

On the Legal Protection of Religious Scriptures

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Abstract

The public events of "burning the Quran" have caused considerable controversy since the beginning of this year. The Organization of Islamic Cooperation (OIC) has summarized the objections from the Muslim side in a resolution of 2023-07-31 where they propose that Swedish authorities shall "criminalize incidents of insulting Islamic sanctities and symbols and prevent their recurrence". The present article is a review of the arguments in their resolution and of whether they provide valid reasons for the proposed criminalization. The review concludes that the arguments do not suffice for such a conclusion.

This article also discusses a proposal, made by the author Carsten Jensen, that this controversy can be resolved by criminalizing the burning of books in general, rather than some particular books. Two reasons are given why this solution may not be workable.

Against this background, the article proposes another approach, namely the adoption of a National Code of Conduct in Religious Matters which could contain guidelines both for citizens in general, and for fervent believers. Such a code would arguably satisfy both the desire for freedom of expression, and the broad disapproval of actions that are provocative without any good reason.

The Viewpoints of Secular and of Theistic States

The state's willingness to provide legal protection for a religious text is bound to differ between secular states and theistic states. A secular state will normally adopt a policy of *public reason* whereby beliefs that are specific to a particular religion shall be considered as irrelevant in the context of legislation, and in public life in general. The opposite case occurs when the belief in a personal God is taken for granted as a state-founding value, and when the state also supports the belief that a certain text is the word of God, which means that it can be officially qualified as being 'holy'. Such a 'theistic' state is therefore prone to view holyness as an inherent property of a text, and to enact laws that protect such holy texts against abuse and scorn.

By comparison, a secular state will consider that the proposed holiness of the text is not in itself a valid reason for legal protection. It may find other reasons for providing such protection, such as for not provoking individuals or states that take a theistic position. But in doing so, or when considering it, the secular state has to make trade-offs and compromise with several of its own values, such as the freedom of expression for individuals, or the principle of sovereignty with respect to legislation.

The current controversy concerning the Quran burnings, and the arguments for and against criminalization of such acts, provide a concrete example of the issues and trade-offs that a liberal and secular state must face. The article proposes that the state may have a choice between *law-based* and *value-based* approaches in such situations, and it suggests that the latter kind of approach is more appropriate for dealing with desecration conflicts.

Current Positions in the Controversy about Burning the Quran

Several public acts of desecrating a copy of the Quran, for example by tearing out a few pages from it and setting them on fire, have caused widespread resentment in the Muslim part of the world since the beginning of 2023. These acts have been performed by individual activists in Sweden and in Denmark and they have been ruled as being legal there, while at the same time their respective governments have expressed their disapproval of them. Besides the popular protests and the objections by many governments, these acts have also had political effects as one of the reasons stated by Turkey for why it has put Sweden's admission to NATO on hold.

The official positions of Sweden and Denmark has been that public expression of scorn is permitted according to the general rules for freedom of expression and freedom of assembly [Swedish Government, 2023] . The organizers of the Quran burnings have applied for permits for these outdoor assemblies; their applications were approved, and police protection was provided for the assemblies because of the danger of violent protests against them. This was interpreted by some as though the government supported the events, which was in fact not the case. On the contrary, government representatives stated that the Quran burning events were "legal but inappropriate", or even "despicable".

Among the public objections to the Swedish and Danish policies there have been many requests that these countries should change their laws so as to criminalize insulting of Muslim (or also other religious) sanctities and symbols. The following are some of the reasons that have been quoted in these regards:

- These actions are contrary to international agreements
- These actions hurt the feelings of Muslims

These reasons may be relevant for secular states and theistic states alike. In addition, the observation that these actions denigrate the sanctity of the Quran has been seen as a reason in itself for criminalizing them, but this argument would not be relevant for a secular state, according to the principle of public reason.

The Resolution of the OIC and Associated Resolutions

A significant position statement from the Muslim world concerning the recent Quran burnings occurred on 2023-07-31 as the Organization of Islamic Cooperation (OIC) issued a "Resolution on the Repeated Crimes of Desecration and Burning of Copies of al-Mus'haf ash-Sharif in the Kingdom of Sweden and the Kingdom of Denmark" [OIC, 2023]. This resolution shall therefore be reviewed here in some detail. The following are the key contents from the first four of the 35 articles in this resolution.

1. [The Council of Foreign Ministers of the Organization of Islamic Cooperation] Strongly condemns the recent despicable acts of aggression against the sanctity of the al-Mus'haf ash-Sharif [i.e. the Quran].

2. [...] Considers that not taking measures by the authorities in Sweden and Denmark to prevent the recurrence of such acts is contrary to UN Security Council Resolution No.2686 (2023) ...

4. [...] Condemns all attempts to denigrate the sanctity of al-Mus'haf ash-Sharif as well as other sacred books, values and symbols of Islam and other religions under the garb of freedom of expression, which is contrary to the spirit of Articles (19) and (20) of the ICCPR...

25. [...] Welcomes the decision of the Secretary-General to suspend the status of the Special Envoy of Sweden to the OIC in line with the final statement of the Executive Committee at its meeting on July 02, 2023, until the Swedish authorities take the necessary measures to criminalize incidents of insulting Islamic sanctities and symbols and prevent their recurrence.

Most of the remaining articles describe diplomatic actions that have been taken, or shall be taken in order to promote the views that are stated in the first four articles.

The Resolution of the Security Council

The Security Council Resolution that is mentioned in article 2 [Security Council, 2023] urged Member States to publicly condemn violence, hate speech and extremism and encouraged them to prevent the spread of intolerant ideology and incitement to hatred. At the same time, several of the speakers in the council noted that nothing in the resolution must be interpreted or invoked to restrict or place conditions on the free exercise of individual rights.

The Resolution of the ICCPR

The ICCPR which is mentioned in Article 4 stands for the International Covenant on Civil and Political Rights. The following are the key contents of those articles mentioned above, where some of the items in each article have been omitted:

Article 19.

2. Everyone shall have the right to freedom of expression ... [list of all modes of expression that are included here.]

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals.

Article 20.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Considerations on the OIC Resolution from a Secular Viewpoint

The OIC resolution concurs with much of what has been said in the public debate about the Quran burnings. However, it relies on the argument that these incidents are contrary to international agreements, and it does not raise the argument that such events hurt the feelings of Muslims. Also, the resolution states that its goal is to *protect all individuals and communities against hatred and violence based on religion and belief*. It is in view of this goal that the OIC resolution condemns "despicable acts of aggression against the sanctity of the al-Mus'haf ash-Sharif".

Do Quran Burnings actually Cause Hatred towards Muslims?

The stated goal of the OIC resolution agrees with a common feature in the two resolutions that it refers to: they condemn discrimination, violence, hate speech, extremism, the spread of intolerant ideology, hostility, and the incitement to hatred.

A key question is therefore whether these "despicable acts" do in fact incite to "hatred and violence based on religion and belief", or if they contribute to such hatred and violence in other ways. The record of what has actually happened does not support such a hypothesis; there have not been any reports of increased hatred or violence against Muslims following the recent Quran burnings.

Moreover, the stated purpose of the burnings, or the popular perception of them does not support that hypothesis either. According to common sense, the

intended message of burning a book must be as a way of expressing outrage at the book's contents. This is a separate issue from one's view of the book's author, or of the readers of the book.

The Distinction between the Art and the Artist

Such a separation of issues is captured by the English expression that one must 'separate art from artist', and by the corresponding Swedish expression 'skilja på sak och person', i.e. 'see the difference between issue and person'. From a Swedish point of view, it is not very natural, therefore, to see the burning of Quran pages as an attack on Muslims in general. Moreover, while some Swedish Muslims view these burnings as a sign that they are no longer welcome in Sweden, if one shall believe reports in news media, their interpretation of the events is not warranted since the most recent burnings were organized by two immigrants to Sweden – from Iraq.

Do Quran Burnings actually Violate the Rights of Muslims?

The ICCPR Resolution specified as well that the Freedom of Expression may be restricted by law if this is necessary for the respect of the rights or reputations of others. However, burning a copy of the Quran, or a few pages from it, does not violate any of the recognized human rights. It is not a human right not to be upset, angry, or sorry.

What About...

As already described, the OIC Resolution relies on two international documents for supporting their case. While the proposed connection between Quran burnings and hate speech can not be verified, these arguments also lose weight when one considers how the OIC member states themselves live up to those documents.

In particular, the ICC resolution says:

Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such

limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. This may be compared with the conditions for Christians in the Islamic Republic of Iran [Iran rules] :

Christians may publicly practice their faith in Iran provided their family was Christian before the 1979 Islamic Revolution, but are nonetheless heavily monitored by the Ministry of Islamic Culture and Guidance and by the Ministry of Intelligence and Security (MOIS). ... Anyone who converts from Islam can face severe punishment, such as jail time or flagellation.

or with the religious freedom in Saudi Arabia:

Today, Christians are permitted to bring Bibles into Saudi Arabia without fearing confiscation as long as they are for personal use and not for distribution. However, public worship, preaching Christianity, and evangelistic activities promoting any other religion other than Islam are strictly prohibited.

It is abundantly clear, from these examples and from many other cases, that the member states of the OIC do not themselves abide by the principles that they invoke in support of their demands.

Appropriate Responses to the OIC Resolution

In view of the observations above, the appropriate responses to the demands in the OIC resolution would be to simply say that the proposals in the resolution have not been validated and, besides, that leading member states of the OIC apparently do not at all respect the very international documents that they are referring to.

Such a clear answer is not likely to occur in the real world, of course, since diplomacy must take several other aspects into account, and not merely common sense. However, it is anyway important to have a clear roadmap and a sense of the direction of the compass, in order to navigate properly.

Short-Term Responses to the Protests in the Muslim World

Besides the direct responses to the OIC, both Sweden and Denmark have to deal with the wave of international protests that have occurred because of the burnings. Given its established position, the major goal from the Swedish point of view should be to drive home the following two messages, both domestically and internationally:

(1) that Sweden and Swedish people in general disapprove strongly of events

where the Quran is burnt, or desecrated in other ways;
(2) that nonetheless, Sweden and Swedish people will allow strongly negative attitudes towards the Quran to be expressed publicly by some individuals, according to the principle of freedom of expression;
(3) that according to their view, deprecation of the Quran is quite compatible with a positive attitude to Muslims.

The practice that is described in item (2) is according to a general policy of open debate and open exchange of opinions. One reason for this policy is that it helps to bring disagreements out into the open, so that they can be discussed and resolved. This is considered as much preferred over the introduction of repressive laws for the purpose of placating a particular group.

The Proposal to Criminalize Book-Burning in General

A Danish author, Carsten Jensen, has proposed that rather than just criminalizing the burning of religious texts, states ought to criminalize the burning of books in general, on the grounds that such acts constitute a threat to democracy. He writes (my translation): "Book burnings are related to fatwas. The author's work should not be allowed to exist. The next step is not a big one: the author shall not be allowed to exist either. ... Many examples from history show this, from the religious persecutions during the Middle Ages, to the Nazi extermination campaigns against dissenters."

Carsten Jensen's argument was that the criminalization of Quran burning, being one particular restriction on the freedom of expression, would be a way of submitting to the demands of a particular ideology, whereas the criminalization of any burning of a book could be motivated as a way of defending democracy against a threat. There are several problems with his argument. In the historical situations that he referred to, book burnings were arguably just one symptom of a broad development, rather than one of its causes. Just criminalizing a symptom of a societal ill does not help very much.

Another problem is that if the burning of a book would always lead to a court proceedings and a fine, then many activists would likely see this as a worthwhile prize to pay for obtaining free publicity for their particular cause. Any parliamentary proposal for legislation on environmental issues or health issues, for example, could be burned in public in order to express a strong disagreement with its contents. And burning a proposal to parliament would of course easily fit under the broad designation of being a threat to democracy.

A National Code of Conduct in Religious Matters

The approach from the Swedish government so far, as well as from the Danish one, has been to express their disapproval of the Quran burnings, while at the same time confirming that they are allowed according to the freedom of expression. It is clear that this argument does not convince everyone. In particular, it must be difficult to accept for a person living in a country where government maintains strict control of media and of what can be said. For them, if the government allows a particular thing to happen, and a thing of this magnitude, and repeatedly, of course they must want it to happen? Official statements of disapproval may be seen as unconvincing veils, in this perspective.

One interesting approach would be the introduction of a National Code of Conduct in Religious Matters, which could be understood by comparison with other codes of conduct that exist already, under a variety of names. For example, while Swedish law allows any person to move around freely in forests and other open spaces, with limited formal restrictions, there is also a set of guidelines for the responsible use of this freedom. These guidelines are taught in schools and they are communicated to tourists on arrival, and this system seems to work fairly well. The guidelines represent a balanced synthesis of the interests of land owners, cultivation of land, environmental concerns, and the general public.

Another example is the booklet "Om kriget kommer" ("If the war arrives") which was distributed to all citizens in the 1950's, and which appeared in a revised edition a few years ago. It described what each person needs to know for their own safety, but it also contained guidelines for what to do in the interest of national defense, and what not to do.

In a similar vein, a Code of Conduct in Religious Matters should give guidelines from two separate perspectives. Guidelines for respecting religious objects and sites, as well as the feelings of believers would be addressed at the population at large, although any such guidelines would probably only represent marginal changes to what most people think already. Their major effect would rather be as a formal confirmation, towards the OIC and its member countries, that Sweden as a country does not condone desecration of religious scriptures.

But the Code should also contain guidelines for believers, making clear that religious feelings and beliefs do not take precedence over laws and national (society-founding) values in our country. This would serve as a counterweight to statements from organizations such as Hizbollah that call on Muslims to "punish" those who desecrate the Quran [DN, 2023] .

Law-Based versus Value-Based Approaches

The use of a set of guidelines or a code of conduct differs in important ways from the use of legal rules for constraining the behavior of individuals. In principle, legal rules are strict, predictable, and enforced through a judicial system, whereas guidelines are flexible and enforced by the good judgement of each individual. When a person adopts a set of guidelines, they incorporate these guidelines into the total structure of values that guide their behavior. This makes it possible for the person to adapt their behavior to the conditions in each situation, but it also means the application of the guidelines is less predicatable than for legal rules.

One may object that this distinction does not hold since legal rules need to be interpreted as well, and since one talks about "the spirit of the law", for example. The difference between law-based and value-based may therefore be a difference of degree, rather than a strict difference. However, this distinction does make sense with respect to the use of code of conduct, which is of course a value-based approach, and as an alternative to the criminalization of particular behaviors. Generally speaking, value-based approaches have an advantage in situations that call for a trade-off between several different values, or desires, or priorities. A set of laws is supposed to be logically consistent, ideally at least, whereas if a set of values contains values that contradict each other when applied to a particular situation, then it just means that the 'user' has decide how to handle that situation in the best possible way.

Value-based approaches have a particular weakness: they can only be effective in societies where individuals are guided and constrained by 'good' values. If the individual citizens are not very much value-driven, then laws and law enforcement are needed to a larger extent.

The use of values, value communities, and a value culture is described in my recent book 'Values and Liberalism' [Sandewall, 2023] which is due to appear in the near future.

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