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# The Radical Application of the Islamist Concept of *Takfir*

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## Abstract

The ideology and actions of certain militant groups in the Middle East are often condemned as a perversion of Islamic precepts. In order to achieve a theologically ideal society these groups espouse *Takfirism*, a minority ideology which endorses violence and in particular advocates the killing of other Muslims declared to be unbelievers. These groups justify their words and deeds with direct quotations from the Qur'an and the *Sunna*, which are the sources of Islamic law (Shari'a), as well as by citing historical precedents such as the Khawarij movement and Ibn Taymiyya's *fatawa*. This article aims to analyse how these groups (and in some cases state actors) defend their actions in legal terms and how mainstream Islamic scholars respond to what they consider to be doctrinal deviations.

## Keywords

*Takfir*; ISIS; the Khawarij; Wahhabism; radical Islamist groups; *hisba*; *fatwa*; blasphemy; apostasy

## 1 Introduction

Mainstream Sunni Islam considers it wrong for Muslims to engage in the practice of *takfir* (excommunication), a right they consider to be held solely by God. Declaring someone a *kafir*<sup>1</sup> and subsequently taking their life are acts that nevertheless have been carried out by certain Muslim groups for centuries, right from the Khawarij in the 7<sup>th</sup> century CE through to the al-Zarqawi-led Iraqi insurgency and the so called Islamic State of Iraq and Syria (ISIS) in modern times.

The emergence and evolution of *takfir* as a device with which to identify and condemn those deemed to be non-believers and the misinterpretation or misuse of the Islamic legal and enforcement tools such as *hisba* and *fatwa* are the main reasons why Islam is plagued by apostasy and blasphemy issues and with extremist groups today. This article looks at how militant groups and state actors have developed a distinctive interpretation of Islamic concepts and precedents as a means to justify purging society of those they view as heretics. It contrasts this construction to that of mainstream Muslim scholars, who deem such

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<sup>1</sup> *Kafir*: non-believer (plural: *kuffar*).

interpretations as distortions of Islamic principles. The article contends that when refuting the legality of human-initiated *takfir* one must avoid the pitfall of labelling their authors ‘non-Muslims’, as this itself may be understood as a declaration of *takfir*. The article thus suggests tackling this complex subject from a strictly legalistic point of view.

Drawing on the Shari’a itself, Section 1 examines the concept of *takfir* and shows that the right to excommunicate is God’s exclusively. Section 2 then gives an overview of the evolution of *takfir*, from the Khawarij to the modern extremist group ISIS. It shows how the notion of *takfir* was first developed in the 7<sup>th</sup> CE and has continued to evolve throughout Islamic history, and also how the roots of modern extremist groups and the ideology they employ can be traced right back to the beginnings of Islam. Section 3 provides a brief survey of the legal and enforcement devices used by militant groups to secure the death penalty, namely *fatawa* (advisory opinions)<sup>2</sup> and *hisba* (commanding right and forbidding wrong) . Both of these Islamic concepts have been used from the mediaeval age onwards, but today they are being deliberately misinterpreted by extremists to punish their fellow Muslims. Lastly, Section 4 argues that *takfir* must be denounced without succumbing to the pitfall of *takfir* rhetoric.

### **1.1 The Shari’a’s position on Takfir: God’s Exclusive Right in the Hereafter**

According to ISIS leader Abu Bakr al-Baghdadi, Muslim societies are ruled by infidel governments and leaders under Western influence.<sup>3</sup> To rid Iraq and Syria of those it deems insufficiently religious and to impose its caliphate the group has relied on the notion of *takfir*, a concept which enables a person’s religious belief (*iman*) to be considered impure, false or wrong and to consequently deprive that person of their Muslim status.<sup>4</sup> The following section offers a brief overview of how militant groups such as ISIS selectively quote from the Shari’a, which is comprised of the Qur’an and *Sunna*, to justify their actions. It argues that any careful reading of these sources will show that religious sinners are not (or should not be) punished as apostates in this world and that repentance for such acts is recognised by Islam to last until death, when God will make his judgement. Moreover, although the term *takfir* itself does not explicitly appear in the Qur’an, the position of the Qur’an is clear: human beings do not have the right to excommunicate others, and calling a Muslim ‘*kafir*’ (unbeliever) is prohibited.

### **1.2 The Prohibition of Declaring Takfir in the Qur’an**

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<sup>2</sup> Singular: *fatwa*.

<sup>3</sup> As he stated, ‘O Muslims, the apostate tyrannical rulers who rule your lands in the lands of the Two Holy Sanctuaries (Mecca and Medina), Yemen, Shām (the Levant), Iraq, Egypt, North Africa, Khorasan, the Caucasus, the Indian Subcontinent, Africa, and elsewhere, are the allies of the Jews and Crusaders. Rather, they are their slaves, servants, and guard dogs, and nothing else’. Abu Bakr al-Baghdadi, ‘March Forth whether Light or Heavy’ (Audio Message, 14 May 2015) accessible at

[https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=video&cd=1&cad=rja&uact=8&ved=0ahUKEwi92PGri-3RAhVIMhoKHahJDmMQtwIIgJAA&url=http%3A%2F%2Fwww.liveleak.com%2Fview%3Fi%3D3c1\\_1431638444&usq=AFQjCNGlaObp9tR7WLzPSn2u5em2eRrJrw&bvm=bv.145822982.d.d2s](https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=video&cd=1&cad=rja&uact=8&ved=0ahUKEwi92PGri-3RAhVIMhoKHahJDmMQtwIIgJAA&url=http%3A%2F%2Fwww.liveleak.com%2Fview%3Fi%3D3c1_1431638444&usq=AFQjCNGlaObp9tR7WLzPSn2u5em2eRrJrw&bvm=bv.145822982.d.d2s) (accessed 31 January 2017).

<sup>4</sup> Ibrahim A. Karawan, ‘Takfir’ in John Esposito (ed.), *The Oxford Encyclopaedia of the Modern Islamic World* (Vol. 5, New York: Oxford University Press, 2009), 311.

The Qur'an is considered to be the first and most important source of Islamic law. ISIS and other groups have selectively quoted the Qur'an in order to justify declaring *takfir* and handing down punishments against those they deem unbelievers, including those who profess to follow the Muslim faith. However, although Qur'anic verses are cited, their meaning and contextual background are overlooked.

They cite verse 9:73, for example, which calls for Muslims to 'strive against the unbelievers and the Hypocrites'<sup>5</sup> and to be a 'sword'.<sup>6</sup> The mediaeval exegetist Ibn Kathir (d. 774AH/1373CE) argued that this verse did indeed relate to hypocrisy in the faith as well as apostasy,<sup>7</sup> however other scholars have specified that attacks could only be made in self-defence.<sup>8</sup> Moreover, the subsequent verse recognises the right to repent, and states that only God is entitled to punish apostates.<sup>9</sup> According to Ibn Kathir, verse 9:74 refers either to the case of 'Abdullah bin Ubayy, who planned to kill Prophet Muhammed, or to some hypocrites who were scheming to kill him during the battle of Tabuk.<sup>10</sup> As noted by Abdullah Yusuf Ali, the punishment of death would require an act of treason to have been committed in addition to apostasy *per se*.<sup>11</sup> This understanding of apostasy is not shared by ISIS (i.e. it punishes people for supposed apostasy itself, whether or not this apostasy was accompanied by a crime such as treason, murder or highway robbery); however, they reference this verse as a means of supporting their calls for capital punishment for whole sections of the Muslim population in Iraq and Syria, as well as for Muslims living in the West, even though these people have not abandoned their faith. In short, such Muslims are deemed 'guilty' of not professing Islam as interpreted by ISIS.

The Qur'an unequivocally considers that apostasy amounts to a religious sin. This position can be understood from a number of verses, such as verse 4:137, which refers to 'those who have believed, then disbelieved, then believed, then disbelieved'.<sup>12</sup> Ibn Kathir says that this verse is characteristic of hypocrites, noting that they 'believe, then disbelieve, and this is why their hearts become sealed'.<sup>13</sup> However, this verse is notable as it clearly illustrates that apostates could not have been killed for their (un)belief, because had this been the case they could not have 'believed' again. It implicitly proves that the apostate was not to be punished by death, since it mentions a recurrence of apostasy. If the Qur'an had prescribed the death penalty for the first instance of apostasy, then such repetition of the 'offence' would not be possible. As former Chief Justice of Pakistan S.A. Rahman observed, 'The verse visualises repeated apostasies and reversions to the faith, without mention of any punishment for any of these defections on this earth. The act of apostasy must, therefore, be a sin and not a crime.'<sup>14</sup>

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<sup>5</sup> This verse reads, 'O Prophet (Muhammad SAW)! Strive hard against the disbelievers and the hypocrites, and be harsh against them, their abode is Hell, - and worst indeed is that destination'. All the Qur'anic verses in this paper are taken from Muhsin Khan's English translation of the Qur'an.

[Qur'an 9:73]:

<sup>6</sup> 'From Hypocrisy to Apostasy', *Dabiq*, Islamic State (IS) magazine (Issue 7, Clarion Project, 2015), 21

<sup>7</sup> Ibn Kathir, *Tafsir ibn Kathir* (Vol. 4, 2<sup>nd</sup> edn, Riyadh: Darussalam, 2003), 475.

<sup>8</sup> Ayatullah Sayyid Kamal Faguih Imani and others, *An enlightening commentary into the light of the Holy Qur'an*, translated by Sayyid 'Abbas Sadr-'āmelī and Mohammad Mehdi Baghi (Isfahan: Amir-al-Mo'mineen Ali Library, 1997) 470. As stated, 'As long as the hypocrites have not initiated war and have not plotted against Islam, similar to the enemy alien nonbelievers, holy struggle upon them should be done only by tongue'. (Commentary of Al-Minar).

<sup>9</sup> Qur'an, verse 9:74.

<sup>10</sup> Ibn Kathir, *supra* note 7 at 477.

<sup>11</sup> Abdullah Yusuf Ali, *The Meaning of the Holy Quran* (Beltsville, MD: Amana Publications, 1997) 523.

<sup>12</sup> Qur'an 4:137.

<sup>13</sup> Ibn Kathir, *supra* note 7, vol. 2 at 611.

<sup>14</sup> S.A. Rahman, *Punishment and Apostasy in Islam* (Kuala Lumpur: The Other Press, 2006), 39.

Understanding the Qur'anic position on *takfir* is the crux of the matter. Although the word itself is not referenced in the Qur'an, it is indirectly prohibited. For example, verse 6:108 of the Qur'an reads as follows:

Revile not ye those whom they call upon besides Allah [non-believers], lest they out of spite revile Allah in their ignorance. Thus have We made alluring to each people its own doings. In the end will they return to their Lord, and We shall then tell them the truth of all that they did.<sup>15</sup>

According to Ibn Kathir, verse 6:108 means that Allah has forbidden Mohammed and his followers from insulting other religions, as such insults could lead to their followers retaliating in kind.<sup>16</sup> This prohibition of *takfir* is repeated in other verses, such as 4:94:

O ye who believe! When ye go abroad in the cause of Allah, investigate carefully, and say not to anyone who offers you a salutation: "Thou art none of a believer!" Coveting the perishable goods of this life: with Allah are profits and spoils abundant. Even thus were ye yourselves before, till Allah conferred on you His favours: Therefore carefully investigate. For Allah is well aware of all that ye do.<sup>17</sup>

According to Abbas, verse 4:94 was revealed by Allah following the murder of Mirdas Ibn Nuhayk al-Farari by Usamah Ibn Zayd, both of whom were Muslims.<sup>18</sup> In this verse the Qur'an prohibits the killing of any Muslim who has openly committed to Allah by reciting the *shahadah* ('There is no god but Allah, Muhammad is the Messenger of Allah').<sup>19</sup>

Many Qur'anic verses mention unbelievers, but the Qur'an does not define apostasy; rather, the Islamic definition of apostasy is always given by human beings.<sup>20</sup> Yet, according to the Qur'anic verses noted above, man does not have the right to declare *takfir*, only God. This is because only God holds the right to decide whether one is a believer or not, and this decision would be made only in the hereafter. As such, *takfir* declarations made by human beings amount to a religious sin under Shari'a law.

Thus with regards to the Qur'an, one may unequivocally assert that there is no Qur'anic support for the earthly punishment of apostasy by man, unlike for sins or crimes such as theft or fornication, which are dealt with by prescribed punishments.<sup>21</sup> Capital punishment for turning away from Islam thus pertains to a human creative endeavour aimed at criminalising a sin which, by definition, is only accountable for in the hereafter.

### **1.3 The Prohibition of Declaring Takfir in the Sunna**

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<sup>15</sup> Qur'an, verse 6:108.

<sup>16</sup> Ibn Kathir, *supra* note 7, vol. 3 at 436.

<sup>17</sup> Qur'an, verse 4:94.

<sup>18</sup> Ibn Abbas, *Tafsir Ibn 'Abbās*, translated by Mokrane Guezzou (Amman: Royal Aal al-Bayt Institute for Islamic Thought, 2007), 98.

<sup>19</sup> The *Shahadah* is a declaration of belief in only one God (*tawhid*) and an acknowledgement that Muhammad is his Messenger.

<sup>20</sup> Various scholars have sought to define apostasy; some mediaeval scholars drew up 'apostasy lists'. See Ahmad Ibn Naqib Al-Misri, *The Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, translated by Noah Ha Mim Keller (Dubai : Modern Printing Press, 1991) , 596; Ibn Qudama, *The Mainstay Concerning Jurisprudence (Al-Umda fi l-Fiqh - Handbook of Hanbali Fiqh)*, translated by Muhtar Holland (Al-Baz Publishing, Incorporated, 2010), 309.

<sup>21</sup> Apostasy is referred to as *ridda* and prescribed punishments as *hudud*. See Abdullah Saeed and Hassan Saeed, *Freedom of Religion, Apostasy and Islam* (Aldershot: Ashgate, 2004), 69-87.

The *Sunna* is considered to be the second source of Shari‘a and consists of a compilation of narratives, developed in the centuries after the Prophet’s era and collectively known as *ahadith* (singular *hadith*), which detail what the Prophet said, did or approved.<sup>22</sup> After the Prophet’s death it was clearly impossible to receive direct explanations as to the significance of any particular act or speech,<sup>23</sup> and so Shari‘a was further developed by scholars by (re)interpreting the *Sunna* in order to solve the new situations that inevitably arose.

Regarding *takfir*, the Prophet warned Muslims ‘...not to declare a person a disbeliever for committing a sin, and not to expel him from Islam by an action’.<sup>24</sup> Moreover, the Prophet stated that insulting a believer was ‘an evil action’;<sup>25</sup> calling another Muslim a *kafir* itself constituted unbelief. The Prophet’s teachings are to be found in many *ahadith*, such as *Sahih Bukhari*,<sup>26</sup> *Sahih Muslim*<sup>27</sup> and *Sunan An-Nasa’i*.<sup>28</sup> They demonstrate that he not only prohibited *takfir* but also considered such declarations of excommunication to be a sin.

In order to justify killing Muslims and others they deem non-believers, ISIS has cited a number of *ahadith*.<sup>29</sup> Three prominent examples refer respectively to a Jewish poet’s ‘blasphemy’,<sup>30</sup> to a chieftain of the Jewish tribes of the Khaybar killed for cursing the Prophet<sup>31</sup> and to a Jewish woman whose blood, according to the Prophet, had been spilled lawfully.<sup>32</sup> In the first two cases, those of the poet al-Ashraf and the chieftain Abu Rafi, the individuals concerned were executed not on blasphemy grounds but for plotting to assassinate the Prophet; al-Ashraf had encouraged the Qur’ish to fight Muhammad,<sup>33</sup> while Abu Rafi had gathered various tribes and clans against him.<sup>34</sup> The third case, that of a Jewish woman killed for insulting the Prophet, is classified as a weak source (*da‘if*) by the notable *hadith* scholar Abu Dawood (d. 275 AH/889 CE) because it only has a single narrator and no

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<sup>22</sup> Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2009), 16.

<sup>23</sup> Ibn Khaldun, *The Muqaddimah: an introduction to history*, translated by Franz Rosenthal (Vol. 3, Princeton, N.J.: Princeton University Press, 1980), 23-24.

<sup>24</sup> Abu Dawud, *English Translation of Sunan Abu Dawud*, translated by Nasiruddin al-Khattab (Vol. 3, Riyadh: Darussalam, 2008), number. 2532, 223.

<sup>25</sup> Abu Abdullah Ahmad bin Muhammad bin Hanbal Ash-Shaibani, *English translation of Musnad Imam Ahmad bin Hanbal* translated by Nasiruddin Al-Khattab; edited by Huda Al-Khattab (Vol. 3, Riyadh: Darussalam, 2012), number. 4345, 591

<sup>26</sup> ‘If a man says to his brother, “O *Kafir* (disbeliever)!” Then surely, one of them is such (i.e., a *kafir*)’. Muhammad ibn Ismail al-Bukhari, *The Translation of Meanings of Sahih Al-Bukhari*, translated by Dr Muhammad Muhsin Khan (Vol. 8, Riyadh: Darussalam, 1997), number. 6103, 77.

<sup>27</sup> ‘Any man who knowingly attributes himself to someone other than his father is guilty of disbelief. Whoever claims something that does not belong to him is not one of us; let him take his place in Hell. Whoever calls a man a disbeliever (*Kafir*) or says to him: ‘O enemy of Allah!’ when he is not like that, it will rebound upon him’. Imam Muslim, *Sahih Muslim*, translated by Nasiruddin al-Khattab (Vol. 1, Riyadh: Darussalam, 2007), number. 217, 158.

<sup>28</sup> ‘It was narrated from ‘Abdur Rahman bin ‘Abdullah, from his father, that the Messenger of Allah said: ‘Defaming a Muslim is evildoing and fighting him is *kufir*’. Al-Nasa’i, *Sunan An-Nasa’i*, translated by Nasiruddin al-Khattab (Vol. 5, Riyadh: Maktaba Dar-us-Salam, 2007), number. 4113, 85.

<sup>29</sup> See ‘From Hypocrisy to Apostasy’, *supra* note 6 at 59.

<sup>30</sup> See Al-Bukhari, *supra* note 26, vol. 4, number. 3131 at 166. See also Abu Dawud, *supra* note 24, vol. 3, number. 2768 at 360-361.

<sup>31</sup> See Al-Bukhari, *supra* note 26, vol. 4, number. 3022 at 162-163.

<sup>32</sup> See Abu Dawud, *supra* note 24, vol. 5, number. 4362 at 21.

<sup>33</sup> Ibn Kathir, *The Life of the Prophet Muhammad; Al-Sira Al-Nabawiyya*, translated by Trevor Le Gassick (Vol. 3, Reading: Garnet Publishing, 2000), 7. See also Uri Rubin, ‘The Assassination of Ka’b b. al-Ashraf’, *Oriens* 32 (1) (1990): 65-71, 65.

<sup>34</sup> Muhammad ibn Jarir al-Tabari, *The History of al-Tabari vol. 7: The Foundation of the Community: Muhammad At Al-Madina A.D. 622-626/Hijrah-4 A.H.*, translated by Michael V. McDonald, annotated by W. Montgomery Watt (New York: State University of New York Press 1987), 99-100. See also Ibn Kathir, *supra* note 33, vol. 33 at 186

mention is made of its circumstances, making it difficult to confirm its veracity or context.<sup>35</sup> None of these narratives furthermore are applicable to Muslims, which is how ISIS is choosing to interpret them.

Some *ahadith* report that the Prophet refused to persecute those of his critics who had converted to Christianity and Judaism from Islam. One such individual was a personal scribe who had been a Christian before converting to Islam but later recanted and reconverted to Christianity. After returning to his original faith he blasphemously claimed that ‘Muhammad knew nothing except what I wrote for him’.<sup>36</sup> The Prophet however did not kill him for making such a statement, and he eventually died of natural causes.<sup>37</sup> Notably, killing non-Muslims is prohibited by the Prophet in both *Sahih Bukhari* and *Jami At-Tirmidhi*.<sup>38</sup>

## 2 Evolution of *Takfir*: From the *Khawarij* to ISIS

Although the Prophet Muhammad never allowed the killing of anyone on the grounds of apostasy and blasphemy *per se*, subsequent events led to the development of the notion of *takfir* and in turn to apostasy and blasphemy being treated as serious offences. These events included the revolt of the *Khawarij* sect in the 7<sup>th</sup> century CE, the Mongol invasion in the 13<sup>th</sup> century CE, the campaigns to reform Islamic society in the 18<sup>th</sup> century CE and the rejections and criticism of Western influence and the Western legal system in particular in the 20<sup>th</sup> century CE. These non-Shari’a based readings of *takfir* have caused grave tragedies throughout Islamic history, culminating today in the rise of such extremist groups as ISIS and Boko Haram, both of which kill fellow Muslims on a large scale in the name of God.

The notion of *takfir* appeared very early within Islamic history, first being given prominence by the al-Muhakkimah sect during the civil wars that immediately followed the Prophet’s era. They came to be known as the ‘*Khawarij*’ literally meaning the dissenters.<sup>39</sup> Nowadays, they are widely considered to have been a seditious group and the term *Khawarij* has a rather negative connotation in the Muslim world.<sup>40</sup>

During the fourth Caliph ‘Ali’s reign (656-661 CE) the *Khawarij* and Shi’a movements split from the Sunni majority. The Battle of Siffin (657 CE) had pitted Mu‘awiya, the then governor of Syria, against ‘Ali, with the former charging ‘Ali with not bringing the third Caliph Uthman’s killers to justice. However, ‘Ali refused to fight his Muslim brothers and so they agreed to settle their dispute through arbitration.<sup>41</sup> A civil war nevertheless ensued, as 12,000 of ‘Ali’s supporters (who subsequently became the *Khawarij*) disagreed with settling the matter through human arbitration. They contended that ‘Ali should have turned to divine judgement and applied the law of retaliation, as prescribed by the Qur’an.<sup>42</sup> Citing their

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<sup>35</sup> See Abu Dawud, *supra* note 24, vol. 5 at number. 4362, 21.

<sup>36</sup> See Al-Bukhari, *supra* note 26, vol. 4 at number. 3617, 492.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, vol. 9, at number. 6914, 87. The Prophet said, ‘Whoever killed a *Mu‘ahid* (a person who is granted the pledge of protection by the Muslims) shall not smell the fragrance of Paradise though its fragrance can be smelt at a distance of forty years (of travelling). See also Al-Tirmidhi, *English Translation of Jami‘ At-Tirmidhi*, compiled by Imam Hafiz Abu ‘Eisa Mohammad Ibn ‘Eisa At-Tirmidhi, translated by Abu Khaliyl (Vol. 3, Riyadh: Darussalam 2007), number 1403, 189. Here, Abu Hurairah narrated that the Prophet said: ‘Indeed, whoever kills a *Mu‘ahid* that has a covenant from Allah and a covenant from His Messenger, then he has violated the covenant with Allah and the covenant of His Messenger, so he shall not smell the fragrance of Paradise; even though its fragrance can be sensed from the distance of seventy autumns’. (*Sahih*)

<sup>39</sup> Henry Lammens, *Islam: Beliefs and Institutions*, translated by Sir E. Denison Ross (London: Methuen & Co. Ltd, 1968), 141.

<sup>40</sup> Frederick Augustus Klein, *The Region olif Islam* (London: Curzon Press, 1971), 231.

<sup>41</sup> Al-Tabari, *supra* note 34, vo. 17 at 100.

<sup>42</sup> *Ibid.*, p. 98. See also Klein, *supra* note 40 at 231.

slogan *la hukma illa lillah* ('Authority belongs to God alone'), the Khawarij called upon all Muslims to follow the Qur'an to the letter.

This was the first occurrence in Islamic history of a sect appropriating the right to declare *takfir* against fellow Muslims, and the rise of the Khawarij sect can thus be seen as a starting point for Islamic extremism. The Khawarij argued that anyone who did not follow the judgement of God should be punished by death,<sup>43</sup> and that the duty incumbent upon each Muslim to obey his ruler should be replaced with the duty to disobey if the ruler contravened God's law.<sup>44</sup> They quoted the Prophet to support their stance: 'There is no obedience in sin' and 'Do not obey a creature against his creator';<sup>45</sup> notably however, these quotes make no mention of capital punishment. The Khawarij considered themselves to be the only true Muslims and branded everyone else as unbelievers, which in turn they saw as sufficient reason for killing them. They were convinced that in doing so they were not acting sinfully but were carrying out their duty.<sup>46</sup>

The Khawarij were thus responsible for two innovations within Islam: the introduction of *takfir* and the legitimisation of the extrajudicial killing of fellow Muslims. The result was that death sentences could be carried out by members of society rather than by state officials, albeit ideally following an impartial Shari'a court hearing. Extrajudicial killing remains to this day a central issue in many instances of *takfir*.

*Takfir* was further developed by the mediaeval Islamic scholar Ibn Taymiyya (d. 728 AH/1328 CE), who strictly distinguished between man-made and divine law and called upon Muslims living under the former to undertake migration (*hijrah*) to lands governed by Shari'a. He classified the *kuffar* (unbelievers) into several groups, the first being those who belonged to religious groups such as the Christians and with whom peace agreements could be made.<sup>47</sup> A second group was that of the *murtadd* (apostates), such as the Persians and Romans as well as other Arab tribes, who had returned to their earlier infidel ways. No peace agreements could be made with these people, nor security granted to them. Ibn Taymiyya declared that if they refused to return to Islam, fighting them was obligatory.<sup>48</sup> The third group comprised of those who claimed to belong to Islam but did not perform their religious duties, such as *salah*, *zakat*, and *hajj*.<sup>49</sup> They were considered by Ibn Taymiyya to be the most evil, because they had rejected Islam while still claiming to belong to it.<sup>50</sup> He argued that they should be fought until they returned to Islam.<sup>51</sup> Ibn Taymiyya thus developed the notion of *takfir* by introducing two ideas, namely that any failure of religious obligation was an offence and that any Muslims who failed in their religious obligations were much worse than unbelievers or members of other religious groups.

Ibn Taymiyya argued that the customary law of the ruling Mongols at the time, the *Yasa* code developed by Genghis Khan, had strayed from divine law because it amounted to a man-made innovation.<sup>52</sup> Despite the Mongols claiming to be Muslims and even including aspects of the Shari'a in their code, Ibn Taymiyya declared that they were not Muslim

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<sup>43</sup> Al-Tabari, *supra* note 34, vol. 17 at 102.

<sup>44</sup> Bernard Lewis, *The Crisis of Islam: Holy War and Unholy Terror* (London: Phoenix, 2004), 123.

<sup>45</sup> *Ibid.*, 123.

<sup>46</sup> W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: The University of Edinburgh Press, 1968), 55-56.

<sup>47</sup> Ibn Taymiyyah, *The Religious and Moral Doctrine of Jihad* (Birmingham, England: Maktabah al Ansaar Publications, 2001), 8.

<sup>48</sup> *Ibid.*, 9.

<sup>49</sup> *Salah*: prayer; *zakat*: alms-giving; *hajj*: religious pilgrimage to the holy city of Mecca.

<sup>50</sup> Ibn Taymiyyah, *supra* note 47 at 9-10.

<sup>51</sup> *Ibid.*, 9-10.

<sup>52</sup> Denise Aigle, *Mongol Empire Between Myth And Reality: Studies in Anthropological History* (Leiden: Brill, 2014), 301.



‘because of their irreligious behaviour and their failure to enforce the Shari‘a’.<sup>53</sup> He urged all Muslims to actively fight their Mongol rulers:

All Muslim Imams command to fight them. The Mongols and their likes are even more rebellious against the laws of Islam than these *Khawarij* [or any other group]. Whosoever doubts whether they should be fought is most ignorant of the religion of Islam. Since fighting them is obligatory they have to be fought, even though there are amongst them some who have been forced to join their ranks.<sup>54</sup>

Although the *Khawarij* were the first Islamic sect to divide the Muslim world between *Dar al-Islam* (territory of Islam) and *Dar al-harb* (territory of war),<sup>55</sup> this division of the world was re-introduced by Ibn Taymiyya in his appropriation of the concept of *hijrah* (migration). He called on all Muslims to permanently migrate,<sup>56</sup> as he held that Muslims could only live in lands regulated by Shari‘a,<sup>57</sup> and furthermore argued that Muslim land could become *Dar al-harb* if Islamic law wasn’t enacted and followed.<sup>58</sup>

The concept of *takfir* was further developed in the 18<sup>th</sup> century CE by Muhammad Ibn ‘Abd al-Wahhab (d. 1206AH/1792CE), the founder of the Wahhabi doctrine. He sought to purify the Islamic community of his day by asking Muslims to return to the ways of the Prophet and his Companions.<sup>59</sup> He rejected the decisions of the four Sunni schools as well as any ‘*ijma*’<sup>60</sup> which had been issued after the death of the Prophet’s Companions. Those Muslims who followed traditions which had emerged in the aftermath of the first generation of Islam were deemed *shirk* or polytheists.<sup>61</sup> The Wahhabis’ use of the term ‘polytheist’ to

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<sup>53</sup> Ibn Taymiyyah, *supra* note 47 at 12. See also Rachel Scott, ‘An “official” Islamic response to the Egyptian al-jihad movement’, *Journal of Political Ideologies* 8(1) (2003): 39-61, 44; Johannes J.G. Jansen, ‘Ibn Taymiyyah and the Thirteenth Century: A Formative Period of Modern Muslim Radicalism’, *Quaderni di Studi Arabi* (5/6) (1987): 391-396, 394; Denise Aigle, ‘The Mongol Invasions of Bilad al-Sham by Ghazan Khan and Ibn Taymiyyah’s Three “Anti-Mongol” Fatwas’, *Mamluk Studies Review* 11(1) (2007): 89-120, 96 where she states, ‘...the rules of the associationists - such as the *yāsā* of Chinggis Khan, king of the polytheists - is most gravely contrary to the religion of Islam’. ‘Ibn Taymiyya held that the Mongols were still following their own customary laws, known as *Yasa* or *Yasiq*, rendering their conversion to Islam effectively invalid. He argued that by not observing Shari‘a law they could not be classed as Muslims and were apostate’.

<sup>54</sup> See Jansen, *supra* note 53 at 395.

<sup>55</sup> The *Khawarij* believe that only their lands are *dar al-Islam* and others lands are *dar al-harb*. Ibn Taymiyya criticised the *Khawarij* and stated, ‘Their[*Khawarij*] imputation of disbelief on account sins results in their making lawful the blood and wealth of the Muslims and declaring the abode of Islam [*Dar al-Islam*] an abode of war [*Dar al-harb*] and only the land in their control the abode of faith’.

Ibn Taymiyya cited in Muhammad Tahir-ul-Qadri, *Fatwa on terrorism and suicide bombings*, foreword by John L. Esposito ; introduction by Joel S. Hayward (London: Minhaj-ul-Quran International, 2010), 283.

<sup>56</sup> W. Montgomery Watt, *Muhammad: Prophet and Statesman* (London: Oxford University Press, 1961), 91, here he states, ‘The Arabic word *hijrah* (which still sometimes appears in the Latin form *hegira*) does not mean ‘fight’ but is best translated ‘emigration’. It has the connotation not of geographical transference, but of separation from one’s family and clan and attachment to others’.

<sup>57</sup> Ibn Taymiyya stated, ‘If he who resides in [Mardin] is unable to practice his religion, then he must emigrate. If this is not the case, then it remains preferable but not mandatory’. Cited from Aigle, *supra* note 52, at 273.

<sup>58</sup> Abd al-Wahhab al-Turayr, ‘The Mardin Conference: Understanding Ibn Taymiyyah’s Fatwa’, (2010), available at <http://muslimmatters.org/2010/06/29/the-mardin-conference-%E2%80%93-a-detailed-account/> (accessed 21 September 2016). As stated, ‘As for whether it is a land of war or peace, it is a composite situation. It is not an abode of peace where the legal rulings of Islam are applied and its armed forces are Muslim’.

<sup>59</sup> George Rentz ‘The Wahhabis’ in A.J. Arberry (ed.), *Religion in the Middle East: three religions in concord and conflict* (Vol. 2, Cambridge : University Press, 1969), 272.

<sup>60</sup> ‘*Ijma*’: consensus of scholars on a legal issue with regards to which the Qur’an and *Sunna* are silent.

<sup>61</sup> Klein *supran* note 40, 237.

qualify those who do not follow their precepts relates to the ‘Age of Ignorance’<sup>62</sup> of the pre-Islamic period, commonly referred to as the *jahiliyya*. However, ‘Abd al-Wahhab appropriated the term ‘*jahiliyya*’ to designate his own epoch, denouncing the ‘ignorance of or disregard for the Right Way laid down by God for the followers of Islam’.<sup>63</sup> He contended that polytheism in his day was far more dangerous than the *shirk* of the Prophet’s era, as ‘those whom the Prophet fought were more intelligent (...) than the people of our own times’.<sup>64</sup> ‘Abd al-Wahhab thus preached that the Muslim community was guilty of unbelief and idolatry, thereby introducing a new type of *takfir* which rejected traditions that had emerged after the first generation of Islam.<sup>65</sup>

*Takfir* evolved further in the 20<sup>th</sup> century CE when many Muslim majority states started to introduce western models of law. Sayyid Qutb (d. 1399AH/1966CE), a leading member of the Muslim Brotherhood in Egypt, referred to the notion of contemporary *jahiliyya* to denounce Muslim societies and governments who were following the Western model by resorting to man-made laws.<sup>66</sup> According to Qutb this had resulted in creating a hierarchy amongst men, leading to man’s ruin and downfall.<sup>67</sup>

Another modern scholar who elaborated *takfir* was Abul A’la Maududi (d.1979), the founder of the political organisation Jamaat-e-Islami. Maududi condemned Muslim majority states for borrowing their constitutions, laws and principles from nonbelievers, arguing that in some supposedly independent states Islamic law had been reduced to mere personal law or to nothing at all.<sup>68</sup> His writing and speeches in which he referred to ‘*jihad*’ have become highly influential; it was Maududi who coined the term ‘Islamic State’ to describe what he saw as the form of government to which Muslims must aspire.<sup>69</sup>

Maududi’s ideas are often cited by militant leaders. For example, in a 2014 speech at Mosul’s Great Mosque in which he appointed himself Caliph, ISIS leader Abu Bakr al-Baghdadi referred to Maududi’s notion of a pan-Islamic state.<sup>70</sup> ISIS has repeatedly drawn on

<sup>62</sup> William E. Shepard, ‘Age of Ignorance’ in Jane Dammen McAuliffe (ed.), *Encyclopaedia of the Qur’an* (Vol. 1, Leiden: E. J. Brill, 2001), 37. Here it is stated, ‘To the original audience of the Qur’ān, however, it [*jahiliyya*] almost certainly referred primarily to the moral condition of those individuals and their society which led them to oppose the mission of the Prophet’.

<sup>63</sup> George S. Rentz, *The Birth of the Islamic Reform Movement in Saudi Arabia; Muhammad ibn 'Abd al-Wahhab (1703/4-1792) and the Beginnings of Unitarian Empire in Arabia* (London: Arabian Publishing, 2005), 19.

<sup>64</sup> Muḥammad ibn ‘Abd al-Wahhāb, *An Explanation of Muhammad ibn Abd al-Wahhab’s Kashf al-Shubuhāt: a Critical Analysis of Shirk*, translation and commentary by Abu Ammaar Yasir Qadhi (Birmingham, UK: Al-Hidaayah, 2003), 165.

<sup>65</sup> Al-Wahhab even criticised visiting the tombs of saints, ‘That the Prophet came to people who had differences in their (objects of) worship: from them were the worshippers of the angels. And from them were the worshippers of the prophets and the pious. And from them were the worshippers of the trees and the stones. And from them were the worshippers of the sun and the moon. But the Messenger of Allah fought them all, and did not consider the differences between them’. ‘Abd al-Wahhāb, *supra* note 64 at 52.

<sup>66</sup> Syed Qutb, *Milestones*, edited by A.B. al-Mehri (Birmingham, UK: Maktabah Booksellers and Publishers 2006), 27.

<sup>67</sup> *Ibid.*, 27, 146.

<sup>68</sup> Abul A’la Maududi, *Witnesses unto Mankind: The Purpose and Duty of the Muslim*, translated by Khurram Murad (Leicester: Islamic Foundation, 1986), 36.

<sup>69</sup> Abul A’la Maududi, *Jihad in Islam* (Beirut: The Holy Koran Publishing House 2006), 22. Here it is stated, ‘...the objective of the Islamic ‘Jihad’ is to eliminate the rule of an un-Islamic system and establish in its stead an Islamic system of state rule’. See also Abul A’la Maududi, *The Islamic Law and Constitution*, translated by Khurshid Ahmad (Lahore: Islamic Publications Ltd, 1960), 144-145 where it is stated, ‘Everyone who desires to remain a Muslim is under an obligation to follow the Qur’an and the Sunnah which must constitute the basic law of an Islamic State’.

<sup>70</sup> Kevin McDonald, ‘Islamic State’s ‘medieval’ ideology owes a lot to revolutionary France’, *The Conversation* (8 September 2014). Available at <https://theconversation.com/islamic-states-medieval-ideology-owes-a-lot-to-revolutionary-france-31206> (accessed 21 September 2016).

Maududi's claims that sovereignty, in all its forms, is for God only (*hakimiya*).<sup>71</sup> His argument that full citizenship of an Islamic state was only available to Muslims has also been adopted by ISIS. This has led to them persecuting religious minorities as well as attempting to crush any Islamic theology which deviates from the ISIS model. An example of this extremist use of *takfir* is the ISIS campaign against the Sunni Awakening, a coalition group in Iraq. The ISIS magazine *Dabiq* notes that:

.... the Sahwah Coalition [Sunni Awakening] ....is actually fighting a state that rules by the Sharī'ah and enforces adherence to its laws while the Sahwah Coalition replaces the Sharī'ah of Allah - which this state has established in its areas of authority - with the laws of men.<sup>72</sup>

Moreover, some extremist groups today are misinterpreting Qur'anic verses in their calls to Muslims to fight against unbelievers, just as the Khawarij sect misinterpreted the Qur'an many centuries ago. For example, verse 4:140, which reads, '....when you hear the Verses of Allah being denied and mocked at, then sit not with them' is quoted by ISIS to support their claim that those doing nothing to counter the activities of *kuffar* (unbelievers) should be considered *kuffar* themselves.<sup>73</sup> However, according to Ibn Abbas, this verse is preventatively aimed at discouraging anyone planning to attack Muslim society rather than defining who is and is not a *kafir*.<sup>74</sup>

Mention must also be made here of Shi'a Islam, which sets itself apart from Sunnism particularly with respect to the doctrine of *imamah*. Shi'ites have a duty to obey their *imam* as well as God. This divine character of the *imam* has had an impact on the use of *takfir* in Shi'a Islam, as anyone who doubts the *imam*'s divinity is deemed an unbeliever by his followers. However, although Shi'ites recognise *takfir*, they do not exclude from the realm of religion those individuals who have been declared to be unbelievers.<sup>75</sup> Their declarations thus differ considerably from those issued by the Khawarij and ISIS.

### **3 The Misuse of *Takfiri Fatawa* and *Hisba* as a Means to Impose the Death Sentence**

Militant Islamic groups have resorted to wilful misinterpretation of legal and enforcement tools such as *hisba* and *fatwa* in order to make declarations of *kufr* (unbelief) and implement *takfir* sentences. However, the Shari'a clearly prohibits *takfir* and these Islamic concepts were never intended to be used in this way. This section looks at how the original objective of these legal devices has been reinterpreted in order to encompass *takfir*.

#### **3.1 *Fatawa***

A *fatwa* is an advisory opinion which may be countered or replaced by another *fatwa*.<sup>76</sup> The root of the term '*fatwa*' is '*fata*', which refers to 'youth, newness, clarification, explanation'.<sup>77</sup>

<sup>71</sup> Maududi, *supra* note 69 at 212.

<sup>72</sup> See 'The Law of Allah or the Law of Men' *Dabiq*, Islamic State (IS) magazine (Issue 10, Clarion Project, 2015), 54.

<sup>73</sup> Qur'an, verse 4:140. See also 'From Hypocrisy to Apostasy', *supra* note 6 at, 60.

<sup>74</sup> Ibn Abbas, *supra* note 18 at 105.

<sup>75</sup> See Martin J. McDermott, *The Theology of al-Shaikh al-Mufīd (d. 413/1022)*, (Beyrouth: Dar el-Machreq, Librairie orientale, 1978), 247.

<sup>76</sup> Daniel C. Peterson, 'Fatwa', in Richard C. Martin (ed.), *Encyclopedia of Islam and the Muslim World*, (Vol. 1,

The use of *fatwa* can be traced back to Islam's beginnings; Powers notes that 'approximately 130 Companions...issued *fatwas* during the course of the first century A.H'.<sup>78</sup> *Fatawa* are widely used by religious establishments such as Pakistan's Council of Islamic Ideology, Saudi Arabia's Hay'ah Kibar al-'Ulama' and Egypt's Al-Azhar and Dar al-Ifta al Misriyyah. Whether issued by individuals or local religious establishments, *takfiri fatwa* (religious edicts claiming a Muslim is an apostate) are central to many apostasy and blasphemy cases. For example, in 1974 the Muslim World League, the largest Islamic Non-Governmental Organisation, issued a *fatwa* that declared Ahmadi Muslims to be apostates.<sup>79</sup> It issued a similar *takfiri fatwa* against the Baha'i sect in 1977.<sup>80</sup>

Islamic scholars have also issued *takfir fatawa*, with the *fatwa* issued against Salman Rushdie in 1989 by the Iranian Supreme Leader Ayatollah Khomeini being a particularly notable example.<sup>81</sup> *Fatawa* have often proven to be the trigger for extrajudicial killings, as with the murder of the secular Egyptian writer Farag Foda in 1992. He was declared a *kafir* and his assassination called for in a *fatwa* proclaimed by the majority of Al-Azhar's sheikhs.<sup>82</sup>

Extremist groups and other non-state actors also issue *takfir fatawa*, many of which have led to extrajudicial killings. Although the *fatwa* against and subsequent assassination of Egyptian President Anwar Sadat (d. 1981) is a particularly well-known example there are many others featuring less celebrated figures, such as the declaration made by the powerful Pakistani organisation Jamaat Ahle Sunnat, which declared Salman Taseer, governor of the province of Punjab, apostate due to his comments and criticisms.<sup>83</sup>

A common characteristic of contemporary *fatawa* is that they are given more legal weight than the Qur'an intended them to have. According to the Qur'an, a *fatwa* is a legally non-binding answer given by a scholar to a very specific question.<sup>84</sup> Similarly, notable scholars believe that *fatawa* do not have legal power or status. Imam Malik (Malik ibn Anas; d. 179 AH/ 795 CE) reportedly stated that, 'It was not a part of people's *fatwas* to say "This is halal [permissible] and this is haram [forbidden]", but they used to say, "I disapprove of this and would not do it myself," and people used to be content with that'.<sup>85</sup> *Fatawa* were not intended to be vehicles for *takfir* declarations; rather, they were the product of *mufti* question-and-answer activities.<sup>86</sup> They were opinions, not declarations, and were not designed to allow

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New York: Macmillan Reference, 2004), 255.

<sup>77</sup> Muhammad Khalid Masud, updated by Joseph A. Kechichian, 'Fatwa', in John L. Esposito (ed.), *The Oxford Encyclopedia of the Islamic World* (New York: Oxford University Press, 2009), vol. 2, 233.

<sup>78</sup> David Powers, 'Legal Consultation (Futyā) in Medieval Spain and North Africa,' in Chibli Mallat (ed.), *Islam and Public Law* (London: Graham and Trotman, 1993), 86.

<sup>79</sup> Muslim World League, 'The Third Resolution on Qadiani Sect and Associating with It' (10-17 Sha'ban 1398H). Available at <http://en.themwl.org/content/third-resolution-qadiani-sect-and-associating-it> (accessed 21 September 2016).

<sup>80</sup> *Ibid.*

<sup>81</sup> '1989: Ayatollah sentences author to death' (website of the BBC). Available at [http://news.bbc.co.uk/onthisday/hi/dates/stories/february/14/newsid\\_2541000/2541149.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/february/14/newsid_2541000/2541149.stm) (accessed 21 September 2016).

<sup>82</sup> Ahmed Fouad, 'Al-Azhar refuses to consider the Islamic State an apostate' (*Al-Monitor*, 12 February 2015). Available at [www.al-monitor.com/pulse/originals/2015/02/azhar-egypt-radicals-islamic-state-apostates.html#](http://www.al-monitor.com/pulse/originals/2015/02/azhar-egypt-radicals-islamic-state-apostates.html#) (accessed 21 September 2016).

<sup>83</sup> Abdullah Saeed, 'Ambiguities of Apostasy and the Repression of Muslim Dissent', *The Review of Faith & International Affairs* 9(2) (2011): 31-38, 36. See also Asim Hussain, 'Apostasy decree issued against Taseer', (The News International, 25 November 2010), available at [www.thenews.com.pk/archive/print/610171-apostasy-decree-issued-against-taseer](http://www.thenews.com.pk/archive/print/610171-apostasy-decree-issued-against-taseer) (accessed 21 September 2016).

<sup>84</sup> Qur'an, verse 4:127; Qur'an, verse 4: 176.

<sup>85</sup> Abu Muhammad 'Abdullah ibn Abi Zayd Al-Qayrawani, *A Madinan view: on the Sunnah, courtesy, wisdom and history*, translated by Abdassamad Clarke (London: Ta-Ha, 1999), 46.

<sup>86</sup> Hallaq *supra* note 22 at 9.

human interference with an individual's belief and personal relationship with God. As such many scholars have prohibited *takfir fatwa*, for example the mediaeval Islamic scholar Ibn Hazm (d. 456AH/ 1064CE), who argued that Muslims should not declare any *fatwa* relating to faith.<sup>87</sup>

The Sheikh of Al-Azhar, Ahmed al-Tayeb, criticised the use of *takfiri fatawa* in December 2014, saying that they undermine Islam rather than defend its values. He has encouraged those deceived by sheikhs issuing such *fatawa* to renounce *takfir*.<sup>88</sup>

## 3.2 Hisba

### 3.2.1 The Traditional Objective of Hisba

The concept of *hisba* has been derived from the Qur'anic verse 3:104, which instructs Muslims to command good and forbid evil (*al-amr bi'l-ma'ruf wa'l-nahy 'an al-munkar*) and is considered as 'a cardinal Qur'anic principle which lies at the root of many Islamic laws and institutions'.<sup>89</sup> According to Al-Ghazali what exactly amounts to good (*ma'ruf*) or evil (*munkar*) is to be determined with reference to Shari'a, 'in particular to those rules that pertain to the protection of the five values, namely, life, faith, intellect, property and lineage'.<sup>90</sup> The Malikī jurist, al-Qarāfī set out the following three conditions which must be observed in the implementation of *hisbah* and are considered the basic guidelines governing the activity of the *muhtasib* (the person who bids good or forbids evil). These are: (i) The *muhtasib* must act from a position of knowledge, since an ignorant individual who is not sure of his grounds may neither enjoin good nor forbid evil. (ii) The *muhtasib* must be reasonably sure that their attempts at prevention do not give rise to a greater evil. (iii) The *muhtasib* must act on the basis of an overwhelming probability (*al-zann al-ghalīb*) that the attempt to enjoin good or forbid evil is likely to achieve the direct result.<sup>91</sup>

Element (ii) above restricts the implementation of *hisba* to situations where the evil conduct and crimes are being committed so that 'the muhtasib is in a position to prevent it, or to bring about a change to an on-going situation'.<sup>92</sup> If one of either of the first two conditions is absent, according to al-Qarāfī, this would render *hisba* illegitimate. On the other hand, the

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<sup>87</sup> Ibn Ḥazm, *Ibn Ḥazm's al-risālah al-bāhirah: (the magnificent epistle)* translated with introduction and notes by Muhammad Saghir Hasan al-Ma'sumi, general editor, Sharifah Shifa al-Attas (Kuala Lumpur: International Institute of Islamic Thought and Civilization, 1996), 70-71. As stated at 79, 'To give fiat (*fatwa*) with opinion is, however, not knowledge, nor excellence, for nobody is unable to do so. This is, on the contrary, condemned by the *sahabah* [Companions of the Prophet] and by their followers after them while they admitted the condemnation against themselves. Here is Rabi'ah who says to al-Zuhri: "I inform the people of an opinion. If they like they may accept it. If they like they may throw it to the wall".

<sup>88</sup> See 'Sheikh of al-Azhar: Takfir, A Fitna Aiming to Distort Islam's Image' (*Ahlulbayt News Agency*, 13 January 2014), <http://en.abna24.com/service/africa/archive/2014/01/13/496697/story.html> (accessed 21 September 2016).

<sup>89</sup> Mohammad Hashim Kamali, *Freedom of Expression in Islam* (Cambridge: Islamic Texts Society 2010), 28. The principle of 'enjoining what is right and forbidding what is wrong' is reiterated in verse 3:110.

<sup>90</sup> Muhammad Abū Hāmid Al-Ghazālī, *Ihyā' 'Ulūm al-Dīn* (Vol. 2, 2<sup>nd</sup> edn., Cairo: Dār al-Fikr, 1980), 324 cited in *ibid.*, 33.

<sup>91</sup> Shihāb al-Dīn Al-Qarāfī, *Kitāb al-Furūq* (Vo. 4, Cairo: Matba'at Dār Ihyā' al-Kutub al-'Arabiyyah, 1346 A.H), 255 cited in Kamali, *supra* note 89 at 33.

<sup>92</sup> Mohammad Hashim Kamali, *The Right to Life, Security, Privacy and Ownership in Islam* (Cambridge: Islamic Texts Society 2008), 183.

absence of the last condition downgrades *hisbah* from an obligation (*wājib*) into a mere permissibility (*mubāh*).<sup>93</sup>

A further debate that has preoccupied the early Muslim jurists (*‘ullama*) was whether *hisbah* is a collective duty (*fard kafā’ī*), or an individual obligation (*fard ‘ayn*), which should be performed by every Muslim. According to Ibn Kathir, verse 3:104 asserts that although *hisbah* is incumbent on each member of the *Ummah*<sup>94</sup> to the extent of one’s ability, this task should be fulfilled by a specific segment of the *Ummah*.<sup>95</sup> It has been argued that *hisbah* becomes an individual obligation and the personal responsibility of the individual concerned only in one situation ‘when there is only one person in the entire community, or when a single individual witnesses evil being committed’.<sup>96</sup> In all other situations/capacities, it remains a collective duty of the community as a whole.

The dual characterisation of *hisbah* as both rights and duties are recognised in the 1981 Universal Islamic Declaration of Human Rights (UIDHR) under Article 4, ‘The Right to Justice’.<sup>97</sup> Paragraph (c) of the above provision explicitly defines *Hisbah* as ‘the right and duty of every person to defend the rights of any other person and the community in general’. As noted by Kamali, ‘whether collective or individual, *hisbah* has been generally characterised as an obligation’.<sup>98</sup>

According to the following *Hadīth*, believers are encouraged to carry out *hisbah* in accordance with their ability and to the extent that circumstances permitted in at least three ways:

Whoever among you sees an evil action, let him change it with his hand (by taking action); if he cannot, then with his tongue (by speaking out); and if he cannot, then with his heart (by hating it and feeling it is wrong), and that is the weakest of faith.<sup>99</sup>

The use of the word ‘sees’ in the above cited *Hadīth* and not the use of words such as ‘knows’ or ‘hears’ as noted by Kamali, concerns the external nature of the evil being committed, and the ability of the person witnessing it to change it in some way.<sup>100</sup>

It is clear that the hadith commands physical action, and it is not this part of literal interpretation by groups such as ISIS which is problematic. What is problematic, is the broad interpretation of what is considered ‘evil’ combined with jihadists’ interpretation ‘which turns *use of the hand* into a strict ideology of *hisbah* applied to all spheres of life, especially public piety’.<sup>101</sup> If evil were interpreted as for example an attack on an innocent person, then preventing that physically would pose no problem. However, when ‘evil’ is interpreted as any deviation from moral rules, even when affecting only the person itself, it goes beyond the idea of God’s judgement in such matters. For example, physical punishment of someone for not wearing the ‘right’ length of trousers is clearly interpreting ‘evil’ too broadly. As noted by one commentator, ‘jihadist have rejected latitude in favour of their own

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<sup>93</sup> *Ibid.* A *wājib* is an obligation or duty arising from the decisive injunctions of the Qur’an and Sunnah.

<sup>94</sup> *Ummah* designates the Muslim community or society in its entirety.

<sup>95</sup> Ibn Kathir, *supra* note 7, Vol., 2 at 233

<sup>96</sup> Kamali, *supra* note 89 at 29.

<sup>97</sup> Universal Islamic Declaration of Human Rights, adopted by the Islamic Council of Europe on 19 September 1981. Available at [http://hrlibrary.umn.edu/institute/islamic\\_declaration\\_HR.html](http://hrlibrary.umn.edu/institute/islamic_declaration_HR.html) (accessed 29 January 2017).

<sup>98</sup> Kamali, *supra* note 89 at 29

<sup>99</sup> Muslim, *Sahīh Muslim* (Vol. 1, no. 177), 143-144.

<sup>100</sup> Kamali, *supra* note 89 at, 31.

<sup>101</sup> Seth H. George, U.S. Army, “Commanding the Right: Islamic Morality and Why It Matters” in *Military Review*, September-October 2016, p. 63.

interpretation which turns *use of the hand* into a strict ideology of hisbah applied to all spheres of life, especially public piety'.<sup>102</sup>

As noted by Michael Cook in his study *Forbidding Wrong in Islam*, Muslim scholars advocated that putting things right (*taghyir*) with the hand is the prerogative of political authorities, with the tongue of scholars and in (or with) the heart for the common people.<sup>103</sup> 'This elitist interpretation' according to Cook and Meijer 'confirms the state's monopoly of force and the "natural" hierarchical structure of society'.<sup>104</sup>

As a function of the state, *hisba* was instituted from early Abbasid time, whereby the Caliph or sultan would appoint a *muhtasib*, i.e. the chief of municipal administration and policing with three main functions: policing of markets; monitoring the state of the roads and buildings in the city; and enforcement of public morals.<sup>105</sup> The *muhtasib* stood between the *qadi* and the police<sup>106</sup> and generally had to be 'a *faqih* [someone with an understanding of *fiqh* (Islamic jurisprudence)], aware of the rules of Islamic law so as to know what to order and what to forbid'.<sup>107</sup> They were able to force debtors to honour their debts and to take other actions that did not require formal hearings or verdicts.<sup>108</sup>

It is thus fair to say that by making *hisba* an official religious post, the Abbasside Caliph transformed the concept into a political tool to get rid of any potential enemies and to portray himself as a defender of the faith.<sup>109</sup> The crime of apostasy was invented at the same time and worked together with *hisba* to eliminate any opponents of the state.

### 3.2.2. The Current Use of Hisba

There is no possibility that the above mentioned Qur'anic verses on *hisba* are intended as encouragement for pursuing allegations of apostasy or to enable declarations of *takfir* since as we have described at length above, neither apostasy nor unbelief are to be considered crimes in the first place nor are they for other Muslims to declare. Furthermore enforcing *hisba* should not involve greater mischief than the one that is to be prevented.<sup>110</sup> There can be little doubt that widespread accusations, persecutions, pillaging and killing based on peoples' beliefs or purported lack thereof brings unparalleled harm to a society as well as the religion itself. The Qur'an clearly states in verse 2:256 that there is no compulsion in religion, therefore forcing it on people through violent intimidation goes directly against this. However, there are numerous examples of *hisba* being used by states, extremist groups and courts to impose *takfir* sentences such as the one declared by the Supreme Shari'a Court of Sudan against al-Amin Da'ud Mohammed Taha. The point of interest here is that the litigants used

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<sup>102</sup> Seth H. George, 'Commanding the Right: Islamic Morality and Why It Matters' (2016) *Military Review*, 63.

<sup>103</sup> Michael Cook, *Forbidding Wrong in Islam: An Introduction* (Cambridge: Cambridge University Press, 2003), 3-4, 11-12.

<sup>104</sup> Roel Meijer, 'Commanding Right and Forbidding Wrong as Principle of Social Action: The Case of the Egyptian al-Jama'a al-Islamiyya' in Roel Meijer (ed.), *Global Salafism: Islam's New Religious Movement* (Oxford: Oxford University Press 2014), 191 citing Cook, *ibid*.

<sup>105</sup> Sami Zubaida, *Law and Power in the Islamic World*, (London, New York: I.B. Tauris, 2003), 59

<sup>106</sup> Knut S. Vikor, *Between God and the Sultan: a Historical Introduction to Islamic Law* (London: Hurst, 2004), 197.

<sup>107</sup> 'Abd al-Rahmān b. Nasr al-Shayzarī, *The Book of the Islamic Market Inspector: Nihayat al-Rutba fi Talab al-Hisba (the Utmost Authority in the Pursuit of Hisba)* translated with an introduction and notes by R. P. Buckley (Oxford: New York: Oxford University Press, 1999), 28.

<sup>108</sup> Ibn Khaldun, *supra* note 23, vol. 1 at 463.

<sup>109</sup> Ahmed Mansour, 'Hisba: A Historical Overview' (website of the Ahl AlQuran, International Quranic Center). Available at [www.ahl-alquran.com/English/show\\_article.php?main\\_id=125](http://www.ahl-alquran.com/English/show_article.php?main_id=125) (accessed 12 October 2016).

<sup>110</sup> Kamarudin bin Ahmad, 'Wilayat Al-Hisba; A Means to Achieve Justice and Maintain High Ethical Standards in Societies', *Mediterranean Journal of Social Sciences* 6(4) (2015): 201-206, 205.

*hisba* as the grounds for their legal action against Taha, calling successfully on the court to declare Taha's *rida* (apostasy).<sup>111</sup>

A similar example of a court's use of *hisba* was a 1995 Egyptian case involving Nasr Hamid Abu Zayd, an Arabic literature lecturer at Cairo University. Abu Zayd's promotion was blocked by Dr. 'Abd al-Sabur Shahin, a member of the review committee, who issued a declaration of *takfir* stating that Zaid's work offended Islam.<sup>112</sup> Dr. Shahin's counsel argued that on the basis of the concept of *hisba* they could file a lawsuit against Zayd.<sup>113</sup> The court deemed that society had a 'direct interest in filling a *hisba* suit'.<sup>114</sup>

*Hisba* was considered a significant obligation by the Egyptian terrorist group al-Jama'a al-Islamiyya (the Jama'a) and an effective tool to 'change reality'.<sup>115</sup> The Jama'a took the interpretation of what is 'changing the forbidden/reprehensible' (*taghyir al-munkar*) from the medieval scholar Ibn Taymiyya.<sup>116</sup> In extreme cases, according to Ibn Taymiyya it was the right of every subject to exert *hisba* and to use force without the sanction of the state'.<sup>117</sup> The Jama'a was also influenced by the work of the classical scholar al-Nawawai who asserted that *hisba* is not merely confined to the Islamic authority (*al-sulta al-muslima*) but also those who are legally responsible (*mukallaf*) have the right to exert *hisba*.<sup>118</sup> When the Jama'a linked *hisba* with the necessity to completely submit to God's sovereignty (the concept of *tawhid al-rubibiyya*) it became an activist programme of changing evil by force.<sup>119</sup> Their adherence to the concept of *hakimiyya* 'which made it imperative to rise up in revolt against the ruler who does not rule in accordance with the revelation' was the main imperative to declare Sadat an unbeliever and subsequently assassinate him.<sup>120</sup> The combination of *hisbah* and *takfir* is explicitly stated in their Charter which entitled *Who Are We and What Do We Want?*. There we read: 'No doubt that he who prefers man-made positive laws to the laws of God is a *kafir* ...' adding that 'as it is not allowed for a *kafir* to rule over Muslims (*la wilaya li-kafir 'ala muslim*) it is a duty to depose the rulers of our country'.<sup>121</sup>

Likewise, ISIS considers declarations of *takfir* to fall within its list of duties. It has its own Islamic police force (Diwan al-Hisbah)<sup>122</sup> to ensure compliance with *hisba*'s requirements, which include investigating reports of drug or alcohol use and seizing such forbidden items as musical instruments or polytheistic idols.<sup>123</sup> ISIS has also made extensive use of *hisba* against those they deem to be apostates. They hold that although faith amounts to an act of obedience, it is in and of itself insufficient and must be followed by action.<sup>124</sup> As

<sup>111</sup> Mohamed A. Mahmoud, *Quest For Divinity: a Critical Examination of the Thought of Mahmud Muhammad Taha* (Syracuse, N.Y.: Syracuse University Press, 2007), 22.

<sup>112</sup> Susanne Olsson, 'Apostasy in Egypt: Contemporary Cases of *Hisbah*', *The Muslim World* 98(1) (2008): 95-115, 104.

<sup>113</sup> Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: The University of Chicago Press, 2012), 46.

<sup>114</sup> Cairo Court of Appeals, case no. 287 (1995) in Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: The University of Chicago Press, 2012), 49.

<sup>115</sup> Meijer, *supra* note 103 at 205

<sup>116</sup> *Ibid.*, p. 194.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*, p. 205.

<sup>119</sup> *Ibid.*, p. 194.

<sup>120</sup> *Ibid.*, p. 196.

<sup>121</sup> *Man nahnu wa madha nuridu?* p. 33 cited in Meijer, *supra* note 103.

<sup>122</sup> Hussein Solomon, *Islamic State and the Coming Global Confrontation*, (London: Palgrave, 2016), 4.

<sup>123</sup> Andrew F. March and Mara Revkin, 'Caliphate of Law' (*Foreign Affairs*, 15 April 2015). Available at <https://www.foreignaffairs.com/articles/syria/2015-04-15/caliphate-law> (accessed 31 January 2017).

<sup>124</sup> ISIS claims that even reciting the *shahadah* (There is no god but Allah, Muhammad is his messenger) is not enough 'Speech will not benefit you without action, for there is no faith without action'.

See *supra* note 3 at 'A New Audio Message by Abu Bakr al-Baghdadi ~ March Forth whether Light or Heavy'.



with the 7<sup>th</sup> century Khawarij sect, ISIS believes that unbelievers' blood and property can be taken away with impunity.<sup>125</sup> Such misuse of *hibah* by ISIS was condemned by a wide assortment of scholars from the Middle East in a recent letter addressed to al-Baghdadi.<sup>126</sup> In their letter and under the section titled Coersion and Compulsion they asserted that:

It is known that the verse: '*There is no compulsion in religion*' was revealed after the Conquest of Mecca, hence, no one can claim that it was abrogated. You have coerced people to convert to Islam just as you have coerced Muslims to accept your views. You also coerce everyone living under your control in every matter, great or small, even in matters which are between the individual and God. In Al\_Raqqa, Deir el-Zor and other areas under your control, armed groups who call themselves "al-hisbah" make their rounds, taking people to task as though they were assigned by God to execute His commandments. Yet, not a single one of the Companions did this. This is not enjoining the right and honourable and forbidding the wrong; rather it is coercion, assault, and constant, random intimidation.<sup>127</sup>

#### **4 Breaking the cycle of *Takfir* condemnations: a legally confined scope of application**

##### **(i) The repercussion of a *Takfir* accusation against its author**

The use of *takfir* has been condemned by notable Islamic scholars, some of whom have been extremely careful in their denunciation not to replicate nor reinforce the very practice they are seeking to criticise. In his work entitled *Faysal al-Tafriqa Bayna al-Islam wa al-Zandaqa* (literally, '*The Decisive Criterion for Distinguishing Between Islam and Godlessness*'),<sup>128</sup> Abu Hamid Al-Ghazali (d. 505 AH/ 1111 CE) explains that the Prophet's statement according to which 'Whenever a Muslim charges his fellow Muslim with Unbelief, this redounds upon one of them'<sup>129</sup> implies that 'if a person knows that another person believes that everything the Prophet brought is true and despite this he brands the latter an Unbeliever, he becomes himself an Unbeliever'.<sup>130</sup> Hence branding another person an unbeliever initiates a series of *takfir* condemnations as the one labelling another person an unbeliever jeopardizes his very own salvation by taking ownership of a right held exclusively by God.

Hasan al-Hudaybi, the leader of the Muslim Brotherhood from 1951 until his death in 1973, aimed to distance himself from the 'with us or against us' stance endorsed by Sayyed Qutb.<sup>131</sup> He stressed that banning someone from the Muslim faith had to be carried out on an individual basis, not against a society in its entirety, as suggested by Qutb.<sup>132</sup> Barbara Zollner noted however that "al-Hudaybi's argument on belief and unbelief shows some

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<sup>125</sup> *The Sea of Precious Virtues (Bahr al-Fava'id): a Medieval Islamic Mirror for Princes*, translated from the Persian, edited and annotated by Julie Scott Meisami (Salt Lake City: University of Utah Press, 1991), 106; Jamaal al-Din M. Zarabozo, *Commentary on the Forty Hadith of Al-Nawawi* (Dar Dawat al-Basheer for Publications, 1999), 168; W. Montgomery Watt, 'Conditions of Membership of the Islamic Community', *Studia Islamica* 21 (1964): 5-12, 7.

<sup>126</sup> Open Letter to Al Baghdadi, available at <http://www.lettertobaghdadi.com> (assessed 31 January 2017).

<sup>127</sup> *Ibid.*, p. 12.

<sup>128</sup> Literal translation by Martin Whittingham in *Al-Ghazali and the Qur'an* (London: Routledge, 2007), 13.

<sup>129</sup> *Sahih Muslim*, *supra* note 27, 1 : 78-9 (*Bab hal man qala li akhihi al-muslim ya kafir*).

<sup>130</sup> Sherman A. Jackson, *On the Boundaries of Theological Tolerance in Islam (Abu Hamid al-Ghazali's Faysal al-Tafriqa Bayna al-Islam wa al-Zandaqa)* (Karachi: Oxford University Press, 2002), 132.

<sup>131</sup> Barbara Zollner, *The Muslim Brotherhood: Hasan al-Hudaybi and Ideology* (Abington: Routledge, 2008), 85.

<sup>132</sup> *Ibid.*, p. 85.

shortcomings”, as he used the belief/unbelief dichotomy to intimidate his opponents and thereby essentially duplicated their *takfir* rhetoric.<sup>133</sup>

Western public figures have also resorted to this dichotomy when referring to ISIS. In 2014, former British Prime Minister David Cameron, for example, said of ISIS that ‘they are not Muslims’.<sup>134</sup> In doing so his statement, presumably unknowingly, bore the imprint of the concept of *takfir*. It is this paper’s contention that one must limit oneself to refuting *takfir* based solely on juristic reasoning and under no circumstances aim at undermining the religious credibility of those who have declared the *takfir*, as this bears with it the risk of perpetuating the belief/ disbelief dichotomy.

## **(ii) *Takfir*: a restricted legal designation with very specific criterion**

In addressing the fundamental question of what amounts to right and wrong belief, Al-Ghazali asserts that one must have a strictly *legal* approach of the matter:

Unbelief is a legal designation (*hukm shar’i*), like slavery and freedom, its implication being the licitness of shedding blood of one (so designated) and passing a judgement upon him to the effect that he will dwell in the Hellfire forever. And since this is a legal designation, it can only be known on the basis of either an explicit text from scripture (*nass*) or an analogy (*qiyas*) drawn from an explicit text.<sup>135</sup>

As a legal designation, the basis on which unbelief is established must therefore be: (a) an explicit text from scripture or an analogy drawn from an explicit text and (b) absolutely certain. With respect to the second criteria, in cases of preponderant probability or of uncertain sources, one ‘should refrain from branding a person an Unbeliever. Indeed, rushing to brand people Unbelievers is the habit of those whose natures have been overrun by ignorance’.<sup>136</sup>

Regarding the person accused of *takfir*, they must not be Muslim, i.e. they must not have recited the profession of faith. Indeed, according to a hadith reported by Ibn Umar, the Prophet said ‘Withhold (your tongues) from those who say “There is no god but Allah” – do not call them *kafir*. Whoever calls a reciter of “There is no god but Allah” as a *kafir*, is nearer to being a *kafir* himself’.<sup>137</sup> Thus calling someone who has recited the profession of Islamic faith (*shahada*) a *kafir* is not permitted and results in the author of the accusation becoming himself an unbeliever, thereby engaging in successive *takfir* accusations.

This is further substantiated by a *hadith* narrated by al-Bukhari and Muslim according to which the Prophet is reported to have said, ‘If a man says to his brother, O Kafir (disbeliever)! Then surely one of them is such (i.e., a kafir)’.<sup>138</sup>

Similarly, Imam Habīb Ahmad Mashhūr al-Haddād stated that it was not permissible for anyone to ‘declare people to be outside Islam’ if they did ‘great confusion would ensure, and

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<sup>133</sup> *Ibid.*, p. 86.

<sup>134</sup> Andrew Osborn and Guy Faulconbridge, ‘UK’s Cameron resists calls for air strikes despite hostage killing’ (London/ Edinburgh; Reuters, 14 September 2014). Available at [www.reuters.com/article/us-iraq-crisis-execution-idUSKBN0H80SE20140914](http://www.reuters.com/article/us-iraq-crisis-execution-idUSKBN0H80SE20140914) (accessed 30 January 2017). Cameron stated, ‘We will hunt down those responsible and bring them to justice no matter how long it takes. They are not Muslims, they are monsters’.

<sup>135</sup> Jackson, *supra* note 129, 92.

<sup>136</sup> *Ibid.*, 115.

<sup>137</sup> Tabarani, reported on the authority of Ibn Umar. See Z. Aziz, *The Ahmadiyya Case, Case History, Judgment and Evidence*, Ahmadiyya Anjuman Isha’at Islam Lahore Inc. 1987, p. 82

<sup>138</sup> Sahih al-Bukhari 6103 Book 78 (on Good Manners and Form, *al-Adab*), Hadith 130.

very few Muslims would be left on the face of the earth'.<sup>139</sup> As previously noted, the right to declare *takfir* is held solely by God and as such any *takfir* declared by man amounts to a violation of God's right. Not a single source of Islamic law grants man the right to sanction religious sin in this world. Ahmad ibn Hanbal (d. 241 AH/ 855 CE) stated that even the Prophet himself did not carry out *takfir*, but that he left 'God to do with His creatures what he likes'.<sup>140</sup>

A more recent stance on *takfir* in Islam may be found in the wording of the Sheikh of al-Azhar Gad al-Haq after the assassination of President Sadat. Al-Haq stated that the killing of President Sadat in the name of Allah was an 'absolute wrong' as 'fighting between Muslims is forbidden by Islam'. He contended that if Muslims killed fellow Muslims, they 'took the wrong path'.<sup>141</sup>

### **(iii) Limiting *Takfir* to the case of self-renouncement of the *shahada* and the sentence to God's sole prerogative**

It results from the addition of the aforementioned criterion that:

- *takfir* may only result from an explicit text from scripture or an analogy drawn from an explicit text.
- there must be absolute certainty regarding the act of *takfir*.
- Muslims may not accuse each other of *takfir*.
- God is solely entitled to punish a *kafir* in the Hereafter.

In consequence, if a Muslim may not be accused of *takfir* by another Muslim, what does the notion refer to, in what cases may it apply and what sanction does it carry?

In view of the aforementioned, there is only a single instance in which *takfir* may be unequivocally applicable: when a Muslim clearly rejects belief in the oneness of God and Muhammad's prophethood, thereby renouncing his faith. This must be an intrinsic and voluntary individual undertaking – the renunciation of the *shahada* under duress, such as is the case in Syrian and Iraqi ISIS controlled areas does not fall under the *takfir* category. Likewise, a 'nominal' Muslim may not be accused of *takfir* as he has not voluntarily renounced his *shahada*. Thus when ISIS imposes strict rules regarding clothing and appearance – such as the length of clothes and beards, the prohibition of brands or noisy heels for women and so on, the non compliance to such rules does not amount to sufficient evidence of *takfir*.

With regards to the sentence, it has been evoked that only God may decide upon a penalty regarding *takfir*. One may say that *takfir* thus falls under the category of *ibâdât* or religious practice, which lies solely in the direct connection between each Muslim and God. There may be no human interference whatsoever with regards to issues pertaining to *ibâdât* and the same is true of *takfir*.

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<sup>139</sup> Ḥabīb Aḥmad Mashhūr al-Ḥaddād, *Key to the Garden*, translated by Mostafa al-Badawi (London: Quilliam Press, 1990), 70-71.

<sup>140</sup> Ibn al-Jawzi, *Virtues of the Imam Ahmad ibn Hanbal*, edited and translated by Michael Cooperson (Vol. 1, New York: New York University Press, 2013), 307.

<sup>141</sup> Wilhelm Dietl, *Holy War*, translated by Martha Humphreys (New York: Macmillan, 1984), 117. Wilhelm Dietl (interviewer): 'The assassins who killed president Anwar el-Sadat said they were doing so in the name of Allah. Was that also a wrong conception?' Sheikh Azhar Gad al-Haq: 'That is absolute wrong. As I already mentioned, fighting between Muslims is forbidden by Islam. One principle of Islam is good counsel. Which is provided by the religion. That applies both for the ruler and for the ruled. The path of force and of killing is forbidden to us. These people took the wrong path when they killed'.

In short, cases of temporal accusations of *takfir* have no substance, legal implications nor meaning, except that they bear the risk for their author of being sanctioned by God themselves in the Hereafter for violating his rights.

Though it has not always been al-Azhar's stance, this point has been assimilated by its current Sheikh, Ahmed el-Tayyeb, who has condemned declarations of *takfir*, viewing them as 'blind sedition and a catastrophe for Islam'.<sup>142</sup> He himself has refrained from making declarations of *takfir* regarding any members of ISIS, saying that he cannot do so unless such members themselves renounce their *shahada*.<sup>143</sup> Thus a Muslim's sins, no matter how grave, are not what will cause him to leave Islam: only the chosen renouncement of the *shahada* bears with it the risk of being condemned by God in the Hereafter.

## 5 Conclusion

The evolution of the concept of *takfir* from the 7<sup>th</sup> to the 21<sup>st</sup> century CE has resulted in conflict and civil war in some Muslim majority states. It has become not only a mechanism for branding other Muslims, governments and societies as unbelievers, but also a trigger for Muslim intra-faith war. Contemporary *takfiri* groups such as ISIS and Boko Haram criticise Muslims they deem unworthy of Islam, whether they be in the West or in the Middle East. However, as seen in Part I, the act of declaring *takfir* is actually prohibited by the Qur'an and the *Sunna* which unequivocally state that only God has the right to decide, in the hereafter, one's Muslim or non-believer status. Therefore, if a Muslim appropriates God's right to declare *takfir*, they themselves may be considered by God to be sinful. There is a risk that by seeking to denounce the use of *takfir* by extremist groups such as ISIS, one constructs one's argument and makes judgements employing the same belief/unbelief dichotomy that one is trying to condemn. In order to avoid an unending cycle of the appropriation of God's right to judge what does and does not constitute belief, it is important to limit oneself to a simple refutation of *takfir* based solely on juristic reasoning. In that they amount to a usurpation of God's right, critics would be well-advised to condemn *takfir* as being illegal under Shari'a but not to attack those declaring it to be non-Muslims themselves; this would merely be a replication of the mistaken language of those extremist groups who kill other Muslims in the name of God.

The rise of different trends of political Islam since 1970s and the lack of political platform and visions during the Arab Spring have paved the way for the issuance of infedilising (*takfiri*) fatwas by Islamist movements. According to a recent report entitled 'The influence of politics on infedilizing fatwas', issued by the fatwa monitoring observatory at Dar Al-Iftaa in Egypt, these fatwas are:

[D]irected to achieve certain political partisan gains and use religion to polarize its followers, exploit the religious fervor of the people, weaken their adversaries by issuing infedilizing fatwas targeting their opponents, the cultured, and police and army personnel whom they consider tyrants.... Furthermore, infedilizing fatwas are seen as legal permits for killing and blood-shed which undermine the objectives of Islamic law.<sup>144</sup>

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<sup>142</sup> 'Sheikh of al-Azhar: Takfir, A Fitna Aiming to Distort Islam's Image' *supra* note 89.

<sup>143</sup> The *Shahada* is the Muslim profession of faith ('There is no god but Allah, and Muhammad is the messenger of Allah') and is one of the Five Pillars of Islam. See: <http://gatesofvienna.net/2014/12/al-azhar-no-takfir-against-the-islamic-state/> (accessed 31 January 2017)

<sup>144</sup> 'The fatwa monitoring observatory; infedilizing fatwas are seen as legal permits for killing which undermine the objectives of Islamic law' (website of Dar Al-Ifta Al-Missriyyah). Available at <http://eng.dar-alifta.org/foreign/ViewArticle.aspx?ID=479&text=The%20fatwa%20monitoring%20observatory:%20infedilizing%20fatwas%20are%20seen%20as%20legal%20permits%20for%20killing%20which%20undermine%20the%20objectives%20of%20Islamic%20law> (accessed 30 January 2017).

The Advisor to the Grand Mufti and the Supervisor of the above report stressed that such *takfiri* fatwas have ‘lead thouthands of youths towards extremism and murder, seeking alleged martyrdom’.<sup>145</sup> Aware of the dramatic consequences of these *fatwas* and its devastating results in tearing socities apart the new Tunisian Constitution of 26 January 2014 included a clause that prohibits *takfiri* fatwas and the new Tunisian anti-terror law included a provision that provided for a ban on the charge of takfir with a sentence that amounts to death. It states:

Anyone accusing others of apostasy (*Takfir*), or inciting others to do it, or promoting the spread of hatred between religious minorities or religions, can be punished with sentences that can include the death penalty. The conviction will be heavier according to whether they bring physical violence.

The present study demonstrates that *takfiri* practices do not merely calssify people or excommunicate them from particular society but it also allows for their killing. Perhaps time has come for all Muslim majority states to stand firmly against the spread of political takfirism and to include in their legislations and penal codes a clear condemnation against such practice. To enact such legislation is not merely a recommendation but an imperative under the right to life provision in the International Covenant on Civil and Political Rights, and the corresponding duty of States to protect the lives of their citizens.

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<sup>145</sup> *Ibid.*