

De-Secularization in Europe and the Consequences for the Nexus Human Rights- Religion in the Middle East

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Introduction

In a world whose social, political, and economic features are increasingly intertwined with one another, it is also increasingly illusionary to conceive of ‘politics’ as framed uniquely within the limits of ‘sovereign’ states, or of religions as closed entities. Instead, one should adopt so to say a ‘higher’ level of analysis to understand some of the challenges that our societies are facing nowadays. The purpose of this paper is precisely to try to understand some of the legal changes in the sphere of religion that take place in Europe and to highlight some of the dynamics on two different levels, namely the impact that such changes on the European level have for EU member states and for larger entities that neighbour Europe, in particular the Middle East, host to widely Muslim majority political systems. (The question of Turkey’s accession to the EU as well as all of the turmoil that mars political life in the region make of the Middle East a central point of enquiry for our paper). To tie legal changes to the study of religion, this article looks at the evolution of the questions of human rights and its religious dimensions, both in the European and the Middle Eastern civilizational constellations. In particular, it argues that religion plays an always greater role not only in politics and in the public sphere, but also in shaping arguments around human rights. If this is the case, this is due in part to dialectical movements between large civilizations, in our case Europe and the Middle

1. I would like to thank Julie Ringelheim, Lorenzo Zucca and Camil Ungureanu for discussing previous versions or sections of this paper with me. They have graciously shared their knowledge on this important matter. The remaining darkness and inexactitudes in the following pages are my sole responsibility.

East, dialectical movements that contribute to the reinforcement of the definition of human rights in religious terms.

The paper wants to test the hypothesis that some of the changes in the sphere of religious decisions (implying human rights) within Europe are best to be understood as a result of dynamics of historical and continuing exchanges (be they positive or negative, i.e. felt as threatening) between Europe and some of its neighbouring Muslim region, categorized here as the Middle Eastern civilizational constellation.¹ Changes around the nexus human rights-religion have been always evolving according to the time and general environment (Asad 2003). The sub-hypothesis is that there is a dialectic moment between European and Middle Eastern civilizational constellation that points towards a conflictual end where religious arguments and debates around human rights are only a tool in broader political problems. In other words, far from serving a universalistic purpose, human rights are increasingly instrumentalized by political powers and will increasingly be framed in particularistic/relativist religious terms, since religions are becoming the most visible or salient identity marker of such civilizational constellations.

Departing from (and in strong disagreement with) the view that there exist clear civilizations with homogenous and essentialist features (à la Huntington 1996) or that would imply more or less implicit cultural superiority (à la Spengler 1961), civilizations should be understood here as “distinct socio-cultural units which share some very important, above all cultural, characteristics” (Eisenstadt 2001: 1916) and that are “hyper-social systems of social systems, [in the sense of] trans-societal and extra-national units of historical perception and categorization” (Mauss quoted in Al-Azmeh 2001: 1908). A final feature of our understanding of ‘civilizations’ (beyond some common large traits and the fact that they are very large units) is that they are “quite heterogeneous and in continuous change” (Delanty 2003: 15). Thus a civilizational approach avoids both the “nationcentric

1. I take the phrase ‘civilizational constellation’ from Delanty (2003: 15), but depart from his coining ‘Islamic civilizational constellation’ in opposition to a European one, since it opposes a religious entity to a geographical one. For a critical discussion of this problematic opposition, see (Asad 1997).

approaches and [...] the vagueness of globalization theory”, offers comparative perspective on the similar process of change towards “multiple modernities”, while the phrase civilizational constellation includes the seed of internal differences within the larger civilizational unit (*ibid.*; 8, 15).

In both cases (European and Middle Eastern constellations) there has been a steady tendency towards a return of the ‘religious’ in the public and political sphere. The paper will analysis the meaning of the increasing role of human rights in the religious issues in these two civilizational constellations. To do so, the paper will be cut in three parts. Section 1 will deal with the return of religion in Europe and with some features of the so-called de-secularization process. Section 2 will assess the trajectory of religion and human rights in the Middle East and describe what I termed the externalization of religion. Finally, Section 3 will draw potential conclusions on the inter-related changes.

A final caveat is addressing the problem of the definitions of ‘secularism’, ‘secularization’, as well as that of ‘religion’. It is has been aptly noted (Asad 2003; Salvatore 2005) that secularism and secularization entail a heavy normative load which can become problematic when applied *outside* of its historical cradle: Indeed the secular experience encountered in the modern worlds is the result of a lengthy adaptation process between the realms of the Church and of lay rulers from the middle ages onwards and that took various institutional forms in Europe. But the process of this differentiation led not only to an increasing confinement of religious practices to a private sphere, but also to a redefinition of what is religious in itself. In other words, there is a danger of a circular type of explanation: since secularity¹ has been the known end-product of the modernization process, our categories and their definition depend from this *telos* (in our case religion becomes what secularization has expunged from

1. I rely on Salvatore definition of secularity which “manifests itself most directly in concrete modes of governance and in the way religion is reconstructed as experience and belief to be confined to the private sphere”, and which is distinct to ‘secularism’ (“an ideological and normative school”) and ‘secularization’ (“a theoretical perspective of a necessary social process of differentiation of a religious sphere, linked to modernization”) (Salvatore 2005: 415).

politics). One of the difficulty of this paper will be to disentangle these problems. Moreover, there is not one unique way or understanding of secularizing societies and polities (or to 'de-secularize' them), nor is there one unique understanding of the religious phenomena. In particular, one problem that this paper wants to highlight is the degree of euro-centrism and bias that secularism entails. Such euro-centrism then bears on the understanding and definition of human rights which will be resented for this reason as a leftover of western ((post-)colonial) power over the Middle East. It is therefore important to study the return of 'religions' in these two civilizational constellations on a different analytical level, at least in a first phase of the paper (the 'de-secularization' thesis in Europe, Section 1; and the 'externalization of religion' in the Middle East, Section 2), before drawing conclusions on the higher level.

1 - De-secularization in Europe

The secularization thesis according to which religious beliefs and practices in a modern world were only a private affair is dead (Berger 1999) and there are many signs that religion is becoming again very important in formal public life in the modern world (Casanova 1994). One just needs to look at the surging literature and theoretical interest for the theme of post-secularism to grasp the width and breadth of the changes (Habermas 2001; Ungureanu 2006). But to understand some of the dynamics in this de-secularization process, one needs to say few words about what is understood by 'secularism'.

European polities and other modern advanced capitalist societies seemed from the 19th century to live beyond religion. In such secular settings, the power of religious beliefs and institutions diminished (at the expense of rational-bureaucratic power), and various legal arrangements put religious hierarchies aside and distant from political seats of power. The secularization degree varied in intensity and forms according to countries, but overall one could say that there had been historically speaking, a de-territorialization of the religious, namely a process where issues of faith and religions were not playing a direct political role in the polities and where the nation-state were not defined in terms of religious belonging. In this de-territorialization

process (that took place between the French revolution up to 1918), one therefore moved from system that was put in place with the Peace of Augburg (1555) after the war of religions in Europe whereby each territory was defined in relation to the dominant religion (the famous principle of '*cujus regio, ejus religio*').

With the emergence of modern nation-states, the primordial affiliation and identity marker of these newly created large entities became those of *national* identity. The problem with this de-territorialization of religion, as we will see in the conclusion of this section, is that the nation-state created their own lay version of sacred political legitimacy, leading to the permanence of theologico-political entwinements (Lefort 1986) and to some ethnocentric bias towards the historically dominant religion (Asad 2003).

Leaving these points aside, let us now concentrate on the question of 'de-secularization'. With this expression one should understand the multi-faceted process that implies the massive eruption of the religious in the public sphere, its gradual re-emergence in the formal political sphere (Ungureanu 2006), and the corollary end of the privatization thesis according to which religiosity is exclusively a private matter. Peter Berger, a leading sociologist of religion, defines (de)secularization in terms of institutional changes between churches and the state and in terms of degree through which religion is a private and personal issue. I suggest to add a third dimension that transcends the states' limits and to look at the impact that de-secularization has had on a transnational level, and to study some of the changes that religion as a basis for normative policies might have had over the last decade or so. Let us now look at the three levels of de-secularization in Europe, or rather at how challenges emerged at these three levels on the existing secular order.

a) De-secularization at the individual level

After decades of full adherence to the secularist paradigm, Casanova (1994) was the first author who questioned in a systematic and comparative manner the thesis of privatization of religion. He hinted at the growing role of 'public religions' and showed that it was conceptually misleading to speak of a privatization of religions.

Indeed, it is always more difficult to sustain the thesis according to which religion is only a private matter. Numerous signs and examples of social actions and collective claims around religious issues have crowded the political agenda and the public sphere, making it difficult to claim that religion is uniquely a private issue. One just needs to think of the activities of the *Pro-Life* movement (anti-abortion) in the USA in the last decade, the zealous activism of the Italian Catholic church in issues related to artificial procreation (2005) and its repeated calls to vote in the Parliamentary elections (2006), and the flow of international protests over the Prophet Mohammed's cartoons in the first months of 2006. All of which suggests that we are not witnessing individual private initiatives but rather a truly articulated collective activism around the theme of religion. We are therefore facing a de-privatization of religion and a re-publicization of activism and social movements with religious vocations.

b) De-secularization at the national level

Also at the national level, one can sustain the thesis of secularization only with increasing difficulty. The best and most conspicuous example of this can be founding France. For decades, the French model of *laïcité*¹ was that of a Jacobin interpretation of the preventing of religions to play any binding political role in France. The tendency was therefore towards a formal a-religiosity from the side of the state leaving individuals free to adopt their personal view on religion. Laic “contention is that the emergence of a *volonté générale* and the attainment of justice as impartiality in conditions of ethical-religious plurality is made possible not only by the strict separation of the state and religion, but also by confining religious discourses to the private sphere. As a consequence, laicism contends to be really neutral in that it is neither inimical to the private manifestation of religion nor supportive of its maintenance and flourishing (e.g. by financing religious schools and granting tax exemptions)” (Ungureanu 2006: 6).

This is for the theory. Debates that emerged from the last 1980s

1. For a distinction between the secular and laic models, see (Ungureanu 2006: 4-7).

onwards around the attributed political function of the veil carried by Muslim women demonstrated the fragility of the State's neutrality. The last *affaire du voile* in 2003 and 2004 culminated with the adoption of the controversial legislation prohibiting conspicuous religious signs and symbols in public venues (Law 2004-228, passed on 15 March 2004).¹ Similar problems arose in Italy and Germany with debates over the presence of crucifix in public schools, a violation of the state's neutrality vis-à-vis religions.² Yet, Christian symbols are generally not considered a problems in these States while other religions' symbols (e.g. the veil) are the preferred target of recent policies. There is therefore a serious problem of ethnocentrism in the definition of what is a conspicuous religious symbol, and there is still a lot of work to be done to de-confessionalize European understanding and practices of secularism (Kilani 2005).

In consequence *laïcité* and secularism do not imply an invisibility or transparency of the religious in general. Rather, Christian religion is considered as a model to follow since it is allegedly the only religion to have allowed an exit from religion. If we depart from such misleading interpretation, the fact is that there exists in the case of European secularism a sort of hierarchy of religions, with the Christian one being more secular-friendly³ than others and becoming thus the model to follow. The legislations discussed in these paragraphs illustrated both the bias towards the dominant Christian religion and the formal de-secularization that takes place in Europe in the recent years.

1. Art. L. 141-5-1 reads : « Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit ».

See <http://www.assemblee-nationale.fr/12/dossiers/laicite.asp> (last visited in Jan. 2007).

2. Salvatore 2005 attributes this lack of neutrality to the historical origins of modern powers that started their edification out of the *Reconquista*, followed by the Wars of Religions and the need to resist the 'Turkish threat' (Salvatore 2005: 412-414). In all cases, the need to centralize power led to a task of cultural, linguistic, and religious homogenization culminating with the advent of the nation-states.

3. A strange ideological construct since European Churches have always been reluctant to cede power to lay rulers.

c) De-secularization at the legal European level

There is, we believe, a new dimension of de-secularization which has been so far under-estimated by a classical sociological approach. This new dimension is unfolding on the European level, i.e. a supra-national level. To illustrate this change, we will shed light on the importance of the Council of Europe which is host of the European Court for Human Rights (ECHR, est. 1950). This latter institution is the guarantor of human rights at the European level¹ and edicts decisions and judgements that are binding for member states. And it is precisely by looking at the decisions of the ECHR with regard to human rights violations in the sphere of religion that one can find traces of changes that might in turn indirectly lead to de-secularization at the supra-national level in Europe.

In terms of numbers of cases brought forward to the ECHR that deal with religious issues, there is clearly a tendency on the rise and a significant substantial shift is also probably taking place over the last 10 years with regard to the nexus human rights-religion. The following table² analyses the number of yearly decisions taken by the ECHR dealing with religious issues. Out of the 207 cases dealing with religious issues,³ one can see that there has been a substantial increase of the cases treated by the European Court over the last 10 years. If 36 decisions were taken on matters of religion and human rights in the period 1973-1989, 171 were taken for the same laps of time (17 years), namely during the years 1990-2006. One notices a strong increase from 1996 onwards when an average of 14 cases were treated yearly (as opposed to 2 cases a year for the period 1973-1995).

1. 'European' as a geographical entity, not a political one. The Council of Europe has nothing to do with the European Union, a politico-economic union. The Council of Europe counts in its members non EU members as well, such as Turkey, Russia and Central Asia States.

2. Personal compilation of number of cases done through the engine search of the webiste of the ECHR. It is available at: <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en> (last visited Jan. 2007).

3. 'Religion' was the keyword for the selection of the cases.

Table 1: Number of the ECHR's judgements that deals with religious affairs

Year	N. of Judgements	Year	N. of Judgements
1973	0	1990	1
1974	0	1991	2
1975	2	1992	2
1976	5	1993	2
1977	0	1994	3
1978	2	1995	2
1979	2	1996	10
1980	1	1997	9
1981	2	1998	9
1982	1	1999	6
1983	1	2000	6
1984	2	2001	13
1985	2	2002	18
1986	6	2003	15
1987	6	2004	17
1988	3	2005	33
1989	1	2006	23
Total 1973-89	36	Total 1990-2006	171

The significance of this increase has to be weighed to a series of important factors that will moderate the view that there was such a dramatic increase in violations of religious human rights. First, the increase of cases has to be read against the backdrop of a larger number of member states who joined in the 1990s the Council of Europe and adhered to its protocols preserving human rights: One thinks here of all former post-Soviet states, with 21 new members – out of 46 – that joined the Council of Europe since 1991, which has undoubtedly increased the number of judgements taken by the Court. Furthermore, the Court's capacity was enhanced with the implementation of Protocol 11 in 1998 which gave more means to one unified Court and a full operational speed from 2000 onwards.¹ The site of the ECHR informs us that during the three years which followed the entry into force of Protocol No. 11 “the Court's case-load grew at an unprecedented rate. The number of applications registered

1. See <http://www.echr.coe.int/ECHR/EN/Header/The+Court/The+Court/History+of+the+Court/> (last visited Jan. 2007).

rose from 5,979 in 1998 to 13,858 in 2001, an increase of approximately 130%” (ECHR website).

So, the increase of cases noted in the previous table is not just the eruption at once of the issue of religion at the heart of human rights violations, but also reflect the increased work burden of the ECHR. One can therefore discuss the significance of the quantitative shift, but in our view the trend nonetheless reflects an increased preoccupation of the theme of religion in the legal sphere. Adopting such interpretation means again that religion has become important for Europe not only in terms of debates within the public sphere, but it also hints at possible new forms of de-secularization on the legal level, because of the nature of certain decisions taken by the Court.

When goes into the *content* or adopt a more *qualitative* approach to recent decisions having to do with religion and human rights, it is much more difficult to dispute the claim that the nexus religion and human rights is becoming an important topic for the work of the Court. This trend now under scrutiny is that there is an increased presence and legitimacy of minority religious claims at the heart of the legal decisions taken by the ECHR, minority claims that seem to receive support from certain decisions of the Court. Our argument is to say that such particularistic claims are, among other, in relation with civilizational exchanges between Europe and the Muslim majority Middle East. The idea here is that cultural particularisms, be they of religious or linguistic nature, have found a form of recognition by the judges of the ECHR for a variety of reasons. The influence of post-modern thinking in Europe and in advanced capitalist societies have paved the way for a breaking apart of dominant narratives and have fragmented not only our approach to knowledge and power, but also our modern identities (Challand 2007a). But the possible influence of post-modernity is also related to the argumentative heart of this article: the recognition of cultural minorities might be the result of a post-modern condition, but it is also the result of a dialectical movements between Europe and the Middle East, and of a process of hybridization of European identities thanks to and through the presence of Middle Eastern *Gastarbeiter*, migrants and refugees in the heart of Europe. In other words, new forms of Muslim presence in

Europe (coined by some as ‘Euro-Islam’) has induced judges of the European Court, as we will now explain, to come to a formal and legal recognition of cultural particularistic claims, some of which have to do with the nexus human rights and religion.

To substantiate my claims, I rely on the groundbreaking findings published by Julie Ringelheim (2004; 2005)¹ who has carefully studied the decisions of the ECHR that have to do with cultural diversity and particularism (expressed in religious, cultural, or linguistic terms). One of her findings is that there exists “an evolution of jurisprudence going in the sense of an increasing recognition of the legitimacy for claims that require to respect certain forms of particularisms.”² Thus the Court has argued for now many years that one of the fundamental characteristics of a democratic society is to respect pluralism. In a very significant decision taken in 2004, the Court has explicitly tied the notion of pluralism to that of cultural diversity. Pluralism, in this light, was defined as following:

*“For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”*³

It seems thus to me that the intensity and the tone of the ECHR’s judgements on cases having religious and particularistic claims has substantially evolved in the last ten years to come to a point where it can be argued that particularisms have been granted *legal subjectivity* on the

1. Ringelheim whom I thank warmly for discussing, explaining and sharing her findings with me has published interesting articles on the matter. The interpretation here presented is my own interpretation taking a different departure point from Ringelheim’s work (2004 ; 2005).

2. The original French reads : «une évolution de la jurisprudence dans le sens d'une reconnaissance croissante de la légitimité de demandes de respect de certains particularismes. » See J. Ringelheim, *Diversité culturelle et droits de l'homme. Cit.*

3. *Case of Gorzelik and Others v. Poland*, 17 Febr. 2004, § 92.

European level. There is a worry, from the Court's side, to take such particularisms into consideration, not automatically always in a positive manner,¹ but at least to pay attention to the issues of cultural and religious particularisms. This can be interpreted in various manners: accession to full religious freedom in new member states of the Council of Europe and signatories of the Conventions on Human Rights,² a sign of the post-modern condition (Challand 2007a), but also a sign that Europe is increasingly diversified in its composition. There is little doubt that the presence of and claims for recognition from millions of Muslims in the heart of Europe (understood either as the political project of the EU or as the aggregation of the Council of Europe's members) have contributed to the evolution of the European jurisprudence.

The point is *not* that such decisions automatically lead to a de-secularization in Europe (some might well lead directly to that by granting legal rights) but rather that such decisions on human rights issues will induce European member states to feel threatened by such minorities. A reading of current political developments in France, Holland, Austria, and England (to name only the most conspicuous cases) shows that the surge of xenophobic right-wing parties has a real impact on the rhetoric and policies of other parties – left-wing parties included. There is therefore a tendency towards a return to patriotic when not simplistic nationalistic-chauvinist policies (*repli identitaire*). The debate about the inclusion of Christian roots in the European Preamble, as well as the adoption of tough legislations towards the religious 'others' (generally having Muslims as targets, because of their large numerical presence in Europe) are indication that in the legal sphere there is an indirect de-secularization as well. It might also be that this is the result of legal changes taken at the supra-national level and that might impact, sooner or later, and in a more or less direct way, individual states that adhere to the Council of Europe.

1. Ringelheim insists very much on the fact that the Court does not always follow particularistic claims. Thus in the *Case Otto-Preminger Institut c. Autriche*, 20 Sept. 1994, the Court has defended the point of view of the dominant religion (Catholicism in Austria). In another case (*Case Leyla Sahin v. Turkey*, 10 Nov. 2005), the Court refused to give reason to this particularistic claim. For an analysis, see Ringelheim (2004).

2. As suggested through a personal communication by a colleague teaching law (Lorenzo Zucca).

So one can now conclude this section dealing with religious preoccupations and claims at the heart of individual, national and supra-national levels with the firm conviction that something is taking place in terms of a formal return of the religious in Europe. We will come back in our final conclusion about the consequences of such changes might have in the light of the dialectic transformation that is taking place in the Muslim majority Middle East.

2- De-secularization in the Middle East, or the Externalization of Religion

Our argumentative flow will now turn to a study of the transformation of religion in the Middle East, again, with a particular focus on the increasing role that Islam has come to play in terms of human rights, but also in the formal political sphere. Our attention will concentrate mostly on Arab Middle Eastern States which are formally secular states since their creation in the first 20th century and where there has been a massive return of religion into the sphere of politics over the last three decades.

I would like to stress that the link between Islam and politics is not an automatic (or essential) one and that it does not make any sense to reduce Islam to a unique interpretation along the line of widespread statements according to which 'Islam cannot be democratic', or 'Islam is more than a religion since it entails precepts about economy, politics, and is a guideline for life, not only faith'), as many Orientalists want to portray it. Put differently, Islam is not an ideology but a faith and a set of practices. Islamism, as a distinct political project that wants to subdue political order to religious ethic and principles, is an ideology that invokes religious principles to act in the sphere of politics. This ideology has a historical, political and legal origins as we will now show. And one has to be careful in not mingling the two levels of analysis, namely that of religion (Islam) and that of a political ideology with religious overtones and symbolic references (Islamism). Because of challenges from outside on local legal systems (a), the socio-political transformations within Middle Eastern states and the evolving international context (b), one has witnessed a process of de-secularization, or of externalization of

religion in the Middle East (c), which can help us understanding the increasing role human rights-religion in the region (d). Let us now look at the challenge that secularization introduced by colonial powers in the beginning of the 20th century represented for Muslims

a) Islam and Secularization: towards of a modern Islamist ideology

Asad's seminal study on the formations of the secular is a stark reminder of the blind spots of secularism, namely that it is a political ideology that never totally rid itself (although it claims to do so) of the religious (i.e. Christian) overtones built in the grammar of modernity (Asad 2003). Thus, Asad believes that secular political practices far from relegating religion into the private sphere often stimulate religious ones, but with a silent and ethnocentric preference for Christianity.¹ Secularization,² as a political project born and carried out by Europe around the late 19th and early 20th centuries and later by the USA, have presented a legal challenge undermining "values indigenous to Islamic societies" (Smith 1995: 29) and thus leading to the creation of a political ideology named 'Islamism'.³

Masud shows that the historical and geographical encounters between Islam and secularism has greatly influenced the ideological content of Muslim contemporary thoughts (Masud 2005: 363-6). He distinguishes between four areas of encounters in the Muslim worlds. First, in Turkey secularism was synonymous under Atatürk'

1. See, e.g. (Asad 2003: Chap. 1, pp. 25f; Chap. 4 and 5)

2. Secularization is here central for two reasons. First, Asad rightly points out that secularization policies by colonial powers in the Muslim world implied thorough changes in the legal systems, putting shari'ah aside, therefore giving to religion only 'qualified freedom' (Asad 2003: 205ff).

Second, influential Islamic thinkers such as Mawdudi, S. Qutb, Y. Qaradawi, etc. all wrote in open opposition to what 'secular' meant. The pillars of their intellectual endeavour (some would say ideology) is the forging of new concepts merging religious principles with political ones opposing secularism. On the various interpretations and connotations of 'secular' in Arabic, see (Masud 2005: 370-5; Filali-Ansari 2002: 21; Asad 2003: 206 n.2; Bishara in Ghalioun & al. 1993: 78; Smith C. 1995: 21).

3. There have been other encounters with political modernity in the late 19th century prior to the encounter with secularization described in these pages. We are thinking of the very important writers such as Afghani (d. 1897), Mohammed Abduh (d. 1905), and Rashid Rida, the so-called 'modernists' or 'reformists'. See Laroui 1987; Esposito 2003). They called for a merger between rationality, scientific progress, and modernity in one hand and Islamic authenticity in the other hand.

modernization plans with westernization and has always been defended as positive feature by Turkish politicians, at least until the challenge of Turkish Islamic parties from the 1980s onwards. Second, in the Arab world, secularism was seen for the Pan-Arab movement in the beginning of the 20th century as a way to get rid of the Ottoman yoke. It had therefore originally a rather seducing appeal for Arab nationalists seduced by the European positivist project of building nation-states. Things gradually changed with the 1967 defeat to Israel: pan-Arabism was gradually substituted after the Six-Day War by a more pan-Islamic appeal, making of secularism the enemy (as shown later). Thirdly in South Asia and in particular for the Muslims of India, the abolition of the Caliphate by Atatürk in 1924 was seen as a Western (British) plot to weaken Islam and therefore Muslims' position in a decaying empire. It is not by coincidence that Sayyid A. Mawdudi (1903-1979), a founding father of modern Islamic political theory was based in Dehli in the 1930s. His writings, calling for the creating of an Islamic state based on Islamic ideology, was in violent opposition to secularism. (His work became very influential, a.o., for Sayid Qutb (d. 1966), a foremost leader of the Muslim Brotherhood¹ in Egypt in the 1950s and 1960s, when his writings were translated into Arabic).² Finally, in South-East Asia, the political economy requested historically a form of religious tolerance and secularism was easier to accommodate and posed a less direct challenge to fragmented subgroups.

These four geographical areas of encounter are also the description of four *types* of adaptation or rejection of secularism. Masud interprets these different reactions as a result of political and cultural processes and sees the influence of the power relations between majority and minority. In his eye, “when the minorities [felt] threatened”, politically and culturally, “they protected their religious identity in political terms. Political secularism, thus does

1. The Muslim Brotherhood is the first Islamist organisation calling for the creation of an Islamic State. It was founded in 1928 in Egypt in the context of opposition to the dismantlement of the Caliphate, and European colonial transformation of the Arab world. Many offshoots were then created in most Muslim countries.

2. Cf Arjomand (forthcoming).

not necessarily negate religion, rather it stresses religious freedom as a basic right.” Islamization, that is the attempt to erect a political project based on religion, implied a reaction against the threat of secularism and called for “cultural unification and centralization” (Masud 2005: 367). The ideology calling for Islamization has its historical roots in the encounters not just with secularism, but also with colonial domination and can be described as a movement in *reaction* to the imposition of a new order by colonial powers. (It is also interesting to note that Islamism is not just a reaction to modernity, but also a product of it.)

This is what could be branded a first step towards the externalization of the ‘religious’ in the modern context of nation-states:¹ the historical dimension of colonialism and of secularization forced Muslim thinkers to mobilize religious principles in order to propose a political ideology to the challenge facing newly created states in the first half of the 20th century. Thus, it could be said that this is the first radical movement for religious ideas to step into the new realm of politics, because of the direct challenge that secularization and the creation of modern nation-states had for Muslim majority societies. From Islam (understood as a faith, a religion), one moved over time to Islamism, an ideology addressing the political conditions of Muslims in modern states. This new radical project was also refusing the modernists’ Muslim attempts (like those of J. Afghani (d. 1897), M. Abduh (d. 1905), etc.) to reconcile western modernity with a return to a cultural Muslim identity proposed by the reformist (Laroui 1987: 82f). The transformation of the first ideas of authors such as Mawdudi into a full fledged political programme and the implementation of Islamism will only be possible within the framework of independent nation-states, which in turn will have an influence on human rights in the region.

b) Islamism within independent states and its imaginary appeal

1. Islam did historically play a political role as well in the founding centuries of the ‘civilization of Islam’ and its expansion. The claim that it made a step towards politics is linked to the new secular environment where religion had been, so to say, neutralize.

If the colonial rule over the Middle East gave the initial sparkle to Islamism, it will be the context of independent secular states¹ and then of the regional conflicts and revolutions that will set aflame the political imagination of Islam and make of Islamism the so-widespread ideology that we now know.

The constant in the two phases² is that Islamism continue to function as an ideology *in reaction* to political developments. In the first phase, Mawdudi wrote against the abolition of the Caliphate and the creation of a secular order in the 1930s and 1940s. In the same opposition vein, the Muslim Brotherhood (MB) was founded by Hassan al-Banna (d. 1949) in Egypt in “reaction to the division of Arab countries into spheres of influence for European powers, the abolition of the caliphate in Turkey, and Western influence on Islamic culture.” In a second phase, Sayyid Qutb (the follower of Banna at the head of the MB) wrote “against ignorant or “pagan” societies, both Western and secular Islamic” (Esposito 2003) in the 1950s and 1960s. The Muslim Brotherhood under al-Banna was keen to support the Free Officers’ coup in 1952 to overthrow King Farouk (considered a pawn in the hands of the British), but quickly became in opposition to Nasser’s regime under Qutb’s leadership, paving the way to more radicalized fringes of the Muslim Brotherhood to resort to political violence against their own leadership: the assassination of Sadat in 1981 is the prime example of the rejection by Islamists of the secular regime of Sadat who like to compare himself to a Pharaoh.

This illustrates the shift from the first to the second step: Many of the Islamist movements came in the second phase to oppose their own government, while in the first step, they were together with secular Muslim leaders calling for the end of western colonial power in the

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1. Our focus and the described case of ‘externalization’ exclude the particular cases of overtly religious states, such as the Islamic Republic of Iran, or Saudi Arabia (to a lesser extent Morocco). There the ‘externalization’ of religion is different because power is more or less in the hands of religious bodies.
 2. The two-step approach might be too simplistic. Laroui (1987: 83ff) speaks of four phases leading to current Islamism (a) the reform movement, b) crisis of liberalism and secularization, c) crisis of Arab socialism and d) crisis of pan-Arabism). The focus of the paper being on the dialectical movements between the nexus human rights and religion in the European and the Islamic civilizational constellations, I merged the first two phases into my first step and the last two into my second step, in order to save some time.

Middle East. A quick panorama of the political setting in this second phase demonstrates our point: Muslim Brotherhood and a splinter group (Islamic Group – *jama'ah islamiyah*) in Egypt assassinated President Sadat and attempting on Mubarak's life; Islamic opposition grew in opposition to the Shah's rule in Iran until the revolution in 1979; the Algerian Islamist party (FIS) presented the strongest challenge to the FLN, the heir of the Algerian revolution, up to the 1991 elections; the Islamic movement seized even power in Sudan; Hamas in opposition to the mainstream nationalist party Fatah in Palestine, etc. In all other Middle East countries the strongest opposition has been stemming from the Islamist milieu (Afghanistan, Yemen, Morocco, Tunisia, Turkey, etc.).

So how is it that these Islamist movements/parties became so strong? There are usually two strands of explanation. The first type of explanation is a sociological one, while the second is political. There have been many changes affecting the composition and profile of Middle Eastern society, among which the higher urbanization rate, the spread of literacy, and the development of mass media and transportation. "Rapid urban growth was accompanied by a renewed vitality of religious activity", a phenomenon that access to literacy and higher education reinforced. Arjomand (2007) thus argues that mosques and other religious associations provided a sense of community that was lost after the dislocation from the villages. Moreover with new mass media (from TV sets in the 1960s to internet and satellite channels nowadays), Middle Eastern societies have reached a level of "conscientization" of their being 'Muslims'. Conscientization was not anymore the unique privilege of 'ulamas (clerics) but also part of the mental equipment of "lay intellectuals, mothers, government leaders and musicians" (Eickelman & Piscatori 1996: xi). Indeed, it is in modern times that one needs and can think of oneself as part of an imagined community (Anderson 1983), in this case the Muslim *ummah*. The language of 'Muslim politics' has now become a popular feature made possible by sociological changes, amplified with new technological means, and because of political developments.

The second strand of explanation for the surge of political

Islam/Islamism has to do with crucial political events in the region. The first sub-element (already hinted at) is that by the 1950s or 1960s all Middle Eastern countries¹ were independent and were almost masters of their fate. ‘Almost’ because the context of the Cold War contributed to the creation of praetorian regimes, whose credentials were a combination of military rule with populist nationalist ideologies striving for a forced secularized modernization (US- or Soviet-style) (Halliday 2005). Most of the regimes were anything but democratic and this contributed to the radicalization of the Islamist leaders under forced modernization plans where little space was left to religion in the political sphere.

But the most important political factor giving indirect support to Islamist ideologies was the 1967 defeat to Israel. The Six-Day war represented a shock defeat and “a moral blow to Muslim self-confidence” (Owen 2003: 156). Many intellectuals² interpreted this *naksa* (‘setback’ in Arabic) as the ‘religious victory’ of Israel³ and as sign for Muslims that they *had* to make of religion the central pillar in politics. This did not emerge at once and shortly after the June war, but contributed decisively to what I like to call the ‘passing of dominant ideologies’: Pan-Arabism failed to produce one Arab kingdom/state during the Great Arab Revolt (1916-18); it was substituted by sub-nationalisms inside newly independent States (Egypt and Nasserism; Syria and Iraq struggling with Ba’athism, etc.) but also failed to impose a regional alignment free of external domination; it was then replaced by socialist/communist/modernist ideologies. All of these ideologies failed (especially communism as a viable option after its collapse in the 1989-1991) to deliver fruits to the majority of the populations of the Middle east which remained disenfranchised and left out without a say in politics. All of this popular discontent created the bed for popular opposition and the challenge of Islamism from the 1980s onwards (Halliday 2005: 193-

1. Except few spots in the Arabic peninsula.

2. This was especially marked in Arab intellectuals’ mind. Islamism is often seen as the substitute for failed Pan-Arabist policies. See Ajami 1982.

3. Amongst Jews, many also interpreted this victory as a religious feature as well. It is from this moment on that religious groups calling for the creation of Jewish settlements inside the Occupied territories emerged (such as the ‘Gush Emunim’).

228). The Islamic revolution in Iran (1979, a vengeance for the US- and GB-supported coup against Moassadegh in 1953), the ('infidel') Soviet invasion of Afghanistan (1979) and the unsettled dispute between Israel and Palestine (the two *intifadas* 1987-1993, and 2000-) set further aflame the political imagination of Muslims¹ in the Middle East in search of a local leadership that would not betray their struggle as other Muslim leaders had done so far.

c) The meaning of the externalization process

The rise of Islamism and Muslim politics brought about a blurring of the lines between religious and political. Again the focus of politics as a "struggle over people's imagination",² or as a transformation from "politics as Leviathan [...] into politics as symbol maker" (Eickelman & Piscatori 1996: 9) are all analytical ways to capture what has happened with the creation of this modern ideology that Islamism³ represent and which will also have influence on the approach to human rights in the Middle East.

Indeed, secular states themselves contributed to making of Islam a central item of political agenda (turning it into an ideology, Islamism). In other words, the ruling regimes of the Middle East, in order to cut the grass under the feet of the Islamist opposition (of all kinds), have contributed to its resurgence and to the creation of this political ideology. This, in a way, has *externalized* religion, denatured it and placed it at the level of political ideology. To put it in Ayubi's words, "historically, the State Islamised politics. Currently, the fundamentalists want to politicize Islam" (Ayubi 1991: 156).

By *externalization* of religion, I mean a complex process by

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1. The struggle for imagination is very important to understand the success of Islamism. I deal with this aspect at length in a recent paper, Challand 2007b. I spot four reasons of the importance of imagination: 1) religion is part of collective imaginary and culture; 2) Islam is seen as a source of justice; 3) Islamist networks attracting the eye of the collectivities for its functions as an example to follow; and 4) overlap between religious and nationalist struggle converges to make of Islam (the apparent binding element, although it is a political ideology at stake) "a label used to convey mundane social grievances. The thesis here is that people have the capacity to choose their symbolic vocabulary according to their perception of their interests at the time" (Tripp 1996: 51).
 2. The phrase is actually taken from Pekonen (1989: 132).
 3. We cannot insist enough on the fact that there are very different forms and degrees of Islamisms. For one possible "taxonomy of Islamicity", see Ayubi (1991: 67-69).

which 'religion' (Islam) is increasingly invoked and instrumentalized by lay institutions and secular governing bodies outside of its regular places of worship and transmission (mosques, religious schools). Through this instrumentalization by governing bodies, 'religion' and religious references become increasingly mingled with straightforward political agendas. This turn religion into a political ideology working precisely against the dominant secular order existing in most of the Middle East states and in great part encouraged, when not forced by former colonial powers and more recently by neo-imperialist powers. This is a further evidence of the dialectical influence of the European civilizational constellation upon the Middle East one.

This externalization of religion in the form of a political ideology has paved the way for Islamist groups and reinforced their success in contesting the governments' hegemony since they offered an easy target on which contest the failure of the states. This convocation of Islam, meant to cut the grass under religious militants' feet and instrumentalized to gain popular support, actually backfired and opened the door to Islamist political involvement within most of the Middle Eastern countries. Externalization also serves to denote the fact that Islamist politics is not the feature of clerics or religious scholars, but mostly of lay people that have taken over their shoulder the task to (re-)Islamize the *ummah* (Muslim community).¹ It has empowered, so to say, or ideologically equipped each individual Muslim as a potential contender against the representatives of the dominant 'infidel' regimes (in the Middle East, but also in the 'first world').

The externalization was made possible because Muslim politics gave rise to a struggle over people's imagination, a process which has been re-appropriated by the contenders and turned against their domestic regime. Let us give now one example of this externalization process. To take the biggest Arab state, Egypt, this process of instrumentalization of Islam started early with Nasser who needed the

1. The two heads of al-Qaeda, Bin Laden (an entrepreneur) and Al-Zawahiri (a surgeon) are a prime illustration of this transformation of lay people into religious leaders per excellence.

This is one of the difficulties to tackle Islamist movements: Islam has simply not the same institutional structures as Christian churches have. It is loosely organized and differs from Sunni to Shi'ite cases and within Sunni, the four schools of jurisprudence have all their decentralized clerical structures.

support of the more religious segments of population to assert his power shortly after his arrival in power in 1953. Both him and his successor Sadat supported at times the Muslim Brotherhood either to undermine the communists' influence in trade unions (Nasser), or to neutralize the Nasserites hostile to Sadat in the 1970s (Owen 2003: 164ff). Soon the regime leaders quoted in political occasions passages of the Qur'an, or *hadiths* (says of the Prophet) and made of the *shariah* the main source of legislation "to expound upon the truly socialist nature of Islam (Tripp 1996: 57). The results are well known: Sadat was assassinated by Islamists, and the main opposition to the current regime stems from the Islamist factions.

d) Human Rights and Religion

To come back to the core of this paper's argument, it is interesting to note how the issue of human rights has also been tied to religion. But since our approach to the Middle East was done through the prism of ideology (Islamism), it has become obvious that one cannot dissociate the issue of religion from that of politics. Our argument is that because of the externalization process, there is a process that bring religion at the heart of legal issues such as the ones pertaining to human rights. Moreover, because of the continuing influence of western powers and/or their attempt to control the Middle East, the issue of human rights bears the mark of the will from Middle Eastern societies to *resist* the impositions of the 'first world'.

Thus, the Organization of the Islamic Conference (OIC)¹ an umbrella organizations for 57 Muslim States have drafted its own human rights charter, the co-called "Cairo Declaration on Human Rights in Islam" (1980). It is worthwhile quoting the preamble:

"Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this

1. The organization was founded in 1969 in Morocco and now gathers 57 Muslim States. See <http://www.oic-oci.org/>

materialistic civilization.

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self-motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible — and the Ummah collectively responsible — for their safeguard”¹

As aptly noted by Arjomand (2007), this type of text (and the structuring of the OIC itself) is a cloning of existing texts and institutions (UN Charter on Human Rights and the UN itself). But why should the Muslim civilizational constellation be wanting to close such institutions and texts if they already exist? This duplication and re-adaptation of the Human Rights Charter demonstrates how Muslims are willing to project their *own* universalising vision of the world. The case of the Cairo Declaration on Human Rights is an indirect rejection of the Western universalistic claims over the property and definition of human rights and can be best understood as a form of “counter-universalism” (Arjomand 2007: forthcoming).

Similarly, the insistence on cultural relativism (in our case, motivated by religious differences) by political exponents within the Middle East (in the field of human rights, or democracy) is a way to put a barrier with the rest of the world that tries to impinge on the definition of local common good. The issue of human rights, by tying it to religious identities, has become a tool of resistance or as a way to actively promote an system of references and meaning independent

1. For the full text, see <http://www.religlaw.org/interdocs/docs/cairohrislam1990.htm>

from intruding external powers. So if religion is increasingly linked to the question of human rights, it is because of the resilience and increase of *political* problem with the first world, of which Europe also plays an important role, along with the USA.

3- Inter-related changes & Conclusion

We have tried to demonstrate in this paper that the issue of human rights is increasingly tied to that of religion, both in the European and in the Middle Eastern civilizational constellations. This is due to general changes that take place at the global scale (the return of the religious is a world-wide phenomenon, as it is well known), but also because of the dialectal moments that inter-relate the two constellations with one another.

Salvatore (2005) convincingly argues that ‘secularity’ is probably not a definitive and fixed product. Instead it is the result of a very long historical process that started with the Spanish *Reconquista* and that led to the establishment of modern powers, after the many wars of religions and the threat that the ‘Turks’ represented in the 16 and 17th centuries. His reading also explains in seeds the origin of Judeophobia and Islamophobia since secularization implied the neutralization of religion (though biased in favour of Christianity).

Our argument is also to say that this process of definition of the legal relations between religions and human rights reflects broader changes in the formal and institutional interplay between politics-religion. We termed ‘de-secularization’ or ‘externalization of religion’ as if there was a space for religion *per se*, a view that also reflects the ethnocentric and teleocentric limits of ‘secularity’ (described in the opening paragraphs). But these two processes might well be simple evidences of adjustments of the matrix of secularity, a process that is not yet ended.

From the evidences discussed in this paper, it should now be obvious that on both sides of the civilizational constellations, there is a tendency to define itself in a) legal terms and b) in religious term. But both are at the end of the day inter-related, since on the one hand it is the presence of Muslims and religious/cultural minorities at the heart of Europe that indirectly induce a de-secularization process, while on

the other hand it is the continuous challenges of Europe and of the West on the Middle East that favoured, here also indirectly, the resurgence of religion at the heart of politics ('externalization process') and made it so popular since the religion of Islam is perceived as the local repertoire *par excellence* to tap into in order to gain wide popular support. In both cases, these presence or challenges can be either physical (take the cases for the recognition for particularisms brought to the European Court of Human Rights by Muslims living in Europe; or take the case of European colonialism and forced secularization in the beginning of the 20th century in the Middle East), or they can be virtual (the struggles in the Middle East itself have broader resonance in the heart of Europe, with, e.g. the impact of the *Intifada* that brings distress for Muslim youths in European suburbs; or the need for the USA and Europe to 'export' democracy, civil society, and human rights perpetuates the post-colonial attempt to regulate the very legal systems of the Middle East).

It becomes therefore essential to rethink further the issue of secularity and to 'de-confessionalize' it, as rightly suggested by Kilani (2005). If Europe does not succeed in recognizing its bias towards the historically dominant religion and does not manage to open its understanding of citizenship substantially to other religious minorities, then there is much to fear that the *othering* process described in these pages in terms of religions and human rights, will go on and will be done at the expenses of the Muslims. The reading done in these pages hints at the fact that the process is entering new phases of confrontation, albeit on abstract grounds so far, and that changes in one constellation bring further steps of radicalization in the other civilizational constellation. By not understanding that these religious issues are highly political ones, both sides will contribute to create rifts with one another. And in this process, human rights would not serve the noble purposes to defend fundamental rights, but could also serve to entrench the two civilizational constellations apart from one another. This, in turn would turn to homogenizing tendencies on each parts and constitute a further way to turn a spurious political myth about a clash between civilizations (here understood as blocks, à la Huntington) into a self-fulfilling prophecy

(Bottici & Challand 2006).

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