



RELIGION WITHOUT COMPULSION

Knowledge to Challenge
Blasphemy and Apostasy Laws

UiO  Norwegian Centre for Human Rights
University of Oslo

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Blasphemy and Apostasy Laws

A report from the Oslo Coalition's project
on New Directions in Islamic Thought

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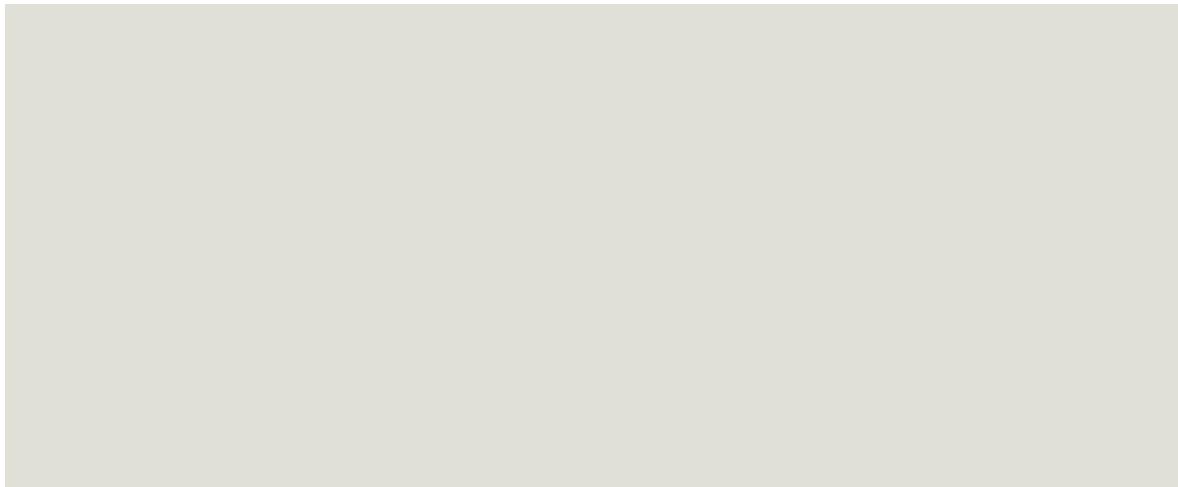
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ABOUT THIS REPORT

The Oslo Coalition is an international network of experts and representatives from religious and other life-stance communities, academia, NGOs, international organisations and civil society, based at the Norwegian Centre for Human Rights, University of Oslo. The mission of the Oslo Coalition is to promote the freedom of religion or belief (FORB) as a common good for the benefit of everyone in every society. It does so by creating spaces for scholars, experts and activists to explore relevant issues; publishing research and resources; and working with partners to teach and build competence about FORB.

Since 2004, the Oslo Coalition project "New Directions in Islamic Thought" has organised nine international workshops and produced three books on burning issues of reform from within the Islamic tradition: *New Directions in Islamic Thought* (2009); *Gender and Equality in Muslim Family Law* (2013) and its companion report *Justice Through Equality*, and most recently *Freedom of Expression in Islam: Challenging Blasphemy and Apostasy Laws* (2021), all published by I.B. Tauris. Below, we refer to these publications as *NDIT*, *GEMFL*, *JTE* and *FEI* respectively.

Since 2012, the project has brought together a diverse group of Muslim experts to discuss freedom of expression and freedom of religion or belief in Islamic law and modern Muslim societies. The experts included religious scholars; academics in the social, human

and legal sciences; public intellectuals and policy advocates. All shared a commitment to engaging with the Islamic tradition to bring about reform informed by modern understandings of the freedoms of expression and belief. We held three international workshops, one in Oslo and two in Istanbul, and published *FEI*, on which this report is based.

This report is intended for policy-makers, stakeholders and advocates as a resource for developing knowledge-based arguments for legal reform. It serves as a companion guide to the book, summing up lessons and key arguments we have learned from the expert discussions and written contributions. It is written from an observer's point of view, and seeks only to showcase various lines of inquiry and scholarship that make the problem clear and bear promise for solving it.

We have therefore not sought to develop a consensus statement. The individual authors cited are not responsible for each other's arguments or for the use we have made of their work in this report. For the full version of the key scholarly findings and arguments as developed by the expert participants, and the evidence and literature they cite, please see the book chapters and other key resources referenced under "Further reading" in each section.

Christian Moe
Muhammad Khalid Masud
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- NDIT** Kari Vogt, Lena Larsen and Christian Moe (eds).
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- JTE** Ziba Mir-Hosseini, Kari Vogt, Lena Larsen and Christian Moe.
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docs/oc/justice-through-equality.pdf](https://www.jus.uio.no/smr/english/about/id/docs/oc/justice-through-equality.pdf)
- FEI** Muhammad Khalid Masud, Kari Vogt, Lena Larsen
and Christian Moe (eds). *Freedom of Expression in Islam:
Challenging Apostasy and Blasphemy Laws*.
London: I.B. Tauris, 2021.

SUMMARY

The right to freedom of religion or belief and the right to freedom of opinion and expression are precious rights for everyone, not least for Muslims, who are often victims of authoritarian rule or prejudice and discrimination. However, there is a concern that human rights are at odds with Muslim belief and identity, not least where the protection of religion is concerned. This gives states an excuse to enforce repressive laws even as they sign up to human-rights treaties. While some blasphemy laws were introduced by colonial or secular regimes, they are defended in the name of Islamic law and protecting the honour of the Prophet. This religious legitimization powerfully mobilizes Muslim communal identity and individual religious conscience against perceived threats. Muslims thus find themselves in a bind between Islam's perceived humane ideals, seen as consonant with human rights, and repressive policies, cast as the demands of tradition. But in this dilemma lies an opportunity for reform if it is recognized as a struggle over interpretations within Muslim tradition itself.

Here, we report on work by Muslim experts that shows that contemporary blasphemy and apostasy laws are damaging to Muslim societies, as well as counter-productive; reveals weaknesses in the religious arguments for these laws; argues for freedom of religion and expression as Islamic values; and opens a space for debate and reform within the Muslim tradition.

Apostasy laws, harsh blasphemy laws, and the religious and social norms that underpin them are a particular **problem for Muslim societies**. Beside the death penalty and other severe criminal punishments, apostasy has civil-law effects, such as dissolved marriages. Alleged apostates or blasphemers also risk extrajudicial violence. Broadly written laws violate fundamental freedoms, ignore basic requirements of justice, and lend themselves to abuse. They not only affect converts, religious dissenters, and religious minorities, they are also abused for political and economic gain. Their effect is to chill debate, retard social progress, criminalize dissent, and suppress opponents of the powers that be. They also tarnish the reputation of the religion and the Prophet they are meant to protect, associating them with cruel punishments, violence, forced belief, and abuses of justice. The plight of victims of such laws is publicized in global media and advocacy networks, feeding a spiral of public outrage.

Fortunately, **there are grounds within Muslim tradition for rejecting the claim that such laws are divine and unchangeable**. Indeed, the pre-modern Muslim legal construction of apostasy and blasphemy was shaped over time by specific historical, social and political conditions, and even by specific events in the lives of central thinkers. The suppression and exclusion of different and marginal religious voices also interlocked with other social hierarchies and exclusions, not least gendered ones.

Recognizing the all-too-human nature of the laws opens a space for reform. Moreover, it turns out that the punishment of apostasy and blasphemy is not as well supported either by the sacred texts or by the consensus of the jurists as is often assumed.

The Qur'an does not state any punishment in this world for leaving Islam or for insulting religion. Jurists who insisted that it did had to resort to far-fetched interpretations. The Qur'an does, on the contrary, give advice on non-violent ways to deal with those who insult God, such as avoiding them and refraining from exchanging insults. Moreover, it contains resources in support of religious pluralism and freedom, among them "There is no compulsion in religion" (2:256). Traditional scholarship has tended to narrow or exclude these meanings, but they could be restored by modern ethical readings of the Qur'an.

The Sunna of the Prophet, as narrated in the Hadith collections, includes reports that the Prophet called for the killing of some persons who insulted him, but that he showed clemency to others. Assessing and interpreting these reports raises questions about their applicability in present circumstances, especially for such a serious purpose as the death penalty. It is widely argued that, in the special circumstances of the first Muslim community, apostasy and blasphemy constituted high crimes akin to treason and enemy propaganda, but today religious sins should be distinguished from political crimes against state security.

The claimed consensus of Muslim jurists on the punishment of apostasy and blasphemy elides considerable historical disagreement. Early Muslim jurists did widely agree that a male Muslim blasphemer was an apostate and should face the death penalty, but differed on many related questions. Later influential jurists recorded these differences, but at the same time denied and suppressed them by claiming a consensus for their own sweeping conclusions. Recovering and historicizing the traditional diversity of juristic opinion from distortion might allow Muslims to challenge the stated rationale for existing laws and rethink the issue for modern times.

The jurists' reasoning was based on many assumptions that were taken for granted at the time: that Islam could only be freely practised under Muslim rule, that the land of Islam was at war with the unbelievers, that non-Muslims could only live there if protected and subordinated by a pact, and that order must be kept by executions and whippings. These assumptions no longer hold now that peace is the norm in international law, modern nation-states have equal citizens, and the new paradigm of human rights forbids religious discrimination and cruel punishment. Today, the surest guarantee that all Muslims may freely practise Islam is the same as for every faith: the state's respect for the human right to freedom of religion. Pre-modern Muslim approaches to protecting religion were relevant to the realities of their time; to remain so, they must be rethought.

This rethinking could lead to the **abolition of repressive laws** in accordance with international standards. This raises the question of **alternative approaches to protecting religion**. "Hate-speech" laws may play a role against the most dangerous forms of anti-Muslim expression, but cannot and should not take over the role of blasphemy laws. To defend their sanctities in free societies, believers will largely have to rely on mission, dialogue, counter-speech and education for tolerance, and may want to make common cause with other religious communities and with human-rights groups against religious intolerance. There is promise in the fact that Muslim and non-Muslim governments have abandoned unhelpful debates over

"defamation of religion" and turned to addressing religious intolerance against persons.

The use of religious arguments in support of human rights might help get human-rights debates unstuck from the impasse between secularist and religious camps. However, religious reform poses its own dilemmas: Should reformers rely on traditional authority to reach the limited goals faster, excluding those without traditional authority from the conversation? Or must religious knowledge and authority itself be democratized, criticized and re-interpreted from the margins? Our aim here is to open a wider space for debate and to build the knowledge needed to address these questions with confidence.

APOSTASY, BLASPHEMY AND RELATED TERMS

In English, *apostasy* is a term that means to leave one's religion, whereas *blasphemy* means a verbal offence against religion or the sacred. These terms have a history in the Christian tradition, where they were long used interchangeably with *heresy*, the holding of unorthodox belief. In modern secular states, apostasy and heresy are no longer matters for the law. In those that still have blasphemy laws, the meaning of blasphemy has largely shifted from any offence against the sacred to particularly strong offence against religious feelings.

In Arabic, apostasy – leaving the religion of Islam – is called *ridda* and the apostate a *murtadd*. These terms can be used to conflate those who leave Islam with enemies of the state, as they go back to the so-called wars of *ridda*, which were fought in the time of the first caliph against tribes that went back on their commitments. Various terms are used for insult and other offensive speech, such as *sabb* and *shatm*. Insult to the Prophet can be called *sabb al-nabi* or *sabb al-rasul*.

In Islamic law, it has widely been argued that a Muslim who blasphemes the Prophet thereby becomes a *murtadd*, and that *ridda* is a crime that incurs capital punishment under the fixed religious penalties known as the "limits" of God, *hudud* (sg. *hadd*).

Accusations of apostasy are often directed against people even though they profess to be Muslims. Accusations of unbelief are known as *takfir* (from *kufr*, unbelief). The practice of *takfir* is controversial among Muslims.

Further expressions are in use in different languages and legal systems. For example, Iranian law uses the term *tohin*, belittling (Arabic *tawhin*). "Deviant sect" (*aliran sesat*) is a key term in Indonesia.

INTRODUCTION: AN ISLAMIC DILEMMA

A perceived conflict between secular human rights and religious identity hampers the struggle for freedom of belief and expression in the Muslim world. Recognizing it as a struggle internal to Muslim tradition allows transforming a dilemma into an opportunity for reform.

The freedom of religion or belief is a precious good for believers in all religions and in none. It includes the freedom to have a religion or belief, to change it, and to manifest it in various ways. The freedom of opinion and expression is a cornerstone of democracy. It includes the right to seek, receive and impart information and ideas of all kinds, in all ways. The two freedoms are closely related. Both are part of international human rights. States are bound by UN treaties to secure the enjoyment of these freedoms for everyone in their jurisdiction without discrimination. States are only allowed to limit these freedoms by law, for a limited set of legitimate aims, and only as far as is necessary and proportionate to achieve those aims (see Box: Articles 18 and 19). Despite near universal assent to human rights, however, huge challenges remain. People are persecuted and discriminated against for their religion; jailed and killed for speaking their mind.

Muslims have a particular stake in these human rights. In today's world, they disproportionately live in countries where governments are not democratic and where civil and political rights are often violated.

Where they live as minorities, they may face anti-Muslim prejudice and discrimination.

International opinion surveys appear to show that Muslims widely support democracy and reject extremism, and that they also support the application of Shari'a, religious law. While it is debated what these responses mean in context, they appear contradictory. The idea of applying divine law conflicts with the idea of democratic law-making. The modern application of Islamic law by states has often focused selectively on certain premodern rulings that conflict with international human rights, including criminal punishment for abandoning Islam, which violates the freedom to change religion or belief; criminal punishment for insulting the sanctities of the religion, which infringes on the freedom of expression; and harsh corporal punishments. Surveys do show less Muslim support for these harsh punishments than for Shari'a overall. But punishments still applied for apostasy and/or blasphemy include the death penalty. Under international human rights, those states that have not yet abandoned the death penalty may only impose it for the worst crimes, not for beliefs and expressions. Some countries provide

for whippings, which violates the freedom from cruel, inhuman and degrading punishment.

Such laws do not all have Islamic origins: Some blasphemy provisions in Pakistan and Egypt, for example, were imposed under colonial rule – among many other restrictions on speech – as a means of preventing religious unrest. Still, apostasy and blasphemy laws in Muslim countries are legitimated and defended as forming part of Islamic law, laid down in the Qur'an and the Sunna of the Prophet and ratified by the consensus of medieval jurists, and serving the aim of protecting the honour of the Prophet in particular. This religious legitimation is a powerful one, imbuing the laws themselves with a sacredness that makes it difficult and even dangerous to argue for their reform – indeed, in some quarters, calls for abolition of the blasphemy law are themselves considered blasphemous. Not only may an individual believer balk at going against God's law as a matter of religious conscience, the argument also appeals to Muslim group feeling and loyalty to the community. By presenting the laws as an authentically Islamic value, illiberal religio-political actors can easily mount a cultural defence against human rights by denigrating reformers as a foreign-inspired threat to a beleaguered Muslim culture and identity. We note that a parallel politics of identity plays out in Western countries, where the faith of Muslim minorities is increasingly cast as a foreign threat to cherished cultural values of freedom, and criticism and caricature of Islam is lauded as a form of cultural resistance.

Concerned Muslims wishing to affirm both human rights and their Muslim identity thus find themselves in a bind. But in this "Islamic dilemma" lies a strategic opportunity for reform, argues Mahmoud Sadri. He compares the "clash inside civilizations" and the "cognitive dissonance" over these issues within Islam to the tension between American democratic values and racist policies in the 20th century, as discussed in Gunnar Myrdal's classic study *An American Dilemma* (1944). Sadri suggests that, like the civil-rights movement in America, Muslim reformers can make progress by confronting their societies with the gap between their inhumane laws and their humane values and ideals. As evidence that this can work, he has examined the relatively few Iranian trials of high-profile religious dissidents for their beliefs, finding that public opinion forced the authorities to back down from the death penalty in these cases.

The dilemma, then, can be addressed by recognizing it as a struggle over interpretations of religion taking place within Muslim tradition itself, as it has also taken place in other traditions. To challenge apostasy and blasphemy laws in the name of Islamic ideals, Muslims need not only the courage of their convictions, but also the knowledge of Islamic tradition to recover values of freedom and non-coercion and unravel the argument that the punishments are divine law.

Here, we report on work by Muslim experts who are building such knowledge in various ways, inter alia by

- showing how the laws operate in ways that are damaging to Muslim societies as well as counter-productive;
- revealing weaknesses in the religious arguments for these laws;
- arguing for freedom of religion and expression as Islamic values; and
- opening a space for debate and reform within the Muslim tradition.

FURTHER READING

- On the religious legitimization of the laws and the problems of identity politics, see the editors' "Introduction," *FEI*, pp. 1-13; on the religious legitimization of laws with partly colonial or secular post-colonial origins, see e.g. the chapters on Pakistan, Egypt and Indonesia in *FEI*.
- On the "Islamic dilemma" and Iranian trials: Mahmoud Sadri, "Re-Framing Reform," *FEI*, pp. 195-206.
- For opinion surveys, see i.a. Pew Research Center, "The World's Muslims: Religion, Politics and Society" (<https://www.pewforum.org>, 2013); John Esposito and Dalia Mogahed, *Who Speaks for Islam?* (New York: Gallup Press, 2007).

ARTICLE 18 AND 19 OF THE ICCPR

International Covenant on Civil and Political Rights

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

THE PROBLEM OF APOSTASY AND BLASPHEMY LAWS

Repressive and easily abused, apostasy and blasphemy laws stifle thought and development in many Muslim countries, and tarnish Islam rather than defend it.

Only about half the world's Muslim countries have blasphemy laws, and they are not the only countries that do, but they tend to enforce such laws more actively and with harsher punishments than elsewhere. Fewer countries have apostasy laws, but the criminalization of apostasy is a problem almost unique to Muslim countries, several of which provide for the death penalty. States also impose a range of difficulties on alleged apostates through civil and administrative law: their marriages may even be voided, as happened to the Egyptian academic Nasr Abu Zayd for applying new approaches to the study of the Qur'an, or they may have problems getting necessary identity documents.

Laws against apostasy violate the human right to freedom of religion or belief, which includes everybody's right to choose one's religion or belief, i.e. to change it. States can, to some extent, limit what people can do in the name of religion ("manifestations of religion"), but the right to a *belief* of one's choice is absolute. Laws against blasphemy limit the freedom of expression, which includes the right to express shocking opinions. States can limit speech to protect

public order, public health, public morals, national security, and the human rights of others. But blasphemy bans on such grounds (which exist in many jurisdictions, not only in Muslim countries) are increasingly out of step with common morality and expert opinion. Recently, the UN Human Rights Committee has clarified that the freedom of opinion and expression protects blasphemous speech. Apostasy and blasphemy laws, then, are not compatible with human rights even in principle.

In practice, they have even worse impacts, because they lend themselves to abuse by the authorities, as well as by political and business rivals, bigots and grudge-holders. They are often broadly written, unclear, and dangerous to question. They operate along with other restrictions on media and political speech to criminalize dissent.

For example, Mohammad Mostafaei notes that Iran brings a "complex mix" of laws to bear on blasphemy – and on apostasy, which is not mentioned in the penal code, but might be dealt with under uncodified religious law through a legal back door.

Although the law provides many grounds for defence for the accused in principle, including strict standards of proof and the option of repentance, Mostafaei knows from his practice as an Iranian lawyer and human-rights defender that judges have wide discretion and are often swayed by politics. The accused may face capital charges just for recording an irreverent video, and yet his legal situation is so unclear that Mostafaei concludes the law fails to satisfy basic requirements of justice. Even when a death sentence is ultimately overturned on appeal, as regularly happens e.g. in Pakistan, the accused may have spent years in prison waiting for death, as in the recent case of Asia Bibi.

Sometimes the laws are used to harass and persecute religious minorities, whether from other confessions (such as Christians), heterodox groups (Ahmadis, Sufis, Shi'a in Sunni-majority settings), or free-thinkers and atheists. Sometimes they are used as a pretext to harass and persecute Muslim mainstream believers for political reasons.

The threat of harsh punishments for voicing one's beliefs can only chill and stifle thought and debate, not only in religious affairs, but also in politics, arts, and scholarship, ultimately retarding the development of society as a whole.

Moreover, such laws have the counter-productive effect of bringing Islam into disrepute. Repressive laws and violent measures may be intended to safeguard the honour of religion and the Prophet.

Today, however, such laws and measures – like the death penalty or vigilante killings – tarnish that honour in the eyes of the world. Modern sensibilities abhor cruel punishments and recognize only unforced faith as authentic. There is outrage at terrorist acts and abuses of justice. The cases of Salman Rushdie, the Danish cartoons and *Charlie Hebdo* in the West, Asia Bibi in Pakistan and Meriam Ibrahim in Sudan are only some of the most notorious. In response to threats of violence against blasphemers, artists and journalists react with defiance, asserting their freedom by producing yet more controversial material. International media and human-rights groups raise awareness about the victims' plight, but Islamophobe networks also exploit such cases. It is not only a question of how Islam is perceived by non-Muslims, but also of how Muslims come to see their own religion. As Mostafaei concludes in the Iranian context, the application of harsh and unjust punishments can only turn people away from Islam.

That such laws discredit and dishonour Islam is not only a political argument: it has implications for Islamic jurisprudence. Mohsen Kadivar argues that the law must take into account the standards of "reasonable people," and that these standards change over time: if a norm of Islamic law today leads to *wahn al-Islam*, impairing Islam, this is a ground for suspending the punishment, or even for invalidating the ruling on which it is based altogether.

FURTHER READING

- The editors' "Introduction" to *FEI* briefly discusses the prevalence of blasphemy and apostasy laws in Muslim countries, as well as the cases of Nasr Abu Zayd and Asia Bibi. The case of Meriam Ibrahim is briefly discussed in Kecia Ali, "Transgressing All Bounds?" *FEI*, pp. 177–173 at 178. There is a considerable literature on the Rushdie and cartoon cases, which are not discussed in *FEI*.
- The UN Human Rights Committee deals with blasphemy in its General Comment No. 34 (2011) on CCPR art. 19 (UN doc. CCPR/C/GC/34).
- Mohammad Mostafaei, "The Crimes of Apostasy and Blasphemy in Iran," *FEI*, pp. 101–110.
- On *wahn al-islam* as grounds for suspending punishments, see Mohsen Kadivar, "Toward Removing the Punishment of Apostasy in Islam," *FEI*, pp. 207–236 at 218–219, 226–228.

RE-EXAMINING TRADITION

Though presented as divine and unchangeable, the Islamic legal construction of apostasy and blasphemy has been shaped over time by specific historical, social and political conditions.

Abdullah Saeed charts in his overview chapter how the development of blasphemy and apostasy laws was shaped by socio-political factors, including political concerns for security and power. At first, the survival and coherence of the early Muslim community was at stake, as Muhammad and his followers faced hostility from the Meccan establishment and subversion by the so-called "hypocrites." After Muhammad's death, the first caliph fought the wars of *ridda* (apostasy) against backsliding tribes. These events provided material for the jurists as they developed the law over the following centuries, amid continuing threats as the rulers of shifting dynasties faced social, political and sectarian conflict as well as invasions. As Saeed notes, a growing trend of devotion to the Prophet also reinforced the need to defend his honour as the honour of the community. It may be argued that laws policing religious speech and belief were intended to shore up the authority of the rulers and reinforced society's boundaries against religious out-groups in turbulent times.

Blasphemy law was even shaped by specific events in the lives of central thinkers. As Muhammad Khalid Masud points out,

Ibn Taymiyya (d. 1328) wrote his influential work on blasphemy in response to an incident where he had been punished for his role in mob violence against a Christian accused of blasphemy. But he also wrote against the backdrop of Shi'a unrest and Mongol conquest, during which he played a public role in Syria. He in turn drew on the work of Qadi 'Iyad (d. 1149), a judge living at the juncture of the Maghreb and Muslim Spain. Nora Eggen's study of 'Iyad suggests that, in laying down the law on those who insult the Prophet, he was also defending a form of religious scholarly authority in reaction to the rising Almohad movement, a radical religious rebellion that founded an empire (c. 1130–1269).

The novel zeal for enforcing such laws in the modern post-colonial era can also be ascribed to socio-political circumstances. The laws have been revived by the rise of Islamism, both directly where Islamists have come to power, and indirectly, as other governments have met their challenge by seeking religious legitimacy. The Islamist project of fusing state and religion naturally entails the ideological policing of religious belief and expression. The controversy stoked by such laws in the West heightens their appeal to popular sensibilities as a defiant

expression of Muslim communal identity and national sovereignties in the face of unequal global power relations.

In many places, religious establishments play a key role in opposing reform of the laws and advocating for their enforcement. Here too the political intertwines with the religious. In a case study of the Council of Indonesian Ulama (MUI), Syafiq Hasyim explores the "politics of fatwa" pursued by this quasi-governmental body of religious scholars, which issues fatwas declaring religious groups and practices "deviant." He shows how these fatwas serve as a tool for expanding the MUI's influence on public life. Though the fatwas have no formal legal effect in a secular state with equal citizenship, in practice they influence legislators, police and courts. Their influence is boosted by the post-Suharto state's need for democratic legitimacy from the Muslim majority. At the same time, they pose a challenge to the pluralism on which the state is based. In Egypt, the al-Azhar University, leveraging its position between the ruling elites and Islamists, has similarly taken a prominent public role by pushing for the Islamization of law and instigating prosecutions of blasphemy, as noted in a richly detailed legal study by Moataz El Feghery.

Taken together, these reflections support a view of Islamic legal thought and practice concerning blasphemy and apostasy as historically contingent, bound up with socio-political power, and susceptible to analysis and critique along the same lines as other forms of social domination and group demarcation. Indeed, the suppression and exclusion of different and marginal religious voices also interlocked with other social hierarchies and exclusions, notably of gender. This is apparent e.g. in legal rulings on differential treatment of female apostates (the Hanafi school of law held that they should not be killed but locked up and harshly treated until they recanted), but the implications extend further.

Noting that power is always linked with gender, Kecia Ali traces parallels between the marginal position of heterodoxy and that of women. Both pose challenges to establishment orthodoxies, raising voices the authorities seek to delegitimize. This is specifically true not only of the modern Muslim feminist, but also of bereft Muslim mothers, whose "excessive grief" might lead them to the theological error of questioning divine justice. This was a source of concern because women, though marginal to power,

are seen as vital to community boundaries. Conversely, Ali argues that religious error has been feminized, noting (with Saeed) that there are parallels between the execution of apostates for transgressing religious boundaries and honour killings of women for transgressing sexual boundaries. Taking into account the close linkages between patriarchal, political and religious authority may thus enrich our understanding of religious freedom and free speech and offer new directions for critique and reform.

Recognizing the extent to which human factors have historically shaped the laws can help demystify them and open a space for reform. Conceptually, it may be helpful to make a distinction between divine law (*Shari'a*) and the imperfect human understanding of it (*fiqh*), as well as between traditional *fiqh* and modern codified state law. Moreover, it turns out that even in traditional terms, the punishment of apostasy and blasphemy is not as well supported either by the sacred texts or by the consensus of the jurists as is often assumed.

FURTHER READING

- On history, socio-political influences, and dynamics of domination and exclusion generally: Abdullah Saeed, "Blasphemy Laws in Islam: Towards a Rethinking?" *FEI*, pp. 17–31.
- On gendered aspects of these dynamics: Kecia Ali, "Transgressing All Bounds? Gendering Authority and Engendering Orthodoxy," *FEI*, pp. 177–193.
- On Ibn Taymiyya: M. Khalid Masud, "Reading Ibn Taymiyya's al-Sarim," *FEI*, pp. 75–98.
- On Qadi 'Iyad: Nora S. Eggen, "al-Qadi 'Iyad's Defence of the Prophet and of Scholarly Tradition: al-Shifā'" *FEI*, pp. 53–73.
- On Indonesia and Egypt: Syafiq Hasyim, "Politics of Fatwas, 'Deviant Groups' and Takfir in the Context of Indonesian Pluralism," *FEI*, pp. 157–174; Moataz El Fegjery, "Guarding the Mainstream: Blasphemy and Apostasy in Egypt," *FEI*, pp. 111–129.
- On the Shari'a–fiqh distinction, see *JTE*. On the difference between the classical Islamic legal tradition and modern state law, see e.g. Saeed, "Blasphemy Laws," *FEI*, at pp. 24–25.

THE QUR'AN AND SUNNA

The Qur'an provides no earthly punishment for apostasy and blasphemy, but does provide support for religious choice and for non-violent responses to insult, a message that has been explained away, but could be recovered by modern readings.

The Qur'an does not explicitly state any punishment in this world for leaving Islam, nor for insulting religion, but makes clear that God will judge severely in the hereafter. Since it does explicitly lay down other severe punishments (*hudud*), e.g. for theft, the absence of such verses on apostasy and blasphemy appears significant.

Some jurists have insisted that the Qur'an did call for temporal punishment, but they have had to resort to far-fetched interpretations. Masud explains how this was done by Ibn Taymiyya (d. 1328), one of the most influential writers on blasphemy. In one of his many lines of argument, Ibn Taymiyya developed an interpretation that words used in seemingly parallel contexts meant the same thing. Thus offences that the Qur'an connected only with punishment in the hereafter, such as "hurting" or "annoying" the Prophet (9:61, 33:57), were assimilated to "defying or disobeying" God and the Prophet (8:12-13), for which the punishment was being "struck over the neck."

However, the Qur'an does contain ample resources for those who seek support for freedom of religion and even robust

speech. There is advice to the believers to deal with those who insult God in non-violent ways: to avoid them and to refrain from exchanging insults (4:140, 6:108). Moreover, the Qur'an contains several apparent statements of religious pluralism and free choice. It affirms that everyone would have believed if God had willed (10:99), and declares "let him who will, believe, and let him who will, reject it" (18:29). In many places the Prophet is instructed that he is only to warn people, not to force them to believe; judgment on the unbelievers is reserved for God. The conclusive statement "there is no compulsion in religion" (2:256) would seem to rule out any worldly punishment for changing one's religion or holding different beliefs, as one of our contributors, Mohsen Kadivar, forcefully argues. How, then, could premodern Islamic jurists and modern laws punish people for exercising their free choice in spite of these messages?

All religious texts must be interpreted, and the Qur'an has been mediated by cumulative layers of Qur'anic interpretation (*tafsir*). Omaira Abou-Bakr has traced the interpretation of the "no compulsion" verse (2:256) through history. Interpreters have used

the hermeneutic tools of *tafsir* to restrict the meaning of the verse or abrogate it entirely. Interpretations restricting it typically seize on (differing) traditions about the occasion on which the verse was revealed, to conclude e.g. that it only refers to People of the Book who submit and pay the poll tax. Abrogation assumes that verses calling Muslims to fight the unbelievers were revealed later and that they therefore replace the rulings of the verses rejecting coercion. Early interpreters did sometimes see connections with other verses promoting free choice, stress that belief was a matter between an individual and God, and realize that coercion in religion conflicted with the idea of individual moral responsibility and divine punishment or reward, Abou-Bakr notes. But these points receded into the background, and the tradition missed the opportunity to ground freedom of religion for everyone, including Muslims, in this verse. In Abou-Bakr's words, "they eternalized what should have been subject to change and considered changeable what should have been a fixed guiding principle."

This began to change with scholars like Muhammad 'Abduh (d. 1905), Mahmud Shaltut (1893–1963) and al-Tahir al-'Ashur (1879–1973), who argued inter alia that the "fighting verses" belonged to the context of Muslims' first struggle for survival in Medina, and thus did not abrogate 2:256. New approaches to the Qur'an have developed to take into account the broader historical context of the revelation as well as the broader textual context and the overall ethical outlook that modern Muslims glean from the Qur'an as a whole. Attempts to ground

modern liberties in the Qur'an are sometimes dismissed as ahistorical, but Abou-Bakr sees value in modern interpretations that seek to "restore the original ethical message," suggesting that a reformist outlook can go hand in hand with a critical perspective.

The Sunna of the Prophet includes reports that the Prophet called for some people who changed their religion or insulted him to be killed, but that he showed clemency to others. It may be questioned whether all these reports are authentic, not least because they seem to clash with the Qur'anic ethos of non-compulsion. Distinguishing sound Prophetic reports (*hadith*) from weak ones is a familiar principle of interpretation in Islamic jurisprudence. If authentic, the question remains what they meant in their original context, whether and how they are applicable today, how to reconcile them with the Qur'an, and in particular, whether their testimony suffices to establish the death penalty.

It is widely argued that apostasy and blasphemy were not purely religious crimes in the specific circumstances of the first Muslim community, when the very survival of the faith was constantly threatened by enemies without and "hypocrites" within. Rather, in this situation they constituted high political crimes akin to treason or propaganda for the enemy. In today's changed circumstances, the argument goes, religious sins should also be distinguished from political crimes against state security. However, this important argument seems more likely to be effective in states that already recognize a degree

of separation between state and religion than in states governed by Islamist ideology.

In *FEI*, Kadivar develops these arguments in the context of Shi'i jurisprudence: The indubitably authentic message of the Qur'an casts doubt on the authenticity

of conflicting Prophetic reports. Kadivar finds no convincing report that the Prophet ever sentenced anyone to death solely for apostasy, and argues that other crimes were always involved.

FURTHER READING

- On Ibn Taymiyya's peculiar interpretation: M. Khalid Masud, "Reading Ibn Taymiyya's *al-Sarim*," *FEI* pp. 75–98 at pp. 90–91.
- On the interpretation of 2:256: Omaima Abou-Bakr, "Freedom of Religion in Qur'anic Exegesis," *FEI* pp. 33–51.
- On textual support for freedom of expression, see also Mohammad Hashim Kamali, *Freedom of Expression in Islam* (Cambridge: Islamic Texts Society, 1997).
- For critiques of the Islamic law of apostasy as contrary to the Qur'anic teachings, see inter alia Kadivar, "Towards Removing," *FEI*; Khaled Abou El Fadel, *Reasoning With God: Reclaiming Shari'ah in the Modern Age* (Lanham, MD: Rowman & Littlefield, 2014), p. 400.
- On the Sunna of the Prophet: Saeed, "Blasphemy Laws," *FEI*, at pp. 19–21; Kadivar, "Towards Removing," *FEI*, at pp. 214–216.
- On apostasy as (linked with) political crime: Abou-Bakr, "Freedom of Religion," *FEI*, at pp. 48–49; Kadivar, "Towards Removing," *FEI*, at pp. 214–15.

QUR'ANIC VERSES

Against compulsion

Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things. (2:256)

If it had been thy Lord's will, they would all have believed, – all who are on earth! wilt thou then compel mankind, against their will, to believe! (10:99)

[...S]hall we compel you to accept it when ye are averse to it? (11:28)

Say, "The truth is from your Lord": Let him who will believe, and let him who will, reject (it): for the wrong-doers We have prepared a Fire [...] (18:29)

Instructing the Prophet only to warn

[...T]hy duty is to make (the Message) reach them: it is our part to call them to account. (13:40)

[...A]nd if any accept guidance, they do it for the good of their own souls, and if any stray, say: "I am only a Warner." (27:92)

We know best what they say; and thou art not one to overawe them by force. So admonish with the Qur'an such as fear My Warning! (50:45)

Therefore do thou give admonition, for thou art one to admonish. Thou art not one to manage (men's) affairs. (88:21–22)

(See also: 5:99, 10:108, 22:56–58, 39:41)

Dealing peacefully with unbelievers and insults

[...W]hen ye hear the signs of Allah held in defiance and ridicule, ye are not to sit with them unless they turn to a different theme: if ye did, ye would be like them. For Allah will collect the hypocrites and those who defy faith – all in Hell. (4:140)

Revile not ye those whom they call upon besides Allah, lest they out of spite revile Allah in their ignorance [...]. (6:108)

To you be your Way, and to me mine. (109:6)

Translation: 'Abdullah Yusuf 'Ali, *The Meaning of the Holy Qur'an*

QUESTIONING THE CLAIM TO CONSENSUS

The claim that there was a consensus on punishment of apostasy and blasphemy elides considerable juristic disagreement.

Claims that harsh punishments for blasphemy and apostasy are authoritatively supported by the consensus (*ijma'*) of medieval jurists are central to the legitimation of these punishments. Early Muslim jurists did widely agree that a male Muslim blasphemer was an apostate and should face the death penalty. They differed over many questions, however, including the possibility of pardon, offering time for the accused to repent, the punishment of the female apostate, whether blasphemy was one of the divinely prescribed punishments (*hudud*) in its own right, the punishment of the non-Muslim blasphemer, and the grounds for punishing non-Muslims, including whether blasphemy voided the non-Muslim's pact of protection as a *dhimmi* subject.

Later influential jurists were aware of these differences, but a narrative claiming there had been consensus largely won out, and the diversity of opinion among earlier jurists was increasingly denied and suppressed. In his work on blasphemy, Ibn Taymiyya claimed consensus for his own sweeping view that whoever insulted the Prophet, whether a Muslim or a non-Muslim, must be punished by death, without being invited to repent and recant first.

But as M. Khalid Masud shows, he also adhered to the tradition of painstakingly recording the opinions held by previous jurists, including many that differed from his own. By doing so, he arguably refuted his own claim that there was a consensus. Ibn Taymiyya's strategies included claiming majority views among jurists as a consensus, and rebutting and dismissing as wrong views that differed from his own. In the following centuries, and especially in the modern era, Ibn Taymiyya's uncompromising position spread beyond the Hanbali school of law to which he belonged.

Arafat Mazhar and Syed Zainuddin Moulvi have examined the arguments that supported the introduction of Pakistan's blasphemy law and the narrowing of the punishment to the death penalty in all cases. Law-makers argued that this reflected the consensus of the Hanafi school of Islamic law, the predominant school adhered to by Pakistani Muslims. However, tradition records that early Hanafi jurists, including Abu Hanifa, differed from this claimed consensus over crucial points. Mazhar and Moulvi follow the Hanafi scholar Ibn 'Abidin (d. 1842) in tracing this error to the Hanafi jurist al-Bazzazi (d. 1414). Bazzazi, they argue, incorrectly attributed

Ibn Taymiyya's position – death to Muslim and non-Muslim offenders alike with no possibility of pardon – to the consensus of the Hanafi school. This misrepresentation became so influential that it displaced the “authentic position” of the school.

Mazhar and Moulvi have gone one step further to show how consensus continues to be manufactured in the present. They have taken their argument to religious institutions, scholars and religio-political figures who advocate the death penalty. Shockingly, several of the advocates they interviewed did not dispute their findings,

but held that the public should not be informed about them. Invoking the Islamic legal principle of *maslaha* (public utility), they argued that disclosure would be socially harmful because it would benefit secular agendas.

Recovering the traditional diversity of juristic opinion from distortion, then, may allow Muslims to challenge the stated rationale for existing laws. Historicizing it allows them to rethink the whole issue of belief and expression for the entirely changed circumstances of modern times.

FURTHER READING

- Masud, “Reading Ibn Taymiyya’s *al-Sarim*,” *FEI*, pp. 75–98.
- Arafat Mazhar and Syed Zainuddin Moulvi, “Plurality, Dissent and Hegemony: The Story Behind Pakistan’s Blasphemy Law,” *FEI*, pp. 131–156.

CHANGING CIRCUMSTANCES, NEW PARADIGMS

Key assumptions behind the traditional law on blasphemy and apostasy no longer hold in the modern world under the human rights paradigm.

The jurists' reasoning was based on many assumptions that were taken for granted at the time: that Islam could only be freely practised under Muslim rule, that the land of Islam was at war with the unbelievers, that non-Muslims could only live there if protected by a pact, that the supremacy of Islam must be clearly established, and that order must be kept by executions and whippings. But these assumptions no longer hold under international law, the legislation of modern nation-states, and the new paradigm of human rights.

Today, the surest guarantee that all Muslims may freely practise and propagate Islam is the same as for every faith: the state's respect for the human rights to freedom of religion or belief and freedom of opinion and expression. Though blasphemy remains a crime in some European countries too, UN expert opinion now holds that blasphemy bans are not a legitimate limitation on freedom of expression.

An important premodern argument for killing non-Muslim blasphemers was that blasphemy violated their pact of protection as *dhimmi* subjects under Muslim rule, so they effectively reverted to the pre-pact status of enemies who could

legally be killed. Masud thus notes that Ibn Taymiyya's arguments for the death penalty "assumed a perpetual state of war" in which apostates and blasphemers were assumed to join the enemy camp. This assumption, he points out, no longer holds.

Under international law the lawful relation between states is peace, not perpetual war (UN Charter, art. 2(4)).

Furthermore, modern states have equal citizens, not "protected" populations. Citizens are equal before the law, not ranked and judged by religion, and discrimination on religious grounds is forbidden. As pointed out by Mazhar and Moulvi, arguments about non-Muslim blasphemers that rely on their premodern "protected" status as *dhimmis* make no sense in the modern Pakistani context, where non-Muslims e.g. serve in the army as co-protectors of their fellow citizens.

A fundamental plank of international human rights is the prohibition of discrimination on various grounds, including religion. States may not interfere in a person's right to marry and found a family on the grounds of their religion or change of religion. They should not place legal and administrative burdens on people,

e.g. in connection with identity cards, for changing religion or belonging to a religion that is not officially approved.

The view of punishment has also fundamentally changed. International human rights forbid torture and cruel, inhuman or degrading punishment. This rules out the many painful physical punishments applied by Muslims and non-Muslims alike until recently, such as whipping.

Human rights also restrict the death penalty to "the most serious crimes," provide the right to seek pardon or commuted sentences in all cases, and have speeded an international

trend toward abolition. More generally, as Kadivar points out, progress in criminology has foregrounded the aims of reforming and rehabilitating the criminal, and shown that new methods "may be better and more able to attain the Legislator's primary goal" than traditional punishments.

Legal defences for religion that were arguably adapted to the legal and political realities of their time are thus increasingly dysfunctional in the present. Those who are concerned about attacks on Islam therefore need to consider other strategies for defending their values.

FURTHER READING

- For UN views: on blasphemy bans, see UN Human Rights Committee, General Comment No. 34 (2011), UN doc. CCPR/C/GC/34; on peace, see the UN Charter, art. 2(4).
- On international relations: Masud, "Reading Ibn Taymiyya's *al-Sarim*," *FEI*, p. 92.
- On criminology: Kadivar, "Towards Removing," *FEI*, p. 222.
- On *dhimmis* and citizens: Mazhar and Moulvi, "Plurality, Dissent and Hegemony," *FEI*, pp. 149–151.

OPENING A SPACE AND BUILDING KNOWLEDGE FOR NEW APPROACHES

The case for legal reform is clear, but wider ethical and strategic questions remain to be worked out.

There is a pressing need for Muslim societies to rethink norms policing speech and belief with a view to legal reform in accordance with international standards. The arguments surveyed here suggest that far-reaching reforms may be consistent with careful interpretations of Islam. Repressive state laws on apostasy and blasphemy could be abolished, particularly the death penalty. Discrimination against converts and “deviant” beliefs in civil law and administration could also be eliminated. Beyond this, however, the new paradigm of human rights poses many questions to Islamic ethics; in particular, how Muslims should relate to conversions, religious dissent, and offensive speech without resorting to criminal law, coercion or violence. At the same time, reformers must also reflect on deeper ethical and strategic questions.

Advocates of reform may want to give thought to what laws, if any, should replace existing ones. In this connection, the editors of *FEI* see promise in developments at the UN. Over the past decade, Muslim and non-Muslim governments have moved on from a long and unhelpful debate over “defamation of religion” to addressing a problem all can agree on: religious intolerance against persons.

Part of the new debate concerns “hate-speech” laws, or laws against incitement to discrimination, hostility and violence on religious and other grounds. International human rights provide that such laws may legitimately restrict the freedom of expression (ICCPR, art. 20). However, experts agree that they must be carefully written with safeguards to avoid creating a back door by which governments can bring in repressive laws under a new name.

Hate-speech laws, then, may play a role against the most dangerous forms of anti-Muslim expression: against outright advocacy of hatred that puts people at risk. But they cannot and should not serve as a drop-in replacement for blasphemy laws. Reformers should be careful not to give that impression. For one thing, hate-speech laws protect the rights of living persons. Unlike laws against blasphemy or “defamation of religion,” they do not shield religion or its sanctities from criticism, even if offensive.

Human rights certainly do not prevent believers from defending their faith and preserving their community. But in free societies their efforts will largely rely on measures such as dialogue,

counter-speech, education for tolerance, and peaceful missionary work (*da'wa*). Carrying out *da'wa* and refuting detractors of Islam is of course nothing new: it goes back to the Qur'an and the example of the Prophet. It was an acute issue in colonial times: Abou-Bakr shows, for example, that when Muhammad 'Abduh reflected on the verse 2:256, he was concerned with countering anti-Islamic propaganda with argument. Today, those who would defend Islam through debate, education, and mission are protected by the international human rights to freedom of belief and expression, and can work with these rights rather than against them. In developing ways to organize and institutionalize such efforts in a globalized world, they can find allies among other religious communities and human-rights groups and make common cause with them against prejudice and discrimination. Among the resources to build on, we note the relevant UN initiatives in this area over the past decade, the Rabat Plan of Action on the prohibition of advocacy of hatred (2012) and the Faith for Rights framework for religious leaders (2017). We also note initiatives such as the Amman Message (2005) against *takfir* and sectarian strife.

There are obstacles to such alliances. Just as the clash of humane religious ideals with harsh religious punishments poses a dilemma that represents an opportunity for reform, religious reform also poses dilemmas of its own. Secular reformers may be concerned that reliance on religious arguments in public affairs concedes too much ground to supporters of religious rule, and that it delegitimizes secular voices.

But this reflects the fact that human-rights debates in Muslim societies are often stuck in a gap between secularist and religious camps; as Mazhar and Moulvi found in Pakistan, for example, this hampers open and honest debate. This is unfortunate: As Abdullahi An-Na'im has argued, there are synergies to be realized between secularism, religion and human rights. Arguments like those set out here are a way of bridging that gap and moving forward.

We also find similar dilemmas within religious reformism itself. Should reformers rely on traditional authority for the legitimacy to reach the limited goals that authority may support? For example, as discussed above, Mazhar and Moulvi make a strong case that Pakistan's blasphemy law has been based on a distortion of the original Hanafi position that it is claimed to represent. In making this argument, they stay within the parameters of traditional juristic argument, which allows them *inter alia* to appeal to the authority of certain jurists traditionally recognized as outstanding, while dismissing certain other figures as unqualified to practice *ijtihad* (independent legal interpretation). As Mazhar and Moulvi are aware, this approach has both strengths and limitations. One limitation is that reliance on the original Hanafi position can only take the reformers so far: capital punishment for the unrepentant Muslim blasphemer still appears to be the rule.

Another is that the argument excludes those without traditional authority from the conversation. As Kecia Ali points out in a separate discussion, many men and nearly all women are traditionally excluded from the ranks of independent

legal thinkers (*mujtahids*). By perpetuating this tradition, reformers would deprive themselves of a valuable resource: "women's passionate grief and legitimate anger, channelled constructively rather than repressed."

Should reformers instead aim to democratize, criticize and re-interpret religious knowledge and authority itself, promoting voices from the margins? Our project does not provide the answer. Our contributors take diverse approaches – indeed, Mohsen Kadivar's single chapter systematically presents two lines of argument, one operating within

the framework of traditional *ijtihad* and a more far-reaching one that relies on a fundamental reconstruction of Islamic legal thought.

Such questions remain to be continually negotiated and reflected on by Muslim reformers as they strive to build broad coalitions and adequate strategies for change. The Oslo Coalition's aim with the project has been to clear a space in which such debates can take place, build knowledge needed to address these questions with confidence, and make it available to all.

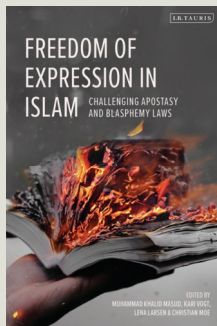
FURTHER READING

- On 'Abduh, see Abou-Bakr, "Freedom of Religion in Qur'anic Exegesis," *FEI*, at pp. 43–44.
- On the Rabat Plan of Action (2011, UN doc. A/HRC/22/17/Add.4) and the Faith for Rights initiative, see <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx>. The Amman Message is at <https://ammanmessage.com>.
- For Abdullahi An-Na'im on religion, state–religion separation, and human rights, see "A theory of Islam, state and society," *NDIT*, pp. 145–161; "The Synergy and Interdependence of Human Rights, Religion, and Separatism," in *Human Rights and Responsibilities in the World Religions*, ed. Joseph Runzo et al., pp. 27–49 (Oxford: Oneworld, 2003).
- On the potential and limits of using traditional frameworks, see Mazhar and Moulvi, "Plurality, Dissent and Hegemony," Ali, "Transgressing all bounds?," and Kadivar, "Towards Removing," all in *FEI*.

The mission of the Oslo Coalition is to promote the freedom of religion or belief (FORB) as a common good for everyone in every society. It does so by:

- facilitating discursive space for scholars, religious leaders, civil servants, experts and activists in the exploration of contemporary FORB-related topics,
- publications of scientific research and resource materials for those working to advance FORB,
- teaching and competence building on FORB in cooperation with partners.

In Muslim countries, apostasy and blasphemy laws are defended on the grounds that they are based on Islamic Shari'a and intended to protect religion. But blasphemy and apostasy laws can be used both to suppress thought and debate and to harass religious minorities, both inside and outside Islam.



Since 2012 the project "New Directions in Islamic Thought: Freedom of Religion and Expression in Islam" has brought together a diverse group of Muslim experts to discuss these freedoms in Islamic law and modern Muslim societies. The result is the book *Freedom of Expression in Islam: Challenging Blasphemy and Apostasy Laws*, on which this report is based.

The report is intended for policy-makers, stakeholders and advocates as a resource for developing knowledge-based arguments for legal reform.

