PUBLIC SPHERE IN MUSLIM SOCIETIES; ITS REFLECTION ON
SOCIAL, POLITICAL THOUGHT AND LAW
CASE STUDY: IRAN AND TURKEY

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Abstract

This comprehensive study aims to situate and contextualize the meaning of the public sphere in Muslim societies, especially Iran as compared with the experience of Turkey, utilizing diverse tools of inquiry in qualitative research methodology, such as critical textual analysis, early Islam historiography and historical analysis of Iran and Turkey, as well as in-depth, open-ended interviews. After setting the scene by rendering explicit certain aspects of Islamic thought and history, this study goes on to demonstrate various reflections and repercussions that such a free domain would have on the societal and, especially, legal structure of the aforementioned societies.

Dedication

Dedicated to all the people whose peaceful and reasonable demands are not being heard.

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Chapter One: Situating Public Sphere in Muslim Societies

1-1 Introduction

Religion is one of the important institutional structures contributing to the total social system. Unlike the formal relationship of the past, in which society's demands did not become influential with the political powers until escalating to some huge event that forced them to act, today societal structure is much more entwined in the panoply of decisions of varying magnitude that politicians must make. This is because the general knowledge of the entire population has improved over time and past experience has proven that ruling without consideration for the people's will is incompatible with maintaining the power to enforce one's rule. In the process of achieving the consent of the people, there is a dire need to combine their individual identities to form a collective whole. This kind of procession requires a space to accommodate it - in fact a public sphere. Hence, for the purpose of this research a public sphere refers to an arena through which people can openly discuss their views without fear of reprisals, persecution and recriminations. In such a free forum people could negotiate and resolve the existing problems between the general population and the ruling government (Fraser, 1990).

In this regard, more than any other religion, Islam, besides encompassing guidance for the conduct of one's private life, is also always associated with a type of government, political power and public life in general. As an illustration, in Islam, Quran (both verses related to prayers [*ibadat*] and those dealing with social and legal issues [*Muamelat*]), the

report of the traditions of prophet Mohammad *(Sunnah)*, the Quranic exegesis governs all aspects of an individual's public life.

The entrance to a post- ideological world becomes a fashion that also suits the Islamic world, acting as a portal to the international commodity culture. However, this study shows that within the boundaries of ideologies there is a possibility of breath. In the Islamic world, ideologies in their limited definition first appeared in the 18th century, campaigning throughout the 19th and becoming a regnant political worldview in the 20th century. Ideological thought, particularly Islam as an ideology, entirely differs from the religious experience of the classical era. Ideological thought is always utopian as it derives from the radical critics of present and past. (Schulze, 2002)

Being an extremist has a cyclical order. Extremism is the result of radicalism. The failure of almost all "isms" - such as Marxism, capitalism, nationalism - to be adequately fulfilling, stable and sustainable often causes religion to reappear at the forefront of society to play a remarkable role in the continuity of the culture. In human history whenever people experience repression it is their automatic impulse to seek another seemingly more appealing ideology to be hooked on. Religion is usually the first place people turn when other more tangible and pragmatic methods have failed to produce the desired result.

According to the historical experiences of the Islamic world, Islamists in the 1980's supported an Islamic identity under an Islamic regime. In the same way, Islamic scholars came to the conclusion that religion is a contextual pattern that leads to a new nationalism

tending to an extreme localization of Islam. The Islamic revolution of Iran institutionalized an ideological Islam leading to the construction of boundaries between the Islamic and non-Islamic world. Therefore, the only prevailing thought in regards to public domain assigned towards having an Islamic public sphere in an Islamic state (Schulze, 2002).

With regard to the struggles of Islamic societies attempting to achieve greater freedom in the 1990's, certain terms gained weight that sought conformity in the moral tradition of Islam such as "willingness", "democracy", "pluralism" and "tolerance"(Schulze, 2002). There was a good number of *faqih*s (Islamic jurists) talking about Islamic liberalism leading to spontaneous criticism in the works of Islamic scholars (Binder, 1988).

One must always take into account that in Islamic societies a free public domain cannot possess the exact same characteristics and criteria as non-Islamic, especially Western, societies. Parekh cites the instance of East Asia and asserts that East Asian leaders' claim of human rights being essentially a Western value is unconvincing due to their misinterpretation of their own traditional values. He refers to the Asian human rights activist who pointed out that Chinese leaders misinterpret traditional values and consider them sacrosanct. Of course, these societies' emphasis on collective rights much more than individual rights is of considerable relevance to the analysis of their interpretation. (1999, pp. 140-143)

By using the spectre of Westernization, instead of universalism, to suppress social progress and democratic development, totalitarian governments are unwittingly endorsing the claim that Western values are compatible with universal human rights and encouraging this view amongst their citizens. In fact, using Westernization as the targeted process to be resisted and rejected instead of universalism, and, even more importantly inferring that without resistance Western values will become universal, does not effectively discourage people from following those norms and values but gives them hope that eventually and inevitably they will be adopted. This leads many people to conclude that rather than finding a way to reconcile their values to those that exist outside, Western values are the only ones which represent human rights and universal values, therefore, they abandon any meaningful attempts to integrate their traditional, indigenous values with those perceived universal values which they are trying to instill.

Besides the false consideration of Westernization as universalism there is also another false assumption of the existence of seamless whole internal cultures. The cultural universe is composed of perpetually fluctuating decisions and actions, not static, canonized boundaries within which culture resides. Culture should be thought of as a journey not a home (Beygi, Cosmopolitanism Conference, York University, 2011).

If we draw a dialectical analysis, the synthesis of our dialectic consisting of universality as thesis and difference as antithesis will be a prominent multifaceted or featured universalism. What I mean by this is that featured universalism is the contested outcome

of intercultural dialogue that would be rationally justifiable and applicable to each culture while also taking into consideration its distinct differences. Having said that, Islamic societies have their own particular and distinct characteristics while possessing universal features that make their needs inseparable from the world around.

My research is about the debates and the existing experiences of the public sphere in Iran and Turkey. My thesis concerns whether there is any possibility of creating a free public sphere in a society ruled under Islamic law and norms. I argue that contrary to the current situation in Iran, having a free public domain that allows criticism of authority would be beneficial for Iranian people. My argument shows that although the current regime in Iran does not support a free public domain, a free public sphere is experienced in the Iranian cultural history (pre-constitutional revolution of 1906, the first two years after the Islamic revolution of 1979 and etc.). Moreover, I will show that a free public sphere is a precondition to democracy with its specific definition. Furthermore, in order to achieve a free public sphere there is a need to consider the place of religion within the Iranian context. This research also explores the possibility of addressing and challenging the construction of "otherness" in a society ruled by Islamic norms and authorities. Consequently, this study investigates Islam from within the religion. In addition it seeks to investigate the "otherness" constructed by the function of religion, such as the law, culture and people's perception of the existing diversity. I will cover various debates, historical and existential experiences regarding the public sphere.

I support my argument by putting forth the example of the existential experience of modern Turkey and its development during the process of secularization, demonstrating that a public sphere can be made to be present and productive in the context of a modern Islamic narrative. In shaping today's formation of Turkey, I am aware that there were many other important contributing factors in establishment of a democratic and secular such as geographic, economic and militaristic. However, these elements are not directly relevant to the focus of this thesis and it is beyond the scope of this work. Turkey's public sphere was instrumental as a mediator between these factors. My research, with regards to Turkey, remains chiefly concerned with the extension of the public sphere and how it has helped the social process of secularization progress, leading to democracy.

I must also add that there are many differences in the approach that Turkey and Iran take toward the presence of religion in the public sphere. There are various debates, historical and existential experiences regarding the public sphere that this paper will encompass. In the Muslim discourse of the public sphere, controversy has swirled around its possibility amongst traditionalist, moderate and fundamentalist Islamic theologians. Their views regarding the place of religion within an Islamic society help to trace the history, possibility and potential outcomes of having a public sphere according to their schools of thought.

1-2 Research objective

In order to undergo the process of secularization there is a necessity to change base structures that affect the common understanding of people in the society. Secularization for the purpose of this study refers to a situation in which governmental authorities and the legislative process are considered independent of religion. My concern centers on religion, specifically Islam, as it relates to this development. Finding the right balance and positioning of the public sphere and religion might help societies currently under control of religious governments - in name or actual entity - to recognize their rights and seek their freedoms in productive ways. The question arises of how can we establish an inclusive, free society that respects freedom of religious expression without risking the possibility of the total removal of all religious expressions in a given public narrative? To me the answer would lie in the integrity of the public sphere and the right of people to express themselves freely. Such a people-constructed public sphere that people would provide a nation with a safe environment to engage in dialogue and discuss choices. This needs the state support in allowing people to demonstrate their choices and enjoy their rights equally. Therefore, the state should be secular and democratic and aiming to support plurality. Such a state is possible only and if a free public domain is recognized and legitimized. This thesis aims to tackle this phenomenon from the ground up -i.e. from accomplishment of a free public sphere in the society at large, which influences societal structure, institutions of law and the state.

Moreover, it is commonly understood that secularism tends to support freedom of choice and expression in the public sphere. The question then is raised: if there is any possibility that such a public sphere could exist in a non-secular governmental system before it would transform into a secular one. Would it be possible in a society based on Islamic norms to first establish a public sphere that would eventually bring about changes to Islamic norms, and later it would provide an eventual secular transformation. In addition, is there any possibility of acceptance of such a free public domain within diverse Islamic narratives? How would such acceptance benefit the average citizen of both Iran and Turkey? How could such a public sphere shape a more people-oriented legal system rather than the existing Islamic legal system? It is noteworthy to consider that Iran and Turkey have very different legal systems.

My work intends to explore whether the emergence and development of a free public domain in Islamic countries, may resolve a number of existing social and economic problems that seemingly prevail in the modern narrative of nations claiming to be ruled through Islamic doctrine. I also intend to further extrapolate on whether the establishment of a free public domain would impact the legal system and government institutions to the extent of ultimately influencing the social and political cultures and everyday lives of all citizens.

As mentioned before, there is literature available demonstrating the efficiency of the public sphere on the whole as a social construct in Western thought, mainly in the works

of Craig Calhoun and Jurgen Habermas. Yet, in an Islamic context, the question that emerges is if the reality of Islam contains within it the potential means for a democratic state or will the Islamic state forever remain separate from global conventions and if so, how will such entities subsequently function and interact with all of the other aforementioned types of government in the global community? It is a common belief that in a government based on religion, such as Islam, sovereignty rests with God, but in a democratic state, sovereignty belongs to people. Is it possible that a government be Islamic in nature and cultivate a society in which people are free to establish a genuine public domain that could eventually lead to democracy in practice?

1-3 Research Field; Why Iran and Turkey?

The focus of my research is Iran compared to the experience of Turkey, as I believe they provide a good contrast to one another, providing a good cross-sample of the spectrum of issues relevant to the topic without being so socially, economically and culturally alien to each other as to defy meaningful comparison. When we look at Iran and Turkey the presence of a Muslim majority population is conspicuous. By comparing these two countries as they each experience the reappearance, arguably resurgence, of Islamic authority in their public sphere and taking into consideration their differences in approach to this multifaceted issue, I believe will provide meaningful evidence as to the forces at work in shaping the public identity and private affairs of these societies. Though manifesting itself quite differently in each instance, we can explore how the public sphere can be made to be present and productive in a modern Islamic narrative.

The existential experience of Turkey in bringing about the public sphere and its development during the secularization process is worthy of mention. Although the domain that was supposed to mediate between the private sphere and public authority was not well established, at least as far as secularism was concerned, its extension and basic impetus led to the initiation of this process. The thesis will remain chiefly concerned with the extension of the public sphere and how it has helped the social process of secularization progress, which led to democracy in Turkey, albeit with occasional setbacks owing to military intervention such as those in 1960, 1971, and 1980. One must also be mindful, as many have said, that Turkey is the only Muslim democracy, having a secular structure while maintaining a population in which the vast majority is Muslim. However, Turkey itself is changing as the public sphere is trying to take religion into political authority.

I should also add that the amount of work done for the part of Iran in this research is far more extensive than that of Turkey. As mentioned before, Iran is the main case study of this research as I have firsthand experience of living most of my life in Iran. I have used Turkey to illustrate the application of a public sphere by the example of a country having nearly 99 percent Muslim population while having the tradition of secular government.

1-4 Research Methodology

The tension between the study of the unique and the need to generalise is necessary to reveal both the unique and the universal and the unity of that understanding.

(Simons, 2009, p.238)

In this research I have studied the possibility of implementing a free public domain in a society ruled by Islamic norms. In addition the reflection of achieving such a public sphere on socio-political thought and law, which has been mostly traced by the discussion of public ethics in different societal and religious narratives. Furthermore, I have studied the struggles made toward realizing a free public realm in these societies, i.e. Iran and Turkey, through a variety of means: revisiting the existential and historical experience of a free public sphere, evaluating and considering Islamic primary sources such as Quran, *hadith* and *Tafsir* (Quran commentary) as well as appraising sources of data used by scholars in the field and data-gathering, coding and analyzing.

I have dealt with critical issues such as religion, culture, ethics and law. My goal is to go in depth to negotiate these issues at large supporting the possibility of having a free public domain within the context of Iran and Turkey. Moreover, I aim to minimize the influences of orientalism, apologetic position, idealism and other types of positioning that result in producing non-realistic and inapplicable research. In order to overcome the influences of the pre-mentioned themes, I have critically revisited the primary and secondary sources. I also have a critical textual analysis of these sources.

Above all, most scholarly works concerning the public sphere tend to be Western-oriented, focusing only on societies already meeting the preconditions to achieve a free

public domain. There is little work done relating to the public sphere within non-secularized systems specifically in the context of restriction by Islamic norms.

I am also aware that there is a debate among scholars regarding whether or not the public sphere can be recognized in non-Western societies. I take the position that having a public sphere is not limited to any specific context. According to Habermas: "A portion of the public sphere is constituted in every conversation in which private persons come together to form a public" and this emerging public were inclusive in principle and the issues discussed became general not in their significance but in their accessibility (1984, p.231). From this perspective one can extrapolate that, in theory, a public sphere can be present under any political system. However, in practice it greatly depends on the power and attitude of the ruling system and the matters of public institutions. In this work, I show that a relatively free public domain has been experienced in Muslim societies throughout history.

I have incorporated a qualitative research method: "Qualitative research is multi-method involving an interpretative, naturalistic approach to its subject matter. This means that qualitative researchers study things in their natural setting, attempting to make sense of, or interpret, phenomena in terms of the meaning people bring to them"(Denzin and Lincoln, 1994, p.2) featuring diverse tools of inquiry such as critical ethnography, critical textual analysis, early Islam historiography and historical analysis of Iran and Turkey as well as in-depth, open-ended interviews and field observation.

As for strategies, this research encompasses manifold strategies including case study, ethno-methodology and interpretive practice since "different lenses or perspectives result from the use of different methods so the researcher can gain a more holistic view of the setting" (Lincoln & Denzin, 1994, P. 224).

Regarding case studies for this research, "Iran" might be called an intrinsic case study as well as illustrative of research in which I, as a researcher have first-hand, personal experience to primarily describe a situation conveying a specific objective (Obamehinti, 2010). "Turkey" might be called an instrumental case study, bounded by the criteria of showing the possibility of having a free public domain exist within the context of a society of Muslim majority. However, owing to the fact that focusing on one specific issue, the formation of a free public sphere as concerning both Iran and Turkey, helps to convey this peculiar objective, it can also be called a collective case study (Herriot & Firestone, 1983).

Ethno-methodology emphasizes a variety of aspects of social order as opposed to conventional sociology that concentrates on norms, rules and shared meanings (Zimmerman, 1971). In the present research naturally occurring discourses and interactions are studied.

Concerning the interpretive practice, it is sufficient to keep in mind the "discursive formation" and "inter-subjectivity" described by Michael Foucault, demonstrating that contextually grounded discourses form local interpretive resource (1972). In other words, interpretations express contextually recognized culture, discourse and daily practice.

This research utilizes qualitative data collection tools, and it is rooted in a qualitative epistemological position that recognizes the importance of locating the research within a particular social, cultural, and historical context, which is Iran and Turkey.

I am aware of qualitative research critics in humanity and social sciences. One relevant point of criticism to my work can be "the problem of authority" that may also be called the "dangers of high interpretive science" and an "overly sovereign" authoritative stance of the interpreter as inscriber (Rainbow, 1986, p.143). My endeavor is to lessen the problems of authority by emphasizing the social construction of knowledge regarding my topic.

One of the tools in qualitative research methodology is interview, consisting of data collection, coding and analysis plus field observation. In this regard, I interviewed five well-known Islamic clergies and four distinguished scholars in Iran.[1] The literature used in the research will be developed to act as a guide for the unstructured interviews that I conducted. Multiple interviews are planned in order to provide a broader sampling of

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[1] Related to the ethical considerations I have completed the research ethics forms and had them signed by my supervisors as provided by the university. By this means I undertook to maintain the highest standards of honesty and foster ethical behavior at the time of interviews, which is consistent with the *Ethical Conduct for Research involving Humans in 1998*. See appendix A.

perspectives, more in-depth data collection and opportunities for follow-up. The aim of the interviews is to raise questions regarding the applicability of free discussion in Islam and Islamic societies.

Furthermore, field observation of the everyday life of people in the society at large and *howzeh*-Shiite school are utilized, to find out how and to what extent the public sphere of Iran and Turkey has the potential ability to function as the reflexive mirror on social political thought and the key influence the legal agenda of society.

I should also point out that besides the interviews that were conducted in Farsi, all citations from non-English primary sources in this study are my own translations. These translations are not in any sense definitive, but I have used them throughout to maintain stylistic consistency. All other translations from Persian texts by various scholars are also my own translations. The only translation that I have used in this study that is not my own translations is the translation of Quran: Yusuf Ali's authenticate and reliable translation.

1-5 Literature review

The definition of the public sphere is problematic. Either it is too abstract: "where people come together to talk about their common affairs," or too specific when referring to a specific context - the nineteenth century "bourgeois public realm" (Habermas, 1991). Therefore, all analyses of the public sphere have the tension inherent in attempting to reconcile two notions: that of a compact and imposing a single idea - indicated by "the"

synthesis as the valorized amphitheater of always already occurring political struggle - with the sense in which the public sphere is composed of diverse, "decentered" publics which appear and disappear with different issues and agendas from time to time more intensely than others. The "public sphere", however, especially as understood by Habermas and his followers, has become part of the foundational discourse of political and now increasingly international theory (Owens, 2002).

In the late eighteenth century in modern Western societies, the concept of people being recognized as "individuals coming together as equals" shaped the public realm in the modern sense. The primary phases of this genesis occurred in "salons", the coffeehouses of London, Paris and some other cities of Europe in which people came to discuss daily problems and issues. Habermas explains the function of the public sphere in its modern sense is to deal with general concern, public debate and deliberation. Social meanings are generated, circulated, challenged and reconstructed in the public sphere. Public domain is the realm of free information exchange in which individuals gather and participate in the process of rational-critical discussions, open dialogue and consensual and mutual judgements that form public opinion. As a result it leads to knowledge and awareness enhancement the result of which is providing people with the final source for the legitimacy of power and government (Habermas 1993).

The concept of the public sphere as a forum to facilitate the exchange of ideas and raise overall public awareness allowing for the criticism of authority has been discussed after

Jurgan Hubermas' book *The Structural Transformation of the Public Sphere*. Since then, much literature has been introduced demonstrating the potential capacity of the public sphere to bring about changes or to evaluate and to challenge authority on the whole as a social construct in Western thought and global community, explored in the works of *Craig Calhoun, Nancy Fraser, Gerard Hauser, Seyla Benhabib, Goffman, Kogler,* and many others who deal with *communication theory* in general.

To my understanding of literature review following Kant, Habermas observes the emergence of a critically reasoning public in the eighteenth-century as the hoped-for conduit of deliberative rationality. Unrestricted, undistorted conversation, he argued, could be the means to political legitimization with a public sphere grounded by a common commitment to deliberative rationality and faith in publicity as the mode of coming to terms with, if not settling, political disputes. Where liberal economics under free-market capitalism invariably conceal the fundamental structural inequality between the classes, the public sphere, as conceived by Habermas, would subject this to scrutiny. Moreover, in line with critical theory's rejection of the post-modern critique of reason, Habermas accepts cultural and linguistic embeddedness while endeavoring to rethink the immanent potentialities in reason and truth by which dominant practices could be critiqued (Habermas, 1984).

Simply put, the public sphere as defined by Habermas is a realm of free and intelligent communication about contested public concerns and uninhibited exchange of opinions about these concerns (Pinter, 2004).

One should also take into consideration that the experience of Western countries relating to the resurgence of the public sphere within their societies differs greatly from those experienced in other parts of the world, especially in regard to the severity and abruptness of the change. Western societies have enjoyed a relatively widespread exchange of culture and ideas experiencing their own problems. Moreover, their historical experiences have helped them to maintain a comparatively firm differentiation between private and political domain. This differentiation has in turn contributed to the establishment of a resilient and robust appreciation for the importance of securing the integrity of the public sphere, regardless of one's respective political, religious or social perspective, or affiliation. If one has an issue with a political initiative, the dispute is with the party or representative that proposed it, not with the government as a whole. It is this acknowledgement and agreement that leads to secularized societies.

The public sphere, for the purpose of this work, refers to the domain mediating between the private sphere and the sphere of political authority. Practically, it is a site for the production and circulation of discourses that can in principle be critical of the state and law in practice. Volumes have been written on the idea of public sphere within Western societies in an ideological sense. This research is chiefly concerned about the existence of public domain in Muslim majority societies such as Iran and Turkey. Throughout this

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thesis, it will be shown that if religious societies educate themselves and meet the preconditions to possess a free public domain, it leads to the empowerment of the public sphere and possibility of a democratic society. I argue that a public sphere that nurtures public reasoning is the source, actor and simultaneous director for bringing about democracy.

Public identity is achieved over time through the combination of individuals' identities. Moreover, a key ingredient in the construction of each individual's identity is his/her affinity to the national identity. Therefore, discussion about identity and public sphere is of primary importance since, having an inclusive public sphere implies considering the various features of people's identity. Iranian identity throughout history has taken various shapes. Pillars of collective Iranian identity are different in the minds of different scholars. For instance, Morteza Motahari considered Iranian and Islamic identities as the components of Iranian identity (1975). Abdol Karim Soroush proposed that Iranian identity, Islamic identity and Western identity are simultaneous constituents of Iranian identity (Zahed, 2005). Farhang Rajaee proposed Iranian identity chiefly constitutes 'Iranianhood' - religion, tradition and modernity (2007). There are many other components of Iranian identity that have been proposed by other scholars. In almost every attempt to discuss the components of Iranian identity there is a trace of religion. Therefore, considering religion in the public sphere of Iran is vital and necessary.

Various studies have been conducted regarding Turkish collective identity. Tapper, for instance, pointed out that secular identity and the European identification of Kemalism, national identity and Islamic identity are the components of Turkish identity, as Turkish people do not perceive a contradiction amongst these constituents. Also Zubaida proposes that public admission of Islam is the essential part of Turkish identity (2011). It becomes apparent that in Turkey as well as in Iran Islamic identity is one of the main components of people's identity. Islam thus has an essential role in the discussion of public sphere in both Iran and Turkey.

Simultaneously, as we recognize the longitude of the true lines locating the public sphere, there would also be a need to address the latitude of its boundaries between the public and private realm, which may not necessarily be clear-cut, but overlapping and contested.
It is worthy of mention that there is also disagreement about the scope of privacy. There is a fine line between the public and private sectors. Instead of a single clear distinction between them, there are a series of overlapping contrasts (Geuss, 2001).

As maintained by Habermas, the dichotomy between the public and private domain in human life is an achievement of the modern Western world, although we can find the root of this distinction in ancient times (Habermas,1991b). Besides this result, recognizing the private sphere alongside the political and delineating each of them, allows the people to participate in public discourses and gain access to the institutions of civil society.

In the study of religion in a public sphere the question of boundaries between public and private sector in a society ties to the conception of public/private religion, in this case public Islam and private Islam. The process of privatizing religion in former modernity differs from late modernity as the project in Western former modernity aimed at having private religion but in late modernity especially when it comes to non-Western societies this project is about the dichotomy of public/private religion (Farasatkhah, 2009). The delineation of the public/private sphere in Islam can deny the very possibility of having an Islamic public sphere that will be discussed further in the following chapters.

Seyla Benhabib clarifies three branches of the private realm in modern political thought: moral religious conscience and belief, private enterprise, and intimate sphere. These are necessary to guarantee for each individual autonomy separate from state and public sphere in order to control personal and private information. Therefore, taking into account Benhabib's thought, religious belief is amongst the issues that exist in the private sphere. However, religious discourse in religious societies that are the cases of this research should be considered as one significant issue within the public sphere. Benhabib categorizes religious belief in the private sector due to the fact that all the issues are not justifiable, non-convictional and rational. Subsequently the rubrics that are not justifiable with commonalities should be considered part of the private sector. (Benhabib, 2002) But in Habermas's way of perceiving the public domain, it could potentially be the realm that is most alike to civil society, while at other times it could be considered as the mediation

between civil society and the political sphere that leads to influence the political domain in an effective way.

In researching the co-relation between the public sphere and governing authorities, I have developed a view based on the Habermasian public sphere balanced with Nancy Fraser's criticism of Habermas. Nancy Fraser argues that in the bourgeois conception of Habermas, which emphasizes the necessity of full accessibility, the other classes could not gain such equal accessibility because of biases related to gender, ethnicity or even property qualifications. The power of non-bourgeois public spheres that emerges and develops, through which people could openly discuss their views without fear of reprisals and recriminations, would have the effect of better negotiating and more quickly resolving many of the problems that exist between the general population and the ruling government (Fraser, 1990).

It is telling that although one might consider that the fixed orbit of the public sphere in Habermasian thought had only been shaped in the atmosphere of the eighteenth and the nineteenth century European bourgeoisie, to me recognition of this realm can be witnessed in other historical moments and climates, although, of course, not to the same extent to which it was experienced in Europe. For instance, it is remarkable to note that according to the text of many Greek philosophers, ancient Athens had a sort of free forum for public communication that was called Agora. Within the Islamic context that is more relevant to the scope of this research, the Mu'tazila is a tradition that encouraged public

debate. Taking into consideration that Mu'tazila was a religious movement in the 8th century makes it worthy of reflection and will be discussed through following chapters.

1-6 Summary of the individual chapters

The research findings of this study in Chapter two and three reveal certain historical, political and legal instances of having a free public sphere in a Muslim society such as Iran and Turkey. In Chapter two the introduction of public reasoning and delineation of public sphere with the political and private sphere in Muslim societies will be discussed. This will be followed by the historical, mythical and religious experiences of the Iranian and the Turkish societies in building up and constructing a solid social, political and legal background in chapter three.

Chapter three also explores the modern era's dialogue swirling over the terrain to signify the sense of revealing commonalities in the experience, dynamic and description of the public sphere cutting across these two case studies. This chapter reviews the prerequisites for a public sphere and examines the existence of them within particular societies.

Chapter four aims to bring forth the discussion of legal philosophy that suggests the empowered public sphere provides a right to disobey the law when there is an extensive gap between public reasoning and the existing reasons provided by the ruling law. Hence in chapter four the capability of social power to bring change in the legal system of a society will be negotiated.

In chapter five, the findings of the interviews will be introduced. It will explore the idea of whether or not one can accept the possibility of having free public domain within Muslim societies under the rule of Islamic norms as a bottom up change.

The concluding chapter begins with a discussion of the negative features of public sphere, followed by an exploration of the implications related to the findings of this research as a basis for discussion of a free public domain within Muslim societies.

Chapter Two: In Search of a public sphere in Islamic Societies

2-1 Introduction

This chapter sets the scene for further investigation of the public sphere and its reflection on the social, political structure of Iran and Turkey as two representative Muslim societies. The first part of this chapter surveys the available literature in Western tradition on public reasoning and its distinction from private reason as a basis for discussion about the differentiation of public sphere from political and private domain. Subsequently, the disposition of the public sphere and its delineation from the private and political sphere will also be traced in Islamic thought and tradition. Chapter two will go on to investigate the idea of the public sphere within Islamic thought by studying primary and secondary Islamic sources. Lastly, certain historical periods will be reviewed; the history of Turkey up to 1938, including the end of Mustafa Kemal Ataturk's presidency, while simultaneously comparing the history of Iran up to the end of Reza Shah Pahlavi's reign in 1941, combined with a sampling of traditional beliefs in Iran and Turkey demonstrating the existence of a public domain and leading into a discussion about the importance of accepting religion as one of the main elements of the people's identity in the aforementioned societies (For more information concerning the timeline of Iran and Turkey see appendix B and C).

2-2 Public reasoning

The discussion of public reasoning is vital to understanding the debate surrounding the public sphere. Volumes have been written on the issue of public reasoning in democratic and liberal societies (Richardson 2002 & Nussbaum 1995). However, public reasoning, as its name suggests, is socially embedded and pluralism plays a key role in how the public perceive their norms (Bowen, 2003). This topic leads inexorably to the discourse of social, political, historical and legal norms owing to the fact that the aim of this study is to examine how power in the hand of the public affects norms in general, identifying these processes in a specifically Muslim context, namely Iran and Turkey. Concurrently, the examination of public reason requires the depiction of different kinds of reasoning proposed by various scholars, following Kant's argument in identifying public as opposed to private reason that specific civic sectors of a society demonstrate (2009). Kant's focus was more closely related to practical public reason rather than theoretical. In an essay called *"An Answer to the Question: What is Enlightment?"* Kant explains the public/private use of one's own reason as follows, "By the public use of one's own reason I mean that use which anyone may make of it as a man of learning addressing the entire reading public. What I term the private use of reason is that which a person may make of it in a particular civil post or office with which he entrusted" (p. 3). It first appears that there are certain criteria that render the reason of a person as applicable to either the public or private domain however when it comes to real cases, the delineation between public and private reason have not yet arrived at clear-cut boundaries.

Rawls and Habermas, two influential political philosophers, are the contemporary leading arbiters of public reasoning and the constitution of the public sphere. As previously mentioned, Habermas addresses a detailed social history of the development of the bourgeoisie (as he puts it) public sphere from its origin in the eighteenth century up to its ongoing transformation through the influence of capital-driven mass media (Habermas, 1984) in the modern era. Formation of the public sphere today extends further from various, remote angles, being magnified through the expanding presence, usage and devices of mass media. Moreover, the public sphere is now no longer exclusive to the bourgeoisie, rather, it is open to all social classes. Habermas provides *the communicative theory of communication action* (1984a) to demonstrate an ideal public domain in which interlocutors treat each other as equals, achieving in Kogler's wording "egalitarian status" – as a post conventional commitment (Kogler, 2005), aiming to reach an understanding on matters of common concerns. The conditions of having an ideal and practical public sphere will be discussed in chapter 5. In parallel co-existence to the public sphere there is the non-public sphere which constitutes a private sector -i.e. "man at his own affairs" and social realm -i.e. the expansion of private domain in which individuals who know each other communicate. The aforementioned literature has drama aplenty however there are substantial bodies of criticism available, mostly provided by feminists, within this definition of the public sphere. They assert that this modern attainment of distinction between public and private domain augments the violence and crime in private sectors such as the family. The main point they discuss is the fact that

this ideal public sphere excludes certain groups of a society including women (Cubbit 2000). All things considered, in this regard the delineation of public/private reason is a common concern that derives from practical questioning of the public. Here, the small discussions grow in proportion to their inherent combustibility to be mass public issues, such as happened in the nineteenth century however as ideas become commodities they become assimilated to the economics of mass media consumption (Cronin, 2006).

According to John Rawls, to engage in public reason, the members have to provide reasons that could be shared by all reasonable members of a community (Rawls, 1971). This idea brings criticism from those who are not proponents of excluding religion from the public sphere because in a pluralistic society in which many members hold religious beliefs either as their identity or as their value system, the proposed norms seem unlikely to be accepted (Macedo, 2010). There are also powerful criticisms against the Rawlsian Ideal mainly centering on the belief that this public sphere remains as an ideal conception that may not be realistic in practice. Despite the criticism it arouses, there are conspicuous political values to support the idea and ideal of a public sphere.

More importantly, besides the distinction between public reason and private reason leading to differentiation of the public/private domain, there is a need to briefly portray the latitude of the political sphere so as not to be mistaken for the public domain. Traditionally, there was an assumption of having two spheres: public and private -i.e. whatever was not included in private sector was considered to be public, with no attempt

to distinguish between the public and political sphere. The position of "power" tended to disregard such differences between the public and political arena. In the modern era, as individualistic viewpoints began to dominate a feeling of necessity to shape an apparatus to control power besides political entities grew -i.e. the people's gathering. The requirement of having a source to criticize pervasive political power for the benefit of the population formed the basis of the idea for a public sphere in the sense to which this paper refers: a site in which people gather to discuss their common concern in order to achieve public good (Geuss, 2001).

Debates over the public sphere and public reasoning in the west tend to dominate the discussion of the public sphere as a whole. But, these debates obscure the far more important issue of contextualizing the public sphere within one peculiarity. Relevant to the scope of this research there is a substantial need to examine the conception of the public sphere within Islam, Islamic thought and Islamic history as well as its functionality within Muslim societies throughout history. When describing the history of the public sphere in Muslim contexts, it is impossible not to take into consideration the huge impact of religious traditions in the region. It is notable to consider whether Islam is a belief system that will prove to be compatible with having free public domain or if this relationship proves to be contradictory. In addition, taking into account that what is acceptable as Islamic thought amongst political powers and the public sphere of Muslim societies is necessary to bridging this communication.

2-3 Religion in the public sphere

The presence of religious plurality in the mainstream discourse of the public sphere can presumably only happen in non-Muslim societies. Notwithstanding, this assumption does not negate the possibility of religion being present in the public sphere of other forms of government. Every religion has tension with the notion of a public sphere, however the manifestation of this tension is distinct to each situation. The issue of the presence of religion in the public sphere can be traced as far back in the west as eighteenth century Europe, when the public power of the religious faith changed into private matter. The religious faith became at this time the public and legal body among other circles (Lennox, 1974).

One primary issue is the continuous preservation of a public sphere, but once a public sphere is delineated there also remains the important issue of insuring the secure place of religion in that forum and an active role in the discourse of the society. Identifying and supporting a free atmosphere for expressing ideas may risk jeopardizing the legitimacy and durability of the power of the state if it is not acting in the public's general interest. Moreover, religious freedom bears a close relationship to the human rights of all people in a civil society. One of the fundamental rights is the freedom of religion. This liberty relies upon the secure environment and necessary social elements to promoting free expression like a public sphere provided by a secularized state. This idea deserves great

respect and necessitates extended discussion that will be undertaken in the following chapters.

Sharp controversies are alive surrounding the presence of religion in the public sphere, relating to the appropriateness of religious concepts and reasoning in politics. There is one certain way to silence these controversies and deal with this issue and that is to exclude religion from the arena of the public sphere. What happened in the Soviet Union can illustrate this approach and provide us with a monumental example of how underground religion can still retain power despite official public suppression. Stalin took elaborate steps to limit and eliminate the power of religion in the USSR (Union of Soviet Socialist Republics). During the period of 1936 and 1937 by Stalin's order there occurred a concentrated campaign to eliminate religion. In fact, the Soviet Union was the first state to have on public record an ideological objective of eliminating all religion and replacing it with an imposed atheism and scientific rationality (Ramet, 1993). Churches, mosques, synagogues and all places of religious worship were closed and converted into schools, movie theaters or other secular utilities. Religious icons were melted down. Religious practice was met with violent persecution and religious gatherings were banned throughout the country. Religion was forced to go underground to hide from the prying eyes of Stalin's police and the severe penalty imposed on those caught practicing their faith.

Obviously, religion did not evaporate in the USSR, but only the venue of presenting religious belief changed, making it even more powerful by separating it from the temporal

authority and placing it back in the hands of the people. One can cite the well-known example of Karol Józef who began preaching Christianity deep within the forests of his native Poland, going on to lead the Vatican in becoming Pope John Paul II and later being instrumental in bringing about the end of Communist control of his home country and eventually all of the Soviet Union (Noonan, 2005). It has also since been discovered deep within Russia's salt mines Christian temples built by Soviet-era miners to practice their faith and pray for God's protection as they went about their very dangerous profession.

Arguably Stalin's terror tactics only served to strengthen the people's resolve and make the belief in their faith that much more potent and relevant when juxtaposed against the harsh reality he provided. This power is rooted in the fact that there is no way to kill an idea and by attempting to do so, it only serves to highlight the failure of the attempt. When belief (of any kind) is manifested in an attempt to eliminate another existing belief, that which changes is the manner of presentation not the fundamental existential feature. Besides Christians, there are a remarkable number of Muslims, Hebrews and other believers that co-exist in the post-Soviet nations today who require an open atmosphere to be able to live in peace and social serenity.

In view of the phenomenon experienced by the Stalinist government and despite the fact that many still argue for the exclusion of religion in the public sphere, I argue in this research that religion, can and even ought to be one of the components of the public sphere, so long as it is not a part of political system. In this regard the delineation between public and political sphere that was discussed previously gains greater importance. This

may provide incentive to further reflect on the idea of a public sphere that allows religion to be present while assessing anew the place of religion, not just for its role in the social process of modernization but also in the public sphere itself (Asad, 2003 & Casanova 1994).

2-4 Public sphere in Islam and Islamic thought

Amongst the array of religions, Islam has been uniquely positioned toward being compatible with the substantial allowance of religion in the public sphere. Islamic tradition differs markedly from other religions. Many readings of Islam would seem to be compatible with a political Islam. For instance, in Islamic thought there are volumes written on the practical idea of political Islam and the pragmatic method of establishing a Muslim state, found either in Islamic history or tradition, whereas in Christianity the concept of Jesus as a political leader is not greatly encouraged and the Christian congregation is directed to follow his path, always ruled by a religious authority, but without specific guidelines for the foundation of the community. In Islam and Judaism, there is the explicitly stated, temporal goal of establishing a state or nation. Christianity, Hinduism, Buddhism and other of the world's major religions do not seem to contain this direct mandate, but in spirit, if not always in practice, are more metaphysically oriented.

In addition to the analysis of public reasoning, the discussion of the public sphere within Muslim societies requires the consideration of Islam and Islamic thoughts. Consequently, this section attempts to show whether Islam could support a free public sphere. Furthermore, Islamic tradition and development delineate how Muslims develop

rationality akin to public thought and can be critical according to their reason and logic. This subject directly leads to the differentiation of public, private and political spheres as well as public/private reason within Islamic thought.

It has been shown in the past in places such as Damascus (635 CE), Jerusalem (610 CE) and Andalusia (711 CE) that Islam is not inherently opposed to other ideologies. In general, the question is not what is the inherent nature of religion, rather what is people's understanding of religion (Weber, 1958). When looking at this matter from a historical perspective, though Islam has been shown in various instances to be accepting of other religions in belief, ideology and word, even so far as being stated in the Qur'an itself, it has not necessarily followed that this sentiment carried over in deed to the social, political and legal practice of those societies claiming to be governed by Islamic principals.

Anderson and Eickelman claim that in the Islamic world much of the public debate has circled around religious matters, and ordinary people were not allowed to participate in the process of interpretation, since this was reserved for the ulama (Islamic scholars) (Eickelman & Anderson 1999). They maintain that public dialogue holds a very special place in the Islamic world, and the discourse has mostly been crafted and controlled by the religious elite. This viewpoint overlooks the fact that according to Islamic doctrine, as

cited in many verses of the Qur'an (Qur'an, 41;53[2], 3;191[3], 30;8[4], 40;82[5]), all people should contemplate every single issue and refer to their logic and reason for acceptance.

In Islamic thought the public sphere as being a realm for rational and critical discourses on common good-is a pre-requisite for implementation of many recognized virtues and values. Notwithstanding, Nobahar argues that the modern meaning of public sphere cannot be traced in the history of Islam but rather it exists in the modern interpretations of the text (2009). I agree that a public sphere with its modern definition cannot be traced historically in Islamic tradition. However, I later will show that one can find evidence of public dialogue throughout Islamic history, such as the early public discussions during the time of prophet Muhammad and later the Mu'tazali school of thought. This does not necessarily suggest that in twenty first century Islamic states would allow the formation of such a free public domain.

Some of the religious extremists, such as Ayatollah Mesbah Yazdi, and Islamic scholars, like Ahmad Fardid, posit that religious texts exclusively are the only bastions of wisdom and knowledge. Therefore, by no means would it be possible to rationalize their thoughts even as a basis to evaluate it in terms of making it compatible with other convictions and

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[2] Soon will we show them our Signs in the (furthest) regions (of the earth), and in their own souls, until it becomes manifest to them that this is the Truth. Is it not enough that thy Lord doth witness all things?

[3] Men who celebrate the praises of Allah, standing, sitting, and lying down on their sides, and contemplate the (wonders of) creation in the heavens and the earth, (With the thought): "Our Lord! not for naught Hast Thou created (all) this! Glory to Thee! Give us salvation from the penalty of the Fire

[4] Do they not reflect in their own minds? Not but for just ends and for a term appointed, did Allah create the heavens and the earth, and all between them

[5] Do they not travel through the earth and see what was the End of those before them? They were more numerous than these and superior in strength and in the traces (they have left) in the land: Yet all that they accomplished was of no profit to them.

ideas. To them, there is no need to search for the causes of one verse or to contextualize it as "this kind of religion is for all places and all times" (Mesbah Yazdi, 2005).

Some of the traditionalist theologians such as Mohammad Reza Hakimi who founded a Maktabe Tafkik (the School of Epistemological Distinction) do not consider it necessary to garner public support for laws that are founded on Sharia. In their view, God's commandments must be implemented, regardless of public approval (Hakimi, 2004). With regards to the legal system, this paper assigns one exclusive chapter to the matter however this viewpoint is representative of all Tafkik believers in the non-significance of public consensus.

In contrast, moderate theologians such as Ayatollah Sanei and Ayatollah Montazeri have suggested that since the majority of the people are religious, the rules of Sharia become law on account of the majority's desire, and respecting these laws becomes incumbent on every citizen (Ganji 2008). In the revealed Qur'an there is an emphasis on the individual, regardless of their relation to the society and the primary mission of Islam is to influence and develop humanity's worldview through contemplation, knowledge, self-understanding, and purification of insight (Quran, 3; 180[6], 17; 84[7], 14[8] & 41[9]).

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[6] And let not those who covetously withhold of the gifts which Allah Hath given them of His Grace, think that it is good for them.
[7] Say: "Everyone acts according to his own disposition: But your Lord knows best who it is that is best guided on the Way."
[8] (It will be said to him:) "Read thine (own) record: Sufficient is thy soul this day to make out an account against thee."
[9] We have explained (things) in various (ways) in this Qur'an, in order that they may receive admonition, but it only increases their flight (from the Truth)!

The appreciation of dialogue as a true path to God could be considered by humanist understandings of the Islamic faith where tolerance and dialogical acts form the foundations of the modern Islamic society (Mojtahed Shabestari 2000). The importance of dialogue in a highly pluralist world of cultures is undeniable. The Qur'an obviously confirms such interpretation of the importance of dialogue over the appreciation of consensus over mutual recognition. "Everyone acts according to his own disposition", "There is no compulsion in religion. The right direction is henceforth distinct from error", "God created humanity as noble beings, and everyone, to a certain degree, has a share in this nobility", and in chapter 49 verse no. 13 "O mankind! We have created you male and female, and have made you nations and tribes that ye may know one another indeed the dearest among you to us is the most pious one."

While the Islam of the Qur'an may take a position toward having a relatively free public dialogue -keeping in mind the different connotations, for instance, the recognition of other faiths and beliefs creates a forum in which religious talk and spiritual development are possible- there is a substantial dichotomy with respect to Islamic history that deserves attention: although people of different faiths had a dialogue with the other, the main purpose of having these dialogues was not to encourage plurality but to gravitate towards Islam (Mojtahed Shabestari, 2000). This notion is noteworthy as it changed the interpretation of the aforementioned verses especially when considered in the light of further practical events during Islamic history.

Moreover, in Islamic thought there is a principle, called *istislah*, that is related to the term *maslahat* or public interest, whose aim is the happiness of the society and to serve the common good. However, appealing to *istislah* or *maslahat* could be controversial when the goal is reforming what has been considered to be divinely-revealed law. But, recognizing the presence of this concept can be an influential asset to gaining recognition of the public sphere within Islamic thought (Zaman, 2004).

One of the concepts almost universally expressed in every international foundation document is the inherent dignity of human beings. It is called "inherent" due to the inseparable and substantive nature of dignity within human beings. Another confirmation of the cosmopolitan essence of Islam is the propagation of human dignity, not solely Muslim dignity. It is crucial to note that the ratification of human dignity requires the consideration that all humans have moral equality, as stated in the Quran, "Verily, we have honored the children of Adam" (17; 70). This verse evidently positions the children of Adam, meaning all human beings, in an equal status as needed to constitute an ideal public domain. But, again it is essential to note that within Sharia, the man-made law based on certain Islamic interpretations of God's commandment, there are many instances in which the rights of Muslims and non-Muslims are not equal.

There are certainly precedents of public debate in early Islamic history. Muslims after the death of the Prophet Mohammad were divided and debated the issue of the divine future path of Islam and the legitimate heir to Muslim leadership. One of the consequences of

this fracture forced them to shape different groups, developing schools of law such as the Shiite and the Sunni, as well as theological discourses like the Mu'tazila and Ashaere known to be instrumental in negotiating the idea of rationality, human mentality and understanding within the context of Islam (Shahrestani, 1984).

According to Ashaere school of thought any attempt to justify the Islamic belief or ritual is considered as an innovation. Indeed, they believed in ubiquitous blind acceptance of whatever Islam states and refuted any kind of creative interpretation. Their school of thought holds that human reason in and of itself is not capable of establishing with absolute certainty any truth-claim with respect to morality, the physical world, or metaphysical ideas.

During the eight century, contrary to Ashaere, the Mu'tazili school of thought challenged the Ashaere and argued that the injunctions of God are accessible to rational thought and inquiry: because knowledge is derived from reason, reason is the "final arbiter" in distinguishing right from wrong (Ibid).

During the Abbasid Era (2ⁿᵈ Islamic Empire, 750- 762 CE), E'tezal gain importance in the eye of the people, their popularity based mainly to their belief in rational reasoning to govern the conduct of the public and an approach fully dependent on logic (Mohammadi Khoram Abadi, 2004). The Mu'tazilis had a nuanced theory regarding reason, Divine revelation, and the relationship between them. They celebrated the power of reason and

human intellectual power. To them, it is the human intellect that guides a human to know God, His attributes, and the very basics of morality. Once this foundational knowledge is attained and one ascertains the truth of Islam and the Divine origins of the Qur'an, the intellect then interacts with scripture such that both reason and revelation come together to be the main source of guidance and knowledge for Muslims (Ess, 2006).

Ashaere's philosophy leaves no room for Islamic belief to co-exist with public discourse and no method of social progress to occur. But, by referring to the Mutaziliite as an intermediate approach, we can trace the religious belief in public discourse and hope for social reflexivity. It is crucial to bear in mind that the political sphere should not intervene in this public discourse though it may be affected by it.

Overall, within some narratives of Islamic thought, Islam's emphasis on having a public sphere in which cooperation, mutual assistance, and the maintenance of a solid sense of communal responsibility is notable. In the discussion of Muslim societies, it might become more apparent when within a religio-social order asserting common values, interests, and expediencies that it is necessary to reject the idea of dividing people into isolated islands of self-sufficiency as done by totalitarian governments such as Iran, and adapt a more collaborative culture such as that of Turkey.

2-5 Political and Societal Structure of Iran and Turkey within Pop-Culture and History

Throughout the vastness of Iranian history, amongst its numerous myths and popular stories exist many examples encouraging the existence of a forum similar in spirit to a free public domain in which contemporary people could relate, discuss and debate their ideas however the scope of this research allows only time and space to briefly mention select instances to illustrate specific issues. As an illustration, during the time (531 CE to 571 CE) of the Sasanid king *Khosro the First*, also known as *Anoushiravan the Just* (*Anoushiravan-e- Dadgar*) for being characterized in the texts as a "just king", there was introduced the practice of citizens ringing a bell to indicate they wished the opportunity to speak before the assembly as an instrument of awareness in the hand of the public (Pirnia, 1982). Furthermore, with regard to religion, though this king was a devout Zoroastrian, he allowed believers of other faiths and religions of the time, such as Hindis, Jews and Christians, to practice and promote their religions in his empire (Daryaee, 2005). This is one of many specific instances that demonstrate during Iranian history the existence of traditions in support of the belief that access to a free public sphere is a great asset for a society to achieve justice.

Another important historical example is Shah Ismail Savafi, Shah of Iran, founder of the Safavid dynasty in 1502, and most significant for declaring shi'ism as the official religion of Iran (Keddie, 1980). It has been documented that Shah Ismail would disguise himself to go anonymously to different levels of society in various cities so that he may encounter

closely the everyday life of people within his domain. It is written that he did this mainly to insure that the ruling authority maintained a balance of power to provide a free forum for the public.

To begin to understand the functionality of the public sphere in Iran and Turkey there is a need to comprehend the political and societal structure within these countries. Additionally, myths, beliefs and attitudes that resonate within the popular culture of these societies will be provided to aid an understanding of the degree of the public sphere's power. Furthermore, this chapter will review the historical periods of Iran and Turkey necessary for considering and understanding what follows, which is the role, development and evolution of the public sphere in contemporary life as it relates to the people and policy of Iran and Turkey. The historical periods crucial in the discussion of public sphere in the respective countries are the history of Turkey up to 1938, the end of Turkish leader Mustafa Kemal Ataturk's presidency, as compared to the history of Iran up to the end of Reza Shah Pahlavi's reign in 1941. Within these specific periods there emerge crucial characteristics of the modern formation of societies in Iran and Turkey that, though distinctive, are not alien to each other, providing a good basis for comparison, helping to shed a light as to the placement and power of the public sphere today. The historical similarities do not serve as obstacles in considering the current existing differences resulting from the respective reactions of each country to Islamic resurgence within their society, which will be discussed further in the following chapter.

Regarding Turkey up to 1938, certain historical aspects of the Ottoman Empire and Tanziamt such as the re-structuring of the Empire, the Young Turk Revolution of 1908 followed by the first composition of Republican People's Party initiated by Mustafa Kemal Ataturk are all worth mentioning. Concurrently, in the context of Iran I refer to certain aspects of society under Qajar rule followed by the Iranian constitutional revolution of 1906, the constitutional period and reign of Reza Shah Pahlavi that are all relevant to the discussion of the public sphere and the people's power to affect the social and legal system.

It is crucial to discuss the policies of the Ottoman Empire since, in a modified form, its political culture and state traditions still continue to influence politics today. Also, the legacy of the Ottoman Empire is truly important when it comes to the examination of the current regime's policies in regard to reconciliation of religion and secularism (Shaw & Shaw, 1977) that will be discussed in the following chapter. The roots of democracy in Turkey are assets to contextualize the Turkish public sphere, tracing back through its history to the time of the Ottoman Empire and on to its eventual modern dissolution in 1923.

There are instances of official policy during the Ottoman period that can be cited to shed light on the issues that are a basis of discussion of Turkey's public domain, though, the majority of the examples from this period tend to illustrate the influence of government on people rather than the public sphere on power. It is still crucial to discuss these

instances, even in a situation whereby a public sphere was provided to the people from above. The subsequent, active role of the people is still evident in contributing to the social order.

As an example, the Millet System in the Ottoman Empire allowed each millet member to decide his/her own perspective in social affairs -i.e. private law including cases to do with marriage, divorce, inheritance and etcetera. The Millet System is of great significance to the discussion of the legal system, tasked with recognizing differences and pluralism within the umbrella of one particularity, which is the state. Moreover, this development has been cited as a very early example in the history of world religion of multi-faith tolerance and acceptance of diversity. As each community had the privilege to be ruled by its own laws, Muslims were allowed the benefit of being governed by Sharia, Jews by Halakha and Christians by Canon law. That this system became active in a country in which the vast majority of the population was Muslim is well worth noting.

Referring back to the Ottomans' legal system, they borrowed a lot from 19th century Europe as the Turkish government made intensive efforts to modernize along Western lines. Under the early republican administration, legal reforms were much-influenced by European laws; Civil Law from Switzerland, Criminal Law from Italy and Commercial Law containing some Germanic influence (Glendon, 1982). This observation, however, is only valid for a certain time during the Ottoman period. By 1923 the only recognized

legal identity is Turkish citizenship, but these examples still serve as an ongoing influence and basis for further discussion.

Every interaction between secularization, as defined and executed by Mustafa Kemal Ataturk, and the public sphere should be considered when examining the various social and cultural venues in which Turks are likely to discuss political issues, such as in People's Houses (*Halk Evieri*), Town Halls, and Public Conferences. One must acknowledge that the official places of assembly were established by the Republican People's Party (Ataturk's Party) to educate people on the values of republic, but the dialogue extended further to more informal meeting places, such as Village Lodges (Koy Odalari) and coffeehouses (Chai Haneh) as people sought to understand and discuss secularism and the public sphere in the context of how it affected their lives and relationship with authority.

Iran and Turkey have both experienced constitutional revolutions in a common historical context: The Young Turk Revolution of 1908 and The Iranian Constitutional Revolution of 1906. Hence, chapter four explores what is of primary importance to the historical analysis of these events and examines the comparison of conditions during the imminently, pre-revolutionary period in contrast to the rise in power of civil society. It is important to identify the stimuli, catalysts and transformative elements during the period of change rather than utilizing hindsight to jump ahead to the explicit legal impact created by these revolutions.

There are a significant number of studies concerning the influences that led up to the reforms. Specifically, pre-revolutionary attitudes toward the social life of the people, but, rather than exploring matters relating to the private lives of citizens, the agenda of the present paper is to explore the influence of the public sphere primarily on social and political matters that eventually cascade into the legal system itself. For the purposes of this inquiry, discussing the Young Turk Revolution of 1908 is important because it illustrates the power of the public domain in bringing about changes toward the direction of the people's desires. The reforms of the early 19th century, particularly at the time of Mahmud II (1808-1839), in weakening the public sphere by suppressing the popular Bektashi[10] religious order, initiated a climate of unrest and turmoil. This action was the starting point to inevitable reaction, resulting in the weakening of various institutions of civil society with ties to guilds, artisans and other social sectors that continued to the end of the reform era (Sohrabi, 1995). The weakened civil society left open a void of unified opposition allowing the state to strengthen its position and not accept demand of the people from below (Heyd, 1961). This situation brought into conflict two main sectors of society, namely the traditional, patrimonial segment and a younger, educated and civil sector. The fracturing of the civil society combined with the increased presence of a "reference group" representing patrimonial, traditional values reduced the previously dominant, pro-modernizing sectors into members of a highly-marginalized, minority opposition coinciding with the financial and political rupturing of the state in the early

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[10] **Bektashi,** Turkish **Bektaşi,** any member of an order of Muslim mystics founded, according to their own traditions, by Ḥājjī Bektāsh Walī of Khorāsān, Iran. It acquired definitive form in the 16th century in Anatolia (Turkey) and spread to the Ottoman Balkans, particularly Albania (Britannica Encyclopedia).

20th century. This confluence of factors led these political sectors to become more radical, reaching a critical mass of political impasse and turning revolutionary (Sohrabi, 1995).

In contrast to the situation in the Ottoman Empire, during the same era in Iran, the Qajar reforms are significant in regard to the empowerment of people. The Qajar reformers made room for civil sectors to be active in the public sphere as a channel of protest (Amir Arjomand, 1988). Ervand Abrahamian quotes Edward Burgess, an Englishman overseeing crown lands in Azerbaijan, as he recounts the appointment of *Kad-khodas* (headmen) who had been such important figures in the management of society:

> If a large majority are determined to have the *kadkhuda* out, not I nor even the Prince, nor the Shah himself, can prevent their doing so . . . I give the term elections to this business because I have no other word for it, but they do not meet and vote. The thing is arranged amongst themselves, they meet and talk the matter over and whenever a large majority is in favour of one man the authorities cannot resist their wish, if they did the people would stand upon their rights and would not pay taxes. If, as not infrequently happens, the governor is a tyrant, he might catch and punish two or three of the ringleaders, but he could get no good by this, and all men of sense find it better to let the village have its own way (P.27).

This unofficial power of people on a grass roots level affecting the official and governing sectors of society proves the potential of the public domain to be forceful in exercising the will of the population.

Moreover, examination of the pre-revolutionary context supports the potency of the public sphere to represent the power of the people and civil institutions. In Iran, a coalition of people including the trade guilds and ulema brought forward the idea of constitutionalism and establishing a system of Justice. It demonstrates the common demand of different sectors of society to each retain the ability to bring about change, even when balanced against traditional obligations that may be resistant to the introduction of modern values to the society and system of government. On one hand, the rational morality of traditional clergy and religious tradesmen, on the other hand, emerging from industry, the Western-educated upper-middle class seeking social justice, nonetheless, both reaching a consensus for constitutionalism.

The first protests in Tehran began in 1904, incited by an incident in which the governing authority punished two merchants for charging exorbitant prices, leading all merchants to close their stores in solidarity and seek sanctuary in *Masjed Shah* mosque. At that week's Friday Prayer, the Imam expressed support of the continued closure of stores and encouraged other Ulemas to follow suit. The first night passed without incident but by the next speech of *Imam Jumaa* during the Friday prayer the government interceded and sent officers to disperse the people in the mosque. This incident made people even more

determined to dissent as the government dared to break the venerability and sanctuary of a mosque (Mackay, 1996).

Consequently, the result of this act was the gathering of an even greater movement in a shrine outside of Tehran called *Shah Abdol Azim*. Many prominent figures participated in this act of civil disobedience including Ayatollah Behbahani, Ayatollah Tabatabai and Sheikh Morteza. Attention needs to be drawn to the precedent of clerics and religious men uniting with merchants and tradesmen, without whose combined participation and influence the movement would never have gained sufficient momentum to enact palpable change. There was need of the financial support of the bazaar as well as the spiritual power and unity represented by the institutionalized belief of clerics (Rezaei, 2009) in order to meaningfully engage the reigning power structure.

The Shah soon became aware of the demand of the people and news of what happened spread widely. As Kasravi narrated, the Shah could no longer ignore the people on the streets requesting actualization of what the sanctuary seekers demanded: establishment of the House of Justice and dismissal of the current chancellor (P. 135). The conspicuity of this situation exerted pressure on the Shah to bring about reform in surrendering judicial power to the *House of Justice* and finally acquiescing to the people's request to dismiss the chancellor.

The establishment of the House of Justice ordered in 1905 by *Mozaffar ad-Din Shah Qajar* (1896-1907) was the first independent judiciary in Iran. Its establishment was an important milestone in Iranian history, as reported in many studies, but what is of greater importance to the scope of this paper, is to explore the manner in which this achievement came about - through the power of people organized to seek justice based on the human understanding of rightfulness in the context of monarchy. This accomplishment would provide incentive to further reflect in chapter four on the legal points of constitutional law that did not succeed in every predicted aspects or intended effects.

After the death of *Mozaffar ad-Din Shah, Mirza Mohammad Ali* became the Shah of Iran. From the very first moments of his reign he made a point of taking a firm position against constitutionalism. This stand led to a protracted divergence in Iranian society, played out mainly in the media, which eventually made way for the constitutional period of Ahmad Shah. During the constitutional period several instances occurred to support the functionality of the people's power within the public sphere of Iran that, presently, will be briefly discussed.

In the spring of 1907, the city of Tabriz began to experience one of its best historical periods, a sort of Renaissance in which it seemed all people were making an effort to improve the country. On Fridays the stores were closed and people went to three main mosques to participate in lectures held by the three residing, prominent, religious figures, namely *Sheikh Salim, Mirza Javad* and *Mirza Hossein*. They lectured on topics relating to

the law, equality and religion, also providing a forum for people to discuss their concerns and express criticism (Kasravi, 2003).

After the establishment of parliament, one of the main requirements of constitutionalism, there was sufficient confidence and liberality for a new crop of newspapers with more editorial freedom to begin being published in different provinces. Despite the fact that the writers and publishers were not necessarily trained journalists, they still played important roles in giving voice to the people, advancing the ideas of constitutionalism and encouraging people to resist the Shah and monarchy as a whole. Furthermore, the presence of a vital and diverse Press, to encompass and broadcast thoughts and ideas throughout the public sphere, is the best indicator of the existence of a free public domain. Its presence also signifies a means of social networking to increase the efficiency of public reasoning, providing a great tool to awaken people's mind towards the issues of the day and, in this case, the values of constitutionalism.

In Tabriz, the group who initiated the public council in that region also published a newspaper called initially the National Newspaper, later becoming the Council Newspaper (Kasravi, 2003). In Tehran, newspapers such as *Hablol Matin, Sour Esrafil* and *Rouh Al Qodos* wrote about the Shah and provided written documents illustrating the deficiency of the ruling government. For instance, in a Sour Esrafil column called *Charand and Parand* (balderdash), *Ali Akbar Khan Ghazvini*, known under the pen name *Dehkhoda,* wrote in a humorous and highly influential manner about political and social

topics. On a more serious note, due to the editorial stance of *Rouhol Al Qodos*, its publisher, Sheik Ahmad Torabi, became the main target of the Shah's wrath (Rezaei and Mahdavi 2009) and the subject of the first media trial in Iranian legal history, that eventually resulted in the legislating by Parliament of a strict Press Law (Shargh Newspaper, 2005).

The Iranian examples provided above, the previous anecdotes of Turkey, plus the historical background of religion in the Soviet Union provide a sufficient basis to argue the importance of a public sphere in which religion plays a role similar to other institutions. The presence of religion in the public sphere demands elaboration that will be provided in the following chapter. Meanwhile, in this chapter, provided as evidence of the existence of free public sphere in Iran up to 1941, is the unveiling decree of Reza Shah Pahlavi from 1936.

In 1921 Reza Pahlavi ascended the throne of Iran by a military coup against the existing ruler, Ahmad Shah, who had provided a relatively legitimate public domain. As previously discussed, the Press had gained considerable freedom during his reign. Once in power, Reza Shah soon changed the press law and his forces attacked local journalists, banning many activities associated with a free and open public domain. As history illustrates, the banning of newspapers in Iran is not a recent phenomenon (Mahdavi and Rezaei, 2009).

Despite death threats and occasional imprisonment for those advocating rule of law, women's rights (particularly unveiling), and human equality, Iran experienced a degree of freedom of speech and thought from 1909 to 1926 as Reza Shah became more secure in his rule. Just as things were stabilizing and social progress was starting to resume, once more a new monarch came into power, changing the whole political terrain of the society as established during those previous years. In this case *Reza Khan* took leadership with the pre-conceived agenda of rapidly introducing modernity to Iran, without allowing for pre-existing social structure and giving adequate consideration to cultural tradition.

Despite his modernist mandate, during this period the Shah banned almost all women's associations and groups who had previously been engaging in autonomous activities since the Constitutional Revolution, some even to the extent of openly advocating emancipation. Ironically, on the 7th of January 1936, Reza Shah simply abolished, by royal decree, the law mandating women to be veiled in public, claiming one step forward toward modernity, progress and women's emancipation (Derayeh, 2006).

This instance is again another example of how religion is not necessarily always congruous with the egalitarian and progressive status of men and women in society that should ultimately be respected in the overall discussion of a real pubic sphere. The above argument opens the window to discuss what pre-conditions must be met in order establish a free public sphere, while allowing for divergent viewpoints. The ethics involved in a real public domain will be discussed extensively in the following chapter, leading into the

examination of the current public sphere as such in Iran and Turkey, considering respective

differences and similarities.

Chapter Three: The Public Sphere's Role in Contemporary Narrative of Muslim Societies

3-1 Introduction

As case studies for the present research, in Chapter Two I have traced the basis of discourse regarding the historical context of Iran and Turkey in the modern narrative of religious belief, particularly Islamic thought. Further questions remain unanswered as I examine the public sphere in the Muslim contexts of Iran and Turkey: How is it possible to create a genuine public sphere when there is already the prominent obstacle of a state-imposed supremacy of one specific religion, which is Islam? What commonalities and dissimilarities exist between the two representative contexts of Islam, Iran and Turkey, each having a population with an extreme majority of Muslims? This chapter aims at answering these proposed questions, engaging the experience of Turkey in contrast with Iran to arrive at a set of mutual criteria to contextualize the global concept of the public sphere and to show how this concept must be modified when applied in practice to one particularity.

The main aim of this chapter, in tandem with the primary purpose of this research as a whole, is reconciling the role of the religion of Islam in the public sphere of Iran, while addressing the practicality of keeping it distinct from its politics. The contemporary historical periods to be reviewed in this chapter include: Iran prior to the 1979 revolution,

the provisional two-year period after the revolution, the presidency of Mohammad Khatami and the current Green Movement under progress in Iran. These events will be contrasted with Turkey's differing approach toward the public sphere in reviewing the history of AKP- *Adalet ve Kalkınma Partisi,* the Justice and Development Party.

3-2 The Public Sphere in Contemporary Iran

Open discussion is important as a balance of power in a society, leading to improvement of living conditions under more desirable ruling authority, and in fulfilling the citizen's role as a "social being", characterized by commitment to others extending into the public domain, while preserving respectability in the private sphere. A social being is intent on communicating with other beings in the public sphere to shape a public reason based on the awareness of people's public concerns.

In the history of Iran several important pre-revolutionary figures played important roles in providing an arena for people to communicate, criticize and be involved in open discussion. Motahhari[11], Bazrgan[12], Taleghani[13] and Khomeini, in spirit or practice, claimed to be centering their thoughts on attainment of rational being (Adelkhah, 1988). These rational and reasonable dialogues, opposed to an existence based solely on "Servile

[11] Morteza Motahari is considered amongst influential figures supporting an Islamic republic political system in Iran. He was a co-founder of *Hosseyniyeh Ershad* and Combatant Clergy Association (*Jamiate-Ruhaniate- Mobarez*). He was appointed as a chairman of the Council of Revolution in Iran by Ayatollah Khomeini in 1980.

[12] Mehdi Bazargan was Iran's first prime minister after the Islamic revolution of 1979. He was a prominent scholar and longtime pro-democracy activist. He is amongst the founders of the contemporary intellectual movement in Iran.

[13] Ayatollah Mahmoud Taleqani was a well-known Muslim reformist and a theologian. He is a founding member of the Freedom Movement of Iran. He was also a contemporary of Ayatollah Khomeini.

Obedience", were given more credence in the pre-revolutionary society, later being labeled as subversive by the post-revolutionary regime. The resistance to rationality by the post-revolutionary society was partially due to the Ulema characterizing rationality as a path to communism/socialism and godlessness. Ironically, many of the original revolutionaries were socialists, but their contributions were no longer appreciated once the oligarchy had secured power. In a similar vein, in the west during the middle ages, Martin Luther famously stated:

> Reason is a whore, the greatest enemy that faith has; it never comes to the aid of spiritual things, but more frequently than not struggles against the divine word, treating with contempt all that emanates from God...Reason must be deluded, blinded, and destroyed. Faith must trample underfoot all reason, sense and understanding, and whatever it sees must be put out of sight and... know nothing but the word of God...To be a Christian, you must "pluck out the eye of reason"...This error of free will is a special doctrine of the Anarchist (Table Talks in 1569).

One should keep in mind that prior to the revolution, during the time of the last Pahlavi Shah, different interpretations of Islam coexisted and gained credence among the people since the Shah encouraged various readings of Islam in order to reduce the dominant religious influence of the Islamic center of Qom, Iran's primary spiritual center and home

of the university of theology. After the revolution, this plurality was swiftly brought to an end and only the officially decreed Islam of the oligarchy was sanctioned.

Amongst pre-revolutionary Iranian scholars, the works of Ali Shariati (1935-1977) and Jalal-Al Ahamad (1923-1969) show the most promise in reconciling some of the debate involved in presenting Islamic and traditional issues in a public domain (Behnam, 2002). Despite many criticisms that have been directed towards Shariati, his works and speeches demonstrated that Islam is capable of communicating actively with the modern world. The significant feature of his work is engaging with the traditional world by means of modern reasoning. In fact he tried to establish a dialectical relationship between historical tradition and modernity (Abdolkarimi, 2011). He also strove to bridge the gap, from an Islamic perspective, between the traditional and modern mentality. Conversely, Jalal Al-Ahmad's nationalist perspective was generated from deep within Iranian tradition, stretching far beyond the Islamic era, as he addressed issues of cultural significance such as westoxication (*gharbzadegi*), also known as "occidentotis".

In the words of Bruce Robbins, "Unlike 'hegemony', the public sphere is less on the side of rule, more open to opposing views. Unlike 'culture', it is more obviously a site of intersections with other classes and cultures... Public sphere invokes 'identity', but does so with more emphasis on actions and their consequences than on the nature and characteristics of the actors" (1993, p. xvii).

Iranian intellectuals who have engaged in the philosophical struggle with the west generally have used Western methodologies and theories. This, according to Ayatollah Broujerdi has limited their thoughts and has contributed to their inclination towards nationalism. Furthermore, the ayatollah argues that this manner of reactionary research and exclusionary ideology leads the society to an essentialist worldview (1999).

One of the most significant incentives continuing to aid Ayatullah Khomeini in attracting people to his philosophy is his stated belief, mentioned again and again in the agenda he proposed before the revolution, in Iran's future ability to gather all ideas and values under the auspices of one, united society. He also promised to establish an Islamic utopia on Earth, free from injustice, inequality, poverty, and social conflict. "The Islamic Revolution," he declared, "will do more than liberate us from oppression and imperialism. It will create a new type of human being" (Ayatollah Khomeini's speech, 1974). To hasten the arrival of this utopia he urged his followers to "unite the oppressed of the world, both Muslim and non-Muslim, against their class oppressors and foreign exploiters." Indeed, through the early period of the Islamic Revolution, the Iranian public hoped to shed foreign influence and demonstrate their subjectivity and distinctness, to be able to "change what they wanted to see in the world" -i.e. this revolution would restore their cultural distinctiveness and return Iran to the forefront of civilization, repaying the previous borrowing of Western values during Shah Pahlavi's regime.

Revolutionary upheavals might unintentionally or invisibly produce a global public. (Beck 2006). During the first two years immediately following the Iranian Revolution of 1979, there was a provisional, revolutionary government in place prior to the Islamic oligarchy securing power. During the Provisional Period we can identify the emergence of a relatively free public sphere. Many newspapers and a plethora of published works began to spring up. The great potential of this era is reflected nostalgically in Iranian films of the early 1990s. 'Two Women' and 'Hidden Face' by Tahmineh Milani[14] depict the relatively free public debates occurring in Iran during the two-year Provisional Period (Taati, 2003 & Derayeh, 2010). This period provided territory to explore pluralistic views concerned with matters beyond merely reconciling Islam with modernity. A feeling of opportunity was in the air and everyone seemed to have an opinion to express. Many intellectuals found a space to talk about sensitive issues related to Islamic values or non-Islamic rubrics during this brief period before the oligarchy secured its power base and ubiquitous public policy took root to mute such discourses.

An early indication of what was to come occurred on Women's Day, 8 March 1979. Iranian women who marched against the revived veiling decree were brutally beaten by the *Pasdaran-i Inqilab* (Guardians of the Revolution) alongside a civilian mob [Jennings, quoted in Derayeh, 2006]. As they attacked they chanted the slogan *"ya rusari' ya tusari"* (either a head-cover or a hit on the head) (Derayeh 2010).

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[14] Tahmineh Milani is a well-known Iranian film director and screenwriter.

Once secure in power after the Iranian Revolution and Provisional Period, the Islamic leaders did succeed in changing the national character and redeeming their promise of establishing a republic united in a single Muslim identity, but in exclusion of all else. The previous pluralism and cosmopolitanism were not absorbed into the new state, but rather became persecuted, suppressed and marginalized. The Islamic utopia they had created was certainly not free from injustice, inequality, poverty, and social conflict.

A significant event soon took place after the subsidence of the political revolution. The commencement of an artificial Cultural Revolution (1980-1987), initiated through official declaration by Ayatollah Khomeini, comprising the consensus of many so-called Islamic scholars and clerics such as Ali Shariatmadari [15], Abdolkarim Soroush[16], and Ali Khamenei. Through the synthesis of these opinions and beliefs, they attempted to cultivate in each person adherence to a single, universal, novel, institutionalized culture, consequently putting an end to diversity, discourse and dissent, the fundamental components of a free public sphere. In fact, their stated intention was to instill one universal particularity that bore no relation to a past, to their minds, tainted by Western thought, and that would remain unchanged in the future. They came to consider any other value system as a threat to the purity of the Islamic identity that they achieved (Bayat-Philip, 1980). This is textbook patriarchy, directing rather than interacting, ruling instead of leading. It reveals an inherent lack of respect for the competency and integrity of the

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[15] Ali Shariatmadari is an Iranian academic who was the Minister for Higher Education in Mehdi Bazargan's interim government after the success of the Islamic Revolution in 1979.
[16] Abdolkarim Soroush writes on Islamic philosophy and Sufism and identifies himself today as an Islamic reformer.

community and betrays a lack of faith in people to make good choices. This is solidarity without the strength of voluntary allegiance and the bond of equally mutual consideration.

This phenomenon bears further investigation. One of the main goals of the Cultural Revolution in Iran was unionizing the *Howzeh* and University to suppress Western thought and Western readings (Keddie, 2003). In fact they aimed to Islamize university education, to shape a social totality in which people would not be aware of other existing possibilities. Consequently, with no alternative basis of comparison, the rulers hoped the people would remain silent about the quality of any rules and regulations imposed on them. Essentially, they tried to stamp out free-thinking, which is ironic, since the revolution was rooted in it. When the aim of a society is to limit knowledge and discourage independent thought, it forms an unhealthy relationship where the population becomes entirely dependent on the state for directive on all aspects of existence and every facet of life, the state being transformed into a totalitarian authority and the population into infants. Totalitarianism, however, is not the only form of government to deny people equal right to pluralistic participation (Arendt, 1951). Most forms of government, to varying degrees, seek to limit the political activism of private groups and individuals in the aim of maintaining social order.

In March, 1989, three months before Ayatollah Khomeini's death, he made a major pronouncement categorizing the clergy into two distinct groups: those most knowledgeable about religious scholarship, including sacred law, and those most

knowledgeable about the contemporary world, especially economic, social, and political matters. It may be inferred that by issuing this directive, he was finally, indirectly, admitting that religious knowledge alone is not sufficient to govern a society (Gerami, 2003).

Following Khomeini's death, a novel ideology once again came to the fore of Iran's public domain. Called 'new religious thinking', it pragmatically intended to engage with religious as well as non-religious perspectives. This philosophy combined with the termination of the Iran-Iraq war, the death of Ayatollah Khomeini, the post-revolutionary baby boom reaching adulthood to increase Iran's youthful demographic into a position of majority and many other elements culminated in the best climate for reactivation of the public sphere in a generation. Iran now entered into a second stage of revolution that would culminate in the Green Movement[17].

The next historical development important to the discussion of the public sphere began with Khatami's presidency. Mohammad Khatami, who had resigned from being Minister of Islamic Guidance and Culture in 1992, campaigned during the 1997 presidential election as a religious reformist, gaining the greatest number of proponents to successfully become president. His political platform was reform. His slogan was civil society - dialogue of civilization as sub-political action (Beck 2006), and inter-civilization

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[17] The Green Movement in Iranian history refers to a series of actions after the allegedly fraudulent results of the 2009 presidential election of Mahmoud Ahmadinejad to initially demand his removal from office and restoration the people's favoured candidate for Mir-Hossein Mousavi.

dialogue to open a new chapter in the Iranian public sphere. He believed that reform was indeed possible on the basis of Islamic principles. Despite the fact that he himself studied amongst religious scholars, his role is one of the best examples of religious intellectuals who defend the pluralistic view within Islam and believe in the freedom of will to accept Islamic ideology. Khatami's dialectical discourse also won him the support of the outside world, bringing an end to Iran's twenty-year period of diplomatic isolation, at least during his time in office.

When Khatami took office, the emergence in Iran of a new public arena soon became apparent with the increasing independence of civil society witnessed in the augmentation of the press, movies and the public attitude in general (Jahanbegloo, 2000). Having more space to communicate in public, people became much more active in the process of democratization and freedom. Possessing the ability not to just remain sequestered in ideological politics, but engage in real issues and criticism of non-democratic policy in Iran created an atmosphere of progress toward reaching an "overlapping consensus" (Rawls, 1999) of public concern. "The actors seek to reach an understanding about the action situation and their plans of action in order to coordinate their actions by way of agreement ... A type of interaction that is coordinated through speech acts and does not coincide with them" (Habermas,1993).

Khatami was, of course, not the first in Iran to introduce the idea of sustaining an effective public sphere, it had been previously proposed in the modern era by *Ayandegan-*

a popular daily newspaper founded by Daryoush Homayoun, later banned by revolutionary prosecutors in August, 1979. The crucial point to emphasize about Khatami is that while holding the second-highest position in the government, his slogan was civil society. Like all politicians, some of his promises did not materialize. One must balance that against the context of dual sovereignty with the religious authority that exists in Iran. What deserves attention is that between August 1997 and June 2000 Iran had a relatively free press, at least compared to any other time since the revolution (MirHosseini, 2002).

I have collected a large number of blogs, novels, magazines, newspapers and various other media that acted as deputy agents of the public sphere during this period. Such examples illustrate the powerful potential for progress and adaptability within the governing principles. Publications came into existence that proceeded to openly address and question traditional roles and interpretations. For instance, a number of newspapers began discussing issues critical to the role of women in the Islamic Republic of Iran, a topic that was once absolutely contra-band. As an example, one article in Zan magazine asserted that the meaning of the word " rajol" in constitutional law refers to both men *and* women, when previously it had been strictly interpreted as applicable only to men. By 1998, 140 women had obtained publishing permits and forty-five percent of these began actively publishing. Hajar's Message magazine, Neda -the voice of women magazine, and Zanan magazine joined the ranks as further evidence of the relatively free press enjoyed during the first years of Khatami's presidency. His efforts led to an enormous increase in civil pluralism in Iran and contestation of the authority of the 'ulama (Mir Hosseini,

2002). The society was quickly reaching critical mass as the currency of the highly fundamental ideology of the Islamic clerics lost value and appeal to the widening reference of the average contemporary citizen living within the increasingly pressurized confines of an ideologically-fatigued Iran.

Following Khatami's second term of presidency, he was forced to step down. Under Iranian Constitutional Act, a president can hold presidential office for a maximum of two consecutive terms. *Mahmoud Ahmadinejad* succeeded him in 2005 as the next official president of Iran. The difference was like night from day. Almost as soon as Ahmadinejad took office any dialogue not consistent with the ideology of the political sphere became officially banned in the Iranian public sphere. Subsequently, this decision led to limited relations between the two spheres of influence, these interactions generally marginalized behind the veil of suppression, remaining unseen in the apparent mainstream social panorama of the country.

The hard-line tactics of Ahmadinejad's administration eventually incited the counter-development of the Green Movement during the June 2009 election, showing that the public sphere of this era in Iran may have been on the ropes but was not down for the count. Since the suppression remained unseen to most until after the fact, subsequent attempts have been made to produce networks to demonstrate the existing pluralistic features. As Hamid Dabashi maintains in one of his interviews, Iranian society is

attempting to achieve the level of freedom in which they can relatively produce knowledge on the basis of commonalities while also exploring their differences (2010).

The Iranian people demand to be engaged and the public domain of Iran is ready to take steps and exercise agency toward action in the process of engaging and having dialogue to influence the political authority of the country. Attempting to establish a relatively free public domain movement in Iranian society necessitates fulfilling many demands of the people without resorting to violence, but, subsequently conditioning and preparing them to be ready to pass through the crucible of open debate in a free public arena and still preserve individual distinctness and particularity.

3-3 Similarities and differences between the public sphere in Iran and Turkey

Iran and Turkey have been chosen as representatives for this study owing to the fact that, besides each meeting the pre-requisite of having a Muslim majority population, they share many cultural and religious commonalities to form a basis of comparability. The history reviewed in Chapter Two shows a primary node of comparability between Iran and Turkey being their strong need for constitutionalism, not only in terms of the ideology, but also the initial processes and dynamics of a constitutional revolution.

One should keep in mind that besides the similarities mentioned, there also exist many differences in the approach that Turkey and Iran have taken toward the presence of religion in the public sphere. For instance, the present official religious hierarchy in Iran

does not exist in Turkey. In Iran the oligarchy is sovereign and active in controlling such vital social resources as education and endowment, as detailed previously in the recount of the Iran's Cultural Revolution. In Turkey, on the other hand, religion is given a prominent place in society, but it does not govern. Even more crucial to bear in mind is the important pragmatic distinction in terms of religious appointment that, in diametric opposite to Iran, Turkey's religious leaders are appointed by the government. There is no Supreme Leader in Turkey. Therefore, Islamic representation does not monopolize the political agenda but the democratically elected government must bear the scrutiny of a civil society. Consequently, such negotiations in Turkey could be considered democratic and tangible at the same time.

What is also helpful to note, in establishing the fundamental cultural differences between these two nations, is Turkey's relatively free press which enjoys a very broad popularity amongst the population even if on occasion it leads certain newspapers to run afoul of the governing authority. There have been instances of some publications being accused of directly insulting the Prime Minister or the Ministers. Consequently, these become matters to be settled by the courts – in which the cases are won or lost based upon the strength, or lack thereof, of the evidence presented in application to the law. On the opposite side of the spectrum, there also exist many publications in Turkey supportive of the government's policies and decisions. Whereas in Iran, due to strict limitations and bans governing political discussion, the number of domestic newspapers writing opposing views to the authoritarian government have been drastically reduced.

There are at least 7 or 8 newspapers in Istanbul alone whose circulation has reached over 500,000 or nearly that number. For instance, *Hurriyet*, with an average readership of 1,275,000, advocates secular policies with a degree of appreciation for the economic success of the government. *Milliyet,* representing liberal views with nearly a million readers also communicates closely with them through Internet. *Cumhuriyet* with around 400,000 readers, has established itself as the most uncompromising secularist voice. Zaman, with 650,000 supporters, represents the ideas of the late Necmettin Erbakan's party, from which Erdogan -who has a decidedly Islamic slant, and his group broke away. Yeni Safak whose circulation is 430,000 has an editorial board consisting of Muslim intellectuals, not religious leaders, that is very supportive of the Islamic policies of the government in social practice without going so far as to advocate any overall strict control of certain behaviors, for example, refraining to comment or strictly object to the trend of young people modeling their behavior and activities after American or European culture. And, Taraf, with strong investigative editors, usually expressing the opposing viewpoint to the present government, is followed by around 250,000 readers. All in all these are healthy signs of open and active discourse between the population and its leadership.

One other notable feature that helps to fortify the foundation of the public sphere in Turkey is the resistance of the Turkish society to let germinate the root conditions for the development of fundamentalism, as differentiated from the situation in, say, Pakistan or Afghanistan, though, truthfully, this is also largely in part due to economic disparity. The Islamic parties in general, but especially the Justice and Development Party in power, actively working in Turkey to create programs to promote social justice and the

progressive aspects of religion (Gole, 1997), attending a number of immediate needs of the general population.

What we see today in Turkey is the compatibility of modern life with pluralism and secularism that will be discussed under the context of public sphere ethics in the next section of this chapter. It appears that more so than adhering to rigid guidelines, the Islamic parties active there attempt to advocate the ethical values of Islam – active belief rather than static, unquestioning observance. Among the main benefits of public debate are all of the above-mentioned attributes that have come to represent some of the most positive aspects of this realm. The importance of the public sphere becomes much more tangible and understandable once religious fundamentalist epistemologies of dread have faded.

Despite Turkey's more openly pluralistic example, in Iran a more strict religious hierarchy and uniform doctrine exists, lending the power of its credibility to the ruling government who in turn officially maintains a strong commitment to the primacy of Islam. It is worthy to mention that not only a universal commitment to Islamic principles is required but also routine adherence to official doctrine. No alternative or competing interpretation of Islam is accepted or tolerated except that of the government. Indeed one of the inseparable elements of the Iranian public sphere is the religious constituent in the whole of society. The religious element is significant due to the fact that this country is currently under the control of a self-proclaimed Islamic government – while remaining debatable as to whether it may be considered so in name, actual identity or practice. What

fortifies the discussion of the public sphere is the empowerment to achieve a government that is inclusive and respects all ideas.

In addition, the manner in which Islam functions within the state and society of Turkey and Iran makes them distinctly different from each other. In Iran the government determines its own interpretation of Islam and expects the entire society to live up to its tenets. In actuality, they do apply, with some adjustment, a large part of the Sharia to official policy (Moaddel, 1986). In Turkey, it can be said that a much smaller group is yearning for the "good early days of Islam", expecting, without much further introspection, that the application of Sharia will heal all wounds. Bear in mind that this group represents a very small portion of the popular sentiment. Therefore, it can be said that Iran and Turkey are very different when it comes to extremism and fundamentalism. While Turkish extremists moderate their thoughts within their political authority, the political authority in Iran supports and even augments the causes of extremism. A true public domain would help mediate public concern to break the roots causing extremism by providing a balanced perspective.

Turkey did experience a brief period of extreme authoritarianism, similar to Iran, in 1960 when the ruling Democratic Party (Adnan Menderes Government 1950-1960) was deposed by military coup and all aforementioned formal and informal institutions of their public sphere were closed for a time. However, this anomaly in Turkish history did not last for long and their free press resumed as political stability was regained. During the subsequent process of establishing a new constitution, many groups sought to advance

their interests, including those representing liberal, religious-right and rationalist-right. They also fought over the distribution of resources such as housing and urban spaces.

The Justice and Development Party is a root political institution in Turkey that, as Hakan Yavuz maintains, has changed a lot over time in name, reputation and direction. Before the 2002 election, the Western press described it as a fundamentalist party. The same press after the election referred to it as an Islamic party. After its attempts in Copenhagen to become a member of EU, they amended their description to it being a party with Islamic roots. It is important to recognize that the acceptability of this party to the west has changed over time depending on its interaction and this acceptability comes not just from above but also from below (Yavuz, 2009).

The Islamic-orientated Justice and Development Party (AK Parti), with their followers of Muslim intellectuals and politicians, are the currently ruling authority since the election in 2003 of their chairman, Tayyib Erdogan, as Prime Minister of Turkey. Until recently, they seemed to be most interested in paying heed to the economic and social ethics of Islam without necessarily challenging the secular basis of government. However, since their second term in office, they have begun making policies that challenge the concepts of Turkish identity and the secular constitution. The AKP's proposal to mandate the wearing by women of the religious Hijab (head-covering) in all official buildings – including schools, courts and government offices, and, cancellation of the secular holiday, Youth Remembrance Day, are examples of the government's change in fashion. In response, since 2008 the public sphere in Turkey has become more vocal in their

demands to the political authority, attempting to critique the government's actions and positively affect its policies.

Another crucial factor influencing the public sphere of Turkey is the nation's economic success which allows its society the resources to provide for more diverse needs compared to other regions in which economic disparity forces an either/or scenario of survivalism between competing needs and interests. The economy of Turkey is one of those emerging markets, rapidly developing in the current era to the extent of being named one of the world's newly industrialized countries; indeed it is now a member of G-20. The dynamic, competitive environment of the bazaar has fertilized the progress of public institutions while simultaneously allowing the private sector to flourish. The Turkish government, despite its Islamic roots, is eager to join the Common Market and values its close relations with the West (Yavuz & Esposito 2003). Despite the primary imperative of economy in Turkey, having democratic institutions that provide the opportunity for growth of social organizations and societal agencies has allowed the public sphere to always function and play a role. But, as mentioned before, the necessity is not always present for the public sphere to sustain a more active identity.

Another key element that contributed to the formation of Turkish society and the character of its public sphere is the proximity to Europe producing more cultural exchange and fostering acceptance of pluralistic views. Turkey's geographical opportunity largely supports the diffusion and dissemination of elements from other cultures to the region. This fact has greatly influenced the people's behavior toward

otherness that is very important to form social trust, sympathy, compassion and friendship with the other within the political and perceptual boundaries of one country as well as beyond (Farasatkhah, 2009).

Moreover, in terms of its relationship with international society, specifically European countries, as a member of NATO, The European Trade Association, and the continuous efforts of the government towards a full membership in the European Union, the effect on Turkish public consciousness is considerable. Joining these associations is not a political tactic per se but a great undertaking to achieve an efficient civil society and democracy.

It is also noteworthy that an historical overview of secularization and modernization in Turkey reveals the public sphere in past to be mostly occupied by the state, similar to other developing countries that have experienced "modernization from above." The deregulation of the activity of the civil society organizations in the middle of the 1990s has subsequently resulted in the enlargement of the space available for discourse that is independent of the state. It should also be noted that this has occurred not only among the middle class but also among those people who traditionally have been deprived of many privileges in the formation of public opinion.

When discussing the public sphere of Turkey it is important to acknowledge the encouraged sensibility to "feel the need" to be active in civil society. In a country in which almost every change that people demand is implemented from above, it acts to lessen the tendency to have an active middle space -i.e. a public sphere to affect societal

decisions of authority, as Turkey's relatively stable economy does not typically provide the social stimulus for more determined political action on the part of the public, compared to a country such as Iran in which the economic disparities are often the source of much political debate.

The distinction between the traditions of Kanun and Sharia may provide further light to reflect on the legal differences between Iran and Turkey. The legal tradition of Kanun (sultanic laws) in the Ottoman State applied to both Muslims and non-Muslims in certain fields such as land, mining and duties related to customs. The Sharia was applied only to Muslim subjects and that in personal matters like marriage, divorce, inheritance, custody, so on. Since formation of the republic of Turkey in 1923, there has been absolutely no application in their legislation of Sharia in any form. Therefore, one could assert that Sharia not being represented in Turkey's statutes renders the consequence that the principles of Sharia may not be foremost on the minds of the people in guiding their actions. The separation of laws from Sharia in Turkey does act to empower the people to make their own choices. In regard to law, acceptability and legitimacy play an important role. In Iran however, Sharia is the only legitimate law, whereas, in Turkey, Sharia exists as a moral tradition that may be acceptably invoked for anecdotal reference in court, but is by no means viewed as the legitimate rationale for achieving justice today.

All these factors make Turkey very different from Iran, in both theory and practice. It is important to bear in mind that these differences add to, rather than detract from, the

significance of Turkey in providing a meaningful example for comparison to the public domain of Iran.

3-4 Public Sphere Ethics or Pre-Conditions to a real public domain

In the reflected, post-modern view, representative reality becomes not only achievable in the mirror of the mind but also in the reflexive, human social actions and interactions. There have come to be written, rich and abundant literature about the public sphere after its formation but such dissertations only become possible if the pre-conditions of the public sphere are met in the first place.

A public sphere can be formed either through the assembly of private individuals, through the sanctioned auspices of public institutions, or as a combination of both. The social pre-requisite of the first option is that these individuals need to have first gained the freedom of assembly and freedom of speech necessary to publish opinions that critically engages the public authority. Simultaneously, the public sphere and political sphere overlap but do not coincide, since the individual actors and their inherent purpose of formation are distinctly different. What is the most effective way to silence your critics? Hire them. For this reason, to maintain its objectivity and integrity, the public sphere must remain separate from and independent of the ruling authority while working in conjunction with it for the advancement of society. Alongside the necessity of at least tentatively meeting the previously-stated prerequisites to form a public domain, there is the broader

requirement of having attained a society containing a reasoning public in which there is relatively equal accessibility for all to information (Lennox, 1974).

One might consider that among the essential building blocks of a free public domain is awareness of the conceptual dichotomy of friend/enemy. The dichotomy of friend/enemy (Schmitt, 2007) present in the approach with which the Iranian government has chosen to act has propagated a polarizing discourse regarding others, rendering the attitude amongst some that Constitutionalism is the only alternative to the religious oligarchy, while others feel continuation of an open public sphere to be a threat to cultural integrity. This stalemate has managed to effectively destabilize much of the effort and hinder much of the progress aimed at implementing true public realm in Iranian society.

To illustrate that ethicists are not welcomed in the social fabric by the ruling authority, it is important to look at the Iranian government's attitude toward education. From the very start of their schooling, students are all conditioned to cry out "Death to the America", in some cases even being forced to walk on the US flag as an expression of their hatred toward the West and commitment to traditional, Islamic values. They are uniformly taught that, for the sake of their tradition and religious beliefs, they should be opposed to the West. Development of the ability to reconcile their differences with anything identified as 'other' is intentionally and consistently neglected in primary education. The goal of this policy is to perennially maintain a revolutionary generation, united and preoccupied with the token struggle against the so-called New World Order, aiming their vitriol and venom at an unseen enemy without ever actually engaging them, unloading

their negativity and frustration on a phantom, foreign power instead of holding the domestic government accountable for their actions and the country's conditions. Despite the fact that government is propagating the friend/enemy dichotomy in order to keep the public off balance, people, on the other hand quest building friendship and cooperation from below.

Once a person becomes mature enough to start forming their own opinions, strict censorship and surveillance act as roadblocks toward achieving a legitimate public sphere. The Iranian government maintains a great deal of control over the traditional media. Institutionalized censorship and coercion intend to deflect all those outside of the government who attempt to voice an opinion and participate in the public debate (ONI's mission, 2005).

Accountability, alongside productive engagement with opposition, is a significant ingredient in producing an effective public sphere. A civil society is based in the principle of free interaction by which people engage with each other and become responsible to one another, in spite of their differences. The essential message of this paradigm is to recognize differences without necessarily being threatened by them, and to respect diversity while at the same time seeking areas of commonality. A notable issue resulting from not preserving a public sphere is marginalization of this discourse of difference, but, of equal concern, once a public sphere has been delineated, is the importance of insuring

the secure place of religion in the public sphere and an active role in the discourse of the society. Popularity alone should not dictate who gets to participate.

Moreover, religious freedom bears a close relationship with the human rights of people in a civil society. One of the fundamental rights is the freedom of religion. Not stipulating a free atmosphere for expressing ideas jeopardizes the legitimacy and durability of the power of the state. This predicament is currently being experienced in Iran. Denial of social responsibility, lack of economic accountability and questionable election results have contributed to undermining faith in the current regime. Confounding these breaches in trust is the regime's unwillingness to engage in any dialogue about the root issues, choosing not to respond to the allegations, instead persecuting those making them.

Said maintains that today in the Middle East civil society is often described as being, at best, fragmented and dispersed by the forces in opposition to what many feel is needed to grow and sustain a viable pro-democracy movement (Said 1978). Bromly further asserts: "weaknesses of and divisions within civil society seem likely to be a major problem in the future process of democratization" (Bromley 1994, p.166). What is needed to profoundly reverse this trend is open public discourse, as a source of social solidarity, mutual commitment, and shared interests, to change people's self-identities and understandings of the world (Calhoun 2003). Abazari identifies that communicative action refers to everyday interaction -i.e. interaction of humans based on non-critical acceptance of deeds and social norms and criticism of everyday systems. Informed dialogue is the

argumentation that occurs in a case of conflict between social actors based on common reason (2005).

Expanding Weber's view on rationality (Ritzer, 2004), I have come to the conclusion that tracing rationality in the ideal of a society is very helpful in determining the degree of recognition the public sphere receives in their thought. This is due to the fact that a crucial element of the public sphere is the ability to be rational in collecting the ideas to be discussed, determining those that are influential enough to enter the social structure and prioritizing those of urgency to facilitate elevation into the political realm in the hope of being successfully resolved by legislative apparatus.

Expanding on rationality to also consider the role of collective reason, the public sphere and collective reason are interdependent entities that cannot be separated. Collective reason encompasses both the audience attending and the actors performing at the Globe Theatre of the public sphere. Therefore, the practical understanding of rationality is prerequisite to recognizing a public quarter in which people become able to discuss their ideas of common good and public interest, gained freely through their own comprehension. At the time that the proper place of rationality is not recognized within its walls, acknowledgment and legitimacy of the public sphere, by default, become cancelled.

One must not, however, confuse collective reason with universal consensus or adhesion. Collective reason is agreement of the standard upon which an issue will be discussed, not agreement about the issue itself. Collective reason is the spirit inhabiting the social role

whose narrative the public sphere seeks to portray. To achieve a public sphere with such qualities, there is a need to attain a capacity for multi-perspectivism, that is to say, to move between and be able to decode a wide array of divergent socio-cultural practices and belief-systems, as well as to be familiar with the self-understandings of various thoughts around the globe (Kurasawa 2010).

One can draw parallels between a local public sphere and global public sphere. One prominent characteristic of cosmopolitanism is the recognition of the probability of potentially becoming *the other* that may manifest itself ubiquitously from dialogue to performative content. Indoctrinating the hatred of others, or what one might call an attempt to inculcate misanthropy of one particularity, as occurs in some non-Western societies, such as Iran, is rooted in many issues including the fear of an authoritarian government to lose the dominancy of their nation, justified in the name of religion or pragmatically as a symbol of national self-reliance. The history is long and complex of the relationship between the so-called *we* and *others*, and supercilious assumptions in divergent matters involving cultural durability, nationalist tendency, and religious supremacy among participants in the Iranian public sphere.

What may also be considered a conflict is the idea that in order to have a constructive public domain there is need for egalitarian grounds of the participants and no *a priori* presumption of superiority being accepted. More specifically, in Kögler's approach toward having a true public sphere "there is a need to meet three conditions".

The first condition is the post-conventional commitment as a means of recognizing the possibility of the superiority of the outsider with a justification based on rationality, not on convention. This capability seems abhorrent to interpretations of Islam in which the belief in the supremacy of Islam above all other religions and beliefs is firmly rooted. More importantly, this resilient superiority is based on the convention that the Qur'an represents God's words - i.e. due to the fact that in the Qur'an God says Islam is superior germinates and fertilizes the ongoing belief among certain Muslims that it is superior.

The second condition is the ability to consider the perspective of others, called perspective-taking. The important feature of this capability is a state of willingness to comprehend another's viewpoint from the perceived context of that other. Despite the fact that this is not completely possible, the willingness to attempt this perspective is the crucial point. It is apparent that to implement this ability there is a need to have established egalitarian grounds in terms of both potentiality and practice.

Kögler's third capability is called social reflexivity. It is considered the most productive part of this process. It asserts that there is no way to escape from self-negotiating or self-questioning. If one can manage to meet these three sets of capabilities, a productive dialogue can begin to take place.

Furthermore, transparency in the public domain is one of the undeniably significant components when it comes to demonstrating legitimate observation of the political

authority. If the public domain is transparent, not only democracy, but also peace— peace at home, and peace between nations— becomes possible (Ganji, 2008).

In founding a relatively free public sphere from below -i.e. emerging independently from the private sector to engage the political domain, rather than being appointed by the ruling institutions, the building blocks needed would appear to be banal. Foucault explains that being banal does not mean they do not exist. What must be done with such banal facts is to try to discover what specific and, perhaps, originating problems are connected to them. (Foucault, 1999)

Democratic citizens would need to learn, through their own resource-fullness, the art of separation by testing the limits of their overlapping consensus (Benhabib 2006) and come to the realization that this process takes place in a public sphere that has the potential ability to become a ruling authority, independent of government and private sector, and, not based solely on equality but also the acceptance and, indeed, the appreciation of these differences (Archibugi 2008). The ideal outcome of having a public sphere is to transform political into "rational" authority (Lennox, 1974).

Habermas views the kind of interchange that he discusses as an arena that will probably never be fully realized but "it is not a mere ideology" (P. 160, 1993). By maintaining reasonable pluralism, the acceptance and respect of this pluralism will engender a public atmosphere of tolerance needed to constitute an ideal public sphere (Gencoglu-Onbasi,

2011). All things considered, an actual public sphere has particular characteristics that need to be achieved in order to support the process of democratization. It cannot begin to be reached until the people themselves seek to communicate with each other, building public trust, while also balancing power to shape an authority that recognizes their fundamental rights. If religion is appended to the public sphere, as it should rightfully take its place in public discussion, it must not, however, become part of the official governing system if rational authority is to be accomplished. It would also negate the *a priori* condition to meet equality or egalitarian status that was discussed above. Therefore, any particular religion should have every right to participate in the discourse of the public sphere, provided a condition of respect for other's equal status in the society is maintained, at the same time I must state that religion should not be a part of the political system.

Chapter Four: Public Sphere and Sharia[18] Law

4-1 Introduction

Following the previous discussion of public sphere ethics, in which were outlined all the pre-requisitions that must be met before the constitution of a real public domain can occur, we now continue the conversation as to how it relates to the law. When it comes to the law, it is first crucial to note the importance of maintaining a legitimate public sphere as a means to empower the population in its interaction with authority. When a society loses its active relationship with authority it leads to the erosion of legitimacy in the law-making process and exorcism of the spirit of case law.

This chapter will demonstrate the concept and application of authority in both religious and secular contexts, laying the foundation for a discussion of the conditions by which an

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[18] The root of Sharia is Shara 'a which in Pre-Islamic era was used as "the road or the path to the water". Sharia in the Quran signifies a path to Allah's way. Later it was interpreted as the Islamic values that direct humans' lives. As such it includes both faith and practice. At its early stage sharia derived from the authoritative or "given source" (the Quran and the sunna of the prophet) and the principle of human intelligence and reasoning. This gradually constructed four Sunni schools of law. Imam Hanifah (699-767, Kufa the founder of the Hanafi school used the Quran, the *Hadith*s, analogical reasoning (*Qiyas*) and rational preference (*Istehsan*).

Malik ibn Anas (715-95) the founder of the Maliki school used the Quran, the *Hadith*s, and common good (*Maslaha*). Although it is suggested that he did not incorporate Ray (opinion), nonetheless to reach the common good, he certainly used his opinion.

Idris al- Shafi 'I (767-820) the founder of the Shafiei school used the Quran and the *Sunnah*. Ahmad ibn Hanbal (780-855) the founder of the Hanbali and the author of a hadith collection entitled *al-Musnad* (Ahmad's Musnad), covering over 30000 hadiths used the Quran and his collection.

The Sunni schools also used the sunna of the first four Guided caliphs. However, a faction of early Muslims did not agree with the succession of the first three caliphs and accepted, Ali, Muhammad's nephew and son-in-law as their the rightful caliph, first leader and Imam. These people are called as the Shiite (party). The Ithna Asharis, or Twelvers also known as the Jafaris live mainly in Iran and Iraq. The Shiite sects' sharia in general and the Twelvers' sharia in particular derived from the Quran, the prophetic hadiths, the report (khabar)of the Imams, and the Ijtihad (Jurist decree).

individual may consider whether they have the moral right to obey or disobey the law, as supported by the rationale of perceiving an extensive gap between current public reasoning and the existing application of law. One can only perceive this gap promoting the power of reasoning. Furthermore, reasoning can only be achieved through cultivating divergent perspectives, which are often sponsored by a free public sphere. It is here that the right to obey or disobey the law gains importance owing to the fact that it is the public sphere's greatest leverage and last option to exercise its power to affect the law. The discussion of Islamic law will relate the roles of authority and the public to affect the legal system and will include a noteworthy investigation into the tradition of reason within Islamic thought.

Consideration of whether obedience to the law is inherent in the nature of law or if it is something that should be regarded as constringent matter (depending on the moral quality of the laws or legitimacy of the lawmaker) is a topic that has been discussed in many legal works. This question of whether obedience is inherent in the nature of law is a key consideration in the context of religious law. By its very nature, religious law mandates absolute obedience. There are specific criteria that have been introduced to render people as being bound and dutiful to religious laws, but this then raises further questions. Does religious law change or evolve? What authority or mediator is appropriate to settle conflicting religious laws or the cases that inevitably occur which do not fit neatly within the existing legal framework? Should these matters be settled autocratically or be open to public debate? In a secular legal system debate and objection act as building blocks

toward legislation in conformity with the people's public reason. In an oligarchy absolute sacred authority is given to a particular state to act upon God's will, achieving, at least in theory, greater unity and efficiency, but, by in large, at the sacrifice of restricting input from the general public.

Having said this, a crucial question emerges: When encountering laws that do not carry the pre-requisite to obey, does this necessarily justify disobedience? Or, give right to dissent? To answer the proposed questions it is crucial to recognize that the rule of law and authority are intertwined, since laws have to derive from substantive rights and the legacy of Aristotle's notion in politics "Law should govern"(16.5). Despite this, there is still the question of the accountability of citizens when unjust laws are in practice. The Nuremberg Trial is a conspicuous, precedent-setting example of a world tribunal holding citizens accountable for following and upholding knowingly unjust laws within their state.

Seeking answers for the above-mentioned questions becomes much more intricate when applied to Sharia law with its inherent claim that all rules are rooted in the commands of God. This renders the authority of law to be the authority of God's commands. Some faithful people, including many Muslims, assert that knowing all of God's Will is beyond the human capacity to comprehend. But, justice is a human value, rooted in the human perception of balance and fairness. If God's Will is beyond our understanding, how do we measure the justness of a law and achieve justice on a human level? Pragmatically, we

hope to compare apples to apples, but according to various holy writings, from God's point of view, an apple may represent knowledge, temptation, gravity, the universe itself, or a myriad of other symbols. The symbolism and ritual of religion engender mystique, making didactic comparison extremely challenging, if not impossible, especially when removed from the temporal context of the culture that began the religion. One could assert that trying to base law solely on religion, without using all the faculties God has granted us, including reason, is like trying to write legislation using only a book of poetry.

> The similitude of those who were charged with the (obligation of the) Mosaic Law, but who subsequently failed in those (obligations), is that of a donkey which carries huge tomes (but does not understand them). Evil is the similitude of people who falsify the Signs of God: and God does not guide people who do wrong (The Qur'an 62:5).

Many assert that religion simplifies people's lives, providing one way of living and a single source of guidance. However, if a single religion is the sole basis of a society's laws, a ponderous cluster of unsightly knots become woven into the *janamaz* (prayer carpet) of the nation's social fabric, making it uncomfortable to kneel on. What are the rights of the unbelievers or differing believers? Are they to be summarily condemned or excluded? Do they exist only to define the righteous? Are they to remain unrepresented in the society? Are their interests only of consideration by the granted goodwill and good graces of the authority? Many believe God speaks through all of us. Perhaps in the

diversity of our differences exists all of God's Will. From conflict comes creation. We should seek balance, not unanimity. Unity is the fusing of the 'I' with the 'other', not victory over the 'other', not the destruction of the 'other', not solitude. Harmony is the sound of multiple voices being heard.

Rawls pointed out that "justice is the first virtue of social institutions" (1971, P.3), Justice is needed to form the social institution. In this regard, citizens' attitude toward unjust laws can be interpreted from a position of lacking the social contract to validate the moral or political obligation to obey the law. What distinguishes this research from existing knowledge on the relationship between public sphere and legal system is it seeks to show that the right to disobey should be a consideration in every legal system, not just in liberal and so called just states, but also in such countries ruled under religious laws, whether in actuality or only in name. The scope of this research goes even further to claim that if Islamic laws are utilized to shape the legal institution in modern Muslim countries, rather than being the sole reference of the formal legal system, the very notion of an Islamic legal system would be better served.

4-2 Overview

Without any specific consequences for poor judgment, what compelling incentive does the ruling authority have to improve? To shed light upon the question about the relationship between authority, law and the right to legal disobedience there is a need to demonstrate a correlation between the authority, duty to obey the law and the right to disobey the law as a vital foundation of every legal system because the challenges it

brings often reinforces the validity of law and legal systems in general.

Obedience without choice is morally worthless. Traditionally, it has been said that political obligation and authority are bound to each other. In contrary to the past, Joseph Raz argues that authority does not coerce its subjects to obey. In fact, there is no duty to obey the law but there is a set of criteria that should be met to have a dutiful legal system in order to manage a society. In his book entitled *The Authority of Law* he argues that law itself does not require obedience unless it serves one's autonomy; in this case one obeys the law not because of its inherent authority but because of its content (2009). In fact, there is no prima facie duty to obey the law. In this respect, taking into account that if citizens become mindful about their moral evaluations, which are among the valuable assets of having a genuine public sphere, what then happens if their expectations are not reflected in the legal system? In other words, when the content of the law is not reflective of people's demand, is this law still dutiful? Answering this question pries open the window of validity to again allow the intruder of legal disobedience into the room. Since, by this standard, obeying the law for its own sake no longer seems sufficient to the present company's repartee, we are led to conclude that what we really need to be discussing is possession of the *right* to disobey the law. The possible argument, to be made to the current regime in Iran, of the importance of dissent is the fact that, if the people of Iran had not disobeyed the government and revolted in 1979, the oligarchy would never have come to power in the first place. Furthermore, if the Prophet Muhammad had not revolted against the customs, laws and authority of the *Sharifs* in His

time, Islam, as we know it, would not have come into being.

4-3 The Authority of Law

Authority takes the role of protagonist in "any discussion of legitimate forms of social organization and of legitimate political action" (Raz, 1979). However, before this dialogue can be enacted, there are a number of ongoing controversies to do with whether the narrative is performed in a secular or religious theatre. In a religious hall, the stage is at the back of the theatre and raised above the audience, forcing them to face the same direction and look up – that is, the authority comes from above. In a secular arena, it is theatre-in-the-round. Like a Greek auditorium, the stage is in the centre and recessed, with the audience encircling it above on concentric levels – i.e. authority is exerted from below. One might also make the further analogy that the main difference between these two venues of authority lies in whether the cast auditions for each role or they are the troupe in residence.

Of further relevance to the discussion of authority in secular and religious contexts is the part of wisdom in determining authority. The distinction of whether "It is not wisdom but authority that makes a law" (Hobbes, cited in Schiller, 2009), or, it is wisdom that empowers authority to make law is a key signifier of a society's overall philosophy. That is, it is essential to observe whether a government must exert its authority to impose reverence and/or fear of punishment in the enforcement of law to render it binding to the people, or, whether it is binding due to the people's voluntary recognition of the apparent

quality and sensibility present in the content of the law. This issue also relates back to what Kant sees as differences between the authority of revelation and the authority of reason (Enns, 2007).

To start situating theories on authority, it is necessary to consider this concept in two levels: theoretical and practical. Theoretical authority is defined as "the authority of experts and those with greater knowledge to say what is or is not the case in their area of knowledge or expertise" (Ehrenberg, 2011) whereas, practical authority is considered as directive for its subjects' conduct. In other words, "authority is to be identified as a special way of guiding action" (Green, 1988). Indeed, it is the normative power over the people's deeds. In general, eligibility to own the authority only relates to the latter form.

Joseph Raz proposes a compromise of basing the practical authority on a definite brand of theoretical authority. Reference to Raz's *normal justification thesis* is helpful here: we should accept X as an authority, if we do as X says it would more likely lead us to act in conformity with a reasonable and established rationale than would be the case if we each chose to engage the issues involved, directly. In other words, he asserts that one has authority over another if his directives help another to finer conformity with established reason that applies to the alleged particularity than if he is to follow his own reason, directly. Indeed, although the *normal justification* is vital for any legitimate authoritative directives, it is not sufficient. For this Raz refers to the people who are recognized as possessing relevant knowledge or expertise. In fact, the practical authority, limitedly

defined as a right to tell others what to do, quite spontaneously manifests itself in the roles of parents, siblings, peers, elders, business leaders, religious leaders, teachers and militants. Raz does not consider this right as tacit consent to obey the status quo, rather he describes it as a duty, which has to be in conformity only with the subjects' reason (1979). In accordance with Raz's conception of authority, one can draw the conclusion that authority should be in conformity with people's reason. Therefore, unbridled and unaccountable government does not gain authority over the people by theoretical means. In the case of Iran, political/ religious leaders allegedly follow Shiite Jafari Islam, and claim to possess a unilateral power from God. The question is raised if there is any need to be in conformity with people's practical reason. To answer this question, we must first refer back to the previous chapters that weighed the compatibility of a traditional Islamic narrative in a society containing a free public domain and a populace not opposed to the idea of a constitution. We came to the conclusion that such an arrangement is indeed sustainable and likely to be overall beneficial to those concerned. If one claims that people's reasoning is of importance to the welfare of a society, within Islamic jurisprudence there is a corresponding principle called *Ghaede Molazeme* (Correspondence/Conformity Principle) which according to Sabzevari: "whatever is allowed in the Islamic law is in conformity with reason and whatever is allowed in reason is in conformity with Islamic law" (1986). Accordingly, since reason is one of the main principles in Islamic Shiite jurisprudence, the next part of this chapter will be dedicated to explore the tradition of reason in Islamic law. As a constituent of conformity principle, it is important to acknowledge the differences between the aforementioned reason and

secular/ deductive reason.

There has been plenty of discussion regarding the role of objective reason and whether even by definition it can necessarily be said to be independent of religious reason or growing out of the same soil of tradition. Despite the fact that there are various interpretations, readings and narratives attempting to resolve this issue, the interpretation most companionable to the notion of accepting an authentic public sphere in a traditional Islamic setting, is one fully capable of giving equal consideration to independent reason and God's order. More precisely, for the purposes of discussion, this viewpoint does not contain a prior assumption of any contradiction between God's commands and the commands of reason (Nobahar, 2009). However, it does not follow that all orders of God are, by default, reasonable, since some obviously cannot be quantified to fit into a discussion based on reason or rationality. It simply means that one will endeavour to maintain an open and active mind to give these matters the equal attention they deserve. Once again we are directed toward achieving balance.

In this regard, it is significant to take into account three areas in which the Ulema seek clarification of the relationship between Islamic commands and secular human reason. Laws as human directives may be rational, irrational and non-rational. The meanings of the first and second categories are descriptively clear however the third demonstrates awareness of the fact that there are actions that are neither required by reason (rational) nor forbidden by reason (irrational) that must be relegated to the non-rational. As

religious thinkers maintain, religion does not encompass any commands that are irrational, but alongside the divine orders that are clearly understandable as rational, exist many ambiguous commands and allegories that may be described as non-rational. In this respect, Ayatollah Montazeri asserts that whenever the Islamic state functions irrationally, it does so, not in correspondence with religion, but, only to fulfill its self-interest (2007). Having said this, do people have a right to disobey irrational laws? Or do they have a duty to obey non-rational laws? From the teachings of Islam (not obeying tyranny) and certain readings of ulema it seems that non-rational laws provide neither duty nor right to obey or disobey. As it is related to irrational laws, there is a need to differentiate between the God-given dependent reason in Islamic thought and man-made independent reason in secular context. However, regardless of the different connotations that reason might take, it should be taken into consideration that this gap leads to erosion of legitimacy of the laws, when laws in practice are not inconformity with people's reasons.

In connection with the points previously mentioned, these strata also apply to the area of law. "The most important locus of authority in the state is law, for it claims to bind many persons, to regulate their most vital interests, and to do so with supremacy over all other mechanisms of social control" (Green, 1988). In order to continue situating the concept of the authority of law, Raz frames basic statements on the qualities leading to the justification of authority. He considers the instrumental role of law as a constant to stabilize socio-economic changes in the world, a reflexive relationship "subject to change in response to changing circumstances" (Raz, 2009). This view considers law as a regulator of society, protecting vital interests as well as corresponding with the

institutions in society that can be supportive of the role of the public sphere. Because the public sphere also functions as a recursive regulator to another existing regulator, which is law, it serves, in general, as an expression of the power of will in society.

Moreover, in a context in which authority is given from below, the authority of law needs justification. For instance, Raz suggests two ways to justify legal authority either "by the special knowledge of those whose utterances are to be regarded as authoritative" or by the demand for social joint action (Green, 1985). Both bonds of authority issue exclusionary reasons that are essential feature of all authorities. Law, if authoritative, must issue exclusionary reasons "authority can secure co-ordination only if the individuals concerned defer to its judgment and do not act on the balance of reasons, but on the authority's instructions" (Ibid). In other words, the Razian legal system and, furthermore, authority itself are not established on coercion or advice, rather it entails action founded on public reasoning. In this thought, reason acts as a source for action. The legal system has authority when the lawmakers' reason can outweigh the subjects' reason, but it becomes obvious in such a situation that the criterion to evaluate outcome is a secular human reason. And, it does not necessarily mean that the subject's reason is not in conformity to law. Subsequently, the immediate question emerges that when someone has legitimate authority over the other to what extent is there a duty to obey? In other words, if the reason of subjects is not compatible with the reason of lawmakers do they have a right to disobey the law?

Having said this, when it comes to the Muslim societies holding different values, not only related to being Muslim, but also cultural and traditional values, it changes the dynamics of legal application. Consequently, the reasons may conflict with each other, as reasons always correspond to people's values (Raz & Griffin, 1991). Dealing with conflicts, Islamic jurisprudence suggested a principle called *Tazahom*[19] (reconciliation). Velaii points out that this principle acted as a means between two contradictory parts, guiding the judge to seek a middle ground. In case of differing values, deliberation of the values outlasts the estrangement, better serving the goal of conformity with people's reason (2001). This is a clear example of comparative reason in Islamic jurisprudence. Therefore, if public reasoning becomes a process incorporating secular reason in compliance with secular ethics, rather than religious ethics per se, the outcome in the area of law should generally be in harmony with public perception.

The discussion of the duty to obey or right to disobey the law begins to play a role, as the public sphere gains power to define and express public reason that may come to criticize and denounce laws in practice that are not in accordance.

4-4 Duty to obey the law

Authority has a strong and controversial link to the concept of obedience, necessitating the exploration of the phenomenon surrounding the duty to obey the law that is essential when making the claim that there is a right to disobey the law. There are various approaches toward the issue of the duty to obey the law. The first claims that there is a

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[19] The Arabic root of this word is *zahama*, literally means to endeavor or to suffer. Here it means finding a mutual reconciliation between two extremes.

absolute duty to obey the law, while the second considers a prima facie duty to obey the law. The first scenario is content-independent while the second weighs duty on a case-by-case basis according to the content of the laws.

The advocates of social contract theory such as Rousseau and Lock insist on free and informed consent as a source of authority. It is based on the reasonable belief that the government is ruling compatibly with reason, for the benefit of its people, which is common good. As a result, their stance about the duty to obey the law is in sequence with their belief in authority. As Simmons puts it "Consent theory has provided us with a more intuitively appealing account of political obligation than any other tradition in modern political theory" (Simmons, 1976). The position that social contract theory takes is important to the discussion of this work in arguing that the public sphere and its citizens' characteristics are constituted by social contract. It means that there is a contract to obey the laws when there is a relatively just government. Thus, this contract brings obligation through itself. This theory regards consent as a source of political obligation. If one draws a conclusion from the proponents of contract theory then there is a need to verify consent before entering into the discussion of obligation and duty to obey the law. If a fraudulent election was held and people gave their consent to another candidate rather than the one appointed, then the legal system would lose its authority within the framework of the consent theory. Another issue also comes up, which is, once this consent is given, how long it extends before it should be renewed or redeemed. For instance, in 1979 majority of Iranian people voted and gave their consent to the establishment of an Islamic

Republic. However, it appears that they are not satisfied with the outcome of the referendum and seek for establishment of a real public domain to bring about reform or even an entirely new legal and political system. Having said this, consent theory may not technically be applicable in this case as the question remains as to whether or not such consent was given by Iranians today. Although it is true that people give their consent when they choose a government, it is a generalization to consider it as blanket consent for all rules. Government has a duty to consult and confirm its policies with people's reason. Furthermore, Raz asserts, "the extent of the obligation to obey varies from person to person. In no case is the moral obligation as extensive as the legal obligation"(1984).

One crucial correlation that gains weight in any discussion of legal obedience is the relationship between morality and legality. Examining whether law has moral normativity and moral authority (Perry, 2005), as well as legal authority is significant to the discussion of public sphere empowerment to affect the legal system. This matter can be regarded as an inherent characteristic of law or considered as providing foundation for legality. For instance, legal positivism denies a mandatory connection between law and morality. Raz sees the best way of asserting this relationship is to consider it as an "evaluative perspective, which informs our thinking of how the law ought to be, rather than how it is" (2009). Noticing that laws do not have the same degree, plays a role in realization of the relation between law and morality. For instance, the laws related to murder, theft and rape have a highly prohibitive function. Raz calls this group "common core", in which the binding function of law applies evenly to every citizen. However,

apart from rules of such nature, the obligation to obey the law can vary and it is relative to different contents. Edmundson has the same assertion that "assign varying weights to different laws depending on their content, and in particular the moral seriousness of the behavior regulated by the law" (Lefkowitz, 2004, p. 420).

4-5 Reason in Islamic Law

As I mentioned in chapter two, the view of the traditionalist, ninth century C.E. Islamic jurisprudence contradicted individual reasoning and suggested that Islamic law had to be derived only from *hadith* (Melchart, 2001). In the initially proposed Islamic law, contradictions in the chain of *hadith* reports were either resolved by *Isnad*[20] or left as is without being given specific definition. However, by the late ninth century traditionalist jurisprudence began to adopt many forms previously only in the domain of rationalist jurisprudence. This provided opportunity in which traditionalist jurisprudence accepted the need for separate proficiency in legal reasoning in addition to hadith criticism. Schacht mapped out two *ideal types* coming into existence in the ninth century, namely *Ashab Al Ray* (Rationalist Jurisprudence) adopted by Abu-Yusuf through human reasoning to be opinionated about human activities and *Ashab Al Hadith* (Traditionalist Jurisprudence) (1950) used by the *muhadiths* to study the transmittance of hadith and create laws based on literal meaning of the textual sources such as *Abd-al-Razzaq* and *Ibn-Abi-Shayba* (Makdisi 1991). It is very important to take into account that the human

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[20] **Isnad,** (from Arabic *sanada* which means to support). In the *hadith* compilation, isnad represents authorities that have transmitted a report of a statement, action, or approbation of Muhammad, or one of his Holy Companions. (Brittanica Encyclopedia). / Chain of transmissions that accompanies each *hadith*

reasoning discussed in the ninth century is far different from conceptions of individual or public reasoning in the 21st century, but it is still essential to be aware that in the history of early Islam there were sects and groups who adhered to logic but, of course, not exclusively. Although, these historical precedents help to manifest the present possibility for a reading of Islamic sources compatible with individual reasoning, the conclusion cannot inferred that Islam is in conformity with individual reasoning.

As documented throughout history, the main tenets of Islamic Jurisprudence (*Usul Al-Fiqh*) established in the 11th century C.E. have given form to the entity of Islamic law existing in Muslim societies today. Going back even further to the 8th century C.E. and continuing even today, are frequent indications of the ongoing debate that has given rise to Islamic Jurisprudence, between those insisting on the literal interpretation of Islamic sources in application of the *hadith*, and, proponents of the importance of local tradition and rational speculation in the development of Islamic law. As an illustration, the categories provided by contemporary thinkers to the narrative existing today in Islamic legal tradition contain different connotations to the role of *aql* reason in legal application as well as theory. Across the spectrum, from the distinction between *Ashab e ray* and *Ashab e hadith*, to *Ashaere* and *Mu'tazila*, to *Akhbari* and *usuli,* to Islamic fundamentalism versus moderate Islam, Islamic modernism in contrast to Islamic traditionalism, reason plays a key role. In all the pre-mentioned categories the emergence and development of the function of legal reasoning is the element that is the greatest asset to reaching conclusions (Gleave, 2005). Those in favour of strict, universal, religious

authority maintain that independent, legal reasoning is not valid due to human imperfection and lack of divine directive, whereas those who believe in a collaborative authority claim that law based on human legal reasoning is valid and authoritative since the scholars have crafted it utilizing their faculties of human reason to balance considerations of justice, morality and God's will. It should be taken into consideration that even for the latter group, the indicated reason is not consistent with the definition of secular individual reason in its liberal sense.

The assertion that reason is a humanly fallible but vital mediator in the execution of legal norms is true of one sub-category of Islam -the Sunni school of thought. However, when it comes to Shiite and other Islamic philosophies including plural ideas in one peculiarity, the function of reason in legal theory is considered differently. This is vital to the discussion of authority in Islamic law and public sphere empowerment because if reason is considered only to act as a proxy empowered by a sacred source (Javadi Amuli, 1998 & Ebrahimi Dinani, 2001) then power in the society will only ever manifest itself from above, leading to many difficulties including irresolvable conflicts of succession such as is at the root of the Shiite/Sunni schism, but if reason is recognized to be free of enforcement from a sacred source this provides a participatory sharing of power, creating the opportunity for the public to situate their thought in a modern context, with their concerns and demands functioning as "pre-understanding" (Shabestari, 1996).

Textual sources of law in the Shiite school of Islamic thought include the Qur'an, itself, *Sunna, ijma* and *aql*. The Qur'an contains very few legal provisions -i.e. out of 6237 verses only 190 verses or 3% of the total can be said to encompass legal provisions and they are mostly to do with family law and inheritance (Badr, 1978). In respect to the discussion of legal reasoning, *aql* is of greatest importance as it functions as a "rational indicator" (Gleave, 2000) to process legal problems. Reference to Allame Tabatabai and Morteza Motahari is helpful here, as they believe that the innate human nature has the same root for both religion and reason (Motahari, 1977). Accordingly, their concept of reason is occurring naturally and has an internal quality, rather than having an external process implemented by individuals. Concurrently, *istihsan*[21] (Juristic preference) in the Sunni school of Islamic thought is a legal apparatus that functions in the application of rational ethics (Johansen, 1999). "Istihsan is when one makes a decision on a certain case different from that by which similar cases have been decided on the basis of precedence, for a reason stronger than that found in similar cases and which requires a departure from those cases" (Shalabi, 1986, p. 6). The reasons involved in Istihsan are also different from the independent secular reason typically used in the public sphere.

Since our focus is the public sphere, it is beneficial to now briefly identify the *umma* (the Islamic community) who, with respect to the discussion of this paper, represent an institution for bringing forth, in a broader sense, the demands and concerns of the

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[21] In literal sense it means considering something good. Sunni jurisprudents use this term to demonstrate their preferences for distinctive judgments in Islamic law over other possible options. This is one of the principles of Islamic legal thought situating under jurists' personal interpretation or *Ijtihad*.

populace. It is mainly important in showing that for Muslims willing to posit their challenges in Islamic forms, there is access to enact their will by means of the *umma* functioning as one of the institutions of the public sphere in society. This way Muslim concerns would not be excluded from the public domain, but would reside in their own institution, which should remain one of the constituent institutions of a true public domain.

The relevant characteristic of rationality to consider is transparency, an established duty for law to manifest itself in an understandable way that in nearly all cases connects with a clear reason. In other words, it is the task of the authority to endeavour to make its legal system as accordant as possible to the reasoning of its subjects. Although to some it may seem impossible, law has to defend the claim that it makes the best choices for the specific society that it governs. When such a claim is in place it means that the specific authority that has the ability to make laws must have an accurate understanding of its society. Accordingly, the 'just' state is in closer compliance with its citizens' reason. From this point of view, we can start to conceive of a reciprocal relationship between people and law as a basis to begin gathering people's input to constitute a true public domain in which accurate assessment, including criticism, of the state is possible. Law has to be morally and rationally compatible with the society. People must have a means of evaluation, even if it is conducted indirectly. This can be more abundantly realized in a society in which a real public sphere has formed so people can communicate amongst themselves and determine what concerns are of priority to advance to the political power.

This is the starting point of challenging authority – balancing power with the right to disobey.

4-6 Right to legal disobedience

Disobedience...is man's original virtue.

It is through disobedience that progress has been made.

Oscar Wilde, 1891, p. 103

In this section, the discussion continues about the existence and validity of the right to disobey the law. If citizens find a law to not be just, are they entitled to disobey it? What is adequate justification for disobedience without crossing the line into individual self-indulgence and social decadence? How do we legally distinguish between situations like apartheid or slavery, and, say prohibition of contraband substances or prostitution? If a law determined to be unjust by the 'moral majority' is disobeyed, does government have the right or obligation to punish the disobedient? Does disobedience have the ability to be practically applicable in the context of Islamic law?

There are several types of disobedience instigated by matters beyond the scope of this research that we are content to let lie and instead choose to dedicate this section to conferring about morally and politically motivated discord that results in civil and legal disobedience. The right to disobey is a lever for citizens to put forth their unique position and arrive at common reason based on common concern. This common concern may come to be directed toward the law, especially if perceived as being immoral. Generally,

there is a primary assertion that "the right to civil disobedience is a moral right and has important implications for the legal system" (Haksar, 2003, pp 407-408). After all, it was the disobedience of populations against the whims of the royalty serving as the only basis of law during aristocratic rule that led to the formation of the first city-states.

It is important to take into account how the right to disobey the law could exist alongside the accompanying legal and political consequences. That is to say, if a person perceives a moral obligation to disobey the law and is able to relate this standpoint, they may have established the justification and ongoing right to disobey this particularity, and, in a best-case scenario, cause for legal reform. This position, based on the application of morality, puts the issue beyond justifiable authoritative interference unless refuted on a moral basis. However, Corlett states that this kind of claim cannot be made against the state, whose primary concern is maintaining order. The right to disobey is condoned just to "give the right-holder the power to voice her own concerns" (1997, P. 244). In addition, this right can be justifiably invoked to prevent a greater harm from occurring when no other means of action is available to individual citizens (Salvatore & Levine, 2005). However, Gandhi as a representative of practical and rightful civil disobedience believes that it is an intrinsic right for all citizens. Apparently, his view is rooted in assurance of the hallowed duty to not take part in evil. However, he does not believe only in sacred duty, but asserts that breaking the law is as much a moral right to be exercised in clear cases of injustice (Haksar, 2003). Gandhi says, "to put down Civil Disobedience is to attempt to imprison

conscience. ... A civil resister never uses arms and, hence, he is harmless to a state that is at all willing to listen to the voice of public opinion" (Mukherjee, 1993, p.148).

These justifications from various angles all lead to roughly similar conclusions that may be surmised as the right to disobey being a moral right that citizens can exercise in situations when the society fails to provide them with any reasonable alternative beyond acquiescing to an unjust law. This belief is in exact contradiction to Socrates' conviction that law is always to be respected, even if unjust. When considering this attitude, one must weigh into account some of the paradoxes of the age and society in which he lived that, on the one hand, provided a comparatively high degree of civil liberty to citizens, but limited who was granted citizenship and, furthermore, readily engaged in slavery.

Relating to the situation in Iran, governed by a non-democratic, authoritarian regime, can one reconcile the right to legal disobedience with their claim of a society being ruled by firm adherence to Sharia law? Raz in *The Essays on Law and Morality* (1979) insists on the right to disobedience in illiberal states but strongly opposes its rightful existence in liberal states. His reasons pertain to the essence of liberal states, which is the right of every person to political participation. Certain basic rights are inextricably woven into the banner of such societies and securely protected, usually in the form of some kind of constitution. This process can solely happen in a liberal state in which the will of lawmakers is in accord with those basic rights to the extent of taking the necessary steps to bind them. In contrast, the illiberal state restricts or denies its citizens the right to

political participation. The citizens are bound to the law only by brute authoritative force –i.e. Might is right. This frees them of the moral obligation to obey and, more importantly, with no access to political action, inevitably forces them toward physical action against the government. Indeed, "the illiberality of the illiberal state may have the effect of narrowing down the moral right to political action of its members"(Raz, 1991, p.166).

Beyond the apparent sensibility of this conviction, there certainly could also be reasons in liberal states to disobey the law. The historical account proves it with instances too numerous to relate here of civil disobedience occurring in liberal states for various moral reasons. This issue is well beyond the scope of this research whose topics deal primarily with authoritarian and non-democratic states, tied to religious authority and relating to Islamic jurisprudence. We choose to restrict the rhetorical evidence to those situations that best illustrate critique from the public sphere of a society when it relates to their social needs within their contemporary era, and how political authority is affected.

In this respect we can cite philosophers such as Dworkin as a supporter of the right to disobey in every state. This view is founded on the assertion that rights and obligations are correspondent. Dworkin agrees with the general duty to obey the law and believes that "principles of obligation and disobedience are the twin cornerstones of legitimacy" (Fagelson, 2002, p. 243). Literally, he agrees with general duty to obey the law, which he makes concomitant with the right to disobey (Dworkin, 2005, p.379). This view is

founded on the assertion that "for every obligation there is a right that is entailed and vice versa. If there is no obligation of a certain kind, then there is no corresponding right." (Senor, 1987). Dworkin allows civil disobedience only after all other political avenues for change have been tried and failed. Civil disobedience is regarded as one of the components of liberally democratic states. It can be regarded as an integral process that can challenge even democratic law (Quil, 2009). Certain groups break the law as a strategy to bring change. This more readily happens if there first exists a genuine public sphere in which people are free to shape public reason based on their public concern. The right to disobey is sought as a means for individuals to practice political participation to alter the law or policy of the state. Literally, civil disobedience possesses a power to generate a change in the law or policies of a government (Brownlee, 2008). Related to the discussion of public sphere empowerment, it can be inferred that the position of the right to disobey is a moral right to exercise when considering a law to be unjust.

Practical study of this subject is crucial since there are many pre-existing laws on record routinely disobeyed in daily life that are rendered mostly useless since they were once relevant but now contradict people's current sensibilities. Distinguishing civil disobedience from regular law breaking is important to take into account as the right to civil disobedience can be justified if other political means have failed to produce any significant result. It is not sensible to label all such instances as civil disobedience, specific investigation of them is necessary to encourage the lawmakers to be more

reasonable. Regarding the cases this research intends to investigate, perhaps it is sufficient to say illegitimate authority is enough to be disobeyed.

Regarding the right to disobey Islamic law, Fish claims that one might be compelled to do so if the law does not coincide with his/her religious beliefs (2010). But, it would be impossible to assume an obligation dependent on individuals' beliefs because, there would no longer be a single law but a multitude of various laws altered and adapted to the maxims and commands of particular faiths. The balance of justice, achieved through consistency, would be lost. Furthermore, as indicated in the previous chapter, if the criterion for law is limited to one specific faith, there would occur institutionalized discrimination for those who do not share the common faith.

The main conflict with the Muslim mentality is that they do not share this notion of individuals being at the centre of all legal analyses, but consider laws to be sacred revelations from God. In this respect, the main struggle is to demonstrate to Muslims that under secular law they would also have the opportunity to practice their faith, so long as it does not impede the belief of others. Again, it falls under the assumption that it is difficult to find a viable path accommodating diversity with equality (Shacher, 2012). The most proven approach to this issue is to draft inclusive legislation that does not make distinctions based on religion, race or gender, but only upon the individuals' deeds. This does not necessarily mean applying Western, liberal values in non-Western contexts, but taking into consideration the religious values of the people in such countries to adopt their

own form of secular laws. In this way, peculiarities are taken into account while acting upon universal secular ethics. Because the public sphere can gain enough capacity to alter laws, then secular ethics, held by the public domain, functions as an asset to bring about changes.

For instance, an attempt has been made by some Iranian scholars in the diaspora to write a charter in the hope it will be adopted in future by Iran. Charter 91 claims to "represent an effort to recognize the tolerant ethos that has found universal expression and fuelled popular struggles the world over to create responsive governments that reflect the will of the people"(Charter 91). This charter has numerous beneficial points, more in harmony with people's demands related to the law while not underestimating the existing religious and cultural values. "The consent of the governed is the sole guarantor of the legitimacy and sovereignty of any government; and the will of the public may only be ascertained by way of free elections in which every individual retains the right to vote or stand for office", "The will of the majority may neither trample nor eviscerate the guaranteed legal rights of minorities" and "boundless, unfettered and exclusive State prerogatives are the source of corruption and ill fortune, and the apparatus of the government must never be insulated from being challenged by civil society and its subjects" are all potent examples of the content of Charter 91 supporting this chapter's argument of public empowerment in altering laws and policies to the reasonable demand of the public. This helps to substantiate the position that having secular laws supported with secular ethics provided by public reasoning is not incompatible with the sensibilities of countries containing

Muslim majority populations. These principles may seem only applicable in liberal, democratic governments, however if we take into consideration the power of all people in stating and implementing their demands, these legitimate concerns of the people can be considered compatible with the sensibilities of the people in Muslim countries. They do not exclude their values, specifically religious values, from appearance in the public domain but retain prominent representation in the institutions of the public arena rather than political sphere.

After establishing a secular system of law to prevent discrimination based on faith, the question emerges: what would happen in the case of conflicts of conscience? For example what should a devout Muslim do if they find their religious belief to be in opposition to this secular law? Does this bring us back to the domain of civil disobedience? In respect to this question, taking into consideration that the prerequisite of legislating this legal code should, for practical purposes, set aside those extreme religious beliefs not part of the mainstream discourse of the people in Iran and not relevant to the everyday workings of society, the lawmakers should seek to be in harmony with the degree of pluralism, without specifically framing the legislation to intentionally exclude anyone. Conversely, if a legal system intends to be in conformity with fundamentalist or religiously biased thoughts, the obvious consequence is that it again loses its active interaction with society. In this respect, the secular legal system in Turkey is a sensible example to show how a nation in which Islam is the dominant religion and 98 percent of the population is Muslim, can uphold a constitution that defines Turkey as a secular and democratic

republic, deriving its sovereignty from the people contrary to many political interpretations of Islamic doctrine.

4-7 Islamic law in practice

Islamic law includes religious duties and obligations, compromising two divisions of responsibility known as *Ibadat* and *Mu'amelat*. The first deals with purely religious matters and the second, all the temporal issues that in non-religiously ruled countries is the only content of the legal system. Islamic jurisprudence, *fiqh,* by its traditional meaning can be applied in all spheres of life and is of practical relevance to the fields of ritual, marriage, family relations and religious endowment. It can be regularly adapted to change social and political conditions (Johansen 1999). Islam, under the prerogative afforded to the Ulema, is a substantial part of Iranian tradition and the political system. For instance, as touched on in the previous chapter, the fundamental laws of 1906 required members of the National Consultative Assembly to take an oath of office on the Qur'an. The Supplementary Fundamental Law of 1907 began with the declaration that the official religion of Iran is the *Jafari* form of Shiite Islam, recognizing the Twelve Imams. It also indicated that no laws may contradict Islam. The assembly consisted of five Ulema elected out of twenty names submitted to the representatives. Their role was to reject any laws deemed to contravene Islamic law (Abrahamian, 1982). However, it is telling that such a determination would depend on the largely subjective context of what reading and narrative of Islam to which one adheres. As an illustration, Daniel Tsadik (2003) claims that the legal status of religious minorities in the constitutional law of Iran from either 1906 or 1979 contravenes Islam, especially regarding the status given to Hebrews who

are considered as *Ahl-al- ketab* (people of the book). These contradictions demonstrate the fact that Islam, besides having different sub-groups, has plurality within each of these groupings on which to base different types of laws and regulations.

In the Shiite state of Iran it is crucial to consider the "sacralization of the state" (Madelung, 2000, p.109) by Khomeini in transferring the total authority of the imam to the ruling government. Moreover, there have been other documented instances in which the legal codes do not appear to agree with Islam, such as the very notion of a *Velayat-e Faqih* -Supreme Leader, a concept, as Mohsen Kadivar (2002) points out, not found in the Qur'an, the hadiths of the Prophet, nor the teaching of the Twelve Imams. In the context of the Iranian legal system there is also the standing prerequisite to negotiate within the scope of Twelver Shiite doctrine.

Despite the fact that the very idea of constitutionalism is the legacy of the French revolution and is considered as moderate doctrine that gives legitimacy and acceptance from below (public sphere) to governments, the constitutional law of the Islamic Republic of Iran in 1979, which is based on the Shiite Jafari-law, says sovereignty belongs to God not people. As Abrahmian (2001, p.298) states, " the constitution -totaling 175 clauses and 40 amendments- is a theocratic-democratic potpourri" in which people elect, by a direct system of voting, the president and the *Majles-e Showra-ye-Islami* (Islamic Consultative Assembly) to act as the main legislative body. Meanwhile, the *Majles-e Khebregan* (Assembly of Religious Experts) elect the Supreme Leader *Rahbar* and are

also charged with investigating the Islamic qualifications of candidates nominated for the election to position of president or representative in the Islamic Consultative Assembly. Therefore, the people may only elect based on a group of candidates receiving the prior endorsement of the Assembly of Religious Experts.

Based on the notion of *Velayat-e Faqih*, according to which authority radiates from above rather than rising from below, the Supreme Leader has extensive powers to dismiss the presidential election result, appoint the Chief of the Armed Forces, the Head of the Judiciary and Guardian Council. This situation makes it difficult to discuss the clear influence of the public on the legal system. The "double sovereignty" existing between the elected parliament and the appointed Council of Guardians makes it equally unclear to recognize exactly where the seat of legitimate authority resides.

Nevertheless, no legal system can be seen to be truly effective while its subjects' reason remains far different from the reason provided by law. *Ulema* (Islamic Jurists) make decisions based on Islamic fundamental principles. In the Islamic legal system the concept of *Ijtihad* plays a significant role, as it is the rationale that judges utilize to render their decrees based on strict adherence to existing Islamic law, regardless of whether inherited doctrine is concurrent with the values of the social and political environment. This leads some to assert that judges function more as a practical arbitrators among disputing parties rather than as implementers of rational and systematic legal rules and values (Gerber ,1999). Not unlike Aristocratic rule, in which law is subject to the

arbitrary whim of the ruler, in such a system consistency is much harder to maintain. If one is not able to maintain consistency, balance is lost, fairness comes into question and with it whether justice is being served. Justice is justification, not opinion.

The entire issue can be summarized in one simple decision: whether, in drafting legislation, the legislators are bound by Islamic doctrine or whether they can make laws contrary to doctrine if people demand it. The proponent of this narrative provide the example of the Ottoman State that remained ideologically committed to Islamic law while simultaneously enjoying a fruitful period of legal development. Although the Sultan participated in the vital and significant roles of insuring the proper functioning of law, the maintenance of social order, moral values and the defense of Islam, the status of Sultan was never held to be above the law (Akarli, 2000). When it comes to law, the Ottoman legal system is significant for incorporating secular laws with the Islamic legal tradition. Certain concepts of Sunni Islam, such as *istihsan*, *bid'a*[22] and *urf*[23] were employed during the Ottoman period, allowing jurists to interpret the classical sources in accordance with the needs of their time. This is another example to show that equipping the narrative of Islamic law with the tools of a secular legal system can produce better results than either

[22] The literal meaning of the word *Bid'a* is innovation and creativity and in Islam it refers to innovation in the religion.

[23] *Urf*'s literal meaning is custom. However, Seyed Hossein Nasr suggests that urf should be considered as human law (2002).In Islamic terminology, it refers to a secular source of ruling by local custom in situations for which there exist no explicit relevant primary texts of the Qur'an and *Sunnah* for which to refer, just so long as the ruling is in agreement with *Sharia* law.

from working in isolation when people's demands are taken into consideration. However, it is necessary to clarify that during the time of the Ottoman State religious jurists had to answer religious questions and dealt with religious dilemmas, while judges were legal experts trained in the legal system. This approach to law and legal system is fundamentally different from the positivist secularism that underlines modern concepts of law. In this respect, the difference between the realm of ethical and religious belief and legal domain is of further importance since it is not necessarily in accordance to Islamic law.

There is a need to recognize the shift from a traditionalist Islamic legal system to a modern Islamic system in order to be able to talk about authority of the law and the effect of people on authority in general. In their traditional role, Islamic jurists' main exegetical goal was to determine the divine intention behind scriptural pronouncement, that is, to discover God's will with regard to a particular legal issue (Arabi, 2002). In a modern context, this role would shift toward one of using their knowledge of Islam and spiritual insight to determine whether an intended decree is in line with public reason that also takes into consideration the viewpoints of morality and just minds. It is possible, as interpretative and declarative authority in Islamic law belongs to Jurists on the grounds that they interpret the scriptural texts in a way to describe the closest possible assessment of God's will in regard to legal issues. *Ijtihad* is the best example showing jurists' autonomy in which the interference of government does not play a role, but the mere interpretations of the jurists are the only deciding factors (Schacht, 1950 & Weiss, 1998).

But, with respect to the public sphere demands, the judges and legislators should not be bound by the interpretation of such jurists, but by the reasonable and justified demands of people.

4-8 Conclusion

All in all, the attempt has been made to show the invalidity of the assumption that Islamic law is a monistic legal system, holding only the ability to enforce one particular Islamic legal provision. A further recommendation has been established for Islamic law to ideally exist as an institution alongside and working in conjunction with other institutions of the public sphere to improve the function of law in society and demonstrate the people's empowerment to bring change. The invaluable change in perspective brought about by this research is in recognizing the permissibility within religious tradition itself of Islamic law functioning as a separate institution.

This chapter demonstrated that Islamic law can be better embraced when the official legal system is modified to contain secular rules preventing infringement on minorities' rights. With that foundation, the legislatures can bring about changes in their respective countries, while keeping intact the authenticity and authority of the law. The results achieved in this chapter included an investigation of authority in both secular and Islamic context, followed by reasoning related to a citizen's obligation to obey the law as basis for a discussion about the right to disobey the law alongside evidence of the practical phenomena causing these issues. Meaningful dialogue has been established between

philosophies believing that obligation to obey the law is based on the quality of its content and those believing obligation is based on sheer obedience to authority, and the differing criteria for establishing the right to disobey the law when it does not serve one's autonomy. Therefore, Islamic law and secular law will not reconcile with each other, but the claim trying to be established is that the people's demands in Muslim majority countries, such as Iran, are pluralistic and not fully reflected in the current Islamic legal system. Furthermore, the genuine public sphere housing secular ethics, has the capacity to mediate change in order to achieve egalitarian status under secular law containing inclusive values and norms. In this way lawmakers are justified in making laws that fit the reasonable and inclusive opinion of the people.

Chapter Five

Findings and Summary

5-1 Introduction

This chapter covers the findings of the interviews conducted in Iran as well as the analysis of the field observation, which was used as a background in the construction of the developed themes of the interviews at the Qom *howzeh* (Jafari Shiite higher school). The focus of the interviews was to raise questions regarding the applicability of free discussion in a free public sphere in Muslim societies and to show the existing plurality amongst different Islamic schools of thought. According to the data collected during the interviews, a free discussion in a free public spheres seems to be possible. The interviewees were amongst the most-prominent Iranian figures in Islamic thought, consisting of four well-known Islamic clerics and five distinguished scholars who either founded a distinct Islamic school of thought (maktab fiqhi) or adhered to a distinguished school of thought. The structure of this chapter is as follows; it begins by describing the implementation of interviews and field observation, followed by the discussion of data collection, data analysis, comparison and contrasts of interview themes. The findings of this chapter are derived from the analysis of interviews and field observation notes at the Qum *howzeh* in Iran which lasted over a 3-month period, between June, 2011 and August, 2011. I will show in this chapter that the discussion of different narratives toward the

public sphere opened the window to air possibilities of a public domain within a society ruled by Islamic norms, specifically in Iran.

5-2 Interviews

The reason I have chosen interview as one of the data collection tools is that "the long interviews are one of the most powerful methods in the qualitative armory. For certain descriptive and analytic purposes, no instrument of inquiry is more revealing" (McCracken, 1988, p. 9). All of the interviews were organized as one-time meetings conducted in Farsi and audio-taped, with the exception of two interviewees who refused to be recorded, therefore, I, instead, took notes. "If possible the researcher should audio - or videotape interviews"(Holstein and Gubrium, 1995, p.78). A hallmark of qualitative research is the use of multiple methods to collect data for ongoing analysis (Omidian, 1999). Data was collected by in-depth, semi-structured interviews, observation and participation. Data from each method was analyzed separately and then merged to arrive at common themes as it is suggested by Holstein and Gubrium (1995, p.78). The data for this study was collected in the setting most convenient for the interviewees in consideration of privacy. Most interviewees chose to be interviewed at their offices. Two of the respondents requested to be interviewed at their houses.

The participants for this study are considered to be prominent figures in the field of Shiite Jafari Jurisprudence, therefore stringent measures were taken to assure their privacy. Hence, I decided to keep all names anonymous despite the fact that some of the interviewees consented to reveal their names, in respect to the others who asked to be

anonymous. Identification of separate participants in the transcriptions while retaining anonymity was accomplished by assigning each participant a pseudonym. The way these pseudonyms are presented is different from instances when interviewees are non-prominent figures, as acknowledgement of their school of thought is important in situating their perspective and establishing their prominence. It is, of course, necessary to address their schools of thought, not only for their intrinsic value but also to give context in presenting formulation of implied criticisms of existing conditions. The schools of thought considered in creating categories for the interviewees include Islamic revolutionaryism (*Inqilabiyoun-eh Islami*)[24], Islamic traditionalism (*Islamiyan-eh Sunnati*), Islamic moderate-traditionalism (*Islamiyan-eh Miyanehro-yeh Islami*), and Islamic reformism (*Islamiyan-eh Islah-talab*). These categories are broad in spectrum, as within each of them there is diversity. I should also add that I have emphasized particular schools of thought in this research because these particularities yield themselves better than many other competing, miscellaneous ideas in giving a clearer picture helping to examine the multiple views concerning the possibility of having a free public sphere within Muslim majority societies.

As previously stated, four categories were established for participants; Traditionalism, moderate-traditionalism, revolutionary-ism and reformism. Amongst the four Islamic clerics, there are two *mojtaheds*, one *Hojjat al-eslam* and one outstanding Islamic

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[24] By Revolutionaryism, I mean those religious figures who strongly believe in the achievements and values of Islamic Revolution of Iran in 1979 and those who strictly believe in *Velayat-e-faqih* (governorship of jurist).

theologian and philosopher. In addition, all Islamic scholars that participated in this study have achieved at least the degree of doctor of philosophy in the relevant fields. The pseudonyms signify their school of thought, category and whether they are amongst *faqihs* or amongst scholars. The list of the pseudonyms are as follows; TF (Traditionalist Faqih), MTF (Moderate-Traditionalist Faqih), Rev.F (Revolutionary Faqih) and RF (Reformist Faqih). To identify scholars I have kept similar categories but substituted the suffix 'F' with the suffix 'S' to signify their identity necessary for this study.

As for the validity of the claims by interviewees, I should mention that because the ideas of the interviewees in this research project represent a particular school of thought that is well-documented and well-known, in and of itself, the ability to cross-reference ensures the credibility of their responses.

The different perspectives of every Islamic school of thought were gained by conducting in-depth, semi-structured interviews with each participant. Each interview lasted between approximately 60 to 140 minutes. I began all of the interviews by informing the interviewee about the research project and I explained to them the sense of some certain words, such as public sphere, that I have used throughout my research project. For instance, due to the fact that the interviewees are prominent figures in the field of Islamic thought, there was a need to establish a common definition for specific terms as I am dealing with in some cases controversial, contestable and critically negotiable issues, such as the very notion of a public sphere.

The procedure I have taken to form my questions is compatible with what McCracken called 'four-part method of inquiry' in his book "the long interview" (See appendix C) It is important to note that all of the questions were related to one of the topics that were discussed throughout the previous chapters. As will be revealed in the following sections, all interviews' themes contribute extensively to the forgoing subjects. For instance, the public sphere in history, public sphere pre-conditions and the possibility of updating *Sharia* are amongst the themes that will be examined in the course of the interviewees. There was a need to translate the interviews that were conducted in *Farsi* into English. Needless to say, language acts as a medium for understanding the process occurring in the mind (Bermann, 2005). Hence, translating certain concepts and words augments the difficulty in bridging communication between cultures. Therefore, I have tried to lessen this rendition by conducting the process of transcribing, data analysis, interview themes and connecting data in the Farsi language and I translated only the results into English. I should point out that all the translations and interpretations are my own.

5-3 Data Analysis

Lincoln and Guba argue that data analysis "…involves taking constructions gathered from the context and reconstructing them into meaningful wholes" (1985, p333). I documented the data and the process of data collection from various interviews. I organized and categorized the collected and transcribed data into concepts or themes, then into sub-themes or sub-categories. Afterwards, I showed how one concept may influence

the whole understanding of the topics. I then identified indications of the interconnection of the themes and sub-themes. This interim stage consists of listing the concepts reflected in the notes and diagramming the relationship among concepts (Maxwell, 1997, pp. 78-81). I also made frequent notes in the margin of the transcriptions to identify important statements and to propose ways of coding the data analysis. Data was analyzed during the process of collection.

A distinctive feature of qualitative research is that understanding from data emerges as the analysis proceeds (Morse & Richards, 2002). Each source of data was analyzed separately and then merged for themes, sub-themes and thematic linkages. Germain suggests that data analysis proceeds according to the various steps (2001). First, coding the data by breaking the transcribed interview text and field notes into discrete segments, indexing them into a coding or classification system, and then labeling these segments by assigning units of meaning (Germain, 2001, p. 296). I then grouped the codes by combining similar codes into categories. Categories were then reviewed for themes. Afterward, the final analysis of the data was conducted and the conclusions that were reached became further informed by the researcher's theoretical perspectives (Germain, 2001). In the final analysis, the finished product was compared to the existing knowledge in the theory of the study. This approach does not overshadow the fact that every attempt has been made to avoid imposing an *a priori* pattern, as it would violate the very basic fundamental of inductive research.

Overall, I treated the interviews as an observational encounter, an outlook thoroughly beneficial for the conclusion of findings in general (Denzin, 1970, p. 133).

5-4 Interview themes

Five themes emerged from the data analysis: 1) The relationship between religion and Iranian culture; 2) The place of religion; 3) Islamic history and the public sphere; 4) The possibility of updating Sharia law; and 5) Pre-conditions of a free public domain. These five categories each have multiple sub-categories that the chart below presents. I have provided a theoretical rationale for the selection of these central themes in previous chapters.

Chart One: Themes and sub-themes

Themes / Sub-themes	1. Religion and Culture	2. The Place of Religion	3. Islamic history and the public sphere	4. Possibility of updating Sharia	5. Pre-conditions of a free public domain
	1-1 Iranized/ Islamized	2-1 Islamic viewpoints on Private/public/ political religion	3-1 Approaches to the public sphere in Islamic history	4-1 Criteria for updating Sharia Law	5-1 Social/Public trust
	1-2 Iranian identity and Islam	– Practicing Islam under secular/Islamic regime			5-2 Diversity and pluralism
				4-2 Wisdom in Islam	
					5-3 Tolerance and civility in Islam
	1-3 West toxification/ Westernization		3-2 Viewpoints on the Prophet's government/ prophecy	4-3 Duty and right in Islam	
		2-2 Islamic/ secular state within Islamic thought			5-4 Islam on human subjectivity
				4-4 Sharia law and the	

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		2-3 Delineation between public and private in Islam	3-3 Islamic Jurisprudence and public sphere	rights of minorities	
			3-4 Difference between *Shura* and democracy		

Source: Interview conducted by the researcher, June 2011- August 2011- Qom & Tehran

As the interview themes and the sub-categories demonstrate, they do share some commonalities, therefore, when it comes to data analysis, there are overlapping areas in the aforementioned themes. But, each theme is also distinct as revealed throughout the analysis and through various distinct answers of each interviewee. I should also point out that the data analysis of this research project contains both the inductive and deductive approach as Miles and Huberman describe: "After one has inductively identified a theme, one goes on to try verifying or confirming the finding (deductive), which again gives an inductive loop. Huberman and Miles see it as legitimate and useful to both start with conceptualizing an analytical category, that is deductive, or to gradually develop them, that is inductive" (Ryen 200, p 157).

Regarding the structure of the discussion of the five themes, each section provides some instances of response containing different or similar thoughts within their respective, distinct school of thought. In addition, under each theme, some responses are provided and each theme is followed by a small chart to point out the main ideas discussed during the interview with the interviewee *faqihs*.

5-4-1 First Theme: Religion and Culture

Discussing the relationship between religion and culture is important for many reasons. This research reflects that culture appears to come into contradiction with the prevailing religion in both the societies that were covered in the previous chapters. The historical exploration in this study suggests conducting a discussion of identity on a personal and social level.

Regarding the presence of religion in the public sphere, one of the interviewees who adheres to a reformist school of thought, qualifies his answer by saying freedom of religion can be perceived as always giving each person the right to choose his/her religion and change it to another faith as they see fit. A more universal understanding of religion would be in recognizing that the essence of religion is free and independent and no one can make a claim to being a guardian of religion. Freedom of religion in its prima facie meaning is freedom of religious belief itself. Individuals' freedom in choosing their religion is a social right associated to human rights, however freedom of religion is a reality instilled within the essence of religion.

In respect to this theme, the RS affirms that traditional cultures are vividly alive, meaning that the major civilizations of antiquity, consisting of Indians, Chinese and Iranians, are still in existence and strongly resemble their forebears but, since the 17th century, have ceased to produce anything new and have only sat and observed past accomplishments. He relates it to the method of the century, observed in almost all societies and believes

that this situation happened as a result of three significant incidents in the history of the West; the Renaissance, the Reform Era of the 16th century and the Enlightenment Era of the 18th century. The Islamic world during this period was ruled by the relatively insular Ottoman Empire that did not share in the open exchange of ideas by which Western regions awakened from the Dark Ages. In this respect, he also supports the idea of "if you can't fight, join". Moreover, concerning identity and its relationship to culture he maintains that Iran has experienced three cultures; pre-Islamic culture, Islamic Iranian culture, and Western culture. Accordingly, Iran's culture now is the amalgamation of the three and in reality it is a three-layered culture that greatly affects people's personal and national identity.

Chart two: Summary of the interviewee's thought relation between religion and culture

Interviewees	Religion and Culture
RF	Religion and culture do not contradict each other
Rev. F	Religion comes first
TF	Religion comes first
MTF	Both can be respected simultaneously

Source: Interview

5-4-2 Second Theme: The Place of Religion

'Where does religion belong to?' is the question derived from imagining different contextual concepts toward religion; political, public and private religion are all potential venues established back in chapter two. Each of these religious contexts supports their own distinct claim toward a ruling system as becomes more evident during the analysis of the interviews. The interviewee Rev. F, for instance, supports the political Islam and, emphasizes that the rulers of an Islamic political system should have the ability to incorporate Islamic norms with their political rulings. Furthermore, he asserts "rulers are not assigned by people, but by God." Within this trend of thought, as discussed in previous chapters, practicing Islam is seen as complete only under Islamic rule. He continues on by saying that the goals of revolution are not achieved easily but are lost effortlessly. In this regard, the TF also emphasises the valuable achievement of the Islamic revolution but acknowledges the fact that all of the desired and expected demands of the people were not met in the post-revolutionary period. He further connects the post-revolution failure to talk about the West (the first main theme's third sub-theme, 1-3) and manipulations by the Western political powers as he states "at the time of the revolution, we kicked out 44000 Americans, so do you think they went back and prayed for our success? No they conspire against us." This interviewee views all the allegations of internal political incompetency and deficiency in Iran's post-revolutionary period as the

result of American conspiracy. Regarding this question, the RS has a very different viewpoint and he says "after thirty years of the revolution we are on the same page as we were before the revolution; the rate of corruption, dishonesty, bribery, fraud and immorality in general, augment day by day". He believes that if the concern of the authorities is related to Islam, practicing Islam under a non-Islamic government serves the purpose of this concern in a better way.

In direct opposition to the previous thoughts, MTF strongly believes that practicing Islam under non-Islamic government would be more feasible than a despotic Islamic government imposing one limited Islamic thought on people under its rule.

Chart Three: Summary of the interviewee's thought concerning the place of religion

Interviewees	Place of Religion
RF	Private, Apolitical
Rev. F	Political
TF	Partially political
MTF	Private and political

Source: Interview

5-4-3 Third Theme: Islamic History and Public Sphere

The third theme gains importance in the distinct debate as to whether or not support of the public sphere is present in Islamic history. In regard to the third theme's first sub-theme, *Approaches to the Public Sphere in Islamic History*, a Reformist Faqih (RF) maintains:

When it comes to the public sphere, being a secular or religious society plays a significant role. If a society is secular with a matching secular government, talking about the public sphere means discussing the situation of the people in the public sphere, and defending against the encroachment of their government for the benefit of preserving the private sphere. Consequently, the above-mentioned condition relates to maintaining a private sphere that remains private and, more importantly, secular - without religious color. Therefore, if we consider a secular public sphere as being formed within a secular state and secular government, then we definitely have to note that during the history of Islamic governments there has been no trace of such a public space. There is a denial of the existence of this domain in either the Prophet's era or during the time of the Caliphs' governance. Whenever we say *in Islam* it is understood we are referring to the time of prophecy, Islamic Caliphates and other Caliphs or governments that have ruled under pretext of Islamic teachings (Interview, June 2011, Qom).

Contrary to this position, a Traditionalist Faqih (TF) in response to the very same question claims that tracing a public sphere within Islamic history is possible as there were many discussion sessions in which ordinary people gathered and raised their questions regarding every possible topic particularly, religion. Another reply to this

significant question from a Moderate-Traditionalist Faqih is that "If we were to extend the meaning of public sphere beyond the boundaries of the secular state and society to include other forms of community such as oligarchies, we may be able to search for this realm in the relationship between Islamic governors and the governed within the political context of that specific era." In this case, there is the possibility to visualize one realm in which Muslims gained the ability to discuss their views and fight for their private rights. Taking into consideration the inherent boundaries in the beliefs of Islamic people during their political epoch, fighting for the preservation of private rights had a trace of religious spirit, such as during the Safavis period. Based on this criteria, it becomes probable to assert that there were some cases of the existing of a public sphere in the Islamic history. However, according to the RS interviewee, "commanding good and forbidding evil" often seen historically, in the public sphere cannot constitute a proof for the existence of a public sphere. I however suggest it is crucial to discuss which varieties of Islamic principle contribute to this discourse because the remaining components of this burden would then rest on the shoulder of the government.

It is worth mentioning that due to the capacity of government at that particular phase, as stated previously, common people were typically the ones who performed these practices, not institutions. Subsequently, these people acted as mediator between political realm and private domain, evaluating and criticizing the deeds of government for the benefit of the private sphere and for enhancing the benefit of political order at times of social and personal injustice, oppression, torture and all other kinds of action manifesting in brutality

against people. Although, they supported people's private rights, their assistance had Islamic roots. Considering that they tried to defend the private rights of people; it was not regarded at the time as a public sphere but as we contemplate their role now, it is realistic to regard it as a form of public realm with its own unique definition. All the people in a society have rights and duties according to their specific situation. These rights were not designed only for Muslims but also others in the community were recognized under them; the only exception being that of atheists who were considered to have declared war against Muslims in their outright denial of God.

Chart four: Summary of the interviewee's thought concerning Islamic history and public sphere

Interviewees	Islam history and Public sphere
RF	History provides partial evidence for public sphere in Islam
Rev.F	History provides no evidence for public sphere in Islam
TF	History provides partial evidence for public sphere in Islam
MTF	Irrelevant to the history of Islam

Source: Interview

5-4-4 Fourth Theme: Possibility of Updating Sharia

As discussed in chapter four, considering law as having sacred origin or treating law as a development of human interpretation makes a significant difference in the understanding of a legal system. Regarding the rights of minorities within Islamic law (sub-theme 4-4) RF stated that this existing claim that Islam only respects Muslim lives and properties is absolutely false. According to him, this is only true when the unusual condition of war is declared and this extraordinary situation warrants extraordinary rules. He continues that these claimants do not address the matter that if a government under Islamic law announces war, at that time according to Islamic jurisprudence territories divide into two divisions; the House of War (*Dar Al-Harb*) and the "House of Islam." The people who live in the region designated the "House of War" were considered as warlike and hostile atheists, while those who inhabit the House of Islam (*Dar Al-Islam*) district are classified differently. The only instance in which Islam is not respectful of the life and property of non-Muslims is in this case that the government declares jihad.

TF accepts updating law under very strict conditions to insure this new law is consistent with what has been declared or acted upon during Islamic history or in the teachings of Islam. Whereas, Rev. F maintains that laws can be modified or updated under very strict conditions but only if the sacred authorities feel the need.

Chart five: Summary of the interviewee's thought concerning possibility of updating Sharia

Interviewees	Possibility of updating Sharia
RF	Updating law under certain condition
TF	Updating law under very strict condition
MTF	Updating law under certain conditions

Rev. F	Updating law by sacred authorities

Source: Interview

5-4-5 Fifth theme: Preconditions to have a free public domain

The ethics of the public sphere or prerequisites to establishing this realm have been extensively discussed in chapter three, describing the conditions to be met in order to provide the foundation for a community with the opportunity to openly express their views on the matters of public concern. Similar to the preceding themes, the fifth theme also elicited widely varying responses amongst the interviewees. For instance, RF stated that if one wants to implement a policy that religion can be openly explored, the best possible outcome would be perseverance of an atmosphere in which religious discussion and criticism become free. In this regard people become arbitrators of religion. In a society of people with faith, government already has a great asset to facilitate the execution of justice and equality. Contrary to RF's view, TF asserts that Islam is supports tolerance and it is egalitarian in essence, though this is not true of all cases. His response is in connection with sub-themes 4-4 and 4-2 as he believes that all of the conditions are not predictable and foreseeable by reasoning. Then, if God commands us to act in a certain way but our reason is not in line of the requested act, we shall do it, as we are not as aware of the consequences as God is.

Chart six: Summary of the interviewee's concerning preconditions to have a free public domain

Interviewees	Preconditions to have a free public domain

RF	Can be met in Muslim majority societies
TF	Can be met but there are certain obstacles
MTF	Can be met while resolving certain problems
Rev. F	Cannot be met and it is unnecessary

Source: Interview

5-5 Overcoming Negative Aspects of a public sphere

The biggest obstacle in gaining acceptance of a public sphere in a country ruled by traditional religious beliefs, such as Iran, is overcoming the negative connotations with which it is associated, both heuristically and by specific political intent through propaganda. The powers in the West, living under capitalism, of being surrounded by economic powers seemingly willing to destroy the whole world for the sake of profit, of corporations more powerful than governments, of a people without purpose being seduced and manipulated by the media outlets supported by the public sphere. If one were to grant this view, still it is by means of the public domain that we become aware of these issues and are able to act upon them. All features of having a public sphere are not necessarily immediately advantageous and constructive. Resolution is not guaranteed by the existence of a public sphere, but it is the most effective forum to seek improvement. The negative scenarios that will be discussed in the following part, are inevitable in the cycle of society, but it is by means of the public sphere that the cycle is able to return to a positive period with the least amount of disruption, turmoil, and upheaval (Prof. Vahid,

Class Lecture, Tehran, *Shahid Beheshti University*, 2008).

As an illustration and continuation of what has been discussed in previous chapters, Ayatollah Khomeini - fundamentalist leader of the Iranian revolution in 1979 and Supreme Leader of Iran until his death in 1989 - talked about the "Soft War" that capitalism had started against Islamic ideas. His suggestion for winning this gambit was banning Western ideas so they would not penetrate into the mentality of Muslims. In his book *kashf al asrar* (Uncovering of secrets) he mentioned that the young generation has to strengthen their ties with the Muslim *ulama*s and just focus on their understanding of Islam while ignoring Western ideologies that intend for them to deviate from the path of righteousness for their own self-interest. By this statement, it seems obvious there would be no way to defend the public sphere in a society truly dedicated to such rubrics. When just one ideology has the exclusive right to appear in the public sphere and enforce a life style for people to strictly obey, there is no purpose in trying to raise support for free public debate if there is an insufficiency of choices and opinions. In contrary to the first two years after revolution that was discussed earlier, Khomeini's teaching, more specifically in his book *"Kash al Asrar"*, for a time, became the dominant dialogue in the public sphere of Iran. If a government considers the role of media to be in just propagating its own interests within its own predetermined structure and will not allow any opposition to enter into the public debate, then the public sphere would be reduced to a circle, that is, only showing one side with no depth.

A similar scenario with a different manifestation is occurring today in Turkey, where the religious agenda of the ruling party is also dominating the dialogue in the public sphere. In this case, a certain, survivalist logic has taken root, a logic of their own devising which focuses on the stable and strict adherence to the principles of their finalized version of faith. If the decision were left entirely up to the hardliners in the ruling party, they most certainly would prefer to ban admission to the public sphere, completely removing its threat to their way of thinking, but, for the sake of the political realm and foreign economic ties that need interaction with other forms of thought and belief, their decision would receive a much less resistance if initiated after they gained and secured political power.

It is often the case when it comes to Islamic fundamentalists and traditionalists who are by no means inclined towards force but are inclined to vehemently deny the call for reform and change, arguing that religion is unchangeable hence any interference by human beings through manipulative means of interpretation is an adulteration of the purity of faith. In one clear move, human reason is subordinated under the ice of an imagined social reality, which disregards the seasons of historicity and is rigidly trapped. Almost all fundamentalists insist that their specific version of religion has to be universally observed and they should not have to justify this position. Religious fundamentalism and traditionalism has a worldview of perpetual dystopia, that the 'Golden Age' of faith is behind us and we must strive backwards uphill to recreate the conditions of that time. I have already discussed and I could elaborate much further on the difficulties related to fusing this mentality onto an active and developing society.

In conclusion to the surveillance of the negative aspects of the public sphere, susceptible as it is to the production standards of economic super powers, and in apprehension of it never taking proper shape unless uniformly inflated with proper respect for diversity, I can say the nature of its existence can be debated as much as any topics presented within it. Seeking public opinion and overlapping consensus in a public sphere not containing diversity, would be an absurdly, poorly-attended event. We are once again drawn to the efficacy of a free public domain in proving itself orchestral for sustaining legitimate discourse and sharing the spotlight with individuals' personal and public convictions to enact the social and legal aspects of society.

5-6 Conclusion

The main purpose of this study was to demonstrate the existing diversity amidst Islamic philosophy that has helped change the previously prevailing monistic understanding concerning a public sphere in Muslim majority societies. It was argued that after establishing a free public domain in Iran, religion should be considered as one of the existing institutions in the public sphere instead of remaining a constituent in the legal and political body. For this purpose, I have used the existing experience of Turkey as the only Muslim majority society ruled under secularism and democracy.

My journey began by delving into existing literature on the topic as a whole and contextualizing the research to the targeted contexts that is the investigation of the public sphere and its relative influence on the social and political structure of Iran and Turkey.

The research focused on the contributions made by the diversity of understandings in providing a forum to voice different viewpoints as well as a free environment to critique political/religious authorities in relation to people's interests as a community and/or as individuals. I have supported my argument by reviewing the relevant history and connecting it with the modern Islamic narrative. I have also established reason and deductive reasoning as main components of public empowerment, showing the strong interconnection between recognition of the influence of public reasoning and the public sphere to eventually affect law in the aforementioned societies. All of the examples given, whether incorporating religion or banning its presence in the public sphere were aimed at providing the grounds, to argue for the necessary presence of religion in the public sphere as one of the institutions. Afterwards, the discussion of public sphere ethics led me to converse about the importance of maintaining a legitimate public arena as a means to empower the people in their interaction with authority. The discussion continued to posit how the interaction with authority would bring about legal discourse. Legal discussion suggests that Islamic law and secular law will not reconcile with each other, leading us to conclude that practicing religion under the secular law would be more beneficial and inclusive to the public at large than practicing religion under religious law. It is due to the fact that residing under Islamic law, with only limited interpretations of legality negates the other possible viewpoints that lead to institutionalized inequality and infringement upon others' rights. Establishing religion as one of the institutions of the public sphere helps to include the voice of religion as well as other necessary intuitions of public sphere.

Lastly, the interviews also contributed to this research project, as they provided descriptive, first-hand evidence of the existing plurality of Islamic thought towards existing concepts supporting the claim presented in this study. I must also acknowledge that this part is reflecting the views of a small and select number of individual clerics and there exist many more whose thoughts and viewpoints need to be reached and voiced.

The intent of my research was to approach the issues surrounding the emergence of a public sphere within an Islamic context by means of a critical textual analysis of the sources and interviews with some prominent *faqihs* in Iran. The ethnographic inquiry helped to develop a body of knowledge concerning the applicability of having a free public domain in Muslim majority contexts. The interview findings and themes explored various existing thoughts related to the public sphere in Iran. The five major themes that were derived from the study have provided knowledge about controversies and polemical thought in regards to the topic. The findings identify several current and emerging sustainable challenges facing the possibility of applicability of public sphere in Islamic thought. Different schools of thought responded to the same questions in different ways not only in terms of approaching the issue but also in terms of content.

Notwithstanding, my thesis explores the public sphere in Muslim societies and brings a fresh perspective that distinguishes this research from available scholarship on the topic in Western thought that deals mainly in public reasoning. Hence, my inquiry provides a description and interpretation of the existing controversies that swirl around the

possibility of having a free public domain in Islamic thought and within Iranian society. Moreover, this study extends the idea of the public sphere in liberal and secular societies to add illiberal and Muslim majority societies to the mixture.

As this research brought light to recognizing different possible views of the public domain and its functionality, it does not ignore the fact that besides the undeniably beneficial features it brings, establishing this realm for a society has potential pitfalls that may result in non-beneficial facets having a negative effect by exposing a society's shortcomings or basing attitudes on popularity instead of facts or true understanding. The quality of the public sphere is determined by the quality of information available and people's initiative and willingness to learn it. Poor civil society implements their dialogues in counter-public spheres (Chambers & Kopsten, 2001). Due to the unstable nature of public sphere in non-Western societies, a counter public sphere may become a marked threat to democratic and inclusive public discourse. On the other hand, I argue that even a "negative" public domain is a social necessity for resolving the issues it addresses. Awareness of an issue is the first step toward resolving it. In this regard, the public sphere's role towards politics is definitely crucial. Acknowledgment of the public sphere's potential negative aspects is integral to maintaining its integrity and is significant for this research project in order to eliminate the naïve assumption that achieving this realm serves as an ideal in all times and places. I argue that the public domain far outweighs any potential shortfalls, especially in contrast to alternative circumstances of one distinct viewpoint seeking to dominate the thoughts of all people in a society. It is very unlikely that all people would ever come to one genuine total consensus on any

given topic, and, more importantly, it can be argued that the very idea of public domain vanishes when no alternative is offered, when diversity is not respected. Just as a government must measure up to its constituent's expectations to maintain legitimacy, so must the public sphere bear scrutiny to retain its integrity. (Lecture's note, *Kurasawa*, York University, 2010).

Let me end by saying my study, in a more general sense, provides an updated guide to contextualizing the concepts in academia by not imposing certain context-independent thoughts and by defining issues in ways that facilitate applying them to other circumstances, in full acknowledgement of the degree of complexity twisted within the folds of these intricate topics. Nevertheless, future research is needed to continue building a knowledge base about the institutions necessary for sustaining an open public sphere in Muslim majority societies that is needed besides religion. More investigation is especially required of the long-term and detailed impact this arena would have on the legal systems of Iran and Turkey.

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Appendix A

Appendix B

1918 Sultan sues for peace. Allied-dictated armistice signed 30 October ... League of Nations assumes administrative custody of former Ottoman Empire

1924-34 Social, political, linguistic, and economic reforms transform Turkey into modern Western state ... various Kurdish insurrections routinely repressed

1939 Franco-Turkish agreement transfers Syrian province of Alexandretta to Turkey ... present-day Hatay Province

1952 Turkey joins NATO

1960 Military coup ... civilian government reinstated in 1961

1974 Greece engineers coup on Cyprus ... Turkish forces invade and occupy northern part of island

1988 Lucrative transit trade to Iran and Iraq shifts from wartime to reconstruction orientation after Tehran and Baghdad agree on armistice

1920 Treaty of Sèvres reduces Ottoman Empire to a small area of Anatolia

1930 Constantinople officially becomes Istanbul

1945 Enters World War II on Allied side shortly before war ends

1964 UN forestalls threatened military intervention to protect Turkish Cypriots on Cyprus

1980 Military takeover restores public order ... new constitution drawn up by 1982

| 1900 | 1920 | 1950 | 1960 | 2000 |

1914 World War I ... Ottoman Empire concludes secret treaty of alliance with Germany

1926 Boundary with Iraq settled by League of Nations initiative

1938 Mustafa Kemal, better known as Kemal Ataturk "father of the Turks", dies

1954 Military facilities agreement with US allows stationing of American forces

1971 "Coup by memorandum" replaces government

1990-91 Economy hard hit when UN-sponsored sanctions against Iraq curtail oil and commodities transit trade

1923 Republic of Turkey proclaimed (29 October) as successor state to 600-year-old Ottoman Empire ... Mustafa Kemal named President ... capital moved from Constantinople to Ankara

1936 Montreaux Convention regulates ship transit through the Turkish Straits

1947 Truman Doctrine results in large-scale US military and economic aid

1967 War with Greece over Cyprus is narrowly averted

1987 Turkey applies for European Community membership

http://www.lib.utexas.edu/maps/atlas_middle_east/turkey_timeline.jpg

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Appendix C

1918 Sultan sues for peace... Allied-dictated armistice signed 30 October... League of Nations assumes administrative custody of former Ottoman Empire

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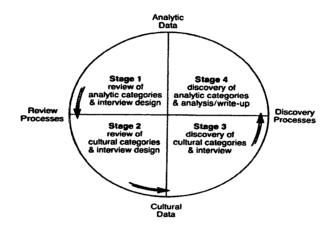**1987** Turkey applies for European Community membership

Source: http://www.lib.utexas.edu/maps/atlas_middle_east/iran_timeline.jpg

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Appendix D

Long Qualitative Interview: Four-Part Method of Inquiry

Source: The long interview, Grant McCracken, 1951, p.30