Ethical Limits on Freedom of Expression with Special Reference to Islam

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Executive Summary
This article is presented in two parts, the first sets the framework and context for a discussion of ethical limits on freedom of expression, and the second considers what those limits actually are. Part One begins with preliminary remarks and then discusses the expanding scope of diversity of custom, climate of opinion and culture that tend to influence ethics. The impact of science, technology, globalisation, the Internet and social media is highlighted - factors that did not feature in traditional ethical values, but which now need to be considered. A question is also raised as to whether Islam has an ethical theory and this is then followed by an overview of the key ethical norms of Islam.

Part Two examines several, sometimes closely allied themes and concepts and their limitation on freedom of expression, for example the Qurʾanic concept of ‘public utterance of evil speech’. Islamic law and ethics also proscribe infliction of harm (ḍarar) on others, defaming and reviling others in their absence, violation of the right of privacy, transgression and lawlessness (baghy), acrimonious speech (mirāʾ), hostile argumentation (khuṣūmah), pernicious innovation (bidʿah) and caprice (hawā). This is followed by an overview of Islamic teachings that advise restraint over indulgence, suspicion and fault-finding with others. The discussion continues by exploring the concepts of Self of God (dhāt Allah), predestination and free will (qaḍāʾ wa qadar). The article ends with a brief note on Islam’s overriding commitment to truth and justice, and then draws to a conclusion.

I. Framework and Context
Preliminary Remarks
The position that Muslims hold on the right to freedom of expression concurs with that of the Universal Declaration of Human Rights, which states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Art.19)
Freedom of expression is of pivotal importance to the self-image and dignity of individuals and communities, and also acts as a pillar for a democratic system of rule, but one over which people on all sides tend to differ widely. Even advocates of democracy are not united on the scope and scale of freedom of expression, let alone its limitations. Those who attach value to ethics may be open to limitations on freedom of expression but may differ as to which ethical principles they value most, or well enough, to present a compelling case. Freedom of expression has also aroused fresh controversies in the much-debated theme of “clash of civilisations.”

The idea of the necessity for some limits on freedom of expression can hardly be refuted, but where does one draw those limits? Countries and cultures, journalists and media regulators have joined the debate and articulated many persuasive arguments, so that ultimately it is hard to present certainties of any kind and no uniformity can be expected on almost any aspect of the subject ahead. So let us begin with some questions. Is it justified to establish a context for ethical limits? Which culture, religion, or civilisation does one choose as a basic framework of ethical limits? Suppose one does make a choice, which in my own case, is Islam, a question arises whether the boundaries should be wider and more inclusive, so as to include followers of other faiths. Inclusivity is important simply because the network of relations among people cannot be limited by the boundaries of a particular religion. On the contrary, freedom of expression is concerned with how individuals and communities across cultural and religious boundaries relate to one another.

Although religion and ethics bear close affinity with one another, unlike religious beliefs which could be exclusivist of other religions, ethical norms are often shared between followers of different faiths within and across territorial divides. Morality as a principle does not exist without religion even though morality as a practice and a particular mode of behaviour is not dependent directly on religiousness. Yet it is suggested that every true moral transformation also starts with a religious renewal.1

Speaking of ethical limits also raises a question over the availability or otherwise of an ethical theory with which to measure the correctness of one’s responses. This may also raise the question whether any ethical theory would be adequate to respond to the wide-ranging issues that arise within and outside particular traditions and cultures. Muslim countries vary so widely in respect of their living realities as to lead an observer to the conclusion that no response coming from one or more of them can be regarded as normative for all. The contentious course of events since the end of the twentieth century point to the same conclusion. Ethical questions can hardly be reflected in unified and monolithic responses. They must take into account the diversity and pluralism that has marked the Muslims of the past and those of the present.2

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Islam also recognises general custom (ʿurf) as a source of law and judgment, and custom tends to interact with ethics and moderate it in-line with the evolving cultural attainment and vision of the community.3

The international human rights law is another area of concern, in particular the claim it lays to objectivity and universalism seems to be ill at ease with religious beliefs and principles. Human rights discourse has given rise to fresh challenges to traditional ethics and their limits on freedom of expression. Whereas ethical limits advocate restraint, the globalised world of scientific modernity and its secularist leanings is pushing us in the opposite direction. Lastly one raises the question that is perhaps more worrying: is there a crisis of values, is the clash of civilisations real? One might readily say that whilst there is more freedom of expression today, there is also more social conflict and clash of values within and among societies and cultures. It is impossible to feel calm in a society that only demands freedom of expression but is oblivious of its limitations. Is it true to say then that a sense of restraint is good for social harmony?

The Expanding Scope of Diversity

“Ethical limits” need to be broadly understood as ethical, religious and legal limits and concerns which tend to converge and overlap in almost all major religions and legal traditions, especially Islam. Broadly, law originates in ethics and predominantly consists of concretisation of ethical norms when society selects and commits itself to enforcing them under the law. This is when ethical norms are elevated into binding rules. Yet traditional ethics, laws and religions are nearly all questioned by secularist modernity and science, which challenge them by the test of scientific rationality. Religious beliefs are also too well-entrenched to readily surrender to these new claims. Hence the controversy continues. Adaptation and change, inevitable as they are, are also the Achilles Heels of older traditions and ethics.

A globalised world in which we live should aspire to globalised ethics that transcend political and cultural boundaries, just as the demands of globalisation aim at penetrating borders and removing barriers to the outside world. Yet it is often said that weaker countries and nations can ill afford to yield only to the demands of opening their doors wide to the more powerful ones without subjecting the latter to a common code of ethics.

Dr Mahathir says the West practices hypocrisy on freedom of expression and illustrates this as follows: 1) Hillary Clinton says that the film first shown in 2012 which was insulting to Muslims cannot be stopped because of freedom of expression; 2) the French and Italian papers published photos of a naked Duchess of Cambridge. A French court subsequently ordered the publishers to surrender all the pictures to the royal couple and to stop publishing them.

The Italian courts did the same. Thus freedom of expression is selective in that it is “not to be used against a Duchess, but is okay for the Prophet of the Muslims.”

Science and technology seem to have closed the doors to the wisdom one needs to know how best to make use of them. Our space is now more crowded than ever by a multitude of philosophic views and outlooks on how to understand religion and science and how to see the notions of progress, human rights and ethics through their lenses.

At one extreme the modernists and secular humanists are arguing that modern science provides a necessary and sufficient basis for a global ethics of human rights and democratic participation. From this viewpoint, religious worldviews are at best inconsequential and at worst an obstacle to human progress. Free flow of ideas and free speech and expression at all levels is an imperative of unhindered human progress.

The postmodernists negate the validity of any metanarrative, be it religious or secular. From their perspective, all metanarratives or teleological philosophies of history are actually or potentially hegemonic that aim, consciously or unconsciously, at domination and exploitation.

A complex variety of other religious and secular worldviews also present their own traditions of civility so as to develop an ethics commensurate with the increasing complexities of our world. Among them one finds fundamentalists as well as mystics, totalitarians and liberals, Islamic communitarian and western individualists, idealists as well as pragmatists.

As we enter the second decade of the twenty-first century, there can hardly have been a time at which the religious institutions and leaders have found themselves in greater need of vision, and compassionate understanding of themselves and their constituencies. The spiritual and ethical renewal, which has acquired urgency, is also required of our religious leaders and institutions. The present state of our societies is “an unequivocal demonstration of the fact that science and technology are unable to solve our problems. But spirituality and ethics will not be sufficient to solve them either.”

We need combined scientific rigour and profound humanitarian insights into our spirituality and ethics. To suggest new models of development imbued with deep ethical content, we need creative and positive synergies between people from religious traditions and those from the technical and scientific world.

**Ethical Theory**

An ethical theory is a reasoned account of the nature and grounds of right actions and decisions.

(4) Dr Mahathir Mohamad’s Speech at the Rafik Hariri UN-Habitat Memorial Lecture, September 18, 2012 at http://chedet.cc/p=840

and the principles underlying the claim that they are morally commendable or reprehensible. Ethical enquiry is especially concerned with the definition of ethical concepts and the justification or appraisal of moral judgments, as well as the discrimination between right and wrong actions or decisions. To be complete, an ethical theory must deal adequately with these aspects of moral enquiry in a coherent way. Majid Fakhry, author of *Ethical Theories in Islam*, reached the conclusion that even though Islam is richly endowed in ethical precepts, it does not have an ethical theory as such. He further explains that the Qur’an around which the whole of Muslim moral, religious and social life revolves “contains no ethical theories in the strict sense, although it embodies the whole of Islamic ethos.” Fakhry then examines the key elements of a ‘scriptural morality’ that underlie the meaning and import of a large number of ethical concepts in the Qur’an. Here I add an explanatory note in response to Fakhry’s conclusion, even though I agree with his basic premise. Then I proceed to expound the key ethical norms of Islam.

The reason why Muslim scholars have not articulated an ethical theory is more to do with the textualist tradition of scholarship than the absence of ethical measurement tools. In their devotion to correct and undiluted understanding of the text, Muslim scholars have chosen not to articulate general theories and thus remain, as often characterised by western scholars, somewhat atomistic in their deliberations. They remain cautious of theory-building lest they risked putting on the cloak of the Lawgiver. They have, for instance, written profusely on a large number of nominate contracts without, however, constructing a theory of contract, and of governance without articulating a constitutional theory. An expected consequence of the literalist tradition of scholarship is that one moves more closely with the scripture rather than theoretical elaborations of scholars. 7

**Key Ethical Norms of Islam**

Islam exhibits a strong commitment to moral virtue, compassion, uprightness of character and justice. Islam’s ethical code is rooted in Abrahamic ethics, which is a shared heritage of all monotheistic religions. The human capacity for wrongdoing is never to be underestimated, yet the Qur’anic outlook of human nature is that the human’s inclination to do good is greater. This essential optimism is sustained by God’s expression of trust (amanah) in humankind and its designation as His vicegerent (khalifah) on earth to establish justice among people. Other salient ethical concepts in the Qur’an that merit attention are ma’ruf (good, approved, as in qawl ma’ruf – approved speech), al-khayr (beneficial, good), al-birr (right conduct), al-ḥaq (truth) al-qist (fairness), ihṣān (being good to others) and ṣāliḥāt (good works) all denoting ethical

(7) Twentieth century Muslim scholarship has changed the traditional patterns of academic writing, by developing comprehensive theoretical entries (al-Naqzariyyah literature) into the various disciplines that provide self-contained yet concise treatment of their subject matter.
rectitude and virtue, acting on that which earns God’s pleasure and benefit to humanity.

The Qur’anic principles of promotion of good and prevention of evil (ḥisbah), cooperation in good works (ta‘awun) and fraternity (ukhuwwah) among the believers, and wider humanity, also promote altruism and human welfare. Two other ethical concepts that are highly appraised are patience (ṣabr) and resistance against anger (ḥilm). Ḥilm is a composite concept that may briefly be defined as “the act of reigning one’s soul and holding back one’s nature from the violent emotion of anger.”

Human nature is endowed in ethical insight, as in the Qur’anic verse: “And by the soul that We fashioned, and then inspired into it the awareness of wrongdoing and righteousness. Truly one who purifies it attains success, and one who corrupts it brings failure unto himself.” (al-Shams, 91:8).

All humans are equal in the eyes of the Creator and there is no recognition in Islam of the superiority of one over another, except on grounds of moral excellence, or taqwā. (Cf., Q al-Ḥujurāt, 49:13). “Believe and do good deed,” a sentence which occurs in the Qur’an more than fifty times, points out the necessity of unifying something that people tend to separate. It expresses the difference between religion (“believe”) and morality (“do good”) as well as the imperative that they should go together. Islamic law is essentially a superstructure that concretises the ethical norms of Islam. For Muslim jurists, law and ethics are ultimately concerned with moral obligations, which they believe are the central focus of the Islamic message. Obligations typically prioritise other people’s entitlement to those of one’s own. A viable nexus between law and ethics is essential in order for them to serve their respective roles in human societies. A manifest neglect of this relationship would risk leaving the society vulnerable to abuse because appeals only to the conscience without positive inducement may well put those who respond with self-restraint at a disadvantage with respect to those who are bent on transgression. This has unfortunately become a problem both in the national communities and internationally.

In one of the chapters of the Qur’an, entitled the Distinguisher (al-Furqān, sūrah 25) revelation becomes the point of reference for distinguishing right from wrong. The same chapter goes on to cite examples of past biblical prophets and their role as mediators of God’s word to their respective societies. The Qur’an thus conveys continuity in essential values and nurtures an outlook for their continued refinement through human endeavour.

The Islamic conception of ḥudūd ḥudūd(lit. Limits) consists, in its Qur’anic usage, of ethical limits for the most part, which demarcate the upper limits of acceptable behaviour from that

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which contravene the Islamic order of values. Ḥudūd (and its singular hadd) which occur in fourteen places endorse the Qur’an’s self-identity as a Distinguisher between right and wrong.10

Two other Qur’anic concepts that impact on almost every aspect of the teachings of Islam are ḥikmah (wisdom, common sense) and mizān (balance, equilibrium). The first occurs on nine occasions in a typical Qur’anic phrase to the Prophet Muhammad: “We taught you the Book and the Ḥikmah,” or else that “the Prophet teaches the Book and the Ḥikmah”11 - and the other also in several places addressing the believers to observe the God-ordained balance in their own nature and in their dealings with the outside world, one’s fellow humans, animals and the natural environment. Ethical limits and how they impact freedom of expression should similarly be informed by wisdom, balanced judgment and moderation.

These are among the salient indicators of the moral vision in the Qur’an.12 Muslim jurists are believed to have given the closest and most faithful interpretations of the Qur’anic text on law and ethics, whereas theologians, and even more so the philosophers have relied in varying degrees in extra-textual evidence, Greek logic and natural reason.13

II. Ethical Limits on Freedom of Expression

Freedom of expression is, broadly speaking, subject to the same limitations, whether moral or legal, that apply to other rights and liberties. The most important of these is avoidance of harm (darar) to others, which means that the exercise of this freedom must neither be hurtful to others nor violate their right of privacy and personal dignity. Freedom of speech does also not extend to promotion of chaos in society, incitement of crime and violence.14 Since the lines of division between law and ethics in Islam are not clearly demarcated, most of the legal restrictions the Shariah imposes on freedom of expression, such as slander and insult, sedition (fitnah), blasphemy, and charging a Muslim with unbelief (takfīr), also tend to partake in moral violations. However, beyond these legal violations, which I have elsewhere considered in detail,15 the bulk of Islamic teachings on speech and expression are of an ethical import, which are addressed to the conscience of the believers, and are not justiceable as such. Included in these are telling lies, ridiculing others and calling them by offensive names, pejorative words, backbiting, espionage and hurtful speech, whether in their presence or behind their backs, addressed to individuals or to groups of individuals and communities.16

(10) Ḥudūd are nowhere tied to any particular punishment in the Qurʾān, which is what the juristic tradition did, and brought fresh complexity to understanding the idea of Ḥudūd as ethical limits. See for further detail on the meaning of “ḥudūd” in the Qurʾān, hadith and fiqh, Mohammad Hashim Kamali, Punishment in Islamic Law: An Enquiry into the Hudud Bill of Kelantan (Kuala Lumpur: Ilmiah Publishers, 2000), 45-85.
(11) This phrase occurs in nine out of the total of 21 places in the Qurʾān wherein ḥikmah occurs in other contexts.
(13) Ibid., 2.
I have considered some of these in my previous works which the reader might wish to consult.\textsuperscript{17} Notwithstanding the emphatic language of the Qur’an on many of these, they have not been subjected to legal sanctions, although under the principles of siyāsah shar‘iyah (judicious policy) and ta‘zīr (deterrence, or deterrent punishment) the lawful authorities are empowered to take discretionary, and if necessary punitive, measures, if such is deemed the best course of action to take. From this basic premise, it is then possible for the government and those in charge of community affairs (i.e. ulū al-amr) to convert these moral teachings into legal ordinances in order protect the community against manifest harm.

We begin with examining limitations of general import and then proceed to the more specific ones as follows:

\textbf{A) Public Utterance of Hurtful Speech}

This title is a direct translation of the Qur’anic phrase ‘\textit{al-jahr bi’-sū’ min al-qawl},’ perhaps one of the most far-reaching limits on freedom of speech of both legal and ethical import. To quote the verse:

\begin{quote}
God loves not the public utterance of evil/hurtful speech except by one who has been wronged if you disclose good or keep it hidden, or forgive evil, verily God is Forgiving, All-Powerful.
\end{quote}

(al-Nisā’, 4:148)

The very first phrase of this verse implies an ethical context, which is also confirmed by its latter segment. The verse does not convey a command or a prohibition, nor any penalty for violation, rather it contains ethical advice and guidance. Hurtful speech may consist of violation of the honour of its victim, offending his sensibilities, or causing him/her physical harm and loss of property. It also comprises that which is addressed to an individual, a group, or the community at large. Public utterance of evil speech may similarly consist of self-indulgent and boastful speech concerning misdeeds committed by oneself, such as adultery, gambling and the like. Also proscribed is the publication and display of obscene literature, and misleading advertisement which fall under the concept of \textit{al-jahr bi’-sū’}, or broadcasting evil. The text before us is broad enough to comprehend all modern means and methods of publicity and broadcasting.\textsuperscript{18} Qur’an commentators further elaborate that the verse here denounces hurtful speech absolutely, that is, regardless of the end it may serve or the context in which it may occur. Nor does it specify whether the speech so uttered consists of truth or falsehood, or whether it contemplates a benefit. It does, however, make one exception for those who have been wronged. Hence all varieties of hate speech and hurtful expressions publicly uttered are proscribed. The only


exception the text has granted aims at vindication of justice. But even here, *al-jahr bi'l-sūʾ* must be limited to that which is deemed necessary under the circumstances, and it is unwarranted altogether in the absence of injustice.19

Yet while granting the oppressed party unrestricted freedom to voice his grievance, the succeeding portion of the verse urges him and all concerned to be forgiving and forbearing, privately or in public, in anticipation of God’s unbounded mercy and reward. Thus while justice must be served and wrongdoings corrected, there may be instances, as the Qur’an reminds us, where maintaining peace and social harmony merit greater attention. To this end, it is forgiveness and tolerance that takes priority over a persistent demand for retributive justice. Elsewhere the text speaks in praise of “those who swallow their anger and forgive others;” and again “...he who exercises patience and forgiveness, has truly acted with great courage.” (Āl 'Imrān, 3:134, and Shūrā, 42:43 respectively).

The Qur’anic advice is taken further by the Sunnah of the Prophet to the effect that Muslims should not only avoid broadcasting hatred but contribute positively to the spirit of fraternity and peace in society. Thus the hadith: “A Muslim is one from whose hand and tongue other Muslims are safe.”20 Although the text here speaks of Muslims, the message is wider. As one observer wrote regarding that the hadith specifies Muslims, “because it is with one’s own community that one has largely to deal. But the aim is to lay down the foundations of human fraternity wherein everyone feels safe.”21

It remains to be said that Islam does not propose any blame or punishment for a person who tells the truth and speaks up about things as they are. Hence no blame is envisaged for someone who calls a thief by this description provided what is said is factual. It is also permissible under the principle of ‘promotion of good and prevention of evil’ to point out the misdeeds of government employees, people’s representatives in national assemblies and those engaged in public service, provided the criticism is true and factual.

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Another instance of violation of the ethical limits of Islam that merit a brief discussion is vilification and disparagement of someone in his or her absence, known as ghībah, which differs from *al-jahr bi'l-sūʾ* in that *ghībah* need not be in the public space.

**B) What is *Ghībah***

The Prophet, pbuh, is reported to have asked the Companions: “Do you know what ghībah is?... It is to mention your brother in a way that he would dislike.” A Companion then asked “What if that which I say concerning my brother is true?” The Prophet replied: “If what you say is true, you have defamed him, and if he is innocent of what you say, you have slandered him.”

Imam al-Ghazālī (d.1111 CE) reiterated the purport of this hadith when he wrote: “The hallmark of ghībah is to mention your fellow Muslim in a way that would displease him if he heard you, even if you are telling the truth.” *Ghībah* can be committed, al-Ghazālī added, by words of mouth, by signs, by betraying secrets, or by any form of expression that comprises the basic concept of defaming others. Exceptions concerning *ghībah*, or ostracising others in their absence, are made on grounds of necessity or when the higher purposes of justice, saving one’s own or someone else’s life, and vindication of truth. A witness before the court of justice may tell the truth even if it involves ghībah. Truth may also be revealed concerning someone who has committed a crime or incites others to criminality, and also concerning the reliability or otherwise of the narrator of hadith.

**C) Infliction of Harm (**Darar**)**

Infliction of harm is a limitation of general import in that it can be of a moral or legal nature or partake between the two. Some of the more specific varieties of harm may constitute particular violations and could fall under one or the other instances of limitation on freedom of speech discussed below.

The Shariah limits the freedom of speech and expression when it causes harm to others. The legal maxim (*qāʿidah kulliyah*) on this simply proclaims that “Harm must be eliminated,” which has evidently both moral and legal implications. The principle derives from a renowned hadith: “Harm may neither be inflicted nor reciprocated in Islam.” This hadith, which is also a legal maxim has given rise to a large number of additional fiqh maxims on the subject of *darar*. The obvious meaning of the hadith is that everyone is immune against harm, but when it is inflicted, whether by accident or design, it must not be reciprocated in the like manner. If the harm in

(22) *Muslim*, Mukhtāṣar Ṣaḥīḥ Muslim, hadith no. 1806.
question is intolerable, one should seek judicial relief, but to exercise self-restraint otherwise. Speech and conduct that violate the right of privacy, or which delve into unwarranted character analyses of others and exposing their weaknesses would fall within the ambit of this principle.

To say that “harm must be eliminated,” is primarily addressed to the authorities, who are authorised herewith to redress the harm through corrective and remedial measures. It is important that harm is ascertained by its true proportions, so that the assessment of harm, whether by its victim or the authorities, is devoid of exaggeration. To take a measured approach in the assessment of harm is the purport of the Qur’anic principle of equivalence in all acts of aggression (iʿtidāʾ), (al-Baqarah, 2:194), and harm which is intended by its perpetrator can be subsumed under iʿtidāʾ.26 Two other maxims of note further provide that “Harm may not be eliminated by means of a similar harm,” and that “Harm shall be prevented (yudfaʾ) to the extent possible.” This latter maxim means that prevention of harm prior to its occurrence is preferable, even if it is partial. If all of it can be prevented, that is even better, otherwise it should be prevented to the extent possible.27

In the event of a conflict arising between a harm that is limited in scope or one which concerns an individual, and another that affects the public at large, it is provided that “a particular harm is tolerated in order to prevent a general one.” And lastly it is instructive to learn in yet another maxim that “prevention of harm takes priority over the procurement of benefit.”28 The ethical import of these maxims is the sense of restraint that must be exercised in time of adversity and sufferance of harm. One ought to ascertain the nature and quantum of the harm and the accuracy of one’s response to it. The instruction here is also supplementary to the larger emphasis Islam places on justice, peace and order in society.

But when the balance is disturbed and one’s sense of fairness is shaken, measures must be taken to redress the harm as far as possible. The norms of justice and fairness are once again to be moderated in the light of ḥikmah and wisdom to which a reference has already been made. Justice may dictate a measure-for-measure response, which may not be always judicious, in which case a consultative and moderated response should be ascertained. An example of this was perhaps the initial response given to the cartoon provocation by the Danish Imams and eleven ambassadors of Muslim countries, who approached the Danish government and police to look into the matter. This response to the provocation was reasonable. However when their grievance was not met and in fact received a negative reply, the issue could no longer be

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(26) See for details on ghībah, Kamali, Freedom of Expression, 118-123.
contained and led to protest, violence and bloodshed on a massive scale.  

This was admittedly a legal rather than ethical issue, and much more serious at that, yet it does serve to illustrate the point over proportionality in the assessment of harm, but also to say how in real life, matters can quickly get out of control if not properly addressed in good time. In a survey report prepared by four researchers from University of Columbia, the authors report on the scale of unrest and agitation the cartoon publication in the Danish and other western newspapers had caused. Thus they wrote that “an independent website, listed the total number of individuals killed at one hundred and thirty nine.” What followed after those initial exchanges is more complex and cannot be encapsulated by this presentation. It is remarkable, however, that western media continued the offence in the face of all this!

D. Transgression (Baghy)

Baghy means lawlessness, refusing to acknowledge the truth and exceeding the limits of proper behaviour with corrupt intention, dishonesty and arrogance. Baghy also means disobedience of a lawful government that is not engaged in transgression and sin (ma’ṣiyah), whether or not such disobedience is based on an interpretation or a particular point of view.

Baghy is committed and manifested in different ways. It is baghy, for example, when a person or a group of persons are engaged in a lawful activity but are denounced for wrongdoing by their opponents. Another example may be the way the followers of a certain school of thought accuse those who do not follow their teachings. This is quite common among the followers of leading schools of Islamic law in that the followers of a certain school observe an aspect of the ritual prayer (Ṣalāh) with a slight variation, which may be permissible if based on evidence, but which is denounced with a degree of arrogance and self-righteousness by some of their counterparts in other schools. Some of the variations thus noted do not actually depart from the essence of worship (ʿibādah), and may consist of a mere difference of form, none of which really justify any claim to self-righteousness by their critics.

This mode of behaviour is also not specified to rituals of worship. It is known, for example, that the mystic (ṣūfī) has often denounced and criticised the jurist (fiqh) for the latter’s zeal.
over the externalities of religion. The jurist has, in turn, criticised the mystic for his esoteric approach to the rules and doctrines of Shariah. Instances of baghy are also noted among the more recent factionalist trends among the Salafi, Wahhabī, jihādī and liberal interpreters of Islam, who exceed the limits of constructive criticism and engage in baghy against those who do not adhere to their teachings.

The correct approach in such cases would be for the parties concerned to assess the merit and demerit of each view or position and then to acknowledge them accordingly, without transgression and prejudice. All other considerations which may be extraneous to the essence of the matter, such as the desire to establish one’s superiority, or expose the ignorance of others, must be excluded from the quest for truth and correct assessment of issues.32

E. Acrimony and Hostile Disputation (Mirā’, Khuṣūmah)

Mirā’ (also mumārāt, lit. embitterment) means indulgence in soul-destroying arguments which serve no worthy purpose and mar the climate of fraternity and peace. It often consists of objecting to another person’s speech in order to show its defects either explicitly or by implication. The motive is usually self-commendation, humiliation of others and attribution of ignorance to them. The hallmark of mirā’ is that it humiliates its victim and leads to embitterment and hostility.33

Khuṣūmah consists of hostile disputation and objection, rightly or wrongly, to the speech of another in pursuit of material gain. Khuṣūmah may be in response to someone else’s speech or it may itself initiate an argument, whereas mirā’ usually consists of an objection to the speech of another person. The hallmark of khuṣūmah is excessive indulgence in speech in order to vanquish the opponent and attain one’s own purpose. It may occur in either of the following two varieties:

a) Khuṣūmah that violates the right of another and comprises discourteous and hostile speech. This form of disputation is reprehensible and must be avoided. Thus according to a hadith: “The most disliked of men before God Most High is one who is most stubborn in khuṣūmah.”34

(34) See for detail Kamali, Freedom of Expression in Islam, 143f.
This hadith primarily applies to those who engage in disputes either in pursuit of falsehood, or matters of which they have no knowledge. The disputant may, for instance, be a lawyer who has not studied the case well, or knows that his side is in the wrong but still chooses to fight for it. Also included in this category are people who deliberately defend false views and beliefs in order to influence the feeble-minded. Similarly, a person who may be disputing over a good cause but exceeds the limits of propriety by engaging in abusive language. This too is blameworthy, although to a lesser degree than one who argues in pursuit of falsehood.

b) *Khuṣūmah* that does not violate the rights of others but advances merely for the sake of arguing, even when the objective could be attained without it. This is also reprehensible, although to a lesser degree. Muslims are advised, in the clear language of hadith, to observe the ethos of forbearance and easy encounter (*al-samāḥah*) especially when making a demand of, or engaging in business with, others.

The leading ulama have cautioned against *mirāʾ* and *khuṣūmah* so much so that they even discouraged the asking of embarrassing questions that might mar the spirit of fraternity and good relations. This manner of advice mirrors the instruction of the hadith on the enormity or *mirāʾ* to an extent that it interferes with the integrity of one’s faith:

Perfection in faith (*al-imān*) is not attained unless the believer abandons lies in jokes he makes, and abandons acrimonious exchange (*al- mirāʾ*), even if what he is saying is true.

The proper manner of engaging in argumentation with others, as the Qur’an and Sunnah specify, is with courtesy and tact, whether dealing with Muslims or non-Muslims. *Mirāʾ* opposes this guidance, which prompts Imam al-Ghazālī to conclude that it is an obligation (*wājib*) of every Muslim to avoid *mirāʾ* if he knows he is in the wrong. This is strong language, but it is in line with the hadith which ‘Alī ibn Abī Ṭālib has reported from the Prophet: He who knowingly argues for what is wrong remains under God’s wrath for as long as he has not withdrawn from it.

Thus it appears that *mirāʾ* is a defect of morality and faith, yet also a subject that cannot be wholly addressed and regulated by legislation, which is why no punitive sanctions are specified for its perpetrator other than advice and exhortation. But when this proves ineffective, a social boycott (*al-ḥajr*) is recommended. Imam al-Awzāʿī (d. 774 CE) has reportedly made the following statement: “When God Most High afflicts a people with calamity, He opens the door of disputation to them and closes the door of action (*ʿamal*) upon them.” Imam Malik (d. 795 CE)

has similarly been reported to have said that mukhāṣamah is not a part of Islam. Imam Shāfiʿī (d. 820 CE) has likewise said that mirāʾ, even in pursuit of knowledge, blackens the heart and sows the seed of hatred.38

F. Pernicious Innovation and Caprice (Bidʿah, Hawā)

Literally bidʿah means either an innovation in religion that cannot be vindicated by valid precedent, or a pernicious innovation that is abnormal, far-fetched and outlandish.39 It is used in contradistinction with ‘sunnah’, that is, normative and familiar practice. A bidʿah may be well-intended or otherwise, but intention is not taken into account, as al-Shāṭibī (d.1388 CE) wrote, because the innovator arrogates to himself the authority of the Lawgiver in a manner that frustrates the objectives of the law.40 Bidʿah may consist of acting upon something, or abandoning something, such as when a person abandons something and advises others to refrain from it even when it is halal under Shariah. Bidʿah which departs from established norms and principles of Islam may partake in legal and theological aspects of freedom of expression, or be of concern to morality and ethics.

Bidʿah distorts Islam and Shariah in various ways, such as by upholding the literal meaning of the Qur’an text without looking into the objective and intention thereof. In reference to the Kharijites, for instance, it is noted that they upheld the ambiguous portions (mutashābihāt) of the Qur’an in preference to the perspicuous (muḥkamāt); declared most of the Companions of the Prophet as infidels; held the view that in the event the imam becomes an infidel, all of his subjects automatically become infidels; that Sūrah Yusuf (i.e. chapter 12) is not a part of the Qur’an and many other views which fell foul of the well-established tenets of Islam.41

References are also made in this connection to the views of the Bāṭiniyyah, also known as Ismāʿiliyyah, and in particular to the meanings they have given to some of the key concepts of the Qur’an, such as the ritual prayer, legal alms, and fasting (ṣalāh, zakāh, ṣawm respectively) that are very different from the standard understanding and practice thereof. Thus they held that ṣalāh is a reference to the Prophet, not the prayer as such, that zakāh means purification of the soul, and ṣawm means abstaining from evil.42

A more recent bidʿah was the assertion by a faction, al-Firqah al-Qurʾāniyyah, whose views found followers in Egypt, Libya, Malaysia and elsewhere, and who denied the authority of the Sunnah with the view that the Qur’an is the only authentic source of Islam. It seems that a consensus has been emerging which rejects the validity of such assertions.

(40) Ibid, I, 50.
(41) Ibid, I, 240f.
(42) See for details and additional examples Kamali, Freedom of Expression, 136f.
Whereas many prominent scholars have relied on a hadith which simply declared that “all bid‘ah is misguided,” there is a report that the second caliph, ‘Umar ibn al-Khaṭṭāb, welcomed the revival of Tarāwīḥ prayer during Ramadan and referred to it as ‘ni‘m al-bid‘ah’ (what a good bid‘ah!). Numerous scholars have refuted the idea of a good bid‘ah (bid‘ah ḥasanah) altogether and considered all innovation to be misguided. Imam Shāfi‘ī has, on the other hand, acknowledged that some bid‘ah can be beneficial. ʿIzz al-Dīn Ḥabīl al-Salām (d. 1269 CE) of the Shāfi‘ī school has concurred and added that it can even be commendable (mandūb). 43

Al-Shāṭibī has taken this further to distinguish a line of convergence between maṣlaḥah mursalah (unregulated public interest) and bid‘ah ḥasanah. To ascertain acceptability and benefit in certain kinds of innovations may be a question of time, especially outside dogmatic and worship matters (ʿaqāʾid, ʿibādāt). Both of these, that is, bid‘ah ḥasanah and maṣlaḥah mursalah, are subsumed by what is considered proper under the circumstances (i’tibār al-munāsib). If the one is accepted, there is no reason to deny the idea of a good bid‘ah. Although al-Shāṭibī advanced this idea of convergence between maṣlaḥah mursalah (as well as juristic preference - istiḥsān) and bid‘ah ḥasanah, he stopped short of drawing this conclusion and wrote that the two were not to be confused. 44

The logical conclusion may be to retain the idea of ‘misguided bid‘ah’ with reference to dogmatics and ‘ibādāt and that which violate the established norms and principles of Islam, but to remain open to the idea of bid‘ah ḥasanah in other matters until further scrutiny suggests the advisable position.

Al-Shāṭibī advises reticence in relationship to the bid‘ah of which the truth and falsehood is not known, saying: ‘We are commanded not to disseminate such views until the truth emerges.’ 45 With regard to the question whether learned scholars who have an opinion over the matter should also remain silent or be able to disseminate their views in the open. Al-Ghazālī was asked this question as he wrote in his renowned work, al-Munqidh min al-Ḍalāl, wherein he engaged in detailed exposition and refutation of the views of Bāṭiniyyah. He wrote that “One of the Sunnites found fault with me for overstating the arguments and views of the Bāṭiniyyah.” The point of the criticism was this: had it not been for al-Ghazālī’s lucid articulation of those views, they may not have been able to articulate their own views so well. Al-Ghazālī responded to this critique and in doing so referred to an incident whereby Imam Aḥmad ibn Ḥanbal (d.869 CE)

(43) See for a discussion Muḥammad Khīr al-Ḥusayn, Rasāʾil al-ʿIṣlāḥ (Cairo: Dār al-ʿIṣlāḥ li’l-Nashr wa’l-Tawzī‘, 1906), II, 169f. See also Kamali, Freedom of Expression, 137f.
(44) Al-Shāṭibī, al-Iʿtiṣām, II, 111f.
found fault with al-Ḥārith al-Muḥāsibī for the latter’s writing in refutation of the Muʿtazilah. Al-Muḥāsibī replied that refuting innovation is a duty. Ibn Ḥanbal replied: “Yes, but you have first reported their specious arguments and then responded to it. It is possible that someone reads the first part, or that only that part sticks in his mind.” Al-Ghazālī commented that Imam ʿAlī b. Ḥanbal’s view was valid, but that it had concerned only a specious argument that had not become widespread.

However, once such an argument does become widespread, a response to it becomes imperative, and it is possible only after setting forth the argument for what it is. This is a sound conclusion, for otherwise one would not be in a position to scrutinise and ascertain the harm or benefit of controversial innovations, and less so to present appropriate responses to them.

Hawā literally means a passing whim, an inclination or desire, not necessarily leading to formulation of an opinion. Yet the ulama have used hawā in reference to views that partake in such impulses - views that also contravene the Shariah. The Qur’an refers to hawā in contradistinction to correct guidance (hudā, dhikr) and identifies it as deviation from the truth the Qur’an may have expounded. It is in this sense that the believers are warned, in no less than twenty-five place in the text, against the temptations of hawā and the hold it can have on the hearts and minds of people. Hawā is used in reference to an opinion that follows personal prejudice and desire, and leads to divergence from the truth, even outright falsehood.

The desire to be a winner at all cost, regardless of the merit of one’s case, and without concern for the well-being of others partakes in hawā. One of the worst forms of hawā is when one’s craving for superiority and power is masqueraded under specious reasoning and plausible argumentation in the name of justice, piety and truth. The hold that hawā can have on the lives of people is depicted in the Qur’an where the believers are asked: “Do you see the one who took as god his own vain desire (hawā), and God therefore left him to stray” (al-Jāthiyah, 45:23)?

Whereas bidʿah consists for the most part of manipulation of Islamic principles, hawā is marked by a strong element of selfishness and a total disregard of such principles. Baghy may be distinguished from both bidʿah and hawā in that baghy indulges in self-righteousness and attempt to impose one’s own opinion on others, often accompanied by denouncement of those who oppose it. Beyond these shades of differences, however, the concepts under discussion have much in common and are often used interchangeably. The Qur’an uses hawā in a generic sense, which could subsume both bidʿah and baghy. Some scholars have used the term bidʿah so widely as to include all varieties of reprehensible opinion. Furthermore, none of these are confined

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to the realm of opinion but apply equally to acts which may qualify the attendant description and attributes of each. The ulama have held it to be a duty of the head of state to prevent bidʿah and hawā in the government, and also to disseminate correct knowledge, whenever necessary, to inform and enlighten the general public. 48

G. Violation of Privacy, Suspicion, and Exposing Others’ Faults

People’s right to privacy is immune from the encroachment of others. Respecting the privacy of others and concealing their faults and their weaknesses is highly appraised in the Qur’an and hadith, hence an integral part of the ethos of Islam. To this effect, it is declared in a hadith that “Anyone who conceals the weakness of another in this world, God will conceal his weakness in the Hereafter.” A variant version of the same message is reported in another hadith which provides “Whoever protects the honour of his brother, God will protect his countenance from the Fire on the Day of Judgement.” Al-Ghazālī’s more detailed review of the hadith guidelines on this subject leads him to the conclusion that “this is strong evidence that the Shariah demands the concealment of people’s nakedness and their sins (satr al-fawāḥish); it also discourages spying on or reporting on the private affairs of others.”

Exposing other people’s privacy and their faults normally originate in suspicion (al-Ẓann), which is also proscribed - as all of these violate the essence of human fraternity and dignified treatment of others. Unwarranted suspicion (Ẓann) is the subject of a separate Qur’anic address to the believers to “Refrain from indulgence in suspicion, for some [types of] suspicion is indeed sinful.” This has been taken a step further by the hadith which warns the people on a more emphatic note to:

Beware of suspicion. For suspicion is the worst form of lying; do not spy upon one another and do not revile each other.

Suspicion is the lying of the heart as it is unproven and an insidious attack against someone who cannot defend himself. Hence the conclusion that a Muslim must avoid suspecting others without factual evidence, and avoid indulgence in speech that partake in unfounded suspicion. Much merit is gained, instead, by remaining silent, indeed we are advised to remain silent with regard to all matters where speech is unnecessary and avails of no benefit. But if someone does engage in unwarranted suspicion against another or expose the privacy and hidden faults

(50) Ibid., hadith no. 1530, 488.
(51) Abū Ḥāmid al-Ghazālī, Kitāb Ādāb al-Ṣuḥbah, 345.
(52) Ṣaḥīḥ Muslim, Kitāb al-Bīrūr wa’l-Ṣilah, “Bāb al-nahy ‘an al-tajassus.”
(53) Thus according to a hadith: “Whoever believes in God and the last Day, let him utter what is good or remain silent.” See Mukhtaṣar Ṣaḥīḥ Muslim, hadith no. 844.
of another, one way of repairing the damage would be to offer a sincere apology. The Prophet, 
pbh, has instructed thus: “Whoever is offered an apology from a fellow Muslim should accept 
it unless he knows that the person apologising is dishonest.”54

Commenting on this, one observer rightly pointed out that the purport of this hadith is not 
confined to Muslims. A sincere apology may indeed be accepted from anyone, for the simple 
reason that the Qur’anic notions of justice and beneficence (iḥsān) are not exclusive of non- 
Muslims.55 The Qur’an further provides: “And let not the hatred of a people degrade you into 
being unjust. Be just for it is closest to piety.” (al-Mā‘ādah, 5:8). So it seems that much of the 
ethical advice and guidelines of Islam applying to speech we have discussed here has wider 
application to both Muslims and non-Muslims, especially if they share common citizenship and 
live in the same community and neighbourhood.

H. Free-Will and Predestination (al-Qadā‘ wa’l Qadar), and the Self of God (Dhāt Allah)

Muslims are advised not to expatiate on predestination and free-will as it is difficult to be sure of 
the issues involved. The question as to whether people are free agents who cause and determine 
their own acts and their consequences, or whether all or some of this is predetermined by the 
will of God requires the knowledge of God, which we do not have, or not to the extent to answer 
those questions. The subject of Divine attributes of God and His Excellent Names (al-asma‘ al- 
ḥusnā) and interaction between the human and the Divine will and knowledge has aroused 
controversy in the various theological schools of Islam. Whereas the Mu‘tazilah maintained a 
rationalist stance in favour of free-will, the Ash‘ariyyah advocated predestination, while the 
Māturidyyah attempted a compromise between the two positions. The Ash‘ariyyah are strongly 
inclined toward determinism whereby God Most High predetermined everything and all acts 
emanate in God who is the sole actor but man is answerable for the acts that are perpetrated 
through Him - the merit or demerit of which he acquires (by way of ʾiktisāb).

This discussion links up with the human knowledge of God, and on this too the religious advice 
encourages restraint simply because of the limited knowledge we have of the illustrious Self of 
God. Hence expatiation on the Essence of God is not advised in order to prevent errors in the 
conception of His Absolute Being.

The Qur’an says in several places that “There is nothing like unto Him;” and that “Sight 
cannot perceive Him...” (al-Shūrā, 42:11; al-An‘ām, 6:103 respectively), and that God has made 
Himself known to mankind by His Excellent Names, and nothing other or beyond that should

(54) ʿAbd Allāh al-Khaṭīb al-Tabrīzī, Mishkāt al-Maṣābīḥ, ed. Muḥammad Nāṣir al-Dīn al-Albānī, 2nd edn. (Beirut: 
al-Maktab al-Islāmī, 1979), III, hadith no.5052.
(55) Aḥmad Zakī Tuffāḥah, Maṣādir 알-Tashrīʿ al-Islāmī wa Qawāʿid al-Sulūk al-ʿĀmmah (Beirut: Dār al-Kitāb al-Lub- 
nānī, 1985), 89-90.
be attributed to Him (cf. al-Aʿrāf, 7:180), and certainly nothing beyond what is revealed in the Qur’ān about Him. These must be accepted as a matter of faith. To negate or reject any of the Attributes of God (ṣifāt Allah) destroys the foundations of belief in His Absolute Being. Clear instruction on this is also given in the hadith where the believers are advised to: “Ponder upon the creation of God, but not on God. For you will never be Able to do Him justice.”

I. Objectivity and Truth

Commitment to objectivity and truth comes high on the applied ethics of journalism as surveyed and presented by the existing literature on the subject. Telling the truth objectively and helping its vindication, as well as fighting falsehood and lies are deeply entrenched in Islam’s messages. The courage to tell the truth must be kept alive as in the Prophet’s instruction: “Tell the truth even if it be unpleasant;” and again when he said that “The best form of jihad is to tell a word of truth to a tyrannical ruler.” And the Qur’ānic proclamation that “The words of Thy Lord are perfected in truth and justice.”(al-Anʿām, 115:6) are indicative of Islam’s unwavering commitment to truth. But note also that this last verse juxtaposes truth with justice.

Telling the truth is an important part of the ethical teachings of all great religions, yet Islam is particularly emphatic on justice and truth together and teaches that truth should be tempered with justice. Elsewhere the Qur’ān directs: “When you speak, speak with justice.”(al-Anʿām, 6:152). Islam’s conception of justice is grounded in truth such that the one may never contravene the other. Yet it is justice that moderates the truth. There may be circumstances, in other words, when withholding the truth saves a life, in which case, one ought to withhold it. In more than one hadith earlier quoted, we noted the advice that if telling the truth compromises the honour and good name of another, one should not say it. Islamic teachings thus link truth, justice and wisdom such that they supplement one another in what Muslims say and express.

Conclusion

The one basic question that underlines the various themes of this article is: What are the ethical limits on freedom of expression? Having explored the various dimensions of the subject, I reach the conclusion that no categorical answer can be given due to the many factors at play as discussed in the first Part of this presentation, but also the persistent convergence and overlap between law, theology and ethics, which is perhaps even more pronounced in Islam compared to other major traditions. Part Two considers a cluster of themes that feature prominently in


(59) For instance, if someone who knows where someone else is hiding for his life from ruthless attackers (such as one hears happening in Afghanistan about the nefarious night raids), one may exercise restraint not to declare it.
the ethical teachings of Islam as found in the scriptural sources and deliberations of Muslim scholars. An effort is made to present an exposition of Islamic ethical norms on freedom of expression and in particular areas where restrictions are suggested on the exercise of this freedom. Yet the question I posed and the scope of the freedom of expression are inherently dynamic such that new influences and challenges are bound to demand fresh enquiry and responses.

In their interesting examination of the ethical dimensions of Islamic civilisation (and that of Buddhism) and their encounters with twenty-first century challenges, Ikeda and Tehranian have this to tell us, and I tend to agree with the substance of what they say: “What is needed is not a new code of ethics, but an earnest return to the ones that exist; a moral and spiritual renewal that would almost certainly look toward the sources of our different faith traditions, yet with a renewed common purpose of advancing benefit for all of us ... We need to take a hard look at harmful accretions in our faith traditions, to be more open to learn from one another.”

Having explored the Islamic responses to the question I posed, I may now take a glance, however much in passing, at western philosophy. This is to show a certain commonality of values which also need to be considered. A glance in passing is admittedly not enough, but space does not permit additional detail.

Political philosopher and historian Sir Isaiah Berlin popularised notions of liberty that stressed costs and benefits, controls and discipline. Berlin stressed that freedom without consideration of values of others was dangerous and could result in violence, injustice and cruelty. His philosophy on ethical thought and value pluralism weighed the importance of relationships with others and the evaluation of how we treat one another. He noted the dangers of utopian views and emphasised the need for measured political pragmatism. Ronald Dworkin held a similarly broad notion of liberty in his theory of liberty and equality. Like Berlin, Dworkin’s theory discussed options and values, respect and sensitivity toward others.

Suzan Harkness and her co-researchers, Michael Richardson, Jameka Roberts and Mohamed Magid, who discussed Berlin, Dworkin and others in their research essay on ‘freedom of speech and religious sensibilities’ have reached the following conclusion: “Globalisation has yielded a pluralistic multicultural world interconnected by the Internet, satellites, cell phones, and emerging media. This increasingly borderless world demands increased sensitivity, respect and tolerance toward others’ beliefs and value systems.” With this, I concur.