I.B.TAURIS

FREEDOM OF EXPRESSION IN ISLAM

CHALLENGING APOSTASY AND BLASPHEMY LAWS

EDITED BY
MUHAMMAD KHALID MASUD, KARI VOGT,
LENA LARSEN & CHRISTIAN MOE

7

Plurality, Dissent and Hegemony: The Story Behind Pakistan's Blasphemy Law

Arafat Mazhar and Syed Zainuddin Moulvi

Introduction

This study is a critique of the narrative surrounding Section 295-C of the Pakistan Penal Code[1] (hereinafter referred to as '295-C' or 'the blasphemy law'), which deals with the offence of 'blasphemy' against the Prophet Muhammad. The law prescribes a fixed and unpardonable death penalty for the crime without distinction between Muslims and non-Muslims. Its status as 'God's law' makes the blasphemy law a highly potent weapon for pursuing enmities and persecuting minorities[2] and an effective tool of domination, threat and retaliation. Moreover, given the particular nature of Pakistan's criminal legal system, where lower courts tend to convict under 295-C, but every sentence of death imposed by a lower court has to be confirmed by the High Court, imprisonment for an inordinate length of time is all but guaranteed even in the case of innocence and eventual acquittal. The unpardonable capital punishment also breeds an ethos of vigilantism, since the dominant Islamic narrative renders an offender subject to certain execution and therefore deprived of the state's protection.[3]

The genesis of 295-C has received little in-depth scholarly attention for such a divisive piece of legislation. There has been no serious attempt to interrogate the law and the narrative justifying it with a historical-legal approach or from the perspective of Islamic jurisprudence, within the local context. The role of various Islamic legal narratives in the trajectory and contemporary development of 295-C has been largely ignored by the secular academia. This neglect is baffling given that local, public and legal discourse is dominated by references to the religious tradition. The evidence also suggests that a reliance on 'secular' critiques of the law has only served to deepen the 'secular'/'religious' divides in Pakistani society, rather than pave the way for any meaningful reform. In this context, an examination of the claims of the dominant legal narrative from the perspective of traditional *fiqh* (Islamic jurisprudence) is urgently needed. Equally necessary is a historical and sociological account of how competing Islamic narratives came to influence the law and its current judicial interpretation.

This chapter is the first formal attempt at undertaking this task. It examines the role of certain Islamic legal narratives in the historical trajectory and contemporary development of the blasphemy law.

A primary focus of this research is on testing the most significant claims of the prevailing narrative around 295-C. These claims are:

(a) that the crime of blasphemy is a *ḥadd* offence, punishable by death, with no possibility of pardon or mitigation of the sentence, to be applied indiscriminately to both Muslims and non-Muslims; and (b) that this ruling enjoys the absolute *ijmāʿ* (consensus) of all four schools in the Islamic legal tradition, and specifically that the law as currently interpreted is an accurate representation of the traditional Hanafi position on the issue of blasphemy.

Jointly, these claims have greatly influenced the judicial and legal discourse on blasphemy, playing a decisive role in the making of the law. The claim of a complete scholarly consensus, for instance, was vociferously espoused by parliamentarians who pushed to amend the law[4] in 1986, in order to include the death penalty as a punishment for insulting the Prophet Muhammad. In fact, the parliamentarian concerned invoked the authority of *ijmāʿ* more than thirty times during the proceedings.[5] Similarly, both Ismail Qureshi in his 1987 petition calling for blasphemy to be made a *ḥadd* offence and the Federal Shariat Court (FSC) in its subsequent 1991 judgment declaring the alternate penalty of life imprisonment null and void, also employed the twin tropes of *ḥadd* and *ijmāʿ*. In the social sphere, popular religious scholars have also made similar proclamations in order to garner the support of the masses against any endeavour to reform the law. Prior to the assassination of Salman Taseer, for instance, Mufti Haneef Qureshi and Mufti Ashraf-ul-Qadri issued fatwas declaring that the only punishment for insulting the Prophet Muhammad was death. Mufti Ashraf-ul-Qadri supported this claim by arguing that not a single jurist in the entire history of the Islamic legal tradition, including Abu Hanifa, dissented on the issue. It was on the authority of this assertion that he called – successfully – for the killing of Salman Taseer.

These claims powerfully influence public discourse in two important ways.

First, the claim of *ḥadd* carries immense weight because it signifies a divinely decreed fixed punishment for a particular crime and therefore places any such law in an unassailable position. Further, by claiming an *ijmāʿ* across all four schools of thought that blasphemy is a *ḥadd*, it essentially becomes an iron-clad law, leaving no space for debate or alternative positions.

Second, the claim that the law in its present form represents the authentic Hanafi position also contributes to the untouchable status it currently enjoys. The Hanafi school of law, which was the official school of the Ottoman and Mughal empires, predominates in the Indian subcontinent.[6] An overwhelming majority of the Pakistani population are Hanafis (Deobandis and Barelvis), and the Hanafi position on any legal matter carries an almost irrefutable authority. The claim that the current judicial interpretation is an accurate representation of the Hanafi position, lends it credibility in the courts, in parliament and among the public.

This study contends that these claims are wholly untenable, given the overwhelming historical evidence for a differing authentic Hanafi stance and for its subsequent misrepresentation and marginalization in the local context. We investigate the genesis

of this misrepresented position and study the reasons for its transmission through a series of texts and its dominance in the contemporary local narrative around 295-C. Furthermore, we present recommendations for framing the discourse in a manner that allows for the identification of progressive solutions through the rich resources present within the religious tradition, rather than relying on secular frameworks. In effect, this means practising a form of immanent critique, i.e. critique from within, rather than positing an inevitable conflict between the demands of modern society and religious tradition. In fact, we contend that such an engagement might be the most effective means to create room for much-needed dialogue and debate, a fact borne out by the final aspect of our research, which addresses the 'us versus them' ideology that results in an impasse between socio-religious and secular actors' discussions of the law.

Background and overview of the crisis

Pakistan's blasphemy law has suffered a perpetual crisis of legitimacy since its earliest days. Its alarming record of abuse, injustice and violence has attracted extensive coverage in the global media and academia over the years. The damning evidence of its costs, both human and social, is now well documented in several academic studies[7] and numerous reports.[8] Quite apart from the international outrage at what many deem state-sanctioned persecution of citizens in general, and minorities in particular, the 'draconian' law has also mobilized minority communities and the more progressive sections of Pakistan's civil society into pushing for legal reforms.[9] These calls for reform have generally sought a repeal of the law inter alia on the grounds that it is discriminatory legislation,[10] riddled with design flaws,[11] has a legal form uniquely prone to abuse, and substantive content that blatantly contravenes settled principles of natural justice. In addition, it is severely criticized for being unrepresentative legislation imposed by praetorian diktat.[12] Others deplore what they consider its barbaric death penalty, which is deemed woefully inconsistent with international humanitarian standards.[13] Local resistance has also voiced the concern that Islamic discourse needs to evolve beyond the confines of archaic medieval tradition and has called for abandoning classical 'Shariʿa laws' in favour of a fresh *ijtihād*. Elsewhere vague references are made to the blasphemy law being 'man-made' and having 'no basis in Qurʾan and Sunna'.[14] The most consistent critiques of the law either rest on the theoretical foundations of human rights law,[15] democratic theory and international law, or at the very least employ them as analytic frameworks for assessing its validity and legitimacy.[16]

On the other hand, the law enjoys the passionate support of the vast majority of the populace.[17] The religious right vehemently asserts that Section 295-C is in fact very much derived from the Qurʾan and Sunna and that the law in its current form has enjoyed absolute consensus throughout the history of the Islamic legal tradition.[18] The crisis reached its climax in 2010 when Punjab governor Salman Taseer filed a mercy petition requesting executive pardon for Asia Bibi, who had been sentenced to death by a session court under 295-C.[19] His criticism of the law was met with outrage, public demands for his assassination and fatwas declaring it mandatory for him to be killed. In December 2010, he was assassinated by his own bodyguard, Malik Mumtaz Hussain

Qadri,[20] who was hailed as a hero by many religio-political parties and received a passionate welcome on his arrival in court.[21]

The most contentious and sensitive issue with the blasphemy law, however, has always been the question of its application to non-Muslims. As stated, the law as it currently stands applies indiscriminately to both Muslims and non-Muslims. Pakistan, however, has faced the greatest international and domestic criticism for its atrocious record of legally sanctioned persecution of minorities – especially its religious minorities. Not only do the law and its current judicial interpretation subject all non-Muslims to the *ḥadd* penalty, they also provide no guidelines whatsoever on the question of what constitutes blasphemy for those non-Muslims[22] whose religious doctrines necessitate a belief that may amount to blasphemy. In the long run, there is a danger that the blasphemy law may become a state-sanctioned tool for a slow-drip Holocaust one reported offence at a time.[23]

The religious right contends that any attempt at revising its form or content is tantamount to altering sacred law, which is fixed and immutable by divine commandment. The fact that a majority of the law's critics draw on 'western'/'secular' philosophies for evaluating the law only heightens the suspicion towards them. As a result, most attempts at reform through legislative amendments have met with abject failure.

We will now delve into the development of the dominant narrative surrounding 295-C in Pakistan.

Development of 295-C and the surrounding narrative in Pakistan

Section 295-C of Pakistan's Penal Code[24] reads as follows:

> Use of derogatory remarks, etc., in respect of the Holy Prophet.
> Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.

In order to gain an appreciation of the current status of the law, it is necessary to review the major players involved in its development. The key state and non-state actors examined in this section include the legislature (Parliament), the judiciary (Federal Shariat Court, FSC), Hanafi institutions (Deobandi and Barelvi scholars/groups) and modern Islamist groups (Ahl-e-Hadith, Jamaat-e-Islami, etc.).

A bare reading of the law suggests that any person convicted under the section could receive either the penalty of death or life imprisonment, with the decision being a matter of judicial discretion. In 1991, however, the FSC declared the alternate penalty of life imprisonment 'repugnant to the injunctions of Islam' and consequently a nullity in law.[25] The FSC judgment is both the controlling legal precedent as well as the state's foremost authority on Islamic interpretations of the blasphemy law.[26] It thus serves as the 'official' state narrative on 295-C. A detailed analysis of the FSC ruling as a legal

narrative merits a separate study in its own right. Here we will only summarize the relevant findings, discuss those features of the judgment that pertain to the penalty for blasphemy, and consider the *fiqh* position at play.

Legislative: Parliament

When the bill was put up for debate in the National Assembly in 1986, repeated calls were made for its amendment so that the death penalty could be made mandatory.[27] The Assembly was near unanimous in its support for a fixed death penalty for blasphemy, which was presented as the single agreed-upon position across the Islamic legal tradition. Indeed, countless references were made to portray an absolute agreement and consensus (*ijmāʿ*) within the *umma* (entire Muslim community)[28] regarding the issue. The six main parliamentarians involved in the debate cited numerous authoritative texts including *al-Ṣārim al-Maslūl* by Ibn Taymiyya (d. 1328), *al-Sayf al-Maslūl* by Taqi al-Din Subki (d. 1355), *Fatāwā Shāmī* by Ibn ʿAbidin (d. 1842) and the *Fatāwā ʿālamgīriyya* or *Fatawa-e-Alamgiri* (seventeenth century) to support their position. A close reading of these primary texts, however, reveals that most texts cited by the parliamentarians regarding a consensus on fixed capital punishment for blasphemy included the caveat that non-Muslims would not be killed for insulting the Prophet. However, none of the parliamentarians, barring one dissenting voice, raised any concerns during the parliamentary proceeding, or called for a consultation with religious experts. Apart from relying on spurious claims, the parliamentarians also used emotional appeals in order to speed up the process. Parliamentarian Turab-ul-Haq Qadri, for instance, argued that 'if we reject this bill, let's keep in mind that 250,000 people can surround the parliament'.[29] Similarly, Nisar Fatima also claimed that 'if this bill is not passed, the government will need to provide us with sanctuary, though there is no sanctuary from God'.[30] Consequently, in a country where it takes months and years to pass the most mundane of laws, it took only a few hours to include the death penalty as a punishment for insulting the Prophet.

Judiciary: the Federal Shariat Court judgment

In 1991, the FSC was presented with the question of whether 'any disrespect or use of derogatory remarks etc. in respect of the Holy Prophet comes within the purview of Hadd and [whether] the punishment of death provided in the Holy Qurʾan and Sunna could be altered'.[31] The FSC was essentially called upon to decide whether the crime of blasphemy was a *ḥadd* offence. In the *fiqh* literature, the technical term *ḥadd* refers to a particular class of offences for which fixed penalties are provided in the Qurʾan and Sunna. As such, these offences carry unchangeable punishments sanctioned by divine commandment. The Muslim community cannot make any alterations or amendments to these offences by legislative, judicial, or any other means.[32] There are certain evidentiary standards for proving a *ḥadd* offence occurred, and its derivation from the scripture (Qurʾan and Sunna) is also subject to stringent conditions of certainty in the textual warrant(s).[33] In this case, the FSC ruled that the crime of blasphemy does

indeed fall into the category of *ḥadd* crimes and therefore carries a fixed penalty of death. Although the judgment generally lacks precision and clarity, this particular finding is clearly articulated.[34] In addition to ruling that blasphemy constitutes a *ḥadd* offence, the FSC also holds that there is no possibility of reprieve, pardon or mitigation of the sentence.[35] Indeed, the Court expressly rules out any allowance for repentance, apology, or renewal of faith. Its verdict rests on the premise that only the Prophet possessed the right to pardon those who insulted him.[36] Presumably this right lapsed with his passing, and the *umma* cannot claim any authority or right to waive the *ḥadd* sentence. Despite a few jurisconsults stating that the sentence could be waived in case of repentance,[37] this position does not receive the attention of the Bench beyond a perfunctory listing in the summary of the various opinions of the scholars invited to assist the Court. As it stands, the legal interpretation of the blasphemy law is very clear on this matter and the ruling purports that the *ḥadd* punishment for blasphemy can neither be waived nor can the sentence be mitigated in any way. This position has also (arguably) been implicitly confirmed by the Supreme Court.[38]

In establishing this interpretation of the law, the Court repeatedly cites various noted authorities of the Islamic legal tradition to prove that there is a consensus on the matter. Qadi ʿIyad (d. 1149)[39] and Ibn Taymiyya are quoted as having endorsed the view that this position enjoys an absolute consensus (the word *ijmāʿ* is used) without a single known difference of opinion. The Court then proceeds to conclude that the tradition is unanimous on the question of the fixed penalty of death with no possibility of pardon or waiving/lowering of the sentence. It is important to note that in reaching this conclusion, the Court makes absolutely no distinction between Muslims and non-Muslims, men and women, or any other categories of legally distinct persons. Neither is there any attempt to discuss the context of the various discussions in the *fiqh* literature used, or the legal reasoning of the authorities cited. Similarly, no attempt is made to inquire into the nuances and differences of the various *fiqh* traditions that appear to have been subsumed under one blanket consensus. From the judgment it appears as if all schools of the Islamic legal tradition are identical in their legal ruling, reasoning and position on the crime of blasphemy, its penalty and the jurisprudential operations involved in the narrative.

Hanafi institutions and scholars (Deobandi and Barelvi)

Alongside these legal and political developments, Pakistani Hanafi scholars from both Deobandi and Barelvi circles were also responding to this issue as a reaction to the publication of Salman Rushdie's book *Satanic Verses* in the late 1980s, which was widely regarded by the Muslim public as highly offensive and blasphemous. The primary mode of these engagements was books clarifying the religious positions on the question of blasphemy. These texts also claimed an *ijmāʿ* on blasphemy being a *ḥadd* offence with no provision for *tawba* (repentance).[40] Despite being advocated by Hanafi *muqallid*s (jurists following the teachings of earlier authorities), most of these texts relied primarily on the work of the non-Hanafi scholars Ibn Taymiyya and Qadi ʿIyad as well as individual direct reasoning through Qurʾan and Hadith, both of which methods fall outside of the purview of acceptable Hanafi scholarship.

The second wave of religious discourse on this issue in recent times came as a response to Salman Taseer's mercy petition for Asia Bibi in 2010. This engagement took place in books, television appearances, sermons and speeches.[41] There is a marked continuity in the narrative about blasphemy between this discourse and the earlier wave. As stated earlier, it included a public declaration by mufti Ashraf-ul-Qadri that it was mandatory to kill Salman Taseer unless he apologized to the general public, the Prophet and God.[42] Following the assassination of Taseer, representatives of the Hanafi legal tradition fiercely defended the law, claiming a complete consensus on its validity in the tradition and declaring that there could be no amendment to the law.[43]

Modern Islamist groups: unusual alliances

A greater convergence of religio-political leaders, Ahl-e-Hadith scholarship and traditional Hanafi legal scholarship on the issue can be noted around the time of Salman Taseer's assassination. This alliance was unusual since parties that had been ideologically opposite joined hands with a united position. This is especially strange for the Hanafi representatives from the Deobandi and Barelvi schools, since they are sceptical towards and vocal critics of modernist parties/ideologies such as the Ahl-e-Hadith, Jamaat-e-Islami and Tanzeem-e-Islami etc., and usually distance themselves from their positions. This alliance, which included parties such as Ahl-e-Sunnat wa Jamaat, Sunni Ittehad Council, Sunni Tehreek, Jamaat-e-Islami and JUI, culminated in the movement *Tehreek e Tahaffuz Namoos e Risalat* (Movement for Protection of the Prophet's Honour). The movement vowed to defend the law against any amendment and led numerous rallies across various cities.[44] Regarding blasphemy rulings, they claimed that it was God's law and a *ḥadd* offence; that no pardon was acceptable for any perpetrator whether Muslim or non-Muslim; and that there was an *ijmāʿ* on the matter.

Investigating the authentic Hanafi position

Most of the arguments used to validate the dominant legal interpretation rest on the claim that there is complete consensus in the tradition regarding the issue, and more significantly, on the claim that current law represents the authentic position of Hanafi *fiqh* throughout history. By presenting itself as the authoritative ruling of Hanafi *fiqh*, the dominant narrative garners much legitimacy and widespread acceptance amongst the masses and the clerical class.[45] However, careful sifting of the historical record reveals that this is not the case, and that in reality the traditional authoritative Hanafi position has taken a far more nuanced view of the matter and maintained a radically different position. This section summarizes the traditional Hanafi position on both Muslim and non-Muslim blasphemers. It further brings to light certain definitive moments of misrepresentation of the Hanafi position on blasphemy and traces the subsequent proliferation of the erroneous view into the dominant discourse on the blasphemy law as the authentic Hanafi position. Specifically, it will highlight how this error features in the case for the applicability of the death penalty, the status of blasphemy as a *ḥadd* offence and the question of pardon.

The traditional Hanafi position on Muslim and non-Muslim blasphemers

One of the major sources that challenges the basis for the current blasphemy law is the work of Muhammad Amin Ibn ʿAbidin (d. 1842). His status as the foremost *muḥaqqiq* (investigator) is significant; some have even called him the last important traditional Hanafi author.[46] He investigated the issue of blasphemy in his treatise *Kitāb Tanbīh al-Wulāt wa al-Ḥukkām ʿalā Aḥkām Shātim Khayr al-Anām aw Aḥad Aṣḥābihi al-Kirām* and also in *al-Radd al-Muḥtār ʿalā Durr al-Mukhtār*, which is widely considered an authoritative tome for deriving Hanafi rulings on a variety of issues, especially in South Asia.[47]

Ibn ʿAbidin traces the original Hanafi position on blasphemy all the way back to the founder of the school, Abu Hanifa (d. 767). Briefly, this position holds that blasphemy is to be considered as a form of apostasy for which a Muslim blasphemer is to receive the death penalty, but there exists a provision for pardoning the blasphemer and waiving the death penalty (whether the state offers pardon or the offender seeks it, and subject to his repentance).[48] If the perpetrator is a *dhimmī*/non-Muslim, he will not be sentenced to death, as this crime does not void his covenant of protection with the State.[49] The act of blasphemy is merely a continuation (and increase) of the disbelief of a non-Muslim. Since his life/wealth is protected by the State while he maintains his (dis)belief, it will stay protected in the case of an increase in his (dis)belief.[50] Tahawi (d. 933) in his elaboration suggests a verbal warning for a first-time offender and any punishment other than death for repeated offence.[51] However, if the perpetrator makes a habit of the offence, he may receive the death penalty at the exclusive discretion (*taʿzīr*) of the head of state, if it is deemed necessary for preserving peace and order in the society (*siyāsa*).[52]

Is this the authentic Hanafi position?

This study relies on the Hanafi position as presented by Ibn ʿAbidin. While Ibn ʿAbidin has been widely documented as the foremost authority on identifying authentic Hanafi positions, we find that two factors in particular make a compelling argument for the reliability of his claims in this case.

First, Ibn ʿAbidin relies on earlier texts such as Abu Yusuf's *Kitāb al-Kharāj*, Tahawi's *Mukhtaṣar al-Ṭaḥawī* and works such as Abu Bakr ʿAlaʾ al-Din al-Kasani's (d. 1191) *Badāʾiʿ al-Ṣanāʾiʿ*, which is based on *ẓāhir al-riwāya* (the most authentic records of the Hanafi position).[53] Ibn ʿAbidin therefore avoids pitfalls associated with research based on secondary or indirect resources.

Second, and most significantly, his stance finds confirmation in the highest possible Hanafi authorities. To verify the authenticity of a purported Hanafi stance it is sufficient to corroborate it in the rulings of the three highest ranks of jurists. A position may be deemed authentic if it is confirmed in the rulings of the *mujtahid fī al-sharʿ* (the founder of the school, Abu Hanifa); if not, then if it is corroborated by rulings found in the second rank of jurists, the *mujtahidīn fī al-madhhab* (his students who use his principles to derive rulings); and failing that, by consulting the works of the *mujtahidīn fī al-masāʾil* (jurists of the third rank, who determine answers to cases not settled by

jurists of the first two ranks).[54] The legitimacy of Ibn ʿAbidin's report of the authentic Hanafi position, then, can be gauged by the fact that it is not only confirmed by Abu Hanifa himself, but also reiterated by jurists of the second and third ranks, respectively, Abu Yusuf (d. 798) (*mujtahid fī al-madhhab*) and Imam Tahawi (*mujtahidin fī al-masāʾil*).[55] In fact, as per Hanafi *uṣūl*, since there is a consensus of the jurists of these three ranks, it is not *permissible* for a jurist to diverge from it.[56]

Understanding how far the representation of Hanafi rulings today deviates from the authentic Hanafi stance allows us to examine this disparity and dissect its origin in detail.

Dissecting the divergent position on Muslim blasphemers

How Pakistan's legal interpretation of blasphemy law came to rest on a position so grossly divergent from the established Hanafi *madhhab* makes for a compelling research question. The possible genesis of this divergence can be traced through Ibn ʿAbidin's research. He claims that the jurist Muhammad bin Shahab al-Bazzazi al-Kardari (d. 1414) was the first person to expound these views in *al-Fatāwā al-Bazzāziyya*.[57] Al-Bazzazi claims that as per Hanafi consensus, blasphemy is punishable by death as a *ḥadd* offense for both Muslims and non-Muslims with no possibility of pardon. This, he incorrectly states, is the position of Abu Hanifa, Sufyan al-Thawri and the people of Kufa. He cites Qadi ʿIyad and Ibn Taymiyya as his sources. Ibn ʿAbidin theorizes that al-Bazzazi's position is a misreading of these sources.

Ibn ʿAbidin highlights al-Bazzazi's misreading of one of his primary sources, *al-Ṣārim al-Maslūl* by Ibn Taymiyya. In this book Ibn Taymiyya states:

> According to Abu Hanifa, if the blasphemer is a believing Muslim, he will be asked to repent. If he does repent, he will be spared. If he refuses to repent, then he will be killed like an apostate. If, however, the blasphemer is a dhimmi (non-Muslim), then the view of Abu Hanifa is that the dhimmi will not be killed, because the blasphemer does not legally break the covenant [under which he enjoys protection] by committing blasphemy.

In spite of Ibn Taymiyya's scholarly accuracy in presenting the Hanafi position in the book, al-Bazzazi in his reading of Ibn Taymiyya maintains that blasphemy under the Hanafi ruling is a *ḥadd* offense for Muslims, with no possibility of avoiding the death penalty. He further claims that this is the only established position on the matter.

While further investigating the roots of al-Bazzazi's claims, Ibn ʿAbidin reproduces two extracts from Qadi ʿIyad's *al-Shifāʾ* which were misunderstood by al-Bazzazi. The first extract in question indicates consensus amongst the majority of scholars, including Abu Hanifa, on the capital punishment of Muslim blasphemers. However, al-Bazzazi erroneously extends the consensus to intricacies regarding issues such as the status and acceptance of pleas for clemency and discerning punishments for Muslims and non-Muslims. For example, Qadi ʿIyad states that Abu Hanifa and his students, as well as the founders of two other schools, Malik (d.795) and Shafiʿi (d. 820), agree that a believing blasphemer should be given the death penalty. However, he distinguishes the Hanafi

understanding of the crime as apostasy, in which case the death penalty may be avoided if the blasphemer repents and reverts. Ibn ʿAbidin claims that al-Bazzazi misses this distinction and consequently grossly misinterprets the nuanced position on the acceptability of repentance for Muslim blasphemers.

The second misreading of *al-Shifāʾ* by al-Bazzazi concerns the statement: 'one cannot imagine a difference of opinion in this matter'.[58] Al-Bazzazi interprets this statement as a claim that there exists, in reality, no difference of opinion in this matter. Ibn ʿAbidin however points out that Qadi ʿIyad, later in the same book, explicitly states the acceptability of repentance in the Hanafi *madhhab*. It is therefore safe to conclude that al-Bazzazi made serious mistakes in his reading and interpretation of the book.

Lastly, Ibn ʿAbidin addresses another problematic statement by al-Bazzazi: that if anyone doubts the mandatory death punishment for one who commits blasphemy, he/she also becomes an apostate. This doctrine is mirrored in the fatwas against Salman Taseer. Ibn ʿAbidin however expresses his frustration at this extremely flawed position, asking whether Abu Hanifa himself, who allowed for the waiver of the death penalty, should have also been killed.[59]

It is important to reiterate, however, that unlike Section 295-C which imposes a fixed capital punishment on both Muslims and non-Muslims, al-Bazzazi's incorrect reading of Abu Hanifa was still only limited to a discussion of the death penalty with respect to Muslim blasphemers. Therefore, even if al-Bazzazi's position was mistakenly employed to support the bill, it still could not justify capital punishment for non-Muslim blasphemers. Section 295-C cannot be viewed as a mere consequence and perpetuation of al-Bazzazi's initial misrepresentation.

Whilst analysing Ismail Qureshi's book *Namoos-e-Rasool Aur Qanoon Tauheen-e-Risalat*, however, we chanced upon a misquotation that does in fact point towards a likely explanation for the current framing of the law with respect to non-Muslims. Qureshi was not only the author and petitioner for the law, but it was in fact due to his relentless efforts in the courts that the law was passed in the first place. Later on, the declaration of the law as *ḥadd* and the elimination of any other punishment for blasphemy was also a direct result of his efforts/petition. In his book, Qureshi quoted Ibn ʿAbidin to support his view on blasphemy. He cited Ibn ʿAbidin as saying: 'A *kāfir* blasphemer of the Prophet (p.b.u.h.) will be killed under *ḥadd* and his pardon won't be acceptable.'[60] This statement was shocking since Ibn ʿAbidin had posited the completely opposite position. A reference to the original text however revealed that Qureshi had quoted that part of the text in which Ibn ʿAbidin actually quoted al-Bazzazi in order to refute the latter's position at length over the following pages, labelling al-Bazzazi's error a matter of extreme negligence and warning against the consequences of this mistake. Qureshi therefore misquoted Ibn ʿAbidin completely.

However, what was even more striking in Qureshi's citation was the substitution of the term *kāfir* (unbeliever) for 'Muslim'. The original quote of al-Bazzazi, as cited by Ibn ʿAbidin, referred to a *Muslim* blasphemer.[61]

Qureshi had therefore not only not relied upon al-Bazzazi's flawed reading, but had further, by replacing the word 'Muslim' with 'Kafir', extended the punishment to non-Muslims. In this way, Qureshi committed a double error in his reading of the primary sources. He not only misattributed al-Bazzazi's statement to Ibn ʿAbidin, but even

whilst quoting al-Bazzazi, he made a further error by applying the death penalty to non-Muslims. It was on the basis of this layered misrepresentation that he framed Pakistan's blasphemy laws – applying the punishment without discrimination to both Muslims and non-Muslims.

Even a cursory analysis of the classical literature clearly reveals the flaws in Qureshi's claims. As stated, Abu Hanifa himself holds that if a dhimmi (non-Muslim) insults the Prophet, he will not be killed as punishment because this merely implies an increase in his disbelief, and does not break his covenant with the state. This position is corroborated by Abu Yusuf and Al-Tahawi in *Ikhtilāf al-fuqahā* and *Mukhtaṣar al-Ṭaḥāwī* respectively. These two jurists fall into the second and third highest ranks, with Tahawi noting that a 'non-Muslim blasphemer [. . .] will be asked to not do it again.' This position is also maintained by the last major jurist of the era, Abu Bakr al-Jassas al-Razi (d. 1191), in *Sharḥ Mukhtaṣar al-Ṭaḥāwī*.[62]

It is also important to note that the context in which blasphemy is treated reflects the jurist's conception of the relationship between the state and its non-Muslim inhabitants and how blasphemy affects that relationship. This relationship (known as *dhimma*) is a covenant of protection for non-Muslims' life and property afforded by the state upon certain terms. The offence of blasphemy does not violate these terms according to these authoritative Hanafi rulings.

In fact, capital punishment is conceivable only as a *siyāsa* (political) punishment, as opposed to a Shariʿa (religious) one,[63] in the case of a habitual offence that amounts to the spread of *fasād* (mischief) intended to undermine the authority of the State in what might be said to approximate treason. This means that for non-habitual offenders, the matter of blasphemy may be resolved with a simple verbal warning.

Even though a consensus among the early scholars would have been sufficient to establish that a death penalty is not prescribed for non-Muslims, we find further proof that this is the definitive Hanafi ruling on the subject through its transmission and endorsement by influential scholars from later periods as well. The highly influential and respected jurist Abu Bakr ibn Masʿud al-Kasani (d. 1191) from the classical era endorses the position recorded by Tahawi and Abu Hanifa in his work *Badāʾiʿ al-Ṣanāʾiʿ*,[64] an authoritative tome hailed by Meron as 'the flowering of legal thought in [the Hanafi *madhhab* at its] pinnacle'.[65] Another scholarly giant, Ahmad ibn Muhammad al-Quduri (d. 1037), writes in *al-Tajrīd*:

> Non-Muslims blaspheme against Allah saying He has a son, and the Zoroastrians by saying He has an 'opposite'. These are realities of their beliefs which do not break their contract [of security]. Similarly, the insult of the Prophet does not break their contract of security because it is just another representation of their disbelief.[66]

Furthermore, from the classical and post-classical period (1200 onwards) four critical Hanafi texts – *Mukhtaṣar al-Qudūrī*, *al-Hidāyā*, *Kanz al-Daqāʾiq* and *Multaqā al-Abḥur,* written by al-Quduri (d. 1037), al-Marghinani (d. 1197), al-Nasafi (d. 1310) and al-Halabi (d. 1517)[67] – share a consensus that the contract of protection for the life and property of non-Muslims is not invalidated in the event that a non-Muslim insults the Prophet. This cements what may be called the predominant authoritative

Hanafi position on the treatment of non-Muslim blasphemers because of the stature and influence of these particular texts. Collectively they have been the subject of over 170 different commentaries, whose influence transcended geographical boundaries: from Anatolia, Iraq and Egypt to Greater Syria, Central Asia, Yemen, modern Saudi Arabia, Macedonia and South Asia. For centuries these texts have also served as a reliable source for deriving fatwas, and they are educational staples for training Hanafi jurists today, from Al-Azhar University in Egypt to the Dar-ul-Uloom in Pakistan.[68] Thus these texts as well as the established rulings of the earlier Hanafi scholars present a concrete perspective on non-Muslim blasphemy that rules out capital punishment, and even allows for verbal warnings, which is in sharp contrast to the current conceptualization and treatment of non-Muslim offenders in countries like Pakistan.

In short, the authentic Hanafi position as identified in the previous sections is drastically different from its current representation in the narrative surrounding 295-C. In the current representation, blasphemy is a *ḥadd* offense on its own and applies to both Muslims and non-Muslims, and there is no provision for pardon. In the authentic position, blasphemy is an offence of *ridda* (apostasy) amongst Muslims, whereas Abu Hanifa classifies the capital punishment of a habitual non-Muslim offender as *siyāsa*; there is a provision for pardon both for Muslim and non-Muslim blasphemers. In the current representation, a single instance of blasphemy is enough to apply capital punishment to non-Muslims. The authentic position, to the contrary, is that in the case of non-Muslims, capital punishment will not be imposed. Imam Tahawi states that only a verbal warning suffices. In exceptional cases, capital punishment can be imposed on a habitual offender at the discretion of the head of state.

Misrepresentation of the authentic Islamic legal rulings on blasphemy

In his book, Ibn ʿAbidin writes: 'It so happens that sometimes one claims a position in a *madhhab* that is not true and it gets transmitted by others (who trust it) and hence creates an alternative, inauthentic position.'[69] In fact, this is precisely what happened as a result of al-Bazzazi's misrepresentation of the Hanafi position. According to Ibn ʿAbidin, Bazzazi's skewed position was copied by jurists such as Ibn al-Kamal al-Humam (d. 1457) in *Fatḥ al-Qadīr*. It was cited by Zayn al-Din Ibrahim Ibn Nujaym (d. 1563) in *al-Ashbāh wa al-Naẓā'ir*. His student Abd Allah al-Khatib al-Tumartashi (d. 1596) further transmitted the same position in his books. It was further echoed by later jurists such as Shaykh Muhammad bin Abdullah Alghazi, Allama Khayruddin Ramali, Sahib al-Nahr and Shurunbalali,[70] and of course in the discourse surrounding 295-C.[71] Ibn ʿAbidin holds al-Bazzazi responsible for the chain of scholars over time who have adhered to his ill-founded claims. He says: 'Al-Bazzazi's negligence has put the later scholars in error for they relied on his report and blindly followed him. None of them reported the issue from any of the books of the Hanafis.'[72] Ibn ʿAbidin is not a lone critic of al-Bazzazi's claims. Several other notable scholars in their investigations have concluded that this line of discourse is directly attributable to al-Bazzazi's erroneous foundations.[73] One such scholar, Allama Al Asr Sheikh Mustafa Al Reemati Ayyubi, warns future scholars that they must show wisdom in this issue and not believe in every statement brought to them lest they are fooled by it and stray from the right path.[74]

Further, Ibn ʿAbidin contends that even if al-Bazzazi's work did not suffer from methodological flaws, his stance could not have merited a footing against those of *mujtahidīn*, let alone take precedence over historically established Hanafi tradition, according to Hanafi *uṣūl*, since he is one of the *mutaʾakhkhirīn* (from later generations who relied on earlier *mujtahidīn*) and *muḥaqqiqīn* (investigators).[75] It is not permissible to follow the position of the *mutaʾakhkhirīn* over the *mujtahidīn* since they do not have authority to legislate. For Ibn ʿAbidin, this is not merely a matter of preferring a strong opinion over a weaker one: Abu Hanifa's position on *tawba* (repentance) and dhimmis (non-Muslims) is the only position. The opinion of al-Bazzazi and those who followed him should be treated as abrogated and non-existent.[76] It is interesting to note that Ammar Nasir, a Deobandi scholar, holds that there is a trend in Hanafi scholars in Pakistan who try to 'hide the authentic Hanafi position of *mujtahidīn* behind those of *mutaʾakhkhirīn*'.[77]

In the nineteenth century, the Hanafi scholars of the subcontinent faced criticism from the Ahl-e-Hadith movement over their various legal positions and *uṣūl*.[78] Particularly under fire was the Hanafi position prescribing the death penalty for a non-Muslim only if he/she was a habitual offender. Maulana Mansoor Ali wrote a series of legal opinions clarifying the Hanafi positions, using hadiths for support. These opinions were validated by 450 Hanafi scholars. Specifically, he writes in his book *Fath al-Mubin* that the use of the past continuous tense for the acts of offenders who were punished in hadiths, is proof that only habitual non-Muslim offenders may be killed at the discretion of the head of state. There isn't a single case in the hadiths where a one-time offence resulted in a punishment. Even though the alternative line of skewed Hanafi positions had already begun, the dominating narrative of the Hanafis in nineteenth-century South Asia regarding blasphemy was thus in line with the authentic position. We can make two observations from the above: first, that al-Bazzazi's misrepresentation became the dominant narrative on blasphemy law between the nineteenth century and the 1980s and, second, that Ahl-e-Hadith and reformist groups made attempts to influence the Hanafi position on blasphemy.

Transmission of false positions – three causes

Al-Bazzazi is criticized for presenting a Hanafi position by relying mainly on texts outside of the Hanafi tradition. Ibn ʿAbidin also warns that some jurists depend on books of later jurists that are not trustworthy. He contends that books such as al-Haskafi's *al-Durr al-Mukhtār* (which includes al-Bazzazi's position) have included rejected opinions or opinions that belong to other schools. Ibn ʿAbidin states: 'The transmission of an opinion may occur in about 20 books of the later jurists, and still the opinion may be incorrect, as the first jurist has erred and those coming after him have transmitted the opinion from him.' Ibn ʿAbidin is pointing towards the pressing need for a *faqīh* to trace a position to the earliest books rather than later ones. This, he believes is the essence of the methodology of *takhrīj*, which is the function of a *faqīh*.[79] As a principle, Ibn ʿAbidin also argues that in order to read and understand books of *fiqh*, the reader must be well trained in all categories of *uṣūl* and read it under guidance, otherwise grave mistakes are likely. Ibn ʿAbidin points towards three reasons why such

a disparity may exist and sometimes even takes the apparent form of a dominant narrative. These three causes are relevant to the current representation of Hanafi *fiqh*.

1. When a jurist consults texts outside of his own *madhhab*. This is exemplified by al-Bazzazi's consultation of Ibn Taymiyya and Qadi ʿIyad (both non-Hanafis) to understand the Hanafi position. As pointed out above, the majority of the Hanafi texts on the subject of blasphemy in Pakistan today rely on the same two sources to represent their position.[80]
2. When a jurist does not trace a position that he comes across to the earlier books, hence not doing justice to the process of *takhrīj*. Opinions on blasphemy illustrate how the *faqīh* is relying on later books (such as *Fatāwā al-Bazzāziyya* and Ibn al-Kamal al-Humam's *Fatḥ al-Qadīr*) rather than the original texts (such as *Kitāb al-Kharāj*, *Mukhtaṣar al-Ṭaḥāwī*, etc.) to understand the original position. In Pakistan the mistake was echoed in the legislative process and in the FSC, e.g. in the representation of the Hanafi *madhhab* by Ismail Qureshi (who was not a *faqīh*, but was functioning as one).
3. When those transmitting these positions are not trained jurists. Without naming anyone, Ibn ʿAbidin pointed out that the erroneous transmission points to a lack of comprehensive training in *fiqh*. This has proved to be a prophetic warning. Today, religio-political figures such as Jamaat-e-Islami's Fareed Paracha position themselves as authorities on traditional schools and promote an oppressive narrative based on dubious methods and training. This is further discussed below.

The influence of non-Hanafis on the Hanafi narrative can be seen in all three mistakes in both time periods, whether it is in the form of relying on non-Hanafi texts or allowing modernist religious figures to represent the traditional *madhhab*.

Institutionalized misrepresentation of Islamic legal rulings

Apart from the causes highlighted by Ibn ʿAbidin, a close examination of the institutionalized and deliberate representation of the Islamic legal tradition in the social, judicial, legal and political spheres in Pakistan reveals another set of common mistakes and practices that allow the perpetuation of faulty legal assertions, often in complete opposition to the actual position espoused within the tradition. The four most common causes for the distortion of Islamic legal rulings regarding blasphemy are misapplication of apostasy rulings to non-Muslims, misquotation, strategic omission of counter-claims, and cherry-picking of hadiths and rulings.

First, apostasy rulings (which are only applicable to Muslims) are misapplied to non-Muslim blasphemers. Indeed, this is precisely what happened in the 1991 Federal Shariat Court judgment, when scholars quoted a number of verses that, either directly or indirectly, related to the punishment for apostasy (*ridda*). These scholars illustrated how, in each case, the mandatory punishment for leaving the religion is death. However, in the final judgment they failed to make any distinction between Muslims and non-Muslims with regard to the applicability of such rulings. In consequence, they implicitly

justified a mandatory death penalty for non-Muslim blasphemers, at least in part, on the basis of apostasy rulings not applicable to them in the first place.

Second, authoritative legal rulings are repeatedly misquoted so as to apply a mandatory death penalty to non-Muslim blasphemers. This deeply troubling inclination is found at all levels, e.g. in Ismael Qureshi's double error when quoting Ibn ʿAbidin's position on blasphemy and in the 1986 parliamentary proceedings on the inclusion of the death penalty as a punishment for insulting the Prophet Muhammad. For instance, parliamentarian Turab-ul-Haq also completely misquoted Ibn ʿAbidin during the proceedings. As was mentioned previously, Ibn ʿAbidin had explicitly argued that non-Muslims would not be killed for insulting the Prophet Muhammad. Turab-ul-Haq however attributed the opposite position to Ibn ʿAbidin, in an effort to perpetuate the claim that there was a complete scholarly agreement on the mandatory death penalty for committing blasphemy.[81] His claim was uncritically accepted, without any fact check, by the parliamentarians who were already in a rush to pass the bill.

Third, there is deliberate omission of rulings in canonical legal texts that are contrary to Section 295-C. The strategic omission of counter-claims occurs not only in fiery speeches by popular religious scholars but also in fatwas by respected religious institutions. For instance, in a fatwa on the treatment of blasphemers (both Muslims and non-Muslims) published by Jamia Uloom-e-Islamia, Binori Town (one of the largest Hanafi seminaries in Pakistan), the scholars claimed a consensus regarding the mandatory death penalty for anyone who insults the Prophet. In support of this claim, the Binori Town scholars quoted Ibn Taymiyya's reference to Ibn Hazm, who had cited the opinions of all four schools of thought on the matter. Whilst quoting Ibn Taymiyya, however, the Binori Town scholars strategically employed ellipses to omit a reference made to Abu Hanifa's differing stance.

It is interesting to note that that the very same quote by Ibn Taymiyya was also distorted by Ashraf-ul-Qadri, in one of his speeches. Since Ashraf-ul-Qadri was making a speech, he couldn't employ ellipses to outright omit Abu Hanifa's position. In an ingenious move, Qadri instead literally concocted Arabic verses, and stated that Abu Hanifa had a similar opinion. In this way, he was able to effectively dodge questions relating to Abu Hanifa's position on the matter.[82] In short, unlike the Binori Town scholars who completely concealed Imam Abu Hanifa's position to make the claim of a universal *ijmāʿ*, Ashraf-ul-Qadri literally changed Imam Abu Hanifa's position on the matter by including the above statement in his speech, and consequently fulfilled the same objective. In a country where the majority of Muslims do not understand the Arabic language, it is no surprise that such play of language remains unnoticed.

Last but not least, scholars and legislators alike also cherry-pick hadith reports and legal positions that support their own position on blasphemy whilst negating various other differing, yet equally valid, legal positions. Furthermore, they also tend to quote unrelated Qurʾanic verses to justify their position. In the FSC judgment, for instance, scholars made reference to Qurʾanic verses dealing with divorce, fasting, morality, war in sacred months, distortion of the Old Testament, and similar topics. These verses were indirectly connected to the issue of blasphemy and were used as evidence for the justification of the law. The arbitrary and careless reference to such verses has become

a commonplace occurrence, and completely ignores the complexity of Islamic legal reasoning.

Primary research: open-ended interviews

A thorough discussion of the socio-economic, political and religious factors that ultimately led to al-Bazzazi's erroneous views eclipsing and replacing the authentic Hanafi position, is beyond the scope of this chapter. However, we carried out informal interviews to understand why this position continues to be dominant today. If the traditional authoritative position differs so radically from what is claimed today, how is it that the local traditional Hanafis have joined hands with modern religious figures to declare the current law divine with no room for debate? Are they deliberately allowing al-Bazzazi's erroneous view to eclipse and replace the authentic Hanafi position? How do religious actors (modern and traditional) respond when presented with the factual inaccuracies of their position? In order to address these questions, we took all of our findings to the author/petitioner of 295-C, modern religious groups and local Hanafi scholarship and confronted them with the disparity we had found.

Ismail Qureshi (the author/petitioner of the blasphemy law)

The most significant of these interviews is that with Ismail Qureshi[83] who, as mentioned earlier, was the author of and petitioner for the law. The law was passed in the first place due to his relentless efforts in the courts. Later on, the declaration of the law as *ḥadd* and the elimination of any other punishment for blasphemy was also a direct result of his efforts/petition. When presented with the original source, Qureshi acknowledged that he had used a secondary source and cited the primary one in his book without actually referring to it. He said that there might be some problems with the law, but held to the opinion that with regards to *maṣlaḥa* (public good), bringing these issues to light would only serve to destroy the movement to protect the honour of the Prophet of Islam.

Modern religious groups

Fareed Paracha, the deputy general secretary of Jamaat-e-Islami,[84] was a regular fixture on TV and in public gatherings, and was vociferous in his support for 295-C. As such, he is an example of modern religio-political leaders. Fareed Paracha has consistently claimed a consensus on the death penalty for both Muslims and non-Muslims without provision of pardon. His feedback on our findings seemed to be grounded on the loosely interpreted principle of *maṣlaḥa*, a term he used to signify the greater wisdom in withholding certain information for the time being, as it might otherwise help the secular voices advance their own agenda.[85]

We also presented our findings to the leader of Tanzeem-e-Islami, Hafiz Akif Saeed.[86] Akif Saeed professed ignorance on the specifics, but like Ismail Qureshi and Fareed Paracha, he advocated the current position as a necessary *maṣlaḥa*.

Hanafi scholarship

We carried out interviews during visits to two Deobandi madrasas, Jamia Ashrifa[87] and Jamia Madnia.[88] In the departments for legal rulings (Dar-ul-Ifta), some muftis were surprised to see the criticisms that Ibn ʿAbidin had made against the position which does not provide for repentance of the offender and waiving of sentence. The Head Mufti in one of them was already aware of this contradiction, but deemed it unwise to make such a disturbance in the narrative right now.

We were able to download a fatwa from Jamia Binoria on 23 November 2010. This fatwa, using Ibn ʿAbidin's *Radd al-Muḥtār* as its source, stated that rulers could punish an alleged perpetrator of blasphemy in any way they liked at their discretion, irrespective of gender and religion. However, after Salmaan Taseer's murder the head of Binoria, mufti Naeem, appeared on television endorsing the dominant narrative of 295-C, hence contradicting the fatwa of his own Dar-ul-Ifta.[89] After a few weeks, the fatwa was removed from the website and replaced with a different fatwa which was stricter and closer to 295-C.

Maṣlaḥa – a license to hide the truth?

The findings of our interviews point towards a problematic misappropriation of the concept of *maṣlaḥa*, whether or not that term is explicitly used. This seems indicative of a deep-seated sense of insecurity and a need for preservation of identity. Due, perhaps, to socio-political factors that are too extensive to summarize here, adopting a hard-line approach to the blasphemy issue seems to be an effective rallying point for many parallel religious ideologies against a perceived global threat to Islam. There is, at the very least, a palpable fear that a more tolerant narrative can be hijacked by a secular agenda, even if it is true to tradition. The fact that such fears are entertained and acted upon, even at the cost of intellectual integrity, points to a widening chasm between the religious and secular sections of society, an 'us vs. them' guardedness that effectively places a bar on dialogue.

This lends support to our original assertion that the best and perhaps the only way to engage with the dominant narrative is to speak from within the tradition rather than criticizing the law from a secular framework. We now look at implications of this research and recommendations that can go a long way in resolving this crisis.

Corrective reform: implications of this research

The traditional Hanafi position on blasphemy has potentially far-reaching consequences for Pakistan's current crisis over its blasphemy law, both at the level of underlying legal theory and in terms of practical impact.

The contentious features of the blasphemy law

While the current design issues, procedural concerns and everyday operation of the blasphemy law involve a complex combination of several legal and cultural factors that

cut across various academic disciplines and require separate study, there are certain contentious features of the law that emerge directly out of the *fiqh* narrative that informs its interpretation and sets the terms of legal discourse. Here we have focused on those features of the law that regularly invite, encourage and/or cause miscarriages of justice, but are subject to dissent and alternative approaches in the Islamic tradition: (1) the fixed and unpardonable punishment of death and (2) the lack of distinction between Muslim and non-Muslim offenders as separate legal categories.

The most daunting challenge facing the policy makers and the legal and academic community is developing a solution to curb the disastrous effects of the blasphemy law while retaining its identity as a religiously inspired law rooted in the Islamic legal tradition. Attempts at legislative reform have always lacked legitimacy in the eyes of the public for whom the law occupies the status of a divinely ordained commandment.

Recommendations for corrective reform

The practical effect of the difference between the Hanafi position and the dominant ruling is that under the Hanafi interpretation of the crime of blasphemy, if the accused is a Muslim, a conviction will not result in an immediate death sentence, but an invitation to repent and revert. Even in the absence of such invitation, the accused repenting on his/her own initiative and of free volition would be sufficient to prevent the sentence of death from being applied. In addition, the result is a complete waiver of penalty and immediate release of the accused. In this sense, some of the most serious miscarriages of justice, i.e. the death sentence and continued imprisonment, may be circumvented on a very practical level. Additionally, a swift confession and immediate repentance may even lead to trial being avoided altogether. These effects may significantly reduce the potential for abuse and injustice in the legal system. Naturally these measures are not sufficient for preventing the menace of vigilantism, but there is nonetheless some potential for reform, at least at the level of legal procedure.

If the accused is a non-Muslim, it is entirely conceivable under this framework that no charge be made out at all. An adoption of the Hanafi position may make it harder to abuse the legal system to persecute non-Muslim minorities. In addition, since under the Hanafi position their covenant with the state remains intact, under the legal framework there is no justification for considering them *mubāḥ al-damm* (unprotected by the state and thus liable to be killed). Their status as protected citizens, in spite of their guilt, may prove empowering. It may significantly blunt what the HRCP referred to as the 'killing edge to Muslim fanaticism'.[90] The punishment can be drastically reduced from a death penalty to a mere verbal warning. That this is an established position in *fiqh* literature allows for framing the discourse without compromising rootedness in tradition and religious legitimacy in the quest for a progressive solution to the crisis of the blasphemy law. An adoption of the Hanafi ruling may not even require a legislative amendment. A judicial recognition of this position at the apex court or in a review judgment at the FSC would be sufficient. Therefore, the radical changes mentioned above can be achieved without even changing the letter of section 295-C.

Even an apparently minor step can have significant consequences. Moreover, proving the fallibility of what was presented as a divine decree opens up possibilities

for further reform and even contemporary re-interpretations. There is hope for drastically reducing the human-rights costs of the law one pragmatic step at a time.

Implications in the bigger picture – refuting 'God's law'

In few matters has consensus been as repeatedly declared by socio-religious and political actors as in the case of blasphemy. The term 'God's law' is constantly employed. We have witnessed the far-reaching social impacts on tolerance, free speech and human rights when such terms are loosely used. It is necessary to refute these claims in legal, social and political forums. If this refutation is successfully propagated, people might view the use of the term 'God's law' and *ijmāʿ* as a device more sceptically, finally ushering in the possibility of dissent and debate. This can lead to the creation of a space for alternative opinions and positions, which at present appears impossible. When 'God's law' is stripped of its irresponsibly attributed divine status, becoming merely a fallible opinion, true dialogue can take place between reformists, modern religious scholars and the rich religious tradition. Most importantly, the exploitation of religion as a tool for violence by religio-political actors can be discouraged.

Areas of further research

Many compelling research questions emerge from this chapter. Firstly, the concept of *maṣlaḥa* emerged to be of particular interest. Our interviewees consistently cite concern for the 'good of the public (the Muslim *umma*)' as the driving force behind their advocacy of an admittedly flawed system. An exploration of why such motives are becoming particularly relevant to these institutions right now could elucidate key crises in Pakistani religious scholarship. In addition, ulterior motives masquerading as *maṣlaḥa* are equally important to uncover. Further, there is a need for comparative analysis of how the term *maṣlaḥa* is employed by the traditional scholars as contrasted with its use by modern Islamist groups such as Ahl-e-Hadith. As is evident from the study, local traditional scholars may instrumentalize the concept of *maṣlaḥa* under influence from these modern religious actors in a quest for a united front. It follows that the influence of Ahl-e-Hadith and Ibn Taymiyya on the Hanafis of the sub-continent in general and on the issue of blasphemy in particular needs to be studied in depth. This includes an investigation of the unusual alliances of religio-political parties, Deobandis and Barelvis after Salman Taseer's assassination.

Our research also reveals that *qiyās*, or analogical reasoning, a legal tool from within the Islamic tradition, can be employed to address problems pertaining to the applicability of blasphemy rulings to non-Muslims in Pakistan. The concept of *qiyās*, and its constituent, the *ratio legis* (*ʿilla*), are especially relevant with respect to the applicability of blasphemy rulings to non-Muslims in Pakistan because religious scholars, parliamentarians and the judiciary alike have made an implicit analogy between dhimmis and Pakistani non-Muslims without ever explicitly articulating this interpretive move. As a result, they applied legal rulings that dealt with dhimmis without explicitly delving into whether such rulings actually applied to citizens in the modern state. However, unlike the prototypical analogy of the date-wine and

grape-wine, dhimmis and Pakistani non-Muslims are in fact separate categories, and the unqualified transposition of rulings from the former to the latter category is not justified.

The relationship known as *dhimma* was a covenant of protection afforded by the state to non-Muslims' life and property contingent upon certain terms. This covenant of protection assumed the Muslim invasion of non-Muslim territories, which relegated non-Muslims in the occupied region to a subordinated position. In short, it indicated a paternalistic relationship between the conqueror and the conquered, in which the latter was subject to certain restrictions in return for sanctuary. In the Pact of ʿUmar, for instance, these restrictions included, but were not limited to, building of churches, beating of Muslims, resembling Muslims in dress and appearance, displaying idolatry or inviting towards it, etc.[91] As A.S. Tritton highlights, these restrictions represented the price that the subjugated dhimmis paid for living under a Muslim government.[92]

Moreover, Tritton highlights that, although theoretically speaking the dhimmi had to satisfy all of the conditions underlined in the peace agreement, the ground reality was quite different. Indeed, according to him, 'in practice a few actions only put him [the dhimmi] outside the protection of Muslim law [and] lawyers did not entirely agree what these actions were'.[93] This ambiguity is precisely the reason behind the diversity in Islamic legal rulings regarding the punishment for non-Muslim blasphemers – whereas some scholars held that blasphemy nullified the covenant between the non-Muslim and the Muslim State, others, such as Abu Hanifa, adopted the opposite position.

In any case, unlike the *dhimma* relationship, citizenship implies a social contract between the state and individual. In this case, the authority of the state does not stem from conquest; rather, it is based on a give-and-take relationship in which the state is responsible for protecting the inviolable rights of the citizen, and the citizen in turn must refrain from activities that undermine the sovereignty and integrity of the State. Moreover, the social contract doesn't merely outline a relationship between the state and the individual citizen; it also establishes equality between all citizens. In other words, non-Muslims in the modern state are equal citizens; like dhimmis, they are protected by the State, but that protection is not accompanied by a subjugated subject position.

It is also worth highlighting that contrary to the status of the dhimmi, non-Muslim minorities have actually played a pivotal role in the very creation of Pakistan. Moreover, many non-Muslim Pakistanis have joined the Pakistani army, the police and various other governmental departments, in order to serve the country. These non-Muslims, by actively participating in the running of the state, afford protection to Muslims, rather than the other way around. This reversal again underscores the radically different status of the dhimmi and the non-Muslim citizen in Pakistan. In short, non-Muslim citizens in Pakistan cannot be treated as the conquered 'other' permitted to live in Pakistani territory, and therefore scholars cannot apply rulings on the latter to the former without clearly and explicitly justifying this analogical leap.

The *ʿilla* or the *ratio legis* behind the prohibition of blasphemy was that it broke the covenant between the non-Muslim subject and the Muslim State. Those scholars who believed that blasphemy made the *dhimma* relationship null and void, consequently ruled that non-Muslims would be killed for blasphemy. However, since such a covenant

no longer even exists in the first place, blasphemy rulings cannot be directly applied to non-Muslims in the modern state.

This does not, however, mean that these rulings serve no purpose in the modern world, and are not relevant to issues pertaining to the treatment of non-Muslims in the Islamic Republic of Pakistan. Rather, these rulings perhaps require a more nuanced and cautious approach, cognizant of the contextual changes. For instance, as was mentioned earlier, dhimmis and non-Muslim citizens are similar in that they are afforded protection by the State. In this case, since the quality of protection is found in both categories, rulings stemming from this first condition are equally applicable to non-Muslims in the present State. However, since subordination no longer exists, rulings embedded in the latter prerequisite are no longer applicable to non-Muslims in the modern State.

Conclusion

To conclude, Pakistan's blasphemy law and its social imagination outside of the Penal Code rests its authority on being connected to, and being an extension of, the Islamic legal tradition. Examining its historical trajectory however unveils a series of distorting discontinuities, both in premodern and modern times, which have created narrative disrupters regarding authentic rulings of blasphemy. Indeed, by the time we reach Pakistan's blasphemy law, the tradition has been completely transformed through misrepresentations and misquotations giving it a meaning completely contrary to the original intent.

Notes

1 The Pakistan Penal Code, usually called PPC, is a penal code for all offences in Pakistan.
2 David F. Forte, 'Apostasy and blasphemy in Pakistan', *Connecticut Journal of International Law* 10 (1994–5), pp. 27–68; Osama Siddique and Zahra Hayat, 'Unholy speech and holy laws: blasphemy laws in Pakistan – controversial origins, design defects, and free speech implications', *Minnesota Journal of International Law* 17/2 (2008), pp. 303–85.
3 Forte, 'Apostasy and blasphemy in Pakistan'.
4 Prior to 1986, the punishment for insulting the Prophet Muhammad was only payment of a fine or life imprisonment.
5 See the complete proceeding in National Assembly of Pakistan, *Debates: Official Report*, 9 July 1986, pp. 3209–38, photocopy of the record, available at http://www.na.gov.pk/uploads/documents/1455604277_115.pdf.
6 John L. Esposito, 'Perspectives in Islamic law reform: the case of Pakistan', *NYU Journal of International Law and Politics* 13/2 (1980), pp. 217–45.
7 See for instance Forte, 'Apostasy and blasphemy in Pakistan'; Siddique and Hayat, 'Unholy speech and holy laws'.
8 See for instance the Asian Human Rights Commission (AHRC) report available at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-090-2013.

9 Most notable was the then Punjab Governor Salman Taseer's call for amendments. Former Information Minister Sherry Rehman, former Member of the National Assembly Jamila Gilani, and Supreme Court Bar Association President Asma Jahangir have repeatedly pushed for repeal or at the very least procedural reform.
10 This argument is consistently made by most human rights organizations. See for instance an interview with Ali Dayan Hasan of Human Rights Watch, 'Minorities are collateral damage in battle for Pakistan's soul', 25 April 2011, http://www.hrw.org/news/2011/04/25/minorities-are-collateral-damage-battle-pakistan-s-soul. Some of the demands actually ask for a complete disbanding of the state 'Islamic' institutes such as the Federal Shariat Court and Council of Islamic Ideology. See for instance Marvi Sirmed, 'Release Aasiya Bibi, repeal blasphemy laws, abolish Shariat Court', 30 December 2010, http://marvisirmed.com/2010/12/30/release-aasiya-bibi-repeal-blasphemy-laws-abolish-shariat-court/.
11 Siddique and Hayat, 'Unholy speech and holy laws'.
12 Ibid.
13 Ibid.
14 See for instance Asma Jahangir, 'The animal within', *Express Tribune*, 24 August 2012, http://tribune.com.pk/story/425700/the-animal-within/; Javed Ahmed Ghamidi, 'Punishment for blasphemy against the Prophet (sws)', n.d., https://javedahmedghamidi.org/#!/renaissance/5adb7248b7dd1138372d99aa. Salman Taseer famously used the words 'man-made' for the law just before he was killed.
15 Human Rights Watch, 'Minorities are collateral damage'.
16 Siddique and Hayat, 'Unholy speech and holy laws'.
17 E.g. AFP, 'Protestors warn of anarchy if blasphemy law is changed', *Express Tribune*, 24 December 2010,http://tribune.com.pk/story/94256/protestors-warn-of-anarchy-if-blasphemy-law-changed/. The results of one poll conducted on this can be found here: http://www.pewresearch.org/fact-tank/2013/09/10/in-pakistan-most-say-ahmadis-are-not-muslim/.
18 Muhammad Ismail Qureshi, *Law of Blasphemy in Islam and West* (Lahore: Nuqoosh, 2008). Qureshi was the petitioner in getting the law approved in the first place and then eliminating all other punishment but *ḥadd*. His relentless, decade-spanning efforts in the courts to get this ruling makes the law his brainchild.
19 Ayesha T. Haq, 'Interview: Salmaan Taseer, Governor of Punjab', NewsLine, 2010, http://www.newslinemagazine.com/2010/12/interview-salmaan-taseer-governor-of-punjab/.
20 'Punjab Governor Salman Taseer assassinated in Islamabad', BBC, 2011, http://www.bbc.co.uk/news/world-south-asia-12111831.
21 AP, 'Lawyers shower roses for governor's killer', DAWN, 2011, http://www.dawn.com/news/596300/lawyers-shower-roses-for-governors-killer.
22 Here taken to include Ahmadis for the purpose of drawing out the legal discussion on blasphemy as a result of the doctrinal belief of a religious minority community.
23 The alarming nature of potential abuse of law in this context is most evident in the case of the Ahmadi community. The precedent set by *Zaheeruddin v. State* (SCMR 1993 Supreme Court 1718) effectively reduces the very existence of the Ahmadi faith to one continuing act of blasphemy by an entire community.
24 Section 295-C was inserted into the Pakistan Penal Code through the 'Criminal Law (Amendment) Act', Act No. III of 1986, s. 2.
25 *Muhammad Ismail Qureshi v Pakistan* (PLD 1991 Federal Shariat Court 10).
26 The Federal Shariat Court enjoys a unique status in the structure of Pakistan's judicature. It is constitutionally empowered by Article 203 D of the Constitution of

Pakistan to declare laws – or provisions of laws – 'repugnant to the Injunctions of Islam'. Failure of the legislature to amend a law accordingly renders it inoperant. This peculiar nature of its jurisdiction confers a near-legislative authority on the FSC. In addition, under Article 203 GG of the Constitution of Pakistan, the decisions of the FSC are binding on High Courts and their subordinate courts.

27 National Assembly, *Debates*.

28 Maulana Gohar Rehman for instance uses the words 'This is a matter of consensus of community'. Similarly, Maulana Sayed Shah Turab-ul-Haq Qadri states at one point that 'There is absolutely no two opinions on this!'

29 National Assembly, *Debates*, 9 July 1986.

30 Ibid.

31 *Qureshi v. Pakistan*.

32 Fazlur Rahman, 'The concept of *ḥadd* in Islamic law', *Islamic Studies* 4/3 (September 1965), pp. 237–51.

33 Muhammad A. Nasir, *Baraheen* (Lahore: Dar ul Kitab, 2008). Nasir lays out a set of conditions that need to be met for a penalty to be classified as a *ḥadd* penalty: (a) It is considered as such by the scripture; (b) it is made mandatory; and (c) the language of the scripture used as proof for the ruling is free from any uncertainty or alternative interpretation.

34 For instance, the Court observes in para. 32 of the judgment that: 'The above discussion leaves no manner of doubt that according to Holy Qurʾan as interpreted by the Holy Prophet (p.b.u.h.) and the practice ensuing thereafter in the Ummah, the penalty for the contempt of the Holy Prophet (p.b.u.h.) is death and nothing else.' In para. 49 the Court states: '...the wrongs of the first category [. . .] will attract the penalty of Hadd and it will apply to the contemner of the Holy Prophet (p.b.u.h).'

35 In para. 32 of the judgment the Court states: 'We have also noted that no one after the Holy Prophet (p.b.u.h.) exercized or was authorized the right of reprieve or pardon.'

36 In para. 26 of the judgment, the Court observes: 'Holy Prophet (p.b.u.h.) had pardoned some of his contemners but the Jurists concur that Prophet himself (p.b.u.h.) had the right to pardon his contemners but the Ummah has no right to pardon his contemners.'

37 Namely, Maulana Subhan Mahmood Sahib, Maulana Mufti Ghulam Sarwar Qadri Sahib and Maulana Hafiz Salahuddin Yousaf Sahib. *Qureshi v. Pakistan*.

38 Judgment on Criminal Petition No. 774 of 2002 (Unreported). This petition was filed by one Dr Muhammad Amin through Muhammad Ismail Qureshi. It challenged an earlier Lahore High Court judgment, *Muhammad Mahboob v The State* (PLD 2002 Lahore 587), in which the judge, Ali Nawaz Chohan, held that a person who commits blasphemy and then repents is like an apostate and may be exempted from punishment. The petitioner argued that in holding this, the judge went beyond his jurisdiction, as he was bound by the FSC judgment in the matter, which expressly denies the possibility of pardon or repentance mitigating the sentence. The Supreme Court reiterated that the High Courts were bound by the FSC declarations, but neglected to comment specifically on whether repentance could exempt the accused from the sentence. It is the author's opinion that this judgment remains too vague and evasive to constitute a binding ruling on the issue at the apex court level.

39 *Qureshi v. Pakistan*, para. 28 cites Qadi ʿIyad [as 'Qadi Ayaz']: 'Ummah is unanimous on the point that the punishment of a Muslim who abuses the Holy Prophet (p.b.u.h.) or degrades him is death. . . .' This particular extract is further clarified below.

40 Examples include: Maulana Muhammad Hassan, *Gustakh-e-Rasool ki Saza: Madrasa Tahaffuzul Qauran al Kareem*; Dr Maulana Mohsin Usmani Nadwi, *Ahanat-e-Rasool ki Saza*; Maulana Mufti Mahmood Ashraf Usmani, *Tauheen-e-Risalat aur uski Saza*; Ibn e Umar Farooqi, *Hurmat-e-Rasool*; Mufti Muhammad Taqi Usmani, *Namoos-e-Risalat ki Hifazat kijiye*.

41 Rana Tanveer and Naeem Ullah, 'Blasphemy law protests: Major markets shut but no violence', *The Express Tribune*, 1 January 2011, http://tribune.com.pk/story/97572/blasphemy-law-protests-major-markets-shut-but-no-violence/.

42 Statement given by a Hanafi Mufti in this sermon: http://youtube.com/watch?v=FJD8wVlSdU8.

43 A. Rashid, 'Blasphemy law: long march to counter any change', *The News*, 31 January 2011, http://www.thenews.com.pk/Todays-News-13-3662-Blasphemy-law-long-march-to-counter-any-changes.

44 Ibid.

45 During the course of this study, various ethnographic methods were employed to gather data on the conception of blasphemy amongst inter alia *madrasa* clerics, Islamic activists and civil society in general. A vast majority believe the current legal position on blasphemy to be the authoritative ruling of the Hanafi tradition. This includes muftis working within the Dar-ul-Iftas of notable religious institutes such as Jamia Ashrafia and Jamia Madaniyya Lahore.

46 Frank Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000), p. 63.

47 Muhammad Khalid Masud, 'Apostasy and judicial separation in British India', in M. Khalid Masud, Brinkley Messick and David Powers (eds), *Islamic Legal Interpretation: Muftis and their Fatwas* (Cambridge, MA: Harvard University Press, 1996), pp. 193–203.

48 Ibn ʿAbidin (d. 1863), *Tanbīh al-Wulāt wa al-Ḥukkām ʿalā Aḥkām Shātim Khayr al-Anām aw Aḥad Aṣḥābihi al-Kirām* (Lahore: Suhayl Academy, 1976). According to Ibn ʿAbidin, this position has been corroborated as the *madhhab* of Abu Hanifa by: Abu Yusuf in *Kitāb al-Kharāj*, imam Tahawi in *Mukhtaṣar al-Ṭaḥawī*, imam Sufyan al-Thawri (d. 778), imam Abu Bakr ʿAla al-Din Kasani (d. 768) in *Badāʾiʿ al-Ṣanāʾiʿ* and Taqi al-Din al-Subki (d. 1355) in *al-Sayf al-Maslūl ʿalā man Sabba al-Rasūl*. Outside the works of Hanafi scholars, it has also been reported by Qadi ʿIyad in *al-Shifāʾ* and by Ibn Taymiyya in *al-Ṣārim al-Maslūl*.

49 Al-Tahawi (d. 933), *Mukhtaṣar al-Ṭaḥawī* (Pakistan: M. H. Saeed Publishers, 1990).

50 Abu Bakr ibn Masʿud al-Kasani (d. 1191), *Badāʾiʿ al-Ṣanāʾiʿ* (Beirut: Dar al-Kutub al-Ilmiyya, 1984).

51 Al-Tahawi, *Mukhtaṣar al-Ṭaḥāwī*.

52 Ibn ʿAbidin, *Tanbīh al-Wulāt*. According to Ibn ʿAbidin this position has been reported by Tahawi, Sufyan al-Thawri, Abu Bakr Ala al-Din Kasani in *Badāʾiʿ al-Ṣanāʾiʿ*, Abu Sulayman al-Khattabi (d. 998) in *Maʿālim al-Sunan Sharḥ Sanan Abī Dawud*, al-Qurtubi (d. 1273) in *al-Jāmiʿ li-Aḥkām al-Qurʾān*, Mulla ʿAli Qadri in the eleventh century and Shawkani in the thirteenth century.

53 Imran Ahsan Khan Nyazee, *Islamic Jurisprudence: Uṣūl al-Fiqh* (Islamabad: International Institute of Islamic Thought, 2000).

54 Upon conflicting positions, the higher ranks take precedence over the lower ones. Exception can be made in the case of Abu Yusuf / Muhammad al-Shaybani disagreeing with Abu Hanifa. This is explained in detail by Ibn ʿAbidin in the above treatise.

55 Ibid. and Abu Yusuf in *Kitāb al-Kharāj*, Imam Tahawi in *Mukhtaṣar al-Ṭaḥāwī*, Imam Sufyan al-Thawri, Taqi al-Din al-Subki in *al-Sayf al-Maslūl ʿalā man Sabba al-Rasūl*.
56 Ibid.
57 Ibn ʿAbidin, *Tanbīh al-Wulāt*; Muhammad Bazzazi, *al-Fatāwā al-Bazzāziyya* (Karachi: Qadimi Kutub Khana, 1414 H).
58 Ibn ʿAbidin, *Tanbīh al-Wulāt*.
59 Ibid.
60 Ismail Qureshi, *Namoos-e-Rasool Aur Qanoon Tauheen-e-Risala*t (Lahore: Al-Faisal Nashran-o-Tajran Qutab, 1994), pp. 115–21, citing the section on the apostate (*Kitāb al-Jihād/Bāb al-Murtadd*) in Ibn ʿAbidin, *al-Radd al-Muḥtār ʿalā Durr al-Mukhtār* (no edition given).
61 Ibn ʿAbidin, *al-Radd al-Muḥtār ʿalā Durr al-Mukhtār* (Riyadh: Dar ʿAlam al-Kutub, 2003), p. 373; cf. Ibn ʿAbidin, *Tanbīh al-Wulāt*.
62 Tahawi, *Mukhtaṣar al-Tahāwī* (Pakistan: M.H Saeed Publishers, 1990); Jassas, *Sharḥ Mukhtaṣar al- Tahāwī fī al-Fiqh al-Ḥanafī* (Beirut: Dar al-Kutub al-ʿIlmiyya, 1984).
63 *Siyāsa* and *sharīʿa* are mutually exclusive terms referring to non-religious and religious laws. *Siyāsa* means the ruler's discretion in the application of *fiqh*. Muhammad Khalid Masud, 'The doctrine of siyāsa in Islamic law', *Recht van de Islam* 18 (2001), pp. 1–29. On this point, see also the recent study by Muhammad Mushtaq Ahmad, 'Pakistani blasphemy law between *ḥadd* and *siyāsah*: a plea for reappraisal of the Ismail Qureshi case', *Islamic Studies* 52/1–2 (2018), pp. 9–43.
64 Abu Bakr ibn Masʿud al-Kasani, *Badāʾiʿ al-Ṣanāʾiʿ* (Beirut: Dar al-Kutub al-ʿIlmiyya, 1984).
65 Ya'akov Meron, 'The development of legal thought in Hanafi texts', *Studia Islamica* 30 (1969), pp. 73–118, at p. 82.
66 Ahmad ibn Muhammad al-Quduri, *al-Tajrīd* (Beirut: Dar al-Kutub al-ʿIlmiyya, 1983).
67 Quduri, *Mukhtaṣar al-Qudūrī* (Beirut: Dar al-Kutub al-ʿIlmiyya, 1997); Marghinani, *al-Hidāyā* (Lahore: Maktab al-Bushra, 2008); Nasafi, *Kanz al-Daqāʾiq* (Beirut: Dar al-Kutub al-ʿIlmiyya, 1983); Halabi, *Multaqā al-Abḥur* (Istanbul: al-Matbaʿa al-Uthmaniyya, 1891).
68 Meron, 'The development'; Guy Burak, *The Second Formation of Islamic Law: the Hanafi School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press 2015); Şükrü Selim Has, 'A study of Ibrāhīm al-Ḥalabī with special reference to the *Multaqā*' (PhD thesis, University of Edinburgh, 1981).
69 Ibn ʿAbidin, *Tanbīh al-Wulāt*.
70 Ibid.
71 Nasir claims that even this skewed position was only limited to Muslims. This mistake was not extended to non-Muslims by Bazzazi and his followers. The contemporary Hanafi scholars in Pakistan have, however, extended this error to non-Muslims as well. Nasir, *Baradeen*.
72 Ibid.
73 Ibid.
74 Ibn ʿAbidin, *Tanbīh al-Wulāt*.
75 Ibid.
76 Ibid.
77 Ibid.
78 Ibid.
79 Ibn ʿAbidin, *Hāshiya* (Quetta, 1399 H), vol. 1, p. 57; *Rasāʾil* (Lahore: Suhayl Academy, 1976), p. 49. *Takhrīj* refers to the derivation of legal norms according to the principles

and methodology of the founding jurist; less than *ijtihād*, it is more than *taqlīd*. See Wael B. Hallaq, Authority, *Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), pp. 43–54.

80 One interesting example is a sermon by mufti Ashraf-ul-Qadri, a Hanafi scholar. In this sermon, the Mufti declares that Ibn Taymiyya died as a heretic, yet moves on to using Ibn Taymiyya's book for hours to defend and justify the law. He justifies this by saying that this particular text is very comprehensive and well researched. Part of the sermon can be seen here: http://youtube.com/watch?v=FJD8wVlSdU8.

81 National Assembly of Pakistan, *Debates*, pp. 3214–29.

82 A video clip of the speech is shown in Arafat Mazhar, 'Blasphemy: the untold story of Pakistan's law', YouTube, 21 April 2016, www.youtube.com/watch?v=y1W78EDIgIo, at about 53 minutes.

83 Arafat Mazhar and Zainuddin Moulvi, interview with Ismail Qureshi, August 2011.

84 Jamaat-e-Islami is one of the most influential religio-political parties in Pakistan and is similar to the Muslim Brotherhood in Egypt.

85 Arafat Mazhar, interview with Fareed Paracha, September 2011.

86 Arafat Mazhar and Zainuddin Moulvi, interview with Hafiz Saeed, September 2011.

87 Arafat Mazhar and Zainuddin Moulvi, visit to Jamia Ashrifa, August 2011.

88 Arafat Mazhar and Zainuddin Moulvi, visit to Jamia Madnia, August 2011.

89 Mufti Naeem's support for the law on national television can be seen at http://www.youtube.com/watch?v=XbJ0v5V2vzw and http://www.youtube.com/watch?v=_vpUhCzlpcs. The fatwa contradicting the law was buried in a huge pool of hundreds of fatwas on the website of Mufti Naeem's *madrasa* – www.binoria.org. The fatwa has now been removed. However, a copy is on file with the author.

90 Human Rights Commission of Pakistan, cited in Forte, 'Apostasy and Blasphemy in Pakistan'.

91 A.S. Tritton, *The Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of ʿUmar* (London/Bombay: Oxford University Press, 1930), pp. 5–8.

92 Tritton, *The Caliphs*, p. 5.

93 Tritton, *The Caliphs*, p. 16.

8

Politics of Fatwa, 'Deviant Groups' and *Takfīr* in the Context of Indonesian Pluralism: A Study of the Council of Indonesian Ulama

Syafiq Hasyim

The terms fatwa, deviant sects (Indonesian: *aliran sesat*) and blasphemy (*penodaan agama*) have come to prominence in the public discourse of Indonesian Muslims since the resignation of Suharto's authoritarian regime in Indonesia in 1998. Fatwas published by MUI (*Majelis Ulama Indonesia*, Council of Indonesian Ulama)[1] have declared that the beliefs of some groups of Muslims in Indonesia deviate from Islam, that is, from Sunni mainstream Islam. This chapter seeks to show how the instrument of the fatwa (Islamic legal opinion) is employed to exclude allegedly deviant Muslims from 'true' Islam and declare certain acts, whether committed by Muslims or non-Muslims, as blasphemy. It outlines the criteria, procedures and methods used by MUI to determine religious deviance. Further, it highlights how fatwas on deviant sects not only function as Islamic legal opinions, but also as political tools in what may be called the 'politics of fatwa'.

State, religion and the institutionalisation of fatwa

Policing the beliefs of Indonesians is not easy, since Indonesia is not an Islamic state, but has grappled with relations between the State and the religious communities as well as interreligious relations since its inception. At the same time, however, dominant Muslim groups such as Nahdlatul Ulama, Muhammadiyah, MUI and others have wanted Islam to play an influential role in public and legal discourse. This chapter, accordingly, emphasizes the interplay between fatwa-makers on one hand, and state actors on the other, focusing on the MUI for its particularly active role in responding to 'deviance' over the last decades. It discusses the role of fatwa-makers who seek to implement Islamic normativity, not by changing Indonesia from a '*Pancasila* state' (based on a national ideology of five principles) to an Islamic theocratic state, but by influencing the legal and political discourse in the Indonesian public sphere through the power of fatwas.

One crucial aspect of the sought-after Islamic normativity is the exclusion of 'deviant' streams of Islam from the group of Muslim communities in Indonesia. Borrowing the perspective of 'denomination theory' from the context of Western Christian countries,[2] one may say that the mainstream groups of any religious community, including Sunni Islam in Indonesia, often regard the other, smaller denominations with a different theological stance as a problem. Köstenberger and Kruger state that those who uphold orthodoxy often view deviant groups as parasites on their religion.[3] Talal Asad states that orthodoxy always creates power relations in which Muslims who follow an Islamic orthodoxy will 'condemn, exclude, undermine, and replace' Muslim practices considered heterodox and incorrect.[4]

After the fall of the Suharto regime in 1998, a dynamic has developed between the government's approach to maintaining stability through criminal law, the fatwas on deviancy and blasphemy issued by the MUI and majoritarian public pressure including mob violence. Although those who are defined as *aliran sesat* (deviant sect) are not deprived of their Indonesian citizenship, they face infringements of their political and civil rights and liberties, including difficulties in such matters as getting identity cards and registering marriages. Moreover, persons alleged to lead deviant sects or to have committed blasphemy have faced criminal prosecution, in which fatwas have been used as evidence. These legal, social and cultural consequences of issuing fatwas on deviant sects in Indonesia raise doubts whether the fatwa-making serves the public good, as it is supposed to. The chapter therefore concludes with a reflection about fatwas on deviant sects as a disintegrating factor for a pluralist society like Indonesia's *Pancasila* state.

Although the majority population of Indonesia (86 per cent) are Muslims, Indonesia was not conceived by its founding fathers as an Islamic state, but as a *Pancasila* state. That is, they based Indonesia on the ideological foundation of five principles set out by Sukarno (1901–1970, president 1945–1967): belief in one God, humanity, the unity of Indonesia, social justice and welfare, and democracy. The *Pancasila* state was a middle way or compromise between the states envisioned by the secular nationalists and the Islamist groups.[5] State and religions have thus never been entirely separate in Indonesia; the State is founded on the belief in one God and is involved in religious life through a Ministry of Religious Affairs and religious offices at district level, and religious courts have jurisdiction in family law matters concerning Muslims.[6]

Nevertheless, in this political and legal system, fatwas are like other social and religious discourses in that they are not legally binding on Indonesian citizens. However, this does not mean that the legislative process in Indonesia is free from the influence of fatwa. Like custom (*adat* law), fatwas can be used by Indonesian lawmakers as a source for making State law or any policy. In fact, several Indonesian laws and policies appear to have been influenced by fatwas, such as State Law No. 4/2008 on Pornography, State Law No. 33/2014 on Halal Product Assurance and many others. However, the incorporation of fatwas through State legislation is selective; for example, the government has not banned yoga (as a religious practice) and cigarettes, even though they were declared *ḥarām* by the MUI 2009 Annual Assembly – nor did MUI expect it to; rather, they underlined that their fatwa was legally non-binding.[7]

Besides influencing legislation, fatwas can also have direct effects if the State apparatus disregards the non-binding legal role of fatwa in Indonesia and acts as if a

fatwa has legal force. When the National Police deal with Ahmadi and Shiʿi groups, for instance, as a basis for their decisions and actions they often refer to MUI fatwas that define these groups as deviant sects of Islam. The vehicle for incorporating fatwas in criminal proceedings is the controversial Law no. 01/PNPS/1965, often referred to as the 'blasphemy law'.

Prior to the establishment of MUI in 1975, fatwas were considered an ordinary religious discourse in the public sphere. Fatwas are a kind of knowledge which is freely circulated and chosen by Muslims without enforcement by the State or by the Islamic community in general: Someone raises a question on Islamic issues, and someone else gives an answer; the fatwa-seeker is not obliged to follow the answer of the fatwa-giver (*muftī*). It is true that, from the perspective of Islamic legal theory, the fatwa-seeker (*muṣtaftī*) is inferior to the fatwa-giver in terms of religious knowledge, but both are equal as citizens of Indonesia.

In term of their makers, fatwas in Indonesia can generally be divided into individual and institutional fatwas. The individual fatwa is issued by an individual mufti, and the institutional fatwa is issued by an organization of ulama. During the colonial era of Indonesia, especially under the Dutch, the individual fatwa was more prominent than the institutional one. In the post-colonial era, fatwas issued by institutional fatwa makers are considered more important than those by individual fatwa-makers. Nahdlatul Ulama (NU), the largest Islamic organization in Indonesia, has *Bahsul Masa'il* as their fatwa body, and Muhammadiyah, the second largest, has *Majlis Tarjih*. These two fatwa bodies dominated the issuance of fatwa until the establishment of MUI in 1975.

These Islamic organizations, NU and Muhammadiyah, were outside Suharto's control; they guarded their independence against intervention by the regime. Suharto therefore formed MUI to give the State a visible presence in religious issues that had previously been left to the community. Although its establishment was supported by the regime and it had a quasi-governmental function, MUI was not a state institution, but an organization of ulama from various Muslim organizations including NU and Muhammadiyah. The establishment of MUI was preceded by the establishment of ulama assemblies in all provinces in Indonesia, and the local MUIs are associated with the central MUI.

Since the establishment of MUI, there has been an increasing tendency among some groups in NU, Muhammadiyah and other Islamic organizations to seek to formalize fatwa either as part of State law or as the norm of society. In the Suharto era (1966–98), such demands were not implemented. On the one hand, this was due to the Suharto regime's opposition to including a religious aspect in the State and society. On the other hand, as a quasi-governmental fatwa-maker, MUI lacked the courage to challenge Suharto. MUI did issue fatwas, but the fatwas were not popularly used in the wider Muslim community. The post-Suharto situation is very different. Indonesia has become more open and democratic, and the government needs legitimacy and support from the Muslim majority population. MUI itself sees this circumstance as an opportunity for marketing its ideas to the public. MUI has been quite successful in this endeavour, as is evident in the increasing number of state laws, policies, and societal norms influenced by MUI.[8]

Fatwas on deviant sects and blasphemy in Indonesia

In the legal context of Indonesia, then, it is problematic to include or exclude a group as Islamic based on such fatwas. First, fatwas cannot be used as grounds for judging a person's religious status in a State that does not base its constitution and law on Islam. Second, in the literature of Islamic legal theory, a fatwa is different from a *qaḍāʾ* (judicial decision). A fatwa does not directly have any legally binding status after its issuance by the mufti, whereas the decision of an Islamic court does, because this institution is recognized in the legal system of Indonesia in matters of family law concerning Muslims (and in Aceh province, exceptionally, in certain criminal matters). In a non-theocratic country like Indonesia, a fatwa could be used as an inspiration for legislation, but a fatwa is not directly applicable as law; it can only be transformed into state law through the legislative process.

Note that MUI distinguishes between fatwa and *tawṣiya* (recommendation). In the legal policy of MUI, the former has a higher standing than the latter, though their content is similar; what differentiates them is that a fatwa is part of Islamic legal tradition, and a recommendation is not; a fatwa is issued by MUI in response to a question from a *mustaftī*, while *tawṣiya* is issued in the absence of such a question.

Fatwas on deviant sects: Method and procedure of *takfīr*

As the most authoritative fatwa body, MUI issues fatwas and legal advice on *ʿaqīda* (belief, creed, doctrine), one of the key foundations of Islam (Arabic: *uṣūl al-dīn*, principles of religion). These fatwas are intended by MUI to police the thoughts and beliefs expressed and adhered to by Indonesian Muslim society, that is, to ensure that all Indonesian Muslims adhere to Sunni Islam. The discourse on deviant groups (Indonesian: *kelompok sesat*) indicates that the MUI fatwas on belief (Arabic: *ʿaqīda*) hold a privileged place in the public sphere. MUI is keen to protect the authenticity and purity of *ʿaqīda*. Hence it holds that Ahmadiyah, Shiʿa and other groups it sees as being outside the Sunni belief system, have to be regulated, restricted and/or banned, as subjects of *al-amr bi al-maʿrūf wa al-nahy ʿan al-munkar* (commanding right and forbidding wrong).[9]

Before the MUI fatwas on belief-related issues are elaborated below, it is relevant to explain what is meant by *aliran sesat* and the MUI process (Arabic: *takfīr*) for declaring a person to be an unbeliever (*kāfir*). Thus the Indonesian term *aliran sesat* is used to condemn those viewed as *kāfir* by the MUI.[10] The term *kāfir* is used for those who, in the tradition of Western scholars, are referred to as heretics. MUI employs two terms to distinguish between the actions of such 'heretics': *kesalahan* (mistake) and *kesesatan* (deviance).[11] Those who have a mistaken understanding and practice related to an aspect of Islamic jurisprudence are deemed sinful, whilst those have a deviant understanding or practice related to the principle of *ʿaqīda* are described as adherents of a false belief. Those who practice the wrong *ʿaqīda* are seen by MUI to be committing apostasy.

To construct a robust conceptualization of *aliran sesat* for the State and the Indonesian Muslim community, MUI has firstly formulated criteria to be used as a

point of reference by the State, Islamic organizations and lawmakers in defining such groups, and secondly, it has set up a transparent procedure by which such groups can be judged *sesat*. MUI has produced a set of ten criteria defining 'heresy'. The first is rejecting one of the six foundations of Islamic belief (Arabic: *arkān al-imān*) or one of the five foundations of Islam (*arkān al-islām*). The second is believing in or following a faith that is not in accordance with the teaching of the Qurʾan and Sunna (the tradition and sayings of Muhammad). The third is believing that there exists divine revelation revealed after the Qurʾan. The fourth is rejecting the authenticity of the content of the Qurʾan. The fifth is interpreting the text of the Qurʾan without referring to the principal foundations of the science of exegesis. The sixth is rejecting the sayings of Muhammad as one of the legitimate sources of Islam. The seventh is demeaning, belittling or denigrating Muhammad and other prophets. The eighth is rejecting the position of Muhammad as the last prophet of Islam. The ninth is changing, adding to or reducing any part of worship that is fundamental under Shariʿa, such as asserting that the pilgrimage is not to Mecca, or that the five daily prayers are not compulsory for Muslims. Lastly, the tenth is calling other Muslims unbelievers or *orang kafir* without a strong argument based on Shariʿa.[12] Any of these ten criteria, if present, could lead to accusation of a group following an *aliran sesat*.

MUI follows a certain procedure to determine the *ʿaqīda* status of a group, and whether or not it should be understood as *sesat*. The first step of the investigation is to collect data, information, evidence and witness interviews regarding the notions, thoughts and activities of the group under investigation. The MUI obtains more detailed information by conducting hearing sessions with the suspected heretical groups, intended to persuade the groups to abandon their perceived heretical beliefs. However, MUI's experience indicates that efforts to return such groups to adherence to the 'correct' Shariʿa through such hearings are generally unsuccessful, perhaps because the dialogue process is dominated by MUI. Although MUI calls the process dialogue, invited groups have no right to defend their faith.[13] This has drawn criticism from other Islamic actors; e.g., Masdar F. Mas'udi from the NU criticized MUI's posture as the 'representative of God' in judging the faith of other Muslim groups and declaring them heretical.

The second step of the investigation is an inquiry with experts who are knowledgeable in the thought and activities of the deviant groups, using a framework derived from Sunni thought. Experts whose beliefs differ from MUI's are not eligible to be witnesses. The investigation process is a means of Islamic proselytizing (Arabic: *daʿwa*) to convert unbelievers into believers, with a closer resemblance to indoctrination than to open philosophical debate with freedom of thought.

In the third step, leaders of the heretical group are invited to meet with experts for verification (Arabic: *taḥqīq*) and confirmation (Arabic: *tabāyun*) about the data, information and evidence related to the heretical group's thoughts and activities. If theological evidence of aberration is found in this third step, a recommendation will be made to the heretical group, aimed at bringing them back into the proper faith and forcing them to abandon their false convictions and activities.

The fourth step of the investigation is to submit the research findings to the MUI leadership or board members. The fifth and final step, if required, is for the leadership

and board members to issue an instruction to the Fatwa Commission to undertake further discussion, and for the Commission to issue a fatwa, if needed.

The politics of fatwa

The issue of religious deviance in Indonesia has produced a discourse with multiple layers of meaning ranging from the theological to the political and from the local to the transnational. In the case of MUI fatwas, discourse on deviance from Islam always starts from the domain of theology. Usually, the Indonesian Sunni mainstream groups are distressed by groups with a belief system that is considered to be in conflict with their own. The other belief system is seen as having the potential to confuse and destroy the established, agreed-upon belief system of society, leading people into *kekafiran* (Indonesian expression for heretical behaviour). Hence, the desire to protect and promote the purity of Islamic belief has become the central leitmotif of MUI fatwa on deviant groups, as can be seen in the MUI statements banning Indonesian deviant groups such as Islam Jama'ah, Jama'ah Muslimin Hizbullah, Darul Arqam and Ahmadiyah.[14] The theological argument put forward by MUI is that all these groups adhere to theological notions that oppose the *ʿaqīda* of Sunnis. MUI argues that the belief system of *ahl al-sunna wa al-jamāʿa* (literally 'people of the Sunna and community', the Sunni group) is the only proper tenet in Islam.[15]

Islam Jama'ah[16] was banned by MUI for introducing a new concept of blind obedience to the *amīr al-muʾminīn* (leader of the believers),[17] which could lead to severance of relationships with family and relatives. The Ahmadis of Qadian were deemed *kāfir* due to their belief that Mirza Ghulam Ahmad continued a line of prophethood from the Prophet Muhammad.[18] This is different from the position of the Ahmadis of Lahore, who view Mirza Ghulam Ahmad as a *mujaddid* (renewer of the age), rather than a prophet.[19] In the MUI fatwa, however, both Ahmadi factions are considered sects that endanger the purity of Islamic belief. On 27 June 1994, the Inkar Sunnah[20] were denounced as heretical by MUI for their rejection of the Sunna as the second foundation of Islamic teaching. Some groups are deemed deviant by MUI for having mystical systems that differ from those of the majority Indonesian Sufi orders, such as Sufi orders that are associated with NU. In this regard, Muslim organizations such as MUI and NU distinguish Sufi orders into two groups as to whether they are based on credible sources (*ṭarīqa al-muʿtabar*) or not (*ghayr al-muʿtabara*). The former are acceptable, and the latter are rejected. According to MUI, the Darul Arqam group, a Malaysian group rejected by MUI in 1994, falls under the latter category. This group believes that *Aurad Muhammadiyah*[21] was revealed by God through the Prophet Muhammad to the group's founder Shaykh Suhaymi (b. 1925) at the Kaʿba when he was in a conscious state (which might be seen as a claim to prophethood).[22] MUI states that the teachings of Islam have been complete since the death of Muhammad, with no subsequent new teachings because no new prophet has been sent since Muhammad, and thus Darul Arqam's false teachings need correction. A similar case to Darul Arqam is the messianic Eden group, which was banned by MUI due to its claim that its leader Lia Aminuddin (b. 1947) was accompanied by and received revelation from the angel

Gabriel. This belief provoked various negative responses from Indonesian Muslims, who did not accept that anyone other than the Prophet Muhammad could meet Gabriel.

Deviant groups are considered by MUI not only as theological threats to Muslim beliefs but as potential political threats to the State because their presence potentially creates religious polarization and challenges to the integration of the nation state of Indonesia.[23] This was one of the reasons why MUI called for political and legal intervention against them, based on the belief that if the *aliran sesat* were allowed to exist in the public space, they would trigger a reaction from mainstream groups. On the basis of this argument, a division of power between the state authority and religious authority in handling the issue of deviant groups was established.

To raise the legal status of its fatwas on deviant groups, MUI has been attempting to persuade the State and lawmakers to consider incorporating its fatwas, or at least their ideas and spirit, into the legislation of Indonesia. In this way the fatwas would gain legal and political influence and could eventually be used to control and regulate deviant groups.[24]

MUI supports the implementation of State Law No. 01/PNPS/1965 on blasphemy, as its content is very close to the spirit and ideas of MUI's fatwa on deviant groups. Normally, blasphemy laws are employed to prosecute acts which insult religion, but in Indonesia, the blasphemy law is used to charge deviant groups who have strayed from mainstream religion. The law provides procedures for disbanding deviant groups and prosecuting individuals for defaming a religion adhered to in Indonesia or persuading others to commit apostasy. (The officially recognized religions are Islam, Protestant or Catholic Christianity, Hinduism, Buddhism, or Confucianism; though the law has been invoked to protect these other religions as well, here we are concerned with Islam.) MUI categorizes deviant groups as those who insult (Indonesian: *menghina*) and denigrate (Indonesian: *merendahkan*) Islam. When MUI declared its opposition to the Ahmadiyah, Shia and other deviant groups, it was on the grounds that their beliefs were blasphemous or defamed Islam. On many occasions, MUI has supported the prosecution of Ahmadis, Shi'a and other so-called heretical groups under this law. Encouraging the implementation of this law is thus a fundamental method for MUI of maintaining the supremacy of the true faith as they see it.

The blasphemy law was passed in the Sukarno era, under the pressure of religious groups, particularly Islamic political groups, to protect mainstream religions from the challenge of *aliran kebatinan* (indigenous belief), which was perceived as an emergency situation. Niels Mulder argues that the passage of State Law No. 01/PNPS/1965 was related to the formulation of the official definition of religion in 1961, which excluded the indigenous beliefs that had challenged the mainstream religions of Indonesia since the 1950s. In 1953, the Ministry of Religious Affairs had listed 360 *aliran kebatinan* in Java alone.[25] Due to the influence of such groups, Islamic parties were defeated in the 1955 general elections. In order to control the increase of *aliran kebatinan*, the Ministry of Religious Affairs established an inter-departmental body for monitoring mystical beliefs in 1954 and placed it under the Attorney General in 1963.[26] In 1965 the blasphemy law was enacted.

During the Suharto era, then, government authority over the activities of deviant groups was in the hands of the Office of the Attorney General and its monitoring

body – later to become the Coordinating Agency for Monitoring Mystical Beliefs in Society (BAKORPAKEM, *Badan Koordinasi Pengawas Aliran Kepercayaan Masyarakat*)[27] – while religious authority was split between such Islamic organizations as NU, Muhammadiyah and MUI.[28] During that era, many fatwas on deviant groups issued by Islamic authorities were triggered by requests from the state authorities, who also followed them up. Still, during the Suharto era, the use of blasphemy law was limited; the State did not always need the support of MUI to curb sects that the regime considered a security threat.

Since the fall of the regime and the start of the reform era in 1998, however, the law has been increasingly used. Donald L. Horowitz, for instance, reports that the blasphemy law was used much more sparingly in the Suharto era compared to the current era. In the first decade and a half after 1998, at least 120 people were convicted under the law, most of them Christians or members of Muslim deviant groups.[29] Tajul Muluk, the Shiʿa leader of Sampang, was for instance sentenced to two years' imprisonment under this law. It seems that the Horowitz report confirms the influence of MUI fatwas on the escalated punishment of the deviant groups.

The other main change brought by the post-1998 reform era is the increasingly dominant role of MUI as a fatwa body for *ʿaqīda*-related issues. Prominent figures from both NU and Muhammadiyah revealed in interviews that MUI's authority to regulate beliefs has significantly increased since NU and Muhammadiyah allowed MUI to take the lead in this area. Muhammadiyah and NU decided to take a smaller role to promote unity of belief in the *umma*. The late Ahmad Fatah Wibisono, chairman of Muhammadiyah's Majlis Tarjih, clarified that the unity of the *umma* would be ensured through the centralization of fatwas on *ʿaqīda* in the one body. Wibisono argued that Islamic organizations could have different stances on *fiqh*-related issues, but not on the issue of *ʿaqīda*.[30] Several important NU figures also chose not to issue belief-related fatwas. Although members of the NU community demanded their own fatwa on the Ahmadiyah and Shiʿa, after long discussion among the NU elite the organization failed to reach an independent position on the issue. When I asked NU chairman Said Aqil Siradj and deputy chairman Asad Ali about this issue, both simply answered that the matter of *ʿaqīda* was an MUI matter.[31]

The increasing use of the blasphemy law as a legal provision for charging deviant groups shows that MUI fatwas on deviant groups have a significant impact on the Indonesian public sphere in the post-reform era. In 2008, a joint decree on the limitation of Ahmadiyah activities was signed by the Minister of Home Affairs, the Minister of Religious Affairs and the Attorney General; it was obviously influenced by the MUI fatwa on Ahmadiyah in 2005. The same year (2005), Lia Aminuddin was arrested and subsequently convicted of blasphemy in court; an MUI fatwa against her had been issued already in 1997. As discussed below, the Constitutional Court also rejected a judicial review of State Law 01/PNPS/1965 on blasphemy due to the prevalent public opinions of mainstream groups opposed to this judicial process. All these cases demonstrate the influence of MUI fatwas on legal discourse and practice in Indonesia.

Rights groups have reacted to this use of the blasphemy law against religious minorities. On 1 December 2009, some religious groups and NGOs joined together to apply for a judicial review of this law by the Constitutional Court (Mahkamah

Konstitusi, MK).[32] One argument used to support the review was that the law had been misused by mainstream religious groups, both Muslim and non-Muslim, as a source of legitimacy for banning other groups. The application for judicial review was rejected by the Constitutional Court, and thus the blasphemy law remains on the books in Indonesia. The Court based its decision on the grounds that the law was needed to sustain religious harmony.[33] Suryadharma Ali, the Minister of Religious Affairs, argued that if the law were eliminated, it could trigger religion-based conflicts that might endanger the State. MUI's opposition to the judicial review was evident in statements by Ma'ruf Amin, now General Chairman of MUI. Amin stated that the judicial review would lead to freedom without limits in Indonesia. If the Constitutional Court accepted the judicial review, the ban on religious heresy and blasphemy would have no legal support. Amin insisted that the judicial review must be rejected and that the status of the law had to be strengthened. He further argued that Indonesia needed stricter regulations to overcome the problems of heretical groups; otherwise, the failure to restrict these groups would create misunderstandings about Islam among Muslims and 'erosion' of believers.[34] Although the Constitutional Court claimed its decision was a middle path between two contesting groups, from the legal material considered it would appear that the verdict relied more on evidence provided by mainstream groups, represented by MUI and leading figures from Muslim organizations such as Hasyim Muzadi (NU) and Din Syamsuddin (Muhammadiyah).[35] This indicates that MUI is influential in legal discourse and practice, and that the government and MUI have converging interests.

Ahmadiyah and Shiʿa as the main targets of victimization

In the post-reform era, the Ahmadiyah have been identified by MUI as a key blasphemous sect. The Ahmadiyah issue reappeared in 2005, with a new fatwa against Ahmadiyah (the first fatwa was issued in the 1980s), due inter alia to growing demands from mainstream Muslim groups for a stop to their spread in Indonesia. Whereas in the Suharto era the public discourse on Ahmadiyah was manageable, without violence or public hatred, in the reform era this has not been the case; on 6 February 2011, for example, three Ahmadiyah followers were killed by a militant Islamic group in mob violence in Cikeusik, Banten. Perhaps this is partly due to the fact that almost no Muslim groups – not even the so-called moderate Muslim organizations Nahdlatul Ulama, Muhammadiyah or Persatuan Islam – opposed the MUI fatwa denouncing Ahmadiyah as heretical.[36] For instance, Hasyim Muzadi (General Chairman of NU 2009–10) does not recognize Ahmadiyah as part of Islam and advises the sect's followers to create a new religion. A similar position was taken by Muhammadiyah, whose leader, Din Syamsuddin, rejected Ahmadiyah due to its heresy.[37] In a parliamentary hearing held in response to the Cikeusik tragedy, Suryadharma Ali, the minister of religious affairs (2009–14), supported the MUI fatwa banning Ahmadiyah.[38] These cases show that the influence of MUI on Muslim society and the State remains very significant. Although Nahdlatul Ulama and Muhammadiyah denounce Ahmadiyah belief as falsehood, however, both the two largest Islamic organizations were outraged by the violence against and killing

of Ahmadis by radical Islamic groups such as FPI, FUI and other Islamic vigilante groups. It should be noted that 342 reported attacks on this group took place from the publication of the MUI fatwa on Ahmadiyah in 2005 until 2010.[39]

Besides Ahmadis, MUI has started to target Shiʿa. The Shiʿi community is the second largest Islamic denomination after the Sunnis. The Ikatan Jama'ah Ahlul Bayt Indonesia (IJABI, Association of Ahlul Bayt Congregation) claims there are 2.5 million Shiʿa in Indonesia.[40] In 1984, MUI published advice on the 'Shiʿi Ideology' (Indonesian: *Faham Syiah*). This advice was quite mild, because it only indicated some fundamental differences between Sunni and Shiʿa without declaring *takfīr*,[41] although the unwritten spirit of this advice was to denounce Shiʿa as heretics. The flagrant denouncement of Shiʿa communities as heretics by MUI and some NU groups in East Java began to escalate in 2011, with several attacks on the Islamic boarding school, Yayasan Pesantren Islam (YAPI), managed by the Shiʿi community in Bangil, East Java. Bangil is a district of East Java which has been home to many Shiʿa since the pre-independence period of Indonesia. It was reported that in February 2013, 200 protesters entered the YAPI premises, comprising a kindergarten, primary school, middle school and two high schools, and destroyed property and buildings.[42] In 2007, a Sunni cleric from Sunni al-Bayyinat Foundation, Surabaya, had engaged in hate speech, calling on Sunnis to 'sterilize' Bangil of Shiʿa.[43] Although human rights violations took place, none of the attackers have faced serious charges. In many cases, rather than act as the neutral protector of those who are attacked, the state apparatus warns the victims against reacting or retaliating against the attackers, because it could complicate the issue.

The rapid escalation of anti-Shiʿa attitudes was marked by the 'Peristiwa Sampang' (Sampang Incident), on Madura, a small island to the north of Surabaya, East Java, in December 2011. This tragic incident was sparked by the accusation that Madurese local Tajul Muluk, a Shiʿi cleric, was proselytizing in the predominately Sunni town of Sampang.[44] Protests soon escalated into physical attacks and violence against the group. The Sampang Sunnis evicted the tiny minority Shiʿi community (around 276 people), leading to the loss of their land and property; 47 houses were destroyed.[45]

Tensions flared between the central board of MUI in Jakarta and its provincial chapter in East Java in the public debate that followed the Sampang incident. Much of this debate, captured in the media, concentrated on the 1984 MUI recommendation on the legal status of this Islamic sect. The voice of the MUI central board was divided between those who did not view Shiʿa as heretical – such as senior MUI ulama Umar Shihab[46] and Din Syamsuddin,[47] deputy general chairman of MUI – and those who did, such as Cholil Ridwan[48] and his supporters.[49] Cholil Ridwan further claimed that MUI board member Khalid al-Walid, a graduate from Qum in Iran, was a Shiʿa adherent, and therefore his position at MUI should be reconsidered.[50] However, Sahal Mahfudh, MUI general chairman, remained silent on the Shiʿa controversy; according to information obtained from one correspondent, he rejected a group of Madurese ulama who sought him out for advice.[51] While the national MUI debates continued, the Sampang branch of MUI issued a fatwa on the heresy of the Shiʿa on 1 January 2012, without any consultation with the central board of MUI, and the East Java provincial chapter followed suit three weeks later.[52] According to MUI fatwa-making regulations, however, it is the central board of MUI that has the authority to publish a

fatwa of national import, or at the very least, the central board should be consulted in such matters.[53]

As a result of the incident, around 200 families became internally displaced persons, living as refugees in the Sampang Sports Hall. On 20 June 2013, local authorities forced the Sampang Shiʿa community to relocate from their temporary camp in Sampang to Sidoarjo on the East Javanese mainland, 113 km from Sampang.[54] Reactions to this violation of the Shiʿa community's human rights varied, with NU and Muhammadiyah taking a different stance to MUI. NU general chairman Said Aqil Siradj viewed the relocation of the Sampang Shiʿa as a poor policy decision and not a permanent solution.[55] Muhammadiyah general chairman Din Syamsuddin tried to persuade the government of Indonesia to sponsor a reconciliation between the Sampang Shia community and its Sunni antagonists.[56] Yet, rather than seeking a solution to the conflict, the minister of religious affairs, Suryadharma Ali, sided with the fatwa of the MUI's East Java chapter, blaming the Shiʿa for the incident and declaring them deviant.[57] It should be noted, however, that to date (2018) no Joint Ministerial Decree pursuant to the blasphemy law has been issued against the Shiʿa.

Local and transnational deviant sects of Indonesian Islam

International agencies and NGOs have expressed concern at the oppression faced by Islam Jama'ah, Lia Eden, Inkar Sunnah and other groups, but the State and Islamic organizations such as MUI, Muhammadiyah, NU and many others have ignored such international pressures. Even when raised by multilateral and bilateral organizations such as the UN, European Commission and ASEAN, such concerns have failed to persuade the government of Indonesia to protect the local deviant groups.[58]

Indeed, MUI has continued to issue fatwas on *aliran sesat* and the authorities have continued to act on them – a recent example is the Gafatar religious movement, which bought land to settle in Kalimantan but was evicted by mobs in January 2016; in February that year, the MUI issued a fatwa that Gafatar is *aliran sesat*, and three leaders of the group have since been prosecuted and convicted for blasphemy.[59]

Moreover, whether or not a fatwa on *aliran sesat* has been issued, indigenous beliefs have been systematically marginalized by the State by implementing the logic of the blasphemy law in all aspects of public administration. Until recently, adherents of religions or beliefs not acknowledged by the State had to leave blank the 'religion' column on their national identity card. This either made it difficult to obtain a card at all or could lead to stigmatization and discrimination in accessing public services (such as birth and marriage certification, school enrolment and public health services) or applying for work. Fortunately, this discriminatory provision of the Law on Civic Administration was struck down by the Constitutional Court in 2017, though it remains to see how the decision is implemented.[60]

From interviews and media observations it would appear that MUI's rejection of the Ahmadiyah and Shiʿa has received stronger support from the broader Muslim public after the resignation of Suharto in 1998. MUI and their supporters have asked the government of Indonesia on several occasions to use the Pakistan model in handling

the Ahmadiyah issue, i.e., declaring the Ahmadis to be non-Muslims.[61] MUI and its supporters have tried to force the Ahmadis to declare themselves publicly as non-Muslims, whilst the Ahmadis reject this pressure.[62] By referring to the policy of Saudi Arabia that prohibits Ahmadiyah adherents from entering Mecca and Medina, due to their status as non-Muslims, MUI has also pressured the Ministry of Religious Affairs to treat Ahmadis in the same way. General Chairman of MUI Ma'ruf Amin states 'the Ministry of Religious Affairs should forbid them [the Ahmadis] from undertaking the pilgrimage [hajj]'.[63] MUI's East Java chapter also declared that the Sampang Shiʿa have no right to live in Madura. In relation to the position of Shiʿa, it seems that MUI does not consider its position to contradict the Amman Message (2004)[64] that recognizes Shiʿa as part of mainstream Islam and has been signed by the Indonesian government[65] and representatives of mainstream Muslim groups in Indonesia.[66]

Fatwas have also come to target not only heresy in religious beliefs, but also *aliran pemikiran* (schools of thought). Clearly MUI perceives not only deviant beliefs, but also secular thought as a great threat. Liberal Islamic groups in Indonesia have used secular paradigms to argue that religions should not judge other religions. However, in 2005, MUI issued a fatwa banning secularism, liberalism and pluralism, stating that these ideas were against the doctrine of Islam, and therefore Indonesian Muslims were not allowed to embrace them.[67] Pluralism was assumed by MUI to be a form of religious relativism, and the fatwa reveals the MUI viewpoint that Muslims should be devoted to Islam and prohibited from mixing and combining their beliefs and rites with non-Islamic precepts. In the social and cultural domain Muslims should be open-minded, but not in the domain of belief. MUI framed this fatwa as a form of resistance to the *perang pemikiran* (Arabic: *ghazw al-fikr*, English: ideological battle) perceived to be led by the West. The general underlying argument was that Indonesian Islam was under attack from Westernization through secularism, liberalism and pluralism. MUI considered that the West had not only opened and maintained an information channel; the channel carried a liberal, secular and plural ideology that threatened Indonesian Islam, and if the Muslim community was not well prepared, Western ideology would eventually intrude and destroy their beliefs. MUI, it seemed, had fallen victim to conspiracy theories about globalization, perceiving all outside influences as a potential danger. The increasing reception of the three ideas among Indonesian Muslim communities and the possibility that secularism, pluralism and liberalism would result in conflict within Muslim societies were cited as other grounds for the fatwa.

However, a fundamental concern behind the fatwa was related to the concept of freedom, which MUI defines as something that will have a negative impact on religious life in Indonesia:[68] MUI sees 'freedom' and 'liberal' as Western concepts that function to destroy Islam, arguing that religious freedom as based on international human rights concepts paves the way for heretical groups to flourish. Ma'ruf Amin states that the implementation of religious freedom in Indonesia must refer to the concept of human rights enshrined in the Qurʾan.[69]

The fatwa banning secularism, pluralism and liberalism (often shortened to the acronym *Sepilis*, playing on the Indonesian word for syphilis) has elicited various responses from progressive and moderate Muslim groups. Most of them believe that the fatwa opposes religious freedom and faith.[70] Debate centres on the use of the fatwa

to object to those having different Islamic thought from MUI, and it seems that the edict is not based on serious scrutiny of recent thought on liberalism, secularism and pluralism,[71] which proponents may understand very differently from MUI. With regard to public criticism, including that of MUI figures Slamet Effendy Yusuf and Din Syamsuddin, who do not agree with the particular critique of pluralism,[72] MUI has provided a special appendix clarifying these three prohibited ideologies. In the fatwa appendix, MUI states that secularism, liberalism and pluralism that do not coincide with the MUI definitions are not the subject of the fatwa. The MUI definitions are based on the interpretation and reading of its own references, and are not intended as academic definitions, but rather as empirical definitions that refer to the living conditions of Muslim society. The pluralism banned by MUI is one understood as religious syncretism and relativism.[73] In this regard, MUI can accept the real diversity of Indonesian citizens who follow different religions and beliefs, which it does not call pluralism, but plurality (Indonesian: *pluralitas*).

However, the fatwa has been employed by radical Islamic groups to attack any ideologies they assume to be liberal and secular. Many progressive Muslim thinkers such as Abdurrahman Wahid (former General Chairman of NU and President of Indonesia), Nurcholish Madjid (Muslim scholar and founder of Paramadina Foundation), Munawwir Sadzali (former Minister of Religious Affairs in the Suharto era), Quraish Shihab (Muslim scholar and Qurʾan expert), Syafi'i Ma'arif (former General Chairman of Muhammadiyah) and others were accused, by the coalition of radical and Salafi groups, of being *antek-antek liberal* (stooges of liberalism). Stigmatization of and public campaigns against liberalism, pluralism and secularism are now prevalent both in real and social media.[74]

Concluding remarks

The determination of *aliran sesat* is not merely a matter of Islamic legal theory: identity politics also plays an important role. In the Amman Message, it is clear that based on the consensus of the Muslim world, the Shiʿa are part of Islam, but on the practical level of Indonesian Islam, the Shiʿa remain regarded as a deviant sect by the mainstream Sunni Islamic organization of Indonesia. This Islamic schism is exacerbated by a tendency to make fatwas without considering the aspect of state unity and human rights, disregarding equal citizenship as a fundamental aspect of the modern state. Such fatwas contribute more to disintegration than integration, particularly when the lines between State and religion are blurred, and can challenge the nature of Indonesia as a *Pancasila* state.

Instead of purifying the faith of Indonesian Muslims, the fatwas have provoked horizontal conflict among Muslims and generated instability in the country. MUI's so-called ideological battle runs the risk of leading to stagnancy or even the death of knowledge and scientific development in Indonesia because all new and critical thought can be accused of 'liberalism, secularism and pluralism'. Therefore, it is not surprising that some social and political scholars predict that Indonesia could eventually become a more 'shariatized' country. The negative consequences of MUI's

fatwas are never admitted by the organization, which instead shifts responsibility to the State.

Indonesia is now facing tension and conflict, not only between Islam and non-Islam, but between the followers of Islam, because whereas the rights of non-Muslims are clearly mentioned in both Islamic sources and the Constitution, those of Islamic 'deviant' groups are unclear due to their rejection by the dominant Islamic groups. Fatwa makers can contribute to resolving this conflict by producing fatwas that do not contradict, but rather support a *Pancasila* that promotes pluralism.

Notes

1 In this chapter, institutions with Arabic names retain their Indonesian spelling.
2 Mark Sedgwick, 'Establishments and Sects in the Islamic World', in Philip Charles Lucas and Thomas Robbins (eds), *New Religious Movements in the Twenty-First Century*, pp. 231–56 (New York: Routledge, 2004), at p. 239.
3 Andreas J. Köstenberger and Michael J. Kruger, *The Heresy of Orthodoxy: How Contemporary Culture's Fascination with Diversity Has Reshaped Our Understanding of Early Christianity* (Wheaton, IL: Crossway, 2010).
4 Talal Asad, *The Idea of an Anthropology of Islam* (Washington, DC: Center for Contemporary Arab Studies, Georgetown University, 1986), p. 15; Kambis Ghanea Bassiri, 'Religious Normativity and Praxis Among American Muslims', in *The Cambridge Companion to American Islam,* ed. Juliane Hammer and Omid Safi, pp. 208–27 (Cambridge: Cambridge University Press, 2013).
5 Eka Darmaputera, *Pancasila and the Search for Identity and Modernity in Indonesian Society: A Cultural and Ethical Analysis* (Leiden; Boston: Brill, 1988); Soekarno, *Filsafat Pancasila Menurut Bung Karno* (Yogyakarta: Media Pressindo, 2006); Seung-Won Song, *Back to Basics in Indonesia? Reassessing the Pancasila and Pancasila State and Society, 1945–2007,* PhD thesis (The College of Arts and Sciences of Ohio University, 2008); Robert E. Elson, 'Another look at the Jakarta Charter controversy of 1945', *Indonesia* 88 (2009), pp. 105–130.
6 Elson, 'Another look', p. 117.
7 'MUI: Merokok haram', BBC Indonesia, http://www.bbc.co.uk/indonesian/news/story/2009/01/090125_rokokharam.shtml (accessed 10 December 2018).
8 Discussing the expanded influence of the MUI, including new legal powers in the fields of Islamic finance, halal certification and the hajj, Lindsey noted that the then president Yudhoyono wanted the MUI to retain 'its semi-official, quasi-state, "central" role as a religious "watchdog"', but unlike Suharto, who saw the MUI as a means for the state to impose its policies on ulama, Yudhoyono instead saw it as a means 'by which ulama could influence and guide the state'. Tim Lindsey, 'Monopolising Islam: The Indonesian Ulama Council and state regulation of the "Islamic economy"', *Bulletin of Indonesian Economic Studies* 48/2 (2012), pp. 253–74, at p. 259.
9 Michael Cook, *Forbidding Wrong in Islam: An Introduction* (Cambridge: Cambridge University Press, 2003); Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2001).
10 The Dutch anthropologist Martin van Bruinessen has written an Indonesian-language article on *gerakan sempalan* (split-away movements) in which he correctly defines *aliran sesat* or *gerakan sempalan* as a movement or religious stream which is regarded

as deviating from the belief, rites and position of the majority of the *umma*. Martin van Bruinessen, 'Gerakan sempalan di kalangan ummat Islam Indonesia: Latar belakang sosial-budaya', *Ulumul Qurʾan* 3/1 (1992), pp. 16–27.

11 MUI, *Mengawal Aqidah Umat: Fatwa MUI Tentang Aliran-Aliran Sesat di Indonesia* (Jakarta: Sekretariat Majelis Ulama Indonesia, n.d.).

12 Syafiq Hasyim, *The Council of Indonesian Ulama (Majelis Ulama Indonesia, MUI) and Religious Freedom*, Irasec's Discussion Papers no. 12 (December 2011), http://www.irasec.com/ouvrage36 (accessed 5 July 2018), p. 10; MUI, *Mengawal Aqidah Umat*, pp. 7–8.

13 Hasyim, *The Council of Indonesian Ulama*.

14 MUI, *Himpunan Fatwa MUI Sejak 1975* (Jakarta: Erlangga, 2011).

15 This is a claim associated with the prediction of the Prophet Muhammad, as reported in various versions, that Islam will split into 73 sects (Arabic: *firāq*) and the only 'saved' sect will be the *ahl al-sunna wa al-jamāʿa*. Ibn Taymiyya, *Sharḥ al-ʿAqīda al-Wāsaṭiyya* (Riyadh: Dar al-Salam li al-Nashr, 1989), p. 219.

16 Islam Jama'ah has many other names, such as Darul Hadits, Lembaga Karyawan Islam (Lemkari, Islam's Working-Class Institution) and Lembaga Dakwah Islam Indonesia (LDII, Indonesian Islamic Propagation Institute). B. I. Hafiludin, D. M. Nasution and Z. A. Aly, *Bahaya Islam Jama'ah, Lemkari, LDII: Pengakuan Mantan Gembong-Gembong LDII, Ust. Bambang Irawan Hafiluddin, Ust. Debby Murti Nasution, Ust. Zaenal Arifin Aly, Ust. Hasyim Rifa'in, Fatwa-Fatwa Ulama dan Aneka Kasus LDII* (Jakarta: Gema Insani, 1988), pp. 1–2; Sutiyono and A. Dzulfikar, *Benturan Budaya Islam: Puritan & Sinkretis* (Jakarta: Penerbit Buku Kompas, 2010), p. 184.

17 MUI, *Himpunan Fatwa*, p. 38.

18 MUI, *Himpunan Fatwa*, p. 40.

19 Iqbal Singh Sevea, 'The Ahmadiyya print jihad in South and Southeast Asia', in R. Michael Feener and Terenjit Sevea (eds), *Islamic Connections: Muslim Societies in South and Southeast Asia*, pp. 134–48 (Singapore: Institute of Southeast Asian Studies, 2009), at p. 137.

20 This name refers to its rejection of the tradition of the Prophet Muhammad (*Sunna*), regarded as the second primary source of Islam after the Qurʾan.

21 *Aurad Muhammadiyah* is a guidance for the followers of this group to do *dhikr* (silently recite the names of God in prayer).

22 Judith Nagata, 'Religious ideology and social change: The Islamic revival in Malaysia', *Pacific Affairs* 53/3 (1980), pp. 405–39, at p. 418.

23 https://www.republika.co.id/berita/nasional/umum/16/01/26/o1jhag377-mui-nilai-gafatar-berbahaya-bagi-nkri (accessed on 26 December 2018).

24 John Olle, 'The Majelis Ulama Indonesia versus "heresy": The resurgence of authoritarian Islam', in Gerry van Klinken and Joshua Barker (eds), *State of Authority: The State in Society in Indonesia,* pp. 95–116 (Ithaca, NY: Cornell Southeast Asia Program, 2009).

25 Niels Mulder, *Mysticism in Java: Ideology in Indonesia* (Yogyakarta: Kanisius, 2005); I. Ali-Fauzi, S. R. Panggabean and T. S. Sutanto, 'Membela kekebasan beragama: catatan pengantar', in *Membela Kebebasan Beragama: Percakapan Tentang Sekularisme, Liberalisme, dan Pluralisme*, (Jakarta: Lembaga Studi Agama dan Filsafat, 2010), p. xviii; S. Weinata (ed), *Himpunan Peraturan di Bidang Keagamaan* (Jakarta: BPK Gunung Mulia, 1994).

26 Melissa Crouch, 'Law and religion in Indonesia: The Constitutional Court and the blasphemy law', *Asian Journal of Comparative Law* 7/1 (2012), pp. 1–46, at p. 6.

27 Crouch, 'Law and religion', p. 7; Human Rights Watch, *In Religion's Name: Abuses against Religious Minorities in Indonesia* (2013), p. 42; U. P. Sihombing, *Menggugat Bakor Pakem: Kajian Hukum Terhadap Pengawasan Agama dan Kepercayaan di Indonesia* (Jakarta: Indonesian Legal Resource Center, 2008).
28 Hasyim, *The Council of Indonesian Ulama*; van Bruinessen, 'Gerakan Sempalan'.
29 Donald L. Horowitz, *Constitutional Change and Democracy in Indonesia* (Cambridge: Cambridge University Press, 2013), p. 250.
30 The author's interviews with Ahmad Fatah Wibisono and Din Syamsuddin, both in 2011.
31 The author's interviews with Said Aqil Siradj (2010) and Asad Ali (2011).
32 Abdurrahman Wahid (Former Indonesian President and General Chairman of Nahdlatul Ulama), Dawam Rahardjo (prominent progressive Muslim thinker from Muhammadiyah and director of Lembaga Studi Agama dan Filsafat (Institute for the Study of Religion and Philosophy), Musdah Mulia (prominent Muslim feminist), Maman Imanul Haq (young ulama from Nahdlatul Ulama, director of the traditional Islamic Boarding School al-Mizan in West Java, and later parliament member of Partai Kebangkitan Bangsa (PKB, National Awakening Party)) and some NGOs were among those who lodged the application for judicial review of State Law No. 1/PNPS/1965 at the Constitutional Court (Mahkamah Konstitusi, 2009, pp. 1–3).
33 The council of Protestant churches (PGI: Persekutuan Gereja Indonesia) is now also facing a rise in deviant sects.
34 'Pemerintah keberatan pencabutan UU Penodaan Agama', http://www.tempointeraktif.com/hg/hukum/2010/02/04/brk,20100204-223522, id.html (accessed 8 March 2011).
35 Mahkamah Konstitusi, *PUTUSAN Nomor 140/PUU-VII/2009* (2009).
36 Hasyim, *The Council of Indonesian Ulama*, p. 13.
37 Interview with the author (2011), http://www.tribunnews.com/2011/03/05/din-Ahmadiyah-anggap-pemeluk-islam-orang-kafir (accessed 4 March 2013).
38 'Menag: Ahmadiyah Qadiyan yang sesat', http://us.detiknews.com/read/2011/02/10/012328/1568162/10/menag-Ahmadiyah-qadiyan-yang-sesat (accessed 4 March 2013).
39 See the report which was prepared by Komnas Perempuan on this issue at http://news.okezone.com/read/2011/02/07/337/422265/redirect (accessed 11 July 2013).
40 Human Rights Watch, *In Religion's Name*, p. 21.
41 The following are differences between Sunni and Shiʿa as outlined by MUI. Firstly, the Shiʿa reject the use of hadith that were not reported by *ahl al-bayt* (the Prophet's relatives from the line of Fatima and ʿAli), whereas Sunnis does not make a distinction between what was narrated by *ahl al-bayt* and others as long as the scrutiny of hadith follows the science of hadith terminology (Arabic, *muṣṭalaḥ al-ḥadīth*). Secondly, the Shiʿa assume that all their spiritual leaders (imams) are protected by God against committing wrongful actions, whereas Sunnis argue that as human beings, all imams are capable of making mistakes. Thirdly, the Shiʿa do not admit the legality of Islamic consensus without the presence of their spiritual leaders, while the mainstream Sunni understanding is that an agreement among ulama, even in the absence of the highest-ranked spiritual leaders, is legal. Fourthly, the Shiʿa believe that *imāma* (Islamic leadership) is part of the principles (*uṣūl*) of Islam, while Sunnis see it as part of Islamic interpretation (*furūʿ*) to ensure the implementation of Islamic proselytizing and the interests of Muslim society. Fifthly, the Shiʿa do not recognize the leadership of Abu Bakr, ʿUmar and ʿUthman, whereas Sunnis acknowledge all of these as well as ʿAli as the Prophet's rightly guided companions. MUI, *Himpunan Fatwa*, p. 46.

42 Human Rights Watch, *In Religion's Name*, p. 21.
43 Ibid.
44 The population of this town is estimated to be 876,950; almost 100 per cent of them are Sunnis and members of the Nadhlatul Ulama community.
45 http://www.antarajatim.com/lihat/berita/94313/jumlah-rumah-syiah-di-sampang-yang-dirusak-bertambah (accessed 11 July 2013).
46 Umar Shihab was one of the MUI chairpersons. He had a traditional Islamic educational background in Islamic studies.
47 Din Syamsuddin was the vice chairman of MUI and the former general chairman of Muhammadiyah, the second largest Muslim organization.
48 Cholil Ridwan was one of the MUI's chairpersons who propagated anti-Shiʿa attitudes. He was delegated to MUI by his organization, called Dewan Dakwah Islamiyyah (DDI, Islamic Propagation Council). This organization has a close connection with Saudi Arabia.
49 http://www.hidayatullah.com/read/26320/12/12/2012/mui-pusat-sulit-keluarkan-fatwa-syiah-sesat-karena-ada-penyusupan.html (accessed 6 July 2013).
50 http://news.fimadani.com/read/2012/12/12/ada-penganut-syiah-dalam-kepengurusan-mui-pusat/ (accessed 6 July 2013).
51 I obtained this information from Masykuri Abdillah, a Muslim scholar who is also active in MUI, when he visited Berlin on 19 June 2013.
52 For Sampang, see A-035/MUI/Spg/1/2012, signed by Mahmud Huzaini (head of the fatwa commission), Mahrus Zamroni (secretary of the fatwa commission and Moh. Sjuaib (secretary general); cf. Human Rights Watch, *In Religion's Name*, p. 60. For East Java, see Keputusan Fatwa Majelis Ulama Indonesia (MUI), Prop. Jawa Timur No. Kep-01/SKF-MUI/JTM/2012.
53 MUI, *Himpunan Fatwa*, p. 939.
54 http://www.tempo.co/read/news/2013/06/21/173490090/Relokasi-Warga-Syiah-Sampang-Dinilai-Pelanggaran (accessed 1 July 2013).
55 http://www.antaranews.com/berita/381240/pbnu-menilai-relokasi-warga-syiah-bukan-langkah-tepat (accessed 1 July 2013).
56 http://www.antaranews.com/berita/381724/muhammadiyah-minta-pemerintah-rekonsiliasi-konflik-syiah (accessed 1 July 2013).
57 http://www.republika.co.id/berita/dunia-islam/islam-nusantara/12/01/27/lyfnwj-sebut-syiah-sesat-ikatan-jamaah-ahlul-bait-sesalkan-komentar-menteri-agama (accessed 11 July 2013).
58 http://www.islamtimes.org/vdceev8wnjh8pfi.rabj.txt (accessed 6 July 2013).
59 Human Rights Watch, 'Indonesia's anti-Gafatar campaign ends in blasphemy convictions', 9 March 2017, https://www.hrw.org/news/2017/03/07/indonesias-anti-gafatar-campaign-ends-blasphemy-convictions (accessed 10 December 2018); BBC News Indonesia, 'Fatwa MUI Nyatakan Gafatar Sesat', 3 February 2016 (accessed 12 August 2018); Anadolu Agency, 'Indonesia: Leaders of "deviant" religious group jailed', https://www.aa.com.tr/en/asia-pacific/indonesia-leaders-of-deviant-religious-group-jailed/765891 (accessed 10 December 2018).
60 Law No. 23 (2006) on Civic Administration, amended by Law No. 25 (2013); article 61 regulates the Household Registry Card (*Kartu Keluarga*) and article 64 the electronic Population Identity Card (*Kartu Tanda Penduduk*), the individual card that serves as the basis for all public service provision in the country; see for example the testimony of Hj. RA Tumbu Saraswati in Constitutional Court Petition No. 97/PUU-XIV/2016, pp. 52–53, or the testimony of Sardy in Petition No. 140/

PUU-VII/2009, p. 88, relating to the Law on Civic Administration and the 'blasphemy law' respectively.

61 Ishtiaq Ahmed, 'Religious nationalism and minorities in Pakistan', in Ishtiaq Ahmed (ed.), *The Politics of Religion in South and Southeast Asia*, pp. 81–101 (New York: Routledge, 2011), at p. 88.

62 http://www.tempo.co/read/news/2010/10/10/078283752/Ahmadiyah-Menolak-Usulan-PBNU-Keluar-dari-Islam (accessed 9 October 2013).

63 http://www.sasak.org/kabar-lombok/agama/depag-ntb-perbolehkan-ahmadiyah-naik-haji/08-09-2009 (accessed 1 July 2013).

64 The Amman Message clarified three points: it recognized eight legal schools of thought (*madhāhib*), including the Shiʿa; it forbade excommunicating or denouncing as disbelievers (*takfīr*) others recognized as Muslims; and it clarified the issuing of fatwas. See http://rissc.jo/the-amman-message/.

65 Alwi Shihab (Minister of Foreign Affairs) and Maftuh Basyuni (Minister of Religious Affairs), Rabhan Abd al-Wahhab (Ambassador of the Republic of Indonesia to the Hashemite Kingdom of Jordan.

66 Hasyim Muzadi, Rozy Munir, Masyhuri Naim, Muhammad Iqbal Sullam (NU), Tutty Alawiyyah (Islamic women's organization), Din Syamsuddin (Muhmmadiyah).

67 MUI. (2011). *Himpunan Fatwa MUI Sejak 1975*. Jakarta: Erlangga, see translation and commentary in Piers Gillespie, 'Current issues in Indonesian Islam: Analysing the 2005 Council of Indonesian Ulama Fatwa No. 7 opposing pluralism, liberalism and secularism', *Journal of Islamic Studies* 18/2 (2007), pp. 202–40.

68 MUI, *Mengawal Aqidah Umat*, p. i.

69 Interview with Ma'ruf Amin in 2010.

70 Interview with Johan Effendi in 2011.

71 Hasyim, *Council of Indonesian Ulama.*

72 Interviews with Slamet Effendy Yusuf (2010) and Din Syamsuddin (2011).

73 MUI, *Fatwa Munas VII Majelis Ulama Indonesia* (Jakarta: Majelis Ulama Indonesia, 2005), pp. 130–31; MUI, *Himpunan Fatwa*, pp. 93–95.

74 I. Hasani and B. T. Naipospos, *Wajah Para Pembela Islam* (Jakarta: Pustaka Masyarakat Setara, 2011), p. 138.

Part Three

New Directions