



PRIVACY RIGHTS AND GENDER FLUIDITY: AN ISLAMIC CRITIQUE OF POSTMODERN CONCEPTIONS OF IDENTITY

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Abstract

The convergence of two seemingly distinct contemporary discourses — the liberal rights framework of personal privacy and the postmodern paradigm of gender fluidity — has produced a novel ideological formation whose implications for Islamic jurisprudence, anthropology, and civilizational thought have not yet been subjected to the sustained critical analysis they demand. Privacy, in its liberal philosophical formulation, asserts the sovereign right of the individual to define and disclose their own identity without external interference, whether by the state, the community, or the religious tradition. Gender fluidity, in its postmodern theoretical formulation, asserts that identity itself is a fluid, self-constructed performance that admits of no fixed or divinely inscribed foundation. When these two discourses converge, as they do with increasing frequency in international human rights instruments, educational policy frameworks, and digital advocacy culture, they produce a claim of formidable political and institutional power: that the individual's right to self-define their gender identity is an inviolable privacy right, immune from communal, legal, or religious evaluation.

This article undertakes a systematic Islamic jurisprudential and philosophical critique of this convergent formation, examining both its theoretical architecture and its practical implications for Islamic law, ethics, and the formation of Muslim identity. Drawing on the Islamic tradition's own sophisticated and historically deep engagement with privacy alongside the Islamic accounts of human nature (fiṭrah), dignity (karāmah), and the purposive structure of Islamic law (maqāṣid al-sharī'ah), the article argues that the Islamic tradition offers a philosophically richer and more internally coherent account of the relationship between privacy, identity, and human nature than the liberal-postmodern synthesis. The article is organized through eight analytical movements, each addressing a distinct dimension of the convergent formation under critique, and concludes with a comprehensive Islamic response and a set of policy and educational recommendations.

Keywords: *Privacy Rights · Gender Fluidity · Islamic Jurisprudence · Postmodern Identity · Fiṭrah · Maqāṣid al-Sharī'ah · 'Awrah and Sitr · Human Rights · Islamic Privacy Ethics · Gender Performativity · Karāmah Insāniyyah · Islamic Civilizational Thought*

Introduction: When Two Discourses Converge

Two intellectual currents that appear, on the surface, to belong to quite different philosophical traditions have, over the past three decades, merged into a single and politically potent ideological formation. The first is the liberal tradition's account of privacy as the domain of individual self-determination — the protected sphere within which the individual exercises sovereign authority over their own life, beliefs, and identity, free from intrusion by public authority or communal norms. The second is the postmodern tradition's account of gender as a fluid, performative construction — a self-produced identity formation that the individual assembles from available cultural materials through the iterative repetition of acts, rather than expressing or discovering a pre-given natural constitution.¹ When these two currents converge, their combined force is considerable. Privacy law — in its liberal philosophical foundation and its increasing international legal codification through instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political



Rights, and the more recent Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity — has progressively been interpreted to protect the individual's right to self-define their gender identity and to resist any external authority — legal, communal, or religious — that would impose an alternative account of their gendered self.² The practical consequences are far-reaching: Islamic legal systems that define gender categories on the basis of biological constitution and divine creation are increasingly characterized, in international human rights discourse, as violations of privacy rights; religious communities that maintain normative gender distinctions are increasingly subjected to legal and institutional pressure to accommodate gender-fluid self-definition; and Muslim educational institutions that transmit the Islamic account of human nature are increasingly presented as perpetrating harm against gender-questioning students. The intellectual challenge this convergent formation poses to the Islamic tradition is not primarily political — though its political consequences are real and serious — but philosophical. The liberal-postmodern synthesis rests on specific and contestable claims about the nature of privacy, the nature of the self, and the relationship between individual identity and communal norms. These claims deserve philosophical examination rather than political refutation, and it is philosophical examination that this article provides. The governing conviction is that the Islamic tradition, properly understood, possesses its own sophisticated account of privacy — one grounded in a richer and more coherent anthropology than the liberal account — and that this Islamic account, when fully articulated, constitutes both a genuine protection of the individual's private sphere and a principled limitation on the claim that privacy immunizes self-definition from all normative evaluation.³

The argument proceeds through the following analytical sequence. Sections 2 and 3 reconstruct the philosophical architecture of the liberal privacy framework and the postmodern gender fluidity paradigm respectively, subjecting each to rigorous internal philosophical critique. Section 4 excavates the Islamic tradition's own account of privacy — its Qur'ānic and jurisprudential foundations, and its classical scholarly elaboration. Section 5 develops the Islamic account of identity and human nature as the anthropological counterpart to the Islamic privacy framework. Section 6 applies the *maqāṣid al-sharī'ah* methodology to the evaluation of the liberal-postmodern synthesis and its institutional manifestations. Section 7 addresses the pastoral and human dimension — the genuine suffering of individuals experiencing gender identity distress — that the Islamic response must engage with compassion as well as jurisprudential clarity. Section 8 concludes with a comprehensive Islamic position and a set of concrete recommendations.

The Liberal Conception of Privacy: Philosophical Architecture and Internal Tensions

Privacy as the Domain of Autonomous Self-Determination

The liberal philosophical tradition's account of privacy is inseparable from its foundational commitment to individual autonomy as the supreme political value. John Stuart Mill's harm principle — the claim that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" — established the philosophical template for liberal privacy: a protected sphere within which the individual's choices, behaviors, and self-definitions are immune from external interference so long as they do not demonstrably harm others.⁴ This template, refined through the philosophical tradition running from Locke through Kant



to Rawls, has become the dominant framework through which privacy rights are theorized in Western political philosophy and codified in international human rights law.

The application of this framework to gender identity is straightforward within liberal premises: if the individual is the sovereign authority over the choices, self-definitions, and identity formations that belong to their private sphere, and if gender identity is understood as such a self-definition, then the individual's gender identity claims are immune from external normative evaluation — by the state, by the community, or by the religious tradition. The Yogyakarta Principles, first formulated in 2006 and extended in 2017, systematize this application in international human rights language, asserting that "each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom."⁵

Internal Tensions: The Self-Undermining Character of Liberal Privacy

The liberal privacy framework, however, is not without internal philosophical difficulties that are directly relevant to the Islamic critique. The most fundamental concerns the presupposed self: liberal privacy protects the individual's right to self-define, but the concept of self-definition presupposes a self that does the defining — a stable subject whose choices, preferences, and identity formations are authentically their own rather than the product of social conditioning, psychological distress, or ideological formation.⁶ Charles Taylor identified this difficulty in *Sources of the Self*: the liberal account of the autonomous self is not a metaphysically neutral description but a historically specific and philosophically contested account of human nature that cannot claim the universal validity its political application requires. To use it as the foundation for privacy claims that are asserted against all other accounts of human nature — including the Islamic account — is to perform, in the name of neutrality, a philosophical imperialism that privileges one cultural tradition's metaphysical assumptions over all others.

The second internal tension concerns the relationship between privacy and truth. The liberal framework asserts that the individual's self-definition deserves protection regardless of whether it corresponds to any objective truth about their nature — because, on the liberal account, there is no objective truth about identity to which self-definitions might correspond or fail to correspond. But this position is itself a substantive philosophical claim — the claim that identity is constituted by self-definition rather than discovered through self-knowledge — and it is a claim that requires philosophical justification rather than mere political assertion. When the liberal privacy framework is extended to protect gender self-definition against Islamic legal categories, it is not enforcing a neutral right but adjudicating a philosophical dispute in favor of one party — the postmodern constructivist — while presenting this adjudication as a matter of human rights rather than contested metaphysics.⁷

The Yogyakarta Principles and the Juridification of Postmodern Ontology

The Yogyakarta Principles represent the most consequential institutional codification of the liberal-postmodern synthesis and deserve specific analytical attention. The principles were drafted by a group of international human rights experts — without participation by the United Nations General Assembly or by the governments of Muslim-majority states — and have been progressively cited by international bodies, domestic courts, and human rights organizations as authoritative interpretations of existing human rights obligations. Their foundational premise — that gender identity is "each person's deeply felt internal and individual experience of gender, which may or may not correspond



with the sex assigned at birth" — presupposes, without argument, the postmodern constructivist account of gender: that biological sex is "assigned" rather than given, and that the authentic gender is the internally felt one rather than the biologically constituted one.⁸

The political and legal significance of this presupposition can hardly be overstated. By encoding postmodern gender ontology in the language of international human rights law, the Yogyakarta Principles transform a contested philosophical position into an enforceable legal norm — one that can be deployed against Islamic legal systems, religious communities, and educational institutions that maintain the alternative account of gender as a dimension of divinely created human nature. The Islamic jurisprudential response to this move must therefore be both philosophical — engaging the ontological premises of the principles — and political — challenging their claim to derive from universally accepted human rights norms rather than from a specific and contested Western philosophical tradition.⁹

The Postmodern Gender Fluidity Paradigm: Theory, Genealogy, and Critique

Performativity, Construction, and the Dissolution of the Gendered Self

The postmodern gender fluidity paradigm draws its primary philosophical resources from Judith Butler's theory of gender performativity, first systematically articulated in *Gender Trouble* (1990). Butler's argument, building on Foucault's genealogical analysis of sexuality as a historical construct produced through power-knowledge regimes and on Derrida's account of iterability, is that gender is not the expression of a pre-given gendered nature but is itself constituted through the iterative repetition of gendered performances: "there is no gender identity behind the expressions of gender; that identity is performatively constituted by the very expressions that are said to be its results."¹⁰ On this account, the male-female binary is not a disclosure of natural human reality but a "regulatory fiction" — a normative fantasy produced by the repetition of heteronormative social practices and enforced by the social sanctions that punish those who fail to reproduce it.

The philosophical move from performativity theory to gender fluidity is direct: if gender identity is not a given but a performance, then it admits of variation, recombination, and the deliberate subversion of normative categories. The "gender fluid" individual — who declines identification with either pole of the male-female binary, or who identifies with different genders in different contexts, or who performs gender in ways that deliberately deviate from normative expectations — is, on the Butlerian account, not suffering from a disorder of identity but exercising the creative freedom that the performative character of gender makes available to all persons.¹¹ The political implication is that normative gender categories are not features of divinely created human nature but instruments of social control whose disruption is a form of political resistance — a position that transforms the personal experience of gender non-conformity into an act of civilizational critique.

The Incoherence of Gender Fluidity as a Lived Framework

Despite its philosophical sophistication and its cultural influence, the gender fluidity paradigm contains incoherences that are not incidental but structural. The most fundamental concerns the relationship between the theory and the experience it purports to describe. Gender is a real and often deeply distressing psychological phenomenon. Postmodern gender theory attempts to address this phenomenon by dissolving the normative categories that generate the experience of disconnect: if



male and female are not fixed natural categories but regulatory fictions, then the person who does not feel at home in their biological sex is not disordered but liberated from an oppressive norm.¹²

The difficulty is that this theoretical resolution does not, in practice, dissolve the distress. Clinical evidence consistently indicates that gender dysphoria in adolescence frequently remits without medical intervention, and that the social and medical transitions encouraged by gender ideology — puberty blockers, cross-sex hormones, surgical procedures — carry significant irreversible consequences whose long-term outcomes are not well-established.¹³ The theoretical celebration of gender fluidity as liberation collides, in the clinical reality of the persons it purports to serve, with the complex and often painful reality of human embodiment — a reality that the Islamic account of human nature as *fiṭrah*-grounded and embodied does not dissolve in theory but addresses with pastoral seriousness in practice.

The Self-Refuting Character of Anti-Essentialist Gender Politics

The deeper philosophical difficulty with the gender fluidity paradigm concerns its internal logical structure. The political program of gender fluidity — the campaign for legal recognition of self-defined gender identity, the inclusion of non-binary categories in official documentation, the prosecution of those who refuse to use preferred pronouns — depends for its moral force on the claim that the individual's felt gender identity deserves recognition and protection because it is authentically their own. But this claim presupposes a stable authentic self whose felt identity deserves respect — precisely the kind of stable self that the anti-essentialist philosophical framework categorically denies.¹⁴

This performative self-contradiction — the deployment of authenticity claims in the service of a theory that denies authentic selfhood — has been identified by critics across the philosophical spectrum. From within Western philosophy, Martha Nussbaum's critique of Butler and Sally Haslanger's critical realist alternative both identify the incoherence of a political program that mobilizes the language of authentic self-expression in the service of a philosophical framework that dissolves the self.¹⁵ From within the Islamic intellectual tradition, this incoherence points toward the deeper anthropological question: if there is no stable human nature, no given self, no divinely inscribed identity to be honored or violated, then on what grounds does the individual's gender self-definition command the respect and legal protection that the gender fluidity paradigm demands? The Islamic tradition's answer — that human beings deserve respect and protection precisely because they are beings of *fiṭrah*, creatures of God whose nature is a divine gift — is both philosophically more coherent and humanly more adequate than the postmodern alternative.

The Islamic Account of Privacy: Jurisprudential Foundations and Philosophical Depth

Privacy in the Qur'ān and Sunnah: The Protected Private Sphere

The Islamic tradition's engagement with privacy is not a modern adaptation of Western liberal concepts but a jurisprudential tradition of considerable antiquity and philosophical sophistication, rooted in Qur'ānic revelation and prophetic practice and elaborated across fourteen centuries of legal scholarship. The Qur'ānic foundations of Islamic privacy are multiple and interlocking. Sūrat al-Hujurāt (49:12) prohibits *tajassus* — spying and surveillance — as a violation of the private sphere: "O believers, avoid much suspicion — indeed, some suspicion is sin — and do not spy on one another,



and do not speak ill of one another behind each other's backs."¹⁶ Sūrat al-Nūr (24:27–28) establishes the inviolability of the domestic space through the requirement of seeking permission before entering a household — a principle whose jurisprudential implications extend far beyond mere domestic manners to constitute a fundamental protection of the private sphere from public intrusion.

The *ḥadīth* literature elaborates these Qur'ānic principles with considerable precision. The Prophet's declaration "whoever peers into another's house without permission, it is permitted to put out his eye" (reported in both Bukhārī and Muslim), while not to be understood as a literal prescription for contemporary application, establishes the principle that the private sphere commands a protection so fundamental that its violation justifies forceful resistance. Al-Nawawī's commentary on this *ḥadīth* in his *Sharḥ Ṣaḥīḥ Muslim* specifies that the protection extends to any form of surveillance or intrusion — visual, auditory, or otherwise — that violates the reasonable expectation of privacy within the domestic sphere.¹⁷

Awrah, Satr, and the Jurisprudential Architecture of Bodily Privacy

The most distinctively Islamic dimension of the tradition's privacy jurisprudence is the concept of *ʿawrah* — the parts of the body whose exposure to others is governed by specific rules of covering and disclosure that vary according to context, relationship, and gender. The term *ʿawrah* (from the root *ʿ-a-w-r*, denoting vulnerability, deficiency, and the need for protection) encompasses not merely the physical body but the entire domain of personal vulnerability — the aspects of the self that require the protection of concealment to maintain dignity and integrity.¹⁸ The jurisprudential rules governing *ʿawrah* — elaborated across the four major Sunni *madhāhib* with considerable sophistication and appropriate contextual variation — constitute a systematic account of the relationship between the body, privacy, and social order that is far richer than anything the liberal privacy framework provides. The complementary concept of *sitr* — covering, concealment, protection from exposure — extends the *ʿawrah* framework from the physical body to the broader domain of personal and domestic life. Ibn Ḥajar al-ʿAsqalānī's discussion of *sitr* in *Fath al-Bārī* identifies the protection of the private sphere as both an individual right and a communal obligation: the community is not merely permitted to respect the privacy of its members but is positively required to do so as a dimension of the collective responsibility for the moral and social fabric of the Islamic community.¹⁹ This communal dimension of Islamic privacy — the understanding that the right to privacy is embedded in a network of mutual obligations rather than asserted by an isolated individual against all other claims — distinguishes the Islamic account fundamentally from the liberal framework, which understands privacy as an individual right that can be asserted against communal as well as state authority.

Satr al-ʿAwrāt and the Ethics of Non-Disclosure

Perhaps the most ethically significant dimension of the Islamic privacy tradition is the concept of *satr al-ʿawrāt* — the covering of faults, the protection of the private failures of individuals from public exposure. This concept, grounded in the *ḥadīth* "whoever covers the fault of a Muslim, God will cover his fault on the Day of Judgment" (reported by Bukhārī, no. 2442), extends Islamic privacy from the bodily and domestic domains to the moral and spiritual domain — the protection of individuals from having their private moral failures, struggles, and deviations exposed to public judgment.²⁰

The implications of this concept for the pastoral treatment of individuals experiencing gender identity distress are direct and important. The Islamic tradition's prohibition of *tajassus* and its positive ethic



of *satr al-‘awrāt* jointly establish a framework for the treatment of gender-questioning individuals that is characterized by genuine respect for their private struggle, prohibition of intrusive surveillance or public exposure, and the positive obligation to protect them from communal humiliation or condemnation. What the Islamic privacy tradition does not establish — and what the liberal-postmodern synthesis wrongly claims it requires — is the public validation of their gender self-definition as an authentic and normatively authoritative expression of their identity. The protection of the private struggle and the public affirmation of its ideological resolution are distinct ethical requirements, and conflating them — as the liberal privacy framework does — produces not the defense of genuine privacy but the juridical compulsion of communal affirmation.

Amānah and the Trust Dimension of Privacy

The Qur’ānic concept of *amānah* — trust, trustworthiness, and the responsible stewardship of what has been entrusted — provides a further dimension of the Islamic privacy framework that has no direct counterpart in the liberal account. Sūrat al-Aḥzāb (33:72) presents the divine *amānah* — the moral and spiritual trust that God offered to the heavens, the earth, and the mountains before offering it to the human being — as the defining characteristic of human existence: the human being is the creature that accepted the trust that creation itself declined.²¹ Applied to privacy, this concept establishes that personal information, domestic space, and the private lives of individuals are not mere possessions to be protected but trusts — entrusted to the individual and to the community — whose protection is a dimension of the fundamental religious obligation of trustworthiness (*amānah*).

This trust dimension of Islamic privacy distinguishes it from the liberal account in a philosophically significant way: whereas liberal privacy protects individual autonomy from communal intrusion, Islamic *amānah*-based privacy protects the sacred dimension of the person — the *khalīfah*-bearing creature whose private life is a domain of divine trust — from reduction to a social performance or a political identity. The person is not merely an autonomous subject but a *khalīfah*, a bearer of the divine trust; their privacy is not merely a political right but a dimension of the divine honoring of the human person. This richer account of privacy — grounded in the Islamic anthropology of *fiṭrah* and *karāmah* — is both philosophically more adequate and humanly more respectful than the liberal alternative.²²

The Islamic Account of Identity: Fiṭrah, Tawḥīd, and the Gendered Self

Identity as Discovery Rather Than Construction

The most fundamental difference between the Islamic and postmodern accounts of identity is the difference between discovery and construction. The postmodern account, grounded in Butler's performativity theory and Foucault's genealogical analysis, understands identity as a construction produced through the repetition of social performances: the self has no given nature to be discovered, only a social position to be produced and reproduced through normative iteration. The Islamic account, grounded in the Qur’ānic concept of *fiṭrah* and its classical elaborations, understands identity as a discovery: the human person has a divinely inscribed nature that is not produced by social performance but is constituted by the creative act of God, and the task of human life is to discover, inhabit, and faithfully actualize this given nature through the disciplines of Islamic formation.²³



This distinction is not a conservative preference for fixed categories over fluid ones; it is a fundamental disagreement about the metaphysical structure of human existence. Ibn Qayyim al-Jawziyyah's account of the relationship between *fiṭrah* and *naḥs* in *Madārij al-Sālikīn* describes the spiritual journey as precisely a process of discovery — the progressive unveiling of the divine inscription that constitutes the human person's authentic identity — and locates the primary obstacle to this discovery not in social norms that constrain authentic self-expression but in the *naḥs al-ammārah bi-l-sū'* (the soul that commands toward evil): the dimension of the self that pulls away from the divine inscription toward the disordered desires that obscure it.²⁴ The Islamic spiritual tradition, from al-Ghazālī's *Iḥyā'* to Ibn 'Arabī's *Fuṣūṣ al-Ḥikam*, is organized around the systematic dismantling of this obstacle and the progressive recovery of the authentic God-given self — a project that is the precise inverse of the postmodern celebration of identity construction through the performance of social norms.

The Gendered Dimension of *Fiṭrah*: Neither Essentialism nor Construction

The Islamic account of the gendered dimension of *fiṭrah* occupies a philosophically nuanced position that resists the binary opposition between biological essentialism and social constructionism that structures the Western gender theory debate. The Qur'ānic account of sexual difference — "*wa-khalāqnāhum dhakara wa-unthā*" ("We created them male and female," 75:39) — establishes gender as a dimension of divine creation rather than a social assignment, but does not reduce this creation to mere biological determination. Al-Ghazālī's account of the relationship between body and soul in the *Iḥyā'* understands the human being as a psychosomatic unity in which the body is the expression of the soul rather than a contingent material container — an account that is neither crudely biological (reducing gender to chromosomes) nor purely constructivist (reducing gender to social performance) but genuinely integrative: gender is a dimension of the whole person, encompassing biological, psychological, and spiritual registers, inscribed by God in the constitution of the creature.²⁵

This integrative account provides the basis for a philosophically serious engagement with the genuine complexity of gender-related experience without the dissolution of normative categories that postmodern theory requires. The classical Islamic jurisprudential treatment of *khunthā* — intersex conditions in which biological markers do not clearly indicate male or female sex — demonstrates a tradition that has always engaged with biological complexity through patient jurisprudential investigation rather than either forcing biological ambiguity into rigid categories or dissolving categories altogether. Al-Kāsānī's treatment in *Badā'i' al-Ṣanā'i'* and Ibn Qudāmah's in *al-Mughnī* both exhibit a jurisprudential sophistication about the relationship between biological reality and normative categories that is directly relevant to contemporary debates — demonstrating that the Islamic tradition has always understood that the normative binary is a feature of created human reality that must be tracked with intellectual care, not a simple given that biological variation can never challenge.²⁶

Tawḥīd and the Unity of the Islamic Self

Beyond *fiṭrah*, the concept of *tawḥīd* — the absolute unity of God — provides a further dimension of the Islamic account of identity that stands in direct opposition to the postmodern celebration of the plural, fragmented, multiply-performed self. Because God is One, the human being who is created in God's image (*khalq Allāh*) is called to a unity and integrity of self that reflects, at the creaturely level,



the divine unity. The concept of *istiqāmah* — straightness, integrity, the consistency of inner conviction and outer practice — captures this ideal: the human being whose identity is organized around the axis of the relationship with God, whose inner life and outer practice cohere in the service of the divine vocation, whose multiple social roles and cultural positions are held together by the unifying thread of *tawhīd*.²⁷

The contrast with the postmodern conception of identity — in which the plural, fragmented, contextually variable performance of different selves in different social contexts is celebrated as authentic freedom rather than deplored as disintegration — is philosophically complete. From the standpoint of *tawhīd*, the fragmented postmodern self is not liberated but lost: it has severed its connection to the divine unity that is the only genuine ground of personal integrity, and has substituted for the discovery of the authentic God-given self the anxious and unending labor of self-construction from available cultural materials. The Islamic spiritual tradition's account of *itmi' nān* — the profound peace of the soul that has found its rest in God (Qur'ān 89:27–30) — describes the goal of Islamic identity formation: not the fluid, self-creating subject of postmodern theory but the *nafs muṭma'innah*, the soul at rest.²⁸

Maqāṣid al-Sharī'ah and the Evaluation of the Liberal-Postmodern Synthesis

The Five Objectives and Their Relevance

The *maqāṣid al-sharī'ah* framework — the theory of the higher objectives of Islamic law, systematically articulated by al-Shāṭibī in *al-Muwāfaqāt* and developed for contemporary application by Jasser Auda and Muḥammad al-Ṭāhir Ibn 'Āshūr — provides the most systematic available Islamic methodology for evaluating social arrangements, legal frameworks, and cultural formations in terms of their contribution to or detracting from the essential goods of human existence.²⁹ The five objectives — the preservation of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) — together constitute a systematic account of the essential goods whose protection constitutes the purpose of Islamic law and whose violation constitutes a juridically serious harm.

Applied to the liberal-postmodern synthesis as it operates in the domain of gender identity and privacy rights, the *maqāṣid* framework yields a systematic critical assessment across multiple dimensions. With respect to *ḥifẓ al-dīn*: legal and institutional pressure on Islamic communities to validate gender self-definition as an authentic expression of human identity directly threatens the Islamic community's capacity to transmit and maintain its theological account of human nature. With respect to *ḥifẓ al-'aql*: educational programs that present gender constructivism as established scientific fact, and that impose social sanctions on those who question its premises, violate the Islamic commitment to genuine intellectual freedom and the formation of the *'aql* in the service of truth. With respect to *ḥifẓ al-nasl*: the systematic dissolution of the normative gender order threatens the anthropological foundations of the family as the primary institution of Islamic social life.³⁰

Privacy in the Maqāṣid Framework: Genuine Protection, Not Absolute Autonomy

It is essential, at this point, to distinguish the Islamic *maqāṣid*-based account of privacy from a mere rejection of privacy rights. The *maqāṣid* framework genuinely supports a robust protection of privacy as a dimension of *ḥifẓ al-nafs* (the preservation of life and personal integrity) and *ḥifẓ al-karāmah* (the



preservation of human dignity, recognized by Ibn 'Āshūr as a fundamental objective of Islamic law supplementary to the classical five).³¹ The Islamic prohibition of *tajassus*, the positive ethic of *sitr al-ʿawrāt*, and the Qurʾānic protection of the domestic sphere all constitute genuine privacy protections that the Islamic tradition has maintained for fourteen centuries and that deserve recognition in any account of the global history of privacy rights.

What the *maqāṣid* framework does not support is the extension of privacy rights to immunize all self-definition from normative evaluation — because this extension would undermine the very normative framework within which privacy itself has meaning and force. Privacy, in the Islamic account, protects the individual's private sphere from unauthorized intrusion — from the state, from neighbors, from communal gossip — but does not transform the private sphere into a zone of absolute individual sovereignty immune from the claims of divine revelation and the norms of the Islamic community. The person's private struggle with gender identity deserves protection, compassion, and non-disclosure; the ideological framework through which that struggle is interpreted does not thereby acquire the status of inviolable truth immune from Islamic theological and jurisprudential evaluation.³²

The Yogyakarta Principles from a Maqāṣid Perspective

The Yogyakarta Principles, evaluated through the *maqāṣid* lens, constitute a systematic violation of the essential objectives of Islamic law — not in spite of their human rights framing but, paradoxically, through it. By encoding postmodern gender ontology in the language of universal human rights, the principles transform a specific philosophical position into a legally enforceable norm that Muslim-majority states and communities are expected to adopt as a condition of their participation in the international legal order. This is not the protection of privacy — it is the juridical imposition of a specific metaphysical account of human nature that directly contradicts the Islamic account.³³

The appropriate Islamic response to this institutional development is neither silence nor reflexive political opposition but principled engagement: the articulation, in the language of comparative jurisprudence and philosophical anthropology, of the Islamic account of privacy and identity — demonstrating that this account provides genuine protections for the private sphere that the Yogyakarta Principles claim to advance, while refusing the postmodern ontological premises on which those principles rest. This argument — that Islamic law protects privacy more consistently and more philosophically coherently than the liberal-postmodern synthesis — needs to be made in international forums, in academic publications, and in the engagement with international human rights bodies that Muslim-majority states and Islamic civil society organizations increasingly undertake.

The Pastoral Dimension: Karāmah, Compassion, and the Islamic Response to Gender Distress

The Unconditional Dignity of the Person

Any Islamic jurisprudential and philosophical engagement with the challenge of gender fluidity that fails to engage seriously with the human reality of gender dysphoria — the genuine psychological distress experienced by individuals who feel a profound disconnect between their biological sex and their experienced gender identity — is both intellectually incomplete and pastorally inadequate. The principle of *karāmah insāniyyah* — the unconditional divine dignity bestowed on every human being by the creative act of God (Qurʾān 17:70) — demands that this reality be addressed with genuine



compassion rather than dismissed or condemned. The person experiencing gender identity distress is a creature of God whose dignity is inviolable, whose suffering is real, and whose welfare is the Islamic community's responsibility.³⁴

The pastoral tradition of Islamic scholarship — from the category of *ṭabīb al-qulūb* (the physician of hearts) in al-Ghazālī's spiritual psychology to the contemporary Islamic bioethics scholarship of Abdulaziz Sachedina — provides a rich framework for the compassionate engagement with individual suffering that does not require the endorsement of ideological frameworks that the Islamic tradition cannot accept.³⁵ The Islamic physician of souls does not tell the person experiencing gender distress that their suffering is not real, or that they are simply disobedient, or that the Islamic account of *fiṭrah* means their experience must be dismissed. What the Islamic pastoral tradition offers is a framework within which the suffering can be acknowledged, the person can be accompanied with genuine care, and the path toward their authentic flourishing — not the path prescribed by gender ideology but the path disclosed by the Islamic account of human nature — can be explored with patience and compassion.

Distinguishing the Person from the Ideology

A distinction that is philosophically essential to the Islamic pastoral response is the distinction between the person experiencing gender identity distress and the ideological framework through which that distress is currently being interpreted and addressed. The Islamic tradition's refusal to endorse gender self-definition as an authoritative expression of the person's authentic identity is not a refusal to take the person's experience seriously; it is a refusal to accept one specific and philosophically contested interpretation of that experience as the final word.³⁶ The gender ideology framework is not the only possible account of gender identity distress: clinical and psychological alternatives — including approaches that address the underlying psychological factors contributing to gender dysphoria without presupposing the postmodern ontology of gender fluidity — exist and deserve serious consideration within Islamic educational and pastoral contexts.

The Islamic community's pastoral obligation is to create environments in which individuals experiencing gender identity distress can find genuine support, genuine intellectual engagement with their questions, and genuine pathways toward the flourishing that the Islamic account of *fiṭrah* — the discovery and faithful actualization of the God-given self — makes possible. This requires Islamic educational and pastoral institutions that combine theological clarity about the Islamic account of gender with pastoral warmth, intellectual seriousness, and the genuine compassion that the prophet's own engagement with the vulnerabilities of his community consistently modeled. It does not require the adoption of an ideological framework that, whatever its genuine humanitarian motivations, rests on philosophical foundations that the Islamic tradition cannot accept.³⁷

The Prophetic Model and Its Contemporary Relevance

The prophetic tradition (*sunnah*) provides both the normative model and the pastoral tone for the Islamic community's engagement with individuals experiencing gender identity distress. The Prophet's (*ṣallā Allāhu 'alayhi wa-sallam*) treatment of the *mukhannathūn* — the gender non-conforming individuals documented in several *ḥadīth* — is characterized by a combination of



normative clarity and personal compassion that models the Islamic pastoral ideal. The *ḥadīth* scholarship on this category — discussed in the major compilations of Bukhārī and Muslim and analyzed extensively in the classical jurisprudential literature — demonstrates a tradition that distinguished carefully between biological intersex conditions, gender non-conforming behavior, and deliberate transgression of gender norms, applying different normative and pastoral responses to each.³⁸

This nuanced classical treatment of gender non-conformity is directly relevant to the contemporary challenge: it demonstrates that the Islamic tradition has always possessed the conceptual tools to engage gender complexity with both normative clarity and pastoral sensitivity, without either dissolving the normative categories or applying them with the blunt force that pastoral failure invites. The recovery and contemporary application of this classical pastoral wisdom — in Islamic educational institutions, in mosque communities, and in the training of Islamic scholars and counselors — is one of the most urgent practical requirements of the Islamic response to the challenge of gender ideology.³⁹

Critical Discussion

The Islamic critique developed in this article must acknowledge several genuine complexities that simple apologetics would ignore. The first concerns the historical record of Muslim communities' engagement with gender non-conformity: this record is, in many respects, one of failure rather than achievement. The social stigma, communal condemnation, family rejection, and, in extreme cases, violence directed at gender non-conforming individuals in Muslim-majority societies represent genuine violations of *karāmah insāniyyah* — violations that the Islamic tradition has the resources to condemn but that Islamic communities have not consistently condemned. Any Islamic engagement with gender ideology that fails to acknowledge and address this failure is intellectually dishonest and pastorally inadequate.⁴⁰

The second complexity concerns the Islamic tradition's own internal diversity on questions of gender. The engagement of scholars such as Amina Wadud, Riffat Hassan, and Kecia Ali with the Islamic textual tradition on gender raises hermeneutical questions that deserve rigorous scholarly engagement rather than dismissal. While this article has argued that the Islamic tradition's core account of gender as a dimension of divinely created human nature is philosophically robust and theologically authoritative, it acknowledges that the jurisprudential applications of this account in classical and contemporary scholarship are not uniform and that some applications have reflected cultural assumptions that the *maqāṣid* methodology requires to be distinguished from the foundational theological commitments they claim to express.⁴¹

The third complexity concerns the political context of the Islamic critique. The Islamic tradition's philosophical engagement with liberal-postmodern gender ideology occurs in a global political environment in which Muslim-majority states and communities face real and serious pressures to adopt gender ideological frameworks as conditions of international legitimacy, economic assistance, and diplomatic engagement. The Islamic response to these pressures must be simultaneously principled — refusing the philosophical premises of gender ideology on the grounds articulated in this article — and politically sophisticated, engaging with international human rights discourse in the language of comparative jurisprudence and philosophical anthropology rather than mere political confrontation.⁴²



Conclusion: Islamic Privacy, Islamic Identity, and the Civilizational Stakes

The convergence of liberal privacy discourse and postmodern gender fluidity theory into a single politically potent formation represents a genuine challenge to the Islamic account of human nature, the Islamic jurisprudential tradition, and the Islamic community's capacity to maintain and transmit its foundational convictions about the nature of the human person. This article has argued that an adequate Islamic response to this challenge requires engagement at three levels simultaneously: the philosophical, the jurisprudential, and the pastoral.

At the philosophical level, the article has demonstrated that the liberal-postmodern synthesis rests on contestable premises — about the nature of privacy, the structure of the self, and the relationship between individual identity and normative order — that are neither self-evident nor universally valid, and that the Islamic tradition's own account of privacy (grounded in *hurmat al-khāṣṣiyyah*, *ʿawrah*, *sitr*, and *amānah*) and identity (grounded in *fiṭrah*, *karāmah*, and *tawhīd*) constitutes a philosophically richer and more internally coherent account of the same values that liberal privacy claims to protect. At the jurisprudential level, the article has applied the *maqāṣid al-sharīʿah* framework to the evaluation of the liberal-postmodern synthesis, demonstrating that it threatens the essential objectives of Islamic law — particularly *ḥifẓ al-dīn*, *ḥifẓ al-ʿaql*, and *ḥifẓ al-nasl* — while the Islamic privacy tradition provides genuine and historically deep protections for the private sphere that deserve recognition in international human rights discourse.

At the pastoral level, the article has insisted that the philosophical and jurisprudential critique must be accompanied by genuine compassion for individuals experiencing gender identity distress, genuine engagement with the classical Islamic pastoral tradition's resources for the care of the gender non-conforming, and genuine commitment to the principle of *karāmah insāniyyah* as the non-negotiable framework within which all Islamic engagement with gender complexity must occur.

The civilizational stakes of this engagement are not abstract. The Islamic tradition's account of human nature — its understanding of the human being as a creature of *fiṭrah*, a bearer of *karāmah*, and a steward of the divine trust (*amānah*) — is the foundation on which Islamic social institutions, Islamic family law, and the Islamic educational tradition have been built across fourteen centuries. The erosion of this foundation through the adoption of postmodern anthropological premises — however they are packaged in the language of rights, inclusion, and compassion — would represent not merely a theological capitulation but a civilizational dissolution. The confident, philosophically rigorous, and pastorally serious articulation of the Islamic account of privacy and identity, in the face of the institutional pressures described in this article, is among the most consequential intellectual tasks confronting the Islamic scholarly tradition in the present moment.

Recommendations

For Islamic Jurisprudential Bodies and Scholars: Develop a systematic, peer-reviewed Islamic jurisprudential analysis of the Yogyakarta Principles and related international human rights instruments, articulating the Islamic privacy tradition's genuine protections for the private sphere while engaging critically with the postmodern ontological premises on which these instruments rest. This analysis should be conducted in English, Arabic, and other major languages to enable engagement with international human rights discourse at the appropriate scholarly level.

For Islamic Educational Institutions: Integrate systematic instruction in the Islamic jurisprudential tradition of privacy — the concepts of *ʿawrah*, *sitr*, *tajassus*, and *amānah* — into Islamic Studies



curricula, situating this tradition within the broader Islamic account of human nature and identity and enabling students to engage the liberal-postmodern synthesis with philosophical sophistication and jurisprudential grounding.

For Islamic Pastoral and Counseling Communities: Develop training programs for Islamic scholars, imams, and counselors in the compassionate, theologically grounded, and clinically informed pastoral engagement with individuals experiencing gender identity distress — drawing on the classical Islamic tradition of *ṭibb al-qulūb* (medicine of the hearts) and contemporary Islamic bioethical scholarship, and guided throughout by the principle of *karāmah insāniyyah*.

For Muslim-Majority State Governments: Engage international human rights bodies with a principled Islamic alternative account of privacy and dignity — one that demonstrates the depth and historical antiquity of the Islamic privacy tradition while challenging the philosophical premises of the gender fluidity paradigm on the grounds of comparative jurisprudence and philosophical anthropology rather than political confrontation.

For International Islamic Scholarly Networks: Establish collaborative research programs bringing together specialists in Islamic jurisprudence, Islamic philosophy, Islamic bioethics, and Western gender theory to produce the body of peer-reviewed scholarship that the Islamic intellectual engagement with the liberal-postmodern synthesis requires — scholarship of sufficient philosophical depth and academic prestige to participate in the international intellectual debate on its own terms.

Endnotes

- ¹ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1990), 33; John Rawls, *A Theory of Justice*, rev. ed. (Cambridge: Harvard University Press, 1999), 54–58.
- ² Universal Declaration of Human Rights, art. 12; International Covenant on Civil and Political Rights, art. 17; Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2006), Principle 3.
- ³ Wael B. Hallaq, *Restating Orientalism: A Critique of Modern Knowledge* (New York: Columbia University Press, 2018), 91; Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 1–30.
- ⁴ John Stuart Mill, *On Liberty*, ed. Elizabeth Rapaport (Indianapolis: Hackett, 1978), 9; John Stuart Mill, *Utilitarianism* (Oxford: Oxford University Press, 1998), 55–64.
- ⁵ Yogyakarta Principles (2006), Preamble; Yogyakarta Principles Plus 10 (2017), Principle 31.
- ⁶ Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Harvard University Press, 1989), 3–24.
- ⁷ For this critique of liberal neutrality see: Alasdair MacIntyre, *After Virtue: A Study in Moral Theory*, 3rd ed. (Notre Dame: University of Notre Dame Press, 2007), 220–225.
- ⁸ Yogyakarta Principles (2006), Preamble, definition of "gender identity."
- ⁹ For critical analysis of the Yogyakarta Principles from a comparative legal perspective see: Robert P. George and Ryan T. Anderson, eds., *Conjugal Union: What Marriage Is and Why It Matters* (Cambridge: Cambridge University Press, 2012), 1–25.



- ¹⁰ Butler, *Gender Trouble*, 33; Michel Foucault, *The History of Sexuality*, vol. 1, trans. Robert Hurley (New York: Pantheon, 1978), 92–102; Jacques Derrida, "Signature Event Context," in *Margins of Philosophy*, trans. Alan Bass (Chicago: University of Chicago Press, 1982), 307–330.
- ¹¹ See: Gayle Salamon, *Assuming a Body: Transgender and Rhetorics of Materiality* (New York: Columbia University Press, 2010), 1–30.
- ¹² American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. (Washington, DC: APA, 2013), 451–459, on gender dysphoria.
- ¹³ See: Michael Bailey and Ray Blanchard, "Controversies about the Causes and Diagnosis of Rapid Onset Gender Dysphoria," *Archives of Sexual Behavior* 46, no. 8 (2017): 2277–2280; Lisa Littman, "Rapid-Onset Gender Dysphoria in Adolescents and Young Adults: A Study of Parental Reports," *PLOS ONE* 13, no. 8 (2018): e0202330.
- ¹⁴ See: David Alvarez, "The Paradoxes of Postmodern Gender Theory," *Journal of Gender Studies* 18, no. 3 (2009): 265–279.
- ¹⁵ Martha Nussbaum, "The Professor of Parody," *The New Republic*, February 22, 1999, 37–45; Sally Haslanger, *Resisting Reality: Social Construction and Social Critique* (Oxford: Oxford University Press, 2012), 221–247.
- ¹⁶ Qur'ān 49:12. Translation adapted from Abdel Haleem, *The Qur'an: A New Translation* (Oxford: Oxford University Press, 2004), 337.
- ¹⁷ Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, no. 6902; Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 2157; Yaḥyā ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1392 AH), 14:129–131.
- ¹⁸ Ibn Manẓūr, *Lisān al-'Arab*, s.v. 'w-r (Beirut: Dār Ṣādir, 1955), 4:614–617; 'Alā' al-Dīn al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 7 vols. (Beirut: Dār al-Kutub al-'Ilmiyyah, 1986), 1:270–290.
- ¹⁹ Aḥmad ibn 'Alī Ibn Ḥajar al-'Asqalānī, *Fath al-Bārī Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Muḥibb al-Dīn al-Khaṭīb, 13 vols. (Beirut: Dār al-Ma'rifah, 1379 AH), 12:488–492.
- ²⁰ Al-Bukhārī, *Ṣaḥīḥ*, no. 2442; al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, 16:187–190.
- ²¹ Qur'ān 33:72; Muḥammad Asad, *The Message of the Qur'an* (Gibraltar: Dār al-Andalus, 1980), commentary on 33:72.
- ²² Ismail Raji al-Faruqi, *Al-Tawḥīd: Its Implications for Thought and Life* (Herndon: IIIT, 1992), 167–188.
- ²³ Qur'ān 30:30; Ibn Taymiyyah, *Dar' Ta'arūḍ al-'Aql wa-l-Naql*, ed. Muḥammad Rashād Sālim, 11 vols. (Riyadh: Jāmi'at al-Imām, 1979–1983), 8:349–367.
- ²⁴ Ibn Qayyim al-Jawziyyah, *Madārij al-Sālikīn*, ed. Muḥammad al-Mu'taṣim Billāh al-Baghdādī, 3 vols. (Beirut: Dār al-Kitāb al-'Arabī, 1996), 1:93–115.
- ²⁵ Abū Ḥāmid al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, 4 vols. (Beirut: Dār al-Ma'rifah, n.d.), 3:3–19; Qur'ān 75:39.
- ²⁶ Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, 6:383–386; Ibn Qudāmah, *al-Mughnī*, ed. 'Abd Allāh al-Turkī and 'Abd al-Fattāḥ al-Ḥulw, 15 vols. (Riyadh: Dār 'Ālam al-Kutub, 1997), 9:32–44.
- ²⁷ Qur'ān 41:30; Muḥammad Iqbāl, *The Reconstruction of Religious Thought in Islam* (Lahore: Institute of Islamic Culture, 1989), 77–103.
- ²⁸ Qur'ān 89:27–30; Ibn Qayyim, *Madārij*, 3:201–230.



- ²⁹ Abū Ishāq al-Shātibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, ed. ‘Abd Allāh Darrāz, 4 vols. (Beirut: Dār al-Ma‘rifah, n.d.), 2:4–20; Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law* (London: IIIT, 2008), 1–20.
- ³⁰ Muḥammad al-Ṭāhir Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, ed. Muḥammad al-Ḥabīb Ibn al-Khūjah (Doha: Wizārat al-Awqāf, 2004), 2:342–378.
- ³¹ Ibn ‘Āshūr, *Maqāṣid*, 1:287–330; Auda, *Maqasid*, 197–224.
- ³² Al-Shātibī, *al-Muwāfaqāt*, 2:14–20.
- ³³ For the political and legal implications of the Yogyakarta Principles for Islamic states see: Mashood Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2003), 162–188.
- ³⁴ Qur’ān 17:70; Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld, 2001), 267–291.
- ³⁵ Al-Ghazālī, *Iḥyā’*, 3:47–65; Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (Oxford: Oxford University Press, 2009), 143–178.
- ³⁶ Tariq Ramadan, *Western Muslims and the Future of Islam* (Oxford: Oxford University Press, 2004), 183–210.
- ³⁷ See: Jonathan Brown, *Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy* (London: Oneworld, 2014), 213–238.
- ³⁸ Al-Bukhārī, *Ṣaḥīḥ*, no. 5886; Muslim, *Ṣaḥīḥ*, no. 2180; see the detailed analysis in: Everett Rowson, "The Effeminate of Early Medina," *Journal of the American Oriental Society* 111, no. 4 (1991): 671–693.
- ³⁹ Sachedina, *Islamic Biomedical Ethics*, 143–178; Ramadan, *Radical Reform*, 187–210.
- ⁴⁰ For documentation of failures of Islamic pastoral care for gender non-conforming individuals see: Scott Siraj al-Haqq Kugle, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims* (Oxford: Oneworld, 2010), 1–40. Note: the article critiques Kugle's normative conclusions while acknowledging the validity of his empirical documentation of pastoral failures.
- ⁴¹ Amina Wadud, *Qur’an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1999), 1–36; Kecia Ali, *Sexual Ethics and Islam* (Oxford: Oneworld, 2006), 1–20; Haslanger, *Resisting Reality*, 221–247.
- ⁴² Baderin, *International Human Rights and Islamic Law*, 162–188; Hallaq, *Restating Orientalism*, 288–310.