

## Speech and the Sacred: Does the Defense of Free Speech Rest on a Mistake about Religion?

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*Maintaining the gap between saying and doing, no matter how difficult, means that there is always a story to tell about how and why speech does the harm that it does.*

– Judith Butler<sup>1</sup>

**Abstract:** *Some scholars have argued that religiously injurious speech poses a serious problem for secular liberal thought. It has been suggested that secular liberal thought and political practice often misrecognize the nature of the injury involved in speech which violates the sacred and that much secular thought about religious injury (and free exercise more generally) is premised on unacknowledged Protestant conceptions of what real religion is. In this essay, I argue against the ideas that secular liberalism tends to treat religion only as a matter of freely-chosen belief and that the unchosen, habituated nature of much religious experience raises a problem for the defense of speech which violates the sacred. I argue that secular thought and practice should remain very concerned about the social and political harms of speech directed unambiguously at social groups, but need not eliminate the gap between religious attachments and religious persons.*

**Keywords:** secularism, free speech, blasphemy, Islam

In this essay I address the problem of speech that in its form and content attacks, criticizes or mocks the sacred. The question of speech offensive to sacred symbols and figures has not only generated some of the most intense political controversy involving Muslims living in the West (from Rushdie to the Danish cartoons and the recent Geert Wilders trial), but often seems to pose the most profound conflict of value between liberal and Islamic frames of moral reference. Importantly, conflict over offensive speech cannot be diagnosed as an instance of the secular state unwilling to live with reasonable expressions of religious difference and particularity (like with bans on veiling); rather, it is a case where many religious citizens want not only to embody their own ethical practices but also to make claims in, and on, the common public sphere.

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Such conflicts in the public sphere have also occasioned a return to the subject of the morality of speech in the academy, recalling the debates over pornography and hate speech in the 1980s and 90s. In addition to expressing a concern for the state of multicultural relations in Euro-America and the particular vulnerability of Muslim minorities, some have raised the possibility that the question of religiously injurious speech poses a serious problem for *secular* political thought and practice. Dovetailing with the present academic interest in the limits of secularism and the contours of a post-secular thought and practice,<sup>2</sup> the following kinds of claims have been made about the inadequacy of liberal secular treatments of religiously injurious speech: that liberal secular thought and political practice render unintelligible the kind of injury involved in speech which violates the sacred,<sup>3</sup> that much secular thought about religious injury (and free practice more generally) is premised on unacknowledged “Protestant” conceptions of what real religion is,<sup>4</sup> that secular thought unfairly excludes or diminishes religious conceptions of moral life and passionate attachment from due consideration,<sup>5</sup> that responding to religious injury might properly be regarded as an issue of religious freedom,<sup>6</sup> and that secular thought blinds and deafens itself to moral perspectives on suffering and emancipation emanating from religious quarters, or that we ought not to simply assume that “critique” is secular.

While these claims can be invoked merely to support the familiar point that liberal justifications of free speech fail to achieve their self-declared aspiration to neutrality because the right to profane the sacred is not accepted by the religious, the force of these claims is not always that *liberalism* is wrong about whether religiously injurious speech should be regulated through the law. Some of these thinkers either steadfastly refuse to

give such normative judgments or are on record as agreeing with liberals that legal regulation is not the best solution, including for the religious themselves.<sup>7</sup> Rather, these claims are used to advance an argument that even thinking about these questions is a problem for secular legal and political theory insofar as many of the ethical claims emerging from religious discourses, particularly non-Western, non-Protestant religious traditions, “fail to translate” into the presently regnant secular imaginary and are thus rendered unintelligible.

What is that argument, and is it convincing? I will concentrate my discussion in this paper on one important claim about the inability of secular thought in its presently dominant liberal form to grasp what is at stake in the case of religiously injurious speech. The claim, articulated most influentially by Talal Asad and Saba Mahmood, on whom I will focus most closely, consists of three moves. First, it is argued that liberal secularism tends to treat verbal and representative attacks on religion primarily as propositional challenges to *beliefs and truth-claims* upheld by religious traditions and voluntarily-endorsed by religious persons and, thus, as fundamentally distinct from racist, sexist and homophobic hate speech directed at *persons*. Second, it is asserted that it is simply a fallacy to assume that all pious religious persons experience offensive and injurious speech as having their considered *beliefs* criticized and thus that liberal defenses of the right to blaspheme simply misrecognize the nature of their injury. Rather, since many religious persons do not see their beliefs and attachments as separate from their selves, and do not necessarily relate to religious symbols, founders and traditions in a propositional, belief-centered way, the secular liberal aspiration to distinguish speech directed at beliefs and practices from speech that targets persons fails. Third, the liberal

defense of the right to blaspheme thus amounts to a demand that all religions be transformed into privatized and internalized states of belief along the lines of Protestant Christianity. While there have been other reasons for objecting to such expressions as Serrano's "Piss Christ," Rushdie's *The Satanic Verses*, Kurt Westergaard's cartoon of Muhammad with a bomb in his turban and Lars Vilks's cartoon of Muhammad as a dog,<sup>8</sup> this particular attempt to trouble and unsettle standing liberal secular understandings of the relationship between speech and religiosity is particularly prominent across academic disciplines.

Importantly, the account advanced in the writings of Asad, Mahmood and others does not rest on the claim that religious attachments are superior to non-religious attachments, or that the symbols and exemplars to which the religious attach themselves are inherently unworthy of being maligned. There is no independent argument advanced to show why others should be bound by the ethical sensibilities of the religious, only an account of how speech impacts the religious morally and emotionally. At stake is not a defense of the sacred, but rather an account of the subjective emotional worlds of certain persons. Already, we have reason to doubt that we are dealing with a radical critique of the secular even on the part of those purporting to make the secular the object of critique.

Nonetheless, are these critiques at least right in their diagnosis of secular discourse about religious injury? If they are, what follows for an ethics or a politics of speech in multicultural conditions? I will argue that the critique itself misrepresents Islamic religious discourse about injury from speech, simplifies secular discourse about religion and religious injury, and misunderstands the relationship between the defense of free speech and the understanding of the injuries which speech can cause.

## **Translation Failure? Habitus, Lived Relationships and Injurious Speech**

This popular critique of the liberal treatment of speech and religious injury begins with a diagnosis of how liberal secularism understands religion and thus how it understands the nature of religious injury. For Saba Mahmood, “while some liberals could see the lurking racism behind the [Danish] cartoons, the *religious* dimension of the Muslim protest remained troubling. Thus even when there was recognition that Muslim religious sensibilities were not properly accommodated in Europe, there was nonetheless an inability to understand the sense of injury expressed by so many Muslims.”<sup>9</sup>

Why this inability? On this account, the inability is caused by a fundamental mistake about how many pious religious subjects relate to signs, religious claims and ethical life. According to Mahmood and others, liberal secularism explicitly assumes that the religious objection is to speech that it regards as “blasphemous.” “It is this consensus across opposed camps that I want to unsettle, calling our attention to normative conceptions enfolded within this assessment about what constitutes religion and a proper religious subjectivity in the modern world.”<sup>10</sup> On Mahmood’s interpretation, diagnosing the conflict over speech as one between an objection to blasphemy and a commitment to free speech involves ascribing to the pious religious subject a belief-centered, propositional relationship to religion. The concept of blasphemy “presuppose[s] a semiotic ideology in which signifiers are arbitrarily linked to concepts, their meaning open to people’s reading in accord with a particular code they share between them.”<sup>11</sup>

Much is often made of the purported bias in the so-called “Protestant” conception of religion-as-beliefs underlying secular jurisprudence and ethical theory on freedom of religion and toleration.<sup>12</sup> This charge was central to the “communitarian” critique of Rawlsian liberalism: “Assimilating religious liberty to a general right to choose one’s own values misdescribes the nature of religious conviction. Construing all religious convictions as products of choice may miss the role that religion plays in the lives of those for whom the observance of religious duties is a constitutive end, essential to their good and indispensable to their identity.”<sup>13</sup> It remains widespread throughout scholarship on liberalism and religion in anthropology, political theory and legal studies. It provides, for example, for Mahmood’s central critical move:

What I want to problematize here is the presumption that religion is ultimately a matter of choice; such a judgment is predicated on a prior notion that religion is ultimately about belief in a set of propositions to which one gives one’s assent. Once this premise is granted then it is easy to assert that one can change one’s beliefs just as easily as one might change one’s dietary preferences or one’s name. While the problematic conception of race as a biological attribute might be apparent to the reader, the normative conception of religion offered here encounters few challenges. ... The legal critics I cite here do not simply misrecognize the kind of religiosity at stake in Muslim reactions to the Danish cartoons but also echo the presumptions of the civil law tradition in which the epistemological status of religious belief has come to be cast as speculative and therefore as less real than the materiality of race and biology. Notably, the normative conception of religion as belief facilitates other claims about what counts as evidence, materiality, and real versus psychic or imagined harm.<sup>14</sup>

Further on: “As much recent scholarship suggests, contrary to the ideological self-understanding of secularism (as the doctrinal separation of religion and state), secularism has historically entailed the regulation and re-formation of religious beliefs, doctrines, and practices to yield a particular normative conception of religion (that is largely Protestant Christian in its contours).”<sup>15</sup> That the liberal secular approach to religion is due to its origins in Protestantism is echoed by Winnifred Sullivan,<sup>16</sup> Peter Danchin,<sup>17</sup> Stanley Fish,<sup>18</sup> Jeremy Waldron,<sup>19</sup> Elizabeth Shakman Hurd<sup>20</sup> and certainly others.

In opposition to this conception, it is argued that religion is often not experienced so much as a discrete set of propositions which one accepts or rejects, but as something inherited or naturalized through habitus and which is manifested in bodily practices, lived social relationships and public institutions. The argument is that we should not see religion as something that an autonomous self chooses, but rather see the subject as something emerging out of religious discipline. On this view, Muslim piety should not be understood in terms of a communicative or representative relationship to the Prophet Muhammad but rather according to a model whereby “Muhammad is regarded as a moral exemplar whose words and deeds are understood not so much as commandments but as ways of inhabiting the world, bodily and ethically.”<sup>21</sup> For Mahmood

the sense of moral injury that emanates from such a relationship between the ethical subject and the figure of exemplarity is quite distinct from the one that the notion of blasphemy encodes. The notion of moral injury I am describing no doubt entails a sense of violation, but this violation emanates not from the judgment that the [religious] law has been transgressed but that one’s being, grounded as it is in a relationship of dependency with the Prophet, has been shaken. For many Muslims, the offense the

cartoons committed was not against a moral interdiction but against a structure of affect, a habitus, that feels wounded. This wound requires moral action, but the language of this wound is neither juridical nor that of street protest because it does not belong to an economy of blame, accountability, and reparations. The action that it requires is internal to the structure of affect, relations, and virtues that predispose one to experience an act as a violation in the first place.<sup>22</sup>

While there are some important differences between their accounts, Talal Asad also advances an interpretation of the objection to scandalous speech within Islam that emphasizes the Muslim commitment to preserving a “lived relationship,” rather than truth in doctrinal belief, a relationship that public speech can disrupt. According to Asad, the concern that justifies the traditional *shari‘a* punishments for blasphemy, heresy or apostasy is “not the correctness or otherwise of ‘belief’ in this sense [of theological doctrine], but the legal and social consequences of a Muslim teaching a doctrine that was said to be contrary to Islamic commitment. ... Put another way, insofar as the [sacred] law concerns itself with disbelief, it is not a matter of a propositional untruth but of a solemn social relationship being openly repudiated.”<sup>23</sup> Asad notes that, while Islamic law does allow for the execution of blasphemers and apostates, Islam never produced anything like the confessional or inquisitorial practices of Christendom of regulating and disciplining purely internal, non-publicized beliefs. At the same time, he observes that the passion which speech about Islam and the Prophet Muhammad generates on the part of Muslims is a consequence of the fact that for Muslims “blasphemy is neither ‘freedom of speech’ nor the challenge of a new truth but something that seeks to disrupt a living relationship.”<sup>24</sup>

I believe that this account of the religious subject contains much that is convincing and plausible as well as much that is forced and artificial. Certainly it would be silly to think that Muslims consult Islamic jurisprudence, or that Catholics consult canon law, before consciously deciding whether to be offended by speech that insults Muhammad or the Virgin Mary and forming a judgment as to whether it is wrong. The idea that the pious inhabit a world of affect and that they experience attacks on the objects of their attachment and devotion immediately and intensely should arouse no skepticism. What we want to consider here is what to make of this claim's potential to contribute to a *critique* of liberal secular discourse about speech and the sacred.

In other words, does the liberal secular defense of free speech covertly and unreflectively perpetuate distinctively and exclusively Protestant conceptions of religiosity and, if so, does this change our understanding of the meaning and the stakes of protecting all speech which is, at least formally and literally, about religion? There are three distinct questions at stake here: (1) Is the dichotomy between "Protestant" conceptions of religion as belief and the alternative conception of piety as habitus, affect and lived relationship stable and convincing? (2) Does liberal secular political and legal discourse in fact tend to characterize "blasphemous" speech only as an attack on voluntarily affirmed beliefs, which are entirely distinct from persons and their affective states? (3) Does the defense of the right to "blaspheme" or offend rest on the demand to privatize religious sentiment or conviction, to reduce it to mere internal belief?

*Did Somebody Say Belief?*

Let us return to Mahmood's central move: "What I want to problematize here is the presumption that religion is ultimately a matter of choice; such a judgment is predicated on a prior notion that religion is ultimately about belief in a set of propositions to which one gives one's assent." There are two views that she claims to be opposing here. The first is that religion is chosen, which I discuss below. The second is that religion is "about belief." In attributing the view that religion is "about belief" to a secular liberal opponent we are asked to be skeptical, but it is far from clear what we are being asked to be skeptical about. Both words in the phrase "about belief" are vague and require unpacking.

Does the view that religion is "about" belief mean that it includes belief, that it includes only belief, that it only need to include belief, that true religion only asks its adherents to believe, or that belief is the most important part of religious life? Does the view that religion is about "belief in propositions" mean belief in God, belief in the possibility of one's own salvation, belief that one's salvation can be secured (only) through faith, affirmation of a set of creedal propositions agreed upon by communal leaders, sincere affirmation of those creedal propositions, affirmation of set of ethical regulations for social life, or reflective and self-conscious affirmation of those ethical regulations? At most, what Mahmood and Asad have reminded us is that many religious persons' lives cannot be fully understood if we only know what theological beliefs they hold or claim to hold. But this does not really undermine the idea that religion is "about belief" given the ambiguity of this phrasing.

First, is it possible for religion *not* to be "about belief"? Obviously, the religious do have beliefs, just as the non-religious do. As humans, how could they not? But more

puzzling is the use of Islam and Muslim piety to pick this particular fight with “Protestantism.” If there is a historical religion that has minimized emphasis on theology and belief, Islam (across its various sects and traditions) is certainly not it. In their eagerness to set up secularizing Western Protestantism as a foil and an explanation for the failure of many to understand Muslim injury, it seems to me that scholars following Asad’s lead have set up an utterly unconvincing opposition between habitus, affect and embodiment on the one hand and a concern with proposition, truth and belief on the other. In doing so they exclude so much that is central to Islamic discursive traditions of piety and morality.

Briefly: this account seems hard-pressed to explain the vast oceans of text devoted to creedal matters (*‘aqida*) in the Muslim tradition.<sup>25</sup> It fails to grasp how even Sufi-oriented, pietistic reconstructions of religion (like Abu Hamid al-Ghazali’s (d. 1111) monumental *Revival of the Religious Sciences* and its Persian summary, *The Alchemy of Happiness*) begin with lengthy accounts of what a Muslim must not only believe but cognitively affirm in order to attain moral excellence.<sup>26</sup> It misses the many important theological and creedal commonalities between Sunni Islam and Lutheran-Calvinist Protestantism, such as the shared belief in divine voluntarism (as opposed to an Aristotelian rationalism, such as what informed both Catholic Scholasticism and Muslim philosophy), in a God who is no man’s debtor and in a text which speaks directly to the faithful without human intermediaries. It overlooks those Islamic doctrines that declare that, in the end, it might be only by belief that man is saved,<sup>27</sup> or (like with Calvin) that belief is a mark of God’s designation for salvation.<sup>28</sup> It cannot explain the Islamic legal doctrine that merely committing a grave sin does not make one an apostate, but believing

the sin to be licit does.<sup>29</sup> Finally, it cannot begin to do justice to the modern Salafi pietistic movement that, for all of its concern with embodied practice and ethical behavior, is foremost a movement about purifying creed and belief.<sup>30</sup>

The immediate response here (and elsewhere in this paper) is that I am caricaturizing their account of Muslim piety. They need not claim that *all Muslims* relate to the Prophet in terms of assimilation and cohabitation. (Mahmood concedes this in response to Judith Butler.<sup>31</sup>) However, this concession detracts enormously from the aspirations and significance of this mode of critique, because the entire basis of the critique is the claim that secular liberal discourse massively misrecognizes “*the kind of religiosity at stake in Muslim reactions to the Danish cartoons*” because the focus on belief is not only incomplete but a radical misunderstanding of how Muslim piety is practiced. But if belief and (as I will discuss next) prohibition of certain speech about the Prophet *are* in fact central to (if, obviously, not exhaustive of) mainstream Muslim religiosity, then where is the misunderstanding or failure of translation? What is special about the habitus-centered description of Muslim piety and, if we are only considering a vague subset of practicing Muslims, how does it generate a critical tension with liberal secularism? In other words, how do we know that they have the *right* account of the objection Muslims have to assaults on the Prophet and their attitudes towards signs, propositions and truth-claims?

Thus, second, do Muslim ethical traditions not contain intellectually elaborate accounts of why certain speech is both injurious and a violation of a moral law? Asad and Mahmood set up a series of binaries that are never justified. It seems much more plausible that Muslims regard abusive speech about the Prophet as *both* blasphemy *and* a

disruption of their affective and embodied practices. (“Blasphemy” after all is derived from the Greek words for nothing other than “harmful speech,” and translates without huge distortion to the Arabic concepts of *sabb*, *shatm* and *adha*, the main terms used to speak about sacrilegious speech.) Likewise, it seems perfectly coherent to regard such speech as both a violation of a moral law and as a more intimate injury to one’s state of being, to regard Muhammad in both a communicative way and an assimilative one, to regard him as both a law-giver and as an exemplar to be emulated and adored, and finally to regard heretical or blasphemous speech as both as assault on the truth and also an assault on the web of lived social relationships.

The fact is that there is a long-standing and well-developed discourse about speech-crimes in Islamic juridical and ethical traditions that is as much a part of Muslim religiosity as are the affective and ethical dispositions of pious Muslims. The moral and political concerns of Islamic religious writing about blasphemous speech do tend to confirm some of what is argued by Asad and Mahmood, but their analysis does not begin to cover the complexity and capaciousness of this discourse.

To put it bluntly, the jurists and theologians are concerned about *every possible form of harm* that might arise from illicit speech. They are concerned about the circulation of false doctrines, about violation of the honor of the Prophet Muhammad (hence why mockery in particular resonates so deeply), about diminution of the esteem in which religion is held, about the violations of rules set out in revelation, about rebellion against God and about rebellion against the social order.<sup>32</sup> The greatest treatise in the Islamic tradition on blasphemy against the Prophet Muhammad, Ibn Taymiyya’s (d. 1328) *al-Sarim al-mashul ‘ala shatim al-rasul*, shows how such speech is a violation of

three categories of rights: *God's* (since it is opposition to His Messenger and most beloved person, a piercing attack (*ta'n*) on His Book and religion, a piercing attack on His divinity since an attack on the Messenger is an attack on the one who sent him, and thus a denial of God and rejection of His attributes), *the Prophet's* (since slander is an assault on honor which Islam protects as a right) and *the Muslim community's* (since their life, religion and afterlife are all dependent on upholding Muhammad's religion).<sup>33</sup>

My point here is not to insist on an alternative psychology of why individual Muslims object to insulting speech about the Prophet. Although even this brief overview of Islamic discourse about the ethics of speech raises doubt that the story Asad and Mahmood are telling about why speech does the harm that it does is the fullest and most convincing one for those interested in Islam as a discursive tradition, for present purposes I mean to raise questions about what is meant by "belief" in popular and academic discourse about religion. While holding up "belief" as the defining feature of "Protestant" understandings of religion, they remain disturbingly uncurious about the *various* possible meanings of referring to "belief."<sup>34</sup> When one refers to religion as involving belief, this should not be understood tendentiously as only a reference to "privatizable" belief about theological matters that neither break my leg nor pick my pocket (the nature of Christ, who exactly was God's final Prophet), but also normative *beliefs about action* in the common social world. The proposition "insults to the Prophet Muhammad are wrong and must be opposed in some way" is a *belief-statement*, as are the range of arguments that explain and justify it. It seems odd to deny that this is a moral belief that is held by large numbers of Muslims for various religious reasons, and not only because they inhabit an assimilative relationship of cohabitation with Muhammad.

Third, does the anthropological account of embodiment and injury displace a focus on belief? The claim that lived traditions need to be studied in a different way from written discourse is convincing. However, the focus on habitus or embodied practices does not oppose a focus on religious beliefs but merely picks up the story at a different point. The question is *why* Muslims seek to emulate the Prophet Muhammad, to assimilate their behavior into his, to cohabit with him. Or why they seek to protect certain doctrines and oppose other ones in order to preserve a particular way of life. Again, it seems to me that we are being asked to accept an oppositional binary that simply doesn't exist between (a) believing in the truth of a proposition and (b) cultivating certain dispositions and preserving lived relationships.

I doubt that any pious Muslim would be the slightest bit reluctant to declare, propositionally, that one embodies certain practices and inhabits a relationship of assimilation with the Prophet because Muhammad is God's Messenger, the Seal of the Prophets, who received an absolutely true revelation from God.<sup>35</sup> Or to declare that emulating him is not only a "way of inhabiting the *world*, bodily and ethically," but of being obedient to God and, God willing, being saved on the Day of Judgment. Naturally, it is incomplete to assert that pious Muslims are wounded by expressive assaults on the Prophet because they believe that the *shari'a* has forbidden this, even for non-Muslims. However, showing that their wounds are deep, immediate and visceral is not to establish that they don't also believe that expressive assaults are offenses (*adha* – offense or affront – being the precise word used in Islamic writing to describe what blasphemous speech does) against entities such as God, the Prophet or religion itself and that such assaults are morally and (ideally) legally wrong. Muslim religious discourse in the West

during the Rushdie and Danish cartoon affairs has born this out. While the injury to Muslim feelings provides a certain kind of standing to press claims, that affect is not left to speak for itself but is rather justified by reference to the greater injury to Islam, God or the Prophet.<sup>36</sup>

Moreover, I would submit that we cannot begin to understand *which* kinds of utterance will be regarded as either injurious to the pious subject or dangerous to the lived social relationship unless we take belief and the religious commitment to truth seriously. Asad asks us to accept that Egyptians suppressed the speech of Nasir Hamid Abu Zayd (a case of heresy, not blasphemy) not because his views were propositionally false but rather because of “the legal and social consequences of a Muslim professor’s teaching a doctrine that was said to be contrary to Islamic commitment.”<sup>37</sup> But what is the difference here, exactly? Unless we want to claim that pious Muslims cultivate irony towards religious dogma, or an “Averroist” attitude towards Islam as a primarily civil religion, I don’t see how we can escape the conclusion that for the pious such speech is only regarded as “contrary to Islamic commitment” in the first place because it is regarded as *false* in a propositional sense. The very text that Asad cites as evidence for his claim confirms that Islamic law does not extract forced confessions of private conscience, but also speaks of apostasy as “the attempt to turn people away from religion through *false doctrines* ... and publicizing, disseminating and propagating these false doctrines amongst the people, and portaying them as scientific truths that clash with religious truths or as doctrines that compete with the Islamic creed.”<sup>38</sup> Asad is, of course, not wrong that the harm of propagating heresy is conceived of as a social or political one

in Islamic law, but we have no good reason for thinking that this indicates a category of religiosity set in stark opposition to one that is centrally concerned with “belief.”

*Do Secular Liberals Really Think Religion Only Involves Belief?*

While I do not believe that Asad and Mahmood have given us a coherent and convincing account of some distinct kind of religiosity or piety which is “unintelligible” in the secular West,<sup>39</sup> I fully agree with them that speech about Islam and Muhammad is often received viscerally and immediately. It would indeed be as much of a mistake to think that blasphemous speech is only propositional as it is to think that pious Muslims are not concerned about propositions. Thus, the second question is whether secular liberal political and legal discourse does in fact tend to characterize “blasphemous” speech only as an attack on voluntarily affirmed beliefs that are entirely distinct from persons.

It is highly doubtful that liberal defenders of free speech are as uniformly oblivious to the varieties of religious experience as they are often accused of being. It would be impossible to scour the entire Western public sphere for a consensus on what religion is and thus what speech about religion is. A few data points will have to suffice to trouble the idea that liberals assume voluntarily affirmed belief to be an accurate description of religious lives. Certainly, the history of legal protection for religion in the United States does not support this reading. The First Amendment protection is for the “free *exercise*” of religion and while not every act derived from religion is protected, from the time of the founding “the phrase ‘free exercise’ reached beyond belief, profession, and worship to other acts of religious conviction.”<sup>40</sup> Similarly, “leading

proponents of the Fourteenth Amendment saw free exercise as a right of individual conscience – including not only worship but all duties to God and other people.”<sup>41</sup> Even where the Supreme Court has made a distinction between belief and action in religion and protected only the former,<sup>42</sup> two points bear mentioning: those cases do not represent the historical center of gravity in free exercise jurisprudence which has tended to protect practice unless there is a compelling state interest that justifies restricting it; and, more importantly here, the judgment that the secular constitution should only protect belief absolutely does not imply the judgment that “religion” *only consists in belief*. Rather, it is that belief is the one aspect of religion that the secular law may *never* restrict, even though the religious will inevitably want more than this for internal religious reasons.

Nor are neo-Kantian liberal philosophers, the most likely suspects for reducing religion to autonomously held belief, under some universal misapprehension about religion. Ronald Dworkin, for example, does not defend the right to offend on the grounds that people voluntarily choose their beliefs and that convictions are separate from one’s personal identity or sense of self: “It is often said that religion is special, because people’s religious convictions are so central to their personalities that they should not be asked to tolerate ridicule.”<sup>43</sup> While he preserves the language of “conviction” and “belief” (which most Muslims would not object to), his defense of free speech openly acknowledges the contrary account of religious selfhood and is thus not based on a mistake about what ridicule can do to the religious. Similarly, it seems hasty to suggest that the secular liberal tradition is stuck in a position about speech that assumes the religious object to blasphemy on the grounds that their ideas or beliefs should remain untouched. One of the most prolific liberal writers on blasphemy and

religion, Peter Jones, noted in 1980 during the *Gay News* case in England that “much the most plausible defence of a blasphemy law is that it is necessary to protect religious believers from suffering offence to their *feelings*,”<sup>44</sup> a characterization which overlaps with legal theorist Joel Feinberg’s understanding of blasphemy as “expressions of disrespect toward something treasured by the listener as deserving of the highest respect.”<sup>45</sup>

These are just three easily-accessed quotes, and I do not mean to deny that *anyone* treats religion simplistically in terms of freely chosen belief, nor that many dimensions of religious practice and injury are ill-grasped by secular discourse (as is true vice-versa). But it does seem wildly implausible that the present divide between the secular public sphere and Muslims injured and enraged by speech about Muhammad is attributable to *so basic and elementary a mistake* as a supposed uniformly held Western understanding that religion is only a matter of freely chosen belief and that speech about religion is only speech about those beliefs, whereas Muslims inhabit some other mode of relating to the sacred. The idea that the secular West assumes blasphemy to be an attack on beliefs at the very least needs to address the ordinary language sense of blasphemy as defilement, desecration, irreverence, profanation, sacrilege or simply “verbal offense against the sacred.”<sup>46</sup>

Nor is it very convincing that the kind of injury described by Asad and Mahmood is unintelligible or untranslatable in the secular public sphere. In fact, I would submit that the opposite is the case: that *Asad and Mahmood have themselves secularized the Islamic discourse on speech about the sacred* by transforming it into emotional pain over the disruption of one’s own state of affect or lived relationship. In doing so they make

religious injury indistinguishable from the countless other sources of visceral attachment persons form in the world. As noted by Peter Jones, the argument for blasphemy laws on the grounds of protecting the *feelings* of Christians is a modern, secularizing turn,<sup>47</sup> Furthermore, the idea that such feelings might be protected by the law is hardly alien to the liberal secular tradition. None other than Jeremy Bentham argued that “all exhibitions, which, being to the minds of individuals taken in any considerable number, productive of uneasiness on a religious account, are offered to their senses in such manner as that the unpleasant sensation produced by them, whatever it be, is unavoidable – all such acts are, in my view of the matter, objects calling for prevention by means of punishment.”<sup>48</sup> To assert, as Mahmood does, that Europeans were unsympathetic to Muslims during the Danish cartoon affair because “the normative conception of religion as belief facilitates other claims about what counts as evidence, materiality, and real versus psychic or imagined harm” is thus puzzling.<sup>49</sup> It is precisely the transformation of assaults on the sacred into assaults on religious affect that the secular mind can most easily accommodate and it was thus not at all uncommon for various officials to issue apologies for offense to “people’s religious feelings” (not beliefs) during the Danish cartoon affair.<sup>50</sup>

While the American public sphere may be more favorable toward religion in broad cultural terms, the concern for religious affect remains more reflected in the law in Europe than in the United States. Although European national and EU human rights jurisprudence does seem to be moving in the direction of greater protection for merely religiously offensive speech (as opposed to incitement to hatred on religious grounds),<sup>51</sup> it is moving that way from a place of concern about injury to religious *affect*, not offense

to religious belief. British Law Lord Scarman, for example, argued in 1979 that Article 9 of the European Convention on Human Rights, which provides for freedom of religion, also “by necessary implication . . . imposes a duty on all of us to refrain from insulting or outraging the religious feelings of others.”<sup>52</sup> This doctrine forms one basis for the plausibility of on-going legal challenges to European anti-Islamic speech.

A final problem for the claim that religious injury “fails to translate” or is unintelligible is explaining why it happens in the first place. The authors of moral injury are not usually *unaware* of the capacity of speech to injure. The Danish cartoons were not accidental acts of injury; the protagonists deliberately set out to make a statement about religious attachments (not just beliefs) being fair game. Offering a genealogy of some so-called “non-Protestant” religious subject does not actually fill in any gaps in such cases when the very speech in question reveals that the antagonist is fully aware of how emotionally and psychologically invested in religious symbols many persons are.

But the more important question is whether the defense of speech about religion depends on a specific account of the pain it causes. Suppose you did think that religion was or ought to be only about freely affirmed belief, and now know better. What now changes in your view of the morality and politics of blasphemous speech? Asad and Mahmood have tried to diagnose the failure of translation as a symptom of liberal secular ideas about what is done unto the religious by such speech. In fact, they have it backwards. What is important to secular liberals is not the precise nature of the injury experienced by the religious but the perspective of the speaker.

*Injurious Speech: Which Gap between Religion and the Religious Subject Matters?*

Carrying to its extreme limits the view that religion is not about freely chosen belief but about constituting the self raises very challenging questions about the ability of free speech advocates to distinguish between acceptable (if painful) speech about religion from unacceptable (if legal) hate speech on grounds of race, sex or sexuality. After all, the central claim of the critical position under review here is that the distinction between racial or sexual identities that are unchosen and thus partially define who we *are*, and religious, cultural or ideological beliefs which we *have*, is faulty.

We are not presently concerned about the claim that much speech about Muhammad or Islam is de facto racist hate speech about Muslims because it is coded speech using religion as an alibi. We are concerned, rather, about the idea that just as the liberal defender of free speech has no coherent way of distinguishing between speech and action (since to speak is to do something), she has no coherent way of distinguishing between her moral acceptance of blasphemy and her condemnation of racist, sexist and homophobic hate speech without resorting to a discredited idea of religion as involving freely chosen belief. The claim is thus that the liberal defender of the right to outrage the religious refuses to problematize her presumption that religion is ultimately a matter of the free choice to assent to a set of propositions which one can then replace just as easily as one might change one's dietary preferences or style of dress.

The very plausible idea that the religious do not see their selves as separate from their commitments and attachments does not seem to expose a serious problem internal to the liberal defense of free speech for three main reasons: (1) the opposition to hate speech is not primarily based on the way in which the attributes which are the target of hate

speech have been acquired; (2) while it is true that religion is very rarely a matter of freely chosen belief, neither is it plausibly reduced to an immutable, identity-giving attribute; and (3) whether or not religion involves belief or the voluntary attachment to symbols and practices for the pious, what is crucial for a liberal morality of speech is what meaning the religion (beliefs, institutions, practices, symbols) holds for the *speaker*.

First, then, I would submit that the stakes of the “free choice” question about religious beliefs are easily exaggerated. While some may defend the right to attack religion, unlike race or gender, on the grounds that a person may change her religion and thus need not be offended by such speech, this is clearly not the core issue in opposing racist or sexist speech or in a more favorable attitude toward anti-religious speech. The opposition to racist, sexist and homophobic speech does not rest entirely, or even primarily, on the fact that such speech targets aspects of persons that they cannot change. Rather, the point is that these are attributes or identities for which people should not be made to suffer disadvantage and yet for which have often been made to suffer terrible disadvantages. For example, there are certainly very many homophobic practices that we regard as particularly *cruel* because sexual preference is not thought to be a freely cultivated taste. But to argue for protection for homosexuality merely on the basis that it is innate and unchangeable is consistent with regarding it as an unfortunate evil deserving only of tolerance, and leaves vulnerable those whose sexuality is more fluid than an innate gay/straight binary allows.

Similarly, a critique of the secular treatment of religious injury cannot rest on the fact that religious beliefs, attitudes and practices are unchosen by the individual: vile beliefs, attitudes and attachments which few would want to protect are just as much a

matter of acquisition through habitus and socialization as admirable ones. Nonetheless, we oppose attitudes and practices that we deplore not because they are voluntarily chosen or easy to change on the part of individuals, but because we think that their occurrence in society might be reduced through such opposition. No one, least of all adherents of proselytizing religions like Christianity and Islam, can deny that religion is mutable in this sense.

At the same time, however, just as the fact that the innateness or immutability of an attribute does not suffice to explain why persons should not be made to suffer for that attribute, so does the mutability of a personal or group identity not exclude that identity from certain protection. An appropriate comparison here is language. A particular language is not a biological attribute. It is far from impossible, although for adults not easy, to abandon one language and adopt another. Yet, language (much like religion) is usually associated intimately with ethnicity, nationality, culture, group identity, history, place and memory. Not only do we see why groups might demand extensive language rights,<sup>53</sup> we can also easily see why they would be injured personally by insults to their language – mockery of tone or accent, denigration of a language’s vocabulary or richness, diminution of its age or derivation, or dismissal of its literary heritage. (Saul Bellow’s infamous remark about the Zulus’ lack of a Tolstoy was regarded, rightly, as a diminution of the cultural value of the Zulu people.)

So if religion is never merely belief, identity or way of life alone, and religiously injurious speech is thus neither speech-about-persons nor speech-about-ideas *simpliciter*, is the right response then to not speak about religiously injurious speech in general but to make distinctions between expressions on the basis of content, context, form and the

presumed intent of the agent? Surely this is unavoidable, just as we make distinctions between merely offensive or ignorant remarks and the kinds of racist, sexist and homophobic utterances that we are inclined to identify as hate speech. But in discussing racism, sexism and homophobia (as well attacks on other politicized identities, like ethno-linguistic community), we begin with the assumption that these are directed at attributes which ought not to be the object of attack in the first place and thus end with the conclusion that what matters in the case of such expression is primarily its *effect*.

But this is precisely what we cannot assume about religiously offensive and injurious speech. This is not, to repeat, because religion is merely a matter of belief, and freely chosen belief at that, so religiously injurious speech can only be a form of self-imposed injury or a category mistake. Nor is it because religion is a social identity for which it is unproblematic to impose disadvantages on people. Rather, what is different in the case of religion is the *world of the speaker*. It is precisely because religion is so complex and public that it provides so much constitutive material not only for the religious themselves but *for the social world of others*, just as the sacred national symbols of American civil religion provide material for the social world of those excluded and harmed by American nationalism. No one should be made to suffer disadvantage on the grounds of mere religious identity; but this is not the same as saying that religious identity means that one should never experience moral injury from speech about one's religion. Because religions also produce doctrines, beliefs, practices, institutions, symbols and discourses which others experience as part of *their* social world, offense or injury may simply be a double-effect of persons expressing themselves about how they experience that world.

Does the preceding amount, in effect, to a liberal demand that all religious citizens “privatize” their religious feelings, beliefs and attachments? This depends on how we understand “privatize.” It certainly means that the religious may not insist on absolute protection from hostile speech everywhere for everything they hold sacred, whether that speech is mockery, abuse or scriptural criticism, just as others may not insist on immunity from all injurious religious speech.<sup>54</sup> It means that traditional religious arguments about what justifies coercive power should not prevail merely on authority within political institutions that seek to represent citizens belonging to multiple moral communities. In short, the public cannot *belong* to the religious.

But the liberal view does not imply two other controversial conceptions of what it means to “privatize” religion. It does not mean, obviously, that the religious may not bring their concerns, injuries and languages into the wider public sphere. The fact that the US Supreme Court does not as a general rule allow for criminalizing racist and sexist speech has not prevented the stigmatization of such speech through other political and moral means. Muslims should bear no burden of self-justification for protesting against speech that they object to for whatever religious reasons. This is not only a matter of basic fairness, but crucially linked to why injurious speech about religion is protected in the first place. The secular liberal discourse about speech and religion emphasizes that religion is a matter of *public concern* and that is why speech about it is itself political and protected. If liberalism truly demanded that religion be privatized in the simplistic sense suggested in the critique under review here, this sense that speech about religion is speech about a common, public matter could not resonate the way I believe it does.

Speaking more to the concerns of Asad and Mahmood, “privatization” does not mean that Muslims (or other public religions) must transform the very concept of what “religion” is into something merely internal and belief-centered. The reason why Muslims (and others) may at times be forced to tolerate public speech that violates their conception of the sacred is emphatically not because secular liberalism regards the desire to coercively suppress such speech as a category mistake *about religion*. (We often hear in the liberal public sphere that opposing blasphemy is exactly what we expect the religious to do and part of why they must be disciplined by being exposed to such expression.) That is, secular liberalism need not demand the conceptual transformation of a public religion like Islam on prior theological grounds, for example, theological grounds derived from a Lockean version of Protestantism. Muslims are not properly asked to proclaim that publicly defending the sacred has nothing to do with *religion*. The demand is rather that these religious claims be weighed against the interests of others who do not share those claims and attachments.

How could it be otherwise in a society that contains not only more than one religion but more than one attitude towards religion in general? Ironically, the claim that respect for religion requires respecting “non-Protestant” religions as well by protecting them from injurious speech is nothing other than a demand that other citizens treat their own beliefs in “Protestant” terms – that is, as beliefs that must only be privately assented to and not manifested in public through conduct and speech. It is fine for Rushdie to *believe* those things about his religious and national heritage, as long as he doesn’t publicize them.

This does not mean that transformations in the internal conceptions of what “religion” is will not take place within religious communities living in pluralistic societies. Obviously, liberalism is not indifferent to that transformation; it prefers religions that do not oppose it to religions that do, and liberal terms of social cooperation are more accommodating of some kinds of religious community than others. Religions that believe that blasphemy can be handled by stoically ignoring it as an act of pious self-discipline<sup>55</sup> or publicly denouncing it as an act of religious witnessing will breathe more easily within liberalism than a religion that holds that tolerating violations of one’s prophet’s honor is a damnable offense. Furthermore, religious communities themselves are active agents in negotiating the dissonances between their traditional ideals and their present realities; they are not only the passive subjects of secular power. But pointing out the obvious fact that living in a secular polity may lead to transformations not only in religious practice but also in the meta-conception of what “religion” refers to is only a *critical* observation if it reveals something which liberalism has sought to hide. That liberalism hopes for religions that can accept it, and will authorize the state to do *some* things to bring this about, is something which liberal secularism has rarely sought to hide.<sup>56</sup>

**Conclusion: Multicultural Inclusion Must Not Only Be Done, But Must Be Seen to Be Done?**

I have argued against the claim that the conflict around injurious speech in the West is a consequence of a “failure of translation” of Muslim religious injury into the

language of secularized Protestantism. I think that the secular resistance to (in this case) Muslim objections is no more attributable to a radical failure to appreciate that Muslims are genuinely wounded by ridicule of the Prophet Muhammad than the Muslim objection to blasphemous speech is attributable to a radical failure on their part to appreciate the value of free speech. The deepest incommensurability, rather, is between the belief that even painful speech about sacred matters may be a legitimate form of self-expression and social commentary and the contrary belief that certain sacred objects are more valuable than individual self-expression. Fair-minded persons on both sides can understand the other well enough; they just value each side of the equation differently. Value pluralism means precisely that not all political and moral conflicts are a matter of mere misunderstanding.

It seems, moreover, that popular and academic concern about religious injury does not primarily rest on a radical doubt about the terms of secular discourse. Few are willing to say that *anywhere* the pious feel injured when others pursue their aims in the world there we see secular political theory incapable of appreciating its own crypto-theological categories, misrecognizing the nature of religion, and deafening itself to other forms of moral knowledge. Instead, sympathy for the religious in the case of injurious speech seems to derive from two features of such speech in its present context: that today the religious target of provocative speech is not usually (at least in the West) a powerful, clerical hegemony but rather vulnerable minority communities, and that it seems intuitively plausible that religious symbols attach in some way to the religious, and thus their objection to injurious speech is not merely an arbitrary intrusion into the freedom of others. Speech about Jesus is speech *done unto Christians* in a way that sinful sex is not.

However, because few (secular) critics of secular thought are actually willing to endorse a religious claim to sovereignty over the linguistic and artistic use of religious symbols, it seems that they thus basically remain part of the liberal project of constantly searching for ways to improve social coexistence between the secular and the religious.

This is obviously not the end of the matter. It is true that experiences of emotional harm and moral injury are the inevitable consequences of social life. Moreover, we ought to be wary of the fantasy that we can be free from the uncertainty and risk necessarily involved in living together with other humans. Such a fantasy reflects a desire for a certain kind of sovereignty over one's fellows and over one's environment that can never be achieved. At the same time, however, we know that our social world is not the product of natural phenomena but of human institutions; it can and must be improved. Thus, while wary of the temptation towards total control over our social world, we are also aware that not all suffering – including emotional pain – has to be tolerated.

With this dilemma in mind, it appears that if we are looking to regulate or discourage speech we are better off beginning with speech that clearly and intentionally targets persons and groups in an effort to impose unnecessary and unreasonable social and political burdens on them for the sake of others' enjoyment or advantage, and not speech that merely disrupts the religious relationship with the sacred. Secular politics will always struggle with the fact that this appears to some religious persons as arbitrary, if speech is regulated to protect against some harms but not others. But given the nature of pluralism in a post-traditional world and the great goods (as well as harms) that depend on speech, it seems too much to ask of secular political theory that it concern itself with anything but the tangible social harms caused by speech.

At the same time, we should not imagine that speech ostensibly and formally about the sacred can never harm the political and moral project of securing the place of all citizens within a fair and inclusive society. The argument of this article is that not *all* speech about Muhammad is de facto speech against Muslims, not that speech about Muhammad is *never* coded speech about Muslims. We might speak then of an obligation on the part of powerful majorities not only to treat minorities fairly but to reinforce the minority's sense of security in this treatment. To paraphrase: "Multicultural inclusion must not only be done, but must be seen to be done."

This standard may overlap at times with a standard that would encourage self-restraint in speaking about the sacred per se, but the two are not the same. Some will judge at times that sacrilege is a reasonable cost to impose on others for genuinely important self-expression or social commentary. I would further suggest that whether or not religiously offensive speech threatens the political project of inclusion is not a property of such speech outside of its social context,<sup>57</sup> but is precisely a judgment to be pursued through a wide and inclusive form of public reason, discourse ethics or political persuasion.<sup>58</sup> Even if we continue to disagree on whether specific expressions constitute a significant harm to a group's sense of belonging, membership and security in a wider community, securing this standard as the terrain of reasoning and argumentation would be no small achievement.

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<sup>1</sup> Judith Butler, *Excitable Speech* (New York: Routledge, 1997), p. 102.

<sup>2</sup> See, for example, Hent de Vries and Lawrence E. Sullivan, eds., *Political Theologies: Public Religions in a Post-Secular World* (New York: Fordham University Press, 2006) and Jürgen Habermas, "Notes on Post-Secular Society," *New Perspectives Quarterly*, Vol. 25, No. 4 (Fall 2008), pp. 17–29.

<sup>3</sup> See Saba Mahmood, "Religious Reason and Secular Affect: An Incommensurable Divide?" *Critical Inquiry*, vol. 35, no. 4 (Summer 2009), pp. 836-862. This essay was republished in Talal Asad, Wendy Brown, Judith Butler and Saba Mahmood, *Is Critique Secular? Blasphemy, Injury, and Free Speech* (Berkeley, CA: University of California Press, 2009). My own citations are to the original *Critical Inquiry* version.

<sup>4</sup> This claim is now so ubiquitous that it almost serves as a mantra that replaces rather than provokes critical analysis. See notes 15-20 below.

<sup>5</sup> Talal Asad, "Free Speech, Blasphemy, and Secular Criticism," in Asad, Brown, Butler, Mahmood, *Is Critique Secular?*, pp. 20-63.

<sup>6</sup> See Jeremy Waldron, "Toleration and Reasonableness," in Catriona McKinnon and Dario Castiglione, eds., *The Culture of Toleration in Diverse Societies* (Manchester, UK: Manchester University Press, 2003), pp. 13-37 and Peter Danchin, "Of Prophets and Proselytes: Freedom of Religion and the Conflict of Rights in International Law," *Harvard International Law Journal*, Vol. 49, No. 2 (Summer 2008), pp. 249-321.

<sup>7</sup> E.g., Mahmood, "Religious Reason and Secular Affect," pp. 859-60.

<sup>8</sup> Meital Pinto has recently argued that it might be just to use the law on occasion to protect religious feelings, using the Danish cartoons as one case study. However, her argument is based on the value of protecting vulnerable cultural identities, a value which she sees not as in conflict with but as *implied by* certain secular liberal commitments. (See Meital Pinto, "What Are Offences to Feelings Really About? A New Regulative Principle for the Multicultural Era," *Oxford Journal of Legal Studies*, Vol. 30, No. 4, pp. 695-723.)

<sup>9</sup> Mahmood, "Religious Reason and Secular Affect," p. 840. Emphasis added.

<sup>10</sup> *Ibid.*, p. 838.

<sup>11</sup> *Ibid.*, p. 842.

<sup>12</sup> See also Jeff Spinner-Halev, "Hinduism, Christianity, and Liberal Religious Toleration," *Political Theory*, Vol. 33, No. 1 (February 2005), pp. 28-57; Jakob De Roover and S. N. Balagangadhara, "John Locke, Christian Liberty, and the Predicament of Liberal Toleration," *Political Theory*, Vol. 36, No. 4 (August 2008), pp. 523-549; and Jakob De Roover, Sarah Claerhout and S. N. Balagangadhara, "Liberal Political Theory

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and the Cultural Migration of Ideas: The Case of Secularism in India,” *Political Theory*, Vol. 39, No. 5 (October 2011), pp. 571-599.

<sup>13</sup> Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge, UK: Cambridge University Press, 1998, 2<sup>nd</sup> ed.), p. xii.

<sup>14</sup> Mahmood, “Religious Reason and Secular Affect,” p. 852.

<sup>15</sup> *Ibid.*, p. 858. Mahmood draws substantially on the argument developed in Kirstie McClure, “Difference, Diversity, and the Limits of Toleration,” *Political Theory*, Vol. 18, No. 3 (August 1990), pp. 361-391.

<sup>16</sup> “Religion – ‘true’ religion some would say – on this modern protestant reading, came to be understood as being private, voluntary, individual, textual, and believed.” (Winnifred Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2007), p. 8.)

<sup>17</sup> On Robert Post’s argument that that the state may not protect against insult to religious feeling because this will suppress the formation of beliefs: “Freedom of religion, however, is compatible with this view primarily to the extent it is understood to encompass an inviolable private or inner realm of ‘belief’ – the so-called *forum internum* – separate from manifestations of that belief. ... The difficulty with this argument is that it relies on a prior contingent assumption equating religion with belief.” (Danchin, “Of Prophets and Proselytes,” p. 294.) See also Peter Danchin, “Defaming Muhammad: Dignity, Harm, and Incitement to Religious Hatred,” *Duke Forum for Law & Social Change*, Vol. 2 (2010), pp. 5-38, and “Islam in the Secular *Nomos* of the European Court of Human Rights,” *Michigan Journal of International Law*, Vol. 32 (2011), pp. 663-747. These latter two papers also reflect the increasing influence of Asad’s and Mahmood’s accounts of the Islamic conceptions of speech and injury.

<sup>18</sup> Criticizing Justice Ruth Bader Ginsburg’s decision in the recent *Christian Legal Society v. Martinez* (June 28, 2010) case: “The distinction between belief and conduct, the very basis of formal neutrality, is not itself neutral because it favors religions (like the Protestantism John Locke explicates in his *Letter Concerning Toleration*, 1689) that are centered on the personal relationship between adherents and the God they believe in, and disfavors religions that require, and regard as a non-detachable extension of belief, the performance of specific forms of behavior. That is to say, the belief/conduct distinction itself embodies a very specific viewpoint (one the government is not entitled to have or enforce) concerning just what a religious belief is, and as such it discriminates against religions that do not respect, indeed cannot respect, the belief/conduct distinction.” (“Being Neutral is Oh So Hard to Do,” *New York Times* Opinionator Blog, July 19, 2010, <http://opinionator.blogs.nytimes.com/2010/07/19/being-neutral-is-oh-so-hard-to-do/>) See also Stanley Fish, “Boutique Multiculturalism, or Why Liberals Are Incapable of Thinking about Hate Speech,” *Critical Inquiry*, Vol. 23, No. 2 (Winter, 1997), pp. 378-395.

<sup>19</sup> In “Toleration and Reasonableness” Waldron introduces the idea of “sensitive” aims (as opposed to “private,” “protestant” ones). Sensitive aims are those that depend not on the actual collaboration of others but on the restraint of others from interfering in our projects. Waldron cites Muslim opposition to the publication of Salman Rushdie’s *The Satanic Verses* as based on a conception of religious practice as a sensitive aim. Important for present purposes is Waldron’s suggestion that many liberals are presently

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committed to respecting only those “protestant” aims that can be pursued in private independent from the speech or actions of others. (Waldron, “Toleration and Reasonableness,” p. 27.)

<sup>20</sup> Criticizing the Chicago Council’s report “Engaging Religious Communities Abroad: A New Imperative for U.S. Foreign Policy”: “One of the great challenges of our time is to engage with and listen to those who enact religious agency and live religious freedom in ways that may not conform to these protestant-secular understandings of religion and religious freedom. In focusing exclusively on ‘values and beliefs,’ the report [f]ails to engage with, or allow spaces for, religious practice, habits, and ways of being in the world that cannot be reduced to values and beliefs.” (Elizabeth Shakman Hurd, “The Global Securitization of Religion,” *The Immanent Frame*, March 23, 2010, <http://blogs.ssrc.org/tif/2010/03/23/global-securitization/> (accessed October 12, 2011).)

<sup>21</sup> Mahmood, “Religious Reason and Secular Affect,” p. 846.

<sup>22</sup> *Ibid.*, pp. 848-9.

<sup>23</sup> Asad, “Free Speech, Blasphemy, and Secular Criticism,” pp. 42-3.

<sup>24</sup> *Ibid.*, p. 46.

<sup>25</sup> Twelve of the most important creeds in the Sunni tradition, and one later Shi‘ite creed, are translated and collected in William Montgomery Watt, *Islamic Creeds: A Selection* (Edinburgh: Edinburgh University Press, 1994).

<sup>26</sup> “Know that the first duty upon whoever becomes a Muslim is with regard to the meaning of the declaration ‘There is no god but God; Muhammad is the Messenger of God’ to pronounce it with his tongue, to know it in his heart [*be-del bedanad*] and believe it [*bavar konad*] so that no doubt about it afflicts him. When he has believed it and his heart is established firmly upon that belief so no doubt can touch it, it is sufficient as the basis of being a Muslim. Knowing it through evidence and proof is not an individual duty incumbent upon every Muslim ... affirming as true [*tasdiq*] and having belief [*bavar dashtan*] are sufficient.” (Abu Hamid al-Ghazali, *Kimiya-i sa‘adat [The Alchemy of Happiness]*, Husayn Khedivjam, ed. (Tehran: Shirkat-i intisharat ‘ilmi va-farhangi, 2005), v. 1, p. 123.) (Author translation from Persian.)

<sup>27</sup> Abu Hanifa (d. 767), the eponym of one of the four major schools of Sunni jurisprudence, wrote a famous creed (“The Testament”) in which he articulated the doctrine that “Faith is professing with the tongue, counting true with the mind and knowing with the heart. ... Those of the community of Muhammad who sin are all believers and not unbelievers.” (See Watt, *Islamic Creeds*, p. 57. In separating belief from works, the school of *irja’* (the Murji‘ites) came close to arguing that one can be saved by belief alone. This doctrine has experienced a resurgent popularity in recent decades in response to the practice of anathematizing (*takfir*) and calling for the death of Muslims on grounds of sinful acts or speech in some Muslim societies. (See “The Amman Message” for a recent statement emphasizing belief as grounds for Muslim unity: <http://www.ammannmessage.com/>.)

<sup>28</sup> Sunni orthodoxy settled on the doctrine of *qadar wa-qada’*, which held that a person’s belief or unbelief is pre-determined by God. The doctrine was derived from the premises of divine omnipotence and omniscience. Sunni theologians struggled within this doctrine to conceptualize a form of human agency whereby humans “acquire” (*kasb*) authorship of their acts at the time of performance.

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<sup>29</sup> “We do not charge any believer with unbelief for any sin he commits as long as he does not believe it to be lawful.” (Abdur-Rahman Ibn Yusuf, trans. and ed., *Imam Abu Hanifa’s al-Fiqh al-Akbar Explained*, by Abu’l-Muntaha al-Maghnisawi (Santa Barbara: White Thread Press, 2007.))

<sup>30</sup> “It is important to understand Salafis as constituting a group that defines its reformist project first and foremost through creedal tenets. Also important, although secondary, for their self-definition are certain legal teachings as well as forms of sociability and politics.” (Bernard Haykel, “On the Nature of Salafi Thought and Action,” in Roel Meijer, ed., *Global Salafism: Islam’s New Religious Movement* (New York: Columbia University Press, 2009), pp. 33-57, at p. 35.)

<sup>31</sup> Mahmood, “Reply to Butler,” in Asad, Brown, Butler, Mahmood, *Is Critique Secular?*, p. 147.

<sup>32</sup> In English, see Mohammad Hashim Kamali, *Freedom of Expression in Islam* (Cambridge, UK: Islamic Texts Society, 1997), Ch. 9, “Blasphemy,” pp. 212-250. A concise contemporary treatment of the problem in Arabic is Abu Bakr ‘Ali al-Siddiq, *Zahirat sabb al-din wa akhtaruha ‘ala’l-Muslimin [The Phenomenon of Defaming Religion and its Dangers for Muslims]* (Beirut: Dar al-basha’ir al-Islamiyya, 2000).

<sup>33</sup> Ibn Taymiyya (d.1328), *Al-Sarim al-maslul ‘ala shatim al-rasul [The Unsheathed Sword against the Defamer of the Prophet]*, eds., Muhammad ‘Abd Allah ibn ‘Umar al-Halawani and Muhammad Kabir Ahmad Shawdari (Dammam, Saudi Arabia: Ramadi l’il-nashr, 1997), 3 vols., at v. 2, pp. 531-3.

<sup>34</sup> See Todd Jones, *What People Believe When They Say That People Believe: Folk Sociology and the Nature of Group Intentions* (Lanham, MD: Lexington Books, 2010).

<sup>35</sup> Consider for example the Muslim woman who applauded Yale University Press’s decision not to reprint the cartoons precisely in terms of blasphemy, propositional untruth and the transgression of a moral law: “The cartoons portray outright lies and distortions ... When it comes to God and his divine wisdom in appointing prophets there are boundaries that cannot be crossed. ... For Muslims, Muhammad was a mercy sent by God to the entire world. To portray him as less than that is blasphemy and it is incumbent upon those who have intelligence to direct the majority away from such contemptuous acts.” (Jamilah Rasheed, “Excluding cartoons a step toward justice,” *New Haven Register*, September 18, 2009, p. A4.)

<sup>36</sup> See, most notably, M.M. Ahsan and A.R. Kidwai, eds., *Sacrilege versus Civility: Muslim Perspectives on The Satanic Verses Affair* (Leicester, UK: The Islamic Foundation, 1993); Shabbir Akhtar, *Be Careful with Muhammad!* (London: Bellew Publishing, 1989) and the various statements collected in Lisa Appignanesi and Sara Maitland, eds., *The Rushdie File* (Syracuse, NY: Syracuse University Press, 1990).

<sup>37</sup> Asad, “Free Speech, Blasphemy, and Secular Criticism,” p. 42.

<sup>38</sup> Muhammad Salim al-‘Awwa, *al-Haqq fi’l-Ta’bir [The Right to Expression]* (Cairo: Dar al-Shuruq, 1998) p. 24. (Author translation from Arabic.) The word that I am translating as “false doctrines” (*shubuhāt*) can also refer to “doubts” but is very commonly used as a technical term for “specious arguments” that are to be refuted in jurisprudential debate. As we are dealing here with questions of creed, I prefer “false doctrines,” noting that the word is used later in the same sentence synonymously with “doctrines” (*‘aqa’id*) that can be said to compete with the Islamic creed.

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<sup>39</sup> Mahmood, “Reply to Butler,” p. 148.

<sup>40</sup> Kent Greenawalt, *Religion and the Constitution, Volume 1: Fairness and Free Exercise* (Princeton: Princeton University Press, 2006), p. 23.

<sup>41</sup> *Ibid.*, p. 27

<sup>42</sup> Most notably in *Reynolds v. United States* (1878), which upheld a territorial ban on polygamy, and in *Employment Division v. Smith* (1990), which upheld a state ban on the use of peyote. The ruling in *Employment Division v. Smith* precipitated both a federal and many individual state Religious Freedom Restoration Acts (RFRAs), which seek to make religious practice an object of special legal protection. It is this aspiration to protect “religious freedom” through such statutes that Winnifred Sullivan criticizes in *The Impossibility of Religious Freedom*.

<sup>43</sup> Ronald Dworkin, “The Right to Ridicule,” *The New York Review of Books*, March 23, 2006.

<sup>44</sup> Peter Jones, “Blasphemy, Offensiveness and Law,” *British Journal of Political Science*, Vol. 10, No. 2. (Apr., 1980), pp. 129-148, at p. 133.

<sup>45</sup> Joel Feinberg, *The Moral Limits of the Criminal Law, Vol. 2: Offense to Others* (Oxford: Oxford University Press, 1985), p. 197.

<sup>46</sup> Leonard W. Levy, *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie* (New York: Alfred A. Knopf, 1993).

<sup>47</sup> Jones, “Blasphemy, Offensiveness and Law,” p. 134.

<sup>48</sup> Jeremy Bentham, “Letters to Toreno,” quoted in Jones, “Blasphemy, Offensiveness and Law,” p. 134.

<sup>49</sup> I discuss a recent case in Britain in which two Muslim activists were found guilty under the UK Public Order Act and in which the judge uses the precise language of moral injury and constitutive attachment that Mahmood claims is unintelligible in liberal secular discourse in Andrew F. March, “Poppies and Prophets,” *The Immanent Frame*, “Is Critique Secular?” March 17, 2011, <http://blogs.ssrc.org/tif/2011/03/17/poppies-and-prophets/>.

<sup>50</sup> See the statements in Jytte Klausen, *The Cartoons that Shook the World* (New Haven, CT: Yale University Press, 2009), pp. 17, 19, 31, 41, 49, 55, 145, 160, and 189.

<sup>51</sup> See Lisanne Groen and Martijn Stronks, *Entangled Rights of Freedom: Freedom of Speech, Freedom of Religion and the Non-Discrimination Principle in the Wilders Case* (The Hague: Eleven International Publishing, 2011).

<sup>52</sup> Quoted in Peter Jones, “Respecting Beliefs and Rebuking Rushdie,” *British Journal of Political Science*, Vol. 20, No. 4. (1990), pp. 415-437, at p. 430.

<sup>53</sup> See Alan Patten, “Political Theory and Language Policy,” *Political Theory*, Vol. 29, No. 5 (Oct., 2001), pp. 691-715).

<sup>54</sup> It is worth remembering that in the realm of speech injurious to affect, religion is privileged more than it is disadvantaged. Religious motive provides a defense against charges of incitement to hatred against homosexuals, for example, in European countries with hate speech laws. As with my argument in this paper, the European jurisprudence does not hold that homophobic speech issued from a religious perspective does not injure homosexuals, but rather that the religious motive outweighs the injury or offense. (See Groen and Stronks, *Entangled Rights of Freedom*, pp. 43-53.)

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<sup>55</sup> Intriguingly, none other than Ibn Taymiyya, whom I quoted above as giving the most elaborate statement of why blasphemy warrants the death penalty in Islamic law, counseled a different ethics, an ethics of patient forbearance, when Muslims are minorities. See Ibn Taymiyya, *al-Sarim al-Maslul*, v. 1, pp. 224-227.

<sup>56</sup> See, for example, Stephen Macedo, “Transformative Constitutionalism and the Case of Religion: Defending the Moderate Hegemony of Liberalism,” *Political Theory*, Vol. 26, No. 1 (Feb., 1998), pp. 56-80.

<sup>57</sup> A cartoon mocking the Pope or Catholic bishops was a much worse act in 1920s America than it would be today. Thus, a cartoon dancing around the issue of Islam and violence is a much worse act in 2005 than I hope it would be in 2035. If this is true, then it seems that the purely religious dimension of the speech act is only a small part of our judgment about its overall morality.

<sup>58</sup> Here I join Lars Tønder in calling for a “pluralization of the ways in which citizens see themselves as citizens” and for “open[ing] our conception of autonomy to the sensorial forces that both trouble and enable free speech.” (Lars Tønder, “Humility, Arrogance and the Limitations of Kantian Autonomy,” *Political Theory*, Vol. 39, No. 3 (2001), pp. 378-385, at p. 379.) This essay is in response to Christian F. Rostbøll, “Autonomy, Respect, and Arrogance in the Danish Cartoon Controversy,” *Political Theory*, Vol. 37, No. 5 (October 2009), pp. 623-648.