Faultlines and Fallacies of Western Secularism and Revisiting the Millet System: Solutions for Multifaith Societies from Islamicate History

Prof. Saeed A. Khan
Wayne State University

German Philosopher Jurgen Habermas declared at a 2008 address in Istanbul that many societies have evolved into a "post-secular" state. Yet, countries like France continue to assert a muscular, policy of laïcité that alienates and excludes religious expression in the public sphere, particularly of religious minority communities, and especially Muslims. In addition, religious revivalism is rife in countries, e.g., India, United States, asserting religious nationalism that targets religious minorities. An alternative to this phenomenon may exist from the former Ottoman policy of the Millet system, which recognized and empowered religious communities to have authority over essential faith matters, while maintaining their identity and space within broader public society.

This paper analyzes the contradictions and flaws within the current application of the secular. It will also explore how the Millet system reconciled the centrality of religious belief and expression in the daily lives of individuals and communities, while accommodating for difference and diversity within multifaith and multicultural societies. It will also demonstrate how the Millet system accommodation for religious minorities to maintain agency, space and inclusion within broader society may serve as a model for allowing state policies of secularism to be compatible with an intended legal-judicial architecture that promotes a vibrant, tolerant civil society.

Secular society may be on the endangered species list, or, as German scholar Jürgen Habermas contends, already a thing of the past:

> Religion is gaining influence not only worldwide but also within national public spheres. I am thinking here of the fact that churches and religious organizations are increasingly assuming the role of "communities of interpretation" in the public arena of secular societies. They can attain influence on public opinion and will formation with relevant contributions to key issues, irrespective of whether their arguments are convincing or objectionable. Our pluralist societies constitute a responsive sounding board for such interventions because they are increasingly split on value conflicts requiring political regulation. (Habermas, 2008)[1]

While Habermas strikes a tone of concern, even anxiety over the perceived rise of religious influence in the public sphere, and especially in the political arena, the secularity of that public sphere is often considered to be a space that is hostile to religion, whether in whole or part. Others would diverge from the Habermasian diagnosis. Secularism may not be anti-religious, but it is hardly ambivalent toward religion either. Conventional perceptions of secularism scribe to it an ironically supernatural power to subdue and even vanquish the religious from public life and beyond. For some, secularism is regarded as salvific, protecting, even redeeming society from the purportedly evil

encroachments of religion. For others, secularism is the personification of the evil it allegedly seeks to contain, stifling and suppressing religion, whose natural purpose is to combat anti-social, dystopic forces. Moreover, the contestation of secularism and its "battles" with religion permeates to the political arena, where secularism is either championed for insulating the political from the taint of the religious or vilified for obfuscating the political's need for religion's ethical calibration. A discussion of the secular and the political with relation to religion may appear to be an inescapably antagonistic narrative, but this is only inevitable if the architecture of relationship among the religious, secular and political is essentialized to a single model. Other options are available to explore.

Once liberated from the conceit that secularism, qua western secularism, is the sine qua non for political systems, political stability and social harmony, one can then explore other historical examples where political structures resembling contemporary models existed. In fact, Islam maintained such a system fourteen hundred years ago and from its inception as a socio-political phenomenon. After the Migration (*Hejira*) from Mecca to Medina (formerly Yahtrib) in 622, Muhammad (the Prophet) was confronted with being given the mantle of leadership over a city with now three distinct demographic groups: the pagan Medinans and the monotheistic Jews and migrant Muslims, respectively. He quickly embarked upon a project to define the political relationships of Medina to prevent any misunderstanding or misgivings that resources were to be illicitly redistributed. To this end, he drafted the Medina Compact, or Constitution of Medina. This charter created a new sense of citizenship, where inclusion, enfranchisement and protection were no longer merely a function of blood ties, but of a series of mutual rights and responsibilities to one another and to Medina itself. While Muhammad was the new authority of the city-state, and Islam the prevailing religious ethos, pagans and Jews were allowed to maintain their beliefs and identity. Most importantly, each religious community was given full autonomy, agency and authority to manage intra-faith matters, a proto-Millet System model that was codified by the Prophet himself.

While some may regard, even dismiss, the Medina Compact as an experiment in Islamic political engineering at a time when Muslims were still in a nascent stage of their societal development, the core principles of a form of Islamic secularism inherent in this charter were

present in other eras of Islamic history, especially during times of Islamic political hegemony. The Ottoman Empire spanned three continents and lasted for nearly six hundred years. It presided over one of the most demographically diverse constituencies in history, representing dozens of religious denominations and faiths, cultures, ethnicities and races. To mitigate social strife and to cohere a diffuse and diverse empire, the Ottoman sultans instituted the Millet System.

Under this enterprise, the Ottoman state allowed each religious minority community (*millet*) to select its own religious leader, granted plenipotentiary power over the respective group. Each community had jurisdiction and authority over its own religious laws, particularly doctrinal, liturgical and personal law matters- those legal issues of primary importance to adherents and from which they derive a sense of religious identity. This system was highly successful in demonstrating respect for religious minorities and was perhaps too successful since it reinforced group identity at the expense of considering oneself primarily a member of the empire, informing the beginnings of nationalism and ultimately leading to separatist movements and the eventual demise of the Ottoman Empire in the early 20th century. But most importantly, the Millet System provided an example of a secular system that would be recognizable, even like corresponding so-called secular states at the time and perhaps even today.

Before exploring whether Islam and secularism are indeed compatible in the present and possibly the future, one must first examine whether both in fact still exist. Islam, of course, is very much alive and with more than 1.8 billion adherents worldwide, thriving, but its political structures have been deeply affected by two developments: the continuing disruptive and destabilizing legacy of colonialism and the emergence of Muslims living as minority communities in the West. For the latter factor, Muslims are clearly negotiating secular spaces despite oftentimes contradictory, even hypocritical applications of secular modalities. For the former, the political project is certainly a work in progress, with several internal and external forces impacting the otherwise organic development of political pathologies in Muslim nations. Both of these scenarios, however, presume the existence of secularism, a notion that perhaps is more contestable than efforts to consider it as dictum. According to Charles Taylor, there are three kinds of secularism: a withdrawal of the religious worldview from the public sphere; the decline in personal religious practice and

commitment; and a fragmentation of ideas concerning the social order, i.e., the shift in cultural assumption that religious faith is still the norm. (Taylor, 2007) Accepting the intellectual architecture that Taylor has proffered, one may be circumspect to acknowledge that secularism even exists, contending instead that the world has now entered a post-secular phase. [2] Taylor's perception is woefully ethno-chauvinistic and dangerously Eurocentric, both maladies contributing to a rather distorted global lens; in fact, his "model" seems to work only in certain parts of Europe and only applies to white Europeans. One need only survey the public discourse in many a country to deduce that religion is a dominant trope expressed and employed to frame debates in the public sphere. If one defines evangelical atheism as a religion of sorts, then clearly religion is alive and well in the purported last bastions of secularism: the academy. Second, there is no measurable withdrawal of religious practice and commitment or of the individual's withdrawal from the community. Rather, the notion of a muscular, communal form of religious affiliation is on display in locales as seemingly varied as America's heartland and the world's largest democracy, and ostensibly largest secular polity, India. Lastly, there has been a fierce assertion of religion as the imprimatur for social order in many parts of the world. Noted scholar Paul Tillich states that religion is the substance of culture and culture is the form of religion. (Tillich, 1959)[3] Such morphology is at best denied by those who hold steadfast to the belief that the two are mutually exclusive and at worst, artificially decoupled. Increasingly, efforts across the world are attempting to reconcile this fissure between religion and culture, leading to the more poignant issue: whose religion and perhaps more precisely, whose culture should prevail. For societies in transition, through demographic shifts, migration and globalization, this is *the* issue for the future.

What is clear is that imagining a secular world without a nation-state or a world of nations without secularism is not a heresy to either. In fact, the Islamic project of a self-generated secularism, one that had tremendous currency in the pre-modern era, may well have resonance in a post-modern world as well. The Islamic world presaged the emergence of globalization, with its hyper-migration, porous or fluid borders and interconnectedness as a world system. The recognition of religious identity as a primary marker of social and individual construction allows for the acknowledgement of its influence on political structures and authority. A system that addresses religious diversity within

a given polity can then aspire toward a true sense of inclusiveness and equality among its citizens provided two key prerequisites are met: the clarification that religion and culture are not synonymous and that the dominance of a particular cultural modality is neither the automatic assertion the primacy of a particular religion nor an absence of the secular; and perhaps most importantly, that the goals of social justice and political peace, innate goals of so many religions, are neither exclusively the province of secularism anymore than secularism is a religion unto itself.

In the United States, advocates of the view that the Founding Fathers intended to create a "Christian" nation often cite the language of America's foundational document as *prima facie* evidence of their objective. A single reference to "Creator" appears in the Declaration of Independence, written by Thomas Jefferson, and the role of providential agency in endowing America and its peoples with inalienable rights. The Declaration, though a historically significant document, is merely a manifesto and has no legal effect on the nation, per se. The more legally controlling Constitution, ratified in 1791, contains no reference, explicit or implicit, to any divine entity. It is therefore a weak edifice upon which to base an argument, i.e., one word in a proclamation that inveighs against the political status quo, and a nation's religious identity.

As strenuously as religious advocates contend that America is founded on Christian principles and was intended to be a nation that espouses religious orientation in the public sphere, so too is the equally indignant argument to the contrary, that the United States is a secular country, as the Founding Fathers aspired to a nation free of religious entanglement in official matters. Proponents of this view look, once again, to Jefferson, for historical and contextual support.

Thomas Jefferson's letter to the Danbury Baptist Association in 1802 is an oft-cited document in the debate about the direction of American religious identity from a state level; it is therefore critical to examine the actual language the nation's third President employed:

> Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. (Jefferson, 1802)[4]

Advocates of the view that the United States is a secular nation, as intended by its Founding Fathers, often point to Thomas Jefferson's 1802 letter, while serving as President, to the Danbury Baptist Association, where he employs the now famous language of a wall of separation between church and state. Of course, this correspondence, though certainly persuasive evidence as to the President's view on the subject, is hardly binding or official policy unless examined in the context of actual government action that reflects a general direction sought for the nation. The Barbary Treaties provide such insight and furnish a much stronger basis for the argument of the pro-separation side. Of course, one must appreciate the irony that both sides of the argument return to the same individual, Jefferson, as the source of convincing evidence for their respective contentions.

The First Amendment in the Bill of Rights of the US Constitution, with its two, often competing clauses- Establishment and Free Exercise, respectively- seemingly marked the conclusion of the debate, at least about government's relationship to religion in America. But whether these clauses represent a triumph of Deist and religious choice advocates over pro-regulation voices or merely a compromise to achieve a political *modus vivendi* during a country's embryonic stages is and remains unclear. The commitment to and reification of the Constitutional provisions, however, occurred soon after their codification into the American juristic tradition when the Barbary Treaties were negotiated and drafted five years later.

The Barbary Treaty of Tripoli of November 1796 was ratified by the United States Senate on May 26, 1797. The Treaty of Peace and Friendship between the United States of America and the Bey of Tunis was signed August 28, 1797. These two documents represent some of America's earliest forays into foreign policy and diplomacy after the War of Independence and its formal conclusion through the Treaty of Paris, 1783. In particular, the former contains critical language that not only asserts the religious identity of the United States vis-à-vis a foreign party, but it also indicates how such religious identity reflects the broader, accepted identity of the nation as it perceived itself in the early years of its inception. Article 11 of this Treaty contains the pertinent language for this inquiry:

> As the Government of the United States of America is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, or tranquility, of Mussulmens; and, as the said States never entered into any war, or act of hostility against any Mahometan nation, it is declared by the parties, that no pretext, arising from religious opinions, shall ever produce an

> interruption of the harmony existing between the two countries. (Barbary Treaty, 1796) [5]

How did American diplomats regard the Barbary Treaties, specifically, the choice of language that was agreed to comprise the final draft? One may examine the notes of Joel Barlow, United States Consul General of Algiers, and a negotiator for the Treaty of Tripoli to glean his thoughts and the intentions of the American government in conveying a particular message vis-à-vis the nation's religious orientation. Interestingly, none of Barlow's correspondences during the period in question make any reference to the religious language of the Treaties. Certainly, Barlow sent several letters back to the United States to various government officials, yet at no time did he express any anxiety, concern or even mention of Article 11, its ramifications or its implications.[6] It would be incredulous to many Americans today that the same Founding Fathers whom many claim had sought the United States to be a Christian nation were so emphatic and affirmed to the contrary. Conversely, it would doubtless come as a shock to many within the early American leadership to see where their country has abandoned their vision of the secular in favor of a distorted, even dystopic social landscape.

2022 may well be noted as the year when the United States removed a few key bricks from the wall separating church and state. The *Dobbs v Jackson Women's Health Organization* (597 US ___)[7] decision that overturned a nearly 50-year-old recognition of a woman's fundamental right to an abortion in the 1973 *Roe v Wade* (410 US 113)[8] case was hailed as a victory by the Christian right in their zealous pursuit to criminalize all abortions in America. While *Dobbs* itself does not mention Christianity, per se, as the basis for the United States Supreme Court's holding, it is difficult to extricate religious motivation from the decision-making process of more than a few of the majority opinion holders, especially as they have in public statements voiced their opposition to abortion on religious grounds. The post-*Roe* abortion landscape removes a federal protection for abortion and relegates the matter to the fifty states to determine whether abortion will be categorically prohibited, fully permissible or some hybrid position in the middle.

Even if *Dobbs* may be regarded as an example of de facto, not de jure promotion of a particular religion's influence on judicial analysis, the Supreme Court's decision in *Kennedy v Bremerton School District* (597 US ___) appeared to be a more explicit endorsement of religion.[9] In

Kennedy, the Supreme Court held that it was within a high school football coach's First Amendment right to freedom of speech to pray on the school's football field after a game, and that such conduct was not considered a violation of the same Amendment's religious Establishment Clause. Here, the open question remains as to whether a school board would be as accommodating were the coach a Muslim, Hindu, or Jew, or whether the relative absence of consternation was because a member of the (current) majority faith tradition was acting with such impunity. Conventional wisdom affirms that the United States Constitution was drafted to protect minority rights from the tyranny and primacy of the majority, not to allow the majority to become further entrenched as the status quo.

Thirteen years after American independence, France embarked upon a revolution of itself, one that transformed the nation well beyond the issue of political governance. The dismantling of the *ancien regime* ushered in a new, almost militantly secular France, the legacy of which is upheld with an equal insistence and ferocity. On September 2, 2004, the French National Assembly passed a law banning the Muslim headscarf (*hijab*) from public schools. This legislation included the proscription of several religious symbols, e.g., large crucifixes, Jewish skullcaps, Sikh turbans, etc. Yet, French interaction with the headscarf is not a new phenomenon; such an encounter had great currency during the Algerian war for independence, where French policy in the colony resembled contemporary attitudes toward the headscarf and Muslim women. The rationale for implementing anti-headscarf policy, in both the Algeria of the 1950s and 1960s and the France of today, is stated to be a function of gender control and gender objectification. While proclaimed as an effort to "modernize" Muslim women and "liberate" them from antiquated and anti-modern cultural tropes, French policy vis-à-vis the headscarf has had the concomitant impact of removing Muslim women from the public sphere.

The French experience is currently the most salient of Europe's encounters with *foulard* discourse.[10] (Cesari, 2004) Official state policy banning the *foulard* from public school has created a firestorm of protest and debate regarding France's recognition of its second-largest religious community and whether French public life has space for Muslims, especially women who adhere to a copiously Islamic identity. As young French Muslims, most of North African descent, are prohibited from going to public school adorned in the *foulard*, the Islamic community in France is feeling under

siege. Many are reminded of the tribulations at the hands of the French in Algeria four decades earlier, where the *foulard* played a prominent and pivotal role in the independence movement. Now, in the name of preservation of the country's secular orientation, *laïcité*, France has imposed laws banning the overt display of certain religious symbols, including the *foulard*. The response has been a resurgence of Islamic identity manifested by the wearing of the headscarf. This new consciousness is caused by the realization that a secular state is not necessarily one that accommodates differing viewpoints or creates sufficient space for them in the public sphere. Despite overtures of being a paragon of tolerance, enlightenment and civilized society, France is perceived to be, in the eyes of its Muslim citizens as well as Muslims the world over, intolerant of religion in general, and specifically, Islam. For France, the *foulard* represents a dual threat: assertion of religious identity in violation of *laïcité*, and the rejection of culturally normative French society.

French policy toward the *foulard* delineates and exposes one of the country's chief ideological dilemmas: the calibration of *laïcité* in public life. Strategic considerations vacillate between allowing the *foulard* in public school, thereby risking the appearance of an establishment of religion, or banning the *foulard*, consequently impeding the free exercise of religion.[11] The French Constitution mentions religion only once, in the first article, and merely as part of a general declaration of non-discrimination:

> France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis.[12] (French Constitution, 1958)

This provision resembles the First Amendment of the United States Constitution not because of similar language, but due to similar practical ambiguity. Just as one person's establishment of religion may affect another's free exercise of it, the French construction addresses religion tangentially. It is telling that French designs on *laïcité* preclude the government from acknowledging or defining the parameters of religion vis-à-vis public space, leaving it up to the government to implement policies that attempt to reconcile divergent goals.

Laïcité may be the presumptive state policy of France vis-à-vis religious life, but its parameters remain a contested issue. Clearly, *laïcité* is not a monolithic concept, nor can it be

considered a binary construct. Rather, *laïcité* may be best understood as a spectrum bearing somewhat definable endpoints. On one side is strict *laïcité*, favored by feminists, France's major teachers' unions and by those who identify as the "Republican" left.[13] (Fetzer & Soper, 2005) Those inclining to this view believe that religion only has a private dimension, and should have no public presence. Thus, there should be no accommodations made to religious belief or practice by the state or society such as requests for prayer in public, forbearance from otherwise religiously proscribed foods and the wearing of religiously identifiable clothing and artifacts.

The vicissitudes of daily life in many French cities renders some attempts to impose strict laïcité restriction impractical, if not entirely futile. The high demand for space during Friday prayers often causes mass spillovers into the streets surrounding factories in major immigrant locales like Marseille, where the sight of several hundred Muslims praying in the road is not uncommon. Ironically, it is the very inflexibility of French authorities to accommodate religion in the name of upholding laïcité, even to the extent of facilitating the construction and funding of mosques- quasi private spaces for religion- that has led to such practices. It is reasonable to infer that most Muslims who must resort to praying outside in the streets would prefer, given the opportunity and option, to pray in a mosque or similarly accommodating structure. As a result of its own obduracy, strict laïcité has had the unintended and counterintuitive consequence of forcing religion into the public space.

It is therefore hardly surprising that the most vehement opponents to giving the *foulard* space in French public life, particularly in public schools, hail from the strict *laïcité* group. Feminists see the *foulard* as a sign of oppression and religious imposition and totally dismiss any possibility that the decision to wear the scarf may involve the active agency of Muslim women in arriving at a voluntary decision. The "Republican" left sees the *foulard* as an affront- a powerful and regressive reminder of France's sordid history of conflict between church and state-and anathema to the state ideal of secularism. The teachers' unions oppose the *foulard* as an unnecessary distraction and disruptive element in the natural progression of school life.

On the other end of the spectrum from strict *laïcité* is "soft" *laïcité*. As would be expected, this perspective finds support among France's "multicultural" Left and human rights advocates, some leaders of the country's Christian and Jewish communities as well as the vast majority of France's

Muslim population.[14] (Fetzer & Soper) Although adhering to the general principle of secularity, promoters of soft *laïcité* call for the respect for all religions in public space and for their free exercise. They also encourage greater engagement by members of the various faiths as well as interfaith dialogue, even in schools. Of course, many of the activities championed by the soft *laïcité* proponents could be implemented by private individuals or the existing religious institutions, but subscribers to this position also desire greater state involvement in the process, both because of the government's financial resources to procure such programs and ostensibly to give the efforts greater credibility with the official endorsement and imprimatur of the state.

In practice, *laïcité*, qua contemporary French society, resides somewhere between the inflexibility of "strict" *laïcité* and the relative accommodation of "soft" *laïcité*, though one may argue that the state inclines toward the latter and then only in a privileging manner vis-à-vis some religions. Despite numerous overtures of France being officially a secular nation, it is in fact a Christian country, particularly, a culturally Catholic one. Whether it is official recognition of religious holidays or the depth to which Catholic tropes have become embedded in society, there is the inevitable disparity of treatment among the various religions. France may not be a Christian country, *de jure*, but it is a *de facto* religiously informed nation.[15] (Ross, 2007)

In culturally and religiously hybrid societies, inclusion and its concomitant negotiation of tolerance is of great concern for those commenting on the future of secularism. For Habermas, he accepts that in a post-secular society, religions and even religious difference do exist within a shared secular space. Yet, religious registers require limits within the social space to the ethical, not political, imperative. As a prerequisite for participation within the discursive space, the burden upon religious communities to walk a fine, if at all extant, tightrope between the ethical and the political, is precarious to the point of impossible. It is the religious narrative that must prove it can adapt to the surrounding society in order to earn its tolerance. Notwithstanding such a potential challenge and onus, Habermas also states that, "There can be no inclusion without exclusion."[16] (Habermas, 2006) This acknowledgement suggests latitude for the justification to exclude particularly religious subgroups in favor of inclusion of religion in its broad abstraction. Religions that espouse an ethical focus that is congruous to the specific society in which it is located can find space, and ideally, agency

within such a paradigm, provided other factors for exclusion based on latest or overt prejudices are curbed and/or overcome.

Within the Islamic context, the 11th Century Islamic Scholar Abu Hamid Al Ghazali enumerated the *Maqasid as-Shariah*, the five foundational goals in Islam, as focusing on the preservation of religion/faith (*din*); life (*nafs*); lineage/progeny (*nasl*); intellect (*aql*) and property/wealth (*maal*).[17] (Auda, 2008) As such, these goals are largely focused upon the individual. The question requiring assessment is how many of these goals require the state as the primary, if not exclusive vehicle of implementation and enforcement. Some will in fact contend that Shariah is not synonymous with Islamic law in the sense that the former is merely an interpretation of law that legitimizes and mandates state authority to enforce, often for its own perpetuation.

Islamic law may be applicable to all members of that society within a state model, irrespective of the religion to which they subscribe. Each religious community, arguendo, shares a common ideological affinity vis-à-vis the "*Maqasid as-Shariah"* of their respective faith tradition as it pertains to a functional, righteous, just society. Even Habermas concedes that, "Ideally, legal rules, too, regulate a matter of equal interest of all those affected and to that extent give expression to generalizable interests."[18] (Habermas, 1996)

A large segment of Islamic law, especially that which is of chief concern to most Muslims, is what may best be described as personal law. This includes liturgical requirements such as prayer, fasting, almsgiving, etc. It also involves hygiene and matters of personal development, such as dietary guidelines. Perhaps the area of law that may be regarded as requiring state intervention is family law, with marriage, inheritance, divorce and custody as critical issues. It is difficult to justify the need for the state to involve itself in the first two categories; an argument may be made for family law to be arbitrated by the state, but this was not always the case in Islamic history. Much of family law was procured between families and individuals, often with clerical, not state intervention. Marriages, for example, did not necessarily require state sanction as they did not involve a relationship with the state as modern marriages do, with distinctions of economic and political consideration made based upon marital status, e.g., income tax rates, public benefits, etc. Clearly, the enforcement of Islamic law

is not contingent upon state action; Muslims have and continue to practice their faith in a self-policing manner.

Islamic political expansion brought with it the concomitant extension of Islamic law and its enforcement in the empire. But it also created the obligation to protect and preserve the agency, authority and authenticity of religious minority communities. Deference to these groups was best exemplified by the Millet system during the Ottoman Empire.[19] Each religious minority community, including minority Islamic sects, received the Sultan's sanction to designate its own leadership and to maintain full authority over its own personal religious law. The state would not interfere in matters of an intra-faith nature, nor would it be responsible for legislating and imposing religious laws upon each respective community. On issues that occurred between faith communities, the state would be the arbiter of such disputes and/or transactions.

The essentialism and eternality of the nation-state, the fundamental socio-political entity of the modern era, are under scrutiny for their viability and necessity. For Habermas,
"Today, as the nation-state, finds itself challenged from within by the explosive potential of multiculturalism and from without by the pressure of globalization, the question arises of whether there exists a functional equivalent for the fusion of the nation of citizens with the ethnic nation."[20] (Habermas, 1996) It is within the architecture of the nation-state where religious nationalism is best illustrated, defined and personified.

In examining the current rise of religious nationalism across the world, it is important to identify in which states this phenomenon is expressed, whether it is a function of the codification of religious law and whether the state and its legal modalities is a matter of religio-cultural and demographic realities. Among Muslim countries, Iran and Saudi Arabia often are defined, or self-defined, as religious states. That both countries proffer an essentialization of Islam as the state religion is explicit, but it appears that such a construction is further informed by demographic realities, i.e. overwhelmingly Muslim societies, and by an assumed general will akin to Rousseau's conception of the social contract, itself predicated upon the organization of states along homo-religious, homo-cultural/ethnic, racial lines of demarcation.[21] (Rosenblatt, 1997) It is important, therefore to gauge whether the implementation of Islamic law in these states requires state

intervention or whether the population would naturally adhere to a certain quantum of Islamic law. In addition, neither Iran nor Saudi Arabia assert a religious nationalism in the classical sense, whereby the state is the ultimate arbiter of religious law; in fact, and despite the powerful role of the religious establishment in both countries, the government apparatus is still distinct from the sacro-juridical.

An understanding of the position of Islamic law in Muslim states may be elucidated in comparison to non-Muslim states that identify closely with a particular religious tradition. Debates abound over whether Israel is a Jewish state. Would such taxonomy suggest a move toward the codification of Hebraic and/or Talmudic law? While some Orthodox and ultra-Orthodox Jews may answer in the affirmative, the prospect would doubtless raise objections among reform and secular oriented Jews. In addition, such a religious nationalism, if so sought, may be problematic given the absence of religious homogeneity in Israel, where the Jewish and non-Jewish populations approach an approximate parity.

With its current lurch toward *Hindutva*, India provides an additional assay for the phenomenon of religious nationalism.[22] The election of Narendra Modi in 2014 and the emergence of his Bharatiya Janata Party (BJP) as the dominant political force in the Indian parliament have evoked a newfound departure from India's secular orientation, emblematic of the diverse nation's social and legal construction since its independence seventy years ago. Yet, Prime Minister Modi has asserted a robust Hindu narrative, and allegations of a state endorsed religio-chauvinism persist. Hindus constitute the overwhelming majority of India's population, and certainly far from all support Modi or his promotion of *Hindutva*. It is difficult to comprehend a state that would be governed and/or dictated by Vedic law.

While there does not appear to be a nexus between religious law and the indispensability of the state to procure it, religious law is nonetheless leveraged as a validator of the majority demographic's dominance as the essential marker in a nation's identity construction. Ironically, it is globalization that is expediting the promulgation of this notion as some nations, particularly those that are multi-cultural, seek an identity to assert and present in a world where lines of distinction become increasingly nebulous.

The spirit of the Millet System does have some manifestations in Western countries today, and in some cases, the letter of the law is also enforced. In the State of New York, Jewish law is recognized and given limited legal recognition by the broader judicial system. (Malinowitz & Broyde, 1997) Under the concept of the *Beth Din* (House of Judgment), a Jewish divorce (known as a *Get*) is accepted by the courts, subject to certain conditions: 1) The parties must enter into and accept the jurisdiction and authority of the Jewish court voluntarily; 2) the parties recognize that there is the broader court system to which they can apply for recourse; and 3) the State recognizes the Jewish court's decision as a form of alternate dispute resolution, a well-established legal mechanism.[23]

The situation regarding the *Beth Din* is different in the British context. While Jewish courts do exist and in fact preside over divorces, they are not a legally recognized judicial entity by the British government; any arbitration or religious judgments are considered voluntary and non-binding by the Crown. Interestingly, the debate about whether the Islamic equivalent to the *Beth Din*, i.e. so-called *Shariah* courts would be permissible in western countries has proven to be a source of considerable contention in the public discourse. Driven largely by Orientalist and bigoted tropes, efforts to implement such systems in Canada, Great Britain and the United States have proven to be unsuccessful. In some ironic cases, the spectre of "*Shariah* law" being recognized by the respective national judicial systems has been deployed as a rationale to "protect" these legal modalities from the encroachment of religious law, while failing to appreciate that religious minority community legal systems already exist and are given some form of formal sanction, and that the purportedly secular legal corpus is highly Christo-centric.

A Millet System-designed legal architecture would go a long way to enfranchise religious minority communities into having a recognition of their faith tradition on matters of a deeply personal nature. It would allow them to freely practice a crucial element of their respective religions, while acknowledging the line between what are central tenets of faith, liturgy, and application and what can coexist within a broader secular, even majority religion-dominated society, in any socio-political geography. For Muslim-majority countries, it is perhaps the optimal way of realizing both the Prophetic vision that was forged in 7th Century Medina of social enfranchisement as well as

comporting to the current trajectory toward a post-secular society in a way that shifts from the futile and disingenuous maintenance of a secular that does not exist.

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[2] Taylor, C. *A Secular Age* (2007). Harvard University Press.
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[10] Cesari, J. (2004) *When Islam and Democracy Meet: Muslims in Europe and in the United States*. Palgrave MacMillan. P.21.
[11] This challenge is also extant in the United States, where religion issues in the public sphere often assume a dialectical quality between these two concepts. The United States Constitution facilitates this debate, as the First Amendment contains both the Establishment Clause as well as the Free Exercise Clause. Current jurisprudential trends employ other First Amendment provisions- the Speech Clause and the Free Assembly Clause- to inform the underlying legal issues and in some cases, reframe the issue into one that is not primarily a religion issue. The lack of such enumerated rights in a single provision of the French Constitution attests to France's relationship with religion in an official capacity.
[12] Article 1, Constitution of 4 October 1958.
[13] Fetzer, J. & Soper, JC. (2005) *Muslims and the State in Britain, France, and Germany*. Cambridge University Press. p.73.
[14] Ibid, 74.
[15] Ross, M.H. (2007) *Cultural Contestations in Ethnic Conflict* Cambridge University Press. p.222.
[16] Habermas, J. ((2006) "Religious Tolerance- The Pacemaker for Cultural Rights" in *The Derrida-Habermas Reader*. University of Edinburgh Press. p.197.
[17] Auda, J. (2008) *Maqasid Al-Shariah as Philosophy of Islamic Law*. The International Institute of Islamic Thought.
[18] Habermas, J. (1996) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. MIT Press. p.154.
[19] The Ottoman Millet system allowed each religious minority community to designate its own authority and gave that individual plenipotentiary power on behalf of the Sultan to conduct all religious affairs for his community, especially within the realm of personal (family law) matters, liturgy, matters of religious observance, demarcation of the community's religious calendar and intra-religious disputes.
[20] Habermas, J. (1999) *The Inclusion of the Other*. MIT Press. p.114.
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[22] According to the Oxford English Dictionaries, *Hindutva* is an ideology seeking to establish the hegemony of Hindus and the Hindu way of life.
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