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Ethical landscape: laws, norms, and morality

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Outline

- Muslim ethics is an amalgam of differentiated discourses merging duty-based rules of *fiqh* (deontological theory), virtue ethics (*akhlāq* and *adab*) and utilitarian approaches (*maṣlaḥa* and *maqāṣid*). A single practice might involve an aspect of each of these discourses.
- Ethics is fused into the lived world of Muslims; tradition and modernity are intertwined.
- Contests between canonical interpretations of Islam and new scriptural readings generate dynamism in debate.
- Epistemology is at the heart of Muslim ethical deliberation.
- Laypersons often flout the ethical rulings but find solace in personal redemptive readings of the tradition.

Introduction

Muslim ethical thinking in the twenty-first century must be rendered in diverse and sometimes discontinuous and conflicting ways. Once the ‘modern’ was imagined as selected rootstock of ‘tradition.’ But such facile metaphors are no longer convincing. It is now impossible to untwist the ‘modern’ from longstanding indigenous ‘traditions’ of Islamdom. The Muslim ethical landscape is the confluence of multiple traditions—modern and pre-modern, local and transnational—and is better thought of as rootstalks or kudzu that shoots out roots and leaves from any point in the organism (May 2005).²

Muslim ethics is essentially about claims and duties between humans. Yet these claims rely on a combined commitment to God, an obligation to reason, and the need to obtain the greatest good. In other words, it is about how others make claims on us and how we reciprocate to others and to God (Nagel 1986: 164).³ An ensemble of discourses constitutes Muslim ethics. These discourses span the categories known as “Islamic law,” “Shari‘a” and “*fiqh*.” Duty-based ethics in syncopation with virtue ethics (*adab* and *akhlāq*) and utilitarian forms of moral reasoning cumulatively seek to advance the good. While ethics in Islam do take the form of both embedded and abstract reason, the theistic shadow remains a permanent one. Drawing from this rich discursive source, Muslims partake of teachings, practices and dispositions of an ethical, moral and spiritual valence.

This chapter addresses five themes: the everyday, the global, the family, sex and intimacy, and innovation in Muslim ethics. Ethics is part of the everyday lives of Muslims in local contexts, just as it is part of a global and transnational conversation. Ethics impact the family in a variety of ways, from marriage to sexuality. Through innovation in methodology contemporary Muslim ethicists have been able to find

some solutions to challenging issues; but they view it as a work in progress. Crucially important to Muslims is that progress in the realm of the ethical is also part of the story of Muslim civilization that many faithful around the world seek to advance.

Everyday life

Kaukab, a Muslim woman of Pakistani origin, is one of the characters in Nadeem Aslam's *Maps for Lost Lovers*. It is midmorning, in an unnamed English city, and she is already preparing the evening's meal of bitter melon. She starts her chores with the Arabic words, "I begin this action with the name of Allah." As she fastidiously sets out to clean the rice, she also listens to the music of the Nusrat Fateh Ali Khan, the late Pakistani rock star of Muslim spiritual music in the Urdu language called qawwali. Aslam writes in Kaukab's voice: "Nusrat Fateh Ali Khan's voice, singing Allah's praises, fills the air from the cassette player on the refrigerator." "Nusrat is gone," we hear Kaukab reminiscing, "leaving his songs behind, the way when a snail dies its shell remains" (Aslam 2004: 290).

Ruminating over her purchases for dinner and the imported cassettes from Pakistan, Kaukab dwells on the music. Something she was taught or heard from Muslim clerics pricks her conscience. "Islam is said to forbid music, Kaukab remembers as she marinades the chicken breasts with natural yoghurt... but she has always reminded herself that when the holy Prophet Muhammad, peace be upon him, had migrated to Medina, the girls there had welcomed him by playing the duff drums and singing tala' al-badru 'alayna, which is Arabic for "The white moon has risen above us"' (Aslam 2004: 290).

This scene lyrically and accurately portrays an everyday scene of Muslim ethical life. It limns several aspects of modern Muslim ethical life by bringing into light the culture of right conduct (*adab*), intentionality (*niyya*) and the ambivalence of the ethical. Kaukab appears to be well-informed. Thrown into the complex and insoluble problems of Muslim ethics, she finds resolution without going to a Muslim cleric for advice or reading self-help manuals on ethics such as *The Lawful and the Prohibited in Islam* (Qaraḍāwī 1982).

The scene begins simply, powerfully, and exactly like any number of activities in the life of a Muslim—from the most mundane activities to the most sacred—with a benediction, called the *basmala* or *bismillah*. The *basmala* stands in for a long Arabic expression, "In the name of Allah the Most Gracious, the Dispenser of Grace." From childhood Kaukab, like millions of others, was taught that every good deed ought to begin with the *basmala*, and was lacking in blessedness without it. Now in adulthood, it is an ingrained habit and she almost instinctively begins the preparation of food, viewed as a divine gift, with the name of God.

In her practice, God's name connects Kaukab's mundane act to a deeper meaning: a reality higher, greater and beyond her. Her invocation points to her religious conscience. She brings into vision her pious intention and enacts what Islam's premier exemplar,

the Prophet Muhammad, had encouraged all his followers to frequently do: always check one's intention at the beginning, middle and end of an act. Sincerity of intent, to do things selflessly in order to earn the love and grace of God, is all that matters.

"All actions are measured by their intentions," the Prophet Muhammad famously said. Intentions signify the kinds of connections Kaukab makes in her mind. How does she make meaning out of the ordinary? For this housewife, cooking is a service to her family. At the same time, this act connects her to something infinitely complex and beyond her comprehension: God. It is the frame of mind and the way one conducts oneself—cognitively and physically—that forms the all-important network of the ethical. Establishing the right relationship with things is what Muslim writers of the past called *adab*, a code of proper conduct that matures with civility and culture, and that finds its beginning on the inside of a human being. The early writers imagined that conduct radiated from the heart into the limbs and into one's external performance. Today, we might describe acts of conscience or mind to occur in simultaneity with the movements of one's body, joining intention and action into one seamless move.

In any ethical practice what counts is not whether the mind or the body initiated an action, but this: how many profound connections does an individual's intention and action make with the world? Connections are all-important, irrespective of whether they are made when doing mundane tasks in the intimate world of domesticity, in the public realm of politics or when flying out into the far reaches of space. In short: actions are consequential. This is precisely what the pre-partition poet-philosopher Muhammad Iqbal, a highly revered figure in Pakistan, the country of Kaukab's birth, so insightfully explained. For people who struggle to understand what makes an act secular or sacred, Iqbal has a profound answer. "An act is temporal or profane," Iqbal writes, "if it is done in a spirit of detachment from the infinite complexity of life behind it; it is spiritual if it is inspired by that complexity" (Iqbal and Sheikh 1999: 122). Crucially, Iqbal urges us to think about the *complexity* of life behind an act. Kaukab fills the rote preparation of the evening meal with a heightened awareness of the intricate life behind her daily mundane acts.

One shoot of Muslim ethics resembles the 'must do' and 'must not do' (duties) features of some ethical systems. Moral philosophers call this deontological ethics. In Islam these duty-based moral rules are divided into two types. The first type involves the duty to *perform* acts (commission). Muslims, for example, are required to perform five prayers a day, to fast in the month of Ramadan, to annually pay religious-taxes and to undertake the pilgrimage once in a lifetime, if one can afford it. The Arabic terms for duty are *fard* or *wājib*. Failing to adhere to these rules can result in an earthly and/or otherworldly penalty. Of course, in a freedom-obsessed world, the mere mention of 'duty' might sound odd. But in many cultures, including many Muslim cultures, duty is not antithetical to freedom. Performing a duty can itself be a profound act. One of the characters in Vikram Chandra's *Sacred Games* insightfully declares, "Love is duty, duty is love" (Chandra 2006: 934).

A second type of rules requires the believer to scrupulously *avoid* or *refrain* from performing certain specified acts. These are called prohibitions (*muḥarramāt* or *ḥarām*). Hence, a Muslim is duty-bound to avoid eating certain foods and drinking alcoholic drinks, and to abstain from adultery, stealing, murder, violence, lying, dishonesty, backbiting, gossip, negligence, disobedience to parents, cruelty to humans and animals, among other things. In both doing and avoiding certain acts, an individual Muslim is performing the work of *dīn*, namely, acts by which an individual Muslim can attain salvation in the afterlife. Muslims believe that disobeying God's rules amounts to a sin and can result in suffering in the hereafter. But divine grace and compassion can also result in forgiveness followed by bliss in Eden.

Yet, music is the medium that best reveals Kaukab's complex thoughts. While she enjoys the inspiring spiritual music of Nusrat, the proscription of music by Muslim clerics confounds and troubles her. Kaukab's passing thought that "*Islam is said to forbid music ...*" stems from this duty-based moral thinking that requires Muslims to refrain from listening to music. This is the view of religious experts who interpret the teachings of the Qur'an and the statements of the Prophet Muhammad in this duty-based system of ethical thinking, called *fiqh*. *Fiqh* literally means "to understand." The folk who are expert in this literature are called the jurists (*fuqahā*) and the learned (*ʿulamā*).

Revelation, also called the *Sharīʿa*, is the source material or raw data that the jurists and scholars interpret. Literally, the word *Sharīʿa* means "a path to water." Both the Qur'an and the traditions (*ḥadīth*) of the Prophet Muhammad comprise the source teachings of revelation. But as revelation, *Sharīʿa* is always in need of rigorous interpretation. Its meanings and purposes have to be explained and therefore require the skills of experts. Often, Muslims refer to the interpretation of the rules in a shorthand manner as "*Sharīʿa*." Technically, the correct name would be *fiqh*, namely, the understanding of the revelation.

So, in the view of *fiqh*-experts the ban on music in Islam is a watertight one. In their view it is firmly supported by a centuries-old consensus (*ijmā*), which is binding in its authority. However, a vocal minority of contemporary scholars contests the validity of this consensus-based opinion. The permissibility or impermissibility of listening to music in Islam, they argue, was debated from multiple angles since early Islam.

Firstly, Muslim mystics over the centuries favored listening to uplifting music that transported them to levels of spiritual ecstasy. Secondly, past Muslim authorities unanimously permitted the use of percussion instruments employed during festivals and celebrations. However, these same scholars disallowed music made by string and wind instruments. Why? Because, in their view, statements attributed to the Prophet Muhammad disclosed the impermissible use of such instruments. As the debate continues, some scholars dispute the evidence as unreliable and as insufficiently compelling to ban music made by string and wind instruments.

Even though Muslims encounter music in their daily lives there remains a great deal of unease on the permissibility of music in practice. Several decades ago, the

prominent Shaykh Yusuf al-Qaraḍāwī, a Qatar-based scholar, ruled music to be permissible. In his view music promotes cheer, relaxation and dignity, as part of a Sharīʿa-compliant form of entertainment. Qaraḍāwī came under considerable criticism from other religious scholars who charged that he flouted the canonical tradition and bent the rules of interpretation (Bin Mūsá 1428/2007). However, he countered by arguing that when issuing legal opinions (*fatwās*), his own interpretative method, Qaraḍāwī said, was to make things easy for people. This motive, he argued, was endorsed by the Prophet Muhammad himself, who said: “Make things easy, and do not make things difficult; give good news and do not alienate people.”

Qaraḍāwī’s critics are unforgiving; they accuse him of bowdlerizing the tradition and for completely subverting the golden rules of interpretation that Muslim scholars adhered to for centuries (Bin Mūsá 1428/2007). Qaraḍāwī rebuts their charges, stating that the evidence on music is not as clear-cut as his critics pretend it to be. Opinions, in his view, are shaped by the kind of intellectual effort (*ijtihād*) one invests in order to understand the evidence. Qaraḍāwī also takes comfort in the fact that, according to Muslim tradition, good faith efforts to adjudicate in matters of the Sharīʿa still deserve reward in the eyes of God, even if those rulings prove to be incorrect, ultimately.

Kaukab and Qaraḍāwī both find music acceptable but they arrive at this decision by very different paths. Qaraḍāwī does rigorous scholarly work to sift and strain the evidence in order to find the correct answer. Kaukab uses different tools, namely analogy and intuition. Stories she heard as a child of the Prophet Muhammad’s arrival in Medina, the city that became his new home after he migrated from the dangers of Mecca, was one source. If the Prophet himself was welcomed by festive drumbeats and song, then Nusrat’s lyrics of earthly and divine love accompanied by a full ensemble of instruments could not, in her view, possibly amount to a sin. But something unsaid seems to also inform her decision: conscience. Did Kaukab continue to listen to music because she found solace in a prophetic teaching? The one that said: “Ask your heart! [literally, *istafti qalbak*—Ask your heart for a *fatwā*] even though the expert jurists (*muftūn*, sing. *muftī*) have issued their verdict on this matter.” And so the disagreement about the lawfulness of music and other issues continue to be debated by both laypersons like Kaukab or among the community of experts in the *fatwā*-literature. Both groups, laypersons and experts continually update the Muslim tradition, which the next example will further amplify.

Global debates

In 1965 a *fatwā*, an ethical-legal opinion, arrived in South Africa from India. A prominent Muslim businessman of Indian ancestry, Mr. A.M. Moola solicited the ruling from a visiting Indian Muslim religious figure during the latter’s visit to Durban in 1964. The businessman’s query was the following: Could a Muslim businessman like himself

participate in interest-bearing transactions with banks and corporations? Interest or usury, known as *ribā*, is prohibited by Islam’s ethical teachings. The Qur’an issues stern warnings of damnation for those who participate in interest-bearing transactions. Surely, these admonitions must have dogged Mr. Moola’s conscience because, as members of a minority religious community in a society dominated by Christians and other African faiths, interest for Muslim businessmen like him was unavoidable. At the time, there were no non-interest-bearing Sharī‘a-compliant alternatives for finance as there are today in the global multibillion-dollar Islamic finance and banking industry.

Mr Moola’s question was put to the Dār al-Iftā, the Department of Fatwās of the renowned Muslim seminary in India, known as Dār al-‘Ulūm Deoband, some 100km from Delhi, the Indian capital. Deoband is an institution where advanced Islamic education is imparted in order to train students in orthodox Islamic teachings. The study of Islamic law or *fiqh* is one of the main subjects taught in South Asia’s madrasas and the rule-based ethical method is the primary narrative of this brand of Islam. Departments of Fatwās are found at nearly all madrasas, big and small. In the Middle East, the renowned al-Azhar University is a major authoritative resource for *fatwās*. In Muslim majority countries, the religious affairs ministries also appoint specialized *fatwā*-issuing councils or a state-appointed Grand Muftī. Millions of queries are put to these councils and institutions annually. Nowadays, online services are sought-after outlets where e-*fatwās* are solicited.



Figure 2.1 Islamic banking in Malaysia, 2010. Courtesy of Bloomberg/Getty Images.

The other feature of the Deoband school is that it is rigorous in issuing its ethical and juridical verdicts almost exclusively according to the Hanafī law school. What is the Hanafī law school? If Islam has two major theological divisions between the Sunnī and Shīʿa doctrines, then each sect also has super-specialist interpreters of ethical and juridical teachings. These specialists are renowned for their ability to articulate rules of interpretation—*ijtihād*—at a meta-level. In other words, they devised a theory of interpretation (a hermeneutic) that gained a following among their students. For this reason these experts were hailed as master-jurists (*mujtahid* pl. *mujtahidūn*). Each founder’s hermeneutical paradigm, known in Arabic as a *madhhab*, became a franchise with the help of dedicated students and admirers, and spread to different geographical regions of the Muslim world. These paradigms of interpretation developed scholarly expertise and generated canonical texts and opinions. Today they are known as the Muslim law schools. Named after their founders, most Sunnīs follow the Hanafī, Mālikī, Shāfiʿī, Hanbalī law schools. The Shīʿa adhere to either the Jaʿfarī, Zaydī or Ismāʿīlī schools. Laypersons and even specialists in ethical and legal matters often commit themselves to the authority (*taqlīd*) of these schools and their opinions. However, there is also a growing trend that disavows obedience to the canonical authorities of these schools. This trend insists that Muslims are obliged to directly access the meaning of the scriptures in imitation of the practice of the pious ancestors, known as the *salaf*. This trend has become known as the *salafīs*, some of whom have grown in notoriety.

The Hanafī school and some of their adherents today adhere to old-style doctrines developed when Islam was a pre-modern empire. Under Islamic imperial rule, the world was politically divided into at least two kinds of political territories: (1) territories inhabited by people of other faiths or no faith, but who negotiated political treaties with the Islamic empire and (2) territories that had no such treaties. Those territories with no political treaty also had no agreement of mutual recognition and were *potentially* at war with the Islamic realm. The Muslim constitutional jurists designated “no-treaty” territories as the “jurisdiction of war” (*dār al-ḥarb*).

In order to assist the Muslim minority in South Africa, the experts (*muftīs*) at Deoband consulted their sourcebooks. They found a precedent that could help the Muslims of South Africa in the question of commercial interest. The Hanafī law school, they argued, permitted interest-bearing transactions to take place between Muslim traders and people of other faiths, provided they were in a region that qualified as a “jurisdiction of war.” Since Muslims were a minority in South Africa, the region approximated the ancient definition of a “jurisdiction of war.” On this reasoning, the experts at Deoband ruled that Muslims in South Africa were exempt from the ban on participating in interest-bearing transactions. As the authors of the *fatwā* wrote: “... and the application of rulings with regard to dealings in interest [*sūdi kārobār*] between Muslims and non-Muslims would also be applicable” (Mehtar 1965: 8–9).

The Deoband scholars hoped that they had provided a way out for South African Muslims in order that they might economically thrive with the use of this exemption. Due to their unfamiliarity with the South African context, they could not have predicted the Muslim reaction to their ruling. A well-meaning *fatwā* became a source for controversy among Muslims in South Africa (Makki 1966: 2–12; Abed 1966: 13–19; Anonymous 1966: 2–8).

At least two kinds of Muslim audiences reacted to the *fatwā*. The first audience was secular educated Muslims. They sensed that the *fatwā* peddled antiquarian ideas marked by an outdated political theology of empire. To boot, it designated South Africa as a “jurisdiction of war.” This group was acutely alert to the treacherous political challenges Muslims as a religious minority faced in apartheid South Africa. These secular Muslims were caught between combating legislated racism on the one hand, and aspiring to attain the political franchise for all South Africans in a democratic future on the other. The *fatwā*, in their view, could distort the self-image of Muslims as a minority, if the territory in which they wished to live was framed as theologically hostile to Islam. Under apartheid, political hostility was directed against all people of color, not so much against religion. The *fatwā* resembled a kind of apartheid mentality itself by allocating to each territory a different political status and for creating legal exceptions for Muslim practice. The spokesperson for this group, Professor Fatima Meer, complained that the *fatwā* entrenched the minority status of Muslims, made simplistic distinctions between Muslims and people of other faiths and implied that the vast majority was an entity with which Muslims were at war (Meer 1966: 12). Such ethical teachings, she argued, could prejudice the well-being of South African Muslims and jeopardize their prospects of being part of a free democratic majority.

The second audience that responded to the *fatwā* was the Muslim religious scholars. Among them was the Council of Theologians (Jamiatul Ulama of Transvaal) seated in a province now known as Gauteng. This council is a standard-bearer of the Deoband school in South Africa. On this occasion, the council strongly dissented from the Indian *fatwā*. Muftī Ebrahim Sanjalvi (d. 1983) was the chief spokesperson of this organization. Exemplifying intra-Muslim diversity, a *muftī* based in South Africa voiced his scholarly disagreement with a group of *muftīs* in India, even though they belonged to the same Deobandi theological fraternity.

Sanjalvi said he doubted whether South Africa could be neatly classified as a “jurisdiction of war” (Sanjalvi 1966). While there were some features confirming that designation, there were also other characteristics that suggested it was a “jurisdiction of safety” (*dār al-amān*), another category of classical Islamic law. But Muftī Sanjalvi’s main thread of reasoning was the following: the prohibition of interest was explicitly and unambiguously mentioned in the Qur’an. For this reason alone, he stated, it was not permissible for Muslims to partake in interest-bearing transactions; neither in trade with fellow Muslims, nor for that matter, in their transactions with non-Muslims. With this

counter-*fatwā*, the South African affiliates of the Deoband school distanced themselves from what they deemed to be the ill-informed response of the parent institution in India.

Several important things can be learnt about Muslim ethics from this episode. The first lesson is that there are diverse forms of ethical reasoning among Muslims and even within a single scholarly fraternity. The second is that different forms of reason are operative within Muslim ethics. The Indian Deobandis proposed a form of reasoning embedded in the canonical tradition of the Hanafī school to which they were utterly committed. The Indian *fatwā* tried its best to find a precedent that could work, but the antique precedent they found was neither legible nor intelligible to Muslim audiences in the twentieth century. The remedy they offered was out of place. Furthermore, the *fatwā* misread the context of South Africa where political realities and the aspirations of the Muslim community offered very different desiderata to what the *fatwā* provided.

The third lesson is that even scholars aligned to the authority (*taqlīd*) of the canonical law schools occasionally mix and match their interpretative strategies. The South African Deobandi leader, Mufti Sanjalvi, ignored the canonical opinion and resorted to *ijtihād*, independent investigation. He countered the canonical teachings with a fresh reading of the scriptural sources. Since the 1960s it has become increasingly noticeable that followers of the law schools, like Sanjalvi and Qaraḍāwī, adopt a mixture of interpretive strategies, combining scriptural reasoning in conjunction with the canonical reasoning of the law schools.

The fourth lesson is context. A qualified and brilliant scholar might know the rules of Muslim ethics, but fail to grasp the context where his opinions will be applied. In all ethical deliberations, knowing the context is often far more important than knowing the rules. The Indian Deoband *fatwā* backfired because the *muftīs* on the subcontinent were unaware of the complex political and religious terrain of South Africa.

Mechanically applying *fatwās* from a bygone age in new contexts frequently miscarries. The most infamous case is the *fatwā* which Ayatollah Ruhullah Khomeini issued against the British-Indian author of *The Satanic Verses*, Salman Rushdie, for making blasphemous comments about the Prophet Muhammad and his family. Khomeini stated the death penalty which Islamic law prescribed for anyone found guilty of satirizing the Prophet. The opinion issued by the head of the Iranian state ignored the modern context of international law, disrupted global international relations, and created a furor around freedom of speech. In a cyber-age of *e-fatwās* the consideration of context is immensely important. In the next *fatwā*, again context, place and purpose become all-important considerations.

The family

Local conditions often become a catalyst for a change in ethical thinking. Take as an example the case of married female Muslim converts in Europe and North America.

Even though they have converted to Islam, their marriages to unconverted spouses are thriving and they do not see the need to end their perfectly good marriages. Their husbands do not object to their conversion to Islam. But the duty-based rules of Muslim law and ethics raise questions about such marriages. How?

The general Islamic marriage law allows Muslim men to marry spouses belonging to the Jewish or Christian faiths. However, Muslim women cannot marry men belonging to other faiths. Under the existing *fiqh* rules, if a wife converts while her husband does not, then the Muslim wife's marriage contract contravenes the rules and therefore the marriage must be terminated and the parties be separated.

Religious authorities are not always very clear as to the reasoning underpinning this rule. Authorities often assume that husbands determine the religion of the family. A non-Muslim husband they fear might coerce her to abandon Islam and become an apostate. Other scholars say that the husband will raise the children in his faith, depriving the wife of raising her offspring as Muslims. So what should these converted women do? Should they end their marriages, according to the established rules? Is that even tenable? Or is there another solution?

This question was put to the Dublin-based European Council of Fatwā and Research (ECFR). The ECFR is by design based in a Muslim-friendly European capital. Its European character also facilitates travel of international experts for consultations that might otherwise prove difficult in other capitals given immigration and travel restrictions. This council is headed by distinguished scholars like Yusuf al-Qaraḍāwī and Faisal al-Mawlawī, among others. After many meetings, the ECFR deliberated on this real-life (*nāzila* pl. *nawāzil*), not hypothetical, case. Such a case is in part resolved by making reference to older ethical and juridical literature and, if necessary, reinterpreting this for the present. The ECFR ruled that it was not necessary for European convert Muslim women to end their marriages. In other words, contrary to the established rule, their conversion did not impact their marriage contracts from an Islamic ethical and legal perspective. Needless to say, this ruling has sparked a great deal of controversy and serious disagreement among Muslim scholars the world over. How did these ECFR experts set aside the established rule and the unbroken practice for centuries?

Firstly, the ECFR scholars argued that what appeared to be a consensus preventing Muslim women from remaining married to non-Muslim men was a not a consensus. Normally, the authority of a precedent based on consensus is even stronger than an explicit text of scripture. Why? In terms of the rules of interpretation, a text of scripture is open to multiple interpretations, whereas a consensus decision is held to be less ambiguous. The ECFR undermined the older consensus position by using the writings of a noted fourteenth-century Ḥanbalī scholar, Ibn al-Qayyim al-Jawzīyya to validate their opinion.

Secondly, the ECFR gave a different interpretation to Qur'anic verse 60:10, which was alleged to have banned the marriages of Muslim women to non-Muslim men. The

relevant portion of the verse reads: “... believing women are no longer lawful to their un-believing husbands, and nor are the non-believing husbands any longer lawful to them” (Qur’an 60:10).⁴ But a crucial piece of historical information casts this verse in a very different light and repositions the hermeneutical framework. The verse dealt with women who fled their pagan husbands in Mecca and arrived in Medina as converted Muslims. Why did they flee to Medina? Their pagan husbands coerced them to abandon their Islamic faith. It was in this context that the Qur’an counseled separation between a Muslim wife and her non-Muslim husband. But the ECFR also found other precedents to support its ruling. So when husbands did not object to the faith of their Muslim wives then matters were different. A case in point was the Prophet Muhammad’s own daughter Zaynab. She was married to a non-Muslim Meccan, named Abū al-‘Āṣ. The difference of his faith did not affect their marriage since he also visited her in Medina (Ḥaṣwah 2009: 134). The senior companion ‘Alī b. Abī Ṭālib also ruled that the marriage contract was intact if a non-Muslim husband lived in the domicile of the Muslim wife.

Thirdly, what really drove the ECFR’s thinking were two doctrines with older histories but in modern Muslim usage both were frequently used. The first doctrine is that all rules of the Sharī‘a, especially those dealing with social transactions, serve explicit and implicit notions of public interest (*maṣlaḥa*). The second doctrine is that the Sharī‘a aimed to preserve certain purposes. Medieval Muslim jurists have counted these “purposes of the Sharī‘a” (*maqāṣid al-Sharī‘a*) as numbering five. The goal of the Sharī‘a is to preserve religion, life, reason, wealth and paternity, an idea that is nowadays glossed as the preservation of the family.

For many traditional scholars, the ECFR’s views sounded radical. Female sex with a spouse from another faith is viewed as crossing certain boundaries of propriety. Anxiety over female sexuality is culturally often more highly prized for reasons that anthropologists and sociologists have amply explored. But in patriarchal Muslim societies female conduct is viewed as an index of the moral order, if not moral health, of the society, irrespective of the detrimental corruption men might unleash on society.

Sexuality and intimacy

Female and male sexual conduct is what the Egyptian writer Alaa al-Aswany insightfully explores in his novel *Chicago*. He not only predicts the fall of the authoritarian president of his country but in one of many subplots of the book, he explores different forms of human frailty (al-Aswany 2008). Intimacy and human sexuality is enigmatic for its beauty, its freight of anxiety and also its capacity to diminish. Despite the abundance of rules and self-discipline, ultimately human desire wins out, often with unpredictable outcomes.

In the city of Chicago, two Egyptian medical students are pursuing PhDs in histology. Tariq Haseeb, a nerd-like character gets excellent grades in college but lacks social

skills and masturbates compulsively. His sexual attraction for a fellow Egyptian from Tanta changes everything for him. Shaymaa Muhammadi, like him, is a qualified physician. Wearing a veil in her mid-thirties, she is deeply devout and unmarried. Her father reluctantly consented to her studies abroad since he preferred to find her an appropriate spouse.

Tariq and Shaymaa's mutual attraction soon leads to physical and erotic encounters. She allows him access to her body but they do not engage in vaginal sex, a domain mutually agreed to be the "red line," a boundary only to be enjoyed after marriage. Aswany sensitively describes their encounters.

He didn't dare take off her dress but they embraced closely and their muscles contracted in instinctive successive thrusts until they both crossed the gate of pleasure together.

But soon Shaymaa, overcome with guilt, sobs and regrets her deed.

"How I despise myself!"

"I love you," he whispered, kissing her hands.

"I am now an immoral woman!"

"Who said that?"

"I've fallen!" ... She looked at him from behind her tears and said, "You couldn't respect me now after what I've done with you."

"You're my wife: how could I not respect you?"

"I am not your wife."

"Aren't we going to get married?"

"Yes, but right now I am forbidden to you."

"We haven't committed fornication, Shaymaa. And there are noble hadiths, all authentic, all unanimous, in stating that God Almighty forgives trespasses that do not amount to fornication of those He wills. We love each other and intend to be lawfully wedded, God willing. And God the merciful forgives us."

(al-Aswany 2008: 219-220)

For several months they continue to seek each other's company until one day Shaymaa announces to him that she is pregnant.

"Now do you know the catastrophe, Tariq? I am pregnant in sin, Tariq. In sin." ...

"You're mistaken."

"What do you mean?"

"You couldn't be pregnant."

"I did the test twice."

“I assure you it is impossible.”

She looked at him shrewishly and said, “You are a doctor and you know very well what happened is possible.” It seemed the red line had been compromised.

(*al-Aswany 2008: 301*)

Mortified by the circumstances of her pregnancy, Shaymaa proposes a “shot gun” marriage in order to cover-up their transgression. But Tariq balks at the prospect of marrying without the consent of his family. Unplanned fatherhood coupled with his faltering grades and fear of failure causes Tariq to predictably retreat. The next time we see Shaymaa in the novel again is when she makes her way through screaming anti-abortion protesters to reach the clinic where she plans to have an abortion. From the opposite side of the street the protestors yell:

“Ruthless murderer!”

“Are you Muslim?”

“Does your God allow the killing of children?”

(*al-Aswany 2008: 338-9*)

Shaymaa eventually has the abortion and when she awakes after the procedure she surprisingly finds an exhausted Tariq at her side.

With refreshing candor Aswany presents to us what millions experience in human relations. Into her mid-thirties Shaymaa had internalized the virtue of sexual abstinence. Sex, according to the duty-based morality advocates, is only permissible within marriage. Outside of marriage sex is a sin. Violations of Islam’s sexual rules in societies where Shari‘a is enforced are in theory punishable with severe penalties, ranging from flogging to the death penalty. But prosecution for this offence has a high bar. Proof of a sexual offence is almost impossible for it requires at least four people to testify that they had witnessed the sexual encounter. Unlawful sex conducted in private, where the law has no reach, is only an offense against God and has to be expiated by repentance.

But Shaymaa’s guilt and shame induced low self-esteem. This psychological trauma is common to male and female experiences in many cultures. Shaymaa’s moral formation and discipline (*akhlāq*) was designed around sexual restraint not experimentation. Very early in her life, Shaymaa was taught that to follow the Shari‘a meant to internalize the most virtuous character (Ḥilmī 2004: 7). At home and school she was taught right conduct (*adab*) that constitutes those basic values of truthfulness, honesty, fairness, compassion, love, altruism, respect and honor for others and their property, among other values essential for humans to flourish. The purpose of virtue ethics in Islam is to train one’s sensibility, in order to intuitively do the right thing when there are no rules to guide one.

The story is about paradox: how humans respect certain boundaries within their frailties. The sinfulness of sex outside wedlock is so deeply ingrained in each of Tariq and Shaymaa's consciousnesses that they retrofit their transgressions in sex. In order not to commit the ultimate sin they physically avoid sexual intercourse. Therefore Tariq can confidently reassure Shaymaa that technically they had not committed the sin of fornication, called *zinā*. On the other hand Tariq mentions nothing of his practice of masturbation. At least one view in Muslim ethics thinks of it as a healthy form of sexual gratification while the majority deems it to be abominable. Many Muslim ethicists and religious counselors would have encouraged Tariq to rather continue with masturbation instead of despoiling the ethical formation of his female friend. But even if Tariq did receive the counseling would it have convinced him to desist?

Zinā is deemed a major sin in Islam. In magnitude of offence, it joins the list of sins alongside murder and disobedience to one's parents. Shaymaa is especially wracked by guilt because she understands the gravity of the offence through her moral formation. The God of the Qur'an is all-seeing and all-knowing, whose presence instills in his servants the awareness to behave correctly. Concerned that she feels dishonored by their semi-sexual encounters, Tariq consoles Shaymaa with words to let her know that he intends to marry her in order to redeem the offence. He uses a narrative of piety coupled with his knowledge of the technical aspects of duty-based morality. He skillfully marshals his information to work around his guilt. Playing the role of a pastor he offers Shaymaa solace by saying that divine compassion invites forgiveness for them. How? By the standards of his own private morality he stresses that the absence of vaginal sex meant that they did not commit *zinā*. They both know a good amount of Islamic theology to take comfort in the knowledge that God's mercy surpasses His wrath and that the doors for divine pardon are always open.

When a very brave and veiled Shaymaa terminates her pregnancy she breaks all stereotypes. It is not expected that a pious Muslim woman would even contemplate abortion, let alone agree to termination. What this episode shows is that Muslim women, like men, are bearers of different stripes of morality and ethical orientations. We do not know for how many months Shaymaa was pregnant. But in the duty-based version of Sharī'a rules there is room for the justifiable termination of pregnancy within a fourth-month period from the date of conception. Is pregnancy conceived outside of wedlock a justifiable reason for the termination of a pregnancy? Given the shame and diminished social status that Shaymaa would suffer in Egyptian society if she gave birth to a child outside wedlock, some Muslim ethicists would justify her decision to terminate her pregnancy (al-Laknawī 1417/1996: 325). There might be others who would demur and possibly recommend that she deliver the child and then give it up for adoption, an option that she did not choose in America (Moosa 1992).

The Islamic position on abortion and other related issues have altered with the advances in biotechnology and new investigative procedures. The traditional, pre-modern Muslim

position allows justifiable termination within four months of conception; but this position has been challenged. Now that sonograms and other types of instrumentation show forms of life in a fetus at the very early stages of a pregnancy, some Muslim ethicists have adopted a more conservative position on abortion, recommending termination only when the mother's life is threatened (Brockopp 2003).

Debates centered on technology, science and bioethics pose some of the greatest challenges to inherited notions of Muslim ethics. Biotechnology has cast a molecular gaze on life, even as it enables the reverse engineering of life (Rose 2007: 83). The technological age is primarily concerned with intervention and its goal is to rewrite and transform life. With the aid of technology, our understanding of the good life (*bios*) is radically altered by our growing knowledge of the living and vital processes of animal life (*zoë*) of which we are part. Biotechnology, in turn, has rewritten the older script of science and medicine. Instead of description and diagnosis, medicine is now capable of highlighting one's susceptibility to disease and calculates one's predisposition to the empire of risk. The future of life will be measured in terms of risk, in what some have described as the emergence of a thoroughgoing promissory culture. In dealing with these new frontiers of ethics, Muslim thinkers, like all other religious traditions, are desperately trying to remain current in order to provide the best guidance to their communities in uncharted waters (Moosa 2012). Finding the right tools and instruments to evaluate the challenges requires innovation in method, an effort already underway and the topic of the next section.

Innovation

Innovation in methodology via the doctrine of public interest and purpose-oriented teachings caused a gradual shift in modern Muslim ethical thinking. With this approach, contemporary Muslim ethicists are able to question the inherited cultural logic embedded in the ethical rules. They can also reassign and link the ethical values to new cultural contexts with the help of this innovation. One of the biggest challenges in modern Muslim ethics has been the question of gender. The older duty-based ethics advanced patriarchal values that were injurious to the welfare of women. Now, under the guidance of new readings of the Shari'a, Muslim ethicists have slowly begun to espouse gender equality and fairness.

Most notable in this approach has been the way the historical tradition has been reread and reinterpreted. Debates in the present always make reference to readings and teachings in the past. By listening carefully to the multiple voices in the past, many contemporary ethicists draw on some of the earlier interpretative soundings to assist them in a bid to give new meanings to practices in the present. Authenticity and continuity in tradition is highly valued and therefore new readings are viewed as

important. Yet resistance to this new approach in Muslim ethics has not been uncommon. Muslim orthodoxy, represented by the *‘ulamā*, frequently rail at the outcomes of this kind of thinking. They fear that utilitarianism will become rife and would gradually supplant the carefully constructed, centuries-old hermeneutical system of the canonical schools of Islamic law.

Bear in mind that methodological innovation in law and ethics was prompted by a political analysis of the balance sheet of Muslim gains and losses in the modern period. Some Muslim reformers and thinkers in the nineteenth century believed that Western colonization of Muslim lands and setbacks to Muslim power had been caused by a lack of innovation in knowledge, together with a moribund tradition. A once vibrant faith’s spirit of rational theology, they thought, was erased by creeping superstition that dulled Islam’s spirit of progress and rendered it ineffective.

Why and how? Muslim thinkers and laypersons alike, analysts claimed, became slavishly obedient to dogma and authority (*taqlīd*). Obedience to authority was identified as the main culprit and “cause of intellectual stagnation” in ethical thought (Colloquium 1953: 60). For many Muslim reformers this state of affairs epitomized the “decline of Islam” thesis, one that later twentieth-century scholars criticized as an inaccurate portrayal of affairs (Schulze 1995).

The cure, many a Muslim thinker proposed, was *ijtihād*. If *ijtihād* in early centuries meant the scholarly license to propose a new interpretative paradigm, then modern Muslim thinkers, many proponents reasoned, should also be able to engage in “independent thinking.” In reality, rhetoric surpassed the actual practice of *ijtihād*. (*Ijtihād* was always permitted in Shī‘a thought but even in that tradition it had seen better days.) The monumental task of recontextualizing the interpretation of Muslim sources and doctrines to match the new realities was hardly broached. And *ijtihād* remained a rallying cry for mobilization, without a convincing intellectual roadmap. Despite its deficiencies, the call for *ijtihād* did introduce some changes in Muslim attitudes that impacted ethical and moral thinking.

Advocates of *ijtihād* hoped to curb the authoritarianism of Muslim clerical orthodoxy (*ulamā*). While such a move was intended to unshackle the minds of lay Muslims from an uncritical adherence to tradition, it also turned out to be a double-edged sword. Lay Muslims were urged to seek out fresh inspiration from the Qur’an and the prophetic tradition in the successful manner that their pious ancestors (*salaf*) did. Hence the rise of a trend called *salafism* that wished to invoke the primitive spirit of tradition. This invitation to reach for new interpretations had one failing. It did not provide for a coherent framework to interpret the Qur’an and the hadith. The outcome was the oversimplification of tradition.

However, Muslim laypersons were the greatest beneficiaries of this new scripture-centered activism that was popularized by a variety of brands of *salafism*. Modern and professionally educated Muslim men and women—doctors, engineers, lawyers,

economists and scientists—all availed themselves of this freedom to pronounce on matters of law and ethics. They often provided common sense and face-value interpretations of the Qur'an and a limited number of prophetic traditions. This ranged from the authoritarian Wahhabi thread from Saudi Arabia to the more tolerant and piety-oriented *salafism* of the Levant, South and East Asia. But a whole range of other actors—from educated Muslims, political and cultural activists to militants and terrorists—found a license in this “do-it-yourself” brand of Islam. Unfettered use of *ijtihad* proved to be lethal in the hands of militants and violent extremists. Militants mixed a hodgepodge of religious narratives into a combustible political rhetoric in response to grievances and victimization that many Muslims experienced at the hands of ruthless Euro-American powers and their equally ruthless proxies. In this way militants succeeded in beguiling unsuspecting audiences with their eloquence in order to justify their nihilistic acts of violence. The former leader of al-Qaida, Osama bin Laden was a veritable poster boy for this brand of militancy when he issued a pseudo *fatwā*—a scholarly opinion—declaring war on his political adversaries, the United States and its allies. In doing so, bin Laden single-handedly rewrote the contemporary Muslim ethical tradition and replaced it with his earth shaking violence as a teaching for his followers. The repudiation of his views from more credible voices in Muslim ethical circles was often belated, unheard and ineffective.

Conclusion

The take home from this chapter is that the practice and theory of Muslim ethics is diverse in its outcome. It depends on methods, approaches, temperaments and contexts. The pre-modern ethical models are attractive for their coherence but their utility for a very different world is questionable.

The premier challenge for practitioners of modern Muslim ethics is one of epistemology. How does knowledge of the present shape an ethics of Muslims today so that it comports to and synchronizes with their lived experiences? Time and space continue to change as our technologies shrink both. Along with this, the social and lived ethical imaginary of Muslims continues to evolve. Muslims espouse new ideals that are embedded in science and technology and enmeshed in capitalist political systems that are driven by the nation-state and fueled by the ideals of equality, democracy, human rights and globalization. Needless to say, liberal capitalism and its ideals are not uniformly welcomed in the Muslim world. To deal with these complexities, innovation in Muslim ethics would have to accelerate at a much more rapid rate than thus far experienced. A search for a new ethics might have to go beyond the reading of texts and involve a fairly sophisticated study and understanding of the social context in which Muslims find themselves.

Summary

- Deliberation in modern Muslim ethics is no longer the exclusive terrain of Muslim traditional clerics and scholars, even though they play a major role.
- Interpretation centers around debates about epistemology and the latter is central to all debates on Muslim ethics.
- Ethical debates frequently occur in counterpoint or are contrapuntal. Voices from the past frequently converse with voices in the present.

Discussion points

- Is “Muslim ethics” a neologism? Do Muslims use other terms to refer to ethical sources? Name them.
- Can you explain on what grounds music is forbidden in Islam? How do those who favor music justify their argument?
- What were the two most effective methods thus far for innovation in method in Muslim ethics?
- Discuss the importance and role of *fatwās* in Muslim ethical deliberation.
- How much does context matter in discussions of Muslim ethics? Discuss the feature of counterpoint in Muslim ethical discussion. Is this a practice unique to Islam or do other traditions engage in the same strategy?

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Notes

- 1 I would like to thank Sam Kigar, Ali Mian, Bruce Lawrence and Leela Prasad for their feedback and suggestions of earlier drafts of this essay. All errors are mine exclusively.
- 2 I am indebted to Deleuze and Guattari for the concept of the rhizome.
- 3 This definition is inspired by the work of Thomas Nagel (1986: 164).
- 4 The full verse is: “Oh you who have attained to faith! Whenever believing women come to you, leaving the domain of evil, question them, although God is fully aware of their faith; and if you determined that they are indeed believers, then do not send them back to the deniers of the truth. These believing women are no longer lawful to their un-believing husbands, and nor are the non-believing husbands any longer lawful to them And do not hold on to the marriage-tie with women who deny the truth” (Qur’an 60:10). The context of this verse requires some explanation. In the early years of Islam when there were hostilities between the Prophet Muhammad at Medina and his pagan foes in Mecca, some married women in Mecca converted to Islam and sought refuge in Medina. Since there was also a political treaty between Medina and Mecca to return any Meccans who went over to the Muslim side without the permission of their guardians, the Meccans were insisting that these converted Meccan women be returned. When the Prophet explained that married women did not fall under the guardianship clause of the treaty, the matter was resolved by compensating the Meccan husbands for the dower they spent on their now Muslim wives. Effectively the marriages were annulled. According to the verse the Prophet first had to interview the refugee Meccan women to verify that they did not leave their husbands under the false pretext of faith when in fact the underlying reasons were more mundane such as marital strife or to be near other family members. Therefore, the Qur’an’s instruction to the Prophet that he should interview the women in order to ascertain their motives.