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Apostasy from Islam under Sharia law

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“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Universal Declaration of Human Rights, art. 18.

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ABSTRACT

Conversion from Islam to another religion or to atheism, in religious terms defined as "apostasy", is at the same time both an undisputable fundamental right, pertaining to freedom of religion as enshrined in many national constitutions and international treaties, and one of the most sensitive issues in *sharia* law and, consequently, in the legislation of contemporary Muslim states.

Sharia law, as emerges from the analysis of its primary sources, is not univocal when it comes to freedom of religion: in the Quran and the *Sunna* one may find totally contradictory statements, ranging from clearly enunciated principles of spiritual liberty, to draconian penalties for those who dare to abandon Islam.

This is explicable in historical terms with the different phases which characterized the "revelation", in fact the different phases of the Prophet's life as spiritual messenger, politician and warrior.

The interpretation largely prevailing both among classical jurists and still today, in doctrine and law, aimed at forbidding and harshly punishing apostasy, is mainly the outcome of a conceptual fusion between religion and state, whereby the disown of the former is also treason against the latter. However, liberal Muslim voices exist to denounce this blatant violation of human rights which may be also seen as nonobservance of the Quranic message.

KEYWORDS: Fundamental rights, Religion and Law, Freedom of religion, Apostasy, Islam and *sharia* law.

Apostasy from Islam under Sharia law

Tommaso Virgili*

SUMMARY: 1. Introduction. – 2. Freedom of religion in the Quran. – 3. Apostasy as a crime. – 4. "No compulsion in religion" vs. "kill the apostate". – 5. Conclusions

1. Introduction

Apostasy, i.e. conversion from Islam to embrace another religion or atheism, is one of the most sensitive issues within Islamic law, both from a theological and a juridical point of view, and for the human rights implications that its possible criminalization inevitably entails.

Apostasy (*irtidad, ridda*) is defined in the *Encyclopaedia of Islam* as the act of “one who turns back”, of the believer who somehow severs his ties with Islam, be it verbally, by denying the faith or some of its fundamental tenets, or by an action, for instance treating the Quran with disrespect.¹

Apostasy is classified among the *hudud* crimes, i.e. the offenses to God, whose prosecution is therefore compulsory for the Muslim state.²

However, there is no explicit reference in the Quran to the penalty to be applied, as the punishment mentioned therein is solely for the hereafter.

Furthermore, those verses which deal with the issue of apostasy have to be contextualized by taking into account two main relevant issues, namely the principle of freedom of religion, clearly expressed in many other verses of the Book, and the possible identification of the *ratio legis* of the punishment in the *political* treason, more than in the purely religious choice.

The analysis will be therefore split in three main parts.

In the first one I will give an account of the principle of freedom of religion in Islam, as clearly emerges from the text of the Quran. In the second one, I will address the specific issue of apostasy, and its configuration as a crime to be harshly punished. Eventually, I will try to recon-

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¹ Bearman P.J., Th. Bianquis, C.E. Bosworth, E. van Donzel and W.P. Heinrichs., edited by. *Encyclopaedia of Islam*. Leiden: Brill, 2004. Entry “Murtadd”.

² *Ibid.*

nect these, apparently contradictory, elements, attempting those explanations which enable the interpreter to read them in a consistent way.

As far as the methodology is concerned, I will rely mainly on the Quran and the *Sunna*³ – as reported in the most respected classic collections –, in this hierarchical order. In relation to the former, I will resort to commentaries and to the contextualization of some of the considered suras and verses. A brief account of the *ijma*⁴ of the founders of the four Sunni School will be also provided, as well as the accounts of the practice of the Four Rightly Guided caliphs.

Finally, the opinion of some eminent modern scholars, who attempt to soften the harshness of the classical juristic interpretation, will be presented and confronted with the opposite view of contemporary Islamists.

2. Freedom of religion in the Quran

The most relevant, and most cited, Quranic verse addressing freedom of religion in an ecumenical way is 2:256:

“Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things”.

From a purely theological point of view, freedom of religion may be considered as congenital to the very meaning of Islam, which means “submission”, that is a voluntary choice to seek proximity with Allah: “religion depends upon faith and will, and these would be meaningless if introduced by force”.⁵

Furthermore, arguing that God needs human intervention to expand or conserve the *umma*, would be a sin of pride which disowns His omnipotence:

³ " Established custom, normative precedent, conduct, and cumulative tradition, typically based on Muhammad's example. The actions and sayings of Muhammad are believed to complement the divinely revealed message of the *Quran*, constituting a source for establishing norms for Muslim conduct and making it a primary source of Islamic law." Esposito John L. (edited by), *The Oxford Dictionary of Islam*, available at <http://www.oxfordislamicstudies.com>, last accessed 28 January 2015. Entry "Sunnah".

⁴ "Consensus or agreement. One of four recognized sources of Sunni law. Utilized where the Quran and Sunnah (the first two sources) are silent on a particular issue. There is considerable debate concerning whose opinions are relevant for *ijma*. Some argue that only the opinions of scholars are relevant. Others contend that *ijma* includes the consensus of the laity. Most agree that the consensus of Muhammad 's Companions, the people of Medina, or the family of the Prophet is authoritative. Once an *ijma* is established, it serves as a precedent." *Oxford Dictionary of Islam*, entry "*ijma*".

⁵ Ali, Abdullah Yusuf. *The Meaning of the Holy Qur'an*. Beltsville: Amana Publications, 2011. Fn. 300 to Q, 2 :256.

“If it had been thy Lord's will, they would all have believed,- all who are on earth! Wilt thou then compel mankind, against their will, to believe!”⁶ Therefore, “Let him who will, believe, and let him who will, reject (it)”;⁷ God will then decide about their destiny in the hereafter.

Everything, indeed, is submitted to the well established plan of God, and dominated by His will and omniscience, and no human deed can possibly put in jeopardy the very existence of the true faith:

“O ye who believe! If any from among you turn back from his Faith, soon will Allah produce a people whom He will love as they will love Him,- lowly with the believers, mighty against the rejecters, fighting in the way of Allah, and never afraid of the reproaches of such as find fault. That is the grace of Allah, which He will bestow on whom He pleaseth. And Allah encompasseth all, and He knoweth all things”.⁸

Not even the Prophet was bestowed by God with the authority of forcing somebody to convert. His mission on earth is solely to bring the good message:

“So if they dispute with thee, say: "I have submitted My whole self to Allah and so have those who follow me." And say to the People of the Book and to those who are unlearned: "Do ye (also) submit yourselves?" If they do, they are in right guidance, but if they turn back, Thy duty is to convey the Message; and in Allah's sight are (all) His servants”.⁹

“If then they run away, We have not sent thee as a guard over them. Thy duty is but to convey (the Message). And truly, when We give man a taste of a Mercy from Ourselves, he doth exult thereat, but when some ill happens to him, on account of the deeds which his hands have sent forth, truly then is man ungrateful!”¹⁰

“Therefore do thou give admonition, for thou art one to admonish. Thou art not one to manage (men's affairs)”, which is even clearer in the tran Sahih International translation: “You are not over them a controller”.¹¹

⁶ Q, 10:99 in *ibid.*, as all the following references to the Quran.

⁷ Q, 18:29

⁸ Q, 5:54.

⁹ Q, 3:20.

¹⁰ Q, 42:48. And also Q, 5:92: “Obey Allah, and obey the Messenger, and beware (of evil): if ye do turn back, know ye that it is Our Messenger's duty to proclaim (the message) in the clearest manner”.

¹¹ Q, 88:21-22

As Yusuf Ali significantly comments on these issues: “If it had been Allah’s Plan or Will not to grant the limited Free Will that He has granted to man, His omnipotence could have made all mankind alike: all would then have had Faith, but that faith would have reflected no merit on them. In the actual world as it is, man has been endowed with various faculties and capacities so that he should strive and explore, and bring himself into harmony with Allah’s Will. Hence Faith becomes a moral achievement, and to resist Faith becomes a sin. As a complementary proposition, men of Faith must not be impatient or angry if they have to contend against Unfaith, and most important of all, they must guard against the temptation of forcing Faith, *i.e.* imposing it on others by physical compulsion, or any other form of compulsion such as social pressure, or inducements held out by wealth or position, or other adventitious advantages. Forced faith is no faith. They should strive spiritually and let Allah’s Plan work as He wills”.¹²

The contextualization would in turn corroborate the universal validity of the “no compulsion in religion” principle: the latter is indeed a Medinan one,¹³ that is to say expressed in a phase which was drifted no longer by merely spiritual requirements, but also by political ones.

Furthermore, this religious tolerance reflects the spirit of the Medina Constitution: “To you be your Way [*din*], and to me mine”,¹⁴ although being *per se* an early Meccan sura,¹⁵ is the same guiding principle underlying the allegiance Mohammad stipulated with the tribes of Medina, as long as the political-military oath was respected: “Guarantee of freedom of religion for both the Muslims and non-Muslim minorities (the Jews): The Jews of Banu Awf (non-Muslim minorities) shall be considered a community along with the believers. They shall be guaranteed the right of religious freedom along with the Muslims. The right shall be conferred on their associates as well as themselves except those who are guilty of oppression or the violators of treaties. They will bring evil only on themselves and their family”.¹⁶

¹² Footnote to Q, 10,99.

¹³ Kamali, Mohammad Hashim. *Freedom of Expression in Islam*. Cambridge: Islamic Texts Society, 1997. P. 89.

¹⁴ Q, 109:6.

¹⁵ Ali, *supra* note 5, p. 1707.

¹⁶ Art. 30, *The Constitution of Islamic State of Madina*, edited by Muhammad Tahir-ul-Qadri. http://www.constitutionofmadina.com/wp-content/uploads/2012/02/Constitution-of-Madina_Articles.pdf (last accessed, 28 January 2015).

3. Apostasy as a crime

If from the foregoing analysis freedom of religion per se clearly emerges, it must be noted that in Islam the latter is not perceived as coinciding with the freedom to *choose* a religion, or to *change* it.¹⁷ As a highly influential modern theologian clearly stated, “There is no compulsion in religion’ (*la ikraha fi’ d din*: Qur’an 2:256) means that we do not compel anyone to come into our religion. And this is truly our practice. But we initially warn whoever would come and go back that this door is not open to come and go”.¹⁸

In other words, if Islam admits different cults (at least the “religions of the Book”), this does not necessarily entail freedom to convert: if a Christian or a Jew is allowed to maintain and practice his religion or to convert to Islam, for the Muslim, according to the majority opinion, only the first part would be operational. Islam would be therefore a one-way ticket, and, for those who were born Muslim, even a prison: you can enter, but never exit.

Apostasy is in fact classified as a *hadd* crime, an offense to God, whose punishment is made compulsory for the Islamic state by the fact that it constitutes a violation of the *huquq Allah*, the rights of God.¹⁹

At the same time, however, one would look in vain at the Quran in order to find the prescribed punishment. The Book, in fact, although addressing apostasy at least 20 times,²⁰ never mentions a penalty to be applied on this earth, but only bad consequences in the hereafter, on the contrary warning the believer not to use coercion against the apostate, like in 18:29:

“Say, ‘The truth is from your Lord’: Let him who will, believe, and let him who will, reject (it): for the wrong-doers We have prepared a Fire whose (smoke and flames), like the walls and roof of a tent, will hem them in: if they implore relief they will be granted water like melted brass, that will scald their faces, how dreadful the drink! How uncomfortable a couch to recline on!”

The punishment in the hereafter is a recurring theme: *inter alia*, Q, 2:217:

¹⁷ Issue raised, for instance, by Saudi Arabia, Yemen, Egypt and Afghanistan during the drafting of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Baderin, Mashood A. *International Human Rights and Islamic Law*. New York: Oxford University Press, 2003. P. 119.

¹⁸ Mawdudi, Abu Ala. *The Punishment of the Apostate*. 1994. <http://www.answer-islam.org/Hahn/Mawdudi/index.htm> (last accessed: 28 January 2015)., III, D.

¹⁹ See fn. 2.

²⁰ Kamali, *supra* note 13, p. 93. Jordan, David A. «The dark Ages of Islam: Ijtihad, Apostasy, and Human Rights in Contemporary Islamic Jurisprudence.» *Washington and Lee Journal of Civil Rights and Social Justice* 9 (2003): 55-72. P. 61.

“They ask thee concerning fighting in the Prohibited Month. Say: ‘Fighting therein is a grave (offence); but graver is it in the sight of Allah to prevent access to the path of Allah, to deny Him, to prevent access to the Sacred Mosque, and drive out its members.’ Tumult and oppression are worse than slaughter. Nor will they cease fighting you until they turn you back from your faith if they can. And if any of you Turn back from their faith and die in unbelief, their works will bear no fruit in this life and in the Hereafter; they will be companions of the Fire and will abide therein”;

and Q, 4:137:

“Those who believe, then reject faith, then believe (again) and (again) reject faith, and go on increasing in unbelief,- Allah will not forgive them nor guide them nor guide them on the way.”

This happens because reneging faith is an evil deed, directly instigated by the Devil:

“Those who turn back as apostates after Guidance was clearly shown to them,- the Evil One has instigated them and busied them up with false hopes”.²¹

If in the Quran no specific earthly consequence is provided, it is in the *Sunna* that one can clearly detect death penalty for apostates.

The most notorious *hadith*²² in this sense is the following:

“Narrated 'Ikrima: Some Zanadiqa (atheists) were brought to 'Ali and he burnt them. The news of this event, reached Ibn 'Abbas who said, "If I had been in his place, I would not have burnt them, as Allah's Apostle forbade it, saying, 'Do not punish anybody with Allah's punishment (fire).' I would have killed them according to the statement of Allah's Apostle, 'Whoever changed his Islamic religion, then kill him.'”²³

It must be said that the validity of this *hadith* is challenged, insofar as “[s]ome Muslim scholars have [...] identified this Tradition as a solitary (*âhâd*) Tradition, while others allege a weakness in its transmission (*isnâd*).”²⁴

However, this is hardly the only *hadith* decreeing death penalty for the apostate:

²¹ Q, 47:25.

²² "Report of the words and deeds of Muhammad and other early Muslims; considered an authoritative source of revelation, second only to the *Quran* (sometimes referred to as sayings of the Prophet)." *Oxford Dictionary of Islam*, *supra* note 4.

²³ Sahih al-Bukhari, *Hadith*, <http://www.searchtruth.com> (last accessed: 28 January 2015). Book 84, Hadith 57. Emphasis added.

²⁴ Baderin, *supra* note 17, p. 124. Kamali, *supra* note 13, p. 93.

“Narrated 'Abdullah: Allah's Apostle said, "The blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am His Apostle, cannot be shed except in three cases: In Qisas for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (apostate) and leaves the Muslims.”²⁵

And further:

“Narrated Abu Burda: Abu Musa said, "I came to the Prophet along with two men (from the tribe) of Ash'ariyin, one on my right and the other on my left, while Allah's Apostle was brushing his teeth (with a Siwak), and both men asked him for some employment. The Prophet said, 'O Abu Musa (O 'Abdullah bin Qais!).' I said, 'By Him Who sent you with the Truth, these two men did not tell me what was in their hearts and I did not feel (realize) that they were seeking employment.' As if I were looking now at his Siwak being drawn to a corner under his lips, and he said, 'We never (or, we do not) appoint for our affairs anyone who seeks to be employed. But O Abu Musa! (or 'Abdullah bin Qais!) Go to Yemen.'" The Prophet then sent Mu'adh bin Jabal after him and when Mu'adh reached him, he spread out a cushion for him and requested him to get down (and sit on the cushion). Behold: There was a fettered man beside Abu Muisa. Mu'adh asked, "Who is this (man)?" Abu Muisa said, "He was a Jew and became a Muslim and then reverted back to Judaism." Then Abu Muisa requested Mu'adh to sit down but Mu'adh said, "*I will not sit down till he has been killed. This is the judgment of Allah and His Apostle (for such cases) and repeated it thrice.* Then Abu Musa ordered that the man be killed, and he was killed. Abu Musa added, "Then we discussed the night prayers and one of us said, 'I pray and sleep, and I hope that Allah will reward me for my sleep as well as for my prayers.'" [emphasis added]”²⁶

Nor does the *ijma'* of the four Sunni Schools tell a different story: indeed, the eminent founders and their direct disciples unanimously agreed on death penalty for apostasy (save in case of forced apostasy), their only disagreements being about the chance of repentance and a different treatment toward men and women:²⁷ “In *Fikh*, there is unanimity that the male apostate must be put to death, but only if he is grown up (*baligh*) and compos mentis (*'akil*) and has not

²⁵ Bukhari, *supra* note 23, Book 83, Hadith 17. As far as the central point is concerned, basically the same in Sahih Muslim, *Hadith*, <http://www.searchtruth.com> (last accessed: 28 January 2015): "Abdullah (b. Mas'ud) reported Allah's Messenger (may peace be upon him) as saying: It is not permissible to take the life of a Muslim who bears testimony (to the fact that there is no god but Allah, and I am the Messenger of Allah, but in one of the three cases: the married adulterer, a life for life, and the deserter of his Din (Islam), abandoning the community". (Book 16, Hadith 4152).

²⁶ Bukhari, *supra* note 23, Book 84, Hadith 58.

²⁷ *Encyclopaedia*, *supra* note 1, v. “Murtadd”. See also Silas. *The Punishment for Apostasy from Islam*. 2007. <http://answering-islam.org/Silas/apostasy.htm> (last accessed: 28 January 2015).

acted under compulsion (*mukhtar*). A woman, on the other hand, is imprisoned, according to Hanafi and Shi'i teaching, until she again adopts Islam, while according to al-Awza'i, Ibn Hanbal (al-Tirmidhi, *Hudud*, bab 25), the Malikis and Shafi'is (cf. *Umm*, i, 131, where al-Shafi'i vigorously attacks Abu Yusuf who is not mentioned by name) she also is put to death".²⁸

According to the Maliki school, one must distinguish between the one who conceals his *kufir* and the sincere apostate, killing the former immediately, but giving the latter the chance of repentance, executing him only if he refuses after three days.²⁹

The Hanbali School accords both men and women three days to repent, thereafter demanding their execution.

The Shafii one does not seem to differ from these positions.

The Hanafi School is, apparently, the only one which does not accept the three-day delay: "The Prophet also said, 'Kill him who changes his religion,' without mentioning a delay, because the apostate is surely a hostile unbeliever and no asylum seeker (*musta'min*) who has asked for protection; furthermore, he is no *dhimmi* (a non-Muslim under Islamic rule), for no poll tax is demanded of him. Therefore, he should be killed without reservation".³⁰ It is therefore maintained that, between the two options of offering repentance or not, the second is preferable, given that the apostate, as a Muslim, has already received his invitation to Islam. However, he should be spared if he, spontaneously, hastens to repent.

As a consequence, the capital punishment for apostasy has been carried out since the epoch of the Rightly Guided Caliphs. Tabari's *History* reports that, in the aftermath of Muhammad's death, many Christians tried to go back to their previous faith, but they were systematically persecuted for their choice. As Abu Bakr is reported to have written to the apostates: "I have learned that some of you have turned back from your religion after you had acknowledged Islam and labored in it, out of negligence of God and ignorance of His command, and in compliance with the devil [...]. I have sent you someone at the head of an army of the Muhajirun and the Ansar and those who follow (them) in good works. I ordered him not to fight anyone or to kill anyone until he has called him to the cause of God; so that those who respond to him and acknowledge (Him) and renounce (unbelief) and do good works, (my envoy) shall accept him and help him to (do right), but I have ordered him to fight those who deny (Him) for that reason. So he will not spare any one of them he can gain mastery over, (but may) burn them with

²⁸ *Encyclopaedia, ibid.*

²⁹ See Silas, *supra* note 27, as for the following.

³⁰ *Ibid.*

fire, slaughter them by any means, and take women and children captive; nor shall he accept from anyone anything except Islam”.³¹

This will continue under the rule of all the Rightly Guided Caliphs. Here is the quote of Tabari on Ali’s will on the matter: “Woe unto you! Do you know the precept (hukm) of ‘Ali regarding any Christian who accepts Islam and then reverts to Christianity? By God he will not hear anything they say, he will not consider any excuse, he will not accept any repentance, and he will not summon them to it. His precept regarding them is immediate cutting off of the head when he gets hold of them”.³²

4. "No compulsion in religion" vs. "kill the apostate"

How to reconcile the blatant violation of freedom of religion analyzed above, mainly derived from the *Sunna*, with the aforementioned Quranic statements which in many different ways prohibit any kind of compulsion in religion?

The possible answers to this question are basically two.

The first one consists in considering the “no-compulsion principle” abrogated in the Quran itself by the “verse of the sword”:³³

“The number of months in the sight of Allah is twelve (in a year)- so ordained by Him the day He created the heavens and the earth; of them four are sacred: that is the straight usage. So wrong not yourselves therein, and fight the Pagans all together as they fight you all together. But know that Allah is with those who restrain themselves”.³⁴

³¹ Tabari’s *History* in Silas.

³² *Ibid.*

³³ See Baderin, *supra* note 17, p. 122. For further details, see also Bukay, David. «Peace or Jihad? Abrogation in Islam.» *The Middle East Quarterly* 14, n. 4 (2007): 3-11.

The principle of abrogation is a chronological criterion which consists in considering previous revelation abrogated by later pronouncements of God. This is a very well established tradition, very hard to challenge, which usually brings about a recrudescence in the content of Quranic verses, explicable from a historical point in view: in the first phase, in Mecca, Muhammad is purely a messenger of a new faith, which has a spiritual and ecumenical connotation. On the contrary, while in Medina, after a short period of peaceful allegiance with the Jewish tribes, Muhammad becomes a warrior leading a community which has to face various enemies, and the religious message changes accordingly, assuming a warmongering and bloodthirsty connotation.

The great Sudanese reformer Muhammad Taha tried to advocate for a 360-degree revision of this approach to the Quran: only the spiritual and ecumenical verses would be valid today, while the violent ones would be no longer applicable, as anchored to a specific historical condition. Yet, because of these ideas, he was charged with the very accusation of apostasy and executed in Sudan in 1985.

³⁴ Q, 9:36.

Along with this line, it is argued that the principle of tolerance has been abrogated by God in favor of *jihad* against disbelievers.³⁵ This would be further proven by Q, 4:88-89:

“Why should ye be divided into two parties about the Hypocrites? Allah hath upset them for their (evil) deeds. Would ye guide those whom Allah hath thrown out of the Way? For those whom Allah hath thrown out of the Way, never shalt thou find the Way. They but wish that ye should reject Faith, as they do, and thus be on the same footing (as they): But take not friends from their ranks until they flee in the way of Allah (From what is forbidden). But if they turn renegades, seize them and slay them wherever ye find them; and (in any case) take no friends or helpers from their ranks”;

and by Q, 8:38-39:

“Say to the Unbelievers, if (now) they desist (from Unbelief), their past would be forgiven them; but if they persist, the punishment of those before them is already (a matter of warning for them). And fight them on until there is no more tumult or oppression [*fitna*], and there prevail justice and faith in Allah altogether and everywhere; but if they cease, verily Allah doth see all that they do”.

The *Sunna* would in turn corroborate this interpretation.

The second approach consists in considering apostasy not *per se* the *hadd* crime to be punished with death, but only in relation to its *political* connotation of betrayal of the Islamic state.³⁶

In this sense, it would constitute a “politico-religious rebellion”,³⁷ a “rebellion against the state, whereby a Muslim-subject of the Islamic State, after denouncing Islam, joins with those who take arms against the Islamic State and thus commits a political offence against the State”.³⁸

This is precisely what the “hypocrites” – mentioned in Q, 4:88-89 – would do: they would pretend to be Muslims in order to benefit from the Islamic state, just to turn their back to the Muslim community and join the forces of its enemies when they feel this to be advantageous for them.

³⁵ Kamali, *supra* note 13, p. 92.

³⁶ Kamali, *supra* note 13, p. 95-96. However, see also in *ibid.* p. 236; Baderin, *supra* note 17, p. 124.

³⁷ Baderin, *supra* note 17, p. 124.

³⁸ *ibid*

This would be confirmed by the term *fitna* (polysemic word whose principal meaning is sedition, rebellion³⁹) used to describe the malicious deeds of unbelievers, for whom either conversion or death is commanded by God in the aforementioned Q, 8:38-39. It must be said that there is no agreement around the right interpretation of *fitna* in this verse: Yusuf Ali translates it with “tumult or oppression”, while others maintain it to be a synonym of *shirk* (polytheism), and still others give to the term the meaning of “aggression”, intended to destroy Islam.⁴⁰ It is evident how the different connotation of *fitna* radically affects freedom of religion in a sense or the other.

The same reasoning may be followed in relation to Q, 8:12-17:

“[12] Remember thy Lord inspired the angels (with the message): ‘I am with you: give firmness to the Believers: I will instill terror into the hearts of the Unbelievers: smite ye above their necks and smite all their finger-tips off them. [13] *This because they contended against Allah and His Messenger*: If any contend against Allah and His Messenger, Allah is strict in punishment. [14] Thus (will it be said): ‘Taste ye then of the (punishment): for those who resist Allah, is the penalty of the Fire.’ [15] O ye who believe! *When ye meet the Unbelievers in hostile array*, never turn your backs to them. [16] If any do turn his back to them on such a day – unless it be in a stratagem of war, or to retreat to a troop (of his own)- he draws on himself the wrath of Allah, and his abode is Hell,- an evil refuge (indeed)! [17] It is not ye who slew them; it was Allah: when thou threwest (a handful of dust), it was not thy act, but Allah's: in order that He might test the Believers by a gracious trial from Himself: for Allah is He Who heareth and knoweth (all things) [emphasis added]”.

Once again, the massacre of unbelievers is put into the context of an aggression against Islam, as Kamali notes by differentiating apostasy from blasphemy: “it would be difficult to implement the principle of the Quranic proclamation ‘there is no compulsion in religion’ (II:256), if blasphemy and apostasy were treated as a unified concept”.⁴¹

It is true that the very attribution of the character of “aggression” to blasphemy, which Kamali does by assigning to the latter the label of “hostile opposition”, “splitting off” and “militant separation”⁴² – referring to suras 8 and 9⁴³ - , might in turn lead to ambiguities: after all, blasphemy is, by its very nature, a *speech* crime, non an armed one; hence, one could deduce that

³⁹ Encyclopaedia, *supra* note 1, entry “*Fitna*”.

⁴⁰ Kamali, *supra* note 13, p. 191.

⁴¹ *Ibid.*, p. 216.

⁴² *Ibid.*

⁴³ In particular, Q, 8:13: “This because they contended against Allah and His Messenger: If any contend against Allah and His Messenger, Allah is strict in punishment”, and Q, 9:63: “Know they not that for those who oppose Allah and His Messenger, is the Fire of Hell?- wherein they shall dwell. That is the supreme disgrace”.

any kind of opposition to Islam, be it political or religious, by weapons or words, legitimize *ji-had* – and not in the sense of the internal struggle toward religious perfection... This is precisely what fundamentalists, and even large masses of common believers, do, if only one thinks about the irrational and violent reactions to Muhammad’s cartoons & co. – not to mention the acts of downright terrorism which have recently struck France.

However, through contextualization one may reach a different conclusion. The title itself of sura 8, “The spoils of war”, puts the reader in a well defined context, which is that of the battle of Badr, right after which the sura is reported to have been revealed.⁴⁴ It would be therefore a sort of “manual of war”, in which “we have the lessons of the Battle of Badr enforced in their larger aspects”.⁴⁵ The abovementioned verses, therefore, ought to be read as detailed features of combat.⁴⁶

It is important to note that the verses Mawdudi views as the Quranic injunction of death penalty for apostasy,⁴⁷ namely Q, 9:11-12,⁴⁸ actually confirm this argumentative line, insofar as they talk about the rupture of the covenant on the part of non-Muslims.⁴⁹

Also the tradition of the Prophet provides arguments corroborating this interpretation. Indeed, the aforementioned *hadith* which provides death penalty in three cases, namely adultery, murder and apostasy, specifically mentions “the one who reverts from Islam (apostate) *and leaves the Muslims* [emphasis added]”: the expression “leaves the Muslims” has been read in terms of political betrayal.⁵⁰

⁴⁴ Ali, *supra* note 5, p. 413

⁴⁵ *Ibid.*

⁴⁶ For instance, thus Y. Ali comments on Q, 8:15: “The laws of spiritual fight are exactly similar to those enforced by military virtue and discipline. Meet your enemy fairly and squarely, not rashly, but after due preparation. *Zahfan* in the text (meeting in hostile array) implies a slow and well-planned proceeding towards a hostile army. When once in combat, carry it through: there is no room for second thoughts. Death or victory should be the motto of every soldier: it may be death for himself individually, but if he has faith, there is triumph in either case for his cause. Two exceptions are recognised: (1) *reculer pour mieux sauter*, to go back in order to jump forward; or to deceive the enemy by a feint; (2) if an individual or body is, by the chances of battle, isolated from his own force, he can fall back on his force in order to fight the battle. There is no virtue in mere single-handedness. Each individual must use his life and his resources to the best advantage for the common cause”. Ali, fn. 1190 to Q, 8:15 . Although there is a similitude with the “spiritual fight”, the latter is, by definition, metaphorical.

⁴⁷ Mawdudi, I, A.

⁴⁸ "But (even so), if they repent, establish regular prayers, and practise regular charity,- they are your brethren in Faith: (thus) do We explain the Signs in detail, for those who understand. But if they violate their oaths after their covenant, and taunt you for your Faith,- fight ye the chiefs of Unfaith: for their oaths are nothing to them: that thus they may be restrained."

⁴⁹ Although blasphemy it is not within the scope of this paper, it must be noted that the above verse is read as the basis for the prosecution of blasphemers, since it talks about those who “taunt”, or “defame”, the Islamic faith.

⁵⁰ Kamali, *supra* note 13, p. 96.

Scholars contextualize also the other *hadith*, the notorious “Whoever changes his religion, kills him”, and reach the conclusion that it must be dated back to a period of turmoil, when, in the aftermath of Muhammad’s death, many tribes rebelled against the Islamic state, putting in jeopardy its very existence.⁵¹

This view is shared by the Hanafi school, in that it excludes death penalty for female apostates with the motivation that women are forbidden to be executed in wartime:⁵² the connection with a situation of armed conflict would be evident.

In the practice of the Rightly Guided Caliphs, as reported in Tabari’s *History*, one can find the same motivation for the persecution of apostasy. Indeed, in the aftermath of Muhammad’s death, some of the tribes which had been submitted to Islam tried to secede from the Islamic state, although in some cases declaring to keep their loyalty to the religious aspects of the faith: “All of these movements are termed *riddah* "apostasy" by the Muslim sources, even in cases where the opponents of Medina showed no desire to repudiate the religious aspects of the faith. Abu Bakr vowed to fight them all until they were subdued and dispatched several armies to deal with the main rebellions”. However, he goes on by saying that “the campaigns did not limit themselves to the reconquest of Arabian tribes that had previously had some contract with Muhammad; they spilled over the whole of Arabia, and many tribes and groups that had had no contact with the Prophet at all, and who certainly had not been allied to or subjected by him, were conquered for the first time. The Arabic sources classify these wars, too, as wars against the *riddah*, even though they involved neither apostasy nor rebellion – only resistance to expansion of the new Islamic state based in Medina. The *riddah* wars constitute, in effect, the first chapter in the early Islamic conquest movement that led to the establishment throughout the Near East of a new imperial state ruled by Arabian Muslims.”⁵³

In other words, the mere self defense against Muslim scimitars came to be identified as "apostasy", in order to confer a religious justification to conquests and massacres.

More than a question of religion, it seems to have been one of power and money: Mawdudi reports that the *jihad* of Abu Bakr against the “people of apostasy” was prompted by their refusal to pay the *zakat*. He confirms that the term used for these rebels was “apostates”, irrespective of their spiritual claim. However, he overturns the inference: rather than acknowledging that the label of apostasy had lost in this phase its original religious connotation to assume a purely political one, he views in the fact that classical sources call these rebellions “apostasy” the very

⁵¹ Jordan, *supra* note 20, p. 62.

⁵² *Ibid.*

⁵³ Tabari’s *History*, in Silas, *supra* note 27.

confirmation that the gravest crime, the one worthy of war and persecution, was not the political, but the religious one.⁵⁴

It must be said that not everyone agrees on this political view of apostasy.

In fact, a good test is the following: is *manifestation* of apostasy, or apostasy *per se*, the object of punishment under Islamic law? In the first case the political connotation makes sense, which is not the case under the second interpretation.

Some indeed hold that “it is not the changing of one’s religion *simpliciter* which is prohibited under Islamic law, but its manifestation in a manner that threatens public safety, morals, or freedom of others, or even the existence of the Islamic state itself”.⁵⁵

An-Na’im, instead, affirms that “private apostasy *per se* is punishable by death under *sharia*, regardless of whether or not the apostate publicized his or her views or advocated them”.⁵⁶ On the basis of this element, he completely rejects the theory whereby apostasy was punished as civil disobedience.⁵⁷ He adds further, in accordance with what we have seen reported by Tabari, that, in the Medinan stages, “the use of force was sanctioned in a gradual progressive manner”, with the consequence that the “no compulsion in religion” verse, which is an early Medinan one, was gradually replaced by coercion: “The overwhelming impact of the Qu’ran of Medina has been to sanction, if not positively command, the use of varying degrees of coercion on non-Muslims to induce them to convert to Islam”.⁵⁸

Therefore, his view is that there is no other way to decriminalize apostasy but to refer directly to the authentic word of the Quran – which, as we have seen, does not prescribe any punishment -, at the meantime considering the *Sunna* authority as “transitional and no longer applicable”.⁵⁹

Furthermore, if we identify the rationale of the crime of apostasy in *fitna*, in an attack against the Islamic state, then we have another problem: is this an association linked to a well

⁵⁴ “For all these various kinds of people the Companions of the Prophet used the word "apostate" (*murtadd*) instead of "rebel" and the word "apostasy" (*irtidad*) instead of "rebellion" when referring to that disturbance. From this it is clearly evident that in their view the real crime that the people had committed was apostasy and not rebellion.” Mawdudi, *supra* note 18, I, D, 2.

⁵⁵ Baderin, *supra* note 17, p. 125.

⁵⁶ An-Na'im, Abdullahi Ahmed. *Towards an Islamic Reformation. Civil Liberties, Human Rights and International Law*. Syracuse: Syracuse University Press, 1990. P. 87. An-Na'im is indeed a reformer, disciple of Muhammad Taha, mentioned above (note 33)

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*, p. 55.

⁵⁹ *Ibid.*, p. 109.

defined historical period, due to the hard time the *umma* underwent in its early stages, but nowadays anachronistic, or is it a permanent condition of the Islamic state, intertwined with its very nature of both political and religious entity, whose constitutive elements are inevitably indissoluble?

To put the question in modern juridical terms: is a clear and present danger for the Islamic society to be demonstrated, or does it lie *in re ipsa* in any act of apostasy?

It is evident that the first scenario opens to the decriminalization of apostasy, since no real threat comes anymore from apostasy (rather the contrary: from too fervent religious sentiments...), while the second one makes it a permanent condition of any state entity which proclaims itself “Islamic”, both for the sake of God as well as for national security and public order, given that the latter comes to overlap with the former.

This is what Islamists such as Qutb and Mawdudi proudly assert to be the real nature of Islam: differently from Christianity, “which has been banished from life”⁶⁰, “Islam must govern”⁶¹. This happens because Islam “is not only a “religion” in the modern technical sense of that term but a complete order of life. [...] It is [...] *a belief on whose continuation the continuation of civilization and the state depend* and the changing of which means changing the order of civilization and state. It is not a faith which a person may choose with only the concern of the individual in mind. It is that faith on the basis of which a society of people establishes a complete order of a civilization in a particular form and brings into existence a state to operate it. A faith and idea of this nature cannot be made into a game for the liberties of individuals. Nor can the society, which establishes the order of civilization and state on that faith, make way for any brainwave to enter, then to be displaced by another brainwave, to come and go at will [emphasis added]”⁶². The consequence is the following: “the true position of an apostate is that he by his apostasy provides proof that he not only rejects the foundation for the order of society and state but offers no hope that he will ever accept it in the future. When such a person finds this foundation on which society and the state are constructed to be unacceptable to himself, it will be appropriate for him to move outside its borders. But when he fails to do this, only two ways of dealing with him are possible. Either he should be stripped of all his rights of citizenship and allowed to remain alive or else his life should be terminated”⁶³.

⁶⁰ Qutb, in Pacini, Andrea, edited by. *I Fratelli Musulmani e il dibattito sull'Islam politico*. Torino: Fondazione Giovanni Agnelli, 1996. P. 36 [translation from Italian].

⁶¹ *Ibid.*, p. 35.

⁶² Mawdudi, *supra* note 18, III, B.

⁶³ *Ibid.*, III, D.

This would be, in other words, “the basic difference between a mere religion and a religious State”⁶⁴: the very nature of Islam, which is at the same time religion and state, would demand the punishment of apostasy *per se*, irrespective of the demonstration of any political betrayal, since this very act is already *in itself* a political betrayal: “Where religion itself is the ruler, where religious law is state law, where religion has taken into its own hands the responsibility of maintaining peace and order, does or does not religion have the right to punish those who have promised loyalty and obedience to it and then turn away?”⁶⁵

This ambiguity is present not only in the writings of fundamentalists: even Kamali, although concluding by unmistakably asserting freedom of conscience and religion, at the meantime clearly maintains that “a total separation between the religious and political aspects of *fitnah* is unfeasible in the context of Islamic polity. For in Islam the state is closely associated with religion, which exceeds, in order of significance, all other considerations of race, language, geography and culture. Hence, when the religious principles of Muslim society are made the target of subversion and attack, the threat is automatically directed at the very foundations of the Islamic society and state”⁶⁶.

Probably beyond the author's intentions, the terrible implications such statements could have on freedom of religion and apostate's lives are even too evident.

5. Conclusions

From what emerges above, it is hard to say a final word, from a theologico-juridical point of view, on apostasy in *sharia* law, and the conclusions scholars and jurists reach depend at the end on their personal understanding of the final meaning of religion. Here lies the real source of discord around apostasy between traditionalists (or modern fundamentalists) and reformists.

For the former, religion is the supreme constitutive element of the Islamic state, to be enforced via law constraints - lest the Muslim society get otherwise destroyed.

For the latter, instead, faith is primarily a matter of conscience and soul, a free choice which responds to the needs of the individual's spirit, a leap beyond the borders of the material world, something to which solely in the absence of any compulsion, one may authentically and truly surrender.

⁶⁴ *Ibid.*, III, E.

⁶⁵ *Ibid.*

⁶⁶ Kamali, *supra* note 13, p. 194.

Sadly, the interpretation of *sharia* by large predominating still today in Muslim states is the first one, to the extent that it is hard to find one Muslim country which does not proscribe the disown of Islam. Indeed apostasy, under different *nomina iuris* and with different consequences, is punished in Afghanistan, Algeria, Bahrain, Brunei, Egypt, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Mauritania, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, Syria, United Arab Emirates and Yemen.⁶⁷

Only when the chains of this nefarious bond between religion and state are broken, will faith finally become a matter of individual conscience, and devotion to God, however He be called, at last attain the realm of freedom, where it belongs.

⁶⁷ The Law Library of Congress, *Laws Criminalizing Apostasy in Selected Jurisdictions*, 2014. Available at <http://www.loc.gov/law/help/apostasy/apostasy.pdf> (last accessed, 29 January 2015).