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RELIGIOUS NORMS IN THE PUBLIC SPHERE

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Edited by:

CHRISTOPHER KUTZ

HEDDY RISS

OLIVIER ROY

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RELIGIOUS NORMS IN THE PUBLIC SPHERE

Edited by

Christopher Kutz, C. William Maxeiner Distinguished Professor of Law; Director, Kadish Center for Morality, Law and Public Affairs

Heddy Riss, Program Director, University Of California Center On Institutions And Governance

Olivier Roy, Professor At The European University Institute, Joint Chair Rscas-Chair In Mediterranean Studies

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Introduction

FOREWORD AND SPEAKER BIOGRAPHIES

I. FOREWORD

The recent years have seen, in the West, an increasing debate on the presence of religious symbols in the public sphere (crucifix in Italy, minaret in Switzerland, veil and burqa in France, mosques, Ten Commandments and even Christmas trees in the USA, etc.). Most of the cases ended in court decisions, either local courts, supreme courts or the European Court of Human Rights, but with no clear results in terms of defining a coherent management of religious signs in public sphere. Why this increasing tensions and criminalization of the debate on religion? Is this the consequence of a growing secularization that aims at eradicating any remnants of religion, or, on the contrary, a "return of the sacred" that tries to reconquer the public sphere? Are we witnessing a clash of civilizations, where traditional cultures fight against newcomers (Islam in the West) by re-asserting a religious identity more than a religious faith? Is this more a conflict of religiosities, that is of personal experiencing of faith, where new believers (converts and born-again) strive to exhibit their faith more than to insert it in inconspicuous social practices? In any case, the debate has far reaching consequences: if the courts have to decide about religious signs, they have also to define what a religious sign is, and by consequence what is a religion, although most national constitutions prevent the state to interfere with theology and internal organization of faith communities.

The debate is also the expression of different conflicts of rights: the individual right to believe and practice or not to be discriminated, the collective right of faith communities versus individual rights, the minority/ majority balance, the endorsement of rejection by the law of a collective identity and of the promotion of a national culture, that could be catholic in Italy or secular in France. An underlying issue is of course to know whether a common public space could be really "equal for all" in terms of religious symbols when many cultural symbols are understood also as religious (Christmas tree) and many religious symbols as cultural (crucifix). To stress a right of a minority to be protected against faith or culture it does not share can lead to "void" the public space of any symbols.

In fact when a dominant religion loses its social and cultural evidence, a new issue arises: what is the meaning of the "religious" sign? In the Lautsee case (the crucifix in Italian class rooms), should we consider the cross as a symbol of a faith (that is the resurrection of Christ) or just as a national symbol, whose lingering presence says more about the secularization of religion in national culture than about a specific creed. It is a paradox that considering religious symbols as merely cultural (or more exactly as having been secularized, like the cross, because people just stop to believe that 'Jesus is my savior") leads also to a secularization of religion.

And what we mean about the "public sphere". There is an institutional one (schools, courts, government buildings), there is an informal one (streets, parks, playgrounds)? But the boundaries between private and public are also more and more blurred: when courts interfere in circumcision or schooling issues, they do circumscribe or more exactly put limit to the right of the parents to transmit, even if they by definition refer to an individual human right (what is more and more called "child's rights").

This book is based on the proceedings of a conference "Religious Norms in the Public Sphere: TheChallenge" held at UC Berkeley on May 6 and 7 2011.

The conference was the culmination of two projects: *The Transatlantic Network of Scholars On Muslims Religious Identity, Secularism, Democracy And Citizenship*, funded by the Partner University Funds; and *The Religious Norms in the Public Sphere*, funded by the Social Science Research Council. Those projects were co-sponsored by the UC Berkeley Center on Institutions and Governance and the Kadish Center for Morality, Law and Public Affairs at Berkeley Law School. The conference was also made possible thanks to the support of the Center for Islamic studies at the Graduate Technological Union. The researchers who have participated to this book come from different academic fields (law, political science, sociology, theology, islamology). Only this transversal approach can offer some ideas to understand the present debate and to present an original perspective.

The first section discusses the religious norms in the public sphere. *Olivier Roy* compares the role of religion in Western Europe and the Mediterranean Arab world after the Arab Spring.*Silvio Ferrari* outlines the religion and public/private divide in the European legal systems. *Peter Danchin* investigates Islam in the Secular *Nomos* of the European Court of Human Rights.

The second section deals with the debate of Islamic norms in Arab countries. *Enrique Klaus* with *Charles Hirschkind* and *Olivier Roy* as discussants analyses the scandals in Egypt and the manufacturing of religious norms in the public spheres. *Benkacem Benzenine* looks at secularism in Arab countries. The third section with *Sarah Song* as discussant examines the cases in European countries.

Geneviève Zubrzycki debates the Place of Religious Symbols in the Public Sphere in Poland, 1989-2010.*Matthew Francis* explores the "Sacred" as a resource for bridging the gap between the religious and the secular.*Romain Sèze* takes us inside the Exercise of the Islamic Religious Authority in France.*Christian Joppke* considers the French Burka Law of 2010 and the limits of restricting Islam:

The fourth section with *Marianne Farina* as discussant consists of two presentations: *Pasquale Annichino* on mosques controversies in the U.S.*David Koussens* on the juridical arrangements and political debates on catholic rituals and symbols in government institutions in Quebec:

The fifth session with *Nargis Virani* as discussant concentrates on Asian countries. *Sophie Lemière* presents the rise of Ethnonationalist groups in Malaysia. *Marco Ventura* outlines the legal arguments on forced conversions before the Supreme Court of India.

For the sixth session *Ebrahim Moosa* gave a keynote lecture on the norms in the Madrassas.

During the seventh session. *Olivier Roy, Naomi Seidman, Ebrahim Moosa, Marianne Farina, Imam Faheem Shuaibe* draw their conclusions from the presentations at the conference.

The last session was dedicated to the project funded by the *Partner University Fund* for a transatlantic network of scholars on Muslims' religious identity, secularism, democracy, and citizenship. Three of the scholars involved in this initiative have presented the results of their research. *Elise Massicard* looks at the Case of Alevism in Turkey. *Munir Jiwa* studies the mediation of Islamic norms through images and media. *Soraya Tlatli* has preferred not to include her paper in the book.

In the final contribution Olivier Roy summarizes the general findings of the project.

II. SPEAKER BIOGRAPHIES

Pasquale Annicchino is Research Fellow at the Robert Schuman Centre for Advanced Studies, he is also a member of EUI Ethics Committee. His main interests include legal theory, law and religion, EU law and religion and politics. He received his Ph.D in Law from the University of Siena.

Hatem Bazian is a senior lecturer in the Department of Near Eastern Studies and Ethnic Studies, and co-founder of Zaytuna College, the first Muslim liberal arts college in America. Bazian teaches courses on Islamic Law and Society, De-constructing Islamophobia and Othering Islam, Religious Studies, and Middle Eastern Studies. He received his Ph.D. in Philosophy and Islamic Studies from the University of California, Berkeley.

Benkacem Benzenine is a researcher at the Centre in Social and Cultural Anthropology in Algier. He received his Ph.D. in political philosophy at the University Charles De Gaulle Lille III.

Peter G. Danchin is Associate Professor of Law and Director of the International and Comparative Law Program at the University of Maryland School of Law. Danchin's scholarship focuses on competing conceptions of the right to freedom of religion and belief in international legal theory and on tensions between liberal and value pluralist approaches in particular. He received his J.S.D. from Columbia Law School.

Sister Marianne Farina is a Sister of the Holy Cross, Notre Dame Indiana. She is an Assistant Professor Catholic theology and philosophical ethics at the Dominican School of Philosophy and Theology in Berkeley, California. Marianne received a Master of Arts in Pastoral Theology from Santa Clara University and a Ph.D.in Theological Ethics from Boston College.

Silvio Ferrari is a Professor of Law and Religion, University of Milan and University of Leuven. He is the director of the Master of Comparative Law of Religions, Faculty of Theology, Lugano. His main fields of interest are law and religion in Europe, comparative law of religions and the Vatican policy in the Middle East. He has a degree in Law from the Catholic University of Milan

Matthew Francis is a Senior Researcher at the University of Lancaster. He works on the Global Uncertainties: Ideology, Decision-making and Uncertainty project looking into the role that beliefs, commitments and ideologies make in decision-making in the face of risk and uncertainty. He got his Ph.D. at the University of Leeds.

Ron Hassner is an Associate Professor in the Political Science department at UC Berkeley. His research revolves around symbolic and emotive aspects of international security with particular attention to religious violence, Middle Eastern politics and territorial disputes. He is a graduate of Stanford University with degrees in political science and religious studies.

Charles Hirschkind is Associate Professor of anthropology at the University of California, Berkeley. His research interests concern religious practice, media technologies, and emergent forms

of political community in the urban Middle East and Europe. He received his M.A. in Anthropology from Columbia University and his Ph.D. from Johns Hopkins University.

Munir Jiwa is the founding director of the Center for Islamic studies and Associate Professor at the Graduate Theological Union. His research interests include Islam and Muslims in the West, media, aesthetics, critical theory and decolonization, secularism and religions formation. He holds a Ph.D. in Anthropology from Columbia University.

Christian Joppke holds a chair in sociology at the University of Bern, Switzerland. His recent research projects are on religion and the challenge to the secular state and on multiculturalism. He obtained a Ph.D. in sociology at the University of California, Berkeley, in 1989.

Enrique Klaus is a Professor of political sciences at the International University of Rabat, Morocco. His researches ground in ethnomethodology and concern the media and the public sphere in the MENA region in general, and in Egypt and Morocco in particular.

David Koussens an Assistant Professor at the department of religious studies of the University of Sherbrooke (Canada) where he hold the Research Chair on Religions in Advanced Modernity. His research interests are in sociology of religion, politics and religion, sociology of law and law and society. He received a PhD in sociology from the *Université du Québec in Montréal.*

Sophie Lemiere is in the last year of her Ph.D. from Sciences-Po Paris and is conducting research on Ethno-nationalist and Islamic movements in Malaysia. She is currently a Research Associate at IRASEC (Research Institute on Contemporary Southeast Asia).

Elise Massicard is a permanent research fellow in sociology at the Centre national de la Recherche Scientifique, Paris, France. She leads the Observatoire de la Vie Politique Turque at the French Institute for Anatolian Studies, Istanbul, Turkey. Her research focuses on the political sociology of contemporary Turkey, especially religion and politics, and social movements. She got her Ph.D. at the Institut d'Etudes Politiques de Paris.

Ebrahim Moosa is Professor of Religion and Islamic Studies in the Department of Religion at Duke University. He is the recipient of the 2005 Carnegie fellowship for research on the Madrasas of South Asia. His interests span both classical and modern Islamic thought with a special focus on Islamic law, history, ethics and theology. He got his Ph.D. from the University of Cape Town

Heddy Riss is Program Director for the Center on Institutions and Governance at the Institute of International Studies at UC Berkeley. She has launched numerous programs such as Judging faith: an international dialogue on the jurisprudence on religion in courts, Religious Norms in the Public Sphere and the global Islam Initiative. She received a MA at the Université Libre de Bruxelles.

Olivier Roy is Professor at EUI, Florence and Chair in Mediterranean Studies. His current research is on religion in the public sphere and on the (re)construction and formatting of religions in the West through courts, social practices, public discourse and transnational institutions. He is the author of numerous books on subjects including Iran, Islam, Asian politics and religion. He contributes regularly to the op-ed pages of major newspapers in the world. He received his Ph.D. in Political Science from the IEP.

Naomi Seidman is Koret Professor of Jewish culture and Director of the Center for Jewish Studies at the Graduate Theological Union in Berkeley. Her current research focuses on translation Studies; translating the Bible **and** the sexual transformation of Ashkenaz; Haskalah Literature. She got her Ph.D. at the University of California, Berkeley.

Romain Seze is teaching at the University of Reims. His research is on Islam from different perspectives (philosophy, ethnology, sociology and political sciences), in different countries (Morocco, US and France) and with different tools (observations, analysis of the discourses, the public policies etc.) He got his Ph.D. at EHESS, Paris.

Imam Faheem Shuaibe is the resident Imam of Masjidul Waritheen inOakland, California. He is the founder of M.A.R.I.A.M. (Muslim American Research Institute Advocating Marriage) and The Sacred Life Project (A public language codification project focused on the language, logic and legacy of Imam Warith Deen Mohammed (ra).

Sarah Song is Professor of Law and Political Science at U.C. Berkeley. Her fields of interest include moral, political, and legal philosophy and the history of American political thought. She specializes in contemporary liberal and democratic theory in relation to issues of citizenship, nationalism, multiculturalism, cosmopolitanism, and migration. She received her Ph.D. from Yale University.

Marco Ventura is Professor at the faculty of canon Law of KUL. His main research interests are on law and religion, canon law, church and state relationships, comparative religions laws, religions freedom, bioethics and biolaw. He got his Ph.D. at the University of Strasbourg, France.

Nargis Virani is Assistant Professor of Arabic and Islamic Studies in the department of Foreign Languages at the New School. Her research explores intersections between the Muslim scripture and literature in a Muslim milieu. She received her PhD in Arabic and Islamic Studies from Harvard University. She holds a post-graduate diploma in Education from London University and a bachelor of commerce from Bombay University.

Geneviève Zubrzycki is Associate Professor of Sociology at the University of Michigan. Her research focuses on the linkages between national identity and religion at moments of significant political transformation, and the role of religious symbols in national mythology. She got her Ph.D. in Sociology at the University of Chicago.

SESSION I

RELIGIOUS NORMS IN THE PUBLIC SPHERE: THE CHALLENGE

I. A COMPARISON OF THE ROLE OF RELIGION IN WESTERN EUROPE AND THE MEDITERRANEAN ARAB WORLD AFTER THE ARAB SPRING

OLIVIER ROY

In Western Europe and the Mediterranean Arab world, there appear to be two different and almost opposite trends about the role of and room for religious markers.

Democratic movements in some Arab countries call into question the centrality of Islam as a legal and political concept, while in Europe there is an opposite trend to reassess the role of Christianity and, more specifically, Catholicism as part of the dominant culture, the *Leitkultur*, as the Germans call it.

While there is a beginning of disconnection in the Arab countries between religion, culture and politics there seems to be a reconnection in Western Europe. We are talking here about religious markers and not of religious practices nor of faith. Many actors who advocate the reconnection of dominant religious markers and the public sphere (like Geert Wilders in Netherlands and Marine Le Pen in France) are people who openly claim to be atheists or at least not church-goers. The same is true for the so-called populist groups: even if they call for a return to Christian references they are not Christian movements. In Italy, the Lega Nord might best be seen as Catholic, but not Christian. They openly criticize the church hierarchy on very specific issues like immigration, and they consider the archbishop of Milano almost a traitor. But they also propose that the cross should be put on the Italian national flag. There is a real discrepancy; hence the problem of using the term religion. What do we mean by that? Of course, the question is complex: it is difficult to tag people as believers, non-believers, belonging but non-practicing believers, apostates, church goers, etc. Sociology of religion has a tradition to scale the level of religious practices but it is not relevant for the issue we are addressing here. The issue is clearly that this connection—the reference to Christian markers in the Western public sphere—is not associated with faith. And, by the way, this is a problem for the Catholic Church, which wants to go further and reinstate, if not redefine, cultural markers in terms of faith.

Another element to take into account is that even if in most Western European constitutions there is a separation between Church and state, it does not mean that the constitution excludes religion from the public sphere. Even in France, with *laïcité* (now more an ideology than a constitutional concept), religion has never been excluded from the public sphere. It's an ideological reconstruction by the secularists now to say that religion is excluded. Religious markers in the public sphere are regulated by the state but not excluded: e.g. bell ringing and processions are not forbidden. Hence the debate about the Muslim prayers in the streets or the veil and burqa is not about religious practices that were never excluded as such. The debate is not about exclusion but more about the room for the dominant religion, either culturally or in religious terms. Of course there is an ambiguity: is it religion as such or just a cultural tradition? But it's interesting to see how the populist movements, all of them born from a secular milieu, have shaped this debate.

By the way, those movements often have a leftist component: you can't say anymore that the extreme right in Europe is just a continuation of fascist organizations. It was true for many of

the first leaders such as Jean Marie Le Pen. His political party, the National Front, was linked at the beginning to the history of the Vichy regime and its collaboration with Nazi forces. We have the same kind of political genealogy in Belgium and in Germany, though not in Holland and Denmark. Now, however, we have a second generation of populist leaders who are just disregarding the references to the first half of the European 20th century history.

There is clearly a shift when you look, for instance, at the Swiss referendum on minarets or the French debate on the burqa. The issue is not whether to promote secularism and separation of church and state. The issue is clearly that some religious markers are now positioned explicitly as foreign, as alien. This view is not just the view of populist movements. It's increasingly shared by the establishment. For example, Susanna Mancini's paper points out that courts dealing with public crucifixes in Italy and in Bavaria in Germany explicitly said that there's nothing wrong with a Catholic sign in the school rooms because it's part of the national culture. So the courts didn't base their decisions on equality of religion, on secularism, or on the separation of church and state. They acknowledge the existence of a national culture whose roots are in Christianity.

By the way, I have the impression—though it has to be corroborated by more studies—that some years ago the expression was "the Judeo-Christian tradition" but during the last two years, the term "Judeo" has disappeared. It's now just "Christianism." This is never said explicitly. But it's not by chance that the debate now concerns the cross, because the cross is Christian. It's not the Bible, it's not prayers. It's not like in the USA where the definition of religious markers is more fluid, less associated with a given religion. Here it's clearly Christian.

There have always been crosses in Italy and in Bavaria. They were part of the landscape, part of the furniture. Nobody noticed. But the fact that the cross has become a point of contention and has been reinstated by the European Court of Human Rights means that it is no longer just part of the landscape. This cross is here because the courts have decided that it should be here, because it's part of the culture. So we have a redefinition of what the national culture is. And we have a redefinition of what a religious marker is.

We are not in a process of continuity (there have always been crosses, bell ringing, etc.) but rather in the process of reconstructing religious markers as symbols of European identity. This has far-reaching consequences. It's interesting to see that the re-installment of the cross, or the legal justification for the cross, has not been the product of Catholic lobbying. Of course the Church was in favor of maintaining the cross. But the Church was not at the vanguard of the debate. Rather, the policy of maintaining the cross was a combination of public opinion, populist support and the decisions of courts.

The connection between religion and culture here has been defined outside a theological debate. The debate is not about what religion is or what faith is. This fact puts the Church in a complex situation. The Catholic Church has always said that Europe is Christian and claimed that Europeans have forgotten the consequences of being Christian because they have lost their faith. The present Church policy uses culture as a bridge to bring the cultural Christian back into real religion. So the church is not fighting here for freedom of religion. Of course, officially the Church supports freedom of religion, but it doesn't consider all religions as equal (although, by definition, no religion considers all religions to be equal—for all of them there is only one truth).

So the church wants to re-introduce this faith dimension. This dimension is outside of the reach of lawyers and social scientists that have little or nothing to say about faith. But this dimension cannot be ignored because it demarcates a purely religious symbol from a cultural symbol rooted in religion.

So in Europe we are rethinking the meaning of religious signs as part of a larger debate about European identity, the separation of church and state, and the presence of religion in the public sphere.

It's interesting to see what is happening on the other side of the Mediterranean, where democratization raises a debate about freedom of religion. In the tradition of Ottoman law (which still is more or less pervasive in many Arab countries), freedom of religion is not an individual freedom or a human right. It's a minority right. It's the right of a community to practice. This idea has largely spread in the West, too, at least regarding Muslim minorities.

We have a mirror effect between Europe and Muslim countries: the foreign, minority religion should be tolerated, but it is not on an equal footing with the majority religion. However, if you change the paradigm from belonging to a community to being an individual citizen, then you change the paradigm of religious affiliation. In the latter paradigm, religion is or should be a choice which brings the issue of conversion. Even if conversions are not statistically numerous, they have vital symbolic importance because it encourages a redefinition of what is religious affiliation and it destroys the connection between religious affiliation and identity. Conversion is not a matter of identity by definition but rather religious choice.

Hence, many of the constitutional debates in the Arab countries concern the definition and status of Islam. There's a consensus that constitutions must keep the reference to Islam as the religion of the nation, as the religion of the state, etc.—which, by the way, exists also in some western countries. It is not contradictory with being a democratic state. But then how do you redefine Sharia? How would you redefine, precisely, apostasy, for instance? And here the debate is very open. Rachid Ghannouchi made a very clear-cut declaration in Tunisia. He said that his party does not push for Sharia, has no Islamist agenda, but a democratic and political one, by accepting a constitution, elections, and individual freedom. And he explicitly refers to the AK Party (Adalet ve Kalkınma Partisi, "Justice and Development Party") experience in Turkey. In the Maghreb the reference to the AK party is explicit: The Moroccan authorized Islamist party, "Justice and Development," explicitly used the name of the Turkish Party, and Ghannouchi also made an explicit rapprochement. Egypt is more complex. The Muslim Brotherhood does not necessarily consider Turkish Prime Minister Erdogan's party as a model.

In summary, we need to pay attention to these parallel and reversal movements. Western Europe is trying to redefine an identity that will go beyond individual freedom, while in the Muslim world there is an endeavor to define citizenship without reference to belonging to a particular religious group. To debate how either or both of these processes will work is why we are here.

II. RELIGION AND THE PUBLIC/ PRIVATE DIVIDE IN THE EUROPEAN LEGAL SYSTEMS

SILVIO FERRARI

1. In Europe religions have a prominent and very visible position in the public sphere: almost everywhere religion is taught in State schools (frequently in the form of denominational teaching), in many countries religions are financed by the State, and in some of these countries there is even a State religion.[1]

This strong presence of religion in the public space is increasingly challenged by the transformation of the religious landscape on the Old Continent. Two developments, in particular, are to be taken into consideration: first, a growing number of Europeans are not members of any religion and therefore question the support offered by the State to religious communities;[2] second, a similarly increasing number of Europeans follow religions that are not traditionally European (first of all Islam) and that are excluded from the support reserved by the State to majority religions.[3] While the first group—those who do not profess any religion—want to reduce the presence of religious communities in the public sphere, the second group—those who profess nontraditional religions—want to enlarge this presence so that they can enjoy the same advantages reserved to mainstream religions. The first group supports a neutral public sphere, without any religious connotation; the second is in favor of a plural public sphere that is inclusive of different religions. Finally, some traditional religions oppose both the neutrality and the plurality of the public sphere because, in the first case, they are afraid of being confined in the private space and, in the second, of losing their dominant position. For these reasons a complex and lively debate about the place of religions and beliefs in the public sphere is taking place in Europe.

2. Although it is very much influenced by specific national backgrounds, this debate has a few common features. Three basic patterns can be identified.

The first pattern is particularly evident in some Catholic and Orthodox countries. It is based on the conviction that traditional religions can still play a central role in creating a national cohesion that, in the opinion of many, is required to deal

1 For an overview of the Church-State systems in Europe see Gerhard Robbers (ed.), *State and Church in the European Union*, Baden-Baden, Nomos, 2005.

2 See Peter Berger, Grace Davie and Effie Fokas, *Religious America, Secular Europe? A Theme and Variations,* Aldershot, Ashgate, 2008, p. 11. The decline both in Church attendance and in belief in God is confirmed by the data collected by Detlef Pollack, *Religious change in Europe: theoretical considerations and empirical findings,* in Gabriel Motzkin and Yochi Fischer, *Religion and democracy in contemporary Europe,* London, Alliance Publ. Trust, 2008, pp. 83-100.

3 On Islam in Europe see Jocelyne Cesari (ed.), *Handbook of European Islam*, Oxford Univ. Press (forthcoming); Jørgen Nielsen (ed.), *Yearbook of Muslims in Europe*, Leiden-Boston, Brill, v. I, 2009; v. II, 2010. More in particular on the legal status of the Islamic communities in the European countries, see Silvio Ferrari, *The Legal Dimension*, in Brigitte Maréchal, Stefano Allievi, Felice Dassetto, Jørgen Nielsen (eds.), *Muslims in the Enlarged Europe. Religion and Society*, Leiden-Boston, Brill, 2003, pp. 219-254; Silvio Ferrari, *Juridical profiles and political management of Muslims' presence in Europe*, in European Parliament, *Islam in the European Union: What's at Stake in the Future?,* Brussels, European Parliament, 2007, pp. 35-60.

with the process of globalization and pluralisation: therefore they deserve a special position in the public space. In this perspective the dominant religion of a country is seen as a central component of the civil religion, a set of principles and values that all citizens of that country are required to accept and defend. Italy is a good example of this trend. The central core of the Italian pattern is the attempt to govern the growing ethical, cultural and religious plurality of the country through the values of Catholicism, raised to the rank of civil religion.[4] More precisely, Catholicism supplies the cultural and ethical principles on which full citizenship[5] is based; provided they are ready to accept these principles, non-Catholics can fully enjoy religious freedom rights (although not religious equality rights). Governing diversity by stressing (Catholic) identity is the narrow and arduous path Italy is trying to follow.

The debate about the crucifix is the best example of this way of understanding the place of religions in the public sphere. In Italian State schools a crucifix has to be hung on the walls of every classroom. Two years ago the European Court of Human Rights decided that the compulsory display of the crucifix violated the freedom of religion of the students and their parents.[6] The Italian government appealed against this sentence, arguing that the crucifix is not only a religious symbol but also the symbol of Italian identity: it manifests the historical and cultural tradition of the country and is a sign of a value system based on freedom, equality, human dignity, and tolerance.[7]

As citizenship is founded on these same values, which are to be respected by everybody, the presence of the crucifix in the classroom is and must be compulsory, because it shows a set of values that everybody who wants to live in Italy has to accept and defend. As a consequence, the crucifix cannot be removed from the classroom wall, nor can its presence be made dependent on the choice of the students and the teachers. These arguments express in legal terms the idea—supported by a large part of the Catholic hierarchy, the governing political coalition and public opinion—that only the Catholic tradition can perform the role of civil religion of Italy and provide the set of fundamental principles and values on which social cohesion is founded. This model is not exclusive to Italy. The Italian appeal against the decision of the Strasbourg Court has been supported by other Catho-

4 See Silvio Ferrari, *The Italian Pattern of Law and Religion Relations: Catholicism as the Italian Civil Religion*, in *Convictions philosophiques et religieuses et droits positives*, Bruxelles, Bruylant, 2010, pp. 397-420.

5 That is not only legal citizenship. Full citizenship is not only a matter of status and rights but also of shared values: to be a good citizen does not mean (only) not to commit crimes but also entails feeling part of a common narrative, partaking in some foundational myths, developing a sense of belonging, solidarity and commitment. The different dimensions of citizenship are underlined by Christian Joppke, *Transformation of Citizenship: Status, Rights, Identity,* in Engin F. Isin, Peter Nyers, Bryan S. Turner, *Citizenship between Past and Future*, London, Routledge, 2008, p. 37.

6 See Lautsee v. Italy, Nov. 3, 2009 (Application no. 30814/06), available online at http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=lautsee&sessionid=47526629&skin=hudoc-en. On this decision see Susanna Mancini, *The Crucifix Rage: Supranational Constitutionalism Bumps Against the Counter-Majoritarian Difficulty*, in *European Constitutional Law Review,* 6, 2010, pp. 6-27

7 See Mémoire du Gouvernement Italien pour l'Audience devant la Grande Chambre de la Cour Européenne des Droits de l'Homme, in http://www.governo.it/Presidenza/CONTENZIOSO/contenzioso_europeo/grande_camera/Memoria_Rappresentanza_Lautsee_Grande_Camera.pdf.

lic and, more interestingly, Orthodox countries:[8] an unprecedented alliance between Catholic and Orthodox States was formed to counter the trends of the European Court, which are considered detrimental to both national sovereignty and religious tradition.

The second pattern answers the same need in the opposite way. It is based on the conviction that national identity and social cohesion can no longer be granted by the traditional religions, which have become too weak to serve as a unifying factor. Common citizenship can be built only around a set of secular principles—liberty, equality, tolerance, and so on—that every individual and group must embrace independently from his origins, preferences, and creed. These principles are assumed to be religiously and culturally neutral: in this way secularism can claim the right to govern the whole public sphere, where every citizen can feel at home exactly because this space is without any reference to the particular values and symbols of the different religious, racial, ethnic, cultural and political communities living in the country. The French laws that forbid the wearing of religious symbols at school and the burqa in all public places, including the streets, are a good example of this approach.[9] Of particular interest is a passage of the French Constitutional Council decision that declared the constitutional legitimacy of the law. It affirms that the self-determination of women is irrelevant: even if their decision to wear the burqa is taken freely and consciously, they are in an objective "situation of exclusion and inferiority that is clearly incompatible with the constitutional principles of freedom and equality."[10] Beneath this statement there is the conviction that, if national identity has to be built around the notion of *laïcité*, "it is the role of the State to create laïque citizens"[11] by educating them to the values of secularism and shielding them from the competing values upheld by religion. This approach to the place of religion in the public space is shared by some international organizations, like the Council of Europe and the European Court of Human Rights: it is no coincidence that all the applications against the ban of

8 Ten countries asked to intervene in the judgment in support of the Italian position. They are Lithuania, Malta, Monaco, San Marino (all countries with a Catholic majority), Bulgaria, Cyprus, Greece, Romania, Russia (all countries with an Orthodox majority) and Armenia (see *Grand Chamber Hearing Lautsee v. Italy - Press Release issued by the Registrar 30.06.10*, available at http://strasbourgconsortium.org/document.php?DocumentID=5015). It is significant that no country with a Protestant majority of citizens is part of this group.

9 See Loi 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics, in *Journal Officiel de la République Française*, 15 March 2004; Loi 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public, in *Journal Officiel*, 12 October 2010. See also John R. Bowen, *Why the French Don't Like Headscarves: Islam, the State, and Public Space*, Princeton, Princeton Univ. Press, 2006; Christian Joppke, *Limits of Restricting Islam: The French Burqa Law of 2010*, unpublished paper available at www2.lse.ac.uk/government/research/resgroups/MSU/events.aspx.

10 Décision n° 2010-613 du 7 octobre 2010, in *Journal Officiel*, 7 October 2010.

11 Peter Berger, Grace Davie and Effie Fokas, *Religious America, Secular Europe?*, p. 77.

religious symbols in the French and Turkis schools have been rejected by the Court of Strasbourg.[12]

The third pattern is best exemplified by the United Kingdom, probably the most advanced European country in the pursuit of an extensive multi-cultural organization of society. The United Kingdom is a common law country where, as in many countries of this type, the central role in shaping the legal system is not played by the State and its laws but by the courts and their judgments.[13] In the task of striking a balance between the different ethnic, religious and cultural groups coexisting in British society, the courts are guided by the respect of fundamental human rights. But sometimes human rights are interpreted and applied in a way that ends up restricting one of them: freedom of religion. An example of this approach is provided by the British Supreme Court ruling in the case of the Jewish Free School.[14] This school had an admission policy that privileged Jewish students and, more specifically, in accordance with the principles of Orthodox Judaism, students born to a Jewish mother: these admission criteria led to the exclusion of a student born to a non Jewish mother who had converted to Judaism according to the rites of a non Orthodox branch. The Supreme Court judged that the school admission policy, focusing on the maternal descent of the student, was based not on religion but on ethnicity and therefore violated the Race Relations Act 1976 that forbids any discrimination on this ground.[15]

This judgment has far-reaching consequences. It implies that the membership rules of a religion are subject to the scrutiny of State courts. By applying the principle of non-discrimination, they can overrule the decisions of the religious authorities about membership in the religious group, thus limiting its collective religious freedom right. The application of a fundamental right—non discrimination—collides with the respect of another fundamental right, religious freedom. This contrast exemplifies the potential tension between human rights and religious rights:[16] the former, as codified in the declarations of the last two and a half centuries, has a rational/ethical foundation and a universal scope that can easily clash with the religious foundation and the more particular scope of rights claimed by religious individuals and groups.[17] As Oftestad underlines, "liberal democracy has its own fundamental ideology rooted in universal human rights" and "the ideological goal of the democratic state is to implement individual

12 See Carolyn Evans, *Individual and Group Religious Freedom in the European Court of Human Rights: Cracks in the Intellectual Architecture*, in *Journal of Law and Religion*, XXVI, 2010, in particular pp. 109-115; Julie Ringelheim, *Rights, Religion and the Public Sphere: The European Court of Human Rights in Search of a Theory?*, forthcoming in C. Ungureanu and L. Zucca, *A European Dilemma: Religion and the Public Sphere*, Cambridge, Cambridge Univ. Press, 2011.

13 See Jean-François Gaudreault-DesBiens and Noura Karazivan, *The 'Public' and the 'private' in the common law and civil law traditions: some comparative remarks,* in Silvio Ferrari-Sabrina Pastorelli, *Religion and the public/private divide* (forthcoming with Ashgate).

14 See R v The Governing Body of JFS (2009 UKSC 15).

15 See Susanna Mancini, *To Be Or Not To Be Jewish: The UK Supreme Court Answers the Questions*, in http://ssm.com/abstracts=1693127

16 See Roger Ballard, *Human Rights in Contexts of Ethnic Plurality: Always a Vehicle for Liberation?,* in Ralph Grillo, Roger Ballard, Alessandro Ferrari, André J. Hoekema, Marcel Maussen, Prakash Shah (eds.), *Legal Practice and Cultural Diversity*, Aldershot, Ashgate, 2009, pp. 299-330.

17 Religions cannot compete with fundamental rights on the ground of universality. Even large supranational religions - Islam, Christianity, Buddhism, etc.- are not as universal as human rights claim to be. See Silvio Ferrari, *Tra geo-diritti e teo-diritti. Riflessioni sulle religioni come centri transnazionali di identità*, in *Quaderni di diritto e politica ecclesiastica*, aprile 2007, pp. 3-14.

freedom and cultural and social equality among all members of the society."

Such a goal places some religious communities, whose doctrine and organization is not entirely consistent with these principles (think of the Catholic Church teaching and practice on ordination of women and homosexual marriages), on a collision course with these democratic ideals. "Until now the state has avoided a concrete confrontation with the Church on these issues, because the state is obliged to respect the ideal of religious freedom not only for the individual, but for the religious institutions as well. But how long the state will maintain an attitude of reserve towards the 'discrimination' in the Church is a delicate question."[18] A "fundamentalistic" interpretation of human rights is another—perhaps less evident but equally insidious—way to affirm the dominance of secularism in the public sphere.

Each of the three models I have described has its limitations. The "Italian" pattern is based on the gamble that citizenship and social cohesion can be built around a particular religious and cultural tradition. In the short term, this strategy may work, yet nobody knows how long it will be able to deal with the challenge of the increasing immigration of non-Christian communities. The weakest point of the "French" pattern is the assumption that not only the State and its institutions, but also society and politics, have to be independent from particular traditions and conceptions of life.[19] To attain such a goal these traditions are to be pushed to the margins of public life. Yet the privatization of religion is being met with growing resistance by many historical religions of Europe and it is rejected by a substantial part of the immigrant communities, especially those that come from countries where law and politics are intermingled with religion. Finally, the "British" model is flawed by an internal contradiction: it has the stated aim of securing and developing religious pluralism but ends up using human rights to compress differences and promote cultural homogenization.

These models are little more than "ideal types" that do not exist, in a "pure" form, in Italy, France, the United Kingdom, or in any other European State. Moreover, they are far from being static: the British Prime Minister has recently advocated "muscular liberalism" as the best way to tackle the multiculturalist drift,[20] while the French President is taking the lead in Europe as a supporter of "positive" and "open" *laïcité*.[21] Nowadays British multiculturalism and French *laïcité* are no longer inviolable dogmas that must be blindly reaffirmed without taking account of social changes. However, these models foreshadow three different ways of understanding the place and the role of religion in the public sphere. It makes little sense to ask which of them is the best in abstract terms.

18 Bernt Ofenstad, *Presence and Mission. The Social-Ethical Engagement of the Catholic Church Within the Nordic Context 1970-2006*, in Lisbet Christoffersen, Kjell Å Modéer, Svend Andersen (eds.), *Law & Religion in the 21st Century – Nordic Perspectives,* Copenhagen, Diøf, 2010, p. 473.

19 This assumption emerges clearly in the *Déclaration sur la laïcité* prepared by Jean Bauberot, Roberto Blancarte, and Micheline Milot and published on December 9, 2005 (see its articles 4 and 9). See Jean Bauberot, *L'intégrisme républicain contre la laïcité,* Paris, Aube, 2006, pp. 247–65.

20 Cameron's speech of February 5 2005 can be read at www.number10.gov.uk/news/speeches-and-transcripts/2011/02/pms-speech-at-munich-security-conference-60293.

21 See the speech delivered by Sarkozy in Rome on December 20, 2007, in www.elysee.fr/president/les-actualites/discours/2007/allocution-de-m-le-president-de-la-republique.7012.html

It is more appropriate to ask in which direction each of them should progress to deal with the changes that are taking place in Europe. The French model has evolved in a context characterized by a strong State and a declining religion, while the Italian one has arisen from a situation where, ever since its creation, a relatively young and weak State has had to deal with a strong religion. These different starting points have to be taken into account in order to understand what can be reasonably expected from each national tradition regarding the accommodation of religion in the public sphere.

3. One of Europe's main assets is its internal diversity and it is wise to try to make the most of it, giving up from the very beginning any dream of assigning to religion the same space and relevance in the public sphere all over Europe. The existenceof different national systems of relations between States and religions is not in contrast with the unification process of Europe, provided they stay within a broad framework defined by the respect of human rights. That said, we can briefly mention the two processes that are challenging the traditional conception of public sphere in many European States.

The first is the cultural, religious, ethnic and ethical pluralization of contemporary Europe. Due to immigration and globalization, individuals and groups are now present in Europe (physically or virtually) who do not recognize the primacy of individual religious liberty as it has been established in European history: in different ways, they are in favor of a communitarian approach that questions the centrality of individual rights and therefore the distinction between the public and private sphere.[22]

Second, there is the publicization of religion. In most of Europe (and with the exception of the Communist regimes) religion was never privatized, in the sense of being excluded from public recognition and support: but there was a clear distinction between the spiritual and the temporal sphere and it was widely assumed that, in the latter, religions had a duty of self-restraint. In the last 20 to 30 years the boundaries between spiritual and temporal have become much more blurred and religions have been able to influence the public discourse on matters from which they were previously excluded. Alberico Gentili's "Silete Theologi in Munere Alieno" has gone out of fashion and an increasing number of citizens claim that they have the right to publicly follow the tenets of their reli-

22 The modern distinction between public and private is founded on the recognition of the legal subjectivity of the individual that was affirmed through the American and French declarations of rights, attesting (not just at the philosophical level, but also in law) to the existence of a private sphere where neither the State not the Church were entitled to interfere. The history of the right of religious freedom shows clearly the importance of this passage. For centuries religious freedom had been a matter of Church-State relations, with the individual having to act as a spectator: starting from the Enlightenment, the main role has been taken over by the individual and the legitimacy both of the State and increasingly also of the Church is questioned when their activity clashes with the respect of individual rights. In this perspective it is not religion but individual religious freedom that has a public dimension today. This approach is not shared by the followers of some religions that, through the process of immigration, have recently become part of the European religious landscape. See Silvio Ferrari, *The formal and substantive neutrality of the public sphere*, available at **http://www.religareproject.eu/?q=content/state-art-report-public-space-formal-and-substantive-neutrality-public-sphere**.

gion in matters of dress codes, gender relations, dietary rules and so on.[23]

These two processes take place in a context dominated by the fear that Europe is entering a phase of demographic, economic, political and military decline. This feeling has instilled many doubts in European minds about being able to manage the pluralization and publicization of religion with the tools available in the store of human rights.[24] This lack of confidence results in a constant oscillation between the impulse to confine religion more strictly to the private sphere, excluding it from the process of building the national identity, and the desire to strengthen national identity through the revitalization (and therefore the re-publicization) of the majority religion(s) only. In the first case the arsenal of human rights is rigorously applied without fear of marginalizing and alienating a substantial part of the population and, in certain cases, of obtaining illiberal results. In the second case a limited application of human rights (particularly when equal treatment is at stake) is adopted with the aim of maintaining the privileged status of the majority religion(s). The French law that forbids wearing religious symbols at school is a good example of the first trend; the laws that mandate the display of the crucifix in the Italian classrooms,[25] that prevent teachers from wearing religious symbols other than Christian ones in some German *Länder*,[26] or the Swiss referendum that forbids the building of minarets,[27] are a good example of the second trend.

To overcome this impasse, the common law model (of a "light" State and no inclination to marginalize religion from the public sphere) could be appealing. But—apart from the fact that it is hardly exportable beyond the English Channel—this model too presents some dangers. Judging from some court decisions, the price religions have to pay to be admitted to the public sphere is the respect for human rights within their own doctrinal and organizational system. If rigidly applied, this principle can start a process of cultural homogenization that, in the end, undermines the specificity of religious communities and the contribution they can give to building a plural society: a much more dangerous result than their marginalization from the public sphere (as in the case of the "French" model).

4. According to some, these difficulties foreshadow "the end of a secular order based on principles—however inadequately they may operate in practice—of consensual rationality," the decline of the distinction between public and private sphere and "the fusion again [...] of those relatively distinct spheres."[28] Personally, I do not think this outcome is inevitable or even desirable. Liberal democracy

23 The analysis of this phenomenon goes back to José Casanova, *Public Religions in the Modern World*, Chicago, Univ. of Chicago Press, 1994 and Gilles Kepel, *La revanche de Dieu*, Paris, Seuil, 1990.

24 Tariq Modood defined this process as the passage from a "pluralism of hope" to "a pluralism of fear" (see: *We need a multiculturalism of hope*, in The Guardian, 24 September 2009).

25 See supra, footnote 6.

26 See Ruben Seth Fogel, *Headscarves in German Public Schools: Religious Minorities are Welcome in Germany, Unless – God Forbid - They are Religious*, in *New York Law School Law Review*, v. 51, 2006/07, pp. 619-53.

27 See Marcel Stüssi, *Banning of Minarets: Addressing the Validity of a Controversial Swiss Popular Initiative*, in *Religion and Human Rights*, v. 3, n. 2, Sept. 2008, pp. 135-53; Vincenzo Pacillo, *"Die religiöse Heimat". Il divieto di edificazione di minareti in Svizzera ed Austria*, in *Quaderni di diritto e politica ecclesiastica,* 2010/1, pp. 199-226.

28 John Frow, *Waiting for the Antichrist*, in Antonio Pinto Ribeiro, *The State of the World*, Manchester, Carcanet and Fundacao Calouste Gulbenkian, 2006, p. 87. On this perspective see Hanne Petersen, *Beyond National Majority/Minority Dichotomies. Towards Legal Traditions & Religions of World Society – A Local Example,* in Lisbet Christoffersen, Kjell Å Modéer, Svend Andersen (eds.), *Law & Religion in the 21st Century,* pp. 321-344.

has sufficient resources to govern the transformations of contemporary society without calling into question the fundamental principles on which it is based.

To find a way out, the notion of public sphere has to be: re-thought so that it is made hospitable to individuals and groups who want to manifest their religion or belief; accessible to all individuals and groups (not only to a select few) who are ready and able to accept the plurality, on an equal footing, of different religions and beliefs in this same sphere (this is the access card required from all subjects that want to enter it); respectful of human rights but open to the accommodations that are necessary to safeguard the internal autonomy of religion and belief communities. This strategy presupposes a better understanding of the distinction between the informal public sphere (the square, internet, the mass media, that is the space of debate and discussion where the public discourse takes shape) and the institutional public sphere (which is the space where coercive deliberations, which are binding to all, are taken: parliament, the law courts, public administration).[29]

The first, the informal public sphere, in order to perform its function of elaborating and proposing projects of collective interest, should be free and plural: the visible presence of different religions and beliefs in this area is indispensable for the pluralism on which a democratic society is based. Instead, the institutional public sphere, in order to gain general respect and recognition for the binding decisions that are taken by its representatives, must be (and appear) fair and impartial. These principles of fairness and impartiality do not mean the automatic exclusion of all religious references, manifestations and symbols from the public institutions. The presence of religious symbols can be unsuitable in some of them and not in others, particularly if the principle of fairness can be interpreted in a way that includes different religions and conceptions of life: when appropriate and possible, the quest for solutions that consent to the coexistence of different religious symbols in the same physical space can be the best way to educate towards responsible and accountable pluralism. This inclusive approach makes it possible to take into account the historical, ethnic, cultural, religious and social specificities of each national community and then may develop into a sustainable pluralism that is able to accompany the ongoing changes in European society and keep the law in touch with its social and cultural background. Such a strategy requires different actions by the different European States. Those where a strong and secular State is in place should refrain from extending to the informal public sphere the limits to the manifestation of religion that are legitimate in the institutional public sphere: forbidding the teacher of a State school to wear a religious symbol can be acceptable, due to his public role; extending the same prohibition to students is much more questionable. The States where a dominant religion exists should refrain from giving it the religious monopoly of the institutional public sphere: recognizing the possibility to display a crucifix or another religious symbol in the classroom in response to a request by the students or the teachers is one thing; imposing it by law, independently from their opinion, is another matter.

By these different paths the challenge of the pluralization and publicization of religion can be tackled in a way that takes into account the specificities of each national Church-State system and, at the same time, identifies a common ground where, in different forms, the questions raised by the transformation of the European religious landscape can find convincing answers.

29 On this distinction see Jurgen Habermas, *Religion in the Public Sphere*, in *European Journal of Philosophy,* 14/1, pp. 1-25; Cristina Lafont, *Religion in the Public Sphere. Remarks on Habermas's Conception of Deliberation in Post-secular Societies*, in *Constellations*, 14/2 (2007), 236-56.

III. ISLAM IN THE SECULAR NOMOS OF THE EUROPEAN COURT OF HUMAN RIGHTS

PETER DANCHIN

My field is international law, and my work in this area analyzes competing accounts of religious freedom in international legal and political theory.

I would like to speak about the post-2001 jurisprudence of the European court under Article 9, which helps us see some quite interesting dynamics. What's interesting, particularly about the place of Islam and Islamic norms in European nation states (and more broadly within the secular nomos of the European court itself), is how these encounters and cases catalyze and unsettle existing legal categories and normative assumptions. They force us to think about the historical and theoretical premises of the modern liberal political order.

In my work I try to look at two questions that the European cases raise. The first concerns the scope of the right itself under Article 9. How does one think about and establish the appropriate scope of the claim of right itself? For example, there's been controversy over whether Article 9 includes the right to be free from injury to religious incivilities or feelings. There's a line of cases in the European court that takes this position, like Otto-Preminger[30] and Wingrove,[31] that got me interested in this whole question. In American settings, this question is not even on the table, but it is a much more live question in Europe.

The second question is how we think about the nature of the so-called secular public sphere itself.

30 *Otto-Preminger-Institut v. Austria*, 295 Eur. Ct. H.R. (ser. A) 1 (1994).

31 *Wingrove v. United Kingdom*, 1996-V Eur. H.R. 1938.

What is the problematic that the secular public sphere is meant to solve? What is the relationship between religion and morality within that space? I found Professor Ferrari's talk extremely helpful in disaggregating some of the concepts that get conflated in this question. If I might say so, I think the European court has made a spectacular mess of these questions by failing to disaggregate and think more carefully about how it defines notions of secularity and neutrality in its jurisprudence. Indeed, the tactic to use the margin of appreciation, which becomes a kind of residual defensive mechanism, by which the problem is avoided rather than confronted normatively.

The concept of the secular public sphere has been haunted from its very beginning by at least three problems.

The first concerns the right to religious freedom itself. What is the object of protection of the right? I heard Professor Roy saying that much modern thinking about this question conceives the right in very individualistic terms. Interestingly, the European courts have not taken that position. Rather, their jurisprudence deals with all sorts of complicated questions of church autonomy and the claims of religious communities. There is a rich line of cases where the court has dealt with the collective aspects of the right, particularly church autonomy questions in Europe.

Yet much academic writing conceives these cases in terms of the right to freedom of conscience. There's a subtle transformation that has occurred in these normative discussions where we don't talk about freedom of religion, per se. We talk about the freedom of individual conscience. I think we need to think a lot more carefully about this transformation.

Now, particularly in the United States and its academic writings, we see a third kind of transformation where people think about religious freedom

in terms of values of autonomy. This reframes the issue of religious freedom in terms of freedom of choice, rather than freedom of conscience. There is an unstable set of normative assumptions about how conscience and autonomy relate in the modern secular imagery of religious freedom. I'm suggesting that is there is a deep set of normative assumptions, confusions and instabilities underlying this whole body of laws that is not only very interesting in itself, but also unsettled by these cases.

The second dilemma (I won't speak in detail about this) is how to demarcate the spheres, how to identify a realm of public reason separate from a sphere of private faith, and how to contain and construe these separate spheres. Europe is fascinating to think about here. What's going on in France shows all the dilemmas that these notions of public and private give rise to. I think that the notion of a free-standing public sphere, where reason and rational deliberation are separable from religion and arguments of religious communities, has been shown to be false.

The third (and perhaps deepest) dilemma is how to secure the authority of public reason itself. I see this as the extension and crisis of the Enlightenment project at large, the quest to place reliance on reason as some kind of universal category in order to give primacy to moral philosophy, i.e. secular theorizing over ecclesiastical and theological positions. Of course, this is a deep set of questions that I cannot go into now.

At a theoretical level, what I see in these questions and cases is a kind of circular and self-reinforcing dialectic between notions of neutrality and universality. Charles Klaus has made the interesting observation that, in much modern writing about these issues, Europe is seen as simultaneously exceptional and universal. For scholars such as Marcel Gauchet and Charles Taylor, the close intertwining of Christianity with secular modernity seems to cause no undue theoretical complications. Rather, it confirms Christianity's unique ability to transcend its own particularity. Of course, if one takes this view then the inexorable rise of modern liberal political orders is really the achievement of Latin Christendom itself. For Hirschkind, both secular politics and private belief on this view emerge as the inheritors of the arc of religion returning to itself. The public sphere is neutral to religion, but unique to a particular political order, particularly the role of Christianity in the broader European normative sphere itself with all the national variations Professor Ferrari has referred to.

On the other hand, the right to religious freedom is universal because it protects religion in its true form (regardless of whether we define this right in terms of religion, conscience, or autonomy). Of course, the latter position collapses quickly when we push the particulars.

I have suggested that two pathologies come out of this way of thinking about the problem. The first is that the claim to have secured secular authority in the public sphere rests at some level on the notion of the unique vantage points of epistemic neutrality. I think this is the French position: that the secular order is above history, above politics, above culture, and indeed is the vantage from which other histories and political formations can be ranked and demarcated as either tolerable or not. Of course, the difficulty with this way of thinking is that accounts of neutrality and secularity, as we see in the European cases, quickly devolve into the unarticulated liberal strategy of hypostasis or reification of a historically specific political order. To make this point most clearly, it's interesting to think about the pre-2000 cases of the European court, where (as Professor Roy put it) the cross was just a part of the furniture. A background assumption that seems to raise no serious problems for

notions of neutrality or secularity was the right to be free from injury to religious feelings in a majority Catholic area, as we can see in a case in Austria where the court upheld the right to restrict a film deemed offensive to Catholics.

It's only once we get into the Islam cases that we start to see the dialectic reversing in quite spectacular ways. I think that the most catastrophic decision of the court was the *Refah Partisi* case,[32] where the court effectively held that a political party seeking to institute reforms to the public sphere in Turkey through democratic means (in this case, a plural legal system premised on Sharia and other religious traditions) was a human rights violation. This decision is just preposterous if one thinks about religious freedom in a global sense. For example, in states like India or South Africa, we see very interesting and complicated plural arrangements of religious and secular laws. As such, the European court's conclusion that the institutionalization of Sharia within a Turkish framework was a violation of the European Convention was a grave mistake.

This leads to the second pathology, which is even more problematic in some senses: the notion of religious freedom as a stable norm entirely separable from specific histories and relations of power. Once one starts delving into the genealogy and history of the emergence of the right itself, we start to see rival intellectual traditions and normative dissonances that are internal to the right to religious freedom itself. My work shows that there are views within the European tradition of religious freedom (specifically in the early Enlightenment) that are quite distinct and operate on quite different assumptions from what follows later in the 18th century, Kantian tradition of religious freedom. Article 9 today encompasses both of these traditions. Indeed, we see the court moving seamlessly between notions of public order and the rights of others, merging in its case laws two traditions without distinguishing their genealogies.

If we look back to the older, 17th century liberal tradition as it emerged in Europe, we see that the public sphere was understood in terms of social peace. Religious liberty was conceived in jurisdictional terms, the classic separation in effect being based on simultaneous religious and secular arguments. This conception, derived from a civil philosophy that sought to desacralize the state, led over time to the churches losing their civil and political authority and to the gradual spiritualization of religion in Europe. Now, one could read some of the early cases in the court's jurisprudence along these lines (particularly in *Otto-Preminger* and *Wingrove*). One could construe the state as, in effect, seeking to preserve religious peace within those regions, and see injury to religious feelings being protected, not as an incident of individual freedom so much as an attempt to maintain harmony between plural religious communities in European nation states. Of course, this argument is preposterous if we apply it to *Sahin*[33] and *Dogru*.[34] The argument really can't be understood on these terms if, for example, we conclude that a medical student at a university wearing a headscarf is a threat to peace within Turkey.

If we then look into the later, 18th century tradition of religious freedom, we see the public sphere being reconceived not in terms of peace, but in terms of a moral theory of justice, with religious liberty grounded in a complex and unstable notion of freedom of conscience. This conception derived from a metaphysical, philosophical tradition, one that simultaneously sacralized reason and rationalized religion. Kant's *Religion Within The Limits of Reason Alone* illustrates this very interesting historical trajectory of religious freedom.

32 *Refah Partisi and Others v. Turkey*, Eur. Ct. H.R. (2003)

33 *Sahin v. Turkey*, 44 Eur. H.R. Rep. 5 (2005)

34 *Dogru v. France*, 49 Eur. Ct. H.R. 8 (2008)

The jurisprudence of the court today entangles both of these traditions. The court can restrict religious freedom to protect public order and social peace on the one hand. On the other hand, it can restrict it to protect the so-called rights of others. I think it's helpful, in the same way that Professor Ferrari disaggregated notions of public space, to disaggregate these notions of the Article 9.2 jurisprudence of the court.

What I suggest, then, is to look at this historical genealogy. If we do, then we start to see that religious freedom is not a single stable principle existing outside of culture, or spatial geographies, or power. Rather, it is a contested, polyvalent concept existing and unfolding within histories of concrete political orders. If neutrality and universality need to be understood in these contingent terms, then the theoretical challenge is to think about pluralizing our understanding of the right and simultaneously relativizing it historically into the contexts in which it's being contested.

Professor Ferrari's idea that these accommodations will occur differently in different political orders within European states strikes me as entirely correct.

I, too, would like to finish my comments with the Grand Chamber's decision in *Lautsee*,[35] the crucifix case. What's interesting there is that, having previously held a Swiss school teacher and a Turkish medical student who were wearing a headscarf to be threats to secularism and public order, in *Lautsee* we see the Grand Chamber saying that a state-mandated symbol of the dominant religion in every public classroom in Italy is a passive symbol. And that it is within the margin of appreciation of the public sphere of European nation states.

Of course, in some sense I support the decision of the Grand Chamber, but not its conclusory and narrow reasoning on these questions. Two judges dissented in *Lautsee*, arguing that a narrower margin of appreciation should be accorded in situations like Italy where there is a very strong dominant religion and that we should be more sensitive to the rights of dissenters and non-believers. This reasoning is based on an autonomous notion of religious freedom. This idea of negative freedom can be compromised, the dissenters contended, by state endorsement of majority religious symbols. I think the *Lautsee* decision is deeply flawed, but for an opposite set of reasons. It fails to take seriously the collective aspects of the claims in *Lautsee*. There is an interesting discussion of the cross as a kind of national cultural symbol, and many scholars have long argued that we should think about religious freedom as a cultural right. The kind of work that culture's doing in this equation, I think, needs a lot of further thought.

The most interesting thing, for those who haven't read the case, is the two separate judgments of Judge Giovani Bonello from Malta and Judge Ann Power from Ireland. Bonello, in highly polemical terms, effectively says that no court (and certainly not this court) should rob the Italians of their cultural personality, that before joining any crusade to demonize the crucifix we should start by placing the presence of that emblem in Italian schools in its rightful historical perspective. Bonello's conception of neutrality draws a clear conceptual distinction between freedom of religion and secularism. To quote his conclusion, "the convention has given this court the remit to enforce freedom of religion and of conscience, but has not empowered it to bully states into secularism or to coerce countries into schemes of religious neutrality." This must come as really surprising news in Ankara. It is for each individual state to choose whether to be secular or not, whether and to what extent to separate church and governance. Bonello then sets out, in fairly strident and emotional terms, a kind of liberal nationalist view where the background of the Italian people is deeply embedded

35 *Lautsee v. Italy*, Eur. Ct. H.R. (2009).

in the history of Catholicism. He points out how the entire education system in Italy is (and it's a good thing, by the way) grounded in the values of the Catholic church—tolerance, pluralism, neutrality, and so on.

The most interesting judgment in *Lautsee*, however, is in fact Judge Power's separate concurring opinion, which exposes the flaws of Bonello's reasoning. Judge Power agrees with Bonello that neutrality does not require a secularist approach. However, she articulates a more value pluralist approach to religious freedom, one sensitive not only to the values of the majority but also to those of religious and non-religious minorities. She rejects the majority's assertion that the crucifix is a passive symbol. Rather, she says, it is a carrier of meaning that speaks volumes without having to do so necessarily in a coercive or an indoctrinating manner. Power's inquiry focuses on the environment in public schools in Italy, investigating how inclusive the treatment of minorities and non-religious students is in those environments. She sees the presence of the crucifix as a stimulus to dialogue, a space where genuine differences of opinion and honest exchange of views can occur.

Power emphasizes that the duty of European states is to respect religious freedom of all persons and groups, both majorities and minorities. But on this conception of neutrality what is required is a kind of pluralist and inclusive notion of the public sphere, rather than a secularist and exclusionary approach. If I understand it correctly, I think that's what Professor Ferrari was arguing for as well. The distinction Power draws between pluralism and secularism is very helpful in illustrating how the margin of appreciation is used in the court's jurisprudence to avoid confronting this collective aspect of the right to religious freedom, whether viewed as a cultural right or more broadly as a collective right of the people to self-determination within the public sphere of the state itself. Her judgment, I think, reveals the double contradiction in the court's Article IX jurisprudence. She shows that the court on the one hand has found a danger of pressure or proselytizing when a Swiss teacher wears a headscarf on *Dahlab*[36] or when a medical student wears a headscarf in *Sahin*,

but not when the state officially adopts a majority religious symbol in *Lautsee*. That's one contradiction.

The second contradiction is that the court has found that the democratic decision to perpetuate a religious tradition in the public sphere violates the principle of secularism in Muslim majority states. I think *Refah* is a catastrophe as a human rights decision. In effect, the court allowed Article 9 to be used by a militarist and enforced notion of secularism against genuine democratic movements within Turkey, while applying a much broader margin of appreciation to a Christian majority state in *Lautsee*. Thinking carefully about these two sets of contradictions helps reveal what's going on at the moment in thinking about religion in the public sphere in Europe.

36 *Dahlab v. Switzerland*, Eur. Ct. H.R. (2001).

SESSION II

THE DEBATE OF ISLAMIC NORMS IN ARAB COUNTRIES

I. INTRODUCTION

HATEM BAZIAN

I think for many of us who are observing what is occurring in the Arab world today and the Muslim world, on a personal level I would say it's about time. On a deeper level, it's been in the making for quite some time. There are very rich debates in Egypt, in Tunisia, in Yemen, in Syria, in Jordan, in Bahrain. Possibly one of the transformations that we are witnessing is the place of Islam, and in particular the place of Islamic groups and organizations that are attempting to engage in the political process and enter into the civil society. It will be a highly contested space and we will see what will be the outcome in the future.

II. SCANDALS IN EGYPT AND THE MANUFACTURING OF RELIGIOUS NORMS IN THE PUBLIC SPHERES

ENRIQUE KLAUS

Norms, religious or otherwise, do not stand magically in the public sphere. We do not live with a cluster of norms above our heads that we could choose or pick according to our specific needs as from a reservoir. In the everyday world that social scientists study, norms are relevant only in the contexts in which they are enunciated. In the public sphere, these contexts can include scandals, debates, controversies, or what (more generally) we might call public or media events. In this respect, the manufacturing of religious norms does not preexist its own context of enunciation.

Two inferences follow. First, norms are not defined transcendently. Rather, they are constantly negotiated and renegotiated in the unfolding of a public event. Second, the manufacturing of norms is contingent upon the unfolding of public events such as scandals or controversies. Therefore, norms cannot be analyzed independently from the context of their instantiation. Analyzing the problematic of normativity within the public sphere requires understanding the practical conditions of the production of norms, including media events like scandals or controversies.

Because of this, I would like to introduce some aspects of what one could call a praxeological approach to media events, or an ethnomethodological approach of scandals. I will address two main points. The first point is to expose some of the difficulties faced by the formal social sciences when tackling the question of scandals. The second point is to describe an alternative mode of analysis that can explain how religious norms are increasingly present in the public sphere.

Towards these ends, I will discuss a few practical variables concerning the birth and consolidation of a scandal, drawing on research that I led in Egypt concerning scandals in the political life under the rule of Hosni Mubarak. When conducting these studies, I didn't know my research was taking place in what would be the last years of reign.

Let's start with the main problems encountered by social scientists when they want to study scandals. There are at least three.

First, various works dedicated to scandals—such as that of John B. Thompson, the so-called scandologists Andrei Markovits and Mark Silverstein, and Damian De Blic and Cyril Lemieux in France—ground their definition of "scandal" in

its Latin origin and etymology, *skandalon*, and in its Biblical meaning of "stumbling block" or "stumbling stone." This definition is of no use, not only because I am interested in scandals in an Arabic speaking society where the population is predominantly Muslim, but because people don't have in mind these references when they use the term scandal. And even if there are Qur'an verses that refer to the word "*fadîha*" or "scandals people don't have the etymology of "scandal" in mind when they use this word in everyday life. Better than grounding the definition of scandal in etymology, we should acknowledge the sovereignty of ordinary people in the qualification of the situations in which they take part by relying upon spontaneous or endogenous definitions of scandals.

A second difficulty with social science methodology is that many works try to analyze the scandal by considering its causes or its social, political, and electoral consequences. On this approach, the process of the scandal itself becomes what Harold Garfinkel would call "the missing what." What is lacking from this approach is a consideration of the scandal as such, that is, as a practical accomplishment.

A third difficulty is that the few works that focus on the scandal process impose to study its unfolding structure prior to any analysis. Most of the time this structure draws upon a dramatic form consisting of four phases—the pre-scandal phase, the scandal itself, the culmination, and the aftemath. This approach presents three problems for the analysis. First, it explains one phenomenon (the scandal) by another (a drama). Second, it reduces the unfolding of scandal to its causal concatenations, thus employing a teleological reasoning. Finally, this reductionism blurs the intelligibility of the phenomenon to be analyzed, namely the scandal.

Each scandal has its own unfolding trajectory. To take an American example, compare Watergate to the Iran Contra scandal. Both had very different unfolding trajectories. The trajectory of each scandal does not preexist the scandal, but rather emerges contingently in the midst of the sequential interactions which are constitutive of this type of media event.

My research on scandals in Egypt seeks to avoid these analytic mistakes. I provide detailed analysis of the unfolding of three scandals that occurred in 2005-2006. The first two cases can be categorized as sexual scandals, as they respectively dealt with the question of pedophilia and sexual harassment in Egypt. The third case addressed a question of the Islamic headscarf. I will only speak here about the latter case, but the conclusions that I reach are drawn from the empirical observations in all three cases.

First, let me give you some of the context of the Egyptian headscarf scandal before raising a few points about its production. The headscarf scandal broke out in November 2006, after the publication of declarations allegedly made by then Minister of Culture Fârûq Husnî that deemed the headscarf a mark of backwardness in Egyptian society. The publication of this declaration created a nationwide argument, the apex of which was a discussion in parliament. The scandal lasted for nearly a month before dying out.

This scandal did not break out in a vacuum. It followed a month of intense debates about whether female students in Cairo University dorms should be allowed to wear the *niqab* or burqa, as well as other debates abroad that I will briefly consider later. The declaration was published only four days before the reopening of the Egyptian Parliament following the 2005 elections in which the Muslim Brotherhood won a historical record of 88 seats out of 454.

The media and the press were the only arenas of the public sphere where the debate on the topic could be held, at least during the first four days in the unfolding of the scandal.

Despite what I have told you, the publication of Fârûq Husnî's declarations was not actually the beginning of the scandal. *Al-Misri al-Yawm*, the newspaper that published these declarations, did not initially attribute major importance to these remarks, and there were no banner headlines. The remarks were inserted in an inside page, at the very bottom. Their newsworthiness was upgraded only in the light of the reactions following their publication. The first article, then, is what we could call a "trigger narrative" for the scandal. Remember, as we can see in all the 3 cases, a scandal does not come out of the blue. It must be grounded in something public, something we could call a "master document." The master document orients the participants in the scandal.

Revisiting the issue of the starting point of the scandal, the very first reaction and denunciation came from the spokesperson of the Muslim Brotherhood in the Egyptian Parliament, Hamdî Hasan. Formally, his reaction was the procedural demand of communication, *bayyân ʿâjil*, which leaked into the press and ignited further parliamentary discussion. This first reaction gave an institutional dimension to the scandal, thus boosting its constitution. Beyond that, what is interesting for us is that the initial reaction did not directly address the headscarf as a religious norm or its infringement. If it did so it was indirectly through the disqualification of Fârûq Husnî through what Harold Garfinkel calls a "ceremony of degradation of status." It is striking to note that all the 3 cases that I have been studying begin with this ceremony of degradation defined as "a communicative work between individuals whereby the public identity of an actor is transformed into something else considered as inferior on the local scale of social types." It is a work of qualification and disqualification relying upon a rhetoric of irony and biographical reexamination. It would take too long to explicate the eight success conditions of this kind of ceremony, as well as to explain how they are realized in Hamdî Hasan's case. What is important to note is that Hasan's letter did not offer a positive defense of the headscarf as a religious norm, but rather invoked a personal disqualification of the denounced person.

This pattern is also realized in later parliamentary discussions of the topic, which occurred after the scandal's early unfolding in the media. The debate was very heated, but it is worth noting that both Mubarak's majority party and the opposition (both the religious opposition and the tiny secular opposition) condemned Fârûq Husnî for his declarations. In fact, the only cleavage concerned whether Husnî's declarations were merely a personal statement or reflected a more general tendency of the regime. The members of Parliament unanimously refused to discuss the question of the headscarf as such as they considered it as an intangible religious prescription. Rather, both MPs and journalists showed what Jean-Noël Ferrié calls "a negative solidarity" on the subject of the headscarf, that is, solidarity that results not from a convergence of views but rather from the difficulty of showing public discord on a question, in this case the question of the headscarf. Eventually this institutional sequence did not mark the end of the polemic, as it lasted for nearly a month. It was after a long postponed reconciliation between the Minister of Culture and a group of MPs that the scandal came to an end and also, as it entered the public sphere, the scandal's salience dissipated in light of other emerging topics in the news in Egypt and in the broader region.

In conclusion, I would like to make two points that interrelate with other contributions to this conference dealing with other contexts. First, as

mentioned before, this scandal did not occur in a vacuum; it was preceded by other debates in Egypt and abroad. Indeed, it broke out only two years after the promulgation of the French law on the headscarf banning the headscarf in public spaces and a month after Jack Straw's declarations concerning the *niqab* in Britain. In this respect there is a clear convergence of international debates concerning religious norms. But the recasting of these debates in the Egyptian public sphere was slightly different from that of the secular context of France and the multicultural context of England. On the one hand, in Egypt, contrary to France, there was a political force in Parliament that was able to take a position in favor of the headscarf. On the other hand, national identity seemed to be at stake in all of these cases, as Professor Olivier Roy has said. In Egypt, the question was whether the headscarf was a part of national identity. In France, by contrast, the question was whether secularism was a part of national identity.

Before ending, a quick word about the Egyptian public sphere after what Egyptians call "The 25th of January Revolution." As Professor Roy has mentioned elsewhere, this revolution defies political science paradigms for the region because it was non-religious in nature. However, in the aftermath of this revolution, a counter-revolution has threatened and still threatens the achievements of the revolution. This counter-revolution relies on two things, in Egypt at least. The first is sectarian conflicts or tensions between Copts and Muslims. The second is a revisiting of old debates concerning religious norms, and specifically concerning issues like the headscarf, whether it be on television, in the dorms, or during exams in the university. In some ways, this tends to prove what was difficult to document before the toppling of Mubarak's rule: the regime exploited these debates about religious norms in order to factualize or to put some flesh on the Islamic threat that has allowed this authoritarian regime to exist for 30 years. To conclude on a positive note, but without risking prospectively analyzing Egypt, let's hope that the toppling of Mubarak's rule will put an end to this kind of misuse of religious norms in the Egyptian public sphere.

Charles Hirschkind, Commentary on Klaus

Whenever I hear discussions about religious norms in the public sphere in the context of Egypt, I think of Tocqueville's observations about the United States in the 19th century. Tocqueville suggested that there is a kind of Christian morality in the US that, without ever being directly invoked, effectively shapes debates within the public arena. In other words, insomuch as Christianity constitutes the unspoken background shaping the moral framework of all participants, the public arena is left relatively free from the direct intervention of religious institutions in public life.

The question we might pose following Tocqueville's observation is the following: to what extent does a religious tradition shape the protocols of discourse, the styles of argument, the boundaries of what's considered relevant and irrelevant, in any given context of political life? I know you [addressing Enrique Klaus] don't address this question directly, but I want to take this opportunity to lay out a potentially different way to analyze the question of religious norms in the public sphere. The idea here would be to follow out a Habermasian take on the public sphere, as a space in which a kind of critical discourse unfolds, and to ask how religious sensibilities, attitudes, and traditions of moral and legal argumentation shape the discursive boundaries of that sphere, determining what is relevant and irrelevant, and which kinds of arguments carry weight and which ones don't.

I think you're quite right in your observation that the Mubarak regime instrumentally both used and, to some extent, manufactured scandals as a means of furthering its own policies and limiting the political force of movements that challenged those policies. However, when you talk about religious norms entering the public sphere, are you suggesting that there's a certain style of religiosity, or a set of religious norms, that acquire their social force via the mechanism of circulation and uptake specific to the public sphere? If so, then when talking about the institutions of public life, and particularly the media, you would be focusing on the way in which those institutions mediate and determine to some extent what comes to be understood and lived as public—and specifically, *religious*—norms. I don't know if it is the right way of analyzing those questions.

To take a hypothetical example from the United States, say that there's a public debate about displaying a *crèche* in public. Are we speaking about the force of religious norms in the public sphere, or is the argument about the appropriate space of religious symbols within a secular society? That is, the arguments themselves might not necessarily be religious or based on religious norms, but could instead be understood as informed by a commitment to secularity, and a will to determine what are the proper boundaries authorized by our secular legal traditions. This mode of analysis would not concern the force of a religious norm in shaping public debate, but rather the proper place of religion within a secular framework.

Another thing you emphasized was the importance of scandal and controversy for the question of religious norms. Now when we speak about religious norms, we generally are thinking about practices that have a kind of social and institutional depth, and that owe their normative force to the way they are inscribed in our habitual ways of acting and thinking. Their normative force is not produced by, or reducible to, the way such norms may be invoked in the context of media scandals. Rather, in some way, they provide a normative background against which such media debates and scandals acquire their social salience and mass audience.

The recognition of this embeddedness of certain religious practices is necessary if we are going to interrogate the force of religious norms in the public sphere. Such norms are not simply products of, and transparent to, the discourse that explicitly invoke them. In short, we must address these norms, not simply as objects of debate, but as integral to the background of attitudes and dispositions structuring the limits and possibilities of public engagement. What is the pervasive force of religious norms as registered in the tone, style, and content of public and political life?

Finally, let me address your comments about the revolution in Egypt. You call the revolution non-religious. I would agree with you, but only part of the way, as I think we should also characterize it as non-secular as well. It was striking to me how little the secular/religious dichotomy played a role in shaping the forms of interaction and discourse that unfolded in Egypt in early 2011, as well as in the commentary on these events. Take, for example, the scenes of collective prayer that were so commonly viewed in Tahrir square. I heard very few people, whether in Egypt of abroad, comment on these scenes as evidence of the imposing force of religious norms. In other instances, large assemblies of collective worshipers, particularly in explicitly political contexts, would have worried many people as an instance of the instrumental use of religion for political ends. Yet neither Egyptians nor outsiders raised this worry in regard to these scenes in Tahrir Square. It seems that very few saw a dangerous contradiction in the insertion of religious practices into the democratic political space of the Square. I'm sure a few people

were worried, but it is curious how little comment was made on this issue. It struck me overall that the whole question about the dichotomy between secular and religious (as part of the political rationale modern states) seemed to be absent. The revolution was neither a religious nor a secular practice, but rather a movement irreducible to the frames offered by those two categories. Notably, in Egypt and throughout the world, those categories powerfully schematize political life: is that a secular or a religious argument? Is that party secular or religious? Is that a violation of the state's commitment to secularism? All those questions have both shaped and limited Egyptian political life for many years, and indeed, now again, one finds them forcefully applied in assess¬ing Egypt's contemporary political challenges. But in that moment, the question was largely absent (though, of course, I am sure there were exceptions). But I think it is worth thinking about how a kind of democratic exercise was being elaborated outside the rationale authorized by the binary division of secular/religious.

Olivier Roy, Commentary on Klaus

The scandals we are referring to were the subject of constant, polemical debates. In fact, when the political space was closed, debates over religious norms were possible in this so-called religious space, even though larger political debates were not possible.

So scandals played a big role, in Egypt as well as elsewhere. But Egypt is a very interesting case. Actors were able to challenge the political order by pushing for religious norms that a religious state can't ignore. For instance, people that were not involved in the court case made requests, in the name of *hisba* [verification], to nullify the marriage of Nase Abu Zeyd because of its supposed apostasy. However, of course, pushing these religious norms had a tremendous political impact on the relationship between state and society and on the legitimacy of the state and the regime. The apostasy debate also played a big role by forcing the state to give up its monopoly on power and the maintenance of public order. It also forced the state to accept norms that were not defined by the state because they were religious norms and also because the main actors were individuals who were not part of the regime. This debate had a significant destabilizing effect on the state.

But what happens when the political space opens suddenly? What happens to the actors who pushed for the implementation of religious norms, regardless of context, when there is at least an open space of debate and freedom?

Recently, we had a workshop in Florence with participants from Algeria, Morocco, Tunisia, and Egypt. Most of our interlocutors were part of the so-called liberal Islamists (for example, members of the Party of Development and Justice [PJD] in Morocco, the left of the Muslim Brotherhood in Egypt, and Ennahdah in Tunisia). While the contexts of these countries are very different, the participants said basically the same thing. Mainstream, so-called Islamist parties are confronted by their own expectations of democracy (like free elections, the building of a political party, and the accepting of contestation) while not trying to impose an Islamic state or Sharia law. But the actors who were pushing for Islamic norms before are still there (let's call them Salafis, although there is come controversy over the usage of this term). Salafis complained about the neglect of Islamic norms. For instance, in Egypt there were widespread demonstrations in the name of Islamic norms against the appointment of a Christian governor, even if it was not the first time that there was such an appointment. The Salafis were challenging the Muslim Brotherhood Ennahdah, and the PJD by saying that it was a clear case where

one could forget the religious norms in the name of democracy, citizenship, etc., but that it should not be the case. They claimed that democracy was important but Islamic norms should have precedence and a Christian governor should not be appointed. So the Muslim Brotherhood had to answer in political (rather than theological) terms to this challenge and they maintained that it was not a problem to appoint a Christian governor. The same goes for Mohamed Ghannouchi in Tunisia, who is nevertheless trying to find an Islamic narrative to explain why Ennahdha is a democratic party pushing for citizenship.

But there is this permanent overbidding of the Salafis, which obliged the mainstream Islamic parties to explain their commitment to democracy and a different set of norms. Of course, the mainstream Islamic parties argue for keeping Article 2 of the Egyptian Constitution, which maintains that Islam is the religion of the state. But they are pushed to accept the autonomy of democratic norms and the rules of the game. But even the Salafis have begun to push for Islamic norms in a public space that is far more open and this is problematic. For instance, when Salafis attacked Sufi graves in Egypt, they faced not just the disapprobation of the religious community, but also of the entire population who thought it was not the time for such attacks or attacks against Christian churches. This strategy was from the past and it was running against the movement.

So it is a challenge for the Salafis to reconcile their will to stick to religious norms, as the norms to apply in the public sphere, with the existence of an open, democratic space. My impression is that they are very embarrassed. They are no longer confronted with the police and the regime but with people who seek to engage them in discussion. And they are not familiar with that.

The same thing goes for the Catholic or the Orthodox Church in the Middle East, by the way. Until recently, the clergy succeeded in representing the entire local community and was quite happy to have religious affiliations expressed in terms of identity and belonging. But this authority of the clergy is also challenged by some young Christians who emphasize the role of citizenship and democracy. This challenge has consequences for the issue of religious freedom. If citizenship takes the predominance then everybody can change his or her religion: it is not an issue for a Copt to convert to Islam or for a Muslim to convert to Christianity. But it is a problem for the Church of course by definition to acknowledge individual freedom of religion.

So we see an interesting process of change in the nature of the debate about religious norms when the political space is open. Here, as Charles Hirschkind said, it's not an issue of secularization versus religion. Rather, it is a change in religious attitudes, such as praying in public, that changes of meaning.

If we compare the recent events in Egypt with the Islamic revolution of Iran, we find differences between the exhibition of religious practices in the public sphere. To pray in the street in Iran was clearly a sign of political protest, but not in Tahrir where it was a sort of banalization of religion. It is not a process of secularization but a process of normalization of religious freedom and practices. Of course it's too soon for definitive theorizing, but these events at least provide new input for our discussion of religious norms in the public sphere.

III. SECULARISM IN ARAB COUNTRIES

BELKACEM BENZENINE

I plan to analyze secularism in Arab countries by examining what is at stake in their political and religious spheres. The interests of Ulemas, reformists and liberal thinkers, as well as Arab intellectuals and politicians in the question of secularism demonstrates the importance of the relation between politics and religion in the life of Arab societies today.

The state-religion relationship is so connected in Arab countries that Islam has been imposed as the official state religion through national constitutions, except for Lebanon. According to Hamadi Redissi, such arrangements are superfluous, but let us stick to the politico-religious spirit that characterizes these constitutions. Is this a simple compromise, a reflection of the fact that Islam is the majority religion of Arab societies? Or is this the desire of Arab states to politicize religion in the face of rising Islamism?

The social and political realities show this ever-growing opposition between Islamization and the depoliticization (i.e. outside the domain of politics) of religion. The social shifts, power conflicts, Islamist dogmatism, and influence of religious institutions only reflect the dominating role that religion plays in the political and social spheres.

It was Ali Aberraziq who, in the 1920s, expressed the need to adapt religious laws to social, economic, and political developments. He believed it was almost self-evident that the veiling of women supports their inclusion in the working world and that the separation between spiritual and temporal power, the practice of usury (*ribā*), and the restriction of divorce and polygamy had become socially accepted without needing to be a part of legislation.

However, the impact of Islamism on societies and on the political-religious orientation in Arab countries was such that depoliticization was on their agenda as a compromise to reconcile divergent positions. There are concrete examples of this form of compromise on two levels, government and intellectual elite.

The compromise between religion and state, as noted by Burhan Ghalioun, was an important characteristic of post-colonial Arab countries and a consequence of the development of the modern state. But his predictions were not realized. To the contrary, we can see today that the opening of political power is associated with a greater intransigence and radicalization of Islamism. This is reflected in the cases of Egypt and Algeria in 1980 and 1990, respectively, where fundamentalism profited from the opening of the political terrain and the tolerance of religious parties.

The failure of the ideologies and economic policies of Arab nations, their defeat by Israel in 1967, and the success of the "Islamic" Revolution in Iran in 1979 have enhanced the legitimacy of the Islamic platform. Within the Islamic discourse itself, the Islamic Revolution was part of a mobilization for social change. It has also been a useful model for realizing the Islamic state and ending secular regimes. Thus, religion has become (to borrow Michel Foucault's insight about the Iranian revolution) "the force behind the political battle."

The implication of Islamists in the recent and ongoing revolts and social movements in Arab countries shows this willingness to resurrect the project of Islamic style. In the wake of the fall of the Egyptian and Tunisian governments, the call for a civil (rather than religious) state by many political formations and large parts of civil society shows that the relation between state and religion persists as a major source of tension.

The state policy that aims to control religion through both its politicization and depoliticization has not succeeded in separating itself from religious institutions. The crisis of Arab regimes has only contributed to the creation of, according to Brandon Turner, a "socio-political background for the re-politicization of Islam."[37]

One has to recognize that re-Islamization is occurring throughout the media, *fatwa*, books, schools, and universities. Its objective is militant Islam, which is claimed to reflect the "need for real visibility of Islamic values at all the levels of social and political life."[38] Olivier Roy speaks of a conservative re-Islamization, led by religious personnel, that touches all Arab and Muslim countries.

This movement is politically loyal, but religiously conservative. According to Roy, the biggest problem that re-Islamization poses is "shariatization from the point of view of a modern state." If, for Roy, re-Islamization expresses itself on an existential level, Bruno Étienne sees it as a "political awakening occurring throughout a policy of Islam rather than a religious renewal."[39]

From another angle, Ghassan Salamé claims that Arab regimes sought to associate with the secular elite only after the rise of Islamism as part of a strategy dealing with this phenomenon.

For certain secular thinkers, secularism is really at the heart of the battle between depoliticization and re-Islamization. The politicization of religion is a historical fact in response to social and political conflicts where the authority of the Qur'an replaces the authority of reason. The rejection of secularism is a form of the politicization of religion by religious institutions who, in the name of the Qur'an, seek to impose their authority and censure freedom of thought.

For Nasr Abu Zayd, the Qur'an represents to Muslims neither an Islamization of life nor a separation of life and religion.[40] Separating religion from the state is essential for protecting the integrity of religion. However, this does not mean relegating religion to the backseat in society. The Qur'an's text gives no political theory and espouses no political principles.

Hasan Hanafi writes:

> I firmly believe that separation of state and religion is essential for protecting religion from political manipulation when the state identifies itself with a certain religion. When the state identifies itself with a certain religion, folks who belong to another religious tradition inevitably are discriminated against….A secular state—one that gives no official sanction to any particular religion—gives religion the space it needs to meet the needs of the people. Otherwise, religion easily becomes a weapon in the hands of those in power.[41]

The relationship between religion and the birth of the Islamic caliphate in contemporary Arab thinking poses a real question for the future of secularism. Even if, for certain Islamist theorists and specialists on Islam, secularism can be enacted, the conception of secularism here is ambiguous. The criticisms of secularism today lead to a compromise with the ideology that is imposed by Islamists. In the actual social and political con-

37 *Islam Critical Concepts in Sociology*, London, Routledge, 2003, p. 132.

38 Ali Mérad, L'Islam contemporain, Paris, P.U.F., 8ème édition, 2007, p. 103.

39 *Islam, les Questions qui fâchent*, Paris, Bayard, 2003, p. 80

40 Nasr Hamid Abu Zayd, *Voice of an Exile: Reflections on Islam*, Westport, CT and London: Praeger, 2004, p. 183.

41 Hasan Hanafi, *Dirasat falsafiyya*, Le Caire, Librairie anglo-égyptienne, 1988.

ditions characterized by authoritarianism and instability, it is not the separation of politics and religion that seems privileged but the reconciliation of the two. "Is reconciliation between secularists and Islam possible, or even inevitable to avoid the slide towards violence?" In response to these questions, the Egyptian philosopher Hassan Hanafi proposes, under the guise of the "Islamic left," the need to find a middle ground between Islamism and secularism. The "Islamic left," born in Egypt in 1980 to protest against the liberalism of President Sadat, supports the project of a rational, authentic, and conscientious society to serve as an alternative to both Islamic fundamentalism and secularism based on the occidental model. According to Hanafi, contemporary Arab societies are divided into two movements, *salafiyya* and secularism. The former movement claims to be a part of Islam's cultural patrimony, the latter to be of Western origin. Hanafi contends that the secular solution, which is an occidental doctrine, cannot succeed in Arab societies.

The positions of the Islamic left on secularism mostly restate (albeit in new language) the basic difficulty of reconciling the religious sensibilities of Islam's cultural heritage with modernity (as well as the colonial and occidental heritage). This social project aims to rediscover the religious and rationalize it, to render credible politics and rethink it in humanist terms in order to make it acceptable to both the masses and religious institutions in Arab societies.

In short, the Islamic left proposes an alternative path to reconciliation, one grounded in Islam's heritage. Yet this alternative remains very abstract and has internal difficulties. When praising Said Qutb and Khomeini in order to attract attention to the importance of social justice in Islam, the idea of secularism loses all its value and all its significance.

The secular militants face a particularly difficult situation: the malaise of secularism. The persistence of this malaise is a testament to the political commitment of the secularist to a principle of conformity, i.e. to applying an occidental model that does not mesh easily with the traditions of Muslim society.

Fouad Zakarya remarks that, because of its decline in the 1970s and 80s, secularism is misinterpreted by both the public and intellectuals. Despite this criticism, the ideal of secularism continues to inspire certain political and intellectual Arab elites. In the Arab political context, secular militancy arises as a by-product of efforts to introduce secularism into the state.

Let's look at the manifesto for secular republicanism in Lebanon, an interesting example because the manifesto declared a desire to mobilize intellectuals to defend secularism in a country where politicians and religious persons were attached to the principle of confessionalism.

In 1984, while a civil and confessional war was raging, a group of lawyers, writers, students, and independent political personalities drafted a manifesto called "The Permanent Congress of Secular Lebanese." It was the first of its kind in Arab countries. It advanced a precise and global project for secularity. Concerning the integration of secularization, the manifesto adopted the position that "Secularism (*laïcité*) is a global vision of the world." After distinguishing several forms of secularism, the manifesto opted for one founded on neutrality and respect for all religions and for all political tendencies. From this commitment, the manifesto proposed a secular solution to confessionalism, a position accepted by the majority of the intellectual and political elites. Though the Lebanese intellectuals behind the manifesto adopted a global conception of secularism, they suggested adopting a model taking into account

the political, sociological, and religious specifics of Lebanon. The manifesto claimed that secularism must be applied progressively in stages. The first stage required bringing about the end of confessionalism, not only in texts but also in psyches.

In Egypt, where secularism has been a cultural and political demand of liberal thinkers for a century, religious and political tensions call today more than ever for a rethinking of the relationship between the political and the religious. "The Congress of the Institution of Secularism in Egypt," reunited in 2006, seeks not to relaunch a debate on secularism but rather to demand it as a fundamental element of democracy under the slogan "no democracy without secularism." As was the case in the Lebanon initiative, the Egyptian Congress brought together a group of intellectual, political, and religious leaders to lay down the foundation of secularism. Secularism, according to the manifesto, must be under the same level as the state project.

This idea is very interesting. It suggests that, as Leila Babès writes, "Secularism is first a matter of state. Second, it is a contract that concerns the entirety of the community. It is not an alternative, an option, or a personal opinion."[42]

Since secularism concerns the community, participants insist on the importance of associating civil society with this process. The institution of secularism begins, according to secular Egyptians, by suppressing all indication of religion in administrative documents, outlawing religious instruction in public schools, and (most importantly) eliminating Article 2 of the Constitution that establishes Islam as the state's religion. Such procedures are seen as required to ensure neutrality of the state and the quality of citizens.

Drawing from the writings of Farag Fouda, the participants of the Congress of the Institution for Secularism in Egypt articulate several principles of secularism: first, the right of citizenship as the principal element for national identity; second, the Constitution as the pillar of power that guarantees the equality of all citizens and unrestricted freedom of belief; third, the public interest as a pillar of legislation; and fourth, a system of civil government which, by its constitutional legitimacy, guarantees the respect of laws and human rights.

The Congress also recognizes the American model, which guarantees the separation of powers and the autonomy of the religious sphere, as valid for the social and cultural realities of Egypt.

Finally, let's consider secular political parties in Arabic countries. Secularism is not limited to political and intellectual movements. Inevitably, political parties include in their vision of society the relation between the political and the religious.

The Wafd party, created in Egypt in 1919 during the struggle for independence, was one of the first Arab parties to call for the separation of politics and religion. Given the rise of Islamism and the political climate of the contemporary Arab world, most parties have removed this idea from their program. Today, Wafd adopts a vision that approves of the status quo implemented by the political regime—in other words, Islam as the official religion of the state. Because of this, the Wafd contend, religious values are essential for developing necessary social virtues.

Many contemporary secular parties have difficulty in clearly defining their identities. These parties are not militantly secular, à la Mustapha Kemal Ataturk, or ideologically committed to a French-style *laïcité*. They simply do not embrace a political platform inspired by religious ideals. This is why we should refer to them as secular rather than secularist.

42 "La laïcité est une affaire d'État," leilababes.canalblog.com.

Caught between an authoritarian power that only allows for a very narrow margin of action and the radical Islamism for which secularism is synonymous with irreligion, secular parties generally lack a social basis or means for action. Nevertheless, secularism continues to claim certain political and intellectual elites who continue to advocate for a society based on the principle of separating politics from religion. This is the position, for example, of Saïd Sadi in Algeria. Sadi explicitly defends secularism in the program of his political party. According to Sadi, the population of the Maghreb is able to freely practice its religion. For him, secularism is not a problem for society but for the political world.

Sadi's variety of secularism is not inspired by the French model but rather by the social realities of Algerian society and the founding text of the Algerian state. Among these social realities is that Algerians have separated the practice of religion from civil and/or political responsibility. The problem of secularism remains political because it depends on the will of political powers. This is why, for Sadi, secularism is central to the project of a modern society.

For the Islamist parties, and even for certain currents of Algerian conservatism, secularism is evidence of a political and cultural plot. This view is indicated by the vocabulary they use, including terms like "The Party of France," the "secular-assimilationist," and "secular communists." Islamist parties both distrust and reject the idea of secularism because they consider it a product of Western culture and therefore incompatible with Islam. For this reason, they also reject any form of social and political modernity that they see as destructive of cultural and religious values.

Only certain parties on the left, Marxists in particular, defend secularism with pugnacity and consistency. Those parties, to which several intellectuals belong, are not so much parties of believers but rather "mass parties," to use the typology of Maurice Duverger. Their project is seen as conflicting with the politics of current governments as well as with the Islamist ideology. Unlike the Ba'athist parties in Iraq and Syria, which came to power through violence, the Marxist parties aspire to a radical social change through a popular movement of liberation. For the communist parties in Lebanon and Egypt, in particular, secularism can only be achieved in the context of a larger egalitarian project—in other words, a global critique of the social order. The struggle is not easy for the Marxist parties and other secular parties. They have to fight on three fronts: Islamists, the current political powers, and public opinion. For Farag Foda, who was killed in 1992 for his secular ideas, the influence of Islamist governments in the Arab world (and Egypt in particular) led to the weakening of the secular parties (which are very far from the masses) as well as to the ostracism of liberal and secular thinkers who raise questions about issues like the veil or Sharia.

Does secularism have a future? Even if it has an impact on religious and cultural aspects, the liberal movement has quickly lost its momentum. The rise of Islamism since the 1920s does not show the failure of secularism, but rather its decline. This pattern does not mean that secularism has lost its power so much as its grip on Arab thought. The secular activism that drove political parties, civil society, and intellectuals is remarkable and important for its challenge to radical Islamism. What we consider a secular solution is, in reality, a reconsideration of certain social and political problems about the relation between politics and religion. What is at stake is the future of a particular project: that of a tolerant and pluralistic society, a neutral and modern state.

SESSION III

THE CASE OF EUROPEAN COUNTRIES

DEBATING THE PLACE OF RELIGIOUS SYMBOLS IN THE PUBLIC SPHERE IN POLAND, 1989-2010

GENEVIÈVE ZUBRZYCKI

In an essay on the Mojave Cross published on the website *The Immanent Frame*,[43] Winni Sullivan pondered why crosses present such difficulty for the modern secular nation-state. Sullivan questioned the degree to which religious myths and symbols have been supplanted by those of nationalism. "Has secularization failed?" she asked. Sullivan posited that religious symbols' ability to connect the universal and the particular is at the root of their success. Yet the ambiguity of the Mojave Cross and the commentaries made by various judges evaluating the case pointed to the layered religious and secular meanings of the symbol of that site, and in U.S. society more generally. Perhaps a more expansive definition of civil religion can trace how the same symbol moves across religious and secular contexts, depending how it is deployed.

In Poland, for example, the cross is and is not religious, although it is always—or almost always—sacred. This ability to pivot in different directions may help to account for the cross's social force.

Like the U.S., Poland is a religious society. About 96% of the adult population declares belief in God, and 70% attend religious services at least once a month.[44] Unlike the United States, however, Poland is ethnically and denominationally homogeneous. It is 96% ethnically Polish and 95% Catholic, at least nominally.[45] This lack of religious pluralism has not diminished debate about the place of religion in the public sphere. Indeed, this issue has been hotly debated since the fall of communism and the construction of a legitimate national state. A new context has therefore forced the reexamination of things that had been taken for granted under communism. Poland and other former communist countries in Eastern European offer an interesting vantage point from which to think through the changing meaning, social power, and political valance of religious symbols and practices. These cases might even illuminate the on-going revolutions in the Middle East.

Some of the debates that have punctuated the post-communist period include: Should Poland be united under the "sign of the cross" (as many on the right have argued)? Should the state embrace confessional neutrality? Should there be an *invocatio Dei* in the 1997 Constitution? Should crosses be present in classrooms, state institutions, or broadly conceived public spaces? The answers to these questions were quite obvious under communism: "no" from the party state; and "yes" by everyone else, including believers, non-believers, and many Jews because the cross, in the communist context, introduced a different perspective than the one propagated by the regime. Its presence, in the public sphere, de facto created pluralism. With the fall of communism, the signification of the cross and religion shifted and their presence in the public sphere needed to be re-examined.

43 Winnifred Fallers Sullivan, *The Cross: More Than Religion?*, http://blogs.ssrc.org/tif/2010/05/05/more-than-religion/

44 Centrum Badania Opinii Społecznej. 2011. O religijnym i społecznym zaangażowaniu Polaków w lokalnych parafiach. Warsaw : CBOS.

45 Główny Urząd Statystyczny. 2012. *Raport z wyników*. Narodowy Spis Powszechny Ludności i Mieszkań. Warsaw: Główny Urząd Statystyczny.

These questions became especially salient in the debate surrounding the controversial erection of hundreds of crosses just outside Auschwitz in 1998 and 1999. Ultra-nationalist Poles chose the cross to mark Auschwitz as a place of *Polish* martyrdom, as opposed to the place of the Jewish Shoah. This effort was part of a broader strategy to articulate an explicitly Catholic vision of Polishness, a vision that had slowly but surely been eroding since 1989.

In my book[46] I develop and analyze both axes of this "war of the crosses." Today, I am discussing the second axis of the conflict, that concerning the place of the cross as a symbol of Polish national identity.

The erection of the crosses garnered significant support from the four corners of Poland and beyond, but it ultimately backfired since most Poles no longer saw the cross as a sign of freedom and dissent from an atheist party state and a totalitarian regime. For liberal intellectuals from the left and center, the cross now stood for the rejection of the principles of the *Rechtsstaat*, where particular allegiances are relegated to the private sphere. For liberal Catholics, the cross had become a sign of intolerance towards others, used as a provocation contrary to the Christian meaning of the symbol. For many members of the clergy and episcopate, the crosses at Auschwitz were a shameful expression of Polish nationalism and anti-Semitism. It took several weeks for the Catholic Church and its hierarchy to try to contain the situation. At first it stood on the sidelines, arguing that it did not have the monopoly over the symbol of the cross since it belongs to the entire community of Christians. Once the schismatic Brotherhood of St. Pius X took over the site and started celebrating masses claiming to represent the true "face" of Catholicism and to defend the true face of Polishness, the episcopate finally intervened on two fronts.

First, it issued a pastoral letter forbidding Catholics to erect more crosses at Auschwitz, asking those who had brought them to retrieve them. Second, it attempted to restrict the semantic orbit of the cross by emphatically promoting a "correct theology of the cross" in various venues. Although some Catholics continued to bring crosses to the site throughout the fall and winter despite these explicit demands, the war of the crosses was basically ended once the church took a firm stand. But it took about three months for the church to intervene.

That very summer, however, the Łodz court rendered judgment in a related civil case that had been filed a year before. A self-proclaimed atheist had sued the city for displaying a cross at a city hall, arguing that it infringed on his well-being. The claim was based on Article 25 of Law 2 of the 1997 Constitution of the Polish Republic, which concerns the religious and philosophical neutrality of public organs. Yet the suit was rejected by the regional court as it ruled that the cross, as a traditional symbol in Polish culture, had been objectified to the extent that it did not constitute a threat to anyone. The Court of Appeals upheld the regional court's decision, arguing that in the Polish patriotic tradition the cross expresses a specific set of moral and historical values:

> Personal well-being cannot be understood […] without reference to the tradition, culture and historical experiences of the collectivity in which physical persons live and function. In addition to its religious meaning […], the symbol of the cross has been inscribed in the experiences and the social consciousness of the Polish Nation—as a symbol of death, pain, sacrifice, and

46 *The Crosses of Auschwitz: Nationalism and Religion in Post-Communist Poland* (U. of Chicago Press, 2006).

> as a way of honoring all those who fought for freedom and independence in the struggle for national liberation during the Partitions and during the war against invaders. The symbol of the cross has for centuries designated the graves of ancestors and the places of national memory. In non-religious collective behavior, [the] meaning of the cross as an expression of respect for, and unity with, the liberators of the Fatherland even has *precedence* [my emphasis] because other universal means to express respect have not been developed. […][47]

Moreover, according to the court, the cross was expressly related to secular state institutions.

> In addition to its religious meaning, the symbol of the cross in Polish society expresses moral order on which the idea of the state and society is based. Throughout history the cross has been in the Polish tradition linked with the legislative and judiciary powers. This fact does not in itself prevent dialogue among people representing different worldviews.[48]

The religious semantics were overshadowed in both courts' decisions by the secular and civic connotations of the cross. However, its secularity made it no less sacred.

Does this case suggest a diminution of the public centrality of religion, with the cross deemed tolerable because it had been sufficiently secularized (and thus not evocative of religious sentiments)? Or did it present a *hypertrophy* of religion with the cross becoming so omnivorous and all-encompassing as to devour the *Rechtsstaat* entirely? Perhaps the cross's religious meaning—however occluded as "merely" cultural—is the champion left standing, not only as Auschwitz, but also over the nation as a whole?

Twelve years later, in the summer of 2010, Warsaw became the site of yet another war of the cross. Self-proclaimed "Defenders of the Cross" prevented the relocation of the wooden cross standing in front of the presidential place. The cross, erected at the site in the days following the tragic death of President Kaczyński in an April 2010 plane crash, was supposed to be moved from the presidential palace square via religious procession to a nearby church. "Defenders of the Cross," however, aggressively prevented the church-led ceremonial relocation, which they understood as a profanation of the symbol and of the nation. For several weeks, the site of this new "war of the cross" became the playground for proponents of the cross and also the stage for protest against the religio-nationalist and anti-Semitic Poland that the cross has come to signify since the fall of communism—a signification that was acquired partly trough previous controversies such as the war of the crosses at Auschwitz.

In addition to serious endeavors (like petitions against the presence of the cross at that specific site and for a stricter separation of religious and political spheres in Poland), parody and mockery of the "Defenders of the Cross" was quite effective. People took to the streets to show the absurdity of the "crusade." "They wanted the circus? We'll give them a circus!" announced a Facebook group coordinating a counter protest. Within hours more than 7,000 Facebook users confirmed their participation in the happening. Radio Maryja, a right-wing conservative radio station that many consider a sectarian movement, countered the initiative by appealing to its listeners, especially its male listeners, to counter-demonstrate against the counter-demonstrators. The streets of the city were

47 *Orzecznictwo sądów polskich*, 1999:488.
48 *Id.*

flooded with people, some praying and protesting, others picnicking and partying. The Facebook initiative had specifically asked people to show up in front of the cross *without* any religious or national symbols (you could see posters with Hello Kitty, clowns and slogans such as "we are Polish too!"). For them, the debate about that cross was not only about the place of religious symbols in the public sphere but also about the meaning of the symbol and the right of secular people to also claim to be Polish.

It took several weeks for the authorities to finally relocate that cross. Barricades had to be installed to prevent the "Defenders of the Cross" from monopolizing the site and inviting chaotic responses. Once order was restored, the cross finally found its permanent home in a local church nearby. Its meaning, however, had been altered. As a result of these two "wars of the cross," the cross is no longer a symbol of the unity of civil society, or of the union between Polishness and Catholicism. Rather, it highlights deep tensions in Polish society about the meaning and place of Catholicism. The cross still stands, but as a symbol of conflict. What broader lessons can we learn from the Polish case and from these two specific events? I opened by mentioning Winni Sullivan's question about whether the failure of national symbols to replace religious ones suggested the failure of civil religion and secularization. "Civil religion," following the Durkheimian tradition, refers to the social sacralization of a given group's symbols. According to this view, civic or state symbols like the flag acquire religious significance and are worshipped by citizens as totems. The Polish case points to a different and somewhat overlooked process. Because of Poland's specific or peculiar political history, it was not political ideals, institutions, and symbols that were sacralized and became the objects of religious-like devotion (like in the paradigmatic French Revolution model). Rather, religious symbols were first secularized and then *resacralized as nationa*l symbols. The cross in Poland is an example of what I call *sacred secular* symbols. It is sacred not only because of (or in spite of) its Christian semantics, but because since the 19th century it has traditionally represented Poland. In the place of religion yielding to nationalism or nationalism becoming a religion, here *religion becomes nationalism*.[49]

In cases where national identity is experienced and expressed through religious channels, the estimation of religious decline or ascent in relation to nationalism is a quixotic mission. When the religious is secularized and then resacralized in national form, the relationship between national symbols and religious symbols is particularly difficult to tease apart for social scientists, not to mention judges. This ambiguity, this ability to pivot into different directions, may be the source of civil religious power for the cross in Poland and for analogous symbols elsewhere.

The national sacralization of religious symbols, however, is meaningful and garners consensual support only in specific contexts (as we discussed in the case of Egypt for example). It has been fiercely contested even in overwhelmingly Catholic Poland since the fall of communism and the building of an independent state. Such symbols could certainly be "secularized" again. Such a process would involve returning to a more distinctly religious or theologically orthodox interpretation of Catholicism in Poland. The de-politicalization of religion has indeed been the objective of many Catholic groups in the past two decades. The agenda they propose is to restore the "truly" sacred status of what has become in their view merely a national religion. After Catholicism's long public career, many Polish Catholics now lobby for its privatization.

49 I elaborate this point further in the conclusion of *The Crosses of Auschwitz* (2006)

II. "RETURN? IT NEVER LEFT." EXPLORING THE "SACRED" AS A RESOURCE FOR BRIDGING THE GAP BETWEEN THE RELIGIOUS AND THE SECULAR

MATTHEW FRANCIS

This paper is co-authored work with Professor Kim Knott, University of Lancaster.

Here is an outline of what I'm going to talk about. First, I will critique the secularization thesis, which is the dominant paradigm for explaining religious secular relations. I will provide a critical discussion of assumptions underlying this thesis and the contemporary discussion of religion in the public sphere.

Second, I will explore how the sacred as a concept can signal deeply held values on both sides of the religious/secular distinction. I will also provide a resource for locating the sacred within religious/secular ideologies. Here, I describe a matrix of markers that can be used to identity and capture data relating to these deeply held values.

Third, I will provide some example of how the sacred within contemporary debates can be mapped out. I will concentrate on the Rushdie affair as an example of the persistence of references to the sacred in religious and secular discourse, one that also throws into sharp relief the religious and secular struggles within British society. Recognizing the sacred as both secular and religious, we argue, opens up constructive potential to serious democratic debate between differing ideological camps. I conclude by offering some examples of the value of this approach for policy makers and analysts.

The withdrawal of religion from the public sphere has been understood to mark a decline in the influence of religious values and institutions on society. Whether this decline is a result of the waning of religious belief, or the retreat of beliefs from the public sphere to the private world of individuals, has been contested. However, despite varying positions on the continuing resilience of some forms of religious beliefs, the arguments are generally framed in relation to the secularization thesis. Outside the academy, the secularization thesis has been accepted by popular European discourses in government, in the media, and also to a lesser extent in the United States. Assumption about the dominance of secular ideals is so popular that the return of the sacred in domestic and international arenas typically elicits surprise, even among academics as shown in this workshop's call for papers.

Institutions, values, ideas, places, and people are assumed to fall into either one or another category—church or state, faith or reason, belief or science. Whether in the American constitution, the French educational system, or the British National Health Service, this separation leads to the marginalization of religion in the public sphere. Likewise, transgressions that threaten these boundaries are seen as impositions that should be forbidden: e.g. the opposition to public displays of religiosity in the clothing of nurses in the National Health Service in Britain and to school pupils in France.

Within these debates lies an idea of what constitutes religious and secular forms. However, we argue that the idea of religion as a reified concept can be seen to have its place within the development of European Christianity, such as in the distinction between religious and secular vocation. As such, the religious/secular binary is a relatively recent and clearly Western construction. According to this binary, religion is comprised of religious institutions along with their traditions, beliefs, practices, and adherents. The domain of

the secular includes everything that falls outside of this definition.

We argue that these categories should not necessarily be seen as dichotomous. Furthermore, we argue that the boundary separating these categories has rarely been impermeable in practice, instead being revised through struggles and movements. For example, Tony Blair, the former British Prime Minster, rarely discussed religion despite the established status of the Anglican Church in the U.K. and despite his own faith. Conversely, George W. Bush, the head of a government with strict separation from any particular religious institution, frequently invoked God in matters of state. Rather, we argue that religion and secularism should be located as separate camps within a single epistemological field.

By drawing on the concept of the sacred, we aim to problematize the discursive distinction between these two camps and thus to trouble the notion of a "return to the sacred" in contemporary modernity. Instead, we argue that the sacred never left modernity, and that a proper exploration of this concept provides an explanation of its apparent return and, indeed, a clearer understanding of the relationship between religious and secular thought.

In the case of the *Satanic Verses* controversy, the debate between the opposing camps was depicted as a struggle, with each side vying to assert the undeniable truth of its position and the uncompromising nature of its opponents. Interestingly, both invoked the language of the sacred and of non-negotiable values. Such language and values were not confined to the religious camp and supports our argument that, irrespective of any decline in religious belief or belonging, the sacred had not disappeared from a modern European society. Strong Muslim positions were pitted against equally vociferous secularist ones in a discursive struggle fought out in the public media. Both sides drew on the language of the sacred to indicate the importance and non-negotiability of their case. Each side repeatedly referred to the gulf or boundary between the two positions. Such boundaries can lie dormant, invisible to outsiders until they are threatened with transgression. (Here I might refer earlier to Professor Roy's discussion of how crosses can seem like part of the furniture, until noticed.) In the case of the *Satanic Verses* controversy, views about the sanctity of the Prophet Mohammed were deeply held but quietly expressed until suddenly challenged. Muslims were seen as rising up in protest in ways that surprised many secularists within the U.K. But their response also led liberal secularists to come out in defense of Rushdie and his freedom as an author to express himself. In short, secularists realized the sanctity of their own position as a result of this threatened transgression.

The concept of the sacred that we utilize here finds its genesis within a Durkheiman notion of "things set apart and forbidden," although we've developed it in the context of recent spatial and cognitive approaches to the study of religion. This observation is supported by the theoretical contributions offered by neo-Durkheimian anthropology, for example, in the cognitive cultural account of the Finish scholar Veikko Anttonen. In his discussion of the sacred as a category boundary, Anttonen argues that the sacred is not confined to the religious context. Rather, it acts as a category boundary, binding together those inside the boundary while, at the same time, separating them from those outside of it. This understanding of the sacred, unlike the religious/secular distinction, is not a construct of modernity and indeed cuts across the modern religious/secular dichotomy.

The claim that one's position is non-negotiable can be made by any exponent according to the

beliefs and values inherent in the worldview to which they subscribe. When such a position is strongly articulated, when a sacred boundary is transgressed, then differences are realized and dichotomist responses become apparent—as in the case of Muslim and secularist protagonists in the *Satanic Verses* controversy.

Understanding where these non-negotiable boundaries lie is essential for policymakers and analysts in order to understand the potential within society for conflict and avoid it. We offer a matrix of markers that can be used to assist in this process. Focusing on the public discourse of groups, these markers can be used to identify and capture data relating to key variables, such as the expression of dichotomous worldviews or external legitimating authorities that may signal conflict and even suggest capacity for violence. Utilizing this approach may assist in identifying the sacred territory of various ideological positions, help in intervention and conflict mediation, and assist in policy formulation in areas such as public order, radicalization, and community cohesion. We developed these markers in earlier research for the British government's Home Office, which highlights gaps in understanding the move to violence in religious beliefs. From this initial formulation, the markers have been refined through case studies. During this process of refinement, we coded into the markers statements by particular groups (taken from interviews, treaties, and propaganda). We developed new markers to account for new areas of examination. It is an iterative process and the list of markers is not fixed.

I will highlight only a few markers that are relevant to the Rushdie case. One marker is a "dichotomous world view," which we define as an oppositional world view or cosmology. Another is "external legitimating authority," defined as a world view justified by appeal to legitimating authority external to or transcending the situation in which the statement is made. So it could refer to God, religious scriptures, traditions, or values such as fundamental human rights.

Let's apply the "dichotomous world view" marker to some specific examples. This marker captures values that expound a "them and us" mentality and suggests a worldview influenced by a struggle between opposing forces, such as God versus the devil, good versus evil, enlightened versus unenlightened, or believer versus non-believer. A group expressing itself in this way tends to see itself as on the side of good, and a clear distinction is made between those within the group and those without. These distinctions are evidence of the kind of non-negotiable values that groups believe differentiate themselves from others.

The following quotation of Salman Ghaffari, the Iranian Ambassador to the Holy See at the time of the controversy is a good example of how he sees the struggle as one between all those in the religious camp against those in the secular camp. An interviewer asked,

> In the appeal you made to the Pope on February the 15th, you described the Pope as a defender of spirituality and of religion. Are you thinking perhaps in terms of a kind of holy alliance between the Catholic Church and Islam against modern unbelief?

Ghafari answered as follows:

> This holy union has existed from the beginning. Islam has always hoped for this collaboration. Our history shows that Islam and Christianity can live together like brothers. Let us leave aside the ideological conflicts of the past. We hope that Christianity with the help of Islam can carry this world towards God

> and toward faith, preventing all oppression.

Ghaffari's sentiments suggest a dichotomous worldview, dividing and indicating a struggle between those who have faith and those who do not. Even though Islam and Christianity are commonly presented in mutual distrust and opposition, the marker of the dichotomous worldview suggests unlikely partnerships and values.

The liberal secularism has also upheld a dichotomous worldview, as exemplified in an editorial published by the center-left *New Statesman* magazine.

> We are embattled in the war between cultural imperatives of Western liberalism and the fundamentalist interpretations of Islam, both of which seem to claim an abstract and universal authority. On the one hand, there is the liberal opposition to book burning and banning based on the important belief in the freedom of expression and the right to publish and be damned. On the other side, there exists what has been identified as a Muslim fundamentalist position.

And the different camps demonstrate their self-defined divisions on how they view the world, divisions marked by values relating to the sanctity of the Prophet in Islam or to freedom of expression. Although we demonstrate these values in relationship to the Rushdie affair, they still play crucial roles in contemporary debates, such as the Danish cartoon affair.

The "external legitimating authority" marker has been defined in such a way that it also captures the legitimization from non-religious sources. This marker captures justifications attributed to God or another legitimating authority in justification of violence. In terms of non-negotiability, this aspect is not stressed much more than the command to kill expressed by Khomeini and explained by the Iranian journalist Amir Taheri: "sometimes true believers must act even before any harm is done to Islam. The prophet is quoted as saying, 'Kill the harmful ones before they can do harm.'" Rushdie, too, invoked an external legitimating authority in this case freedom of expression, which, he wrote, "is at the very foundation of any democratic society" and "is an essential part of any democratic system that people who act within the law should be able to express their opinions freely."

These examples show how the matrix can be (and these two markers in particular) applied to the Rushdie affair. In operationalizing the sacred, the matrix can identify and focus attention on the public values of the groups to which it has been applied. The Rushdie affair not only provides examples of Islamic religious values (which are publicly expressed in many countries, not just in Britain) but also suggests that secular values can have the same non-negotiability. We argue that this case supports our claim that the sacred has never been absent, even within secular ideological systems. At the same time, it demonstrates a new method of analyzing the presence of religious norms in the public sphere.

Recognizing the sacred as both secular and religious opens up constructive potential for serious democratic debate between differing ideological camps. In the above examples, we draw on the values expressed by liberal secularist defenders of free speech and those that held Islamic values. By doing so, we highlight what is distinctive about the eruption of the sacred in public discourse (within both religious and secularized environments) and how such instances may contribute to the construction and maintenance of non-negotiable identities. This matrix of markers is a methodology that can contribute to public understand-

ing about the importance of sacred beliefs and values for people's identities. It can also deepen our knowledge of secular society, its beliefs and values, and particularly its relationship with religion. It shows how beliefs can be interrogated and challenges the assumptions about the relationship of religion and the secular with reference to the sacred.

In conclusion, the matrix model we suggest allows those interested in the ideological norms of groups to explore sacred boundaries. It is apparent that the greater understanding that this methodology brings about with respect to the importance of sacred beliefs and values to the identity of groups would have been of public benefit. Such an understanding could have helped bridge the gap in discourse between the liberal secularist and Muslim communities that clashed over the *Satanic Verses*. It also deepens an understanding of the nature of religious values within secular systems, as well of the similarities between systems—in terms of adherence to matters of sacred concern—that are generally seen only in oppositional terms.

We suggest that this matrix has utility not only in academic studies of the religious norms in the public and private spheres, but also in policy applications. Through application of the matrix, the above benefits could help shape policy to be sensitive to areas of potential ideological non-negotiability.

III. WEARING THE FULL VEIL IN EUROPE: HOW THE RELIGION OF SOME BECAME THE PUBLIC CONCERN OF OTHERS

VALÉRIE AMIRAUX

Introduction

Over the course of the last thirty years, the publicly visible "otherness" embodied by the Muslim population in the member states of the European Union (EU) has sparked movements of transnational panic, mainly driven by the fear of the collapse of "national cohesion."[50] *Threat, invasion, barbarism, inadequacy, incompatibility…* the terminology by which this panic is expressed varies depending on the context and the circumstances. Generally, however, these fears, shared internationally, always become more pronounced when women are at the center of their focus, a phenomenon equally evident in the language used in reference to other communities of belief, such as Mormons, Amish, and Jews. Islamic women's attire, whatever the terminology used to describe it—veil, scarf, and, more recently, burqa, to designate a garment fully covering the body—is presented as an increasingly delicate problem, an issue at the center of legal battles and the subject of virulent political controversy in France, Belgium, Germany, the Netherlands, and the United Kingdom. The Islamic headscarf (and, by extension, the Muslims who wear it) has thus come to represent all the negatives associated with the presence of Islam in Europe, embodied by a demonizing iconography whereby the dark silhouette of the veiled woman, whether fully veiled or not, now functions as a globalized *memento mori*.

50 (Morgan, Poynting 2012; Lentin, Titley 2010)

These occurrences of local friction, tension, disagreement, and sometimes violence, have emerged in different contexts, regardless of the national conventions with regards to immigration politics, the relationship between church and state, and the wider construction of national identity.[51] They are part of a racializing configuration about which I wish to develop three lines of argument. The first hinges on the unintelligibility of certain manifestations of belief in secularized European public spaces, including the critical weakness of arguments that refer to "religion." The second develops an analysis of the racialization of the indicators of religious belonging, whether real or supposed, and which most specifically affect the Muslim population of the EU. The third finally proposes some speculative readings of the public experience of the different crises arising from the visibility of Islamic religious signs and the capital attached to their visibility.

I. Is Religion intelligible in secular Europe?

In Europe—France being the prime example for the purposes of this essay—religion remains mostly unintelligible to politics and to the public imagination owing to the historical, constructed belief in the absolute opposition between the rational modernity of the public sphere and the intimate and private experience of religion.[52] Since the end of the 1980s, secularized public spaces in the EU have taken a radical turn in terms of the public's attitude towards certain visible expressions of religiosity by the Muslim population, approaching them as cultural, social, and political pathologies that must be fought, most notably by legal means. The latest episode of this saga is manifest in the different attempts at banning, in public spaces, the wearing of garments that partially or fully cover the face (of which the burqa is the prime example), in the wake of the ban on the wearing of the veil in educational institutions.[53] On the whole, these bans seem to generate as much consensus among the politicians as they do in the court of public opinion.[54] Islam, a minority religion, is now a shared topic of controversy across the EU, particularly when it comes to the visible expression of certain forms of religiosity. The proliferation of related debates and legal disputes reveals the fact of a Europeanization that relies on spreading "anti-Muslim bigotry" or "European Muslimania" (fed by the fear of the "Islamization" of Europe.[55] These garments, worn in conviction and belief and forbidden from being displayed in public, function effectively as transnational "synecdoches"[56] that simultaneously evoke the pervasiveness of discourse on the failure of multiculturalism and confirm the relevance of secularism as a rational modality for organizing the peaceful co-existence of religions. The banning of such garments indicates, all at once, the "securitization" of cultural markers, the questioning of the moral and political loyalty of Muslim European citizens (whether converts or not), the impact of external politics on national spaces, and the efficient circulation of discourse on the "Islamic menace," often to the point of absurdity.From a legal perspective, religion enjoys, on the one hand, constitutional protection under the

51 In addition to the ban on wearing the full veil in public, which is the topic of this piece, we may also cite and recall the Danish caricatures, the laws on blasphemy, the Rushdie affair, religious tribunals and family law, the wearing of the Islamic veil in public schools, the construction of minarets, but also, beyond the Muslim minority, questions of polygamy, new religious movements, public financing of religious schools, sects, abortion, et caetera.

52 (Fitzgerald 2007)

53 Of course, nuance must be made to differentiate between contexts. Outside the EU, in Switzerland, the National Council decided, on September 28, 2012, not to proceed with an initiative launched by the canton of Aargau proposing a ban on garments that partially or fully cover the face.

54 (Pew, July 2010)

55 The expression anti-Muslim bigotry is taken from Ford 2011; the expression European Muslimania from Goldberg 2010.

56 (Jiwani 2010: 65)

right to freedom of religion in all member states of the European Union, and, on the other, protection under the right to equal treatment. Racial and ethnic origins are protected under several provisions relating to equality, especially in terms of protection against discrimination, at national, European, and international levels. And yet, while both French and European law consider it unacceptable to discriminate on the basis of religion, most of the cases brought forth on discrimination are based on race and ethnicity. The issue of discrimination on the basis of religion is legally unique in that the law understands it in both a positive way, under the idea of guaranteed freedoms, and in a negative way, under the umbrella of protection of groups and individuals from all forms of discrimination.[57] The cases brought before the European Court of Human Rights [ECtHR] have primarily been about questions of the autonomy of religious communities vis-à-vis states and their neutrality. Many authors have highlighted the "secularist" or "secular" nature of the ECtHR's decisions: how all that relates to religion should remain contained within, intimate and invisible. The unmistakable interference (the State intervening in an individual's freedom of religion) then leads to the question of the legality of said interference. Legally, the notion of a "margin of appreciation" is invoked, implicit in which is the idea that the State is best placed to decide such a thing. The "margin of appreciation" is a concept that was developed by the Court in its judicial practice and effectively means that, in certain situations, States are more or less granted latitude to assess the extent and form of their obligation to the terms of the Convention,[58] and that States are better placed (and better equipped) to decide on certain cases that cannot be tried at the Court, most notably in cases that are "culturally sensitive."[59]Generally speaking, in Europe, religion is seen in terms of its institutional manifestations rather than as a practice or an experience that is lived on a day-to-day basis. Religion is a concept that covers not only religious observance, but also spirituality (beliefs and practices) and the social significance of the impact of religion on other sectors of society. However, for the courts and the government, believers are essentially practitioners of a cult.[60] A definition that is based on practice or experiences obliges us to look more closely at the different ways in which believers express their beliefs in practice in their everyday lives[61] without necessarily recognizing them. This general inability to recognize religion outside of its institutions is expressed particularly eloquently in the silence and inaction regarding the headscarf and the full veil on the part of anti-racism groups, an issue I will come back to in the second part of this paper. The difficulty of understanding the whole concept of "religion" is part of a larger, general failure to make sense of religious belonging outside of its accompanying symbols, through practical accomplishment.[62] It is this non-symbolic aspect of religious garments and the gestures that accompany them that I want to address now, for it seems largely ignored, if not almost entirely disregarded, probably because it forces the observer to come too close to a reality that "secular, enlightened and modern citizens" and liberal enthusiasts generally prefer to keep at a good distance.[63]

The specificity of religious and cultural symbols, such as women's clothing, brings the European public to a confrontation: with the nature of the link between the simultaneously positive and negative normative aspects of the discourse on justice

57 (Calvès 2011)
58 (Nieuwenhuis, 2005)
59 (Hoffman, Ringelheim 2004; Marshall 2008).

60 This epistemological challenge is an essential, daily task in the lives of judges, lawyers, civil servants, doctors and social workers, who are often called upon to determine whether or not people have the right to wear a headscarf, file a complaint against religious discrimination (as opposed to ethnic), to obtain refugee status, to close their shops on particular days, to divorce, etcetera. Defining religion is not just a theoretical exercise: for many social workers, particularly those within the court system, it is a daily requirement.
61 (Bender 2003; Lichterman 2005)
62 (Claverie 2003; Benhabib 2002)
63 (Parvez, 2011).

and equality (stopping discrimination and guaranteeing liberties); with our capacity to think and react, in a reasonable manner, towards this religious dimension; and with the moral foundations that underlie this capacity for reflection and reasonable action. The complex challenge that arises, and that European societies at this time are failing to meet, is to be able to develop definitions of equality and social cohesion that *practically* take into account individual religious belief. Public discussion on the question of "Islam and Muslims" adds to this challenge by presenting secularism as a principle that needs to be reaffirmed and defended in its capacity as a fundamental European value, constituting both a path to integration and an indispensible norm for regulating social life. Secularism, in this sense, is increasingly regarded as the foundation for national identity—or, at the very least, considered inextricably linked to it—as evidenced by, among other things, the recent statements by the leaders of the French National Front and the organization's nationalist slant of late, as well as in the reasoning of the ECtHR during the Lautsi case.[64] If, in multicultural societies, antidiscriminatory policies can be considered one of the essential organizational pillars for peaceful coexistence between competing systems of interpretation (for example, religions) or between conflicting values (for example, the antagonism between the neutrality of the state and religious freedom of the individual), the impulse to restrict religious freedom (limiting the right to wear a headscarf in certain specific situations) actually expresses the need to limit the visibility of religious practice. The paths to secularization taken by the different member states of the EU (established national church, French-style secularism, concordance between church and state) and the way in which each one of them defines "disorderly public conduct" reveal why European judges generally agree with limiting the right to wear a headscarf, or, today, a "burqa." The Court supports the most restrictive member states in these decisions, mainly citing the latitude accorded to the state to provide its own interpretation of the situation and its own position on how best to maintain public order, as well as the perception of this position by the population at large. The main analytical framework that supports the prohibition of wearing the headscarf or the full veil can therefore be summarized as follows: "we stand by our values." In other words, the protection of liberal values, those historically considered the most sacred (freedom of thought, freedom of expression, equality between men and women), means that society can tolerate restrictions on only so many of them before it is forced to answer back. The various decisions of the ECtHR, therefore, validate the idea that public space, as a place of citizenship, is not subject to the requirement of absolute neutrality, but that individual liberties can and will be curtailed in the name of the minimum requirements for social life as these are defined by sovereign states.

The failure to intellectually understand Muslims in a reasonable manner undoubtedly stems from the kinds of representations that Europe has produced about Islam and Muslims throughout its history with them. For Mahmood, who shared the controversies raised by the Danish cartoons in order to analyze the normative encoding of the "secular" incapacity to understand religious insult, the moral impasse can be explained by the paradigmatic polarization around the "conflict between secular necessity and religious threat."[65] This rupture between secular liberal values (freedom of expression, the empowerment of women and their bodies) and Muslim forms of religiosity reflects the normative view that Europe has of religion: one specific form of the religious subject (and not of the agent) is ultimately tolerated. There is finally no room for "Muslims as Muslims." The binary model of secular vs. religious also explains how the veil is ultimately seen as antithetical to gender equality,

64 During a second ruling (2011) referring to a first decision dating from 2009, the Court puts forward the concept of "majority religion" to justify the more visible presence of Catholicism in the school environment without it being categorized as a process of indoctrination (ECtHR - Lautsi v. Italy, Grand Chamber 18/03/2011).

65 (Mahmood 2009: 65).

to the emancipation of women, and to secularism. Thus, "the veil has itself become an iconic sign of difference, but a sign reified to such an extent that its strategic use, within Western understanding, completely obscures and overrides the intentions and motivations of the actors/agents who define it."[66] The reduction of the wearing of the veil to a strictly personal decision (chosen by the wearer) ultimately becomes the only way to consider it, precisely because of the unintelligibility of religion in public space, which does not consider religion to be a proper choice for a reasonable individual. In fact, legally, "the dignity and equality of women constitute the two foundational pillars of most arguments in favor of the prohibition" of the garment in question.[67] These symbolic or functional interpretations of religious gestures hold up only insofar as to be able to validate the idea that personal beliefs (those of Muslims who cover) can be metamorphosed into something that can be legally determined. The limits of European social and political imagination vis-à-vis all that is religious are also made manifest in the inability to consider the physical and material realities of daily piety and worship—things like symbols, but also ideas such as forms of engagement—their perspective having been shortened considerably by the secular liberal gaze.[68] As Mahmood has highlighted, this manner of conceiving religion has become as normative as the relegation of the question of race to the sphere of pure biology.

66 (Jiwani 2010: 66).
67 (Ford 2011).
68 (Bender 2003; Lichterman 2005; Parvez 2011).

II. The racialization process of muslims in Europe

If for several decades the situation of Muslims in the Western world was considered the more or less happy evidence of national traditions of integration, the September 11 attacks marked the beginning, on the one hand, of European states developing a more politically active institutional framing of Islam as a religion, and, on the other, a European convergence on characterizing Muslim citizens as *personae non gratae*. How could such distinct citizenship regimes and traditionally opposed "models of integration" (interculturalism, multiculturalism, republicanism, assimilationism) have such similar public discussions on the topic of Islam and Muslims in Europe? These discussions relate, of course, to wider social issues (social, political, ideological, and economic), but they also openly challenge multiculturalism as a normative horizon as well as the ability of secular liberal democracies to effectively secure a peaceful religious pluralism in Europe. In all these discussions, we are presented with a dichotomous view of Muslims who are characterized as either bad or good, loyal or disloyal, moderate or extremist: Europe's representation of Muslims is that of a Janus with two faces—trustworthy (like us) or untrustworthy (unlike us). This representation frames, as Goffmann would say, first at a primary level and then as a proper master frame, the public discussion on Islam and Muslims in Europe as an issue of public politics. This has now become the marker against which Muslim behavior ought to be evaluated, in a way that is often completely objectified (that is, made to sound objective) by the main intermediaries of this vulgate, usually through the use of supporting data or evidence, in such a way that promotes the expression of animosity towards those who continue to adhere to practices judged foreign and archaic, with this whole discourse maintained by an international newsfeed, as we have recently seen with the release of the film *The Innocence of Muslims*. This framing allows for the expression of Islamophobic racism embedded in

concrete tests of discrimination. With this map in place, the criminalization of the wearing of the full veil becomes only the tip of the iceberg of a much larger problem, one in which it seems that racialization is the central axis of publicizing. Developed in such a way as to be sensible and intelligible to the indirectly concerned public, the problematic situation that follows the public presence of "illegitimate" Muslim religious gests acquires a factual and moral objectivity that is restrictive and allows for the emergence of a public that remains distant from the direct experience of the trouble caused by the visibility of the religious. There is no need to even encounter a woman wearing a "burqa" in order to be distrustful of the garment as the situation is not one of co-presence, but of co-relevance between actors.

Religion therefore traces a cultural demarcation between different groups of citizens in the population who then have an efficient marker to distinguish between desirable and undesirable citizens (and this based on their values and beliefs) as well as a way in which to explain the manner in which one group is perceived by the other. Since the end of the 1990s, Islamophobia was considered for a time as useful to understanding these phenomena. Fifteen years later, anti-Muslim bigotry has only become more pronounced—with the conditions for the emergence of a Muslim "popular devil"[69] about to reach a breaking point—and consolidating, through a somewhat independent process, a new identity category, only reinforced after September 11, that groups everyone who seems "Near Eastern, Arab or Muslim" under one umbrella. The development of this new category clearly creates a "racialization that equates all the members of this group with terrorists and strips them of their identity as citizens."[70] I would quickly point out here that in parallel, most notably since 2001, several European states (Germany, Belgium, France) have committed themselves to supporting the development of a "civil Islam" by establishing collaborations with national Muslim federations or associations, thus allowing Islam, as a religion, to be either recognized or represented within government. In many of these initiatives, the promotion of an official representation of Islam was conceived as a concerted effort to fight against the temptation towards radicalization that threatens Europe's Muslims rather than as a political strategy to ensure the representation and protection of civil liberties for a group of believers. The frame of reference here are programs such as those promoted through "church-like institutions," which also illustrate how liberal governance may be exercised through paying lip service to religious diversity.

Speaking of race when it comes to Muslims suggests that there exists a set of conditions resulting in their stigmatization and social denigration. Variable, polysemous, it also depends on other factors and adjusts to different circumstances. For example, the very fact of calling the full black veil a "burqa" illustrates the variability of racialized signifiers: the Afghan woman veiled in her blue burqa is considered a specific symbol of the Taliban's oppressive brand of Islam, but also, on a transnational level, of the victim of a foreign culture.[71] The ideological impact of these multiple overlaps of meaning is so huge that in Iceland, far from the EU, minority MPs in 2010-2011 anticipated the possible prohibition of the burqa on the island before the garment had even made an appearance there.[72] Associating the image of the veiled Muslim woman, oppressed by men and requiring rescue (as extensively studied in postcolonial theory), with the Taliban (who, in fact, claim their observance of Islam while practicing a cruel brand of misogyny) emphasizes a representation of Islam in which moral qualifications and racial assignations become entangled, with the moral aspect allowing non-Muslims to place Muslim privacy under the microscope of public scrutiny. The criminalization of the wearing of the full veil shunts Muslims into a separate category where they are defined by their incompetence at

69 (Werbner 2005: 6)
70 (Volpp 2002: 1575).
71 (Jiwani 2010)
72 (*Reykjavik Grapevine*, February 2011)

making the right decisions in a secular liberal context (covering up instead of uncovering, submitting instead of becoming empowered). The paranoia engendered by their presence in public space operates as an automatic reaction within a logic of suspicion, supported, in the case of the full veil, by the idea that the motivation for action (the desire to cover up in accordance with belief) is not the real reason behind it (Islamicization, invasion, submission). The suspicion here is far easier than the fact that the individual Muslim in question is subsumed by a broader category (Islam, Islamism) that makes the logic behind the action difficult to read and facilitates the entanglement, without distinction, of different dimensions of otherness (religious, racial, socio-economic).[73] The wearing of a headscarf or full veil, exterior signs of belonging to Islam, facilitates the categorization of human beings along the lines of incarnate qualities and "secular incompetence" with a view to their exclusion.

The prohibition on wearing the full veil alternates incessantly between explicit and implicit forms of racialization. This serves to alienate both women and men, imprisoning the former in the role of victim and the latter in that of the oppressor. The French law banning the covering of the face in public imposes a fine for two people:[74] the person who covers her face and the person who has allegedly compelled her to do so. This double sanction can't help but echo the discussion around bills about prostitution, which propose to penalize both the client and the prostitute. While the behavior and situations are radically different, both tracks of legal reasoning clearly operate along a line whereby there is a moral evaluation of actions undertaken by autonomous individuals. If we consider veiled women within a more intersectional perspective, they appear to be the joint target of both state and nation, but also the main protagonists in a network of social relations that multiplies the probability that they will be seen as illegitimate social actors, regardless of the role they themselves wish to play (mother, co-educator of children, citizen, artist, etc.). The process of racialization is therefore tinged not only by the notion of race, it becomes racist in the fact that it directly affects the bodies of veiled women, their garments being considered as part of their bodies.

Fed by the incendiary discourse of certain media outlets, as well as public figures, anti-Muslim rhetoric is becoming normalized across all of Europe, especially in France. The public expression of hostility or "discomfort" in the presence of Muslims is gaining both legitimacy and popularity. A double dynamic has probably paved the way for this phenomenon: on the one hand, the "euphemization" of Islamophobia and the discrimination experienced by Muslims (this does not exist; this is no different from other forms of ethnic discrimination; we do not have enough data to draw conclusions); and, on the other, the dissemination of explicitly racist remarks by leading political figures and media personalities. In this double context—notable during the public debates between September 2009-January 2010 on national identity, but by no means exclusive to those debates—it is interesting to note that there are still very few anti-racist groups or associations engaged specifically in fighting discrimination against Muslims.

The ban on the headscarf and the full veil in the European context may be examined under a number of different angles. Most public discussion centers on the political polemics and potential prejudice that a religious garment (even if freely chosen) might incite within society, always within the referential frame of social cohesion and loyalty to national values, highlighting the tension between the protection of individual rights fundamentally guaranteed by the Constitution and secularism itself. By contrast, the explicit link between the ban and other policies "designed to accelerate the integration of minority groups in the prosperous and dominant segment of society and to adopt a utilitarian approach to the question of accommoda-

73 (Casanova 2008: 72).

74 (Articles 3 and 4 of the law of October 11, 2010)

tion" remains largely ignored.[75] The ambiguity of the concept of accommodating religious needs is actually one of the implicit foundations on which the whole idea rests, for these accommodations granted to members of minority groups constitute a form of legitimation of their practices and give them "legal support, which designates them as essential constituents of said group."[76] Ford proposes to restrict the legal recognition of those needs of the group that are more likely to expose individual members to discrimination. Thus, the state will no longer confer legitimacy nor additional weight to any single practice: the goal will simply be to accurately discern and respond to any unlawful obstacles that might impede full participation in the labor market and in civil society.

III. The Public Texture of the "Burqa" and Differentiated Capitals of Visibility

The legal prohibition of Islamic feminine garments can therefore now be seen as a necessary element of corralling the behavior of individual Muslims and protecting national and cultural mores. The panic that has seized European public opinion spreads by osmosis, regardless of any direct personal experience with full veils, which themselves seem to have the gift of omnipresence. It is therefore easy to draw a map of the Islamic threat, in the service of an iconography of fear representing different images of deviance from the republican ideal, where male and female figures are equally characterized by behaviors deemed hostile to European states. This solidification of representation, the one we have come to at present, contributes to fixing the parameters of what we may refer to as a field of vision. Everyone knows what a "burqa" looks like. The garment is immediately recognizable, independent of the context in which it appears, and recognizable despite the fact that you or I may have never been to Afghanistan and encountered one in real life.[77] They are, in this and all respects, comparable to celebrities, whom N. Heinich recently proposed to study in terms of visibility, designated as the ability to be seen by others, e.g. an "objective quality of people, very unequally distributed according to the capital of visibility."[78] This recent work is particularly relevant to reading the "burqa" as a social phenomenon, which consistently draws the gaze of those who do not wear it (Muslims and non-Muslims alike); it is excrutiatingly obvious and forces permanent exposure to the view of others. I would like, in the final section of this chapter, to offer some thoughts on the inclusion of the "burqa" in a public culture of visibility, taking a few steps back from strictly racial and religious issues.

Recognizable and classifiable by everyone, though by often-inadequate terminology, the "burqa" is also possessed of a comprehensive, global visibility on the international level. This public show becomes an exhibition by virtue of the asymmetry it reveals between the spectators (society as a whole) and the covered women being observed: it forces into hyper-visibility that which one wishes to keep hidden, without consideration for the privacy of the one exposed to the gaze of others. This phenomenon of the full veil's unfolding visibility shares many things in common with that of the media coverage that follows stars around, so that we end up only able to recognize the person in question through their reduction down to certain expected, eccentric signs, as in the case of some famous pop stars for example. The most salient common point here is that this visibility operates principally at a distance, by proxy, but also at the intersection of aesthetic and political issues.[79] Visibility, in its relational, strategic, and procedural dimensions, has

75 (Ford 2011).
76 (FORD, 2011).
77 The widespread use of the term "burqa," for example, puts a readily understandable name, immediately recognizable in all languages, to a phenomemnon, thus creating instant cognitive recognition.
78 (Heinich 2012: 493) The concept of "capital" here refers to the idea of visibility as *property*: something some have while others do not.
79 (Brighenti 2007).

two main consequences: first, recognition, and second, control. This relation of visibility is asymmetrical in most cases (to see and be seen are two different processes), with "intervisibility" remaining largely imperfect. Here, the difference between celebrities and other people enjoying the capital of visibility that N. Heinich speaks of, the "burqa," as a garment, and by extension, the women who wear it, possess a capital of visibility (we all recognize it as a burqa) that is almost exclusively negatively connoted. This asymmetry of identification highlights a huge gap between the huge number of those who see and recognize (you and I) and those who are seen and recognized (Lady Gaga and the "burqa"). In fact, just as in the case of the singer, the "public performer," the recognition of the "burqa" is rarely informed by any real recognition based on direct and personal contact: our capability of recognizing the garment as is, that is, for what it is and what it does, does not rely on direct experience (co-presence) nor on the privileged relationship between two people (acquaintanceship) that might together allow for the engagement of any sort of reciprocity. The "burqa" is recognized without needing to be directly experienced. Just as in the case of stars or icons, the representations that circulate in the media create visibility for the burqa and the women who wear them, but this is uniquely negative. Disembodied by the effect of its transnational ubiquity (a failure of proximity) and by the absence of reciprocity (all women in "burqas" are recognizable but they do not in turn recognize all those who recognize them), the "burqa" seems an obstacle to personal relationships. It does not allow for union. The decision to legislate against "concealment of the face" gives the collective a hold on its political future, despite the fact that the consequences of that decision, most notably in terms of the distribution of rights and responsibilities between the involved parties (the women who wear the burqa and the multitudes of the engaged public), have not been systematically envisioned in terms of the nature of the initial "trouble," that is, the remote experience of visible religious otherness.

Conclusion

How does the religion of some become the public concern of others? Whether in the form of controversy over the wearing, in public, of certain religious attire or symbols (turban, hijab, kippah, kirpan, burqa), the institutional organization of some minority sects (buildings of places of worship, formation of representative ministries, institutional recognition) or even the conflictual interaction between the agents and users of public services, the public discussion of anything to do with religion straddles many different layers of analysis, both in the EU and elsewhere.

Examining the widespread movement to prohibit and criminalize the wearing of the burqa in different member states of the EU, this text now returns full circle to the public drama that has grown out around the framing issue, that is, the process of publicizing the religion of some orchestrated by others. If European public opinion is actually prisoner to a binary representation of Muslim religious practices, considered inadequate and threatening for Western liberal democracies, the thrust of this reading lies in the fact that "religion" remains a largely unintelligible concept to public opinion, which strives to censor some elements of visibility. In so doing, the Europeanization of restricting the visibility of certain signs of individual belonging to Islam becomes part of a process of racializing Muslims, where the criminalization of the wearing of the full veil in public space is only the most recent episode. At the intersection of several categories of experience (aesthetic, sensory, symbolic, political, private), the social presence of the full veil becomes a public issue where the capital of visibility is inversely proportional to the recognition of those who wear it. Framing the question of the prohibition of the full veil (commonly designated as a "burqa") as one of publicity and visibility allows somewhat for the stripping away of the ideological component of a debate,

which, in actuality in France, is the subject of political deadlock.

From a legal perspective, it means that the demands for equality made by Muslims in the EU take place within a context where religious freedom is no longer considered an absolute. Religions are cultural and historical variables as well as social and cultural systems of interpretation. The persistent, historical mistrust vis-à-vis certain particular expressions of diversity, even when relegated to the strictly private sphere of individual life, exposes the implicit nationalism that underlies the discourse on identity and violates the cultural and ethnic borders it claims to wish to protect.

I. STANDARDIZATION OF THE EXERCISE OF THE ISLAMIC RELIGIOUS AUTHORITY IN FRANCE

ROMAIN SÈZE

What I'm presenting today stems from the preparation of a Ph.D. in sociology about imams in France, prepared at the École des Hautes Études en Sciences Sociales, Paris.

While contemporary Islam is more often analyzed as an institution rather than as a daily practice, I would like to approach an institution that is not too well known as an object of research: the decades-old imamate in France from a bottom up perspective by examining the daily religion of imams. Since September 2006, I have visited around 30 mosques, where I took part in various activities. I have also interviewed about 30 *imams*.

I'd like to show the key role of imams in institutional change not by using my own observations as a political scientist but by referring to debates on the sociology of religion. Keeping in mind two specificities of Islam in France (and in the West), namely Islamic pluralism and the experience of the minority condition, I will try to show that imams maintain their legitimacy and exercise their authority by positioning themselves at the crossroads of multiple influences that inter-penetrate with globalization. In so doing they become agents of Islam's formatting.

This phenomenon appears first from their practices of domination. When religiosities do not fit any more into a common horizon of sense, they are intellectualized (i.e. explained and justified).

Studies about priests and pastors in France show that they reinvent the exercise of their authority by integrating this dynamic. It's legitimate to suppose that the Islamic magesterium does so as well. This first hypothesis clarifies several reports, and I'll discuss two cases.

The first case concerns conversions. In most mosques, imams impose a preliminary training on people who want to convert. This denotes a loss of relevance of the declaration of shahâda as a rite of passage. It also indicates a rejection of ritualism, which is a consequence of the disappearance of religious evidence. Imams remedy this loss by imposing training on converts. They reinvent the rite of passage by intellectualizing it.

In the same way, most of the sermons that I heard were original products. The emotional strength, the art of public speaking, and the rhetorical flourishes that traditionally characterize sermons tend to be eliminated. This simplification is a choice that imams make in order to be understood by the faithful who may have different origins and use different languages. Rather than be eloquent, imams prefer simpler and more accessible speeches. The art of public speaking is incompatible with the dynamic of explanation of religiosity. Displays of encyclopedic knowledge figure more

prominently in sermons. Imams reinvent the literacy's genre of sermons by intellectualizing it.

Religious leaders do not exercise their authority violently because they cannot. Rather, the two cases I identify here, among others, suggest a further conclusion: that domination is not practiced by violence, but rather through intellectualization. The process of the institutionalization of Islam in France has given rise to the phenomenon of the "imam-islamologist." This process is part of the creation of an original exercise of Islamic authority, similar to the de-clericalization of the priesthood and to recent evolutions of the pastorate in France. As such, the institutional integration of the Islamic magesterium should be understood using the same categories and paradigms that we use to understand other religious authorities.

This first hypothesis suggests a second. This way of practicing domination involves a repositioning of imams as religious authorities. In France, imams have progressively become the leaders of their local communities and, in the absence of a central legal authority, have been placed in a position to reinvent orthodoxy. There are two other challenges that other religions face also in the West: the experience of the minority condition and intra-religious pluralism. My second hypothesis is that imams build their legitimacy at the crossroads of these multiple borders, while also repositioning themselves as religious authorities.

For the sake of brevity, I'll demonstrate support for my hypothesis by focusing on sermons and consultations. First, imams tend to use more ambiguous speech patterns in their sermons when addressing more controversial issues. For example, on the topic of the status of women in Islam, the same *imam* strongly condemns feminism as a primary driver of trouble in the West, while at the same time arguing in favor of the sharing of housework between husbands and wives. His sermon insists on the primacy of the respect toward women, without defining it. This kind of ambiguous construction, often interpreted as double speech, is a response to the *imam's* need to address a plural congregation (one driven by divisions) as well as a surrounding society in which Islam is stigmatized. Beside this ambiguity in their sermons, *imams* use a semantic of consensus. In general, the sermons that I observed often insisted that values like love, respect, tolerance, and mercy should override other considerations. These patterns indicate that *imams* are repositioning themselves as religious authorities, in the face of pluralism.

Second, my observations of the counseling function of imams (on issues such as dating during the Ramadan fasting period) provide further support for my hypothesis. Rather than adopt a "magisterial" posture or position themselves as the only holders of the truth that they impose from above, imams build their legitimacy by mediating claims of the faithful. In doing so, they try to reinvent a democratic horizon for an acceptable consensus.

Ambiguous constructions of sense and the primacy of the consensus semantic field in imams' sermons, as the search for democratic consensus in imams' consultations, are different aspects of the same positioning of the Islamic magisterium, which adjusts to individualism and pluralism, to secularization and globalization. In many ways this process is comparable to that of the Catholic Church in the 20th century, as analyzed by the sociologist Daniel Hervieu-Léger.80 It also resembles the process of democratization in the evolution of Catholic and Protestant theologies in the second half of the 20th century. It is what Monsignor Rouet, a French Archbishop, called "fragile Christianity." By extension, "fragile Islam" would seem to be a feature of the integration of the Islamic authority in common paradigms with

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other religions but with the specificity (among others) that it is elaborated from the bottom, by the daily practices of imams who fit and retranslate in legal and theological terms transformations of the contemporary Islam.

So the imams, who both lack appropriate training and are often stigmatized, are agents of Islam's formatting in a position between a simple evolution of religiosities and a repositioning of Islam in itself. They question Islamic institutions and summon them to react: will a democratization of Islamic theology and jurisprudence be able to answer to this democratic exercise of authority? The answer remains to be seen.

My analysis suggests not so much a conclusion as some practical considerations. The two hypotheses of an "Islam islamologist" and of a "fragile Islam" show how France's imams are becoming agents of Islam's formatting. It is because they act on the border of the plurality of influences which interpenetrate with globalization that they acquire this key role in institutional change. It is as such, if we open ourselves honestly to "positive secularism" (an expression still dear to some French policy makers), that it is interesting to wonder about imams' "utility" and potential for social cohesion.

Without being alarmist, it is nevertheless important to be attentive to the situation we are witnessing today—in France, at least. It is a rejection of Islamic markers considered as foreign in the public sphere and, at the same time, a growth in the use of Islam as identical reference81 and a multiplication of pockets of toughening. This tension generates a potentially explosive situation that *imams* have a real potential to defuse and that it is possible to exploit (for example, by training them in mediation or by accompanying their expression in the public sphere).

France's imams began to arouse the interest of public authorities and opinion in the 1990s, when they appeared to be conduits for introducing into France the conflicts that still trouble the Maghreb. This mistrust towards imams remains, even though imams are proving to be decisive agents of the normalization and integration of Islam. It would be wrong to ignore this potential for social cohesion. It is high time to bet on these "dangerous social actors."

II. LIMITS OF RESTRICTING ISLAM: THE FRENCH BURQA LAW OF 2010

CHRISTIAN JOPPKE

One can read almost anything into debates about the burqa. What I'm going to say about the campaign that led to its legal prohibition in France is quite different from the other angles by which it has been addressed here today. I read it not as an exercise of reverse Talibanism or as ridicule: one may shake one's head about the disproportionate measure of gunning down by national law an ultra-marginal phenomenon that concerns by far under 0.1% of France's Muslim population. I propose a third angle to look at this. This whole campaign shows the extraordinarily high legal and constitutional hurdles that have to be taken in order to make this prohibition possible.

This paper went through several incarnations. I thought I had finished it by March 2010 after the Conseil d'Etat said "no" to a general, across-the-board prohibition of the burqua because it was deemed incompatible with the constitution and with European human rights norms. The broad theme of my analysis was the limits to excluding Islam in the liberal state. I had concluded that even this most extreme form of Islamic dress must, in

81 (P. Haenni, 2009)

the end, be tolerated, however we may disagree with and dislike it.

Well, the story moved on. By July 2010, I had to rewrite my paper because a law was passed that the concerted legal opinion in France had thought to be impossible just a few months ago. This was the outcome of the parliamentary commission headed by a communist deputy, André Gerin. They had wanted that law from the start, but the dozen-plus lawyers testifying before the commission had said that it was not possible. So I am investigating the extraordinarily high legal and constitutional hurdles that had to be taken in order to make this ban of the burqua possible

The first thing to see here is that the context of the campaign was not to roll back the institutional accommodation of Islam in France that had already occurred. Such accommodation included the funding of mosques on a kind of priority note in order to redress historical disadvantage, not through the cultuelle but cultural angle, and the availability of long term leases (bails emphéotiques) making it affordable to buy land from the French state for building mosques. In the words of Nicolas Sarkozy, Islam is to be and has been established "on a floor of equality with the other great religions."

Jonathan Laurence, an American observer from the Brookings Institute, said that negative rhetoric and "repressive measures that have put Muslim communities on the defensive belie a broader trend toward greater religious freedom and institutional representation."82 So there is a double reality going on here, and the burqa reality is only one. Of course, it's the one that is mediatized, that is more visible than the hidden institutional accommodation of this religion.

82 Jonathan Laurence, The Emancipation of Europe's Muslims: The State's Role in Minority Integration 6 (Princeton University Press, 2012)

The interesting thing is that, because the burqa campaign is not meant to remove Islam from the fabric of French and European society, the campaign is presented as more political than religious in nature. The argument is made that the burqa is not part of Islam. You don't find a prescription for full body veiling anywhere in the core doctrine of Islam. So it is a political phenomenon, not a religious phenomenon. One might even say that the campaign against the burqa is actually the final moment of institutionalizing and recognizing Islam in France. To reject the integral veil is to respect Islam, as former Immigration Minister Eric Besson put it before the Burqa Commission.

That is the context. Now to my main interest here: the flawed legal basis for the burqa ban. This event provides a fascinating window into the judicialization and constitutionalization of politics. It's a case of judicialized politics or, as Martin Shapiro once put it, a politics that is conducted through the medium of legal discourse. So the Burqa Commission saw many lawyers testifying to the same effect: a ban was not legally possible. At one point one exasperated commission member retorted that we must liberate ourselves from the clutches (décisions) of justices.

What were the possible legal and normative arguments in favor of the burqa ban? First, of course, laïcité. However, this argument doesn't work for two reasons. First, laïcité is a principle that applies to the state and not to private persons. Laïcité concerns only state institutions that must be neutral and laic. It is not something that you can impose on ordinary people on the street. The second reason laïcité had to be quickly discarded as a ground for the burqa ban is that the wearing of the veil was taken to be a political phenomenon, rather than a religious one. Laïcité applies only to the regulation of religion, and so cannot be used to prohibit something that is political in nature.

The second possible response was to say the burqa violates human dignity. That became the main impetus for the ban. Now, dignity is a very complex concept. Immanuel Kant defined dignity as the condition of being an "end in itself" and not just a value relative to some other purpose, which Kant called the price of that thing.

Human dignity, whatever it is, can be understood from both a subjective and an objective point of view. From a subjective point of view, human dignity is exercised in the freedom of choice of the individual, which distinguishes us as humans from the animal kingdom.

The objective reading of human dignity is a bit more complex. Here you could see dignity as an objective image of humanity that may be brought against the individual even if she violates this dignity against herself, which is not possible with the subjective reading of dignity. Here dignity merges with freedom of choice, and that can be violated only by a third party.

Of course, those in favor of restricting the burqa needed to invoke an objective reading of dignity. The commission members acknowledged that the burqa is chosen by those who wear it. They did not jump to the argument (quite prominent in the headscarf restriction a few years earlier) that those who wear the burqa are responding to coercion by male relatives in their suburban environments. From what little we know about the sociological reality of the burqa, it is freely chosen. As such, a subjective understanding of dignity weighs in favor of the burqa because the choice to wear the burqa is an exercise of dignity.

Why, then, was an objective reading of the burqa discarded? First, because it would push the state into the pursuit of an ethical project, in violation of commitments of political liberalism that even the French state has to respect. Secondly, if you use an objective reading of dignity you cannot make a difference between the public sphere (in which you rule out a practice) and the private sphere (in which you let it go). If it's really an objective violation of the person inflicted by the person herself against her own best interests, then you have to follow that all the way through, not just in the public realm but also in her private life. You must make a total prohibition of the thing if it objectively violates dignity. Thirdly, and not least, dignity has been understood in legal terms in a subjective, not objective way. So the human dignity argument is, in the end, a defense of the burqa, and not a basis for prohibition by the French state.

The last possible argument against the burqa was to say it violates public order. As a legal concept, "public order" can be understood in different ways. The most elementary way is in terms of security. The argument would be that the burqa violates public security. However, on that ground, you can only arrive at the partial prohibition, say, in airports and train stations, where under the cloak of the burqa one could carry guns. You don't get an across-the-board prohibition on the basis of public order interpreted as security.

A second dimension to the public order argument is framed in terms of public morality. Interestingly, the lawyers before the Burqa Commission said that this argument was not possible. There was once a time when mayors in French beach towns would prohibit walking on Main Street in bathing trousers or with a provocative bikini. These restrictions were upheld by courts for the sake of public morality. But this kind of policy has died out in France. Today such prohibitions are no longer thinkable because the state is no longer an ethical watchdog, but rather must retreat from regulating ordinary ways of life. Of course, this moralized public order argument would ultimately become the rationale for the law.

That seemed to be the state of affairs in March 2010. The smartest lawyer before the commission, Denys de Béchillon of the provincial Université de Pau in the French Pyrenees, offered the best possible conclusion. He said, "I don't like the burqa. It disgusts me. But I don't believe that we have the tools and the political culture for prohibiting the wearing of such dress on the territory of the Republic."

Here enters politics, against the law. I had to rewrite the entire paper with a section discussing this topic of politics against the law. Sarkozy responded to the Conseil d'Etat verdict in March. His sentiment was that "we are politicians, we are not lawyers, we have to take political responsibility." That became the entry into this last round, which would end in the successful passing of the total burqa prohibition in public. "We have to be ready to take judicial risks," the Prime Minister of France, François Fillon exclaimed in late April 2010.

So one has to read the eventual passage of the law as a political backlash against a perceived dictate of the legal system. I think a lot of Muslim integration in Europe has been achieved through a silent, legal route. People were not aware of all these court judgments that were, in the end, very generous, very accommodating, very inclusive. Politicians stepped in and claimed the need to stop the reign of unelected judges, reasserting their responsibilities as democratic lawmakers. Yet the politicians still needed a justification. Ironically the Conseil d'Etat verdict against a total prohibition in March 2010 gave them a clue, namely, its claim that there is a non-material dimension to public order, a moral dimension, as I called it earlier. "Public order rests on a minimal fundament of reciprocity and of essential guarantees of life in society." "Reciprocity" became a key term, which is only appropriate in the land of Durkheim. The irony is there had been many legal cases and much legal theorizing on the first two elements of the republican triptych, which is of course liberty and equality. But fraternity had mostly been left out, so it was *terra incognita*, a white space that could be filled out with legal meanings and legal judgments. If incest, polygamy, and public nudity are prohibited, why not prohibit the complete veiling and hiding of one's identity, which is the exact opposite of nudity?

This became the justification in the end. Reciprocity belongs to the social fabric in public places. The burqa woman disrupts reciprocity because she sees, but does not allow herself to be seen. In that sense the burqa is "symbolic violence" inflicted on third parties, as Elisabeth Badinter said unironically. This was the justification of the law. I quote Sorbonne law professor Ann Lavande who said before the commission that "neither laïcité, nor dignity, nor public order could ever justify a general and absolute prohibition" on the burqa. In a new hearing in the context of the parliamentary preparations of the law, Lavande said that the immaterial dimension of public order is "an indispensable counterweight to the excesses of the absolute primacy of individual rights." I wonder how Professor Lavande reconciles that statement with her previous statement before the Burqa Commission.

Of course, the whole immaterial public order justification reintroduces "dignity" as the main justification of the law. A socialist opposition deputy, Jean Glavany, called out the trick: "You claim not to invoke the principle of dignity, but this is finally the only principle that is written into your legal text."

So enters the Conseil Constitutionnel. Although one might have expected the Conseil to strike down the burqa ban, instead they sanctified it, finding that the burqa was manifestly incompatible with the constitutional principles of liberty

and equality. This reasoning is a stretch, if not an impossibility. It conflicts with all of the testimony before the Commission. Who is on the Conseil Constitutionnel? Not professional lawyers, nor judges. Rather, it is conservative Union for a Popular Movement (UMP) politicians like Jacques Chirac, Valéry Giscard d'Estaing, and Jean-Louis Debré. Now they are in retirement, and they get state pensions through being on this court. Of course, these UMP guys will not throw sand into the machinery of their own party in power.

However, and this will be my last word, there is an interesting religious proviso introduced into the caustic three-page judgment here, namely that the burqa prohibition "shall not restrict the exercise of religious liberty in places of cult that are open to the public." Patrick Weil has written a brilliant editorial in Le Monde stating that this opinion "unveils the real, the religious object of the law." At the very tail end of the whole campaign, the highest court in France saw a religious dimension to the burqa, whereas the starting point for this debate had been the assumption that the burqa was not at all religious, but political. This concession is quite significant. Take, for instance, the example of a woman in burqa who decides to go to Notre Dame church in the center of old Paris. Catholic churches have nothing against the burqa. Will the police interrupt the short, two-minute walk of that woman from her apartment to Notre Dame?

There is a real problem created by the religious proviso in the Conseil Constitutionnel's decision upholding the law against the burqa, which suggests that the story has not yet come to an end. *Arslan v. Turkey*[83] is an interesting decision by the Human Rights Court just after the burqa campaign came into high gear. That verdict established a distinction between restricting dress in public institutions (which the state is allowed to do only if public servants are restricted by it) and dress restrictions in public places that are open to all (like streets or places that are addressed to simple citizens).

This opens up the possibility of an Article IX violation, a violation of religious liberty under the European Convention of Human Rights (ECHR). Now that the religious proviso has been put into a decision of the Conseil Constitutionnel, the Arslan judgment of the ECHR becomes directly relevant. If the court is consistent it cannot hide (as it has frequently done) behind the "margin of appreciation" clause. Then indeed this law may still be found in violation of the European human rights regime.

III. COMMENTS
SARAH SONG

Let me first highlight some general themes before moving on to raise specific questions and comments. These include the idea of sacred as present in both religious and secular forms; that religious symbols are both used and abused in the construction and reinforcement of national identity and social cohesion; and the dissociation between certain religious markers, such as the burqa and religious faith. There is also a broader question about how our normative frameworks of the public sphere can be rethought to be more inclusive of religion. A final commonality is a questioning of the appeal to security and public order, including public morality, as a moral and legal basis for restricting religion in the public sphere.

First to Geneviève's paper. In your presentation you talked about the cross, both in the presidential palace square and outside Auschwitz, which

83 *Ahmet Arslan and Others v. Turkey*, Eur. Ct. H.R. (2010).

is defended as a symbol of Polishness. The cross designates the place of national memory. You described this as religious symbols being secularized for the purposes of national identity and social cohesion. Then, you argue, the symbol is re-sacralized in secular form. I wondered if you could develop. I am curious to hear more about this notion of the sacred in secular form. You referenced the notion of civil religion, which made me immediately think of Rousseau's discussion of civil religion and patriotism in the sacred and secular form. The question that comes to mind: are there meaningful differences between Rousseau's notions and your arguments about the sacred and religious forms, at least in the case that you're looking at?

Matthew's paper proceeds by way of critique of the traditional view of religion and secularity as oppositional and dichotomous concepts, and then offers a re-conceptualization of the religious and secular by drawing on the concept of the sacred. I thought that Matthew and Geneviève's papers had interesting overlaps. The sacred is a category boundary, he says, that sets things with non-negotiable values apart from things whose value is based on continuous transactions. If we adopt this definition of the sacred, Matthew suggests, we see that not only are religious values sacred, but so are secular values (like, for example, the Western liberal values of freedom of expression). So in the Rushdie case, both those who supported Khomeini's fatwā against Rushdie and Western liberals, including Rushdie himself, who invoked ideas of freedom of expression and the idea of a democratic society are invoking non-negotiable values, sacred ideas.

I'm still not entirely clear what constitutes the sacred in your paper. You indicate that a sacred value is non-negotiable and abstract. Why can't we say that in the case of both the religious and the secular? What is at stake between values and beliefs? What does this idea of the sacred add that isn't captured by simply using the concept of value? Is the non-negotiability what matters? Is it the invocation of an extratemporal or non-human authority?

A second set of questions emerges when comparing the "secular" sacred with the sacred of the religious. Are there any interesting differences between the two? Rushdie and his defenders might say that the sacred of the secular is freedom of expression, for example, or the idea of a democratic society. These ideas have or aspire to have authority over a greater range of individuals across different religions. When they come into conflict with the sacred of the religious, should secular norms prevail? In other words, sacred ideas of the secular aspire to be more pluralistic, and this is supposed to give them greater authority. This difference might help a Western liberal to distinguish between the sacred of the secular and the sacred of the religious.

Another question concerns your discussion of the marker, what you call external legitimating authority. In the case of religious belief, the legitimating authority is God, for some, and is external in the sense that the authority is external to a human community. But in what sense is the secular belief in freedom of expression or democracy external? The idea of certain rights being fundamental is abstract and may transcend a particular situation. So is it external simply because it transcends the particular situation? Is external equivalent to universal? But these ideas might be said to originate from human beings, so they aren't external in the sense of invoking an extratemporal authority.

On to Valérie's paper, a central claim of which is that religion remains unintelligible to secular publics and therefore absent from public discussions about the ban on the burqa in France and elsewhere in Europe. I wonder if you could say

more about why religion is absent. On the one hand, in France this absence is not surprising given the power of ***laïcité*** in French public life. On the other hand, the absence of religion in public discourse about the burqa is deeply counter-intuitive, since some women who do wear the burqa may view their decisions about what to wear as a religious practice. So how can the French debate the burqa or even the headscarf without conceiving these practices as religious practices? I think the discussion has already gotten at the answer: by disassociating religious faith and the burqa, you permit the burqa to stand for nothing that's worth protecting, that's only worthy of our scorn and our prejudice. It made me wonder if the disassociation is a strategic one, or if the disassociation stems from other sources.

I was really interested in your point about silence and inaction on the part of anti-racist groups in the debates about the burqa. You suggest that one reason why they've held back is that they don't want to play into the narrative of the Muslim woman as victim who requires rescue, thus bringing gender and concerns about women's agency into the discussion. I wonder if you could say more about these anti-racist groups. In particular, are there other motivations for their not wanting to get involved in this debate, or is what I've just articulated the primary motivation? Does their silence also stem from a genuine belief that the ban on the burqa is justifiable based on some concern for gender inequality in Muslim communities?

I also wondered what French feminists say about the ban on the burqa. Are they mysteriously silent as well? When reading your paper I couldn't help but think about the value of a comparative analysis that looks at the racialization of Muslims in France, elsewhere in Europe, and in North America. My colleague Leti Volpp has written about the racialization of persons who appear Middle Eastern, Arab, or Muslim in the US post 9/11 and their identification as terrorists outside the circle of citizenship. I wondered if one important difference in a comparative racialization study is the French legacy of colonialism and its resonance for contemporary immigration in France, the vast relations between the *metropole* and the post-colonial migrants and their descendants. You quickly noted the post-colonial relation but didn't go into it. How does this play a role in explaining the absence of religion in public discourse around the burqa?

Romain Sezes paper takes us inside the exercise of Islamic religious authority. In contrast to the other papers and presentations, he does not look at the state or mainstream political, public discourse. Rather, he goes inside Islamic communities to look at *imams* as agents of the regulation of religiosities. His analysis shows us that, in thinking about the role of religion in the public sphere, we have to complicate our view of religion, how it changes and adapts in response to both global and local events. You talk about the blurring of the border between issuing advice and issuing *fatwā*, the changing role of the use of speeches to show harmony increasingly between the modern sciences and the Qur'an. You say that the specific goal of the *imam* is to attempt to create consensus, but that the pluralism and democratization of the religious authority complicate this task. Could you say more about the sources of the democratization of theological and legal thought among the *imamate* in France? Is democratization a response to external conditions? Is it more of an internal process? Is it both?

Also, it seems that you are taking your analysis in a comparative direction. I wondered if your interviews in the U.S. context provide any further insights into the phenomenon of the imam Islamologist?

Finally, Christian's paper begins by noting the institutionalization of Islam in France. He argues that the negative rhetoric against Muslims in France belies a broader trend toward greater religious freedom and the greater institutional representation of Muslims. I wonder how this observation relates to Valérie's claims about the broader trend of the racialization of Muslims in France. Christian suggests that it's misleading to think about the French discourse around the burqa as part of a broader European assault on Islam and Muslims. For example, he points to the Swiss national referendum against the construction of new minarets, and observes there are no institutional channels for the French to enact a similar sort of restriction. But what about at the level of individual attitudes toward poor Muslims? The French state may be intent on funding mosque constructions by handing out long-term loans for building sites, but do the French people broadly support such measures? When Valérie speaks of the racialization of Muslims, is she talking about individual attitudes concerning French national identity and culture and responses to Muslims in France, whereas Christian is talking about legal and political institutions and what restrictions on Islam are, in fact, possible? Christian suggests if you look at the broader context of institutions, it's misleading to say that the ban on the burqa is driven simply by prejudice against Islam. Is that right?

On the question of whether the burqa is a religious symbol, I was fascinated to read about Tariq Ramadan and the anthropologist Dounia Bouzar saying that the burqa and *niqab* are not an Islamic prescription. On the sociological account of burqa-wearing, there are three non-religious motivations for donning the burqa: symbolic protest; the quest for social distinction; and hyper-individualism about ethnic origins and community. Are there really no women who wear the burqa out of religious conviction? This question gets at the dissociation between a religion marker and religious faith. If some women view wearing the burqa as a religious practice, then the attempt to dissociate the burqa from Islam cannot succeed. My questions are: What's behind this disassociation? Who's driving it? Is this dissociation desirable? And is the attempt to dissociate the burqa from Islamic faith actually reinforcing the connection between the two among those who wish to don it?

Holding the practice of wearing burqas against the republican triptych of liberty, equality, fraternity, Christian says that liberty (and in particular freedom of religion) requires respecting the freedom of choice to wear the burqa. Here, there isn't a compelling case that freedom is being violated, but rather the burqa runs again the other two parts of the republican ideal, equality (in particular equality between the sexes) and fraternity. I was really interested to learn that the burqa Commission report cites the work of Emmanuel Levinas on the face as the mirror of the soul, the site of humanism and individualism in the west—the entire face, not just the eyes or nose, has this quality of expressing the soul. Here I was reminded of Matthew and Geneviève talking about the sacred in the secular realm.

At various points in the paper, Christian hints that part of what's behind the effort to restrict Islam is the never-ending project of nation building and national identity formation. One way of thinking about the total burqa ban in Belgium and "the front against Islam" more generally is as the best means available for political elites to unify and mobilize a majority of the Belgium electorate, which was dissolving into the French and Flemish speaking parts. As it is often the case, then, solidarity of the French Republic or the Belgium society is constructed out of an opposition to another and the use of religious markers is a way to rally and solidify national identity.

I wanted to conclude by asking a question of all of the panelists and everyone in the audience. Earlier in the morning, Charles Hirschkind invoked Tocqueville, who's a congenial theorist for thinking about religion and its relationship to the public sphere and democracy. I was thinking about Marx. There are several different models of thinking about religion in the public sphere. There is the separation model, which is what we sometimes refer to as the liberal neutrality model. There are moments where I think that Christian Jopke is very sympathetic to this liberal neutrality model, especially what he said this morning about the Italian case of the cross in the public schools. There is an assimilation model, where the dominant religion or the dominant racial identity is instantiated in the state and all must assimilate into it (perhaps the Sarkozy and Berlusconi model). Then there is the Marxist model, which no one in this room probably adheres to, which states that genuine human emancipation consists in transcending religion altogether. There was a lot of talk this morning that the most desirable normative model seems to be a kind of pluralistic one. I took Silvio Ferrari's comments, what he called inclusive neutrality, to be a kind of broadening of the liberal neutrality model, while making it more pluralistic. Peter Danchin was talking about value pluralism. I took that to be looking for something beyond liberalism, beyond the liberal neutrality model. This Marxist model wasn't explicitly discussed in any of your papers, and I would like to hear more about the normative models implicit underlying your discussions of particular cases.

SESSION IV

THE CASE OF NORTH AMERICAN COUNTRIES

I. MOSQUE CONTROVERSIES IN THE U.S.: EMOTIONS, POLITICS AND THE RIGHT TO RELIGIOUS FREEDOM

PASQUALE ANNICCHINO

"Transcript from the session. For the full paper see P. Annicchino, N. Marzouki, Mosques Controversies in the U.S.: Emotions, Politics and the Right to Religious Freedom, in "Annuaire Droit et Religions", 2012, pp. 153- 160.

On this paper, which I'm working on with Nadia Marzouki, deals with mosque controversies. I intend to address three main questions: Where are we now? How did we get to the political and legal debates we currently have? Where we are going?

The first thing is to map the issue. There are 2,000 mosques in the US and, currently, almost 35 active political controversies involving mosques. Some are also legal controversies, with courts involved in deciding the issues at stake. Of course, there is great variance among many of the situations. I will try to discuss the structure of the ongoing debates, which is basically similar in all of these cases.

How did we get here? Let's consider the national context in which these debates have surfaced. One notable factor is the rise of the Tea Party movement. Research from the Pew Forum indicates that there is a clear religious dimension to the Tea Party. Other right-wing political movements can be seen to endorse the Tea Party movement, and a strong faction of the Tea Party movement is connected with what was formerly called the Christian right or the Moral Majority.

The second factor is the intensification of opposition to Obama, especially in relation to health care policy. This opposition reflects the libertarian section of the Tea Party movement, an element which basically opposes the welfare state and state intervention in the economy. Pew Forum research indicates a clear connection between the Christian right and this libertarian element of the Tea Party movement. We might also find similar dimensions in European populist movements.

The third factor is the spread of discourse concerning the Christian roots of American identity and the threat that foreign civilizations represent to the survival of America. We can see evidence of these concerns particularly in the anti-Sharia proposals in some US states.

The framing of the debate surrounding the mosque controversies is summarized by the notion that "*it's not about rights; it's about what is right.*" There is a kind of selective blindness displayed between the legal and political arguments because the legal dimension of the debate is quite clear. There is no major legal issue, but there is a big political issue.

Several approaches have been visible in this debate. The first approach is the religious freedom approach. This is well summarized by Welton Gaddy, the president of the Interfaith Alliance. How do we approach the issue of building a mosque? During the New York mosque controversy, Gaddy said that "in my experience, any sentence that begins 'We recognize that this is a religious freedom issue, but…' is usually followed by an attempt to circumvent the guarantee of religious freedom on the basis of discomfort and bigotry. To oppose this project because Islam is involved and Muslims are sponsors of it is a violation of the religious freedom guaranteed and protected by the First Amendment of the Constitution, period."

Contrary to his approach, there is what might be called the "religious freedom, but" approach. This is apparent in Nathan Diament's response to Gaddy: "There is a difference between rights which must be protected under the law, and courtesies,

the mutual respect and common decency that neighbors owe to one another. Yes, those behind the building of the mosque may have a legal right to do so, but should exercise self-restraint and not do so at this time." In this approach, there is no questioning of the legal right, but the issue concerned is what is proper to do, what is right to do.

There has also been a third approach, one focused not on religious freedom but rather on private property rights, which I think is a very interesting feature of the debate. This approach was represented by a speech given by Mayor Bloomberg in New York during the controversy. Bloomberg stated, "the simple fact is the building is a private property and the owners have a right to use the building as a house of worship, and the government has no right whatsoever to deny their right. And if it were tried, the courts would almost certainly strike it down as a violation of the U.S. Constitution." This kind of approach, interestingly enough, is also followed by a section of the Tea Party movement which is represented by Ron Paul. Ron Paul was in favor of the mosque even though he has strong connections to the Tea Party movement. Therefore we must be very careful when attributing one kind of position to a particular political faction or political party.

There are also those from the Democratic Party who are against the mosque, so opposition is not just an issue for the GOP. Carl Paladino, for instance, argued against Andrew Cuomo's position in favor of the mosque. Paladino said: "Andrew Cuomo supports the mosque. He says it is about religious freedom and he says the mosque construction should proceed. I say it is disrespectful to the thousands who died on 9-11 and their families, insulting to the thousands of troops who've been killed or injured in the ensuing wars and an affront to American people. And it must be stopped."

So as we can see, the political debate is not so easily classified according to traditional right and left positions; there are several nuances to be taken into consideration in the analysis. Nevertheless, as has already been stressed, there are clear connections between these debates and the Tea Party movement.

From a legal perspective, a noteworthy issue concerns the role of RLUIPA, the Religious Land Use and Institutionalized Persons Act. RLUIPA, as some of you may know, is a law that was passed with unanimous bipartisan support in 2000. It was designed to facilitate the construction of places of religious worship. What is significant about RLUIPA in this context is Section 2(b)(2), which bars discrimination against any assembly or institution on the basis of religion or religious denomination. This is very interesting in relation to mosque construction because the construction of some mosques has been barred because of what appears to be religious discrimination.

On the role of RLUIPA in this debate, the Obama Administration's Department of Justice has given one official position, in relation to the *Murfreesboro* case. In an amicus brief submitted in the case, the Obama Administration tried to answer the main questions of crucial relevance to the application of Section 2(b)(2) of RLUIPA. The most significant of these was: is Islam a religion? This was of great importance to the political debate because a lot of people claim that Islam is not a religion so much as a political ideology. If Islam is a religion, then Islam and mosques are entitled to the protection guaranteed by Section 2(b)(2) of the RLUIPA. The response from the Obama Administration in the amicus brief was clear. To quote from the brief, "there is no question that Islam is a religion within the meaning of the Free Exercise Clause and related federal laws." The brief went on to cite several cases from the US Supreme Court. Interestingly enough, the Obama Administration also

quoted from a concurring opinion in *McCreary County vs. ACLU* whereby Justices Rehnquist, Thomas, and Kennedy wrote that "Islam is one of the three most popular religions in the United States."

So the Department of Justice's position is clear. Any failure to treat mosques equally to churches in the application of zoning laws would be a violation of Section 2(b)(2) of the RLUIPA.

To summarize thus far, the political position is nuanced and we must be very careful not to reduce the issue to one of right-wing populism versus leftist, elitist movements. There are people who oppose mosques from the left, and there are those in favor of mosques from the right. The legal debate is quite clear. RLUIPA applies to Islam, so mosques are entitled to the protection offered by Section 2(b)(2).

Where are we going? First of all, there is competition between the judicial sphere and the political sphere in the debate on the protection of Muslim Americans and their religious rights. This same competition has been noted in several other papers to date. Another interesting trend is the borrowing of arguments from the European extreme right for use in the debate on Islam, and vice versa. This was apparent in Geert Wilders' speech in New York. Some of the developments in the political sphere have been responses to judicial defeats. Representative Peter King's hearings on Muslim radicalization seem to be an example of this. Another trend is towards anti-Sharia amendments. These two elements lead the political debate.

A more interesting development is of what I call transnational populist networks. I have interviewed several people working mainly in American and European think-tanks. This research has revealed very important transatlantic ties, both financial and intellectual. One clear example is the relationship between the English Defence League and Pamela Geller of Stop Islamization of America. It's clear that efforts and political investments are passed from one side of the Atlantic to the other, that these groups have common positions and work to exchange ideas. This pattern represents the circulation of arguments and resources, the sharing of goals.

I want to conclude with a quotation from Matthew Duss of the Center for American Progress. Duss writes, "Are there also radical Muslims in America right now trying to find ways to turn the US into a religious state? Most likely, yes, and we should be on guard against these. It's worth noting, however, that the Christian Right has failed at this for decades in a country where over 75% of people identify as Christian. So good luck with that, radical Muslims."

II. CATHOLIC RITUALS AND SYMBOLS IN GOVERNMENT INSTITUTIONS: JURIDICAL ARRANGEMENTS, POLITICAL DEBATES AND SECULAR ISSUES IN QUEBEC

DAVID KOUSSENS

Although Quebec's government institutions are secular, some symbols and practices inherited from the province's Catholic history remain in many of them, such as in the National Assembly, hospitals, and city halls. While the Supreme Court of Canada has long defined the principle of separation between church and state, the presence of crucifixes or Catholic rituals within these institutions certainly challenges the reality of state neutrality. Drawing upon juridical and political data (i.e. jurisprudence and public reports such as the Bouchard-Taylor report), I propose to examine the dialectic relationship between juridical reasoning

and the recent political debates about the visibility of Catholic religious symbols and practices in government institutions. In so doing, I propose to show how the most recent jurisprudence questions the equilibrium between the historical heritage of the majority of the population and openness to religious diversity in the Province of Quebec. I will more precisely focus on two issues in this chapter: first, the legality of prayers being recited at the beginning of municipal council meetings; and second, the legality of crucifixes hanging in government institutions.

Concerning the prayers in Quebec Government institutions, the only existing legal text is a rule dated 1st April 1972 abolishing the recitation of a prayer before the opening of working sessions of members of parliament in the National Assembly. In spite of this text, members of parliament perpetuated this practice, and it was only in 1976 that the prayer was substituted with a moment of silence.[84] If the recitation of prayers is now only a memory in the Quebec National Assembly, these rituals are nevertheless still practised in certain municipal council meetings, thereby questioning the neutrality of the management of municipal affairs. In the absence of a formal prohibition, the courts had to pronounce on the legality of these prayers in Government institutions. In a verdict on 22nd September 2006,[85] the Quebec Human Rights Tribunal (QHRT) based its argument on the principle of equality between citizens and on the freedom of conscience and religion, both of which are guaranteed by the Canadian and Quebec "Charter of Human Rights and Freedoms" (CHRF), to ban the recitation of prayers at the council meetings of the city of Laval in the suburbs of Montreal. In this case, the plaintiff, Madame Payette, argued that the Laval council was interfering in a discriminatory manner with her *right to the recognition and exercise of her freedom of religion and conscience by beginning the public sittings of the City Council with these ritual practices.* The QHRT judged that:

> the practice of reciting a prayer at the public sittings of the City Council of the City of Laval impairs Madame Payette's right to the recognition and exercise of her convictions as a non-believer, and the right not to be forced to take part in a religious observance in which she does not believe and to which she does not adhere.[86]

In this decision, state neutrality is an implicit result of the constitutional guarantee of freedom of conscience and religion. In fact, the tribunal added that "the recitation of the prayer imposes a religious atmosphere and tone that produces a form of coercion contrary to the spirit of the *CHRF* and the dignity of non-believers or people who do not adhere to that religious ideal." . This argumentation directly referred to a Supreme Court of Canada decision of 24th April 1985,[87] a decision which ruled that:

> Freedom of conscience and religion can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.

The public report presented by Gérard Bouchard and Charles Taylor on 22nd May 2008, during the controversy around practices of reasonable accommodation in Quebec, made the government

84 Assemblée nationale du Québec, *Bulletin*, vol. 12, no 4, december 1982, p. 14

85 Tribunal des droits de la personne, *Commission des droits de la personne et des droits de la jeunesse v. Laval (Ville de)*, 2006 QCTDP 17 (CanLII)

86 *Idem*

87 *Q. v. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295

institution's obligation of neutrality more explicit.[88] The report recalled that neutrality is a normative requirement imposed on the state, thereby limiting the reasons that can be invoked to justify policies adopted. However, the report added that it would be too restrictive to impose on believers, whose faith must be expressed in ritual or symbolic practices and behaviour, a duty of neutrality by avoiding displays of their faith when they use public institutions. Indeed, the report found that the individual and collective expression of freedom of conscience and religion must be authorized in Government institutions (schools, prisons, and hospitals, for instance). But these institutions cannot embrace any of the numerous religious convictions, nor limit the expression of any of them. For this reason, the report recommended avoiding maintaining the recitation of a prayer at the public sittings of city councils simply because this now seems to have only heritage value. It argued that these practices clearly identify the state with a religion, usually that of the majority, and should be abandoned because the appearance of neutrality is a guarantee of the citizen's—and notably members of religious minorities'—confidence in the institutions.

The Quebec Commission on Human Rights quickly endorsed the Bouchard-Taylor Report's position. First, in a letter sent on 15th May 2008 to the *Fédération québécoise des municipalités* and to the *Union des municipalités du Québec*, the Commission clearly affirmed that the recitation of the prayer at the public sittings of city councils was a threat to the principle of state neutrality. Second, the Commission had to give a verdict on whether or not this practice in the city council of *Trois-Rivières* was compatible with the Quebec CHRF. In a decision of 17th December 2008, the Commission ruled that the recitation of the prayer by the mayor of *Trois-Rivières* constituted the exercise of a religious practice which is incompatible, on the one hand, with respect for the freedom of conscience and religion of citizens, and, on the other hand, with the obligation of state neutrality.[89]

With this decision, state neutrality expressly became the ground for the prohibition of a practice qualified as religious, and in a decision dated 9th February 2011 the QHRT judicially reaffirmed this position in a case relative to Saguenay in the north of Quebec.[90] In this case, which was widely debated in the Quebec media, the plaintiff, Mr. Simoneau, asked the tribunal to convict the mayor of Saguenay for reciting prayers at the city council meetings. He argued that these prayers were not cultural but religious practices infringing his right to be an atheist.

In framing the decision, after deducing from the text of the prayer ("God, Guide us… God, Help us…") that it was calling for divine intervention in the governance of the city, the tribunal also argued that it would be insulting for the mayor to deny the religious character of the prayer because the mayor himself was justifying the practice as a necessary "fight for Christ." It is thus precisely because the recitation of prayers is not a cultural but a religious practice that it threatens the principle of state neutrality.

Unfortunately, the decision of the QHRT did not put an end to the mayor of Saguenay's "fight for Christ." On the contrary, the controversy quickly overflowed beyond the limits of the city. In Feb-

88 Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles. 2008. Fonder l'avenir. Le temps de la conciliation. Rapport, p. 143, http://www.accommodements.qc.ca/documentation/rapports/rapport-final-integral-fr.pdf

89 Commission des droits de la personne et des droits de la jeunesse, *Louise Hubert c. Ville de Trois-Rivières et Yves Lévesques*, Résolution CP-529.18, 17 décembre 2008

90 Tribunal des droits de la personne. *Alain Sinoneau et Mouvement laïque québécois v. Jean Tremblay et ville de Saguenay* (2011), QCTDP 1.

ruary and March, the mayor collected donations from across the country and decided to appeal against the tribunal's verdict. In the context of an increasing visibility of minority group religious practices, and after the heated debates around practices of reasonable accommodation in Quebec, a number of individuals—mostly cultural Catholics—consider cultural diversity an affront to the Catholic heritage and its historical prerogatives. They associate secularism with shared values, which would include the secularized Catholic heritage. While it is certainly difficult to include prayers in this category, the question is nevertheless still asked and the Quebec Court of Appeal will have to come to a decision before the end of the year. Not only will it have to decide on the prayers but also on another litigious question: the legality of crucifixes in government institutions.

The question of the legality of crucifixes in government institutions is absent from the law. It was therefore the responsibility of the tribunals to evaluate, on a case by case basis, if the conditions in which crucifixes were installed in government institutions were compatible with the freedom of conscience and religion guaranteed in the CHRF.

In the first cases relating to the crucifixes on the walls of the audience rooms of tribunals, the judges did not directly found their reasoning on the freedom of conscience and religion and on state neutrality, but on another principle guaranteed by the CHRF: the citizen's right to a fair hearing before an independent and impartial tribunal.

In a decision dated 5th December 1991,[91] the Supreme Court of Canada specified that "the requirement of impartiality has both an individual and an institutional aspect and both aspects are encompassed by the constitutional guarantee of an "independent and impartial tribunal." Therefore, whether or not any particular judge harboured pre-conceived ideas or biases, "if the system is structured in such a way as to create a reasonable apprehension of bias on an institutional level, the requirement of impartiality is not met."

The Quebec Commission on Human Rights , in a decision dated 21st December 1994, directly referred to the Supreme Court of Canada's argumentation to pronounce on the legality of a crucifix on the wall of the audience room of a tribunal in Quebec. The Commission ruled that, even if there is no discrimination, the presence of a crucifix in the audience room of a tribunal may limit the citizen's confidence in the impartiality of the Quebec juridical system. In this reasoning, the Commission avoided pronouncing itself on the principle of state neutrality that should be required of the juridical system, but it may nonetheless have made such a pronunciation implicitly by ruling that it is the requirement of the appearance of impartiality that requires that certain traces of the religion of the majority must be abandoned.

The question of the legality of a crucifix in a city council meeting room, in this case in that of the borough of Verdun in Montreal, was asked for the first time before the Quebec Commission on Human Rights on 11th June 2008.[92] In this case, the Commission considered that the relevant criterion for assessing the incompatibility of a religious symbol with the CHRF was that of coercion.

The Commission affirmed that "the single presence of a religious symbol in a government institution is not in itself incompatible with the Charters of Rights (CHRF) , unless this symbol acquires a coercive character because of the context of vulnerability of the persons who are exposed to it." The Commission thereby validated the legality

91 Q. *v.* Lippé, [1991] 2 S.C.R. 114

92 Commission des droits de la personne et des droits de la jeunesse, *Mouvement laïque québécois et C.T c. Ville de Montréal-Arrondissement de Verdun*, Résolution CP-521.3, 11 juin 2008.

of the presence of the crucifix in the city council meeting room by considering that no vulnerable person attended the deliberations of the council meeting. It defined "vulnerable persons" as "captive, young or impressionable persons." It can be inferred from this reasoning that religious symbols installed in institutions frequented by persons of this kind, that is to say prisons, schools, or hospitals, could be qualified as coercive symbols incompatible with the CHRF .

The same reasoning was endorsed by the Bouchard-Taylor report in 2008, which considered that a religious symbol, for instance a crucifix, is thus compatible with secular principles "when it is a historic reminder rather than a sign of religious identification by a public institution." It added that "a symbol or ritual stemming from the religion of the majority does not infringe basic freedoms if it is not accompanied by any restriction on individuals' behavior." In promoting such compatibility, the Bouchard-Taylor report proposed a form of compromise that has a number of traits in common with the concept of the "secular pact" initiated by French sociologist Jean Baubérot.

Using this concept, Jean Baubérot described how the French law on the Separation of Church and State in 1905 permitted the State to overcome the conflict between the "two Frances," that is to say, between the Catholic tradition and the secular movement, by taking into account the old—and notably the Catholic—heritage to build the new.[93]

Why transpose this concept of the "secular pact" to the Bouchard-Taylor report proposal? Let us remember that the Commission was working in a very tense context. The Commission itself recalled that during the controversy around practices of reasonable accommodation in Quebec, accommodations were perceived as one-way processes. It was always the immigrants, who were regarded as the main requesters, who won. They were therefore perceived as people endangering Quebec's culture and calling into question Quebec's Christian foundations. In order to overcome the conflict, the Bouchard-Taylor report avoided ignoring these popular representations and preferred to integrate elements of the religion of the majority, which can be qualified as secularized elements, into the secular model proposed for the Province of Quebec.

But at the same time, the Bouchard-Taylor report also proposed removing the crucifix above the chair of the president of the National Assembly of Quebec—certainly the very embodiment of the constitutional state—and relocating this symbol in the Parliament building in a place that emphasizes its meaning as cultural heritage.

This proposition was immediately rejected by the National Assembly, which unanimously passed a motion affirming Quebecers' "attachment to their religious and historic heritage represented by the crucifix." Nevertheless, the permanence of the crucifix in the Quebec National Assembly is no longer guaranteed and the most recent jurisprudence now refuses to consider crucifixes as holding heritage value that prevails over their religious character.[94]

The case dated 9th February 2011 regarding the prayer in Saguenay has previously been mentioned. In the same case, the QHRT also ruled that even if the exhibition of crucifixes may be considered a cultural tradition, this does not have the effect of removing their religious character from these symbols or of guaranteeing that the institution does not impose a particular religious morality. By deducing an infringement of the freedom of conscience and religion of unbelievers or atheists

93 Baubérot, Jean. 2006. *L'intégrisme républicain contre la laïcité,* Coll. « Essai » Paris : Éditions de l'Aube, p. 170.

94 Assemblée nationale, Procès-verbal de l'Assemblée, jeudi 22 mai 2008, no 87, 38è législature, première session, p. 840.

from the religious character of the crucifix, the tribunal clearly affirmed that the case in Saguenay did not respect the principle of state neutrality. With this decision, the law relative to religious symbols in Quebec government institutions was clarified and, according to the QHRT's argument, it cannot be doubted that the crucifix installed in the National Assembly also falls under the category of religious symbols. However, the law has only been temporarily clarified. The QHRT's decision was appealed by the mayor of Saguenay and also criticized in political circles.

And, it should also be mentioned, by way of a conclusion, that on 9th February 2011, that is to say the day of the QHRT's decision regarding the prayer and the crucifix, the National Assembly unanimously adopted a motion to block members of the Sikh community, who wanted to testify on a project of law relative to practices of reasonable accommodation, from entering the Assembly after they refused to remove their *kirpans* (ceremonial dagger).[95] While the deputies justified this motion with security considerations, they also argued that the wearing of the *kirpan* in the National Assembly was an infringement of the principle of neutrality.

Two unanimously adopted motions then: the first one in 2008 relative to the crucifix installed in the National Assembly and interpreted by the deputies as a symbol of Quebec's cultural heritage; the second, banning a religious symbol—the *kirpan*—in the same assembly in the name of state neutrality. The question of equilibrium between the historical heritage of the majority of the population and openness to religious diversity in Quebec is thus obviously still open.

95 Assemblée nationale, Procès-verbal de l'Assemblée, mercredi 9 février 2011, vol. 41, no 170, 39è législature, première session, http://www.assnat.qc.ca/fr/travaux-parlementaires/assemblee-nationale/39-1/journal-debats/20110209/30891.html#_Toc285107869

III. COMMENTS
MARIANNE FARINA

In looking at Pasqual Annichino's paper, I was interested in these debates over the issue of building places of worship, especially mosques, in the United States. I thought it was important that the study maps the issues, getting the local context of these actors and actions. The study also marks the journey through the persons, the movements, and the rearticulation of the various views concerning these particular constructions. Appreciating the complexity of the local situation gives us the clearest perspective as to what's being debated here.

Our religions have complex identities, and our symbols communicate many things. It takes a broad conversation to move away from what Charles Hirschkind called the tyranny of bilateral or bipolar conversations. We need other groups to get into the conversation about the political versus the legal in order to to complicate and problematize this tyranny. I think that, by bringing in their own perspectives, some of these groups will expand the conversation and help find more concrete solutions. I wonder what other groups you are investigating, because I think others (not only from the political and legal spheres) have something to contribute to these debates.

Another important issue for your analysis is the transnationalization of religions. I think the question of the politicization of mosque construction is broader than just one incident. For example, debates over the presidency in Kenya in 2007 also evince a transnational conversation between Protestant and Catholic groups over selection of the Kenyan president. So I think that this whole transnationalization of religions is an issue that is part of the indigenization of religions. Because

of our global identities, this transnationalization trend is one that's always going to be present.

As for David Koussens's paper. I just want to say that, given all this discussion about cross and crucifix, I'm wearing one. There are important distinctions that I would like to make. As a theologian, I would say that the crucifix will have the image of Jesus and the cross will not have the image of Jesus. We must understand those differences, especially when considering the notion (which has been repeated this morning) that the crucifix is compatible with secular principles and does not impose a particular religious identity. This sentiment makes every Catholic saint roll in his or her grave because the crucifix is supposed to say something. Wearing it is supposed to be a stumbling block and an obstacle to reason. So I think that we have to look at that. Now, our discussion of Quebec and issues concerning majority and minority rights has proceeded as if confessional identities did not matter within this category and also as if we did not have a multiplicity of confessional identities. I don't just mean confession in the sense of faith, but also the confession of heritage, ethnicity, and race that are all in that category of minority-majority rights. When I cannot express my confessional identity in material symbols or symbolic actions, is it not a threat to my own human rights? Does a policy of neutrality violate my cultural and confessional rights? If so, is that a violation of my dignity as a person? In this debate, what rights get to trump other rights?

SESSION V

THE CASE OF ASIAN COUNTRIES

I. CRACKS IN THE MOSAIC: THE RISE OF ETHNONATIONALIST GROUPS IN MALAYSIA

SOPHIE LEMIÈRE

In this talk, I'm going to give a case study on the rise of ethnonationalist groups in Malaysia. In order to understand the origins and challenges of this movement, it is necessary to give a bit of background first.

Historically, Malaysia has been at the crossroad of civilizations. Contemporary Malaysia is thus a mosaic of language, culture, customs, and religion. It is often described as a multicultural and multi-religious country, where communities live in peace and harmony. But the growing space occupied by religions in the public sphere and 50 years of ethnic-based politics have triggered many tensions.

Since independence in 1957, the ethnic composition of Malaysia has dominated the country's politics. Malaysia is a diverse country where about 60% of the population is Muslim. Islam is the official religion of the federation. The ethnic distribution is virtually identical to the religious composition. The largest part of the population in Malaysia is Bumiputera—I will come back to this identity later—then a large Chinese-descent minority, and a smaller Indian-descent community. Most of the population is actually Muslim, so most of the Bumiputera are Muslims. Malaysia includes important Buddhist and Christian minorities as well.

Malaysian society is divided along two parameters: religion and ethnicity. The difference between Muslim and non-Muslim matters legally. Muslims are subjected to both Islamic and civil laws, while non-Muslims are subjected to civil laws only. The ethnic criteria of differentiation creates two categories: Bumiputera and non-Bumiputera. Bumiputera means, literally, the "son of the soil." The differences between the two categories mostly concern economical privileges. Bumiputera is a virtual category with no legal basis and includes Malay, native Sabah and Sarawak (the two states in Borneo), and indigenous people from the peninsula called Orang Asli (translated as "the original people").

So the concept of "Bumiputera rights" follows the adage "first come, first served." Bumiputera are considered as the first inhabitants of the territory and according to this primacy they "should" be entitled to a bigger share of resources. Since Malaysian independence, the National Constitution has stipulated that Malays and the native of Sabah and Sarawak (i.e. Bumiputera) have a special status regarding public services, education, land ownership, property acquisition, and business, as well as state leadership positions. These preferences, coupled with economic policies of affirmative action started in the 1970s, mean that Bumiputera enjoy significant advantages in getting government positions, university admission, loans, investment shares, and public contracts. Malaysia is actually one of the rare cases where affirmative action is directed at the majority.

In sum, although Malaysians are unified under the banner of their citizenship, they are institutionally and constitutionally segregated. Each ethnic community has its own vernacular school (Chinese, Indian, and Malay), its own religion (Christian, Hindu, Muslim, Taoist, etc.), and its own laws (Islamic or secular, you may call it sharia and civil law). The political landscape follows this pattern: most political parties are ethnic-based. The UMNO (United Malays National Organiza-

tion) represents the Malays. The MCA (Malaysian Chinese Association) represents the Chinese. The MIC (Malaysian Indian Congress) represents the Indians. In addition, Malaysia contains other parties that represent various indigenous populations.

So the impossibility of establishing a consensus over Malaysian identity has resulted in a polarization of ethnic and religious communities. The current tensions between ethno-religious groups in Malaysia have been present since the independence of the country (and even before), leading to several ethnic riots and "race-related" violence in 1964, 1969, 2001, 2007, and 2010. Moreover, there has been an increase in religion-related violence since 2001.

The lack of consensus over Malaysian identity has challenged the success of governments since independence. Today, Prime Minister Najib's government faces the same issue of national identity, which is interestingly linked to religious membership. In the case of France, the question is, wrongly, phrased by the government as: how to integrate Muslims? Ironically, in Malaysia, the question is reversed: how to integrate non-Muslims?

To what extent is a government able and allowed to influence and even shape the idea of national identity? Today, the population of the Malaysian state has been recast from its origins by migrations, trade, and the colonial power. The original, indigenous people of the territories are today's minorities. The Malays are seen as the "true" people, while Indian and Chinese are still considered immigrants—indeed, they are still referred to by ethnicity as "Indian" or "Chinese."

In fact, Najib's government did not intend to step into the national identity debate. It did not try to define or redefine Malaysian identity, but rather chose a cosmetic-community rebinding strategy. Launched in 2009, the "One Malaysia" campaign reaffirmed the beauty of Malaysian diversity and unity. It started with a gigantic multicultural, multi-racial and multi-religious aerobic exercise session through mixed traditions of dance on the main square with the prime minister and his wife. One of the sub-campaigns organized under the "One Malaysia" campaign was the "Satu Tandas" campaign often translated as "One Toilet." This concept promoted the idea of having common toilets for professors and students in universities and schools in order to get them closer. In April 2010, about one year after the One Malaysia campaign began, polling by the Merdeka Center found that 46% of respondents affirmed that the "One Malaysia" concept was part of a political agenda to win non-Malay votes.

In contrast, "*ketuanan melayu*," or Malay supremacy, is the motto of ethnonationalist organizations. Ethnonationalist groups are often registered as NGOs and operate on the edge between civil society and the political scene. Religion and identity are used as axioms of this ethnonationalist movement, which aims at securing political power and economic privilege for the Malay. Ethnonationalist groups act as right-wing lobby or pressure groups seizing the emotion of their counterparts to awaken ethnonationalist feeling through the "media coup." This media coup strategy can be seen as a way to attract media attention by organizing "bankable events" or releasing powerful or shocking statements. This strategy is seen in the context of the controversies related to, for example, religious freedom (Allah controversy or Lina Joy's case) and elections. Public space is indeed a virtual space of debate through which these groups express their discourse in order to influence political parties, including the ruling party, and their constituencies.

Until the general election of 2008, most of the ethnonationalist groups remained marginal or underground phenomenon. In fact, most of these

groups are linked, sharing members and even leaders. The election in 2008 weakened the ruling coalition and revived the old fear of the possibility for non-Malays to take power. Several groups emerged out of the blue to voice this concern, often relaying racist discourse.

Malay nationalism has been a vibrant component of Malaysian politics in the pre-war period, when Malayans lived under the rule of the British Empire. Nationalism was a key element in the discourse of anti-colonial movements, be they Islamist reformists or secular traditionalists. Malay nationalism has always been embodied by the United Malay National Organization, which was created in 1946 and remains the ruling part of the country today. Until the creation of the NGO *Pribumi Perkasa Negara*, or Perkasa, a Malay-right interest group, UMNO held a monopoly of the expression of secular, non-Islamist Malay nationalism. This hegemony was threatened by the results of the general election in 2008: "a political tsunami" that saw the success of the opposition coalition. These results (and the fear of losing non-Malay votes) prompted Prime Minister Najib Razak to announce reforms of the policies favoring the Malay. The election results and the political move of Najib wakened the old fear in the Malay community of being overthrown economically and politically by the non-Malays. This fear has been crystallized in the discourse of Ibrahim Ali, the president of Perkasa and an elected member of Parliament (Pasir Mas constituency, State of Kelantan). This NGO has been alternatively supported or criticized since its creation by the former minister Mahathir Mohamad, who remains the organization's patron. Perkasa has given a new face to Malay nationalism.

Perkasa is not the first ethnonationalist NGO, but it remains the most visible and active one on the political scene. Perkasa is not a mainstream organization. In fact, it seems to push extreme policies that had previously been promoted mostly by the UMNO. Perkasa's rethoric concentrates on two main axes: the defense of Malay rights and of the religion of Islam. Perkasa is a newcomer in the Malaysian public sphere, yet it is also the biggest Malay NGO claiming more than 200,000 members.

Perkasa's strategy aimed at countering the political and economic reforms announced by Najib, which, they claimed, challenged the supremacy, economic privileges, identity, and religion of Malays. Perkasa encourages social and political upheaval, and non-Malay parties are calling for its ban. But the government seems reluctant to take action against the organization for fear of losing Malay votes. In fact, the organization seems to benefit from the support of a fringe of the ruling party, and may be seen as part of that party's political strategy.

So is vox Perkasa, vox populi? The question is whether Perkasa really embodies the voices of the majority of the Malays in Malaysia. The rise of Perkasa and other ethnonationalist groups has emphasized the decisiveness of the concept of a current Malaysian nation and identity. It reveals the shortcomings of the Malaysian system of governance and highlights its ambiguities. In fact, it seems today that the government's majority has been hijacked by the right-wing lobby and, subsequently, that it has struggled to restore credibility and trust within the non-Malay constituencies. Ethnonationalist NGOS like Perkasa are challenging the ruling party and reshaping the boundaries of religious and political pluralism in Malaysia through an attempt to outcast the secular non-Muslim and non-Malay voices. It is too early to determine the long-run impact of Perkasa and to determine whether the organization truly represents the voice of the majority of Malays or is just part of UMNOs political strategy. However, it seems that the organization holds strong bases in both rural and urban constituencies. The com-

ing general election will certainly add crucial elements to the analysis.

II. YOU SHALL GO TO HELL: LEGAL ARGUMENTS ON FORCED CONVERSIONS BEFORE THE SUPREME COURT OF INDIA

MARCO VENTURA

The theme of conversion is a huge topic, with nuanced implications for the interaction of texts, religions, and identity, as illustrated by Massimo Leone in his *Religious Conversion and Identity*.[96] Conversions in India are also a vast area of investigation. By means of anticipation of my history of religion in British, Indian, and South African Courts,[97] this paper will offer a brief reflection on some documents, mainly court decisions. The paper is based on my visit to the Supreme Court of India in 2011.

I will start from the end by illustrating a crucial 2011 judgment delivered by the Supreme Court of India. I will then briefly discuss the colonial background, which remains important to understanding the whole picture. Then, I will focus on post-colonial, independent India and on three different phases—the first in the 1950s, the second in the late 1960s and the 1970s, and the third at the end of the 1990s. I will finally offer some very brief conclusions. The case decided by the Supreme Court on 21 January 2011 is a famous case that goes back to 1999. An Australian missionary named Graham Staines was burned alive while sleeping in his car with his two minor children in the region of Orissa. The culprit was initially convicted by the High Court. The convicted appealed the life sentence to the Supreme Court.

96 (Routledge, 2003)

97 (Cascade Books, 2013)See the book also for further case law, literature and sources in general.

In the Supreme Court's judgment that upheld the sentence, drafted by Justice P. Sathasivam, two paragraphs are particularly worth quoting. The first one is paragraph 43:

> Though Graham Staines and his two minor sons were burned to death while they were sleeping inside the station wagon at Manuharpur, the intention was to teach a lesson to Graham Staines about his religious activities, namely converting poor tribes to Christianity.[98]

Remarks by the court were unnecessary and sounded like an indirect legitimation of the murders' motives. One could ask whether there was a need for the court to specify that this murder was perpetrated in order "to teach a lesson," as well as whether the wording here was appropriate.

Confirming the impression that the court itself wanted "to teach a lesson" on the danger of conversions, paragraph 47 dealt with the issue of conversion:

> It's undisputed that there is no justification for interfering in one's belief by way of use of force, provocation, conversion, incitement or upon a flawed premise that one religion is better than the other.

The court's opinion prompted widespread protests. In particular, the leading daily newspaper *The Hindu* published a column reporting a letter signed by members of the civil society, including the chief editors of the most important Indian newspapers. The letter indicated that "leading editors, media and groups of the civil society from across the country have signed a statement taking strong exception to the Supreme Court's observation that the killers intended to teach the Austra-

98 Supreme Court of India, Rabindra Kumar Pal @ Dara Singh, 21 January 2011.

lian missionary a lesson for preaching and practicing conversion."[99] Arguing that the remarks were gratuitous, unconstitutional, and went against the freedom of faith guaranteed by the Constitution, the signatories asked that they be expunged. The signatories said the Supreme Court and other judicial forums were secular India's last hope to preserve constitutional guarantees given to religious minorities and other marginalized groups.

Two days later, the Supreme Court redrafted the decision. Although no reason was given for the change, this was a clear response to the pressure by the press. How was it changed? Paragraph 43's infamous expression "teaching a lesson" was excised and replaced by a more straightforward statement: the "life sentence awarded by the High Court need not be enhanced." Paragraph 47, which had the charged description of "unacceptable conversion," was revised as follows: "there is no justification for interfering in someone's religious belief by any means." The problem was still there, but the decision was now drafted in a more moderate way.

In the meantime, *The Hindu* (in the edition of 24 January 2011) also rectified itself—a curious case of double rectification by both the court and the newspaper. *The Hindu* amended its reporting by indicating that the statement of protest had not, in fact, been signed by the chief editors of all (or even the main) Indian newspapers.

The case illustrates two crucial features of the public approach to conversions in India. On the one hand, conversions are negatively seen not only in the society at large, but also in many articulations of the state, like the judiciary—and the Supreme Court in particular. On the other hand, the anti-conversion bias takes the shape of ambiguous and tortuous legal concepts, as eminently witnessed by the "no right to conversion" doctrine. The following part of this paper will present a short history of the blurred legal approach to conversion as subservient to the social and political uneasiness with inter-religious mobility.

The discussion on conversions and crossing the boundaries of religious memberships in India is based on the colonial legacy and the paramount imperial strategy of dividing India into communities along religious lines. A famous rule of the Warren Hastings plan of 1772 stated that, "in all suits regarding marriage, inheritance, caste and other religious usages and institutions, the law of the Qur'an with respect to Mohammedans and the law of the Shaster with respect to the Hindus shall be invariably adhered to." The forging of separate communities with separate laws for matters of family law was thus the result of the imperial re-interpretation of Indian multicultural and multi-religious society.

After independence, the Indian constituent assembly and civil society engaged in a crucial debate on the place of personal laws in the new Indian legal system as well as on the reform of religious laws. Article 44 of the Indian Constitution envisaged the adoption of a uniform civil code: this was certainly a defeat of those who defended religious personal laws, but it was not a victory of those who wanted personal laws to be swept away either. Hindu personal law was reformed through piecemeal legislation in the mid-1950s. Against this background, in 1954 Justice Bijan Kumar Mukherjea for the Indian Supreme Court concluded that "the right to propagate religious views for the edification of others is recognized as a substantial part of Section 25 of the Indian Constitution on religious freedom."[100] The judge further established that "every person has a fundamental right under our Constitution not

99 The Hindu, 23 January, 2011.

100 Supreme Court of India, Ratilal Panachand Gandhi Vs The State of Bom bay and Ors, 18 March 1954.

merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others."[101] The Court added that it was "immaterial whether the propagation is made by a person in its individual capacity or on behalf of any church or institution." [102] That same year, in Madhya Pradesh, the Niyogi Committee was instituted to investigate abusive activities of conversion by Christian missionaries. The committee issued a landmark report in 1956 that established a basic criticism of conversions. The report found that conversions were induced by rich foreigners and missionaries from abroad, each of whom (in the course of pursuing an international agenda) brought in money to build facilities, hospitals, and schools in order to induce conversions. It found that those who converted were the weak and poor tribes, or "untouchables." It also found that conversion was routinely performed by force or fraud. The report made "conversion" synonymous with "forced conversion." This vision culminated in recommendation n. 5: "Any attempt by force or fraud, or threats of illicit means or grants of financial or other aid, or by fraudulent means or promises, or by moral and material assistance, or by taking advantage of any person's inexperience or confidence, or by exploiting any person's necessity, spiritual (mental) weakness or thoughtlessness, or, in general, any attempt or effort (whether successful or not), directly or indirectly to penetrate into the religious conscience of persons (whether of age or underage) of another faith, for the purpose of consciously altering their religious conscience or faith, so as to agree with the ideas or convictions of the proselytizing party should be absolutely prohibited."

101 Ibid.
102 Ibid.

Indeed, the Niyogi Committee's report contained the main arguments from which the legal discussion of conversions developed in the following decades. As Gauri Viswanathan noted, "the Niyogi Commission's landmark report set the lines of an argument that have continued to the present day, blurring the lines between force and consent and giving very little credence to the possibility that converts change over to another religion because they choose to."[103]

The Niyogi Committee's report yielded its most spectacular fruits in the states of Orissa and Madhya Pradesh, both of which were heavily exposed to efforts of Christian missionaries for social reasons. In 1967 and 1968, both states passed acts against forced conversion. Both of these acts were challenged before the local high courts. In 1972 the Orissa High Court struck down Orissa's anti-conversion act as inconsistent with the Constitution and thus illegitimate. Based on significant testimonial evidence by the Christian applicants, the Orissa High Court agreed that Christianity could not be propagated or expressed without "mild threats."[104] In fact, witnesses reported, the following is normal practice for Christians: "The preacher says: 'You (non-Christians) shall go to hell' or 'You shall not obtain salvation.' The preacher also often says: 'Wrath of God shall come down upon you' or 'God will be displeased with you.'"[105] The Court also accepted that conversion to Christianity could be a deliberate attempt to escape poverty and social disadvantage: "people of the depressed classes in society feel that they are hated and despised by the well-placed section of people. People of the depressed classes embrace Christianity voluntarily as an escape."[106] Hence

103 G. Viswanathan, *Outside the Fold. Conversion, Modernity, and Belief*, (ed orig 1998, New Delhi: OUP, 2001.
104 Orissa High Court, Yulitha Hyde and Others v. State of Orissa, 24 October 1972.
105 Ibid.
106 Ibid.

the conclusion that for Christians religious freedom in India also implied a "right to conversion": "The true scope of the guarantee under Art. 25 (1) of the Constitution (…) must be taken to extend to propagate religion and as a necessary corollary of this proposition, conversion into one's own religion has to be included in the right so far as a Christian citizen is concerned."[107]

One and a half years later the High Court of Madhya Pradesh took the opposite view. The judges upheld the anti-conversion legislation, finding it perfectly consistent with those Constitutional principles that "establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such as conversion by force, fraud and by allurement."[108] Equality of religions, for the judges, can't admit of a special treatment for Christians.

These cases ended up in the Supreme Court, which gave a momentous decision in January 1977, a few months after the principle of India as a secular state had been included in the Constitution by Indira Gandhi during her emergency rule. The Court accepted that religious freedom included propagation of one's own religion, but ambiguously stated that it "does not imply the right to convert another person to one's own religion."[109] In this decision, Justice Ajit Nath Ray, a very controversial justice appointed directly by Indira Gandhi against the wishes of the Indian judiciary, wrote:

> Religious freedom does not imply the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion.[110]

Given the impossibility of defining what "right to convert" means, the decision does not bring clarity in theoretical and legal terms. It is however very clear in political and social terms: religious freedom protects propaganda, but not in an unlimited way. Christians, therefore, are kept under some pressure as much as their evangelization happens to be successful.

After the first phase of the 1950s, culminating in the Niyogi Committee's report, and the second phase of the 1960s and 1970s, culminating in the 1977 decision of the Supreme Court establishing the "no right to conversion" doctrine, a third phase spans the late 1990s until the present.

In 1995 and 2000 the Supreme Court of India gave two momentous judgments on the same case of conversion to Islam aimed at enabling a man to take a second wife without divorcing the first according to the applicable personal law (namely Hindu law as codified by the state). The right to convert was thus adjudicated in the context of the application of religious personal laws and of the contentious debate on the adoption of a unified civil code, while reflecting at the same time tensions between the Hindu and the Muslim communities.

In the case *Sarla Mudgal v. Union of India* (1995),[111] a Hindu husband was not entitled to divorce his wife because there were no grounds under Hindu law. To evade this problem, the husband converted to Islam and took another wife under Muslim law. This was by no means new. Judges could look at a long line of cases from the 19th century

107 Ibid.
108 Madhya Pradesh High Court, Rev. Stainislaus v. State of Madhya Pradesh, 23 April 1974.
109 Supreme Court of India, Rev. Stainislaus vs. State of Madhya Pradesh, 17 January 1977.
110 Ibid.
111 *Sarla Mudgal v. Union of India*, 10 May 1995.

onwards where even English people were engaged in much the same tactic. Justice Kuldip Singh was extremely critical of such practice: "There is an open inducement to a Hindu husband, who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim. Since monogamy is the law for Hindus and the Muslim law permits as many as four wives in India, errant Hindu husband embraces Islam to circumvent the provisions of the Hindu law and to escape from penal consequences."[112] The Court ruled that conversion could not be used to simply shift between regimes of personal laws, as it was the case if husbands embraced Islam in order to circumvent the provisions of Hindu law.

In the Supreme Court's appeal judgment in the same case five years later,[113] Justice Saiyed Ahmad reiterated that "religion is not a commodity to be exploited." [114] Again, conversion was not accepted as a way to access different legal treatment, especially if this legal treatment resulted in reduced protections of fundamental rights (particularly women's rights):

> Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. [115]

112 Ibid.
113 *Lily Thomas & Ors. v. Union of India & Ors.*, 5 May 2000
114 Ibid.
115 Ibid.

In her 1997 Booker prize *The God of Small Things*, Arundhati Roy wrote of Malabar untouchables who were "expected to crawl backwards with a broom, sweeping away their footprints so that Brahmins or Syrian Christians would not defile themselves by accidentally stepping into a Paravan's footprint."[116] Then the British arrived in Malabar and many Paravans, Pelayas, and Pulayas converted to Christianity. "As added incentive" Roy wrote, they were given a little food and money. They were known as the Rice-Christians."[117] A bitter fate awaited them, in Roy's depiction: "It didn't take them long to realize that they had jumped from the frying pan into the fire.

They were made to have separate churches, with separate services, and separate priests. As a special favour they were even given their own separate Pariah Bishop.

After Independence they found they were not entitled to any Government benefits like job reservations or bank loans at low interest rates, because officially, on paper, they were Christians, and therefore casteless. It was a little like having to sweep away your footprints without a broom. Or worse, not being allowed to leave footprints at all."[118]

Emotions and conflicts on conversion are as strong in India as anywhere else, especially when society is multi-religious. As witnessed in the 2011 rectification of the decision in the Graham Staines case, Indian courts have often interacted with the changing social context by means of decisions the political purpose of which is served through ambiguous legal arguments. Is this an inevitable price to pay for the continuity between colonial and independent India?

116 A. Roy, *The God of Small Things* (ed or 1997, London: Fourth Estate, 2009) 73-74.
117 Ibid., 74.
118 Ibid.

III. COMMENTS
NARGIS VIRANI

I first want to examine Sophie Lemière's discussion of the new face of ethnonationalism. Malaysia has always been a very interesting case, especially in comparison with India. There are many levels of comparison in terms of multilingualism, multi-ethnicity, multi-religious groups. People always wonder what keeps India together. It's still together as a functioning democracy, the largest in the world. But the case of Malaysia suggests that unity can be instituted in many different ways.

As I was listening to both the papers, one question that came to my mind was: In Malaysia, how would the conversion issue (which Marco Ventura brought up in the Indian case) apply to the different groups? In Indonesia, I've looked at several fatwas, or non-binding legal opinions, stating that under Islamic Law a man is allowed to marry a woman of the People of the Book. Yet, over the last 20 years, there are many legal opinions saying that a man may not marry a Person of the Book unless she converts (due to her responsibilities to bring about the next generation). Malaysia would be an interesting case where there could be conversation between the two papers on the topic of conversion. I was struck by the logo and the name of Perkhasa meaning light. The image seems very strong to explain the widespread appeal of their ideas.

Marco Ventura ended his paper with a theoretical formulation. I couldn't help but think of Arjun Appadurai's work on the fear of numbers. In both of these countries, there is a trajectory from colonial to post-colonial phases. Particularly in the third, post-colonial phase you describe, I think that Arjun Appadurai's work would be extremely useful for illuminating a paradoxical situation where the majority is always threatened by the minority. In most of the cases, you're talking about minority rights, but several of the examples that we have seen (for example, France and Italy) involve a majority threatened by minorities. In the case of India, it is the Hindutva movement and the idea that the sizable yet still relatively small Muslim minority (nearly 150 million, albeit no more than 15% of the country's population) still poses a significant threat. Given this threat, the possibility of conversion is not merely a convenience, but also has been used for Muslim-bashing or as the law that compromises women's right (as exemplified in the Shaha Bano case in the 1980s where the political parties were divided.)

In discussing the colonial phase, I think it is important to say more about the landmark Hastings decision, where every community in that census was forced to put themselves into a certain religious category, which was unheard of during Muslim rule. Several communities from local castes were converted to Islam by a variety of Sufi groups, whose identities maintained a certain fluidity for centuries, were forced to identify as either Hindus or Muslims under the British and thus were boxed and straitjacketed in ways that they had never previously experienced. Despite the fundamentalism on both sides, it was problematic for several groups to identify themselves as one or the other because of shared practices and shrines that are visited in common (like the Ajmer Sharif and Haji Ali). I think it's important to bring up how colonial times were responsible for these kinds of forced differentiations and identifications giving rise to the manifestation of some of the communalisms that one sees today.

In colonial times, especially in the Middle East (such as in Lebanon), the missionary movement was fraught with problems. It was clearly the case that the colonial powers were Christian and so the Christian missionaries didn't just come with money from outside but from inside e.g. the East

India Company. Most of the best schools in India to this day are the missionary-run schools. I wonder whether this kind of conversion would fall into phase 2 and phase 3 of your paper or more into the categorization of the rise of minorities and also the rise of fundamentalist (even if I hate this term) or more literalist movements.

What struck me was that in Madhya Pradesh during phase 1 the language of conversion by force was deemed appropriate. It struck me that the same discourse is being used in Europe today about the unacceptability of the hijab by force. This idea of exercising volition or will has been used by courts in different forms.

In the case of ethno nationalism, Sophie Lemière has emphasized the ethnic side. What about (as discussed at length earlier today) the religious side: religious symbols turning into national symbols? Where would Malaysia fit into this debate? You mentioned religions with the Bumiputera being the national religion. How do ethnonationalism and religious nationalism intersect particularly in terms of that symbolic logo form?

SESSION VI

KEYNOTE ADDRESS

I. NORMS IN THE MADRASA-SPHERE BETWEEN TRADITION, SCRIPTURE AND THE PUBLIC GOOD

EBRAHIM MOOSA

How norms are debated within and without the madrasa-sphere of South Asian institutions is my focus. In discussing this, I will reflect on the question of tradition, scripture, and the public good. It is important to get a grasp of the madrasa narrative in itself in order to understand one thread of South Asian Muslim traditionalism, namely the Deoband school. One might not always agree with this school, but to remain ignorant of its normative narratives in all their complexity is to intentionally misunderstand this group. In doing so one will fail to grasp the differences and overlaps in discursive horizons between, say, the Deobandis and their contemporary rivals, including modernist, revivalist, and Salafi trends, among others.

Talk about the Deoband school possibly drew the attention of Western policy circles and academia for the first time in the wake of 9/11. In that context, key words like "Taliban," "al-Qaeda," and "madrasas" became the terms of the media's rhetorical diet. Educated members of the public correctly associated the Deobandi movement with the "madrasas" of the South Asia. But the over generalization was to treat this network of seminaries with dread since it was yoked to Western security interests in South Asia, especially the Taliban. Yet the Taliban is only one thread that finds legitimacy for its views in the Deobandi school. Internally, the Deobandi school is variegated and diverse and not everyone will identify with a Taliban perspective.

I will look at how the Deoband School debates religious normativity in the public sphere through a sample of issues that illustrates how the public good is advanced within madrasa networks.

Let me say something briefly about the institution called Deoband. In 1867, in the aftermath of the Indian rebellion against the British, a number of rural religious elites decided that they wanted to establish a school. For nearly a century, there had been a school based in Lucknow known as the Farangi Mahall school that served the needs of Muslim India in terms of religious scbolarship. But a new idea of the madrasa emerged at the hands of a group of people, two of whom had studied in the British educational system in Delhi College: Muhammad Qasim Nanotvi and Rashid Ahmad Gangohi. They decided that they were going to establish a school in the north Indian town called Deoband.

One purpose for establishing this school was to preserve the Islamic religious tradition and protect it from what they saw as the onslaught of British colonialism and Western culture. They knew the die was cast and that the Mughals were out of the political picture. It's very interesting to look at the constitution of the school. The idea was that this institution should take money only from the Muslim community, never from any government. The founders wanted this to be a community venture. They also wanted to preserve a version of Islam that was very different from their adversaries, the Ahl al-Hadith (or Salafis) who ignored the canonical tradition or *madhhab* ("doctrine") approach to the study of Islamic norms and values.

The founders of Deoband tried to understand themselves as continuing the tradition that went back to Ahmad Sirhindi (1564-1642, a key religious figure during the time of the Mughal emperor Akbar). And they were equally charmed by the legacy of the Islamic scholar Shah Waliyul-

lah (1703-1762) of Delhi. Both of these exemplary figures inhabited a rich metaphysical tapestry of Sufism and utilized Sufism to enhance both the inner life of the self and engagement with the public aspect of life.

Now, of course, the Deobandis were not the only players in colonial India nor in what later turned out to be the Indo-Pakistan-Bangladesh nation-state scene. Deobandis disagree with their rivals from the Barelvi school on the particular understanding of the conception of the Prophet Muhammad in his cosmic status. The Deobandis also disagree with al-Hadis, who ignored the intermediate tradition after the Prophet Muhammad and take only the immediate generations after Muhammad to be the authoritative reference point for Islamic teaching. There are also twelve Shiite, Ismaili and Dawudi Bohra denominations on the subcontinent all of whom will not be the subject of this presentation.

I want to focus on the Barelvis because of their particular way of articulating themselves and talking about tradition. The Barelvis are basically populists because they support (or at least tolerate) pilgrimages to shrines and do not vocally object to popular religious festivals.

By contrast, the Deobandis are more austere. Despite this austerity, the Deoband School too has great national and international presence for several reasons. In the beginning of the 20th century, some people belonging to a great Islamic evangelical movement known as the Tabligh movement attached themselves to and identified themselves with the Deobandi tradition. The Tabligh movement has a truly global presence, even if they have no post office box. And the Tabligh remains one of the most extraordinary and understudied religious movements. The Tabligh increased the visibility of the Deobandi. The Barelwis in their polemical literature treat the Tabligh movement as synonymous with the Deoband school.

Compared to rival traditionalist networks, the Deobandi madrasas proliferated on both a national (in India, Pakistan, and Bangladesh) and a global scale. They have been strongly supported by foreign revenues (especially from people settled in the U.K., in Southern Africa, and in the Caribbean) in addition to Indian merchant capital from the big cities of Calcutta, Mumbai, and Chennai.

The key idea that I want to introduce is that, far from being a political movement, or a militant group, or a network of madrasas—even though it manifests itself in the form of a network—the Deoband School sees itself first and foremost as an ethical and moral franchise. As an ethical and moral franchise it advocates a specific nomos (what they call a *maslak*) drawing from a variety of traditional blends of Islam. Their *maslak* is their identifying vocabulary. To explain what the Deoband School is requires that one identify the elements of their *maslak*.

Why did the Deoband School become so popular post 9/11? It is because Mullah Omar and some of the religious clerics in the Taliban movement—not everyone in the Taliban movement is a cleric—were affiliated with the Deoband franchise in Pakistan. Mullah Omar studied at a Deobandi madrasa in Pakistan. Hence, the Deoband movement became connected to the Taliban.

I use the term "nomos," made famous by Robert Cover in American juridical and ethical circles, as a useful provisional translation of *maslak*. *Maslak* refers to the normative universe that people inhabit. More important than rules, principles of justice, and formal institutions are the narratives that locate and give meaning to the law. If you read the Deobandi story correctly, the *maslak* is a set of narratives that drives the project. The *maslak* shapes and regulates the normative uni-

verse of adherents to Islamic thought. In Cover's words, "law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse, to be supplied with history and destiny, beginning and end, explanation and purpose." I could find no better description for what *maslak* means than Cover's words. In Cover's view, the force of interpretive commitment holds the normative universe together. I draw on Cover's concept, then, to deepen our understanding of the Deobandi movement. I also use the words *maslak*, nomos, and nomos-sphere interchangeably.

What has intrigued me in my exploration of Deoband's ethical discourse is its sustained commitment to key elements of the *maslak*: this often involves a critique of its adversaries. One of its critiques focuses on the subversive capacity of Westernization and Western culture to undermine age-old Islamic norms and values. Yet on issues related to the implementation of a range of scientific, technological, and economic practices inspired by Western science—like organ transplantation, brain death, women's issues, and Islamic banking the Deobandi attitude is different. One can find surprising rulings issued by the same South Asian ulama that seem to validate Western commercial, economic, and biotechnological practices. In other words, modern Western economic and scientific practices are absorbed and accommodated via an Islamic nomos-sphere. That is to say, while there is a rhetoric of resistance to Westernization, in practice there is a logic of accommodation.

But that accommodation happens according to a particular narrative. And we must understand this narrative in order to understand how the Deobandis justified and accommodated modern practices. The pragmatic outcome in the Deobandi's ethical deliberation is striking. What is also evident is an accommodation of changing social norms, albeit at a very different pace.

In order to show how tradition, scripture, and the public good are constructed within the madrasa-sphere, let me introduce you to a key thinker in the Deoband School. I will describe how he imagines and subsequently exfoliates the concept of tradition. Following Ludwig Fleck, I use the term "tradition" here to refer in one sense to a thought style. But tradition is something more: it is also a mode of living.

The Deoband figure is Qari Muhammad Tayyab, who died in 1983. He was a former principal of Dar al-`Ulum Deoband, in India. Outside the thicket of the madrasa-world in the Indo-Pakistan continent, Tayyab's name probably does not mean much. Yet by all accounts he was a paragon of traditional piety and learning of the Indian Hanafi-Deobandi tradition. In post-partition India, he assumed a role of pontifical solemnity during a five-decade stewardship as principal of the famous Deoband seminary.

I draw on two works of Tayyab's. One is *Independent Reasoning and Authority* (*Ijtihaq aur Taqlid*), which was written sometime in the late 1960s or early 1970s. The second text is *The Religious Orientation and Ethical* (*Nomothetic*) *Temperament of the Ulama of Deoband* ('Ulamā'-i Deoband ka Dīnī Rukh aur Maslakī Mizāj). This latter text especially is the lodestone of Deobandi teachings and is highly revealing.

Tayyab argues that all new events, contingencies, and challenges require a systematic taxonomy in order to reach what constitutes the universal. This is clearly a kind of Aristotelian method. Human beings are distinguished by their capacity to think, he argues, which elevates them above all other animals. The notions of "perception" and "understanding" form the centerpiece of Tayyab's hermeneutic. "Understanding" is signified by the Arabic word "*fiqh*," which is also the term used for the norm-making or norm-discovery process

in Muslim juro-moral thought. Tayyab's understanding of *fiqh*, which draws on the medieval figure Abu Hamid al-Ghazali, is literally linked to the heart, to the pectoral region of the body. For Tayyab, both the mind and the affect on the body matter in order to arrive at the notion of interior "understanding." In other words, understanding is not merely discursive. Rather, it is the product of a discursive tradition tied to human subjectivity and the inner needs of the human being. This distinction between "external" (*zahir*) and "internal" (*batin*) notions of understanding is important to the hermeneutic of the Deobandi tradition.

Tayyab also addresses the idea of renovation (*tajdid*) in Islamic thought. In his view, any kind of revisionist engagement with Islamic thought must point in the direction of what he called "prophetic pedagogy," or *minhāj-i nubuwwat*. Just as the Prophet Muhammad inaugurated an entirely new mode of thinking at the inception of Islam, one could only attempt to refashion Islamic thought by adhering to the same prophetic model. The prophetic model presents perfect moderation and balance as cornerstones of Islamic teachings.

Tayyab argues that grasping and mastering this prophetic pedagogy makes it possible to articulate Islamic thought in a whole new format. But to step away from the prophetic model even an inch is to invite doom. He warns that inaugurating new rules of Islamic thought would inevitably fail and result in disfiguring Islamic teachings. In Tayyab's words,

> The only thing required today is this: based on an understanding of the prophetic methodology, there is a need to formulate in the idiom and style of the day a new projection and appropriation of Islamic thought. Only through this approach can one truly renovate Islamic thought. However, if we depart from the prophetic pedagogy in renovation and forsake its tradition-based wisdom, then the result would to be to alter Islamic thought and subvert the entire process. Renovation of thought can be summarized in two brief phrases: our questions or topics (*masā'il*) should be ancient, but our arguments [in defense] should be new. Only by pursuing renewal in this manner can we fulfill the responsibility of divine stewardship (*khilāfat-i ilāhī*) and the delegation of prophecy.

Yet this Deobandi *maslak* is not fully comprehensible unless one digs a little deeper into the meaning of the term "prophetic pedagogy." To refine my earlier brief description of a *maslak* one should add that a *maslak* is comprised of several subnarratives that constitute the overall compelling story or narrative. The key word behind *maslak* or nomos is story. First, the nomos involves an historical narrative—how Islam originated and how the version received by the Deoband tradition is the most correct one. Second, it involves a pedagogy of the self. The spiritual formation, as well as the pedagogical or ethical formation, of the madrasa student is absolutely crucial to the Deobandi's nomos-sphere. The most important point of that pedagogy is the indispensable role of apprenticeship between student and teacher, which resembles the Sufi relationship between master and disciple. For the Deobandis, this apprenticeship (*sohbat*) is absolutely crucial. Without this apprenticeship, you cannot be a Deobandi in the true sense of the word.

Like the Prophet Muhammad whose Companions imparted his teachings and knowledge to their successor generation, similarly every generation must have access to a living person and an actual community who mediates the teachings of Islam. In this lived community the Deobandis want to

create a relationship between student and teacher that is even more profound and more significant than biological relationships. It transcends kinship and creates an intellectual community more sacred than even a biological community. Abu Hanifa's students in the 7th century were known as the Companions of Abu Hanifa, not as individuals known as Abu Yusuf or Muhammad al-Shaybani. Deobandis argue that the relationship to the master is of great value**.** The relationship between student and teacher goes beyond merely the affective relationship. Apprenticeships in the formation of a scholarly community also generate a set of knowledge kinships. This knowledge-based (epistemic) DNA is viewed as more intimate and sacred than family or biology. Reverence for the teacher supersedes all else.

This reverence is crucial to the transmission of both the tradition's integrity and its correct understanding. Accordingly, Tayyab's writings are absolutely bruising in their criticism of those who commit themselves only to the reading and interpretation of texts. Such an approach, he argues, only offers a reader black lines on a book. You can read all kinds of books, he says, but you will still be lost if you don't have a relationship with a teacher who can perform the book for you. Thus, the teacher is an exemplar that performs the book for the student through his lived experience.

Tayyab's writing here focuses on questions of tone, the very registers in which the student hears what the teacher is saying. His subject is the men's madrassa, although there are also exclusive women's madrasas. Through their experience and connection to the tradition, teachers can actually perform the books in ways that students can hear what they might not have heard on their own.

Tayyab also engages in an extended discussion of how one should grasp the principles (*usūl*), universal axioms (*qawa'id-e kulliyya*), and precepts or maxims (*dawābit*) that underlie the teachings of Islam. For Tayyab, to be a Deobandi means: to articulate a nomos in which comprehensive interpretive principles are blended with personal intellectual mentorship and apprenticeship under a teacher.

Tayyab lists some 31 axioms or maxims that encapsulates the most important principles he advocated:

> 1. There is no Islam except in community. 2. There is no monasticism in Islam. 3. People should not be coerced to accept religion. 4. We do not discriminate among any of God's prophets. 5. Do not harm, nor retaliate with harm. 6. All believers are a brotherhood (which I suppose includes women, too). 7. All of humanity is a single brotherhood. 8. Finally, whoever takes a life without justification, it is as if he had killed all of humanity.

There is a kind of checklist by which Tayyab operates. When Tayyab deals with the key issues, one must understand that pivotal to this nomos are two issues: 1. the teacher-student relationship; and 2. universal maxims that you must comprehend and fully embody, as well as implement, in an interpretive framework.

He also designates different zones of inter-human transactions that are known as *mu`āmalāt* (social intercourse) and *mu`āshara* (political and social life). These spheres of life overtly carry the imprint of their times and are mutable (they always alter). In these spheres, Shari`a provides an abundance of general principles (universal axioms) and a paucity of specific applications. In fact, the Shari`a mindset itself, he says, anticipates particular applications designed to serve the specific spheres of inter-human transactions (politics and social

life). They are time-sensitive applications and, therefore, are designed to change according to the vicissitudes of time.

However, a key issue for Tayyab is this: who can inaugurate this change in practice? No one can do this work of engaging with new contingencies unless you are someone who has embodied the tradition. Someone who encapsulates this form of teaching, this kind of pedagogy, and the universal maxims is licensed to effect change. If one choses any another route—such as the path chosen by revivalist groups like the Jamaat e-Islami, the Muslim Brotherhood, or the Ahl-i Hadis—then surely the result would not be a renovation in Muslim religious thought but rather, in Tayyab's view, it would be a complete abomination of Islamic thought.

What is important, in his view, is the character and capacity of the persons who embark on the project of reformulating Islamic thought. Two qualifications are crucially important: they must possess intellectual excellence and embody a commitment to practice (rather than merely espouse theoretical commitment). The most important initiative, he pointed out, was the selection of persons of action who were visionary in matters of religion and occupied a status of "wisdom and insight" (*faqīhāna sha'n*) who fully grasp the primary and secondary aspects while embodying the true spirit of Islam. And they should behold the practical wisdom dispensed by God for which the formulation of this religion came into existence."

Now, this is a general of overview of the Deobandi *maslak*. I want to provide two examples of its application in order to highlight some variation.

The first takes place in South Africa, where Tayyab traveled to in the 1960s. At the time, the South African Muslim community understood the topic of bank interest (*ribā)* to be forbidden. Usually, such interest is prohibited by teachings in the Qur'an and Shari`a. During Tayyab's trip, a prominent businessman named A.M. Moolla asked for his views on the question of bank interest. Tayyab forwarded this inquiry to the Dār al-Iftā, the office that issued *fatwās* at the Deoband school in India. A year later, the *fatwā* arrived in South Africa. More important than the *fatwā* is the response it got from South African Deobandis.

Here is some background on the subject. The ancient Hanafī authorities (one of the four prevailing Sunni legal traditions) adhered to by the Deoband school permitted interest-bearing transactions between Muslims and non-Muslims in a territory deemed to be an "abode of hostility" or *dār al-harb*. A *dār al-harb* referred to those territories with which Muslims did not have a treaty or arrangement of demarcated territorial sovereignty. By contrast, interest-bearing transactions were prohibited in places where Muslims have established themselves politically, in *dār al-Islam*.

The Deobandi muftis in India who issued the *fatwā* stated the following:

> If the position in the Republic of South Africa is similar to that of a *dār al-harb*, that is an abode of hostility according to classical Islamic law, then the classification of that country as a *dār al-harb* and the application of rulings with regard to dealings and interest between Muslims and non-Muslims could also be applicable. According to your statement, Muslims are in a very small minority in the Republic of South Africa [and] non-Muslims are in the overwhelming and ruling majority. This, indeed, is the only basis for classifying it as a *dār al-harb*.

The response of the South African Muslim leadership, and particularly the South African chapter of the Deobandi school, can best be characterized as one of mild outrage and consternation. In a rare move, the mufti of the South African Deoband sector strongly dissented from the ruling issued in India. He was perplexed by how the *fatwā* characterized South Africa in Muslim juridical terms. Muftī Ebrahim Sanjawli, speaking on behalf of his `ulamā group, doubted whether South Africa could be neatly classified as a *dār al-harb*. While some features suggested South Africa resembled an "abode of hostility," other characteristics suggested that it was an "abode of safety," a *dār al-amān*. South Africa, in Muftī Sanjawli's view, was a liminal space, an intermediate territorial jurisdiction in classical Islamic legal terms.

So here we see how a Deobandi speaks back to Deoband: the internal differences become apparent. The South African version of the Deoband school basically argued that the ruling on the prohibition of interest was premised on Qur'anic teachings and, therefore, superseded and overrode any canonical interpretation. Basically, they said that the muftīs in Deoband misread the political context of South Africa in declaring it as a *dār al-harb*. Rather, they argued, South Africa's juridical status in classical Islamic law was one of *dār al-amān*, since Muslims have safety in that country even though they are a minority. The argument, then, was that Qur'anic scriptural imprimatur overrode the canonical imprimatur.

This conflict illustrates something that has become more visible in Deobandi circles: that the canonical tradition is utilized side-by-side with the scriptural tradition. This is the kind of practice that the Deobandis historically criticized the Ahl-i Hadis for doing, namely, referring to the Qur'an while ignoring the intermediate canonical tradition. This is a new emerging trend among those who overtly commit to the canonical schools. The justification used to do this is to square the canonical tradition with the scriptural teachings.

South African Deobandis were able to push back and maintain their position of not accepting interest-bearing transactions in a Muslim minority context like South Africa as per the Hanafi canonical tradition.

My second example comes from India. In the summer of 2005, a heated controversy held Muslim India in the spell of confusion. A section of India's Muslim religious leadership were caught on the horns of a dilemma: they could either yield to the authority of canonical tradition (the teachings of the Hanafi *madhhab*) by honoring a traditional Islamic legal edict related to sexuality or else alter the rule in the light of new realities.

The story involves a woman named Imrana, a mother of five living near the city of Muzaffarnagar in the state of Uttar Pradesh, who claimed that she was raped. She claimed that the rapist was her father-in-law. Little is known about the context, but the details are not relevant to illustrate my point with respect to this case. The woman in question exposed herself to great risk by making the allegation. It had devastating consequences for her personal honor and social standing.

Tragically, it was not the alleged crime that prompted widespread media coverage. Rather, greater outrage was provoked by the decision of a Muslim cleric, a member of the `ulama and a junior muftī, and the influential Deoband seminary. This mufti ruled that Imrana was no longer married to her lawful husband. In the Islamic legal tradition, an offspring son or daughter can never lawfully marry, nor remain married to, someone with whom his or her parents have had sexual intercourse. Under these rules, Imrana's husband could not remain married to her, because the husband's father had illicit sexual intercourse with his wife.

Not all Muslim authorities enforce such metallic reasoning: only a sexual encounter within a valid marriage can erect such moral barriers of consanguinity. If the husband's father was validly married to Imrana, only then would the son was prohibited from marrying her.

But the Deoband School pressed its position based on the Hanafi law school. They were not mindful that a rape had happened or that their commitment to the tradition bordered on ideology. Many right-thinking people found it scandalous that a woman's claim to have been raped did not matter to the moral calculus of the Deobandi ruling.

Some other Indian Muslim jurists hinted at dissent on the issue. But they ultimately lost nerve and failed to say explicitly that rape was fundamentally different from adultery for the purposes of voiding a marriage based on consanguinity.

The Ahl-i Hadis (Salafi religious authorities) who are also adversaries of the Deoband school, followed the plain meaning of the imprimaturs of the scriptural authority as derived from the Qur'an and prophetic tradition. They argued that it was okay for Imrana to remain married to her husband, regardless of the tragic events that happened to her.

Instead of reviewing the ethical and moral violation of Imrana in the light of the reality faced by women like her in India, the folks at the Deoband seminary found a scapegoat. They laid the blame for the fiasco at the feet of what they called sensationalist, pro-Western media as blowing the matter out of proportion and distorting the facts. They also upbraided Muslim critics of their ruling, dismissing them as pseudo-reformers, unqualified to venture an opinion in religious matters. Even worse, they lambasted critics for possessing the gall and the temerity to challenge the authority of religious scholars.

The Deoband scholars claimed that Muslim critics who challenged their ruling were driven by malice, ignorance, and the goal of earning cheap publicity. Thankfully, however, some of the Deobandis essentially dissented and said that the question of rape mattered to the application of the rule.

This incident provides a glimpse into an issue at the center of the debate on Muslim ethics today. Male Muslim religious authorities are committed to implementing the canonical tradition of *fiqh* with integrity as an act of piety and religiosity. The question many people ask is this: can there be fidelity to the tradition when it results in what would by any account be a miscarriage of justice and fairness to a victim?

The story in the Imrana case evokes the words of the novelist and moral theorist William Gass and his interest in the work of Tolstoy We could take Tolstoy's caricatured, but rationalist, figure of Professor Katavasov, of interest to Gass, as a stand-in for the Deobandis. To use Gass's words in the Tolstoyan context, the Deobandis are like men "in love not with particular men or women, not with things, but with principles, ideas, webs of reasoning, and if he rushes to the aid of his neighbor, it is not because he loves his neighbor, but because he loves God's law about it." In many ways, this kind of application of tradition, where you love God's law more than everything else, does indeed create problems in the dynamic of the Deobandi tradition.

Let me sum up. Madrasa traditionalists invoke an ontological and metaphysical otherness. They invoke another order, one that accepts the limits of reason and defers to the wisdom of God. Any retreat to the irrational and the archaic merely reveals the limits of reason and the violence that reason imposes, especially when reason claims to make everything knowable and transparent. While the purposes of Shari`a are knowable, the

purposes and forms of the practices are not always within the ken of reason.

Yet the madrasa tradition is deeply embedded in another kind of discourse of reason, an embodied reasonableness. The primary function of norm-making and norm-derivation stems from a tradition of *fiqh*, of insightful understanding. This could be construed as a pragmatic form of reasonableness. Manazir Ahsan Gilani, a prominent figure of the Deoband school, explained that *fiqh* is discernment in order to appreciate the tradition. So *fiqh*, to some extent, is a rational discipline. However, *fiqh* is not governed by a secular rationality so much as it is one that is restricted and restrained by the limits of heteronomy and a commitment to a theistic order. *Fiqh* creates a particular kind of legality and ethicality that attaches the body to the soul and connects practice to conscience. Sometimes, as in the Imrana case, *fiqh* turns into brutal technical reason. Often such enforcement occurs with a thunderous theological authority, in order to validate the truth. But it can be challenged from the margins of the tradition, as we saw in the case of South Africa or the minority rulings in the case of Imrana. Some of those who contest the mainstream madrasa-sphere would argue that when law and justice come into conflict, the law must give way to a higher reason, to justice, which is its primitive reason.

I am loath to deprive individuals, communities, nations, and societies of their agency, to proclaim that they are victims of exploitative and globalizing forces, although many critics are not so circumspect. Domination and hegemony are, in my view, never total and complete. Individuals, communities, and societies devise overt and covert means of resisting even the most brutal attempts of deprivation. The point I wish to make is that Muslims everywhere make choices on a daily basis about the range of activities. These choices concern not only their modes of income and dress, but also a variety of ethical and moral matters.

Of course, their choices are not always autonomous. Obligations are foisted upon citizens of even the most liberal political orders. In both obvious and non-obvious ways, citizens and individuals are subject to rules, ordinances, conventions, and other demands from a variety of sources (like state, society, and community). The act of paying one's utility bills, obeying traffic laws, showing courtesy to neighbors and strangers, and caring for parents or spouses or pets are all demonstrations that we are not entirely autonomous in our choices. Autonomy is often partial. We respond to a variety of impulses in our most basic decisions, not all of them rational, even though most of the time we strive to reach reasonable and sensible outcomes. In the nomos-sphere of the Deobandis there is a spectrum of positions to articulate Islamic norms in the public sphere: they operate from within a larger narrative (nomos) and can be both resistant to reality and accommodate reality. While the outcomes are important, more significant is to examine how such juro-moral traditions validate their viewpoints.

SESSION VII

HOW TO FACE THE CHALLENGE OF RELIGIOUS NORMS AND THE PUBLIC SPHERE?

I. OLIVIER ROY

I was struck by a prominent thread throughout the presentations: namely, the attitude of the courts. From the Italian courts, to the Quebec courts and to the European Court of Human Rights, we see the forging of a common jurisprudence on the issue of religious signs and religious norms in the public sphere. The courts in all of these Western states articulate two legal principles, although their implementation of these principles varies based on local legal traditions, constitutions, histories, and other factors. One principle is freedom of religion. In some countries, this principle is very recent. In Spain, for instance, the tolerance for Protestantism came only in 1967. The other principle is the separation of church and state. Of course, this principle has different meanings in Britain, Denmark, Italy, and France. But the basic idea that a state should not interfere with the life of the churches is widely accepted and well entrenched.

Reviewing the different court cases that have been mentioned by participants suggests a new principle developed in the last 10-15 years: namely, the predominance of a religion and/or culture, such that religious freedom does not entail equality of religions. Courts are giving legal basis for refusing a total symmetry in the treatment of all religions. This evolution is largely a response to public opinion. The evolution of the Conseil d'Etat in France provides a clear illustration of this principle. In the early 1990s, the Conseil d'Etat opposed the ban of the scarf in schools. When Lionel Jospin asked advice, the Conseil d'Etat (as well as the Conseil Constitutionnel) told him that the ban on the headscarf would not survive judicial scrutiny. Twenty years later, it did. This clearly suggests an evolution. When the Conseil d'Etat introduced the concept, if I can call it that, of an "excessive practice of religion" for burqa-wearing women, the court suggested that wearing a burqa was not a "good religious practice." To judge a particular religious practice as excessive is to claim the authority to define which practices of religion are good (or at least acceptable).

On this issue, we see two different approaches. In Italy and Germany (particularly Bavaria), for instance, the courts have supported the notion of a dominant religious culture. In France and Quebec, this principle is newer. Clearly, the courts have bent to the pressure of public opinion. And this is possible because today populist movements cross through the political spectrum. It's no longer an issue of a Christian right versus a secular left. We see many cases (including the ascension of Thilo Sarrazin in Germany and Geert Wilders in Netherlands) of populist movements that don't have roots in the traditional fascist or extreme right. Some did (like Jean-Marie Le Pen in France), but clearly the present populist movements do not follow the categories of right versus left, as they did for so long.

Because this push to define "leading culture" or *Leitkultur* is untethered to its historical origins, the courts have become more responsive to this pressure. As indicated in testimonies from retired judges, they don't see it as a pressure. They are quite happy to alter the concept of religious freedom and separation of church and state. So the first point is to appreciate the importance of populist movements on court decisions about dominant religious culture and national identity. Appreciating this point is the key to rethinking notions of religious freedom and the separation of church and state.

A second and final conclusion can also be seen in the court decisions from Italy, Quebec, and Strasbourg that were mentioned yesterday. They do accept the concept of a dominant religion but on one condition: it should not be a religion but a culture. The crucifix is okay, as long as it's not a religious expression. As in Quebec, you could have a crucifix in a courtroom if it doesn't express the faith of the judges. This conclusion is paradoxical, as well as an unintended consequence. It is the product of a compromise made by courts between the separation of church and state (which deprives the court of the right to define good theology), religious freedom, and this concept of a dominant religion, culture and national identity. The paradox is that, by bringing back religion, the courts facilitate the secularization of religion by separating religions from what is the most important for many believers—namely, belief, faith, and creed.

This development is risky, as well as paradoxical, because it transcends the issue of religious freedom while invoking the issue of national identity. What is national identity? What are the consequences of defining a national identity? Consider a former left-wing (some would say extreme left-wing) website in France, *Riposte Laïque*, that shifted to the extreme-right and allied with an extreme right movement, *Les Identitaires* ("The Identarians"). When they are asked to define the content of identity, there is a very interesting text that says, "my identity is what I am" or (equally trivially) "I am my identity." And they stop here.

Yet they organize demonstrations in the street bringing what (for them) are the two signs of French identity—red wine and *saucisson*, pork sausage. I am not opposed to either of these, but they appear rather shallow bases for identity. Moreover, they are exclusionary definitions of identity: they exclude Muslims and Jews. And politicians are not at ease: either they jump on the (shallow or exclusionary) identity bandwagon or else they refer to universal principles like freedom or laïcité that they are unable to define. This situation is made possible by ambiguities from the churches, and the Catholic Church in particular. The Protestants (although it depends on which kind of Protestantism, of course), when in the minority, are reluctant to define religion as an identity and tend to emphasize faith. By contrast, the Catholic Church tends to see that it is a good first step to consider Christianity as part of our identity, but of course there should be a second step: to come back to church on Sunday morning. The Catholic Church has taken an ambivalent stance towards populist movements like *Les Identitaires*. It cannot buy the agenda of the populist, but it doesn't want to disapprove of potentially powerful allies.

Given these facts, the new approaches of courts and churches require us to fine-tune our own analytical approaches. We must ask what the courts and churches are doing and, furthermore, whether they appreciate (and welcome) the consequences of their commitments.

II. EBRAHIM MOOSA

In my comments, I want to follow up on what Olivier has said about the secular, politicians, the courts, and the religious. I have recently been reading the Polish thinker Leszek Kolakowski. I was struck by this one quote of his, and I wonder whether the picture that we have been painting is missing something. In his essay *The Revenge of the Sacred in Secular Culture*, Kolakowski says

> Since the profane is defined in opposition to the sacred [I would say that the "profane" he means is equivalent to what we mean by "secular"], its imperfection must be intrinsic and in some measure incurable. Culture, when it

> loses its sacred sense, loses all sense. With the disappearance of the sacred, which imposes limits to the perfection that could be attained by the profane arises one of the most dangerous illusions of our civilization—the illusion that there are no limits to the changes that human life can undergo, that society is "in principle" an endlessly flexible thing, and that to deny this flexibility and this perfectibility of society is to deny man's total autonomy and thus to deny man himself.[119]

In some of our discussions, there has been a back and forth about the place of the sacred, the place of religion. We ask whether we eradicate the sacred if one religion is privileged over others. One of the interesting things in Kolakowski's sensibility here is that the idea of the sacred helps us toward perfectibility. Engaging the sacred is a requirement for attaining perfectibility in our profane world. When we lose the sense of the sacred, then we reach a state of jeopardy, of deep civilizational illusion.

As we press forward with our work, I hope that we are bold enough to press some of these philosophical frontiers and challenge the philosophical assumptions that we assume within our work, whether in the humanities or the social sciences.

Here are two such underlying assumptions that I want to ventilate and perhaps explore further. Much of what we are talking about happens in the context of contending notions of liberalism. Often toleration, which is a hallmark of Western liberalism, is premised on the idea that we can reach a rational consensus about the best way of life. Both toleration and the search for rational consensus arose in the West because people were divided on what was the best way of life. Because there was no single way, Europeans introduced the notion of toleration. Yet this has led to a paradox because within liberal societies there is a persistent view that their model is the single way for the best life! This assumption is completely in contradiction with the idea of toleration.

We should ask the same questions when talking about religious norms on a global scale or in different contexts. I think many of our international institutions, including the U.N., hit the hard question when they push for a single (tolerant, liberal) way of life. Yet this push is both paradoxical and antithetical to the liberal ideal.

There are two strategies for pushing the liberal agenda. On the one hand, you have the universal regime of John Locke and Immanuel Kant, whose more recent followers include F.A. Hayek and the later work of John Rawls. Locke believed that the best defense of toleration is that it enables us to discover the best way of life for humankind. The other strategy is Thomas Hobbes and David Hume, who advocated liberalism of coexistence. Their followers are Isaiah Berlin and Michael Oakeshott. For Hobbes, toleration is the only strategy for peace. This is a toleration that advocates a *modus vivendi*.

I think that we need to go back to that notion of liberalism of coexistence and ask ourselves what is the place of reason in human affairs. The imperfection of reason is what leads to the ideal of toleration as a means to consensus. Because of reason's imperfection, you can open up the conversation as people all over the world share a concern with this imperfection: not only in the West but also in the East.

Rational inquiry in norms does not yield consensus on the best life. Rather, it shows that the best life comes in many varieties. In some of the court decisions that we have discussed, the judges and their philosophical tradition seem to assume

119 Leszek Kolakowski, Modernity on Endless Trial 72 (Chicago, 1987). Not 1990? Or later 1997 edition?

that there's only one variety of the best life. This assumption is also consistent with the underlying values of these judges. The absence here of a good mode of liberal toleration is problematic.

The idea of a *modus vivendi* accepts that there are many forms of life, some of which are yet to be contrived. That's why in Europe and North America, where there are so many different ways of life, we should be optimistic about these possibilities and recognize that no one life can be the best for everyone. The idea of human good is too diverse to be realized in one mode of life. So for the advocates of multiple kinds of human flourishing, pluralism is the ethical theory that underpins the *modus vivendi*.

One could say, for instance, that there are kinds of good lives that are neither better nor worse. Sometimes, they are incommensurably valuable. In some modes of life, people wear the *niqab*. In others, people prefer to wear the miniskirt. These modes are different and incommensurable. But we cannot deny that either mode is worthy in itself. They are differently valuable, because we cannot reach consensus on them and because rationality cannot settle the question of their value. Just as Charles Hirschkind discussed the tyranny of categories, I think we see here the tyranny of modes of life.

In value pluralism, there is an affirmation that each side has access to moral knowledge. This requires giving up the notion of the truth of norms, of ethical truth. To allow that the good is plural is to allow the potential for conflict and that there is no one solution to such conflicts. We face hard questions—homosexuality, heterosexuality, bisexuality, monogamy, polygamy, serial polygamy. How do we adjudicate these issues? Purdah, *niqab*, absolute personal liberties, blasphemy, and modesty: how do we reconcile these kinds of viable claims?

To say that values are incommensurable is not to say that all ways of life have equal value. To value pluralism is to argue that there is a diversity of goods and a diversity of evils. Different ways of life can more or less find their own ways of achieving universal goods, of mitigating universal evils and resolving conflicts among them. We are now facing, in this bio-political stage of global politics, the tyranny of the singular.

III. NAOMI SEIDMAN

I have two students—one is working on Jewish laws around Hanukkah, and the other is working on U.S. Supreme Court decisions about public displays around Christmas and Hanukkah. I thought, what would happen if their projects were combined? How would that illuminate how Jews think internally about Hanukkah and how the Supreme Court thinks about what Hanukkah is? I came up with some confusing findings.

At first glance, it looks as if we're dealing with two distinct entities: on the one hand, Hanukkah as an internal Jewish religious practice; on the other hand, Hanukkah in the public sphere, and the question of how the public sphere accommodates or limits the public display of religion.

Yet this way of conceiving how religious practice interfaces with the public sphere maintains an artificial distinction between these two spheres, one that does not hold. At least in the humanities, we know perfectly well that dichotomies like these are problematic. To the extent that it makes sense to talk about two separate spheres, I am tempted to say that the thinking is fuzzier in the public, legal sphere than in the religious sphere. However, in religious studies departments and the humanities more broadly there is a near consensus that there's no clear way to distinguish the public and private

spheres. And Jewish modernity is, in some ways, a symptom of the mismatch between the categories of public and private. Understanding Judaism as a religion is an invention of the modern secular era. A scholarly consensus views the 19th century as the time of invention of Judaism, as a precondition for Jews to become citizens of France and Germany and other modern national states. What was defined in some loose way as a peoplehood became a religion at precisely the moment where Jews were becoming significantly less religious; for the purposes of incorporating Jews into the nation state, they were defined as a faith group, a religious group. What constituted that faith also needed to be invented in order for Jews to satisfy the citizenship requirements as minorities in European states.

In this context and for these purposes, the main constituents of what was to be seen as the Jewish religion were a translation of enlightenment thought into Judaism. You can see this translation of enlightenment thought in Max Lilienthal's contention that "in the glorious words of the old prophet, this word of toleration must be our unswerving North Star." The ideals of liberalism in modern European states thus became ancient Jewish ideals. And secularism itself became a particularly thick Jewish religious identification in ways that it has never been for the people who initially formulated it. Both the German and French enlightenments had moments that gave way to various kinds of nationalism but Jews clung stubbornly to the idea of enlightenment. Jews are the biggest champions of the separation of church and state, the most intensely "religious" liberals. So perhaps thinking about religion and secularism as separate categories doesn't work in any case, but it certainly doesn't work in the case of Jewish modernity.

Another symptom of this history is that the term "secular Jew" is a recognizable category, while the term "secular Christian" is considered as incoherent. Yet the backdrop of what is called "the December dilemma," which pits the menorah against the Christmas tree, is really about internal contradictions in secular Christianity, a category that remains largely invisible.

The situation of Jews within "the December dilemma" is not only a symptom of a few different kinds of mismatch, the hard bargain that's driven for Jewish citizenship in the modern nation state, but also a symptom of a larger incoherence within the modern secular nation state. This comes up very clearly in the (comical) Supreme Court decision about the crèche in the public sphere somewhere in Rhodes Island. In this case, which is commonly known as "the plastic reindeer case," the Supreme Court argued that because America is part of Western civilization and the Christian story is deeply embedded in Western civilization, it was appropriate to have a crèche in a public space. This display was particularly appropriate because the crèche also had some plastic reindeers next to it; that served to make the crèche (also) secular, and so secured it a legitimate space in what was still ostensibly a secular public sphere. The issue of the Christianity of this secular space remained outside the discussion, rendered invisible by the apparent distinction between Christianity as a religion and the (false) religious neutrality of American public space—guaranteed here by the plastic reindeers that helpfully fail to appear in the New Testament.

The Supreme Court's equally incoherent discussion of the Hanukkah menorah came three years later, in 1987. The Supreme Court ruled that a huge Hanukkah menorah put up by the Chabad (a Hasidic Group, also known as Lubavitch, which proselytizes secular Jews) was actually a secular symbol. Whereas they had ruled that a crèche inside the same courtroom building before which the menorah was erected was a religious symbol

and had to be removed, a Christmas tree outside the courtroom was a secular symbol. Because the menorah was smaller than the tree, it was secular because one could interpret the menorah in light of the tree. According to this logic, if the menorah had been larger than the tree, its religious character would have rendered the tree a religious symbol. There was also a rather hilarious discussion in which the Supreme Court discusses whether there could be a more secular symbol of Hanukkah than the menorah. Could it be "a dreidel" (four-sided spinning top)? But then one of the justices pointed out that an 18-foot tall "dreidel" would look somewhat silly outside of a courthouse. Ultimately, the court ruled that the menorah put up by the Chabad Hasidim was a secular symbol, and so permissible. Since then, there have been many menorahs in public spaces.

It was shocking for me to learn that the oldest piece of rabbinic legislation about Hanukkah actually says that the Hanukkah menorah is supposed to be lit in public. The law specifies that if you're scared of the mockers and the non-Jews, then you can light it in the window of your house or even, if you are still too scared, on a table inside. This very early piece of legislation suggests that the proper, ideal size of a menorah might actually be the sort of 40-feet tall menorah put up by Chabad around the country, with cherry-pickers in order for the menorah to be lit with torches.

It is interesting to see that this rabbinic law was only fulfilled 2000 years later. Another thing that was interesting to me about this case is that Chabad Hasidim didn't cite this piece of rabbinic legislation as part of a claim for accommodation to their religious law. Accommodationism runs somewhat counter to the way that Chabad normally operates. The Grand Rabbi of Chabad (known as the Rebbe) wrote to the Jews of Teaneck (most of the arguments about the right of Chabad to erect a huge menorah actually happen among Jews) that Hanukkah was a perfectly good American holiday celebrating liberty and religious freedom (the principles of America) and it should be celebrated publicly on American ground (no need of accommodation to specific religious laws here). And then the Rebbe asked whether the Jews that objected to this public display were afraid that people would know that there were Jews living in Teaneck?

Still another interesting aspect of this argument is that the Supreme Court case was between Allegheny Country and the ACLU, but the ACLU lawyers were mostly Jews. In some ways, the Supreme Court is adjudicating a dispute between one sort of Jews that uphold to the separation of church and state more than any other group as one major aspect of American Jewish identity, and other sorts of Jews who take the mantle upon themselves not so much of their right to practice Judaism but rather, in the letter from the Chabad Rabbi, of a different kind of Americanism.

In each of these cases, even the oldest, Hanukkah is not a test case for the distinction between religion as privately observed and the public sphere, but rather of the very viability and distinctiveness of these categories, in late antiquity as today.

I'd like to say one more thing about the so-called "War on Christmas," especially as it is played out in the public sphere of Fox News. Here, the objections are not to Jews putting up Hanukkah menorahs beside Christmas trees, or based on concern about the crowding out of Christmas symbols. Rather, the main objection voiced by commentators is against people saying "Happy Holidays" instead of "Merry Christmas." Some commentators have even called for a boycott of storekeepers or corporations that don't greet their customers with "Merry Christmas." This issue was first raised by John Gibson on Fox News in the 1990s, and it recurs every holiday season. Fox News typically defends itself by stating that its campaign

is not anti-Semitic, but rather against secularism and atheism. But "Happy Holidays" itself, despite its pluralizing of the holidays to include, presumably, Hanukkah and Christmas, in fact reinscribes Christianity as the major locus around which "holiday-ness" accumulates, since Hanukkah is actually a minor Jewish holiday. To secularize or pluralize the national calendar, a more major revision would have to occur, say in September, where the major Jewish holidays would be made to serve as a bundler around which Labor Day (perhaps yet another secular Jewish holiday, given the associations of Jews and the cause?) would obediently fall into place.

Another notion that is worth undermining (since that is what we do in the humanities) is that "the December dilemma," which describes Jewish anxieties about the paltry attractions of Hanukkah in contrast with Christmas, is a particularly modern historical dilemma. As people always stress: Hanukkah is a minor holiday in Jewish tradition. The only reason to make a big deal of it is its proximity to Christmas. It is a way to compete with the Christian holiday: that's why Jewish parents stress that there are 8 nights of celebration instead of one, with presents for the lucky Jewish kids every day instead of just once, etc. Against this, rabbis excoriate that Hanukkah (like Christmas) is falling prey to materialism, and the true religious meaning of the holiday must be recovered.

But it never had this primal purely Jewish meaning. The holiday begins as a resistance to Hellenism, one that very rapidly fails: The Maccabees themselves became Hellenists in the next generation. Moreover, resisting Hellenists through a festival celebrating a military victory is, itself, a Hellenistic notion. From its rabbinic incarnation, Hanukkah already had a performative aspect. It was about showing our menorahs to other people. The idea is that religion belongs to the private sphere, as Y.L. Gordon (a Hebrew poet in the Enlightenment period) says, "Be a man on the street but a Jew in the house." The Jew in the house lights the menorah. But like the rabbis, who saw Hanukkah as a performance for public consumption, we are now again Jews in the street and perhaps only in the street; there's nobody inside. I think Hanukkah is good textual evidence of the performative and dialogical aspects of religion, the ways that even in our most intimate religious moments we are actually in conversation with others. In the rabbinic literature the term mockers is used to mean theater-goers, meaning that if you think this will look like a play don't do it outside. On the other hand, the rabbis suspected that, at bottom, in its deepest sense, Hanukkah was a kind of public theater. So if we think we can manage a space of religion that it isn't already infected by the great conversations, by the way people look at us and the way we look at others, then I think we have to find another holiday (or perhaps another religion).

IV. SISTER MARIANNE FARINA

Some of my remarks will try to pull together the threads and strands that we have been talking about so far. First, I appreciated the broadness of the European focus, in a sense that one or two countries were not seen as representing the whole European story. I also appreciated the analysis of the Asian countries. This kind of broad scope helps us to understand our local context. The discussion of cases and analyses of recent contests and negotiations concerning religious norms in the public square illuminate the definition of religious presence, religious freedom, universality, the sacred, secularism, neutral space, and public space. Our discussions have also highlighted the importance

of addressing human rights claims and the complexity of debates concerning minority rights, religious rights, and cultural rights. They allow us to identify the principles underlying the controversies over religious national symbols, the construction of religious structures, nationalization projects, and the politics of conversion.

I see two challenges.

The first is to create a broader interdisciplinary approach that will help uncover the inner workings of national, civil, and religious identities. As Naomi Seidman just mentioned, we in the humanities like to mess things up by highlighting the complexity of what initially look to be simple notions. The second challenge, I think, is to foster various communities of discourse, so that no group (e.g. the populist) dominates the discussion. It is in these communities of discourse that we encounter the philosophical impasses, the historical limits, and the ethical dilemmas of our various identities. If we can take this broader interdisciplinary approach and involve various communities of discourse, we will be able to explore what we mean by religious plurality, religion, and what composes confessional identities: religion or faith, as Olivier Roy mentioned.

It's also important to understand what we mean by norms. Do we mean laws? Benefits? Values? Visions? Each of these represents a certain philosophical approach to understanding norms. An interdisciplinary approach could benefit our important interrogation of the actions and practices in the intersection of the different spheres: common, public, and institutional.

As the pluralism of civic life continues to evolve, I am reminded of the work of the Catholic theologian John Courtney Murray. Murray raised some important principles. First, the state cannot offer all the good that is needed for civilization in a pluralistic society. We have to look at all the other venues that offer us images of the good. Second, dialogue will help us to understand these thick descriptions of the good. Neither ontological nor utilitarian approaches can provide or elucidate these thick descriptions. Murray's invocation to limit warfare and expand dialogue was part of what he saw as a contest between civility and barbarianism. Murray argued that a society becomes barbarian when people group together out of fear or because of force, when economic interests assume primacy over higher values, and when the laws of argument and debate break down. Because civility dies with the death of dialogue, civil associations have a critical, rational deliberative quality that we have to promote.

Murray also spoke about three sets of discussions, arguments, and conversations. One is the need for government action, cases, and decisions. The second is the concern of the commonwealth: who are the groups coming together to really discuss what are the public actions? The third is the form of constitutional consensus.

I would like to emphasize the second conversation: a conversation that allows for an approach that embodies and describes our goals and visions of the common good and how religious norms guide our practices in the public space. We must bring forward—by gathering information and disseminating findings—accounts of the ordinary ways believers as citizens contribute to the common good. What are the projects religious and social groups create? How do these efforts help us to understand the way religious norms operate in the public space? What are the practical implications of their understanding of religion and civil identity?

Here are two examples that illustrate my point, one from Asia and one from the United States. The first example involves the Bangladesh Rural Advancement Committee (BRAC) and Caritas

Bangladesh as examples of the public groups that help define and describe what we are doing in the public square. In the United States (and specifically California), two such groups are the East Bay Housing Corporation Community and the Three R's Project. The Three R's Project—which stands for Rights, Responsibilities, and Respect—is an education project for religion and civil discourse.

I believe these two examples have created what I call a community of discourse to act in ways that communicate how vision, values, and norms operate in the public sphere. They do this not only in the creation of their projects but also in the composition of their leadership and the practice of fairness, equality, and inclusion. I believe these organizations remind us that it is fraternity that helps us to define liberty and equality. They also help us in discovering unmet needs. As I have seen in my 12 years work in Bangladesh, they help to problematize and make a complex understanding of what you mean by development. Development is not just one vision of the good. Caritas Bangladesh is a religious group that is really promoting an active pluralism in their approach and their discourse about what they are doing and how they conceive it.

As for the East Bay Housing project, they are religious yet act with a civil alliance—which invites us to ask, "What does this alliance mean, and how is it shaped?"

As for The 3 R's project, they are promoting our understanding of religion and civil identities through education about civil society and religion, and questions regarding what it means to be a citizen and what it means to be a believer are not ignored.

In conclusion, I would like to suggest that we expand the dialogue in a sense of a broader interdisciplinary approach (with philosophers, theologians, as well as legal scholars, sociologists, and artists), we foster these various communities of discourse, and we bring people into these discourses through the various projects they are working on.

V. IMAM FAHEEM SHUAIBE

The title of this conference doesn't dictate whether one should speak descriptively or prescriptively about religious norms and the public sphere. I will take advantage of this ambiguity to speak about my experience working with a congregation and also with activists of all stripes. By "activists," I mean people who actively work to realize a vision of the good. In particular, I'd like to mention an organization that I am working with, called the Abraham Family Reunion. It is an aggregation of Christians of various stripes, Jews, and Muslims who search out various kinds of activities, interventions, and methodological approaches for bringing about peace "locally" and ultimately peace in the world.

Working with this group and leading a congregation as an Imam forces me to deal with everyday pragmatic, practical, and personal problems. I am also confronted with issues that come up within a congregation where a group of people tries to move in the same direction even though the natural dynamic of being human brings up conflicts and challenges to that process. In doing so, there is one central (though sometimes overlooked) core concept and it is the idea of our humanity. Our humanity explains why things happen the way they happen. It is because we are humans that we often have difficulties grasping things that may otherwise seem fundamentally obvious.

Therefore, a critical part of any prescriptive solution to the question of religious norms in the public sphere is the definition of humanity. There is a philosophical sentiment that "to err is human but

to forgive is divine." This sentiment seems pejorative to our humanity, because it sets humanity in opposition to the divine. On one level, it is true that humans are faulty and error-prone. But there is another dimension of humanity, at least from the Islamic perspective: that God creates human beings, by nature, in the most excellent mould and structure. The Qur'an, which Muslims believe to be the revealed word of God, teaches that the human being is created in the mould of excellence and is not corrupt by nature.

Human beings, Muslim and otherwise, perform and behave in ways that are destructive, unproductive, erroneous, irrational, unreasonable, greedy, and selfish. This, too, is a part of the human being. But while it is part of a person's existence, it is not their nature. What should stand as a norm for human beings is the Qur'an. For Muslims, the ground of religious norms is the Qur'an. Then we introduce Mohammed who is the Messenger of Allah. The Qur'an says that He is also the most excellent model example to follow for any who believes in G-d and the Last Day. He is to be the ideal standard. At the time of the Qur'an's revelation, G-d tells Mohammed to tell the people - "I (Muhammad) am a human being just like you. I'm a flesh and blood human being just like you." So the deification of Mohammed is inappropriate for Islam. The Islamic ideal is to follow the human behavior that Mohammed provides. His behavior is the norm for Muslims; it is the central point that Muslims are supposed to be orbiting around—and which Muslims believe is best for all humanity.

In light of this standard, we might wonder whether many contemporary Muslims are behaving according to the model that Mohammed represented. To the extent that they do not, then they are not reflecting the universal norms that are posited in Mohammed's teaching and the teaching of the Holy Qur'an. When we talk about religious norms in the public sphere, I know that much of the conversation among scholars is around the cultural, the political, and the legal environment, some of the particular artifacts, and how these artifacts are accepted or rejected within that environment. As far as Muslim religious norms are concerned, I would like to go back to those definitions because, often, the practices of Muslims don't conform to the Qur'anic prescriptions, which call for Muslims to be more tolerant. Sometimes Muslims take artifacts, for example the kufi (short rounded cap) that I am now wearing, as having more significance than they actually do. I put this kufi on more for the functional purpose of pressing my hair down than to convey that I'm a religious person. Yet there are some who would take my wearing this artifact as a sign that I have *Taqwa (G-d Consciousness)*, that I really believe in G-d.

One of my awakenings came when I went to Egypt in 2005 to study Arabic. When I got to Jumu'ah, there were only five other people beside myself who were wearing kufi caps. In the land of the Arab, you would expect everybody to be wearing the kufi. But no, because there it's just a common thing that you go to the prayer then you go back to work. There is no need to proclaim your "G-d Consciousness" in a land that is nearly 100% Muslim.

However, in a culture like America's, where the religious environment is more heterogeneous and issues of identity are more significant, the kufi has a different significance than in Egypt, where the religious environment is more homogeneous. In non-Muslim cultures we (both Muslims and non-Muslims) charge these artifacts with more value and emotional force than the religion warrants.

In Al-Islam, religion is not separated out as it is in the West. The true definition of Al-Islam as a way of life is *Din*, which (among many other things) means the totality of life. The separation of church and state is not a dimension of Islam. Coming

from the West, it might be difficult to understand that Muslims don't draw the distinction between the political and the religious in their lives. This misunderstanding leads to a fear and sometimes hostile attitude toward Muslims who don't abide by or acknowledge this culturally dictated separation. This is a source of conflict.

This conflict leads to a question of ethics. By "ethics," I mean the conflict between good and bad things that requires a choice. The Qur'an calls the Muslim to strive after what is best. But "best" can be relative to circumstances and situations. What is best in Morocco in 1975 might not be what is best in East Oakland in 2011. Yesterday, Dr. Moosa stated that unreasonably holding to a tradition could make that tradition an idol. If one does not understand the flexibility, the mutability, and the utilitarian value of these edicts of the Qur'an, then one might hold unreasonably to them even though they are not the essential or immutable roots of the religion. This elevation of everyday artifacts into the warp and woof of a religion is another source of conflict.

Another prescription is a call for dialogue. In the Qur'an, God says to invite people into dialogue in order to come to common terms. The definitions we use are essential. We may actually be talking about the same thing, or we might be talking about different things. But we should at least figure out what we're talking about. Only in dialogue can we determine if we have a disagreement or simply a misunderstanding. The difference between the two is that a misunderstanding can be cleared up by more information, while a disagreement cannot be resolved by providing more information. The only way to resolve a disagreement is by appealing to a higher authority. The need for this appeal implicates not only a religious dialogue but also a need for political and legal dialogues across cultural lines.

About religious norms in the public sphere there is a verse saying: "Let there arise out of you an *Ummah* (Community)." It expresses the quest for a beloved, uniform life with peace on earth, goodwill towards men. It is an invitation for everybody to come to *Ummah*. This verse commands people to do what is universally good. Those values are trans-temporally, trans-spatially "Good." All normal people value love, truth (nobody wants to be lied to, even a liar does not want to be lied to), integrity, honesty, mercy, and justice. Those are values that are universally appreciated, no matter who you are or where you are. The Qur'an invites us to have a common definition of what is universally good.

I've had the good fortune of being with Dr. Farina and others on a panel on the Universal Declaration of Human Rights. The idea behind that declaration is that we might come to agreement about what constitutes a human being and what rights are derived as a result of our existence as human beings. There are the 3 R's that have been mentioned: rights, responsibilities, and respect. It means that I have to accept that as a human being regardless of my ethnicity, my nationality, or my political party, that all others are human beings (Republican, Democrats, gays, etc.) also. And by the simple virtue of their humanity, there are certain rights, certain responsibilities, and a certain respect that derive simply because they exist—as human beings. If we can agree on that, then I think this world would be a better place to live in.

SESSION VIII

TRANSATLANTIC NETWORK OF SCHOLARS ON MUSLIMS' RELIGIOUS IDENTITY, SECULARISM, DEMOCRACY, AND CITIZENSHIP

I. WHEN HETERODOXY CHALLENGES THE PUBLIC PLACE OF RELIGION: THE CASE OF ALEVISM IN TURKEY

ELISE MASSICARD

I will speak about Turkey. Turkey is often considered the first Muslim secular state. But in the past few years the relationship between state and religion has been widely challenged. Interestingly, it has been challenged from different directions: part of this challenge has come from the party in power, the Justice and Development Party, which has an Islamic background, but also by other movements. Today I will speak about the challenges brought by a movement demanding the recognition of heterodoxy, Alevism.

There are estimated to be 12 to 15 million Alevisin in Turkey. Alevis enjoy no formal status, although they have increasingly demanded recognition. First, I will argue that these demands not only concern the status of Alevists, but also challenge institutional arrangements between state and religion in Turkey (especially the issues of religious pluralism and state neutrality). Second, the Alevists' challenge has, on the whole, failed to change this basic arrangement. Third, this failure has prompted Alevists to resort to alternative means of satisfaction, such as the judicialization of their claims and "extraversion," especially towards the European Union.

Let me first briefly describe who Alevis are. Aleviness is both heterodox and syncretistic. It is characterized by diverse influences, especially from Shi'a Islam (for example, the cult of Ali, the Twelve Imams, or the Fast of Muharram) and also from Islamic mysticism (it has strong esoteric features). However, the requirements of Islam actually bear little on Alevi life. For example, Alevis do not fast during Ramadan or perform the Islamic prayer. Instead, they have specific rituals, for instance the Cem ceremony. They have specific institutions and cultural practices which are hardly linked to Islam. There is an ongoing debate among Alevis about whether or not they are a part of Islam.

Alevis have been stigmatized as heretics in the Ottoman Empire since the 16th century, after the empire became a defender of Sunni Islam. Interestingly, the non-recognition of Alevis continued in the Turkish Republic, even though some non-Muslim groups gained the status of officially recognized minorities due to international pressure. One reason for this denial lies in the fact that Islam was accepted as a kind of national identity marker of Turkishness. This crucial place of religion in the nation-building process suggests that it is misleading to speak about the separation of state and religion in the Republic of Turkey. Many people are misled by the official principle of *laïcité*, *laiklik* in Turkish, that has been in the Turkish Constitution since 1937. Yet this term has a different meaning in Turkey than in France. In the Turkish context, it is more appropriate to talk about the domestication of religion by the state, since the state controls religions through the Directory of Religious Affairs, also called the Diyanet. This state institution manages both mosques and clergymen, whom it nominates and pays. Moreover, until recently the Diyanet wrote the Friday sermons that were read in the mosques all over the country, which allowed them to promote a kind of official religion. Thus, the Turkish state is heavily involved in religious affairs.

What is this official religion? It seems to be a modernist version of the Sunni Hanafi interpretation. Therefore, far from being religiously neutral, the Turkish state has endorsed and institutionalized one specific interpretation of Islam, denying all other interpretations in the process. In the terms that Silvio Ferrari introduced yesterday, Turkey has a dominant religion, although it is not spoken of as such.

What is the place of Aleviness in this framework? The Diyanet considers Alevis as Muslims who have somehow been pushed aside from the true path. So institutions classify Alevis as a minor and mainly cultural subgroup of Islam, one not entitled to any special treatment from other Muslim groups. For example, Alevi children must attend compulsory religious courses, which teach only the official religion.

Since the 1980s, an Alevist movement has voiced demands for public recognition of Aleviness as a legitimate element of Turkish society and for equal participation in all spheres of life without facing discrimination. However, these claims challenge the official understanding of the relationship between state and religion, since they assert the recognition of religious pluralism and question the neutrality of the state. I will briefly mention three main related demands.

One of the main demands is the official recognition of Alevi *cemevis* as worship places. In Turkey, most churches and synagogues enjoy this worship place status, which allows them to benefit from privileges like free electricity and water as well as the allocation of building sites. Alevi *cemevis* do not, having only the status of associations. This status makes them much more difficult to build and denies them access to public financing. As a result, many Alevi worship places are only half built.

A second demand regards compulsory religious instruction. These compulsory courses called "religious culture and ethics" do not teach about different religions. Rather, they teach Sunni beliefs and practices alone. In general, Alevis see this instruction as biased and assimilatory. However, they disagree about the best solution. Most Alevists oppose the existence of these mandatory religious courses and suggest making them optional or even abolishing them. Others argue that the content of these courses should be made more religiously neutral by, for instance, including Alevi teachings (and possibly those of other religions as well).

A third demand concerns the Diyanet itself. Alevis blame the Diyanet for institutionalizing the Sunni interpretation of Islam. However, there is disagreement about how to resolve this complaint as well. Some Alevists support abolishing the Diyanet, and others demand that it integrates or represents Aleviness. Thus, Alevists claim equal treatment and the neutrality of institutions either through a really secular laic state exerting no control on religion—no Diyanet and no religious course—or by keeping this relationship between state and religion but by introducing equal treatment and thus pluralism.

The Alevist movement has achieved only some minor victories after more than 20 years of mobilization. For example, state institutions no longer deny the existence of Alevis. However, on the whole nothing has changed about the institutional arrangements that frame the basic relationship between state and religion. For example, there has been no recognition of any official status for Aleviness, nor the abolition of the Diyanet or an alteration of compulsory religion classes. For instance, in 2006, there was a parliamentary debate on the content and meaning of the term "worship place." Yet this debate reasserted the exclusion of Alevi *cemevi* from the category of worship places.

The only important change took place in 2005, when some Alevi teachings were introduced into the religious education syllabus. However, many Alevis saw this change as part of an assimilation strategy, since the syllabus traced the similarities between Alevis and Sunnis but did not mention the basic differences. In other words, this change was interpreted as a further attempt by state authorities to fold Alevis into mainstream Islam, rather than a relaxation of state control over a unitary religion.

This suspicion was further confirmed in 2007, when the ruling Justice and Development Party launched a policy called "Alevi Opening." This policy included a variety of symbolic gestures, with ministers recognizing the discrimination that Alevis had suffered and Prime Minister Erdoğan promising to accommodate Alevi's requests. However, very few concrete steps were taken. For example, the demand for recognition of Alevi *cemevis* as worship places was ignored. Furthermore, the government has still not followed through on its commitment to further revise the content of compulsory religious instruction.

One of the government's most important symbolic gestures was the organization of an *iftar*, the meal breaking the fast, during Muharram (the fast taken by Alevis). This program was organized on the model of the Sunni *iftar* during Ramadan, which is a very important and symbolic time of eating together. But the Alevi fast is quite different, because people actually eat during the days (but no meat or other heavy foods). As such, there is no sense in making a big meal when breaking the fast for Muharram. Alevis saw this gesture as another example of government officials encouraging Alevis to follow the mainstream dominant model.

Because of the failure to gain recognition of these claims through the political field, Alevists have turned towards extraversion and judicialisation. Alevi migrants in Europe, especially in Germany, demand the same rights to accommodation as do Alevists in Turkey. In 2000, a Berlin administrative court granted them the status of a religious community and the right to teach Aleviness in public schools. So, accommodation demands were much more successful than in Turkey. Since the early 2000s, Alevists have subsequently resorted to European institutions as a way of leveraging Turkey's European accession process into domestic reforms. The European Commission has legitimized Alevist demands in all its annual reports by implicitly recognizing Aleviness as a religious phenomenon within Islam. This has been an important step for Alevists, even if it has so far resulted in few concrete changes to the situation of Alevis in Turkey.

Both in Turkey and abroad, Alevists have also channeled the conflict over the place of religion in the public sphere into the judicial arena. In Turkey, this judicialization has not been part of a positive struggle for recognition, but rather a negative struggle against calumny and discrimination. While some Turkish courts have been willing to hear these cases, most of these claims (especially those related to basic arrangements between state and religion) have not been heard.

As a result of these denials, Alevists have begun to raise claims before the European Court of Human Rights. Two main cases are important here. The first, *Zengin v. Turkey*,[120] deals with the exemption of Alevi children from compulsory religious education. The second case dealt with the mention of Aleviness as a religious identification on Turkish ID cards which was compulsory until 2006 but then abolished. In both cases, the European Court ruled in favor of the Alevists.

120 *Hasan and Eylem Zengin v Turkey* (2008) 46 EHRR 44

Let me elaborate on the *Zengin* case. Here, an Alevi citizen requested that his daughter be exempted from lessons in religious culture and ethics. The claim was that these lessons violated the parents' right to choose the type of education that their children will receive, which is guaranteed under the Universal Declaration of Human Rights. The petitioner also alleged that the religious course was incompatible with the principles of secularism and neutrality, as it was essentially based on the teaching of Sunni Islam. Each of these claims was rejected or dismissed in Turkish courts. The citizen then went to the supreme administrative court and all his requests were dismissed on the ground that the course called "religious culture and ethics" were in accordance with the Turkish legislation. On appeal, the European Court of Human Rights found that the syllabus for the religious course gave greater priority to Islam than to other religions and philosophies, and that the pupils did not receive teaching on the confessional or ritual specificities of the Alevi faith. Therefore, the court found, the religion course and ethics lesson were inconsistent with the objectivity and pluralism necessary for education in a democratic society.

This decision was taken up by some Turkish authorities, but not by others. The Council of State declared that the religion courses could not be mandatory in their current form and should be optional. However, the Diyanet criticized the Council and so far has refused to change the curriculum.

Turkish authorities hardly implemented the decisions of the European court until now. The judicialisation of Alevist claims in Turkey through the European court took the form of questioning the authoritarian imposition of one official religion on the grounds of freedom of religion. Religious pluralism has been invoked as a way to implement the neutrality of institutions.

In a way, this is a classical case of a minority challenging the dominant religion. What's unique is that it takes place in a Muslim country in which the European Court of Human Rights is competent. It brings up again the question of the consistency of the Court's decisions and the heterogeneity of the situations it has to deal with.

One point I would like to raise is that disputes about the place of religion in the public sphere are channeled into the judiciary. What are the consequences of this judicialization process? In Turkey we can say that the judiciary itself is very politicized so there is a kind of blurring of the boundaries.

Moreover, the role of Europe in this process is doubled-edged. One could expect that the support of European institutions would enhance the legitimacy of the Alevists' claims. To the contrary, the support of these claims by European institutions is widely considered in Turkey as dangerous, an illegitimate intrusion of foreigners supporting minorities against domestic authorities. Indeed, this intervention has led to strong resistance.

Let me raise a last point: these issues are not just about Alevis, but rather about the basic arrangements between state and religion. In this framework, other groups (including Islamists) also criticize the relationship between state and religion in Turkey. Despite the fact that the Justice and Development Party (which comes from an Islamist background, but is not really an Islamist party) has seemed to challenge this relationship between state and religion, it has in reality acted to preserve the status quo.

II. THE SEPARATION OF CULT AND STATE IN COLONIAL ALGERIA

SORAYA TLATLI

The author has preferred not to include her presentation. The webcast is still available on the igov website (http://igov.berkeley.edu/content/case-european-countries) and on YouTube (http://www.youtube.com/watch?v=Ka5X48-NAqM)

III. MEDIATING ISLAMIC NORMS

MUNIR JIWA

This presentation is a reflection on my work with the Religious Norms in the Public Sphere project, rather than an academic paper. As part of this project, we were initially looking at different ways to think about what was then called Islamic norms, and this inquiry was expanded from Islamic norms to religious norms more generally. As an anthropologist by training who works on aesthetics with Muslim artists, I have been thinking about how framing and understanding religious norms within a legal framework alone not only makes these norms too prescriptive, but, more so, how these normative frameworks do not always account for the communities that I have been working with, especially in terms of how norms are constituted, articulated, and embodied among Muslims.

My initial project was also about how to expand beyond the stereotypical places where we find Muslims. Not all Muslims are found at mosques, and not all things Muslims do necessarily relate to Islam. There are many kinds of norms, prescriptions, and ideas that regulate, shape, and give structure and meaning to our lives, not always captured by scholarship. This project has also raised more general questions about the production and circulation of knowledge, the academic question of how we come to know and represent our subjects, and the disciplinary ways in which we approach our topics. Though I have learned a lot from the legal and political theories and methodologies used in the Religious Norms project, how do these relate to and inform my own disciplines of anthropology and theology? Do these disciplines have anything to say to each other? Is one inquiry at the level of legal or political theory while the other at the level of practices?

Since so much of the way in which Muslims enter and are imagined in the public sphere in America is through media/events, another question I am interested in is how and what we remember about events and the mediation of globalized events/Islam through images. Our study of the normative practices of Islam and the reformulation or reformatting of religion, are often not only mediated by images, but the images themselves are embedded in this reformulation. So, as part of this project, it is important to look at the relationship between images, texts, contexts, and practices.

I would like to introduce and then later return to my concept of the "five 'media pillars' of Islam" as the secular norms that frame much of the conversations and politics of Islam and Muslims in public life: 9/11, terrorism/violence, Muslim women and veiling, Islam and the West, and the Middle-East. These five "media pillars" are so hegemonic and normative that to think of Islam and Muslims outside of these norms becomes almost impossible. To borrow from anthropologist Arjun Appadurai, this suggests a "metonymic freezing," a fixivity of classification. So if one thinks of terrorism, one also thinks of Islam, and vice-versa. Not only do we categorize and attempt to represent Islam and Muslims in these ways, but we tend to fix them in such limiting categories and understand their lives only through these prisms. If one thinks outside these categories, one gets classified as either

apologetic or accused of not addressing the "real" (public) concerns relating to Islam and Muslims.

I also get the sense that religion itself becomes too reified in our analysis of it. We tend to focus on Islam and Islamic norms as the problem, and one of the strategies out of this seeming impasse is to Americanize or Europeanize the problem, rather than Islamicizing it. From a secular standpoint we tend to see religion and religious norms as restrictive, oppressive, and dogmatic, while taking secular norms for granted as natural, rarely questioning the secular regulations we are subjected to in our daily lives.

My initial project began with Muslim artists. I was interested in the ways that artists could lead to a reimagining of Muslim communities after 9/11. Artists were often mobilized and represented by the U.S. government as "good Muslims," secular, Sufis, not really practicing, a kind of "Islam-lite" that was palatable for Americans, but my own research examined how these artists navigated the New York art scene after 9/11, as well as how they came to imagine themselves within the category "Muslim." Prior to 9/11, these artists (it happened that all the artists I have been working with were women) were categorized by ethnic, gender, national, regional, or art-historical categories—as African, Arab, Indian, Iranian, Malaysian, Pakistani, as women, as abstract-expressionist, minimalists, etc. After 9/11 they became "Muslim" artists, first externally by the New York art scene and then an identity they strategically negotiated themselves. We found that most of these artists didn't self-apply this category, but began to use it because it allowed them more artistic opportunities, rather than because they had reflected more about what it meant to be Muslim. Interestingly and perhaps not surprisingly, through the process, many Muslim artists began embracing their Muslimness as a minority identification.

While my initial work with these artists was to understand how they navigated the secular New York art world through the category Muslim, my more recent research and work looks at how Muslim artists navigate both the art worlds and their relationship to the Islamic tradition, and what their theological commitments look like. It displaces the idea of Muslim artists being secular in nature, or put another way, because they are artists, they are likely to be more secular Muslims.

Let me share an example. A few years ago, Jennifer Taylor's film, *New Muslim Cool*, was featured at the San Francisco film festival. The film is about Jason Perez (now Hamza Perez), a Puerto Rican American rapper and his spiritual journey. It was fascinating that, during the film festival in the Sundance Kabuki Cinema, Muslims prayed one of their five daily obligatory ritual prayers! A senior staff member of the festival, who had never seen this happen before, not only welcomed it, but was curious to know why some people were praying and some were not! What was even more fascinating was that many non-Muslims in the cinema space could not imagine that these artists and film actors and the Muslims in the audience could be religiously observant—in the cinema! I think this may be both because one isn't used to seeing prayers being performed in a cinema space, but also because the general thinking is that if you are an artist, Muslim artistic creativity only comes from abandoning ritual and religious norms. That is, one can only be creative as an artist in so far as one lets go of the so-called "Islamic" prohibitions on (figurative) art work. These artists denied the dichotomy between artistic creation and their commitment to their faith (seeing themselves as practicing Muslims *and* artists). In fact among the Muslim artists at the film festival, they found that it was the norms of the art world that were restrictive and that their art practices were enhanced because they were religiously observant.

This example has pushed me to think more about the frames through which Muslims are represented. More theoretically, my own work seeks to elaborate on Judith Butler's understanding of frames, and how we begin to understand ourselves through various categories and frames:

> "The epistemological capacity to apprehend a life is partially dependent on that life being produced according to norms that qualify it as a life or, indeed, as part of life. In this way, the normative production of ontology thus produces the epistemological problem of apprehending a life, and this in turn gives rise to the ethical problem of what it is to acknowledge or, indeed, to guard against injury or violence…[121]
>
> The 'frames' that work to differentiate the lives we can apprehend from those we cannot (or that produce lives across a continuum of life) not only organize visual experience but also generate specific ontologies of the subject. Subjects are constituted through norms which, in their reiteration, produce and shift the terms through which subjects are recognized.[122]

Turning now to the five "media pillars" of Islam mentioned earlier, I want to show how Butler's conceptualization of frames and their normative reiteration produce a public recognition of Islam, often at odds with Muslim subjectivity. If we attempt to understand Islam and Muslims outside these five categories and their scripts, we tend to find a disconnect between the public imaginary and Muslim lived experience, the likelihood of misrecognition, and even accusation of being apologetic for using alternative frames.

The first frame, "9/11," tends to be the most dominant temporal frame used to think about Islam and Muslims, most certainly in the United States. As Jean Baudrillard said in his provocative 2002 publication, *Spirit of Terrorism*:

> When it comes to world events we had seen quite a few. From the death of Diana to the World Cup. And violent, real events, from wars right through to genocides. Yet, when it comes to symbolic events on a world scale – that is to say not just events that gain worldwide coverage, but events that represent a setback for globalization itself – we had had none. Throughout the stagnation of the 1990s, events were 'on strike' (as the Argentinian writer Macedonio Fernandez put it). Well, the strike is over now. Events are not on strike any more. With the attacks on the World Trade Center in New York, we might even be said to have before us the absolute event, the 'mother' of all events, the pure event uniting within itself all events that have ever taken place.[123]

He goes on to say,

> This goes far beyond hatred for dominant world power among the disinherited and exploited, among those who have ended up on the wrong side of the global order. Even those who share in the advantages of that order have this malicious desire in their hearts. Allergy to any definitive order, to any definitive power, is – happily – universal, and the two towers of the World Trade Center

121 Judith Butler, "On This Occasion…" in *Butler on Whitehead: On the Occasion*, ed. Faber, Halewood, Lin (Lanham: Lexington Books, 2012): 13.

122 Judith Butler, *Frames of War: When is Life Grievable?* (London: Verso, 2009) : 3-4. (?)

123 Baudrillard, *Spirit of Terrorism* (2002):

were perfect embodiments in their very twinness of that definitive order.[124]

"9/11" not only becomes a temporal frame marking Muslim presence in the public sphere in the United States, but erases the long history and presence of Muslims in the Americas, forcibly brought over during the Atlantic Slave Trade, as Sylviane Diouf's and others' works remind us. It also erases the important history of African-American Muslims in the United States, central to understanding Islam in America. In addition, 9/11 also becomes a way to think about the questioning of symbolic power—the twin towers as both symbols of global capital and a site of sacredness. For example, debates on the Park 51 Islamic Community Center were often couched as questions of sensitivity, as if proximity of the so-called "Ground Zero Mosque" would profane the otherwise sacred ground of the fallen twin towers. What is interesting here are the liberal markers we use to make Muslim public space thinkable and acceptable to a wider public: the mosque could not just be a mosque with, for example, a dome and minaret (though not theologically necessary). Initially, it only registered as thinkable because it was presented as a proposed community center, open to Jews and Christians, with an interfaith center, art exhibits, a culinary school, a swimming pool, a recreation center, and a memorial to pay tribute to those who lost their lives on 9/11. Even though the idea of Park 51 was modeled on the YMCA or Jewish Community Center, it was never quite accepted as a community center. Again, if it were just a mosque, and not an extended community center open to all, there would likely have been even more of a public outcry, and indeed there was once the "Stop the Islamization of America" group, headed by Pamela Geller, began calling it the "Ground Zero Mosque," sometimes also called the "Victory Mosque."

124 Baudrillard, *Spirit of Terrorism* (2002): pp

Returning to my point about frames, public conversations are not only confined by their frames, but the discussions within those frames are further scripted. For example, in the case of Park 51, there seemed to be a significant disconnect between the particular and localized conversations about the architecture and logistics of the building (how it aimed to be the greenest building in NYC, the designs and aesthetics of the building, what the recreation facility would look like, etc.) and the public understanding that was focused on the politics of the proximity of the "mosque" to ground zero. If one only focused on the aesthetics of Park 51 or, for example, the recreation facility they were hoping to have in the center, the general public would think these conversations to be odd or to have missed the larger, national conversations about Park 51 in relation to 9/11, ground zero, and how shari'a law was taking over. These are the scripts and codes within particular frames to which I am referring. If I were to talk about Park 51's green architecture, I would be seen as an apologist, as not dealing with the "real" and wider public issues, even though much of my own interest in and work with the community center were concerned with these architectural and aesthetic details.

The second frame used to discuss, think about, and represent Islam and Muslims in the American public is terrorism, violence, and fundamentalism. We can hardly think about Islam and Muslims without thinking about terrorism, or asking Muslims to denounce terrorism. Jihad, Al-Qaeda, the Taliban, the burqa, and the madrasa are all English words now and most of the American public knows these only as English words without knowing their origins in Arabic and other languages. Afghanistan, Iraq, Iran, Palestine, Guantanamo, Abu Ghraib—these are all the frames and archives through which we think about Islam and Muslims, consistently connected to violence.

Talal Asad's book on suicide bombing is instructive for its discussions on death dealing and the effects of different forms of violence—some forms of violence shock us while some do not, even as they destroy lives. Along the lines of Butler, I would argue that, in addition to Asad's discussion on the scales of violence, our different responses to violence are also related to whose lives count as lives to begin with. I would argue that some forms of violence are acceptable to us when we perpetrate violence on others (as in their best interests and for the sake of freedom, democracy, and security). Yet, when these same forms of violence are perpetrated on us, we interpret them as the products of hatred, evil, religious fervor, and fundamentalism. Of course these forms of violence are also differentiated by whether or not they are state-sponsored. To understand our differentiated approaches to violence and dealing with death requires studying these phenomena both in terms of power and in terms of classifying people (individual or collective) as subject or objects, as victims or perpetrators of violence.

The third frame is Muslim women and veiling. We often talk about "Islamic patriarchy" as if patriarchy were intrinsic and limited to Islam and Muslims. Our concern about women driving in Saudi Arabia, or rape in Pakistan, or saving Afghan women (from the Taliban-imposed *burqas*—itself having a long colonial history) seems misplaced and excessive given the rape of women every two minutes in this country, or the fact that women are exploited by and enslaved to a multi-billion dollar beauty and sex industry. There seems to be little national and collective outrage about these here at home. It seems then that the defining difference is that women in the West are free to choose (their exploitation) and women in the rest of the world (especially the Muslim world) are in need of such choices.

The marking of different societies according to the rights it accords to its women and other minorities is now extended to sexual minorities, which Massad, Puar, and others have written about. As mentioned at the outset of this presentation, focusing on legal categories at the level of the state alone often misses out on accounting for the great diversity of lived experience, For example, the Islamic Republic of Pakistan now recognizes the category of the third gender on national identity cards. Long seen as part of South Asian societies, *hijras* (as they are most often identified) are protected by the state and can choose the category of third gender to identify themselves (there are numerous examples of how Muslim societies have protected sexual minorities in various ways across time and place). Does this all of a sudden make Pakistan more "liberal" than the West, given such legal recognition? Can the West learn from Pakistan about gender and sexual minorities given that it would be hard to imagine recognition of this sort in the U.S.?

The ideas we hold about prescribing a condition to specificities and scripts based on the fact that they are Islamic or not tells us little about the way in which people live their social lives. The same is true if we focus on the *hijab*, or more specifically on Muslim women's various forms of headscarves. Headscarves have been mobilized as a colonial strategy to secure entry into the Muslim world, just as the *burqa* was used to gain military entry into Afghanistan. Returning to my point about Pakistan's third gender, notice how those transgendered men, or men who cross-dress as women, don't think twice about wearing headscarves—that is not their focus. My point here is that Muslim women and veiling have been taken up in the West as a major frame and focus, especially as it relates to rights discourse and legitimizing war, but significantly lacks the nuance of Muslim lived experience. Where gender advances have in fact been made in the Muslim world, they are often

ignored on procedural grounds as Muslim women look to the Qur'an and the Prophetic paradigm for liberation and living more piously. Saba Mahmood's many excellent works help us understand these discussions in more detail, including the importance of rethinking categories of "freedom, agency, authority, and the human subject."

The fourth frame is "Islam and the West" or the so-called "Clash of Civilizations." The idea that Islam and Muslims are somehow "foreign" to America and American values is problematic at many levels. As mentioned in the first frame on 9/11, first and foremost this binary forgets the long history of Muslims in the West, such as African Muslims who were forcibly brought over to the Americas during the Atlantic Slave trade, or the long history of African-American Muslims, or, in the context of Europe, going beyond the immigration debates to remind ourselves of Bosnian Muslims as Europeans. In this frame, the primary discussions generally focus on questions of democracy and freedom and Islam's compatibility with the West in terms of values—reinforcing, somehow, that Muslims are less American or less European, returning to the language of "us" and "them," and thereby demanding Muslims to prove their loyalties as Americans. The most insidious part of this, as we have seen in the efforts by Pamela Geller and the "Stop the Islamization of America" crowd, is that even if Muslims seem to be "good American citizens," they are not to be believed because they are practicing *taqiyya*—a very marginal concept in Islam that permits religious dissimulation if under threat (especially within the Shi'a tradition). Geller's group attempts to instill fear in the American public by stating that Muslims following "Islamic ideology" are appearing to be moderate and hiding their real efforts of exerting a "jihad" against America—referred to as "stealth jihad." An example of this according to Geller's group is how "*shari'a*" is supposedly taking over the American legal system, but, more importantly, she attempts to show how Islamic values, laws, and traditions have "always" been at odds with progressive Judeo-Christian civilization. Were it not for the millions of dollars being poured into funding such Islamophobia, with so much agreement by state officials, we might be able to dismiss such blatant anti-Muslim racism, but, unfortunately, freedom of expression permits such hatred to be exercised.

If 9/11 is the temporal frame through which we think about Islam and Muslims in America, the fifth frame is "the Middle East" as the geographic and spatial frame. The focus on the Arab world and on Israel and Palestine is central to this frame, even though we know that the majority of Muslims live outside the Middle East, namely in South Asia, with the largest Muslim-majority country being Indonesia. While a focus on the Middle East may be relevant given the origins, theology, and practice of the faith (for example the *hajj* or annual pilgrimage to Mecca), the fixation on the Middle East is usually tied to politics, oil, and terrorism, and generally not about the profound intellectual contributions of the Arab Muslims to the West, or the incredible history of Islamic aesthetics, architecture, and art.

As these "five media pillars" show, the secular normative frames, through which Islam and Muslims enter the public sphere predominantly through global events and media, are the very frames that also attempt to format and fix Muslim lived experience. Though the state guarantees the freedom of religion, secularism as a political project is fully invested in reformulating religion, and by extension regulating it. For religious minorities in the United States, the historical unfolding of secularism and Christianity is then the very history through which we imagine the unfolding of all religions, forgetting that religions follow different theologies and histories, both overlapping and distinct. Saba Mahmood's "Secularism, Herme-

neutics, and Empire: The Politics of Islamic Reformation" is an important work for the way it meticulously exposes how the state has been involved with "reformulating" its relationship to Islam and Muslims through programs like the White House National Security Council's Muslim World Outreach. In addition, think tanks such as the RAND Corporation which make policy recommendations on Islam and Muslims, are hugely problematic for the way they identify "traditionalist Islam" as the longer term problem for Western democracies, as the traditionalists take the Qur'an as the word of God and the *Sunnah* (way of life) of the Prophet as a legitimate source for the conduct and embodiment of everyday life. If the 2003 report is correct, then the majority of Muslims are going to be problematic. A follow-up RAND report in 2007 recommended working with Muslims who support democracy, recognize international human rights (including gender equality and freedom of worship), respect diversity, accept non-sectarian sources of laws, and oppose terrorism and illegitimate forms of violence. These reports are aimed to advise the U.S State Department to build moderate Muslim networks, meaning working with five categories of Muslims: liberal and secular Muslim academics and intellectuals, young moderate religious scholars, community activists, women's groups engaged in gender equity and campaigns, and moderate journalists and writers.

These efforts not only remind us of state involvement with religion, but also the reformulating of Islam and Muslims according to secular notions of how Christianity ought to be lived. The idea that Muslims should adopt a symbolic relationship to Islam and its foundations is the very "formatting" of religion that this Religious Norms project has tried to address.

My aim in this project has been to reveal the sociopolitical and historical circumstances in which we find Muslims and Islam, to look at secular norms rather than theological or religious explanations that attach all things Muslims do to their faith, and, at the same time, to recognize how religious commitment is articulated and practiced amongst Muslims. My work with Muslim artists has been an attempt to think about Muslims in new ways that neither restrict them to theological belief nor locate them only at mosques. It has been an effort to rethink and re-map the locations where we normatively find Muslims, and to question and make more complex secular/religious divides. Through artists, we are also reminded that affect, embodiment, and lived experience can easily remain untranslated if we focus only on legal frames at the level of the state. The Religious Norms in the Public Sphere project has played an important role in bringing together disciplinary and interdisciplinary approaches to understanding religious and state actors in all their complexity and relationships.

IV. CONCLUSIONS

OLIVIER ROY

To understand the issue of religious signs in the public sphere, one should first disaggregate different conceptions of the public sphere. Moreover, "rights" is not a uniform category, and rights might compete with each other (defamation and freedom of expression, right to educate children and children's rights, collective and individual rights, and balance between majority and minority "rights," such as in the display of Christmas trees or crucifixes in a "Christian" country, loudspeakers calling for prayers in a Muslim country, etc.). The paradox is that the courts support either total neutrality of the state, which means ignoring the very idea of a shared dominant culture in favor of a pure collection of individual rights, or on the contrary abide by the concept of a dominant culture (*Leitkultur* for some German courts who banned the scarf for Muslim teachers, but not the cornet wimple for teaching nuns). But in the meantime, the courts, at least in Europe, acknowledge that most of the Christian religious symbols are not religious thus endorsing the de facto secularization of Europe—a fact that does not necessarily please the Catholic Church. The consequence is a growing discrepancy in the approach of religions: some are perceived as first of all "confessional" (stressing faith) while other are seen as first of all "cultural." The courts thus give some credence to the concept of "identity" that is nowadays the motto of European populist movements that are not "religious" but stress the Christian identity of Europe (all the Northern European populist movement endorse gay-marriage, sexual freedom, and abortion). In a time of a growing populist surge in almost all the Western countries, the issue of identity, or more precisely national identity, is becoming a strong electoral argument.

In fact, when the European Court of Human Rights supported the display of the crucifix in Italy and the ban on the headscarf in Turkish universities it acted first by taking implicitly into consideration the political consequences of any decision: to make a different choice would have entailed a deep political crisis, and, as far as Italy is concerned, a stiffening of anti-European feelings. Most of the decisions of the ECHR allowed national governments a wide room for maneuver through the vague concept of "margin of appreciation" while many local courts' decisions (Baden-Wurttemberg on *Leitkultur*) gave legitimacy to the concept of a dominant culture, which nevertheless cannot be defined as a right.

There cannot be an abstract use of the law. Court decisions have to take into account the density of each society constituted by its history, political culture, public opinion, and a set of narratives that are not necessarily "true" but shape perceptions (for example, the narrative of "laïcité" in France, as a system of values and a sort of national ideology, has nothing to do with the law and the Constitution: the law of 1905 that separated church and state was a compromise and never rejected religion in the private sphere). And, as far as the Muslim societies are concerned, the prerequisite stating that there is "no democracy without a previous secularism" proved also to be wrong. The issue is not to fix new boundaries between religion and the public sphere, but to re-contextualize the debate in the framework of different societies, with their own histories, compromises, evolutions, and narratives.

The universality of human rights is not an empty term: there is a universalization of human rights, but it can work only if it is conceived first as a political process and not as a mechanic expression of abstract legal principles.

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