



## CHAPTER 6

# HOW ISLAM QUESTIONS THE UNIVERSALISM OF WESTERN SECULARISM

In March 2000, an atheist association claimed the right to broadcast a message on the nonexistence of God, for several minutes each week in reaction to the call to prayer granted to the grand mosque of Oslo by the municipality.<sup>1</sup> This is one of many examples of the rejection of Islamic signs perceived as a violation of secular principles in Europe that, unlike in the United States, predates 9/11. Since then, more acute crises have occurred across European countries, including the September 2005 Danish cartoon incident; the November 2009 minaret ban in Switzerland; and the 2010 to 2011 wave of niqab bans in France, Belgium, and Spain.

All of these controversies reveal the increasing disjunction between secularism and secularity. I define secularism as the multiple ideological and cultural narratives that Western countries have built to justify separation of religion and politics. Secularity by contrast refers to two major principles—political neutrality of the state vis-à-vis all religions and equality of all religion in public spaces.<sup>2</sup> They can be implemented in multiple legal ways according to the specific political culture and history of each country as the differences among European countries and the United States attest. Ultimately, these specific cultures frame social expectations about the status of religion in public space. Two common denominators of these expectations are separation of religion and politics and the disjunction between private and public behaviors. The requirement of state neutrality vis-à-vis religion is implemented across Europe and in the United States through different forms of differentiation of religion and politics. The private/public separation refers to the split between personal and social behaviors that is expected from citizens acting in public spaces.

Islam presents a challenge to both of those requirements. First, European states have launched initiatives to create representative bodies of Islam that incidentally lead not only to a reshaping of the religion but also to its politicization. Second, Islamic practices from dress code to minaret are seen as a major challenge to the private/public dichotomy.

## In Search of the Good Muslims: How European States Are Reshaping Islam

The principle of political neutrality, does not equate to separation of church and state. If this were the case, France would be the only secular country in Europe. Rather, it refers to differentiation *and* cooperation between church and state.

The differentiation takes three main forms across Europe and the United States. The first form includes the existence of a state religion as well as the extension of rights to other religious groups, as is the case in the United Kingdom and the Scandinavian countries. The second form entails formal agreements of cooperation between state and religious institutions, as is the case in Belgium, Germany, Spain, Italy, and the Netherlands. The third form is the separation between state and religious institutions, as is the case in France and the United States.

Cooperation between state and religious institutions is also implemented in different ways: either the state provides for the teaching of religion in public schools, grants religious organizations free access to public-owned media, or gives direct/indirect funding to religious institutions.<sup>3</sup> Usually, religious organizations must comply with specific state requirements in order to receive this conditional support. For example, religious groups must organize local and national representative bodies to serve as counterparts to state institutions. In countries where a denominational teaching of religion is offered in public schools, as is the case in Germany and Spain, the religious community is required to design a central religious authority that serves as an interlocutor with the state. This authority gives credentials to teachers of religion in public schools, cooperates with state agencies to train the teachers, and approves curricula. For groups with strong religious infrastructure, like the Catholic Church, such requirements are easy to fulfill. But for others, like the Muslims, such institutions have often been built from scratch. The situation is very different in the case of American secularism, which does not necessitate the same level of cooperation between the state and religious organizations. That is why, there is no need for a grand mufti or centralized religious institution to serve as interlocutors with state or national government.

Due to these particular circumstances, facilitating the cooperation between the state and Muslim groups has been a common concern of European governments and has led to the creation of Muslim representative bodies in Belgium, Spain, and France. For state agents, these bodies are aimed at reducing the gap between the political and legal status enjoyed by other religious groups and Muslims. They also are seen as a way to assuage feelings of discrimination that could potentially fuel Islamic radicalism and, ultimately, ensure that the leadership of Muslim organizations falls into the hands of “moderates.”<sup>4</sup>

As noted by many scholars from Fetzer and Sope to Laurence,<sup>5</sup> these representative bodies are the outcome of successive state actions to create

umbrella organizations by gathering the most “representative” Islamic organizations and facilitating elections from the Muslim population to create institutions (assembly and executive committee). Even in the United Kingdom, in the 1990s, the Muslim Council of Britain gained status as a representative body, at least until the 7/7 attacks. After that, at the different levels of the British government, the strategy has been to move away from “(...) the demand for a vertically integrated Muslim body that speaks for all Muslims” toward a diversification of representatives.<sup>6</sup> (See appendix 8 for a list of these councils across Europe.)

Interestingly, this institutional integration of Islam within the dominant framework of European secularisms shows the willingness—even the eagerness in some cases—of major Muslim organizations to cooperate with the state. However, such cooperation is rarely presented in the public discourse as a positive sign of Muslim integration, and the dominant rhetoric continues to describe Islam in opposition to secularism.

At a deeper and even less explored level, the state has become an active agent in reshaping Islam by creating new Islamic institutions and leaders. Those leaders are state-appointed or bureaucratic leaders who often compete or conflict with religious leaders who derive their authority from other sources, primarily scholarly expertise or transnational networks (see chapter 7).

The heads of the new representative bodies are increasingly supplanting the bureaucratic leaders of the countries of origin,<sup>7</sup> revealing a profile of leadership tailored to the specifics of European secular states. First, most of them have secular background with some Islamic knowledge. For example, Mohammed Moussaoui, the current head of the Conseil Français du Culte Musulman (CFCM) (French Council of Muslims Faith), born in East Morocco, became a French citizen in 2008. He obtained his diploma in mathematics and physics in 1984 in Morocco and his doctorate in Mathematics in 1990 from the University of Montpellier. In Morocco, he received training in theology and delivered *khotbas* (Friday sermons) for 20 years. He was elected president of the CFCM in 2008 and still holds this position at the time of this writing.<sup>8</sup>

Şemsettin Uğurlu, president of the Executives of Belgian Muslims, is a Turkish Belgium-born Muslim with training in Islamic studies. Before becoming president he was an imam and professor of Islamic religion in Belgium. Additionally, Isabelle Praile, vice president of the organization, is a Belgian-born convert to Shi’ism with a secular background.

The main role of these bodies is to support state actions toward Islam, especially when they are seen as hostile to some Islamic practices. For example, Dalil Boubakeur, who in 2003 was the head of the CFCM, initially expressed disagreement with the project of a bill to ban religious signs in French public schools. However, after President Jacques Chirac’s speech on December 17, 2003, supporting the bill, Boubakeur changed his position and made an announcement asking Muslims to respect the law if it was passed and urging them not to protest. Other members of the CFCM, however, such as Vice President Fouad Alaoui leader of Union des Organizations

Islamiques de France (UOIF) (Union of Islamic Organizations of France), one of the major Islamic organization in France), criticized the proposed law. In the end, the CFCM's decision not to contest the 2004 headscarf ban has been cited as one reason for its relatively "seamless-execution."<sup>9</sup> Dalil Boubakeur was willing to concede that the ban might be in the best interests of the common good when he stated "we believe Muslims must embrace a modern form of Islam in the name of the Republic."<sup>10</sup>

The CFCM leadership provided the same support to the French state at the time of the debate on the niqab ban in 2010. Mohammad Moussaoui declared that he was "opposed to the full veil and would try to convince the tiny minority of veiled women that it was not a religious obligation and was out of place in France."<sup>11</sup> He also declared, "Nobody accepts it... A veiled woman cannot have a normal social life."<sup>12</sup> At the same time, the leaders of the CFCM warned the government that they would not impose the ban on their mosque goers, be instructed to force the women to unveil or "act as agents of the state" in helping enforce the ban.<sup>13</sup>

In sum, these new bureaucratic leaders act as mediators between state administrations and Muslim populations. This role was particularly visible at the time of the cartoons crisis when the CFCM leaders were able to call for moderation while expressing their disapproval of the caricatures. Initially, Dalil Boubakeur was extremely critical of the newspaper *Le Soir's* publication of the 12 caricatures of the Prophet Muhammad (first made notorious by the Danish daily *Jyllands-Posten*). The CFCM threatened to sue [*Le Soir*] but decided against litigation after the newspaper's owner fired the editor. In his condemnation of the publication, Dalil Boubakeur rejected the idea that Muslim objection to the publication was a sign of radicalism. "We attach enormous importance to this image," he said, "and we will not allow it to be distorted. I myself oppose the extremist forms of Islam; we reject this parallel." As a result, the reactions of French Muslims were more muted than in other European countries, including the United Kingdom.<sup>14</sup>

At a less explicit level, these representative bodies work as political tools to "civilize" Islam by shaping the image of the good Muslim. This "ideal" good Muslim is loyal to state institutions and values, subordinates shari'a to state law, refuses transnational allegiances such as the Muslim Brotherhood or salafi groups, distances himself from ethnic-national allegiances, and supports gender equality and freedom of speech. In brief, he or she is the dream of a Muslim coming true. Consequentially, through state active strategy, "Muslim" becomes a political category palatable to the specificity of the country public culture. Case in point, some individual members of the German Islamic Conference present themselves by referring to categories such as secular, liberal, or conservative to address public or social issues pertaining to Islam.

According to this nomenclature approved by the German Islamic conference, a secular Muslim advocates the limitation of Islamic practices to private space and rejects Islamism. Turgut Yüksel, a sociologist and founder of the Initiative for secular Muslims in Hessen, is emblematic of this secular

good Muslim of Germany. Similarly, Gönül Halat-Mec, a lawyer who specializes in family law with a focus on migrants, promotes the idea that religion should be a personal and private matter and critiques religious doctrines that discriminate against women and conflict with the plural democratic societal order.<sup>15</sup> The “liberal” is different from the secular Muslim, in the sense that he or she expresses attachment to the social visibility of Islam as long as it does not conflict with liberal principles of human rights. Bernd Ridwan Bauknech, a teacher of Islamic studies at a public school, is one of those “liberal Muslims” whose goal is to assist Muslim students and youngsters in their integration without losing their Islamic identity. Sineb el Masrar, chief editor of the women and migrant magazine *Gazelle*, stands for the recognition of Muslims and their contribution to German society. Another example is Bülent Ucar, professor of Islamic religious education, who promotes mutual participation and recognition between Muslims and non-Muslims as fundamental parts of the integration process. He also advocates state support for the education of imams in Germany.<sup>16</sup>

The conservative Muslim category includes traditional religious leaders. Abdelmalik Hibaoui, an imam and preacher, expects the Islam Conference to support the creation of Islamic theology centers at universities. Tuba Isik-Yigit, affiliated with the Center for Theology and Cultural Sciences at the University of Paderborn, also supports the establishment of centers for theology training and provides support to veiled women.<sup>17</sup>

Strikingly, state involvement in the redefinition of the good Muslim persona constitutes an unprecedented breach of the rule of noninterference of political institutions on the internal function of a religious group, which is one of the foundational principles of secular legal tradition. Such intrusions have consequences for the internal organization of Islam in Europe by producing new leaders. At the same time, the influence of these new leaders is undermined by international and transnational religious authorities who have a more decisive appeal on Muslim groups. Interestingly, the consequences of these state initiatives have never really been discussed in public space. In fact, there is very little probability that they will be. More heated discussions have taken center stage in European public discourse about the ability of Muslims to disconnect religious convictions from public behaviors.

### The Private/Public Disjunction and Its Multiple Manifestations

The disjunction between private convictions and public behaviors is the result of what Charles Taylor calls the second mutation of the Western secularization process. The first mutation happened during the Renaissance period when states started to assert their political sovereignty over the church, with the consequence of altering the social status of the latter. It means that the roles of the church were increasingly understood exclusively

in terms of “worldly” goals and values—peace, prosperity, growth, flourishing, and the like.<sup>18</sup>

This shift led to two major changes: first, the concept of good political order and social virtues was disconnected from Christian ethics; second, the world became divided between the immanent and the transcendent. This divide was the invention of Latin Christendom and, incidentally, Christendom’s contribution to the secularization process.<sup>19</sup> The Western understanding of the secular builds on this separation. It affirms, in effect, that the “lower” immanent or secular order is all that there is and that the “higher,” or transcendent, order is not to regulate the lower. A believer in the transcendent is, therefore, expected to keep it to himself and not let belief influence the political or social practices in which he engages. This is the foundational principle of the difference between private convictions and public behaviors.<sup>20</sup>

Most of the controversies surrounding the presence of Muslims in secular societies relate to three major manifestations of this principle: secular justification, primacy of individual rights over collective rights, effacement of the religious self in public space. On all accounts, Muslims are at fault because they are noncompliant to the principle of secular justification, as they privilege collective rights over individual rights and bring the religious self in public space.

### *Islam and the Principle of Secular Justification*

According to the principle of secular justification, only arguments based on secular reasoning are legitimate in political or public debates outcomes are binding decisions or laws.<sup>21</sup> Interestingly, most of the recent crises related to Islam in public space can be interpreted as the critique that Muslims are unable or unwilling to conform to this principle of secular justification.

For example, the Rushdie affair, which is usually seen as a multicultural conflict of minority rights versus individual rights,<sup>22</sup> can also be read as Muslims’ difficulty to comply with the principle of secular justification. In this sense, the condemnation of the Satanic Verses and the push by some Muslims to have the book banned, highlight their incapacity or unwillingness to accept the disjunction between private convictions and public behaviors that characterize the “immanent frame” described by Charles Taylor. Additionally, some Muslims have not built a strong “buffered self”<sup>23</sup> and, therefore, are unable to accept that individual rights and freedom of religion can operate independent of religious convictions.

It is worth pointing out that the liberal definition of secular public space poses a special burden on the shoulders of *all* religious citizens.<sup>24</sup> The main reason is that many believers are not always able to undertake an artificial division between their private convictions and public behavior without destabilizing their existence as pious persons. However, according to our survey discussed in chapter 2, it seems that the vast majority of Muslims are

already living their religion within the immanent framework. The problem is that some, specifically religious leaders, do not systematically communicate or express their opinions within this framework. This was evident when a Moroccan imam condemned homosexuality during a Dutch TV program in 2001 and defined it as a “sin.”<sup>25</sup> His comment ignited public outcry against Muslims, who since then have been described as homophobic and unable to live in a liberal society. In other words, tensions between Islamic claims and secular norms emerge when the convictions of believers or their spokespeople are not seen as compatible with the immanent frame.

If the Rushdie affair instigated public debate about freedom of speech, the cartoon crisis highlighted tensions between freedom of speech and religious freedom—two concepts that do not exactly line up in European public spheres. When the Danish newspaper *Jyllands-Posten* printed on September 30, 2005, 12 editorial cartoons depicting the Prophet Mohammed, many Muslims across Europe found the images distasteful and offensive<sup>26</sup> and demanded respect for the convictions of minority religions.

Some religious leaders argued that the cartoons constituted a blasphemous act. For example, Danish imams Raed Hlayhel, Ahmed Akkari, and Ahmed Abu Laban organized the Committee for the Defense of the Honor of the Prophet, which consisted of 27 other mosque leaders and Muslims groups.<sup>27</sup> At the bequest of Abu Laban, the leader of the Islamic Society in Denmark, Muslim diplomats in Denmark wrote a letter to the Danish prime minister, Rasmussen, in October 2005. They declared that the “Danish press and public representatives should not be allowed to abuse Islam in the name of democracy, freedom of expression, and human rights.”<sup>28</sup> Rasmussen responded later, saying that “freedom of expression is the very foundation of Danish democracy” and that describing the cartoons as blasphemous and consequently liable under the law was a process for the courts, not the Danish government.<sup>29</sup> Raed Hlayhel commented that “this type of democracy is worthless for Muslims. Muslims will never accept this kind of humiliation.”<sup>30</sup>

Interestingly, because blasphemy laws exist in Scandinavian countries, Muslim groups were able to make (unsuccessful) claims against the cartoons. In fact, the appeal by some Muslims to these laws, led in some cases to their abolition.<sup>31</sup> The only exception was Norway, where Parliament amended their Penal Code to criminalize blasphemy, which since February 2006 is punishable by fine or imprisonment.<sup>32</sup>

However, even when Muslim leaders respected the principle of secular justification, their claim was not heard. That is why the cartoon crisis shed light on the hierarchy among group demands in public space: some being more acceptable than others.

### *Some Claims Are More Equal than Others, or the False Universalism of Secularism*

For this reason, the cartoon crisis directly challenges John Rawls’ conception of public space. In his view, people with conflicting but reasonable

metaphysical and/or religious views can agree to regulate the basic structure of society. Rawls' account is an attempt to secure the possibility of a liberal consensus regardless of the "deep" religious or metaphysical values that the parties endorse, so long as people remain open to compromise that is "reasonable." The ideal result is conceived as an overlapping consensus because different and often conflicting accounts of morality and nature are intended to overlap with each other on the question of governance. However, Rawls is clear that such political agreement is narrow and focused on justice. This consensus is reached, in part, by avoiding the deepest arguments in religion and philosophy in favor of sharing core values of human rights, freedom, democracy, and the rule of law. In this sense, Muslims' call for censoring the cartoons from newspapers because they considered printing them an act of blasphemy could be seen as a breach in the overlapping consensus concerning the right of freedom of speech.

The Western legacy of open critique undeniably plays into this controversy, as some Muslims are unable to accept any critique of their faith, instead labeling criticism as an insult as discussed above. Yet, in the name of freedom of speech, some opinions that insult a specific faith, group, or culture can also be considered a breach of the overlapping consensus. This is particularly true regarding legislation throughout Europe that creates legal limits on speeches that might contain offensive language to a specific religious or ethnic group. In this context, the cartoons debate highlights the fact that Islam and Muslims are not necessarily protected by such laws. Muslim claims to be protected by this type of legislation was actually not taken into consideration, even when some leaders utilized arguments about hate speech and political acts that can incite violence and are, therefore, punishable by these laws.<sup>33</sup> For example, the Union of European Turkish Democrats in Cologne filed in March 2006 a criminal complaint against the newspaper *Die Welt* for printing the cartoons by referencing the German law that forbids public insults against "religious societies, beliefs, and groups that support specific world views." However, no legal action was ultimately taken against *Die Welt*.<sup>34</sup> Similarly, several Muslim organizations in Denmark, instead of referring to the blasphemy law as discussed above, placed a complaint with the police on the basis that the cartoons were racist under Criminal Code Article 266b.<sup>35</sup>

In the United States, there is no equivalent to these European laws on blasphemy and hate speech. Interestingly, almost no newspapers reprinted the cartoons at the time of the controversy. However, since 2008, the rise of anti-Islamic rhetoric has led to greater concern about the effect of hate speech, and some media have responded by restraining their coverage of such speech. For example, when Pastor Jones decided to publicly burn the Qur'an on the tenth anniversary of the 9/11 attacks, the American media decided not to cover the event. Even more significantly, the restriction on hate speech also has started to influence legal decisions. During a 2011



Halloween parade, a man dressed as a zombie Muhammad was assaulted by a Muslim and decided to press harassment charges. In his February 2012 decision, the judge dismissed the claim of the defendant on the ground that his behavior was inciting racial hatred. Such a decision was very much criticized by lawyers as they saw it as a violation of the First Amendment.<sup>36</sup>

In brief, the cartoon crisis reveals the arbitrary limits of the secular public space, which is not an open space *for all* even when they conform to the principle of secular justification. In other words, despite liberal claims, secular spaces are not “equally” shared by different groups that accept and abide by the same principles or ethics of citizenship. Instead, they appear as heterogeneous landscapes, divided by competition of different social groups to access it. As pointed out by Talal Asad, the “liberal public sphere” since its inception has excluded certain types of people: women throughout the nineteenth and twentieth centuries, poor classes, immigrants, religious groups, and others.<sup>37</sup> Therefore, the advancement of rights in Western democracies can be read as the struggle for outsider groups (poor, women, sexual minorities, and the like) to get “in” the public space. Muslims are now the outsider group that challenges the dominant civil order, especially in Europe.

### *Individual Rights versus Collective Recognition: The Shari'a Debate*

The recognition of Islamic law within existing legal systems, and the concern that specific subcultures can stifle individual rights, is another example of the tension between political order and Muslim communities. The debate was set in motion in February 2008 by the declaration of the archbishop of Canterbury approving the inclusion of shari'a principles within European legislations.<sup>38</sup>

#### *Shari'a as a Political Construction*

Like the term Muslim, shari'a has become a construct used in political debates to oppose Islam to Western democratic principles. The construct operates on the historical and political decontextualization of shari'a as a fixed medieval set of laws. It also projects into Europe the situation of some Muslim-majority countries.

In most Muslim-majority countries, shari'a is confined to family law, although there has recently been an expansion of shari'a to areas of criminal law (*budud*)—including stoning to death and harsh corporeal punishments—in countries like Mauritania or Afghanistan.<sup>39</sup>

The concern about the intolerant use of shari'a in some Muslim states is transferred to Europe without taking into account the completely different context in which references to shari'a operate. Where there is democratic constitutionalism, the debate does not stem from constitutional issues.

Contrary to the widespread belief that Muslims in the West seek the inclusion of shari'a in the constitutions of European countries, as analyzed in our previous chapters, most surveys show that they are quite satisfied with the secular nature of European political regimes. When Muslims agitate for change, they engage in politics and the democratic process, utilizing mainstream parties and institutions.<sup>40</sup> Yet as our survey results have shown, this does not mean that they renounce Islamic principles and legal rules to guide or structure their daily lives.<sup>41</sup>

The shari'a ban in the United States, discussed in chapter 5, is a similar reaction to what is perceived as a fixed medieval code of laws applied across the Muslim world. However, it has not been addressed within the parameters of American secular principles because, as described in chapter 5, the shari'a ban was declared unconstitutional. This prohibition obliged anti-shari'a political actors to orient the prohibition against foreign laws and, therefore, grounded the debate even more into security issues.

Although the fear of *hudud* or constitutional Islamic law is not founded, questions remain regarding the compatibility of shari'a with legal pluralism.

### *Shari'a and Legal Pluralism*

Legal pluralism is historically related to the inclusion of customary laws into legal systems of postcolonial countries. Later, it was embraced by postmodernist scholars and lawyers to describe the fragmentation and competition between multiple legal systems in modern societies. As noted by Andrea Buchler, the consideration of Islamic prescriptions within secular law is part of a broader trend of the pluralization of family law that has been developing in Europe since the end of the nineteenth century. Due to cultural and demographic changes, such as increased divorce, sexual cohabitation outside of marriage, the rise of single parent families, and declining birth rates, family values per se have transformed and pluralized to include a variety of definitions.<sup>42</sup> Therefore, European family law has become less "institutionalized and more contractual in its nature."<sup>43</sup> It is within this changing framework of pluralization of family law, and the growing importance of contract and arbitration, that Islamic norms may find a place within European legal references. Additionally, the right to cultural identity, which is a part of European legislation,<sup>44</sup> can be used to justify and promulgate the recognition of Islamic legal norms in Europe. There is, however, a restrictive condition to the possible recognition of shari'a within legal pluralism, which is that Islamic norms should not contradict the basic principles of equality between individuals. In this regard, possible tensions between law and norm can emerge. The latter is the set of rules and conventions accepted by a specific social group, while the former is the set of permissions and prohibitions enforced by state institutions. In other words, shari'a as a set of norms recognized by some Muslims can potentially clash with state laws. These clashes have surfaced in countries where arbitration procedures are permitted. It is, therefore, not surprising

that these procedures have become the focus of political concern about shari'a misuse.

Arbitration can be carried out by two adults if, prior to the procedure, they sign an agreement (the Arbitration Agreement) that defines rules they will both accept in order to solve their disagreement. The arbitration can be conducted in accordance with any rules or legal system that is specified in the arbitration agreement, including shari'a. The final judgment or decision is registered with a civil court and enforced as if the trial had taken place in a civil court. Arbitration agreements are allowed in some countries like the United Kingdom and Canada and do not concern shari'a *per se*. However, the use of Islamic prescriptions through this procedure has raised objections because of the potential conflict between some Islamic norms and respect of human rights.<sup>45</sup> For example, the opponents to Shari'a courts in the state of Ontario saw such courts as a threat to gender equality. When the Islamic Council of Canada announced by the end of 2003 that it would seek arbitration courts based on shari'a, a heated debate broke out about the legitimacy of using Islamic principles within the arbitration framework. Particularly active in this debate were feminists groups, especially the Canadian Council of Muslim Women and the International Campaign against Shari'a Courts, led by Iranian refugee turned citizen Homa Arjomand. The controversy came to a close when in 2005 the governor of Ontario declared that he would not allow his province to become the first Western government to legitimize the use of Islamic law to settle family disputes and that the boundaries between church and state would be clearer if religious arbitration was banned completely.<sup>46</sup> The political result of this heated controversy was the rejection of all forms of religious arbitration from Ontario courts.<sup>47</sup>

Interestingly, such a fear of human rights abuse was not supported by the behaviors of most of Muslims in Canada. For example, Christopher Cutting shows that Muslim families in Canada turn for guidance to imams but do not request official arbitration.<sup>48</sup> In the same vein, other surveys on shari'a courts in the United Kingdom describe how imams can be very active in defending female rights against abusive husbands, especially in the case of "limping marriages."<sup>49</sup>

Thus, religiosity and use of law is a complex negotiation. Research suggests different and sometimes contradictory attitudes among Muslims toward European and North American secular laws; complete rejection of secular law is rare while complete acceptance of civil law is also rare. This nuance is further complicated by the heightened securitization context on both continents following the 9/11 and 7/7 attacks that we discussed in the previous chapter. Nevertheless, the general trend across Europe is accommodation of some Islamic requirements within national laws. This accommodation has often been conducted in an indirect way through European judges rather than Islamic legal experts or Muslim theologians.<sup>50</sup> Consequently, a slow and "invisible" form of personal Islamic law is being constructed and adapted to Western secular laws.<sup>51</sup> Of course, European judges do not claim Islamic

authority, but the fact that most clerics do not contest their decisions—or sometimes even endorse them—illustrates the law’s adaptation. It is as well reflective of the malleability of shari’a itself.

We examined the literature and jurisprudence of several key European countries in order to ascertain the arguments used by the courts and by Muslims when conflicts arise between the two.<sup>52</sup> The plethora of national laws in Europe and the diversity among Muslim groups makes comparison difficult, but we found a general trend of recognizing foreign law. It means that legal systems distinguish between national and foreign jurisprudence, therefore, giving the possibility to residents to utilize their national laws. In these situations, the country of residence applies foreign law even if it is discriminatory. It is worth noting that Islamic laws on marriage, divorce, and custody greatly differ<sup>53</sup> according to the family law of each country of origin. Some countries (such as Pakistan or Algeria) have more restrictions than others, such as Tunisia, Turkey, and Morocco, where family law has been progressively amended to comply to equality between men and women.

However, some abusive practices justified by Islamic law do persist. For this reason, in 2011, British activists ran the campaign called One Law For All, which led Baroness Caroline Cox to introduce the Arbitration and Mediation Services (Equality) Bill in the House of Lords on June 7, 2011.<sup>54</sup> Similarly, it is difficult to abate the persistence of customs that can be discriminatory toward women and presented as “Islamic” by some Muslims. For example, in the 1990s, honor killings became a topic of public debate in the United Kingdom and led several Muslim clerics to publicly condemn such killings as non-Islamic. Similarly in Canada, a father and his son of Pakistani origin were sentenced in June 2010 for the murder of their daughter/sister because she was rebelling against the honor rules and had demanded more freedom. The father argued that he was acting in accordance to what his community dictated since her behavior was an insult to him.<sup>55</sup>

Such cultural claims can sometimes influence the judge’s interpretation in ways detrimental to the principle of equality. For example, in 2007, a Muslim woman was denied a fast-track divorce in Germany on the basis of domestic violence because the judge reasoned that the Qur’an allows physical abuse against one’s wife. Several politicians, legal experts, and Muslim leaders noted that they “were confounded that a German judge would put seventh century Islamic religious teaching ahead of modern German law in deciding about a situation involving domestic violence.”<sup>56</sup> Because of the ensuing outcry, the court removed the judge from the case and several legal experts further explained that this was a judicial misstep rather than a trend.<sup>57</sup>

Sometimes, the political context can affect the judge’s decision. One example is a 2008 divorce case in French court. The husband, of Moroccan origin, wanted a divorce because his wife was not a virgin at the time of the marriage. The judge annulled the marriage because “the woman had lied over what is called in French law an ‘essential quality,’ in this case her virginity.”<sup>58</sup>

According to the contract logic, the annulment was correct.<sup>59</sup> However, because of the politically sensitive nature of the case, the initial ruling was overturned in October 2008 by the French Court of Appeals, which found that virginity “is not an essential quality in that its absence has no repercussion on the matrimonial life.”<sup>60</sup> The recognition of such a discriminatory cultural practice by the French judge was at the time highly criticized as a breach of the principle of equality and seen as an implicit acceptance of the discriminatory status of shari’a—although this is not found in Islamic law and is a cultural practice—even if the wife had initially accepted the annulment of the marriage.

These extreme cases remain atypical, especially when it comes to nationals of European countries with a Muslim background. In this situation, negotiation is still the strategy of choice for most families. The recognition of individual freedom and the consideration of each party’s best interests lead to compromises that change not only the letter but also the spirit of Islamic laws, stripping them of the official meanings they have in Muslim-majority societies. One example of this transformation, in which Islamic regulations are “acclimatized” to Western legal norms, concerns the acceptable period of time one’s widowhood should last. Traditional Islamic law specifying the time that must elapse before one is allowed to remarry cannot be strictly enforced in European societies.

Laws governing inheritance offer another example of the flexibility involved in translating old practices into new contexts. Most of Islamic laws on inheritance specify that for every part given to the daughter, two parts must be given to the son. This ruling cannot always be strictly adhered to in practice, especially in legal systems influenced by Roman law, which ensures that each descendant be provided for equally. In 1975, Sheikh Zaki Badawi (1922–2006), president of the Muslim College in London, established a ready-made Islamic will to solve the contradiction between European and Islamic norms. For years, according to his own admission, no one used it,<sup>61</sup> perhaps indicating that Muslims in Europe are generally quite comfortable with Western norms of inheritance.

Changes in Islamic law in matters of divorce have been not only the most significant but also the most difficult to identify. Even though a divorce can still officially be carried out within religious law, unofficially it may have been already initiated by the wife herself in the civil court system. In addition, divorce is increasingly a topic of discussion for both members of the married couple. The fact that husband and wife both abide by Islamic law does not necessarily determine the degree of oppression or inequality within a marriage. Negotiation in divorce proceedings and polygamous marriages are two main categories in which Islamic laws are transformed within the context of Western democratic societies.<sup>62</sup>

There is no doubt, however, that some interpretations of Islamic norms are at the antipodes of secular legislations.<sup>63</sup> Most of these interpretations are increasingly transnational and easily accessible everywhere due to electronic

*fatwas* of all kinds, as it will be addressed in the next chapter. Even though the silent majority of European Muslims accept Islam's compatibility with the basic precepts of human rights, some fringes or marginal groups reject this paradigm and can act in ways that strongly prejudice Europe's perception of Islam and Muslims.<sup>64</sup> For example, the group Shari'a for the UK emerged in 2009 with the sole agenda of promoting shari'a in the United Kingdom. This group's leaders declared,

We hereby request all Muslims in the United Kingdom to join us and collectively declare that as submitters to Almighty Allah, we have had enough of democracy and man-made law and the depravity of the British culture. On this day [October 31, 2009] we will call for a complete upheaval of the British ruling system its members and legislature, and demand the full implementation of *shari'a* in Britain.<sup>65</sup>

The same claim has spread to the Netherlands and Belgium with the emergence of Shari'a4Holland and Shari'a4Belgium groups.<sup>66</sup> One reason for the appeal to illiberal forms of Islamic law is the globalization of Salafi interpretations of Islam that have gained influence among all Muslim countries and the West. As we shall discuss in the next chapter, salafis promote shari'a as the opposite of secular law, which reinforces the dominant opinion that Islam is incompatible with the West.

In sum, the ongoing search for a balance between individual rights and collective identity reveals the complexities of political interactions between disparate stakeholder communities. As noted above, this complexity comes from the involvement of not only lay Muslims and clerics but also lawyers and judicial systems in a highly politicized context. For this reason, we see again the gap between the daily interactions of Muslims with public institutions and the construction of shari'a as a political problem.

### *Religious Self and Secular Space*

The increased resistance against Islamic signs of piety illustrates the third level of disjunction between private convictions and public behaviors: the legitimate manifestations of the religious person in public life.

Since the eighteenth century, the general tendency across Europe has been to push religious customs and rituals outside the area of civil legality. In most countries, such an evolution has affected the presence of religious voices in the broader public space and has contributed to the decline of religious identification among citizens. A majority of Europeans assert that they are not religious, that they do not belong to religious groups, and that God is not important in their lives.<sup>67</sup> Even when they identify themselves as believers, citizens participate less and less in the broader public space in the name of religious beliefs. The debate on crucifixes in public spaces in Italy provides a good example of this seemingly inexorable trend. In March 2011,

the European Court of Human Rights ruled that crucifixes are acceptable in Italian public school classrooms since they are seen as an “essentially passive symbol’ with no obvious religious influence.”<sup>68</sup> Interestingly, this ruling directly contradicts the one issued by the same court in 2009 that stated that the use of crucifixes in Italian classrooms violated “the right of parents to educate their children as they saw fit and ran counter to the child’s right to freedom of religion.”<sup>69</sup> This shift in interpretation illustrates the emerging political consensus across Europe that tends to legitimize the visibility of the religious signs of the dominant religion, interpreted as elements of the public culture, while the religious signs of other religions are seen as inappropriate in the public space.

That is why controversies erupt when Muslims exhibit social markers based on religious convictions in societies where the engrained perception of religion is that it is part of individual intimacy and should not be visible in the makeup of one’s social self. This disjunction is the outcome of several centuries of socialization that has associated modernization, progress, and individual empowerment with the decline of religious practices. Of course, it does not manifest itself uniformly across countries and historical periods. For example, there is a greater tolerance for dress codes or other religious signs in British and American society in contrast to the French rejection of such signs in some, if not all, parts of the public space and social interactions.

Nevertheless, most European citizens tend to consider expressions of faith misplaced and illegitimate within civil context. The idea that religion cannot play a role in the general well-being of societies—a mark of the secularized mind—is, in fact, common throughout all of Europe, despite differences among the national contracts between states and organized religions addressed in the previous section of this chapter. It is important to note that religious groups other than Muslims also can be challenged by this core principle of mainstream secularism. For example, in 1995, a Bavarian school ordinance allowed the display of crucifix in every elementary classroom. In stark contrast with the ulterior decision of the European Court of Human Rights of 2011, the Federal Constitutional Court held at the time that because the crucifix is a core symbol of Christian faith, such a gesture by the school was seen as proselytizing and was unconstitutional.<sup>70</sup> Nevertheless, main strands of public culture in the political and intellectual spheres and media are highly secularized, and, therefore, tend to ignore or reject religious dimensions and references that are still meaningful to some segments of society. The implication of such secularism is that the various manifestations of Islam in Europe have become troublesome or even unacceptable, especially, when they act as body markers or discriminate between genders.

### *Body Markers, Religious Beliefs, and Sexual Equality*

In secularized public cultures, the cognitive dimension of religion, defined primarily as beliefs and values relegated to the intimacy of the private self,

has become preeminent with the outcome that religious beliefs and body markers do not match anymore. In these conditions, what Talal Asad calls “embodied practices of religion,” such as dress code or circumcision, seem to violate the neutrality of European public spaces.<sup>71</sup>

In other words, at the core of Western secular discourse is the rejection of what Michael Connolly calls the “visceral” dimension of religious expressions. Secularism suffers, in his view, from its failure to thematize how the “infrasensible register” shapes social and cultural dispositions operating below the threshold of consciousness. Kant’s marginalization of Christian theology in favor of a “rational religion” grounded in moral reasoning is a key moment, in Connolly’s account, of the philosophical development of this moral repulsion for the visceral. As he notes, Kant degrades ritual and arts of the self by subordinating them to the supersensible realm, or domain of the moral obligations drawn by the power of the intellect. Secularists later carry this Kantian project of diminishment a step or two further.<sup>72</sup> With Enlightenment and its central critique of Christianity, reason and intellect were prioritized over emotions and ecstasy, especially in the Protestant forms of religiosity. Eventually, almost all other religions (present in the West) were influenced by this more intellectual worldview and gave priority to reason and logic over the ecstatic. In this sense, the Enlightenment period engendered a fundamental shift in the relationship between the body and the mind. As new theories of agency, responsibility, and individuality emerged, the body became an object controlled by the mind of the individual.

As summarized by Hirshkind,<sup>73</sup> the secular subject—the Kantian dinner host—is one whose speech and comportment incorporates recognition of the distinctions authorized by the twin categories of religious and secular. Put differently, a secular person is someone whose affective-gestural repertoires express a negative relation to forms of embodiment historically associated with, but not limited to, theistic religion. In this regard, the genealogy of the secular includes, from the sixteenth to the eighteenth century, a variety of social transformations that are key to our understanding of the modern subject. Among them are the desensualization of knowledge as described by Walter Ong, the stilling of passionate expression within courtly society examined by Norbert Elias, the increasing internalization of psychic and emotional life within bourgeois society, and the transfer of vast realms of experience from the surface of public life into the invisible depths of the lonely individual.<sup>74</sup> It is then not surprising that Muslim embodied practices appear as shockingly “uncivic.”

The other cause of suspicion vis-à-vis embodied practices of Islam is related to gender equality. The Islamic headscarf worn by women is often interpreted as a sign of rejection of individual female emancipation. This interpretation has provoked the wrath of those groups spearheading the defense of secular ideology: teachers, intellectuals, feminists, civil servants, and so forth. The French law prohibiting religious signs in public schools,



adopted in March 2004, is a case in point. It also illustrates the importance of a specific political sensitivity regarding gender issues. Since 1989, the legitimacy of headscarves in public schools has been debated with great passion, showing conflicting interpretations of *laïcité*.<sup>75</sup> However, the specific political conditions of 2004 rendered the change in law possible. At this time, young women in the disfranchised suburbs were continuously harassed and sometimes killed by young men unless they adopted the Islamic dress code. The movement called Neither Whores nor Submitted led by young women from these suburbs encapsulates the false dilemma of the public discourse where the headscarf comes to symbolize the submission of young women who have to veil in order to protect themselves. The fight against the headscarf could hence be justified as a fight against female oppression and a way to liberate them against male domination and religious obscurantism. The fact that some of these young women have made the choice to wear the headscarf was not even discussed in the months leading to the vote of the law. If it was mentioned, it was typically discarded as insignificant or irrelevant to the greater “cause” of liberating women, which was much more in tune with the sexual politics and culture of the country. In this sense, the 2004 law is quite specific as it modifies the secular principle to render social expression of religious beliefs illegal. In other countries, like Germany, only some groups of civil servants have been prohibited of wearing the hijab, like public school teachers.<sup>76</sup> Social pressures however are exerted on students to dissuade them to wear the hijab. A lot of German educators see it as their “moral duty” to try to reduce the number of headscarves at their schools, as they think this will support the girls’ enhanced integration in society. A Protestant secondary school in Gelsenkirchen, for instance, only allows female Muslim students to wear a headscarf on two conditions. They have to be 14 or older (the official age of religious maturity in Germany) and are obliged to pass a test from the school council about their reasons for wearing the scarf. This way, the school’s headmaster declared, he wanted to find out whether the girls decided to wear the headscarf for their own reasons or whether they were forced by their families or the surrounding Muslim community. In other schools, psychological pressure is exerted on parents not to “force” their daughters to wear this “sign of disintegration” by suggesting they would otherwise face significant problems at school and in society.

### *Niqab versus Hijab*

As discussed in chapter 5, the ban of the niqab is justified by security issues more than by secularism for two reasons. First, while the hijab ban is a French “specificity”, the niqab ban can be found in countries that have been accommodating to the headscarf like Spain or the Netherlands. Second, the security argument in support of the niqab ban is the same everywhere. Europeans view Muslims as threats, so their states respond with measures purporting to rid their lands of terrorism.

It should be said, however, that the niqab, unlike the hijab, does present a challenge for secular democratic spaces. There is no doubt that, sociologically and culturally speaking, such a dress code reveals an attempt to separate from mainstream society. It is, as such, incompatible with the kind of face-to-face encounters that are constitutive of the citizenship status: when you vote, when you take part in a public debate or mobilization, or when you take an exam. Therefore, it can indeed be questioned and its use rightly restricted when such civic encounters occur. It is regrettable that, by linking together Islam and security, the real issues of integration of Islamic practices within secular democratic spaces are not really addressed. In this sense, a complete prohibition may not be the most efficient response to the few Muslim women who choose to adopt an illiberal lifestyle in the midst of liberal democracies.

### Conclusion: Modern Individualism and Religious Individualism Are Not Synonymous

Islam is disturbing because Muslims claim—or demonstrate by embodied practices—that modern and religious individualism are not synonymous. By covering, distinguishing, and separating, they inconveniently remind us that the individual, especially his or her body, is not absolutely powerful. In the current phase of modernity, the body has become the primary vehicle for individual expression in the public sphere. Individuality is expressed not only through ownership of the body (including upholding legal rights) but also through choices regarding gender and sexuality. In other words, in a modern and consumer-driven capitalist world, individuals choose to change their physical bodies—from makeup and beauty salons to plastic surgery and gender reconstruction.

Interestingly, this greater emphasis on corporality has resulted in a recovered sense of sensuality that challenges the dominant intellectualization of western religion highlighted above. The tensions between these two perceptions of the body—the sensuous-oriented and the cognitive-oriented—can be seen throughout contemporary societies. The cognitive realm is manifested in popular obsessions with diet, health, and medical discourses that were already central to the Protestant Reformation. The sensuous-oriented self claims its rights to sexuality and empowerment over the biological restrictions of the body. In other words, the modern individual exercises personal body rights with the new tools of advanced science and medicine, including procedures such as cloning, gender changes, and fertility treatments. In contrast to the premodern perspective, consumerist culture emphasizes the right to body control and the right to pleasure. Hedonistic images dominate mainstream culture, most clearly in advertising and popular entertainment. Predictably, these new corporeal-focused forms of individualization seep into contemporary forms of religiosity.

More specifically, religiosity has been affected to the point that modern individualism is often equated with religious individualism. Very much influenced by Protestantism, this conflation is reflected in the way in which religion has largely been understood by Western scholarship. Scholarly literature on religion emphasizes ideas and beliefs—values that are central to the Protestant Reformation—over behavior and functions of the body. As Talal Asad argues, such a focus leads in turn to the construction of religion as a transhistorical/ideational object of study, removed from social contexts or groups.<sup>77</sup> This perspective has contributed to the dominant consensus that religious modernity is synonymous with religious individualism. Concretely, it means that the modern individual has (almost) unlimited capacity of religious choice.

The consequence is that most Westerners have forgotten that in all religious traditions, including Islam, there is a concept of the individual—personal responsibility of the believer vis-à-vis God, obligations of the believers—but it is far from being similar to the modern individual. The religious individual is restricted by discipline, control and asceticism, and thus cannot follow through all personal motives or desires. However, the modern individual is defined by the absence of limits in the pursuit of his or her desires. Therefore, the so-called irresistible progression of the individualization of beliefs is a staple of the Western narrative but does not reflect the historical tension between the autonomy of the subject as a believer and the modern individual. In this sense, the current discourses and concerns of Muslim believers vis-à-vis the body reflect these tensions but are not specific to Islam.

For example, with the shift from religious obligation to consumption in Europe, religion, which was at one time imposed or inherited, has become a personal choice.<sup>78</sup> As noted by Grace Davies, a decrease in teenage confirmations in the Church of England suggests teens are less obligated to perform this religious ritual and an increase in adult confirmations reveals that more people are choosing to be religious in their adult life. Similarly, Daniele Hervieu-Leger argues that the breakdown of the clergy in France represents the change from the church as the representative of society and cultural memory to religion constituted by individual choice.<sup>79</sup> Furthermore, traditional religious authorities have been increasingly challenged and sometimes replaced by mutual validation of small groups of believers that do not need or seek the priest or cleric confirmation.<sup>80</sup> For example, in modern-day Catholicism, smaller groups of believers recognize homosexuality whereas the clerical establishment continues to reject it.

It can be argued that, as part of their integration process, Muslims may in the long term experience a similar conflation of the modern and religious individualism. Our focus group discussions, however, tell another story and highlight acute tensions between modern and religious individualism, especially among the second and third generations of immigrants.

The first reason for such tensions is that Islam in the West is part and parcel of global Islam and, therefore, still connected to Muslim-majority countries that have not experienced a reformation of the body similar to the Protestant one. More generally, in the Islamic tradition, the body is a vital aspect of religiosity. Far from the Protestant Reformation, corporality in Islam is intrinsically part of the religious experience as an aspect of spirituality. In the classical Islamic view, custodianship of the body is fundamental to a meaningful spiritual life. This is a viewpoint that even Muslim scientists have held in both medieval and modern times. The scholar Majed A. Ashy observes, “Praying five times a day helps to reduce psychological stress and to keep structure and discipline in the life of the individual.”<sup>81</sup> From the more mundane perspective, the body is integral and intertwined into both the mental and spiritual realms. Contrary to the contemporary Western perspective, Ashy continues, “it offers both individual and group strength in times of hardships through belief in a powerful God.”<sup>82</sup>

The second reason is related to the modernization experiences of Muslim countries. In this regard, it would be very misleading to think that Islamic societies did not undergo a process of modernization. In fact, since the eighteenth century onward, their modernization process has created renewed tensions between the modern and the religious individual—triggering persistent discussion on the monitoring of the body as a part of religious life. This attentiveness to the body has included prescriptions that range from diet to sexual rules to regulation of modesty, such as the hijab, which vary according to the cultural setting.

In the postcolonial era, these tensions have been exacerbated by the role of the nation-state. More precisely, debates in the Islamic tradition have contended with state-centered modernization and its participation in identity-formation and influence on religious practice. As a result, institutions and communities within the Muslim world have universally experienced an increasing amount of state-controlled and state-redefined religion.<sup>83</sup>

This redefinition of Islamic norms has created cognitive dissonance for Muslim believers between civic obligation and personal piety. There is an internal struggle between the empowerment of individuals as citizens and the significance of Islamic religious norms. This personal struggle is also a global one, amplified by competing interpretations of Islamic orthodoxy from multiple transnational actors. The anxiety of the Muslim individual, then, is not only felt in a national context but also in a global one.

It would be misleading, however, to interpret body-centered religiosity of Islam as an exceptional resistance to postmodernity. As mentioned above, Muslim communities are not unique in their struggle with the modern sense of corporality. Everywhere, believers are grappling with the “tyranny of the body.”

It is, therefore, not surprising that the body is the topic through which many Islamic religious authorities are redefining the “true” Islam.

The female body particularly is the major site of these cultural and political tensions, which take the form of binary oppositions in stark conflict to Western values: Islam versus the West, past versus present, and communal integrity versus individual freedom, as we will see in the next chapter.