



ISLAM'S TRAJECTORY

by David Forte

In March 2006, Abdul Rahman, an Afghan who converted to Christianity, was charged with apostasy because, in a custody dispute, his wife had reported him to the authorities as a Christian. Had he been found guilty, according to the Hanafi school of jurisprudence (which is the form of Sharia in Afghanistan), Rahman would have had three days in which to recant; if he maintained his Christian beliefs, he would have been executed. But after enormous international pressure the judge dismissed his case on the ground that Rahman may have been mentally unstable, and under the procedural rules of Sharia, one cannot be convicted of a Hadd offense--the crimes for which God has affixed a set penalty (adultery, fornication, false charge of adultery, drinking wine, apostasy, theft, and robbery)--unless he is mentally competent. Rahman is now safe in Italy, albeit with his identity hidden for fear of assassination.

This was a quick and easy way out of the problem, because everyone knew that once he was released in Afghanistan, Rahman would have been murdered, likely by his family, and under Islamic law there is no liability for killing an apostate. Knowing this, the Afghan parliament protested Italy's granting asylum to Rahman, thus robbing the people of Afghanistan of their opportunity for vigilante justice. Abdul Raouf, a moderate member of the Ulama (legal fraternity), who himself had suffered persecution under the Taliban, said "We will call on the people to pull him into pieces so there's nothing left." Another top religious leader stated, "We must set an example, he must be hanged."¹ Ordinary Afghans agreed. To them, a conversion to Christianity was an affront that had to be avenged. One of Rahman's neighbors said "There is no way we're going to allow an Afghan to insult us by becoming Christian."² One resident of Kabul stated, "According to Islamic law, he should be sentenced to death because Christianity is forbidden in our land."³

There are in fact Christians in Afghanistan. They're a tiny minority, but they do number in the thousands. Virtually all of them were or are the offspring of converts from Islam. And so they fear. There is no public Christian church in Afghanistan; Christians must worship secretly in their homes or within the diplomatic compound. This is no Saudi Arabia; this is a country freed from a gross tyranny by an army from a Christian land. And now this is a democratic country in which Christians fear for their lives.

It is events like this that have begun to turn Americans against the notion of Islam as a religion worthy of respect. After 9/11, George Bush famously said "Islam is a religion of peace," and there is a strong moderate and spiritual strain in Islam that would affirm this. But Americans have seen so much going on in the name of Islam that their attitude toward it has shifted.

The constitution of Afghanistan stipulates that it shall abide by the UN Universal Declaration of Human Rights, which affirms that "everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief." But the Afghan constitution also says "No law can be contrary to the beliefs and provisions of the sacred religion of Islam." How can such a contradiction be negotiated?

There is a great mystery in Islam. Islam should have been the first civilization to have abandoned slavery; it was the last. Islam should have been the first to establish complete religious liberty; today, non-Muslims suffer egregious persecution in Muslim lands. Islam should have been the first to establish social equality for women. Instead, women who stray outside the family's code of behavior are murdered with impunity. Islam should have been the foremost civilization to observe the humanitarian laws of war, but its empires have been no different from others; some claim they have been worse. Today Muslims slaughter innocent civilians precisely because they are innocent.

The founder of every great religion sets its message off on a trajectory into the world that is carried through history. But the followers of religion, being human, inevitably deflect the trajectory from its original path. The Old Testament, especially in its prophetic literature, is to a large extent a narrative of a people being called back to the path set for them by God. The

¹ Daniel Cooney, "Afghan clerics want Christian convert killed," AP, Mar. 24, 2006.

² Allan Wall, "Abdul Rahman and the 'New' Afghanistan," NewsMax.com, Mar. 24, 2006.

³ Sanjoy Majumder, "Mood hardens against Afghan convert," BBC, Mar. 24, 2006.

Protestant Reformation changed the trajectory of Christianity and itself set off a thousand attempts at righting the Reformation's trajectory. Catholicism's counterreformation, or as Catholics prefer to call it, the Catholic Reformation, was a frank acknowledgment that the Church had strayed from the direction set for it by Christ. In fact, looking at modern times, John Paul II's pontificate was itself so historically seminal because it refocused the Church in the world on the trajectory first begun in the early church by Peter.

To understand a religion's sense of its identity, we must focus on its founding documents and traditions and on its developing sense of itself. We must get a hold of its animating ethos. The founding documents of Judaism, Christianity, and Islam have all been subjected to historical criticism. But for their adherents, they are real and truly derived from divinity. To understand a religion's place in history, therefore, we must appreciate how the faithful see their sacred documents. As observers, we must accept them in that sense as a historical given.

As we take the Quran, as most moderate educated Muslims interpret it, we find the following: Christians and Jews are respected as Abrahamic brothers in faith and will enjoy the favor of God on the last day. There is no compulsion in faith for any person. A person who abjures Islam will suffer God's disapproval, but may not be harmed in this world. Non-Muslims can practice their religion and receive protection upon the payment of tribute, the standard mechanism for a subject population in ancient imperial times.

In pre-Islamic Arabia, most women lived at the sufferance of their husbands and male relatives. Although some women achieved wealth on their own--Khadija, Mohammed's first wife, was such a woman--most Arabian women could not inherit wealth, the bride price was given to the father, they could be divorced at will or kept unavailable to other men during a period after divorce, and they could be beaten with impunity. Mohammed took Arabian society as far as it could go in his time. Women are to be recognized as sui generis of the law; they may own their own property; they get to keep the dower, which the husband may not interfere with, even if he is indebted. Wives must be maintained according to their station. They cannot be abused. At most they can be physically chastised so long as there is no physical harm. And even that is not seen as the morally preferable option in Islam. Polygamy, unlimited before Mohammed, is limited to four wives, but only if each wife can be maintained equally. A man may not marry a second wife if he has fear of injustice to his first wife and every man, were he honest with himself, should fear that he might commit such an injustice.

Slavery has been the universal unexceptionable norm throughout human history until recent times. In the Quran, the slave must be well treated. Muslims cannot be enslaved by other Muslims after battle, for debt, or for any other reason. Another international norm at the time was universally observed by Christian armies, Muslim armies, and Persian armies: a soldier taken in battle can be killed, enslaved, let loose, or kept for ransom. There was no dissent to this proposition. The Muslims, however, were told in the Quran not to harm subject populations, monks, or any innocent civilians. A child of a slave cannot be separated from its mother in Islam. Manumission is meritorious; it overcomes sin and is counted among the good deeds in the balance of life upon which attaining paradise is dependent. In Muslim moral theology, one attains paradise according to the balance of good deeds over bad deeds. There is no deathbed recantation. There can be a deathbed conversion that wipes out previous sins if one were not Muslim. But if one were a bad person all one's life, saying you're sorry on your deathbed is not going to do it. Islam has a sophisticated five-level sense of moral actions: there are some moral actions that are compulsory; others that are approved, that is, gain one moral credit; some actions are neutral; some are disapproved, what we call sins; and some are absolutely forbidden, which the state must proscribe. Manumission is approved. It gains a soul moral favor. But owning a slave is legal and morally neutral. It is permitted to enslave someone after a battle, but it is meritorious to manumit a slave.

So how did such a noble start come a cropper? How did tolerance become intolerance? How did protection become persecution? How did the dignity of women turn into indignity? How did limited war become massacre? It is not enough of an answer to say that there have always been bad Muslims and bad Christians and bad Jews. For the problem in Islam is that intolerance and indignity and the murder of a person because of his changed religious belief have gained authoritative sanction from some quarters.

Three institutions have deflected the trajectory of Mohammed's original message: the law, the empire, and the tribe. Let us take apostasy as an example. The Quran condemns the apostate to damnation but imposes no earthly penalty. The death penalty arose later, in the law. It was the traditions of the Prophet, known as the Sunna, developed and codified later during a drive for the Islamicization of the early Islamic empire, that required putting the apostate to death. A primary tradition relied upon for this view attributes to Mohammed the statement, "Whoever changes his Islamic religion, kill him."

Most traditions, however, including the one just cited, inflict the death sentence because the apostate waged war on Islam. Indeed, the primary justification for the execution of the apostate is that in the early days of Islam, apostasy and treason were in fact synonymous. War was perennial in Arabia. It never stopped. To reject the leader of another tribe, to give up on a coalition, was in effect to go to war against him. There was no such thing as neutrality. There were truces, but there was never a permanent neutrality. It is reported, for example, that immediately after the death of Mohammed, many tribes apostatized. They said in effect, "The leader whom we were following is gone, so let's go back to our own leaders." And they rebelled against Muslim rule. The first caliph, Abu Bakr, ordered such rebels to be killed.

Many scholars argue that the tradition that all apostates had to be killed had its origin during these wars of rebellion and not during Mohammed's time. In fact, many argue that these traditions in which Mohammed affirmed the killing of apostates

were apocryphal, made up later to justify what the empire had been doing. In fact, most of these traditions do not have sound *isnad*, or chains of authority. Muslims knew that there were tens of thousands of fabricated traditions in the 8th and 9th centuries during the ideological battles between the legalists and other parties in the Islamic empire. And so the method of authenticating what were sound traditions developed. Those traditions that could be regarded with authority possessed a clear, unbroken chain of transmission by reputable Muslims reaching back to the Prophet. In Islam, as in most ancient methods of adjudication, authority was the method of determining truth, not objective forensic evidence. If the witness were moral, the witness had to be believed. You can impugn the witness's character, but you don't impugn the testimony. The testimony is accepted. So if one could find sound *isnad*, one had to accept its authority. (Of course, one could fabricate the transmissions as well as the substance of the tradition, but that problem was not, to my knowledge, systematically addressed in Islamic tradition.)

But there are breaks in some of the *isnad*. That tradition is then called weak, or not sound. Most, if not all, of the traditions regarding Mohammed's assertions of apostasy as a capital offense are either apocryphal, according to Western and some Muslim scholars, or have weak *isnad* and need not be believed. In one of the most exhaustive studies of the classical sources of Islamic law, S.A. Rahman, a Pakistani jurist of renown, argued that all references in the Quran to apostasy tied retaliation to rebellion, not merely falling from faith. Rahman argued that most other verses and sound traditions indicate an undeviating view that changes in belief were left to God to punish, and that it was forbidden to compel any person to join or rejoin any religion.

Whatever the source for the sentence of apostasy, most jurists of the Sharia came to regard the crime as one of neither rebellion nor unbelief, but merely a falling away from Islam. They were, after all, religious judges, and they came up with these rules a century or two after Mohammed's death. And so the religious judge would import authoritative actions into a religious mold. No distinction was made between the apostate who converts to one of the protected religions and one who falls into polytheism or unbelief. All apostates were denominated as unbelievers. No connection with rebellion was required. All that was needed was some evidence of disbelief, and unless recantation occurred relatively quickly, death was imposed.

For the Maliki school, it was the act of falling away from the religion of Islam that mattered. The law had no regard for conversion from one non-Islamic faith to another. But for the more casuistical Shafii school, any act of apostasy was fatal, even from say Judaism to Christianity.

As in other areas of Islamic law, probative evidence relies upon the bona fides of the witnesses more than upon the substance of the act that constitute apostasy. According to Abu Zakariyya Yahya Ibn Sharaf al-Nawawi (1233-78) of the Shafii school, "witnesses need not recount in all their details the facts that constitute apostasy; they may confine themselves to affirming that the guilty person is an apostate." The punishment for an apostate is death; traditionally by beheading, although crucifixion and immolation have also been employed. For some jurists, the apostate must be given a period of time in which to recant and return to Islam; most schools require that the apostate be exhorted to repent. But the Shia will not accept the recantation of an apostate who was born a Muslim. The Hanafi school recommends three days of imprisonment before execution, although neither the delay nor the requirement to try to dissuade the apostate before killing him is mandatory. The Maliki school (dominant in Egypt), which is normally stricter than the Hanafi school, will in this case allow up to ten days for recantation. Although the Hanafi school does not condemn the female apostate to death, jurists in the Maliki and Shafi schools do.

Under most schools of Islamic law (Hanafi, Maliki, Shafii, Hanbali, Shia Jaafari), the apostate is an outlaw. The Hanafis are explicit: any person killing an apostate is himself immune to prosecution and immune from retaliation. In addition, the apostate loses all civil entitlement. His marriage becomes a nullity, and he has no rights to inherit. In 1995 in Egypt, for example, a court declared Nasr Abu Zeid, a professor of Arabic literature and Islamic studies at Cairo University, an apostate, and he and his wife had to flee to France. He and his wife escaped to France because they knew the fate of with the novelist Farag Fouda, whom the ulama of Al-Azhar university had declared to be an apostate. Certain that he was going to be assassinated, Fouda was in fact murdered in 1992. His killers announced "All we did was carry out the appropriate Islamic punishment in light of the accusation leveled by Al-Azhar's ulama."

Here is where the religious law can become pernicious. One of the most signal reforms of Mohammed was to get rid of self-help vengeance between the tribes. In seventh-century Arabia, if a member of one tribe were killed or harmed by a member of another tribe, the tribe of the victim could retaliate at will. This led to unending feuds. Mohammed decreed that there would no longer be retaliation allowed until the guilt of the malefactor was proven to an impartial third party. And then, retaliation was allowed only in the most egregious circumstances, where there was what we would call malice afore thought. In all other circumstances, there could only be compensation. Self-help was no longer allowed. This is a fundamental legal principle of any ordered society.

But the legal jurists, in turning apostasy from an act of treason to an act of unbelief, allowed self-help vengeance to return to Muslim society. They undid one of the most important reforms of Mohammed. This has been filtered into the tribal culture that has always remained within Islam. The act of apostasy became an offense against the honor of the clan or the family. And since the law allowed acts of private vengeance in such cases, there was a return to the very kind of violent act that Mohammed originally decreed out of Muslim society.

Such a cultural practice leaves non-Muslims paralyzed. On a trip I made to a moderate Muslim country, I visited non-Muslim religious leaders and asked them what happens if a Muslim wishes to convert to Christianity. They were all upset by that

question. One religious leader told me, “Well, there are many reasons why a man might want to convert to Christianity, none of them genuine. It might be a psychological reason, it might be he’s unstable, etc.” It is not just that it is politically embarrassing for a Christian leader that someone might want to become a Christian. If his family should find out, and he cannot be gotten out of the country, his family will kill him.

So apostasy has been brought into tribal cultures, which sadly to many Westerners seems to give the lie to the Quranic verse that there shall be no compulsion in religion. Such actions, in my view, distort the genuine heart of Islam. But it shows how far from the original principles the culture has come because of what the legal community did to it, what the empire’s needs were, and how tribalism has distorted the religion’s spiritual message.

Another example is the treatment of religious minorities. When Mohammed conquered a religious minority, he gave them safe conduct and the right to continue their religious practices on payment of tribute. There was nothing unusual about that. Tribute was the normal method of acknowledgment of a superior ruler over an inferior people. Even during the middle period of the Islamic empire, when the Byzantine Empire had a brief resurgence, the caliph paid tribute to the Byzantine emperor. And then afterwards, the Byzantine Empire generally paid tribute to the caliph.

When the Islamic armies had first conquered Syria, the Holy Land, and Egypt, they came with no historic tradition of imperial rule. The first empire, after the four caliphs who succeeded Mohammed, was the Umayyad Empire (661-750), which had its capital in Damascus, a Byzantine city. At the start, the Muslim conquerors were in effect garrison troops. Virtually the entire population was non-Muslim. In fact, in the first few decades of the Umayyad Empire, the court language was Greek, not Arabic.

Now the Byzantines had already invented the idea of what to do to a heretical sect (short of persecution). They would permit it to exist on payment of tribute. The Umayyad Empire simply adopted the Byzantine practice. Then when the Abbasids took over from the Umayyads in 750, they moved their capital to Baghdad, which had been part of Persia. The Abbasids absorbed the Persian Sassanid imperial structure. The Persians, who were Zoroastrians, had, under the Parthians (till around the year 250), been very tolerant of other religions. But under the Sassanids, who had succeeded the Parthians, deviant sects were persecuted. The Sassanids would allow some sects to exist, provided they paid a higher tax than did the Zoroastrians. This practice was absorbed by the Abbasid Empire and developed into the law of the dhimmi (Christians and Jews, but later including Zoroastrians, Hindus, Sabians). The practice was codified into the law that the jurists were developing at the same time. It was a contemporaneous development, not something from the Quran or from the Prophet.

The dhimmi were allowed to exist and practice their own religion on payment of a *jizyah*, which originally meant tribute but became much higher than the normal *zakat* that the Muslim had to pay. (The *zakat* itself was originally a voluntary tithing, but the empire turned it into a permanent tax, for empires know a good tax scheme when they see it.) This differentiation put great pressure upon the dhimmi to convert, because most people maintain their religion as a matter of social norm, not as a matter of personal belief. This differentiation between the *zakat* and the *jizyah*, as well as a later differentiation in property taxes, derived from the Sassanid Empire and became part of the Islamic rule regarding the dhimmi. But if you take Mohammed’s original premise, which is that a subject religion can continue to practice so long as they recognize the legitimacy of the state over it, there’s nothing contrary to that in modern religious freedom.

With the dhimmi under imperial rule, ratified authoritatively by the Sharia, as a subject religion, tribalism adds the mental construct of intolerance of the other, and the results are the kind of massacres against dhimmis that have always punctuated Islamic history over the centuries. It need not have been so. But it became ratified by the law through the structure of empire and acted upon through the lens of tribalism.

As most moderate and reformist Muslims readily agree, none of these untoward practices of Muslim civilization are required by the spiritual message of the Prophet. Looking past the present-day violence of radical Muslims, we see that, in the long run, the great struggle within Islam is to return to its spiritual roots undeflected by empire, tribe, or rigid legal norms. In sum, moderate and reformist thinkers in Islam are seeking to return to the spiritual trajectory established by the Prophet.

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