

Mohammad Hashim Kamali

Freedom of Expression in Islam



ISLAMIC TEXTS SOCIETY

1997

IX. Freedom of Religion (*Al-Hurriyyah al-Dīniyyah*)

One of the manifestations of personal liberty is the freedom of the individual to profess the religion of his or her choice without compulsion. Everyone must also have the freedom to observe and to practise their faith without fear of, or interference from, others. Freedom of religion in its Islamic context implies that non-Muslims are not compelled to convert to Islam, nor are they hindered from practising their own religious rites. Both Muslims and non-Muslims are entitled to propagate the religion of their following, as well as to defend it against attack or seditious provocation (*fitnah*), regardless as to whether such an action is launched by their co-religionists or by others.¹⁶¹

Freedom of religion acquires special significance in the *Shari'ah*, a system of law which recognises no clear division between legal and religious norms. Since the creed of Islam lies at the root of many a doctrine and institution of the *Shari'ah*, the freedom of whether or not to embrace and practise Islam is the most sensitive and controversial area of all individual liberties.¹⁶² However, this alone should not necessarily change the basic meaning and character of the freedom of belief: it should matter little, therefore, whether one speaks of the freedom of belief in the context of Islam or of any other legal system. For the basic idea of freedom defies impositions of any kind on an individual's personal choice. Freedom of belief, like all other freedoms, operates as a safeguard against the possible menace of oppression from superior sources of power. This is also essentially true of the Islamic concept of this freedom: as Fathī 'Uthmān observes, 'No power of any kind in the Islamic state may be employed to compel people to embrace Islam. The basic function of the Islamic state, in this regard, is to monitor and prevent the forces which might seek to deny the people their freedom of belief.'¹⁶³

From a historical perspective it is interesting to note that when the Prophet of Islam ﷺ began his mission among the pagans of Mecca, he invited them into the new faith despite their hostile attitude and response. This situation lends support to the conclusion, as al-'Ilī points out, that Islam subscribes to freedom of belief, since Islam

itself began by inviting and persuading people to embrace it on the merit of its rationality and truth. In other words, if Islam is to remain true to its own beginnings it can be expected to validate the freedom of belief.¹⁶⁴ This is precisely the stance that the 'ulamā' have adopted and upheld: 'The doctors of theology and monotheism (*tawhīd*) are in agreement that confession to the faith (*īmān*) is not valid if it is not voluntary. In the event, therefore, wherever confession to the faith is obtained through compulsion, it is null and void.'¹⁶⁵ On a similar theme, Ibn Qudāmah, the renowned Hanbali jurist/theologian has written:

It is not permissible to compel a disbeliever into professing Islam. If, for example, a non-Muslim citizen (*dhimmi*) or a person of protected status (*musta'man*) is forced to accept Islam, he is not considered a Muslim unless it is established that his confession is a result of his own choosing. If the person concerned dies before his consent is known, he will be considered a disbeliever . . . The reason for the prohibition of duress here are the words of God Most High that there shall be 'no compulsion in religion'.¹⁶⁶

The Qur'ānic text that Ibn Qudāmah has referred to in this passage is of central importance to our discussion, and I shall return to it later. At this point, however, I shall proceed with a general characterisation of freedom of religion in the writings of some modern authors. These works, which draw substantially from the evidence in the sources, come to much the same conclusions as are found in earlier writings. The only notable difference between classical and modern works on religious freedom is that some of the earlier writers were persuaded by the argument that many Qur'ānic passages which affirm the freedom of religion have subsequently been abrogated or superseded by other passages of a more restrictive nature. However, modern Muslim opinion on the subject tends to dismiss this rather weak argument. A representative contemporary opinion on the subject of freedom of religion can be found in the following excerpt issued by a recent International Conference on Islamic law, which was held between the leading scholars of Saudi Arabia and Europe. 'The individual is free in regard to the creed he wishes to embrace, and it is unlawful to compel anyone to embrace a religion.' The statement gives as its authority the Qur'ānic text which declares that 'there is no compulsion in religion' (II:256), and also the following Qur'ānic passage which was addressed to the Prophet ﷺ: 'Had thy Lord willed, everyone on earth would have

believed. Do you then force people to become believers?' (X: 99)¹⁶⁷

- لَا أَكْرَاهُ فِي الدِّينِ
- وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ فِي الْأَرْضِ كُلَّهُمْ جَمِيعًا
أَفَأَنْتَ تُكْرِهُ النَّاسَ حَتَّى يَكُونُوا مُؤْمِنِينَ.

This latter passage is a Meccan text which was revealed at an early stage in the advent of Islam. This was later followed and confirmed, after the Prophet's ﷺ migration to Medina, by the afore-mentioned verse in *sūrat al-Baqarah* (II:256). Thus, freedom of belief has been consistently enunciated as a norm of the *Shari'ah* (*aṣl al-tashrī'*) regardless of considerations of time and circumstance.¹⁶⁸

The substance of these Qur'ānic provisions has also been upheld in the 1952 convention of the 'ulamā' of Pakistan who drafted a statement entitled 'The Basic Principle of an Islamic State'. This included the following clauses: 'The citizen shall be entitled to all the rights ... he shall be assured within the limits of the law of ... freedom of religion and belief, freedom of worship...'.¹⁶⁹ Similarly, the Universal Islamic Declaration of Human Rights, issued by the Islamic Council of Europe provides: 'Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.' (Art XIII.)¹⁷⁰ Provisions of this kind have now become a regular feature of the constitutions of many contemporary Muslim countries, including Malaysia and Pakistan. The Federal Constitution of Malaysia 1957, which is currently in force, declares the following in Article (II) entitled 'Freedom of Religion':

- (1) Every person has the right to profess and practise his religion, and subject to clause (4) to propagate it.
- (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

The text goes on to declare, under clause (3) that every religious group is entitled to manage its own religious affairs, to establish religious and charitable institutions, and to acquire and own property for such purposes. Clause (4) provides that a state law, and in respect of the Federal Territories of Kuala Lumpur and Labuan, federal law, may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

In the case of 'The Minister of Home Affairs v. Jamaluddin bin Othman',¹⁷¹ the Supreme Court of Malaysia has upheld its decision to respect the constitutional clause on freedom of religion in its full sense, by dismissing a plea made by the Minister of Home Affairs that conversion to Christianity by a Muslim was a punishable offence. In this case, the respondent, Jamaluddin, was detained under the Internal Security Act 1960, s.8(1), by the Minister of Home Affairs, for what really amounted to apostasy, but was prosecuted for an internal security offence. Originally, the respondent was detained 'for acting in a manner prejudicial to the security of Malaysia',¹⁷² and the allegations that led to Jamaluddin's detention were that he had himself converted from Islam to Christianity and that he was propagating Christianity among the Muslims of Malaysia. It was also alleged that he participated in a work camp and seminar for such a purpose and that, as a result of these activities, he had converted six Malays to Christianity. The defendant pleaded that the Minister did not have the power to order detention without trial. On an application by the respondent for writ of *habeas corpus*, Justice Anuar, the trial judge in the High Court of Kuala Lumpur, took the view that 'the Minister had no power to deprive a person of his right to profess and practise his religion which is guaranteed under Art.11 of the Federal Constitution, and, therefore, if the Minister acts to restrict the freedom of a person from professing and practising his religion, his act will be inconsistent with the provision of Art.11 and therefore an order of detention would not be valid'.¹⁷³ Consequently, the judge ordered the release of the respondent from detention. The Minister for Home Affairs appealed to the Supreme Court in Kuala Lumpur, but the Criminal Appeal Division dismissed the appeal and stated the grounds of its decision as follows:

The sum total of the grounds for detention in this case was the supposed involvement of the respondent in a plan or programme for the dissemination of Christianity among the Malays ... We do not think that mere participation in meetings and seminars can make a person a threat to the security of the country. As regards the alleged conversion of six Malays, even if it were true, it cannot by itself, in our opinion be regarded as a threat to the security of the country.¹⁷⁴

While dismissing the appeal, the court added that the grounds for detention in this case, when read in the proper context, were insufficient; that the guarantee provided by Art.11 of the constitu-

tion, namely, the right to freedom of religion, must be given effect, unless the actions of a person go well beyond what can normally be regarded as professing and practising his or her faith.

The 1973 *Constitution of the Islamic Republic of Pakistan*, which is currently in force, proclaims in its section on Fundamental Rights and Liberties that:

Subject to law, public order and morality: a. every citizen shall have the right to profess, practise and propagate his religion; and b. every religious denomination and every section thereof have the right to establish, maintain and manage its religious institutions. (Art.20)

The constitution of Pakistan also forbids discrimination against religious communities as regards taxation, educational policies, and the allocation of funds and concessions that the state may make to religious communities or institutions. (Arts. 21, 22, 38.)

While quoting some of the Qur'ānic verses on the subject, Mutawalli has characterised the main thrust of the Qur'ānic teaching on religious freedom as follows: religious belief should be founded on conviction and considered choice, not on mere imitation or conformity to the views and beliefs of others. The *Shari'ah* forbids compulsion in religion as it is incompatible with the courteous methods of persuasion that the Qur'ān prescribes for the propagation of Islam. While stating the evidence to support his comment, the same author observes, on a historical note, that Muslim rulers and governors have generally exercised tolerance in the treatment of non-Muslim subjects, particularly in the matter of religious beliefs. Mutawalli also agrees with the conclusion which Thomas Arnold came to in his investigations: that the concept that Islam was imposed by the sword is inaccurate and far from the truth. In his book, *The Preaching of Islam*, Thomas Arnold advanced the theme that Christian historians have obscured 'the genuine missionary character of Islam'¹⁷⁵ and have instead laid emphasis on the use of the sword as the principal instrument in its propagation: 'So little is there in the statement that Islam makes progress only by the force of arms'¹⁷⁶ that one can see the opposite of this in the history of Islam in Africa, the Middle East and elsewhere. With reference to the spread of Islam in Palestine and Syria, Arnold commented: 'That force was not the determining factor in these conversions may be judged from the amicable relations that existed between the Christian and the Muslim Arabs.'¹⁷⁷ To quote Arnold again:

From the examples given above of the toleration extended towards the Christian Arabs by the victorious Muslims of the first century of the Hijrah and continued by succeeding generations we may surely infer that those Christian tribes that did embrace Islam did so of their own choice and free will. The Christian Arabs of the present day, dwelling in the midst of a Muhammadan population are a living testimony of this toleration.¹⁷⁸

Mutawalli has concluded that any oppression that might have soiled the otherwise tolerant record of Muslim rulers was mainly attributable to political factors which find little support in the principles of Islamic law.¹⁷⁹ The practice of early Islamic leaders, particularly the Rightly-Guided Caliphs, was consistently determined by the Qur'anic norms which seek to protect the integrity of the individual conscience. Abū Zahrah and Mutawalli, among others, are both explicit on this point. According to the former, 'the early Muslims showed great care and sensitivity not to compel anyone in the matter of religion.' Abū Zahrah also tells of an incident where an elderly Christian woman came as a supplicant to the Caliph 'Umar b. al-Khaṭṭāb, who met her request with favour. Afterwards, he invited her to embrace Islam, but she refused. At this the Caliph became anxious, fearing that his invitation might have amounted to compulsion, and he expressed his remorse in these words: 'O my Lord, I did not mean to compel her, as I know that there must be no compulsion in religion ... righteousness has been explained and distinguished from misguidance.' Thus, the Caliph 'Umar expressed the point that only God Most High can prevail upon the hearts and minds of people in matters of faith.¹⁸⁰

The precedent and attitude of the Rightly-Guided Caliphs reflects the correct understanding of the norms of the *Shari'ah* which clearly recognise the freedom of religion and proscribe all oppression and violation of the integrity of this freedom.¹⁸¹

«Notwithstanding the relative clarity of the Qur'anic proclamations on the freedom of religion, the subject has become controversial. This is due partly to certain other passages in the Qur'an which have sometimes been interpreted in a manner which casts doubt on the subject. Indeed, some commentators have drawn the drastic conclusion that the Qur'anic passages which validate holy war (*jihād*) and fighting against disbelievers actually abrogate the Qur'an's proclamation on tolerance and respect for other religions. The controversy has been exacerbated further by reliance on the provi-

sion in the Sunnah which authorises the death penalty for apostasy without due consideration of other evidence in the Sunnah to the effect that punishment by death was meant only for apostasy accompanied by hostility and treason. However, a full enquiry into these issues would fall beyond the scope of this study. Some of these issues have already been treated and investigated at length in books and articles in the English language.¹⁸² I shall, therefore, confine my discussion to some of the conclusions that have been drawn, without paying undue attention to many of the details.

In his monograph, *The Punishment of Apostasy in Islam*, S. A. Rahman looks into the evidence in the Qur'ān and the Sunnah in detail, and draws attention to the fact that the Qur'ān is silent on the question of death as the punishment for apostasy, despite this subject occurring no less than twenty times in the Holy Book. Rahman then traces the chain of transmission of the *Hadīth* which proclaims 'kill whoever changes his religion'.

مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ.

As this is a solitary *Hadīth* (*āḥād*), Rahman finds some weakness in its transmission (*isnād*). Rahman's conclusion is also supported by other evidence, such as the fact that neither the Prophet ﷺ himself, nor any of his Companions ever compelled anyone to embrace Islam, nor did they sentence anyone to death solely for renunciation of the faith.¹⁸³ In the light of this, it is not surprising to find a number of prominent 'ulamā', across the centuries, subscribing to the view that apostasy is not a punishable offence. Ibrāhīm al-Nakha'ī (d. 95/713), a leading jurist and traditionist among the generation succeeding the Companions, and Sufyān al-Thawrī (d. 161/772), who is known as 'the prince of the believers concerning *Hadīth*' (*amīr al-mu'minīn fi'l-Ḥadīth*) and is the author of two important compilations of *Hadīth*, namely *al-Jāmi' al-Kabīr* and *al-Jāmi' al-Ṣaghīr*, both held that the apostate should be re-invited to Islam, but should never be condemned to death. They maintained the view that the invitation should continue for as long as there is hope that the apostate might change his mind and repent.¹⁸⁴ 'Abd al-Wahhāb al-Sha'rānī has also cited the views of al-Nakha'ī and al-Thawrī and adds that 'the apostate is thus permanently to be invited to repent'.¹⁸⁵ The renowned Hanafī jurist, Shams al-Dīn al-Sarakhsi, is rather less explicit but what he writes amounts to saying that apostasy does not qualify for temporal punishment. He begins by stating that apostasy

is not an offence for which there is a prescribed punishment (*ḥadd*), because the punishment for it is suspended when the apostate repents:

The prescribed penalties (*ḥudūd*) are generally not suspended because of repentance, especially when they are reported and become known to the head of state (*imām*). The punishment of highway robbery, for instance, is not suspended because of repentance; it is suspended only by the return of property to the owner prior to arrest ... Renunciation of the faith and conversion to disbelief is admittedly the greatest of offences, yet it is a matter between man and his Creator, and its punishment is postponed to the day of judgement (*fa'l-jazā' 'alayhā mu'akkhar ilā dār al-jazā'*). Punishments that are enforced in this life are those which protect the people's interests, such as just retaliation, which is designed to protect life

...¹⁸⁶

Al-Sarakhsī goes on to recount the punishments for adultery, theft, slanderous accusation, wine-drinking and highway robbery - namely, all the *ḥudūd* punishments - but leaves apostasy out altogether from the list. The Mālikī jurist, al-Bājī (d. 494 A.H.), also observed that apostasy is a sin which carries no prescribed penalty (*ḥadd*), and that such a sin may only be punished under the discretionary punishment of *ta'zīr*.¹⁸⁷ The renowned Ḥanbalī jurist, Ibn Taymiyyah, also categorically agrees on this latter punishment for apostasy.¹⁸⁸

Among modern scholars, 'Abd al-Ḥakīm al-ʿĪlī and Ismāʿīl al-Badawī have commented that by al-Nakhaʿī's time, Islam was secure from the hostility of disbelievers and apostates. This, they maintain, indicates that al-Nakhaʿī understood the Prophetic *Ḥadīth* quoted above, which made apostasy punishable by death, to be political in character and aimed at the inveterate enemies of Islam.¹⁸⁹ On a similar note, Maḥmūd Shaltūt analyses the relevant evidence in the Qur'ān and draws the conclusion that apostasy carries no temporal penalty, and that in reference to this particular sin, the Qur'ān speaks only of punishment in the hereafter:

As for the death penalty for apostasy, the jurists have relied on the *Ḥadīth* reported by Ibn ʿAbbās in which the Prophet has said, 'Kill the one who changes his religion' (*man baddala dīnahu faqtulūhu*). This *Ḥadīth* has evoked various responses from the 'ulamā', many of whom are in agreement that the prescribed penalties (*ḥudūd*) cannot be established by solitary *Ḥadīth* (*āḥād*), and that unbelief by itself does not call for the death penalty. The key factor which determines the application of this punishment is aggression and hostility against the believers and the [need to] prevent possible sedition (*fitnah*) against religion and state. This conclu-

sion is sustained by the manifest meaning of many of the passages in the Qur'ān which proscribe compulsion in religion.¹⁹⁰

Mahmassānī has observed that the death penalty was meant to apply, not to simple acts of apostasy from Islam, but when apostasy was linked to an act of political betrayal of the community. The Prophet ﷺ never killed anyone solely for apostasy. This being the case, the death penalty was not meant to apply to a simple change of faith but to punish acts such as treason, joining forces with the enemy and sedition.¹⁹¹

The late Ayatollah Mutahhari highlighted the incompatibility of coercion with the spirit of Islam, and the basic redundancy of punitive measures in the propagation of its message. He wrote that it is impossible to force anyone to acquire the kind of faith that is required by Islam, just as 'it is not possible to spank a child into solving an arithmetical problem. His mind and thought must be left free in order that he may solve it. The Islamic faith is something of this kind.'¹⁹²

Selim el-Awa discusses the issue of apostasy at length, declaring that 'there is an urgent need to reinterpret the principles contained in the Qur'ān and Sunnah'. He cites the fact that the Qur'ān is completely silent on the death penalty for apostasy, and that the evidence in the Sunnah is open to interpretation.¹⁹³ El-Awa elaborates that the death penalty in the Sunnah is not designed for apostasy per se but for high treason, or *hirābah*, that is, when apostasy is accompanied by hostility and rebellion against the community and its legitimate leadership. The *Ḥadīth* which proclaims 'whoever renounces his religion shall be killed', is a general ('*āmm*) command which is in need of specification (*takhsīṣ*). In its general form, it would apply equally to cases that manifestly fall outside its intention, as it would render this same punishment not only to Muslims but also to Christians who convert to Judaism, and vice versa. Al-Shawkānī adds to the foregoing, that the general purport of this *Ḥadīth* has been restricted in the Qur'ān so as to exclude a person who changes his religion outwardly under duress but remains faithful otherwise.¹⁹⁴ Al-Shawkānī has also criticised the ruling of some Shafi'i scholars who have followed the literal and general meaning of the *Ḥadīth* in question and erroneously held that the death penalty therein applies equally to a non-Muslim who converts from one religion to another. On this subject, he states that, 'My response to this is that the literal meaning of the *Ḥadīth* has been abandoned in

regard to a disbeliever who embraces Islam.¹⁹⁵ Moreover, the Hanafis have countered the general interpretation of this *Hadith* in yet another respect, namely, that a woman apostate is not punished by death but only by imprisonment (since the masculine pronominal suffix alone occurs in the wording). According to the rules of interpretation, as expounded in *uṣūl al-fiqh*, once a decisive (*qaf'i*) ruling of a text has been specified in some respect, the part which remains unspecified becomes speculative (*ẓannī*), and as such, is open to further interpretation and specification (*takḥṣīṣ*). It is thus also suggested that the *Hadith* in question may be further qualified, and that the death penalty therein may be reserved only for apostasy which is accompanied by high treason (*hirābah*).¹⁹⁶

The preceding analysis is also extended to the second *Hadith* often quoted in support of the death penalty for apostasy, which is as follows:

The blood of a Muslim who professes that there is no god but Allāh and that I am His Messenger, is sacrosanct except in three cases: a married adulterer; a person who has killed another human being; and a person who has abandoned his religion, while splitting himself off from the community (*mufāriq li'l-jamā'ah*).¹⁹⁷

لا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ، وَإِنِّي رَسُولُ
اللَّهِ إِلَّا بِأَحَدٍ ثَلَاثٍ، الثَّيْبُ الزَّانِي وَالنَّفْسُ بِالنَّفْسِ،
وَالتَّارِكُ لِدِينِهِ مُفَارِقٌ لِلْجَمَاعَةِ.

As will be noted, this *Hadith* makes clear that the apostate must also boycott the community (*mufāriq li'l-jamā'ah*) and challenge its legitimate leadership, in order to be subjected to the death penalty.¹⁹⁸

The Qur'ān specifies a three-fold punishment for high treason (*hirābah*), culminating in death (V:34). Ibn Taymiyyah, in an attempt to reconcile the terms of the preceding *Hadith* with the Qur'ān, observes that the crime referred to in the *Hadith* under discussion is that of high treason (*hirābah*) and not apostasy (*riddah*) as such.¹⁹⁹ This observation is again supported by the fact that the Prophet ﷺ never put anyone to death for apostasy alone. Indeed, there were cases when certain individuals apostasised after professing Islam yet the Prophet ﷺ did not even penalise them, let alone condemn them to death. Affirmative evidence on this point is found in the following

incident which appears in the *Hadith* compilations of al-Bukhārī and Muslim:

A Bedouin came to the Holy Prophet ﷺ and pledged his allegiance to him, professing Islam. The next day he came back, ill with fever and said, 'Return my pledge to me,' but the Prophet ﷺ refused - thrice. Then the Prophet ﷺ said: Medina is like a bellows which rejects its dross and recognises its pure.²⁰⁰

عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ: جَاءَ أَعْرَابِيٌّ إِلَى النَّبِيِّ ﷺ فَبَايَعَهُ
عَلَى إِلَّا سَلَامَ فَجَاءَ مِنَ الْغَدِ مَحْمُومًا فَقَالَ: أَقْلِنِي، فَأَبَى
- ثَلَاثَ مَرَّاتٍ فَقَالَ الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَثِهَا وَتَنْصَعُ
طَبِئَهَا.

This was a clear case of apostasy, in which the Prophet ﷺ made no reference to any punishment at all, and the Bedouin, despite his persistent renunciation of Islam was left to go unharmed.²⁰¹

Furthermore, the following Qur'ānic passage is in complete harmony with the purport of the foregoing *Hadith*, and provides, once again, a strong argument against the death penalty for apostasy:

Those who believe then disbelieve, then believe again, then disbelieve and then increase in their disbelief - God will never forgive them nor guide them to the path. (IV:137)

إِنَّ الَّذِينَ آمَنُوا ثُمَّ كَفَرُوا ثُمَّ آمَنُوا ثُمَّ كَفَرُوا ثُمَّ أَرَادُوا
كُفْرًا لَمْ يَكُنِ اللَّهُ لِيُغْفِرْ لَهُمْ وَلَا لِيَهْدِيَهُمْ سَبِيلًا.

The implication is unmistakable. The text would hardly entertain the prospect of repeated belief and disbelief if death were to be the prescribed punishment for the initial act. It is also interesting to note that the initial reference to disbelief is followed by further confirmation of disbelief and then 'increase in disbelief'. One might be inclined to think that if the first instance of apostasy did not qualify

for capital punishment, the repeated apostasy might have provoked it - had such a punishment ever been intended in the Qur'ān.

The Prophet ﷺ did not treat apostasy as a proscribed offence (*ḥadd*), but, on the contrary, pardoned many individuals who had embraced Islam, then renounced it, and then embraced it again. Included among these was 'Abd Allāh ibn Abi Sarḥ, the foster brother of 'Uthmān ibn 'Affān, and one-time scribe of the Prophet ﷺ, whom the Prophet ﷺ forgave when 'Uthmān interceded on his behalf. Other cases included that of al-Hārith ibn Suwayd, 'and a group of people from Mecca' who embraced Islam, renounced it afterwards, and then re-embraced it. Their lives too were spared. Ibn Taymiyyah, who has recorded this information, added that 'these episodes and similar other ones are well-known to the scholars of *Ḥadīth*.¹²⁰² Ibn Taymiyyah further added that the Companions reached a consensus (*ijmā'*) on this, for when the Prophet ﷺ passed away, most of the Arabs, except for the residents of Mecca, Medina and Ṭa'if, apostasised, including many followers of the self-proclaimed 'prophets', Musaylimah, al-'Anasī, and Tulayhah al-Asadī, who renounced Islam and were subsequently fought by Abū Bakr al-Ṣiddīq and other Companions until they returned to the faith again. They were left unharmed and not a single one of them was killed because of their renunciation of Islam. This, Ibn Taymiyyah adds is common knowledge.²⁰³

In response to the question of whether Islam permits war as a means of propagation, many scholars have reached the conclusion that war is permissible only to protect the freedom of belief and to prevent oppression. The Qur'ān forbids sedition (*fitnah*) in religion, as well as the persecution of people for their religious beliefs. It is this *fitnah*, as Abū Zahrah observes, which the Qur'ān declares to be a menace greater than murder, and thus it permits waging war in order to prevent tyranny and sedition, as the following text shows: 'And fight them until *fitnah* is no more and religion is for God alone. But if they stop then there is to be no hostility except against the oppressors.' (II:193)

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ فَإِنْ
انْتَهَوْا فَإِنَّ اللَّهَ بِمَا يَعْمَلُونَ بَصِيرٌ

From this passage, Abū Zahrah draws the conclusion that 'fighting

is only permissible in order to defend the freedom of belief and prevent oppression in religion'.²⁰⁴ He also quotes another Qur'anic passage in support of his statement, which declares explicitly:

Fighting has been permitted for those against whom war has been waged, because they have been wronged - and God is able to give them victory; those who were expelled from their homes for no cause other than saying: "God is our Lord". (XXII:39)

أَذِنَ لِلَّذِينَ يُقَاتِلُونَ بَأْنَهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ
الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبُّنَا اللَّهُ.

Rashīd Riḍā comments on the first of these two passages by saying, 'This verse reaffirms the one which occurs in *Sūrat al-Baqarah* (II:256), and both proscribe compulsion in religion. Both of these passages proclaim and uphold that people are free to pursue religious beliefs of their own choosing. No one is to be compelled to abandon the religion he professes nor must anyone be exposed to punishment and torture for the sake of religion.'²⁰⁵

By far the most explicit of Qur'anic verses on freedom of religion is the following one in *Sūrat al-Baqarah* (II:256):

There is to be no compulsion in religion. Surely the right direction has been made clear and distinct from error. He who rejects false deities and believes in God has grasped a firm handhold which will never break.

لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بَاطَاغُوتٍ وَيُؤْمِنَ بِاللَّهِ فَقَدْ اسْتَمْسَكَ بِالْعُرْوَةِ
الْوُثْقَى.

This verse was revealed on the occasion when some Companions among the Helpers (*anṣār*) asked the Prophet ﷺ for permission to compel their relatives to profess Islam. However, some of these people had practised Christianity or Judaism since their early childhood, and the Banū Naḍir, a Jewish tribe of Medina even had children who were related to the Companions, but who were brought

up by Jewish parents and were considered Jews. When the Prophet ﷺ issued orders for the Banū Naḍīr to move out of Medina, so as to prevent clashes between them and the Muslims, some Companions sought instead to force their relatives into Islam. It was at this juncture that the preceding verse was revealed, and the Prophet ﷺ ordered his Companions not to compel anyone, but to give them the choice to decide what religion they wished to follow.²⁰⁶

Commentators of the Qur'ān, such as Ibn Kathīr and Rashīd Riḍā, have considered this text to be a general proclamation in the sense that it absolutely prohibits compulsion in religion. No one must be compelled to embrace Islam, as it would serve no useful purpose for a person to do so under coercion, while his mind and heart remain closed to enlightenment and guidance. To this Rashīd Riḍā adds that belief (*īmān*), which is the pillar and essence of religion, implies a willing submission of the self which cannot be gained through duress: it must be attained through conviction and reason. Force, therefore, has no place in the matter of belief. The subsequent portion of the text, Riḍā adds, endorses the general message of the verse, namely, in this religion there is guidance and light and the call to the faith should be through explanation. Once people are shown the right path then it is their choice whether to follow it or abandon it. Riḍā continues:

We are ordered to invite people to the path of God with wisdom and good exhortation ... This would explain the place of holy war (*jihād*) in Islam. *Jihād* is not of the essence of religion nor one of its goals. It is only a protective shield and is resorted to as a matter of political necessity. The common hysteria and its misguided exponents who assume that faith is established by the sword merit no attention whatsoever.²⁰⁷

Some commentators have attempted to qualify the general import of the verse under discussion (i.e. II:256) by showing that it was initially in force but was later abrogated when Islam gained victory. S.A. Rahman, the former Chief Justice of Pakistan, responds to this argument as follows:

There is no warrant for such a conclusion to be found in any Qur'ānic verse, and indeed the ethical plane of such argumentation is too obvious to require comment ... Furthermore, there is no indication in the text that the words are to be understood in a restricted or qualified sense, nor would the *shan-i-nuzūl* reports justify that course.²⁰⁸

Rahman characterises *Sūrat al-Baqarah* (II:256) as one of the most important verses in the Qur'ān, and he is perturbed that Muslim scholars have attempted to whittle down its broad humanistic meaning by imposing limitations on its scope dictated by historical theological controversies.²⁰⁹

Another aspect of Qur'ānic evidence that relates to our discussion is its explicit recognition of other great religions preceding the advent of Islam. There are a number of verses in the Qur'ān which not only declare the validity and divine provenance of other faiths, but highly compliment their teachings. The Qur'ānic evidence is explicit on the unity of the origin and purpose of all the revealed faiths. Thus, we read in *Sūrat al-Mā'idah* (V:44): 'We revealed the Torah in which there is guidance and light.'

إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ

The text then continues to expound and confirm some of the laws of the Torah, in particular, the law of just retaliation, which became an integral part of the *Shari'ah* of Islam. A subsequent passage in the same *sūrah* further confirms both the Torah and the New Testament:

And in their footsteps We sent Jesus the son of Mary confirming the law that was revealed before him; We gave him the Gospel in which there is guidance and light and which confirms the Torah before it, a guidance and admonition to those who fear God. Let the people of the Gospel judge by what God has revealed therein, and whoever refuses to judge by what God has revealed are transgressors. (V:46-48)

وَقَفَّيْنَا عَلَىٰ آثَارِهِم بِعِيسَى ابْنِ مَرْيَمَ مُصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَةِ وَأَتَيْنَهُ الْإِنجِيلَ فِيهِ هُدًى وَنُورٌ
مُّصَدِّقًا لِّمَا بَيْنَ يَدَيْهِ مِنَ التَّوْرَةِ وَهُدًى وَنُورٌ
لِّلْمُتَّقِينَ وَلِيُحْكَمَ أَهْلُ الْإِنجِيلِ بِمَا أَنْزَلَ اللَّهُ فِيهِ وَمَنْ
لَّمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ.

This is followed by a further affirmation which is addressed to the Prophet Muḥammad ﷺ: 'We sent down to you the Book in truth,

confirming and safeguarding the Book before It.' (V:48.)

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ
الْكِتَابِ وَمُهَيْمِنًا عَلَيْهِ.

¶The Qur'ānic recognition of the truth and essential unity of the revealed faiths is not confined to Christianity and Judaism but extends to all the Prophets preceding Moses ﷺ and Jesus ﷺ and their teachings. Thus, it is stated that belief in all of them is an integral part of the Muslim faith:

Say: We believe in God and in what has been revealed to us and what was revealed to Abraham, Ishmael, Isaac, Jacob, and the tribes, and in the scriptures that God sent to Moses and Jesus, and the Prophets. We make no distinction between them ... (III:84)

قُلْ أَمِنَّا بِاللَّهِ وَمَا أُنْزِلَ عَلَيْنَا وَمَا أُنْزِلَ عَلَىٰ إِبْرَاهِيمَ
وَإِسْمَاعِيلَ وَإِسْحَاقَ وَيَعْقُوبَ وَالْأَسْبَاطِ وَمَا أُوتِيَ
مُوسَىٰ وَعِيسَىٰ وَالنَّبِيُّونَ مِنْ رَبِّهِمْ لَا نُفَرِّقُ بَيْنَ أَحَدٍ
مِّنْهُمْ.

¶Affirmative references to other revealed religions is one of the major themes of the Qur'ān. These recur in several places in the Book and they consistently confirm that Islam does not deny the followers of other faiths the freedom, both within and outside the territorial domain of Islam, to choose, retain and practise the religion they wish to follow.²¹⁰ This is precisely the conclusion that commentators have drawn from the totality of the Qur'ānic evidence. Referring to these verses, Fathī 'Uthmān writes that 'Islam rejects compulsion even if it be the only way to Islam itself ... for worshipping God and the enforcement of His law cannot be properly achieved unless man is free from fear ...'.²¹¹

The Qur'ān is most explicit on the dignity and nobility of man, both individually and collectively, and it repeatedly expresses the theme that a person's dignity is intimately related to his or her free-

dom - particularly freedom of conscience. In sum, the Qur'an is consistent in its affirmation of the freedom of belief and it fully supports the conclusion that the objectives of the *Shari'ah* cannot be properly fulfilled without granting people the freedom of belief, and the liberty to express it.

Another pertinent Qur'anic theme is the affirmation that religion is a matter of individual conviction and belief, and that persuasion and advice are the only ways through which others may be invited to embrace Islam. The passages that are quoted below also cast light on the function of the Prophet ﷺ, and the methods which he was to follow in his summons to the new faith.

If they embrace Islam, they are rightly-guided, but if they turn their backs on it, then your only duty is to convey [the message]. (III:20)

فَإِنْ أَسْلَمُوا فَقَدِ اهْتَدَوْا وَإِنْ تَوَلَّوْا فَإِنَّمَا عَلَيْكَ الْبَلْغُ.

Remind them, for you are one who reminds; you are not a warden over them. (LXXXVIII:21-22)

فَذَكِّرْ إِنَّمَا أَنْتَ مُذَكِّرٌ لَسْتَ عَلَيْهِمْ بِمُصَيْطِرٍ.

And if they turn away, We have not sent you as a guardian over them. Your duty is but to convey the message. (XLII:48)

فَإِنْ أَعْرَضُوا فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِظًا إِنْ عَلَيْكَ إِلَّا الْبَلْغُ.

Obey God and obey the Messenger and beware. But if you turn back then know that Our Messenger's duty is but to proclaim clearly [the message]. (V:92. See also V:99 to the same effect.)

وَاطِيعُوا اللَّهَ وَاطِيعُوا الرَّسُولَ وَاحْذَرُوا فَإِنْ تَوَلَّيْتُمْ
فَاعْلَمُوا أَنَّمَا عَلَى رَسُولِنَا الْبَلْغُ الْمُبِينُ.

Yet another Qur'ānic theme which occurs in a number of passages is that invitation to the faith must be wisely made with courteous advice, and that it must be based on sound reasoning and eloquent persuasion. The message here once again precludes resorting to compulsion in the promotion and propagation of Islam. Moreover, it is to be understood that anything which dilutes the self-evident meaning of the Qur'ān on these points, whether in the name of *jihād* or enlightenment, is unacceptable and should be strongly discouraged. For *jihād* is abused when it is pursued in such a way as to impede the Qur'ānic principle of the freedom of belief.

Both Wafi and 'Awdah have drawn the conclusion that Islam protects freedom of religion in at least three ways. Firstly, by enacting that no one may be compelled to abandon his religion and embrace Islam, which is clearly proclaimed in *Sūrat al-Baqarah* (II:256). Muslim rulers and conquerors have generally abided by this principle and allowed their subjects to continue practising their own religion, provided they paid the poll-tax (*jizyah*) and obeyed the government in power. They were, on the other hand, exempted from military service and the *jizyah* was a substitute for this. Secondly, Islam validates the freedom of the individual to propagate the religion of his following through sound reasoning and argumentation. Thus, Muslims are required in the Qur'ān to resort to courteous reasoning to attract others to Islam and to permit the practitioners of other religions to employ the same methods. (XXI:46; XVI:125; II:111). Thirdly, the Qur'ān validates the norm that true faith stems from certitude and conviction, and not from imitation and mere adherence to forms. As the following passage shows, this is why the Qur'ān denounced pre-Islamic practices and attitudes which promoted the blind imitation of ancestral precedents at the expense of independent thought and personal conviction.

When it is said to them: 'Follow what God has revealed', they say: 'Nay we follow the ways of our fathers'; what! even though their fathers understood naught and were not rightly-guided. (II:170)²¹²

وَإِذَا قِيلَ لَهُمْ اتَّبِعُوا مَا أَنْزَلَ اللَّهُ قَالُوا بَلْ نَتَّبِعُ مَا
أَلْفَيْنَا عَلَيْهِ آبَاءَنَا أَوَلَوْ كَانَ آبَاؤُهُمْ لَا يَعْقِلُونَ شَيْئًا وَلَا
يَهْتَدُونَ.

Commenting on this Qur'ānic verse, Wafī refers to, and supports the conclusion 'Abduh has reached, that 'thoughtless imitation which lacks wisdom and correct guidance is the hallmark of the disbelievers. A man can hardly be called faithful or a believer (*mu'min*) unless he thinks about his faith and satisfies himself as to the veracity of his belief.²¹³ 'Awdah concurs with 'Abduh, but adds that the *Shari'ah* also obligates one who is faithful to protect and safeguard his belief. If a person is exposed to intolerable oppression on account of his belief and lacks the means to protect his freedom, then he should migrate to a place where he can safeguard his belief and self-respect. 'Awdah concludes by saying that 'if the person is able to migrate and he does not do so, then he would have committed an injustice against himself'. 'Awdah's conclusion here is based on the Qur'ānic text (IV:97-98) which denounces the attitude of those who do not exert themselves, if necessary, to migrate, in order to safeguard the integrity and freedom of their consciences.²¹⁴

To sum up, the Qur'ān has explicitly declared freedom of religion a norm and principle of Islam. This declaration, found in *Sūrat al-Baqarah*, (II:256) is consistently endorsed in numerous other verses of the Holy Book. Unfortunately, there are those who have promoted a misleading and politically motivated discourse which declares that Islam denies freedom of religion, and that the Qur'ānic passages which advocate this freedom were subsequently abrogated and overruled by its other provisions on the subject of *jihād*.²¹⁵ The proponents of this view have used abrogation, itself a highly controversial issue, as their primary tool in an attempt to whittle away one of the cardinal principles of the Qur'ān.²¹⁶ Throughout history, the militant outlook espoused by this group may have had its sympathisers among expansionists and military strategists, but the view has never commanded general acceptance or support. Furthermore, this school of thought lacks sound reasoning and has been less than convincing in its attempts to overshadow the essence of the Qur'ānic message on the freedom of conscience. The unequivocal recognition of this freedom in the constitutions of present-day Muslim nations bears testimony to a decisive movement in favour of the basic rights of the individual, including the freedom to follow the religion of his or her choice. As a result, there appears to be a consensus of opinion emerging among the Muslims of the twentieth century in support of the universal validity of the freedom of religion in the *Shari'ah* and contemporary constitutional law.

CONCLUSION

The evidence that I have looked at in the various areas of the Qur'ān and Sunnah is clearly affirmative of the fundamental right to freedom of speech. Nevertheless, only the Qur'ānic principle of *hisbah* is broad enough in scope to include freedom of speech and expression in most of its material manifestations. There are, as previously noted, numerous passages on *hisbah* in the Qur'ān, and although the Qur'ānic directives on *hisbah* are mainly addressed to the believers, this does not preclude their application to non-Muslims. For the latter enjoy the same rights in respect of speech and constructive criticism as do their fellow Muslim citizens. *Hisbah*, in the specific sense of duty, does not exclude the non-Muslim either, although there may be instances where necessary exceptions have to be made. For example, to attempt to save the life of a drowning person - whether a Muslim or non-Muslim - is an obligation of everyone who witnesses the incident, regardless of their faith. But, preventing another person from drinking wine is not expected from an individual in whose religion the consumption of alcoholic beverages is not forbidden.

On a similar note, the Qur'ānic principle of consultation, although primarily addressed to the Muslims, does not exclude the non-Muslim citizen from the scope of its application, nor indeed from the ranks of the consultative assembly (*majlis al-shūrā*). Thus, the non-Muslim may be elected to the consultative assembly, and may represent his or her own community. The following Qur'ānic text authorises non-Muslim participation in consultation pertaining to community affairs outside the scope of religion.

'And ask the people of renown if you yourselves do not know'. (XVI:43)

فَسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ.

The right to criticise government leaders and express an opinion, critical or otherwise, in public affairs, or indeed to formulate a response to a statement or opinion expressed by another individual is, once again, the right of every citizen, Muslim and non-Muslim alike. There is nothing in the *Shari'ah* which reserves the *haqq al-*

mu'araḍah for Muslims alone. However, a general observation which should be made here is that in matters which pertain to the dogma of Islam, or those which are regulated by the direct authority of the Qur'ān or Sunnah, criticism, either from Muslims or non-Muslims, will not be entertained, as personal or public opinion does not command authority in such matters. Islam is basically a religion of authority, and the values of good and evil, or rights and duties are not determined by reference to public opinion, or popular vote, although these too have a certain role to play in the determination of the *ahkām* (such as in *ijmā'* and *maṣlaḥah*). But, this need not diminish in any material sense the substance of the freedom of expression that the individual must enjoy under the *Sharī'ah*.

The history of legal development in almost all the major systems of law reflects the realities and experiences of the world's different nations and societies, and Islamic law is no exception to this. There may be instances, however, in some of the detailed formulations of the established schools of law, which may not serve the ideals of harmony and cohesion in the pluralistic and multi-religious societies of our own time. In such instances, recourse to the broad principles of justice in the Qur'ān and the Sunnah, and a fresh look at the principal objectives of the *Sharī'ah* (*maqāṣid al-Sharī'ah*), could be recommended. This may be done in accordance with the true spirit of unfettered *ijtihād* in order to effect changes that reflect a more considered approach to the Qur'ānic standards of equality and justice.

NOTES

1. '*Fiqh*' is often used synonymously with '*Sharī'ah*', both of which refer to the general body of Islamic law, although there is a difference between them in that '*fiqh*' consists largely of juristic interpretation whereas '*Sharī'ah*' bears a closer affinity with divine revelation.

2. Al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn* (al-Maktabah al-Tijāriyyah edn.) II, 310.

3. Ibn Qayyim, *al-Turūq al-Hukmiyyah fī'l-Siyāsah al-Sharīyyah*, (Al-Mu'assasah al-'Arabiyyah, 1961 edn.), p. 278.

4. The early '*ulamā'* have raised and discussed in detail the question as to whether *ḥisbah* is a collective duty (*farḍ kafa'i*), or an individual obligation (*farḍ 'aynī*) which should be performed by every Muslim, like the canonical prayer (*ṣalāh*) and other obligatory duties. For further detail see Hammād, *Ḥurriyyah*, p. 221 ff.

5. Azzam, ed., *Universal Islamic Declaration of Human Rights*, p. 8.
6. Hammād, *Humriyyah*, p. 221.
7. Zaydān, *Majmū'at Buḥūth Fiqhiyyah*, p. 128.
8. Al-Sibā'ī, *Istirākiyyat al-Islām*, p. 52.
9. Al-Ghazālī, *Ihyā'*, (al-Maktabah al-Tijāriyyah edn.) II, 304.
10. For 'Ḥadīth' see either note 14 of Part One or the glossary.
11. Muslim, *Mukhtaṣar Ṣaḥīḥ Muslim*, p. 16, *Ḥadīth* no. 34.
12. Cf. Hammād, *Humriyyah*, p. 221.
13. Al-Maqdisī, *al-Ādāb al-Shar'iyyah wa'l-Minah al-Mar'iyyah*, I, 94.
14. Breaking the instruments of gambling or spilling away the wine are more illustrations that al-Ghazālī gives of the use of force in *hisbah*. For details see *Ihyā'* II, 329-33.
15. Al-Maqdisī, *al-Ādāb*, I, 94.
16. Al-Ghazālī, *Ihyā'*, II, 324.
17. Al-Qaraṣī, *Kitāb al-Furūq*, IV, 255.
18. Hans Wehr, *Arabic-English Dictionary*, p. 970.
19. Al-Ghazālī, *Kitāb Ādāb al-Ṣuḥbah wa'l-Mu'āsharah ma' Aṣnāf al-Khalq*, p. 270.
20. Al-Maqdisī, *al-Ādāb*, I, 328.
21. Cf. Hammād, *Humriyyah*, p. 207.
22. Al-Bukhārī, *Ṣaḥīḥ*, Kitāb al-Imān, I, 23; Muslim, *Ṣaḥīḥ Muslim*, Kitāb al-Imān, Bāb al-Dīn al-Naṣīḥah. Ibn Mājah quotes this *Ḥadīth* and repeats the first clause therein three times, while al-Nasā'ī quotes the first clause with a slight variation, that is *innamā al-dīn al-naṣīḥah*.
23. Al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 113, *Ḥadīth* no. 186.
24. Cf. Naḥwī, *Malāmīḥ al-Shūrā fi'l-Da'wah al-Islāmiyyah*, p. 703.
25. Al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 113, *Ḥadīth* no. 187.
26. Al-Maqdisī, *al-Ādāb*, I, 327, records this *Ḥadīth*:
'An amir who is in charge of the affairs of the Muslims and fails to exert himself for their benefit and give them sincere advice shall not enter Paradise with them.'

مَا مِنْ امِيرٍ يَلِيْ اَمْرَ الْمُسْلِمِيْنَ ثُمَّ لَا يَجْتَهِدُ لَهُمْ اِلَّا
لَمْ يَدْخُلْ الْحَنَّةَ مَعَهُمْ

27. Ibid., I, 327.

28. Al-Khulafā' *al-Rāshidūn*, literally, the Rightly-Guided Caliphs, refers to the first four caliphs who took office following the demise of the Prophet Muḥammad ﷺ, namely Abū Bakr al-Siddīq (died 12 A.H./634 A.D.), 'Umar ibn al-Khaṭṭāb (d. 23/643), 'Uthmān ibn 'Affān (d. 35/656) and 'Alī ibn Abī Ṭālib, (d.40/661). The period of their rule lasted forty years.

29. Cf. Abū Ḥabīb, *Dirāsah fī Minhāj al-Islām al-Siyāsī*, p. 337.
30. Al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, pp. 103-107.
31. Ibid.
32. Zaydān, *Majmū'ah*, p. 128; Abū Ḥabīb, *Darāsah*, p. 334.
33. This is unanimously reported (*muttafiqun 'alayhi*) and recorded as such by: A. I - Nawawī, *Riyāḍ al-Ṣāliḥīn*, p. 113, *Hadīth* no. 188; al-Maqdisī, *al-Ādāb*, I, 327-28.
34. Abū Ḥabīb, *Darāsah*, p. 336.
35. Ibn Ḥanbal, *Fihris Aḥādīth Musnad al-Imām Aḥmad b. Ḥanbal*, II, 162; al-Suyūṭī, *al-Jāmi' al-Ṣagḥīr*, I, 41.
36. Ibn Mājah, *Sunan Ibn Mājah*, Kitāb al-Fitan, Bāb al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar.
37. Al-Bahī, *al-Dīn wa'l-Dawlah min Tawjihāt al-Qur'ān al-Karīm*, p. 389.
38. Al-Ṭabarī, *Tafsīr al-Ṭabarī*, IV, 152.
39. Ibn Taymiyyah, *al-Siyāsah al-Shar'iyyah fī Islāḥ al-Rā'ī wa'l-Ra'iyyah*, p. 169.
40. Riḍā, *Ta'rīkh al-Ustādh al-Imām Muḥammad 'Abduh*, II, 207; Abū Ḥabīb, *Darāsah*, p. 642.
41. Asad, *Principles of State and Government in Islam*, p. 57; Zaydān, *al-Farḍ wa'l-Dawlah fi'l-Sharī'ah al-Islāmiyyah*, p. 37; al-Bahī, *al-Dīn wa'l-Dawlah*, p. 387; see also Abū Ḥabīb, *Darāsah*, p. 642, where he quotes Abū al-A'īn Mawdūdī and 'Abd al-Qādir 'Awdah to the effect that *shūrā* is a Qur'ānic obligation.
42. Al-Tirmidhī, *Sunan al-Tirmidhī*, IV, 213.
43. Ibn Ḥanbal, *Musnad*, IV, 277.
44. For details see al-Khālidi, *Qawā'id Nizām al-Ḥukm fi'l-Islām*, p. 145 ff.
45. Cf. al-Khālidi, *Qawā'id*, pp. 141-42.
46. Al-Bahī, *al-Dīn wa'l-Dawlah*, p. 388.
47. Shaltūt, *al-Islām 'Aqīdah wa-Sharī'ah*, p. 556; al-Sibā'ī, *Ishtirākiyyah*, p. 5.
48. Zaydān, *Majmū'ah*, p. 128.
49. Al-Qurtubī, *al-Jāmi' li-Aḥkām al-Qur'ān* (known as *Tafsīr al-Qurtubī*), IV, 250-51.
50. Cf. al-Khālidi, *Qawā'id*, pp. 155; El-Awa, *On the Political System of the Islamic State*, p. 90.
51. Ibid., p. 155.
52. Ibid., p. 157.
53. For details on the *ahl al-shūrā* and the participation of women and non-Muslims therein see al-Khālidi, *Qawā'id*, pp. 176, 185; Abū Ḥabīb, *Darāsah*, p. 661 ff; and al-Nabhānī, *Muqaddimat al-Dustūr*, pp. 114-117.
54. Ibn Taymiyyah, *al-Siyāsah*, p. 169.
55. Abū Ḥabīb, *Darāsah*, pp. 681-82.
56. Al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, IV, 162; al-Shawkānī, *Irshād al-Fuḥūl min Taḥqīq al-Ḥaqq ilā 'Ilm al-Uṣūl*, p. 250.
57. For details on the textual authority of *ijtihād* see my *Principles of Islamic Jurisprudence*, pp. 470-73.

58. Abū Dāwūd, *Sunan*, Eng. trans. Ahmad Hasan, III, 1013, *Ḥadīth* no. 3567.
59. Cf. Zaydān, *Majmū'ah*, p. 288.
60. Cf. Ghazawī, *al-Ḥurriyyah al-ʿĀmmah fi'l-Islām*, p. 60.
61. Al-Bahī, *al-Dīn wa'l-Dawlah*, p. 415.
62. Zaydān, *Majmū'ah*, p. 288; al-Sibā'ī, *Ishtirākiyyah*, p. 48; Munayminah, *Mushkilat al-Ḥurriyyah fi'l-Islām*, p. 15.
63. Al-Bahī, *al-Dīn wa'l-Dawlah*, p. 415.
64. Mahmassanī, *Arkān*, p. 143.
65. Al-Kāsānī, *Badā'i' al-Ṣanā'i*, VII 4; Ibn Qudāmah, *al-Mughnī*, IX, 40-41.
66. Madkūr, *al-Qaḍā' fi'l-Islām*, p. 63.
67. Al-ʿAmidī, *Iḥkām*, III, 232; al-Qarāfī, *al-Furūq*, IV, 43; Ibn Qudāmah, *al-Mughnī*, IX, 57.
68. 'Fatwā' is often used synonymously with 'ijtihād'; it means a considered opinion by a qualified person on a legal or religious issue—often given in response to a particular question.
69. *Mujtahid* (pl. *mujtahidūn*), one who is qualified to carry out *ijtihād*, usually by direct recourse to original sources.
70. See for details Ghazawī, *al-Ḥurriyyah*, p. 60.
71. Khallāf, *al-Siyasah al-Shar'iyyah*, p. 136; Mutawallī, *Mabādi'*, p. 281; Ramadan, *Islamic Law: Its Scope and Equity*, p. 78.
72. For details on how freedom of expression in this period exceeded its limits in debates on the matter of the Essence and the Attributes of God, the createdness or uncreatedness of the Qur'ān etc., see al-Bahī, *al-Dīn wa'l-Dawlah*, p. 552 ff.
73. Mutawallī, *Mabādi'*, p. 282.
74. For further details see the chapter on *ijtihād* in my *Principles of Islamic Jurisprudence*, especially p. 484 ff, and my article 'The Approved and Disapproved Varieties of Ra'y (Personal Opinion) in Islam' in the *American Journal of Islamic Social Sciences*, vol. 7, No. 1, 1990, 39-64.
75. 'Aḥḥī, *al-Mujtama' al-Islāmī wa-Uṣūl al-Hukm*, p. 93; see also al-Sibā'ī, *Ishtirākiyyah*, p. 50.
76. Al-Qāsimī, *Nizām al-Hukm fi'l-Shar'ah wa'l-Ta'rikh*, p. 101.
77. The clause to which 'Umar protested stated that if a member of the Quraysh tribe went to the Prophet ﷺ without the permission of his guardian (*wali*), then he was to be returned to his tribe. But, if a member of Quraysh from the side of the Prophet ﷺ went back to his kin-folk, it was not obligatory on the latter to return him to the Prophet ﷺ. The conversation between 'Umar and the Holy Prophet ﷺ is recorded as follows: "'Are you not the Messenger of God?' asked 'Umar. 'I am', said the Prophet ﷺ. 'Then why are we being denigrated because of our faith?' questioned 'Umar. To this the Prophet ﷺ said, 'I am the servant and messenger of God, I shall not disobey Him and He shall not let me be the loser.'" (Ibn Hishām, *al-Sīrah al-Nabawīyyah*, III, 331).

78. Ibn Mājah, *Sunan*, Kitāb al-Fitan, Bāb al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar, *Ḥadīth* no. 4011.
79. Ibn Hishām, *al-Sīrah*, IV, 262; Abū Ḥabīb, *Darāsah*, p. 725; al-Qāsimī, *Nizām al-Hukm*, p. 106.
80. Abū Ḥabīb, *Darāsah*, p. 727.
81. Abū Zahrah, *al-Jarīmah wa'l-'Uqūbah fi'l-Fiqh al-Islāmī*, p. 160; al-Sibā'ī, *Ishṭirākiyyah*, p. 50; al-Nabhān, *Nizām al-Hukm*, p. 250.
82. Al-Khudarī, *Muḥāḍarāt fi Ta'rīkh al-Umam al-Islāmiyyah*, II 17-18; al-Nabhān, *Nizām al-Hukm*, p. 240; Abū Ḥabīb, *Darāsah*, p. 743.
83. Abū Yūsuf, *Kitāb al-Kharāj*, p. 13.
84. Al-Sibā'ī, *Ishṭirākiyyah*, p. 50.
85. Khalīl, *Fi'l-Naqd al-Islāmī al-Mu'āṣir*, p. 35.
86. Abū Ḥabīb, *Darāsah*, p. 743.
87. Husayn, *Naqd Kitāb al-Islām wa Uṣūl al-Hukm*, p. 89.
88. Al-Qāsimī, *Nizām al-Hukm*, p. 100.
89. 'Affī, *Al-Mujtama' al-Islāmī*, p. 94.
90. *Ḥadīth* reported by al-Tirmidhī in al-Tabrizī, *Mishkāṭ al-Maṣābīh*, III, 1418, *Ḥadīth* no. 5129.
91. Khalīl, *al-Naqd*, pp. 33-34.
92. Al-Bukhārī, *Jawāhir Ṣaḥīḥ al-Bukhārī*, Kitāb al-Jum'ah, Bāb al-Jum'ah fi'l-qurrā wa'l-mudun.
93. Cf. Ḥammād, *Ḥurriyyah*, p. 416.
94. Ibn Ḥanbal, *Musnad*, II, 70.
95. Cf. Ḥammād, *Ḥurriyyah*, p. 416.
96. Muslim, *Mukhtaṣar Ṣaḥīḥ Muslim*, p. 16, *Ḥadīth* no. 34.
97. Al-Subkī, *al-Ashbāh wa'l-Nazā'ir*, I, 275; Tuffāḥah, *Maṣādir al-Tashrī' al-Islāmī wa-Qawā'id al-Sulūk al-'Āmmah*, p. 46.
98. Al-Maqdisī, *al-Ādāb*, I, 340; Tuffāḥah, *Maṣādir*, p. 46.
99. Tuffāḥah, *Maṣādir*, p. 47.
100. For details on *istishāb* see my *Principles of Islamic Jurisprudence*, p. 377 ff.
101. Abū Sulaymān, *'al-Nazarīyyāt wa'l-Qawā'id fi'l-Fiqh al-Islāmī*', in *Majalat Jāmi'at al-Malik 'Abd al-'Azīz*, no. 2, Jamāda al-Thānī 1398/May 1978, p. 56; Tuffāḥah, *Maṣādir*, p. 89.
102. Tuffāḥah, *Maṣādir*, p. 87.
103. Imām Ja'far al-Ṣādiq, a descendant of the Prophet ﷺ and the sixth of the Shi'ī Imāms, is greatly respected by both Sunnis and Shi'īs. In addition to his outstanding spiritual qualities he was a man of great learning in theology, jurisprudence and the science of *Ḥadīth*. One of the oldest extant Qur'ān commentaries is attributed to him. He died in the year 148/765.
104. Tuffāḥah, *Maṣādir*, p. 88.
105. Al-Subkī, *al-Ashbāh wa'l-Nazā'ir*, I, 275; Tuffāḥah, *Maṣādir*, pp. 88-92.

106. Tuffāḥah, *Maṣādir*, pp. 93-95.

107. Cf. Ibn Qayyim al-Jawziyyah, *Flām*, I, 55.

108. Abū Dāwūd, *Sunan*, III, 1013, *Ḥadīth* no. 3567.

109. The reader might be interested to know that a chapter is devoted to each of these topics in my *Principles of Islamic Jurisprudence*.

110. Al-Ghazālī uses the name 'Ta'limiyyah' as a synonym of 'Bāṭiniyyah', literally 'esoterists' - a term which can be used quite loosely; for example, Ibn Taymiyyah uses it for certain Sufis and philosophers in addition to its conventional application. The latter is in respect of the *Ismā'īliyyah*, and refers to their distinctive emphasis on the non-literal interpretation of the Qur'ān (*ta'wīl*), specifically involving reading it in terms of their own sectarian doctrines, a hermeneutic which was hierarchically and secretly imparted. The *Ismā'īliyyah* are complicatedly ramified eg. the *Qarmatiyyah*, the *Fātimids* proper (ie the great Shī'ite counter-caliphate ruling from Egypt from 358/969 for two centuries), the *Nizārī's* and the Musta'li *Ismā'īliyyah*. In general, the *Ismā'īliyyah* are a branch of the Shī'ah - the 'partisans of 'Alī ibn Abi Tālib' who believed that politico-religious authority after the Prophet's death should by rights fall exclusively to the Prophet's son-in-law, 'Alī, and thence to his descendants through *Fātimah*, the daughter of the Prophet. Unlike the *Ithnā 'Ashariyyah* branch, for whom the *Imāmate* is in 'occultation', the *Ismā'īliyyah* Shī'ites tend to see the *Imāmate* as continuous and living, and historically show themselves in consequence of this understanding of religious authority to be more prone to the view that the religious law can be modified and even overturned - famously exemplified amongst the Assassins by the declaration in 1164 A.D. by Ḥasan, fourth lord of the secret stronghold of Alamut, of the 'Resurrection' - interpreted by them as the end of exoteric religion. [Editor's note.]

111. Al-Ghazālī, *al-Munqidh min al-Dalāl* (MacCarthy's translation), pp. 122 and 183.

112. Abū Dāwūd, *Sunan*, III, 1019, *Ḥadīth* no. 3585.

113. Cf. Shaltūt, *al-Islām*, p. 555.

114. Abū Zahrah, *Tanzīm al-Islām li'l-Mujtama'*, p. 194.

115. Cf. al-Bahī, *al-Dīn wa'l-Dawlah*, p. 376.

116. 'Ā'ishah 'Abd al-Rahmān, *al-Qur'ān wa Qaḍāyā'l-Insān*, p. 116.

117. Cf. Fikrī, *al-Mu'āmalāt al-Māddiyyah wa'l-Adabiyyah*, pp. 84-85.

118. *Ibid.*, p. 87.

119. Thus we read in a *Ḥadīth* that 'A good word (*al-kalimah al-ṭayyibah*) is a form of charity'. See al-Nawawī, *Riyāḍ al-Ṣāliḥīn*, 2nd ed., p. 284, *Ḥadīth* no. 699.

الْكَلِمَةُ الطَّيِّبَةُ صَدَقَةٌ.

120. *The Holy Qur'ān*, Text, Translation and Commentary by 'Abdullah Yusuf 'Ali, footnote No. 3775.

121. Cf. Ibn Qayyim, *Flām*, I, 55.

122. Ibid.

123. This is often quoted as a Ḥadīth of the Prophet ﷺ. Both al-Āmidī (*al-Iḥkām*, I, 214) and al-Shāṭibī, *al-Iṭīṣām*, II, 319) refer to it as such. It is, however, more likely to be a saying of the famous Companion, 'Abd Allāh Ibn Mas'ūd (Cf. Ahmad Hasan, *The Doctrine of Ijmā' in Islam*, p. 37).

124. Ibn Qayyim, *Fīlām*, I, 55.

125. Ibid., I, 67.

126. Ibid., I, 68.

127. Ibid., I, 69.

128. Ibid., I, 70.

129. Ibid., I, 72.

130. Ibid., II, 120.

131. Ibid., I, 55.

132. Cf. al-Khālidi, *al-Shūrā*, p. 91.

133. Cf. *The Holy Qur'an*, V:2.

134. Cf. Asad, *Principles*, p. 6; al-'Arabī, *Nizām al-Hukm fi'l-Islām*, p. 92.

135. Cf. al-Anṣārī, *al-Shūrā wa-Āthārūhā fi'l-Dimuqrāṭiyyah*, p. 432.

136. Waṣfī, *al-Nizām al-Dustūr fi'l-Islām Muqārīnan bi'l-Nuzum al-'Aṣriyyah*, p. 76.

137. Maudūdī, *al-Hukūmah al-Islāmiyyah*, p. 217.

138. 'Abd Allāh, *Nazariyyat al-Dawlah fi'l-Islām*, p. 153.

139. As mentioned above the Shī'ites are literally 'the partisans of 'Alī ibn Abī Ṭālib' ('Shī'at 'Alī'), who believed that politico-religious authority after the Prophet's ﷺ death should by rights fall exclusively to the Prophet's son-in-law, 'Alī, and thence to his descendants through Fāṭimah, the daughter of the Prophet ﷺ, thereby excluding the first three of the Rightly-Guided Caliphs.

The Khārijites, literally 'seceders', were a very early group of extremists who rebelled against Caliph 'Alī, when he agreed to arbitration in his dispute (over the matter of bringing to justice the assassins of Caliph 'Uthmān) with Mu'āwiyah (who eventually became the first 'Umayyad caliph). Although 'Alī defeated the Khārijites, he was murdered by one of them in revenge. The Khārijites went on to terrorise the Muslims, in that they held that the status of being a believer is actually annulled by major sins, and for the Khārijites it was a major sin to oppose their point of view. In practice this meant that they declared licit the blood of countless Muslim opponents, whom they held to be effectively pagans.

For the author's discussion of this group, see the section below on 'Historical Examples' under 'Sedition (*Fitnah*)' of Part Four. For further details of the Shī'ite and Khārijite political and theological beliefs please refer to the relevant sections of the *Encyclopaedia of Islam*, new edition, Leiden: Brill 1978. [Ed. note.]

140. Cf. al-Anṣārī, *al-Shūrā*, p. 429.

141. Thus, according to El-Awa, 'The people's interest at the present time can only be served by allowing political parties so that the differing opinions on the ummah's

affairs can be (ascertained) and expressed.' (cf. conference report on 'Pluralism in Islam', *The American Journal of Islamic Social Sciences*, 8 (1991) at p. 353.)

142. Anṣārī, *al-Shūrā*, p. 431.

143. El-Awa, 'Pluralism in Islam', *The American Journal of Islamic Social Sciences*, 8 (1991) n. 130 at p. 431.

144. Ibn Taymiyyah, *Majmū'at al-Rasā'il wa'l-Masā'il*, I, 141.

145. Ibid.

146. Muḥammad al-Ghazālī, quoted in a conference report by IIIT, Cairo on 'Pluralism in Islam', *American Journal of Islamic Social Sciences*, 8 (1991), p. 353.

147. Abū Dāwūd, *Sunan*, Ḥasan's Trans., III, 1013, Ḥadīth no. 3567.

148. El-Awa, 'Pluralism in Islam', *The American Journal of Islamic Social Sciences*, 8 (1991) n. 130 at p. 353. See also Idem, *Fi'l-Nizām al-Siyāsī*, pp. 83-84.

149. Ibn Qayyim al-Jawziyyah, *al-Tunūq al-Ḥukmiyyah fi'l-Siyāsah al-Shar'iyyah*, pp. 286-289.

150. Cf. al-Khālidi, *Qawā'id*, p. 205.

151. Al-Ghazālī, *Al-Mustafā min 'Ilm al-Uṣūl*, I, 17.

152. Al-Nabhānī, *Muqaddimat al-Dustūr*, p. 101.

153. Muslim, *Mukhtaṣar Ṣaḥīḥ Muslim*, Ḥadīth no. 34.

154. Al-Nabhānī, *Muqaddimat*, p. 104; see also al-Khālidi, *Qawā'id*, p. 290.

155. Note, for example, Ṣaī al-Raḥmān al-Mubārakfurī's booklet, *al-Aḥzāb al-Siyāsiyyah fi'l-Islām*, al-Jāmi'ah al-Salafiyyah, India, 1407/1987, whose whole discussion focuses on unity in Islam, and is almost totally oblivious of the application of party organisation to political and economic development matters.

156. Al-Aluṣī, *Rūḥ al-Ma'ānī fi Tafsīr al-Qur'ān al-'Azīm*, V, 144.

157. Khan, *Human Rights*, p. 45.

158. Ibid., p. 46.

159. Yusuf Ali, *The Holy Qur'ān*, note 5347.

160. For further details on *maṣlaḥah mursalah* see my article 'Have We Neglected the Sharī'ah Law Doctrine of Maṣlaḥah?', *Islamic Studies*, 27 (1988), pp. 287-304.

161. cf. Abū Zahrah, *Tanzīm al-Islām li'l-Mujtama'*, p. 190; al-'Ilī, *al-Ḥurriyyah al-'Āmmah*, p. 330.

162. cf. Faṭḥī 'Uthmān, *Ḥuqūq al-Insān Bayn al-Sharī'ah al-Islāmiyyah wa'l-Fikr al-Qānūnī al-Gharbī*, p. 97.

163. Ibid., p. 91.

164. Al-'Ilī, *al-Ḥurriyyah*, p. 330.

165. Ibid., p. 356 (quoting Rashīd Riḍā's *Tafsīr al-Manār* XI, 484).

166. Ibn Qudāmah, *al-Mughnī*, VIII, 144.

167. *Nadwat al-Riyāḍ*, p. 33.

168. Cf. 'Abd al-Raḥmān, *al-Qur'ān wa Qaḍāyā'l-Insān* p. 96.

169. The full statement of this convention appears in Maudūdī, *Islamic Law and Constitution*, p. 333 ff.

170. Azzam, ed., *Universal Islamic Declaration*, p. 11, The Islamic Council of Europe, 1981.
171. *Malayan Law Journal*, (1989) I, pp. 368-70, 418-20.
172. *Malayan Law Journal*, (1989) I, p. 368.
173. *Malayan Law Journal*, (1989) I, p. 369.
174. *Malayan Law Journal*, (1989) I, p. 419.
175. Arnold, *The Preaching of Islam*, p. 46.
176. Ibid.
177. Ibid. pp. 47-48.
178. Ibid. pp. 51-2.
179. Mutawallī, *Mabādi'*, p. 287.
180. Abū Zahrah, *Tanzīm*, p. 192.
181. Mutawallī, *Mabādi'*, p. 287 ff.
182. Note e.g. S.A. Rahman, *The Punishment of Apostasy in Islam*, Abdul Hamid Abu Sulayman, *The Islamic Theory of International Relations: New Directions for Islamic Methodology and Thought*; El-Awa, *Punishment in Islamic Law*.
183. Rahman, *The Punishment of Apostasy*, pp. 63-64; al-ʿIlī, *al-Hurriyyah*, p. 339.
184. Ibn Taymiyyah, *al-Ṣarīm al-Maslūl ʿalā Shātim al-Rasūl*, p. 321; al-Shawkānī, *Nayl al-Awtār*, VII, p. 230.
185. Al-Shaʿrānī, *Kitāb al-Mizān*, II, p. 152.
186. Al-Sarakhsī, *al-Mabsūṭ*, X, p. 110.
187. Ibn Taymiyyah, *al-Ṣarīm al-Maslūl ʿalā Shātim al-Rasūl*, p. 318; al-Shaʿrānī, *Kitāb al-Mizān*, II, 134; El-Awa, *Punishment*, p. 55.
188. Ibn Taymiyyah, *al-Siyāsah*, p. 124.
189. Al-ʿIlī, *al-Hurriyyah*, p. 426; Badawī, *Daʿāʾim al-Hukm*, p. 166.
190. Shaltūt, *al-Islām ʿAqīdah wa-Sharʿah*, pp. 292-93; al-Samaraʾī, *Aḥkām al-Murtadd fī al-Sharʿah al-Islāmiyyah*, p. 114 ff.
191. Mahmassanī, *Arkān*, pp. 123-24.
192. Mutahhari, *'Islam and the Freedom of Thought and Belief'*, Al-Tawhīd, p. 154.
193. El-Awa, *Punishment*, p. 55.
194. Al-Shawkānī, *Nayl al-Awtār: Sharḥ Muntaqā al-Akhbār*, VII, 218.
195. Ibid., VII, 219.
196. Ibid., VII, 219; El-Awa, *Punishment*, p. 55.
197. Muslim, *Mukhtaṣar Ṣaḥīḥ Muslim*, p. 271, *Ḥadīth* no. 1023.
198. El-Awa, *Punishment*, p. 52.
199. Ibn Taymiyyah, *al-Ṣarīm al-Maslūl*, p. 52.
200. Al-Bukhārī, *Jawāhir Ṣaḥīḥ al-Bukhārī*, p. 150, *Ḥadīth* no. 229.
201. Cf. El-Awa, *Punishment*, p. 54.
202. Ibn Taymiyyah, *al-Ṣarīm*, p. 318.
203. Ibid. For similar information and additional names of apostates whom the Prophet ﷺ pardoned after the conquest of Mecca, see Ibn Hishām, *Sīrah*, IV, 23.

204. Abū Zahrah, *Tanzīm*, p. 192.
205. Rashīd Riḍā, *Tafsīr al-Manār*, IX, 665, Beirut: Dār al-Maʿrifah, 1324.
206. Ibid., III, 37; al-ʿIlī, *al-Hurriyyah*, pp. 333-34.
207. Ibn Kathīr, *Tafsīr*, I, 310; Riḍā, *Tafsīr*, III, 37-39.
208. S.A. Rahman, *The Punishment of Apostasy*, p. 21. *Shan-i nuzūl*, the Persian and Urdu equivalent of the Arabic *asbāb al-nuzūl*, means the historical context of the revelations of the Qurʾānic verses.
209. Ibid., p. 16.
210. Note *Qurʾān* II:91 & 97; IV:46; XXXV:31 and XLVI:30.
211. ʿUthmān, *al-Farḍ*, pp. 27-28; note also Ghazawī, *al-Hurriyyah*, p. 69, and ʿĀʾishah ʿAbd al-Raḥmān, *al-Qurʾān wa Qaḍāyāʾ-l-Insān*, p. 97 ff.
212. Wafī, *Huqūq al-Insān*, pp. 122-23.
213. Ibid., p. 124.
214. ʿAwdah, *al-Tashrīʿ al-Jināʾī*, pp. 31-33.
215. For a discussion as to how military and political interests have influenced the writings of medieval Muslim jurists on the subject of *jihād*, see Abū Sulaymān, *The Islamic Theory of International Relations*.
216. For a discussion of the theory of abrogation (*naskh*) and its impact on Islamic law see my *Principles of Islamic Jurisprudence*, ch. 7.