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# Against State Censorship of Thought and Speech: The “Mandate of Philosophy” *contra* Islamist Ideology

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## ABSTRACT

Contemporary Islam presents Europe in particular with a political and moral challenge: *Moderate-progressive* Muslims and *radical fundamentalist* Muslims present differing visions of the relation of politics and religion and, consequently, differing interpretations of freedom of expression. There is evident public concern about Western “political correctness,” when law or policy accommodates censorship of speech allegedly violating religious sensibilities. Referring to the thought of philosopher Baruch Spinoza, and accounting for the Universal Declaration of Human Rights, the Universal Islamic Declaration of Human Rights, and various empirical studies on the religious convictions of Muslims, it is argued here that: (1) sovereign European state powers should be especially cautious of legal censorship of speech allegedly violating Muslim religious sensibilities; and (2) instead of legal moves to censorship, European states should defer to the principle of separation of religion and state (political authority). Further, a reasonable interpretation of Islamic jurisprudence allows that matters of religious difference may be engaged and resolved by appeal to private conscience and ethical judgment, rather than by appeal to public law *per se*.<sup>1</sup> In so far as they are representative of contemporary scholarship, the interpretative positions of Ziad Elmarsafy, Jacques Derrida, and Nasr Abū Zayd are presented in illustration of this latter point.<sup>2</sup>

**Keywords:** freedom of expression; censorship; Europe; Islam

## 1 Introduction and Background

“Daesh,” the Islamic State of Syria and the Levant (ISIL, also known ISIS) has been defeated on the battlefields of Syria and Iraq. But, its jihadist remnants promise continuing terrorist action against Western powers and peoples. In the wake of terror and political oppression in many Muslim-majority countries by no means homogenous in Islamic doctrine, Europe faces uncertainty about its own political culture due to the massive waves of refugees seeking asylum, prospective citizenship, and contested expectations about assimilation. There is much that is ambiguous in this intercultural encounter. Some years ago, political scientist Michael Dillon commented that,

The refugee is a scandal for philosophy in that the refugee recalls the radical instability of meaning and the incalculability of the human. The refugee is a scandal for politics also, however, in that the advent of the refugee is always a reproach to the formation of the political order of subjectivity which necessarily gives rise to the refugee. The scandal is intensified for any politics of identity which presupposes that the goal of politics is the realization of sovereign identity.<sup>3</sup>

This scandal, at once philosophical and political, is front and center in European politics today. On the one hand, Europe is experiencing a strident nationalist and populist appeal (e.g., in the Netherlands, France, Germany, Austria, Britain, Italy), national electoral politics pitting political parties against each other according to varying interpretations of the national interest. On the other hand, the waves of refugees crossing the Mediterranean into the continent out of North Africa and Turkey entail a European encounter with “Islam” that the continent has not seen since the removal of the Moors and the last political incursion of the Ottoman Empire. In this empirical sense of contraposition, but in a philosophical sense also as expressed, e.g., by French philosopher Jacques Derrida,<sup>4</sup> Europe is therefore unsure of its *identity* and its *destiny*. Both this identity and this destiny cannot be settled except with reference to this encounter with Islam.

Europe’s identity and its destiny are understood historically, of course, to have been formed in the modern era according to the “humanist” and “secular” ideals of the Renaissance (normally dated 14<sup>th</sup>-17<sup>th</sup> centuries) and the principles of “liberal” political philosophy championed in the Enlightenment (18<sup>th</sup> century). Both secular-humanist philosophy and liberal-republican politics contributed to the configuration of the modern political order. That is to say, since the end of the Thirty Years War and the Treaty of Westphalia (1648), modern political philosophy has been clearly motivated against the Christian religious (temporal and spiritual) authority that long dominated the behavior of the European states of the Middle Ages. Recently, however, scholars in the history of ideas have sought more precision in the understanding of the Enlightenment (often associated with the French philosophes in particular—D’Alembert, Diderot, Condorcet, Voltaire, etc.). Hence, there is recent attention to, and explicitly novel identification of, the so-called “radical Enlightenment,” as articulated convincingly by Jonathan Israel.<sup>5</sup>

## 2 Spinoza's Counsel

The “radicality” of thought associated with the concept of the radical Enlightenment is here associated with the philosophy of Baruch (Benedict) Spinoza (1632-1677), and understood to be “foundational” to the *ethos* of the subsequent French Enlightenment. I, therefore, turn to Spinoza's thought for its counsel in the present circumstance of Europe's encounter with Islam.

It is well known, as Spinoza scholar Steven Nadler puts it, that Spinoza's thought contributed formatively to “a strongly democratic political thought and a deep critique of the pretensions of Scripture and sectarian religion.”<sup>6</sup> It is in his critique of sectarian religion, and in his insistence on the separation of the institutions of church and state, that Spinoza has his place as the principal philosophical authority of the radical Enlightenment. This critique is especially to be found in Spinoza's *Theological-Political Treatise* (1670). Hence, one may argue that this treatise speaks to today's European disquietude about human rights, especially in a moment of mass migration and the entirely ambiguous status of the refugee vis-à-vis the sovereign state and the European union itself.<sup>7</sup> This is so especially for the refugee who self-identifies as Muslim.

The “Introduction” to the 2007 Cambridge edition of the *Treatise* informs us that, Spinoza “strove to reinforce individual liberty and freedom of expression by introducing, or rather further systematizing, a new type of political theory”—a theory issued as an exercise in “applied philosophy.”<sup>8</sup> Spinoza sought to preserve the individual's “natural right of free reason and judgment” against tyrannical abuse of sovereign authority, the latter occurring through usurpation of a right not abdicated precisely because it is inalienable. Jonathan Israel argues that, “Spinoza and Spinozism were in fact the intellectual backbone of the European Radical Enlightenment everywhere,” marking “the most dramatic step towards secularization and rationalization in Europe's history.” Central to Spinoza's “radical” enlightenment were Spinoza's claims: (1) philosophical reason is *the only true guide* in human life; (2) *no scripture or revelation* can be authoritative. Both claims are essential to democracy as the best form of government favoring equality and opposed to hierarchy present in political despotism.<sup>9</sup> Israel asserts Spinoza was “the chief challenger of the fundamentals of revealed religion...and what was everywhere regarded ...as divinely constituted political authority.”<sup>10</sup> In short, Spinoza privileges equalitarian democracy over theocracy as a matter of philosophical reason.

Jewish scholar Yirmiyahu Yovel characterizes Spinoza a modern philosopher whose “philosophical revolution anticipated major trends in European modernization, including secularization, biblical criticism, the rise of natural science, the Enlightenment, and the liberal-democratic state.”<sup>11</sup> Spinoza's philosophical commitment is to the authority of *reason*, not revelation. Spinoza's *Treatise* thus expresses a grave concern for the harm done by religious dogma when enforced by the State: “Religious dogma comes to be enforced on everyone by force of law because the common people are persuaded by religious teachers that they should insist on doctrinal uniformity in the interests of their own and everyone else's salvation and relationship to God.”<sup>12</sup> Force of law (i.e., positive law) is essential to the order of any political

society, but *only if* assuming law adheres to and implements a defensible concept of justice. In Chapter 16 of the *Treatise*, Spinoza discusses the foundation of the state, natural and civil rights, and the authority of the sovereign power. In Chapter 19 Spinoza engages the difficult issue of the relation of politics and religion, specifically what authority the sovereign power may have “in sacred matters.” In Chapter 20 Spinoza reasons that a “free state” allows everyone “*to think* what they wish and *to say* what they think.” (italics added) It behooves us, then, to consider Spinoza’s argument primarily as given in Chapter 20 of the *Treatise*.

Spinoza acknowledged the sovereign’s “civil jurisdiction,” but also its authority as guardian of “sacred matters,” even as “interpreter” of divine law.<sup>13</sup> As the title of Chapter 19 makes clear: “the external cult of religion must be consistent with the stability of the state if we wish to obey God rightly.” Aware of the consequences of religiously motivated warfare, such as occurred during the Thirty Years War, Spinoza sought “to demonstrate that religious worship and pious conduct must be accommodated to the peace and interests of the state and consequently must be determined by the sovereign authorities alone.”<sup>14</sup> Freedom of *expression* of religious belief is rightfully exercised only as sanctioned by the sovereign power in relation to the *desideratum* of peace (stability) within the established political order. Spinoza distinguished “formal religious worship” and “piety itself or private worship of God or the means by which the mind is internally directed wholeheartedly to revere God.”<sup>15</sup> He was concerned not with the *private* observance of the rituals of faith, but with what occurs as the *public* practice of religion. The doctrine of separation of religion and state is foundational for this distinction. Piety has its place in the State as a private matter. But, Spinoza argued, “any pious act that one can perform for a neighbor becomes impious if it entails harm to the whole state, and, conversely, there can be no impious act against a neighbor which is not to be deemed pious if done for the preservation of the state.”<sup>16</sup> Thus, religious observance must conduce to the preservation of *civil* society (which is not to say preservation of the “cult of religion.”

Spinoza recognized individual freedom of religious practice, individual piety; but, he was also clear that men acting *as private men*, and *not as officials of state*, must take care not to “make a seditious attempt themselves to champion divine right” as if they have the authority to decree as does the sovereign.<sup>17</sup> It may seem contradictory for Spinoza to proceed in Chapter 20 of the *Treatise* to argue, in “a free state” everyone is permitted “to think” what he wishes and “to say” what he thinks.<sup>18</sup> But, his argument is to be assessed in relation to his remarks in Chapter 19: It is a matter of *natural right* that one *thinks freely* and *makes his own judgments* about *any matter whatsoever*, Spinoza asserted. This right to think and to judge cannot be transferred to the State power. Any government that seeks to compel transfer of this natural right acts oppressively, thus contrary to public justice that preserves this right. Every individual retains full control over his thinking and his judgment while a member of a civil society. But, his or her *actions*—which proceed from his thinking and his judgment—are subject to restriction by the sovereign, as demanded by public interest and public justice. *Qua* private citizen any person may think and say as s/he wishes, bearing in mind s/he does not think or speak as an official of the State. Such private speech is by no means to be censored.

If speech is to be restricted, however, it is warranted, Spinoza allows, only when an individual speaks “[1] by trickery or [2] in anger or [3] from hatred or [4] with the intention of introducing some alteration in the state on [his] own initiative.” Spinoza provides a pertinent distinction:

...suppose someone shows a law to be contrary to sound reason and voices the opinion that it should be repealed. If at the same time they submit their view to the sovereign power and in the meantime do nothing contrary to what the law commands, they surely deserve well of their country, as every good citizen does. If on the other hand, they make use of this freedom to accuse the magistrate of wrongdoing and render him odious to the common people or make a seditious attempt to abolish the law against the magistrate’s will, then they are nothing more than agitators and rebels.<sup>19</sup>

Spinoza’s two conditional propositions here concern a proper relation of individual (natural) right to sovereign authority: “...the individual may say and teach what he thinks without infringing the right and authority of the sovereign power, that is, without disturbing the stability of the state. The key is to leave decisions about any kind of action to the sovereign powers and do nothing contrary to what he himself judges best and publicly expresses.”<sup>20</sup> The operative assumption is that (a) *speaking one’s mind* and (b) *teaching what one thinks does not infringe on the right and authority of the sovereign* and (c) *does not, for that reason, disturb the stability of the state*. Taking action that amounts to sedition is not included in the natural right of speaking one’s mind; it is prohibited as a matter of public justice.

### 3 Engaging Islam: Elmarsafy and Derrida

Spinoza’s counsel on the relation of sovereign authority and religious dogma is surely pertinent to Europe’s historical engagement with Islam and is, therefore, entirely salient for any contemporary evaluation of the present political order as it relates to Europe’s current encounter with Islam. Important to the present European disquietude is Ziad Elmarsafy’s engagement of the Qur’ān in terms of Enlightenment discourse, and thus in relation to the radical Enlightenment perspective initiated by Spinoza. Elmarsafy’s conception of “the Enlightenment Qur’ān” draws our attention (a) to the *politics* that belongs to the very act of translation of this text and (b) to the *construction* (i.e., constructed representations) of Islam according to this politics of translation.<sup>21</sup> Elmarsafy reminds of history as “invention.” Hence, the historiography of Islam is one of “construction,” European interpretations of Islamic faith and practice having their constructed discourses, all according to various motivations—religious, moral, social, cultural, and political. In undertaking his study of the European translation of Islamic texts, Elmarsafy identifies himself as “culturally Muslim,” but one who is “uncomfortable with homogeneity of any kind.” He is, therefore, appreciative of “difference” and “plurality”—ideas of interpersonal and intercultural relation he finds (1) supported by the text of the Qur’ān itself<sup>22</sup> and (2) salient to inter-faith dialogue as Europe today must work through the “production” and “reproduction” of its histories concerning the relation of self (e.g., European Christian, European nationalist) and other (e.g., the refugee/immigrant as Muslim and not European in the classical historical sense).

Thus, in particular today in Europe, the relation of “Christian” (Roman Catholic, Protestant, Anglican, Greek/Russian Orthodox, Coptic) to “Muslim” (Sunni, Shi’a, Sufi, Salafist, Jihadist) elicits the basic question about the status of the refugee of today, whose identity is framed religiously first and foremost.<sup>23</sup>

The politics of translation in the 17<sup>th</sup> century, Elmarsafy points out, is one in which the Arabic text will find its expression into the Latin (the translation by Ludovico Marachi in 1698) and later into English (the translation by George Sale in 1734), but not without a committed “painstaking refutation” in the case of the former translation and “copious commentary” in the case of the latter translation, in relation to the then extant exegesis of that same text. Presumably, these hermeneutic moves are consistent with: (a) the Christian prejudices (Roman Catholic or Protestant) of the translator; (b) inspiration from the politics of Rome’s Catholic “Reformation” (i.e., the “institutional” context of “counter-reformation” to the emergent Protestant faith and official declarations of what counts as “heresy” in contrast to Catholic “orthodoxy”); or (c) in the case of the translation of the Qur’ān into English, an intellectual commitment to the “republic of letters” inspiring the liberal politics of the day that sought to diminish the spiritual and temporal authority of the Church of Rome.

Evidently, the presentation of the work of religious “scholarship” in Latin for a European audience at once (1) *introduces* a foreign scripture and (2) *repudiates* its religious validity, thereby (3) *alienating* the doctrinally “Christian” reader from whatever religiosity (legal, moral, spiritual) might otherwise be absorbed from this ostensibly “revealed” and, therefore, “authoritative” scriptural text. The politics of translation thus presents itself initially as *a polemic against Islam*, despite the seemingly defensible exegesis of Islamic doctrine. This polemic yet resounds in the European encounter with the history of Islamic scholarship and, more pressing, the current encounter with immigrant Muslims seeking to practice their faith according to sectarian interpretations of Islamic doctrine, the latter manifestly subject to various degrees of inter-sectarian intolerance and antipathy. For Elmarsafy, the task for the present, then, is to consider an appropriate *ethical* response to the contemporary politics of estrangement (whether that of polemics or apologetics, both having roots in a history of invention/construction). He seeks an ethics that recalls the opportunity vouchsafed by a comportment of “hospitality,” thus one of *sympathy* between “self” and “other” that is asserted against the images of self and other represented in the comportment of *antipathy*. In this regard, Elmarsafy links to Derrida’s concern for the relation of European to “the other,” to s/he who is manifestly “stranger” and calls forth one’s “hospitality.”

## 4 Derrida and the Call to Hospitality

Derrida, of course, opined on the issue of European identity as well as the significance of an act of hospitality towards what is foreign, strange—*l’être étranger* (“the stranger,” “the foreigner,” *xenos* in the classical Greek, thus ‘xenophobia’). In a seminar from 10 January 1996, Derrida commented on one manner of perception of the foreigner (in Plato’s *Theaetetus* and *The*

*Statesman*), as someone “mad” (*manikos*), his manner of speaking giving the opportunity to others to look upon him as “deranged.”<sup>24</sup> Yet, in Plato’s *The Statesman* the stranger is “warmly welcomed, apparently, *he is given asylum, he has the right to hospitality...*”<sup>25</sup> Those are two concepts pertinent to the present disquietude in Europe. Of course, Derrida observes, “the foreigner is first of all foreign to the legal language in which the duty of hospitality is formulated, the right to asylum, its limits, norms, policing, etc. He has to ask for hospitality in a language which by definition is not his own...”<sup>26</sup> And, Derrida clarifies, starkly stating the import of the statement: “that’s the first act of violence” against the foreigner:

That is where the question of hospitality begins: must we ask the foreigner to understand us, to speak our language, in all the senses of this term, in all its possible extensions, before being able and so as to be able to welcome him into our country? If he was already speaking our language, with all that implies, if we already shared everything that is shared with a language, would the foreigner still be a foreigner and could we speak of asylum or hospitality in regard to him? This is the paradox...<sup>27</sup>

Derrida’s reference to the foreigner’s “language” means the foreigner is no barbarian to be excluded because he is either “savage” or “heterogenous” in his self-presentation. Having a language, “the foreigner doesn’t only have a right, he or she also has, reciprocally, obligations...”<sup>28</sup> The relation of right (*droit*) to duty (*devoir*) presupposes a civil pact—a pact within which the foreigner is received first “by asking his name; you enjoin him to state and to guarantee his identity,” thus the initiation of a legal relation. “In telling me what your name is, in responding to this request, you are responding on your own behalf, you are responsible before the law and before your hosts, you are a subject in law.”<sup>29</sup> Engaged neither as barbarian without language nor as outlaw (*anomon*), the foreigner is thus to be received as one claiming his or her right to hospitality, and s/he thereby also lays claim to a reciprocal obligation. It is within this concept of civil pact that both foreigner and native citizen are called to forge their identity, both individual and collective. The problem of collective identity, of course, is the problem of *integration* and *assimilation*, whether the individual accepts the political culture of the host or instead seeks to subvert it by contraposing himself such as is argued is happening today with the influx of Muslims transporting with them sectarian beliefs and practices.

One may, thus, consider, the political present of Europe more or less as Derrida commented: “... I believe that Europe is a confused concept and a common name for very diverse things: the relationship of the State to religion is not the same in France, Germany, England, Italy, and nevertheless, there is something common to all the European States, which is *a certain principle of separation between the State and religion*, without scorn for religion.”<sup>30</sup> Separation of State and religion is, of course, a championed principle of modern political philosophy and incorporated in the establishment of the constitutional discourse of the modern nation-state that is denominated “republic” (i.e., *res publica*). When that principle is challenged at the limits of encounter between religious and political discourse, however, then a crisis of identity presents itself—how far to recognize the legitimacy of religious sensibility within the republic; how far to insist on the freedom of expression that may “offend” religious sensibility; whether to insist on

legal (as opposed to moral) limits on expression; whether to admit the State's sovereignty over sacred matters insofar as the State upholds public justice over against private claims to justice (as we see engaged by Spinoza). This is now an issue center-stage in the European scene of political and religious contestation even as it is current elsewhere in the setting of Muslim-majority countries.

Europeans are obviously gripped by fear of the immigrant Muslim, of his "values" and "disvalues" deriving from the Qur'ān and the Sunna (the tradition of sayings and deeds of the prophet Muhammad). Europe's fear is motivated by what has been called "the great danger of Islamic terrorism,"<sup>31</sup> and the unsettling prospect of a "multicultural" Europe that is in fact not a "melting pot" of convergence and coalescence but instead one of restrained contact and uneasy (even hostile) co-existence. The fear is that the "Greco-Roman-Christian-liberal" democratic political order of the past and present will be reshaped prospectively through "Islamization" rather than assimilation of Muslim immigrants into the liberal order.<sup>32</sup> At issue here is a question Mustapha Chérif raised with Derrida in a discussion of the relation of Islam and the West: "... whereas it is very difficult to learn how to live, and there is no convincing model, rather only disappointing and worrying ones, why this aggressiveness toward Islam, *why must we all be Westernized, Europeanized, Americanized*, to conform to progress, and *thus appear to be civilized?*"<sup>33</sup>

Derrida's response is instructive: "...I believe that it is not at all a comment against religion to say this; on the contrary, it is out of respect for religion that we must dissociate things and that *we must cease to lead politics in the name of religion, or under the authority of religion, or sometimes under the authority of religious authorities themselves.*"<sup>34</sup> Derrida's statement here is consistent with that of Spinoza. The presupposition here, of course, is that anyone having religious convictions, including in the context of the discussion about Muslims emigrating to European countries and seeking citizenship therein, are free to maintain their religious convictions but without seeking to "lead politics" in the name of Islam, or "under the authority" of Islam, or even "under the authority" of Islamic religious authorities—the latter to include here those recognized locally as "imams" and those more institutionally located within Sunni and Shi'a Islam with titles of rank such as "mufti" and "ayatollah." But, of course, the question—from the views of Islamic jurisprudence and Islamic morality/ethics that influence the political judgments of adherent Muslims—is: whether such religious "authority" can be disengaged readily from a Muslim's sense of political right (*droit*) and political duty (*devoir*) as determined by his or her religious conviction.

## 5 Interpreting Civil Rights and Duties: Assimilation vs. Islamization

Consider: It has been argued that, "mass Muslim immigration [e.g., into Europe] and the importation of sectarianism [both Sunni and Shi'a] unfortunately inherent in Islamic doctrine, undermine even more significantly... noble principles of 'public good.'"<sup>35</sup> For many Europeans that proposition is reasonably defensible, given the extant empirical evidence of radical Islamic

pronouncements of doctrine and terrorist actions that manifest themselves in the public domain often against what Europeans take to be the moral and political principles that govern their interactions as citizens committed to a public good, that separates religion and State. Europe's fear of the "radical-fundamentalist creed" of Muslim Salafists (those otherwise denominated militant "jihadists") in particular is evident. But, there is also concern about "moderate" Islam, interpreted by some as quietly advancing an agenda of "Islamization" of Europe—the quiet transformation of Europe into "Eurabia."<sup>36</sup> Not surprisingly, then, some argue, "The chief threat to free speech today comes from a combination of radical Islamic censorship and Western political correctness," even though historically democracy is underpinned by the principle of free speech and reasoned criticism.<sup>37</sup> Of concern here, for example, is action undertaken in 2010 by the UN Human Rights Council, Resolution No. 16/18 concerning "defamation of religion," interpreted by some Muslims to mean *outlawing* "blasphemy" as such—even though there is ample reason conceptually, morally, and legally to distinguish defamation and blasphemy relative to precisely "who" is covered by the scope of the category.

Writing on freedom of expression in relation to Spinoza's thought, Roger Hearst remarks: "Political theory, being derived from knowledge [i.e., *Reason*] is, therefore, independent of Scripture [as the text of *Revelation*]. Reason is *absolutely free* to conceive of objects, such as the State, as it desires and without respect to Scriptural dogma."<sup>38</sup> On this ground of reason, the social contract within which a person commits himself to civil society, does not install an absolute sovereign such as religion might countenance.<sup>39</sup> Clearly, the *political* hope of a greater good does not equate to the *metaphysical* hope that informs theistic belief, even as the fear of some greater evil cannot be that proper to theistic belief as expressed in eschatology. Hence, religious authority cannot defensibly command a citizen's absolute allegiance in view of a doctrine concerning "the afterlife," even as religious authority cannot defensibly superintend the individual citizen's rationality expressed freely in the present life in his thoughts and speech. A citizen's commitment to the authority of reason, in contrast to the presumed authority of revelation, is in this sense reasonably unflinching in the setting of the modern liberal democratic order.

Concerns about the relation of sovereign to individual freedoms in the setting of Europe are reasonably evident in the case of contemporary expressions of Islamic belief. This is so for those nation-states that today have either a Muslim-majority or Muslim-minority population, but especially those self-identifying as liberal democracies in actuality or in intention. There are, of course, Islamic scholars who have engaged the question of the relation of human rights to Islamic law,<sup>40</sup> even as the United Nations community has debated the issue of free speech and "Islamophobia" (incorrectly equated to anti-Semitism in kind of discrimination—Islam itself is not a race or ethnicity as such).<sup>41</sup> Two groups, Human Rights First and the Muslim Public Affairs Council counter efforts to criminalize free speech, arguing that, "Countless incidents show that when governments or religious movements seek to punish offences in the name of combating religious bigotry, violence then ensues and real violations of human rights are perpetrated against targeted individuals."<sup>42</sup>

The above stated argument is consequentialist in form—so long as the consequences of violence ensue, criminalization of free speech should not occur—and not a proposition that appeals as a matter of principle to civil liberty *per se*. Notwithstanding, it is clear from reports from international inter-governmental (IIGOs) and non-governmental organizations (NGOs), as well as from any number of media reports, that governmental practices in contemporary Muslim-majority states raise questions about their commitment to human rights. From the European perspective at issue are fundamental rights stipulated in the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR).

The UDHR recognizes “equal and inalienable rights” as “the foundation of freedom, justice and peace,” our contemporary world one “in which human beings shall enjoy freedom of speech and belief...”<sup>43</sup> The right to freedom of expression is essential, “if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression.” This right proceeds from a human’s natural endowment “with reason and conscience,” the basis of an individual’s moral conduct towards others. Hence, Article 18 of the UDHR stipulates: “Everyone has the right to freedom of thought, conscience and religion...” Spinoza in his day and Derrida in our day utter the same. Consistent with this statement, Article 19 specifies: “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.” Hence, the basic right to freedom of expression is not limited to what means of expression an individual may access within his/her territorial nation-state. S/he may exercise this right and access numerous means of expression by right internationally, despite legal recognition of a sovereign capacity for restriction in a given nation-state (i.e., legal limitation for various stipulated public interest concerns).

While stipulating an individual’s basic human rights, the UDHR also recognizes corresponding “duties to the community.” Article 29(2) states, “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” Important here is the reference to “democratic” society, the preferred form of government in the modern world, contrasting to other political orders (theocracy, monarchy, or aristocracy, or other version of rule by religious authority). Accordingly, it is expected, especially in the European body politic, that any restriction on a right to freedom of thought and expression must accord with the just requirements of modern liberal democracy.

The ICCPR likewise holds, such rights “derive from the inherent dignity of the human person,” the protection of which is essential to an individual’s “right of self-determination.”<sup>44</sup> Article 18(1) stipulates, “Everyone shall have the right to freedom of thought, conscience and religion;” and, Article 19(1) specifies that even as, “Everyone shall have the right to hold opinions without interference,” so Article 19(2) clarifies that, “Everyone shall have the right to freedom of expression,” including: “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other

media of his choice.”<sup>45</sup> As with the UDHR, ICCPR Article 19(2) allows for restriction (a) for respect of the rights or reputations of others, or (b) for the protection of national security or public order, or of public health or morals.” That accords with the Spinozan concern for political stability.

The relation of these two expressions of international law and morality to Islamic doctrine is clearly, then, a pertinent concern in the setting of Europe’s present disquietude. In September 1981, at the International Conference on Human Rights in Islam, Muslim nations agreed on a *Universal Islamic Declaration of Human Rights* (UIDHR), notably prepared by the Islamic Council of Europe, affiliated with the Muslim World League, and eventually supported by the Organization of the Islamic Cooperation (OIC). This Declaration asserts, “Islam gave to mankind an ideal code of human rights fourteen centuries ago,” in which case “Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.”<sup>46</sup> Hence, concerning the relation of divine revelation and human reason, the UIDHR asserts, “rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God.” Here the UIDHR clearly privileges divine sovereignty over that of the popular sovereignty central to modern civil/democratic society.

As with the UDHR, the UIDHR recognizes various freedoms, including (Article XII) the right to freedom of belief, thought and speech. It is expected that this right is to be observed, in prospect, wherever a Muslim finds residence, to be sure, but consistent with his and her *primary “obligation to establish an Islamic order.”* (italics added) The latter means governance by Islamic law (*sharī‘ah*), delivered “with the rules and the values set out in the Qur’ān and the Sunnah.” The latter means, further, that “all public affairs” must be determined such that they “accord well with the [Islamic] Law and the public good” (the latter meaning the “objectives” [*maqāsid*] of the *sharī‘ah* and “public interest,” [*maslahah*]). Any infringement of rights (as harm, *darar*), then, is to be evaluated and settled with reference to “appropriate remedial measures in accordance with the [Islamic] Law.” Clearly, this is a contentious postulate of obligation contrary to the liberal democratic conception.

Islamic jurisprudence scholar Mohammad H. Kamali clarifies, however, that “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* [*sic*] as such.”<sup>47</sup> This is an important point in clarifying the propriety of any question of legal limits on speech acts in European countries that are presently Muslim-minority in status. It is, therefore, to be expected that, in recognizing a right to freedom of thought and belief there will very likely be relevant restriction from the government *in a Muslim-majority* country seeking to enable public legislation according to Islamic jurisprudence, even if the Constitution of that country allows otherwise for secular and

non-sectarian beliefs and behavior. Thus, Article XII of the UIDHR stipulates, “Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the [Islamic] Law [i.e., *sharī‘ah*].” These limits may include means of dissemination, no barrier to such practice “provided it does not endanger the security of the society or the state and is confined within the limits imposed by the [Islamic] Law.” The latter bar will be in effect if any one “shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them;” in which case, all individuals are obligated to show “respect for the religious feelings of others.”<sup>48</sup> Hence, according to the UIDHR, there should be no violation of religious/Islamic sensibilities through one’s exercise of free speech, in which case it is not surprising that Muslim-majority countries have laws criminalizing such speech.

But, as Kamali argues, properly interpreted, Islamic law “confines the scope of restrictions to measures necessary to repel an imminent danger to normal order in society,” and in that case “modern interpretations of seditious speech [*fitnah*] and conduct have done much to restrict the scope and substance of the freedom of expression.”<sup>49</sup> Kamali clarifies, “Seditious *fitnah* applies to words and acts that incite dissension and controversy among people to such a degree that believers can no longer be distinguished from disbelievers.”<sup>50</sup> Thus, we have here an uneasy disjunction in the prescriptions stipulated by the UIDHR and the UDHR. Clearly, the majority of the international community accepts the UDHR as a standard expressive of a common international *morality* if not international legality (as part of a declaratory tradition of international law).<sup>51</sup> The UIDHR is not so received to-date precisely because of provisions contrary to the *ethos* of liberal democracy. In contrast to these two declarations, the ICCPR does count as a legally binding treaty for its signatories (i.e., those who have signed and ratified the treaty and thereby given it municipal effect), even as it is a guiding standard for international morality. This raises the question of the relation of *Islamic law (sharī‘ah)* to *international law*, the latter conceived as a set of principles deliberated and advanced primarily as Western jurisprudence without attention to theistic belief. Nation-states in Europe have no inclination to permit Islamic law an authority internal to their States, while nonetheless allowing that international law (*qua* treaty law) does have municipal effect. A.E. Mayer, among others, engages this problem in a recent work, even as there is ample periodical literature speaking to the question, i.e., to clarify fundamental issues of *incompatibility* relative to contemporary expectations for a *democratic* (not theocratic) structure of government.<sup>52</sup>

For an analyst of the contemporary political scene such as Moataz ElFegiery, the conclusion subsequent to the “Arab Spring” is that “Arab revolutions have not yet managed to lead to democracies that are genuinely tolerant of individual human rights,” that “Islamists” have manifest an “ambivalent approach to human rights” that “reinforces cultural relativism and subverts universal human rights.”<sup>53</sup> The central problem is that, “Islamists have not abandoned the objective of establishing Islamic states and a public order based on *Shari‘ah* (Islamic law).”<sup>54</sup> The latter recognizes no separation of religion and State or separation of the public and private such that religion is relegated to the domain of individual piety and action without interference by governmental authority. Bassam Tibi, e.g., distinguishes Islamists who pursue *violent jihād* and those Muslims who pursue *institutional reform*. The latter group is ambiguous in its political

agenda insofar as, despite their non-violence, their perspective nonetheless accords with the UIDHR quest for an Islamic political order and the establishment of institutions of government organized according to *sharī'ah*.<sup>55</sup>

One may thereby consider related empirical evidence as to this scene of contestation. Jan Michiel Otto's comparative legal analysis of twelve Muslim countries provides some pertinent insights.<sup>56</sup> The conclusions are not encouraging for the early 21<sup>st</sup> century as one ponders the continuing encounter between proponents of liberal democracy and Muslims advocating an Islamic political order,<sup>57</sup> notwithstanding calls from some prominent Muslim scholars for Islamic reform.<sup>58</sup> Despite a clear perspective on government authority provided in a document such as the UIDHR, Otto reminds that there is "a diversity of schools and interpretations of Islam," that there are even historical "shifts in the interpretation of [*sharī'ah*] as well as of a great variety in orientations both among and within national legal systems."<sup>59</sup> A country like Iran, e.g., governed according to a Shi'a interpretation of Islam, once had a high-ranking cleric, Mirza Mohammad Hossein Na'ini (b.1860; d. 1936), who (according to Otto's report) *rejected absolutism and defended constitutionalism* at the time of the Iranian movement that led to the Constitutional Revolution of 1905-1911. Sheikh Fazlolla Nuri, a religious scholar, opposed Na'ini, arguing to the contrary that, "ideas of democracy and freedom, the reforms advocated by the constitutionalist, and the establishment of a parliament to enact legislation, were *in contradiction with Islam*."<sup>60</sup> The same opposition occurs in some contemporary Muslim-majority nation-states as they advance (1) the idea of liberal democracy as to some degree compatible with Islamic values, but with continuing ambivalence about the relation and priority of religious values to secular values, or (2) as the idea of an "Islamic State" clarifies that Islam is the religion of State and, therefore, Islamic doctrine constitutionally guides and structures deliberations about what is morally and legally permissible in the public order.

The foregoing comments point to the question how tolerant a given nation-state is of *legal pluralism*—i.e., having various sources of law and morality conditioning individual behavior and governmental law, policy, and regulatory practice—as opposed to how *essentialist* is the interpretation of *sharī'ah*. The latter is the view according to which Islamic law is "unchangeable," "binding," "fixed," and always to be "delineated" in that way by the recognized juridical authorities.<sup>61</sup> Fundamentalist, traditionalist, Islamist groups advance the latter essentialist notion today; reformists advance the former pluralist perspective. That said, however, even where there is a pluralist approach and a diminution of traditional jurisprudential authority of classical Islam, "Muslims seem to entrust key decisions in law and governance to the 'new' legal institutions of the state, rather than to the old structures of [*sharī'ah*] authority," thereby eschewing religious leaders from having a "direct role in drafting a country's constitution, writing national legislation, drafting new laws, determining foreign policy and international relations, or deciding how women dress in public or what is televised or published in newspapers."<sup>62</sup>

Obviously this can work positively to advance democratic values among Muslims, or it can work in the direction of insistence on an Islamic political order as laid out in the UIDHR, which links

to the classical Islamic concept of *siyasa* (“ruler’s power to make laws,” hence, “religious” government). Hassan Hassan characterizes *siyasa* as a “pragmatic” principle: “The rise of Islamists...has revived a pragmatic form of Islamic jurisprudence that has been neglected for centuries: ‘*siyasa shariyyah*’, or Sharia-compliant realist governance, deals with politics, economics and law based on an overarching principle known as ‘*maslaha*’, or public interest. In practice, *siyasa shariyyah* is often seen as in opposition to traditional jurisprudence.”<sup>63</sup> At once opportune and problematic, however, the application of this principle lends itself to appeal to various schools of Islamic jurisprudence (Hanbali, Maliki, Hanafi, Shafi’i, Ja’fari), judicial outcomes allowing for change in legal authority and pernicious consequences (e.g., courts operating initially under the *Maliki* school sanctioning *imprisonment* for a capital offense, then the appeal level adjudication changing to the *Hanafi* school which permits the *death penalty*, as happened in a case in Abu Dhabi).<sup>64</sup> In the relation of sovereign to individual, the authority is unmistakably clear: “The interests of the nation precede the interests of the individual. Justice that safeguards the interests of the whole nation is preferable to that which safeguards the interests of the individual.”<sup>65</sup> This deference to collective interest diminishes individual right as construed in the liberal political order of European democracies.

Asifa Quraishi-Landes observes, “average Muslims presume that *sharia* corresponds only to the doctrinal rules of *fiqh* [i.e., “rules extrapolated from scripture by religious legal scholars articulating right conduct for Muslims”], leading them to believe that state legislation of *fiqh* rules is the only way their government can follow *sharia*.”<sup>66</sup> Despite the opportunity associated with *siyasa*, “governance failures” in many Muslim countries, along with “people’s attachment to tradition in the form of symbols, structures and authorities of religion and custom,” contribute to this view of Islamic law.<sup>67</sup> The tendency in contemporary political Islam is to privilege a narrow conception of *fiqh* over the pragmatism of *siyasa*. An approach to *shari’ah* based on *siyasa* is acceptable to reformist-minded Muslims, but it is the former approach that remains dominant in practice. Hence, freedom of expression (including here freedom of thought and speech) is constrained and restrained by Islamic conceptions of the public good favoring State authority over individual liberty. It is, therefore, not surprising that Muslim-majority states implement prosecution for “public utterance of hurtful speech” (*‘al-jahr bi’-sū’ min al-qawl’*) through defamation laws, ‘hurtful’ here interpreted as harm to religious sentiments/sensibilities; even though, Kamali clarifies in reference to a typical verse such as the Qur’ān, *al-Nisā’*, 4:148: “The verse does not convey a command or a prohibition, nor any penalty for violation, rather it contains *ethical* advice and guidance.”<sup>68</sup> In fact, Kamali adds, the verse urges a person so offended “and all concerned to be forgiving and forbearing, privately or in public, in anticipation of God’s unbounded mercy and reward.” This ethical advice is lost on Islamic authorities as they seek retribution for perceived violations of religious sensibilities in free speech.

## 5 Conclusion: A Commitment to “the Mandate of Philosophy”

The prospect of Islamic reform, with respect for freedom of expression in thought and speech as a mandate of philosophy itself, as central to the contemporary debate, reminds of the case of the

Egyptian scholar Nasr Abū Zayd.<sup>69</sup> Abū Zayd is “the voice of an exile”<sup>70</sup> from his homeland, charged as he was in 1993 as an apostate (indeed, as one whose writing expresses an “atrophy of religious conscience” and “intellectual terrorism”—itself a telling concept used by Islamic religious authorities appropriating the authority of the State). Sometimes it is unclear whether an individual is properly accounted guilty of apostasy, blasphemy, or heresy, depending on the source of indictment and the venue of adjudication, since there tends to be a blurring of the three actions when alleged infidelity occurs.<sup>71</sup> Abū Zayd migrated to Holland, a voice in exile championing freedom of thought, to be distinguished conceptually from freedom of speech *per se*. Fitting to Abū Zayd’s scholarly acclaim was his appointment as Ibn Rushd Professor at the University for Humanistics (Netherlands) and recognized in November 2005 as the recipient of the Ibn Rushd Award for Freedom of Thought.

Abū Zayd understood that, “since the fifth century of the Islamic era, i.e., the twelfth century [C.E.], Islamic philosophy and Islamic theology as well as the creative philosophy of Sufism have been gradually marginalized” consequent to a reduction of Islam to “the paradigm” of *sharī‘a*.<sup>72</sup> This paradigm dominates wherever it is asserted that the gates of *ijtihād* (interpretation) are closed (e.g., closed since the 13<sup>th</sup> century), leaving little room for renovation in Islamic thought, including tolerance of varied interpretive approaches such as that undertaken by Abū Zayd. It is this paradigm that, for Abū Zayd, “commits ‘ideological deception’ when it encounters reason with the dictum *lā ijtihād fī mā fīhi nass* (there is no personal reasoning in any matter covered by the religious text).”<sup>73</sup> During his time as Professor of Islamic and Arabic Studies at Cairo University, Abū Zayd bemoaned the “siege mentality” and “intellectual stagnation” there, such that “To offer new explanations or interpretations of religion becomes a blasphemous act.”<sup>74</sup> Thus, innovation in contrast to conservative interpretation is automatically suspect and rejected. Hence, we have extant “two ways of thinking,” he says: “The Islamists cling to the immutability of the past. This attachment to the past appeals to those who find change and development threatening. Intellectual free-thinkers such as I,” said Abū Zayd, “do not consider our Islamic heritage sacred in and of itself.” It is in this intellectual attitude that Abū Zayd speaks for freedom of thought, even if it means advancing an interpretation of the religious texts that denies *literal* truth and allows an engagement of the scriptures as *metaphor*. That is a courageous approach to the Islamic texts that ought not be prohibited in European states through legal censorship of free speech on the grounds that religious sensibilities of Muslims are violated. Genuinely reformist voices surely do not countenance such prohibition, notwithstanding uncertainty associated with the UIDHR.

For the present and for the foreseeable future, it seems, we are immersed in this irreconcilable tension between (1) those who adhere to the immutability of the past, such as given in Islamic scripture and tradition, and (2) those who advance the mandate of philosophy, to live the examined life that since Socrates questions ancestral custom and the authority of tradition, including the traditions of religious authority. So long as arguments for freedom of thought and speech are ignored in the contemporary present of (a) rival religious belief and (b) the contraposition of (i) government based on religious authority and (ii) government based on principles of liberty, the contemporary world order will see continuing conflict to the detriment

of individual liberties. Contemporary Europe is now a case in point. Even so, a philosopher such as Spinoza speaks with authority as philosophical counsel to today's *theologico-political* disquiet: "...the state is never safer than when piety and religion are taken to consist solely in the practice of charity and justice, when the right of the sovereign authorities, whether in sacred or secular matters, is concerned only with actions, and when everyone is allowed to think what they wish and to say what they think."<sup>75</sup> That goes as well for those in Europe critical of Islam belief as it conduces to radical Islamist action, i.e., acts of religiously motivated terrorism.

Clearly, the UIDHR privileges Islamic doctrine rather than the free thinking an individual may pursue on the basis of his or her reason alone. The right of the sovereign in Muslim majority countries and among many Muslims is understood to govern thought as well as action, contrary to the positive freedom of philosophical reason such as Spinoza characterizes to be the mandate of philosophy. European countries faced with Muslim immigration are thereby obligated to defend freedom of speech as a positive human and civil right protected by the liberal political order, without deferring to arguments of political correctness seeking to protect religious sensibilities when those sensibilities are insistent on asserting the demands of Islamic political order contrary to the fundamental liberties recognized by Western jurisprudence and morality. Spinoza's position on the mandate of philosophy is reasonably advanced thereby, even as contemporary philosophically-minded writers of the 20<sup>th</sup> century such as Derrida and Abū Zayd propose consonant rationale for freedom of speech relative to Europe's encounter with Islam. To do otherwise would be to harm the foundations of European liberal modernity. National security, properly understood, is as Spinoza advised: The State is secure when everyone is allowed to *think* what they wish and to *say* what they think, whatever the medium and venue of free expression.

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## Notes

<sup>1</sup> See here my “Rehabilitating Islamic Ethics: A ‘Postmodern’ Opportunity for Contemporary Islam”, *American Journal of Islamic Social Sciences*, Vol. 26, No. 2, May 2009, pp. 1-22.

<sup>2</sup> I say here “in illustration” rather than by appeal to extended argument, which I have developed elsewhere. For this extended argument on how Western and Islamic jurisprudence may be engaged positively in contrast to radical Islamist interpretation, I refer the reader to my paper, “Applying Dworkin’s Legal Philosophy *contra* Islamist Ideology: *Sharī‘ah* as a Matter of Interpretation (*Ijtihād*) and Ethics (*ilm al-akhlāq*)”, *UCL Journal of Law and Jurisprudence*, Vol. 6(1), 2017, 90-113; <http://discovery.ucl.ac.uk/1553299/1/4.%20Swazo%20FINAL.pdf>.

<sup>3</sup> Michael Dillon, “Epilogue: The Scandal of the Refugee: Some Reflections on the ‘Inter’ of International Relations,” *Refuge*, Vol. 17, No. 6, December 1998, pp. 30-39.

<sup>4</sup> Mustapha Chérif, *Islam and the West: A Conversation with Jacques Derrida*, trans. T.L. Fagan (Chicago: University of Chicago Press, 2008).

<sup>5</sup> See here Jonathan Israel, *Radical Enlightenment* (Oxford: Oxford University Press, 2001); Jonathan Israel, ‘The Islamic World and the Radical Enlightenment: Toleration, Freethinking, and Personal Liberty,’ (Princeton: Institute for Advanced Study), 18 May 2016, <http://videos.ias.edu>. (accessed on 11 February 2017).

<sup>6</sup> Steven Nadler, “Baruch Spinoza,” 04 July 2016, <https://plato.stanford.edu/entries/spinoza/>, accessed 15 June 2017. See here also, Steven Nadler, “Why Spinoza Still Matters,” *Aeon*, 28 April 2017, <https://aeon.co/essays/at-a-time-of-zealotry-spinoza-matters-more-than-ever>. (accessed 27 January 2017).

<sup>7</sup> See here Benedict deSpinoza, *Theological-Political Treatise*, ed. Jonathan Israel, trans. M Silverthorne and Jonathan Israel (Cambridge: Cambridge University Press, 2007); B. Spinoza, *Complete Works*, trans. S. Shirley, ed. M.L. Morgan (Indianapolis: Hackett Publishing Co., 2002); Julie E. Cooper, “Spinoza’s Theological-Political Treatise,” *Law, Culture and the Humanities*, Vol. 2, pp. 91-114, <http://journals.sagepub.com/doi/pdf/10.1191/1743872106lw037oa>. (accessed on 27 January 2017); Roger Arnaldez, ‘Spinoza et la pensée arabe,’ *Revue de synthèse*, XCIX, 3<sup>rd</sup> Série, No. 89-91, 1978, pp.151-173.

<sup>8</sup> deSpinoza, 2007, ix.

<sup>9</sup> Israel, 2016.

<sup>10</sup> Israel, 2001.

<sup>11</sup> Yovel, 1991, ix.

<sup>12</sup> deSpinoza, x.

<sup>13</sup> deSpinoza, 2007, 238.

<sup>14</sup> deSpinoza, 2007, 238.

<sup>15</sup> deSpinoza, 2007, 239.

<sup>16</sup> deSpinoza, 2007, 242.

<sup>17</sup> deSpinoza, 2007, 247.

<sup>18</sup> deSpinoza, 2007, 250.

<sup>19</sup> deSpinoza, 2007, 252-253.

<sup>20</sup> deSpinoza, 2007, 253.

<sup>21</sup> Ziad Elmarsafy, *The Enlightenment Qur’an: The Politics of Translation and the Construction of Islam* (Oneworld Publications, 2009).

<sup>22</sup> Emarsafy reminds, e.g., of *Qur’ān 49:13*, which is explicit that mankind are created with multiple and diverse languages so that they may come to know one another.

<sup>23</sup> See here Ziad Elmarsafy, “History as Invention, Creation, and Ethics,” public lecture presentation sponsored by the Oxford University Centre for Muslim-Christian Studies, Annual Joint Lectures 2015, on the theme “The History of Muslim-Christian Relations—What Relevance for Today?” 15 March 2015, <https://www.youtube.com/watch?v=ztSMtg8CgYs>, accessed on 15 June 2017.

- <sup>24</sup> Jacques Derrida, *On Hospitality*, trans. R. Bowlby (Stanford: Stanford University Press, 2000), 9
- <sup>25</sup> Derrida, 2000, 11; italics added.
- <sup>26</sup> Derrida, 2000, 15.
- <sup>27</sup> Derrida, 2000, 15-16.
- <sup>28</sup> Derrida, 2000, 23.
- <sup>29</sup> Derrida, 2000, 27.
- <sup>30</sup> See here Derrida (2008), 65, italics added.
- <sup>31</sup> Wilders, 2016.
- <sup>32</sup> Cesari, 2013.
- <sup>33</sup> Derrida, 2008, 61; italics added.
- <sup>34</sup> Derrida, 2008, 65; italics added.
- <sup>35</sup> Iglar, 2016.
- <sup>36</sup> Meotti, 2016.
- <sup>37</sup> MacEoin, 2016.
- <sup>38</sup> Haerst, 1966, 42; italics added.
- <sup>39</sup> Spinoza, e.g., says in Chapter 19 (p. 238), “religion has the power of law only by decree of those who exercise the right of government and...God has no special kingdom among men except through those who exercise sovereignty...religious worship and pious conduct must be accommodated to the peace and interests of the state and consequently must be determined by the sovereign authorities alone.”
- <sup>40</sup> See here, e.g., Baderin, 2008; Al-Marzouqi, 2005. For an historical review of Islamic political thought, see Crone, 2005.
- <sup>41</sup> See, e.g., Irish, 2012.
- <sup>42</sup> Irish, 2012.
- <sup>43</sup> United Nations, *Universal Declaration of Human Rights*.
- <sup>44</sup> United Nations, *International Covenant on Civil and Political Rights*.
- <sup>45</sup> Art has been a notorious problem for Muslims in Europe. See, e.g., Goolam, 2006, 333-350. Goolam argues: “the limits of the freedom [of expression] were overstepped by the publication of the cartoons and that such freedom must be limited when it reaches the bounds of hate speech and blasphemy. It is further submitted that the publication infringed the human dignity of Muslims worldwide.”
- <sup>46</sup> *Universal Islamic Declaration of Human Rights*.
- <sup>47</sup> Kamali, 2014, 48E, includes here: “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.” Italics added.
- <sup>48</sup> Examples of governmental action suppressive of individual expression, legion in many Muslim-majority countries: Iran against Salman Rushdie for his *Satanic Verses*; Egypt against Islamic scholar Nasr Abū Zayd’s reformist approach to interpretation of Islamic texts; Saudi Arabia’s arrest of Hamza Kashgari for tweets allegedly insulting the prophet Muhammad; Bangladesh’s legislation that allows for arrest of freethinkers, bloggers, and anyone alleged to have insulted religious feelings; Pakistan’s anti-blasphemy law that applies to speech insulting Islamic belief; etc.
- <sup>49</sup> Kamali, 1993, accounts for various meanings of the word as used in the Qur’ān and the *ahadith* (narration concerning the prophet’s sayings or deeds). Central to evaluation of the consequences of free expression are: “concepts of caprice, pernicious innovation, distorted interpretation, and inimical doubt.” (p. 190) See here also, Kamali, 2014, 48E.
- <sup>50</sup> Kamali, 1993, 181.
- <sup>51</sup> For a summary account of this tradition, see Jones, 1992.
- <sup>52</sup> See here Mayer, 2012; Munir, “Islam and Human Rights;” Baderin, 2001; ElFegier, 2012; Manzoor, “Freedom of Expression and Islam.”

<sup>53</sup> ElFegiery, 2012, 1.

<sup>54</sup> See here Ayoob, 2008.

<sup>55</sup> Tibi, 2010. See also Marshall, 2005. Notably, Donner (1998, 45) argues for separation of Islamic religious and political authority is given in historical analysis: “The discrepancy between Qur’ān and *hādīth* on the question of political leadership is striking, and suggests strongly that the two bodies of material are not the product of a common ‘sectarian milieu,’ but come from somewhat different historical contexts... [Subsequent] generations of Muslim political theorists... were forced to develop a theory of political legitimacy with almost no Qur’ānic basis, and consequently pulled and stretched the interpretation of even the most unlikely Qur’ānic passages in order to find some support in scripture for their political theories—not to mention loading much of the weight of the whole theoretical edifice on the slender basis of the Qur’ān’s vague reference to ‘those in authority among you.’”

<sup>56</sup> Otto, 2010.

<sup>57</sup> Otto, 2010, “Chapter 14.”

<sup>58</sup> See, e.g., include Abū Zayd, 2004a; Rahman, 1999; Ramadan, 2008; Kenny and Moosa, 2013; El Fadl, et al., 2004; Esposito and Voll, 1996.

<sup>59</sup> Otto, 2010, 615.

<sup>60</sup> Otto, 2010, 615; italics added.

<sup>61</sup> Otto, 2010, 616.

<sup>62</sup> Otto, 2010, 617. Otto cites, J.L. Esposito and D. Mohahed, *Who Speaks for Islam? What a Billion Muslims Really Think*. Based on Gallup’s World Poll—the Largest of Its Kind. (New York: Gallup Press, 2007), 50.

<sup>63</sup> Hassan, 2017.

<sup>64</sup> Hassan, 2017.

<sup>65</sup> Hassan, 2017, citing Dr. Ahmed AlKubaisi, head of *sharī’a* studies at UAE University.

<sup>66</sup> Quraishi-Landes, (no date). Quraishi-Landes says this average understanding excludes legislating according to *siyasa*. She argues in favor of understanding such legislative opportunity according to *siyasa* rather than by way of the more narrow appeal to *fiqh*.

<sup>67</sup> Otto, 2010, 626.

<sup>68</sup> Kamali, 2014, 49E; italics added.

<sup>69</sup> For an overview, see Najjar, 2000.

<sup>70</sup> See here Abū Zayd, 2004b.

<sup>71</sup> As an example, see my “The Case of Hamza Kashgari: Examining Apostasy, Heresy, and Blasphemy under *Shari’a*,” *Review of Faith and International Affairs*, Vol. 12, No. 4, December 2014, pp. 16-26, <http://dx.doi.org/10.1080/15570274.2014.976089>.

<sup>72</sup> Abū Zayd, 2004a, 43.

<sup>73</sup> Najjar, 2000, 181.

<sup>74</sup> Abū Zayd, 2004b, 4.

<sup>75</sup> deSpinoza, 2007, 259.