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When Islam Is Not a Religion in America

Muslim lawyer who helped Hobby Lobby and Hosanna-Tabor win at the Supreme Court details the difficulties Muslims face in securing the freedoms that US Christians demand.

INTERVIEW BY JAYSON CASPER | SEPTEMBER 9, 2019



Image: Caleb Lyman

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question is regularly posed by populists seeking to restrict Muslims in America. If Islam is not a religion—if it is a militant ideological system, for example—then some argue it is not subject to First Amendment protection.

At stake is the protection of religious liberty, writes lawyer Asma T. Uddin in [When Islam Is Not a Religion: Inside America's Fight for Religious Freedom](#). Her new book details recent legal cases involving Muslims, arguing that restrictions on one faith community affect the freedom of all.

Formerly a legal counsel with Becket, a leading religious liberty law firm, Uddin has worked with the US State Department to advocate against the former United Nations resolution on the defamation of religion, which was seen by many as an attempt at international cover for blasphemy laws. And through the Legal Training Institute, she has worked to extend the American understanding of religious liberty to several Middle Eastern, North African, and Southeast Asian countries.

Uddin, a Muslim of Pakistani descent, has worked on religious liberty cases at the federal and Supreme Court levels—including the [Hobby Lobby](#) and [Hosanna-Tabor](#) victories praised by conservative Christians—defending evangelicals, Catholics, Jews, Native Americans, and Muslims. Christianity Today, which recently editorialized on [why religious freedom isn't just for Christians](#), spoke with her on the sidelines of the recent US State Department Ministerial to Advance Religious Freedom.

CT: American evangelicals are often concerned that Christians have their religious liberty threatened around the world, often in Muslim-majority nations. The focus

of your book is Muslim religious liberty, threatened in the United States. What sorts of challenges do Muslims face in America?

Uddin: I think it's important to point out that the book doesn't just look at attacks on Muslims. The book looks broadly at the attack on religious freedom, seen through the prism of attacks on Muslims. I discuss violence against churches, synagogues, and Sikh temples.

But in terms of threats to Muslim religious freedom specifically, I look at the nationwide anti-mosque controversy, which started in earnest after the so-called "Ground Zero mosque" fiasco. From there, it spread to Murfreesboro, Tennessee, which was the first community to be affected while attempting to build a mosque. That's where the claim was made that Islam is not a religion.

CT editorial: [Mosques in Middle America](#)

To this day, there are ongoing struggles to build mosques. It's not just litigation, but also arson and fire bombing. There is even a question about Muslim cemeteries, to the point where American Muslims are unable to bury their dead. That's the challenge we're facing to our human dignity.

I also look at the so-called anti-Sharia laws that now have been proposed in 43 states: 217 bills as of 2017. The movement continues in full force accompanied by "marches against Sharia" (religious laws based on Islam), where we see people taking to the streets. And not that long ago, there was a murderous attack in public transportation of two men who came to the defense of two women in headscarves.

Popular agitation against Muslims is on the rise in America. But what is the legal threat these anti-Sharia laws pose to religious liberty for Muslim citizens?

Anti-Sharia laws are described as ways of stopping this really dangerous thing called "Sharia" from taking over the US. But in fact, where they really come into play is in restricting the right to religious arbitration—the same type of arbitration that conservative Christians and Orthodox Jews make use of. It's very limited; only permitted in certain areas of the law. It's not applied to criminal law, and it is very carefully constrained by the US legal framework. Arbitration decisions are not enforceable without review by a secular civil court.

Can you give a practical example of what such arbitration implies?

It involves the terms of divorce, alimony, and the enforceability of a prenuptial agreement. It deals with business transactions involving nations whose laws might or might not refer to Sharia.

The interesting thing about Sharia law is the way it reminds me of the 19th century when American society was ripe with anti-Catholic sentiment. Numerous provisions were instituted into state constitutions that limited public funding for parochial schools, driven by a presumed threat of Catholics controlling or influencing public education.

Many of those amendments are [still on the books](#)—and impact all religious schools, not just Catholic schools.

Similarly, anti-Sharia laws are described in reference to Muslims, but if they're allowed to stand, [the laws] will impact people across the religious spectrum.

How have you seen evangelical Christians contribute to either the popular clamoring against Muslims or the legal issues that would threaten Muslim religious freedom?

The Institute of Social Policy and Understanding came out with a poll that shows the varying degrees of Islamophobia among different religious groups. Evangelicals scored at the highest level. Another poll found that evangelicals are the least interested in overcoming the divide with Muslims. And I don't know if I can pin it only on evangelicals, but there are conservative Christians who challenge the accommodation of Muslim students' religious practice in public schools.

One of the things I do in the book is show how one feeds into another. These attitudes legitimize and keep certain groups silent, when actual legal incursions are taking place. We see this when, for example, religious freedom advocacy groups that are either evangelical or broadly conservative Christian fail to speak up with any sort of vigor or consistency when its Muslim religious freedom at risk.

Around the world, there are many Muslims who practice politics not just to represent their interests or to make the world a better place, but because Islam, in their interpretation, demands a certain set of laws and form of government that needs to be implemented. Is this an incorrect view of Islam? How might similar efforts affect the US legal system, if some Muslims seek this within American politics and society?

Recent research really complicates that picture. Daniel Philpott writes of a distinction between what he calls "Islam-pluralists" and "Islam-skeptics." The latter look at the problematic political use of Islam and then project it onto all of Islam and the Muslim world. But almost a quarter of Muslim-majority states are religiously free, and of the remaining, 40 percent are secularly repressive, trying to shut Islam and every other religion out of government. This complicates the idea of a necessary link between Islam and statecraft, showing that there are a variety of approaches.

But ultimately what I do with the book is to draw the readers' attention to the US. I understand that there's all these different thoughts about Islam and politics and freedom, but this book is about the state of religious freedom in America, and the rights of our fellow citizens.

So then, even if there are some Muslims wishing to change America, how does US law protect religious freedom and the basic constitution of the state?

The law limits religious freedom only when it violates a compelling government interest. For example, when religion poses a serious risk to life or health. The government is not at

a loss in this regard, it just does not have as broad a role as some of these people who are against Muslim freedom would like it to have. They want the government to step in more often with respect to Muslims, who they consider a threat at large. But the law says to look more narrowly.

Under the Religious Freedom Restoration Act, the believer can demonstrate if a substantial burden has been placed on her practice. The government then must justify the burden by identifying a compelling interest and showing that there is no better way to serve that interest than by limiting the religious practice at issue. So, a law cannot be overly broad and clamp down on someone's religious practice without showing that it is fulfilling a very particular and compelling interest.

Can you make this practical for us? What are some of the controversial Muslim practices that should be struck down by the law? What others might be controversial but the law needs to protect them anyway?

There is concern about extremist speech, for example. In one case, a prison system restricted a Nation of Islam individual from receiving his religious literature because it was considered racially inflammatory. But, in fact, Nation of Islam practitioners across the nation have been receiving the same publication, and it never resulted in violence. So even though the government was able to articulate an interest in preventing violence, it didn't show that this interest was supported by evidence. And the law requires that you back up your claims with evidence.

Here is a partial checklist of issues: taxi drivers who refuse to carry alcohol; polygamy; full-face veils; halal meat in schools. Can you take two or three on either side of the permitted/not permitted spectrum?

Each one depends on the government interest. Customers need to have access to their particular service or goods. This is also a huge question in conservative Christian cases; for instance, dealing with the ability to refuse access to contraception.

In the school context, there's a space in between the accommodations that challenge establishment of religion versus the necessary expression and free exercise of rights. While there are limits on the role of religion in public schools, under the First Amendment we do not separate religion from public life, including public schools.

In terms of things that are permissible, women who want to wear the headscarf should have that accommodated in the workplace. If they want to wear a full-face veil, that should generally be permitted unless the government can show that it violates a compelling government interest. For example, if a woman has her face covered in her picture for a government ID.

Obviously permissible is the building of religious cemeteries and houses of worship. The right to religious land use is explicitly protected by our law, though—as my book demonstrates—plenty of American citizens work feverishly to deny that right to their Muslim co-citizens.

But in other cases where the government might think that a particular practice poses a risk to physical safety, then obviously they can legitimately step in.

National security is probably the most compelling interest, but the government has to show a direct link to the practice that's being restricted. A close connection is often alluded, but there tends to be really broad incursions on liberty without showing this was the best way to limit a security threat, such as with the now-defunct NYPD surveillance program.

Do you believe that religious freedom issues are linked between evangelicals and Muslims? Should they be cooperating on these matters?

I do. It's the nature of freedom and the understanding of our law, which has very nuanced and specific requirements designed to protect religious freedom in the broadest sense, limiting it only when absolutely necessary. That's the type of protection that religious believers—and people of no religion—all benefit from.

People who get upset about the [Hobby Lobby ruling](#) don't understand that immediately after that, the precedent was used to protect the rights of Native Americans to [access their ceremonial feathers](#). Once a legal precedent has been created, it's going to translate over to other diverse religious practices.

Do you have a positive example of evangelical engagement in defense of Muslim liberty that you would like to celebrate?

Pastor Bob Roberts, the founder of [Glocal.net](#) and pastor of Northwood Church (in Texas) has been doing this work for three years in very nuanced ways. He is authentic to his religious tradition, but the openness of his faith breaks down barriers and brings people together who otherwise wouldn't speak to each other. Sharing the same space, they can then create effective, authentic change.

Has there been a high-profile evangelical legal effort in defense of Muslim liberty that you have seen?

Well, with the *Holt v. Hobbs* case (where a Muslim prisoner wished to grow a beard), several Christian religious advocacy groups did come around and support with an amicus brief.

Russell Moore (president of the Southern Baptist Convention's Ethics and Religious Liberty Commission) is one who suffered a [lot of criticism](#) from his own denomination. He publicly came out to file an amicus brief in support of the Islamic Society of Basking Ridge when that mosque was going through a very long, arduous process to get approval. ... And the folks at the First Amendment Partnership, who I think would identify as evangelical, have done really good work on this as well.

Can you tell us about your own history to help evangelicals identify with you and your efforts? How have you made contributions to defend evangelical stances on religious liberty?

I have helped to litigate their cases—for example, the Hobby Lobby case. There were a range of Catholic entities that brought similar concerns. *Hosanna-Tabor v. EEOC* was a case involving a Lutheran school, which [helped to crystalize](#) the ministerial exception doctrine.

And I think it goes beyond litigation to actual public defense, which is really where religious freedom is put in question. In the distinction between the popular realm and the legal realm, many people working on religious freedom today would say that those are intricately connected because the very legitimacy of the courts are in question and has become deeply politicized.

The work that I do, including with this book, is an attempt to help depoliticize and lower the temperature in a way that would have benefits for all kinds of religious claims.

CT editorialized on [mosques in Middle America](#) in 2010, and why religious freedom [isn't just for Christians](#) in April.

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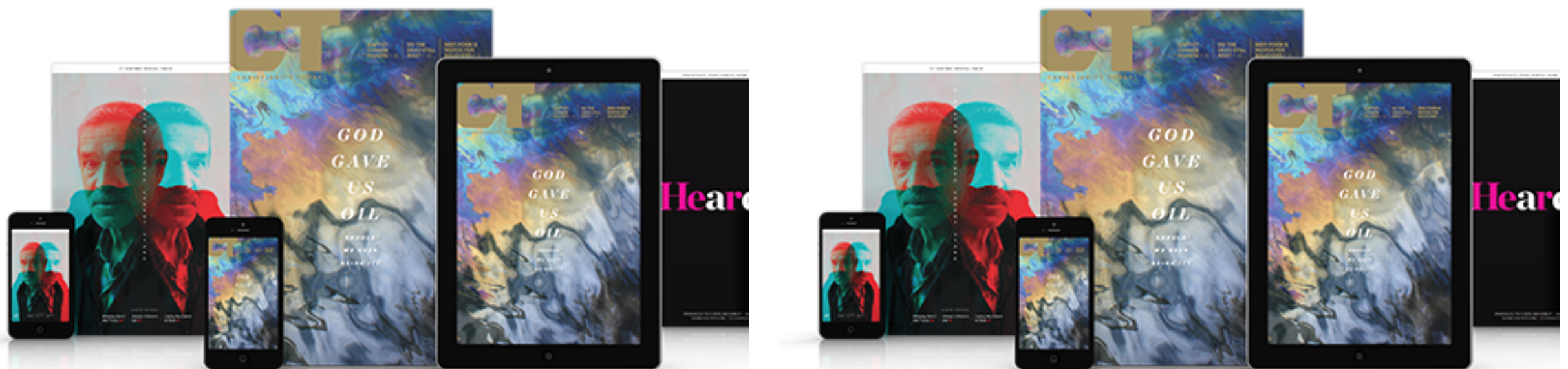


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4 Ways Muslims' Religious Freedom Fight Now Sounds Familiar to Evangelicals

The two faiths have endured similar legal backlash—underscoring the importance of advocating for religious freedom for all.

THOMAS C. BERG



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