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**Between religious norm and state law**

**Foreword: Very questions about an uncertain future**

Within the so-called "Islamic world", the internal discourse between representatives of the religious norm on the one hand and those of the secular-state legalism on the other occurs more and more. In addition, there is a moral and ethical impotence among citizens around the world as a result of abominable abuses and violence, which are endangered by the state or which are tolerated by at least some places. Therefore, religious-minded intellectuals need to be asked whether and how religious ethical norms and values ​​can enter into state-guaranteed rights.

A second question concerns the desire of representatives of religious norms to transform these norms directly into state-guaranteed laws. Here, contrary to some fears of the Western cultural world, there is not necessarily an backward directed religious concept opposed to secular bourgeois structures, but the desire for wider parts of Islamic societies, to integrate religious and ethical norms, which are already present in the society, at the state level into state structures.

For a direct intervention of the state in a religiously defined area one can think of different possibilities; however all concrete state regulations show strong side effects, both for the non-religious-minded citizens - the representatives of a secular society form - as well as for the representatives of the religious-ethical norms themselves. In the case of doubt, these consequences can hardly be controlled by the state, unless all the parties involved in the society act in a consensus manner on the integration of religious norms. We are talking about a new kind of social contract, which is hardly ever thought in today's Europe, but will be necessary in the context of the Islamic world.

**Introduction: The essential positions of thought in East and West**

A tendency to secular social designs within West European history has been increasingly and vehemently represented since the end of the Second World War, often linked to fundamental, strongly anti-religious conceptions; it should be noted that it is a specifically western European thought model.

Both in the US, as well as in Asia, and especially in the Middle East, a religious attitude in society and politics is maintained, sometimes even emphasized.

The question of a non-religious society, in which religion can and should exist at best in the most intimate private sphere, has arisen during the French Revolution, and is also famously emphasized by today's France as a national achievement. It was consequently spread during the French colonial period under the Westernized upper class.

However, in most European countries there are manifold connections and references to religion, such as the corresponding regulations and restrictions (the head of state in Great Britain or Sweden is to be protestant), state-church treaties (concordat between the catholic church with the German or Austrian state) and countless administrative rules (cross in public classroom and courtroom in several European countries).

These facts directed by state law are not questioned in the Western world, but the option that Islamic-religious norms are translated into legal form in countries which are historically and from their majority society belonging to Islam (in one of its forms).

This dual dimension, which is mainly based in Western Europe, is not paying attention to the the power and vitality, the vehemence and the sometimes violent discourse, which is carried out in countries with a Muslim majority population between two camps and in which the Western European secularism representatives are involved. Thus we can consider as antagonists the "self-proclaimed seculars" with anti-religious attitude who wants to ban all manifestations of Islam (including clothing and behavior) from the public, and the (often self-proclaimed) "defenders" of the Islamic-spiritual tradition. Nevertheless a non-religious society is considered by the mass of muslim societies as unacceptable, and consequently the implementation of religious norms in law requires attention.

The major part of the simple population, on the other hand, is often pushed into the direction of „propagandists of a secular state“ or their counterparts, sometimes by internal pressure or on the other hand by external circumstances. This leads to behaviors that are misunderstood in the Western European perspective as the consent of the majority to secular values, or vice versa as a sign of "radical Islamic tendencies".

However, both are pure misinterpretation, as will be explained below. De facto, in the sight of West European journalism, the silent majority of "Islamic countries" is given a viewpoint which is interpreted corresponding to West-European expectation or a state respective anti-state rhetoric.

The real debate outside of Europe is not concerned about religious values ​​(that is, not about „Islam" as such), because this is not to debate for anyone in Muslim majority societies. It is rather a question of whether and how society and the public should reflect these values ​​- and whether concrete norms of laws should or should not include the corresponding norms of religion.

As is easily understood, this debate has nothing to do at all with the current disputes about Islamic religious attire, customs and religious practice that are currently being held in Central Europe: in Muslim majority societies, this is "normal" (also socially acceptable), whereas in European majority societies this attitude is regarded as mostly unusual, often seen in the context of islamophobia and newly awakened alongside the Islam hate image.

In clear words: in the first case mentioned above, it is about the majority that want to decide how to live and to deal with their religious norms, whereas in the second case, it is a majority society that does not know how to deal with its Muslim minority.

This difference in the initial situation and the ideologies and positions associated with it are reflected in the following questions and distort the perception of the phenomenon in the long term, which is why this introduction is regarded as indispensable by the author of these lines in order to allow a factual consideration.

**Short excursus: The difference between religious norm and state law**

To confuse a „religious norm“ with "law" is a misinterpretation, which has been interpolated for years in the Western reporting language about Islamic phenomena: the "Shari'a" as an "Islamic law", its regulations defined as "religious law".

Nothing is more false than that. In fact, these are religiously defined norms of behavior which are regarded as binding for Muslims who feel bound to religious practice. Whether or not it is actually carried out depends on the religiosity of the respective religious follower.

Similar references of norm and perceived obligation are also known from other religions, monotheistically or also non-monotheistically (like Hindu or Buddhist religious norms). These norms extend across practically all spheres of human-social life - and precisely for this reason, they are perceived as "oppressive" by people of the Western European cultic sphere, because in this way the "border" between what is for God and what is due to the emperor ", blurred, and sometimes seems indeed to disappear.

**The actual internal discourse of the "Islamic world“**

Within Muslim societies around the world, there has been a discussion since the end of the respective colonial period, whether and to what extent religious norms are to be transformed into a concrete form of the law. This inner struggle has never taken place under a favorable condition, but has always been overshadowed by the wish of the former colonial powers - especially Great Britain and France - that the idea of ​​a political Islam would not be strengthened.

Apart from the fact that this attitude was, and still is, socially-minded far from reality in Muslim societies, it also fired those forces who saw in the implementation of the Islamic-religious norms as a form of liberation from post-colonial aspirations. At the same time, this attitude provoked the pro-Western political forces, which saw themselves in the spiritual succession of Westernized state philosophy and consequently turned against the "Islamization of the Law".

Regardless of this, the majority of the Muslim populations wanted a legal form of Islamic norms only if there were concrete social grievances, which were thought to be turned away by "Islamic laws".

Apart from the special cases of the laicist Turkey and Tunis, the respective legislators adopted the most Islam-compliant regulations for the societal-relevant areas of marriage, divorce, foundation and inheritance and saved the remaining areas of legal relevance from the discussion. Only in few countries such as Saudi Arabia, some of the United Arab Emirates and Iran, other sectors of the economy and social affairs were also transferred to the legal system.

In the end, little has changed to this situation since the 1970s. However, in many societies with a Muslim majority, the desire is now also to introduce other areas, which are covered by religious norms, into concrete laws. These "representatives of the religious norm" can reach those parts of their societies which are remote from the "representatives of a legally anchored secular state" and have never been seen by secularist state representatives as partners, but only as subjects. Typically, the foreign-European representatives of the secular state, unlike their European counterparts, react not with the offer of open public discussion, but with state power, on the pretext of protecting the secular order.

**The effort to integrate religious norms into state laws**

The majority of the Muslim societies hope, through many transpositions of religious norms into state-guaranteed laws, to facilitate those religious forms of life that are practiced anyway. A minority of Islamic movements, on the other hand, would like to have a changed society that is mainly ethical and moral based on Islamic values ​​of religion.

The dilemma is that most of the representatives of a secular state are neither close to the feeling of the majority of their own population, nor did they succeed in improving the actual living conditions of hard everyday life. As a result, many Muslims increasingly want to abolish the dipolarity of Islamic norm and concrete law.

In the last few years, many proposals have been submitted by political actors who have been brought up in parliaments and have been heavily debated in the past few years. They have been concerned with the introduction, approval or rejection of certain forms of behavior based on Islamic religious norms. Often the parliamentarians were also segregated over party divisions, which also led to secular governments to offer mock-resolutions in the form of "islamized regulations".

However, two attitudes had a damaging effect: to prohibit a concrete transposition into a legal norm simply because it was brought forward from a particular socio-political direction ("the state has to prevent"), or any change as a defense against a part of one's own ("The secular state must be protected").

In both cases, two important arguments were missing: Should not a legal regulation convince all the essential parts of the population? Should not a weighing of religious norms be a matter of whether they are legally protected or excluded from the general public?

It is precisely these two points, which are actually discussed in Muslim majority societies, and which form a counter-pole to current European-secular ideas: unification of the entire society on Islamic-ethical basic norms (religious identity) and shaping of a public appearance of Islamic defined forms of behavior (public identity).

The first point leads "representatives of the religious-legal norms" to the demand that society is an idealized practice of Islam, the second point to the demand to transfer elements of religious realms from the private into the public, and this by law form.

**The concrete possibilities and corresponding consequences for state action**

In fact, most Muslim majority communities are currently facing a poor initial situation: some countries such as Syria, Iraq and Afghanistan are drained by war and civil war, divided into hostile factions, occupied by non-military and paramilitary troops, lacking functioning infrastructure and desolate education and health care, can not provide stability to the basic supply of the population with regard to nutrition, health and safety. Other states - especially the Maghreb states in North Africa - are internally split and a reflection of post-colonial foreign interests. Still other countries, such as Malaysia and Indonesia, have developed multireligious and multiethnic forms of society, in which strong Islamic perspectives partly create social unrest, partly lead to redefinitions of society in itself.

Therefore, a new consideration of state and society is necessary: ​​the state is not self-purpose, but has obligations to meet the citizen, meet basic needs; security of citizens and not oppression of ethical norms are helpful to further develop both state and society.

In the end, the state government only has the option of using force when it excludes its citizens from making decisions. All intellectuals and thinkers normally shut themselves up to such states, leaving the governments concerned only with the choice between defending external interests and the corrupt political circles associated with them - against the genuine interests of their own people, correspondingly with insurrection and restlessness, as well as in connection with extremist movements reacting to real needs by surreal deeds.

If, on the other hand, a state recognizes its citizens as a potential and also treats its ethical-religious views as a serious attitude, many non-legislative possibilities are open to it to take real influence on opinion formation and thus on concrete movements within the population.

Only if a free and honest investigation can be carried out to what extent the implementation of religious norms into a concrete form of law can help to achieve these goals, the Muslim societies could escape from the current turmoil. Nevertheless the thought that mere laws find ethical agreement, or the other way round that the rejection of religious norms could help to solve social problems, both are wrong assumptions.

Contrary to the position adherents of secularism are convinced of, these tasks can not be undertaken either by states as only actants or by ideologically influenced groups: social and political peace will only be possible through the ethical and religious consent of the population majority and their real participation in the discussion.