HISTORY
AND
CULTURAL IDENTITY

Retrieving the Past, Shaping the Future

Edited by
John P. Hogan

ISLAMIC DOCTRINE AND THE RELATIONSHIP BETWEEN THE PUBLIC AND PRIVATE SPHERES

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INTRODUCTION

In this article, after presenting some brief explanations about the concepts of public and private, I will argue that in Islamic thought, the state has moral responsibility towards its citizens for promoting virtue and morality. Nonetheless, the private sphere as a realm that is outside the supervision and interference of the state is also recognized. Thus, in Islamic society, even in an officially Islamic state, citizens can, or should be able to form their personal identities through optional and free behavior.

DEFINING THE PUBLIC AND PRIVATE

Dividing the domain of human life into the public and private spheres is, in a sense, an achievement of the modern world, but like many other concepts of the human and social sciences it has its roots in the thought of ancient figures. Plato, for example, supported a kind of paternalistic interference of State in the private affairs of citizens. He thought that if peoples' private life were not regulated, the law imposed on public life would not be sustained. He also was of the opinion that the government should adopt a special and different treatment of private deviations as opposed to overt ones, but without offering a clear delineation between the two areas. Ironically, Menville's research shows that the dichotomies forming modern democratic politics, such as state and society, public and private, law and morality, were never really applied in Athens.

In modern times since the nineteenth century, serious attention has been given to the public and private spheres. John Stuart Mill and Jurgen Habermas have dealt with the issue more than other philosophers. Mill believed that the individual's conduct is a personal matter when it does not affect others. Adopting a utilitarian approach, he thought that the individual is the best and final authority to decide his own interest. As a result, the best reason against interference in the private sphere of individuals is that when others interfere in this sphere, it is likely that their interference is wrong or unwarranted. After Mill, Habermas dealt extensively with the public sphere. In his book *The Structural Transformation of the Public Sphere*, he explains the emergence and development of the bourgeois public sphere—that is, a sphere which was distinct from the state and in which citizens could discuss

issues of general interest. In analyzing the historical transformations of this sphere, Habermas recovers a concept which is of crucial significance for current debates in social and political theory. He focuses on the liberal notion of the bourgeois public sphere as it emerged in Europe in the early modern period and examines both the writings of political theorists, including Marx, Mill and de Tocqueville, and the specific institutions and social forms in which the public sphere was realized.[1] He attempts to criticize the classical liberal conception of public and private spheres. In the liberal conception of the private sphere, the individual is not and ought not be subject to legal standards and rules or constrained by social constraints and moral and normative commitments.

The individual is, however, bound by a series of norms, rules and regulations in the public sphere of life. British and American philosophic traditions are both based on some minimalist conception of the state. In political philosophy and theory there are also such doctrines as representation and separation of powers which support this conception of state and imply that it serves as an instrument for some ends and consider it mainly as a "necessary evil". Here, "liberty" is often intended to mean "freedom from" any interference with attaining individual liberty and well-being. But this is negative freedom. In contrast, German philosophical tradition, since Kant, and in particular since Hegel, considers society, quite naturally, as a collective manifestation of knowledge, cognition, wisdom and identity of a nation. Social institutions are consequences resulting from this collective "will and conscience." Here, though state and society are very different from each other, the emphasis is on the positive and rational potentials of both, and they are seen as mediums through which individuals are able to promote voluntary and self-imposed restrictions on their lives and to collectively realize higher aims and objectives. Thus, the boundary between public and private is not as strong as it is in the liberal tradition.

BOUNDARIES AND DISTINCTIONS

Nowadays, at least in some important fields of the humanities like economics, politics, law and sociology, great efforts are being made to propose clear-cut boundaries between the two spheres. The expansion of the debate owes to its significant role in human social life. Biotechnology, for example, has introduced new attitudes towards the concept and scope of privacy. It has also posed threats to it and amplified the importance of the debate. This has caused lawyers, political theorists, feminists, anthropologists, cultural historians and economists who advocate a theory

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[1] Jurgen Habermas, *The Structural Transformation of the Public Sphere: Inquiry into a Category of Bourgeois Society,* Thomas McCarthy, (Introduction), Thomas Burger & Patrick Lawrence (Translators) 1992, Publisher: Polity Press.

of public choice to introduce their own categorizations relating to the concept.

The distinction between public and private spheres should in no way be considered a simple dichotomy; it should rather be seen as a multifaceted and shifting series of distinctions constantly varying under increased social pressures and political struggles. The complex and dubious nature of classifications relating to public and private spheres has been highlighted by some recent research. The liberal economic model, civil republicanism, cultural and social historical approach, and feminism are but some of these frameworks. This leads one to conclude that the relation between the two spheres is necessarily asymmetrical. One should not think of a simple classification which would resolve the issue. Something that used to belong to public sphere may now be considered as belonging to the private sphere. An institution like marriage may at the same time have both public and private aspects.

The present paper aims at showing the compatibility of the separation of the two spheres within Islamic teachings and doctrines. This exempts the author from engaging in a careful and technical discussion as to the criteria of the distinction at stake. My concern is more a conception in line with the delimitation of state authority separating the public from the private sphere.

Separating public and private spheres serves various purposes. Economic liberalism uses the distinction to separate the area of public or state economy from the private sector. The latter is left to the market in which the state is not permitted to interfere. Proponents of civil society use it to strengthen their own status as institutions mediating between "citizens" and "government". Advocates of secularism are concerned with providing social space that excludes the institution of religion. Feminists want to offer boundaries in order to include family as a public institution, but also to protect it, within the state's supervision. This is seen as a means to protect women's rights. For them, a private issue may be "political. The very public/private distinction is a political construction and it is, they argue, in men's interests to conceal domestic violence against women from the public.

This paper is not concerned with evaluating such approaches to the public and private spheres; it is only to demonstrate the fact that from an Islamic perspective, many areas of human life are not considered public and hence under the State's supervision and control. Any government is committed to recognize this distinction. Obviously, a government committed to divine law, is more observant of this and gives effect to its consequences. On the other hand, respect for the citizens' privacy is not an obligation restricted to state authorities; it extends to civil institutions, non-state social organizations and even to ordinary citizens. Indeed, a person's private life is part of his/her personality, and all individual citizens are entitled to demand non- interference from others and the state.

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It can be argued that in recognizing a "right" or other convention consistent with Islamic principles or supported by them, there might not necessarily be available explicit texts to that effect. Many rights or other social conventions are consistent with Islamic principles in the sense that their conceptual analysis makes us consider them as a clear instance of a right or transaction recognized in Islamic texts. Perhaps, they are found as a general concept, the compatibility of which is obvious; or perhaps, although not found in the Shari'a rules, they emerge as valid, needed prohibitions or transactions and this provides legitimacy.

THE NEED FOR SOME SEPARATION

Among the arguments for the compatibility of separating the public from the private sphere within Islamic doctrine is the rule of *Ada al- sultah* or non-dominion. According to this rule, one has dominion over one's life and property. Though the jurists consider it a property rule, there is no doubt its content is not limited to one's property and assets; one's dominion over his/her property results from his/her dominion over his/her life and body and over his/her personality. It provides in a positive way that any decision relating to a human being's personality is left to him/her alone. The rule corresponds more closely to positive freedom.

Similarly, the principle of "non-authority" as a recognized and valid principle among the jurists, excludes others' dominion over one's life, body, property and any other personal aspect. The content of this principle is more consonant with negative freedom. Thus, interference in the private life of persons, including the attempt to gain knowledge of a private nature by the State or individuals is, in principle, forbidden and intrusive; the principle may be overridden only by a strong justification. An example of this justification might be where harm is caused to public interests; interference to prevent harm to the individual himself would be permitted only under special conditions. Interference to implement morality, interference to allow an individual to act for his/her own benefit or the benefit of others is covered by the principle.

Another ground for believing the compatibility of Islamic principles with the separation of the public and private spheres is the prohibition of spying which is an established Qur'anic rule. God's short commandment, "do not spy", contains several points:

A) The imperative in the verse denotes prohibition of spying.

B) The imperative implies one's right to privacy. Indeed, since there is such a right, others are obliged to respect it. The discourse of duty or responsibility has more emphasis than the discourse of right.

C) The condemnation of spying is not confined to attempting to discover other people's weaknesses or bad points; even goods and virtues are to be kept from others and may not be made overt by spying.

D) The object of spying is not mentioned in the verse. According to Arabic linguistic rules this omission indicates generality and substance; this is a Qur'anic method which tries not to mention changeable affairs. The scope of the individual's privacy is determined according to various circumstances and through the interaction of the individual and society.

E) The verse is addressed to believers. This seems natural; God addresses those who are prepared to listen to Him; but the scope of the obligation is not restricted to believers. Spying on non-Muslims is also included.

F) Spying is of itself inherently prohibited; it is forbidden even when it does not disclose secrets. Prohibition of disclosure of private matters is distinct from that of spying.

G) The holy Qur'an does not give any utilitarian grounds for the prohibition of spying. In other words, it does not try to enumerate social evils resulting from the practice, notwithstanding the fact that we know what God forbids surely contains evils. The author believes that the Qur'an wants the audience to consider spying an immoral act and to feel a moral obligation not to engage in such behavior. The utilitarian justification may direct individuals to think that the evil may be remedied by positive measures.

H) Spying is not condemned only as a method of collecting information; the point is that spying gathers information which is to be concealed and not to be revealed.

One of the important Islamic principles is enabling good and forbidding evil. The emphasis put on this duty indicates that members of an Islamic society feel moral responsibility to each other. This sense of responsibility is naturally felt by the State as a social institution. But this religious duty is in no way contradictory with the prohibition on spying. First, because, as expressed in some traditions, enabling good and forbidding evil are related to cases of refraining from good and committing evil in public. Second, because the texts forbidding spying are special, and impose the duty to enjoin good and forbid evil, they modify moral responsibility in both the public and private sphere. Adding to this, we would say that the rationale behind the duty to enjoin and forbid others is a utilitarian consideration, in that it is discharged whenever it is useful. No one would doubt that, spying on the privacy of the people even to enable virtuous action. This would only make them disgusted with religion.

Another way to reach the compatibility and emphasis of Islamic doctrine on the separation of the public from the private sphere is by promoting basic moral values. This needs some explanation. Morality enjoys a first rank of priority in Islam; numerous verses of the Qur'an include purification of the human soul as the purpose for sending prophets, including the Prophet Mohammad (p.u. h.). It is obvious that what is intended by Islam and the Prophet is the real and genuine promotion of morality and its internalization by sincere and conscientious individuals.

Building a society without belief in religious principles and uncommitted to moral values but with external religious trappings is of no interest to Islamic leaders. Whatever the Islamic moral system may be, it is beyond question that Islam gives moral value to individual, reflective, voluntary actions when they are performed out of an inner sense and wisdom and without coercion. Spying and paternalistic supervision even with incentive to promote and spread moral values and virtues will not bring this outcome. They will instead institutionalize hypocrisy in the conduct of citizens, and this is opposed by both Qur'an and Shari'ah.

The consequences of the spread of hypocrisy caused by paternalistic imposition on public life and in particular on the private life of individuals should not be taken as trivial; it is followed by its own social problems. Individuals come to know less of each other, since the outward manifestations of behavior are short of representing the real personality of agents.

The institution of *dhimma* is further evidence of the compatibility of Islamic thought with the idea of separating the public from the private sphere. Historical evidence indicates that Muslims, even at times when they were of the great power, tolerated covert practices of non-Muslims which were clearly in conflict with Islamic rules. *Dhimmis* were allowed to do, in private, what they deemed correct. This treatment which was approved by the Prophet and our Imams, on the one hand, indicates the potential and capability of Islamic thought to adopt a tolerant attitude, and, on the other, is expressive of the fact that belief in God and adherence to Islamic rules is not something to be imposed on others.

SOME CONCLUSIONS

Good relations between the State and citizens is desired and valued by any government, including the one which has committed itself to Islamic principles. According to Imam Ali's guidelines to *Malik Ashtar*, the governor must try, beyond observing justice and truth, to seek the consent of the citizens. There is no doubt that the government's interference in the private life of people, even for correction and the spread of virtues, will obliterate the relations between the State and citizens and undermine the very foundation of government. Imam Ali gives paramount importance to the protection of privacy especially concerning the government. The role of government, in this regard, is to protect its citizens' privacy—even their faults.

Among the grounds which encourage the individual or government to spy on peoples' affairs is suspicion. Islamic teachings while blaming both optimism and skepticism and insisting on being realistic, put the weight of blame on suspicion and in particular on acting accordingly. Good will is of course encouraged. It is not merely moral advice. The principle of *sihhat* (correctness), according to which a Muslim's (or any person's) act, should be construed as correct and proper, even where they could be

interpreted otherwise, has many legal effects, including the ban on spying. Prohibition of suspicion and the principle of correctness can be considered as appropriate foundations for distinguishing the public and private spheres.

Since spying and, in fact, interfering in the private sphere of others is prohibited save in exceptional cases, the government should insure protection in this realm. Justice which binds us to protect the subordinate requires providing the most protection to individuals and their rights against the encroachment of government. Moreover, governments traditionally, and too often, offer broad interpretation of the concept of security and invoke it to violate citizens' privacy. Therefore, it is necessary to have transparent laws and provide for appropriate sanctions in order to ensure citizens' security and privacy. This is something which, unfortunately, has received insufficient attention in my country.