

2 Islam and Religious Hate Crime: Exploring the Role of Religion
3 and Crime

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5 Abstract

6 Our previous work considered the ability to ‘abuse, ridicule, threaten, defame, mock
7 and insult the religious beliefs, icons, prophets, practices and esteemed figures of
8 believers’. This chapter will revisit such issues, but the foci are the legal definitions of
9 ‘religious hate crime,’ and arguments concerning the potential dangers of effectively
10 reinstating ‘blasphemy’ for one specific religion. Currently, as with all ‘hate crimes
11 offences,’ a base offence must be committed, motivated by, or demonstrate hostility
12 towards, a protected religion, or indeed, atheism. Equally, intention to incite religious
13 hatred is criminalised. This chapter analyses ‘privileging’ one religious belief over
14 others, for example, Islam. Analysis considers support for, but also the implications
15 for the operation of ‘hate crime,’ prosecution, and practices deemed ‘religious’ in
16 nature, by some, but potentially criminal by others. The methodology utilises literary
17 and legal analysis. The foci are England and Wales, as illustrative of the concerns
18 raised by religion, crime, and control, but these are relevant to democracies
19 worldwide.

1 Introduction

2 Issues of legality and religion, which mediate religious hate crimes laws, are
3 intertwined in numerous and analytically and politically challenging ways
4 (Sandberg 2011: Iganski & Levin 2015.) One of the initial challenges lies in
5 identifying and differentiating ‘religion’ from ‘non-religion’ (*R (Hodkin) v Registrar*
6 *General of Marriages* [2013] UKSC 77, [2014] 2 WLR 23 at [57] by Lord Toulson).
7 Another issue lies in balancing freedom of religion and expression of religious
8 doctrines with no less core liberal rights of freedom of expression concerning the
9 critique of religious doctrines and practices. Does a further issue concern whether
10 membership of a religious group or abuse from co-religionists that stems from, say, a
11 Moslem announcing she has decided to change her religion, fall within the rationale
12 of hate crimes laws?

13 In April 2021, Pakistan’s prime minister, Imran Khan, stated his intention to
14 launch a campaign seeking Muslim countries’ support to raise the simmering issues of
15 blasphemy and ‘Islamophobia’ at international forums, including the UN and the
16 European Union (EU). ‘When we begin a campaign by bringing together all Muslim
17 countries [against Islamophobia and blasphemy], it will make a difference and change
18 will come in the West,’ Khan said at a televised ceremony in the capital Islamabad
19 (Latif 2021). One possible realisation of his call would be for Britain to reinstate
20 special protections for Islam over and above those currently contained in existing

1 religious-related hate crimes laws, as noted in *The Guardian* (*The Guardian* 1
2 December 2018). Unfortunately, *The Guardian* article did conflate Islamophobia with
3 racism, confusing the issue, as discussed below.

4 Several consultees to the Law Commission’s review of hate crime laws called
5 for specific references to particular religions. The commission itself stated: ‘the
6 evidence base for the inclusion of “religion” in hate crime laws derives primarily from
7 anti-Semitic and Islamophobic hatred; both of which remain very serious concerns
8 (Law Commission 2021, 4.87).

9

10 However, consistent with existing hate crime and anti-discrimination laws, we do not
11 believe it is desirable to define specific forms of prejudice (such as antisemitism and
12 islamophobia) in primary legislation, which focuses on the identification of protected
13 characteristics such as ‘race’ and ‘religion’. (Law Commission 2021, 4.108)

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15 In the period since 9/11/2001, we have witnessed calls for extra and special
16 protection for one religion, namely Islam. Indeed, there have been calls to make
17 ‘Islamophobia’ a new offence, providing more protection than that offered for race
18 and religion in current ‘hate crime’ legislation. Such calls are supported by claims of
19 rising aggression towards followers of Islam, especially since 9/11. However, can
20 such a move can be justified at the level of principle? Furthermore, would its
21 enactment prove not only difficult but counterproductive and divisive?

1 In recent years, religious and political leaders have been accused of violating
2 hate-speech laws by voicing their religious convictions in ways that others find
3 insulting, offensive, and discriminatory. Hate-speech laws prohibit incitement to
4 religious hatred. Many argue religious freedom includes a right to radically critique
5 religions, even if the effect is to offend and insult religious believers. Any credible
6 response to suggestions for special protections for Islam must consider a range of both
7 in principle and in practice objections, including those we set out here (Rehman
8 2010).

9 This chapter will revisit religious hate crime issues, but the foci are the legal
10 definitions of ‘religious hate crime’ and incitement to religious hatred. Our particular
11 concern is effectively reinstating ‘blasphemy’ for one specific religion, preventing
12 critique and potentially sanctioning abuse. Islamic and Christian blasphemy law in the
13 UK will be the main foci because any proposal to give special legal protection to
14 Islam will face similar principled objections to those that the former faced, which led
15 in part to its abolition. Rehman is particularly useful here, for example, discussing
16 Sharia law and the Quran. (Rehman 2010)

17 Transnational Dimensions

18 There is no global or even pan-European-wide consensus within European states
19 claiming liberal-democratic status on whether to enact religious hate speech laws or
20 other hate crime measures. Indeed, there is a significant variation in the characteristics

1 that are protected, the legal tests that are applied to identify the offence for the
2 purposes of criminal law, and the mechanism by which such laws recognise the
3 behaviour as a hate crime (Law Commission 2021, Summary: 3). Although the details
4 addressed in this short chapter are primarily related to the UK, the issues and
5 dilemmas we address have far wider relevance to any modern liberal democratic state
6 that strives to find a coherent relationship between competing imperatives (Bielefeld
7 et al, 2016, 494–95; Temperman, 2017). For instance, those dilemmas related to
8 European and international human rights protections of ‘freedom of religion,’ which
9 includes freedom to hold and express religious views about more issues relating to
10 sexuality and same-sex marriage that groups specifically protected by hate crimes
11 laws might find offensive and insulting, as well strongly held critiques of other
12 religions and ‘deviant’ co-religionists (Perrone, 2014). Yet even international human
13 rights measures endorsing freedom of speech make provision for legal restrictions
14 based on indeterminate grounds of ‘public morals’ and ‘public order’ (International
15 Covenant on Civil and Political Rights, 1966, Art 19(3)b). This dilemma even
16 features in the deliberations and policies of the UN (Cox, 2015;UN, 2013).

17 Not surprisingly, international as well as European human rights lawyers have
18 weighed in on this topic from a diversity of incompatible perspectives (Dobras, 2009;
19 Bennett, 2009; Holzaepfel, 2014). Most modern liberal democratic states struggle to
20 strike a balance somewhere between no restrictions on speech and, at the other
21 extreme, laws that permit only officially sanctioned opinions and beliefs related to

1 religious issues (Law Commission, 2021). Every modern society with liberal
2 democratic aspirations must strive to protect itself from the danger of overreach from
3 both the sides of intolerant militant secularism and religious extremism, in which, at a
4 minimum, laws against incitement to violence cannot avoid including contextually
5 inappropriate expressions of religious criticism (Temperman, 2016). Yet this debate
6 occurs within a pluralist context where the possibility of achieving a rational
7 consensus on even the definition of the terms of the debate is extremely unlikely
8 (Cox, 2020; O’Flaherty, 2012).

9 In this respect, our critical analysis of British provisions can be read as a case
10 study of dilemmas intrinsic to the whole enterprise of deploying criminal laws,
11 including blasphemy and hate crime measures, to regulate and criminalise religious
12 and religious-related speech that has transnational implications. This question has
13 transnational relevance in a context where nearly 50% of states have blasphemy-
14 related laws (Hicks 2015, 51; Liu, 2020). Finally, there are also transnational
15 dimensions to encoded forms of religious hate speech, especially anti-Semitism,
16 arising from Holocaust denial (Cox, 2014; Salter, 2017). In short, while these
17 transnational dimensions cannot be surveyed in this short chapter, our treatment of
18 British legal regulation can be read as a case study of issues that transcend the border
19 of any single legal regime.

1 The Current Religious Hate Crime Legislation in England and 2 Wales.

3 Currently in the UK, for all ‘hate crimes offences,’ a *base* criminal offence must be
4 committed, motivated by, or demonstrate hostility towards a protected ‘religion,’ or
5 indeed, atheism. Religion itself is not specifically defined. These crimes are covered
6 by the Crime and Disorder Act (CDA)1998 and section 66 of the Sentencing Act
7 2020, which allows prosecutors to apply for an uplift in sentence for those convicted
8 of a hate crime. ‘Religious group’ is defined in section 28(5) of the CDA 1998 as a
9 ‘group of persons defined by reference to religious belief or lack of religious belief.’

10 The scope of ‘lack of religious belief’ means the simple absence of religious
11 belief, such as ‘atheists’ or ‘apostates (Addison, 2007, 126; The Equality Act, 2010,
12 s10). Hostility towards a group defined by non-religious beliefs or philosophies that
13 extend beyond mere lack of religious belief (for example, humanism) is therefore
14 excluded. Whether a cult or a similar group is protected will depend on whether their
15 beliefs are ‘religious in nature.’ The inclusion of groups defined by a lack of religious
16 belief is especially interesting. It means that if, for example, an offender is motivated
17 to assault a fellow Muslim because the latter is considering rejecting this or any other
18 religious belief, thereby becoming ‘apostate,’ the offender would be guilty of a
19 religiously aggravated offence. The same applies to sectarian hostility between Sunni

1 and Shia Muslims, or Catholics and Protestants as such scenarios are also covered by
2 the definition of 'religious group' (Law Commission, 2021, 2.34).

3 The prosecution must prove not only that the underlying or 'base' offence was
4 committed, but also that the defendant demonstrated, or the offence was motivated by,
5 racial or religious hostility. The hostility does not need to be the sole or even the main
6 motivation for committing the base offence (Babbs, 2007, 8). There is no legal
7 definition of either the meaning or the scope of 'hostility' (or hatred). Hatred, which
8 must be directed at a group, not merely an individual as such, is not defined in the
9 POA 1986 and

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11 it can be taken to bear its ordinary meaning. It is generally thought that 'hatred' is a
12 stronger term than 'hostility.' As a term which appears very rarely in criminal
13 statutes, there is limited further definition in case law, and it is ultimately a question
14 for the trier of fact (jury or magistrates) whether this standard has been met. (Law
15 Commission, 2021, 2.132–34)

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17 So, legal outcomes cannot but be determined by: 'everyday understanding of
18 the word which includes ill-will, spite, contempt, prejudice, unfriendliness,
19 antagonism, resentment and dislike' (CPS, 2022). Especially relevant to our points on
20 sectarian inter-Moslem conflict, 'hostility' can be demonstrated by the defendant
21 towards someone of the defendant's own racial or religious group (White, 2001, 20).

1 There are also relevant provisions of the Racial and Religious Hatred Act 2006
2 – Stirring Up Religious Hatred. This offence is committed if a person uses threatening
3 words or behaviour, or displays any written material which is threatening, providing
4 that person intends thereby to stir up religious hatred. Here, it is ‘*threatening*’ that is
5 the operative word, *not abusive or insulting*. Possession, publication, or distribution of
6 inflammatory material is also an offence. The offence can be committed in a public or
7 a private place but not within a dwelling, unless the offending words and behaviour
8 were heard outside the dwelling and were intended to be heard. A vital point for the
9 viability of prosecutions is that the defendant *must intend* to stir up religious hatred;
10 recklessness is not enough. In terms of the realisation of the policy goals that include
11 deterrence, the need for ‘intend to stir up’ is a relatively high threshold.

12 The Public Order Act 1986 (POA) contains wide protection for comment,
13 criticism, and debate on religious beliefs and practices, including comic treatment
14 amounting to ridicule. Unlike the parallel offences relating to other protected groups,
15 such as race, there is a ‘freedom of expression’ defence contained in Section 29J,
16 (Foreign & Commonwealth Office, 2014, March 24) which both asserts and affirms
17 that:

18 *Nothing in this Part shall be read or given effect in a way which prohibits or restricts*
19 *discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of*
20 *particular religions or the beliefs or practices of their adherents, or of any other*
21 *belief system or the beliefs or practices of its adherents or proselytising or urging*

1 *adherents of a different religion or belief system to cease practising their religion or*
2 *belief system.* (POA, 1986, 29J)

3 There are no reported cases interpreting this provision. In the absence of appellate
4 judicial interpretation, it is hard to assess the meaning and scope of this ‘free speech
5 provision’ (Law Commission, 2021, 2.139). Traditional defences of Christianity-only
6 blasphemy laws faced the objection that it was impossible to determine the content of
7 the protected tenets with the type of precision needed for criminal law. Yet the same
8 point applies to Islam. It has, for example, proven difficult to determine whether
9 alleged ‘hostility’ accompanying a criminal offence against followers of Islam is due
10 to either racial or religious bias, or to which it demonstrates hostility. The aggravated
11 offences under the CDA 1998 were extended to *religious* aggravation as part of a
12 package of measures introduced by the Anti-terrorism, Crime and Security Act 2001
13 in the name of equal treatment: some religious groups, such as Jews and Sikhs, which
14 were also ethnic groups, previously were afforded the protection of *racially*
15 aggravated offences, but this was not available to multi-ethnic religions, such as
16 Christianity and Islam. This received criticism within Parliament, and from Muslim
17 groups, which, having lobbied for the extension, were troubled by its inclusion in a
18 Bill concerning terrorism (Law Commission, 2021, 2.113). To prosecute, the
19 protected characteristic must be clearly identified (Hansard (HL), 27 Nov 2001, vol
20 629, col 150).

1 As Sealy argues: ‘Islamophobia has been a controversial concept ever since it
2 first gained popular currency. One of the main sticking points over the term is
3 whether or not it refers to religion’ (Sealy, 2021:1). Furthermore,

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5 Debates about the term itself, whether we should instead use anti-Muslim racism or
6 anti-Muslimism for instance, as well as debates about whether it refers to religion,
7 ethnicity, or culture, have been the focus of much academic as well as political
8 commentary. (Sealy, 2021, 1; Halliday, 1999; Allen, 2010; Sayyid & Vakil 2011;
9 Jackson, 2018)

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11 The updated report *Islamophobia: Still A Challenge for Us All* (Runnymede,
12 2017) and the All-Party Parliamentary Group on British Muslims (APPGBM) report
13 *Islamophobia Defined* (APPGBM 2018), shared the definition of Islamophobia as
14 anti-Muslim racism: ‘Islamophobia is rooted in racism and is a type of racism that
15 targets expressions of Muslimness or perceived Muslimness (cited in Sealy, 2021, 1).
16 However, this definition was rejected by the government (*The Guardian* 16 May
17 2019). Such rejection makes sense insofar as it conflates Islam with questions of
18 racial exclusivity which, to its credit, Islam itself rejects. If Muslim extremists blow
19 up Christian churches in Sri Lanka, for example, it is surely unjustifiable to accuse the
20 perpetrators of ‘Christianophobia rooted in racism’ (De Votta, 2009).

1 Whilst ‘Islamophobia’ may coincide with racism in certain contexts, this is not
2 always the case. According to Greer, “‘Islamophobia’ generally refers to irrational
3 antagonism towards Islam and/or Muslims typically based on myth, caricature, and
4 misleading stereotype. Strictly speaking, a ‘phobia’ is a clinically observable anxiety
5 disorder defined by recurrent and excessive fear of an object or situation’ (Greer,
6 2019). However, we argue that many who express intense critiques do not have a
7 phobia of Islam per se, nor an excessive irrational fear. Rather fear may arise from a
8 concern over the extreme version of Islam proposed by organisations such as the
9 Islamic State of Iraq and al-Sham (ISIS), or the Taliban, and the symbiotic linking of
10 politics, law, and religion. The Taliban are a predominantly Pashtun, Islamic
11 fundamentalist group. Since their return to power in Afghanistan in 2021 and the
12 imposition of their interpretation of Islamic law, many have been fearful of even
13 further expansions of this illiberal ideology. The especially negative consequences for
14 established legal and constitutional rights of women have been noted (Ibrahim, 2021).
15 The fact that interpretations can be defined as ‘classical’ and a strict interpretation has
16 created difficulties for critique, even from within their communities of belief.

17 The Need to Offer Critique

18 However, the practice of critique cannot be restricted to the potentially negative
19 consequences of repressive policies justified by reference to a particular interpretation
20 of Islamic doctrine. Instead, as with any other form of rights repression, critique must

1 also address the motivating power of the ideological basis that reinterprets such
2 repression as a righteous – indeed obligatory – act of religious observance.

3 Different versions of Islam are noticeable even within extremist factions. As
4 with other extreme approaches, including the political far-right and left, there is a
5 tendency towards factionalism, as well as sectarianism: one that may be driven by the
6 personal ambitions of would-be leaders of what is rhetorically represented as ‘the one
7 true version of Islam.’ Once such fusion of non-religious motivations with religious
8 movements takes place, those who dissent or oppose the leader of one faction,
9 possibly on entirely reasonable grounds based upon credible interpretations of Islamic
10 teaching, risk being subjected to hostility and discriminatory treatment justified by
11 their alleged status as ‘apostates.’

12 Members of faith groups can be as vulnerable to religiously related hostility
13 and violent abuse from members of ‘their own’ religious communities, broadly
14 defined, as from outsiders. To give one illustration of religious interpretation, the
15 Islamic State, also known as ISIS, follows one distinctive variety of Islam, which
16 differs from the Muslim Brotherhood in Egypt. It is claimed that the Islamic State
17 views leaders of the Muslim Brotherhood as ‘apostates’ meriting murder (Wood,
18 2022). Hence, legal measures to address ill-defined instances of ‘Islamophobia’ risk
19 generating more prosecutions of Muslims than anyone else. Furthermore, this could
20 publicise a mass of details of sectarian prejudice that far-right racist groups would

1 regard with malicious glee as a massive ‘own goal’ in the sense of representing a
2 propaganda boost and source of further recruitment.

3 Legal measures having a chilling effect upon religious debates and
4 disagreements within Muslim or any other communities of religious faith, must be
5 avoided (Marshall & Shea, 2011). The health of any religion lies in its constant
6 reinterpretation through a process of informed debate regarding its basic principles,
7 and appropriateness to prevailing social contexts. A version of Islam rooted in rural
8 Afghanistan and Pakistan is one thing, the preconditions for the acceptability of Islam
9 among ultra-Westernised teenagers from a South Asian cultural heritage in
10 Manchester quite another.

11 Laws relating to religion must surely respect, indeed encourage, open and free
12 debate between incompatible narratives. As Sandberg and Colvin note: ‘Powerful
13 narratives that invoke religious concepts – *jihad, Sharia, shahid, Caliphate, kuffar,*
14 *and al-Qiyāmah* – have accompanied jihadi violence but also inspired robust counter-
15 narratives from Muslims’ (Sandberg & Colvin, 2020, 1585). It was also noted that:

16 *Authorities on Islam have offered high-profile rejections of the jihadi readings, for*
17 *example when several hundred Islamic scholars signed a letter denouncing IS and its*
18 *theological views. (Open Letter to Al-Baghdadi, in Sandberg & Colvin, 2020, 1586)*

19 Hence, the arguably unresolvable practical difficulty facing proposals to give Islam
20 special legal protection superior to that afforded to Judaism and so on, can be summed
21 up in the slogan ‘Islam, which Islam?’ In practice, academic evidence from

1 theologians could render prosecution for critiques of Islam ambiguous or even ill-
2 founded, since different views on the core tenets are common, evoking tensions
3 between more traditional and liberalising views.

4 A possible counterargument could be that only expressions of Islamophobia
5 from non-Muslims would fall under revised legislation to bypass the issue of sectarian
6 hostilities within Islamic faith communities. Yet, the parallel here would be, for
7 example, that black people can subject brown and white-skinned persons to racist
8 hostility with legal impunities that would not apply in the reverse. That no such
9 proposals for law reform have arisen even from the most fervent anti-racist pressure
10 groups is surely telling. It suggests that anti-discrimination laws are based on the
11 practical enforcement of liberal doctrines of equal rights for all citizens irrespective of
12 their religion, race, and ethnicity.

13 A related point is that membership of religious faith communities does not
14 preclude belonging to ideologies of extreme intolerance targeting those they identify
15 as gay, bisexual, and transgendered persons, and/or who exhibit hostile forms of
16 xenophobia and religious sectarianism. Although in legal principle the categories of
17 perpetrator and victims of religious hate crime are utterly distinct, in real-world cases
18 such as drunken teenagers clashing outside a nightclub both groups can be legally
19 classified as ‘perpetrators’ (who are merely incidentally ‘victims’) or as ‘victims’
20 (who are merely incidentally ‘perpetrators.’)

1 The Problems with Resurrecting Blasphemy Laws

2 We argue that British political and everyday culture, as well as other Western nation
3 states, have enhanced their orientation towards all manner of expressions that had for
4 many centuries been subjected to censure, even criminalisation, as supposedly
5 ‘deviant.’ The form of ideological bigotry that conflates one’s own specific beliefs to
6 a divine moral order, which provides the religious rationale for punishing those who
7 disagree with one as ‘heretics’ and ‘apostates,’ now appears to belong to a distant and
8 thankfully long-departed historical era: one with no claims to be respected or missed.
9 The last British citizen to be sent to prison for blasphemy was John William Gott. In
10 1922 he was sentenced to nine months’ hard labour for comparing Jesus with a circus
11 clown. In Scotland, there has not been a public prosecution since 1843 (BBC, 1984).

12 The long-standing rationale for opposition to British blasphemy laws is of
13 special interest because the criticisms remain relevant for the idea of prioritising Islam
14 within a revised hate crime legislation. The British Humanist Association developed a
15 critique arguing that any form of blasphemy law is a threat to rights to free speech.
16 The latter argument was echoed in 2008 by a House of Lords select committee which
17 stated that any future blasphemy prosecution would fail because it would clash with
18 the right to free speech in the European Convention on Human Rights, itself part of
19 British domestic law (House of Commons, Hansard Debates for 09 Jan 2008 (pt 0026)
20 (parliament.UK), 9 Jan 2008, Column 442).

1 Although the offence of blasphemous libel has been legally challenged as
2 contrary to the freedom of speech provisions in the Convention, particularly Article
3 10, the results have been mixed and controversial. In *Wingrove v UK* (1996), the
4 European Court of Human Rights (ECtHR) decided that it was within the state's
5 margin of appreciation to restrict free speech in a case where the content is deemed
6 'blasphemous.' *Wingrove* involved a film board's refusal to issue a classification
7 certificate to a film accused of blasphemy. The court found no violation of the right to
8 freedom of expression because the interference was properly prescribed by law and
9 pursued a 'legitimate aim' of protecting the Christian faith from blasphemous
10 expressions. However, Judge Lohmus wrote a dissenting opinion, arguing that
11 because the aim of the criminal law of blasphemy was only to protect the Christian
12 religious belief, there remains a question of whether the interference could indeed be
13 interpreted as 'necessary' in a multi-faith democratic society (*Wingrove v UK* 1996).

14 Further, shifting societal and cultural attitudes can be seen in the following
15 examples. In 1977, a trial judge in the prosecution of *Gay News* for blasphemous
16 libel, *Whitehouse v Lemon*, argued that this crime was committed: 'if a publication
17 about God, Christ, the Christian religion or the Bible used words which were
18 scurrilous, abusive or offensive, which vilified Christianity and might lead to a breach
19 of the peace' (BBC, 1984). This case arose from a private prosecution by Mary
20 Whitehouse against *Gay News* for publishing an erotic poem depicting a centurion's
21 sexual love for Christ. Arguably, her position is analogous with some British Muslims

1 unsuccessfully calling for the author Salman Rushdie to be tried under the law after
2 the publication of his controversial novel, *The Satanic Verses* (Rushdie, 2012).

3 Our main issue is further advanced if we reconstruct how the offence of
4 blasphemy was first introduced and then abolished in the UK. Their original rationale
5 and abolition have been marked by social and historical contingencies. Within the
6 UK, common law criminal laws prohibiting blasphemy and blasphemous libel hark
7 back to the mediaeval fourteenth century supplemented, in some special cases, by
8 legislation (Temperman, 2017). The common law offences of blasphemy and
9 blasphemous libel were formally abolished in England and Wales in 2008 (Criminal
10 Justice and Immigration Act, 2008, s.79), but abolition in Scotland – where issues of
11 religious sectarianism persist – only occurred in 2021 (Sandberg & Doe, 2008). In
12 May 2017, Stephen Fry and the Irish broadcaster RTE were under investigation for
13 the crime of blasphemy in Ireland (*The Telegraph*, 9 May, 2017). Ripples from the
14 affair prompted New Zealand and Denmark to repeal their still existing blasphemy
15 laws, with many in shock that they were still in place (Nash, 2017). Ireland was the
16 first country in the world to hold a referendum on ending blasphemy law, which
17 resulted in a constitutional amendment in 2018 and in repealing the offence of
18 blasphemy with effect in 2020. Given these divergences, it can hardly be argued that
19 laws regulating religious and anti-religious expression can be reduced to the
20 realisation of any type of immutable universal principles and ahistorical ‘natural

1 rights.’ Indeed, their promotion and abolition owe more to policy arguments, and
2 perceptions of promoting ‘peace.’

3 Policy Issues

4 In a 1949 speech later quoted in Parliament, Lord Denning, despite placing the
5 blasphemy laws in the past, suggested a social policy goal he believed they contained:

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7 The reason for this law was because it was thought that a denial of Christianity was
8 liable to shake the fabric of society, which was itself founded upon the Christian
9 religion. There is no such danger to society now and the offence of blasphemy is a
10 dead letter. (Denning, 1949, 46)

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12 However, in 1977, when giving judgement on the *Gay News* case, Lord
13 Scarman said that ‘I do not subscribe to the view that the common-law offence of
14 blasphemous libel serves no useful purpose in modern law. The offence belongs to a
15 group of criminal offences designed to safeguard the internal tranquillity of the
16 kingdom (*Whitehouse v Lemon* [1979], AC, 617). Furthermore, Lord Scarman thought
17 that blasphemy laws should cover *all* religions and not just Christianity and sought
18 strict liability for those who ‘cause grave offence to the religious feelings of some of
19 their fellow citizens or are such as to tend to deprave and corrupt persons who are
20 likely to read them.’ On the first hearing, the prosecuting counsel, John Smythe,
21 stressed that the whole of 1970s morality was on trial with his assertion that it was a

1 test case of ‘whether anything is to remain sacred.’ The conclusion of this case differs
2 from the incitement to religious hatred currently enacted, which requires intent
3 (Racial and Religious Hatred Act, 2006; Public Order Act, 1986, ss 29B to 29G) .

4 It is, however, vital to emphasise that the criminalisation of religious hate
5 crime and speech is not a purely conceptual-linguistic issue of legal semantics. Being
6 convicted of a religious or any other type of hate crime or hate speech may have
7 devastating consequences for a person’s reputation and even career. Only in those
8 rarer cases where an offender belongs to a brutal subculture of violent religious (or
9 racial etc ...) intolerance and ideologically driven sectarian hatred will a conviction
10 function as a desirable symbolic rite of passage and a badge of honour. Yet in this
11 area, there remains the permanent danger that the chronic ambiguities within the
12 doctrinal and procedural laws are not always consistently interpreted in favour of the
13 accused according to general liberal criminal law doctrine, with extensions of
14 criminalisation through creeping judicial reasoning by analogy.

15 Conclusion

16 Presently, the goal of advocates of religious hate crime laws typically includes
17 bolstering the voices of supposedly especially ‘vulnerable’ and less-resilient religious
18 groups deemed from discriminatory abuse. Whether this is the case, such special
19 legislative protections inevitably require the *partial silencing* of the speech of other
20 religious groups or even members of the protected group. Affording legal and

1 constitutional protection of freedom of religious expression by, for example, religious
2 hate speech legislation, must factor in protection from abusively intolerant co-
3 religionists (*Wingrove v UK*, 1996).

4 It must also be recognised that actions that are readily classified as
5 ‘Islamophobia’ are also carried out by Moslems. No legal measure designed to protect
6 the peaceful expression of Islamic views can be framed in ways that exclude
7 prosecutions of a co-religionist. Expressions of hateful intolerance can arise from
8 sectarian disagreements within religious groups.

9 We argue that within modern multifaith liberal democratic societies, the right
10 to offer critique, even insult, is important. Such critique may challenge and offend an
11 individual’s intimately held religious beliefs and convictions, but should not be
12 prevented. We understand reactions to cartoons satirising the prophet Muhammad, to
13 burnings of the Koran, and offensive anti-Islam videos, but Islam is not the only
14 religion affected (WION Web Team, 2020). As a Foreign and Commonwealth Office
15 report states, ‘many of the cases taken to the European Court of Human Rights
16 (ECtHR) and communicated to the UN Human Rights Committee concern other
17 beliefs, including Christianity and Judaism’ (Foreign Office Report, 2016). We do not
18 dispute that in recent years an increase in high-profile cases related to Islam is
19 evidenced (Home Office, 2019–2020).

20 In both practice and principle, it is doubtful whether religious hate speech laws
21 ever protect all those who speak out on religious or religious-related controversial

1 matters. Yet, this is surely the only credible justification for any claimed right to legal
2 protection deemed to be universal. We should strive to equalise all protected
3 headings, not prioritise any of them. Only in this way can we avoid the paradox of
4 striving to formulate a legislative definition of the defining characteristics of religious
5 hate speech related to Islam, whilst contravening the dignity and rights of all others. If
6 we reinstate blasphemy for Islam or any other religion, how can this avoid effectively
7 preventing critique of ‘religiously supported’ views: potentially opening the
8 floodgates for expressions that detrimentally affect others? Unless and until these
9 challenges are credibly and convincingly answered, the case for enhanced legal
10 protection for Islam is not made.

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