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## Freedom of Expression in Islam and Liberal Democracies: A Comparison

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# Contents

<b>Chapter 1 Introduction.....</b>	<b>1</b>
1. Introduction .....	1
2. Theory and Methods.....	2
3. Study Outline .....	5
<b>Chapter 2 Freedom of Expression in Liberal Democracies.....</b>	<b>7</b>
1. Introduction .....	7
2. <i>Féret v. Belgium</i> : The Boundaries of Freedom of Expression .....	8
3. Freedom: what is it? .....	16
3.1. Two Selves.....	17
3.2. Positive or negative freedom? .....	21
3.3. Hannah Arendt on Positive Freedom.....	24
3.4. Only one concept of freedom? .....	27
3.5. Should freedom have a goal?.....	28
4. Free Speech: Freedom of Expression or Freedom to Expression? .....	29
5. Which boundaries of free expression are been drawn by European judges?.....	33
5.1. Hate speech.....	34
5.2. Jeremy Waldron: The Harm in Hate Speech .....	36
6. Does freedom of speech involve moral and/or legal responsibility? .....	39
6.1 Legal Moralism, Offense, and Harm: Joel Feinberg: Offense to Others .....	39
6.2. A reevaluation of the Rechtsstaat.....	43
Conclusion.....	45
<b>Chapter 3 Freedom of expression in Islam .....</b>	<b>46</b>
Introductory Remarks .....	46
1. Justifications for Freedom of Expression in Islam.....	49
1.1. Human Dignity and Discovery of the Truth.....	49
2. Corroborating Evidence for Freedom of Expression in Islam .....	51
2.1. <i>Shūra</i> (Mutual Consultation).....	52
2.2. <i>Ijtihād</i> (independent reasoning).....	59
2.3. <i>Naṣīḥa</i> (Sincere advice) .....	61
2.4. <i>Ḥisba</i> : commanding good and forbidding evil .....	65
3. The Boundaries of Freedom of Expression in Islam: Moral and Legal Restraints.....	67
3.1. Moral Restraints.....	69
3.1.1 <i>Ghība</i> (Backbiting).....	70
3.1.2 <i>Namīma</i> (Talebearing) .....	72
3.1.3 <i>La'n</i> (Cursing) .....	73
3.2. Legal Restraints .....	74
3.2.1. <i>Qadhf</i> (Slandorous Accusation).....	74
3.2.2 <i>Iftirā'</i> (Libel).....	76
3.2.3. <i>Shatm</i> (Insult).....	77
3.2.4 <i>Takfīr al-Muslim</i> : excommunicating or declaring a Muslim an apostate.....	79
3.2.5 <i>Fitna</i> : Seditious speech .....	81
Conclusion.....	86

<b>Chapter 4 Muslim Legal Discussions on Blasphemy and Apostasy.....</b>	<b>87</b>
I Blasphemy in Islam .....	87
1.1. Definition and scope of blasphemy in Islam .....	88
1.2. Arguments to distinguish apostasy and blasphemy .....	92
1.3. Punishment for Blasphemy in Islam.....	92
1.4. The standpoint of Islam regarding mocking other religions .....	93
1.5. The issue of repentance .....	95
1.6. The Issue of Repentance of a Muslim and a non-Muslim: A .....	98
Comparison .....	98
Conclusion.....	100
II Apostasy in Islam .....	101
Introduction .....	101
1. Definition and Scope .....	101
2. Consequences for Committing Apostasy .....	103
3. Relevance for Western Muslims .....	103
4. The Issue of Repentance .....	104
5. The Qur'an on apostasy .....	104
6. The Sunnah on apostasy .....	105
7. Does apostasy entail the <i>hadd</i> punishment?.....	106
8. Arguments against Capital Punishment for Apostasy.....	108
9. The rationale behind capital punishment for apostasy in Islam and some .....	
counterarguments.....	112
Conclusion.....	117
 <b>Chapter 5 The Boundaries of Freedom of Expression in Islam and Freedom of Expression in .....</b>	 <b>118</b>
<b>Liberal Democracies .....</b>	<b>118</b>
5.1. The Difference between Boundaries of Freedom of Expression in Islam and Liberal .....	
Democracies in Terms of Content.....	118
5.2. The Difference of Boundaries of Freedom of Expression in Islam and Liberal Democracies .....	
Due to the Nature of the Community.....	132
5.3. The Boundaries of Freedom of Expression in Islam and Liberal Democracies: Some Case .....	
Studies.....	142
Conclusion.....	152
<b>Summary and Conclusions.....</b>	<b>154</b>
<b>Bibliography .....</b>	<b>158</b>

# Chapter 1

## Introduction

### 1. Introduction

Freedom of expression is a heated and highly debated subject. The tensions it elicits are frequently discussed in the news. In the Netherlands, the murder of Dutch filmmaker and columnist Theo van Gogh (November 2nd, 2004) has primarily been discussed as an attack on freedom of speech. This incident triggered me to delve further into the subject of this thesis. Since the man who murdered Theo van Gogh, Mohammad Bouyeri, is a Dutch-Moroccan Muslim, the debate about freedom of speech very much concerns Islam. Before the murder of Theo van Gogh, freedom of expression was hardly discussed in the Dutch news. Thus, we can say that a Muslim caused freedom of expression to be a prominent topic in the public debate. Other examples of incidents that sparked debates about freedom of expression and Islam around the world are the Salman Rushdie affaire (1989),<sup>1</sup> The Danish Cartoon Crisis (2005),<sup>2</sup> the anti-Islam film *Innocence of Muslims* (2012),<sup>3</sup> and the Charlie Hebdo shooting (2015).<sup>4</sup> These incidents inspired me to compare Islamic conceptions of freedom of expression with that of Western liberal democracies.

The debate on freedom of expression and Islam is, in my opinion, not confined to the boundaries of freedom of expression but touches on many more issues, as I will point out through this study. It can be related to the broader question of how freedom in general is perceived in liberal democracies and Islam. It appears that freedom in liberal states is, first of all, an individual right. A liberal state is not to interfere with an individual's freedom, and by extension, not to impede the freedom of expression of its citizens. Freedom, in particular freedom of speech, is considered one of the typical Western liberal values that is lacking in Islam.

Many Muslims also conceive unrestricted freedom of expression as a specific Western value alien to Islam, even though many Muslim majority countries have also endorsed the human rights charter, including freedom of expression as a human right. In their perception, freedom of expression is a right to attack Islam, vilify, and mock the Prophet of Islam, Muhammad, and thereby to offend Muslims. Furthermore, some Muslims might believe that there is no such thing as freedom of expression, but they are entirely unaware that freedom of expression is crucial for certain principles and institutions in Islam. This study endeavours to remedy these lacunae. Throughout this dissertation, I will point out the complexity of the subject of freedom of expression in Islam and in liberal democracies. This complexity is due to the fact that both

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<sup>1</sup> For more information about the Salman Rushdie affair, see chapter 5.

<sup>2</sup> The Danish Cartoon Crisis took its name from an incident in Denmark. On September 30<sup>th</sup>, 2005, *Jyllands-Posten*, a Danish newspaper, published a dozen cartoons satirizing the Prophet Muhammad. Worldwide, hundreds of thousands of people protested against the cartoons, killing almost 250 people.

<sup>3</sup> This American film led to worldwide protests and left several scores dead.

<sup>4</sup> On January 7<sup>th</sup>, 2015, two gunmen (Saïd Kouachi and Chérif Kouachi) forced their way into the office of the *Charlie Hebdo* and killed eight journalists of the weekly satirical magazine. They also killed a guest, a receptionist, and later on, two police officers. The reason for this attack was the publication of cartoons mocking the Prophet Muhammad.

Muslim majority states and liberal democracies have their own socio-political systems with their own value systems, which makes a comparison on an equal base complex. This study revolves around the following main question:

What aspects characterize the boundaries of freedom of expression in Islam and liberal democracies and how do they compare?

This main question is answered through the following sub-questions:

- What are the boundaries of freedom of expression in liberal democracies?
- What is the evidence corroborating freedom of expression in Islam?
- What are the boundaries of freedom of expression in Islam?
- How do blasphemy and apostasy in Islam relate to freedom of expression?
- How do blasphemy and apostasy in Islam relate to each other, and what are the standpoints of Muslim scholars on these subjects?
- Where do the boundaries of freedom of expression in Islam stand in relation to the limits of freedom of expression in liberal democracies?

This study will constitute a thorough comparison between freedom of expression in Islam and liberal democracies. It draws, among others, upon Arabic sources from both the classical period and modern period of Islam. It also draws upon philosophical approaches on freedom and freedom of expression and several European Court cases.

## **2. Theory and Methods**

There are interesting works on the subject of freedom of expression in Islam and in liberal democracies. The core contribution of this study is to analyse the tensions between freedom of expression in Islam and liberal democracies. It considers the institutional foundations of freedom of expression in Islam as these are functioning in the premodern context and the challenges they pose to Muslims in modern context of human rights and liberal societies. The study explores the controversial tension between the boundaries of freedom of expression in Islam and the way this human right is cheered and protected in liberal democracies. It discusses the tension not only in terms of conflictive views, but also demonstrates the potential for an eventual reconciliation between the two worlds of ideas.

In order to answer the main and sub-questions above and since this work is a comparative study, it draws upon several sources. One of the most important sources is to be found in European court cases regarding freedom of expression in liberal states that were not only vested by domestic courts but also judged by the European Court of Human Rights. By discussing the boundaries of freedom of expression drawn by European judges, it becomes clear what they consider to be valid reasons to curtail free speech. Since freedom of expression is a part of freedom, the concept of freedom plays a vital role in this work. Therefore, this study draws upon several Western philosophers whose work contributed significantly to define the notion of freedom, such as John Stuart Mill (d. 1873), Hannah Arendt (d. 1975), Isaiah Berlin (d. 1997), Hans Bloklund (b. 1960), and Charles Taylor (b. 1931).

Consequently, this work also has a philosophical approach. The discussion of freedom of expression in Islam is based on both classical and modern literature. A modern study about freedom of expression in Islam that merits special attention is *Freedom of Expression in Islam*,<sup>5</sup> written by Professor Mohammad Hashim Kamali. Some of the themes discussed by Kamali will be compared to the liberal discourse on free speech.

Offense, blasphemy, and apostasy are subjects closely related to freedom of expression and will also be discussed in this thesis. As will become clear later, incidents such as the Danish Cartoon Crisis and the Charlie Hebdo shooting are related to freedom of expression and offense. Naturally, offense is very subjective, people get offended for very different reasons. Some people get offended when a male wears a pink T-shirt, while others get offended when a female has a crew cut. In this dissertation, I will not discuss such trivial offenses but refer to profound offenses coined by the late Joel Feinberg (d. 2004) in his book *Offense to Others* (1985),<sup>6</sup> which will be used in this study.

Blasphemy and apostasy in Islam are not only closely related to freedom of expression, but are also interrelated. Blasphemy is a form of profound offense, not only because it shows irreverence to something deemed sacred, but it also involves a hostile and contemptuous attack on the fundamentals of religion, thereby offending the sensibilities of its adherents.<sup>7</sup> Muslim scholars generally consider a Muslim who commits certain aspects of blasphemy as an apostate. Changing or abandoning one's religion is nowadays considered a fundamental right by liberal democracies. It is viewed as something encompassed by human rights. However, the mainstream view of Islam, which is based on some narrations, holds the opinion that apostasy from Islam is punishable in this world and, according to the Qur'an, in the hereafter. In some countries, apostasy is punishable by imprisonment and even capital punishment. At the same, some modern scholars argue that there is no proof for implementing capital punishment for apostasy. Strikingly, they employ an evidence-based approach by also examining the Qur'an and the Sunnah.

For almost half a century, there has been a tendency in liberal states to abolish or reform blasphemy laws. The relationship between blasphemy laws and freedom of expression is often a source of heated debate. This has been the case in the aftermath of the Danish Cartoon crisis. Again, many in the West cogitate the Danish Cartoons as freedom of expression, whereas most Muslims were infuriated by the offensive nature of the cartoons and conceived it as a clear case of blasphemy. In Islam, blasphemy is proscribed, and like apostasy, the death penalty can be applied in certain countries. In liberal democracies, blasphemy rarely leads to a lawsuit because it's an arduous task to prove the contemptuous intention. Moreover, freedom of speech in liberal democracies is either warranted by the Constitution or by international covenants and the declaration of human rights. For example, in the United States, the Constitution and the US Bill of Rights protects freedom of speech and safeguards the Bill of rights itself through a vast number of precedents that curtail the qualifications that might be placed on them. Therefore, the government's capability to constrain freedom of speech is firmly curtailed. An exception might be when there's a clear case of hate speech that can incite violence and loss of life, disparage certain protected groups or individuals, or pose a serious threat to the social order of a society.

The Qur'an and the *ḥadīth* (pl. *aḥādīth*) are, as mentioned above, the two primary sources of the Islamic law and are often referred to in this study. For the translations of the meanings of

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<sup>5</sup> Kamali, Mohammed Hashim, *Freedom of Expression in Islam*, Cambridge: The Islamic Text Society, 1997.

<sup>6</sup> Feinberg, Joel, *Offense to Others*, New York: Oxford University Press, 1985.

<sup>7</sup> Feinberg, *Offense to Others*, p. 192; Kamali, *Freedom of Expression in Islam*, p. 213.

the verses of the Qur'an, I use different translations, depending on which translation best adheres to the original Arabic and the context of the discussions. For the translations of the *ḥadīth* I use existing translations and, where necessary, make minor modifications. It should be noted that the differences of opinion among Muslim scholars regarding the boundaries of freedom of expression, blasphemy, and apostasy are due to the different interpretations of the primary texts.

In this study, the opinions of different authoritative Sunni Muslim scholars -both classical and modern- will be analysed in relation to freedom of expression. A famous *ḥadīth* underscores the importance of scholars in Islam: "...the scholars are the heirs of the Prophets. The Prophets did not leave behind dinars or dirhams, rather they left behind a heritage of knowledge, and the one who acquires it acquires an abundant portion."<sup>8</sup>

Examples of classical scholars are the founders of the four Sunni schools of law: Abū Hanifa (d. 767), Mālik ibn Anas (d. 795), Muḥammad ibn Idrīs al-Shāfi'ī (d. 820), and Aḥmad Ibn Hanbal (d. 855). Other scholars of the classical period that are referenced are Abū Ḥāmid al-Ghazālī (d. 1111) and Ibn Taymiyyah (d. 1328), because many Muslims hold both scholars in high esteem and their works are frequently read and referred to. In order to analyse how freedom of expression and its boundaries are implemented in our day and age, I will also refer to modern Muslim scholars who have discussed the topic. For example, as I point out in chapter 3, some modern scholars have conducted in-depth studies about *shūra* or mutual consultation, its importance from the viewpoint of the Islamic legal texts, and convincingly argue that *shūra* can be implemented nowadays on several levels: from state level to family level, individually and collectively etc. To stick to our subject, he proves that without freedom of expression, there is no *shūra*.

There are two kinds of moralities in political philosophy: a thin morality and a thick morality. A thin morality is one formed by general and universal principles, whereas a thick morality is one that comes about through deliberation conditioned by culture, history, and tradition. As such, liberal democracies can be conceived as *thin* societies, and Muslim majority countries can be construed as *thick* societies. *Thick* societies are socio-centric and focus on the well-being of society as a whole, whereas *thin* societies are individualistic and focus on maximizing personal freedoms. These two kinds of moralities affect the boundaries of freedom of expression. As will become clear later, freedom of expression is more curtailed in a thick society than in a thin society.

Another way to explore the boundaries of freedom of expression is using ethical theories. I employ the following ethical theories: consequentialism, deontology, and virtue ethics.

Dignity and tolerance are two significant concepts in setting the boundaries of freedom of expression in Islam and liberal democracies. In Islam and liberal democracies, dignity is a natural right. In both Islam and liberal democracies, speech that affects someone's dignity can be restricted. However, at the same time, tolerance is also essential in freedom of expression, and the dividing line between tolerance and the protection of human dignity is not always clear.

In comparing the boundaries of freedom of expression in Islam and liberal democracies, it is essential to explore the influence of the nature of liberal and Muslim communities. However, in comparing the nature of both communities, I must establish some caveats. First, although

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<sup>8</sup> Abū Dāwūd, *Sunan*, tr. Ahmad Hasan, vol. III, p. 1034, *ḥadīth* no. 3634. According to al-Albānī this *ḥadīth* is authentic, see al-Albānī, *Ṣaḥīḥ Sunan Abī Dāwūd*, p. 407.

Muslim communities are all monistic communities, they differ among themselves. Consequently, the boundaries of freedom of expression vary among Muslim communities. Secondly, due to, among other things, its highly complex historical tradition, the nature of a liberal community is more complex than that of a Muslim community. Renowned liberals such as Locke, Constant, Mill, Dworkin, and Rawls had different ideas about the liberal state.<sup>9</sup> Besides its internal diversity, liberalism varies nationally, regionally, and in time. Consequently, liberalism can be approached and interpreted in different ways.<sup>10</sup> I will confine myself to a social approach. From a social point of view, I consider Islamic society as a social-oriented society that deems its citizens interdependent and emphasizes social harmony, and liberal democracy as an individualistic society in which its citizens are considered independent and equal.

### 3. Study Outline

As mentioned before, this study aims to examine and analyse several aspects that characterise a comparison between the boundaries of freedom of expression in Islam and liberal democracies. To this end, the study is divided into 6 chapters.

Chapter 2, *freedom of expression in Liberal Democracies*, discusses several issues related to freedom of expression in liberal democracies. This chapter starts with analysing the most principled judgment regarding inciting discrimination and intolerance: *Féret v. Belgium*. This case is also highly controversial due to the dissenting opinion of three out of seven judges of the European Court of Human Rights. Chapter 2 discusses in depth the concept of freedom in liberal democracies, primarily based on Isaiah Berlin's (1909-1997) famous essay *The Two concepts of liberty*. A closer look at the origin of freedom of speech reveals that it is closely connected with the emergence of political freedom and, more precisely, with the nascency of the concept of freedom. Berlin's two concepts of freedom, negative freedom and positive freedom, also help understand the boundaries of freedom of expression in liberal democracies. Negative freedom or freedom *from* is the area in which a person is to be left alone and reflects the classical liberal standpoint. This concept envisages freedom as a *possibility* to action. Positive freedom or freedom *to* is not only a *possibility* to action but the action itself. It is the liberty in which a person is a subject and not an object, in which people can formulate and shape their lives and achieve their ideals and goals, without being thwarted or decided by others. Consequently, a human is a rational, active, and willing being who bears responsibility for his or her choices. I argue that positive freedom is preferable to negative freedom because we appreciate freedom not simply for being left alone but also achieving things in life. In line with this argumentation, I argue that freedom of expression is more than protection from state inference (negative freedom), but that in academic literature, several justifications of freedom of speech are mentioned: discovery of truth, self-fulfilment, human progress, citizen participation in a democracy, and the much-needed control of the government.

Chapter 3 discusses the subject matter of freedom of expression from an Islamic perspective. I first concentrate on the justifications for freedom of expression in Islam: upholding human

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<sup>9</sup> Asad, *Is Critique Secular? Blasphemy, Injury, and Free Speech*, p. 19.

<sup>10</sup> Bell, Duncan, *What is Liberalism?*, p. 687-8, in *Political Theory*. 42 (6): 682-715.



dignity and the discovery of truth. I argue that freedom of expression in Islam is primarily a positive freedom. I then focus on the corroborative evidence for freedom of speech in Islam. The purport of discussing the corroborative evidence for freedom of expression is to demonstrate that it is essential for the functioning of several foundations and institutions of the *Sharī'a*, such as *ḥisba*, *nasīha*, *shūra*, and *ijtihād*.

The second session of this chapter 3 is dedicated to the boundaries of freedom of expression in Islam. It consists of two parts: the moral and legal boundaries of freedom of expression in Islam. Moral violations of free speech in Islam are reprehensible but are not punishable according to the laws of the *Sharī'a*. However, moral violations of freedom of speech in Islam can ruin someone's reputation or undermine dignity and integrity. Legal violations of freedom of speech are reprehensible and punishable in Islam. Some of these criminal offenses restricting free speech in Islam also limit freedom of expression in liberal democracies, as I shall point out in chapter 5.

Chapter 4, *Muslim Legal Discussions on Blasphemy and Apostasy*, deals with two subjects: blasphemy and apostasy. In the first part of this chapter, I expound on what constitutes blasphemy in Islam, and I argue that blasphemy is a kind of profound offense. I then concentrate on arguments to separate blasphemy from apostasy and discuss various standpoints on the issue of repentance from blasphemy. The issue of apostasy is not only debated in Muslim majority countries, but it is also extremely relevant for Western Muslims. For Muslims living in liberal democracies, freedom of religion is a fundamental right which safeguards their right to practise their religion. However, freedom of religion also entails the right to change one's religion, including stepping out of Islam. This is a dilemma for Western Muslims; on the one hand, they have the freedom to practise their religion in a liberal democracy, but on the other hand, most Muslim scholars view apostasy as prohibited, based on certain *aḥādīth*. In the second session of this chapter, I explore the different viewpoints on apostasy in Islam.

Chapter 5, *The Boundaries of Freedom of Expression in Islam and Freedom of Expression in Liberal Democracies*, compares, as the title suggests, the boundaries of free speech in Islam and liberal democracy. This chapter consists of three major parts. The first part explores the difference in terms of content, concentrating on four levels. I first examine how the *context* plays a role for courts to set boundaries for freedom of expression. I then explore some ethical theories to evaluate the boundaries of freedom of expression, then compare thick and thin societies concerning free speech and how dignity and tolerance relate to the boundaries of freedom of expression. The second part explains the difference of boundaries of freedom of expression in Islam and liberal democracies through the lens of the nature of the community. The last part of this chapter explores how the boundaries of freedom of expression are conceptually different or comparable in liberal democracy and Islam. To this end, I also discuss some case studies, which, among others, reveal that liberal states themselves vary in setting the boundaries of freedom of expression due to the so-called margin of appreciation.

The final chapter is devoted to the conclusions and the sub-questions of the study. At the end of this work, the reader should have a clear conception of the objectives and boundaries of freedom of expression in Islam and liberal democracies. The reader can then decide how much overlap there is between freedom of expression in Islam and liberal democracies and, to a certain extent, Islamic and liberal values.