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Introduction

There are several ways a state can deal with religion and religious believers. In 1918, for example, the Fifth Congress of Soviets officially proclaimed the Communist constitution. This marked the turning point in the creation of an anti-religious legal system. It comprised the Communist atheist doctrine and laid the foundation for the subsequent legal provisions, which gradually and steadily crushed every religious institution.¹ Its most comprehensive decree was “On the Separation of Church from State and School from Church”, and the first part basically reads as a liberal constitution, similar to the French constitutional separation of state and the churches of 1905. It separated the church from the state and it granted equality of religions and states freedom of conscience – the right to believe and not to believe.²

Of course, Lenin did not intend this constitution to function as a legal document concerning religious freedom for Soviet citizens and to regulate the tasks of a liberal state in a secular fashion. Communism was considered incompatible with religion: a bourgeois method of exploiting the proletariat. Lenin and the Bolsheviks decided upon their anti-religious strategies: it would not suffice to let religion simply “wither away” as the people would gradually become more educated and lifted from poverty.³ The Bolshevik practices at the beginning of their regime focused on a pragmatic approach signifying the weakening of the role of the position of the hated “servant of the autocracy” – the Russian Orthodox Church – and other faiths as well. Formal legal documents were mirrored by secret instructions setting out hate campaigns and shocks of terror, fully intended to destroy religion in the creation of an atheist society and the making of a new people by eliminating “the enemies of the

¹ Szczesniak, Boleslaw, *The Russian Revolution and Religion. A Collection of Documents Concerning the Suppression of Religion by the Communists, 1917-1925*, Notre Dame: University of Notre Dame Press 1959, p. 15.

² Szczesniak 1959, p. 35.

³ Marsh, Christopher, *Religion and State in Russia and China. Suppression, Survival, and Revival*, New York: Continuum 2011, p. 54.

people”.⁴ More and more laws, decrees, provisions, and party statements continually addressed questions relating to attacking religion. These were not merely announcements or prescriptions, as the Bolsheviks combined them with practice. A brutal campaign against believers was unleashed. Church property was desecrated, looted, and violently taken over. Dozens of bishops and thousands of clergy were arrested, often tortured, and executed for “counterrevolutionary activities”. A wave of terror had swept the country.⁵

It is recorded that just in the year 1922 – the year in which Joseph Stalin had become secretary-general of the communist party – 2,691 priests, 1,962 monks and 3,447 nuns had been executed, and thousands more were sent to one of the Gulag camps.⁶ In the decade between 1928 and 1938 purges against clergy and believers starkly increased, and this phase ended with what is commonly referred to as ‘The Great Terror’, or the Stalinist purge. This decade marked the institutional destruction of the Church.⁷ Thousands of religious believers (“counterrevolutionaries”) were executed for “religious crimes” and hundreds of thousands were sent off to labor camps or psychiatric hospitals.⁸ In addition to these measures, the atheistic propaganda machine had warmed up. The state publisher produced several periodicals, with titles as *The Godless (Bezbozhnik)* and *The Anti-Religious (Anti-Religioznik)*.⁹ The atheistic message was constantly spread through use of media.¹⁰ By 1927, publishing houses had printed about a million and a half atheistic books and pamphlets. By 1932, the League of the Militant Atheists, the anti-religious organization which united workers, peasants, students and intelligentsia, had 5.5 million members. Intended as an atheistic propaganda instrument, it soon evolved

⁴ Pospelovsky, Dimitry, *A History of Marxist-Leninist Atheism and Soviet Antireligious Policies*. Volume 1 of A History of Soviet Atheism in Theory and Practice, and the Believer, Houndmills: MacMillan 1987, p. 35-36.

⁵ Pospelovsky, Dimitry, *Soviet Anti-Religious Campaigns and Persecutions*. Volume 2 of A History of Soviet Atheism in Theory and Practice, and the Believer, Houndmills: MacMillan 1988, pp. 1-18.

⁶ Marsh 2011, p. 56.

⁷ Pospelovsky 1987, p. 43.

⁸ Froese, Paul, *The Plot to Kill God: Findings from the Soviet Experiment on Secularization*, Los Angeles: University of California Press 2008, p. 122.

⁹ Szczesniak 1959, p. 15; Pospelovsky 1987, p. 29.

¹⁰ Pospelovsky 1988, p. 37.

into a vehicle for pogroms of all sorts.¹¹ Children and teenagers were also actively drawn into antireligious organizations, such as the Pioneer and the Komsomol, which aimed at turning the youth in good Soviet citizens. At the university level, a special antireligious faculty “the Institute of Red Professors” had been set up, while in the same period the Russian Academy of Sciences was cleansed from anti-Marxist scholars and practicing Church members; after the arrests most of them perished in camps and prisons.¹² Throughout these years, as Alexander Solzhenitsyn reiterated, “[...] we must always remember that: Religious believers, of course, were being arrested uninterrupted.”¹³

In this anti-religious political ideology, atheism is not regarded as a conviction privately held, but one that the state must achieve for all its citizens by all means and measures. The state, in a totalitarian effort, is committed to “liberate” people from religion and cleanse society from religious believers.

Political atheism is one of the five models for the relation between state and religion. A state can: 1) categorically reject religion, 2) be agnostic towards religion, 3) accommodate minority religions, 4) prioritize one particular religion, and 5) enforce one specific religion. This results in these state ideologies:

1) Political atheism; 2) Political agnosticism; 3) Multiculturalism; 4) State Church Doctrine, and 5) Theocracy.¹⁴

The model of political agnosticism stands for treating – or ignoring – all religions and non-religions alike. Multiculturalism focuses on minorities. *Choosing Sharia?* focuses on the second model, multiculturalism, and on the fifth model, theocracy. The

¹¹ Marsh 2011, pp. 64-65.

¹² Pospelovsky 1987, p. 46.

¹³ Solzhenitsyn, Alexander, *The Gulag Archipelago 1918-56*, London: The Harvill Press 1986 (2003), p. 24-25.

¹⁴ See for a longer exposition of the five models: Cliteur, Paul, ‘State and religion against the backdrop of religious radicalism’, *International Journal of Constitutional Law* 2012, pp. 127-152. Cliteur defines multiculturalism as a state model as “treating all religions alike”. I depart from that and define it as “accommodate minority religions”.

importance of the second model, political agnosticism, is embedded throughout the dissertation.

It should not come as a surprise that eradicating religion (including believers) is irreconcilable with the central tenets of liberal democracy. A modern liberal democracy aims to secure justice for all citizens, and does not persecute those who hold and carry out religious beliefs. Democratic states uphold the principle of non-discrimination and respect liberty of conscience. The politically atheist state is not a model that should serve as a serious contender when we consider the possibilities of arranging state-religion affairs.

However, on the world's stage, the opposite of political atheism is, unfortunately, indeed a serious contender: theocracy is *alive and kicking*. This political model determines the rights and duties of citizens in Iran and Saudi Arabia. Islamic fundamentalism, also described as Political Islam and Islamism, is a religious-political ideology that is not only limited to these two countries. Since a few decades, due to oil trade, globalization and mass migration, Islamist religious leaders and followers have been globally espousing a political doctrine firmly grounded in religion that aims to influence the lives of people worldwide. Karima Bennoune, professor of international law and author of *Your Fatwa Does Not Apply Here. Untold Stories from the Fight Against Muslim Fundamentalism* (2013), warns against “a creeping Islamization” that transfigures lifestyles and limits individual freedoms – of both Muslims and non-Muslims – all over the world.¹⁵ She laments Western left-of-center responses to Muslim fundamentalism to talk about something else whenever the topic comes up: “The anniversary of September 11 is a time to criticize the U.S. government. An Afghan women having her nose cut off by the Taliban becomes a platform for saying that there is violence against women everywhere. I think when we talk about Muslim fundamentalism, we have to actually talk about *it*. It exists.”¹⁶

¹⁵ Bennoune, Karima, *Your Fatwa Does Not Apply Here: Untold Stories from the Fight Against Muslim Fundamentalism*, New York: Norton & Company 2013, p. 8.

¹⁶ Bennoune 2013, p. 24. Italics in original.

A part of this dissertation is dedicated to Bennoune's message: we have to talk about Islamic fundamentalism; it exists. Not merely from a humanitarian point of view, also from an academic viewpoint it is important to seriously consider the consequences of a political ideology that challenges the relationship between religion and the state as we know in the West. The second chapter is about the origin of Islamic fundamentalism as well as on its consequences, and the ways in which its adherents push for control. Sharia, the collected laws of Islam, lies at the heart of political Islam.

British-German professor of Arabic and Islam Joseph Schacht (1902-1969), the leading Western scholar on Islamic law, described Sharia as the sacred law of Islam. It consists of "an all-embracing body of religious duties, the totality of Allah's commands that regulate the life of every Muslim in all its aspects; it comprises on an equal footing ordinances regarding worship and ritual, as well as political and (in the narrow sense) legal rules."¹⁷ One of the ways in which Islamic fundamentalism is manifest in Europe is through Sharia councils. Since the 1980s, these councils have been operating in the United Kingdom. They function as a legal order that stands apart from the British body of laws. The third chapter is about Sharia councils in the United Kingdom and their relationship to Islamic fundamentalism, as well as the consequences these minority legal orders have for individuals.

The central research question is: what are the implications of the political ideologies of multiculturalism and Islamic fundamentalism? And, more in particular, what is the interaction between these ideologies when it comes to the debate on the legitimacy of sharia councils in the United Kingdom? Modern, multicultural, states struggle to respond to these religious-political challenges to liberal democracy. They wonder whether Sharia councils should be accommodated. Or whether individuals should be allowed to choose to live under Sharia laws.

¹⁷ Schacht, Joseph, *An Introduction to Islamic Law*, Oxford: Clarendon Press 1982, p. 1.

One point of view is that society itself may be diverse and *multi-cultural*, the legal order that regulates it should be *mono-cultural*.¹⁸ 16th century French political philosopher Jean Bodin conceptualized the modern sovereign state as having the exclusive right to make laws and execute them within its territory.¹⁹ “The rights, obligations, and democratic procedure are non-negotiable as they are based on a single body of laws and one language,” as professor of Jurisprudence Afshin Ellian contends as well.²⁰ The idea is that there should be “one law for all”. In addition, individuals may have the liberty to hold or dismiss religious beliefs, but the state should principally not favour religion over non-religion or vice versa. In establishing a legal order that oversees the social order of the entire population equally, the state should be “agnostic” when it comes to religious issues.²¹

A third contender for a model for state-religion affairs is thus political agnosticism. Rather than mildly favouring one religion over other sets of belief (as is the case for model number 4, the state church doctrine), the state should not take positions on religious questions: not in its daily administration, not in its laws, and not in its constitution either. Political agnosticism does not view religion as something that is good and deserves to be promoted, nor does it see it as a dangerous force that needs to be contained.²² Since the state represents all citizens – individuals who are religiously divided yet united under the nation-state –, social order and justice is served best when a formal position of equality is supported through religiously neutral laws. Part of being politically agnostic is that the state does not take a position on the idea that religion, whether from an individual or communal point of view, contributes

¹⁸ Ellian, Afshin, ‘Emancipation and Integration of Dutch Muslims in Light of a Process Polarization and the Threat of Political Islam’, *Middle East Program Occasional Paper Series* Summer 2009, pp. 15-23 (19).

¹⁹ Bodin, Jean, *On Sovereignty. Four Chapters from the Six Books of the Commonwealth* (Edited and Translated by Julian H. Franklin), Cambridge: Cambridge University Press 1992.

²⁰ Ellian 2009, p. 19.

²¹ T.H. Huxley (1825-1895), who coined the term agnosticism, said: “Agnosticism is not a creed, but a method.” Almost a hundred years later Bertrand Russell (1872-1970) stated about whether we can know whether there is a god, that “The agnostic suspends judgment, saying that there are not sufficient grounds for affirmation or for denial.” See Cliteur, Paul, *The Secular Outlook. In Defense of Moral and Political Secularism*, Chicester: Wiley-Blackwell 2010, pp. 57-59.

²² See also: Laycock, Douglas, ‘Religious Liberty as Liberty’, *Journal of Contemporary Legal Issues* 1996, pp. 313-356 (313-314).

to a positive or negative life. The state simply “does not know” and is insensitive to claims that are detrimental for or made on behalf of any religion. It should not have an opinion, because it is not the role of the state to have an opinion about religion, religious believers or religious communities.²³

In 2013 I visited the United Kingdom to research Sharia Councils. I have had numerous open-ended interviews with academics, activists, lawyers, and the member of the House of Lords who initiated a bill to restrict the legal remit of these councils. I went to a *beth din* – a rabbinical council, visited the Nuneaton-based Muslim Arbitration Tribunal and attended hearings at the Sharia council of the Birmingham Central Mosque and the Islamic Sharia Council in London.

Sharia councils are not universally viewed as “problematic”. Of course, Islamic fundamentalists themselves favour the existence of such institutions. They choose Sharia over democratically established laws. But there is another significant stream of thought that sees Sharia councils as a possibility, rather than a problem. Take for instance former Archbishop Rowan Williams, who was the principal leader of the British Anglican church in 2008 and Baron Nicholas Phillips of Worth Matravers, who was the most senior judge in England and Wales that same year. They made high-impact speeches on how Muslim minorities should be accommodated in their need for legal institutions based on laws following from the Islamic religion.²⁴ This is based on the notion that religion and membership of a community is so vital for one’s well-being that this should be accommodated into a minority legal order. This forms the foundation of state-religion model number 3: the multiculturalist model. The idea that one’s cultural and religious identity is so important that the state should recognise

²³ “An agnostic has no opinion on whether God exists, and neither should the government. But an agnostic also believes that humans are incapable of knowing whether God exists. If the government believed that, it would prefer agnostics over theists and atheists. Agnostics have no opinion for epistemological reasons; the government must have no opinion for constitutional reasons. The government must have no opinion because it is not the government's role to have an opinion.” See: Laycock, Douglas, ‘Equal Access and Moments of Silence: The Equal Status of Religious Speech by Private Speakers’, *Northwestern University Law Review* 1986, pp. 1-67 (7-8).

²⁴ Williams, Rowan, ‘Civil and Religious Law in England: a Religious Perspective’, 7 February 2008. Available online at <http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/> and Phillips, Nicholas, ‘Equality before the Law’, Keynote speech at the East London Muslim Centre, 3 July 2008. A transcript can be found in: Ahdar, Rex and Aroney, Nicholas (eds.), *Shari’a in the West*, Oxford: Oxford University Press 2010, pp. 309-318.

and respect it *as such* is part of an ideology that deserves to be studied in itself. Where does this body of thought come from? What are the implications of this ideology?

Firstly, I discuss the foundations of the ideology of multiculturalism. In the second chapter, I lay down the basis of Islamic fundamentalism. Finally, I bring these ideologies together in a case-study on Sharia councils in the United Kingdom. The development of British Sharia councils is the result of the combination of multiculturalism and Islamic fundamentalism. These political ideologies combined are especially interesting, for: if individuals should be supported in their religious identity, what does that mean when they choose for religious fundamentalism?

Regarding the methodology of the three chapters I would like to state the following. Each chapter could very well be a book onto itself. To that end, the chapters “read” differently. The first one is an in-depth analysis – a critique – of the central tenets of multiculturalism. For that, I have chosen to highlight the work of the world’s leading multiculturalist philosophers. The second chapter is an exploration of the elemental structure of Islamic fundamentalism. Here I have selected those authors and sources that best explain the political implications of this body of thought. Whereas the first chapter is very analytical, the second one is quite descriptive. Together they form the groundwork for the third chapter. In addition to a descriptive and a critical analysis of Sharia councils in the United Kingdom, this chapter is the result of extensive fieldwork in the form of open-ended interviews and observation.