

Manfred Sing

## 10 The Politics of Religious Outrage: The *Satanic Verses* and the Ayatollah's Licence to Kill

When on February 14, 1989 the Ayatollah Ruhollah Khomeini (1902–1989) called on “the valiant Muslims of the world” to execute Salman Rushdie (b. 1947) and the publishers of his book *The Satanic Verses*, this caught the writer himself, politicians, and the general public completely unawares. The call to murder, better known as a “fatwa,” came when the book had already been banned in several countries with Muslim populations, but not in Iran itself. It had been published in Britain five months earlier, in September 1988, and had caused quite a stir before this event, partly as a result of newspaper interviews with Rushdie. After only a few weeks, organised resistance from Muslims began to emerge, mainly in England, Pakistan, and India. Khomeini's interference contributed significantly to this escalation and thus created the “Rushdie affair.” This was a global crisis that hardly any state, international organisation or cultural association could escape; a polarisation of the public debate that ran through British and Western European societies as well as through migrant communities, enabling a politicisation of young Muslims.<sup>1</sup>

This chapter analyses the protests and then examines what Muslims considered blasphemous about Rushdie's work. It also explains the legal background for the accusations in Britain, Iran, and in Islam in general. Then, the chapter focuses on the form and content of Khomeini's call for murder which cannot be meaningfully explained simply in the context of blasphemy or Islamic law, which has hitherto been the orthodox approach. Khomeini's text first made the terms *Ayatollah* and *fatwā* known to the non-Islamic world, although, curiously enough, the “death fatwa,” as it came to be called in the media, did not fulfil the essential criteria of a *fatwā*.<sup>2</sup> Since a *fatwā* actually represents a non-binding legal opinion, it remained difficult for the general public and experts

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1 Mobeen Azhar, “Salman Rushdie radicalized my generation,” *BBC*, February 14, 2019, accessed November 20, 2020, <https://www.bbc.com/news/stories-47225607>.

2 In the following, I write *fatwā* to indicate a legal opinion, but “fatwa,” when Khomeini's text is described.

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**Note:** This is the extended version of my habilitation lecture that I presented at the University of Basel on May 23, 2019.

to understand on what basis Khomeini had issued an order to kill. Neither was this accepted by Sunni authorities, although they were mostly in favour of banning the novel. Nor did any other state support the call for murder. I therefore argue here for a reinterpretation of the “fatwa,” historically with reference to the profound state crisis in Iran in 1988/89 and philosophically with reference to the work *Homo Sacer* by the Italian philosopher Giorgio Agamben and his idea of “bare life.”<sup>3</sup> The focus thus shifts from the religious problem of blasphemy to the political problem of Islamic sovereignty – a sovereignty that reduced Rushdie’s existence to “bare life,” that may be taken away. This re-interpretation is intended to capture not only Khomeini’s claim to political authority in Iran, but also a Muslim transnational self-empowerment beyond the state. The aim is to show that the accusation of blasphemy was not only used to legitimatise acts of violence and vigilante justice, but that it was a vehicle of political mobilisation.

## Protests, Bans and Violence

In retrospect, the call to murder seems like a catalyst for the murder of filmmaker Theo van Gogh in 2004; the controversy over the Muhammad cartoons in the newspaper *Jyllands-Posten* in 2005; and the deadly attack on the satirical magazine *Charlie Hebdo* in 2015. Thus an aggressive cat-and-mouse game established itself, with Muslims complaining of blasphemy and racism amidst critics of Islam spreading religious slurs. Both sides would try to claim the protection of the law for their own purposes. While political scientist Kenan Malik draws a line from *fatwa* to *jihad*, Hamid Dabashi links the Rushdie controversy to the beginning of Western Islamophobia.<sup>4</sup>

Regardless of which interpretations the commentators on the 30th anniversary of the “fatwa” followed, they often saw the “Rushdie affair” as a harbinger of the “clash of civilisations” firstly described by Samuel P. Huntington in an ar-

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<sup>3</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998).

<sup>4</sup> Kenan Malik, *From fatwa to jihad: The Rushdie Affair and its Legacy* (London: Atlantic Books, 2009); Hamid Dabashi, “The Salman Rushdie Affair: Thirty Years and a Novelist Later,” *Al-Jazeera*, February 19, 2019, accessed November 20, 2020, <https://www.aljazeera.com/indepth/opinion/salman-rushdie-affair-years-novelist-190217140017088.html>; idem, “The Life and Death of Salman Rushdie, Gentleman Author,” *Al-Jazeera*, October 17, 2017, accessed November 20, 2020, <https://www.aljazeera.com/opinions/2017/10/17/the-life-and-death-of-salman-rushdie-gentleman-author>.

ticle in 1993. This – if it is supposed to mean a conflict between Islam and the West – did not take place largely because the forces on both sides were by no means united. Many Western politicians, Christian dignitaries and literary associations were reticent in their solidarity with Rushdie and even accused him of violating the historical record of early Islam in an “ethically problematic” way.<sup>5</sup> In contrast, a large number of writers of Muslim origin showed solidarity with Rushdie because they understood that it was important to be “earnest about Salman Rushdie” as they knew about censorship and accusations of blasphemy all too well.<sup>6</sup>

The first victims of assassins were probably the Saudi imam of the Brussels Central Mosque, ‘Abdallah al-Ahdal, and his Tunisian librarian, who were shot on March 29, 1989, after the imam had criticised Rushdie’s work but rejected Khomeini’s call for murder.<sup>7</sup> Two years later, the Japanese translator Hitoshi Igarashi was stabbed to death and the Italian translator wounded. In 1993, the Norwegian translator was injured and 37 people died at a cultural festival in the Turkish town of Sivas, when a crowd set fire to a hotel, trying to get hold of the writer Aziz Nesin (1915–1995), who had announced that he wanted to translate Rushdie’s novel. Additionally, there were several threats against publishing houses and attempted and successful bombings of book stores before and after Khomeini’s “fatwa.” As early as October 1988, the work was banned in India, followed by further bans in Pakistan, Bangladesh, Saudi Arabia, Egypt, Sudan, Somalia, South Africa, Qatar, Malaysia and Indonesia until the end of 1988.

The question of when death threats were first made against Rushdie has not yet been sufficiently clarified. A march by 7,000 Muslims in the northern English city of Bolton on December 2, during which a copy of the *Satanic Verses* was reportedly burned, is usually considered as the first anti-Rushdie demonstration. When demonstrators gathered in Bradford on January 14, 1989, again on the provocative pretext of burning books and a Rushdie puppet, this time in a previously advertised manner, there were enough cameras on the ground to get the protesters’ message across. Further large-scale demonstrations followed in London and Islamabad. The fact that the first copies of the novel were to be delivered in the USA in February 1989 provoked a mass demonstration in front of the Amer-

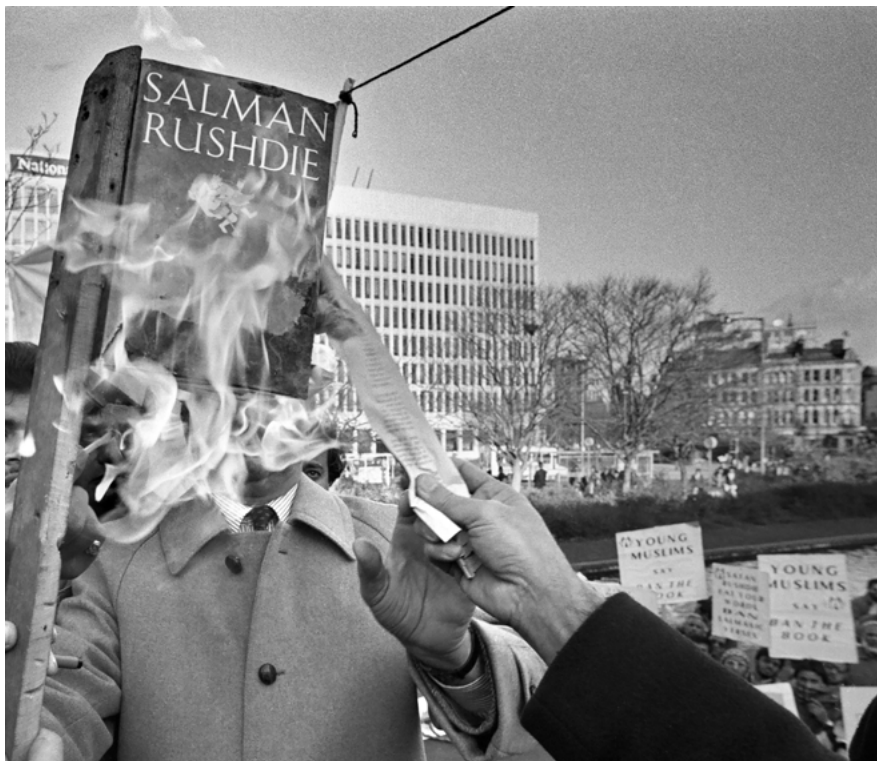
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5 Anshuman A. Mondal, “‘Representing the Very Ethic He Battled’: Secularism, Islam(ism) and Self-Transgression in *The Satanic Verses*,” *Textual Practice* 27, no. 3 (2013): 419.

6 Sadiq al-Azm, “The Importance of Being Earnest about Salman Rushdie,” *Die Welt des Islams* 31, no. 1 (1991). For pledges of solidarity with Rushdie see Abdallah Anouar, *For Rushdie: Essays by Arab and Muslim Writers in Defense of Free Speech* (New York: Braziller, 1994).

7 “The Satanic Verses: A Chronology,” *Index on Censorship* 37, no. 4 (2008): 146, accessed November 20, 2020, <https://www.tandfonline.com/doi/abs/10.1080/03064220802507179>.

ican Cultural Center in Islamabad, in which the first deaths among the demonstrators occurred.<sup>8</sup>



**Fig. 19:** Muslim protesters organised a book burning at an anti-Rushdie demonstration in Bradford in January 1989, attracting international attention to their cause and provoking a public outcry in liberal media. Photo courtesy of Guzelian Ltd.

It is not clear what knowledge Khomeini had of the novel. It is possible that his advisors gave him some passages or a summary in Persian. Since Khomeini was an enthusiastic radio listener, it is also possible that he heard the review of the work on Iranian radio. He may also have judged, as other opponents of Rushdie did, without any deep knowledge of the novel. There is even an unverifiable story

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<sup>8</sup> The death toll among demonstrators and security forces in various countries cannot be determined exactly, but is estimated to be at least two dozen.

that a mollah allegedly collected incriminating passages in a 700 pages dossier at the end of 1988 and brought it to Khomeini, who refused to ban the book, saying "it is not worth replying to this sort of thing."<sup>9</sup>

## The Politics of Blasphemy Allegations

The so-called "Rushdie affair" provoked a whole series of studies on blasphemy, which highlighted the astonishment that an outdated offence suddenly reappeared – "like a dud from an earlier wartime that could suddenly go off," as the scholar of religious studies Hans Kippenberg rightly notes.<sup>10</sup> It is significant that the controversy has become inexorably linked to Rushdie's name, as if he were ostensibly the culprit. Nonetheless Khomeini's call to murder is the key to the "Rushdie affair" since the "fatwa" intensified the protests and gave apparent legitimacy to them, although it did not spark them. It is therefore highly problematic that the affair is inscribed into a history of blasphemy "from Moses to Salman Rushdie," by the historian Leonard Levy, who dedicated only a few lines on Khomeini's "infamous legal judgement."<sup>11</sup> He justified this, somewhat naively, arguing that "the riots, book burnings and bannings, state-sponsored terrorism, diplomatic crises, and death edicts command no attention here, only the blasphemy."<sup>12</sup> Levy also does not discuss what exactly can be considered "blasphemous" in Rushdie's novel, but reproduces the contemporary public discussion on the question of whether a new British blasphemy law should be extended to all religions, or whether this would unacceptably curb the freedom of expression. In his *A Brief History of Blasphemy*, the writer Richard Webster stated that "Rushdie's intention was to use blasphemy as a way of attacking unjustifiable forms of political and religious rigidity" in the name of freedom.<sup>13</sup> Webster argued against such a right to blaspheme and against the liberal

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9 Moin, who tells this story, quotes a "private source" who renders Khomeini's words as follows: 'The world has always been full of lunatics who have talked nonsense. It is not worth replying to this sort of thing. Do not take it seriously.' See Baqer Moin, *Khomeini: Life of the Ayatollah* (London/New York: I.B. Tauris 1999), 283 and footnote 30.

10 Hans G. Kippenberg, "Die Kontroverse um Salman Rushdies *Satanische Verse* und der aktuelle Rechtsdiskurs über Blasphemie," in *Religionskonflikte im Verfassungsstaat*, ed. Astrid Reuter and Hans G. Kippenberg (Göttingen: Vandenhoeck & Ruprecht, 2010), 260.

11 Leonard W. Levy, *Blasphemy: Verbal Offense against the Sacred, from Moses to Salman Rushdie* (Chapel Hill, NC: Alfred A. Knopf, 1993), 562.

12 Ibid.

13 Richard Webster, *A Brief History of Blasphemy: Liberalism, Censorship and 'the Satanic Verses'* (Southwold: Orwell Press, 1990), 33.

plea to abolish blasphemy laws, “which would almost certainly leave the Muslim community in this country, as well as other religious minorities, feeling more precarious and more threatened.”<sup>14</sup> Webster presupposed that Rushdie’s work was blasphemous since “words *do* wound, insults *do* hurt, and abuse – especially extreme and obscene abuse – *does* provoke both anger and violence.”<sup>15</sup>

However, even if some passages of Rushdie’s novel or indeed the whole work have aroused the indignation of the faithful, the passages were and are not punishable according to current legal understanding. The attempt by British Muslims to bring Rushdie to trial for blasphemy and have the book banned failed for the simple formal reason that the blasphemy legislation only protected the Anglican Church of England. At the European level, the Commission for Human Rights saw no indication in this case that the granting of freedom of religion would require state intervention to protect people from offensive statements.<sup>16</sup> Ever since the criminal law reforms of the late 1960s, legislation in many European countries has come to conceive state-sanctioned “blasphemy” as anomalous in modern criminal law. It has ceased to be a criminal offence, and it is no longer punishable to simply hurt the believers’ feelings.<sup>17</sup> The former offence of “blasphemy” has now been restricted to revilement and turned into an act that must have the potential to disturb public peace.

After long discussions in the UK since the 1960s, common law offences of blasphemy and blasphemy libel with regard to the Church of England were finally abolished in England and Wales (2008) and Scotland (2021). These offences have been, *de facto*, replaced by a more comprehensive legislation that criminalises the instigation of racial and religious hatred. Even under the new law, Rushdie’s novel would not and cannot be charged as hate speech. (Strangely enough, even a distant observer such as Kippenberg does not explicitly draw this conclusion in his article.) The vilification of religions and religious people is only punishable, if it is intended thereby “to stir up religious hatred” (according to the Racial and Religious Hatred Act 2006), or if the disparaging talk is “likely to disturb the public peace” (as in Article 166 of the German Criminal Code).

Two problems continue to exist with this reformulation. Firstly, there remains a grey area of interpretation because the transgression of punishable remarks happens somewhere between a disparaging critique of religion and dragging it maliciously into the dirt. The second problem is the attribution of the acts of a “third party”. This means that it is different from a legal definition of wheth-

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<sup>14</sup> Ibid., 31.

<sup>15</sup> Ibid., 129.

<sup>16</sup> Kippenberg, “Die Kontroverse,” 270 – 272.

er public peace is disturbed by a provocator, who instigates his followers against a faith, or whether riots are brought about by the followers of the defamed religion in order to have a provocator punished. While in theory revilement should legally only apply to the first case, the dividing line is not always obvious. In Rushdie's case, the book bans in many countries practically followed the second understanding of upholding public order.<sup>17</sup>

Resulting from these two fundamental problems there remains an enduring discussion of whether "religious peace" deserves a special status which offers legal protection. Should the respective article be maintained or extended? Or are other criminal offences – such as insult, incitement of the people, and hate crime – sufficiently clear and robust to ensure public peace and incitement laws should therefore (paragraph 166 in the German example) be abolished?<sup>18</sup> The majority position is until now that paragraphs, which sanction the abusive insult of religious creeds, should be maintained with a narrow interpretation for the sake of upholding public peace.<sup>19</sup> In view of the 2020 murder of the French teacher Samuel Paty, who had discussed the Muhammad cartoons in his school class, the voices of those criminal law experts, who call for the complete abolition of the "blasphemy" paragraphs have again grown louder. In their view, blasphemy gives some kind of – though unintended – legitimacy to the actions of assassins.

The underlying problem is that the State has retreated to a position of simply protecting public peace and no longer decides on the intricacies of blasphemy as such. It is therefore incumbent on the religious communities to indicate the need for political and legal action – the louder they do this, the more urgent a case appears. It was undoubtedly true that many believers found Rushdie's novel offensive. Their criticisms ranged from suggesting Rushdie was engaged upon the falsification of Islamic history, of obscenity, of mixing the sacred and the profane, and disturbing the public peace to accusations that Rushdie was a racist or religious traitor or even Satan himself. The British Muslim intellectual Shabbir

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17 Before the novel was published, Salman Rushdie had expressed his lack of understanding for such a view, stating: 'It would be absurd to think that a book can cause riots.' Quoted by Malise Ruthven, *A Satanic Affair: Salman Rushdie and the Rage of Islam* (London: Chatto & Windus, 1990), 86–87, and Malik, *From Fatwa to Jihad*, 1.

18 In German law, these are the Articles 185 (insult), 139 (incitement of the people) and 46 (hate crime). For the debate and the arguments of both sides, see for example Friedmann Eißler, "Einführung," in *Blasphemie und religiöse Identität in der pluralen Gesellschaft*, ed. Friedmann Eißler (Berlin: Evangelische Zentralstelle für Weltanschauungsfragen, 2018).

19 See for example Martin Heger, "Brauchen wir ein Blasphemiegesetz," in *Blasphemie und religiöse Identität*, ed. Eißler.



Akhtar expressed a widespread sentiment in 1989, when he argued that “anyone who fails to be offended by Rushdie’s book ipso facto ceases to be a Muslim”; for him, self-defence was a necessity because without “an internal temper of militant, but constructive wrath” Islam would decline like Christianity, unable to safeguard its heritage in a hostile environment – which was obviously represented by Salman Rushdie.<sup>20</sup>

In Kippenberg’s analysis, the controversy was a result of secular law: By contributing to making religious diversity possible, it also contributed to sharpening the ambivalence of religious commitment in a secular and multireligious society.<sup>21</sup> It thus has created a space for conflicts, in which religious communities use the concept of blasphemy, which legal discourse has to re-translate into secular terms.<sup>22</sup> This interpretation misses an important point of the controversy, namely the strong polarisation of society and the politicisation of public debate. Kippenberg’s focus underestimates the politics of religious outrage, which came into conflict with “liberalism’s holy war” for unrestricted free speech.<sup>23</sup> The debate about the *Satanic Verses* became so polarised precisely because the blasphemy allegations were connected to other pressing issues. As the blasphemy accusations did not occur in an empty space, the debate immediately turned to a meta-level of discussion, asking the questions of what is considered as blasphemy and what rights minorities have.

The limitation of Kippenberg’s view about the role of religion in a secular frame becomes more obvious when compared to a more politicised reading of the affair, in which Islam is pitted *against* the secular frame or against the absolute freedom of speech. For thinkers in the tradition of Talal Asad and Saba Mahmood “the secular” is a constellation characterised by an anti-Islamic bias and an inherent violence – a constellation that is unable and unwilling to protect the religious common good.<sup>24</sup> Webster, for his part, argued that Rushdie and his supporters failed to subvert repressive orthodoxies because they themselves repre-

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20 Shabbir Akhtar, *Be Careful with Muhammad! The Salman Rushdie Affair* (London: Bellew Publishing, 1989), 102. “The Muslim response to Rushdie has successfully challenged the cultural and mental imperialism of the occidental mind.” Ibid., 105.

21 Kippenberg, “Kontroverse,” 286.

22 Ibid.

23 Webster, *A Brief History*, 45.

24 See Asad’s and Mahmood’s treatment of the Danish cartoons: Talal Asad, “Free Speech, Blasphemy, and Secular Criticism,” in *Is Critique Secular? Blasphemy, Injury, and Free Speech*, by Talal Asad, Wendy Brown, Judith Butler, and Saba Mahmood (Berkeley, CA: University of California Press, 2009); Saba Mahmood, “Religious Reason and Secular Affect: An Incommensurable Divide?,” in Asad et al., *Is Critique Secular?*. In these articles Rushdie is only mentioned once in passing by Asad, “Free Speech,” 20.



sented the liberal orthodoxy of free speech that had no liberating, but “disastrous consequences.”<sup>25</sup> Rushdie’s attack on fundamentalism “had precisely the opposite effect.”<sup>26</sup> Instead of weakening oppressive power structures, Muslims closed their ranks, and the book “was seized upon by Khomeini to help to shore up his shaky regime.”<sup>27</sup>

In his analysis of Rushdie’s novel in 1990, the anthropologist Talal Asad did not distinguish between what or whom Rushdie insulted, who felt offended, what the media debated, and who used the book for what purpose.<sup>28</sup> He simply attributed the various levels of the controversy to Rushdie himself, who stood for Western secular modernity and its “imperializing projects.”<sup>29</sup> Likewise, Webster believed that Rushdie’s novel “is the latest battle” in the long history of tensions between the West and Islam; thus, the novel transferred tropes of Christian anti-semitism to Muslims and used Western forms of Orientalist prejudices against Islam.<sup>30</sup>

Asad claimed that the book was deliberately insulting to Muslims, and he demanded that “the basic identity of Muslim immigrants should be legally protected against wanton attacks.”<sup>31</sup> Thus, Asad blurred the difference between Rushdie’s possibly denigrating picture of “Mahound” and racist attacks at Muslims. Asad held that the liberal media allowed the Muslim demands for a ban of the book to appear as “completely crazy” or “unacceptable foreign,” when they debated the demand for a ban in “hysterical terms” as censorship and the destruction of British freedoms and thus “virtually criminalized” it.<sup>32</sup> Webster added that before the “fatwa,” Muslims’ feelings were ignored, and after it, the “fatwa” was used as a pretext for doing so.<sup>33</sup>

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25 Webster, *A Brief History*, 88 and 89.

26 Ibid., 33.

27 Ibid.

28 Talal Asad, “Ethnography, Literature, and Politics: Some Readings and Uses of Salman Rushdie’s *The Satanic Verses*,” *Cultural Anthropology* 5, no. 3 (1990). Reading Asad’s treatment of the controversy, one wonders whether his later critique of secularity in *Formations of the Secular: Christianity, Islam, Modernity* (Stanford, CA.: Stanford University Press, 2003) had not started as a critique of Rushdie’s novel.

29 Asad, “Ethnography,” 239. Also compare to Akthar’s quote in footnote 21.

30 Webster, *A Brief History*, 36–38, 97 and 141.

31 Asad, “Ethnography,” 247.

32 Ibid., 247, 244 and 259. Note that Asad interprets the fact that British Muslims could not legally enforce a ban of the book as a potential criminalisation of British Muslims.

33 Webster, *A Brief History*, 131.

Although Asad noted the fact that Muslims were far from being united in several respects,<sup>34</sup> he did not apply his insight to their views on blasphemy. Rather, he held that Rushdie's readers were either "Western" readers or "the most Westernized" of Muslims since the novel "as a whole reproduces that post-Christian approach to textuality."<sup>35</sup> Asad dissociated Rushdie from an ordinary or authentic Muslim non-Western Other, whose experiences found no expression in Rushdie's novel.<sup>36</sup> He also tried to alienate him from his progressive readers by stating that the novel was not as sufficiently post-modern, post-colonial, feminist, class-conscious or culturally diverse, as it claimed to be, but rather followed a racist and anti-immigrant agenda.<sup>37</sup>

Asad started his (mis-)readings of the novel with an initial blurring of categories. He claimed that Rushdie's novel represented "some of the same things anthropologists study: religion, migration, gender and cultural identity" and that the novel stood for "the classic encounter between Western modernity [...] and a non-Western Other."<sup>38</sup> Not very surprisingly, Asad found that Rushdie's work was "poor history" and "poor ethnography" – which it never aspired to be.<sup>39</sup> Asad was especially angered by the fact that Rushdie – in fact, it is not Rushdie, but one of the novel's characters – made up some religious rules that were not contained in "any Sunni canonical work."<sup>40</sup> It remains unclear how far the anger about fictitious passages substantiates the demand to ban the book.

For Asad, the interesting point was that Muslim immigrants who asserted themselves "not as victims but as heirs of an equal civilisation who now live permanently in the West" did not ask to be included, but made "detailed demands of the state to enable them to live out their lives in a culturally distinctive manner."<sup>41</sup> On this basis, he suggested to read the book burnings anthropologically as a symbolic form of violence – a kind of self-defence against the secular order, as it were, – thereby stressing that the Muslim and the liberal outrages "are not equally balanced, in that Muslim immigrants [...] do not possess anything like the resources of power and violence available to the British state."<sup>42</sup> Asad frankly

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34 Asad, "Ethnography," 241.

35 Ibid., 245 and 250.

36 Ibid., 245.

37 For these points see especially *ibid.*, 254–257.

38 All quotes *ibid.*, 239.

39 All quotes *ibid.*, 253.

40 Ibid., 251.

41 Ibid.

42 Both quotes *ibid.*, 258.

admitted that he was neither interested in the “international ramifications” of the controversy nor in radical Islamic movements, “most notably the Islamic Republic of Iran.”<sup>43</sup> He merely stated that the Muslims’ symbolic actions and the liberal outrage about it had “also become entangled with the issue of Khomeini’s shocking death threat against a British citizen.”<sup>44</sup>

The only point that Asad is unmistakably right about is the exclusion of Muslims from the social negotiation process about the limits of public speech. Nevertheless, he did not suggest that Muslims should negotiate their own different positions with other religious, sceptical, non-religious, legal and political actors, finding viable limits of public speech critical of religions, from comedy and satire to hate speech. He simply wanted to see a ban enforced, which he considered *a priori* – given the partisan nature of the secular order – something impossible and therefore a scandalous fact *par excellence*.

Kippenberg’s, Webster’s and Asad’s positions show that blasphemy allegations in this debate are not only about religion and free speech. Rather, blasphemy allegations are a means to negotiate the essence, legitimacy, and bias of the secular order. Where Kippenberg wants to fence in religious ambivalence in the secular frame, Asad and Webster oppose the bias of the secular frame to the Muslims’ needs. Whereas the demand of inclusion can be blind to simultaneous processes of marginalisation and exclusion, the fundamental criticism of an unequal order and its underlying racism can be read at least as justification of acts of symbolic violence. Moreover, the debate also touches on the question of whether Rushdie or anyone else is entitled to speak on behalf of migrants and British Muslims. Thus, blasphemy allegations were tools to raise all of these questions about legal grey areas, social inequality, political representation, cultural rights, and power imbalances.

## The Slippery Boundaries of the Text

The accusations of blasphemy usually focused on two dream sequences in Rushdie’s novel. One concerns the writing of the Quran, using the example of the Persian writer Salman al-Farisi, who is an alter ego of Rushdie; the other concerns the brothel scene in which prostitutes at the behest of the poet Baal, another alter ego of Rushdie, take on the names of the Prophet’s wives. In both cases,

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<sup>43</sup> Ibid., 240 and 241.

<sup>44</sup> Ibid. This passing remark is the only mention of Khomeini. Note that Asad does not correctly render the addressees of “the death threat.”

the novel itself raises the question of the boundaries between reality, fictionality, and literature.

Webster is very much concerned about Rushdie's use of violent and obscene language, "the use of sex as a form of vilification."<sup>45</sup> Although Webster admits that obscenity can have liberating effects, in Rushdie's case it is "brought into conjunction with the most sacred traditions of Islam" and thus simply used "to grease the dagger of insult."<sup>46</sup> Beyond the accusation that Rushdie sometimes uses extreme language, Webster discusses neither the sexual imagery nor its function in the novel.

Furthermore, the debate has often referred to the incident of the "Satanic verses" itself, which gave the novel its title and which in Arabic is called the episode of the 'cranes' (*al-gharānīq*). It has often been claimed that the related tradition, luridly exploited by Rushdie, is apocryphal and unhistorical.<sup>47</sup> The accusation is that Rushdie deviates from the interpretations of Arab exegetes and from the Prophet's biographers – as if their texts contained the historical truth – and that Muslims must find the whole incident "blasphemous and offensive."<sup>48</sup>

However, Shahab Ahmed has meanwhile shown that there are more than 50 different lines of transmission of this episode in early Islamic literature, which is not only recounted by important Muslim historians such as al-Tabari (d. 923), but by almost all the early *ḥadīth* collectors.<sup>49</sup> Ahmed puts the percentage of those scholars up to the year 1200 who considered the narrative to be authentic at about 80 to 90 percent. In the period between 1200 and 1800, the rate fell to about 50:50; but not even Ibn Taymiyya (d. 1328), whose works are otherwise often used as reference points by modern Islamists, had any doubts about the veracity of the story.<sup>50</sup> Only since the nineteenth century have a majority of scholars considered it unhistorical and the majority of ordinary believers were not even aware of it before Rushdie's work.

The episode of the 'cranes' is a classical *topos* about the subtle temptations to which prophets are exposed at all times, but which they ward off with the help of God, as it is said, for example, in Quranic verse 22:52: "We did not send before *you* any apostle or prophet but that when he recited [the scripture] Satan in-

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<sup>45</sup> Webster, *A Brief History*, 40.

<sup>46</sup> Ibid., 93 and 92. For a justification of the sexual in the novel see Azm, "The Importance."

<sup>47</sup> See, for example, Mondal, "'Representing'," 426.

<sup>48</sup> Ibid., 427–428.

<sup>49</sup> Shahab Ahmed, *Before Orthodoxy: The Satanic Verses in Early Islam* (Cambridge, MA.: Harvard University Press, 2017).

<sup>50</sup> Shahab Ahmed, "Ibn Taymiyya and the Satanic Verses," *Studia Islamica* 87, no. 2 (1998).

terjected [something] in his recitation. Thereat Allah nullifies whatever Satan has interjected, [and] then Allah confirms His signs, and Allah is All-knowing, All-wise.”<sup>51</sup> According to the ‘crane’ episode a question about the ancient Arab goddesses that is still found in the Quran today was asked of Muhammad: “Have you considered Lāt and ‘Uzzā? and Manāt, the third one?” (Q 53:19–20). As a compromise offer to the Meccans, he is reported to have answered: “These are the high-flying cranes (*al-gharānīq al-‘ulā*) and their intercession is to be hoped for.”<sup>52</sup> This report has not become part of the Quran because shortly afterwards, Muhammad noticed his mistake and the archangel Gabriel gave him the correct answer: “These are but names which you have coined – you and your fathers – for which Allah has not sent down any authority” (Q 53:23).

The Quran – as a strongly self-referential text – often addresses its own incomparability as a feature of divine revelation.<sup>53</sup> In doing so, it distinguishes prophetic speech from satanic whispers on the one hand and the poets’ words on the other. In Sura 26 (called “The Poets”), the poets are described as erring, lying, and aimless people: “As for the poets, [only] the perverse follow them. Have you not regarded that they rove in every valley, and that they say what they do not do?” (Q 26:224–226). In another instance, it is further declared that even if man and *jinn* were to join forces, they would be incapable of producing anything equal to the Quran: “Say, ‘Should all humans and jinn rally to bring the like of this Quran, they will not bring the like of it, even if they assisted one another’” (Q 17:88).

Therefore, the often mentioned view that Rushdie’s treatment of the Quranic text hit a sore point in Islamic theology and tore open the wound even further does not appear to be well founded from a religious-historical point of view.<sup>54</sup> He rather took up a central motif of the Quranic text and the Islamic tradition itself in a literary form, when exploring the boundaries between revelation, poetry, and diabolical seduction. By addressing this fluid and slippery boundary region in an ironic and self-ironic way, he was not interested in dragging the divine into the dirt, but conversely ridiculed the all-too-human use of the sublime

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51 English translations according to the Online Quran Project at <http://al-quran.info>, accessed November 18, 2020.

52 According to al-Ṭabarī, whose report is quoted and analyzed by Gerald R. Hawting, *The Idea of Idolatry and the Emergence of Islam: From Polemic to History* (Cambridge: Cambridge University Press, 1998), 130.

53 Stefan Wild, ed., *Self-Referentiality in the Qur’ān* (Wiesbaden: Harrassowitz, 2006).

54 For the view that Rushdie hit a sore point see, for example, Kippenberg, “Zur Kontroverse,” 264.

divine – especially the usages of religion on the part of “mad mollahs,” lay actors, naive persons or avenging angels of all kinds.<sup>55</sup>

## The Killing Order

A great deal has been written about the accusations of blasphemy surrounding Rushdie's novel, but comparatively little about the “fatwa” itself. The status of Khomeini's appeal for assassination is unclear, as it not only violates human rights and international law, but is also difficult to reconcile with Islamic and Iranian law. The text was read out on Radio Tehran on February 14, 1989, published in the government press on the same day and referred to as *ḥokm*, ‘sentence.’<sup>56</sup> The following day, the London-based newspaper *Kayhān*, which belongs to opponents of Khomeini, published the text under the heading *fatwā*, and it became generally known by that name. It may also be that the foreign word became so quickly established in the Western media because it was suitable for identifying the unheard-of, the foreign and the new.<sup>57</sup> The terminological ambiguity continues to this day. In Khomeini's collected works the term *ḥokm* is used in Persian, which is given as ‘decree’ in English. The Iranian governmental press never corrected the impression that Khomeini had issued a *fatwā*, but accepted it

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55 In his careful analysis, Busse also concluded that Rushdie's novel is a plea for Islam, but a rejection of Islamic fundamentalism as well as of a Western culture intolerant of other cultures, see Heribert Busse, “Salman Rushdie und der Islam,” *Geschichte in Wissenschaft und Unterricht* 41, no. 4 (1990): 212.

56 See Busse, “Salman Rushdie,” 193 and 212. For the text see Rūḥollah Mūsawī Khomaynī, *Ṣaḥīfeh-ye Imām: Majmū‘a-i āthār-i Imām Khomaynī* 21 (Tehran: Mo‘assasa-i Tanẓīm wa-Nashr-i Āthār-i Ḥaḍarat Imām Khumaynī, 2014), 263 and 265. The published translation reads: “In the Name of God, the Compassionate, the Merciful. ‘Verily, to Allah we belongs (sic!) and to Him we shall return.’ I would like inform the valiant Muslims of the world that the author of the book, *The Satanic Verses*, which has been written [“printed,” is missing in the translation, M.S.] and published against Islam, the Prophet and the Quran, as well as the publishers aware of its content, are sentenced to death. I request the valiant Muslims to execute them promptly wherever they found (sic!) them so that nobody else would dare to insult the sanctities of Muslims. Anyone, who would be killed in this path, is a martyr, God willing. Meanwhile, if anyone has access to the author but does not have the courage to execute him, one should introduce him to the people so that he could get the reward for introducing him. May God's peace, mercy and blessing be upon you. Ruhullah al-Musawi al-Khomeini.”

57 The political scientist Mehdi Mozaffari pointedly, but not entirely wrongly, writes that the term became widespread due to its constant use by Western scholars of Islamic studies. Khomeini himself used the term “fatwa” only once in a press conference. See Mehdi Mozaffari, *Fatwa: Violence & Discourtesy* (Aarhus: Aarhus University Press, 1998), 48–49.

without comment, while it mostly referred to Khomeini's call to murder as his *payām*, a 'message,' in the sense of an (official) 'announcement,' just as the actual text begins: "I would like to inform the valiant Muslims..."

The text meets neither the formal nor substantive criteria of a *fatwā*, as it does not mention or answer any previously asked question, does not quote references from the Quran and Sunna, does not weigh up source texts, does not cite comparable examples and does not follow any legal reasoning or argumentation. A further argument against the status of a *fatwā* is that it did not lapse with the death of the *muftī*, who issued it, as is otherwise the rule in the case of the Shiite *fatāwā*. On the contrary, the representatives of the Iranian State even claimed that it could not be revoked because it was pronounced by Khomeini. Even considered as a 'punishment,' the text largely lacks any legal characteristics, as Khomeini issued a death sentence *ex cathedra*, as it were – without reference to any legal principle, a hearing of the accused, and a trial. Moreover, the question of jurisdiction was not clarified since the killing order was imposed on persons living outside the scope of Iranian criminal law for an offence (blasphemy, apostasy) that was not even mentioned in Iranian law at that time.<sup>58</sup> Even if it was considered punishable within Iran, the death sentence was a clear transgression that removed the distinction between people living under Islamic and non-Islamic jurisdiction.

The text is also extremely imprecise. It does not identify the accused by name, does not unequivocally define the group of persons concerned and does not specify the exact nature of the offence, or the underlying criminal provision. First, Khomeini qualifies Rushdie's work as "written, printed and published against Islam, the Prophet and the Quran." Although this formulation implies a hostile act, the difference between the various mentioned acts and the difference between verbal and physical aggression is not reflected within it. Khomeini already concludes that author and publishers are "sentenced to death" and authorises every Muslim to enact the sentence. He is neither interested in determining the gravity of the offence, nor does he explain how far Muhammad or the Quran have been vilified. He simply decrees the protection of a higher good (namely "Islam") through an otherwise lawless act of vigilante justice. In a fourth step, he legitimises vigilante justice with its didactic effect, which, he hopes, will stop others from "denigrating (*tohīn*) the holy goods of Muslims (*mo-qaddasāt-e muslemīn*)". So, Khomeini was not only concerned with punishing

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58 Silvia Tellenbach, "Die Apostasie im islamischen Recht," 13, accessed November 20, 2020, [http://www.gair.de/pdf/publikationen/tellenbach\\_apostasie.pdf](http://www.gair.de/pdf/publikationen/tellenbach_apostasie.pdf).



Rushdie and his publishers, but he also aimed at a far reaching preventative effect.

Despite the juridical shortcomings of this text and the fact that it “is noticeably unspecific about exactly how the book breaches law and therefore gets its legal force contextually,” many observers still did not hesitate to see it as “clearly expressing a sentence against blasphemy and apostasy” and “a legal pronouncement against literature;” thus, “despite its argueably questionable interpretation of Islamic law, it is as much a legal proclamation as a religious one.”<sup>59</sup> The confusion reflected in such a view is part and parcel of the whole affair. How can a text be a legal document, when any kind of specifically legal quality is missing? How can a text be a religious document condemning blasphemy, when it does not bother to exactly determine the content, scope, and severity of the blasphemy?

In particular scholars of religious studies as well as Islamic and Middle Eastern studies tried to wrest a deeper meaning from Khomeini’s text by resorting to classical Islamic blasphemy and apostasy regulations. The crux of the matter is that, firstly, there is no exact related term for “blasphemy” in Islamic law; in the case of a Muslim perpetrator, various acts could be negotiated under the broadly defined charge of abuse (*sabb*) and apostasy (*ridda/irtidād*) in classical law. Secondly, neither the charge of apostasy nor that of abuse automatically entailed the death penalty; rather, it required close investigation and was seldom executed in practice. Thirdly, as already mentioned, neither blasphemy nor apostasy was part of the Iranian criminal law at the time of Khomeini’s call to murder. The “Blasphemy Article” 513 was only introduced in the aftermath of the affair with the 1991 Criminal Law Reform, ratified in 1996; apostasy is still not a criminal offence.<sup>60</sup> The missing legal basis, of course, did not prevent the Iranian revolutionary courts from constructing charges of high treason against all kind of Iranians throughout the 1980s. It was general practice to refer to Quranic verses 5:33–34, when imposing death sentences for “war (*muḥāraba*) against God and his messenger” as well as against the Islamic Revolution and for spreading “corruption” (*ifsād*) on earth – a practice that was legitimatised by several articles of the Penal Code of 1982/83 (articles 194, 197, and 198–200).<sup>61</sup> Although Rushdie

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59 All quotes from Pinaki Chakravorty, “The Rushdie Incident as Law-and-Literature Parable,” *The Yale Law Journal* 104, no. 8 (1995): 2216.

60 All quotes from Refworld, “Islamic Penal Code of Iran,” accessed December 3, 2020, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=52b812384>. On apostasy see Tellenbach, “Apostasie,” 13.

61 Silvia Tellenbach, “Zur Re-Islamisierung des Strafrechts in Iran,” *Zeitschrift für die gesamte Strafrechtswissenschaft* 101, no. 1 (1989); Rudolph Peters, “The Islamization of Criminal Law: A

was also called an “apostate” (*murtadd*) in the press, the term certainly does not apply to his publishers. Above all, Khomeini's text makes reference neither to apostasy nor to *muḥāraba*.

To get the death threat lifted, Rushdie immediately crafted an apology and defended himself by claiming that he had not been brought up as a Muslim and could therefore not be an apostate. But Khomeini ruled out a pardon even if Rushdie became “the most pious man of all time.”<sup>62</sup> He did not permit the delinquent's repentance, which is unprecedented in apostasy charges since even the Quran does not dictate the death penalty for apostasy alone and speaks of cases of multiple apostasy.<sup>63</sup> This might be different when a case of apostasy is combined with the active struggle against the Muslim community, but even then repentance is possible.<sup>64</sup>

Because of these peculiarities, many Sunni scholars and the prominent Syrian philosopher Sadiq al-‘Azm wondered whether the “fatwa” was actually a *fatwā*.<sup>65</sup> In the *Oxford Encyclopedia of the Islamic World*, however, the text is without any question counted among the “famous recent fatwas.”<sup>66</sup> The religious scholar Gereon Vogel believes that there is only one explanation for all the inconsistencies in Khomeini's text, namely that it had been “written in a hurry

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Comparative Analysis,” *Die Welt des Islams* 34, no. 2 (1994). For the relevant passage, see Quran 5:33–34: “Indeed the requital of those who wage war against Allah and His Apostle, and try to cause corruption on the earth, is that they shall be slain or crucified, or have their hands and feet cut off from opposite sides or be banished from the land. That is a disgrace for them in this world, and in the Hereafter there is a great punishment for them, excepting those who repent before you capture them, and know that Allah is all-forgiving, all-merciful.”

62 The Associated Press, “Khomeini Spurns Rushdie Regrets and Reiterates Threat of Death,” *New York Times*, February 20, 1989, accessed December 3, 2020, <https://www.nytimes.com/1989/02/20/world/khomeini-spurns-rushdie-regrets-and-reiterates-threat-of-death.html>.

63 For the absence of a link between apostasy and the death penalty see, for example, Quran 2:217, 3:79–92, 3:106, and 3:177. For multiple forms of apostasy see Quran 4:137: “As for those who believe and then disbelieve, then believe [again] and then disbelieve and then increase in disbelief, Allah shall never forgive them, nor shall He guide them to any way.”

64 See footnote 62 for a translation of Quran 5:33–34. For a detailed discussion of the relevant verses see for example Armin Hasemann, “Zur Apostasiediskussion im modernen Ägypten,” *Die Welt des Islams* 17 (2002).

65 Sadiq al-Azm, “Is the Fatwa a Fatwa?,” in *For Rushdie: Essays by Arab and Muslim Writers in Defense of Free Speech*, ed. Abdallah Anouar (New York: Braziller, 1994).

66 See “Concepts of Fatwā” (Muhammad Khalid Masud, updated by Joseph A. Kéchichian) s.v. “Fatwā,” *Oxford Encyclopedia of the Islamic World*, ed. John L. Esposito, accessed November 20, 2020, <http://www.oxfordislamicstudies.com/article/opr/t236/e0243#>.

and in personal excitement.”<sup>67</sup> Moreover, the charismatic style of the “fatwa” speaks for a religious motivation rather than political calculation.<sup>68</sup> The Islamic scholar Heribert Busse, on the other hand, believes that Khomeini’s text is not to be understood in terms of apostasy or blasphemy, but *jihād* rules, since assassins are granted martyr status in advance. Although there is no reference to *jihād* in Khomeini’s text either, Busse judges that Khomeini understood Rushdie’s book as a “verbal attack on Islam, which must be averted by the means stated in *jihād*.”<sup>69</sup> This explanation is unsatisfactory because it reproduces Khomeini’s blurring of the distinction between verbal and physical attacks and passes over its legal questionability. Kippenberg remarks en passant, that Khomeini, “as the highest clergyman who bindingly establishes the norms of Shiite action,” was entitled to issue his call for murder, this in contrast to the competences of a Sunni scholar.<sup>70</sup> On the contrary, says Mehdi Mozaffari: as head of state, Khomeini was not entitled to issue a *fatwā* for his own purposes: “In short, Khomeini had no authority to order Muslims to kill Rushdie. His decree was null and void from the moment it was published.”<sup>71</sup>

This panorama of views bears witness to the difficulty of interpreting the “fatwa” in the light of classical Islamic law; Mozaffari’s conclusion especially is completely counter-intuitive. The debate is not about whether Khomeini had the authority to issue a licence to kill, be it called “fatwa” or not. On the contrary, the question is on what basis he called for Rushdie’s murder, precisely because he belonged, as a ‘source of imitation’ (*marja’ al-taqlid*), to the highest rank of Shiite scholars and because he represented, as its ‘leader’ (*rahbar*), the Islamic Republic of Iran.

In her study of the “Rushdie affair” as an event strongly contributing to the “making of the British Muslim,” Nicole Falkenhayner has identified various “translation failures” in the media coverage, as well as in the political and intellectual reactions.<sup>72</sup> I would like to add to these failures not only the academic treatments of the “fatwa,” but also one of the widely cited English translations of the “fatwa” itself. Whereas the official Iranian translation into English simply reads that the author of the *Satanic Verses* and its publishers “are sentenced to

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67 Gereon Vogel, *Blasphemie: Die Affäre Rushdie in religionswissenschaftlicher Sicht. Zugleich ein Beitrag zum Begriff der Religion* (Frankfurt am Main: Peter Lang, 1998), 186.

68 Ibid., 190.

69 Busse, “Salman Rushdie,” 194.

70 Kippenberg, “Die Kontroverse,” 267–268.

71 Mozaffari, *Fatwa*, 58.

72 Nicole Falkenhayner, *Making the British Muslim: Representations of the Rushdie Affair and Figures of the War-On-Terror Decade* (Basingstoke: Palgrave Macmillan, 2014), 36–63.

death," *meḥkūm be e'dām mībāshand* in Persian, the journalist Malise Ruthven, an expert on Middle Eastern politics, rendered this passage in his book *A Satanic Affair* with the expression that they "have been declared *madhur el dam* (whose blood must be shed)."<sup>73</sup> This difference is astonishing, as it introduces an element of strangeness to the text, where it is actually straight forward, while the rest of this translation conforms with the official translation and the Persian original. I have no idea where this difference comes from, since another correct English translation was available in *The Rushdie File*.<sup>74</sup> Moreover, as Malise Ruthven's book was one of the first comprehensive publications on the "Rushdie affair," his version was widely used. As Ruthven additionally transliterated *mahdūr* wrongly as *madhur* (with inverted letters d and h), the adoption of this misspelling in much of the literature can be traced back directly or indirectly to his book. Thus, the idea that Khomeini declared Rushdie an outlaw, or that being outlawed is a consequence of blasphemy can not only be found in books on the "Rushdie affair," but also in works on Muhammad more generally.<sup>75</sup> Even Kippenberg, although writing in German in 2010, quotes Ruthven's translation in full length in English, although a perfect German translation had already been provided by Heribert Busse in 1990.<sup>76</sup>

Ruthven's text version introduces an element of classical Islamic legal reasoning into Khomeini's text that is obviously not there, subsequently used by the then President of the Republic, 'Ali Khamene'i, for explanatory purposes around Khomeini's text. It is further known that Khomeini himself used the concept of *mahdūr al-dam* often in his tirades against enemies of Islam and the Islamic revolution. The term has somehow been smuggled into Khomeini's text and suggests an association with Islamic law. The concept of *mahdūr al-dam* ("unavenged blood") stems from the law of talion (*qiṣāṣ*), which stipulates the forms of retaliation permitted for criminal offences. Accordingly, enemies of Islam or persons, who had themselves committed a serious crime, forfeited their legal protection. If people of this "outlawed" status themselves were injured, robbed or killed, the perpetrators did not have to pay any compensation.

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<sup>73</sup> Ruthven, *A Satanic Affair*, 112. Also compare the same translation in Malise Ruthven, "Naming the Unnameable," *Index of Censorship* 37, no. 4 (2008): 135.

<sup>74</sup> See Lisa Appignanesi, ed., *The Rushdie File* (London: Fourth Estate, 1989), 68. Malise Ruthven has not answered to my question via email.

<sup>75</sup> Clinton Bennett, *In Search of Muhammad* (London: Bloomsbury Publishing, 1998), 218.

<sup>76</sup> Kippenberg, "Die Kontroverse," 267. Some authors even refer to both English translations by Ruthven and Appignanesi without noticing the difference, see for example Vogel, *Blasphemie*, 184, footnote 644, who obviously bases his own German translation on that of Busse. Busse, "Salman Rushdie," 193.

However, the perpetrators had to prove before a court that the damaged person was actually *mahdūr al-dam*; a mere suspicion was not considered sufficient. This was introduced into Iranian Criminal Law only with the reform of 2010, in articles 303 and 304. Therefore, declaring Rushdie *mahdūr al-dam* – just as declaring him an apostate – without a trial and court verified evidence was also a transgression of classical Islamic legal procedures and had no basis in the existing Iranian Law. The analysis of the form and content of Khomeini's text clearly shows that it is no legal text in a conventional sense.<sup>77</sup> The attempt to explain this text through a recourse to classical Islamic law is as misguided as seeing it as a mere answer to blasphemy.

## Bare Life and the Problem of Sovereignty

As Giorgio Agamben has convincingly shown, there is an intrinsic connection between the modern State's sovereignty and its ability to reduce individual people or groups of people to bare life. Taking Agamben's insights as a springboard, the aim is to develop an interpretation of Khomeini's "fatwa" pronouncement that places it, firstly, in the context of the disenfranchisement of the individual as well as Khomeini's claim to sovereignty, and, secondly, in the context of the actual crisis that the Islamic revolutionary regime underwent in 1988/89.<sup>78</sup> The idea of vigilante justice and the state of emergency are major concepts that entwined with these contexts. The legal figure of *mahdūr al-dam* should not be interpreted in any traditional sense, but as counterpart to 'bare life', a person "who may be killed, yet not sacrificed," in Agamben's words.<sup>79</sup> In this sense, the concept was at first used to challenge the sovereignty of the nation-state and outlaw its secular supporters.

Already in his first pamphlet *Kashf al-Asrār*, written as a young scholar in about 1943 after Reza Shah had been forced to abdicate in 1941, Khomeini retorted to a work written in the circle of the secular philosopher Ahmad Kasravi (1980–1946), calling anti-clerical reformers and secular intellectuals *mahdūr*

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<sup>77</sup> This is also Mozaffari's view although he draws the wrong conclusions when he finally explains the "fatwa" with Khomeini's paranoia, see Mozaffari, *Fatwa*, 57–63.

<sup>78</sup> Ebrahim Moosa has already alluded to the possibility of using Agamben's work for an analysis of the "Rushdie Affair," see Ebrahim Moosa, "Muslim Political Theology: Defamation, Apostasy, and Anathema," in *Profane: Sacrilegious Expression in a Multicultural Age*, ed. Christopher S. Grenda, Chris Beneke, and David Nash (Oakland/London: University of California Press, 2014).

<sup>79</sup> Agamben, *Homo Sacer*, 12.

*al-dam*.<sup>80</sup> Kasravi himself, an outspoken critic of the Shiite clergy, was assassinated in 1946, after high-ranking Ayatollahs, including one of Khomeini's teachers, Muhammad 'Ali Shahabadi (1875–1950), had declared him an apostate.<sup>81</sup> In the same way, the Egyptian Muslim Brother 'Abd al-Qadir 'Awda (1906–1954), who was himself executed as a conspirator under 'Abd al-Nasser's reign, argued that an apostate is outlawed and has to be killed by the authorities. If the State does not fulfil its duty or cannot enforce this punishment, it is incumbent on each individual Muslim to act in anticipation of, or on behalf of, it.<sup>82</sup> The idea of action, when the State is unable to fulfil its duty, is inspired by the *ordre public* in the French constitution, which understands a conspiracy against the laicist principle as high treason.<sup>83</sup> The accompanying element that justifies popular self-defence is the idea of a state of emergency. Thus, Shiite as well as Sunni Muslim opponents of secular intellectuals and politicians generally sought to prove, since the middle of the twentieth century, that secularists were apostates and that apostasy amounted to high treason. Secularists were not only considered apostates, they were also accused of sowing discord in society, thus forfeiting their membership of the Islamic community (*umma*) whose very existence they threatened. With Khomeini's "fatwa," the officially announced state of emergency and the individual Muslim's duty to act came together.

Shiite or Sunni Islamic activists reject the sovereignty of the secular nation-state as a violation of God's omnipotence, which they in turn – in order to suggest a rivalry – reinterpret as "God's sovereignty," using the neologism *ḥākimiyyat allāh*, as in Article 56 of the post-revolutionary Iranian constitution. Paradoxically, the State is supposed to use its own sovereignty to limit this and give God's sovereignty its rightful place.<sup>84</sup> Since national sovereignty, *siyāda*, derives etymologically from the master-servant relationship, and modern nation-states in the Middle East are mostly governed in an authoritarian manner, Muslim ac-

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<sup>80</sup> Amir Taheri, *The Spirit of Allah: Khomeini and the Islamic Revolution* (London: Hutchinson, 1985), 101.

<sup>81</sup> Taheri maintains that the organiser of the assassination had read Khomeini's pamphlet, see Taheri, *The Spirit of Allah*, 101; Gholam Reza Afkhami, *The Life and Times of the Shah* (Berkeley, CA: University of California Press, 2009), 370; Mohammed Amini, "Kasravi, Ahmad ii. Assassination" (2012), in *Encyclopaedia Iranica*, accessed November 20, 2020, <https://www.iranicaonline.org/articles/kasravi-ahmad-ii>. For the general context, see Moin, *Khomeini*, 60–63.

<sup>82</sup> Tellenbach, "Apostasie," 11.

<sup>83</sup> On this point see Martin Forstner, "Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem der islamischen Staaten," *Kanon* 10, no. 1 (1991).

<sup>84</sup> Therefore, the Islamic State is actually an impossible state, according to scholar of Islamic law Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013).

tivists decry a theoretical and practical legitimacy problem within the nation-state and resort to the concept of *wilāya*, the “trusteeship.”<sup>85</sup> The form of government that Khomeini had elaborated in lectures in 1970 is therefore deliberately called *welāyat-e faqīh* (“the trusteeship of the jurist”). The constitution stipulates that the jurist exercises a double trusteeship: As the twelfth Imam is considered to be hidden in occultation (*al-ghayba*) since the tenth century in Shiite faith, the jurist acts on behalf of him and assumes “the Wilayah and the leadership of the Umma” (Article 5).<sup>86</sup> Article 56 knows of two sovereignties: the “absolute sovereignty,” which belongs to God, “He who has made man master of his own social destiny;” the people’s sovereignty which is derived from the absolute sovereignty of God: “the people are to exercise this divine right” which no one can deprive of them or “subordinate [...] to the vested interests of a particular individual or group.”<sup>87</sup>

## From the Legitimation Crises in Iran to Sovereignty beyond the State

That this constitutional construction suffered a major crisis of legitimacy, which intensified around the tenth anniversary of the revolution, forms the background to the “fatwa.”<sup>88</sup> Dual sovereignty led to an impasse between the Council of Guardians, in which religious forces dominated, and the government and parliament, which was seen as the expression of the people’s will. Since no agreement between the two sides could be reached on ending the war with Iraq (1980 –

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<sup>85</sup> On this point see Mohammad Fadel, “Ideas, Ideology, and the Roots of the Islamic State,” *Critical Review* 31, no. 1 (2019).

<sup>86</sup> Constitution, “Iran (Islamic Republic of)’s Constitution of 1979 with Amendments through 1989,” 10, accessed November 20, 2020, [https://constituteproject.org/constitution/Iran\\_1989.pdf?lang=en](https://constituteproject.org/constitution/Iran_1989.pdf?lang=en); for the original see Islamic Parliament Research Center of the Islamic Republic of Iran, “Qanūn-i Asāsi-i Jumhūrī-i islāmī-i Īrān,” accessed December 3, 2020, [https://rc.majlis.ir/fa/content/iran\\_constitution](https://rc.majlis.ir/fa/content/iran_constitution). The Imam Mahdi went into hiding as a precaution because of his enemies. After a transitional period he stopped communicating with the community; hence, the question of political authority over the community. He is considered to be still alive and will return at the end of days.

<sup>87</sup> Constitution, “Iran’s Constitution,” all quotes 20 (article 56); cf. Islamic Parliament Research Center, “Qanūn-i Asāsi-i.”

<sup>88</sup> For the constitutional crisis see Johannes Reissner, “Der Imam und die Verfassung: Zur politischen und staatsrechtlichen Bedeutung der Direktive Imam Khomeinis vom 7. Januar 1988,” *Orient* 29, no. 2 (1988); Silvia Tellenbach, “Zur Änderung der Verfassung der Islamischen Republik Iran vom 28. Juli 1989,” *Orient* 31, no. 1 (1990).



1988) and on economic reforms, the post-revolutionary regime underwent “an erosion of its legitimacy.”<sup>89</sup> On January 7, 1988, about a year before the assassination call, Khomeini issued a directive that established a new “Conciliation Council” which was not provided for in the constitution and was intended to mediate between the two sovereignties. Khomeini’s move strengthened the government (which was then able to end the war with Iraq). To justify this move, Khomeini referred to the juridical principle of a compelling “necessity,” and at the same time he started to call his own trusteeship as “absolute” (*velāyat-e moṭlaq-e faqih*), thus counter-balancing the weakening of the religious forces.<sup>90</sup> He summarised this by saying that maintaining a functioning Islamic government in Iran was more important than complying with individual provisions of Islamic law, even if they were as fundamental as the five pillars of Islam.<sup>91</sup>

After the unfavourable cease-fire with Iraq, Khomeini made short shrift with arrested opposition members in the summer and fall of 1988. By a secret decree, he ordered the so-called prison massacres, in the course of which thousands of political prisoners were executed under the *muḥāraba* accusation – the largest wave of executions since the already scarcely bloodless Islamic revolution. After that, the crisis of legitimacy intensified and led to a rift between Khomeini and Grand Ayatollah Husayn ‘Ali Montazeri (1922–2009), his deputy and designated successor as *rahbar*.<sup>92</sup> Montazeri publicly criticised mismanagement, the denial of people’s rights, and human rights abuses. On the tenth anniversary of the revolution, he said: “On many occasions, we showed obstinacy, shouted slogans and frightened the people of the world who thought that our only task here in Iran was to kill.”<sup>93</sup> Demanding at first “a reconstruction of the country’s thinking about administration and its quality,” he voiced the opposing view to Khomeini by publicly saying that if the government compromised “our values and principles,” it would be better not to have a government.<sup>94</sup>

These words called into question Khomeini’s power and the whole Islamic government. Khomeini’s life work, the existence and legitimacy of his *welāyat-*

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<sup>89</sup> See Reissner, “Der Imam und die Verfassung,” 222.

<sup>90</sup> Ibid., 223 f.

<sup>91</sup> Ibid., 224. It is noteworthy that Khomeini had always opposed the secular state on the ground that the rule of God meant the implementation of the Shari’a, while all other laws must be dropped, and that only a properly implemented Shari’a could liberate Muslims from Western influences. Moin, *Khomeini*, 63 and 59.

<sup>92</sup> On Husayn ‘Ali Montazeri see von Ulrich von Schwerin, *The Dissident Mullah: Ayatollah Montazeri and the struggle for reform in revolutionary Iran* (London: Tauris 2015). For the rift between him and Khomeini see *ibid.*, 122–131.

<sup>93</sup> Moin, *Khomeini*, 281.

<sup>94</sup> Ibid., 280 and 280; cf. von Schwerin, *The Dissident Mullah*, 116.

*e faqih*, was at stake. Three days later, Khomeini countered Montazeri's words with the appeal to murder Rushdie and his publishers. At the end of March, he ousted Montazeri with the accusation that the latter wanted to hand the country over "to the liberals and hypocrites" whose mouthpiece he had become.<sup>95</sup> The original crisis of legitimacy thus turned into a constitutional crisis because no procedure had been laid down for appointing a new successor to the terminally ill Khomeini and because, after his disagreement with Montazeri, there was no other Grand Ayatollah available to take over the highest office of state.<sup>96</sup> Khomeini therefore ordered another constitutional reform. The amended Article 5 now stipulated that the supreme jurist no longer had to be from the highest ranks of the Grand Ayatollahs (*marja' al-taqlid*), but only a "just and pious" jurist. At the same time, the reform added to the jurist's trusteeship the adjective "absolute," although it had rather lost authority.<sup>97</sup> This paved the way for the lower ranked Hojjatoleslam 'Ali Khamene'i to take over the highest office.

State crisis, prison massacre, successor discussion, constitutional reforms and the "fatwa" formed an integrated context. The "fatwa" was part of Khomeini's actions to solve the legitimization and constitutional crises in Iran. It exemplified the paradoxical relationship between revolutionary and constitutional power.<sup>98</sup> With the reforms of the constitution, the leader of the revolution institutionalised that revolution by making his own office a function in the system. As the charismatic leader, however, Khomeini himself continued to stand within and outside the Islamic order and to exercise executive power through his directives. This is reflected in the apparent inconsistencies of "the fatwa," which defends the higher aim – Islam, Quran, and Muhammad – with means that are beyond Islamic law. Yet, the "fatwa" demonstrated Khomeini's extraordinary authority, representing the absolute power of God, the Hidden Imam and the Iranian people. Khomeini asserted the right to depose, persecute, and kill whoever called into question this authority.

According to Agamben, every state order allows the sovereign to suspend human rights for certain individuals or groups without violating the law. The sovereign decides not only what is permissible and not permissible, but also the relationship between the legal and the factual. Therefore, Agamben argues that "the violence exercised in the state of exception clearly neither preserves nor simply posits law, but rather conserves it in suspending it and posits it in except-

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<sup>95</sup> Von Schwerin, *The Dissident Mullah*, 124.

<sup>96</sup> Khomeini died on June 3, 1989, less than four months after his murder decree.

<sup>97</sup> See Constitution, "Iran's Constitution," 10 and 20 (articles 5 and 57); Islamic Parliament Research Center, "Qanun-i Asasi-i."

<sup>98</sup> For this compare Agamben, *Homo Sacer*, 17–23, 29–33.

ing itself from it.”<sup>99</sup> Sovereign, then, is he who can declare a state of exception and, in doing so, although he disregards it, invokes the law. In calling for the murder of Rushdie, Khomeini acted as an Islamic revolutionary sovereign not only vis-à-vis critics in his own ranks, but also vis-à-vis Iranian law and classical Shari‘a rules.

Yet, there is more to the “fatwa” than Agamben’s analysis of the State’s power can reveal. Since Khomeini linked the State’s monopoly of force with private vigilante justice, he not only eliminated the contradiction between the two sovereignties in Iran, but also claimed sovereignty beyond the State. The Muslim sovereign who imposed the death penalty was the authority of Khomeini, while the Muslim sovereign who was to carry it out was the Muslim people. On the international level, Khomeini thus acted as part of a revolutionary movement that challenged the un-Islamic world order, by claiming a power of interpretation and action beyond the State; in a religious guise, he claimed “cultural sovereignty” and tried to enforce it.<sup>100</sup> By delegating the order to kill Rushdie to any ordinary Muslim, Khomeini turned the question of whether a like-minded Muslim community, *umma*, existed into “an everyday referendum” about the *Satanic Verses*, forcing Rushdie to live in hiding for a decade.<sup>101</sup> In spite of contradictory statements by Iranian state officials, the death threat still exists, indeed private Iranian donors have raised the bounty to four Million Dollars, and Rushdie’s name is still found on the hit lists of Sunni radical movements.

## Prospects

Khomeini’s appeal to murder is neither a deficient *fatwā* nor a direct outflow of Islamic law; he rather rationalised a widespread line of argument in modern Islamic political thinking, according to which Islam is a central part of the public order and secularists, who challenge this idea, should be regarded as apostates and executed as traitors. Khomeini’s death sentence clearly expressed this idea

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<sup>99</sup> Agamben, *Homo Sacer*, 41.

<sup>100</sup> Gregor Feindt, Bernhardt Gißibl and Johannes Paulmann, ed., *Kulturelle Souveränität. Politische Deutungs- und Handlungsmacht jenseits des Staates* (Göttingen: Vandenhoeck & Ruprecht, 2017). By referring to this sovereignty as “cultural,” I underline that taking law into one’s own hands is a cultural practice that does not follow from religious practices, nor from religious norms or doctrines. Claiming this practice as one’s rights – on religious grounds – means claiming “cultural sovereignty” in interpreting one’s own religious and legal tradition.

<sup>101</sup> The expression is borrowed from Ernest Renan’s famous lecture “Qu’est-ce qu’une nation?” (1882).

and raised it to the international level. This act reflected his power to declare a national and international state of emergency and reduce people to bare life, thereby contributing (a) a solution to a legitimacy crisis in Iran saving the Islamic form of government and (b) to mobilise Muslims all over the world and empower them in an ambivalent way. This act can be seen, on the one hand, with Agamben as a characteristic for a modern understanding of sovereignty and, on the other hand, as a cultural extension of political sovereignty beyond the State. The paradox is that Khomeini's decisionism produced precisely the kind of modern state sovereignty that he had always claimed to reject as a violation of God's omnipotence. Treating his act as a mere reaction to blasphemy does not consider the religious, moral, legal, and violent transgressions that Khomeini's "fatwa" and his followers' acts involved.

Although Khomeini did not spark the protests against the *Satanic Verses*, his act dramatically intensified and polarised the debate. While Muslim believers in Britain obviously felt offended by the book, their outrage was not only directed at blasphemous passages, but at a biased campaign for unrestricted free speech and an apparently biased secular order that did not take Muslim sensitivities into consideration in the same way as it did with others. Such demands therefore addressed the significance of religious feelings and participation, racism and exclusion in modern societies. Through their protests, British Muslims constituted themselves as a religious, cultural and political minority expressing their specific demands.

Conflicts about the nature of multi-religious and multi-ethnic cohabitation are far from over. Today, we can watch the different uses of Muhammad and a continuing provocation between (a) champions of free speech who make fun of the Prophet to test the limits of public speech, (b) Islamophobe groups who disparage everything Islamic to push an anti-Muslim and anti-immigration political agenda, (c) Muslims, who respond with protest and violence, providing the media images of an intolerant religion that are useful for groups a) and b). Between wanton blasphemers and outraged defenders of Islam, it sometimes appears as if there was a shrinking space for voices of multiculturalism and moderation, although they are by far the majority.

Moreover, Khomeini's call to use extra-legal force to protect the highest Islamic sanctities set a modern example of how to use blasphemy allegations for political and other reasons. Rushdie's tragedy has been followed by many farces. The accusation of blasphemy has become a weapon to maltreat secular politicians and intellectuals, feminists and non-Muslims in several societies with a majority Muslim population, especially in Pakistan, whose blasphemy law goes

back to British colonial times.<sup>102</sup> Such conflicts about constructed blasphemy allegations offer Muslim activists, as well as secular groups, a way to mobilise followers at home and supporters abroad around their respective agendas – an Islamisation of the criminal law or the abolition of the relevant paragraphs. Thus, it is fair to conclude that “blasphemy against the Prophet of Islam has become a global challenge.”<sup>103</sup> It can be further assumed that the Prophet of Islam will not retreat so quickly. The underlying conflicts are not religiously motivated in a narrow sense; rather, the actors use blasphemy allegations as a tool for social mobilisation to negotiate the significance of Islam as a public and political identity. Or, as an observer of the blasphemy cases in Pakistan remarks: “The first thing I noticed was that this was not about religion at all; it was all politics.”<sup>104</sup>

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**102** Several hundreds have been charged with blasphemy since 1990, no one has been executed, but up to 60 people were assassinated, among them also two politicians, who supported Asia Bibi, who was the most notorious case. As a Catholic woman, she was sentenced to death in 2010, but the Pakistani Supreme Court acquitted her in 2018, and she left the country for Canada. For an Islamic criticism see M.A. Muqtedar Khan, *Islam and Good Governance. A Political Philosophy of Ihsan* (Basingstoke: Palgrave Macmillan, 2019), 25–42. Compare also Deutscher Bundestag, *Zweiter Bericht der Bundesregierung zur weltweiten Lage der Religionsfreiheit*, Drucksache 19/23820 (October 29, 2020), 127, accessed December 2, 2020, <https://dip21.bundes-tag.de/dip21/btd/19/238/1923820.pdf>.

**103** Khan, *Islam and Good Governance*, 27.

**104** *Ibid.*, 28.

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