ISLAM AND FREEDOM

Introduction

Paola Bernardini[*]

EXPANDING cultural exchange and rapidly developing political relationships between Muslims and the pluralist, liberal democracies of the West make the question of the role of freedom in Islam more compelling. This Forum aims at shedding fresh light on this question, by adopting a variety of approaches: an empirical investigation of the political regimes of contemporary Muslim majority countries, and two explorations of classical and modern interpretations of Islam's founding texts – the Qur'an and Sunna – both believed to provide a «comprehensive model for individual and communal life».[1]

The multiplicity of interpretations of Islam's founding texts was already discussed by Ibn Rushd (1126-1198), one of the leading Muslim philosophers known in the West for his commentaries on Aristotle. In his *Decisive Treatise*, he identified three levels of interpretation of the Qur'an: literal, dialectical, and rational.[2] The first level of interpretation, according to Ibn Rushd, was that of the «jurists [*fuqahā]* who are mainly concerned with the literal, strict linguistic sense of the [texts]. The second level is that of the theologians [*mutakallimūn*], who are interested in arriving at a more rigorous and widely accepted view through debate and disputation. The third level of interpretation […], is that of the philosophers [*falâsifa*], whose interpretation [has a much stronger legitimacy since it] is based on rational principles that are incontestable by any human in his capacity as a rational being».[3]

As Dominique Avon writes in the first contribution, the Muʿtazila were the first to use a rational and philosophical interpretation of the Qur'an. Although they were mostly known to be theologians[4], they resorted to philosophy in their arguments with non-Muslims, going to the extent of making reason «the

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* Department of Global Perspectives, Holy Cross College at Notre Dame, 5415 State road 933 N., P.O.Box 308, Notre Dame, IN 46556, E-mail: PBernardini@hcc-nd.edu

[1] A.A. An-Na'im, *Islam and the Secular State*, Harvard University Press, Cambridge 2008, p. 49.

[2] Averroës (Ibn Rushd), *Decisive Treatise*, transl. by C.E. Butterworth, Bringham Young University, Provo, Utah 2008.   [3] Idem, *Islam and the Secular State*, cit., p. 46.

[4] That's how Averroes viewed them in his *Decisive Treatise*. Idem, *Decisive Treatise*, cit., p. 26.

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judge of revelation».[5] Whenever «Qur'anic verses […] seemed to contradict the conclusion of reason», they interpreted them allegorically. Moreover, they would openly challenge and ridicule the sayings of the Prophet (Sunna), the historicity of which was held to be questionable.[6] Mu'tazilism, however, was proscribed by the Abbasid caliph al-Mutawakkil in 848,[7] and was eventually replaced by Ash'arīsm.

In an interesting exploration of the intersection between politics and religion, Bettina Koch claims that Ashar'ism most likely served the interests of the rulers better than Mu'tazilism. Thus it became the official doctrine of the Muslim empire, including the Ottomans.[8] Unlike their predecessors, the Ash'arīs relied on a literal interpretation of the Qur'an. In order to support the voluntarist view according to which man cannot will anything if God does not will it first, they would interpret those verses which speak about divine guidance, or omnipotence, out of their original context.[9] Hence ignoring other passages which acknowledge human freedom, or natural guidance. For this and other reasons, Averroes did not consider them very reliable in their use of dialectical exegesis.[10]

Political interests contributed also to the early jurists' consensus (*ijma*) on the legal consequences of apostasy (*ridda*) and the justification of war (*jihad*) against unbelievers, supposedly legitimized by the Quran and Sunna. Such politicized legal interpretation of the texts is very clear in the writings of Ibn Taymiyya (1263-1328), one of the most well-known Sunni scholars to have developed the legal doctrine of the death penalty for apostasy, and the most quoted author by contemporary Islamist groups. Taymiyya ironically adopted a double standard on who should have been considered an apostate' from the perspective of Islamic texts. In his theological writings, Ibn Taymiyya supported the claim that whoever performs the ritual prayer (*salah*), even if unjust, or sinful, should be considered a Muslim, not an apostate.[11] However, in his political works, responding to the needs of the Mamluk authorities who had an interest in fighting the Mongols, Ibn Taymiyya categorizes the Muslim Mongols as apostates, since they continued to follow the laws of Gengis Khan, instead of Islamic law (*shar'ia*).[12] In a similar fashion, in order to legiti-

[5] R. Caspar, *A Historical Introduction to Islamic Theology,* pisai, Roma 1998, p. 186.

[6] *Ibidem*, p. 190. [7] *Ibidem*, p. 186.

[8] B. Koch, *Patterns of Legitimizing Political Violence in Transcultural Perspectives,* De Gruyter, Berlin 2015, p. 85; R. Caspar, *A Historical Introduction to Islamic Theology*, cit., p. 186.

[9] A. Sachedina, *Freedom of Conscience and Religion in the Qurᵃan*, in D. Little-J. Kelsey-A. Sachedina (eds.), *Human rights and the conflict of Cultures*, University of South Carolina Press, Columbia, S.C. 1988.

[10] Idem, *Decisive Treatise*, cit., p. 26.

[11] Idem, *Patterns of Legitimizing Political Violence in Transcultural Perspectives*, cit., p. 85.

[12] *Ibidem*, p. 86.

mize Muslim expansion, Ibn Taymiyya, and the jurists living at the time of the early caliphs, considered the more conciliatory (Mecca) verses of the Qur'an – including those on defensive jihad- to be abrogated by the more intransigent (Medina) verses, calling for fighting and killing the unbelievers (especially polytheists) wherever they may be found.[13]

Although silenced by the ruling political and religious elites, Mutʿazilism, and its rational and philosophical interpretations of Islamic sources, have survived in some parts of the world, particularly among the Shiʿites and Kharijites.[14] Moreover, since the 20th century, Sunni Islam has experienced a «renewed interest in Muʿtazilism», cultivating «its enthusiasm for reason in the modern setting». This was perhaps initiated also by «the significant discovery of important Muʿtazilite manuscripts in Yemen, between 1952-1964».[15]

The continuing influence of Mu'tazilism is reflected in the contributions to this Forum, alongside the enduring presence of the more traditionalist trends. Dominique Avon explains that, after a long journey, freedom of conscience was finally enshrined in the 2014 Tunisian Constitution. The drafters' refutation of the classical understanding of Islam as the natural religion (*din al fitra*) greatly accounted for this new recognition. Classical scholars would make such a claim on the basis of one of the Prophets' Hadiths, whose authenticity had already been challenged by the Mu'tazila: «Every infant is born according to the *fitra*; then his parents make him a Jew or a Nazarene [i.e. Christian] or a Magian». Hence the assumption that «any religious position, other than Islam, is not only an error, but objectively an apostasy».[16] Yadh Ben Achour, leading figure in the drafting of new Tunisian Constitution, criticized the classical notion of natural religion, with all the ensuing consequences, in his 2011 book, *La Deuxième Fâtiha*. His claim then was that the Prophet's hadith, if read in its entirety, really states: «Every infant is born according the *fitra*; then his parents make him a Jew or a Christian or a Mazian. If they are Muslim, so will he […]»[17]

This is also the view of Marshall Hodgson, cited in Massimo Campanini's contribution. The Islamic scholar is quoted as saying that the real meaning of natural religion *(din al fitra)* can be deduced from the historical contextualization of Sura 30:30: «So set thy face to the religion (*din*), a man of pure faith

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[13] J.L. Esposito, *Unholy War. Terrorism in the name of Islam*, International Islamic Publishing House, Riyadh (ksa) 2003, p. 35.

[14] R. Caspar, *A Historical Introduction to Islamic Theology*, cit., p. 167.

[15] *Ibidem*, pp. 167, 186.

[16] R. Brague, *The Law of God. The Philosophical History of an Idea*, The University of Chicago Press, Chicago 2007, p. 163.

[17] Y. Ben Achour, *La Deuxième Fâtiha. L'Islam et la pensées des droits de l'homme*, puf, Paris 2011, p. 128. «*Tout homme est mis au monde par sa mère en l'état de fitra. Ses parents en font un juif, un chrétien ou un mazdéen. S'ils sont musulman il sera […]*».

– God's original creation *(fitra)*, upon which He patterned mankind…That is the right religion *(din)*». Hodgson argues that the notion of natural religion *(din al fitra)* referred to in this passage could not have been any other than the true monotheistic religion wherein all human beings are created. It could not be otherwise, given that Muhammad's revelation came at a time when Islam, as an historical religion, was not yet developed. The authentic meaning of natural religion *(din al fitra)* can also be deduced by looking at the literary context in which Sura 30:30 is placed. The verse is found in a chapter discussing and defending the unicity of God. Hence, a hermeneutical understanding of the Qur'an confirms the view that monotheism is what is meant by natural religion *(din al fitra)*. This last approach to Qur'anic interpretation was used by the Mu'tazila to defend freedom in matters of religion. In fact, they would interpret Sura 30:30 in light of verse 2:254 – «There is no compulsion in religion» – in order to support the view that the nature *(fitra)* God has endowed human being with, is the capacity to know the One-God by the rational investigation of creation.

Finally, a few contemporary democratic regimes of Muslim majority countries – especially those of Western Africa – are witnessing a revival of the spirit of Mu'tazilism, through the prevailing presence of Sufism: a mystical group which historically had counted in their midst some members of the *Mu'tazila*.[18] Sufi's appreciation for «the free character of faith and the presence of God in every person» – as Philpott writes – offer support to the liberal-state institutions in places like Senegal, Mali, Niger, Guinea, Burkina Faso, Sierra Leone, and The Gambia. When freedom is trodden upon, in Muslim majority countries, this is not always by the hands of Islamic regimes, or in virtue of Islamic principles. Rather it is often trodden upon, by the hand of secularist regimes.

In conclusion, the variety of political institutions in the Muslim world, and the diversity of Islamic interpretations on human freedom – presented in the Forum – contradict the general claim that Islam *per se* is inexorably an intolerant religion. While some interpretations, and political arrangements, are not consistent with a modern understanding of liberty, others are more conciliatory and supportive of the secular State, liberty of worship and freedom of conscience. In fact, a close examination shows that political interests, rather than religion alone, may be conducive to a restrictive understanding of human freedom in Islam, and in Muslim majority countries. On the contrary, wherever religion is unaffected by material and political pursuits – no matter how legitimate they may be – freedom is more likely to blossom.

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[18] R. Caspar, *A Historical Introduction to Islamic Theology*, cit., p. 186.

Freedom of conscience («Hurriyat al-damîr»).
A challenge for Arab-Islamic authorities

Dominique Avon[*]

For a century in the Arab world, the historical home for the Islamic sciences and for Islamic jurisprudence, the notion of «Hurriyat al-ḍamīr» (Freedom of conscience) has been a topic of dispute among liberal thinkers, on the one hand, and integralist thinkers including a majority of "rijāl al-dīn" [Religious men], on the other. According to the Egyptian Gamāl al-Bannā (1920-2013), son of an imam who spent his life collecting the writings attributed to Ibn Hanbal and brother of Hasan al-Banna, the founder of the Muslim Brotherhood, religious authorities, like the Ulamas and other *fuqaha*-s, had always been influenced by political powers and consequently ended up promoting oppressive legal opinion [*fatwa*-s]. Nonetheless, in an essay dedicated to "freedom" and to "laymanship," G. al-Bannā defended "freedom of belief" and "freedom of thought" to a great extent. He also stated that: «philosophers, scholars and thinkers took the place [of the messages of the prophets] and revealed "conscience" [*ḍamīr*], they established conscience [*wijdān*] through which they invented works of art»[19]. G. al-Bannā knew that the word "liberty" was not included in the Quran but he was convinced that the value could be derived from the spirit of the text, thereby going against a significant part of the Islamic tradition. al-Bannā's "liberalism" was unacceptable for those who somewhat successfully fought, towards the end of the 1950s, to preserve the integrity of the Islamic "'*aqīdā*" [doctrine], by rejecting any external influence and by saying that "Islam" already offered a global and intangible framework as well as the tools for specific answers to every question. They especially challenged the claim that rights could be established for individuals, while holding that only groups pre-defined by Islamic jurisprudence enjoy rights. In this contribution, I will highlight some historical phases of this liberal-integral divide regarding freedom of conscience with references to the early centuries of Islam.

In early Islam, echoing some earlier debates on the responsibility of the human being before God,[20] only the Mu'tazilah school of thought established

[*] Centre de Recherches Historiques de l'Ouest and Institut du Pluralisme Religieux et du Athéisme, Université du Maine, Avenue Olivier Messiaen, 72085 – Le Mans cedex 9, France. E-mail: Dominique.Avon@univ-lemans.fr

[19] G. Al-Banna, *al-islām wa al-huriyya wa al-'almāniyya*, Dar al-fikr al-islāmī, Cairo, s.d., p. 18.

[20] V. Comero, *La défense argumentée du libre arbitre dans la tradition musulmane. Hasan al-Basrī et 'Umāra b. Wathīma al-Fārisī*, «Revue de l'histoire des religions», Janvier-Mars 2013, tome 230, fascicule 1, p. 66.

a principle according to which the human being had the *"taqdīr"* [determination] of his own acts. Excluded from the core of Islamic power in the middle of the 9th century, the Mu'tazilah school was later overtaken by the Ash'arite school of thought, which left personal responsibility in its "mystery" section for everything that falls within the scope of the All-Powerful Divine. Ash'arī (d. 935) provided a consistent and coherent doctrine which infused all the Sunni juridical schools. He accused supporters of the Mu'tazilah school of thought of assuming that humans could dictate their will to God himself.[21] Both conceptions, however, were also connected with the notion of *fiṭra*, a hapax in the Quran (xxx, 30) which was traditionally interpreted in the light of a *hadīth*, "Every infant is born according to the *fiṭra*; then his parents make him a Jew, a Nazarene [i.e. Christian], or a Magian".[22] Therefore, traditional religious scholars held that Islam was the religion of the unspoilt nature, as held for instance by Abū Ḥāmid al-Ġazālī's (d. 1111) in *Al-Munqiḏ min al-ḏalāl,* who rejected Christian doctrine[23] as well as some Muslim trends which he qualified as "heretical", but distinguished between "sciences of relations" for the relations with the Jews, "sciences of unveiling" for their salvation, and "jurisprudence" for their legal status.[24]

The implications of various interpretations of the original religion, for instance regarding the salvation of children, were extensively debated without reaching a clear consensus. Some Sufis returned to early figures like Al-Ḥakīm al-Tirmiḏhī (d. 869) with his explanation that *fiṭra* was a capacity given to all humans by God in order to create the opportunity to answer to Him via the "original pact". A legal system became the working framework for a millennium and included the following elements: tolerance for some faiths endowed with inferior rights (Judaism, Christianity, and, only in some specific places, Mazdeism, Buddhism and Hinduism) under the *dhimma* regime;[25] public persecution against others (Paganism, Manicheism); legal ignorance of diversity within Islam which meant that a Shiite could be tolerated under Sunni authorities but without recognition of a religious status; fight against free thought which would contest the *"thawābit"* [immutable principles] in Islam, and the death penalty, although with some restrictions, for anyone who attempted to abandon Islam.

The notion of "freedom of conscience" was unknown in Arabic before the

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[21] D. Gimaret, *La doctrine d'al-Ash'arī*, Cerf, Paris 2007, p. 396-399.

[22] D.B. Macdonald, *Fiṭra*, *The Encyclopaedia of Islam*, vol. ii, E.J. Brill, Leiden 1991 (new ed.), p. 931-932.

[23] Al-Ghazali, *Réfutation excellente de la divinité de Jésus-Christ d'après les évangiles, texte établi, traduit et commenté par Robert Chidiac*, Préface de Louis Massignon, Paris, 1939.

[24] E. Pisani, *Regards d'Abū Ḥamīd al-Ġazālī (m. 1111) sur les juifs*, «Tsafon», 62, 2011, p. 63-95.

[25] S. Al-Din Al-Husayni, *Mabādi' al-'alāqāt wa huqūq al-Aqlīyya al-dīniyya*, Dār al-Hādī, Beyrouth 2002.

19th century. It came from Europe amidst contentious debate.[26] By measuring the strength of the idea of *"huriyyat"* [liberty or freedom], the Azharian, Rifāʿa al-Tahtāwī (1801-1873), the first Muslim scholar who visited France in the Modern period, began delimiting the potential for "freedom of conscience". He advocated "freedom in relation to dogma" [*huriyyat al-muʿtaqad*], which, however, was not to be understood as freedom in the belief of religion [*huriyyat al-iʿtiqād bi al- dīn*], in the non-belief [*ʿadm al- iʿtiqād*], or in the free choice of each individual as regards religion [*huriyyat ikhtiyyār al-marʾ li dīnihi*]." Rather, it indicated the traditional freedom to comment on texts pursuant to the judgement of reason [*ijtihād*]. al-Tahtāwī and some of his followers contributed to placing the notion of "freedom" in a new semantic field, surpassing the classical approach of merely defining the legal status of the man who is not a slave. In that sense, they initiated a movement of intellectual reform.

Under European influence and the authority of the Sultan in Istanbul, Cairo, Beirut, and Tunis (where the first Arabic Constitution was enacted for three years, 1861-1864) became centers of an Arabic intellectual "Renaissance" which was called Nahda. The period referred to as *tanzimat*-s (1839-1876) in the Ottoman Empire, opened the way for equality of rights that was hitherto inconceivable within the Muslim-based state structures. These institutional reforms came up against three limitations: 1) subjects only existed in a community framework;[27] 2) the community was systematically linked to a religious reference; and 3) only conversion to Islam was acknowledged. Apostasy was proscribed by all schools of law (Hanafi, Hanbalite, Shafiite, Malekite rites), and the death penalty for apostasy of anyone of Muslim origin remained a threat from which one could only escape through exile despite a new rule imposed under British-French powers[28] but never validated by the most important religious authority, the Sheikh ül-Islam.

The notion of "freedom of conscience" was then penned by one of the greatest Arab intellectuals of the 19th century, Butrus al-Bustānī (1819-1883), a Maronite converted to Protestantism: "internal freedom is the freedom of will, the freedom of conscience *[huriyyat al-ḍamīr]*, the freedom of the mind and the freedom of literature".[29] Religious scholars qualified as "reformists" abstained from addressing the issue head-on. For Muhammad ʿAbduh (1849-1905), it was necessary to awaken Islam by introducing educational reforms, affirming the role of human reason, reasserting the created character of the

[26] Pope GREGORY XVI, *Encyclical Mirari vos*, 1832, http://www.papalencyclicals.net/Greg16/g16mirar.htm.

[27] J. MAZLOUM, *La question du statut personnel au Liban et en Syrie*, «Les conférences du Cénacle», 6 (1947), p. 10-13.

[28] S. DERINGIL, *Conversion and Apostasy in the Late Ottoman Empire*, Cambridge University Press, New York 2012, pp. 69-70.

[29] B. AL-BUSTÂNÎ, *Dāʾirat al-Maʾārif*, Beirut, 1877, Volume VII, pp. 2-4.

Quran, and man's ability to know right from wrong, and consequently that an obtuse sinner was sent to the "eternal fire".[30] He promoted a classical interpretation of *fitra*: thereby emphasizing more the responsibility of man than his freedom, and Islam was presented as the "religion of the innate and reason", such that the human being was invited to faith in God, in the Quran and in the prophet Muhammad.[31] Despite a period of rising liberal thought among some Islamic scholars in the Arab world between the end of the 19th century and the middle of the 20th, the rights of individual freedom, and especially of "freedom of conscience", including the possibility to change religion –even Islam- or not to have one, was defended only outside of religious circles by secular jurists, philosophers and ordinary citizens, with or without a religious training background.

To some extent, the legal transformation towards greater freedom came under colonial domination. The State of Greater Lebanon was proclaimed in 1920 under the authority of the power of the French Mandate. The original version of the Lebanese Constitution,[32] drawn up by Michel Chiha (1891-1954) in a Commission comprising twelve members, was French. Article 9 was formulated as follows: «Freedom of conscience is absolute. By paying homage to the Most-High, the State shall respect all religions and denominations, ensure free exercise of religious rites, and respect religious interests and personal status laws».[33] However, in the Arabic translation, which became the official reference, rather than the expression *huriyyat al-ḍamīr, huriyyat al-i'tiqâd* was chosen to mean "freedom of belief" and therefore overlooked the possibility of unbelief. In Syria, France faced a huge mobilization led by Muslim scholars against the right of "freedom of conscience" and, eventually, failed to introduce it.[34]

Charles Malik (1906-1987), a Lebanese present in the Committee that drafted the UDHR in 1948 exercised a crucial role especially for Article 18. According to his closest advisor, «the Lebanese delegation specifically emphasized certain significant rights and freedoms that were of particular importance depending on how they were perceived». Among these elements were: «the right for every man to the freedom of thought, of conscience and of religion,

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[30] R. Caspar, *Le Renouveau du Mo'tazilisme*, «MIDEO», 4 (1957), p. 169.

[31] A. Elias and Y. Aschi, *Science et islam aux 19ᵉ et 20ᵉ siècles*, «Vingtième siècle», (130), April-June 2016, p. 36.

[32] E. Rabbath, *The Lebanese Constitution. Origins, Texts and Comments*, Beirut, Publications de l'Université libanaise, 1982, p. 10 sq and p. 96 sq for Article 9.

[33] Copy of the handwritten version of the Lebanese Constitution, *Michel Asmar Archives* (Beirut), Dossier 16, Volume 1.

[34] B.T. White, *The Emergence of Minorities in the Middle East: The Politics of Community in French Mandate Syria*, Edinburgh University Press, Edinburgh 2011, pp. 162-197.

as well as the freedom to change religion or belief».[35] The Declaration did not receive a single negative vote from any of the United Nations Member States. Among the abstainers stood Saudi Arabia, officially represented by another Lebanese Christian, Jamil Baroody (1906-1979),[36] whereas Egypt and Pakistan voted in favor. Translation to Arabic left no room for ambiguity, since it was rendered as *hurriyyat* […] *al-ḍamīr*[37] with the explicit mention of the possibility to change one's religion and/or one's dogma [*'aqīdatahu*]. A few years later, Camille Chamoun (1900-1987), the President of the Republic of Lebanon, boasted of how Lebanon was an exception throughout the Near-East: «This country is the country of freedom, freedom of thought, freedom of expression, freedom of conscience [*huriyyat al-ḍamīr*], freedom of economic activity».[38]

But then a new trend began under the growing influence of Saudi Arabia within the Arab world and a move to reject any European influence under the critique of (neo)colonialism. In 1963, the Declaration on the Elimination of All Forms of Racial Discrimination did not include the right to «the freedom of thought, of conscience and of religion».[39] The International Covenant on Civil and Political Rights, adopted by the UN General Assembly on 16 December 1966 did not include any mention of the "freedom to change religion" in its Article 18.[40] The new Egyptian Constitution of 1971 acknowledged the "freedom of religious dogma [*huriyyat al-'aqīda*] and the practice of worship" ensured by the State,[41] which meant the refusal of the abandon of Islam. The following were described as apostates: Muslims who became Christians, free thinkers (including communists) who rejected the *sharī'a*, Christians who converted to Islam and back again to Christianity, "any individual whose behavior constitutes a lack of respect for a prophet, a messenger from Heaven

[35] K. Azkul, *Musāhamāt Lubnān fī tashrī' al-Umam al-Muttahida*, «Les conférences du Cénacle», 9-12 (1951), Beirut, p. 216-217.

[36] M.A. Glendon, *A World made new. Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House, New York 2002, pp. 148-154.

[37] *Huqūq al-insān, wa al-nuṣūs al dawliyya al-khāssa bihā, Matb'at al-markaz al-tarbawi lil-buhūth wa al-inma'*, Sin al-Fil, 1980, p. 14.

[38] Extract of the press conference of 21 May 1958, in S. Al-Sulh, *Muzakkirāt Sāmī Bik al-Sulh, Beirut, Manshūrāt maktabat al-'arabī wa matba'atiha*, 1960, p. 495.

[39] United Nations Declaration of the Elimination of All Forms of Racial Discrimination, 20 November 1963, consultable on the Internet at http://www.un-documents.net/a18r1904.htm.

[40] International Covenant on Civil and Political Rights, 23 March 1966, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx. See also M. Levinet, *Théorie générale des droits et libertés*, Bruylant, Brussels 2010, pp. 309-335 and pp. 357-365.

[41] Article 46 of the Egyptian Constitution of 1971 (see E. Canal-Forgues, *Recueil des Constitutions des Pays arabes*, Bruylant – Cedroma, Brussels 2000, p. 242 for the original text and p. 110 for the French translation).

or the Holy Book" and, for some jurists, Muslims who married non-Muslims. Following several cases in the 1970's, a draft Bill on apostasy was prepared and then abandoned. As a result of failure to fall in line with modern law, «it was the Hanafi doctrine that became law pursuant to Art. 280 of Decree-Law 78/1931»,[42] meaning that the death sentence is legally possible for the Muslim apostate but implying prison terms, forced exiles[43] or extrajudicial killings, meaning that extenuating circumstances for religious reasons were asked for the killers of an "apostate" like Farag Fouda.[44]

In a postcolonial context of cultural tension, the preference accorded to the "rights of God" [*huqūq Allah*] distinct from the "human rights" [*huqūq al-ʿabd/huqūq al-insān*] was promoted as a defining element of Muslim jurisprudence[45] implying, unless otherwise indicated, that Muslims were prohibited from breaking from their religion.[46] The Constitutions of Arab States expressed this tension within one text affirming both "freedom of belief and of opinion" and reference to the *sharīʿa*. The Cairo Declaration on Human Rights in Islam (CDHRI, 1990), which followed on from the Dhaka Declaration (1983),[47] enshrined "fundamental rights" and "civil liberties" in "Islamic faith", and assimilated "rights" and "enforceable divine commandments, which God dictated in his revealed Books". Article 10 referred to the identification between Islam and *fiṭra* according to which: «Islam is the religion of the *fiṭra*. It is prohibited to exercise any form of compulsion on man [i.e. Muslim] or to exploit his poverty or ignorance in order to convert him to another religion or to atheism». The "integral" conception against the "liberal" one prevailed. Freedom was, as such, limited: «Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the

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[42] S.A. Aldeeb Abu-Sahlieh, *Non-musulmans en pays d'islam. Cas de l'Egypte*, Editions universitaires, Fribourg (Switzerland) 1979, pp. 258-259.

[43] A. Darwish, *Professor Nasr Hamed Abu Zaid: Modernist Islamic philosopher who was forced into exile by fundamentalists*, «Independent», 14/07/2010, http://www.independent.co.uk/news/obituaries/professor-nasr-hamed-abu-zaid-modernist-islamic-philosopher-who-was-forced-into-exile-by-2025754.html

[44] S. Abou Bakr, *Farag Fouda; assassination of the word*, «Daily News Egypt», 08/06/2013, http://www.dailynewsegypt.com/2013/06/08/farg-fouda-assassination-of-the-word/

[45] M.A. Al-Midani, *Les apports islamiques au développement du droit international des droits de l'homme*, Doctoral Thesis in Public Law, University of Strasbourg III, October 1987, p. 17-19.

[46] M.M. Cherif, *La conversion ou l'apostasie entre le système juridique musulman et les lois constitutionnelles dans l'Algérie indépendante*, «Cahiers d'études du religieux. Recherches interdisciplinaires», (2011), consultable on the Internet at http://cerri.revues.org/809.

[47] M.A. Al-Midani (pref. Jean-François Collange), *Les droits de l'homme et l'Islam. Textes des Organisations arabes et islamiques*, Marc Bloch University, Association of Publications of the Protestant Theology Faculty, Strasbourg 2003, p. 103 s; R. Caspar, *Les déclarations des droits de l'homme en Islam depuis dix ans*, «Islamochristiania», 9 (1983), pp. 65-73.

principles of the *sharī'a*» (art. 22).[48] An intergovernmental group of experts, appointed to follow up this Declaration has not yet adopted any new position. In November 1996, The Arab League, in its founding text (15 September 1994), which guaranteed "freedom of belief, thought and of opinion" (Article 26)[49] adopted a consolidated draft Criminal Code bill that explicitly provided for the death penalty for anyone who abandoned Islamic religion.[50] This first version of the Arab Charter on Human Rights was never brought into force, but the second (May 2004) has been in force since 15 January 2008: Article 30 recognizes the "right to freedom of thought, of belief and of religion", but not "freedom of conscience" or of changing religion.[51]

It was Tunisia that effected change, but not Egypt where liberal thinkers were too weak to deal with the integral one. After the fall of Ben Ali in late January 2011, a fight between the integral and liberal trends took place, especially on the issue of the autonomy of the subject vis-à-vis political and religious powers. Eventually, the first one, represented for instance by the exegete Muhammad Talbi – who, for years, advocated for a new understanding of the complex notion of *fiṭra*, pursuant to which all human beings receive a spiritual spark by birth, an argument by which he called to abolish forever the traditional legal status of *dimmī*[52] –, and won despite the opposition of Ennahda movement and many scholars. In January 2014 Tunisian representatives adopted a Constitution which included the right of "freedom of conscience" distinct from "freedom of belief" (Article 6).[53] It was one of the most controversial articles, and it has been passed only after one of the members of the majority said to another that he was "an apostate", threatening a wide part of the national assembly whose members decided at the same time to "prohibit

[48] The Cairo Declaration on Human Rights in Islam, 5 August 1990, resolution 49/19-P of the Conference of Foreign Affairs Ministers, consultable on the Internet at http://www.arabhumanrights.org/publications/regional/islamic/cairo-declaration-islam 93e.pdf.

[49] It has to be noticed that the English translation is wrong on the website of the UN-HCR (http://www.refworld.org/docid/3ae6b38540.html) but correct on the website of the University of Minnesota (http://hrlibrary.umn.edu/instree/arabcharter.html).

[50] Sami A. Aldeeb Abu-Sahlieh, *Les sanctions dans l'islam, avec le texte et la traduction du code pénal unifié de la Ligue arabe*, St-Sulpice (Suisse), Centre de droit arabe et musulman, 2016, p. 25.

[51] *Al-Mīthāq al-'Arabī li-huqūq al-Insān*, 23/05/2004, http://www.lasportal.org/ar/legalnetwork/Documents/%D8%A7%D9%84%D9%85%D9%8A%D8%AB%D8%A7%D9%82%20%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%89%20%D9%84%D8%AD%D9%82%D9%88%D9%82%20%D8%A7%D9%84%D8%A3-%D9%86%D8%B3%D8%A7%D9%86.pdf

[52] G. Gobillot, *La conception originelle. Ses interprétations et fonctions chez les penseurs musulmans*, «IFAO Cahiers des Annales Islamologiques», 18 (2000), pp. 3-5.

[53] *Dustūr al-Jumhūriyya al-Tūnisiyya*, 26 January 2014, http://www.arp.tn/site/main/AR/docs/constitution.pdf

and fight against calls for Takfir" [i.e. excommunication].[54] The Constitution-alist and also religious scholar Yadh Ben Achour, who worked hard to help it reach this goal, said that this mention was the *sine qua non* condition to avoid a threat of theocracy:[55] «The feeling of humanity is at the heart of the Islamic consciousness and prefigures the modern idea of humanity, as formulated by the school of natural law or the thought of Kant, an idea of humanity without which a human right could not be conceived. Put in this way, the reasoning is correct, even though it refers to neither the same right nor the same man as those who were at the origin of the great modern documents discovered by the Arabs in the nineteenth century».[56] Ben Achour knew that this step to-wards a recognition of human rights would need a deep renewal of religious scholarship, religious law, and anthropology, meaning an internal reform of Islam before it could be accepted by Islamic scholars who in fact immedi-ately challenged article 6. A development of opening appeared very recently among Egyptian scholars stimulated by someone like Saad al Dîn al-Hilâlî.

RELIGIOUS FREEDOM IN THE QUR'AN

MASSIMO CAMPANINI[*]

Religious freedom in Islam is a sensitive issue because of the widespread con-viction not only that the Arabs forced the conquered peoples to embrace Is-lam, but also that the Qur'an – the very basis of Islamic faith – is aggressive towards non-Muslims, preaching the necessity to convert them, even by force.

Regarding the first issue, historical research demonstrates that Arabs nor-mally did not impose the new faith by violence. Although force was used at times for the imposition of their faith, it was not normally the case. Many clues point towards the more frequently non forceful promotion of Islam. For example, most of the Egyptian Christians welcomed the new conquerors,

[*] Faculty of Philosophy, University of Trento, Via Tommaso Gar, 14 - 38122 Trento, Italia. E-mail: massimo.campanini@unitn.it

[54] D. AVON and Y. ASCHI, *La Constitution tunisienne et l'enjeu de la liberté individuelle: un exem-ple d'accommodement au forceps*, 03/06/2014, http://www.raison-publique.fr/article708.html

[55] *Tunisie. Yadh Ben Achour: 'Bientôt le RCD va aussi parler au nom de la revolution!'*, 20/03/2013, http://www.lecourrierdelatlas.com/440620032013Tunisie-Yadh-Ben-Achour-Bi-entot-le-RCD-va-aussi-parler-au-nom-de-la-revolution.html. See also Y. BEN ACHOUR, *Poli-tique, Religion et Droit dans le Monde Arabe*, Cérès Productions – Cerp, Tunis 1992, p. 233-236.

[56] Y. BEN ACHOUR, *Politique, Religion et Droit dans le Monde Arabe*, Cérès Productions – Cerp, Tunis 1992, p. 2343-236: «Le sentiment d'humanité se trouve au coeur de la conscience islamique et prefigure l'idée moderne d'humanité, telle que formulée par l'école du droit naturel ou la pensée de Kant, idée d'humanité sans laquelle un droit de l'Homme ne pour-rait pas se concevoir. Dit comme cela, l'argumentation est correcte, sauf qu'il ne s'agit ni du même droit, ni du même homme que ceux qui ont été à l'origine des grands documents modernes découverts par les Arabes au XIXe siècle».

on account of their opposition to Byzantine dominion. The Arabs were not originally especially interested in forced conversion of conquered populations because they relied upon the non-Muslims continuing to pay the poll-tax, or *jiziya*, thereby benefiting public revenue. Last but not least, conversions were fairly slow and gradual. The Muslim world only became Muslim in their majority by the 10th century (three centuries after the invasions).[57]

Regarding freedom of religion in the Qur'an, a first analysis results in ambivalence. Obviously a thorough analysis of the Qur'anic text would exceed the length of this study. Therefore, I shall limit myself here to comment upon three verses with their nuanced implications.

The first includes the clear-cut sentence of Q. 2:256, which apparently affirms a full religious freedom: «There is no compulsion in religion (*la ikrah fi'l-din*)». The verse has been frequently quoted by Muslim modernists like the Egyptian *shaykh* and *mufti* Muhammad 'Abduh (1849-1905) who argued that Islam permits the practice of all religions and that war and *jihad* may only be defensive.[58]

The second verse I quote commands the contrary: «Fight those of the People of the Book [Jews and Christians] who do not [truly] believe in God and the Last Day…who do not obey the rule of justice, until they pay the tax and agree to submit» (Q. 9:29. A Medinan verse translated by Muhammad Abdel Haleem. Otherwise the renderings are mine). Abdel Haleem's addition of "truly" is important because it would seem to refer *only* to those Jews and Christians who did not practice correctly their religion. Abdel Haleem's translation is possibly biased (in favour of Islam of course), but it could be explained better – I suggest – with the recent historical hypothesis of Fred Donner. Donner argued that the first community of believers in Medina was not properly "Muslim": because Muhammad gathered around him his own fellows, but also a number of Jews and Christians. Thus, the verse would refer to those Jews and Christians who remained separated from the "true" new Muslim community in the process of to being constituted. In Donner's view, Muslims became really Muslims only by 'Abd al-Malik's caliphate (685-705).[59]

However, David Cook and others argued that verses like Q. 9:29 legitimate the submission and the domination of non-Muslims and are the sources of violent *jihad*.[60] The issue of *jihad* is complex and beyond the scope of this study. Asma Afsaruddin's recent historical reconstruction shows that the con-

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[57] See for example H. KENNEDY, *The Great Arab Conquests*, Weidenfeld & Nicholson, London 2007, and its bibliography.

[58] See for instance, R. PETERS, *Jihad in Classical and Modern Islam*, Markus Wiener, Princeton 1996, pp. 59 ff.

[59] F. DONNER, *Muhammad and the Believers. At the Origins of Islam*, Harvard University Press, Cambridge Mass. 2010.

[60] D. COOK, *Understanding Jihad*, University of California Press, Berkeley 2005, p. 10.

cept of *jihad* is nuanced and less categorical than it appears in Cook's reconstruction.[61]

The third verse (that the tradition considers to have been revealed during the Prophet's Farewell Pilgrimage in March 632, three months before his death) says: «Today, I [God speaking] made your religion perfect […] and I was pleased to give you Islam as religion (*radiytu lakum islama dinan*)» (Q. 5:3). I believe that translating *din* as "religion" is infelicitous because during that time an "Islamdom", that is a historical Islamic world and lore and civilization, did not yet exist. In fact, it seems right to hold that in Q. 5:3 "Islam" means not the "historical Islamdom", but the natural monotheistic religion (*fitra hanifiyya*) in which all humans are created (see the seminal verse Q. 30.30).

There are two ways to face the difficulties of reconciling these two seemingly contradictory statements: historical contextualization and hermeneutics.

Historical contextualization is important because there is a strict link between the Prophet's life and the Qur'an's development. In a sense, Muhammad's biography is a living interpretation of the Qur'an insofar as many verses were revealed in particular circumstances of his life and a specific science (the science of the "causes of revelation", *'ilm asbab al-nuzul* in Arabic[62]) has been devoted to this end. Obviously, the traditional Muslim record of history should be followed to interpret the Qur'anic verses. While acknowledging the Orientalist objections to such an approach, to understand the Muslim mind, we must try to reason as Muslims.

While following historical contextualization, we notice that the first quoted verse, Q. 2:256 was revealed just after the Hijra, the emigration of Muslims from Mecca to Medina in 622. Muhammad was seeking coexistence with the Jewish and pagan tribes living in Medina. A treaty of mutual respect and alliance between Muslims and non-Muslims was promulgated in the year 1: the so-called "Constitution of Medina" allowing every tribe to keep its religion and customs and calling for mutual help against common enemies.[63] In this framework, the Qur'an allows the free practice of religions (except for idolatry) and urges the resolution of conflicts: «Say [God commands to Muhammad]: People of the Book [Jews and Christians], let us arrive to a statement (*kalima*) that is common to us all: we worship God alone, we ascribe no partner to Him» (Q. 3:64. Translation Abdel Haleem).

The warlike verse Q. 9:29 belongs to one of the latest *suras*, perhaps the very latest *sura*, after many battles had been fought between Muslims and

[61] A. AFSARUDDIN, *Striving in the Path of God. Struggle and Martyrdom in Islamic Thought*, Oxford University Press, Oxford - New York 2013.

[62] The Egyptian exegete Jalal al-Din al-Suyuti (1445-1505) has been one of the most important scholar of *asbab al-nuzul*.

[63] See M. LECKER, *The Constitution of Medina. Muhammad's First Legal Document*, Darwin Press, Princeton 2004.

pagan Qurayshites, after the Jews had refused to acknowledge Muhammad's religious and political supremacy and had tried to betray him. Moreover, Muslims had been exiled and many killed. The Muhammadan message (*risala*) transformed from a purely religious one (in Mecca) to a religious *and* political one (in Medina)[64] aiming to consolidate the hegemony of the finally triumphant community. In this framework,[65] the Qur'an allows fighting for the sake of consolidating and expanding power.

It is true that the Qur'anic polemics against the Jews is often very sharp (the expressions towards the Christians are much milder) but it is carried out always on a historical level. That is, the Qur'an does not condemn Judaism or Christianity in themselves, but Jews and Christians as "betrayers" of their religion. One of the most distinguished Sunni Azharite scholars of the last century, Muhammad al-Ghazali (d. 1997), commenting the *sura 2 al-Baqara*, charged the Jews «to [have] received [Islam] with cynicism, denial and disdain since they believed in their God-given monopoly over religion and in the notion that after their race religion would never be revealed to other human group».[66] Muslim hostility towards the Jews is therefore historically motivated, since, at least according to the traditional accounts, the Jews were considered strongly hostile to the Prophet and tried many times to betray the Muslims.

As to the third verse, Q.5:3, it is clear, as I mentioned above, that "Islam" must not be understood as a "historical" form of civilization. The Islamic/Arab empire did not yet exist. No theology had been elaborated. No class of religious scholars (*'ulama*) existed. Thus, in Q. 5:3 "Islam" must not be understood as an "Islamdom", in Marshall Hodgson's words,[67] but as the "natural religion" of humanity, the monotheistic natural religion wherein all humans are created. The Qur'an says: «Set [Prophet] your face to [the true] religion (*din*) as a pure monotheist (*hanif*), the nature (*fitra*) God impressed on all humans» (Q. 30:30). Therefore, Q. 5:3 does not intend that the *only* permitted religion is the "historical" Islam set up after the Prophet's death and the conquests in Asia and Africa, but that a universal religion exists, centered on monotheism and called *Islam*.

Such historical contextualization offers a methodological key applicable to other Qur'anic texts whether peaceful (e.g. Q. 2:62: all religions are recog-

[64] W. WATT, *Muhammad, Prophet and Statesman*, Oxford University Press, Oxford - New York 1974.

[65] Obviously, it is the Muslim point of view to be meaningful. For a Muslim critical biography of Muhammad see M.H. HAYKAL, *The Life of Muhammad¸* American Trust Publications, Washington-Indianapolis 1993, and in Italian *Vite antiche di Maometto*, ed. by M. Lecker and R. Tottoli, Mondadori, Milano 2007.

[66] M. AL-GHAZALI, *A Thematic Commentary of the Qur'an*, International Institute of Islamic Thought, Herndon VR 2011, p. 16.

[67] M. HODGSON, *The Venture of Islam*, University of Chicago Press, Chicago - London 1974.

nized by God) or warlike (e.g. Q. 2:190-193: fighting is permitted against those who fights the believers) verses (I intentionally quote from the same *sura al-Baqara*). After clarifying the premise of historical contextualization, let us turn to hermeneutics.[68]

Commenting Q. 2:256, the Egyptian Sayyid Qutb (1906-1966), one of the leaders of the Muslim Brotherhood defined by his detractors as "the philosopher of terrorism"[69] and *maitre-à-penser* of radical Islam, wrote: «Islam looks at religious faith as a matter of conviction [...] faith is never a matter of coercion and compulsion. To achieve this conviction, Islam addresses human beings in totality [...] Islam never seeks converts through compulsion or threats or pressure of any kind. It deploys facts, reasoning, explanation and persuasion. In contrast, we find that Christianity was imposed by force after the Roman Emperor, Constantine the Great, made Christianity the official religion».[70]

On the other hand, the Pakistani Fazlur Rahman (1919-1988), one of the outstanding Muslim intellectuals of the 20th Century and former professor at the University of Chicago, wrote: «Western Christian propaganda has confused the whole issue [of *jihad*] by popularizing the slogan 'Islam was spread by sword' or 'Islam is the religion of sword'. What was spread by sword was not the religion of Islam, but the order on the earth that the Qur'an seeks. One may concede that *jihad* was often misused by later Muslims … but one can never say that Islam was spread by sword. There is no single parallel in Islamic history to the forcible conversion to Christianity of the German tribes *en masse* carried out by Charlemagne».[71]

These affirmations are not merely apologetic. Qutb takes Q.2:256 in its literal unequivocal sense, while Rahman is correct in pointing out that the Arab conquests did not lead to forcible conversions, as demonstrated by the fact that the majority of Egyptians and Iranians became Muslims gradually over centuries.

The hermeneutical issue involves the necessity to read the Qur'an as a system of dialogues and as a polycentric text. The suggestion has been put forward by the well-known exegete Nasr Abu Zayd (1943-2010), who had to escape from Egypt because of being charged with apostasy. Abu Zayd argued that the Qur'an is an on-going communication between God and man and that it must be interpreted in multifaceted ways according to the circumstances. In relation to the Jews for instance, Abu Zayd contended that the hostile Qur'anic expressions against them were revealed in a time of confrontation, while the Qur'anic ecumenical expressions were revealed as the general en-

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[68] See in general M. CAMPANINI, *The Qur'an: Modern Muslim Interpretations*, Routledge, London - New York 2011.

[69] P. BERMAN, *The Philosopher of the Islamic terror*, «New York Times».

[70] S. QUTB, *Ma'alim f' il-tariq (Milestones)*, Dar al-Shuruq, Cairo 1983, pp. 74 ss.

[71] F. RAHMAN, *Major Themes of the Qur'an*, Bibliotheca Islamica, Minneapolis 1989, p. 66.

dorsement of all monotheistic religions. Peaceful coexistence is the normal path, although sometimes conflicts could arise.

In conclusion, religious freedom in the Qur'an is a complex and multifaceted issue when viewed with a historically contextualized hermaneutic. Oversimplification leads to misunderstanding. Greater textual and exegetical analysis is needed by both Orientalists and Muslims.

Religious Freedom In Islam?

Daniel Philpott[*]

There is a culture war roiling in the West over Islam. It is stirred up whenever Islam is connected with violence – recent shootings in Orlando, Paris, San Bernardino, and Nice; the predations of the Islamic State in Iraq and Syria and Boko Haram in Nigeria; and a long train of episodes and incidents dating at least as far back as the attacks of September 11th, 2001.

Again and again, the debate squares off the same. There are hawks who hold that Islam is hardwired for violence through its texts and its theology; that Islam is inhospitable to democracy and freedom; that the West ought to gird up for a long civilizational struggle with Islam; and that Westerners who would appease or accommodate Islam are naïve. Pitted against them are doves who hold that Islam is diverse and no more peaceful or violent than other religious traditions; that violence is confined to a small minority of extremists; that Islam is open to democracy and tolerance; that Islam's problems are due in good part to Western colonialism and imperialism; and that hawkish views are prone to beget further violence and extremism.

The controversy is an important one with implications for peace and cooperation between civilizations and for the foreign policies of western states towards the Muslim world. Is there a criterion by which it might be assessed? There is indeed a standard by which to judge whether Islam, or any religion, is peaceful and capable of democracy and freedom or violent and prone to authoritarianism. It is religious freedom. Unlike toleration, which is often rendered as temporary and subject to truce, religious freedom is a stable, enduring principle implying an enduring commitment to respect the full citizenship rights of those who adopt divergent answers to the most important questions. Religious freedom can also be defended as a universal human right, consonant with its appearance in the major international conventions.[72]

[*] Department of Political Science, 217 O'Shaughnessy Hall, University of Notre Dame, Notre Dame, IN 46556, USA. E-mail: james.d.philpott.1@nd.edu

[72] The full case for the universality of religious freedom is more extensive than I can defend here. For an overview of arguments and sources, see T.S. SHAH, *Religious Freedom: Why Now? Defending an Embattled Human Right*, The Witherspoon Institute, Princeton, NJ 2012.

Is Islam hospitable to religious freedom, then? Different methods for answering this question might be adopted. Islam's founding texts – the Quran and the Hadith – could be examined, the tradition of Islamic thought could be plumbed, or we might look at Islam as a whole around the globe, noting, or instance, the rise in Islamic terrorism since 1980. Here, I adopt a different approach – an examination of contemporary regimes in Muslim majority countries. This is a strong test for religious freedom in Islam. It is when Muslims are in a majority that they have the power to impose laws and policies that are intolerant towards religious minorities and dissenters from declared orthodoxies. If religious freedom can be found in these states, then the case for Islam's capacity for religious freedom is strengthened. To be sure, regimes are not the only source of freedom or repression in Islam. Social actors, not least terrorist groups, are important, too. Still, regimes are a good test for the religious freedom question.

An excellent index for assessing religious freedom has been developed by Pew Research Center scholars Brian J. Grim and Roger Finke.[73] Their Government Restriction Index (GRI) scores the laws and policies of 198 states and territories on a scale of 0 (least free) to 10 (most free) based on a battery of 20 questions that measure particular dimensions of religious freedom. Based on these scores, Pew divides the world's countries into four categories of restrictiveness: Very high, high, moderate, and low.

What do the numbers tell us about religious freedom in Islam? In a separate book, Grim and Finke show that in the aggregate, the Muslim world suffers from a dearth of religious freedom. High levels of state restriction on religious freedom can be found in 78 percent of Muslim-majority countries in comparison to 43 of percent of all other countries and 10 percent of Christian countries.[74]

Zooming in from a landscape view to a close-up view, however, the picture starts to look more diverse and hopeful. It becomes apparent, for instance, that 11 out of 46 – or nearly one-fourth – regimes of Muslim-majority countries have low restrictions on religious freedom according to the Pew Index (of 2009) and can thus be judged religiously free. Among the regimes that exhibit high levels of religious restriction – Pew's "moderate," "high", and "very high" categories – there is diversity in the reasons behind the restrictions. To understand this diversity, we must look beyond the numbers to the manner in which religious freedom is restricted. Crucial is what we may call a regime's political theology, that is the doctrine of political authority, justice, and

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[73] Their original report, followed by a series of successors, is The Pew Research Center, *Global Restrictions on Religion*, 2009.

[74] B.J. Grim and R. Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century*, Cambridge University Press, Cambridge, UK 2011, pp. 170-171.

the proper relationship between religion and state that political and religious actors derive from more foundational theological and philosophical claims. Among religiously unfree regimes in Muslim-majority countries, two very different political theologies can be found. One is "secular repressive," where the state marginalizes Islam in order to build a modern society. 14 regimes fit this description. The other is "religiously repressive," characterized by an "Islamist" political theology where the state imposes a strongly traditional form of Islam. 21 regimes fit this description. When regimes with a "religiously free" political theology are added to these orientations, a typology of three kinds of regimes in Muslim-majority states emerges.

Let us take a closer look at these three orientations. Consider first the 11 religiously free regimes in the Muslim majority world. Their governments are committed in principle to refraining from coercing or discriminating heavily against individuals and religious communities in their practice of religion. They adhere closely to international human rights conventions in matters of religion. Their constitutions either do not mention Islam or else mention it in a sense that has little implication for the interpretation of law. Their constitutions also contain robust provisions for religious freedom, allowing religious people and communities wide liberty to practice and express their faith, to educate their children in their faith, and to govern their communities and their properties. They protect the liberty of Muslims who dissent from prevailing orthodoxies and of religious minorities such as Christians, Jews, and Bahais. In these states, Muslim religious leaders promote the vigorous practice of Islam, the spread of Islam, and a robust Islamic culture while often enjoying direct state support for religious activities. These are the implications of a political theology of religious freedom.

The greatest concentration of religiously free Muslim-majority countries is in West Africa, where they are found in Senegal, Mali, Niger, Guinea, Burkina Faso, Sierra Leone, and The Gambia. Most of these countries contain minorities of Christians and other faiths, and many of them, Shia and Ahmadi communities who dissent from mainstream Sunni Islam. This is the geographic heart of religiously free Islam and offers the strongest existing evidence for the possibility of religious freedom in Islam.

Importantly, these countries are free not despite or apart from but rather because of their Islamic character. Prevalent in them is Sufi Islam, which strongly stresses the free character of faith and the presence of God in every person.[75] Sufis often appeal to Quran 2:256, which says, «[t]here is no com-

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[75] See P. Jenkins, *Mystical Power*, The Boston Globe, January 25, 2009, find at http:// archive.boston.com/bostonglobe/ideas/articles/2009/01/25/mystical_power/ (accessed June 3, 2016); and in J. Azumah and L. Sanneh (eds.), *The African Christian and Islam*, Langham Monographs, Carlisle, uk 2013.

pulsion in religion». They refrain from labeling anyone an apostate and even defend a right to exit Islam. Dating back to the 14th and 15th centuries in West Africa, Sufism is arguably the most important shaper of the region's unusual degree of interreligious harmony and tolerance, and more broadly, the commitments to freedom in matters of faith that form the political theology that underlies governance in these regions.

The second orientation of Muslim-majority states towards the governance of religion is based on a political theology of "secular repression." Emanating from a western strand of thinking magnified in the French Revolution, this ideology espouses the building of modern states, economic development, science, equality, and nationalism, and views religion as an irrational force and an enemy to these commitments that must therefore be sidelined, managed, and marginalized.

Typically, Islamic secular repressive rulers will establish a moderate version of Islam by supporting it, commending it, and closely controlling the governance of mosques, seminaries, universities, and schools; the content of curricula; the public expression of religion; the architecture of buildings; and even the dress of their citizens. They will simultaneously suppress more traditional and radical forms of Islam, preventing its clerics from holding positions of power and, if necessary, jailing them, torturing, or killing them. Secular leaders will present these religious figures as enemies of the state and use them to make the case for authoritarian rule: «It's me or the Muslim Brotherhood», Egypt's Hosni Mubarak would say to his critics.

The prototype of this pattern in in the Muslim world is the Republic of Turkey, founded by Kemal Atatürk in 1923. After World War II, several Arab states adopted the model, the most influential of these being Egypt, but also including Libya, Morocco, Jordan, Syria, and Algeria. Iran embodied the pattern under the shahs of the Pahlavi dynasty up until the Shah's overthrow in 1979, as did Iraq under Saddam Hussein up until his overthrow in 2003. Indonesia was a secular repressive state under the dictatorship of Suharto from 1967 to 1998. So, too, are the Soviet republics of Central Asia, including Uzbekistan, Turkmenistan, Tajikistan, Kyrgyzstan, and Azerbaijan.

The third orientation is a religiously-repressive one based on a political theology of Islamism, which calls for the government to use law and policy to promote a traditional form of Islam in all spheres of life – the family, the economy, culture, religious practice, education, dress and other areas. Islamism originated in the first half of the twentieth century in the thought of intellectuals like Hassan al-Banna, Abu Ala Al-Mawdudi, and Sayyid Qutb, who called for a revival of Islam in the wake of centuries of decline due to internal moral decay and external imperial domination, symbolized most vividly by the abolition of the caliphate by the newly established Republic of Turkey.

Religiously repressive regimes contain strong constitutional provisions that

establish Islam as the identity of the state and the source of law. They exercise strong authority in both supporting and regulating the Muslim religious community in their state, while sharply restricting dissenting forms of Islam and religious minorities. There are 21 of these regimes. The standard bearers are Saudi Arabia and Islam, who seek to spread Islamism far beyond their borders. Sudan and Afghanistan are strong examples, too. While most of these regimes are highly authoritarian, some of them are democracies whose electoral dynamics favor religiously repressive policies, including Malaysia, Bangladesh, Pakistan, and Indonesia. Indonesia might at first seem like a strange choice to include in this category because it is the world's largest democracy, has two large movements that espouse tolerance, and has a regime based on Pancasila, which recognizes six official religions. At the same time, however, there are numerous ways in which Indonesia's laws and government restrict minority religions, especially those not officially recognized, and in which the Indonesian state empowers Islamist groups in society. For these reasons, Indonesia ranks in Pew's "Very High" level of restrictions on religious freedom.[76]

What does this typology of three regimes teach us about religious freedom in Islam, the principle that I have proposed as a criterion for our present culture war? It shows that while there is a dearth of religious freedom in Islam (the hawks' point), Islam is not straightforwardly responsible for the dearth (as doves would have it). While Islamist regimes make the strongest case for the hawks' view, even they are a product of modern times – formed through an alliance with the sovereign state, in many cases incubated in secular repression (e.g., the Iranian Revolution of 1979), and erected partly in reaction to colonialism – and not merely a direct outgrowth of the Quran. Behind secular repressive regimes are principles imported from the West. Religiously free regimes, almost one-fourth of Muslim-majority regimes, are more than anomalies and show that religious freedom is possible and that religious repression is not the overwhelming story of contemporary Islam.

Still, we can hope that the sphere of religious freedom will increase in the Muslim world. We can take encouragement from the rise of Muslim intellectuals around the world who are arguing for religious freedom out of the Islamic tradition.[77] Should the influence of their ideas increase, we may well see an increase in religiously free regimes.

[76] See The Pew Research Center, *Global Restrictions on Religion*, 2009; M. CROUCH, *Regulating Places of Worship in Indonesia: Upholding Freedom of Religion for Religious Minorities*, «Singapore Journal of Legal Studies», 1 (2007), p. 100; International Crisis Group, *Indonesia: Implications of the Ahmadiya Decree*, «Asia Briefing», n. 78, July 7, 2008, pp. 8-10.

[77] See, for instance, A. SAAED and H. SAAED, *Freedom of Religion, Apostasy, and Islam*, Ashgate, Aldershot (UK) 2004; and M. AKYOL, *Islam Beyond Extremes: A Muslim Case for Liberty*, W.W. Norton, New York 2011.