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Islam, Cultural Transformation
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Studies in Honor of Professor
George Francis McLean
On his 80th Birthday

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Islamic Teachings and the Relation between Public and Private Spheres

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For Professor GEORGE F. MCLEAN: A manifestation of knowledge,
faith, reason, virtuousness, openness, persistence and peace.

*Introduction*¹⁷⁸

Nowadays in many important fields of the humanities such as economics, politics, law and sociology great efforts have been and are being made to propose definitions for the public and private spheres and to delineate clear-cut boundaries between them. The expansion of this debate is due to its significant role in human social life. The spread of biotechnology, which has introduced new attitudes towards the concept and scope of privacy and posed threats to it, has amplified the importance of the debate. Similarly the intervention of the state into the social life of citizens even in the Western world has fostered many questions about the extent of the public sphere. This has prompted lawyers, political theorists, feminists, anthropologists, cultural historians and economists to introduce their own categorizations relating to the public-private demarcation.¹⁷⁹

My concern here is to study this demarcation from the Islamic perspective. Regardless of the nature and social and political functions of the public-private demarcation, I will focus more on the relationship between these two realms according to Islamic Teachings: whether they are distinct and separate as conceived in Liberal thought, or function as interrelated realms with active and positive interactions.

¹⁷⁸ I am indebted to several persons: Professor Emeritus George F. McLean himself to whom this work is dedicated; Professor Robert Destro at the Columbus School of Law, The Catholic University of America, Washington D.C.; my friend Dr. Ahmad Irvani, also at CU; and in particular Associate Professor Karim Douglas Crow (IAIS – KL) without whom this study would not have achieved its present form.

¹⁷⁹ See Passerin d'Entreves, Maurizio & Ursula Vogel, *Public and Private: Legal, Political and Philosophical Perspectives* (London: Routledge, 2000) p. 1.

The question of public–private demarcation is to some extent different from our attitudes towards each one of these domains as such. The main purpose of imposing a public–private division is to create a realm free from the encroachment of the state and even of society. In such a division the public sphere includes every domain occurring outside the private realm. In other words, ‘public sphere’ in this sense includes both the “Sphere of Public Authority” as well as civil society. Only intimate and family relations occur outside the public sphere. By contrast, the public sphere in its narrow sense as Habermas conceives it – whose notion has become widespread and influential – occupies a space between the private sphere and state power. Combining these two differing conceptions may create ambiguities and confusions. Therefore I attempt to maintain boundaries between these two notions. Toward this aim, after providing several depictions of the concepts of public and private spheres, I will first explain how Islamic Teachings evaluate these two realms and then take up the question of public–private demarcation.



I. *The Public and Private. Concepts and History*

♦ CONCEPTS

There is an informal consensus among thinkers on the ambiguity of what each concept of ‘public’ and ‘private’ actually denotes, as well as their relationship with each other.

As for ‘public sphere’ in its Habermasian sense, it is usually defined by Habermas himself and by others as: “*a realm of free and intelligent communication about contested public concerns and uninhibited exchange of opinions about these concerns.*”¹⁸⁰ It refers to a domain mediating between the ‘private sphere’ and the “Sphere of Public Authority”. The “Sphere of Public Authority” is dealt with by the State, or the realm of the police and ruling authority; but public sphere through the vehicle of public opinion puts the state in touch with the needs of society. Thus, this area is conceptually distinct from the state. It is a site for the

¹⁸⁰ Anderj Pinter, “Public Sphere and History: Historians’ Response to Habermas on the “worth” of the Past,” *Journal of Communication Inquiry* 28/3 (July 2004) p. 217

production and circulation of discourses that can in principle be critical of the state. The public sphere can supervise and control the state, since public opinion may potentially lead to political action. The flourishing of the public sphere in this sense is most indebted to Jürgen Habermas (born 1929) through his influential work *The Structural Transformation of the Public Sphere*.¹⁸¹

As for the 'private sphere', it is a certain sector of life in which an individual enjoys a degree of authority, unhampered by interventions from government, other institutions or even individuals. Family, home and intimate relations are examples of private sphere. The very controversial concept of privacy, notably when it denotes a protected zone, is derived from the private sphere. That is to say, the term 'privacy' has been applied to two different concepts. One is a structural concept and the other is substantive. In structural vision, it appears as the "Zone of privacy"; in other words, a place or relationship that is beyond governmental regulation. It is a conceptual wall to keep government out of the private lives, places and relationships of private citizens. The substantive notion maintains that certain affirmative, substantive rights, are protected by the constitution; privacy is the most popular catch-all label for those substantive rights.¹⁸²

Scholars disagree about how to approach defining privacy. The first arcane debate is over its nature. Some say privacy should be defined as

¹⁸¹ [Habermas' *Strukturwandel der Öffentlichkeit* was published in 1962 and only translated into English in 1989. He interpreted the social conditions necessary for Enlightenment ideas to spread and take root facilitating "rational, critical, and genuinely open discussion of public issues" in terms of the formation in the late-seventeenth and eighteenth centuries of the "bourgeois public sphere...a realm of communication marked by new arenas of debate, more open and accessible forms of urban public space and sociability, and an explosion of print culture." He portrayed the public sphere as egalitarian, rational, and independent from the state, wherein intellectuals could critically examine contemporary politics and society away from interference by established political and religious authority. In this domain of "common concern" the arenas of political and social knowledge that had previously been the exclusive territory of the state and religious authorities, now became open to critical examination by the public sphere. KC]

¹⁸² Lynn Wardle, "A Critical Analysis of Constitutional Claims for same-sex Marriage", in *Brigham Young University Law Review* No. 1 /1996 p. 39.

a value or moral claim, others as a fact or a legal right. Certain thinkers hold the definition of privacy should prescribe ideal uses of the term, while others maintain the definitions must describe actual usage.¹⁸³

There is also disagreement about the scope of privacy. Proposed definitions of privacy range from the very expansive “being let alone,” to Alan Westin’s more specific: “claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others.”¹⁸⁴ Somewhere in the middle we find characterization of privacy as only those aspects of liberty that relate to intimate and highly personal aspects of one’s life, such as those involved in sexual preferences and decisions about whether and when to procreate. This controversy is found in philosophical analyses of privacy, as well as in the context of its legal protection. It has led some thinkers to argue that the term be abolished in order to promote clarity of thought and analysis.¹⁸⁵ Despite these ambiguities, different aspects of privacy like physical, bodily, informational and decisional are often recognized.

As for the public–private demarcation, no one believes that there is a single unitary distinction between public and private.¹⁸⁶ Instead of a single clear distinction between them, there are a series of overlapping contrasts.¹⁸⁷ The character of the dichotomy is in no way static. It should rather be seen as dynamic, multifaceted and shifting, involving a 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 researchers. Jeff Weintraub, for instance, has identified four broad frameworks in which different notions of public and private play an important role, namely: the Liberal-

¹⁸³ Anita Allen, “Privacy in Health Care” in *Encyclopedia of Bioethics* (3rd ed., eds. Stephen Post & Thomson Gale, 2004) v. 4 p. 2122.

¹⁸⁴ *Ibid.*

¹⁸⁵ R. Gavison, “Privacy: Legal Aspects” in *International Encyclopedia of the Social & Behavioral Sciences*, ed. Neil J. Smelser & Paul B. Balets, (Elsevier Science Ltd, 2001) v. 18 p. 12067.

¹⁸⁶ Raymond Geuss, *Public Goods, Private Goods* (Princeton University Press, 2001) p. xviii.

¹⁸⁷ *Ibid.*, p.6.

economistic model, the civic republican tradition, the approach of cultural and social historians, and the trends in feminist scholarship.¹⁸⁸

One should not think of a simple classification to resolve the issue. A matter which used to belong to the public sphere may now be evaluated as belonging to the private sphere; while an institution like the family may at the same time have both public and private aspects. Furthermore the distinction between the public and the private, as it is normally understood, is not identical with that between the social & collective and the individual. Nor is it identical with that between the altruistic and the egoistic; one may have altruistic or egoistic feelings in his or her relations with private friends or in the experience of a public office.¹⁸⁹

♦ HISTORY

Dividing the domain of human life into public and private spheres is in a real sense an achievement of the modern world. Menville argued that the dualisms shaping modern politics—the divide between state and society, between public and private, or between law and morality—simply did not apply in ancient Athens.¹⁹⁰ In modern times, since the nineteenth century serious attention has been given to the public/private distinction. It is an important part of that brand of Liberalism which for a long time now has dominated political thinking in Western Europe and North America.¹⁹¹ While many thinkers have considered the demarcation between the public and private as a basis for liberalism and therefore very important in our social life, others argue that there is no single clear distinction between public and private but rather a series of overlapping contrasts, and thus that the distinction between the public and the private should not be taken to have the significance often attributed to it.¹⁹²

In Western (Euro-American) culture the origins of the public-private demarcation are rooted in ancient times. The ancient Greeks

¹⁸⁸ Passerin d'Entreves, Maurizio & Ursula Vogel, *op. cit.* p. 1.

¹⁸⁹ R. Geuss, *op. cit.* p. 9.

¹⁹⁰ See Keith Faulx, *Citizenship* (London: Routledge, 2000) p. 16.

¹⁹¹ R. Geuss, *Public Goods, Private Goods* p. viii.

¹⁹² *Ibid.*

distinguished the “public” sphere of the *polis* or city-state, from the “private” sphere of the *oikos* or household.¹⁹³ The Romans similarly distinguished *res publicae*, concerns of the community, from *res privatae*, concerns of individuals and families. The ancients celebrated the public sphere as the sphere of political freedom for citizens. The public realm was the sector in which selected males—free men with property whose economic virtue had earned them citizenship and the right to participate in collective governance—could truly flourish. By contrast, the private realm was the sector of mundane economic and biologic necessity. Wives, children, and slaves populated the private economic sphere, living as subordinates and ancillaries to autonomous male caretakers.¹⁹⁴ In the small self-governing city states of antiquity the sphere of private production was tedious and laborious and that of consumption underdeveloped. On the other hand, the political power of ancient democratic assembly could regulate anything. All private actions, including even such things as how the citizens chose their occupation or their marriage partner, and how they educated their children, could in principle be, and often in fact were, subject to severe public scrutiny and control.¹⁹⁵

The roots of the dichotomy can be seen in the thought of ancient figures as well. In the *Laws*, Plato warned against excluding a citizen’s private life from legislation.¹⁹⁶ He supported a kind of paternalistic interference of state in the private affairs of the citizens, arguing that if the people’s private life were not regulated the law imposed on the public life could not be sustained.¹⁹⁷ Plato also upheld the opinion that the government ought to adopt a special and different treatment of the secret deviations as opposed to overt ones, without offering a clear delimitating line between these two areas.¹⁹⁸

In modern times, Benjamin Constant in 1814 sharply distinguished between the “private existence” of members of a modern society and

¹⁹³ *Ibid*, p. 15.

¹⁹⁴ *Ibid*, p. 16.

¹⁹⁵ *Ibid*, p. 18.

¹⁹⁶ Robert Maddex, “Freedoms, Abuses and Remedies”, *International Encyclopedia of Human Rights* (CO Press, 2000) p. 276.

¹⁹⁷ Plato, *The Laws*, trans. Benjamin Jowett (Prometheus Books, 2000) p. 38.

¹⁹⁸ *Ibid*.

their “public existence”. “Private existence” referred to the family and one’s intimate circle of personal friends, the spheres of individual work and the consumption of goods, and the realm of individual beliefs and preferences; “public existence” designated action in the world of politics.¹⁹⁹ For a variety of historical, economic, and social reasons, Constant thought, the ‘private’ sphere had come in the modern world to be the source of especially vivid pleasures, and the locus for the instantiation of especially deep and important human values.²⁰⁰

The British philosopher John Stuart Mill should be considered among those who advocated this distinction. Discriminating between self-regarding and other-regarding, he wrote: “*Nobody desires that Law should interfere with the whole detail of private life.*”²⁰¹ He believed that the individual’s conduct is self-regarding when it does not affect any one else’s interests, or does not need to affect others unless they so wished.²⁰² Adopting a utilitarian approach, he thought that the individual is the best 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 into this sphere, it is likely that their interference will be improper or undue.²⁰³ In the course of his major work *On Liberty*, Mill states not one but two principles of demarcation. The first one declares that the only legitimate grounds for social coercion are to prevent someone from doing harm to others.²⁰⁴ According to his second principle a person ought to be subject to social coercion only to prevent the violation of a “distinct and assignable obligation to any other person or persons.”²⁰⁵ The continuing debates about Mill’s approach still revolve around how may any action be purely ‘self-regarding’, without significant actual or potential impact on the interests of persons other than the agent (and his or her voluntary associates)? And granted that, how may one usefully distinguish between actions that risk harm only to their agents

¹⁹⁹ R. Geuss, *op. cit.* p. 21.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, p. 27.

²⁰² John S. Mill, *On Liberty*, ed. Elizabeth Rapaport (Hackett, 1978) p. xv.

²⁰³ *Ibid.*, p. 13.

²⁰⁴ *Ibid.*, p. xvi.

²⁰⁵ *Ibid.*, p. xvii. Some objections to this principle were raised by Mill himself.

and those that may harm others.²⁰⁶ In other words, the blurred distinctions between self and others, individual and society, and private and public revealed itself when sharp critiques were made of his thesis.

Of those philosophic thinkers who paid attention to this demarcation, in some manner or other, Jürgen Habermas stands out. Although his main concern is the public sphere, he implicitly treats the private sphere as well. In his book *The Structural Transformation of the Public Sphere*, he explains the emergence and development of the Bourgeois public sphere in eighteenth century Europe – that is, a sphere distinct from the state and the Church 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. Habermas focuses on the liberal notion of the bourgeois public sphere as it emerged in Europe in the early modern period. He examines both the writings of political theorists, including Karl Marx, J. S. Mill and A. de Tocqueville, and the specific institutions and social forms wherein the public sphere was realized.²⁰⁷

He attempts to criticize the classic liberal conception of public and private spheres. In the liberal conception of the private sphere, the individual is not and ought not to be subjected to legal standards and rules or constrained by social constraints and moral and normative commitments. The individual is, however, bounded by a series of norms, rules and regulations in the public sphere of life. British and American (Anglo) philosophic traditions are both focused upon a minimalist conception of the state. In political philosophy and theory there are doctrines such as representation and separation of powers, which support this conception of state implying that it serves as an instrument to certain ends and considering it primarily as a ‘necessary evil’. Here, ‘liberty’ is often intended to mean ‘freedom from’ any interference with attaining individual liberty and well-being—that is, a negative concept of freedom. In contrast, the German philosophic

²⁰⁶ *Ibid*, p. xvi.

²⁰⁷ Jürgen Habermas, *The Structural Transformation of the Public Sphere: Inquiry into a Category of Bourgeois Society*, Intro. by Thomas McCarthy; translated Thomas Burger with assistance of Frederick Lawrence (Polity Press, 1992).

tradition since Kant, and in particular since Hegel, considers society, quite naturally, as the collective manifestation of knowledge, cognition, wisdom and identity of a nation or a people, and understands their social institutions as consequences resulting from collective 'will and conscience'. Here, although state and society are very different from each other, the emphasis is put on 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 Anglo liberal tradition.

♦ THE IMPORTANCE OF PUBLIC AND PRIVATE SPHERES

Public and private spheres are both necessary for the evolution of humans. Each provides a background for the realization of specific components of human needs. However, the importance given to each realm has not been the same. Whereas the classical Greek philosophers treated the private realm—including economic activity—as clearly inferior to the public realm associated with affairs of state, many moderns placed a new positive value on family and economic pursuits. They argued that both privacy and civil society need to be defended against encroachments by the state.²⁰⁸

Privacy is not a purely individualistic value. As many commentators have pointed out, the private sphere is essential both for the maintenance and the improvement of the self and of society.²⁰⁹

Islam considers both public and private spheres in a moderately balanced approach. Islam awards great significance to social life and social activities, but this does not mean that Islam treats all human thought and action within the orbit of social and political action. While issues concerning the private sphere such as intimate and family relations have their own significance, a great emphasis is placed on social life and its contribution to social affairs in the community. Many

²⁰⁸ C. Calhoun, "Civil Society / Public Sphere: History of the Concept". in *International Encyclopedia of the Social & Behavioral Sciences*, ed. Neil J. Smelser & Paul B. Balets (Elsevier Science Ltd, 2001), v. 3 p. 1897.

²⁰⁹ See Carl D. Schneider, *Shame, Exposure and Privacy* (Boston: Beacon Press, 1977) p. 41.

Islamic teachings affirm that the best people are those who are more useful for their society. Promoting the key concepts of benevolence, social cooperation and harmony, enjoining good and forbidding the reprehensible, and the common good (*al-Maṣlahah al-‘Āmmah*) underlines the significance of communal social affairs and the public sphere in Islamic thought. Even a brief glance at Islamic ritual worship and religious rites such as prayer (*ṣalāt*) and pilgrimage (*ḥajj*) indicates how worship and spiritual practice are deeply embedded with social matters. Many Islamic doctrines and practices are directly related to social affairs. Accordingly, from an internal religious viewpoint it is impossible to limit Islam to the private sphere alone or to reduce it to a bare set of individualist moral statements.



II. *Islamic Teachings and the Private Sphere*

To examine Islam’s position on public and private spheres two questions should be sharply distinguished. The first question is: how Islam treats these spheres as two domains separate from the state. The second is: how Islamic Teachings evaluate the public–private demarcation, as it is conceived of in orthodox liberalism. I will treat each of these two questions in turn.

The private sphere is deeply imbued with the value of privacy. The main, and probably the only, aim of recognizing the private sphere is to protect privacy. To come to a judgement about the worth of privacy we should be aware of the concept itself as well as the conceptions surrounding it. Privacy is not an abstract value; rather it is closely related to other significant values and notions including mutual respect and self-respect, love and shared concern, friendship and dignity, and reciprocal trust. Quite apart from any philosophical analysis this is intuitively obvious. There are those who maintain that in developed social contexts the human qualities or traits of respect, love, friendship and trust “are only possible if persons enjoy and accord to each other a certain measure of privacy.”²¹⁰ Privacy is not merely a good technique for furthering these fundamental relations; rather “without privacy they are simply inconceivable.”²¹¹ Indeed, a large

²¹⁰ Charles Fried, “Privacy”, *Yale Law Journal* v. 77 (1968) p. 475.

²¹¹ *Ibid*, p. 477.

number of Islamic teachings that insist upon this quality of values implicitly indicate the significance of privacy.

Moreover, privacy provides people with a strong and deep relationship with Almighty God. Contemplation upon the absoluteness and grandeur of God, of His beauty and glory, of His good self-description and Names, and pondering over His work of creation is only possible when a secure private realm is recognized and respected. In Islamic civilization, a major portion of its rich legacy of ethics and mysticism is only achievable within our private relations with God, which are facilitated in the light of respect for privacy. In sum, privacy is a prerequisite for many valuable virtues whose cultivation is exhorted by the Islamic value system.

In addition to the role of privacy and the private sphere in assisting and realizing those virtues and values, various aspects of privacy are awarded respect and privileged in Islamic Teachings. These include :

- ♦ With respect to privacy in the sense of organic bodily privacy, there are numerous instructions and recommendations focusing on the character trait of *ḥayā'* or 'modesty-shame'. Men and women are enjoined as a fundamental ethical duty to conceal specific parts of their bodies (e.g. the pudendum), and are discouraged from viewing specific body parts of others. This implicitly denotes the importance of organic privacy not only as a religiously imposed duty, but also as a human right. There are sufficient indications confirming that in the instructions regulating 'gazing at others' (*aḥkām al-naẓar*), protecting organic privacy is also intended.²¹²

- ♦ Similarly, spatial physical privacy in the sense of privacy of the home and workplace is validated and strongly protected in Islam. According to certain narratives from the Prophet Muḥammad (ṣ) and his descendants the Shī'ah imams, whoever is killed defending his

²¹² [Professor Nobahar touches upon a fundamental trait of Islam's ethic of individual self deportment: the virtue of 'pudency' (*'iffah* or *ḥayā'*) or 'organic shame', allied with the moral injunction of 'chastely lowering the gaze' (*ghadd al-baṣar*) as internally observed chastity of the senses. This widespread psychic and somatic feature of social relations within traditional Muslim societies today appears alien or backward to moderns, although medieval Christian tradition once embraced it (cf. 'privy parts' ... privacy). KC]

personal property is deemed a martyr.²¹³ The same is certainly true for those who are killed in defense of their soil or their honor. This is why in classical Islamic jurisprudence the self-defense of privacy, including privacy of one's home, has been recognized under specific circumstances from the early centuries. Various aspects of respecting one's dignity and honorable reputation (*'ird*) are also highly protected in legal thought. This concept of dignity and honor is expanded to cover almost all aspects of privacy including spatial physical privacy. Respecting privacy is not limited only to Muslims but also extends to non-Muslims.²¹⁴ The Qur'an (*al-Isrā'* 17:70) unambiguously teaches that respecting human dignity applies to all human beings.²¹⁵

♦ As for privacy in the intrusive informational sense, there are many clear indications that Islam guards and respects this. The prohibition of spying in order to gather information concerning others is a well-known Qur'anic injunction. Almighty God ordains: "*Do not spy on one another!*" (*al-Hujurat* 49:12). This concise commandment embraces several significant 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. In Islamic texts and discourse the paradigm of 'duty' or 'responsibility' (*ḥaqq*) was more commonly met with than the paradigm of 'right'. But this does not mean that Islamic teachings ignore the importance of right and of having rights. As many philosophers of Law both East and West have observed: 'right' and 'duty' are two sides of one coin.²¹⁶

²¹³ Muḥammad b. Ya'qūb al-Kulaynī, *al-Furū' min al-Kāfī* (Tehran: Dār al-Kutub al-Islāmīyah, 1387 shamsī) v. 7 p. 296; see also Muḥammad b. Ismā'īl al-Bukhārī, *al-Jāmi' al-Ṣaḥīḥ* (Beirut: Dār al-Fikr, 1401) v. 8 p. 108.

²¹⁴ Ibn Bābawayh al-Ṣadūq, *al-Khiṣāl* (Qum: al-Nashr al-Islāmī, 1403) p. 27 *ḥadīth* 95.

²¹⁵ "Truly We have dignified humans. . . and exalted them above many of those whom We created." For a fuller explanation of this verse see: Rahim Nobahar, "Religion and Human Dignity" in *Theoretical Foundations of Human Rights: Collected Papers of the Second International Conference on Human Rights* (Qum: U.N. and Mofid University, 2002) pp. 336–351.

²¹⁶ See for example: Wesley Hofeld, "Fundamental Legal Conceptions—As Applied in Judicial Reasoning" *Yale Law Journal* (1917) p. 26. Also Muḥammad Ḥusayn Iṣfahānī, *Hāshiyah-i Kitāb al-Makāsib (Risālah fī Taḥqīq al-Ḥukm wa-l-Ḥaqq)*, researched and edited by 'Abbās Muḥammad Āl-i Sibā (Qum: 1418) v. 1 p. 25.

C. The spying condemned is not limited to attempting to discover other people's shortcomings and weak points; goods and virtues an individual wishes to keep secret should not be divulged by spying.

D. The object of spying is not mentioned in this verse. According to Arabic linguistic rules the omission of the object denotes generality; the Qur'an often seeks to avoid mentioning or specifying changeable affairs. The scope of the individual's privacy is determined according to various social, cultural and political circumstances, as well as through the interaction of the individual with society.

E. The verse is addressed to the faithful. This seems natural; God addresses those who are prepared to listen to Him. However, the scope of the obligation is not restricted to the believers. Spying on affairs of non-Muslims is included in this verse's broad prohibition.

F. Spying is inherently prohibited *per se*. It is forbidden even when spying is not conducted for disclosure of secrets. The prohibition against disclosing secrets (which is stressed in many narratives) is distinct from that of spying.

G. The Qur'an here does not provide any utilitarian grounds for prohibiting spying. In other words, it does not try to enumerate social evils resulting from such a practice; notwithstanding the fact that we know whatever God forbids surely contains harm. It appears that the Qur'an wants the audience to consider spying as an immoral act and feel a moral obligation not to engage in it. Any utilitarian justifications may lead individuals to think that the evils enumerated may be remedied by positive measures.

H. Spying is not condemned merely as a method of collecting information; the point is that intrusive spying intends to gather concealed information for defamatory or injurious ends.

Moreover, according to numerous explicit Islamic regulations, one should not expose the private sins of a Muslim even when one knows about them. The Prophet avers that whoever keeps something concealed which dishonors a Muslim will receive the same consideration from God.²¹⁷ Muslims have frequently understood such narrative Prophetic traditions merely as a divinely enjoined duty; in

²¹⁷ al-Ḥusayn b. Sa'īd al-Ahwāzī, *Kitāb al-Mu'min* (Qum: Madrasat Imām Mahdī, 1404) p. 69; Aḥmad Ibn Ḥanbal, *al-Musnad* (Beirut: Dār Ṣādir) v. 4 p. 62.

truth they denote that these are reciprocal human obligations towards one another. In other words, these considerations should be understood as a right for one party, and a duty imposed upon another.

• Yet privacy in a decisional sense is the most important aspect of privacy and somehow relates to the principle of human dignity. Manifested in the right to privacy in this sense is the core of the liberal conception of freedom centered on the human as an autonomous subject—that is, the individual who is sovereign over himself and all of his actions which do not interfere with others. The right to respect for and protection of one's privacy, in this sense, protects one's identity, integrity, dignity, and intimacy. Identity includes one's name, gender, appearance, feelings, views and opinions, honor and reputation.²¹⁸

Islamic teachings emphasize this decisional aspect of privacy very strongly. There is a well-known principle in Islamic jurisprudence termed '*adam al-sulṭah* or 'non-Domination'. There are a number of Qur'anic verses and Prophetic traditions supporting this principal. According to this rule an individual enjoying the age of majority with innate reason possesses sovereign authority over his/her own life and property—*free from unwarranted imposition of authority or jurisdiction*. The content of this principle is not limited to one's physical property and material assets; one's dominion over his property results from one's unimpeded authority over his life and body, in other words over his personality and identity. It provides that any decision relating to a mature individual's personality is left for him or her alone.

Similarly, a closely related operating principle among Muslim jurists is that of 'non-Guardianship' (*aṣl 'adam al-wilāyah*) which excludes others exercising dominion over one's life, body, property and other personal aspects, unless confirmed by convincing legal considerations—in effect guaranteeing an essential aspect of individual freedom. Privacy in this specific meaning is thereby closely related to liberty. Thus, interference or unwarranted intrusion into the private life of persons by the State or by other individuals, including attempts to obtain knowledge of their privacy, is in principle forbidden and undue. This fundamental code of safeguarding an individual's freedom of disposal over person and

²¹⁸ Janusz Symonides, *Human Rights: Concept and Standards* (Ashgate, 2000) p. 88.

property may be overridden only by strong compelling justifications. One certain case for such an exception is where harm is caused to public interests. Interference in order to prevent harm to the individual himself is only permitted under specially defined conditions. Interference to implement morality, and interference to compel individuals into action for the benefit of themselves or others, is still covered by this principle.

- ♦ Another avenue to apprehend the inherent compatibility of Islam with recognition of privacy is its overwhelming concern exhibited for promoting basic moral values. This requires some explanation. Morality enjoys a first rank of priority in Islam; numerous verses of the Qur'an stress purification of the human soul among the purposes of dispatching the prophets including the Prophet Muḥammad (ﷺ). It is evident that what is intended by Islam and our blessed Prophet is the real genuine promotion of morality and its internalization through sincere and conscientious acceptance by individuals. Building a society devoid of assent to religious faith and uncommitted to ethical-spiritual values with merely an ornamental or surface religious appearance is of no interest to our authentic religious leaders. Whatever the Islamic ethical system may be, it is beyond question that Islam awards moral value to sincere voluntary actions by the individual when they are performed out of inner conscience, faith-understanding and wisdom and without any prompting by threat and coercion. A vast number of Islamic Teachings insisting on the necessity of cultivating good inner-intent (*ḥusn al-niyyah*) unequivocally confirm this. Intrusive spying and paternalistic authoritarian supervision—even when motivated by an incentive to promote and spread moral values and virtues—will never bear this precious fruit. Such heavy-handed modes of interference will instead institutionalize hypocrisy and double-dealing in the conduct of citizens, a consequence most repellent to sincere faith.

The consequences of the spread of hypocrisy caused by paternalistic impositions and interferences into private life should never be taken as trivial; it brings in its wake its own social problems further complicating any remedial attempts. The individuals come to know less of each other, since their outward manifestations of behavior fall short of representing the real personality of the agents, and this, in turn harms the delicate balance of sustaining trust and confidence. The

true damage of authoritarian interference is to erode the healthy equilibrium of relations between public and private spheres.

Regardless of these general considerations, historical records demonstrate that Muslims have been familiar with the concept of privacy from their earliest centuries. Among them are the *dhimmah* contracts. Historic evidence confirms that Muslims tolerated covert practices by non-Muslims clearly conflicting with Islamic law, even during those eras when Muslims were at their greatest strength, and that *dhimmīs* were allowed to privately practice among themselves what they deemed proper. On the one hand, this generous attitude, approved of by the Prophet and our Imāms, indicates the potential capacity of Islamic thought for tolerance; on the other it indicates that belief in God and adherence to Islamic rules may not be willfully imposed upon others. Amartya Sen, referring to aspects of this type of privacy in Muslim history when it was very rare in Europe, pointedly observed that freedom was not limited to Western culture and that a totalitarian understanding of Asian values is selectively partial and narrow-minded.²¹⁹

A further consideration for the balanced recognition of privacy in Islamic thought is that it leads to good relations between the state and its citizens. Indeed emphasizing good relations between state and citizens implies that privacy should be desired and valued by any government, including one committed to Islamic principles. In Imām ‘Alī’s guidelines to Mālik al-Ashtar upon his appointment as viceroy of Egypt, a governor must seek not only to observe justice and truth, but to seek the active consent of citizens.²²⁰ The government’s interference into the private life of the population, even for purposes of correcting people or promotion of virtues, will obliterate the relations between state and citizenry and undermine the very foundation of governance. Imām ‘Alī gave paramount importance to concealing faults, especially those of the government; he strongly bade his governor Mālik al-Ashtar to conceal shortcomings of citizens and to avoid fault-finding.²²¹

²¹⁹ See Amartya Sen, *Development as Freedom* (Oxford University Press, 2001).

²²⁰ al-Sharīf al-Raḍī, *Nahj al-Balāghah*, ‘Alī’s Epistle to Mālik (Qum: Dār al-Uswah, 1415) p. 617.

²²¹ *Ibid.*

♦ *'ENJOINING GOOD & FORBIDDING WRONG' AND PRIVACY*

The principle of enjoining good and forbidding wrong is central in Islamic doctrine and polity. It is recommended by numerous Qur'anic verses as well as Prophetic traditions. Some thinkers view it as a revealed obligation, while others treat it as a rational obligation and view all instructions of the *sharīah* regarding enjoining good and prohibiting wrong to be understandable by human reason. In other words, reason as such realizes the propriety and necessity of enjoining good and prohibiting wrong, and thereby this principle is subject to many rational prerequisites such as efficiency.

The emphasis laid on this duty underlines that members of an Islamic society feel moral responsibility toward each other. This sense of responsibility is naturally apprehended by the State as a social institution. Hence one might imagine that the principle of enjoining good and forbidding wrong is not compatible with recognition of privacy. Yet there is no contradiction between enjoining good and forbidding wrong as a duty, and recognizing privacy as a citizenship right in all its senses.

Breaching bodily privacy for enjoining good or prohibiting wrong does not make sense. Coerced bodily investigation or frisking when investigating or preventing crimes in specific circumstances is acceptable in various legal systems in order to guarantee the security of society. It does not necessarily contradict privacy in the physical and informational senses—since enjoining good and forbidding evil are related to cases of refraining from good and committing evil in public. In forbidding wrong, the forbidders should abstain from interference in the private lives of others. The emphasis is more on the elimination of *manifest sin*; secret sin is often reserved for God's jurisdiction alone.

In other words, texts forbidding spying are specific and special; therefore assuming the generality of the texts imposing the duty to enjoin good and forbid evil modifies the latter. Furthermore, if these texts were taken to prevail over the former, there would hardly be found a case falling under the prohibition of spying, thus rendering it superfluous. The understanding of early Muslims was the same. There is a famous incident related about the second Caliph 'Umar b. al-Khaṭṭāb when he entered a man's home by climbing over the wall and caught him engaged in wrongdoing. But the man retorted that while

he had indeed sinned in one aspect, ‘Umar had sinned in three: he had spied, whereas God has prohibited this (*al-Ḥujurāt* 49: 12); he had entered through the roof, whereas God commanded us to enter houses through their doors (*al-Baqarah* 2:189); and he entered without offering a greeting, whereas God has forbidden us to enter a house without first greeting those who dwell in it (*al-Nūr* 24:22). ‘Umar let the man be, merely stipulating that he should repent.²²² Narrations of this genre underline the prohibition of spying and the sanctity of the home.

As for privacy in its decisional sense, changing people’s private decisions through coercive force and encroachment on their privacy is neither permitted nor efficient. It is not permitted because it contradicts the principle of ‘non-domination’, and is not efficient since it often leads to hypocrisy, strongly disapproved by Islamic teachings: “*there is no compulsion in religion*” (*al-Baqarah* 2:256).

According to the Qur’an the prime aim of all prophets has been to help people stand forth in justice by their own efforts (*al-Ḥadīd* 57:25); Islam seeks to promote a self-organized society. From an individualistic point of view the aim of all prophets is the purification (*tazkiyah*) of mankind (see *Baqarah* 2:151, 159, 164), and it is clear that such an aim is only achievable in the light of free will with a motivation that arises from the deepest level of our hearts. Therefore, the principle of enjoining good and prohibiting wrong should not in any way be construed as a means of compulsory implementation of *sharī‘ah* in the private sphere. In addition, the rationale behind the duty to enjoin or forbid others is a utilitarian consideration, for it is allowed whenever it is of utility. No one can deny that breaching citizen privacy in order to enjoin to virtue might instead yield the opposite effect—due to resentment or a sense of personal violation or injury to dignity.

Despite the great privilege and importance given to these various aspects of privacy in Islam, some have sought to give the concept of privacy in Islamic doctrine a procedural character, rather than a substantive one. For example, regarding the principle of *enjoining and forbidding* the Princeton Professor Michael Cook opines:

“Wrongdoing that is confined within a home can still trigger the duty for others who live in that home: as we have seen, a

²²² See al-Muttaqī al-Hindī, *Kanz al-‘Ummāl* (Ḥalab: al-Risālah, 1390) v. 3 p. 808.

wife may be obligated to rebuke her husband and a son his parents. Perhaps most significantly, someone from outside the home who for any reason happens to be there, and encounters wrongdoing, may be obligated to do something about it. In other words, we do not seem to have here the notion that certain kinds of behavior are inherently private and as such immune to public scrutiny.²²³ ... What is protected is not 'private life' but rather 'hidden sin', behavior that happens not to be public knowledge. It is no business of ours to pry into what is unknown to us, nor to divulge what we innocently stumble upon; but once we know, we are likely to incur some kind of obligation to forbid wrong."²²⁴ He concludes that: "The difference between Muslim thinking and that of the modern West is thus not simply that there is no single Muslim concept corresponding to the Western notion of privacy; it is also that Muslim concepts seem to be of a significantly different kind."²²⁵

No doubt there are real differences between Islamic and Western conceptions of privacy, yet we have consistently demonstrated that privacy in the decisional sense, in particular as it relates to human dignity, is a vital and substantive value in Islam's value system. It appears that neither are there any clear standards clarifying the concept of 'private life' in Western doctrines of privacy. Many debates take place in Western societies over controversial issues such as homosexuality, abortion, or euthanasia, and whether they should be viewed as private or in fact bearing on the public sphere. The same ambiguity could be found in the concept of 'sin' and particularly the concept of 'hidden' (from view), which is a parallel term conveying the notion of 'private'. As for forbidding wrongdoing inside the home, this is not due to non-respect for privacy in the home, but because of the relativity existing in the very conception of 'hidden' or 'private' itself. An example will clarify this point: we may consider that a wife or a husband has a private room in their shared home, and that no person

²²³ Michael Cook, *Forbidding Wrong In Islam* (Cambridge University Press, 2003) p. 62.

²²⁴ *Ibid*, p. 63.

²²⁵ *Ibid*.

in their household could intrude into it without permission from the room's holder.

♦ FROM RESPECT TO PRIVACY TO PUBLIC-PRIVATE DEMARCATION

Recognizing privacy in all its aspects does not mean, however, that the private sphere is a realm devoid of values and that there is no question about the good life in that area, or that it is left completely up to individuals. While the private sphere is a realm mostly free from state coercion, its values are not different from, nor do they contradict, the basic values of the public realm in its broadest sense. Islam often defends a series of coherent values dominating both public and private domains. Therefore, no gap exists between the values of these two realms—as it is conceived in classic liberal thought. There are many values inherent to the private sphere which a Muslim must follow. To be qualified for many social responsibilities and positions one should not breach Islamic standards, neither in the public nor in the private realms. For instance, being just (*'ādil*) is a prerequisite for many important Muslim social responsibilities and for one to be just requires one to observe Islamic norms *both publicly and privately*.

From yet another perspective, Islam addresses the question of the human good and of how humans, individually and collectively, should live their lives. But the emphasis is placed on optional and deliberative pursuit of these values. We wish to repeat that the primary function of Islamic Teachings is to develop the spirit of self-motivation and self-organization through education and training in the family, neighborhood, community, and other social institutions. Using force and compulsion for inculcating morality and virtue often leads to the hypocrisy which is strongly condemned in many verses of the Qur'an. Indeed, all such verses and the abundant Islamic Teachings reproaching hypocrisy (*nifāq*) denote that all aspects of a Muslim's life are under the dominion of a coherent spectrum of values. Muslims are free to formulate and elaborate their individual identities, but at the same time there exists a rich tradition based on the Holy Qur'an and the legacy of God's Messenger Muḥammad as an inspiring guide for shaping identity. Islamic society, especially its nucleus of the parents and family, seeks to teach the new generation this prophetic legacy. In this manner, Muslim peoples formulate their identity freely through careful consideration of their Islamic tradition comprising perpetual

and changing characters; and Islamic society rethinks and re-appropriates it by considering the contingent elements of ‘time’ and ‘place’. In the presentation of this tradition over successive generations, the emphasis is put more upon the society, rather than the state. Nevertheless, the Islamic state has the duty, in turn, to promote virtues and common goods sustaining the practice of the common life—especially in the practical adherence to foundational Islamic principles including respect for all citizens’ rights and civil liberties.

Recognizing decisional privacy in the sense of a realm absolutely free from the encroachment of the state and/or societal authority, as sometimes advocated by certain liberal ideologues, is neither practically possible nor is it desirable in the light of Islamic Teachings. As Alasdair MacIntyre explains:

“I am never able to seek for the good or exercise the virtues only *qua* individual; because as such, I inherit from the past of my family, my city, my tribe, my nation a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my life its own moral particularity.”²²⁶

Due to the significance of history in shaping identity, a great emphasis is placed on the history of the prophets in the Qur’an and Muslims are strongly recommended to recite and contemplate the tales of their moral and spiritual example in the process of elaborating their own personal and collective identities. Then Muslims are not alone in forming their identity, rather they are strongly related with their past and their traditions—they are rooted or embedded in their culture.

Because the private sphere as conceived in Islamic thought is not a realm free from values, nor absolutely attributed to the free choice of citizens, phenomena such as homosexuality cannot be tolerated by recourse to the notion of an individual’s privacy. In this way, we certainly find differences between Islam and Liberalism regarding their attitudes toward, and conceptions of, the public–private demarcation.

²²⁶ Alasdair MacIntyre, “The Virtues, the Unity of a Human Life and the Concept of a Tradition” in *Liberalism and its Critics*, ed. Michael Sandel (London: Basil Blackwell, 1984) p. 28.

Moreover, there are many experiences which teach us that the boundaries between the public and private spheres are shaky or shifting, and that every action occurring in the private sphere would arise in the public realm sooner or later, especially in an open democratic society.²²⁷ Thus, if we are truly concerned about public morality and sincerely committed to exploring the relevance of the Good Life in the public domain, we cannot ignore individual values practiced in the private sphere by imagining that the private sphere is absolutely free from the question of the Good Life.



III. *Islam and the Public Sphere*

The public sphere—in the sense of a realm for rational-critical discourses on the common good—is prerequisite for implementation of many virtues and values recognized in Islamic thought. Considering this fact, there are a number of reasons and indications showing that Islam not only welcomes a public sphere, but emphasizes its significant role.

Among those reasons and evidences we may invoke many Teachings blaming concentrated power and that power has a great potentiality to be abused and leads to mischief. According to the Qur'an, man would act arrogantly whenever he sees himself self-sufficient (*Alaq:6-7*). Reproving obstinacy and tyranny in all human relations is, of course, a central aspect of the Islamic heritage. This idea cannot agree with totalitarianism, which ignores the public sphere and puts all aspects of society under the surveillance of the state. By contrast, Islam promotes the idea of limiting the use of power through citizens' supervision. This class of Teachings upholds the just distribution of power and defends a vibrant civil society.

Enjoining good and forbidding wrong is a further indication clarifying Islam's attitude towards the public sphere. Indeed, this principle takes for granted manifest freedom of speech: it is a right and a

²²⁷ The movement for rights of homosexuals, for example, begun as the struggle of a minority, but what they are now trying to "liberate" is an aspect of the personal lives of all people: sexual expression. See Manuel Castells, *Information Age: Economy, Society and Culture v. 2 The Power of Identity* (UK: Blackwell Publishers, 1998) pp. 202-220.

responsibility at the same time. Based on this principle every Muslim has the right and even the duty to monitor and correct the governance of the state. Giving good advice (*naṣīḥah*) to the governing authorities, or speaking truth to power, is deemed among the most highly recommended duties of an upright Muslim. For this to be practiced, a strong civil society and viable public sphere is required, since in many cases reforming evil and corruption is not achievable without some form of common assembly and disseminating information comprising an effective public sphere.²²⁸

Islam's emphasis upon a workable public sphere may also be grasped from abundant Islamic Teachings urging unitary social cooperation, mutual assistance, and the maintenance of a solid sense of social communal responsibility. To achieve this aim a flourishing public space for pursuing ways of reciprocal social cooperation and open discussions of the common good are needed. Muslims often express their conception of the 'common good' by the term *al-maṣlaḥat al-āmmah* ('public wellbeing') and endow it with great importance. Clearly, a religio-social order asserting such values, interests and expediencies will reject the idea of dividing people into isolated islands, as commonly done in totalitarian authoritarian regimes. In Qur'anic discourse, it is the arrogant character of a Pharaoh heading a corrupt state who separates or isolates people, which represents the archetype of such abuse (*Qaṣaṣ* 28:4).

Shūrā or 'mutual consultation' (the title of the 42nd chapter of the Qur'an) is another principle displaying the importance of the public sphere for Islamic thought. It can play a role not only in the political arena, but is generally conceived as a method of decision-making and interaction between Muslims in different aspects of their social life.

²²⁸ [Professor Nobahar is fully cognizant of the painful consequences suffered by upright Muslims who in good conscience exercise this "right and duty" in many Muslim societies both in the past and today. He is also well acquainted with the contrast between Sunnī and Shī'ah doctrines concerning such a duty, for which the admirable study by Professor Michael Cooke referred to above (n. 46) is a good guide; see Nobahar's remarks below on Islam's rejection of totalitarianism. Perhaps his training in the *Ja'farī* school explains his pungent dismissal of what most classical Sunni political theorists upheld: i.e. that good Muslims should not rebel against authoritarian abuse of power by corrupt regimes. This twisted doctrine was part of the distorting legacy of Umayyad and 'Abbāsīd rule. KC]

The Qur'an exhorts believers to conduct their affairs by mutual consultation (*Shūrā* 42:38). The Prophet himself was strongly bidden to consult with the people in momentous affairs affecting the entire community (*Āl 'Imrān* 3:159). There are numerous Qur'anic verses indicating that many of the Prophet's addressees were culturally at a low or undesirable level. In his practical model of conduct, behavior and wisely humane leadership the Prophet Moḥammad has left a rich and profound legacy for mankind in this field. He dealt with his followers so openly and fairly that they felt comfortable consulting him on weighty social issues, strategic dilemmas affecting the entire body of the faithful, as well as very many private and personal problems. It was a common custom among his Companions to question the Prophet whether an idea raised by him in a certain case was revealed from God or was Moḥammad's personal opinion. When his suggestion or advice was understood not to be revealed as God's decisive bidding, his Companions felt free to discuss it in detail and even disagree with him.

Above all, the public sphere is prerequisite for the pursuance and performance of Islamic values. This is because the addressees of God's bidding are all Muslims; they are not simply passive followers. God has taken them into account by directly addressing them through the divine appeal to their innate intelligence and understanding, and by requesting them to ponder the Qur'an's guidance (*Muḥammad* 47:24). The outcomes of their contemplations should be valid and authentic. While recourse to allies and religious experts in various domains has its own framework and rationale, all people are strongly urged to contemplate God's bidding and forbidding in particular Qur'anic verses. Thereby, all Muslims play a role in understanding God's guidance and in applying virtues and values. Hence there must be a 'place' not only in the physical sense, but more importantly in the sense of 'institutional settings', for Muslims to discuss their values. In this way, the public sphere is necessary not only for the conduct of daily affairs, but also for a correct understanding of Islam. In this way, the public sphere enables the Muslim community to rethink and rebuild their value system in response to fresh circumstances and requirements they encounter through the unfolding of history.

Islamic teachings emphasize the importance of 'truth' (*ṣidq*). Islam teaches humans to behave properly in all aspects of their life based on

correct thought and sound understanding. This may also be seen as confirming Islam to be consistent with the reality of the public sphere, for the truth is often the fruit of dialogue and honest discourse. God states: “Announce the good news to My servants who listen to the utterance and follow the best thereof” (*al-Zumar* 39:17-18). This verse teaches us that dialogue has a crucial role in arriving at the best understanding and action; it does not limit talking and listening to specific people, but implies that the scope of dialogue and discourse be expanded.



IV. *Islamic Theory of State & Public and Private Spheres*

Public and private spheres cannot exist when a society is governed by a totalitarian state. As Mounier explained, totalitarianism is the enemy of privacy and the private sphere.²²⁹ H. Arendt adds that totalitarianism is the enemy of both public and private spheres. It allows citizens neither privacy nor free public discourse.²³⁰ According to Arendt, totalitarianism is distinguished from mere tyranny by the fact that it works directly on private life as well as limiting public life.²³¹ Habermas shows that among the reasons for the ‘re-feudalization’ of the public sphere in the West was that the state began to play more fundamental roles in the private realm and in everyday life, thus eroding the difference between state and civil society, between the public and the private sphere.²³² In modernizing societies the main obstacle blocking the functioning of the public sphere and civil society is ruling cliques exercising power in the name of Islam while abusing Islamic Teachings.

To be convinced that Islam indeed recognizes public and private spheres, it should be demonstrated that its theory of state rejects totalitarianism. Certainly Islamic Teachings—and even what wishes to assume the name of religion—never agree with a totalitarian state. This

²²⁹ See Emmanuel Mounier, *Personalism* (Notre Dame IN: University of Notre Dame Press, 1952) pp. 36–37.

²³⁰ C. Calhoun, *op. cit.* v. 3 p. 1900.

²³¹ *Ibid.*

²³² See Douglas Kellner, “Habermas, the Public Sphere, and Democracy: A Critical Intervention” in *Perspectives on Habermas*, ed. Lewis Edwin Hahn (USA: Open Court, 2000) pp. 259–287.

is because the Totalitarian idea is based upon a primary social philosophy which claims that society's interests always take priority over the individual's interest, and that all people are reducible to a 'societal whole'—in other words, individuals and persons have no real existence. I think no religion, in essence, can agree with such an idea. As far as Islam is concerned, it emphasizes persons and individuals regardless of their relations to the society at large. Almighty God in the revealed Qur'an often addresses people and individuals as His servants and creatures. Again we repeat that the primary mission of Islam is to effect a development in humans' worldview through contemplation, knowledge, self-understanding, purification and perfection of insight. This aim can never agree with totalitarianism in any of its forms.

Due to this crystal clear point, while there exists a wide spectrum of theories of state entertained in Islam by the scholars, yet not one accepts that Islam defends a totalitarian or tyrannical state. Some authorities even held that Islam is really only concerned with spirituality and has no necessary connection to the social aspects of man's life. Others maintain that every state loyal to the principle of 'Justice' may be evaluated as an Islamic one. One also finds the idea that Islam possesses a comprehensive system covering all aspects of human life, including its own distinctive theory of state.

Whatever Islam's theory of state is deemed to be, to state that Islam deals only with the spiritual and intellectual life and has no intended relation to governance and social questions, is as far from reality as saying that Islam contains a comprehensive detailed social, political and economic system valid for all times and places! As the Qur'an reminds us, the same may be said about all the Abrahamic faiths; for Almighty God portrays both Moses and Jesus (upon them peace) as having great social concerns and responsibilities. The mission of Moses was to release the Children of Israel from a haughty and dissipated dictatorial regime that was the instrument of their shameful torment (*Dukhān* 44: 30–31). Jesus' mission was to pay attention to both spiritual and social affairs. From the start he was strongly commissioned to implement *ṣalāt*, the symbol of worship and spirituality, and *zakāt* as the manifestation of social cooperation and responsibility (*Maryam* 19:30–31). Hence Islam cannot be neutral on the issue of the state as a significant social institute.

Relying on numerous Qur’anic verses and Prophetic traditions, especially those insisting upon enjoining good and prohibiting wrong, one may state that an Islamic state—or an acceptable state according to Islamic teachings—cannot be neutral regarding the question of the Good Life. The question of a neutral state in Western thought, which has been central to political theory at least since Kant, derives from the question of equality. The question has been and still is: how can government treat all its citizens as free or independent, or with equal dignity? As Dworkin assesses, this question has not been yet solved. Some thinkers still hold that:

“The content of equal treatment cannot be independent of some theory about the good for man or the good of life, because treating a person as an equal means treating him the way the good or truly wise person would wish to be treated. Good government consists in fostering or at least recognizing good lives; treatment as an equal consists in treating each person as if he were desirous of leading the life that is in fact good, at least so far as this is possible.”²³³

As one can see clearly, in this sort of discussion the question of neutrality of state toward the Good Life is still a live question in process. Separation between the state and society, as it is conceived in Liberal thought, is not based on decisive philosophical argumentation. It is rather based on a type of experimental approach.²³⁴ One may reject it as unsuccessful—at least as a general idea valid for all societies.

It appears that Islam does not agree with the idea of separation between the state and the society. State, whether it is an Islamic one or not, is in any case a *part* of the society. Society and state mutually reinforce each other in providing the discipline for controlling human behavior. An Islamic state, or an acceptable state in Islam Teachings, has the responsibility to effectively promote virtues and values. Every

²³³ Ronald Dworkin, “Liberalism” in *Liberalism and its Critics*, ed. Michael Sandel (Basil Blackwell, 1984) p. 28.

²³⁴ See esp. Stephen Schneck, “Scylla or Charybdis: Rethinking the State/Society Dichotomy” in *Private and Public Social Invention in Modern Societies*, general editor George F. McLean (Washington, D.C.: Paideia Publishers & Council for Research in Values and Philosophy, 1994).

state should be worried about the wellbeing (*khayr*) of its citizens through promoting the common good; but this should be accomplished through a mutual interaction with the citizens. However, we should be well aware and take care that morality not be abused by the state power in its effort to clothe itself with an authority borrowed from religion. Mankind has had many bad experiences of this kind, whether in the name of religion or of other phenomena.

In Islam, in the case where all or the vast majority of society are Muslims, it is assumed that there exists a form of consensus about the framework of the value system binding society together. Consequently society and the state—which is deemed to be a *part* of the society and not necessarily contradicting it—should help each other in an actively bilateral interaction toward pursuing and promoting basic values and the common good. Of course, this interaction requires the state to be bound to democratic principles when coming to power and in staying in power, for the reason that without possessing popularity and good relations with citizens (as is the case in non-democratic regimes) the promotion of the common good would be unreachable.

Again, in a pluralist society the state seeks to promote what is accepted as common good based on a rational dialogue and discourse between state and society. The state as such has no authority to establish moral rules; its responsibility is to promote the spirit of deliberative pursuit of the common good among its citizens. Toward effectively achieving this aim, the law and legal mandatory norms do not enjoy the first rank of priority. Instead, the first rank is occupied by morality and prompting civic virtues by civil society within the public sphere. As one prescient thinker has correctly perceived:

“The better the society, the less law there will be. In heaven there will be no law, and the lion will lie down with the lamb. In Hell there will be nothing but law, and due process will be meticulously observed.”²³⁵

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Conclusion

²³⁵ John Witte, “Law and Religion: The Challenges of Christian Jurisprudence” *Law Journal of University of St. Thomas* (Spring 2005) No. 2 p. 439.

Islamic Teachings agree with the recognition of both public and private spheres as two relatively separate realms from the power of the state. The public sphere exercises control over the state on the one hand, and promotes the common good in society on the other. This realm helps Muslim communities to develop their rational-critical discourse about various aspects of their social life including Islamic values. In this manner, a Muslim community may rethink and rebuild its values in the light of new realities and modern demands. This realm also develops the potential of Muslims for dialogue with the international community, including powerful secular orientations at the global level. Similarly, Islamic thought recognizes the private sphere as a realm free from encroachments by state and society. The private sphere should serve as a supportive background and fund of resources for individuals to form and elaborate their private autonomy.

Islamic Teachings, however, do not agree with the absolute distinction between the public and the private sphere as it is recognized in classic Liberalism. In Islamic thought, although there are specific values clearly delineated for each of these two domains, there exist sufficient common and general virtues and values covering all dimensions of Muslim life. Muslims will pursue these values deliberately based on self-understanding, with the aid of the Muslim community and by learning from their Islamic heritage and digesting their own authentic Teachings. The responsibility of the state is to create the proper background enabling citizens to achieve and apply Islamic and humane values, and to not impede the flourishing of resources and access to the Teachings. Therefore, unilateral imposition of morality and values by the state without an active and positive interaction between the state and citizens, apart from its self-defeating inefficiency, is not permitted. Indeed, in an authentic Islamic society Muslims work out their divergent identities both in the public and private sphere by self-consciousness through active interaction with their society that inherits the Islamic legacy from previous generations. Thus, in the light of this interaction between individual and society a combination of free will and tradition forms the genuine identity of Muslims.