

# 1

## Podcast Transcript

Version 1.1, 13 June 2019

### When Islam Is Not a Religion



Podcast with **Asma Uddin** (24 June 2019).

Interviewed by **Benjamin Marcus**.

Transcribed by **Helen Bradstock**.

Audio and transcript available at:

<http://www.religiousstudiesproject.com/podcast/when-islam-is-not-a-religion/>

**Benjamin Marcus (BM):** *Hello, Religious Studies Project Listeners! My name is [Ben Marcus](#) and I'm really pleased to be here today with [Asma Uddin](#) – Welcome, Asma! Asma Uddin is a fellow with the Initiative on Security and Religious Freedom at the UCLA Burke Centre for International Relations. She's also a Berkley Centre Research fellow and a senior scholar at the Religious Freedom Centre of the Freedom Forum Institute. Uddin previously served as council with Becket, a non-profit law firm specialising in US and international religious freedom cases, and was director of strategy for the Centre for Islam and Religious Freedom, a non-profit engaged in religious liberty in Muslim-majority and Muslim-minority contexts. She is widely published by law reviews, university presses and national and international newspapers. She is also an expert adviser on religious liberty to the Organisation for the Security and Cooperation in Europe and a term-member of the Council on Foreign Relations. In addition to her expertise on religious liberty, Uddin writes and speaks on gender in Islam and she is founding editor-in-chief of [altmuslimah.com](#). She graduated from the University of Chicago Law School, where she was a staff editor at the University of Chicago Law Review. And we're here with Asma today because she just wrote an excellent new book that I've had the chance to get a sneak preview of, which is titled [When Islam Is Not a Religion: Inside America's Fight for Religious Freedom](#), out on July 6<sup>th</sup>, and available for pre-order now. So I'm excited to have Asma here today to talk about that book. And I want to start off with a broad question that really is the context for the book that you're writing, which is: was there a specific moment, or experience, that alerted you to the fact that people are seriously arguing that Islam is not religion?*

**Asma Uddin (AU):** There was. And thank you, Ben, for having me here. It was in 2010, I was still at the Becket fund, and I was working on a case in Murfreesboro Tennessee, involving [the Islamic Centre, Murfreesboro](#), and its attempt to build a new facility. As is very common with Muslim communities across the US, the community in Murfreesboro had outgrown its base numerous times

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# 2

## Podcast Transcript

Version 1.1, 13 June 2019

and was tired of moving from apartment, to garage, to storefront, and decided that it needed a permanent spot: something that was big, and could accommodate them and their growing congregation over the course of many years. And, given the existing relationships that the Muslims of Murfreesboro had with others in that community, they were totally caught by surprise when, in the course of their construction of this building, their construction site and much of the construction material was actually set on fire. And those flames – as they were eating up this site and these materials – those were really the opening scene of my book. Because it was in that moment where there were these very clear signs that there was going to be real tension. And chronologically speaking, the timing is important because this incident happened pretty much on the heels of the [Park51](#) dispute that has sort-of erupted, and taken over both New York City and the national headlines dealing with the mosque project – or a project that was deemed to be a mosque. It was actually a cultural community centre in New York. And so the two incidences are linked, in terms of the substance and the timing. But the argument in Murfreesboro was clear that it had come out of the animosity against the Park51 building. In the Murfreesboro case, it was actually argued in court, over the course of the six-day hearing . . . which is a significant fact, because the judge didn't stop the questioning as it went on! Typically, if a lawyer gets out of line the judge shuts it down, but in this case it was allowed to go forward. And in the course of that six-day hearing it was argued very explicitly . . . and there's always been a long time when these arguments have implicitly been made that Islam is not a religion, but these words were actually stated in court. And the argument was, essentially, that all the different protections that houses of worship get under the law do not apply in that case because Islam is not a religion.

**BM:** *And what are they arguing that Islam is? What are they saying? If it's not a religion, what can it be?*

**AU:** There tends to be a number of responses to that. But the most dominant response is that it is a political ideology. And, you know, furthermore a dangerous political ideology that is bent on taking over the United States; that is at odds with the US Constitution; and its ultimate goal is a subversion of that Constitution.

**BM:** *And I assume . . . Did the judge provide any good questions . . . that would try to undermine that argument? Or did the judge just let that go forward unchallenged?*

**AU: (5:00)** I mean, it was a number of witnesses that were questioned with really outrageous questions, such as: “If a religion is founded by a Prophet that engaged in sexual relationships with underage girls, specifically a six year old, would you call that a religion?” I mean, these are like  
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## 3

## Podcast Transcript

Version 1.1, 13 June 2019

commissioners and various government officials, sitting on the stand, being asked these kinds of questions.

**BM:** *Wow! So what do you find most alarming about this move to redefine Islam as something other than a religion? What have been some of the tangible repercussions or consequences of this?*

**AU:** Yes, I think the conversation on Islamophobia has been going pretty strong for a long time. A lot of scholars and activists have noticed this trend. And what I noticed when I set out to write this book was that the conversation was almost exclusively based on what the media and politicians are saying – which is very important, obviously, because of the impact that both of those players have on our society. But nobody was really looking at the effect of this rhetoric on constitutional rights. And to the extent that that sort-of bridge was being made to tangible results, it was almost always in the light of national security policy and questions of immigration and detention. But it was a little odd for me, actually, that Muslims as a religious community . . . that conversation wasn't happening through a religious liberty lens – which I get into in the book, actually. To the extent that framing, in itself, is another way of essentially saying that “Islam is not a religion”. If you keep talking about it in some other terms and not as a religious liberty issue, you're almost implying that religion isn't the proper lens to be looking at this through. And so when I set out to write this book, I was really coming from my background as somebody who's a lawyer and writer focussed on religious liberty in the US, and abroad. And I was wanting to change that conversation a little, and turn the focus a bit to the concrete effects on religious freedom – which is what I spend the entire book really looking at: the various ways that this “Islam is not a religion” argument comes up. Sometimes it's very explicit. Sometimes it's implicit but in all cases it's very obvious. And I have several chapters, each dedicated to a different area of religious exercise, where this has come into play to diminish legal rights of American Muslims under the US Constitution.

**BM:** *That's so interesting. I wonder if you've seen any changes in the strategies of lawyers, or legal scholars, who are advocates for the Muslim community? Are they starting to add in legal language protecting the rights of Muslims that are not just based on the [First Amendment](#) but based on other laws or legal precedent in their court cases? Are they trying the [Fourteenth Amendment](#), or other laws or statutes?*

**AU:** Yeah, I mean I haven't done a full survey of actual briefs filed. It's more so: are briefs being filed at all? But I did see some legal literature – academic literature – where Muslims were arguing that

Islam, and protections for Muslims, needs to be defended under the racial discrimination elements of

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## 4

## Podcast Transcript

Version 1.1, 13 June 2019

the equal protection clause.

**BM:** *Interesting.*

**AU:** And in some cases the argument went so far as to say that it should be used *instead* of religious liberty arguments because it “more accurately captures what is going on”. And that was, again . . . I mean, this was something that I read very early on in my research, which again was very alarming for me because it wasn't just that there was a failure to understand these issues, but it was an actual concerted effort to diminish the importance of that. So again, it's a move *within* the community. It's not just outsiders saying this. But now it's like a move within the community being, like, “Yeah, I think a better way to think about what we're going through is racial discrimination and let's advocate for it that way.” And I think that that in itself opens . . . I think the racialisation of Muslims is a reality. I think that is a phenomenon. But when you begin to say that it is racial instead of . . . or that the racial element is more important than . . . you're creating exactly the space that these other people want, to diminish the religious status of Islam. You're giving them that opening. And that's worrying.

**BM:** *It's fascinating that the discourse by those who are antagonistic towards, or attacking the rights of Muslims has actually changed, to a certain extent, the legal strategy of Muslims – or their allies in courts – to move from the religious liberty lens to the race-based discrimination lens. Or maybe a combination of those two things.*

**AU:** Again, I haven't . . . that was the advocacy that I saw in the academic literature (10:00). And in terms of the actual legal advocacy I think, for me, that's less of a current problem in its explicit form. But I think this idea of Muslims as racial or ethnic minorities – or something akin to that – as opposed to a religious minority, is showing up just in the types of issues that are being litigated to begin with.

**BM:** *Right.*

**AU:** And so, coming from a background where I saw very sort-of expansive advocacy for religious liberty on behalf of conservative Christians, and Jews, and a wide array of other religious groups in the US, that expansiveness is very much missing in the Muslim legal advocacy space. It's like even the [NYPD surveillance case](#), it was just. . . . The argument there, in terms of proving animus, was almost entirely based on trying to prove intentional discrimination. And I was like . . . I tried advising that group that you can actually prove discrimination without proving the exact very explicit intentional discrimination. There's a wide array of ways to prove that there was systemic differential treatment in

## 5

## Podcast Transcript

Version 1.1, 13 June 2019

a very systemic way. It could be something that's not at its face discriminatory but applied in a particular way . . .

**BM:** *Right.*

**AU:** And that resistance or, I guess, the narrow sort-of lens on what constitutes religious discrimination is not something that's limited to Muslims, but I think it's just part of the political alliance that they've been welcomed into, that wants to think of religious liberty in very limited terms. Whereas many people on the conservative side would argue for religious liberty much more broadly. And so I think all those are political elements mixed in as well.

**BM:** *Yeah. That's fascinating. And are you seeing it show up in the court? So could you tell us a little bit more about how your work ties into the argument that courts are biased against Muslims – that somehow religious freedom is for Christians only? This is something that's come up with a few of the Supreme Court cases that were decided just in the last year – that religious freedom laws are only really being applied to protect Christians and not Muslims or other religious minorities. Could you speak a little bit more about that?*

**AU:** Yeah. And so I think that more extreme version of that statement . . . this idea that you stated perfectly encapsulated that . . . The Editorial board of the *New York Times* put out a piece about a month ago with the title “[Is Religious Freedom for Christians Only?](#)” And I think that that's an extreme version of what I'm looking at. I don't think that the bias is that extreme. And I definitely don't think that's the case with the US Supreme Court. Do I think that there is some problematic bias and some dynamics that need to be looked at, and questioned more closely? Yes. There is statistical evidence that a number of different researchers have put together, looking at religious liberty cases brought under a wide array of legal bases – whether it be the [Free Exercise Clause](#), the [Religious Freedom Restoration Act](#), and so on – and looking at these cases over the course of . . . one study, for instance, looked at it over the course of a decade and found that Muslims were the least likely to have their religious liberty claims resolved in their favour. I think the only one that was competitive with that was the black separatist sects. And so there's a number of studies looking at and bringing this issue to the fore. And these researchers then also take the step of trying to figure out “Why?” Like, “What's going on?” Because when it comes to legal cases and their resolution there can be a number of different things going on. It could be, for instance, that many Muslim claims are from Muslim prisoners, and prisoners generally are notorious for bringing frivolous claims – so is that what's going on? Well, no. Because if it was frivolous it would have been dealt with much before the judge got to

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## 6

## Podcast Transcript

Version 1.1, 13 June 2019

writing opinion and deciding a case. And so, for instance, a [study](#) that I discuss in some detail in the book is one by [Gregory Sisk](#) and [Michael Heise](#) and they go through a number of explanations of what they think, and explain why none of them are the right explanation. And they finally conclude that it's bias. It's a bias that a lot of judges probably don't realise that they have. But they, as human beings living in a society saturated with this, are essentially being affected by what's going on outside the courtroom in terms of how they're dealing with some claim in front of them. And so there's that empirical evidence. And then in terms of the type of thing that the New York Times was seizing on . . . I think it's significant that it is the New York Times and its editorial board. Because it's really reflecting, I think, what many Americans are feeling in the light of more recent decisions. I think that contrast that we saw this last summer between the Supreme Court's (15:00) . . . the way it dealt with animus – religious animus or anti-religious animus – in the [Masterpiece case](#). And there was a lot made of what the commissioners and the Colorado Human Rights Commission had said about Jack Phillips' Christian beliefs, or religious beliefs specifically. And that was enough to, essentially, hold in favour of the baker. And then, three weeks later, you have the [Travel Ban case](#) where it's just way more evidence of animus and it's like the President of the United States who's engaging in this. And it was just sort-of deemed an issue, by the majority, that wasn't relevant. And there are all kinds of other complicated factors here. It's not just a state commissioner it's the President. The President comes with all kinds of special privileges. But many Americans. . . . And it's also the fact that the dissent in that case disagreed and said that, “Well, I don't think that that's the way law should be interpreted in that particular case.” And so there's that plausible legal argument for why animus should have played a bigger role. But then that contrast really, I think, left a lot of Americans seriously wondering about the impartiality of our justice system. And then it came again to the fore in February, about a month ago, when we dealt with the [case involving a Muslim inmate](#), a death row inmate who wanted an Imam with him in the execution chamber and was told that he couldn't have him there with him, because the only clergyman allowed in there was the one of the staff. And the only one on staff was a Christian clergyman. And so, again, it was just especially because the facts of that case are so heart-breaking – it's like your final moments! And the fact that it wasn't just, like, no clergyman was available. I think Alabama has actually moved to that position now, which I think is bad for other reasons. But it was like, “Well if you happen to be Christian, you'll get him.” Right?

**BM:** *Right.*

**AU:** And so I think we're consistently seeing this. And of course there's the bigger looming question of how partisan Supreme Court is. And we saw that blow up with the [Kavanaugh](#) hearings.

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## 7

## Podcast Transcript

Version 1.1, 13 June 2019

**BM:** *Right. So you've outlined so many challenges to trying to help the public understand the nuances of this issue. Obviously there is compelling empirical evidence that you mentioned from different scholars who've been researching the success of religious liberty claims by different religious groups. You've talked about public understanding of how the Supreme Court and other courts have interpreted the First Amendment. And The New York Times editorial board piece. So with this very loud media landscape, where people are talking about this issue in very polarising ways, what have you found has been successful when you're talking about Muslims and religious liberty, when you're trying to reach different audiences – and especially audiences that might be hostile, or questioning the research and evidence that you present in your book? Has it been that empirical evidence is really helpful? Have you found personal narrative . . . ? I know in your book you weave in some of your personal narrative with your family growing up in Florida, if I remember correctly. So what has been successful? Do you change your tactics or strategies when you're speaking to different audiences?*

**AU:** So in terms of whether or not this is successful, I think that's a question that remains to be seen once the book comes out and I use it as a sort-of launching pad for conversation and real engagement – which is what I'm hoping to do with it. But I think you raise an important question. I think that's what I was also trying to get at when I said this framing of *The New York Times*' editorial board . . . and I also understand that it's probably getting a compelling title. But I made it a point to say that I thought it was more extreme than it needed to be. And part of that is just sort-of forks into how I wrote this book to begin with. I just made . . . I made a concerted . . . It was actually a struggle to write about anti-Muslim issues in the US and not to fall into the type of tone and rhetoric that tends to dominate the space. I'm not actually sure that I've seen a book that really gets into the question of Islamophobia, and does it in a way that tries to make peace and reconcile with the people who are engaging this rhetoric. And that ultimately is, I think, why a lot of this literature just isn't having an impact. I don't think it's enough just to kind-of like use it to hammer other Americans. I think the point is . . . OK I aim to articulate what's actually happening. I'm not going to sugar coat it (20:00). But I'm also not going to use it to make assumptions about . . . certain types of assumptions that I think are probably a little bit too common now. Which is this idea that the person making these arguments is either inherently “dumb” or “bigoted” is something that we hear a lot. And I try to stay away from those words. Because I think it turns people off. It turns off the precise people that you need to reach. It makes them uninterested and it makes them put you in a particular box. And so I try, to the extent possible, to use language that shows that to some extent I understand their concerns. And I see them as another human being who is motivated by things that a lot of human beings are concerned about. A huge one that I

## 8

## Podcast Transcript

Version 1.1, 13 June 2019

keep hearing about is this idea of security and the way that Muslims have been portrayed in the circles . . . and with the leaders that they listen to, as a threat to the security of them, to their families and to their country. And part of my effort here, in humanising this, is like, “Guess what? I feel that, too.” Because I am also human, right? And so it's hard to explain that a) I'm not going to put you down for your concerns, but I'm also going to explain to you how I have those same concerns and yet, even with those same concerns I don't think that that justifies, or requires that, we limit the rights of Muslims, or of anyone else. So to the extent that we can measure success, I think some of the people, that interact with that group, which have read the manuscript, feel that I've done that well. So it remains to be seen.

**BM:** *Yes. And to follow up on the question of audience: when you were writing it, did you imagine that you were equipping . . . were you trying to “robe the choir”, you know, “feed the choir”... are you “preaching to the choir” intentionally so that they have the tools that they need to continue to “sing out loud” – to use the metaphor for too long – to say that that “Islam is a religion: here are resources that I found from this book that help me make that argument?” Or are you trying to convert other people? Are you trying to reach an audience that already disagrees with you, or perhaps doesn't quite know, and you're trying to bring them over to your understanding of things?*

**AU:** Well, the funny thing with the book is that I sort-of take aim – in my very civil, calm way, you know – across the political spectrum. So, roughly the last half of the book really looks at the way that I think that liberal allies of the Muslim community are, in their own ways, turning it into something that is not a religion. And why I think that this is really problematic. So the question really is: will I have any friends after the book? (Laughs).

**BM:** (Laughs)

**AU:** But the way you phrased the question was interesting. Because you said, “Are you preaching to the choir or trying to give them the tools to make the argument that Islam is a religion?” And it's interesting because I've written about the book topic in mainstream news outlets, [The New York Times](#) and more recently [The Washington Post](#), and a lot of people do get caught up in that. Like this question of “Well is Islam a religion, or is it not a religion?” “How do we define a religion?” “Is the dominant frame here the Protestant conception of what a religion is, and is that the core of all this?” And I actually don't get into that. I sort-of mention that as an introduction as like “Yeah, that's going on – but that's not relevant.” This book is not a philosophical, deep dive into what constitutes a religion. I think that's not what's important. I think a lot of other people have done that. I think it would be interesting to look at that again in the light of modern political debate. But it's more so: OK, I'm

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## 9

## Podcast Transcript

Version 1.1, 13 June 2019

talking about the law, and the law has its own way of figuring out what's a religion for purposes of protection under the US Constitution. And that really is the only definition that matters when it comes to legal grades. So there's various philosophical definitions that have been adopted by the courts. But, again, the relevance is only to the extent that it's been adopted by a court.

**BM:** *That's so interesting. Do you think that there's a disconnect between conversations in Religious Studies as a field about what religion is, and in the legal field about what religion is? Are the courts listening to Religious Studies scholars when they're trying to make sense of what constitutes a religion and what doesn't? Or is it its own tradition, and they're just referring back to their own tradition and not really in conversation with Religious Studies scholars?*

**AU:** Well I mean, currently, it's [Paul Tillich](#)'s definition of religion that has really . . . The US Supreme Court has never defined religion. But federal courts have. And so there isn't, like, this one agreed upon definition in the legal world (25:00). But for purposes of actual legal protections they understand . . . there is an understanding by the courts that whatever the definition may be, it has to be pretty broad. And that judges are not in the best position to be defining philosophical parameters of what constitutes religion. So to the extent that they can turn to philosophers and religion scholars to have the terminology and help figure out some sort of way to articulate this, they do that. But they're more sort-of concerned about "How do we capture what we're trying to protect without necessarily creating too strict a boundary?" Because ultimately this is about constitutional protections. And we have to . . . So the emphasis really tends to be on what judges can and cannot do. We can't interfere with questions of religious doctrine. Whether something is important to a religion, or central to a religion, it doesn't matter. It could be the most peripheral element. If you're religion-based it still gets protected. And so that's really interesting, also, if you start tying it back to the discourse around "Islam is not a religion". Because a lot of that discourse tends to be "Well, Islam is not *just* a religion". Or, more specifically, as some pretty high-profile [people](#) have said, "Only sixteen percent of Islam is a religion."

**BM:** *How do they quantify that?*

**AU:** Well my sense is that it all comes from a study or extensive ongoing studies done by the [Centre for the Study of Political Islam](#), CSPI, and they actually, apparently, have gone through all the various Muslim core texts and have sort-of categorised what they think counts as religion, versus politics. And based on this categorisation have come up with the sixteen percent number.

**BM:** *Wow! (Laughs).*

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# 10

## Podcast Transcript

Version 1.1, 13 June 2019

**AU:** And of course it's like, you know, the fact that outsiders are sitting there parsing through this way, coming up with their own definitions of where religion ceases to be religion and politics starts. It really kind-of shows: a) how ridiculous the process is – purely from an intellectual perspective – but then also what it leads to.

**BM:** *Right.*

**AU:** And that's exactly the sort of thing that judges have to stay very far away from.

**BM:** *Right. Wow. Well as we wrap up, do you have any thoughts about the future? Do you think that we're moving in a positive, or negative, or neutral direction? Are you seeing groups that are popping up that are more vocal in their defence – I don't know if defence is the right word – but their explanation that Islam of course is a religion? Or are you seeing more and more groups that are popping up, making this argument that Islam is not a religion? Where do you think that we're heading? And I know that's a very broad question, so you can answer in the courts, or just in the public discourse. Do you think that there's reason for hope, or reason for some concern? Or both?*

**AU:** I would say both. In terms of the people who might be popping up to say that Islam is not a religion, I think that they are not yet popping up (in court) – at least not in that form – because I think that . . . What the book seeks to do is articulate a problem. And once I articulated it, lots of people were like, “Yeah. I heard that!” But you know they just sort-of dismissed it. And it's really about “Don't dismiss it. Focus on it.” And even more recently, with the Australian Senator commenting on New Zealand mosque attacks, he put out an [official statement](#) that said, “Islam is not a religion and these people are not blameless, even if they are essentially being gunned down in their own house of worship. They are not blameless.” And again it was just like people were like: “Oh my God! This is crazy!” But it was like: ‘It's crazy!’ And then attention sort-of diverted from it. And my intention was to bring it back. “You've seen this before. It's happening again.” An official statement put out by politicians in the most gruesome circumstances and I'm trying to direct the attention to that. Because you can't really take it seriously, and begin to figure out a solution to it, if you don't actually realise it's happening.

**BM:** *Right.*

**AU:** And if you don't realise it's part of a larger concerted plan with particular goals in mind . . . So in terms of the two different camps that you've mentioned I think the side that's saying Islam is not a

# 11

## Podcast Transcript

Version 1.1, 13 June 2019

religion is gaining steam. There's a piece that I cite in the very beginning of my book, but that was written by [David French](#), a very prominent conservative commentator and columnist with *The National Review*. (30:00) And he says this. “Every time that I go and talk to conservative audiences about religious liberty, the first question is always: ‘Does everything you just said apply to Muslims?’” And so, there's plenty of evidence that this is gaining ground. It's becoming a very common argument. And I think it's time to sort-of focus our energies in articulating proper responses to that.

**BM:** *Well, thank you for doing that so compellingly in your book. It's a really compelling, cogent, explanation of this line of argument that we've seen come through certain conservative circles. And then you also, as you mentioned, talk about the ways that folks across the religious political ideological spectrum are eroding the sense that Islam is a religion. So thank you for that contribution. As a reminder to our Listeners, the book is out on July 6th. The title is, When Islam Is Not a Religion: Inside America's Fight for Religious Freedom. And you can pre-order it now. Thank you so much, Asma, for coming in. I really enjoyed the conversation.*

**AU:** Thank you, Ben, for having me.

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