

**Freedom of Religion as a Universal Human Right: UDHR, Islam, and the Late 20th
Century Rights Revolution**

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Abstract

The Universal Declaration of Human Rights (UDHR) represented a dramatic moment in the emergence of the new international discourse on universal human rights. Contemporary debates around the “freedom of religion” have roots in issues that shaped deliberations from the opening sessions of the Drafting Committee in 1946 to its proclamation by the United Nations General Assembly in Paris on 10 December 1948.

Revisionist historiography of the 20th century problematizes traditional narratives of the origin of modern human rights and suggests that this discourse was a new mid-twentieth century development facilitated by the emergence of faith-based movements of social and political discourse based in Christian theories of human dignity and rights.

On the Islamic side, it was only in the latter half of the 20th century that Muslim intellectuals came face to face with the concept of human rights and Islamic participations remained minimal and mostly within a reactive mindset. The principles of freedom of religion and the right to convert from Islam to another faith were among the major sticking issues.

This thesis explores recent historiography on the 20th century human rights movement and demonstrates how representatives of the new faith-based view influenced the drafting process with a close focus on articles related to religion and religious freedom, particularly article 18. It then discusses the engagement of some leading Islamic human rights scholars and grassroots movements towards the end of the twentieth century and their attempts to conceptualize the relation between Islamic doctrines and the human rights discourse around the freedom of religion. Academics such as Fazlur Rahman, Khaled Abou El Fadl, and Abdullahi An-Na'im are discussed as they attempt to present a rights-oriented re-reading of the tradition.

A special focus is placed on Mohammad Shahrur's "contemporary reading" as one of the most innovative approaches and his arguments for a deep critique of the classical sources of Islamic jurisprudence other than the Qur'an (e.g. Sunna, Consensus, Analogy).

This thesis explores Islamic discourses on rights as a complex and evolving response to equally new and unsettling developments and highlights how Shahrur positions religious freedom as the crucial test for a renewed understanding of Islam and human rights.

Abstrait

La Déclaration universelle des droits de l'homme (DUDH) a marqué un moment dramatique dans l'émergence d'un nouveau discours au niveau international sur les droits de l'homme universels. Les débats contemporains au sujet de la «liberté de religion» trouvent leurs racines dans les questions qui ont influencé les délibérations depuis les séances d'ouverture du Comité de rédaction en 1946 jusqu'à sa proclamation par l'Assemblée générale des Nations Unies à Paris le 10 décembre 1948.

L'historiographie révisionniste du XXe siècle problématise les récits traditionnels sur l'origine des droits de l'homme modernes et suggère que ce discours était un nouveau développement du milieu du XXe siècle, facilité par l'émergence de mouvements confessionnels de discours sociaux et politiques fondés sur les théories chrétiennes de la dignité humaine, ainsi que les droits.

Du côté islamique, ce n'est que dans la seconde moitié du XXe siècle que les intellectuels musulmans ont confrontés le concept des droits de l'homme. La participation de la part de la communauté d'intellectuels islamiques est restée minime, étant plus souvent caractérisé par un état d'esprit réactif. Les principes de la liberté de religion et du droit de se convertir de l'islam à une autre religion sont parmi les principaux problèmes persistants.

Cette thèse explore l'historiographie récente sur le mouvement des droits de l'homme du 20ème siècle et démontre comment les représentants de cette nouvelle vision religieuse ont influencé le processus de rédaction en se concentrant sur les articles relatifs à la religion et à la liberté religieuse, accordant une attention particulière à l'article 18. Elle explore aussi certains spécialistes islamiques éminents des droits de l'homme et des mouvements populaires vers la fin

du XXe siècle, ainsi que leurs tentatives de conceptualiser la relation entre les doctrines islamiques et le discours sur les droits de l'homme tournant autour de la liberté de religion. Des savants tels que Fazlur Rahman, Khaled Abou El Fadl et Abdullahi An-Na'im sont discutés dans le contexte de leurs tentatives de présenter une relecture de la tradition orientée vers les droits.

Une attention particulière est accordée à la «lecture contemporaine» de Mohammad Shaḥrur en étant considéré comme l'une des approches les plus innovantes, prêtant aussi une attention à ses arguments pour une critique profonde des sources classiques de la jurisprudence islamique outre le Coran (par exemple Sunna, Consensus, Analogie).

Cette thèse explore les discours islamiques sur les droits comme étant une réponse complexe et évolutive à des développements tout aussi nouveaux et inquiétants, et a souligné comment Shaḥrur positionne la liberté religieuse comme le test crucial pour une compréhension renouvelée de l'Islam et des droits humains.

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Introduction

UN debates on the place of religion within a human rights discourse began with the opening sessions of the Commission on Human Rights in 1946 and culminated in the milestone document of the Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly on 10 December 1948. Article 18 of the UDHR affirms the principle of religious liberty. Debates leading to its adoption underscored the problematic character of its formulation for some Islamic member states, as well as in some sectors of the wider Islamic discourse. These controversies continued with subsequent developments of the international bill of human rights, namely the ICCPR and the ICESCR. Later UN resolutions relating to religious freedom have only raised the intensity of the debate.

Both within Islamic public spheres and beyond, questions are raised concerning the compatibility between Islam and human rights as well as the wider question of how the Islamic tradition navigates the rough waters of modernity. Islamic narratives on rights in the post-UDHR era have been shaped by a longer history of critical response to Western colonialism, Christian missionary projects, Western geo-political and military intervention, and postcolonial critiques of Orientalist scholarship.¹

This thesis explores Islamic contributions to debates on the freedom and right to change one's religion in the drafting of Article 18 of the UDHR and evolving UN policy debates on religious freedom. The study then maps out three broad approaches to human rights and religious freedom discourse in the post-UDHR era:

- a) rejectionist approaches that view human rights as a Western construct incompatible with Islam;

¹ See Saba Mahmood's recent discussion of the impact of the West on problematizing of religious freedom in Middle East contexts: *Religious Difference in a Secular Age: A Minority Report* (2016)

- b) apologetic approaches that view Islam as the integral foundation for human rights, but also insist that human rights must be controlled, defined, and shaped by specific understandings of the authority of Shari‘a;
- c) revisionist approaches that highlight the new ethical and intellectual challenges faced by longstanding traditions of Islamic jurisprudence in addressing fundamentally new horizon of concerns and aspirations entailed by the modern discourse on universal human rights.

The thesis will argue that the deep revisionism of Mohammad Shahrur, a leading Syrian intellectual, offers one of the more innovative approaches towards an Islamic understanding of universal human rights while challenging a number of influential understandings of human rights and religious freedom within contemporary Islamic discourse.

The research employs a historical approach with a text-based archival study of relevant United Nations documents as a primary source. These include initial terms of reference, verbatim records of meetings, summary meeting reports, draft resolutions, and hand-written drafts by influential actors such as John Humphrey (available at McGill) with special attention to the Islamic actors and their engagement starting with the drafting process and through the ensuing discussions until the present time.

Chapter 1. Drafting the UDHR: The Divine and Freedom of Religion

1.1 Introduction

During the formative years of the United Nations following the Second World War, a number of resolutions relating to issues of religion were debated and eventually voted on by the United Nations. The evolving debate engaged an array of actors including member States, international organizations, and human rights and free speech advocacy groups. It engaged a variety of issues that included religious freedom, defamation of religion, freedom of expression, blasphemy, among others.

To some extent, contemporary debates around the “freedom of religion” have roots in issues that shaped deliberations from the opening sessions of the Drafting Committee in 1946 to its culmination in the milestone document of the Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

Revisionist historiography of the 20th century human rights movement suggests that universal human rights discourse, and particularly religious freedom, was a new mid-twentieth century development facilitated by the emergence of new movements of faith-based social and political discourse which turned to theories of human dignity and universal human rights in response to the apparent failures of liberal secularism in the face of totalitarian regimes. I will discuss aspects of this new view of human rights genealogy as they manifest during the development of the UDHR.

The UDHR represented a dramatic moment in the emergence of the new international discourse on universal human rights. Differences appeared among the representatives right from the opening sessions. Some of the most vexing issues that emerged gravitated around the discussions of religious freedom and the possible inclusion of a “God” clause in the document.

The tightly worded one-liners of the original Humphrey draft were significantly expanded and enriched by the ensuing debate. I will examine the tensions in those debates and explore how the drafters negotiated their way around issues of including or excluding “God” and freedom of religion and the contribution of Islamic voices to these evolving debates.

The drafting process 1946-1948 arguably highlights the dominance of Western Christian influence and the marginality of Islamic voices in the drafting process. While almost all Muslim majority countries supported the UDHR, the voting stage at the General Assembly in Paris 1948 did expose some sites of Islamic resistance. The reservations by Islamic states were based on justifications based on particular accounts of significance of adherence to Islamic law and its implication for religious freedom.

This chapter will track the development of what became Article 18 of the UDHR relating to freedom of religion, starting from the initial draft text until its adoption as part of the full resolution in 1948. As main reference, the task will rely on United Nations original documents which include initial terms of reference, minutes of meetings, reports of the Drafting Committee, and so forth. Other sources will include works by scholars active in the field of Human rights.

1.2 Human Rights and 20th Century Historiography

Samuel Moyn problematizes traditional narratives of the origin of contemporary discourses on universal human rights. These developments are not based on Enlightenment principles of the French or American revolutions, nor do they emanate from older traditions of natural law. Moyn’s historiography also challenges the view that human rights can be viewed as a new transnational achievement building on the ruins of mid-twentieth century global conflict. Standard historical accounts of human rights’ origins ignore the critical role of mid-twentieth century Christian voices both before and during the drafting process of the UDHR. Moyn argues

that the pursuit of Christian projects, from building moral community at home to fostering missionary expansion abroad, were now reformulated in terms of “human rights.” Abstentions to the UDHR at the General Assembly, reflected the concerns of organized Christianity’s major antagonists, old and new: Islam and communism. In this sense, as Moyn argues, “Christian human rights have not so much been about the inclusion of the other, but about policing the borders and boundaries at which threatening enemies loom.”²

1.3 The Emergence of Christian Human Rights

Starting from the 19th century where the political space was contested between secular individual liberals on one side and religious communitarians on the other, the Catholic position on religious freedom evolved through a number of shifts. In his encyclical *Immortale Dei* (1885), Pope Leo XIII explained that Catholicism must stand against the theory that everyone is to be free to follow whatever religion he prefers, or none at all if he or she so desires. Catholic authorities generally continued to critique the principle of religious freedom prior to Vatican II, despite the advocacy of Catholic intellectuals like Jacques Maritain and others³.

Maritain, however, was not always in favour of human rights, and Moyn maintains that in order to understand Maritain’s (and Europe’s) conversion to ‘rights’, we need to look at the unexpected conversion of Catholicism to personalist forms of discourse in the 1930s.⁴ As a firm anti-Communist, Maritain watched nervously the successes of communist propaganda in the West in the mid-1930s. This was a time when figures such as André Gide and André Malraux were convinced that the Soviets might have the true recipe for the achievement of the dignity of the human personality. However, even in his *Integral Humanism* (1936), in which he spelled out

² Moyn, Christian Human Rights, p24

³ Moyn, Samuel, “Religious Freedom between Truth and Tactic.” *Politics of Religious Freedom*. Sullivan, Winnifred Fallers, et al., Chicago: University of Chicago Press, 2015: P137-38.

⁴ Moyn, Christian Human Rights, p74

his politics of personalism in their most classic form, Maritain endorsed the person without endorsing rights, a clear sign of his struggle to free himself from illiberal currents in mid-twentieth century European thought.⁵

The move toward the embrace of rights talk as the essence of Christian social thought occurred in a gradual manner. In 1937 the expiring pope Pius XI and his soon to be successor, Pius XII, realized against a background of totalitarian regimes on the left and on the right that some of the most serious modern threats to Christianity came from states. That is when “human dignity” emerged as a major theme of Christian political discourse. The crucial leap occurred when Pius XI began to use the terms in ways that involved the assertion of religious sovereignty over personal conscience. Pius, who knew Maritain and admired his work, turned to personalism as the foundation of Church’s spiritual alternative to totalitarianism.

The rise of the totalitarian state and the threats it posed to Europe, prompted Christian conservatives to forge a political philosophy that would protect the human person and civil society, especially the Church. It was in this perilous space between the two extreme political ideologies of Nazism and Communism that the Church discovered its commitment to human dignity and universal rights; a commitment that assured it the kind of sovereignty that goes beyond the authority of states and the reach of temporal politics. “Man, as a person,” Pius declared, “possesses rights that he holds from God and which must remain, with regard to the collectivity, beyond the reach of anything that would tend to deny them, to abolish them, or to neglect them.”⁶

Influenced by personalism, Maritain provided the key conceptualization by arguing for a Christian vision which placed “personal entitlements in the framework of the common good.” By

⁵ Moyn, *Christian Human Rights*, p74

⁶ Moyn, *Christian Human Rights*, p75-76

this he offered a persuasive theory of rights that established continuity between natural law and natural rights.⁷ By Christmas Day, 1942, when the outcome of World War II was still undecided, Pope Pius XII, inspired by notions of personal dignity, was laying out his postwar vision using the new vocabulary. He endorsed new values of ‘dignity of the Human Person’ and of ‘personal rights’, thus announcing the basic idea of universal human rights as a world principle that transcends the State, and enabling the language of human rights to acquire a transnational orientation and to facilitate supranational politics.

With Communism increasingly claiming the secular heritage of the French Revolution, especially after World War II, European Liberals and Conservatives had to work closer together in the face of the new ideological foe. Confronted by the threat of secular collectivism, Christian intellectuals turned to an old adversary; liberal democracy. In the compromise that followed, the conservatives had to accommodate ‘rights’ and the liberals had to show more acceptance of religion. The outcome was a reformulation of conservative politics among Christian democrats committed to the preservation of western European moral traditions. The values of that new coalition came to be reflected in post-war European constitutions.

Moyn argues that it was such geopolitics of the Cold War that have played a main role in altering Catholic political thought with regard to religious freedom. Traditionally viewed as a catalyst of secularism, religious freedom was recast as a tool of fending against secularism.⁸

European Catholics were not alone in authoring the story of human rights and particularly religious freedom, as a central Christian value. Transatlantic Protestantism also contributed its part.

⁷ Moyn, Christian Human Rights, p83

⁸ Moyn, Christian Human Rights, p156

Summer of 1937 was again a major milestone in the solidification of transatlantic Protestant 'ecumenism'. The Oxford conference laid the foundation for creating the future World Council of Churches established after the war in 1948. It was at that conference and against the same backdrop of totalitarian systems, that the rhetoric of "the human person", as a moral alternative to power politics, found its echo in transatlantic Protestant thinking. like Maritain, Protestant thinkers like John Rawls, became convinced and provided arguments for presenting the notions of personhood and community as complimentary rather than mutually exclusive⁹.

After World War II, however, victory of Anglo America gave it a leading role in Protestantism, and highlighted its role as a bulwark against Communism. Liberty of conscience, historically held dearly by Protestant Christians, emerged as a central value in this confrontation. Packaged together, personalism and 'freedom of religion', seemed to provide the needed doctrinal bridge between the politics of European Catholics and transatlantic Protestants.

The adoption of religious freedom in Christian discourse also proved beneficial as a major pillar of missionary activity overseas. This offered another example, notes Moyn, of evangelical Protestants, joining together with conservative Catholics in putting religious freedom to work. As at home, however, the goal was not to use freedom of religion as a tool of individual choice within a secular culture of social tolerance, but instead as a principle for building communities of belief and practice that subordinate individual choice to religious moral authority¹⁰. This new conception of human rights, as will be demonstrated next, was actively at work throughout the process of developing the UDHR and particularly salient in the definition and articulation of Article 18 on religious freedom.

⁹ Moyn, Christian Human Rights, p.17

¹⁰ Moyn, Samuel, "Religious Freedom between Truth and Tactic." *Politics of Religious Freedom*. Sullivan, Winnifred Fallers, et al., Chicago: University of Chicago Press, 2015: P140

1.4 The Drafting Committee and The Process

The Economic and Social Council (ECOSOC) of the UN in its first session in 1946 established a Preparatory Committee, often referred to as the “Nuclear Commission”, whose role was to propose terms of reference for the newly established Commission on Human Rights (CHR). The CHR held its first session in Jan-Feb 1947. Eleanor Roosevelt (US) was unanimously elected Chairman, P.C. Chang (China) as Vice-Chairman, and Charles Malik (Lebanon) was chosen to be Rapporteur. Canadian John Humphrey, the newly appointed Director of the Division of Human Rights and Secretary of the Commission, sat in on the sessions of the Commission and participated in the drafting process. Soon after the initial meetings, the Drafting Committee was enlarged from three to eight members including: Australia, Chile, China, France, Lebanon, the USSR, the UK, and the US. The ECOSOC then officially requested the Secretariat to prepare a documented outline concerning an International Bill of Human Rights.¹¹ Representatives of various non-governmental organizations, Christian, Jewish, and civil unions also sat in on regular meetings of the CHR. However, there was a clear absence of any Muslim, Arab, or indeed any non-western representation among these NGOs.

In its early meetings, the drafting Committee had to work with two documents: one was the Draft Outline of an International Bill of Rights¹² which was Humphrey’s very first draft consisting of 48 articles, and the other was a UK proposal for an international bill of rights¹³. At the sixth meeting of the Drafting Committee, the USSR delegate affirmed that it was necessary for his Government to have detailed information regarding the basis of a draft Bill, and to know how other governments felt about it.¹⁴ He proposed to set up a small working group to collate the

¹¹ E/CN.4/SR.1, Report of the 1st session of the HRC dated 28 Jan 1947

¹² E/CN.4/AC.1/3, dated 4 Jun 1947 and E/CN.4/AC.1/3/Add.1

¹³ E/CN.4/AC.1/4, dated 5 Jun 1947

¹⁴ E/CN.4/AC.1/SR.6, dated 16 Jun 1947

opinions that had been discussed until then. This group would prepare appropriate drafts for transmission to the governments for their comments. The UK delegate objected fearing this move might detract from his country's draft being a basis for the new Bill. After some discussion, the proposal was accepted, and a temporary Working Group was appointed which included the representatives of France (Prof Cassin), Lebanon (Dr Malik) and the UK (Mr. Wilson) and was tasked with suggesting a logical arrangement of the articles of the Draft Outline provided by the Secretariat, and to suggest a redraft of the various articles in the light of the discussions of the Drafting Committee. The small Working Group held two meetings and “asked Prof. Cassin (France) to undertake the formulation of a rough-draft Declaration because it felt that such a document might have greater unity if drawn up by one person.¹⁵” Prof. Cassin produced the Preamble and forty-four articles of a rough-draft Declaration¹⁶. This was often referred to as “the Cassin redraft.”¹⁷

1.5 The Declaration and the Divine

The two topics that generated the lengthiest and likely most interesting debates were the attempts to include a reference to God in article 1 and discussions around the formulation of freedom of religion in article 18. In the initial drafts of the secretariat outlines, both articles consisted of very short formulations that proved to be problematic for the drafting committee. However, this opening economical approach changed as the drafting process progressed.

¹⁵ E/CN.4/AC.1/SR.7, summary report of the meeting of 17 Jun 1947, page 2

¹⁶ E/CN.4/AC.1/W.2 Rev.2, dated 20 Jun 1947 contains the ‘Cassin redraft’

¹⁷ E/CN.4/AC.1/W.1, dated 16 Jun 1947, contained the Preamble and articles 1 to 6 of the draft Declaration. This was followed by E/CN.4/AC.1/W.2/Rev.1, dated 18 Jun 1947 containing articles 7 to 44 of the draft Declaration (the document title mistakenly states ‘articles 7 to 32’).

During the second meeting of the Working Group on Draft Declaration, the proposed formulation of article 1 of the Cassin redraft came up for discussion.¹⁸ It stated:

All men are brothers. Being endowed with reason, members of one family, they are free and possess equal dignity and rights.

General Romulo (Philippines) said there was no logical connection between the two parts of the sentence and suggested an alternative text. A discussion ensued at the end of which the Chairman invited Cassin, in consultation with the Philippine representative, to submit a new text of article 1. The new article was presented for discussion at the 9th meeting of the Working Group¹⁹ and had the term “by nature” inserted after “endowed”:

“All men are born free and equal in dignity and rights. They are endowed **by nature** with reason and conscience and should act towards one another like brothers.”

The term “endowed by nature” was clearly controversial because it touched on the question of the origin of human rights. To some representatives it simply indicated a materialistic or evolutionary account of the anthropological grounding of rights. Others argued that this formulation represented an unwelcome bias, privileging a justification for rights that rejected any reference to a divine creator. This made article 1 the locus of lengthy debates that lasted until the very end of the drafting process.

¹⁸ CHR Second Session, E/CN.4/AC.2/SR.2, p4-7 on 5 Jun 1947

¹⁹ E/CN.4/AC.2/SR.9, p21, on 10 Dec 1947

Mr. Bogomolov (USSR) objected to the implications of introducing any metaphysical reference in the text. Referring to the initial proposals by the Philippines and the French representatives, he noted that the Working Group had two proposals before it: the first derived from the French materialist philosophers of the 19th century; the second was of deistic origin, a proposal taken from the Gospels. He could not understand why the Declaration should contain solemn proclamations, devoid of meaning. He felt that such wording would have a pompous and ridiculous effect, and asked for the article to be deleted altogether. After a short discussion, the Chairman called for a vote on the text of article 1 as proposed by the delegations of the Philippines and of France. The text was adopted and the term “endowed by nature” thus escaped further scrutiny and remained part of article 1 without raising any issues for the following ten months. However, in October 1948 a significant controversy emerged within the final meeting of the Third Committee of the General Assembly, just before the final adoption of the Declaration.

The question of including or excluding a reference to God in the UDHR was in reality a repackaging of issues concerning the origin of human rights. Charles Malik, the representative of Lebanon, was also influenced by the early twentieth century revival of Thomism led by figures like Jacques Maritain and Etienne Gilson. As Rapporteur Malek was an influential figure in almost all discussions and often tried to inject his Natural Law perspective into the texts of various articles. He was not a member of the Working Group on the Declaration where the debate over the inclusion of a reference to God in Article 1 started. However, Malek introduced a similar move a few days later when discussing the article on family and marriage in the 37th meeting of the Second Session of the CHR.²⁰ The Article stated:

²⁰ E/CN.4/SR.37, p11, on 13 Dec 1947

“Men and women shall have the same freedom to contract marriage in accordance with the law. Marriage and the family shall be protected by the State and Society.”

Dr Malik proposed the following two sentences as substitute text for the second sentence of the then article 15A (highlight of proposed change added):

“The family deriving from marriage is the natural and fundamental group unit of society. It is **endowed by the Creator** with inalienable rights antecedent to all positive law and as such shall be protected by the State and Society.”

Mr. Bogomolov (USSR) opposed Dr Malik’s amendment for a number of reasons and reminded the committee that many people did not believe in God, and that the Declaration was meant for mankind as a whole, believers or unbelievers. After a short discussion, the Chairman put the first sentence of Dr Malik’s amendment to the vote. It was carried but the second sentence with its reference to “the Creator” was rejected.

Malik’s attempt to insert a metaphysical reference to God and natural law were, thus, not successful. However, that did not stop him from trying again during the second session of the Drafting Committee in May 1948. At the 38th meeting Malik suggested once again the amendment which he had already proposed earlier and which had been rejected because of objections to the name of the Creator being mentioned with a Capital.²¹ He now pointed out that the “Creator” was not necessarily God; in certain philosophies, it might be Nature. There was no

²¹ E/CN.4/AC.1/SR.38, p8 on 18 May 1948

theological implication here and if there were objections against the use of the word “Creator” then he would suggest using “Nature” instead. But Mr. Pavlov (USSR) felt that it was unnecessary to bring any philosophical theories into the Declaration. He suggested retaining the second part as is. A short debate ensued and the proposal was rejected by voting.

The issue of embedding a reference to the divine within the Declaration, however, was not going away easily. It was reignited during the meetings of the Third Committee of the General Assembly when two amendments to that effect were introduced, one by Brazil and the other by the Netherlands. The Brazilian amendment proposed inserting the text “created in the image and likeness of God,” at the beginning of the second sentence of article 1 of the Declaration So the article would read (highlight of proposed change added):²²

Article 1

All human beings are born free and equal in dignity
and rights. **created in the image and likeness of God**, they are
endowed with reason and conscience and should act towards
one another in a spirit of brotherhood.

The Dutch amendment, on the other hand, targeted the preamble and proposed to insert after the words “human family” the text “based on man’s divine origin and immortal destiny.” So, the text would read (highlight of proposed change added) ²³:

²² A/C.3/215 submitted on 2 Oct 1948, was discussed in meetings A/C.3/SR.92 to A/C.3/SR.99, 2 to 11 Oct 1948 and was withdrawn in the 99th meeting (A/C.3/SR.99, p117).

²³ A/C.3/219 submitted 4 Oct 1948, was discussed in meetings A/C.3/SR.164,165,166, on 29-30 Nov 1948 and was withdrawn in the 166th meeting (A/C.3/SR.166, p777)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family **based on man's divine origin and immortal destiny** is the foundation of freedom, justice and peace in the world;

Arguing for the amendment proposed by his country, Mr. de Athayde (Brazil) said that the declaration should include, a reference to God as the absolute origin of the rights of man and of all rights.²⁴ That would be an acknowledgment of the importance of the great spiritual trends towards the maintenance and development of international cooperation among the nations.

Count Carton de Wiart (Belgium), speaking at the 96th meeting, said that the text of the article as it stood stated that human beings were endowed “by nature” with reason and conscience.²⁵ Those words might be ambiguous and lead to long, philosophical arguments, and certain proposed amendments to them, such as the Brazilian one, were of a particularly delicate character. He proposed to simplify the text by deleting the words “by nature”, which were unnecessary, with the hope that the resultant wording would find general acceptance. Mr. Pérez Cisneros (Cuba) agreed with the Belgian representative that there should be no question of implying that nature, as opposed to God, was the source of man's reason and conscience. The Chairman, Mrs. Roosevelt (USA), recalled that, in drafting article 1, it was not the intention of the Commission to imply that man had been endowed with reason and conscience by some entity beyond himself. The English text would be clearer if the order of the words were changed so that they read: “They are by nature endowed . . .”

²⁴ A/C.3/SR.92, 2 Oct 1948

²⁵ A/C.3/SR.96, p96-97, 7 Oct 1948

Mr. Chang (China) supported the deletion of the words “by nature”, as suggested by the Belgian representative, in order to obviate any theological question, which should not be raised in a declaration designed to be universally applicable.²⁶ He recalled that the population of his country comprised a large segment of humanity, with ideals and traditions different from those of the Christian West. The Chinese culture attached the greatest importance to manners as a part of ethics, yet he would refrain from proposing that mention of them should be made in the declaration. He hoped that his colleagues would show equal consideration and withdraw some of the amendments to article 1 which raised metaphysical problems.

Mr. Carrera Andrade (Ecuador) observed that article 1 was a doctrinal statement, rather than a statement of human rights. He asked that the Committee should distinguish between the divine and the human, and refrain from placing the divine on the political plane by introducing it into the Declaration. Mr. Jiménez de Aréchaga (Uruguay) referring to the words “by nature”, said that rights were derived from the nature of man and not from the acts of States. As it stood, the article could give rise to objections on dogmatic grounds. It might be thought to imply nature as distinct from God. No reference to a godhead should be made in a United Nations document, for the philosophy on which the United Nations was based should be universal. The declaration was a legal document and therefore it should not make reference to a transcendental source.

When the discussion resumed at the 98th meeting of the Third Committee, Mr. Corominas (Argentina) warmly supported the Brazilian amendment as it signaled that the full answer to the implied philosophical question was beyond human knowledge. Yet he considered that men “created in the image and likeness of God” was a belief which all men held in common. The

²⁶ A/C.3/234, 7 Oct 1948

Brazilian amendment would, however, give to article 1 an element of universality, a reference to common divine source.²⁷

The representative from the USSR opposed the Brazilian amendment because he believed the declaration of human rights should not include statements of theological nature as those were not acceptable to all delegations. The Brazilian amendment might, furthermore, conflict with the constitutions of those countries that maintain a separation of Church and State.

Mr. Ramírez Moreno (Columbia) pointed out that certain materialistic schools of thought considered man only as the material expression of evolution and denied that his rights were inherent. It had been said that no mention of God should be made in the declaration since there was a separation of Church and State in some countries. That argument had little foundation, for a reference to God would in no way contradict that separation. He, therefore, supported the amendment submitted by Brazil.

Mr. Anze Matienzo (Bolivia) also supported the Brazilian draft amendment with the opinion that the idea of God was not a debatable theological doctrine, but a positive reality.

Mr. Chang (China) spoke again at length and in his philosophically nuanced speech said that the Committee should not debate again the question of the nature of man, as was done by eighteenth century philosophers but should build on the work created by those philosophers. He proposed that the Committee should agree to delete the words “by nature”, as proposed by the Belgian delegation, without including any reference to God. In this way, those who believed in God could still assume the idea of God was implied in the strong opening assertion of the article, and at the same time others with different concepts would also be able to accept the text on their terms. Mr. Chang hoped that in the light of his explanation the Brazilian delegation would be

²⁷ A/C.3/SR.98, 9 Oct 1948

willing to withdraw its amendment and so spare the members of the Committee the task of deciding by vote on a principle which was in fact beyond the capacity of human judgment.

Discussion of the Brazilian amendment, however, continued into the next meeting of the Third Committee²⁸. Mrs. Menon (India) said that the amendment, contained a statement of belief which was not shared by all the representatives, and appealed to withdraw it for the sake of unanimity.

Mr. Grumbach (France) said he respected the religious sentiments which had inspired the amendment, but he did not think it would be appropriate to include in article 1 a statement on man's origin to which all representatives could not agree. He concurred with the representative of China that it was useless to attempt to reach agreement with regard to man's origin, and that such controversial issues should be avoided. He added that the Committee's essential aim was to reach agreement on fundamental principles which could be put into practice endorsed by believers and non-believers alike, recalling that the Catholic philosopher, Jacques Maritain, had stated in relation to that very question that the nations should try to reach agreement on a declaration of human rights, but that it was useless to try to reach agreement on the origin of those rights. He agreed that the words "by nature" should be deleted from the second sentence of article 1, and appealed to the representative of Brazil to withdraw his amendment, so that the article could be adopted unanimously.

Mr. Beaufort (Netherlands) supported the principle set forth in the Brazilian amendment, as his delegation had submitted a similar amendment to the preamble. However, recognizing the difficulties encountered, he urged the representative of Brazil to withdraw his amendment for

²⁸ A/C.3/SR.99, 11 Oct 1948

now as the subject would be discussed again when the Netherlands amendment to the preamble came up for consideration.

Mr. de Athayde (Brazil) reaffirmed his belief that the draft declaration should contain some reference to the belief in the existence of God, which, he felt, was held by most men. However, in view of the difficulties that had arisen, he withdrew his amendment to article 1, reserving the right to raise the matter again during the discussion of the amendment to the preamble, submitted by the Netherlands delegation.

Mr. Santa Cruz (Chile) welcomed the withdrawal of the Brazilian amendment, however, he supported the Belgian proposal, believing the words “by nature” should certainly be deleted from the second sentence of the article and no mention should be made of the origin of man’s reason and conscience.

Mr. Bagdadi (Egypt) thought that article 1 should set forth man’s inherent right to freedom and equality. He agreed with the representatives of Belgium and China that the words “by nature” should be deleted from the second sentence of article 1. Mr. Kayaly (Syria) considered article 1 as the cornerstone of the draft declaration. As to the inclusion of the words “by nature” in the second sentence, he saw no reason to omit them as they were used in a figurative sense to describe the effect of outward circumstances on man. Mr. Azkoul (Lebanon) thought the words “by nature” should remain in the second sentence of article 1. They must not be interpreted as referring to some external power but rather that man’s freedom and equality were based on his very nature and were inseparable from it.

The Chairman put to the vote the Belgian proposal to delete the words “by nature” in the second sentence of the article, and the proposal was adopted by 26 votes to 4, with 9

abstentions.²⁹ The Debate was reopened, however, two months later, at the end of November 1948 when the Dutch amendment was discussed.³⁰ Most of the arguments presented earlier were repeated and new ones introduced. At the 166th meeting of the Third Committee of the GA, Mr. Beaufort (Netherlands) defended the amendment proposed by his delegation, nevertheless, without support from a majority of members of the Committee, he decided not to press for a vote on it.³¹

The proponents of including a reference to “Nature” in specific articles of the UDHR, notably Dr. Malik, the representative from Brazil, the Dutch representative, among others, were not trying to express a scientific view as much as a pre-modern Natural Law perspective which implies that human morality comes from nature, but also that everything in nature has a purpose and can be understood by reason and subsequently, signifies a divine order. Those who resisted such attempts, interpreted the reference to “Nature” as an indirect reference to God or a divine originator.

In short, all attempts to include a reference to God, whether direct or indirect were met with firm resistance and cooler heads prevailed in securing a rational, neutral voice for a document of such historic magnitude.

Table 1 below, documents the chronology of unsuccessful attempts to include a reference to the divine in the UDHR.

²⁹ A/C.3/234, dated 7 Oct 1948

³⁰ A/C.3/219 submitted 4 Oct 1948, was discussed in meetings A/C.3/SR.164,165,166, on 29-30 Nov 1948 and was withdrawn in the 166th meeting (A/C.3/SR.166, p777)

³¹ A/C.3/SR.166, p777, 30 Nov 1948

1.6 Table 1- Chronology of Article 1 debates

A combined chronology of unsuccessful attempts to include a reference to God in the UDHR and the evolution of the text of article 1 from inception to adoption.

4 to 20 Jun 1947 Initial outline of the Secretariat (Humphry's) (E/CN.4/AC.1/3)	Article 1 Every one [<i>sic</i>] owes a duty of loyalty to his State and to the (international society) United Nations. He must accept his just share of responsibility for the performance of such social duties and his share of such common sacrifices as may contribute to the common good.
20 Jun 1947 Cassin's redraft (E/CN.4/AC.1/W.2/Rev.2)	Article 1 All men are brothers. Being endowed with reason, members of one family, they are free and possess equal dignity and rights.
1 Jul 1947 Report of the 1st session of the Drafting Committee to the 2nd Session of the CHR (E/CN.4/21 in Annex F)	Article 1 All men are brothers. Being endowed with reason, members of one family, they are free and possess equal dignity and rights.
10 Dec 1947 Report of the WG on Declaration to 2nd Session of the CHR (E/CN.4/57, p5)	Article 1 All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.
13 Dec 1947 (E/CN.4/SR37)	During the discussion of the Article 15A (family and marriage), Malik wanted to add that family rights were " endowed by the Creator ". This attempt however was rejected by a vote.
17 Dec 1947 Report of 2nd Session of CHR to the ECOSOC (E-600)	Article 1 All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.
18 May 1948 (E/CN.4/AC.1/SR.38)	Second attempt by Malik to include the term " Creator " in the Article on family and marriage. This too was rejected by a vote.
21 May 1948 Report of the 2nd session of the DC to the CHR (E/CN.4/95)	Article 1 All men are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another like brothers.
28 Jun 1948 Report of the 3rd Session of the CHR to the ECOSOC (E/800)	Article 1 All human beings are born free and equal in dignity and rights. They are endowed by nature with reason and conscience, and should act towards one another in a spirit of brotherhood.
Oct 1948	Brazilian amendment to article 1 (A/C.3/215): " Created in the image and likeness of God " and Dutch amendment to the preamble (A/C.3/219): " man's divine origin and immortal destiny "
07 Dec 1948 Report of 3rd Committee of the 3rd Session of the General Assembly (A-777)	Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood.
10 Dec 1948 General Assembly Resolution (A/RES/217(III)) Final and current UDHR text	Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

1.7 The elusive ‘Freedom of Religion’

In his State of the Union address to the 77th Congress on Jan 6, 1941, president Roosevelt included “freedom of religion” as one of “the four essential human freedoms”. This concept, has over the years been elaborated to mean much more than FDR’s formulation of it as “the freedom of every person to worship God in his own way.” This individualistic account did not provide much clarity as to what constituted this particular freedom. How it was interpreted or articulated? How was it related to the freedom of worship, belief, or conscience? The task of answering such questions was delegated to the Drafting Committee of the CHR whose members had to grapple with understanding and articulating what constituted freedom of religion. The way it was finally expressed shaped subsequent controversies that had initially surfaced in the General Assembly sessions leading to the adoption of the UDHR. The text of Article 18 was carried almost verbatim into Article 9 of the European Convention of Human Rights and many other legal instruments, and remains at the root of many thorny issues³².

In one of the final sessions of the GA discussing the article on religious freedom, the delegate of Cuba raised his concern that this Article “had been least well drafted by the Commission on Human Rights. It began with a phrase which meant nothing, as it stated a right which was evident, which existed a priori and which need not be defended.” Furthermore, he noted that, “The second part of the article was unsatisfactory; it placed too much emphasis on the individual's right to change his religion, and thus weakened the absolute value of freedom of thought, conscience and religion proclaimed in the first phrase.”³³

³² Notable cases include: *Dahlab v. Switzerland*, Eur. Ct. H.R. 449 (2001) and *Leyla Şahin v. Turkey*, 44 Eur. H.R. Rep. 5 (2007).

³³ A/C.3/SR.127, p404: 127th meeting of the 3rd session of the 6th Committee of the General Assembly meeting in Paris on 29 Nov 1948.

The truth of the matter, however, was more complex. The text of Article 18 presented a major change in the articulation of the concept of freedom of religion. Traditionally referred to in terms of “freedom of worship” and “free exercise of religion” the concept was defined rather apophatically as an obligation of the State, but its constituents remained implicit and open to different interpretations depending on where one stands. Article 18 introduced into the concept not only the freedom of thought and conscience, but the explicit freedom to change religion. As will be demonstrated here, in addition to the philosophical and religious drivers, this was primarily a politically motivated wording. Although agreed through a difficult consensus on essential values within the Drafting Committee, the two main components of the article were an emphasis on the right to change one’s religion and on the inner dimensions of conscience and belief. Both elements emanate from two specific interests and intellectual currents of the postwar era of the late 1940s. In its final articulation, Article 18 represented the crown jewel for a group of actors who believed it was essential to their programs and aspirations.

1.8 The Genesis of Article 18

When the UDHR was proclaimed by the United Nations General Assembly in 1948, it consisted of 30 articles. Article 18 related to the freedom of religion. The current version of the text went through a long process of drafting and redrafting where every word was contested, debated, and elaborated upon over a period of two years. The driving consideration among the members of the Drafting Committee was to express this right in a way that transcended issues of race, gender, and majority/minority status.

As discussed earlier, in its early meetings, the Drafting Committee had to work with two documents; one was the draft outline of the Secretariat prepared by the Division of Human Rights (headed by John Humphrey) and the other was a UK proposal for an international bill of rights³⁴. The original text on freedom of religion was proposed as article 14 in the outline of the Secretariat and submitted to the Drafting Committee.

Initial text: Article 14³⁵

There shall be freedom of conscience and belief and of private and public religious worship.

UK Text: Article 13³⁶

1. Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief.
2. Every person shall be free to practice, either alone or in community with other persons of like mind, any form of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and freedoms of other persons.
3. Subject only to the same restrictions, every person of full age and sound mind shall be free to give and receive any form of religious teaching and to endeavour

³⁴ E/CN.4/AC.1/4, dated 5 Jun 1947

³⁵ Text of the Secretariat proposed in the original draft outline, E/CN.4/AC.1/3, p6 on 4 Jun 1947

³⁶ E/CN.4/AC.1/4, p10

to persuade other persons of full age and sound mind of the truth of his beliefs, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

Final text: Article 18³⁷

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.

The members of the Committee were split on how to reconcile the two drafts of the Secretariat and of the UK. Dr Chang (China) maintained that the discussion should start with the Secretariat draft and then go on to consider other articles proposed by other members. Dr Malik, in contrast, suggested that the UK document be used as a formal basis for discussion and that the Secretariat document be used as a material basis. The Secretariat document, Dr Malik felt, did not contain sufficient reference to the dignity of man and he suggested that the Committee, make “extensive use of the proposals of the United Kingdom, and then turn to the Secretariat outline to fill out and complete its draft.”³⁸ Section III of the Secretariat document included a collection of national constitutions submitted by various States for consideration by the drafting committee as supporting material. Many States, including several Islamic States, submitted copies of their national constitutions. Dr Malik pointed out that since the UK had no written Constitution,

³⁷ Final and current text, General Assembly Resolution (A/RES/217(III)), on 10 Dec 1948

³⁸ E/CN.4/AC.1/SR.2, p5

“therefore it would be an act of injustice not to give them a special chance to present their own ideas in writing and to utilize their proposals extensively.”³⁹ However, the Chairman (Mrs. Roosevelt), disagreeing with Malik’s proposal, suggested that the Committee take articles presented in the Secretariat outline as a basis of its work because this took into account many other documents which had been submitted by States and organizations to the Commission on Human Rights. She suggested referring to other documents when there appeared to be a similarity between them.

In subsequent meetings the Drafting Committee discussed Article 14 of the Secretariat Draft Outline and Part II Article 13 of the United Kingdom Draft, along with the Cassin redrafts and other suggestions. Dr Malik explained during the Committee’s tenth meeting, that what he liked about the UK draft was its mention of the right “to change belief.” Without this he argued, there could be no freedom, and further stated that this right to change one’s mind “on any question, without any legal recrimination is most important.”⁴⁰ Professor Koretsky (USSR) felt “that Article 14 of the Secretariat draft was unobjectionable substantively but that the UK draft Article seemed to him to be too detailed.”⁴¹ Professor Cassin (France) cautioned against attempting to make too detailed a text because the problem “was to have all nations of all civilizations accept certain common principles.”⁴²

At the eighth meeting the Drafting Committee discussed the text redraft proposed by the representative of France (Article 20). Dr Malik commenting on the first part of the text argued that to use the words “absolute and sacred” might be justified in connection to the liberty of worship, conscience, and thought but not with any other liberty. He further felt it important that

³⁹ *ibid*

⁴⁰ E/CN.4/AC.1/SR.3, p3

⁴¹ E/CN.4/AC.1/SR.3, p2

⁴² E/CN.4/AC.1/SR.3, p4

the Drafting Committee recognizes “the fundamental human right for differing fundamental convictions, as in religion, to exist in the same national entity.”⁴³ He argued that since by international law a single nation is obliged to “recognize the diversity of fundamental points of view on ultimate matters” he believed that this should “be considered an essential and fundamental human right.”

At the tenth meeting of the Drafting Committee, the Chairman (Mrs. Roosevelt) read Article 13 of the United Kingdom draft, along with Article 14 of the Secretariat draft outline. Mr. Harry (Australia) said he would prefer the longer and more explicit form to be included in the Convention. Dr Malik (Lebanon) agreed with the Australian Representative because “this was a matter of the utmost importance, in the stating of which the Drafting Committee could not be too explicit.” He said he would also “like to see stressed the notion of the autonomy of religious sects and orders, the right of these sects to hand down their teachings with absolute autonomy of conscience, and their liberty to perpetuate their own modes of life without interference.”⁴⁴

It was decided that for the next meeting of the Drafting Committee, Professor Cassin would prepare a revised draft of his proposals for Articles to be included in the Declaration. The thirteenth meeting of the Drafting Committee continued its discussion of the revised suggestions submitted by the Representative of France.⁴⁵ His proposed text for the article on freedom of religion was:

Article 20

The individual freedom of conscience, belief and thought is
an absolute and sacred right.

⁴³ E/CN.4/AC.1/SR.8, p13

⁴⁴ E/CN.4/AC.1/SR.10, p10

⁴⁵ E/CN.4/AC.1/SR.13

The practice of a private or public worship and the manifestations of different or varying convictions can be subject only to such limitations as are necessary to protect public order, morals and the rights and freedoms of others.

The Chairman thought that it was clear from the first sentence that persons had complete freedom of conscience and belief. Hence, the phrase in the second sentence relating to manifestations of different convictions, had no particular meaning and she would like to see it deleted. Professor Cassin explained that the article was trying to take into account the fact that manifestations of convictions captured a set of concerns distinct from worship, including, for instance, manifestations of philosophical opinions.

Dr Malik added that the fundamental freedom to change one's opinions and beliefs must be included here. He suggested the following wording for the first sentence:

Individual freedom of thought and conscience, [to hold or change](#) beliefs, is an absolute and sacred right.

The Chairman did not see the point of this addition and said that "freedom of conscience and belief" implied that one could change one's beliefs⁴⁶. But Dr Malik explained that he wished, as alternatives, the phrasing of the representative of France with the changes suggested by himself, and the suggestion made earlier by the Representative of the UK. Mr. Wilson (UK) had

⁴⁶ E/CN.4/AC.1/SR.13, p19-20

earlier maintained that the United Kingdom proposal covers all the points raised and it would be useful to use a shortened version of its Articles.

Malik repeatedly insisted on including the phrasing of the UK proposal as it gave him the bridge he needed to the freedom “to change belief”. The text he was referring to here was paragraph 1 of Article 13 of the UK proposed declaration which read:⁴⁷

Every person shall be free to hold any religious or other belief dictated by his conscience [and to change his belief](#).

Mr. Wilson (UK) stressed further “the importance of the right of every person to give and receive every form of religious teaching”. This, he pointed out, was provided for in the UK proposed text but not in the text proposed by the Representative of France.⁴⁸ The Chairman stated that three alternatives would be submitted to the CHR, the original text by the Representative of France, the text as modified by the Representative of Lebanon, and the text of the UK Representative.

The UK representative, interested in safeguarding the proselytizing activities of the missionaries in the British colonies was clearly keen on emphasizing the right to change religion, and the right to promote one’s religious teaching. Christian missionary organizations operating under the protection of French and British colonial administrations across Africa and the Middle East were one of the main actors who had a major stake in defining the raw concept of ‘freedom of religion.’ Saba Mahmoud demonstrates how the genealogy of this ‘freedom’ has been

⁴⁷ E/CN.4/AC.1/4, p10, of 5 Jun 1947 - Text of the UK proposed draft

⁴⁸ E/CN.4/AC.1/SR.13, p20

intertwined with the exercise of Western power first, in its exposed Christian form and later repackaged within the secular.⁴⁹ She illustrates how the construct of the ‘religious minority’ has shaped the formulation of religious freedom in international law. She argues that the history of the contemporary concept of religious freedom in the Middle East has played a significant role in its development as a universal concept. For missionaries in the areas under British rule ‘religious liberty’ meant the freedom to proselytize and secure religious conversion. The struggle to achieve this liberty, however, was elevated into a universal struggle only with the emergence of international human rights.

The records of missionary institutions, as Laura Robson points out, and their contributions to these debates, is another British source that has not yet received much attention from scholars of mandate Palestine.⁵⁰ Her research in the archives of the Church of Missionary Societies (CMS) reveals another aspect of the role played by missionary interests. In 1928 Reverend F. S. Cragg, inspired by the ideas of CMS prominent secretary Henry Venn (d. 1873) directed his attention to the promotion of Venn’s idea of “native clergy” in Palestine. Venn wanted to have independent local churches headed by a local clergy. Cragg noted how that represented “a great opportunity in Galilee for the evangelization of Moslems.”⁵¹ And that “there is no question that the native christians [*sic*] of Galilee are now ready to take their share in Moslem evangelization.”⁵²

Saba Mahmoud argues that the discourse of religious liberty in the Middle East has historically been closely linked to the subjugation of national sovereignty by foreign super

⁴⁹ Saba Mahmood, “Religious Freedom, the Minority Question, and Geopolitics in the Middle East,” *Comparative Studies in Society and History* 54, no. 2 (2012): 418–46.

⁵⁰ Robson, Laura. *Colonialism and Christianity in Mandate Palestine*. Jamal and Rania Daniel Series in Contemporary History, Politics, Culture, and Religion of the Levant. 1st ed. Austin: University of Texas Press, 2011. P130

⁵¹ *ibid*

⁵² *ibid*

powers. Similarly, Robson's work demonstrates how the role of the Christian missionaries in mandate Palestine, intersected with British political plans. Both had a lot to gain from creating a shift from the supra-religious nationalism of the Palestinian elite to a sectarian political landscape. A strategy that, arguably, the State of Israel continues to pursue in the larger middle east today.

1.9 Malik's Global Allies

Dr. Malik was an influential presence within the Drafting Committee. In addition to being a fierce opponent of communist ideas, his religious convictions and aspirations played a major role in his activities. Linde Lindkvist describes Malik's philosophical and religious motivations and argues that in addition to his own convictions, his struggle for the right to change one's religion was spurred by one of his principal allies in the drafting process: the international ecumenical movement.⁵³ Lindkvist describes how in 1947, British Protestants tried to convince the United Nations Special Committee for Palestine (UNSCOP) to include the right to change religion in the Partition Plan for Palestine. And how they emphasized that the most central aspect of 'religious liberty' was the right to change one's religion.⁵⁴

A very influential figure of the ecumenical engagement with international human rights was Mr. O. F. Nold, who attended most sessions of the CHR for the Commission of the Churches on International Affairs (CCIA) and established contacts with the delegates.⁵⁵ Official meeting records of the CHR show that Mr. Nold has played an important role in defining the components of religious freedom as it was being drafted in the Declaration. Speaking before the

⁵³ Lindkvist, p438

⁵⁴ Lindkvist, p439

⁵⁵ Lindkvist, p440

6th meeting of the Working Group on the Declaration, Mr. Nold described religious freedom as having five aspects: 1. Freedom of worship; 2. Freedom of observance; 3. Freedom of teaching; 4. Freedom of association; 5. Freedom of practice. He asked the Working Group, not to leave out any of these five points, nor a reference to their application.”⁵⁶

But the intellectual force behind this focused ecumenical engagement was the Baptist missionary and scholar, Searle Bates, who in 1945 compiled a lengthy monograph, “*Religious Liberty: An Inquiry*”, commissioned by the Federal Council of Churches and the Foreign Missions Conference, wherein he used the example of “Moslem Countries” to define what religious liberty ‘was not’: “Orthodox Islam is the contrary of religious liberty and finds no room for the concept as developed in Western lands. In principle it forbids apostasy under dire penalty and provides for change of faith only toward Islam.”⁵⁷

1.10 Malik’s Local Concerns

Edward Said whose mother was a first cousin of Charles Malik’s wife, mentions Malik as someone “who was to play quite an important role in my life and the development of my ideas.”⁵⁸ He described him as a “polarizing charismatic figure” who “had an unmistakable confidence, an assertive bearing, and an extraordinarily overpowering personality” which earned him the name ‘divine Charles’, as much for his brilliance as for his religious penchant.⁵⁹

Said had great admiration for his personality initially, but increasingly came to view him as a troubling figure.⁶⁰ “By the 1970s he had turned himself into the symbol and the outspoken intellectual figurehead of everything most prejudicial, conflicted, and incompatible with the Arab

⁵⁶ E/CN.4/AC.2/SR.6, 6th meeting of the Work Group on the Declaration 2nd session of CHR on 9th Dec 1947.

⁵⁷ Quoted in Lindkvist, p441.

⁵⁸ Said, p170

⁵⁹ Said, p264

⁶⁰ ibid

and largely Islamic Middle East.... Later I understood that Nasser's approach to the Soviet Union coupled with his Islamic faith were the real problem for Malik; hidden beneath the discourse of statistics and demographic trends were Communism and Islam.”⁶¹ Said describes his “regret, mystification, and bottomless disappointment” in Malik's intellectual and political trajectory. Having started his career in the 1940s as an Arab spokesman for Palestine at the U.N, he turned later into an anti-Palestinian architect of the Christian alliance with Israel during the Lebanese Civil War.⁶²

Malik always perceived the Christians of Lebanon as a threatened community within the wider demographic structure of the Middle East. This was something that dominated his thinking and he often expressed in his writings. In an article he published in 1980, Malik expresses his concerns for Christianity in the East, and warns “if liberal Christianity tumbles in Lebanon, which is its last stronghold in the East, then it is finished in the whole Middle East, even in Asia and Africa.”⁶³ Antoine Najm, a Lebanese author and a former ideologue of the Lebanese Falangists narrates of a meeting he had with Charles Malik in 1981 where Malik expressed to him his visions for Lebanon and “liberal Christianity”⁶⁴. Malik believed that the Maronites of Lebanon enjoy a cultural exceptionality that is divinely anchored and maintained. One day, he told Najm, the Maronites will be called upon to play their divinely ordained task. This sacred task is to be the instrument for converting the Jews into Christianity. The oriental and linguistic resemblance common to the two will enable the Maronites to convert the Jews.

⁶¹ Said, p280

⁶² Said, p264

⁶³ Alkatheer Al matloub, by Charles Malik in Arabic online at <https://www.lebanese-forces.com/2017/02/08/the-maronite-charles-malek/>, accessed 12 Oct 2017 and [also here](#) accessed 20 Dec 2017.

⁶⁴ Alwaqe' Alwujudi Al maseehy fi Lubnan, by Anoine Najm in Arabic at <http://www.aramaic-dem.org/Arabic/Archev/Anton-Nejm/1999.htm> accessed 12 Oct 2017

1.11 Freedom of Religion at the General Assembly

After the long drafting process, the General Assembly of the UN received the final draft for discussion. When Article 18 came up, Mr. Baroody (Saudi Arabia) called the attention of the meeting “to the fact that the declaration was based largely on Western patterns of culture, which were frequently at variance with the patterns of culture of Eastern States. That did not mean, however, that the declaration went counter to the latter, even if it did not conform to them.”⁶⁵

Because Saudi Arabia had not been represented at the Drafting Committee, nor was the Saudi delegate involved in its drafting activities, Mr. Baroody was now “surprised to find that the Commission on Human Rights had sponsored an article wherein, after stating those three freedoms [of thought, conscience and religion] it had concentrated exclusively on religion and the right to change religious beliefs, without any mention of the right of the individual to change his or her mind in the other two areas mentioned.” He, therefore, urged that the words “freedom to change his religion or belief” be “omitted” from the text. Explaining the reasons behind his position, Mr. Baroody pointed out that throughout history missionaries had often abused their rights by becoming the forerunners of political intervention, and there were many instances where peoples had been drawn into murderous conflict by the missionaries' efforts to convert them. He gave the Crusades as an example and recalled that religious wars between Catholics and Protestants had caused, in Europe, the death of Millions.⁶⁶

Some delegates including Mr. Abadi (Iraq) and Mr. Kayaly (Syria) also felt that the statement that “everyone has the right to freedom of thought, conscience and religion” was sufficient and therefore, they supported the Saudi position. The Saudi Arabian delegation did not think this right needed to be spelled out quite so clearly. Because the article went out of its way

⁶⁵ AC.3/SR.91, p49

⁶⁶ A-PV.183

to mention this specific right, the Saudi delegation felt that it "violate[d] the spirit of the other articles of the Declaration. The article would have the unfortunate effect on many people in many parts of the world and there did not actually seem to be any need for such an insertion”⁶⁷

The Pakistani delegate praised the declaration but also had few observations in connection with the freedom to change one's religion. Pakistan, he said was an ardent defender of freedom of thought and he recalled that the Koran expressly said: “Let he who chooses to believe, believe, and he who chooses to disbelieve, disbelieve.”⁶⁸ He maintained, however, that the Article had given rise to anxiety among certain delegations because of the actions of the missionaries. He was glad to pay tribute to the work carried out by Christian missionaries... but he added that it was undeniable that their activity had sometimes assumed a political character which had given rise to justifiable objections.⁶⁹

In the final vote, however, all delegates from Islamic States (Afghanistan, Egypt, Iran, Iraq, Lebanon, Pakistan, Syria, Turkey and Yemen) voted for the resolution except the Saudi Arabian delegation which abstained based on its reservations to Article 18 and Article 16 (equal marriage rights).

⁶⁷ Morsink, J. 1999, *The Universal Declaration of Human Rights –Origins, Drafting and Intent*, University of Pennsylvania Press, Philadelphia.

⁶⁸ Qur'an 18:29 –verse number reference was not provided in original document but added here.

⁶⁹ A/PV.182

1.12 Table 2 - Evolution of Article 18 from drafting to adoption

4 Jun 1947 Text of the Secretariat proposed in the original draft outline (Humphry's draft) (E/CN.4/AC.1/3, p6)	Article 14 There shall be freedom of conscience and belief and of private and public religious worship.
5 Jun 1947 Text of the UK proposed draft (E/CN.4/AC.1/4, p10)	PART II - Article 13 1. Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief. 2. Every person shall be free to practice, either alone or in community with other persons of like mind, any form of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and freedoms of other persons. 3. Subject only to the same restrictions, every person of full age and sound mind shall be free to give and receive any form of religious teaching and to endeavour to persuade other persons of full age and sound mind the truth of his beliefs, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.
20 Jun 1947 Text as proposal by the representative of France (the Cassin redraft) 1st Session of the DC E/CN.4/AC.1/W.2/Rev.2	Article 20 The individual freedom of conscience, belief and thought is an absolute and sacred right. The practice of a private or public worship and the manifestations of different or varying convictions can be subject only to such limitations as are necessary to protect public order, morals and the rights and freedoms of others.
1 Jul 1947 Report of the 1st session of the Drafting Committee to the 2nd Session of the CHR (E/CN.4/21 in Annex F)	Article 20 Individual freedom of thought and conscience, to hold or change beliefs, is an absolute and sacred right. The practice of a private or public worship, religious observances, and manifestations of differing convictions, can be subject only to such limitations as are necessary to protect public order, morals and the rights and freedoms of others. Alternative- Text (United Kingdom) 1. Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief. 2. Every person shall be free to practice, either alone or in community with other persons of like mind, any form' of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interests of humanity and morals, to preserve public order and to ensure the rights and. freedoms of other persons. 3. Subject only to the same restrictions, every person of foil age and sound mind shall be free to give and receive any form of religious teaching and to endeavour to persuade other persons of full age and sound mind of the truth of his "beliefs, and in the case of a minor the parent or guardian shall be free to determine what religious teaching he shall receive.

10 Dec 1947 Report of the Working Group on the Declaration to the 2 nd Session of the CHR E/CN.4/57	Article 20 Individual freedom of thought and conscience, to hold and change beliefs is an absolute and sacred right. Freedom of belief, of worship and of religious teaching is the right of everyone.
17 Dec 1947 Report of 2nd Session of the CHR to the ECOSOC (E-600)	Article 16 1. Individual freedom of thought and conscience, to hold and change beliefs, is an absolute and sacred right. 2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.
21 May 1948 Report of the 2nd session of the DC to the CHR (E/CN.4/95)	Article 16 1. Individual freedom of thought and conscience, to hold and change beliefs, is an absolute and sacred right. 2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in teaching, practice, worship and observance.
28 Jun 1948 Report of the 3rd Session of the CHR to the ECOSOC (E/800)	Article 16 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.
07 Dec 1948 Report of 3 rd Committee of the 3rd Session of the General Assembly (A-777) Draft UDHR	Article 19 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.
10 Dec 1948 General Assembly Resolution (A/RES/217(III)) Final and current UDHR text	Article 18 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.

Chapter 2. Rights in Islamic Discourse

2.1 Introduction

It was only in the latter half of the 20th century that Muslim intellectuals came face to face with the concept of human rights. Islamic participation in the development of the UDHR and the international bill of human rights remained minimal and mostly within a reactive mindset. The principles of freedom of religion and the right to convert from Islam to another faith were among the major sticking issues. This chapter will examine two lines of discourse on human rights.

- Rejectionist approaches: Maududi, Qutb, Khomeini, resist human rights discourse as a modern Western secularist project incompatible with the Islamic tradition.
- Apologetic approaches embrace universal human rights discourse but highlight the foundational historical and juridical significance of Islam for human rights. In this context, I will be examining the adoption by the Organization of the Islamic Conference of the *Cairo Declaration on Human Rights in Islam* in 1990 which diverged significantly from international human rights standards, particularly on the freedom of religion. Some Muslim countries have ratified human rights conventions subject to reservations regarding various central provisions. This discussion will focus on the shortcomings of this ‘Islamic State’ discourse and its failure to propose a successful formula to meet the challenge of human rights and freedom of religion. The discussion will also zoom into the specific subject of Article 18 of the UDHR and present treatments by modern Islamic scholars of apostasy and the freedom to change religion.

The theoretical backdrop for all the discussions in this chapter is the Islamic system of jurisprudence known as *usul-ul-fiqh*. The discussions on grounding modern Human Rights in the Islamic tradition, the adoption by the Organization of Islamic Cooperation (OIC) of an alternative “Islamic” declaration of human rights, and the freedom to change religion, are all premised on this system of making laws in Islam. The discussion will highlight the limits of what can be achieved by the traditional system of Islamic jurisprudence despite the progressiveness of the scholars undertaking the task.

2.2 *Usul-ul-fiqh* – The basis of Islamic law

Beginning with the death of the prophet Mohammad and the end of revelation, the Muslim legal tradition struggled to answer questions about the sufficiency of human reason to guide Muslims in their practical and spiritual conduct to fulfil God’s mandate on earth. Virtually from the beginning, and arguably, until today, the answers were not in favour of reason alone. In the preamble of the 1981 Universal Islamic Declaration of Human Rights (UIDHR) the authors expressly proclaim in the Arabic version that they believe that human reason, independent of God’s guidance and inspiration, is insufficient to provide the best plan for human life.⁷⁰

Traditional thinking postulated that human rationality is in constant need of guidance from the One who created the world and alone knows all its secrets. This guidance must be sought in the knowledge revealed by God in the Qur’an and through his prophet. The ultimate source of Islamic law, therefore, was this marriage between reason and revelation. The theory of

⁷⁰ Mayer, p48

law that reflected the concerns and goals of this “marriage” was articulated by Muslim jurists as *Usul-ul-fiqh*.⁷¹

In this chapter, I discuss a number of scholarly approaches to the issue of rights, freedom of religion, and apostasy, all informed by *usul-ul-fiqh* and framed within its constraints. Therefore, a brief definition of this methodology is in order. *Usul-ul-Fiqh* is used to derive rulings from the main sources of law which are:

- The **Qur'an** containing God's revelation to the prophet recorded in the text of 114 chapters (*suras*).
- The **Sunna**, understood as accounts of narrations about the prophet, whether of acts, sayings, or all that he has tacitly approved. This also includes reports describing his physical attributes and character.
- **Consensus (*Ijma* ')** refers to the consensus of the companions of the prophet after his death, whenever the need arose for new rulings (*ahkam*) necessitated by cases for which no solutions could be found in the Qur'an and Sunna. If the companions were to agree unanimously upon a solution, then the assumption is that this agreement must have been based upon a teaching of Mohammad of which they all knew. Consensus as an instrument, therefore, bestows on a ruling the legal strength of a Qur'anic verse or a *hadith* of the prophet. After the time of the companions, other types of *Ijma* ' were devised such as consensus of Muslim scholars.
- **Analogical Deduction (*Qiyas*)** understood as the application of a ruling from an original case to another case on which the law is silent, provided the two cases share a common effective reason (*'illah*).

⁷¹ Hallaq, 2009, p14-16

2.3 Grounding Rights in Islam

This part of the chapter will discuss features of the encounter between Islamic theology and modernity and outline the implications for the application of human rights. The discussion will feature the ideas of some of the leading scholars trying to anchor the concept of human rights in the Islamic tradition.

2.3.1 Abdulaziz Sachedina⁷²

Sachedina explains that what modernity stands for and what makes it highly problematic for the traditionalist is the liberty it gives to reason to interpret sacred scriptures and further relativize and contextualize their meaning. This is traditionally perceived as a threat to the integrity of Islamic revelation and textual tradition.

Just as traditional scholars saw it as a threat, so do many governments of Islamic states who share in the suspicion that human rights advocacy will undermine the public role of religion and undermine the process on which they govern. They use this as an excuse to resist it and deny its legitimacy.

In the encounter with the human rights discourse and UDHR in specific, the traditionalists raise two main objections, both relating to Article 18 and the freedom of religion, and reflect two views anchored in Islamic theology; one view regards human beings as endowed by God with the ability to act and choose as free agents, while the other denies this capacity to navigate a moral path autonomous from explicit divine commands.

To anchor human rights ideas and practices in the Islamic tradition, one needs to work at the level of universal concepts in Islam. This will inevitably lead to the complex theological

⁷² Dr. Abdulaziz Sachedina is Professor and IIIT Chair in Islamic Studies at George Mason University in Fairfax, Virginia.

debates among Muslim theologians of the 2nd century following the death of the prophet, represented by two trends; the rationalist *Kalam* of the Mu'tazilah and the orthodox *Kalam* of the Ash'arites. The orthodox trend denied human reason any ability to understand the rightness or wrongness of an act independent of God's revelation, and consequently rejected the concept that autonomous individuals, can freely determine the course of their life. Human beings were born to obey God, who alone determined what was good or bad for them. In fact, without God's intervention there was no way for a person to know the moral worth of his or her own actions. God's commands and prohibitions establish the good and the evil, respectively. Carried to its logical extreme, this position denies any inclusive doctrine of human moral worth and human dignity outside the boundaries of faith⁷³

The Mu'tazilites on the other hand, recognized reason as God's gift to humanity and its tool to cultivate moral consciousness and develop moral agency. They anchored this doctrine in God's justice; humanity requires God's guidance for establishing justice on earth. The comprehensive theological doctrine of justice includes providing necessary guidance to all human beings, without exception, for establishing a just society. It includes their empowerment with moral cognition and responsibility which is not delimited by religious affiliation.

One of the main doctrines of the Mu'tazilite political ethics required the fulfilment of human moral duty to establish the good and prevent evil (*al-'amr bi-l-ma'ruf* and *al-nahy 'an-l-munkar*) in the external public domain as well as in private. It conferred on the human individual the freedom of will to distinguish right from wrong and to make choices. However, the development of this natural rationalist notion was defeated by the traditionalist Ash'arite

⁷³ Sachedina 2009, p60

theology during the Abbasid era.⁷⁴ Ash'arite theology postulated the absolute will of God and offered no space for moral law outside the boundaries of revelation. The morality of human action was measured against the stipulations of revelations alone and reason had no say in it.

The philosophic tradition that followed featured philosophers like al-Farabi, Avicenna, and Averroes who tried to “rationalize” the process of revelation. They agreed that the divine law must be accepted by all, however, after the death of the prophet it was only attainable through the human intellect. Their views were opposed and refuted on Ash'arite grounds most prominently by al-Ghazali and even the study of philosophy became suspect.

The Mu'tazilite view of *Kalam* and the philosophic tradition did not completely die out however, and have reappeared in the modern discourse of Sunni Muslim scholars of the 19th century in advocating inherent human dignity and rights. This line of thought extended from al-Afghani and his student Mohammad Abdu in the 19th century to a new generation of neo-Mu'tazilite thinkers in the 20th century. The Mu'tazilite theology, with its notions of human reason as agent of moral epistemology can be seen to provide the human rights advocate with a necessary access route solidly anchored in the text of the Qur'an and the language of the early tradition. This is particularly helpful for the notion of freedom of religion as detailed in Article 18. It is important to remember, however, that the Mu'tazilite arguments emanate from a selective reading of that tradition. Nevertheless, its importance lies in its capacity to connect the contemporary human rights discourse to a historical theological debate at the foundation of the Islamic tradition. This will no doubt strengthen the position of Muslim advocates and embolden their argument as internal to the tradition, rather than imposed from outside. This could also

⁷⁴ The term *Mihna* (trial or testing), is used to refer to the period of religious persecution instituted by the 'Abbasid Caliph al-Ma'mun in 833 CE in which religious scholars were punished, imprisoned, or even killed unless they conceded the Mu'tazilite doctrine of the created nature of the Qur'an

provide counter arguments for human rights advocates against accusations of engaging in relative morality, argues Sachedina.

Another doctrinal concept provided by Sachedina relies on the notion of *fiṭra*. As featured in the Qur'an and explained in the *Hadith*, *fiṭra* is the universal moral capacity inherent in human beings prior to any religious or political affiliation which Sachedina argues provides an analogue to natural law in Western discourse. Islamic religious thought is based on the human ability to know right from wrong. Through God's special endowment to all of humanity. Each and every person on earth is endowed with a nature (*fiṭra*), which is the receptacle for intuitive reason that guides humanity to its spiritual and moral well-being.⁷⁵ On this notion of divine endowment, moral cognition is innate to human nature and gives human beings the capability to discern moral law. There is no discussion of natural law or natural rights in Muslim theology. But the Qur'anic notion of universal morality with which all human beings are blessed and held accountable to God, regardless of their faith commitment or even lack of it, makes it legitimate to speak about an Islamic idea of natural law. The moral law that is discernible through the naturally endowed minimal knowledge of good and evil, then, is universal and can be discovered by all due to the simple fact of sharing a common humanity through creation. Through *fiṭra*, therefore, humans are endowed with the natural capacity of intuitive reason. Innate to this nature is moral cognition enabling human beings to discern moral law, universal and equally discoverable by all humans.

Ash'arite theological doctrine stipulated that the will of God is the ultimate source of morality. This was developed into a juridical tradition which perpetuates discriminatory attitudes toward women and non-Muslim minorities. The Mu'tazilite doctrine on the other hand rejected

⁷⁵ Sachedina 2009, p52

this extreme view of absolute sovereignty of God and furthered human responsibility. The Mu‘tazilite theology challenged the view that Islamic Shari‘a was merely an expression of divine will, but also viewed it as an expression of the divine morality conferred on humanity through the very creation of human nature (*fiṭra*). This Mu‘tazilite doctrine, argues Sachedina, is truly universal and immutable as it is firmly rooted in the Qur'an, and as such, it establishes the authenticity of natural law in Islamic theological ethics and provides the human right advocates with another genuine argument.⁷⁶

2.3.2 Khaled Abou El Fadl⁷⁷

In Abou El-Fadl’s estimation, the emergence of human rights represents one of the most formidable challenges to Muslims in modern times. The roots for this uneasy relationship lie in a range of causes that characterized modern Islamic history: colonial legacies, tyrannical regimes, and Western double standard with regards to human rights, and backward-looking nature of some Islamic reform movements.

The early encounters between Muslims and the Western conceptions of human rights took place long before the institution of the United Nations and the drafting of the UDHR. These were transmitted by colonial regimes, facilitated by missionaries and Orientalist scholars. This experience, has profoundly marked, perhaps stained, the conception and reception of human rights in the Muslim imagination, and shaped the Islamic narrative on the subject. Subsequently, it turned the field of human rights into an arena for cultural, social, and religious confrontation. Fundamentalist reformers like Al-Mawdudi and Sayyid Qutb saw it as nothing more than an anti-

⁷⁶ Sachedina 2009, p113

⁷⁷ Dr. Khaled Abou El Fadl is Professor in Islamic Law at the UCLA School of Law where he teaches International Human Rights. He is also the Deputy Chair of the Islamic Studies Interdepartmental Program at UCLA.

Islamic cultural invasion and a Western ploy to weaken Muslims and keep them in perpetual inferiority.

The initial response of modern Islamic intellectuals to the Human Rights challenge can be classified into two general groupings: the apologetic or the defiant puritans. Muslim apologists claimed Islam's inherent compatibility with international human rights, or even that Islam constituted a fuller and more coherent basis for human rights. Their common heuristic device often consisted of producing enumerations of Islamic rights, supported by a Quranic verse or a *hadith* and contrasted or correlated with articles of the UDHR and thus implying the redundancy of the latter.⁷⁸ The "apologetics", therefore, avoided the confrontation by claiming that all significant achievements of the human rights movement were realized first by Muslims. In their view Islam liberated women, guarded human rights, and introduced democracy.

The "defiant puritans" on the other hand, were far more anti-Western than pro-Islamic. Instead of being concerned with exploring Islamic values, or the Islamic historical experience, their focus was to be independent from the West. Their mode of functioning depended on constructing Islam, or a reduced version thereof, as antithetical to the West. This informed much of their views on the universality of human rights. Therefore, their value system was not derived from normative Islamic values and as such "Islam was simply the symbolic universe in which they functioned".⁷⁹

With the pendulum swinging between the two types of response, early Islamist approaches remained superficial and the human rights discourse did not earn the serious philosophical and theological engagement it deserves. A serious analytical approach to the discourse was yet to be realized. Abu El Fadl believes "that even if Islam has not known a

⁷⁸ Abu El Fadl, p327

⁷⁹ Abu El Fadl, p310

human rights tradition similar to that developed in the West, it is possible, with the requisite amount of intellectual determination, analytical rigour, and social commitment, to demand and eventually construct such a tradition.”⁸⁰ He argues for a new paradigm to establish human rights on Islamic grounds and bridge the gap between human rights law and Islamic Jurisprudence. His approach is based on an analysis of the Islamic juristic tradition which relates to the rights of God (*huquq Allah*) vs. the rights of people (*huquq al-‘ibad*).⁸¹ The rights of God are rights retained by Him through an explicit designation to that effect. Only He can say how violations of these rights may be punished, and only He can forgive such violations. Furthermore, according to Islamic jurisprudence, all rights not explicitly retained by God accrue to the benefit of human beings. Violations against the rights of people may be forgiven only by people.

Muslim jurists take the position that if the rights of God and rights of people overlap, in most cases, the rights of people should prevail. The justification for this is that humans need their rights, and need to vindicate those rights on earth. God, on the other hand, asserts God's rights only for the benefit of human beings, and, in all cases, God can vindicate God's rights in the hereafter if need be. The fact that the rights of people take priority over the rights of God, on this earth, necessarily means that a claimed right of God may not be used to violate the rights of human beings. In this context, the commitment to human rights does not signify a lack of commitment to God, rather, human rights become a necessary part of celebrating human diversity, honouring the vicegerents of God, achieving mercy, and pursuing the ultimate goal of justice. This approach, Abu El Fadl concludes, can lead to an authentic commitment to human rights emanating from Islamic theology.

⁸⁰ Abu El Fadl, p115

⁸¹ Abu El Fadl, p321

2.4 Maududi, Qutb, and Khomeini

In the late 20th century era, rejectionist approaches have attracted attention both within and without the Muslim public sphere. Abu al-'A'la Maududi of India, Sayyed Qutb of Egypt, and Ayatollah Khomeini of Iran are figures who have exerted an undeniable influence on the Islamic thought of the twentieth century and the effect of whose ideas continues to influence the current discourse of Islamist movements today. For some non-Muslim proponents of a clash of civilizations approach, they also serve as symbols for the inherently problematic nature of the Islamic stance towards basic human rights and freedoms.

In his pamphlet titled “Human Rights in Islam”⁸² Maududi starts with a polemical criticism of “the people in the West” who “have the habit of attributing every good thing to themselves.” He rejects claims that the concept of human rights emanated from the Magna Carta which “itself came into existence six hundred years after the advent of Islam,” and asserts that “the practical proof and demonstration of these concepts can only be found at the end of the eighteenth century in the proclamations and constitutions of America and France.” He further maintains that, later, when “there appeared a reference to the basic human rights in the constitutions of different countries”, those rights remained only “on paper.”

Maududi laments that in modern times, the United Nations is very divided that it “can now be more aptly and truly described as the Divided Nations.” Although it has produced the Universal Declaration of Human Rights and passed a resolution against genocide, these remain “just an expression of pious hope” where the UN has neither physical nor moral means of enforcing. In short, it is not clear whether Maududi rejects the modern formulation of human

⁸² Maududi, Syed Abul A'la. *Human Rights in Islam*. Leicester: Islamic Foundation, 1976.

rights more because they are “Western” or because he views them as an ideal that cannot be realised. The latter is a view he ironically shares with several sceptics in the West as well.⁸³

In contrast to the Western approach, Maududi explains that “when we speak of human rights in Islam we really mean that these rights have been granted by God” not by “kings or the legislative assemblies.” As such, “no legislative assembly in the world, or any government on earth has the right or authority to make any amendment or change in the rights conferred by God.”

Maududi’s opposition to human rights is rooted in his belief in the “Sovereignty of God” (*hakimiyya*) as opposed to Sovereignty of man. This thinking emerges from the idea that everything belongs to God alone and falls under divine sovereignty. God alone is the true lawmaker and legislator and any law derived from human reason or emanating from historical experience is essentially false and is, therefore, rejected. This modern conception of *hakimiyya* by Maududi had a great influence on Qutb in Egypt and has been as a powerful driver of Islamist movements since the early twentieth century.

Accordingly, Maududi asserts that “resolutions of the United Nations cannot be compared with the rights sanctioned by God” since these “are a part and parcel of the Islamic faith. Every leader or administrator who claims to be a Muslim will have to accept, recognize and enforce them” and if they don’t “the verdict of the Holy Quran for such governments is clear and unequivocal.” Here Maududi cites the three verses that define his approach (adopted later by Qutb) and exemplify the main exegetical pillar of political Islam:

“Those who do not judge by what God has sent down are the dis-Believers (*kafirun*). (Q5:44). The following verse also proclaims: “They are the wrong-doers

⁸³ In “Human Rights in the New Millennium” given at the London School of Economics and Political Science, October 29, 2009, Noam Chomsky lists several prominent political figures expressing their contempt for some human rights including the once US ambassador to the UN, Jeane Kirkpatrick, referring to them as “a letter to Sanata claus...”. At <https://chomsky.info/20091029/> accessed 25 Sep 2017

(*zalimun*)" (Q5:45), while a third verse in the same chapter says: "They are the evil-livers (*fasiqun*)" (Q5:47)."

The three verses in their full text contain the phrase 'judge by what God has sent down' and the Arabic verb translated here as 'judge' is '*yaḥkum*' which is used to mean '*to issue a legal decree*' as well as to mean '*govern*' in the modern sense of ruling a state. Mohammad Shaḥrur, whose work will be explored in the next chapter, argues that the concept of "God's Sovereignty" (*al-ḥakimiyy-al-ilahiya*) which originated with Maududi, was gradually developed by Qutb into an ideology using old terms to describe new concepts that blur the distinction between the legislative authority expounded in the legal verses of the Book and the executive authority of the modern state in governing and applying the law.⁸⁴ The Islamic jihadi movements continued to discredit Muslim societies and regimes based on this skewed reading of these Quranic verses.⁸⁵

Maududi cites Q2:256: "There should be no coercion in the matter of faith" as the source for freedom of conscience and conviction that "Islam gives to its citizens in an Islamic State." His understanding of this verse as an injunction is consistent with a traditionalist understanding in Islamic jurisprudence that this prohibits imposing Islam on non-Muslims but it does not include the freedom of Muslims to leave Islam or choose another religion as he has explained clearly in his earlier writings⁸⁶: "as regards Muslims, none of them will be allowed to change creed. In case any Muslim is inclined to do so, it will be he who will be taken to task for such a conduct, and not the non-Muslim individual or organization whose influence might have brought about this change of mind." Mohammad Shaḥrur argues that the traditional understanding of this verse is misguided; "No coercion" in the verse is to be understood as prescriptive not predicative;

⁸⁴ Shaḥrur 2014, p59-63

⁸⁵ Shaḥrur 2014, p95-96

⁸⁶ Sayyid Abul A'la Mawdūdī, *The Islamic Law and the Constitution*, trans. and ed. Khurshid Ahmad (Lahore: Islamic Publications. 2nd edn 1960, p297.

It is not to prohibit Muslims from imposing faith on others but to declare that “religion” and “coercion” are mutually exclusive, hence affirming the absolute freedom of individuals to choose or reject faith.⁸⁷

Ayatollah Khomeini:

As the architect of the Iranian Revolution of 1979, Ayatollah Ruhollah Khomeini was one of the most inspirational and enigmatic figures of the twentieth century. The Revolution placed Iran at the forefront of Middle Eastern politics and Islamic revival. For Khomeini, “the biggest threats posed to Islam and Iran – whether cultural, economic, political or military – emanated from the West.”⁸⁸ In his “Critical Introduction to Khomeini”, Moghaddam⁸⁹ asserts that, “Throughout his lifetime as a thinker, revolutionary and politician, Khomeini never quite defined ‘the West.’ As a notion in his discourse, the West at once came to designate cultural intrusion, political repression and enslavement; economic exploitation, imperialism and neo-colonialism; and American arrogance all wrapped into one concept.”⁹⁰

Khomeini has always focused on denouncing the West’s double standards and highlighting its claims of promoting and defending human rights as mere tools to fool the masses around the world while trampling on their dignity and robbing them of their freedom. In contrast to Maududi’s open hostility to human rights, Khomeini in his anti-Western rhetoric, presents himself as an advocate of the principle of human rights, but not in the way the West defines them, or tries to impose them on Muslims. In a speech addressing young jurists and stressing the need for Westernized intellectuals to re-orient themselves to Islam, Khomeini asks “...and see who the

⁸⁷ This is an understanding that Shahrur and Abdullah An-Na’im use in denying the validity of political Islamists’ arguments for the establishment of an Islamic state, since, like any other state, it will necessarily have to be based on coercion.

⁸⁸ Moghaddam, p156

⁸⁹ Dr. Arshin Adib-Moghaddam is professor in Global Thought and Comparative Philosophies at SOAS, University of London, and chair of the Centre for Iranian Studies at the London Middle East Institute. His official website is www.adib-moghaddam.info

⁹⁰ Moghaddam, p157

people are in the West that present themselves as the champions of human rights and what their aims are. Is it human rights they really care about, or the rights of the superpowers?" In addressing the "Society for the Defence of Human Rights", a body composed chiefly of jurists who objected to the activity of the Revolutionary Courts, he continues, "You should implement human rights as the working classes of our society understand them. Yes, they are the real Society for the Defence of Human Rights. They are the ones who secure the well-being of humanity; they work while you talk. The workers and the peasants, the Society for the Defence of Human Rights— they work while you write. None of you are actively struggling to enable men to attain their real rights." ⁹¹

Khomeini often referred directly to the UDHR in his speeches, and presented himself as a defender of the values it represented, while highlighting the disdain shown to those values by the Western states they claim to promote and their local allies. In early 1978 just as the revolution was gaining momentum he delivered a speech to that effect: "All the miseries that we have suffered, still suffer, and are about to suffer soon are caused by the heads of those countries that have signed the Declaration of Human Rights, but that at all times have denied man his freedom. Freedom of the individual is the most important part of the Declaration of Human Rights. But we see the Iranian nation, together with many others, suffering at the hands of those states that have signed and ratified the Declaration. The U.S. is one of the signatories to this document. ... But see what crimes America has committed against man. ..." ⁹² All these declarations they make, supposedly in favor of human rights, have no reality; they are designed to deceive. They draw up some pleasant-looking, high-sounding declaration with thirty articles relating to human rights and then neglect to enact a single one of them! The Declaration of Human Rights exists only to

⁹¹ Algar, p270

⁹² Algar, p213

deceive the nations; it is the opium of the masses. What we have said is true not only of America but also of Britain, another power that signed and ratified the Declaration of Human Rights.... it was Britain that brought Riza Shah to power, Riza Shah wished to expunge every trace of the *shari'a*, He forbade every form of Islamic propagation and deprived the people of all their liberties.”⁹³

As the American president at the time of the Iranian revolution, Jimmy Carter, was often personally targeted by Khomeini's speeches, something that continued after the revolution. In 1980 following the failed U.S. military attempt to rescue diplomats held hostage in Tehran, Khomeini stated that “Mr. Carter uses all means of coercion to violate human rights, using all conspiracies and schemes, including military intervention and economic sanctions, to prevent us from reaching and asserting our rights.”⁹⁴ In his discourse, Khomeini constantly associated the suffering of the Iranian people at the hands of the Shah with the Western powers paying only lip service to human rights. In allocating blame for the shooting of demonstrators in Qum in January of 1978, he exonerates the local police and declares “It is the Shah who determines everything; he is the real criminal. And it is the signatories to the Declaration of Human Rights who have imposed him on us.”⁹⁵ Khomeini's opposition to the West was not as deeply rooted as with Maududi or Qutb, who in addition to expressing their bitter resentment of Western domination, often castigated Western societies for their materialism, and viewed Western culture as decadent and ultimately morally inferior to Islamic culture. Khomeini's opposition seemed to be driven more by political exigencies than theologically based.

⁹³ Algar, p213, 215

⁹⁴ Moghaddam, p157

⁹⁵ Algar, p218

2.5 Islamic States, the Cairo Declaration (CDHRI), and Universality

In 1990, The Cairo Declaration on Human Rights in Islam (CDHRI) was adopted by the Nineteenth Islamic Conference of Foreign Ministers held in Cairo, Egypt, 31 July to 5 August. The 25-article declaration and its preamble were issued as Annex to Res. 49/19-P, to serve “as a general guidance for Member States in the field of human rights.” Article 22 states that “Everyone shall have the right to express his opinion freely in such manner as would not be contrary to principles of Shari‘ah.” Article 24 of the CDHRI states that “All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari‘ah.” And article 25 affirms that “The Islamic Shari‘ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.”

Despite its particular interpretation and conception of human rights, the CDHRI was presented by the OIC at the 1993 World Conference on Human Rights in Vienna.⁹⁶ A central debate at the Conference was over whether human rights were inextricably linked to Western culture and whether they could or should be universal. Mary Robinson, acting as General Rapporteur for the Interregional meeting organized by the Council of Europe in advance of the World Conference on Human Rights, was trying to walk a fine line in anticipation of the upcoming debate on universality. On the one hand she affirmed that “one of the most important aims of the World Conference will be to stress yet again the universality and indivisibility of human rights and to resist claims that the minimum standards contained in human rights instruments are essentially Western in nature and not appropriate to countries with different religions and cultural traditions.” At the same time, she stated “More thought and effort must be given to enriching the human rights discourse by explicit reference to other non-Western

⁹⁶ [A/CONF.157/PC/62/Add.18](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5917) – accessed 21 Sep 2017 at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5917

religions and cultural traditions.” She added, perhaps too optimistically, that by tracing linkages to “Islam or the Hindu-Buddhist tradition or other traditions, the base of support for fundamental rights can be expanded and the claim to universality vindicated. The Western World has no monopoly or patent on human rights. We must embrace cultural diversity but not at the expense of universal minimum standards.”⁹⁷

The CDHRI was seen by independent human rights activists as an attempt to undermine the rights declared in the UDHR rather than complement them.⁹⁸ It was sharply criticized by some Muslim scholars. “According to the Cairo Declaration,” Sachedina protests, “the reasons why Muslims ought to implement human rights in their societies is because they happen to be Muslim, and not because they are first and foremost humans.” Such an approach in a declaration proposed as a Muslim response to the UDHR, “actually invalidates its claim to be universal, because it primarily caters for its own members as privileged rights-holders.”⁹⁹

Addressing the opening session of the OIC Inter-Institutional Forum on Universal Shared Values, held in Geneva in December 2008, Prof. Ihsanoglu, Secretary General of the OIC declared that “the OIC is going through a phase of introspection and soul searching on human rights.” Referring to the adoption by the OIC of the CDHRI in 2000, he added “This Declaration was not conceived as an alternative to the Universal Declaration even though it additionally addresses religious and cultural specificity of the Muslim countries. The OIC has moved beyond the Cairo Declaration.”¹⁰⁰

⁹⁷ Human Rights at the Dawn of the 21st Century, *Human Rights Quarterly*, Vol. 15, No. 4 (Nov. 1993), pp. 629-639 Published by: The Johns Hopkins University Press. <http://www.jstor.org/stable/762400> accessed 28 Oct 2017

⁹⁸ HR the Universal Declaration Vs. The Cairo Declaration. <http://blogs.lse.ac.uk/mec/2012/12/10/1569/>, visited 27 Sep 2017.

⁹⁹ Sachedina 2009, p27

¹⁰⁰ Keynote Address of Prof Ekmeleddin Ihsanoglu, dated 19/12/2008 at https://www.oic-oci.org/topic/?t_id=1692&ref=765&lan=en accessed 26 Oct 2017

Whereas Articles 24 and 25 of the CDHRI stipulated that Shari‘a was the sole reference for dealing with human rights issues, the OIC Secretary General struck a distinctly different tone by recalling that the OIC summit of 2005 has "unanimously declared that contemporary reform and development must be anchored in the principles of good governance, protection of human rights, social justice, transparency and accountability," and concluded by stating "in all sincerity that we will do our best to uphold and defend for all, the lofty values of the Universal Declaration in cooperation with the international community.”¹⁰¹

Over the last few years, the OIC has shown a new commitment to advancing human rights in a manner that is more in harmony with the UDHR. In 2012 it entrusted this task to the newly established Independent Permanent Human Rights Commission (IPHRC). In his opening address to the Commission’s first meeting in Jakarta, Secretary General İhsanoğlu asked the Commission to “review and update OIC instruments, including the Cairo Declaration...”¹⁰² Indeed, the IPHRC reviewed the CDHRI against existing universal and regional human rights instruments and has adopted a revised draft which was presented to the 44th Council of Foreign Ministers (CFM) of the OIC in July 2017. A finalized draft of the new declaration titled ‘The OIC Declaration of Human Rights,’ will be presented at the 45th CFM of the OIC meeting in Bangladesh in 2018¹⁰³.

An-Naim warns against framing the conflict in terms of universality vs. relativism because this leads to compromising the very universality which the UDHR is expected to uphold. He argues that such universality is inherent in the idea that rights are due to human beings by virtue of their humanity regardless of other distinctions such as race, religion, or national affiliation. Therefore, “human rights must either be accepted as universal, or rejected altogether,

¹⁰¹ *ibid*

¹⁰² Online at [Opening Statement by H.E the OIC Secretary General](#), accessed 29 Oct 2017

¹⁰³ [11th IPHRC Session Concluding Press Release](#) Online, Accessed 29 Oct 2017

since the notion of relative human rights is logically incoherent.” He further problematizes the concept of an “Islamic State” and the validity of its representation of Islam in the human rights debate. Can one, based on the position of Islamic States in International fora, draw conclusions regarding the position of Islam? In other words, can one take for granted the unity of Islam and the modern state? And what effect would that have on the concept of universality with respect to the UDHR? An-Naim argues that national context may be much more important in defining Islamic reactions to the UDHR than broad theological principles in the religion as a whole. This would apply equally to other declarations such as the CDHRI. What decides a state’s position towards international law cannot be reduced to a single element but has to be seen as a result of religious, cultural, economic, and political factors. While “Islamic” is certainly not the only element, it cannot, however, be dropped or ignored either. In conclusion, he suggests that in the most workable view, an Islamic State is simply one with a majority Muslim population.¹⁰⁴ “It is only by abandoning the notion that the so called Islamic States are somehow unique that we can begin to realize the possibility of acceptance and implementation of universal human rights norms that are equally binding on all States, whatever religious, cultural or ideological characterization they may claim for themselves, or be attributed to them.”¹⁰⁵

2.6 Apostasy

This part of the chapter will discuss the general approach and methods used by some of the leading scholars in treating the question of apostasy within Islamic jurisprudence (*fiqh*). It will be argued that the problem lies in the structure and ethos of the legal system itself, and as

¹⁰⁴ An- Na'im 1999, p192

¹⁰⁵ An-Na'im 1999, p183

will be demonstrated, the scholars discussed remain unable to offer concrete proposals or innovative ideas to break out of the constraints of *usul-ul-fiqh*.

2.7 Apostasy - Abdullah Saeed¹⁰⁶

In “Islamic Law and International Human Rights Law: Searching for Common Ground”, the editors follow a genealogical approach they call ‘clearing ground’ which means inter alia “examining the deeply contextual nature of how Islamic law and international human rights law are legitimately formed, interpreted, and applied”¹⁰⁷. The book addresses a selection of issues including freedom of religion and apostasy which is discussed mainly by Abdullah Saeed. His contribution “aims to provide an overview of the apostasy law as it developed in classical Islamic law, to trace the development of the idea of apostasy and its punishment, and to examine how Muslims in the modern period are questioning the use of the death penalty for apostasy and arguing for religious freedom”¹⁰⁸

2.7.1 The notion of apostasy (*ridda*)

In Islamic jurisprudence, there are many ways that lead to apostasy (*ridda*). Common to all is a “reversion from the religion of Islam to unbelief”¹⁰⁹. At least two witnesses are required before a judge can decide whether a person is an apostate (*murtadd*) or not. The witnesses must testify that the words of the accused amount to apostasy; the judge decides if that amounts to a repudiation of what is generally accepted as part of Islam.

¹⁰⁶ Abdullah Saeed is the Sultan of Oman Professor of Arab and Islamic Studies at the University of Melbourne, Australia.

¹⁰⁷ Ellis 2012, p4

¹⁰⁸ Ellis 2012, p227

¹⁰⁹ Ellis 2012, p227

There is a great variety among the different Juristic schools on what constitutes apostasy. This can range from uttering something such as “I don’t know what true faith is”¹¹⁰ cursing God or the prophet, or reasons that the majority of Muslims would agree puts a person outside of Islam. There are in fact lists of reasons although the legitimacy of such lists is not a matter of agreement among the different groups or sects.

Saeed discusses the different views of the Islamic schools of thought and the variety of Islamic legal opinion on how a person comes to be considered an apostate and how legal conviction is achieved and punishment applied. For example, since apostasy must be an act of free will performed by a sane adult, a man or a woman, jurists express different opinions regarding the apostasy of a minor. There is a general agreement among jurists that the punishment for apostasy is death and this is a subject of consensus (*ijma*). Some schools grant the apostate the chance to repent. Among the key consequences of apostasy (pending repentance) is the suspension of the right to dispose of property which in the case of death is declared to be ‘spoils of war’ to be passed to the Public Treasury according to most jurists (Maliki, Shafi’i, Hanbali). “Upon the apostasy of one or both partners, a marriage contract immediately expires without any need for judicial intervention,” and their children would still be considered Muslims and are subject to the same penalties if they follow a parent into apostasy.¹¹¹

2.7.2 The Qur’an appears to be silent on the death penalty

Saeed cites the Qur’anic verses that deal with apostasy and notes that while they condemn the apostate in very harsh terms, none of them stipulates a penalty in life.

Q16:106 Anyone who after accepting faith in God, utters من كفر بالله من بعد إيمانه، إلا

¹¹⁰ Ellis 2012, p228

¹¹¹ Ellis 2012, p229

unbelief-except under compulsion, his heart remaining firm in faith – but such as open their breast to unbelief – on them is wrath from God, and theirs will be a dreadful penalty

من أكره وقلبه مطمئن بالإيمان، ولكن من شرح بالكفر صدرا فعليهم غضب من الله ولهم عذاب عظيم

In fact, some of the verses seem to clearly envisage a natural death for the apostate:

- Q2:217 And if any of you turn back from his religion and dies while he is an unbeliever, it is those whose deeds will come to nothing ومن يرتدد منكم عن دينه فيمت وهو كافر فأولئك حبطت أعمالهم...
- Q3:86-91 How shall God guide those who reject faith after they accepted it and bore witness that the Messenger was true and that clear signs had come unto them? But God does not guide a people unjust * Of such the reward is that on them [rests] the curse of God, of His angels and of all mankind * Abiding eternally therein, the punishment will not be lightened for them, nor will they be reprieved * Except for those who repent after that and correct themselves, for indeed, God is Forgiving and Merciful * Indeed, those who reject the faith after their belief and then increase in disbelief - never will their repentance be accepted, and those are the ones who have gone astray * Indeed, those who disbelieve and die while they are disbelievers - never would an 'Earth-full' of gold be accepted from one of them if he would ransom himself with it. For those there will be a painful punishment, and they will have no helpers. كيف يهدي الله قوما كفروا بعد إيمانهم وشهدوا أن الرسول حق وجاءهم بالبينات، والله لا يهدي القوم الظالمين * أولئك جزاؤهم أن عليهم لعنة الله والملائكة والناس أجمعين * خَالِدِينَ فِيهَا لَا يُخَفَّفُ عَنْهُمْ الْعَذَابُ وَلَا هُمْ يُنْظَرُونَ * إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ * إِنَّ الَّذِينَ كَفَرُوا بَعْدَ إيمانهم ثُمَّ ازدادوا كُفْرًا لَنْ تُقْبَلَ تَوْبَتُهُمْ وَأُولَئِكَ هُمُ الضَّالُّونَ * إِنَّ الَّذِينَ كَفَرُوا وَمَاتُوا وَهُمْ كُفَّارٌ فَلَنْ يُقْبَلَ مِنْ أَحَدِهِمْ مِلءُ الْأَرْضِ ذَهَبًا وَلَوْ اقْتَدَى بِهِ * أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ وَمَا لَهُمْ مَنْ تَلْصِقِينَ

Maududi on the other hand supports the death penalty for apostates by relying on the following verse:

- Q9:11-12 Yet, if they repent, and take to prayer, and render the purifying dues, they become your brethren in faith: and clearly do We spell out these messages unto people of [innate] knowledge. But if they break their solemn pledges after having concluded a covenant, and revile your religion, then fight against these archetypes of faithlessness who, behold, have no [regard for their own] pledges, so that they might desist [from aggression]. فَإِنْ تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوْا الزَّكَاةَ فَخِذُوا أَنْكُمْ فِي الذِّينِ وَفَصِّلِ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ * وَإِنْ نَكَثُوا أَيْمَانَهُمْ مِنْ بَعْدِ عَهْدِهِمْ وَطَعَنُوا فِي دِينِكُمْ فَقَاتِلُوا أَلَمَةَ الْكَفْرِ إِنَّهُمْ لَا أَيْمَانَ لَهُمْ لَعَلَّهُمْ يَنْتَهُونَ

Saeed challenges Maududi's interpretation by referring to the verse's context, namely military conflict those who renege on their agreements with the prophet and promises of non-aggression against the believers. The verse mentions neither apostasy nor the death penalty. Saeed also quotes al-Shawkani, a well-known Qur'an interpreter as permitting a general application of this verse to "all leading figures of unbelief" (Ellis 2012, P.232).

Proponents of the death penalty also refer to the verse:

Q5:33 Those who wage war against God and His Messenger and strive to spread corruption in the land should be punished by death, crucifixion, the amputation of an alternate hand and foot, or banishment from the land...	إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ...
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The verse targets specifically those who spread corruption in earth and fight against the Muslim community, but does not mention apostasy nor advocates killing those not engaged in such activities. Saeed quotes al-Shawkani in explaining that the verse mentions crimes against life and property, not against a person's belief. The verse, therefore, target the perpetrators of such crimes whether Muslim or unbelievers (Ellis 2012, p232).

Saeed cites Q16:106 as another verse used in the modern period:

Q16:106 With the exception of those who are forced to say they do not believe, although their hearts remain firm in faith, those who reject God after believing in Him and open their hearts to disbelief will have the wrath of God upon them and a grievous punishment awaiting them.	من كفر بالله من بعد إيمانه، إلا من أكره وقلبه مطمئن بالإيمان، ولكن من شرح بالكفر صدرا فعليهم غضب من الله ولهم عذاب عظيم
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Saeed explains that while this verse mentions apostates as (those who reject God after believing in Him), it does not mention death as penalty but the "wrath of God". Further confirming that this punishment is in the afterlife, verse 16:109 reads "Truly it is they, they who

is not sufficient for establishing prescribed penalties (*hudud*). Saeed discusses this *ḥadith* in detail and the different ways it is understood by the different schools and the weaknesses emphasized by some and discounted by others. As pre-modern jurists have allowed a number of exceptions to the application of the *ḥadith*, several modern scholars have extended on those exceptions by arguing that unbelief on its own does not call for the death penalty unless the person engages in a war like activity against the Muslim community.¹¹⁴ In this they make recourse to a related *ḥadith*:

The prophet, peace be upon him, said: ‘The blood of a Muslim who confesses that there is no god but Allah and that I am the messenger of Allah, cannot be shed except in three cases: a life for life; a married person who commits illegal sexual intercourse; and the one who turns renegade from Islam (apostate) and leaves the community of Muslims.

The emphasis is laid on the latter part of the *ḥadith*; “the one who turns renegade from Islam (apostate) and leaves the community of Muslims”: *al-tarik al-islam al-mufariq li aljama’a*. This *ḥadith* exists in a number of different versions. Saeed, however, like the many scholars of the different schools, finds that the common thread that ties the different narrations together is the clear connection they make between the apostate and those who take up arms against the Muslim community (*muharibun*). Hence, Saeed concludes,

¹¹³ **solitary**: A prophetic *ḥadith* transmitted through fewer channels than recurrent reports (see recurrence). Knowledge engendered by this report is considered probable. **recurrence**: a mode of transmitting Prophetic *ḥadith*. Recurrence obtains when a *ḥadith* is narrated through so many channels and by so many people that collusion upon forgery is deemed inconceivable (because of the assumption that such a large number of transmitters cannot find ways to conspire amongst themselves); knowledge engendered by this type of *ḥadith* is considered certain. (Hallaq 1997, p176)

¹¹⁴ Ellis 2012, p234-235

This suggests that the punishment of death is meant for those who repudiate Islam, join the enemy, and then aim to inflict harm upon the Muslim community and Islam: thus, the issue of apostasy could be said to be a political issue more than a private, religious one.¹¹⁵

It is worth noting here, that anyone who turns against the Muslim community and takes up arms to fight it, will be considered an enemy with a valid reason to be killed, apostate or not. Therefore, in establishing a close association between apostates and those who fight the Muslim community (*muharibun*) serves only to justify eliminating of apostates on the basis of resistance to armed aggression by enemies, rather than appeals to theological justifications. However, since the Caliph or ruler is the head of the Islamic state, he can portray opposition to his rule as opposition to the faith of Islam itself, hence apostasy, and therefore, the association of apostates with those who fight against the Muslim community (*muharibun*) becomes an effective tool to eliminate political opposition. Although Saeed notes that this ḥadith is narrated by the famous ḥadith scholar Muslim in his authoritative Sahih and that it appears in the chapter titled “Ruling related to muharibun and apostates”, he does not question the motives of Muslim in choosing such a clearly suggestive title for his chapter. It is quite possible that the idea of associating apostates with enemies of the state was facilitated by the work of politically driven jurists and scholars.

A second ḥadith often quoted in support of the death penalty is also narrated by Muslim:

The blood of a Muslim who professes that there is no god but Allah and that I am His Messenger, is sacrosanct except in three cases: a married adulterer; a person who has

¹¹⁵ Ellis 2012, p234-236

killed another human being; and a person who has abandoned his religion, while splitting himself off from the community (*al-mufariq li'l-jama'a*)¹¹⁶.

Here Saeed quotes ibn Taymiyya in observing that in one version of this ḥadith the described penalty is identical to that usually associated with treason, which he uses to confirm the political rather than doctrinal understanding of the punishment.¹¹⁷ Saeed (drawing heavily on Kamali and De-Vries) ends by arguing that these two ḥadith, being solitary, cannot abrogate the Qur'an (something that *usul-ul-fiqh* permits in principle). Therefore, the contradiction they introduce against Qur'anic ruling by allowing the killing of doctrinal apostates cannot be sustained and needs to be resolved. To resolve it one has either to accept the killing of doctrinal apostates, hence accepting the ability of solitary ḥadith to abrogate the Qur'an which is untenable, or to accept that the ḥadith does not address doctrinal-apostasy but rather hostility and aggression against Muslim community, in which case the life of the doctrinal apostate is spared and the contradiction with the Qur'an disappears. In both of these scenarios the authenticity of the ḥadith is preserved. If, however one rejects the ḥadith as spurious, then one has to explain the fact that some apostates were killed in the early period of Islam. This Saeed suggests “can be explained as a relic of pre-Islamic customs, when anyone who was not formally protected by a tribe could potentially be killed, or as a result of the application of martial law necessitated by rebellion and disturbances”¹¹⁸.

This last piece is a very good demonstration of the complicated and inelegant reasoning scholars resort to in order to avoid a serious challenge to the historicity of ḥadith and the *sunna* tradition by confining their scope of movement and thinking to the maxima of *usul-ul-fiqh*. It is

¹¹⁶ Ellis 2012, p236

¹¹⁷ Ellis 2012, p236

¹¹⁸ Ellis 2012, p238

quite remarkable how many scholars are called upon in this discourse to counter the authority a single ḥadith narration in Bukhari, quoting ibn Abbas attributing a saying to the prophet, whose content are in direct contradiction to multiple Qur'anic verses. This highlights the entrenchment of the discourse of “transmission vs rationality” (*naql* vs *'aql*) in the traditional Islamic thinking. The next chapter will present an alternative approach proposed by Shahrur and Banna based on special criteria for evaluating the acceptability of a ḥadith narration. This begins by examining the *ḥadith* against the Qur'an. If the *ḥadith* is found to disagree with the Qur'an it would be rejected.

2.7.4 Apostasy and the “pillars of Islam”

In explaining the context in which apostasy was equated with treason, Saeed attempts to explain how the “very high degree of freedom of religion during the Prophet Mohammad’s lifetime” suffered from increasing restrictions after his death and “when classical Islamic law took its form over the course of the first three centuries of Islam, these restrictions came to be embedded in its operation”¹¹⁹. According to Saeed, in the notion of freedom of religion started in Mecca and continued in Medina, “an important new idea was added to the notion: religious belief as a marker of inclusion within a political community. In this way Muslims became a religious *and* a political community” (emphasis by Saeed). Here Saeed misses an opportunity to dig deeper into this distinction between the ‘religious’ and ‘political’ to elicit a distinction between the concepts of ‘*iman*’ and ‘*islam*’ which is argued later as key to understanding the evolution of apostasy laws. This distinction between ‘*islam*’ and ‘*iman*’ became more crystallized in Medina where the “Muslim” community came to be understood in terms of the Qur'anic conception to include the followers of Mohammad (*al mu'minun*) and members of

¹¹⁹ Ellis 2012, p241-242

monotheistic communities: Jews and Christians, and others as well.¹²⁰ The emergence of this distinction, Saeed rightly notes, was not enough to make apostasy the major affair it became later: “Despite this, there was no strong emphasis on the superiority of Islam in this period.”¹²¹

It is this notion of ‘superiority of Islam’ instead, that Saeed relies on to explain the establishment of apostasy in Islamic law. With the military expansions outside Arabia during the time of the four Caliphs and the Umayyad and ‘Abbassid periods, “the idea of the ‘superiority of Islam’ came to be emphasized in an unambiguous way”, specifically, as “a very clear distinction between Muslim communities and non-Muslim communities” where it became “important to maintain the integrity of the Muslim community by strictly controlling community members.” “As a result, religious freedom was curtailed to some extent for both non-Muslims and Muslims, and the ‘law of apostasy’ and its punishment were developed”¹²².

Throughout his nuanced discussion, Saeed accurately describes the various symptoms of the problem, its drivers, and its manifestations but does not quite explain how it was possible to establish apostasy as an integral part of Islamic law in doctrinal terms apart from a solitary *ḥadith* despite the opposition of the Qur'an. He comes close to an explanation when describing how “A powerful *political and religious community* with a strong sense of superiority over other *religious and political communities* emerged”¹²³ (emphasis added). This statement demonstrates the conflation of the ‘political’ and the ‘religious’ in Saeed’s discourse (and typically of others’). The blurring of this distinction between the *political* community of ‘islam’ and the *religious* community of ‘iman’ was necessary to establish apostasy as a charge effective equally against both. The conception of who is ‘muslim’ needed to be drastically transformed and reinterpreted

¹²⁰ See Q2:62, Q41:33, Q2:112, Q21:108, Q10:90, Q5:44, all demonstrating the fluidity of who is ‘muslim’.

¹²¹ Ellis 2012, p241

¹²² Ellis 2012, p242

¹²³ Ellis 2012, p242

by the early jurists to mean the followers of Mohammad exclusively, i.e. the community of the faithful (*mu'minun*) rather than the wider community of '*muslimun*'. The way this became possible was through developing the doctrine of "pillars-of-Islam" (*arkan-ul-islam*) disguising the concept of 'iman' as 'islam'. This conflation as will be argued in the next chapter was systemic and designed to keep control of the fledgling Islamic state within the small group of the Messenger's companions (*al-mu'minoun*). While this was legitimate politics, the measures and policies it took to realize, became in the eyes of later generations "islamic" and subsequently part of the faith of Islam.

The doctrine of the "pillars-of-Islam" reduced the inclusive 'muslim community' to an exclusive community of the faithful. The wider Qur'anic understanding of 'muslim' and 'islam' were sacrificed for political gains with disastrous consequences beyond the laws of apostasy. Established in the formative years of Islamic law, this doctrine continues to dominate the discourse of most modern scholars today who readily accept it as basis for the "very clear distinction between Muslim communities and non-Muslim communities" that Saeed describes.

2.7.5 Conclusion

In conclusion, Saeed's approach follows a familiar general pattern in dealing with the question of apostasy laws by contextualizing them within the history of early Islam and granting the benefit of the doubt to early jurists and scholars as if they operated outside the temporal politics of their time: "The resulting emphasis on retaining the purity and superiority of Islam perhaps led jurists to a particular approach to the law of apostasy and interpretation of key ḥadith texts"¹²⁴. At the end of the discussion, it becomes increasingly clear that the problem lies in the structure and ethos of the legal system itself. Saeed closes by remarking that, "Although

¹²⁴ Ellis 2012, p246

apostasy can justifiably remain a major sin within Islamic theology, Muslims can do more to emphasize that all human beings are legally free to adopt or to change their religion.”¹²⁵ However, there are no concrete proposals on how to address the root of the problem or innovative thinking on how to break out of the constraints of *usul-ul-fiqh*. In spite of highlighting the problems, Abdullah Saeed does not seek solutions by looking beyond or outside of the system. His treatment exposes many of the issues that *usul-ul-fiqh* suffers from, it shows its limits, and demonstrates that it is in need of reform.

2.8 Apostasy - Ahmad Abed al-Jabiri¹²⁶

Similar to the genealogical approach used by Emon, Ellis, and Glahn, al-Jabiri works through “cultural implantation” of Western conception of human rights in the Islamic tradition. This he explains is not an attempt to reach a compromise between the two rationales or to absorb one into the other, but rather to seek the universal underpinnings of Western human rights within the Arab Islamic culture and identify them at its theoretical bases, which, he asserts “are not radically different from the bases of human rights in Western culture”.¹²⁷

Al-Jabiri starts his discussion of apostasy by stating a commitment to Shari‘a as the foundation of his view on the matter. Shari‘a he explains, “comprises general fundamentals (*kulliyāt*) as well as particular rulings (*juz ‘iyāt*)...” He counts the occasions of revelation (*asbāb-un-nuzūl*), and the intents of Shari‘a for public good (*al-maqasid*) among the reasons that justify a departure from applying general fundamentals and resorting to particular applications of the law. He describes those parameters as the “facts” defining the space for his discussion of the

¹²⁵ Ellis 2012, p246

¹²⁶ Al-Jabiri (1935 – 2010) was a Moroccan critic and professor of philosophy and Islamic thought in Mohammed V University in Rabat. Known for his academic project "The critique of the Arab Mind", he published several influential books on the Arab philosophical tradition.

¹²⁷ Jābirī 2009, p177

ruling against the apostate¹²⁸. Asserting that as a general principle, Islam recognizes freedom “in absolutely clear terms”, he also notes, that, “Freedom and other issues differ, in some aspects at least, from one age to another in accordance with level of development, concerns, and aspirations.” Therefore, he warns that it would be a methodological mistake to “expect the Islamic or any other old texts to discuss freedom in the language we use today”¹²⁹.

By proposing that it is wrong to read Islamic texts “in the language we use today” he highlights the need to contextualize the relevant texts by paying attention to the language of their own time as an alternative. In fact, his subsequent treatment of apostasy confirms this as a method of preference. Because al-Jabiri does not make a distinction between the Qur'an and other Islamic texts, this approach is particularly problematic in reference to the doctrine of universality of the Qur'an and the suitability of its message across time and place. Islamic tradition is dominated by transmitted understandings of the early generations of Muslims, their interpretations, methods of legislation, and tools of problem solving. This is a point of sharp contrast between the approach of al-Jabiri and other scholars discussed so far with the “*contemporary reading*” methodology of Mohammad Shahrur. As will be demonstrated in the next chapter, Shahrur distinguishes the Qur'an from any other Islamic text and gives priority in reading to contemporary understanding and worldview.

Al-Jabiri affirms that “Islam specifies the principle of freedom in all fields” and asserts that the reference for this is the Qur'an and the sunna.¹³⁰ In advancing this claim, al-Jabiri quotes Omar and the Qur'an but cites no reference from sunna. In contrasting the path of freedom to slavery, he cites Omar's famous exclamation “Since when did you enslave people when their mothers gave birth to them free?” and mentions that some of the prophet's eminent companions

¹²⁸ Jābirī 2009, p196

¹²⁹ Jābirī 2009, p196

¹³⁰ Jābirī 2009, p197

were slaves before embracing Islam. Recognizing that slavery is a cross-cultural phenomenon that was only abolished in modern times, he notes “the general tendency in Islamic legislation is definitely towards abolishing this phenomenon, based on the principle that man is born free.” (Jābirī 2009, p197) The Qur'an indicates that man freely chose to undertake God's viceregency on earth thus demonstrating his personal freedom and his freedom of belief.

Q33:72	Indeed, we offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it...	إِنَّا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَوَاتِ وَالْأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْإِنْسَانُ...
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Al-Jabiri also quotes the Qur'an in confirming Islam's commitment to the freedom of belief:

Q18:29	Say: “The truth is from your Lord. Let him who wills, believe, and let him who wills, disbelieve”	وَقُلِ الْحَقُّ مِنْ رَبِّكُمْ، فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفِرْ...
Q88:21-22	Therefore, admonish [them], for you are one to admonish. You do not have control over them	فَذَكَرْ إِنَّمَا أَنْتَ مُذَكِّرٌ. لَسْتَ عَلَيْهِمْ بِمُصَيِّرٍ...
Q42:48	If then they turn away, we have not sent you as a guard over them. Your duty is but to convey [the Message] ...	...فَإِنْ أَعْرَضُوا فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا إِنْ عَلَيْكَ إِلَّا الْبَلَاغُ...
Q10:99	If it had been the Lord's will, they would all have believed, all who are on earth. Would you coerce people until they became believers?	وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ مِنَ فِي الْأَرْضِ كُلَّهُمْ جَمِيعًا، أَفَأَنْتَ تَكْرَهُ النَّاسَ حَتَّى يَكُونُوا مُؤْمِنِينَ
Q76:2-3	We have created man from a drop of mingled sperm, in order to try him: so, we gave him [the gifts] of hearing and sight. We have guided him to the way: whether he be grateful or ungrateful	إِنَّا خَلَقْنَا الْإِنْسَانَ مِنْ نَظْفَةٍ أَمْشَاجٍ نَبْتَلِيهِ فَجَعَلْنَاهُ سَمِيعًا بَصِيرًا * إِنَّا هَدَيْنَاهُ السَّبِيلَ إِمَّا شَاكِرًا وَإِمَّا كَفُورًا

All those verses affirm the individual right of freedom to choose or reject “Islam” and that the messenger cannot coerce people into it. Islamic jurisprudence however stipulates that the

apostate is killed as punishment based on the ḥadith “Whoever changes his religion, kill him”. Al-Jabiri describes this glaring disagreement between the Qur'an and the *ḥadith* as a “discrepancy” explaining it as one of those particular applications (*juz'iyāt*), “a marginal issue, wherein the ruling differs from the demands of the general principle which is specified by the quoted verses”¹³¹. He then cites more Meccan verses that clearly show no punishment for the apostate:

Q2:217	And if any of you turn back from his religion and dies while he is an unbeliever, it is those whose deeds will come to nothing	ومن يرتدد منكم عن دينه فيمت وهو كافر فأولئك حبطت أعمالهم...
Q3:77	As for those who sell their pledge to God and their faith for a petty sum, they shall have no portion in the Hereafter	إن الذين يشترون بعهد الله وأيمانهم ثمنا قليلا أولئك لا خلاق لهم في الآخرة
Q3:86-87	How shall God guide those who reject faith after they accepted it and bore witness that the Messenger was true and that clear signs had come unto them? But God does not guide a people unjust * Of such the reward is that on them [rests] the curse of God, of His angels and of all mankind	كيف يهدي الله قوما كفروا بعد إيمانهم وشهدوا أن الرسول حق وجاءهم بالبينات، والله لا يهدي القوم الظالمين * أولئك جزاؤهم أن عليهم لعنة الله والملائكة والناس أجمعين
Q4:115	If anyone contends with the Messenger, even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of faith, we shall leave him in the path he has chosen, and convey him to Hell, and what an evil refuge!	ومن يشاقق الرسول من بعد ما تبين له الهدى ويتبع غير سبيل المؤمنين نوله ما تولى ونصله جهنم وساءت مصيرا
Q16:106	Anyone who after accepting faith in God, utters unbelief-except under compulsion, his heart remaining firm in faith – but such as open their breast to unbelief – on them is wrath from God, and theirs will be a dreadful penalty	من كفر بالله من بعد إيمانه، إلا من أكره وقلبه مطمئن بالإيمان، ولكن من شرح بالكفر صدرا فعليهم غضب من الله ولهم عذاب عظيم

¹³¹ Jābirī 2009, p198

He dismisses any doubt concerning the authenticity of the *ḥadith*; it is not only the subject of consensus (*Ijma'*) but is further reinforced by the historic fact that Abu Bakr waged war against the apostates. "That is because the 'apostate' (*almurtad*), after the rise of the Islamic state, was not merely a person who changed his faith. He was also a person who renounced Islam as a faith, a society and a state."¹³² Although the text of the *ḥadith* only mentions changing of "religion," al-Jabiri expands his reading to include a renunciation of "society and a state." The reason he and traditional scholars can get away with this obvious conflation is due to deep rooted misconception of 'islam' vs 'iman'. While 'islam' indicates the religion started by Noah and brought to completion by Mohammad, 'iman' is particularly practiced by the followers of Mohammad. This is one of the essential arguments in Mohammad's Shahrur's approach to a reformed understanding of the tradition, to be discussed in the next chapter.

Despite his earlier warning about expecting old Islamic texts "to discuss freedom in the language we use today", he explains that "in modern terms the apostate at that time was equal to a traitor who betrays his country and colludes with the enemy at the time of war."¹³³ Here, he appears to be applying a "contemporary reading" of a sort to the issue of apostasy but unfortunately, he stops short from extending this reading to other issues of traditional jurisprudence such as *Ijma'* and *sunna* narrations toward which he shows no inclination to re-think. Al-Jabiri closes by concluding "The ruling of Islamic jurisprudence on the apostate in this sense is not a ruling against the freedom of belief. It is one against treason to the nation, the state and religion." And "legal position of the apostate in Islam does not come under the rubric of freedom of faith, but under what is nowadays called 'high treason' by taking up arms against society and the state."¹³⁴

¹³² Jābirī 2009, p199

¹³³ Jābirī 2009, p199

¹³⁴ Jābirī 2009, p200

After having started by asserting that “Islam specifies the principle of freedom in all fields” and adding that “The reference in all this is the Qur'an and the sunna”, he closes his discussion by proposing that,

“What the modern jurisprudents are expected to do is to decide whether or not a Muslim who chooses to follow another faith, on personal bases, which do not affect the Islamic society or the state, should be considered an apostate in the traditional jurisprudential sense or in the sense explained by the verses quoted above.”¹³⁵

In other words, he is back at the beginning without having resolved the issue and with the core question left unanswered. Worse yet, the apostate comes out to be not only a defector from faith but also a traitor of state and nation, a far worse charge than just doctrinal apostasy.

2.9 Conclusion

It is quite clear that the war Abu Bakr waged against the dissenters was not driven by doctrinal concerns but political ones. This is plainly evident in Abu Bakr's argumentation for making his decision to fight¹³⁶. Furthermore, the Qur'anic verses Q5:54 and Q2:215 which clearly exempt doctrinal apostates from worldly punishment, use derivatives of the term “*ridda*” to describe the actions of those who turn back from *religion*, hence affirming the doctrinal nature of *ridda*:

Q5:54 O ye who believe! if any from among you **turn back** from his **religion**, soon will God 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 God, and never afraid of the reproaches of such as find fault. That is the Grace of God, which He will

يَا أَيُّهَا الَّذِينَ ءَامَنُوا مَنْ يَرْتَدَّ مِنْكُمْ
عَنْ دِينِهِ فَمَا يَتَّبِعِ اللَّهُ يَأْتِ اللَّهُ بِقَوْمٍ يُحِبُّهُمْ
وَيُحِبُّونَهُ أَذِلَّةٌ عَلَى الْمُؤْمِنِينَ أَعِزَّةٌ
عَلَى الْكَافِرِينَ يُجَاهِدُونَ فِي سَبِيلِ اللَّهِ
وَلَا يَخَافُونَ لَوْمَةَ ءَلِمٍ ذَلِكَ فَضْلُ
اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

¹³⁵ Jābirī 2009, p200

¹³⁶ In Abu Huraira's narration, Abu Bakr said 'By Allah I will fight whoever differentiates between Salat and Zakat. For indeed, Zakat is the right due upon wealth. And by Allah! If they withhold even (camel) tethers which they used to give to the Messenger of Allah I will fight them for withholding it.'

bestow on whom He pleases: and God encompasses all and He knows all things.

Q2:217 ...nor will they cease fighting you until they **turn you back** from your **religion** if they are able. And whoever of you **turn back** from their **religion** and die in unbelief, their deeds will bear no fruit in this world and the Hereafter; and those are the companions of the Fire, they will abide therein eternally

وَلَا يَزَالُونَ يُقَاتِلُونَكُمْ حَتَّىٰ يَرُدُّوكُم مِّن دِينِكُمْ إِنِ اسْتَطَاعُوا ۚ وَمَن يَرْتَدِدْ مِنْكُم مِّن دِينِهِ فَمَا لِهَيْبَتِهِ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

‘*Ridda*’ is the same term that later Arab historians chose to describe Abu Bakr’s fight against political apostates: the “*ridda wars*”. This choice of words can hardly conceal its political teleology; conflating doctrinal and political dissent under the single term of *ridda* has always served the interests of despotic Muslim leaders, and political Islamic movements throughout Arab history. The cited Qur'anic verses explicitly mention “*ridda*” from “religion”. The *ḥadith*, on the other hand, does not use the term *ridda* but mentions “changes his religion”, again affirming the doctrinal nature of an act punishable by death. While the *ḥadith* and the Qur'anic verses appear to address the same doctrinal offence, the *ḥadith* profoundly transforms the problem by introducing a non-existing capital punishment in direct violation of the verses, and yet, this fails to merit any questioning of authenticity or to create a dent in the ‘*Ijma*’ over the *ḥadith*. This highlights the “malleability” of *usul-ul-fiqh* as a system of legislation where, theoretically at least, sunna is subordinate to the Qur'an as the second source of law.

Modern scholars follow a similar pattern in their treatment of apostasy; they focus their attention on the concept of apostasy qua “*ridda*” in the context of Abu Bakr’s war or early wars of expansion outside Arabia. By explaining that such wars were waged against political apostates of the Islamic state rather than against doctrinal apostates of faith, they reduce the term “*ridda*” into its exclusively political meaning which, in modern language, they translate into ‘national treason’. Hence, they conclude that the Islamic tradition is not opposed to freedom of religion

but to common treason as is any modern system of state. The problem with this reasoning is that the *ḥadith* in question, as transmitted, does not mention ‘*ridda*’ as a concept but explicitly uses the word ‘change’ in reference to ‘religion’ (“he who changes his religion...”). As such, the problematic it raises remains unresolved by construing “change of religion” as “*ridda*” first, then as general apostasy, and finally as one type of apostasy and not the other: political not doctrinal. In the final analysis, they do not succeed in building a solid argument or in bringing the question closer to resolution. The problematic *ḥadith* remains part of Islamic law, ready to be brandished by modern Islamic states or by political Islamic movements in the face of their opponents¹³⁷ whenever it is politically expedient to do so.

The approaches followed by al-Jabiri and partly by Saeed is designed to avoid a direct challenge to the authenticity of *ḥadith* narratives that clearly violate the Qur'an in text and spirit and betray unwillingness to question the historicity of the *sunna* tradition where the boundaries between religion (islam), faith (iman), history, and politics have become tangled beyond recognition. As such, this approach can only be seen as apologetic, and the muddled reasoning it displays fails to convince or open doors for change.

¹³⁷ Cases of using Ridda as a political tool in recent memory include Nasr Hamid Abu Zeid, Farag Foda in Egypt, Mahmoud Taha in Sudan, and Fazlur Rahman in Pakistan. Also, Ayman Zawahri of al-Qa’ida described Arab leaders as apostates ‘murtaddeen’. Abu al-Ala Maududi, viewed modernity as the “new jahiliyyah” implying a departure from Islam, and Sayyid Qutb interpreted that as the domination of humans over humans, rather than submission of humans to God.

Chapter 3. Islam and the Challenge of Freedom

3.1 Introduction

The previous chapter discussed the engagement of some leading Islamic human right scholars and explored their attempts to conceptualize the relation between Islamic doctrines and the human rights discourse around the freedom of religion. Academics such as Mohammad Shaḥrur, Fazlur Rahman, and Abdullahi An-Na'im have been offering qualitatively different approaches. Their work critiques rejectionist or apologetic narratives and attempts to present a rights-oriented re-reading of the tradition.

Mohammad Shaḥrur offers one of the most innovative approaches.¹³⁸ First, Shaḥrur argues that since the Qur'an strongly asserts a universal message, and proclaims Mohammad as a messenger to all humans, it should follow, that contradictions between Islamic doctrines and universal values such as those enshrined in the UDHR must be the result of deeply flawed misconceptions of the message of the Qur'an and a lack of nuance in distinguishing the different role(s) assigned to Mohammad by the Qur'an as a messenger, a prophet, and an ordinary human. Shaḥrur argues for a deep critique of the classical sources of Islamic jurisprudence other than the Qur'an (e.g. Sunna, Consensus, Analogy) and only a partial acceptance of the Sunna in connection with the Qur'an.

Second, Shaḥrur positions freedom, not justice, as the core value of Islamic jurisprudence, and accordingly, reformulates the concept of universality of Islam and of the Qur'an. A conception of universality aims at building bridges and leads to the fulfilment of the Qur'anic message. Shaḥrur proposes a rethinking of entrenched doctrines through an updated understanding of Qur'anic texts and a thoughtfully reasoned exposition of the limitations of

¹³⁸ "Of all the attempts to reformulate legal theory, Shaḥrur's seems thus far the most convincing" (Hallaq 1997, p253)

alternative classical sources of law. Critical to this exploration is the “burning question” of freedom of religion within the evolving Islamic tradition.¹³⁹ He positions religious freedom as the crucial test for a renewed understanding of Islam and human rights. The ideas and methodologies elaborated by Shahrur and Fazlur Rahman strive to open new avenues and eliminate barriers to a discourse on universality based on a return to Qur’anic foundations that would address unresolved tensions over human rights and freedom of religion in Islamic legal traditions.

3.2 Usul-ul-fiqh as a problem

In the last chapter, I discussed the approaches of a number of scholars to the issue of freedom of religion and pointed out that their methods were informed by the traditional theory of Islamic law known as *usul-ul-fiqh* and framed within its constraints. With respect to the human rights issue of freedom of religion and the right to change one’s religion, the discussion in chapter three demonstrated that the problematic in Islamic law does not originate with the primary source, the Qur’an, but with the secondary source, the *Sunna* tradition. While the Qur’an stipulates no worldly punishment for the apostate, *Sunna* prescribes killing as the mandatory sentence. Specifically, the issue is captured in two ḥadiths that appear to contradict the Qur’an.

This apparent contradiction between the Qur’an and the *Sunna* highlights a distinct experience of scholars attempting to analyse the interface between human rights discourse and the Islamic tradition. It is an experience where less traffic takes place in the space between the two discourses but most activity occurs within the sphere of Islamic tradition itself. Between the

¹³⁹ Shahrur, 2009, 329

two primary sources of Islamic law, the scholar witnesses an uneasy dialogue revealing an internal incoherence that pulls the tradition apart in a schizophrenic display. The problematic just described, is reflected in the work of Ahmad Abed Al-Jaberi and Abdullah Saeed discussed in the previous chapter, and applies with varying degrees to the contributions of Abu El Fadl and Sachedina. All of them, attempt to play a conciliatory role between the Qur'an and the *Sunna* tradition, and they do so operating within the space offered by *usul-ul-fiqh*. Their conclusions are constructed on its premise, with comparable lack of innovation in method. The effect is further rationalization of the status quo and dominance of *usul-ul-fiqh*.

Scholars like Shaḥrur and Fazlur Rahman, on the other hand, represent a different stream of "religious liberals"¹⁴⁰ who so far "stand outside the current mainstream of legislation"¹⁴¹. Shaḥrur published his first book in 1990 and his status of being outside the mainstream has been slowly changing. He has recently appeared in a series of thirty episodes broadcast daily during Ramadan on the *Khalijiah* TV station operating from Abu Dhabi and watched in Saudi Arabia and the Gulf.¹⁴²

The rise of extremist Islamist movements, and the mayhem they leave in their wake on the ground, is compounded by unresolved theoretical tensions internal to the tradition. The inherited tradition of Islamic law-making, asserts Shaḥrur, is incompatible with the social and epistemological context of changing times. These traditions were created in the formative years of Islamic thought and the challenge to resolve and reverse their effects is a monumental task few Islamic thinkers are willing to take up.¹⁴³

¹⁴⁰ Hallaq 1997, p231

¹⁴¹ Hallaq 1997, p254

¹⁴² Episodes of "An-Naba' -el-'azīm" are available online on the Khalijiyah station website: <http://rotana.net/vod-programs/alnaba2/> - last visited 23 Jul 2017.

¹⁴³ Shaḥrur 2009, p329, 336

It will be argued in this chapter, that while the scholars discussed earlier have attained varying degrees of success, Shaḥrur is most effective in his attempts to present a rights-oriented reading of the tradition and eliminate barriers to discourse on universality based on a return to Qur'anic foundations. For a rightful assessment of Shaḥrur, it is important that one gets an appreciation of the depth and contours of his reach in diagnosing problems at the foundations of traditional Islamic thought and particularly in the understanding of Sunna as a source of law integral to *usul-ul-fiqh*. Therefore, a summary of Shaḥrur will be presented As Appendix 3 to this thesis. While this chapter can stand alone in presenting its arguments and conclusions, a degree of familiarity with Shaḥrur's thought as layed out in the Appendix can greatly facilitate the task of working through this chapter, especially in relation to Shaḥrur's approach to the question of apostasy, his arguments for *freedom-not-justice* as the core value of Islamic jurisprudence, and for a conception of universality grounded in the Qur'anic message of Islam that respects freedom of religion as depicted in Article 18 of the UDHR.

3.3 Religious Liberalism

Many scholars have proposed typologies to describe trends of Islamic thought and reform movements¹⁴⁴. In his review of the different types of modern Islamic reformers, Hallaq mentions four categories. He excludes from his discussion the “secular” who hold that Islam altogether should be set aside, and the “traditional” group which aims at applying the Shari‘a in its presumably intact, puritanist traditional form.”¹⁴⁵ He directs his attention to two trends which he

¹⁴⁴ See Shepard p307–335, Ramadan p23-28, Saeed p142-154, Bennet p44-46.

¹⁴⁵ Hallaq 1997, p212

calls the religious utilitarianism and religious liberalism and places Fazlur Rahman and Mohammad Shahrur in the latter. Hallaq argues that the two trends are inspired by Mohammad Abduh (d. 1905) who laid the basis of modern ideas of reform by reviving the Mu'tazilite theology which postulates that human reason is capable of distinguishing good from bad, right from wrong. The Ash'arite theology in contrast postulates that human reason is utterly incapable of making such distinctions. Although their methods differ significantly, Utilitarians and Liberals share the same goal which is "the reformulation of legal theory in a manner that brings into successful synthesis the basic religious values of Islam, on the one hand, and a substantive law that is suitable to the needs of a modern and changing society, on the other."¹⁴⁶

3.4 Fazlur Rahman

Fazlur Rahman advocates a methodology that tries to find the balance between text and context. He blames the authors of the traditional legal theory as having a fragmented view of the revealed sources.

In his opinion, both the traditional legal theorists and the exegetes treated the Quran and the Sunna verse by verse, and the Sunna report by report. The lack of cross-reference to the textual sources was thus responsible for the absence of an effective *Weltanschauung* 'that is cohesive and meaningful for life as a whole' ¹⁴⁷.

After the death of the prophet, early Muslims regarded *Sunna* as an ideal that they sought to emulate and reinterpret under the changing needs of their regions. This progressive and

¹⁴⁶ Hallaq 1997, p214

¹⁴⁷ Hallaq, 1997, p241-242

continuous effort which appeared after the development of the science of *Hadith*, was also termed *sunna*. Rahman highlights this latter fact as “fundamentally important for grasping the true nature of the early development of Islam.”¹⁴⁸ Rahman contrasts this conception of *Sunna* by the early generation to the later understanding developed by the later legists; one espousing a healthy level of freedom in the interpretation of the prophetic activity and applying a “freely flowing situational treatment” aimed at formulating the practice of the community, characterised by a “ceaseless search for what the Prophet intended to achieve.” The other is a “rigid and inflexible doctrine of *Sunna*” advocating “a rigid system, definite and defined” with “a once-and-for-all positing of immobile rules.”¹⁴⁹

Unlike some of the other modernist reformers, notably Shaḥrur, Rahman appears to accept the doctrine of abrogation of Qur'anic verses by other verses, and grants Prophetic Sunna (in the *correct* understanding) a great deal of reverence, which is more critically challenged by Shaḥrur. Rahman shares with Shaḥrur a sharp criticism of traditional Islamic jurisprudence for its marked absence of Qur'anic ethics and laments that the intellectual movement in early centuries of Islam was focused on theological problems, but did not give due weight to issues of moral import. The Mu'tazilites for example “were, e.g. keenly interested in the problem of free-will but the centre of gravity of their thought was not this problem philosophically or absolutely speaking but largely in so far as it affected the concept of God, *i.e.* whether free-will was or was not compatible with the idea of a *Just God*.”¹⁵⁰

The interaction between divine revelation and history which Fazlur attempts to rationalize through the mind of the prophet, Shaḥrur attempts to resolve through the functional differentiation between the roles of Mohammad as Prophet and as Messenger and through

¹⁴⁸ Rahman 1965, p27

¹⁴⁹ Rahman 1965, p29

¹⁵⁰ Rahman 1965, p118

proposing a different understanding of the terms ‘*inzal*’ and ‘*tanzil*’. Rahman was preoccupied mostly with the dialogical relation between divine revelation and history. “How do the norms and values of revelation have an enduring relevance to religious communities without becoming anachronistic?”¹⁵¹ He expressed this in his “double movement theory.”

The first movement of this is to study both the micro and macro contexts in which the Qur'an was first revealed. This would establish the original meaning of revelation within the moral-social context of the prophetic society And yield a coherent narrative of the underlying normative injunctions¹⁵².

Here *asbab-un-nuzzul* and abrogation techniques come into effect. Since the unity of the prophetic and the Qur'anic is best seen against the social background of early Islam in Arabia, therefore, “a thorough understanding of the Meccan social, economic and tribal institutions becomes necessary in order to understand the import of revelation for the purpose of universalizing it beyond the context of the Prophet’s career.”¹⁵³ In the second movement Rahman wants to redeploy in the current social context of Muslim society, the values and principles obtained from the revealed sources. This requires a considerable analysis to understand both the social context and the revealed sources with their background. Fazlur Rahman did not elaborate on the social and intellectual coordinates of this analysis and how it takes place”¹⁵⁴ however, he appears to believe that modern social sciences and humanities are sufficient as tools for facilitating a good understanding of history¹⁵⁵. The weakness of Rahman's methodology thus lies in the not altogether clear mechanics of the second movement¹⁵⁶.

¹⁵¹ Raman 2000, p15

¹⁵² Raman 2000, p15

¹⁵³ Hallaq, 2009, p242

¹⁵⁴ Hallaq, 1997, p245

¹⁵⁵ Raman 2000, p16

¹⁵⁶ Hallaq, 1997, p245

The dilemma of the modern Muslim reformer was summed up by Fazlur Rahman as follows: “the difficulty before the real secularist [in the Muslim world] is to have to prove the impossible, namely that Mohammad, when he acted as a law giver or political leader, acted extra-religiously and secularly.”¹⁵⁷ An-Na’im, commenting on Rahman’s assessment, casts doubt on the plausibility of such a proposal because secularization of the Muslim public life would deprive Muslims of valuable cultural resources necessary for their cultural identity. Mohammad Shaḥrur appears to address most of those concerns by providing a framework for a historical contextualization of the *Sunna* without cutting it off as a source of cultural identity. His deep reaching analysis of the institution of *sunna*, Obedience of the messenger, prophethood vs messengerhood, theory of limits, rejection of synonymy and abrogation, all form parts of his method of ‘contemporary reading’ based firmly in the Book, which will be discussed next.

3.5 Shaḥrur’s Approach to Apostasy and Freedom of Religion

3.5.1 Introduction

Shaḥrur tackles the question of apostasy under the wider problematic of political Islam and raises two basic questions; does freedom of religion exist in Islam? And how is apostasy understood? He uses an alternative approach where, in addition to the Book, he draws heavily on Sunna and traditional sources (*ḥadith*, *tafseer*), specifically to highlight the wide gap that separates them from the Book and to expose their internal incoherence.¹⁵⁸

The outline of his approach to apostasy, therefore, follows a track similar to that taken by other scholars discussed in the previous chapter; he quotes traditional references, contrasts them with the Book, and attempts to historicize them within the context of early Islam. Unlike the

¹⁵⁷ Quoted in (an-Na’im, 1990, p44)

¹⁵⁸ Shaḥrur 2009, 329

other scholars, however, he openly challenges the authenticity of the two ḥadīths at the center of the controversy as fabrications serving political ends. And when he finally rejects them, he does so on his proposed platform for a new Islamic jurisprudence, where compatibility with the Book is an essential qualifying criterion. He then employs his *contemporary reading* approach to ground the conception of freedom in the Book and to argue for religious liberty as a core value of Islam, and as a human right for which *jihad* (as will be discussed) is mandatory.

3.5.2 Islam vs. Iman

Shāḥrūr's treatment of apostasy builds on clearing what he sees as a major confusion at the very root of Islamic thought; the confusion between the concepts of *islam* and *iman* (belief). He describes the task of correcting this misconception as "the most important cultural reform that we need".¹⁵⁹ It helps to understand that in the Book the term 'islam' is not used as a proper noun although it is often translated as such (for example, in English, it is usual to translate it capitalized as 'Islam'). The Book, however, uses *islam* as a verb; a conduct ensuing from a natural disposition towards God. Specifically, someone who believes in God, the last day, and engages in good deeds (Q2:62, Q41:33, Q2:112, Q21:108, Q10:90, Q5:44), is considered *muslim* (plural *muslimoun*). Someone who has *aslama* (simple past tense) meaning someone who has accepted those three fundamentals. This includes someone who is a follower of Mohammad, Jesus, Moses, or be Magus, Buddhist, or Shaivite¹⁶⁰.

¹⁵⁹ Shāḥrūr 2008, p29

¹⁶⁰ See Shāḥrūr 1996, p38 also See Donner, Fred McGraw. *Muhammad and the Believers: At the Origins of Islam*. Cambridge, Mass.: The Belknap Press of Harvard University Press, 2010. 71-74: "As used in the Qur'an, then, *islam* and *muslim* do not yet have the sense of confessional distinctness we now associate with "Islam" and "Muslim"; they meant something broader and more inclusive and were sometimes even applied to some Christians and Jews, who were, after all, also monotheists (Q. 3:52, 3:83, and 29:46)."

Therefore, the Book uses the adjective *muslim* to describe the conduct of Abraham, Jacob, Joseph, Noah, Lot, the disciples of Jesus, Jinn, Pharaoh, and Pharaoh's sorcerers, none of whom were followers of Mohammad.

Q72:14 (Jinn)	And among us are muslims, and among us are the unjust. And whoever has become muslim - those have sought out the right course.	وَأَنَا مِمَّا الْمُسْلِمُونَ وَمِمَّا الْقَاسِطُونَ فَمَنْ أَسْلَمَ فَأُولَئِكَ تَحَرَّوْا رَشَدًا
Q3:67 Abraham	Abraham was neither a Jew nor a Christian, but he was one inclining toward truth, a muslim. And he was not of the polytheists.	مَا كَانَ إِبْرَاهِيمَ يَهُودِيًّا وَلَا نَصْرَانِيًّا وَلَكِنْ كَانَ حَنِيفًا مُسْلِمًا وَمَا كَانَ مِنَ الْمُشْرِكِينَ
Q2:132 Abraham	And Abraham instructed his sons and [so did] Jacob, "O my sons, indeed God has chosen for you this religion, so do not die except while you are muslims"	وَوَصَّيْنَا بَنِيَ إِسْرَٰهٖمَ بَنِيَّهٖ وَيَعْقُوبَ يٰٓبَنِيَّ إِنَّ ٱللَّهَ اصْطَفَىٰ لَكُمُ ٱلدِّينَ فَلَا تَمُوتُنَّ إِلَّا وَأَنتُمْ مُسْلِمُونَ
Q12:101 (Joseph)	My Lord, you have given me of sovereignty and taught me of the interpretation of dreams. Creator of the heavens and earth, you are my protector in this world and in the Hereafter. Cause me to die a muslim and join me with the righteous."	رَبِّ قَدْ ءَاتَيْتَنِي مِنَ ٱلْمُلْكِ وَعَلَّمْتَنِي مِن تَأْوِيلِ ٱلْأَحَادِيثِ فَٱطِرَ ٱلسَّمٰوٰتِ وَٱلْأَرْضِ أَنتَ وَلِيّٖ فِى ٱلدُّنْيَا وَٱلْآخِرَةِ تَوَفَّنِي مُسْلِمًا وَأَلْحِقْنِي بِٱلصَّٰلِحِينَ
Q7:126 (Pharaoh's sorcerers)	And you do not resent us except because we believed in the signs of our Lord when they came to us. Our Lord, pour upon us patience and let us die as muslims	وَمَا تَنْفَعُ مِنَّا إِلَّا ءَآءَآمَنَّا بِآيٰتِ رَبِّنَا لَمَّا جَآءَتْنَا رَبَّنَا أَفْرِغْ عَلَيْنَا صَبْرًا وَتَوَفَّنَا مُسْلِمِينَ
Q10:90 (Pharaoh)	And We took the Children of Israel across the sea, and Pharaoh and his soldiers pursued them in tyranny and enmity until, when drowning overtook him, he said, "I believe that there is no deity except that in whom the Children of Israel believe, and I am of the muslims	وَجَوْرَتَنَا بَيْنِي وَبَيْنَىٰ إِسْرَٰءِيلَ ٱلْبَحْرِ فَأَنْبَعَهُمُ فِرْعَوْنُ وَجُنُودُهُۥ بَغْيًا وَعَدُوًّا حَتَّىٰ إِذَا أَذْرَكَهُ ٱلْغَرَقُ قَالَ ءَامَنْتُ أَنَّهُ لَا إِلَٰهَ إِلَّا ٱلَّذِى ءَامَنْتُ بِهِۦ بَنُوٓا۟ إِسْرَٰءِيلَ وَأَنَاۡ مِنَ ٱلْمُسْلِمِينَ
Q3:52 the disciples of Jesus	But when Jesus felt disbelief from them, he said, "Who are my supporters for God?" The disciples said, " We are supporters for God. We have believed in God and testify that we are muslims	فَلَمَّا أَحَسَّ عِيسَىٰ مِنْهُمُ ٱلْكُفْرَ قَالَ مَنْ أَنْصَارِىٓ إِلَى ٱللَّهِ قَالَ ٱلْحَوَارِيُّونَ نَحْنُ أَنْصَارُ ٱللَّهِ ءَامَنَّا بِٱللَّهِ وَآشْهَدُ بِأَنَّا مُسْلِمُونَ
Q10:72 Noah	And if you turn away then no payment have I asked of you. My reward is only from God, and I have been commanded to be of the muslims	فَإِنْ تَوَلَّيْتُمْ فَمَا سَأَلْتُكُم مِّنْ أَجْرٍۭ إِنِىۢ أَجْرِىٓ إِلَّا عَلَى ٱللَّهِ وَآمُرْتُ أَنْ أَكُونَ مِنَ ٱلْمُسْلِمِينَ
Q51:35-36 Lot's folk	So We brought out whoever was in the cities of the believers * And We found not within them other than a house of muslims	فَأَخْرَجْنَا مَن كَانَ فِيهَا مِنَ ٱلْمُؤْمِنِينَ * فَمَا وَجَدْنَا فِيهَا غَيْرَ بَيْتٍ مِّنَ ٱلْمُسْلِمِينَ

The Book also draws a clear distinction between muslims (*muslimoun*) and believers (*mu'minoun*), and shows that *islam* naturally precedes *iman* (faith). Therefore, one becomes *muslim* first then comes *iman* entailing performance of rituals and other duties. Islam is primordial (Q30:30) but *iman* is an obligation taken up by choice.¹⁶¹

Q33:35	Indeed, the muslim men and muslim women, the believing men and believing women, the obedient men and obedient women, the truthful men and truthful women, the patient men and patient women, the humble men and humble women, the charitable men and charitable women, the fasting men and fasting women, the men who guard their private parts and the women who do so, and the men who remember God often and the women who do so - for them God has prepared forgiveness and a great reward.	إِنَّ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَانِتِينَ وَالْقَانِتَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَاشِعِينَ وَالْخَاشِعَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّامِينَ وَالصَّامَاتِ وَالْحَافِظِينَ فُرُوجَهُمْ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا
Q66:5	Perhaps his Lord, if he divorced you, would substitute for him wives better than you - muslims, believing, devoutly obedient, repentant, worshipping, traveling - widows and maids	عَسَىٰ رَبُّهُ إِنْ طَلَّقَنَّكَ أَنْ تَبْدِلَهُ أَزْوَاجًا خَيْرًا مِنْكَ مُسْلِمَاتٍ مُّؤْمِنَاتٍ قَانِتَاتٍ تَلْبِسَاتٍ غُلَبَاتٍ سَابِقَاتٍ تَيْبَاتٍ وَأَبْكَارًا
Q49:14	The Arabs (of the desert) have said. "We have believed." Say, "You have not believed, but (rather) say, we have become muslims and belief has not as yet entered into your hearts. And in case you obey God and His Messenger, He will not withhold you anything of your deeds. Surely God is Ever-Forgiving, Ever-Merciful."	قَالَتِ الْأَعْرَابُ آمَنَّا قُل لَّمْ تُؤْمِنُوا وَلَكِنْ قُولُوا أَسْلَمْنَا وَلَمَّا يَدْخُلِ الْإِيمَانُ فِي قُلُوبِكُمْ وَإِنْ تُطِيعُوا اللَّهَ وَرَسُولَهُ لَا يَلْبِسْكُمْ مِنْ أَعْمَالِكُمْ شَيْئًا إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

This view raises a fundamental problem and exposes a major misunderstanding with respect to the so-called five pillars of islam (*arkan-ul-islam*) and the six pillars of iman (*arkan-ul-iman*).

The distinction between *islam* and *iman*, reflects the distinction between the two roles of Mohammad as a messenger and prophet. A distinction, Shaḥrur asserts was fiercely protected in Mohammad's lifetime but hardly had a chance to survive in the face of entrenched Arab Bedouin

¹⁶¹ Shaḥrur 2008, p29 and Shaḥrur 1996, p52

values and their extreme individualistic concept of freedom.¹⁶² With the death of Mohammad, the distinction was gradually blurred and confusion of the two was perpetuated in the books of *ḥadith*. In Bukhari's *Sahih*, the section titled 'Faith' (*iman*) begins with the well-known *ḥadith* which states "Islam was built on five..." and discusses the five pillars¹⁶³. Shaḥrur rejects the traditional conception of the 'pillars' as a fallacy and gross misconception of what is stipulated in the Book.

Traditional scholars (*foqaha* ') have defined the first 'pillar' of Islam to consist of the two declarations of the creed 'There is no deity but God' and 'Mohammad is a messenger of God', followed by prayers, fasting, *zakat*, and *haj* (pilgrimage). They defined the pillars of Iman to be belief in God, angels, books, messengers, day of judgement, and predestination. Shaḥrur argues that those scholars have inverted this formula on its head. The first of the two declarations 'there is no deity but God' is the foundation of *islam*, while the second 'Mohammad is a messenger of God' is the foundation of *iman*, this latter is what entails the performance of rituals.¹⁶⁴ *Islam* comes first then *iman*. It is entirely possible for someone to be a *muslim* but not a *mu'min*, but it is impossible for someone to be a *mu'min* without first being a *muslim*.¹⁶⁵ People are believed to be born with *islam* in their nature (Q30:30, Q7:172). As they grow up however, some tend to 'hide' this natural disposition. 'hiding' is the literal meaning of the Arabic '*kufir*', which conventionally came to be understood as 'unbelief'.

Shaḥrur accuses Bukhari of failing to distinguish the act of *islam* from the act of *iman*, and finds it shocking that the five pillars of islam do not include any moral values but only rituals, so that not fasting in Ramadan, for example, is considered worse than lying or cheating.

¹⁶² Shaḥrur 2009, p333

¹⁶³ Shaḥrur, Interview with Ar-Raya Qatari newspaper in Arabic, online at <http://www.shahrour.org/?p=1420>, Shaḥrur official website 2010, (accessed 23 May 2017)

¹⁶⁴ Shaḥrur 2008, p240

¹⁶⁵ Shaḥrur 1996, p52

Shahrur demonstrates that the Book presents Islam as ‘The One Religion’ and *muslims* are the followers of the three Abrahamic traditions, each referred to as *milla* (not religion). Each *milla* is characterised by its own laws and rituals.¹⁶⁶

At the hands of traditional scholars, Islam was re-defined to include only the followers of Mohammad with *their* version of laws and rituals, i.e. they have re-labelled *arkan-ul-Iman* as *Arkan-ul-Islam*, de-facto redefining the Islam of the Book to mean exclusively Mohammad’s *milla*. With this, traditional scholarship has reduced the universality of *islam* into the specificity of *iman*.

3.5.3 Apostasy

Apostasy in Arabic is ‘*riddah* رَدَّة’ – used in the Book to mean return or recoil in the sense of going back to an initial or former position (Q28:13, Q2:109, Q12:65). Derivatives of the root r-d-d appear fifty-nine times in the Book. However, two verses are particularly relevant in the context of rejecting the faith where *riddah* is understood as a conduct that invites certain consequences.

Q2:217 ...nor will they cease fighting you until they **turn you back** from your **religion** if they are able. And whoever of you **turn back** from their **religion** and die in unbelief, their deeds will bear no fruit in this world and the Hereafter; and those are the companions of the Fire, they will abide therein eternally

...وَلَا يَزَالُونَ يُقَاتِلُونَكُمْ حَتَّى يَرُدُّوكُمْ عَنْ دِينِكُمْ إِنِ اسْتَطَاعُوا وَمَنْ يَرْتَدِدْ مِنْكُمْ عَنْ دِينِهِ فِيمَتٍ وَهُوَ كَافِرٌ فَأُولَٰئِكَ خَبِطَتْ أَعْمَالُهُمْ فِي الدُّنْيَا وَالْآخِرَةِ وَأُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ...

Q5:54 O ye who believe! whoever of you **turn back** from his **religion**, soon will God bring forth a people whom He will love as they will love Him, humble toward the believers, powerful against the disbelievers, they strive in the Way of God, and do not fear the blame of a critic. That is the favour of God, which He bestows on whom He wills: and God is all encompassing all knowing.

يَا أَيُّهَا الَّذِينَ ءَامَنُوا مَنْ يَرْتَدَّ مِنْكُمْ عَنْ دِينِهِ فَسَوْفَ يَأْتِي اللَّهَ بِقَوْمٍ يُحِبُّهُمْ وَيُحِبُّونَهُ أَذِلَّةٌ عَلَى الْمُؤْمِنِينَ أَعِزَّةٌ عَلَى الْكَافِرِينَ يُجَاهِدُونَ فِي سَبِيلِ اللَّهِ وَلَا يَخَافُونَ لَوْمَةَ لَائِمٍ ذَلِكَ فَضْلُ اللَّهِ يُؤْتِيهِ مَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

¹⁶⁶ Shahrur 2008, p240

Apostasy (*riddah*) in these verses is understood as a deed and behaviour like believing or disbelieving. It is an act people choose to do and constitutes the basis for reward or punishment in the afterlife where “people will issue forth in groups to be shown their deeds * So whoever does an atom's weight of good will see it * and whoever does an atom's weight of evil will see it” (Q99,6-8).

Apostasy always manifests in relation to a specific subject and within a specific context. The *riddah* verses provide the subject and context of apostasy to be ‘religion’. In distinguishing between *islam* and *iman*, it became clear that *islam* marks the lower limit of religion; the minimum required to count someone into Islam, implied by the first declaration ‘there is no deity but God’. *Iman* marks the upper limit of religion implied by the second part of the declaration ‘Mohammad is a messenger of God’. Between the two limits people conduct their lives by following moral precepts, performing rituals, and avoiding what is proscribed.¹⁶⁷

As defined in these verses, apostasy means ‘to turn back from religion’, that is to transgress the lower limit. Since Islam is the one religion of monotheism, turning back from one of its three *millas* into another, would mean turning back from one monotheistic community into another and not turning back from ‘religion’ and, therefore, this is not apostasy.¹⁶⁸ In addition to giving a clear description of what apostasy is, the *riddah* verses specify the consequences for those who choose apostasy. Q2:217 says, “their deeds will bear no fruit in this world and the Hereafter”, and the punishment prescribed in (Q5:54) is that God will replace them with “people whom He will love as they will love Him”. Nowhere else in the Book is there a specific punishment for *riddah*.

¹⁶⁷ Shahrur 2008, p252

¹⁶⁸ Shahrur 2009, p341

Other verses of the Book mention the consequence for those who reject their faith after becoming believers, but without using the specific term of *riddah*:

- Q3:90-91 Indeed, those who **reject the faith after their belief** and then increase in disbelief - never will their repentance be accepted, and those are the ones who have gone astray * Indeed, those who **disbelieve and die while they are disbelievers** - never would an 'Earth-full' of gold be accepted from one of them if he would ransom himself with it. For those there will be a painful punishment, and they will have no helpers.
- إِنَّ الَّذِينَ كَفَرُوا بَعْدَ إِيمَانِهِمْ ثُمَّ أَزْدَادُوا كُفْرًا لَّنْ نَّقْبَلَ تَوْبَتَهُمْ وَأُولَٰئِكَ هُمُ الضَّالُّونَ * إِنَّ الَّذِينَ كَفَرُوا وَمَاتُوا وَهُمْ كُفَّارٌ فَلَن يُقْبَلَ مِنْ أَحَدِهِمْ مِلَّةٌ الْأَرْضِ ذَهَبًا وَلَوْ أَقْتَدَىٰ بِهٖ أُولَٰئِكَ لَهُمْ عَذَابٌ أَلِيمٌ وَمَا لَهُمْ مِنْ نَّاصِرِينَ
- Q4:137-138 Indeed, those who believe, then disbelieve and then believe, then disbelieve, and then increase in disbelief, God will never pardon them, nor will He guide them unto a way * Bear unto the hypocrites the tidings that for them there is a painful doom
- إِنَّ الَّذِينَ ءَامَنُوا ثُمَّ كَفَرُوا ثُمَّ ءَامَنُوا ثُمَّ كَفَرُوا ثُمَّ أَزْدَادُوا كُفْرًا لَّمْ يَكُنِ اللَّهُ لِيُغْفِرْ لَهُمْ وَلَا لِيُجِدِيَهُمْ سَبِيلًا * بَشِّرِ الْمُنَافِقِينَ بِأَنَّ لَهُمْ عَذَابًا أَلِيمًا

Here again one understands that there is no legal consequence or worldly retaliation against the action of disbelief, even when confirmed through repetition and increase in it. There is nothing in the 'theory of limits' that addresses *riddah* as in the cases of killing, adultery, or stealing. Shahrur concludes that one must therefore, accept that there is simply no punishment for apostasy in the law of the Book.¹⁶⁹ This he argues, should not come as a surprise because belief is a conceptual position chosen by a conscious adult without coercion. This is further confirmed in the Book's instruction to Mohammad:

- Q10:108 Say, O mankind, the truth has come to you from your Lord, so whoever is guided is only guided for his own soul, and whoever goes astray only goes astray against it. And I am not over you a guardian
- قُلْ يَٰٓأَيُّهَا النَّاسُ قَدْ جَاءَكُمُ الْحَقُّ مِنْ رَبِّكُمْ فَمَنْ اهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ وَمَنْ ضَلَّ فَإِنَّمَا يَضِلُّ عَلَيْهَا وَمَا أَنَا عَلَيْكُمْ بِوَكِيلٍ

It is also consistent with the voluntary conception of faith propagated in several other verses such as:

¹⁶⁹ Shahrur 2008, p241

Q16:124-125	Invite to the way of your Lord with wisdom and good instruction, and argue with them in a way that is best. Indeed, your Lord is most knowing of who has strayed from His way, and He is most knowing of who is guided.	ادْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحُكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَادِلْهُمْ بِالَّتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ
Q10:99	And had your Lord willed, all those on earth would have believed in their entirety, will you then compel people till they become believers?	وَلَوْ شَاءَ رَبُّكَ لَآمَنَ مَنْ فِي الْأَرْضِ كُلُّهُمْ جَمِيعًا أَفَأَنْتَ تُكْرِهُ النَّاسَ حَتَّى يَكُونُوا مُؤْمِنِينَ
Q88:21-24	So, remind, you are only a reminder * You are not over them a controller * But, he who turns away and disbelieves * Then God will punish him with the greatest punishment	فَذَكِّرْ إِنَّمَا أَنْتَ مُذَكِّرٌ * لَسْتَ عَلَيْهِمْ بِمُسْطَرٍ * إِلَّا مَنْ تَوَلَّى وَكَفَرَ * فَيُعَذِّبُهُ اللَّهُ الْعَذَابَ الْأَكْبَرَ
Q2:272	Not upon you, is their guidance, but God guides whom he wills...	ليس عليك هداهم ولكن الله يهدي من يشاء
Q18:29	And say, "The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve." Indeed, we have prepared for the wrongdoers a fire whose walls will surround them. And if they call for relief, they will be relieved with water like murky oil, which scalds faces. Wretched is the drink, and evil is the resting place.	وَقُلِ الْحَقُّ مِنْ رَبِّكُمْ فَمَنْ شَاءَ فَلْيُؤْمِنْ وَمَنْ شَاءَ فَلْيُكْفُرْ إِنَّا أَعْتَدْنَا لِلظَّالِمِينَ نَارًا أَحَاطَ بِهِمْ سُرَادِقُهَا وَإِنْ يَسْتَعِينُوا يُعَاثُوا بِمَاءٍ كَأَلْمَهْلِ يَتَشَوَّى الْوُجُوهَ بِئْسَ الشَّرَابُ وَسَاءَتْ مُرْتَفَقًا
Q2:256	There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejects false deities and believes in God has grasped a firm handhold which will never break. God is hearer, knower	لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدْ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَى لَا أَنْفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ

In view of the Book's position on apostasy, Shaḥrur raises the question concerning the origins of traditional perspectives on apostasy: to fight and capture the apostate, to kill him when captured, to deny him support, aid, and good mention, to distance his wife from him, to deprive him from inheriting other Muslims, and so on? How did all the detailed histories and enumerations of apostate tribes originate? These lists included three tribes during the time of the prophet, seven under Abu Bakr, and one in the time of Omar. How were all those pretexts furnished and scholarly opinions made by the *fuqaha'* to incriminate the apostates? This literature turned Islamic history into 'historicised Islam' and fashioned traditional texts that later

possessed such authority that scholars like al-Zamachshari and al-Razi would quote without feeling the need to challenge, critique, analyse or discuss.¹⁷⁰

Arab historiographers of the prophetic tradition created those narratives at a time where the dominant scholarly ethos regarded the companions of the prophet as infallible and their accounts as sacrosanct. These historical accounts, Shaḥrur maintains, were “islamized” and turned into legislation despite obvious contradictions to perspectives in the Book. The purpose of the scholars was to provide despotic rulers of the Umayyad and Abbasid dynasties with pretexts to legitimise the elimination of their political opponents. When they failed to find support in the Book, they turned to the *Sunna* of the prophet, where they also failed find valid precedents for killing apostates. They finally found a *ḥadith* of the prophet where he had given orders to fight apostate tribes (Bani Madlaj, Bani Hanifah, Bani Asad) and attributed to him the *ḥadith* “he who changes his religion, kill him” narrated by Bukhari and the same *ḥadith* narrated by Malik with a slightly different wording; “he who changes his religion, cut off his head.”¹⁷¹ They also claimed that Abu Bakr and Omar were only following in the steps of the prophet when they decided to fight the tribes that declared apostasy during their Caliphates.¹⁷²

The *ḥadith* appears in two different narrations, one accepted by Bukhari in one version while the other accepted by Malik in another. The other renowned *ḥadith* collector, Muslim

¹⁷⁰ Confirming the political rather than theological nature of the matter, Shaḥrur notes the following inconsistencies in Zamachshari’s account: The list of apostate tribes produced by him includes the Bani-Ghassan, a Christian tribe that did not follow Muhammad. The list also excludes Abdullah bin Abi Sarh, a known apostate, and a close relative of the Umayyads. Shaḥrur, further notes that apostasy is applied collectively to describe whole tribes when the deed is individual in nature. This is contradictory to the Qur’anic doctrine “...and no bearer of burdens will bear the burden of another...” (Q39:7) which features five times in the Book.

¹⁷¹ Full text of the two *ḥadith* narrations in Arabic in: Shaḥrur 2008, p243 and in English in (Shaḥrur 2009, p344), both reproduced in Appendix 2

¹⁷² Shaḥrur 2008, p243 and Shaḥrur 2009, p343

rejects it in both versions for unknown reasons and it is not featured in his *Sahih*.¹⁷³ Shahrur in turn, rejects both of them in either version and lists five reasons for doing so:

Doctrinal reasons:

1. The ḥadith dissents from the punishment specified for the apostate in the Book in Q2:217 and Q5:54.
2. It contradicts, both in text and spirit, tens of verses of the revealed Book such as Q16:125, Q3:128, Q10:99, Q88:21-24.
3. It contradicts other ḥadiths of the prophet such as Abu Huraira's narration "None of the Muslims' is allowed to another Muslim, his blood, property and honour".

Historical reasons:

4. The history of the *ḥadith* confirms it was known during the Caliphate of Ali, i.e. sometime after year 35 H.¹⁷⁴ It is strange, therefore, that it did not feature in the recorded dispute, some twenty-five years earlier, between Abu Bakr and Omar in the context of justifying the war against the apostates, to which Omar initially objected. Neither man referred to this *ḥadith* in his argumentation. Abu Bakr's arguments were "I will fight those who separate prayer from zakat" and "if they deny me a bridle which they used to pay to the Messenger of God, I will fight them for it." If the *ḥadith* had been known to any of the two men, Abu Bakr would have used it rather than resort to his own *ijtihad* to justify his action.

¹⁷³ Shahrur 2008, p244

¹⁷⁴ It is highly questionable that Abu Bakr who was very close to the prophet for twenty-three years had not heard that ḥadith, while Ibn Abbas who was only ten years old when the prophet died would be considered a reliable source in reporting of this *ḥadith* (DM, p27).

5. The ḥadith was not applied in practice neither by the prophet during his life, nor by any of the four Caliphs during their rules.

Most relevant to the subject of this thesis are the first two reasons out of the five that Shahrur uses to reject the idea of punishment for the apostate, and the *ḥadith* used to support it in traditional scholarship. Here, he demonstrates his willingness to rely on the authority of the Book alone to reject *ḥadith* and traditionally established practices and modes of thinking and legislating. None of the scholars discussed earlier were willing to take that route. Their efforts remained within the framework of *usul-ul-fiqh* and tacitly accepted its historical constraints and contradictions. Shahrur's refusal to do so is what distinguishes his unique approach to Islamic reform.

One feature shared by *riddah* movements in early Islam is that they were collective breakaway movements, driven by political demands with which they challenged the central government. But in the Arab and Islamic political and cultural conscience, apostasy against religion is inextricably conflated with political dissent. Hence, the need to distinguish between doctrinal and political apostasy: Apostasy from iman vs apostasy from islam.

Apostasy from Iman:

Distinguishing between islam and iman based on the first declaration 'no deity but God'', and the second declaration 'Mohammad is a messenger of God' stems from the Book where the three monotheistic traditions are not referred to each as a religion but as a *milla*, each having its own law and rituals, within the one religion of Islam. Therefore, an individual who changes

affiliation from Mohammad's *milla* to one of the other two is considered to have changed *iman* but not *islam*, hence remains *muslim* and this cannot be counted as apostasy (Q2:120, Q3:64).

- Q3:64 Say, 'O People of the Book, come to a word that is equitable between us and you - that we will not worship except God and not associate anything with Him and not take one another as lords instead of God'. But if they turn away, then say, 'bear witness that we are muslims'
- قُلْ يَا أَهْلَ الْكِتَابِ تَعَالَوْا إِلَى كَلِمَةٍ سَوَاءٍ بَيْنَنَا وَبَيْنَكُمْ أَلَّا نَعْبُدَ إِلَّا اللَّهَ وَلَا نُشْرِكَ بِهِ شَيْئًا وَلَا يَتَّخِذَ بَعْضُنَا بَعْضًا أَرْبَابًا مِنْ دُونِ اللَّهِ فَإِنْ تَوَلَّوْا فَقُولُوا اشْهَدُوا بِأَنَّا مُسْلِمُونَ
- Q2:120 And never will the Jews or the Christians approve of you until you follow their *milla*. Say, 'Indeed, the guidance of God is the guidance' If you were to follow their desires after what has come to you of knowledge, you would have against God no protector or helper.
- وَلَنْ تَرْضَىٰ عَنْكَ الْيَهُودُ وَلَا النَّصَارَىٰ حَتَّىٰ تَتَّبِعَ مِلَّتَهُمْ قُلْ إِنْ هَدَىٰ اللَّهُ هُوَ الْهَدَىٰ وَلَئِنْ آتَيْتَ أَهْوَاءَهُمْ بَعْدَ الَّذِي جَاءَكَ مِنَ الْعِلْمِ مَا لَكَ مِنَ اللَّهِ مِنْ وَلِيٍّ وَلَا نَصِيرٍ

Apostasy from Islam is characterized by three features. At the level of doctrine: since belief in God and in the Last day constitute the minimum level of doctrinal belief by a muslim, rejecting this belief represents the first level of apostasy from 'islam' because it means rejecting the first declaration of islam: 'no deity but God' and subsequently the second declaration: 'Mohammad is a messenger of God'. This form of apostasy at the level of doctrine is conventional atheism and is an absolute right of any individual to choose and express through peaceful means.

At the level of action: the second level of 'islam' is a practical one that involves doing good deeds by adopting a conduct consistent with the ethical teachings of the Book which dictates avoiding cheating, acts of fraud, adultery, theft, bearing false witness, disrespecting one's parents, spreading of vice in the community, and so forth. Apostasy from islam at this level means engaging in such practices that are detested by a human community regardless of *millah* or religion, they will be a matter of common concern not only to the believers in a community but to all other groups and will naturally lead to a person being ostracised, committed to a mental institute, or imprisoned. Therefore, this manner of apostasy is naturally unsustainable.

At the level of legislation: Islamic legislation as articulated in the ‘theory of limits’ is a human civic law functioning within the ‘limits of God’. As human societies advance in their levels of progress they will increasingly move toward this limit-based legislation. Parliamentary systems of legislation do indeed espouse in their laws this islamic characteristic of *hanifiyya* (flexibility within set limits).¹⁷⁵

The sort of apostasy that takes place at the individual level should not be punishable by death, but where it turns into withdrawal from morality and civility then it must be punishable by society. Religious apostasy understood as complete withdrawal from iman and islam, i.e. at all levels of doctrine, action, and legislation as described above is practically impossible to sustain as individual conduct. If, however, this turns into collective movements of violence and open confrontation with the community, it is then theoretically naïve and politically oppressive to continue to regard it as ‘religious’ apostasy and ignore the social, political, or economic aspects of discontent. Such has been the reality of apostasy in Islamic history, both political and collective.

The events following the death of the prophet, the controversy of his succession, and the apostasy wars of the tenth and eleventh years AH, were purely political in nature as their disputations were not against religious doctrines of islam or iman. Nevertheless, they have entered Arab and Islamic political and cultural conscience, acquired normative status, and became part of Islamic law. They continue to impact politics today as powerful weapons used to stem opposition and suppress dissent.

¹⁷⁵ Shahrur 2008, p253

3.5.4 The Question of Freedom

The death of the prophet vacated two roles, religious and political, but only the latter needed to be filled. The scope of his role as messenger was completed and closed shortly before his passing away as proclaimed by the revelation of (Q5:3) and as conveyed by the final address of the Messenger to the community during his last pilgrimage.

Q5:3 ...this day, I perfected your religion for you,
 and completed My favour upon you and have
 approved for you Islam as religion. ...

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتْمَمْتُ
عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ
الْإِسْلَامَ دِينًا

However, the other role which he performed as a prophet, (i.e. from the position of prophethood) was the role from which he had created a state and managed the social, political, and military affairs of the Muslim community. i.e. assuming the role of executive power (with the legislative being entrusted in the role of Messenger). This was the role which needed to be filled by a successor and would automatically be reduced to a purely political role with no religious authority after the cessation of revelation.¹⁷⁶

The companions of the prophet, however, conflated the two roles and the Caliphs ruled without properly distinguishing between the political (Islam) and the theological (Iman); Political rule entered Arab consciousness as ‘Islam’ thus confusing politics and religion with disastrous consequences. The formative period witnessed a redefinition of the faith along two streams: one political, redefined as pillars of Islam (*arkan-ul-islam*), reduced to prayer, zakat, fasting, and pilgrimage while discounting ‘good deeds’ and ethics. The other is a theological stream, redefined as pillars of faith (*Arkan-ul-iman*), with *Shura* dropped and *Jihad* redefined as

¹⁷⁶ Shahrur 2008, p251

fighting and conquest whereas under the prophet it had meant struggling in God's way to ensure freedom of choice as will be discussed.¹⁷⁷

This redefinition established the understanding that as long as people performed their rituals, God will be well served and Islam will continue to prosper. It created a social space controlled by religious *'ulama* who introduced newly devised and politically motivated theologies such as predestination, wherein God had already predetermined every single human act, age, and provision. This politically driven doctrine, concocted towards the end of the *Umayyad* rule resulted in demoting the need for critical thinking and marginalizing the concept of free will and freedom of choice at the individual and collective levels.¹⁷⁸

3.5.4.1 'ibadiyya vs. 'ubudeyya¹⁷⁹ - العبادية لا العبودية

In addition to the political reasons that led to the suppression of freedom as a supreme value in Arab consciousness, there was another epistemological element, namely that the word 'freedom' or 'liberty' (*hurriyyah*) never appears in the Book. It is mentioned rather apophatically in the context of slavery. Thus, the term 'liberating a slave' (*tahrir-u-raqaba*) appears 5 times in the Book. Traditional scholars saw freedom merely as exemption from slavery, and did not explore its more basic meaning as freedom to choose between belief and disbelief, or between

¹⁷⁷ Shahrur 2009, p336

¹⁷⁸ Shahrur 2009, p337; Controversy around the concept of 'Divine Justice' erupted towards the end of the Umayyad Caliphate. The Umayyads who usurped the caliphate by the sword and maintained their rule by violence against their opponents, justified their rule as predestined by God, and their actions as totally in accordance with His will. As such they will be exempt from responsibility in the hereafter. Further, as muslim believer rulers, it was wrong to rebel against them or fight them Jābirī 1997, p74.

¹⁷⁹ The topic is discussed in Shahrur 1996, p153-160

obedience and disobedience.¹⁸⁰ Therefore, Shaḥrur recognises the necessity of innovation to ground this concept in Islamic jurisprudence.

These two reasons lead to what Shaḥrur calls a crisis of epistemological oppression.¹⁸¹ Whereas Man's vicegerency of God on earth (*khilafa*) was based on the gifts to mankind of knowledge, legislation, and freedom of choice as in Q33:72 and Q17:70, this contractual relationship with God was distorted by the traditional jurists through the reductive notion of freedom as the opposite of slavery.¹⁸² Hence, the traditional Islamic view of politics grants authority to a single vicegerent, a Caliph, who rules on behalf of God and excludes the participation of the ruled.

Shaḥrur's approach to grounding the concept of freedom in the Book turns to the two terms '*ibad*' and '*abeed*' both understood conventionally as 'God's servants.' However, Shaḥrur argues for an important difference between the two that lies in the ability of only one group to choose freely. In other words, what distinguishes '*ibad*' from '*abeed*' is possessing the freedom of choice. He points out that '*abeed*' appears five times in the Book, all in the context of God's final judgement, i.e. beyond the point where people make choices and decisions. The word '*ibad*', on the other hand appears to indicate the ability to choose freely during life. Take for example, the verse Q51:56 commonly understood to mean that God created humans and jinn for worship expressed through obedience.

Q51:56 I created the jinn and humankind only that وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ
they might [worship](#)

¹⁸⁰ Shaḥrur 2000b, p.12-13

¹⁸¹ Shaḥrur 1994 p222; Shaḥrur 2014, p299, Shaḥrur 2008, p126; Shaḥrur 2009, p451

¹⁸² Shaḥrur 2000b, p.10

Shahrur focuses on the word ‘worship’, (Arabic *y’abud* يَعْْبُدُ) and contests the way it is traditionally understood, namely to mean, as in its English translation, to engage in performing rituals in reverence, adoration, or obedience to God.¹⁸³ He argues that the Arabic word (يَعْبُدُ *ya’bud*) used here, is from the verb ‘*abada*’ which belongs to the group of verbs known as the ‘opposites’ or auto-antonym (*al-adhad* الأضداد) and as such it carries two opposing meanings; to obey or to disobey depending on the context¹⁸⁴. Therefore, a person can be an obeying subject (*‘abd* عبد) or a disobeying subject (*‘abd* عبد). It is therefore, a mistake to take the word *ya’budun* of Q51:56 to mean ‘to obey’ (and similarly wrong to translate it in English as ‘to worship’). The verse, therefore, means that Jinn and mankind were created to “obey with their own volition or disobey with their own volition”. In other words, being *‘ibad* (plural of *‘abd*) does not automatically imply a status of ‘being obedient’ as traditionally understood. To backup this argument, Shahrur points to several verses where *‘ibad* does not indicate obeying¹⁸⁵:

¹⁸³ Shahrur 2008, p102

¹⁸⁴ A glossary of terms of the Book is provided as Chapter 2 of Shahrur 2008, see also “Concept of Freedom in Islam”, article in Arabic, “مفهوم الحرية في الإسلام” on Shahrur website, at <http://shahrour.org/?p=1391>, dated Oct 2004, (accessed 11 Apr 2017). Also Shahrur 2008, p52-53

¹⁸⁵ See also: Q17:17, Q40:31, Q5:118, Q15:39-40.

Q34:13	...work, O House of David, in gratitude! And few of My subjects ('ibad) are grateful.	...أَعْمَلُوا ءَالَ دَاوُدَ شُكْرًا وَقَلِيلٌ مِّنْ عِبَادِيَ الشَّاكِرِينَ
Q50:9-11	And We have sent down blessed water from the sky and made grow thereby gardens and grain from the harvest * And lofty palm trees having fruit arranged in clusters * As provision for the subjects ('ibad) ...	وَنَزَّلْنَا مِنَ السَّمَاءِ مَاءً مُّبَارَكًا فَأَنبَتْنَا بِهِ جَنَّاتٍ وَحَبَّ الْحَصِيدِ * وَالنَّخْلَ بَاسِقَاتٍ لِّهَا طَلْعٌ نَّضِيدٌ * رِّزْقًا لِّلْعِبَادِ ...
Q39:53	Say, O My subjects ('ibad) who have transgressed against themselves, do not despair of the mercy of God. Indeed, God forgives all sins. Indeed, it is He who is the Forgiving, the Merciful.	قُلْ يَا عِبَادِيَ الَّذِينَ أَسْرَفُوا عَلَىٰ أَنفُسِهِمْ لَا تَقْنَطُوا مِن رَّحْمَةِ اللَّهِ إِنَّ اللَّهَ يَغْفِرُ الذُّنُوبَ جَمِيعًا إِنَّهُ هُوَ الْغَفُورُ الرَّحِيمُ
Q14:31	Say to my subjects ('ibad) who have believed, to establish prayer and spend from what We have provided them, secretly and publicly, before a Day comes in which there will be no exchange, nor any friendships	قُلْ لِّلْعِبَادِ الَّذِينَ آمَنُوا يُقِيمُوا الصَّلَاةَ وَيُنْفِقُوا مِمَّا رَزَقْنَاهُمْ سِرًّا وَعَلَانِيَةً مِّن قَبْلِ أَن يَأْتِيَ يَوْمٌ لَا بَيْعَ فِيهِ وَلَا خِلَالٌ
Q40:47-48	And when they will argue within the Fire, and the weak will say to those who had been arrogant, 'Indeed, we were your followers, so will you relieve us of a share of the Fire?' * Those who were arrogant say: 'Indeed, we are all (together) herein. Indeed, God has judged between the subjects ('ibad) '	وَإِذ يَتَحَاوَنَ فِي النَّارِ الْفُقَرَاءُ لِلَّذِينَ اسْتَكْبَرُوا إِنَّا كُنَّا لَكُمْ تَبَعًا فَهَلْ أَنْتُمْ مُغْنُونَ عَنَّا نَصِيبًا مِنَ النَّارِ * قَالَ الَّذِينَ اسْتَكْبَرُوا إِنَّا كُلٌّ فِيهَا إِنَّ اللَّهَ قَدْ حَكَمَ بَيْنَ الْعِبَادِ

He further points out that the Arabic *'ibadah* (conventionally worshiping) is not akin to performing rituals. For example, in the following verses the word 'worship' would be redundant if it meant performing rituals of prayer, prostration, and *zakat*:

Q18:14	Indeed, I am God. There is no deity except Me, so <i>u'budni</i> (worship Me?) and establish prayer for My remembrance.	إِنِّي أَنَا اللَّهُ لَا إِلَهَ إِلَّا أَنَا فَاعْبُدْنِي وَأَقِمِ الصَّلَاةَ لِذِكْرِي
Q22:77	O you who have believed, bow and prostrate <i>and u'budu</i> (worship?) your Lord and do good - that you may succeed.	يَا أَيُّهَا الَّذِينَ آمَنُوا ارْكَعُوا وَاسْجُدُوا وَاعْبُدُوا رَبَّكُمْ وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ
Q89:5	And they were not commanded except to <i>ya'budu</i> (worship?) God, sincere to Him in religion, inclining to truth, <i>and</i> to establish prayer <i>and</i> to give <i>zakat</i> . And that is the correct religion.	وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا اللَّهَ مُخْلِصِينَ لَهُ الدِّينَ حُنَفَاءَ وَيُقِيمُوا الصَّلَاةَ وَيُؤْتُوا الزَّكَاةَ وَذَلِكَ دِينُ الْقَيِّمَةِ

Mankind, therefore, is God's *'ibad* (subjects who believe or do not with their own will) but not his *'abeed* (slaves). Shahrur argues thus, that people are God's *'ibad* in life (where they have the freedom of choice) and his *'abeed* during the Day of Judgement (where the ability to

make choices is suspended). Shaḥrur also finds the concept of freedom present in the term *mashi'ah*¹⁸⁶ (will, volition المشيئة) as in Q18:29 “say, the truth is from your Lord, so whoever wills (*sha'a*) let him believe; and whoever wills let him disbelieve”. Here, *mashi'ah* is knowledge and power to act and is an expression of freedom as basis for Man’s vicegerency of God on earth (*khilafa*). This freedom is always tightly bound to the binary of belief-disbelief in God.

3.5.4.2 Freedom as the binary opposite of coercion and tyranny

Having established that freedom of choice is theorized in the Book under the concept of *'ibadiyya* عبادية (as distinct from *'ubudeyya* عبودية), and in the concept of volition *mashi'ah*, Shaḥrur explains how this freedom is the supreme value that is referred to in Q2:256 through the doctrine of ‘no compulsion in religion.’

Q2:256 No compulsion in religion, guidance is henceforth distinct from misguidance. And whoever disbelieves in tyranny [*Taghut*] and believes in God has grasped the trustworthy handhold which will never break. God is hearer, knower

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ
الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ
بِالطَّاغُوتِ وَيُؤْمِنْ بِاللَّهِ فَقَدْ
اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا
أَنْفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ

Shaḥrur draws attention to the distinction in Arabic grammar between two types of use for the word “no”:

No for negation	لا النافية	indicates that the predicate is negated from the genus of the subject, as in: ‘No oxygen on the moon’
No for interdiction	لا الناهية	As in: ‘No Smoking in Classrooms’

He is careful to point out that the ‘no’ preceding ‘compulsion’ in this verse is of the first type.¹⁸⁷ It is not meant to prescriptively discourage compulsion in religion as understood by most

¹⁸⁶ Shaḥrur, Q & A in Arabic, online at http://shahrour.org/?page_id=3964#comment-10935, Shaḥrur official website, page dated 2010, (accessed 12 Aug 2017)

¹⁸⁷ Shaḥrur 2014, p263

scholars and Qur'an commentators, but rather to categorically deny the compatibility of compulsion with religion; declaring the two as mutually exclusive.¹⁸⁸

Furthermore, Shaḥrur notes that in this doctrinal verse, belief in God is directly contrasted with rejecting tyranny (*taghut*). The concept of tyranny appears in other places in the Book describing excessive use of power and denial of individual freedom.¹⁸⁹ The intersection between belief in God with rejection of tyranny is described as the “trustworthy handhold” that never breaks and is a choice for individuals to make free of coercion.¹⁹⁰ This freedom to choose generates diversity among mankind, something that God expressly intended:

Q11:118-119	And if your Lord had willed, He would have made mankind into one community, yet they continue to be different * Except whom your Lord has given mercy, and for that He created them...	وَلَوْ شَاءَ رَبُّكَ لَجَعَلَ النَّاسَ أُمَّةً وَأَحَدَةً وَلَا يَزَالُ الَّذِينَ مُخْتَلِفِينَ * إِلَّا مَنْ رَحِمَ رَبُّكَ وَلِذَا لِكَ خَلْقُهُمْ ...
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This freedom, argues Shaḥrur, that God wants people to protect and defend is referred to in the Book as ‘the word of God that preceded.’ It is his promise without which there is no meaning for reward or punishment.¹⁹¹ It is God’s highest word given to mankind as a vicegerent on earth, responsible for his own free choice in obeying or disobeying.¹⁹² This is further confirmed in several verses.¹⁹³

¹⁸⁸ See also: Tabatabaiee, “refusing the compulsion can be interpreted either predicatively or prescriptively...” in Gaay Fortman, Bastiaan de, Kurt Martens, and Mohamed Abdel Rahim M. Salih. *Hermeneutics, Scriptural Politics, and Human Rights: Between Text and Context*. Basingstoke: Palgrave Macmillan, 2010.134-135.

¹⁸⁹ The Book uses ‘transgressed’, ‘*tagha*’ to describe the general conduct of pharaoh in Q20:24. Further, Q20:71 demonstrates in more detail how this conduct is about depriving individuals of their ability to choose freely, where the pharaoh was offended not because the magicians believed Moses but because they did so before he gave them his permission to do it.

¹⁹⁰ Shaḥrur 2014, p264-265

¹⁹¹ Shaḥrur 2014, p270, see also Shaḥrur, “Interviews with journalists in Arabic,” online at <http://www.shahrour.org/?p=1422>, Shaḥrur official website, page dated 2010, (accessed 12 Aug 2017)

¹⁹² Shaḥrur 1996, p379, p398

¹⁹³ “Concept of Freedom in Islam”, article in Arabic, “مفهوم الحرية في الإسلام” on Shaḥrur website, at <http://shahrour.org/?p=1391>, dated Oct 2004, (accessed 11 Apr 2017)

Q10:19	And mankind was not but one community, but they differed. And if not for a word that preceded from your Lord , it would have been judged between them [immediately] concerning that over which they differ.	وَمَا كَانَ النَّاسُ إِلَّا أُمَّةً وَاحِدَةً فَاخْتَلَفُوا وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ لَفُضِيَ بَيْنَهُمْ فِيهِ يَخْتَلَفُونَ
Q11:110	And We had already given Moses the Scripture, but it came under disagreement. And if not for a word that preceded from your Lord , it would have been judged between them....	وَلَقَدْ آتَيْنَا مُوسَى الْكِتَابَ فَاخْتَلَفَ فِيهِ وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ لَفُضِيَ بَيْنَهُمْ ...
Q20:129	And if not for a word that preceded from your Lord , and a specified term, punishment would have been an obligation	وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ لَكَانَ لِزَامًا وَأَجَلٌ مُّسَمًّى
Q42:14	And they did not become divided until after knowledge had come to them - out of animosity amongst them. And if not for a word that preceded from your Lord until a specified time, it would have been concluded between them...	وَمَا تَفَرَّقُوا إِلَّا مِنْ بَعْدِ مَا جَاءَهُمُ الْعِلْمُ بَغْيًا بَيْنَهُمْ وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ إِلَى أَجَلٍ مُّسَمًّى لَفُضِيَ بَيْنَهُمْ ...
Q41:45	And We had already given Moses the Scripture, but it came under disagreement. And if not for a word that preceded from your Lord , it would have been concluded between them...	وَلَقَدْ آتَيْنَا مُوسَى الْكِتَابَ فَاخْتَلَفَ فِيهِ وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ لَفُضِيَ بَيْنَهُمْ ...

Shahrur explains his understanding that as God's subjects and not his slaves, individuals have the freedom to choose and make decisions and that is 'God's promise' given to mankind.¹⁹⁴ Further, as Q2:256 binds together the rejection of tyranny and the belief in God, it is a responsibility of believers to stand against tyranny manifesting as coercion and to ensure others are not denied their freedom of choice, i.e. not coerced, or compelled in thought or conduct. This, Shahrur maintains, is one of the legitimate reasons for fighting 'in the way of God.'

3.5.4.3 Freedom is where 'God's word reigns supreme'

Shahrur rejects the traditional definition of *Jihad* as "fighting the unbelievers to support Islam and to exalt God's word".¹⁹⁵ He ridicules the understandings of Razi, Tabarsi and other renowned scholars and their tendency to confuse basic concepts through their patterns of thought dominated by synonymy where *fath* (opening) becomes *harb* (war), and *jihad* (struggle) becomes

¹⁹⁴Shahrur, Interviews with journalists in Arabic, online at <http://www.shahrour.org/?p=1422>, Shahrur official website, page dated 2010, (accessed 12 Aug 2017) – search for "كلمة الله"

¹⁹⁵ Shahrur 2008, p57

qital (fighting) and fighting becomes *ghazou* (invading).¹⁹⁶ He admonishes their failure to distinguish between ‘words of God’ and ‘God’s speech’, *kalimaat-ullah* vs. *kalam-ullah*, and failing to grasp the significance of the term ‘exalting God’s word’.¹⁹⁷ The conventional understanding of *Jihad*, he points out, is very different from the one stated by the prophet which is “One’s struggle with own desires,” an understanding which conforms to the Qur’anic meaning (29:8 and 31:15).¹⁹⁸

With reference to Q9:40, Q2:251 and Q22:40 Shaḥrur makes the case for three reasons for fighting according to the Book, the first among which is that ‘God’s word reigns supreme.’ The ‘words of God’ or *kalimaat-ullah*, are a group of deterministic objective laws added to a set of privileges that God gave to mankind, chief among these is freedom to choose. This freedom is the ‘word of God that preceded’ which was explained earlier as God’s promise of freedom of choice without coercion.¹⁹⁹ Therefore, freedom of choice in matters of belief is not only a basic privilege from God but it is one of the causes for which God has made fighting a duty of the believers.²⁰⁰

Q5:76 Those who believe fight in the way of God, and those who disbelieve fight in the way of tyranny [*taghut*]. So fight against the allies of Satan. Indeed, the plot of Satan has ever been weak

الَّذِينَ ءَامَنُوا يُقَاتِلُونَ فِي سَبِيلِ
 اللَّهِ وَالَّذِينَ كَفَرُوا يُقَاتِلُونَ فِي
 سَبِيلِ الطَّاغُوتِ فَقَاتِلُوا أَوْلِيَاءَ
 الشَّيْطَانِ إِنَّ كَيْدَ الشَّيْطَانِ كَانَ
 ضَعِيفًا

Shaḥrur understands any struggle for freedom, justice, and equality as a ‘jihad in God’s way’ *fi-sabil-illah*.²⁰¹ He explains that the Qur’anic expression *fi-sabil-illah* means ‘according to

¹⁹⁶ Shaḥrur 2009, 425

¹⁹⁷ Shaḥrur 2008, p100

¹⁹⁸ Shaḥrur 2008, p57

¹⁹⁹ Shaḥrur 2009, p429 and Shaḥrur 2008, p99

²⁰⁰ Shaḥrur 2008, p101

²⁰¹ Shaḥrur 2009, p54, footnote 48

God's way' not 'for God'.²⁰² *Jihad* and fight 'in the way of God' are carried out exclusively to 'exalt the word of God' 'ila' *kalimat-ulllah* i.e. to defend freedom of choice which is the 'supreme word of God'.²⁰³ This *jihad* is a universal call that works across time and place , and can be fulfilled with words as a minimum and escalate to fighting as an upper limit.²⁰⁴ "The most significant 'word of God' is freedom of choice for all people, regardless of whether they are assenters, heretics, believers, or unbelievers".²⁰⁵ The struggle to secure freedom of choice to all individuals is *Jihad* in God's way *fi-sabil-illah*. When people are coerced into religion or belief or coerced out of it, then the word of God does not reign supreme but is held lowermost.²⁰⁶ The Messenger was ordered into *jihad* for the sole reason of exalting the word of God. The doctrine of "no compulsion in religion" is about freedom to make choices without which the concepts of reward and punishment become meaningless and so does the Day of Judgement, "this demonstrates that freedom as such is the purpose of creation in God's Book"²⁰⁷.

3.5.5 Universality of Islam and its Message

Universality of Islam as a religion is based on a covenant between God and humankind. It began with God's declaration of installing a vicegerent on earth:

Q2:30 And when your Lord said to the angels, 'I will make upon the earth a successive authority.' They said, 'Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?' God said, 'verily, I know that which you do not know.

وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ

²⁰² Shaḥrur 2008, p137

²⁰³ Shaḥrur 2009, p430 and Shaḥrur 2008, 137-138

²⁰⁴ Shaḥrur 2008, 128 and Shaḥrur 2014, p451 #11

²⁰⁵ Shaḥrur 1996, p398; Shaḥrur 2009, p337

²⁰⁶ Shaḥrur 1996, p380, see also Shaḥrur, Interview with Qantara.de in Arabic, online at <https://ar.qantara.de/node/12005>, dated 15 Jun 2006, (accessed 13 Aug 2017)

²⁰⁷ "Concept of Freedom in Islam", article in Arabic, "مفهوم الحرية في الإسلام" on Shaḥrur website, at <http://shahrour.org/?p=1391>, dated Oct 2004, (accessed 11 Apr 2017)

Subsequently Man was created, endowed with God's breathe of spirit *nafkhat-ur-ruh* (knowledge, legislation, and freedom of choice). Starting with Noah and concluding with Mohammad, prophets and messengers explained the terms and reminded humankind of its covenant with God. Humankind's part of the covenant is not to take a deity other than God, to believe in a day of judgement, and do good deeds Q2:62. Shahrur asserts that the majority of humans, accept naturally, those three fundamentals of 'islam.' "whoever commits himself of his own will and without coercion to these three principles is in the eyes of God a Muslim, regardless of the faith to which he or she is affiliated or the customs and rites they practice, whether a follower of Mohammad's noble prophecy, Jewish, Christian, or other."²⁰⁸

The relationship is defined by being subjects to God through *ibadeyyah* which is expressed in freedom of choice to believe or disbelieve, accept His commands, or reject them. This freedom is 'God's word which preceded' to mankind, it is their responsibility to defend and secure to themselves and to others. Denial of this freedom to individuals or groups is described as tyranny that people must struggle against through various forms of *jihad*.²⁰⁹ This universality was expressed through the mission of Mohammad in the characteristics of mercy and finality.²¹⁰

Q21:107 And We have not sent you, except as a mercy to the worlds. وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

Mercy is mentioned in several places in the Book and came often in the context of revealing a new system of law, mitigating previous harsher codes (Q2:178, Q7:157).

Q2:178 ...This is an alleviation from your Lord and a mercy... ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ...

²⁰⁸ Shahrur 2000b, p.14-15

²⁰⁹ Shahrur 2014, p445-449

²¹⁰ Shahrur 2014, p108

Finality of the message was achieved through clear specification of fourteen proscriptions *haram* in the Book. Those items are based on human values revealed in previous messages, through various prophets. No one is authorized to add to or take away from them.²¹¹ Anything that is not specifically proscribed is by default allowed i.e. *halal*. This *halal*, however, is never absolute and can only be practiced or enjoyed within defined limits. Therefore, along with the fixed and finalized proscriptions, the universality of the message and the characteristic of its finality was assured by revealing the framework of ‘limits’ to manage the non-proscribed *halal*. This allowed the Messenger’s mission to be comprehensive, flexible, and applicable to all times and places.

Q7:158 Say: O mankind, I am the messenger of God to you all – to whom belongs the dominion of the heavens and the earth. There is no deity except Him. He gives life and causes death, So believe in God and His messenger, the unlettered prophet who believes in God and His Words, and follow him that you may be guided.

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا الَّذِي لَهُ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ لَا إِلَهَ إِلَّا هُوَ يُحْيِي وَيُمِيتُ فَآمِنُوا بِاللَّهِ وَرَسُولِهِ النَّبِيِّ الْأُمِّيِّ الَّذِي يُؤْمِنُ بِاللَّهِ وَكَلِمَاتِهِ وَاتَّبِعُوهُ لَعَلَّكُمْ تَهْتَدُونَ

Through his method of *contemporary reading*, Shahrur raises the basic question of ‘who is muslim?’ The answer he provides, grounded in the Book’s definition of ‘islam’ and ‘iman’ is a very inclusive one, depicting the vast majority of humankind as de facto muslims²¹². He reaffirms the conception of Islam as one religion that encompass three *millal* (singular *millah*), and three modes of expressing faith (*iman*) through different rituals and laws all built around the same core of moral values of the ten commandments.²¹³ “Islam (as expressed through its three

²¹¹ Shahrur 2015, p254-255

²¹² In the conclusion to his discussion of Tabari’s exegesis of Al-Kitab, Berg notes that “[...] many Qur’anic passages, so critical to Muslim self-definition, were unclear even for the greatest authorities three centuries after “the clear kitab” had been sent down.”. See: Berg, Herbert. “Tabari’s Exegesis of the Qur’anic Term Al-Kitāb.” *Journal of the American Academy of Religion* 63 4 (1995): 774.

²¹³ Shahrur 2008, 240

branches) is global and the moral values stipulated in the chapter of al-An‘am are applicable to all earth’s inhabitants”.²¹⁴

The Book’s demarcation (Q33:40) of Mohammad’s two spheres of activity as prophet and messenger was, in Shaḥrur’s understanding, an early attempt to introduce the idea of separation between two types of powers; executive and legislative into the society of seventh century Arabia. The work of the prophet in his time was his own *ijtihad* in understanding and implementing the Message of the Book. Such practices and instructions of the prophet were not universal and are not binding to later muslims. Furthermore, Abrogation and ‘occasions of revelation’ *asbab-un-nuzul* are extremely dangerous inventions that are directly responsible for “localizing” the universal message of Islam.²¹⁵ The *contemporary reading* and understanding is necessary to salvage the Islamic discourse from the hold of seventh century Arabia into the here and now of Muslim communities and the wider global sphere.

3.5.6 Conclusion to apostasy and freedom of Religion

This chapter has demonstrated that apostasy, *riddah*, although strongly condemned in the Book, is not a vice that invokes a worldly punishment. The Book does not prescribe any punishment for it but relegates its judgement to God in the afterlife. The discussion demonstrated that the death penalty for apostasy is an invention produced by traditional Islamic jurisprudence, justified as *sunna*, and utilized to discipline muslim believers and discourage political dissent. Death as punishment for apostasy as sanctioned by *Shari‘a* is a serious violation of the freedom of belief not only as proclaimed in the UDHR, but also as a fundamental value sanctioned in numerous verses by the Qur'an. Shaḥrur’s method of *contemporary reading* applied to the Book

²¹⁴ Shaḥrur 2008, p141 bullet 18

²¹⁵ Shaḥrur 1990, p578-9

and his deep analysis of the institutions of *sunna* and obedience of the messenger, ground his proposal for an updated theory of Islamic Jurisprudence where apostasy is not a crime and where freedom of belief as *ibadeyyah* is held as God's supreme word and where *Jihad* for 'exalting the word of God' is regarded as struggle in God's way *fi-sabil-illah*.

Conclusion

I began this discussion with an exploration of recent historiography on the 20th century human rights movement that set the backdrop into which the latter part of the work played out. I discussed the arguments of Samuel Moyn whose ideas stand in contrast to historiographies that portray the rights movement as evolving secularist project that religions resist or eventually struggle to come to terms with. I showed how it also diverges from various forms of historical apologetics that argue for the longstanding foundational role of particular faith traditions in the birth and development of human rights. This revisionist historiography suggests that universal human rights discourse was a new mid-twentieth century development facilitated by the emergence of new movements of faith-based social and political discourse.

The second part presented a close examination of the development of the UDHR with focus on articles related to religion and religious freedom, a journey that started around the drafting table in 1946 and culminated at the General Assembly of the UN in 1948. The thesis offered detailed views and analysis of various controversies during the drafting process and highlighted how the new faith-based intellectual movements played a critical role not only in the birth of the human rights movement but how their influence was exercised particularly in articulating the current understanding of religious freedom in Article 18.

The Final part discussed the engagement of some leading Islamic human right scholars and grassroots movements towards the end of the twentieth century and explored their attempts to conceptualize the relation between Islamic doctrines and the human rights discourse around the freedom of religion. Academics such as Fazlur Rahman, Khaled Abou El Fadl, and Abdullahi An-Na'im offer qualitatively different approaches. I demonstrated how their work critiques rejectionist or apologetic narratives and attempts to present a rights-oriented re-reading of the tradition. Mohammad Shahrur offers one of the most innovative approaches. Through his "contemporary reading" of Islamic tradition and scriptures, he argues that since the Qur'an strongly asserts a universal message, and proclaims Mohammad as a messenger to all humans, it should follow, that contradictions between Islamic doctrines and universal values such as those enshrined in the UDHR must be the result of deeply flawed misconceptions of the message of the Qur'an, and a lack of nuance in distinguishing the different role(s) assigned to Mohammad by the Qur'an as a messenger, a prophet, and an ordinary human. Shahrur argues for a deep critique of the classical sources of Islamic jurisprudence other than the Qur'an (e.g. Sunna, Consensus, Analogy) and only a partial acceptance of the Sunna in connection with the Qur'an. This thesis explored Islamic discourses on rights as a complex and evolving response to equally new and unsettling developments and highlighted how Shahrur positions religious freedom as the crucial test for a renewed understanding of Islam and human rights. The ideas and methodologies elaborated by Shahrur and Fazlur Rahman strive to open new avenues and eliminate barriers to a discourse on universality based on a return to Qur'anic foundations that would address unresolved tensions over human rights and freedom of religion in Islamic legal traditions.

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Appendix 1 - UN Document Numbering

Key to understanding UN Document Numbering

All documents of the [UN General Assembly](#) begin with "A."

All documents of the [Economic and Social Council](#) begin with "E."

All [documents](#) of the [Commission on Human Rights](#) (created by the Economic and Social Council) begin with "E/CN.4"

"SR" stands for "[Summary Record](#)" and refers to minutes of meetings.

Meetings of the Commission on Human Rights document is referred to as "E/CN.4/[SR](#).#".

[Meetings](#) of the [Drafting Committee](#) (set up by the Commission) "[AC.1](#)" is inserted, as in "E/CN.4/[AC.1](#)/[SR](#). #/p. #,"

[Meetings](#) of the [Working Group](#) (set up by the Second Session of the Commission); "[AC.2](#)".

[Meetings of the Third Committee](#) (set up by the Second Session of the Commission); "[AC.3](#)" is inserted instead.

[Working paper](#) distributed by John Humphrey's Human Rights Division to one of these bodies
"W"

Appendix 2 – Apostasy Ḥadith(s)

Shahḥrur 2008, p243	١ - أخرج البخاري وأبو داود والنسائي وابن ماجة الترمذي وابن حيان والحاكم وأحمد وأبو يعلى والبيهقي والدارقطني والطبراني وابن أبي شيبة عن عكرمة (واللفظ للترمذي) أن علياً حرق قوماً ارتدوا عن الإسلام فبلغ ذلك ابن عباس فقال: لو كنت أنا لقتلتهم لقول رسول الله (ص): من بدّل دينه فاقتلوه. ولم أكن لأحرقهم لقول رسول الله (ص): لاتعذبوا بعذاب الله. فبلغ ذلك علياً فقال: صدق ابن عباس. وقال أبو عيسى الترمذي: هذا حديث صحيح حسن، والعمل عليه عند أهل العلم في المرتد، واختلفوا في المرأة إذا ارتدت. فقالت طائفة: تقتل. وهو قول الأوزاعي وأحمد، وقالت طائفة: تحبس ولا تقتل وهو قول سفيان وغيره من أهل الكوفة. أهـ.
Shahḥrur 2009, p344	1. By a <i>ḥadith</i>, narrated by al-Bukhari, Abu Dqwuḍ, al-Nisa'i, al-Tirmidhi, Ibn Ḥayyān, al-Ḥakīm, Ahmad b. Hnbal, Abu Ya'la, al-Bayhaqi, al-Dhuqutni, al-Tabarani, Ibn Abi Shaybah, reported from 'Ikrima: 'Ali had burnt a group of apostates. This [news] reached Ibn #Abbas who said, "Had it been me, I [also] would have killed them because of the statement of the Messenger (Ṣ): 'he who changes his religion, kill him'. But I would not have burnt them because of the statement of the Messenger (Ṣ): 'Do not punish with Allah's punishment.' This [news] reached 'Ali who said: "Ibn 'Abbas has spoken the truth". Abu 'Isa al-Tirmidhi said: 'This <i>ḥadith</i> is <i>sahih hasan</i>, and based on this is the practice of the people of knowledge regarding apostates. They [only] differ with regard to [the treatment of a] woman if she apostacizes. One group said: she is to be killed; and this is stated by al-Awza'i and Ahmad; and one group said: she is to be imprisoned and not killed; and this is stated by Sufyan and others from Kufah.
Shahḥrur 2008, p243	وأخرج الإمام مالك في موطئه عن زيد بن أسلم أن رسول الله (ص) قال: من غيّر دينه فاضربوا عنقه. مرسل عند جميع الرواة. ومعنى قول النبي (ص) فيما نرى والله أعلم أن من خرج من الإسلام إلى غيره مثل الزنادقة وأشباههم فأولئك إذا أظهروا ذلك قتلوا ولم يستتابوا، وأما من خرج من الإسلام إلى غيره ولم يظهر ذلك يستتاب فإن تاب وإلا قتل. ولم يعن النبي (ص) بذلك فيما نرى والله أعلم من خرج من اليهودية إلى النصرانية وإلّا من النصرانية إلى اليهودية أو إلى غيرها. أهـ. مع أن اليهودية والنصرانية هي ملل تنتهي إلى الدين الإسلامي.
Shahḥrur 2009, p344	Also, by a <i>ḥadith</i> narrated by Imam Malik in his Muwatta, reported by Zayd b. Aslam: 'The Prophet (s) said: "He who changes his religion, cut off his head." This is mursal according to all narrators. The meaning of the Prophet's (s) statement is, according to our understanding—and Allah is most knowledgeable—that whoever leaves Islam for another [religious community], including the zanadiqah [those who have secretly apostacized] and similar others, if they make it [i.e., their apostasy] [publicly] manifest, they will be killed and will not be asked to repent. As for someone who has left Islam for another [religious

	community] but did not make it [publicly] manifest, he will be asked to repent. If he repents [he should be left alone], otherwise he will be killed. The Prophet (ﷺ) [however] did not intend [to include], according to our understanding— and Allah is most knowledgeable—someone who leaves Judaism for Christianity or someone [who leaves] Christianity for Judaism or for any other [religious community] ...’.
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Appendix 3 - A Shaḥrur Primer

As demonstrated in chapter 2, there appears to be no fundamental conflict between the Qur'anic view and that of Article 18 of the UDHR with respect to freedom of choosing or changing religion. With no mention of worldly penalties for apostates and deferment of judgement to the afterlife, the conflict persists only with reference to the Sunna in an apparent disagreement with the Qur'an in text and outlook.

Al-Jaberi and Saeed, informed by *usul-ul-fiqh*, attempt to resolve this by contextualizing the problematic ḥadith(s) within the history of Sunna. Mohammad Shaḥrur aims instead at contextualizing the institution of Sunna itself within the wider history of the faith. Shaḥrur draws support in this approach from a growing body of reformers known generically as the Qur'anists²¹⁶ who reject the precedence of the sunna over the Qur'an and insist that the Book should be the first and last reference for Muslims in organizing their religious, social, and spiritual lives.

Shaḥrur does not include the text of the Qur'an in the historically evolved body of the tradition (*turath*), unlike *usul-ul-fiqh* and *Shari'a* which are historically developed. He holds the Book to be the authoritative source of morals and laws for the Muslim community, and holds beyond doubt the divinity of its source, its revelation to Mohammad as messenger, and subsequent compilation and recording into the present form.²¹⁷ The expressions and meanings in the Qur'an must be assumed to contain a high level of precision and accuracy comparable to that found in the laws of natural science and mathematics. This is because like the revelation, they emanate from the same divine source.²¹⁸ Shaḥrur believes "it is impossible to take away a single word or to even remove a single particle from the text without seriously damaging the integrity of its meaning."²¹⁹

Therefore, as advancements in science, communications, philosophy, epistemology, and linguistics have modified our understanding of the natural world, they are similarly capable of advancing our understanding of revelation.²²⁰ His goal is to lay down the foundations for a new jurisprudence based on such updated understanding of the Book sustained by a new conception of its textual structure.²²¹ His plan for doing this is anchored in his methodology of '*contemporary reading*', and consists of a three-track approach. He begins by problematizing the dominant understanding of Sunna and enumerating problems coming out of this understanding. Here, he mounts a scathing critique of its foundational assumptions, and directs a good part of this critique at Shafi'i whom he credits with creating *usul-ul-fiqh* as we know it. After highlighting the faults of conventional Sunna and painting it as historically constructed, he then moves to question its suitability beyond the life of the prophet in seventh-century Arabia. He contests the position it occupies today as a source of law within *usul-ul-fiqh*, and asserts that the challenge of perpetual validity across time and place exceeds the cogency of *Sunna* and *usul-ul-fiqh*. Only the Book, as source of law, possesses the authority and dynamism to fulfil this task.

²¹⁶ See for example: Bannā, Jamāl. *Naḥwa Fiqh Jadīd. Al-Juz' 2.: Al-Sunnah Wa-Dawruhā Fī Al-Fiqh Al-Jadīd*. al-Qāhira: Dār al-Fikr al-Islāmī, 1997. Also [Ahl AlQuran - http://www.ahl-alquran.com/English/](http://www.ahl-alquran.com/English/), accessed 19 Oct 2017

²¹⁷ Shaḥrur 1990, p.35-36

²¹⁸ Shaḥrur 2000a p190

²¹⁹ Shaḥrur 2009, p.6

²²⁰ Shaḥrur 2000a, p190

²²¹ Interview with Rose-el-Yousef magazine in Arabic, online at <http://www.shahrour.org/?p=1377>, Shaḥrur official website 2010 (accessed 23 July 2017)

Having destabilized its conventional position as a source of law, he then proposes a revised definition and a new re-interpretation of Sunna conceived within a symbiotic relationship to the Book, loyal to its text, and subject to its authority. With conventional understandings of sunna dislodged, a new system of Islamic jurisprudence is proposed with a clear path to universal human values, where Shaḥrur deploys his *contemporary reading* to demonstrate its features in relation to freedom of religion and in harmony with the universal appeal of Article 18 of the UDHR.

1. Critique of conventional understanding of Sunna

According to Shaḥrur “the largest problematic of all, is defining the *sunna* of the prophet and engaging with it through a new conception. Similarly, understanding the time of the prophet, the founding of Islamic jurisprudence in the second Hijra century, and how to engage with it.”²²²

The depiction of the Messenger as it emerges from the *ḥadith* and traditional narrations is very different from the image that emerges from the Book. In fact, the depiction of the faith itself (islam) as it emerges from the Book is very different from the islam as based on the collections of *ḥadith* and *sunna*. The numerous contradictions between this literature and the Book on the one hand and within the literature itself, on the other, is a clear indication, argues Shaḥrur, that the latter is a product of human invention and mythology that must be challenged and corrected by reference to the authority of the Book rather than allow it to dominate and even abrogate it.

Despite the confirmation of the Qur'an that Mohammad was a typical human in physical constitution, privileged however, by receiving revelation (Q18:110), the traditional depiction of Mohammad is rooted in mythical abilities and miraculous claims.

Q18:110 Say, I am only a man like you, to whom has been revealed that your god is one God....

قُلْ إِنَّمَا أَنَا بَشَرٌ مِّثْلُكُمْ يُوحَىٰ
إِلَيَّ أَنَّمَا إِلَهُكُمُ إِلَهُ وَاحِدٌ...

Upon the death of the prophet, the immediate concern of his companions was to collect and secure the verses of the Qur'an. There is no evidence to suggest that collecting the sayings of the prophet was a concern, especially with the final verses of the revelation in Q5:3 proclaiming that the message was now complete, even before any of the *sunna* books were yet in existence or a single *ḥadith* written down.

Q5:3 ...this day, I perfected your religion for you, and completed My favour upon you and have approved for you Islam as religion. ...

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ
عَلَيْكُمْ نِعَمَتِي وَرَضِيتُ لَكُمُ
الْإِسْلَامَ دِينًا...

The process of collecting *ḥadith* came much later and with it the emergence of the concept and definition of *sunna* as a corpus that “complements” the Qur'an. Shaḥrur lays a big part of the blame for the misconception of the *sunna* at the doors of Shafi'i (d. 820 CE, 204 H). He is the first to argue that the Messenger received two types of revelation; one recorded in in the Book and the other is contained in narrations of the prophet's *ḥadith* and reports of his life. This led to the definition of *sunna* as "everything that the prophet said, did, or witnessed and approved or disapproved of"²²³. Shaḥrur contests this definition as neither found in the Book nor how the prophet explained it to his companions whom he instructed not to write down his sayings²²⁴.

²²² Shaḥrur 2000a, p59

²²³ Shaḥrur 1990, p39

²²⁴ Shaḥrur 2009, p494 #20

Shahrur describes this as “the forgery that Shafi‘i put into the faith of islam, effectively transforming it into a local religion”²²⁵.

Shahrur is not very charitable concerning the legacy of Shafi‘i. He argues that his ideas laid the foundations for partisanship and fanaticism that led to armed conflicts, destruction, and bloodshed. He advocated that Arabic, being the language of God and the Messenger, was a sacred language, that prayers are not permitted in any other language, and that the Qur'an should not be translated. Shafi‘i’s ideas depicted the Arabs as a “chosen people” and led to the transformation of the universal message of islam into a local religion tailored to boundaries of the Arabian Peninsula of the seventh century CE. Following themes are some of the major misconceptions in Shafi’s work.

1.1 Failing to distinguish between the roles of Messenger and Prophet

Failure to distinguish between the roles of Mohammad as a Prophet and a Messenger, a distinction clearly emphasized by the Book in Q22:52 and many other verses led the early generation of jurists to promulgate the concept of “obedience of the prophet” not only during his life but also after his death.²²⁶ “Their theologically most detestable step” protests Shahrur, “was to regard the Book as incomplete and in need of the elaborations and specifications of the sunna, implying that a divine text needs to be completed and confirmed by a human source—which is a truly blasphemous thought!”²²⁷.

1.2 Failing to distinguish between enunciation (نطق *nutq*) and saying (قول *qaul*)

Attributing a much-exaggerated sanctity to the *sunna* tradition rests largely on the faulty understanding by Shafi‘i and others of (Q53:3-4) to mean that, not only the Qur'an, but everything uttered by Mohammad was revelation inspired by God.

Q53:3-4	Nor does he talk [<i>yantiq</i>] from inclination * It is not but a revelation revealed	وَمَا يَنْطِقُ عَنِ الْهَوَىٰ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ *
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Shafi‘i built his juristic scholarship largely on his unquestioning acceptance of synonymy which led him to drop the distinction between enunciation (نطق *nutq*) and saying (قول *qaul*). Shahrur explains that the Book was delivered by Mohammad and although its verses were uttered by him, it is not his own sayings²²⁸. He further argues that these particular verses are Meccan emanating from the early days of the message when Mohammad began receiving revelations, and when his proclamation was faced with vehement denial and claims that he was himself authoring the revelations. Hence, the verses were meant to counter those claims and their subject is the Qur'an and not *sunna* which was not yet in existence as a concept²²⁹. In other words, the claim that *sunna* is the subject of those verses is seen by Shahrur as gross anachronism on the part of Shafi‘i.

²²⁵ Shahrur 2012, p52

²²⁶ Shahrur 2012, p53-54

²²⁷ Shahrur 2009, p71

²²⁸ Shahrur 2012, p55

²²⁹ Shahrur 2009, p83

1.3 Misconception of the messenger's wisdom (ḥikmah الحكمة) as revelation

Shāḥrūr notes that the term *sunna* in the Book is always attributed to God (*sunnat-u-llah*) and refers to Gods laws that never change. Nowhere in the Book can one find 'sunna of the messenger' or 'sunna of the prophet'. Shafi'i, however, claimed that the 'wisdom' *ḥikmah* in Q4:113 is a reference to the *sunna* of the prophet²³⁰:

Q4:113	...and GOD has sent down to you the Book and wisdom, and has taught you that which you did not know. Indeed, GOD's favour upon you has been great	وَأَنْزَلَ اللَّهُ عَلَيْكَ الْكِتَابَ وَالْحِكْمَةَ وَعَلَّمَكَ مَا لَمْ تَكُن تَعْلَمُ وَكَانَ فَضْلُ اللَّهِ عَلَيْكَ عَظِيمًا
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Shāḥrūr rejects this understanding by asking where is the *sunna* of Noah, Hud, Shu'ayb, Saleh, Moses, Jesus, Elias, and Joseph? All of whom were described in the book as endowed with the possession of *ḥikmah* by virtue of their being prophets (Q3:81). Abraham (and his family) were endowed with *ḥikmah* (Q4:54). Finally, Shāḥrūr points out to (Q17:23-39) describing a list of virtuous attributes that the prophet is enjoined to follow and that are described collectively as "This is some of the wisdom [*ḥikmah*] inspired to you by your Lord....". This, Shāḥrūr argues, is enough to put to rest Shafi'i's baseless confusion of *ḥikmah* with revelation.²³¹

1.4 Permitting the transmission of *ḥadith* by meaning rather than verbatim

Shafi'i's unquestioning acceptance of synonymy, led him to relax the conditions for the verbatim transmission of the *ḥadith* and allowed the narration of *ḥadith* by meaning.²³² To demonstrate how problematic this is, Shāḥrūr describes well-known debates among Muslim scholars on the different readings of certain verses of the Qur'an.²³³ He points out how some of those scholars tried to inject much of their ideological, political, and doctrinal differences into a narrow space created by the absence of a single diacritic of one letter of one verse of the Book²³⁴. One can only imagine, therefore, what can be done with the much larger space offered by Shafi'i's permission to narrate *ḥadith* by meaning.

Shāḥrūr lists additional problems that afflict the conception of the tradition in relation to *Sunna*. These include:

1.5 Constitutional infallibility of the Messenger العصمة التكوينية

It is commonly claimed in books of sunna that the Messenger was endowed with constitutional infallibility. This is based on the belief that he was subjected to a number of "surgical procedures" over the course of his life starting when he was thirteen when the angles opened his chest and, sanctified his heart by extracting a black lump which is Satan's influence on his human character. This made him physically infallible (*ma'soum*) by making him immune to common human faults such as delusion, forgetfulness, greed, envy, etc...²³⁵.

²³⁰ Shāḥrūr 2012, p59 and Shāḥrūr 2000a, p171-2

²³¹ Shāḥrūr 2000a, p162

²³² Shāḥrūr 2000a, p171

²³³ Shāḥrūr 2000a, p182-189

²³⁴ See the debate between Razi and ibn-Abbas on reading of Q7:20 – Malikayni (royals) vs Malakayni (angles), and the different implication of each reading, see Shāḥrūr 2000b, p186.

²³⁵ Shāḥrūr 2012, p30

This concept is drawn from Q5:67 where the word *ya 'simuka* which simply means 'protects you' was interpreted to bestow on Mohammad a physical form of infallibility.

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|--|---|
| <p>Q5:67 O Messenger! Make known that which has been revealed to you from your Lord, for if you do not, then you have not conveyed His message. And God will protect you [<i>ya 'simuka</i>] from people. Indeed, Allah does not guide the disbelieving folk.</p> | <p>يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنْزِلَ إِلَيْكَ مِنْ رَبِّكَ وَإِنْ لَمْ تَفْعَلْ فَمَا بَلَّغْتَ رِسَالَتَهُ وَاللَّهُ يَعْصِمُكَ مِنَ النَّاسِ إِنَّ اللَّهَ لَا يَهْدِي الْقَوْمَ الْكَافِرِينَ</p> |
|--|---|

Shahrur rejects this understanding of the term *ya 'simuka* and argues that it means God protects the Messenger from error in delivering the revelation as received and from falling under the influence of others in this process. This understanding is supported by other verses using verb derivations of the same root that simply mean 'to protect' such as Q5:67, Q11:43, Q3:101, Q12:32²³⁶.

The Qur'an commentators and scholars have attributed this characteristic of infallibility to all of God's messengers and prophets not just Mohammad although it is contradicted by many verses of the Qur'an where prophets or messengers have erred and asked for God's forgiveness such as Q10:37 and Q10:45-47 in the case of Noah, Q28:15-16 for Moses, Q21:87-88 and Q37:139-144 for Jonah, and Q38:24-26 for David.

If Mohammad was privileged by a form of physical or constitutional infallibility, argues Shahrur, then how could he claim merit for doing good deeds or avoiding bad ones, or how could his conduct be the model to define *al-'uswat-ul-ḥasana* (normative good example) that God asked the faithful to emulate in Q33:21. It would surely be unfair to expect normal humans to model their conduct after the example of a genetically infallible man.

1.6 Misunderstanding the term “to make clear” (التَّبَيَّنَ) as justification for Sunna

Many scholars refer to Q16:44 and Q16:64 for support in arguing that *Ḥadith* and *Sunna* have primacy over the Qur'an wherever a conflict occurs between the two.²³⁷

- | | |
|---|---|
| <p>Q16:44 And We revealed to you the remembrance (<i>dhikr</i>) that you make clear to people what was sent down to them and that they might give thought</p> | <p>وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ</p> |
| <p>Q16:64 And We have revealed the Book to you only that you make clear to them that wherein they have differed and as guidance and mercy for people who believe</p> | <p>وَمَا أُنْزِلْنَا عَلَيْكَ الْكِتَابَ إِلَّا لِتُبَيِّنَ لَهُمُ الَّذِي اخْتَلَفُوا فِيهِ وَهُدًى وَرَحْمَةً لِّقَوْمٍ يُؤْمِنُونَ</p> |

The traditional understanding of “make clear” (*tubayyen*) is that the revelation is in need for clarification. They maintain that the revelation is general in nature and the “make clear” of the prophet means to provide the missing detail. Some went further to conclude from these verses that *ḥadith* rules over the Qur'anic text and abrogates it. Shahrur argues that the correct understanding of “make clear” (*tubayin*) is not explaining as in introducing clarity to replace confusion, but it means making ‘apparent’ as opposed to hiding or concealing. Making-clear in the latter sense is used in many verses to contrast with premeditated obscuring and concealing of divine revelations such as in Q2:159, Q3:187, Q5:15.

²³⁶ Shahrur 2012, p30-34

²³⁷ Shahrur 2000a, p126 and Shahrur 2012, p88

Furthermore, the **Book** does “make clear” that it does not require the Messenger to explain it because the Book consists of clear instructions in the form of the *precise* verses: Q16:89, Q6:114, Q11:1, Q17:12, Q6:126.

Q16:89	And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the muslims	وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ بَيِّنَاتٍ لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ
Q6:114	[Say] Is it other than God I should seek as judge while it is He who has revealed to you the Book explained in detail	أَفَعِثَرَ اللَّهِ أَتَبْغِي حَكْمًا وَهُوَ الَّذِي أَنْزَلَ إِلَيْكُمُ الْكِتَابَ مُفَصَّلًا...

The **Qur'an**, on the other hand, is the container of the *ambiguous* verses and again here clarification is not expected from the Messenger. That task is left for *ta'wil* which Shaḥrur explains as the process of ‘realising’ the import of the Qur'anic prophecies as time unfolds.

Q75:17-19	Indeed, upon Us is its collection and its recitation * So when We have recited it then follow its recitation * Then upon Us is its elucidation	إِنَّ عَلَيْنَا جَمْعَهُ وَقُرْآنَهُ * فَإِذَا قَرَأْنَاهُ فَاتَّبِعْ قُرْآنَهُ * ثُمَّ إِنَّ عَلَيْنَا بَيَانَهُ
Q41:53	We will show them our signs in the horizons, and within themselves, until they realize that it is the truth. Is your Lord not sufficient as a witness of all things?	سَنُرِيهِمْ ءَايَاتِنَا فِي الْأَفَاقِ وَفِي أَنْفُسِهِمْ حَتَّىٰ يَتَبَيَّنَ لَهُمْ أَنَّهُ الْحَقُّ ۖ أَوَلَمْ يَكْفِ بِرَبِّكَ أَنَّهُ عَلَىٰ كُلِّ شَيْءٍ شَهِيدٌ

In matters of rituals such as performing prayers and the amount of due *zakat*, these are not found in the Book, hence, there is an explicit instruction to the faithful to “obey the Messenger” in that regard, and the Messenger, in a well-known narration has instructed “take your rituals from me”.

Q24:56	You shall observe the Contact Prayers (Salat) and give the obligatory charity (Zakat), and obey the messenger, that you may attain mercy	وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَطِيعُوا الرَّسُولَ لَعَلَّكُمْ تُرْحَمُونَ
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1.7 Reading Q59:7 – “...whatsoever the messenger gives you, take, and whatsoever he enjoins you from, refrain...”²³⁸

This verse is considered the essential reference for scholars advocating obedience to the Messenger after his death as during his life through transmitted *hadith* and narrations. It represents to Shaḥrur a shrill example of the intellectual chaos that afflicts the traditional system.²³⁹

²³⁸ Shaḥrur 2012, p143; Shaḥrur 2000b, p129-130 & 155; Shaḥrur 2009, p88

²³⁹ Shaḥrur 2012, p143

Q59:7 What God bestow as spoil upon His messenger from the people of the townships, is for God, His messenger, the near of kin, the orphans, the needy, and the wayfarer, that it become not a commodity between the rich among you. **And whatsoever the messenger gives you, take, and whatsoever he enjoins you from, refrain.** And revere God. Verily God is stern in penalty

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَآلِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

The key to clearing the misunderstanding of this verse lies in highlighting an important distinction between the meaning of two verbs ‘*ata* (أتى) and *ja’a* (جاء). Both traditionally assumed to be synonyms carrying the same meaning and subsequently translated as such. Both understood to mean ‘came’ (in the simple past tense). Shaḥrur, however, argues that each term carries additional qualification over the original ‘came’ which results in two very distinct understandings; While ‘*ata*’ connotes closeness and ease, *ja’a*’ connotes remoteness and effort. Extrapolating this connotation to epistemology signifies the difference between an immediate, local source of knowledge and an external, divine one. Shaḥrur maintains that this is how the two terms are used throughout the Book, a fact that has eluded traditional scholars and commentators. One of the best examples is in the verse reporting a dialogue between Abraham and his unbelieving father:

Q19:43 O father, indeed there **has come to me** [ja’ani] of knowledge that which **has not come to you** [ya’tika], so follow me; I will guide you to an even path.

يَلَّابِتْ إِنِّي قَدْ جَاءَنِي مِنَ الْعِلْمِ مَا لَمْ يَأْتِكَ فَاتَّبَعْنِي أَهْدِكَ صِرَاطًا سَوِيًّا

Another example refers to the qualitative difference between the arguments produced by the human interlocutors of the Messenger and those given to him by revelation:

Q25:33 Whatever simile they **come to you** with [ya’tunaka], we **come to you** with [ji’naka] the truth, and a better explanation.

وَلَا يَأْتُونَكَ بِمَثَلٍ إِلَّا جِئْنَاكَ بِالْحَقِّ وَأَحْسَنَ تَفْسِيرًا

In both examples, the two different verbs are used to underline the difference in the source of knowledge: local, empirical vs. external, revelatory. The verb used in Q59:7 in “whatsoever the messenger gives you [*‘ata*kum: comes to you from him]” indicates that whatever the Messenger decides to give you is coming from himself (his own discretion) rather than ordained by God. In other words, Shaḥrur maintains that this is an example of Mohammad the prophet using his *ijtihad* in running the affairs of his community in seventh century Arabia. The verse indicates the temporality of his action through the choice of one verb rather than the other; ‘*ata*kum not *ja’akum*. Shaḥrur cites other verses to demonstrate the distinction in the meaning mediated by the purposeful use of either of the two verbs: Q4:4, Q6:34, Q7:5, Q10:76, Q15:61, Q18:10, Q28:36-37, Q73:20.

1.8 The good example of the Messenger (*al ’uswat-ul-ḥasana*) الأسوة الحسنة

Another verse that traditional scholars use to argue for the imperative of upholding the practices of the prophet as *sunna* is Q33:21

Q33:21 Verily you have in the Messenger of God a good example for those among you who seek GOD and the Last Day, and constantly remember GOD

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ
أَسْوَةٌ حَسَنَةٌ لِّمَن كَانَ
يَرْجُوا اللَّهَ وَالْيَوْمَ الْآخِرَ
وَذَكَرَ اللَّهَ كَثِيرًا

Rejecting that this verse is about *sunna*, Shaḥrur points to the second half of the verse which indicates the specific conduct of the Messenger which the faithful are recommended to follow: ‘seeking God and the Last Day and the frequent remembering of God’. This same recommendation is repeated in Q60:4, where the good example is set through Abraham who is not known to have a *sunna*:

Q60:4 A good example has been set for you by Abraham and those with him. They said to their people, we disown you and the idols that you worship besides GOD...

قَدْ كَانَتْ لَكُمْ أُسْوَةٌ حَسَنَةٌ فِي
إِبْرَاهِيمَ وَالَّذِينَ مَعَهُ إِذْ قَالُوا
لِقَوْمِهِمْ إِنَّا بُرَءُؤُا مِنْكُمْ وَمِمَّا
تَعْبُدُونَ مِنْ دُونِ اللَّهِ ...

Shaḥrur points to Q60:6 as a third instance where the ‘good example’ (*al ’uswat-ul-ḥasana*), refers to ‘seeking God alone’ as recommended conduct with no relation to emulating the Messenger in personal matters such as dressing or eating.²⁴⁰

1.9 Knowledge of the unknown علم الغيب

Another capability that the tradition attributes to the Messenger is the knowledge of the unknown—past, present, and future. The Qur'an explains that the knowledge of the unknown (*ghayb*) that Mohammad possessed was limited to what is in the Book itself: Q6:50, Q7:188, Q11:49, Q46:9, Q12:3, Q3:44. Most of it however, is in abstract form that the prophet enunciated without having certain knowledge of how or when its credibility (*ta'wil*) will be realised in time. Shaḥrur explains that, in contrast to earlier pre-Qur'anic miracles that became historical soon after they have occurred, the Qur'an contains prophecies in the form of *ambiguous* verses that are continuously confirmed with the passage of time through the evolving human understanding of the fixed text²⁴¹.

1.10 The Messenger's Miracles

The tradition is replete with tales of Mohammad's miracles. For example, he had the “seal of prophethood” as a distinctive birthmark on his shoulder. Also, when he travelled with merchant caravans in the company of his uncle as a child, he always had a cloud protecting him from the sun. Trees would bend down in prostration as he walked by. All of this, according to Shaḥrur, is fabrication which is challenged by many Qur'anic verses denying its possibility, Q11:12, Q7:203, Q10:20, Q29:50-51, Q20:133, Q21:5, 17:90-93.²⁴²

1.11 Criteria for filtering the sunna

Shaḥrur's unease with the sunna is not restricted to the historicity of its transmission, which he regards as plagued with political, doctrinal, and personal biases. He maintains that “the only

²⁴⁰ Shaḥrur 2000a, p164 and Sharur 2012, p90-92

²⁴¹ Sharur 2012, p43

²⁴² Shaḥrur 2012, p39

criterion for accepting or rejecting its rulings is its accord with the revelation and lived context”²⁴³. His method rejects *hadith* and practices that fail these criteria even, as he puts it, if their authenticity was backed up by audio-visual evidence.²⁴⁴ Jamal al-Bana is another scholar on whose work Shahrur draws for developing a validation for accepting or rejecting *hadith* narration. The verses containing rulings (the Message) came to the Messenger in Medina over a short period of ten years. Can this period be considered enough to exhaust all the possible variations of the juristic verses in that living context? Given that Mohammad was the last prophet, with no revelation to follow after him, his application of the juristic verses must be seen as temporal and historical and, as such, permits no legitimacy for *Qiyas* (Analogy). Leaving only *ijtihad* based on reason as basis for implementation. The lived context i.e. the objective reality and epistemological framework establish or deny the credibility of *ijtihad*.²⁴⁵

2. Summary Outline to a new conception of Sunna

The distinction between the Qur'an and al-Kitab (the Book) is important as it leads to distinguishing between the two roles of Mohammad as prophet and as messenger. The two roles, are fundamentally different, and the subsequent outcomes of this distinction are two types of sunna: sunna of the prophet (*sunna nabawiyya*) and Sunna of the messenger (*sunna rasūliyya*). This dichotomy is a fundamental premise of Shahrur who rejects the traditional definition of sunna as discussed earlier. Distinguishing between the prophet's sunna (*nabawiyya*) and the messenger's sunna (*rasūliyya*), leads to two types of obedience to the messenger; continuous (*ta'ah muttasila*) and discontinuous (*ta'ah munfasila*). Continuous obedience is associated with the messenger's sunna, and is binding to later generations of believers, while discontinuous sunna is associated with the prophet's sunna which reflects the prophets understanding and implementation of his messengerhood (*resalah*) within his time and social context i.e. his *ijtihad*. Hence, this second type of sunna (*nabawiyya*) has no trans-historical validity and is not binding to later generations of Muslims.

Before embarking on his project of re-defining sunna and detailing a new system of Islamic jurisprudence, Shahrur lays down two foundations of his *contemporary reading*: rejection of synonymy and ‘theory of limits’.

3. Synonymy: The night in which all the cows are black²⁴⁶

In the introduction to his commentary on the Qur'an, al-Ṭabarī explains that God has given four names to the revelation sent to the prophet Mohammad, and lists them as al-Qur'an, al-Furqan, al-Kitab, and al-Dhikr.²⁴⁷ Another prominent commentator, al-Qurtūbi, includes all four among his alternative names of the revealed book²⁴⁸ and so does Ibn-Katheer²⁴⁹. The four names also appear in Ibn Taymiyya's tafseer on a list exceeding thirty items in length under “Names of the Qur'an”.²⁵⁰ This understanding is quite pervasive in Islamic thought and commentaries.²⁵¹

²⁴³ Shahrur 2000a, p63

²⁴⁴ Interview with Dr Shahrur published on his website 25 Feb 2010, (<http://shahrour.org/?p=1422>) accessed on 9 Aug 2017) “قالأحاديث النبوية غير ملزمة وظرفية حتى ولو صحت كلها صوت وصورة”

²⁴⁵ Shahrur 2000a, p63-64

²⁴⁶ Hegel's memorable phrase, in his “Phenomenology of Spirit”: darkness in which all distinctions are blurred, and merged.

²⁴⁷ Al-Ṭabarī, V1, p43

²⁴⁸ Al-Qurtūbi, V1(p10, p224), V2(p403), V5(p10, p13)

²⁴⁹ Ibn-katheer, V1(p25, p137, p157, p162, p341), V6(p92)

²⁵⁰ Ibn Taymeyya, V14, p1

Shahrur rejects this uncritical handling of what he considers key terms in understanding the structure of the founding Book of Islam. This conflation of terms is normally attributed to synonymy (*taraduf*), which he counts among the major problems of the Islamic tradition and which constitutes the point of departure for his *contemporary reading* of the primary text, a method he applies to reveal a range of concepts that have eluded generations of scholars, and to propose answers to questions that have lingered in suspension for centuries.

The table below shows examples of Arabic terms from the Book customarily treated as synonymous. Shahrur presents ample examples of verses where the meaning changes depending on how the assumed synonymy is resolved. Distinguishing between *um* and *walidah* (both commonly understood to mean ‘mother’) significantly alters the understanding of verses related to laws of inheritance and marriage, and opens new frontiers in Islamic law for adoption (proscribed traditionally) and modern reproductive technologies such as IVF, embryo transfer, and surrogate motherhood.²⁵² Similarly, distinguishing between *‘ibad* and *‘abeed* (عبيد/عباد) opens a space for redefining freedom as the central value in Islam, as discussed in a different chapter. The adoption of synonymy, Shahrur maintains, routinely leads to truncated comprehension and confused interpretations of verses to an Arab audience. The loss of meaning is even much greater in translation.

Shahrur argues that traditional Islamic jurisprudence (*fiqh*) is structured on synonymy and the institution of *Hadith* would collapse if synonymy is abandoned as a principle because unlike the Book, *Hadith* narrations are transmitted by meaning rather than verbatim.²⁵³

Arabic words customarily treated as synonymous		...and understood indiscriminately as:
qur'an	kitab	qur'an
جا'أ ja'a	أتى ata	came
أب ab	والد waled	father
أم um	والده waledah	mother
إنزال inzaal	تنزيل tanzeel	revelation
قلب qalb	فؤاد fu'aad	heart
بعل ba'l	زوج zawj	husband
سيئة Sayye'ah, ذنب thdanb, خطيئة khatee'ah		sin
مغفرة Maghferah, تكفير Takfeer, صفح Safh		forgiveness
عباد 'ibad	عبيد 'abeed	servants
بشر bashar	إنسان insaan	human

²⁵¹ For more on the confusion of “Kitab” with “Qur’an” see: Berg, Herbert. “Tabarī’s Exegesis of the Qur’ānic Term Al-Kitāb.” *Journal of the American Academy of Religion* 63 4 (1995): 761-74.

²⁵² Shahrur explains that *waled/waledah* indicate the biological owner of the sperm or egg respectively, while *ab/um* refers to the legal father or mother. See also distinctions in Q4:23 “...your mothers...and your mothers that have suckled you...and your sons who are of your own loins...”. Also in Shahrur, “التبني ضرورة إنسانية”, “Adoption, a Human Necessity” in Arabic, dated 26 Feb 2016, at <http://www.shahrour.org/?p=4153>, (accessed 20 July 2017).

²⁵³ Shahrur, Interview with Ar-Raya Qatari newspaper in Arabic, online at <http://www.shahrour.org/?p=1420>, Shahrur official website 2010, (accessed 23 May 2017)

4. Theory of Limits (brief introduction)

With the end of Mohammad's mission, the divine project that was launched with God's declaration in (Q2:30), was now proclaimed completed in the last revealed verses of (Q5:3).

Q2:30 And when your Lord said to the angels, "Indeed, I will make upon the earth a successive authority." They said, "Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" God said, "Indeed, I know that which you do not know."

وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتُجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ

Q5:3 ...this day, I perfected your religion for you, and completed My favour upon you and have approved for you Islam as religion. ...

...الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا...

The verse in Q5:3, Shahrur understands as announcing the end of the 'training phase' for humankind and mark its 'graduation' into a new a post-prophetic era in human progress. An era where people are expected to develop their own laws, without divine intervention, in harmony with the universal moral values revealed cumulatively through earlier divine messages starting with Noah and ending with Mohammad.²⁵⁴ In this era human rights laws are essentially in agreement with religions and go further in details.²⁵⁵

For the Islamic system of law to be final it had to fulfil necessary requirements that enable it to change dynamically and stay current with the progress of time and evolving human experience and knowledge. It must be able to absorb the variety of different legal codes developed in various cultures and economies. This Shahrur argues, was accomplished through the 'theory of limits' revealed with the Book. It possesses the characteristics of mercy (Q21:107), finality (Q33:40), and universality (Q7:158). This system of law, however, was not fully understood by traditional scholarship and its suitability to all times and places remained elusive.²⁵⁶

The Book mentions the word *hudud* (limits) several times, warning Muslims of the sin of transgressing them (Quran 2:187). The Arabic word '*hadd*' which literally means limit (pl. *hudud*) translates automatically in the mind of the average Muslim, into the word 'punishment'. This happens in a similar way to how a spell-checker auto-corrects a misspelled word. Even in legal scholarship, the term is used and understood in that sense.²⁵⁷

Early legal scholars have understood Islamic law to be a punishment-specific code like the Mosaic code and not a limit-oriented one. They took the legal verses to be a text (*nass*) wherein *ijtihad* was not permitted. Hence, they stood in their treatment exactly on the limit rather

²⁵⁴ Shahrur 2000b, p.34

²⁵⁵ Shahrur official website, <http://shahrour.org/?p=1422> accessed 9 Aug 2017

²⁵⁶ Shahrur 2015, p198

²⁵⁷ see Al-Zuhayli, V6, p12, also Hallaq 1997, p173. See also Abu Zahra, p43 and p49-54, who explains that apart from the literal meaning, '*hadd*' in the legal convention means punishment. Also 'ward off the *Hudud* by ambiguities (*shubuhāt*).' is a well-known Islamic legal maxim;

than at the limit²⁵⁸. As a result, law scholars have mostly recognized only the upper limits thus missing the playing field opened by the presence of a lower limit.

The theory of limits specifies lower and upper boundaries for rulings and application of punishments. The jurist hands out punishments moving proportionately between lower and upper limits. While exceeding the upper limit is a gross transgression and is not permitted, mitigation of punishment stops at the lower limits which represent the legally allowable minima. Shāḥrūr distinguishes six types of Limits:

1. The Lower Limit when it stands alone, in cases where a minimum punishment is prescribed for an offense.²⁵⁹
2. The Upper Limit when it stands alone. This marks the maximum punishment. An example is in (5:38) – the crime of stealing – cutting of the hand. Here it is the responsibility of the mujtahids to determine according to social circumstance and requirements what type of punishment is appropriate.²⁶⁰
3. The Lower and Upper Limits when they are Conjoined (Q4:11) cites an example from the area of inheritance.²⁶¹
4. Where there is a meeting of the Upper and Lower Limits (Q24:2) refers to the punishment of adulterers with a hundred lashes.²⁶²
5. The type in which the jurist's movement takes place between the Lower and the upper Limit but neither is touched. The examples of this type come from sexual relations between men and women.²⁶³
6. Where movement takes place between a positive Upper Limit and a negative Lower Limit. This is about financial transactions and ways of lending or giving money. The upper limit represents usury *riba*, specifying an interest rate that must not be exceeded (Q3:130), while the lower limit represent *zakat*, specified at 2.5% which can be exceeded by giving charity *sadaqah*. The neutral (zero) position would be giving a loan at 0% interest called *qard hasan* (Q2:279).²⁶⁴

Shāḥrūr asserts that the Book mandates Muslim societies to develop and adapt their legislation within those limits and according to the conventions and socio-political circumstances of the time. He offers examples of applying the theory to transactions of *riba*, interest, and polygamy and demonstrates how traditional scholars went in erroneous directions because they had not fully recognized the existence of such a theory in the Book.²⁶⁵

²⁵⁸ Shāḥrūr 1990, p579

²⁵⁹ Shāḥrūr 1990, p453

²⁶⁰ Shāḥrūr 1990, p455

²⁶¹ Shāḥrūr 1990, p457

²⁶² Shāḥrūr 1990, p463

²⁶³ Shāḥrūr 1990, p464

²⁶⁴ Shāḥrūr 1990, p464-471

²⁶⁵ Shāḥrūr 1990, 453-497

5. Structure of The Book (*muḥkam* and *mutashābih*)

Having excluded synonymy as a valid reason for conflating key terms, Shaḥrur then moves to explaining the four terms most commonly used to refer to the book of Islam starting with the Book (*Al Kitab*) and the Qur'an (*Al Qur'an*).

He points to two verses in the second chapter of the Book (*Al-Baqarah*) to note that the Book and the Qur'an are not the same:

Q2:2-3 That is **the Book**, there is no suspicion about it, a **guidance to the God-fearing** * who believe in the unseen, establish prayer, and spend from what We have provided for them.

ذَٰلِكَ ٱلْكِتَٰبُ لَا رَيْبَ فِيهِ هُدًى
لِّلْمُتَّقِينَ * ٱلَّذِينَ يُؤْمِنُونَ بِٱلْغَيْبِ
وَيُقِيمُونَ الصَّلَاةَ وَمِمَّا رَزَقْنَاهُمْ
يُنْفِقُونَ

Q2:158 The month of Ramadan in which **the Qur'an** was sent down: a **guidance to mankind**...

شَهْرُ رَمَضَانَ ٱلَّذِى أُنزِلَ فِيهِ ٱلْقُرْءَانُ
هُدًى لِّلنَّاسِ...

These two verses, indicate that the Book (*Al kitab*) and the Qur'an (*Al Qur'an*) are not directed at the same audience (the God fearing vs. mankind). This suggests that *Al Qur'an* has a much wider scope than *Al Kitab* since 'the God-fearing' of the first verse are a smaller group of 'mankind' of the second verse. However, to thoroughly explain this difference between *Al Qur'an* and *Al Kitab*, Shaḥrur turns to the much-discussed verse of *Al-Imran* (Q3:7) and the controversy of the *precise* and *ambiguous* that have been the locus of much confusion in traditional Islam.²⁶⁶

Q3:7 It is He who has sent down to you, [O Mohammad], the Book; in it are verses [that are] **precise** - they are the foundation of the Book - and others **ambiguous**. As for those in whose hearts is deviation, they will follow that of it which is ambiguous, seeking discord and seeking an exegesis. And no one knows its exegesis except God and those firm in knowledge say, "We believe in it. All [of it] is from our Lord." And no one will be reminded except those of understanding.

هُوَ ٱلَّذِى أُنزِلَ عَلَيْكَ ٱلْكِتَٰبُ مِنْهُ
ءَايَٰتٌ مُّحْكَمَتٌ هُنَّ أُمُّ ٱلْكِتَٰبِ وَأُخَرُ
مُتَشَابِهَةٌ فَأَمَّا ٱلَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ
فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ ٱلْفِتْنَةِ
وَأَبْغَاءَ نَآوِيلٍ وَمَا يَظُنُّ نَآوِيلُهُٗ إِلَّا ٱللَّهُ
وَٱلرَّءَاسُخُونَ فِى ٱلْعِلْمِ يَقُولُونَ ءَمَنَّا بِهِ
كُلُّ مَنْ عِنْدَ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو ٱلْأَلْبَٰبِ

Here the *precise* and the *ambiguous* are understood to be two distinct parts of the one Book. This understanding, however, is subsequently challenged by another verse, which seems to indicate that the *whole* book is of the *precise* type:

Q11:1 Alif. Lam. Ra. a book whose verses were made *precise* and then expounded from One Wise, Aware.

ٱلرَّ كِتَٰبٌ أَحْكَمَتْ ءَايَتُهُ تَمَّ فَصَّلَتْ
مِنْ لَّدُنْ حَكِيمٍ خَبِيرٍ

²⁶⁶ For more on the exegesis of Q3:7 see: Syamsuddin, Sahiron. "Muḥkam and Mutashābih: An Analytical Study of Al-Ṭabarī's and Al-Zamakhsharī's Interpretations of Q.3:7." *Journal of Qur'anic Studies* 1 1 (1999): 63-79. Also: Wild, Stefan. "The Self-Referentiality of the Qur'an: Sura 3:7 as an Exegetical Challenge." *With Reverence for the Word: Medieval Scriptural Exegesis in Judaism, Christianity, and Islam*. Eds. McAuliffe, J.D., B.D. Walfish, and J.W. Goering. Oxford University Press, USA, 2010. 422-36.

Then one finds a third verse which appears to indicate that the *whole* book is of the *ambiguous* type:

Q39:23 God has sent down the best discourse, *an ambiguous book* from which shiver the skins of those who have awe of their Lord. Then, their skins and hearts soften to the remembrance of God. That is the guidance of God, through which He guides whoever he wills. But whoever God leaves to stray will be left with no guide.

اللَّهُ نَزَّلَ أَحْسَنَ الْكِتَابِ مُتَشَابِهًا
مُتَنَبِّئًا تَقْشَعِرُّ مِنْهُ جُلُودُ الَّذِينَ
يَخْشَوْنَ رَبَّهُمْ ثُمَّ تَلِينُ جُلُودُهُمْ
وَقُلُوبُهُمْ إِلَىٰ ذِكْرِ اللَّهِ ذَٰلِكَ هُدَىٰ اللَّهِ
بِجَدِّى بِهِ مَن يَشَأْ وَمَنْ يُضْلِلِ اللَّهُ
فَمَا لَهُ مِن هَادٍ

To sort out this confusion, Shaḥrur reverts to explaining the concept behind the Arabic word for ‘book’; *Kitab* he explains is a grouping of elements united by a common purpose, or a collection of items with a common thread²⁶⁷. Hence, the totality of the book one normally refers to as Al Qur’an or al-Kitab, is in fact a collection of several ‘books’ as demonstrated by the following verse for example:

Q98:2-3 A messenger from God, reading purified pages * Containing correct *books* *

رَسُولٌ مِّنَ اللَّهِ يَتْلُو صُحُفًا مُّطَهَّرَةً * فِيهَا
كُتِبَ قِيمَةٌ*

Such *books* Shaḥrur argues, are each a collection of verses addressing a specific subject, some in relation to human actions such as marriage, divorce, fasting, pilgrimage, prayers, etc., and others in relation to phenomena such as creation, the hereafter, death, nature, and so on. The *book* of death, for instance, is the group of factors that when assembled result in sure death. Moreover, everything that takes place, whether human actions or natural phenomena, only occurs through the mechanism of a *book*, i.e. the presence of all elements necessary for a specific outcome.

Q78:29 And everything We have enumerated in a book.

وَكُلُّ شَيْءٍ أَحْصَيْنَاهُ كِتَابًا

Contrary to the traditional understanding, therefore, “...a book whose verses were made precise...” (Q11:1) is not a reference to the whole book but only to the group of *precise* verses. Similarly, “an ambiguous book...” (Q39:23) refers to the complete group of *ambiguous* verses. each collection on its own is a *book*, and altogether they constitute the Book (capitalized). Shaḥrur further explains, that the two groups (books) of *precise* and *ambiguous* are the same two groups referred to in (Q3:7) of the Al-Imran verse²⁶⁸. Shaḥrur explains the quality of being *ambiguous*, to indicate the unique characteristic of the text remaining fixed, while its meaning changes dynamically in time and space, to be understood differently through evolving epistemologies²⁶⁹. In contrast, the quality of being *precise* describes a fixed text and a fixed meaning.

²⁶⁷ Shaḥrur 1990, p51-2 and Shaḥrur 2015, p115

²⁶⁸ Traditional scholars have struggled with this issue for over ten centuries and held that the *precise* and *ambiguous* verses of Q3:7 were different in type to the *precise* of Q11:1 and the *ambiguous* of Q39:23 respectively, and distinguished them as general vs. specific *precise* and general vs. specific *ambiguous* without proposing a satisfactory explanation of either. Discussed in detail in: Shaḥrur 2015, p58-72. See also Shaḥrur 2015, p113

²⁶⁹ Shaḥrur 1990, p187

Armed with this new understanding of *book*, *precise*, and *ambiguous*, Shaḥrur argues that all verses within the two covers of the Book are organized into three groups. One group is the *precise*, also called ‘the foundation of the book’ (*Um-ul-kitab*) literally ‘mother of the Book’. The second category is the *ambiguous*. He then notes that the reference to the *ambiguous* verses in (Q3:7) is made without the use of the definite article (Al), so (Q3:7) continues “...and others ambiguous...” not “...the others ambiguous ...” which he reads as indicating the presence of a third group alongside the *precise* and the *ambiguous*.²⁷⁰ This third group he argues, is the collection of verses that are neither *precise* nor *ambiguous*, and whose purpose it is to point out and explain the *precise* and *ambiguous* verses. He identifies this group as ‘the exposition of the book’ (*Tafseel-ul-kitab*), as referenced in other verses, such as:

Q10:37 And this Qur'an is not such as could ever be invented despite of God; but the confirmation of that which was before it and the **exposition of the Book**- Therein is no doubt - from the Lord of the Worlds

وَمَا كَانَ هَذَا الْقُرْآنُ أَنْ يُفْتَرَىٰ
مِنْ دُونِ اللَّهِ وَلَكِنْ نَصَدِّقُ الَّذِي
بَيْنَ يَدَيْهِ وَتَفْصِيلَ الْكِتَابِ لَا
رَيْبَ فِيهِ مِنْ رَبِّ الْعَالَمِينَ

In summary, Shaḥrur groups the contents of revelation into three groups referred to collectively as al-Kitab by including the definite article Al in Arabic (the Book capitalized in English)²⁷¹:

1. *Um-ul-Kitab*: foundation of the book, consists of 19 *precise* verses.²⁷² This group specifies the fourteen proscription of Islamic law (*muharramat*).
2. *Al-Qur'an* and the *Seven Mathani*²⁷³: consist of the *ambiguous* verses.
3. *Tafseel-ul-Kitab*: consists of explanatory verses that are themselves neither precise nor ambiguous but function to explain the structure of the book, and to distinguish the precise and the ambiguous verses.

As will be discussed next, this grouping of verses mirrors the two main functions of Mohammad’s mission: his prophethood (*nubuwwah*) and his messengerhood (*resalah*). The prophethood is based in *Al-Qur'an* or the ambiguous (*Mutashābih*) verses (and their explanation in *Tafseel-ul-kitaab*) while his messengerhood is based in *Um-ul-Kitab* or the precise (*muḥkam*) verses (and their explanation in *Tafseel-ul-kitaab*)

Because ‘Al Kitab’ and ‘Al-Qur'an’, describe entities within the Book, Shaḥrur suggests that it would be more accurate to refer to the whole as *al-Mushaf*; the Arabic word that refers to the actual physical tome containing all hundred and fourteen suras.

Al-Mushaf, therefore, consists of:

²⁷⁰ Shaḥrur 1990, p55

²⁷¹ Shaḥrur 1990, p37

²⁷² Shaḥrur 2015, p187

²⁷³ A group of verses that in addition to being ambiguous, have the characteristic of being *mathani* explained to mean sura openers (singular *mithnah*). The *mathani* combine with the Qur'an to form the *ambiguous* book but remain distinct from the Qur'an. They are referenced in the Book as the ‘best of narration’ (*aḥsan-ul-ḥadeeth*, 39:23) while the Qur'an is referenced as ‘narration’ (*ḥadeeth*, 12:111). Discussed in detail in: Shaḥrur 2015, p119-121 and in: KQ, p120.

1. the *precise* (*Muḥkam*) book, consisting of the verses referred to as *Um-ul-kitab* (foundation of the book).
2. The *ambiguous* (*Mutashābih*) book, the verses constituting Al-Qur'an and the Seven Mahtani²⁷⁴.
3. The explanatory verses referred to as *Tafseel-ul-kitab*. They are neither *precise* nor *ambiguous* and function to explain the structure of the book, and to distinguish the *precise* and the *ambiguous* verses.

6. Structure of The Mission (*risalah* and *nubuwwah*)

Understanding the structure of the book and its different parts, facilitates access to new knowledge in relation to two of the most important aspects of human life. The first relates directly to man's connection to the universe and the other to one's connection to society. These two themes constitute the core of the revelation (*tanzeel*) and were the subject of thorny debates between Mohammad and his contemporaries. Indeed, the structure of the Book, explains Shaḥrur, is aligned to the dual mission of Mohammad as prophet and as messenger.²⁷⁵

Q33:40 Mohammad is not the father of [any] one of your men, but [he is] the Messenger of God and seal of the prophets. And ever is God, of all things, Knowing.

مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِّن رِّجَالِكُمْ وَلَكِن رَّسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ وَكَانَ اللَّهُ بِكُلِّ شَيْءٍ عَلِيمًا

Here Mohammad's two spheres of activity as prophet and messenger²⁷⁶ are affirmed. The dual role, argues Shaḥrur, mirrors the two aspects of behaviour described in (Q2:2-3) that characterize the God-fearing as those 'who believe in the unseen' and as those who 'establish prayer, and spend from what We have provided for them', and thus espouse a specific conduct of morals, rituals, and laws.

Q2:2-3 That is the Book, there is no suspicion about it, a guidance to the God-fearing * who believe in the unseen, establish prayer, and spend from what We have provided for them.

ذَٰلِكَ الْكِتَابُ لَا رَيْبَ فِيهِ هُدًى لِّلْمُتَّقِينَ * الَّذِينَ يُؤْمِنُونَ بِالْغَيْبِ وَيُقِيمُونَ الصَّلَاةَ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ *

The unseen mentioned in the verse, is the source of Mohammad's prophethood (*nubuwwah*) while his messengerhood (*risalah*) associates with the domain of righteous conduct. These are the Qur'an and *Um-ul-kitab* respectively. The theme of prophethood (*Nubuwwah*), is found in the corpus of verses that disclose information hitherto unknown to the prophet, some historic, some announcing future events. This is the objective part of the revelation which informs of cosmic laws and natural phenomena and address questions of human existence;

²⁷⁴ A group of verses that in addition to being ambiguous, have the characteristic of being *mathani* explained to mean sura openers (singular *mithnah*). The *mathani* combine with the Qur'an to form the *ambiguous* book but remain distinct from the Qur'an. They are referenced in the Book as the 'best of narration' (*aḥsan-ul-ḥadeeth*, 39:23) while the Qur'an is referenced as 'narration' (*ḥadeeth*, 12:111). Discussed in detail in: Shaḥrur 2015, p119-121.

²⁷⁵ Shaḥrur 2015, p100, p117

²⁷⁶ Also, Q18:110 Say I am only a man like you, to whom has been revealed that your god is one God...
قُلْ إِنَّمَا أَنَا بَشَرٌ مِّثْلُكُمْ يُوحَىٰ إِلَيَّ أَنَّمَا إِلَهُكُمْ إِلَهٌُ وَاحِدٌ

creation, life, death, resurrection, judgement, hell, paradise, and so forth. Shahrur refers to this as the book of prophethood (*Kitab-un-nubuwwah*) which outlines the frame of reference for Mohammad's role as prophet. It is encapsulated in the ambiguous verses which are the Qur'an and the Seven *Mathani* together, and supplemented by the related explanatory verses of *Tafseel-ul-kitab*. As the Qur'an is concerned with the reality of objective existence, its emphasis is on distinguishing between truth and falsehood (*haq and batel*) and its topics are subject to belief or denial (*tasdeeq or takdheeb*).

The second theme is the messengerhood (*risalah*) of Mohammad. This is the subjective part of the revelation which defines the frame of reference for Mohammad's role as messenger (*rasul*) which Shahrur names as the book of messengerhood (*kitab-ur-risalah*). It resides in *Um-ul-Kitab* which is the *precise* book, supplemented by explanatory verses from *Tafseel-ul-Kitab*. Its verses cover rules of righteous conduct in the daily lives of the faithful and describe morals, social precepts, rituals of prayers, fasting, pilgrimage, and detail what is proscribed (*haram*).²⁷⁷ Its themes are subjective and accessible in human consciousness; therefore, they are the subject of obedience/disobedience (*ta'ah/ma'seya*) rather than belief/denial (*tasdeeq/takdheeb*).²⁷⁸

The role of messenger entails the task of delivering the revelation as received. In this regard only, the messenger was infallible (Q5:67) in the sense that he delivered what he received unaltered by addition or concealment²⁷⁹. As part of the Book consists of the *ambiguous* verses, the messenger delivered it without having to understand it or being able to explain it to his contemporaries.²⁸⁰ Unlike the *ambiguous* verses constituting the book of prophethood, the *precise* verses constituting the book of messengerhood are not immutable across time and geography. They express laws bound within specified limits (*hudud*) and their application changes with temporal and social contexts.²⁸¹ Hence, the role of the prophet necessarily entails the task of *ijtihad*; this refers to applying the part of the Book (*Um-ul-kitab*) which contains laws, prohibitions, rituals, moral values, and social duties.

It was necessary for Mohammad to be a messenger (Q33:45), a military leader (Q8:65), political leader of a state (Q9:73, 66:9), social leader (Q66:1) and a jurist (Q4:65). He received the revelation as a messenger, but as prophet, Mohammad demonstrated a living example in the application of the Book in the different facets of living. He did that not by providing additional explanations to what was already provided within the Book and detailed in *Tafseel-ul-kitab*, but by practicing *ijtihad*. The duality of the task must inevitably manifest itself in the daily life of Mohammad and typify his actions and utterances in relation to one or the other of the two roles. There is a marked difference in verses discussing the role of the messenger and those addressing the prophet especially verses opening with "O Prophet..."; While the messenger is directed to spread God's message "... with wisdom and good instruction..." (Q16:125), the prophet is instructed to urge the faithful and lead them in fight.

Q24:45²⁸² ... there is not upon the Messenger except the clear notification

مَا عَلَى الرَّسُولِ إِلَّا الْبَلَاغُ

²⁷⁷ Shahrur 1990, p54

²⁷⁸ Shahrur 2015, p100, p117

²⁷⁹ Shahrur 2012, p108

²⁸⁰ Shahrur 2012, p103

²⁸¹ Shahrur 2000a, p191 #7

²⁸² See also Q16:82, Q22:52, Q3:20, Q5:92, Q5:99, Q13:40, Q29:18, Q42:48

Q8:65²⁸³ ...O Prophet, urge the believers to battle...

يَا أَيُّهَا النَّبِيُّ حَرِّضِ الْمُؤْمِنِينَ عَلَى
الْقِتَالِ...

The prophet is sometimes rebuked and his decisions criticized²⁸⁴. This conception, unfamiliar in conventional Islamic thought, is an important move in Shaḥrur's methodology for proceedings to distinguish between two types of sunna: *sunna nabawiyya* (of the prophet) and *sunna rasūliyya* (of the messenger). With this distinction, discussed next, Shaḥrur raises another pillar in the structure of a new Islamic jurisprudence.

7. Structure of The *Sunna* (*rasūliyya* and *nabawiyya*)

Shaḥrur notes that obeying Mohammad and following his example in the Book has always come in association with 'messengerhood' exclusively, never with prophethood. One finds over seventy injunctions to "obey the messenger" but never the prophet or the person of Mohammad. This is so, Shaḥrur explains, because the import of messengerhood is directed at effecting change in human behavior, thus it requires obeying, while the import of prophethood is addressed at the faculty of belief of what is being narrated or foretold. Two verses illustrate this distinction.

The first is from the Qur'an (*ambiguous*) which invites belief or denial:

Q55:1-4 The Most Merciful * made known the Qur'an *
created man * taught him utterance

الرَّحْمَنُ * عَلَّمَ الْقُرْآنَ * خَلَقَ الْإِنْسَانَ *
عَلَّمَهُ الْبَيَانَ *

The second is from *Um-ul-kitab* (*precise*), hence, it invites obeying or disobeying:

Q62:9 O you who believe! When the call is heard for the
prayer of the day of congregation [Friday], then
proceed to the remembrance of God and leave the
trading. That is better for you if you only know

يَا أَيُّهَا الَّذِينَ ءَامَنُوا إِذَا نُودِيَ لِلصَّلَاةِ مِنْ
يَوْمِ الْجُمُعَةِ فَاسْعَوْا إِلَىٰ ذِكْرِ اللَّهِ وَذَرُوا
الْبَيْعَ ذَٰلِكُمْ خَيْرٌ لَّكُمْ إِن كُنْتُمْ تَعْلَمُونَ

This indicates that obeying the messenger is tied to the Book (*risalah*) and therefore, only to the function of messengerhood²⁸⁵ Mohammad's political career and creation of a state were performed from the position of prophethood not messengerhood. Shaḥrur argues that believers after the time of the prophet are required to obey the messenger in the position of messengerhood and not the prophet in the position of prophethood. Mohammad received rituals and moral values as part of his messengerhood. He taught them to the faithful who were expected to follow his example and perform them as he did. This presents one type of obeying the messenger where followers are expected to follow his example in his life and after his death.

The law and the theory of limits are also part of messengerhood which believers accept as delivered in the Book. In applying the law, however, Mohammad was exercising *ijtihad* by navigating within the specified limits (*ḥudud*). As such, he was the first *mujtahid* in attempting to implement revelations from an absolute source, in the relative world of seventh century

²⁸³ See also Q8:67, Q66:9, 9:73

²⁸⁴ See Q66:1, Q8:67, Q9:113, Q9:117, Q17:73-75

²⁸⁵ Shaḥrur 2012, 108

Arabia.²⁸⁶ Here also, the faithful were expected to obey the messenger by accepting his decisions. This is the second type of obeying the messenger. Unlike the first type, however, this is binding only to the community of the prophet during his time and does not automatically extend to muslim communities beyond his life.

8. Re-conceptualizing the doctrine of obeying the Messenger (*ta'at-ur-rasūl*)

Shahrur drives this further to re-conceptualize the doctrine of obeying the messenger. He describes this in two types: one continuous; valid during and after the messenger's life, the other discontinuous and is not necessarily binding to Muslims living in all times and places. In the Book, the two types are marked by different styles. An example of the continuous type is found in the following verse:

Q3:132²⁸⁷ And obey God and the Messenger وَأَطِيعُوا اللَّهَ وَالرَّسُولَ لَعَلَّكُمْ
that you may obtain mercy * تُرْحَمُونَ *

The verse uses 'obey' once to combine God and the Messenger in one command, hence continuous obedience to God (*ta'ah muttasila*) effective during the life of the messenger and after his death and covers rituals and proscriptions. Rituals were taught by the prophet and performed by him thousands of times and transmitted by recurrence not books of *hadith* or scholarship. The prohibitions (fourteen in total) were detailed in the Book itself and furthermore, argues Shahrur, they possess a universal quality so that ordinary humans are primordially equipped to understand and accept them.²⁸⁸

The second (discontinuous) type is referred to in the book in the following manner:

Q4:59²⁸⁹ O you who have believe, obey God and obey the يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا
Messenger and those in authority among you. And if الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ فَإِنْ
you disagree over anything, refer it to God and the تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ
Messenger, if you should believe in God and the وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ
Last Day. That is the best [way] and best in result * الْآخِرِ ذَٰلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا *

The verse repeats the verb 'obey' twice, once for God and another for the messenger, separate from each other, hence discontinuous obedience (*ta'ah munfaselah*). This type of obedience is due to God always but to the messenger only during his life, and to 'those in authority' after his death. It covers his actions as he practiced his own *ijtihad* only in the domain of regulating what is *halal*. This *ijtihad* was practiced from a position of human imperfection and fallibility. A position from which he established a state and acted as political leader of his community. Believers, however, were required to accept his decisions and instructions as he represented the legislative authority for God's law. That is why the verse also extends this type of obedience to the ruler as the representative of legislative authority after the death of the prophet.²⁹⁰

²⁸⁶ Shahrur 2000a, p60

²⁸⁷ See also Q4:69, Q3:32, Q8:46

²⁸⁸ Shahrur 2000a, p155-56

²⁸⁹ See also Q5:92, Q24:54

²⁹⁰ Shahrur 2000a, p156

It is to understand that Mohammad the prophet could make additional rulings in establishing his state and leading his community. These fall within his discretion in organizing and managing the unrestricted (*halal*) within the legal framework defined by the theory of limits. This *sunna nabawiyya*²⁹¹ of the prophet offered an instance of applying God's law, but it is neither the only model nor necessarily the one that later Muslims should duplicate in legislating for their own societies. Restrictions that he might have introduced within this task are not proscriptions (*tahrim*) but have a circumstantial character (*sifa zarfiyyah*), hence temporal and historical and not revelation. As such, they are not binding to generations of Muslims living after the time of the messenger.²⁹²

Shahrur maintains that "prohibition (*tahrim*) is the exclusive prerogative of God and is not to be claimed by any other creature".²⁹³ He further warns that the subjects that are divinely prohibited (*haram*) are only the fourteen specified in the Book²⁹⁴, and except for those, "everything else is permitted (*halal*) and subject to *ijtihad*".²⁹⁵ Further, "*halal* in any community can only be practiced within constrictions which change with time and place".²⁹⁶ Therefore "Mohammad was a judge from the position of prophethood (4:65) and his rulings cannot be considered as eternal legislation ... because he constructed his rulings through analysis and examination of available data and evidence".²⁹⁷ This is consistent with reports in *hadith* that Mohammad instructed his followers to refrain from writing his sayings because these were subject to change with time and circumstance²⁹⁸. "As for those who say Mohammad's prohibitions and his permissions are valid until judgement day, this is fabrication".²⁹⁹

9. Conclusion to Shahrur Primer

Shahrur, advocates a new understanding of sunna that does not contradict the Book and works in harmony with it. Distinguishing between two types of sunna deriving from the two roles of messenger and prophet, and subsequently proposing a new conception of obeying the messenger serves his project in proposing a new Islamic legal theory to challenge *usul-ul-fiqh* which he argues is not sustainable given constant social and technological progress. His ideas render redundant the concept of *Qiyas* (analogy); it is through *ijtihad* in 'real-time' that the text of the Book can be read and interpreted to credibly demonstrate its applicability to current issues of human societies. He advocates a new understanding of *qiyas* to be based on empirical proof and scientific data presented by biologists, sociologists, statisticians, and economists. They can

²⁹¹ *Ijtihad* by the prophet is one component of the sunna nabaweyya, the other is the '*Qasas*'. These are tales of events from history narrated in the Qur'an. Their source, however, is al-imam-ul-mubeen, this is the 'archival record' in which all events are recorded after they occur. The events in Muhammad's history are also 'archived' in al-imam-ul-mubeen as they occur and then re-told in the Qur'an for the benefit of future generations. These are not sources of legislation, and are presented only for contemplation and drawing of lessons (see Shahrur 2012, p99).

²⁹² Shahrur 2012, p107

²⁹³ Shahrur 2008, p148

²⁹⁴ Listed as 12 in: Shahrur 2000b, p78 but updated to 14 in later books ex: Shahrur 2014, p137-138 and Shahrur 2015, p254.

²⁹⁵ Shahrur 2012, 106

²⁹⁶ Shahrur 2000a, p154

²⁹⁷ Shahrur 2012, 106

²⁹⁸ Shahrur 2000a, p155

²⁹⁹ Shahrur 2008, p148

replace traditional scholars and fatwa departments and can credibly advise legislative and political authorities.³⁰⁰

Similarly, Shaḥrur argues as obsolete the conventional understanding of consensus (*ijma*). This should obtain by a majority of the living members of a community on proposed legislations on issues facing them. Its tools today are legislative assemblies, referenda, and opinion polls.³⁰¹ *Qiyas* and *ijma*, so understood, can be useful instruments in relation to matters of social import such as smoking or polygamy. They can be used within the theory of limits to propose acts of allowing/preventing by authorities in contrast to acts of permitting/proscribing (*tahlil/tahrim*) which only God can do through a messenger.

³⁰⁰ Shaḥrur 2000a, p193

³⁰¹ Shaḥrur 1990, p581-2