How much religious freedom can an Arab Muslim expect in Europe?

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Arab Muslims who come to the West for work and security are often strong believers. Religious law requires them to follow specific religious practices that may appear unusual to the average European observer. This situation has caused strained relations between the local (mainstream) population and Muslim migrants.

To make the position of Arab Muslims living in Europe more tangible, imagine the following situation. Assume that Mahmoud, a devout young Muslim, left Damascus to live in Zurich, Switzerland. As a young professional he was fed up with both Syria’s political turmoil and the economic stagnation that have plagued the Arab nation for quite some time. The prospects of a new and prosperous life made him move abroad. Thanks to his enthusiasm, Mahmoud quickly found a decent job with a Swiss construction company. Also imagine that most of his spare time is spent participating in Muslim community life. Despite the fact that he has already gained some Swiss friends, he feels most comfortable among his Arab compatriots. Because of his particular lifestyle he involves himself sparsely with local Swiss tradition. Instead, Mahmoud practises most of the religious demands he was taught as a child. For instance, he gets up in the middle of the night for prayer, gives part of his salary away to a private Muslim school, volunteers at the nearby mosque, cooks only halal food, and abstains from alcohol. He is also the type of person who thinks that a woman’s greatest role in life is to look after her husband’s family. Once he gets married he wants her to follow his religious practices, and that she a fortiori raises his children in accordance with Muslim beliefs.

Without doubt, Mahmoud’s position is that of a stereotypical Arab as many Muslim migrants find themselves in similar situations. Thus, the example sketched is not overly fanciful. The above situation generates two intriguing questions:

- To what extent can a Muslim migrant live up to Islamic practices?
- And why do Muslim migrants have specific, sometimes unusual, religious expectations when they settle in the West?

Having said that, there is need to refer to the theoretical assumptions the paper embarks from. I basically claim that the two questions above can (at least partially) be answered by measuring the extent of religious freedom found in the countries of interest. This special type of exercise not only gives an indication as to what religious freedom means in Europe, but also, and this especially, gives clues as to why migrants expect what they expect. As in the above case of Mahmoud, the paper addresses these questions by looking at two model countries: Switzerland and Syria. The word model as applied here does not refer to a tested legal or social construction

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1 This paper is thus based on the author's doctoral thesis: MODELS OF RELIGIOUS FREEDOM: Switzerland, the United States, and Syria by Analytical, Methodological, and Eclectic Representation, Lit 2012.

2 At the time of writing the Syrian constitution is expected to be amended once the political turmoil has ceased. The author assumes that during this process the collective rights of the Sunni community will be strengthened (e.g. the Quran will be put above the constitution or the constitution will draw its legitimacy from the Quran; the Grand Mufti will be chosen by the Sunni community; fatwas will be made binding on the entire Islamic community instead of having declaratory character only; the High Waqf Council will be re-established and given its initial or even greater powers; remaining secular law will be checked by the said Council for its compliance with the Sharia, or secular law will be abrogated altogether). This means that it is likely that some changes will be in legal effect by
that is perfecting an earlier set up. Instead, it is used in a more neutral fashion, namely for particular religious freedom norms that are bundled together and enacted in view of a specific concept or greater idea. In Switzerland and Syria this type of model exists by means of religious freedom concepts. As we will soon see, analyzing them is illuminating and practical. It will provide reasonable results that help answer the two questions posed.

The paper assesses three dimensions of religious freedom – one measuring the level of state interference with individual religious freedom, another involving the amount of collective religious autonomy granted by the state, and a third representing the proximity between religious and governmental institutions. It is equally claimed that the theoretical accounts of this paper can be applied to varying national jurisdictions, especially to those governing pluralistic societies.

The experiment begins by the development of theoretical indicators necessary to assess individual aspects of religious freedom. Next, these theoretical indicators are applied to concrete constitutional law found in Switzerland and Syria. The objective of this method is to illustrate the extent to which individual religious freedom has been internalized by the respective legal system. Subsequently, the same approach is taken with regard to collective religious freedom. It means that consideration is initially given to a philosophical reason why collective religious freedom is important; then theoretical indicators are established; and finally, concrete Swiss and Syrian constitutional law is applied and illustrated. As for the proximity dimension, a slightly different objective is pursued. Although the same method is utilized, the proximity dimension does not search for degrees of any justifiable right, but for the resulting configurations between religious institutions and the state. The question is how close Swiss and Syrian public authorities come to religious organizations (or whether powers are even merged). So the issue is one of legal structure, but not one of claimable right. Finally, an overall conclusion will be drawn. This will also be the time to ponder over Mahmoud’s hypothetical situation. It must be emphasized also that this theoretical paper is bedevilled by questions of scope. It is not possible to answer comprehensively the two questions raised.

**Individual Dimension**

**Theoretical Indicators**

Most if not all pluralist nations – including Switzerland and Syria – have responded to the significance of individual religious freedom. Country-specific interpretations, however, pay varying heed to the importance of this type of liberty. It is assumed that the degree of individual

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3 Resulting configurations between individual adherents and religious institutions are not treated here as a separate, that is to say, a fourth dimension. The reason for this is that Swiss and Syrian constitutional law does not regulate the relationship between “private parties,” unless the state is obliged to act positively for the protection of religious freedom.

4 Although such an evaluation can never be accurate from a scientific perspective and, thus, will also remain vague in this paper.
religious freedom can be evaluated by means of a straightforward linear continuum (see D.1(p) below). Poles A. and B. represent the polar extremes of either complete absence or complete presence of individual religious freedom. Between them lie various intermediate indicators referred to as Area AB. They are presumed indefinite since it is not really known how many intermediate indicators exist. Once these basic features are recognized, refinements need to be introduced that help fine-tune and describe significant subfeatures along the continuum. From the left to the right, they correspond to three major areas of gradation, namely as a “narrow,” a “balanced,” or a “broad” constitutional right. Arguably, these refinements make it possible to identify salient differences among country-specific interpretations, and will later help me to plot the Swiss and Syrian models along the continuum.

Practical Indicators

In applying the succinctly described theory to practice, it is possible to consider where the Swiss and Syrian legal systems are to be plotted along continuum D.1(p) below. The process will reveal what type or model each of the jurisdictions is. In this respect, neither Pole A. nor B. applies to one of the nations in question. As to the former, evidence for this is presented by the legal situation that Swiss and Syrian citizens all enjoy a constitutionally entrenched right to individual religious freedom. And, as to the latter, individuals in their belief are not completely free to do and omit anything they please. This is because activities based on religion can justifiably be limited in all three countries. From this point of view, it is clear that the jurisdictions in question must be placed somewhere along Area AB.

Starting with Syria, it can be claimed that Arab government grants de minimis rights to individual religious selfhood in that the state does not interfere with religious choice, or the replacement of one’s current religion with another. The Republic restricts itself from limiting freedom of thought, conscience, and belief. In the entire country, apostasy is not a punishable offence under the criminal law of the land. However, a person who wishes to convert is only free to do so as long as such activity is exercised beyond the pale of society – that is, behind closed doors and without affecting the public, or private family members. This is why Syrians, despite being unrestrained in beliefs, are not free to act upon their new conviction. Their freedom in this respect is more theoretical than concrete and real (they must hide it from others). The liberty to

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6 In other words, the subfeatures “narrow,” “balanced,” or “broad” correspond to a “small,” “medium,” and “large” scope of the right to religious freedom. So degrees of religious freedom increase from left to right on the spectrum.
7 Swiss Const. art. 15; U.S. Const. amend. I; Al-dustur al-suri [Syrian Const.] art. 35.
8 Id. at art. 36; also Reynolds v. United States, 98 U.S. 145, 164 (1879); Al-dustur al-suri [Syrian Const.] art. 35(2).
10 An exception to this understanding is presented by the circumstance of a Syrian who converts to an Islamic cult. As held in Quadri Pasha’s Article No. 126 quoted as in Qanun al-ahwal al-shakhsiyya [Personal Status Act] of 1949, rule 212.
manifest one’s new belief impairs the very limited rights guaranteed under the Constitution. Individuals are discouraged from converting to or from another belief. A person who nevertheless changes from Sunni Islam to some other preferred belief-system may face social isolation or even persecution, without the government doing much to prevent it.11

It follows that individuals possess very limited rights to enjoy practices of worship, use of ritual formulae and objects, and the observance of holidays and days of rest other than those of officially recognized religious communities. In other words, in Syria a dividing line must be drawn between individual exercise as part and parcel of an established religion, and different practices expressing a person’s sincere but highly individual or unusual belief. The legal circumstances are such that no criteria exist by which government would balance an individual adherent’s interests against those of the wider community or third parties. If a new, or unusual religious exercise disturbs public order, it may be restricted, however meaningful it might be. In other words, rights to individual expressions and practices other than those officially warranted are “highly nominal.” It must, however, be emphasized that it is believed that exceedingly few individuals live in fear of losing earlier assigned liberties, as the broad majority of Syrians appear not to bother about diverse forms of individual religious self-determination. Most religious expressions are made in collectivity with others in the sense of following a traditional religion. The “absolute” right to hold or change an individual conviction is of very limited use as it is not coupled with the right to manifest one’s new or unusual religion. So although the system knows limited (and mostly theoretical) aspects of “absolute” rights (which would otherwise fall within the “broad” field) it still appears necessary to place the Syrian model within the beginnings of the “narrow” field for the apparent insignificance, and limited legal protection, of individual religious aspects.

The legal situation in the Swiss Confederation is different. The right to freedom of belief and conscience is primarily couched as an individual, rather than a collective right. All citizens are equally free to espouse, manifest and profess their own convictions.12 No one is categorically banned from joining or belonging to a religious community, from participating in religious ceremonies, from following religious teachings, or from promoting her or his faith through proselytizing.13 National jurisprudence is first and foremost concerned with what should happen in the event that no mutual agreement exists on the boundary of freedom. Justices apply specific standards to figure out whether, on the balance of reasonableness, individual claims outweigh specific interests or vice versa.14 The test most often applied in Switzerland requires a “pre-

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11 The Syrian state had on several occasions been accused of turning a blind eye to vigilantism or even reducing the punishment of perpetrators who acted in the name of respected families. The UN Human Rights Committee [UNHCHR], Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Third Periodic Report, Syria, U.N. Doc. CCPR/C/SYR/2004/3 (October 19, 2004) para. 410 ff. An exception to this is that conversion to an Islamic cult is state-facilitated if a non-Muslim man marries a Muslim woman. Islam is then offered to him. Quadri Pasha’s Article No. 126 quoted as in Qanun al-ahwal al-shakhsiyya [Personal Status Act] of 1949, rule 212.

12 SWISS CONST. ART. 15 IN ASSOCIATION WITH ART. 8. The only exception to this is a person’s right to build an Islamic minaret. Id. at ART. 72(3).

13 BGE 125 I 369, E. 5c, S. 379.

14 Such interests can be police interests, other public interests, and interests of third parties. SWISS
And because of this important factor, it makes sense to keep the Swiss model within the beginnings of the “balanced” demarcation.

So although the above explanations are anything but precise, it is still possible to say by looking at Figure D.1(p) that today’s applicable scope of the right to individual religious freedom is narrower in Syria than in Switzerland.

![Figure D.1(p) – individual religious freedom](image)

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15 A few examples where the proportionality test was applied are BGE 109 Ia 273 E. 7, S. 289; BGE 113 Ia 304, E. 4c, S. 307; BGE 116 Ia 252, E. 7, S. 262; BGE 123 I 296, E. 2a, S. 299; BGE 125 I 369, E. 5c, S. 379; BGE 126 II 366, E. 3c, S. 371; BGE 134 I 56, E. 5.2, S. 63.

16 Enshrined since 1999 in SWISS. CONST. ART. 36(2) AND (3).

17 BGE 119 Ia 178, E. 7a, S. 190.

18 E.g. the right to equality and non-discrimination under Article 8 of the Federal Constitution is as important as the right to freedom of belief and conscience under Article 15 of the Constitution. As found e.g. in BGE 134 I 56, E. 5.2, S. 63.

19 SWISS. CONST. ART. 36(4).

20 BGE 104 Ia 79, E. 3a, S. 84.

21 As guaranteed in SWISS. CONST. ART. 15(4).

It is now time to turn our attention to the collective side of religious freedom. This second section starts by considering a purpose of allowing citizens to assemble, join or belong to a religious community.

**Collective Dimension**

**Theoretical Indicators**

The all-intriguing question is what degree of collective religious freedom pluralistic nations afford to religious groups existing in their jurisdictions. To address the issue it is necessary to establish a method designed to measure the scope of the right to collective religious freedom. The approach taken in this paper can be depicted as in Figure D.2(p) below. On this second continuum, once again, the polar extremes are demarcated by poles A and B, while Area AB is subdivided by intermediate reference points or indicators. However, the subfeatures “narrow,” “balanced,” and “broad” now refer to the ambit or scope of the right to collective – instead of individual – religious freedom. So what changes is the features’ hypothetical contents. It is these fictitious qualities to which attention will now be turned, by commencing a second country-specific evaluation including Switzerland and Syria.

**Practical Indicators**

It is once more possible to employ the above theoretical indicators to the legal circumstances found in Switzerland and Syria. Proof that none of the jurisdictions analysed touches on Pole A is that both constitutions either expressly or implicitly protect the basic right to manifest religious freedom in community with others. The two legal frameworks guarantee several collective aspects like the right to worship, the use of ritual formulae and ceremonial acts, or the right to display symbols representing a shared belief. Nor are the extreme conditions under Pole B satisfied, as in both nations, religious communities cannot be seen as completely self-governed regimes that exist from their own nature alone. The secular state has a firm grip on the organization of society, which means that the countries are mainly determined by civil laws of the land. They thus need to be assigned somewhere in the intermediate Area AB, and not at either extremity of the continuum.

In order to establish greater detail about each country’s placement on the continuum, I start with Switzerland. A first reference point represents the fact that the Swiss government grants all religious communities status and rights, and therefore goes beyond mere toleration of collective religious expression. Any religious group can take up secular associational forms so as to interact with other legal or natural persons. A second indicator characterizes the situation that under Swiss federal constitutional law, religious organizations possess no positively formulated right to autonomy, but enjoy their freedoms within the bounds of state-made civil laws. It

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23 In Switzerland and Syria the right is express. SWISS CONST. ART. 15(2); AL-DUSTUR AL-SURI [SYRIAN CONST.] ART. 35(1) AND (2).
24 E.g. BGE 123 I 296, E. 2a, S. 300; Guru Nanak Sikh v. Country of Sutter, 456 F.3d 978, 993 (9th Cir. 2006); AL-DUSTUR AL-SURI [SYRIAN CONST.] ART. 35(2).
25 E.g. Schweizerisches Zivilgesetzbuch [Swiss Civil Code] of December 10, 1907, SR 210, art. 60(1).
26 A competence enjoyed by the secular state. SWISS CONST. ART. 5. e.g. by way of partnership, Bun-
follows that the state dominates the way people organize themselves for religious purposes. With regard to private-law-organized religious communities, government treats them very similarly to any other economic or philanthropic venture. They have the right to organize themselves according to existing forms, but enjoy no right to negotiate new forms if all available structural forms are unsuitable to their religious precepts. This also means that the system may leave no leeway to choose the most appropriate associational form. From this perspective, the Swiss model needs to be plotted somewhere at the right side of the “narrow” interpretation field.

But matters are more complicated than that. Swiss law also expresses the expectation that government must do more than simply providing basic means of incorporation. The secular state restricts itself from interfering with religious doctrine, discipline, or order. This can include, for instance, the freedom to choose religious leaders, priests and teachers, as well as the freedom to administer finances in order to pay for religious objectives. Thus, the assessment of a religious attitude or rules, or even the review of theological truth – in particular the interpretation of the relevant parts in holy scriptures – remains barred to the state, unless and until boundaries of arbitrariness are overstepped. The law recognizes that Swiss civil courts’ refusal to interpret religious doctrines is as vital as the maintenance of religious policies is for spiritual courts. An exception to this understanding might be a religious-exercise claim that is so unreasonable that no reasonable court could ever agree to an autonomy claim. The legal threshold is thus set very high, which means that the system includes indicators that need to be placed within the “balanced” field.

However, when it comes to public-law recognized religious institutions, differentiation between civil and religious affairs is (democratically) state-imposed. Civil law governs issues such as finances, personnel, and real property, regardless of whether they have a religious meaning.


What is meant by negotiation is a direct agreement between the government and the religious community. Negotiation here does not refer to political processes that could, if successful, allow religious communities to take up new organizational forms.

Government does not check whether the legal forms available match the religious self-conception of newly incorporating communities. It presupposes that the forms already available are adequate for the community concerned.

BGE 119 Ia 178, E. 4c, S. 185. As demonstrated below, this approach does not necessarily apply to dual Catholic Church structures as found in many Swiss cantons.

Id.

E.g. in most Swiss cantons the Catholic Church is established by way of a dual legal structure: a civil-law structure comprising “external” public law quasi-church institutions (which govern church finances, personnel, and real property); and a second divine structure comprising “internal” divine canon-law-determined church bodies (which regulate dogma, promulgation, liturgy, and counseling). Where competences between divine and civil church institutions overlap, it is the latter that prevail. The effect of this is that within the scope of overlapping affairs, “internal” divine bodies must also adhere to general principles of Swiss civil law. To give an example, a Catholic bishop is not free to revoke his parish administrator’s “spiritual working permission” (missio canonica) if the procedure is not exercised in compliance with civil public law. Kantonsgericht Basel-Landschaft [High Court Decision of the Canton of Basel], BJM 9/2007 Nr. 06. E. 9/10.
On the other hand, civil government abstains from regulating inherently religious affairs like dogma, promulgation, liturgy, and counselling. Under the Swiss system, the citizens’ democratic participation is treasured more highly than the guarantee of religious autonomy. From this viewpoint, it is exceedingly difficult to clearly affix the Swiss jurisdiction to either the “balanced” or the “narrow” interpretational field. What is more certain, however, is that the domestic interpretation of the right to collective religious freedom in Switzerland has not reached a “broad” level. It can convincingly be stated that Swiss (regional) government has all but relinquished its hold on religious organization.\[32\]

Nevertheless, the uncertainty over the jurisdiction’s place along the spectrum can be resolved by way of reasonable compromise. In this sense, it appears that “narrow” indicators somewhat outweigh “balanced” indicators, for which it is possible (though not accurate) to place the Swiss model at the far right within the “narrow” field on the spectrum. But certainly, this approach is very imprecise from a scientific perspective. It might still gain greater acceptance once the plotting of the Swiss model can be brought into relation with the assignment of the Syrian model.

In Syria this government affords traditional\[33\] religious communities a broad ambit of collective autonomy in that it has never tried to gain legal hold over their organization and administration. It generally secures – rather than assigns – to religious institutions the freedom to regulate personal status laws such as marriage, divorce, separation, adoption, or inheritance.\[34\] Conceivably, communities’ liberty to regulate matters pertaining to personal status is “absolute” in that the civil lawmaker abstains from governing these matters in all cases. The personal status laws of Islamic communities are regulated by the shari’a, whereas Christian rites are governed by the Gospel, and the Jewish community by talmudic law. In Syria, there exist two kinds of judicial systems: one secular and one religious.\[35\] Secular courts hear matters of public, private and criminal law. Religious courts that exercise specialized jurisdiction are divided into shari’a courts, doctrinal courts, and spiritual courts. They hear personal status law cases only. Shari’a courts regulate disputes among Syrian Muslims, whereas doctrinal courts are empowered to

\[32\] An example of this is the relatively new cantonal Constitution of Zurich. Article 130(3)(a-d) provides an exhaustive list of religion-state issues that must be regulated by the cantonal lawmaker. The provision holds that cantonal secular laws regulate “(a.) the ground structure of church entities; (b.) the right to levy tax; (c.) state subsidies;” and “(d.) the competence and procedure of the election of priests, as well as the duration of their office.” (Das Gesetz regelt: (a.) die Grundzüge der Organisation der kirchlichen Körperschaften; (b.) die Befugnis zur Erhebung von Steuern; (c.) die staatlichen Leistungen; (d.) die Zuständigkeit und das Verfahren für die Wahl der Pfarrerinnen und Pfarrer sowie deren Amtsdauer.) Verfassung des Kantons Zürich [Constitution of the Canton of Zurich] of February 27, 2005, SR 131.211.

\[33\] New and emerging religious communities enjoy no rights to incorporate by way of institutional forms other than charitable or economic enterprises. However, as far as can be established, they are virtually non-existent. For this reason, no heed is given to them in this evaluation.


guarantee the personal status decisions of members of the Druze cult. Spiritual courts settle disputes of religious law for Jewish, Christian and other non-Muslim groups. Decisions of all religious courts may be appealed to the canonical and spiritual divisions of the Court of Cassation.

Syrian law reflects the expectation that every person is strictly related to her or his religious community as part of a larger organism. Interfaith marriages are not legally accommodated as they risk systematic differences or structural collapse between group-dependent personal status laws. Syrian jurisdiction does not, apart from personal status laws, regulate other social affairs according to religious law. Legal branches such as constitutional, administrative, criminal, or commercial law, as well as other private-law-determined rights and obligations, are regulated by state-enacted civil law. This is the main reason why the Syrian model is to be assigned to the lower end of the “broad” interpretative field. This finding can be bolstered by the fact that the law treats government not as a simple enforcing agent that retains very limited assignments and duties, but, according to the Syrian Constitution, government enjoys great powers in setting out or defining its rights.

The Syrian legal system also incorporates elements of “narrow” religious-freedom interpretation. The majority’s belief-system, that is the Sunni Islamic Establishment, faces serious legal constraints. By law it is, for example, disempowered from choosing its highest religious leader (the so-called Grand Mufti) without governmental interference and barred from exercising religious powers in the area of public endowments (which still constitute a large part of Syrian wealth). Thus the Republic, too, interprets the right to collective religious freedom depending on the community concerned. Looking at the predominant factors, it can still be concluded that Syria must be placed somewhere within the “broad” interpretational field, while keeping it relatively close to “balanced” indicators.

All of this in a nutshell means that, as illustrated in Figure D.1(p), today’s applicable scope of the right to collective religious freedom is narrower in Switzerland than in Syria.

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36 *Al-marsum al-tashri’* [Parliamentary Decree] No. 133 of October 8, 1953; also United Nations Development Programme (UNDP), Programme on Governance in the Arab Region on Syria, http://www.pogar.org/ (search for “Syria;” then follow “UNDP-POGAR: Arab Countries” hyperlink); also *DINA CHARRIF FELLER, LA GARDE (HADANAH) EN DROIT MUSULMAN ET DANS LES DROITS ÉGYPTIEN, SYRIEN ET TUNISIEN* 36 (Librairie Droz 1996).


38 For a comprehensive catalog of powers *AL-DUSTUR AL-SURI [SYRIAN CONST.]* ART. 50 ff.

39 The Grand Mufti as the most senior mufti of the country is appointed by legal “Decree” (*marsum*) and chosen from cabinet of a list with three names which the Sunni Islamic *waqf* minister provides. *Al-marsum al-tashri’* [Parliamentary Decree] No. 146 of October 23, 1967; in association with *AL-DUSTUR AL-SURI [SYRIAN CONST.]* ART. 119. The authority to dismiss the Grand Mufti lies within the powers of the Prime Minister, who in turn may be appointed and dismissed by the President. *AL-DUSTUR AL-SURI [SYRIAN CONST.]* ART. 95.

40 E.g. the High Council of *Awqaf* is a Sunni body that once administered a great part of Syrian wealth. *Al-marsum al-tashri’* [Parliamentary Decree] No. 386 of October 11, 1961.
When looking back at the above considerations, it can be concluded that the patterns of individual and collective religious freedom can be treated as separate dimensions from each other. As we will soon see, the same clear separation is not possible when it comes to the “proximity” and “collective religious freedom” dimensions. The former will partially be construed out of aspects already identified by the latter. The reason why pursuing the proximity evaluation still produces varying results is because its emphasis lies not on the search for degrees of collective autonomy, but on the resulting configurations between religious institutions and the state. Hence it is no longer possible to speak of a right, as persons possess no court-enforceable means of being proximate to or remote from the secular state. Rather, a situation determined by structural arrangements is implied. The discussion of assumed indicators starts out, once again, from a little theory.

Proximity Dimension

Theoretical Indicators

The question that arises is how proximate or remote religious organization can be in relation to the state. In the following it is presumed that degrees of religion-state proximity can once again be assessed along a basic linear continuum. Although the main features remain the same, some changes need to be made on the continuum’s refinements. The subfeatures “low,” “balanced,” or “high” now refer to greater or lesser religion-state nearness. As mentioned earlier, the distance between the institutions can no longer be characterized as a claimable right, but must be regarded as resulting configurations. Poles A and B represent the extremes of either complete absence of proximity versus complete presence of proximity between religion-state affairs. Having said that, it is now possible to give more meaning to the method envisaged.

Practical Indicators

It is once more time to apply this theoretical configuration to country-specific indicators. The level of religion-state proximity to be found in Switzerland and Syria is illustrated in Figure D.3(p) below. When considering the above formulations, it is impossible to say, either in respect to the Swiss, or the Syrian jurisdiction, that there is anything resembling complete absence or presence of religion-state proximity. Pole A is irrelevant because in both countries, religious communities are expected to possess certain rights and obligations. These legal elements ac-
knowledge implicitly that religious institutions exist and that their adherents have a right to organize and administer themselves.\textsuperscript{41} The relationship produces basic structural connections between religious and state entities.\textsuperscript{42} Thus, there is no full out remoteness between the authorities. Neither does Pole B. possess any practical meaning. None of the countries in question have adopted complete identification between religion and state affairs. The prime reason for this is that in these nations most interactions between natural and legal persons are regulated by way of civil and not religious law.\textsuperscript{43} The same is true in respect to the Syrian Arab Republic. For this country, too, the assertion that all Syrian lawmakers are God’s spokesman is wrong. The highest framework organizing Syrian society is not divine scripture, but the country’s secular Constitution.\textsuperscript{44} It cannot reasonably be claimed that one of the governments in question allows total fusion between religious and mundane powers. Several distinct and largely separate religious institutions can be found, not one sole ruling divine authority.

The issue that arises is where the two countries lie along the intermediate indicators of $AB$. Commencing the evaluation with Switzerland, it becomes clear that also for this third dimension it is virtually unachievable to make accurate claims. The Swiss system once again comprises indicators that are to be allocated among two subfeatures. In order to affix the Swiss system, complexity must be reduced and concessions made. The idea is that eventually, only the most significant indicators are reflected on the spectrum.

As mentioned earlier, in Switzerland both public-law and private-law-organized religious communities exist. Starting with the latter, it can be said that this institutional form is placed on the same legal footing as other associational, charitable, or business organizations.\textsuperscript{45} It means that communities within this category enjoy a minimum of relations with the state only. For instance, Islamic communities, which in most cases formed as private-law associations, may hold property and organize themselves relatively freely within the laws laid down by the state. A minimum of relations also include that cantonal government may provide communities of this type with access to state-run facilities such as a hospital, a military compound, or a prison in order to render their religious services.\textsuperscript{46} But regardless of such interaction, all private-law-organized religious communities are distinct and kept separate from governmental entities. From this perspective there is no concrete identification but legal acceptance. The situation can

\textsuperscript{41} Swiss Const. art. 15; U.S. Const. amend. I; Al-Dustur Al-Suri [Syrian Const.] art. 35.
\textsuperscript{42} E.g., if a community does not adhere to civil law, government has the power to enforce civil law even against a community’s will.
\textsuperscript{43} In Switzerland all branches of law are governed by civil law. In Syria, only the personal status system is regulated by divine laws. E.g., Qanun al-ahwal al-shakhsiyya lil-duruz [Personal Status Act of the Druze] No. 59 of 1953, as amended by Kanun [Act] No. 34 of 1975.
\textsuperscript{44} Islamic jurisprudence is “a” main source, though not “the” main legal source. Al-Dustur Al-Suri [Syrian Const.] art. 3(2). Divine laws unfold their capacity only within the area of personal status law. This limited area of law can then be seen as standing alongside, but not above the civil laws of land.
\textsuperscript{45} E.g., Schweizerisches Zivilgesetzbuch [Swiss Civil Code] of December 10, 1907, SR 210, art. 60 or art. 80 ff.
\textsuperscript{46} Relations are then mostly private-law contractual ones.
therefore be qualified as rather limited proximity between religion and the state, and means that indicators would have to be placed within the “low” proximity field.

A different picture emerges when taking the second organizational category, that is public-law recognized religious communities, into consideration. Most Swiss cantons indirectly identify with one or more traditional religious institution. Religious establishment can symbolically go as far as a canton stating that: “The Roman-Catholic Church is the cantonal church [of Nidwalden].” The reason why such a declaration is still to be seen as indirect and not direct is that regional governments do not actually recognize a particular religion (or denomination), but the social significance of one or more communities. The more adherents a religious community numbers, and the greater social benefit it provides, the higher the esteem a community enjoys. This basic formula is mirrored in the law at regional level.

However, in some cantons such a declaration is not only symbolic, but also concrete and real. Regional government may in some instances award economic relief to public-law recognized communities (to date, either to one or more traditional Christian denominations or to the Jewish community) in return for bearing burdens that would otherwise be imposed upon the public sphere (e.g. for the running of food shelters, promotion of culture, or maintenance of historically significant real property). Apart from this type of support, public-law recognized religious communities must not be regarded as part and parcel of regional government. Most interests of official religious institutions and regional government are, by law, not synonymous. Governmental functions are kept separate from religious ones. This also explains why public-law recognized religious communities are seen as “quasi-religious bodies” and not as “quasi-state entities.” Thus, Swiss regional governments are not neutral in a strict interpretational sense. Only public-law-organized religious communities possess ample prerogatives, which is sufficient indication for a “high” degree of religion-state proximity.

Because the institutional relationships found in Switzerland touch upon more than one subfeature, this evaluation restricts itself to assigning the country to the “high” religion-state proximity level. It is assumed that in the Swiss setup, “low” indicators are not as significant as their “high” counterparts. The reason for this assumption is twofold. Firstly, the religion-state relationship of the public-law organizational form has far greater weight than that of private-law-organized religious communities. This judgement can be bolstered by the fact that the number of people who are members of public-law recognized religious communities outweigh the number of people belonging to private-law organizations by far. Secondly, the amount of financial support paid by regional governments can be crucial, as opposed to being only trivial. For example, the canton of Zurich is reported to have paid twenty million Swiss Francs to the Roman Catholic Church and thirty million to the Evangelical-Reformed Church in 2009. No such support was

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49 Seventy-seven percent of the Swiss population is either Roman Catholic or Evangelical Reformed. Claude Bovay, Religionslandschaft in der Schweiz, Eidgenössische Volkszählung 2000, Bundesamt für Statistik 2004, at 63 ff.
granted to private-law-organized religious communities also operating in the canton’s territory.\textsuperscript{50} The practice of providing financial support to public-law recognized religious communities exclusively has been defended persistently,\textsuperscript{51} despite its apparent conflict with the right of equality and non-discrimination.\textsuperscript{52} Both reasons together give sufficient indication to place the Swiss model at the beginning of the “high” field of religion-state proximity.

In Syria, the government recognizes that religious authority and political authority almost necessarily and inevitably come close to each other as a result of being major forms of authority. Civil authority, nevertheless, has no justification for interfering in purely religious affairs, and religious societies to a large extent have no justification for attempting to use purely civil institutions for their own religious purposes. Religious communities are allowed to prescribe, legislate, and judge all ethical matters that are not regulated by civil law.\textsuperscript{53} The government is friendly towards recognized religious communities as it offers specifically tailored legal frameworks in which they can suitably administer and organize their affairs.

Proximity between religious institutions and government is higher in Syria than it is in Switzerland. This is because the distribution of social services is partially shared between mundane and spiritual powers. It means that large amounts Syrian public property – which is entrusted in pious endowments called waqf – is jointly regulated. Waqf cannot be utilized for purposes displeasing God, as it must necessarily acquire merit in the sight of God and reward in the next world.\textsuperscript{54} This is a reason that Syria’s waqf wealth is mainly administered by religious and not secular personnel within the Waqf Ministry.\textsuperscript{55} The institution’s minister is nominated by the President of the Syrian Arab Republic.\textsuperscript{56} By custom the highest waqf official (the minister) has to be of the Sunni Islam faith.\textsuperscript{57} Waqf money is used for all sorts of social services such as state hospitals, libraries, schools, poor houses and many other public beneficiaries. Thus, the Sunni Islamic establishment as the predominant waqf administrator, takes an important position within the overall state structure.

A second reason why Syria’s model has to be allocated within the “high” proximity field is the circumstance that the most senior Mufti of the Republic (the Grand Mufti) enjoys significant

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\item \textsuperscript{50} Petra Schanz, \textit{Reformierte müssen mehr bezahlen}, Tagesanzeiger (Feb. 16 2009), at 4.
\item \textsuperscript{51} Mostly by means of Supreme Court decisions as well as the will of the cantonal civil lawmaker. E.g. BGE 17 I 557, E 1, p. 559; also BGE 4 I 539, E 1, S. 541; BGE 9 I 416, E 1, p. 458; BGE 13 I 374, E. 1, p. 566; or Kirchengesetz des Kantons Zürich [Church Act of the Canton of Zurich] of July 9, 2007, Nr. 180.1, para. 19.
\item \textsuperscript{52} As guaranteed by the Swiss Constitution. \textsc{Swiss Const.} art. 8.
\item \textsuperscript{53} In contrast to Switzerland this includes an entire body of personal status laws. E.g. \textit{Qanun al-ahwal al-shakhsiyya lil-katulik} [Personal Status Act of the Catholic Rites] No. 31 of 2006, enforced on Jan. 1, 2007.
\item \textsuperscript{54} AHMAD AL-HAJI AL-KURDI, AL-AHWAL AL-SHAKHSIYYA: AL-AHLIYYA, AL-NIYABA AL-SHARAYA, AL-WASIYYA, AL-WAQF, AL-TARIKAT 199 (Personal Status Law: Legal Capacity, Legal Representation, Estate, Waqf, Inheritance) (University of Aleppo Press 1997).
\item \textsuperscript{55} \textit{Al-marsum al-tasri’} [Parliamentary Decree] No. 68 of June 14, 1947.
\item \textsuperscript{56} \textit{Id.} at No. 204 of December 11, 1961, art. 3.
\item \textsuperscript{57} Interview with Georges Jabbour, former Member of the Syrian Parliament, in Damascus (Jan. 8, 2007).
\end{itemize}
In any Western nation, concluding a social contract between individuals, organizations and the state in a "religion that secular laws provide an effective means of avoiding clashes on religious law. The act of to secularism as a predominant belief system. The reason for this is that Swiss sovereignty holds ance. Particularly in the Alpine c
to accept religious pluralism is a necessary condition of religious tol-
erance. Particularly in the Alpine country, the recognition of religious pluralism inevitably leads to secularism as a predominant belief system. The reason for this is that Swiss sovereignty holds that secular laws provide an effective means of avoiding clashes on religious law. The act of concluding a social contract between individuals, organizations and the state in a “religion-
zone is expected to be consoling because no one must prove that one person’s religion is truer than another’s.

The lawmakers expect that the secular system is dependent on and characterized by religious neutrality. The Swiss government presents itself as an institutionalized arbitrator. Its function is to maintain and foster impartiality between religious adherents and enforce common secular denominators where necessary. What is crucial is the secular state’s capability to unite people of divergent religious convictions – whether they are Muslims, Hindus, Christians, or Jewish people – by making a minimum of moral claims on the community and its members. The impartiality concept is key to Switzerland’s secular mission. Swiss sovereignty appears sure that the more neutral the stance of public authorities towards religion, the lesser is the likelihood of illegitimate discrimination against religious adherents of whatever belief or religious institution.

Switzerland’s norms reflect the conviction that secular law does not stand in direct competition with religious law. For secularists the aims of religious and secular laws are different and, for this reason, should in the eyes of constitutionalists not be played off against each other. Religious law mostly intends to give people specific directions. If believers follow them they secure for themselves and others a life of happiness and love. The function of secular law is different. It guarantees to all participants in society the ability to enjoy basic freedoms, whenever the enforceability of such interests is judged reasonable. It thereby protects persons from being harmed illegitimately and punishes those who commit a wrong (including the state itself). This also means that one must give up some religiousness for the sake of religious harmony among many or no belief systems. The expectation is that secular law develops effects which promote and maintain peace. In this view, secularism is not tantamount to hostility towards religion, or disengagement of society from religion. In fact, in Western pluralist societies the two sides are co-implicated.

In more concrete terms this means that an Arab Muslim like Mahmoud enjoys freedom of belief and conscience. However, these rights are primarily couched as individual rather than collective. Mahmoud is, like all other Swiss citizens, free to espouse, manifest and profess his own convictions, as long such practices do not conflict with secular law. For example, Mahmoud

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58 From a traditional perspective secular law is not “religion-free.” However, the question is whether today’s legal enactments and judicial decisions are still religion based, or far more “religious-neutral” than before. Another possibility is that today’s secular law is viewed as a kind of mixture of several belief systems or none. The actual nature of contemporary secular law is still to be investigated. But that task is definitely beyond the scope of this paper.

59 Admittedly, another truly liberal thought.

60 Here I do not make a distinction between secular and civil law; the two terms are readily interchangeable.

61 Secularism from a liberal perspective does not necessarily challenge the supremacy of divine law. The secular state is, nonetheless, in need of a pliable citizenship which recognizes that actual interaction between the powers is one of parity. No doubt this view runs counter to the belief that secular law is of complementary character only, and that it is religion which enables nature to come to its proper end. Generally LEO STRAUSS, NATURRECHT UND GESCHICHTE (Suhrkamp 1977).

62 SWISS CONST. ART. 15 IN ASSOCIATION WITH ART. 8. The only exception to this is a person’s right to build an Islamic minaret. Id. at ART. 72(3).
must not be, according to secular law, categorically banned from joining or belonging to a religious community, from participating in religious ceremonies, from following religious teachings, or from promoting her or his faith through proselytizing.63

A Muslim like Mahmoud will, however, (at this stage) not be able to live up to the same group interests to the extent found in his home country. He cannot, for instance, set up a religious endowment system in accordance with Islamic belief. Muslim inheritance law, which leaves two thirds of a father’s estate to his son and only one third to his daughter, cannot be made applicable law in Switzerland as it would clash with secular inheritance law. Nor can Mahmoud expect to receive publicly funded free time in order that he and his compatriots can pray five times daily. Also, secular law does not permit Muslims to have their children raised according to Islamic belief if the mother of the child opposes such practice. Even in cases where Mahmoud’s religious community decides to produce halal food themselves, they commit a crime under applicable Swiss law. The same is true for marrying more than one woman. In short, support of religious collective interests is utopia in Switzerland if it permeates into areas where secular law is fully developed.

This brings us to the second question: Why do Muslim migrants have specific, sometimes unusual, religious expectations when they settle in the West?

In an Arab nation like Syria the government allows religious establishment. For instance, the Sunni Islamic institution is given the opportunity to implement parts of its religious organization (e.g. public endowments called awaqf) into the greater civil administration. Simultaneously, government grants to traditional non-Sunni religious communities (such as Druze, Christian, and Jewish communities and others) a broad right to collective religious freedom in that they enjoy the freedom to set up their own personal status system.

The Syrian system puts considerable emphasis on shared values of various religious communities. Common good takes centre stage because in this country the law reflects the expectation that it can provide a justification or explanation of a coherent and feasible social order. On the other side, the laws of the Arab Republic pay very limited heed to individual religious freedom. It can be deduced that when religious organizations enjoy the freedom to structure themselves by way of religious law, they require uniformity amongst all who espouse commitment to their mission. The system then appears incapable of extending the same array of freedoms to individual followers as religious communities claim for themselves. Arguably, to the average Arab Muslim this is not necessary. As a devout Muslim he does not need laws that protect him so that he can change his religion. This is because Arab Muslims identify strongly with their belief. If such a person gives up his belief, he is also giving up his identity – a phenomenon that is not often seen among Arab Muslims.

Since, in Syria, matters pertaining to marriage, separation, adoption, and inheritance are social fields which are regulated by religious law, it can be concluded that Syrians and also other Arabs are less willing to make room for secular law than is the case in Switzerland, where the same issues are governed by civil law. In the area of personal status, Syrian law thus follows the

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63 BGE 125 I 369, E. 5c, S. 379.
ideology of religious pluralism instead of legal secularism. For the Arab nation this system works as long as people stay and organize their lives within the religious community into which they are born. In Switzerland (and most other European countries), however, the same concept of legal pluralism would very likely fall prey to the fact that people mix and change – e.g. they marry and divorce partners of different faiths and sexes; they take up new religions or reject them altogether. If legal pluralism was also adopted in Western societies like Switzerland, varying religious laws would collide with each other like billiard balls.

So it is perfectly legitimate for Arab Muslims like Mahmoud to expect that group interests receive great protection. However, it is a precondition of Western secularism that citizens are prepared to make moderate compromises in the way they exercise their religion. Thus, if Arab migrants do not want to be disillusioned in the West, they must come to terms with European convictions which are deeply carved into the respective legal system. In Switzerland the law reflects the importance that each person is free to choose her or his religion. In contrast, Syria’s norms mirror the understanding that citizens find true happiness better within the specific religious community into which they are born than by seeking their own uniquely chosen path. The apparent conflict between Western and Near Eastern value and identity systems cannot easily be reconciled.

To sum up, an ideal Western constitutional setup is both robust and flexible. Robust in the sense that applicable secular law is not easily amended. Lawmakers should ensure that religiously neutral law is protected from rash parliamentary decisions and/or popular initiatives. And flexible in the sense that the Muslim community is given the chance to regulate by way of religious law all those societal issues that are not already regulated by secular law. Western lawmakers will thereby have the opportunity to show that collective religious freedom is not an illusion but a concrete claimable human right also in a Western society like Switzerland. They will also be able to demonstrate that the middle ground sought by a democratic system is real and determined by consideration of and respect towards all participants in society, whatever their beliefs might be.