The Classical Islamic Laws of Apostasy in the Present Context

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Abstract—The main purpose of this essay is to examine whether or not the earthly punishments in regards to apostates that are often found in classical Islamic sources are applicable in the present context. The paper indeed addresses how Muslims should understand the question of apostasy in the contemporary context. To do so, the paper first argues that an accurate understanding of the way the Quranic verses and prophetic hadiths deal with the concept of apostasy could help us rethink and re-examine the classical Islamic laws on apostasy in the present context. In addition, building on Abdolkarim Soroush's theory of contraction and expansion of religious knowledge, this article argues that approaches to apostasy in the present context can move away from what prescribed by classical Islamic laws. Finally, it argues that instances of persecution of apostates in the early days of Islam during the Medinan period of Muhammad's prophetic mission should be interpreted in their own socio-historical context. Rereading these reports within our modern context supports the mutability of the traditional corporal punishments of apostasy.

Keywords—Apostasy, Islam, Quran, hadith, Abdolkarim Soroush, contextualization.

I. INTRODUCTION

FREEDOM of religion occupies a significant place in the present context. Advocates of the discourse of freedom of religion often support the individuals' right to maintain or to change their religious beliefs. Article 18 of the Universal Declaration of Human Rights (UDHR) supports such a right: "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" [1]. Despite such a right given by the UDHR, in most Muslim-majority countries, individuals wishing to leave Islam would face difficulties. As noted by Erich Kolig, the concept of apostasy in Islam tends to "stick out unpleasantly, grating against globally growing expectations of personal freedom" in our globalized and secularized world [2]. During the past few decades, there have been even several cases in Muslim-majority countries where certain Muslim intellectuals and scholars have been accused of apostasy. In 1985, the Sudanese scholar Muhammad Mahmūd Taha was accused of apostasy and was consequently executed for his exegetical hermeneutic of the Quran. In 1995, the Appeal Court in Cairo maintained that the Egyptian scholar Nasr Hamid Abu Zayd was an apostate and ordered his separation from his wife. In another case, Hashem Aghajari

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and Hasan Yousefi Eshkevari, two religious intellectuals (*rowshanfekran-e dini*) from Iran, were initially condemned to death for apostasy, but their sentence was later commuted to five years imprisonment, in the case of Eshkevari, and eight years imprisonment, in the case of Aghajari. The trial of the aforementioned scholars raises questions about the place of the Sharia-especially the issue of apostasy- in the present context. This paper aims to examine whether or not the earthly punishments in regards to apostates that are sometimes implemented today in most Muslim-majority countries are applicable in the present context.

II. APOSTASY AND ITS PUNISHMENT IN CLASSICAL ISLAMIC LAW

Apostasy is identified in classical and modern Islamic law as turning away from Islam to unbelief or to another religion. According to classical Islamic law, a Muslim could be considered an apostate when he contaminates or destroys a copy of the Quran, or humiliates the Prophet, or uses a foul language towards the Prophet or an angel, or denies fundamental Islamic ritual obligations such as praying and fasting. A charge of apostasy can also be based on one's mere utterance or one's explicit conversion to another religion [3], [4]. Most Sunni jurists in the course of Islamic history believed that an apostate should be punished by death, but often held that a period of three days should be given to the apostate to reconsider his decision [3, p.54]. Muslim Jurists often indicate that the laws on apostasy are applicable only to those apostates who are of majority age (*baliq*), in complete possession of their mental faculty (*aqil*), and not under coercion. All Sunni schools of jurisprudence except the Hanafis believed that the punishment for apostasy should be applied to both male and female apostates [3, p.52][2]. According to most Shiite jurists, however, female apostates should not be executed, but rather should face solitary confinement. During the imprisonment, if the female apostate repents, she should be released [5]. For Shiite jurists, there are two types of apostates (*murtad*): those who were born Muslim and then renounced Islam (*murtad fitri*), and those who were born non-Muslim and converted to Islam, then after their conversion abandoned their religions (*murtad milli*). According to most Shiite jurists, while a *murtad fitri* (an innate apostate) has no right to repent, a *murtad milli* (a

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The Hanafis often based this view on the Prophet's general prohibition to kill women and children. There is also a hadith narrated from Ibn Abbas stating that "women are not to be killed when they renounce Islam. They are to be imprisoned, summoned to Islam and forced to embrace it" [4, pp.135-139].

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national apostate) has such a right [6], [7]. This distinction between two types of apostates does not exist in Sunni jurisprudence, and thus all apostates, are to be treated equally.

III. Apostasy in the Quran

According to the Bible, the punishment for apostasy and blasphemy is death penalty (Deuteronomy 13:6-9; Leviticus 24:16). The Quran deals with the issue of apostasy in several verses, but, unlike the Bible, does not determine any worldly punishments for apostasy, only warning apostates of being punished in the afterlife. A number of Quranic verses (2:108 and 4:167) describe the apostates as having strayed from the right path; one verse describes them as being enticed by Satan (47:25) and one verse warns the apostates that they cannot expect God's forgiveness (4:137). The Quran also tells us that the apostates are either to be inflicted by wrath of Allah (16:106) or to be cursed by God and the angels (3:87). Some Quranic verses dealing with the concept of apostasy, however, emphasize that the apostates will be punished in the afterlife. Among these verses, some explicitly envisage the natural death of the apostates in their condition of disbelief and thus avoid pointing out a particular worldly punishment for their disbelief. For example, the Quran states "Whoever of you reverts from his religion and dies while he is a disbeliever, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally" (2:217; see also 3:91; 2:161-162; 5:5; 88-23-24). It is worth noting that the Arabic word used in the verse just quoted is *fa-yamūt*, indicating natural death, rather than death by killing or slain [8]. There is only one Quranic verse which states that the apostates will be punished both in this world and the Hereafter (9:74), but still does not define the nature of the penalty inflicted by God upon the apostates in this life, thereby only highlighting the idea that apostasy is a sinful act. The verse also seems to indicate that the apostates are to be punished only by God, not by humans. Therefore, it can be concluded from the Quranic verses dealing with the issue of apostasy that the Quran denounces abandoning from Islam and vocalizes warnings about such an error, but does not prescribe any earthly punishment on apostasy, let alone the death penalty.

IV. The Source of Islamic Law on Apostasy: Apostasy in the Hadith Literature

As discussed, the law of apostasy has its origin in the first centuries of Islamic history. There has been a general consensus among the majority of Muslim jurists that the punishment for apostasy is death. This has become a norm until the modern period. Since there is no Quranic verse, as already stated, prescribing explicitly the death penalty for apostasy, early jurists "rarely attempted to demonstrate that the punishment for apostasy was based on the Quran", as Saeed notes [3, p.57]. There have been some Muslim scholars and clerics during the modern period that base their argument for killing the apostates on certain Quranic verses[3], but even such scholars often attempt to support their claims by referring to various hadiths.

One of the most significant hadiths frequently quoted for the duty to execute an apostate is the statement traceable back to Muhammad: "whoever changes his religion kill him", or in another formulation, "whoever willingly disbelieves in God after he has believed, kill him" [See 4, p.126]. Another *hadith* commonly used by jurists for applying the death penalty to apostates is: "the life of a Muslim may be taken only in three cases. If a man commits adultery…or when he kills another human being or when he breaks away after he had confessed to Islam" [9]. On the basis of these hadiths, the majority of Muslim jurists from various schools argued that apostates must be subject to death penalty. They only differed on such issues as to whether to kill the apostate immediately or give him a few days in order to allow him to repent; or the appropriate manner in which the apostate must be asked to repent, or, as discussed, whether a female apostate must be killed or only imprisoned until she is convinced to return to her original faith.

There are at least three counterarguments proposed by "modernist" or "liberal" Muslim scholars against the aforementioned hadiths. First, some scholars find certain weaknesses in the transmission of the above-mentioned hadiths [10], [11]. Second, according to some scholars, the hadith stating that "whoever changes his religion, kill him", conveyed in the form of a general and broad provision, without any specification. Indeed, the act of the person liable for execution is described here in general terms without providing any specification; it could include "any change from one religion to another". The wording of the hadith could indeed imply that "even a non-Muslim who becomes a Muslim or a Jew who becomes a Christian must be killed" [12]. In addition, this hadith does not point out the nature of the religion to which an apostate converts. Since Islam does not treat all religions alike, it is reasonable to conclude that the person who converts to Judaism or Christianity must be differentiated from those who become idolaters. Therefore, the hadith requires some sort of specification; the Prophet could simply mean here that people who become idolaters should be killed, and not those who convert to one of the revealed religions of God [3, p.59]. Third, the last argument put forward by some scholars against the aforementioned hadiths is that there are a number of reports, indicating that the Prophet had not ascribed any earthly penalty for apostates. Heffening points out to a number of prophetic traditions, according to which the Prophet forgave apostates [13]. There is, in particular, one tradition, as cited below, which explicitly shows that the Prophet made no reference to any punishment for apostasy at all: "A Bedouin came to the Holy Prophet 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 refused-thrice. Then the Prophet said:

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[3] Among them, we may refer to Muhammad Hamidullah and Maududi. For the ideas presented by such scholars see: [3, pp.57-58]

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Medina is like a bellows which rejects its dross and recognizes its pure" [14].

V. APOSTASY: THE RIDDA WARS

The events that took place after the Prophet's death also provided the jurists with evidences to apply death penalty to those who broke away from Islam [3, p.65]. It is well-known that, shortly after the Prophet's death, a number of Arab tribes terminated their allegiance to the Muslim leadership. They believed that they owed allegiance only to the Prophet, and not to his successor. Therefore, the nascent Muslim community experienced instability and encountered dangers from various fronts. Consequently, Abu Bakr, Muhammad's successor and the first caliph, launched a number of campaigns, known as *ridda* wars or wars of apostasy, against these Arab tribes, and managed to subdue them [15].

Muslim jurists considered these events as evidence for supporting the idea that apostates must be fought and killed. However, some contemporary scholars consider this claim unwarranted. From the events that led to wars of apostasy, a number of contemporary scholars of Islam conclude that the war should only be initiated against those who rebel against an established authority, and not merely against those who change their religious beliefs. In fact, they believe that changing one's religion, or turning back from Islam does not merely result in death penalty. Muhammad Abduh and Rashid Rida were among the first modern Muslim scholars who believed that apostates should not be killed on the mere ground of their beliefs, arguing that they should be put to death only when they pose dangers to the state [5, p.14]. In a similar vein, Muhammad Ali argues that any earthly punishment associated with apostasy in the classical Islamic jurisprudence should only be applied to those who join forces of the enemies of Islam in a state of actual war. In this sense, he believes that apostates are to be killed not because of their beliefs but should be treated like any other fighters against Muslims in the battlefield [12, p.52]. Mohammed El-Awa, similarly, argues that the prophetic hadiths dealing with killing an apostate have nothing to do with the case of "simple apostasy, i.e. apostasy which is not accompanied by fighting against God and His Prophet", concluding that the law of apostasy cannot be drawn from such hadiths [12, p.52]. Abdulaziz Sachedina goes so far to state that "the term *irtidad*… was historically applied to the battles that were fought against those Muslims who had refused to pay taxes to the Muslim political authority after the Prophet's death" [16]. In this sense, Sachedina concludes that apostasy in Islam essentially refers to those who rebel against an established order, and not simply to those who change their religion. As a result, this group of Muslim scholars argues that the key factor which determines the application of any worldly punishment to apostates is hostility and rebellious activities against an established order, rather than merely changing one's religious belief. It is within this context that even few traditional scholars of religion and clerics argue that if the apostasy has taken place as a search for finding truth, or for academic purposes, without leading the apostate to involve in rebellious acts, no earthly punishment should be inflicted on him. The grand Shiite jurist, Ayatollah Montazeri argues that "changing one's belief, if it happens after research, does not result in the death penalty". For him, the penalty for the apostates should only be applied to those "who were Muslim and then on ground of hostility and with the intent to damage Islam became unbelievers" [17]. Although Montazeri does not explicitly de-emphasize the classical Islamic laws on apostasy, he has a unique opinion among Shiite clerics in regards to such an issue.

VI. ABDOLKARIM SOROUSH AND THE THEORY OF EXPANSION AND CONTRACTION OF RELIGIOUS KNOWLEDGE

Abdolkarim Soroush's theory of the expansion and contraction of religious knowledge helps to provide a solution to the problem of apostasy in the present context. Soroush, an Iranian-born scholar and philosopher, is a world-famous Muslim intellectual of the contemporary world. He is a much respected personality in the West. He is identified as one of the fifty key figures of Islam by Roy Jackson [18] and was named by *Time* magazine as one of the world's leading 100 intellectuals in 2005 [19]. Soroush became one of the ardent critics of the Iranian regime during the last decade or so, and this led to his eventual exile in the 2000s. What is also significant about his life- which could be relevant to the topic of this essay- is that some of his ideas led certain Iranian clerics to apostatize him.

Central to Soroush's theory is the idea that we should distinguish between religion (*din*) and religious knowledge (*marifat-e dini*), a term Soroush uses for human understanding of religion. He asserts that while religion is "sacred and heavenly", our understanding of religion is "human and earthly". The former is unchangeable, whereas the latter is changeable and temporary since it is a product of human understanding of the divine, which should be subjected to constant criticism and reconsideration [20]. In this sense, religious knowledge is simply one of the branches of human knowledge and does not represent an error-free type of knowledge; it is the product of religious scholars engaged in the study of the Quran, hadith and teachings of the Prophet and imams [21]. This theory, as Soroush himself puts it, "separates religion and religious knowledge, considers the latter as a branch of human knowledge, and regards our understanding of religion as evolving along with other branches of human knowledge" [20, p.33]. That is, "temporalization is not an attribute of religion but of religious knowledge" [20, p.33]. As such, "although religion has no defect or flaw, defects abound in exegeses (of sacred texts)" [20, p.31]. For Soroush, all understandings and interpretations of religion and sacred scriptures are reflective of human knowledge shaped by interpreters' presuppositions and pre-assumptions. As such, he acknowledges human epistemic limits in interpreting the Qurʾān in each generation.

The corollary of Soroush's theory is that it historicizes the Sharia and interpretive corpus (*tafsir* literature), giving them a temporary nature. It inevitably denies the divinity of the Sharia law, considering it as a humanly interpretation of

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primary sources of Islam. For Sorosuh, in religious knowledge, as in any other field of human knowledge, no particular conception is sacred and beyond questioning: "this is", Soroush points outs, "equally true in *fiqh* and exegesis (and the Sharia literature) as it is chemistry, for example" [22]. Because the knowledge of religion is entirely human and temporary, no interpretation of a given Islamic/Quranic theme is final and free of reconsideration. The theory of expansion and contraction of religious knowledge also accepts the inevitability of change in human understanding and interpretation of religion, which is to say that our interpretation of religion has the capability of being adapted to the modern world.

In moving from the realm of theory to that of practice, this article now argues that since the rules on apostasy are expounded mainly by jurists rather than by the Quran itself, it is neither sacred nor infallible. Although most medieval and modern jurists have held the view that apostates should be subject to death penalty, such provision, like many other stipulations of the Sharia, is not part of the divine, but should be regarded as human endeavors for interpreting the theme of apostasy. In addition, the ideas concerning apostasy given by earlier generations of Muslim scholars- even if derived from the Quran itself- are not final verdicts and can be displaced or go under total revision in today's context. Indeed, even if some jurists and religious scholars base their ideas about apostasy on the Quran, Soroush's theory makes it clear that such ideas are only tantamount to their own interpretation of certain Quranic verses. The fact that some contemporary scholars reject the rule on apostasy based on their own reading of the Quran shows that theme of apostasy is open to interpretation. As such, those scholars who argue that the message of death penalty is found in the Quran follow a particular interpretation of the Quran- an interpretation that is neither infallible nor eternal. This type of interpretation is open to revision, reconsideration and reinterpretation. In fact, Soroush's theory provides a strong justification to reconsider classical Islamic on apostasy.

VII. CONTEXTUALIZING THE REPORTS ON APOSTASY

The paper has argued so far in favor of the mutable nature of the classical law on apostasy- in particular the idea that apostates should be subject to death. Indeed, building on Abdolkarim Soroush's theory of expansion and contraction of religious knowledge, the paper has argued that there is always an opportunity to go back and rethink our previous religious knowledge, in this case the laws on apostasy. Using the framework of the contextualist approach presented by a number of contemporary Muslim scholars, the final section of this essay argues that the classical laws of apostasy are not applicable in the present context. Contextualization is an approach to interpreting the Quran that requires consideration of the text within the circumstances or conditions of the Prophet and early Muslim community at the time of revelation of the Quran. Contextualization, in general, maintains that the Quranic teachings that concern social, political and legal matters are context-specific. Although scholars use the

contextualist approach for Quran's interpretation, the remainder of this article uses the term contextualization to refer merely to the context in which a given Islamic precept, namely the laws surrounding apostasy, came into existence. Given the historical context or framework in which the Islamic concept of apostasy came into existence, we are in better position to examine whether or not the classical laws of apostasy are applicable in today's context.

A number of events took place in the Prophet's lifetime in which Muhammad ordered the execution of certain apostates often bolstered the medieval jurists' argument that the punishment of apostasy is death. In one instance, it is reported that in the Medinan period of Prophet's life, a group of Arabs from the tribe of Ukal came to the Prophet in Medina, announcing their allegiance to Islam. Later, when they fell ill, the Prophet advised them to go outside the town where camels were grazing in order to drink the milk. When they recovered, they killed the camel's herdsmen and took the camels. The Prophet sent some of his companions after them and subsequently they were captured and killed [3, p.61]. In another case, Abdullah Ibn Abi Sarh was one of the scribes of revelation in Medina, but later abandoned Islam and returned to Mecca to side with enemy forces. He questioned the accuracy and reliability of the Quran, stating that he used to change words of the Scripture. The Prophet made his blood licit after the conquest of Mecca, although he was eventually not killed since he was Uthman's foster-brother [9, pp.150-151]. Another report tells us that a blind man killed a slave-girl because she repeatedly vilified the Prophet. When the case was brought to the Prophet's attention, he approved of it [9, pp.149-150]. The Prophet also ordered the execution of Miqyas ibn Sababah, a Muslim who converted to idolatry [3, p.63].

A number of contemporary scholars argue that the use of some of these reports in support of the death penalty for apostasy is problematic because the main reason for their penalty was not merely apostasy, but was robbery and murder [3, p.62], [23]. While this paper does not challenge such an argument, it takes another approach to the concept of apostasy. Rather than making an apologetic argument against the validity of such reports, the remainder of this paper argues that the aforementioned incidents that led to the declaration of the execution of the apostates by the Prophet were natural responses to the concerns of a community which felt an existential threat from its enemy. In this sense, it is first significant to explore the historical circumstances of the emergence of the Islamic community in Medina in order to be able to assess the context in which the Prophet ordered the execution of apostates.

During the Medinan period of Muhammad's life, membership in the community was a significant matter for the Prophet. According to Saeed, it was in this era that the concept of "religious belief as a marker of inclusion within a political community (emerged)... In this way, Muslims became a religious and a political community" [10, p.241]. It is in this context that membership in the nascent Islamic community in Medina became a significant point of difference between a

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Muslim and a non-Muslim. Indeed, belief in God and the Prophet were not the only distinguishing differences between Muslims and non-Muslims, but Muslims were required to be part of the Islamic community. The nascent Muslim community, like other religious communities in pre-modern era, required its members to express their sense of belonging to the community, distinguishing themselves from other communities. Turning away from Islam, in such a context, did not only mean abandoning one's personal religious beliefs, but also meant abandoning one's sense of belonging to the Muslim community, thereby threatening the integrity of the community. In addition, the earliest community of Muslims experienced instability and encountered dangers from various fronts, not only during the Prophet's life, but also, as shown, shortly after his death. This community was under threat in such a way that it could have been destructed in its entirety by its enemies. Given the state of war that existed between Muslims and their non-Muslim enemies, it was naturally unwilling for the Prophet to see a decrease in the number of members of his community or an increase in the number of polytheists or followers of other religions, and thus could not allow Muslims to freely abandon their faith. In the circumstances in which Muslims were in a state of war with unbelievers and thus the nascent community of Muslims were under constant threat, conversion by any member of the community could be seen as joining the enemy camp and weakening the growing Islamic society. Conversion was not only considered a termination of the relationship between God and individuals, but was also considered equal to treason and betrayal. In other words, the apostates were not only seen as transgressors against Muhammad's new religion, but were also considered a serious threat against the stability and strength of nascent Muslim community. The Prophet's order for the prosecution or execution of the apostates made sense within such a context. In the following eras of Islamic history, most jurists failed to distinguish between betrayal, political disobedience and treason, on the one hand, and changing individual's religion on the other. As Donna Arzt states, "it is possible that the early Muslim leaders and jurists were confused over the Quranic tension between religion and politics, thereby improperly treating disobedience, communal betrayal, murder, theft and perhaps mere breach of contract as apostasy" [24]. Indeed, most Muslim jurists developed the law on apostasy from the aforementioned reports without taking their appropriate context into consideration.

In order to arrive at "any discussion of human rights in Islam", one should "take into account the historical context within which" precepts of Sharia were "constructed and applied by the early Muslims" [25]. Using this framework, what must be taken into consideration is the *logic* behind the Prophet's ordering of execution of the apostates and the context where such a commandment took place. The rules surrounding the issue of apostasy within the context of nascent Muslim community had public and political dimensions and were not only related to the matter of faith. Even if one accepts the authenticity of the reports concerning the Prophet's order for execution of the apostate, the same

punishment cannot be applied in the present context at least for two reasons. First, as discussed, the behavior of most individuals accused of apostasy during Muhammad's lifetime was simultaneously perceived as a sign of betraying the relation with the Prophet and Muslim community. This is due to the fact that the Muslim community or the community of believers during the Prophet's era also functioned as a political unit and thus "there was a conjunction between corporate religious identity rooted in the community and political identity" [3, pp.168-169]. This intimate relation between religious and political identities of individuals existed in almost all pre-modern societies where the identity of individuals was highly dependent on their religious affiliations. By contrast, we live in a totally different context in the present day. As Saeed notes, "most Muslims today have moved away from this conjunction between religious community and political identity to a separation between the two" [3, p.169]. The notion of the nation-state belongs to the modern period- a notion that is not based on individuals' religious orientation. An individual can become a citizen of a country in today's world regardless of his/her religious beliefs. Therefore, pre-modern Islamic laws that highly depended on the notion of an intimate relation between religion and state cannot be applied in the context of nation-states. Second, during the Prophet's era (and by its extension in all pre-modern societies), the modern concepts of religious freedom and pluralism did not exist as these concepts are the products of modernity. The Prophet's decisions for punishment of the apostates, and by its extension the medieval Islamic laws on apostasy, were all compatible with the non-existence of such concepts. Since the socio-political context of early Islam is different from that of the present world, Muslims should not simply expect the implementation of all stipulations of Sharia, including the classical Islamic law for apostasy.

VIII. CONCLUSION

The central argument of this paper has been that the notion of killing an apostate must be explored within its proper context in the early days of Islam, and should not be de-contextualized, being viewed as a precept that could be applied at all times and in all places. This argument has been made in two steps. First, the facts that the Quran does not prescribe any earthly punishment for apostasy and that the apostates are only destined for the Fire in the afterlife from the Quranic perspective, show that there is nothing sacred about the medieval Islamic laws on apostasy. This provides a strong basis for rethinking the classical laws of apostasy developed by Muslim jurists, since we should make a distinction between the Quran and any human understanding of it (as Abdolkarim Soroush's theory of expansion and contraction of religious knowledge argues). In the second step, the paper focused on the historical context, in which the Prophet ordered prosecution of the apostates, in order to examine whether the same rules can be implemented in the present context. The paper has argued that during Muhammad's lifetime, the act of apostasy was often linked to an act of political betrayal of the Muslim community, treason, sedition and joining forces to the

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enemy, and it is not surprising that such matters were sensitive for the Prophet. In addition, such decisions were made centuries before the development of modern notions of religious pluralism and human rights. Since today's context is different from the Prophet's historical context and by its extension from the medieval world, neither the Prophet's decisions nor the classical Islamic laws on apostasy are applicable in the present world, which is to say that modern Islamic discourse should move in the direction of abolition of all earthly punishment, be it death penalty or imprisonment, for apostasy.

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