

**Prophet  
Muhammad<sup>(s)</sup>**

**father of  
Good Manners**

**Freedom of Speech  
and Islam**

Edited by Erich Kolig

## FREEDOM OF SPEECH AND ISLAM

Freedom of speech and expression is considered in the West a high public good and an important social value, underpinned by legislative and ethical norms. Its importance is not shared to the same extent by conservative and devout Muslims, who read Islamic doctrines in ways seemingly incompatible with Western notions of freedom of speech. Since the Salman Rushdie affair in the 1980s there has been growing recognition in the West that its cherished value of free speech and associated freedoms relating to arts, the press and media, literature, academia, critical satire etc. episodically clash with conservative Islamic values that limit this freedom for the sake of holding religious issues sacrosanct. Recent controversies – such as the Danish cartoons, the Charlie Hebdo affair, Quran burnings, and the internet film ‘Innocence of Muslims’ which have stirred violent reactions in the Muslim world – have made the West aware of the fact that Muslims’ religious sensitivities have to be taken into account in exercising traditional Western freedoms of speech.

Featuring contributions from experts across a spectrum of fields within Islamic studies, *Freedom of Speech and Islam* considers Islamic concepts of blasphemy, apostasy and heresy and their applicability in the modern world.

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# Freedom of Speech and Islam

Edited by

ERICH KOLIG

*University of Otago, New Zealand*

ASHGATE

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# Prefatory Remarks and Acknowledgements

As the collection editor I have standardised spellings of non-English terms – except in direct quotations. This may not conform with chapter authors’ usage and preferences, but for the sake of uniformity and simplicity a particular standard had to be imposed. Arabic, Persian and Turkic terms by and large have been Latinised and are rendered without ayn and hamza and other diacritical marks. Thus, for instance, it is simply Quran and *sharia* and not Qur’an and *Shari’a*. However, where such marks are part of names proper or in cases where their absence may be confusing – as for instance in Shi’i and Isma’ili – they have been retained in simplified form.

Quran quotes have been taken from various sources and using various translations which may produce verbal and substantive differences. It goes without saying that translations of one and the same verse can differ noticeably, allowing for different exegesis and considerable divergence in understanding.

The list of acknowledgements can be short. The chapter authors have not benefitted materially from their effort in this publication project. They have simply responded to my invitation to produce an essay on the topic of free speech in relation to Islam and lay their thoughts on the matter open honestly and without prospects of tangible rewards. It goes without saying that authors were free to exercise their right to free speech, allowing them to express any opinion, not necessarily shared by the editor. Some scholars I invited to contribute may have declined for the reason that they did not wish to be published together with the views of others’ they do not share. This is very regrettable as it is exactly the purpose of this volume to assist in initiating a dialogue between seemingly irreconcilable viewpoints.

It would be churlish of me not to acknowledge a debt to some of my colleagues, research assistants, associates and graduate students (mainly at the universities of Otago and Vienna, where I taught) who over the years have helped me in gaining an understanding of Islam and Muslim issues, as have many non-academic Muslims through patient explanation and their lived example. In particular, my friend Rex Ahdar, Professor of Law at Otago University, has stimulated my interest in legal issues and their reference to Islam. Thanks to Owen Baxter of

the Otago University IT Centre for his electronic troubleshooting efforts. Tricia Craggs, Ashgate desk editor, readied the manuscript for printing with exemplary efficiency and professionalism.

I am grateful to my wife Nicole for giving me the space when I was busy with this project, oblivious to the needs of everyday life. I also owe a debt of gratitude to my brother Helmut in the USA who, although as a university-trained, coldly rational and pragmatic engineer he has little use for Islam, supplied me generously with relevant books.

ERICH KOLIG

*Dunedin, New Zealand, May 2013*

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**Erich Kolig** is a retired New Zealand and Austrian social/cultural anthropologist who taught at Otago University, Dunedin, New Zealand, and the University of Vienna, Austria. Currently, he is Honorary Fellow in Religion at Otago University. He has authored and edited several books and volumes and many articles on indigenous politics, Islam in general, New Zealand Muslims, radical Islam in Indonesia, Australian Aboriginal culture and other topics. Among his very recent work, he is the author of *New Zealand's Muslims and Multiculturalism* (2010) and of *Conservative Islam: A Cultural Anthropology* (2012).

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After studies in Frankfurt and Leeds, **Katharina Völker** received her PhD from the University of Otago, Dunedin, New Zealand, for research on Quran exegesis and reform in 2012. Dr Völker follows, and publishes on, developments of Islamic theologies within European universities and has contributed to conferences at Otago, Yale, Bonn, Waikato, Griffith and Victoria universities. She lectured on 'Women in Islam' at the University of Otago, and is currently conducting postdoctoral research on Islamic theology in Germany, at the University of Potsdam, Berlin.

# Foreword

Rex Ahdar

Nobody likes to be satirised, pilloried or mocked. No community likes their most cherished beliefs, practices or heroes to be ridiculed or vilified. African-American civil rights campaigners would be most offended if a book denigrated Martin Luther King Jr. Rastafarian and reggae music lovers alike would be aghast at a film that featured unbridled calumnies directed at Bob Marley. Liverpool football fans would not take kindly to a vicious satire on their legendary manager Bill Shankly.

The natural irritation and even outrage we experience in such situations of vitriol directed at persons (or things) we venerate is bad enough. But the hurt, some say, is ratcheted up several notches when the objects of the real or perceived insults are religious in nature. And amongst the myriad communities of the faithful there may be some devout religionists whose sensitivity to slights against their venerated beliefs or founders is particularly acute. Some of these religionists may not suffer in silence. To the contrary, the offended may express their displeasure with vigour.

Many in the West perceive that some Muslims – not all, but nonetheless a noisy subset – are especially sensitive to religious offence. *If* that assessment is accurate – and it is by no means easy to measure and compare the offensiveness experienced by Jews, Christians, Hindus, Sikhs, Zoroastrians or other faiths – an intriguing question is why? Talal Asad suggests that criticism is perceived as an attempt to ‘seduce’ Muslims from their living relationship with God and so might be regarded as akin to a kind of ‘violence’. It is, according to this view, impossible to remain passive when confronted with blasphemy.<sup>1</sup> Saba Mahmood describes a form of pain experienced by many pious Muslims: it is tantamount to a personal violation when one is confronted, for example, by ridicule of the

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<sup>1</sup> Talal Asad, ‘Free Speech, Blasphemy and Secular Criticism’, in Talal Asad et al., *Is Critique Secular? Blasphemy Injury and Free Speech* (Berkeley: University of California Press, 2009), pp. 36–46. See Russell Blackford, *Freedom of Religion and the Secular State* (Oxford: Wiley-Blackwell, 2012), p. 185.

Prophet Muhammad.<sup>2</sup> Yet another explanation is that by Dr Fouad Ajami, who discerns that ‘Arab pain and a volatility in the face of judgment by outsiders stem[s] from a deep and enduring sense of humiliation. A vast chasm separates the poor standing of Arabs in the world today from their history of greatness. In this context, their injured pride is easy to understand.’<sup>3</sup> No doubt there are further explanations too.

Some vigorously maintain that in a liberal democracy there is no right to be protected from offence. The democratic citizen ought to have a thick skin. The late eminent legal philosopher, Ronald Dworkin, in a much-publicised article entitled ‘The Right to Ridicule’ (written in response to the Danish Prophet Muhammad cartoon furore), contended:

Freedom of speech is not just a special and distinctive emblem of Western culture ... Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be. Ridicule is a distinct kind of expression; its substance cannot be repackaged in a less offensive rhetorical form without expressing something very different from what was intended. That is why cartoons and other forms of ridicule have for centuries, even when illegal, been among the most important weapons of both noble and wicked political movements. So in a democracy no one, however powerful or impotent, can have a right not to be insulted or offended.<sup>4</sup>

The European Court of Human Rights in a series of cases involving offensive religious material likewise emphasised the importance of freedom of expression, even at the cost of offending or shocking some citizens.<sup>5</sup> In *Otto-Preminger Institut v Austria* it stated that:

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<sup>2</sup> Saba Mahmood, ‘Religious Reason and Secular Affect: An Incommensurable Divide?’, in Asad et al., *Is Critique Secular?*, pp. 74–8.

<sup>3</sup> Fouad Ajami, ‘Insult and Injury’, *Hoover Digest* 1, 25 January 2013. <http://www.hoover.org/publications/hoover-digest/article/138311>. Here, of course, one must note that Arab and Muslim are not coterminous and a great many Muslims are non-Arabs.

<sup>4</sup> Ronald Dworkin, ‘The Right to Ridicule’, *New York Review of Books* 53/5, 23 March 2006, [http://www.nybooks.com/articles/article-preview?article\\_id=18811](http://www.nybooks.com/articles/article-preview?article_id=18811).

<sup>5</sup> See Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State*, 2nd edn (Oxford: Oxford University Press, 2013), pp. 438–43.

freedom of expression constitutes one of the essential foundations of a democratic society ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that shock, offend or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.<sup>6</sup>

Liberal democracies protect various fundamental rights, including religious freedom. Part and parcel of having the right to religious liberty is acceptance of the fact that not everyone will appreciate one's religion, and some may criticise one's most cherished religious beliefs. Believers must do their best to overlook these slights. There is, to quote the European Court of Human Rights again, a *quid pro quo* at work here:

Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.<sup>7</sup>

In that sense rights and freedoms in Western democracies are a sort of indivisible 'package deal'. Freedom of religion and association come with freedom of expression. One cannot be a cafeteria democrat: select one dish and discard the rest.

If protecting people's religious feelings from being offended and granting their faith an immunity from all criticism is not justified, then does that exhaust the matter? We may readily grant that speech that expressly incites or encourages acts of violence against religious communities can and ought to be prohibited. Is there anything more by way of sensible restriction a liberal polity ought to do?

Jeremy Waldron has recently suggested that in between speech that causes offence to believers and that which incites violence against them lies another area of potential concern. Speech that systematically portrays a faith group as 'social pariahs', that 'disparages and disenfranchises' them, and seeks to get others to do the same, is problematic.<sup>8</sup> There may, he maintains, be a case to legislate against this without going so far as 'taking on the impossible burden of

<sup>6</sup> (1995) 19 European Human Rights Reports 34 at [49].

<sup>7</sup> *Ibid.* at [47].

<sup>8</sup> Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2013), p.130.

protecting everyone from offense.<sup>9</sup> The effective exercise of religious freedom may require that religious citizens be secured in their status or ‘dignity’ as citizens and safeguarded against ‘the mobilization of social forces to exclude them.’<sup>10</sup> Hateful speech that erodes ‘a person’s basic entitlement to be regarded as a member of society in good standing, as someone whose membership of a minority group does not disqualify him or her from ordinary social interaction’<sup>11</sup> may call for state regulation. Crafting a suitable law will be difficult, but that alone should not disbar it.

When offence occurs outside liberal democracies, the protection for both freedom of religion and speech is, despite the ministrations of international human rights laws, attenuated. *Some* nations with a Muslim majority – again, one must counsel against over-hasty generalisations – provide weak to non-existent protection for citizens’ freedom of speech, and those foolish enough to issue utterances or publish works that might be construed as denigrating Muslim teaching are often subject to heavy criminal penalties. Pakistan’s draconian anti-blasphemy laws are a notorious example.<sup>12</sup> This raises the awkward question of whether there is not some duplicity at work here: Muslims (rightly) expect freedom of speech in the West, but some adherents of the same faith are seemingly not willing to extend the same right in Pakistan, Iran or Saudi Arabia.

These and many other thorny questions remain to be answered. Meanwhile, the search for coherent and acceptable principles to guide us through these difficult waters remains. Dr Erich Kolig is to be commended for drawing together an array of impressive scholars to tackle an issue that is as difficult as it is urgent.

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., p. 105.

<sup>12</sup> See e.g. Rob Crilly, ‘Pakistan girl falsely accused of blasphemy flees to Canada’, *Daily Telegraph*, 30 June 2013 (a Christian girl, Rimsha Masih, released from prison after charges dropped following evidence she had been framed). For a first-hand account of the operation of the blasphemy law in Pakistan, see Michael Nazir-Ali, ‘Islamic Law: Fundamental Freedoms, and Social Cohesion: Retrospect and Prospect’, in Rex Ahdar and Nicholas Aroney (eds), *Shari’a in the West* (Oxford: Oxford University Press, 2010), pp. 78–90.

# Chapter 1

## Introduction:

### This Book, Its Mission and Its Essays

Erich Kolig

I disagree strongly with what you say, but I will defend to the death your right to say it.

(Voltaire 1694–1778)

And the (faithful) slaves of the Most Gracious (Allah) are those who walk on the earth in humility and sedateness, and when the foolish address them (with bad words) they reply back with mild words of gentleness.

(Quran 25/63, translation in the official Saudi version,  
*The Noble Qur'an in the English Language*, Madinah, n.d.)

Voltaire's *bon mot*, having been recycled thousands of times in many diverse contexts and for various purposes, still sums up one of the arguably greatest public goods the West has produced and through its Enlightenment modernity elevated to a supremely important principle in its social discourse. Legal and political ideas as much as modern liberal democracy have been inspired by it, handing liberties to individual persons unprecedented in recorded history. Incompletely though as it may be applied in many Western nations, and hemmed in by limiting legislation intended to be protective of other aspects of human interaction, it stands as a beacon in the globalising enterprise. But in this respect it runs into new difficulties with other cultural and ideological systems that place value emphases differently. The fact that the West is ranking free speech and associated freedoms very highly has also had the effect of throwing a negative limelight on the absence of both freedom of speech and the ideological value placed on it, in other societies. In return these societies view this freedom in the West with suspicion and disgust.

Ethical and legal issues surrounding the value of the freedom of speech and expression, in the West considered one of its most precious of public goods, in very recent years have come to pose a source of trouble and a most pressing

problem to address. In the modern globalised world, some ultra-conservative and radical expressions of Islam (and harsh interpretations of *sharia*) have powerfully and controversially raised awareness in the West that this is a liberty that, when it comes to Islamic issues, can cause problems. It seems it cannot, or should not, be exercised to its full extent, at least not as it is traditionally understood in the West.<sup>1</sup> Largely secularised Western society extends this freedom to criticising and even mocking religion – potentially all religions, but especially and routinely Christianity as well as Islam, have become fair game. It becomes evident, however, that in the interest of global harmony caution is to be mandated.

In an ideologically charged arena the Western notion of personal freedom episodically collides powerfully and sometimes fatally with the conservative Islamic conceptions of blasphemy, heresy and apostasy – regardless of the triviality such clashes and their causes may have from a Western viewpoint. The globalising mission based on Western Enlightenment rationality appears to have to be bent to orthodox (or conservative) Islamic values for the sake of peaceful relationships. Yet, among Muslim political and ideological leadership the realisation sets in that religious privilege to set social boundaries and to punish transgression (in accordance with traditional religious values) is diminishing in the modern world.

Free speech is a general, ubiquitous political, philosophical, legal and ideological issue, but in relation to Islam in the West it has become a more focussed and specific matter in recent years. It resurrected concerns about blasphemy thought to have been overcome in secularised modern Western society. It started with the Rushdie affair (in the late 1980s) and since then its simmering topicality is episodically punctuated by even more tragic events: the Theo van Gogh murder; the endless ructions around the Danish cartoons; the firebombing of the *Charlie Hebdo* office in Paris; irreverent treatment of the Quran; the bitter dispute around the internet film *The Innocence of Muslims*. There are recurrent death threats against individuals necessitating police protection, violent demonstrations, book burnings and many other incidents. Equally disturbing is the fact that through increasing globalisation of the news media more and more reports on the bloody suppression of this freedom in the so-called Islamic world spread in the West. This demonstrates very clearly that the globalisation in ethical and legal matters in the Western sense is far from complete; or, phrased differently, that the global ideological hegemony

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<sup>1</sup> Some aspects of the deficiency in the right to free speech in the Islamic world have to do with authoritarian political systems and the denial of human rights to the citizens of these autocratic states. Here only issues of a religious nature are being discussed.

of the Euro-American West is far less powerful than often claimed by both its proponents and its detractors.

Islamicly imprinted cultures impose constraints on the free expression of thought and belief, some interpretations of Islam proffered by radical Muslim thinkers even iconicising such limitations, so as to hold religious faith sacrosanct and above human entitlement to reject, dissent, criticise and mock. Even open and honest discussion may be subject to harsh retribution. The strict reduction and limitation of the right to free speech and the condemnation of ‘irresponsible’ levity with which to address religious issues have become cultural markers setting fundamentalist expressions of Islam apart. Not only Muslim ‘free-thinkers’ and dissenting theologians are in peril – being perceived a heretic can also have awful consequences. Adherents to local minority sects as much as apostates, reformers and others deviating from the locally or nationally prevalent ideological course have to fear for their lives in so-called Muslim-majority countries and collectively often are politically disadvantaged. Even within the borders of the West Muslim reformers and detractors have to fight against stigmatisation and attempts to silence them. In both Sunni and Shi’a Islam fundamentalisation has elevated the unholy trinity of blasphemy, heresy and apostasy to central and mutually interwoven importance that begins to impinge even on the West and its sense of free speech.

Most Islamic schools and formal scholarly opinion on the subject take so-called religious insult very seriously, although not all consider it a crime worthy of the death penalty. Radical forms of Islamic scholasticism certainly wish to pursue very harshly what they consider sacrilege. Apostasy and heresy are equally condemned as crimes against God and his ‘gift to humanity’. Intolerant interpretations of *sharia* demand the severest retribution in absolute denial of the right to freely choose belief and express it. When seen from the outside what appears to be a widespread tendency among Muslimhood is to show little tolerance for phenomena that fall outside the regionally or locally accepted norms of religious belief. The life of individuals considered blasphemers, heretics or apostates is made precarious. Suffering rejection by large parts of their society, such persons’ demonstrated ‘deviance’ may even be treated as a formal, punishable crime by tribal authorities or the state’s judicial apparatus.

Much publicity is given to the demands by radical Muslims to punish so-called blasphemers, heretics and apostates with death, befitting, as they believe, the magnitude of the offence. Not all Muslims though agree with the view that such allegedly insulting incidents – several of which have made headlines in the Western media in recent years – constitute capital crimes. Voices clamouring for deadly revenge may attract the most attention, but their claims to represent

true Islam are challenged by others, quite different ones which make the same claim of authenticity. Quranic and Sunna (tradition) tendencies that seemingly demand harsh retribution for insulting God and his Prophet can be counter-balanced with milder scriptural expressions such as the one quoted above. Many forms of Sufism and other more liberal interpretations of Islamic dogma reject the extreme theological positions the regimes of Saudi Arabia, Iran, Pakistan and some other countries (or non-governmental organisations dishing out their own version of justice) enforce with their judicial systems – and which through Islam’s recent fundamentalisation have widely infused other Muslim-majority countries and regions (such as northern Nigeria, parts of Somalia and (temporarily) Afghanistan and Mali). Also, the Muslim diaspora in the West has not remained untouched by this development.

Abdurrahman Wahid, former Indonesian president and Islamic scholar of note, formulated an enlightened, ‘globalised’ notion of Islamic piety which regards the conventionally attributed importance of blasphemy as absurd. He argues that ascribing to God the pettiness that He could be seriously offended by anything people – the denizens of a tiny speck in the infinite vastness of the universe – do, and thereby handing to devout Muslims the duty to punish ‘transgression’, is a self-aggrandisement that in itself is tantamount to blasphemy.<sup>2</sup> It anthropomorphises and belittles God, reducing Him to the limited comprehension of truth man is capable of – and therefore has to be rejected.<sup>3</sup> This is possibly the strongest indictment of the overzealous, intolerant, hateful reactions some Muslims manifest towards perceived religious insults from the West, or towards so-called dissidents among their own ranks. In reconciling humanity’s position in the universe with modern knowledge, it redefines conventional religious views on dissidents’ turpitude and relegates the religio-centric understanding of the traditional Islamic cosmology to the intellectual flat-earth category. It is theocentrism with a modern twist.

It is well to remember that the right to free speech is not absolute, not even in the West. Even the most liberal and liberty-conscious of jurisprudential systems in Western nations hedge the freedom of speech and expression in with some restrictions. Most conspicuously in Western judicial thinking, libel, slander, obscenity and incitement to commit crime are categorically excluded from this

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<sup>2</sup> Abdurrahman Wahid, ‘God Needs No Defense’, in Paul Marshall and Nina Shea, *Silenced: How Apostasy and Blasphemy Codes Are Choking Freedom Worldwide* (New York: Oxford University Press, 2011).

<sup>3</sup> As an anthropologist I leave the discussion of the ‘nature’ of God, or of qualities of the God concept, to theologians, both Christian and Muslim. The God principle of monotheism, despite the surface simplicity of this core belief, is too complex to even outline here.

freedom. Nebulous rights to be verbally aggressive and offensive run up against boundaries set by law and other regulations which divide the generic concept of personal freedom from public order offences. Locutionary powers of aggressive, xenophobic, insulting, misogynous provenance have to be dammed in for the sake of social harmony. Conversely, religious freedom is also not unlimited. Despite human rights and other guarantees, religion has to be exercised under the auspices of domestic laws and conventions. (In the West, for instance, this curtails the reach of *sharia* enormously.)<sup>4</sup>

A complaint of Muslims, not infrequently heard, is that the West's legal situation is manifestly unfair: Islam can be insulted with impunity, they claim, while denying the Holocaust, for instance, is forbidden in several European countries. Of course it must be remembered that such restrictions primarily are not meant to exercise controls over history writing or seek to protect Judaism, but are to prevent the resurrection of unwelcome political ideologies which in the past have brought untold misery over the world. Muslims also forget that several strictures have been imposed in Europe on critics of Islam under the aegis of laws protecting religion or religious communities from defamation. Some non-Muslim critics of Islam, having stepped over an opaque line of legality, have been subjected to arraignments before courts and suffered convictions (usually fines or bans). Such relevant laws, being aimed at minority protection, seek to prevent slander or purport the preservation of social harmony, and may not be aligned with notions of *sharia* rules about blasphemy or meant to protect Islamic 'exceptionalism'. But they may have been successful in protecting against religious slurs in general. However, when in mid October 2012 an American federal judge rejected to force YouTube to withdraw the anti-Islamic internet video *The Innocence of Muslims* that had triggered violent protests across the Muslim world, it seemed like another proof of the Western judicial system's unfairness. President Obama had previously even declared himself powerless to intervene by reference to the First Amendment. The internet of course has introduced a whole new dimension into the issue of free speech, making controls practically very difficult as well as politically and ethically odious. Again, Muslims saw the judicial system's inability to intervene as evidence that the West prefers to ignore their sensitivities. This leads them to suspect that this is just another expression of the West's Islamophobia. And while insulting other religions and cultures is seen by the West's opinion-shapers as violating if not actual laws then 'political correctness' and rules of international courtesy, Islamic

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<sup>4</sup> See Rex Ahdar and Nicholas Aroney (eds), *Shari'a in the West* (Oxford: Oxford University Press, 2010).