

The Approved and Disapproved Varieties of *Ra'y* (Personal Opinion) In Islam

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While Islam emphasizes conformity to the directives of the Qur'an and Sunnah, one finds in the same sources a parallel emphasis on rational inquiry, exercise of personal opinion, and judgment. This essay looks into the evidence in support of this statement and the extent to which Islam validates the freedom to formulate and express an opinion. It also examines the methodology and criteria that ascertain the validity of personal opinion and distinguishes the acceptable *ra'y* from that which is not tolerated. This essay also highlights how the detailed classification of *ra'y* by the 'Ulama reflects a concern for latitude and tolerance on the one hand, balanced on the other by respect for recognized authority and values which are deemed essential to Islam.

Freedom to express an opinion is probably the most important aspect of the freedom of speech, which also comprises such other varieties of speech as a simple narration of facts, comedy, and fiction. To express an opinion on a matter implies a level of involvement, commitment, and competence which may or may not be present in the factual narration of an event. This may partly explain why the phrase *hurriyah al-ra'y* (literally, freedom of opinion) is used in the Islamic scholastic tradition for freedom of speech, in preference to *hurriyah al-qawl*, the more precise equivalent of "freedom of speech." That scholars and jurists have consistently used *hurriyah al-ra'y* for freedom of speech perhaps signifies that *ra'y*, or personal opinion, is the most important aspect of this freedom.

Ra'y has three main classifications—praiseworthy, blameworthy, and doubtful personal opinion—which are further subdivided. The main varieties of praiseworthy opinion to be discussed here are *ra'y* that elaborates the Qur'an and Sunnah, the opinions of the Companions, *ra'y* that consists of *ijtihad*, and *ra'y* that is arrived at as a result of consultation. Blameworthy opinion is also divided into three types, namely *bid'ah* (pernicious innovation), *hawā* (caprice), and *baghy* (transgression). And, lastly, *ra'y* that is the subject of doubt (*ra'y fi mawḍi' al-ishtibāh*) does not lend itself to classification or

evaluation in advance, and it is this type of *ra'y* which often gives rise to disagreement (*ikhtilāf*).

Excluded from the scope of this discussion are certain subjects such as *fitnah* (sedition) and such other instances of the violation of the freedom of speech such as libel, slander, and contempt. These may have some bearing on the abuses of *ra'y*, yet they are not directly related to the main focus of this inquiry—the extent to which freedom of speech relates to the exercise of personal opinion in Islam.

Ra'y is defined as opinion on a matter which has not been regulated by the Qur'an or the Sunnah. It is a considered opinion arrived at as a result of thinking and self-exertion on the part of the individual who explores and searches for knowledge of something, about which there may exist only signs or indications. But the existing signs are such that may lead the investigator to different conclusions. There is an element of arbitrariness attached to *ra'y*, in the sense that it is self-inspired and unrelated to the text of the Qur'an, the Sunnah, and definitive *ijmā'* (consensus of opinion).

In the usage of the Arabs, *ra'y* is applied to things which are not seen but are known through the application of reason, intuitive judgment and the light of one's heart. Matters which are regulated by definitive factual or rational knowledge and matters on which all the signs are bound to concur such as the number of days in a week, or the virtue of telling the truth, are thus excluded from the proper application of *ra'y*. No one is thus expected to give or formulate an opinion over factual or rational matters which require no deliberation and thought. It is also clear from the foregoing that *ra'y* is founded on signs and indications (*amārāt*). Hence when a person pronounces an opinion concerning a matter pertaining to the realm of the unseen on which there are no signs whatsoever, what he or she says is not to be regarded as *ra'y*. In this sense, *ra'y* is a preliminary to knowledge in that it must take its lead from signs which are open to investigation and rational conclusions.¹

A person may express an opinion, arbitrary or otherwise. So long as he does not violate the law concerning blasphemy, sedition, etc., he is free to advance an opinion. Just as the law tolerates an arbitrary opinion, the latter has a role to play in the development of ideas and the quest for knowledge and truth. Often a sound opinion is invoked and stimulated by a weak, provocative, or misguided one. The *juris corpus* of fiqh, is, in fact, the embodiment of both *ra'y* and authoritative tradition, but only the latter is deemed to provide criteria on which to judge the propriety or otherwise of *ra'y*. As already noted, *ra'y* has a limited role vis-a-vis the clear ordinances of divine revelation. But when no such guidance is available in the sources,

¹Cf. Ibn Qayyim al-Jawzīyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, ed. Muhammad Munir al-Dimashqi, (Cairo: Idārah al-Ṭabā'ah al-Muniriyyah), 4 vols, n.d., I, 55.

or when the existing guidance is no more than a sign which is open to interpretation and inference, then the matter is open to *ra'y*. The veracity of *ra'y* is always judged by its proximity to the letter and spirit of the *nuṣūṣ* (Qur'an and Hadith) Consensus of opinion (*ijmā'*) is the only recognized method for establishing the validity of *ra'y*. Apart from *ijmā'*, which is usually slow to materialize and retrospective, there is no method for a prompt evaluation of *ra'y* other than *ra'y* itself. The sound *ra'y* in this case declares the arbitrary *ra'y* as invalid or weak. This process of sifting through the accuracy and veracity of *ra'y* is integral to decision-making and *ijtihād*. The weak and erroneous opinion has thus a role to play in the evolution of correct *ijtihād*. It was perhaps in view of this truism that the beloved Prophet of Islam declared the mere effort of a competent scholar or *mujtahid* at attaining the truth to be worthy of reward, whether or not he or she actually succeeds in attaining it. This is the purport of a well-known Hadith which proclaims: "When a *mujtahid* make exertions and fails to attain the truth, it merits one reward, but when a correct decision is reached, then it merits a double reward."²

In the scholarly context of early juristic thought, *ra'y* became increasingly associated with liberality and extrapolation in personal preferences. This was the main charge which the partisans of Hadith (i.e., *Ahl al-Hadith*) laid against their counterparts, the partisans of opinion, or the *Ahl al-Ra'y*. This somewhat negative connotation of *ra'y*, however, underwent a gradual change due mainly to sustained efforts by the *Ahl al-Ra'y*, the Hanafis in particular, who maintained that Islam never discouraged recourse to reason and personal opinion, provided that such did not violate any of its principles and objectives. To substantiate their efforts, the proponents of *ra'y* devised methodologies and guidelines on the correct use of *ra'y* in the forms of analogical reasoning (*qiyās*), juristic preference (*istiḥsān*), blocking the means (*saḍ al-dharā' i'*), and presumption of continuity (*istiṣḥāb*). These and other principles of *uṣul al-fiqh*, such as the priority given to the Companions' opinions (*fatwā al-ṣaḥābih*) in preference to the opinion of other *mujtahidūn*, aimed at establishing a closer identity between *ra'y* and the laws and principles of the Qur'an and Sunnah.³

There is ample evidence in the sources which validate recourse to personal opinion. The Qur'an (al-Shūrā, 42:38) thus authorizes consultation (*shūrā*) in public affairs, which consists essentially of the personal opinion of its participants. The Qur'an also enjoins Muslims to refer matters upon which they disagree for decision-making to the *ūlu al-amr* (al-Nisa', 4:58). These are persons of knowledge and authority who are capable of forming an opinion and judgment. This is confirmed further in al-Nisa' (4:83), which validates

²Abu Dawud al-Sijistani, *Sunnan Abu Dawud*, Eng. trans. Ahmad Hasan, (Lahore: Ashraf Press, 1984), III, 1013, Ḥadīth No. 3567.

³The reader might be interested to know that a chapter is devoted to each of these topics in my book *Principles of Islamic Jurisprudence* (Kuala Lumpur: Pelanduk Publications, 1989).

inference and deduction of the rules of law from the sources by recourse to reasoning and *ra'y*. Furthermore, the Hadith of Mu'adh b. Jabal (q.v., below) provides specific authority for *ra'y* in juridical matters and the settlement of disputes. The Sunnah of the Prophet and the precedent of his companions leave no doubt on the point that judges and governors were appointed to distant places with the understanding that they would rely on their personal *ra'y* and *ijtihad* in matters on which they could not find any guidance in the sources.⁴

But beyond the scope of specific evidence in support of *ra'y*, it will be noted that many a principle and institution of the Shari'ah takes for granted the individual freedom to formulate and express an opinion. The right/duty of the citizen to promote good and prevent evil (*amr bi'l-ma'ruf wa nahy 'an al-munkar*), his or her right to give sincere advice (*nasihah*) to persons in authority or to anyone else, the right to monitor government activities, the right to a vote in electing a leader, and the right to be consulted in public affairs could only materialize when a citizen enjoys the freedom to formulate and express an opinion. According to one observer, "it would be totally in vain and would make no sense to say that the government in Islam is bound by the principle of consultation and yet it should have the liberty to deny the participants of *shūrā* (*ahl al shūrā*), the freedom to express an opinion."⁵ Similarly, it would be impossible to discharge the Qur'anic obligation of commanding good and forbidding evil without the freedom of speech and the liberty to formulate and voice an opinion.

On numerous occasions we note that the Qur'an invites people to investigate and explore the world around them and to draw rational conclusions, not in the manner of blind imitators who follow and accept what others have said, but through intelligent analysis and judgment. "This would not be possible," as Abu Zahrah observes, "without the freedom to express one's opinion and thought."⁶ To this we may add the rider that the Qur'an values rational endeavor which is accompanied by sincerity in the quest for truth and justice. No intellectual inquiry may begin on the premise of denying the fundamental truth of monotheism (*tawhīd*) and clear guidance enunciated in divine revelation.⁷ Provided that these values are observed, rational inquiry and the quest for truth must be maintained even in the face of hostility from the masses. For the masses may be uninformed and may themselves be in

⁴Cf. Maḥmūd Shaltūt, *Al-Islam, 'Aqīdah wa Shari'ah* (Kuwait: Maṭābi' Dār al-Qalam, c. 1966), p. 555.

⁵Abd al-Karīm Zaydān *Majmu'ah Buḥūth Fiqhīyah* (Baghdad: Maktabah al-Quds, 1407/1986), p. 128.

⁶Muhammad Abu Zahrah, *Tanzīm al-Islam li al-Mujtama'* (Cairo: Matba'ah Mukhaymar, n.d.), p. 194.

⁷Cf. Muhammad al-Bahī, *Al-Dīn wa al-Dawlah* (Beirut: Dār al-Fikr, 1391/1971) p. 376.

need of enlightenment. This is the purport of the Qur'anic ayah which proclaims that once clear guidance has been given, a mere conjecture, even if promoted by the masses, should not be allowed to obstruct it (al-An'ām, 6:116).

Notwithstanding the fact that obedience to lawful government is a Qur'anic obligation, the very text which prescribes this duty (al-Nisā', 4:59) follows on to provide in an address to the believers "should you dispute over a matter, then refer it to God and to the Messenger." The Qur'an here anticipates the possibility of disputes arising between the ruler and ruled and it affirms that the duty of obedience does not overrule the right of the citizens to take issue with their leaders and government.

Disputation or *Jidāl* is clearly permitted in the Qur'an. Indeed it is one of the major themes, as there are 25 occasions where the sacred text is expressive of a human being's inclination as a rational being toward argumentation.⁸ On one such occasion, the Qur'an refers to the narrative of a woman, Khawlah bint Tha'labah, wife of Aws b. Thabit, who complained to the Prophet of abuse and insult she suffered at the hands of her husband. The following Qur'anic passage was consequently revealed: "Allah heard the speech of the woman who disputed with you concerning her husband; she complained to Allah and Allah heard your conversation." (al-Mujādalah, 58:1).

The woman was consequently granted the right to separate from her husband by a form of separation which is referred to as *zihār*. In the meantime, this *āyah* recognized the right of the individual, a woman in this case, to argue her case with the Prophet-cum-head of state. There are words in this *āyah*, such as *tujādiluka* (disputes with you), *tashtaki* (complains), and *tahāwurakumā* (your conversation) which suggest that the plaintiff expressed herself forcefully on the occasion. This is perhaps borne out by the fact that the whole of the surah which begins with this passage bears the title, al-Mujādalah (disputation). The Qur'an also contains declarations which confirm differences of opinion or *ikhtilāf* to be an inescapable fact of social life: "If God had willed, He would have created the people as one nation, but they cease not disagreeing among themselves." (Hūd, 11:118) The Qur'an is also expressive of the limits within which freedom of speech and *ikhtilāf* must operate. One such limit is to avoid hurting others, as the text declares:

Allah loves not public utterance of hurtful speech except by one who has been wronged (al-Nisā', 4:148).

But even this limit is dropped, as the text itself provides, in the case of an aggrieved person whose cry for justice must not be hindered in any way. Hurtful speech may thus be uttered in public, or in the court of law,

⁸ A'ishah 'Abd al-Rahmān bint al-Shāṭi', *Al-Qur'ān wa Qaḍāyā al-Insān* (Beirut: Dar al-'Ilm li al-Malāyīn, 1982), p. 116.

by the defendant if it would help the cause of justice, which must in the final analysis take precedence over the avoidance of hurtful speech. This is confirmed further by the Hadith which provides that "one who has a right has the privilege to speak."⁹ Thus a person who has something to say, or has a cause or a grievance, is entitled to speak out and his or her effort to eliminate injustice may never be obstructed.

In the political sphere, freedom of speech is also upheld by the Hadith which declares that "the best form of jihad (holy struggle) is to utter a word of truth to a tyrannical ruler."¹⁰ This Hadith obviously goes further than merely affirming the freedom of speech, in that it elevates the exercise of such freedom for the right cause to the best form of jihad.

The precedent of Companions is most instructive on the use of this right. Upon his election to office, the first Caliph, Abu Bakr, addressed the public in his inaugural sermon: "O people, I have been given authority over you but I am not the best of you. Support me if I am right and rectify me when I fall in error."¹¹ This is a clear affirmation of the right of individuals to oppose or criticize their political leaders when they deviate from the right path. It also indicates that constructive criticism and freedom to express an opinion are a source of healthy growth and enrichment.¹² Abu Bakr's successor, 'Umar b. al-Khattab, is also on record as asking people, in his inaugural speech, to "rectify any aberration" they might see in him. A man in the audience responded: "If we see aberration on your part, we shall rectify it by our swords." The Caliph reacted with magnanimity and said "Praise be to God that there is someone who will rectify 'Umar by his sword (in the cause of righteousness)."¹³

According to yet another report, a man addressed the Caliph, 'Umar b. al-Khattab, somewhat impudently by telling him "Fear God, O 'Umar!" Someone who was present on the occasion reminded the man that he was

⁹In its Arabic version, the principle is stated as "inna li-ṣāhib al-ḥaqq maqāl." See Muhammad Abu Zahrah, *Al-Jarimah wa al-'Uqūbah fi al-Fiqh al-Islam* (Cairo: Dar al-Fikr, n.d.), p. 158.

¹⁰Hadith reported by Abu Dawud, Tirmidhi, and Ibn Mājah, recorded in Muhammad b. 'Abd Allah al-Khatīb al-Tabrizi, *Mishkāt al-Maṣābīh*, ed. Muhammad Nāṣir al-Dīn al-Albāni, 2nd edn. (Beirut: al-Maktab al-Islāmi, 1399/1979), II, 1094, Hadith No. 3705.

¹¹Abu Muhammad 'Abd al-Malik Ibn Hishām, *Al-Sīrah al-Nabawīyah* (Cairo: Maktabah al-Kulliyāt al-Azharīyah, 1392/1972) IV, 262.

¹²Cf. Sa'di Abu Ḥabīb. *Darāsah Fi Minhāj al-Islam al-Siyāsī* (Beirut: Mu'assisah al-Risalah, 1406/1935), p. 727.

¹³Abu Zahrah, *Al-Jarimah*, p. 160; Mustafa al-Sibā'i, *Ishtirakiyah al-Islam*, 2nd edn., (Damascus: Dar al-Qamiyah, 1379/1960), p. 50; Muhammad Faruq al-Nabhān, *Nizam al-Hukm fi al-Islam* (Kuwait: Matba'ah Jāmi'ah al-Kuwait, 1974), p. 245.

being impudent, but the Caliph intervened and said, "It will be no good if they did not say so, and no good if we did not listen."¹⁴

The Qur'an and Sunnah are replete with moral encouragement and guidance on the proper use of freedom of speech. While the Qur'an compares pleasant or righteous speech (*kalimah tayyibah*) with a benevolent tree which is firm and healthy in both foundation and foliage (Ibrāhīm, 14:24), the Sunnah compares it to charity that every one can afford to give.¹⁵ And then the recurrent Qur'anic theme which encourages the utterance of courteous and elegant speech (*qawlan ma'rūfan*) to one's parents (al-Isrā', 17:23), to the indigent (al-Nisā', 4:8), to the ignorant (al-Nisā', 4:5), and to the people at large (al-Baqarah, 2:83; al-Isrā', 17:53; al-Naḥl, 16:125; al-'Ankabūt, 29:46) all in all confirm the truism that the law can at best penalize blatant abuse of the freedom of speech. Nurturing the proper use of this freedom and attaining beauty and excellence in speech is largely a matter of developing good moral and cultural standards. The Qur'an calls upon the wisdom and good judgment of the believer when he speaks (al-Aḥzāb, 33:7). There may be, for example, instances where telling the truth may fail to achieve a good purpose. The speaker is therefore urged to be mindful of the end result that his speech is likely to obtain.¹⁶ There are in fact instances where the Sunnah permits silence in regard to truth or even telling a white lie if it would serve a higher objective, such as saving an innocent life from imminent danger. And lastly the freedom of speech is subservient to the general principles of justice: "And when you speak, then speak with justice, even if it be against those who are close to you" (al-An'ām, 6:152). The Qur'anic guidance here applies equally to a witness in the court, to the judge, to the head of the family, and to the people at large who are asked to be honest and fair when they speak to, or about, one another.

Varieties of *Ra'y*

Although the potential scope and subject matter of *ra'y* defies the idea of a predetermined framework, the 'Ulama have nevertheless attempted to divide *ra'y* into various types. To begin with, *ra'y* is divided into four types, namely valid or praiseworthy opinion (*al-ra'y al-ṣaḥīḥ*), void opinion (*al-ra'y*

¹⁴Abu Yusuf Ya'qub b. Ibrāhīm, *Kitāb al-Kharāj*, 2nd edn., (Cairo: al-Maṭba'ah al-Salafiyah, 1352/1933), p. 13.

¹⁵Thus we read in a Ḥadīth that "righteous speech—*al-kalimah al-tayyibah*—is a form of charity." See Muḥayy al-Dīn al-Nawawī, *Riyāḍ al-Sāliḥīn*, 2nd ed., Muhammad Nāsir al-Dīn al-Albānī (Beirut: al-Maktab al-Islāmī; 1404/1984), p. 284, Ḥadīth No. 699.

¹⁶*The Holy Qur'an, Text, Translation and Commentary* by 'Abdullah Yusuf 'Ali, footnote No. 3775.

al-bāṭil), blameworthy or objectionable opinion (*al-ra'y al-madhmūm*), and opinion whose validity is in doubt (*al-ra'y fī mawḍi' al- ishtibāh*).¹⁷

The first, valid *ra'y*, is what is in accord with authoritative precedent and approved opinion of the 'Ulama of the past, who have acted in harmony with it and accepted it in principle in their own *fatwā* and *ijtihād*.¹⁸ In other words, its harmony with the accepted norms of *Shari'ah* is not in question. The test here is necessarily retrospective, in that past authorities of proven validity are taken as the criteria on which to evaluate a fresh opinion. It is to be noted, however, that an opinion of this type may initially be uncertain and doubtful. Only when all doubt as to its propriety is eliminated and resolved can it be classified as valid. The main process for this form of refinement known to the classical methodology of thought in Islam is *ijmā'*. Once an opinion is accepted and supported by *ijmā'*, it becomes authoritative and valid beyond question. *Ijmā'* puts the final seal of approval on an opinion which might have been disputed but which no longer remains open to it.

Legislation and judicial decisions of higher courts in modern times provide for a similar process in that once a proposal or opinion is adopted by proper legislative/judicial authorities, its validity is, for practical purposes at least, no longer debatable. Collective and consultative resolutions by professional and representative bodies also enhance the authority and weight of an otherwise isolated opinion. Public opinion and the press in modern societies may likewise serve the purpose of identifying the direction of a possible consensus in favor or against a doubtful opinion whose validity cannot be readily ascertained by reference to the *nuṣūṣ* or *ijmā'*. According to a well-known saying of the leading Companion, 'Abd Allah b. Ma'sūd, "what the Muslims deem to be good is good in the sight of God."¹⁹ Should there be consultation among experts or public and representative bodies, and the opinion which emerges incorporates the views of the community leaders and the *ahl al-shūrā*, the weight and authority of that opinion would be enhanced and in line with the Qur'anic principle of consultation.

At the opposite pole of valid opinion stands the void opinion (*al-ra'y al-bāṭil*), one which carries no authority at all. Once again Ibn Qayyim wrote on a somewhat retrospective note that void opinion is clearly in discord with the approved precedent of past 'Ulama. They would have denounced it in

¹⁷Cf. Ibn Qayyim, *I'lām*, I, 55.

¹⁸Ibid.

¹⁹This is often quoted to be a Hadīth of the Prophet. Both Sayf al-Dīn al-Āmidī (*Al-Ihkām Fī Uṣūl al-Ahkām*, 2nd edn., ed. 'Abd al-Razzāq 'Afifi, (Beirut: al-Maktab al-Islami, 1402/1982), I, p. 214, and Abu Ishāq Ibrāhīm al-Shāṭibi, *al-I'tisām*, (Cairo: Maṭba'ah al-Manār, 1332/1914), II, 319 refer to it as such. It is, however, more likely to be a saying of the famous Companion, 'Abd Allah Ibn Ma'sūd (see Ahmad Hasan, *The Doctrine of Ijmā' in Islam*, (Islamabad: Islamic Research Institute, 1984), p. 37.

principle and refused to give it any recognition in their juridical decisions and *fatwā*.²⁰

Ibn Qayyim al-Jawzīyah divides the valid *ra'y* into four types, namely the *ra'y* of a Companion (*fatawā al-ṣaḥābih*) *ra'y* which interprets and clarifies the *nuṣūṣ* (*al-ra'y al-tafsīri*); consultative *ra'y*; and *ra'y* which consists of *ijtihād* (*al-ra'y al-ijtihādi*).

The 'Ulama are on the whole in agreement with the special status and authority that the *fatwā* of a Companion enjoys in religious and juridical matters. The Companions are generally held in high esteem as they were most knowledgeable of the Qur'an and of the teachings of the Prophet. Opinions that they have formulated and advanced are on the whole considered to come close, in order of authority, to the Sunnah of the Prophet. Ibn Qayyim quotes Imam al-Shāfi'ī's statement in support of his own view to the effect that "the *ra'y* of a Companion commands greater merit and is preferable to our own opinion."²¹ Ibn Qayyim then goes on to cite several examples where the *ra'y* of a Companion on certain issues was upheld and corroborated by the revelation of the Qur'an, "a blessing and a privilege that is unparalleled and unique." The conclusion is thus drawn that the *fatwā* or opinion of a Companion is *sui generis* and any attempt to equate it with that of the generality of 'Ulama is "devoid of substance and ill-conceived."²²

The second type of valid *ra'y* is one which seeks to interpret the *nuṣūṣ*, clarify their meaning, and facilitate the deduction of legal rules from them. This type of *ra'y* is designed to promote clear understanding of the Qur'an and Sunnah and seeks to derive guidance from them on matters affecting the life of the community. The hallmark of such opinion is the sincerity, knowledge, and devotion of its author to the promotion and understanding of the Qur'an and Sunnah.²³

The third variety of valid or praiseworthy opinion is the consultative *ra'y*, which is arrived at not by a single individual, but through consultation among people, especially those who are competent to give counsel. God Almighty has praised "this Ummah for their diligence at consultation in community affairs; the Messenger of God has practiced it, and it is one of the best forms of *ra'y*."²⁴

The fourth type of praiseworthy opinion is arrived at through correct procedures which are characteristic of *ijtihād*. The proper procedure for anyone who attempts to give an opinion on a matter is to look into the Book of

²⁰Ibn Qayyim, *I'lām*, I, 55.

²¹Ibid., I, 67.

²²Ibid., I, 68.

²³Ibid., I, 69.

²⁴Ibid., I, 70.

God first, and if he or she fails to find the necessary guidance, then they look into the Sunnah of the Prophet and the precedent of his Companions. But if guidance sought still cannot be found then he or she formulates his or her own opinion and judgment in the same way as the Companions are known to have attempted on many issues. This is, in fact, the procedure laid down in the Hadith of Mu'ādh b. Jabal, which is a standard authority on *ijtihad*. An opinion so formulated and expressed may be correct or otherwise, or it may appear at the time to be correct but the contrary emerges over time. The principle to apply here is that which is expounded in a letter from the Caliph 'Umar b. al-Khattab, when he instructed his judges that "the mere fact that you have made a certain decision must not deter you from changing it, if it becomes clear to you that it was erroneous in the first place. For truth is timeless; nothing must overrule it and it is far better to return to the truth rather than persist in falsehood."²⁵ This principle would seem to be of general application to all decisions, judicial or otherwise, and it clearly rejects the notions of sacrificing truth at the altar of consistency and the so-called credibility of judicial office. But the point that is most emphasized in all of this is sincerity and devotion to the cause of truth and justice, the essence of beneficence in any praiseworthy opinion. "Anyone who exerts himself with the intention of gaining the pleasure of God and benefit to the people will be counted as one of the *muḥsinūn*, as goodwill and sincerity in telling the truth embodies the highest value in *taqwā*."²⁶

As for *ra'y* whose validity is open to doubt, it is equivalent to a conjecture (*zann*). This type of *ra'y* is accepted as a basis for judicial decision and legal opinion (*fatwa*) in cases of emergency or where no better alternative may be known to exist. Unless it is adopted into a court decision, a doubtful opinion or a conjecture does not bind anyone. The 'Ulama have neither approved it nor have they denounced it, but have left open the choice between acceptance or rejection.²⁷ But since we do not always have the necessary knowledge of or access to truth, a considered opinion, which may amount to no more than a probability or a conjecture, is accepted as a basis of decision-making so as to avoid indefinite suspension and delay that the quest for knowledge and truth may entail. In the sphere of judicial decisions, however, there are checks and balances, especially with regard to the rules that govern admissibility of witnesses, which are designed to minimize the possibility of error. Decisions and opinions which are formed in conformity with correct procedures are therefore deemed to be valid, even if they partake in a measure of speculation or individual bias of a tolerable sort.

²⁵Ibid., I, 72.

²⁶Ibid., II, 120.

²⁷Ibid., I, 55.

From the viewpoint of its subject matter and relative value, *ra'y* is once again divided into three types. Firstly, *ra'y* on a juridicial, or *shar'ī*, matter which is validated and accepted only on the strength of the *shar'ī* proof on which it is founded, regardless as to whether it is advanced by one person or by a multitude. Secondly, *ra'y* concerning specialized matters which require technical knowledge, where the people at large are not expected to be in a position to form an enlightened opinion on them. Only the expert opinion is to be taken into account on such matters and the value of that opinion is determined on an informed basis. And thirdly, *ra'y* on matters of practical nature which require public participation and compliance, such as election of the head of state and opinion on public, constitutional, and municipal affairs which concern the community as a whole. On matters of this nature, the preferred opinion is that of the majority of the people whose action and participation is of central importance to the opinion concerned.²⁸

Abuses of *Ra'y*

The blameworthy opinion (*al-ra'y al-madhmūm*) is a type of *ra'y* which is neither completely false nor totally invalid and yet it is misguided and reprehensible. It may occur in the form of a deviant innovation (*bid'ah*), transgression (*baghy*), or self-seeking desire (*hawā*). There is yet a fourth variety of reprehensible *ra'y* which is referred to as *jahl* (ignorance), as it is deemed to be no more than an unfounded extrapolation that originates in ignorance. All of these fall under restrictions on freedom of opinion primarily because the right to free speech and expression does not extend to these areas. The term "restrictions" here does not necessarily mean prohibition. For as we shall see, the whole of this field is governed not by legal prohibitions as such but by moral sanctions—sincere and persuasive advice. Although the precise legal position is not always clear on some forms of *bid'ah* and *hawā*, these are, broadly speaking, nonjustifiable violations of the freedom of speech.

It will be noted at the outset that the whole of this classification is somewhat overlapping and scholars have sometimes used these terms almost interchangeably, presumably because the concepts of, for example, ignorance or transgression are often deemed to be present in some measure in the case of a capricious opinion (*hawā*) and a pernicious innovation (*bid'ah*). The main difference between the last two would appear to be that *hawā* consists of a strong element of selfishness and pursuit of one's desire in disregard of clear guidance. *Bid'ah*, on the other hand, is distinguished by an attempt

²⁸Cf. Mahmud ' Abd al-Majīd al-Khālidi, *Al-Shūrā*, (Beirut: Dār al-Jil, 1404/1984), p. 91.

at distorting the principles of Islam or misinterpreting them out of good intention and the desire to explore the unexplored. The word "*bid'ah*" is generally used in contradistinction with "Sunnah," that is the normative and familiar practice. In this sense, *bid'ah* signifies a deviation from, or superimposition on, the Sunnah of the Prophet. An opinion which amounts to *bid'ah* may or may not be motivated by self-seeking interest, and as such, it is not always distinguishable from *hawā*. Note, for example, the distinction between the two forms of divorce in Islamic law, known as *ṭalāq al-sunnah* and *ṭalāq al-bid'ah* respectively. The former signifies the type of divorce which conforms with the law and established precedent. The latter is labeled as *ṭalāq al-bid'ah* primarily because of its departure from the legal norm which requires that the maximum of three pronouncements of *ṭalāq* are each uttered within a clean period (*ṭuhr*), that is the period between two menstruations. *Ṭalāq al-bid'ah* ignores this and combines the three pronouncements of *ṭalāq* to be uttered all at once. As for the question, however, whether this form of *ṭalāq* also partakes in a measure of self-seeking desire (*hawā*) on the part of the husband, the answer is not always clear but is likely to be in the affirmative. Hence the distinction between the concepts under discussion is expected to be in broad outline and not necessarily exclusive.

Baghy may be distinguished from both *bid'ah* and *hawā* in that it indulges in self-righteousness and an attempt at imposing one's own opinion on others, often denouncing all those who oppose it. Beyond these shades of differences, however, the concepts under discussion have much in common between them and are often used interchangeably. The Qur'an uses the term *hawā* in a somewhat generic sense which could include both *bid'ah* and *baghy*. We also find that many scholars have used the term *bid'ah* so widely as to include all varieties of reprehensible opinion. Furthermore, none of these are confined to the realm of opinion but apply equally to acts which may qualify the attendant description and attributes of each.

Bid'ah and Hawā

Literally, *bid'ah* means innovation that could not be vindicated by authoritative precedent, a pernicious innovation which is far removed from the norm and its established practice.²⁹ It is defined as innovation in religion, resembling that which the Shari'ah has expressly approved, and is intended to fulfill the proclaimed objectives of Shari'ah.³⁰ It will be noted in this

²⁹Cf. C.A.Q. Nieuwenhuijze, *The Lifestyles of Islam*, (Leiden: E. J. Brill, 1985), p. 155.

³⁰Al-Shāṭibī, *Al-ʿItisām*, I, 29. The Arabic definition of *bid'ah* reads as follows: *al-bid'ah ṭarīqah fī al-dīn mukhtari'ah taḍāhi al-shari'ah, yuqṣid bi al-sulūk 'alayhā mā yuqṣid bi al-ṭarīqah al-shar'iyah.*

definition that the resemblance between *bid'ah* violates the established norms of Shari'ah.

The definition also indicates that the intention behind *bid'ah* does not deviate from the norms of Shari'ah in the sense that the rules of Shari'ah are generally intended to achieve benefits (*maṣāliḥ*) and this is precisely what the innovator intends to do. The good intentions behind *bid'ah* are, however, of no account, as al-Shāṭibi explains, because the innovator arrogates to himself the authority of the Lawgiver in such a manner as to frustrate the objectives of the law.³¹

Bid'ah is divided into two types, namely genuine *bid'ah* (*al-bid'ah al-ḥaqīqīyah*), for which no justification or support could be found in the Qur'an, Sunnah, or ijma', nor in any precedent or opinion of the learned, neither wholly nor in part. It is in other words an innovation in the true sense of the word. The second type of *bid'ah* is known as *al-bid'ah al-idaḥḥīyah*, or partial innovation, which has two facets, one being identical with the genuine *bid'ah* in that it is unprecedented and indefensible. But there is another side to this type of *bid'ah* for which support can be found in the established norms. That is, *bid'ah* as an ambivalent innovation which can be accepted as part of the authoritative Sunnah or rejected completely, depending on how it is viewed.³²

Bid'ah is once again divided into two types, namely *bid'ah* of abandonment (*al-bid'ah al-tarkīyah*), which consists of abandoning something, such as, for example, when a person abandons, or advises others to abandon, something which is lawful under the rules of Shari'ah. The opposite of this is *al-bid'ah ḡhayr al-tarkīyah*, that is innovation, which does not consist of abandoning anything; it may involve a change or advance a different perspective which amounts to innovation but not abandonment.³³

The hallmark of *bid'ah* is the pursuit of capricious and whimsical opinion (*hawā*) in preference to divine guidance. Thus we read in the Qur'an in an address to Prophet David:

O David, we have made you a vicegerent in the earth, so rule among people righteously and follow not the dictates of *hawā* which lead you astray from the path of God. (Ṣād, 38:26).

and

Who is more misguided than one who follows his own *hawā* in disregard of the guidance that God has revealed? (al-Qaṣaṣ, 28:50)

³¹Ibid., I, 50.

³²Ibid., I, 54.

³³Ibid., I, 38.

And then a person who chooses to follow the vagaries of *hawā* is not to be obeyed by others, as the Qur'an proclaims:

Obey not the one whose heart is negligent of our remembrance ('*an dhikrinā*), one who follows his *hawā*, and one who has exceeded all limits. (al-Kahf, 18:28)

While quoting the foregoing, al-Shāṭibi points out that in all of the three the matter is confined to two things, namely following the guidance (*hudā*, *dhikr*), or following caprice (*hawā*). The innovator (*mubtadi'*) has chosen the latter; hence he or she is utterly misguided while thinking otherwise of their personal intent. The same author goes on to quote another Qur'anic passage which denounces those who attempt to confuse the meaning of the Qur'an through misguided and self-styled interpretation:

He it is who has sent down to thee the Book. In it are āyāt which are perspicuous; they are the foundation of the Book: Others are allegorical. But those in whose hearts is perversity follow the part which is allegorical, seeking discord (*fitnah*) and searching for its hidden meanings . . . (Āl-'Imrān, 3:7)

It is reported from 'A'ishah that the Prophet read this ayah and then said: "when you see those who argue and dispute about the Qur'an these are the ones that God has meant, and they should be shunned." To this al-Shāṭibi adds: "The disputation that the Prophet has referred to concerns the pursuit of the Mutashābih (intricate) in the Qur'an." Disputation of this kind leads to disunity and deviation from the guidance of the Qur'an, in which we read further:

This is My way, leading straight, so follow it and follow not the paths which will scatter you away from it (al-An'am, 6:153)

The phrase "follow not the paths," according to Qur'an commentators, refers to the ways of those who have deviated from the straight path and these are the innovators and the skeptics, the *ahl al-bida' wa al-shubhāt*.³⁴

While elaborating on some of these statements, al-Shāṭibi adds: "the innovators distort the Shari'ah in various ways, such as by upholding the manifest or apparent (*zawāhir*) in the Qur'an without looking into the objectives and intentions of the Lawgiver." In a reference to the Kharijites, the same

³⁴Ibid., II, 54.

author notes that they upheld the intricate portions (*Mutashābihāt*) of the Qur'an in preference to the perspicuous (*Muḥkamāt*) therein; that they declared as infidel most of the Companions of the Prophet; they also held the view that in the event the Imam becomes an infidel, all of his subjects automatically become infidels; that the adulterer is not liable to the punishment of *rajm* (stoning to death); that the prescribed punishment of *qadhf* (slanderous accusation) applies to those who accuse women of non-chastity but not to those who charge men of similar conduct; that ignorance of the *furu'* (detailed rules of fiqh) is an excuse; that God will send a Prophet from among the '*ajam* (i.e. non-Arabs), who will bring a book and the Shari'ah of Muḥammad will then be abandoned; that the Sūrāh Yusuf (i.e., chapter XII of the standard text) is not a part of the Qur'an; and so on; views which are contrary to the principles and established tenets of Islam.³⁵

While commenting on the subject of *Mutashābih* (intricate portions) Ibn Qayyim al-Jawzīyah writes that a particular form of *hawā* in connection with the Qur'an is to uphold the *Mutashābih* in preference to the *Muḥkam* (perspicuous) so as to advance and substantiate a particular point of view. What is even more hideous, he notes, is that when the morbid attempt to find a *Mutashābih* with which to reject the *Muḥkam* fails, attempts are then made to find some weakness in the *Muḥkam* itself and thereby downgrade it to the level of *Mutashābih* and in this way try to suspend its definitive import. Ibn Qayyim also makes references to the Jahmīyah and Qadarīyah (subdivisions of the Mu'tazilah) and their views on the meaning of certain portions of the Qur'an. The author concludes his discussion by saying that the correct approach which the Companions and the leading jurists and scholars have adopted is precisely the opposite: The *Mutashābih* must be read in light of the *Muḥkam*, not vice versa, so as to maintain internal harmony and consistency in interpreting the Qur'an.³⁶

References are also made in this context to the views and beliefs of the Bāṭinīyah (also known as Isma'īliyah), in particular the meaning they have given to some of the key words of the Qur'an, such as *ṣalāh*, *zakāh*, *ṣawm*, etc., meanings which are very different from what is normally understood by the majority of 'Ulama. They have thus interpreted *ṣalāh* to be referring to the Prophet, for example in the Qur'anic ayah that "surely *ṣalāh* keeps one away from indecency and evil" (al- 'Ankabūt, 29:44). Since it is the Prophet who forbids evil not the *ṣalāh* as such. Similarly *zakāh* (legal alms) according to the Bāṭinīyah means purification of the soul, and *ṣawm* (fasting) means abstaining from evil; *jannah* (paradise) is held to mean the sweet smell of

³⁵Abu Ishāq Ibrāhīm al-Shāṭibi, *Al-Muwāfaqāt fi Uṣul al-Aḥkām*, ed., Muḥammad Ḥasanayn Makhḥluf, (Cairo: al-Maṭba'ah al-Salafiyyah, 1341/1923 A.H.), IV, 100 Idem., *al-I'tisām*, 240-80.

³⁶Ibn Qayyim, *I'lam*, II, 230. The author discusses the sectarian views of the Jahmīyah etc., and their tampering with the Qur'an in some detail at pp. 220-31.

the human body; *wudu'* (ablution) is said to mean following the awaited Imam, and *tayammum* (ablution with clean earth where no water could be found) is held to mean obedience to the deputy of the Imam in the absence of the Imam himself; whereas *ghusl* (bathe) is held to mean renewal of one's pledge of allegiance to the Imam.³⁷ It is perhaps due to these and similar remote and allegorical interpretations they have given to the Qur'an that the *Bāṭinīyah* (proponents of the esoteric and the hidden) have derived their name.

A more recent form of *bid'ah*, embraced by some Muslims, is to deny the authority of Sunnah and to take the view that the Qur'an, being self-contained, authentic, and comprehensive, is the only source of Shari'ah. This is the view taken by a faction calling itself *al-Firqah al-Qur'anīyah* (partisans of the Qur'an) whose views are known to have spread and found adherents in some Arab countries like Egypt and Libya.³⁸

Whereas some scholars have accepted the notion of a good *bid'ah*, Ibn Taymīyah refutes the division of *bid'ah* into good and evil, as he maintains that all *bid'ah* is evil. People have held different views on *bid'ah* and some have divided it into two types, namely *bid'ah qabīḥah* and *bid'ah ḥasanah*, saying that not all *bid'ah* is evil, that when a *bid'ah* is accepted and generally approved by the community of believers it is no longer *bid'ah*. Ibn Taymīyah then goes on to refute this by saying that these views came into being only after the 3rd/10th century; that all *bid'ah* is evil and that the Sunnah is completely clear on this point. The author then quotes three *aḥādīth* which are: "All *bid'ah* is misguided—*kull bid'ah ḍalālāh*," "every innovation is *bid'ah*—*kull muḥdathah bid'ah*," and "the worst of things are the novel among them—*inna sharr al-'umūr muḥdathātuhā*." The examples which Ibn Taymīyah has given of *bid'ah* in this context pertain mainly to rituals of the faith, such as fasting on certain days of the year, unauthorized prayer (*ṣalāt al-muḥdathah*), and festive celebrations (*a'yād*) other than those which are commonly recognized.³⁹

The view that some *bid'ah* is good originates in the precedent of 'Umar b. al-Khattab, who is on record to have welcomed *ṣalāt al-tarawīḥ* during Ramadan and referred to it as *ni'mal bid'ah* (what a good *bid'ah*!). To this Ibn Taymīyah responds that *tarawīḥ* was not an innovation at all; that it originated in the Sunnah of the Prophet and the Companions had practiced it, but that the Prophet abandoned it after awhile for fear of it becoming obligatory. Hence what 'Umar Ibn al-Khattab is quoted to have said does not at all contradict the Hadith that "all *bid'ah* is misguided." Ibn Taymīyah

³⁷Ahmad b. Ḥajar al-Buṭāmi al-Ban'ali, *Tahdhīr al-Muslimīn 'an al-Ibtidā' wa al-Bid'ah fi al-Dīn*, (Doha, Qatar): Maṭābi' 'Ali b. 'Ali, 1402/1983), pp. 37-38.

³⁸Ibid., p. 41.

³⁹Taqī al-Dīn Ibn Taymīyah, *Iqtidā' al-Ṣirāt al-Mustaqīm li-Mukhalafah Aṣḥāb al-Jaḥīm*, ed., Nāṣir b. 'Abd al-Karīm al-'Aql, (Riyādh, 1404 A.H.), I, 55.

concludes that 'Umar must have used the word *bid'ah* in its linguistic sense of welcoming something that was forgotten; that he did not use the word in the sense of a *bid'ah shar'iyah*.⁴⁰

Al-Ghazali divides the *mubtadi'* into two types: one who invites others to *bid'ah*, and the other who remains silent out of fear or personal choice. The first type of *mubtadi'* may be propagating something which does not amount to infidelity (*kufr*) in which case the matter rests between him or her and God (*fa amruh baynah wa bayn Allah*). But if that person invites the people to what may amount to *kufr*, he or she can be even more harmful than the *kāfir ab initio*. For the evil of the latter is not contagious in the sense that the person is known as a non-believer and as such the believers are not likely to pay attention. But the *mubtadi'* who actively propagates *bid'ah* has a claim to righteousness and tries to spread corruption under the guise of truth and that kind of evil is contagious. This kind of *mubtadi'* must be denounced, his or her evil exposed, and people should openly show their disapproval; they should turn away from him and refuse to respond to his greeting (*salam*) in public and should avoid helping or cooperating with that person.

As for the commoner who indulges in *bid'ah* (*al-mubtadi' al-'āmi*) but is unable to persuade others and is unlikely to command any following, he or she should, instead of stern treatment and humiliation, be given good counsel (*naṣiḥah*) and kind advice. But if *naṣiḥah* proves futile and shunning (*i'rāḍ*) is called for, then this should be done. For if *bid'ah* is not denounced, it is likely to spread and give rise to evil in society.⁴¹

Al-Shāṭibi advises reticence vis-a-vis *bid'ah* whose truth or falsehood is not known: "we are commanded not to disseminate such views until the truth emerges."⁴² In response to the suggestions by some 'Ulama that *mubtadi'ūn* who propagate *bid'ah* should be severely punished, al-Shāṭibi observes that they should be treated in accordance with the enormity of their conduct. If the *bid'ah* is a minor one, they should be punished lightly, but if it amounts to a grave violation, the punishment should be proportionately increased. Al-Shāṭibi also records the point that the early scholars (*mutaqaddimūn*) divided *bid'ah* into two types: that which is reprehensible (*makruh*) and *bid'ah* which falls under the category of *haram* (forbidden). The author then concludes that *bid'ah* is not a monolithic concept, nor is it a singular offense; that each *bid'ah* should be viewed and evaluated individually; and that treatment or

⁴⁰Ibid., I, 56; idem, *Malmu'ah Fatāwā Shaykh al-Islam Ibn Taymīyah*, ed., 'Abd al-Rahmān b. Qāsim, (Beirut: Mu'assisah al-Risālah, 1398 A.H.), X, 371.

⁴¹Abu Ḥāmid Muḥammad al-Ghazālī, *Kitāb Adāb al-Ṣuḥbah wa al-Mu'āsharah Ma' Aṣnāf al-Khalq*, ed. Muḥammad Sa'ud al-Mu'ini, (Baghdad: Matba'ah al-'Āni, 1984), pp. 201-4.

⁴²Al-Shāṭibi, *Al-Muwāfaqāt*, IV, 104.

reprimand accorded to its perpetrator must strictly be determined on this basis.⁴³

Although in its literal sense, *hawā* can mean a passing whim, inclination, or desire without necessarily leading to either the formulation or expression of an opinion, the 'Ulama have nevertheless used it to imply an opinion which originates in these impulses. This usage, which is basically a metaphor using the cause for the effect, is probably motivated by the frequent recurrence of the word *hawā* and its derivatives in the Qur'an. *Hawā* has been defined as "the pleasure seeking inclination of the soul (nafs) toward that which is not permitted by the Shari'ah."⁴⁴

As already indicated, the Qur'an refers to *hawā* in contradistinction to *guidance* (*hudā*, *dhikr*), and deviation from the truth which the Qur'an itself has expounded. It is in this sense that the Qur'an warns the believers, on no less than 25 occasions, against the dangers, incitement, and temptations of *hawā* and the hold that it can have on the hearts and minds of people.⁴⁵ The phrase *ahl al-hawā* typically refers to those who say what they please, who violate the truth by indulging in corrupt and distorted interpretations which are unacceptable to the mind and heart of the believer. Whenever opinion is allowed to follow personal prejudice and desire, it leads to divergence from truth and even outright falsehood.

Among the instances of *hawā* one is the personal desire to be the winner at all costs regardless of the merit of one's case or concern for the well-being of others. One of the worst forms of *hawā* is when such personal craving for superiority and power is masqueraded with specious reasoning and plausible argumentation in the name of justice, piety, and truth. The hold that *hawā* can have on the minds and lives of people is depicted in the Qur'an, where the believers are asked the question, "Did you see the fate of one who took as his god his own vain desire—*hawā*—and his god led him astray! (al-Jāthiyah, 45:23).

Elsewhere we find evidence in the Qur'an which clearly forbids the pursuit of *hawā* and indulgence in sensuous and hedonistic desires: "Follow not the *hawā* as it would lead you astray from the path of God (Ṣad, 38:26)." *Hawā* occurs in the Qur'an in contradistinction to Shari'ah, as in the following passage:

Thus we gave you a Shari'ah (i.e., a path) in religion, so follow it, and follow not the desire (ahwā) of those who know not. (al-Jāthiyah, 45:18)

⁴³Ibid.

⁴⁴Adnān Darwish and Muhammad al-Miṣri, *Al-Kulliyāt, Mu'jam fi al-Muṣṭalahāt wa al-Furuq al-Lughawīyah*, (Damascus: Wizārah al-Irshād, 1974), V, 38.

⁴⁵Abu Habib, *Darāsah*, p. 454.

Al-Zamakhshari elaborates the meaning of this āyah: Follow the Shari'ah which is founded in proof and evidence and let not yourself be tempted by the views and arguments of the ignorant which are founded in caprice and pernicious innovation (*hawā wa bid'ah*).⁴⁶ Furthermore, the Prophet is on record to have addressed his followers that "None of you can be a true believer unless your desire (*hawā*) is made subservient to (the guidance) I have brought forth." According to another Hadith, "Nothing that is worshipped on this earth is hated by God more intensely than *hawā*."⁴⁷

Another instance of *hawa* that is clearly forbidden is when a person believes in the legality or prohibition of something, and then ignores it when it applies to himself or his friends. To illustrate this, a person may be demanding his right of preemption (*shuf'*) while believing in its validity, but when someone else demands the same right of him, he ignores it and claims that it is unproven and advances an opinion to that effect.⁴⁸ On a similar note, a person may denounce another for a certain activity such as listening to music, but when his friends do the same, he claims that the prohibition of such activity is not proven and that the subject remains open to *ijtihad*.⁴⁹

The jurists have not specified any punitive measures for *hawā* and no particular punishment for the perpetrator of *bid'ah* either, except for a form of social boycott (*al-hijr*, also referred to as *i'rad*) that is signified by refusing to greet, speak to, or approve of the views of such a person. The 'Ulama have spoken of *hijr* as a moral obligation of the community regardless as to whether the perpetrator of *bid'ah* is a relative, a neighbor, or a stranger, especially when the *bid'ah* concerns the community at large and violates what is referred to as the Right of God (*Haqq Allah*). But if the *bid'ah* relates to private rights (such as consisting of a form of slander or libel), then greeting is permitted and *hijr* is not required. There is no maximum limit on the duration of *hijr* and it continues until the person repents and corrects him or herself. The community is under moral obligation to denounce the *bid'ah*; those who are able to produce evidence for its refutation, and those who are in possession of authority and able to put an end to it, must do so.⁵⁰

The 'Ulama have held it to be a duty of the head of state to prevent *bid'ah* and *hawā* in the business of government. This is a part of the general obligation of the head of state to facilitate transmission and dissemination

⁴⁶Jār Allah Mahmud al-Zamakhshari, *Al-Kashshāf 'an Ḥaqā'iq al-Tanzīl*, (Beirut: Dār al-Ma'rifah, n.d.), III, 511.

⁴⁷Both Hadiths are quoted by Abu 'Abd Allah Muhammad al-Qurtubi in his *Tafsīr al-Qurtubi*, (Cairo: Dar al-Kutub al-'Arabīyah, 1387/1967), XVI, 167.

⁴⁸Zaydan, *Majmu'ah*, p. 298; al-Sibā'i, *Ishṭirakīyah*, p. 54.

⁴⁹Shams al-Dīn b. 'Abd Allah Muhammad b. Malfah al-Maqdisi al-Ḥanbali, *Al-Ādāb al-Shar'īyah wa al-Minaḥ al-Mar'īyah*, 2 vols., (Cairo: Maṭba'ah al-Manār, 1348 A.H.), I, 183.

⁵⁰*Ibid.*, pp. 237, 269.

of knowledge whenever necessary or when it is in the interest (*maṣālahah*) of the community. Dissemination of knowledge, as a duty of the head of state, comprises the following: (a) propagation of the faith by defending it against doubts and *bid'ah* and offering an adequate response to the promoters of *bid'ah* and *hawā*. (b) Inviting the disbelievers and the misguided to righteousness and truth. (c) Investigating and bringing together the various views concerning *bid'ah* and *hawā* and trying to resolve disputes over them by validating or authorizing a view that seems best. Whenever the Imam exercises this form of *ijtihād*, or when he selects the *ijtihād* of others for the purpose of general practice, even if that *ijtihād* is of disputed validity, it becomes authoritative nevertheless and action upon it becomes obligatory.⁵¹

Baghy (Transgression) And Ikhtilāf (Disagreement)

Baghy means lawlessness, refusing to acknowledge the truth, and exceeding the limits of things with corrupt intention, dishonesty, and arrogance.⁵² *Baghy* is also the opposite of obedience (*ṭā'ah*) to lawful government. In this sense, *baghy* is defined as refusing to obey the lawful Imam who is not indulging in sin (*ma'ṣiyah*), whether or not such disobedience is based on an interpretation or a particular point of view which is believed to be the truth.⁵³

An instance of *baghy* which is frequently encountered is when a person or group of persons are engaged in a lawful pursuit but they are denounced for wrongdoing by their opponents. In the sphere of religious rituals such as the call to prayer (*ādhān*), standing to prayer (*iqāmah*), and even the contents of the ritual prayer, the followers of different *madhāhib* observe them with slight variations. Basically all the variations are permissible as they all subscribe to the tenet of *'ibādah*; a mere difference of form does not justify any claim of superiority or preference of one over the other. And yet, owing to *baghy*, the followers of some *madhāhib* have denounced and abused their counterparts in others for not following the rituals that they have themselves adopted. This is not even confined to rituals: in certain other spheres we know, for example, that the mystic has often criticized the jurist for the latter's zeal over the externalities of religion. The jurist has, in turn, criticized the mystic

⁵¹Yahyā Ismā'īl, *Manhaj al-Sunnah fi al-'Alāqah Bayn al-Hākim wa al-Maḥkūm*, (Cairo: Dar al-Wafā', 1406/1986), pp. 330-32.

⁵²Zaydān, *Majmu'ah*, p. 295.

⁵³While the Hanbali definition of *baghy* includes disobedience to an unjust ruler, the Hanafi's define it as disobedience to a just or lawful Imam only. See Muḥammad Amīn Ibn 'Abidīn, *Radd al-Mukhtār 'Ala al-Durr al-Mukhtār* (also known as *Hāshiyah Ibn 'Abidīn*, 2nd edn., (Cairo: Maṭba'ah al-Bābi al-Ḥalabi, 1386/1966), III, 426; Yahyā Ismā'īl, *Manhaj al-Sunnah fi al-'Alāqah Bayn al-Hākim wa al-Maḥkūm*, (Cairo: Dār al-Wafā', 1406/1986), p. 147.

for his esoteric approach to religion and to some of the rules and doctrines of Shari'ah. Each has thus denounced the other in disregard of their respective merits. Their views partake in transgression, as they both indulge in self-righteousness and unwarranted denunciation of the views of their opponents. The correct approach in such cases would be for both sides to assess the merit and demerit of each view and acknowledge them accordingly without transgression and prejudice. All other considerations which are external to the essence of the matter such as the desire to expose the ignorance of one's opponent or establish one's own superiority and power, etc., must be excluded from the quest for truth and assessment or criticism of the opinion of others.⁵⁴

Disagreement (*ikhtilāf*) over the rituals of 'ibādāt, including variation in the forms of the call to prayer (*ādhān* and *iqāmah*), the 'Id prayer, and prayer at times of fear for one's safety (*salat al-khawf*) and other such rituals which vary in form but unite in the essence of worship are, according to Ibn Taymīyah, a variety of *ikhilīlāf al-tanawwu'*, that is variation which is devoid of substance. As opposed to *ikhilīlāf al-tadād* (disagreement over substance amounting to contradiction), *ikhilīlāf al-tanawwu'* consists basically of preference for one of the two or many of equally valid views over others, which should be presented and evaluated as such. The essence of preference (*tarjih*), according to Ibn Taymīyah, is in the recognition of the basic validity of two views, one of which may be recommended while the other is neither denounced nor falsified.⁵⁵ The author then quotes the following Hadith, reported by 'Abd Allah b. Mas'ud: "I heard a man reciting an *āyah* (of the Qur'an) which differed with what I had heard the Prophet reciting. So I took his hand and we went to the Prophet and reported the matter. Then I noticed signs of displeasure on his face and the Prophet said: "Both of you are right—*kilākumā muhsin*—and neither of you should disagree over this. For, many a people who came before you met with destruction because of disagreement over trivialities."⁵⁶

Ibn Taymīyah continues: The Prophet forbade disagreement which consisted of *juhd*, that is, denial of the truth and veracity of the opinion or conduct of the other party. This was the case in the foregoing Hadith where the Prophet explained that disagreement which was devoid of substance was basically destructive. The parties were both reciting the Qur'an in different dialects, which was why the Prophet declared them both to be *muhsin* (doing something good or beautiful) but they fell in error when they denounced and denied the validity of each other's opinion.⁵⁷

⁵⁴Cf. Zaydān, *Majmu'ah*, pp. 277, 295.

⁵⁵Ibn Taymīyah, *Iqtidā'*, p. 130.

⁵⁶Ibid., p. 123; Al-Tabrizī, *Mishkāt*, ed. al-Albāni, I, 677, Ḥadīth No. 2212.

⁵⁷Ibid., pp. 124-5.

As for *ikhtilāf al-taqād*, which amounts to contradiction, the two views at issue are diametrically opposed to one another in regards to either essentials or subsidiary detail or both. The majority opinion on this type of disagreement is that only one of the opposing views could be right and declared as such, but not both. Examples of this type of *ikhtilāf* among the scholars are found over the issue of free will and determination, on the attributes of companions, and in the views and beliefs of the different faction's of the jurists and the *mutaṣawwifah* (mystics). The matter is different in *ikhtilāf al-tanawwu'*, where each of the two parties are undoubtedly right but blame falls on one who exceeds the limits and resorts to *baghy* over the other.⁵⁸ In Ibn Taymīyah's assessment, by far the greatest part of the differences of opinion among the Ummah is of this type: they consist of mere variations and amount to no more than a difference of perspective or a way of looking at reality and truth, and yet they still lead to hostility and conflict. This is because neither of the disputing parties acknowledge the merit in the views of the opponent and both persist in pursuing self-righteousness and superiority over the other.⁵⁹

Religious and sectarian fanaticism of the type that lays exclusive claim to righteousness is, as one observer explains, a deviation from the valid precedent of Companions and a form of *bid'ah/baghy*, which is found among the followers of different *madhhabs*. The exponents of such transgression among the Ḥanafis are often people who lay claim to piety and knowledge and yet they propagate fanaticism in such ways as to proclaim invalid the *ṣalāh* of one who performs it behind a non-Ḥanafī Imam; they also vehemently denounce the raising of hands during ritual prayer upon descending to *ruku'* (bowing), which is normal practice among the Shafī'is. There are, in fact, fanatics of this type in every *madhhab*, including the Shafī'i, Māliki, and Ḥanbali, who see the truth as a prerogative of the school or their own following only. Even outside the sphere of *'ibādāt*, in matrimonial matters, for example, they engage in transgression and *bid'ah* when they forbid their daughters from marrying a Muslim who is not a follower of their own *madhhab*.⁶⁰ They are indeed deviating from the consensus of all the leading Imams, who have urged their followers to adhere to the teachings of the Qur'an and Sunnah and abandon individual or scholastic opinions which do not conform to the authority of these sources.

Al-Shahristani has held that *istibdād bi al-ra'y*, or imposing one's own opinion over others without clear authority, is transgression and a *bid'ah* which contradicts the precedent of the pious and upright 'Ulama of the past. The same author adds that *istibdād bi al-ra'y* is not a *bid'ah* when it is founded

⁵⁸Ibid., pp. 130-1.

⁵⁹Ibid., p. 134.

⁶⁰Al-Bar'ali, *Tahdhīr*, p. 61.

on knowledge and reason; it is only so when views of doubtful provenance and validity are inflicted on others.⁶¹

One of the manifestations of *istibdād bi al-ra'y* which often partakes in transgression and ignorance is the assumption that one's own knowledge, opinion, and belief is all that counts; that everyone must follow it; and that anyone who differs with it should be denounced. The person who persists in such an attitude has little regard for knowledge and truth and tends to ignore merit and reason in the opinion of others. This could only lead to hostility and abuse, and no benefit can be expected as a result.⁶²

And finally Ibn Qayyim al-Jawzīyah includes under the category of reprehensible opinion, over-indulgence in personal preference (*istiḥsān*), advancement of analogies, and speculative argumentation which verge on *hawā* and seek to circumvent the Shari'ah. This kind of *ra'y* pays little attention to the origin and proper causes of the *aḥkām* of Shari'ah and often deviates from their objectives. Over-indulgence in this type of *ra'y* leads to "suspension of the Sunnah, to ignorance and confusion in the correct meaning of the Book of God, and to their ultimate neglect."⁶³ The author includes in this category argumentation and opinion which originate in excessive questioning and highly theoretical issues which have little bearing on reality and practical experience. There is evidence that the Qur'an and Sunnah discourage over-indulgence in such questions. Ibn Qayyim then quotes the relevant evidence and draws the conclusion that Islam is basically a religion of authority which encourages humility and submission on the part of the believer and shuns over-indulgence in opinions and questions that smack of a libertine attitude toward the authority of divine revelation. This is borne out, the same author adds, by the accepted principles of *uṣūl al-fiqh* on which the various schools are in agreement: Even a weak Hadith is to be given priority over both *ra'y* and analogy (*qiyās*). But this only refers, Ibn Qayyim hastens to observe, to "that type of *ra'y* and *qiyās* which the generality of 'Ulama have discouraged because they diverge from the Qur'an and Sunnah." As for *ra'y* whose conformity to, or divergence from, the Book of God and the Sunnah are not known, this type of *ra'y* may be adopted as basis of action only when necessary but it carries no binding authority on anyone.⁶⁴

⁶¹Abu al-Fath Muḥammad b. 'Abd al-Karīm al-Shahristāni, *Al-Milal wa al-Niḥal*, ed., 'Abd al-'Azīz Muḥammad, al-Wakīl, (Cairo: Mu'assisah al-Ḥalabi, 1378/1968), p. 1045; Yahyā Ismā'īl, *Manhaj al-Ālāqah Bayn al-Hākim wa al-Maḥkūm*, (Cairo: Dār al-Wafā, 1406/1986), p. 106.

⁶²Ibn Taymīyah, *Iqtidā'*, p. 127; Zaydān, *Mahmu'ah*, p. 299.

⁶³Ibn Qayyim, *I'lām*, I, 57.

⁶⁴Ibid., I, 64.

Conclusion

While juristic doctrine and scholarly opinion will continue to influence the outlook and attitude of contemporary Muslim individuals and societies, it is always instructive to refer back to the Qur'an and Sunnah: Not only because these are the locus of recognized authority but also because *ra'y* is often subjective and circumstantial—so much so that its author may derive a fresh message from these sources that would relate to his own point of view. This is also true because of society's changeable perception of reality and outlook over time and the bearing it might have on its standards of acceptability and tolerance. What the society and 'Ulama of the Middle Ages perceived as unacceptable may today fall within tolerable limits and vice-versa.

The tradition of Muslim scholarship in relation to freedom of opinion and *ijtihād* is, on the whole, indicative of latitude and tolerance. This is borne out by their reluctance to bring pernicious innovation (*bid'ah*) into the sphere of punishable offenses. Despite some difference of opinion on this point the dominant view is that *bid'ah* or any innovation and idea for which no support could be found in the sources should be tolerated until the truth emerges. Or else that it should be discouraged only through persuasive measures, unless it is manifestly harmful, in which case the harm must be prevented.

There is some disagreement as to the veracity of the so-called closure of the door of *ijtihād*. It seems true nevertheless that independent *ijtihād* of the type which was practiced by the Companions and leading Imams was severely restricted, if not totally halted, following the crystallization of the *madhāhib* at around the beginning of the 4th century Hijrah. In view of the overwhelming diversity of juristic and theological thought and the emergence of schools, sects, and groups throughout the Islamic lands, a climate of opinion began to prevail that fresh inquiry, *ra'y*, and *ijtihād* were to be discouraged. It seems that the primary motive behind the so-called closure of the door of *ijtihād* was not so much to deny others the freedom of expression and opinion as to protect the unity of the Ummah, to prevent confusion, and to defend the purity of Islamic heritage.

But whatever explanation that one might be able to offer, closure of the door of *ijtihād* could hardly be justified in principle. It was basically a situational response that the 'Ulama gave to a certain development and it ought to have been regarded as such. However it soon became dominant practice and the tide of *taqlid* (imitation) carried many so far as to say that there was no further need to interpret the Qur'an and Sunnah after the closure of the door of *ijtihād*. 'Ulama and scholars, including al-Shawkani, Abu Zahrah, and Muhammad Iqbal, among others, have rejected the validity in principle of the closure of the door of *ijtihād*. Abu Zahrah makes the point

clearly that God Almighty granted human beings the gift of reason and has encouraged rational inquiry into His creation. How is it possible that only the 'Ulama of the first three centuries of Islam were entitled to the formulation of opinion and *ijtihād* and the rest were deprived of this freedom? In Abu Zahrah's phrase "nothing is farther from the truth and we seek refuge in God from such exaggerations."⁶⁵

In modern times, constitutional provisions and statutory legislation on the freedom of speech, press, and assembly in Muslim countries have granted this freedom to the citizens, often without discrimination on grounds of language, race, or religion. Statutory legislation in many Muslim countries has in the meantime specified the various violations of the freedom of speech and their legal consequences.⁶⁶ The substance and broad outline of such legislation is, I believe, in harmony with the objectives of Islam and its principal message of human dignity, equality, and freedom. The realities of day-to-day life in many Muslim countries are, however, a far cry from the guidelines that are found in the *Shari'ah* or their own statutory legislation. Freedom of speech, opinion, and expression is yet to become a reality of social and political life in many present-day Muslim societies.⁶⁷

But the issue can only partially be tackled on legislative grounds. Social tolerance and the capacity of a community to enable those of its members to speak when they have something to say without fear of calling upon themselves the wrath of society or government is largely related to healthy public opinion and progress in the spheres of education and culture. It will be borne in mind in the meantime that no total and unrestricted freedom of expression could be expected in any society. But the attempt to balance and refine the use of this freedom against its possible abuses epitomizes society's educational and cultural achievement. Only in an atmosphere of security and tolerance, coupled with the tacit assurance that sincere and constructive contribution and criticism by individuals and groups are gracefully received and tolerated, could such contribution be positively encouraged.

⁶⁵Muhammad Abu Zahrah, *Uṣūl al-Fiqh*, (Cairo: Dār al-Fikr al-'Arabi, 1377/1958), p. 318. See also Muḥammad b. 'Alī al-Shawkāni, *Irshād al-Fuḥūl min Taḥqīq al-Haqq ilā 'Ilm al-Uṣūl*, (Cairo: Dār al-Fikr, n.d.), p. 254; Muhammad Iqbal, *The Reconstruction of Religious Thought in Islam*, (Lahore: The Book House, n.d.), p. 178.

⁶⁶For information on the freedom of speech in Malaysia see John A. Lent, "Social Change and the Human Rights of Freedom of Expression in Malaysia," *Universal Human Rights*, Iiii (1979), 51-56; Ahmad Ibrahim, "Freedom of Speech and Expression Under the Federal Constitution—Sedition and Contempt of Court," *Law Info* (a Law Society publication of the International Islamic University, Malaysia), September 1989, pp. 7-20.

⁶⁷For information on civil liberties in Saudi Arabia, Jordan, Egypt, and Iraq see James Dudley, "Human Rights Practices in the Arab States: The Modern Impact of *Shari'ah* Values," *Georgia Journal of International and Comparative Law* 12 (1982), 55-93.

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It is important not only to write 'friend of the court' briefs but to make common cause with established interest groups that lobby the courts, especially in the arena of free exercise of religion issues. At the same time, it is essential to develop a multi-pronged approach and pursue local, state, and national legislative activity and to be involved in the inception and promotion of ballot initiatives in the electoral process in order to influence legal measures that effect the quality of Muslims' lives in the United States. While in the United States minority groups tend to pursue their rights through the courts, in Canada they do so in the legislative arena. Therefore, in order to gain a better understanding of the ways of winning legislative support, it is helpful to look at the legislative process in Canada and most specifically at their multicultural policy.

In the United States we are commemorating the twenty-fifth anniversary of adoption of the Federal Civil Rights Acts of 1964 and 1965. In light of this it is appropriate to ask whether there has been an evolution in the interpretation of civil rights laws to the point where religious toleration is now mandated. First the civil rights laws were conceived and applied in the area of race discrimination, then they were applied to issues of gender discrimination and, recently, ethnic or national origins discrimination. Perhaps it is now time to test the religious accommodation provision of the Civil Rights Act. In fact, a Muslim has recently done so at the state level. In *U.S. v. Board of Education of Philadelphia* (May 1989), a Muslim school teacher successfully challenged a Pennsylvania state law that prohibited public school teachers from wearing apparel that indicates membership in a religious denomination. In this case U.S. District Court Judge Kelly said that Title VII of the Federal Civil Rights Act of 1964 requires employers to make 'reasonable accommodation' of an employee's religious needs and that the Pennsylvania law challenged by the Muslim teacher was invalid because it violated the federal statute. In addition, passage of the 'hate violence' legislation in Congress in 1988, which criminalized the interference with the free exercise of religion and damage of religious property specifically including churches, synagogues and mosques,⁸ is another indication that the time is propitious to call for greater application of the 'religious accommodation' provisions of federal legislation.

⁸P.L. 100-346, adopted by the U.S. Senate May 18, 1988. The bill was amended by the Senate Judiciary Committee to include specific reference to mosques and Islamic centers under the term 'religious real property'.