

Contemporary Discussions on Religious Minorities in Islam

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I. INTRODUCTION

Most public debate on Islam today, as it takes place outside the Muslim world proper, is locked into views of Islam in its traditional medieval forms and in particular those specific aspects and forms of expression which have attracted the attention of centuries of observation and scholarship. This is not the place to engage again in regretting the impact of medieval European misunderstandings of Islam and the Muslim world¹ or in attacking “Orientalism.”² It is enough to recognize that such traditional approaches have had a substantial effect on public debate concerning the contemporary Muslim world. Indeed, the position of religious minorities in Islam is one of the topics that has been especially prone to being locked into a traditional view. This traditional view of Islam has found renewed vigor in the public debate about Islam after September 11. I intend in this paper to point out some of the alternative views which are gaining ground, especially in the Arab world, and give an indication of some of the contextual processes which are supporting them, as a counterweight to the strength of the traditional views, in the hope that this might contribute to a more differentiated image of a religion and culture which is much more complex than is popularly supposed.

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1. These are surveyed in their complexity by scholarly works such as NORMAN DANIEL, *ISLAM AND THE WEST: THE MAKING OF AN IMAGE* (1993); MAXINE RODINSON, *EUROPE AND THE MYSTIQUE OF ISLAM* (Roger Veinus trans., 1988); and ALBERT HOURANI, *ISLAM IN EUROPEAN THOUGHT* 7–60 (1991).

2. See generally EDWARD SAID, *ORIENTALISM* (1978). For a sympathetically critical response, see BOBBY S. SAYYID, *A FUNDAMENTAL FEAR: EUROCENTRISM AND THE EMERGENCE OF ISLAMISM*, ch. 2 (1997).

Much of the early European scholarship in the field of Islam relied heavily on the classical Islamic legal textbooks.³ One major problem with this scholarship is that it assumed such law was also descriptive. While these assumptions about law had also characterized a phase of European historiography, the historians were able to correct their assumptions by referring to the data in diplomatic and judicial archives. Scholars of Islam and the Middle East were much slower to adopt these methods of the European and North American historians⁴ for two main reasons: first, their training long remained isolated from the mainstream of history as a discipline, and second, because the Islamic and Middle Eastern archives, necessary for a study of how the law was implemented and how it impacted society, have only recently become accessible.⁵

Modern historiography is not the only discipline that has influenced Islamic scholarship; the questions and methodologies of the social sciences have also opened up new vistas. For example, the work of social anthropologists has exposed the distance between the norms of the Shari'ah and the practice of local communities. In addition, legal anthropology and the recently popular field of the study of *fatawa* (legal opinions) have shown how the local upholders of the Shari'ah, the Islamic *qadis* (judges), often bridged the gap between the normative rules of the Shari'ah and the practical requirements of the local communities.⁶

3. One of the best single accounts to come out of this tradition is that of Antoine Fatal who presents a systematic analysis of the position of the minorities protected by the contract of *dhimma*. The outlines of this account were already established in the time of the Prophet Muhammad and were elaborated over subsequent generations until the subject was incorporated into classical normative textbooks.

4. Indeed, this is one of Said's complaints against the orientalist.

5. A vast amount of literature based on court archives and registries has appeared in recent years. An already classical work of this nature based on even older archival materials, namely S.D. GOITEIN, *A MEDITERRANEAN SOCIETY: THE JEWISH COMMUNITIES OF THE ARAB WORLD AS PORTRAYED IN THE DOCUMENTS OF THE CAIRO GENIZA* (1967), was a significant factor in the disillusion with legal texts as a reliable source for social realities.

6. A good example of this is offered in LAWRENCE ROSEN, *THE ANTHROPOLOGY OF JUSTICE: LAW AS CULTURE IN ISLAMIC SOCIETY* (1989). See also KEMAL CICEK, *Living Together: Muslim-Christian Relations in Eighteenth-Century Cyprus as Reflected by the Shari'a Court Records*, 4 *ISLAM AND CHRISTIAN-MUSLIM REL.* 36-64 (1993).

II. DISCUSSION

A. Explaining Present Perceptions of Islam

1. The development and influences of Islamic scholarship

Simplistic views of Islamic law, rooted in out-of-date scholarship, have been reinforced by developments in the Muslim world itself. Islamist political movements have tended to attract most attention when they have expounded those traditional rules of Shari'ah such as the death penalty for apostasy and adultery, harsh punishments for certain other crimes, and oppression of women and non-Muslims. The Taliban in Afghanistan is another obvious example. The West has gradually accepted such rules and traditions as "typical" of the Islamic world.

However, the "typical" image outlined above is only partially accurate and ignores the extraordinarily complex predicament of the Islamic scholarly disciplines over the last century or so. The rise of European economic and political power during the nineteenth century had deep repercussions in the Muslim Middle East even before many regions fell under direct colonial rule. The shift of educational models from that of the *madrassa*-university to that of Oxford, Cambridge, and the Sorbonne accompanied the rise of new forms of employment in civil and military state structures. New professions and specialties associated with modernization and the gradual integration of local and regional economies into global networks attracted growing numbers of people and resources away from the systems and institutions of Islamic education. New specialist colleges, military and civilian, became the ideal destinations for ambitious young men, and the American University of Beirut became the desired alternative to Al-Azhar, the thousand-year-old Islamic university in Cairo.

The result of these changes was the decimation of the Islamically literate elite (*ulama*) and a consequent decline in comprehension of the complexities of the Islamic legal tradition. At the same time, pressures for reform, especially in family law, came to be associated with pressures for westernization, leading many Islamic scholars and activists to reject all reform as a surrender to the imperialists. What was left in the broader Muslim public opinion was a merely superficial comprehension of the rules of the Shari'ah partnered by complete ignorance of its subtleties, of its scope for flexibility in imple-

mentation, and of the centrality of the rules of interpretation. At the same time, the available trained personnel with the full range of traditional skills and knowledge was sharply reduced in number. So when, for example, President Jaafar al-Numeiri of Sudan made Islamic law the norm in his country, citizens had only a superficial knowledge of it and committed quite blatant mistakes.

2. Islamic constitutions

Western perceptions of human rights in the Muslim world are influenced by traditional views of Islamic thinking, by the practice of states in the region, and often by a confusion of the two. It is important to emphasize that very few Muslim countries claim to have an Islamic constitution. Some of the Muslim countries that *do* claim to have an Islamic constitution are Iran, Afghanistan, Libya, Saudi Arabia, one or two Gulf States, and possibly Morocco. However, these countries lack a full consensus of Islamic opinion inside and outside their own countries in support of their claims to an Islamic constitution. Indeed, in many cases it might be said that there is a contradiction between the state and Islamic trends. Examples of this contradiction are found in most of northern Africa, Algeria, Egypt, Syria, Iraq, Turkey, and all the Muslim countries of the Caucasus and Central Asia.

3. Islam and the Universal Declaration of Human Rights

The relationship between the governments mentioned in section two and the Universal Declaration of Human Rights (“Declaration”) has always been somewhat ambivalent. During the drafting stage of the Declaration, Charles Malik, a Lebanese Christian, proposed including in Article 18 the right to change one’s religion, traditionally prohibited in Islam.⁷ Saudi Arabia abstained because of this article and because of Article 16’s provision for equal rights in marriage. The only other abstentions in the vote in December 1948 were the U.S.S.R. and six other East European countries; Yemen was absent. No country voted against the Declaration. Despite voting in favor of the Declaration, the representatives of Afghanistan, Egypt, Iraq,

7. ALBERT VERDOODT, *NAISSANCE ET SIGNIFICATION DE LA DECLARATION UNIVERSELLE DES DROITS DE L’HOMME* 177 (1964).

Pakistan, and Syria drew attention to the difficulties that Articles 16 and 18 posed for Muslim countries.⁸

4. *Urbanization in Muslim countries provides support for Islamic political movements*

For the first three decades or so after the adoption of the Declaration, the consolidation of the newly independent Muslim nation states was a political priority. In the context of the Cold War, the contrast between state systems (often constructed by revolutionary military regimes) and the Muslim character of the population was one of potential tension rather than one of common activity in the public space. It was not until the 1970s that this tension gained a higher profile in the process of social and economic change. The massive urbanization of Muslim countries everywhere, which took place in the 1950s, 1960s, and 1970s, has often been the source of popular support for Islamic political movements.⁹ An important part of this modernization was the migration of Muslim people from the countryside to the city. Many of the children of these immigrants have gone into higher education and are forming a growing professional urban middle class. They and their parents came from a countryside that had only indirectly experienced the periods of secularization and nationalism which characterized the 1920s to 1960s and which had mostly preserved its traditional way of life and outlook. For them, their Islamic foundations were not open to question. Rather, the question was how they could function in an Islamically appropriate fashion. Their education and intellectual capabilities helped this new middle class deal with this question, and they have become participants in a new, more self-confident exploration of how Islam and its Shari'ah can make sense in the modern world. It should be noted that in this exploration they share very directly with their cobelievers in Europe and parts of North America, who are usually also the children of the same process of migration from the countryside to the city.¹⁰

8. *Id.* at 181–82.

9. See, e.g., the later chapters in PETER MANSFIELD, *A HISTORY OF THE MIDDLE EAST* (1991), and NAZIH AYUBI, *POLITICAL ISLAM: RELIGION AND POLITICS IN THE ARAB WORLD* (1991).

10.A forthcoming paper picks up the implications of this for Islamic thinking in Europe: PETER MANDAVILLE, *TOWARDS A CRITICAL ISLAM: EUROPEAN MUSLIMS AND THE*

5. Islamic organizations draw up their own human rights documents

Amidst this period of growth and urbanization, Islam was increasingly being challenged on its attitude toward human rights. In response to these challenges, Islamic organizations felt obliged to create their own Islamic human rights documents in such a way as to provide Islamic parallels to the U.N. Declaration on Human Rights. These documents tend to have an apologetic tone, indicating that the concept of human rights is now comfortably at home in an Islamic environment and that human rights are rooted in Qur'anic principles. Large parts of these texts are reasonably consonant with recognized principles laid down in international documents such as the U.N. Universal Declaration on Human Rights¹¹ and the European Convention on Human Rights.¹² In relation to the status of non-Muslims, the documents usually begin by citing the Qur'anic injunction that "There is no compulsion in religion" and then to guarantee to non-Muslims the right to freedom of belief and religious practice.¹³

Among the most widely circulated of such declarations is the so-called Universal Islamic Declaration of Human Rights, adopted by the International Islamic Council in September 1981,¹⁴ which includes a freedom of religion provision in sections 10, 12a, and 13. However, the way in which the document has been presented and translated can only be termed devious. While the English text refers to rights "subject to the law," the Arabic text is explicit that the law being referred to is actually the Shari'ah. The result is that a comparatively innocuous text in English becomes, in the Arabic original,

CHANGING BOUNDARIES OF RELIGIOUS DISCOURSE (Stefano Allievi & Jorgen S. Nielsen eds.).

11. G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (1948).

12. European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953).

13. A comprehensive discussion of the attitude of the *Qur'an* specifically to Christians and how the relevant texts have been interpreted over the centuries may be found in JANE DAMMEN MCAULIFFE, *QUR'ANIC CHRISTIANS: AN ANALYSIS OF CLASSICAL AND MODERN EXEGESIS* (1991).

14. Both the English and the Arabic versions were published in pamphlet form by the Council's office in London. The English version has been published online by the Al-Hewar Center at <http://www.alhewar.com/ISLAMDECL.html> (last visited May 1, 2002). The Arabic version can be found in *AL-HAQQ QADIM: WATHA'IQ HUQUQ AL-INSAN FI AL-THAQAFAH AL-ISLAMIYYAH* 143-56 (Ghanim Jawad ed. 2000).

a minefield of ambiguity to anyone but a traditionally inclined Muslim reader.

As Ann Mayer has pointed out, section 12a is particularly problematic. In its English version it confirms the right to expression of thought and belief “within the limits prescribed by the Law,” but limited by the prohibition of spreading slander, falsehood, and defamation. The English text, however, does not include the prohibition of “leaving the [Muslim] *ummah*,” which is included in the Arabic text.¹⁵

Other documents of this nature have been more hesitant in speaking of the religious rights of minorities. A draft Islamic constitution published in 1979 by a committee of Islamic scholars linked to Al-Azhar University in Cairo merely spoke of providing “for the natural basic rights of religious and intellectual beliefs” within “the limits of the Islamic Shari’ah.”¹⁶ The 1990 Cairo Declaration of Human Rights in Islam, adopted by a foreign ministers’ meeting of the Organization of the Islamic Conference (OIC), avoids the question of religious freedom and religious minorities altogether.¹⁷

6. *Building a foundation for human rights*

Some Islamic scholars themselves have been aware of the human rights problem and have been looking for ways to establish a constructive relationship between the Shari’ah and the world around them. It is probably no coincidence that the number of these scholars has grown quickly in the last few decades. The rise of Islamic politics, whether in its Iranian form or in the revived family of trends around the Muslim brotherhood, has led to a political environment in many parts of the Muslim world in which participants have to take account of Islamic trends. Indeed, in some regions, such as Egypt, politics have become Islamic even when the state structures have not. This has allowed Islamic thinkers, scholars, and movements a growing self-confidence, permitting them to become more critical about their tradition. At the same time, this political revival has mobilized

15. ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS* 160–61 (3d ed. 1999).

16. *Id.* at 162.

17. For the Arabic text, see AL-HAQQ QADIM, *supra* note 14. For an English translation, see MAYER, *supra* note 15, at 203–08.

an increasing number of intellectuals, both within the religious disciplines and without, to participate in the Islamic discourse.

7. Non-Muslim minorities

With regard to non-Muslim minorities, there are some scholars and activists who advocate the traditional practice of tolerating Christians and Jews¹⁸ as protected communities with specific rights, privileges, and duties. These scholars view such protection and toleration as a favor towards communities that are in essence subjugated. Contemporary proponents of this tradition rightly point out that this treatment was far better than that which religious minorities generally experienced in Europe until the eighteenth and nineteenth centuries.

Other scholars have reformulated these traditional concepts into the language of modern state structures, the most well-known being the Pakistani founder of the Jama'at-i-Islami, Abu'l-A'la Maududi. In his view, many of the specific rights and duties of non-Muslims are no different from those of Muslims, including a degree of participation in the political process. However, he insists that the Islamic state is an "ideological state" and that it is reasonable that only those who share that official ideology can fully participate in the state. Therefore, he concludes, public expressions of minority religion must be restricted.¹⁹ Nevertheless, members of the religious minorities, along with a growing number of Muslim intellectuals engaged in rethinking the issue, insist that this subjugation of religious minorities is not satisfactory in a modern society. It is the ideas of this group to which I now turn my attention. The next section will discuss the ideas of this third group.

B. Literature Review of the State of Religious Minorities in Islam

1. Historical introduction

While this section will concentrate on authors who have published during the 1990s, it would be a mistake to think that they do not have important predecessors. The great Shaykhs of Al-Azhar Is-

18. Known also as "people of the book" (*ahl al-kitab*).

19. ABUL A'LA MAUDUDI, RIGHTS OF NON-MUSLIMS IN ISLAMIC STATE (Khurshid Ahmad trans., 1961).

lamic University in Cairo, Muhammad Abduh, and Mahmud Shaltut were among the leading thinkers to highlight the concept of citizenship in the Islamic discourse in a way that forced people to pay attention.²⁰ This discussion of the concept of “citizen” was shared with secular circles in an environment where the primary political questions were those of independence from imperial rule and then, in some countries, from autocratic monarchies. In the terms of the Egyptian secularist Khalid Muhammad Khalid, writing in the last year of the Egyptian monarchy, the struggle was for the liberation of the citizen (*muwatin*) from the status of subject (*ri'aya*).²¹

Three decades later, another Egyptian, this time associated with the moderate wing of the Muslim Brotherhood, Fahmi Howeidi, echoed Khalid's title in his book, *Muwatinun, la dhimmiyyun*,²² this time juxtaposing the traditional status of protected community with the concept of citizenship. In the intervening period, of course, the context had seen some radical changes. The radical Arab nationalism of the 1950s and 1960s had failed in some crucial areas, particularly in relation to Israel. Both Syria and Iraq had suffered a series of military coups, while the leading figure President Gamal 'Abd al-Nasir of Egypt had suffered a number of setbacks, above all the defeat in the June 1967 War. In the aftermath of such disillusion, Islamic alternatives to the secular state were beginning to acquire a new attractiveness. By the time Howeidi's book appeared, the political initiative was very much in the Islamists' court. The Islamic revolution had occurred in Iran, and Islamist radicals had assassinated President Anwar al-Sadat. Islamist parties were beginning to make inroads in those states where elections took place, and armed Islamic militant groups were appearing in a number of different countries. Howeidi's book, written by someone better known as a journalist than a scholar (he was and is a leading columnist and deputy editor of *Al-Abram* newspaper), was a sign that the internal Islamic debate was beginning to open up.

20. See WILFORD CANTWELL SMITH, *ISLAM IN MODERN HISTORY* ch. 3 (1957); GUDRUN KRÄMER, *GOTTES STAAT ALS REPUBLIK* chs. 1, 2, 6 (1999).

21. KHALID MUHAMMAD KHALID, *MUWATINUN-LA RAAYA* (6th ed. 1958); *MU'ASSASAT AL-KHANJI* (1st ed. 1958). The publication of the 1958 edition was no coincidence: during this year the Iraqi monarchy was overthrown and widespread protests took place against the U.S.-led Baghdad Pact, the book was still relevant.

22. FAHMI HOWEIDI, *MUWATINUN LA DHIMMIYUN* (1985).

2. *Views on relations between Muslims and non-Muslims*

In the years that followed the 1979 Islamic revolution in Iran, several other prominent Egyptian intellectuals associated with the moderate tendencies within the Muslim Brotherhood contributed to the Islamic debate, mostly through discussions of human rights and the political order. In 1989, Dr. Muhammad Salim al-'Awwa, a British-trained lawyer practicing in international civil law, published a discussion of the political ordering of the Islamic state.²³ The basis of the state, he said, is the collective citizenship established by the Prophet Muhammad in the so-called Constitution of Medina, a citizenship founded on a common commitment to the Prophet under God. This original community, the *ummah*, included the Jewish tribes of Medina. The classical and medieval scholars developed the jurisprudence of this community into the status of *dhimmah* for all peoples of the book by analogy with the Jews of Medina.²⁴

Al-'Awwa revisits the general question of relations between Muslims and non-Muslims on the basis of *Qur'an* and *Sunna* (the precedent set by the Prophet's deeds and pronouncements preserved in the *Hadith*). The general principle espoused is to deal in a kindly and just manner with those, regardless of religion, who reciprocate such treatment.²⁵ Verses in the *Qur'an* that detract from or contradict this principle, such as those which call for a *jihad* against non-believers or for them to be oppressed,²⁶ only apply in specific circumstances. Events in the life of the Prophet are cited in support of this principle, and al-'Awwa concludes that Muslims are obliged to use their intellect and reasoning (*ijtihad*) to ignore any rulings in the classical Shari'ah which contradict it.²⁷

Applying the argument to the present day, he asserts that the modern state represents a new kind of Islamic sovereignty to which much of traditional law cannot apply. Reasoning based on first principles (*ijtihad*) must be used to deduce a new system. The modern Muslim state is the result of a common struggle for independence

23. MUHAMMAD SALIM AL-'AWWA, *FI AL-NIZAM AL-SIYASI LI'L-DAWLAH AL-ISLAMIYYAH* (1989).

24. *Id.* at 55-57. A translation of the text of the "constitution" can be found in Ali Bulac, *The Medina Document*, in *LIBERAL ISLAM: A SOURCEBOOK* 169-78 (Charles Kurzman ed., 1998).

25. *Qur'an* 60:8.

26. *E.g.*, *id.* 9:29.

27. AL-'AWWA, *supra* note 23, at 248-55.

and nation building in which the Muslim majority and the non-Muslim minority have shared. In this way it differs sharply from the early Muslim state that was based on conquest. In this situation it is the duty of the Muslim majority to concentrate on applying the principles established by God and the Prophet rather than stubbornly insisting on applying outdated and inappropriate rules. The discourse has changed from one of contract (*'aqqd*) to one of constitution (*dustur*) and from *dhimmah* to citizenship (*muwatanah*).²⁸

An older but close colleague of al-'Awwa, Ahmad Kamal Abu al-Magd, was moved by the growing tension between the Egyptian regime and Islamic political extremism to issue a declaration of principles in 1991.²⁹ The following year a second printing included a foreword responding to comments to the first printing.³⁰ One particular point to which he felt called to respond was the fear expressed by Christian commentators that his insistence on majority rule would marginalize the Christians, given the overwhelming Muslim majority in the population of Egypt.³¹ His first point, in response, is that the *dhimmah* was a historical expression of rights and duties guaranteed in the founding documents of Islam, namely *Qur'an* and *Sunna*, and that the conditions originally necessary for the institution of *dhimmah* are no longer present. He reaffirms his belief expressed in the original declaration that it is possible to write a modern constitution which gives full religious freedom and civil rights to all, Muslim or not. Therefore, according to Abu al-Magd, the rights of non-Muslims in a modern Islamic state would be guaranteed in constitutional texts that have the highest legal standing and would be fully in consonance with the *Shari'ah*.

The concept of majority rule is, of course, one that arises out of the western democratic experience. Abu al-Magd posits that the fears that Christians have expressed are based on an assumption that religion is the primary line of division within society, a fear that has come about because of the hard-line Islamic movements that seek to impose their fossilized concept of *Shari'ah*. A constitution that is con-

28. *Id.* at 257–63.

29. AHMAD KAMAL ABU AL-MAGD, RU'YA ISLAMIYYAH MU'ASARAH: I'LAN MABADI' (1991). In fact, the original declaration had been circulated for private discussion already in 1981.

30. AHMAD KAMAL ABU AL-MAGD, RU'YA ISLAMIYYAH MU'ASARAH: I'LAN MABADI' (2nd prtq. 1992).

31. *Id.* at 15–18.

sistent with this position would guarantee the equal rights of all citizens and should thus alleviate the understandable fears of non-Muslims.

A few years later, another Egyptian, Muhammad 'Imara, who was closer to the center of the Muslim Brotherhood than the two previous writers, asked whether Islam was the solution. This question echoed the slogan of the Islamic radicals: "Islam is the solution."³² 'Imara also referred to the "constitution" of Medina, which, within the shared community/*ummah*, has space for religious pluralism.³³ Communities and states are founded on a shared belonging. In the case of the Islamic state, the priority of this belonging is Islam, within which there is no problem with a plurality of lesser belongings, including family, tribe, ethnic group, locality, etc.³⁴ This belonging, says 'Imara, includes non-Muslims in the Muslim world. The difference between them is that while for the Muslims the belonging includes "creed, *Shari'ah*, values, civilization, nationality, country, culture, history, and heritage," the belonging for the non-Muslim does not include a shared creed or *Shari'ah*; they have their own.³⁵ Islam, he says, represents their shared belonging and brings together the peoples and nations of the *ummah* with their differing beliefs and forms of worship. In fact, the Constitution of Medina distinguishes between *ummah* as a religious community and *ummah* as a political community, citing the status of Jews as an analogy. In a direct comparison with Christians and Christianity, he asserts that the Islamicness of a Muslim majority state is an essential requirement in a way that the "Christianness" of a Christian majority state is not. The implementation of *Shari'ah* does not detract from the Christianness of Christian minorities, but its absence would fatally flaw Islam.³⁶

Perhaps one of the most influential Arab Islamic political writers outside Egypt during the 1980s was Rashid al-Ghannushi, the now-exiled leader of the Islamic opposition in Tunisia. In a series of sermons delivered in 1984 at the Burj al-Rumi mosque in Tunis, he

32. MUHAMMAD 'IMARA, *HAL AL-ISLAM HUWA AL-HALL?* (1995).

33. *Id.* at 53-54.

34. *Id.* at 162-63.

35. Interestingly, this is a view which is mirrored in an earlier generation of Christian, mostly Byzantine Orthodox, Arab nationalist thinkers. See A. HOURANI, *ARABIC THOUGHT IN THE LIBERAL AGE: 1798-1939*, 309-11 (1962).

36. 'IMARA, *supra* note 32, at 170-73.

outlined his thoughts on citizenship and the rights of non-Muslims in Muslim society.³⁷ He bases his arguments on a few key *Qur'anic* verses, the most basic of which is Surah 16:90: "God commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds and injustice and rebellion." Quoting the medieval commentator al-Razi, Ghannushi says that all the rest of the *Qur'an* is a commentary and explanation (*tafsir*) of this verse. The first four sermons deal with his understanding of justice (*'adl*). On this foundation he then enters into a detailed discussion of the rights of non-Muslims, where the key *Qur'anic* verses are 49:13 ("O people, We created you male and female, and made you peoples and tribes, that you might know each other") and 2:256 ("There is no compulsion in religion: truth stands out clearly from error"). In the face of much traditional commentary, Ghannushi emphasizes that this last verse appeared towards the very end of the period of revelation during the lifetime of the Prophet and must therefore be regarded as a general injunction taking precedent over the number of more inimical statements that related only to specific events and circumstances.³⁸ On this basis, Ghannushi joins the previous authors in relegating the status of *dhimmah* to a past history that is no longer relevant³⁹ before proceeding to deal with the various practical implications. There is broad agreement with the other authors that non-Muslims have equal political and civil rights, including full rights of employment, even within the government, except in posts with religious content. On the issue of the *jizyah* (a poll tax incumbent on non-Muslims according to classical rulings), Ghannushi takes the view that the *Qur'anic* statement that it should be collected "with submission" (9:29) is linked to one particular event. The crucial element is that it is paid in lieu of military service, and as the modern state is one of shared citizenship, it is more appropriate for all to share that duty. In which case the requirement to pay the *jizyah* falls away.⁴⁰

Professor Syed Z. Abedin took a different approach in dealing with the contemporary challenge to the traditional Islamic views.

37. RASHID AL-GHANNUSHI, *HUQUQ AL-MUWATANA: HUQUQ GHAYR AL-MUSLIM FI AL-MUJTAMA' AL-ISLAMI* (International Institute of Islamic Thought, Herndon, VA 1993) (1989).

38. *Id.*

39. *Id.* at 65-75.

40. *Id.* at 99-103.

Trained in social science and being of Indian origin, Professor Abedin was the founder of the Institute of Muslim Minority Affairs in Jeddah, Saudi Arabia, an institution that had the quiet but active support of the then General Secretary of the Muslim World League, Dr. Umar Abdallah Nasif.⁴¹ In an article published just a decade ago, Professor Abedin places the *Qur'anic* concept of “the people of the book” (i.e. Christians and Jews) into the exegetical context of what he identifies as a *Qur'anic* distinction between religion as *din* and as *shir'a*.⁴² The former term, often translated “faith” or “religion,” represents the eternal divine absolutes and truths that are revealed at various times and various places into particular contexts. There they acquire the trappings of the limitations of the created, finding expression in the circumstances of time and place, “hence multiple ways of life . . . i.e. religious and cultural plurality among mankind.”⁴³ *Shir'a* is then the term which applies to such ways of life. Islamic scholars have also dealt with apostasy.

One topic that most such intellectuals tend to avoid is the sensitive matter of conversion away from Islam—apostasy (*riddah*)—whose traditional punishment according to the vast majority of the texts is death. However, there are different views on this topic. An increasingly common argument is that the traditional judgment was determined by the conditions in early and classical Islam. Reading the *Qur'an* and *Sunnah* allows for an understanding of *riddah* that is essentially akin to the concept of treason. In modern society and state, apostasy, understood simply as a turning away of faith from Islam, has become an issue separate from treason. This was reflected in the conclusions of a 1976 meeting of Christian and Muslim theologians discussing mission and *da'wah* (the Muslim equivalent to Christian mission) which accepted the legitimacy of the “right to convince and to be convinced.”⁴⁴ While not widely referred to, the significance of this statement lies in the identity of some of those

41. Dr. Nasif subsequently spent some years as the first deputy president of the new Saudi Shura, often seen as an embryo national parliament. The Institute continues to publish a journal, *Journal of the Institute of Muslim Minority Affairs*, although after the first few issues, the publication had to be moved from Jeddah to London.

42. Syed Z. Abedin, *Al-Dhimma: The Non-Believer's Identity in Islam*, 3 ISLAM AND CHRISTIAN-MUSLIM REL., 40-57 (1992).

43. *Id.* at 50.

44. 65 INT'L REV. OF MISSION (Oct. 1976), reprinted by the Islamic Foundation under the title CHRISTIAN MISSION AND ISLAMIC DA'WAH (1982).

Muslims who participated and agreed to the text, most notably Professor Khurshid Ahmad, a leading member of the Jama'at-i-Islami of Pakistan and later its deputy leader. More recently it has been expounded in strong and explicit terms from an unexpected quarter, namely Dr. Hassan al-Turabi of Sudan, in an interview with *Al-Mustakillah* newspaper in which he opposes Ayatullah al-Khumayni's *fatwa* against Salman Rushdie:

If Almighty Allah has granted us the merit of freedom, he who wants to believe is allowed that right and so too the one who wants to disbelieve. If He has chosen to distinguish us from other creatures through His gift of freedom, instead of creating us believers by necessity like stones, mountains and the earth . . . then the exercise of that freedom will become a matter of course—a self-evident truth confirmed by the Qur'an as in, "No-one is compelled to believe."⁴⁵

One question that cannot be avoided in relation to such trends among Islamic scholars and thinkers is the degree of relevance they have to the practical and legal situation in Muslim countries. This is not a matter relating only to the status of non-Muslims. As Ann Mayer has pointed out, bans on apostasy are more likely to be used against fellow Muslims than against those who convert to another religion: "[P]rofessing Muslims may be prosecuted as heretics or blasphemers for what is actually political or theological dissent or may be arbitrarily declared apostates and executed."⁴⁶ The experience of the Pakistani law on blasphemy supports this analysis, as does the renowned case of the Egyptian scholar Nasr Hamid Abu Zayd, whose marriage a Cairo court dissolved on the grounds that he was allegedly an apostate.⁴⁷

The answer to this question can only be given with reference to individual countries and will usually depend on the local political situation as much as on anything else. The degree to which the regime is under pressure from Islamist groups, as well as the balance of power between different Islamist trends, has a major part to play in determining the effects of bans on apostasy.

45. [2:256] English translation in *THE DIPLOMAT* 38-39 (June 1996).

46. MAYER, *supra* note 15, at 174.

47. Abu Zayd supplies a sharp attack on what some people have called the 'intellectual terrorism' mobilized against him in this case. *AL-TAKFIR FI ZAMAN AL-TAKFIR* (Sina, Cairo) (1995).

A longer-term factor is the nature of the Islamic instruction that is provided in schools and the nature of training in Islamic religious scholarship offered in the Islamic faculties of the universities around the region, the latter usually training the teachers who provide the former. While much of the university training remains traditional, there are signs of change. Nevertheless, this is beyond the scope of this study.

III. CONCLUSION

Discussion of the issues outlined above has not remained isolated in small groups of enthusiasts. Most recently it has found unusually strong expression in the form of an "Arab Muslim-Christian covenant" entitled *Dialogue and Coexistence*. The text of this document, nearly three years in preparation, was finalized at a large, highly publicized meeting in Cairo in December 2001. Participants included scholars, writers, and religious functionaries covering a wide and ecumenical spectrum of both Christians and Muslims from the Arab world. Press and political response to the document ranged from positive to enthusiastic. I can think of no better way to end this paper than by including a few key excerpts from the document:

5. The Arab Working Group on Dialogue observes that the effort to give firm foundation to a sense of coexistence is mandated by shared national and social concerns and aims, by a single historical and cultural process, and by a sense of common destiny. These are core issues that bring everyone together. The duties, rights and consequences they imply are not the domain of just one faction. Religious differences do not cancel out the fact of belonging all together to the Arab Islamic culture, in whose making Christians and Muslims participated side by side.

6. [The Working Group] sees the strengthening national unity as imperative. Sensitive to how external intervention can precipitate internal unrest that can take on a religious coloration, it is not right to make light of how internal factors and circumstances can be manipulated and exploited by foreign powers to serve their own interests.

The citizens of the united nation, both Muslim and Christian, must join in dialogue and work together to address internal issues and to solve the problems they raise. This is the prerequisite to frustrating foreign interference that only aggravates the situation and nurtures

suspicions and mutual fear. But if making light of how internal problems can inflict great damage on national unity, so too making too much of them can provoke similar damage. Among Muslim and Christian citizens of one nation, exaggerations can foster a generalized atmosphere of panic, fear and self-isolation.

. . . .

11. Lack of respect for cultural and religious distinctiveness and the poor management of pluralism in Arab societies has, to some extent and in specific countries, restricted areas in which Muslims and Christians can intermingle, join with each other, meet, work together and cooperate. This restriction has affected residential districts, educational institutions (especially private ones), professional, cultural and political institutions, and clubs. The effect of this has been to weaken the institutions of civil society that ought to be a uniting force for the national body politic. Addressing this, the dialogue envisioned by the working group strives to foster full citizenship and participation in public life freed from the shackles of confessionality that, by their nature, undermine national unity, open doors to foreign interference and obstruct democratic development.⁴⁸

48. The full text in Arabic and English is available from the Middle East Council of Churches at jarjour@spidernet.com.cy, available at <http://www.mecchurches.org/posandpress/> (last visited May 1, 2002).

