

Secularism: Conceptual Genealogy or Political Dilemma?

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If we step back and consider the words around which critiques and debates have crystallized in recent years, some have been relatively clear, while others have been constantly in need of disambiguation. Even during the most drawn-out of debates over “nationalism” or “revolution,” and despite the arguments over definitions and typologies, we had the sense that we were all talking about the same thing—that is why the debates could move along, adding new perspectives, disputing whether this or that author had placed enough stress on class position, or industrialization, or ideas.¹

Such is not the case with “secularism.” To begin with, there are a number of words to choose from: you can write about “secularism,” “the secular,” “secularity,” or “secularization,” or about several at once. You can stick to a French word or a Turkish one, refusing translation. (Indeed, I have done that.) Although one might think that having a number of distinct terms would help us disambiguate their meanings, such does not seem to have been the happy result. Years after a considerable literature began to accumulate on the topic, one has only to glance at a sample of recent books and articles to see that their authors feel the need to begin by defining and distinguishing.

I think that we do this because we often are discussing not different aspects of the same object—how beliefs, practices, and political arrangements change with respect to one another—but rather quite different *types* of objects. Failing to understand this, we talk past one another, or slip from studying one object to discussing another.

More precisely, I think that we have built up quite impressive bodies of work about two different things: about, on the one hand, a set of historical processes that characterize the modern age (at least for some of the world) and, on the

¹ This essay appears in a special 2010 issue of *Comparative Studies in Society and History* (52, 3), and implicitly or explicitly reviews issues raised in the other essays, as was my charge. But so that it remains an essay that can be read on its own, rather than serving as a written form of a discussion or review, I limit my references to the footnotes.

other, a dilemma of governance that emerges at quite distinct times and places. These two distinct objects of study have different properties and epistemologies: historical genealogies for the one; political and legal analyses for the other. One kind of study cannot reveal the other object: the genealogy of an idea will not show how a regime works, nor will studying legal practice in India resolve debates over early modern Europe.

The first object of study, then, is a long-term process, “secular” in the older sense of the term. Usually this usage concerns secularism as a general historical condition. It is a product of modern sovereignty, or of the Enlightenment, or of the division of labor. (The word “secularization” usually refers to the third source.) Those studying this object trace intellectual, political, or social developments in Western Europe from the early modern period onward. They formulate quite distinct theories depending on the kind of historical trajectory to which they accord priority. Focusing on the rise of state sovereignty leads to an emphasis on power; it can, but need not, also engender a notion of the secular as a self-contained object, evolving as it goes, with its own logic and reasoning. Focusing on the rise of Enlightenment rationality leads to an emphasis on belief and also on a modern consciousness of pluralism. Focusing on the development of the division of labor leads to an emphasis on the trajectories of religious and political institutions.² Any of these approaches can stretch to encompass much of the rest of the world, but only by tracing a genealogy from the West to the Rest, through processes of colonial or neo-colonial domination, or alternatively processes of movement and borrowing. These processes are shown to carry the original European structures and ideas to Asia, Africa, and the Americas. What allows these different theorists to engage in debate is that they are all discussing processes arising out of early modern and modern European history regarding the place of religion in society.

The second object of study is a political problem rather than a historical process. It concerns how states manage to encompass or govern religions while not denying their truth claims or social rights. Now, one surely can study particular structures and strategies while also looking at broader processes, insofar as both converge on, say, how France governs Islam or how India regulates marriage. But in the one case we see France or India as instantiations of an historical force or condition, “the secular,” whereas in the other we treat them as outcomes of particular regimes and dilemmas. Nor do we always find these regimes and dilemmas within the sweep of the post-Enlightenment process; they are to be found whenever rulers seek to create a space of governance above that wielded by religious authorities, albeit often drawing on those

² In current work, Talal Asad (2003) has been the touchstone for those approaching this object through questions of sovereignty; Charles Taylor (2007) and, before him, Wilfred Cantwell Smith (1978) for the emphasis on the Enlightenment; and Jose Casanova (1994) for a recent reformulation of the third, Durkheimian, view. See also Masuzawa 2005.

authorities' legitimacy. This space-creating occurs in early Islamic and Buddhist societies as well as in later ones, and in indigenous orders in Madagascar as well as in Germany. Analytically, of course, questions of governance concern more than religion, and when we speak of "secularism" we are pointing to the particular problem that arises when religious authorities counter the state's claims with their own, arguing that it is they who rightly encompass or transcend the authority of the state and not vice-versa.

The two objects give rise to distinct kind of grammars. Secularism as a single historical process can lead writers to make "the secular" a grammatical subject as well an historical one, in more or less consciously Hegelian fashion. Secularism as a problem of governance, by contrast, leads writers to form sentences with authority figures as grammatical subjects. Judges, kings, ministers, and mullahs take center stage here, as actors vying for positions of encompassment.

Now, distinguishing these two objects, and thus the research questions and answers that go with each, does not mean that they cannot, or should not, be linked. One may be able to see diverse forms of state encompassment of religions in, say, France, the United States, and Indonesia as emanating from a single set of ideas first developed in early modern Europe. Indeed it is quite likely that such links were created in the forms of the ideas and regimes of imperial and colonial rule. Alternatively, one can study ethnographically the social dimensions of the awareness of pluralism that some see as the key feature of the secular age: conflicts over public space, a decreasing willingness to simply ignore what others are doing, and so forth.³

But so saying does not mean that we can best understand how states govern religious authorities in particular countries by referring to the broad linkages. Indeed, I will argue here the opposite position, that those of us interested in studying how such governance works (from history, politics, anthropology, and other disciplines) can best do so if we start with the regimes specific to each case, and examine how they carry out projects of encompassment. Perhaps we then discover shared features, but we do not start by positing them. In short, legitimate and important as both objects are, it is the second that bears the most fruit for students of history and society.

GOVERNANCE

We can illuminate this distinction by examining two issues: how states seek to govern religious organizations, and how they regulate marriage and divorce. I start with France, where one would be in good company if one saw the relevant story as that of a gradual ascendance of "the secular," or, in French, *laïcité*. Such is the progressivist story that many French philosophers and political scientists tell. Historians, however, are more likely to emphasize state efforts

³ As an example, see Dalsheim's study of conflicts among secular and Orthodox Jews in Israel (2010).

to wrest power from the Church. They often begin with Phillippe le Bel (1268–1314), who by asserting sovereignty over the temporal affairs of the Church fashioned the French or “Gallican” Church controlled from the Palace.⁴ Despite the sharp changes that occurred thereafter—the Edict of Nantes (1598) allowing the practice of Protestantism, the Revolution of 1789, Napoleon’s reign, and the succession of Empires and Republics thereafter—this framework for state regulation of the Church has continued to underpin state regulation of religion. The state retains an explicit superiority over the church—or churches—in all temporal matters, and may offer support to these institutions as a way of regulating them. Religious toleration then becomes a matter of extending state recognition to additional organized religions or *cultes*. It is this particular approach to governing religion that differentiates French forms of religious toleration from others in Western Europe—from English religious toleration, for example, which grew out of a generalized recognition of freedom of conscience, applied to dissenting Protestants.

The Gallican schema survived the Revolution to shape Republican policies. Although we rightly point to the Declaration of Rights of Man as guaranteeing rights to hold religious beliefs (as a limiting case of this freedom), we often ignore the control over religious practices that immediately followed. The 1790 Civil Constitution of the Clergy required priests to take a new oath to the Constitution, and Napoleon’s Concordat stipulated that the state would recognize and finance four religious organizations (Catholic, Reformed, Lutheran, and Jewish), employ their ministers, and own their buildings. The most famous statement from this period about religions regards the emancipation of the Jews—that they would be given full rights as citizens but none as a community. But at the same time that they ceased to exist legally as a religious community, their religious practices and institutions were aggregated into a legal corporation, the Consistory. By the 1980s, the state had set out to create an Islamic equivalent to the corporate bodies representing Jewish, Protestant, and Catholic interests to the state, finally succeeding in 2003 with the creation of the CFCM, the French Islamic Council. But the state also tried (and failed) to compel Muslims to sign a late-twentieth-century equivalent to the 1790 oath of the clergy, the Muslim Charter that was to sum up Muslims’ expressions of fealty.

The Gallican approach to governing religion fits well with Republican political philosophy more generally, in that Republicanism suspects intermediate organized bodies of intervening between citizens and the state, the guardian of shared values and the General Will.⁵ But a subordinated line of thought

⁴ See Bowen (2007) for a longer version of this argument and the references contained therein.

⁵ One might find Talal Asad’s treatment of secularism as the state’s transcendence of all that divides citizens, including class, gender, and religion (2003: 8), to be closer to the French idea of Republicanism than to either the French notion of *laïcité* (the usual candidate for “French

championed the right to form associations. (Rousseau, intriguingly, championed both free association among citizens and the role of the state in upholding the public interest.) By 1901, the state was prepared to recognize the right of citizens to form associations as a general legal right.⁶

Much of what has happened since then has been a struggle between proponents of free religious association and those of strict state control, in which the law of 1905, which is usually celebrated as separating religions and state, was but one moment. Let me delve into that struggle briefly to underscore the contingent nature of the outcomes. First, during the period 1901–1905 the state swung from a violently anticlerical position to an association-oriented compromise. The 1901 law permitting citizens to form voluntary associations *also* aimed to weaken Catholic institutions by requiring that religious orders obtain authorization from parliament. By autumn 1903 that state had closed ten thousand Catholic schools and in 1904 it forbade people who belonged to religious orders from teaching.

The famed law of 1905 represented a swing in the direction of the other available normative model, the liberal idea of free association. The law allowed citizens to form private religious associations that would take over the buildings and properties previously owned by the state. But the law was never applied to Catholics, because the Vatican refused its consent, and two years later the state and municipalities took back responsibility for church buildings but gave free use of the buildings to priests and the faithful. By the 1950s the state also had settled on a formula to support religious schools as well, on condition that they teach the national curriculum. The state in this way emerged as the protector of churches and religious schools, in return for their subjection to state governance: the victory of the corporatist Gallican schema of encompassment, but the survival and indeed rise of an associationist scheme of religious social life.⁷

Thus a law usually hailed as embodying French secularity (that of 1905) not only does not contain that term, but also never was applied to the only religion that mattered at the time, and neither of these inconvenient truths is part of the liturgy of *laïcité* set out in scholarly and popular publications. The systematic misrecognition of the laws by most in France makes possible the continued working of a complex system of state governance of religious institutions, one in which the state can conveniently invoke “secularity” when doing so suits its aims—such as banning various forms of Islamic dress—but continue its corporatist policies the rest of the time.

secularism”) or alternative ideas of state-religion relations, such as those that govern practices and policies in the United States.

⁶ Rosanvallon 2004.

⁷ Baubérot 2000.

The contradictions took on a somewhat different coloration in the colonies, where France exercised direct control of Islamic authorities and institutions. Algeria was the hardest case, it being administratively part of France rather than a colony or protectorate. The law of 1905 forbade the state from paying clerics' salaries and, as we saw, provided for the faithful to form religious associations to take over control of the buildings and services. Although not applied to Catholics, it was accepted by Protestants and Jews, and there was no reason not to apply it to Muslims in Algeria, except that doing so would have contradicted the state's governance practices there. Algerian administrators held authority over imams in Algeria, and wished to retain that authority.

The solution in theory was to encourage the creation of religious associations under colonial rule (in effect, tracking metropolitan developments). But the associations' open membership rules and the cleavages among religious scholars set up a different logic than that intended by the French rulers. The membership of the Algiers association expanded to include thousands of adherents. Factional fighting so grew in intensity that when the colonial government finally closed the Algiers association, Islamic religious scholars of all persuasions approved the act. Far from wishing open public deliberation, religious officials wanted the colonial state to turn over affairs to them.⁸

One sees corresponding adaptations by Islamic leaders to French corporatism today, in the eagerness of Muslim notables chosen to be the leaders of the CFCM, the French Islamic Council. The Council is supposed not only to be the privileged interlocutor with the French state on Muslim matters, but also to play a role in passing foreign funds through a French charitable arm and establishing a means to pay for the certification and distribution of halal foods. The leaders were chosen for their position as heads of different Islamic associations and not for any expertise in Islamic law or theology. Indeed, the argument for creating the CFCM in the first place was that it was not an assembly of clerics, but rather representatives of Muslims who could advise on practical matters of concern to Muslims. But the Council nonetheless now provides the state with useful theological backing, as when they declared the full covering known as *niqab* or (less correctly) *burqa* not to be required in Islam, thereby allowing the state to say that a proposed burqa ban would not restrict religious freedom.⁹ But these positions further alienate the Council notables from other Muslim leaders, as is often the case for those who serve as the connectors between state and religion, sitting under the aegis of the former but supposed to speak for the latter.

Already in the French case we find two features of some generality. The first is the effort by the state to regulate religions in the name of supporting them, and inevitably having to define them. The French State Council has to draw

⁸ McDougall 2010; see also Benton 1999, and Lewis 2008.

⁹ *Le Monde*, 16 Oct. 2009.

up a list of those religions that may receive fiscal and other privileges. It is this combination of regulation and support—"governance" in a word—that gives rise to competing and often contradictory characterizations of states, whether France, Egypt, or the United States, as "secular" or "religious." In all these cases states govern, and do so in ways that take account of the pressures and claims made in the name of religion.¹⁰

The second feature is the active competition among religious elites, often exacerbated by government sponsorship of certain religious groups. New spaces for religious practices and movements open up, often as an unintended consequence of state actions, of governance rather than secularism. Religious movements then can claim to incarnate a truer religious vision than that supported by the state, whether those movements be those supporting Hindu nationalism in India, the Indonesian Defenders of Islam Front, or the Christian right in the United States. The state is then forced to develop further strategies of encompassment, even when they appear to side with positions taken by religious movements, and finish by bringing them into a controllable state-governed space.

Egypt provides a striking test for these characterizations of secular governance because its Constitution proclaims that its laws come mainly from Islam.¹¹ This sort of declaration may be dealt with handily if it in fact allows the state to control the definition and the implementation of Islamic law, but in the 1990s things appeared to have escaped the state's control. A group of citizens brought suit to declare the scholar Nasr Abu Zayd to be an apostate. The court agreed with the group's claims and dissolved his marriage, as a non-Muslim man should not remain married to a Muslim woman. The suit was justified under an Islamic legal concept called *hisba* that requires Muslims to "command the good and forbid the evil" when these tasks have become neglected. The Court indeed underscored the duty of Muslims to undertake such actions in order to protect the public interest. The Egyptian legislature responded to this challenge to its authority by passing laws that restricted the use of *hisba* to state officials, arrogating to the state the right to define what was and was not proper Islamic practice, "the good" and "the evil."

States are inevitably brought to the task of defining what is and is not religion. For France, the legally relevant object is a *culte*, an organized body of doctrines with buildings, ministers, and clear times for worship. It is not a set of individual beliefs and practices, nor is it other practices in which religious

¹⁰ As Agrama (2010) says of judiciaries in Egypt, the tensions between labels of "secular" and "religious," and the tensions found in battles over specific decisions, "are not peculiar to Egypt; they are also characteristic of many states considered to be paradigms of modern secularity, such as France, Germany, and Britain." For an analysis of the same issue in the United States, see Sullivan 2005.

¹¹ On the High Court's invocation of Islam and application of civil law, see Dupret (2000); on the *hisba* case described below, see Berger 2005, and Agrama 2010.

leaders might engage. Publishing books, distributing religious tracts, and wearing special clothing in the street are not matters of *le culte*, and are covered by different laws and rulings.

Such definitions provide states with ways of shoring up support from religious authorities by appropriating those authorities' distinctions between religion and non-religion. In Turkey the state's governance strategy (also in the name of "secularity," borrowing the French term) includes strictly regulating Sunni Islam along lines that favor Sunni leaders. A major challenge to those leaders comes from Alevi Muslims, who see their differences in ritual practice as distinguishing them from Sunni Muslims.

The foci of concern are the events of religious worship called *cem*, which include forms of singing and dancing not found in mosques. Are these events part of religious worship? Alevis say that they are; state-backed Sunni leaders say that they are part of Turkish "culture" and "folklore" and not religious at all. But as culture they reaffirm the collective identity of the Turkish nation and thus can be encouraged. Youth groups have benefited from this opening by staging performances of certain dance rituals outside the *cem*, in settings that suggest the rituals indeed are cultural. When they attain a degree of public visibility as cultural performances, these events thereby reinforce the Sunni-state categorization as "folklore" that Alevi religious groups are trying to oppose.

Well aware of this effect of "culturalizing" rituals once considered religious, officials overseeing *cem* worship events refuse permission to these youth groups when they seek to perform at the *cem* itself. They hope that by clearly drawing a line between events now classified as "cultural" they will strengthen or at least not weaken their case that the rest of the *cem* events are indeed properly religious.¹²

What bearing do these cases have on the general argument with which I began this paper? Recall the analysis of France. Far from the expression of a principle of "the secular," the regimes of French governance of religion emerged as the result of a sequence of political acts and struggles in which politicians invoked competing schemas and arrived at compromises. Put in terms of epistemology, if all we knew were the supposedly general properties and features of "the secular," we would be able to understand very little about how the French governance regime came to be what it is today. Nor, *mutatis mutandis*, would we be any closer to understanding any other country's particular set of historical processes and modes of governance, including in the United States, where the configurations of Catholic immigrants and Protestant traditions of schooling, for example, produced a specific set of tensions focused on Bible reading and individual prayer that do not play as prominent a role elsewhere.

¹² See Tambar 2010, and Navaro-Yashin 2002.

Nor do the explicit categories for debate in these countries provide a useful analytical framework. Recent debates in France have centered on competing understandings of “secularity” (*laïcité*), but this term gives us little purchase on the reasons why the regime of governance has the features it does—not any more than do such terms as “wall of separation” in the United States or “toleration” elsewhere. When scholars do try to analyze the issues in terms of the very terms of debate, they usually do so as part of their efforts to advance particular policy positions: for or against school prayer, headscarves, or faith-based charities. Precisely because the historical trajectories producing current regimes also produced their ideologies, prominent ways of speaking about state and religion cannot serve as bases for analyzing state and religion. A sort of discursive Gödel theorem seems to apply to these problems.¹³

MARRIAGE

These examples remained at a level of the general regime through which states have sought to encompass religious organization. The second example concerns a specific policy issue, where the issues of encompassment become most difficult and often contradictory. States see an interest in regulating marriage and divorce, and so they seek to define proper forms of marriage and divorce. But at the same time marriage and divorce touch very directly on people’s private affairs.¹⁴ Marriage and divorce, then, always partake of public and private worlds—but they do so in very different ways in different legal regimes.

Colonial rulers found themselves caught in this tension of public interest and private sensibilities. When they wished to create modern systems of law and administration, or *a fortiori* when they tried to define codes of “civilized” conduct, they had to define institutions of marriage. But to the extent their major concerns lay in extracting wealth and suppressing dissent, they were more interested in creating new criminal and commercial codes than they were in risking popular wrath by touching too deeply on domestic affairs. Thus the constant tinkering with efforts to recognize native systems and yet “reform” or “rationalize” them so as to render them suitable for judicial administration. Post-colonial states have continued this process.

But each colonial power also had its very own contradictions. In colonial India, British rulers faced problems of defining religious communities for purposes of assigning and enforcing marriage laws, themselves to be derived from colonial understandings of each community’s traditions.¹⁵ By declaring

¹³ I therefore do not entirely follow Gregory Starrett’s argument (2010) that the terms of analysis are themselves *inevitably* “essentially contested,” though I do find perceptive and convincing his analysis of those terms that he proposes to be essentially contested.

¹⁴ A point made by Agrama 2010.

¹⁵ Here I follow the historical analysis in Chatterjee (2010). See also Galanter 1997, and Jalal 2001.

themselves neutral with respect to these many religious traditions, they were also compelled to recognize the rights and privileges of each. But in the nineteenth century Britain regulated marriage “at home” in a not entirely different fashion, giving Anglicans, Quakers, and Jews the right to regulate marriage in their own communities. Civil marriage became possible in 1837, but it did so against this pre-existing background of religious marriages for these confessions. Religious marriage rights were in a sense extended to others; British laws recognized the rights of different religious institutions at home to perform marriages, in some cases with the presence of a registrar (as is the case today), and marriage only with the registrar also was permitted. The extension was about toleration, particularly of Nonconformists, not about secularism.

The British therefore found it conceivable to do something similar in India. The 1872 Special Marriage Act provided for civil marriages in India and was passed at the behest of the Brahma Samaj, a community whose marriages were not considered legitimate by other Hindus. But rather than the law being a recognition of the individual, contractual nature of marriage, it grew out of the continued British desire to create personal status laws for each religious community, much as in Britain itself. Because in India a particular structure of religious communities, each with its own personal laws, already had been set in place, any broader idea of civil marriage had to be restricted to those not already covered by personal status laws, including Christians and others not members of recognized Muslim or Hindu communities. But such was exceedingly difficult in a case like that of the Brahma Samaj, whose members disagreed over whether they did indeed wish to be considered not Hindu. British efforts were therefore impossible to realize in a logically consistent way, as long as policies were to recognize community-based personal laws and also the rights of individuals to decide to which community they belonged. Thus the turn toward civil marriage.

There was an additional wrinkle that continues to reverberate across the subcontinent. Indian personal status laws were conceived not as merely positive law, the legal force of which would arise from their enactment. In theory they derived their authority and legitimacy from the “ancient traditions” they were supposed to translate into a useable form. The laws were “digests” of material available elsewhere, not “codes” with the *ex nihilo* force of statutes. This fiction of law as a window into religious norms continues to permit judges to directly inspect the traditions to see what they say and how they might be reinterpreted. The Shah Bano case, where a Hindu judge looked into the Qur’an to critique the existing Islamic code, is only the most famous instance.¹⁶

¹⁶ Engineer 1987.

The duality of the personal status laws, as having legal form but a scriptural source, has allowed and encouraged religious scholars to create their own alternative tribunals in today's India and Pakistan. These tribunals now have been created in England, bringing colonial ideas of personal status back home to their legal source. England continues to regulate religious collective identities. Churches and synagogues are allowed to limit attendance at state-aided schools to those who are members in good standing of the church. Civil judges can refuse to complete a divorce process if the religious divorce entered into by the couple has not run its course. Most recently, the new Supreme Court ruled that Orthodox Jewish methods of determining Jewish identity amounted to ethnic discrimination (because identity comes from a Jewish mother rather than one's own practice).¹⁷

Although one might say that in Western Europe marriage is "private" in the sense that private matters are involved in married life, marriage may or may not also be considered as a highly public institution, depending on the legal tradition concerned. Marriage is contractual in England but not only contractual, in that the state has an interest in equity and most particularly in the rights of legal minors. In France, marriage is a "public thing" (*chose publique*), not contractual at all. Islamic contractual notions of marriage and divorce thus have an easier fit with English notions but none at all with French ones (although someday far in the future French jurists might begin to see them as fitting French notions of cohabitation outside the sphere of legal marriage and divorce).

If the British proceeded to categorize colonized people on the basis of religion, and were unable to distinguish between "natives" and "British" within the category of Christians, the French, for whom overt religious or racial classifications would have offended Republican sensibilities, proceeded to categorize their ruled peoples on the basis of legal regime, and were unable to distinguish between "Arabs" and "Europeans." For them, subjects were either ruled by French law or, in Muslim-populated territories, by Islamic law.

Neither British nor French rulers were intellectually handicapped; they were handicapped rather by their respective schemas of "vision and division."¹⁸ French universalistic ideology did not allow for explicit and overt racial categories, although of course semi-official discourse was highly racialized. The legal categories offered an acceptable cover.¹⁹ British governance categories in India were consistent with British governance categories at home in that they classified by confession (although in fact British "religious" categories really come down to civil status because the relevant domain is that of administration, not theology). These ideological matrices constrain the explicit

¹⁷ See Bowen 2009.

¹⁸ Bourdieu 1996.

¹⁹ Shepard 2006.

categories of governance, so that the British were forced to create additional religion-based personal status laws as new cases arose, while the French were forced to invent new administrative categories to permit the recognition, surveillance, and in some cases murder, of Muslim citizens, once such citizenship was granted to Algerian Muslims.

The British-French contrast shows us the importance of specific analyses of religious governance. France's conception of marriage and divorce as public things means that public order considerations apply to the regulation of the regime (as in many other regimes deriving from the civil law tradition). Private arrangements for marital affairs, which in Britain follow from common law and from the history of governance of religious communities, are inconceivable in France. The struggle with the Church adds emotional force and additional statutory measures to this opposition to private arrangements. Only city hall may perform civil marriages, and penal laws prohibit a religious marriage being performed prior to a civil one. This law, designed to prevent Catholics from proceeding as if the church marriage was all they needed, has been used recently to indict Islamic officials who had celebrated Islamic marriages among people not married civilly, a commonplace practice in Britain.²⁰ France and Britain thus have two quite distinct approaches to civil marriage: one carves out a separate secular space; the other treats marriage as religious in nature but also allows for civil marriage.

In this respect Britain appears closer to a country such as Indonesia, where marriage is defined as performed in accordance with religious laws, but where civil marriage has existed. (It currently exists as a possibility but not a practice.) As in many other countries with Islamic legal arrangements, such as Egypt, marriage, divorce, and inheritance among Muslims is regulated according to Islam, but Islam as rendered in the form of statutes or law codes. In the Indonesian case, the relevant text is the Compilation of Islamic Law in Indonesia, promulgated in 1991 by then President Suharto. The Compilation consists of a set of law-like rules concerning Islamic family law. In effect, it rendered as positive law one among several possible interpretations of sharia.

The Compilation raised the key question of governance of religion: was an action effective in Islamic terms if it corresponded to current socially accepted Islamic norms, or only if it was carried out in accord with the Compilation? Put another way, were the new rules contained in the Compilation "positive" in the technical legal sense, in that they created laws that did not previously exist, or did they merely render explicit and in law-like form what already was

²⁰ Thus the public order concerns, elucidated well by Agrama (2010), derive not from "the secular" but rather from the specific ways that at least some civil law tradition legal regimes have conjugated public order with control of marriage.

the consensus among judges and other authorities? Take the example of divorce initiated by the husband, *talaq*. According to older understandings and practices, the husband pronounces the *talaq* and it is immediately effective. The laws require that the husband show grounds for divorce and stipulates that the divorce occurs if and only if the judge permits the husband to pronounce the *talaq*. But an ambiguity remained: if a man divorced his wife out of court, was he divorced (albeit in violation of the law), or still married? Although courts ruled each way, the Supreme Court maintains that marriages and divorces only occur if the persons involved follow the requirements of the law. Through its decisions, the court has effectively shifted the domain of marriage and divorce entirely into the sphere of state law.²¹ This shift has broad consequences. The Supreme Court says that the courts have the sole right to interpret the laws regarding actions defined as Islamic, and that they have the sole power to effect several of those actions, including marrying, divorcing, and deciding on divisions of property at divorce.

Here, as in the Egyptian *hisba* case and in other mainly-Muslim countries, the state governs Islam by reproducing in modern legal form what appears to be the content of older traditions of Islamic jurisprudence. But much is altered in the process. Courts become agents of legal acts that once were prerogatives of ordinary people. One version of an otherwise pluralistic jurisprudential tradition becomes the sole enforceable one, and indeed the sole legitimate one. State religious authorities or tribunals incorporate the opinions of religious scholars, rather than appealing to them as external guarantors of religious knowledge.

CONCLUSIONS

Much of the above merely summarizes recent and revelatory analyses of how state actors try, with more or less success, to domesticate religious authority. But I refer to these cases to make a methodological point: that the studies succeed by delving deep into the mechanisms and processes of governance. These processes entail their own ideologies, which become part of the mechanisms of legitimation—as Islam, as *laïcité*—and thus are inappropriate analytical tools. They are informed by traditions and habits both particular to the case at hand and in complex relationships to other traditions, elsewhere. Little is added to their analysis by seeing them as outcomes of a single historical actor, “the secular.” Indeed, it is only by leaving behind this grammatical irregularity that even those who subscribe to the world-historical thesis in question have produced singularly revelatory studies of governance in societies across the world.

²¹ Cammack, Donovan, and Heaton 2007.

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