

Beyond the mosque walls

**Legal constructions 'apostasy' and 'blasphemy' in
Egypt's public sphere**

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Chapter 1: Theoretical Frameworks

At twilight on June 7, 1992, Dr. Farag Fouda was standing on the sidewalk outside his office in Heliopolis, a middle-class suburb north of downtown Cairo, when a motorcycle carrying two young men swerved purposefully toward him. In a hail of gunfire, Fouda, his son, and a family friend were left bleeding on the pavement. An outspoken advocate of secularism, Fouda had recently been denounced as an apostate – one of the three most severe crimes according to Qur’anic tradition – by a well-respected sheikh from the famous al-Azhar institution, the bastion of Sunni Islamic scholarship. The two young assailants, members of the radical Gama’at al-Islamiyya organization, had taken the Sheikh’s decision to heart. So had Farag Fouda, literally. When the doctors pronounced him dead the next morning, Fouda instantly became one of the most prominent victims of apostasy accusation and retribution since the 1981 assassination of Egyptian president Anwar Sadat.

Although Egypt boasts an independent press and protection of free speech, countless authors and political figures have come under fire – both literally and figuratively – in the past two decades for actions deemed by religious leaders to be detrimental to the public good. Shortly after Fouda’s death, Cairo University professor Nasr Abu Zayd was convicted of apostasy, or conversion away from Islam, and fled to the Netherlands to escape a court-ordered sentence that he divorce his Muslim wife, as an apostate cannot be legally married to anyone of any religion. In 1994, Nobel Prize-winning author Naguib Mahfouz survived a knife attack in retaliation for his fictional writings about medieval life, and feminist writer Nawal el Saadawi has been imprisoned

as an apostate for tracing the *hajj* pilgrimage to pagan roots. Interestingly, of the intellectuals mentioned above, only Fouda actually renounced Islam and publicly expressed atheist beliefs. The others never converted away from Islam and remain practicing Muslims today.¹

On a macro-level, this thesis is an investigation into political Islam and the status of certain human rights in a state with a tumultuous history of conflict between the government, religious right, Islamist groups and outside observers. On a micro-level, I seek to examine the relationship between legality, free speech, and the public sphere. I have identified two ways in which the judiciary and public sphere interact regarding free speech and apostasy.

First, the 1990s marked a veritable revolution in the relationship between lay Egyptians and complex legal issues previously delineated from behind the thick stone walls of the mosque. The apostasy debates after the Fouda assassination were launched and perpetuated in the public sphere by lay persons, as opposed to in the mosque by trained Islamic jurists. As Fouda's assassins stood trial, newspaper editorial pages exploded with incendiary headlines, passionate arguments and propaganda campaigns from all camps. Political opposition figures, laypersons and journalists took to the page, stirring a debate that divided society down the middle. For the first time, the epicenter of the apostasy debate was in the public sphere, among lay persons with no formal legal or theological training. In other words, the public relegated to itself the task of deciphering both Islamic and secular law regarding free speech.

The second important interaction between the judiciary and the public relates to judicially-determined notions of public welfare. In the apostasy cases of the 1990s, the

¹ Mahfouz was a professed Muslim until his death in 2006.

judiciary assumed responsibility for delineating what values, practices, and individuals are detrimental to the public good. The courts assigned apostasy to the ambiguous domain of public policy, which is never clearly defined and can be used on an *ad hoc* basis for judicial legislation. In apostasy cases, the Egyptian judiciary does this without codified positive law, but rather refers to al-Azhar for religious edicts and is constitutionally required to refer to the *shari'a*, or Islamic law, as the primary source of legislation.² Simply put, the legal system maintains that apostasy is not a constitutionally-protected freedom of religion because it interferes with public morality as defined by the *shari'a*. By prosecuting apostates but not formally creating a law against apostasy, Egypt maintains the international image of a progressive state with a strong respect for individual freedoms, while simultaneously appeasing the religious right, which calls for a stricter adherence to *shari'a* principles.

The criminalization of apostasy in Egypt is based largely on the intertwined relationships between the government, judiciary, al-Azhar, Islamist groups, secularists, intellectuals and international observers. At the beginning of this chain is the Egyptian government: infamous for its entrenched regimes and heavy hand toward political opposition, the government has long held control over al-Azhar University. Widely considered the global bastion of Sunni Hanafi theology and scholarship, al-Azhar in turn exercises control over the public and the judiciary by issuing religious edicts to guide both legislation and personal behavior. For instance, a decree issued by Sheikh Mohammad Gazelli in 1992 accused Farag Fouda of apostasy and ultimately led to his death at the hands of the Gama'at al-Islamiyya organization. At the trial of the assassins, other Azhar edicts were used to ultimately find one defendant guilty. The Egyptian

² For a discussion of constitutional Islamization, see Chapter 2, page 36.

judiciary is indeed constitutionally required to uphold *shari'a* values, and turned to al-Azhar for professional assistance.

The myriad apostasy convictions of the 1990s, both on the street and in the courtroom, led to outbursts from international human rights observers and Egyptians alike who call for a transparent government with practiced standards of free speech and religion. Faced with quite possible criminalization or physical harm, intellectuals and political dissidents became understandably hesitant to publish or teach. Dissident writer Sayyid al-Qimni, for instance, chose to recant his work after threats from the same militants responsible for the Fouda murder. The Egyptian apostasy game thus has no lack of players: the government controlled al-Azhar, which guides the courts and militant Islamist groups alike. The judiciary criminalized apostasy as a detriment to the public good, but neglected to codify official anti-apostasy law. This allowed the Egyptian government to maintain the image of a progressive state dedicated to human rights while simultaneously exercising powerful control over dissidents and scholars.

The maintenance of the culture of Islam – often through the punishment of those who defy it – is a government strategy of placating both internal and international players. By enforcing traditional Islamic law, the state retains support from the powerful conservative camp, which promotes hierarchical and patriarchal Islamic values by working within existing institutions to reinforce the status quo (Salwa 1998:2). Concurrently, by not codifying (and therefore not committing to) apostasy laws, Egypt maintains the image of a tolerant, modernizing state. The mere fact that Egypt is a signatory on high-profile human rights doctrines overshadows the state's *shari'a*

reservations to certain provisions.³ Thus, the government wears a different mask for each audience: it remains a traditional Islamic regime for the conservatives and becomes a modernizing state for the international community, all the while retaining an important and powerful tool for staunching political dissidents.

The politics of knowledge

“What would a Western woman know about Islam? Don’t assume anything in that book is true.” Hamid Ali, the fifty-something publisher of an Algerian daily newspaper, looked me squarely in the eyes with obvious suspicion. I had been sitting in on a meeting at the Algiers-based paper where my journalist father worked as a consultant. Hamid interrupted his conversation about classified ads mid-sentence when he noticed I was reading *Islam and Human Rights* by Ann Mayer (1998). Perhaps influenced by Algeria’s long history of French occupation, or perhaps by the rumors circulating the office that my father and I were both CIA agents, Hamid was extremely skeptical that a Westerner could or would write anything both objectively and factually correct about Islam.

A basic assumption of Hamid’s thesis was that the bulk of Western scholarship has indeed typecast Islam as a cultural homogeneity, and that the Western media tends to portray Islam as an oppressive regime without history, debates, or politics. Hudson noted that especially in Middle East studies, excessive generalizations create an “artificial dichotomization between ‘traditional’ and ‘modern,’ the oversimplification of ‘subject-parochial-participant’ classifications, and the application of a single ‘culture’ to a whole nation” (1995:64). As Esposito observed, proponents of reductionism often contended

³ For a discussion of *shari’a* reservations, see Chapter 4, page 85

that the democratization and liberalization of Muslim societies is only achievable through a progressive secularization and westernization of society (2003:3).

Orientalism and its Muslim exceptionalist thesis posit that the turbulence of the Muslim world is due solely to the influence of Islam. Mamdani (2004) labeled this association “culture talk”, or the assumption that Muslim political systems can be explained as a consequence of a single cultural characteristic. Contemporary Orientalist thinkers (including Huntington 1996, Lewis 2002, Barber 2001) argue that Western ideals of liberalism, constitutionalism, human rights, rule of law, and separation of church and state have little resonance in Islamic cultures, which are thereby backwards and oppressive. Lewis (2002:10) argued that for over one thousand years, Islam has provided the only universally-acceptable set of rules for the regulation of Muslim public and social life, dictating matters of the civil, commercial, criminal, constitutional, and religious. According to this view, Muslim societies are stagnant today because the inability for legal evolution directly impedes the establishment of a Muslim civil society, as civil society suggested an organizing principle other than religion. In the same vein, Barber contended that the inherent inseparability of the Islamic state and religion constitute a “literal war on the values, culture, and institutions that make up liberal society” (2001:206). He further suggested that Islamic societies lack the “attitudinal resources” to build a democratic civil society, which means there can be no citizens, and thus no meaningful democracy (2001:204). In his controversial 1996 book *The Clash of Civilizations: Remaking of the World Order*, Samuel Huntington similarly argued that “Islam has bloody borders” (1996:34) and that Muslims have a propensity toward violent conflict (1996:258).

These notions fall well short of social reality, where “there are as many Islams as there are situations that sustain it” (Al Azmeh 1993:4). Since September 11, 2001, academia has burgeoned with questions of political Islam, and Bennett noted that recent scholarship rarely argued that “Islam says this or that,” but rather of Muslims in “this context saying such and such” (2005:4). Because the *umma*, or community of believers, is located within myriad cultural contexts and religious interpretations, many scholars recognize simply that a civilization is comprised of related but distinct local cultures with independent histories, politics and traditions (Bennett 2005). While these scholars acknowledged that all Muslims share generally similar Islamic values, they simultaneously opposed the reduction of every event in the Muslim world to the entrenchment of Islam. It is through this rejection of the “meta-narrative notion” of Islam as a universal totality that I proceed (Ahmed 1992:10).

Defining Fundamentalism

Thanks largely to the Western media, the term ‘Islamic fundamentalist’ readily conjures images of misogynistic, sword-wielding maniacs with a bloodlust for violence (Said 1997). Indeed, Talal Asad observed in his widely-cited book *Formations of the Secular: Christianity, Islam, Modernity* that experts on ‘Islam’ and ‘the modern world’ have argued that the September 11 tragedy indicates yet another failure by the Muslim world to embrace secularism and enter modernity by severing its violent roots (2003:10). This stereotype, though reeking of Orientalist typecasting, is not entirely unfounded: some Muslim groups that self-identify as Islamic fundamentalists have and do use acts of violence to further their agendas. The killers of Anwar Sadat, for instance, were members

of the fundamentalist group Jihad and sought to initiate a militant Muslim revolution to Islamicize Egypt (Voll 1991:345). At the same time, however, other Egyptian fundamentalists were busy running rural medical clinics, schools and other social welfare programs. Indeed, the organizations and ideologies that identify as fundamentalist are as diverse as Islam itself. Wahhabism in Saudi Arabia and Egypt's Gama'at al-Islamiyya, for instance, both tout themselves as fundamentalist, but in reality their greatest similarity is simply in their broad goal for an Islamized society.

Fundamentalism in any religion denotes a strict adherence to the scriptural tenants of that religion, and in Islam it is no different. John Voll, author of *Fundamentalism in the Sunni Arab world* used the term 'Islamic fundamentalism' to denote "the reaffirmation of foundational principles and the effort to reshape society in terms of those reaffirmed fundamentals" (1991:347). Voll wrote:

Islamic fundamentalism... is a distinctive mode of response to major social and cultural change introduced either by exogenous or indigenous forces and perceived as threatening to dilute or dissolve the clear lines of Islamic identity, or to overwhelm that identity in a synthesis of many different elements (1991:347).

Although Islamic fundamentalism is manifested differently in national and local contexts, it generally advocates for the reconstruction of society based on Islamic sociomoral lines, often as a response to foreign intrusion. Fundamentalist Islamization campaigns involve the "redefinition and re-allocation of institutions and values within an Islamic state" (Turner 1991:88), including the equal redistribution of income, the creation of welfare institutions for the needy, and the reinstatement of the *shari'a* as the only source of legal thinking (Turner 1991:88). As such, most fundamentalist campaigns reject notions of secularism as remnants of Western colonialism.

Islam came to play a crucial role in the development of anti-colonial nationalist movements in the Arab world and throughout South and South East Asia (Turner 1991:87). Indeed, fundamentalism was inarguable impacted by Arab encounters with Western colonialism. In the late nineteenth-century, the might of Islamic political energy was focused on utilizing new European technologies and implementing European political and legal systems, but fundamentalist movements remained solidly opposed to these foreign intrusions.⁴ Indeed, Voll noted that the major and most visible efforts of nineteenth-century Arab Muslim fundamentalist movements were to resist European expansion, not to restore Islamic fundamentals (1991:352-3). By the twentieth century, fundamentalist organizations were rooted in peripheral and rural regions where European modernization had not yet reached. As the Arab territories began to gain independence beginning with Tunisia in 1956, fundamentalist movements stepped out of the woodwork to reassert the need for a modern, Islamized society.

Islamic modernism became the Muslim response to Western secularism; it was “a movement that combined a modern, Western-style scientific rationalism with an Islamic faith” (Voll 1991:355). The theory, developed by Jamal al-Din al-Afghani (d. 1897) and Muhammad ‘Abduh (d. 1905), emphasized the need for science and knowledge to help inform Islamic thought. Like fundamentalism, Islamic modernism advocated a need for independence from foreign control. Unlike fundamentalists, however, modernists did not repudiate Western ways, seeking a synthesis of Islam and the modern West rather than a purified society constructed along solely Islamic lines (Voll 1991:356).

⁴ For a discussion of the introduction of European legal mechanisms in the nineteenth century, see Chapter 2, page 27

Contrary to widely-held beliefs, many Islamist movements today advocate not a return to traditional fundamentalism, but rather a re-appropriation of society and modern technology based on politics (Roy 1994:3). Fuller (2003:24) similarly argued that through advocating progressive political and social change, Islamist movements challenge the moral impoverishment and corrupt governance of most current Muslim states. In this sense, political Islam remains the only realistic major alternative to most of today's authoritarian regimes (Fuller 2003:24).

Indeed, political Islamic fundamentalism is a *modern* response to Western occupation. Voll (1991:352) argued that present-day political Islam stems from 19th century colonialism, when Muslim fundamentalists in regions including Algeria, Tunisia, and Morocco advocated a stricter adherence to the scriptures, but also struggled against the imposition of foreign occupation. Arjomand (1991:189), Sachedina (1991:408), Fuller (2003:29), and Ahmed (1991:460) similarly argued that fundamentalist revolutionary sectarianism was born out of total exclusion from existing political society, either self-imposed or enforced by the entrenched political regime. For example, the Muslim Brotherhood in Egypt was completely excluded from the political realm after 1954, with the incarceration of its leader, Sayyid Qutb (Arjomand 1991:189)⁵. Some groups, like the Deoband, purposefully retreated from the mainstream as a challenge to the West (Sachedina 1991; Ahmed 1991). Orientalists often dismiss this history of oppression and exclusion, claiming that Muslim societies are “backwards” today due to an Islamic aversion to modernization. However, Asad (2003:206) argued that Islamic

⁵ For a discussion of the Muslim Brotherhood, see Chapter 2, page 32.

politics are neither static nor entrenched in traditional systems: Egypt, for instance, began codification of secular law in the 19th century.⁶

Both Islamism and fundamentalism call for the resurrection of traditional Islamic values and the use of *ijtihad*, or personal reasoning, to interpret the source texts of Islam, but most Muslim organizations today identify more readily with Islamism. Islamism, I contend, is a more mainstream movement that combines theories of Islamic modernism with goals of Islamization, operating visibly in the political arena and appealing to young urban dwellers. As Chapter 3 will explain, the values of Islamic modernism played an important role in the public apostasy debate, whereby young lay Muslims upheld Islamism while simultaneously deploring the violent tactics of some Islamist groups.

Deconstructing the secular myth: an Islamic civil society

The existence of community fundamentalist and Islamist organizations deconstructs the Orientalist myth that Muslim societies lack a public sphere and civil society. Much Orientalist literature further posits that secularism is the necessary bedrock for a public sphere to even develop. Yet this postulate falls flat: albeit with different methodologies and support demographics, Islamists and fundamentalists alike serve as buffers between citizens and the government, an important characteristic of civil society organizations.

The public sphere facilitates the growth of civil society, which then serves as a buffer between the individual and the government. Turner observed that political scientists commonly contended that “there is no established tradition of legitimate

⁶ For a discussion of the nineteenth century legal codification debates, see Chapter 2, page 27

opposition to arbitrary governments in Islam because the notion of political rights and social contract had no institutional support in an independent middle class” (1994:30). Roy (1994) and Kelsay (2002) similarly contended that because the *shari'a* is a divinely-revealed code for both individual behavior and political policy, autonomous political space with separate rules, laws, and values is prohibited in Islam. While Kelsay (2002:4) argued that civil society organizations help prevent government authoritarianism as well as citizen sectarian strife by creating a forum and outlet for action, Walzer (1995) noted that the biggest threat to civil society is the government monopoly on legitimacy, as the government has the means to regulate and eliminate associations it deems threatening.⁷

Civil society organizations preserve the balance of power between the state and ordinary citizens. Turner (1994:23) and Kelsay (2002:3) defined civil society as a network of voluntary, non-state organizations that mediate between private and public life, such as the ACLU, Rotary Clubs, mosques, churches, synagogues, and community sports teams. Although these organizations operate autonomously of the state, they work within the state’s framework of laws to encourage participatory citizenship and develop loyalties outside of kinship (Kelsay 2002:3). Hegel saw civil society organizations are critical for the development of participatory citizenship in a modern state (Avineri 1972). Mosques, for instance, often organize community development activism, grassroots political mobilization and voter registration. Civil society organizations in Egypt, ranging from neighborhood mosques to journalist guilds and the Muslim Brotherhood, allow citizens to participate in discussions that were previously reserved for government officials only.

⁷ For instance, the Egyptian government has long banned the Muslim Brotherhood from forming a political party, so Brotherhood candidates often run for Parliamentary as independents. See Chapter 2, page 32 for a discussion of the Muslim Brotherhood.

Talal Asad's *Formations of the Secular: Christianity, Islam, Modernity* (2003) constitutes an important intervention in the discourse of the public sphere and Islam. Secularism, Asad contended, is not simply the separation of religious from secular institutions in the government (2003:1), and a modern nation-state is not simply defined by the absence of "religion" in public life (2003:5). Asad defined the 'public sphere' as "the equal right of all to participate in nationwide discussions" (2003:2), but added that the influence of pressure groups, opinion polls and the mass media mediate political reactions of the public and indeed create the antithesis of a direct-access society (2003:4).

He wrote that

There is no space in which all citizens can negotiate freely and equally with one another. The existence of negotiation in public life is confined to such elites as party bosses, bureaucratic administrators, parliamentary legislators, and business leaders. The ordinary citizen does not participate in the process of formulating policy options as these elites do – his or her participation in periodic elections does not even guarantee that the policies voted for will be adhered to (Asad 2003:4).

Asad countered philosopher Charles Taylor's (1998) argument a modern nation is characterized by the horizontal, direct-access of the people to the government, as reflected by the rise of the public sphere, the extension of the market principle, and the emergence of citizenship. While Taylor contended that liberal democracy ushers in a direct-access society, Asad maintained that modern society is "not a simple matter of the absence of 'religion' in the public life of the modern nation-state" because religion is present even in modern secular countries like Britain, where the state is linked to the established church (2003:5).

Because a secular state is largely characterized by notions of religious toleration, religion should be regarded by the political authorities with indifference as long as it remains within the private domain (Asad 2003:206). If secularism requires the distinction between private reason and public principle, then the 'religious' must be characterized

with the former because, as Asad argued, “private reason is not the same as private space” (2003:8). Private reason is immune from public reason, yet freedom of belief also entails the legal right to exercise one’s religion and express one’s beliefs freely. Where it interacts with legality, religion is brought back into the public domain (Asad 2003:206). We now turn to the relationship between religion and legality in Sunni Islamic legal thinking.

Sunni Islamic concepts of law

In Islamic legal thinking, the sacred correlation between the spiritual and the temporal grants legitimacy to legal constructions associated with the *shari’a*. Unlike in the West after Enlightenment, Muslim legal scholars never separated knowledge from the sacred, but rather maintained that “knowledge possessed a profoundly religious character, not only because the object of every type of knowledge is created by God, but...because the intelligence by which man knows is itself a divine gift” (Nasr 1990:123). Tibi (2001:63) argued that this divinity of knowledge formation is evident in Islamic law, which was constructed post-Qur’an but is still perceived as *lex divina*.

Despite the sizable amount of literature on Islamic epistemology and law, medieval Sunni scholar Abu Hamid al-Ghazali (d. 505/1111) is often cited in discussions of Islamic legal theory. While Islamic legal practices have certainly changed since Ghazali’s time, his works are still seminal in modern-day debates about legal epistemology. In his 12th century volume *Faysal al-tafriqa*, al-Ghazali argued that deviation from any faith based on divine revelation is only permissible if the revelation can be proven untrue in its wording. Al-Ghazali wrote that there is no convincing argument to contradict the Qur’anic wording of the three fundamental articles of faith:

belief in eschatology as laid out in the Quran, belief in God's creation of the world in time, and belief in God's omniscience (in Griffel 2001:354). Because there is no logical argument otherwise, there is no other source than revelation behind the knowledge of these three articles. Therefore, the precise wording of the three tenets must be followed, and anyone who deviates "is considered an unbeliever and subsequently an apostate, and may be put to death" (in Griffel 2001:355).

Many contemporary Islamic scholars argue that this notion of divine knowledge creates distinct challenges for free speech issues in modern societies. Roy (1994) and Kelsay (2003) contended that because the *shari'a* is a divinely-revealed code for both individual behavior and political policy, an autonomous political space with separate rules, laws, and values is prohibited in Islam. In a more acerbic tone, Kramer wrote that if there is one truth in Islam, it is that "there is no room for one crucial element of political and intellectual liberalism: free speech" (1995:114).

For Tibi, the claim that all knowledge can be found in the Qur'an is dangerous because "scholarly knowledge is universal and human" (2001:107). He contended that the divinity of Qur'anic knowledge belongs in the realm of personal faith, not law, and disavowing the Qur'an as the inexhaustible source of all knowledge invites accusations of heresy and unbelief (2001:62, 184). In fact, Tibi, who identified himself as a Muslim rationalist, wrote that he and Western scholars were charged with *takfir*, or an accusation of unbelief, and are condemned by Muslim orthodoxy even today for rejecting the claim that all knowledge is particular to Islam (2001:160).⁸ He wrote: "Orthodox Muslim *fiqh* [jurisprudence] scholars respond in an intolerant manner against all reformers, not

⁸ For an in-depth discussion of *takfir* and legality, see Chapter 4, page 77

hesitating to invoke the weapons of *takfir* against culturally innovative Muslims” (2001:164).

Takfir is indeed a powerful tool used to regulate the status quo. Charges of unbelief are used to de-legitimize Muslim intellectuals who question official versions of history or criticize the political or religious regimes. Farag Fouda’s assassination began when an Azhar Sheikh used *takfir* to first label Fouda an apostate, and then have him murdered.

“Real dialogue, not a monologue”: Fouda and Gazelli share the pulpit

When Sheikh Mohammad Gazelli⁹ led public prayers, tens of thousands of ordinary Egyptians would gather in Cairo’s public squares to listen to the didactic and renowned religious leader. A centrist Islamist, Gazelli was a weekly contributor to Muslim Brotherhood publication *al-Sha’b* and a member of al-Azhar. Baker wrote that Gazelli “embodies the belief of Egypt’s Islamist centrists that only a state reformed on the foundations of Islam can provide Egyptians with an authentic yet modern and democratic political community” (2003:6).

In 1992, Gazelli’s fame brought him to the grand stage of the 24th annual Cairo Book Fair, but not to give a sermon. Rather, on this particular sunny day, Gazelli was to square off with one of Egypt’s most prominent secularists, Dr. Farag Fouda. The topic: an Islamic state versus a secular state. The ensuing dialogue launched a national debate over political Islam and the future of Egyptian politics. The debate also marked the

⁹ (d. 1996), Not to be confused with medieval Islamic jurist and scholar al Ghazali

beginning of the end for Dr. Fouda, who would be assassinated in 1993, allegedly on Gazelli's command.

The verbal sparring between Sheikh Gazelli and Dr. Fouda at the 1992 Cairo Book Fair began as an innocent discussion of politics, but less than a year later Fouda was dead at the hands of young Islamists acting on the orders of the Sheikh. Piecing together newspaper articles from *al Ahram* and *Rose al Yusef*, Raymond Baker (2003:7) described the scene as "ominous," with the crowd of bearded young men mingling unknowingly with secret police concealing billy clubs under their jackets. The three-hour debate began with Gazelli reminding his audience the suffering that Egypt endured at the hands of colonizers and the Western incursions that threaten Islamic heritage. According to an account published in *Al Musawwar* newspaper on January 17, 1992, Gazelli said that Egyptians will find success in the modern world "only by renewing our connection to Islam and by ridding ourselves of educational, legislative, and intellectual colonialism...Islamic government is not against reason because such government will perform its duties according to the Holy Qur'an and to reason" (Baker 2003:8).

When Fouda took the podium, he advised that his remarks should not be taken as insult to the religious commitment of Muslims, but that Gazeli's argument for government under the name of Islam is a claim of "competing visions, disparate judgments, and disagreement" (*Al Musawwar*, January 17, 1992 in Baker 2003:8). Fouda argued that religious states like Iran and Saudi Arabia have degenerated into massive repression and bloodshed, and that national cohesion can only be achieved through a non-religious principle of citizenship. Religious faith, he continued, should be preserved from the corruption of the political realm (*Al Musawwar*, January 17, 1992 in Baker 2003:9).

Indicative in itself of a highly regulated but existent public sphere, the Book Fair debate ignited a national discussion over the role of Islam in Egypt's public and government spheres. One reporter covering the Fair wrote that the debate was important because "an audience used to hearing only one point of view, today was able to hear two opinions...by the end of the debate the tension and the inclination toward violence had disappeared, showing that the present generation sorely needs real dialogue and not the monologue that has prevailed for more than ten years" (*Al Musawwar*, January 17, 1992 in Baker 2003:9). "Real dialogue" or not, the Book Fair debate infuriated Sheikh Gazelli and prompted him to issue a decree condemning Fouda as an apostate.¹⁰ Four months later, Fouda was dead.

Methods

I focus on the Egyptian public sphere and judiciary for two reasons. First, as home to both the Muslim Brotherhood and al-Azhar Mosque, Egypt is a bastion of Sunni Islamic theology as well as political Islamist movements. The power dynamic between al-Azhar, Islamist organizations, the government, and secularists is unique to Egypt and creates interesting implications for internationally-upheld individual freedoms. Further, while many states have colonial histories, Egypt's experience with the West has created mottled norms of legality that mix the religious with the secular, as exemplified by apostasy criminalization there. Second, Egypt is recognized by the international community as an ally to the West and an increasingly influential state in global affairs.

¹⁰ There is a discrepancy among the very few sources that detail the Fouda case regarding whether Gazelli issued a compulsory religious decree called a *fatwa* or simply just a decree accusing Fouda of apostasy. Without citing his source, Viorst (1998:32) argues that it was expressly *not* a *fatwa*, but the Gama'at Islamiyya claimed its actions were the result of an Azhar *fatwa*. Baker (2003), an obvious supporter of Gazali, never addresses the issue.

While certainly not representative of the entire Islamic world, Egyptian politics do influence and inform other nations. The state's treatment of apostasy and blasphemy is indicative of Egypt's precarious position as an increasingly influential global player with a well-established and increasingly vocal Islamist base.

I spent the summer of 2006 in Cairo, studying intensive Arabic and becoming acquainted with the reality of apostasy criminalization and free speech in Egypt. During this time I attempted to assimilate into Cairo society as a participant observer, asking questions but also listening to conversations and observing how individuals interact with the law. I conducted Arabic- and English-language interviews, participated in public conversations, and read the Arabic newspapers daily.

Egypt's thriving public sphere is evidenced by the myriad public journals and newspapers available to all literate Egyptians. After Fouada's assassination, newspaper articles and editorial exchanges became an active forum whereby lay persons debated apostasy criminalization in particular and Islamization in general. Any Egyptian with access to a newsstand could enter this debate, which was propagated not by trained legal scholars, but rather by laity.

At a 1979 conference, American social scientist Burns W. Roper criticized journalists for "changing their function," for no longer being concerned simply with "what others said or did... They [journalists] are now in a position of making news, not merely reporting it" (in Weaver and McCombs 1980:490). Indeed, the Egyptian apostasy debates were perpetuated in a range of print newspapers, which editorialized about free speech, public welfare, and religious politics. The debates were carried by party newspapers including *al-Hala* of the Tagammu party and *al-Shaab* of the al-Shaab

opposition party, semi-official papers including *al-Ahram*, state-owned dailies like *al-Gomhurriya*, pro-government weeklies such as *Rooz al-Yosef*, and independent newsweeklies like *al-Fiqr*. Through editorials, point-counterpoint debates, and news coverage of the testimony of Sheikh Gazelli, these newspapers provide a critical look at how the public responded to apostasy criminalization. I chose these particular newspapers for both their diversity in demographics and purpose, as well as for the substance of what they added to the discussion. After translating dozens of Arabic-language articles, I have included in Chapter 3 those that lend most to the apostasy debate.

A public debate recorded on paper is an important historical relic, but a modern-day debate unfolding, on the street, is important too. To understand how apostasy was discussed and framed among the public, I spoke with religious scholars, journalists, artists, political dissidents, and lay Egyptians. I met with these Egyptians over a cup of tea, in a newsroom, or at a religious learning center to discuss, in candid terms, the highly sensitive issue of apostasy. Often, my questions about free speech were met with laughs, but more than once I was told that the government had eyes everywhere. Once, I was pulled into the corner of a café and told to be careful of my surroundings when speaking about *ridda* (apostasy).

Many of my interlocutors were politically-active and seemed to be confident that speech in Egypt was not, indeed, free. For instance, a journalist who was also a prominent member of a political opposition party told me over coffee that he was convinced that the government had put a flag on his passport to bar him from leaving the country. Another interlocutor, a well-known Arab independent filmmaker who was seeking refuge in Egypt after expulsion as a political dissident from his home country,

told me that he was just waiting until the Egyptian government kicks him out, too. Although my original research plan was to focus specifically on apostasy, I quickly realized that apostasy and blasphemy are often packaged together to suppress political opposition. Because of the highly-sensitive nature of free speech issues in Egypt, I have changed the names of my interlocutors and avoided revealing any distinguishing characteristics about them.

After listening to personal accounts of apostasy and blasphemy accusation and collecting published articles that helped form the debate, I realized that the criminalization of apostasy cannot be explained by an analysis of the public sphere alone. There is a dichotomy between legality and the actual social climate: laws must respond to society, but in Egypt the public space is not governed by only secular or only Islamic law. I do not claim to be a lawyer or an Islamic scholar. Rather, this thesis is an investigation of how law is experienced and shaped by lay persons. I therefore include, in Chapter 4, details of the Nasr Abu Zayd case, in which a prominent Cairo University professor was convicted of apostasy in an Egyptian court and fled the country to avoid the sentence.¹¹ I chose to focus on the Fouada case for the public debate it sparked, but I discuss the Zayd case for the legal precedent it set. For the first time, the Egyptian judiciary not only sentenced an apostate, but first defined what an apostate was: the court decided ultimately that an apostate, and therefore Nasr Abu Zayd, is a threat to public welfare.

Reflections

One year ago, when this thesis was in its nebulous stages, I hypothesized that there is a lack of debate on the criminalization of apostasy in Egypt. I was reading many

¹¹ An apostasy conviction is akin to a civil death: the apostate loses all rights to inherit and bequeath, and cannot be legally married to anyone from any religion. For a detailed explanation of apostasy, see Chapter 3, page 54.

human rights scholars who argued that few Egyptian laypersons actually question the state's contradictory application of religious protections. During the course of my field research, I realized that this could not be farther from reality. Various manifestations of apostasy, including blasphemy and accusations of slander, actually form the cornerstone of many public debates in the realms of politics, human rights, academic freedom, and modernity. Indeed, the apostasy debate was not simply existent in Egypt; it was also vociferous, passionate, and ubiquitous. This thesis thus became an exploration of how to understand the relationship between Egypt's public sphere and notions of legality.

My original suppositions, however, were not entirely off-mark. There is indeed a large gap in the literature regarding the modern-day use of *hisbah* and *takfir* to charge intellectuals and dissidents with the severe crime of apostasy. Scholars of all religious backgrounds largely overlook the consequence of apostasy criminalization for individual freedoms on the micro-level and nation-building on the macro-level. By upholding the legality of *takfir* and *hisbah*, the Egyptian courts rationalized the use of apostasy accusation as a legitimate means to protect the ambiguous public welfare. In reality, however, these accusations are used to further specific political or personal agendas, as was Sheikh Gazelli's accusation against Farag Fouda.

Conclusion

Hamid Ali, the publisher of the Algerian daily, was certainly not unjustified in cautioning me against reading only Western views on Islamic societies. In such a polarized world where news reports are often filled with misused buzzwords like *jihad* and 'fundamentalism', there are as many different viewpoints within Muslim literature as

from the West. Hamid's gaze softened when I explained, in a mix of Arabic, French, and charades, that for every Western writer, I read twice as many works from Muslim authors. Still, as a man dealing every day with issues of government censorship and blackmail (the Algerian government owns the printing press and buys all the classified ads, so an unflattering article could result in the paper going bankrupt), Hamid surely understood why issues of individual freedoms and the public sphere in the Middle East are important to study.

Chapter Two, "Suppression and appeasement: Egyptian political Islam" explores the complex and turbulent relationships between al-Azhar, Islamist organizations, the government, the judiciary, secularists and the lay public since Egypt's nineteenth century codification of European positive law. Over the past two centuries, alliances have been formed, severed and re-connected, largely in association with the constitutional Islamization projects advocated for by the Islamist groups and al-Azhar. This chapter begins with the story of Amina, an apostate from Christianity to Islam. It next elucidates the tumultuous nineteenth and twentieth century legal codification debates, including the role of the judiciary in applying *shari'a* law and judicial responses to Islamization. The chapter concludes with a discussion of how entrenched Egyptian government regimes form a symbiotic relationship with religious officials and even Islamist groups through measures of suppression and appeasement.

The title of Chapter Three, "'I was busy killing nine apostates in the back room': The public apostasy debate" is a reference to a comment made to me in jest by a Sunni *imam*, or highly trained legal and political community leader. The first quarter of this chapter is comprised of his opinions and experiences with apostasy and blasphemy, two

terms which he often used synonymously. After an in-depth discussion of how Muslim scholars discuss apostasy, I analyze the newspaper articles and editorials that created and sustained the apostasy criminalization debate following the Fouada assassination. Using my own translations and analyses of Arabic-language newspaper articles, I first describe the expert testimony of Sheikh Gazelli, who defended the assassination as a religiously-mandated protection of the public good, before discussing how the lay public debated the case.

The final chapter, entitled “Perceptions of the public: Islamic and secular legality at a crossroads” explores apostasy criminalization from the legal perspective, both in Egypt and international human rights law. This chapter first discusses how the Islamic legal mechanisms *hisbah*, which mandates Muslims to speak out against injustice, and *takfir*, or the act of accusing another Muslim of unbelief, propel apostasy criminalization. These mechanisms were evoked in the case of Nasr Abu Zayd, a Cairo University professor convicted of apostasy in 1995. Significantly, the court ruled for the first time on what an apostate is, not on how to punish a confessed apostate. Indeed, the court ruled that because the *shari'a* is the primary source of legislation, and because apostasy is a violation of the *shari'a*, then apostasy is therefore a violation of public policy that does not need codification to be illegal. While this chapter begins with the specific use of *hisbah* and *takfir* against Zayd, it concludes with a broader exploration of the compatibility of Islam and human rights, focusing specifically on how Egypt, as a signatory to various international human rights doctrines, rationalizes apostasy criminalization.

Chapter 2: Suppression and appeasement: Egyptian political Islam

Amina nodded hello in my direction but declined to make eye contact. Her husband, Mohammad, pretended not to notice my outstretched hand. We took seats around the large conference room table as Amina's three young children were ushered out of the room on the promise of candy next door. Resting her black gloved hands on the table, she looked directly into my eyes with a hint of a smile. Could she speak freely in the presence of an American? she asked Laila, my friend and translator, in Arabic. After receiving assurances in both English and Arabic, Amina cautiously began her story.

Amina is an apostate, but not an apostate from Islam. In fact, she was born and raised as a Coptic Christian, a community that represents about two percent of Cairo's population. As a young adult, Amina grew skeptical of certain Christian beliefs. If Jesus was the son of God, she wondered, would he do human things like actually use the bathroom? Amina found answers at the mosque and converted to Islam despite the protests of her Christian family. "Muslims are usually very happy to receive converts," she said in Arabic. Although her coworkers were surprised at her conversion and her extended family disowned her, Amina said she never felt threatened because of her choice. She now wears a headscarf, robe and gloves in public, and has married a Muslim man. Between joking about Amina's new low-sugar diet and talking about the World Cup soccer games, Mohammad said his wife's past as a Coptic Christian had no bearing on his respect for her now.

What opinion, then, does a Christian apostate have of her Muslim counterparts? Referencing the well-known Qur'anic verse that "there is no compulsion in religion," Amina said that a Muslim apostate should not be killed, but rather just ignored. While both Amina and Mohammad know other converts to Islam, including Amina's brother and mother, neither knew a single Muslim apostate. This, they said, was because nobody in their right mind would forsake the true religion of Islam. Before departing, Amina and Mohammad exchanged a quick conversation in Arabic about whether to use the meeting as an opportunity for *dawa*, or to counsel me about converting to Islam. Deciding against it, Amina gave me a hug and a kiss on the cheek – a markedly warm measure considering her aloofness at the beginning of the meeting. Egypt's Coptic Christian minority has faced its share of government oppression, but Amina's story shows that the Egyptian government does allow freedom of religion: Egyptians can convert between religions, as long as they are not converting away from Islam.

Since the nineteenth century, Egypt's political sphere has wavered between Islamization and secularization projects, peppered with assassinations, suppression of Islamist groups, and widespread protest. As the first country in the Arab world to undertake major Westernizing legal and administrative reforms, Egypt represents a historically influential case of Sunni Arab engagement with twentieth-century modernization (Voll 191:354). The assertion of Islamic principles in Egyptian politics has challenged notions that modernization must require a progressive secularization and westernization of society (Esposito 2003:3). This chapter explores the development of political Islamization through the legal codification debates between the *ulama*, or religious scholars and leaders, the government, and Egyptian civil society organizations. I

argue that al-Azhar *ulama* and Islamist groups like the Muslim Brotherhood have highly influenced the development of Egypt's public sphere in the nineteenth century and twentieth centuries. Indeed, Egyptian politics have long been characterized by vociferous and occasionally violent Islamization debates between these camps, and there remains today deep disagreement over the interpretation and application of Islamic legal theory to modern Egypt.

The nineteenth century, in which the Islamic turns secular

Egypt's nineteenth century experiences with foreign occupation and legal reform laid the foundation for the twentieth century legal codification debates. Although formally a part of the Ottoman Empire, by 1874 Egypt enjoyed relative autonomy of legal and judicial administrative matters. Still, by 1875 it had adopted Ottoman legal practices, including *shari'a* courts with primary jurisdiction over urban Muslims, and *milliya* courts to preside over Christians and Jews (Asad 2003:210). Less than a decade later, in 1882, Egypt became a British protectorate, and by 1883 the Egyptian government, led by Muhammad Ali, had abandoned Islamic legal codes in favor of modified French positive, or statutory, laws. As Egypt increasingly came under foreign influence, its legal system became increasingly molded after European systems.

According to Lombardi, "the decision to adopt European codes of law was a watershed event. It represented an official endorsement of the secularist position that governments in modern states did not need to (and often should not) use laws that were checked against classical Islamic norms" (2006:72). Indeed, secularists applauded the codification of positive, or statutory, law, and maintained that government legislation

need not conform to Islamic principles.¹² The leading *ulama* were not opposed to codifying Egyptian law, but rather were wary of a code drafted without reference to Islamic legal norms (Ziadeh 1968:35 n. 29). Interestingly, Brown noted that the general Egyptian public, excluding the *ulama*, were comfortable with the new secular legal system (1997:33). There was neither a great protest against the 1882 civil code nor the establishment of political opposition organizations to advocate for a return to classical Islamic legal norms. Brown posited that popular discontent was soothed because civil cases could still be heard in *shari'a* courts, rather than in the new national courts (1997:33).

The lack of public outrage over the new codes does not necessarily indicate a popular preference of European secularism over traditional Islamic law. Perhaps it instead reflects widespread doubt over the ability of classical Islamic jurists and legal norms to govern a rapidly modernizing state. In fact, as new theories of Islamic law emerged, Islamic opposition parties gained increasing momentum and popularity. By the early twentieth century, Egyptian Islamists were calling for the adoption of legal codes in accordance with new, distinctly un-classical theories of Islamic law.

To resolve the dispute, the government ensured that the new European-based statutory law could feasibly be described as Islamic legislation (Baer 1969:111-30). Peters argued that these adopted codes were indeed consistent with Islamic jurisprudence, or *fiqh*:

In spite of the increasing modernization of the country [in the early nineteenth century], one does not observe a tendency to abandon the Shari'a. To the contrary, with the better organization of the

¹² According to Asad, secularism “is an enactment by which a political medium (representation of citizenship) redefines and transcends particular and differentiating practices of the self that are articulated through class, gender and religion” (2003:5).

Egyptian state apparatus, Shari'a justice during the second half of the nineteenth century became better organized too by means of clearer legislation, the regulation of the function of the mufti, and the creation of procedures to watch over the qadis' [judges'] decisions (Peters 1995:153)

However, Lombardi noted that beginning in the 1870s, the government decided not only to codify the law, but to codify law that was not easily reconcilable with classical Sunni Islamic norms (2006:67).

The rise of secularism coincided with the rise of Islamic modernism, whereby Islamists called for new methods of interpreting and drafting Islamic law.¹³ Muhammad Abduh (d. 1905), a founding father of Islamic modernism, asserted that jurists should depart from following procedures issued by their legal guilds and rely instead on *ijtihad* – a process of using reason to directly interpret the scriptures (Kerr 1966: 117). Modernists held that legal rulings should be established based on a rational determination of whether or not the act in question would benefit society (ibid). In the coming years, political movements founded this form of Islamic modernism would prove highly effective in appealing to the public and rallying popular support (See below).

As Islamic modernism and legal secularization found a niche in Egyptian politics, the power balance in legal matters shifted significantly. Before secularization, classical Sunni legal guilds from al-Azhar long controlled most of the courts and important educational institutions of Egypt, providing advisors to the government and serving as mediators between the government and the masses (Lombardi 2006:67). Muhammad Ali attempted to include these jurists as leaders in his modernizing state, but succeeded instead in causing a rift in the guilds between government allies and more traditional thinkers. As their relationship with the government began to deteriorate, the guilds' power and popularity began to diminish as well. Ultimately, the guilds became so

¹³ For a discussion of Islamic modernism, see Chapter 1, page 9

marginalized that the government was able to gain control of al-Azhar, controlling appointments and discipline and imposing curriculum reforms (Lombardi 2006:69). As the guilds became obsolete, the new secular courts embraced the European positive law, “applying rules of decision that had been written down in clear language in the official law codes” (Lombardi 2006:67).

As the power of traditional legal guilds diminished, Islamic scholars from the *ulama* moved into the mainstream as mediators between the government and the people. The *ulama* constituted the educated elite in Egyptian society and held enormous sway as preachers, judges and lecturers. The most prominent of the Egyptian *ulama* held the post of Sheikh of al-Azhar. During Ottoman rule, Azhar *ulama* had become spokesmen of urban protests against economic grievances and gained social power in times of political instability, but remained largely deprived of real political or economic power (Hatina 2003:51). Hatina wrote that “the *ulama* were able to preserve their function as mediators between the regime and the population because of their linkage to the ruling elite, their hold over Islamic knowledge, and their commitment to the religious principle of social justice embodied in the *shari’a*” (2003:51). Indeed, the *ulama* advocated against the secularization of positive law and pushed for a neo-traditional code to be applied to the *shari’a* courts (Lombardi 2006:103). This view departed significantly from the Sunni legal guilds, which considered revealed text superior to knowledge derived from reason and interpretation.

As the nineteenth century drew to a close, Egypt’s legal reforms were only beginning. Physically and politically, the state was still occupied by Britain. Legally,

European positive law was gaining hold and even the popular *ulama* were becoming marginalized. It seemed that Islamization was a lost cause.

The twentieth century: in which Islam turns political

By the early twentieth century, social and political power had largely shifted away from the *ulama* and into the hands of Western-based legal reforms. For instance, the *ulama* were unrepresented in political leadership of the 1919 independence movement. Further, the nucleus of early twentieth century protest movements shifted from mosques to factories, secondary schools and colleges (Hatina 2003:55). Still, after Egypt was prohibited from participating independently in the 1919 Paris Peace Conference, a series of nationalist demonstrations escalated into a revolution with distinctly neo-traditional Islamist undertones.

As Egypt gained independence in 1922, al-Azhar found itself waging an intensive battle on two fronts: against the government's increasingly secular agenda, and simultaneously against newly emerging populist Islamist movements (Hatina 2003:56). Directly after independence, most Egyptians agreed that the new autonomous state needed institutional structure and a legal system that was both progressive and distinctly Egyptian (Voll 1991:357). There was little agreement, however, on whether the new state should conform to Western principles of liberal nationalism, or to a version of Islamic nationalism, or even whether it should embody the re-establishment of the Islamic caliphate. Although burgeoning political and class-based Islamist organizations advocated for some form of public Islamization, they threatened al-Azhar's monopoly on religious authority (Lombardi 2006:102-3, Hatima 2003:56). By the 1930s, however, al-

Azhar realized the importance of collaborating with the highly politicized youth, which could rally immense support for Azhar causes. For instance, some *ulama* collaborated with a neo-traditionalist political group called Young Egypt, which called for a monarchy to purge Egypt of all foreign influence and establish legislation based strictly on the interpretations of al-Azhar *ulama* (Vatikiotis 1991:330-34). Indeed, most movements of the 1930s advocated not a return to classical Islamic legal theory, but rather sought to combine positive law with Islamic values (Lombardi 2006:103).

One of the major socio-political developments of the early twentieth century was the birth of the highly influential Muslim Brotherhood, an urban-based Islamist group that eventually became a powerful government opposition group. The Brotherhood, created in 1928 by Hasan al-Banna,¹⁴ sought to stymie the Western-style modernization programs advocated by the government and military. Both a social and religious group, it advocated “the transformation of Egyptian society based on a return to Islam – a message of increasing political significance as Egyptians became discouraged with...representatives of the political elite” (Voll 1991:363). Indeed, the Brotherhood quickly grew into a leading political institution with mass support from disgruntled Egyptians of all classes.

The Brotherhood had a distinctive character: although it sought to Islamize Egyptian society, it was not directly associated with older Islamic institutions (Voll 1991:361). Indeed, the organization transcended older fundamentalist structures by advocating for a modern Islamized society based *ijtihad*, or reasoning, while additionally providing social welfare services and participating in political activism. Further, while the Brotherhood occasionally worked through mosques and later established its own

¹⁴ Banna was assassinated by the Egyptian government in 1949.

mosques, it was not simply a mosque organization (Voll 1991:361-362). Finally, unlike traditional Islamist organizations, the Brotherhood's rosters included far more devout non-*ulama* than learned traditionalist scholars (ibid). Unlike the antiquated Sunni legal guilds or the elitist *ulama*, the Brotherhood was hugely successful in rallying support from the lower middle classes, including students and civil servants, who viewed the *ulama* as "obscurantists" (Lombardi 2006:106). The Brotherhood was thus an Islamic organization organized around and accessible to common Egyptians.

Inspired by the teachings of Rashid Rida, a leading proponent of Islamic modernism,¹⁵ the early Brotherhood believed that the state should identify general principles of conduct written in the Qur'an and then implement them in official codified legislation. According to Lia, Brotherhood founder Hassan al Banna "stressed that interpretations of the meanings of the Glorious Qur'an must be linked 'scientifically, socially and morally' to aspects of modern life, and 'modern theories and ways of thinking' should be employed" (Lia 1998:76). Indeed, the early Brotherhood called for the use of independent reasoning, as opposed to the widespread reliance on interpretations from medieval scholars, to reinstate the essential principles of Islam in Egyptian society.

The Muslim Brotherhood's ideologies greatly influenced Abdel Razzak el-Sanhuri, an Egyptian legal scholar and professor who drafted the first version of the Egyptian civil code in 1948. The only reference to Islam in the existing Constitution, drafted in 1922, was a stipulation in Article 149 that "Islam is the religion of the state." The Constitution further asserted that the king must obey only the Constitution and "the laws of the Egyptian people," but failed elaborate on whether the *shari'a* had any weight

¹⁵ For a discussion of Islamic modernism, see Chapter 1, page 9.

in those laws.¹⁶ For the entire duration of the monarchy, from 1922 until Sanhuri's Civil Code, the government used its old civil code without ensuring a legal consistency with Islamic norms.

Sanhuri did not consider his code fully 'Islamic,' but rather sought to prepare a foundation for a true Islamic code in the future. He hoped that as an independent and competent judiciary would interpret and apply his code, Egypt would become more Islamic (Lombardi 2006:109). Indeed, as Lombardi noted, Sanhuri's code was designed so that "non-Islamic elements would be reduced organically through the process of interpretation" (ibid). For instance, the first article of the 1948 Code stipulated that "in the absence of an applicable legal provision," a competent judge could rule "according to custom and, in its absence, according to the principles of the *shari'a*."¹⁷ The *shari'a* was thus introduced as a secondary source of legislation to custom. Secularists opposed the code as too Islamic, while neo-traditional groups like the Muslim Brotherhood declared the code not Islamic enough (Hill 1987:65-70). The *ulama* were similarly concerned that the draft code would bestow judicial authority to lawyers, rather than to trained Islamic jurists. Nonetheless, Parliament adopted the draft code in 1949.

The divide between secularists and Islamists deepened when Gamal Abdel Nasser assumed the presidency in 1952. An advocate of secularism, nationalism and socialism, Nasser sought to homogenize the Egyptian public sphere by eradicating the roots of division. Specifically, he attempted to subdue or destroy all forms of Islamism that constituted a threat to his apolitical state (Lombardi 2006:111). For instance, he

¹⁶ Egypt had been ruled by the Muhammad Ali dynasty since 1805. After independence in 1922, a parliamentary representative system was erected but the monarchy remained until the 1953 Revolution, led by Gamal Abdel Nasser, established the Republic of Egypt.

¹⁷ 1948 Egyptian Civil Code, Article 1

nationalized al-Azhar to effectively bring the *ulama* “to heel without completely annihilating them” (Zeghal 1999:374).

Asad saw Nasser’s unification and extension of state power, along with his successful preservation of European statutory law, as part of Egypt’s secularization and its progress toward ‘rule of law’ (2003:212). Although he operated under Sanhuri’s 1948 Civil Code, Nasser sought – successfully – to prevent interpretation or amendment to comply with Islamic norms, as Sanhuri had intended. Rather, Nasser ensured that legislation leaned heavily toward the secular, socialist goals of his regime (Shalakany 2001:242). The judiciary, however, quietly aligned with a more Sanhuri interpretation of the Civil Code, gradually introducing Islamic concepts into the public sphere.¹⁸

As Nasser gradually turned Egypt into a dictatorship, the Muslim Brotherhood’s membership divided into moderates and radicals. Both camps called for the establishment of an Islamic state based on universal principles of *shari’a* legislation, but they advocated different methods of achieving this state. While moderates rejected violence and sought to reform existing constitutional structures, radicals rallied behind Sayyid Qutb, a leading Brotherhood intellectual who advocated for the use of violence to build a truly Islamic state (Lombardi 2006:112). The use of violence “was extraordinary because it implied that the leading *ulama*, or even the more moderate Muslim Brothers, might actually be non-Muslim enemies of Islam and thus legitimate targets of violence” (Lombardi 2006:112). Notions of apostasy thus became linked to political, not necessary theological, ideology, as so-called ‘enemies of Islam’ were identified based on their affiliation with rival Islamist organizations.

¹⁸ For a discussion of how the judiciary interacts with notions of the public good, see Chapter 4, page 83.

With Qutb's writings as a guide, the radical wing of the Brotherhood gained a popular following. By the 1960s it had spawned a number of smaller revolutionary cells with a similar mission: to turn Egypt into a true Islamic state, no holds barred. These cohorts were collectively known as *gama'at*¹⁹ and, although diverse in specific ideology, all generally advocated for an Islamic state. The Islamists continued to clash over who should interpret and apply *shari'a* legislation even after Nasser's death in 1970 (Voll 1991:386). Nasser's successor, Anwar Sadat, inherited a fractured, divisive and violently angry state.

Constitutional Islamization

“Do you wish to be ruled by God or man?”
(Ashmawy 1994:120)²⁰

Ashmawy's succinct question encapsulates the essence of Egyptian nation-building: the issue of constitutional Islamization and the official codification of *shari'a*-based law. As Anwar Sadat assumed the presidency in 1970, Egyptian society was still reeling from the oppressive, authoritarian state created by Nasser. But unlike his predecessor, Sadat called for public discussion regarding what Lombardi called ‘constitutional Islamization,’ or the process of drafting a constitution to incorporate *shari'a* laws into state norms (2006:1). In response, the semi-official *al-Ahram* newspaper published a considerable volume of letters and essays from religious figures, laypersons, and government employees that demonstrated a range of viewpoints.

¹⁹ The Arabic word *jama'a* literally means “group”, but it is also closely related to the Arabic words for university (*ja'ama*) and mosque (*jawama*). In Egyptian dialect, the “j” sound is pronounced “g”, so Egyptian *jama'at* groups are known as *gama'at*.

²⁰ Said al-'Ashmawy, a specialist in Islamic law at Cairo University, served as a judge and chief prosecutor, as well as chief justice of the High Criminal Court, the High Court for Security of State, and the High Court of Assizes. A critic of Egyptian Islamist groups, 'Ashmawy has received death threats for apostasy since 1979.

According to J.P. O’Kane, the letters revealed widespread support for an abstract form of Islamization, whereby Egyptian laws would at least be consistent with norms of Islamic law (1979:138). The letters also demonstrated the divisions between different Islamic legal camps: some held that the *shari’a* should be the chief source of Egyptian legislation, while others advocated interpretation through neo-*ijtihad* (Lombardi 2006:119).

Based on this public affirmation of the Islamist goals, Sadat embraced constitutional Islamization and in 1971 amended Article 2 of the Constitution to state that “the principles of the Islamic *shari’a* are a chief source of Egyptian legislation” (emphasis added).²¹ By 1980, Article 2 had been revised again to stipulate that “the principles of the Islamic *shari’a* are the chief source of Egyptian legislation” (emphasis added).²² Article 2 therefore ensures the place of the *shari’a* as Egypt’s primary source of legislation. The Supreme Constitutional Court (SCC)²³ ruled in 1985 that all legislation enacted after the amendment must be consistent with the principles of the Islamic *shari’a*, and has since developed a substantive body of jurisprudence both upholding and striking down laws in accordance with *shari’a* procedures.²⁴ In Lombardi and Brown’s terms, this process of ‘constitutional Islamization’ emphasized Islamic legal norms as the main source of legislation, trumping imported European legal norms as the primary reference for judicial decision-making (2006:381).

²¹ Constitution of the Arab Republic of Egypt, amended September 11, 1971

²² Constitution of the Arab Republic of Egypt, amended May 22, 1980

²³ The SCC is charged with interpreting laws, controlling constitutionality, and conflict resolution between jurisdictions (Kosheri, Rashed, and Riad 1994:125).

²⁴ Although the judiciary was constitutionally required to use the *shari’a* as its primary source of legislation, the courts did not become a rubber stamp for Islamization. Rather, as Lombardi noted, the (SCC) was considered the only court “surprisingly independent” enough to rule on the constitutionality of the Egyptian legislature: “The... SCC proved to be remarkably aggressive in exercising constitutional review and imposing supra-legislative norms on the political branches” (Lombardi 2006: 416).

Despite these small but meaningful constitutional changes, the text of Article 2 overlooked two important specificities. First, it failed to define which “principles of the Islamic *shari'a*” the judiciary should uphold. Second, it failed to identify who would be vested with the constitutional authority to interpret the *shari'a* and judge Egyptian legislation based on these interpretations (Lombardi and Brown 2006:390-391). Additionally, the constitutional drafting committee was extremely vague on how the courts and legislature should identify and interpret which Islamic norms to apply as law. Indeed, the drafting committee stipulated that in order to decide what “the principles of the Islamic *shari'a*” require, the legislature must consider “the Qur'an, the *Sunna*²⁵, and the opinions of learned jurists and *imams*” (Gabr 1996:219). Islamists asserted that Article 2 “empowered and, indeed, obliged the courts to determine whether the Egyptian legislation was consistent with the principles of the Islamic *shari'a* and, if it was not, to strike it down” (Lombardi 2006:391).

Despite the myriad interpretations of Sunni Islam and the generations of “learned jurists and *imams*” who have contributed to the development of the Hanafi school of law, the constitutional drafting committee failed to outline which opinions were valid and applicable to Egyptian society. Islamists, too, remained ambiguous on how the judiciary should discern which *shari'a* rule to apply to Egyptian legislation. The judiciary thus developed for itself a “legal repertoire” to decipher constitutional Islamization.

²⁵ The *Sunna*, a collection of reports of the Prophet’s actions and sayings, serve as a template for the behavior of Muslims. In Hanafi law, the *Sunna* is second to the Qur’an as a source of legislation.

Islamic legal repertoire

Dupret identified three judicial practices utilizing the *shari'a* in the Islamic legal repertoire: instrumentalization, objectivization, overvalidation and invalidation (2003:128). These categories illuminate how Egyptian judges reconcile secular codified law with the constitutional mandate of *shari'a*-based legislation. By recognizing how the judiciary understands and implements the Article 2 mandate, we can better understand the relationship between Islamic and secular law in Egypt.

Instrumentalization refers to arguments utilizing Islam “as a source of legitimation for rulings related first and foremost to the institutional form of the state or to a specific conception of public order.... The harm to Islam is instrumentalized by the judge or by the parties who, under this guise, seek a different objective” (Dupret 2003:128-9). In other words, by connecting Islam to the preservation of the Egyptian state, the judiciary can legitimize certain policies of the ruling regime. This is especially important to the study of apostasy in Egypt’s public sphere: by not codifying anti-apostasy laws, the judiciary legitimizes the state’s international image as advocate of international human rights standards.²⁶ Still, by upholding the criminalization of apostasy in practice, the courts sustain the notion that apostasy is detrimental to the public order. These judicial decisions claim to be protecting the values of Islam and the public good, but are really aimed at furthering a political cause. For instance, when the Communist Party of Morocco (PCM) was banned in 1964, the ruling of the Rabat Court of Appeal stated that

The request of the Prosecution... stems from the incompatibility of the principles of the PCM with Islam and the Islamic institutions; Whereas HM King Mohammed V stated many times that any materialist ideology was contrary to the religious precepts of which he is the spiritual guardian;

²⁶ For a discussion of Egypt and international human rights doctrines, see Chapter 4, page 89.

...For these reasons, the Court...declares the dissolution of the association, with all the legal consequences” (in Dupret 2003:129).²⁷

Similar logic was used in Egypt to deem the Baha’i sect heretical and to legitimize the criminalization of apostasy as necessary for public welfare (Dupret 2003:129). Simply put, instrumentalization occurs when a court argues that harm to Islam as a religion also affects public order.

The remaining two categories of judicial response to the Islamic legal repertoire concern the explicit relationship between statutory and Islamic law. Overvalidation occurs when statutory law is self-sufficient and does not explicitly justify reference to Islamic law. In this case, a judge may derive rulings from both statutory law and general religious principles, thereby simply reinforcing statute law without challenging the status quo (Dupret 2003:130). This category, then, is relatively benign and simply occurs when a judge combines all available resources, including the *shari’a*, *Sunna*, consensus of the *ulama*, jurisprudence of the old Islamic courts and statutory law (Botiveau 1993:225). The final category of judicial response, called invalidation, takes overvalidation one step further to actually invalidate statutory law in the name of the *shari’a*.

Dupret’s discussion of the Islamic legal repertoire failed to acknowledge instances where judges align more with, or rule in favor of, statutory rather than Islamic legal principles. For instance, the 1957 Federal Constitution of Malaysia, still in effect, declares that “Every person has the right to profess and practice his religion and...to propagate it.”²⁸ Interestingly, in 1989 the Supreme Court of Malaysia upheld its decision to respect the freedom of religion clause in *Minister of Home Affairs v. Jamuluddin bin Othamn*, dismissing a charge by the Minister of Home Affairs that the conversion to

²⁷ The Court of Appeal of Rabat, 3 February 1960, in Dupret 2003:129

²⁸ Federal Constitution of Malaysia, Article 11, Clause 1

Christianity by a Muslim was a punishable offence. A trial judge at the High Court of Kuala Lumpur found that

The Minister had no power to deprive a person of his right to profess and practice 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 practicing his religion, his act will be inconsistent with the provision of Art. 11, and, therefore, an order of detention would not be valid.²⁹

Following an appeal by the Minister for Home Affairs, the Malaysian Supreme Court upheld the ruling, effectively choosing to uphold secular law over the *shari'a*.

These categories of legal repertoire suggest that although the Egyptian judiciary is constitutionally required to rule according to *shari'a* norms, it does have some discretion over the general use of these applications. Consider, for instance, that Saudi Arabia and Iran are states ostensibly run on Islamic principles, yet they demonstrate that “imperatives of man-made sovereignty either override Islamic objectives of Muslim unity and divine order, and/or employ them for the benefit of the state” (Akbarzadeh 2003:171). Like the judiciary, Egypt created its own paradigm of political Islam in the second half of the twentieth century: a paradigm of mutual appeasement and suppression toward the powerful religious right and political dissidents, respectively.

Appeasement, suppression and legitimacy: from Sadat to Mubarak

Secular leaders in the Muslim world seem to have a two-pronged approach of appeasement and suppression in relation to Islam. Akbarzadeh wrote that “the incorporation of Islamic symbols and jargon in manifestations of state power is justified by reference to the inseparability of Islam and national identity,” so the use of Islamic symbols bolsters the legitimacy of regimes (2003:169). Sadat, for instance, was the self-

²⁹ (1989). *Minister of Home Affairs v. Jamuluddin bin Othamn*, Supreme Court, Kuala Lumpur. 1 M.L.J. 369.

named “believer-president” who routinely posed for the press at Friday prayers. He promoted the construction of new mosques, legitimated the 1973 Israeli war as *jihad* (holy struggle), released Muslim Brothers from prison, and supported Islamic student organizations to counter leftist influences (Esposito 1996:174). Sadat’s use of Islamic rhetoric and symbols appealed to the Islamic left and, until the 1979 peace deal with Israel, rallied mass support from the Muslim Brotherhood and Al-Azhar.³⁰

Sadat’s courtship of the Islamist camp launched a new period in Egypt’s modern Islamization, whereby unlikely alliances were formed and violence became the political tool *du jour*. As they brought cases before the Supreme Constitutional Court for Article 2 review, Islamists became increasingly vocal, critical, and popular among laypersons. While the radical cohort collectively known as *gama’at* amassed support from university students and urban workers, the Muslim Brotherhood found itself allying more and more with the *ulama* (Ibrahim 1996:58). The *gama’at* and the *ulama*, however, found themselves increasingly at odds, especially after a radical group kidnapped and killed a prominent *ulama* member in 1977. The murderers claimed that because the cleric had allied with a non-Muslim leader, he himself was clearly not a Muslim and was thus a legitimate target of violence (Lombardi 2006:128).

Despite his initial popularity, Sadat was declared an apostate in 1981 for his dealings with Israel and, after a *fatwa* was issued by an Egyptian cleric, he was assassinated by member of the Egyptian Islamic Jihad organization. Political expediency

³⁰ Despite this initial popularity, Sadat was declared an apostate for his dealings with the Israelis and, after a *fatwa* was issued by an Egyptian cleric, Sadat was assassinated by the Egyptian Islamic Jihad organization. Political expediency thus prevents state leadership from taking any bold steps away from political Islam or Islamic groups. Rather, in the late twentieth-century Egypt largely favored complacent, moderate, and government-controlled interpretations of Islam delivered by official members of the *ulama*.

thus prevents state leadership from taking any bold steps away from political Islam or Islamic groups. Rather, in the late twentieth-century Egypt largely favored complacent, moderate, and government-controlled interpretations of Islam delivered by official members of the *ulama*.

The Egyptian state under Hosni Mubarak, Sadat's successor, continued to "control and direct the development of the Islamic movement and to identify itself in significant ways as the primary Islamic institution of society" (Voll 1991:384). Like Sadat, Mubarak maintained a strong policy of suppression toward any groups involved in violent action against the state. Unlike his predecessor, however, Mubarak's suppression campaign focused on particular organizations or individuals, not on sweeping roundups of suspected Islamists in a given region. Whereas Sadat lumped all Islamists together, Mubarak "learned to distinguish between the handful of underground revolutionary groups that are sworn to destroy the regime and the wide assortment of mainstream religious organizations that are pursuing various visions of an Islamic state through peaceful and legitimate means" (Bianchi 1989:93). The Muslim Brotherhood, for instance, was still not a recognized political party but was nonetheless allowed to participate in party coalitions and in the National Assembly during the 1980s (Voll 1991:385). In another act of appeasement, Mubarak instituted a policy of open dialogue between the Islamists and the government to encourage non-violent forms of opposition (Voll 1991:284).

The early Mubarak regime embodied the broader and relatively moderate mainstream of the Islamic revival, balancing stronger fundamentalism advocacy against the pragmatic needs of the state and against the "generally nonviolent mood of Egyptian

Islamic life” (Voll 1991:385). The Muslim Brotherhood, too, emerged as an advocate of nonviolent Islamization characterized by “a strategy of moderation, gradualism, and constitutionalism” (Voll 1991:387). Indeed, by the late 1980s, the organized and publicly permitted Islamic opposition had become a normal part of Egyptian society.

As political Islam entered the mainstream, however, Mubarak implemented a widely unpopular secular constitutionalism approach. However, “any court that declared Article 2 to be non-justiciable would be seen as tacitly condoning the government’s violation of a constitutional command” (Lombardi 2006:392). The SCC had become the mediating voice helping to propose a compromise between the Islamists and government. The authoritarian government had stifled public politics and suppressed dissident groups, creating great animosity from the Islamists. Indeed, Mubarak’s secularist regime and Islamist militant groups had become exceedingly violent, pushing Egypt to the brink of a civil war (Lombardi 2006:178).

In response to this need for social mediation, the SCC began to publicly articulate its methods of Islamic legal interpretation and to apply it to high-profile cases. Lombardi argued that

In explaining why it reaches the conclusions it does about Islamic law and about the consistency of state legislation with the principles of the *shari’a*, the SCC has never deferred to the opinion of the *ulama* or even cited the *ulama* as additional evidence to support a conclusion that it had independently reached (Lombardi 2006:183).

In contrast, however, the Court of Cassation has embraced a more socially conservative interpretation of justice than the SCC, as when it requested a legal verdict from al-Azhar during the Fouda trial (Lombardi 2006: 263).

Both Sadat and Mubarak developed a symbiotic relationship with al-Azhar in order to strengthen the public perception of the relationship between Islam and the

Egyptian state (Hatina 2003:58). The *ulama* were given access to state channels, including the courts and media, to advance Islamist causes and support the censorship of films, plays and books they considered harmful to Islam (Moustafa 2000:16). A 1994 government decree declared state recognition of the absolute authority of al-Azhar “in matters of faith in order to guarantee public order and social morality befitted a country whose official religion was Islam” (Hatina 2003:63). At the same time, however, the Egyptian government enjoyed an enormous leverage over al-Azhar, exercising purges of anti-government officials, control over Azhar finances, and gaining the power to appoint Azhar’s key leadership (Moustafa 2000:3). Al-Azhar and the government thus maintained a relationship of appeasement: the government needed al-Azhar to legitimize its rule and staunch militant opposition, and in return al-Azhar was granted exceptional power over social decisions, including the censorship of books, television and radio broadcasts.

Al-Azhar thus became the de facto guardian of Islamic ethics, controlling a wide spectrum of Egyptian cultural life, including the fate of intellectuals with “dissident views in matters of faith” (Hatima 2003:63). Utilizing this power, Azhar *ulama* launched apostasy campaigns against Nasr Abu Zayd, the Cairo University professor, and Farag Fouda, the secularist politician and intellectual. Significantly, the *ulama* joined forces with the very militants they were supposed to counterbalance to prosecute these cases, both on the street and in the courtroom.

Conclusion

As the last two centuries of political history suggest, the temporal and religious trajectories seem to be converging in Egypt. As Akbarzadeh (2003:173) noted, the

elevation of Islam onto the political plane, formally or informally, confers on it an authority to evaluate government policies that may not be recognized in 'secular' states. From a government perspective, then, political Islam is a double-edged sword: it can legitimate an otherwise despotic regime while simultaneously bolstering Islamist opposition groups of all ideologies. We now turn to how the relationship between the government, al-Azhar, Islamist groups and the public, elucidated above, transformed after Farag Fouda's 1992 assassination, effectively revolutionizing how Islamic law is discussed and perceived in the public sphere.

Chapter 3: “I was busy killing nine apostates in the back room”: the public apostasy debate

“I’m sorry for making you wait. I was busy killing nine apostates in the back room.” I couldn’t help but smile as Ahmad Rahman greeted me in his large office complex in Nasr City, Cairo. Wearing khakis and sporting a neatly trimmed beard, Rahman defies the stereotypical image of a robed and bearded Imam. Boisterous and jolly, it was clear that Rahman is both well-Surahd in American stereotypes of Islam and acting in *dawa*, or proselytizing, towards me. In fact, he sent me off three hours later with a stack of religious pamphlets and a Qur’an, and his courier arrived a week later to my apartment with a gift: a DVD presentation entitled *Allah is known through reason*.

Rahman is the director of an interfaith organization devoted to rectifying the negative stereotypes of Islam, especially in the West. He has extensive experience lecturing on Islam to Western audiences and government bodies. The walls of Rahman’s roomy office were adorned with bright posters of Qur’anic slogans and inspirational phrases. Most importantly, he has personally counseled nine Egyptian apostates, of whom four returned to Islam and five became atheists. Eying me steadily from across his desk and gesturing for me to accept the box of fruit juice offered by his assistant, Rahman appeared wary to discuss free speech issues with a westerner who, he told me, probably has no perception of Islam itself. Indeed, Rahman laughed when I explained, in English, that I wished to speak about modern-day criminalization of apostasy in Egypt.

Rahman, a follower of the Hanafi school, began with the well-known Qur’anic phrase ‘there is no compulsion in religion,’ arguing that the nine Qur’anic Surahs that

mention apostasy warn only of punishment in the afterlife. Rahman maintained that an apostate should be engaged in open dialogue about the spiritual ramifications of leaving Islam and counseled to return to the religion. If the apostate refuses to repent, he should be simply left alone – with no legal ramifications, and certainly no execution. Echoing this view, Rahman’s associate Dalia Saladdin, a Qur'an teacher and journalist, added that “law should have nothing to do with it; it should be an informal act of goodwill [to counsel the apostate to repent].” Nodding in agreement, Rahman said that based on Qur'anic teachings, only combatants or terrorists can be physically fought.

Islam today is the exact same religion as the last days of Prophet Mohammad, Rahman said, adding that the physical punishments for apostasy are the result of misinterpretations of Islamic history. In the seventh century, apostates were executed for political crimes, not for the act of apostasy itself. Prophet Mohammad never killed an apostate for apostasy, but rather punished thieves who posed as Muslims to steal camels and goods. Rahman recounted a parable in which a Bedouin became Muslim, then apostated, then returned to Islam. After his third cycle of apostasy and repentance, the Prophet simply left the Bedouin to his own devices. “Mohammad never punished the man!” Rahman exclaimed, straightening in his chair and banging on his desk for emphasis.

According to Rahman, the only crimes punishable by execution are adultery, murder, fighting Allah and his messengers, and theft. Because of the historical circumstances on the Arabian Peninsula following the Prophet’s death in 632, ‘theft’ was applied to tribes who defected from Islam and waged wars against the Muslims. These *ridda* wars have been misinterpreted by modern thinkers who attribute the fighting to the

act of religious apostasy rather than to the political chaos of the time, Rahman said.

Rahman repeated several times that theft is the worst crime in Islamic law, punishable by crucifixion. He was unable or unwilling, however, to define ‘fighting Allah and his messengers’ beyond the historical context of the seventh century tribal wars.

I asked Rahman how Islam interacts with Western notions of free speech. He replied: “Allah is allowing freedom of speech. Prophet Mohammad, peace be upon him, said ‘If you see my nation afraid of telling a tyrant he’s a tyrant, there’s no hope’”.

Although Rahman never labeled the practice of confronting tyranny, his view invokes the *hisbah* principle to speak freely when faced with corruption or oppression (See Chapter 4: Public Policy and the Egyptian Judiciary). To illustrate his point that freedom of speech is implicit in Islam, Rahman showed me a black-and-white photograph of mutilated bodies of Mussolini’s victims in Libya. Like a proud father displaying his child’s drawings, Rahman smiled as he jabbed at the photograph, which was taken in 1931 by Knut Hombel, allegedly the first Danish convert to Islam. This photo, Rahman explained, is evidence that there is free speech in Islam: Hombel was “martyred” because he refused to retract his writings and photos of Mussolini’s death squads. Perplexed, I asked how Rahman would respond to an Italian who considers this photograph blasphemous or offensive toward Italian history. Unable or unwilling to address the question, Rahman changed the subject to the recent conflagration over Danish newspaper cartoons portraying the Prophet Mohammad.

Rahman became guarded when I asked how blasphemy fits into the apostasy debate. Blasphemy, he said, is almost worse than apostasy – an apostate should simply be left alone, but a blasphemer should be punished:

Blasphemy is someone who, you know, starts attacking a religion. But people are free to question and to examine, but they are not free to hurt the feelings of other people. This is the issue. I believe so much in Prophet Mohammad and Allah, for example, that no one is free to come and tell me 'he was this and that'. People are free to come and ask me 'why did he do that', you know, with a little respect. If someone in the street says '[Prophet Mohammad] is a S.O.B.', no, this is not freedom of speech. I am not free to slander people (Ahmad Rahman, personal interview, July 2006).

Rahman indeed called blasphemy an abuse of free speech, and free speech an issue of respectability. When I mentioned the Fouda case, he shook his head. "Blasphemy. The blasphemer should be held accountable for his actions," he said simply. Then what is the appropriate punishment for a blasphemer? Rahman cited the documentary of Theo Van Gogh, the Dutch filmmaker murdered in 2004 by a young Dutch-Moroccan for his controversial film critical of Islam. Becoming visibly agitated, Rahman said

This is blasphemy. I'm not saying I was sad when he died, but it was ridiculous to kill him because he became a martyr of freedom of speech. Those people should be neglected! And I think Muslims should just work at propagating the message. The successful person ignores those attacks (Ahmad Rahman, personal interview, July 2006).

While Rahman applied 'apostasy' directly to religious conversion, he used 'blasphemy' to describe public criticism of Islam. However, he was appeared equally unremorseful at the assassinations Farag Fouda, an apostate, and Theo Van Gogh, a blasphemer. The parameters between these constructions further blurred when Rahman provided a detailed history of apostasy but appeared to equate blasphemy to slander and offense, all outside the realm of free speech. Repeating that 'ignorance is the enemy,' he used the English terms blasphemy and slander interchangeably, but only in cases where Islam was perceived to be under attack. In contrast, Rahman called the Danish writer Hombel a martyr of free speech, and used the term 'free speech' with frequency. The unclear parameters around the constructions 'apostasy' and 'blasphemy' suggest that they

can be applied synonymously to an individual as a social offense, but, as Rahman argued, entail different consequences. Nasr Abu Zayd, for instance, was convicted of apostasy for actions that were actually blasphemous – he never renounced Islam and is still a practicing Muslim. Rahman asserted that freedom of speech in Islam is epitomized by the obligation to confront a tyrant, but, as the next section will explain, this does not necessarily equate to a personal freedom.

Apostasy expounded

Egyptian legal discourse, which is largely dominated by Islamic jargon, contains no term for “conversion by a Muslim,” because whether the apostate converts to another religion or merely gives up Islam is irrelevant. It is essentially considered impossible for a Muslim to convert to anything outside of Islam. Non-Muslims, on the other hand, are said to “change religion,” not to apostate (Berger 2003:720). In Islamic law, apostasy is defined as:

Unbelief of a Muslim who had earlier accepted Islam by confessing the unity of God and prophethood of Muhammad of his own free-will, after having acquired knowledge of the fundamentals [of Islam] and made a commitment to abide by the rules of Islam (Jaziri n.d., Saeed 2004:36).

Thus, an apostate is a Muslim who rejects Islam and/or converts to another religion. Specifically, apostasy occurs through the denial of the existence of God, or the attributes of God; the denial of a particular messenger; the denial of one of the fundamentals of religion, for instance that a particular prayer, like the late afternoon prayer (*‘asr*) requires four units of prayer; declaring prohibited (*harem*) what is manifestly permitted (*halal*) or vice-versa; or worshipping an idol (Saeed 2004:13).

The law of apostasy originated in the first century of Muslim history, when newly-Islamicized Arabian tribes reverted to tribal religions after the death of the Prophet Mohammad. While the Qur'an ascribes no temporal punishment for apostates, the legal basis for executing convicted apostates is found in two *ahadith*, or alleged actions of the Prophet, which determine that: (1) anybody who changes his or her religion from Islam shall be killed, and (2) apostasy is one of the three offences deserving capital punishment³¹ (Griffel 2001:341). According to some, these *ahadith* were likely a reference to the tribal warfare that erupted between the Muslims and those who defected from Islam, thus breaking political and economic ties and creating chaos.

There is no consensus among jurists about whether the punishments for apostasy are prescribed in the Qur'an or *Sunnah*, or whether it remains at the discretion of a judge. According to Saeed, a *hudud* punishment is not open to bargaining or commutation and cannot be changed according to the generally accepted principles of Islamic Law. If apostasy sentences are at the discretion of a judge, however, the punishments can change from case to case (Saeed 2004:56). Shafi'is and Zahiris hold that apostasy is one of the immutable crimes of Islamic jurisprudence and is therefore met with *hadd* punishments, while the Hanbalis rely on judicial discretion (Awa 1982:55-56). Predetermined punishments for the crime can include flogging, crucifixion, and beheading; death is still sentenced in Saudi Arabia, Yemen, and Sudan.

According to the Malikis and Hanafis, apostasy renders the marriage of the apostate null and void and, as in the case of Egyptian Nasr Abu Zayd, results in the forced separation of the spouses and prevents the apostate from entering into a new marriage, even with a non-Muslim (Berger 2003:723-724). If both spouses commit

³¹ The other two offenses are sexual relationships out of wedlock and committing murder.

apostasy, according to the Shafi'is and Hanbalis, they should be separated, while for the Hanafis they should remain married. The apostate is excluded from receiving or leaving inheritance, and all blood ties with his or her children are voided. Indeed, children born before the parents' apostasy are considered Muslim and "cannot be allowed to follow their parents in their apostasy" (Saeed 2004:53).

Malikis, some Shafi'is and Hanbalis hold that property ownership by the apostate must be suspended until the situation becomes clear. If the apostate dies or is executed, ownership ceases and the property is transferred to the public purse. If the apostate returns to Islam, the property is returned. Some Hanafis argue that property ownership remains valid even after apostasy, and that the property should be transferred to heirs – in accordance with Islamic law – even if the apostate is found guilty and executed (Saeed 2004:53).

Jurists across the schools generally agree that an apostate should be given time to repent before a death sentence is imposed. The Hanafis argue that an apostate should be asked to repent, but this period of forgiveness is not obligatory. For the Malikis, Shafi'is, and Hanbalis, asking for repentance is obligatory, and only those who refuse to return to Islam should be killed (Saeed 2004: 54). The shari'a stipulates a period of three days between the conviction of an apostate and his execution. Repentance is generally accepted, although there are some significant exceptions.

Notably, a Muslim who commits the offense of blasphemy by insulting the Prophet or an angel is considered an unbeliever (*kufir*) and, for the Hanafis, Hanbalis and Malikis, executed with no repentance sought. According to Saeed, blasphemy is considered a "right of man," and repentance alone is insufficient to absolve the offender

of the consequences of reviling the Prophet or an angel (2004:55). The Shafi'i school, on the other hand, holds that repentance of a blasphemer is valid.

The notion of blasphemy has generally been subsumed under the category of apostasy. In Kamali's words, the main difference between blasphemy and apostasy is that the latter can occur without contemptuous attack and sacrilege (1997:206). However, many *ulama* argue that one who blasphemes the essentials of Islam cannot fail, at the same time, to renounce it (Kamali 1997:206). In December 1991, Egyptian judicial authorities convicted novelist Alaa Hamid and his publisher to eight years of imprisonment on counts of blasphemy for a satirized portrayal of the Prophet Mohammad. The cases were tried in a special security court and the sentences passed under an anti-subversion law. Anti-religious publications in Egypt are normally treated under the provisions of the Penal Law no. 29 of 1982, which stipulates "imprisonment ranging from six months to five years and fine of 500 to 1000 Egyptian pounds" (Art. 928).

While the majority of jurists agree that both men and women can apostate from Islam, the prescribed punishments differ for women. Based on the claim that a woman should not be killed, the Hanafis argue that an apostate woman should be imprisoned until she returns to Islam, rather than be put to death. Conversely, the Malikis, Shafi'is and Hanbalis hold that an apostate woman should have three days to repent before facing execution (Saeed 2004:52). There is a nearly unanimous agreement among jurists that the apostasy of a minor who does not comprehend the meaning of apostasy is not valid.

Intra-Islamic apostasy debates

Widely-cited Muslim scholar Majid Khadduri wrote that although the Qur'an explicitly states that there is no compulsion in religion, the concept of individual freedom excludes the ability to renounce Islam:

It is true that conversion into Islam must be achieved by persuasion and not by violence, according to the Revelation; but once the individual has adopted Islam, he should not 'turn his back to it,' according to the Tradition, as the change of religion is considered apostasy punishable by death unless the individual repents (Khadduri 1984:238).

At the same time, Khadduri wrote that according to the Mu'tazilite theory of justice, "belief in Islam is a matter of reason and a manifestation of voluntarism" (1984:52).

Under this reasoning, a man must become a believer of his own free will. Citing Islamic scholars Bukhari (1864), Malik (1951), Abu Dawud (1935) and Ibn Hisham (1869), Khadduri argued that the Islamic Revelation has left matters of belief to individual choice, as "only God will ultimately decide such matters on the Day of Judgment." He further wrote that the Prophet never punished an apostate for apostasy, but rather left "all matters of faith to human conscious and allowed those who adopted Islam to renounce it, if they so wished, without molestations" (Khadduri 1984:238).

Sultanhussein Tabandeh of Iran, in a 1948 commentary against a stipulation for religious freedoms in United Nations Declaration of Human Rights (UDHR), argued that religious minorities in an Islamic state who follow the one true God and the revelation given to one of His prophets – whether Jews, Christians, or Zoroastrians – enjoy complete religious freedoms. However, he further wrote that followers of a religion contrary to Islam have no official right to freedom of religion under an Islamic government (1970:70). Tabandeh additionally protested the freedom of an individual to change religions, writing that:

No man of sense, from the mere fact that he possesses intelligence, will ever turn down the better in favour of the inferior. Anyone who penetrates beneath the surface to the inner essence of Islam is bound to recognize its superiority over the other religions. A man, therefore, who deserts Islam, by that act betrays the fact that he must have played truant to its moral and spiritual truths in his heart earlier (1970:71).

Tabandeh's argument of the superiority of Islam can be found in classical sources of Islamic law. Pre-modern Muslim jurists debated whether non-Muslims who did not qualify as People of the Book should be forced to convert to Islam if under Islamic rule, but in practice, these groups were largely treated like the People of the Book (Saeed 2004:15).

While Tabandeh wrote from a Shi'a perspective, many Sunni scholars similarly contend that apostasy in Islam is a capital offense that does not qualify as a freedom of religion because apostasy laws are a part of the Islamic religion that, as such, all Muslims must abide to. Egyptian Sunni Hassan Ahmad Abidin stated that "belief is a fundamental human right" and that "Islam does not force anyone to profess it" (1984:137). He noted that apostasy was prohibited at the time of the Prophet as a protective measure because some Arab tribes professed Islam in order to harm the religion, but because the Muslim community is strong today and there is no need for such precaution, there is no need to retain the apostasy ruling. However, Abidin abandoned this reasoning by returning to the classical argument of the superiority of Islam:

To which [religion] does the apostate convert? If he or she is going to convert to a better and more complete religion than Islam, it is not fair for Islam to punish [the apostate]. If the apostate is going to convert to a religion that will guarantee for him and others more and better rights than what Islam guarantees, there will be no one to support Islam's ruling on the punishment [of the apostate]. But the reality is that Islam is the most perfect and complete religion; it is the religion that gave rights which no human being ever thought of [in the pre-modern period] (Abidin 1984:185).

Despite the general agreement between the two main sects that apostasy is a crime, many Islamist thinkers are adamantly opposed to the use of *takfir al-Muslim*, or

the act of accusing someone else of unbelief. Kamali, for example, wrote that *takfir* violates both the rights of the individual and the rights of society, as it “does immense harm to the Muslims as a community” (1997:186). Sayyid ‘Abul Ala Maudoodi, one of the most influential Islamic scholars of the 20th century, argued that wrongful use of *takfir* can easily pervert the message of Islam. In an article called “Mischief of *Takfir*,” Mawdudi wrote:

God in His clear Book had drawn a plain line of distinction between *kufir* and Islam, and had not given anyone the right to have discretion to declare anything he wants as *kufir* and anything he wants as Islam. Whether the cause of this mischief [meaning *takfir*] is narrow-mindedness with good intentions, or selfishness, envy and self-seeking with malevolent intentions, the fact remains that probably nothing else has done the Muslims as much harm as this has done. *As to the question of a person being in fact a believer or not, it is not the task of any human being to decide it. This matter is directly to do with God, and it is He Who shall decide it on the Day of Judgment* (Mawdudi 1935, emphasis mine).

Mawdudi made two important points. First, that *takfir* can easily be used for malevolent ends, and secondly, that judgment of a believer is up to God, not man. On the first point, Mohammad Sa’id al‘Ashmawy, prominent Islamic scholar and *shari’a* judge, echoed Mawdudi by arguing that “militant Islamists” who exercise *takfir al-Muslim* act on the premise that Islam is the sole valid religion, thereby abrogating all other religions. He wrote: “By claiming politics as a pillar of the faith, they [militant Islamists] have added a sixth to the recognized five pillars of Islam... Such a claim undermines orthodox Sunni Islamic doctrine” (1994:119). On Mawdudi’s point that declaration of *takfir* is not a right of man, it is important to note that respected authorities of jurisprudence in the different schools of Islamic law generally agree that *takfir al-Muslim* is not a legally-valid accusation against other Islamic scholars in disputed cases, as differing opinions between the schools are expected and respected among Islamic scholars (O’Sullivan 2003:120).

Apostasy thus transcends a single Islamic institution. It is prosecuted by the state, debated among religious scholars, contested by academics, and presented to the Egyptian

public by both religious and secular writers. The debate over the criminalization of apostasy is not limited to textbook chapters or mosque rhetoric. Rather, apostasy and its subcategories, including blasphemy and declarations of unbelief, command a loud presence in everyday life. Advocates and opponents of apostasy prohibition and the larger issue of shari'a jurisdiction used Egypt's print media network as a forum to appeal to public perceptions of religious equity in a legally pluralist society. The significance of this debate is not simply that it occurred, but rather that it occurred beyond the walls of al-Azhar University or the closed doors of the judicial chamber. By using popular publications as an arena for debate, activists pushed the apostasy issue into the national consciousness.

The remainder of this chapter will revisit the case of slain secularist Farag Fouda, who was declared an apostate by an Azhar sheikh after publicly expressing views deemed anti-Islamic. Fouda was assassinated on June 7, 1992 by two young members of the *Gama'at al-Islamiyya*, a militant Islamist group based loosely on Muslim Brotherhood ideals. Of the 12 people eventually charged for the crime, the court dismissed eight as innocent, three were imprisoned, and one was dismissed due to the defendant's death. Sheikh Mahmood al-Gazelli, the same Azhar sheikh who issued a decree calling for Fouda's death, testified at the trial on the behalf of the defense. This testimony sparked a massive public debate that unexpectedly pushed the subject of apostasy criminalization from the elite Azhar mosque and into the public editorial pages.

The trial of Fouda's assassins was hotly debated by religious scholars and the laity alike. Finding a forum in religious newsletters, semi-official press and politically-partisan newspapers, lay persons editorialized about every detail of the case, from the

specific theological apostasy cannon to the wider implications for human rights in Egypt. The articles addressed the same general questions: Is there a religious obligation to punish apostates, and were Farag Fouda's assassins acting in accordance with a religious mandate? In a historical role-reversal, it was the laity – not highly-trained Islamic legal scholars – that powered this debate. On the street and in the popular press, the discussion was framed in simple terms and accessible to lay-Egyptians. We now turn first to the controversial testimony that sparked the debate, and then to the editorial debates themselves.

Between *wadjib* and *fard*: Testimony of Sheikh Gazelli



Sheikh Gazelli's stylized moniker, printed in *Al-Hala*, August 4, 1993

Gazelli's adamant defense of Fouda's assassins, recounted in numerous Arabic-language newspapers, was met with both support and condemnation from other Islamic scholars and politicians. Gazelli testified on June 23, 1993 that Fouda's assassination was justified due to the failure of Islamic jurists to punish Fouda for the crimes of blasphemy and apostasy. The interpretation of the *shari'a* and sentencing of defendants is a task for Islamic jurists only, Gazelli argued, but Fouda's assassins fulfilled a religious obligation that the judiciary failed to undertake. The assassins should therefore not be punished, as they were acting under a religious mandate. Interestingly, Gazelli failed to acknowledge

his own role in Fouda's death: he issued a decree for the murder just days prior to the assassination.

A sampling of headlines from summer 1993 indicates the ferocity and level of public interest over Gazelli's testimony: "In his testimony on the case of the assassination of Farag Fouda: Sheikh Gazelli: 'Only Islamic judges can interpret Islamic legal punishments and judge punishments'" (*Al Ahrām*, June 23, 1993); "Sheikh Gazelli: No punishment in Islam for all who kill apostates" (*Al Hayatt*, June 23, 1993); "The testimony of Gazelli in the killing of Farag Fouda: The renegade from the application of the Islamic shari'a is 'an apostate' and the mocker of it 'an unbeliever.' An individual applying the punishment for 'apostasy' in a case of negligence of the state does not cease power, but do not punish him" (*Al Shaab*, July 25, 1993); "Worship the powerful Veiler [attribute of God]: Gazelli Fatwa to kill!" (*Rowz al-Eyosf*, June 28, 1993); "In his testimony in the case of the assassination of Fouda: al-Gazelli: No punishment in Islam for those who kill apostates" (*Al-Heah*, July 23, 1993); "Al Gazelli: 'The killing of Farag Foda was in fact the implementation of the punishment against an apostate which the imam (the state) has failed to undertake'" (*Al Gomhuriah*, June 23, 1993).

Al Gomhuriah reprinted Gazelli's testimony in full and recounted the courtroom scene on June 23, 1993. The article headline and sub-headline reads:

Sheikh Gazelli presents testimony in the case of the murder of Farag Fouda: Determining the necessary Islamic legal punishments is a judicial obligation, not the responsibility of individuals. [But] an individual carrying out an Islamic legal punishment... should not be punished. Whoever objects to implementing the shari'a is an unbeliever in the Qur'an. The shari'a was implemented in Islamic countries until colonization (*Al Gomhuriah*, June 23, 1993).

After testifying that he has “no relationship with the incident” and will speak “based on propelling circumstances” (a claim that apparently overlooks his decree against Fouda), Gazelli defines Islam as:

... a faith, law, form of worship, knowledge, a belief, organization, a religion and a state, and the meaning of this [phrase] can be found in the Great Qur’an...And so Islam is a true religion...Religion is politics, and it doesn’t separate power and time from the meaning of spirituality (*Al Gomhuriah*, June 23, 1993).

Simply put, Gazelli established his belief in the Qur’an as the framework for all human needs, both spiritual and temporal.

The defense lawyer next asks whether it is necessary to apply the *shari’a* in matters of apostasy. Gazelli never offers a straight-forward answer to this question, but rather draws parallels from early Islamic history. He first testifies that the answer can only be found in the Qur’an, the greatness of God, and the exalted sayings of the Prophet. “Do not express yourself until you know what happened,” Gazelli said (*Al Gomhuriah*, June 23, 1993). Although he never clarifies this remark, it is not unfeasible that it was a reference to the Islamic legal mechanism of *takfir al-Muslim*, which prescribes severe punishments for unfounded accusations.³² The closest Gazelli came to discussing the applicability of the *shari’a* to the Fouda case is a reference to the early Muslims who did not refer to the “judgment of the state of ignorance” in legal matters, but instead resolved arguments using “the best of Allah’s judgment” (*Al Gomhuriah*, June 23, 1993). Gazelli thus avoided directly answering the question in relation to the Fouda case, but still alluded to the highly-revered example of the early *umma*, the companions of the Prophet.

Gazelli was next asked how he would “judge a person who declares, mockingly and with denial, to refuse the application of the Islamic *shari’a*” (*Al Gomhuriah*, June 23,

³² See Chapter 4, page 83 for a discussion of *takfir*.

1993). He responded that anyone who would publicly refute the judgment of God is guilty of “denial of the pharaohs” (*Al Gomhuriah*, June 23, 1993). He elaborated:

It was the Islamic *shari'a* that used to govern the Arab Islamic world until colonization entered with the crusades, which attacked Islam...The *shari'a* legal provisions and types of punishments and law sentence the people with love. Military colonization was closely related to cultural colonization, and it was important to make the people be peaceful about the destruction of their shari'a and the obstruction of God's laws, disregarding that they were grieved [by it]...It was necessary to correct the *shari'a* and there many people began obstructing the *shari'a* and quarreling with each other about the validity of it. The judgments which were published in the laws of the foreigners and the colonizers of the world called for the destruction of the *shari'a* and ridiculed us when we said to not squander the judgment of what God left us (*Al Gomhuriah*, June 23, 1993).

Quoting various *ayaat*, or Qur'anic verses, Gazelli added that “whosoever does not judge by what God left them are unbelievers. [One who makes] an inferior substitute for that which is greater...is not Muslim” (*Al Gomhuriah*, June 23, 1993). Gazelli thus qualified as an apostate one who does not embrace “what God left.” Based on the entirety of his testimony, this likely refers to the *shari'a*, the Qur'an, and the *Sunna*, or reports of the Prophet's deeds.

Toward the conclusion of Gazelli's testimony, the questions adopted a more direct tone. “So if he changes this belief [from Islam], it is considered unbelief and he leaves his religious claim to the religion of Allah?” asked the attorney. Gazelli responded: “Yes, the legal opinion is that to leave Allah is to leave the rights of God's religion” (*Al Gomhuriah*, June 23, 1993). Asked to define the *shari'a* judgment for an apostate, Gazelli said:

To judge [the apostate] in the shari'a is to call on him to repent. The public opinion of the Islamic legalists and in the opinion of an esteemed person [i.e. learned scholars] is to kill him. In order to prosecute [an apostate] instead of killing him, he [should be] imprisoned in jail, as if he was not an apostate. (*Al Gomhuriah*, June 23, 1993).

Gazelli added that because an apostate poses danger to women, “it is necessary to finish him off and to prosecute him that he is killed” (*Al Gomhuriah*, June 23, 1993). Gazelli thus outlined a clear punishment for an apostate: if he does not repent, he must be imprisoned or killed. While he does not elaborate on how exactly an apostate threatens women and society, it is not unreasonable that Gazelli was making a statement about public morality. If, by definition, an apostate holds different values than a practicing Muslim, perhaps Gazelli was suggesting that apostates pose a risk to public morality at large. An apostate threatens the very fiber of an Islamic state based on an Islamic *shari’a*, constituting a danger to the state and the people. Such a threat must be staunch.

Who, asked the defense, is responsible for judging an apostate and carrying out the sentence? According to Gazelli, it is the judiciary’s explicit obligation to apply the *hudud*, or punishments outlined in the *shari’a*, and “present judgments so that society does not fall into disarray” (*Al Gomhuriah*, June 23, 1993). Gazelli testifies that the application of Islamic legal punishments is the responsibility of qualified Islamic jurists, not individuals. However, if the judiciary failed to enforce the *hudud*, it becomes the responsibility of the Muslim community to administer the punishment. Therefore, an individual who carries out a *hudud* punishment in the event of judicial incompetence should not be punished himself, as he effectively becomes “a *mufti*³³ of power” (*Al Gomhuriah*, June 23, 1993). “For an individual to carry out Islamic punishments is contradictory to power, but the individual who carries it out should not be punished,” Gazelli said, adding that the Imam remains the ultimate source of legal decisions (*Al Gomhuriah*, June 23, 1993). The defense challenged the judge that if the assassins were

³³ According to the Encyclopaedia of Islam, a *mufti* is a trained Islamic official who issues *fatwas*, or opinions on a point of law.

guilty, so were Gazelli other prominent religious clerics that echoed his judgements. Interestingly, the Sheikh of al-Azhar and the minister of religious endowments emphasized repeatedly that only law enforcement officials were responsible for investigating apostasy charges or carrying out a death sentence.

In his testimony, Gazelli consistently uses the Arabic word *wadjib* to describe the responsibilities of the judiciary. By choosing this specific word, Gazelli defines the punishment of apostasy as a necessary based on *ijtihad*, or reasoning, not on specific religious injunction. For instance, the *Al Gomhuria* article mentioned above reported that the Sheikh said: “To apply the Shari’a is necessary [*wadjib*] and to obstruct it is unbelief...Determining the necessary [*wadjib*] Islamic legal punishment is a judicial obligation” (*Al Gomhuria*, June 23, 1993).

Two words are used in the *shari’a* to indicate necessity: *wadjib* and *fard*; Gazelli’s choice of *wadjib* is highly significant. According to the Encyclopaedia of Islam, *wadjib* is often used interchangeably with *fard*, and literally means “something which has been apportioned, or made obligatory.” For the majority of *ulama*, *wadjib* and *fard* are synonymous, conveying an “imperative and binding demand of the Lawgiver addressed to the *mukallaf* (competent person who is in full possession of his faculties) in respect of doing something” (Kamali 2003: 413). In some contexts, these terms can refer to a religious duty or obligation, the omission of which will be punished and the performance of which will be rewarded. For instance, Kamali (2003:xxi) argued that according to the classical formations of *shari’a* law, *ijtihad* is *wadjib* and must therefore never be discontinued. The enforcement of *hudud* punishments are additionally considered *wadjib* because they are specified in terms of quantity. Crucially, carrying out *hisbah* is a *wadjib*

obligation to promote good and prevent evil as the occasion arises (Kamali 2003:416). Thus acting upon something deemed *wadjib* leads to reward, while omitting it leads to punishment in this world or in the hereafter.

The Hanafi school of Islamic law, however, distinguishes between *fard* and *wadjib*: *fard* refers to religious duties explicitly established by the Qur'an and *Sunna*, while *wadjib* refers to obligations determined by reasoning (*ijtihad*), not specific religious injunction. In Kamali's words, an act is *fard* when the command to do it is conveyed in a "clear and definitive text" of the Qur'an or *Sunnah* (2003:414). But if the command is established in a speculative authority, such as by a *hadith*, the act is obligatory in the second degree and is *wadjib*. The obligations to perform the five daily prayers and undertake the pilgrimage to Mecca are classified as *fard*, as they are each established in definitive texts of the Qur'an (Kamali 2003:414). Depending on the context, *fard* can refer to individual religious duties, such as ritual prayers, or collective duties including funeral prayer and holy war. On the other hand, the obligation to recite certain combinations of prayers during *salah* is considered *wadjib*, as it is established by *hadith* whose authority is not completely without doubt (ibid).

A Muslim is bound to complete acts which are obligatory in either the first (*fard*) or second (*wadjib*) degree. Completion will bring reward and merit, while failure entails both temporal and spiritual punishment. Kamali wrote that the main difference between these two types of obligation, according to the vast majority of Hanafi and other jurists, is that "the person who refuses to believe in the binding nature of a command established by definitive proof becomes an unbeliever, but *not if he disputes the authority of an obligatory command of the second degree, although he becomes a transgressor*" (Kamali

2003:414, emphasis added). This distinction is crucial to the study of apostasy in Egypt, which predominantly follows the Hanafi school, because The disregard of a *fard* or *wadjib* duty demotes the doer to status of unbeliever.

As a revered and popular Azhar sheikh, Gazelli's testimony provides a strong defense for Fouda's assassins. His message was important for dual reasons. First, he was clear that Islam does not condone unjust murder. Rather, he argued that the assassins undertook a difficult mission that the proper authority, the judiciary, failed to complete. Second, Gazelli evoked notions of public morality. His overarching message was that an apostate threatens the moral fabric of Muslim society, and must be apprehended for the good of public welfare. Whatever his intentions, Gazelli's testimony was the first in a long chain of printed articles revolving around the criminalization of apostasy and the subscription to *hudud* punishments in contemporary Egypt. We know turn to the conflagration stirred by the Fouda case in general and Gazelli's testimony in particular.

Beyond the mosque walls: the print media debate

Gazelli's testimony sparked a heated debate between Islamist groups, political parties, and human rights advocates. Significantly, the major players of this discussion were not formally trained theologians or legal scholars. Rather, lay Egyptians took control of the apostasy issue, marking a change in the dynamics of Egypt's public sphere. From street corners to editorial pages, the Farag Fouda case created the fodder for a widespread and passionate debate among laity on issues previously reserved for mosque officials. In this way, the apostasy debate became a public discourse in highly-accessible public forum and mediated largely by untrained lay persons.

Before his divisive testimony, Sheikh Gazelli was a weekly contributor to the Muslim Brotherhood's *al Sha'b* newspaper. After publicly sentencing Fouda to death and then defending the act, however, even the Brotherhood joined the public debate over the validity of apostasy criminalization. Mostafa Mashur, a senior Muslim Brotherhood official, said he found Gazelli's legitimization of Fouda's murder "strange" because it could "result in anarchy in society if anybody can go ahead and kill an apostate... The government should do this – an Islamic government" (*al Misree*, May 30, 1993). Indeed, the Muslim Brotherhood severed ties with Gazelli over his vociferous call for the capital punishment of apostates.

The May 30, 1993 headline of *al Misree* read: "Sheikh al-Gazelli accuses Muslim Brotherhood politicians of being Freemasons and the Brotherhood replies passionately that Gazelli is guilty of pre-Islamic ignorance and unbelief!" (*al Misree*, May 30, 1993). Freemasons are widely considered subversive and un-Islamic³⁴, and Gazelli's accusation was likely an attempt to undermine opponents of *hudud* punishments or constitutional Islamization. The *al Misree* article clearly favored Gazelli over the Brotherhood:

The Muslim Brotherhood witnessed progress – spanning its long history – of a lot of disruptions and discord. Despite that, the movement has not seen any changes in the path which its leaders painted for it, and the leaders' plan is characterized by extremism and extravagance in the opinion of many of their political enemies... [who are] prosecuted for slander in the current waves of intimidation connected to the movement of the Muslim Brotherhood, which began to be excessive in the third segment of the twentieth century (*Al Misree*, May 30, 1993).

The article cites Ali al Dali, a government official (although the article does not say in which government department), who

confirms that the relationship between the Muslim Brotherhood and terrorist organizations, which currently participate in criminal activities in order to destroy

³⁴ On the same date the *al Seamee* newspaper ran the headline "Zionists and Masons are the first organizations of unbeliever gatherings" (*al Seamee*, May 30, 1993).

the permanent security in Egypt, is a relationship of thought, structure and planning to the furthest extent of mental acuteness” (*Al Misree*, May 30, 1993).

Al Misree thus associates the Muslim Brotherhood with both domestic terrorism against the state and the use of intimidation to silence political opponents. The Brotherhood officially condemned the statement and distanced itself from Gazelli, who told the paper that he resisted the “bombardment and punishment [from the Brotherhood] for talking...and decided that it was necessary to separate from us the misfortune” (*Al Misree*, May 30, 1993). Indeed, the article advocates for the implementation of a Gazelli-brand Islamic state, warning that “Egypt lives in a modern state of ignorance – pre-Islamic barbarism – which is growing dark from the ignorance as before Islam” (*Al Misree*, May 30, 1993).

In contrast, the bold lettering of *Rooz al-Yosef*'s June 28, 1993 edition proclaimed “Gazelli’s *fatwa* to kill is leaked!” The first paragraph of the story announced that

At last, the truth has come to light that a citizen, who declares another citizen an unbeliever or an apostate, kill him at once. And is he not frightened that all crimes are warranted by religious decisions of power and are un-punishable offenses in the Islamic *shari’a*!?” (*Rooz al-Yosef*, June 28, 1993).

The article’s sarcastic tone picks at Gazelli’s testimony that Fouada’s assassination was legitimate. The author clearly finds fault in Gazelli’s defense of *takfir*, which places undue power in the hands of ordinary and potentially vindictive lay persons. Does a citizen have the right or power to assume control of the law? The sarcastic tone of the article suggests disagreement with Gazelli’s legitimation of murder as a response to a civilian (as opposed to judicial) accusation of apostasy. The author asks: Isn’t anyone concerned that the *shari’a* could be interpreted to condone murder?

Another article in the same edition of *Rooz al-Yosef* ran under the headline “Despite his important testimony in the case of Farag Fouda: Charging Sheikh Gazelli with unbelief” followed by a subhead calling the case “the challenge of the year” (*Rooz al-Yosef* June 28, 1993). According to the article:

There is no compulsion to declare Sheikh Mahmood Gazelli friendly and esteemed...charging him friendly and esteemed would enable him, truly. Without him it is not necessary [*wadjib*] to begin confirmation of the judgment [of apostasy] (*Rooz al-Yosef*, June 28, 1993).

Simply put, *Rooz al-Yosef* was not a fan of Sheikh Gazelli.

Similarly, *Al Hala* newspaper contended on August 4, 1993 that while the *shari'a* is an important part of justice, Gazelli's legitimation of extra-judicial punishment was not supported by Islam. The article began by proclaiming support for *shari'a* justice:

An unbeliever is one who calls to obstruct the justice of the Islamic *shari'a*, and an unbeliever imposes the laws of apostasy to save the adulterer from punishment which is necessary [*fard*] in the great *shari'a* for an adulterer or adulteress (*Al Hala*, August 4, 1993).

Al Hala argued that the *shari'a* rules of apostasy, as outlined in Gazelli's testimony, are necessary for the public good. By obstructing “the justice of the Islamic *shari'a*” (*Al Hala*, August 4, 1993), an apostate is equated to an adulterer. The article further contends that just as national state laws derive from Islamic sources, the judgments of the *shari'a* derive from the Qur'an. By linking the Islamic holy text with national state laws, *Al Hala* extends religious legitimacy to the judiciary and government officials to prosecute apostates as detrimental to society as defined by the *shari'a*.

Although the article began with a defense of the *shari'a*, it concluded with on a very different note. While it is necessary to celebrate the foundations of Muslim heritage, it is additionally important that the laws adapt to changing times: “In order [for Egypt] to

become the peacemaker and thus have a future propelling international relations, it is necessary to the neglect of some *shari'a* laws” (*Al Hala*, August 4, 1993). The article offers a crucial counterpoint to Sheikh Gazelli’s testimony about the absolute power of the *shari'a*:

Sheikh Gazelli argued that Allah would agree with this interpretation: To not say that if something obstructs the great *shari'a* and influences time or place – then can we call it unbelief of time and unbelief of place, or do we remain silent and accept this obstruction and not fix it?...And a group of legal scholars met to decide the legal basis that laws change with changing times for changing interests. The group thought that this basis, in accordance with the rules, stops at the *hudud* laws of the *shari'a*, of which blood money is a part, from the way of *ijtihad*. The group did not want, in the matter of the quotation of the Qur’an, because it found that the change which happens because of circumstances of time and place obstruct some of the *shari'a* laws which are mentioned in the Qur’an quotations (*Al Hala*, August 4, 1993).

Al Hala is the official paper of the Al Tagammu party, which clashes with the Muslim Brotherhood, rejects religious extremism, and seeks to end state monopoly over the media, develop Egyptian industries, and raise awareness of environmental issues. It is therefore not surprising that this paper advocates for *ijtihad* and speaks against the complete application of *hudud* laws to Egypt’s penal system.

Early that year, on April 29, 1993, *Al Hala* attacked the Gazelli camp for hypocrisy and imposing a virtual censorship on intellectual freedom. Under the headline “The school of ‘unbelief’ varies according to opinion – Religion is under the protection of the government,” the author listed a number of grievances against the government’s institution of *shari'a* law (*Al Hala*, April 29, 1993). First, he wrote that the Fouda trial was another in a long series of accusations of unbelief (or *takfir*) launched against intellectuals, including academic Taha Hussein:

Do you agree with me that the practices which caused a group from the Al-Azhar faculty to bring a charge of unbelieving thinking against the Muslim Dr. Farag

Fouda caused his assassination? Do you agree with me that this climate causes...[one] to confiscate books of the independent legalists of thinking Muslims? Do you agree with me that this climate which participates in censoring your books and newspapers is that which instigated the charge of unbelief against a university professor, Doctor Nasr Hamid abu Zayd? (*Al Hala*, April 29, 1993).

The author then harshly criticizes those who, like Sheikh Gazelli, support the criminalization of intellectuals on charges of unbelief. Speaking rhetorically to the reader, the author wrote:

Because you didn't agree with [abu Zayd], you said he was a bigger enemy to Islam than America, Israel, corruption, and the selling of countries. He who differs with your political opinions you consider an enemy Islam, and you criticize, and you call for a ruling for his end. You omit his belief in God and the ruling of unbelief. We return to cease the judgment of his belief in God (*Al Hala*, April 29, 1993).

Thus the *Al Hala* article, published months before Gazelli's testimony, strongly criticizes the use of apostasy conviction as a method of suppressing dissent.

Equally passionate, but in a less political vein, popular journalist Hasam Soelm wrote "No judgment in the Qur'an for killing apostates," published in *Al Gomhuria* on August 17, 1993, which argued against Sheikh Gazelli's stance that an apostate must be "caught and killed" (*Al Gomhuria*, August 17, 1993). Soelm wrote of Fouda's assassination:

This crime claims that killing apostates from Islam, in order to be in conformity with [the assassins'] fervor and understandings, changes the application of the *shari'a* to claim the foundation of all Muslims and not [just] religious apostates. Rather, they claim in their legal opinion to restrict the claim that it is truth by which a Muslim kills another Muslim (*Al Gomhuria*, August 17, 1993).

Soelm thus contended that the criminalization and execution of apostates was driven by "men of religion that assemble in some distorted call of intimidation," leading to civil strife and discord in Egypt (*Al Gomhuria*, August 17, 1993). Apostasy, he argued, represents an obstruction of the Prophet Mohammad's teachings, which indicate the

freedom of “entire people in choosing their path of belief or unbelief, and to him total freedom in that he enters Islam or he leaves it” (*Al Gomhuria*, August 17, 1993).

Soelm bolsters his argument with six Qur’anic *Surahs*, or Surahs, that suggest that while an apostate will be punished for abdicating the religion, his punishment will be left to God’s judgment in the afterlife, not to man’s judgment now. It is, incidentally, of interest that Sheikh Gazelli made no mention of these Surahs, which are often used to refute the application of criminal penalties to convicted apostates. Soelm begins with Surah al-Maeda 5:54, “O you who believe, if you revert from your religion, then God will substitute in your place people whom He loves and who love Him” and Surah al Imran 3:86, which states that “How shall Allah guide a people who disbelieve after their belief, and after they bore witness that the Messenger is true and after clear proofs had come unto them, and Allah does not guide the people who are Zilimin [polytheists and wrongdoers].” Soelm argued that these *ayaat* are clearly “void of any judgment to kill those who return to unbelief after their belief,” as only God can be the ultimate judge of a person’s character (*Al Gomhuria*, August 17, 1993).

Soelm next turns to Surah al Baqarah 2:217: “And if any of you turn back from your faith and die in unbelief, your works will bear no fruit in this life and in the hereafter; you will be companions of the fire and will abide therein.” This Surah is the Prophet’s response to a question about fighting during the holy month of Ramadan; his response is that the enemies of Islam will not relent until they succeed in “turning you back from your faith if they can.” This Surah, then, likely refers to the *Ridda* wars of the seventh century, when tribal warfare broke out after the Prophet’s death. Soelm includes this Surah in his argument because it allocates the only punishment for apostasy to “the

other world” and reinforces that an apostate will suffer after death, but should not be punished in this world for his unbelief.

The fourth verse listed by Soelm against temporal punishment of apostates is Surahe al Imran 3:90: “But those who reject Faith after they accepted it, and then go on adding to their defiance of Faith, never will their repentance be accepted; for they are those who have gone astray.” Similarly, Surah An Nisa 4:137 says that: “Those who believe, then reject faith, then believe (again) and (again) reject faith, and go on increasing in unbelief, Allah will not forgive them nor guide them nor guide them on the way.” Soelm wrote:

These Surahs describe when people shift repeatedly between belief and the idea of unbelief a number of times, rather than settling on unbelief. Despite this, do not assume an imperious attitude of the Lord of power and dignity by killing them not the first time, and not the second, and not the third when they return to unbelief after they shift from belief. Rather, imitate the punishment of the prohibition from God’s forgiveness and from the blessing of His gifts, and afterwards the anger of the Lord’s power and dignity will befall them (*Al Gomhuria*, August 17, 1993).

Soelm further argued that an accused apostate must be educated about his transgression, because he may not realize that his actions constitute apostasy:

It is obvious that to call on an apostate to repent... and to threaten him with murder or even with imprisonment if he does not repeal his disbelief is not the [correct] manner to call for his comeback to the religion. And with the order that an apostate return to Islam under threats of the sword to his neck, is this the Islam that the Lord of power and dignity wanted for what turns this apostate back from a notion of unbelief? This method of calling on an apostate to repent under the threat of murder was born from hypocrisy (*Al Gomhuria*, August 17, 1993).

Soelm reprinted segments of his *Gomhuria* article in *Al-Haqeeqa* on September 25, 1993. Under the same headline, “There is no punishment for apostates in Islam,” he refuted the criminalization of apostasy in two points. First, he reiterated his point that

there is no way to religiously legitimize an act without a Qur'anic judgment pertaining to it:

The lack of a verdict in the Qur'an to kill an apostate is not a claim that I make, but a truth that all scholars recognize, including Gazelli himself. And even if such a thing was a law, no Muslim would dare to make an *ijtihad* for killing, and secondly that it is prison and thirdly that if he escaped that no one will pursue him including the big difference between each *ijtihad* (*Al-Haqeeqa*, September 25, 1993).

Second, Soelm argued that there are no Qur'anic verses that allow the persecution of apostates, outside of the context of the *Ridda* wars of the seventh century. He thus challenged his readers:

If the apostate declares his apostasy openly and manifests it and demonstrates it evilly...then gather the Surahs which speak about apostasy or hypocrisy; don't continue to kill them, but leave their punishment to God in this world and the other (*Al-Haqeeqa*, September 25, 1993).

A journalist by trade, Soelm was never trained in Islamic legal theory or theology. His editorials were therefore based on his perceptions of apostasy from a lay perspective.

These newspaper discussions provided a crucial forum for lay persons to debate both the politics and theology behind apostasy criminalization. The question remains of why the 1990s specifically inspired lay intellectuals to step into a realm previously delineated for highly trained Islamic jurists. Perhaps revolutionary sentiments lingered from the 1979 Islamic Revolution in Iran. A more likely explanation, however, is that the public had become disenchanted by the constant clashing between the government, secularists, Islamists and traditional *ulama*.³⁵ As the internet grew prolific and Egypt's international image became more important than ever, it is not unreasonable that the public simply became fed up of the decades-old quarrels and sought a new status quo that would allow intellectuals to contribute unhindered to Egypt's public sphere.

³⁵ For a discussion of the centuries-old disagreements between these groups, see Chapter 2, page 27.

While many newspapers were semi-official or aligned with a specific party, the ability for lay persons to engage and disseminate the debate was indicative of a change in the Egyptian public sphere. Egyptians assumed control of complex religious issues and lobbied fellow citizens and officials alike to reconsider their views. Indeed, the newspapers created a public discussion not just of apostasy, but of the larger issue of free speech in the public sphere.

Conclusion

Ahmad Rahman, the Cairo Imam mentioned at the beginning of this chapter, did not kill nine apostates in his back room. Rather, his experience counseling apostates shows a very human side to religious conversion. These nine individuals chose to abdicate from – and some chose to return to – Islam for personal reasons of spirituality and belief. Although those who remained apostates gave up their civil rights as Muslims, no cleric issued decrees for their deaths, and nobody asked whether these nine apostasy cases were a detriment to public welfare. Indeed, the matter was quiet and simple. Unfortunately, this was not the case with high-profile intellectuals, like Farag Fouda, for whom apostasy was a very public matter.

The public apostasy discourse over Fouda's assassination provided an important antithesis to the Orientalist claims that the Muslim world is without history, politics, and debate. As the above discussion shows, not only were the judgments of a revered Azhar sheikh questioned, but they were scrutinized by lay persons in a public forum accessible by all literate Egyptians with access to a newsstand. The key importance of the debate was not simply that it happened, but rather how it happened: the inner workings of an

intricate and sensitive Islamic legal mechanism were dissected and analyzed as a public, inclusive discourse. The debate transcended the boundary of the mosque to integrate, and indeed rely on, lay persons without formal legal training but with access to the published word.

As the apostasy discourse unfolded in the public sphere and in lay vernacular, questions of free speech rose to the forefront of the dialogue. International observers have long questioned the compatibility of Islamic legal norms and international human rights standards. The intersection of Islamic and secular legality over public human rights standards, specifically the freedoms of speech, expression, and religion, is the subject of the final chapter of this thesis.

Chapter 4: Perceptions of the public: Islamic and secular legality at a crossroads

“No one would expect the law to offer exhaustive guidance on freedom of expression, as public opinion, moral attitudes, and custom all play a significant role in determining the scope and dimension of this freedom” (Kamali 1994:15)

The relationship between international human rights standards in theory and in practice can be weak, especially in a state like Egypt where traditional religious law is reconciled with modern conceptions of legality. This chapter explores legality, human rights and the public sphere, focusing first on the Egyptian judiciary’s use of specific Islamic legal mechanisms for the preservation of public welfare. The mechanisms *takfir* and *hisbah* were evoked by Sheikh Gazelli to accuse Farag Fouda, and by lay persons to accuse Nasr Abu Zayd of apostasy. Although many Islamic legal scholars (Kamali 2003, Hallaq 2006, Ramic 2003) analyze the semantics of technical legal issues, there is a noticeable gap in literature regarding *hisbah* and *takfir*. This chapter seeks to fill that void by analyzing how the Egyptian judiciary, which touts itself as progressive and independent, interacts with these legal mechanisms for the alleged betterment of public welfare.

The remainder of this chapter engages the highly contentious human rights discourse, whereby Islamic law is widely perceived as irreconcilable with international human rights norms. Although Egypt is a signatory to various human rights doctrines, the state and judiciary continued to identify and prosecute political opposition as apostates in the 1990s. By asserting *shari’a* reservations to certain provisions on international human rights treaties, Egypt received the accolades of being an international human rights advocate while simultaneously declining to uphold specific provisions within human

rights doctrines. We begin with a look at the two Islamic legal mechanisms responsible for much of the apostasy accusations elucidated on the previous pages.

Hisbah and takfir: Promote good and prevent evil

Apostasy enjoys a liminal status in Egypt's judicial system. Neither legal nor illegal, the crime lacks codified positive law to guide prosecution and sentencing. Indeed, apostasy is omitted from Egyptian statutory law and is not expressly prohibited by the Penal Code. The Court of Cassation and the Supreme Administrative Courts have both ruled that the omission of codified apostasy law is not indicative of permission for apostasy.³⁶ Charges of apostasy are often validated by Article 98f of the Egyptian Penal Code, which prohibits the use of religion to "ignite strife, degrade any of the heavenly religions or harm national unity or social peace," or on the all-encompassing powers of the Emergency Laws (Berger 2003:722).

Despite the lack of official apostasy legislation, the Egyptian judiciary prosecuted apostates in the 1990s based on the legal principle of *hisbah*, an Islamic mechanism that mandates Muslims to speak out against perceived evil for the good of the public. By maintaining the legality of *hisbah*, the judiciary assumed control over the definition and allocation of public welfare while concurrently appeasing advocates of constitutional Islamization. At the same time, by avoiding codifying anti-apostasy positive law, the judiciary maintained Egypt's signatory status on international human rights doctrines protecting religious freedoms.

³⁶ Court of Cassation No. 28, Year 33, 19 Jan. 1966; No. 20, Year 34, 30 Mar. 1966. Supreme Administrative Court, No. 240, Year 22, 13 May 1973. Fatwa by state council in its legal ruling Nr. 804 of 2 Dec. 1962.

According to legal scholar Kamali (1994), a proclamation of freedom of speech is not a license for unrestrained action. The freedom of speech does not cover opinions displaying pernicious innovation, transgression, caprice, dissension and ignorance (Kamali 1994:125). In the *shari'a*, violations of freedom of speech fall into two categories: first in the form of particular offenses, such as blasphemy, sedition, insult, slanderous accusation, or attribution of lies, and second in the form of a contempt to, or denial of, the accepted norms and principles of Islam (Kamali 1994:161). The latter category includes unbelief (*kufir*) and heresy, and can carry specific criminal penalties.

Intricately linked to notions of public welfare, *hisbah* is a *wadjib* obligation to promote good and to prevent evil as the occasion arises (Kamali 1994, 2003). Al-Siba'i argued that it is the obligation of an individual who witnesses an 'evil action' in violation of the *shari'a* to prevent or denounce it to the greatest extent possible (1960:52). *Hisbah* is the cardinal Qur'anic principle which entitles citizens "to speak and to act in pursuit of what in their enlightened judgment seems good, or they can forbid, whether in words, acts, or silent denunciation, any evil which they see being committed" (Kamali 1994:30).

In an affirmative sense, this principle encourages freedom of expression because it promotes an individual to speak out against, for instance, government wrongdoings (Kamali 1994:13, 2003:416). *Hisbah* is not confined to free speech issues, but, in Kamali's words, without freedom of speech it would be inconceivable to command good or to forbid evil (1994:31). Kamali's definition is unsatisfying, however, as notions of 'good' and 'evil' are highly subjective and can be appropriated for purely political agendas. Kamali argued that the *shari'a* entitles an individual to say "what he or she pleases provided that the words so uttered do not incur blasphemy, backbiting, slander,

insult and lies, nor do they seek to give rise to depravation, corruption, hostility, and sedition” (1994:13). *Hisbah* urges Muslims to not remain silent in the face of injustice, and upholds the individual right to express an opinion. Yet the relationship between the *shari'a* version of free speech and the *hisbah* obligation to speak out against immorality seem contradictory: if a Muslim reports an unjust ruler, the whistleblower could be accused of slander, sedition, or any number of the charges enumerated by Kamali (1994:13) above. To therefore avoid counter-prosecution, *hisbah* claims must expressly seek to counter an evil for the betterment of the public good.

Hisbah is an element of broader considerations of public interest, or *maslahah*, which is “essential to life and when disregarded this leads to the collapse of normal order in society” (Kamali 1994:23). Widely-cited medieval scholar Abu Hamid Al-Ghazali characterized *hisbah* as the most important objective of all revealed scriptures, the essence of the Islamic religion. As such, the absence of *hisbah* would lead to the collapse of the religion and “widespread corruption and ignorance” (1980:310). *Hisbah* is therefore a form of public policy to prevent the degradation of society and promote morality.

Although the *shari'a* forbids “inquisitions” of any kind meant to establish or investigate the Islamic identity of individuals (Kamali 1994:181), the *hisbah* principle gives both men and women a mandate to “denounce and disapprove transgression, be it on the part of a government leader, a fellow citizen, or indeed anyone who is engaged in criminality and evil” (Kamali 1994:51). A Muslim is forbidden from accusing others of unbelief (an action called *takfir*) or even transgression without indisputable evidence, and even then, Kamali argued that laypersons lack the knowledge to judge a situation fairly.

In the event of self-evident proof, “the issue is so sensitive and complex that only a judge or *mufti* who is well-versed in theological sciences is authorized to determine what exactly amounts to disbelief” (Kamali 1994:179). In fact, an unfounded accusation of unbelief is itself a grave crime punishable in a court of law.

Takfir appears extensively in the *Sunna* (written accounts of the Prophet’s deeds), which are second only to the Qur’an as a source of legislation in Sunni Islam. The vast majority of the *hadith* which address *takfir* actually prohibit accusations of unbelief between laypersons. For instance: “Whoever charges another person with disbelief, or say to him ‘O enemy of God’ while this is not so, the charge returns and befalls upon himself” (Al-Tabrizi, *Mishkat*, vol. 3, Hadith 4817). Ibn Hazm, an Andalusian-Arab jurist and theologian (d. 1064), wrote that anyone who utters the testimonial of faith, declaring that there is one God and Muhammad is His prophet, becomes a Muslim, and this bond with Islam cannot be severed unless allegations of unbelief are backed with indisputable evidence (n.d. III, 138). Once a person professes faith in Islam, he becomes a Muslim and therefore falls under *shari’a* jurisdiction.

By upholding the legality of *hisbah* and *takfir*, the judiciary extended legality to apostasy accusations between lay persons. This shifts power from trained court officials to lay persons, and opens the door for apostasy accusation based on personal vendettas. Indeed, as Zayd discovered, *hisbah* and *takfir* are powerful and potentially dangerous tools that purport to protect the common good but can be appropriated for political means, instead.³⁷

³⁷ Significantly, while the Nasr Abu Zayd conviction was ultimately upheld by the Supreme Court, it also led to passage of Law no. 3/1996, which prevents *hisbah* claims by private individuals.

Apostasy as public policy: the Nasr Abu Zayd case

While Farag Fouda was a self-proclaimed secularist and atheist, Cairo University associate professor Nasr Zayd was – and remains – a practicing Muslim. Convicted of apostasy in 1995, Zayd was ordered to divorce his wife, as an apostate cannot be legally married. However, Zayd did not fulfill the major requirement of apostasy: he never defected from Islam or ceased practicing the religion.

The Zayd conviction is important to this discussion for three reasons. First, it illustrates the political use of apostasy in lieu of blasphemy charges. Although his crime, positing alternative versions of early Islamic history, is probably closer to blasphemy, Zayd was convicted of the more severe offense of apostasy. Second, the Zayd conviction represents the first time the Court of Cassation convicted an individual of apostasy on the grounds of a violation of public policy. As Berger (2003) noted, the judiciary decided what constitutes apostasy, not simply how to punish a self-confessed apostate. The court thus expanded the definition of apostasy to include crimes of blasphemy, not simply crimes of conversion. Third, the Zayd case justified strict adherence to the rules of apostasy while simultaneously reinforcing a protective shield for the orthodoxy of Islam (Berger 2003:738). Because apostasy is considered a *hudud* crime in Islam, it is likewise a crime in Egypt's shari'a- based legal system.³⁸ Zayd's writings were deemed by Islamist advocates as a public attack on the fundamental rules and rights of Islam, and his conviction was hailed as a victory for the Islamist right.

By equating the illegality of apostasy to the maintenance of public welfare, the Court of Cassation effectively ruled that apostasy constituted a violation of public policy.

³⁸ For a discussion of the constitutional Islamization debates, see Chapter 2, page 36

According to Berger, public policy “stands for those legal principles that are considered fundamental to a society, and which may not be contradicted, altered, or violated by any rules or laws of that same society” (Berger 2003:725). Not attaching any legal consequences to apostasy, therefore, is tantamount to violating Egyptian public policy. The court thus relegated apostasy into the ambiguous realm of the public good, where it could reside uncodified and open to interpretation.

Zayd’s conviction additionally reinforced claims that apostasy is not protected by constitutional guarantees of freedom of religion because apostasy is part of the *practice* of a belief. A person must already be a Muslim to defect from Islam, and therefore must therefore submit to the legal frameworks already in place in the religion. For instance, the Egyptian Supreme Administrative Court in 1980 ruled that freedom of belief protects citizens against forced conversions, but once a person professes a single faith, he or she must abide by the rules of that faith. The Court ruled that:

Since Islam protects the freedom of belief—for Islam may not be forced on anyone—freedom of belief as granted by the Constitution means that each individual may freely embrace whichever religion he believes without constraint. However, this freedom does not restrict the application of the Islamic Shari’a to those who embrace Islam. The State’s religion is Islam. . . . Since the plaintiff has embraced Islam, he must then submit to its law which does not condone apostasy. (Supreme Administrative Court, 1980, Case No. 20, Year 29, 8 Apr. 1980).

Similarly, the Court of Cassation ruled in the Nasr Zayd case that:

The purpose of entering Islam is to abide by its rules, including those of apostasy. The rules for apostasy are no more than measures to keep a Muslim in his Islam, distinguishing him from others. . . This is what also happens in other religious law with regard to their followers: they demand continuous loyalty to them. Once an individual joins in, he is to abide by its rules which can expel or segregate him if he violates their fundamental principles which he embraced. . . Certain religious laws. . . consider a difference of religion an impediment to marriage which prevents its conclusion, and they consequently impose separation or divorce. The same applies when one of the spouses embraces another religion. This does not violate the freedom of belief (Court of Cassation, Nos 475, 478, 481, Year 65, 5 Aug. 1996).

In Berger’s words, the rules of apostasy are part of the freedom to practice one’s religion: a Muslim must abide by Islamic law, so the criminalization of apostates from Islam is a

religious practice in itself (2003:739-740). Apostates therefore still qualify as Muslims under personal status law, and must face the Islamic consequences of committing the crime of apostasy.

Rationalizing apostasy criminalization as a religious practice seems contradictory to Egypt's stated dedication to the values enumerated in multiple international human rights doctrines. The relationship between Islamic and secular norms of human rights has been highly debated.

Human rights law and Islam: an inherent contradiction?

Scholarship is largely polarized regarding the compatibility of Islamic law and modern human rights. At one end, numerous authors (Maududi 1976, Tabandeh 1970, Said 1979, Khadduri 1946, Hassan 1982) have argued that Islam provides a comprehensive set of human rights, including the rights of individuals. In contrast, An-Na'im (1990:185) argued that because human interpretations cannot be considered divine, the application of the *shari'a* would inevitably create dictators. Tibi (2001) similarly argued that the basic hierarchy of Islamic law begins with the *umma* and ends with the family unit, with little emphasis on the status of the individual, which contradicts Western notions of cultural modernity that emphasize the role of the individual.

Human rights, including the freedom of expression, can be powerful tools to protect the individual from the intrusive modern state, forming a reciprocal relationship with state authority: the state determines which rights to enforce, but those rights in return limit state action (Donnelly 1985: 45). Chase defines human rights as "a legal-political discourse that responds to the power of the modern state, not a religious-spiritual

discourse” (2006:27). According to Donnelly, human rights are “the rights one has simply for being born a human being” (1998:202). These rights are held equally and are inherent to all human beings, and “they are the social and political guarantees necessary to protect individuals from the standard threats to human dignity posed by the modern state and modern markets” (1998:202).

The freedom of religion (and the implicit freedom to change religions) is included in all of the international human rights accords signed by Egypt. It is also enshrined in the Egyptian constitution as

the right to freedom of thought, conscience and religion...includ[ing] freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching (Article 40).

Yet freedom of religion acquires special significance in the *shari'a*, a legal system which recognizes no clear distinction between legal and religious norms (Kamali 1997:85).

Once a Muslim renounces his faith, he is no longer entitled to the civil rights accorded by Islamic law.

For Mayer (1999), contradictions between international human rights standards and Islamic law are obvious. For instance, the 1948 United Nations Universal Declarations of Human Rights (UDHR) stipulates that, among other things, “slavery and the slave trade shall be prohibited in all their forms” (Article 4), “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 5), and “Everyone has the right to freedom of thought, conscience and religion; *this right includes the freedom to change his religion or belief*” (Article 18, emphasis mine). In contrast, slavery is lawful under the *shari'a*, which also authorizes the aggressive use of force to propagate Islam. Additionally, the punishments of the *shari'a* can include

floggings, crucifixions, and amputations (Mayer 1999:47). Furthermore, while secular public law recognizes the rights and status of non-Muslims, the *shari'a* does not (An-Na'im 1990:8-10).

Contrary to common belief, Muslim states that ratify international human rights treaties are not bound by the international law rule that a State Party to a treaty “may not invoke the provisions of its internal law as justification for its failure to perform a treaty” (Vienna Convention on the Law of Treaties, Article 27). Muslim states that evoke so-called *shari'a* reservations do so not to justify a failure to perform their human rights obligations, but rather because the international human rights law in question is deemed incompatible with or disregarding Islamic values. For instance, in his 1988 written argument against the UDHR, Egyptian cleric 'Ismat Sayf al-Dawla wrote

I must admit that I am not a supporter of the *Universal Declaration of Human Rights* that the United Nations Organisation issued on December 10, 1948. Our history of civilisation has taught us to be wary of big and noble words as the reality of our history has taught us how big words can be transformed into atrocious crimes. We cannot forget that the initiators of the *Declaration of Human Rights* and the plain French citizens are the same people who shortly afterwards, and before the ink of the *Declaration* had dried up, organised a campaign and sent their forces under the leadership of their favourite general, Napoleon, to Egypt. We must not forget either that the United Nations Organisation issued the *Universal Declaration of Human Rights* in the same year that it recognised the Zionist state that usurped Palestine and robbed its people of every right stipulated in the *Declaration*, including the right of life (al-Dawla 1988:33-39)

Al-Dawla's position clearly accuses the framers of the UDHR of hypocrisy and imperialism by colonial actions in both Egypt and Palestine. Ridwan al-Sayyid writes that this position “stems...from the contradiction between word and deed among Westerners despite the beauty and truth of the word” (1995:21).

When Egypt ratified the ICCPR and the ICESCR in 1982, it also entered a declaration that it would take “into consideration the provisions of the Islamic *shari'a*” when enforcing the two covenants. However, Egypt's initial report on the ICESCR submitted in 1998 stated that:

Egypt expressed a general reservation to the effect that account should be taken of the need to ensure that the Covenant was not incompatible with the provisions of the Islamic Shari'a. However, the practical implementation in Egypt of the provisions of the Covenant, as one of the country's laws, from 14 April 1982 to date has not revealed any incompatibility between the provisions of the Islamic Shari'a and the principles and rights set forth in the Covenant and relating to its field of application (Initial state party report, 1998).³⁹

These *shari'a* reservations thus allow Egypt to enter the Western discourse of human rights while concurrently appeasing Islamist advocates and maintaining discretion over which human rights norms to apply. Under this framework, Egypt preserves an image as a progressive supporter of international human rights regimes, despite its suppression of apostasy to suppress intellectual dissidents.

In opposition to these claims, Donnelly argued that “where such arguments are not entirely anachronistic, they confuse what is *right* with *human rights*” (1985:49, emphasis mine). Citing the work of religious scholar Khalid Ishaque (1974), Donnelly contended that

The scriptural passages cited...as establishing a ‘right to protection of life’, in fact are divine injunctions not to kill and to consider life as inviolable. Likewise, ‘the right to justice’ proves to be instead a duty of rulers to establish justice, while ‘the right to freedom’ is merely a duty not to (unjustly) enslave others. ‘Economic rights’ turn out to be duties to earn a living and help provide for the needy, and ‘the right to freedom of expression’ actually is an obligation to speak the truth (Donnelly 1985:50).

In this view, the Islamic concern for human good is not equivalent to a concern for, or recognition of, human rights. Rather, Donnelly contended, Islamic human rights provisions regulate behavior and delineate the duties of Muslims. These provisions, then, are not meant to protect the rights of individuals, but rather to simply create a set of behavioral norms.

An-Na'im argued that current international law and human rights standards cannot co-exist with corresponding *shari'a* principles unless Islamic public law is reformed to include standards of human rights that are currently neglected in the *shari'a*

³⁹ Initial State Party Report: Egypt; E/1990/5/Add.38 of 30 June 1998.

(1990:8-10).⁴⁰ He further wrote that while completely eradicating Islamic law is infeasible, the historical *shari'a* will continue to contradict international norms of human rights unless it is reformed to coalesce with modern times. At the same time, the secular public law that was introduced to the Muslim world through colonial experiences and the establishment of the modern nation-state “will have to be Islamized in recognition of the Muslim right to self-determination” (An-Na'im 1990:10). As Kamali argued, Muslim societies have the right, and indeed a need, to elevate teachings from the Qur'an and *Sunna* into positive laws for the purpose of enforcement (1994:104). The lingering problem, for which I have no solution, is how to reconcile Islamic legal norms with appropriate international human rights or secular statutory norms.

Conclusion

Egyptian Islamic and secular notions of law are indeed at an important junction, whereby concepts of legality intersect and occasionally contradict one another. For many Islamists, the public interest is vested in the application of Islamic principles to public life. To secularists and international human rights observers, however, the Egyptian public would be best served by a transparent state with an active commitment to human

⁴⁰ According to Halliday (1995:152), there are at least four classes of Islamic response to the international human rights debate: (1) Islam is compatible with international human rights, (2) true human rights can only be fully realized under Islamic law, (3) the international human rights objective is an imperialist agenda that must be rejected, and (4) Islam is incompatible with international human rights. Baderin (2003:13) added one more response, that international human rights objectives have a hidden anti-religious agenda. These responses reflect Muslim reactions to so-called double standards of human rights promotion. The second response, that human rights can only be achieved under Islamic law, evokes the same exclusionist and ethnocentric ideology often applied exclusively to Western perspectives or powers. The view that international human rights represents an imperialist agenda is not unique to the Islamic world, but is often common to the human rights discourse of developing nations still struggling from the legacy of Western imperialism and neocolonialism. The view that international human rights objectives contain some secretive anti-religious plot is indicative of the suspicions held by some Muslims that the separation of church and state in the West indicates some Western intention to do the same in the Muslim world via international rights ideologies (Baderin 2003:16).

rights. The judiciary is torn between its constitutional duty to maintain *shari'a* values, including *hisbah* and *takfir*, while avoiding inviting malicious accusations leveled for purely political reasons, as in the Zayd case. The 'public good,' meanwhile, remains an ambiguous space with unclear parameters, simply notion that can be molded to fit any political, religious, or secular agenda.

Conclusion

The apostasy debates of the 1990s marked a substantial shift in the dynamics of Egypt's public sphere. For the first time, lay persons with no formal training in Islamic law publicly argued against revered Azhar sheikhs on matters of theology and legality. Finding a public forum within newspapers, these debates were accessible to any literate Egyptian with access to a newsstand. By questioning the legality behind apostasy accusation, lay persons gained control of the apostasy discourse and became a reckoning force in a game previously dominated by large, organized bodies such as the government, al-Azhar and Islamist groups.

The judiciary additionally molded the relationship between apostasy, legality and the public sphere. In the 1995 conviction of Nasr Abu Zayd, the judiciary ruled not on the specific punishments for a confessed apostate, but rather on the definition of apostasy. The court concluded that because the Egyptian Constitution allocated the *shari'a* as the primary source of legislation, acts that violate the *shari'a* simultaneously violate the public interest. Nasr Abu Zayd's conviction was thus rationalized as a measure of protection for the public, even though Zayd never converted from Islam. For the first time, the court defined apostasy as something detrimental to the public sphere, an ambiguous definition that open to myriad interpretations. The courts further entrenched the relationship between apostasy and the public by upholding the legality of two Islamic legal mechanisms, *hisbah* and *takfir*, which allow Muslims to accuse one another of apostasy and other crimes for the preservation of public welfare. Again relying on the Constitutional provision in Article 2 that the *shari'a* is the source of legislation, the

judiciary avoided codifying apostasy law because religious clerics and laypersons were already evoking *hisbah* and *takfir* to bring apostasy cases to the court docket.

As suggested by Ahmad Rahman, the Cairo Imam mentioned in Chapter 3, apostasy criminalization in practice is not simply a matter of conversion. Using the English words blasphemy, slander and offense to discuss apostasy, Rahman appeared unable or unwilling to differentiate between the terms. Rather, he subsumed blasphemy, slander and offense under the umbrella category of apostasy. This is highly indicative of the way ‘apostasy’ was used in the public sphere after the Fouda assassination: most of the intellectuals accused of apostasy in the 1990s only questioned elements of Islamic history or political Islam, not converted away from the religion. Further, crimes of blasphemy are often brought to trial labeled as crimes of apostasy, which carry a much more significant social stigma and judicial sentence. The use of ‘apostate’ to describe a situation of offense or blasphemy creates severe implications for free speech in Egypt’s public sphere.

Apostasy criminalization in Egypt presents a unique contradiction between a legal commitment to upholding *shari’a* values and a promise to the international community to protect basic standards of human rights, including the freedoms of belief and speech. Despite the state’s signatory status on numerous international human rights doctrines, apostasy remains a highly ambiguous charge with severe consequences akin to a civil death. As the myriad accusations against politically-active intellectuals in the 1990s demonstrated, the criminalization of apostasy in Egypt’s public sphere was a measure to stymie political or religious opposition ostensibly for the preservation of public welfare. By not codified official anti-apostasy statutory law, Egypt could both

maintain the international image of a progressive state with a strong respect for individual freedoms while simultaneously appeasing Islamist advocates.

Although future of Egyptian human rights law remains unclear, a few patterns are evident: Egypt's judiciary is constitutionally mandated to uphold *shari'a* values, but many courts are touted by Western and Egyptian scholars as progressive and relatively independent. Egyptian newspapers may face foreclosure for printing an unflattering story, but editorial pages burst with rants against the government and calls to arms for the Egyptian people. Intellectuals have faced severe consequences, including death, for failing to conform to the religious status quo, yet universities have active presses and are full of students. Indeed, the trajectories of Egyptian politics, judicial independence, and personal freedoms in the public sphere appear to be moving, albeit inching, closer together.

Glossary of Arabic terms⁴¹

Dawa (دعوة): to call or invite or, in a religious sense, an invitation addressed to men by God and the prophets to believe in the true religion, Islam

Fard (فرض): religious duty or obligation, the omission of which will be punished and the performance of which will be rewarded; often synonymous with *wadjib*, although the Hanifi school defines as *fard* those religious duties which are explicitly mentioned in the proof texts, the Qur'an and *sunna*

Fatwa (فتوى): an opinion on a point of law given by a *mufti*

Fiqh (فقه): Islamic jurisprudence, or the science of religious law in Islam, encompassing provisions for all the legal questions that arise in social life

Hudud (حدود): punishments of certain acts which have been forbidden in the Qur'an and are therefore considered crimes against religion

Hadīth (الحديث): an account of what the Prophet Muhammad said or did, or of his tacit approval of something said or done in his presence, transmitted orally by scholars and considered second in authority to the Qur'an

Hisbah (حسبة): the duty of every Muslim to “promote good and forbid evil” for the good of public morality.

Ijtihad (اجتهاد): literally “exerting oneself”; the use of individual reasoning and reasoning by analogy to interpret religious law, drawing on conclusions from the Qur'an and the *sunna*

Imam (إمام): the highly trained legal, military, and political leader of a Muslim community

Jama'a (pl. *jama'at*) (جَمَاعَة): literally “group”; in Egyptian dialect pronounced and spelled *gama'at*

Jihad (جهاد): “effort”, a duty found in the Qur'an to extend the sway of faith, both physically and spiritually

⁴¹ All definitions come from the *Encyclopaedia of Islam*, eds Bearman, Bianquis, Bosworth, van Donzel and Heinrichs. Brill, 2007. [Brill Online](http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam_COM-0189). Available through University of Washington libraries at http://www.brillonline.nl.offcampus.lib.washington.edu/subscriber/entry?entry=islam_COM-0189

Kufr (كافر): unbelief in God; can include neither recognizing nor acknowledging God, remaining an unbeliever in spite of one's better knowledge or out of envy or hatred, or outwardly acknowledging God but still remaining an unbeliever

Maslahah (مصلحة): public welfare or public interest

Mufti (مفتي): a jurist, preferably highly qualified, who made himself available to give specific answers to specific questions of the law and issued *fatawa*

Ridda (ردة): apostasy; the name given in Islamic historiography to the series of battles against tribes, both nomadic and sedentary, which began shortly before the death of the Prophet Mohammad and continued throughout Abu Bakr's caliphate

Sheikh (شيخ): the head of a religious establishment or any Muslim scholar of a certain level of attainment

Sunnah (سنة): Normative custom of the Prophet or of the early community

Shari'a (شريعة): designates the rules and regulations governing the lives of Muslims, derived in principal from the Qur'an and *hadith*

Siyasa shar'iyya: literally "the politics of the *shari'a*"; notion that the state has the discretionary authority to legislate outside the framework of the *shari'a* as needed for the public good, provided that the *shari'a* is not infringed thereby; implies punishment beyond the *hudud*.

Takfir (تكفير): the verbal noun form of the verb *kaffara*, "to declare someone an unbeliever"

Ulama (علماء): scholars of the religious sciences considered guardians, transmitters and interpreters of religious knowledge; experts in religious and judicial issues

Umma (أمة): a community with political authority and autonomy, as well as religious and social characteristics; the community of believers in Islam

Wadjib (واجب): an obligation; often synonymous with *fard*, although the Hanafi school defines as *wadjib* those religious duties the obligatory character of which has been deduced by reasoning