Saba MAHMOOD *Religious Difference in a Secular Age: A Minority Report* (Princeton, Princeton University Press 2016)

The German word *secularisieren* apparently was first used by a French delegate in Münster, when the Westphalian Peace was negotiated, and it meant "liquidation of clerical rule" and the transfer of church property to worldly rulers.[1] More generally, "secularization" came to signify the "displacement of religion from the centre of human life".[2] This is still the shortest and most succinct synopsis of what a modern society is all about. At first a provincially European invention, intrinsically connected with the humanizing and religion-busting forces of the Latin Christian faith, secularism—the product of the process called secularization—now is a universal requirement of all liberal democracy, wherever it may be. Because without separating itself from religion, the state could not treat its members as equal citizens but would have to prioritize those who are of the favored faith.[3]

However, a simple "subtraction" story of secularism,[4] as what remains if you take away religion, has long been discarded. Instead, the constitutive powers of secularism, even giving form and direction to what we understand as "religion" itself, has moved into the picture. Note that the word "secular" stems from the Catholic church lexicon: in pre-Westphalian times, a *saecularis* was an ex-*regularis*, a monk who left the monastery without thereby abdicating God.[5] The difference today is that the secular, but not the religious, is the default condition, whereby religion shrinks to being optional—Taylor's famous "immanent frame." But at the semantic level both concepts still require one another: take away religion, no point for the secular. This is why "secular studies," Saba Mahmood's word for the genre *Religious Difference in a Secular Age* is dwelling in [2], is a synonym for

[1] Hermann Lübbe, 1965, *Säkularisierung: Geschichte eines ideenpolitischen Begriffs* (Freiburg and München, Karl Alber: 23).

[2] Steve Bruce, 2011, *Secularization: In Defense of an Unfashionable Theory* (Oxford, Oxford University Press).

[3] The most succinct account remains Charles Taylor, "Models of Secularism", 1998, *in* R. Bhargava, ed. *Secularism and its Critics* (New Delhi, Oxford University Press).

[4] Charles Taylor, 2007, *A Secular Age* (Cambridge, Mass., Harvard University Press).

[5] "Säkularisation, Säkularisierung", 1984, *in* O. Brunner, W. Conze and R. Koselleck, eds. *Geschichtliche Grundbegriffe*, Vol. 5. (Stuttgart, Klett-Cotta: 796).

Christian JOPPKE, University of Bern [joppke@soz.unibe.ch]
European Journal of Sociology, 58, 3 (2017), pp. 577–589—0003-9756/17/0000-900$07.50per art + $0.10 per page
©*European Journal of Sociology* 2017. doi: 10.1017/S0003975617000406

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

a distinct kind of religious studies—one in which the religious is seen as shaped and constituted by its secular other, mostly the laws and institutions of the modern state. Mahmood follows in the tracks of Talal Asad, who has laid bare the Western origins and definition of "religion," while denouncing the violence and distortions that result from transplanting this concept along with its legal-political luggage into non-Western settings.[6]

Religious Difference in a Secular Age is, as its subtitle *A Minority Report* flags, a study of the "increasingly precarious situation of non-Muslim minorities in the Middle East" [1], with a focus on Coptic Orthodox Christians and the Bahai sect in Egypt. Conventional accounts would hold an increasingly assertive and politicized practice of Islam or the authoritarian-military regimes of the Arab world responsible for the considerable plight of its religious minorities. For Mahmood, instead, a generic "secular political rationality" [2] is to blame, which is not much different in Egypt than in the Western states where it originated. In her view, religious minorities are "structurally precarious" in "all modern societies" [6]. What she calls "political secularism" is not what one conventionally thinks, liberal neutrality or the "separation between church and state" [2]; instead it is a partial, position-taking exercise of power, involving the state in the "regulation and management of religious life to an unprecedented degree" [*ibid.*]. The element of truth in this is that the activation of religious liberty rights in a constitutional regime requires the state to determine when a claim or actor is "religious" in the first; to a degree, this does prove wrong the state's constitutional posture of neutrality and religious agnosticism.

But to the plausible assumption of a minimally religion-regulating state, which even a radical separationist regime like the French or American cannot escape, Mahmood adds a rather more controversial assumption of "secular governance" to transform and intensify "pre-existing interfaith inequalities, allowing them to flourish in society, and hence for religion to striate national identity and public norms" [2]. The basic idea is that by privatizing religion, the secular state allows inequalities grounded in religion (including gender or sex inequalities) to grow uncontrolled in civil society, thus undermining its formal equality promise. The model for this reasoning is Marx's *On the Jewish Question*, which is approvingly cited in various parts of her study. The element of truth in this is that an increased autonomy of religious

[6] Talal Asad, 2003, *Formation of the Secular: Christianity, Islam, Modernity* (Stanford, Stanford University Press).

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

organizations is the often-ignored flipside of secularization. This is captured in Alfred Stepan's evocative notion of the "twin tolerations": religion respecting the autonomy of the state *but also* vice versa.[7]

However, it is not within the logic of secularism to relegate family law to the authority of religious organizations, which is Mahmood's main case for demonstrating the repressive impact of privatizing religion. This is simply the "Oriental pattern" of doing family law, reinforced by Western colonialism.[8] Commenting on an increasingly conservative Coptic family law, which since 1971 prohibits divorce and, curiously, forces Coptic women to convert to a more "liberal", because divorce-granting, Islam if they want to escape abusive marital conditions—yet who are poisonously rumored by Copts to have been abducted and forcibly converted to Islam—Mahmood argues: "Modern secularism has perniciously linked religious, sexual, and domestic matters to the extent that the family has become the primal site for the reproduction of religious morality and identity, exacerbating earlier patterns of gender and religious hierarchy" [115]. This is plainly wrong. Not "modern secularism" in general but religion-based family law in particular, albeit inherited from British colonialism, is responsible for the Coptic Orthodox Church's frantic reinforcement of group boundaries through family law, at the cost of repressing the freedom of their members, particularly women, for whom religion of whatever stripe, Christian or Islamic, has never been positive. Not secularism but too little of it is the problem here, and the solution would be a fully secular, not religion-based family law as it is standard in contemporary Western states. The latter follows an "Occidental pattern," where "secular family law [...] substantially refrains from trying to articulate a common morality [...] while leaving maximum room for choice and avoiding value judgments other than those favoring individual liberty."[9] In short, there is nothing inherent in secularism that would make the family the lynchpin of religious morality.

Equally unconvincing is Mahmood's complementary claim that secularism must privilege religious majority norms. In Egypt, the key expression of majority-privileging is the constitutional clause, inserted in 1971 and radicalized in 1979, that "the principles of Islamic Shari'a are the main source of legislation" (one notch up from "a source of legislation", as had been the original version, which reflected

[7] Alfred Stepan, 2001 *Arguing Comparative Politics* (New York, Oxford University Press: ch. 11).

[8] See Max Rheinstein, 1974, "The Family and the Law", *International Encyclopedia of Comparative Law*, Vol. 4 (edited by A. Chloros, M. Rheinstein, and M.A. Glendon (Tübingen, Mohr Siebeck: 8f).

[9] Mary Ann Glendon, 1989, *The Transformation of Family Law.* (Chicago, University of Chicago Press: 14).

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

President Anwar Sadat's heightened urgency to appease the swelling forces of political Islam). However, if a structural feature of the modern state is to be held responsible for the increasingly privileged position of majority religion (and not, say, political Islam), it should be its democratic, not its secular aspect. This is not the same.[10] Mahmood operates with an unhelpfully monolithic concept of the state—"modern state," "nation-state," "secular state"—it is all the same to her, in Egypt or in Britain. And always the state is seen as one—no effort is made to expound its legal, representative, or executive branches and their different logics, nor its different regime forms, such as liberal democratic v. autocratic. Mahmood's world is the secular dark in which all cats are grey.

Particularly striking is the claim that the Egyptian state is as Islamic as European states are Christian: "The centrality of Christianity to European identity […] is similar to Islam's place in […] Egyptian social and state identity" [168]; or, stronger still, "Christian political theology is just as central to European identity and legal structure as Islamic political theology is to Egyptian identity and legal structure" [170]. In particular, Mahmood draws an analogy between the Egyptian high courts' prohibition of the Bahai sect and the European Court of Human Rights' (ECtHR) affirmation of Christian crucifixes in Italian public schools, in its controversial Lautsi decision (2011). In both cases, she sees a similar dominance of the "values of the majority religion at the expense of minorities" [168f]. Central to her claim is that in both legal regimes "public order" is used in similar ways to prioritize majority preferences and quash minority freedoms. The Lautsi decision, however, was not based on a public order restriction of an individual right guaranteed by the European Convention of Human Rights (ECHR); instead, the court held, rightly or wrongly, that a merely "passive symbol" with no proselytizing intention, which the crucifix pinned on a public school wall was taken to be, did not constitute a violation of a Convention right in the first.

One may well criticize, as Mahmood rightly does, the European court's double standards when adjudicating on Christian crucifixes and Islamic veils, which the same court, in its 2001 *Dahlab* decision, took to be "powerful external symbols" with a "proselytizing effect" (without any concrete evidence in the particular case) that were required to be reined in by the "necessary in a democratic society"

[10] See also Karuna Mantena and Aziz Rana, "Democracy and the Secular Predicament", *The Immanent Frame*, posted on 22 March 2016 (http://blogs.ssrc.org/tif/2016/03/22/democracy-and-the-secular-predicament).

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

proviso of Article 9, the Convention's religious liberty clause. But, legally speaking, neither *Dahlab* nor *Lautsi* were "public order" restrictions of an individual right. In *Dahlab*, the "rights of others," namely, of dependent and immature school children, were to be protected; and in *Lautsi*, the court's public order resembling argument that the Italian state had the right to "perpetuate tradition" was auxiliary to the basic legal argument that the crucifix in the school context had not impaired the atheist parent's "right to educate" her children according to her "religious and philosophical convictions," as guaranteed under ECHR Article 2.

And, I would argue, whenever Western courts invoke the public order formula, they mostly do so in an attenuated, individual- rather than group- or religion-protecting way. In *Sahin v. Turkey* (2006), the ECtHR condoned Turkey's restricting the veil of a university student for the sake of "gender equality" and "secularism." This is not to defend this decision—it thrives on a paternalistic understanding of gender equality (that can hardly be violated by a woman acting on herself), and, like most ECtHR decision on Islam, *Sahin* suffers from a stereotyped, demonizing view of Islam. It is still fair to argue, as Paul Lagarde did for the public order concept in the French application of private international law: "French law is quite moderate. The cultural differences that are rejected in the name of public order are those which are contrary to human rights".[11]

Now compare the use of the public order concept by the Egyptian Court of Cassation: "[Public order] comprises the principles […] that aim at realizing the public interest […] of a country […] These [principles] […] supersede the interests of the individuals. The concept of [public order] is based on a purely secular doctrine that is to be applied as a general doctrine […] However, this does not exclude that [public order] is sometimes based on a principle related to religious doctrine, in the case when such a doctrine has become intimately linked with the legal and social order, deep-rooted in the conscience of society […] The definition […] [of public order] is characterized by objectivity, in accordance with what the largest majority […] of individuals in the community believe".[12] One sees the Egyptian High Court struggling over a secular v. religious

[11] Paul Lagarde, 2010,"Reference to Public Order ('Ordre Public') in French Private International Law", *in* M.C. Foblets *et al.*, eds. *Cultural Diversity and the Law* (Brussels, Bruylant and Editions Yvon Blais: 545f).

[12] The Egyptian Court of Cassation (1979), quoted in Hussein Ali Agrama, 2010, "Secularism, Sovereignty, Indeterminacy: Is Egypt a Secular or a Religious State?", *Comparative Studies in Society and History*, 52 (3): 495-523, at 506.

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

definition of the state, which has absolutely no parallel in a "Christian" European state. In the end, the principle of public order is used to enshrine the plain dominance of majority religion. True, in this particular statement at least, this is not done because Islam is seen as the "true" religion, which would make Egypt a theocratic state. Instead, it is done because the majority wants it this way, which however does not make it any better. If the factual say-so of the majority trumps the interest of the individual, this betrays a fundamentally different understanding of the legal order than in the West: collectivist and individual-subsuming rather than individual-protecting.

The repressive consequences of the Egyptian state's unabashed privileging of Islam are laid out by Mahmood in all desired detail. While other "religions of the book" (a sharia concept that includes Judaism and Christianity) are allowed to resolve their family affairs under their own religious rules, Islamic family law is still considered the "general law" of the country, applicable, for instance, in marriages across Christian sects; conversions from Islam to Christianity are obstructed; new church constructions are restricted; and mounting violence against Copts over the last two decades has occurred with the complicity of state security and the police. Particularly striking is the direct and openly discriminatory application of religious norms by secular courts. Muslim men may marry Christian women without changing their religion, while Christian men marrying Muslim women are required to convert. Although the conversion of Muslims to Christianity is legally protected by the Egyptian constitution, the Interior Ministry refuses to list the changed religious affiliation on an individual's national identity card, which is also a violation of the Civil Status Code that allows for the change of religious affiliation on state documents. The Supreme Administrative Court justified this refusal by arguing that "monotheistic religions were sent by God in a chronological order," so that one cannot convert to an "older religion" [137, n.106]. In this case, the reference to sharia even trumped the state's own civil law.

Non-adherents of a "religion of the book," like the Bahai, fare even worse. The Bahai are entitled to their beliefs in private, but are not entitled to manifest their beliefs in public—in fact, as a group the Bahai have been banned since 1960, officially because of their lack of "Abrahamic" credentials, but probably also because their headquarters are located in Haifa, Israel. Capriciously, they are not allowed to list their religion on state documents (such as ID cards), as this counts

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

as a "manifestation" of religion. It would also amount to their de facto recognition as religion. This prohibition is justified on the basis of the public order principle, which includes the notion of People of the Book, the only ones to be recognized by the state. While public authorities had previously made informal exceptions to not registering members of the Bahai faith, this became impossible once the process was computerized, in 2004. At that point, a legal skirmish shows in shocking detail this "secular" state's (even worse: its courts') theocratic leanings. At first, an administrative court required a "Bahai" entry on state documents, but only to render its members visible and subject to surveillance as a non-recognized faith. This was overturned by the Supreme Administrative Court, arguing that registration amounted to a "manifestation" of religion that had to be contained on public order grounds. Finally, in 2008, the same court allowed Bahai members to at least leave blank the religion box on public documents, so that they would not be forced to lie about their religious affiliation. This was in keeping with the Koranic principle that "there be no compulsion in religion". However, the primary purpose was "to avoid a grave prejudice to the religion that will be recorded incorrectly" [162] which in most cases is presumably Islam.

It is difficult to see in these repressive and discriminatory measures, justified by the Koranic hierarchy of religions, "the modern state and its operational logic," which for Mahmood is a "double movement" of structurally privileging the majority while whetting the appetite for critique by disadvantaged minorities because of the state's parallel equality and neutrality promise [87]. Surely, this "logic" must be there somehow because we are dealing with a "state" and not, say, a rugby club. But it does not cut through to what is eyebrow-raising about these practices. Would a future US Supreme Court, even if a good number of its justices were nominated by The Donald, dare to quote the bible when finally overturning *Roe v Wade*? (Incidentally, the "right to privacy" that justified the Supreme Court's legalization of abortion in 1973, in *Roe v Wade*, uses to women's great advantage the "public-private division" that Mahmood sees as the source of evil for aggrieved minorities, women included [135]). Instead of blaming secularism for the plight of Egypt's religious minorities, it seems more reasonable to dust-off the discarded alternatives, above all political Islam. Mahmood does not deny that "Islamic concepts and practices are crucial to the production of [...] inequality"; still she deems "the modern state and its political rationality [...] far more decisive" [2]. How does she know? She never seriously engages in a contrasting

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

analysis of how a politicized and increasingly conservative Islam may have battered the Egyptian state's secularity over the last few decades. Short of a more balanced multi-factorial approach, calling Islam "crucial" but secularism "far more decisive" is merely speculative. One must suspect that exculpating Islam is the whole point of blaming secularism.

For calibrating the secularism and political Islam factors, consider the famous case of Hamid Abu Zayd, a noted liberal Islam scholar of the University of Cairo who was put on trial for his heretic views that the Koran is a human creation. (This case is briefly mentioned in the book.) In 1996, the Court of Cassation found him guilty of apostasy, the forsaking of Islamic religion. This is not a crime under Egyptian law. However, the court annulled his marriage to a Muslim woman in application of sharia principles, and the couple was forced to flee to the Netherlands. There *is* an element of modern (though not secular) statecraft undergirding this and similar apostasy trials, often leading to death penalties, which took momentum in the Middle East not before the 1980s and 1990s. Previously, apostasy—nowhere mentioned in the Koran as a punishable crime—had been considered "a matter between God and the concerned individuals," to be punished only "in the world to come."[13] With the rise of Arab states, what previously had been purely ethical religious norms (in Egypt controlled and adjudicated by the oldest Islamic law school, the Hanafi) became codified as state law, though limited to personal status (or family) law. Now "the methods of modern legal positivism [...] create(d) a new outlook on the legal and ethical tradition of Islam," as it were, making it enforceable by police power.[14] Apostasy became justiciable in Egypt under the Court of Cassation, but only with respect to the dissolution of the apostate's marriage. Following classic Islamic law, the so-called *hisba* obligation admitted testimony by witnesses with no direct personal interest in the case but who were obliged by the Koranic rule to "order what is good and to forbid what is evil." Only, rarely did anyone make use of it. Enter political Islam in the 1980s. Under its sway, several Muslim countries (such as Sudan and Yemen), under the flag of a "return to Islamic law," inserted apostasy laws into the penal code, and deadly apostasy trials proliferated throughout the Arabic world. Now, as in the Abu Zayd trial in Egypt, licentious use was made by political Islamists of the *hisba* provision.

[13] Baber Johansen, 2003, "Apostasy as Objective and Depersonalized Fact", *Social Research*, 70 (3): 687-710, at 692.
[14] *Ibid.*: 690.

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

In a pedantic and hypocritical deployment of the secular private-public distinction, the Egyptian high court did not condemn Abu Zayd on the grounds of his subjective belief (which is protected under the Egyptian constitution), but the public manifestation of his views in the form of his printed words. As Johansen put it, apostasy was condemned as "objective and depersonalized fact," incidentally by theologically untrained judges and their views of what constitutes "the true" and unchanging Islam.[15] Accordingly, the notional secularism of the state (in terms of its constitutive private-public distinction) imprinted a certain form on this restriction of religious freedom. In essence, however, it was driven by the Islamist movement, which would have prevailed without the legalist private-public nicety. Addressing the Arab world at large, Johansen speaks of a "certain cooperation between Islamist political movements […] and the highest courts."[16] Eventually, two laws passed by the Egyptian parliament in 1996 greatly restricted the possibility of Islamists raising *hisba* claims, which brought to an end the wave of apostasy trials in Egypt. Alas, Johansen notes that "the Court of Cassation decided to disregard (these laws)" in the Abu Zayd case. He did not dwell on the strange fact of a populist high court ignoring an apparently legally minded parliament—the exact opposite constellation of that found in Western states! A generic "modern secular governance" lens does not provide any tools for understanding such paradoxes.

Never pulling a punch, Mahmood presents three "possible objections" to her political secularism frame, which highlights the similarities over the differences between Egyptian and European high court rulings on religion [174-180]. However, in my view, each one of these rhetorical objections turns out to be stronger than the proffered rebuttal. The *first* "possible objection" is that Egyptian courts "stipulate religious content," while European courts mainly restrict "certain religious symbols for the purpose of protecting the rights of others" [174]. Precisely. This difference is of the essence. If an Egyptian administrative court, in a 2008 ruling that limits public manifestations of the Bahai religion, stipulates that the Egyptian state is a "state whose official religion is Islam" [165], this surely points to a lack of secularity rather than its operation. Mahmood's only defense is that European courts espouse a "Protestant" view of religion, as protected in the *forum internum* but restricted in the *forum externum*. If this is "Protestant," so is the Egyptian Court of Cassation's attack

[15] *Ibid.*: 700.

[16] *Ibid.*: 698.

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

on Abu Zayd, not for his beliefs, but for his writings. And, as demonstrated by Mahmood herself, the judicial outlawing of the Bahai sect rests on the same hypertrophied private-public distinction.

Secondly, Mahmood rhetorically muses, is not the "state's denial of the legal existence of a religious group," as occurred to the Bahai in Egypt, simply due to their not being a "religion of the book," of a "fundamentally" different order than the state's "refusal to accommodate certain religious practices because they contravene its sociopolitical norms" [175]? Precisely, again. One must consider here that European "sociopolitical norms" are not the random musings of "the man in the Clapham omnibus,"[17] to cite a famous defender of majority-group particularism, but these norms are linked to the exigencies of a liberal democracy or an aspirational neutral state. Again, this is not to defend the mostly insensitive and alarmist judgments of the ECtHR on Islam. But, surely, the prohibition of headscarves in public schools, even of the face veil in public places at large, is not of the same order as prohibiting mosques or the corporate existence of Islam, which no European state—not even Hungary, Poland, or Greece—would ever dare to entertain. Mahmood's only defense to the differential-severity objection is that a preference for the European approach "should not blind us to the majoritarian norms built into the European laws of religious protection" [175]. These "majoritarian norms" exist, but they are more qualified and considered than on the Egyptian side. In *Lautsi*, a peculiar (perhaps implausible) "culturalization" of religion (as "tradition" or "identity") was required to let the crucifixes pass constitutional muster. But only on the condition that no individual convention right was violated and, moreover, that "religious pluralism", with the toleration of minority faiths, was a reality in Italian schools.[18] Similarly, in the ECtHR's earlier *Folgerø* decision (2007), the Norwegian school curriculum's "priority to tenets of Christianity over other religions" was declared compatible with the European human rights convention, but only on the condition that a "full" (not only "partial") exemption was granted for dissenting school children, to protect their parents' education rights under ECHR Article 2.

Thirdly, is not the main problem the "faulty and unfair application" of the law rather than a generic "prejudice internal to secular liberal law"? Also here the rhetorical objection turns out stronger than the rebuttal. In defense of her view, Mahmood argues that the "judicial

[17] Patrick Devlin, 1963, *The Enforcement of Morals* (Oxford, Oxford University Press: 15).

[18] For the "religious pluralism" aspect of *Lautsi*, see Christian Joppke, 2013, "A Christian Identity for the Liberal State?", *British Journal of Sociology*, 64 (4): 597-616.

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

system" always "consecrate(s) majoritarian sensibilities". Among several Western court cases cited to confirm this, she also cites a decision of the German Federal Constitutional Court (FCC) that "upheld" the early millennium Baden-Württemberg legislation restricting religious symbols on the part of public school teachers, which controversially exempts the catholic nun's habit on the ground that it is not creedal but a "cultural tradition" [176]. However, no such FCC judgment exists! In reality, the Federal Administrative Court upheld this law, and several state courts (like the Hesse Supreme Court) upheld similar double-standard restrictions in other Länder. But, in its second headscarf decision in 2015, the Federal Constitutional Court struck down the double-standard restriction of North-Rhine Westphalia, and with it similar restrictions in the other Länder, arguing that a religious-garb restriction for public schoolteachers had to "apply to all faiths and world views equally." The court denounced the "privilege" of "representing the Christian-Occidental educational and cultural values or traditions" as "discrimination on the grounds of faith and religious views."[19] In fact, the FCC's first headscarf decision, in the well-known case of Fereshta Ludin in 2003, had already argued that any Land-level headscarf restriction (none of which existed at the time) had to be applied to other faiths also, consonant with the constitutional equality principle; only it took the court twelve years to affirm its position over the patently unconstitutional double-standard laws passed in some Länder after 2003. Admittedly, this is a small and rare error (in fact, the only one I could find) in an otherwise impeccably researched book. The important point is that the list of legal judgments that do not "consecrate majoritarian sensibilities" could be easily prolonged. An authoritative review of the European high court that comes closest to endorsing majority sensibilities, which is the ECtHR with its majority-friendly "margin of appreciation" doctrine, finds that this court, over the last few decades, has been "strengthening equal rights of religious minorities and limiting state privileges for religious majorities".[20]

The point of a "faulty and unfair application" of the law, only raised by Mahmood to be rebutted in turn, needs to be underscored. To stay with the notorious headscarf restrictions, they are not all of the same cloth, to use a sartorial metaphor, some being defensible from

[19] 1 BvR 471/10 and 1 BvR 1181/10, decision 27 January 2015: 123.

[20] Matthias Koenig, 2015, "The Governance of Religious Diversity at the European Court of Human Rights", *in* J. Boulden and W. Kymlicka, eds., *International Approaches to Governing Ethnic Diversity* (New York, Oxford University Press: 72).

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

a liberal point of view, while others are not. Defensible are restrictions for public school teachers and other agents of the state, as long as they are evenhanded and do not single out Muslims; even an evenhanded foulard restriction for pupils (like the 2004 French Law on Laicity) might be justifiable, as an attempt to shut out debilitating and self-segregating group noise from the autonomous-citizen making school. This could not be said about the face veil ("burka") prohibitions in public spaces at large, such as the one legislated in France in 2010. These are illiberal laws that violate basic religious freedom rights. The ECtHR, in *S.A.S. v. France* (2014), accepted the French Burka Law, not on public order grounds (for reasons of legal technique), but because the face veil allegedly violates the "right of others" to "live in a space of socialization which makes living together easier".[21] This is a case of "faulty" application of the law. Because, as two dissenting justices pointed out, there is no right under the ECHR to enter into communication with anyone as one pleases. The reverse side of a right is an obligation, and a requirement to communicate would clearly be against the spirit of a "human rights" convention. If the European court's justification of the Burka restriction is applied strictly, the public use of headphones or telephoning in public must also be prohibited, because this makes the wired individual inaccessible to in situ communication. Mahmood would probably see in the burka laws the generic majority bias of political secularism. This view is too static, too negative. In reality, these laws are a violation of constitutional and convention law, attributable to a contingent political logic of the political center seeking to preempt the forces of right-wing populism that have been gaining strength alarmingly in Western Europe over the past decade.

It may appear excessive, and obsessive, to go to such lengths to criticize a slim book. But it is not just any book; it comes with the insignia of elite academy, down to the prime publisher. Leading scholars have endorsed it as an "extraordinary work" (Wendy Brown), a "stunning book" (Joan Wallach Scott), by "one of the most prominent anthropologists of her generation" (Webb Keane). On the SSRC's influential *Immanent Frame* website, devoted to politics of religion issues, you find nine uniformly cheerleading appraisals of the book: "powerful and incisive," "rich and fascinating," "indispensable contribution," "(of) major significance," "luminous, fiercely argued," "original and thorough," "erudite and engrossing," etc. Saba Mahmood is a star in the academy, her word the holy grail of Asadian

[21] ECtHR, *Case of S.A.S. v. France*, 1 July 2014: 122.

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press

"secular studies," that she indeed masters better than most of her jargon-thumping *confrères*. It is thus important to dare to disagree. In my view, Mahmood's *Religious Difference in a Secular Age* succeeds as a fact-filled, highly nuanced, often gripping and brilliantly observed account of the plight of religious minorities in a Muslim-majority state—here is my share of the claptrap. But it fails for its monochrome theoretical frame, a kind of *ceterum censeo* that secularism is to blame, for anything from gender inequality to the law's majority bias to the hardening of minority politics—all basically the same in Berlin or Cairo. In Mahmood's own words, her work draws "too bleak a picture of secularism" [20]. Throughout reading her book, I wondered: What is the alternative? Does she prefer a religious state, an empire, or no state at all? Of course, there is no alternative to separating religion and state, which is still the incontrovertible bottom line of secularism, despite all attacks on it, and Mahmood herself is aware of that: "Secularism is not something that can be done away with any more than modernity can be" [21].

In her best moments, Mahmood is her own best critic. Not one but a "variety of factors" [80] have shaped the Egyptian religious minority problematique. In my reading of the evidence presented in her book, among these factors are an authoritarian regime, in alliance with political Islamism, trampling over religious liberty rights; a religion-based family law that betrays not the workings but an insufficient degree of secularism; and, not least, a neoliberal retreat of the state from providing essential goods, which created a vacuum filled by self--aggrandizing religious organizations, minority and majority. Because these factors help explain variation, they are more potent explanatory devices than the stale reference to the invariant logic of secularism, which Mahmood ultimately favors. In the end, Mahmood faults secularism for its "inability to envision religious equality without the agency of the state" [212], whereby "secularism" equals "state". But wishing away the state, which seems to be the secret subtext of this book, and with it the rule of law and "so-called rights of man", as Marx did with acidic stringency in *On the Jewish Question*, does not seem a viable compass for mitigating religious conflict in a pluralistic society.

CHRISTIAN JOPPKE

https://doi.org/10.1017/S0003975617000406 Published online by Cambridge University Press