Apostasy, Blasphemy, & Religious Freedom in Islam
A Critique Based on Demonstrative Jurisprudence

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Apostasy, Blasphemy, & Religious Freedom in Islam
A Critique Based on Demonstrative Jurisprudence

Mujazat-e Ertedad wa Azadi-ye Mazhab
Naqd-e Mujazat-e Ertedad wa Sabb al-Nabi ba Mawazin-e Feqh-e Estedlali

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Introduction

This book, as the second volume of “Islam and Human Rights Series,”\(^1\) undertakes to affirm certain positions and to negate others under the rubric of its major themes: apostasy, blasphemy, and religious freedom. As for the former, it attempts to establish that freedom of religion, in particular the freedom to turn away from a religion (abandoning Islam, choosing another religion, or becoming non-religious), is akin to the freedom of choice to accept or reject the fundamental principles of religion. Secondly, no temporal punishment is prescribed for one who rejects the religious doctrines of Islam and fails to conduct oneself in accordance with the religious dictates.

As for the latter, this negation applies to the lawfulness of shedding the blood of an apostate or one who insults and defames the Prophet, administering any form of worldly punishment on the one found guilty of apostasy, and carrying out capital punishment and other grave forms of punishment on the one who defames the Prophet. As for the one who is found guilty of defaming the Prophet and denigrating religious convictions, that person could be sentenced by a fair judicial system under “hate speech.”

This introduction will attempt to do the following: provide the salient points that are covered in much greater detail in the book: Ayatollah HoseinAli Montazeri’s (d.

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1. The first volume of this series was *Haqq al-Nass (The Right of People)*, Tehran: Kavir, 2008.
2009) recent opinion on apostasy; the legal opinion that negates any scope for penal provision on the matter of apostasy and blasphemy; the freedom to interrogate and be critical of religious convictions but without engaging in a hate speech; a bird’s eye view of this book; and limitations of this work with a view to charting out future areas of research on the subject matter.

I. Recent Opinions of Ayatollah Montazeri on Apostasy and Blasphemy

In 2005, for the first time, the eminent Ayatollah Montazeri issued a legal ruling in which he clearly demarcates a separation between changing of religion and apostasy. He regards the freedom to change one’s religion as one of a human being’s inherent rights. His recent position on apostasy and defaming the Prophet can be summarized in the following points:

1. Changing religion as a result of intellectual endeavor and without any hostility or enmity toward the Truth (which activates penal provision) would not trigger any temporal punishment and, as such, bears no resemblance to the punishment for apostasy.

2. One cannot regard as an apostate any person who rejects the essentials of religion (daruriyyat), so long as it does not lead to the negation of prophethood.

3. The rejection of Islam (i.e., apostasy) is dependent upon enmity and hostility as constituent components of the situational context (mawdu‘). Changing one’s religion on account of research and rational proofs overrides any possible linkages to the situational context of apostasy. The phenomenon of apostasy invoked at the dawn of Islam was associated with a political rebellion against the
central government and thus was not confined to a change in religious belief. Judgments on apostates and those who exhibit zealous hatred \((nasibi)\) toward the family of the Prophet are considered to be part and parcel of the political and administrative spheres bound by their own particular time and place.

4. It is not obligatory for an apostate to convey his convictions to anyone. Moreover, such a person has an opportunity to seek repentance from God, which would revoke the implementation of the three possible forms of punishment.

5. It is the mandate of a proper judicial system to adjudicate on an alleged case of apostasy or blasphemy. If the person is found guilty, then it is for the court to implement the punishment, provided that negative consequences would not ensue from it.

6. The judge has to reach a conclusion that the person in question intended to denigrate and defame the Prophet. The only possible way to attain this is for the accused to voluntarily confess to the validity of the charge laid against him/her. The judge is required to take into account the sect \((madhhab)\), culture, and social conventions of the region when determining the criterion of insult or offense.

7. Even if blasphemy is established by way of personal confession in the court, the judge has the discretion to forgive the accused. All punishments for defamation and slander are to be carried out under the supervision of the judge. Under certain circumstances, the judge can rescind the punishment and forgive the accused.

8. Scholarly objections and criticisms in an Islamic society should not be construed as defamatory, for it is permissible to do so on any subject matter – even on
monotheism. The public is free to ask questions and research on any aspect of the belief system.

9. With regards to implementing the punishment for certain offences mentioned in the Qur’an (*hudud*) and others (*taʿzir* – discretionary punishment to chastise and deter), the slightest amount of weakness in establishing these offences renders them void.

Ayatollah Montazeri, by narrowing the situational context of the ruling on apostasy and defaming of the Prophet, has rendered the implementation of religiously sanctioned punishments extremely difficult and rare. Moreover, the judge has the discretion to forgive any person found guilty of defaming the Prophet. The harsh punishment for apostasy has to be administered via the judicial system after it has established that the accused intended to make a mockery of religion and incite a rebellion.

### II. Negation of Punishment for Apostasy and Defamation of the Prophet

The gist of my argument can be encapsulated as follows:

1. Islam has presented itself to the people, by the use of clear-cut standards, as the true religion and possessor of sound beliefs, and has contrasted itself to the corrupt and harmful tendencies of falsehood. Islam envisions true prosperity for humanity to be situated in following the true religion and its sound beliefs. Any digression from this path is considered highly blameworthy. From the perspective of Islam, people have the freedom to adopt a religion and a belief system of their choice, and no one is capable of making one accept Islam by force and coercion.
Introduction

Islam gave the rank of official status to many religions and sects in the sense that their adherents had adamantly persisted in following the wrong path in spite of the invitations extended to them to embrace Islam.

Those who knowingly elect not to respond to this invitation due to stubbornness and obstinacy will be punished in the afterlife, for Islam has not anticipated any temporal punishment for such a situation. The logic of Islam, when inviting others to it, is based on reason, peace, and compassion and distant from violence and despotism. It is not possible to bring back by force any person who has altered one’s religion. Even though there is no temporal punishment for an apostate, such a person will face a severe retribution in the afterlife if his/her denial was due to spite and hostility. Freedom of religion and faith have been inscribed in Islam and, as such, any traditions that sanction killing or shedding the blood of an apostate are incompatible with the noble Qur’an.

2. During the Prophet’s time, no one was executed on account of apostasy. Those who were sentenced to capital punishment were guilty of crimes other than apostasy. The killing of some people during the time of the first three caliphs in the wars of riddah (apostasy) was not endorsed by members of the Prophet’s family (ahl al-bayt). The claim that Imam ‘Ali, during his caliphate, administered capital punishment on one who had abandoned Islam or engaged in apostasy lacks any credible evidence. Likewise, no Imam ordered a person to be executed for changing religion or exiting from Islam. There is no denying that some believers were killed on the charge of apostasy under the Umayyad and Abbasid dynasties; however, there is no reliable evidence to support the claim
that the Imams endorsed this act. In conclusion, there is no cogent evidence in the Shiʿi corpus to establish that anyone was killed for apostasy due to a judgment rendered by the Imams or with their endorsement and satisfaction.

3. The situational context of apostasy found in the traditions or juridical works is wider in scope than just changing religion or exiting from Islam, because it was closely linked with joining hands with the opponents of Islam (i.e., the polytheists and unbelievers). The “apostates” of that period, in addition to exiting from Islam, engaged in a propaganda campaign against Islam and united with the enemy’s army. This constituted a form of political, cultural, and military war against the Muslims. However, the present-day usage of “apostate” is restricted to exiting from the religion of Islam without taking into account any other conditions and motives. In other words, the subject of “apostasy” is associated with religious and cultural freedom by contemporary people, whereas the same term in the religious judgments of Islam is linked to political crimes that are akin to a belligerent (muharib). Undoubtedly, these two are different and distinct from each other.

In the Qur’an, “apostasy” is explicated as hostile unbelievers whose motive was to encourage Muslims to turn away from their religion by way of concocting propaganda and, as a result, deal a blow to the prestige and image of Islam.

The first instance in Islamic history where “apostasy” was invoked to kill someone was during the time of the first caliph: Some Muslims refused to remit their zakat to him. The same practice continued during the era of the two caliphs that succeeded him. In that period, “apostasy”
was not confined to exiting from religion and was undoubtedly coupled with carrying out acts of opposing and confronting the government.

The ruling of killing the apostate entered into the works of Shi‘i jurisprudence from the Sunni schools of thought. The prophetic tradition “whosoever changes his religion, kill him,” is related by the Companions; however, no such tradition originating from the Prophet has been narrated by any of the Imams.

Gradually, the judgment on killing the apostate, which was linked with political rebellion and partnering with the Muslims’ enemies, was transformed to solely changing one’s religion. From the fourth century AH onward, narrations on this subject matter, in the restrictive sense of changing religion, have been attributed to the Imams, although most of them have no chain of transmitters, contain unknown individuals in the chain, or are weak.

If the explanation above fails to establish that the subject matter of “apostate” has undergone any alteration or change – although in my estimation this has been well established – at a minimum it generates ambiguity in sustaining the situational context as understood today in its restricted sense. The legal maxim of aversion (the lapse of punishments that have been prescribed in the Qur’an [hadd] in the presence of any doubt or ambiguity) would bar a presumption of continuity (istishab) on sustaining the subject matter and, as a consequence, in sustaining the ruling. In accordance with the command of the Prophet, the penalties of hudud are suspended in the case of doubt, and which doubt can be stronger than that of an altered subject matter?

The punishment of death for one guilty of defaming the
Prophet is unique to Shi‘is. In actuality, from the fourth century AH amidst the Shi‘is, a form of exaggerating the attributes of the Imam, but not in the extreme, had progressed to such an extent that capital punishment for one who defames the Imams had to be anticipated. Moreover, traditions were fabricated for that purpose. Since the killing of anyone who defames the Imams could not be justified without the same ruling for the Prophet, Shi‘i jurists were firmer and more united than Sunni jurists on the judgment of killing one who is guilty of defaming the Prophet.

4. The outcome of interrogating the issue of apostasy and blasphemy is:

There is no reliable proof from the Qur’an, Sunnah, consensus (ijma‘), or reason that can establish the validity of shedding the blood of anyone who has been accused of apostasy or defaming the Prophet. On the contrary, this goes against the Qur’an and reason. Moreover, the negative effects that would ensue from making licit the shedding of someone’s blood would be plenty and, as such, would certainly weaken Islam.

Only a sound judicial system can issue a judgment and supervise its implementation. The issuance of a judgment by a jurist who is qualified to issue a legal opinion (fatwa), out of judicial system, does not suffice.

A judgment on the apostate and defamer of the Prophet is absolutely lacking in evidence from the Qur’an. Traditional jurists, by employing ijtihad, have arrived at this judgment and have claimed consensus by relying on solitary (akhbar wahid) or dependable (muwatthaqah) hadiths.

The ruling on killing the apostate and defamer of the
Prophet is incorrect and not possible to implement on account of the following seven proofs:

(a) The necessity of stopping the implementation of the rule of execution of an apostate or a blasphemer as a secondary injunction, “debilitating Islam” (avoiding the harm or seeking public welfare or governmental injunction).

(b) The necessity of suspending or stopping the implementation of a punishment for *hudud* that would lead to killing of a person during the Occultation of the Twelfth Imam.

(c) Since the judgment on killing is based on solitary reports (*al-akhbar al-ahad*), it is mandatory to exercise caution by negation of rule of shedding someone’s blood.

(d) Any judgment of killing based on solitary reports is not a valid basis for dealing with vital and critical issues.

(e) Alteration of the subject matter or situational context (*mawdu‘*) of apostasy.

(f) The hadiths mandating execution of apostate and defamer of the Prophet are contrary to Qur’anic dictates.

(g) The rational proof is too weak to establish the execution of one who abandons religion or insults the holy personages.

In conclusion, exiting from religion (i.e., apostasy) has no temporal punishment. Executing anyone on the basis of insulting the Prophet or the Qur’an or other sacred objects in Islam is therefore indefensible.

5. Freedom to life has no relationship to one’s beliefs and convictions. The temporal world is not the place to assign reward or punishment, irrespective of one’s faith being true or false, for the results and consequences of
one’s faith will only appear in the afterlife. The punishments prescribed to be carried out in this world have to do with the commission of crimes. As no worldly punishment has been assigned for committing sins, apostasy, in the sense of abandoning Islam for whatever motive, warrants no punishment, let alone capital punishment. Likewise, there is no worldly punishment for remaining an unbeliever and refusing to embrace Islam. It is not in the realm of possibility for a sound judicial system to convict a person and enter a judgment against that person with a punishment for not becoming a Muslim or exiting from Islam. In addition, the Lawmaker did not approve any punishment in this world and hereafter for erring in scholarly research and study. Of course, there will be a severe retribution for rebellion and exhibiting hostility and enmity toward Islam in the afterlife.

III. Freedom to Critique Religious Beliefs Co-joined with the Prohibition of Engaging in “Hate Speech”

There are three essential conditions for “respect to be accorded to the believers and not the beliefs” on the one hand and freedom of expression on the other:

1. Freedom to critique religious beliefs.
2. The prohibition of insulting religious beliefs and atheism (“hate speech”).
3. General nullification of punishments for apostasy, especially capital punishment.

From the point of view of Islam, there is no punishment whatsoever in this life or the afterlife for one who raises objections and is critical of religious beliefs, for one is free to do so. Secondly, insulting, ridiculing, and
belittling religious beliefs are unworthy acts and violate the honor of those people who subscribe to that religion. In addition, insulting atheistic beliefs is explicitly prohibited in the Qur’an. Thirdly, in accordance with Article 20 of International Covenant on Civil and Political Rights, “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Insulting and belittling religious beliefs is an instance of producing “hate speech,” which is considered a crime. One who is accused of such a violation is to be summoned to a civil court in front of an impartial committee (a random selection from the pool of citizens) for adjudication. Undoubtedly, the punishment meted out for such a crime would not be capital punishment.

Failing to demarcate a boundary between critique and insult, as well as belittling and mocking religious beliefs, generates a conflict and propels the traditionalist believers to commit acts of cruelty, such as in Islam. An essential condition for a peaceful world is mutual respect. It is not possible to insult and mock the religious beliefs, the Scripture, and the Prophet of one-fourth of the global population without anticipating a harsh and extreme reaction from the traditionalists. On the other hand, it is possible to create a culture in which peaceful rivalry between religion and atheism can take place, provided that a clear boundary separates critical analysis from insult. This boundary will be subject to time and place, along with the level of cultural maturity. In relatively closed societies many of the critiques could be construed as insults, and in very open societies it is possible that many of the insults could be categorized as critiques. Setting the
boundary requires serious research and investigation. In any event, only coupling respect for religious beliefs with freedom can bring about a peaceful and esteemed world.

If religious people do not have the right to disseminate their religious beliefs to others, then likewise an atheist should not have the right to propagate his/her unique beliefs under the guise of universal conventions and customs. Alongside the declaration of human rights, there is a need for a pronouncement on universal obligations and human responsibilities for those who subscribe to a religious or an atheistic worldview under the category of “covenant to obliterate all forms of violence, insults, and hate speech.”

Just as believers must announce the nullification of any form of punishment for an apostate, atheists should proclaim and officially register that insults and mockery against religious beliefs constitute both a crime and an unworthy act. Both groups need to officially embrace the freedom to critique, as it is mutually beneficial. A healthy competition is attainable through mutual respect and is the only pragmatic method to defend Muslims along with the followers of other religions and ideas.

IV. A Quick Glance at the Book

The book demonstrates an absolute negation of punishment for apostasy, lawfulness to shed the blood of an apostate, and administering capital punishment to one who is found guilty of defaming the Prophet. Alongside defending the right to freely critique religions, insulting the Prophet or the sacred scriptures is advanced as criteria of “hate speech” that would be deserving of punishment as determined by the judicial system.
The book has two parts: The first part deals with apostasy and defaming the Prophet, and the second part with freedom of expression and “hate speech.” The former contains five sections with certain sections exclusively devoted to the killing of Rafiq Taqi, a journalist residing in Baku, Azerbaijan. On the basis of his articles, some of the jurists in Qum, such as Ayatollah Muhammad Fazel Lankarani (d. 2007), issued a fatwa during the spring of 2006 that he was guilty of apostasy and defaming the Prophet and, as a result, sentenced to death. On November 23, 2011, he was fatally stabbed in Baku. Four days later Muhammad Jawad Fazel Lankarani, the late ayatollah’s son, conveyed his joy and delight that his father’s fatwa on apostasy had been carried out. The ruling to kill and related documents, as well as the pronouncement of delight, is dealt with in the first section of the book.

In an open letter on November 28, 2011, to Muhammad Jawad Lankarani, my former classmate, I denounced the ruling of execution and his joy and delight at its implementation and, in general, critiqued the legal judgment of execution and shedding the blood of one who is an apostate and a defamer of the Prophet. The text of this open letter constitutes the second section of this work.

On December 13, 2011, Muhammad Jawad Lankarani responded under the title “Response to Doubts Surrounding Apostasy.” It contained an introduction, six aspects, and a few reprimands and defense in response to the objections leveled against his father’s religious judgment and ruling. The text of his entire response constitutes the third section of the book. He defended and considered the popular juridical opinion on the lawfulness to shed blood of an apostate and defamer of the Prophet,
and subjecting them to capital punishment, to be correct.

The fourth section, the most detailed part, consists of my second open communication to Muhammad Jawad Lankarani in January 2012, under the title “Treatise on the Negation of Punishment for Apostasy and Defaming the Prophet.” It is an elaborate treatment of the subject matter under the rubric of demonstrative jurisprudence. It comprises an introduction, ten sections, and a conclusion. The proofs dealing with the lawfulness of shedding the blood of an apostate and executing a defamer of the Prophet on the basis of the Qur’an, Sunnah, consensus, and reason are diligently and minutely examined. The final outcome is that there is no temporal punishment for an apostate, that shedding the blood of an apostate or defamer of the Prophet lacks any reliable evidence, and that capital punishment for the defamer of the Prophet has no basis at all. Seven proofs, some of which are original, are cited on the baselessness of the juridical rulings on killing an apostate and a defamer of the Prophet.

Muhammad Jawad Lankarani, did not provide a response to this second open communication and, in actuality, did not have one that could provide a rebuttal. His explanations are reproduced in exactly the same form in three parts as an integral part of the fifth section. This dialogue and debate clearly presents the two different methods of research in dealing with contemporary jurisprudence: traditional ijtihad in the derivatives of law, and ijtihad in the fundamentals and principles. This debate under the rubric of applied jurisprudence and sources of Islamic Law on punishment has produced some original points and perspectives.

The Addendum to the first part contains three subject
matters. One is the full translation of Rafiq Taqi’s October 2006 article, “Europe and Us” from the Sanʻat newspaper. This was the article that prompted a fatwa of apostasy and, ultimately, his assassination. The second consists of two open letters written by Ghoona-ye Tabrizi (a fictitious name of one of Rafiq Taqi’s defenders, who shared the same language) that raise objections and are critical of the two pronouncements of Muhammd JawadLankarani. The latter makes reference to the letters in his second pronouncement, but without mentioning any name. The last subject is translation of three interviews of Rafiq Taqi conducted by his supporters prior to his assassination. They provide a useful glimpse into the thoughts that led to his killing.

The second part pertains to religion and freedom of expression and was composed in serial form from December 2011 to December 2013. The first in the series comprises the notes on freedom and “hate speech” that I had prepared to deliver by invitation of St. Antony’s College, Oxford University. The second is an open letter entitled “Respected Jurists Instead of Addressing the Effect, Ought to Address the Cause,” which was collectively written (Abdolali Bazargan, Siddiqi-ye Wasmaqi, Hasan Yousef Eshkavari, and myself) in May 2012 and addressed to the jurists who had issued a doubtful ruling on the lawfulness of shedding the blood of a singer who had generated public outcry. The third is an interview that took place in September 2012 after the film “The Innocence of Muslims” (with Arabic subtitles) was released on the Internet and the attendant bloodletting under the title “Insulting the Prophet as a instance of ‘hate speech.’” The fourth subjects the institution of marja‘iyyat
to scrutiny for its defense of inquisition, as expressed in the views and unprecedented legal ruling in Shi‘ism of Ayatollah Makarim Shirazi against the writer of the article “Imam: Political Leader or Exemplary Role Model.”

V. The Book’s Limitations and Future Areas of Research

This book comprises a collection of six pieces of different lengths from November 2011 to December 2013. Most of the writings are responses that I felt obliged to make in the face of legal rulings and judgments, as well as other acts, that were being foisted in the name of Shi‘i Islam as regards religious freedom. In other words, various parts of the book were composed as objective and scholarly responses to bigoted and prejudiced views being circulated in the name of religion. Thus, the book did not come to fruition as a result of my arrangement of the subject matter.

The intended readers are those jurists, maraji‘, senior scholars and students of the seminaries, professors, university students specializing in legal punishment, and, in general, anyone who is interested in jurisprudential and legal discourses. The language is technical and coupled with widely used juridical vocabulary and, as such, an ordinary reader may find it somewhat laborious. Even then, he/she will not return empty-handed after studying it.

No discourse on religious freedom can be limited to the two vantage points that are the focus of the book (i.e., freedom to turn away from religion and freedom to reject the doctrine and not abide by some of its fundamentals and practices). Other areas not covered in the book could include the freedom to proclaim one’s identity and the
freedom of propagation, to study, to publish, to hold announced worship services, to build places of worship, etc. from the point of view of different schools of thought (inclusive of the Sunni schools and other Shi‘i schools), other Abrahamic and non-Abrahamic religions, and more recent ones (like Baha’ism).

Although I have tried my utmost to engage in an in-depth and meticulous examination of the subject matter from the perspective of the Ja‘fari school of thought, along with an exhaustive analysis of the mainstream juridical opinions, I can make no such claim with regards to other Shi‘i (e.g., the Zaydis) and Sunni schools of thought. I have not incorporated the views of reformist scholars, whether Sunni or Shi‘i who have obtained seminary training or not, because their views are not given any weight in Sunni and Shi‘i seminarian circles. I hope that in the future I will be able to compile a list of reformist scholars’ views on the issue of religious freedom and punishment for apostasy spanning a period of two centuries.

The book’s relevance is not confined to the discussion on Ayatollah Lankarani’s fatwa to assassinate Rafiq Taqi; rather, there is a resemblance to other edicts, such as the one that Ayatollah Khomeini issued against Salman Rushdie in February 1989, which made it lawful to shed his blood, and the atrocious and savage killing of Ahmed Kasravi at the hands of Fedaeyan-e Islam on March 11, 1946, in the court during his trial. It is more constructive to raise the public’s cultural and religious literacy level along with scholarly and well-researched responses to a defamatory book, article, film, cartoon, and song. If a case truly is defamatory and an insult to the beliefs held by
believers, then one should follow up on it by filing a complaint with the court. In any event, it is not possible to pass a judgment of capital punishment and lawfulness to shed the blood of the accused during his/her absence and without allowing him/her the right of self-defense.

The brutal killing of Ahmed Kasravi did not eradicate his thoughts. The legal ruling to kill Salman Rushdie became a means for him to gain global fame while Islam was portrayed as a violent religion that opposes religious freedom and possesses fanatical tendencies. The savage killing of Ahmed Kasravi and Rafiq Taqi, as well as the legal ruling to kill Salman Rushdie and Rafiq Taqi, must be openly condemned in order to prevent their recurrence, for these events produced nothing other than weakening and debilitating Islam. Issuing judgments and legal opinions is a sign of weakness and inability to provide a rebuttal. Condemning assassinations and legal rulings should never be construed a justification or defense of such people’s problematic books or articles. A corrupt and unwholesome idea should be addressed with a scholarly response.

I would like to state in advance that I will readily welcome all critiques on any aspect of this work. I invite those who are acquainted with jurisprudence and legal punishment to share with me their constructive suggestions and criticisms to help me make the necessary corrections and enhance the quality of this work.

Mohsen Kadivar
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