Women's Rights, Secularism, and the Colonial Legacy

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La laïcité est une condition nécessaire, sinon suffisante, à l'exercice des droits humains fondamentaux des femmes. Elle est également une condition nécessaire à l'exercice de la démocratie, selon laquelle les lois sont votées par le peuple et amendables de part la volonté du peuple, et non figées pour toujours selon des décrets supposés divins interprétés par des humains le plus souvent réactionnaires. La politique communautariste d'une partie de l'Europe se fonde sur une re-definition de la laïcité (en tant que séparation des religions et du pouvoir politique), en la remplaçant par celle d'égale tolérance des gouvernements vis à vis de toutes les religions. Ce système qui privilégie les droits des communautés aux dépens de ceux des citoyens supposés y appartenir (et souvent enjoints de le faire) soutient de fait les fondamentalistes qui oeuvrent contre la démocracie, pour l'instauration de théocracies. Certes, la laïcité à elle seule ne peut garantir les droits des femmes, mais elle est essentielle pour que le fondamentalisme religieux cesse d'empiéter sur leurs droits en particulier et sur la démocratie en général.

The impact of "sharia courts" on women's rights in the UK cannot be looked at without first exploring how secularism represents the last recourse for women of migrant Muslim descent in the protection of their legal rights, which are now endangered in Europe through policies of communalism and cultural relativism. However, we first need to clarify what is secularism is, as definitions vary in different parts of Europe and thus bring about different consequences for women rights.

Definition(s)

There is an increasing trend among English-speaking secularists to adopt the French word *laïcité*[1] (which they write "laicity"),[2] rather than "secularism," on the grounds that these concepts do not refer to the same reality.

Indeed, the original concept of laïcity and the realities defined as secular differ in different parts of the world. It is clear that the principle of laïcity, conceived of under the French Revolution as separation of church and state, cannot fit unaltered into countries where the head of state is also the head of the Anglican Church (as is the case in the UK), or where the federal state collects religious taxes through the Länders' administration (Germany), or where one swears on the Bible in court (U.S.). Moreover, as formerly colonized countries in Asia and Africa inherited the British concept of secularism, we can say that very few countries today are *laïques*.

At a time when Muslim fundamentalist detractors of laïcity now pretend it has been designed to discriminate against Muslims in France, it is worth considering a bit of history. During the French Revolution and for a long time afterwards, until World War I, there was no Muslim emigration in France. In fact, it remained statistically insignificant until after World War II. As the founding laws on secularism were passed in 1905-1906, and therefore they anticipate from at least half a century the first numerically important migrations from North Africa, one needs to point at the historical mistake and the political manipulation by which Muslim fundamentalists today decry these laws as "anti-Muslims."[3]

Historically, the principle of laïcity emerged during the French Revolution, at a time when the political power of the Catholic Church over the

Kingdom of France was overwhelming. In an initial stage, it had been a hard-won step forward to impose the creation of a representative assembly to temper the power of the king, and then to limit the power of the church to only one third of the assembly (which was then composed of three categories: the nobility, the clergy, and a specific category of citizens known as the *Tiers Etat)*. "Separation" was then an essential component of the emancipation from the Vatican's political power, and was a matter of survival for the emerging democracy in France. In later developments, the modalities of this "separation" between church and state were codified, over more than a century, until the establishment of the laws of 1905-1906 laws that gave French democracy the secular legal frame, as we know it today.

This legal framework allows for equality between all citizens (religiously inclined or not), rather than for equality between religions:

> The secular recasting of the state, initiated in France with the acts of 1881 and 1886, then the Act of separation of Church and State of 9 December, 1905, corresponds to some sort of evidence enclosed in the very etymology of the word: the Res Publica addresses everybody, believers, atheists and agnostics alike and cannot therefore favour anybody…. In that sense, secularity is akin to universalism, which is the essence of the republic. But it could not occur spontaneously. There had to be a movement to emancipate the current law from any submission to some specific religious persuasion. Hence, the republic is neither atheistic nor religious: it no longer arbitrates between beliefs but arbitrates between actions and is devoted only to the general interest…. At the same time, the ethical liberty of the private sphere is guaranteed. No conception of what the good life is can monopolize law or illegitimately extend the normative function of the law beyond the interest of the community of citizens. (Pena-Ruiz "A Secular Recasting")

Having completed over more than a century the arduous task of expelling the churches from political power, the secular state undertook to secure the individual right of citizens to develop their own personal forms of spirituality—religious or not. Considering the abundance of articles in English, including scholarly ones, that display—today, in the wake of rising Muslim fundamentalist political forces—an unbelievable degree of ignorance about secularism in France, it is worth looking at the law in some detail.

In its articles 1 and 2, the 1905 law grants and protects individual rights to belief and practice. The 9 December 1905 Act opens on two indivisible articles, grouped under the heading, "Title 1. Principles":

> "Section 1: the Republic shall ensure freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order. Section 2: the Republic may not recognise, pay stipends to or subsidise any religious denomination. Consequently, from 1 January in the year following promulgation of this Act all expenditure relating to participation in worship shall be removed from State, region and municipality budgets."

Grouped under the same heading, the two first articles of the law are obviously inseparable and are clearly referred to as principles. Religious freedom is but one version of the freedom of conscience (article 1) and is viewed only as a particular illustration of the freedom. Having to coexist with the freedom of choosing to be an atheist or an agnostic, the freedom of opting for a religion obviously belongs to a more general category, which is the only one mentioned by the law. Insisting on "religious freedom" is in fact preserving the privilege of a spiritual option when the law henceforth rejects all privileges. This is why section 1 is inseparable from section 2, which stipulates that the Republic does not recognise any religious denomination. This strictly means that it has passed from recognising certain denominations (before 1905, Catholicism, Lutheran and Reformed Protestantism, and Judaism) to renouncing all recognition. It is not passing from recognition of some to recognition of all, as a multireligious or communitarist interpretation would have it, but from a selective recognition to a strict non-recognition. This principle of non-recognition understood in its legal sense confirms the fact that no stipend or direct subsidy may be paid to any church by the state. The 1905 act does not just stipulate that all churches are henceforth legally equal. It extends this equality to all spiritual choices, whether religious or not, by dispossessing the churches of any public law status. Assigning religions to the private sphere entails a radical secularization of the state. It henceforth declares itself incompetent in matters of spiritual options, and has not therefore to arbitrate between beliefs nor to let them encroach on the public sphere to shape

common norms. (Ruiz, "A Secular Recasting")

According to the 1905 law, religious belief is a personal option just like agnosticism or atheism. Hence the law does *not* grant "religious freedom" *specifically*, but freedom of conscience in general. For the first time, the law considers beliefs other than that of the dominant Catholicism equal with each other. Personal stands are equally respected and none is privileged over the other, but neither religion nor the absence of religion (atheism) is granted any public privilege by the state. The state will simply not interact with the official representations of organized religions—it declares itself incompetent in religious matters, and it states that religion is not within its mandate—so that politics will not be instrumentalized by religion, nor will religion be instrumentalized by politics. Indeed, the history of Europe has largely shown how dangerous such instrumentalization may be.[4]

Secularism is not just another belief on par with religions; it is clearly and exclusively defined as a legal and administrative provision through which the role and place of religions in politics is regulated and limited.

It is in this context that one should understand the secular rule in France that civil servants, when they are in contact with the public, should not wear any sign of their religious or political affiliations, nor should teachers, administrative staff, and pupils in secular state schools. Under these circumstances, civil servants stand as equal citizens of a secular republic, not as members and representatives of any community. However, it is useful to reiterate here that what these citizens do outside these functions is their personal choice in which the state will not interfere. One can easily see that the decision of the UK to grant each citizen permission to be received by a representative of his/her religious or ethnic community when s/he goes to a police station, for instance, stands exactly at the other end of the political spectrum in matters of secularism: the entire society is communalized.

Secularism/*laïcité* is understood in this article as separation between religion and the state. I do not consider that several definitions of secularism exist (as is the common belief in the UK), but rather that there are presently many near-successful attempts at undermining laicity by redefining it as secularism in ways that allow the states to continue to grant religions political power. We are still, and may be more than ever before, in a struggle for secularism. It may hearten us to remember here and now that secularism is a hard-won right and that people always had to fight for it. What we face today with the rise of new religious-Rights,[5] in particular the Muslim-Right, is not unlike what earlier secularists had to face.

The Struggle for Secularism

Nowhere, not even in the birthplace of laicity, has this right been easily won; everywhere it has been a long, hard, and ongoing struggle—and it continues to be so today.

The reactionary struggle in France against the eviction of (then) the Catholic Church and (now) religions in general from direct access to political power through an undemocratic mode of representation[6] has never stopped. It has taken different forms at different moments in history, from open war to the more modern attempts to dissolve and melt the principle of separation into the muddy waters of multiculturalism. While the Catholic Church has apparently taken a back seat, the anti-secular struggle in Europe is now led by Muslim fundamentalism, a far-Right movement working under the cover of religion, with the active backing of the Catholic and Jewish religious authorities.

One of the many attempts to undermine secularism is to reformulate and redefine it. The UK—logically considering the confusion it entertains between head of church and head of state—promotes, under the apparently neutral principle of equal tolerance by the state of all religions, a formal recognition and representation of religions within the state, thereby planting the seeds of "communalism." (I am using here the concept developed in South Asia to stigmatise the adverse effects of separating people and fellow citizens into communities.) The UK is playing a leading role within European institutions insofar as its redefinition—the switch from separation to equal tolerance—is now largely

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adopted by Europe. Consequently, more and more pressure is being put on France to abandon the historical definition of secularism and to adopt the Anglo-Saxon one in the name of human rights and religious rights.

Historically, this policy had severe consequences throughout Asia and Africa, as British colonialism propagated the "equal tolerance by the state" definition throughout its former Empire. We have recently witnessed in France various attempts by the Right-wing to add adjectives to the word secularism in order to modify its meaning and bring it closer to the British redefinition, such as "open secularism," "inclusive secularism," "plural secularism," "positive secularism," etc.; all are intended to corrupt the concept.[7]

The major political consequence of this redefinition is "communalism": while laïcity considers only individual citizens, UK "secularism" gives birth to communities and communalism (i.e., division among citizens and competition between different religions for political representation within the state):

> The denominational neutrality of the republic cannot be assimilated to a vague ethico-political relativism.... Secularity was actually introduced in the law with the acts of emancipation from religious supervision of school, public institutions, and then of the State. It is by essence a separation of State and Church, which rules out all Concordat regimes. The official recognition of certain worships involves a double exclusion: that of other worships and that of non-religious figures of spirituality. It encroaches on the public sphere, alienating it to the domination of religions. It makes no difference to recognize several religions: the alienation of the public field to religious persuasions is none the less patently obvious. (Ruiz, "France")

In a globalized world where people, not just in richer Europe and North America but also within Africa and Asia, are increasingly mobile, populations of mixed origins and diverse religions and cultures, increasingly inhabit the same location. There is an equally increasing need for political and legal frames based on universal principles, beyond the specific religious and cultural norms of these diverse populations. Only secularism can avoid competition between religions for public privileges and political power, as well as competition between citizens for imposing one's own norms over others'. This requires that universalism should prevail and that laws common to all should be free from the particular cultural and religious norms and restrictions specific to one category of citizens. Therefore, absence of "separation" between states and churches/religions, especially in matters of law and education, is incompatible with equality of rights between all citizens (see also Ruiz, *Dieu et Marianne*).

The consequences are heavy for women in formerly colonized countries, where the British colonizers imported their own definition of secularism: women are trapped in the colonial legacy of "community rights" that limits their access to universal rights, even in the eyes of their own independent governments.

Women of migrant descent, who are now citizens of European countries, may further trapped into abandoning their voted rights as citizens in the defence of un-voted "community rights" imposed by "community leaders." They are made to choose between two loyalties: to women's rights or to "community rights." A double bind indeed.

In fact, what we are witnessing in this moment in history is the increasing trend for nations to abandon the principle of "one law for all," and to accept different laws for different categories of citizens on the basis of their—often presumed—religious affiliation, thus creating an inequality of rights among individuals otherwise supposed, under the official constitutions of most countries, to be equal before the law. This can be observed throughout the world, with a visible long-lasting influence of former colonizing countries' definitions of "laicity" vs "secularism" on their former, albeit now independent, colonies.

This can be observed in Britain with the recognition of the so-called Sharia courts, which are in fact arbitration courts that do not apply the law of the land but whose judgments are legally binding under the 1996 *Arbitration Act.* The religious court's decisions can then be enforced by the county courts or the High Court (Hickley). Similarly, Jewish Beth Din courts have handled civil legal cases for more than a hundred years in Britain on the same basis, and now operate under the 1996 *Arbitration Act* (see also Taher; Rozenberg; Edwards). This is the ground on which Muslim fundamentalists claimed equality of treatment, not between citizens who are, in fact, denied equality, but between religions.

In the past three years, there have been several attempts by Muslim fundamentalist groups in the U.K. (Lucas) and in the U.S. (Grayson) to enforce sex segregation in public universities (against U.K. gender equality rules) and in the U.K. to promote "sharia compliant" wills (Southall Black Sisters), which denied Muslim women equal share, and excluded non-Muslim wives and adopted children from the rights to inheritance otherwise guaranteed to all under the law of the land.

It is worth noting that—at least for the time being—demands for accom-

modating religiously inspired laws or practices do not focus on criminal law and *huddud* punishment (such as stoning for sex outside marriage or cutting off the hands of thieves), but they are limited to personal status laws (also called family codes). These laws affect primarily women through regulating marriage, polygamy, repudiation, divorce, custody of children, alimony, inheritance, etc. Under the guise of cultural and religious rights, women—and their subordination by the males in their communities—are the primary, and in fact the exclusive, focus of communal demands.

Abandoning democratically voted universal secular laws to accommodate communalist demands for separate un-voted religious laws amounts to trading women's human rights, temporarily appeasing fundamentalists through a highly undemocratic process. Abandoning secular principles and trading women's rights for the sake of appeasing reactionaries and traditionalists is a policy that has been practised by colonial powers. Still today, women continue to pay the price for this legacy. It was "British India" who codified what passes today as "Muslim law" in India (Anderson). It is the French secular colonial power that codified, in the "overseas French provinces in Algeria," the "Indigenous law" (Mayer) that became the basis on which the infamous family law of independent Algeria was designed.[8]

These colonial, often syncretic re-inventions weigh heavily on today's feminist struggles. Indeed, under the pretext of respecting Indigenous mores, colonial powers did want to trap colonized people into their supposedly ontological "difference," as this was the basis for not granting them equal legal rights on par with the colonizers. Is this any different philosophically from what is being done today in Europe to citizens of migrant descent in the name of respect of their religions and cultures?

Just as the revolutionaries of the French Revolution were not revolutionary enough to think that women too could enjoy the rights that men had just conquered,[9] and therefore discriminated against them, "secular France" during colonial times was obviously not secular enough to accept the idea that colonized Algerians too may have enjoyed the right to define their futures without interference from clerics. Algerian women still struggle to get rid of the family law that was initially, under colonization, presented as a symbol of cultural indigenous resistance to colonization (alas, Fanon seems to have fallen into the trap). In fact, it was the instrument of colonizers to control the resistance by throwing men a crumb: power over "their" women.

Indian feminists still struggle today to get rid of separate family laws for Hindus, Christians, and Muslims. These laws trap women into either defending their rights as women or defending their community from the attacks of the dominant religious group, even though these laws clearly prevent the rights of women within the family from moving forward (Mehta).[10] It is worth noting how the shying away from defending secular laws was detrimental not just to the advancement of women's rights in family matters, but also to the unity of the women's movement in general. After the Shah Bano case, which granted alimony to a repudiated old woman, feminists of Hindu majority background feared to be seen as anti-minority Muslims (or as would be said now: "Islamophobic"), while rights-demanding women from Muslim minority background feared further rejection from their "community." They also feared that if they persisted in their demands for rights, their Hindu background feminist counterparts would not stand by them. Isn't this exactly what rights-demanding feminists of Muslim heritage are facing in Europe today?

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"Divide and rule": whether it is India, Bangladesh, Pakistan, or Sri Lanka, the region is plagued with the fragmentation of citizens into religious identities, a practice that is inherited from the colonial era and from the British definition of secularism as equal tolerance by the state towards religious communities.

The same applies to African countries formerly colonized by Britain: in all of them, specific family laws (or Personal Status Laws) apply to different religious communities.[11] Therefore, the law discriminates against women as citizens, granting rights to some women citizens that are denied to others, by virtue of being born into a Christian, Muslim, or Animist family. Some countries,

such as Senegal, still give women the final "choice" between, for instance, a monogamous or a polygynous marriage, which must be determined once and for all at the time of the marriage civil registration. One could ponder on the logic of giving anyone the choice between "more rights" and "fewer rights." Moreover, numerous first-hand reports show that husbands-to-be who promised that—of course!—they would opt for a monogamous marriage, often change their minds at the very last second and request a polygynous marriage in front of the registrar. The "choice" left to the bride is to swallow her tears in the wake of this first betrayal, or create a scandal in front of both their extended families and numerous invitees—something that they can hardly face. "Choice," when granted to the powerless, generally amounts to supporting the most powerful.

In the early 2000s, Canada witnessed attempts to introduce discriminatory legislations that would have deprived specific categories of the population (the Muslims) of rights enjoyed by all other citizens in the name of their geographical origin, hastily equated with a presumed religious faith (see Boyd). Interestingly, the Left and feminists in Canada were not unanimous in standing against such propositions of law, presumably because these propositions were presented as respectful of minorities' difference, while in fact they would have deprived women of Muslim migrant of the legal rights enjoyed by all other Canadian women. Although many Canadian women of Muslim origin openly opposed the bill (CCMW), it took external solidarity to enrol the support of the majority of women's organisations in Canada. In solidarity with Canadian women of Muslim descent, the network Women Living Under Muslim Laws organized a speaking tour in Canada, featuring women from Algeria, Iran, India, South Africa, Bangladesh, etc.[12] The aim was to explain in detail to Canadian feminists what minority women would face if they did not enjoy any longer the protection of the law of the land, as well as why feminists in Canada should support secular laws, which were democratically voted by the people and could thus be changed by democratic means, rather than adopt supposedly divine (and therefore unchangeable) laws interpreted by conservative men. Each woman on the tour (myself included) gave multiple examples of the rights we lost when our countries moved to so-called sharia law. The tendency of the Left and "majority community women" is generally to shy away from supporting the universal rights of citizens of Muslim descent under secular laws; it has been replicated on many occasions, in the name of respect for their unsurpassable otherness.

More examples of the global trend to erase secular laws and replace them with religious ones specific to each "community" can be given even from secular France. Since the 1980s, numerous attempts have been made by Muslim fundamentalists to alter laws and mores and to outlaw secularism, which they branded as discriminatory against minorities. Let me give a few examples. 1) They demanded the annulment of a civil marriage on the ground that the bride lied about being a virgin, "an essential quality" of the marriage.[13] It took the government to step in and appeal against the court decision to grant the annulment (a very rare legal procedure) on such slippery grounds, rather than a simple divorce (which was immediately granted). 2) They demanded that a court hearing be postponed on the grounds that the accused was fasting during Ramadan.[14] 3) They demanded not just *halal* meat to be served in school canteens but also that all food served be *halal*, otherwise it would be contaminated by the proximity of non-*halal* food. 4) They demanded that the curriculum in national state-run secular schools—where education is entirely free from primary school to university—be altered so as to eliminate graphic arts, gym for girls, and biology (due to the curriculum's preference for evolutionism rather than creationism). 5) They demanded segregated time for Muslim women in swimming pools (Soulé). 6) They demanded that women in hospitals be exclusively approached by female personnel from cleaner to doctor.[15] 7) They demanded that religious signs be allowed in state secular schools (it is in this context that the demand for headscarves for girls, which made the headlines of the international media, should be understood) (Bennoune).

Analyzing these examples leads us to more general political comments. The above-mentioned demands are not made at random: Muslim fundamentalists target the very secular principles that are the foundation of the French Republic. In their views, secular schools, civil marriage laws, or justice are to be amended so as to recognize the existence and pre-eminence of religious opinions. The demand for the annulment of a marriage is different from a request for divorce: while the second resolves the dispute between a couple, the first undercuts marriage laws which do not include acknowledging "virginity as an essential quality of the bride," as does Muslim marriage law in many countries. This is therefore a legal encroachment of religious views into secular laws. The aim is not just to "accommodate" specific demands, but also to abandon founding principles about the place of religions and religious laws in a secular political system. All these requests are geared towards making religion, at the very least, visible, and at worst to treat it on par with, or even to allow it to supersede, secular principles. Present-

ing secularism, like atheism, as just another "religious" opinion or way of life is to undercut secularism entirely.

These are presented as demands from "Muslims" in the name of "Islam," while progressive citizens of Muslim descent (both believers and unbelievers) and progressive theologians of Islam loudly voice their dissent regarding demands made in their name (see Bencheikh, *Marianne et le Prophète*).[16] Progressive citizens of Muslim descent and progressive Muslims love and openly defend secularism (Helie Lucas "The Struggle"). Cultural relativism as it prevails in Europe today actually promotes the idea of a totalizing, transcontinental, uniform, ahistorical, Muslim religion-cum-culture and excludes progressive people from it. It recognizes only the most reactionary opinions as legitimately representing Islam and Muslims. Therefore the Left and feminist supporters of cultural relativism de facto support, in "The Other's community," the very Rightist forces that they would fight within their own "community."

Moreover, by locking citizens, including dissenting ones, into an imaginary Otherness (Helie Lucas "What is Your Tribe?") they create ex nihilo a falsely homogenized "community" that fits the negative stereotypes that the far-Right openly displays about "Muslims" but that the Left and feminists usually disapprove of as racist—what a contradiction.

Secularism does not erase differences between individuals, but it definitely avoids essentializing difference, the trap into which human rights organisations, the Left at large, and too many feminists have fallen over the past few decades in Europe. By unduly accepting the ideological construct of homogeneous communal identities without ever asking who speaks for this community and with what legitimacy, by essentializing Otherness and forcing individuals into a group identity by virtue of their birthplace without their consent, and by allowing the unelected self-appointed representatives of these groups to weigh in on political decisions, cultural relativists have actually abandoned the hard-won rights that secularism granted all citizens.

Economic liberalism tends to favour communalist policies, as opposed to secular ones, because communalism plays a determinant role in the fragmentation of the people. When migrant workers in the U.K. were all initially seen as "foreigners," they regrouped and fought collectively for their rights as workers on par with the indigenous British workers. Then they were partitioned as South Asians, Turks, or Africans and encouraged to create their own communities, a process which highlighted their cultural differences and inevitably affected the earlier common struggle for rights. Now they are further divided along religious lines (South Asians, for instance, have been split into "Hindus," "Muslims," "Sikhs," etc.) to the point that human rights organisations now even speak about "Hindu human rights," or "Muslim human rights," etc. Capital and fundamentalist Right-wing organizations cannot dream of a better situation to further their ends. Additionally, the cultural relativist Left and feminists undermine their own political forces by failing to ally with and support progressives voices among citizens of migrant descent and by cowardly shrinking from the potential accusation of "Islamophobia"—a concept fostered by fundamentalists to silence dissent.

There is no denying that, historically, secularism alone, even within secular states, has not automatically granted full rights to women. Detractors of secularism have always been quick to point out all the inequalities that remain between citizens even after the separation of organized religions and state had been declared.

Secularism is Definitely a Women's Issue

There is no denying that, historically, secularism alone, even within secular states, has not automatically granted full rights to women. Detractors of secularism have always been quick to point out all the inequalities that remain between citizens even after the separation of organized religions and state had been declared. Women were not always included as equal citizens in revolutionary attempts to win equality and equal rights, nor were the colonized people in Africa and Asia during the previous centuries, nor are today's sexual minorities in many countries in Europe and North America.

However, what secularism does do is regulate and limit undemocratic political representation of "churches." This is not a small achievement, and we should hold on to it. My generation may have believed for some time that this struggle was one of the past, with the decline of the Catholic Church, but we have been

quickly awakened to the fact that it was replaced by Muslim fundamentalism as the spearhead of religious claims to political power during the second half of the twentieth century. Concomitantly, women's rights have suffered many new assaults, in the name of gods, with the rise of identity politics.

In other words, if secularism is not a sufficient condition to ensure women's rights, it is a necessary one, even an indispensible one. Because it favours the rights of communities over the rights of individuals, communalism induces a hierarchy of rights in which women's rights come last, after religious rights, minority rights, and cultural rights. And organized religions have generally been instrumental to the oppression of people and specifically of women.

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Many so-called "Muslim countries" experienced and still experience the rise of fundamentalist forces that seek to dictate to the state and to citizens their own interpretation of a supposedly divine law. In the words of Ali Belhadj, the then vice president of the Islamic Salvation Front (FIS) in Algeria, announcing on the eve of the December 1991 elections that, should FIS win these elections, it will be the end of parliamentary democracy and there will be no more elections under FIS rule: "If we have the law of God, why do we need the law of the people? One should kill all these unbelievers" (Belhadj). When the laws are not voted on by citizens any more but are ready-made in conformity to a supposedly divine prescription, this is the end of democracy—i.e., the hard-won power of the people to formulate, express, and change their laws according to their will by voting. And when the laws are religiously inspired and binding, they deny citizenship agency not only to agnostics and non-believers, but also to believers who read their religion with progressive lenses, and to followers of other non-recognised creeds. In such a context, women demanding rights are quickly labelled *kofr*, and anti-Islam by fundamentalists. The situation is similar in countries of emigration. While secular laws today defend women's access to universal rights, communalism induces introduces a "choice," just like in colonial situations, places women in a position in which they are forced to defend their rights or to defend community rights—i.e., mores and rules defined by conservative men. We will not dwell here on the contentious issue of "choice" and agency, but simply note that only secular systems free women from this double bind.

Secularism keeps religions and religious institutions from infringing on democratically voted legal rights. The secular system does not force individual women who are Roman Catholic believers to practice contraception or recourse to abortion; it simply denies the Vatican the right to enact a law forbidding reproductive rights in the name of god. It prevents the Vatican from forbidding citizens who want to from buying contraceptive devices at the nearest drugstore. Catholic women can still go through as many pregnancies as they feel they have to in order to fulfil their religious duties. The secular system does not force an individual woman who is a practicing Muslim to accept an equal share of inheritance on par with her brothers, but it denies Muslim clerics the right to make inequality in inheritance part of the law of the land. A Muslim woman will still be able to donate her share to her brothers if she believes this is her religious duty.

Secularism gives rights; it does not force rights down one's throat. As we women all experienced, enough pressure can be exerted on individual women by other individuals who have moral authority or influence over them to make a woman renounce her legal rights. Let's not add to her plight by forcing her to permanently have to "choose" between the law of the land and "religious laws" or "cultural rules" at the risk of exclusion from her family and social group. Secular laws are her most efficient (necessary albeit not sufficient) protection against religious or cultural oppression.

This explains why so many women of migrant Muslim descent (both believers in Islam and atheists) in Europe and North America are now on the forefront of the struggle for *laïcité*—i.e., total separation between religions and states—and against the introduction of separate laws for different categories of citizens in places where governments abide by the redefinition of secularism as state's equal tolerance of all religions. We find them in the U.S.A., in Canada, in France, in the UK, in Germany,

etc. (see Bencheikh, *Marianne et le Prophète*). Similarly, we find women at the forefront of secular struggles in the countries of the former Soviet bloc (such as Poland, Russia, Ukraine, Croatia, Serbia, etc.), where various denominations of Christianity have infringed upon the laws of the lands and reintroduced religious restrictions on women's rights (starting with reproductive rights).

While France's Leftist intellectuals slept for a long time over their glorious secular past, it was women of Algerian descent who first blew the whistle regarding the dangers of forceful Muslim fundamentalist groups challenging the foundational secular laws. Ahead of most Left thinkers and theorists, who ignored the fundamentalist danger for far too long and held the view that the priority was the anti-imperialist struggle, women of migrant Muslim descent insisted that struggles against capitalism and imperialism and struggles for secularism and against extreme right religious fundamentalist forces should be fought simultaneously, without prioritizing one over the other. For this reason, anti-fundamentalist women secularists in Europe have been repeatedly accused of betrayal by the Left. Running across the tide, a poem entitled "I was shot by my secondary enemy" points at the probable outcome of the main enemy theory, cherished by the Left for so long:

> Totally caught into my struggle
> against the main enemy,
> I was shot by my secondary enemy,
> Not from the back, treacherously, as his main enemies claimed,
> But directly, from the position it had long been occupying,
> And in keeping with his declared intentions that I did not bother about, thinking they were insignificant.
>
> (Fried, *Cent poems sans frontier*, my translation)

Maybe these "declared intentions" were seen as "insignificant" for the simple reason that fundamentalists smartly target women's rights first, and that the Left is still dominated by male thinkers.

Like most revolutionaries before them, the Left does not automatically include colonized people or women into the beneficiaries of equal rights, through democracy and secularism.

Because they have been made aware of the dangers of religious fundamentalism in the countries of origin of their families, and of the value of secularism in their countries of immigration, women of migrant Muslim descent are playing a major role in the defence of secularism, secular laws, and secular values against Muslim fundamentalists in Western Europe today. Numerous new organisations are emerging, very often atheist ones. The two first Ex-Muslim Councils were set up in Germany and the UK by women of Iranian descent. These are organisations that denounce the acceptance in Europe of the concepts of blasphemy, heresy, and apostasy; as indicated in their name, they uphold the right to leave the religion one has been brought up in, without being condemned to death and executed for doing so. In Canada, the defence of secular laws was initiated by the progressive women's organisation Canadian Council of Muslim Women, led by practicing believers, and by the No Sharia Campaign, which was led by an atheist Iranian woman. This is an illustration of the fact that believers and atheists can stand together for secular laws. Many believers want their faith to remain a private affair and want to prevent the religious-Right from infringing on the laws of the land. Similarly, it is women who lead the struggle for secularism in Eastern Europe, with the pro-Choice movement in Poland, the Coalition for Secularism in Serbia, the Femen in Ukraine, etc.

Relentlessly calling on the Left to defend secular laws and denouncing its unholy collusion with fundamentalist religious-Rights movements, secular women are also playing a major role in the enlightenment of the Left in Europe regarding the extreme Right-wing political nature of religious fundamentalist forces.[17] Prominent Leftist thinkers are still a long way away in their analysis of Muslim fundamentalism, with notable exceptions:

> The control of capital over bodies, its strong will to reveal their market value, does not at all reduce their control by religious law and the theological will to make them disappear. The ways of oppression are as numerous and inexhaustible as those of god are mysterious. The poor dialectic of main and secondary contradictions, forever revolving, already played too many bad tricks. And the "secondary enemy," too often underestimated, because the fight against the main enemy was claimed to be a priority, sometimes has been deadly. (Bensaïd)

If this awareness gains ground, and if a philosophical and political shift takes place in the Left in this respect, it will be thanks to the efforts of secular feminists and to their activism on the ground. We must admit that, at the forefront of this worldwide struggle are the women of Muslim heritage, as the adverse circumstances they face are of a magnitude that is nowhere to be found. In our countries of origin, we are facing not only unfavourable changes in the laws but also death, enslavement, and torture at the hands of armed religious militia, not only in one country, but on at least two

continents. This explains why those of us in the diaspora relentlessly denounce the early warning signs of rising fundamentalism and confront the Western Left when it does not take up the defence of secular values.

It is even more important today to reach the Left when the traditional xenophobic extreme Right tries to hijack the concept of secularism, equated to "Western values" by the National Front in France, just as the Hindu Right in India had been supporting Indian women's demands for secular family laws, provided the secular law was aligned with the Hindu family law. As we know, this unfortunately resulted in the abandonment of the struggle for a uniform civil code by Indian feminists. We do not want a similar fear of feeding into the extreme-Right in Europe—where they are everywhere on the rise—to be used against women's rights to secularism. The biggest danger we now face is the adoption of "equal tolerance by the state," as a perverse European definition of secularism vs laicity. So far, although it is a hard struggle, it is not—not yet—a lost battle, for feminist secularists can stand on the vast body of conceptual work inherited from the Enlightenment era.

If we can agree that secularism alone is not enough to guarantee women's rights, we must state that it is definitely a necessary condition without which "divine" laws are undemocratically forced upon women citizens. Whether it is the Vatican, the Orthodox Church, or the Evangelists throughout the Americas, Africa, and Eastern Europe; or Daesh, Boko Haram, the Taliban, al Qaeda, the Shababs, the GIA, etc. throughout Asia, Africa, the Middle East, and now in the western diasporas; or on a much smaller scale the Hindu Right or the Buddhist Right in South Asia and South East Asia, religious fundamentalists have again started the conquest of political power: democracy and women's rights have everything to lose in the process.

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Endnotes

[1]The word 'laïc' comes from the Latin word laicus, which itself comes from the Greek word λαϊκός, laikos; it means 'common, from the people' (Laos) i.e. someone who is not part of the clergy, hence, although a Christian who follows the Church, someone who is ignorant in theological matters; it is opposed to κληρικός, klerikos (clerc), a man who received religious education and is part of the clergy. Secularism comes from the Latin word saecularis. "Secular" is what belongs to the world—i.e., not to the Church.

[2]Taslima Nasreen has used the term *laicity* since 2009. See, also, "What is French '*Laïcité*?"

[3]The 2005 law on secularism passed under Sarkozy's presidency actually weakens the 1905 law; it moves from "no sign" of religious affiliation to "no ostentatious signs." This allows for interpretation. (Source?)

[4]As testified by the religious wars like the massacre of Saint Barthelemy (massacre of Protestants during several days in 1572 in Paris then extended to more than twenty cities in France), to the murder of Giordano Bruno (born in Italy in1548, a Dominican monk and a philosopher well informed of Copernic thesis who was accused of heresy and atheism tortured and burnt to death by the Inquisition), or the assassination of Chevalier de la Barre (accused of heresy and sacrilege—blasphemy was not any longer punished by death) who was tortured and burnt to death in 1766 at age nineteen for refusing to uncover his head when a religious procession was passing by and for owning the *Dictionnaire Philosophique* written by Voltaire, despite attempts by Enlightenment philosophers to save his life; the outcry that followed this ordeal and execution are believed to be one of the factors that sparked the secular revolution of 1789.

[5]In order to facilitate the reading of this article, I will use a capital letter for political affiliation—such as: extreme-Right, religious-Right, etc.—and the lowercase for rights as in: people rights, human rights, women's rights, religious rights, etc.

[6]It has been a long struggle to come to the Secular Republic. After a brief separation of church and state in 1795, Napoleon re-established the Catholic Church as the state religion with the Concordat of 1801. Today, this provision still exists in the region Alsace-Moselle and there are still many demands for the suppression of this exception to laicité. Article 10 of the 1789 Declaration of the Rights of Man and Citizen states that: "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order." The 1871 Paris Commune proclaims state secularism on April3, 1871; but it is cancelled after its defeat. From 1879, the French state establishes a national secularization program in order to eliminate the still very prominent influence of the Church in the education and health systems which since the Middle Ages have

been running charity institutions: the state takes charge of these institutions by organizing the funding, training and staffing in these crucial sectors, and by the removal of priests from the administrative committees of hospitals and boards of charity, and the substitution of lay women for nuns in hospitals. Jules Ferry, under the Third Republic, in 1881–1882 purges from any religious instruction all the state-run and state-funded secular schools. In 1886, the secularization of the teaching staff of the National Education system is established. Divorce and civil marriage become legal despite the Church opposition; civil marriage must be celebrated prior to any religious marriage, as it is the only one the Republic recognizes as legal, although the state does not interfere in the celebration of additional religious ceremonies. Seminarians loose the privilege of being exempted from conscription. Public prayers at the beginning of each Parliamentary Session are abolished, all religious actions and emblems are banished from the courts, the schools, the army and all public buildings. All these struggles lead to the laws of 1905 and 1906 that codify secularism as we know it today.

[7]In 2007, there was an outcry in France against the Discours du Latran, in which the president Nicolas Sarkozy (excerpts in French below) used the concept of "positive laïcité" and stated that a secular teacher will never be able to convey to the students the same morality standards as a religious one. He also speaks of France's Christian roots that should be most valued.

> "*La laïcité ne saurait* être *la négation du passé. Elle n'a pas le pouvoir de couper la France de ses racines chrétiennes. Elle a tenté de le faire. Elle n'aurait pas dû…. Nous devons … assumer les racines chrétiennes de la France, et même les valoriser…. Le temps est désormais venu que, dans un même esprit, les religions, en particulier la religion catholique qui est notre religion majoritaire, et toutes les forces vives de la nation regardent ensemble les enjeux de l'avenir…. Le fait spirituel, c'est la tendance naturelle de tous les hommes à rechercher une transcendance. Le fait religieux, c'est la réponse des religions à cette aspiration fondamentale…. Or, longtemps la République laïque a sous-estimé l'importance de l'aspiration spirituelle…. Ce n'est qu'en 2002 qu'elle a accepté le principe d'un dialogue institutionnel régulier avec l'Eglise catholique. Qu'il me soit* également *permis de rappeler les critiques virulentes dont j'ai* été *l'objet au moment de la création du Conseil français du culte musulman…. Et puis je veux dire* également *que, s'il existe incontestablement une morale humaine indépendante de la morale religieuse, la République a intérêt à ce qu'il existe aussi une réflexion morale inspirée de convictions religieuses. D'abord parce que la morale laïque risque toujours de s'épuiser ou de se changer en fanatisme quand elle n'est pas adossée à une espérance qui comble l'aspiration à l'infini. Ensuite parce qu'une morale dépourvue de liens avec la transcendance est davantage exposée aux contingences historiques et finalement à la facilité…. C'est pourquoi j'appelle de mes vœux l'avènement d'une laïcité positive, c'est-à-dire une laïcité qui, tout en veillant à la liberté de penser, à celle de croire et de ne pas croire, ne considère pas que les religions sont un danger, mais plutôt un atout…. Dans la transmission des valeurs et dans l'apprentissage de la différence entre le bien et le mal, l'instituteur ne pourra jamais remplacer le pasteur ou le curé….*" ("Le Président Sarkozy"; see also Mélenchon)

[8]Listen to "Ouech Dek" (on YouTube). A beautiful protest song, written and performed by twenty-six women artists in the three languages currently spoken in Algeria, confront the religious judges who drafted the 1984 family code that confirm the inferiority status of Algerian women by denying them adulthood status: "Hi judge! What's wrong with you?!"

[9]As we all experienced, neither revolution, nor secularism automatically grant rights to women. A pioneering feminist, Olympe de Gouges demanded in vain equal rights for all citizens including women**,** during the French revolution. She paid it with her life. Born in 1748, she was executed in Paris on November 3, 1793. On the model of the revolutionary *Declaration des droits de l'homme et du citoyen*, she wrote a Declaration of the Rights of Women as Citizens which proclaims equality of sexes in civil and political rights, as women's birthright taken away by prejudice. She wrote: "If women have a right to be executed, they should also have the right to speak up" ("*La femme a le droit de monter sur l'échafaud*; *elle doit avoir* également *celui de monter à la Tribune*"). On January 2016 the then French Minister of Justice (a woman) gave the name of Olympe de Gouges to the building hosting her Ministry.

[10]After the Shah Bano case, the Indian feminist movement abandoned the struggle for a secular uniform civil code, for fear that this demand be hijacked by the Hindu-right, and manipulated against the Muslim minority; similarly, there are feminists in France today who step back out of the battle for secularism because the National Front is attempting to hijack the concept.

> "An important concern that such communalisation creates for women's movement, is that

the conservative forces employ women themselves to counter the argument for women's protections and rights. For instance this argument for protection of personal laws was also used to protest the banning of *Sati* (widow immolation). Women activists opposing *Sati* were deemed as western and elite and a large counter procession was organized by women seeking the protection of their right to commit Sati." (Saxena)

[11]For instance, African countries such as Cameroon, Nigeria, the Gambia, Senegal, etc, and the whole of the Middle East, have separate family laws according to individual citizens' presumed religion. See details on what rights these religious laws deprive women of, in *Knowing Our* (WLUML). It is interesting to note that in former British colonies the plurality of legal systems is directly justified by "secularism" (defined as "equal tolerance" for all religions—in which case colonized people are at par with colonizers), while in former French colonies, as was the case in Algeria or Senegal, it is the racist assumption that colonized people ("*les indigènes*") do not—yet—deserve benefitting from laicity and may access it later, when they are more civilized. For the time being, they can be left with their customs. A reasoning very similar to the one Olympe de Gouges denounced in the male revolutionaries vis à vis women revolutionaries, during the French revolution. It can also be found in the Whites' Enlightenment discourse over Black people.

[12]The report celebrates the opportunity "to learn from the experiences and legal realities of women in the Women Living Under Muslim Laws Network (WLUML), living in India, Pakistan, South Africa, Algeria, the United Kingdom, France and other parts of Europe and the Arab world" (see also "Canada: Support"). The 1991 *Arbitration Act* allowed for the use of any laws in arbitration. It did not differentiate between areas such as commercial or family, and so the Act was permissible for religious communities. There were no Christian groups using the Act for family matters. The Jewish Beit Din religious tribunal did use private legally binding arbitration for commercial matters and in a year we heard that there were two family issues when the arbitration act was used. There were no records of any other arbitral awards.

According to the Canadian Council of Muslim Women (private communication, April 13, 2009), the *Arbitration Act* allowed for the use of private legally binding arbitrations and there were only two Jewish instances that came forward in their research. The CCMW went for no religious arbitration. Now, of course, no religious laws are recognized by the courts (see "Canada: Support"; "Muslim Women Embrace").

[13]I looked in vain for a decent article in English on this landmark case, but was discouraged by their bias (including calling a civil marriage between two Muslims a "Muslim marriage"! It is hard to believe but it is true) (see "L'annulation d'un marriage." See also "Nullité" Fourest; Bennhold; Rotman; Huyette).

[14]We note that no such request was ever made in Muslim countries where courts do not remain closed during times of religious fasting. Anger over "Ramadan" trial delay:

> "Critics say the decision is a breach of France's strict separation of religion and state. The trial of seven men for armed robbery was due to start on 16 September in Rennes. But last week the court agreed to a request from a lawyer for one of the accused to put it off until January. In his letter asking for the delay, the lawyer noted that if the trial were to start now, it would fall in the Muslim month of Ramadan. His client, a Muslim, would have been fasting for two weeks and thus, he said, be in no position to defend himself properly. He would be physically weakened and too tired to follow the arguments as he should."

[15]A testimony at the Stasi Commission:

> *En consultation ordinaire, chacun peut choisir son médecin. Mais en urgence? A Montreuil comme à Lyon, les soignants expliquent qu'il leur faut parfois parlementer avec des maris qui refusent une césarienne, parce qu'elle sera le fait d'un home…." C'est stressant, surtout quand on reçoit des menaces ou des insultes", soupire le docteur Pierre-Yves Barrier, gynécologue à l'hôpital de Villefranche, à Gleizé (Rhône). Il y a sept ans, un mari a refusé qu'il accouche par césarienne sa femme. Trois jours après, il apprend qu'elle a accouché ailleurs d'un enfant mort.* (In normal circumstances, one can choose one's medical doctor, but what about emergencies? In Montreuil as in Lyon, the medical staff has to take issue with some husbands who refuse a caesarean cut on the ground that it would performed by a male doctor. "This is stressful, especially when one is facing threats and insults" said docteur Pierre-Yves Barrier, gynecologist in Villefranche hospital, in Gleizé (Rhône). Seven years ago a husband refused that he performed a caesarean cut on his wife. Three days later he learnt that she gave birth, elsewhere, to a still born baby." ["L'hôpital confronté," *my translation*])

See also Thibodeau "Patientes voilées même à l'hôpital").

[16]"*Ce sont les musulmans qui devraient expliquer à leurs coréligionnaires qu'il faut* éviter *de ridiculiser Dieu dans*

l'interprétation de Sa parole. Si le Coran a recommandé le voile, c'est dans le seul objectif de préserver la dignité et la personnalité de la femme selon le moyen disponible à l'époque de la Révélation. Si, aujourd'hui, le même moyen ne réalise plus le même objectif, il ne faut pas s'attarder sur ce moyen mais le chercher ailleurs. Paradoxalement, ce qui préserve aujourd'hui la personnalité et assure l'avenir de la jeune fille, c'est l'école. C'est en s'instruisant que la femme peut se défendre contre toute atteinte à sa féminité et à sa dignité. Aujourd'hui, le voile de la musulmane en France, c'est l'école laïque, gratuite et obligatoire" (Bencheikh *Marianne et le Prophète* 144; see also Kacimi).

[17]For more examples of the role of women in promoting a secular analysis, see Lucas, *The Struggle for Secularism in Europe and North America*; it gives many examples of the leadership of women in secular struggles.

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KATHY ASHBY

Another Party

There she is again, of course with him
never letting her go anywhere alone.

Why are they both beaming,
as if they've been shopping and
showing off their new clothes? Do they think we forgot?

We stare.
He walks across the room.
She follows.

We gather like a herd smelling wolf
heads down; keeping thoughts from stumbling across the room,
after the last time, his sudden shouts, stomping feet, slamming doors,
wheels screeching down the side street,
when our hearts dipped in unison at her shrug, glistening eyes staring through us,
the smile super-glued
how we talked around it, him, her. Someone actually said, "The elephant in the room."

She finds a ride home; of course we want to help. Goodbyes are sweet and swift.
We hide behind how-must-she-cope and life-goes-on.
Somewhere between she lives and somewhere between she is.

Kathy Ashby is the author of the book Carol 'A Woman's Way,' *published by DreamCatcher NB. Kathy's poetry and stories have appeared in numerous publications such as* Descant Magazine, Canadian Woman Studies Journal, *and* Chicken Soup for the Soul, *and have been broadcast on the program* Outfront *on CBC Radio One.*