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عوانيتهم زبيراش مسام قوائينهم

Women living under muslim laws

النساء في ظل قوانين المسلمين

Femmes sous lois musulmanes

**WLUML Dossiers:**

The Dossiers explore and synthesize a broad range of feelings, interpretations and strategies of women on issues of feminism, nationalism, internationalism, and religion.

**The Dossiers** are an occasional publication of the international solidarity network of Women Living Under Muslim Laws. Conceived as a networking tool, they aim to provide information about lives, struggles and strategies of women living in diverse Muslim communities and countries.

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Information contained in the Dossiers does not necessarily represent the views and positions of the compilers or of the network Women Living Under Muslim Laws, unless stated. The Dossiers are meant to make accessible the broadest possible strands of opinion within varied movements/initiatives promoting greater autonomy of women. The Dossiers seek to inform and share different analysis and experiences.

WLUML runs a very popular website in English, French and Arabic which is updated regularly with news and views, calls for action and publications. For more information please visit [www.wluml.org](http://www.wluml.org)

**Regional Coordination Offices** are in Nigeria and Senegal (Africa and Middle East) and Pakistan (Asia) and are responsible for coordinating network activities in their respective regions:

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# What is WLUML?

Women Living Under Muslim Laws is an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam.

For more than two decades WLUML has linked individual women and organisations. It now extends to more than 70 countries ranging from South Africa to Uzbekistan, Senegal to Indonesia and Brazil to France. It links:

- Women living in countries or states where Islam is the state religion, secular states with Muslim majorities as well as those from Muslim communities governed by minority religious laws;
- Women in secular states where political groups are demanding religious laws; women in migrant Muslim communities in Europe, the Americas, and around the world;
- Non-Muslim women who may have Muslim laws applied to them directly or through their children;
- Women born into Muslim communities/families who are automatically categorized as Muslim but may not define themselves as such, either because they are not believers or because they choose not to identify themselves in religious terms, preferring to prioritise other aspects of their identity such as political ideology, profession, sexual orientation or others.

Our name challenges the myth of one, homogenous 'Muslim world'. This deliberately created myth fails to reflect that: a) laws said to be Muslim vary from one context to another and, b) the laws that determine our lives are from diverse sources: religious, customary, colonial and secular. We are

governed simultaneously by many different laws: laws recognised by the state (codified and uncodified) and informal laws such as customary practices which vary according to the cultural, social and political context.

## How did WLUML start?

WLUML was formed in 1984 in response to three cases in Muslim countries and communities in which women were being denied rights by reference to laws said to be 'Muslim' requiring urgent action. Nine women from Algeria, Morocco, Sudan, Iran, Mauritius, Tanzania, Bangladesh and Pakistan came together and formed the Action Committee of Women Living Under Muslim Laws in support of local women's struggles. This evolved into the present network in 1986. The network is guided by Plans of Action which are reviewed periodically. For more information please see the WLUML website at [www.wluml.org](http://www.wluml.org)

## What are WLUML's aims and focus?

The network aims to strengthen women's individual and collective struggles for equality and their rights, especially in Muslim contexts.

It achieves this by:

- Breaking the isolation in which women wage their struggles by creating and reinforcing linkages between women within Muslim countries and communities, and with global feminist and progressive groups;
- Sharing information and analysis that helps demystify the diverse sources of control over women's lives, and the strategies and experiences of challenging all means of control.

WLUML's current focus is on the three themes of, fundamentalisms, militarization, and their impact on women's lives, and sexuality. As a

theme, violence against women cuts across all of WLUML's projects and activities.

### How is WLUML organised?

WLUML's open structure has been designed to maximize participation of diverse and autonomous groups and individuals as well as collective decision-making. WLUML does not have formal membership and networkers are a fluid group of individuals and organisations who maintain regular two-way contact with the network.

The Programme Implementation Council (PIC) comprises 20-30 women and men involved in aspects of cross-regional networking within WLUML for a significant period of time. They take primary responsibility for developing and implementing the Plans of Action.

The International Coordination Office (ICO) has primary responsibility for facilitating coordination between networkers. Regional Coordination Offices are in Pakistan (Asia) and Senegal (Africa and Middle East) and are responsible for coordinating network activities in their respective regions. Although legally and financially autonomous, they are key components of WLUML. Based on their connections with networkers, and their knowledge and understanding of networkers' activities and contexts, the ICO and Regional Offices ensure that the relevant people in the network are meeting, strategizing, planning and acting so as to support each other and thereby strengthen local, regional and global effectiveness.

### What are WLUML's principles?

WLUML focuses on laws and customs and the concrete realities of women's lives. This includes the often diverse practices and laws classified as 'Muslim' (resulting from different interpretations of religious texts and/or the

political use of religion) and the effects these have on women, rather than on the religion of Islam itself.

The network consciously builds bridges across identities - within our contexts and internationally. We are especially concerned about marginalized women. This includes non-Muslims in Muslim majority states, especially where spaces for religious minorities is rapidly dwindling; Muslim minorities facing discrimination, oppression, or racism; women whose assertions of sexuality - including but not limited to sexual orientation - are either criminalized or are socially unacceptable.

WLUML recognises that women's struggles are interconnected and complementary, and therefore has a commitment to international solidarity.

WLUML actively endorses plurality and autonomy, and consciously reflects, recognises and values a diversity of opinions. Individuals and groups linked through the network define their own particular priorities and strategies according to their context.

The personal has always played an important part in the work of WLUML, which values the solidarity and active support that the networkers extend to each other by way of personal links.

### What does WLUML do?

#### Solidarity & Alerts

WLUML responds to, circulates and initiates international alerts for action and campaigns as requested by networking groups and allies. WLUML also provides concrete support for individual women in the form of information on their legal rights, assistance with asylum

applications, and links with relevant support institutions, psychological support, etc.

### **Networking & Information Services**

WLUML puts women in direct contact with each other to facilitate a non-hierarchical exchange of information, expertise, strategies and experience. Networking also involves documenting trends, proactively circulating information among networkers and allies, generating new analysis, and supporting networkers' participation in exchanges and international events. While WLUML prioritises the needs of networkers, it also selectively responds to requests for information from, for example, academics, activists, the media, international agencies and government institutions.

### **Capacity Building**

WLUML consciously builds the capacity of networking groups through internships at the coordination offices, and exchanges, trainings and workshops.

### **Publications and Media**

WLUML collects, analyses and circulates information regarding women's diverse experiences and strategies in Muslim contexts using a variety of media. It translates information into and from French, Arabic and English wherever possible. Networking groups also translate information into numerous other languages.

An active publications programme produces:

- A theme based Dossier, an occasional journal which provides information about the lives, struggles and strategies of women in various Muslim communities and countries;
- A quarterly Newsheet on women, laws and society by Shirkat Gah, WLUML Asia Regional Coordination Office;

- Occasional Papers - specific studies and materials which, for reasons of length or style, cannot be included in the Dossier series and;
- Other publications on specific issues of concern such as family laws, women's movements, initiatives and strategies, etc.

For more information and to download WLUML publications, please visit [www.wluml.org/english/publications.shtml](http://www.wluml.org/english/publications.shtml)

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### **Collective Projects**

Collective projects have included topic-specific initiatives that arise out of the shared needs, interests and analysis of networkers. Networking groups and individuals are free to participate, or not, according to their needs and capacity, and collective projects have involved from three to over twenty networking groups and lasted from a few months to ten years. Projects are principally coordinated and implemented by networking groups or individual networkers in their respective countries or communities; the coordination offices provide facilitation when necessary.

Collective projects have included training sessions, workshops, research for advocacy, meetings and exchanges around specialised topics.

Previous projects include:

- Exchange programme (1988)
- Qur'anic interpretations meetings (1990) and for West African networkers (2002) and Francophone West Africa (2004)
- Women and Law in the Muslim world

programme (1991-2001)

- Feminism in the Muslim World Leadership Institutes (1998 and 1999)
- Gender and displacement in Muslim contexts (1999-2002)
- Initiative for Strengthening Afghan Family Laws - INSAF (2002 - present)

# Introduction by Cassandra Balchin

For more than two decades, feminists have discussed the impact and mechanics of extreme right politico-religious forces and shared strategies of resistance against fundamentalisms. But, as feminists, we have yet to develop a coherent analysis of the concrete alternatives. Yet we need such an analysis in order to move beyond resistance and be more pro-active in our advocacy for an alternative vision of society. In the context of globally rising extreme right politics justified with reference to religion and rising neo-liberalism's impact on democratic governance and social inclusion, it is time to discuss secularisms in depth.

We use the plural 'secularisms' to highlight the fact that we must first explore the multiple understandings and models of 'secularism'. Some, especially those working in the French context or influenced by French political experiences, prefer to avoid the term altogether and use the very specific term *laïcité* instead – for reasons discussed in various contributions included in this volume (Bencheikh, Mira).

There are numerous questions urgently needing answers. How do we relate these multiple understandings of secularism to our own diverse contexts both strategically and tactically? How do believers and those who choose other markers of identity relate to the various models: are secular and faith-based initiatives necessarily dichotomized or can common ground be found? How do secularisms relate to fundamentalisms, 'extremists' and 'moderates'? What is the specific gender impact of each model of secularism? What do feminists do about the push (including from donors, mainstream human rights organizations, etc) to privilege religion-based initiatives? How do we call

for the separation of the state and religion or religion and politics without reinforcing the public-private dichotomies that feminists have critiqued for so many decades? How can cultural 'difference' be accommodated without essentializing communities and reinforcing patriarchal control of women's lives? How can feminists ensure that secularisms become a means of protecting and promoting the precious space for alternative visions of society?

These are just some of the questions feminists need to begin discussing in order to define more clearly the changes we want to see and the systems that will work best for women, and in order to develop a movement that is more inclusive and more effective.

This volume seeks to contribute to these discussions by presenting various analyses of secularism, from the perspective of theory as well as lived experience in contexts as diverse as Algeria, Argentina, China, Egypt, France, India, Italy, Senegal, South Africa, and Sudan.

Wee begins the volume with a brief warning that secularism is no solution to patriarchy. This is followed by two lengthy discussions (from Muslim scholar Abdullahi an-Na'im and Argentinian academic Juan Marco Vaggione – both of whom clearly also see themselves as human rights activists) of possible models as to how secularism may work to protect and promote human rights in contexts where religion – be it Islam or Christianity or any other – may have a prominent place in society. Soheib Bencheikh, known as the 'Mufti of Marseilles', meanwhile makes an impassioned plea for French-style *laïcité* – as the only means of guaranteeing the flourishing of Islam in Europe.

If our discussions are to lead to effective analysis, it is also important to understand the fundamentalist approach to the state. Therefore, we have also included Irfan Ahmed's brief but fascinating examination of how one of the chief ideologues of Muslim fundamentalism came to his views on the relationship between state and religion.

In a conscious effort to redress the imbalance in the contexts and regions generally covered in discussions on secularism, we have included a number of contributions from Africa, including an original paper from Senegalese feminist Penda Mbow. We also carry two items relating to the challenges facing post-apartheid South Africa, the first from Imam Rashied A. Omar which suggests a framework for multi-religious interactions in post-conflict societies – based on pluralism and tolerance and secularism in public life. The second, an original contribution from Rashida Manjoo, then fleshes out how those ideals can go astray – with a specifically problematic impact on gender rights. The extreme discriminations that can arise in a supposedly 'secular' constitutional context is a theme also reflected in the transcripts of WLUML's panel on secularisms at the 2005 AWID Forum, notably the presentation by panelist Vahida Nainar regarding India.

Nadje al-Ali outlines the challenges facing secular women's rights activists and their constructions of theory when attempting to counter fundamentalism in the highly charged Egyptian context.

Finally, both Tarik Mira and Asghar Ali Engineer emphasize popular traditions of secularism in Algeria and India respectively, and decry the failure of the national political leadership since independence from colonial rule to allow secularism to flourish – thereby,

both argue, undermining the development of democracy locally.

In this volume we have included a new section on 'Related Materials' which includes a brief selection of relevant items that were either more news-focused or action-oriented (press statements, calls for action, etc) but which we felt were an important background or added resource to our discussions.

We expect that WLUML networkers, our allies and the wide audience that our Dossiers reach will have very different views on the items we have included in this volume. Indeed, there would be no need for this theme if we all shared identical views. However, we hope this selection of analyses, experiences and resources sparks debate that will take our collective and individual activism forward to pro-actively ensure that concrete alternatives to fundamentalisms are made as visible as possible.

**Cassandra Balchin**

## Abstract

Vivienne Wee argues that patriarchy is alive and well in secular as well as religious hierarchies. She suggests instead of talking about religious fundamentalisms we need to talk about equality versus hierarchy.

## Misguided assumptions

There are many mistaken assumptions around the issues of secularism and fundamentalism. Secularism does not automatically mean modernity, individualism and equal rights. Similarly, religion does not automatically mean traditional values, communitarianism and hierarchy. Nor can we assume that a secular state automatically guarantees gender equality. Patriarchies exist in secular and religious varieties.

## Secular patriarchies

Confucianism is an example of an ancient 3000-year-old secular patriarchy. In Confucianism, the rule of the father is not legitimated by reference to any superhuman power (i.e. God, gods or divine law). Instead, patriarchal law is legitimated as statecraft. The formation of a patriarchal state is based on a symbiosis between the emperor as a father at the macro level and the father as an emperor at the micro level. Is this ancient secular patriarchy obsolete? No, there has been a revival of Confucianism in post-1978 Communist China and Singapore - both secular states with high economic growth. ('High economic growth' is mentioned in this context because another common misconception is that patriarchies are found only in countries of low economic growth. Unfortunately, patriarchies persist even in countries with high economic growth - for example, post-1978 China with its 60 million 'missing females' and a double-digit economic growth rate.)

Fascism is an example of a modern secular patriarchy. Here, the cult of machismo as statecraft leads to organized male violence, which is valorized as the highest expression of citizenship. Women are domesticated and seen primarily as biological and social reproducers of leaders and soldiers. Again

these views are not legitimated by reference to any superhuman power (i.e. God, gods or divine law). Examples of fascist states are Fascist Italy and Nazi Germany, both of which operated as secular states. The Neo-Fascists of contemporary Europe have also inherited this secular orientation.

Secularism therefore does not necessarily exclude patriarchy; nor is it necessarily egalitarian. On the contrary, there are examples of religious egalitarianisms, such as the Bahai religion, Shaker Christianity and many animistic religions. There is therefore no straightforward opposition between the so-called 'secular left' and 'religious right'.

### 'Secular left' versus 'religious right'?

In everyday discourse, it has become commonplace to refer to a supposed opposition between the 'secular left' versus the 'religious right'. However, is this opposition valid? Is the 'left' always secular? And is the 'right' always religious? No. Instead, what we need to talk about is equality versus hierarchy.

#### Box 1. Differences and similarities

|           | Left                    | Right                    | Mode of legitimation                                   |
|-----------|-------------------------|--------------------------|--|
| Secular   | Secular left            | Secular right            | Statecraft - that is, a 'good' way to organize a state |
| Religious | Religious left          | Religious right          | Superhuman God/gods, divine law                        |
| Key value | Equality as desideratum | Hierarchy as desideratum | Setting social norms                                   |

### Why is the 'right' ascendant now?

Why have religious fundamentalisms and secular neo-fascisms become so dominant now? What characterizes this historic moment?

In 1990, the end of the Cold War was followed by capitalist triumphalism - 'the end of history', to quote Francis Fukuyama (1992).<sup>1</sup>

Or, to quote Jeffrey Sachs (2000),<sup>2</sup> we have experienced 'a capitalist revolution' whereby 'the market economy, the capitalist system, became the only model for the vast majority of the world.'

Underlying the logic of capitalism is the 'survival of the fittest', a phrase coined in 1851 by Herbert Spencer, the man who invented 'social Darwinism'. Capitalism is indeed not just an established power structure (e.g. a monarchy), but a process of structuring power that keeps producing a few winners from a multitude of losers.

In this context, a question of legitimation arises: do winners deserve to win and do losers deserve to lose? Fundamentalisms and neofascisms have emerged as attempts to answer this question from the contrasting perspectives of winners and losers. As shown in Box 2 below, fundamentalisms and neo-fascisms are both embedded in hierarchies of winners and losers. They differ only in their criteria of winning and losing, and thereby their identification of winners and losers.

These fundamentalist and neo-fascist modes of legitimating and counter-legitimizing hierarchy cannot be underestimated. They represent contesting interests on the right that are aiming to capture ideological space and possibly the state itself.

#### Box 2. Fundamentalist and neo-fascist usages

|         | Fundamentalist   | Neo-fascist  |
|---------|--|--|
| Winners | Use God/gods/divine law to justify inequities - for example, the rich are blessed, the poor are cursed           | Use statecraft to justify inequities - for example, the hierarchical state is a 'strong' state, under an elite who deserve to rule   |
| Losers  | Use God/gods/divine law to assert another system of winning - for example, believers as superior to all infidels | Use ethno-nationalism to assert another system of winning - for example, indigenes as superior to all newcomers, by virtue of 'blood', 'race', genes, 'homeland', other ascriptive markers |

## Challenges to feminists

We are in a moment of great danger from old and new patriarchies, both secular and religious. We face capitalist patriarchies, fundamentalist patriarchies, neo-fascist patriarchies - all founded on hierarchies of winners and losers, all with ambitions of expanding their political space. Women are collectively losers in these hierarchies. In fact, these hierarchies are based on women being losers who would 'service' the winners. In the current context of globalized capitalism, the idea of equality as a desired value is being made irrelevant, while the idea of inequality is being established as a 'law of nature', 'law of the jungle', 'divine law', or the 'will of God'. There can be no gender equality if the very idea of equality is lost as a desired value. The key challenge to feminists at this critical moment is to protect and promote equality as a social desideratum and gender equality as part of that. We cannot naively assume that secularism as such can end gender inequalities, since such inequalities are increasingly exacerbated by the ascendance of the right, in both secular and religious varieties.

## Acknowledgements

The article is based on a presentation, 'Patriarchies and fascisms: secular and religious varieties' given at 'Secularisms as alternatives to fundamentalisms: questions for feminists', organized by Women Living Under Muslim Laws (WLUML), at the AWID Forum, 27-30 October 2005, Bangkok). This article was first published in Development quarterly journal of the Society for International Development volume 49 no 1 'Women's Rights and Development' please see [www.sidint.org/development](http://www.sidint.org/development) for more details on the volume.

## Endnotes

- <sup>1</sup> Fukuyama, Francis (1992), *The End of History and the Last Man*, New York: Free Press
- <sup>2</sup> Sachs, Jeffrey (2000), 'Interview', *Commanding Heights*, [http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/int\\_jeffreysachs.html](http://www.pbs.org/wgbh/commandingheights/shared/minitextlo/int_jeffreysachs.html), retrieved on 26 October 2005



## Abstract

This paper contains edited extracts of a paper initiating a project, 'Debating the Future of Shari'a in a Secular State'. The project celebrates and seeks to contribute to the struggle of Muslim societies to define themselves in the context of the local and global conditions under which they live. A key aspect of this process is the constitutional and legal dimensions of the post-colonial experiences of Muslim societies, especially the relationship among Islam, state and society.

## Introduction

In this 'work in progress' (hence no footnotes in this draft), I argue for a coherent theory of the tripartite relationships among religion, state and society for the development of Islamic societies in their present local and global context. I call this theory 'secularism from an Islamic perspective' as a framework for mediating these relationships to maintain a separation between Islam and the state while retaining and regulating an active role for Islam in public policy, as explained below. The context of this constant negotiation of these relationships in present Islamic societies is shaped by profound transformations in the political, social and economic structures and institutions under which Muslims live and relate to other communities as a result of European colonialism (Soviet Marxism in the case of Central Asia) and more recently global liberal capitalism. This context is also shaped by the internal political and sociological circumstances of each society, including the internalization of externally inspired changes, whereby Islamic societies continued, after achieving political independence, Western forms of state formation, economic, legal and administrative arrangements, education and social organization. Consequently, all present Islamic societies now live within territorial states which are totally integrated into global economies, engaged in political and security inter dependence, cross-cultural influence, and so forth.

I will present here a tentative formulation of the main elements of this theory, which I am elaborating through a broader study of current discourse around related issues in several locations (in Indonesia, India, Egypt and Turkey). While drawing on some experiences of Islamic societies regarding these relationships in the various locations, that study is more conceptual than

empirical. That is, I am calling for rigorous and candid appraisal, clarification and re conceptualization of these relationships, rather than offering a detailed discussion of recent political and legal developments in various settings.

One aspect of that study I will not be able to present here is an argument that the conception of secularism presented here is more consistent with Islamic history than the notion of an Islamic state to enforce Shari'a as positive law which is a post colonial idea. In that part of the book, I will trace the main features of Islamic history in different regions to demonstrate that the state was always secular in the sense explained below. Moreover, if Shari'a principles are codified and enacted, the basis of their authority shifts from being the normative system of Islam as such to the political will of the state. In other words, they cease to be part of Shari'a by the very act of codifying and enacting them as positive law, which makes the idea of an Islamic state conceptually incoherent, a contradiction in terms. As briefly discussed later, an Islamic state is also practically unworkable in the modern context because the nature of the post-colonial state in its global context is incompatible with Shari'a notions of Muslim and non-Muslim (*dhimmi*) subjects rather than citizens and the status of women. Certain aspects of Shari'a commercial law principles like the prohibition of interest (*riba*) and speculative contracts (*qara*) are of course appropriate for voluntary observance by believers as a matter of religious obligation, but cannot be the subject of legal prohibition by the state under present domestic and global economic conditions.

Another aspect not discussed here is a comparative analysis of corresponding theories of these tripartite relationships in

Western societies to show that they are always the product of deeply contextual and constant negotiation within each society. In other words, secularism remains tentative and contested everywhere, not a fixed model with predetermined outcomes for direct application, and hence cannot be transplanted from one society to another. It is true that certain characteristic features of secularism emerge over time, but that is the product of subsequent theoretical analysis of the practical experiences of different societies, rather than the spontaneous or logical outcome of a prescribed doctrine.

Moreover, I argue that the present global context of the negotiation of these tripartite relationships faces all human societies with similar challenges despite significant differentials in power relations among post-colonial African and Asian societies, on the one hand, and former colonial and neo-colonial Western societies, on the other. The recent drastic acceleration of patterns of economic and cultural globalization requires corresponding entrenchment of the values of constitutionalism and democratic governance, international legality and universality of human rights in the domestic and foreign policies of all societies. These developments also emphasize the importance of the deliberate promotion of domestic and international institutional capacity to safeguard the rule of law and universality of human rights. This view, I suggest, is supported by domestic and global developments during the last decades of the 20th century, and dramatically emphasized recently by the twin shared security threats of international terrorism and military unilateralism. While these challenges face all human societies, Western and non-Western alike, my primary concern is with Islamic societies. From this perspective, I argue that the values and institutions of

the rule of law cannot be realized in Islamic societies without developing a clear theory of the relationship between Islam, state and society for domestic governance and international relations.

This cannot be in terms of an Islamic state or other ways of enforcing Shari'a as such through legislation or official policy. Ironically, political activists who call for the establishment of an Islamic state to enforce Shari'a through legislation and official policies are in fact calling for a European positivists approach to law and totalitarian Marxist view of the state. That is, they seek to enforce Shari'a principles through the coercive power of the state, not the moral authority of religious doctrine, and to control the state in order to transform society on their own terms, instead of accepting the free choices of persons and communities. These views are inconsistent with the nature of Shari'a that evolved through consensus among many generations of Muslims, as briefly explained in the next section, and as such defies codification as positive law in the modern sense of the term. The totalitarian model of the state is also illegitimate from an Islamic point of view, and unprecedented in the pre-colonial history of Islamic societies. It is also dangerous to confer the sanctity of Islam on the present state with its extensive power to control and regulate far more of the daily lives of citizens and communities than was ever possible for the pre-modern imperial states or traditional princes who ruled Muslims in the past. Yet, these views of Islamic activities apparently have strong appeal among many Muslims, probably because of the dangerous combination of simplistic utopianism with ruthless authoritarianism, as can be observed in the recently experiences of countries like Iran and Sudan.

I am therefore approaching this study with a strong sense of urgency because I believe that the failure to clarify these relationships is a major obstacle facing the realization of political stability, economic development and social justice for present Islamic societies. I am not suggesting here that the theoretical clarification of these tripartite relationships is the sole problem facing these societies today. But I do believe this to be one of the major issues facing all of them to varying degrees and in different ways.

It is also important to understand that the apparently deliberate avoidance of these issues in many Islamic societies is probably due to apprehensions that open and free debate might promote the supporters of an Islamic state in some cases, or encourage secularism as an inherently anti-Islamic doctrine. In my view, these apprehensions are unwarranted or exaggerated. Islam can neither be enforced by the state as a matter of official policy and formal legislation, nor excluded from the public life of Islamic societies. Since the state is a political institution that cannot have a religious faith, whatever is enforced as Islamic policy and law will necessarily reflect the views and interests of the ruling elite. Seeing the issue in this light immediately exposes the paramount danger of allowing such claims to prevail because they will force Muslims as well as non-Muslims to live by the ideological vision or narrow self-interest of the ruling elite. The view that Islam may be relegated to the so-called 'private domain' is unrealistic because the religious beliefs and values of Muslims will continue to influence their political and economic behaviour and social relations. This view is also undesirable because it denies Islamic societies the benefit of the most formative and dynamic sources of ethical reflection and moral authority in the

formulation and implementation of public policy and legislation. While it should not be asserted as the basis of the state and administration of justice as such, Islam is too central to the moral consciousness and social institutions of Muslims to be overlooked or relegated to the purely private domain. A brief background on Islam, Shari'a and the state may be helpful for the purposes of this presentation, before elaborating on some aspects of the proposed theory.

### Islam, Shari'a and the modern state

The term Islamic law is misleading in that Shari'a, the normative system of Islam, is both more and less than 'law' in the modern sense of this term. It is more than law in that it encompasses doctrinal matters of belief and religious rituals, ethical, and social norms of behaviour, as well as strictly legal principles and rules. Shari'a is also 'less' than law in the sense that it can only be enforced as positive law through the political will of the state, which would normally require statutory enactment or codification, as well as practical arrangements for the administration of justice. Thus, the corpus of Shari'a includes aspects that are supposed to be voluntarily observed by Muslims individually and collectively independently of state institutions, and other aspects which require state intervention to enact and enforce them in practice. I will discuss the implications of this and related points later. For now, this is to explain why I use the term Shari'a, rather than Islamic law.

The primary sources of Shari'a are the Qur'an (which Muslims believe to be the final and conclusive Divine Revelation) and Sunnah (traditions of the Prophet), as well as the general traditions of the first Muslim community of Medina, the town in western Arabia where the Prophet established a state in 622 CE. Other commonly accepted

sources of Shari'a include consensus (*ijma'*), reasoning by analogy (*qiyas*) and juridical reasoning if there is no applicable text of Qur'an or Sunnah (*ijtihad*). But these were matters of juridical methodology for developing principles of Shari'a, rather than substantive sources as such. The early generations of Muslims are believed to have applied those techniques to interpret and supplement the original sources (Qur'an and Sunnah) in regulating their individual and communal lives. But that process was entirely based on the understanding of individual scholars of these sources, and the willingness of specific communities to seek and follow the advice of those scholars. Some general principles also began to emerge through the gradually evolving tradition of leading scholars at that stage which constituted early models of the schools of thought that emerged during subsequent stages of Islamic legal history.

The more systemic development of Shari'a began with the early Abbasy era (after 750 CE). This view of the relatively late evolution of Shari'a as a coherent and self-contained system in Islamic history is clear from the time-frame for the emergence of the major schools of thoughts (*madhabib*, singular *madhhab*), the systematic collection of Sunnah as the second and more detailed source of Shari'a, and the development of juridical methodology (*usul al-fiqh*). All these developments took place about 150 to 250 years after the Prophet's death. In other words, the first several generations of Muslims did not know and apply Shari'a in the sense this term came to be accepted by the majority of Muslims.

The early Abbasy era witnessed the emergence of the main schools of Islamic jurisprudence, including the main schools which survive to the present day which

are attributed to Ja'far al-Sadiq (died 765 - the founder of the main school of Shi'a jurisprudence) Abu Hanifah (died 767); Malik (died 795); al-Shafi'i (died 820); and Ibn Hanbal (died 855). However, the subsequent development and spread of these schools has been influenced by a variety of political, social, and demographic factors. These factors sometimes resulted in shifting the influence of some schools from one region to another, confining them to certain parts, as is the case with Shi'a schools at present, or even the total extinction of some schools like those of al-Thawri and al-Tabari in the Sunni tradition. Also, Muslim rulers tended to favour some schools over others throughout Islamic history. For example, having originated in Iraq, the center of power of the Abbasy dynasty, the Hanafi School enjoyed the important advantage of official support of the state. This School was also popular throughout Central Asia and the Ottoman Empire which sponsored principles of Hanafi jurisprudence as the basis of state and judicial practice. But until the late Ottoman Empire, as noted below, state sponsorship of certain schools traditionally happened through the appointment of judges trained in the chosen school and specification of their geographical and subject-matter jurisdiction, rather than legislation or codification in the modern sense of these terms.

The timing of the emergence and early dynamics of each school also seem to have influenced the content and orientation of their views on Shari'a. For instance, the Hanafi and Maliki Schools drew more on pre-existing customary practices bear a stronger influence of reasoning and social and economic experience than the Shafi'i and Hanbali Schools which insisted that juridical elaborations must have more direct textual basis in the Qur'an or Sunnah. However,

the principle of consensus (*ijma*) apparently acted as a unifying force that tended to draw the substantive content of all these four Sunni schools together through the use of juristic reasoning (*ijtihad*). Moreover, the consensus of all the main schools has always been that if there are two or more differing opinions on an issue, they should all be accepted as equally legitimate attempts to identify and express the relevant rule.

The principle of consensus originally is clearly foundational to all aspects of Islam, as it has been the basis of acceptance of the text of the Qur'an and Sunnah themselves, as well as the process by which Shari'a principles came to be accepted as authoritative over time. This principle can also be useful today for achieving similar authority for newly developed principles of Shari'a through a more democratic theology under modern conditions of education and communication, as I argue later. But it is also clear that excessive reliance on consensus by the ninth and tenth centuries resulted in a gradual diminishing of the role of creative juridical reasoning on the assumption that Shari'a had already been fully and exhaustively elaborated by that time. This rigidity was probably necessary for maintaining the stability of the system during the decline, sometimes breakdown, of the social and political institutions of Islamic societies. It is true that there were some subsequent development and adaptations of Shari'a through legal opinions and judicial developments after the tenth century. But that took place firmly within the framework of already established framework and methodology of *usul al-fiqh*. In other words, there has not been any change in the basic structure and methodology of Shari'a since the tenth century. In that way, formulations of Shari'a principles gradually grew out of touch

with subsequent developments and realities of society and state.

Moreover, the essentially religious nature of Shari'a and its focus on regulating the relationship between God and human beings was probably one of main reasons for the persistence and growth of secular courts to adjudicate a wide range of practical matters in the administration of justice and government in general. The distinction between the jurisdiction of the various state and Shari'a courts under different imperial states came very close to the philosophy of a division between secular and religious courts. That early acceptance of a 'division of labour' between different kinds of courts has probably contributed to the eventual confinement of Shari'a jurisdiction to family law matters in the modern era.

Another aspect of the legal history of Islamic societies that is associated with the religious nature of Shari'a is the development of private legal consultation (*ifta*). Scholars who were independent of the state issued legal opinions (*fatwa*) at the request of provincial governors and state judges, in addition to providing advice for individuals from the very beginning of Islam. This type of private advice has persisted throughout Islamic history, and became institutionalized since the mid-Ottoman period. The significant difference between this sort of moral and social influence of independent scholars, and the enforcement of Shari'a by the state as such underlies the theory of Islamic secularism I am proposing.

It is not possible or necessary here to examine the variety of mechanisms for negotiating the relationship between Shari'a and secular administration of justice over the centuries. The main point is that varying

degrees of practical adaptability did not succeed in preventing the encroachment of European codes from the mid-19th century. As openly secular state courts applying those codes began to take over civil and criminal jurisdictions during the colonial era and since independence in the vast majority of Islamic countries, the domain of Shari'a was progressively limited to the family law field. But even in this field, the state continues to regulate the relevance of Shari'a as part of broader legal and political systems of government and social organization. Thus, selectivity among competing views of various schools and scholars on such issues as grounds for judicial divorce (*faskh*) or inheritance reflected the social and political preferences of different states, and governments in the same state over time.

However, there was a tension between that reality of state sponsorship of a particular school and the need to maintain the traditional independence of Shari'a, as rulers are supposed to safeguard and promote Shari'a without claiming or appearing to create or control it. This tension has continued into the modern era, in which Shari'a remains the religious law of the community of believers, independent of the authority of the state, while the state seeks to enlist the legitimizing power of Shari'a in support of its political authority. This ambivalence persists as Muslims are neither able to repudiate the religious authority of Shari'a, nor willing to give it complete control over their lives because it does not provide for all the substantive and procedural requirements of a comprehensive and sustainable modern legal system. This came to be more effectively provided for by European colonial administrations throughout the Muslim world by the late 19th century.

The concessions made by the Ottoman

Empire to European powers set the model for the adoption of Western codes and systems of administration of justice. Moreover, Ottoman imperial edicts justified the changes not only in the name of strengthening the state and preserving Islam, but also emphasized the need to ensure equality among Ottoman subjects, thereby laying the foundation for the adoption of the European model of the nation state and its legally equal citizens.

Reforms introduced into Ottoman law followed the European model of attempting a comprehensive enactment of all relevant rules. Although Shari'a jurisdiction was significantly displaced in the fields of commerce, penal and civil laws, an attempt was still made to retain some elements of it. The Majallah, which came to be known as the Civil Code of 1876, though it was not devised as such, was promulgated over a ten-year period (1867-77), to codify the rules of contract and tort according to the Hanafi School, combining European form with Shari'a content. This major codification of Shari'a principles simplified a huge part of the relevant principles and made them more easily accessible to litigants and jurists/lawyers.

The Majallah acquired a position of supreme authority soon after its enactment, partly because it represented the earliest and most politically authoritative example of an official promulgation of large parts of Shari'a by the authority of a modern state, thereby transforming Shari'a into positive law in the modern sense. Moreover, that legislation was immediately applied in a wide range of Islamic societies throughout the Ottoman Empire, and continued to apply in some parts into the second half of the 20th century. The success of the Majallah was also due to the fact that it included some provisions drawn from other

sources than the Hanafi School, thereby expanding possibilities of "acceptable" selectivity from within the Islamic tradition. By applying the principle of selectivity (*takhayur*) among equally legitimate doctrines of Shari'a through the institutions of the state, the Majallah opened the door for more wide-reaching reforms. But at the same time, the codification of the views of a single school, even with some selectivity or inclusion of some other views, also precludes access to other schools and scholars.

This trend toward increased eclecticism in the selection of sources and the synthesis of Islamic and Western legal concepts and institutions was carried further, especially through the work of the French-educated Egyptian jurist Abd al-Razzaq al-Sanhuri (died 1971). The pragmatic approach of al-Sanhuri was premised on the view that Shari'a cannot be reintroduced in its totality, and could not be applied without strong adaptation to the needs of modern Islamic societies. He used this approach in drafting the Egyptian Civil Code of 1948, the Iraqi Code of 1951, the Libyan Code of 1953, and the Kuwaiti Code and Commercial law of 1960/1. In all cases, al-Sanhuri was brought in by an autocratic ruler to draft a comprehensive code that was enacted into law without public debate. In other words, such reforms would not have been possible at all if those countries were democratic at the time, as public opinion would not have permitted the formal displacement of Shari'a by what was believed to be secular Western principles of law.

Paradoxically, those reforms also made the entire corpus of Shari'a principles more available and accessible to judges and policy makers in the process of selecting and adapting which aspects could be

incorporated into modern legislation. In the process, that synthesis of the Islamic and European legal traditions also exposed the impossibility of the direct and systematic application of traditional Shari'a principles in the modern context. The main reason for that is the complexity and diversity of Shari'a itself, as it has evolved through the centuries. In addition to strong disagreement among and within Sunni and Shi'a communities that sometimes coexist within the same country as in Iraq, Lebanon, Saudi Arabia, Syria, and Pakistan, different Schools or scholarly opinions may be followed by the Muslim community within the same country, though not formally applied by the courts. Judicial practice may not necessarily be in accordance with the *madhhab* followed by the majority of the Muslim population in the country, as in North African countries that inherited official Ottoman preference for the Hanafi school, while popular practice is according to the Maliki school. Since the modern state can only operate on officially established principles of law of general application, Shari'a principles can be influential politically and sociologically, but not automatically enforced as positive law without state intervention.

The legal and political consequences of these developments were more recently intensified by the significant impact of European colonialism and global Western influence in the fields of general education and professional training of state officials. Curricular changes in educational institutions meant that Shari'a was no longer the focus of advanced instruction in Islamic knowledge, and was displaced by a spectrum of secular subjects, many derived from Western models. Regarding legal education in particular, the first generations of lawyers and jurists took advanced training in European and North American universities and returned

to teach subsequent generations or hold senior judicial office. Moreover, in contrast to the extremely limited degree of literacy in traditional Islamic societies of the past, where scholars of Shari'a (*ulema*) monopolized the intellectual leadership of their communities, mass literacy is growing fast throughout the Muslim world, thereby opening the door for a much more democratic access to knowledge. Thus, the *ulema* not only lost their historical monopoly on knowledge of the sacred sources of Shari'a, but traditional interpretations of those sources are gradually being questioned by ordinary Muslims.

Another significant transformation of Islamic societies relates to the nature of the state itself. Although there are serious objections to the manner in which it happened under colonial auspices, the establishment of European model nation-states for all Islamic societies has radically transformed political, economic and social relations throughout the region. By retaining this specific form after political independence, Islamic societies have freely chosen to be bound by a minimum set of national and international obligations of membership in a world community of territorial states. While there are clear differences in the level of their social development and political stability, all Islamic societies today live under domestic constitutional regimes (including countries that have no written constitution as in Saudi Arabia and the Gulf states) and legal systems that require respect for certain minimum rights of equality and non-discrimination for all their citizens. Even where national constitutions and legal systems fail to expressly acknowledge and effectively provide for these obligations, a minimum degree of practical compliance is ensured by the present realities of international relations. The fact that countries where Muslims constitute the predominant majority

of the population have acknowledged these principles as binding on them is used by foreign governments and global civil society to pressure for compliance. These changes are simply irreversible, though stronger and more systematic conformity with the requirements of democratic governance and international human rights remain uncertain and problematic for most of these countries, as it is for other societies throughout the world.

### Elements of a theory of Islam, state and society relations

A fundamental concern is how to ensure the institutional separation of Islam and the state, despite the organic and unavoidable connection between Islam and politics. The first part of this proposition sounds like 'secularism' as commonly understood today, but the second part indicates the opposite. This is a permanent paradox that is part of my thesis, namely, that the relationship among religion, state, and society is the product of a constant and deeply contextual negotiation, rather than the subject of a fixed formula, whether of total separation or complete fusion of religion and the state. The paradox of separation of Islam and the state while regulating the organic relationship among Islam and politics can only be mediated through practice over time, rather than completely resolved through theoretical analysis. The question is therefore how to create the most conducive conditions for this mediation to continue in a constructive fashion, rather than hope to resolve it once and for all.

One controversial aspect of the proposed theory relates to the use of the term secularism, which may be seen as problematic and distracting from my main thesis because it widely viewed as hostile

to religion in general. This term is suspect in popular Islamic discourse for its strong association with the Christian experience of Europe, colonialism and post-colonial Western hegemony in general. It also seems to be difficult to dispel the common view that this term inherently and necessarily requires the total exclusion of religion from the public domain. Since my primary objective is to ensure the institutional neutrality of the state regarding matters of religious doctrine, as explained below, it may be wiser to present this proposal in these terms instead of a call for secularism. But the problem with this shift in terminology is that it hinders comparative analysis with non-Islamic societies, which would be most useful for debates within and among Islamic societies. Moreover, many Islamic societies, from Senegal to Turkey to the Central Asia Republics, have already accepted the term 'secularism' in their own domestic constitutional and political discourse. I will therefore use this term and define it for the purposes of my proposal.

### Contextual approach to secularism as mediation

To begin with a brief clarification of the term secularism and its deeply contextual nature; the word secular derives from the Latin word *saeculum*, meaning 'great span of time' or more closely 'spirit of the age'. Later on, the meaning changed to mean of 'this world' implying more than one world, eventually translating into a concept of the secular and the religious derived from the idea of the temporal and the spiritual. The term also evolved in the European context from 'secularization' as privatization of church lands, to secularization of politics and later, art and economics. Following dictionary definitions, the term is therefore often taken to signify such notions as decline of religion, conformity to the present world,

disengagement/differentiation of society from religion (separation of church and state), transposition of religious beliefs and institutions (shift from the source of divine power to a phenomena of human capability and creation), and 'desacralization' of the world and subsequent 'sacralization' of rationality.

From my perspective of deeply contextual understandings of secularism, such views are at most reflections of how the concept has evolved in various European and North American settings. Such views of secularism are so deeply contested within and among different societies that there is simply no uniform systematic understanding and practice of the principle that can neatly fit into any specific definition. Secularism is in fact a multidimensional concept, reflecting elements of the historical, political, social, and economic landscape of a particular country. In the United States, for instance, it usually taken to signify a 'wall of separation between church and state', but what that means remains the subject of intense political contestation and constitutional litigation. Mexican secularism requires such a strict separation of religion and politics that priests are not allowed to vote, while in the Republic of Ireland the Catholic Church wields so much political power that abortion is illegal on the grounds that it violates Church doctrine.

By the same token, secularism for various Islamic societies must also account for the religious dimension of the lives of local communities, instead of being seen as an effort to impose preconceived notions of categorical relegation of religion to the private domain. In my view, it is grossly misleading to speak of complete separation or total union of any religion and the state. The state and its constituent organs and institutions

are conceived and operated everywhere by people whose religious or philosophical beliefs will necessarily be reflected in their thinking and behaviour. Yet, a ruling elite cannot effectively impose their religious views on others, and their attempt to do so is bound to lead to serious problems, as can be observed in the current experiences of countries like Iran and Sudan. I suggest that the tension in these relationships and the need for its mediation should be acknowledged and regulated, instead of insisting on the illusion of either complete separation or total fusion.

Another reason for the importance of the proposed definition of secularism as mediation is that to limit this principle to separation of religion and the state is not sufficient for achieving its purpose of safeguarding political pluralism in diverse societies. Secularism in that limited sense is able to unite diverse religious communities into one political community precisely because it makes minimal moral claims on the community and its members. This is not to say that the principle of secularism is morally neutral, as it must encourage certain civic ethos on the basis of some specific understanding of the person in relation to the community and the state. But that normative content needs to remain minimal to achieve and maintain consensus among completing religious and philosophical traditions. As such, secularism in the sense of categorical exclusion of religion from the public domain fails to inspire or motivate believers unless it relies on a religious foundation or justification.

Moreover, secularism as only separation of religion and the state is capable of meeting neither the needs of individual citizens nor the collective requirements of public policy. Emphasizing exclusion of religious ethics

without providing an alternative, fails to take into account the moral or ethical foundations of public policy. Moreover, questions of public policy, like whether or not to legalize abortion or how to adjudicate custody of children after divorce, necessarily draw on moral and ethical underpinnings which are influenced, if not significantly shaped, by religion in any society.

A related concern is that secularism, as simply the strict separation of religion and the state, is unable by itself to address any objections or reservations believers may have about specific constitutional norms and human rights standards. For example, since discrimination against women is often justified on religious grounds in Islamic societies, this source of systematic and gross violation of human rights cannot be eliminated without addressing commonly perceived religious rationale. Moreover, this must be done without violating freedom of religion or belief for Muslims, which is also a fundamental human right. While a purely secular discourse in the European/North America sense can be respectful of religion in general, indeed by far more than the present practice of Islamic societies, it is unlikely to succeed in rebutting religious justifications of discrimination against women among Muslims. Adherence to the principle of secularism as I am defining it here can also encourage and facilitate internal debate and dissent within religious traditions.

The first part of the proposition I wish to advance is that the modern territorial state should neither seek to enforce Shari'a (the normative system of Islam) as positive law and public policy, nor claim to interpret its doctrine and general principles for Muslim citizens. Since effective governance requires the adoption of specific policies and

enactment of precise laws, the administrative and legislative organs of the state must select among competing views within the massive and complex corpus of Shari'a principles, as noted earlier. That selection will necessarily be made by the ruling elite, and yet difficult for the general population to oppose or resist when the policy or law are presented as mandated by the 'divine will of God.'

The rationale of all public policy and legislation must always be based on public reason which all citizens can accept, reject or amend, without reference to any religious doctrine as a matter of individual conscience. At the same time, citizens should be able to propose policy and legislative initiatives emanating from their religious beliefs, provided they can support them by reasons that are accessible and convincing to the majority of citizens, including non-Muslims. Such proposals must also conform to basic constitutional and human rights safeguards against the tyranny of the majority, especially requirements of equality and non-discrimination. These commonsensical propositions are already supposed to be the basis of legitimate government in the vast majority of post-colonial Islamic societies. But I believe that these principles are unlikely to be taken seriously enough for the processes of institutionalizing and systematic implementation to even begin unless they are perceived to be at least consistent with Islam.

Thus, policy initiatives and legislative proposals may emerge from the principles of Shari'a, and can be implemented or enacted by state institutions, provided they are supported by public reason and not simply asserted as the divine precepts of Islam. To permit the latter view to prevail is to repudiate the equal citizenship of not

only non-Muslims, but also of Muslims who have always had significant disagreements about the meaning and implications of Islam. At the same time, Islamic principles should remain available for Muslims who believe in them to observe privately in personal and communal affairs, and not for state policy and legislation. Such principles can also be adopted as official policy and legislation through the political process and subject to constitutional safeguards as emphasized below, but not automatically just because some Muslims believe them to be divinely ordained. In other words, Shari'a principles are neither privileged or enforced as such nor necessarily rejected as a source of state law and policy. The belief of even the vast majority of citizens that these principles are binding as a matter of Islamic religious obligation should remain the basis of individual and collective observance among believers, but is not sufficient reason for their enforcement by the state as such.

The second part of my proposition is that Shari'a can and should be a source of public policy and legislation, subject to the fundamental constitutional/human rights of all citizens, men and women, Muslims and non-Muslims equally and without discrimination. This will require reform of certain aspects of Shari'a, especially regarding the rights of women and religious minorities, as explained later. The point I am emphasizing here is that the total or categorical exclusion of Shari'a from the public domain is neither realistic nor desirable. In addition to holding this view as a matter of principle, I also find it helpful for convincing Muslims that secularism does not mean the exclusion of Islam from public life altogether.

To summarize my argument so far, I define secularism as a principle of public

policy for the regulation of the relationship among Islam, state and society to ensure constitutional governance, pluralism, stability and development with due regard to the Islamic identity of each society. The underlying idea here is one of balancing these competing demands. This balance may shift back and forth at different times within the parameters of the equal human rights of all citizens, provided the negotiation process is fair, open and fully inclusive of all segments of the population. First, this neither permits the enforcement of Shari'a as such by the state, nor excludes it as a possible source of public policy and law. This view can also be called 'the religious neutrality of the state', whereby state institutions neither favour nor disfavour any religious doctrine or principle. Second, the mediation of this paradoxical proposition is subject to constitutional and human rights safeguards. In this way, constitutionalism, democratic governance and respect for human rights are both ends and means as the standards for regulating substantive content as well as the process of negotiating the relationship among Islam, state and society. But this view of the relationship requires significant Islamic reform, as outlined later.

Various understandings of Shari'a will remain, of course, in the realm of individual and collective practice as a matter of freedom of religion and belief, but also subject to established constitutional safeguards. What is problematic is for Shari'a principles as such to be enforced as state law or policy because once a principle or norm is officially identified as 'decreed by God' it will be extremely difficult to resist or change its application in practice. At the same time, the integrity of Islam as a religion will decline in the eyes of believers and non-believers alike when state officials and institutions fail to

deliver the promise of individual freedom and social justice. Since Islamic ethical principles and social values are indeed necessary for the proper functioning of Islamic societies in general, the implementation of such principles and values would be consistent with, indeed required by the right of Muslims to self-determination. This right, however, can only be realized within the framework of constitutional and democratic governance at home and international law abroad because these are the legal and political basis of this right in the first place. That is, the right to self-determination presupposes a constitutional basis that is derived from the collective will of the totality of the population, and can be asserted against other countries because it is accepted as a fundamental principle of international law.

Allowing Shari'a principles to play a positive role in public life without permitting them to be implemented as such through law and policy is a delicate balance that each society must strive to maintain for itself over time. For example, such matters as dress style and religious education will normally remain in the realm of free choice, but can also be the subject of public debate, even constitutional litigation to balance competing claims. This can happen, for instance, regarding dress requirements for safety in the work place, or the need for comparative and critical religious education in state schools to enhance religious tolerance and pluralism. I am not suggesting that the context and conditions of free choice of dress or religious education will not be controversial. Rather, my concern is with ensuring fair, open and inclusive social, political and legal conditions for the negotiation of public policy in such matters. Those conditions, I argue, are to be secured through the entrenchment of such fundamental rights of the persons

and communities as the right to education and freedom of religion and expression, on the one hand, and due consideration for legitimate public interests or concerns, on the other. There is no simple or categorical formula to be prescribed for automatic application in every case, though general principles and broader frameworks for the mediation of such issues will emerge and continue to evolve within each society.

### Not an Islamic state model

My call to recognize and regulate the political role of Islam and accept the possibility that Shari'a principles can be a source of state policy and legislation, subject to the safeguards noted earlier, is untenable without significant Islamic reform. It is critically important for Islamic societies today to invest in the rule of law and protection of human rights in their domestic politics and international relations. This is unlikely to happen if traditional interpretations of Shari'a that support such principles like male guardianship of women (*qawamah*), sovereignty of Muslims over non-Muslims (*dhimmah*) and aggressive *jihad* are maintained.

While the Qur'an and Sunnah are the divine sources of Islam according to Muslim belief, the meaning and implementation of these sources for everyday life is always the product of human interpretation and action in specific historical context. It is simply impossible to know and apply Shari'a in this life except through the agency of human beings. Shari'a developed through the consensus of believers over many centuries, and not by the spontaneous decree of a ruler or will of a single group of scholars. Beyond this basic premise, I remain completely open to any methodology that is capable of achieving the necessary degree of reform in the interpretation of Shari'a and takes into

account the following considerations.

There are two important methodological requirements of coherent and sustainable Islamic reform. First, one must be clear on the actual traditional interpretations of Shari'a before considering how and to what extent alternative views can be supported from an Islamic perspective. Second, whatever alternative interpretation one may favour should rely on a systematic methodology of reform, and not arbitrary selectivity among competing texts. It is not helpful to cite texts of the Qur'an and Sunnah that are apparently supportive of one view of the status of non-Muslims, for instance, without addressing verses that can be cited in support of the opposite view.

A necessary consequence of the above-mentioned premise of inevitability of human interpretation of divine text is that alternative views of Islam and formulations of Shari'a principles are always possible, and can be equally valid if accepted as such by Muslims. Since it is impossible to know whether or not Muslims would accept or reject any particular view until it is openly and freely expressed and debated, it is necessary to maintain complete and unconditional freedom of opinion, expression and belief for such view to emerge and be propagated. The idea of prior censorship is therefore inherently destructive and counter-productive for the development of any Islamic doctrine or principle. It is therefore critical to maintain the possibilities of dissent as the only way for the tradition to remain responsive to the needs of the believers. It would therefore follow that securing constitutional democratic governance and protection of human rights is not only necessary for the religious freedom of Muslim and non-Muslim citizens of the present territorial state, but for the survival and

development of Islam itself. Indeed, freedom of dissent and debate were always essential for the development of Shari'a itself because it enabled consensus to emergence and evolve around certain views that matured into established principles through acceptance and practice by generations of Muslims in a wide variety of settings.

This would preclude the idea of an Islamic state that can enforce Shari'a as positive law and official state policy for several reasons. In addition to the conceptual incoherence and practical difficulties of an Islamic state noted earlier, the formal enactment of Shari'a principles requires selection among competing and equally valid interpretations of the various Schools and scholars. That would deny believers freedom of choice among these views as a matter of conscience, as when the Shi'a citizens of Saudi Arabia, who are a significant minority, are forced to live by the Wahabi doctrine enforced by the Saudi monarchy, which deems Shi'a doctrine to be heretical. In fact, the concept of citizenship itself is inconceivable under an Islamic state that enforces the Shari'a principle of *dhimmah* as positive law because that principle does not accept the possibility of non-Muslim citizens in the modern sense of this term. The basic idea of this system is that, upon the conquest and incorporation of new territories through *jihad*, People of the Book (mainly Christians and Jews) should be allowed to live as protected communities upon submission to Muslim sovereignty, but cannot enjoy equality with Muslims. Those who were deemed to be unbelievers by Shari'a standards were not permitted to live within the territory of the state at all except under temporary safe conduct (*aman*). Such notions are obviously morally indefensible and politically untenable for present Islamic societies who all now live within pluralistic

territorial states which are totally integrated into an international legal and economic context.

The coincidence of citizenship and nationality as understood today was not only the product of a peculiarly European and relatively recent process, but was often exaggerated in that region itself at the expense of other forms of membership, especially of ethnic or religious minorities. To avoid this discrepancy I prefer to use the term territorial state to identify citizenship with territory, instead of nation state that can be misleading, if not oppressive of minorities.

The colonial origins or antecedents of the present system of territorial sovereignty and international relations do not mean that it is inherently bad or wrong. It may be hypothetically possible to imagine an alternative system for organizing internal politics and inter-communal relations, but that system would probably also have its own problems for Muslims and non-Muslims alike. On the one hand, agreement on an alternative system is unlikely among Muslims themselves, as clearly demonstrated by the fact they have all retained the territorial state model after independence. On the other hand, non-Muslims are unlikely to accept such an alternative if it will threaten their interests or violate their rights. The intellectual resources and political will of Muslims should therefore be devoted to developing the present system to ensure human dignity and social justice for all human beings, instead of attempting to set it aside, even if that was possible. In view of concrete issues of citizenship in particular, this transformative approach is both desirable as a matter of principle and unavoidable in pragmatic practice.

These reflections clearly emphasize the

importance of creative Islamic reform that balances the competing demands of religious legitimacy and principled political and social practice which are simply inconsistent with the notion of an Islamic state. But this notion is so appealing to Muslims in the present domestic and global context that other possible justifications must also be confronted. For example, it is sometimes suggested that it is better to allow the idea of an Islamic state to stand as an ideal while seeking to control or manage its practice. This view is dangerous because as long as this notion stands as an ideal, some Muslims will attempt to implement it according to their own understanding of what it means, with disastrous consequences for their societies and beyond. It is impossible to control or manage the practice of this ideal without challenging its core claims of religious sanctity for human views of Islam. Once the possibility of an Islamic state is conceded, it becomes extremely difficult to resist the next logical step of seeking to implement it in practice because that would be regarded as a heretical or 'un-Islamic' position.

Maintaining this ideal is also counter-productive because it will preclude debate about more viable and appropriate political theories, legal systems and development policies. Even if one overcomes the psychological difficulty of arguing against what is presented as the divine will of God, charges of heresy can result in severe social stigma, if not prosecution by the state or direct violence by extremist groups. As long as the idea of an Islamic state is allowed to stand, societies will remain locked in stale debates about such issues as whether constitutionalism or democracy are 'Islamic', interest banking to be allowed or not, instead of getting with securing constitutional democratic governance and pursuing economic

development. Such fruitless debates have kept the vast majority of present Islamic societies locked in a constant state of political instability and economic and social underdevelopment since independence. Instead, Muslims need to accept that constitutionalism and democracy are the ultimate foundation of the state itself, and engage in the process of securing them in practice. To authoritatively establish that the state will not and cannot enforce any religious view of charging or paying interest on loans (*riba*) is to ensure the freedom of all citizens to choose to practice or avoid interest banking as a matter of personal religious belief. Moreover, citizens who wish to avoid such practices can establish their own banking institutions, subject to appropriate regulation by the state and general public supervision, like any other business venture.

Another argument in support of the notion of an Islamic state that I will challenge is based on the distinction between Shari'a and *fiqh* (Islamic jurisprudence), namely, the claim that since *fiqh* is human interpretation, it can be amended and adjusted to fit the current circumstances of Islamic societies, whereas Shari'a should remain immutable. This distinction is not useful for our purposes here because both Shari'a and *fiqh* are the product of human interpretation of the Qur'an and Sunnah of the Prophet in particular historical context. As such, whether a given proposition is said to be based on Shari'a or *fiqh*, it is subject to the same risks of human error and influence of ideological or political bias, economic interest and social concerns of its proponents. Moreover, the distinction is not only difficult to maintain in practice, but any attempt to do so will itself necessarily be the expression of a human opinion that is subject to the same risks and limitations.

A modified version of the same argument asserts that all is required is to observe the fundamental objectives of Shari'a (*Maqasid al-Shari'a*), while *fiqh* principles and rules can change from one time or place to another. But the problem with this line of thinking is that the so-called fundamental objectives of Shari'a are expressed at such a high level of abstraction that they are neither distinctly Islamic nor sufficiently specific for the purposes of public policy and legislation. If and when these principles are presented in more specific and concrete terms, they will immediately be implicated in the familiar controversies and limitations of *fiqh*. For example, 'the protection of religion' is one of the objectives of Shari'a, but this principle has no practical utility without a clear definition of what 'religion' means in this context, and specification of the necessary conditions and limitations of its protection as a matter of state policy and legislation. Does 'religion' include non-theistic traditions like Buddhism, or atheism? Can a Muslim adopt another religion or belief? When can freedom of religion be limited in the public interest of the state or the rights of others? Yet, addressing such questions immediately takes the subject into the realm of *fiqh* principles which raise the serious human rights and political objections outlined earlier.

### Concluding remarks

As noted earlier, the realities of Islamic societies in the 21st century I am concerned with in this study are not only permanent and structural, but also necessary for the stability and development of present Islamic societies. The nature of the state, political, social and economic conditions, domestic and foreign relations of these societies are not simply the result of Western colonial and neocolonial hegemony that can be overcome through asserting an idealized 'Islamic' right

to self-determination. These transformations have become so much internalized and integrated into Islamic societies that they have become part of the 'self' as well as the conditions under which self-determination can be realized. Even possibilities of alternative models can only be pursued through these realities of domestic and international politics and relations. Since 'opting out' of the present realities of pluralistic state societies in their global context in favour of an autonomous pre-colonial notion of an Islamic state and society is no longer possible, or desirable in my view, Islamic societies should define their own role in the context of these irreversible realities instead of having it defined for them by others.

Various Islamic societies today can be seen as being at different stages of the spectrum in accepting or rejecting the proposed understanding of secularism. To the extent that the proposed theoretical framework can include strategies for practical advocacy, one should try to understand the role and relative strength or weakness of various elements in the internal dynamics of continuity and change in each society. Relevant questions include: How are the secular realities of life perceived and justified in public discourse, and balanced against religious considerations in formulating public policy? What are the arguments used by proponent and opponents of an Islamic or secular state in mobilizing their own political constituencies, and what are the economic or other interests that underlie their influence?

There is also the impact of regional and global geopolitical factors and power relations on the dynamics of internal transformation. The likely resistance to the term secularism among Muslims because of its colonial and neocolonial associations, as noted earlier,

is part of this phenomenon. This dimension has been complicated and intensified by the aggressively militaristic response of the United States to the atrocities of 9/11, especially its colonization of Iraq since April 2003 in collaboration with United Kingdom, which was the last Western colonial power in the country. Regional geopolitical, religious or ethnic relations can also influence perceptions of the issues or willingness to accept change in underlying political and social attitudes. For instance, Christian/Muslims relations in Nigeria today also seem to affect debates about secularism and the enforcement of Shari'a by northern Nigerian states. The challenge raised by such considerations is how to present the proposed theory of secularism as an internal priority of Islamic societies, rather than an externally imposed ideology or concession to regional or global 'hostile' protagonists.

I am firmly convinced that there are strong factors and forces in favour of the thesis and objectives of this study in most Islamic societies. In my view, the clear majority of Muslims are open to persuasion, indeed desperately seeking a viable balance between the religious neutrality of the state and the role of Islam in public life. These and related issues should of course continue to be debated in a fair, open and inclusive process, whereby ideas are accepted or rejected on the basis of their argument and supporting evidence. When objections are raised to the proposal on its own terms, the question will ultimately be settled through consensus at the theological level, and/or the democratic process at the political level. In both cases, as emphasized earlier, constitutional and human rights safeguards are critically important as ends and means of Islamic transformation in the present context.

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<http://www.law.emory.edu/cms/site/index.php?id=2383>

The complete book chapters, written after the paper included in this Dossier, are available for download at:

<http://www.law.emory.edu/cms/site/index.php?id=2245>

## Abstract

The strong influence of secularization theory has produced simplified conceptualizations of religion that, when analyzing gender and sexuality, overlooks important sociopolitical dynamics and generates paradoxes. Looking at civil society organizations that articulate counter-doctrinal theologies, this article suggests that a post-secular understanding of the public sphere is a valid path for overcoming gender and sexuality inequalities not only within the Catholic Church but also in society at large.

## Introduction

Feminist and gay-lesbian scholars have valuably contributed to the debates about the public/private dichotomy. It was through des/re-articulating this dichotomy that the limitations of socio-political analyses were shown and the politicization of 'new' identities created. In particular, they unmasked how the assigned private role of gender and sexuality functions as an ideological frame structuring inequalities. The liberal model of a pre-set private sphere<sup>1</sup> was, precisely, the main theoretical construct feminist and gay-lesbian scholars criticized in order to include gender and sexuality as two main dimensions of inequalities in academic and political agendas.<sup>2</sup> Gender and sexuality needed to be liberated from the liberal closet of the private realm for relations of power and domination to become visible.

Although feminist and gay-lesbian scholars moved away from the liberal distinction between public/private, when dealing with religion they uncritically reproduced it. The theoretical apparatuses built to disjoin and blur the frontiers between public/private become rigid when analyzing religion. The need to confront the patriarchal and heteronormative<sup>3</sup> substratum of religious doctrines reinforced the liberal distinction uncritically accepting religion as belonging to the private realm. For gender and sexuality to be publicly re-inscribed religion has to be privatized.

However, religion has evaded the liberal barriers surviving in multiple and complex ways obscured by secularist assumptions. Mainly considering Latin America, I want to propose in this article that the endurance of religion as an identity dimension and the complex manners in which the Catholic Church publicly intervenes should be taken

seriously, thus forcing us to revisit some secularist assumptions still permeating many socio-political analyses.<sup>4</sup> I present some paradoxes created by secularization arguing that a post-secular understanding of the public, in addition to accepting the factual role of religion in contemporary societies, could be useful for reducing the influence of conservative religious sectors and for privileging democratic conceptions of gender and sexuality. Although counter-intuitive this article suggests that is not by privatizing religion that its patriarchal and homophobic components can be reduced but by fully including it in public debates.

### Paradoxing the secular

Secularization has been defined in many ways but, in general, it aims to describe the declining influence of religion as a result of modernity.<sup>5</sup> Collapsing empirical and normative elements and also collapsing different dimensions, this theory permeates the majority of social theorizing placing religion at the margins, if placed at all. The affinity between secularization, as a normative enterprise, and pro-feminist and pro-gay positions is obvious. Patriarchy and heteronormativity are encapsulated in the 'traditional' conception of family very much enforced by the majority of mainstream religions.<sup>6</sup> At an individual level, religiosity<sup>7</sup> and religious denominations are crucial independent variables when analyzing patriarchal and homophobic attitudes.<sup>8</sup> When considering civil society, religious institutions, in particular the Catholic Church, articulate public interventions, create specific pro-family organizations and lobby the state against feminist and gay/lesbian rights and demands.<sup>9</sup> Furthermore, the transnational existence of the Catholic Church and its special status at the UN has facilitated a centralized role in maintaining traditional

definitions of gender and sexuality vis-à-vis the transnational feminist and gay/lesbian movements.<sup>10</sup> This antagonism, articulating two opposite definitions of gender and sexuality, has reinforced secularization as the assumed path for reducing gender/sexuality inequalities.<sup>11</sup>

However, in the last decade some debates have shown that religion has not followed the pattern assumed by secularization theory.<sup>12</sup> First, contrary to predictions, people have not declined their religious identities. Western Europe, the paradigmatic example, has proven to be an exception when compared with USA and Latin America. It is astonishing to observe how stable religious identifications have been in the last hundred years and how insignificant the number of non-believers is. Some changes have occurred in the Latin American religious market, such as the increase of Protestantism,<sup>13</sup> but the percentage of people without religious beliefs has remained stable.<sup>14</sup> So, a first paradox that needs to be taken seriously is that the global spread of feminist and pro-gay/lesbian identities has not been accompanied, at least in Latin America, by a decline in religious beliefs. On the contrary, religion remains a crucial identity dimension, one that coexists with homodesire and the rights to one's own body in more sophisticated and creative ways than the secular/religious antagonism can capture.

Secondly, and contrary to predictions as well, religion has permeated the public sphere and not necessarily in an anti-modern or anti-democratic way. In some countries, such as Brazil or Chile, it has been an important counter-authoritarian force in the transition to democracy articulating a voice and a social space against human right violations.<sup>15</sup> Once democracy is already established, the Catholic

Church continues playing some crucial public interventions, such as reinforcing human rights discourses, providing protection to individuals in contexts of state impossibility - illegal immigrants or economically deprived citizens - articulating a social justice discourse against neo-liberal models, or favouring processes of dialogue among socio-political actors. This public visibility has converted the church into the most believable institution in all Latin American countries.<sup>16</sup> Paradoxically, the “same” Church that incarnates a fundamentalist position toward gender and sexuality is also the one that publicly intervenes favouring democracy, denouncing class exclusions or articulating public dialogue. Although a strong secularization would label any public role of religion in a negative way, the public interventions of the Catholic Church cannot be fully captured by the progressive/conservative or democratic/anti-democratic dichotomies.

Finally, the strong and quasi-paradigmatic influence of secularization theory created a tendency toward the ‘sacralization’ of the secular. It cannot be denied that the switch from the church regulating morality to the state integrating a plurality of ethics is a basic democratic step. However, it should also be recognized that sometimes secularization is just a process of translation reproducing, in a different language, similar codes to those generated and sustained by religious traditions. Although secularization is an important alternative in reducing religious influences, it could create the opposite consequence if uncritically sustained: to freeze a religious ethics under a secular language, to sacralize the secular.<sup>17</sup> Furthermore, the Church has a long history of articulating religious beliefs with secular and rational discourses. Homosexuality and abortion are presented not only as sinful

because of theological interpretations but also contrary to the ‘common good’ because of rational arguments. The Church managed to articulate religious and secular languages in a kind of bilingualism that empowered its position. A third paradox is that the frontiers between the religious and the secular are not as clear and neat as the secularization theory seems to assume. On the contrary, religious denominations master secular discourses in order to oppose homodesire and abortion. God is easily harmonized with reason. To secularize sexual ethics, although crucial in some respects, does not necessarily represent a substantial change. Secularization can also bring the reproduction of religious based values though in a different language.

If religion has a public role in contemporary societies, a role that cannot be reduced to an anti-modernist or anti-democratic one, socio-political theorizing should take religion seriously. It is necessary, then, to overcome the general tendency of ‘progressive’ thinking to reinforce an antagonism between the religious and the secular, an antagonism that produces a homogenization and invisibility of religious influences and ‘sacralizes’ secularization in a rather uncritical manner. If any public role of religion is considered, by definition, the manifestation of an anti-modern tendency, the complexity of religion is underscored and the differences between public religion and fundamentalist positions blurred. Secularization is still a valid and legitimate way of confronting gender and sexuality inequalities but it is imperative to face the centrality of religion in contemporary societies and examine the potentialities of religious alternatives of targeting patriarchy and heteronormativity.

## Reinscribing religious visibility

For anybody who confronted religious influences as a way of overcoming patriarchy or heteronormativity to witness the increasing importance of religion would immediately feel as a drawback in the march toward social equalities. An immediate, almost intuitive reaction would be to articulate an anti-religious discourse reinforcing secularization and propelling religion into the private. However, the economic and political crisis plus the high legitimacy of the Church reassure its public presence in the region. The challenge, I think, is not to insist on the 'privatization' of religion but to analyze the potentialities that religion being in the public could bring in confronting gender and sexuality inequalities.

For doing so, it is necessary to revisit some secularist assumptions running through many socio-political theoretical corpuses and to bracket the 'visceral reactions' that religion generates.

A crucial distinction, when considering the public role of religion, is between church/state separation and the privatization of religion.<sup>18</sup> The separation between church and state, the most salient aspect of secularization reinforced by theories of democracy, is also the least controversial one because even the Catholic Church has accepted state separation as a core element of its functioning in contemporary societies. The Church, since the Vatican II (1962-5) became a society-centered institution. However, to affirm that the Catholic Church has normatively chosen state separation does not mean that it is a completed process. On the contrary, there are many instances where the separation becomes blurred.

Many constitutions in Latin America still provide the Catholic Church with a special

status that, sometimes, violates the basic understandings of church/state separation.<sup>19</sup> However, the separation between church and state does not necessarily imply the privatization of religion. On the contrary, this separation is a prerequisite for the public role of religion in contemporary societies.<sup>20</sup> Ironically, the disentanglement from the state is a central variable for explaining not only religious survival but also its increasing importance in some contemporary societies. This disentanglement allowed the Catholic Church to become a key actor in civil society playing a variety of roles from generating dense social networks, more participatory individuals and militant leaders<sup>21</sup> to providing organizations that constitute the backbone of civil societies, such as the *Comunidades Eclesiales de Base*,<sup>22</sup> welfare organizations and pro-human rights groups. Powerless states, illegitimate political societies and immense economic inequalities have reinforced, in Latin America, the centrality and legitimacy of the Church.<sup>23</sup> The Catholic Church and its organizations become core instances articulating, simultaneously at the transnational, national and local level, a counter liberal discourse of social justice and representing and providing welfare to the economically excluded sectors. This time, the church's public intervention has become a crucial part of civil society,<sup>24</sup> not through the state or political society. It is not only as a means of 'spiritual' salvation but also as a manner of earthly survival that people's identification with religion is maintained.

The role of the Catholic Church can be evaluated in many ways but one thing is clear: the church can go public without violating its separation from the state. This public role of religion also implies the acceptance of the democratic game. Religious narratives are publicly articulated and become debatable

material not only by secular groups but also by those who, being religious, do not agree with some aspects of the official doctrine.

Although a religion in the public represents a more powerful and legitimized organization, it is also forced to become a more democratic one, allowing, whether voluntary or not, debates and disagreements.<sup>25</sup> This possibility becomes crucial when considering the quasimonopolistic status of the Catholic Church in Latin America and its authoritarian internal functioning. The Catholic Church, although appearing as a homogeneous and centralized organization, has important 'internal' differences and opposite theological standpoints. A strong secularized position would force those 'theological' debates out of the public,<sup>26</sup> coinciding, ironically, with the most conservative sectors within the church that have instructed these theological disputes to be kept private and out of public debates.<sup>27</sup> In a way, secularization of the public sphere is functional to the more conservative religious sectors aiming to avoid open debates about its official doctrine and to resolve those disagreements by internal 'non-democratic' logic. If secularization historically emerged to avoid bloody interreligious wars, now secularization is, in some ways, covering intradenominational disagreements; disagreements that could be crucial in propelling religious changes.

Although counterintuitive, I would like to hypothesize that to revert patriarchalism and heteronormativity, sustained among others by the Catholic Church, it is better to allow religious languages to be publicly articulated and debated. If we reduce public debates to 'secularized' languages and justifications we are reducing the potentialities of public debates. The Catholic Church has shown that to secularize a religious language is not

a problem when sustaining patriarchy and heteronormativity and that a secularized public sphere prevents internal disagreements from being publicly articulated. Although it sounds paradoxical, while it is important to reinforce the secularization of the state through strengthening church separation and avoiding religious discourses as part of legal regulations it is also necessary to desecularize the public sphere allowing those same discourses to circulate; to out religion from the assigned private sphere. In a context where the big majority of the population identifies as catholic, the public circulation, beyond the wall of the church, of alternative theologies debating the official doctrine has enormous potentialities for a democratization of gender and sexuality conceptualizations. People still speak and inhabit religious languages, so while secularizing those languages is a possible path, the public existence of religious discourses countering homophobia or patriarchalism could be an even more revolutionary alternative.

Theological de(re)constructions of the official Catholic doctrine,<sup>28</sup> many times overseen by 'secular' progressive approaches, are powerful elements for any kind of theorizing about gender and sexuality in the Latin American contexts. First, they show that the contemporary church's position towards abortion and same-sex sexuality has not always been the same, revealing the temporality of doctrinal elements.<sup>29</sup> At the same time, these alternative theologies break the assumption of 'a unique' catholic doctrine demonstrating the existence of important fractures and different ways of being catholic. Second, these theological debates reshape key social institutions, such as the family, with an incredible potentiality that, for example, not only breaks with heterosexuality but also uses the model of gay sexual communities as a

normative model for contemporary families.<sup>30</sup> If we consider that important secular sectors of the gay/lesbian movements have quickly accommodated to the 'traditional' definition of family, including same-sex desire, just as another possibility but without confronting the institution of marriage itself, some of these theological debates, although religious, reshape contemporary understanding of the family in more radical ways. Thirdly, the strong influence of liberation theology in Latin America produced that considerations about gender and sexuality are being done in close connection with economic exclusion. In this sense, different type of oppressions, such as poverty, woman or sexual minorities, appear interconnected. Finally, theological debates are eroding a key argument of the official church: that the process of secularization is to blame for the increased lack of 'morality' in contemporary societies as a result of feminist positions and homosexuality. These theologies while reinforcing a religious discourse at the same time make it compatible with homodesire and feminist conceptions of the body.

### Catholics For a Free Choice: genderized souls

*...to understand that the bishops did not speak for Catholics and that Catholics could and did support the right to choose*

(CFFC President Frances Kissling)

The existence, at the level of civil society, of religious organizations aiming to confront and change patriarchy and heteronormativity in religious official doctrines is not a new phenomenon.<sup>31</sup> Contrary to more antagonistic views, these religious communities function as 'free social spaces' for certain marginalized groups, such as women and homosexuals,

to get together and organize in demanding for recognition and equality, not only within the denomination but also within society at large.<sup>32</sup> Specifically within the Catholic Church there are several pro-change groups<sup>33</sup> - such as Dignity, Women's Ordination Conference, Association for the Rights of Catholics within the Church, Catholics Speak out, and Catholics For a Free Choice - aiming to redefine some aspects of the catholic doctrine while affirming their identification as Catholics.

Catholics For a Free Choice (CFFC) is a very interesting case for illuminating the potentialities of these groups when combating gender and sexuality inequalities. CFFC is an independent, non-profit organization engaged in education and advocacy on issues of gender equality, women rights and reproductive health. It was created in USA in 1973 to articulate a pro-choice catholic position and to offer an alternative voice to that of the hierarchy.<sup>34</sup> Following the trends toward transnationalization, both as a general phenomenon and specifically for the Catholic Church under John Paul II, CFFC, in 1987, chose a representative in Latin America and held a symposium for Latin American Catholic women. Due to this transnationalization, women with similar concerns in Latin America came to know CFFC activities and decided to create 'sister-organizations' in countries such as Mexico, Brazil, Bolivia, Argentina, Chile, Colombia, and Peru.<sup>35</sup>

CFFC provides public narratives where a catholic identity appears integrated with certain feminist standpoints such as abortion, reproductive rights and desire. CFFC retains the core identity of the Catholic Doctrine, though reinscribed with a different understanding of gender and sexuality, basing their integrative position on

counter-doctrinal theologian interpretations.<sup>36</sup> This integration, although contrary to the antagonism articulated by the Catholic Church and feminist and gay-lesbian movements, reflects a tendency followed by important sectors of the population who integrate, in multiples and creative ways, their religious identities with a more egalitarian conception of gender and sexuality.<sup>37</sup> Because power relations and pre-existing repertoires strongly shape individuals choices,<sup>38</sup> the role of CFFC publicly articulating an integrated narrative is crucial for people aiming to maintain their religious identity consistently with a more egalitarian definition of gender.

The mission of CFFC is not only to propose an integrative project between religious identity and feminist position, but also to articulate their proposal in an antagonistic way with the fundamentalism on gender and sexuality sustained by the official Catholic Church. In this sense, the different CFFCs have organized 'transnational' and 'national' campaigns confronting the Catholic Church and presenting counter-official Catholic alternatives. At a transnational level, CFFC is leading an international campaign to prevent the Vatican conserving its privileged status as a Non-member State Permanent Observer<sup>39</sup> forcing it to participate in the UN like all other religious organizations, i.e. nongovernmental organization. Another interesting public intervention is the first global campaign to end Catholic Bishop's ban on condoms. It involves the simultaneous publication, in different cities around the world, of denunciations against catholic bishop manifestations and lobbying against pro-condoms campaigns. At national levels, the existing CFFCs target the state favouring feminist or gay-lesbian rights and intervene on civil society, in particular popular sectors, with educational campaign about sexual health and reproductive rights.<sup>40</sup>

In summary, while CFFC integrates a catholic identity with a democratic definition of gender/sexuality maintains, at the same time, an antagonism with the Church fundamentalist position on those issues. Although these organizations claim a catholic identity and the right to substantiate it, they antagonize with the Church hierarchy in even more confrontational ways than secular sectors.

## Conclusions

Latin America presents a series of characteristics where the insistence on a strong secularization and privatization of religion could bring the missing of a central political cleavage for reversing heteronormativity and patriarchy. The majority of the population has a religious identity, contrary to the strong secularization *a la* Western Europe, but without a pluralist religious market *a la* USA. In Latin America, Catholicism has a quasimonopolistic position and, together with language, is a key element in considering the region as an 'imagined community'. People are not dropping their religious identities. So, to conceive gender and sexuality without considering its (dis) encounters with religious identities is to isolate dynamics that, in most cases, take place in an intertwined manner.

No doubts a more democratic understanding of gender and sexuality in Latin America would require a religious change. Although secularism is a political project with important potentialities in reducing gender/sexuality inequalities, the profusion of intradenominational debates would benefit from non-secularized ways of targeting those inequalities. The Catholic Church, in particular, is not a democratic organization, however, there are crucial disagreements that, though not reflected in the official doctrine, characterize the Church as

a pluralistic institution in spite of itself. To consider these disagreements as private is to restrict the potentialities they have in democratizing gender and sexuality not only within the Church but also in society at large. On the contrary, to publicize these internal debates can imply the publicization of alternative narratives to the official Doctrine; narratives that integrate religious beliefs with less oppressive definitions of gender and sexuality; narratives democratizing Catholicism through bypassing its authoritarian leadership. Religion should not be considered the 'constitutive outside' of a democratic definition of gender and sexuality. The 'constitutive outside' of any democracy attempt favouring gender and sexuality should be the Church fundamentalist positions and secularization is not necessarily the only way to combat them; on the contrary, a forced secularization can be a fruitful arena in preserving the status-quo. There is also religious resistance; resistance that subverts fundamentalist conceptions while retaining the religious narratives. Disarming the antagonism between the religious and the secular would allow important alliances between different sectors confronting the fundamentalist positions of the Catholic Church toward gender and sexuality in more successful manners.

Finally, although paradoxical, I consider that from a normative standpoint a post-secular definition of the public aims to reinforce secularism as a politico/ideological possibility. The quasi-paradigmatic role of secularization theory becomes, in a sense, an emptying of secularization as an ideological position and as a political alternative. The assumed existence of secularism as the only legitimized voice for the public sphere has frozen the need to consider it as 'another' possibility in need of discussion,

elaboration and confrontation. A post-secular understanding of the public does not mean the disappearance of secularization as an option; on the contrary, secularism becomes another alternative and, as such, in need of re-politicization. Secularized theorizing about gender and sexuality is a necessary dynamic element because, not corseted by any specific religious doctrine, has more analytical and political potentialities. If we 'de-sacralize' secularism and accept it as another alternative in the public realm,<sup>41</sup> secularism would stop being a pre-given and would be reestablished as a political program. Ironically, a post-secular understanding of the public would attribute even more importance to secularism as a public discourse.

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## Endnotes

<sup>1</sup> Also included in authors such as Habermas. For a critique of a liberal and Habermasian conception of the public sphere see Fraser, N. (1992), 'Rethinking the Public Sphere: A contribution to the Critique of Actually Existing Democracy', and Benhabib, S. (1992), 'Models of Public Space: Hannah Arendt, the Liberal Tradition, and Jürgen Habermas', both in *Habermas and the Public Sphere*, C. Calhoun, Cambridge, London, the MIT Press.

<sup>2</sup> When I refer to gender/sexuality inequalities I am considering Fraser's neo-Weberian approach of misrecognition as status subordination, in the sense that certain communities are "prevented from participating as a peer in social life" (Fraser, N. (1997), 'Rethinking the Public Sphere', *Justice Interruptus: Critical reflections on the 'postsocialist' condition*, N. Fraser, New York and London, Routledge). The institutionalization of these social and cultural norms has different levels of formality, from more juridified (codification) to more informal social practices at the level of civil society. I also agree with Fraser that although it is possible to analytically distinguish misrecognition as a particular type of injustice, it is intrinsically connected to class inequalities. See Fraser's concept of bivalent community.

- <sup>3</sup> Although there are many ways of presenting the kind of misrecognition suffered by homosexual persons, I prefer the term heteronormativity, as a sense of rightness associated to heterosexuality. Specifically, it has been defined as "the constitution of practices that everywhere disperses heterosexual privilege as a tacit but central organizing index of social membership" (Berlant, L. and M. Warner (1998), 'Sex in Public', *Critical Inquiry* 24(2)).
- <sup>4</sup> This paper has been produced with a fellowship by the Transregional Center for Democratic Studies. I would like to thank Elzbieta Matynia, Timo Lyra, Codrina Rada and Karolina Szmagałska. Also Jose Casanova for valuable comments.
- <sup>5</sup> This can be observed in some of the classic concepts within sociology, such as rationalization (Berger, P. L. (1967), *The sacred canopy: Elements of a sociological theory of religion*, Garden City, NJ, Doubleday) or the disenchantment of the world (Weber) or individualization (Bellah, R. N., R. Madsen, W. M. Sullivan, A. Swidler, and S. M. Tipton (1985), *Habits of the heart: Individualism and commitment in American life*, Berkeley, University of California Press) or Durkheim's secular "civil religion."
- <sup>6</sup> Religion is the "major cultural reinforcer of modern industrial patriarchy" (Briggs, S. (1987), *Women and religion. Analyzing gender: A handbook of social science research*, B. B. Hess and M. M. Ferree, Beverly Hills, Sage: 408). For a summary of different denominations (Christian and non-Christian) toward homosexuality see: <http://www.religioustolerance.org/>. For a general literature review of the ways in which Catholic Church, doctrine and popular religion (specifically *marianismo*) perpetuate women's subordination in Latin America see Drogus, C. A. (1997), *Women, Religion, and Social Change in Brazil's Popular Church*, University of Notre Dame Press, and Goldsmit, S. and E. Sweeney (1988), 'The Church and Latin American Women in their struggle for equality and justice', *Thought* 63(249): 176-88.
- <sup>7</sup> Religiosity, in this context, refers to the strength of religious beliefs that empirically can be measured of many different ways, from service attendance to how important are religious beliefs in one's life. In general, the analysis confirm that the stronger the religious beliefs the stronger the rejection of abortion and homosexuality.
- <sup>8</sup> Vaggione, J. M. (1998), 'Some reflections about Argentine Homosexual Community. Civil Society, Public Spheres and Homophobia'; and Woodrum, E. and B. Davison (1992), 'Reexamination of Religious influence on abortion attitudes', *Review of Religious Research* 33(3): 229. It must be noted that there are analysis showing that although these associations exist it has reduced its significance in the last twenty years (Petersen, L. R. and G. V. Donnerwerth (1998), 'Religion and declining support for traditional beliefs about gender roles and homosexual rights', *Sociology of Religion* 59(4): 353-373).
- <sup>9</sup> There are many civil society organizations 'defending' the religious principles against feminism and gay and lesbian movements. Among them, Catholic League for Religious and Civil Right (see Dillon, M. (1999), *Catholic Identity: Balancing Reason, Faith, and Power*, Cambridge, Cambridge University Press; Weaver, M. J. and S. Appleby, Eds. (1995), *Being right: Conservative Catholics in America*, Bloomington, Indiana University Press); Catholic United for the Faith (see Sullivan, J. (1995), *Catholics United for the Faith: Dissent and the Laity. Conservative Catholics in America*, M. J. Weaver and S. Appleby. Bloomington, Indiana University Press: 107-137); Women for Faith and Family (Hitchcock, H. H. (1995), 'Women for faith and family: Catholic Women Affirming Catholic Teaching', *Being Right: Conservative Catholics in America*, M. J. Weaver and S. Appleby, Bloomington, Indiana University Press). For relationship between the state, the Catholic Church and pro-life groups in the Argentinean case, see Gutiérrez, M. A., Mónica Gogna, et al. (1998), 'Hacia nuevas formas de relación entre la sociedad civil y el Estado: la experiencia de Mujeres Autoconvocadas para Decidir en Libertad (Argentina)', *Saude reproductiva na América latina e no Caribe: Temas e problemas*, E. D. Bilac and M. I. B. d. Rocha. Brazil, PROLAP, ABEP e NEPO/JUNICAMP.
- <sup>10</sup> Together with some Muslim countries. See Sabom, D. (1999), 'The Feminist attack on religion: How gender justice is shaking down religion at the UN,' *World and I* 14(6): 318.
- <sup>11</sup> It is possible to understand the relationship between the Church and feminist and gay and lesbian movements in the logic proposed by Mouffe, influenced by Schmitt, of the we/them relationship (Mouffe, C. (1993), *The return of the Political*, New York, London, Verso). These movements articulated their conception of gender and sexuality distinguishing them from the proposed by religious doctrines (the constitutive outside). A similar logic can be observed when organized religions articulate their traditional family defense against feminist and gay-lesbian movements.
- <sup>12</sup> The Journal *Sociology of Religion* dedicates a whole number to discuss the 'health' of secularization thesis (Volume 60 # 3). It is possible to find two extreme positions: post and neo secularists according to how much they retain or reject the secularist thesis. I am in agreement with those authors affirming that while secularization should not be completely rejected some of its aspects need to be refashioned (Casanova, J. (1994), *Public Religions in the Modern World*, Chicago and London, The University of Chicago Press; Connolly, W. E. (1999), *Why I am not a secularist*, Minneapolis, University of Minnesota Press).
- <sup>13</sup> In Latin America, even the increase of religious pluralism has been associated with a strengthening of the Catholic Church (Gill, A. (1999), 'The Struggle to be soul provider: Catholic Responses to Protestant growth in Latin America', *Latin American Religion in Motion*, C. Smith and J. Prokopy, New York and London, Routledge: 18).
- <sup>14</sup> The percentage of people without religious beliefs has not increased importantly between 1900-1980 (Parker, C. (1996), *Otra Logica en América Latina: Religion Popular y Modernización Capitalista*, Mexico, Fondo de Cultura Económica). According to him there are 0.7% of atheists and 4.0% of non-believers in Latin America. It is interesting to note that these percentages are not associated with urbanization, industrialization or level of education in the countries (Parker, op.cit. 99). Specifically in Argentina,

Gallup reported the existence of 4% of atheists; 12% non-religious people; 83% religious from which 84% are Catholics, see [www.gallup.com.ar](http://www.gallup.com.ar)

<sup>15</sup> However, the Catholic Church in Argentina was a close ally of the military regime (Mignone, E. (1986), *Iglesia y Dictadura. El papel de la Iglesia a la luz de sus relaciones con el regimen military*, Buenos Aires, Ediciones del Pensamiento Nacional; Burdick, M. (1995), *For God and the Fatherland. Religion and Politics in Argentina*, Albany, State University of New York).

<sup>16</sup> In 2001, CIMA carried out a comparative study of 15 Latin American countries concluding that the Catholic Church is the most trusted institution (71% of surveyed people has confidence in the Catholic Church). For a summary of the research see [www.gallup.com.ar](http://www.gallup.com.ar)

<sup>17</sup> Let me exemplify with two main demands: abortion and same-sex marriage. To reduce opposition to abortion to the role played by the Catholic Church is only to understand part of the phenomenon. It is correct that many people oppose pro-abortion legislation based on their religious beliefs, but there is also an important percentage of people basing their opposition to abortion on 'secularized' values, such as the right of unborn child. Even more, the existing legislation justifying the prohibition of abortion in Latin America uses a complete secular language. In a similar way we can consider the gay/lesbian fights for same-sex marriages. Although Christian doctrines have a key role in opposing this possibility, it cannot be forgotten that a set of secularized values, guaranteed by the State, do also resist the possibility of same-sex marriages arguing the risk of societal disintegration.

<sup>18</sup> I base this distinction on Casanova, op.cit.

<sup>19</sup> Many constitutions in Latin America incorporated a special status for the Catholic Church, either as an 'official religion' or requiring the president to be Catholics. However constitutional amendments are reducing the special status of the Catholics Church tuning the legal system with a more open religious market. Also religious languages are used, in judicial decisions, to justify the rejection of women or gay/lesbian rights.

<sup>20</sup> See Casanova, op.cit. and Wood, J. R. (1999), 'Public Religion Vis-à-Vis the Prophetic Role of Religion', *The power of religious publics. Staking claims in American Society*, W. H. Swatos Jr. and J. K. Wellman Jr., Westport, Praeger.

<sup>21</sup> These types of analyses are in the line of Tocquevillian analyses. Foley, M. and B. Edwards (1996), 'The Paradox of Civil Society', *Journal of Democracy* 7(3): 38-52; Bellah et al, op.cit. For Latin America see Levine, D. and D. Stoll (1997), 'Bridging the Gap between Empowerment and Power in Latin America', *Transnational Religion and Fading States*, S. Hoerber Rudolph and J. Piscaroty, Boulder, Westview. For an alternative account of these phenomena, using the concept of public sphere of civil society see Casanova, op.cit.

<sup>22</sup> See Levine, D. (1992), *Popular Voices in Latin American Catholicism*, Princeton, Princeton University Press.

<sup>23</sup> The increase of economic exclusions in Latin America, the most unequal region in the world, has reinforced the strong presence of the Catholic Church vis-à-vis the critical situation of the state and political society. The state has lost its welfare and interventionist features reducing its capacity to articulate an alternative to neo-liberal policies. The political society, on the one hand, is characterized by an extreme crisis of legitimacy that generated a void in representation and produced that the Church ranked as the only institution with a certain level of legitimacy among the population, together with mass media.

<sup>24</sup> See Casanova, op.cit. for a detailed analysis of these processes.

<sup>25</sup> *ibid.*

<sup>26</sup> Although secularism and liberalism are closely connected they are distinguishable (Connolly, op.cit: 10). Habermas also has a 'secularized' conception of the public; according to Schussler Fiorenza, F. [(1992), 'Introduction: A critical Reception for a Practical Public Theology', *Habermas, modernity and public theology*, F. Schussler Fiorenza and D. Browning, New York, Crossroad] he does not envision theology as communicative and as capable of mutually critical dialogue.

<sup>27</sup> "catholic theologians...are to be faithful to the Magisterium of the Church as authentic interpreter of Sacred Scripture and Sacred Tradition" (Revised Code of Canon Law by John Paul II in 1983; Canon 812). See also the Vatican's Instruction on the Ecclesial Vocation of the Theologian (1990) "theologians should avoid turning to the mass media." See Dillon, op.cit. for a summary of these documents.

<sup>28</sup> Either Catholic or of other denominations.

<sup>29</sup> There are also historical accounts, such as Boswell (1980), showing how early medieval Christians did not regulate homosexual behaviour; on the contrary, they celebrated same sex unions (Boswell, 1994). Furthermore, the church doctrine toward abortion has not been stable (Connelly, 1977).

<sup>30</sup> Rudy, K. (1997), *Sex and the Church: Gender, Homosexuality and the Transformation of Christian Ethics*, Boston, Beacon Press, for example, uses a model of gay sexuality as a way of reformulating the contemporary Christian concept of family.

<sup>31</sup> Since the 60s and 70s, firstly in USA and later in Latin American, several groups and organizations emerged very much influenced by feminism and gay-lesbian movements.

<sup>32</sup> These groups can either be part of an existing religious denomination -such as Integrity in the Episcopal Church; Lutheran Concerned or Good news in Evangelical Churches or constitute new denominations. Metropolitan Community Churches are an example of this. They were created, particularly, to serve the 'spiritual' needs of gay/lesbian feeling of expulsion from other denominations. Greeley, A. M. (1997), 'Coleman revisited: religious structures as a source of social capital', *American Behavioural Scientist* 40(5): 587-565; Warner, R. S. (1995), 'The Metropolitan Community Churches and the gay agenda: the power of

pentecostalism and essentialism,' *Religion and the Social Order* 5: 81-108; Wood, J. R. and J. P. Bloch (1995), 'The role of the Church Assemblies in Building a Civil Society: The case of the United Methodist General Conference's debate on Homosexuality', *Sociology of Religion* 56(2): 121-136. For Latin American there are some studies showing the role of the Catholic Church in triggering the emergence of women's movements (Alvarez, S. (1990), 'Women's participation in the Brazilian People's Church: A critical appraisal', *Feminist Studies* 16(2)).

<sup>33</sup> See Dillon, op.cit. for a detailed analysis of some of these pro-change groups.

<sup>34</sup> Precisely, one of the most effective campaigns was a full page advertisement in The New York Times asserting that "a Diversity of Opinions Regarding Abortion Exists Among Committed Catholics."

<sup>35</sup> The existing organizations in Latin American, known as "Catolicas por el Derecho a Decidir", although present important similarities with CFFC are autonomous institutions nucleated by a Latin American network.

<sup>36</sup> Theologians such as Mary Hunt, Rosemary Radford Ruether and Daniel Maguiere (Dillon, op.cit.).

<sup>37</sup> D'Antonio, W. (1994), 'Autonomy and democracy in an autocratic organization: The case of the Roman Catholic Church', *Sociology of Religion* 55: 379-396; Yip, A. K. T. (1997), 'Dare to differ: gay and lesbian Catholics' assessment of official Catholic positions on sexuality', *Sociology of Religion* 58(2): 165-181; Thumma, S. (1991), 'Negotiating a religious identity: The case of the gay evangelical', *Sociological Analysis* 52: 333-347.

<sup>38</sup> In this respect I agree with the many authors indicating that although it is important to recognize the centrality of discourses and narratives it is also crucial to connect them with agency (see, as an example, Somers, M. A. and G. D. Gibson (1994), 'Reclaiming the Epistemological "Other": Narrative and the Social Constitution of Identity,' *Social Theory and the Politics of Identity*, C. Calhoun, Oxford, UK; Cambridge, Mass, Blackwell).

<sup>39</sup> This is an exceptional situation because no other religion has this peculiar status: they usually participate as non-governmental organizations.

<sup>40</sup> This situation is more crucial in Latin American countries where the Catholic Church is the most powerful religion organization and has an important and pervasive influence.

<sup>41</sup> See Connolly, op.cit. for a thorough debate about the potentialities of considering secularism just another possibility in the public sphere.



## Abstract

This paper argues that the reason why the state became central to Islamism was not because Islam, unlike other religions, supposedly fails to distinguish between religion and state. Rather it was because of the impact of early twentieth century socio-political formations. The paper bases its arguments on an examination of the views of Islamist ideologue and founder of the Jamaat-e-Islami in India, Abut ala Maududi.

The vast literature on political Islam predominantly offers the following explanation for centrality of 'state' in the discourse of Islamists: the state is pivotal to Islamism because, unlike other religions, Islam (as a faith) does not make a distinction between religion and state. Put differently, the argument asserts that since it fuses religion and politics, the idea of a state naturally flows from the very character of Islam. In Ernest Gellner's view, Islam has a lack in so far as, in contradistinction to Christianity, it failed to enact a separation between religion and politics. So pervasive is this argument that it invariably informs the writings of scholars such as Louis Dumont, Bernard Lewis, Bassam Tibi, Montgomery Watt, and Myron Weiner. Perhaps as a reaction to this, some scholars have taken the pain to demonstrate the opposite. Egyptian Ali Abd al-Raziq and Said al-Ashmawy, as well as the Indian theologian Wahiddudin Khan, for instance, contend that Islam **does** distinguish religion from state and that the latter is not important to it as a faith. On the face of it, both these positions look radically antagonistic. However, a closer scrutiny shows their basic similarity: both arguments parade a theological logic. In different ways, the proponents of both positions quote, *inter alia*, Qur'an and hadith to prove their respective arguments.

In this article, I call into question the validity of the theological approach to the issue of state and Islamism. I argue instead that the reason why the state became central to Islamism was not because Islam theologically entailed it. Rather it did so because of the configuration of the early twentieth century socio-political formations under which the state as an institution had acquired an unprecedented role in expanding its realm of action and scope of its effect. Since Islamism was a

response to the modern state formation with its far-reaching consequences it was only logical that the state became the centre of its discourse. Thus it was not due to Islamic theology that the state became central to Islamism; on the contrary, it was the unusual expansion of the early twentieth century state and its imprint on almost every domain of life that drove Islamists to make the state central to theology. To substantiate my argument, I will discuss the writings of Abut Ala Maududi (1903-79). Arguably, he is the foremost ideologue of Islamism. Founder of the Jamaat-e-Islami in India, Maududi's appeal has crossed the frontiers of India to influence Islamist movements in the Arab world, prominent amongst whom is Egypt's Muslim Brotherhood and its ideologue, Sayyid Qutb. Here I will show how Maududi's theoretical elaboration about Islam being synonymous with the state was enmeshed in and a direct product of the political-electoral matrix of colonial India.

### The modern state

As is well documented, the medieval European state governed mostly by not governing. That is to say, seldom did it interfere in most affairs of its subjects. Its main interest, then, was to extract levies. Its administrative scope was also far less limited. The modern state, by contrast, developed a more penetrative scope. Because of print media, transportation links and other innovations, it assumed what Giddens calls "heightened administrative power"<sup>1</sup> and thus went beyond mere extracting taxes to impact mundane life. Around the 16th century or so, observes Foucault, there was a "veritable explosion of the art of governing"<sup>2</sup> in Europe as a result of which state acquired the pastoral power manifest in its regulation of every facet of life, including the intimate zones of sexuality and care. It would be wrong to say

that the Indian colonial state had a similar pastoral power. But its administrative scope was surely more vast and far-reaching than that of its predecessor, the Mughal state. According to the political theorist, Sudipta Kaviraj, the pre-modern Indian state was of marginal significance to everyday life. It was barely interested in altering socio-religious order. "The state, far from being the force which created ... or changed this order," he argues, "was itself subject to its control."<sup>3</sup> In contrast, the role of colonial state was unusually far reaching. It played such an interventionist role in religion, law, education, census, language, and so on that it directly affected everyday life.<sup>4</sup>

Given its centrality, all social movements in the 19<sup>th</sup> century and later pertained to the role of the state even if their target were non-state actors. The anti-colonial movement, spearheaded by the Indian National Congress (hereafter Congress) under M. K. Gandhi's able leadership, was the largest. From the early twentieth century, its main goal became *swaraj*, self-rule. Clearly, self-rule was essentially about the state. It was in such a context that Maududi, still a teenager, appeared as a journalist on the scene. Initially, he was a devoted Congressman. He wrote laudatory biographies of Gandhi and Pundit Madanmohan Malaviya, a Congress revivalist leader who he called 'sailor of India's boat. 'In 1920, Maududi, believing in its mission for a secular, religiously composite, and free India, became an editor of *Muslim*, a newspaper published by the Jamiatul Ulema-e-Hind, an organization of ulema, and ally of the Congress. However, Maududi soon grew disenchanted with the Congress, which he believed favoured Hindus at the cost of Muslims.

## From communalism to Islamism

In 1928, Maududi left Delhi for Hyderabad, capital of the Muslim princely state of the Nizams. There he devoted himself to studying Islam. Worried as he was about the decline of Muslim power, he offered a blueprint to the Nizams to revitalize it. It called for overhauling the education system and propagating a 'pure' Islam. To his dismay, the Nizams showed no interest in it. In 1932, he launched an Urdu journal, *Tarjumanul Koran* as a part of his own plan.

While busy with his studies, the elections of 1937 took Maududi by storm. Consequently, he moved first to communalism and finally to Islamism. Under the Government of India Act of 1935 introduced by the colonial state, elections to form provincial governments were held. The contest was mainly between the Congress and the Muslim League, a party of landed magnates who demanded a separate Muslim state, Pakistan. As such the League rejected the Congress' claim to represent Muslims. Yet, It lost the elections. The Congress clinched victory to form provincial Ministries. It was then that Maududi turned *Tarjuman* into a weapon against the Congress. He equated the policy of the Ministries (1937-39) with heralding a 'Hindu Raj.' He accused them of imposing Hindu culture on Muslim students in schools: schools were named Vidya Mandir (literally temple), which "smelled of Hindu religion." Muslim students were forced to wear the *dhoti* (a lower garment worn mostly by Hindu men) and sing the anti-Islamic Sanskrit anthem *vande matram*; while the curriculum elided or misrepresented Islam and unduly highlighted Hinduism. Maududi saw evidence of 'Hindu Raj' in the marginalization of Urdu as well. Clearly, Maududi's allegations pertained to the role of state - a role the pre-colonial state barely had.

After the elections of 1937, both Maududi and the League thus opposed the Congress. This did not make them friends, however. Actually, as the possibility of Pakistan's creation intensified so did Maududi's critique of the League. He criticized it for the absence of a Shari'a state from its agenda. In the late 1930s, the whole national politics revolved around the issue of state: the League demanded a separate Muslim state; the Congress attempted to avert it by having a secular state of united India; and the Indian Communist movement's agenda was to secure a socialist state. In a con-text where 'state' was the reigning vocabulary of politics, Maududi advanced his own, a Shari'a state. From this standpoint, he found the League un-Islamic. For him, there was no difference between the Congress and the League as both desired a secular state. He described the League as a "party of pagans," because its leaders did not know even elementary Islam. Nor did they quote, even mistakenly, the Qur'an in their meetings. Since the League had no agenda for a Shari'a state, Maududi declared that future Pakistan would be "*na-Pakistan*," a profane land. He even called it an "infidelic state of Muslims." It was for this reason that in 1941, he founded Jamaat-e-Islami as an alternative to both the Congress and the League. The Jamaat's Constitution described its goal as the establishment of *hukumat-e-ilahiya*, 'Islamic State.'

## Theology of state, state of theology

To Maududi's amazement, there were only a few enthusiasts for *hukumat-e-ilahiya*. As a party of reputed ulema, the Jamiatul Ulama-e-Hind believed in a secular, composite India and did not regard 'state' as essential to Islam. Given the wholesale rejection of his ideology, Maududi realized that Muslims, in general, and ulema, in particular, would rally around him only if he proved, through the

Qur'an and hadith, why the state was basic to Islam. A radically new theology of the state was on the anvil.

It is not as if Maududi was oblivious to the all-encompassing nature of the modern state. In March 1938, he wrote in *Tarjuman*, "Now [the state] also decides what to wear or what not to wear ... what to teach your kids ... what language and script you adopt.... So, the state hasn't left untouched from its ultimate intervention even most peripheral is-sues of life." Not only did Maududi fully comprehend the nature of the modern state, his views also reflect a critique of the policies of provincial Ministries on issues of dress, language, curriculum, and religion. Considering 19<sup>th</sup> century approaches to understanding the state outdated, he remarked in the same issue: "The state is beginning to acquire the same status that God has in religion." Given the extremely interventionist role of the modern state and the manner in which it impinged on the daily lives of Muslims, he equated Islam with state and accordingly interpreted the Qur'an.

The bible of Maududi's political theology is the tract *Four Fundamental Concepts of the Koran* (1979),<sup>5</sup> where he argued that to know the "authentic objective" of the Qur'an it is crucial to grasp the "real and total" meaning of the four Quranic words: *ilah* (Allah), *rabb* (Lord), *ibadat* (worship) and *deen* (religion). He claimed that soon after the revelation, their real meaning was lost.

Maududi considered 'Allah' the most important word. His exposition on its meaning is premised on a distinction between the 'metaphysical' and 'worldly political' life which together constitute an organic whole. To be a Muslim is to worship Allah alone not just on the meta-physical plane but also

in political life because He is the master of both. Accordingly, Maududi contended that Allah must also be the "Ruler, Dictator (*aamir*), and Legislator" of the political domain.<sup>6</sup> Consequently, if someone claimed to be the ruler of a country his claim would be equivalent to a claim to be God on the metaphysical plane. Thus, to share political power with someone who disregards the laws of Allah, he declared, would be polytheism in the same sense as someone who worships an idol rather than God.<sup>7</sup> Elaborating on the meaning of *rabb*, a cognate term for Allah, he wrote that it was "synonymous with sovereignty, *sultani*."<sup>8</sup> Since he regarded sovereignty as basically political, he argued that Allah is also a "political *rabb*."<sup>9</sup> To believe in Allah is to un-questionably obey His laws, Shari'a, in the political realm. Thus *taghoot*, another Qur'anic word, does not just mean Satan or idol. It means a political order not based on Allah's sovereignty. He chided the ulema for reducing the meaning of *taghoot* to a literal idol. For Maududi, the Qur'anic injunction to worship Allah and shun *taghoot* meant fighting for a Shari'a state and rejecting all forms of non-Islamic polity.

In Maududi's formulation, like Allah, worship, also meant obeying the ultimate political authority. He lamented that Muslims had limited its meaning to worshiping Allah in metaphysical life alone and banished Him from their political life.<sup>10</sup> He furthermore equated rituals like prayer to military training and considered them as tools to achieve the goal of Islamic state, "prayer, fasting ... provide preparation and training for the assumption of just power."<sup>11</sup> Likewise, Maududi interpreted *deen*, religion, politically, "The word of the contemporary age, the state, has ... approximated [the meaning of *deen*]."<sup>12</sup> Elsewhere, he wrote, "in reality, the word *deen* approximately has the same meaning

which the word state has in the contemporary age.”<sup>13</sup> Many other theorizations of Maududi also echo the spirit of modern politics; for instance, the conceptualization of Islam as a movement and Muslims as a party. Interestingly, he introduced such innovative theorizations in the name of reclaiming ‘pure’ Islam.

## Conclusion

The aim of this article has been to rethink the dynamics of state and Islamism. To this end, I have demonstrated that the reason why the state became foundational to Islamism was not due to Islamic theology that presumably fused religion and politics. Drawing on the writings and politics of Maududi, I have instead argued that it became basic to the Jamaat-e-Islami because of the expansion and unusual reach of the colonial Indian state and the ways in which it crucially impacted everyday life. Not surprisingly, Maududi interpreted the Qur’anic words - Allah, worship and religion - to mean state. The study of theology is important; far more important however are the political dynamics in which theology unfolds, wins, or loses salience.

## Acknowledgements

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## Endnotes

- <sup>1</sup> Anthony Giddens, *The Nation-State and Violence* (Cambridge, 1985), 256; also see Talal Asad, ‘Europe against Islam: Islam in Europe’ *The Muslim World*, no. 2 (1997): 183-95.
- <sup>2</sup> Michael Foucault, ‘What is Critique?’ in *What is Enlightenment?* ed. James Schmidt (Berkeley, 1996), 383; and ‘Afterward: The Subject and Power’, in Hubert L. Dreyfus and Paul Rabinow, *Michael Foucault: Beyond Structuralism and Hermeneutics* (Chicago, 1985).
- <sup>3</sup> Kaviraj, ‘The Modern State in India’, in *Politics and the State in India*, ed. Zoya Hasan (Delhi: 1999), 40.

<sup>4</sup> Peter Van der Veer, ‘The Ruined Center: Religion and Mass Politics in India’, *Journal of International Affairs* 1 (1996) :254-77.

<sup>5</sup> Maududi, *Koran ki Chaar Bunyadi Istelohen* (Delhi, 1979[1941]).

<sup>6</sup> *Ibid.*, 28.

<sup>7</sup> *Ibid.*, 29.

<sup>8</sup> *Ibid.*, 79.

<sup>9</sup> *Ibid.*, 73.

<sup>10</sup> *Ibid.*, 81-98.

<sup>11</sup> Maududi, *Let Us be Muslims* (Delhi, 1983 [1940]), 291.

<sup>12</sup> Maududi, *Koran*, 108.

<sup>13</sup> *Tarjuman*, February 1941, 13.



# Secularism as an alternative to fundamentalisms: Questions for feminists

## Abstract

These are edited excerpts from a panel and open discussion organized by Women Living Under Muslim Laws at the AWID Forum held in Bangkok in September 2005. The panelists were Soheib Bencheikh, the mufti of Marseilles; Vahida Nainar from the Women's Initiative for Gender Justice; and Dr. Vivienne Wee from City University in Hong Kong.

## Introduction

### WLUML

This is a panel being run by Women Living Under Muslim Laws but we hope to take this issue far beyond issues facing Muslim communities and countries. The issue of secularisms and fundamentalisms is an issue facing all of us in very varied contexts. We hope this will kick off a fruitful discussion among feminists.

As an international network, Women Under Muslim Laws has long discussed the issue of fundamentalisms: we have debated the meaning of the term 'fundamentalisms'; we've analyzed the warning signs of fundamentalisms. When we say that we reject fundamentalisms and the political manipulation of culture and religion, the question then arises: what is the alternative that we are proposing?

It seems that as feminists it is time that we discuss amongst ourselves more clearly what do we mean by secularism. That's why, in fact, in our original title we've used the word 'secularisms' in the plural because maybe we have many different concepts and ideas of secularism. In many languages there is no word for 'secularism' and in some instances the word used is understood to mean 'anti-religion'. Some, like Soheib Bencheikh, prefer to use the term '*laïcité*' because they feel 'secularism' does not accurately convey the particular French approach.

This morning, in the Forum plenary, it was very rightly pointed out that secularism is only a beginning, a first step beyond which many other steps would follow. We first need to discuss what do we mean by that first step? As feminists do we have a shared understanding of the many models of secularism, of different models appropriate

in different contexts? What are the different models? When we say the state must be neutral, how is that neutrality manifested in concrete forms? I hope we can begin to raise the questions but time may be too short to come up with concrete answers.

## Presentations by Panelists<sup>1</sup>

### Vahida Nainar

In India, we have a constitution written in English and we are called a 'Secular Democratic Republic' i.e. as understood in the English sense rather than the French 'laïcité'. How we use it in our conversations and in our writings has different meanings. Before I go into what it means in India, I would like to list how we use the term 'secularism'.

Secularism at an individual, personal level could mean 'religion means nothing to me.' It could mean 'religion is not important to me, it's not big deal.' Or it could mean 'religion does not matter much in my life.' Or that 'religion is a deeply personal matter to me.' When a state opts for secularism as part of its national definition or identity again it means different things. One is, of course, separation of state and religion. I think that's what Soheib was talking about. It means that the state does not have a religion, that religion is not a consideration in governance - it is not important in the administration of a country. Or that religion is irrelevant or has no place in state matters or that all religions have equal status.

But in India, the majority religion is interpreted as a more tolerant religion and therefore secular. So it has come to mean different things in India when we refer to secularism.

Similarly, the term 'fundamentalisms' is used to mean different things. One is the political use of religion or culture. Another

is a fanatical or extreme interpretation of religion or a conservative interpretation of religion and religious practices. Or indeed it is used to mean the dogmatic following of a certain religion or religious practices, or in fact any 'isms'. I have heard people talk about economic fundamentalisms. If you are not wavering on your attitude about something, they say you're fundamentalist about it. In our normal conversation it is used in all of these various ways. When we use these terms therefore, we need to be mindful that they can mean any of these things.

When secularism is debated and chosen as part of the state's self-definition, it is often out of a desire to keep religion away or at best accommodated. It is to dilute the influence of religion in state matters. It emerged during the Enlightenment period to escape the tyranny of religion particularly when religion as an influence, begins to be irrational, unreasonable and not in tune with the modern times. When religion is seen as a concern in state matters, then secularism comes up as a solution. But has this 'secularism solution' worked? Let's look at India as a case study.

India is, constitutionally, a secular democratic republic. Secularism is meant and interpreted as equal respect for all religions. This interpretation is not in the constitution but in many academic writings, jurisprudence and explanations by political leaders since the formation of the constitution. The constitution further guarantees freedom to propagate, preach and practice religion. It is this constitutional article that is used to justify the interpretation of secularism to mean equal respect for all religions.

How has this interpretation of secularism manifested itself over the last 50 odd years in India? The state supports, finances and

manages religious institutions. There are temples that are managed and run by state governments. The state provides subsidies for religious purposes like for Muslims to go perform pilgrimage to Mecca. Moreover, religious institutions establish and run schools, places of worship, cultural centers and other similar kind of institutions as a matter of constitutional right. While there are civil laws, commercial laws, criminal laws that have nothing to do with religion, when it comes to personal laws and family laws you have the Muslim personal law that is applicable to Muslims in India. You have the Hindu Code Bill for Hindus and Christians are governed by legislations such as the Indian Marriages and Divorce Act and the Succession and Inheritance Act. In addition, in secular India, state events are performed with religious ceremonies. If the state inaugurates a development project, it is often accompanied by a religious ceremony. These are the ways the interpretation and practice of secularism manifests itself at various levels of state institutions in India.

With all the above in place, how is India 'secular' or what aspect of religion is prohibited? It is prohibited to use religion for political purposes. This is not stated in the constitution but described as one of the rules of the Election Commission. It is prohibited seeking wars on religions grounds. There are criminal provisions that prohibit incitement of people using religious arguments i.e. hate speeches are criminalized. There is legislation to outlaw religious or cultural practices like dowry or *sati*. There is legislation passed using 'secular' means, i.e. the state legislative machinery, to regulate religious laws. The passing of the Dissolution of Muslim Marriages Act, 1939 or the Muslim Women Protection (on Divorce) Act, 1986 are other examples of such legislation.

It is these formulations, interpretations and practices of secularism in the past 50 years that has led us to where we are today. There is an increased and successful use of religion to capture power. We had a very right-wing Hindu political party that held power in central government for five to seven years. Not in power any more, they remain a significant national political party. They are the political wing of a Hindu Right group, the Rashtriya Swayam Sevak (RSS), a group that speaks about Hindu supremacy and of establishing a Hindu nation. There is increasing infiltration by members of right-wing forces in state institutions including the judiciary to varying degrees and at various levels in different states in India. There is a steady decline in the representation of members of minorities in state institutions. There is an increase in the incidence of persecutions of minorities in India, particularly the Muslim and Christian minorities. There is an increasing influence of religion in women's lives. The state decidedly encourages religious identity. There is really no freedom to be a-religious or to be an atheist. Most of the state forms have a column that ask for your religion and if you leave it blank; it will be filled in for you on the basis of your name. This kind of religious practice is obviously problematic in women's lives.

Thus India, despite being 'secular', has all of the above experiences - so where is the problem and what is the problem? Is the formulation of secularism in India the problem? Is the way we understand secularism a problem? Would it have been better if secularism meant the 'total separation of state from religion' as the French concept of *laïcité* suggests? Was this meaning even a possibility given the context in which India became independent, i.e. the context of partition on the basis of religion? Because at

the time of independence, it was important to reassure the minorities that they would have religious freedom and their institutions and their language and their religion would be protected in secular India. Is it possible now to revert to that interpretation, given that all religion and religious practices can be found in every nook and corner of the country? Or is the problem a result of a disconnect between secularism as a national identity and at an individual level. Is the way secularism manifests as national identity a reflection of the sum effect of the practice of secularism or lack thereof at an individual level? Is it that the more secular people are in their practice, the more secular the state or vice versa? Because the way state and state institutions practice secularism actually depends on its people who form these institutions and not the state which is an abstract entity. If the state opts for secularism as its national identity and its people are searching their religious identity at individual level or when state opts for a religious national identity and the people feel the need to practice secularisms, there is a disconnect leading to a lot of the above kind of questions and issues.

In the struggle of women right's, secularism is often seen as an alternative. One thing we have experienced is we certainly have problems with religious laws but we also have to struggle in non-religious matters. We still have to struggle for equal pay and against domestic violence. The question really is whether secularism is a solution to patriarchy? Patriarchy is based on religion but secularism in that sense is not divorce from patriarchy. Secularism as a notion evolved in a patriarchal society. So the question "Is secularism an alternative to patriarchy?" is also something that needs to be discussed. Perhaps there is a need to have, as feminists, our own definition and

understanding of secularism. Clearly as it was pointed out there isn't one. These are the questions I'm hoping we will have an opportunity to discuss.

### Open discussion

Following presentations by the three panelists, the floor was opened to participants.

#### Speaker from the floor

I want to throw in some other ideas. My understanding of secularism historically, is that it was a reform movement within religion in Holland. People were being told that religion means you should only be concerned about the hereafter and they revolted and said, No we want to know what is happening here and now; we want accountability here. That is just my understanding of where this term comes from. I want to emphasize two things. One is that if the *laïcité* form of secularism does not exist in our cultures, you have a problem. Those of you from Muslim backgrounds in our parts of the world know it is usually translated as 'without religion', 'anti-religion' which it is not so but that's the way it is translated. I also wanted to emphasize that patriarchy is system, it's a structure of power, and religion is a faith but it is also an ideology. You cannot compare a discourse with structures of power. When we are talking about secularisms and so-called fundamentalisms, we have to understand they are used by patriarchy and structures, but they are two different kinds of things we are trying to address.

#### Speaker from the floor

I found the three contributions very interesting, especially, though, as regards an ideological construct - secularism as being also an ideological construct - which presupposes clear dividing-lines between the religious and the secular. And I'd like us

to have a bit of discussion specifically on that. What's becoming clear at the moment is how difficult it is to draw these dividing-lines between the religious and the secular. The construction of this dichotomy is also connected to the failure of secularization, or secularism as an ideology - not just as an analytical theory, but as an ideology. To take Latin America as an example, and especially the role of the Catholic Church, I'd like to tell you briefly about an instance in which strategic secularism was actually used by the religious sectors. The Church articulates not just a religious discourse but also a rational discourse. Sexual and reproductive rights are opposed not just by invoking the Bible, the supernatural, but also by means of a discourse based on scientific research into the shortcomings of the condom as a contraceptive method, and by a legal discourse, on natural law. It's not just religious players who articulate the Church's position: starting in the 1970s in the United States, and now throughout Latin America, a growing number of non-governmental organisations have been using civil society as the most democratic post-authoritarian-government arena not just for putting forward their own demands, their religious position, but also for getting the religious agenda to predominate in state structures by influencing policy. To finish up, the point I want to make with this example of strategic secularism is simply that the toughest challenge is precisely to redefine the dividing-lines between the religious and the secular, and I think that our constructs, the constructs influenced by secularism as an ideological construct, must be varied in order to counter the reactionary politicization by religious discourses in contemporary societies and democracies.

#### **Speaker from the floor**

I'm from Bangladesh. From the Indian

experience, it is not clear in the constitution what the state means by 'secularism'. Same happens to other neighboring countries like Bangladesh: when it was liberated it was secular country but now it is not. I suggest that those who are working on these issues clarify what is secularism to us as the women's movement. They also need to mobilize other women's organizations so we can push the individual state either to include secularism where is not included, or also to revise and clarify more in the constitution. Then we can globalize that issue.

#### **Speaker from the floor**

I come from Mexico, and I'd like to say that since the 19<sup>th</sup> century our country has been a secular one. It used to be a religious - Catholic - country, but since the 19<sup>th</sup> century it has been secular. The state and education are secular. But what has been happening lately? These days we have a right-wing government, one that has allowed the Church to interfere again in political issues, and this has caused secularism to become diluted in many private universities and schools - it's not like this in the state, but in many schools secularism is becoming diluted. Why? Because the Church is currently insinuating itself into a lot of things in our country. At the same time, other women were talking about what patriarchy used to be like... Patriarchy exists in Mexico. We call it 'machismo': men are very macho, because they are the patriarchy - as our friend here was saying, the patriarch is the boss, and today machismo is still very strong in our countries in Latin America.

#### **Speaker from the floor**

I'm from the Philippines where we have several religions and Islam being a minority religion but getting the headlines, as you probably know: fundamentalisms and all that. I would like to agree with the lady from

Mexico where our state is secular but the Church gets involved and gets in the way of development. It promotes policies or does not promote for example birth control. There is a situation where secularism is the condition but it evaporates into the air because of certain interests. Individuals have a better chance of developing themselves under a democratic regime and that's why I think we can use politics here by bringing a democratic form wherever we are.

### **Speaker from the floor**

There are three points that troubling me that I'd like to offer for consideration. In the context of England in the political moment one of the ways the term 'secular' is being use is to equate it to being without any values at all. That's immensely troubling for people who want to assert values such as feminism or socialism or even humanism and who wants to assert these values based on religion, which is different from a particular interpretation of religion. The second thing, again in the UK context, with the kind of political terrorism that is very much a focus of public policy, 'secularism' doesn't allow us to distinguish between people on the one hand from religious communities who are dissidents, and on the other hand those who follow forms of political religion. With the [London July 2005] bombing and things, there is a lot of discomfort within Islamic and other communities about how to be Islamic but not be fundamentalist. The third thing was, is it right to suggest that women are always losers in the sense that there are trade offs? There are many dimensions of equality. If you start to kind of breaking it down in terms of choice, entitlements, you could have equalities in some of them and trade-offs others. You could perhaps trade choice for status and opportunities and so on.

### **Speaker from the floor**

I think the fundamental issue is the need for equality from a human rights perspective. Human rights is about dignity. It is about decency. It's about trying to deal with the leverage that is also assumed by how human rights is invested by culture and religion. Also because human rights was founded by liberalism and by the divide between religion and state so it is invested with all sorts of acknowledgment of how one is more equal than another. So much so that it took women until 1993 to have coined a phrase that is so simple: that women's rights are human rights. Simply that connection obligates us to see equality is, in fact, the cornerstone.

### **Speaker from the floor**

I'm from an organization based in London, where we deal with fundamentalism and have been problematizing secularism for years and years. We have been both promoting secularism, but also realizing that every existing form of secularism is deeply unsatisfactory, deeply inegalitarian and protects religious rights in ways that they shouldn't be protecting while also failing to protect minorities and the lives of people.

The equality argument is an interesting one but it is not sufficient because of course fundamentalists have used equality arguments precisely to argue for forms of protection for religion that are protection of the religious Right. In England, the issue that Women Against Fundamentalisms dealt with was precisely that we don't live in a secular state. It is a Christian state, It protects forms of Christianity that is protecting the Church of England in Britain and that does have an impact on what people can say or not say about Jesus Christ. There is a huge amount of self-censorship in Britain. There is also a civil society that will protest against

it. It is in this context that the Muslim Right fundamentalists have argued for protection of their so-called rights and the right to have blasphemy provisions. That is not protection as a person but protection of religious thought. I think that's the confusion in England.

British society isn't secularized and the government has failed to make the distinction between political forms of religion and religious beliefs and practices. The distinction it has made is between what they call 'extremism' i.e. people bombing us in Britain and what they call 'moderation' which is people promoting the bombing of people abroad.

The issue of secularism for Women Against Fundamentalisms was that it provides a state structure - no doubt one which will always be imperfect and it will always have to be struggled with and struggled around in a democratic framework. We don't have any final answers because we don't know where the lines should be drawn between belief, practice, protection of people as minorities, the freedom to exit religion as well to join them; in many societies the right to convert is a major issue.

I would like to end with one practical example of what having a secular civil society space within a secular state structure can offer. I say this to all my Indian friends and sisters here because we have really criticized ourselves - both those of us that live in the diaspora and those of us who live in India - for our multiple and collective failures to stop the rise of fascism in India and to stop the attacks on religious minorities.

Even under a fascist regime, the Supreme Court acted. Also, in the diaspora we clearly identified these as political forces,

and there have been two major reports by diaspora communities in America and in Britain detailing the money that the Hindu fascist groups were raising, the ways in which they made themselves respectable, the connections with fascist movements in India and the connection with killing. It's very difficult to actually prove that the money given in good faith for relief work following the earthquake in Gujarat was actually being used to promote a fascist project. But we did identify these processes and made a lot noise about them. The communities that came together to work on this includes different kinds of people: Hindus, some who have converted to Buddhism; Christian evangelicals because Christians have been murdered by Hindu fascists in India; Indian Muslims also Pakistanis because it is a South Asian group; and a whole bunch of us from various religious backgrounds, as well as atheists, communists, and other sorts of people without beliefs. It is 50 years of deeply flawed, deeply implicated Indian secularism that has allowed that space, not only in India for civil society in India to act but civil society groups abroad to act.

### **Speaker from the floor**

I wonder about these 'isms' that we are talking and the words we are using here. We heard recently about multiculturalism in Canada and also in France the issue of multiculturalism within the secular state came out. Where do multiculturalisms stand within the secular state and the issue of secularism? Are Pakistanis, Iranians, women in Canada facing problems *vis a vis* the state of Canada? Also in France, our sisters from Africa face problems, how do we address these issues?

### **Speaker from the floor**

Let's not forget the creation of identities, the

legitimization of political Islam is completely linked with international politics. People who were completely anti-democratic, anti-women, absolute fascists, were promoted as the Mujahideen and suddenly religiosity and linking politics with religion was given legitimacy internationally. There is a complicity between international forces and national forces which I think we have to understand and make clear to ourselves if we are ever to grapple with it.

When I think about the rise of what I call fundamentalist groups or movements, maybe we need to ask what about failure of the progressive movements? Why did they fail? It's not that they did not exist. If we have not managed to resist then we need to do that analysis if we are going to be able to understand where we are going. When we look at secularism, the alternative, and we have discussed that secularism is not enough, to me the question is whether there is any space for dissent, including outside a religiously framed discourse. Equally it is important to have space for dissent within religious viewpoints which do not fit the stereotype. It is often forgotten when we are talking about dissent that there is a monopolization of identity.

Finally there is the question of morality. I was in the U.S. earlier this year; every debate is being formulated around questions of morality. The media is completely dominated by this. I think this is all quite deliberate. Poverty is not immoral. The fact that people are dying everywhere that is not immoral. What it is immoral is a woman saying I have the right to decide what I want to do with my body. One has to be looking at where the discourse is coming from. We have the example of Canada where we have this idea of multiculturalism that is leading to quite

racist and exclusive kind of development. On the other hand, we have France which does not accept that there is any such a thing as minorities and therefore there is no information on racial groups, etc. So those groups become marginalized. Neither of these systems of governance seems to have worked. To me these are questions to the future to expand beyond secular and non-secular, secular and fundamentalism, but questions of governance, systems of interaction in governance which we have not examined.

### **Speaker from the floor**

Religions did not fall from heaven the way they are today. Religions are almost 80 per cent culture; over the hundreds of years in which they developed, they changed, answering the problems of the day. So when we speak of Islam, or any religion as it is today it is the cultural aspect that is very strong, even stronger than sometimes the divine aspect. That's one fact we cannot forget.

You can't lump all religions together. I'm afraid I'm ashamed to say I'm a Buddhist and that in Buddhism we don't believe in a God; there is not concept for instance of blasphemy, whereas in the Mosaic religions you have a concept of blasphemy and of God. It is extremely difficult to argue beyond the certain point because you suddenly find yourselves face to face with God: He said and you said... so who is going to win? This is something we have to regard where there is absolutism in religion which denies any further argumentation or thought. I think this differentiation has to be made because this is one of the roots of the kind of totalitarianism in religion itself. I think we can look at religion as something progressive, in the sense of changing with the times as it has done always, as something that is historical, a

cultural movement. At the beginning there were many feminine religions that suddenly, at a certain point, became masculine religions but every now and again they pop up like the Virgin Mary Here is the point where feminists have to focus: we are living in the world of male cultures and male religions.

### **Vivienne Wee**

Let me first respond to the comment about how patriarchy and religion might be two different kinds of things and how we bring them together. I don't think that there is any religion or discourse that is not embedded in a context of power relations. There is no power structure that doesn't use a discourse to legitimate itself. Discourse and power structures are intrinsically linked. However, we are also looking at contesting discourses; when trying to grapple with all the different 'isms' it is very important that we are non-essentialist, that we don't say that religion is this and nothing else and secularism is this and nothing else.

In response to the question about the clarification of what secularism means so that we know what to push for, the trouble is that the moment you nail it, it is dead; it's like nailing a butterfly. We have to be holistic about it. In other words, we have to look at all the links that come together, including for example international power structures, the geo-politics that legitimated Mujahideen and so on. How these contesting discourses link with fundamentalism is precisely that they are attempts to end the contesting discourses. Fundamentalisms are an attempt to end the discussion. They want no debate. Fundamentalism is essentialist and that's why we cannot be essentialists. What is it that we want? To give the form A, B, C, D, E is in fact very dangerous because if we do that we end up being fundamentalists about

fundamentalisms.

To the question about how we justify secular values: it's important to realize that we should justify them as ends in themselves; human rights, equalities are ends in themselves and not just means to some other ends. On the point of equality, it is all a question of claims to power, claims to resources. This whole business of equality of the collective versus the equality of individuals is a very fundamental question that we need to address because many of these collective units - whether they are called nations, or communities, or minorities or whatever it is - are basically unequal in their internal constitution. They are unequal to their individual members yet claim equality collectively and that's actually the problem of multiculturalism. I'm in agreement with our friend from the Philippines who said basically when we look at human rights and democracy, we are looking at rights of individuals. This is what is under attack: the equality of individuals. Individuals are now being claimed as members of conflicting constituencies. The power holders or the power seekers of these constituencies are using all the various tools at their disposal to claim additions of these individual members and asking them to give up their right to define their own identities.

I understand how people who are struggling not to be claimed by various constituencies feel that they need a space which you may call 'secular' where there is room for heterodoxy, dissent and so on but to call that space 'secular' might also be a bit problematic. We have many secular states that are problematic. Indonesia is a secular state, but that did not stop Indonesia from killing 2 million of its own citizens. Cambodia was a secular state, but more than 2 million maybe 3, 4 million. Nazi Germany was also secular

and killed 6 million. We cannot maintain our hopes in secularism without looking at the content of that secularism because it is very dangerous to do so. We must protect the equality of individuals. If we give up that one, we cannot talk about gender equality.

### **Vahida Nainar**

The objective of my talk and how I understood the objective of the panel, was to problematized 'secularism,' in a sense to showcase one more model of secularism. While Soheib feels the solution really is to understand secularism as understood by the French term '*laïcité*', I presented the secularism we have in India and to say that it has not quite worked. But that does not mean to say that secularism as practiced in India is irrelevant or that it needs to be thrown out because it has not worked. I raised the question in my presentation of whether it was at all possible when India became independent to have secularism to mean separation of state and religion. I felt that it was not possible at that time, I think it's even more impossible now for that kind of understanding of secularism to be implemented in India.

I certainly believe that there is a widespread practice of and indeed belief in secularism, however understood, among people or civil society; particularly the women's groups, human rights groups both in India and in the diaspora. The fact that the [Hindu Right] Bhartiya Janata Party was not voted back to power at the general elections in May 2004 is a testimony to that fact. So secularism in India, however flawed, provided the space to differ and to challenge. The questions I raised in my presentation were really about the contents of secularism, what it is and what it means.

### **Speaker from the floor**

My point was to stress the ideological element within secularism. Until we do not recognize that secularism behaves as an ideology and distorts some of the elements that are behind that ideology, just like religious discourse, until we do not criticize our own progressive movement and ourselves, I don't think that secularism as an ideology will be an effective one. We need to reflect on the limitations of secularism as an ideology, to follow how secularism originated, why it originated and with which power struggle it originated.

### **WLUML**

As feminists we want to act. When we look at the diverse contexts that we face, what are the choices and what are the structures and what are the discourses and what are languages, and what are the terms that we can use which will advance our work? Is secularism part of that? Are there different understandings that we can access? Can we use secularism in some contexts to mean some things and therefore to advance our work? Is it not useful in other contexts? How can we, perhaps, recapture this term and make it useful for ourselves in all our diversities and recognize that perhaps we do have diversities on the particularly understanding of this term. It seems to me as feminists we keep tip-toeing around this term very neatly but we don't get into the meat of what is your understanding and what's my understanding and can we find common ground on the questions of feminisms.

I have two questions from the two contexts in which my activism has been based. The first is Pakistan. I ask myself how can I talk about secular spaces in a context where the state declares itself to be religious and where currently all identity is very determined by reference to religion. How do I protect

those people who wish to dissent - whether as a non-believer or as a believer that sees things differently from the mainstream? Then I come to the UK where at the moment those in Britain associated with the extreme Right Jamat-i-Islami, a fundamentalist party, are saying it is a secular party. What they mean is "We'll deal with our own people, so let's separate the religions"; everybody has to be identified by a religion, you're automatically presumed to be of a religion because of the certain name that you bear or certain clothing that you wear or your migrant background. That party is now claiming the right to govern a certain section of society that is defined in religious terms. That is seen as 'secularism' in Britain. When the state talks to a community, it talks to the men, the conservative men, and women have been very excluded from that process of multiculturalism.

### **Speaker from the floor**

I work on some of these issues. Especially for Malaysia this is a crucial time. Malaysia's former Prime Minister declared Malaysia an Islamic State. We are into this whole issue of multiculturalism. I'm not Malaysian, I'm Singaporean but I work in Malaysia. There is now important work about the synergy and interdependence of religion, secularism and human rights. Human rights engaging with secularism and engaging with religion, and religion engaging with secularism and human rights. There would be state neutrality in the sense of that it's always negotiable. Who negotiates that with the state would be the population. I'm offering this particular theory to Malaysia because we are not sure whether Malaysia is a secular or religious state: it is a mixture of both. I don't think such scholars can actually develop a beautiful picture of how this might work on abortion, on apostasy, how this might work elsewhere but it is a theory that I've tried to argue this

in the particular context of Malaysia. And the most important thing is to ask: from whose perspective are we looking? Is it the state? Or is it the community? Is it the oppressor? Is it women? Is it minorities? And then you work the three factors together.

### **Speaker from the floor**

A practical point is that we try and create secular spaces where we can't create secular states. And where the space is available, then we argue for a structure that does have some form of state-religion separation. It's not just about saying that X or Y country is not homogenous. I don't think any country is homogenous because even if it is a mono-religion country (which I'm not quite sure exists), people have heterodox beliefs within religions and non-religious beliefs. The right to exit or leave religion, the right to apostasy has to be protected. It is precisely in religious communities that apostasy is important because you can't blaspheme if you don't believe in religion at some point. It does not exist outside of religious communities. At the same time, while I completely agree that women's rights and equality will never be protected outside the concept of protection for the individual's rights, communities are collectively under attack in today's world as well. We have to deal with this notion of the collectivity under attack. This dual task faces us: how do we defend the rights of individuals within communities and the rights of communities under attack without thereby allowing a collection of individuals to use that space to then justify their religious intolerance and their control over their own communities and their intolerance towards others as well. That is a difficult problem. I think we can find our path through that in terms of the structures that we argue for and the laws and reforms that we argue for as well.

## WLUML

I'd like to pose a few more questions. I did promise that I had more questions than answers. When we talk of the complete separation of state and religion, we have some very practical issues to examine. Do we mean, in terms of the French model for example, that if private schools are permitted and they start teaching a religious element, then the state has no control whatsoever over the content of that private education? In Britain on the other hand, the state school syllabus for religious education and the section on Islam is determined by the extreme Right parties which are collaborating with the British government. So you have a problem either way. How do we resolve this? Do we say that separate of the state and religion means surrendering all rights to monitor?

I'd just like to summarize four points that seem to have come out of our discussions and we hope that some of us will join in to take this further.

- Governance seems to be key: the need to discuss state formations, ensure good governance and to look at the impact, especially gender impact, of whatever system of governance and state structures we have or want to opt for.
- Labels are problematic and we have seen that even labeling something can start to limit it.
- The actual ideological content of something is important, not just its label, and we need to see where we can maximize social justice.
- Globalization notwithstanding, how do we deal with difference in societies that have becoming increasingly complex, increasingly diverse? How do we respect

difference but not allow it to come the means of oppressing some of us within society?

## Endnotes

- <sup>1</sup> Contributions to the topic by Vivienne Wee and Soheib Bencheikh appear elsewhere in this Dossier.

## Abstract

In discussing the political struggles around attempts to introduce regressive reform of the Family Code in Senegal, this paper examines the relationship between the state and religion, modernity and democracy in an African country and the challenges this poses for freedom of speech and gender equality.

## Why bring Africa into the debate?

Current reflections on Islam and democracy focus on the Middle East, Islam in Europe, or Islam in the West. Many often forget the experiences of African countries. As far as democratic conquests are concerned, how can a country belonging to the Islamic *Umma* also ask for citizenship rights? How is this debate perceived in African countries? One way to look into the issue of Islam and democracy is to use lived experiences such as that of Nigeria's Safiya Hussain,<sup>1</sup> women's struggle for their rights, the media revolution, and democracy. Another way is to scrutinize how Islam perceives human rights. It is in this context that Islamic groups tried to impose a Personal Code Status to replace the Family Code adopted in 1972, in Senegal.

But how should we respond to the vital necessity of strengthening the democratic system in African countries and promoting true citizenship? One of the essential debates going on Africa today is whether we should build a republic before constructing a democratic system. Some increasingly argue that the 'democratic' machine can undermine the foundation of a fragile republic. In this respect, it is important to understand the significance of the separation of religion and state. Is Islam a religion that is compatible with such a philosophy of separation? What is the understanding that African Muslims have of their own religion?

This paper will attempt to grasp the main points of this debate through the case of Senegal, and will explore the parallels between governance structures within the political and religious orders. It will examine the extent to which democratization within religious institutions and communities has the potential to foster good citizenship and lies at the foundation of a democratic culture.

## The Senegalese model and its religious and political dimensions

The dichotomy between political Islam and a form of civil Islam promoting peace deserves to be analyzed in the case of Senegal. While political Islam aims at having the state under the control of religion, civil Islam tries to remove religious ideals and spirituality from the control of the state. There is a possibility to have a coexistence of these forms of Islam but one will necessary prevail over the other. The following factors are pertinent to analyze in the case of Senegal.

In Senegal, Islam was not propagated through jihad; local fighting involving Muslim figures such as Elhadj Omar and Ma Ba Diakhou could be understood as forms of resistance to colonization rather than a will to forcibly convert local people.

Senegal has a solid heritage in the field of citizenship, which must be preserved at all costs. For example, it will be extremely difficult to reverse the trend towards equality of rights between men and women. The incursion of religion in the field of politics would signify the failure of democratization and a will to instrumentalize religious leaders. In a period when the state and the Republic are in an unprecedented situation of weakness, it is highly tempting to turn religion into a source of power.

It is important to avoid having religious and political leaders exploit the despair of citizens who are victims of extreme material poverty and moral misery. However, religions have an essential role in the construction of nations through the inclusion of citizens. To date, Senegalese Islam has significantly contributed to homogenization of ethnic groups and sometimes of social categories, though it did not eliminate the caste system.

If Senegal wishes to remain a model of stability, political leaders must stop instrumentalizing religious leaders and religion must be confined to its role of being the conscience of politics. If one of the two leaves its field, in a precarious world where equilibrium is fragile, this may be fatal to the model. This is the reason why the separation of religion and state (which is not incompatible with Islam<sup>2</sup>) should be analyzed in relation to the history of countries and religions. Even though humans clearly need spirituality, this should not, in any case, prevent them from using reason to build a better world. It should be noted that '*kalam*' or reason has never been absent from the history of Islamic thought. Indeed the legacy of *ijtihad* demonstrates this, as well as the Mut'azalite thinking, which is mainly incarnated by Ibn Rushd after the Caliph al Ma'mum.

When observing daily realities, it becomes apparent that whoever wishes to destabilize Senegal could manipulate the local Muslim brotherhoods rather than religious differences.

Islam in Senegal is essentially based on brotherhoods and on the particular relationships each had with the administration even during the colonial era. Religious leaders have had a role in the education system, and have taken sometimes controversial political standpoints. The most notorious have been the difficult relationship between Cheikh Ahmed Tidjane Sy and the government of ex-President Senghor, the political *Ndigguel* (voting order) of the General Caliph of the Mourides, Abdou Lahad Mbacké in favour of the candidate Abdou Diouf during the 1998 presidential election, and the involvement of the Moustarchidines (religious group belonging to the Tidjanya sufi brotherhood) in the tragic events of February 1994.

In 1960 when Senegal became independent, it adopted the constitution of the Fifth French Republic, bureaucratic centralism, secularity, the freedom to create trade unions, and a legal system based on the Napoleonic Code with minor amendments. The first Article of the Constitution states that the Republic is secular, democratic and social. It guarantees equality for all citizens regardless of their origin, race, sex, and religion. It recognizes all religions.

The State's secular foundations are not fundamentally challenged, even if some interference between politics and religion does exist. It is not unusual to see politicians use, even manipulate, religion for election purposes or to defuse critical situations. As an example, Falilou Mbacké, then General Caliph of the Mourides played an important role in the resolution of the general strike in May 1968.

Senegal's religious authorities have a hold over their disciples. The requirements of a modern state and the need for some religious leaders to show and use their influence can create conflicts. That was the case when in 1996 the Supreme leader of the Mourides issued a decree ordering the closure of new many public schools in the area of Touba. Similar cases are the status of certain "holy" cities said to be free of any state control and the tax issue within these cities and the booming informal sector, etc. The state has to deal not only with prominent religious families but also with fundamentalist groups. The reformist movement in its discourse tried to challenge the secular foundations of the state. Accordingly, as soon as it was created, the Muslim Cultural Union (UCM) started talking about the establishment of the Islamic State or Shari'a, and criticizing the country's Islamic brotherhoods. From the

1970s onwards, the UCM ceased to be an independent Muslim reformist movement, but kept its reformist ideas.

In the past, some people tried to give a religious interpretation to the conflict of Casamance, southern Senegal. This was based on the fact that the leader of the Casamance rebellion, Father Diamacoune, is a Catholic priest, though he has been disapproved of by the Church hierarchy. Nevertheless, the question deserves to be examined whether Senegalese Catholics suffer from Islamic hegemony in the country. Senegalese Christians are among the elite and this historical legacy made it possible for a Senegalese Catholic, Leopold Sedar Senghor, to be elected the country's first president. The various heads of state after Senghor did not hesitate to 'exhibit' their non-Muslim spouses (especially President Diouf, whose wife, Elizabeth, was the link between the President and the Catholic community). In fact there has been a tendency for various political figures who wish to run for presidential office to marry Christian women or women who originally come from Christian families. To a certain extent, the Catholic Church acted as an electoral college and candidates who were labelled as tolerant reassured external partners.

However, the situation has changed significantly because of the pressures of the economic crisis affecting the country. The desire to win elections has also led some to conclude that only numbers are important, and Christians represent only a tiny percentage of the Senegalese population.

The growing influence of some of the Muslim religious brotherhoods questions the unwritten rule that took into account the influence of the Church and the Christian

community. There are several landmarks supporting this analysis:

- The interview of Archbishop Thiandoum of Dakar for *Jeune Afrique Magazine* in 1999, in which he invited a local political leader, Moustapha Niasse, to run as presidential candidate and the response of the ruling party that saw this as an interference. The involvement of the Church with calls for peaceful elections. Pre electoral periods have always been moments of Ecumenical dialogue in Senegal.
- The change of government in 2000 and the inclusion, of fewer - and less locally legitimate - Christians in the cabinet.
- The elimination of the separation of religion and state in the first draft of the Constitution in 2001.
- The exaggerated use of religious symbols by the Senegalese national team in the World soccer championship. This led to incidents and to the division of supporters.
- The close ties between the new political authorities and religious authorities in Touba that culminated in the nomination of the religious Caliph of Touba, a venerated figure, as party candidate for local elections in 2002. Though the nomination was cancelled after protests by disciples, the decision showed a will to identify the Muridiya brotherhood with the political party of the head of state. This was a major cause of concern for many Senegalese citizens.
- The lack of fairness in the media coverage of religious activities of the brotherhoods in the state-owned media.
- The greater visibility of religious activism in the media, especially in private radios, with the establishment of religious radio stations.

- The introduction of religious education in public schools - religious education that only covers Islam.
- Reference to the Holy Qur'an during the Prime Minister's policy statement at the National Assembly in 2003.

If Senegal is to grow prosperous and remain stable as a multi-religious country it is important to reinforce the fundamental principles of a republic and citizenship. The sensitive nature of religious issues commands caution and requires preserving the equilibrium in the relationships between the state and different religious communities.

This is why concepts such as the separation between state and religion, inherited from French history, and the idea of a republic, are fundamental. In this analysis, there is another axis that remains important: attempts to reform the Senegalese Family Code and the respect of public liberties.

### The Family Code at the centre of secularity debates

Under President Senghor, the first initiatives intended to change political life were sporadic but the state's preference for secularism was plain, and was clearly reaffirmed when developing the Family Code. The codification of a new law for the family started under the former President of the Council, Mamadou Dia (decree of April 12, 1961). In 1965, Senghor appointed another Committee of Options for the family code. This committee was tasked with unifying the different forms of laws, and ensuring the harmonious co-existence of laws originating from different sources (traditional, Shari'a, Napoleonic). After six years of work, the Family Code was presented to the Senegalese public in 1972. The main characteristics of the Code include: the unification of the law; the strong statement

of a secular society; and the recognition of the principles of individual rights; and the principle that all citizens are equal.

The Islamic Supreme Council strongly criticized the code. While the Code is relatively broadly applied in urban areas, it has remained totally ignored in rural areas due to the influence of religious leaders. For example, the General Caliph of the Mourides, Abdoul Ahad Mbacké, said the Code was null and void on the whole territory of Touba, where “God’s law is the only reference.” Criticizing the family code seems to have been the favourite hobby of Muslim fundamentalists. Cheikh Abdoulaye Dièye, leader of the FSD-BJ (a denominational party) never missed a chance to demand that the code be discarded.

There is currently a strong coalition of Islamic associations – the Islamic Committee for the Reform of the Family Code in Senegal, (CIRCOFS) – which is trying to impose a family code “inspired by Islam” that will enforce Shari’a, establish Muslim tribunals, and legalize repudiation. What are their arguments?

According to CIRCOFS and their supporters, the 1972 Family Code is a failure, and it is high time to replace it with a new Family Law inspired by the Islamic and cultural values of Senegalese Muslims and which “respects the freedom of conscience inscribed in the Constitution.”

Lawyer Babacar Niang, President of CIRCOFS, noted that, “Contrary to what many have said, the Family Code has never been accepted by our eminent Islamic leaders who condemned it unequivocally and rejected its implementation before and even after its promulgation.” He further writes that

when invited to give their views and make observations on the Family Code in 1972, “our eminent religious leaders, members of the High Islamic Council of Senegal, met several times to study the text and make a systematic critique, in order to define a common position.” It is this document, synthesizing the views of the various participants, that is the basis of the arguments developed by CIRCOFS.

“We have examined carefully... and we have noted a clear will to adopt new legislation that would be applied to Muslims, Christians, animists, and other people living in Senegal and that would abrogate all previous legal provisions. For us Muslims, we must reiterate that Islam has been governed for over 13 centuries by the Qur’an, the ultimate Constitution that has considered all possible situations in life and has omitted nothing, in marriage, divorce, succession and other social issues. Its prescriptions that are meant for all times are respected and applied in many parts of the world, without any changes. We are surprised to see now in Senegal that there is a desire to bring changes or “innovations” not to say contradictions, and this despite the fact that even the French colonizers had accepted the principle of a Muslim Code applicable to people of Islamic faith in special courts they had established. By virtue of the powers conferred on us as religious leaders, we must give clearly our position and hereby affirm solemnly our determination to reject categorically all measures, be they official that would be in contradiction with the sacred principles of our religion.”

Although CIRCOFS quoted the general reaction of the committee, it also mentions the views of individual religious leaders in order to ensure members of the various Muslim brotherhoods follow their leaders in supporting change of the Code.

Seydina Issa Laye, General Caliph of the Layene brotherhood based mainly in the area of Dakar and known for its egalitarian propensity, said that "... Islam is our code; none of our disciples will go to official jurisdictions for marriage, divorce, or inheritance cases." Serigne A. Lahad Mbacké, General Caliph of the Mouride brotherhood, had a similar attitude when he declared: "Touba will not be part of the code because God's law is a set of commandments and cannot be regulated by humans, no matter who they are: God does not make mistakes, men do." As for Abdoul Aziz Sy, the most politically hallmarked of all religious leaders, and main supporter of President Abdou Diouf's regime, he insisted on the fact that: "...the Code has nothing to do with Senegal because the legislator should not impose on citizens, concepts and rules that are not theirs, regulations that frustrate them in their Muslim impulse."

Where do Christians come in the picture? The response of CIRCOFS members is that in all democracies, the rule of the majority should prevail. In addition they say: "Christians and other non-Muslims will be ruled by a so-called exception law (exception to common law....) which is more adapted to their religious and philosophical beliefs."

Moreover, CIRCOFS equates the Family Code with family conflicts: "Actually, the district and regional courts which use French are the only jurisdictions dealing with Family Code-related issues." In the eyes of reformers, this situation is due to the fact that, having been trained in French schools, the political, administrative and other elite are influenced by alien values, whose "aspirations are in contradiction with the aspirations of the majority of the population, which is deep-rooted in its Islamic religious beliefs." Warning of anarchy, the CIRCOFS publicity said, "A

law rejected by citizens and which authorities try to impose on people is very dangerous."

To those who try to separate religion and politics and push religion into the sphere of private life, CIRCOFS warns: "Let those who say religion is a private issue, in an effort to prevent people - who are sovereign after God - from having a personal status code attuned to their religious beliefs, be reminded that if in French, 'religion' simply refers to the relationships between the human being and God or, as the *Robert Dictionary* defines it: "relationships with a superior being revered and recognized as such," for us the Wolof word *dine* encompasses both relationships with God and with other human beings. *Dine* for us is not a mere "private" issue, but something that rules private and public matters. Imposing on people, especially introducing in their families, a law that defies the rules (which are superior to all other laws made by deputies or parliament) set by religion i.e. by God or revealed by the Prophet, is a violation of people's constitutional right to freedom of conscience."

Moreover, CIRCOFS notes, the Family Code is essentially the legacy of the colonial experience. "The term secularity, which does not exist in the majority of European constitutions was simply imported from France and replicated in our constitution. Religion plays a major role in most European countries more than we are made to understand. France is the only country in Europe where there is no religious teaching in public schools. In Germany, Greece, Italy, Spain Denmark Sweden and Belgium, religious instruction is organized in public schools, and in many cases, for Muslim minorities living in there. There are even European countries like Germany where the Church receives an important amount of

money from State taxes. It is therefore clear that in those countries, religious and cultural traditions were taken into consideration when adopting family rights.”

It is true that the Code reform is the work of a group of activists and members of Islamic associations. However, the initiators want to use religious leaders’ influence in Senegalese society to undermine the secular foundations of the state and move towards the slow but sure establishment of Shari’a. “As a conclusion, we are determined to achieve our personal status code project with God’s blessing and the support of our eminent religious leaders once they approve it. We already convene all Senegalese Islamic associations, all people interested in the construction of a new Senegal that respects the religious values of this profoundly religious country, to mobilize and get actively involved in our efforts to get the personal status code finally adopted by the new regime’s government and parliament.”

What is the real problem with the Family Code? What does it contain that is contrary to the good practice of Islam, especially when it enables coexistence with other religions? Is the whole campaign simply a matter of promoting political Islam in Senegal? The CIRCOFS thinks the following provisions of the Code should be reformulated: bring back the possibility of repudiating a wife; suppress the “natural child’s” (born out of wedlock) right to inherit; and restore the father’s authority in place of “parental authority.” The result of this set of actions would be the re-establishment of the foundations of patriarchal authority in Senegal, but the ultimate goal is to seize power and create an Islamic State.

## Debating religion, modernity and democracy

In Senegal, it seems as if thinking, rigorous analysis and lucidity disturb certain people, especially those from prominent religious families who believe they are naturally vested with a monopoly of knowledge, including knowledge of Islam – to the extent that they do not need to use books. There is a difference between preaching and intellectual interpretation of the scriptures: religion is not simply theology; it is also history, anthropology, sociology, philosophy, etc. But strong oral traditions and the prevalence of radio magnifies the reach of preaching – rather than interpretation - in the country.

The following experiences would not be known without the revolution in the media that has occurred in countries like Senegal. This revolution however raises the issue of the proliferation of private FM radios. Are these radio stations instruments of liberation or a tool to indoctrinate the population and keep them subservient to ignorance? This question is justified by the reactions of many Senegalese listeners broadcast live on radio stations – as illustrated by a discussion on Islam.

For two weeks, Mr. Alioune Tine, Secretary General of the African Collective for Human Rights (RADDHO), Penda Mbow, a member of civil society, and Sidi Lamine Niasse, President of the board of directors of the Walfadjri media group, were subjected to scathing criticism for expressing their views during a radio program called *Diné ak Diamano* (Religion and Time) which was aired on 25 January 2002. What motivated those virulent attacks against them?

The story began with the creation by Niasse, as Director of Walfadjri FM Radio, of a

program called *Diné ak Diamano*. One of Niasse's ideas was for a dialogue between Senegalese scholars trained in western countries and those trained elsewhere. The purpose, as Ousmane Kane, Professor at the University of Saint Louis (now teaching at Columbia University), who use the expression of "Intellectuels non-europhones" was to find a space for mutual acceptance and appreciation between these two groups. This wish was however threatened by intolerant attitudes.

After the episode on "Islam and Human Rights", some listeners voiced their strong opposition to the views defended by scholars, and Sidi L. Niasse was accused of partiality in his handling of the debate. Critics said the program was only "good for hell because it was designed by the devil, the Fifth Column, etc.," and insults and threats were uttered. These were spiteful words indeed, but they could not question certainties based on intellectual rigour, especially the certainty that God does not delegate His power of judgment. If He had legatees, no human being would live on earth! Suffice it to remind that even the *Zindiq* (atheists) who lived under the Abbasids lived freely, yet historically those who suffered the greatest intolerance were the Hanbalites, the Sufis, and the Shiites. Was not Al Hallaj crucified in 922 and Ibn Arabi violently assaulted by Ibn Taymiyya after calling him names like *wali shaytan* (the devil's disciple)? It is understandable that sometimes people get excited by the various hardships of life but it should not mean going back to June 22, 1633, the day Galileo was condemned for stating that the world was round - as it indeed turned out to be.

To address the intersections of Islam, democracy and human rights in Senegal means going into the intricacy of the political

and religious debate with a particular focus on women. It also means raising the controversial issue of Islam and modernity, which is neither new nor specific to Senegal.

At the end of the 19th century, a reformist faction was born in certain Arab countries. Created in the aftermath of social and economic changes, and contacts with European civilization, that group allowed influential thinkers to rise up and try to adjust the teachings of Islam to the new demands of the era. The group then called for a return to the original Islam; a call later echoed by contemporary writers like Nawal el Saadawi who was well known for her progressive opinions. However, has 7th century Islam been able to find solutions to the multiple challenges facing modern Muslim societies in a world dominated by increasingly sophisticated technology? Even if a Muslim country like Pakistan has successfully jumped over many scientific hurdles, the problem of rights still remains a lingering issue in many Muslim-dominated countries. The issue of Islam and modernity revolves around a number of concerns such as: Islamic political philosophy through the debate on secularity and democracy; Islam versus liberalism and the problem of individual rights, particularly the status of women in a Muslim society; and, the need for a new exegesis of Holy Scriptures through *ijtihad* (personal interpretative effort).

The religious movement initiated by the Prophet Muhammad had no evident political substance. The Prophet's political activities, which were required by the growth of the Muslim community, started with the Hijra (Hegira) in 622. The agreements signed with the clans of Medina were part of the construction of a political entity. But can the "Medina Constitution", defended by the advocates of political Islam like Muhammad

Abduh, and Rachid Ridda, address the issues and preoccupations facing modern Muslim communities?

The essence of the pact focuses on the place of the clan in the Umma, the relationships between members, and mostly their cohesiveness when they are faced with bloodshed crimes, etc. However, the ideas defended by thinkers like Mawdudi (1903-1979), Shariati (1933-1977), and Sayyid Qutb (1906-1966) revolve around the essential vision, *al-islam din wa dawla*: Islam is both religion and State administration, thus political. What then, is the relationship between Islam and democracy?

This boils down to the issue of secularity. For fundamentalists, democracy is based on *shura*, i.e. discussion within the community of believers. It also involves referring to those who have the power “to tie and untie” (*dhawu-l-hal’ wal’ aqqi*), i.e. those who, after the disappearance of the Caliphs, had the religious knowledge and wisdom to discern true from false. Naturally, advocates of democracy do not share this point of view. Thus, in a country like Senegal where religious brotherhoods play a prominent role, will their followers continue to be seen as followers rather than citizens in times of elections for example? This takes us back to the issue of the *Ndigguel*, a voting order always followed by the majority of the disciples of a *marabout* (religious leader).

Senegalese society like other societies in the world has been undergoing profound changes. The economic and moral crises have pushed women to the forefront. Women are at the centre of the debate regarding modernity in Senegal. They ask for more access to education, a greater role in the decision-making process, and the full

implementation of the democratic option in our country. This momentum is seen as a threat by conservatives who try to stop it by stirring up sacred scriptures. How can women fight this conspiracy? They need to learn Qur’anic exegesis in order to find the arguments that advocate equal rights for men and women. An exegesis of the scriptures based in evolution is therefore necessary.

Great Muslim thinkers of the 20th century have developed an Islamic vision of human rights. Among them are Si Hamza Boubakeur, Ihsan Hamid al-Mafregy, Muhammad Hamidullah, Sinaceur, Ali Merad, Chadine, etc and Senegalese researchers like El Hadj Rawane Mbaye. With this in mind, it would be mistaken to think that Islam has nothing to do with human rights theories. Studies on this issue focus on three aspects. The first discusses the founding values or the source of the Islamic philosophy; what thinkers say about man’s identity, his situation in a divine economy, the meaning of his commitment. The second, the slow conquest or what constitutes the historical dossier of stakes involved; the outstanding points of the debate on religion and human rights; And the third, examines the current struggles or the dimension in real life; the prospect of the commitments; the meaning of the religious framework for the defence and development of human rights. In this area other topics are covered: the definition of man, the respect of human dignity, freedom in general, political and individual freedom, individual rights (to life, education, property, etc.).

## Conclusion

As this discussion has shown, Islam and modernity are not incompatible. Islam, with *ijtihad*, gives any Muslim the possibility to make a personal interpretation effort in order to grasp the changes taking place within

communities in time and space. Faith does not mean surrendering one's intelligence; on the contrary, Islam is a religion of learning. The evolution of the family, women's status, the relationships between Islam and politics, are all topics that need to be looked into.

In the debate on the Family Code reform, Senegalese Christians and women's associations are fighting for the same cause. They advocate for a stable state, for secularity and for the consolidation of citizenship. As we have seen, religion is a reality in democratic processes which can end up causing distortions in public life, in relationships between individuals, between religious communities and brotherhoods. Control of power relations are justified with reference to religion, which is also used to exclude women from this control of power.

In any attempt to search for a rebalancing of the statutes and positions in society, above all it is necessary to reinvent a new approach to Islam so as to define the scope of public space. Thus, human rights and secularism constitute 'spaces' for the liberation and emancipation of women. For them to achieve the ideals of peace and democracy, this presupposes that women have a good command of the evolution of the Islamic discourse, of how Shari'a has been elaborated and what Ijtihad is about.

## Acknowledgements

This paper is printed with permission from the author.

## Endnotes

<sup>1</sup> A divorcee, aged 30 at the time of the events at the end of January 2004, was convicted of adultery for having conceived a child outside of marriage. Under the application of Shari'a in the northern Nigerian State of Kano, she was to have been publicly stoned to death. Ultimately, following widespread mobilisation, she was acquitted in March 2002.

<sup>2</sup> Ali Abderraziq: *Islam et les fondements du pouvoir*, La Découverte, 1994 (originally published in 1925).

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## Abstract

This paper, derived from the post-apartheid experience in South Africa, distinguishes between a plurality of religions in any given country and state policies of religious pluralism. It proposes a framework for multi-religious interactions in post-conflict societies, based on pluralism, tolerance and secularism in public life.

## Introduction

South Africans have experienced a negative understanding of religious pluralism under apartheid, as well as a unique history of inter-religious solidarity in the struggle against apartheid. In recognition of this latter reality, the democratically elected ANC Government led by President Nelson Mandela committed itself to pursuing a public policy of genuine religious pluralism. In contradistinction to the apartheid regime's policy of separate development based on the homogenization of cultures and religions, and the privileging of Calvinistic Christianity, the new government adopted a policy of non-alignment to any religious tradition or denomination, but nevertheless welcomed active and constructive interaction with all religious traditions and institutions. As a democratic institution, the government acknowledged the critical role that religion had to play in society, and is prepared to listen to its prophetic voice.

How has this overtly religio-pluralistic state policy influenced and affected the quality of religious co-existence in post-apartheid South Africa? But more importantly, for the purposes of this paper, how has this historical context informed and influenced my own self-understanding, theological reflections and religious praxis?

## Religious plurality in South Africa

It might be useful to begin by presenting a brief statistical overview of the religious scene in South Africa. The figures we shall be introducing are derived from the first democratically supervised population census which was conducted in 1996.

Adherents of the different religions in South Africa:

|               |        |
|---------------|--------|
| Christians    | 66.40% |
| Hindus        | 1.74%  |
| Muslims       | 1.10%  |
| Jews          | 0.41%  |
| Buddhists     | 0.01%  |
| Confucians    | 0.02%  |
| Other beliefs | 0.13%  |
| No religion   | 31.00% |

From the above statistics it is clear that Christians are in an overwhelming majority. However, as many analysts have reminded us, there was no category for African Traditional Religionists in the census, and it is highly probable that many Africans who indicated they were Christians might well have chosen to identify themselves with African Religion if such a category existed (Mndende 1998:115). A complementary point is the fact that 34% of those that indicated they were Christians belonged to one or other of the over 4000 African Independent Churches (AICs). Protestant Churches accounted for 41% of Christians and Catholics 11.4% (Kritzinger 1998:4).

There are three critical points in relation to the question of religious pluralism that emerge from the above. Firstly, statistics were used in apartheid South Africa as an instrument of Christian hegemony and thus the denial of the existence of indigenous African belief systems. Secondly, from a cursory glance at the census figures, religious diversity - or plurality of religion - is an inescapable reality in South Africa. This however does not automatically imply religious pluralism. Facts and figures about different religions in a country refers to religious plurality, and should not be confused with the concept of religious pluralism, which relates to the quality of religious co-existence between the diverse

religions within a specific context. In other words, religious plurality informs us about cold statistics and religious demography, while religious pluralism presents us with a story of human interactions. It is this story which concerns us in this paper. Shockley (1988:140) succinctly captures the nuance between these two concepts in the following quote:

*“Religious pluralism must be distinguished from religious diversity, the reality and presence of a variety of types and forms of religious expressions. This is minimal religious pluralism. The essence of religious pluralism is not regalia but relationships. What is the relation of the content of the various faiths in a community? What is their common history, if any? What are their status and power relations? How do they relate to each other? What are some common humanity efforts that can be planned and worked on jointly?”*

Thirdly, in order to deal with diversity within a particular religion, it may be useful to nuance our concept of religious pluralism. There is a need for us to acknowledge not only the plurality of religious traditions that pervade our landscapes (what we may call extrinsic pluralism), but even more importantly, we need to incorporate pluralism into our very notion of a religious tradition (intrinsic pluralism).

### The challenge of intrinsic pluralism

No religious tradition likes to acknowledge diversity within its own ranks, more especially if it has to take place in the context of inter-religious dialogue. Applying this to the Islamic context, we need to understand that there is no (one) monolithic Islam in South

Africa, or for that matter elsewhere in the world but a number of diverse articulations or understandings of Islam, frequently locked in fierce rivalry in their claims to be the privileged, orthodox and authentic voice of Islam in South Africa.

Against this backdrop then, our presentation here should not be construed as the Islamic viewpoint on the complex topic of religious pluralism, but rather one particular perspective deriving its inspiration from the Islamic ethos. There may be many alternative Muslim viewpoints on the topic. All of this polyphony of voices need to be heard, if we are indeed serious about religious pluralism. At this juncture it may be expedient to explicate my own theological appreciation of the concept of religious pluralism, which I have already alluded to, has been profoundly influenced by the South African context.

### Theological foundations for religious pluralism

The foundations out of which an Islamic perspective on any topic should arise is nothing less than the authentic sources of Islam, the Qur'an and the traditions of the Prophet Muhammad (PBUH). Both the Qur'an and the Hadith embrace and affirm *ikhtilaf*, i.e. differences in belief, perspectives and viewpoints, as being natural and an essential part of the human condition. A denial of the right of others to hold beliefs and views which are different and incompatible to one's own is tantamount to a denial of Allah himself. In Surah Yunus (10), verse: 99, Allah, the Sublime, declares:

*"If your Lord had so desired, all the people on the earth would surely have come to believe, all of them; do you then think, that you could compel people to believe?"*

And again in Surah Hud (11), verse: 118, Allah, the Sublime, declares:

*"And had your Lord so willed, He could surely have made all human beings into one single community: but (He willed it otherwise, and so) they continue to hold divergent views."*

Both of these verses establish the principle of freedom of belief and thought in Islam. At the conclusion of the first verse, the Prophet Muhammad (PBUH) is himself reproved for transgressing this principle by being over-enthusiastic in convincing others with regard to the truth of Islam. Thus the Qur'an stresses that the differences in beliefs, views and ideas of humankind is not incidental and negative but represents an Allah-willed, basic factor of human existence.

The challenge which the principle of freedom of belief and thought in Islam holds for us is to develop clear ethics and find mechanisms to manage and deal with the differences of beliefs and theologies that exist. This is the challenge that religious pluralism holds for us. Let us briefly examine how this challenge has been met in post-apartheid South Africa.

### Religious pluralism and the post-apartheid democratic South African state

In the transition period leading up to the 1994 democratic elections religious leaders and organizations were engaged in a number of interfaith consultations and conferences aimed at defining a progressive relationship between organized religion and a democratic state. A number of probing questions occupied their minds. How should religion relate to public policy in a modern secularized society? Should they have no significant relationship at all and religion be privatized? Or is religion

so important that it should dominate public policy? Which of the competing religious discourses should be privileged by public policy formulators? And what are the political implications of such religious privileging? In the ensuing discussions the following typology of constitutional models were considered as possible options.

- 1) Theocracy, that is, a state wherein public policy is completely determined by one particular religious denomination.
- 2) A partly religious, partly secular state, with power sharing between it and a particular religious denomination, but public policy is dominated by the religious interpretations and moral standpoints of one particular religious denomination.
- 3) A secular state with interaction between the state and religious organizations, and religion is encouraged to play an important role in influencing public policy.
- 4) A secular state in which religious organizations have a tolerated, private sphere of action, but there is no overlapping or joint activity with the state, and little or no consideration given to religious standpoints in the formulation of public policy.
- 5) A secular, atheistic state in which religion is suppressed. (Albie Sachs 1991:39)

The third option, namely that of a secular democratic South African state, with active interaction between the state and all religious organizations, which not only have a constitutionally recognized sphere of autonomy, but collaborate with the state in tasks of mutual concern, was considered the most appropriate given South Africa's religious demography, and more importantly the strong influence of religion on the anti-

apartheid culture. The embracing of the third option was not done without an acute awareness of the polychrome perils it could and has to bring in its wake.

Undoubtedly the most crucial peril arising out of the third option for organized religion was that of religious co-optation or legitimization. We had in front of us the tragic example of the apartheid state's co-optation of the Dutch Reformed Church: such that the Nationalist Party was said to be the Dutch Reformed Church at prayer. The inter-religious movement needed to be careful of not falling into the same trap and becoming the African National Congress at prayer. Progressive religious organizations were under no illusions that there would be violations of human rights in a new South Africa and religious leaders would be obliged to maintain their historic role of being the moral conscience of our society, and raise their voices of protests against such violations of human dignity. This could however only effectively be achieved if religious organizations maintained their moral and spiritual integrity by not succumbing to the pressures and expediences of one or other political party, but maintained a position of positive neutrality vis-à-vis all political parties of the democratic South Africa.

Recognizing their responsibility as custodians of moral values, religious organizations had a duty to exhort and challenge the government whenever they perceived them to be failing in their political mandate. They also had a political right and obligation to censure and criticize them. At the same time they also had a responsibility to support and collaborate with the government in areas of mutual concern and benefit. On the other hand, they needed to resist temptations of merely being apologists for the political authorities, of simply getting co-opted by the government

onto any seemingly good cause. Genuine support and critical distance did not need to be opposed positions in the relationship between religion and the state. Such a position was complex and demanding but it is free of the expediencies and political opportunism of opposition political parties. But exactly how well has the inter-religious movement been able to play this prophetic role as the moral conscience and custodians of post-apartheid South Africa?

### **The progressive inter-religious movement in post-apartheid South Africa**

Since the first non-racial democratic elections in April of 1994, the progressive inter-religious movement has been somewhat in disarray. It was struggling, along with the rest of the anti-apartheid movement, to make the transition from a 'theology of resistance' to that of a 'theology of reconstruction'. In the five years since, the inter-religious movement lost a lot of its earlier vibrancy and support-base, and was kept and held together by a small band of committed activists, meandering along an undefined agenda. As a direct consequence of the leadership vacuum left by the progressive inter-religious movement, sections of our conservative religious leadership have filled them. These conservative religious leaders are more exclusivist in their religious outlooks and view religious pluralism with great suspicion. In some instances it is regarded as syncretism and a devious attempt to create a single universal religion. These religious leaders urge their followers to resist religious pluralism. The danger then is the formation of religious ghettos, which resembles so much of the discredited apartheid philosophy of separateness.

It was against this backdrop that President Mandela intervened and introduced the idea

of a morals summit to address the declining moral fibre of South African society. A National Inter-religious Leaders Forum was established to drive this process. The first morals summit was convened late last year and a follow up summit is planned for mid 1999.

### **Challenges facing religious pluralism in post-apartheid South Africa**

Religious pluralism has no doubt been one of the major beneficiaries of the post-apartheid dispensation. The democratic South African state has established the necessary conditions for the emergence of a culture and ethos of inter-religious tolerance and co-operation. The irony however is, that while in the past this religious pluralism was being driven by civil society from the ground, it is now being driven from the top, by religious individuals who are too close to the government. This is an anomaly which inter-religious activists are aware of and attempting to correct. The challenge for inter-religious activists continues to be how to bring other members of the clergy and more importantly the rank and file along in this new found culture and ethos. There is a real risk that the wonderful benefits which procure from religious pluralism may not filter down to the rank and file.

Yet another challenge confronting the inter-religious movement continues to be its lack of ability to transcend the extrinsic motivations on which interfaith solidarity is sought. It appears always to be external factors, for example, the need to fight crime or lead the moral reconstruction programme of our country or do damage control after provocative attacks on members of another faith community by one or other radical factions, which provide the impetus for interfaith co-operation. In order for the inter-

religious movement to become self-propelling and mature, we need to find intrinsic reasons from within our own faith commitments for promoting good relations with people of other religions. Intrinsic motivations continue to be the most elusive goal for the South African inter-religious movement.

It is true to say that the inter-religious movement led by World Conference on Religion and Peace, South Africa, grew in response to the need to fight a common enemy, apartheid. There are numerous other examples the world over of inter-religious co-operation developing in response to situations of conflict. But it is our considered view that intrinsic reasons need to precede external reasons for authentic religious pluralism to be procured. Why do we always need to wait for conflict and violence to overwhelm us before we feel the need to develop healthy inter-religious and cross-cultural relationships? If intrinsic reasons were to precede external ones, we would not only be contributing to the resolution of existing conflict situations, but be going a long way towards preventing them occurring in the first place. In fact, a far more genuine and permanent religio-pluralistic culture and ethos could emerge. This we believe to be the major challenge of the inter-religious movement in the democratic South Africa. Now that apartheid has been dismantled, we need more than ever before to find intrinsic motivations, and for the religio-pluralistic ethos to transform itself into a culture with a long-term relevance to our new nation.

## Conclusion

Religious pluralism in post-apartheid South Africa has and continues to make a difference to relations within the broader society. It has contributed to the difficult reconciliation process, the sensitive transformation phase

and above all nation-building.

## Acknowledgements

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## Abstract

This paper argues that the current demand in South Africa for the legal recognition of Muslim marriages, while valid and necessary, has resulted in the part codification of one community's religious law, which constitutes a violation of the fundamental rights and values agreed to at the founding of South Africa's secular democracy.

## Introduction

The previous article in this Dossier by Rashid Omar highlights the de facto existence of both religious plurality and religious pluralism in South Africa pre-democracy. The role of a religious pluralist movement, driven by civil society, in the struggle against an oppressive and discriminatory system of government in South Africa is aptly captured therein. The article also highlights the post-democracy relationship between the democratic state and the religious pluralist movement. Concerns about the possibility of "religious co-optation or legitimization" by the State, and also the rise of conservative religious leadership who are "more exclusivist in their religious outlooks and who view religious pluralism with great suspicion," are also raised in his article.

The latter point is a concern that resonates today and is visible in the demands by some religious leaders and community members, in the area of Muslim Personal Law and the codification thereof. This paper argues that the demand currently in South Africa, for the legal recognition of marriages conducted under Muslim laws, is a valid and necessary one. But it also argues that codification of aspects of religious law, in this process, is a violation of the fundamental rights and values that were agreed to at the founding of South Africa's secular democracy. This includes the pre-eminent right to equality based on sex and gender. The privileging of one religion is not only unconstitutional, it is argued, but it also has possible negative implications for the achievement of substantive gender equality, for the building of a unitary state, for national unity and also for reconciliation. The reality is that South Africa is a secular State which has also constitutionally entrenched the rights to freedom of religion, belief, conscience and opinion. The protection of minority group rights, whether based on race,

religion, culture etc, is hence guaranteed.

The nexus between gender, rights, culture, religion and law indicates clearly that, both individually and collectively, these are contested areas in terms of understandings, interpretations and challenges. There are different views both about these concepts, as well as the linkages between them. It seems apparent in South Africa that there is an absence of common acceptance that "... cultures [and religions]<sup>1</sup> are products of history, place, politics and people, and change over time." Also, as Jolly argues "... that individuals form and change their cultural [and religious] environments, through accepting or resisting the norms with which they live."<sup>2</sup>

Jolly's research leads her to understand culture [religion] to be: diverse and dynamic, formed by internal and external influences and structured by representations and power.<sup>3</sup> She asserts that charges of western imposition are often made in response to gender interventions, and that this could be interpreted as being accurate, or simply a politically motivated effort to obstruct transformation of gender relations, or both.<sup>4</sup> Charges of interference with the culture/religion of others and/or betrayal of one's own culture/religion, are part of the challenges facing activists who advocate for change in gender relations, and who challenge cultural and religious practices which violate substantive gender equality norms and principles.

Issues relating to contestations between group and individual rights; the consequences of colonization processes on customary and religious laws; the lack of a contextual approach to law making; the distortion of custom and religion; and also the dissonance

between official and living laws - are all areas for further discussion. A further challenge is the often-held view that Muslim laws are regarded as sacred and hence untouchable and unchanging - despite the fact that globalization and industrialization have had an impact. This effectively silences any challenges and discussions, and creates a hierarchy of untouchable custodians of religion.

### Legal framework

The Constitution of South Africa is viewed by many as an ideal model for multicultural democratic contexts, wherein the right to equality exists with the right to culture, tradition and religion, amongst other differences. South Africa is described as a unitary, multicultural, secular democracy that protects individual liberty and freedom through a Bill of Rights, with applicability against both the state and against individuals. The foundational values of the Constitution include non-sexism, non-racism, the right to dignity and also the right to substantive equality. Both the Interim and the Final Constitutions guarantee freedom of conscience, religion, opinion and belief, and explicitly permits the State to enact legislation for the recognition and practice of any religious, personal law and family law system as well the recognition of marriages concluded under any system of religious law. This freedom includes both the right to hold religious belief and to express such a belief in practice; also the right to enjoy one's culture, practice one's religion, use one's language; and also to form, join and maintain cultural, religious and linguistic associations.

These rights and freedoms are all subject to other rights in the Bill of Rights, especially the right to equality, which is articulated as a core value and is formulated both as a command for equal treatment and as a

prohibition of unfair discrimination. Prohibited grounds include amongst others, gender, sex, religion, conscience and belief, race, sexual orientation. Any limitation of rights has to be reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. Interpretation of the Bill of Rights and other legislation must promote the values that underlie an open and democratic society.

International and foreign law must also be taken into account when interpreting the Constitution. South Africa has ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 16 of the Convention deals with marriage and family life and the duty on a state to take steps to end all discrimination against women in marriage and family life. The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 serves a two-fold purpose, i.e. promotion of equality and the prevention of unfair discrimination. The preamble states that democracy demands the eradication of inequalities, especially those that are systemic in nature. The guiding principles include the need to take measures at all levels to eliminate discrimination and inequalities. Some measures include the forbidding of systems which prevent women from inheriting family property; forbidding customary, religious or other practices which impair the dignity of women and undermines equality between women and men and; forbidding any policy or conduct that unfairly limits access of women to land rights, finances or other resources.

### **Problem statement and proposed solutions**

Under apartheid, there had been widespread observance of both religious as well as

customary law, despite the non-recognition of other forms of law, including Muslim laws. Marriages conducted under Muslim law systems were refused legal recognition as valid marriages on the basis that they are potentially polygamous, and hence repugnant to public policy. As a result, they have been denied civil law status/benefits in terms of the Marriage Act 25 of 1961; the Divorce Act 70 of 1979; Intestate Succession Act 81 of 1987 and the Maintenance of Surviving Spouses Act 27 of 1990. The non-recognition of Muslim marriages has caused great hardship to many Muslim women and children. South African women married in terms of Muslim laws only are currently disadvantaged both socially and economically. Children born of such marriages were considered illegitimate in terms of South African law, there is no legal nexus between a wife and husband, there is no joint estate and also no financial obligation between them etc. Currently the courts are relied on for protection of rights. The relief granted is sometimes arbitrary, often a-contextual, is of an interim nature and it could be perceived as the courts usurping the functions of the legislature in the law-making process. Hence the Court in some cases dealt with the rights and duties created due to the existence of a de facto monogamous Muslim marriage, but failed to treat such marriages on a par with civil marriages, or recognize them as valid marriages per se. The courts have not dealt with the bigger problem of the nature, impact and consequences of polygynous marriages. The administration of Muslim Personal Law (MPL), by the judicial and welfare sections of the clergy bodies, has been criticized by numerous writers. Nevertheless, there have also been persistent efforts by the clergy groups to have MPL recognized by the state. Currently, there is no commonly recognized body of Muslim judicial authority

for the engagement in a constructive manner with this contested issue. The attempt at drafting family laws that are consistent with the Constitution is crucial.

The Law Reform Commission has proposed legislation for the recognition of Muslim marriages. The preamble of the draft Muslim Marriages Bill 2003 sets out the objectives that the Bill seeks to achieve. These include: to make provision for the recognition of Muslim marriages; to specify the requirements for a valid Muslim marriage; to regulate the registration of Muslim marriages; to recognize the status and capacity of spouses in Muslim marriages; to regulate the proprietary consequences of Muslim marriages; and to regulate the termination of Muslim marriages and the consequences thereof. In this effort, certain aspects of Muslim Personal Law have been codified. Concerns have been raised by different constituencies about the consequences of codification of religious law, as well as the violation of constitutional rights. Furthermore, there is no general consensus in the Muslim community on this draft Bill.

The Commission on Gender Equality<sup>5</sup> has drafted an alternative Bill which would recognize all religious marriages - without codifying any particular religion. This would then address all religious marriages - where parties are subject to the same legal equality violations as those faced by people in Muslim marriages. The primary aim of this Bill is to give effect to the Constitutional principles of equality by affording legal recognition and status to all religious marriages. This will in turn extend the protection and enjoyment of legislation afforded to spouses in civil marriages, to people in religious marriages. This becomes even more important in contexts where on the one hand, there exist deeply embedded and systemic patterns

of inequality and oppression; and where on the other hand, the Constitution is regarded as a transformative document, which seeks to take past discrimination into account, in providing redress.

This second bill provides for the recognition of religious marriages; regulates the registration of religious marriages and provides for the equal status and capacity of spouses in religious marriages. It includes the following sections: definitions, recognition of religious marriages, requirements for validity of religious marriages, age of majority, designation of marriage officers and appointment of registering officers, registration of religious marriages, equal status and capacity of spouses, proprietary consequences of religious marriages and contractual capacity of spouses, dissolution of religious marriages, change of marriage system, and offences and penalties. The constitutional protection afforded to the right to religion, allows for remedies for the amelioration of the legal disadvantages suffered by women in such marriages, and the recognition of religious marriages will hence create the necessary legal nexus for redress purposes.

## Conclusion

The process of law reform efforts described above has given rise to many constitutional questions, including those relating to the separation of religion and state in a secular democracy. The larger questions of identity politics, of the loss of the tradition of religious pluralism in South Africa, and also the implications of this for nation-building and also the promotion and protection of gender equality, are not being discussed as broadly as they should be.

The lack of understanding and the a-

contextual approach adopted in the research of culture and religion have contributed to this problem. There is also a lack of recognition about the inadvertent consequences that often arise out of law reform and implementation processes, which lead to further and new problems within communities that live within such cultures and religions. There also seems to be a lack of debate on identity politics in South Africa, and hence there appears to be a conflating of culture and religion with other identity issues. This is leading to a situation where individual and group identity issues are being manifested in battles for legal recognition of culture and religion, even to the extent of introducing notions of culture and religion that are not practiced by such communities

There is a lack of acknowledgement that the battles for cultural and religious identities today is more about power and authority, and also a lack of knowledge of how the relevant formal institutions relate to modern life and their 'changing constituencies'. It is apparent in this attempt to codify Muslim Personal Law, that there is a battle to again entrench the public-private divides which we have moved away from, in light of our transformative Constitution which entrenches the right to substantive gender equality.

*"We must hold the past sacred, but the future even more so"*

Makuvaza, 1998:43<sup>6</sup>

## Acknowledgements

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## Endnotes

<sup>1</sup> In some contexts the term 'culture' implies an inclusion of religion. In the South African context, culture and religion are understood as two different concepts.

<sup>2</sup> Jolly S. *Gender and Cultural Change Overview Report*, Institute of Development Studies July 2002: 1

<sup>3</sup> *Ibid*: 1

<sup>4</sup> *Ibid*: 2

<sup>5</sup> The Commission is a constitutional body set up to promote and protect gender equality and women's human rights.

<sup>6</sup> Quoted in Jolly, *op.cit*: 2



## Abstract

This short contribution outlines the history of secularism in India and the particular form it has taken, based on popular religious notions of inclusivity and pluralism. Any failures of secularism in this context are blamed on political struggles for power rather than religions themselves.

## Introduction

Secularism in India has very different meaning and implications. The word 'secularism' has never been used in the Indian context in the sense in which it has been used in Western countries i.e. in the sense of atheism or purely this worldly approach, rejecting the other-worldly beliefs.

India is a country where religion is very central to the life of people. India's age-old philosophy as expounded in Hindu Upanishad scriptures is *sarva dharma samabhava*, which means equal respect for all religions. The reason behind this approach is the fact that India has never been a mono-religious country. Even before the Aryan invasion India was not a mono-religious country.

There existed before the Aryan invasion numerous tribal cults from north-western India to Kanya Kumari most of whom happened to be Dravidians. Thus certain languages in North West of Pakistan even today contain some words of Dravidian origin. However, with the invasion of the Aryans, people of Dravidian origin were driven down south and today we find all Dravidian people in four southern states of India.

Aryans brought a new religion based on the Vedas and Brahmins who dominated the intellectual life of north India. But a section of Brahmins also migrated south and evolved new cults marrying Vedic cults with Dravidian ones. Thus it is said that Hindu Indians worship more than 33,000,000 gods and goddesses.

Thus even before the advent of Christianity and Islam, India was multi-religious in nature. Christianity and Islam added more religious traditions to the existing Indian traditions. It would be correct to say that India is

bewilderingly diverse country in every respect - religious, cultural, ethnic and caste.

India is one country where caste rigidity and the concept of untouchability evolved and still plays a major role in religious, social and cultural matters. Caste dynamics in Indian life, even in Christian and Islamic communities, plays a larger than life role. Since most of the conversions to Christianity and Islam took place from lower caste Hindus, these two world religions also developed caste structure. There are lower caste churches and mosques in several places.

Under the feudal system there was no competition between different religious traditions as authority resided in the sword and generally there were no inter-religious tensions among the people of different religions. Though at times inter-religious controversies did arise, there was never bloodshed in the name of religion.

There was also a tradition of tolerance between religions due to Ashoka and Akbar's state policies. Ashoka's edicts clearly spell out a policy of religious tolerance and Akbar used to hold inter-religious dialogue among the followers of different religions and he also followed the policy of tolerance and even withdrew the *jizya* tax (a poll tax on Hindus) which was an irritant. Thus both Ashok and Akbar have a place of great significance in the religious life of India.

Also, India had Sufi and Bhakti traditions in Islam and Hinduism respectively, which were based on respect for different religions. Unlike Ulema and Brahmans, the Sufi and Bhakti saints were highly tolerant and open to the truth in other faiths. They never adopted sectarian attitudes and kept away from power structures. The poorer and lower caste

Hindus and Muslims were greatly influenced by these traditions.

Nizamuddin Awliya, a great Sufi saint of the 13-14th century saw the times of five Sultans but never paid court to a single one. When the last Sultan sent a message requesting him to come to the court, he refused. Then he sent the message that if Nizamuddin does not come to my court, I (the Sultan) will come to his hospice. He replied that there are two doors to my hospice; if the Sultan enters by one, I will leave by the other. Such was the approach of Sufis and saints to the power structures of their time.

Dara Shikoh was heir apparent to Shah Jahan, the Moghul Emperor but had a Sufi bent of mind and was also a great scholar of Islam and Hinduism. He wrote a book *Majmau'l Bahrayn* (Co-mingling of Two Oceans Islam and Hinduism) and quoting from Hindu and Islamic scriptures showed both religions had similar teachings; the difference, he felt, was of languages (Arabic and Sanskrit) and not teachings. Thus Dara Shikoh also contributed richly to inter-religious harmony in India.

Most of the conversions to Islam and Christianity took place through Sufis and missionaries with a spirit of devotion. Even today in India most of the Christians and Muslims belong to these lower caste strata. Even centuries after conversion their caste status and economic status has not changed.

### Emergence of competitive politics

However, the entire social, economic and political scenario changed after the advent of the British rule in the 19th century. Differences between the Hindu and Muslim elite began to emerge for various reasons - socio-cultural, economic and political. The

British rulers adopted the policy of divide and rule, distorted medieval Indian history to make Muslim rulers appear as tyrants to the Hindu elite. This distorted history was taught in the new school system, which was established by the British rulers.

Also there developed economic and political competition between the Hindu and Muslim elites leading to communal tensions. The Hindu elite was quick to adjust to new realities and took to modern education and commerce and industries. The Muslim ruling elite resisted the new secular education system and also could not take to commerce and industry. They were thus left far behind in the race for progress.

Muslim intellectual, Sir Syed Ahmad Khan had a perceptive mind. He understood the importance of a modern education system and founded Mohammedan Anglo Oriental College (MAO College) which became the fulcrum of modern education for the North Indian Muslim elite. The orthodox Ulema, however, vehemently opposed modern secular education and declared Syed Ahmad Khan a *kafir* (unbeliever).

Initially the Hindu and Muslim elites cooperated with each other, and Syed Ahmad Khan always emphasised Hindu-Muslim unity. But the competitive nature of political and economic power drove a wedge between the two elites and communal tensions began to emerge. When the Indian National Congress was formed in 1885, it adopted secularism as its anchor in view of multi-religious nature of Indian society.

India could not head towards Hindu Rashtra (Hindu Nation) as India was not merely a Hindu country. In the pre-partition period Muslims were 25% besides Christians, Sikhs,

Buddhists and Jains. Hindu society was also highly fragmented and far from monolithic. The Dalits (low caste people) refused to call themselves Hindus (subsequently their leader B.R. Ambedkar) adopted Buddhism in protest).

Muslims too, though not monolithic, had a semblance of unity and this was used by communal Hindus to try to unite Hindus as one community. However, it is also true that the Hindu elite was more confident than the Muslim elite in the emerging new power-structure and felt more secure. The Muslim elite felt less secure and they hitched their wagon to the British rulers. They wanted to ensure a power-sharing arrangement before the British left the country.

Thus secularism in India was more a political than philosophical phenomenon. The Indian National Congress adopted secularism, not as this worldly philosophy but more as a political arrangement between different religious communities. As a power-sharing arrangement could not be satisfactorily worked out between the Hindu and Muslim elites, the country was divided into two independent states of India and Pakistan, most of the Muslim majority areas of the North-West going to Pakistan.

After independence and partition a large body of Muslims were left in India and hence leaders like Gandhi and Nehru preferred to keep India secular in the sense that the Indian state would have no religion though the people of India would be free both in the individual and corporate sense to follow any religion of their birth or adoption. Thus India remained politically secular but otherwise its people continued to be deeply religious.

In India right from the British period, the main

contradiction was not between the religious and the secular but between secular and communal. In the western world the main struggle was between the Church and the state and the Church and civil society, but in India neither Hinduism nor Islam had any church-like structure and hence there never was any such struggle between secular and religious power structures.

The main struggle was between secularism and communalism. The communal forces from among Hindus and Muslims mainly fought for a share in power using their respective religions in their struggle for power.

Even after Partition, the communal problem did not die. It raised its head again within a few years. The RSS (Rashtriya Swayam Sevak Sangh), which is the mainspring of the Hindu Right remained in existence and at its instance a new political outfit, which was communal in nature came into existence called the Jan Sangh. In independent India the Jan Sangh was the mainspring of the communal problem and it kept on denouncing secularism as a 'western concept' alien to the Indian ethos.

Jawahar Lal Nehru, the first Prime Minister of India, was a great champion of secularism and secular politics. Theoretically speaking the Congress Party was also committed to secularism. However, the Congress Party consisted of several members and leaders whose secularism was in doubt. But it was due to Mahatma Gandhi, Nehru, Maulana Abul Kalam Azad and B.R.Ambedkar that India committed itself to secularism and its Constitution was drafted on secular lines.

Secularism in India, as pointed out before, meant equal respect for all religions and

cultures and non-interference of religion in the government affairs. Also, according to the Indian Constitution no discrimination will be made on the basis of caste, creed, gender and class. Similarly all citizens of India irrespective of one's religion, caste or gender have the right to vote. According to Articles 14 to 21 all will enjoy the same rights without discrimination on any ground.

According to Article 25, all those who reside in India are free to confess, practice and propagate the religion of one's choice subject to social health and law and order. Thus even conversion to any religion of one's choice is a fundamental right. But the BJP (Bhartiya Janta Party) and RSS are opposed to all this. According to them there should be Hindu Rashtra (Hindu Nation) in India and Muslims and Sikhs should be secondary citizens without any political rights.

Since the BJP is a political party it cannot say so openly and publicly. It also has to take pledge of upholding secularism in order to be able to contest elections. But since it is an integral part of the RSS ideology, it is also responsible for RSS beliefs. In fact all secular forces in India consider the BJP a communal party. It always takes an anti-minority stance and accuses the Congress, supposedly a secular party, of 'appeasement' of minorities. It also describes the Congress and other secular parties as indulging in 'pseudo-secularism'.

The RSS and BJP, also known as the Sangh Parivar, not only reject secularism but provoke violence against minorities. Since independence several major communal riots have taken place in India. The first such riot took place in Jabalpur in Central India and last major riot took place in Gujarat in Western India in 2002 in which more than

2000 Muslims were killed and several women were raped. When the Gujarat carnage took place, the BJP was in government in the state of Gujarat.

According to the filed evidence, BJP Chief Minister Narendra Modi was involved along with the entire governmental machinery in the carnage and on this basis the US Government denied him entry to the US in early 2005. The BJP was directly involved in high pitch propaganda against the historic mosque called Babri Mosque and ultimately demolished it claiming it to be a birth-place of Lord Ram, a Hindu god.

Lal Krishna Advani, who was then the President of the BJP, spearheaded the campaign against Babri Mosque and the mosque was demolished right in his presence. He later became Home Minister in the National Democratic Alliance (NDA) ministry. He is known as a hardliner Hindu. Shri Vajpayee who became Prime Minister of India in the NDA Government, is known as the moderate face of BJP though one can say there is hardly any ideological difference between the two.

### Secular and unsecular people

Now the question arises as to how many Indian people are secular and how many unsecular? Since secularism does not mean 'being this worldly' in India, one cannot say how many are believers and how many unbelievers. On the contrary, in the Indian context what it means is how many people are against people of minority religions like Islam and Christianity and how many people respect them.

In India an overwhelming majority of people are religious but tolerant and respect other religions and are thus 'secular' in the Indian

context. The followers of RSS and the BJP are very few, not more than 5-10 per cent. India has remained secular and democratic for its entire post-independence period (more than 58 years).

There is no doubt India has witnessed much communal violence but only due to involvement of RSS and BJP and occasionally the Congress in some places. Communalism is a powerful political weapon used by politicians of different hues. The Hindu masses are generally not to be blamed for such violence. However, few fanatics under the influence of RSS ideology are involved along with anti-social elements.

It is also true that on certain major issues, like disputes over the birthplace of the Hindu god Ram, people get misled by powerful communal propaganda and may side with the BJP but that does not mean they are for violence and bloodshed. If they are properly informed they withdraw their support. However, secular forces are not as pro-active as communal forces are. Communal forces are actively spreading communal poison round the year whereas secular forces become active only after communal violence and once peace is established they become nonchalant. It is their nonchalance which benefits communal forces.

The communal forces thus came to power through false propaganda but were exposed during this five-year rule and were voted out of power as they were perceived to be behind communal carnage in Gujarat in 2002. No less than a person than Vajpayee, the former BJP Prime Minister, himself admitted that people rejected the BJP because they were held responsible for the Gujarat carnage.

This confession on the part of the BJP ex-

Prime Minister himself clearly establishes that the people of India are by and large secular and do not like killing of others just because they are not Hindus. Not only the BJP lost the election but also its allies, which are otherwise considered secular, suffered defeats. The BJP is today being deserted by its former allies as they realised that association with communal dispensation is not approved by the people of India.

There are some rationalists and secularists who reject religion in its entirety but such rationalists or secularists are extremely few. Though there are no census figures available but one can safely say they are less than 0.1% in India. Also, there are extremely orthodox people who exhibit rigidity and intolerance towards other faiths though of course not on communal grounds but on the grounds of religious orthodoxy but they too are in miniscule minority. Tolerance in India among people of all religions is widely prevalent. It is perhaps due to influence of the ancient Indian doctrine that 'truth is one but is manifested in different forms', and on the other hand due to the Sufi doctrine of *wahdat al-wujud* (Real Being is one) that implies that there is only One Real Being and all of us are mere manifestations of that real being.

As the ancient Hindu doctrine leads to inclusiveness and peaceful coexistence so does the Sufi doctrine. For peaceful co-existence another Sufi doctrine of *sulh-i-kul* i.e. total peace and peace with all is very important. Sufism left deep influence on Hindu masses as much as on Muslim masses.

Thus the real spirit of secularism in India is all inclusiveness, religious pluralism and peaceful co-existence. However, it is politics, which proved to be divisive and not religion.

It is not religious leaders by and large (with few exceptions) who divide but politicians who seek to mobilise votes on grounds of primordial identities like religion, caste and ethnicity.

In a multi-religious society, if politics is not based on issues but on identities, it can prove highly divisive. Politicians are tempted to appeal to primordial identities rather than to solve problems. The former case proves much easier. The medieval society in India was thus more religiously tolerant as it was non-competitive. The modern Indian society, on the other hand, has proved to be more divisive as it is based on competition. This competition becomes more acute if development is uneven and unjust.

Thus in the case of India one can say by and large it is secular in as much as it is religiously plural and tolerant but there are politically divisive forces quite active and create communal pressure and widen the gap between religious community thus bringing Indian secularism under threat.

### Acknowledgements

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## Abstract

Based on field interviews with Egyptian women activists, this paper traces the dilemmas they face when challenging fundamentalists. While some are positioned at the avant-garde of rights discourses, the complex context has led others to reproduce the very discourses they are seeking to challenge.

The history of the Egyptian women's movement is characterized by a variety of competing and sometimes overlapping discourses, including secular-oriented and religious voices. However, during the past decades, both the state and women's activists had to take into account increasing fundamentalist activism, discourses and demands. These days the discursive and political spaces of secular activists is becoming smaller and smaller. But how do secular-oriented women struggling for women's and human rights as well as changing gender relations counter Islamist constituencies and fundamentalist tendencies?

From the outset, I should clarify that I am not using the term fundamentalist synonymously with Islamist. In my view, Islamist movements and political activists comprise a variety of political positions ranging from radical militant to moderate. Some Islamist groups are exclusionary and fascist as it is characteristic of fundamentalist movements all over the world. However, there are Islamist individuals and groups who pursue their political goals of establishing an Islamic state and implementing the Shari'a (Islamic law) while considering the rights of religious and ethnic minorities. Some Islamist women also advocate women's rights within the family, as well as the social, economic and political spheres. Although I am suspicious about the term "Islamist feminism", I do believe that, at least in the Egyptian context, there are Islamist women whose political culture and goals cannot merely be subsumed under the category fundamentalist.

## The parameters of secular-oriented women activists

Acknowledging that women's activism in present-day Egypt encompasses a broad

range of political and ideological frameworks, in my own research I have specifically focused on secular-oriented activists. With secular-oriented I mean those who advocate a separation between religion and politics, which does not necessarily denote anti-religious or anti-Islamic positions. Furthermore, I suggest that secular women activists do not endorse Shari'a as the main or sole source of legislation; but they also refer to civil law and human rights conventions as frames of reference for their struggle. However, this only presents a very general working definition. It became obvious in the course of my political involvement with the Egyptian women's movement and also in the context of my research that Egyptian women, just as women in western societies, are eclectic and selective in their frames of references. Values and politics are shaped through a variety of factors, including family, education, religious frameworks, political ideologies, personal experiences, literature and so forth. What is important to stress is that there exists a broad continuum of secular approaches and religious practices, which, to my mind, challenges simplistic dichotomous notions of secular vs. religious. Also important to mention is the fact that there are about 10% Christians, that is particularly Copts, in Egypt. Several of the women I interviewed in Egypt were of Coptic origin. For Coptic women, secularism is often perceived as the only framework that would allow them equal citizenship both as women and as members of the minority religion.

All secular-oriented women activists have experienced a whole range of legal, cultural and political restrictions that have seriously affected the way politics can be carried out. The question arises: What are their strategies in legitimizing their ideas and activism in an environment where both

the state and prevailing social and political movements are hostile to secular thinking? And how do they relate to western feminists who could be potential allies in struggling against fundamentalist constituencies? The short answer to this question is that, unfortunately, many feminists reproduce the very same discourses of fundamentalist and conservative nationalist voices within Egypt. However, a small number of activists dare to challenge the points of reference and parameters of political discourse within the Egyptian national fabric. I am mainly referring to the culturalization of political issues.

Rather than taking issue with specific political positions or concrete policies, fundamentalist forces tend to dichotomise the world into 'us' vs. 'them'. This dichotomization has become so naturalized in many parts of the world that it is very difficult to question its grounds. Egypt is a case in point. Many political debates are argued along the lines of 'our authentic culture' as opposed to 'Western culture'. Women activists constantly have to be on the defensive against a vast number of charges ranging from being 'loose women' to aping 'the West'. The attempt to legitimize and justify their outlooks and activism is at the centre of many debates and can be detected in the various trends of the contemporary movement.

It is therefore not surprising that Egyptian women activists spend as much time asserting their 'authenticity', their 'Egyptianness' and sometimes 'Arabness' as they can invest in the struggle for women's rights. My use of the term 'women's activism' rather than 'feminism' is related to the fact that many of the women I interviewed reject the label 'feminist' for pragmatic and ideological reasons. The English term 'feminism', evokes antagonism and animosity, and sometimes even anxiety.

A great number of women seem to have internalized the way feminists are being portrayed in prevailing Egyptian - but also European and North-American discourses - namely men-hating, aggressive, possibly obsessed with sex, and certainly westernized women. The resistance of many Egyptian women to identify themselves with feminism is also related to the fact that feminism is often perceived to be a western concept that tends to distract from larger issues, such as imperialism and Zionism.

But maybe more significantly than rejecting the term feminism, women activists do engage in anti-western rhetoric in order to legitimize their politics and escape the accusations of being traitors. Several women activists I talked to referred to 'western culture' and its attempt to undermine local cultures as posing a threat to Egypt. Mass consumption, disrespect for the family, promiscuity, AIDS, and drug addiction are presented as the characteristics of 'western civilization'.<sup>1</sup> Globalization - understood as the spread of western (i.e. US) consumption goods and values as well as western imperialism are also key concepts within the discourse of Egyptian women activists. In this context, culture becomes reified and essentialized.

Ironically, social class, which is generally of great concern within Egyptian political culture becomes obliterated. So do political and cultural differences within the so-called West. In other words, many secular women activists use the same mechanism used by fundamentalists to construct an unbridgeable gap between the 'East' and 'West'. It is difficult to assess whether the construction of our culture vs. their culture is more of a strategy rather than a deep-felt belief. What can be said with certainty is that these discourses seem to be ingrained into people's thinking

and worldviews. However, there is also an obvious gap between people's anti-western rhetoric and every-day lives and patterns of consumption.

## Dilemmas facing Egyptian women activists

Repeatedly the encounter with western feminists puts Egyptian women activists in a dilemma. While they might be arguing in the very same vein at home against a particular form of discrimination, like female genital mutilation, for example, abroad, in an international forum, when certain western feminists are outraged about 'the barbarism' practised in Egypt, activists often feel offended by the tone and its implicit racism.<sup>2</sup> So it could happen that a woman, extremely outspoken against female genital mutilation within Egypt, might find herself defending the practice during a confrontation with some western feminists. Most of the time, this is experienced as being extremely unsettling and disturbing. For Reem M.,<sup>3</sup> this entails a Catch 22 situation in which one is torn between arguing despite one's convictions and arguing in a way that confirms negative stereotypes:

*"I feel that when a western feminist makes a negative statement about my own culture, I should make a positive statement to counter it. Living across two cultures is very difficult. There is the danger of playing up to western expectations. But sometimes it might just appear like it, because you might be really just saying what you feel and believe in. It's a real dilemma. You have to acquire two tongues."*

It is obvious here that the verdict of 'betrayal' heavily weighs on any woman who carries the heavy burdens of the colonial legacy

while struggling against contemporary forms of patriarchal oppression.

Yet some Egyptian women activists explicitly say that the notion of cultural specificity is used as a tool by men to reinforce their power over women and question the whole notion altogether. Nadia F., a researcher and activist in her fifties, deeply despises this attitude:

*“Amazingly they scream here about western theories concerning women’s issues, but they have adopted other western theories, like Marxism. Or those concerning political structures. The problem with the Arab world is that we have been eclectic. We take some elements from western theory, which do not clash with our culture, but we disregard elements that clash with traditional beliefs and values, which, of course, are linked to specific political and economic interests. We scream: “Our values!” when it clashes with power positions, but when it is beneficial to the same group, they adopt it, despite it being western.”<sup>4</sup>*

Nadia F.’s impassioned critique gives evidence to the fact that traditions are invoked in a politically selective manner: far from representing continuity with the past, traditions are being actively constructed by political constituencies. Ideas and values of western thought are borrowed when it seems fit, and ferociously combated and perceived as western values when the struggle for women’s rights is on the agenda.

Women activists find themselves in a dilemma: fundamentalist and conservative forces within Egypt accuse them of adopting western agendas at the same time as western organizations and governments

are trying to establish an absolute authority over issues related to women’s and human rights. Caught in the middle, many activists are cautious and defensive and therefore fail to challenge the discursive parameters of fundamentalist forces. However, a small, yet increasing number of women rejects this way of arguing and refrains from reproducing a dichotomy of ‘us’ vs. ‘them’. They point to differences not only within their own national and cultural spheres but also with respect to the so-called ‘west’. And they also point to a long history of creative encounters between western and Muslim thinkers and activists.

### Challenging notions of secularism

It is these women who are also at the forefront of challenging the common notion that being secular equates to being against religion. It should be stressed though that even amongst those women reproducing dichotomous notions of culture, many challenge the fundamentalist rhetoric about secular constituencies. They point to the fact that religious belief and observance are not antithetical to secular political outlooks and activism. The specific content given to secular political activism as well as the specific strategies used to promote the rights of women varies significantly. One factor, which might account for variations in attitudes and practices among the women I interviewed, is age and generational affiliation. Different entry points into the women’s movement influence political convictions and the type of activism a woman engages in. Similarly, generational differences may be discerned concerning a woman’s specific perspective on secularism.

This was apparent throughout my research, but became particularly noticeable with regard to *Markaz Dirasat Al-Mar’a Al-Gedida* (the New Woman Research Centre), since

the membership consists of two generations of activists: those who had been part of the student movement in the 1970s and are now in their forties, and the younger activists, in their late twenties and early thirties, who have joined the group in recent years. Overall, it appeared that the younger members were more observant to their respective religion than their elder counterparts. In the case of some of the younger members it became particularly obvious that personal religious observance in and of itself is not a marker of political orientation. Even among the older women of the group, I could detect differences concerning their approach to religion and their positions were far from unanimous. Some of the older members rejected the idea of engaging in the reinterpretation of religion in order to counter conservative male interpretations, others, however, advocated this approach.<sup>5</sup>

Coptic women activists have a particular stake in debates about secularism. Nadia M., one of the eldest activists I interviewed and a self-proclaimed believer, defines her secularism in terms of a divergence from religious dogma articulated by the church. She views her faith as an integral part of her life, but rejects the idea that faith equals official doctrines or rulings by religious authorities: "Religions as institutions are always trying to close the door on others. I look beyond the confines of parochial religion, accepting humanism, accepting pluralism, basing my decisions on the good for all." Nadia M. avoids the subject of discrimination against Copts in her account of secularism, and only hints at the issue of national unity in terms of her value of pluralism. Raga N., on the other hand, is more vehement about the relation between secularism and her Coptic religious affiliation:

"Public figures in the Coptic community argue from a political religious context. It is not that I want to assert myself as a Copt, but if the whole society only sees you in this frame, you have two options: either you denounce it, or you say "yes, so what." But I never say, "I am Copt first", I say, "I am Egyptian." When suddenly in the 70s a religious identity replaced the national identity, I still made the choice that I am Egyptian first and then a Copt. This is against the general trend though. I still feel that the only salvation of this country is to go back to the 1919 revolution slogan: "Religion is for God, and the nation for its citizens." I believe in a secular state where being Egyptian means to be a citizen. In an Islamic state citizenship is based upon a particular religious denomination. That automatically discriminates against non-Muslims."<sup>6</sup>

Raga N. views herself as being part of two minority groups: women and Copts, and feels that second-class citizenship is conferred to both groups. She despises the exclusionary nature and claim to truth by any religion, an aspect she compares to fascism: "I do not even like the word 'tolerance', because it means that you just bear with something. In the religious context, it means to bear the other's belief. It means that these people are really wrong, but you tolerate them. It is a condescending attitude. I do not want tolerance, I want respect!" Aside from her conviction that only a secular state could grant her equality, justice and respect, she also stresses that her secular orientation is an outcome of a conglomeration of value systems. Her religious upbringing was tied to an exposure to humanist values, mainly through her readings and her conversations with her father. Later on, she developed a socialist orientation, which, as she recalls, was inspired by specific readings, but

originated in her profound sense of justice. Raga N., like Nadia M., emphasizes the need to recognize the mosaic nature of the backdrop against which values are shaped and decisions made. Religion, in her view, might play more significant roles in other people's lives, but for Raga N. there are other significant frameworks.

Often, like in my own assumptions prior to fieldwork, these other frameworks are presumed to derive from comprehensive worldviews and doctrines, like socialism, or specific documents, such as the international convention of human rights. Many of the leftist-nationalist activists explained to me that they would still take a Marxist approach in their analyses. However, most emphasized that they had moved away from earlier certainties concerning the direct relationship between economic exploitation and women's liberation. Their own experiences within the political parties and with their "progressive" husbands at home changed their outlooks in a way that, today, they argue for the necessity of an independent women's struggle. Other women, who mainly refer to international conventions of human and women's rights, highlight that they do not believe in cultural specificity with regard to basic human rights in general and women's rights in particular. However, a number of women I interviewed stressed that their values and concepts were not based on a specific doctrine or on the international declaration of human rights, but emerged out of the various experiences of collective and individual struggle. As Hania K. told me:

*"Islamists solely use the text and this is their framework. Their judgement of the value system comes through the text. My frame of reference is based on certain abstract concepts, such as*

*egalitarianism, humanism, human rights, pluralism, tolerance etc., which have come from my every day experiences. Of course, these concepts did not come out of a void, but emerged from different schools of thought. However, I do not uphold a certain ideology, because it would reduce the forms of oppression and the complexity of reality. My values and concepts are as much part of my personal development as they grew out of collective struggle.<sup>7</sup>*

*The tendency to frame human agency mainly in terms of collective ideologies - whether secular or religious - is problematic as it does not give space to individual improvisation and resistance. The individual level is significant in connection with women's own frames of reference, their relation to religion, but also concerning their concepts and values. Hania K. argues that one has to start building one's own framework based on specific realities: "The reality I see today is characterized by the existence of different oppressed groups of people: women, Christians, low-income classes. My reality is filled with all kinds of inequalities. Solutions have to be found taking these inequalities into consideration."*

It becomes obvious that secularism in and of itself does not provide a remedy for these inequalities. Hania K. for example, recalls her own experience with socialism, which, as she thinks today, worked in many ways as a blinker limiting her ability to see other viewpoints and prevented her from considering new concepts. Secularism only provides a very broad umbrella under which a variety of discourses, practices and concepts may be accommodated, some reiterating old

truths others breaking with rigid paradigms. In the Egyptian context, secular women activists are engaged in the difficult task of subverting hegemonic discourses emanating from the state, as well as fundamentalist and conservative nationalist intellectuals. Trying to challenge fundamentalist political actors and thought, many women use a similar discourse, thereby unwittingly reproducing the very same categories initially coined by the colonizers and currently backed by the neo-liberal clash of civilization advocates. Those women who challenge fundamentalists not only with respect to their conceptualization of secularism, but also with respect to their reification of 'authentic culture' as opposed to 'western culture' are simultaneously positioned at the margin of prevailing political culture and at the centre of the avant-garde engaged in the attempt to challenge existing political structures and discourses.

## Acknowledgements

This paper is reprinted with permission from the author. It is based on a wider study published as Al-Ali; Nadje, *Secularism, Gender and the State in the Middle East: The Egyptian Women's Movement* (Cambridge: CUP 2000).

## Endnotes

<sup>1</sup> Nadje Al-Ali, *Secularism, Gender and the State in the Middle East: The Egyptian Women's Movement* (Cambridge: CUP 2000): 48

<sup>2</sup> *ibid*: 210

<sup>3</sup> All names in this paper have been changed.

<sup>4</sup> *ibid*: 213

<sup>5</sup> *ibid*: 147

<sup>6</sup> *ibid*: 145

<sup>7</sup> *ibid*: 146



## Abstract

This paper, from an Algerian political activist, discusses the place of secularism in Algeria's unstable post-independence political history. It argues that secularism is not alien to Algerian society and is indeed a precondition for democracy.

Secularism as a precondition for democracy is an ambitious theme, and a challenge at a time when the resurgence of politics in religion is becoming a reality throughout the world. In the southern Mediterranean the issue presents a difficult but exhilarating challenge. Algeria has narrowly escaped a theocratic state, but without managing to settle the question of democracy. The patching up of the regime, which has led to its continuation, may be ascribed to several causes. It is interesting, however, to see the instrumentalization and complicity that link the government and Muslim fundamentalism in their efforts to reject democracy and ward off secularism. How did it come to this? The causes, which are both old and recent, are linked to colonialism, to the construction of the national State and to the kind of State this is.

## Secularism and the national movement

The Great Revolution undoubtedly had a significant influence on all Algeria's politicians, including Messali Hadj (a radical leader) and Ferhat Abbas (moderate leader). These two figures, who dominated Algerian nationalism for a quarter of a century, were fascinated by the ideals of 1789. Both say so in their memoirs.<sup>1</sup> They fought in the name of these values to achieve collective emancipation on behalf of the colonized. Yet neither the founding of the Republic, with its legal and political discrimination, nor the importance of religion in indigenous society - where it acted as a marker of identity - prompted these two leaders to support secularism. To sum up, we might say that the Republic is the vehicle for the struggle while Islam remains the 'spiritual homeland'.

This position dominated the national movement from its inception until a daring

attempt was made at the Soummam Congress in August 1956 (FLN's first charter), to define what the future national state would be like. It was stated explicitly that, "it is not a question of restoring a monarchy or theocracy, which now belong in the past. It will be a democratic, social state." This openly secular position - put forward by Abane Ramdane, a leading figure socialized under the Third Republic, and the brains behind the Congress - was gradually weakened after independence.

### The first period - great potential wasted

The era of national construction, which began in 1962, was inaugurated by a coup d'état by the frontier army to seize power from the legal authority, the GPRA (Provisional Government of the Algerian Republic). Until the advent of multi-partyism in February 1989, power was legitimized by the granting of charters and the holding of plebiscites on the basis of a negation of public freedoms accompanied by open repression. At the ideological level, although secularized options (Arabism and socialism) were introduced, all the constitutions of that period (three in total) proclaim, in Article 2: "Islam is the State religion."

So blurred was the distinction between the Arabo-socialist option and Islam that the term 'specific socialism' was used, to stress firmly that there was no place for secularism. During the reign of Ben Bella (1962-65), the only authorized association - apart from the mass organizations attached to the single party - was an Islamist one, el-Qiyam (Values). After the first president had been ousted by a putsch, the distinction was not clear. Houari Boumedienne (1965-78) dissolved el-Qiyam but arranged for a rapprochement with the Ulema (religious scholars), whom he included in his various governments, and from 1968 he speeded up the process of Arabization.

Whole areas in ideological sectors (education and justice) were handed over to Arabists close to Muslim fundamentalism. Although the rhetoric was progressive, nervousness about secularism showed through in the inability of the leaders of the time to endow the country with a family code. The reform of personal status laws introduced by Bourguiba in Tunisia was not something that was going to happen in Algeria. The issue was settled in a reactionary manner in 1984, when the single party's National Assembly (APN) voted for the most retrogressive family code in the Arab/Islamic world after that of Saudi Arabia. For ten years, until the upsurge of pluralism, the reign of Chadli Bendjedid (1979) was marked by both a slight political thaw and a shift towards conservatism at the societal level.

The Arabization generation began to appear on the political and economic scenes. It demanded a shift away from 'Islamic secularism' (*la laïcité islamique*), to quote the title of a work by Henri Sanson, who has made a useful analysis of this aspect of the period. The machinations of the Islamists began to become visible in public. Their influence could be seen symbolically when Algerian women began to wear the veil again, in the 1980s. During this period, the convergence between the state authorities and 'non-institutional' Muslim fundamentalism was established concretely for the first time since independence. At the political level, the Islamists were not satisfied with this marked change of course. They were aiming for power. They wanted power in its entirety.

What can be said about this first period of post-independence history? It is tempting to state curtly that the conclusion is inescapable: a lack of secularism goes hand in hand with authoritarianism and dictatorship. Is there a

relationship of cause and effect? The reality, as it is experienced in real life, and even as it is understood, is far more complex. One thing is certain: large numbers of Algeria's political personnel have been trained in, and for, the kind of modernity that is synonymous with individual autonomy. With determination, they could have gone down the road of downright secularization. We must not forget, moreover, that the concept of secularism is virtually peculiar to France, or that, taking the historical circumstances into account, opponents of this option award themselves patriotic credentials very cheaply. The defeat of the Tizi-Ouzou Group - a grouping of some of the *maquis* from within the FLN's Federation of France, aligned behind the GPRA - seriously undermined what chances this philosophy had. Without straying into the realm of fiction, all the elements for a potential Algerian-style Kemalism were there on independence, more than they had been for its historical promoter in his own time and in his own country, Turkey. Ultimately (and looking at the question posed here from exactly the opposite angle), I would hazard as an initial conclusion that the potential for secularism contained in the national liberation plan was suppressed by the lack of democracy at that time.

### The second period - open calls for secularism

The second historical period began in February 1989 with a multi-party system. Democracy got in by the back door. True, from 1980 onwards the hegemony of the single party had been openly contested by Berberists invoking democracy and secularism, and Islamists demanding a theocratic state. In the end, the drastic collapse of oil prices in 1986 put paid to the FLN's political monopoly in October 1988.

Of these two groups which were the most active when it came to challenge, it was the democrats who suffered most from the lack of public freedoms. Unlike the Islamists, who had mosques as sanctuaries from which to launch propaganda, the democrats were pursued every where. The lack of ideological and constitutional clarity had given rise to a series of political fictions that were to end up strengthening democracy's worst enemies: the Islamists. In the first elections (local elections in June 1990, parliamentary ones in December 1991), the FIS (Islamic Salvation Front) emerged with a majority throughout the country, Kabylia being the notable exception. There then began an extremely dangerous period, whose price in human lives was high: almost 100,000 deaths in ten years. The army burst brutally onto the scene, halting the electoral process between the two rounds of parliamentary elections, but it did not end the debate about the good and ill effects produced by this interruption. In its immediate aftermath, the army's action accentuated the differences between the two main democratic political formations, the FFS (Front des forces socialistes - the Socialist Front) and the RCD (Parti du rassemblement pour la culture et la démocratie - Alliance for Culture and Democracy). Referring back to the original message of November 1954, these two parties appealed for secularism: the FFS tried to forge a new concept by talking about the 'civil state' and the separation of the political and religious spheres, while the RCD openly called for secularism with the separation of state and religion.

For this latter formation, secularism was not foreign to Algeria when our traditional reference-points were examined. And in fact, in the village assemblies that dominated rural life, especially in Kabylia, there was indeed a clear separation between the spiritual and

political authorities. This is the experience we need to bring back into fashion and modernize. And if it does tally with the French concept, it is access to universality that needs to be not just accepted, but encouraged. For the first time in Algeria there are explicit calls for secularism as such.

### **A compromise between conservatism and fundamentalism**

The way in which events have flared up since the electoral process was stopped have made it impossible to address such an emotionally and symbolically charged issue calmly. In all the havoc, which nearly brought down the foundations of the national state, secular intellectuals were targeted by terrorists. Kidnapped women were booty for emirs. Among those in power, the same cycle of mistakes started again. The new legitimization process, begun in 1995 with the first pluralist presidential election, was marred by electoral fraud even though, despite threats from Islamists, there was significant public participation. An identical fate awaited the whole process that was to come.

The legacy of what had gone before, combined with the preservation of power at any cost, was to give rise to a huge paradox: although Muslim fundamentalism had been defeated militarily thanks to the mobilization of society, politically it had not yet had its last word, thanks to the attitudes of the authorities. The recent referendum on “the charter for peace and national reconciliation”, which guarantees impunity for terrorists and, in a subtle simulation, an amnesty for soldiers, is an additional indicator of this compromise between conservatism and fundamentalism which, in the end, advances the cause of social Islam. Unfortunately, this vast multiple hoax - as seen from the ethical, political,

ideological and even electoral points of view - has been hailed by the French foreign ministry as a “democratic consultation.”

In conclusion I would say that, despite appearances, there is within Algerian society an immense democratic and secular potential which asks nothing more than to be allowed to emerge further. The idea of secularism is still new. It is not exhausted. While the idea is being manipulated here and there to set up authoritarian regimes, it nonetheless remains the guarantee of a flourishing democracy. The road ahead is a long and difficult one. It begins with school, which nurtures citizens. That is why we have chosen the symbolic acronym RCD, with ‘culture’ in the middle. We are convinced that Enlightenment is achieved through education and training, but also through a renewal of Islam involving society as a whole and theologians in particular. We in the South do not lack courage: what is lacking for us is interest from the North. Do not be timid when faced with fundamentalism - with fundamentalisms - wherever they may be. Ultimately, it is the idea of secularism that guarantees a balance between public and private life, a separation that is healthy for social and political harmony. And Algeria badly needs it in order to take a decisive, definitive step into modernity.

### **Endnotes**

<sup>1</sup> Mohamed Boudiaf also identified with the ideas of the French Revolution of 1789 (memo by Simon Blumental).

## Abstract

In this brief contribution, a French Muslim scholar argues passionately that there is a positive link between guaranteeing the neutrality of public spaces (including promoting secular education) and a return to 'religion as message'.

A century of religious worship in the under the umbrella of the separation of Church and State is long enough now for us to be able to analyze it and draw some significant conclusions.

Something that will interest the most fervent of religious believers is that this secular experience puts all religions back in their original state – that of a message adopted out of pure conviction, completely uninfluenced by fear or force. People believe while all the time having the option of not believing, and they practise their religion only insofar as it fits in with their daily schedule, their commitment, and no more. The small amount of worship devoted to God is genuine and in no way prompted by social hypocrisy or professional ambition of any kind.

Diminishing religion as an institution is not a betrayal of religious messages. On the contrary, drawing back in this way encourages a return to religion as message. The Church instituted by Jesus is an invitation to universal brotherhood, and the transnational community of the Ummah really exists only in the sense of belonging together to a more or less clearly identified Islamic teaching. The use of the term "community" in relation to Muslims is, in any case, a linguistic indulgence, if not sheer nominalism.

Nevertheless, the experience of the secular state has brought to light some serious shortcomings in terms of ethics, sense and transcendence.

Let us look for a moment at the confusion – not to say the impasse, or failure – of secular education in its mission to educate future generations. Educating does not just mean training minds and stuffing heads with all sorts of knowledge. Educating means,

above all, handing down values such as serious-mindedness, commitment, a sense of responsibility and other virtues – even if we do not know on what conviction we should found them, or in the name of what transcendence we uphold them. A Nation, indeed, is not just a set of cold, implacable institutions, but a soul, an ethic, and a path towards a horizon.

One question has been on my mind since I started reflecting on the subject of religion and secular education: is it really possible to separate the temporal from the spiritual, in human consciousness ?

If we are always to always distinguish between the political and the religious, if we are at all costs to maintain the separation of the state from all religious institutions, then it seems logically and logistically impossible to dissociate the temporal from the spiritual, as human beings lie at the intersection of these two dimensions. Is it possible to separate responsible human behaviour from conscience, and conscience from ideals and convictions?

There is food for thought in this, as pragmatic laws are not designed to settle such metaphysical questions. Moreover, what is the point in having a spirituality that is not reflected in positive behaviour in society?

Let us leave it up to each and every person to draw on their own spiritual or philosophical tradition. The important thing is that we eventually end up by establishing a shared ethics.

There are no longer any issues lurking in relations between the State and the Churches, and generally speaking there is social stability in relation to religion. Perhaps

it is time for the state to concern itself with religion as a “citizen’s need” like sports and the arts, in the same way as it concerns itself with hunting and fishing and all sorts of highly popular disciplines which are undoubtedly far less existential than faith and transcendence. If this “citizen’s need” is not met, it is the fundamentalisms, the sectarian movements or, more trivially, pushiness and wheeling and dealing that will take care of it. We are already seeing examples of that happening.

Yet how can we get religion talked about again, given the tense reactions any time the subject is raised and the habits that society and official bodies have got into?

### **New opportunity for discussion in France**

There is an opportunity. The presence of Islam in France and the concern about how it is organized can be a fortunate coincidence, a breath of fresh air. Because the collective memory of French Muslims bears no scars of the secularism or anticlericalism that marked the birth of secular education, and have not suffered the slightest ill-effects from them, their relationship with religion is completely different from that of their Catholic or Protestant fellow-citizens, for example.

Because of this stormy, painful history, most of the traditional churches arm themselves with caution when they intervene in public. They prefer to speak in the name of solidarity, mutual support or humanity than directly in the name of God or charity.

Muslims’ religious expression in public, on the other hand, is characterized by extreme spontaneity, even naivety. As people whose speech is peppered with references to God, and who will pray anywhere, anytime, without feeling the slightest embarrassment

or shyness, they have no conception of how “corny” it is to talk about religion. They are not aware of the extent to which mention of beliefs gave rise – and still does give rise – to derision, if not a mental block, on the part of their listeners, because there is no tradition of “imam-haters” and the presence of Islam in France began a long time after the so-called War of the Two Frances.

The presence of a religion with a clear mind free from this anti-religious trauma could in fact be a chance to take the emotion out of people’s relationship with religion and to think calmly about the role of spirituality as a foundation for an ethics that provides the meaning necessary for building up the human conscience.

While clinging jealously to the individual freedoms, rationality and denominational neutrality that characterize public institutions, there is nothing to prevent the numerous religious traditions that make up our society from giving us the benefit of their experience, enriched over several centuries. The liveliness shown by a religion should not be a source of embarrassment, or cause anxiety. A living religion is a dynamic force with proposals to put forward, a source of ethics which is capable of suggesting, promoting or disapproving.

It is too easy to present the neutrality of the public arena as the expulsion of all religious expression. In fact the most stimulating challenge would be for secular education to become able to transform the antagonists of yesterday into partners who have lived through the same experience, with a fertile, fruitful, fascinating debate.

While in the shadow of secular education, religion no longer has a secular arm for

making its presence felt – it has only the word; and it must use it at all times and with full independence. Drifting off course, all drifting happens when religion exceeds its prerogatives and tries to assert itself using some method of pressure. In that case, let us strip it of all administrative authority and remove it completely from the political sphere – partly to safeguard its immunity and protect it from the ambitious and the career-minded.

In our new century, religious feeling is making a come-back. Channels for accessing it must be dug before it overflows. If we do not acknowledge the place of religion in society, it will not disappear – on the contrary, it will evolve anarchically, and will burst out of its framework.

### Acknowledgements

This contribution is printed with the permission of the author, and formed the basis for his presentation at the WLUML panel on secularisms at the 2005 AWID Forum in Bangkok.



A week ago, at a reception in one of London's dowdier hotels, Maryam Namazie received a cheque and a certificate stating that she was Secularist of the Year 2005. The audience from the National Secular Society cheered, but no one else noticed.

At first glance, the wider indifference wasn't surprising. Everyone is presenting everyone else with prizes these days - even journalists get them. If coverage was given to all award winners, there would be no space left in the papers for news. On top of that, secularism is still an eccentric cause. Despite the privileges of the established churches, this is one of the most irreligious countries on Earth. The bishops have power but no influence, and the notion that you need a tough-minded movement to combat religious influence still feels quaint.

Like republicanism, secularism is an ideal which can enthuse the few while leaving the many cold.

The rise of the Christian right in the United States and the Islamic right everywhere, of faith schools and religious censorship is breaking down complacency. The 7 July bombings should have blown it to pieces. But the Ealing comedy caricature of a kind vicar, who may be a bit silly but remains intrinsically decent, is still most people's picture of the religious in England, not least because there is truth in it. (It's a different matter in Northern Ireland and on the west coast of Scotland, for obvious reasons.)

For all that, Maryam Namazie's obscurity remains baffling. She ought to be a liberal poster girl. Her life has been that of a feminist militant who fights the oppression of women wherever she finds it. She was born in

Tehran, but had to flee with her family when the Iranian revolution brought the mullahs to power. After graduating in America, she went to work with the poor in the Sudan. When the Islamists seized control, she established an underground human rights network. Her cover was blown and she had to run once again. She's been a full-time campaigner for the rights of the Iranian diaspora, helping refugees across the world and banging on to anyone who will listen about the vileness of its treatment of women.

When an Iranian judge hanged a 16-year-old girl for having sex outside marriage - I mean literally hanged her; he put the noose round her neck himself - Namazie organized global protests. Her best rhetorical weapon is her description of the obsessiveness of theocracy. The law in Iran not only allows women to be stoned, she says, but it specifies the size of the stones to be used; they mustn't be too small in case it takes too long to kill her and the mob gets bored; but mustn't be too big either, in case she is dispatched immediately and the mob is denied the sado-sexual pleasure of seeing her suffer.

She's media-friendly and literate, not least because she runs the London-based International TV English whose programmes have a large following in the Middle East. Yet one of the most important feminists from the developing world has never been on Woman's Hour. I searched our huge cuttings database and could find only one mention of her in the national press over the past 10 years. Right-thinking, left-leaning people have backed away from Maryam Namazie because she is just as willing to tackle their tolerance of oppression as the oppressors themselves.

It was the decision of broad-minded politicians

in Ottawa to allow Shari'a courts in Canada which did it for her. They said if they were not established, the Muslim minority would be marginalized and to say otherwise was racism pure and simple.

After years of hearing this postmodern twaddle, Namazie flipped. Why was it, she asked, that supposed liberals always give 'precedence to cultural and religious norms, however reactionary, over the human being and her rights'? Why was it that they always pretended that other cultures were sealed boxes without conflicts of their own and took 'the most reactionary segment of that community' as representative of the belief and culture of the whole.

In a ringing passage, which should be pinned to the noticeboards of every cultural studies faculty and Whitehall ministry, she declared that the problem with cultural relativism was that it endorsed the racism of low expectations.

'It promotes tolerance and respect for so-called minority opinions and beliefs, rather than respect for human beings. Human beings are worthy of the highest respect, but not all opinions and beliefs are worthy of respect and tolerance. There are some who believe in fascism, white supremacy, the inferiority of women. Must they be respected?'

Richard J Evans, professor of modern history at Cambridge, pointed out in *Defence of History* that if you take the relativist position to its conclusion and believe there's no such thing as truth and all cultures are equally valid, you have no weapons to fight the Holocaust denier or Ku Klux Klansmen.

Namazie is on the right side of the great intellectual struggle of our time between

incompatible versions of liberalism. One follows the fine and necessary principle of tolerance, but ends up having to tolerate the oppression of women, say, or gays in foreign cultures while opposing misogyny and homophobia in its own. (Or 'liberalism for the liberals and cannibalism for the cannibals!' as philosopher Martin Hollis elegantly described the hypocrisy of the manoeuvre.) The alternative is to support universal human rights and believe that if the oppression of women is wrong, it is wrong everywhere.

The gulf between the two is unbridgeable. Although the argument is rarely put as baldly as I made it above, you can see it breaking out everywhere across the liberal-left. Trade union leaders stormed out of the anti-war movement when they discovered its leadership had nothing to say about the trade unionists who were demanding workers' rights in Iraq and being tortured and murdered by the 'insurgents' for their presumption.

Former supporters of Ken Livingstone reacted first with bewilderment and then steady contempt when he betrayed Arab liberals and embraced the Islamic religious right. The government's plans to ban the incitement of religious hatred have created an opposition which spans left and right and whose members have found they have more in common with each other than with people on 'their side'.

As Namazie knows, the dispute can't stay in the background for much longer. There's an almighty smash-up coming and not before time.

### Acknowledgements

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### Union of three principles

*Laïcité* is the union of three principles: the liberty of conscience, the equal treatment of all citizens irrespective of their beliefs, and the idea that the law should have no other objective than the common good. Like in other countries, the Democratic Republic of Congo (DRC) is governed by a number of texts, the most basic of them being the Constitution. Article 4 of the transitional constitution of the DRC declares that the state is independent, sovereign, indivisible and secular. Constitutionally, the DRC is secular and *laïcité* is also the 1st Article of the proposed new Constitution which would govern the 3rd Republic from 2006. While these constitutional provisions determine and assure the freedom to choose one's religious affiliation, the separation of religion and state in DRC is a real challenge.

### *Laïcité* in action: an example

As per the decree issued on 5 July 1948, couples who contracted an exclusively religious marriage could get it recognized officially by fulfilling the necessary formalities, and obtain a legal status for their previously contracted religious marriage. Since 1997, the family code through its Article 330 has emphasized the civil character of marriage. Henceforth, the code specified, purely religious marriages would not be recognized by Congolese law. This step was taken keeping in view the principle of separation of religion and state: the DRC being a secular state, it was necessary to dissociate the official rules concerning marriage, and the rules formulated in this regard by religious groups. Unfortunately, in practice some Churches continue to celebrate exclusively religious weddings. Worse still, for the past several years, the proliferation of sects in Congolese society has been increasing,

resulting in several negative developments. Many matrimonial homes are being destroyed because of revelations about some clergymen's activities. Adherents are being cheated and divine authority is frequently invoked for economic, financial and political ends.

### Religious interference in politics

Since the official end to the war, and the setting up of a transitional government in 2003, the Church has once again taken on itself the task of being the moral guardian of the political powers. Organizations like the National Episcopal Conference of Congo (Cenco) and the Ecumenical Council of Congo (COE) today play a definitive role in the political affairs of the DRC. They invoke their supposed moral and political authority and claim that they are working within the framework of their institutions which they say have social and political responsibilities. They claim to be interlocutors for the general public - if not indispensable partners - vis a vis their interaction with the political authorities. The Churches affirm that they respect the principle of separation of the temporal and the spiritual as well as the secular nature of the state, while at the same time remaining an important actor in the nation's political life. They keep a watch on the defects and the deficiencies of the state in the social, educational and economic sectors. All this indicates how the Church implicates itself in political and public affairs. As a consequence, several institutions are guided, or led, either directly or indirectly, by Church officials or their nominees, be it at the Independent Electoral Commission, the Senate, or the Truth and Reconciliation Committee etc.

### The future of *laïcité* in the DRC

The draft Constitution which has been accepted at the referendum on 18 December

2005 and which will come into effect in 2006 proclaims the secular character of the DRC. But unfortunately, this Constitution curiously appears to be contrary to the very values and principles that it intends to promote. In fact, the Preamble as well as Article 74 of the Draft Constitution make explicit reference to God. On the one hand the people of Congo are to declare their responsibility "before God, the Nation, Africa and the World"; and any Congolese elected President of the Republic is expected to take the oath of office "solemnly in the name of God and the Nation" (Article 74). On the other hand this same draft Constitution's 1st Article provides that "The DRC is a state governed by law, democratic and laic, and that all persons have the freedom of thought, conscience and religion." "Every person has the right to manifest his religion or his convictions, subject to respect for the law, for public order, for morality and for the rights of the others" (Article 22).

Reading these different provisions in the draft constitution one notes a forced marriage between the noble idea of constructing the Republic around the concept of *laïcité* with the obligation for all future presidents of the Republic to accept their office in the name of God. This imposition of God on all Congolese leaves one perplexed. Such a step is injurious to the fundamental right of all persons to believe or not to believe. Even if we were to concede that the majority of the population is pious, it is an undisputable fact that not all Congolese are believers; amongst them we also find non-believers, agnostics, atheists etc. This, from the perspective of Human Rights and *laïcité* is discriminatory.

A secular regime ought to, *ipso facto*, imply that religion or faith should cease to be a tool or a criterion in the hands of the

administration. The proclamation of the principle of secularism ought to, in principle, bring in a clear distinction between political matters and religious beliefs, in order to render to all citizens the freedoms of thought, conscience and religion guaranteed by the draft constitution.

### A secularism proclaimed but not practised

Secularism in the Democratic Republic of Congo appears to be more a theoretical pursuit than a practical one. Even if it exists in legal texts, it is not encountered in the daily life of the Congolese and one could go to the extent of saying that secular culture is non-existent in the country. Even if the political slogans affirm that 'the DRC is a secular country' and that 'There is no state religion'.

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### Acknowledgements

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### Silvia Aloisi | Darfur rebels split over secular state demands

Darfur's main rebel group insisted on Sunday religion and state should be separated in Sudan, a demand rejected by Khartoum and which has divided the two rebel groups at peace talks in Nigeria.

The rebel movements negotiating with Sudan's Islamist government to try to end the 20-month-old conflict in Darfur have been unable to come up with a common political framework, presenting separate documents to mediators instead.

The United Nations says 70,000 people have died of disease and malnutrition in Darfur since March. There are no reliable figures for those killed by the fighting, which Washington calls genocide and the U.N. says has displaced 1.6 million people.

Talks in Nigeria's capital Abuja to end the fighting have stalled, mainly on security and disarmament issues, while parallel negotiations on Sudan's future political system have also failed to make much progress.

The main rebel group, the Sudan Liberation Army (SLA), wants a clear separation between political and religious affairs in Sudan -- a demand rejected by the government and unlikely to find support with the second, more Islamist-oriented, rebel group at the talks, the Justice and Equality Movement (JEM).

#### Politics and religion

"This is a very important issue for us. I am a Muslim, but religion in our country is being used to kill and marginalize people," said SLA spokesman Mahgoub Hussain.

But JEM spokesman Ahmed Hussain said: "I think this is something we should leave

for the people of Sudan to decide in wider consultations.

"We didn't take up arms to fight for the separation of politics and religion. We took up arms to fight against marginalisation."

Government negotiators said Sudan's mainly Muslim north, including Darfur, should continue to be governed by the principles of Islamic law.

"Sharia is the law and should be the law. The concept of separation between state and religion does not exist in the Islamic world. It's all politics, it's all religion," said Abdul Zuma, media adviser to the government delegation.

While the government has agreed in separate peace talks with mainly Christian and animist rebels in southern Sudan not to apply Sharia law there, Zuma said that deal did not include the western region of Darfur.

The SLA and the JEM took up arms in February last year, accusing Khartoum of neglecting Darfur and arming Arab militias to kill African villagers.

Most of Darfur's ethnically Arab and African tribes are devout Muslims, but the non-Arabic speaking tribes see themselves as culturally distinct from the Arab tribes dominating politics in Khartoum.

The leadership of the two rebel groups have very different backgrounds. JEM's leaders are widely believed to have retained prior links with Sudan's opposition leader and Islamic ideologist Hassan al-Turabi, an advocate of Sharia law.

## **Acknowledgements**

This paper © Reuters, October 31, 2004 and appeared on the website of World Wide Religious News (WWRN) <http://www.wwrn.org/article.php?idd=5749&sec=59&con=57>

### Presented by Elfireda Harth, Catholics for a Free Choice, European Representative

Catholics for a Free Choice (CFFC) welcomes the discussion in the European Parliament regarding dialogue between the European Commission and churches and non-confessional organizations.

CFFC strongly supports the inclusion of nongovernmental voices in the development of EU policy. This includes the voice of churches and non-confessional and philosophical organizations that have considerable knowledge and experience regarding many matters that come before the community.

At the same time, we strongly support the principles articulated in the oral question raised by Sophie in't Veld and 37 members of Parliament, which states that "the dialogue will be balanced and inclusive with regard to the participating organizations."

We further endorse the suggested practices raised by the question:

- No privileged relations will exist with any particular religion or movement; the dialogue will take place on the basis of an established list of participants, published on the website of the Commission;
- The dialogue will be transparent; to the effect that the meeting agenda and minutes will be published and meetings take place in public;
- The dialogue will be put on the same footing as the dialogue with other sections of civil society.

Given the fact that the European Constitution has not been adopted, the EU has to be run according to the rules of the Nice Treaty. Article 52<sup>1</sup> of the proposed Constitution, which was quite controversial and a compromise, should not be the basis for the relationship between churches and non-confessional and philosophical organizations and the EU.

Thus far, the only official mention of religious institutions and non-confessional organizations existing in the Treaties of the European Union is a footnote in the 1997 Treaty of Amsterdam, establishing the European Union:<sup>2</sup>

*"11. Declaration on the status of churches and non-confessional organizations. The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organizations."*

In spite of the relegation of religion to the national realm in accord with the EU principle of subsidiarity and the strong claims made by some religious organizations that the EU has no standing to legislate relative to religion, practices have evolved in the EU in which certain churches have been informally and, in some cases, formally granted privileged status.

As members of one of these religions, Roman Catholicism, we are very concerned by this practice and believe that it actually discriminates against the views and values of many Roman Catholics.

There is, we believe, no justification or need

for the EU to institute and maintain diplomatic relationships with religious authorities that present themselves as international political players. A limited number of religions desire such relations, most notably the Order of Malta and the Holy See. Most religious entities seek only the same status and rights as other NGOs and expect no such special privileges.

Diplomatic relations should be based on clearly defined definitions of statehood under international law and comparable state level practices of democracy, equality and respect for human rights as is demanded of member states. To establish diplomatic relations with entities where these principles are not part of the governing structure of the religion or organization would be violative of EU values and principles as stipulated in the Charter of Fundamental Rights of the European Union, adopted in Nice in 2000.

This principle should extend to special institutional relationships with organizations representing the corporate interests of a special (religious) body. For example, at present the Commission of the Bishops Conferences of the European Community (COMECE), one of whose members is the apostolic nuncio to the European Union (a foreign diplomat), holds the status of official "civil society" interlocutor of the Catholic faith community with the European Commission. While we very much respect many of the specialized contributions of COMECE, based on the experience and programs of its members working in the fields of poverty alleviation, care of immigrants and other matters, these contributions are also made by other non-faith-based NGOs and by platforms of NGOs who hold no special status. A level playing field between and among all NGOs must be maintained. The Commission and

Parliament should also consider whether or not the COMECE, as well as other religious groups, fully subscribe to the values of the EU on central issues like equality between women and men, divorce, same sex couples, sexuality education, contraception, abortion, HIV and AIDS prevention and the role of religion in policy making.

An important element of dialogue between governments and NGOs, including religious NGOs, is the question of their constituency representation. If NGOs put forward positions that the majority or a large minority of their constituents do not agree with, should the government take those NGOs seriously? An AP/Ipsos poll conducted in May 2005<sup>3</sup> shows that there is widespread support for a clear divide between politics and religion. More than three quarters (77%) of citizens of the United Kingdom rejected the idea that their religious leaders try to influence government decisions, a position shared by 76% in Spain, 75% in Germany, 72% in France and 63% in Italy. In 1998, 46% of Irish Catholics found that the Catholic church has too much power,<sup>4</sup> and in 2001, 56% of Polish citizens stated that the participation of the Catholic church in politics was excessive.<sup>5</sup>

In the example of the COMECE, which is recognized by the European Commission as interlocutor of the Catholic faith community, there are a number of issues on which the COMECE does not reflect the views of its constituency. Large majorities of Catholics throughout Europe believe that cohabitation before marriage is acceptable, a clear form of civil union increasingly recognized by the EU including 76% of German Catholics, 72% of Spanish Catholics, 62% of French Catholics and 58% of Catholics in Portugal.<sup>6</sup> One out of ten babies born in Spain, a country with a population of 90% of Catholics, has

been conceived through medically assisted reproduction.<sup>7</sup> Opinion polls throughout Europe show increasing support for civil unions for both gay and straight couples, and the Netherlands, Belgium and Spain were the first three countries in the world to legalize gay marriage.

A good example of appropriate relations between the EU and religious organizations can be found in a number of areas. The EU cultivates working relationships with organizations of civil society that are working in all sorts of fields, such as employers and employees, farmers' organizations, small businesses, the crafts sector, the professions, cooperatives and non-profit associations, consumer organizations, environmental organizations and associations representing the family, women, persons with disabilities and the scientific and academic community. Many of these organizations have a religious background and are, at least to some extent, controlled by religious authorities, for example, Caritas or the Catholic development aid organizations regrouped in CIDSE or the Protestant equivalent regrouped in APRODEV. These groups provide essential social services for the poor, do not have religious evangelization as their aim and abide by the laws governing any other organization created by EU citizens. Therefore, they should have the same rights and obligations as all other comparable organization. These organizations, religious and secular, are among the most active ones in the EU in establishing structured, efficient and transparent mechanisms of participation of civil society in the political life of EU democracy.

There are many complex questions regarding the role of religious organizations and churches in the EU. We believe

Parliamentary discussion of the matter and eventually the guidelines established should be respectful of the contributions that can be made by religious organizations to the aims of the community and the developing world and respectful of the rights of religious organization to free speech and participation in civil society, but they should also be equally concerned with ensuring no special privileges above those of all civil society organizations and all citizens of the Union. The moral mandate for governance in European society rests on the will and consent of the governed, not on the religious beliefs of any or all faith groups. That principle must be jealously guarded and protected by all.

## Acknowledgements

This paper appeared on the Catholics For a Free Choice website <http://www.catholicsforchoice.org/news/pr/2005/prarchive2005.asp>

## Endnotes

<sup>1</sup> Article I-52 Status of churches and non-confessional organizations.

The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

The Union equally respects the status under national law of philosophical and non-confessional organizations.

Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations.

<sup>2</sup> <http://europa.eu.int/eur-lex/lex/en/treaties/dat/11997M/html/11997M.html#0145010077>, accessed 2 September 2005.

<sup>3</sup> <http://wid.ap.org/polls/050606religion.html>, accessed 2 September 2005.

<sup>4</sup> See Andrew Greeley, 'Religion in the Emerald Tiger: The Irish are still Catholic, but now on their own terms', in *America*, 12 March 2001.

<sup>5</sup> See 'Poland: Poll scrutinizes attitudes toward Catholic Church', in *Relioscope*, 21 August 2002.

<sup>6</sup> Catholics for a Free Choice, *World View: Catholic Attitudes on Sexual Behavior & Reproductive Health*, Washington, DC: Catholics for a Free Choice, 2004.

<sup>7</sup> See *El Mundo*, April 26, 2002.



# Appeal to Muslim citizens of France who love peace, justice, freedom and secularism

### Movement of Secular Muslims of France

Today, 14 July 2003, our freedom of conscience and our freedom of expression are at stake. We can no longer keep silent. Our silence makes us complicit in the self-serving manipulations of the obscurantists of Islam.

We have to shoulder our responsibilities to escape the traps laying siege to the republic, secularism, Islam and Muslims.

In the face of attempts by those who want to impose a fundamentalist Islam imported from abroad and to manipulate Islam and Muslims for political purposes, it is our duty to mobilize and to act:

- To mobilize and to act in order to defend a modern concept of Islam, in tune with the times and with the laws and values of the Republic, in particular secularism and the absolute equality of rights between citizens of either sex;
- To mobilize and to act in order to defend the concepts of self-determination and individual freedom;
- To mobilize and to act in order to fight all forms of fundamentalism and obscurantism;
- To mobilize and to act in order to encourage integration into the nation of French people born of migrants and to develop their active participation in the social, economic, public and political life;
- To mobilize and to act in order to work collectively towards a reform of Islam by promoting the start of a real in-depth debate on Islam and necessary adjustments, and finally;

- To mobilize and to act in order to promote a respectful dialogue and reconciliation with other religions.

We therefore call upon the silent majority of Muslims of France - practising or not - forever silenced by pressures and intimidations, to at last stand up to express and promote their point of view.

We also denounce any culture of hate and violence in the name of Islam, which reflects a reactionary attitude of mind. The current surrealistic debate on the Islamic scarf, a veritable flag of political Islamism, and the questioning of French secularism should not blind us to the fact that the real issue for France and for the French people is to refuse and resist the establishment into their territory of an ideology both dangerous and perverse, which could lead to the death of the Republic.

This ideology is being pushed by movements that, under the pretext of representativeness, have appropriated for themselves the voices of all the Muslims in France.

As secular Muslims deeply attached to France, we are the first victims of manipulations and attempts to put us all in the same basket.

We therefore have a duty to be on the forefront, to be the first ones to react and to become engaged in the defense of the republic, secularism, citizenship, freedom of cult for all, without fail and without weakness.

Send your signatures to:

Espace B  
16 rue Barbanègre  
75019 Paris  
France

and MMLF@free.fr

or sign on at:

[http://www.maghrebins-laiques.fr.st/article.php3?id\\_article=34](http://www.maghrebins-laiques.fr.st/article.php3?id_article=34)

First signatories:

**Sabiha Amine**

*Deputy Mayor of Lyon*

**Fouad Ahmine**

*Cadre*

**Nadia Amiri**

*ex-Vice President of France Plus*

**Soheib Bencheikh**

*Grand Mufti of Marseille*

**Abdallah Bensadoun**

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**Nora Borra**

*Medical doctor, member of the City Council of Neuville-sur-Saône*

**Nadir Bourkani**

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**Malek Chebel**

*Anthropologue*

**Betoula Fekkar-Lambiotte**

*General Inspector in the National Education, member of the French Council of Muslim Culture*

**Abderrahmane Ghouli Moulay**

*Imam*

**Mozri Haddad**

*Philosopher and writer*

**Morad El Hattab**

*Writer*

**Rachid Kaci**

*President of the Movement Démocratique*

**Hamid Lafrad**

*Member of the City Council of Metz*

**Michel Renard**

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**Yassir Yebba**

*Researcher*

1 February 2006: Judge Luigi Tosti, of the court of Camerino (Italy), was sentenced to seven months in jail and one year of exclusion from public buildings for refusing to sit in the presence of religious symbols in the courtroom. He has now, in addition, been suspended from his functions and remuneration by the disciplinary section of the Italian judiciary system. This sanction was requested by the prosecuting attorney of the Italian supreme court of appeal, who is the voice of the Italian government presided over by Dott. Silvio Berlusconi.

### **Judge Luigi Tosti must be acquitted!**

This is the demand made by 2500 citizens from 34 different countries on every continent, including 500 Italian citizens, mobilized over the last two months, to demand an end to the legal and disciplinary procedures and the immediate restoration of the judge to his position.

On 15 August, 2005 Pope Benedict XVI stated in his homily: "It is important that God be visible inside public and private houses, that God be present in public life, with the presence of crucifixes inside public buildings."

On 19 November 2005, Benedict XVI and Silvio Berlusconi, following "an exchange of opinions over Church-State relations in Italia", confirmed "the common will of both parties to collaborate within the framework of the Lateran Treaty."

On 18 November 2005, judge Luigi Tosti, age 57, was sentenced by the Aquila tribunal, about 100 km from Rome, to seven months in jail and a one-year suspension. His crime? Luigi Tosti refuses to judge in the presence of religious symbols inside the courtroom.

The judge bases his case on the Italian Constitution of December 1947 that states that all citizens "are equal before the law, without consideration of sex, race, language, religion" (Art. 3), but a directive from the Fascist minister Rocco, dated 1926 and never abolished since by any of the following governments, states that crucifixes must be displayed inside Italian courtrooms.

Indeed, Italy continues to live under both, the Lateran Treaty regimen and the Church-State concordat, signed on 11 February 1929, between the Vatican and Italy. Italy was then represented by Benito Mussolini, head of government. In 1984, the head of the government, the socialist Bettino Craxi, renewed the concordat with the Vatican: admittedly the catholic cult was no longer State Religion but the fascist laws were not abolished. So Italy has, in cardinal Tauran's words, a 'coordinated' Church-State separation, as opposed to "the pure and simple separation" in which "religions are constrained to the private sphere (USA, France)."

This is indisputably an intolerable attack on freedom of conscience and the principle of secularism. This is why the signatory organizations of this statement call on international public opinion forcefully to demand:

- The acquittal of Judge Tosti and the cessation of legal proceedings against him;
- The immediate cessation of the disciplinary proceedings against him;
- The immediate restoration of Judge Tosti in his functions and remuneration.

This cause, adopted by Democrats, Humanists, Secularists, Rationalists and

Free-thinkers, is the same one on every continent: for the absolute freedom of conscience guaranteed by separation of Religion and State!

The organizations who initiated this statement call on every local, national, international organization that, throughout the world, defends secularist principles to join them with signing this statement, to support and gather signatures for the international petition, which has already collected more than 2500 signatures and, in the name of their own organization, to call upon the chief of the Italian government to require the end of this attack on freedom of conscience in Italy:

Dott. Silvio Berlusconi  
Presidenza del Consiglio dei ministri  
Palazzo Chigi  
Piazza Colonna 370  
00186 Roma - Italia

tel. +390667791  
e-mail. berlusconi\_s@camera.it

Secularists of all nations, unite!

Each organization adopting this statement is asked to send a message for the attention of Union Rationaliste de Nantes, which is coordinating information about these initiatives, and ensures coordination with the international petition by individuals and with Judge Luigi Tosti.

by e-mail:  
naud\_michel@yahoo.fr (Michel Naud)

by postal mail:  
Union Rationaliste de Nantes

13, place du Petit Bois  
F- 44100 Nantes (France)

Individual signatures to be addressed to  
Michel NAUD:  
brightsfrance@free.fr

Specify last name, first Name, credentials,  
area (city, state/province, country,)

Central website of the campaign:  
<http://brightsfrance.free.fr/tosti.htm>

Signers list:  
<http://brightsfrance.free.fr/tostiliste.htm>

List of signatory organizations:  
<http://brightsfrance.free.fr/tosticall.htm>

Latest news about Judge Luigi Tosti:  
<http://brightsfrance.free.fr/tosticassation.htm>



## Contributors

### Irfan Ahmed

Irfan Ahmad is Postdoctoral fellow at ISIM, the Institute for the Study of Islam in the Modern World, Leiden, Netherlands. His project, funded by the Netherlands Organization for Scientific Research, deals with practices of immanent criticism among Islamic organizations in postcolonial India.

### Nadje al-Ali

Senior Lecturer in Social Anthropology, Institute of Arab and Islamic Studies, University of Exeter

Nadje al-Ali has carried out research on gender in the Middle East as well as Muslim migrants and refugees in Europe, and has authored, amongst others publications, *Secularism, Gender and the State in the Middle East*. Nadje was involved in the Egyptian women's movement and is now a member of Women in Black (WiB) London, Women Against Fundamentalisms, and Act Together: Women's Action on Iraq.

### Soheib Bencheikh

Soheib Bencheikh studied at Al-Azhar University, Cairo, Egypt, and holds a Doctorate in Religious Sciences from the Ecole Pratique des Hautes Etudes, France. He was nominated Grand Mufti of Marseille, France, in 1995 by the Rector of the Great Mosque of Paris. He is a member of the Conseil Français du Culte Musulman (Council of French Muslims), and has written on the position of Muslims in secular democracy, *Marianne et le Prophète: L'Islam dans la France laïque*.

### Asghar Ali Engineer

A distinguished scholar of Islam with more than 40 books to his credit, Dr. Engineer lectures across the world and has received several awards for his work on inter-religious understanding. He is a leading figure in the Centre for the Study of Society and Secularism in India, whose objectives include spreading the spirit of secularism and communal harmony and social peace.

### Rashida Manjoo

Visiting Fellow in the Human Rights Program at Harvard Law School; Honorary Research Associate in the Law Faculty of the University of Cape Town

Rashida Manjoo (LLM) is an activist, academic and a lawyer. She has been a member of South Africa's Commission on Gender Equality (CGE), a constitutional body mandated to oversee the promotion and protection of gender equality. She has worked on a range of issues, including gender justice (particularly violence against women), judicial education, transitional justice, and the implications of plural legal systems on women's human rights. She designed both content and methodology for social context training for judges and lawyers during her time at the Law, Race and Gender Research Unit, University of Cape Town and at the University of Natal, Durban.

## Penda Mbow

Associate Professor of History at Cheikh Anta Diop University in Dakar.

Penda Mbow has served as Senegal's Minister of Culture and as cultural advisor to the Senegalese Department of Ethnography and Historical Heritage. Her many areas of interest include African intellectual history, Islam, and gender studies.

## Tarik Mira

Tarik Mira is National Secretary for International Relations with the Rassemblement pour la culture et la démocratie (Algeria) - Alliance for Culture and Democracy. His commentary appears frequently in the French leftist press.

## Abdullahi an-Na'im

Charles Howard Candler Professor of Law at Emory School of Law

A Sudanese influenced by Mahmoud Mohamed Taha and who left the country in 1985 following the increasing hold of fundamentalism over Sudanese society and politics, Professor An-Na'im is an internationally recognized scholar of Islam and human rights, and teaches courses in human rights, Islamic law, and criminal law. His research interests also include constitutionalism in Muslim and African countries, and Islam and politics. He directs several research projects which focus on advocacy strategies for reform through internal cultural transformation.

## A. Rashied Omar

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A. Rashied Omar received a doctorate in religious studies from the University of Cape Town, South Africa, in 2005. He has been the Imam of a Muslim community in Maitland, Cape Town, South Africa, and writes regularly on issues of conflict, Islam and Inter-religious movements.

## Juan Marco Vaggione

Juan Marco Vaggione is currently working on a Ph.D. dissertation: *Gender and sexuality beyond secularism: The political mutations of the religious* – at the University of Cordoba, Argentina, and has been on the faculty of various research institutions and universities, including the New School, New York. He has also been associated with Catholics for a Free Choice for several years.

## Vivienne Wee

Core member, Southeast Asia Research Centre, City University of Hong Kong

Vivienne Wee is an anthropologist whose research interests include: Southeast Asia, development, gender, religion, the politics of continuity and change, globalisation and resource competition. She was chairperson of ENGENDER, Centre for Environment, Gender and Development, Singapore. Her several publications include: *Gender, poverty and sustainable development: toward a holistic framework for understanding and action* (with Heyzer, Noeleen, 1995, Singapore: ENGENDER and New York: UNDP).

