In a state of being religious

Notions of religiosity underlying Abdullahi an-Na'im's
model for a secular state

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CHAPTER 1: INTRODUCTION

1.1. Thesis topic

Why "notions" matter

This thesis deals with the work of Abdullahi Ahmed an-Na'im, a Sudanese born-scholar, reformist intellectual and human rights advocate. More precisely, it deals with his plea for a secular state in Muslim countries.[1] A scholar of law, Professor an-Na'im has devoted much of his work to the question of how human rights and constitutionalism can be justified on Islamic grounds, while at the same time granting Muslims the right to live in accordance with their religion. While in his early work he seeks to reinterpret aspects of *shari'a*[2] that are assumed to conflict with this objective, in later works an-Na'im advocates a non-religious state in Muslim countries. In his latest book, *Islam and the secular state*, he outlines a model for such a state and endeavours to justify it historically, theologically and empirically.

The objective of this thesis is not to discuss an-Na'im's secular state model in light of empirical studies on the practices of secularism. I do not seek to engage with Islamic theology or the history of Muslim societies to see whether his arguments stand the test. Nor do I want to evaluate the alleged "Islamic" legitimacy of his model or compare it with those of other advocates of secularism. Although I briefly touch upon these aspects, my main interest is with the theoretical foundations of an-Na'im's model. In particular, I am interested in how an-Na'im conceives of religiosity. What, in his eyes, does it mean to be a "Muslim" or a "believer"? How does he distinguish analytically between "religious" and "secular" states? How do they impact the outline of his model, and its internal consistency?

My interest in the theoretical foundations of an-Na'im's work is triggered first by the frequent use of terms like "Islam" and "Muslim" in public debate. In Norway, as in elsewhere in Europe, it is by now as common to categorise groups of inhabitants in terms of their assumed religious identities, such as "Muslim", as it is to describe them as "immigrants". From the point of view of students of religion, the term "Muslim" could designate "religious" or "secular" individuals; the criterion is whether or not a person chooses to identify as Muslim. In public debate, however, the term "Muslim" is often applied without reflecting on whether the person in question *is* religious or what this may imply.

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[1] My use of qualifiers such as "Muslim" and "Islamic" will be explained below.
[2] Shari'a is often referred to as Islamic *law*. However, the term also denotes a body of ethico-religious norms. As such, its scope is often considered to be wider than that of *positive law*. In this thesis, I use "positive law" or "state law" for law enacted by a legislature. See chapter 3 for a discussion of an-Na'im's approach to shari'a.

At the same time, being Muslim is linked to certain motivations and inclinations. For example, notions of religious "Muslimness" have been evoked in debate on the *hijab*, the "Muslim headscarf" (see e.g. Klausen, 2005; Borchgrevink, 2007). In this context, being "Muslim" is often seen as the primary motivation for people's actions, both by advocates and opponents of the right to carry it. Adherence to Islam is also used as an explanation in cases of forced marriage, female genital mutilation and honour killings.[3]

Notions of religiosity: A conceptual approach

The often self-explanatory manner in which terms such as "Muslim" and "religious" are used in public debate provides an interesting contrast with the variety of meanings they embody for those who identify with them. Also in academic literature about Islam, such a variety is often assumed, but not necessarily reflected in scholars' conceptual approach.

A case in point here is the treatment in scholarly literature of capacities such as Tariq Ramadan (Switzerland), Khaled Abou El Fadl (USA), Abdoulkarim Soroush (Iran), Abdulaziz Sachedina (USA), and the late Nurcholish Madjid (Indonesia). These and other scholars, activists and intellectuals, including Abdullahi an-Na'im, are referred to in scholarly anthologies as "reformists" or "modernists";[4] their works are also discussed in graduate course curricula. One important premise for reformists is that the disciplines and sources of Islam – especially those of Islamic *law* – need reinterpretation and reform in the encounter with modern society. However, literature and course discussions most often focus on reformists' interpretative strategies for reform or the contexts in which they operate. The assumptions behind their use of concepts such as "Muslim", "religion" or "religiosity" are rarely analysed in a systematic manner. In my view, inquiring such assumptions is of outmost importance, as they have impact on the outcome of reformists' work.

I have therefore chosen to study Abdullahi an-Na'im's model for a secular state, to see how notions of religiosity inform the work of one Muslim thinker. An-Na'im's secular state model is particularly well suited for a conceptual study, as *secularism* entails focusing – if not solely – on religious or non-religious dimensions people's identities.[5] His model is intended to secure a space for religious practice as well as state neutrality towards religion. It outlines civil and political spheres where citizens can partake regardless of their religious affiliation.

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[3] Even if such phenomena hardly can hardly be justified by Islamic foundational texts. The American Professor of History and Religious Studies, Philip Jenkins (2008) has observed the labelling tendency.

[4] Other terms include "liberal" and "progressive". See e.g. Esposito and Voll (eds.) *Makers of Contemporary Islam* (2001); Kurzman (ed.): *Liberal Islam* (2002); Safi (ed.): *Progressive Islam* (2003); Kamrava (ed.), *The New Voices of Islam* (2006); Vogt et al. (eds.), *New directions in Islamic thought* (2009).

[5] An-Na'im sees secularism as a mediation between state, religion and politics. His use of the term, as well as the practices and political theories associated with secularism, is discussed in detail in later chapters.

To advocate such a system, an-Na'im must necessarily start from notions of what it means to be religious, that is, notions of *religiosity*.[6] In this thesis, I try to identify such notions in his work. Although an-Na'im does not explicitly discuss the term himself, I will argue that notions of religiosity are essential in order to address strengths and weaknesses in his model.

1.2. Research justification and research questions

How may this study be justified as a research project? In my view, the thesis rests on what Liv Hausken, a Norwegian scholar of media studies, calls theoretical and societal justifications.[7]

To start with the former, theoretical justifications do not rely on the object of study being widespread, but on whether the study might challenge existing concepts of a given area of research (Hausken, 2009, p. 158). An-Na'im's texts, which constitute my primary material, do have a certain impact within academia. His works on Islamic reform, human rights and secularism are read by and commented upon by fellow scholars. Among non-scholars he is less known, except in groups of Muslim political activists. As a reform intellectual, an-Na'im is not necessarily representative or typical. Thus, my study will primarily be useful in that it analyses the *internal* impact of notions of religiosity in an-Na'im's work. Nevertheless, similar or divergent notions of religiosity can also be traced in the works of other thinkers. As such, my study of an-Na'im has value as an example of how to approach Islamic reformism. I will therefore try to develop analytical categories with which to assess an-Na'im's notions that could prove valid outside the particular context of his works.

Theoreticians such as Asad (1986) and Beckford (2003) have held that definitions can never capture a universal essence of religion. Research should therefore set aside questions of what religion "abstractly is" and ask *how*, *where* and *why* religious actors, ideas or systems interact with their environments (Rønnow, 2007, pp. 79, 95). Nonetheless, asking what religiosity "is" *as a part of research* could prove decisive in many cases. In an-Na'im's case, asking what is "religious" about his notions of religiosity may shed light on what he considers to be the core of religious conduct, and what, on the other hand, belongs to "politics" or "culture". What is found in such a reading of his texts may not be generalised without necessary caution, as an-Na'im's notions are embedded in particular historical and social circumstances. But the insights from my thesis could enhance reflection on basic concepts in the study of religion. As such, it has general theoretical value.

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[6] "Notions of religiosity" is a key concept in this thesis; it is presented and discussed in detail in chapter 4.
[7] Hausken holds such justifications valid for all research in humanities and social sciences (2009, p. 154).

Research with a societal purpose, on the other hand, concerns objects with certain prevalence in a society or culture (Hausken, 2009, p. 156). Such research could highlight power relations between institutions or groups. An-Naʻim's audience may be limited, but his discussion of secularism touches upon issues with relevance in many societies. These include how religious freedom might be limited, and whether citizens' religious views should influence politics. Such issues are discussed in the media, by authorities and organisations, and they are studied by scholars. In addition, an-Naʻim's model is explicitly meant for application. Drafts of his *Islam and the secular state* were translated into Arabic, Turkish, Urdu, Persian and four other languages, and discussed by activists and politicians. As such, my thesis has societal value as a contribution to general and specific debates on secularism and an-Naʻim's model. On this basis, I have formulated my inquiry in this thesis as follows:

- *How do notions of religiosity in Abdullahi an-Naʻim's work impact his model for a secular state, and what are the analytical and practical implications of this impact?*

As explained below, I see an-Naʻim's model as closely connected to an overall objective in his work, namely his advocacy of a religiously legitimate alternative to an Islamic state. To get an understanding of this connection, I will also answer these additional research questions:

- *What view of shariʻa is reflected in an-Naʻim refutation of an Islamic state?*
- *How can the notions of religiosity invoked in his work best be characterised?*
- *What makes an-Naʻim's version of secularism religiously legitimate, in his own view?*

1.3. Theory: Tools for reasoning

My discussion of an-Naʻim's state model and the notions underlying it will draw on theories of secularism, secularisation and religion. I will approach them in a three-fold manner.

First, I distinguish between religion of first and second order (Beckford, 2003, p. 7). Objects, texts, institutions and actions may all be perceived by actors to express their religion. As such, they are phenomena of the first order. Many theoreticians claim that religion in this sense should be studied as a human product of meaning, appearing in certain cultural and social settings and determined by historical circumstances (Krogseth, 2007, p. 77). To make sense of these social phenomena, scholars apply interpretative categories such as "religiosity", "myth" or "ritual". These concepts are second-order accounts of religion; they are abstracted from "reality" or the material of the scholar (Beckford, 2003, p. 4; Smith, 1998, p. 281).

Second, and accordingly, in assessing an-Na'im's work I develop four different but closely related "notions of religiosity" as a second-order concept. These "notions" are conceptual tools; they refer to observations, opinions and arguments of the first order made by an-Na'im, and are not "found" in the texts as such. Nor are they necessarily in agreement with what an-Na'im would see as characteristic of religiosity.

Third, I use my own and other theoretical approaches in order to discuss traits in an-Na'im's texts. The British sociologist James Beckford notes that social theory over the last decades has approached religion in two ways: By "grand theories" explaining, for example the role of religion in modern societies, or by small-scale elaborations of concepts such as "secularism" that may shed light on empirical material (Beckford, 2003, p. 31).[8] This thesis does not adhere to a specific theory of religion. Instead, I apply theories as tools for reasoning; by being "held up" against an-Na'im's text, they bring out features of it.

In the chapters that discuss secularism, I draw in particular on Rawls' outline of *public reason* (Rawls, 2006) and Habermas' modifications to it (2008). This is because an-Na'im has adapted Rawls' concept in his model, but also because it puts an-Na'im's justification of secularism in perspective. In addition, Talal Asad (1986, 2003) and Charles Taylor (1999, 2007) offer accounts of how "the religious" and "the secular" are connected. They have proved helpful in discussing the impact of notions of religiosity on an-Na'im's model. As noted below, I also refer to of empirical studies. Aside from noting the nature of the material in question, I make no point of distinguishing such studies from theories.

Note also that by an-Na'im's "model", I refer to his argument for a secular state in chapters 1-3 and 7 of *Islam and the secular state*. In my discussion of the model I also draw on other accounts by an-Na'im (2008b and 2009a). The stated purpose of an-Na'im's book is to provide a framework for political action, rather than contributing to theoretical clarification (an-Na'im, 2008a, p. ix). As such, his approach should be regarded as a *prescriptive model* of secularism rather than as a theory, although I will also refer to it as a *concept* of secularism.[9]

1.4. Method: Reading in context

The material of this thesis consists of written texts by an-Na'im and others. From the theoretical perspective outlined above, it follows that I see texts as human products: They carry meaning embedded in certain cultural and historical circumstances. To analyse the texts

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[8] Beckford defines social theory as "[F]rameworks of concepts configured in such a way as to offer accounts of social phenomenon at a relatively high level of generality (Beckford, 2003, p. 11).

[9] My terminology also conforms to an-Na'im's own use: He characterises his proposal as a "model" several times (an-Na'im, 2008a, pp. 278, 292), although his most frequently applied term is "framework".

I therefore apply a hermeneutical method.[10] For the purposes of this research project, hermeneutical analysis therefore means that I seek to achieve an *understanding* of my material, but that such an understanding is not immediately given. Rather, texts are given meaning when they are read in light of particular circumstances (Lægreid and Skorgen, 2006, p. 9). This implies reading an-Na'im's texts *in context*, on two levels. First, I consider his texts as related to each other as *parts*, where a text and its distinctive passages give meaning when read in relation to each other and a body of work as a *whole*. Second, I try to show how his texts are informed by those of other authors and shaped by historical circumstances.

As outlined below, I relate an-Na'im's model of the secular state to an overall objective in his authorship, namely the refutation of an Islamic state based on shari'a. I therefore read his texts in light of the attempt to realise such a state in post-independence Sudan (chapter 2); of perspectives on shari'a (chapter 3); and of theories of secularism (chapters 5 and 6). This is not to say that the meanings of an-Na'im's texts are exhaustively understood in light of this specific context. My perspective results from a gradual process of reading and reflection. In this process, I have selected some texts and thereby omitted others. As such, my account is specific by all means. It reflects my own research interests and considerations.

Clemens Cavallin, a Danish scholar of religious studies, describes method in scientific enquiry as a systematic attempt to align one's theoretical approach to a material approach (Cavallin, 2006, p. 22). In my view, the hermeneutical method reflects a two-fold relationship with material and theory. In one sense, the theories that I apply are tools from a "toolbox"; they form part of the hermeneutical horizon of the material. In a different sense, the hermeneutic reading becomes a distinct method; it "flows from" the theoretical perspective of texts as time-bound constructs of human meaning (Cavallin, 2006, pp. 16-18, 24-26).[11]

1.5. Reflexivity: Methodological agnosticism

The present account will inevitably be influenced by my own view of the object of research. As mentioned, I agree with Beckford (2003) that actions and institutions seen by actors as representing their religion should be studied as social phenomena. I consider the borders between what is "religious" and "secular" – institutionally and on an individual level – to be constantly negotiated by human actors. Abdullahi an-Na'ims scholarship is primarily

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[10] From Greek: *hermeneuein*, meaning to express, to interpret and to translate (Lægreid and Skorgen, 2004, p. 9). I do not adhere to a larger philosophical hermeneutic, like that of Gadamer or Taylor.

[11] In the latter sense, the relationship between theory and method is *particular*, as a different theoretical approach would open for a different method. An-Na'im's opposition to an Islamic state model could merit, for example, a discursive perspective, as well as subsequent analyses of his texts as representations in a *discursive field* of contestation. Such an extensive approach would however limit the space available for accounts of secularism.

concerned with one such "religion", namely Islam. An-Naʻim is a self-designated Muslim, and central parts of his oeuvre is directed towards – but not exclusively read by – other Muslims (see an-Naʻim, 1990, p. xiii; 2008a, p. vii). To a great majority, being "Muslim" entails, among other things, acknowledgement of the existence of a God beyond this-worldly reality – and the possibility of some for of interaction between this God and human beings.

Personally, I do not share the world-view of an-Naʻim and many of his readers. My view of the object of study on this points amounts to what is known as *methodological agnosticism*. This means leaving out any assessment of the truth claims of religious actors (Beckford, 2003, p. 29). On the other hand, in holding "Islam" to be a site of human construction, I come close to an-Naʻim's own position, at least on the area of textual interpretation. For an-Naʻim, the Qurʼan contains "the conclusive divine revelation". Nevertheless, he holds, Muslims perceive the content of the Qurʼan as authentic due to intergenerational consensus since the 7th century (an-Naʻim, 2008a, p. 13, 12). Thus, he argues, any shariʻa rule derived from the Qurʼan could be reinterpreted through human reasoning.

This is worth noting, as my own epistemological stance could make me favourably inclined towards an-Naʻim's position. I have tried to compensate for any potential bias by accounting for the criticism against an-Naʻim's view, notably in discussions of shariʻa and religiosity as agency.

1.6. Introducing an-Naʻim

Abdullahi Ahmed an-Naʻim was born in a village outside the Sudanese capital Khartoum in 1946. After being trained in law at the University in Khartoum, he continued his education in law and criminology in the United Kingdom, finishing his PhD in Edinburgh in 1976. He worked as lecturer and assistant professor in Khartoum until 1985. He then fled the country, following the execution of his mentor Mahmoud Muhammad Taha, leader of the Islamic movement called Republican Brothers, of which an-Naʻim was a member for sixteen years. An-Naʻim has held academic positions in the USA, Canada, Sweden and Egypt. Since June 1995 he has been Professor of law at Emory University in Atlanta, Georgia.

Much of an-Naʻim's work has been committed to finding a way to reform Islamic law to accommodate human rights and modern constitutional government. To be legitimate, an-Naʻim holds, such reform must be adapted to the circumstances in which it takes place. In the case of Islam, Muslims must be given the right to live in accordance with Islamic precepts, including Islamic laws. Through "internal discourse", these precepts can be interpreted to

accommodate changing societal circumstances. In general, an-Na'im's scholarship is often normative and explicitly intended to enhance the possibilities of "social change".[12]

Although an-Na'im's work displays considerable elements of continuity, two approaches towards reform – one early and one later – can be observed. In early writing he advocates a reinterpretation what he calls "public aspects" of Islamic law by the so-called evolutionary approach developed by his mentor Taha. The core of this methodology is that Islamic law must be based on the verses of the Qur'an revealed in Mecca, believed by Taha and an-Na'im to contain a more universal part of God's message. Reform along these lines could replace historical versions of shari'a with Islamic law in a modern version.[13] An-Na'im promotes these ideas in his acclaimed and disputed *Toward an Islamic Reformation* (1990).

In later texts, an-Na'im rejects that public law can be based on any version of shari'a, and downplays his reform approach. From 1999, his work is more devoted to developing an "Islamic" variant of secularism, culminating in *Islam and the secular state* (2008). Here, he argues for the necessity of a secular state for Muslims. Within this state, constitutional government, respect for human rights *and* reform of shari'a can be achieved, he claims.

Survey of material: Primary sources

My analysis is based on several texts by an-Na'im, with *Islam and the secular state* as a major work of reference. Here, an-Na'im outlines his version of secularism. In brief, its essence is a secular state that neither promotes religion nor intervenes with religious conduct, except for guaranteeing its freedom. Religion may however influence *politics*.

In his book, an-Na'im puts forth historical and theological arguments for his case. Three of its chapters are devoted to empirical studies of secularism as practised in India, Turkey and Indonesia, respectively. In the preface, an-Na'im states that *Islam and the secular state* is "the culmination of [his] life's work" (an-Na'im, 2008a, p. vii). In my view, an-Na'im's early and later works diverge on several points, such as the role of shari'a, and the nature of secularism. However, his late and early works share a major objective: To refute an Islamic state based on shari'a. They are also united by a common epistemological position on the interpretation of religious texts (see previous section). Finally, an-Na'im's reverence for a form of secularism could arguably be traced back to the early 1990s (an-Na'im, 1993a).

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[12] One of his research programs trains scholars to become active human rights advocates and seeks to establish networks of scholars and activists. See http://www.law.emory.edu/aannaim/; "Advocacy". In the period 1993-1995 an-Na'im served as Executive Director of Human Rights Watch Africa.

[13] Notably penal, constitutional and family law. See chapter 3 for a discussion of an-Na'im's reform proposal.

I have therefore chosen to read *Islam and the secular state* in light of earlier works. This includes *Toward an Islamic Reformation*, as well as other articles, notably on problematic aspects of shari'a (1986; 1987b; 1993b, 2000); Islamism (1999a); and secularism (2003a; 2003b; 2008b; 2009a). I have also found his book on African constitutionalism useful (2006). To assess an-Na'im's broad authorship in full is a formidable task. Due to the focus of this thesis – and its limitation in length – I have omitted from my material texts by an-Na'im dealing mainly with human rights questions, the most comprehensive being his *Human Rights in Cross-Cultural-Perspectives* (1992). I have relied on English texts only, and to my knowledge, all texts by an-Na'im that are relevant for this thesis are available in English.[14]

Survey of material: Secondary sources

Although an-Na'im's major work on secularism is recent, it has been subject to commentary. In this respect, postings on the web log *The immanent frame* edited by the Social Sciences Research Council have been useful, especially those by John L. Esposito, Daniel Philpott, Saïd Arjomand and John Bowen (2008). The political scientist Bassam Tibi has criticized an-Na'im in his latest book (Tibi, 2009). In addition, an-Na'im's model is discussed by social anthropologist Sindre Bangstad (2009a).[15] I return to these accounts in chapters 5 and 6.

The bulk of existing literature on an-Na'im's work deals less directly with secularism. Most of it discusses an-Na'im's *Toward an Islamic Reformation*, in particular his adherence to the evolutionary approach of Mahmoud Muhammad Taha, which is often criticised. The most comprehensive treatment of this part of an-Na'im's oeuvre is the 1993 anthology *Islamic Law Reform and Human Rights*, edited by the Norwegian scholars Kari Vogt and Tore Lindholm. This book discusses several aspects of *Toward an Islamic Reformation*. The contributions by the political scientist Ishtiaq Ahmed and an-Na'im himself are particularly relevant to my discussion of an-Na'im's take on shari'a.

In an interview with the Norwegian scholar of religious studies, Kari Vogt (1995) an-Na'im elaborates on experiences from Sudan and his view on Islamism. My account of events in Sudan in chapter 2 will draw on this interview as well as one by Packer (2006); Mohamad Mahmoud's book on Taha (*Quest for Divinity*, 2007) has also been useful in this respect.

An-Na'im's work is also frequently mentioned in the increasing number of articles (see e.g. Campanini, 2009; Gould, 2008) and anthologies (Kamrava 2006; Kurzman, 1998; Vogt et al., 2009) compiling and categorising modern Islamic thought. Much literature also assesses

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[14] During the course of writing, I asked professor an-Na'im for an interview to supplement my material. Unfortunately, he declined, due to lack of time (an-Na'im, 2009c).

[15] It should be noted here that Bangstad has contributed as assistant supervisor for this thesis.

an-Na'im's on human rights (see e.g. Mayer, 1999). Following the focus of this thesis, I have not taken this literature into consideration. I have made use of other secondary literature in my discussions of Sudan, shari'a, Islamism, religiosity and secularism. I do not read Arabic, but literature in English on these topics abounds and is to my mind sufficient for my discussion.

1.7. An-Na'im as Islamic reformist

In this thesis, I treat Abdullahi an-Na'im as a reformist intellectual. In literature on modern Islam, reformism is often denoted by the Arabic term *islah* (reform), which is associated with the so-called modernists around the turn of the 20th century (Kurzman, 2002, p. 6-16).[16]

Today's reformists are both similar to and divergent from modernists. They seek to reinterpret Islam to achieve social and political change; they criticise dominant interpretations of shari'a; they defend democracy, human rights and the rule of law (Vogt, 2005, p. 299-305). This is also characteristic of an-Na'im. However, like many other reformists, he dismisses modernists' attempt at shari'a reform for lacking methodological reflection. He is particularly critical of the claim – made by Abduh and others – that Islamic concepts like *shura* (consultation; see chapter 2) can equal modern notions of democracy (an-Na'im, 1990, p. 61).

My categorisation of an-Na'im is in line with that of Vogt (1995) and Kamrava (2006), and it situates an-Na'im vis-à-vis earlier reformist tendencies. A further contextualisation of an-Na'im's work is offered in my account of his notions of religiosity in chapter 4.

1.8. Terms and transliteration

As noted at the start of this introduction, I am uneasy about using terms without qualification; in fact, this is part of my motivation for writing this thesis. I therefore stress that in using "reformist" of an-Na'im and others, I do not refer to them as a particular "group" easily distinguishable from others. Nor do I imply that the term exhausts the actions of those it refers to (Kurzman, 1998, p. 8-9; Vogt, 2005, p. 299-302).

These precautions also pertain to my use of the qualifiers "Muslim" and "Islamic" in this thesis. But to discuss an-Na'im's texts properly, I cannot avoid using such terms in one way or another. I therefore use "Muslim" of individuals who self-designate as belonging to Islam, as well as of areas or countries inhabited mainly or predominantly by such people.[17] "Islamic" refers to practices and institutions that are justified by or defined in terms of their conformity with what is generally perceived as "Islam".

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[16] See chapter 4 for an account of Islamic modernism.
[17] Note that an-Na'im on his part uses "Islamic societies" for such areas or countries.

Other terms are explained as they appear. As to transliteration of Arabic terms, I follow the *International Journal of Middle Eastern Studies* guide, but I have omitted diacritical marks except for medial "ayn" (') and "hamza" (') (appearing within words). And I have put all Arabic terms in italics, except for proper names and frequently used terms such as Qur'an, shari'a, Sunna and ulama.

1.9. Thesis outline

The subsequent course of this thesis will be as follows. In the first two chapters, I try to place an-Na'im's thought in wider contexts. After the current introduction in chapter 1, chapter 2 gives a brief account of developments in post-independence Sudan that are critical to the advent of an-Na'im's scholarly and activist work. I relate these preconditions to an-Na'im's analysis, in early writing, of the ills of the Islamic state. Chapter 3 concerns an-Na'im's approach to shari'a, the change in which, I argue, is related to his recent embrace of secularism. I try to show how an-Na'im "re-appropriates" shari'a: from being a direct source of public law it becomes a code for personal religious conduct outside state domains. I also briefly discuss an-Na'im and Taha's reform methodology.

Chapter 4 presents notions of religiosity in an-Na'im's work. Drawing on examples from early and later texts by an-Na'im, I argue that his view of religiosity is fourfold: he sees it is as a primary source of motivation; as a conviction; as determined by human agency; and as free and autonomous. I briefly draw parallels between these notions and other scholars' views.

Chapter 5 goes on to discuss secularism in detail. It has two parts. I start by encircling secularism as a result of historical events and as a set of practices. Attention is devoted to different Muslim attitudes towards the public role of religion under secularism and of its "Western" origin. The second part presents the basics of an-Na'im's secular state model through a comparison with other theories of secularism, notably Rawls'. I also highlight how notions of religiosity have impact on his model.

Chapter 6 is the longest chapter. It starts by showing how an-Na'im demarcates "the secular" from "the religious". On this basis, I discuss three areas where notions of religiosity contribute to weaknesses in an-Na'im's model. First, I argue that it depends too heavily on adherents being able to reflect upon all aspects of their religion, something that cannot be presupposed. Second, I argue that the model fails to answer how reform of shari'a can carried out without undermining secularism. Third and finally, I claim that in arguing for his model an-Na'im takes a too narrow view of Islamism's appeal. This is a paradox, as the model is a response to claims of an Islamic state. Chapter 7 briefly summarises the thesis and concludes.

CHAPTER 2: A SUDANESE LEGACY

2.1. "Becoming a Muslim"

This thesis argues that notions of religiosity in Abdullahi an-Na'im's work relate closely to his view of shari'a and its role in a secular state. To prepare my subsequent discussion of this topic, in the present chapter I draw particularly on texts from 1986 to 1999 to account for two aspects of an-Na'im's engagement in Sudan. First, I assess an-Na'im's involvement with the Republican Brothers – a Sudanese reform movement – and its fate during the so-called *islamisation* in Sudan. Starting in 1977, this process led to laws based on shari'a being introduced in 1983. Second, I outline an-Na'im's case against an Islamic state as promoted by Islamists in Sudan, as well as in Pakistan and Iran. I focus in particular on an-Na'im's criticism of human rights violations in shari'a. Finally, I also anticipate how an-Na'im's analysis of Islamism relates to notions of religiosity.

Three preconditions of post-independence Sudan

In an interview conducted by the Norwegian scholar of religious studies Kari Vogt (1995, pp. 36-53) an-Na'im has described the post World War II Sudan he grew up in as ridden by "great poverty" but at the same time "stable and peaceful" until the 1970s. Roughly from this decade and onwards, conflicts started to arise in Sudan that were partly related to the role of Islam in society, which shaped an-Na'im's personal and professional orientation. The conflicts have roots in certain social and political conditions in modern Sudan.[18]

First, Sudan is a vast country – Africa's largest – characterised by great religious and ethnic diversity. During the British/Egyptian joint government (condonium) in Sudan between 1898 and 1956, a system of Indirect Rule granted government power on local and regional level to tribal and religious leaders. This system included acceptance of parallel legal systems. Here, European-inspired law in civil and penal matters (largely in central/northern Sudan) co-existed with customary law in rural districts and Islamic family law for Muslim inhabitants (an-Na'im, 1986, p. 198-199). It has also included promotion of religiously differentiated education. Despite the gradual replacement of this system by a more centralised bureaucracy legal pluralism has joined forces with British rule to partly strengthen divisions between a predominantly Muslim Arab north and more religiously and ethnically diverse south Sudan (Collins, 2008, pp. 36-38, 43, 48).

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[18] For a thorough account of modern Sudan, see Collins (2008).

Second, political life in Sudan since the country's independence in 1956 has been characterised by pervasive sectarian/religious divisions. This is pointed out by both an-Na'im (1987a, pp. 8, 25) and other scholars (Collins, 2008, p. 40, 51; Esposito and Voll, 2001, p. 124-125). The multi-party republic established after the independence has been dominated by two forces, the Umma Party and the National Unionist Party (later Democratic Unionist Party, DUP). Both are dominated by Sufi followers (of the Ansar and Khatmiyya movements respectively); they are based in the Muslim north; and they deem Islam to be integral to politics. However, both parties have failed to represent and mobilise broader segments of the population. Their rivalry on the regional, local and personal levels has cut short efforts toward national unity and contributed to the 1964 and 1969 military coups and the subsequent islamisation of Sudan (Collins, 2008, p. 92-93; Esposito and Voll, 2001, p. 124).

Third, demands for an Islamic constitution and introduction of shari'a as state law have been contested. Disagreement on this point has contributed to the division between northern and southern Sudan, and ultimately the civil wars of 1955–72 and 1983–2005 (Collins, 2008, p. 164-170; Kepel, 2002, p. 179). As will be discussed in more detail in the next chapter, shari'a could be seen as a law meant for application in courts. On the other hand, it is also a set of religious norms extending beyond "law" in such narrow sense, prescribing rituals, regulating belief and judging social behaviour. As such, it is described as "God's way" (El Fadl, 2005, p. 321), a gateway to the conduct of Islam. Not withstanding its crucial importance to Muslims, it is contested whether shari'a can actually be interpreted to sanction modern human rights and citizenship, in particular for women and non-Muslims (see e.g. Mayer, 1999). In Sudan both non-Muslims and many Muslims have resisted application of shari'a as positive law for such reasons.

An-Na'im and the Republican Brothers
The question of implementing shari'a lies at the core of an-Na'im's professional, personal and political life both before and after his departure from Sudan. As a law student in Khartoum in the 1960s, he specialised in both human rights law and shari'a, reaching the conclusion that shari'a clearly violated citizenship for women and non-Muslims. According to an-Na'im, this conflict resulted in a personal tension. An-Na'im was raised in a family of Sunni Muslims where religious practice was largely limited to celebrating religious holidays; nevertheless, he felt a Muslim identity. At the same time, the ills he attributed to shari'a conflicted with his own wish for Sudan to be a democratic, pluralistic and egalitarian society (Vogt, 1995, p. 38-39; Packer, 2006). In 1967, he encountered the ideas of Mahmoud Muhammad Taha, the

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leader of the religious movement Republican Brothers (*al-Ikhwan al-Jumhuriyyun*), also termed Republicans. An engineer by profession, Taha came from a religious Sufi background and wrote extensively on the topic of Islam. He argued that to achieve individual rights and social justice, the Sudanese constitution should be reformed in line with Islam in an "original form" (Packer, 2006.)

An-Na'im joined the Republican Brothers. Founded as an anti-monarchical political party in 1945, the movement eventually became a more loosely organised social community, devoted to Taha's ideas of Islamic reform and led by him until his death in 1985 (Voll, 1900, p. xii). They mobilised among young, educated, lower middle class northern Muslims and attracted a few thousand followers in total, active members counting no more than 200 people. It comes across as a closely-knit community, resembling a Sufi brotherhood (*tariqa*) in terms of intensity and community. Its core members were engaged in a number of political issues; they were also committed to public preaching and private Sufi-style rituals, including recitals of prayers and poems (*dhikr*) (Mahmoud, 2007, p. 30-34). Vogt stresses their advocacy of gender equality; this is also emphasised by an-Na'im.[19]

An-Na'im was among the members who lived over time in Taha's house in Omdurman north of Khartoum with his family, devoting all his spare time to movement activities and being spokesperson for the group from the 1970s (Vogt, 1995, p. 41; Voll, 1990, p. xi). Meeting Taha's message and getting involved with the movement resolved the tension between his Muslim identity and his political ideas. In the interview with Vogt, an-Na'im stresses that the relief was part of his rebirth as a Muslim:

> When I joined Taha's movement, I felt that I became a Muslim. Before that, I was not a Muslim. And if I had not gotten this opportunity to consolidate tensions in me, I would probably have become totally secular. Equality, human rights and a pluralistic society is of fundamental worth to me, and I was lucky getting the opportunity to consolidate tensions through a religious experience (an-Na'im in Vogt, 1995, p. 40).[20]

Connecting religious experience and social engagement

Before turning to the Republicans' stance on shari'a implementation, a crucial issue in an-Na'im's later work, I would like to note the movements' impact on him in a wider sense. This has to do with his view of religiosity. An-Na'im stresses, for one, that for members of Taha's movement the engagement was not only time-consuming and demanding but also

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[19] An-Na'im (1987a, p. 6-7) stresses the members' practice of marriage granting both parties right of divorce, and keeping bride prices (*mahr*) to a minimum to avoid marital conflicts and financial exhaustion of families.
[20] Translated from Norwegian in Vogt's original by the author of this thesis.

comprehensive: "[R] eligious, social and intellectual activities were part of a whole" (in Vogt, 1995, p. 40). Moreover, an-Na'im states that Taha's key objective is *individual freedom*, in the sense of acting and speaking in accordance with one's own conviction. For Taha this freedom was not a mere intellectual proposition but also involved prayer, fasting and meditation (an-Na'im, 1987a, p. 4). Freedom for Taha denotes a perfected stage of consciousness, manifest in correct behaviour. This also means realising God, a goal Islam enables each person to attain (Taha, 1987, pp. 72, 56).

An-Na'im stresses that for Taha, individual achievement of this higher state through religion is a precondition for greater social development. He relates it to Taha's "fundamental" and "essentially religious view of the universe and the role of humans in the cosmic order of things" (an-Na'im, 1987a, p. 24).

Finally, an-Na'im holds that Taha met and socialised with both Republican members and other people in complete *honesty*. Such face to face encounters between people are "the essence of religion"; however, it is doubtful whether this essence can be recreated on a larger organisational and political levels, an-Na'im claims (in Vogt, 1995, p. 43-44).

It is not my objective in this thesis to trace specific influences on an-Na'im's work. However, it will become clear from subsequent chapters that the aspects of Taha's thought and Republicans' practice noted above resemble what I will call an-Na'im's notions of religiosity. This includes the idea that religious experience and social engagement are intimately connected; the emphasis on raised individual consciousness and responsibility; individual freedom as a main objective; and religious activity and experience as autonomous.

2.2. The Republican Brothers and the islamisation in Sudan

A key aim of the Republican Brothers was to hinder the implementation of shari'a as positive law in Sudan unless it was substantially reformed. Their preferred recipe for reform was the so-called evolutionary approach developed by Taha. This methodology, adapted by an-Na'im in his work, is discussed in chapter 3. In short, Taha sought to base a reformed shari'a on the Qur'anic verses revealed during Muhammad's first stay in Mecca. These verses contained a "universal" message suited for enlightened human existence. Instead, legal Islamic tradition took the verses revealed during his stay in Medina as basis for shari'a. The intermediate message contained in these verses was meant for the circumstances of 7th century Medina, Taha claimed. Thus, shari'a denied women and non-Muslims equal rights to Muslim men, and sanctioned aggressive warfare as well as brutal punishment for crimes (Taha, 1987).

The Republicans' views eventually came under severe pressure. In 1969, colonel Ja'afar Numayri and his Free Officers rose to power in a military coup centred on state-run economic progress. Reaching a peace accord with southern political forces in 1972, Numayri then replaced the multiparty system with one overarching political party – the Sudanese Socialist Union (SSU) – and curbed civil rights (Mahmoud, 2007, p. 22-24). Numayri increasingly stressed that Islam should be a cornerstone both of political and social life (Collins, 2008, p. 145). From 1976 onwards, he was forced to expand his government, and this gave formal power to the so-called "Islamic Charter Front" (later National Islamic Front, NIF). Founded in 1949 as the Sudanese branch of the Muslim Brothers (*al-Ikhwan al-Muslimun*), the NIF had established itself as a political party. It now gained influence in the SSU, as well as through mosques, schools, the military and Islamic banks and businesses (Kepel, 2002, p. 180). From 1976, its leader, the Sorbonne-educated lawyer and intellectual Hasan al-Turabi, was given the task of drawing up a constitution based on shari'a. Also, a committee for revising law after "Islamic principles" was established under his leadership (Collins, 2008, pp. 138, 145).[21]

This legal and societal process of islamisation was disrupted when Numayri from September 1983 introduced laws based on shari'a, through his own Provisional Orders. Later vetoed by the national assembly, these laws established, among other things, penal and criminal codes as well as civil procedures. In 1984, emergency and special criminal courts were set up, administered by judges directly appointed by Numayri. These courts enforced *hudud* (sing.: *hadd*) provisions of shari'a, whereby certain crimes are subject to corporal punishment. Thus, an increasing number of people were whipped, had limbs amputated or where even executed (Collins, 2008, p. 146; Kepel, 2002, p. 181).[22]

The introduction of these laws contributed to the outbreak of civil war in southern Sudan between predominantly Muslim and non-Muslim factions. As for Taha's movement, they originally favoured Numayri's course, seeing it as a buffer against the implementation of shari'a. Following the islamisation process, they withdrew their support. Following an 18 month long arrest of their leaders, including Taha and an-Na'im, the Republicans issued a statement in December 1984 in which they demanded a peaceful solution to the southern conflict and, importantly, repeal of the September 1983 laws. These laws, they argued, denied

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[21] See below for an account of the Muslim Brothers and other so-called Islamist movements.

[22] *Hudud* (Arabic): "limits". Denotes crimes and punishments sanctioned in the Qur'an and/or in *Sunna* (the tradition after prophet Muhammad), the main sources of shari'a. Variations abound in theory and practice, but an overview would include: adultery (*zina*) or slanderous accusation (*qadhf*) award 100 lashes; theft (*sariqa*) is punished by amputation of a hand; those guilty of highway robbery (*hirabah*) are crucified/delimbed/exiled (Kamali, 2008, p. 190-94). In addition to these four crimes, Sunna sanctions death penalty for renunciation of Islam (apostasy or *ridda*). Alcohol consumption (*shurb*) is also included by many scholars, but not specified in the sources (Vogt, 2005, p. 127-130). For criticism of *hudud* laws, see Kamali (1993) and Ramadan (2005).

equal rights for all citizens, threatened national unity and "distort[ed] Islam" (an-Naʻim, 1987a, p. 11). Taha and four others were arrested again (Collins, 2008, p. 148-149). All five were sentenced to death for offences against the state, and in a court of appeal, the sentence was confirmed through a procedure clearly indicating that *ridda* (apostasy, or renunciation of Islam) was part of their alleged crime (Deng, 1991, p. 28 [sn 9]; Warburg, 1991, p. 90). On January 18th 1985, Taha was hanged in prison; the other four were released after having recanted their opinions.

Shortly after the execution, mass demonstrations and a general strike erupted. This led to the overthrow of Numayri in a military coup in April 1985. Although economic crisis and the civil war were main factors, the shock that many Sudanese experienced as a reaction to the execution could be said to have contributed to the public dismay that preceded the coup (Collins, 2008, p. 150-155). After Taha was executed, the Republicans were formally dissolved and have since been publicly inactive (Voll, 1990, p. xii; an-Naʻim, 1987a, p. 25).

An-Naʻim fled Sudan after 1985, eventually settling permanently in the USA. In his scholarly work, reform of shariʻa has been a centrepiece, manifest on two levels. First, in his insistence that dominant interpretations of shariʻa violate human rights, citizenship and constitutional government, as seen in Sudan. Second, in his rejection of an Islamic state based on shariʻa and his efforts to provide an alternative. In his discussion of these topics, certain notions of religiosity can be identified. This will be clear from my discussion in subsequent chapters; as a preparation, I here present an overview of his arguments on both topics.

2.3. Ills of shariʻa: An-Naʻim's analysis

The apostasy ruling as violation of rights and liberties

The starting point in an-Naʻim's critique of shariʻa is the apostasy case against Taha. One of his first published articles in "exile", "The Islamic Law of Apostasy: A case from Sudan", contains a critical examination of the trial against Taha and the provision of apostasy in shariʻa in general.[23] Like other authors, he concludes that Taha fell victim of president Numayri's "drive for Islamization" and was killed to avoid further criticism against this process (see also Collins, 2008, p. 148-150). On one level, this shows that shariʻa rulings on apostasy could be abused for political means, an-Naʻim claims. But the 1986 essay also offers a more principled criticism: that to renounce one's religion should not be punished in modern

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[23] Here, an-Naʻim points to errors in formal juridical procedure; he also argues that the sentence was fabricated, as Sudanese law contained no provisions for apostasy when Taha's offense was committed (1986, p. 207-210).

society at all. I render his line of argument here because it is also found in his analysis of ills caused by shari'a application.

At the outset, an-Na'im contends that the sources of shari'a *do* sanction punishment for apostasy. It is condemned in the Qur'an, and the Sunna sets the punishment to a death penalty. This affects Muslims who, whether or not they adopt a new religion, reject elements of Islam commonly seen as essential, he claims. Even if they are not executed, people convicted as apostates are deprived of rights to inheritance and property and their marriages are deemed invalid (an-Na'im, 1986, p. 211-213). Among others who have objected to implementation of shari'a apostasy rulings, the Malaysia-based scholar Mohammad Hashim Kamali puts forth a range of arguments: He holds that the death punishment only covers cases of high treason and active hostility against Muslims (Kamali, 1998, p. 220-221). Citing legal sources and other scholars to his support, he argues, among other things, that punishment is only due in afterlife; that offenders are given a chance to repent; that the very Qur'anic category of *hudud* does not imply fixed punishments; that the least doubt invalidates *hudud* rulings; that scholarly disagreement is widespread (Kamali, 1998).[24]

An-Na'im makes similar remarks. But for him, such arguments are too weak to refute the apostasy ruling. They simply fail to acknowledge the fact that sanctions against apostasy are based on explicit Qur'anic texts and consensus among traditional legal scholars. Thus, an-Na'im hesitates to moderate or contextualise apostasy by citing alternative opinions from legal scholars. Instead, he portrays the apostasy ruling as clear and impenetrable from "within the framework of traditional shari'a" (an-Na'im, 1986, p. 215). It will therefore stand, he holds, unless shari'a is fully reformed. In an-Na'im's view, the apostasy ruling must be rejected by a standard external to shari'a itself. It is namely:

> (…)inconsistent with modern notions of religious freedom, an internationally acknowledged basic human right and generally accepted fundamental civil liberty guaranteed by most constitutions throughout the world (an-Na'im, 1986, p. 213).

I argue that the kind of reasoning embodied in this quote underlies all later objections in an-Na'im's works against the ills of shari'a. He refuses any attempt to moderate these ills from within the domain of what he calls "traditional" or "historical" shari'a frameworks. Instead, shari'a must be weighed against modern standards of human rights, citizenship and constitutional government.[25]

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[24] The critique in Kamali (1998) concerns a *hudud* bill in Kelantan, Malaysia.
[25] For a discussion of this line of argument, see chapter 3.

Shortcomings of shari'a in a modern context

In *Toward an Islamic Reformation* (1990) an-Na'im gives a critique of shari'a on such premises. It can be subsumed as follows (references below are to page numbers in this book):

(1) On areas of **criminal justice**, shari'a rulings contradict international and constitutional standards (102). The fixed *hudud* punishments are hard to define; and they do not give any guarantee against abuse by political or religious majorities (110-111; 135). They should not be forced on non-Muslims; however, this is hard in cases involving, for example, a Christian offender and a Muslim victim without discriminating on grounds of religion (114-115). It must be left to a legislative assembly to decide other forms of punishment for criminal offenses, and not, as in shari'a, to the ruler (118-122). In addition, shari'a procedures on for example evidence, liability and appeal are rudimentary (122-124).

(2) Shari'a also violates standards of modern **constitutionalism**. In the model of the Medina state, which is considered ideal by shari'a, the population has no opportunity to authorise or restrict the ruler's power and sovereignty, which were exercised on behalf of God (81). Nor are legislative, executive and judicial powers separated (77). The duty of *shura*, which in Islamic tradition denotes consultation between the ruler and his subjects, was not binding on the ruler and does not conform to modern democracy (79), and shari'a does not secure full political rights and equality before the law to women and non-Muslims (88-91).

(3) The principles of modern **International Law** in the United Nations Charter prescribe interstate peace and security, cooperation in problem solving and friendly relations as binding on UN members (140). Through offensive *jihad* (striving/warfare), shari'a sanctions violence against non-Muslims and subversive Muslims for the purpose of spreading Islam (148-150). It also permits intervention by a Muslim third-party in conflicts between Muslims (155).

(4) Many of the rights violated by shari'a criminal and constitutional law are breached also *qua* **international human rights** manifest in declarations, covenants and conventions. Against these standards, shari'a is problematic, as it also permits slavery (172). Further, it discriminates against women and non-Muslims in terms of inter-religious marriage and inheritance, and sanctions polygamy and the unilateral right to divorce only for men (176).

Making a case against shari'a application largely on the basis of modern human rights, not on the basis of established legal mechanisms of shari'a itself – as does an-Na'im – is problematic in several respects. I will return to some objections in the following chapters; here, I will only briefly clarify an-Na'im's own position. He admits that predominant shari'a rulings are the result of certain historical circumstances and as such, they cannot be judged by contemporary standards. But for precisely this reason, historical versions of shari'a are unfit

in today's world, he claims (an-Na'im, 1990, p. 170). This is because positive developments have been made in international law to restrict the use of force, to balance state's interests, and to respect human rights (ibid, p. 139). Moreover, standards of human rights or of constitutional law cannot be rejected simply because they are Western and therefore not universal, he claims; nor because there are problems in implementing them (ibid, pp. 69-70, 162). Rather, these standards *can* be accepted as universal. Even if religions and cultures value freedom and justice differently, agreement on human rights and constitutionalism can be reached by making them legitimate from within these cultures and religions (ibid, p. 165).[26]

This process of acceptance must however result in Muslim countries bringing "every aspect of their law (…) into complete compliance with human rights standards", as well as with constitutionalism. To simply abandon these standards is "morally untenable and politically unacceptable" (ibid, p. 99). Shari'a can only be reconciled with these standards through drastic reform (ibid, p. 179).

2.4. An-Na'im's case against Islamism

The ambiguities of Hasan al-Turabi and the NIF

Another related aspect of an-Na'im's work on shari'a is his assessment of proponents of an Islamic state based on shari'a. This brings us back to the role of Hasan al-Turabi's National Islamic Front (NIF) in the islamisation in Sudan. After Ja'afar Numayri was overthrown in 1986, shifting ruling coalitions debated whether the shari'a laws should be redrawn. In 1989, Prime Minister Sadiq el-Mahdi abrogated the laws and called a ceasefire with the southern Sudanese forces. He was then sidelined in a military coup orchestrated by the NIF putting brigadier Umar Ahmad al-Bashir in power. Under the rule of his Revolutionary Command Council (RCC) more laws based on shari'a were introduced (Collins, 2008, p. 170).

An-Na'im claims that the outcome of the islamisation in Sudan can be ascribed to the influence of the NIF, and thereby to the Muslim Brothers (an-Na'im, 1986, p. 213). However, it has been argued that the NIF originally saw this introduction as only one part of a gradual islamisation 'from below': a transformation of morals, beliefs and practices in agreement with the population at large (Esposito and Voll, 2001, p. 130-132). Moreover, the Sudanese-born

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[26] To achieve this, a "cross-cultural approach" towards universality is needed, holds an-Na'im. This is integral to his work on human rights, the details of which lie outside the scope of this thesis. In short, however, universality for an-Na'im means that standards must be adapted to specific environments and be rooted in indigenous values. Negotiating these values in "internal" religious/cultural terms, while acknowledging achievements of other cultures, can lead to the acceptance of human rights standards (see e.g. an-Na'im, 1992, p. 20-22). His approach on this point is similar to that towards secularism; see my discussion in chapter 5.

social scientist Abdelwahab el-Affendi notes al-Turabi's wish throughout his participation in Numayri and al-Bashir governments to reinterpret shari'a in line with modern conditions. Al-Turabi has argued against segregation of the sexes, but *for* the right of women and non-Muslims to hold leading public positions. He has also denied that non-Muslims could be subject to shari'a, nor the target of warfare by Muslims. His call for "a contemporary interpretation of the Qur'an" prompted Islamic scholars and conservative Muslims to criticise him for going against established views on shari'a (el-Affendi, 2006, p. 144-147).

In general, the emphasis transformation of society from below has characterised the Muslim Brothers and many other movements labelled as *Islamists*.[27] From their founding in 1928, the Brothers and their founder Hasan al-Banna regarded Islam as "a comprehensive order for all aspects of human existence" (Commins, 1994, p. 134). Inherent to this end was control of the state apparatus, a central thought for ideologues such as Abu al-A'la Mawdudi in Pakistan and later Ruhollah Khomeini in Iran. But the establishment of an Islamic state would nonetheless come as a result of a program of a broader islamisation (el-Affendi, 2008, p. 90-98). For al-Banna, as well as for many contemporary Islamist movements, this includes providing welfare services, running charity, schools and industry, in addition to propagating and preaching (Commins, 1994, p. 147).

Whatever its intentions, however, the introduction of shari'a as state law overseen by the NIF in Sudan was sudden, top-down and not based on any equivocal public demand (Esposito and Voll, 2001, p. 133-134). Nor did they meet al-Turabi's stated ideals for reinterpretation. Under the al-Bashir regime, women's public role, work opportunities and dress code were strictly regulated and apostasy was made punishable by death. Moreover, civil rights were curbed, political parties were replaced by an advisory council loyal to the government, and non-compliance with moral norms was met with arrest, torture and capital punishment (Mayer, 1999, p. 32). The civil war in southern Sudan also continued, with shari'a-based law being imposed on non-Muslims. A preliminary peace agreement was brokered in 1995.

Legitimate cause, flawed identity assertion

For an-Na'im, many human rights violations in Sudan can be ascribed directly – if not exclusively – to the Islamists coming to power. It has been the explicit wish of the NIF to introduce shari'a as part of an Islamic state, an-Na'im states (1990, p. 39; 2003b, p. 140).

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[27] Other terms include Islamic fundamentalists, integrists, salafists and neo-traditionalists. In this thesis, I will use "Islamists" and "Islamism" of movements or actors who work for an Islamic state in the political sphere but also of those who seek to transform society from below in an "Islamic" direction. Thus, my understanding of Islamism comes close to that of Ismail (2003, p. 2).

However, they have failed to see the incompatibility of shariʻa with modern human rights; nor do they provide a method of reinterpretation to omit these shortcomings, he holds (1990, p. 39-42, 51, 1993b, p. 145-146).

From *Toward an Islamic Reformation* and onwards, an-Naʻim also criticises claims for legislation based on shariʻa in other countries, or the introduction of such legislation. In addition to Sudan, the examples cited most often by an-Naʻim are Pakistan, Iran and eventually Afghanistan.[28] Egypt is also frequently seen by an-Naʻim as a country where the political opposition contends shariʻa (see e.g. an-Naʻim, 1987a, p. 28; 1995, p. 47; 1999a, p. 104; 2003a, p. 42-44). An-Naʻim most often refers to the governments or political movements in question in those countries as "fundamentalists". What they have in common, he says, is the advocacy of an Islamic state with laws based on shariʻa in the sense of its "traditional" or "historical" formulations.[29]

In his discussions in *Toward an Islamic Reformation*, an-Naʻim sees Islamism (in his words, "fundamentalism") as a form of "Islamic resurgence". Interestingly, in an-Naʻim's assessment the resurgence could also be "natural and healthy", as it seeks to solve political problems in Muslim societies from *within* Muslim tradition (1990, p. 4). Religion has always been a key factor in the lives of "Muslim peoples", an-Naʻim asserts, in forming the essential basis for their identity and loyalty. Drawing on this, an Islamic resurgence is in line with what an-Naʻim terms Muslim peoples' "collective right to self-determination".

The right to self-determination not only pertains to national independence, pursued by Muslim populations after freeing themselves from colonial rule. It includes the right to maintain an Islamic identity, partly through Islamic law, an-Naʻim holds (ibid., p. 1). This latter point is repeated in a later essay addressing the need to counter "fundamentalism" (1999a). As a form of "political Islam", Islamic fundamentalism seeks to assert a form of Islamic identity (1999a, p. 107). But an-Naʻim dismisses this particular perception of identity, as it equals "being Muslim" with enforcement of oppressive versions of shariʻa and hostility towards non-Muslims and dissenters. Muslim states can only claim self-determination from an Islamic identity that respects the equal right of other groups and individuals to self-determination (1990, p. 4). It must also be acknowledged that Muslim identity is diverse and negotiable, and that Muslims are informed by other factors than Islam (1999a, pp. 109, 115).

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[28] For an assessment of human rights violations related to shariʻa in these countries, see Mayer (1999).

[29] In *Toward an Islamic Reformation* an-Naʻim abandons "fundamentalism", due to the "broad spectrum of Muslims" the term may apply to. He later (1999a, p. 104 [sn 2]) re-adopts it. Note that in Vogt (1995) an-Naʻim is referred as speaking of *Islamists*. This wording is meant to conform with an-Naʻim's use of "fundamentalists": that is, for groups that seek an Islamic state (personal communication to author).

At the same time, Islamic identity cannot be solely *private*. Current developments show that many Muslims feel "religiously obliged" to carve out politics and legislation on the basis of Islam. The challenge in an-Na'im's eyes is to build an Islamic identity based on "the strong relationship between Islam and politics in Islamic societies" (an-Na'im, 1999a, p. 115).

2.5. Toward notions of religiosity

It would not be unfair to say that events during an-Na'im's years in Sudan shapes the frame of reference in his writing. Assessing the introduction of shari'a under Ja'afar Numayri, an-Na'im concludes that it threatens the rights and identities of Muslims and non-Muslims alike. He extends this criticism to similar attempts by other Islamists. As he puts it ten years into his exile: "In Sudan, I have experienced myself what the Islamic state is about (…) This is why I challenge Islamist politicians as much as I do the Sudanese regime" (in Vogt, 1995, p. 48).

I will also argue that elements of an-Na'im's experiences in Sudan shed light on his view of religiosity. One such element, as pointed out above, is his encounter with the philosophy and practice of the Republican Brothers. They connected religious experience with political commitment, particularly in their case for reform of shari'a. Another element is the way Islamists, in an-Na'im's perspective, forge a link between politics, religious identity and beliefs. This could be read from the following quotes from an-Na'im's analysis:

> The real importance of *Ustadh* Mahmoud's [i.e. Taha's] trial and execution is in the questions
> it raises about the place of the *Shari'a* in the modern world. Especially important is the
> relation between sincere Muslim belief and compliance with laws purporting to be derived
> from that belief (1986, p. 197)

> An Islamic identity has always been integral to Muslim politics, and will remain so as long as
> there are people who profess this faith (…) [F]undamentalist movements should be seen as
> simply one form of political Islam, rather than the only way in which Muslims who take their
> faith seriously can relate that faith to their politics (1999a, p. 108).

Similar assessments can be found in later texts. As will be clear in chapter 4, the connection between religious identity and politics is a central dimension of the notions of religiosity that underlies an-Na'im's model for a secular state. Finally, it should be noted that in texts from 1999 and onwards, an-Na'im broadens his argument against Islamic state models. In the early texts discussed in this chapter, an-Na'im's emphasis is on their incompatibility with human rights and freedoms. In later texts, he argues that such a state is against the "nature" of shari'a and that it lacks precedence in Muslim history. This is the topic of the next chapter.

CHAPTER 3: RE-APPROPRIATING SHARI'A

3.1. What is shari'a?

In light of events in post-independence Sudan, the previous chapter outlined a frame of reference for Abdullahi an-Na'im's work. The main feature of this frame is that implementation of shari'a in the form of positive law, as advocated by Islamists movements, would violate rights and liberties of Muslims and non-Muslims. In this chapter, I will analyse four central elements of an-Na'im's own approach to shari'a: His view of its nature and characteristics; of its application in history; of methods for its "reform"; and the role he assigns to shari'a in the lives of today's Muslims. My objective is to highlight what I see as a re-conceptualisation of shari'a in later texts by an-Na'im. As I will argue in chapter 4, this re-conceptualisation is reflected in what I have called notions of religiosity in an-Na'im's work. It also has direct influence on his model for a secular state.

In Western European popular and media parlance, shari'a is taken to mean "Islamic law". It is often used to refer to certain rulings imposed by governments or authorities.[30] The meaning of this concept and the content it refers to is, however, more complex and contested. *Al-shari'a* is an Arabic word commonly translated as "the way" or more specifically "the path to the waterhole". In the Qur'an, it is used in verse 45:18 as a religious path to be followed by Muhammad (Kamali, 2008, p. 14). Thus, one definition refers to shari'a as:

> God's eternal and immutable will for humanity, as expressed in the Quran and Muhammad's
> example, considered binding for all believers; ideal Islamic law.[31]

In what follows, I will use the features of this dictionary entry as a catalyst for a discussion of an-Na'im's approach to shari'a as outlined above. The academic literature on shari'a and Islamic law is vast, and my very general account touches only touches on aspects relevant to my overall discussion. I will draw especially on Vikør's history of Islamic law (Vikør, 2005).

"God's will": Law, morals, or both?

In the dictionary entry cited above, the words "God's (…) will for humanity, as expressed in the Qur'an and Muhammad's example" imply that the scope of shari'a is different from what is understood by 'law' in other contexts. First, in principle shari'a covers all areas of human

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[30] Popular mention of shari'a or "shari'a law" often entails condemnation of Qur'anic *hudud* rulings sanctioning disembodiment of limbs, lashing and stoning as punishment for e.g. theft and adultery. See chapter 2.

[31] "Sharia", 2003, *The Oxford dictionary of Islam*, p. 287-8.

action ranging from economic transactions, criminal offences and marriage regulations to social norms and performance of religious ritual (Kamali, 2008, p. 41). Shariʿa judges the performance of each action by placing it in one of these five categories: *fard* (*wajib*), actions which are mandatory; *mandub*, recommended actions; *mubah*, actions that are neither good nor bad; *makruh*, actions that disapproved of; and finally *haram*, forbidden actions. The first four categories denote what is *halal* or permitted (Schacht, 1982, p. 121).

Second, shariʿa makes its own categorisations. European or Western law, for example, often separates between "public" and "private" law. The former regulates individuals' relation to the state or internal state matters, whereas the latter deals with relations between individuals. In shariʿa, the distinction is between *ibadat*, affairs between humans and God, and *muʿamalat*, which governs inter-human relations (Vikør, 2005, p. 3). These categories cannot be mapped onto the public/private distinction. Moreover, court procedures are in theory identical regardless of the nature of the offence. They do not include public prosecution or lawyers. Legal cases are held between individual plaintiffs and defendants, even if the punishment may be carried out by the state (Vikør, 2005, p. 4).

Third, the scope of shariʿa in the sense of "God's will" is conceived of in differing ways. An early distinction among legal scholars separated shariʿa as denoting God's law from *fiqh*, meaning "knowledge" of the law or jurisprudence. *Fiqh* is the work of legal scholars (*fuqaha*, or with a more general term, ulama) who formulate rulings on issues in which the sources are not specific enough for practical purposes (Kamali 2008, p. 40-42). In this understanding, *fiqh* includes both the methodology or principles applied to make legal rulings (*usul al-fiqh* or "the roots of law") and the concrete rulings (*furu al-fiqh* or "the branches of law"). Beginning with the early 20th century Islamic modernists, some modern scholars have reworked the shariʿa/*fiqh* pair to distinguish eternal principles (shariʿa) from historically determined interpretations (*fiqh*) (Vogt, 2005, p. 81). As will be discussed below, this conceptualisation is shared by many reformists, as it allows for seeing (at least some) legal rulings as purely human and therefore changeable.[32]

Fourth and finally, shariʿa is not – or was not, originally – issued by a legislature as positive law, presented in codes.[33] Rather, *God* is seen as legislator, and shariʿa is his "will" for humanity. According to Islamic tradition, it is laid out in the Qurʾan and the normative

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[32] The term *fuqaha* (sing.: *faqih*) denotes sholars who work specifically with jurisprudence. Other specific terms are *mufti* and *qadi* (see below). Since I am dealing with shariʿa on a general level, I most often use ulama (sing.: *alim*) for legal scholars. This term includes scholars of all Islamic sciences, including theology and philosophy.
[33] Codification of shariʿa as seen in Sudan, Iran, Pakistan (see previous chapter) and other countries is a modern phenomenon. See below.

tradition of Muhammad. These are considered the basic sources of shariʻa by virtually every Muslim. From textual analyses of these sources, the legal scholars, not politicians, formulate rules for specific cases. These rules form a legal corpus or "body of work" that has been the basis of decisions by a *qadi* or judge (Vikør, 2005, p. 6-8). But shariʻa has also taken the form of legal declarations or *fatawa* (sing.: *fatwa*) given by a legal expert or *mufti* (Vogt, 1995, p. 136; Schacht 1982, p. 73-74). These declarations have more often than not been given outside courtrooms in the form of *ifta* (giving legal advice) to private individuals (Masud et al, 1996, p. 8-9). Thus, on the one hand, shariʻa could be characterised as a "juristic" law – in contrast to codified law. Here, it is scholars who see fit that actual laws comply with God's will (Vikør, 2005, p. 8). On the other hand, even though shariʻa in some cases is applied as state law – as in Sudan since the 1980s – it could also be seen as a set of norms largely dealt with *outside* a legal sphere in the Western sense.

From the points stated above we might say that shariʻa could be seen as law, morals, or both. As put by legal scholar and reformist intellectual Khaled Abou El Fadl, shariʻa is "God's Way, and it is represented by a set of normative principles, methodologies for the production of legal injunctions, and a set of positive legal rules" (El Fadl, 2003, p. 321).

An-Naʻim's early conception: Shariʻa as potential legislation
So how does an-Naʻim conceive of shariʻa in his work? In general, he argues that shariʻa should not be seen solely as law. But as with other topics, one can, at least somewhat simplified, discern early and later conceptualisations on this point. It is important to note that in texts up until 2000 an-Naʻim uses the term "shariʻa" in a very specific sense: He likens it with what he calls "historical formulations" of *Islamic law*, which have prevailed into the modern period (1990, p. 2; 1993a, p. 135; 1999a, p. 106).

As accounted for in chapter 2, an-Naʻim claims that this version of shariʻa violates human rights and is incompatible with constitutional government. He is alarmed that Islamists in Sudan and elsewhere wish to implement shariʻa as positive law, or have done so already. In *Toward an Islamic Reformation*, his most comprehensive treatment of shariʻa, the very objective is to outline how so-called "public law" aspects of shariʻa might be reformed. The result of this reform, he maintains, would be a new public Islamic law, adjusted to modern society. But he does not refer to his reformed law-to-be as shariʻa; he reserves this term for "old" non-reformed variants (1990, p. 2).[34]

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[34] I owe professor Tore Lindholm thanks for making this clear during a seminar at the University of Oslo in November 2009 devoted to an-Naʻim's recent authorship.

Arguably, early texts of an-Na'im do describe shari'a as a "comprehensive system", consisting of legal matter, social norms and a political theory. It encompasses the duties of Muslims in sum, he holds, and as such it cannot be reduced to "Islamic law" (1990, p. 11; 1993a, p. 135 [sn1]); see also 1999, p. 106). But when advocating a new public Islamic law in his actual discussions he downplays the "moral" or non-legal aspects of shari'a.

At the same time, an-Na'im goes to great lengths to underline that the legal rulings conceived of as shari'a do not contain God's will in any unmediated way. Shari'a, he claims, is a work of humans. It is "constructed" by Muslim jurists, particularly between the 8th and 11th centuries (see below). However, an-Na'im claims that most Muslims actually think the shari'a is based on God's word and that it is therefore "divine" (1990, pp. 10-11). It is this perception among Muslims – for which an-Na'im does not quote any empirical evidence – that makes the Islamist appeal to strict compliance with shari'a so forceful, he claims.[35]

At the outset, an-Na'im sees this Islamist appeal to shari'a as a "natural and healthy" expression of Muslim right to self-determination, as noted in chapter 2. He is not against Islamic legislation *per se*: If an alternative conception of Islamic public law can be reached, this could "resolve [the] problems and hardships" caused by historical shari'a versions (1990, p. 2). This makes his early position rather complex and seemingly paradoxical.

An-Na'im's later conception: A religious normative system
In texts from the late 1990s and onwards, an-Na'im abandons the idea that shari'a may form the direct basis of a new "Islamic law". This is first made manifest in his essay from 2000 in *Yearbook of Islamic and Middle Eastern Law*, where he defines shari'a as "the religious normative system of Islam" (2000, p. 29 [sn1]), a definition he also uses in later texts (see e.g. 2002, p. 1). In fact, it is misleading to think of shari'a as Islamic law, an-Na'im holds. Not only does it cover all aspects of life, and is broader than what is generally considered to be "law" (2002, p. 1). As a religious system, it pertains to duties that humans have to their God.

Even if it can be proved, an-Na'im states, that shari'a in itself is not divine but constructed by legal scholars, it is "commonly understood by Muslims to mean the divine ordained way of life" (2000, p. 32). The way an-Na'im sees it, it is a right *and a* duty for Muslims to follow this way of life based on their religious convictions: It is what makes shari'a a *religious* system (2006, p. 104). Once a state applies shari'a, however, Muslims must follow it not as a matter of religious obligation, but as a legal requirement subject to sanction

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[35] An-Na'im also gives other explanations, but this is his most frequent one. As discussed in chapter 6, his analysis is problematic, especially as he fails to accord agency to Islamists and their supporters.

by state institutions. This, he holds, will derive Muslims of the freedom of *how* to follow "the way of God". Moreover, when enacted, shari'a is no longer the will of God; it becomes "the political will of the state" (2006, p. 154). Enacting shari'a as law therefore contradicts its "essentially religious nature" (2008a, p. 15).

For an-Na'im, shari'a can only embody the "God's will for humanity" if is kept outside of courts and parliaments. Throughout this thesis, I will argue that an-Na'im's late position on this matter is related to his view of what *religiosity* is. I will now discuss some of his historical arguments for the salience of this kind of religiosity.

3.2. Shari'a: Real or ideal?

According to the dictionary entry structuring the present discussion, shari'a is not only God's will but also "ideal Islamic law". In my view, this wording could pertain to two aspects of shari'a as applied historically: First, that to an extent, shari'a is the sum of legal opinions created independent of "state" institutions. Second, that shari'a has never been the sole law in Muslim societies, but a body of law with which other legal practices must conform. For an-Na'im, this indicates that enacting shari'a as comprehensive state law today lacks precedence.

Institutional separation and diversity

Historically speaking, shari'a has developed somewhat independently of the court as a legal institution. After the Prophet Muhammad's death in 632 AD, from around 700 AD groups of scholars or ulama emerged who were devoted to different forms of study of the religion transmitted by him. One was the study of the Qur'an and recorded sayings and actions of Muhammad. Centred mainly in Kufa, Basra and Baghdad in Iraq, as well as in Medina, some scholars specialised in deriving rules of behaviour from these sources (Vikør, 2005, p. 20-25).

The scholars identified with the authority ascribed by Muhammad in the Qur'an (verse 4:63) to "those among you with authority" (Masud et al., 1996, p. 8). The actual courts in the expanding Muslim territories were not led by these scholars, but by judges appointed by governors or the ruler (*khalifa*).[36] These judges or *qadi*s ruled at the outset by a legal mix of Qur'anic principles, custom, existing administrative rules, and rulers' decrees (Hallaq, 2005, p. 55). Thus, the development of "religious" rules by ulama took place to a great extent independently of courts. Gradually, however, their work came to be seen as a form of law that eventually was termed shari'a (Vikør, 2005, p. 23; Kamali, 2008, p. 5). The legal theory of

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[36]Arabic: Vicegerent, successor. Title used to denote those who succeeded Muhammad as political leaders from 632 until 1924, when the caliphate – then situated in Istanbul – was abolished by the government in new-founded Turkey. Similar titles include *sultan* and *imam*. In this thesis I use caliph or sultan about this function.

this "Islamic law" was termed *usul al-fiqh*. In the developed version of *fiqh*, the Qur'an and *Sunna*[37] – meaning the prophetic normative tradition in the form of *ahadith* (sing.: *hadith*) or sayings – are the basic sources of law. *Fiqh* establishes methods for determining legal content from these texts, and adds two sources or techniques for making actual rules. They are consensus (*ijma*) among legal scholars and *qiyas* or reasoning by analogy.[38]

In the course of the formative period of Islamic law from the late 7th to the middle of the 10th century AD, the scholarly circles develop into legal "schools" or *madhahib*. Of these schools, four sunni schools (Shafi'i, Hanafi, Maliki, Hanbali) and one shi'a (Ja'afari) exist today (Hallaq, 2005, p. 167). Within these schools, one gradually reached majority consensuses on rulings that, on each area of law, could be attributed to the founding scholar or other authorities. These were often collected in legal manuals. However, both within and in between schools, some difference of opinion (*ikhtilaf*) was accepted. In the absence of clear textual proof or major consensus, reinterpretation was possible (Vikør, 2005, p. 106-110).[39]

Accordingly, existing courts were "Islamised" into "shari'a courts" using laws derived from these law schools. But under the Abbasid caliphate in Baghdad (until 1258 AD) and the sultanates, kingdoms and emirates that eventually emerged, other courts or institutions supplemented the shari'a courts. Among them were the ruler's court (*mazalim*), the police court (*shurta*) and the office of the public inspector (*muhtasib*) (Vikør, 2005, p. 190-198).[40] This practice was due to a need for flexibility. The strict shari'a procedures only accepted declarations from witnesses as evidence. It also imparted harsh *hudud* punishments for some criminal offences (Zubaida, 2003, p. 56-58). Under the Ottoman Empire from the 12th century and onwards, the sultan systematised his own edicts, called *qanun*, into books of law that often set shari'a aside, especially on the area of criminal law (Vikør, 2005, p. 207-8).

In his account, Vikør stresses that in Muslim political entities up until the 20th century, shari'a was seen as the only and ideal law. Besides, additional rules like *qanun* were generally based on shari'a principles. Both rulers and scholars accepted the parallel laws and courts, as they were flexible and gave a predictable division of labour. This practice was part of *siyasa*

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[37] Before being restricted to mean the prophet's tradition, Sunna originally denoted exemplary behaviour of predecessors or local practices in general (Hallaq, 2005, p. 46; Vikør, 2005, p. 27).

[38] The initiator of this formalisation of sources and their methodology is Muhammad al-Shafi'i (d. 820) in his book *Risala*, although the formative period of Islamic law extends into the 10th century (Hallaq, 2005, p. 122)

[39] Historians disagree as to how much reinterpretation the methodology allowed for. See below.

[40] The *mazalim* often functioned as an appeal court in which the sultan judged by his own discretion. The *shurta* was in charge of criminal jurisdiction and was not bound by shari'a rules. The *muhtasib* scrutinised markets and public morality, thereby fulfilling the religious duty of *hisba* or "commanding good and forbidding evil" (*al-amr bil ma'ruf wa al-nahy an al-munkar*) (Vikør, ibid.). For contemporary *hisba*, see chapter 6.

shari'a, rulers' efforts to govern society according to general principles of shari'a, he holds. Vikør terms the additional courts *siyasa* or "government" courts (2005, p. 202-204; 190).

What is important to the present discussion, is that a degree of separation has existed between the interpretation of shari'a on the one hand and the activities of the state on the other – or this could be argued. Feldman (2008) has even suggested that as interpreters of shari'a, ulama could perform an independent check on rulers' power. Even if their edicts were not always approved of by ulama, rulers were in principle only legitimate and deserving other subjects' loyalty if they ruled in accordance with shari'a (Feldman, 2008, p. 6). In one of his treaties, the 13th century scholar Ibn Taimiyya argued that this should be the only criteria for rulers' legitimacy (Zubaida, 2005, pp. 91-93; 99-100).

An-Na'im: The illusion of comprehensive shari'a law

The perceived degree of separation between state and shari'a I have accounted for has bearings on an-Na'im's argument against contemporary application of shari'a as law. As seen in the previous chapter, an-Na'im dismisses shari'a as a guarantee for checking the executive branch of government in today's societies. In later texts, this focus on shari'a violations of constitutionalism and civil rights is supplemented with arguments of historical character. This is particularly evident in his 2002 introduction to an edited compilation of *Islamic family law in a changing world* (an-Na'im, 2002). Here, an-Na'im notes the relative independence of scholars; the legal advice given outside courts; and the parallel courts system. Like Vikør, he notes that the shari'a was often supplemented by other edicts, but his analysis is different.

As we have seen, Vikør maintains that all the parallel courts abided with the general principles of shari'a. Although shari'a courts ruled by the letter of the law, they were not simply "religious" courts, and shari'a also deals with many secular issues, Vikør holds (2005, p. 202). An-Na'im on the other hand sees the shari'a courts as *religious*. He now stresses that shari'a is of an "essential religious nature", as it regulates the relation between God and humans. Citing legal historian Noel Coulson, an-Na'im postulates that the distinction between shari'a and *mazalim* courts came very close to "a philosophy of division between secular and religious courts" (Coulson, cited in an-Na'im, 2002, p. 8). This suggest that secular legislation has some precedence in Muslim history, and that shari'a was never enacted as comprehensive law, an-Na'im holds (2002, p. 18). The Islamist idea of an Islamic state based on shari'a is a post-colonial invention, presupposing a modern state apparatus, he claims (2008a, p. 44).[41]

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[41] Here, one could object that the theory of the Islamic state in the modern area precedes the post-colonial area.

An-Naʿimʾs most emphasised historical argument, however, is that the transition to the modern period has made it impossible to apply shariʿa as positive law. He draws on accounts from the Ottoman Empire, the main parts of today's Turkey. In the mid-19th century, Ottoman bureaucrats educated in Europe and inspired by foreign state models undertook considerable reforms of economic, administrative, military and legal procedures. The causes and objectives of these reforms were several. But part of the outcome was that Muslims and non-Muslim were made subject to the same law, sidelining the old *millet* system of separate jurisdictions for faith communities (Vikør, 2005, p. 230). In the areas of criminal and commercial law shariʿa was replaced by legal codes after French model, in several stages (Cleveland, 2000, p. 84). Shariʿa was partly adapted to this system, notably by codification of existing laws into the new civil code called *Mecelle* (*Majalla* in Arabic) in 1876.[42]

In sum, these inventions extended beyond the former Ottoman co-existence of shariʿa and *qanun* laws. The legal "field" was now divided into new and other domains than before. Shariʿa was only applied in the area of "personal status" and "family" law, regulating issues such as marriage and inheritance (Karčić, 2001, p. 213). Similar replacements of shariʿa laws and courts took place in Egypt (Vikør, 2005, p. 239). During the colonisation in the 19th and 20th century, other Muslim majority countries have also codified shariʿa in the areas of civil, commercial and family law. An-Naʿim holds that this process and its outcome has revealed a gap between shariʿa and the modern legal environment.

For one, the codification in itself mixed different legal opinions from within different schools of law and also introduced non-Muslim legal theory. Thus, the historical diversity of opinion among ulama was combined into one singular ruling. This work was not only eclectic and basically inauthentic, an-Naʿim claims. Any future codification will also be morally problematic, as it violates the freedom of choosing between opinions and schools (an-Naʿim, 2002, p. 15-16). Moreover, other scholars have noted that the process of legal interpretation has changed. The interpretative authority of ulama over legislation is lost to elected assemblies. In universities, curricula are centred on "secular" legal subjects, whereas *fiqh* is now taught in specific Islamic educational institutions (Masud et al. 1996, p. 26-27). Radio, TV, the internet and other publications have created a new public arena for legal advice. But here, traditional *muftin* (sing.: *mufti*) have lost their monopoly of knowledge to new educated classes. Whether they are preachers, intellectuals, or call themselves ulama, they are products

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[42] Reform was most intense during the *Tanzimat* ("reorganisation") period 1839-1876. The aims of the reforms included securing efficiency in a difficult financial situation; creating a "national" Ottoman identity against foreign claims of influence over non-Muslim subjects; and reconciling European forms of government with Ottoman political tradition (Cleveland, 2000, p. 81-89).

of the massive alphabetisation in many countries. This process has also led to interpretations of shari'a being subject to critical questions to a certain degree (Eickelman, 2005, pp. 49, 45).

In addition, Muslim countries have codified laws and constitutions. This makes them part of a world-wide legal environment in which countries' respect of standards of International Law and human rights can be scrutinised across borders. Applying shari'a would instead isolate Muslim countries economically and politically, an-Na'im writes (2002, p. 16).

Toward an indivisible shari'a?

For an-Na'im, the changes related to shari'a in the modern period are simply irreversible. The pre-modern framework for shari'a interpretation and application cannot be recreated, and the situation has become too complex for shari'a to be applied as law, he holds.

On this point, the Bosnian legal historian Fikret Karčić has argued against an-Na'im. He agrees that shari'a is a normative system, but suggests that the various groups of Muslims in a given society have a common responsibility for applying it on different arenas. The state enacts parts of it as codified law, individuals upholds *ibadat* by being pious, whereas society builds mosques. Thus, Karčić evokes the shari'a terminology of *fard ayn*, individual duties, and *fard kifaya*, collective duties (Karčić, 2001, p. 209-210). In fact, one could say that this resembles the position held earlier by an-Na'im, in *Toward an Islamic Reformation*. Even though he uses a different terminology, here an-Na'im is preoccupied with a *public* law reform, leaving private matters of shari'a for individuals to follow (an-Na'im, 1990, p. 1).

In later texts, however, an-Na'im rejects state application of shari'a. In an exchange between an-Na'im and Karčić in 2005, an-Na'im maintains that shari'a embodies a variety of legal opinions, which gives "Muslim believers choices". Once codified by the state, this choice will vanish. And if a modern state wishes to enact a shari'a principle as law, it must call it something else; if not, religious citizens criticising it will risk being called apostates by fellow adherents. Against this, Karčić holds that in the past, before codification was even an issue, freedom of choice was not absolute either. It was limited by the fact that some opinions being considered more authoritative than others. Moreover, laws need not be enacted directly as shari'a, but "in accordance" with it (Vogt et al., 2009, pp. 213, 218-19).[43]

Here, Karčić's argument pertains to the fact that in contemporary Muslim societies, shari'a is used as a parameter by bodies of scholars who either decline or accept laws formulated by parliaments. This is famously the case with the where the Council of Guardians

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[43] This discussion also involved other scholars and took place in a seminar on Islamic reform in Indonesia. My account of it is based on Vogt et al., 2009, *New directions in Islamic thought*, pages 213 and 218-19.

in Iran, but also in Kuwait. In addition, in many other countries, the codes represent a mixture of shariʻa and non-shariʻa material (Vikør, 2005, p. 259). For instance, in 1980 under president Anwar al-Sadat's rule the Egyptian constitution was altered, making shariʻa "the main source (…) of the country's legislation" (Stene, 1991, p. 25)

In my view, the exchange with Karčić on the application of shariʻa highlights an-Naʻim's specific view of what shariʻa means today. It could be argued, as does an-Naʻim, that codification of shariʻa will deprive Muslims of a variety of legal opinions. But the diversity of rulings produced by legal scholars in the past was not motivated by respect for religious plurality. Nor were they intended to provide a reservoir of advice from which believers could choose freely. It could, however, be argued, that they were intended as specific time-bound answers to specific inquiries by specific believers.

This is also how an-Naʻim envisions legal advice to be given today, as *ifta* by a *mufti* to adherents outside the state sphere (an-Naʻim, 2008a, p. 10-11). Nonetheless, to him, this process is a matter of "choosing" among opinions. In a way, *ifta* in an-Naʻim's conception is more simultaneous than it is sequential, as was the case earlier. This simultaneousness is made possible by the existence of multiple channels of *ifta* in the media and in mosques or centres. But to a certain extent, it presupposes believers that are able to reflect upon *ifta* as something more than time-bound legal opinions. Believers should rather see it as a vehicle for their own freedom to follow Islam. This emphasis on believers' rights and freedoms makes an-Naʻim's view of shariʻa very *modern*. Still, he argues that the abundance of religious choice is an historical reality now threatened by codification. Here, an-Naʻim's exposition is in fact similar to that of Islamists claiming historical precedence for an Islamic state model.

An-Naʻim also rejects the idea of an Islamic state applying shariʻa in a comprehensive manner. At the same time, his conception of shariʻa in later texts is equally comprehensive. In his view, Muslim countries in the 20th century have implemented shariʻa half-ways through their codification processes. This is "temporary and insufficient" in the face of Islamists' "forceful reassertion of Shariʻa" (1990, p. 46). He therefore concludes that the "ideal" – in the meaning of "overarching" – character of shariʻa must be maintained *outside* the state.

In sum, in his assessment of history, an-Naʻim finds precedence and rupture: Whereas separation of state and religious law has historical roots, the role of shariʻa was irrevocably altered by modernity. He holds both aspects to support his case against the application of shariʻa as positive law in modern society.

3.3. Shariʿa: Immutable or changeable?

Returning to the starting point of my discussion, the entry on "shariʿa" in *The Oxford Dictionary of Islam* refers to "shariʿa" as an "eternal and immutable" expression of God's will. The same entry distinguishes "*fiqh*" from shariʿa, defining the former as "human efforts to codify Islamic norms in practical terms and legislate for cases not specifically dealt with in the Qurʾan and Sunnah".[44] This distinction reflects a viewpoint shared by Muslim reformists, who often distinguish immutable and *changeable* aspects of Islamic foundational texts. The objective behind their distinction is, generally, to reinterpret aspects of Islamic foundational texts to accommodate social, economical and political reform (Vogt, 2005, p. 300-305).

Some approach these texts via philosophy, history or theology. But those who are concerned with *legal* reinterpretations often separate *fiqh* from shariʿa in order to contest established interpretations that they find problematic. Here, much reformist thought resembles the criticism voiced by so-called Islamic modernists like Jamal al-Din al-Afghani and Muhammad Abduh around the turn of the 20th century. They argued that, in the area of law, most scholars had eventually failed to exercise *ijtihad* (interpretation by reasoning) of their material, deteriorating instead into mere imitation (*taqlid*) of authorities within their school. This prevented the adaptation of the law to actual social developments.

To realign Islam with scientific reason and accommodate modernity, the Qurʾan and Sunna should be subject to new *ijtihad*, producing a new *fiqh* (Esposito, 1998, p. 129-130).[45] Likewise, reformists assert *ijtihad* as a tool to reinterpret Islamic tradition.

An-Naʿim: Rejecting impediments to reinterpretation

Although he proposes significant political and social change, "reform" for Abdullahi an-Naʿim means *legal* reform. That is, to reform "the way Muslims understand certain aspects of shariʿa" (an-Naʿim, 2008a, p. 2). As noted, in most of his writing he is preoccupied with the "public" aspects of shariʿa, either in the form of a public law in Muslim countries (an-Naʿim, 1990) or as a basis for public policy in a secular state (an-Naʿim, 2008a). Overall, he subscribes to a reformist distinction between eternal and changeable aspects of God's will.

But this distinction cannot be drawn between shariʿa and *fiqh*, he holds. Instead, *all* of shariʿa should be seen as a human construction. An-Naʿim does not relate his position to a larger epistemological framework. However, he insists that interpreting shariʿa is "always the

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[44] "Sharia", 2003, p 288.

[45] Schacht (see 1982, p. 70-71) is a frequently cited source on the existence of this decline. Other scholars studying both court archives and legal theory deny that "the doors of *ijtihad* were closed" (Hallaq 1984) or that diversity of opinion was lacking among scholars of previous generations (El Fadl 1994). For an account of the meaning of *ijtihad* and its relation to other legal techniques, see Vikør, 2005 (chapter 4).

product of the 'human agency' of believers" (2008a, p. 10). This interpretation cannot avoid "the layered filters of the experiences and interpretations of preceding generations" nor the "methodology that determines which texts are deemed to be relevant (…)" (2008a, p. 11).

As for *ijtihad*, an-Na'im applauds it as a mechanism to reinterpret shari'a. He criticises what he sees as stagnation among legal scholars throughout history. Whether or not the doors of *ijtihad* were actually closed, no substantial changes in the framework for interpreting shari'a has taken place after the 10th century, he claims. In particular, he deplores that the practice of *ijtihad* was limited to cases where no clear (*qat'i*) texts of the Qur'an or scholarly consensus existed. Nor should *ijtihad* be restricted to scholars with specific qualifications; it may be performed by all Muslims, an-Na'im claims (1990, p. 28-29; 2008a, p. 14-15).[46]

However, he rejects any use of *ijtihad* within the traditional interpretative framework of shari'a. This criticism is most elaborate in early writing, where an-Na'im refrains from using the very term "shari'a" for his proposed public Islamic law. As seen in the previous chapter, he rejects what he calls "modern proponents" of shari'a. In an-Na'im's view, Islamists such as Hasan al-Turabi and the Egyptian Adil Husayn fail to see the limitations of the interpretative framework of shari'a. Nor do they give credible proof that shari'a will give rights to all citizens and check the powers of rulers (an-Na'im, 1990, p. 39-42; in Vogt, 1995, p. 47).

An-Na'im also rejects that problematic aspects may be omitted by claiming that they are inconsistent with the "totality" of God's message. Nor can problematic "legal" aspects of the text be deemed inferior to higher "moral" values.[47] Qur'anic verses will remain inconsistent with each other and with parts of the Sunna, he holds. Therefore, reform must rule out the *legal* validity of unacceptable practices sanctioned by the Qur'an (1990, pp. 49, 63).

The evolutionary approach: Idiosyncratic law reform

Instead, an-Na'im opts for a law reform based on the methodology of his mentor Mahmoud Muhammad Taha. This is outlined in Taha's book *Al-Risalah al-thaniyah min al-Islam* or "The second message of Islam", translated into English by an-Na'im. According to Taha, the Qur'an was revealed in two stages, the Meccan and Medinan stage respectively (Taha, 1987, p. 125). These stages overlap in time and cannot be mapped onto the periods prior to and after Muhammad's move from Mecca to Medina respectively; rather, they are messages directed at different audiences. The verses (*suwar*, sing.: *sura*) revealed in Mecca contain eternal and

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[46] He thereby takes a positive view of ulama loosing their monopoly on shari'a, as discussed above. From a different point of view, the dethroning of ulama could be deplored for making possible more legal opinions from unschooled extremists sanctioning terror, suicide bombings and oppressive practices (see chapter 6).

[47] The South African scholar and reformist intellectual Ebrahim Moosa has given a poignant critique of this and other attempts to identify "essentials" of text among reformists (Moosa, 2003).

fundamental principles, including the right to absolute freedom. Even if some *suwar* revealed in Mecca express hostility towards polytheism, the truly "Meccan" texts are addressed to all humankind, believers and non-believers alike (an-Na'im, 1990, p. 52; 1994, p. 105).[48]

But Muhammad's preaching of the message was rejected in Mecca. Subsequently, Medinan verses were revealed; they are directed towards "believers", that is, the Muslims living in 7th century Arabia (ibid, p. 53). So Islam's *first* message, the Medinan one, lays down detailed regulations. These rules, which were meant to govern the first Muslim polity after the *hijra* (emigration) to Medina in 622 AD, segregate the sexes and discriminate against women in areas like divorce and inheritance. They also sanction repression of religious minorities and warfare against "enemies" of Islam. They represent a lower or "realistic" level of the "original precepts" embodied in the *second* or Meccan message (Taha, 1987, p. 137). This latter message aims at realising an ideal community of mature individuals who enjoy full freedom and full social justice without the strict prohibitions mandated by the first message.

Taha's account of the second message theory is complex and dense with quotations from the Qur'an.[49] For the purposes of this thesis, it is important that – according to Taha and an-Na'im – early Muslim jurists, faced with the variety of emphasis between Meccan and Medinan verses, thought that the Qur'an contained *contradictions*. To reconcile this, jurists applied the method called *naskh* (abrogation), suspending the legal effect of earlier verses in favour of later ones. Thus, writes an-Na'im, "the public law of Shari'a was based on the Qur'an and related Sunna of the Medina period rather than that of the Mecca stage" (1990, 56). For him, the incompatibility of shari'a with human rights and constitutionalism results from the practice of *naskh*. He therefore proposes to *reverse* the process of abrogation, "so that those texts which were abrogated in the past can be enacted into law now, with the consequent abrogation of texts that used to be enacted as Shari'a" (an-Na'im, 1990, p. 56).

This is what Taha and an-Na'im calls "the evolutionary principle of interpretation" (ibid.). However, nowhere in his writing does an-Na'im attempt a full-fledged review of Qur'anic verses according to this principle; nor does he formulate a new public law. Such reform must be left to actual Muslim societies in light of their specific circumstances, he

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[48] Although Islamic sciences do not conceive of two "messages" of the Qur'an like Taha does, they traditionally acknowledge the categorisation of Meccan and Medinan verses ("Surah", 2003, p. 307).

[49] In short, for Taha the evolution of messages is accompanied by humans transforming their conduct from a legal ("*shari'a*") to a truth ("*haqiqa*") level of law. Legal prohibitions may be lifted when humans reach a higher level of knowledge of God's message and their place in the universe (Taha, 1987, p. 67-77). Here, Taha might be drawing on the meaning of *haqiqa* in Sufi literature as the "ultimate, divine reality" (Brenner, 1984, p. 1). I owe Nora S. Eggen thanks for pointing this out to me. For Taha's Sufi inspiration, see also chapter 2.

holds (an-Na'im, 1993a, p. 104). In *Toward an Islamic Reformation*, he merely identifies the problematic areas of shari'a, as accounted for in the previous chapter.

Criticism of an-Na'im's reform and his response

The evolutionary approach clearly deviates from the traditional methods of *fiqh* outlined in this chapter. Revered by some for its aim to consolidate Islamic law with human rights and constitutionalism, an-Na'im's approach has also been criticised. On a pure textual level, Selahvarzi (2000, p. 86-88) claims that an-Na'im misinterprets the Qur'anic verse 2:106 cited by Taha to prove the worth of the method.[50] Other authors hold the methodology to be so radical that it will be rejected by a majority of ordinary Muslims (Ali, 2000, p. 21), not to mention ulama (Zaman, 2005, p. 82-83 [sn 6]).

Others note that the method suspends larger parts of the Qur'an from shari'a. It thus risks rendering divided – and thus less than perfect – what most Muslims consider a direct divine revelation. This could be seen as contrary to the Islamic dogma of *tawhid* or God's unity, and "[t]he holiness of God's book is depreciated".[51] In *Toward an Islamic Reformation*, an-Na'im defends his proposition on this point by claiming that the revelation in itself is not suspended. It is its application as law which is postponed, through a consideration of the *rationale* behind some texts. In the Meccan verses, the rationale of God's message exists in a form that is more conducive to modern conditions (1990, p. 59-60).

But an-Na'im also encounters other difficulties. For instance, the postulation of Meccan verses as more appropriate today could be said to rest on an-Na'im's normative claims, for example that full individual freedom necessitates equality between spouses. His position is further affected by his own epistemological principle of human agency. People who disagree with an-Na'im's envisaged reform could simply argue that it does *not* express a fundamental part of God's message, just a historically determined claim of such fundamentality.

Similar criticism was voiced in the 1993 volume *Islamic Law Reform and Human Rights*, which compiles comments on an-Na'im's proposal. Here, the French-based philosopher Muhammad Arkoun contends that an-Na'im's method fails to see the whole Qur'an as an historical product (Arkoun, 1993, p. 21). Moreover, the Pakistani political scientist Ishtiaq Ahmed questions whether Muhammad himself thought that the Qur'an consisted of separate messages. And even if this was the case, in the minds of both Islamists

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[50] In short, he claims that Taha misreads *nunsiha* ["to cause to be forgotten"] as *nunsi'ha* ["to postpone"]. The meaning of the verse (and, holds Selahvarzi, the whole *sura*) is not that God "saves" verses for reintroduction, but that his revelation replaces earlier ones. Attentive to this distinction and its significance for Taha's approach, an-Na'im sees the other reading, of *nunsiha*, as "contrary to fundamental Islamic belief" (1987a, p. 40 [sn 9]).

[51] Cited by Johnston (2007, p. 153 [sn 13]) from a study by the Cairo Center for Legal Studies and Information.

and "ordinary" Muslims, the Medinan state was a major achievement, in that pious Muslim ancestors realised shari'a. In fact, the thousand years of Muslim civilisation that followed was built on the moral strength embodied in Medina; the year of the *hijra* even marks the start of the Islamic calendar, whereas the human rights revered by an-Na'im is a more recent invention. In making this preference, says Ahmed, an-Na'im expresses "a rational response of a Muslim rather than an Islamic response of a rational intellectual" (Ahmed, 1993, p. 69-70).

To this latter observation from Ahmed, an-Na'im replies that if his reform proposal is actually accepted, the difference between "rational" and "Islamic" responses will no longer be valid (an-Na'im, 1993a, p. 106). Nonetheless, the bulk of criticism reveals certain features in an-Na'im's reform proposal that could hamper its success. In particular, this applies for the use of reversed *naskh* to suspend the legal – but not the "revealed" – content of verses. To accept this last element and oppose established Islamic jurisprudence, Muslims must show analytical reflexivity and courage.

In my view, an-Na'im's strong identification with the evolutionary methodology can be related to his involvement with Taha's Republican Brothers. As noted in the previous chapter, an-Na'im found in Taha's philosophy a bridge between being a Muslim and advocacy of human rights. The law reform is intimately tied to Taha's thoughts, admired by an-Na'im, on what constitutes a spiritually satisfying existence. Moreover, the methodology is part of an-Na'im's overall rejection of an Islamic state based on shari'a. It contrasts with the objective of Islamists such as Hasan al-Turabi, who, an-Na'im claims, wish to reform shari'a with existing methods of interpretation. An-Na'im is highly critical not only of the outcome of the legal islamisation in Sudan: He accuses al-Turabi of lacking a credible method for reform of shari'a whatsoever. An-Na'im obviously fears that other reform attempts might result in oppressive shari'a variants. His rejection of reform within the existing "framework" of shari'a must be read in light of such apprehension. As he puts it in the exchange with Fikret Karčić accounted for above: "I am from Sudan. We have been through this experience [with codification of shari'a]. In fact, Sudan has a more complex experience with the Islamic state idea than Iran has. That idea has been tried and has failed (…)" (in Vogt et al., 2009, p. 212).

In texts from 2000 and onwards, an-Na'im devotes less space to Taha's evolutionary methodology for reform. Seeing it as "coherent and systematic", he still favours it over the "arbitrary selections of modern scholars, who fail to explain what happens to the verses they choose to overlook" (2008a, p. 136). But he does not "preclude the possibility of alternative approaches" (ibid, p. 2). This caution should not be seen as a loss of faith in Taha's method, but rather as a shift of perspective towards establishing a political *framework* for reform.

3.4. Shariʿa: Binding for whom, and why?

I now want to sum up the discussion in this chapter through the last feature of the definition cited at the outset: In what way does an-Naʿim consider shariʿa to be "binding for believers"? As we have seen, an-Naʿim eventually conceives of shariʿa as a religious normative system. It is a human construction, a body of diverse opinions developed by legal scholars throughout Muslim history. In today's society, old interpretations of shariʿa violate human rights and constitutionalism. Shariʿa must therefore not only be reformed: In his latest work, an-Naʿim's also re-appropriates shariʿa as a reservoir of religious values that are to be complied with in the civil and private spheres of a secular state (an-Naʿim, 2008a). For an-Naʿim, shariʿa must be followed as a result of one's convictions and free will. This is a responsibility of believers that they cannot, *must not*, share with the state, he holds, thereby rejecting the position of Fikret Karčić: If shariʿa is made mandatory, believers might comply with it out of fear or other non-pious motives, which is condemned by the Qurʾan (2008a, p. 3-4).

Thus, shariʿa is only *voluntarily* binding for Muslims as part of their religious conduct. But does "Muslims" here refer to individuals or a group? At the outset, the shariʿa regulates "the individual's relationship with God", according to an-Naʿim (2002, p. 18; 2008a, p. 15). Nevertheless, an-Naʿim also refers to the role of shariʿa in "the public life of the community of the believers" (2008a, pp. 1, 6, 28), and that religious conduct outside the state may take "personal" and "communal" forms (ibid, p. 8). Both forms of conduct express a "legitimate collective right to self-determination" for Muslim peoples (1990, pp. 1, 4). To understand this demand, he argues, the centrality of religion in the lives of various Muslim peoples throughout history must be acknowledged (ibid. p. 3).

We could therefore say that for an-Naʿim, compliance with shariʿa is an individual right and duty partly justified by a collective history. In sum, Muslims should claim this right and perform this duty as part of their self-determination. But in contrast to early writing, in later text an-Naʿim does not think that such self-determination can be realised in the form of public law. In his advocacy of a secular state, self-determination only means drawing on religious values *underlying* shariʿa to propose legislation and public policy (an-Naʿim, 2008a, p. 1; 2005, p. 29; 2008b, p. 334). As such, in a secular state, shariʿa is only *indirectly* binding on Muslims as a group.

A more detailed account of how an-Naʿim envisions this process follows in chapter 5. In the next chapter, I wish to build on the above discussion to demonstrate how an-Naʿim's work is informed by certain notions of religiosity.

CHAPTER 4: NOTIONS OF RELIGIOSITY

4.1. Religiosity as an entry to an-Na'im's work

In the two previous chapters, I have tried to show, first, how the islamisation in Sudan, beginning in the 1970s, led Abdullahi an-Na'im to criticise ills in what he holds to be predominant interpretations of shari'a; second, how an-Na'im gradually rejects the idea of an Islamic state based on shari'a as positive law.

In my view, an-Na'im's criticism and re-conceptualisation of shari'a is related to certain notions of *religiosity*. The main argument of this thesis is that such notions of religiosity underlies an-Na'im's model for a secular state in Muslim countries. In this chapter, I will present the notions and show their resemblance to other notions in literature on Islam, religion and identity. Towards the end of the chapter, I will briefly discuss some of their implications.

What I mean by "notions" and "religiosity"

What do I intend by using the expression "notions of *religiosity*"? One general definition takes religiosity to be "the state of being religious", in other words, a feature of a person's being in the world.[52] In academic literature on the study of religion, the use of the word is similar, but somewhat broader and more elaborate. It often designates beliefs, practices and ethical standards of individuals compared with features of "official religion" (McGuire, 1997, p. 101-107) or in contrast to "organised religious life" (Furseth and Repstad, 2003, p. 139ff). Describing and analysing people's religiosity – not only religious texts – has become increasingly important for anthropologists and students of religion. Furthermore, many sociologists have sought to answer why people are or become religious.[53] Religiosity also refers to the presence of religious belief, practice and conduct as a phenomenon in society, beyond the level of individual subjects. For instance, researchers have tried to measure the "level of religiosity" to get an indication of the degree of secularisation in societies.[54]

In what follows, I understand "religiosity" broadly as the religious belief and conduct of actors on an individual *and* societal level. Both dimensions are integral to an-Na'im's argument for the salience of a secular state. I will also argue that this perspective in his works

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[52] "Religiosity" (2005, p. 1279) Two online references (Oxford's *online* [http://dictionary.oed.com/] and [http://www.thefreedictionary.com]) define religiosity as "religiousness; religious feelings or belief" and as "the quality of being religious", respectively. All entries emphasise religiosity as characteristic of a person/persons.

[53] Answers here include deprivation, socialisation, rational choice and quest for meaning (Repstad and Furseth, 2003, p. 139-150). Another strand of research traces religiosity in cognition and patterns of brain activity; a seminal study here is Whitehouse (2004).

[54] See the next chapter for a discussion of the term "secularisation" in relation to an-Na'im's work.

pertains to the belief and practice of religious adherents in general, not only Muslims. Arguably, most of an-Na'im's work discusses Islam and Muslim religiosity. But nowhere does an-Na'im claim specific aspects of this religiosity – say, the link between identity and political assertion – to be exclusively *Muslim*. This is explicit in *Islam and the secular state*, where the term "believer" is frequently used without specific reference to Muslims. In fact, a main premise for an-Na'im in this book is that both private and public religious conduct is fundamental to adherents of *any* religion *anywhere*. This is what a secular state is meant to secure (an-Na'im, 2008a, p. 94-95). Therefore, the "notions of religiosity" I refer to in an-Na'im's texts pertain to religious belief and conduct in general.

As emphasized in chapter 1, "notions of religiosity" is a second-order category invented by me to identify traits in an-Na'im's work. An-Na'im himself does not make frequent use of the actual term "religiosity".[55] In nearly every text on Islam and secularism, however, he approaches his topic through the religious conduct of the individual, alone or as part of a collective. This is evident from the opening phrases of both *Toward an Islamic Reformation* and *Islam and the secular state*, respectively:

> This book is based on the premise that the Muslim peoples of the world are entitled to exercise their legitimate collective right to self-determination in terms of an Islamic identity, including the application of Islamic law, if they wish to do so (…) (an-Na'im, 1990, p. 1).

> In order to be a Muslim by conviction and free choice, which is the only way one can be a Muslim, I need a secular state (…) that facilitates the possibility of religious piety out of honest conviction (an-Na'im, 2008a, p. 1).

An-Na'im also emphasises the actor-perspective in his definitions of religion and Islam. In *Islam and the secular state*, an-Na'im notes rather matter-of-factly that Islam is a monotheistic religion propagated by Muhammad, with doctrines, practices and ethics made manifest in the Qur'an and Sunna. But to Muslims, an-Na'im holds, Islam is also "about realizing the liberating power of a living and proactive confession of faith in an infinitely, singular, omnipotent, and omnipresent God" (2008a, p. 9-10). Likewise, in an article on the place of religion in civil society, an-Na'im provides a working definition of religion as "a system of beliefs, practices, institutions, and relationships that provides the primary source of

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[55] Nor does it figure in the indexes of an-Na'im's books. However, he does use it directly, both in the first sense, as pertaining to individual piety and conviction (1999a, p. 116) and in its second sense, in a line of argument where the ability of religious actors to influence public policy is seen as dependent on several factors, including "the level of religiosity in the society (…)" (2008a, p. 40).

moral guidance *for believers*" (2005, p. 24, emphasis added). In these quotes, the stress it not so much on divine attributes or dogma themselves as on their importance to adherents.

4.2. A fourfold religiosity

In more detail, I have distinguished four main notions of religiosity that underlie an-Na'im's writing, in particular his outline in *Islam and the secular state*. These notions are closely related, and as analytical categories, I do not conceive of them as mutually exclusive.

Religiosity as a primary source of motivation

To an-Na'im, religiosity is a primary source of motivation for believers. In itself, religious affiliation is among the "primordial attachments" of any person's identity. This "religious" part of the identity is shaped by cultural codes in communities, but each person may choose how strongly to emphasise it, depending on the context (an-Na'im, 2008a, p. 22-23). An-Na'im states that both religious beliefs and cultural codes shape believers' "political behaviour" (2008a, p. 42). Many Muslims in particular are influenced by one such code: that Islam requires the establishment of an Islamic state built on historical versions of shari'a. This is something that they feel "religiously obliged" to contribute to (an-Na'im, 1993a, p. 106).

Moreover, for those who are religious, beliefs are significant premises for the kind of reasoning that can be accepted for policy and practice. Thus, it is "extremely difficult" for "believers" to resist shari'a if it is presented as "decreed by God" (2008a, p. 28-29; see also 1990, p. 10-11). Likewise, an-Na'im holds that, since discrimination of women in many parts of the world is argued on religious grounds, it must be fought by providing religiously sound reasons for non-discrimination, in the same way as Muslims need an Islamic rationale to fully accept the principle of constitutionalism (2003b, p. 35; 1990, p. 100). Importantly, this need for religious rationale also pertains to political decisions in a secular state, as well as the principle of secularism itself (2003b, p. 35; 2008a, p. 42).

To an-Na'im, the primacy of religious motivation becomes all the more important on a societal level, as religious believers – he holds – are in clear majority in societies (2003b, p. 35; 2008a, p. 42). But whereas he in *Towards an Islamic Reformation* generally does not distinguish between "Muslim" and "religious" belief and practice (see e.g. 1990, pp. 20, 83, 100), in later writing he emphasizes that Muslims can draw on different attachments in their identities: to their family, their nation or their profession (1999, p. 109; 2008a, p. 22). Still, he holds believers to be in dire need of religious motivation for their actions (2008a, p. 42).

Religiosity as conviction

The notion of religiosity as *conviction* is closely related to the notion of primary motivation above. An-Naʿim uses the term explicitly to denote religious adherents' beliefs and their understanding of their religion (2008a, p. 3). The content of believers' conviction will vary, as it results from the interaction between the believer and the community. But importantly, convictions become manifest through the formulation of moral norms which religious people act upon in public and on which they seek to base public policy on (2008a, pp. 1, 39-40).

According to an-Naʿim, one such moral norm is *muʿawada* or the Golden rule of reciprocity.[56] He holds that this norm could justify the mechanisms of the secular state and the principle of secularism itself (2008a, pp. 42, 92). As such, the notion of *conviction* denotes how religious actors apply "inner" or integrated norms to transform their outer environment.

That religiosity manifests itself in conviction is for an-Naʿim both a fact and a positive good of society. Religious believers simply need "to express the moral implications of their faith" (2003b, p. 31); moreover, this should be a vital source for social action. Here, a great *responsibility* actually rests on believers to actively pursue and promote public policy based on their convictions: both to achieve good solutions to problems and to maintain a public sphere that is open to participation for themselves and other citizens (2008a, p. 38; 2008b; p. 336). A condition for this engagement is that is must not violate the rights and abilities of others to hold and act upon *their* own convictions (2008a, p. 94-96).

An-Naʿim discusses cases of Hindu, Catholic and Pentecostal religiosity. Nonetheless, he is particularly preoccupied with how Muslims have acted upon *their* religious convictions throughout history. According to an-Naʿim, Muslims who hold their religious beliefs to be important have contributed significantly to politics (1999a, pp. 107, 115). Whereas the notion of primary motivation is seen by an-Naʿim both as a need and a fact, religiosity in the sense of expressing views from one's religious conviction is also emphasised as a *right* of believers. To an-Naʿim, this right is granted both through the universal principle of reciprocity of rights and in human rights conventions (2008a, p. 38-39; 1990, pp. 162- 163).

Religiosity as agency

As seen in the previous chapter, an-Naʿim sees shariʿa as a product of human reasoning. The variety of opinions among Muslim legal scholars on topics such as women's right to divorce

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[56] Although he does not refer to this, an-Naʿim seems to adopt this term from his mentor Mahmoud Muhammad Taha; in *The Second Message of Islam* Taha holds *muʿawada* to be a principle underlying all Islamic law. In *fiqh*, however, *muʿawada* means "exchange" and is used e.g. with reference to contracts stipulating the exchange of monetary assets (*muʿawada maliyya*) (Schacht, 1982, p. 145). As such, one could question if the principle is sufficiently broad and fundamental to legitimise secularism in the eyes of Muslims.

or apostasy is not only the result of shifting social and cultural circumstances; it is also a result of individual preferences and human difference. A premise for this view is the notion that living out one's religiosity – an important part of which, for Muslims, consists of interpreting and applying shari'a principles – is a matter of human *agency*. In my view, this notion has two implications in an-Na'im's texts:

For one, the content, scope and orientation of people's religiosity are never fixed, but will vary in time and from region to region (2003b, p. 44-45). The extent to which "religion" should be the basis of public policy in any society is not "given" in scriptures such as the Qur'an, nor does it flow naturally from the "essence" of a religion. Accordingly, a secular state cannot be contrary to "Islam" in itself. It is up to Muslims, on the basis of their interpretations of scripture and of their practice, to decide on the establishment of a secular state and determine its scope and features (2003b, p. 45-46). Therefore, it is important to an-Na'im that multiple views must be allowed on how religion should be properly conducted.

Second, because agency is integral to all such interpretation, believers will always and already be constrained in their efforts by the opinions of others. For example, although all Muslims should interpret religious sources for themselves, they will often seek the authority of religious scholars. As will be discussed in chapter 6, this is one reason why an-Na'im holds reform of shari'a to be crucial, even though shari'a should not apply directly as positive law in a secular state (2009a, p. 155).

Religiosity as free and autonomous

The last notion I wish to point out in an-Na'im's reasoning is that of religiosity being *free and autonomous*. Both these characteristics are also integral to his rejection of what he calls "traditional versions" of shari'a. For an-Na'im, religiosity – in the sense of "true conviction" and "religious piety" – simply cannot result from believers being coerced by fellow citizens or state institutions. Such coercion could lead to believers pretending to be pious or express a view contrary to their real conviction; this amounts to hypocrisy (*nifaq*) and is not acceptable as genuine religiosity, an-Na'im warns (1999a, p. 116; 2008a, p. 291-292). As such, religious conduct both in public and private must be completely free.

From this it follows that the conduct of religiosity for believers should be *autonomous*: it must be allowed to develop independently of any "external" forces. In Islam, it is particularly important to secure believers the freedom of choosing to follow any of the diverging religious rulings derived from the body of shari'a (2003a, p. 39). The state cannot therefore promote one religion or any particular interpretation of it. This would make other interpretations liable

to accusations of heresy (2008a, p. 34) and thereby deprive ordinary Muslims of the freedom to private piety *and* to propose public policy on the basis of their convictions (ibid, p. 6-7). Keeping the conduct of religiosity autonomous is also necessary for the sake of the state, an-Na'im holds. As will be discussed in more detail in the next chapter, the state in an-Na'im's model of secularism must be autonomous in order to secure religious freedom. If it is hijacked by a particular religious group, the state will be illegitimate, he claims (ibid, p. 92).

As with the notion of conviction, an-Na'im roots the aspect of autonomy in the right to religious freedom stated in human rights declarations and in *mu'awada* or the Golden Rule (2008a, p. 94-95).

Notions of religiosity: Both "is" and "ought"

In sum, these four notions reflect a view of religiosity that is both descriptive and normative. The notions of *primary motivation* and *agency* in particular reflect the fact that an-Na'im sees the role of religiosity in society as an empirical fact. Likewise, as seen in the previous chapter, an-Na'im also argues that Muslim compliance with shari'a has taken place independently of the state. At the same time, the notions in sum reflect dimensions of religiosity that adherents *should* be able to realise, in an-Na'im's mind. He is well aware that actual religious practice is not always free and autonomous. This is the very rationale behind major works such as *Toward an Islamic Reformation* and *Islam and the secular state*. Both these texts seek to identify and promote conditions that will enable religion to be conducted the appropriate way.

4.3. What the notions resemble

Together, these four notions of religiosity – as a primary source of motivation, conviction, agency and free/autonomous – form what I would call a distinct perspective of religiosity underlying much of an-Na'im's writing. For the purposes of this thesis, I regard his perspective as idiosyncratic, and I do not purport a comparison with the perspectives of other reformists. Nevertheless, the notions resemble views of religiosity and social action also held by other scholars. An-Na'im's perspective of religiosity should also be seen as resulting from the specific historical conditions for contemporary reformist thought in general.

Contextualising an-Na'im's notions and showing their resemblance to notions held by others may give a better impression of the kind of religiosity he envisions. This type of contextualisation and comparison is also common in religious studies in general, and a broader comparison could prove fruitful in further studies of an-Na'im and Islamic reformism. However, I will keep my own account brief and somewhat general on this point, because I

have found it more important to relate an-Na'im's notions – and his model of a secular state – to other theories of secularism. This will become clear in the next chapter.

Precursors of reformism: *Islah* and *tajdid*

In my view, the notions of religiosity I have identified reflect the existence of a climate of political contestation in post-colonial Muslim societies, to which an-Na'im and other Islamic reformists relate, directly or indirectly. Some historical conditions exist for this climate and for the emergence of Islamic reformism in the 20th century.

In literature on modern Islam, reformism is often denoted by the Arabic term *islah* (reform) and distinguished from *revivalism*, which is associated by terms for revival (*ihya*) and renewal (*tajdid*). The tendencies are however overlapping. In an historical perspective, both may refer to groups and movements in Muslim majority societies from the 18th century and onwards that advocated a strengthened and purified Islam, focusing on the practice of Muhammad and his followers as ideal. *Islah* is most closely associated with the so-called modernists around the turn of the 20th century, including Jamal al-Afghani from Iran (d. 1897) and Muhammad Abduh (d. 1905) from Egypt. They deplored what they saw as Muslim stagnation, and saw Islam as the cure (Esposito, 1998, p. 125).[57] For modernists, a reinterpretation of Islamic tradition to promote its true content was needed in order to achieve social and political development. According to Muhammad Abduh this was a common responsibility placed upon shari'a scholars and individual believers (Abduh 2000, p. 50).

Similarly, *tajdid* has been associated with attempts to re-enact the practices of the early generations of Muslims. Scholars John L. Esposito and John O. Voll claim that some of the new Muslim intellectuals from the 1930s and onwards represent a continuation of *tajdid*. Among them they list important Islamists like Hasan al-Banna (d. 1949) and Abu al-A'la Mawdudi (d. 1979), who were critical of other intellectuals neglecting Islam's vital importance for all areas of life. On the other hand, they did not subscribe to ulama's interpretations of shari'a (Esposito and Voll, 2001, p. 20).

The notions in context: Political contestation

In the eyes of both Islamic modernists and revivalists, the need for reorientation was partly due to the impact of Western *modernity* on their own societies, especially the colonisation by

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[57] See also "Islah" and "Tajdid" (1995) Revivalism is often identified with 18th and 19th century movements such as the (originally) Arabian Wahhabism, the Libyan Sanusi and Sudanese Mahdist groups and the Indian thinker Shah Wali Allah (Esposito, 1998, p. 118-125). As for modernists, they also include e.g. Rashid Rida (d. 1935) from Syria as well as Muhammad Iqbal (d. 1937) and Sayyid Ahmad Khan (d. 1898), both from India.

European nations. The great political and social changes that have taken place during the modern period, noted in the previous chapter, not only affected the role of shari'a and deprived ulama of their interpretative monopoly; new political arenas have also emerged.

This is what the anthropologist Dale Eickelman and political scientist James Piscatori argue in their study *Muslim politics* (2004). In the last decades, they hold, more Muslims have become increasingly conscious of the content of their religion, of the role it plays in their lives and how it affects their actions. The authors relate this process to the emergence of mass education and mass media, as well as the proliferation of printed books on religious topics. This gives people more knowledge and access to a wide range of different religious authorities. This raised awareness of Islam in many societies, the authors claim, amounts to an *objectification* of "Muslim consciousness" (Eickelman and Piscatori 2004, p. 37). As a result, more Muslims have come to see their religion not only as something to be practiced, but also as a system of ideas that is valid for social and political purposes (ibid., pp. 38, 42).

One consequence of this objectification, Eickelman and Piscatori hold, is that the political climate in many Muslim countries is characterised by contestation over societal ideals and political authority. In this process, politicians, activists and intellectuals with both "religious" and "secular" education use Islamic symbols and vocabulary (ibid, p. 4-11) Examples include the use – and banning of – the Muslim headscarf (*hijab*) in universities; the adaptation of "religious" titles and vocabulary by political leaders such as Saddam Hussein, Anwar al-Sadat and King Hassan II of Morocco; and the denunciation of some of the same leaders by their opponents with the use of terms such as *kafir* (infidel) (ibid, p. 11-15). Another aspect of this objectification is that ideas and practices are increasingly justified by referring to "tradition". For instance, the authors emphasise how many Islamists invoke the period under the first four rightly-guided caliphs of Islam as a "golden age", the practice of which represents an ideal. On this background, they claim that Islam is *din wa dawla*, both religion and state. In the Islamic state, they claim, shari'a must be upheld as law (ibid, p.30).[58]

Other authors have also pointed out how the use of Islamic symbols and vocabulary increasingly shapes public debate in Muslim countries.[59] As argued by Vogt, reform movements often consist of "new" intellectuals and activists who challenge both traditional interpretations of Islam *and* solutions purported by Islamists (Vogt, 2005, p. 202-203).

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[58] Eickelman and Piscatori are explicit in their criticism of this idea, see e.g. 2004, p. 56-57.
[59] Examples include studies of *ulama*'s impact on the civil sphere in Pakistan since the 1960 (Zaman, 2005); activists trying reform family law in Morocco (Buskens, 2003); the influence of reform movements in Malaysia (Peletz, 2005); and political opposition in Saudi-Arabia (Okruhlik, 2005).

The climate of political contestation accounted for here is also a factor in Abdullahi an-Na'im's writing. He observes a "politics of religion (…) in post-colonial Islamic societies in different parts of the world"; a premise of this politics is the "competing interpretations" that exist within religious traditions (an-Na'im, 2005, pp. 28, 26). Such a diversity of views "is likely to become more intensified and widespread under modern conditions of education and communication" and become manifest in political disagreement, he holds (2003b, p. 45).

Some of the aspects in Islamic thought and practice that I have outlined above are akin to what I have called notions of religiosity in an-Na'im's work. First, the notion of *primary motivation* resembles modernists and revivalists' insistence on Islam as a major solution to Muslim stagnation. As noted in chapter 2, an-Na'im sees the Islamic resurgence of the last decades as natural, because it acknowledges what he sees as the importance of Islam for Muslims throughout history.

Second, the notions of religiosity in an-Na'im's texts resemble aspects of the "objectification" of consciousness outlined above. As mentioned, Eickelman and Piscatori identify a tendency to not only practice or follow one's religion, but increasingly also to look at it as consisting of ideas and values that are distinct from the ideas and values of other religions. These ideas and values then become the basis of political demands. This is akin to the kind of religiosity I have tried to capture in the notion of *conviction*. As noted above, this notion implies a sense of conscious understanding that some believers today have of their religion – according to an-Na'im – as well as their need to transform it into public policy.

Moreover, Eickelman and Piscatori argue that various religious interpretations exist to an increasing degree in Muslim societies, not only in relation to classic textual sources but also in contributions by contemporary intellectuals. They also argue for Muslims' ability to question the "givenness" of interpretations, for instance with regard to the link between religion and politics. Both these elements of the objectification are akin to the notion of *agency* as I have identified it. In sum, the objectification of religious consciousness denotes a sense of awareness of religion among some Muslims. I would argue that a similar awareness underlies the notions of *agency* and *conviction* that I have identified in an-Na'im's work.

In my view, the increased religious awareness observed by Eickelman and Piscatori, as well as by an-Na'im, should not be taken to imply that such awareness did not exist at all in pre-colonial Muslim societies. Nor can it be assumed that categories such as "objectification of Muslim consciousness" or "notions of religiosity" give an exhaustive description of the meaning of Islam for Muslims. First and foremost, these concepts describe aspects of the

public assertion of religion among some Muslims, in my view.[60] There is no agreement among Muslims that Islam should even play a public role, nor on what public religion means in practice. In his study of Indonesian Islam, anthropologist Robert W. Hefner also notes that in many Muslim societies, a public sphere of contestation has emerged. But in Indonesia, he argues, this sphere is dominated by Muslims who deny the idea of an Islamic state (Hefner, 2000, p. 10-13). As will become clear in chapters 5 and 6, an-Na'im sets specific conditions for the public conduct of religiosity in his secular state model.

Finally, an-Na'im's insistence on religiosity as *free* and *autonomous* echoes Mahmoud Taha's emphasis on total individual freedom as the overarching goal of compliance with shari'a (Taha, 1987, p. 68-72). In their combination of pious practice and a political platform grounded on religious values, Taha's Republican Brothers (of which an-Na'im himself was member) could also exemplify the display of religiosity favoured by these notions.

A wider theoretical context: Weber and Giddens

I would also like to briefly point out the similarity between the notions of religiosity and accounts of religion and social action from a non-Islamic context. For one, an-Na'im's unequivocal emphasis on the religious actor closely resembles the perspective of the German sociologist Max Weber (d. 1920). Instead of seeing religious values as abstract entities inflicted upon believers by structures of "society", Weber started with the assertion that believers acted upon religious values, thus *creating* social change. This is a major point in Weber's account of how Protestant ethical piety made a significant contribution to the growth of modern Western capitalism. Integral to Weber's work is also the notion that religiosity is manifest when a set of beliefs is acted upon by religious adherents (Weber 2003).[61] The perspective of an-Na'im's writing captured in the notions of *conviction* and *agency*, could thus be termed "Weberian".

The notions of conviction and agency could be aligned with the so-called "discursive consciousness" described by the British sociologist Anthony Giddens in his *structuration theory*. By this category, Giddens designates a mode of consciousness in which people are able to give reasons and intentions for their actions and reflect on how they relate to concrete goals, as opposed to more taken-for-granted, routinised actions. Moreover, it is through

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[60] Nor do I suggest that Islamism or Islamic reformism can be seen as a mere continuation of earlier tendencies of *islah* and *tajdid* among Muslims. For a critique of the lack of historicity of such explanations in some works by John O. Voll and John L. Esposito, see Ismail (2003, p. 4-11).

[61] *The Protestant Ethic and the Spirit of Capitalism*. It should be noted that a premise of Weber's study is that, in post-Reformation Christian thought, religious motivation is an "inner" phenomenon that indirectly results in social action, not necessarily because adherents see such action as "religiously" intended.

people's action that societal structures and systems are maintained and transformed (Giddens, 1984, pp. 6-7, 25). The awareness present in this "discursive" mode of action pointed out by Giddens is somewhat similar to the awareness an-Na'im presupposes among religious actors, particularly in his model of the secular state.

4.4. State/non-state and public/private distinctions

Religious and political authority

In his argument that religiosity must be autonomous and free, an-Na'im makes a distinction between religious and political authority. This is most evident in *Islam and the secular state*, in which an-Na'im devotes a chapter to historical arguments for his case (discussed in chapter 3). Notably, an-Na'im analyses the first Muslim caliphate in Medina and the so-called wars of apostasy. During these wars, Abu Bakr, the first caliph after Muhammad's death, evoked religious reasons for fighting certain tribes that withheld the payment of *zakat*, the religious tax. According to an-Na'im, the widespread disagreement among other followers of Muhammad in relation to this question indicates that Abu Bakr succeeded because of his ability to defend the state, not religion (2008a, p. 60).

On the basis of this and other examples, an-Na'im argues that religion and politics produce different forms of authority. [62] Political leaders derive authority from their ability to handle the coercive power of the state and provide services to all citizens. These are largely objective criteria, assessed by the public on a large scale, as they also *should* be, writes an-Na'im, given the importance of political responsibility. Religious authority, on the other hand, arises from strong personal ties in religious communities. It is dependent on leaders being seen by their adherents as pious and wise. This is a subjective assessment based on daily interaction on a small scale, but even religious leaders who act on a larger scale derive authority through transmitting their piety to others, an-Na'im holds (2008a, p. 50-51). An-Na'im explicitly mentions Mahmoud Taha's appearance in the Republican Brothers as an example of such religious leadership (Vogt, 2005, p. 42-44).

An-Na'im admits to the difficulty of making such a distinction in practice, as a leader could exercise religious and political authority at the same time. His point is rather that these are modes of authority that *should* be held separate. Notwithstanding whether Abu Bakr made the right judgment, the wars of apostasy had drastic consequences on the individual level, as

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[62] Including *al-Mihna*, a theological inquisition under subsequent Abbasid caliphs in the 9th century; this was rooted in disagreement among ulama on whether the Qur'an was created and pertained to a conflict between Mu'tazilite and Ash'arite scholars on the role of rational thought in religion. An-Na'im also discusses legal practice under Fatimid and Mamluk dynasties in Egypt (10th to 16th centuries).

did other historical events. In today's society conflation of the two forms of authority could violate the free practice of religion in civil society, an-Naʻim warns (ibid, p. 78-79).

An-Naʻim's account ties political authority closely to large-scale institutions like the state.[63] This is clearly a generalisation, but it should be read in light of an-Naʻim's overall objective: to challenge Islamists arguing for an *Islamic* state. In his view, such a state conflates political and religious authority and thereby enforces religious norms through laws. This state is "political" and therefore religiously invalid; it does not conform to religiosity as free and autonomous. But in my view, an-Naʻim's distinction is not necessarily helpful in order to understand the nature of *claims* made by religious actors. Rather, it illustrates how his normative notions could conflict with actual practices. Some adherents might see it as perfectly legitimate from a "religious" point of view that a state should uphold religion.

In addition, an-Naʻim is somewhat idealistic in his assertion of the kind of power religious actors use. He separates the "moral authority" of religious leaders from the "coercive powers" of politicians (2008a, p. 51). His view is similar to Max Weber's characterisation of charismatic authority as based on personal traits, on a divine mandate and on the relation to adherents (cited in Furseth and Repstad, 2003, p. 176- 78). However, religious leaders also use coercive means to mandate norms and social in their communities (ibid; Phillips, 2007, p. 177). They also have discursive authority over religious narratives; these could be oppressive, as they naturalise oppressive relations, for instance between the sexes (Okin, 1999, p. 13).

Public and private religiosity

As noted briefly above, the notions I have identified also reflect an emphasis in an-Naʻim's work on *public* aspects of religiosity. This is explicitly stated by an-Naʻim in the preface to *Islam and the secular state*: What concerns him is not how religion is – or should be – practised in the "private, personal domain", but what role religiosity should have with regard to legislation and policy (2008a, p. vii; see also 1990, p. 1). This is an-Naʻim's main criterion when he accounts for his secular state model, although he does not stipulate exact categories.

The distinction is important to an-Naʻim due to the limits he sets for public religiosity. Religion produces values that should inform public policy and legislation. But an-Naʻim insists that the process of drawing up and applying laws and policies must be kept in non-religious *arguments* (I discuss this in the next chapter). Outside these domains, people are free to practice their religion. This also includes religious organisations doing charitable work in civil society (2008a, p. 95). As such, religiosity for an-Naʻim is both a private virtue to be

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[63] He is careful to note that the state "hardly existed as a political institution" during Abu Bakr's rule in Medina.

protected *and* an important tool to enhance democracy and the rule of law on a public level. A premise is that neither private nor public religious practice may infringe on other people's right to religious freedom.

Evidently, an-Na'im is aware of the interconnectedness of public and private religiosity; a case in point here is his account of how the islamisation in Sudan affected the private lives of citizens. As argued by others, matters of private practice may also inflict on public life. For instance, religious family law and other cultural practices could restrict adherents – especially, women's – ability to participate in public forums (Okin, 1999, p. 13; Phillips, 2007, p. 113-123). An-Na'im is aware of this potential problem, but only discusses it in general terms, concentrating on the public dimension. Thus, it could be argued that his distinction makes him less capable of discussing *which* religious actors are most likely to influence public life, and what consequences this might have for his secular state.

CHAPTER 5:
AN-NA'IM'S MODEL: A VARIETY OF SECULARISM

5.1. Dimensions of secularism

In the previous chapter, I identified four notions of religiosity underpinning Abdullahi an-Na'im's work. My objective for this thesis is now to discuss how an-Na'im's model for a secular state – outlined in *Islam and the secular state* – is impacted by these notions.

However, an-Na'im's own description of his proposed secular state reveals the need to discuss the phenomenon of secularism in a wider context. "By a secular state I mean one that is neutral regarding religious doctrine (…)" writes an-Na'im on the first page of *Islam and the secular state*. He continues: "This is what I mean by secularism in this book, namely, a secular state that facilitates the possibility of religious piety out of honest conviction" (an-Na'im, 2008a, p. 1). But can a state be "neutral" with regards to religious doctrine and nonetheless "facilitate" – or "promote", as an-Na'im puts it in the subsequent sentence – religious piety? What distinguishes this promotion from that of a "religious" or "Islamic" state? And can a secular state actually be neutral in the eyes of its religious citizens?

The second quote above also relates the secular state to *secularism*. The objective of finding "an Islamic approach to secularism" has been on an-Na'im's agenda for the last decade (1999a, p. 115), and could be traced even further back (1993a, p. 106-107). But what makes a specific *Islamic* approach to secularism necessary? Does this mean that a basic tension exists between Islam and secularism? Moreover, secularism entails more than a model for a secular state. As noted by scholars, secularism is also a political doctrine of separation between state and religious institutions – although it cannot be reduced to that (Taylor, 1999, p. 31; Asad, 2003, p. 1). In its various versions this doctrine offers different justifications and prescribes different means. And it is practised in various ways in actual societies.

Therefore, before turning to an-Na'im's model, in first part of this chapter I will try to account for these different dimensions of secularism. In the second part, I present an-Na'im's model for a secular state by comparing it to other theories of secularism, especially that of John Rawls. I begin the first part by tracing the "secular" in pre-modern Christian Europe. I continue with the emergence of secular nation states in Europe and the USA. As noted by others, today's practices of secularism have many different roots (Jakobsen and Pellegrini, 2008). But accounting for the European origin of secularism is nonetheless important. Firstly, because the versions of secularism that an-Na'im draws on were developed in European and

American contexts. Secondly, the very idea that secularism is "Western" or "Christian" is arguably widespread in Muslim societies; this has impact on an-Na'im's secular state model.[64]

5.2. The "secular" and the "religious"

A new secularity in modern Europe

The term "secular" stems from the Latin term "saeculum", meaning *century* as well as *time* or *age*. According to Charles Taylor, in pre-modern Christian understanding, "secular" denotes the time or age of this world, a sequential time in which people's "ordinary" day-to-day-business and governance by kings and princes are part. But the "secular" time with its related activity is also embedded in and tied to modes of "higher" or "sacred" times. These pertain to practices and institutions oriented towards God and eternity (Taylor, 2007, p. 54-55). In this line of thinking, the church and the monasteries belong to a sphere that is partly set off from the secular. Priests ordained to serve outside religious orders were called "secular" (Beckford, 2003, p. 33). However, the secular was an orientation *within* a background understanding in which all events were part of a divine order; atheism was "close to being inconceivable", Taylor holds (2007, p. 26). Worldly institutions and churches both had functions belonging to the secular and were seen as contributing to the divine order (Taylor, 2007, p. 43-45).

Starting in early modern Europe, the quality and role of the "secular" changed and made possible a new worldview forming modern secularism. Three factors can be highlighted:

One is the phenomenon Taylor calls "Reform". It consists of movements trying to make the fulfilment of moral standards incumbent upon ordinary believers, not leaving it to be performed by those inside "religious" monasteries and orders on behalf of people (Taylor, 2007, p. 61-75). The most decisive is the Protestant Reformation. The key message of the German priest and theologian Martin Luther (d. 1546) – one of the Reformation's foremost advocates – was that the Bible promises salvation as a result of faith alone. The Reformation criticised the Church's emphasis on sacraments like mass and absolution, as well as the trade of indulgences for remission of sins; moreover, Luther held that the conduct of religion should be held separate from secular politics (Collinson, 2006 [2003], p. 54-56).

Part of the consequence of the Reformation was a conception of the relationship to God as internal to the religious subject. At the same time, the reformators rejected the importance of "religious" involvement in this-worldly affairs by the Church and thus directed the moral responsibility of lay Christians towards a disciplined social order (Taylor, 2007, p. 82). This

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[64] I have explained my distinction between "theories" of secularism and an-Na'im's "model" in chapter 1.

created a public sphere potentially subject to emerging "secular" reasoning independent of religious categories of understanding (Bangstad, 2009a, p. 31).

A second decisive event is the religious wars of the 16th and 17th century Europe. They were fought in the aftermath of the Reformation, between political entities of Protestant and Western Catholic Church affiliation over religious and political hegemony. One consequence of the wars was the parties' gradual commitment to tolerance. A thought gained momentum that people of different confessions should be able to co-exist peacefully – at least in separate confessional states – *independent* of a particular confessional authority (Høibraaten, 1993. p. 237-238). This was made manifest in principle in the peace treaty of Westphalia in 1648.

Thirdly, during the Enlightenment – a period in European history often set between the late 17th and late 18th century – contributions from writers, philosophers and scientists helped to shape a new intellectual climate in which the role of religious thought and institutions was challenged. What united many thinkers of this period was, put simply, their insistence that the procedures of society should be based on knowledge derived from human reasoning.[65] By consequence religious dogma on the creation of the world or the nature of government were increasingly criticised. Also emerging in this period is the idea of a *natural* "religion" that could be emptied of "superstition" (e.g. of miracles) and be "true" or "reasonable" (Aadnanes, 2005, p. 4), as well as critical scholarship treating the Christian bible as an historical text.[66]

As regards the role of religion in society, Enlightenment thinkers held different views. Prominent Scottish philosophers such as Adam Ferguson praised religious institutions as providers of a society built on traditional moral. A more "radical" strand of thinkers – among them Paine, Diderot, D'Holbach and Helvetius – saw Christian dogma and institutions as contributing to wars, upholding oppressive rule, sanctioning persecution of religious "heretics" and glossing over social equality. Therefore, to secure equality of citizens, social progress and religious toleration, the state must be founded on non-religious authority and the churches should lose their influence over societal affairs (Israel, 2010, p. 157-68). Despite these ambiguities, Enlightenment scepticism and institutional criticism in general paved the way for practices and institutions to rest on an independent, "secular" foundation.

The emergence of "secular" nation states

Taylor has described this process in modern Europe as the emergence of *direct access societies*. They are built on a new kind of social imaginary, whereby people's actions are

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[65] The epistemological turn in the work of Immanuel Kant (d. 1804) locating secure knowledge exclusively to the experiencing subject, is part of the philosophical foundation of such thinking.

[66] Even though critical biblical scholarship actually emerges as early as the 15th century (Frampton, 2006)

embedded in the same secular time and not mediated through the hierarchies of religious institutions (Taylor, 1999, p. 39-43). In these societies the "religious" and "secular" became gradually more distinct and separate.

One manifestation of this process is the call on the part of religious minorities and radical intellectuals for the equal treatment of adherents from different religions, that is, mainly from different Christian confessions. The states emerging in Europe from the 17th century were initially founded on the religious unity of most of its inhabitants, and of the rulers' ability to uphold one particular confession.[67] Persecutions of religious groups seen as heretics were widespread in these "denominational states". Eventually, arrangements were made to protect inhabitants regardless of religious affiliation (Lindholm, 2004, p. 26-27).

Thus, the inter-religious toleration emerging after the religious wars was developed into the concept of rights, including the right to religious freedom. In the social contract theory of Thomas Hobbes (d. 1679) and John Locke (d. 1704), these rights were natural rights given to all humans and, as such, inalienable: They induced people with a sovereignty that the state could delegate to a state in return for protection and some kind of political representation (Asad, 2003, p. 132-134).

The concept of natural rights, including the right to religious freedom, inspired the political revolutions in the USA and France. It is manifest in their foundational documents, both the American Declaration of Independence (1776) and the Declaration of the Rights of Man and the Citizen (1789). A key objective of these and other revolutions in the 17th and 18th centuries was to separate political sovereignty from religious institutions. The American constitution grounds the state on the sovereignty of people as a *nation* (Taylor, 1999, p. 41). Similarly, the French Republic of 1792 sought to establish a government as a contract between people and rulers independently of the Catholic Church (Bauberot, 1999, p. 98).[68]

Gradually and partially – mostly during the 19th century – "secular" nation states were established in Europe. They were united by a language, territory and a government elected by its inhabitants, and not by their ability to uphold a religion. This is the core of the French concept of secularism, *laïcité*, established in 1789 and affirmed in 1905. In the later version, the responsibility of the state to uphold a particular confession was abandoned, and people were given freedom of conscience as individuals (Bauberot, 1999, p. 118-119). As we have seen, a certain distinction between secular and religious authority is partly inherent to

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[67] Here, "state" refers to territorial sovereign political entities. See below for an-Na'im's use of this term.
[68] Note that the rights in the American declaration were not non-religious per se: they were given humans "by their Creator" (Bauberot, 2004, p. 442). But in both the French and American case, the new state foundations claimed justification by their ability to uphold the rights for all citizens regardless of religious adherence.

Christian understanding. Nevertheless, the push for a secular polity often came from movements and intellectuals outside religious institutions.[69]

Although secularism amounts to more than just the state being "secular", the establishment of non-confessional nation states in the modern period is an important condition for secularism as a political doctrine and a set of practices. As will become clear below, the state is also the most decisive part of Abdullahi an-Na'im's model for secularism.

5.3. Secularisation: Societal, individual

The emergence of secular nation states can also be seen as part of a process of *secularisation*. In early modern Europe, this term referred to expropriation of ecclesiastical property by the state, following for example the Reformation or a revolution. However, in the mid-19th century, it came to mean a development whereby religious institutions became a separate societal sector with less influence (McLeod, 2000, p. 1). The gradual separation of church and state in France also removed church authority over legislation as well as over such functions as health care, welfare of citizens, registration of births and marriages (Bauberot, 1999, p. 103). From 1879 to 1905, laws abolished religious teaching in state schools and banned religious symbols in public. In other countries, too, secular procedures replaced religious ones in many areas; most notably in welfare and education (McLeod, 2000, pp. 52-53, 60, 71).

From the late 19th century and for most of the 20th century social scientists have defined secularisation not only as a transfer of power away from religious institutions; it has been studied as a decline of the importance of religion in society as a feature of modern, industrial, capitalist societies (Berger, 1990, p. 107-109). Scholars such as Tönnies, Comte, Weber and Durkheim held that religion would decline or be radically altered, for instance into secular "scientific" or "civil" forms of religion (Furseth and Repstad, p. 102-104).

Throughout the 20th century, a set of theoretical concepts characterised as the "secularisation thesis" has guided much social science research on religion (Gilje, 1996, p. 99). Some of the most important points in this thesis include:

(1) That religion is weakened because of **societalisation**; old forms of community in which values are transmitted through close relations are replaced by large-scale institutions assigning people social roles (Wilson, 1982, p. 41).

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[69] Some Christians welcomed the loosening of ties between state and church. Others opposed it, partly because they saw a comprehensive church as part of the political order. For example, the granting of religious freedom to dissenters after Westphalia and the French separation of 1905 were both opposed by Catholic popes (Lindholm, 2004, p. 30; Bauberot, 2004, p. 444).

(2) Similarly, as modern societies are **differentiated** into autonomous sectors, schools, universities, companies and bureaucracies are governed according to their own logic. This, it is held, deprives religious institutions of influence on society (Berger, 1990, p. 107).

(3) Moreover, scientific discoveries have transferred religious explanations of existence from facts to "symbolic" accounts that are accepted only as particular subjective truths in a landscape of religious diversity (ibid, p. 166-167). This **rationalisation** makes religion's offer of social cohesion and curing distress is redundant (Wilson, 1982, pp. 41, 33-34).

(4) This is related to the factor of **privatisation**. Religion is absent from the public sphere, it can no longer reinforce its own beliefs, and religious arguments are no longer valid in politics (Bruce, 2006, p. 342).

(5) These and other factors will lead to a **decline** in the importance of institutions, and also in people's religious belief, theorists have held (see e.g. Martin, 1993, p. 2-3).

Is secularisation only "Western"?

As noted by Peter Berger, a central premise for many scholars studying secularisation has been that it is *inevitable*: As modern societies are differentiated and governed by "rational" procedures, religion is bound to be less important, it has been asserted (Berger, 1999, p. 2). Secularisation studies have also been partly *normative*. Sociologist David Martin has remarked that the works of scholars at large have both "noted and promoted" the decline of religion in modern societies (Martin, 2005, p. 8). From the 1960s and onwards, critics have claimed that the thesis is not valid, imprecise or that it does not apply to all societies. Two strands of criticism are particularly relevant to the present discussion, as they shape an-Na'im's view of secularisation and its relation to secularism.[70]

One concerns the emphasis on *privatisation* in the standard secularisation thesis: If modernisation of societies makes religion retract to the private sphere, why is it that religious institutions influence public policy in many countries? Here, sociologist José Casanova has tried to revise – but not refute – the content of the thesis. He argues that differentiation of religious and secular institutions does not necessarily lead to privatisation. In modern societies a form of public or de-privatised religion can be observed, he holds (Casanova, 1994, p. 215). He supports his argument with studies of mobilisation for various political goals by national churches and religious movements in countries like Spain, Brazil and Poland (ibid, p. 221).

A second objection holds that it is misleading to speak of secularisation in any sense of the term outside Western Europe and North America. Theoretical and empirical studies of

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[70] Beckford (2003), Furseth and Repstad (2003) and Gilje (1996) offer overviews of such criticism.

secularisation have often concentrated on these areas and on how Christianity responds to modernisation. Scholars contend that Western Europe is "secularised": Religious institutions have little public influence, and polls indicate that fewer people hold religion to be important in their daily lives. But that makes this region an exception in a world characterised by religious revival, it is held: This revival includes the rise of Pentecostalism and Evangelical Christianity on a global scale, religious nationalism in a number of countries, as well as the Islamic revolution in Iran in 1979 and Islamist mobilisation in the Middle East, North Africa and Asia (Davie, 2000, p. x; Berger, 1999, p. 7-9; Esposito, 2000, p. 1-3).

The validity of these counter-arguments depends on how secularisation is defined, how it can be accurately measured and how data are interpreted. This topic lies beyond the scope of this thesis. What is important to the present discussion is that, according to an-Naʻim, many Muslims associate *secularism*, as a political arrangement, with *secularisation*, in the sense of decreased importance of religion. Because it is important for Muslims to live in accordance with Islam in their private and public life, they therefore reject secularism, he holds. This is a fundamental premise in his argument for a specific "Islamic" approach to secularism. As will be seen below, a look at how secularism is applied in practice defies simple conclusions as to how it relates to secularisation. First, given the caution taken by an-Naʻim, I will account for different opinions of the validity of secularism in Muslim countries.

5.4. Islam and secularism: Rejection and defence

The "Western" and "irreligious" legacy

Apart from reports of discussions with other Muslims, an-Naʻim does not cites empirical evidence for the alleged Muslim rejection of secularism (see e.g. 2008a, p. 247). Nor is it easy to draw evident conclusions from empirical enquiries.[71] However, other authors also hold Muslim scepticism to be widespread. They relate it to experience in Muslim areas from North Africa to Southeast Asia with European colonialism and post-colonial regimes.

In Europe, the political scientist Nader Hashemi notes, the separation of religious and political power took place gradually and was institutionalised through a somewhat broad consensus. By contrast, in Muslim societies "the political manifestation of secularism was imposed from the outside via Western hegemony" (2009, p. 137). The most prominent

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[71] Although none of them treats secularism explicitly, two surveys can indicate attitudes among Muslims: A global survey in six countries with predominantly or large Muslim populations conducted in 2005 recorded great majorities in most countries favouring a greater role in politics for Islam ("Pew Global Attitude Survey ", 2005). Polls conducted in 2001–2007among people in 35 such countries showed that the majority in most countries wanted shariʻa to be "a source" or "a main source of legislation" (cited in Esposito and Mogahed, 2008, p. 48).

examples are Iran and Turkey; with the establishment of the latter, the institution of the caliphate, seen as a symbol of Islam's political and spiritual power, was abolished in 1924 (el-Affendi, 2008, p. 88). In many of the post-independence nation states in these areas, governments advocated a secular nationalist ideology. Western-style political, legal and educational systems dominated. Islam was kept as state religion, but played little discernable role in the often state-run socialist economic and social policies (Esposito, 2000, p. 2-3). Although progress was also made, growing poverty, inequality, lack of job opportunities and corruption – especially in the Middle East and North Africa – weakened the legitimacy of many governments (Hashemi, 2009, p. 139-140). Rights of citizens have been curbed, and Islamists movements have been banned and made subject to oppressive methods, not least in secular regimes such as Turkey and pre-revolutionary Iran (Hurd, 2008, p. 68-74).

According to the Swiss theologian and Islamic reformist Tariq Ramadan, "secularism" has in the Muslim world thus been associated with the authoritarian politics of Kemal Atatürk, Saddam Hussein and/or Hafiz al-Assad. Many Muslims have seen secularism as "processes of 'de-Islamization', of opposition to religion" making it "historically and factually impossible to associate 'secularism' or 'religious neutrality' with freedom and democratization" (Ramadan, 2009, p. 30-31). Hashemi also notes the Arabic translation of secularism, first as *la-diniyya* (non-religious), and later as *ilmaniyya* (from *ilm*: science) or *almaniyya* (this-worldly). This, he holds, has made the term easy to link to atheism and materialism and difficult for Muslims to consolidate with a religious identity (Hashemi, 2009, pp. 136, 143).

Other scholars see secularisation and secularism as alien to Islam as a religion. Islam, it is held, does not allow for separation of secular and religious institutions. For example, the renowned scholar in Islamic studies, John L. Esposito, writes that, at least in the eyes of many Muslims, "Islam is believed to be relevant and integral to politics, law, education, social life and economics. These institutions or areas of life are not viewed as secular, but religious (Islamic)" (Esposito, 1998, p. 159). Similarly, Peter Berger (2005, p. 16-19) and the historian Bernhard Lewis (2006, p. 256) underline what they see as a "traditional" lack of separation between state and religion in Islam.

Islamists' rejection of secularism

This perceived unity of religion and politics is evident in Islamists' argument against secularism. Islamism must partly be seen as a reaction to the abolition of the caliphate in 1924 and the social and political "Westernisation" of Muslim societies. The founder of the Muslim Brothers, the Egyptian national Hasan al-Banna (d. 1949), feared that his home country would

follow Turkey and establish a secular state. He considered Islam to be a comprehensive order and saw in the first generations of Muslims, the *salaf*, an ideal for an Islamic *society*; as a long-term goal, the caliphate should be revived, he held (Commins, 1994, p. 130-137).

Later Islamist thinkers who shared this ideal put greater emphasis on the *state* as a vehicle for realising a comprehensive Islamic order. For thinkers such as the Pakistani Abu al-A'la Mawdudi (d. 1979), the Egyptian Sayyid Qutb (d. 1966) and the Iranian Ayatollah Ruhollah Khomeini (d. 1989), the Qur'an and Sunna contain a political theory. In practice, this means that an Islamic state governed by shari'a must be established in contemporary societies. Upholding the caliphate as an ideal for such a government, these ideologues differed regards how it should be realised. In particular, they disagree on how to ground it on popular will. But they all agree that the ultimate sovereignty in an Islamic state lies with God (Martin, 2003, p. 136). This makes a secular polity independent of religion difficult to accept.

Thus, Mawdudi states that Islamic government is "the antithesis" to "Western secular democracy" that builds solely on popular vote (Mawdudi, 1960, p. 219). According to Khomeini, Muslim countries that have introduced legislation after a Western model have distorted the meaning of Islam. In particular, the alliance between Reza Shah's Iranian government and Western colonialists, "ousted Islam's judiciary and political laws from the sphere of application and have replaced them by European laws in contempt of Islam for the purpose of driving it away from society (…) In the Prophet's time, was the church separated from the state?" (Khomeini, 2007, p. 334).

Similarly, contemporary Islamists in many countries reject the term secularism and the idea of a government separate from Islamic principles. They argue that secularism breaks with a unity of religion and state ever since the first Muslim community in Medina; that secular governments have caused wars and spread moral decay; and that secularism can only be realised in Christian societies (Hashemi, 2009, p. 144-145).[72] The last argument is used by the British-Palestinan Islamist Azzam Tamimi. Secularism has been successful in "the West" because it is derived from a Christian separation of religious and secular authority, he holds. In "the Muslim world", however, it was enforced by colonial rule (Tamimi, 2000, pp. 13, 16).

Muslim defence of secularism
It is evident, as Dale Eickelman and James Piscatori write, "that Muslims hold a variety of opinions on the relationship between religion and politics" (2004, p. 55). Among those

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[72] This argument is used by the Qatar-based Egyptian mufti and leader of the European Council for Fatwas and Research, Yusuf al-Qaradawi (Hashemi, 2009, p. 145).

opinions is support to a form of secularism, contrary to the attitude expressed by Islamists. A classic formulation of such a position was made by the Egyptian *alim* Ali Abd al-Raziq in the book *al-Islam wa'l-Usul al-Hukm* ("Islam and the fundamentals of authority") from 1925. Al-Raziq dismissed the idea that the Qur'an contains principles "necessary for a civil state as regards political principles and laws". The tenets of Islam are only religious, not political, al-Raziq holds (al-Raziq, 2000, p. 97). By consequence, the model of the caliphate had no grounding in Islamic doctrine, and in al-Raziq's view, Muslims were now free to adopt other forms of government. Because of these suggestions, al-Raziq was deprived of his title as *alim* at the al-Azhar university (el-Affendi, 2008, p. 86).

Other scholars have questioned the "Islamicness" of the Islamic state. They hold that throughout history, interpreting the shari'a and upholding piety in Muslim societies have been the tasks of the ulama, not the state. Muslim communities have been loyal to rulers because of the latter's ability to protect Islam from external threats and prevent chaos. Political and religious authority was therefore long been separate in practice, it is argued (see Eickelman and Piscatori, 2004, p. 46-48). This separation of responsibility is visible in the works of medieval political theorists such as al-Mawardi and al-Ghazzali (Zubaida, 2003, p. 91-93). On the basis of this, the idea of an Islamic state could be seen as distinctly modern and more akin to Western political theory than historical Islamic practice (Hefner, 2005, p. 23).

Some contemporary Muslims argue that a partial separation of political and religious authority is not necessarily tied to secularisation, in the sense of religious decline. Rather, a degree of separation can prevent Islam from being corrupted by political leaders. Among those who argue in favour of a form of secular political system are intellectuals and activists such as the Indonesian Nurcholish Madjid (b. 1939), the Iranian Abdoulkarim Soroush (b. 1945), the Egyptian Muhammad Sa'id al-Ashmawi (b. 1932), and the Syrian Sadiq al-'Azm (Eickelman and Piscatori, 2004, p. 53-55; Hefner, 2005, p. 23).

In the same way as Islamists who reject secularism, the intellectuals referred to above do not represent the attitudes of all Muslims. But it should also be noted that for Muslims living in Europe or countries like Indonesia and Senegal, a secular state does not necessarily mean authoritarianism or atheism (Engineer, 2006, p. 338). It could even be argued, as does Tariq Ramadan, that in Europe, the conditions for practicing Islam are favourable, one some areas even more so than in some Muslim societies (Ramadan, 2002, p. 135-140). Among Islamists, cautious concessions to secular government can also be found. The Tunisian Islamist Rashid al-Ghannouchi contends that in absence of an Islamic *shura* (consensual) model of governance, "a democratic secular system of government is less evil than a despotic system of

government that claims to be Islamic"(al-Ghannouchi, 2000, p. 123). Turkey's ruling AK Party, with forerunners in Islamist parties, favour a "democratically negotiated" secularism in which public policy to a greater extent can reflect Islamic values (Yavuz, 2009, p. 169-70).

5.5. Varieties of secularism

The account that I have given above suggests that some Muslims are wary of secularism as a term and a government principle because they associate it with religion becoming less important. This is based on experiences of post-colonial Muslim societies and the roots of secularism in European Christian thought and practice.

In their discussion of secularism, scholars Janet R. Jakobsen and Ann Pellegrini point out that secularism in Western thought *has* been associated with the decline of religion. In science, as well as in politics and popular culture, an Enlightenment narrative has been dominant. In this narrative, liberation and progress are dependent on religion being restricted to personal belief and replaced by a universal reason, based on an idealised model of post-reformatory Europe (Jakobsen and Pellegrini, 2008, pp. 4, 8). Secularism in Western thought has been the vehicle for realising this progress, the authors hold.

The wish for such progress was clearly a goal also for George Holyoake, who in 1851 invented the term "secularism". He founded The Central Secular Society, an association promoting reason as the basis for all moral and ethics and discouraging people from worship of supernatural beings (Bangstad, 2009a, p. 28-29). But to Jakobsen and Pellegrini, secularism is *not* "more rational, more modern, freer and less dangerous than religion" (2008, p. 11). The very idea that secularism is the opposite of religion must be discarded, they hold. Instead, we should see secularism as different practices intertwined with *religious* practices in individual societies (ibid.) As secularism has a strong Western legacy, its practices are similar, but not determined by one, universal and European form of secularism, it is argued (ibid, p. 13).[73]

In my view, the approach taken by Jakobsen and Pellegrini fits well with the various practices of secularism. So far in this chapter I have stressed that secularism includes a form of separation between religious institutions and the state. Accounts by scholars also name other features, but even if we stick to this criterion, the practices differ widely.[74] For example, it has been argued that the separation of church and state in the USA was intended to allow

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[73] On this basis, Jakobsen and Pellegrini actually prefer to speak of secularism*s* in the plural.

[74] To mention just three minimum definitions of secularism, they also include individual religious freedom (Bangstad, 2009a; Smith, 1999; Chatterjee, 1999). Other additional criteria include a religiously neutral basis of law (Bangstad, 2009a, p. 44) and equality *before* the law regardless of religious adherence (Smith, 1999, p. 178-181). Although I touch indirectly on different criterion of secularism, in what follows I will mainly discuss an-Na'im's secular state model in light of different *means* and *justifications* of secularism.

religious denominations to prosper without interference (Sandel, 1999, p. 80-81). In France, the rationale behind separation has rather been to actively substitute a religious morality with a secular one, especially in schools (Bauberot, 1999, p. 121-124). And in Turkey, the secular state has tried to control the teachings of mosques through a state department for religious affairs (*diyanet*) (Yavuz, 2009, p. 144-146). Thus, the Turkish political scientist Hakan Yavuz holds that secularism means freedom *for* religion in USA, freedom *from* religion in France, and *control of* religion in Turkey (ibid.). These brief examples indicate, in my view, that secularism can entail very different objectives and justifications.

5.6. An-Na'im's position: Secularism, not secularisation

In a way, in *Islam and the secular state* Abdullahi an-Na'im tries to de-think the associations of secularism accounted for above, i.e. that secularism equals the decreased importance of religion and that it is incompatible with Islam.

In his early work, an-Na'im had strong doubts about secularism. Here, he sees it as a political system based on privatisation of religion, in the same way as many Islamists and other Muslims do. He associates it with politicians and intellectuals who want a purely secular law in Muslim societies. This, holds an-Na'im, fails to acknowledge Muslims' need to comply with shari'a, also in the form of "public law" (an-Na'im, 1990. p. 1-3).

However, in *Toward an Islamic Reformation* an-Na'im also admits that some benefits of the legal secularisation that *has* happened in Muslim countries. It has granted civil rights and religious freedom to non-Muslims, Muslim women and even men that they would not have had under shari'a in its current interpretation. Accordingly, any new "Islamic" public law in Muslim countries must also give rights to people by virtue of their citizenship, and *not* through membership of a religious community such as the Muslim *umma*, an-Na'im holds; it must achieve "the benefits of secularism within an Islamic framework" (1990, p. 8-10).

An-Na'im's formulations led one commentator – the political scientist Ishtiaq Ahmed – to suggest that an-Na'im "comes very close to democratic secularism" (Ahmed, 1993, p. 70-71). Responding to this characterisation, an-Na'im holds that the majority of Muslims would reject secularism, despite its advantages (1993a, p. 106-107). But he also admits that Muslims could have difficulty accepting the Islamic public law that he proposes. In such case, he would welcome "an internal Islamic discourse in order to specify and articulate an understanding of secularism which is acceptable to the majority of Muslims" (ibid.).[75]

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[75] The texts by Ahmed and an-Na'im referred to here are both lectures, exchanged as a response and a counter-response during a seminar in Oslo in 1992 where an-Na'im's *Toward an Islamic Reformation* was discussed.

From 1999 and onwards, this project moves to the forefront of an-Na'im's agenda. He now abandons the idea that a reformed shari'a can be applied as law in Muslim countries (an-Na'im, 2000), and he starts to elaborate a form of secularism in line with Islamic values, recognising "the [strong] relationship between Islam and politics" (1999a, p. 115). The secular state model is the culmination of an-Na'im's later work on secularism. In fact, he prefers to speak of a secular state *instead* of secularism, due to "Muslim apprehensions to secularism as (…) hostility to religion" (2008a, p. 8).

In the rest of this chapter, I will account for an-Na'im's model and point out how it is informed by the notions of religiosity I presented in chapter 4.

The model: State neutrality…

What, then, does an-Na'im's mean by a secular state? First, that it is intended to be religiously neutral. Its institutions and laws must not stem from specific religious doctrines, and the state must not interfere with or promote any practice or interpretation of religions.

To understand this feature of an-Na'im's model, we must understand its place in his greater project (discussed in chapters 2 and 3): to sustain an alternative to an Islamic state governed by shari'a. Positive law based on shari'a is untenable, an-Na'im holds, because it will derive Muslims of their right and duty to comply with shari'a by free choice. Moreover, so-called traditional versions of shari'a do not provide people their basic human rights, including the right of free religious choice. If traditional rulings, for example the death penalty on apostasy, are enforced by modern states it will violate religious freedom. All Muslims today, an-Na'im holds, live in modern states whose sovereignty is partly based on its monopoly of coercive power.[76] In the hands of this coercive power, religiously sanctioned rulings will lead to hypocrisy (*nifaq*) among believers, which is strongly condemned by Islam, an-Na'im holds (2008a, p. 4). This leads an-Na'im to state the following rationale of secularism in the opening of *Islam and the secular state*:

> In order to be a Muslim by conviction and free choice, which is the only way I can be a
> Muslim, I need a secular state (…) This is what I mean by secularism in this book, namely, a
> secular state that facilitates the possibility of religious piety out of honest conviction (an-
> Na'im, 20008a, p. 1).

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[76] An-Na'im indirectly conceives of 'states' in two senses: 1) as sovereign territorial (not ethnical) political entities to which inhabitants belong as citizens; 2) as a set of institutions within the territory of this state (an-Na'im, 2008a, pp. 33, 86-88). In addition to being dependent on the monopoly of force, the state's sovereignty rests – in an-Na'im's account – upon the authority of popular will, not the authority of God. An-Na'im does not discuss for example whether this definition would make Iran not "modern".

Thus, securing the free conduct of religiosity in general becomes both the purpose and the justification of an-Na'im's model for a secular state. This rationale is also clearly informed by notions of religiosity as *free* and *autonomous*: True religiosity can only exist when it is not coerced, and when it is conducted independently of "political" concerns and institutions.

However, the practice of secularism in actual societies varies greatly, not least with regard to what a secular and "neutral" state looks like. In three of the chapters in *Islam and the secular state*, an-Na'im discusses practices of secularism in India, Indonesia and Turkey. Experiences from Turkey in particular prove that questions of education, attire and state control of religious doctrine could be contested in secular states, he holds (2008a, p. 39, 203-125; see also 2008b, p. 336). But in these discussions as well as in the outline of the model, an-Na'im avoids prescribing detailed borders between "religion" and the state apparatus. He concentrates on legal and political processes of the state on a general level.

… and state mediation

For an-Na'im, secularism is also a way of mediating the relationship between state, religion and politics. A fundamental premise of his argument is that Muslims and other believers "will always assert their religious convictions politically", to think otherwise is simply "illusory" (an-Na'im, 1999a, p. 107; 2008a, pp. 85, 36). Therefore, shari'a and other religious doctrines should not be discriminated against as a source of policy and legislation "simply because they are believed to be the will of God" (2008a, p. 28-29). Instead, the secular mediation is to secure a place for religious views in politics. For instance, Muslims may use their religion to create public policy on issues such as taxation, abortion and euthanasia on the basis of Islamic values (ibid, p. 95-96). If citizens are not allowed to base political claims on their religious convictions, this "would undermine the principle of secularism" (ibid, p. 37).

One premise of this mediation is that religious engagement in politics must not violate the right of *all* citizens to equal participation and freedom. Another premise is that the state can only be legitimate in its mediation if no particular religious or political group controls its institutions – and if the state makes minimal moral claims on its citizens. So, whereas religion and politics are intimately linked, the state must be kept separate from politics, that is, distinguished from the interests of political actors (an-Na'im, 2008a, pp. 5, 36-37). An-Na'im seems particularly concerned with the relationship between government and legal system; courts and judiciary must be kept independent, in case governments are tempted to try to enforce shari'a (2009a, p. 147). However, as public policy and legislation in their turn are

implemented by governments via state institutions, the state cannot be completely separate from religion or politics, an-Na'im admits (2008a, p. 36-37).

In this respect, an-Na'im's model is premised by notions of religiosity as *conviction*, but also of religiosity as *agency*. For one, the feature of secularism as mediation stresses how important it is to an-Na'im that believers can assert their religious views in public. At the same time, an-Na'im wants to protect the state's institutional integrity. This is not only to ensure that it is autonomous from religion per se, but because religious actors hold *different* religious views. Secularism should not allow for state institutions to enforce religious doctrines "on the sole basis that such doctrine constitutes the religious beliefs *of some people*", an-Na'im writes (2008a, p. 37, emphasis added). The parliamentary process of formulating laws "is subject to human error and fallibility" and can therefore "be challenged or questioned" (2008a, p. 11). In my view, the notion of religiosity as subject to agency is evident in such formulations.

5.7. Substantial or procedural secularism?

To get a better grip on the details of an-Na'im's envisaged political system, we may look at it in terms of the distinction between *substantial* and *procedural* secularism. This conceptual pair is provided by Bangstad in his introduction to secularism as theory and practice.[77] "Substantial" secularism, he proposes, pertains to societies "where the state seeks to change society in a secular direction". For example, some states promote values and policies that it sees as non-religious – such as autonomy, freedom and rationality – and discourage or forbid public religious conduct.[78] "Procedural" secularism, on the other hand, means that the state does not promote "secular viewpoints" as such (Bangstad, 2009a, p. 49-50).

Both types of secularism entail a degree of separation between the apparatus of the state and particular religions. Both also abide by a principle of non-discrimination *between* religions. However, they imply different objectives and demand different justification.

Objectives of secularism: Can a secular state promote religion?

To start with the objectives, states pursuing substantial secularism try to exclude religious viewpoints or manifestations from public domains such as schools, media, legislation and

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[77] Bangstad is careful to stress that the practice in actual societies is often too complex to be characterised as either "substantial" or procedural (ibid.) As concepts, they correspond, respectively, to features of what Ahmet Kuru calls "assertive" and "passive" secularism (Kuru, 2006, p. 137) and what Veit Bader terms "ethical" and "political" secularism (Bader, 2009, p. 112). Rajeev Bhargava operates with similar conceptualisations of "value-based" and "political" secularism (Bhargava, 2009, p. 90-92; 1999b, p. 494-496).

[78] Veit Bader (2009, p. 112) notes that such values can also be promoted from within a religious worldview.

politics. Promoting a secular worldview (as for example Turkey does in its constitution) is integrated in what is considered the common good by such states. By contrast, states pursuing procedural secularism do not favour secular or religious values as such; instead, they try to establish *procedures* for public policy that are acceptable to all citizens, whether or not they see religion as part of the common good of society.[79]

An-Naʻim rejects secularisation of society and opts for a state that makes "minimal moral claims" on its citizens (an-Naʻim, 2008a, pp. 37, 8). At the outset this should earn him a place among proponents of procedural secularism. But still, does not the purpose of his model referred to above, "facilitating" and "promoting" religious conduct, express a particular view of the common good? In *Islam and the secular state*, he writes that "[s]ecularism needs religion to provide a widely accepted source of moral guidance", whereas "the concept of the secular lacks independent motivating power for believers" (2008a, pp. 42). He describes Islam as a "liberating power", and shariʻa as having a "fundamental" or "positive and enlightening" function in Muslim societies (2008a, pp. 1, 4, 10). From these quotes, it must be assumed that an-Naʻim sees religious conduct as integral to the common good, at least in Muslim societies.

So, if they were introduced to an-Naʻim's model, at least some citizens in contemporary Muslim societies would perceive it as favouring religious worldviews over non-religious ones, and as such the model would not be secular at all. For instance, non-religious humanists who see promotion of religious morals as contrary to *their* view of the common good, could object. So could Muslims who think that religion has no role in politics. On the other end of the scale, so to speak, Muslims advocating an Islamic state based on shariʻa might refute the secular state model as promoting a worldview opposite to their own. They might see it as not overly religious, but as not religious *enough*; this potential objection is acknowledged by an-Naʻim himself (2008a, p. 94).

Nonetheless, an-Naʻim's secularism could be described as mainly procedural, as it does not intend his state to promote one particular religion or a secular worldview. I therefore suggest that an-Naʻim calls for procedural secularism as a tool for *substantial religiosity*. In my view, this also goes to show that an-Naʻim's approach to secularism is informed by what I have called the notion of religiosity as a *primary source of conviction* for believers.

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[79] Referring to Charles Taylor, Bangstad notes that establishing procedures independent of viewpoints of the common good is integral to *liberal political theory* (see Heywood, 1999, p. 29-30). As will be seen, an-Naʻim's model rests on the ideas of theorists of political liberalism, such as John Rawls and Jürgen Habermas.

Justification of secularism: Overlapping consensus

Furthermore, the categories of "substantial" and "procedural" also relate to different ways of justifying secularism within political theory, as discussed by Taylor and Bader. Roughly speaking, substantial secularism is supported by a so-called "independent political ethic". In accordance with this line of thinking, politics must be argued independently of any religion (Taylor, 1999, p. 48-49; Bader, 2009, p. 112). This excludes arguments based on religious truth from political arenas. A different way of arguing for secularism is based on so-called "common ground". Here, political agreement can be grounded directly on ideas that different religions have in common (Taylor, 1999, p. 49; Bader 2009, p. 112-113). For instance, the right to life could be grounded in a view of humans as created in God's image or as "sacred". Religious worldviews might therefore support important political principles of modern states. In line with this thinking, the public presence of religious doctrines is encouraged.

Taylor and Bader are critical of these two methods, holding that they cannot be sustained in increasingly plural and diverse societies.[80] To be viable, they claim, secularism must instead be based on so-called *overlapping consensus*. This strategy was formulated by the philosopher John Rawls; it is a key element of his *Political Liberalism* (1993) and reformulated in later versions (e.g. Rawls, 2006). Rawls' objective is, in simple terms, to establish a sound theoretical foundation for a democratic state. His starting point is that in modern plural societies, all citizens will adhere to some form of philosophical, moral or religious doctrine that is relevant to all aspects of their lives, including politics. As such, the doctrines are comprehensive, Rawls states, and they diverge from each other.[81]

It is therefore not realistic for people to agree on principles for democracy based on what their doctrines have in common, as held by the supporters of the common ground-strategy. Instead, citizens must come up with *reasons* for such principles that they see as fair from the point of view of their own doctrine, and that others can accept from theirs (Rawls, 2006, p. 183, 141). For example, religious adherents might accept multi-party democracy based on an interpretation of their doctrine. One example of this is the Islamic ideal of consultation or *shura*, promoted both by Islamic modernists and some Islamists. To support this, adherents of one doctrine need only agree on the reasoning – that democracy is fair when all are consulted – not on the actual content of *others*' doctrines. As such, this and other principles are agreed

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[80] The strategies exclude religious and non-religious arguments, respectively and are incompatible with plural societies, both authors hold. In addition, Bader thinks that "common-ground" ignores internal religious dissent.
[81] Rawls defines comprehensive doctrines as systems of norms, values and opinions that inform the way believers act, think and behave in certain situations (cited in Fjørtoft, 2007, p. 139).

on politically, not religiously, and only indirectly embedded in the doctrines themselves. This is what makes the consensus "overlapping" (Taylor, 1999, p. 49).[82]

John Rawls' concept of overlapping consensus is part of his liberal political theory of justice, which does not outline a form of secularism as such. Nevertheless, one could say that Rawls attempts to regulate the place of religion in politics in plural societies. It is therefore not surprising that an-Na'im – who seeks to *mediate* between religion, politics and the state – advocates the same ideas in his model of secularism. He sees overlapping consensus as the crux of political processes, a way of seeking pragmatic solutions where people agree "on the outcome despite their disagreement as to why they agree on that outcome" (2008a, p. 96).

5.8. An-Na'im's civic reason: Secularism regulates religion

Civic reason as protection against religious overload

How, then, can political consensus in a society be reached? Here, an-Na'im draws on a mechanism outlined by Rawls, called *public reason*. Rawls holds that citizens discussing in courts, parliaments or public bureaucracies must abide by this mechanism. For consensus to be achieved, arguments in such public forums must be acceptable to all (Rawls, 2006, p. 147-148). Therefore, in these forums, citizens cannot argue on the basis of their comprehensive doctrines, as such arguments will not be accessible to adherents of other doctrines. Instead, all participants must leave their attachments to religion where they belong: in the "background culture" of civil society – including the family, media and schools (Rawls, 2006, p. 142-143). This is a "duty of civility" that citizens owe each other. Nevertheless, Rawls allows religious arguments as long as they are "translated" into reasons that can be accepted by everyone.[83]

This translation "provisio" (Weithman, 2002, p. 180) and the principle of public reason in Rawls' thought are also discussed by the German philosopher and sociologist Jürgen Habermas in his book *Between Naturalism and Religion* (2008). Neither Rawls' nor Habermas' works can easily be summarised, but their works on public reason both presuppose democracies based on the rule of law, where political authority derives from popular will. To both of them, public reason is more than a tool to secure political consensus. Put very simply, we can say that it is meant to secure political processes that rest on and reaffirm rights and liberties granted by citizens to one another. To Rawls, who has developed the concept, public

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[82] Taylor's approval of Rawls here (and in Taylor, 2009) is surprising, as Taylor in much of his thought has emphasised that societies need overarching formulas of the common good in order to be cohesive and functional.
[83] "Public forums" also includes actors in public debate and candidates for elections (Rawls, 2006, p. 142-143).

reason is specifically intended to achieve justice in the sense of *fairness*. Only when political processes are fair can overlapping consensus be reached, he holds (Fjørtoft, 2007, p. 139).

By and large, an-Na'im shares the assumptions behind Rawls and Habermas' outline of public reason. An-Na'im also presupposes that the secular state should be democratic and fair. "[T]he people of the country are generally assumed to be the ultimate source of power and authority of the state", he writes (an-Na'im, 2008a, p. 88). For an-Na'im, as for Habermas and Rawls, fairness rests on citizens having equal right to participation. At the same time, in his account of the model, lack of religious freedom is seen more explicitly as a threat to fairness. In addition to the translation proviso accounted for above, he sets as premise that the process of civic reason must respect three principles: constitutionalism, human rights and citizenship. As seen in previous chapters, an-Na'im sees shari'a – in its historical formulations – to be in violation of these principles. Only if they are accepted, an-Na'im states, can religious views be allowed to influence politics (2008a, p. 84-85). For example, respecting these principles is necessary to avoid that a political majority imposes its views on a minority (2008b, p. 335).

Instead of public reason, an-Na'im uses the term *civic reason*, but the basic function of the mechanism is largely the same as for Rawls. This includes that debates on public policy and legislation cannot be conducted in exclusive religious terms. Even if "believers might have private religious motivation for making a proposal for public policy or legislation", an-Na'im writes, such proposals must be translated; they must refer to social rationale, not just religious rules (2008a, pp. 101, 93). He gives several examples, including Muslim demands to prohibit interest on loans (*riba*). Such a claim cannot be grounded in the ban on interest in the Qur'an, as this would prevent non-Muslim policy makers from assessing the argument for such a ban (or, it might be added, against it) (2008a, p. 93-95).

How civic reason builds on notions of religiosity

At the outset, the mechanism of civic reason most evidently builds on what I have termed notions of religiosity as *conviction* and *agency* in an-Na'im's work. As for conviction, the objective of civic reason is to allow citizens with religious worldviews to draw on them when participating in politics. Further, civic reason builds on believers' own ability to interpret and understand their religion, and see in it the potential for the common good of society. This is what I have implied by the notion of religiosity agency. As noted above, this notion underlies an-Na'im's wish to protect the state from domination by one religious doctrine. Clearly, civic reason is his safeguard against this threat. Here, an-Na'im seems to argue that civic reason can correct the authoritarian versions of secularism in some Muslim societies.

Contrasting this view with John Rawls view on how the borders of civic reason should be policed, is instructive. To start with, Rawls' theory is based on reciprocity. Citizens must offer reasons for political principles that they would accept from others. Thus, inhabitants whose doctrines disrespect the fundamental constitutional rights and freedoms of others must be excluded from the process, Rawls holds. He simply states that his political liberalism "does not engage" with such "non-reasonable" comprehensive doctrines (2006, pp. 183, 42).

An-Na'im is no less insistent than Rawls in that political arguments must be accessible. He is particularly clear on the fact that, in Muslim societies, keeping public debate in non-religious terms – through civic reason – may protect participants from being accused of heresy (an-Na'im, 2009a, p. 150). He indirectly criticises Islamists, who he claims would not grant others the same right to political participation (an-Na'im, 2008a, p. 94-96).

But at the same time, he is keen to stress the *advantages* of civic reason for Islamists: "Even those who insist that Islam and the state should be unified need the freedom to be able to make this claim without fear of reprisal (…)" (2008a, p. 95). As such, one could argue that Muslim apprehension towards secularism has influenced an-Na'im's model.[84]

I will also argue that the concept of civic reason is underpinned by what I have termed a notion of religiosity as a *primary source of motivation*. A short comparison with Rawls and Habermas' concept of public reason can serve to illustrate this point.

As noted above, in later works, Rawls has tried to make room for religious arguments in his concept of public reason. Jürgen Habermas has nonetheless argued against Rawls that religious convictions cannot be "turned off" or left behind in a background culture once citizens enter a public arena. For believers, such convictions are a source of energy integral to all aspects of life (Habermas, 2008, p. 127). So, even if only secular arguments should count in parliaments and other state institutions, states must encourage religious arguments from "organizations and citizens in the political public sphere" (ibid. p. 127). Here, religious and non-religious citizens must both translate each other's arguments and reflect upon the limitations of their own worldviews (ibid, p. 136).[85]

In a way, Habermas' line of argument in this respect echoes the notion of religiosity as a primary source of motivation for believers. Moreover, the state, too, has an interest in "the free expression of religious voices" and "the political participation of religious organizations". If these voices are silenced, society could risk loosing sources of meaning and identity that all

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[84] An-Na'im does not mention civic reason in his analysis of secularism in Turkey. However, worries that the ruling Islamic-oriented party AKP might be banned from politics informs his discussion (2008a, p. 215-222).
[85] Like Rawls and an-Na'im, Habermas insists that religious arguments be kept outside public forums (2008, p. 134).

citizens could learn from (ibid. p. 131). According to the Norwegian philosopher Arne Johan Vetlesen, Habermas seems to indicate by such formulations that in the long run, the state is fundamentally dependent on religion: Not only in the form of religious arguments for politics that might be refined into secular arguments, but as a "primary" source of meaning (Vetlesen, 2007, p. 29-30).[86] I would nonetheless argue that there is a clear difference between Habermas' and an-Na'im's argument on this point. In *Between Naturalism and Religion* Habermas he holds that believers can accept the state as *legitimate* based on non-religious reasons. In return for rights and freedoms, citizens respect state constitutions and are also motivated by political processes (ibid., p. 105). It is political decisions, not the system itself, that need to be legitimate for people who orient themselves according to comprehensive doctrines. The limitation of secular states seems to be that believers might need some extra motivation to participate in politics.

Like Habermas, an-Na'im sees it as important that believers are being motivated into participation; nevertheless, his perspective is somewhat different. Certainly, many Muslims will accept the principle of civic reason even if it originates in "Western" political theory, he holds. At the same time, he argues that civic reason must also be "acceptable to Muslims from an Islamic perspective (2008a, pp. 97-98, 93). Moreover, "some believers may need a religious justification for the principle of secularism itself" (ibid., pp. 93, 42). In several passages of *Islam and the secular state*, an-Na'im specifically notes that Muslims must find secularism consistent with or stipulated by their religious "doctrine" (ibid, pp. 30, 38, 42).[87]

This goes to show how the notion of religiosity as a primary source of motivation has decisive impact not only on civic reason, but on an-Na'im's model as a whole. It also leaves open who has the burden of evidence that secularism actually *does* conform with "religious doctrine". In the next chapter, I will argue that an-Na'im puts a great responsibility on specific religious believers in this regard. This is part of my discussion of how notions of religiosity in general lead to what I see as important analytical problems in an-Na'im's model.

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[86] Vetlesen relates this to Habermas' assumption that liberal societies under modern capitalism experience a loss of meaning due to the "colonisation of the lifeworld" by market and bureaucracy (ibid. p. 26-30).
[87] As such, an-Na'im's justification of secularism is similar to his "cross-cultural approach" to human rights, as noted in chapter 2: Adherents of different religions might embrace the same political arrangements, as long as these arrangements are rooted in their respective religious traditions.

CHAPTER 6:

NOTIONS OF RELIGIOSITY AND THEIR IMPLICATIONS

6.1. Three problematic aspects of an-Naʻim's model

The previous chapter demonstrated that Abdullahi an-Naʻim's model of the secular state builds on notions of religiosity, namely religiosity as a primary source of motivation, as agency, as conviction and as free and autonomous. These notions run through an-Naʻim's texts as a whole, I argued in chapter 4. In this chapter, I also suggested that the notions have important implications for the secular state that an-Naʻim envisions. In the present chapter, I wish to elaborate on this part of my argument. In short, I hold that the notions of religiosity are related to three major problems of an-Naʻim's model:

- His model is too dependent on religious reflexivity among actors in civil society.
- His model fails to account for how shariʻa can be reformed and inform public debate without undermining the secular state itself.
- In arguing in favour of his own model, an-Naʻim misconceives the appeal to large groups of Muslims of a state based on shariʻa.

Although I also consider an-Naʻim's account of the practice of secularism in Turkey and Indonesia, my discussion in this chapter is mainly theoretical. It draws partly on Talal Asad's work on the formations of the secular (Asad, 2003), but it is not based on one coherent theoretical "position". Rather, I try to show from different angles how an-Naʻim's approach to religiosity has analytical consequences. On an indirect level, these consequences are also societal, because an-Naʻim's model is explicitly intended for *application*. However, I will start by inquiring an-Naʻim's theoretical approach to the terms "secular" and "religious".

6.2. An-Naʻim, the "secular" and the "religious"

Both the historical emergence and contemporary practices of secularism accounted for in chapter 5 display great variety as regards what actually counts as "religious" and "secular". Acknowledging this fluidity has become common in literature on secularism. Thus, Talal Asad takes "the view, as others have done, that 'the religious' and 'secular' are not essentially fixed categories" (Asad, 2003, p. 25).[88] It is important to note, however, that scholars attach

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[88] Other examples include Martin: *The Religious and the Secular* (1969); Taylor: *A Secular Age* (2007); Jakobsen and Pellegrini: *Secularisms* (2008).

different meanings to such conceptual precautions. It could mean qualifying the notion that "religion" is in decline (Martin, 1969, p. 10-16); it could mean describing a modern conditions for belief (Taylor, 2007, p. 13-20); or it could mean identifying that Western notions of secularism are specific rather than universal (Jakobsen and Pellegrini, 2008, p. 2-3). Abdullahi an-Na'im also insists that it is "misleading" to draw a too sharp distinction between the religious and secular. For him, as for other writers, this carries a distinct meaning.

Early texts by an-Na'im: Secular and religious as opposites

As noted in the previous chapter, the salience of finding an "Islamic" approach to secularism can be traced back to an-Na'im's writings from the early 1990s. One early and several later meanings of "secular" and "religious" can roughly be identified. In early texts, he sees the secular simply as the opposite of religious, but he does not explicitly discuss the content of these terms. However, their binary and mutually exclusive relationship in his texts is implied by his rejection of secularism in *Toward an Islamic Reformation*. In this book he sees secularism simply as "the "relegation of religion to the domain of private faith" (1990, p. 10).

An-Na'im associates this relegation process with the introduction of secular law in post-colonial Muslim countries. In the long term, a secular basis for legislation is futile, as Muslims will feel "religiously compelled" to contribute to establishing an Islamic state based on shari'a (1993a, p. 106). Therefore, secular law must be "Islamized", that is reformed on the basis of "*Islamic*, not secular grounds") (1990, p. 10). In his discussions with critics of *Toward an Islamic Reformation* (an-Na'im, 1993a), an-Na'im uses Turkey as an example of why future prospects for secularism in Muslim countries are bleak. As such, in his early texts "secularism" is seen only as *substantial*, as promoting secular values.

Later texts by an-Na'im: Secular and religious as mutually enriching

In texts by an-Na'im from 1999 and onwards, both "secular" and "secularism" carry other meanings. "Secular" still means non-religious and an-Na'im naturally relates it to the practices of his envisioned state. The laws and institutions of this state are "necessarily secular" (2008b, p. 322). But in contrast to the earlier texts, his later writings do not see religion and the secular as *mutually exclusive*. Rather, they seem to be dependent on each other. "Secular" now takes on a broader meaning of "this-worldly", and an-Na'im seems to imply that *all* efforts undertaken by humans should be seen as secular in this sense. This applies to the making of "necessarily secular" laws of the modern state, but even formulations of the shari'a "can only be secular and human", an-Na'im holds (1999, p. 117).

At the same time, an-Naʿim places more and more emphasis on the shortcomings of everything "secular" for the *religious actors*. Secular language in public debate "can be respectful of religion in general", writes an-Naʿim in *Islam and the secular state*, but "it is unlikely to convince believers". This is because the very "concept of the secular lacks motivating power" (2008a, p. 42, 43). Such formulations can be found in all texts on secularism from 2003 and onwards. In other words, an-Naʿim suggests that a major problem with secularism is how to make it legitimate to religious persons, especially Muslims.

An-Naʿim makes his own attempt at legitimisation: He now sees "secularism" as something different from earlier. The "relegation" of religion to the private sphere is no longer a feature of secularism as such. From 1999 and onwards, he characterises secularism as a "framework" (2003b, p. 34); a way to "safeguard" religious freedom (2003a, p. 37); a principle of neutrality that can create "a safe space" for promoting religious views (2008b, p. 336); and a tool to "mediate between different communities" (2008a, p. 41).

Here, one might say that an-Naʿim draws normative consequences from what he sees as a discursive reality. This needs elaboration. Religious believers – whom an-Naʿim holds to constitute a "vast majority of the world population" – are not motivated by a secular language, he holds. Whereas secularism is "narrow" and lacks "capacity" to support politics in itself, "religion" is a "widely accepted source of moral guidance". Therefore, secularism must act as a *frame* within which religious arguments can inform politics, or as he puts it: "[S]ecularism is able to unite diverse communities into one political community *precisely because* it makes the least moral claims on the community and its members" (2003b, p. 34, emphasis added).

"Political" is also a key word in the latter quote. As shown in chapter 5, the "space" created by secularism is a "political space" (2008a, p. 41, 42). Here, religious views may be transformed into politics by way of a non-exclusive language, through civic reason. I also mentioned earlier an-Naʿim example of such a process: If Muslims want to include a ban on interest in economic transactions in public policy, this involves the "political space" of state institutions. It must therefore be argued socially, not by reference to the prohibition of *riba* in the Qurʾan., an-Naʿim holds. This is because public policy must be based on reasons that all citizens, not only Muslims, can relate to (ibid). An-Naʿim makes clear that secularism, by making religion present itself in non-religious terms, is not totally *neutral*. But in sum, I would argue that in later texts an-Naʿim sees "the secular" as an accommodating framework. "The religious", however, is a strong and affirmative substantive force.

An indirect theological case for secularism

As I see it, an-Na'im's late conception of "religious" and "secular" as mutually confirming concept serves two functions. First, it differentiates his form of secularism from what he calls "European" and "Turkish" variants by making the secular state a condition for religious practice. This, an-Na'im holds, will address Muslim apprehension towards secularism as alien to their religion (an-Na'im, 2003a, p. 37).

Second, an-Na'im intends to demonstrate that distinguishing "religious" and "secular" spheres is a matter of human *agency*. This is evident in an essay from 2003, where an-Na'im claims that the content of the Qur'an and Sunna reflect "the transcendental aspect" of religion. At the same time, they "respond [naturally] to the secular concerns of human beings". One such concern could be the provision of laws that protect human rights. In fact, believers see religious precepts as practical only to the extent that they are "useful for their secular concerns"; this is referred to by an-Na'im as "the "secular dimension" of religion (2003b, pp. 46, 34). But what "secular concerns" means in practice depends on human interpretation of the sources. Thus, the "secular dimension" of religion for an-Na'im depends on agency.

This point is actually supported by 114 verses of the Qur'an itself, an-Na'im holds. But precisely because texts in themselves can be used in support of different opinions, it is more important to secure "a space for human agency" *to operate in*. It is this space that secularism, mediating between religion, politics and state, is intended to provide (ibid, p. 43-45). The interdependence between religious texts and secular concerns is "critical for the theological basis of the relationship between Islam and both human rights and secularism", an-Na'im writes (an-Na'im, 2003b, p. 46). With these words he also makes an indirect theological case for secularism, in my opinion. And in the same breath he also states that "a sharp distinction between the religious and the secular is misleading" (ibid).

An-Na'im's wording is similar to that of the social anthropologist Talal Asad, when he writes that "the 'religious' and the 'secular' are not essentially fixed categories" (Asad, 2003, p. 25). However, while an-Na'im's statement is meant to justify secularism, Asad's objective is to show how secularism demands a specific *kind* of religion. Asad's study, to which I now turn, might demonstrate that this is also the case with an-Na'im's model for a secular state.

6.3. Talal Asad: The oppressive power of secularism

Like Abdullahi an-Na'im, Talal Asad has devoted much intellectual effort to discuss the relationship between secularism and Islam (Asad, 1986, 1993, 2003). But whereas an-Na'im's texts are *prescriptive*, offering a model for the application of secularism, Asad's approach

might be characterised as *deconstructive*.[89] His project is to identify the conditions upon which the political doctrine of secularism rests. Thus, in his book *Formations of the Secular* he tries to trace the changing meanings of "the secular" throughout history. It is not enough to admit that the "religious" and the "secular" sometimes overlap, writes Asad. Instead, we must acknowledge how the secular takes on a new meaning with the advent of modernity. Here, it becomes a separate sphere of activities, governed and regulated by nation states.

Asad is particularly preoccupied with the practice of secularism in modern Western European societies. Here, dominant narratives from the Enlightenment and onwards have portrayed the secular sphere as being gradually liberated from "religion", Asad holds (Asad, 2003, pp. 191, 255). As a result of secularisation, a distinction is drawn between the publicly enacted "secular" law of the state on the one hand, and "religion" on the other. The latter is seen more and more as an individual religious *conviction* manifest in *morality* (Asad, 2003, pp. 24-25, 205). This law/morality distinction is the foundation of the doctrine of secularism, Asad claims. In this doctrine, holding a religious conviction and acting upon it in public becomes a "right" granted by "secular" human rights conventions (ibid, p. 139-40).

This may sound similar to how Charles Taylor imagines the emergence of secularism, as well as to José Casanova's assurance of the continued public role of religion, as mentioned above. But Asad holds these accounts to be too harmonising. For Taylor, secularism may secure a political agreement between religious groups through overlapping consensus. However, according to Asad, Taylor is wrong to see this consensus as a product of negotiation. On the contrary, the procedures of secular nation states *decide* what should count as "political" and what should count as "religion" and thus be left outside politics.

This amounts to exclusion, not negotiation, Asad holds (2003, p. 4-6). Similarly, when Casanova claims that religion contributes to public policy in modern states, Asad points out that this presupposes a specific *kind* of religion. Moreover, secular democratic governments shape these contributions to a significant degree: They grant political participation only to religious actors "that are able and willing to enter the public sphere for the purpose of rational debate", thereby accepting the secular distinction between law and morality (ibid, p. 183).

Therefore, when Asad states that "the religious" and "the secular" are not fixed categories, he implies that in modern secular democracies, "religion" does not exist naturally or outside of power relations. It is rather *defined* by the doctrine of secularism and thereby

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[89] Among Asad's objectives is the scrutiny of concepts and identification of sites of power. He belongs to a poststructuralist and postcolonial anthropology, especially inspired by the French scholar Michel Foucault, as well as the Scottish philosopher Alasdair MacIntyre (Bangstad, 2009b, pp. 192, 196).

confined "to a space where they cannot threaten political stability or the liberties of 'free-thinking' citizens" (ibid, p. 191). It is only allowed as a source of "enrichment" of the politics. But religions, including Islam, are not mere "beliefs", Asad insists. In an earlier and often quoted essay, "The Idea of an Anthropology of Islam" he holds that Islam should be approached "as Muslims do, from the concept of a discursive tradition" (Asad, 1986, p. 14). This tradition is contained in the shari'a: On the basis of the Qur'an and Sunna, shari'a instructs Muslims to perform correct *practices* in a legal language. Shari'a therefore regulates both law *and* morality in the form of rules (Asad, 2003, pp. 251, 244).

If they are accepted as complete traditions, Islam and other religions entering the public sphere will not "translate" their "moral intuitions" into "accessible arguments", as Habermas has argued (2008, p. 131). They will tie moral to authoritative rules and thereby challenge secularism's narrow view of what counts as "political" (Asad, 2003, p. 184-185).[90]

6.4. Is an-Na'im's religiosity too narrowly conceived?

In the present discussion, Asad's critique is useful because it serves to illustrate that an-Na'im's variant of secularism depends on a specific kind of religiosity. To make this point, I must first elaborate briefly on the case made by Asad and others against the public political arena of secularism, as outlined by Rawls and adapted by an-Na'im.

Public/civic reason: Favouring non-religious citizens?

Asad holds that overlapping consensus in modern societies – favoured by Taylor and made operational by John Rawls through public reason – only accepts certain kinds of arguments. Arguments that claim religious authority are not accepted in the process of coming to an agreement on legislation and policy, whereas secular arguments are seen as reasonable, that is, something that all citizens can agree on (Asad, 2003, p. 185). Rawls insists that public reason is only political, not secular. By this he means that the mechanism is meant to secure a fair process, not favour secular arguments in themselves (Rawls, 2006, p. 153). But several authors have criticised Rawls on this point.

Some, among them Charles Taylor, have raised the question of how issues such as abortion or the separation of state and church may be deliberated on in parliamentary forums. On such fundamental issues, Taylor holds, Rawls' concept of public reason only enables a "political" agreement that "secular citizens can accept" (Taylor, 1999, p. 52-53). The Dutch sociologist Veit Bader has claimed that Rawls seems to favour a specific kind of rationality,

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[90] Asad's writings on secularism have been met with several objections. See e.g. Hirschkind and Scott (eds. 2006) and Bangstad (2009b).

one based on "arguments", excluding emotions and practical knowledge (Bader, 2009, p. 133-134). The American philosopher Paul Weithman has reproached that religious people are forced to present their religiosity as something they have a *right* to as citizens. Whether religiosity is good for society for example through charitable work of religious congregations, is irrelevant in Rawls' outline of public reason. Believers cannot be expected to make sense of this, Weithman holds (2002, p. 207-209).

These objections have to do with whether public reason unfairly favours arguments by non-religious citizens in political processes. Among the commentators of an-Na'im's model, political scientist Daniel Philpott makes reference to similar arguments on secular exclusivity (Philpott, 2008). Most commentators, however, do not focus on how an-Na'im's model affects religious conduct. Instead, they object that an-Na'im fails to provide a theoretical justification of secularism *itself*, based on religious texts, that Muslims may accept, it is held.[91]

Above, I have argued that an-Na'im does provide textual arguments for secularism, but only indirectly. The Qur'an, he holds, does not fix any relation between religion and politics; it leaves this for human agency to determine. But according to critics, arguments that refer to "the inherent nature" of shari'a or Qur'anic interpretation will not suffice. Muslims need direct justification from the Qur'an to accept secularism (Philpott, 2008; Arjomand, 2008).

Moreover, Muslims are more likely to accept arguments from within legal tradition, critics hold. An-Na'im, on his part, criticises this tradition. In *Islam and the secular state*, an-Na'im writes that *ijtihad*, fresh interpretation of shari'a, should not be restricted by previous consensus (*ijma*) among legal scholars, but be applied on any issue and by any Muslim (2008a, p. 12-14). John L. Esposito argues that this bypassing of legal tradition will attract few supporters to an Islamic secularism. Esposito writes: "This reliance on theory rather than on textual sources or theology is flawed if one expects to foster broad-based reform rather than be read and celebrated by a small elite Muslim and non-Muslim readership" (2008).

Empirically speaking, this is a valid argument, although studies suggest that the contrary could also be the case. For instance, many Muslims live in secularised European countries by choice. The great majority support the secular democratic institutions there, probably for a variety of reasons, not only out of legal interpretations by *muftin*. Moreover, secularism in countries such as Turkey, Malaysia, Senegal and Indonesia appeal to more than an elite, albeit

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[91] *Islam and the Secular State* has been debated on a web log or blog called "The immanent Frame", administered by the Social Sciences Research Council (SSRC) in New York, USA. In what follows, I will refer to several posts from this blog notably those of Esposito, Philpott, Bowen, Arjomand and White.

for different reasons. The state-centred *laiklik* in Turkey, where 97 per cent register as Muslims, has many supporters. In addition, the ruling AK Party promotes a brand of secularism more open to public religion (Kuru, 2006), attracting voters based on its economic and social policy rather than on religious arguments (Çarkoğlu, 2006). In Indonesia, Muslim leaders backed by large civil associations favour constitutional rule and democracy. This, they hold, is not "merely the stuff of Westernizing secularists, but political instruments that could resolve problems in the Muslim community itself" (Hefner, 2008, p. 45).[92]

Now, however, I would like to put forth criticism against a different aspect of an-Na'im's model, namely his *conceptual* premises for religious support of secularism. I argue that, by relying on notions of religiosity as *agency* and *conviction*, he demands considerable religious reflexivity and motivation on the part of the inhabitants of his imagined state. As I have noted, an-Na'im holds many Muslims to be sceptical of a secular state. A major objective of his civic reason mechanism is therefore to create a political climate that over time may support secularism. As such, a critical point in his model is not only what kind of religiosity it excludes, but what kind or religiosity it rests upon for support. Certainly, the question could be posed as one of "secular" exclusion. However, we may achieve a richer understanding of an-Na'im's model if we see it in terms of "religious" *dependency*.

An-Na'im's civic reason: Depending on "religious" citizens?

According to an-Na'im, believers' political behaviour is shaped by religion, although not exclusively. Believers will seek to act on the basis of norms derived from religion. As noted above, this could take the form of "transforming" scriptural texts into "secular" concerns.

One type of forum for this transformation can be parliaments or local political councils. But it could also take place *outside* of state institutions, writes an-Na'im. He uses discrimination against women as an example. Such discrimination is often justified on "religious grounds", he holds, so fighting it requires religious rationale:

> "[C]itizens need to use that safe space [outside state institutions] to promote religious views that support equality for women and other human rights. In fact, such views are required to promote the religious legitimacy of the doctrine of separation of religion and state itself (…) (an-Na'im, 2008a, p. 38)

Other issues, such as the question of religious dress and state support for religious education, also need religious rationale. Thus, both inside and outside political institutions, religiously

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[92] One could object that Turkey and Indonesia are authoritarian states where opposition to secular government has been oppressed. Nonetheless, many inhabitants may still support secularism for different reasons.

grounded arguments are crucial, not only to resolve critical issues in which citizens engage, but to support the very principles of secularism. It is this religious engagement which I have tried to imply by the notions of religiosity as *conviction, primacy* and *agency*. As soon as people wish for religious arguments to have *political* impact, however, civic reason requires that they are "translated" into non-religious language.

On this point, I question whether an-Na'im's model argues convincingly. For *why* should people acting on the basis of religiosity as their primary source of motivation actively choose to participate in political institutions? For one, the state institutions that an-Na'im envisages, do not engage with religious arguments; within them, civic reason must be applied rigorously. When religious *terms* are excluded, it is difficult to even *raise* religious issues in political forums, for example whether the Qur'an supports gender equality. Moreover, an-Na'im clearly indicates that for believers, religious arguments are the most convincing ones. Adherents choosing to enter political institutions must therefore leave behind the rationale that they themselves are likely to find most compelling. They must also be able to reflect critically upon their own arguments and determine which ones count as reasonable to people of a different religious persuasion. So why would religious adherents want to engage in secular institutions, when they can debate religious issues *outside* these institutions?[93]

Further, there are those citizens who do not actively participate in parliaments, councils or other state institutions. Their arena is that of civil society.[94] Among them, some will take an interest in public debate as mere observers; they are "ordinary citizens", so to speak. Their support of secularism rests first – excluding interests such as welfare and economy – on the states non-interference with their own religious freedom. But it also rests on their acceptance of the fact that political institutions argue in non-religious terms on issues which, in their own daily lives in civil society, "require a religious rationale" (an-Na'im, 2008a, p. 38).

A third group of citizens are those we may refer to as non-state *actors*. They are actively engaged in political issues in the safe space provided by the secular state. Through mosques, religious networks, human rights organisations or pious foundations committed to welfare, they are engaged in a variety of issues. As an example, an-Na'im mentions groups that collect *zakat*, the religious almsgiving that – according to shari'a – all Muslims must pay to support

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[93] An-Na'im admits in *Islam and the Secular State* that his "conception of civic reason is tentative and evolving" (2008a, p. 101). It is not clear from the following formulation where civic reason is *not* required: "In public discourse, in the media, before the courts, at the legislative level, *and elsewhere*, the debate should always be in terms of civic reason (2008a, p. 96, emphasis added). In my view, this and other formulations suggest that outside state institutions, an-Na'im intends for civic reason to be an ideal rather than a strict rule.

[94] See below for a discussion of the term, and of the role an-Na'im accords to civil society in shari'a reform.

the poor and needy in society. According to an-Na'im, such associations are free to employ an entirely religious discourse, as long as they do not make demands on state institutions.

An-Na'im's model creates a space for such organisations outside the state. Nonetheless, the issues they engage with, such as women's rights, will also be addressed by political institutions, in the form of policies or legislation. At least formally, these political institutions only state non-religious reasons for their activity. Thus, to be able to relate the policies of the secular state to their own "religious causes", actors in civil society must accept and "translate" secular arguments from political institutions during their own activity. They must also realise that their freedom to engage freely in religious issues in the first place is best secured by a secular state. By implication, they must reflect on whether their own religious utterances and practices are conducive to the continued existence of such a state or not.

A delicate balance

Can such political institutions that an-Na'im envisages in his model be legitimate? In his own writing, he states that in order to function, the state must be more or less legitimate in the eyes of those who deal with it. This state legitimacy "derives from its deep and organic links with various non-state actors in the political field across society at large" (an-Na'im, 2008a, p. 92). The point I am making is that, on a theoretical level, an-Na'im's model for a secular state rests upon a delicate balance. This is the case because its citizens must be able to weigh the state's religious legitimacy against the secular "concerns" or outcome it provides. They must manage to distinguish the objectives they pursue out of primarily religious motivation from the value of political institutions that do not even engage with their own religious arguments.

In some cases, these interests may collide. In his comment to *Islam and the secular state*, the anthropologist John Bowen points to an-Na'im's attitude to divorce legislation. An-Na'im writes about how the Egyptian state since the year 2000 has granted women the right of divorce through the shari'a principle of *khul*. By using shari'a terms instead of speaking of good social policy, the state has made divorce dependent on heavy financial costs for women and intruded on religious ground by "enacting Shari'a", says an-Na'im (2008a, p. 29).[95]

However, according to Bowen, Muslims in many countries have *wanted* the state to intervene on their behalf. For instance, women's groups have urged state courts to settle divorce issues, thereby involving the state in the enactment of shari'a (Bowen, 2008) An-Na'im on his part only allows for shari'a to influence social policy indirectly, through civic

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[95] *Khul* means that a wife by forfeiting her dower or by other compensation makes her husband agree to dissolve their marriage In shari'a, only men have the right to unilateral divorce (*talaq*) (Mir-Hosseini, 2000, p. 36-39).

reason. This restriction is also implied in what I have termed the notion of religiosity as *free* and *autonomous*. As noted in chapters 3 and 4, it is urgent for an-Na'im to prevent a situation where one interpretation of shari'a is implemented by the state: In such case, it no longer reflects God's will, but the will of the state (an-Na'im, 2006, p. 154).

In a way, the mechanism of civic reason therefore challenges religious citizens on what they think is most important: Should they try to resolve religious issues, like women's right to divorce according to shari'a? Or promote a secular state, by participating in its institutions or indirectly by sticking to a secular language and thus strengthening civic reason? If you can choose between them, why opt for the secular state? Why work actively for a secular system, instead of concentrating on the religious issues? This leads to another question: To what extent do an-Na'im's notions of religiosity render it likely that this legitimising process actually takes place? In other words: How are adherents actually motivated by their religions?

Providing change, demanding reflexivity

On the question of religious motivation it is interesting to compare the approaches taken by an-Na'im and Talal Asad, respectively. As noted, in his book *Genealogies of religion*, Asad sees Islam as a "discursive tradition", in which sacred texts and practices, such as ritual and social action, are closely connected. In Asad's view, the texts constitute certain *discourses* that provide an instruction for how to practice Islam. However, in a discussion of Asad's book, the anthropologist Steven Caton notes that Asad does not see practices as shaped only by "scriptural" discourses.[96] The texts tell Muslims how to perform practices, but practices take place in various specific situations. Thus, Asad holds open a "gap" for Muslims acting *reflexively* in relation to a text; they do not simply imitate what it says: "[I]t will be the practitioners' conceptions of what is an *apt performance*, and of how the past is related to present practices, that will be crucial for tradition, not the apparent repetition of an old form" (Asad, 1986, p. 14-15; cited in Caton, 2006, p. 43).

In Catons view, Asad means that what counts for Muslim is whether, *in their own eyes*, actions are justified by sacred texts in certain situations. Then Caton goes on to ask: "But if this is so, then who or what authorizes them to think so?" (Caton, 2006, p. 43-44). This, Caton

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[96] In his text, Caton relates "discursive tradition" to another of Asads concepts, that of "authorizing discourses" (1993, p. 27-54). Others have noted how Asad's concept of "discursive tradition" is generally akin to Foucault's understanding of "discourse" (Bangstad, 2009b, p. 196). In this respect, "discourse" in Asad's use denotes, somewhat simplified, a set of related practices and utterances that impact – and are impacted by – the participants of the discourse in a systematic manner that informs social relations (Neumann, 2002, p. 17-18). This differs from a more common meaning of the term as spoken/written conversation, vocabulary or parlance.

holds, is not answered properly by Asad. In particular, it is difficult to see how a practice can be "authorized" in cases where there are no religious texts to support it (Caton, 2006, p. 44).

On this point, an-Na'im's notions of religiosity gives a broad perspective on what religious practice is and opens for great flexibility. Arguably, an-Na'im does not answer exactly *how* practices can be religiously authorized in a religion either. Religious norms have strong impact on behaviour, but they can be changed, he holds: Shari'a norms that are currently based on consensus (*ijma*) were once innovative; nothing should therefore prevent forming a consensus today through fresh interpretation (*ijtihad*). Rejecting the outcome of such textual innovation is in itself a product of human interpretation, and as such it is fallible (an-Na'im, 2008a, p. 12-14). Here, his view is simply normative and insistent.

What an-Na'im does offer is a view of religious actors that – theoretically – enables this fresh interpretation to take place. Religious and cultural norms are maintained by actors within small and large communities, he holds. Roughly speaking, an-Na'im sees these norms as subject to human agency, in two ways: They are shaped by existing human interpretations that are contested among actors, and they can be changed according to the communities' perception of the common good. In order to change a norm, actors must convince their communities that a new interpretation is legitimate: This means that it must conform to the existing version of what constitutes the common good (an-Na'im, 2008a, pp.11, 24-26). Believers actually exercise agency, an-Na'im holds, both in that they continuously challenge existing interpretations and in that they see religious texts as closely related to secular concerns (2003b, p. 46). When subjected to civic reason, this ongoing process of balancing secular and religious concerns can be strengthened, an-Na'im holds.

Thus, an-Na'im allows us to see how religious norms not only give instruction through authorisation but also provides religious adherents with *motivation*. On the other hand, an-Na'im bases his prescriptive model on this religious motivation being directed towards support of secularism itself. As seen above, this would demand a high level of reflexivity on the part of religious citizens on at least three levels: (1) They must reflect upon the connectedness of "the religious" and "the secular"; (2) they must decide what counts as "politically reasonable" arguments; and (3) they must consider how their own religious engagement may support a secular political system – and vice versa.[97] In a long-term perspective, an-Na'im claims, the requirements that civic reason places upon citizens "will

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[97] The anthropologist Jenny White argues that an-Na'im's concept of civic reason takes for granted motivation in a different sense: That *state institutions* are willing to give religious actors power and influence. With Turkey as example, White suggests that state elites prefer media manipulation and exclusion (White, 2008).

(…) diminish the exclusive influence of personal religious beliefs over public policy and legislation" (2008a, p. 8). Whether this is actually possible, remains unclear.

In addition, an-Na'im's model makes a rigid separation between people's private religious conduct and the affairs of the state. On a conceptual level, a tension exists in his model between different notions of religiosity: between religiosity as *free* and *autonomous* on the one hand, and as *agency* and *conviction* on the other hand. In my view, this tension weakens the stability of an-Na'im's secular state model. The separation between religious conduct and the affairs of the state also leaves the reform of shari'a solely up to the believers in civil society. An-Na'im sees such reform to be an important vehicle for Muslim piety. I will now turn to a discussion of this topic.

6.5. The problematic role of shari'a in an-Na'im's model

As argued in chapters 2 and 3, a frame of reference in an-Na'im's writing is that shari'a conflicts with citizenship, human rights and constitutionalism. In states where "historical versions" of shari'a has been made into law, this has had fatal consequences, an-Na'im holds.

In early writings, an-Na'im opts for legislation and policy in Muslim countries to be based on a "reformed Islamic law". But over the years his preferred solution has become to "replace" shari'a with secular law. Simultaneously, an-Na'im "reappropriates" the term "shari'a": From abandoning it in 1990 as "traditional versions of Islamic law", in 2008, it has become "a source of liberation and self-realization" playing "a positive and enlightening role" for the believer and society (an-Na'im, 2008a, pp. 290, 4). The full title of an-Na'im's latest book – *Islam and the secular state: Negotiating the future of shari'a* – is telling of the role he assigns to shari'a in his secular state model. Here, shari'a serves two functions: Its rules are a guide to "personal and communal religious experience" for Muslims in private and civil spheres, while at the same time, its values are meant to inform politics. This is what an-Na'im means when he calls for "the state to be secular, not for secularizing society" (2008a, p. 8).

If shari'a should inform politics, its interpretation must be reformed an-Na'im holds. But how is this reform to be accomplished, and by whose authority? Here, objections put against an-Na'im by the German sociologist Bassam Tibi provides a point of departure.[98]

Is secularism possible without secularisation?

On the surface, Tibi's starting point is similar to an-Na'im's: Central tenets of shari'a are in conflict with constitutionalism and human rights; contrary to what Islamists and traditional

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[98] Tibi's comments appear in his book *Islam's Predicament with Modernity* (2009). He voices a similar criticism in an anthology on an-Na'im's writing, mentioned above (Tibi, 1993).

scholars claim, shari'a is not divine but a legal construct subject to historical change (Tibi, 2009, p. 117-118); the Islamic state is not authentic but a modern invention (ibid, p. 95); and Muslims should embrace a secular state (ibid, p. 104).

But according to Tibi, in this secular state, shari'a can be no more than a source of personal morality. He calls for a *secularisation* of Muslim societies, whereby he means separating religion from politics and replacing religious reason with "rationality". This is crucial in order to establish a secular state (Tibi, 2009, p. 181). In trying to preserve a role for shari'a in politics and praising its "liberating" virtues, an-Na'im fails to grasp the concept of secularism, Tibi holds (ibid, p. 178-179). And what is worse: An-Na'im does not see the negative consequences of what Tibi calls "shari'atisation", a symbolic reinvention by contemporary Islamists whereby shari'a has become a symbol of a specific Islamic authenticity that inhibits the modernisation of Muslim countries. By upholding shari'a, says Tibi, an-Na'im contributes to Islamists' cause (ibid, p. 95-97). He calls an-Na'im's concept of secularism contradictory and "outright laughable" (Tibi, 2009, p. 72).[99]

In my opinion, Tibi's criticism lacks nuance. The accusation of "shari'atisation" fails to grasp that an-Na'im, unlike Islamists, refuses shari'a as a source of law. Also, both in *Toward an Islamic Reformation* and in later writing, an-Na'im stresses how legal secularisation has benefited rights and constitutionalism (1990, p. 6; 2008a, p. 114-115). Moreover, an-Na'im's outline of civic reason should not be essentially alien to Tibi's vision of secular politics as rational, although Tibi roots his criteria explicitly in Weber's thought, not in Rawls'. Finally, Tibi also neglects an-Na'im's intention of keeping strictly political arguments non-religious. However, Tibi draws attention to two questions raised by an-Na'im's approach to secularism. First, what are the prospects of achieving reform of shari'a in Muslim societies? And second, is the deliberation on shari'a in civil society conducive to the secular state?

Shari'a: A double-edged sword

That shari'a is in fact a double-edged sword is a premise of an-Na'im's analysis. If shari'a is codified and applied as positive law, it is limited to one interpretation, one which may be repressive for one or more groups in society, for instance women. Interpretation of shari'a must therefore take place outside the law's domain, to provide freedom of choice for believers (an-Na'im, 2008a, p. 282-283). At the same time, an-Na'im is evidently aware that shari'a could be interpreted to generate norms that undermine his secular state. In complying with

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[99] Tibi does not discuss what makes secular arguments rational, nor why – if secularisation as differentiation *is* a precondition for secularism (Tibi, 2009, p. 181) – religion still influences public policy in "secular" countries.

shariʿa on these and other areas, Muslims will often seek advice from ulama from their school of law or a *shaykh* from their Sufi order, an-Naʿim holds.

This practice of private legal consultation or *ifta* is widely practiced among Muslims in many countries parallel to the formal legal system, and in modern societies frequently through the internet and magazines (Masud et al., 1996; see also chapter 3). It also covers "social" areas of shariʿa (*muʿamalat*), such as inheritance, upbringing of children or inter-sexual relations. Such private legal advice or *fatawa* clearly influences what an-Naʿim calls "social relations" of Muslims. For instance, *muftin* giving *fatawa* may either promote or curtail women's right to economic independence, depending on the interpretation of shariʿa.

On this basis, an-Naʿim holds that shariʿa needs to be reformed in order to serve its purposes in a secular state. One objection against an-Naʿim on this point is put forward by the sociologist Saïd Amir Arjomand. He holds that an-Naʿim's wish to restore shariʿa as a liberating force amounts to "starry-eyed utopia": "[W]hy should we expect the new *ijtihad* and reformulation of the principles of jurisprudence to produce results this time that are different from the Wahhabi *ijtihad* from the eighteenth century to the present, Salafi *ijtihad* of the early twentieth century, or the current one of the Islamists?" (Arjomand, 2008). An-Naʿim's assurance that reform should respect the requirements of civic reason has little worth for Arjomand: There is little evidence, he holds, to suggest that reform will in fact "legitimize the constitutional democracy and human rights to which it should be subject!" (ibid.).

In my view, Arjomand's comment is sobering. As pointed out in chapter 4, an-Naʿim and other reformists are part of a climate of political contestation, which results partly from the breakdown of traditional ulama's monopoly over shariʿa interpretation. But this "deconstruction of the institutions of religious authority" in post-colonial Muslim societies means that any actor claiming to hold the correct interpretation of shariʿa may potentially get authority among Muslims. This includes groups professing aggressive *jihad*, such as al-Qaʿida, as well as puritan groups inspired by contemporary versions of the strict Wahhabi theology (El Fadl, 2003, p. 44-48). Their interpretations will often see rights and democracy as "Western" inventions that contradict shariʿa.

On the basis of this, there is no guarantee that shariʿa will be reinterpreted to an-Naʿim's liking. On the other hand, this objection could be held against *any* proposal by *any* reform-minded Muslim, depending on how swift and comprehensive one imagines this reform to be. If reform means step-by-step attempts to provide Islamic rationale for constitutional rule or human rights, the possibility of securing this in a secular state cannot be precluded, even if shariʿa is also interpreted for opposite purposes.

An-Naʿim does not provide any detail in *Islam and the secular state* as regard how reform is to be achieved. He prefers the reform method outlined by Mahmoud Taha and advocated in *Towards an Islamic Reformation*, but he does not "insist on it as a prerequisite for the proposed framework [of the secular state]" (2008a, p. 277). Nor does an-Naʿim specify where and by whom this reform should take place. Judging from his insistence that state and religion must be kept apart, however, the major initiative of reforming shariʿa seems to be left to 'lay' Muslims and/or ulama acting outside the state, in civil society.

This points to a different problem with shariʿa in an-Naʿim's model: Insisting on the autonomy of religiosity from the state, he wants to place the discourse on shariʿa outside the state institutions, in civil society. This might put pressure on the mechanism of civic reason.

Shariʿa's impact on civil society

As noted by the anthropologist Robert Hefner, the term "civil society" has different meanings. In contemporary common usage, it refers to

> "(…) the clubs, religious organisations, business groups, labor unions, human rights groups,
> and other associations located between the household and the state and organized on the basis
> of voluntarism and mutuality" (Hefner, 2000, p. 23).

Over the last decades, many scholars have held that these voluntary associations foster virtues such as cooperation, trust, and active involvement among citizens. As such, they contribute to the support for democratic government, it has been held (Hefner, 2000, p. 23-25).[100] However, as Hefner notes, associations in the civil sphere do not necessarily contribute to democracy. They can also create a "climate" that undermines trust and human rights, as does the Ku Klux Clan. Even if they do produce supposedly positive values, associations are nonetheless dependent on the state to "scale them up" to society as a whole. In an authoritarian state like Indonesia under the rule of Muhammad Suharto (r. 1966-1998), civil organisations, including Islamic ones, were strongly suppressed by the state (ibid., p. 25, 92).

In his studies of Islam in Indonesia, Hefner also points to how fairly small paramilitary Islamists groups, such as the FPI (*Front Pembela Islam*, Islamic Defenders Front), have used shariʿa norms to "change the tone and tenor" of politics (Hefner, 2008, p. 42). By attacking phenomena that are considered immoral by a somewhat broader segment of the population they have been able to raise debates about whether shariʿa should be applied as law. This has happened despite the fact that FPI and similar groups enjoy limited popular support.

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[100] The optimistic view of civil society has roots in Alexis de Toqueville's *Democracy in America* and later studies by the political scientist Robert Putnam, Hefner holds (ibid.).

In addition, the official Indonesian ulama association MUI issued a *fatwa* against secularism, liberalism and pluralism in 2005. This fatwa was backed by a massive coordinated campaign organised by conservative Islamist groups. Muslim organisations that support the secular state were put on the defensive, although they are in great majority in Indonesia. Part of the reason, Hefner holds, was the weight accorded to ulama's interpretation of shari'a by ordinary Muslims (2008, p. 43-44). Another example is Malaysia, where public support is strong in favour of conservative interpretations of shari'a – including support for *hudud* punishments – especially in Kelantan and Terengganu, provinces in which the Islamist Party PAS has power. Here, shari'a is now a key term in public debate (Peletz, 2005, p. 255-259).

This centrality of shari'a has also been observed by scholars studying the public sphere in Egypt. For instance, the political scientist Salwa Ismail notes Islamists' use of *hisba* or "commanding good and forbidding evil". This duty is rooted in several Qur'anic verses and has historically denoted correction of behaviour seen as unorthodox, immoral or threatening public safety (Cook, 2003, pp. 3, 9).[101] The command is a central part of the "moral" vocabulary in many Muslim countries. In her study, Ismail claims that Egyptian Islamists lawyers, by invoking this command, urge state authorities to convict individuals by shari'a rules. They sometimes succeed, to the detriment of human rights of individuals (Ismail, 2003, p. 62-71). This has made the public space subject to religious norms derived from shari'a.[102]

The religious temptation

In general, an-Na'im is also aware of the dangers of a dominant public religious language. On the one hand, he holds a generally positive view of civil society organisations on this respect. In an essay from 2005, he sees civil society as "social processes and [an] intermediary participatory realm" (an-Na'im, 2005, p. 38). Such realms and processes exist in all societies, he holds. And because religion is a "necessary form of associational life for most people", it may contribute to strengthen the positive values of civil society. However, experience from fundamentalist Islamist movements in Sudan, Iran and Pakistan shows that the pluralism of civil society can also be undermined by pressure to conformity with norms and hostility between religions, he holds (ibid, pp. 39-40, 29).

In the secular state envisioned by an-Na'im, actors of civil society must interact with state institutions to secure a role for shari'a in the secular state (2008a, pp. 20, 290-291). The

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[101] As noted in chapter 3, the *muhtasib* (literally: the one who carries out *hisba*) was a public inspector, but in principle, the duty is incumbent on all Muslims. In his study of *hisba*, Cook holds that, historically, it has often also been performed by scholars and preachers, often to uphold puritanical norms (Cook, 2003, p. 98-105).
[102] Ismail here cites the case of the Egyptian writer Nasr Hamid Abu Zayd, whom "Islamist" lawyers had convicted as an apostate in 1995, leading to the annulment of his marriage.

domains outside the state might produce alternative interpretations of shariʻa, he holds (see above, section 6.3.) At an analytical level, an-Naʻim thereby assigns a major role to shariʻa in civil society debate. He stresses that "Shariʻa values can provide a strong basis for a powerful and positive critique of political oppression" and promote other aspects of the public good. But to protect it from being manipulated by the state – and vice versa – it should be rooted in civil society (2008a, p. 290), This, I claim, is related to his notions of religiosity as a *primary source of motivation* and as *free* and *autonomous*. The only criterion set by an-Naʻim is that reform debate must be "subject to the safeguards of civic reason" (ibid., p. 277). However, the empirical studies by Hefner and others show that public debate does not necessarily conform to civic reason by itself. In my opinion, the role an-Naʻim accords to shariʻa – reflected in the notions of religiosity mentioned above – can undermine the mechanism of civic reason.

This point can be illustrated, I propose, through the following "worst case scenario". With shariʻa as an important source of values, public debate could be dominated by religious arguments. Policing the boundaries of civic reason could become a difficult task. This would hamper the chances of reaching political agreements across religious divides. Moreover, the distinction between "religious" and "secular" terms for articulating policy would become much more accentuated. This could discourage those Muslims – and other religious adherents – who hold that religion has no place in politics whatsoever, from participating in public debate. Adherents with such "secular" tendencies would risk loosing their public identity as "Muslim" or "Christian", compared with adherents who are comfortable with arguing on religious terms.

In turn, this indirect favouring of a specific *kind* of public religiosity – characterised by religion as a primary source of motivation – would put pressure on civic reason itself and weaken its legitimacy. For why should public debate be made subject to civic reason if the clear majority of participants favour religious arguments anyway?

Of course, it should be stressed that an-Naʻim's outline of public debate, the role of shariʻa and civic reason are part a *theoretical model*. An-Naʻim emphasises that this model is tentative and evolving (an-Naʻim, 2008a, p. 101). Nevertheless, if his model of secularism should be implemented in countries like Indonesia, Malaysia or Egypt, how would debate in civil society be affected, if actors were actively encouraged to draw on shariʻa? How likely is it that this public debate should abide with civic reason and be cast in non-religious terms?

6.6. Misconceiving Islamism

I have argued in previous chapters (2, 3 and 5 in particular) that Abdullahi an-Na'im's framework for a secular state is best regarded as an alternative to an Islamic state governed by shari'a. One element of an-Na'im's argument against such a state is that it is not compatible with Muslim religiosity. However, in my view, an-Na'im's argument fails to analyse properly the appeal of Islamists who advocate an Islamic state. In many respects, it could be said that Islamists are informed by the very notions of religiosity underlying an-Na'im's work.

Are Islamists obsessed with the divine?

A prime example of an-Na'im's arguments for the superiority of a form of secularism over an Islamic state is found in the 1999 essay "Political Islam in national politics and international relations". Here, an-Na'im argues against advocates of "political Islam" such as the regimes in Iran, Sudan, Pakistan and Afghanistan, as well as unspecified movements in Egypt and Algeria, all of which an-Na'im sees as "fundamentalist" (an-Na'im, 1999, p. 104).[103]

One of an-Na'im's targets in this essay is Islamist movements' advocacy of an Islamic state governed by shari'a. Shari'a, he states, is a result of interpretation of God's will and as such, it is "human and secular". Therefore, it cannot be enforced "by the state as a divine command". Turning it into law would also favour *one* interpretation, thereby violating the religious freedom of choosing how to live by shari'a. To describe a state that enforces shari'a as "Islamic" is therefore a "contradiction in terms" (1999, p. 117). As a response to such "fundamentalist demands", it is necessary to develop what an-Na'im terms an Islamic approach to secularism (ibid, p. 119-120).

Here, an-Na'im invokes notions of religiosity as *agency*, as well as *freedom* and *autonomy*, to support his case: Interpretations of shari'a are contested and changeable. Instead of following one interpretation in the form of positive law, believers must be able to choose among interpretations outside the domains of the state. Only then can the religious nature of shari'a *and* religious freedom be respected, he implies. The same line of argument is found in many texts, both before and after 1999.

Thus, in a 2008 essay, an-Na'im declares that "the distinctive issue" regarding the relationship between shari'a and state law, "is the tension between perceptions of the 'divinity' of Shari'a and the realities of secular experiences of present Islamic societies" (an-Na'im, 2008b, p. 324). As seen above (in section 6.2), an-Na'im holds that this "relationship" not only should be but in fact *is* one of interdependence. The sources of shari'a, the Qur'an

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[103] For an-Na'im's use of terminology regarding Islamism, see chapter 2 and below.

and Sunna, are only practically relevant to the extent that they answer to Muslims' daily concerns.[104] This secular dimension of religion, in an-Na'im's terms, is based on the *agency* of believers to transform transcendental aspects, such as "the will of God", into politics.

In my opinion, it is striking that this agency seems to be absent from an-Na'im discussions of Islamism and its appeal to Muslims. For an-Na'im, the characteristic trait of governments in existing Islamic states or advocates of such states is always the same: they have implemented shari'a as law, or wish to do so. Moreover, Muslims who encounter shari'a as law – either suggested by Islamists or implemented in practice – will see shari'a as an expression of "divine will" (ibid) or as "decreed by God" (2008b, p. 334).[105]

Arguably, some Muslims *will* be able to see through Islamists' claims, an-Na'im holds. His confidence in the critical capabilities of Muslims on this point seems to increase over the years. In earlier texts, Muslims were generally seen to regard the whole of shari'a as divine (1986, 1990). In later texts, the picture has changed. His formulation from the 2008 essay that "traditional interpretations of those sources [of shari'a] are no longer viewed as sacred or unquestionable by ordinary 'lay' Muslims", is a typical example of this (2008b, p. 339).

Nevertheless, in the same essay, an-Na'im also makes the opposite point: that public policy and legislation based on shari'a will be "difficult to resist or even debate when presented *as the will of God*" (2008b, p. 335, emphasis added). The same formulation can be found almost verbatim in *Islam and the secular state* (2008a, p. 29), and in a similar version in *African constitutionalism* (2006, p. 116). In fact, an-Na'im's oeuvre on Islamists and their purported claims speaks of a concern that Muslims may be unable to resist the notion of shari'a as divine. To the extent that Muslims are convinced by Islamists, whether it be those who govern Sudan and Iran or those aspiring to power in Egypt and Algeria, the invocation of divine law remains crucial. Thus, what is at issue, an-Na'im writes in 1999, is a "fundamentalist political Islam" asserting a "particular content of Islamic identity", namely one requiring "strict enforcement of shari'a by the state" (1999a, p. 108).

The "secular concern" of Islamism

In my opinion, an-Na'im's analysis of the appeal of Islamism is too narrow. On an analytical level, both the advocates of Islamic states and their supporters are conceived by an-Na'im to be on conflicting terms with what I have called religiosity as *agency* in two respects. For one,

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[104] See direct quote above. In my view, an-Na'im clearly holds the Qur'an and Sunna to have more than *practical* value. His argument should be seen in light of his objective of outlining the public role of shari'a (see 2008a, p. vii). As such, the wording illustrates his separation of private and public religiosity, noted in chapter 4.

[105] A tribute essay to the American law professor Frank Vogel. In the quoted passage an-Na'im speaks of shari'a as a *research topic*; however, I hold the point to be valid for an-Na'im's purposes of formulating a state model.

Islamists seem to be solely concerned with what an-Na'im calls the "transcendental" dimension of religion, without reflecting on their relation to secular concerns. Besides, he sees the state implementation of shari'a advocated by Islamists as "un-Islamic", because it threatens religious freedom. Or, in the analytical terms of this thesis: Islamists appeal to religiosity as *primary motivation* – something that Muslims find hard to resist – and thereby violate the *agency, autonomy* and *freedom* required in true religious conduct.

Empirical studies present a more nuanced picture. Egypt, one of the countries mentioned by an-Na'im as a breeding place for what he calls fundamentalism, provides a good example in this context. According to several studies, Egyptian Islamists gain support from their ability to address "secular" concerns by way of religious precepts. For example, the political scientist Carrie Wickham argues that Islamists recruit many activists among educated people who are socially upwardly mobile. They seek better jobs as well as spouses and social networks, but lament that the authorities fail to reward their merits and provide decent salaries and welfare services. Via friends, they come into contact with Islamist groups that offer informal contacts and welfare services: kindergartens, libraries and health clinics.

The recruits also receive the message that Islam is a moral code that can address the concerns of recruits *on a societal level*. By recruiting people to campaign against authorities and in favour of a just and Islamic state, Islamists offer "a language for understanding the predicament of contemporary Egyptian society, the vision of a better alternative and an agenda for change – all in a single package" (Wickham, 2002, p. 161). Wickham identifies this as the *diagnostic* and *prescriptive* power of Islamists.[106]

However, recruits did not respond positively to this message simply out of an existing "religious" commitment. The success of Islamists rested on their ability to "frame" people's interests and life-experiences through the concept of *da'wa* (Arabic: calling, vocation), in the sense of religious activism to cure society's illness. This "framing" *created* a more profound moral or ideological identification, Wickham holds (ibid, p. 151). In her study, she also examines how the so-called "Islamic Trend" has managed to win elections in professional associations, especially for lawyers, doctors and engineers. Although it was obviously also a result of election tactics and mobilisation, the success depended on the candidates' record for putting welfare services for members and the greater goal of social justice first. Interestingly, Wickham notes that among voters, "very few Islamic Trend supporters explicitly mentioned

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[106] Wickham has studied activist networks loosely affiliated with the Muslim Brothers. She characterises them as "reformist Islamists" due to their alleged wish for a broad islamisation of society from below by the use of peaceful means (Wickham, 2002, p. 112-115).

their support for the organization's political goal, that is, for the application of Islamic law as the basis for reorganizing state and society" (ibid, p. 199). This suggests that other factors, such as the moral uprightness of candidates, were more important.

Similarly, the historian Bjørn Olav Utvik has pointed out how the Muslim Brothers' ideologues conceive of Islam as a guide for social conduct. Thus, on a personal level, being a Muslim means taking personal responsibility, not only for compliance with moral rules but for working hard and being productive. Institutionally, Islamic banks and investors must not only pay heed to scriptural bans on *riba* (interest) but also fulfil the public good (*maslaha*). Over and above this, the state must eliminate corruption; it should provide welfare, education and jobs according to merit only. By encouraging people to work for such causes, the Brotherhood in reality transforms Islamic symbols into social, economic and political development and as such contributes to modernity, Utvik argues (Utvik, 2003, p. 55-59).[107]

In a third study, the political scientist Mona el-Ghobashy focuses on the Muslim Brothers' stronger emphasis on parliamentary politics since the mid-1980s. She finds that their parliamentary record cannot be reduced to advocacy for the implementation of shari'a in an Islamic state. It rather exemplifies how their religious principles are accommodated into practical needs, such as the right to political participation in an authoritarian and repressive state (el-Ghobashy, 2005, p. 377-381). In practice, this led to the Brotherhood supporting plural democracy and full political rights for women from the mid-1990s (ibid, p. 383-385).

The appeal of Islamists: More than calls for a religious state
An-Na'im is not wrong to claim that Islamism urges a specific kind of Islamic identity built on the enforcement of moral codes. Islamist activists in Egypt (and elsewhere) promote strict norms on attire and sexuality as well as a pious lifestyle. Activists are encouraged to avoid activities that are deemed to be incompatible with "being a Muslim", such as fraternising with Copts and foreigners (Wickham, pp. 152-56, 165-175). As noted above, Ismail observes how Islamic lawyers make public accusations of appropriate conduct, even apostasy, against individuals. It is also beyond doubt that in states such as Sudan, using shari'a as law has meant enforcing codes for moral behaviour, punishing in the most abhorrent ways those who do not abide (Kepel, 2002, p. 182-193). Hasan al-Turabi, leader of the Sudanese Islamic movement NIF, protested against the removal of the shari'a-based "September Laws" of 1983 by referring to them as "God's legislation" (Collins, 2008, p. 169).

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[107] Utvik's arguments to this point includes that Islamism entails individualisation of live projects; that it adapts Islam to contemporary reality; that it draws on political mass mobilisation. One could counter that Islamists also hamper individual empowerment by supporting enforcement of strict social mores in public; see below.

An-Naʿim also doubts the will of Egyptian Islamists to grant full civil and political rights to Copts and women in a principled way (in Vogt, 1995, p. 47-48). My point, however, is that Islamists and their supporters *do* display religious conduct along the lines of agency that an-Naʿim sets as a condition for his own secular state model. In fact, parts of an-Naʿim's analysis of political parties and activists in Turkey and Indonesia prove the same point.

In the case of Turkey, he discusses the performance of the ruling AK Party (AKP) which emerges out of a tradition of Islamist parties from the 1970s. An-Naʿim agrees that AKP managed to secure a majority in parliament in 2002 by promising to deliver on "secular" issues such as heath care, infrastructure and Turkish admission into the EU (see Çarkoğlu, 2006, p.175-179 and Dagi, 2006, p. 98-104). AKP supports secularism, albeit in a variant that allows for religious arguments in politics and addresses the problematic issues of state control over religious sermons, education and attire, an-Naʿim holds. Fears that they may want to introduce shariʿa are, however, uncalled for (an-Naʿim, 2008a, p. 218-220). According to an-Naʿim, peacefully changing the strict Turkish secularism is a shared responsibility of the army, the secularist political elite and "Islamist" politicians. However, one of the conditions for this to happen is that AKP stays committed to a secular state, he warns (ibid). [108]

In his analysis of Indonesian Islamic activists, an-Naʿim finds that they hold divergent viewpoints on the nature of government, and on shariʿa. Some opt for immediate or gradual state implementation, some hold shariʿa to be a code for personal religiosity, some see it as a source of public policy (an-Naʿim, 2008a, p. 243-246). However, he claims that:

> "[T]he key difference between those who call for an Islamic state and those who advocate stronger separation of Islam and the state is that the advocates of an Islamic state seek to define *the state itself as an instrument of religion*, while this claim is resisted by other Islamic reform and renewal movements as well as by those described as secularist (…) (an-Naʿim, 2008a, p. 258; emphasis in original).

This quote illustrates an-Naʿim's view of Islamists' agendas. As has been pointed out throughout this thesis, introducing shariʿa as positive law in Muslim countries could be disadvantageous for Muslims and other religious groups, which abound. The viewpoint on an Islamic state might even be "the key difference" between political actors. But in my opinion, an-Naʿim loses sight of other *similarities* between Islamists in his analysis, as well as between

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[108] Political scientist Hakan Yavuz (2009) has argued convincingly that AKP – self-designated as conservative democrats – although consisting of former Islamists cannot be termed an "Islamist" party. An-Naʿim does use this term in relation to the AKP. This is in line with his exclusive use of "fundamentalists" for parties and movements that advocate an Islamic state (which the AKP does not).

Islamists and those who do not favour an Islamic state. For example, an-Na'im notes how some Indonesian activists refuse "to accept that the enforcement of shari'a would improve the present corrupt and oppressive system of government". They see such proposals as disguising "merely normative-moralist claim[s] that obscures the true nature of Islam" (ibid, p. 246).

From an-Na'im's observation here, however, it follows that shari'a advocates do seek to cure corruption and oppression. This objective is shared by many political actors regardless of whether they opt for a secular or Islamic state, in Indonesia as in other Muslim countries. Seeing the debate in terms of state instrumentalisation of religion, as does an-Na'im, does not explain why and how religion actually is invoked. An-Na'im's focus on keeping religious conduct *autonomous* obscures the fact that Islamists, in considering how religious precepts might transform into mundane politics, also display religiosity as *agency*, as do their supporters. Thus, an-Na'im fails to provide a richer analysis of the motives and appeal of his perceived political adversaries. This is a paradox, since his outline of secularism is intended to be more sensitive to public religion *and* to counter Islamist visions for state government.

Shari'a: Divine law?

This brings me to a last point on an-Na'im's view of "transcendental" and "secular" aspects of religion. Even if we accept the premise that Islamists primarily seek state implementation of shari'a, this need not be due to the fact that they see it as "decreed by God". Nor is this necessarily the reason why some Muslims find the idea "hard to resist". In *The Fall and Rise of the Islamic State* political scientist Noah Feldman analyses Islamic constitutional theory. His main point is that shari'a in Muslim political entities throughout history has served as an emblem of *justice* meaning rule by law (not power) and through law (not ignoring it). As guardians of shari'a, ulama could check the powers of rulers (Feldman, 2008, p. 6).

This function was removed when a constitution replaced shari'a as the source of law in the Ottoman Empire, but shari'a has remained a symbol of just rule.[109] Hence, when contemporary Islamists appeal to shari'a, they appeal to justice. A tempting promise in the eyes of Muslims – pious or not – who have seen little of the sort, argues Feldman (2008, p. 9-10). Thus, at least for moderate Islamists such as the Muslim Brothers, Palestinian Hamas and the Moroccan Justice and Development Party, shari'a is not strictly a *religious* law. It is rather a vehicle for social, political and legal justice, in the sense of redistribution, free elections and

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[109] According to Feldman, the change consisted not in the new constitution of 1876 being *secular*, but in sultan Abdulhamid removing it – and the popular assembly – in 1878, without reinstating the ulama as guardians of the law. Thus, the laws emanated neither from God nor the people, but the sultan. This removal of checks on power contributed to the autocracy of 20th century Muslim states, Feldman holds (2008, p. 75-78).

non-corruption (2008, p. 113-115). For some of these movements, the application of shariʻa also means social control, regulation of sexuality and *hudud* laws, Feldman concedes, but their appeal among voters cannot be *reduced* to such aspects (2008, p. 6).[110]

According to Feldman, if in power, Islamists would delegate the task of legislation to a democratically elected assembly, leaving it to an assembly of legal scholars to control whether the laws actually comply with shariʻa. This combination of democratic legislation and judicial review amounts to a *democratisation* and *constitutionalisation* of shariʻa (2008, p. 117-124). As such, the contemporary call for an Islamic state is distinctly *modern*, Feldman holds. Islamists want the modern state to apply shariʻa in the form of codified law, not the traditional *qadi* or *mufti*. Here, Feldman refers to the recent constitutions of Afghanistan and Iraq as examples. This is in line with an-Naʻim's characterisation of the Islamic state as a "post-colonial innovation" (an-Naʻim, 2008a, p. 7). But when it comes to the reason why Islamism is received favourably by many Muslims, Feldman's argument is similar to that of Wickham and Utvik, rather than an-Naʻim. Islamists invoke God's will, but also cry out for just government, which makes their aims "both religious and worldly", Feldman claims. Otherwise, Islamists would not stand a chance of gaining the support they actually enjoy:

> "Political actors in the contemporary Muslims world, from ordinary voters to elites, take
> Islam seriously only to the extent that they believe it can make a practical difference in places
> where both the state and society itself have fallen on hard times" (Feldman, 2008, p. 3)

This wording is strikingly similar to an-Naʻim's formulation, cited above (in section 6.2.), regarding how believers transform transcendental truths into secular concerns as a matter of *agency*. The difference is that Feldman takes this understanding of religiosity to be the crux of Islamists' appeal in Muslim countries, while an-Naʻim analyses its popularity to be a matter of invoking the "divine commands" of shariʻa, which is "hard to resist".

Having made this point, I now turn to sum up and draw some conclusions on the basis of my discussion in this chapter as well as of findings in previous chapters.

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[110] Feldman holds the movement to be "moderate" because they accept parliamentary politics (2008, p. 3 [sn 2]).

CHAPTER 7: SUMMARY AND CONCLUSION

7.1 Summary

Abdullahi an-Na'im's quandary: The public role of Islam

A starting point for my inquiry has been Abduallahi an-Na'im's position as a contemporary advocate of Islamic reform. Reformist intellectuals and movements generally hold that the key to social and political change among Muslims is reforming the interpretation of Islam.

An-Na'im's reform effort has been directed at *shari'a*, the Islamic law or normative system. It has two main and potentially conflicting objectives: On the one hand, to subject shari'a to modern standards of constitutional government and human rights, and on the other hand, to let a reformed shari'a be a main source of influence on politics. His secular state model or "Islamic approach to secularism", which he lays out in *Islam and the secular state*, purports to unite these objectives.

It must be acknowledged that an-Na'im is not representative of how Muslims think with regard to politics and religion. His standards of judgement are human rights and modern constitutionalism, not the Qur'an, the shari'a or the constitution of Medina. He is inspired by liberal political theory from "Western" philosophers. He has fronted a controversial method for Islamic law reform. And he advocates secularism, a political doctrine which at the outset is discredited in Muslim societies. In sum, this places him outside the political mainstream in Muslim countries, even if some of his ideas arguably are shared by many Muslims.

I have not compared an-Na'im in any detail with other reformists in this thesis, but he has clearly gone further than Khaled Abou El Fadl, Tariq Ramadan and Abdoulkarim Soroush in actively advocating a secular state and detailed what it should look like. An-Na'im also leans less on arguments from within Islamic legal science than do Ramadan and El Fadl. As such, an-Na'im is not necessarily representative of Islamic reformist thought.

However, an-Na'im's model of a secular state touches upon questions debated in many modern societies: What role should religion play in politics? What are the consequences for religious and political freedom of including it or excluding it? In my eyes, this makes an-Na'im's model worth studying. I have also suggested that it is fruitful to approach the model from a theoretical angle. This is because secularism – as a doctrine and practice regulating secular and religious spheres – must rest on a presupposition of what "religion" means in people's lives, that is, of people's *religiosity*. Such presuppositions might also shape an-Na'im's model for a secular state. In this thesis, I have therefore inquired:

- *how notions of religiosity in Abdullahi an-Na'im's work impact his model for a secular state, and what the analytical and practical implications are of this impact.*

Such an inquiry has demanded that I first answer what characterises these notions of religiosity. This has been one additional research question in my thesis. I have also argued that the notions are embedded in a frame of reference in an-Na'im's work: his rejection that shari'a can be applied as positive law in an "Islamic state". I therefore added two subordinate research questions: How does an-Na'im distinguish his own understanding of shari'a from that of Islamists who claim an Islamic state? And what, in an-Na'im's view, makes his secular state model religiously legitimate, as opposed to models for an Islamic state?

Shari'a: At the core of an-Na'im's case against Islamism
To start with the issue of shari'a, in chapter 2 I showed how experiences from Sudan shaped an-Na'im's subsequent confrontation with Islamism. He embraced the approach to shari'a taken by Mahmoud Muhammad Taha and the Republican Brothers in Sudan. He opposed the introduction in Sudan of state law based on shari'a, which was partly due to the political influence of Islamists. After Taha was executed by the regime in 1985, an-Na'im fled Sudan.

As subsumed in my chapter 2, on this basis an-Na'im rejects prevailing interpretations of shari'a in *Toward an Islamic Reformation* (1990). Here, he also advocates Mahmoud Taha's evolutionary approach to Islamic reform. Because this approach is assessed and criticised by others, in chapter 3 I have mainly focused on changes in an-Na'im's view of shari'a: From seeing shari'a in early texts as potential legislation, in later texts it becomes a religious normative system to be complied with voluntarily. From refuting the term shari'a, in later writing he re-appropriates shari'a as an *indirect* source of politics in a secular state.

The result of this re-appropriation, as I have termed it, is a distinctly *modern* view of shari'a as a vehicle for religious freedom to be asserted by religiously conscious Muslims. The re-appropriation coincides with an-Na'im's promotion of secularism, starting from 1999. Still, this turn is less of a rupture than a change of perspective. Complying with shari'a is seen as the core of Muslims' right to self-determination also in later texts by an-Na'im.

Notions of religiosity: The public role of religion
I argued in chapter 4 that an-Na'im approaches shari'a and other topics mainly from the point of view of the religious actor, not from religious dogma or ethics. I went on to trace four different *notions of religiosity* in his texts: (1) As a primary source of motivation for believers, that is, as a part of their identity that strongly shapes their obligations and judgements. (2) As

conviction, that is, as manifest in religious adherents' need to act upon their beliefs in public. (3) As agency, denoting how religiosity is a contested and changeable human product and not given by God. (4) As free and autonomous, that is, as something that cannot be coerced.

These notions of religiosity are not part of an-Na'im's explicit vocabulary; they are conceptual tools that I have invented to identify traits in his texts. What view of religiosity do they capture? My main argument is that the notions mirror a strong sense of awareness and reflexivity that an-Na'im assigns to religious actors. They reflect how an-Na'im in his texts is mainly concerned with public aspects of religiosity. Further, I have stressed that the notions are imprinted by what an-Na'im considers to be a Muslim religiosity. This is particularly evident in the notions of conviction and agency; they capture, respectively, an-Na'im's insistence that Muslims are bound to express their religion in politics, and that religious sources cannot be said to rule out a secular state *as such*. It would, however, be misleading to hold that an-Na'im's writing mirrors only a Muslim religiosity, not least because the *right* of all adherents to free religious conduct lies at the core of his argument.

Procedural secularism, substantial religiosity

Chapter 5 started with an outline of the growth of secular nation-states in modern Europe. This was done because the state as an institution is so crucial in an-Na'im's version of secularism. My account also illustrated how an-Na'im's model is intended to meet accusations by some Muslims against secularism: That in Europe, secularism has left religion with less societal influence, something which makes it alien to Islam. In response, an-Na'im tries to make secularism religiously legitimate – an attempt informed by notions of religiosity.

For one, the *mediation* between state, religion and politics in his model is meant to protect the state and the religious groups from being overtaken by each other. At the same time, citizens should have an equal right to influence politics on the basis of their respective religions. In this argument, notions of religiosity as free and autonomous and as conviction and agency are present. Further, *civic reason* is meant to secure a role in political debate for all religions, by filtering out exclusive religious arguments. This draws on notions of agency and conviction, but also of primary motivation, since for an-Na'im, secularism as a system – not only as political decisions – must be made religiously legitimate through civic reason.

In my discussion, I have left out the question – addressed by scholars like John L. Esposito – of whether an-Na'im *fails* the test of legitimacy by not grounding his model in Islamic foundational texts and legal science. Instead, I have focused on other weaknesses: I have argued that, theoretically, it exhibits tensions between his different notions of religiosity.

Tensions in an-Na'im's secular state model

My main argument has been that an-Na'im's model creates barriers between citizens and the political institutions of the state. To influence laws and policy that are debated in such institutions, people must use non-religious arguments. This principle is meant to protect the *freedom* and *autonomy* of religiosity – and of the state – but it rests uneasy with religiosity as *primary motivation* and *conviction*. Will a majority of the believers in a secular state see its institutions as legitimate representatives of their causes, I have asked. And can people be convinced of its policies, also on areas where religious reasons shape people's practice?

For an-Na'im, the notion of religiosity as *agency* forms a bridge over this divide, in that believers are capable of reflecting on their religion, and of seeing how it can translate into politics in a secular language. I think this is perhaps the greatest strength of an-Na'im's model. It enables us to see religious adherents as actors motivated by religion in very different ways and as seeking very different ends. One such end might be the kind of secularism an-Na'im favours. At the same time, an-Na'im makes the support of secularism dependent on a strong degree of awareness among religious actors. To me, an-Na'im's account of his model does not make it obvious that even conscious believers would *actively* choose to support a secular state instead of putting their effort into the autonomous associations in civil society.

This impediment to the legitimacy of secular politics is increased by the role an-Na'im gives to shari'a as a source of public policy. This role, I argue, is related to the notions of religiosity as autonomous and a primary source of motivation: To protect individual religious freedom and the state itself, shari'a must be reformed and be debated *outside* state domains. Illustrating my point with examples from Indonesia and Egypt, I have held that this "isolation" of shari'a from the state could also make public debate vulnerable to an "overload" of religious arguments. As a result, civic reason could be difficult to enforce, and the religious freedom and agency of believers could be threatened.

Finally, I have pointed out that an-Na'im fails to acknowledge that Islamists also display agency when they argue on the basis of Islam. On an argumentative level, this makes his secular state model less convincing as an alternative to the idea of an Islamic state.

7.2. Conclusion

In my opinion, my arguments illustrate the value of analysing an-Na'im's work in terms of notions of religiosity: It has enabled me to point out how his secular state model depends on different kinds of religious conduct. It has also suggested, I think, that future research on Islamic reformists – or comparison between them – along similar conceptual lines could prove

fruitful. However, it must be stressed that an-Na'im's model for a secular state is determined also by other factors than these notions of religiosity, in two respects.

First, promoting religious conduct is one of an-Na'im's crucial objectives. But it is intertwined with others – achieving social justice, protecting human rights and seeking international cooperation – which for an-Na'im are valuable in themselves. Second, to realise these objectives is arguably a more pressing concern for an-Na'im than to discuss concepts and their theoretical underpinnings. In his response to comments on his latest book, posted in the web log *The immanent frame*, an-Na'im states that "terms like secularism and liberalism (…) tend to distract rather than facilitate understanding". Instead he suggests to "call it X and focus on what I mean" (an-Na'im, 2008c). This comment is telling of a certain theoretical pragmatism evident in an-Na'im's texts.

As a final remark, I would like to borrow a point from the philosopher Paul Weithman in his discussion of Rawls' public reason, a principle adopted by an-Na'im. Weithman notes that realisation of the kind of liberal democracy that Rawls promotes will depend on citizens' commitment, which they will not make unless they believe that such a democracy is likely:

> If a just liberal democracy is too unlikely – it if is a mere logical possibility – then
> affirmation, commitment and the actions and attitudes which follow from them will be at best
> quixotic. There may [then] seem little point in committing oneself to the pursuit of justice or
> to refraining from entirely self-interested political action (Weithman, 2002, p. 214).

Of course Rawls cannot "show" or prove that democracy is possible, but he tries to convince people that it is reasonable to trust others' commitment to support democracy, Weithman holds. As such, Rawls advocates a form of "political faith" (ibid.). The "political faith" that Weithman describes is also characteristic of an-Na'im's attitude towards secularism.

A signature feature of an-Na'im's texts on this topic is the sense of urgency with which he insists that secularism can be compatible with religious piety. His insistence rests on the conviction, no less characteristic, that the possibility of realising this state rests with the religious actors themselves. They *can* make sure that human rights and the rule of law is respected, they *can* promote progressive religious interpretations, they *can* involve themselves in the creation of a secular state which allows for religious blossoming, an-Na'im argues. But whether religious adherents would actually prefer to live out their religiosity in the secular state an-Na'im envisions, remains an open question.

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ABSTRACT

This thesis deals with the possible public role of religion in a secular state. More precisely, it deals with the plea for such a state in Muslim societies advanced by the Sudanese-born Islamic reformist and human rights advocate Abdullahi Ahmed an-Na'im. A professor of law now based in the USA, an-Na'im has devoted much of his work to the question of how respect for human rights and the rule of law can be aligned with the right to religious freedom, especially for Muslims. Increasingly, he has held that these goals can only be reached within a secular state. His book *Islam and the secular state* (2008) outlines a model for such a state.

In this thesis, this secular state model is discussed in light of an-Na'im's refutation of an Islamic state based on shari'a as positive law. The refutation of such a state is a central objective for an-Na'im that can be traced back to his experience with the introduction of laws based on shari'a in Sudan from 1983 and onwards. In a secular state, an-Na'im argues, shari'a cannot be applied as positive law. It can only be voluntarily binding for Muslims as a religious normative system and, as such, influence politics indirectly.

The thesis inquires some problematic aspects of an-Na'im's secular state model. This is done through an analysis of the model in terms of so-called notions of religiosity. Using these notions as a set of conceptual tools, the thesis traces presuppositions in an-Na'im's model of what it means for adherents to be religious. Tensions between different notions of religiosity cause problems in the model, it is argued. First, the model is too dependent on religious reflexivity among actors in civil society. Second, it fails to account for how shari'a can inform public debate without undermining the secular state itself. Third, in arguing in favour of his model, an-Na'im misconceives the appeal to large groups of Muslims of a state based on shari'a, as claimed by Islamists.

As a result, barriers are created in the model between citizens and the political state institutions at a theoretical level. The argumentative strength of the "Islamic" approach to secularism advocated by an-Na'im is also weakened.

In the course of discussion, the thesis highlights how an-Na'im's model is influenced by the works of theoreticians such as John Rawls and Jürgen Habermas. The discussion also draws on other theoretical and empirical studies of secularism, secularisation and Islamic law. It is suggested that future research of Islamic reformism along similar conceptual lines could prove fruitful.