

REVIEW ESSAY

APOSTASY THROUGH DOUBT AND DISSENT

M. CHRISTIAN GREEN

Center for the Study of Law and Religion, Emory University

BOOKS REVIEWED

The Apostates: When Muslims Leave Islam. By Simon Cottee. London: Hurst, 2015. Pp. 243 (paper). ISBN: 9781849044691.

Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law. By Intisar A. Rabb. Cambridge: Cambridge University Press, 2014. Pp. 414 (cloth). ISBN: 9781107080997.

Dissent on Core Beliefs: Religious and Secular Perspectives. Edited by Simone Chambers and Peter Nosco. Cambridge: Cambridge University Press, 2015. Pp. 244 (cloth). ISBN: 9781107101524.

What if instead of studying religions by texts, history, and practices we studied them by what they fear? I first had this thought in considering philosophical differences between Plato's *Republic* and *Laws*.¹ What accounted for the shift from the profound idealism of the *Republic* to the apparent authoritarianism of the *Laws*? The standard answer is that Plato was born in a time of troubles, at the tail end of the oligarchic regime of the Thirty Tyrants, who took hold of Athens at the end of the Peloponnesian Wars. As recounted in the *Apology*,² it was a regime that was famously and vigorously opposed by Plato's great teacher, Socrates. Socrates is absent from Plato's last dialogue, the *Laws*, written as an older man, after a stint in prison for having opposed another tyrant. In the *Laws*, the contemplation of ideal forms in *Republic* gives way to promulgation of detailed laws to achieve unity, harmony, and a perhaps tenuous peace. Most imperative of all is the need to avoid the chaos of war and tyranny. The philosopher is gone—Plato has lawyered up.

A similar sort of impression struck me in reading Augustine's *Confessions*.³ Augustine began his career as a Manichaean and neo-Platonist. In his life Augustine witnessed, from the African outpost of the Roman Empire, the rise of Christianity but also the decline of the Roman Empire. A fear of chaos, not unlike that of Plato, stalks the *Confessions*. And despite being, in the first instance, an account of Augustine's conversion to Christianity, it seemed to reflect a fear of change. Change, change, change—I wrote repeatedly in the margins. And indeed, among the many philosophical and theological debates that Augustine parses and ponders in the course of his conversion is one that has to do with a query from the neo-Platonist theorist Porphyry: How could creation have happened in time at the instigation of an unchanging God, since it would have involved a decision to

1 See Plato, *The Republic of Plato*, trans. Allan Bloom 2nd ed. (New York: Basic Books, 1991); Plato, *The Laws*, trans. and ed. Trevor Saunders (1970; repr. London: Penguin Classics, 2005).

2 See Plato, *Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo*, 2nd ed. (Indianapolis: Hackett, 2002).

3 Augustine, *Confessions*, trans. R. S. Pine-Coffin (1961; repr. London: Penguin, 1970).

create—and thus a change in the mind of God? Augustine’s ruminations on these and related points are relayed in Books 11–13 of the *Confessions* on time, creation, and the Trinity.

What emerged, at least for this reader, from these Platonic and Augustinian writings was a sense of how certain prospects—chaos and change—can become problematic within philosophical and religious traditions in a way that comes to have great impact in their shaping and formation. In the sphere of religion and human rights, both chaos and change are implicated in what has become a key concern in religious freedom today: apostasy. Article 18 of the Universal Declaration of Human Rights specifically includes a person’s “freedom to change his religion or belief.”⁴ Likewise, Article 18 of the International Covenant on Civil and Political Rights protects a person’s “freedom to have or adopt a religion or belief of his choice.”⁵ There is, thus, protection of the right of religious conversion—to enter and exit religion—in international human rights law today. But not all conversions come quickly and easily with the flash of a fabled lightning bolt, like Saul on the road to Damascus. More often than not, conversion comes torturously, as it appeared to do with Augustine, after prolonged periods of serious doubt.⁶ And yet in many parts of the Islamic world today, doubt, particularly if it leads to open dissent or claims of apostasy, can earn the doubter a death sentence.⁷

A trio of recently published, and apparently unrelated, books raises some interesting questions about apostasy, doubt, and dissent. Simon Cottee brings sociological and criminological analysis to the largely unanalyzed questions of what prompts Muslims to leave Islam and how that process unfolds, which turns out to have implications not only for the faith but also the identity of the once-believers. Intisar Rabb’s weighty legal history shows that doubt, for all of the problems it raises, may in fact be the centerpiece of the development of Islamic criminal law, in which charges of apostasy may be based. Finally, the essays in the edited volume of Simone Chambers and Peter Nosco provide a comparative ethical examination of doctrinal dissent among a selection of world religions and secular philosophies. In that inquiry, as suggested above, doubt can lead to dissent or apostasy. In the course of analyzing these books, I argue that doubt, dissent, and apostasy are not only closely related but also deeply intertwined with questions of religion, conflict, and identity in our time.

APOSTASY THROUGH THE GATEWAY OF DOUBT

One of a number of European researchers who have turned their attention recently to the problem of religious radicalization and the rise of the Islamic State, Simon Cottee, a criminologist at the University of Kent and a contributing writer to the *Atlantic*, recently published in that magazine’s pages an article

4 Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), art. 18.

5 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, art. 18.

6 Doubt has also been trendy in the media in recent years. See Peter Steinfeld, “Uncertainties about the Role of Doubt in Religion,” *New York Times*, July 19, 2008; Julia Baird, “Doubt as a Sign of Faith,” *New York Times*, September 24, 2014; William Irwin, “God Is a Question, Not an Answer,” *New York Times*, March 26, 2016; Damon Linker, “Why Doubt Is So Difficult,” *Week*, March 29, 2016; “Faith and Doubt” (letters to the editor), *New York Times*, April 2, 2016.

7 See “Islam and Apostasy: The Right to Renounce,” *Economist*, June 27, 2014; Ebrahim Moosa, “Muslim Political Theology: Defamation, Apostasy, and Anathema,” in *Profane: Sacreligious Expression in a Multicultural Age*, ed. Christopher S. Grenda, Chris Beneke, and David Nash (Oakland: University of California Press, 2014); Claudia Mende, “The Reinvention of Islam” (interview with Ebrahim Moosa), Qantara.de, March 22, 2016, <https://en.qantara.de/content/interview-with-the-islamic-scholar-ebrahim-moosa-the-reinvention-of-islam>.

provocatively titled “Reborn into Terrorism,”⁸ which asked the question, why are so many recruits of the Islamic State of Iraq and Syria former convicts and converts. Cottee begins by quoting the words of an ISIS jihadi driving a truck laden with a “mound of corpses,” who proclaims, “Before we towed jet skis, motorcycles, quad bikes, big trailers filled with gifts for vacation in Morocco. Now, thank God, following God’s path, we’re towing apostates.” As Cottee explains, “This was a derogatory reference to his victims, who, in his mind, were renegades from the Muslim faith and thus legitimate targets for slaughter. But it was also a telling allusion to his own irreligious past, before he found God and joined ISIS and started murdering people.” Now there is a conversion story!

Describing the jihadi as “once a wayward soul with a rap sheet,” Cottee, with every other terrorism researcher today, quotes the philosopher Eric Hoffer, who argued in his 1951 book *The True Believers*, “‘Mass movements ... are custom-made to fit the needs of the criminal—not only for the catharsis of his soul but also for the exercise of his inclinations and talents.’ This also applies to jihadist groups like ISIS, which promise would-be recruits not just action and violence, but also redemption.”⁹ In the *Atlantic* article, Cottee notes that analysis of documents of a banned British Islamist movement reveal promotion of “the idea of spiritual salvation—socializing its members to believe that their sacrifices in the here-and-now will be rewarded in the hereafter” in a way that “seems tailor-made for the needs of criminals and ex-cons, providing them with a supportive community of fellow outsiders, a schedule of work, a positive identity, and the promise of cleansing away past sins.”

Amid anecdotal reports showing top Amazon.com purchases by would-be ISIS initiates as including titles like “Islam for Dummies” and “The Koran for Dummies,”¹⁰ Cottee challenges, in the course of his *Atlantic* article, the notion that converts to Islam are unschooled in the faith. He states: “A common line of argument among scholars is that converts to Islam are insufficiently knowledgeable about their new faith and thus acutely vulnerable to extremist interpretations of Islam, which they lack the intellectual or theological resources to counter. While intuitively this explanation seems plausible, it assumes that converts to Islam know less about their newfound religion than Muslims who were born and raised into it. Yet the evidence for this claim is shaky, and at odds with studies showing just how engaged and well versed many converts are in debates over matters of faith.” Indeed, Cottee continues, “The idea that converts, lacking in religious knowledge, are peculiarly susceptible to demagogic manipulation also carries the implication that those with a deep knowledge of Islam are unlikely to join jihadist groups. This, too, is a contentious point—and it is unclear whether it could even be empirically established, given how contested Islamic knowledge is. More contentious still, this logic essentializes Islam as inherently pacifist, suggesting that some true or proper understanding of the faith would serve as a repellent against deviant jihadist interpretations.”¹¹ From this, Cottee concludes, rather provocatively, that “what Islam is or isn’t is an open (and indeed volatile) question; there is not one “true” Islam, but a plurality of Islams, each competing for epistemological hegemony.”

8 Simon Cottee, “Reborn into Terrorism,” *Atlantic*, January 25, 2016, <http://www.theatlantic.com/international/archive/2016/01/isis-criminals-converts/426822/>.

9 Ibid., quoting Eric Hoffer, *The True Believer: Thoughts on the Nature of Mass Movements* (New York: Harper Perennial Modern Classics, 2010).

10 Mehdi Hasan, “What the Jihadis Who Bought ‘Islam for Dummies’ on Amazon Tell Us about Radicalization,” *New Statesman*, August 21, 2014.

11 Cottee, “Reborn into Terrorism.” For another recent manifestation of controversy over the term “apostate” as an assessment of faith, see Adam Taylor, “John Kerry Keeps Calling the Islamic State ‘Apostates,’ Maybe He Should Stop.” *Washington Post*, February 23, 2016.

Why is this claim provocative? This is what Cottee addresses in his book on Muslim apostates. There, Cottee is talking not of conversion to faith—but conversion away from it. Even so, what becomes apparent is that jihadis and apostates have a number of things in common. In many ways, they are two sides of the same coin. Most poignantly, it turns out that many of the apostates reach the point of apostasy only after very serious struggles to exemplify their faith—and often to do so perfectly. Theirs is a particularly strong form of falling away that in many respects parallels the zeal of the convert. Much of apostasy turns out to hinge significantly on doubt, and whether to openly express that doubt as dissent becomes especially problematic.

To be sure, doctrinal or theological doubt is not the sum total of the problem. With many accounts of recent Islamic radicalization in Europe, Cottee notes the difficulties of life “as an immigrant and the challenges of growing up as a stranger in a strange and not entirely hospitable land” and of being a “young person growing up in an adopted country” (xiii). He further observes, “There is a lot of pain and torment in the lives of ex-Muslims. This is to do, in part with feelings of shame, the sense that they’ve failed their families and the wider Muslim community, that they’re not right that they’re wrong. Not normal. To do, also, with feelings of alienation, sense of being out of place. Not belonging” (xiii). In many ways, the stories of apostates resemble nothing so much as the stories of those who come out as gay, lesbian, or otherwise differently sexual. Apostasy is, moreover, not merely a philosophical exercise; it has deep implications for former Muslims, their families and communities, and perhaps even for the global Muslim *ummah* and the international politics of religious freedom. On the last point, Cottee maintains, “Writing about Islamic apostasy is difficult . . . because the issue has become so intensely politicized and polarized. This is directly related to the contested status of Islam in western democratic secular societies. . . . Because apostasy in Islam is intimately connected to the question of toleration and freedom of conscience, it has become conscripted into this wider public reckoning over the political identity of Islam” (2).

In the context of these global religious freedom debates, inquiry into the true nature and effects of apostasy has suffered. As Cottee observes, on the right side of the political spectrum “Islamic apostasy is widely viewed as a serious global human rights problem and apostates are portrayed as brave dissidents who live in fear of violent reprisal from fanatical Muslims” (4). On the left, Cottee maintains, “the question of Islamic apostasy barely registers and is seen as at best a diversion from more pressing issues, like the emancipation of Palestine” (4). Hypostasized by the right and ignored by the left, apostasy has thus not received its fair share of scholarly examination. It is into this lacuna that Cottee delves, with his ethnographic study of apostasy as an “active process of self-transformation, the culmination of struggle, self-examination and self-doubt,” in which former believers “abandoning the guidance and consolations of faith . . . put into question the very foundations of their identity and indeed the very basis of their existence” (8). Indeed, Cottee observes of his key study category of nonreligious apostates (some do convert to other faiths), “Non-religious apostates are also unique in the sense that they deviate not only from the faith into which they were born or converted, but also from the widely shared cultural assumptions that one must invest in *some* notion of the divine. This makes them doubly deviant—and doubly interesting” (8).

Cottee distinguishes apostasy from both conversion and heresy. Having described apostasy as not merely critique, but disavowal (16), and not merely “exchange” or “switching,” in cases where a new religion is claimed, but crucially of exit from the former faith (16–17), Cottee specifies: “Connectedly, apostasy is not defection: not necessarily. Defection refers to the act of exiting a group for another. It implies a realignment of allegiance, a switching of sides in a competitive struggle. To defect is thus necessarily to apostatize, but as we have just seen, to apostatize is not necessarily to defect (i.e. to transfer one’s loyalties to another group). To put it more succinctly: all

defections are apostasies, but not all apostasies are defection” (17). Of the connection to heresy, Cottee warns, “One must also sharply distinguish apostasy from heresy. The heretic does not renounce the group. Quite the contrary, the heretic professes to embody its highest and truest ideals” (17). Quoting other authorities, Cottee further explains that “the heretic claims to uphold the group’s values and interests, only proposing different means to this end or variant interpretations of the official creed” and “the heretic chooses *voice* over exit, fighting to change their organization from within” (17).¹² More problematically, “the heretic continues to compete for the loyalty of existing group members,” which “makes him a more ambivalent figure than the apostate” (17).¹³ This is the case because “in his conflict with the group he still maintains the group’s basic values’ and thus ‘is apt to create more confusion in the group’ than the person who outright rejects them” (18).¹⁴

At the center of apostasy, hence the inclusion of Cottee’s book with the others assembled here, is the problem of doubt. Cottee begins his chapter on the process of becoming an apostate, with an epigrammatic quote from of an interviewee, who asserts, “I always had doubts. In fact, that seems to be the one sort of constant in my life: doubts about myself, doubts about my religion, doubts about everything” (31). Indeed, Cottee provides a threefold taxonomy of the doubts experienced by the former Muslims he interviewed, detailing, *epistemological doubt* of the “truth claims of Islam,” *moral doubt* of “the morality of Islamic commands or prohibitions,” and *instrumental doubt* over “the utility of Islamic commands/prohibitions” (32). Among the “pathways” or “triggers” of doubt, Cottee identifies significant personal experiences, exposure to alternatives, scriptural discoveries, spiritual alienation, and political events (35). All of these points are discussed in detail and supported by Cottee’s interview findings. But in a striking note on the impact of 9/11 terrorist attacks as a political event, Cottee quotes a former Muslim who, bothered by defenses of the 9/11 attacks in his community, maintained

I couldn’t understand how such a devout and pious Muslim, who carried out every single religious duty to a fault, could be so confident in beliefs that were so obviously immoral, so obviously wrong. This led me to an even more rambling thought: was I like him? Not in the sense of trying to justify killing innocent people—but what if I was also confident in beliefs that were wrong? What if the Quran is not the word of God? What if Muhammed is not the Prophet of God? And what if Islam is not true? (42)

Cottee traces the path of apostates through doubt, dissatisfaction, discord, denunciation (of self deliberation, disavowal, and eventually disclosure. All of these are analyzed in detail and some broken down into even more minutely detailed taxonomies, along the lines of the taxonomy of doubt. Cottee goes on in subsequent chapters to analyze the experiences of former Muslims who come out, those who stay hidden in their communities, and later post-apostasy phases in which apostates “hang on” and “manage” their apostasy. But there can be no doubt, from the book’s opening chapters, that doubt is the first stop on the road to apostasy—hence doubt’s problematic status not only in Islam, but also other religions. After all the Christian tradition has its own doubting Thomases and even Judases.

12 Citing Albert O. Hirschman, *Exit, Voice, and Loyalty: Response to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

13 Citing Lewis A. Coser, *The Functions of Social Conflict* (London: Routledge and Kegan Paul, 1956), 71, 101.

14 Quoting Coser, *The Functions of Social Conflict*, 101.

THE “DOUBT CANON” OF ISLAMIC JURISPRUDENCE

So, if doubt is the mother of apostasy and apostasy is a crime in Islamic jurisprudence, is it even possible that doubt could have a place in Islamic jurisprudence? Islamic legal scholar Intisar Rabb answers in the affirmative with her magisterial study of doubt (*shubha*) in Islamic criminal law. In introducing her historical inquiry, Rabb maintains, “This history calls into question a popular notion about Islamic law—which some have upheld and promoted and others have criticized and opposed. The notion is that Islamic law is a divine legal tradition that has little room for discretion or doubt, particularly in Islamic criminal law. Despite its contemporary popularity, the notion turns out to have been far outside the mainstream of Islamic law for most of its history. Instead of rejecting doubt, medieval Muslim scholars largely embraced it” (1). Indeed, Rabb continues,

these scholars—the expert jurists who articulated the main contours and rules of Islam’s legal system—held doubt so closely that it came to be at the heart of Islamic criminal law. Moreover, these scholars embraced doubt in ways that helped them construct the system of Islamic law, which they simultaneously claimed to have divine origins. This account examines that process of construction-through-interpretation by exploring some of the thorniest issues in Islamic law: those involving Islamic criminal law. More often than not, the difficult interpretive questions of crime and punishment facing Muslim jurists were characterized by doubt. (1)

In a way that, curiously, seems to track the three forms of doubt that Cottee identifies in Muslim apostates, Rabb finds the Islamic jurisprudence of doubt to be central to resolving the “difficulties that medieval Muslim judges face when attempting to apply Islamic criminal law without the benefit of being able to discern the *facts*, the *law*, or the *morality* of punishment with any certainty” (3). Indeed, Rabb goes on to argue that

Muslim jurists made doubt—and avoidance of punishment on its basis—a central pillar of Islamic criminal law. . . . Muslim judges *retrospectively* explained such cases with reference to doubt. Taking cases such as that one as a precedent, those jurists then prospectively promoted a surprisingly extensive tendency of extending the benefit of the doubt to the accused. They packaged this tendency in the form of a directive calling on judges to “avoid criminal punishments in cases of doubt: *idratū l-hudūd bi l-shubahāt*.” I call this statement Islamic law’s “doubt canon”—one of many Islamic legal maxims that were rooted in past cases and gained the status of an oft-repeated principle of interpretation that medieval Muslim jurists sought to apply to future cases. (4)

One suspects that these subtleties may be lost amidst the “Bring out your apostates!” calls of Islamic State jihadis driving the trucks of execution.

But the concept of doubt that Rabb describes is an expansive one that may have implications outside of Islamic criminal law—and maybe even outside of Islam when a comparative religion eye is brought to the issue. Of one obvious comparison, Rabb notes, “For the reader familiar with American criminal law, it is important to note here that the Arabic term for “doubt” in this canon, *shubha*, was a term of art. It assumed a much more expansive meaning than the common conception of reasonable doubt in American law. Rather than representing a principally fact-based standard of proof, the Islamic doctrine covered factual uncertainties, legal ambiguities, and even extralegal considerations that I call ‘moral doubt’” (4). Bringing the aforementioned stereotype of Islamic law, or *sharia*, into conversation with this more expansive concept, Rabb thus observes,

The expansive meaning of doubt in Islamic law is doubly perplexing because this doubt seems somehow misplaced in a religious legal tradition that posits God as a divine Lawgiver who asserts absolute supremacy over the law and who “legislated” a series of harsh criminal sanctions. Indeed, given the ever-present specter of doubt, Muslim jurists obsessed over devising an “economy of certainty.” But if Islamic law is a textualist legal tradition requiring Muslims to apply the rule of God rather than the discretion of men (as Islamic theorists maintain that it is), how did doubt—about textual meaning as well as matters that were atextual and otherwise uncertain in nature—come to be so central and confer so much discretion on the jurists? Moreover, why did this occur? (5)

This is the historical development that Rabb chronicles in the rest of the book—and it is an argument that must be taken up in detail by someone more schooled in Islamic law and its historical development than the present reviewer, schooled in law and religion generally, but Christian ethics more particularly.

From a Christian ethical perspective, the Islamic problem of doubt is redolent of a similar issue in Christianity over the development of casuistry and case analysis as a method of moral reasoning. The Christian debate over casuistry is one that is perhaps nowhere better chronicled than in Albert R. Jonsen and Stephen Toulmin’s excellent book, *The Abuse of Casuistry: A History of Moral Reasoning*.¹⁵ Casuistry is a method and term that fell into disrepute, particularly after the philosopher Blaise Pascal’s seventeenth-century, Enlightenment-based take-down.¹⁶ With its minute parsing of probabilities, “casuistry” now conjures up images of thousands of angels dancing on heads of pins, an unfathomable number of hair-splitting cuts, and an equal number of Jesuit priests to tally it all up. But for centuries in the Christian church, having been devised by priests to account for and adjudge the sins of the faithful and with its notable attention to doubt and multiple probabilities of metaphysical and actual certitude, casuistry was the standard *modus operandi* of moral theology. Casuistry gave rise to theories of probabilism that remain influential, and sometimes disputed, in Roman Catholic moral theology and ethics.¹⁷ There are important conceptual, methodological, and practical connections between Christian casuistry, Jewish *halakhah*, and the Islamic form of legal reasoning known as *ijtihad*, the latter being a flexible form of Islamic legal

15 See Albert R. Jonsen and Stephen Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California Press, 1990). Jonsen and Toulmin specifically refer to doubt in several places in their account. See *ibid.*, 165, 170.

16 Blaise Pascal, *The Provincial Letters*, trans. A. J. Krailsheimer (London: Penguin Classics, 1982). Pascal seems to have more doubts about casuistry in the hands of humans than the rationality of belief in God. See Gary Gutting, “Pascal’s Wager 2.0,” *New York Times*, September 28, 2015, on why belief in God in the face of doubt is a good bet.

17 Casuistry and probabilism are often referred to as proportionalism or consequentialism today, but they surface frequently in debates over the applicability of moral norms, especially moral absolutes, in particular cases. See, for example, Charles E. Curran and Richard A. McCormick, *Moral Norms and Catholic Theology* (New York: Paulist Press, 1979); John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (Oxford: Clarendon Press, 1989); Josef Fuchs, *Moral Demands and Personal Obligations* (Washington, DC: Georgetown University Press, 1994); Charles E. Curran, *The Catholic Moral Tradition Today: A Synthesis* (Washington, DC: Georgetown University Press, 1999), especially chapters 6–8; Patrick Andrew Tully, *Refined Consequentialism: The Moral Theology of Richard A. McCormick* (New York: Peter Lang, 2006); Charles E. Curran, *The History of Moral Theology* (Washington, DC: Georgetown University Press, 2013). Cf. John Finnis, *Moral Absolutes: Tradition, Revision, and Truth* (Washington, DC: Catholic University of America, 1991); Robert P. George, *Natural Law and Moral Inquiry: Ethics, Metaphysics, and Certitude in the Thought of Germain Grisez* (Washington, DC: Georgetown University Press, 1998).

hermeneutics that has been used by progressive, reformist, and feminist Islamic legal theorists to advance the tradition.¹⁸

Rabb provides three main reasons for the recent significance of doubt in Islamic thought. The first is related to “contemporary developments in the Muslim world, where Islamic law is spreading not only in constitutions and civil codes, but in criminal matters as well” (5). Particularly in light of the recent Arab revolutions in the Middle East and North Africa, Rabb argues, “there is great uncertainty about the fate of democracy and the rule of law, in no small part because of the raging battles between authoritarian secularist regimes and rebel Islamists who promote ill-defined or ill-conceived versions of Islamic law to oppose them” (6).

The upshot of these developments, Rabb points out, is that

The emergence of such ill-conceived versions of Islamic law in recent times has prompted, more than anything, fears of its punishments. In fact, those punishments have come to define the face of “*sharīa*” itself—often left untranslated to heighten the exoticism and danger that it can evoke in the popular imagination. On this view, *sharīa* is no more than a religious code that expresses the will of an angry and vengeful god intent on oppressing women, amputating hands, and executing apostates. . . . On that view, it is no wonder that *sharīa* inspires fear of its spread not only in the Muslim world but throughout the globe. In the light of history, however, these views present a distortion of the theory and practice of Islamic criminal law, a distortion ironically adopted by the most vociferous proponents and opponents of “*sharīa*” alike. (7)

Thus, apostasy makes its initial appearance in Rabb’s argument, as an example of faulty reasoning and *sharia* gone wild.

But another aspect of Rabb’s “doubt canon” of Islamic jurisprudence emerges here that also links up to Christian casuistry debates, namely, the fundamental role played by legal interpretation in conveying (or challenging) tradition and authority. Much like opponents of probabilistic moral theology or proponents of the late Justice Antonin Scalia’s “originalism,” some Muslim legal theories are using *sharia* in rather cramped and foundationalist ways. Here, Rabb observes,

In point of fact, new Islamic constitutions and codes do require many judges in the Muslim world to apply Islamic law in their decisions, in ways deeply connected to Islamic legal history. Some judges in these Islamic constitutional countries tend to appeal to conceptions of Islamic law drawn from its foundationalist texts

18 Jonsen and Toulmin make the connection between casuistry and *halakhah* squarely, in maintaining, “Halakhah is the casuistry of Rabbinic Judaism.” Jonsen and Toulmin, *The Abuse of Casuistry*, 57. At a later point in their account, they cite a discussion that took place in the journal *Judaism* in response to an article on this flexible dimension of *halakhah*. See Robert Gordis, “A Dynamic Halakhah: Principles and Procedures of Jewish Law,” *Judaism* 28, no. 3 (1979): 263–82. A subsequent issue of *Judaism*, 29, no. 1 (1980), contained no fewer than twenty articles in response to Gordis.

Ijtihad has been recommended as an interpretative methodology by progressive theorists of Islamic law for some time. Among some of the more interesting recent writings on *ijtihad*, see David Smock, “Special Report: *Ijtihad*: Reinterpreting Islamic Principles for the Twenty-First Century,” Washington, DC: United States Institute of Peace, August 13, 2004; Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (New York: Oxford University Press, 2008); Ahmad Atif Ahmad, *The Fatigue of the Shari’a* (New York: Palgrave Macmillan, 2012); L. Ali Khan and Hisham M. Ramadan, *Contemporary Ijtihad: Limits and Controversies* (Edinburgh: University of Edinburgh Press, 2012). There is even a documentary film about *ijtihad* and feminism: see *Ijtihad: Feminism and Legal Reform*, video, 56:91, directed by Nancy Graham Holm, 2012, posted by Muslims for Progressive Values, February 9, 2013 (parts 1 and 2) and April 19, 2014 (part 3), <https://www.youtube.com/watch?v=KX2PDOE4yz8> (part 1), <https://www.youtube.com/watch?v=NC-YrnDyI5M> (part 2), <https://www.youtube.com/watch?v=8TD5lrgwblQ> (part 3).

and from understandings of Islam's ever authoritative "founding period," which stretched from the seventh to the eleventh century. (7)

Thus the second reason for the recent debates over doubt has to do with its coincidence with the "so-called closing of the gates of *ijtihād*, a phrase that Sunnī Muslim jurists created to signal the settling of their legal schools and to suggest that they were applying God's rule, rather than interpretive discretion" (9). Even for aficionados of progressive legal interpretation who only dabble in Islamic legal theory, among whom this reviewer is most certainly included, the "closing of the gates of *ijtihād*" is a concept that is known and, for the most part, feared—but Rabb puts a new spin on that understanding.

Rabb suggests that "it is not that interpretation ended as the theory of closed gates suggests." Instead, she argues,

Sunnī jurists sought to close the canon of foundational texts in their efforts to systematize Islamic law and place it more on a foundation of shared textual bases of authority than it had been in the previous era—when regional or judicial practices, charismatic authority, and local norms often prevailed. Put differently, the so-called gate-closing of Islam's late founding period signified the moment when Sunnī jurists—in the process of their attempts at systematizing Islamic laws and legal theory—turned increasingly to the authority of texts and authoritative modes of interpretation, by which they simultaneously added to the textual corpus in textualizing legal maxims such as the doubt canon. (9)

It is at this point that Rabb herself draws one of several connections to American appeals to the Founding Fathers to understand the United States Constitution and other comparisons to American criminal and constitutional law (9, 12, 14). But to draw on another foundational American debate, it takes no diehard anti-federalist to understand that local is not always better—even, or perhaps especially, when it comes to cases of jurisprudential interpretation and doubt. One has only to look at some of the less jurisprudentially advanced regions of the world, or even some of the more far-flung regions of the United States, to see local tribal leaders, judges, and juries engaged in the most backward forms of localized jurisprudential malfeasance.¹⁹ Against such local exercises of power, systematization and codification may be a progressive jurist's best friend: it may close the doors to ideas that should not gain admission to any system of law or justice.

Too much flexibility, to the exclusion of certainty, can also prove problematic in the field of criminal law, which is the second reason that Rabb gives for the attention to doubt in Islamic legal circles. She explains,

In this high-stakes area of law, the criminal process could result in unjustified deprivation of life, liberty, or property flowing from dubious convictions. A challenge to any system of criminal law, doubt—if unheeded

19 See, for example, Zarghuna Kargar, "Farkhunda: The Making of a Martyr," *BBC News Magazine*, August 11, 2015, <http://www.bbc.com/news/magazine-33810338>; Alissa J. Rubin, "Flawed Justice After a Mob Killed an Afghan Woman," *New York Times*, December 26, 2015; Campbell Robertson, "The Prosecutor Who Says Louisiana Should 'Kill More People,'" *New York Times*, July 7, 2015; Shaun King, "Meet Dale Cox: The Perverse, Racist, Deadly D.A. of Caddo Parish, Louisiana," *Daily Kos*, July 6, 2015, <http://www.dailykos.com/story/2015/7/6/1399558/Meet-Dale-Cox-The-deadliest-most-racist-perverse-prosecutor-in-the-country>. Of course, sometime justice wins: see Sara Mechi, "Acting Caddo DA Dale Cox Leaves Race Following National Criticism," *KTBS*, July 14, 2015, <http://www.ktbs.com/story/29549496/acting-caddo-da-dale-cox-leaves-race-following-national-criticism>; "Caddo Parish Elects First Black District Attorney as Spotlight Stays on Death Penalty and Jury Selection Controversies," *Death Penalty Information Center*, accessed May 16, 2016, <http://www.deathpenaltyinfo.org/node/6308>.

by operation of the doubt canon in Islamic law—could result in the wanton loss of life or limb. In short, attention to doubt in Islamic and other comparative contexts is important because criminal law needs to center on certainty, which is often in short supply, and because the stakes of getting criminal law decisions wrong are so high. (10)

Rabb's third reason for the significance of doubt in Islamic law may provide a middle way between the perils of excessive flexibility or rigidity, and it accounts for her focus on the particular function of legal maxims. Specifically, Rabb cites a history of the "doubt canon" that "has been nearly forgotten despite its surprising centrality to early Islamic criminal law and to the role of Muslim jurists in constructing it" (12). Specifically, she argues,

This history reveals that the doubt canon was one of many legal maxims that historically—in the hands of jurists—played a central, but currently underappreciated role in the construction of Islamic law. Legal maxims, known as canons of construction, are "rules of thumb used . . . to enable interpreters to draw inferences from the language, format, and subject matter" of ambiguous legal texts. . . . The history of doubt is a significant example of the operation and growth of one Islamic legal maxim, as it interacted with other legal maxims and sociolegal rules. Islam's doubt canon spread quickly, achieving a place of prominence in Islamic law very early in its history. (13)

Thus, legal maxims at the heart of Islamic law are the focus of Islamic criminal law jurisprudence and of Rabb's analysis. For, as Rabb argues at the end of her analysis, "it may well be that considering Islamic law without legal maxims blocks avenues to grasping the nature of Islamic law and legal interpretations both historically and in the contemporary world" (321).

As indicated earlier, the specific experience of this reviewer with Islamic law is by no means extensive enough to comment more fully and specifically on the details of Rabb's analysis, which I shall leave to the Islamic legal specialists. My focus here is on highlighting how Rabb's lifting up of the "doubt canon" of Islamic criminal law jurisprudence, along with Cottee's analysis of the prevalence of doubt among Muslim apostates, in connection with the idea that Islam cannot deal with doubt. True, the two accounts seem to lead in different directions. Rabb's jurists draw on the "doubt canon" with flexibility, but also a need for certainty. They draw on doubt in order to preserve—and often to advance and reform—the tradition. By contrast, Cottee's apostates draw from doubt the conclusion that they must exit the tradition. Nonetheless, some of the most powerful—and powerfully ironic—accounts from the ex-Muslims that Cottee interviewed emphasize their struggles in various phases of the process of apostasy to cling strongly to tradition and even try to be more pious than their fellow Muslims before ultimately abandoning the faith (38–39). Theirs, too, may be a quest for truth and certainty, much like the heretics whom Cottee distinguishes from apostates. Apostates become the heretics who leave.

Moreover, the apostates' struggle, with that of the Islamic jurists may equally be an interpretive struggle—in this case a self-interpretive struggle focused on their own identities within family, community, and nation. The apostates' struggle, with wider legal, theological, and doctrinal struggles within the faith comes to focus on authority and tradition. Apostates ultimately reject and exit the tradition, but they share many similarities with dissenters, who remain within the tradition, often then labeled heretics by the traditionalists.²⁰ If the question of apostates is why they do not stay, the

20 In this regard, it is interesting that many of the Christian casuists and probabilist theorists have come to be labeled—and to self-label—as dissenters. See, for example, Charles E. Curran and Richard A. McCormick, *Dissent in the Church*, Readings in Moral Theology 6 (New York: Paulist Press, 1987); Charles E. Curran, *Faithful Dissent*

question of dissenters is why they do not leave. Crucially, there is evidence that for apostates, and likely for dissenters as well, this is not seen to be a matter of choice. Thus, along with questioning the capacity for doubt in religious traditions, we need also to ask about their capacity to tolerate dissent.

COMPARATIVE RELIGIOUS AND SECULAR ETHICS OF DISSENT

In their edited volume on dissent in world religious and secular traditions, Simone Chambers, Peter Nosco, and the contributors shift attention from the moral and legal problem of apostasy to the ethics of dissent. It is a problem that goes far deeper than the validity of mere doctrine. In his study of apostates, Simon Cottee observes, “there can be no doubt that apostasy is a moral problem” (10). This dovetails well with Chambers’s and Nosco’s framing of dissent as an ethical problem going to the heart of communities and their common life. As one of Cottee’s interview subjects puts it in the Islamic context, “It’s not just that you’re criticizing Islam in some way . . . you’re actually criticizing the very foundations of it and people take it as an attack on their identity, not just their belief” (11). As Cottee himself puts it, “For some Islamic jurists, apostasy is at least as grave an offense as murder, since it threatens the very unity of the Muslim community” (11). There are shades, in this, of the Platonic concern for harmony over chaos.

Chambers and Nosco situate their volume within contemporary ethical discussions of difference and diversity, religion in the public sphere, and questions of personal and communal identity. They open the volume by observing, “Difference, diversity, and disagreement are inevitable features of our ethical, social, and political landscape. Although difference of opinion is not a modern phenomenon, the modern world is particularly concerned with the ethical navigation of difference. What is the range of appropriate responses to deep disagreement? How should we interact with those whom we do not see eye to eye? When does elasticity properly become diversity?” (1). In Cottee’s and Rabb’s books, we have seen these questions addressed in different ways. In Cottee’s study, some apostates make a clean break with tradition, including in some cases their families and communities. But others feel compelled to remain closeted within the faith, even backtracking their apostasy a bit, at least publicly, once the hurt to their families and communities becomes apparent. In Islamic jurisprudence, the need to manage and balance doubt and certainly has given rise to various schools of Islamic jurisprudence, something that often seems eclipsed with the ascendancy of the Salafist and Wahhabist schools in extremist movements.

Chambers and Nosco further observe, “Traditions have an immense impact on people’s lives. To be brought up as a Catholic, to think of oneself as a liberal, to be at home within a Confucian social order, these ways of being in the world carry with them hosts of substantive implications. Interrogating the ethical message that various traditions send about how to treat their opponents and rivals, and examining how these messages have been played out in concrete histories of these traditions have proved to be a very large topic” (1). At the same time they argue—and one suspects that Rabb would agree from the standpoint of religious jurisprudence—that

disagreement and dissent are not only inevitable in the ongoing life of a tradition, but would also appear to be necessary to maintaining a tradition’s vitality, and it is here that one observes a Goldilocks-like paradox of dissent. On the one hand, the complete stifling of criticism and agreement would render a tradition static and incapable of growth and adaptation. On the other hand, a tradition’s inability to discipline and at times to rein in criticism could equally lead to its demise, as the center cannot hold endlessly against

(New York: Sheed & Ward, 1986); Charles E. Curran, *Loyal Dissent: Memoirs of a Catholic Theologian* (Washington, DC: Georgetown University Press, 2006).

comprehensive dissent. Indeed, all strong and vibrant traditions, and of course all of the ethical traditions represented in this volume, have found their own ways to navigate between the Scylla of stagnation and the Charybdis of revolt. (2)

On the religious side, they observe, dissent has produced “heresy, apostasy, and schism,” while on the secular side, one sees “unprincipled heterodoxy, deviation from a ‘party line’ and disloyalty” (2). Religious traditions represented in the volume include Judaism, Christianity, Islam, Buddhism, and South Asian religions; secular traditions covered include liberalism, Marxism, and natural law traditions, which originated in Greco-Roman thought, but also have many religious manifestations. The volume’s very span necessitates giving it relatively short shrift in the space of this review, but specific issues covered include authenticity and essentialism, relationship to modernity, relationship to host institutions, orthodoxy and orthopraxis, and the use of violence.

Of authenticity and essentialism, Chambers and Nosco observe that each of the chapters in the volume “has had to strike a balance between the essentializing impulse to define a tradition, and the historicizing impulse to document its transformation over time” (3). This problematic seems equally applicable to Cottee’s apostates and their struggle between perfection and rejection of the faith and to Rabb’s account of progressive interpretation of Islamic law. The challenge of modernity, in Chambers’s and Nosco’s assessment, is that it “contains new ways to think about, manage, and perhaps value pluralism, difference, diversity, and disagreement” (5). The presence of this novelty, as we have seen in Cottee’s apostates and Rabb’s *sharia* account is that it almost inevitably raises doubt about the status quo, which can be either a crisis or an impetus to change. By “host institutions,” Chambers and Nosco mean the institutions “charged with the task of managing dissent, as well as inculcating orthodoxy” (8). For apostates, those host institutions may include family and community. The efficacy of novel legal interpretations may ultimately rest in their reception and ratification by larger schools of law. Of orthodoxy and orthopraxis, Chambers and Nosco, maintain that “liberalism is a creed but it does not directly police belief” and that “liberalism is more concerned with behaviors and practices than belief” (10)—an assertion that might strike some as interesting in the context of ongoing debates over “political correctness” and related issues, but one which also hints at the connections they and several of the book’s contributors, including such notable interpreters of liberalism as William A. Galston and Michael Walzer, draw between religious and secular traditions. (The book also includes a notable chapter on intramural Christian dissent by Peter Steinfels, who has written on issues of liberalism and Catholicism in politics and culture over the years.) Finally, there is the problem of violence, a perpetual risk to dissenters in both religious and secular systems. There, Chambers and Nosco observe, as part of their overall emphasis on attending to both formal and authorized violence, such as that committed by states, and informal and unauthorized violence, such as that enacted by mobs or even the proverbial lone wolves, “Like individual acts of aggressions, rather than a way of managing dissent, the explosion of unauthorized and informal sectarian violence can be seen as evidence of a failure to manage dissent at all” (12). These are some of the cross-cutting themes addressed in the book’s chapters.

What seems important to observe is that these issues of dissent, like doubt and apostasy, are not going away anytime soon. With the advent of what has been described as a global resurgence of religion, there has also been an increase in knowledge of other religions, competition between religions, and sharpened orthodoxy and orthopraxis in many cases in the quest to win souls. While two of the books covered in this essay have dealt with Islam the question is hardly limited to Islam. Religious fermentation is affecting and sometimes producing religious conflict and religious violence within and among many if not most of the religions in the world, including Hinduism, Buddhism, and Christianity, and indigenous and alternative religions as well. The time is ripe for

further inquiry into doubt, dissent, apostasy, and related issues. The three books discussed here are excellent contributions to those ongoing discussions. We are living in a world in which the ancient concerns of Plato and Augustine seem a long time ago and very far away, but concerns for unity, harmony, change, and the ever-present possibility of falling into chaos, such as the black-flagged hole of the Islamic State, are very real possibilities today and will continue to demand our attention for the foreseeable future.