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Publisher: Routledge

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Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Journal of Ethnic and Migration Studies

Publication details, including instructions for authors and subscription information:
<http://www.informaworld.com/smpp/title~content=t713433350>

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Online Publication Date: 01 August 2007

To cite this Article: Bowen, John , (2007) 'A View from France on the Internal Complexity of National Models', Journal of Ethnic and Migration Studies, 33:6, 1003 - 1016

To link to this article: DOI: 10.1080/13691830701432905

URL: <http://dx.doi.org/10.1080/13691830701432905>

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A View from France on the Internal Complexity of National Models

John Bowen

In this paper, I argue that explicit national models of religious governance inevitably conceal tensions and ambiguities, and are not suitable bases for socio-political analysis of religious governance. I take the French notion of 'laïcité' as an example, pointing out the diversity of definitions and uses of the term. A stronger foundation for analysis is the long-term tradition of the state controlling and supporting recognised religions, a tradition that dates from the early modern Gallican Church and continues through Napoleon's Concordat, the state's assumption of responsibility for maintaining church buildings and paying religious school teachers' salaries in the twentieth century, and the recent creation of a national Islamic body, the Conseil Français du Culte Musulman (CFCM). I draw on this idea to examine the preceding papers in this special issue.

Keywords: Governance; Islam; France; Laïcité; Models

In his introductory paper to this special issue, Veit Bader argues for the appropriateness of 'governance' as a key concept for studying how European states and societies have responded to the growing presence of Islam. Governance is broader than it might at first appear to be; it includes all processes that stem from norms, including laws, procedures, and socially-embedded ways of acting, whether they apply to government officials or ordinary people, Muslims or non-Muslims. Indeed, one might wonder whether simple norm-following by an individual would fall under its purview.

In any case, Bader's goal is not to provide an exhaustive definition of governance but to point to the importance of constructing models that adequately describe patterns in different countries and also provide explanations of at least some dimensions of those patterns. He argues both for disaggregating these patterns in order to take account of different institutions and actors, and for pursuing comparisons of highly aggregated models, to take account of the importance these models have for the actors themselves.

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The papers included in this issue include examples of both aggregative and disaggregative approaches.¹ Soper and Fetzer aggregate by country. They focus on the models for Church–State relations followed by public actors in Britain, Germany and France: French secularity, British church establishment and German decentralised corporatism. They argue that these national models not only serve as explicit models for the actors concerned, they also provide the best explanation for each country's patterns of governance.

By contrast, Kraler and Bergeaud-Blackler disaggregate. Each extracts from the complex set of issues surrounding governance of religion one specific problem—imam immigration, halal regulation—and then examines approaches to solving that problem adopted by a range of European countries. If Soper and Fetzer's approach by its very nature highlights the uniqueness of each country's approach to Islam, Kraler's and Bergeaud-Blackler's approaches automatically highlight the similarities in problems faced by all nations and the very small number of possible solutions to each of these problems. Indeed, it is striking how small a role the French, Swiss or British national models play in these two articles.

Maussen's article could be taken up as a case study within Soper and Fetzer's comparative model, but I see it in quite a different way, namely as a way to disaggregate a national model by emphasising a series of historical processes and changes. Maussen shows how French electoral politics, foreign policy and ideas about race and history shaped state actors' treatment of Muslims, and how the general tenor of these policies changed over time, largely in response to transformations in migrants' settlement patterns. One might argue that the differences in governance over time within any one country have been at least as important in structuring Muslims' lives as have been the relatively stable elements that serve to distinguish one country from another. For example, the situation of Muslim workers in 1930s France probably comes closer to the situation of Turkish workers in 1980s Germany than it does to that of Muslims in 2000s France.

I wish here to push this last insight—derived from Maussen's paper—a bit further, in order to interrogate the adequacy of our models of governance. I will not introduce new dimensions of disaggregation—that would probably discourage anyone interested in model building—but rather ask about other properties of these national models and how we might look comparatively at the very problematic character of the national model itself. I begin with the gap noted by Bader between country-specific, explicit models for the governance of Islam, on the one hand, and the broader set of processes that shape policies and processes, on the other. I consider the explicit, national models to be cultural resources on which actors draw at particular moments, rather than explanatory models, ready-made and provided by the actors themselves. I make this case through the example of France, which provides a particularly clear instance of the gap between national and explanatory models but is hardly unique in this respect. I content myself with posing questions through analysis of this case rather than proposing comparative models of the gap itself—such could be the next step.

Internal Tensions within National Models

Once we have developed *n*-way contrasts among nation-states, along the lines of Soper and Fetzer, then we can turn to the internal tensions and contradictions within each national model. Indeed, such as been the development of studies about nationalism and citizenship in Europe. For example, early ground-breaking studies such as Brubaker's (1992) on French–German contrasts in the histories of citizenship laws and practices led to studies of changes and conceptual transformations within each state (Feldblum 1999; Kastoryano 2002; Weil 2002). Although the second-round studies sometimes overstated their differences with the first round, they each pointed to the gaps and changes in each country case.

Before turning to the French example, let me propose three general sources of tension and contradiction within national models for the governance of Islam. First, as Bader mentions (Introduction, this issue), national models are normative ones, and as such are political instruments, devised and transformed with specific goals in mind. Politicians develop them in order to change social reality, not to reflect it. The anthropologist Clifford Geertz (1973) proposed a distinction between the 'models of' a social reality that we build, and the 'models for' that are equally 'real' and that guide actors. The distinction was a bit artificial to the extent that models-for must inevitably shape the reality that 'we' then try to model, and in a case such as that of France many of the social scientists constructing the models-of are also political actors applying the models-for. But Geertz did make the important Weberian point that models are designed to do different things, and that some might be intended to disguise and divert attention from the reality they purport to describe. We should probably assume from the beginning that the models-for will be ideological distortions of the social processes they purport to describe (see Bloch 1986). The workings of these normative models, as now I will refer to them, are part of the social life we wish to describe and analyse rather than a sufficient model of that life.

The second source of internal tensions is in fact one additional way of explaining the models-of/models-for tension described above. The national models themselves are historical products, and as such inevitably contain within them multiple lines of reasoning and emotion, developed in counterpoint to each other, and in tension if not in contradiction with one another. Revolutions engender counter-revolutionary ideas, and neither disappears from the set of collectively-available, and differentially-distributed cultural resources on which people can and do draw in each country. Ethnic and 'civic' notions of national identity coexist in many counties of Europe (and not only there), each having more or less legitimacy in the public sphere at any one historical moment—consider the oscillations of German and French citizenship policies, for example. But even the work of a single, emblematic philosopher can generate contradictory visions of how society ought to be organised. Locke's 1685 brief for toleration explicitly excluded atheists, and it made toleration of Catholics conditional on their renouncing obedience to the Pope. Rousseau's distaste for

intermediate corporate bodies co-existed in his writings with a celebration of the rights of citizens to form associations.

Finally, national models and policies contain experiential paradoxes and unintended consequences *even when* they succeed in remaining logically consistent. A Jacobin society turns out to be unworkable, and leads French regimes to grudgingly re-recognise unions and other guild-like bodies over the course of the nineteenth century (Rosanvallon 2004). Germany's ethnic-based ideas of citizenship could not provide the basis for a workable society when many of its long-term residents came from Turkey, and were altered at the end of the twentieth century (Kastoryano 2002). Paradoxes also abound at the heart of many specific policies designed to improve equity and equality. For example, United States affirmative action policies grant privileges in order to counter a history of discrimination against a social group but by the very fact of granting that privilege, may increase resentment, visibility of group differences, and perhaps, increased social discrimination (Minow 1990). Closer to our topic is the paradox of co-optation, whereby the state recognises one social group over others but usually thereby weakens that group's popular legitimacy, reducing its usefulness to the state.

France's *Laïcité* as Case Study

So far I have argued that we should expect national models to contain internal tensions for three reasons: they are created to change, not mirror reality; they have developed over time and thus have picked up the contradictory impulses reigning at different moments; and they often contain practical paradoxes at their very heart. Although these claims should be tested against a range of European cases, I will illustrate them for France.²

As Soper and Fetzer correctly point out, the key term in French accounts of their regime of Church–State relations is *laïcité* or secularity. Most historians of *laïcité* emphasise its continuity: the Revolution laid down the basic principles; the Third Republic extracted the Church from the schools; the Assembly ratified *laïcité* in 1905 (Baubérot 2000). Some philosophers and historians underscore the long process of secularisation that made possible this evolution.

But other views are possible. Some writers underline the sharp conceptual break that came with the privatisation of the Church in 1905 and the continuing struggle within Republican thought between a centralising (or 'Jacobin') political philosophy and one based on associations or civil society (Rosanvallon 2004). The political scientist Olivier Roy (2005) points out that, although a number of philosophers have created theories of *laïcité*, these theories conflict with one another, and it would be better to say that *laïcité* is the sum total of laws dealing with the relationship of the state to organised religions. Others, particularly Henri Pena-Ruiz (2005), have made *laïcité* into the equivalent of a religion, an atheistic philosophy, rather than a legally-defined set of limits on proselytising. Yet any attempt to see *laïcité* as a guiding

philosophy risks ignoring the bloody combats that pitted the French against each other over the proper place of religion in French public life.

Much as some would see *laïcité* as a guiding concept in French history, the word does not appear in the very law (of 1905) that is celebrated as its embodiment. Its legal status rests on its inclusion in a key phrase in the Constitution of 1946, repeated in that of 1958: *La France est une République indivisible, laïque, démocratique et sociale*—France is an indivisible, secular, democratic and social Republic.³

Nowhere in these texts is *laïcité* defined. One view, a recent one, is that it designates not a specific set of rules regarding religious expression, but rather a protected, privileged, multifunctional social space within which Republican principles could survive and prosper. President Chirac expressed this idea in his address on religious signs in state schools of 17 December 2003. He noted that *laïcité* protects the freedom to believe or not to believe, to express and practice one's faith, but also that 'it is the privileged site for meeting and exchange, where people find themselves and can best contribute to the national community. It is the neutrality of the public space that permits the peaceful coexistence of different religions'.

Now, if *laïcité* defines the character of public space, then it can be cited as the justification for excluding any signs deemed dangerous to free exchange of ideas. This notion of protected public space goes far beyond the law of 1905, which constrains the state, not pupils or other ordinary citizens, and it is mentioned by mayors who exclude scarf-wearing women from city halls and by ordinary citizens who ask them to leave buses on grounds that they are in 'public space'.

'*Laïcité*' remains one of those 'essentially contested concepts' that is politically useful precisely because it has no agreed-upon definition (Gallie 1964). Or rather: it is useful for political debates because its use conveys the double illusion that everyone knows what *laïcité* means and that this meaning has long been central to French Republicanism. It is not that the historical accounts are 'wrong', it is that they provide a narrative framework that permits public figures—politicians, journalists or public intellectuals—to speak *as if* there is an historical object called '*laïcité*' that emerged from bitter struggles (Wars of Religion, Revolution, Commune), led to the forming of a social contract (under the Third Republic), and was enshrined in law (1905) and Constitutions (1946, 1958). In this account, *laïcité* represents the General Will and indicates the Common Good. It is a Historical Actor. It must, therefore, have a philosophical base that can then be drawn on to derive new laws and regulations—such as regimenting the wearing of religious signs in public space.

The difficulty with this notion is that there is no 'it'. Not only has there never been agreement on the role religions should play in public life—some in France hold *laïcité* to guarantee freedom of public religious practice, while others think that it prevents such practices—there is no historical actor called '*laïcité*': only a series of debates, laws and multiple efforts to assert claims over public space. As those debates came to concern Islam, many public figures had recourse to claims about a venerable 'it' that could provide solutions to the new challenges. But no such firm ground existed; no easy deductions of new laws from old principles were possible. What

ensued were tempestuous debates about what laïcité *should* be and how Muslims *ought* to act, not in light of a firm legal and cultural framework, but in light of a disappearing sense of certitude about what France was, is and will be.

The Gallican Tradition

French Church–State relations do have a long history, but it is one characterised by control of religion by the state through selective recognition and support of religious institutions. When the rather bloody king nonetheless called Phillippe le Bel (1268–1314) asserted his political control over the Church, he inaugurated the tradition of maintaining an independent French (‘Gallican’) Church *vis-à-vis* Rome, and of controlling this Church from the Palace. Despite the sharp changes that occurred thereafter—the Edict of Nantes (1598) allowing the practice of Protestantism, the Revolution of 1789, the succession of Empires and Republics—this model of state regulation of the Church continued to explicitly shape French politics until the late-nineteenth century and, I argue, implicitly thereafter. It is this model that differentiates French forms of religious tolerance, as a matter of royal regulation of a recognised religion, from those in Britain, where it was a generalised recognition of freedom of conscience.

The Gallican model also shaped Republicanism, in that state control coexisted with the individual’s right to follow his or her own conscience.⁴ The *Concordat* regime stipulated that the state recognised and financed four religious organisations (Catholic, Reformed, Lutheran and Jewish), employed their ministers and owned their buildings. But over a much longer period the basic principle of explicit subordination of *le culte* to *l’État* was followed, from the 1790 Civil Constitution of the Clergy requiring priests to take a new oath to the Constitution, to the various promises required of Muslim leaders in the early 2000s. Explicit subordination of Religion to State must be affirmed: recall how often French politicians have castigated the largest Muslim confederation in France, the *Union des Organisations Islamiques de France* (UOIF), for the statement attributed, rightly or wrongly, to one of its leaders, but more generally associated with the Muslim Brotherhood, that ‘The Qur’ân is our Constitution’ a statement that flies in the face of what Philippe le Bel had wrested from the Church.

If the Church was the primary battleground for Gallicanism, the school became the second, for conceptual and historical reasons. Conceptually, schools play the role of socialising individuals into Republican citizens. Historically, they provided the central mechanism to produce citizens over and against cleavages of region and religion. Schoolteachers were the designated agents to make ‘peasants into Frenchmen’ and to fight against the Church’s efforts to control the minds of primary school pupils. From the Jules Ferry reforms in the 1880s to the negotiations with the Vatican in the mid-1920s, the Third Republic succeeded, through a series of decrees, laws and negotiations, in removing the Church from the state schools *and* in depriving the

Church of its public status, a dual victory that *later* was to be summed up with the single word *laïcité*.⁵

The Crucible: 1898–1908

I have spoken of a long period of state assertion of priority, but let me now focus on the ‘hot’ ten years between the Dreyfus crisis of 1898 and the laws of 1907 and 1908 regarding control of Church property. Fluctuating passions and quickly-shifting political power relations swung the strongly anti-Church period of 1901–05 over to the much cooler and *libéral* period of 1905–08 that continued on between the world wars (Baubérot 2004). We often forget that the 1901 law, celebrated for permitting citizens to form voluntary associations, *also* aimed to weaken Catholic institutions by requiring that religious orders (*congrégations*) obtain authorisation from parliament. By Autumn 1903, the anticlerical Emile Combes had used the law in an *ex-post-facto* manner to close 10,000 Catholic schools on grounds that they had been created by religious orders, even though their creation predated the 1901 law. A 1904 law went even further, forbidding people who belonged to religious orders from teaching, although many teachers resigned from their orders and then resumed teaching.

The law of 1905 inaugurated a liberal period. Although it ended the regime of recognised religions, it might have been more strongly anti-clerical had it not been for the success of the reporter of the law, the by-nature conciliatory Aristide Briand, in guaranteeing the continued existence of religious organisations, albeit as private associations. The 1905 law foresaw future private religious associations taking over the buildings and properties previously owned by the state, but because the Vatican refused to accept the terms of the law, in 1907–08 the state gave priests and the faithful the free use of the churches, and gave the churches to municipalities (*communes*), except for the cathedrals, which remained the property of the state. One result has been an inequity in religious subsidies: whereas the great majority of Catholic churches are owned by municipalities, such is the case for only 50 per cent of Protestant churches and 10 per cent of Jewish temples.

In the 1920s the French government carried out negotiations with the Vatican similar to those that had created Napoleon’s *Concordat* and those that would, in the 2000s, establish agreements with North African states about French Islam. Catholics finally did create 1905-style associations for churches, reorganised formerly religious schools as ‘free schools’ under new laws regulating education, and started non-religious 1901-style associations for sports and other extracurricular activities. A 1919 law allowed them to receive state financing for their private schools, and the 1959 Debré law created the current formula that allows private schools to retain their ‘particular characteristics’, including religious ones, and to receive state funds on condition that they teach the national curriculum and accept students without regard to ‘origin, opinions or beliefs’.

To sum up: a strongly anti-religion series of measures in 1901–05 was followed, for political reasons, by a much more liberal set of laws in 1905–08 and a gradual rise in

state support for religion-backed schools. Although Marcel Gauchet (1998) stresses that these changes moved religion out of the public sphere, I would emphasise that they set out the means for the state to *support and control* religious institutions, through laws regulating religious associations, private schools and the use of religious buildings, and that the state has since endeavoured to extend this support-and-control as far as is legally possible. Indeed, one could say that the law of 1905 was and continues to be an irritating secularist thorn in the side of the state's long-term Gallican policies.

The state carries out several tasks on behalf of those religions that it recognises. First it, or municipalities, finances the costs of upkeep of those religious buildings that already existed in 1905, whether the buildings are owned by the state or by private religious associations, even as it gave full use of those buildings to their religious groups. Secondly, it organises and finances chaplains' offices for each of those religions, to serve in state schools, hospitals, prisons, the military and, eventually, even in airports. Third, it makes explicit provision for religious representation in a number of domains: it finances Sunday morning religious broadcasts through the France 2 television station, invites the representatives of major recognised religions to present their respects to the president each year, and pays the salaries of teachers at private confessional schools that enter into contract with the state, on condition that they accept students regardless of religion, follow the state curriculum, and make doctrinal instruction optional.

How do all these activities remain consistent with the idea of separation of religions and state? The law of 1905, after guaranteeing 'freedom of conscience and the free exercise of *les cultes*', proclaims that the state 'neither recognises, nor pays the salaries of, nor subsidises any religion'. But as the Chief of the Interior Ministry's Religious Bureau explained, 'The article should be understood in this way: the Republic does not decide to favour one religion or to favour one school of thought within a religion' (Sevaistre 2004). The state regulates, recognises and supports and, as long as it does so equally for all recognised religions, then it meets its obligations of fairness. Thus this explains the foundations in equity as well as politics for extending to Muslims the fiscal and other benefits long enjoyed by Catholics, and the reasons for which Protestants ask for 'tweaking' the law to allow more straightforward financing of their religious activities.

Dilemmas of Co-optation

So far, I have argued that the normative model of secularity disguises a more complicated and long-term policy by which the state controls religious activities through recognising and supporting religions, and that specific laws and rulings have oscillated through history between more state-centered and more associational or civil components of the French model. Let me now briefly point to the paradoxes of co-optation that result from the state's efforts to control, and to the reasons why these are particularly acute for Islam.

The Gallican model of state control over religions can raise questions of legitimacy, but these are quite different for each religion, as a function of that religion's internal governance structure. For Catholicism the battles between the French state and the Vatican then became battles within France between Republican proponents of state control and Catholic forces in the society. Islam has an entirely different structure of authority, of which two elements are most relevant here. First, no one is *ex officio* the most authoritative source of norms and judgments; consequently, anyone's declarations can be challenged by anyone else. Anyone appointed by the state to speak for Muslim affairs can, and will, be challenged by others, who will be able to draw on Islamic principles to justify their challenge. Secondly, and in response to the first element, certain institutions of higher learning, in Cairo, Mecca, Damascus, Qum and elsewhere, arose as more authoritative than others on grounds of their superior teaching and the advanced knowledge of their spokesmen or leaders. They became the leading interpreters of the major legal traditions, and most Muslims learned to follow one legal tradition and, perhaps, one set of authorities.

Because relatively authoritative teachers and institutions are outside Europe, European Muslims have developed ways of drawing on their prestige in order to respond to European questions and problems. Notable among them is the European Council for Fatwa and Research, a collection of jurists of various nationalities led by the highly influential Egyptian jurist, Sheikh Yûsuf al-Qardâwî, currently of Qatar. European Muslims who try to rally support for a particular position must contend with, if not draw on, these external authorities. To the extent that states place pressure on their appointed Islamic spokesmen to conform to certain state demands, these officials experience pressure from their base to listen instead to the opinions from those of greater religious authority elsewhere.

In France this experience of being pulled in two directions has virtually paralysed the state-run French Council of the Islamic Religion. It has also led members of that Council to try and argue two conflicting positions at once. While the Council did not take a stand on the law against religious signs in state schools, for example, its most influential component, the UOIF, took a strong stand against the law and for the wearing of *hijâb*, which meant headscarves, as required by Islam. Many Muslims saw these contradictory positions as politicians' double-talk, which further discredited the CFCM and the UOIF in their eyes.

Muslim populations in France also have a second transnational dimension. The French state treats them as still under some degree of control and influence from their countries of 'origin', an approach that heightens the sense that Muslims in France are treated much as were Muslims in the colonies: as second-class citizens. The Interior Minister, Nicolas Sarkozy, appointed the Council's President, Dalil Boubakeur of the Great Mosque of Paris, and browbeat the various associations into agreeing with him. For some, these methods echoed the ways of colonial rule, where the president would appoint ministers and local 'leaders' who were supposed to speak for the people. In the case of the CFCM, not only did Sarkozy designate the Council's leadership, but he did so in consultation with the governments of those countries from where the

leaders had come. Over the summer of 2002 he spoke with the ambassadors from Algeria, Morocco and Tunisia, and representatives of the Turkish embassy, and on 8 October, the Moroccan ambassador asked that Sarkozy meet with ambassadors from the three North African countries (Tunisia sent a representative). The ambassadors approved the selection of Boubakeur as Council president and said they would work to keep ‘the extremists’ out of the process (El Ghissassi 2004). Their role was made clearer when the Paris Mosque did poorly in the 2003 elections to the Council. Dalil Boubakeur was quickly summoned back to Algiers to ‘explain himself’.⁶

Governance Beyond Islam

So far, I have examined some of the complexities of France’s ways of governing Islam, in order to pose questions about how we construct models of governance. But we should also note that interactions between new Muslim immigrants and other public actors in European countries have led some of these actors to re-examine some of their own norms and laws. The issue of ‘governing Islam’ is thus pushed over into other domains having to do with society at large.

Some of these re-examinations are quite specific. For example, most European jurists find polygamy to be counter to the norms as well as the laws of their countries, but recent affirmations of the European Court of Human Rights concerning the equal rights of all children, whatever their legal status, have forced jurists to re-examine the effects of this principle on their countries’ treatment of children of second wives.

Somewhat more broadly, Bergeaud-Blackler points to a convergence of interests between some Muslims and non-Muslims in tracing the provenance of meat. For the Muslims this concern stems from their religious norms about ensuring non-contamination of halal products with non-halal ones. For non-Muslims the concern comes from their anxieties about the transmission of disease. This convergence transposes the effort to ensure halal status from the religious domain to that of general health. It also supports Muslim arguments that inspection of meat for its halal status also provides safety for everyone, in ensuring that diseased animals do not enter the food chain, for example.

Finally, and much more broadly, a series of incidents have forced at least some public figures in European countries to look at the ways in which they safeguard and yet also limit the freedom of expression. Despite the protestations of some editors and prime ministers about the sacred character of free speech, in fact Europe’s heritage in this area contains rather than overcomes contradictions about freedom and the social contract.

Out of the bloody battles about conscience and obedience in the sixteenth and seventeenth centuries came two commitments: to preserving freedom of expression, and to preserving the civil peace. First, Europeans (and North Americans) share a commitment to protect the right to express opinions—‘even religious ones’, in the words of the 1789 French Declaration of Human Rights. John Locke’s Letter

Concerning Toleration, written in 1685 while in exile in Amsterdam, set out the dominant Anglo-American version of those rights: that one's religious conscience, out of reach of the ruler in any case, should remain one's private domain, as long as one swore obedience to that ruler. The contrasting French heritage was best summed up by Blandine Kriegel, former Maoist and now advisor to President Chirac, who explained to me in 2003 the contrast of French secularity with the 'Anglo-Saxon' idea of freedom and religion. 'In Anglo-Saxon thinking, in Locke or Spinoza, it is the concrete individual who has rights; freedom of conscience is the foundation. In our tradition these liberties are guaranteed through political power, which guarantees a public space that is neutral with respect to religion.'

Secondly, and against the memories of early modern religious wars but also those of irredentism and genocide, Europeans share a commitment to preserve civil peace against conflict along religious, racial or nationalist lines. Many of my discussions with French high officials about the state and religion began by their invoking the Wars of Religion as a way of reminding me that the state needed to exert constant vigilance lest religious passions once again tear apart the social fabric. One must create public institutions that teach, in part through example, how to live as equal citizens rather than as members of closed-off communities. The more recent memories of the Holocaust and, for many women, of the difficult fight against Christian religious authorities, especially in majority Catholic countries, to win control of their own bodies, reinforces this strong sense of a need for vigilance against all forms of religious (and racial or ethnic) conflict, and a sense that this vigilance includes playing down religious and ethnic identities in the public sphere.

These sentiments are perhaps stronger in France than in some other countries, and help explain the French government's decision in early 2004 to prohibit Muslim girls from wearing headscarves to state schools. Although France was not alone in worrying about worldwide political Islam and problems of integration at home, the French spin was to emphasise the importance of the state school as a place where religious and ethnic distinctions would be placed aside, and pupils would learn to be French above all. In Britain, by contrast, even after the recent bombings, the expression of personal religious beliefs through dress and in other ways is seen as part of the social contract, rather than a threat to it.

The anxiety lest civil peace be threatened by religious, racial or ethnic hatred goes beyond Islam to governance of expression in general. Those countries most directly affected by Nazism have laws making a public denial of the Holocaust a crime, and in February 2006 an Austrian court sentenced British author David Irving to a three-year sentence (of a possible ten years) for having denied in print that Hitler had a plan to wipe out the Jews and that Jews were murdered in gas chambers. It is illegal to deny the Holocaust in Germany, France, Belgium, Poland, the Czech Republic, Switzerland and Slovakia, as well as in Israel.

International law already prohibits expressions of religious or racial hatred that incite violence or even hostility (the International Covenant on Civil and Political Rights—ICCPR, and the Committee on the Elimination of Racial

Discrimination—CERD), but the European Convention on Human Rights goes even further. The Convention applies to all members of the Council of Europe, a body whose 46 members include the EU countries but also Turkey and most prospective EU members. The Convention is of increasing legal importance, as the European Court on Human Rights exerts more and more pressure on member states to bring the details of their legal systems into line with its principles (France is routinely cited). Article 10 guarantees the right to freedom of expression, but it also allows states to restrict those rights for a number of reasons, including ‘the protection of the reputation or rights of others’, a clause interpreted by the Court to include religious and racial sensibilities.

Moreover, the Court gives considerable latitude to member-states to formulate their own versions of what is necessary to protect these sensibilities. Thus, when France’s law against Holocaust denial was challenged, the Court ruled that, because France had claimed that Holocaust denial was a principle vehicle for anti-Semitism, the law was a legitimate restriction on expression. One of the Court’s justices assured the French parliament that a law banning scarves from schools would be upheld because it expressed a national consensus about how best to preserve social order. And, indeed, shortly after France passed that law the Court upheld Turkey’s ban on Islamic scarves at university.

Member-states assume this right to prohibit a range of expressions. In October 2005 a French court ordered a marketing company to remove posters that featured a version of the Last Supper, with women, well covered up by French advertising standards, in the place of the disciples, and a shirtless man. The court said that the poster offended Catholic sensibilities. A new British law allows the prosecution of speech that is intended to stir up hatred of others based on their beliefs—incitement to action need not be proved. And although it has not been applied to the case of cartoons of the Prophet Muhammad, the Danish Penal Code allows for the prosecution of anyone who disseminates information that would insult or degrade a group on account of their beliefs, origins or race.

European countries differ among themselves on these issues. The Scandinavian countries have a much shorter and shallower experience with Muslims, and indeed with visible differences among citizens, than do countries with colonial histories. In some, policies of tolerance and toleration have been succeeded by virulent anti-immigrant discourses and even policies. The recent furor over the cartoons focused attention on Denmark, and indeed Danish Muslims have a lot of ammunition for their claim that Denmark unevenly applies its own norms and laws. They point out that the editor of the offending paper, the *Jyllands-Posten*, had in 2003 rejected cartoons about Jesus on grounds that they would insult Christians. Denmark probably has the most virulent public anti-Islamic discourse of all the European countries. Its far-right party succeeded in making it so difficult for a Dane to obtain residency rights for a non-Danish spouse that a rather large number of couples now live right across the water in Sweden, where such matters are more easily resolved.

Differences in European governmental responses to the Danish cartoon uproar may serve as indices of how they have approached the general problem of governing expression with respect to Muslims. Scandinavian governments by and large supported the Danes in championing free speech. President Chirac of France condemned 'all provocations that could inflame passions'. Even France's Jean-Marie Le Pen, seeking the Catholic vote, condemned the publication of the cartoons as damaging religious sensibilities. No British paper (save one student one) has published the cartoons, seeing the overall public reaction as being strongly against publication (and perhaps also thinking of the South Asian near-monopoly of newspaper kiosks).

Conclusion

I have used the French case to explore two broad characteristics of national models that make them somewhat more problematic as units of analysis than otherwise they might seem. First, not only are they internally complex, but they conceal a fundamental, intended ambiguity: as actors' explicit models, they are resources for political action rather than objective models of processes. The French term *laïcité* is not as ubiquitous as it is because it provides such a precise label for and accurate window into the relations of religions and state in France, but precisely because it conceals a great deal of conflict, disagreement and general muddle about what those relations are or should be.

Secondly, governance of religion bleeds out into other areas of social and political life, and indeed the very success of a group's efforts to convince politicians and others of the legitimacy of their demands may lead to an erasure of the religious nature of those demands—halal becomes healthy, anti-blasphemy becomes preserving decorum and dignity. Although the newness of the large Muslim presence in most of Europe does indeed make 'Governance of Islam' a discrete element in public policy, this discreteness will fade over time. The increasing difficulties faced by social scientists in constructing models specifically of Islam will provide a useful index of Muslims' own success.

Notes

- [1] I take the papers by Koenig and Minkenberg as continuing the meta-analytical discussion about models begun by Bader.
- [2] For an extended version of the argument see Bowen (2007).
- [3] Constitution of 1946, article I of section I, 'On Sovereignty'; Constitution of 1958, article 1 of the Preamble.
- [4] Pierre Rosanvallon (2004) traces this tension within Rousseau, although he emphasises the victory of associations more than might others.
- [5] At the time, Ferry, Gambetta and others saw the usefulness of retaining the *Concordat* to better control anti-Republican priests.

- [6] *Le Matin*, an Algerian paper, of 22 April 2003: 'Boubakeur explains himself'. The mosque leader claimed he was tricked by the French state, which had assured him that they would not let Algeria lose strength in the Council.

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