tion of such politics. (This is not properly understood by those well-wishing critics who urge Asian immigrants to abandon their traditions, to regard some of their collective memories and desires as not essentially their own, and to embrace instead the more modern conception of self-determination underlying the European nation-state in which they now live.[38]) For many Muslim minorities (though by no means all) being Muslim is more than simply belonging to an individual faith whose private integrity needs to be publicly respected by the force of law, and being able to participate in the public domain as equal citizens. It is more, certainly, than a cultural identity recognized by the liberal democratic state. It is being able to live as autonomous individuals in a collective life that extends beyond national borders. One question for them (although not necessarily asked by all of them) is: What kind of conditions can be developed in secular Europe—and beyond—in which *everyone* may live as a minority among minorities?

I conclude with another question because decisive answers on this subject are difficult to secure. If Europe cannot be articulated in terms of complex space and complex time that allow for multiple ways of life (and not merely multiple *identities*) to flourish, it may be fated to be no more than the common market of an imperial civilization,[39] always anxious about (Muslim) exiles within its gates and (Muslim) barbarians beyond. In such an embattled modern space—a space of abundant consumer choice, optional life styles, and slogans about the virtues of secularism—is it possible for Muslims (or any other immigrants, for that matter) to be represented as themselves?

38. As in Homi Bhabha's "where once we could believe in the comforts and continuities of Tradition, today we must face the responsibilities of cultural Translation," written in a spirit of friendly advice to Muslim immigrants in Britain during the Rushdie affair (*New Statesman and Society*, March 3, 1989). Yet how innocent is the assumption that Muslim "Tradition" carries no responsibilities, and that "cultural Translation" to a British lifestyle in Britain is without any comforts.

39. "Europe is again an empire concerned for the security of its *limites*—the new barbarians being those populations who do not achieve the sophistication without which the global market has little for them and less need of them" (J. G. A. Pocock. There remains, however, a periodic need for barbarian labor *within* Europe).

6

Secularism, Nation-State, Religion

I have tried to follow aspects of the secular indirectly—through ideas of myth and the sacred, through concepts of moral agency, pain, and cruelty—and also more directly through the notion of human rights as well as the idea of religious minorities in European states that claim to govern themselves according to secularist principles. In this chapter I examine the secularization thesis with particular reference to the formation of modern nationalism.

Volumes have been written on the idea of secularization and its alleged centrality for modernity. Is it worth saving? The secularization thesis in its entirety has always been at once descriptive and normative. In his impressive book on the subject,[1] José Casanova points to three elements in that thesis, all of which have been taken—at least since Weber—to be essential to the development of modernity: (1) increasing structural differentiation of social spaces resulting in the separation of religion from politics, economy, science, and so forth; (2) the privatization of religion within its own sphere; and (3) the declining social significance of religious belief, commitment, and institutions. Casanova holds that only elements (1) and (3) are viable.

Many contemporary observers have maintained that the worldwide explosion of politicized religion in modern and modernizing societies proves that the thesis is false. Defenders of the thesis have in general re-

1. José Casanova, *Public Religions in the Modern World*, Chicago: University of Chicago Press, 1994.

torted that the phenomenon merely indicates the existence of a widespread revolt against modernity and a failure of the modernization process. This response saves the secularization thesis by making it normative: in order for a society to be modern it has to be secular and for it to be secular it has to relegate religion to nonpolitical spaces because that arrangement is essential to modern society. Casanova's book attempts to break out of this tautology in an interesting way. It argues that the deprivatization of religion is not a refutation of the thesis if it occurs in ways that are consistent with the basic requirements of modern society, including democratic government. In other words, although the privatization of religion within its own sphere is part of what has been meant by secularization, it is not essential to modernity.

The argument is that whether religious deprivatization threatens modernity or not depends on *how* religion becomes public. If it furthers the construction of civil society (as in Poland) or promotes public debate around liberal values (as in the United States), then political religion is entirely consistent with modernity. If, on the other hand, it seeks to undermine civil society (as in Egypt) or individual liberties (as in Iran) then political religion is indeed a rebellion against modernity and the universal values of Enlightenment.

This is certainly an original position, but not, I would submit, an entirely coherent one. For if the legitimate role for deprivatized religion is carried out effectively, what happens to the allegedly viable part of the secularization thesis as stated by Casanova? Elements (1) and (3) are, I suggest, both undermined.

When religion becomes an integral part of modern politics, it is not indifferent to debates about how the economy should be run, or which scientific projects should be publicly funded, or what the broader aims of a national education system should be. The legitimate entry of religion into these debates results in the creation of modern "hybrids": the principle of structural differentiation—according to which religion, economy, education, and science are located in autonomous social spaces—no longer holds. Hence element (1) of the secularization thesis falls. Furthermore, given the entry of religion into political debates issuing in effective policies, and the passionate commitments these debates engender, it makes little sense to measure the social significance of religion only in terms of such indices as church attendance. Hence element (3) of the secularization thesis falls. Since element (2) has already been abandoned, it seems that nothing retrievable remains of the secularization thesis.

However, this doesn't mean that the secularization thesis must either be accepted in its original form or dismissed as nonsense. Its numerous critics are right to attack it, but they have generally missed something vital. I'll try to outline what that is later on. For the moment I simply assert that neither the supporters nor the critics of the secularization thesis pay enough attention to the concept of "the secular," which emerged historically in a particular way and was assigned specific practical tasks.

I begin by examining *the kind* of religion that enlightened intellectuals like Casanova see as compatible with modernity. For when it is proposed that religion can play a positive political role in modern society, it is not intended that this apply to *any* religion whatever, but only to those religions that are able and willing to enter the public sphere for the purpose of rational debate with opponents who are to be persuaded rather than coerced. Only religions that have accepted the assumptions of liberal discourse are being commended, in which tolerance is sought on the basis of a distinctive relation between law and morality.

Ever since Habermas drew attention to the central importance of the public sphere for modern liberal society, critics have pointed out that it systematically excludes various kinds of people, or types of claim, from serious consideration. From the beginning the liberal public sphere excluded certain kinds of people: women, subjects without property, and members of religious minorities.[2] This point about exclusions resembles the objection made many years ago by critics of pluralist theories of liberal democracy.[3] For these critics the public domain is not simply a forum for rational

2. See, for example, Mary P. Ryan, "Gender and Public Access: Women's Politics in Nineteenth-Century America," and Geoff Eley, "Nations, Publics, and Political Cultures: Placing Habermas in the Nineteenth Century," both in Craig Calhoun, ed., *Habermas and the Public Sphere*, Cambridge, Mass.: MIT Press, 1992.

3. Robert Wolff, for example, wrote in 1965: "There is a very sharp distinction in the public domain between legitimate interests and those which are absolutely beyond the pale. If a group or interest is within the framework of acceptability, then it can be sure of winning some measure of what it seeks, for the process of national politics is distributive and compromising. On the other hand, if an interest falls *outside* the circle of the acceptable, it receives no attention whatsoever and its proponents are treated as crackpots, extremists, or foreign agents" (R. P. Wolff, "Beyond Tolerance," in *A Critique of Pure Tolerance*, by R. P. Wolff,

debate but an exclusionary space. It isn't enough to respond to this criticism, as is sometimes done, by saying that although the public sphere is less than perfect as an actual forum for rational debate, it is still an ideal worth striving for. The point here is that the public sphere is a space *necessarily* (not just contingently) articulated by power. And everyone who enters it must address power's disposition of people and things, the dependence of some on the goodwill of others.

Another way of putting it is this. The enjoyment of free speech presupposes not merely the physical ability to speak but *to be heard*, a condition without which speaking to some effect is not possible. If one's speech has no effect whatever it can hardly be said to be in the public sphere, no matter how loudly one shouts. *To make others listen* even if they would prefer not to hear, to speak to some consequence so that something in the political world is affected, to come to a conclusion, to have the authority to make practical decisions on the basis of that conclusion—these are all presupposed in the idea of free public debate as a liberal virtue. But these performatives are not open equally to everyone because the domain of free speech is always shaped by preestablished limits. These include formal legal limitations to free speech in liberal democracies (libel, slander, copyright, patent, and so forth), as well as conventional practices of secrecy (confidentiality) without which politics, business, and morality would collapse in any society. But these examples do not exhaust the limits I have in mind. The limits to free speech aren't merely those imposed by law and convention—that is, by an external power. They are also intrinsic to the time and space it takes to build and demonstrate a particular argument, to understand a particular experience—and more broadly, to become particular speaking and listening subjects. The investment people have in particular arguments is not simply a matter of abstract, timeless logic. It relates to the kind of person one has become, and wants to continue to be. In other words, *there is no public sphere of free speech at an instant.*

Three questions follow. First: Given that historical forces shape elements of "the public" differently, particular appeals can be made successfully only to some sections of the public and not to others. If the performance of free speech is dependent on free listening, its effectiveness depends on the kind of listener who can engage appropriately with what is said, as well as the time and space he or she has to live in. How have different conceptions and practices of religion helped to form the ability of listeners to be publicly responsive? This last question applies not only to persons who consider themselves religious but to those for whom religion is distasteful or dangerous. For the *experience* of religion in the "private" spaces of home and school is crucial to the formation of subjects who will eventually inhabit a particular public culture.[4] It determines not only the "background" by which shared principles of that culture are interpreted, but also what is to count as interpretive "background" as against "foreground" political principles.

B. Moore Jr., and H. Marcuse, London: Cape, 1969 [U.S. edition 1965], p. 52; emphasis in original). William Connolly has pushed this criticism in new and more interesting directions in his *The Ethos of Pluralism*, Minneapolis: University of Minnesota Press, 1995.

My second question is this. If the adherents of a religion enter the public sphere, can their entry leave the preexisting discursive structure intact? The public sphere is not an empty space for carrying out debates. It is constituted by the sensibilities—memories and aspirations, fears and hopes—of speakers and listeners. And also by the manner in which they exist (and are made to exist) for each other, and by their propensity to act or react in distinctive ways. Thus the introduction of new discourses may result in the disruption of established assumptions structuring debates in the public sphere. More strongly: they may *have* to disrupt existing assumptions to be heard. Far from having to prove to existing authority that it is no threat to dominant values, a religion that enters political debate *on its own terms* may on the contrary have to threaten the authority of existing assumptions. And if that is the case, what is meant by demanding that any resulting change must be carried out by moral suasion and negotiation and never by force? After all, "force" includes not only degrees of subtle intimidation but also the dislocation of the moral world people inhabit.

This brings me to a question about the law. Secularists are alarmed at the thought that religion should be allowed to *invade* the domain of our personal choices—although the process of speaking and listening *freely* im-

4. An example of this was made dramatically evident in Turkey early in the summer of 1997, when the secularist army forced the resignation of the coalition government led by the pro-Islamic Welfare Party. The military-backed government that succeeded it has instituted major reforms in an effort to contain the growing resurgence of Islam in the population. A crucial part of these reforms is the formal extension of compulsory secular education for children from five to eight years, a measure designed to stop the growth of Islamic sentiment in the formation of schoolchildren.

plies precisely that our thoughts and actions should be opened up to change by our interlocutors. Besides, secularists accept that in modern society the political increasingly penetrates the personal. At any rate, they accept that politics, through the law, has profound consequences for life in the private sphere. So why the fear of religious intrusion into private life? This partiality may be explained by the doctrine that while secular law permits the essential self to make and defend itself ("our rights constitute us as modern subjects"), religious prescriptions only confine and dominate it. Yet even if we take as unproblematic the assumption that there exists a priori a secular self to be made, the question of coercion in such a constructive task can't easily be brushed aside. For the juridification of all interpersonal relations constrains the scope for moral suasion in public culture. In that context, far from becoming a source of moral values that can enrich public debate, deprivatized religion (where religion has already been defined essentially as a matter of belief) becomes a site of conflict over nonnegotiable rights—for example, the parent's right to determine his or her child's upbringing, or the pregnant woman's right to dispose of her fetus.

One old argument about the need to separate religion from politics is that because the former essentially belongs to the domain of faith and passion, rational argument and interest-guided action can have no place in it. The secularist concedes that religious beliefs and sentiments might be acceptable at a personal and private level, but insists that organized religion, being founded on authority and constraint, has always posed a danger to the freedom of the self as well as to the freedom of others. That may be why some enlightened intellectuals are prepared to allow deprivatized religion entry into the public sphere for the purpose of addressing "the moral conscience" of its audience—but on condition that it leave its coercive powers outside the door and rely only on its powers of persuasion. In a liberal democratic society, as Charles Taylor puts it in his discussion of modes of secularism, citizens belonging to different religious traditions (or to none) will try to persuade one another to accept their view, or to negotiate their values with one another.

The public, however, is notoriously diverse. Modern citizens don't subscribe to a unitary moral system—moral heterogeneity is said to be one of modern society's defining characteristics (even if the modern state does promote a particular ethical outlook). The puzzle here is how a deprivatized religion can appeal effectively to the consciences of those who don't accept its values. And the possibility of negotiation depends on the prior

agreement of the parties concerned that the values in question are in fact negotiable. In a modern society such agreement does not extend to all values. The only option religious spokespersons have in that situation is to act as secular politicians do in liberal democracy. Where the latter cannot persuade others to negotiate, they seek to manipulate the conditions in which others act or refrain from acting. And in order to win the votes of constituents they employ a variety of communicative devices to target their desires and anxieties. I will return to the idea that deprivatized religion in a secularized society cannot be any different.

My conclusion so far is that those who advocate the view that the deprivatization of religion is compatible with modernity do not always make it clear precisely what this implies. Is the assumption that by appealing to the conscience of the nation religious spokespersons can evoke its moral sensibilities? The difficulty here is that given the moral heterogeneity of modern society referred to above, nothing can be identified as a national conscience or a collective moral sensibility. So is the assumption then that religious spokespersons can at least enrich public argument by joining in political debates? But even liberal politicians don't merely engage in public talk for the sake of "enriching" it. As members of a government and as parliamentarians they possess the authority to take decisions that are implemented in national policies. What authority do religious spokespersons have in this matter?

Should nationalism be understood as secularized religion?

Is nationalism, with its affirmation of collective solidarity, already a religion of the nation-state? Is that how religious spokespersons can derive their authority in the public sphere, by invoking the national community as though it were also a religious one? There is certainly a long and interesting tradition that suggests nationalism *is* a religion. Thus as far back as 1926 Carlton Hayes remarked that "Nationalism has a large number of particularly quarrelsome sects, but as a whole it is the latest and nearest approach to a world-religion."[5]

Julian Huxley, writing in 1940, maintained that "humanist religion"

5. C. J. H. Hayes, *Essays on Nationalism*, New York, 1926, cited in John Wolffe, *God and Greater Britain: Religion and National Life in Britain and Ireland, 1843–1945*, London and New York: Routledge, 1994, p. 16.

was destined to replace traditional theological religion, and that social movements of a religious nature like Nazism and Communism were evidence of this supersession. Their cruel and repulsive character, he went on to suggest, merely reflected their youthfulness in relation to evolutionary development: "Just as many of these early manifestations of theistic religion were crude and horrible . . . so these early humanist and social religions are crude and horrible."[6] Although Huxley doesn't address the question of nationalism directly, the idea of nationalism as the highest stage of religion conceived within an evolutionary framework is not hard to discern in his text.

More recently, Margaret Jacob has made an argument about the historical connection between secular rituals and the formation of modern political values. She describes how a new pattern of sentiments, beliefs, and ceremonial activities—a "new religiosity"—came to be associated with eighteenth-century Freemasonry, and how it contributed to the emergence of liberal society.[7] "Reason" and "civil society," she proposes, were thus sacralized in the life of early West European nations—and (in her view) a good thing too.

Among anthropologists, Clifford Geertz is famous for having identified the centrality of sacred symbols springing from religious impulses to all forms of political life, nationalist as well as prenationalist, in societies both modern and premodern. The symbolic activities that take place in the center, Geertz suggests, give it "its aura of being not merely important but in some odd fashion connected with the way the world is built." This is why "The gravity of high politics and the solemnity of high worship" are akin.[8] Since Geertz there has been a spate of writing by anthropologists that describe "the deification" of the supreme leader, the promotion of national "icons" and "pilgrimage sites," the solemnity of state "ritual," and so on.

6. Julian Huxley, *Religion without Revelation*, abridged edition, London: Watts and Co., 1941, p. viii.

7. See Margaret C. Jacob, *Living the Enlightenment: Freemasonry and Politics in Eighteenth-Century Europe*, New York: Oxford University Press, 1992, and especially her "Private Beliefs in Public Temples: The New Religiosity of the Eighteenth Century," *Social Research*, vol. 59, no. 1, 1992.

8. Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, New York: Basic Books, 1983, p. 124. See also Robert Bellah, "Civil Religion in America," in *Beyond Belief: Essays on Religion in a Post-Traditional World*, New York: Harper and Row, 1970.

However, I am not persuaded that because national political life depends on ceremonial and on symbols of the sacred, it should be represented as a kind of religion—that it is enough to point to certain parallels with what we intuitively recognize as religion. One problem with this position is that it takes as unproblematic the entire business of defining religion. It does not ask why *particular* elements of "religion" as a concept should be picked out as definitive, and therefore fails to consider the discursive roles they play in different situations. (This kind of definition is what Steiner criticized in his book *Taboo*, mentioned earlier.)

Of course notions of sacredness, spirituality, and communal solidarity are invoked in a variety of ways to claim authority in national politics (sovereignty, the law, national glories and sufferings, the rights of the citizen, and so forth). Critics often point to the words in which these notions are conveyed as signs of "religion." But this evidence is not decisive. I suggest that we need to attend more closely to the historical grammar of concepts and not to what we take as signs of an essential phenomenon. In the first chapter I tried to do this—albeit far too briefly—by looking at "the sacred," "myth," and "the supernatural."

A writer who appears to do the same is Carl Schmitt. Schmitt argues that many theological and political concepts share a common structure. "All significant concepts of the modern theory of the state are secularized theological concepts," he writes, "not only because of their historical development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts. The exception in jurisprudence is analogous to the miracle in theology. Only by being aware of this analogy can we appreciate the manner in which the philosophical ideas of the state developed in the last centuries."[9] Although Schmitt's thesis about the secularization of religious concepts is not about nationalism as such, it does have implications for the way we see it. For if we accept that religious ideas can be "secularized," that secularized concepts retain *a religious essence*, we might be induced to accept that nationalism has a religious origin.

However, my view is that we should focus on the differential results rather than on the corresponding forms in the process referred to as "secu-

9. Carl Schmitt, *Political Theology*, Cambridge, Mass.: MIT Press, 1985 [original, 1934], p. 36.

larization." For example, when it is pointed out that in the latter part of the nineteenth century Tractarianism in England and Ultramontanism in France (and in Europe generally) helped to break the post-Reformation alliance between church and state,[10] and that this was done by deploying religious arguments aimed at securing the freedom of Christ's church from the constraints of an earthly power, we should regard this development as significant not because of the essentialized ("religious") agency by which it was initiated, but because of the difference the outcome yielded. That outcome not only included the development of different moral and political disciplines, such as those that Foucault identified as governmentality.[11] It involved a redefinition of the essence of "religion" as well as of "national politics."

By way of contrast: in later eighteenth-century England, supporters of the established church regarded it as a representative institution reflecting popular sentiment and public opinion. It would not be right to say that religion was then being used for political purposes or influencing state policy. The established church, which was an integral part of the state, made the coherence and continuity of the English national community possible. We should not say that the English nation was *shaped or influenced* by religion: we should see the established church (called "Anglican" only in the nineteenth century) as its *necessary condition*. Nor, given that it was a necessary condition of the nation-state, should we speak of the *social location* of religion in the eighteenth century being different from the one it came to occupy in the late nineteenth and beyond. Rather, the very essence of religion was differently defined, that's to say, in each of the two historical moments different conditions of "religion's" existence were in play. What

10. The constitutional privilege accorded the Church of England in the British state today is largely a formality—and to the extent that it still has material consequences, it is often cited as evidence of Britain's "incompletely modernized" state. See Tom Nairn, *The Break Up of Britain*, London: New Left Books, 1977.

11. Strictly speaking, Foucault doesn't think of discipline as being intrinsic to governmentality but only as something "in tension with it." That's why he speaks of "a triangle, sovereignty-discipline-government, which has as its primary target the population and as its essential mechanism the apparatus of security" (see "Governmentality," in *The Foucault Effect*, ed. G. Burchell, C. Gordon, and P. Miller, Chicago: University of Chicago Press, 1991). I'm not persuaded, however, that discipline can be conceptually separated from governmentality, whose raison-d'être is the management of target populations within nation societies.

we now retrospectively call *the social*, that all-inclusive secular space that we distinguish conceptually from variables like "religion," "state," "national economy," and so forth, *and on which the latter can be constructed, reformed, and plotted*, didn't exist prior to the nineteenth century.[12] Yet it was precisely the emergence of *society* as an organizable secular space that made it possible for the state to oversee and facilitate an original task by redefining religion's competence: the unceasing material and moral transformation of its *entire* national population regardless of their diverse "religious" allegiances. In short, it is not enough to point to the structural analogies between premodern theological concepts and those deployed in secular constitutional discourse, as Schmitt does, because the practices these concepts facilitate and organize differ according to the historical formations in which they occur.[13]

I am arguing that "the secular" should not be thought of as the space in which *real* human life gradually emancipates itself from the controlling power of "religion" and thus achieves the latter's relocation.[14] It is this assumption that allows us to think of religion as "infecting" the secular domain or as replicating within it the structure of theological concepts. The concept of "the secular" today is part of a doctrine called secularism. Secularism doesn't simply insist that religious practice and belief be confined to a space where they cannot threaten political stability or the liberties of "free-thinking" citizens. Secularism builds on a particular conception of the world ("natural" and "social") and of the problems generated by that

12. Mary Poovey notes that "By 1776, the phrase *body politic* had begun to compete with another metaphor, *the great body of the people*. . . . By the early nineteenth century, both of these phrases were joined by the image of the social body" (*Making A Social Body: British Cultural Formation*, Chicago: University of Chicago Press, 1995, p. 7). See also the second chapter, "The Production of Abstract Space."

13. Hans Blumenberg criticizes Schmitt for not taking into account the way theological metaphors are selected and used within particular historical contexts, and therefore for mistaking analogies for transformations. See *The Legitimacy of the Modern Age*, Cambridge, Mass.: MIT Press, 1983 (original, 1973–1976), part I, chapter 8. This point—as also his more extensive critique of Karl Löwith's thesis about the essentially Christian character of the secular idea of progress—is well taken. But I find Blumenberg's delineation and defense of "secularism" rooted firmly as it is in a conventional history-of-ideas approach unconvincing. His relative neglect of *practice* is also remarkable given the nature of his criticism of Schmitt.

14. For an illuminating discussion of this point, see John Milbank's *Theology and Social Theory*, Oxford: Blackwell, 1990.

world. In the context of early modern Europe these problems were perceived as the need to control the increasingly mobile poor in city and countryside, to govern mutually hostile Christian sects within a sovereign territory, and to regulate the commercial, military, and colonizing expansion of Europe overseas.[15]

The genealogy of secularism has to be traced through the concept of the secular—in part to the Renaissance doctrine of humanism, in part to the Enlightenment concept of nature, and in part to Hegel's philosophy of history. It will be recalled that Hegel—an early secularization theorist—saw the movement of world history culminating in the Truth and Freedom of what he called "the modern period." Like later secularists, he held that from the Reformation to Enlightenment and Revolution, there emerged at last a harmony between the objective and subjective conditions of human life resulting from "the painful struggles of History," a harmony based on "the recognition of the Secular as capable of being an embodiment of Truth; whereas it had been formerly regarded as evil only, as incapable of Good—the latter being essentially ultramundane."[16]

In fact the historical process of secularization effects a remarkable ideological inversion, though not quite in the way that Hegel claimed in the sentence just cited. For at one time "the secular" was part of a theological discourse (*saeculum*). "Secularization" (*saecularisatio*) at first denoted a legal transition from monastic life (*regularis*) to the life of canons (*saecularis*)—and then, after the Reformation, it signified the transfer of ecclesiastical real property to laypersons, that is, to the "freeing" of property from church hands into the hands of private owners, and thence into market circulation.[17] In the discourse of modernity "the secular" presents itself as the ground from which theological discourse was generated (as a form of false consciousness) and from which it gradually emancipated itself in its march to freedom. On that ground humans appear as the self-conscious makers of History (in which calendrical time provides a measure and direction for

15. Cf. James Tully, "Governing Conduct," in E. Leites, ed., *Conscience and Casuistry in Early Modern Europe*, Cambridge: Cambridge University Press, 1988. This work is an attempt to apply a Foucauldian perspective to the intellectual history of early modern Europe.

16. G. W. F. Hegel, *The Philosophy of History*, trans. J. Sibree, Buffalo, NY: Prometheus Books, 1991, p. 422.

17. See "Säkularisation, Säkularisierung," in *Geschichtliche Grundbegriffe*, ed. O. Brunner, W. Conze, and R. Koselleck, Stuttgart: E. Klett, 1972–1997, vol. V, pp. 789–830.

human events), and as the unshakable foundation of universally valid knowledge about nature and society. The human as agent is now responsible—answerable—not only for acts he or she has performed (or refrained from performing). Responsibility is now held for events he or she was unaware of—or falsely conscious of. The domain in which acts of God (accidents) occur without human responsibility is increasingly restricted. Chance is now considered to be tamable. The world is disenchanted.

The interesting thing about this view is that although religion is regarded as alien to the secular, the latter is also seen to have generated religion. Historians of progress relate that in the premodern past secular life created superstitious and oppressive religion, and in the modern present secularism has produced enlightened and tolerant religion. Thus the insistence on a sharp separation between the religious and the secular goes with the paradoxical claim that the latter continually produces the former.

Nationalism, with its vision of a universe of national *societies* (the state being thought of as necessary to their full articulation) in which individual humans live their worldly existence requires the concept of the secular to make sense. The loyalty that the individual nationalist owes is directly and exclusively to the nation. Even when the nation is said to be "under God," it has its being only in "this world"—a special kind of world. The men and women of each national society make and *own* their history. "Nature" and "culture" (that famous duality accompanying the rise of nationalism) together form the conditions in which the nation uses and enjoys the world. Mankind dominates nature and each person fashions his or her individuality in the freedom regulated by the nation-state.

One should not take this to mean that the worldliness of the secular members of modern nations is an expression of the truth revealed through the human senses, since senses themselves have a history. However unworldly medieval Christian monks and nuns may have been, they too lived in the world (where else?), but they lived differently in it from laypersons. Allegiance demanded of them was solely to Christ and through him to other Christians. Benedict Anderson quite rightly represents the worldliness of secular nationalism as a specific ideological construct (no less ideological than the one it replaces) that includes in the present an imagined realm of the nation as a community with a "worldly past." And he makes an important point when he draws our attention to the fact that nationalism employs highly abstract concepts of time and space to tell a particular story—even though that story is presented as commonsensical, that is, as

accessible to all in the nation—a story about the nation as a natural and self-evident unity whose members share a common experience. This construct is no less real for being ideological; it articulates a world of actual objects and subjects within which the secular nationalist lives. What needs to be emphasized beyond Anderson's famous thesis is that the complex medieval Christian universe, with its interlinked times (eternity and its moving image, and the irruptions of the former into the latter: Creation, Fall, Christ's life and death, Judgment Day) and hierarchy of spaces (the heavens, the earth, purgatory, hell), is broken down by the modern doctrine of secularism into a duality: a world of self-authenticating things in which we *really* live as social beings and a religious world that exists only in our imagination.

To insist that nationalism should be seen as religion, or even as having been "shaped" by religion is, in my view, to miss the nature and consequence of the revolution brought about by modern doctrines and practices of the secular in the structure of collective representations. Of course modern nationalism draws on preexisting languages and practices—including those that we call, anachronistically, "religious." How could it be otherwise? Yet it doesn't follow from this that religion forms nationalism.

We should not accept the mechanical idea of causality always and without question. Thus if we take cause to be about the way an event is "felt" in subsequent events, we will tend to look for the continuity of religious causes in nonreligious effects. But searching in this way for the origin of elements or for the "influence" of events on one another is, I would submit, of limited value here: what requires explaining (how nationalism contains a religious influence) is being used innocently as the means of explanation (religion as at once both cause and effect). If instead we were to attend to an older sense of cause (cause is that which answers to the question "Why?") we would ask about the reformation of historical elements in order to understand why their meaning is no longer what it was. After all, religion consists not only of particular ideas, attitudes, and practices, but of followers. To discover how these followers instantiate, repeat, alter, adapt, argue over, and diversify them (to trace their tradition) must surely be a major task. And so too with secularism. We have to discover what people do with and to ideas and practices before we can understand what is involved in the secularization of theological concepts in different times and places.

Or should Islamism be regarded as nationalism?

Let us take for granted that nationalism is essentially secular (in the sense that it is rooted in human history and society). Can we now argue from the opposite direction and say that some apparently religious movements should be viewed as nationalist, and that they are therefore really secular? Many observers of political Islam have adopted this argument, although in doing so they are in effect simply reversing the terms of the secularization thesis.

To represent the contemporary Islamic revival (known by those who approve of it in the Arab world as *as-sahwa*, "the awakening") as a form of crypto-nationalism,[18] to refer to it explicitly by the term "cultural nationalism,"[19] is to propose that it is best understood as a continuation of the familiar story of Third World nationalism. That proposal renders the claim by Muslim activists to be part of a historical Islamic tradition specious because, as cultural nationalists, they must be seen as part of something essentially (though distortedly) "modern." However, the fact that those active in the revival are usually highly critical of "traditional" teachers and practices does not prove that they are really rejecting tradition. Belonging to a tradition doesn't preclude involvement in vigorous debate over the meanings of its formative texts (even over which texts *are* formative) and over the need for radical reform of the tradition. The selectivity with which people approach their tradition doesn't necessarily undermine their claim to its integrity. Nor does the attempt to adapt the older concerns of a tradition's followers to their new predicament in itself dissolve the coherence of that tradition—indeed that is precisely the object of argument among those who claim to be upholding the essence of the tradition.

All of this is not to say that there is nothing in common between the

18. For example A. Ayalon, "From Fitna to Thawra," *Studia Islamica*, vol. 66, 1987; and N. Keddie, "Islamic Revival as Third Worldism," in J. P. Digard, ed., *Le Cuisinier et le Philosophe: Hommage à Maxime Rodinson*, Paris: Maisonneuve et Larose, 1982.

19. Luciani, reviewing the effect of the Islamic resurgence on modern Middle Eastern politics, observes that "modern Islamic thinking, in avowedly different ways, offers radical answers to contemporary issues. These answers are, in a sense, a form of cultural nationalism, in which religion gives more substance to the rejection of Western domination" (G. Luciani, ed., *The Arab State*, Berkeley: University of California Press, 1990, p. xxx).

motives of Islamists and of Arab nationalists. There are overlaps between the two, notably in their similar stance of opposition against "the West," which has been experienced in the Middle East in the form of predatory nationalisms of the great powers. Because, as individuals, Islamists and nationalists share this position they are sometimes led to seek a common alliance—as happened at the Khartoum international conference of Islamists and Arab nationalists in the aftermath of the Gulf War.[20] However pragmatic and brittle such alliances turn out to be, they presuppose differences that the would-be allies believe should be bridged.

The differences spring from the Islamist project of regulating conduct in the world in accordance with "the principles of religion" (*usul ud-din*), and from the fact that the community to be constructed stands counter to many of the values of modern Western life that Arab nationalism endorses. Both these conditions define what one might call contemporary Islamic worldliness. The basic thrust of Arab nationalist ideology is of course supra-denominational (despite its invocations of Islamic history and its concessions to Islamic popular sentiment), and it is committed to the doctrine of separating law and citizenship from religious affiliation and of confining the latter to the private domain. In brief, "religion" is what secular Arabism specifies and tries to set in its proper social place.

For nationalism the history of Islam is important because it reflects the early unification and triumph of the Arab nation; in that discourse the "Arabian Prophet" is regarded as its spiritual hero.[21] This is an inversion of the classical theological view according to which the Prophet is not the object of national inspiration for an imagined community, but the subject of divine inspiration, a messenger of God to mankind and a model for virtuous conduct (*sunna*) that each Muslim, within a Muslim community, must seek to embody in his or her life, and the foundation, together with the Qur'an, of *din* (now translated as "religion"). Nor is Islamic history in the classical view an account of the Arab nation's rise and decline. Classical Islamic chronicles are not "history" in the sense that nationalism claims "it has a history." They grow out of *hadith* accounts (records of the sayings and doings of the Prophet) on which the *sunna* is based, and they articulate a Qur'anic world view as expressed in the political and theological conflicts among the faithful. At any rate it is easy to see that while the "Arab nation" is inconceivable without its history, the Islamic *umma* presupposes only the Qur'an and *sunna*.

The Islamic *umma* in the classical theological view is thus not an imagined community on a par with the Arab nation waiting to be politically unified but a theologically defined space enabling Muslims to practice the disciplines of *din* in the world. Of course the word *umma* does also have the sense of "a people"—and "a community"—in the Qur'an. But the members of every community imagine it to have a particular character, and relate to one another by virtue of it. The crucial point therefore is not that it is imagined but that what is imagined predicates distinctive modes of being and acting. The Islamic *umma* presupposes individuals who are self-governing but not autonomous. The *shari'a*, a system of practical reason morally binding on each faithful individual, exists independently of him or her. At the same time every Muslim has the psychological ability to discover its rules and to conform to them.

The fact that the expression *umma 'arabiyya* is used today to denote the "Arab nation" represents a major conceptual transformation by which *umma* is cut off from the theological predicates that gave it its universalizing power, and is made to stand for an imagined community that is equivalent to a total political society, limited and sovereign like other limited and sovereign nations in a secular (social) world.[22] The *ummatu-l-muslimin* (the Islamic *umma*) is ideologically not "a society" onto which *state, economy*, and *religion* can be mapped. It is neither limited nor sovereign, for un-

20. The delegates were mostly from countries that had opposed the U.S.-led invasion of Kuwait and Iraq, including Islamist and Marxist currents within the PLO, but oppositional elements from Muslim states that had supported the Americans—such as Egypt and Turkey—also participated (see Majdi Ahmad Husain, "al-mu'tamar ash-sha'bi al-'arabi al-islami: al-fikra, al-mumarasa, ath-thamara," *ash-Sha'b*, May 7, 1991, p. 3).

21. A Christian Arab nationalist writes with admiration of the personality of the Prophet Muhammad, of his strength of conviction and firmness of belief, and concludes: "This is the spiritual message contained in the anniversary of the Arabian Prophet's birth which is addressed to our present national life. It is for this, in spite of their different tendencies and their diverse religions and sects, that the Arab nationalists must honor the memory of Muhammad b. Abdallah, the Prophet of Islam, the unifier of the Arabs, the man of principle and conviction" (Qustantin Zuraiq, *al-wa'i al-qaumi*, Beirut, 1949, cited in S. G. Haim, ed., *Arab Nationalism: An Anthology*, Berkeley: University of California Press, 1962, p. 171).

22. The reference here is to Benedict Anderson's definition of the nation: "it is an imagined political community—imagined as both inherently limited and sovereign" (*Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1983, p. 15).

like Arab nationalism's notion of *al-umma al-'arabiyya*, it can and eventually should embrace all of humanity. It is therefore a mistake to regard it as an "archaic" (because "religious") community that predates the modern nation.[23] The two are grammatically quite different.

I do not mean to imply that the classical theological view is held in all its specificity by individual Islamists. All Muslims today inhabit a different world from the one their medieval forebears lived in, so it cannot be said of any of them that they hold the classical theological view. Even the most conservative Muslim draws on experiences in the contemporary world to give relevance and credibility to his or her theological interpretations. As I indicated above, people who have been called "Islamists" are in many ways close to nationalists even though nationalism had no meaning in the doctrines of the classical theologians. Yet it is evident that "Islamists," as they have been called by observers (to themselves they are simply proper Muslims), relate themselves to the classical theological tradition by translating it into their contemporary political predicament. Of course this relationship isn't articulated identically in different countries, or even within the same country. But the very fact that they must interpret a millennium-old discursive tradition—and, in interpreting it, inevitably disagree with one another—marks them off from Arab nationalists with their Western-derived discourse. For example, the right of the individual to the pursuit of happiness and self-creation, a doctrine easily assimilable by secular nationalist thought, is countered by Islamists (as in classical Islamic theology) by the duty of the Muslim to worship God as laid down in the *shari'a*.

Both Arab nationalism (whether of the "liberal" or the "socialist" variety) and Islamism share a concern with the modernizing state that was put in place by Westernizing power—a state directed at the unceasing material and moral transformation of entire populations only recently organized as "societies."[24] In other words, Islamism takes for granted and seeks to work through the nation-state, which is so central to the predicament of all Muslims. It is this *statist* project and not the fusion of religious and political ideas that gives Islamism a "nationalist" cast. Although Islamism has virtually always succeeded Arab nationalism in the contemporary history of the Middle East, and addressed itself directly to the nation-state, it should not be regarded as a form of nationalism.[25] The "real" motives of Islamists, of whether or not individuals are "using religion for political ends," is not a relevant question here. (The motives of political actors are, in any case, usually plural and often fluctuating.) The important question is what circumstances oblige "Islamism" to emerge publicly as a political discourse, and whether, and if so in what way, it challenges the deep structures of secularism, including its connection with nationalist discourse.

From the point of view of secularism, religion has the option either of confining itself to private belief and worship or of engaging in public talk that makes no demands on life. In either case such religion is seen by secularism to take the form it should properly have. Each is equally the condition of its legitimacy. But this requirement is made difficult for those who wish to reform life given the ambition of the secular state itself. Because the modern nation-state seeks to regulate all aspects of individual life—even the most intimate, such as birth and death—no one, whether religious or otherwise, can avoid encountering its ambitious powers. It's not only that the state intervenes directly in the social body for purposes of reform; it's that all social activity requires the consent of the law, and therefore of the nation-state. The way social spaces are defined, ordered, and regulated makes them all equally "political." So the attempt by Muslim activists to ameliorate social conditions—through, say, the establishment of clinics or schools in underserviced areas—must seriously risk provoking the charge of political illegitimacy and being classified *Islamist*. The call by Muslim movements to reform the social body through the authority of popular majorities in the national parliament will be opposed as "antidemocratic," as in Algeria in 1992 and in Turkey in 1997. Such cases of deprivatized religion are intolerable to secularists primarily because of the *motives* imputed to their opponents rather than to anything the latter have actually done. The motives signal the potential entry of religion into space already occupied by the secular. It is the nationalist secularists themselves,

23. Cf. Anderson, p. 40.

24. It's worth noting that the modern Arabic word for "society"—*mujtama'*—gained currency only in the 1930s. (See Jaroslav Stetkevych, *The Modern Arabic Literary Language*, Chicago: University of Chicago Press, 1970, p. 25.) Lane's *Lexicon*, compiled in the mid-nineteenth century, gives only the classical meaning of *mujtama'*: "a meeting place."

25. Arguably, the idea of an Islamic state is not identifiable at the beginnings of Islamic history (see my comments on the subject in "Europa contra Islam: De Islam in Europa," in *Nexus*, no. 10, 1994; the English version has been published in *The Muslim World*, vol. 87, no. 2, 1997).

one might say, who stoutly reject the secularization of religious concepts and practices here.

The main point I underline is that Islamism's preoccupation with state power is the result not of its commitment to nationalist ideas but of the modern nation-state's enforced claim to constitute legitimate social identities and arenas. No movement that aspires to more than mere belief or inconsequential talk in public can remain indifferent to state power in a secular world. Even though Islamism is situated in a secular world—a world that is presupposed by, among other things, the universal space of *the social* that sustains the nation-state—Islamism cannot be reduced to nationalism. Many individuals actively involved in Islamist movements *within the Arab world* may regard Arab nationalism as *compatible* with it, and employ its discourse too. But such a stance has in fact been considered inconsistent by many Islamists—especially (but not only) outside the Arab world.[26]

Some outstanding questions

In conclusion, I want to suggest that if the secularization thesis seems increasingly implausible to some of us this is not simply because religion is now playing a vibrant part in the modern world of nations. In a sense what many would anachronistically call "religion" was *always* involved in the world of power. If the secularization thesis no longer carries the conviction it once did, this is because the categories of "politics" and "religion" turn out to implicate each other more profoundly than we thought, a discovery that has accompanied our growing understanding of the powers of the modern nation-state. The concept of the secular cannot do without the idea of religion.

True, the "proper domain of religion" is distinguished from and separated by the state in modern secular constitutions.[27] But formal constitutions never give the whole story. On the one hand objects, sites, practices, words, representations—even the minds and bodies of worshipers—cannot be confined within the exclusive space of what secularists *name* "religion." They have their own ways of being. The historical elements of what come to be conceptualized as religion have disparate trajectories. On the other hand the nation-state requires clearly demarcated spaces that it can classify and regulate: religion, education, health, leisure, work, income, justice, and war. The space that religion may properly occupy in society has to be continually redefined by the law because the reproduction of secular life within and beyond the nation-state continually affects the discursive clarity of that space. The unceasing pursuit of the new in productive effort, aesthetic experience, and claims to knowledge, as well as the unending struggle to extend individual self-creation, undermines the stability of established boundaries.

I do not deny that religion, in the vernacular sense of that word, is and historically has been important for national politics in Euro-America as well as in the rest of the world. Recognition of this fact will no doubt continue to prompt useful work. But there are questions that need to be systematically addressed beyond this obvious fact. How, when, and by whom are the categories of religion and the secular defined? What assumptions are presupposed in the acts that define them? Does the shift from a religious political order to one that is governed by a secular state simply involve the setting aside of divine authority in favor of human law? In the chapter that follows, I try to address this latter question in relation to a particular place and a particular time.

26. Thus when a delegate from Jordan at the conference (mentioned in note 20) maintained that disagreements between the aims of the Islamic movement and those of Arab nationalism were relatively minor, and that it was certain that "any movement that is to prevail in our Arab world must be either a nationalist movement incorporating the Islamic perspective with a commitment to democracy and social justice, or an Islamic movement incorporating nationalist perspectives" (Husain, ibid.), his assertion was strongly contested, especially—but not only—by delegates from non-Arab countries who insisted that the only bond between Muslims at present divided among nation-states was Islam.

27. Although whether it should be so is contested even in the paradigmatic case of the United States. Thus it is pointed out that the phrase "separation of church and state" is not found in the Constitution, but represents the Supreme Court's interpretation of the founders' intention. See David Barton, *The Myth of Separation*, Aledo, Texas: Wallbuilder Press, 1992.

SECULARIZATION

7

Reconfigurations of Law and Ethics in Colonial Egypt

At the beginning of this study I proposed that the modern idea of a secular society included a distinctive relation between state law and personal morality, such that religion became essentially a matter of (private) belief—a society presupposing a range of personal sensibilities and public discourses that emerged in Western Europe at different points in time together with the formation of the modern state. Another way of putting this is that the idea of religious toleration that helps to define a state as secular begins with the premise that because belief cannot be coerced, religion should be regarded by the political authorities with indifference as long as it remains within the private domain. The individual's ability to believe what he or she chooses is translated into a legal right to express one's beliefs freely and to exercise one's religion without hindrance—so "religion" is brought back into the public domain. This freedom is qualified, however. The public expression of religious belief and performance of religious ritual must not be a probable cause of a breach of the peace, nor should it be construable as a symbolic affront to the state's personality. Perhaps the most famous examples of this have occurred in recent years in France (see Chapter 5). This indicates that the secular state, like others, is conceived of as a person who can be morally threatened.

In this final chapter I begin with two questions: How did Muslims think about secularism prior to modernity? What do Muslims today make of the idea of the secular? In contemporary polemics about the proper place of religion in Egypt several writers have claimed that secular life was

always central in the past, and seen to be such, because religious law (that is, the *sharī'a*) always occupied a restricted space in the government of society.[1] But the issue here is not an empirical one. It will not be resolved simply by more intensive archival research, just as understanding the place of the secular today requires more than mere ethnographic fieldwork, and more than a vigorous defense of its value for the political world we inhabit. A careful analysis is needed of culturally distinctive concepts and their articulation with one another. So in what follows I shall focus on Egypt in the late nineteenth and early twentieth century, a period in which significant shifts occurred in the relations between law, religion, and morality. So in spite of the questions with which I begin, I shall refer to premodern concepts and contemporary discourses briefly—and then only in order to draw certain contrasts.

One clue to how the secular was thought before the involvement of Egyptian history with the history of the modern West is found in nineteenth-century attempts to translate the term "secular" and its cognates into Arabic. The commonest word used today for the adjectives "secular" and "lay" as well as for "secularist" and "layman" is *'almāniyy*.[2] This latter word, now the most commonly used, was invented in the latter part of the nineteenth century. (There is no entry for it or for any of its cognates in Lane's *Arabic-English Lexicon* compiled in Egypt in the first half of the nineteenth century.) The word yields the abstract noun *'almāniyyah* to mean "secularism" or "laicism."

1. See, e.g., Muhammad Nur Farhat, *al-Mujtama' wa al-sharī'a wa al-qānūn*, Cairo: Al-Hilal 1986, p. 39.

2. The only relevant entry in *Muhīt al-Muhīt* (the first modern Arabic-Arabic dictionary, published in Beirut in 1870) is *'almāniyy*, which it renders as nonclerical and which it derives from *al-'ālam*, the world. Thus the Arabic-English *Al-Mawrid* (8th edition, 1996) gives the following: "secular, lay, laic(al); secularist; layman" for *'almāniyy*; "secularism, laicism" for *'almāniyyah*; "to secularize, laicize" for *'almana*; and "secularization, laicization" for *'almanah* [the nominal form derived from the invented verb]. *'Almanah* is also equated with *'almāniyyah*. The relative recency of this concept is also reflected in the fact that *The Oxford English-Arabic Dictionary of Current Usage* (1972) gives *'ilmāniyy* and not the now standard *'almāniyy* for "secular." The former is still used conversationally—often provoking pedantic attempts at correction—and its popularity may in part be due to the implicit suggestion that the concept of "secularism" is related to *'ilm*, meaning "knowledge" and "science," in contrast to "religion." Indeed Ahmad Hatum in his "'ilmaniyyah bi-kasr al-'ayn la bi-fathiha" (*al-Nāqid*, vol. 44, no. 20, 1990) distinguishes interestingly between the two forms.

Badger's *English-Arabic Lexicon*, published in 1881, gives two words for "secular" in the sense of "lay, not clerical": *'almāniyy* and *'āmmiyy*. But the latter carries the senses of "common," "vulgar," "popular," and "ordinary." Badger also renders "secular," in the sense of "worldly," as *dunyāwiyy* (and *dunyawiyy*). It has no entry for "secularism," but under "secularity" it gives *hubbu al-'ālam* (literally, "love of the world") as well as *dunyāwiyyah* (the abstract noun from the word for "worldly"), and *'ālamiyyah*, on the same pattern, derived from the word *'ālam*, meaning "world" or "logical universe." The latter occurs in the familiar Qur'anic epithet for God, *rabb al-'ālamīn*, "Lord of the two worlds" (namely, the world of men and the world of jinns [spirits]). But *'ālamiyyah* also signified "the state of knowledge," that is to say of Islam, as opposed to *jāhiliyya*, "the state of ignorance" or paganism.[3] In contemporary usage *'ālamiyyah* signifies "internationalism" not "secularism" or "secularity," although the adjectival form *'ālamiyy* does also carry the sense of "worldly" and "secular."

The response of Egyptians to the concept of secularism, their attempt to further it or attack it, was mediated by this work of translation. Thus in the nineteenth century the verbal form "to secularize" had no single Arabic equivalent. It is only very recently that the verb *'almana* was invented by working backward from the abstract noun *'almāniyyah*. (The normal procedure in Arabic is for the verbal root form to yield qualifiers and substantives.) More interesting is the fact that the verbal form was restricted to a legal sense indicating transfer of property—as in the Reformation sense of *saecularisatio* (secularization) mentioned in Chapter 5. Thus the process of "secularization" was rendered *tahwīl al-awqāf wa al-amlāk al-mukhtassa bi al-'ibāda wa al-diyāna ila al-aghrād 'ālamiyyah*[4]—literally, "the transfer to worldly purposes of endowments and properties pertaining to worship and religion." One problem with that was that a *waqf* (normally translated as a "religious endowment") might have a "religious or devotional purpose" (if it was a mosque, say), but more often than not it had no such purpose (as in the case of agricultural lands), or, more commonly, several purposes, "religious" and "nonreligious" (hospitals and schools, for example). *Waqf* (plural *awqāf*) was simply the sole form of inalienable property in the *sharī'a*, described by Max Weber and others as "sacred law." The Hanafi school

3. See Kazimirski's *Dictionnaire Arabe-Français*, revised and corrected by Ibed Gallab, volume 3, Cairo, 1875.

4. Badger, *English-Arabic Lexicon*, p. 937.

of law, followed in Egypt, defines the endowment of a *waqf* as (1) the extinction of the founder's right and the transfer of ownership to God, (2) that therefore becomes perpetual and irrevocable, and (3) which is devoted to the benefit of mankind.

In Europe, the word "secularism" denoting the doctrine that morality, national education, the state itself, should not be based on religious principles, dates from the middle of the nineteenth century[5]—as does the French "laïcisme" ("the doctrine that gives institutions a non-religious character").[6] The French expression "laïcisme" draws on the Jacobin experience, one that authorizes a stronger, more aggressive secularism (including hostility toward the presence of some "religious symbols" in state institutions) than the British equivalent does. There are therefore significant national differences in the way "secularism" is understood in Europe corresponding to different political histories. But by and large these are family differences: they articulate particular struggles over whether religious doctrines and communal morality—in their historical variety—should be allowed to affect the formation of public policy. So although both the concept and word were available in nineteenth-century Western Europe—used in connection with different institutions and politics—no attempt was made at that time to supply an Arabic word. Of course, this verbal lack does not in itself prove that Egyptians in the nineteenth century had no conception of "secularism." It does indicate, however, that political discourse in Arabic did not need to deal directly with it as it has since then. In this sense, secularism did not exist in Egypt prior to modernity.

What made its existence possible? In this chapter I try to trace some changes in the concept of the law in colonial Egypt that helped to make secularism thinkable as a practical proposition. I focus on some of the ways that legal institutions, ethics, and religious authority became transformed, my purpose being to identify the emergence of social spaces within which "secularism" could grow. I start by recounting the well-known story of the gradual narrowing of *sharī'a* jurisdiction (that is, a restriction of the scope of "religious law") and the simultaneous importation of European legal codes. This process has been represented by historians as the triumph of the rule of law, or as the facilitation of capitalist exploitation, or as the complex struggle for power between different kinds of agent—especially

5. See *The Oxford English Dictionary*.
6. See *Dictionnaire alphabétique et analogique de la langue française*.

colonizing Europeans and resisting Egyptians. Each of these perspectives may have something to be said for it, but my concern here is with something else: with exploring precisely what is involved when conceptual changes in a particular country make "secularism" thinkable.

I therefore look briefly at the wider context of cultural change and Islamic reform, and I point to the importance of the modern state for these developments. In this context the state is not a cause but an articulation of secularization. I stress that I do not aim at a total history of legal reform, although my focus is on the reform of the *sharī'a*, regarded by would-be reformers as a religious law that is largely inappropriate for a modern society. So I do a reading of a report on the reform of the *sharī'a* court system written by the highly influential Islamic reformer Muhammad Abduh in 1899 to examine the ways in which it reflects the new spaces of a modernizing state. I then do the same for Qasim Amin's famous book on the legal emancipation of women, and for the writings of the lawyer Ahmad Safwat who, as early as the second decade of the twentieth century, proposed principles for the reform of the *sharī'a* crucial to the constitution of a secular state. Safwat is not as well known or influential a figure as Abduh—or even Abduh's friend Amin. Indeed, his work is little known today. But his attempt to think through separate domains for state-administered law and religiously derived morality is highly instructive for understanding a space necessary to the secularizing impulse. The separation presupposes a very different conception of ethics from the one embedded in the classical *sharī'a*. That is why my reading of Safwat's texts is followed by a discussion of the relation between law and ethics in classical Islamic jurisprudence (*fiqh*). And why I return from this digression into classical thought to an analysis of connections between ritual worship (*'ibādāt*)—as stipulated in the rules of the *sharī'a*—and the authority of the religious law. This returns me to another aspect of Muhammad Abduh's discourse.

My interest in the texts I deal with is not in the influence they may have had on social and legal reform but in the arguments they display. I claim that the shifts in these texts reflect reconfigurations of law, ethics, and religious authority in a particular Muslim society that have been ignored by both secularists and Islamists.

The story of law reform

Egypt in the nineteenth century was formally part of the Ottoman empire but it possessed a large measure of political autonomy.[7] Internal order in the Ottoman empire during the nineteenth century was maintained by a variety of institutions—the police, inspectors of markets, the ruler's court of complaints, and so on. *Sharī'a* courts had primary jurisdiction over urban Muslims,[8] rural tribes followed customary rules and procedures (*'urf*),[9] and *milliyya* courts were regulated by and for the various sects of Christians and Jews.[10] Hence *sharī'a* courts were by no means the only form of law administration.[11] Indeed, the ruler had his own body of administrative law (*qanūn*) that did not draw its authority from the *sharī'a*. From the mid-nineteenth century on, a series of progressive legal reforms was carried out in the empire under the rubric of the *tanzīmāt* (the Commercial Code was issued in 1850, the Penal Code in 1858, the Commercial Procedure Code in 1861, and the Maritime Commerce Code in 1863) that involved the wholesale adoption of European codes. The first attempt in the Ottoman empire to codify the *sharī'a*, known as the *majalla*, was published over a period of seven years, from 1870 to 1877. Officially it had jurisdiction throughout the empire, but in fact it was never effective in Egypt.[12] There the formal control of Egypt's national budget by the European powers, to whom it had become heavily indebted, very quickly led (in 1876) to the introduction of a civil code for the Mixed Courts of Egypt—an autonomous institution administered by European judges by which European residents (over one percent of the population at the end of the nineteenth century) were legally governed in all matters including their interactions with Egyptians (thus disputes between natives and Europeans always fell under the jurisdiction of the Mixed Courts). A code for *sharī'a* courts was promulgated in 1880 and substantially amended in 1887. In 1883, a year after the British Occupation of Egypt, a modified version of the code used in the Mixed Courts was compiled for the National (*ahliyya*) Courts, both codes being based mainly on the Napoleonic Code. On the other hand, courts administering *sharī'a* law, often described by European historians as "religious courts," were deprived of jurisdiction over criminal and commercial cases and confined to administering family law and pious endowments (*awqāf*). The so-called "secular courts" (both Mixed and National) had jurisdiction over the rest.[13] The bureaucratization of the *sharī'a* courts (that is, the introduction of an appellate system, a new emphasis on documentation in judicial procedure as well as the authorization of written codes) drew on Western principles and incorporated the *sharī'a* into the modernizing state. The march from premodern chaos to modern order was initiated by Europeans and overseen at first by them and later by Europeanized Egyptians.[14] Law began to disentangle itself from the dictates of

7. For a standard Western account of nineteenth-century legal changes, see J. N. D. Anderson, *Islamic Law in the Modern World*, London: Stevens & Sons, 1959. For a recent sketch, see Rudolph Peters, "Islamic and Secular Criminal Law in Nineteenth-Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society*, vol. 4, no. 1, 1997.

8. See Muhammad Nur Farahat, *al-Tārīkh al-ijtimā'i li al-qānūn fī misr al-hadītha*, Cairo, 1993.

9. See *'URF* in *Encyclopaedia of Islam*.

10. See George N. Sfeir, "The Abolition of Confessional Jurisdiction in Egypt: The Non-Muslim Courts," *Middle East Journal*, vol. 10, no. 3, 1956.

11. Recent research into eighteenth- and nineteenth-century Ottoman archives seems to show that the administration of justice for non-Muslims was much more fluid and complicated than previously thought. On the one hand, evidence for the existence of full-fledged communal courts is exiguous; on the other hand there is copious evidence of Christians and Jews resorting voluntarily to *sharī'a* courts. This was strikingly the case for non-Muslim women who turned to these courts in matters relating to marriage, divorce, and inheritance, because there the *sharī'a* was often more favorable to them than the rules followed in their own religious communities. See Najwa al-Qattan, "Dhimmis in the Muslim Court: Legal Autonomy and Religious Discrimination," *International Journal of Middle East Studies*, vol. 31, 1999.

12. See S. S. Onar, "The Majalla," in *Law in the Middle East*, ed., M. Khadduri and H. J. Liebesny, Washington, D.C.: The Middle East Institute, 1955. In *al-Sharī'a al-islāmiyya wa al-qanūn al-wad'i*, Cairo: Dar al-Sharuq, 1996, p. 15, Tariq al-Bishri mentions that there were attempts to codify the *sharī'a* in the sixteenth and seventeenth centuries.

13. It may be noted, incidentally, that Fathi Zaghlul, in his influential history of the legal profession in the nineteenth century entitled *al-Muhāmā* (Cairo, 1900), does not write of *al-mahākim al-dīniyya wa al-'almāniyya* but of *mahākim al-shar'iyya wa al-madaniyya*—that is, not "religious and secular courts" but "*sharī'a* and civil courts." By the time we get to the 1930s we find the term *mahākim zamaniyya* (literally "temporal" courts) being used explicitly, as by Hamid Zaki (see note 17).

14. A summary statement of "the progress made in the administration of justice" in Egypt under British tutelage is contained in John Scott, "Judicial Re-

religion, becoming thereby both more modern and more secular. In 1955, under Jamal Abdul Nasir, the dual structure of the courts was finally abolished.[15] This unification and extension of state power, and the accompanying triumph of European-derived codification, have together been seen as part of Egypt's secularization and its progress toward "the rule of law."

Why *this* reform?

The story historians tell is of course more complex, deals with particular times and places, and has resort to the motives (declared or inferred) of actors in a changing political field. But what interests me are the categories used in the story, and the attempts to explain aspects of it through them—such as "agency," "tradition," "subjectivity," "ethics," "freedom."

The massive process of Westernization is not in dispute among historians of modern Egypt. A question that is in some dispute, however, is why the reformers looked to Europe rather than build on preexisting *sharī'a* traditions. The Egyptian jurist Tariq al-Bishri contends that what he calls the mimicry of the West was the outcome of a combination of circumstances, chief among them European coercion and the Egyptian elites' infatuation with European ways.[16] Bishri seems to me to have a better

form in Egypt," *Journal of the Society of Comparative Legislation*, no. 2, July 1899. Sir John Scott, who was charged by Lord Cromer, the British consul-general, with overseeing these reforms, repeats the colonial notion that "until recently there was no such thing as native justice" (p. 240). This view was then taken up by Egyptian progressivists as well

15. John Anderson writes that "In Egypt the reason given for the abolition of both the *Sharī'a* courts and the community courts of the various Christian and Jewish sects was the unsatisfactory nature of some of their judgments and procedure; but there can be little doubt that behind this lay—naturally enough—a general predilection for bureaucratic unification" (J. N. D. Anderson, "Modern Trends in Islam: Legal Reform and Modernisation in the Middle East," *International and Comparative Law Quarterly*, vol. 20, 1971, p. 17).

16. "When we look at the closing years of the nineteenth century and the opening years of the twentieth, we are struck by names applied to what they do not mean. Thus altering legal organizations so as to accommodate them to the West was called 'reform', although 'reform' means the removal of corruption, that is, continuity together with improvement. It does not mean radical change and substitution. Thus taking from the old (*al-qadīm*) was called 'imitation' (*taqlīd*),

sense of the contingent character of the changes brought about by the encounter with Europeans than many historians, Western and Egyptian, who narrate Europeanization as the story of true civilization.[17]

So how is one to understand the Egyptian elites' adoption of European models of law? Sa'id Ashmawi, ex-judge of the Appeal Court, writes that the assumption of a foreign law having been imported into Egypt is wrong. Roman law, he explains, was a synthesis of various customs, conventions, and laws prevailing in the empire (including Rome itself of course, as well as West Asia and North Africa) that was codified in the Institutes of Justinian in 533 C.E. Thus Roman law, says Ashmawi, has a great deal in common with Islamic law and jurisprudence (*fiqh*) because it provided a foundation for the latter.[18] When Napoleon Bonaparte charged the lawmakers of France to draw up a civil code they turned naturally to the Institutes of Justinian to devise what came to be known as the Napoleonic Code. And when the Egyptian lawmakers intended in 1883 to modernize the judicial system and legal style, they noticed that Islamic jurisprudence was not properly organized and categorized, and that legal procedure and judgment lacked adequate method and system. So they translated French compilations into Arabic, and with some slight modifications this became Egyptian law.[19] "But Egyptian law is neither French nor Roman," insists Ashmawi, "meaning that it does not contain principles foreign to Egyptian society or remote from the Islamic *sharī'a*, or it would have been impossible to apply it so successfully for more than a century, implanting the principles of justice and ensuring social peace and security."[20] Even if these generalizations regarding the Roman origins of both the Napoleonic Code

while taking from the West was called 'renewal' (*tajdīd*) and innovation (*ibdā'*)—despite the fact that it was precisely taking from the West that was mere mimicry (*al-muhākā*). For when someone mimics he doesn't mimic himself but another, so that the term 'imitation' is applied more appropriately to taking over something from another" (Tariq al-Bishri, *al-Hiwār al-islāmi al-'almāni*, Cairo: Dar al-Sharuq, 1996, p. 9).

17. Thus the lawyer Hamid Zaki, in arguing for the reform of personal status law, refers repeatedly to European societies as "civilized countries," implying perhaps that Egypt was not quite one of them yet ("*al-Mahākim al-ahliyya wa al-ahwāl al-shakhsiyya*," *Majallat al-qānūn wa al-iqtisād*, December 1934).

18. Sa'id al-'Ashmawi, *al-Sharī'a al-islāmiyya wa al-qānūn al misrī*, Cairo: Maktabat Madbuli al-Saghir, 1996, pp. 32–33.

19. Ibid., p. 36.

20. Ibid., p. 37.

and the *sharī'a* were correct, this denial of *difference* makes it impossible to understand the specific implications of importing modern European codes into nineteenth-century Egypt for law and morality. This is crucial, in my view, for understanding secularism, a doctrine that is not Roman but modern.

Nathan Brown, the author of an excellent history of law in the modern Arab world, has complained that "much recent scholarship continues to assert that the basic contours of legal systems were laid by the metropole, local imperial officials, and expatriate populations. . . . This view, centered as it is on the motives and actions of the imperial power, should cause some discomfort because it risks writing the population of much of the world out of its own history."[21] Thus Brown argues that contrary to the repeated nationalist claim that the Mixed Courts were imposed because of the capitulations, the Mixed Courts were in fact a means by which a partially independent Egyptian government sought to limit the capitulations.[22] *This* motivation, he says, should be attributed to the entire movement of legal reform along European lines because the latter can be seen as a tool for resisting direct European penetration.[23]

But the motives were surely more diverse—especially in different periods. For example, when Muhammad Ali initiated certain penal reforms on the European model in the first few decades of the nineteenth century, he was not doing this to resist European penetration but to consolidate his own control over the country's administration of justice: "Europeans are people who conduct their affairs properly," he noted, "and they have found an easy way of solving every matter of concern, so we must emulate them (*wa nahnū majbūrīn al-iqtidā bihim*)."[24] By the time of his grandson Ismail, this utilitarian reason for imitating Europeans is joined by others: "Our parliament is a school," declares Nubar Pasha proudly in Paris, "by means of which the government, being more advanced than the popula-

21. Nathan Brown, "Law and Imperialism: Egypt in Comparative Perspective," *Law and Society Review*, vol. 29, no. 1, 1995, pp. 104–5.

22. See also Byron Cannon, *Politics of Law and the Courts in Nineteenth Century Egypt*, Salt Lake City: University of Utah Press, 1988, pp. 37–61.

23. Brown, p. 115. But Rudolph Peters disagrees: "The wholesale reception of foreign law in Egypt beginning in 1883 must . . . be attributed to strong foreign pressure" (R. Peters, "Islamic and Secular Criminal Law in Nineteenth-Century Egypt: The Role and Function of the Qadi," *Islamic Law and Society*, vol. 4, no. 1, 1997, p. 78).

24. Cited in Fathi Zaghlul, *al-Muhāmā*, p. 183.

tion, instructs and civilizes that population."[25] The attempt at explaining major social changes in terms of motives is always a doubtful business.

In 1882, immediately after the British Occupation, Husayn Fakhri Pasha, the new minister of justice, wrote a memorandum arguing that a *sharī'a*-based code would not be consistent with the arrangements to which Egyptians were accustomed, and urged that the laws then being applied in the Mixed Courts should be adopted by the National Courts.[26] The notion that such laws would be more suitable for Egyptians than anything that might be based on the *sharī'a* represents an aspiration for a Westernized future rather than for a reformed continuity of the recent past. As a supporter of the importation of European codes, Fakhri knows that the function of law is not merely to reflect social life but also to reconstruct it—if necessary by force and against all opposition. For all his talk about making the law conform to the prevailing conditions of society, he knows that European law will help to create the modern conditions to which Islamic law must then adapt itself. Whether that knowledge was central to what motivated him is another matter. For whatever the *motives* impelling him and others to draw on European codes, the result was to help create new spaces for Islamic religion and morality.

25. In order to impress the European powers, who were also his creditors, Ismail convened an advisory chamber of delegates (the Majlis Shura al-Nuwwab) in 1866. While this "was meant to ensure Egypt a place among the 'civilized' countries, within Egypt it was intended as a 'civilizing' instrument. Nubar [Ismail's foreign minister] declared to the French Foreign Minister in December 1866 that 'notre parlement est une école au moyen de laquelle le gouvernement, plus avance que la population, instruit et civilise cette population.'" (A. Schölch, *Egypt for the Egyptians! The socio-political crisis in Egypt, 1878–82*, London: Ithaca, 1981, p. 15). It was Nubar who originated the idea of the Mixed Courts (see J. Y. Brinton, *The Mixed Courts of Egypt*, rev. ed., New Haven: Yale University Press, 1968, chapter 1).

26. Fakhri's implicit reference is to the previous minister of justice, Muhammad Qadri Pasha, who had attempted to codify the *sharī'a*. "Is it really possible," Fakhri writes, "to apply [the *sharī'a*] on the inhabitants [of this country] given that their customs and their dealings at present with one another or with Europeans are governed by the Civil Code that settles disputes over sale, rent, ownership, and the like?" ("*Mudhakkirāt hussayn fakhrī bāshā nāzir al-haqqāniyya li majlis al-nuzzār*," in *Al-kitāb al-dhahabi li al-mahākim al-ahliyya*, vol. 1 [1883–1933], Cairo: Bulaq Press, 1937, p. 112). In effect, Fakhri's argument in the memorandum is that legal changes in Egypt have gone too far to talk of "returning" to a reformed *sharī'a*—and anyway, the European codes are superior.

The notion of resistance is attractive to historians and anthropologists who wish to give subordinated peoples what they think of as "their own agency." (See Chapter 2.) In the context of Egypt's colonial history the notion allows for the argument that European reforms were not imposed on helpless agents but used by them. However, the notion we are presented with is obscure, for sometimes resistance to the reforms is described as "rigidity and reaction," at other times it is attributed to the fear that material interests are being threatened.[27] How good are such explanations? Talk of reactionaries merely invokes a metaphysic of teleological progress and as such is no explanation at all. Reference to the resisters' material motives is in principle an explanation, although a reductive one. It does not account for opposition to the reform by those who had nothing material to lose by it. More generally, it raises problems that all explanations in terms of attributed motives encounter, but fails to address them.

What is frequently missed in such attempted explanations, however, is that since the idea of "resistance" implies the presence of intrusive power, proper attention must be paid to what that power consists of, what intrusive power seeks when it seeks "improvement"—in short, one must ask what acts one is confronted with and how they are fitted into a larger figure. If "imperialism" is thought of as the term for an actor contingently connected to acts, for a player calculating what his next move should be in a game whose stakes are familiar to all participants, and whose rules are accepted by them, then one may talk of agents seeking to strategize and of others resisting that strategy. If, on the other hand, imperialism is regarded not as an already constituted agent who acts in a determinate way but as the totality of forces that converge to create (largely contingently) a new moral landscape that defines different kinds of act, then one should certainly not say, as some now do, that "imperialism was a far weaker force for legal reform than has generally been assumed to be the case."[28] The basic question here, in my view, is not the determination of "oppressors" and "oppressed," of whether the elites or the popular masses were the agents in

27. Farhat Ziadeh mentions resistance on the part of advocates in the 1930s: "In controversies that pertained to religious or quasi-religious matters *sharī'ah* advocates tended to rigidity and reaction." Furthermore, "Appeals to religion were sometimes utilized in fighting the inroads into jurisdiction of the *sharī'a* courts, and hence the livelihood of its advocates" (*Lawyers, the Rule of Law and Liberalism in Modern Egypt*, Stanford: Stanford University Press, 1968, pp. 58 and 59, respectively).

28. Nathan Brown, *The Rule of Law in the Arab World*, Cambridge, 1997, p. 18.

the history of reform (both, of course, in various ways participated in the changes). It is the determination of that new landscape, and the degree to which the languages, behaviors, and institutions it makes possible come to resemble those that obtain in the West European nation-states. This approach requires some reference to the necessities and potentialities of modernity (or "civilization") as these were presented by Europeans and interpreted by Egyptians.

Arguments about the defensive character of legal reforms are not new. The numerous reforms initiated by the Ottomans since the eighteenth century have long been described in precisely that way. My interest, however, is not in speculating about an old motive (resistance) but about new institutional and discursive spaces (themselves not immutably fixed) that make different kinds of knowledge, action, and desire possible. That the results of these changes were not exactly European has also long been recognized, but there are two ways of looking at this outcome: either (as the majority of historians have claimed) as evidence of "a failure to modernize properly," or (and this is just beginning to be proposed)[29] as expressions of different experiences rooted in part in traditions other than those to which the European-inspired reforms belonged, and in part in contradictory European representations of European modernity.

(By contradictory representations of modernity I refer, for example, to this: Whereas Max Weber wrote that the *sharī'a* was primitive because it lacked the criteria given to modern law by rational authority,[30] Anglo-American jurists had no hesitation in regarding English common law *modern* even though it did not embody the Weberian criteria of legal rationality. In other words, there is no consensus on what the decisive criteria are

29. My point here should not be confused with the rebuttal of the "Eastern-stagnation-versus-Western-development" thesis now being mounted by many historians of Asian countries. To argue that there were indigenous roots of modern development in the latter does not in itself interrogate the criteria by which "modern development" is described. That industrialization and modernization are to be seen as global processes that transform all component units differentially does not shift from the idea of teleological history. For a subtle study that does attempt to do just that, however, see Dipesh Chakrabarty's *Provincializing Europe; Postcolonial Thought and Historical Difference*, Princeton: Princeton University Press, 2000.

30. Weber derived his understanding of Islamic law largely from the Dutch orientalist Snouck Hurgronje, who was closely involved with projects of law reform in colonial Indonesia.

for regarding particular forms of law "modern" *in* the West. There "modernity"—like secularism, which is said to be part of the latter—is located in an argument about the importance of particularity. Even in the context of Western-dominated Egypt, European codes arrived as *exceptions* applicable only to particular categories of subject and not as *universal* law applicable to everyone.)

Brown connects the legal reforms with the needs of what he calls "centralization and state building."[31] Certainly the state's appropriation of the domain of criminal law, its monopolization of the definition of categories of crime—and of the treatment of criminals—was part of this process.[32] But there was more at work here than a single project of increasing state power. There was also the question of how liberal governance (political, moral, and theological) was to be secured during the different phases of state building and dismantling—of how, according to many reformers, liberty, modernity, and civilized life were to be achieved. It was in response to that question that the law had to acquire new substance and new functions and to employ new kinds of violence. For colonial punishment—the institution of a police force and a prison system—was central to the modernization and secularization of law in Egypt.[33] And it gradually replaced previous forms of violence.

Reforming Islam by reforming its law

The secularization of the law in Egypt has not only involved the circumscription and reform of the *sharī'a*, it has been deeply entangled with the nineteenth-century reformulation of Islamic tradition generally. So before I proceed with the analysis of my texts I consider aspects of that reform.

Reinhard Schulze once asked a question most historians have taken for granted: Why did nineteenth-century Islamic reformers take so eagerly

31. Brown, pp. 56–60.

32. For example, in homicide cases, as Rudolph Peters points out, "according to the Sharia, the next of kin of the victim can play an active role in the proceedings, whereas, according to the secular, Western type laws, they are left out of the trial, unless summoned as witnesses" (R. Peters, "Murder on the Nile," *Die Welt des Islams*, vol. 30, 1990, p. 116.

33. See Harold Tollefson, *Policing Islam: The British Occupation of Egypt and the Anglo-Egyptian Struggle over Control of the Police, 1882–1914*, Westport, CT: Greenwood, 1999.

to the European interpretation of Islamic history as one of "civilizational decadence"?[34] The interesting answer he gives refers to political economic changes as well as to the cultural consequences of print. European capitalism, he points out, transformed the eighteenth-century mode of surplus extraction through rent into a system of unequal exchange between metropole and colony. Because the traditional forms of political legitimation were now no longer appropriate to the colonial situation, he argues, a new ideological need was created—and eventually met by the indigenous elite that emerged out of the social-economic disintegration of the old society and of the effects of print on its culture. European historical reason (including the notion of an Islamic Golden Age followed by a secular decline under the Ottomans) was adopted by the new elites, he suggests, via books from and about Europe, as well as the Islamic "classics" selected for printing by European orientalists and by Westernized Egyptians. That civilizational discourse could now be used, concludes Schulze, to legitimize the claim to equality and independence.

Ijtihād (a term used by earlier Muslim scholars to refer to independent legal reasoning on matters about which they were not in agreement) was made to mean the general exercise of free reason, or independent opinion, directed against *taqlīd* (the unreflective reproduction of tradition) and in the cause of progressive social reform. This extension of the sense of *ijtihād* has been commented on critically by generations of orientalists. Thus Charles Adams writes that "In orthodox Islam, the right of 'ijtihad' (independent opinion) in matters of law and religion, belonged only to the great masters of the early generations and has consequently not existed since the third century A.H. [ninth century C.E.]. Muhammad 'Abduh and his followers have, however, claimed this right for the present generation, as for every other, so that Islam, and particularly its legal system, may be adapted to present-day requirements."[35] And Aharon Layish pronounces on the intellectual inadequacy of Muhammad Abduh, Rashid Rida, and their followers: "the modernists did not succeed in shaping a new legal doctrine amalgamating Islam with liberal elements of Western civilization. Their attempt to improve the doctrine of selection and reopen the gates of

34. Reinhard Schulze, "Mass Culture and Islamic Cultural Production in 19th Century Middle East," in *Mass Culture, Popular Culture, and Social Life in the Middle East*, ed. G. Stauth and S. Zubaida, Boulder, CO: Westview, 1987.

35. Charles Adams, *Islam and Modernism in Egypt*, London: Oxford University Press, 1933, p. 70, n. 1.

ijtihād by refashioning traditional mechanisms was immature, unauthoritative and unenduring. Their efforts were not continued, at any rate not by the authorized exponents of the *sharī'a*."[36] Since it was precisely the "authorized exponents of the *sharī'a*" that Abduh and Rida sought to dislodge (and in some measure succeeded in dislodging) it is evident that Layish's critique—and others like it[37]—operates with an a priori concept of "orthodox Islam." Yet this concept seems to me misplaced in the discourse of scholars who aim to write a history of Islamic tradition. It belongs to religious dispute between reformers (who invoke the authority of the text over that of the interpretive community) and conservatives (for whom authority is vested in the community of interpreters, the keepers of texts), because both of them are committed to doing certain things *to* what they regard as the essential tradition.

In short, there is no such thing as "real" *ijtihād* waiting to be authenticated by orientalist method; there is only *ijtihād* practiced by particular persons who situate themselves in various ways within the tradition of *fiqh*. When Abduh and Rida draw explicitly on the precedence of the medieval theologian and jurist Ibn Taymiyya, who employed *ijtihād* to criticize the status quo of his time, they are invoking a tradition of several centuries—albeit in very changed circumstances—and not simply "refashioning [namely, departing from the legitimate uses of] traditional mechanisms." *That* tradition does not consist in employing the principle of universal reason. It provides specific material for reasoning—a theological vocabulary and a set of problems derived from the Qur'an (the divine revelation), the *sunna* (the Prophet's tradition), and the major jurists (that is, those cited as authoritative) who have commented on both—about how a contemporary state of affairs should be configured. Since *ijtihād* comes into operation precisely when *ijmā'* (the consensus of scholars) has failed, the disagreement of Abduh and Rida on this point with other Muslims, past and con-

36. Aharon Layish, "The Contribution of the Modernists to the Secularization of Islamic Law," *Middle Eastern Studies*, vol. 14, 1978, p. 267.

37. Layish's assessment of the work of the reformers as both inauthentic and a failure is of a piece with earlier verdicts by Elie Kedourie and Malcolm Kerr. See E. Kedourie, *Afghani and Abduh: An Essay on Religious Unbelief and Political Activism in Modern Islam*, London: Cass, 1966; M. H. Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad Abduh and Rashid Rida*, Berkeley: University of California Press, 1966. I have written a review article dealing with the former: "Politics and Religion in Islamic Reform," *Review of Middle East Studies*, no. 2, 1976.

temporary, does not signify that their view is no longer "traditional." On the contrary, that disagreement or difference is what makes it part of the tradition of Islamic jurisprudence.

In fact, recent scholarship on the history of the *sharī'a* (by, for example, Wael Hallaq, Haim Gerber, and Baber Johansen[38]) has challenged the orientalist thesis, propounded in the West since at least the beginning of the twentieth century, that the Islamic legal tradition became static—that "the gates of *ijtihād* were closed," as the famous phrase has it—after the first formative centuries. That thesis reflects the more general notion that "the traditional" is opposed to "the modern" as the unthinking and unchanging is to the reasoned and new. But argued change was always important to the *sharī'a*, and its flexibility was retained through such technical devices as *'urf* (custom), *maslaha* (public interest), and *darūra* (necessity).

Schulze himself appears to be interested less in whether or not the reform movement led by Abduh and Rida was intellectually "immature." Instead, he tells us that advocating *ijtihād* in this new sense provoked the fear among more conventional *'ulama* that they would lose their position of power as the new Islamic intelligentsia emerged, so they too began to take their distance from "tradition." Nevertheless, says Schulze, "traditional Islamic culture" did not disappear. The bastion of that tradition remained mysticism. The movements of rebellion against colonialism were based on this traditional culture, and the hostility between it and colonialism was extended to relations with the official Islam that colonialism had created. Thus Schulze too employs a notion of "traditional Islam" that he identifies with sufism and considers more authentic than the *salafiyya* attempts at reform. Schulze writes that the reform movement (*islāh*) openly turned against every manifestation of mysticism because mysticism represented what the European bourgeoisie disliked most about Islam—irrationalism, superstition, fanaticism. By taking their distance from what Schulze calls "tradition," the new Islamic elites signaled their abandonment of it and so asserted their claim to independence on the basis of civilized status.

This is a sophisticated account, and Schulze is right to draw our attention to the evolving class structure of nineteenth-century Egypt. But I am not persuaded by it as an explanation. To begin with a substantive point, it ignores the ways the Egyptian reformers were able to draw on

38. W. Hallaq, *Law and Legal Theory in Classical and Medieval Islam*, Aldershot: Variorum, 1995; H. Gerber, *Islamic Law and Culture, 1600–1840*, Leiden: Brill, 1999; B. Johansen, *Contingency in a Sacred Law*, Leiden: Brill, 1999.

some of the ideas and attitudes of the eighteenth-century Hanbalite Arabian reformer Muhammad bin Abdul-Wahhab, who was also very suspicious of "irrationalism" and "superstition," and who was prepared to use *ijtihād* to attack them in order to "purify" Islamic practice—but not because he wanted to get closer to the European bourgeoisie. Ibn Abdul-Wahhab, like ibn Taymiyya before him, was considered by the Egyptian reformers to be part of their tradition even where they disagreed with him.

Thus theoretically, Schulze's perspective on the reasons behind discursive and behavioral shifts in Islamic tradition is too instrumental. (Whereas Nathan Brown explains the reform of the Egyptian system of justice in terms of tools for resisting imperialism, Reinhard Schulze sees Islamic reform in general as a means of claiming political independence.) When major social changes occur people are often unclear about precisely what kind of event it is they are witnessing and uncertain about the practice that would be appropriate or possible in response to it. And it is not easy to shed attitudes, sensibilities, and memories as though they were so many garments inappropriate to a singular historical movement. New vocabularies ("civilization," "progress," "history," "agency," "liberty," and so on) are acquired and linked to older ones. Would-be reformers, as well as those who oppose them, imagine and inhabit multiple temporalities.

The concept of "tradition" requires more careful theoretical attention than the modernist perspective gives it. Talking of tradition ("Islamic tradition") as though it was the passing on of an unchanging substance in homogeneous time oversimplifies the problem of time's definition of practice, experience, and event. Questions about the internal temporal structure of tradition are obscured if we represent it as the inheritance of an unchanging cultural substance from the past—as though "past" and "present" were places in a linear path down which that object was conveyed to the "future." (The notion of invented tradition is the same representation used subversively.) We make a false assumption when we suppose that the present is merely a fleeting moment in a historical teleology connecting past to future. In tradition the "present" is always at the center. If we attend to the way time present is separated from but also included within events and epochs, the way time past authoritatively constitutes present practices, and the way authenticating practices invoke or distance themselves from the past (by reiterating, reinterpreting, and reconnecting textualized memory and memorialized history), we move toward a richer understanding of tradition's temporality. When settled cultural assumptions cease to be viable,

agents consciously inhabit different kinds of time simultaneously and try to straddle the gap between what Reinhart Koselleck, speaking of "modernity," calls experience and expectation, an aspect of the contemporaneity of the noncontemporaneous.[39] But unilinear time together with its breaks—the homogeneous time of modern history—in spite of its being essential to thinking and acting critically, is only one kind of time people imagine, respond to, and use.

Modern history clearly links time past to time present, and orients its narratives to the future. But present experience is also, as Koselleck points out, a reencounter with what was once imagined as the future. The disappointment or delight this may occasion therefore prompts a reorientation to the past that is more complex than the notion of "invented tradition" allows. The simultaneity of time that this generates is not to be confused, incidentally, with what Benedict Anderson identifies as the premodern religious imagination in which cosmology and history are confused, or as the modern secular imagination that links together disparate events on the one hand and nationwide readers on the other hand—two kinds of linkage mediated through the daily newspaper.[40] Koselleck's notion of simultaneity relates neither to a confusion of religious imagination nor to coincidences apprehended within homogeneous time. It is intrinsic to the structure of time itself.

(The Arabic word *hadīth*, incidentally, captures nicely the double sense of temporality usually separated in English: on the one hand it denotes anything that is new or modern, and on the other hand a tradition that makes the past—and future—reencountered in the present.[41] For *ha-*

39. *Gleichzeitigkeit der Ungleichzeitigen.* Koselleck sees "modernity" (*Neuzeit*) as being located precisely in the rupture between the two: "the divide between previous experience and coming expectation opened up, and the difference between past and present increased, so that lived time was experienced as a rupture, as a period of transition in which the new and the unexpected continually happened" (*Futures Past: On the Semantics of Historical Time*, Cambridge, Mass.: MIT Press, 1985, p. 257). Koselleck does not add that in this rupture the old might be remembered in unexpected ways because the future looked forward to is not experienced as such when it arrives. One should not take it as given, as progressivists tend to do, that all positive invocations of the past are inevitably "nostalgic."

40. Benedict Anderson, *Imagined Communities*, London: Verso, 1983, chapter 2.

41. In an excellent (unpublished) paper entitled "The Birth of Tradition and Modernity in 18th and 19th Century Islamic Culture—The Case of Printing,"

dīth means "discourse" in the general, secular sense as well as the remembered discourse of the Prophet and his Companions that is actualized in the disciplined body/mind of the faithful Muslim—and thus becomes the tradition, the *sunna*.)

But I have empirical concerns about Schulze's account too. Muhammad Abduh's relation to sufism was more complicated than it suggests. For although Abduh was critical of Sufis who promoted doctrines and practices he considered contrary to the *sharī'a* (*ghulāt al-sūfiyya*), and who served the political ambitions of rulers by providing them with what he called "corrupt fatwas," he strongly endorsed the sufi understanding of ethics and spiritual education (*'ilm al-akhlāq wa tarbiyyat al-nufūs*).[42] The complexity in Abduh's views brings out the inadequacy of the kind of binary thinking (familiar to Western students of Islam since Goldziher) that opposes as mutually exclusive "orthodox Islam" to "*sufi* Islam," "doctors of law" to "saints," "rule-following" to "mystical experience," "rationality" to "tradition," and so forth.[43] This is not to say that Muslims never themselves employ such binaries—especially for polemical purposes—but this situated deployment should not be mistaken by the nonparticipatory scholar as objective evidence of a continuous split in the Islamic tradition. The difference that does exist is between would-be authorizer and practioner. The participant's engagement with his tradition is in part an involvement with

Reinhard Schulze traces the shifting semantic field of such Arabic words as "new" (*hadīth*), "free from precedent" (*ijtihād*), "original" (*asli*), and so forth, which reenforces the point I am making.

42. See, for example, the summary of a conversation in 1898 between Abduh and Rida (published under the heading "*al-tasawwuf wa al-sūfiyya*" in volume three of *al-A'māl al kāmila*, edited by Muhammad Imara) in which he also declares to the latter that "All the blessings of my religion that I have received—for which I thank God Almighty—are due to sufism" (p. 552).

43. The idea that these contrasts are at once mutually exclusive and fundamental to Islamic thought and practice was taken up and repeated by an older generation of social anthropologists (for example, E. E. Evans-Pritchard, E. Gellner, and C. Geertz). Unfortunately even recent anthropological monographs on mystical Islam (for example, by K. Ewing, who employs psychoanalytic theory in her work) have, by their exclusion of any discussion of the connections between sufism and *sharī'a*, tended to reinforce that binary. But this has now begun to be disputed by scholars. See G. Makdisi, "Hanbalite Islam and Sufism," in *Studies on Islam*, ed. and trans. M. Swartz, London: Oxford University Press, 1981. See also the comments in Julian Baldick's *Mystical Islam*, London: I. B. Tauris, 1989, pp. 7–8.

its multiple temporalities, his selection, affirmation, and reproduction of its authoritative practices. I will return to this point later.

In his informative study of the connection between late-nineteenth-century Islamic reform and the modernizing state, Jakob Skovgaard-Petersen has taken the argument about the ideological role of the new Islamic elites further, with specific reference to a sociology of secularization within Egypt.[44] He underlines the well-known social developments from the late nineteenth-century onward—the centralization of state authority, the creation of new state institutions, the standardization of administrative rules—and like Schulze he considers the spread of printing and the emergence of a reading public as critical developments. These new developments, he tells us, enabled Islamic reformers to advocate a more "rational and ethical" Islam, especially through the institution of the *fatwa* (jurisprudential opinion on matters of religious conduct), in which the idea of self-regulation is crucial. Borrowing from Peter Berger's ideas on secularization, he proposes that freeing the individual from religious authority has a double consequence: on the one hand it greatly expands the choices available, and on the other hand religious commitments come to depend on subjective judgment. Because the choices are now situated in a "disenchanted" world,[45] the judgment tends to employ secular reason.

There is some truth in this, but as I proposed earlier, terms such as "rational and ethical" as well as "disenchantment" are problematic (see Chapter 1). Perhaps more important is the mistaken assumption (gaining some popularity in Islamic studies) that modernity introduced subjective interiority into Islam, something that was previously absent. But subjective interiority has always been recognized in Islamic tradition—in ritual worship (*'ibadāt*) as well as in mysticism (*tasawwuf*). What modernity does bring in is a new *kind* of subjectivity, one that is appropriate to ethical autonomy and aesthetic self-invention—a concept of "the subject" that has a new grammar.

In this connection Skovgaard-Petersen makes the familiar progressivist claim that "the room for choice is constantly expanding in the case of sexual relations, as it is in most other walks of life"[46]—presumably because sex is no longer hedged around by religio-legal taboos. However, this state-

44. Jakob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dar al-Ifta*, Leiden: Brill, 1997.

45. Ibid. pp. 23–24.

46. Ibid., p. 384.

ment of increasing freedom obscures a complicated picture. Consider the many legal restrictions in modern life (minimum age of marriage, restrictions on polygyny, the requirement of state registration of marriage and divorce, and so on) that were previously absent. So what one gets is a different pattern of constraint and possibility reflected in a reformulated criminal law. Consider, further, the fact that many social relations—such as those between adults and children—become sexualized in modern life, and thus become the object of public anxiety (an uncontrollable emotion) and administrative regulation (involving judgment and intervention). This very modern instance of the interweaving of fantasy and exploitation, forbidden pleasure and governmental power is not well represented in the old formula of a "disenchanted world" in which triumphant rationality affords increasing choice.[47] "The room for choice" is not a homogeneous space of which secular liberal society happens to have the most.

Nevertheless, one can draw out a conclusion from Skovgaard-Petersen that he leaves implicit but which I consider especially important for my story. The individual is now encouraged—in morality as well as in law—to govern himself or herself, as befits the citizen of a secular, liberal society. But two points should be borne in mind in relation to this conclusion. First, this autonomy depends on conditions that are themselves subject to regulation by the law of the state and to the demands of a market economy. Second, the encouragement to become autonomous is primarily directed at the upper classes. The lower classes, constituted as the objects of social welfare and political control, are placed in a more ambiguous situation.

This conclusion seems to me to have particular implications for an analysis of the modernist movement in Islam. It prompts one to ask of the *salafiyya* reformers not why they failed to produce a sufficiently impressive Islamic theology or legal theory, nor why they became willing ideologists for the state (both being tendentious and question-begging formulations), but how the reordering of social life (a new moral landscape) presented certain priorities to Islamic discursive tradition—a reordering that included a new significance being given to the family, a new distinction being drawn between law and morality, and new subjects being formed. How the Islamic discursive tradition responded to and intervened in the newly emerging moral landscape is a complex matter. In this chapter I consider only one small aspect of it, having to do with the reform of the law.

47. See Ian Hacking, *Rewriting the Soul: Multiple Personality and the Sciences of Memory*, Princeton: Princeton University Press, 1995, a fascinating discussion of child abuse as subjective experience, emancipatory politics, and psychological knowledge.

Moral autonomy and family law

"The *sharī'a* was not abandoned," writes Nathan Brown, "but it was restricted to matters of personal status and to areas where it could be clearly and easily codified."[48] But when the *sharī'a* is structured essentially as a set of legal rules defining personal status, it is radically transformed. This is not because the *sharī'a*, by being confined to the private domain, is thereby deprived of political authority, something that advocates of an Islamic state argue should be restored. On the contrary, what happens to the *sharī'a* is best described not as curtailment but as transmutation. It is rendered into a subdivision of legal norms (*fiqh*) that are authorized and maintained by the centralizing state.

In the perspective on law reform in Egypt that I adopt, a citizen's rights are neither an ideological legitimation of class rule ("Marxism") nor a means for limiting arbitrary government ("liberalism"). I see them as integral to the process of governance, to the normalization of social conduct in a modern, secular state. In this scheme of things the individual acquires his or her rights mediated by various domains of social life—including the public domain of politics and the private domain of the family—as articulated by the law. The state embodies, sanctions, and administers the law in the interests of its self-governing citizens. The state's concern for the harms and benefits accruing to its subjects is not in itself new. But—as Foucault argued—the modern state expresses this concern typically in the form of a new knowledge (political economy) and directs it at a new object (population). It is in this context that "the family" emerges as a category in law, in welfare administration, and in public moralizing discourse. The family is the unit of "society" in which the individual is physically and morally reproduced and has his or her primary formation as a "private" being. It is often assumed that colonial governments were reluctant to interfere with family law because it was the heart of religious doctrine and practice. I argue, on the contrary, that the *sharī'a* thus defined is precisely a secular for-

48. Hacking, p. 58.

mula for privatizing "religion" and preparing the ground for the self-governing subject.

This brings me to Muhammad Abduh's report on the *sharī'a* courts written in 1899, the year he was appointed Grand Mufti of Egypt.[49] Abduh's recommendations in this remarkable mandate for reform cover a range of technical topics—improving court buildings, increasing the salaries of judges and clerks and raising their standard of education, expediting the hearing of cases and the execution of judgments, instituting regular inspections and a better system of record-keeping, simplifying interaction with litigants and clarifying the official language used, and so on. The reforms Abduh proposes here are therefore largely to do with procedure and setting. The *sharī'a*, he insists, is not itself in need of improvement but the books in which it is written are unnecessarily difficult for litigants to understand, and it could therefore do with the kind of rationalizing work that the Ottoman state undertook for the *majalla*.[50] But what is striking is the way Abduh approaches the basic social function of the *sharī'a* courts in terms of something that has come to be called "the family."

These courts, he writes, intervene between husband and wife, father and son, a guardian and his ward, and between brothers. There is no right relating to kin over which these courts do not have jurisdiction. This means, says Abduh, that *sharī'a* judges look into matters that are very private and listen to what others are not allowed to hear. For even as they provide the framework of justice, so they are a depository for every kind of family secret. In other words, the courts are expected both to guard the privacy of the words and acts of domestic life and to work through the sentiments on which social life ultimately depends. Since the *sharī'a* code of 1897 explicitly required a public hearing of cases (something Abduh must have been aware of in writing his report) his emphasis on secrecy expresses the old liberal dilemma of addressing both *privacy* and *publicity* in the legal culture.

Abduh observes that in these modern times, "Most of the lower class and a fair number of the middle and upper classes have abandoned kinship

49. Muhammad Abduh, "*Taqrīr islāh al-mahākim al-shar'iyya*," in *Al-A'māl al-kāmila lil-imām Muhammad 'Abduh*, ed. Muhammad Imara, vol. 2, Beirut, 1980, pp. 217–97. Surprisingly, it is not mentioned in modern histories of law in Egypt.

50. Ibid., p. 295.

and affinal sentiments, and so they resort to the *sharī'a* courts in the matter of domestic relations. With regard to such matters as daily expenses, the accommodation and comfort of the wife in disputes with the husband's family, with regard to provisioning and other affairs of the children, to their education until a pre-determined age, and to everything needed for such matters, the resort among those we have mentioned is now to the *sharī'a* courts. It is obvious," Abduh goes on, "that a people (*sha'b*) is composed of households that are called families (*al-buyūt allati tusamma 'ā'ilāt*) and that the basis of every nation (*umma*) is its families, because a totality is logically made up of its parts. Since the welfare of families is connected in its most detailed links with the *sharī'a* courts—as is the case today—the degree to which the nation needs the reform of these courts becomes clear. It is apparent that their place in the structure of Egyptian government is foundational, so that if they were to weaken, the effects of this weakness would be evident in the entire structure."[51]

Among the many recommendations in his report, Abduh stresses the need for a more careful separation of functions between administration and jurisprudence (*al-idāra wa al-fiqh*), and he urges greater independence of the *sharī'a* courts from state control. Thus even though he considers the *sharī'a* system to be integral to governance, he does not consider the state to be the source of its authority. Nevertheless, he regards the *sharī'a* to be essential to the restoration of "the family," especially among the lower classes. Without the work of the *sharī'a* courts—which are in effect "family courts"—he sees social life itself in danger of moral collapse. By being identified with the family the *sharī'a* thus becomes functionally central at once to political order and to the total body that will eventually be represented as "society." The modern Arabic word for society (*mujtama'*) is not yet linguistically available, nor is the modern concept to which it now refers. For insofar as that concept is political, it signifies a population held together by social relations where "the social" is constituted by the theoretical equivalence of autonomous individuals.[52] The theological concept *umma* that Abduh employs has the sense of a collective body of Muslims bound together by their faith in God and the Prophet—a faith that is em-

51. Ibid., pp. 219–20.

52. The entry for "society" in Badger's *English-Arabic Lexicon*, London (1881), gives neither the word *mujtama'*, nor any reference to the modern concept. Lane's *Arabic-English Lexicon*, London (1872), also has no reference to the modern concept of "society"; the sense of *mujtama'* is still only "a meeting place."

bodied in prescribed forms of behavior. It is therefore quite different from the idea of a society made up of equal citizens governing themselves individually (through conscience) and collectively (through the electorate). That idea was just beginning to be deployed in Western Europe in the nineteenth century as the object of knowledge-based interventions[53]—by movements for universal franchise,[54] as well as movements for the moral improvement of the poor, for the practical reform of education and the law, and for the organization of sanitation and hygiene in urban space.

It is in this context that I think one may place the reform that eventually translates the *sharī'a* as "family law." For the family is not merely a conservative political symbol or a site of gender control. By virtue of being a legal category it is an object of administrative intervention, a part of the management of the modern nation-state—not least in the twentieth-century projects of birth control. (Paradoxically, the "family" becomes salient precisely when modern political economy, the principal source of government knowledge and the principal object of its management, begins to represent and manipulate the national population in terms not of "natural units" but of statistical abstractions—economic sectors, consumers, active labor force, property owners, recipients of state benefits, demographic trends, and so forth. At the level of public knowledge and activity "the individual" becomes marginalized.)

It is because the legal formation of the family gives the concept of individual morality its own "private" locus that the *sharī'a* can now be spoken of as "the law of personal status"—*qānūn al-ahwāl al-shakhsiyya*. In

53. The National Association for the Promotion of Social Science was home to everyone "engaged in all the various efforts now happily begun for the improvement of the people," as the official account of its foundation in England in 1857 put it. "It divided itself into five 'departments': legal reform, penal policy, education, public health, and 'social economy'. . . . [T]he bulk of its members were drawn from . . . professions most actively engaged with practical social problems—doctors, coroners, charity organizers, and the like" (Stefan Collini, *Public Moralists: Political Thought and Intellectual Life in Britain, 1850–1930*, Oxford: Clarendon, 1991, p. 210).

54. For an excellent history of the suffrage in France, see Pierre Rosanvallon, *Le Sacre du Citoyen*, Paris: Gallimard, 1992.

this way it becomes the expression of a secular formula, defining a place in which "religion" is allowed to make its public appearance through state law.[55] And the family as concept, word, and organizational unit acquires a new salience.

The modern "family"

The sense of the word *'ā'ila* (translated into English as "family") as used by Abduh and other reformers is modern—a fact reflected not only in its relatively recent coupling with *sharī'a* law, but also in changing literary Arabic. Eighteenth-century dictionaries do not give the modern sense of *'ā'ila* and *usra*, meaning a unit consisting of parents and children. One can see how the modern usage was probably derived: the form *'iyāla* is given as meaning "to give help and support to dependents," but also as "the process of having more children"; *usra* meant "tribe," or "agnates" (relatives on the father's side).[56] By the late nineteenth century, *'ā'ila* becomes a part of common usage and generally signifies "a man and his wife and his children and those who are dependent on him from his paternal relatives"[57]—such as younger siblings or aged parents. A modern dictionary has a definition in terms of unit of habitation: *'ā'ila* means "those who are gathered

55. Hamid Zaki states that the term *al-ahwāl al-shakhsiyya* (personal status) is new to Egypt, having been introduced from Europe with the laws now administered by the National Courts, and he notes its absence in the codes administered by the *sharī'a* courts. Accordingly, he traces the definition of the term through French legal authorities, from the division between "personal status" and "real status" in the Napoleonic Code, to the contemporary recognition of multiple status categories. The term "personal status" (*al-ahwāl al-shakhsiyya*) now refers, Zaki notes, to the ensemble of juridical institutions that define the human person independent of his wealth, obligations, and transactions ("*Al-Mahākim al-ahliyya wa al-ahwāl al-shakhsiyya*," in *Majallat al-qānūn wa al-iqtisād*, December 1934, pp. 793–95). This abstraction subverts the old *sharī'a* categorization of the human person. In the writings of medieval Islamic jurists the particular categories of male and female, free and slave, are essential to the legal interpretation of the human body, intention, and agency (see Baber Johansen, "The Valorization of the Human Body in Muslim Sunni Law," in D. J. Stewart, B. Johansen, and A. Singer, *Law and Society in Islam*, Princeton: Markus Wiener, 1996).

56. See *Tāj al-'Urūs*.

57. See *Muhīt al-Muhīt*.

together in one house, including parents, children and near relatives."[58] So much for shifting referents.[59]

The things signified are also being transformed. Social historians have traced the rearticulation of kinship units and networks among the rural population in mid-century and ascribed it both to state and market: forced labor and military conscription, a general decline in the economic condition of handicraft workers and petty traders due to the penetration of European capitalism, as well as the reform of landholding and taxation systems. Thus Judith Tucker notes that although it was common for several brothers to live and work together with their wives and children, sharing goods, livestock, and land in a unit recognized in law as a partnership (*shirka*), the state's draconian measures seriously affected the structure of such units and networks. For example, "Despite the migration of women and children in the wake of drafted husbands in a conscious attempt to maintain the family unit, conscription made inroads on traditional [that is, existing] structures. The military family was a nuclear family; the man, wife and children were removed from their village community, and more importantly, from the extended family which had formed their social and economic environment. A network of economic relations and social responsibilities bound them to their parents, brothers and sisters, and relatives by marriage. The formation of a nuclear family unit at some distance away weakened these ties. If the woman remained without her husband in the village, the man's absence affected patterns of material support and the division of tasks."[60] (It is of some interest that the "family" makes its appearance as a category in the census registers of Egypt only in 1917.[61])

So if Muhammad Abduh regards the family as the basic unit of society, it is not because he invokes a nostalgic past but because something new is now emerging in the changing social structure.

Among the urban upper classes, Western-type schooling (in European languages) and the adoption of Western domestic styles and manners

58. See *al-Mu'jam al-Wasīt.*

59. The *Qur'an*, which is the basic source for the *sharī'a*, contains neither *'ā'ila* nor *usra*. The words that are used there, *bayt* and *ahl*, and that are translated into English as "family," have much wider or looser connotations.

60. Judith Tucker, "Decline of the Family Economy in Mid-Nineteenth-Century Egypt," in *Arab Studies Quarterly*, vol. 1, no. 3, 1979, p. 262.

61. See François Ireton, "Element pour une sociologie historique de la production statistique en Egypte," *Peuples méditerranéen*, no. 54–55, 1991, p. 80.

also produced a discourse of the ideal family—typically expressed in terms of "the problem of the status of Muslim women"—among Western-educated reformers in the late nineteenth century. Perhaps the most famous text that exemplifies this is Qasim Amin's controversial book on *The Emancipation of Woman*,[62] long regarded as a major step in the history of Egyptian feminism. In a powerful critique of that work, Leila Ahmed has argued that "In calling for women's liberation the thoroughly patriarchal Amin was in fact calling for the transformation of Muslim society along the lines of the Western model and for the substitution of the garb of Islamic-style male dominance by that of Western-style male dominance. Under the guise of a plea for a 'liberation' of woman, then, he conducted an attack that in its fundamentals reproduced the colonizer's attack on native culture and society."[63] It was designed, in other words, to help eradicate bad habits among the natives.

Amin's book is devoted to a sustained condemnation of the seclusion of women (symbolized by the veil) and a reiteration of the condition that makes for happiness in the family. As he puts it, when a "woman learns of her rights and acquires a sense of her self-worth, marriage will become the natural means for realizing the happiness of both the husband and wife. Then marriage will be based on the inclination of two persons to love each other completely—with their bodies, their hearts, and their minds."[64] Thus the nuclear family is the essential site for the happiness of the married couple through the fulfillment of their dreams. The material conditions of their existence are irrelevant. "Look at spouses who love one another, and you will see that they enjoy the blessings of paradise. What do they care if they are penniless, or if they have only lentils and onions to eat? Their cheerfulness throughout the day is enough for them—a cheerfulness that energizes the body, reassures the self, awakens feelings of joy in life, and renders it beautiful."[65] The core of the happy modern family is a monogamous relationship; a polygynous household can only be a space of conflict, hatred, and misery. But if even monogamous families are not to-

62. Qasim Amin, *Tahrir al-mar'a*, Cairo: Dar al-Ma'arif, 1970 [1899]. Amin was a lawyer by profession, initially trained in Egypt but with several years' further education in France.

63. Leila Ahmed, *Women and Gender in Islam*, New Haven: Yale University Press, 1992, p. 161.

64. Ibid., p. 145.

65. Ibid., pp. 145–46.

day full of happiness and true love, if on the contrary they are usually the site of continuous quarrels, it is because the uncivilized practice of veiling prevents the wife from acquiring the minimal education and from interacting with men in order to make the (middle-class) family successful.[66]

Ahmed is right to describe Amin's text, with its contempt for Egyptian domesticity and its insistence on the supreme importance of abolishing the veil, as the reproduction of a "Western colonial discourse." But here I want to focus on something else: the appearance of the conception that love between a man and a woman is the necessary basis of the only kind of family life that can have any value, and the assumption that legal conditions are necessary for ensuring domestic bliss. Of course monogamy in itself is not a Western phenomenon, nor was affection between husband and wife unknown in Egypt until Westernized reformers proposed it—although Amin, like many other Egyptian reformers of his time, believed that that was so. My concern is simply to draw attention to the condition of equality in the mutual sentiments of love between a man and a woman that Amin regards as essential to the private institution called "family"[67]—and to the fact that this equality is entangled with legal definitions.

It is for this reason—to secure mutual love within a monogamous family—that the reform of marriage and divorce provisions in the *sharī'a*

66. The Islamic journal *al-Manār*, edited by Muhammad Abduh's disciple Rashid Rida, was very favorable to Qasim Amin's book—as well as to its sequel *The New Woman*. See Sami Abdulaziz al-Kumi, *as-Sahāfa al-islāmiyya fi misr fi-l-qarn at-tāsi' 'ashara*, Mansura: Dar al-Wafa', 1992, pp. 96–97.

67. In his magisterial study of European bourgeois sexuality in the long nineteenth century, Peter Gay observes: "Intimate love, intimate hatred, are timeless; Freud did not name the Oedipus complex after an ancient mythical hero for nothing. But the nineteenth-century middle-class family, more intimate, more informal, more *concentrated* than ever, gave these universal human entanglements exceptional scope and complex configurations. Potent ambivalent feelings between married couples, and between parents and children, the tug between love and hate deeply felt but rarely acknowledged, became subject to more severe censorship than before, to the kind of repression that makes for neurosis. The ideology of unreserved love within the family was attractive but exhausting. Father's claims on daughters and mother's claims on sons, assertions of authority or demands for devotion often masquerading as excessive affection, acquired new potency precisely as the legal foundations for authority began to crumble. Increasingly, family battles took place, as it were, not in the courtroom, but in individual minds" (*The Education of the Senses*, New York: Norton, 1984, pp. 444–45).

plays such an important role throughout Amin's text. Thus polygyny, which unfortunately for Amin seems to be condoned by the Qur'an, should be legally circumscribed as much as possible. Indeed he argues, like other reformers before and since, that the intention of the relevant Qur'anic verses is that polygyny be allowed only if it is secured against injustice. "If there is injustice among the wives as is evident in our times," Amin writes, "or if moral corruption comes to families from the plurality of wives, and if the limits of the law that should be respected are transgressed, and if there is enmity among members of a single family and it spreads to the point that it becomes general—then it is allowed to the ruler who cares for public welfare [*al-maslaha al-'āmma*] to prohibit polygyny, conditionally or unconditionally, according to what he sees as suitable to public welfare."[68] Thus although state legislation is necessary for creating the conditions for moral behavior, the argument for overriding the Qur'anic permission of polygyny is simply a generalized sense of public welfare that is still justified in Islamic terms.[69] Although, paradoxically, the ideal that exemplifies the solution is the monogamous nuclear family among the Westernized classes (whose men now engage in the publicly regulated professions of law, medicine, the higher civil service), increasingly separated from "public life," and becoming the principal domain in which moral behavior is to be learned and always to be practiced.

Defining secular law for modern morality

I am suggesting, in effect, that the social and cultural changes taking place in the late nineteenth and early twentieth centuries—whether deliberately initiated or not—created some of the basic preconditions for secular modernity. These involved the legal constitution of fundamental social spaces in which governance could be secured through (1) the political authority of the nation-state, (2) the freedom of market exchange, and (3) the moral authority of the family. Central to this schema is the distinction between law (which the state embodied, produced, and administered) and

68. Amin, pp. 154–55.

69. This position is quite different from that of Ahmad Safwat, which I discuss below, but it is not unrelated to arguments produced by recent Muslim modernists, such as Fazlur Rahman—see, for example, his "Law and Ethics in Islam," in *Ethics in Islam*, ed. R. G. Hovannisian, Malibu, CA: Undena Publications, 1985.

morality (which is the concern ideally of the responsible person generated and sustained by the family), the two being mediated by the freedom of public exchange—a space that was restructured in Egypt by the penetration of European capital and the adoption of the European law of contract,[70] a space in which debates about Islamic reasoning and national progress, as well as about individual autonomy, could now take place publicly. The reform of the *sharī'a* in Egypt should be seen in relation to this re-ordering, although it was not the only way the reform could conceivably have been carried out.

Ahmad Safwat's attempt at the beginning of the twentieth century to formulate for Egypt a secular distinction between law and morality claims our detailed attention, because it applies *ijtihād* (in the wider sense popularized by the *salafiyya* reformers) in the cause of a modernized and modernizing state. It is also, to my knowledge, the first work to argue this case rigorously and without having to depend logically on Islamic ideas of *maslaha*. Safwat was a British-trained lawyer and an advocate of *sharī'a* reform, who first presented his ideas in a book entitled "An Inquiry into the Basis of Reform of the Law of Personal Status." Three years later he published a short statement of his position in English.[71]

The former, being addressed to an Egyptian audience, is largely preoccupied with the problem of changing the existing laws relating to marriage and divorce, the social problem with which it begins. There is a popular feeling, Safwat claims, that the *sharī'a* is sacred (*shu'ūr 'āmat al-nās bi qadāsatihi*),[72] and yet it is precisely its details, such as inequality in the marriage contract, that make for difficulties now that social life has changed. This constitutes a danger to the whole of society. "If we wish to discover a cure for the present situation then let us think of how we want our family life to be organized, and see how we can put that into effect in agreement with religious rules. Previously marriage was (and continues to be in the customary practice of the lower classes) an institution designed for sexual pleasure and procreation, but now it has become a partnership

70. See Hossam M. Issa, *Capitalisme et sociétés anonymes en Égypte: Essai sur le rapport entre structure sociale et droit*, Paris: R. Pichon et R. Durand-Auzias, 1970, especially part one.

71. *Bahth fi qā'idat islāh qanūn al-ahwāl al-shakhsiyya*, Alexandria: Jurji Gharzuri Press, 1917; "The Theory of Mohammedan Law," in *The Journal of Comparative Legislation and International Law*, vol. 2, 1920.

72. Safwat, *Bahth*, p. 2.

in a joint mode of life." This means that the marriage contract can be binding only with the complete agreement of both sides with no interference from anyone.[73] The freedom of contract between equal parties—a freedom already central to the sphere of commercial exchange—is thus a basic principle of Safwat's proposals for reform, one on which he lays great stress.

The improved conditions of domestic life among the upper classes, Safwat believes, point to the way that marriage for all of society must be civilized with the aid of a civilized law. Safwat's attribution of people's feelings of "sacredness" toward the *sharī'a* is a formulation symptomatic of the newly emerging secular discourse. It is clearly intended to signal the presence of "irrational" sentiments toward the law assumed to be based on the belief that it cannot be touched by "profane" hands ("taboo"). But the Arabic word *qadāsa* ("sacred") is not used classically to qualify the *sharī'a*. (See Chapter 1.) The most common adjective used, at least in the nineteenth century and later, is "Islamic." It is when something is described as belonging to "religion" and it can be claimed that it does not that the secular emerges most clearly.

Safwat insists that such reforms are not contrary to the fundamental principles of the *sharī'a*, and proposes a reexamination of the basic sources of that law: Qur'an (the divinely revealed text), *sunna* (the tradition of the Prophet), *ijmā'* (consensus of scholars), and *qiyās* (analogical reasoning). Since analogy is not a source but a method of reasoning, it can be set aside, he says. Furthermore, since the consensus established in the past by jurists, and even the tradition of the Prophet himself, depend for their authority on the Qur'an, Safwat suggests that it is the latter one must attend to above all.

Safwat notes that the commandments in the Qur'an may be classified as follows: (1) acts that are forbidden (*harām*), (2) acts that are mandatory (*wājib*), and (3) acts that are permitted (*jā'iz*).[74] This latter residual category consists of everything that (from the point of view of religion) the individual has the right to do, and as the members of an infinite residual category they cannot be exhaustively enumerated. The legal status of such acts mentioned in the Qur'an is no different from those that are not mentioned. They are all equally optional. The few that are specified have the

73. Ibid., pp. 3–5.

74. Ibid., p. 24.

function of defining forbidden acts—as when the Qur'anic statement that Muslims may have up to four wives defines a limit (that is, that having *more* than four at the same time is forbidden). But as optional acts are not mandatory, they cannot be granted absolutely by the state since they may conflict with the freedom of others in particular social circumstances. And this is where the positive law of the state comes in, because its function is to limit—in the interest of all—the options of the individual that the *sharī'a* permits. That is why a large number of activities are possible only by prior permission of the government in which particular conditions are stipulated—for example, the professional practice of medicine or law, or (this is Safwat's example) of plural marriage.

The almost indefinite extension of "natural" rights may thus be curtailed by the state through legislation without infringing the rules of (religiously derived) morality, because the state's jurisdiction lies beyond the two Qur'anic classes of forbidden and obligatory acts. The argument by which Safwat delimits the sphere of religious rules and opens up the space for secular state law is, I think, one of the earliest and most rigorous of its kind in modern Islamic reform. Thus although he repeatedly adverts to the importance of recent historical changes and to the need for responding to them, he does not make that the basic *method* of reform. He does not, for example, take the easy way out (as others have done since) by resorting directly to the slippery notion of "public interest" (*istislāh*) in order to adjust *sharī'a* rules to "modern standards." He first clears a theoretical space in which the state *can* judge and act freely in limiting the liberties of its individual citizens in the public interest—an interest that presupposes the conditions in which civilized life can be lived by all.

It is in the English article (addressed to European readers) that Safwat more boldly represents the Qur'an as a religious text that mixes together moral and legal rules: "the liberty of a Mohammedan is only restricted by the positive commandments of the Koran. I say 'positive' to distinguish the positive rules of law from those of morality, which in the Koran are mixed together, and to distinguish them, we have to look for the nature of the sanction."[75]

The distinction between law and ethics is itself made in jurisprudential terms that are traceable in European thought at least as far back as Grotius,[76]

75. Safwat, "Theory," p. 314.

76. See J. B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy*, Cambridge: Cambridge University Press, 1998, chapter 4, especially pp. 75–78; and Richard Tuck, *The Rights of War and Peace*, Cambridge: Cambridge University Press, 1999, chapter 3.

a distinction expressing the idea that law is the domain of obedience to a civil sovereign and morality the domain of individual sovereignty in accordance with inner freedoms (conscience). The idea of an inner, conscience-driven moral law is taken for granted by Safwat. Where the disregard or breaking of a rule leads to punishment imposed by the state, says Safwat, there is (secular) law; where transgression is sanctioned only by punishment in the next world, there is (religious) morality. The interesting point here is not simply that law and morality are distinguished (medieval Islamic jurists made that distinction too, as we shall see in the next section), but that the distinction between "morality" and "law" can be defined in parallel ways as rules, and that their obligatory character is constituted by the punishment attached to them.

There are at least two ways in which Safwat's clear separation between the scope of morality and of law may be described, the first of which one might call ethnographic. Thus even in the Western liberal scheme morality is connected to law in complicated ways. The authority of legal judgments is dependent on the ways justice, decency, reasonableness, and the like are culturally interpreted; the credibility of witnesses is linked to ways "good" or "bad" character are culturally recognized, assessed, and responded to. Furthermore, there is the general sense that the laws in force should be consistent with the prevailing morality.[77] In Egypt the codes introduced at the turn of the century were largely European and secular while morality was largely rooted in Islamic tradition.[78] This fact

77. James Fitzjames Stephen expresses this negatively in relation to criminal law thus: "If a man is punished by law for an act for which he is not blamed by morals, law is to that extent put out of harmony with morals, and legal punishment would not in such a case, as it always should, connote, as far as may be possible, moral infamy" (*A History of The Criminal Law of England*, London: Macmillan, 1883, vol. 2, p. 172). Paul Vinogradoff makes the more general point that "law cannot be divorced from morality in so far as it clearly contains, as one of its elements, the notion of right to which the moral quality of justice corresponds." But then he proceeds to address the precise distinction (so crucial to the modern conception and practice of law) "between moral and legal rules, between ethical and juridical standards" (*Common-Sense in Law*, London: Thornton Butterworth, 1913, pp. 24, 25).

78. See Tariq al-Bishri, *al-Sharī'a al-islāmiyya wa al-qanūn al-wad'i*, Cairo: Dar al-Sharuq, 1996, pp. 30–32. But while al-Bishri is thinking of the content of moral rules my concern is with the grammar of "the moral" itself.

leads to the question of how interpretive tendencies and assumptions of "secular" law engage with sensibilities and predispositions articulating "religious" morality. If traditionally embodied conceptions of justice and unconsciously assimilated experience are no longer relevant to the maintenance of law's authority, then that authority will depend entirely on the force of the state expressed through its codes.

It might appear at first sight that I am making a familiar argument about the introduction of "foreign codes." But my concern here is neither with the geographical origin of the law nor with codification as such. I argue that it is the power to make a strategic separation between law and morality that defines the colonial situation, because it is this separation that enables the legal work of educating subjects into a new public morality.[79] The European task of establishing order in Egypt was based on a new notion of "order," as Timothy Mitchell has rightly argued.[80] But it also required a new conception of what law can do and how it should do it.

Of course I am not proposing that Safwat's theoretical text is a complete copy of Western secularism—he is concerned, after all, to adapt *Islamic* ethics and law to Western jurisprudential thinking, and the *Qur'an* is his theoretical starting point. Nor do I assume that the clarity of his theory is a reflection of institutional practice (the insertion of discourses such as Safwat's into processes of institutional legal reform in modern Egypt still needs to be researched). I am looking for systematic shifts in reasoning about legal reform that indicate ways in which "the secular" are understood and applied in colonial Egypt.

79. James Fitzjames Stephen (one-time legal member of the viceroy's council) describes the principles that animate the task of the colonial government in India as follows: "The government which now exists [in India] has not been chosen by the people. It is not, and if it is to exist at all, it cannot look upon itself as being, the representative of the general wishes and average way of thinking of the bulk of the population which it governs. It is the representative of a totally different order of ideas from those prevalent amongst the natives of India. To these ideas, which are those of educated Europeans, and particularly of educated Englishmen, it attaches supreme importance; they are the ideas on which European civilization is founded. They include all the commonly accepted principles of European morality and politics—those for instance which condemn cruel acts like the burning of widows, or the offering of human sacrifices in the name of religion, or the infliction of disabilities, as for instance disability to marry, on account of widowhood or a change of religion, and others of the same sort" (J. F. Stephen, "Foundations of the Government of India," *The Nineteenth Century*, no. 80, October 1883, p. 548). The law, while not itself a moral system, is indispensable to the replacement of an inferior morality by a superior one.

80. Timothy Mitchell, *Colonizing Egypt*, Cambridge: Cambridge University Press, 1988.

The second way of describing Safwat's division between (secular) law and (religious) morality is analytic. It follows the conceptual implications of the fact that his reading cuts right across the famous *sharī'a* classification—*'ibādāt* (rules governing relations between God and the faithful), *mu'āmalāt* (rules governing proper behavior between the faithful), and *hudūd* (rules defining limits to the behavior of the faithful through penalties). Modern secular law not only excludes the first as being beyond its purview. It also redraws the distinctions applicable to proper behavior and punishments in terms of "civil law" and "criminal law." It does all this in accordance with different principles. Furthermore, Safwat's division deliberately ignores the fivefold *sharī'a* ranking of acts—required (*wājib*), recommended (*mustahabb*), indifferent (*mubāh*), discouraged (*makrūh*), and forbidden (*harām*).

The grid separating "law" from "morality" that Safwat imposes on the *sharī'a* differs sharply from its traditional language. The concept of virtue (*fadīla*) in the latter cannot be defined simply in terms of the type of sanction (this-worldly versus otherworldly) or of the type of governance (subjective freedom versus obedience to external authority). It constitutes a dimension of all accountable behavior (including justiciable acts), in the sense that while all such behavior is the responsibility of a free agent, it is also subject to assessments that have practical consequences for the way one lives in this world *and* the next. And all practical programs for the cultivation of moral virtues presuppose authoritative models. In the case of the *sharī'a* the ultimate model is that of the Prophet Muhammad as embodied in the discursive tradition known as *hadīth*. In other words, the *sharī'a* in this conception is the process whereby individuals are educated and educate themselves as moral subjects in a scheme that connects the obligation to act morally with the obligation to act legally in complicated ways.

A digression on medieval 'fiqh'

This point is important for my argument. The conception of the law

assumed in Safwat's texts clears the space not only for the modern, reforming state, but also for a secular morality. In this section I shall try to develop this theme through a dialog with one of the most impressive contributions to appear in recent years to the study of premodern *fiqh* (Islamic jurisprudence), Baber Johansen's *Contingency in a Sacred Law.*[81] It will, I hope, help us to clarify some crucial ways in which modern concepts replaced earlier ideas in the tradition of Islamic jurisprudence and ethics in Egypt.

Johansen reminds us of the colonial context of orientalist studies of the *sharī'a*, and observes that Snouck Hurgronje, the first Western authority on the subject, regarded *fiqh* as an incoherent mixture of religion, ethics, and politics—not as a functioning law but as a theory of the ideal Muslim society that had practical significance only in matters relating to ritual devotions, family relations, and endowments. This view, says Johansen, has had a profound effect on Western students of Islam who have tended to see *fiqh* as a deontology—a system of religious and moral duties—rather than as a law in the rational sense.

Joseph Schacht, perhaps the most important orientalist of the twentieth century to specialize in Islamic law, drew on Max Weber's distinction between procedural and substantive rationality, but retained his notion of the *sharī'a* as "sacred law."[82] However Schacht did see that *fiqh* was not simply a compendium of religious duties but a system of subjective rights, and so inaugurated a new, and more fruitful, approach because *fiqh* could

81. Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, Leiden: Brill, 1999.

82. See Joseph Schacht, *Introduction to Islamic Law*, Oxford: Oxford University Press, 1964. But his most influential, and most controversial, work is *The Origins of Muhammadan Jurisprudence*, Oxford: Clarendon, 1950. Its thesis—that the prophetic traditions (*hadīth*) are historical inventions—is an early example of what anthropologists now call "the invention of tradition." Schacht wrote that just conceivably some traditions might be authentic but orientalists had found it impossible to determine with certainty which these were. A scholarly defense of the authenticity of those traditions is Muhammad M. Al-Azami, *On Schacht's Origin of Muhammadan Jurisprudence*, New York: John Wiley & Sons, 1985. On this matter orientalists tend to see the latter as biased by their religious belief; Muslim scholars see the former as biased by their anti-Islamic prejudice. However, both critics and defenders share the assumption that the time of tradition must always be vindicated by the time of history, that the question of "historical fact" is always integral to the constitutive work of tradition.

now be seen as a legal system that private individuals could use "for their individual strategies of claims and counter-claims. It is a law in which individuals can create individual norms through their actions and can pursue individual claims against others. It enters into the world of social relations and ceases to be an abstract religious duty."[83]

The aim of treating *fiqh* as real law, with changing implications for everyday life, is extremely important, and Johansen's formulation of this point opens the way for a comparative study of Islamic law that is not mired in dubious evolutionary assumptions—and therefore also for serious consideration of the relations between law and ethics in the Islamic tradition. But the following question suggests itself: Is the manipulative model the only way of representing law as "real"? And is this why we are urged to see *fiqh* as essentially individualistic? There seems to be a connection between the two in Johansen's argument, and in particular in his opposing "the world of social relations" to "abstract religious duties." And yet, are religious duties not themselves partly constitutive of the world of social relations? For although not all social relations entail religious duties (buying and selling legitimate goods, for example), some do (an offspring's obligations to his or her parents, for instance). Another way of putting this is to say that no religious duty can be entirely abstracted from social relations. Thus although one may perform the *salāt* by oneself, one has to learn their *correct* performance from others. Besides, Friday prayers, 'Id prayers, and so on cannot be performed alone. And of course the concept and practice of *nasīha*—of the duty of "promoting what is right and discouraging what is wrong"—presupposes social relations in the making. Thus it is precisely *how* "religious" duties are embedded in social relations (learning and teaching correct religious practices, giving moral advice to fellow Muslims, and so on) and *what* specific duties are entailed by social relations that need to be analyzed in *fiqh*.

Johansen extracts two major questions that he finds implicit in Schacht: (1) how the legal dimension relates to the ethical and religious dimension, and (2) how subjective rights relate to religious duties. The difficulty with Schacht, as well as with contemporary Arab jurists such as Sanhuri and Shahata who have taken a similar line, is that while they recognize the distinctive character of the legal dimension of *fiqh*, they ignore its ethical dimension. Johansen makes this point as follows: "in all these attempts

83. Johansen, pp. 54–55.

to bring the *fiqh* back into law those who want to do so act as jurists who refer to legal texts. The liturgical acts, the ethical content of those norms which cannot be applied by courts but which address the conscience of the individual believers, their *forum internum*, in short, the religious dimension of the *fiqh*, has hardly been considered as an object of legal reconstruction and would need a completely different approach."[84] Johansen quite rightly insists that attention must be paid to *both* the religious *and* the ethical dimensions if the connections between Islamic law and ethics are to be explained. Thus Schacht failed to consider that "ownership" is given a different moral and religious value in different domains,[85] a difference reflected in the fact that, as Johansen observes, in some cases "intention"—regarded as an inner, psychological state—is considered legally critical for the transfer of ownership, and in others it is only the form of words used in the transaction that is relevant.

Finally, Johansen argues that Schacht and Hurgronje (and Weber) seriously underestimated the scope and significance of doctrinal disagreements between the schools. Dissent on details was not regarded as heresy. Johansen elaborates this point with skill and erudition and sums it up as follows: "The respect for normative pluralism (*ikhtilāf*) is possible only because the *fiqh* scholars conceive an ontological difference between the knowledge as revealed by God in Koranic texts, the prophet's praxis or the community's consensus on the one hand, and the knowledge which human beings acquire through their own reasoning. The first one contains absolute truth, the second one is fallible human reasoning. The second one has to interpret the first but cannot aspire to reach its rank. Therefore Muslim jurists recognize the contingency of all results of scholarly reasoning. The acknowledgment of the contingency of all human action and reasoning is at the basis of the *fiqh* as a discipline which comprises different methods and schools of thought (*madhāhib*) and different organizations of scholars and upholds the cohesion of the scholars and doctrines."[86]

Johansen's overall argument is complicated. There is, on the one hand, the thesis that Islamic jurists have traditionally held all human (and therefore legal) reasoning to be based on probability not certainty, and, on the other hand, the proposition that Islamic law has always distinguished

84. Ibid., p. 59.
85. Ibid., p. 64.
86. Ibid., pp. 65–66.

moral judgments from legal ones. Both theses are brilliantly expounded. The two then seem to be linked together through the idea that "certainty" (*'ilm yaqīn*) depends on observability—on the *forum externum*—with which the law deals, as opposed to the *forum internum*, the domain of "conscience" and so of ethics. It is not always clear whether the absolute certainty referred to in this argument relates to the authority of the divine text or to that of conscience.[87] In any case, it seems to me that when it is conceived as the hidden seat of self-government, "conscience" refers to something at once modern and Christian.

What defines "conscience," in modern Christianity, is not simply that it is "interior" and "hidden" (the mind of someone who calculates his or her own interests is also hidden to others) but that it is the seat of a moral function responding sovereignly to the question: "What should I do if I am to do that which is good?" This conception of ethics has a history,[88] of course, and its great theorist was Kant. "The question here is not," wrote Kant, "how conscience ought to be guided (for conscience needs no guide; to have a conscience suffices), but how it itself can serve as a guide in the most perplexing moral decisions."[89] This proposition, with its emphasis on the absolute moral autonomy of the subject, would surely be rejected by medieval Islamic theologians and jurists. Wouldn't Kant's equation of morality with the certainty of sovereign, internal judgment also come into question? "It is a basic moral principle, which requires no proof," Kant insisted, "that *one ought to hazard nothing that may be* wrong . . . Hence the *consciousness* that an action *which I intend to perform* is right, is unconditioned duty. . . . [C]oncerning the act which *I* propose to perform I must not only judge and form an opinion, but I must be *sure* that it is not wrong; and this requirement is a postulate of conscience, to which is opposed *probabilism*, i.e., the principle that the mere opinion that an action may well be right warrants its being performed."[90]

87. "The *forum internum* is the instance of the religious conscience," writes Johansen, "the seat of the relation between God and the individual, of veracity and of absolute identity between the truth on the one hand, rights or obligations on the other. The *forum externum* is an instance of contingent decisions which are legally valid and whose assertions about the facts of the cases are probable" (ibid., p. 36).

88. See Alasdair MacIntyre, *A Short History of Ethics*, London: Macmillan, 1966.

89. Immanuel Kant, *Religion Within the Limits of Reason Alone*, New York: Harper and Row, 1960, p. 173.

90. Ibid., pp. 173–74; emphases in original.

Kant detested the old Catholic discipline of moral casuistry because it sought to guide the conscience, especially in situations of uncertainty, and would also surely have detested the practice of seeking *fatwas*. His standpoint suggests that a category like *makrūh* (reprehensible) has no place in a truly moral vocabulary because it dilutes the absolute wrongness of an act to which it is applied.[91] But seen simply as the products of ethical judgment one misses the practical use of the words *makrūh* (reprehensible) and *mustahabb* (desirable) in cultivating virtuous thought and behavior—forms of behavior that, incidentally, carry no punitive sanctions.

This modern view not only takes the moral question to be quite different from the "social" question "How should I behave if I want to do well?" but assumes that doing well and having it socially recognized that one is doing well have nothing to do with acting morally. And yet it is precisely the way in which the answers to these two questions have been connected (and disconnected) in Muslim societies that needs systematic investigation—that is, how learning forms of thought and behavior properly (that would be socially recognized and admired as demonstrations and exemplars of religious virtues) comes to be a precondition for acting ethically. Johansen's general approach makes it possible to investigate this connection fruitfully.

Johansen is absolutely right to maintain that Islamic law has always distinguished between justiciable norms and those that are not subject to the court's ruling. Indeed this point is often missed by contemporary scholars dealing with "intentionality" in Islamic law. But is this point best made by equating legal norms with observable acts and ethical norms with nonobservable ones? I think not. Acting in a way that people generally recognize as *makrūh* (reprehensible) is observable, since an act is what it is because of the description under which it falls, and yet as Johansen himself is at pains to point out, this behavior does not entail a judgment by the court in spite of its being "observable." On the other hand, acts that are justiciable (for example, contracts) may require an inquiry into aspects of behavior that are "nonobservable" (such as intention)—as Johansen himself clearly notes.

91. Kant's requirement that in order to act morally the conscience must be certain of its rightness would also, incidentally, rule out the discourse of modern bioethics that deals in probabilities rather than certainties—but that's another matter.

Johansen's attempt to identify the ethical dimension of *fiqh* in its relation to the law is of the greatest importance, but his characterization of it in terms of disembodied "conscience" does not seem to me quite appropriate. Besides it is, so I would argue, not essential to his basic view of *fiqh*. My position, at any rate, is that one should not try to map the interior/exterior binary directly onto ethics/law. The latter has to do with authoritative judgments in cases of dispute over transactions and dispositions and in cases where transgressions against particular norms are alleged to have occurred. Both kinds of judgment carry important social consequences, and both often depend on reconstructing what was not "visible." The crucial point is that they are, as justiciable cases, sanctioned by the use of violence that the court can authorize. One might therefore reformulate the matter by saying that it is not strictly the literal visibility of a justiciable event that is at issue here but its objectification. Punishment inflicted on the body-and-mind is possible only when a justiciable event can be constituted as a discursive object.

While the formation and exercise of virtues (a disciplinary process in which rites of worship are involved) do overlap with what in modern parlance is called "ethics," one must be careful not to assume that ethics as such is essentially a matter of internal conditions, with conscience as a sovereign matter. That conscience is a purely private matter at once enabling and justifying the self-government of human beings is a necessary (though not sufficient) precondition of modern secular ethics. The *sharī'a*, in contrast, rejects the idea that the moral subject is completely sovereign (Kant's "conscience needs no guide; to have a conscience suffices"). Islamic jurists certainly recognized that a Muslim's relation to God (*fīmā baynahu wa bayn allāh*) cannot be the object of a judge's (*qādi*'s) verdict. But this is not because they thought this matter was practically inaccessible; it is simply that being set doctrinally outside the jurisdiction of an earthly court of law, they regarded it as legally inviolable.[92] Nevertheless, they regard the individual's ability to judge what conduct is right and good (for oneself as well as for others) to be dependent not on an inaccessible conscience but on embodied relationships—heavily so in the learning process of childhood, but also

92. Hence, as Johansen has himself pointed out, classical Hanafi doctrine forbade torture to extract evidence, but later *fiqh* accepted it for reasons of expediency (op. cit., pp. 407–8). See also his excellent essay, "La découverte des choses qui parlent: La légalisation de la torture judiciaire en droit musulman (XIIIe–XIVe siècles)," *Enquête*, no. 7, 1998.

in adulthood where the intervention of authorities, relatives, and friends in particular situations may be critical for the exercise of that ability or for dealing with the consequences of its failure. Here body-and-mind is the object of moral discipline.

In brief, I submit that although the *sharī'a* does distinguish between "law" and "ethics," neither term should be understood in its modern, secular sense.

'Sharī'a' as a traditional discipline

In Safwat's proposal for reform, the basic moral appeal is to conscience in the Kantian sense. The *sharī'a* comes to be equated with jurisprudential rules concerning marriage, divorce, and inheritance, with the resolution of disputes arising from such relationships, and also with the rules for proper worship. The consequence of that equation is not simply abridgement but a rearticulation of the concepts of law and morality. The latter comes increasingly to be seen as rules of conduct whose sanctions are essentially different from those of legal rules—that is, not subject to institutionalized, worldly punishments. This is precisely what one finds in the liberal reform lawyers who describe the *sharī'a* as "the law of personal status" (*qānūn al-ahwāl al-shakhsiyya*), that is, as rules for regulating "the family," a modern institution built around the married couple. And one finds it also generally among recent Islamists.

But in Abduh, the modernizing Azharite steeped in *tasawwuf* (mysticism), there is a tension that is absent in the proposed reforms of European-trained lawyers such as Safwat. For Abduh also invokes an older conception of the *sharī'a*. Thus on the one hand Abduh complains that teaching and examining the *sharī'a* in al-Azhar pays far too much attention to *'ibādāt* (rituals of worship) and far too little to *mu'āmalāt* (rules for social relations).[93] But he also says that the judge's authority requires more than intellectual competence, that it depends on his developing certain moral aptitudes and predispositions.

In Abduh's words, "the Islamic *sharī'a* has intricate details which cannot be taken into account except by someone who has informed himself thoroughly of all its legal provisions, enquired properly into its objectives and arrived at its precise meanings—that is, someone who knows its language as well as its masters do. No man can attain to that state unless he has acquired the *sharī'a* from its practitioners, and has been brought up according to the true religious tradition (*al-sunna al-dīniyya al-sahīha*). Furthermore, the judge cannot be a preserver of family and domestic organization merely by learning *sharī'a* injunctions. The injunctions must become an authoritative part of himself [*thumma la yakūnu al-qādi hāfizan nizām al-usr wa al-buyūt ba'd al-ihāta bi ahkāmi al-shar'i hatta yakūnu li al-shar'i wa ahkāmihi sultān—ayy sultān 'ala nafsihi*]."[94] That is to say, the *sharī'a* must become part of the judge's moral and physical formation, ceasing in that context to be mere "rules"—although rules are what he deploys in his judgments. (Incidentally, I make no claims about Abduh's "real motives"—a topic on which historians and biographers have been happy to speculate—but about what the text says.)

93. Muhammad Abduh, *Taqrīr*, p. 295.

What such a passage reveals is not the banal recognition that rituals of worship are a vital part of every pious Muslim's upbringing. Nor does it simply indicate that they are an integral part of the Islamic tradition. Its interest, I suggest, lies in the claim that increasingly correct social practice is a moral prerequisite for the acquisition of certain intellectual virtues by the judge. A knowledge of legal rules will not suffice—so Abduh insists—because the judge's task is not simply the application of those rules. It is necessary for him to know *how* to apply the rules in such a way that he helps "to preserve the family." The thought presented here is not that by being seen to be religious the judge acquires the charisma to reinforce his authority. Nor is it that faith and probity are essential *criteria* for eligibility to the status of judge.[95] On the contrary, Abduh is saying that the authoritative character of the law can be recognized, and its rules properly applied, only after a process of personal discipline that depends on *al-sunna al-dīniyya al-sahīha*—"the true religious tradition." The tradition is not based on rationally founded belief but on commitment to a shared way of life divinely mandated. The techniques of the body (kinesthetic as well as sensory) employed in rituals of worship are taught and learnt within the tradition, helping to form the abilities to discriminate and judge correctly, for these abilities are the precondition not only of Islamic ethics in general but also—and this is the point I want to stress—of the law's moral authority

94. Ibid., p. 219.

95. On some medieval discussions about the preconditions for authoritative legal reasoners, see Wael Hallaq, *A History of Islamic Legal Theories* (Cambridge: Cambridge University Press, 1997), pp. 117–21.

for the model judge. Whether, and if so how and to what extent, such cultivation actually works, how it combines or conflicts with extra-*sharī'a* conditions, are of course different questions—and questions for historical and ethnographical research. But the conception here is that being a defective judge is not unlike being a defective teacher in as much as both intervene wrongly or inadequately in the developing lives of others. In other words, it is when the *sharī'a* fails to be embodied in the judge that it becomes a set of sacred rules—"sacred" because of the source of their sanction, "rules" because of their impersonal and transcendent application.

The view that Abduh takes here of the moral subject is not concerned with state law as an external authority. It presupposes that the capability for virtuous conduct, and the sensibilities on which that capability draws, are acquired by the individual through tradition-guided practices (the *sunna*). *Fiqh* is critical to this process not as a set of rules to be obeyed but as the condition that enables the development of virtues. Abduh therefore repudiates the liberal conception of the right to self-invention. Implied in this conception of *fiqh* is not simply a comprehensive structure of norms (*ahkām*), but a range of traditional disciplines, combining both sufism and the *sharī'a*, on which the latter's authority depends. In other words, Abduh sees the "Islamic tradition" (the *sunna*) not merely as a law whose authority resides in a supernatural realm, but as the way for individuals to discipline their life together as Muslims. The role of pain—penalty—is not to constitute moral obligation, but (as indicated in Chapter 2) to help develop virtue as a habitus.

The fourteenth-century jurist Ibn Taymiyya, whose authority Abduh often invoked, expounded a doctrine of sufism that I think underlies Abduh's views. According to Ibn Taymiyya the only point of spiritual discipline (the point that makes sufism essential) is to promote a convergence between human willing and the commands of God as expressed in the *sharī'a*. Thus for Ibn Taymiyya (and for Abduh) "at every stage the servant must desire to do that which has been commanded him in the *sharī'a* and avoid what has been forbidden him in the *sharī'a*. When [the mystic Abd al-Qadir] commands the servant to leave off his desiring, that pertains to those things which have been neither commanded nor forbidden."[96] In this

96. Cited in Thomas Michel, "Ibn Taymiyya's *Sharh* on the *Futuh al-Ghayb* of Abd al-Qadir Jilani," *Hamdard Islamicus*, 4/2, 1981, p. 5. Michel, in his very interesting analysis of Ibn Taymiyya's theological tract on sufism, goes on to comment: "Ibn Taymiyya stresses that this primacy of the *sharī'a* forms the soundest tradition in Sufism, and to argue his point he lists over a dozen early masters, as well as more contemporaneous *shaykhs* like his fellow Hanbalis, al-Ansari al-Harawi and Abd al-Qadir, and the latter's own *shaykh*, Hammad al-Dabbas. Conversely no *maqam* or *hal*, no spiritual exercises, no status as spiritual guide—even when these are accompanied by miracles and wonders—can be considered valid unless they promote obedience to the *sharī'a* command. However, within this carefully delimited interpretation, the Sufi path is considered a salutary effort and even essential within the life of the Islamic community. Its goal is to imitate those who have approached near to God through supererogatory works in imitation of the Prophet and the '*shaykhs* among the *salaf*.' The goal is not the unity of *being* between God and the believer, as is spoken of by many mystical writers, but a unity of *will*, where the believer actively wants and desires nothing but what God desires and performs in his life. . . . Ibn Taymiyya is an activist, convinced that God calls upon Muslims to undertake the responsibility of combatting external enemies as well as internal evils, and that *sabr* [fortitude, patience] is the proper Islamic response only to those things that cannot be prevented or controlled after all man's efforts" (pp. 5–6, 7).

view, the performance of the *sharī'a*—spiritual cultivation of the self through *'ibādāt*, the entire range of embodiments that define worship, together with supererogatory exercises as well as the norms of social behavior (called *mu'amalāt*)—are all interdependent. *Together they occupy the space that Ahmad Safwat would pre-empt for the legislative authority of the sovereign state and the moral authority of the sovereign subject.*

There is, of course, a partial resemblance between this idea and the one familiar to the social sciences as "habitus," made famous by Pierre Bourdieu but first introduced into comparative sociology by Marcel Mauss in his famous essay "Techniques of the Body." Mauss himself acquired the concept from medieval Christian discourse, which continued and built on the Aristotelian tradition of moral thinking[97]—a tradition that is also shared with Islam.

The concept of *habitus* invites us to analyze any assemblage of embodied aptitudes not as systems of meanings to be deciphered. In Mauss's view, the human body was not to be regarded simply as the passive recipient of "cultural imprints" that can be imposed on the body by repetitive discipline—still less as the active source of "natural expressions" clothed in local history and culture—but as the self-developable means by which the subject achieves a range of human objects—from styles of physical movement (for example, walking), through modes of emotional being (for ex-

97. See Mary Carruthers, *The Book of Memory*, Cambridge: Cambridge University Press, 1990.

ample, composure), to kinds of spiritual experience (for example, mystical states).

It is the final paragraph of Mauss's essay that carries what are perhaps the most far-reaching implications for an anthropological understanding of secularism. Beginning with a reference to Granet's remarkable studies of Taoist body techniques, he goes on: "I believe precisely that at the bottom of all our mystical states there are body techniques which we have not studied, but which were studied fully in China and India, even in very remote periods. This socio-psycho-biological study should be made. I think that there are necessarily biological means of entering into 'communion with God'."[98] Thus the possibility is opened up of inquiring into the ways in which embodied practices (including language-in-use) form a precondition for varieties of religious (and secular) experience.[99] The inability to "enter into communion with God" not only becomes a function of untaught bodies but it shifts the direction in which the authority for conduct can be sought. And authority itself comes to be understood not as an ideologically justified coercion but as a predisposition of the embodied self.

Conclusions

The importation of European legal procedures and codes in nineteenth-century Egypt were seen at the time, by Westerners and Egyptians alike, as aspects of becoming Europeanized (*mutafarnij*) or civilized (*mutamaddin*). Today most people prefer to speak of that process as sec-

98. Ibid., 122.

99. In *Genealogies of Religion* I attempted to explore this question with reference to medieval Christian monastic discipline. I deal there with how bodily attitudes were cultivated, but also with how sexuality (libido) was differently managed among Benedictines (who recruited children) and Cistercians (who recruited adults only) in the education of Christian virtues. In the one case this involved trying to direct the body's experience; in the other, to reconvert the experienced body. My suggestion was that not only the force and direction of universal desire but desires in the form of specific Christian virtues may be historically constituted. Incidentally, this line of thought should not be confused with the conditioning thesis—the notion that "beliefs" are "inculcated" by bodily repetition, as though the self were an empty container to be filled with "belief" through ritual performance. I argue specifically against that in my book—see chapter 4 of *Genealogies of Religion*, and especially pp. 143–44.

ularization and modernization. The need to unpack these terms is rarely recognized.

The increasing restriction of *sharī'a* jurisdiction has been seen as a welcome measure of progress by secular nationalists, and as a setback by political Islamists. But both secularists and Islamists have taken a strongly statist perspective in that both see the *sharī'a* as "sacred law" that is presently circumscribed but should in any case be properly administered or further reformed by state institutions. This is not surprising since the unprecedented powers and ambitions of the modern state and the forces of the capitalist economy have been central to the great transformation of our time.

Nevertheless, a modern autonomous life (which is, paradoxically, regulated by a modern bureaucratic state and enmeshed in a modern market economy) requires particular kinds of law as well as particular kinds of subjects of law. It is because the ideology of self-government seems also to call for the "civilizing" of entire subject populations through the law that the authority of the law and its reconstructive power come to be taken as supremely important. Ideally that project requires the installation of a particular conception of ethics and its formal separation from the authority of law, both also delinked from "religion." Thus a useful study of Egyptian *sharī'a* courts during the first half of the twentieth century concludes that "The state's leaders and legislators were reluctant . . . to create a split with tradition in this sensitive field of family law; they felt the society was not yet ready for more drastic change and that it was therefore preferable to introduce a modest reform in the framework of the existing legal system."[100] My argument, on the contrary, is that whatever the intentions of legislators, the legal reforms marked a revolutionary change.

Interestingly, the project of "civilizing" a population is one that secularists and Islamists share, albeit differently. Both of them agree that the rural and urban lower classes are immersed in "non-Islamic beliefs and practices," in a deep-rooted culture that owes more to Pharaonic and Coptic Egypt than it does to Islam brought by the sixth-century Arab con-

100. Ron Shaham, *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī'a Courts, 1900–1955*, Leiden: Brill, 1997, p. 228. However, the study also shows that judges (*qādis*) were often quite innovative in adjusting their decisions to changing socioeconomic circumstances.

querors.[101] Both agree also that these classes need to be educated out of their superstition, an obstacle to their becoming "truly modern." And both agree, finally, that the social power that can carry out this mission is the one that already represents them as a nation and directly intervenes in their lives: the modernizing state. Of course the two tendencies are by no means the same; they do not draw on the same sensibilities. Each attaches to itself elements of what is generally represented in political discourse as "the secular," but not entirely the same elements.

Thus for secularists each citizen is equal to every other, an equal legal and political member of a state that itself claims a single personality. In their scheme the categories "majority" and "minority" technically relate to electoral politics only, but in practice they reflect entrenched social inequalities. For Islamists they are basic cultural categories that define citizens as necessarily unequal. In the modern state, both make it difficult, if not impossible, for people who belong to different religions (Muslims, Christians, and Jews) to live in accordance with their traditions without—on the one hand—having also to be grouped invidiously as *dhimmis* (non-Muslim protected subjects of a Muslim state) or—on the other hand—as "ethnicities" (that is, as "minorities" unwilling or unable to assimilate to "the national culture").

In so far as "religion" is recognized in the texts of modern legal re-

101. This view has been greatly strengthened by the efforts of folklorists who have constructed a secular, mass "culture" for Egypt (embracing tribes and urbanites, upper Egyptians and inhabitants of the Delta) within an evolutionary framework that secures its continuous national personality. See, for instance, the standard survey of Egyptian folklore by Ahmad Rushdi Salih, *Al-adab al-sha'bi* (Cairo, first edition, 1954); the famous study of "immortality" in Egyptian cultural heritage—"an extremely ancient and continuous heritage"—by Sayyid 'Uways in his *Al-khulūd* (Cairo, 1966); and the interesting dictionary of customs, manners, and sayings compiled by Ahmad Amin: *Qamūs al-'ādāt wa al-taqālīd wa al-ta'ābīr al-misriyya*, Cairo, 1953. Such writers, most of whom date from the Nasir period (1952–70), are clearly inspired by a secular vision that denies the existence of any significant "cultural" distinction between Christians and Muslims within a unified Egyptian nation. They draw freely from the writings of European folklorists and travelers from previous centuries. Ahmad Amin's unacknowledged reproduction of numerous etchings from Edward Lane's early nineteenth-century classic, *An Account of the Manners and Customs of the Modern Egyptians*, reinforces the reader's impression of a timeless and general Egyptian people. (For national history, homogeneous time belongs to the larger frame within which "epochs" and "events" can be plotted.)

formers—Amin, Safwat, and so forth—it comes to be thought of in moral terms. The essence of religion—as Kant put it, and other moderns agreed—was its ethics. (In contrast, the Kierkegaardian view makes a sharp distinction between "religion" and "ethics.")[102] This meant that the attempt to allocate "religion" or its surrogate to its own private sphere, defined and policed by the law, was also an attempt to clear a space within the state for modern ethics.

Put another way: whereas ethics could at one time stand independently of a political organization (although not of collective obligations), in a secular state it presupposes *a specific political realm*—representative democracy, citizenship, law and order, civil liberties, and so on. For only where there is this public realm can *personal ethics* become constituted as sovereign and be closely linked to a personally chosen style of life—that is, to an aesthetic.

A secular state is not one characterized by religious indifference, or rational ethics—or political toleration. It is a complex arrangement of legal reasoning, moral practice, and political authority. This arrangement is not the simple outcome of the struggle of secular reason against the despotism of religious authority. We do not understand the arrangements I have tried to describe if we begin with the common assumption that the essence of secularism is the protection of civil freedoms from the tyranny of religious discourse, that religious discourse seeks always to end discussion and secularism to create the conditions for its flourishing.

One of the many merits of Johansen's account of classical Islamic law is his demonstration that the *sharī'a* is a field of debate and dissent in which the distinction between certainty and probability is pivotal, and that this law has evolved in the context of changing social circumstances and arguments. But just as important is his implicit suggestion that the authoritative closure of a debate is not necessarily a sign of discursive failure, that it indicates a different kind of discursive performance altogether—the carrying out of *legal judgment*. For legal judgment is not confined to the cog-

102. "The ethical expression for what Abraham did is, that he would murder Isaac; the religious expression is, that he would sacrifice Isaac; but precisely in this contradiction consists the dread which can well make a man sleepless, and yet Abraham is not what he is without this dread" (Søren Kierkegaard, *Fear and Trembling (&) The Sickness Unto Death*, Princeton: Princeton University Press, 1954, p. 41). Thus even in his conception of "religion" as deeply personal and experiential, Kierkegaard stands in sharp opposition to the liberal, secularized view.

nitive domain of truth, to a recognition of transcendent rules; it is also central to the practical domain of punishment and pain.

The judicial process is an institution integral to every kind of state, and it is always based on coercion. In order to understand "secularism" I therefore did not begin with an a priori definition of that concept ("the universal principles of freedom and toleration" or "a particular cultural import from the West"). I tried to look at aspects of *sharī'a* reform as both the precondition and the consequence of secular processes of power. For the law always facilitates or obstructs different forms of life *by force*, responds to different kinds of sensibility, and authorizes different patterns of pain and suffering. It defines, or (as in the present moment of genetic and cognitive revolutions) tries to redefine the concept of the human—and so to protect the rights that belong essentially to the human and the damage that can be done to his or her essence. And it punishes transgressions (of commission and omission) by the exercise of violence.

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