of Pakistan in its response to the bill. Asma Jahangir, chairperson of the Human Rights Commission of Pakistan, stated on 12 May 2007 that:

HRCP believes it is imperative that authorities carefully consider any decision in this regard given the tendency to abuse laws in the country. The blasphemy law, widely used to settle petty, personal disputes is a case in point with suffering inflicted on many innocent persons through its misuse.

It is also a fact that there is apparent lack of unanimity among Islamic scholars on the application of centuries-old concepts in the modern age. There is as such a danger the new law could ignite further sectarian friction and acrimony

*The authorities need also to carefully consider global opinion, Pakistan's obligations to uphold human rights and its image in the international community. A new law on religion may further damage the country's standing in the comity of nations, particularly at a time when violence by extremist groups has already brought it a bad name*⁶³

Egypt

In the 1970s, attempts were made by Islamists in Egypt to impose an "apostasy law" (*qanun al-rida*) that enshrining shari'a (including the death penalty) upon apostates. The proposal covered Christians who convert to Islam temporarily, a practice followed by some Coptic Christians for practical reasons. The idea was dropped after Coptic uproar upon the encroachment upon freedom of religion.⁶⁴

In April 2006, an Egyptian court recognized the Bahá'í religion. In response, a number of Islamist clergy pressured the government to appeal the decision. Gamal Akl, a member of parliament belonging to the Muslim Brotherhood, declared the Bahá'ís infidels, who should be killed on the grounds that they had changed their religion.⁶⁵ By contrast, Egyptian human rights and civil society groups welcomed the decision as a victory for freedom of belief guaranteed (in theory) under the constitution.⁶⁶

While Egypt has no laws against apostasy, laws against "insulting Islam" or "creating sectarian strife" have been used to arrest, torture and in some cases kill converts.⁶⁷

⁶² 'Afgan backs MMA against blasphemy law reform bill' *Daily Times* (Pakistan) 09 May 2007 http://www.dailytimes.com.pk/default.asp?page=2007\05\09\story_9-5-2007_pg1_6; Qaiser Felix 'New apostasy bill to impose death on anyone who leaves Islam' At <http://www.asianews.it/index.php?l=en&art=9218&size=A>

⁶³ 'Afgan backs MMA against blasphemy law reform bill' *Daily Times* (Pakistan) 09 May 2007 http://www.dailytimes.com.pk/default.asp?page=2007\05\09\story_9-5-2007_pg1_6 (Italics added) Qaiser Felix, 'New apostasy bill to impose death on anyone who leaves Islam' At <http://www.asianews.it/index.php?l=en&art=9218&size=A>

⁶⁴ See Ami Ayalon, 'Egypt's Coptic Pandora's Box' in Ofra Bengio and Gabriel Ben-Dor (eds) *Minorities and the State in the Arab World* (1999)

⁶⁵ State to appeal ruling that favours Egypt's Baha'is' *Khaleej Times* (Dubai, UAE) 3 May 2006 At: <http://www.khaleejtimes.com>

⁶⁶ Ibid

⁶⁷ Paul Marshall, 'Apostates from Islam: The Case of the Afghan Convert is Not Unique' *The Weekly Standard* (Washington, DC) 2 April 2006 Available at: www.weeklystandard.com/Content/Public/Articles/000/000/012/059fpgrn.asp

In 2006, Marshall noted that:

Vigilantes have killed, beaten, and threatened converts in Pakistan, the Palestinian territories, Turkey, Nigeria, Indonesia, Somalia, and Kenya. In November, Iranian convert Ghorban Tourani was stabbed to death by a group of fanatical Muslims. In December, Nigerian pastor Zacheous Habu Bu Ngwenche was attacked for allegedly hiding a convert. In January, in Turkey, Kamil Kiroglu was beaten unconscious and threatened with death if he refused to deny his Christian faith and return to Islam.⁶⁸

Wilson notes that in the between 2004 and 2006 in Afghanistan, 'Islamist militants murdered at least five Christians who had converted from Islam.'⁶⁹ The concern here is that while actual State-ordered executions for 'apostasy' are rare, 'killings by vigilantes, mobs, and family members, sometimes with state acquiescence' are not.⁷⁰

This brief glance of State practice in a number of Muslim States is by no means exhaustive. It does not for example consider the law and practice of Saudi Arabia, where various religious crimes are strictly enforced under Sharia. It does however reflect the widespread view, in Muslim States and societies, that apostasy is a punishable crime. In this writer's view, the fact that apostasy remains a punishable crime in numerous Muslim States, offers a measure of legitimacy to the action of non-State actors, who purport to be acting in accordance with Islam when they carry out extra-judicial killings of alleged 'apostates'.

Apostasy as a justification for politico-religious violence by non-State actors

Since 11 September 2001, the willingness of non-State actors to justify the killing of unarmed civilians under the doctrine of *riddah* has become an international concern. Evidence of invocation of the doctrine of *riddah* to justify acts of terrorism abounds. One need look no further than:

1. Speeches by Osama bin Laden, Ayman al-Zawahiri and Abu Zaqawi;
2. Video recordings left by suicide bombers prior to terrorist attacks in a range of States; and
3. Similar recordings made by extremists prior to the beheading of hostages.

In each case, verses of the Koran and Hadith are recited. This exercise is an attempt to persuade their audience that such behaviour is authorised under Islamic law. Stated differently, these non-State actors seek to legitimize and justify violence - carried out without State authority - by reference to Islam.⁷¹

Abu Zaqawi invoked the doctrine of punishment of apostasy in a letter "*To the Muslims in Iraq in Particular and The [Islamic] Nation in General*" aired on Al-Jazeera 27 December 2004. It states:

Aiding America, or the Allawi government [in Iraq] which is apostate [*Murtada*], or the Karzai government [in Afghanistan], or the Mahmoud Abbas government [in the Palestinian Authority] which is apostate, or the other apostate governments in their war against the Muslims, is the greatest apostasy of all, and amounts to abandonment of the Muslim community.

Participation in the Iraqi or Palestinian Elections is Apostasy (italics added)

Muslims must beware of these kinds of elections. They must unite around the *Jihad* warriors and those who resist the occupiers." He continued, "Anyone who participates in these elections has committed apostasy against Allah

Criminal organisations such as *Al Qaeda in the Land Between Two Rivers* have exploited the notion of apostasy to justify an ideology of hatred and violence. This phenomenon has been critiqued on Arab satellite channels. The *Al Arabiya* channel highlights the problem in a programme entitled *Sinaat al-Mawt*

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Marshall

⁷¹ See for example [Free Blockade on the Gaza Strip](http://worldanalysis.net/postnuke/html/index.php?name=News&file=article&sid=1063) (Message from Ayman al Zawahiri, 4 June 2008) Available at: <http://worldanalysis.net/postnuke/html/index.php?name=News&file=article&sid=1063>

(Death Industry). Abu Zaqawi's terror network built upon a long tradition of invoking *riddah* to justify acts of murder. This can be traced back (in modern times) to Egyptian dissident Sayyid Qutb, who argued (from his gaol cell) that it was necessary to rid not only the Islamic world but also the entire planet, of the "structure" of Jahiliyya (godless ignorance). Ayman al-Zawahiri, inspired by his mentor (Qutb), continues to promote an ideology that actively encourages criminal attacks on civilians, including Muslims, who are deemed 'apostates'. This far-reaching doctrine has been invoked to justify attack upon non-Muslim Western nations, as well as Muslim governments that are deemed apostate (for engagement with the West, corruption etc.). While Zawahiri may be the chief apologist for *Al Qaeda* and its ideology, Osama bin Laden's theological direction was heavily influenced by Abdullah Azzam, the Palestinian academic who masterminded a new ultra-extreme form of wahhabism. Azzam was killed by a massive explosion in Peshawar in 1989. However his reputation as an Islamic scholar with mujahedeen credentials (gained from his involvement in the *jihad* against Soviet occupation of Afghanistan) was keenly exploited by bin Laden's movement. Azzam's legacy is a popular ideology that justifies mass-killing in an attempt to overthrow 'apostate' regimes and eliminate those who support them.

How has this situation come about? That question has been explored in detail elsewhere.⁷² One factor has been the failure of Muslim States and societies to repeal laws that permit the punishment of 'apostasy' and ensure that those who carry out vigilante attacks on alleged apostates are prosecuted and punished. (Iranian courts have declared that they have no authority to punish Muslims who kill Bahais.)⁷³ Clearly, the removal of religious crimes that are discriminatory in their effect, including *riddah* laws, is one way of undermining the 'death industry' and the international harm that extremists are causing to the reputation of Islam.

State sanctioned religious violence, and laws that operate in a discriminatory manner by protecting vigilantes who engage in such violence, draw attention to the importance of: separation of religion and state; strong central governments that are committed to the rule of law and human rights; and non-discriminatory laws. These are necessary requirements for reduction of religious violence by non-State actors (such as *Al Qaeda*, *Abu Saef*, *Jamaa Isamiyah*) and State actors (including religious courts and in some States, government sponsored death squads)

Solutions

(1) The Principle of Non-discrimination as a Cornerstone of State Law & Policy

One way to discourage the abuse of religious doctrines by State and Non-State actors alike is to ensure that State law and policy adheres to the fundamental principle of human rights law - non-discrimination. There are a number of implications of moving towards a legal order where discrimination on the basis of, *inter alia*, age, gender, race, religion, political opinion, ethnicity or disability is prohibited. For example, discrimination in employment, access to government facilities, freedom of movement, political participation and other aspects of public life is prohibited. This means that nationals may not be excluded from political or judicial office or public sector employment on the basis of age, gender, sexual orientation, religion, or sectarian affiliation (or absence of religious belief). In order for the principle of non-discrimination to be uniformly adhered to, it is necessary to maintain a strict separation of religion and State. It also requires the abolition of laws that permit the punishment of religious crimes that apply against certain faiths (and those with no faith) but not others.

In 1995 the Special Rapporteur on Religious Intolerance called attention to the use of blasphemy and apostasy laws.⁷⁴ It was noted that constitutional recognition of freedom of expression and religion is not sufficient. These fundamental rights must be guaranteed and protected by governments and the courts. The principle of non-discrimination is at the heart of efforts to guarantee human rights in all States and

⁷² Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10 2001* (2008); Yousaf, Mohammad and Adkin, Mark, *The Bear Trap. Afghanistan's Untold Story* (1992)

⁷³ See Jamie Glazov 'Sharia Goes Global' FrontPageMagazine.com | Monday, October 03, 2005

⁷⁴ 1995 Report of the Special Rapporteur E/CN.4/1995/91, para 269

societies. This principle reinforces the point that the punishment of apostasy, for leaving a particular religion, is a violation of freedom of conscience and religion.

2 *Secularism: The Separation of Religion & State*

Secularization of the criminal and civil law makes it easier for states to bring their legal systems into conformity with other aspects of international human rights law, including principles of non-discrimination against minorities. It is also an effective way of advancing tolerance and respect for those with different beliefs. It may also over time, assist in promoting pluralism and thus reduce extreme ideologies that perpetuate hatred and religious and political violence. *It is a necessary, but not sufficient step to help curb extremism.* Others include determined efforts to reign in corruption, improve governance and pursue regional peace. Without a commitment to the institutions and values of liberal democracy (e.g. robust anti-corruption agencies, political transparency, democracy, protection of fundamental human rights etc...) a political and social vacuum will exist that will be filled by Islamists or others.

Secularism is sometimes characterised by religious conservatives as 'un-Islamic'. There are numerous conspiracies theories, doctrines and propaganda speeches that suggest that secularism is a tool promoted by the West to destroy Islam.⁷⁵ These views are unfortunate, given that secularism, *together with democratic checks and balances*, offers a framework for the prevention of manipulation and exploitation of religion by autocrats, extremists and others. In calling for the secularisation of Islamic States and societies, I am not proposing the dismantling of the Islamic faith, Islamic culture and Islamic tradition. Instead I am calling for a framework whereby religious laws (and indeed all national laws) are reviewed to ensure that they conform to fundamental human rights guaranteed under international law. The principle considerations should be 'Does this law conform to the principle of non-discrimination? Or does it operate in a discriminatory manner against religious, ethnic or other minority groups?'

(3) *Good Governance & Reversal of Arab Brain Drain*

Western countries are benefiting from the influx of Arab and Persian students and professionals. 'Brain drain' from Arab and Islamic States is linked, *inter alia*, to systemic social and economic problems at home.⁷⁶ This exodus can also be attributed to the lack of a culture of innovation, particularly in the fields of scientific and technological research and advancement. Other factors may include the absence of: liberal democracy; respect for fundamental civil and political rights; and a culture of civic responsibility. Instead citizens are often required to tolerate corruption by State officials and practices that offend the principle of non-discrimination.

Islamic law has a long history of rights protection⁷⁷ and an important role to play in the further development of human rights in Muslim States. So do Muslim jurists with expertise in international human rights, as well as Muslim intellectuals from other disciplines including the sciences and humanities, through engagement in dialogue with traditionally educated scholars of Islamic jurisprudence.⁷⁸ In addition, politicians across the Middle East need to show leadership in the protection and promotion of fundamental rights through law and policy that achieve these ends. A human rights based approach to governance should be seen as an opportunity rather than a threat. Pejorative views of secularism and liberal democracy, among political and religious leaders in Arab and Islamic States, undermines social and political development in these nations. They stymie efforts to move towards political systems that are in harmony with international human rights.

⁷⁵ See Ali bin Khudeir al-Khudeir, *Al-Qawa'id Al-'Arba' Al-lati Tufariq Bayna Al-Muslimin Wa-Din Al-'ilmiyyeen*. al-Quaim, Saudi Arabia. <http://www.saa'id.net/Warathah/khudier/kh3.zip>. al-Khudeir defines secularism as "shirk" (polytheism). See also Abu al-Saed al-'amili, "Al-Dimoqratiya: wsilah li-ihtiwa Al-Tayyar Al-'islami," *Al-Ansar*, Vol 23 December 19, 2002, pp 25-30, cited in Jonathan D. Halevi, *Al-Qaeda's Intellectual Legacy: New Radical Islamic Thinking Justifying the Genocide of Infidels*. No 508 6 Kislev 5764 / 1 December 2003

⁷⁶ See 'Arab nations hit by brain drain' 4/20/2007 *The Peninsula* (Qatar) Available at: www.thepeninsulaqatar.com

⁷⁷ Baderin, above n 25, 31-32

⁷⁸ See Baderin, above n 25, 32

(4) *Removal of Legal Justifications under State Law for Religious Violence by Extremists*

States that retain on their statute books religious crimes such as apostasy, provide a measure of legitimacy for some of the religious violence perpetrated by extremists. Terrorists may point to these laws when asserting that their actions, in designating and punishing *fakir* (apostates), are valid. Moreover, apostasy laws that carry the death penalty offer terrorists a 'legal template'. Stated differently, the terrorists may argue that in executing 'apostates' they are merely doing what many nations permit under their national law. Why give extremists who engage in violence in the name of religion legitimacy that they don't deserve?

Conclusion

Violence by religious extremists has plagued Arab and Islamic States for decades. With the spread of such violence across the world, global attention has turned to its causes. Unquestionably, foreign invasion and occupation has played a major role in fuelling extremism. However this is not the only cause of religious violence. Another cause is the abuse of religion by States and ideological extremists. In recent years this has led to sectarian killings on a massive scale in Iraq. The thesis advanced in this paper is that State recognition of crimes against religion has contributed to the spread of sectarian hatred and religious violence. It is therefore imperative that governments show leadership in this area by, *inter alia*, abolishing crimes against religion (including apostasy and blasphemy). This will require the revision of criminal laws, the introduction and enforcement of non-discriminatory religious hatred laws, the cessation of the enforcement of relevant aspects of Sharia, and public awareness campaigns. All crimes should be defined in a non-discriminatory manner in accordance with fundamental principles of human rights law. A good criminal law is one that does not discriminate against minorities (whether religious or otherwise). Instead it treats all persons as equal before the law.

The right to follow one's own conscience in matters of religion and belief is a fundamental human right. Departing from a religious tradition - whether Islam or any other faith - is a universal right and not a punishable act under human rights law. Indeed the punishment of those who change religion (or marry outside their religion) may itself be visited with legal sanctions.⁷⁹ The majority of States have long departed from the notion that religion may be imposed, opting instead for the right to freedom of conscience. Laws that punish those who leave the religion of their forefathers are incompatible with the core values that underpin the human rights movement: pluralism; diversity; tolerance and respect.⁸⁰ They are also incompatible with the globalised society in which we live. These values are encapsulated in the basic principle of non-discrimination.

The separation of religion and State, and the shift towards secular government, runs counter to the wave of religious conservatism that has swept through many Arab and Islamic States in recent years. Ideologies that embrace Political Islam generally exclude these two notions.⁸¹ This is a setback for those hoping for the emergence of human rights based democracies in Arab and Islamic States. However globalization means that all States must now confront the realities of pluralism or miss out on opportunities and benefits of the global society. Moreover, people throughout the world - including Muslim states and societies - are demanding human rights, democracy, political transparency and an end to corruption.⁸² If human rights based governance is to be achieved, religious crimes that operate in a discriminatory fashion must eventually be abolished. Similarly, the control and manipulation of religious institutions by government for political purposes must end. While regulation of religious movements may be necessary in some States to

⁷⁹ See Dennis de Jong 'The Legal Obligation of State and Non-State Actors in Respect of the Protection of Freedom of Thought, Conscience and Religion or Belief' (2008) 3 *Religion & Human Rights* 1-13. 13

⁸⁰ The point is well illustrated in an intriguing argument that Barack Obama is technically an 'apostate' and liable to the death penalty unless he 'returns' to Islam. See: Edward N. Luttwak 'President Apostate?' *New York Times* 12 May 2008 http://www.nytimes.com/2008/05/12/opinion/12luttwak.html?_r=2&partner=rssnyt&emc=rss&oref=slogin&oref=slogin

⁸¹ See Bahey eldin Hassan, 'Muslim Brothers Party's Platform in Egypt from a Human Rights Perspective' Center for the Study of Islam and Democracy Bulletin, 9th Annual Conference Report (2008). Presented at the Center's conference 'Political Islam and Democracy - What do Islamists and Islamic Movements want?' (Washington, DC 14 May 2008)

⁸² This is evident from the goals and activities of human rights organisations across the Arab world. For an extensive list see: UN Development Programme *Arab Human Right Index* At: www.arabhumanrights.org/en/hrights/

control violent extremists, such powers must not be abused (e.g. through arbitrary repression of minorities that do not embrace the dominant faith) Abolition of discriminatory religious crimes is one way of addressing this problem.

It is often claimed that education, economic development, friendly cooperation between States and peaceful resolution of the Middle East conflict and will bring an end to religious violence and extremism in the Arab world.⁸³ In my view, an additional requirement is needed - a firm commitment to universal human rights, including the elimination of practices that are a barrier to the universal enjoyment of these rights. One such practice is the 'earthly punishment of apostasy' by State and non-State actors. In closing, it is relevant to note the words of Faraj Fawda, an Egyptian assassinated by Islamist militants in 1992 after being accused of blasphemy for his condemnation of religious extremism. After becoming the victim of a wild rumour campaign, Fawda responded by noting that it reflected the Islamists' inability to respond to his arguments.⁸⁴ He remained confident that the word was more powerful than the bullet,⁸⁵ believing that ultimately 'the enemies of history'⁸⁶ would be defeated by reason and progress.⁸⁷ It is 'reason' and 'progress' that allowed the notions of 'freedom of expression' and 'freedom of religion' to flourish during the Enlightenment, and gain universal recognition during the human rights era. These notions are a threat to ideological extremists who oppose such values. In order for universal human rights norms to prevail, all States must move towards non-discriminatory systems of law and governance. This requires an abandonment of the prosecution and punishment of apostasy. In Arab and Muslim States such change may be brought about in a variety of ways. They include national law reform and a new approach to the role of religion in society. National institutions may play an important role (such as the Turkish Department of Religious Affairs). So may experts in Islamic law from the various schools of Islamic jurisprudence (through engagement in the process of *ijtihad*).

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⁸³ See 'Measures to address the conditions conducive to the spread of terrorism', *The United Nations Global Counter-Terrorism Strategy* (8 September 2006) UNGA Res 60/288, GAOR. 60th Sess, 99th Plen Mtg. UN Doc A/Res/60/288 (2006)

⁸⁴ Fawda, *Hiwar Hawla al-Almaniyya*, p 8, cited in *Ana B. Soage 'FARAJ FAWDA, OR THE COST OF FREEDOM OF EXPRESSION'* *Middle East Review of International Affairs* volume 11, No. 2, Article 3/8 - June 2007

⁸⁵ Fawda, *Qabla al-Suqut*, p 189, cited in *Ana B Soage 'FARAJ FAWDA, OR THE COST OF FREEDOM OF EXPRESSION'* *Middle East Review of International Affairs* volume 11, No 2, Article 3/8 - June 2007

⁸⁶ Fawda, *Faraj Fawda wa-Ma'ariku-hu al-Siyasiyya*, pp. 231-37; see also Fawda, *al-Nadhir*, pp 78-82, 88-91; Fawda, *Hiwar Hawla al-'Almaniyya*, p 31; Fawda, *al-Haqiqa al-Gha'iba*, p. 152.

⁸⁷ *Ana B. Soage 'FARAJ FAWDA, OR THE COST OF FREEDOM OF EXPRESSION'* *Middle East Review of International Affairs* volume 11, No 2 Article 3/8 - June 2007

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