Society and Propriety: The Cultural Construction of Defamation and Blasphemy as Crimes in Islamic Law

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1 Introduction

Authors writing on Islamic law have long recognized a key distinction by which medieval Muslim jurists divided the world of rights and responsibilities into matters of the mundane and matter of the divine. Medieval Muslim jurists used the terms ḥuqūq al-ʿibād (lit. “rights of man”)¹ to refer to the former and ḥuqūq Allāh (lit. “rights of God”)² to refer to the latter. But the meaning of these terms was not as simple as this bipartite distinction would suggest. The terms certainly did not take on the sense of rendering unto Caesar or unto God the things due to each, as familiar from the Roman Christian tradition.³ Moreover, the presence of a third category—ḥuqūq mushtaraka (lit. “shared rights” between man and God)—threw into question the nature and extent of the distinction. Why was it, for example, that a minority of jurists considered “God’s rights” to have been offended when someone made a defamatory statement against an individual, whereas most jurists deemed “man’s rights” to have been injured for the same offense? Moreover, how did this influential minority define the “rights of God” in the first place, such that they were able to articulate a set of public values, or what we might call rules of propriety, that collectively came to frame popular Islamic legal views of defamation and blas-

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¹ Other terms used for this same concept include: ḥuqūq al-ʿabd/al-ʿabīd, ḥuqūq al-ādami/al-ādamiyyīn, ḥuqūq al-nās, and ḥuqūq khāṣṣa.

² Other terms used for this same concept include: ḥuqūq al-sharʿ, ḥaqq al-imām, ḥuqūq al-sultān, and ḥuqūq āmma.

³ See Matthew, 22:20–21 (“And he saith unto them, Whose is this image and superscription? They say unto him, Caesar’s. Then saith he unto them, Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.”).
phemy? This essay seeks to answer these questions with an eye on the novel arguments of that minority, that is, of Ḥanafī law.

I argue that, as most clearly articulated in Ḥanafī law, the concept of “God’s rights” often had little to do with unequivocally divine rules. Instead it meant public values.⁴ In turn, the medieval notion of public values was in part defined by rules of propriety, that is, the rules of decorum, honor, and morality as conventionally understood and constructed by Muslim jurists within their particular social and cultural contexts. To situate this new definition, it is worth exploring recent scholarship on the typical distinction between “God’s rights” and “man’s rights,” as I do briefly in Part I. Drawing on the Sunnī treatment of the criminal law of defamation in Part II, I identify a uniquely Ḥanafī categorization of that crime as a violation exclusively of “God’s rights”—a notion distinct from the conception of all other schools of Islamic law of that crime as personal offenses against “man’s rights.” After arguing in Part III that Ḥanafī jurists understood offenses against “God’s rights” to mean violations of public values and of common rules of propriety, in Part IV I provide some examples of the related laws against blasphemy⁵ from Fatāwā ʿālamgīriyya, a seventeenth-century compendium of Ḥanafī law from Mughal India. Throughout, the claim is not that Ḥanafī law alone espouses blasphemy as a crime. Rather, the claim is that the Ḥanafī conception of defamation as exclusively one of “God’s rights” helped medieval Muslim jurists construct and expand the related Islamic law of blasphemy in ways that transformed acts deemed noncriminal and/or private in early Islamic law into criminal violations against both the public values of at least one medieval Islamic society and the common rules of propriety.

2 Part I: Defining God’s Rights

In defining “God’s rights,” other scholars have highlighted notions of society in their attempts to delineate the jurisprudential and social meaning of that

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⁴ For a further definition and study on public values in a different context of Islamic criminal law, see Rabb, “The Islamic Rule of Lenity”. For elaboration of this concept in American law, see further Eskridge, “Public Values,” 1007, 1091 (observing that American legal canons reflect “public values” drawn from the U.S. Constitution, federal statutes, and common law).

⁵ I use blasphemy to refer to statements that subject a person to an accusation of unbelief or a legal ruling of apostasy (kufr). Because the offense refers to statements, rather than actual beliefs, as discussed by the Ḥanafī jurists in Fatāwā ʿālamgīriyya, I use blasphemy rather than heresy as the more accurate term.