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### April 3, 2011: The Legal Background of Burning the Qur'an

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Title: The Legal Background of Burning the Qur'an

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4/3/2011—It will come as a surprise, apparently, in the Muslim world that Terry Jones cannot be arrested and punished for burning the Qur'an. It will come as a surprise to Americans, apparently, that the reasons for this are pretty uniquely American. Jones' action is protected here by the first amendment--freedom of speech, which has been held to include certain forms of symbolic action. The last successful blasphemy prosecution in the United States, according to Wikipedia, was in 1928. It was not until 1952 that the United States Supreme Court held a blasphemy law to be unconstitutional, but this was undoubtedly because prosecutors were not attempting such prosecutions. In most of the world, however, intentional incitement to racial or religious hatred is a crime. This does not just include the Muslim world, but most of the nations of Europe. The historical reason for this limit to freedom of speech is the experience of the Nazi atrocities. You apparently can have pretty free societies and still punish people who intentionally defame the religion of other people. Even in the United States, attempts to punish really hateful speech continue. In 1983, Hustler magazine published a very distasteful parody of Jerry Falwell, founder of the Moral Majority and a well-known conservative religious figure, in which Falwell was "quoted" as stating that his "first time" was with his mother in an outhouse. Hustler magazine was found civilly liable for intentional infliction of emotional distress and this verdict was upheld by the Fourth Circuit Court of Appeals. The Supreme Court reversed unanimously in a decision in 1988. The attempt to hold Westboro Baptist Church liable for its distasteful funeral protests followed a similar pattern just this year. But you can certainly lose your government funding for hateful speech. In 1989, the National Endowment for the Arts supported two artists that led Congress to deduct money from the NEA budget and to amend its funding provisions to require that "general standards of decency" be taken into account by the agency. The two artists and their work were Robert Mapplethorpe's homoerotic photos and Andres Serrano's famous photograph showing a crucifix immersed in urine. The Supreme Court upheld the amendment in a fractured decision in 1998. And we do not allow the teaching of racial hatred in schools supported, even indirectly, with public money. The Cleveland voucher program upheld by the Supreme Court in 2002 provided that no school could participate in the program if it taught "hatred of any person or group on the basis of race, ethnicity, national origin, or religion." So, yes, Jones is protected by freedom of speech. But it is not as if many Americans have not attempted to punish similar actions in our past and until recently have succeeded.