

An Introduction to the Public and Private Debate in Islam

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THE separation of what is “private” from what is “public” may in some sense be as old as human existence itself. However, the escalating emphasis on the private domain, and the central concern for protecting that which is private from prying intruders, has in our times gained unprecedented intensity. Governments have long infringed on the private space of their subjects, and in our time astonishing technological developments and mind-boggling electronic communication devices have come to the aid of governments in threatening private boundaries.

What demarcates the Public from the Private undoubtedly depends on a complex set of cultural, political, and economic factors, and as a result of the interaction between such factors the line of demarcation inevitably has had to shift. From among the cultural factors, religion stands out as one of the most decisive components in delimiting the two spheres. Religions distinctly recognize and sanction a sphere of private action for individuals. In Western religions—that is, the Abrahamic traditions—human identity and individuality are emphasized through the recognition and sanctioning of private life. The present paper aims to shed some light on the debate around notions of the Public and the Private in Islamic culture.

How does Islam, as one of the vibrant religions of the contemporary world, differentiate between the public and private? What is the extent of privacy in the Islamic point of view? What similarities

and differences are there between the Islamic and Western perceptions of privacy? In general, what are the distinguishing characteristics of Muslims' private lives? Does the extent of private sphere change, or perhaps shrink, in a society that is run according to Sharia (the Islamic tradition)? What is the extent of government authority, including that of a religious government, regarding an individual's right to privacy? What is the Islamic point of view on such concepts as the individual, family, society, and government?

The present paper takes proposes an introductory, yet innovative, discourse for formulating a framework for a meaningful discussion of questions like these. It provides an introduction to an otherwise complex subject.

The basic distinction between that which is private and that which is not can be visibly discerned in the fields of Islamic ethics, law, and jurisprudence. A systematic discussion of the private and public domains, however, as independently significant subjects of inquiry, remains undeveloped. Here we shall first present a brief description of what we mean by the two concepts, and then proceed to establish the principal tenets of our reasoning. Drawing on two corollaries derived from our definition of privacy, we present the Islamic point of view based on two axes, namely the forbiddance of unwarranted inquiry on the one hand and, on the other, recognizing the right to freedom in action. We then turn to issues of relevance to the private domain, namely the Islamic principle of "ordaining good and forbidding evil" (*al-amr bi al-ma'ruf wa al-nahy 'an al-munkar*), the legitimacy of governmental regulation (*hisba*), and the extent of the authority the Islamic state exerts. In conclusion, we emphasize the need for a heightening and intensification of a sense of religious conscience on an individual basis.

1. The Meaning of Privacy and Private Matters

The terms "private" and "public" are not rooted in the heart of Islamic doctrine. The two terms occur neither in the Qur'an nor

in the traditions conveyed from the prophet and the imams. Islamic jurisprudence does not recognize these terms either. It is incumbent on us, therefore, to explicate what we mean by these terms in the first place, and then to attempt to locate within the Islamic tradition what may be the closest references and rulings regarding these concepts. "Private" and "public," as intuitive and obvious as their meanings may appear, are not amenable to straightforward definition. No unanimity obtains with regard to their meaning either. Three distinct yet related meanings may be gleaned for what is "private" from the available literature (Boruch, 2001: 1267): first, that which is personal or exclusive to the individual; second, that which one would rather keep concealed and protected from others; third, that over which the individual should exercise exclusive authority and control. Our use of the term "private" falls along those enunciated in the second and third criteria. The first criterion is not clear at all. When the two conditions are realized—namely, when an issue had rather be kept hidden from and inaccessible to others, and when it falls exclusively within the decision-making authority of an individual, then that issue is "private." Clearly, one could decide to share parts of this sphere with other people he or she trusts and at the same time keep most of it concealed and private. One's private wishes, desires, hopes, and desires, and most of one's personal memories, may fall into this sphere. The private sphere is the sole prerogative of the individual: others may not decide for or even dispense advice regarding matters in this sphere. The first criterion guarantees that information is withheld from other parties, and the second criterion rules out any claims to guardianship and authority from the others. Wealth and property, housing and occupation, religion and ideology, body and clothing, political subscriptions and social affiliations are all considered private matters according to these criteria. It may be an issue may be covered by both criteria. In some cases, access to information constitutes the private nature of an issue, while in others access to information is not the sole condition of privacy; it may be a question of

who decides to disclose information. Do others have a right to decide or to alter the course of decision making? Can we say some people have “no” right to privacy—for example, prisoners, patients committed to psychiatric institutions, or underage children? What about people living under totalitarian regimes that strip them of any right to privacy? The more powerful the regime, the fewer rights to privacy left for its subjects.

In contrast, in the public sphere, nothing is kept secret from or rendered by the citizens: the management, improvement, and alteration of the public sphere are the prerogative of the citizenry. The public domain is the sphere of influence for governmental authority (*Dictionary of the Social Sciences*, 2002: 392). This domain is jointly owned by all citizens (Ha’eri Yazdi, 1994: 95, 99-108), and as a transparent container, its contents are in everyone’s plain view (unless there is agreement that matters pertaining to defense and security should be placed under the supervision of their representatives, and not everyone).

One should not inquire into private matters: prying into these matters should be forbidden. If someone happens to come across private information, further disclosure of that information is not permitted. Managing the affairs of the private domain is the exclusive right of the individual, who also has the right to determine his or her own fate. No one else has priority over an individual in his/her private domain.

Islamic jurisprudence, in accordance with the two criteria given here, fully acknowledges the sanctity of the private domain: there is ample admonition against prying into the affairs of others; preventive measures can be found that guarantee the privacy of personal information and positively support individual rights to property and promote freedom in determining one’s course of life. There can be no doubt that Islamic law can fully accommodate the notion of the private domain. The debate lies at delimiting the private domain from what is regarded as public, and we should take account of a number of Islamic rulings that appear to contradict the aforementioned criteria of privacy.

2. Principles of the Private-Public Debate

Now that we have established the criteria to distinguish between private and public matters, it is necessary to further elaborate on the implications of the distinction. Doing so will help us clarify any ambiguities that may arise in cases that are shades of gray rather than black and white.

According to the standards of Sharia, the *prima facie* status of every issue is that of being not public. In other words, all matters are assumed to belong to the private domain, unless and until they are proved to belong to the public sphere. One may not ask questions about the affairs of other people unless proof is supplied that such issues to be questioned belong in the public domain. Subjecting citizens to search or investigation goes against the *prima facie* principle (Montazeri, 1411, Vol. 2: 539). Obtaining a search warrant requires legitimate proof and sufficient justification. Yet every citizen is fully entitled to make decisions with regard to himself or herself, while others interfering in matters of his or her concern would be required to present just cause. This is the principle of "excluded *wilaya* (guardianship)" (Ja'far, n.d.: 37; Ansari, n.d.: 45). It implies that no one has the right to interfere in the affairs of an individual without specific divine permission to do so. This is considered a basic postulate and as such does not require reasoning or proof.

According to this analysis, matters relating to the individual are only that individual's prerogative, and any investigation or interference in such matters is not allowed without the individual's consent. Any inquiry into such matters should be based on legitimate reasoning in accordance with religious law. Similarly, no individual has the right to impose his or her will on matters of interest to other individuals (i.e., the public domain) unless divine permission is given. Now we should examine the following: in what cases, by virtue of legal argument, can we proceed to investigate into and interfere with an individual's affairs without his or her consent? Which matters are entrusted exclusively to the

individual, irrespective of everybody else's opinion? Deliberation in this regard shows that this debate rests on the grounds of human reason, and any deviation asserting priority over reason requires legitimate religious argument (and proof).

3. The Requirement of Piety in Religious Private and Public Spheres:

A pious individual is devoted to God. He or she has freely chosen to align his or her life's work with his or her religious devotion. Islam is the name of all religions descending from Abraham (3:19; 22:78), and the essence of it is surrendering to the will of God. A faithful individual orients all dimensions of his life according to the principles of his faith. On this basis, there is no difference between his private and public spheres of thought and action. The life of the faithful is one of which two entities are aware, the individual and God. Life is conducted according to divine command, and the believer has freely chosen to pursue God's satisfaction alone. A non-believer thinks that no one witnesses his or her deeds. The faithful is aware of divine supervision, which he or she heartily welcomes. The faithful is not forced into abiding by divine revelations. He may, on occasion, overlook this or that requirement and as such commit a sin. Committing a sin of course goes against the requirements of the faith, and subjects the sinner to punishment. The believer stands to be punished if he or she does not repent. If he or she repents, however, he or she will be absolved. Not every sin is necessarily punished in the temporal world: punishment may be handed out on Judgment Day. A faithful individual is not required to confess the sins that he has committed to someone else if proving what he has done carries a worldly punishment (except when another person's rights have been compromised); it is enough for the sinner simply to repent before God. In other words, a sin against God committed in private carries no obligation for the sinner to confess: it would be in the best interest of the religion for the sinner not to publicize his or her sin (Montazeri, 1408-1411, Vol.2: 544). Islam regards the rela-

tionship between the individual and God a direct relationship, and no intermediary, including the clergy, is required in an individual's act of repentance. No one has the right to impose piety on the people, or to force individuals to perform religious duties and obligations. Should an individual fail to perform a religious requirement or should commit an act that prohibited by religion, for whatever reason, that is the individual's choice and responsibility alone (i.e., the individual's private sphere).

Islam also has rules for the public domain, which Muslims are required to observe. Therefore, in addition to managing the public domain in an Islamic society in accordance to the consent of the Muslim constituency, satisfying God's commandments is also required. This is assured by adhering to Islamic codes of conduct. The Qur'an speaks to Muslims (Montazeri, n.d.: 499). So long as Muslims freely elect to manage their society in harmony with the provisions of Islam, the management of their society will be Islamic, and whenever for whatever reason these provisions are transgressed, the society will no longer be an Islamic society, even though it may be viewed as a society of Muslims.

Has God appointed a specific body or institution to manage the public domain? Almost all Muslims concur that the prophet was also a judge and arbiter of disputes and the ruler of the public domain. Following the prophet is the religious duty of all Muslims, as clearly stated in the Qur'an (4:58-60, 65 and 105; 24:62-63). The verse the "prophet is closer to the faithful than he is to himself (33:6)" holds, and encompasses all of the prophet's edicts, even those relating to the private lives of Moslems.¹ Shiites, aside from the prophecy, hold the same authority as that of the prophet for the 12 "Innocent Imams." But after the Innocent Imams (Toosi, 1407: ch. 5; Helli, 1407: ch. 5), has a specific person or group of people been appointed to hold such authority? The collective answer of all Muslims to this question is negative, meaning that no one can claim that he or she is acting as the appointed steward of God on earth (Kadivar, 1379, 1379-1381).

But in general neither of these two approaches is unanimously agreed upon in the two great sects of Islam.

4. Strict Injunction Against Search and Investigation

The first criterion of private life was that a person may choose to keep certain matters concealed from and inaccessible to others. This criterion implies a prohibition on search and investigation, and a prohibition on the dissemination of personal information and matters of the private sphere. Both have been clearly stated in the Qur'an (49:12).

In his verse, God admonishes the faithful to refrain from suspicion and skepticism toward others, and then to refrain from prying into the personal affairs of others. The prohibition expressed in this verse has legal implications. Our discussion is concerned here with the subjection to search and investigation whatever an individual has chosen to conceal. The Qur'an not only admonishes against prying into each other's personal spheres, but also forbids any dissemination of such information (24:19).

Religious faith guarantees the sanctity of private life. The faithful do not the right to pry into other people's personal affairs, nor do they have the right to disseminate any such information that may have become known to them. The clear implication of these two religious injunctions is the full religious guarantee of the individuals' sphere of privacy. Is this guarantee only applicable to Muslims, or does it include all members of society, Muslim as well as non-Muslim? Although the prohibition quoted from chapter 24 is about the faithful, the forbidding of unwarranted investigation given in chapter 49 is all-inclusive, and all citizens of an Islamic society, Muslim or non-Muslim, should be guaranteed freedom in their private conduct. Although most of the quoted passages and the general debate around them has been about Muslims, no religious reason has been put forward that would justify investigating the private

domain of non-Muslims, and one cannot assume the opposite of a ruling about Muslims to hold for non-Muslims.

The prophet has directed: "Those, who acknowledge God in words, and not at heart, do not find fault with their fellow Muslims. The wrongdoing of those who do so become the subject of God's scrutiny, and when God looks into someone's wrongdoing then all shall be truly exposed" (Koleini, 1388, Vol. 2: 353).

Imam Ja'far Sadiq forbade exposing the faithful, and when he was asked if he meant this in a physical sense, he replied: "No, I mean revealing their secrets" (Koleini, 1388, Vol. 2: 385). This prohibition against dissemination of private information does not apply only to the information about others; the individual is also forbidden from announcing his or her own wrongdoings. Imam Ali admonished a man who confessed to adultery and advised that he "should have kept his sin to himself." (Aameli, n.d.: 328). Sharia is inclined to keep sins private and concealed from the public eye. The prophet noticed: "a ruler who seeks to expose the faults of its subjects is bound to drive them to falter" (Beihaghi, n.d.: 333; Ghortobi, n.d.: 333).

Entitlement to personal opinion is also a corollary of the injunction against revealing private information. Should an individual feel disinclined to state his or her opinion, others are not allowed to question him or her as to the contents of his or her thoughts. Furthermore, no one should be subjected to punishment for subscribing to an opinion—any opinion. An opinion may be considered right or wrong, correct or incorrect, but no opinion is subject to punishment. Punishment may apply to a deed—or more aptly to a misdeed—not to an opinion. Islam has disallowed the questioning of other people's opinion, and it has not prescribed any worldly punishment for subscribing to wrong opinions. I have in a separate paper argued for the full compatibility between freedom of opinion and religious belief in Islam (Kadivar, 2001), and have shown that, contrary to the current practice, no one can be punished in the name of Islam for converting from his religion or for changing his mind. There is no justification in the Qur'an for the punish-

ment of those who choose to leave Islam—despite widespread opinion to the contrary.

One of the companions of the prophet reported that ‘Umar b. Khattab, the second caliph, was roaming in the city one night when he heard shouting and cursing coming from a residence; he then peeked over the perimeter and started admonishing the man: You, the sinner, do you think that God will ignore your sins, as you’re sinning against him? The man replied: Woe, commander of the faithful, do not rush to judgment; if I sinned once, you sinned three times. God has forbidden you to look into someone’s fault (49:12), and you have done otherwise. God has commanded you to enter peoples’ homes through the front door (2:189), and you have intruded over the fence. And you have approached me without salutation, and God has commanded you not to enter into other peoples’ homes without their permission, and without saying “greetings” (Salam) when you enter their premises (24:27). ‘Umar reportedly asked for the man’s forgiveness, and went on only after he was granted forgiveness (Hendi, 1390, Vol. 3: 808).

This incident in early Islamic history is indicative of people’s freedom at the time and also clearly portrays the sanctity of the private sphere. Committing a sin in the private sphere is not the government’s concern. If there is a consequence to sin (failure to repent), it also belongs to another domain—that between God and the sinner. It does not belong to this world, and it is not within the authority of the ruler. In summary, one can claim that Islam recognizes the sphere of private life. Private information and the affairs of the individual are left to the individual’s recognizance, and no one, not even the government, has the authority to inquire or investigate anyone’s private domain. Furthermore, in the case of having been privy to such information, no one has the right to disseminate another’s private information. Probing for personal opinion is prohibited. If someone has committed a sin in his or her private domain, there is no need to confess it before anyone, or to any authority, including a judge or the government; the preference is to repent and keep it unpublicized. In the Sharia, intruding into a

person's private domain, searching and probing into it, and disseminating such information is itself a sin, and in addition to worldly penalties, it is subject to divine punishment (see, for example, Najafi, n.d.: 660). Therefore, the rights of the individual in his or her private sphere are guaranteed to a higher degree in an Islamic society than in a secular one.

5. Freedom of Action in Private Sphere

One of the principal attributes of the private domain is the right to free choice; the individual is free to make any arrangements in his or her private sphere, and no one else is entitled to set priorities for him or her in that space. The prophet in a famous tradition clearly stated: "People have control over their property" (Majlesi, 1363, Vol. 2: 272; Aameli, n.d.: 381). No one can intrude on another individual's property without the owner's consent. Jurists have derived a jurisprudential principle from this tradition, known as "the principle of sovereignty," which implies that whoever controls a piece of property is recognized as its rightful owner (Montazeri, 1408-1411, Vol. 1: 495). Another principle, in support of private life in the Islamic culture, is the "principle of lack of *vilaya* (guardianship)" (Montazeri, 1408-1411, Vol. 1: 27). No one has the right to oversee and set priorities for others, unless having credible religious appointment by the divine. The result of these two principles is individual freedom in private life, within the framework of Sharia. On this basis, selecting an occupation, spouse, name, form of living, and clothing are the components of private life. Adhering to the Islamic criteria, people are completely free in the private domain.

The individual, in his or her private space—which we call home—is on his own, and away from the public eye. There, he or she would be free to act, even though it may be a sin. There is only one condition to this freedom, which is that it cannot harm anyone else. That is all. But as soon as the individual enters the public

domain, there are limitations that are imposed on him or her by the law, in any society. Individuals in the public domain are limited with regard to clothing, sexual behavior, and certain forms of social conduct that may vary from one culture to another. In an Islamic society—one in which the principal rulings of Islam underlie the penal code—specific limitations in the public domain are imposed on individuals. This can be compared to limitations imposed in other cultures, including those in the West. These limitations, which can be grouped into such categories as clothing, sexual relations, eating, and drinking, along with economic and even religious relationships, show the private sphere in Islamic culture to be smaller than the norm in the contemporary world, and accordingly show the Islamic public domain to be further stretched than that prevalent elsewhere in the world. In the context of religion, to overstep these boundaries is to commit a sin, and in a society whose laws are based on Sharia, committing a sin in the public domain is a crime, and subject to punishment. What is required to be observed in the public domain is the outer manifestations of religious conduct, be it in performing trade or in performing religious rituals. It is evident that the essence of religion cannot be evaluated, except by the individual conscience and by God. Therefore, even in the public domain, the intent and the essence of an act is not enforceable, and only the outer or visible layer of the acts must comply with legal requirements. Since religious edicts encompass all aspects of human life, and the obligatory rulings separate a considerable number of actions into either necessary to carry out or necessary to abstain from, leaving the necessities and committing the forbidden acts that would on the surface reflect negatively in the public domain have been prohibited. “Commanding good and prohibiting evil” (*al-amr bi al-Ma’ruf wa al-nahy ‘an al-munkar*) is one of the most important Islamic necessities, without which one cannot sufficiently resolve the public-private debate in Islam. In other words, individual freedom in the public domain becomes limited by this necessity; therefore, we need describe the scope of its effect and the sphere of its influence.

6. "Commanding Good and Prohibiting Evil"
(*al-amr bi al-Ma'ruf wa al-nahy 'an al-munkar*)

According to this indubitable Islamic principle, much emphasized in the Qur'an and throughout the Islamic tradition (Khansari, 1405, Vol. 5: 399), all Muslims are required to speak out and act for what is right and against that which is wrong: it is a command that covers every individual, party, or government (rulers, sovereigns, etc.). Certain conditions and protocols obtain, including taking into account the likelihood of the act leading to an effective change in the behavior of the addressee. Muslims are obligated to object sincerely to the perpetration of any offense, be it a wrongdoing or failure to act rightly; they are then urged to voice their demands and concerns; and finally they are required to oppose the offender. The three phases of this protocol consist of expressing dismay, turning away, or gesturing disagreement or dismay. The second step, which is a vocal objection, may certainly comprise interference in the private lives of the individuals, and if it were not for the religious permission, and even insistence, it would not be justified. These two steps are required of everyone, but it will suffice if only one person attends to it; so long as it is being addressed, the requirement is no longer binding on everyone. In other words, it is everyone's religious duty, and even in the absence of religious government, it is to be carried out. The third phase, meaning physical opposition, which includes inflicting harm and possibly taking someone's life, under the authority of Islamic government, is considered the religious prerogative of the government (Khomeini, n.d.: 481)—to which we will separately attend—and in the absence of a religious government, it is apparently everyone's religious duty. However, the final phase, or the two final steps, have usually not been permitted, unless specifically commanded by a jurist qualified to call for such actions.

Although the prohibition against the search and investigation of the private sphere remains intact, all apparent obligations and

prohibitions are subject to the principle of "commending good and prohibiting evil," and citizens of an Islamic society are not allowed to visibly commit sins in the public sphere. If one does break the law, he or she should expect to be confronted with displays of dissatisfaction, unpleasant language or direct notice, and possibly with physical intervention by other members of the Muslim community. The significance of this principle lies in the divine emphasis on complying with religious rules in the public sphere. This principle helps take control of the public sphere away from the influence of irresponsible and undisciplined individuals.

Matters left to private choice in the public sphere are indeed quite limited in Islamic society. "Commending good and prohibiting evil" is also a decisive and powerful lever in the hands of Muslims in terms of overseeing the government and confronting unjust rulers. So long as this principle is adhered to among Muslims, corruption in government is held at bay; and if it is overlooked, governments will deviate from justice and fairness. This principle guarantees the continuous preservation of Islamic values among the members of society. A sense of responsibility among the faithful toward other members of society, and resorting to proper approaches by which people's commitments to the Islamic teachings are deepened, are among the benefits of this divine principle. One should not overlook, however, that by failing to satisfy the conditions for its exact applicability, this religious principle can easily turn into a means for inappropriately interfering with the private sphere. In other words, abusing the principle of "commending good and prohibiting evil" can become a weapon in the hands of the inept and unsophisticated for eroding legitimate individual rights and freedoms. Despite all this, one cannot overlook that citizens of an Islamic society are bound to comply, at least in appearance, with Islamic teachings. In other words, Sharia does not tolerate individuals who do not respect Islamic rules in the public sphere, and who insist on visible violations of the law. Even so, it protects their individual freedom in their private sphere, and prohibits others from investigating their personal affairs.

7. Inspection Authority (Da'ira Hisbah)

The inspection authority is among the institutions of Islamic government that actively enforces the principle of "commending good and forbidding evil" in society (Ibn Khaldun, 1398: 158). In more exact terms, a compliance inspector is appointed by the Islamic ruler to ensure that the public sphere is orderly, according to the Islamic standards, and to prevent any violation of "rights" and perpetrations of "wrongdoing." In the event that the interest of society warrants it, he can enforce acts and deeds that are recommended or permitted, and circumvent certain repugnant deeds in the public sphere (Ibn al-Ekhvah, 1937: 22). In effect, the inspection organ institutionalizes the principle of "commending good and prohibiting evil" by the Islamic regime in a concentrated and concerted effort, to take the place of volunteers acting in an unplanned and inconsistent fashion.

The inspection authority encompasses the entire public sphere, and the compliance inspector has very broad authorities—as broad as those of the Islamic ruler (comprising the entire realm of Sharia). Its jurisdiction includes transactions in the field of trade and commerce, and even extends to the realm of religious rituals. The compliance inspector recognizes not only individuals' rights toward one another and those between the people and the divine, but is also required to assure the observance of religious duties in the public domain. The compliance inspector can remind Muslims of prayer and obligate them to righteousness should they ever become lax or negligent. The inspector can stop a Muslim who is publicly breaking fast and can detain people who fail to maintain the Islamic standards of covering. Similarly, if a merchant in the marketplace is withholding goods from customers or propping up prices, the inspector could intervene and require fair treatment of the public. Should someone present the teachings of religion in a manner that was inconsistent with accepted norms, the inspector would be authorized to intervene and prevent the presentation or publication of such material (Ibn

ol-Ekhvah, 1937: 9). The compliance inspector does not permit any repugnance to persist in the public sphere, and sees that every commandment is followed and fulfilled. The task of the compliance inspector is to assure compliance with religious values and standards at every corner of the public sphere.

The inspector and other executors of the compliance circuit, with permission from a jurist, are permitted in few cases to dole out swift and immediate punishment of offenders. This is called *ta'zir* and is a subset of religious *ta'zirs* (*ta'zirat*). In other words, the inspector can attempt to cleanse the public sphere by resorting to the following levers: enforcing commanded actions, and certain recommended and permitted ones; forbidding prohibited activity; and again, should public interest so require, to inflict punishment (*ta'zir*) on offenders and violators. The punishment inflicted by the inspector can only be less severe than the maximum prescribed religious sentence (*had*), and includes such measures as the exaction of cash penalties, short-term detention, and physical punishment (such as flogging) (Mavardi, 1393: 251). It is clear that the inspector does not have the right to enter or interfere with private sphere. The inspector is also not permitted to investigate, so long as the matter has nothing to do with public domain.

In cases where there is in doubt as to whether the matter is private or infringes on the public sphere, the inspector's discretion sets the standard. As an example, if someone has joined with friends in a home, and if in private sphere of the home they engage in inappropriate conduct that does not have an effect in the public domain, is this case within the private domain—and therefore investigating it is prohibited, and it is required to overlook the probable sins—or is it a matter of the public sphere, and therefore prevention of the wrongdoing necessary? Another example: Is the inside a private automobile a private sphere or not?

The inspection authority is no doubt one of the powerful levers the Islamic government can use to cleanse society of religious impurities (pollutants). The Islamic ruler can shape the public sphere according to religious sentiments through his appointee

(the compliance inspector [*muhtasib*]). On this basis, irresponsible and unruly individuals are denied the possibility to deteriorate or diminish the quality of life in the public domain. On the other hand, the unlimited authority of the compliance inspector is a serious threat to the private sphere, and by giving it a free reign, one could strip the public sphere of all freedom for individual activity, even in cases of apparent private and personal conduct. In other words, the boundaries of the private sphere would most likely shrink to those of one's private domicile: all individual matters visible to the public eye, even those of a completely personal and private nature, would be considered as belonging to the public sphere. The individual would thus be stripped of any sense of authority and determination, and the religious ruler through the compliance inspector would make all decisions for the individual. The individual can be forced to perform against his or her will, only to face punishment in face of noncompliance. The *muhtasib* may even limit or take away freedom of speech.

Should a ruler assume his prerogative to cease full control of the public sphere in the broadest sense, how could one challenge the ruler's authority? It is obvious that given an active compliance circuit, the private sphere can easily shrink to negligible size and ultimately be confined the private space of one's home. In the prevailing reading of Islam, both among the Sunnis and Shiites, the public sphere is too broad and subject to too much authoritative exercise of authority by the Islamic government: the recognized sphere of privacy beyond the perimeters of the home is indeed quite small.

8. The Extent of Authority Ascribed to an Islamic Government

Government authority and the radius of the private sphere and individual liberties are inversely proportional. Where the government wields absolute power and it is not harnessed from violating the private sphere of citizens, private life and individual liberties

remain rather insignificant. This problem is not unique to religious governments—it is generally a problem in all human societies. The private sphere is more threatened by totalitarian governments and dictatorships than in other societies, and the private sphere remains essentially meaningless in these autocratic societies (Arendt, 1951). Similarly, when a religious government adopts a totalitarian or dictatorial attitude, the private sphere sustains even more damage than in nonreligious environments since the totalitarian leaders are worldly gods literally creating hell for their citizens, but religious governments do the same in the name of a divine paradise.

Citizens in a healthy society should attempt to strengthen “civil society” and restrict government power. Legal minimums should be provided for the private sphere that cannot be threatened under any circumstances: this is a sign of a healthy society. Governments constantly aim to interfere with the private sphere of their citizens, under the pretext of the national or public interest. Members of the opposition, especially those more vocal among them, are more likely to have their privacy violated. In Islamic societies governed by Islamic governments—for example, in the case of caliphal rule among Sunnis Muslims or *velayat-e faqih* among the Shiites, public interest is sharp dagger that easily cuts through the fabric of the private sphere.

Should the interest of the state (*maslehat-e nezam*) be deemed more sacrosanct than religious principles (Kadivar, 1379: 111-135), an Islamic state would justify the temporary suspension of Sharia with the express aim of preserving the interest of the state. Should prying into the personal affairs and private lives of individuals ever be necessary, it will be permissible and even mandatory. *Maslahat* (Interest) is the catalyst that turns copper into gold (Kadivar, 1379: 560-571). Recognition of such interests for the state, without limitation or granting absolute authority to the Islamic state, is tantamount to providing the state the absolute right to penetrate the very fabric of the private sphere. Limitations to state authority under exigent circumstances must be spec-

ified to the letter of the law, and it should be guaranteed that such measures can be resorted to only for brief periods. Unscrupulous resort to exigent measures, particularly by Islamic rulers, poses the gravest danger to private life and legitimate individual freedoms.

To safeguard against the unbridled corruption that necessarily stems from absolute authority, strict legal limitations must be imposed—namely absolute rights should be the prerogative of all citizens, with the understanding that the state cannot undermine this right under any circumstance. Religious limitations should be delineated so that they cannot be violated or curtailed under any circumstance, at any time or place, and in the name of any institution. Determination of exigency (*maslahat*) must not be the prerogative of the state for it would mean that religion has become a handmaiden of political power. Analysis and interpretation of religion cannot be left to the state, or else religion will be seriously threatened. Determination of interest (*maslahat*) should be conducted by an elective institution that is itself responsible to an appropriate legislative body, and that functions under civil auspices. Last but not least, centralizing power in a fallible individual and relegating absolute powers to that individual is bound to beget corruption and will have the end result of obliterating religious principles (Kadivar, 1379: 254-256).

9. Elevating Religious Conscience

The principle of “commending good and prohibiting evil” does not suffice in and of itself without exact measures for its implementation. The institution of a compliance circuit, and the relegation of absolute powers to the Islamic state—and putting the interest of the state above and beyond all religious principles—may have been devised with the good intention of strengthening Islamic and implementing Islamic laws (Sharia). With such approaches, however, a religious façade could at best be forced

upon society. Even if the believers or the Islamic state may thus succeed in uprooting what is prohibited and erecting what is commanded, the true essence of Islam will have been weakened among the public. Deceit, duplicity, and maintaining appearances are only some of the pitfalls of imposed religiosity. What good is it to maintain an outwardly Islam-abiding public sphere while in their private spheres—homes—the citizens have nothing but contempt for it?

The responsibilities of the believers do not supersede those of the prophet's. The prophet was tasked with bringing Islam to the people, not with forcing it upon them (5:99; 2:256). The principle of "commending good and prohibiting evil" is one of the requirements of the Mohammedan Sharia, but it must be viewed within the larger context of Islam as the religion of compassion and mercy. The crux of the matter lies in the urgency of preparing the grounds for doing good deeds and forsaking evil. The people should be willingly shown the merits of this sublime system of values. The crux of the matter lies in reconstructing the public's religious conscience. A weak conscience begets unwarranted deeds. Imposing seemingly right conduct without healing the religious conscience of the public fails to remedy the handicap. God has intended for his subjects to freely and voluntarily choose to do what is righteous (18:29). Should he have meant to impose this upon his subjects, God would have done it himself (9:99). He has not even permitted his messenger to use force in ushering in Islam (88:21-22; 6:107). The likelihood of acceptance highlights this delicate point. Paying attention to others acting within religion requires the establishment of clear and minimum bounds in the law to acknowledge the private life. The overseeing institution need not be a state agency: it could be commissioned by the public and operate within the context of civil organization. It can thus be far more effective in preventing corruption and promoting moral rectitude. Islamic thought finds absolute and despotic rule alien and does not sanction interests not already delineated in Islamic terms. Islamic jurisprudence requires strict

caution in such matters affecting people's lives, honor, and right to property. Respecting these minimal rights and legislating with such fundamental principles in mind would guarantee that the private domain in Islamic society would be protected from the whims of rulers and literalist adherents of religion. By taking into account these points, the public and private spheres in Islamic society will maintain a balanced equilibrium. Such a balance is already well established in the body of Islamic writings (although Muslims seem to have gradually overlooked them). Striking the point of equilibrium where the private sphere soundly functions within the framework of religious principles and in tandem with the public sphere calls for a renewed effort to look afresh at our Islamic heritage. It is the sincere hope of this author that such a challenge will be met. Let it be that through a critical analysis of the challenges posed by the notion of a private sphere to current Islamic thinking that we approach the desired balance between the public and private spheres in Islamic society. Explaining the detailed dynamics of such a desired situation shall be followed up at another opportunity.

Notes

¹Interpretations of the Qur'an (33:6).

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