

# **Asserting Religious Identities in the Federal Republic of Germany<sup>1</sup>**

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## **On Personal and Group Identity, an Introduction**

Personal and group identity<sup>2</sup> formation is not a one sided affair. A person, just like a group of persons, develops its identity by engaging in a ‘struggle for recognition’<sup>3</sup> with the surrounding social environment. This process involves a double image formation: Both, the individual person will form an image of himself or herself and its social environment, in turn, will form an image of the person. The individual is free, to a certain extent, to form a certain self-image and so are its social ‘partners’. In the end, however, the two images have to match, at least partly, for the personal identity of the individual to achieve its purpose. For without the social environment recognising it for what it purports to be, the society will not abide by the expectations that go with the individual’s self image.

The same holds true for the identity formation of a whole group of persons. A group may develop a certain perception

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<sup>2</sup> I take personal as well as group identity formation as two kinds of social identity formation. Both follow similar patterns, the difference being, that with group identity formation a general awareness is created amongst the members of the group that everyone else is also part of the group. This awareness distinguishes a group from any random set of individuals that might share any given property. For further discussion Krappmann 1969.

<sup>3</sup> cf. Honneth 1992 & 2001

of itself, but whether this self-perception it matched with a similar perception of it by the outside world is subject to an open process of negotiation. With social groups the case differs in an important respect from that of personal identity formation. In the case of the individual the social environment has to accept at least its sheer existence. In the case of group identities, however, the social environment can both deny existence to a group, and force into existence a group of people who never thought of themselves as belonging together. For both cases, examples abound. An example of a group being denied existence is the Kurdish people in eastern Turkey. For a long time, the policy of the Turkish government has been to speak of them as 'mountain Turks'.<sup>4</sup> For the latter case, there are the recent examples of Serbians and Croatians in former Yugoslavia and of the Hutu and Tutsi in Rwanda. In both cases, people who thought of themselves as neither Serbian nor Croatian, neither Hutu nor Tutsi were forced to ally themselves with either one of the two groups who were being whipped up against each other.

The social environment thus imposes certain limitations on the range of possible individual and group identity formations that derive from the prevalent worldview and social norms adhered to in the social environment. In its general formulation, this proposition is probably a candidate for an anthropological constant. What has increased over time and with the growing complexity and differentiation of modern society is the number of different and disjunct social environments that a person is simultaneously exposed to in the process of its identity formation. With the ensuing anonymity, the identity that the individual conjures up for himself in various contexts is not checked across various social contexts. With family, work place, neighbourhood, nightclub, high school, university and various sub-cultures existing disjunct from

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<sup>4</sup> For details on Human Rights violations against the Kurds committed by the Turkish state read Kerr (2003).

each other, the individual is no longer confronted with a social environment where, whatever he or she does in one context, will have repercussions in the others. Thus, somebody may be an obedient employee during the day and convert to a post-puberty rebellious hard rocker after ten o'clock at night. There is no one to hold him accountable for any apparent inconsistency in his multi-faceted identity. It seems that it is never the whole human being which matters in any one social context. In fact, the pressures to conform to the expectations of one social environment exclusively may be so great that individuals are pushed to conjure up compensatory 'spare time' identities.

In the current literature of minority research and multiculturalism, a host of terms such as 'hyphen', 'plural', 'multi', 'patchwork' and even 'post-identities' have been coined. Yet others speak of 'fuzzy', 'liminal' or 'hybrid' identities. All of these terms stress the fact that identities are constructs; they reject the idea that underlying personal identity was some kind of an essence which governs individual or collective identity-genesis. The anti-essentialist assumption is that personal and group identity formation is an open process which includes the participation, and to a certain extent the conscious cooperation, of the subject concerned. The assumption is that, in spite of certain social constraints, the identity formation of any person or group involves to a certain extent the free choice of the respective subject.

Anti-essentialism can even explain why it is that some are under the impression that identity formation at the individual or group level involves some kind of a fixed pattern, a governing plan, that could be mistaken for an 'essence' of the subject involved: At the macro level it may seem as if identity formation of any individual or group within the same social environment follows a regular pattern with the result that the ensuing identities bear certain similarities. This however, according to anti-essentialism, is the result not of anything ge-

netically inherent in the person or group, but of the similarity of the social environment, which has a similarly limiting impact on the range of choices each individual or group faces in constructing its identity.

At the micro level, an awareness of these limitations and possibly a reflection on how to overcome them may increase the scope for choice. This awareness has to be consciously created, for the more natural thing for anyone to do would be to internalise the perspective prevailing outside and to adopt unreflectingly the roles that the society ascribes to its preconceived groups. This is how traditional identities are imbibed by successive generations. In the absence of a culture of awareness and critical self-reflection, social constraints, which act as a restriction on the range of possible identity formations, perpetuate themselves. Both essentialist and anti-essentialist cultural predilections have a tendency to become self-fulfilling prophecies as the first denies whereas the latter cultivates the reflective skills necessary for the subject to engage in a conscious quest for its own identity.

The macro-perspective, then, has a tendency to show more of the social constraints on identity formation; in micro-perspective the scope for choice is more apparent. The look from without allows one to neglect the individual contribution of each person or group in the evolution and perpetuation of their identity. From this totalising perspective, it is relatively easy to identify a person or a group solely with reference to its discriminating features. The look from within, on the other hand, reveals a mosaic of different elements of individual or collective identity, with a subject that highlights each of these in proper circumstance. Some of these elements may seem strange to the observer, others familiar. The microscopic look thus reveals points both of common identity and of difference. It makes it difficult for the observer to totally identify with the other and also to completely reject him or her. To cultivate this look from within (to learn how to put oneself into the

other's shoes, as it were) would be an important contribution in counteracting existing prejudice. It may be discovered, then, that whoever belongs to the 'other' in one respect can be part of the 'own' in another. Circles of identities and hence commonalities would seem to overlap in certain places and not be mutually exclusive as it would appear from a totalising point of view.

Processes of personal and group identity negotiation have an immediate impact on the potential of inclusion and thereby indirectly on the social cohesion of European and / or South Asian societies; thus its relevance for the viability of integration of Muslims in Europe and the mechanisms of inclusion and exclusion of Muslims in South Asia. Whereas inclusion of a yet to be integrated minority is the order of the day in Europe, in South Asia the case presents itself in a reversed manner, especially in the case of India, where an already socially and politically integrated minority is confronted with various strategies of exclusion under various schemes of ethnic or religious nationalism.

The circumstances of individual and collective identity formation are felt as liberating by some, and as a great burden by others. Some individuals enjoy the play with their self-images; others suffer from an apparent lack of inner coherence. Some are more, some are less, able to withstand the mutually exclusive demands of disparate social contexts. Some do not have the 'open mind' required to endure such stress on their subjective identity. They tend to develop an 'identity mania,' as Thomas Meyer (2001) has called it, i.e. a craving for a unified social world in which a single community imposes a single set of norms on all individuals. In such a world, the individual would be spared the burden of balancing conflicting social demands since there is only one reference group with respect to which the individual forms its identity. Militant fundamentalism is an attempt to violently bring about such a unified, and simplified, social world and to deny,

through violent means, or by means of forced hierarchisation, what Rawls has called ‘the fact of pluralism’.<sup>5</sup>

Due to its importance in the identity formation of important social groups, religion receives new attention of late by social scientists, historians and other intellectuals in Germany, India and elsewhere. While it was generally assumed throughout the sixties and seventies that religion as a social phenomenon would slowly fade away as it would become obvious to an ever-growing number of educated people that its tenets could not withstand the scrutiny of scientific gaze, intellectuals in both regions note today that the debate around the role of religion in a secular state has re-emerged as a response to a new religious assertiveness amongst certain minorities. What are we to make of this? Did secularism fail, as some Indian intellectuals would maintain? T. N. Madan (1998) and Ashis Nandy (1998), for instance, blame the prevalence of an ideology of secularism in Indian statecraft for the emergence of religious fundamentalism, amongst both Hindus and Muslims. They call for a greater recognition of religion in the public sphere. In Germany, political analysts ask whether the re-emerging importance that is being claimed for religion in the public sphere is an indicator of an ever-growing politicisation of religion with the aim of re-negotiating the boundaries between religion and politics.<sup>6</sup> They suggest that the more politics stays aloof from the religious aspirations of a majority of the population and the less it is able to provide for their spiritual guidance, the more religion will be politicised and established as an alternative source of identity and social praxis.<sup>7</sup>

The question thus arises as to whether, in the face of such threats, we have to re-think and possibly re-define the relation between state and religion. Such re-definition, of course, can go two ways. Either one follows the suggestions of the above-mentioned post-secularists, or one follows a strategy of further

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<sup>5</sup> cf. Rawls 1993

<sup>6</sup> Minkenberg & Willems 2003, 6

disinvestments of the state in the affairs of religious communities. The second option would involve a re-assertion of the fundamental principle of every liberal state and society according to which every individual and thereby everyone's religion and religious community are of equal value from the perspective of the state and its officials, no matter how well this religion is organised or not, or whether it is practiced visibly or invisibly.

Unlike in India, in Germany, organised religion has continually decreased, and is still decreasing, in importance for a large part of the population. By organised religion I mean the classical, Church like organisations that exert a certain authority over their members and not, for example, the many individualistic forms of spirituality that seem to have gained in importance for an indefinite part of the population. Belonging to a religious organisation of this kind also implies that one asserts one's religion visibly and publicly whereas the more individualised forms of religiosity are practiced in private and are less visible. As I am concerned in this paper only with the interface of religion and state and not with the phenomenon of religiosity as such, I am not interested here in a possible rise in religiosity if it does not lead to any new challenge for the liberal democratic state to re-think its relations with its religious communities. Thus religious assertiveness, for the purpose of this paper, is to signify public assertion of religious identity. And it possibly has a political dimension as well. It is understood to include organised religion but is not restricted to it. Some religious minorities may be less organised but still very visible and their assertiveness definitely has a political dimension.

For Germany, the secularist prediction seems to have been validated to a certain extent as a growing third of the population professes no organised or publicly visible form of religion at all. The decrease in religious affiliation, however,

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<sup>7</sup> *ibid.* 14.

concerns mainly the two major Christian Churches (the Protestant and the Roman Catholic). Amongst the smaller religious minorities, notably in the Muslim and the Jewish minority, a certain increase of public assertiveness and a growth of membership can be observed. In focussing on these two minorities, I would like to illustrate how in Germany the involvement of the state in the affairs of religious minorities can have a monitoring effect, moderating the politicisation of religions, but also how state recognition of religious minorities can lead to a dilemma if it is based on the idea of a unified, Church-like, organisation serving as a model for non-Christian minorities. In Germany for instance, the possibility is being discussed of helping (or forcing) Muslims to form a unified organisation that would serve the state as an interlocutor for its relations with the whole of the Muslim community. In France, similar attempts have already been made – and been unsuccessful. In the following, I would like to cast some light on this debate as it takes place in Germany today. I begin with some data on the religious composition of the German population and about the German model of a secular state. In the remainder of the paper, I shall argue that the challenge posed by the new (and not so new) religious minorities should lead to a re-thinking of the relations between religious communities and the German state. The dangers lying in the conception of a unified representative body for every religious community will also become apparent, and I shall suggest that we abandon this idea in favour of a more pluralistic interface between state and religion in Germany.



## **The Religious Composition of the German Population**

The post-war division of Germany left roughly equal numbers of Roman Catholics and Protestants in West Germany. East Germany had five times as many Protestants as Roman Catholics. After more than 4 decades of socialist rule, the population of the eastern part of the country had become more a-religious than the western part. Church representatives note that only 5 to 10 percent of eastern inhabitants belong to a religious organisation. There the authorities tried quite successfully to minimise the influence and authority of the Protestant and Roman Catholic churches. Although the constitution theoretically provided for freedom of religion, the socialist state placed obstacles before those seeking to exercise that basic right. Pressure was exerted on citizens to renounce religion. East Germans who practiced their religion outside their four domestic walls were denied educational and professional opportunities, for example. Consequently, at unification the majority of East Germans were either not baptised or had left Church. In the 1990s, polls in the newly joined eastern federal states revealed that more than 70 percent of East Germans did not believe in God. Young people were even less religious. Some polls found that only 16 percent of East German schoolchildren believed in God.

In West Germany, freedom of religion was guaranteed by Article 4 of the Constitution (Grundgesetz), and the churches enjoyed a special legal status as bodies of public law. In theory, there was constitutional separation of church and state, but church financing complicated this separation. To support churches and their work, most West Germans paid a church tax, amounting to an 8 or 9 percent surcharge on income tax paid. Few West Germans formally withdrew from the established churches before the 1980s. Beginning in the 1980s, however, negative attitudes toward the churches and church

tax became more common, and people began leaving the churches in significant numbers. Between 1980 and 1992, about 1 million Catholics and 1.2 million Protestants gave up their church memberships. A faltering economy and increased taxes caused many to withdraw for financial reasons. In a 1992 poll, approximately 42 percent of those queried stated that the church tax was much too high; 64 percent favoured abolishing the tax and supporting the churches through voluntary contributions. Fourteen percent of those Roman Catholics and Protestants polled stated that they were likely to withdraw or definitely would withdraw from their church.

Since German unification in 1990, visible practice of religion decreased further. Regular attendance at religious services is decreasing. In 1990, there were nominally 30.2 million Protestants and 26.7 million Roman Catholics in united Germany, together about 71% of the country's total population. According to the Federal Office of Statistics (Statistisches Bundesamt), the number of Catholics and Protestants shrunk by about 200,000 each between 1999 and 2000. More recent official data are not available but it is generally assumed that the trend of quitting the two major Christian churches is continuing.

In Germany today, roughly 30% of the population profess no religion, 30% are Protestant and 30% are Roman Catholic. Amongst the remaining 10% the Muslims form the largest group (3½%). Unlike amongst Christians where attendance of religious service has constantly decreased – according to the Catholic and Protestant churches in Germany, only 17.5% of the Catholics and 4% of the Protestants regularly attend religious service – 32% of the Muslim population attends service several times a week. Attendance is less amongst Muslim youth (22%) but at the same time, there seems to be indication that religion plays an increasing role in

the identity formation of Muslim youth.<sup>8</sup> A similar trend can be found amongst young Jews in Germany.<sup>9</sup> Thus, if we are looking for public religious assertiveness, with implications for re-thinking the relation between state and religion, the Muslim and the Jewish communities are the most likely candidates.

### **The German Model of a Secular State**

To understand the nature of the relationship between state and religion in Germany, we have to look at the German State-Church-Law (Staatskirchenrecht) that regulates the relations between the central and federal states and diverse groups whose members share a common ‘worldview’ (Weltanschauung). Some perceive the German Staatskirchenrecht as the most sophisticated of its sort in all of Europe.<sup>10</sup> For one thing, the definition of ‘worldview’ is the widest conception in Europe of what forms a religious community. If a religious organisation fulfils requirements such as assurance of permanence and a certain size, and if there is no indication that the organisation’s principles conflict with the constitution or the European Human Rights laws, the organisation may request that it be granted the status of a corporation under public law. Public law corporation status, among other things, entitles it to

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<sup>8</sup> cf. Goddar 2002a; Rollmann 2002. The recent study of the Centre for Turkish Studies of the University of Essen, Germany, concludes that religiosity and marginalisation are often correlated. Among the better integrated Muslims in Germany religiosity declines whereas the more marginalized tend to be also more religious. While the study confirms our thesis that religiosity among Muslims, particularly after 11 September 2001, is on the rise, it also points to the fact that increase in religiosity is relatively low among young Muslims. Only 13% of young Muslims in Germany rate themselves as traditionally religious. It could not be established whether the different rates of increase among different age groups is due to life cycle or value change with future consequences. As one would expect, religiosity decreases with the degree of education and is consequently less frequent in educated professions. Surprisingly, however, religiosity seems to positively correlate with duration of stay in Germany: the longer the stay, the more religious the person. (Cf. Şen 2004).

<sup>9</sup> cf. Rollmann 2003

<sup>10</sup> cf. Etienne 2002

levy taxes on its members that the State collects for it and for which the organisation pays a fee to the Government.

Most religious organisations are registered and treated as non-profit associations and therefore enjoy tax-exempt status. State level authorities review these submissions and routinely grant this status. Organisations must register at a local or municipal court and provide evidence (through their own statutes) that they are a religion and thus contribute socially, spiritually, or materially to society. Among the religious organisations that have been granted public law corporation status are the Protestant and Roman Catholic Church, Judaism and some smaller Christian denominations<sup>11</sup>. So far, Muslim communities in Germany do not qualify for this form of public recognition owing to difficulties relating to their reluctance to recognise the right of their members to change or abandon their faith – which conflicts with the constitutionally guaranteed liberty of conscience and relevant Human Rights law at the European Union level.<sup>12</sup>

State governments also subsidise various institutions affiliated with public law corporations, such as church-run schools and hospitals. Most public schools offer religious instruction in co-operation with the Protestant and Catholic churches and the Central Council for Jews in Germany (CCJG). A non-religious course in ethics generally is available for students not wishing to participate in religious instruction. The issue of Islamic education in public schools is becoming topical in several states and at the federal level.

Relations between the various religious communities are generally amicable. However, following a rise in the incidence of anti-Semitic crimes and an increase in public criticism of the Israeli Government's actions in the Middle East, Jewish community leaders expressed disappointment in the leaders of other religious communities, as well as in some local and na-

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<sup>11</sup> Mormons, Seventh-Day Adventists, Mennonites, Baptists, Methodists, Christian Scientists and the Salvation Army

tional politicians, for not speaking out more forcefully against anti-Semitism.<sup>13</sup> Problematic is also the relation between public officials, government representatives or parliamentarians, and the non-religious faction of the population. Leading politicians in Germany sometimes act as if the normative background consensus among the members of the society rested on the premise that the majority of the population subscribes to some religious faith. Thus, the president of the German parliament (Bundestagspräsident) Wolfgang Thierse fears that if the German society would become more '*secularised, then nothing remains, then the common ground would amount to nothing*'.<sup>14</sup> The non-religious part of the German population may find this alarming for such remarks suggest that anyone who is not subscribing to any religion has no ethics and cannot be part of a decent political community. The fact that large numbers of the German population are turning their back on the traditional forms of organised religion is not to be taken as a '*total denigration and thereby annihilation of elementary ... ethical fundamentals of society*' (ibid.), as Thierse would like us to believe. This would deny any ethical sensibility to those not practicing any religion and turn a completely legitimate personal choice into an act of violence against human society. The choice to abandon one's faith is a fundamental right that is just as constitutive of a liberal democratic society as the right to profess any religion.

After this rough sketch of the composition of the German population in terms of religious affiliation or non-affiliation, I would like to come back to the main questions here, namely, first, the question of public religious assertiveness in Germany and, subsequently, the question as to how a secular state should deal with it. We have located two instances of increased public religious assertiveness in Germany, that is, the Jewish and the Muslim community. By focussing on these

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<sup>12</sup> cf. Etienne 2002

<sup>13</sup> Beucker 2001

two, however, I do not mean to suggest that parts of the traditional Churches are not equally assertive about their role in society. On the contrary, there appears to be a growing awareness amongst Christians in Germany that acceptance of their minority position could liberate them from the need to accommodate each and every one<sup>15</sup> and thus free them for a more partisan approach to the role of religion in public life. However, in terms of the need to rethink and possibly redefine the relationship between the liberal democratic state and the various religious communities, the Jewish, and particularly the growing Muslim community offer more controversial material for the debate since they conform less to the Occidental<sup>16</sup> view of how religious communities should be organised. In the following two sections, I will therefore try to give an impression of the controversial issues in these debates.

### **Judaism in Germany**

Surprisingly, at the moment Germany seems to be the number one destination for Jewish migrants in the world even in comparison to Israel. In the year 2002, more than 19,000 Jews, mostly from the former Soviet Union but also from Israel, North and South America immigrated to Germany (in the same year, only 18,700 Jews migrated to Israel<sup>17</sup>). This is particularly significant since throughout the sixties, seventies and eighties, only around 30,000 Jews lived in West Germa-

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<sup>14</sup> Lücke & Wöhlert 2002

<sup>15</sup> An aspiration dating from the time when religion was still the defining feature of an empire or, later, a territorial state.

<sup>16</sup> In search for a European identity, conservative intellectuals sometimes allude to the old idea of the Christian Occident (Christliches Abendland) as a basis for such an identity (cf. Wehler 2002). The main thrust, here, is against the inclusion of Turkey into the European Union. Among the collateral damage, however, are many achievements of Western modernity which are at the basis of the constitutions of the EU member states: An equal standing of all religions, freedom of conscience, independence of the liberal democratic state from any of the religious organisations and a religiously neutral ethical justification for its legitimacy (cf. Duschke 2000).

<sup>17</sup> cf. Philipp 2003; Bodemann 2003

ny.<sup>18</sup> This population consisted in small parts of Jews who had originally been born in Germany and for the most part of European Jews who had survived the Shoa (Holocaust) and who had found themselves as displaced persons in occupied Germany after the war. In post-war Germany, these Jews formed a Unified Community (Einheitsgemeinde) uniting Jews of various traditions. In 1950, the Jewish communities in West Germany formed the ‘Central Council of Jews in Germany’ (CCGJ) as a common representation of Jews *vis-à-vis* West-German government institutions. Jewish communities built Synagogues and community centres but their membership aged and shrank since many of the young members emigrated to Israel.

The turning point for Jewish life in Germany was the country’s re-unification in 1990.<sup>19</sup> The last East-German government had established a policy allowing Jews from the former Soviet Union to immigrate to East Germany. After the collapse of the East German government, re-unified Germany took over its foreign obligations and adopted the same policy with a sense of historic responsibility toward a European minority which had almost been extinguished under Hitler and which was facing anew anti-Semitic threats in the countries of the former Soviet Union. Today, after years of stagnation, Jewish life re-emerges in Germany. The result is an ever-growing diversity and dynamism prompting some observers to note that Germany had become the stage for a Jewish renaissance with repercussions for Jewish life worldwide.<sup>20</sup>

The main stage of this renaissance of Jewish life in Germany is the German capital itself. Berlin has the largest and most thriving Jewish community with currently 12,000 members, a Jewish high school, several Synagogues, Museums,

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<sup>18</sup> cf. Suchsland 2003a

<sup>19</sup> An event that the CCJG supported even against objections from the Jewish World Congress (cf. Guttman 2003).

<sup>20</sup> cf. Bodemann 2003

Theatres, online-magazines, and two weekly newspapers.<sup>21</sup> Among members of the Jewish students' organisation (Bundesverband Jüdischer Studenten in Deutschland) it has been observed that – while it was fashionable among young Jews during the eighties and nineties to present themselves as 'secular' – today an increasing number of students grow more conscious of their religion and refuse to assimilate into the 'secular' mainstream.<sup>22</sup> In this sense, we can speak of a new public assertiveness of Jews in Germany today.

The climax of this development, for the time being, was the ratification on 6 June 2003 by the German legislative assembly (Bundestag) of a memorandum of understanding (Staatsvertrag) between the Federal Republic of Germany (FRG) and the CCJG. The MOU regulates the co-operation between the FRG and the CCJG in matters of common interest; it obliges the FRG to help preserve the German-Jewish cultural heritage, to help re-build a Jewish community in Germany, to help the CCJG with its social responsibilities, especially with the integration of Jewish immigrants from the former Soviet Union, and to help the CCJG in financing its administration.<sup>23</sup> The FRG obliges itself to help with an annual contribution of 3 million Euros 'in the awareness of the historical responsibility of the German people towards Jewish life in Germany' (ibid, Preamble).

The new emergence of Jewish life as well as the reconciliatory spirit of the Staatsvertrag is welcomed in Germany. Controversies regarding the exclusiveness of the Staatsvertrag to orthodox Jews to the detriment of progressive Jews have been countered by the inclusion of a phrase that reminds the CCJG of its mandatory openness towards Jews of all denominations.<sup>24</sup> In the past, in spite of proclamations to the contra-

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<sup>21</sup> cf. Suchsland 2003a; Goddar 2003

<sup>22</sup> cf. Rollmann 2003

<sup>23</sup> cf. Staatsvertrag 2003, Art. 1

<sup>24</sup> 'Zentralrat der Juden in Deutschland ... der nach seinem Selbstverständnis für alle Richtungen innerhalb des Judentums offen ist' (Staatsvertrag 2003, Art. 1).



ry,<sup>25</sup> the CCJG has often denied progressive congregations access to funds that are meant for all Jews.<sup>26</sup> German governments have often taken the side of the orthodox with the intention of upholding Jewish tradition.<sup>27</sup> However, in March 2000, the Federal Administrative Court (Bundesverwaltungsgericht) has obligated the CCJG to allow members of the Union of Progressive Jews in Germany, Austria, and Switzerland (UPJGAS) into their ranks and to receive the same benefits as orthodox Jews.<sup>28</sup>

The controversy, in the final analysis, amounts to the question as to how the secular state is to position itself with respect to inner religious controversies regarding the boundaries of the community. We will see below that similar controversies exist within the Muslim community. The question is: Can we conceive of any neutral principle by which the state can define a religious community without getting entangled in theological controversies? I will take up this question after a brief look at the situation of Muslims in Germany.<sup>29</sup>

### **Islam in Germany**

Whereas non-Muslim immigrants coming from other European countries were absorbed more or less easily, even after 40 years the Muslim population appears less integrated into German society than comparable minorities in other European countries. This is partly due to the fact that most Turkish migrants came from rural areas without technical skills and without any command of German language whereas, for example, most Maghrebian Muslims coming to France knew French before coming and most South Asian Muslims coming to Great Britain knew English before. Another obstacle for integration was the old-fashioned descent based (*ius sanguis*-

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<sup>25</sup> cf. Braun 2003

<sup>26</sup> Bremer 2003

<sup>27</sup> I. e. the major (Oberbürgermeister) of Munich Christian Ude (cf. Bremer 2003).

<sup>28</sup> cf. Bremer 2003

<sup>29</sup> cf. Dastider 2001 for further details

*nis*) German immigration law that has only recently been amended by adding a right of the soil (*ius solis*) to it. Under the new law, children of migrants born in Germany can claim citizenship. Today, half of the 2.37 million people of Turkish descent living in Germany were born there.<sup>30</sup> Around half of these (700,000) chose German citizenship. The other half chose to retain their Turkish nationality.<sup>31</sup> A double German / Turkish citizenship is not available. A recent study carried out by the Essen based Centre for Turkish Studies revealed that 57% of Muslims feel “at home in Germany”. At the same time, however, 71% do not feel very close to Germans. More than half have apprehensions of “becoming like the Germans”. This points to a dilemma in which many Muslims in Germany find themselves: They want to retain their traditional and at the same time integrate into the German society, thereby giving their own interpretation to our conference motto “living together separately”.<sup>32</sup>

People of Turkish descent are comparatively worst off, economically, amongst all immigrant groups. In July 2003, 24.4% of the Turkish immigrants were unemployed but only 18.5% of the Italian and only 13.8% of the Spaniard (the overall unemployment rate in Germany is around 10%). One reason for their economical weakness is lack of education. Out of 417,000 Turkish school children only 22,000 (roughly 5.3%) attend higher secondary school (Gymnasium).<sup>33</sup> Nevertheless, there is also indication that a part of the Turkish population begins to form a small middle class. In Germany, 59,500 people of Turkish descent run businesses and employ about 327,000 workers. 30,000 people of Turkish descent study in German universities 80% of which have obtained their high school graduation from a German Gymnasium.<sup>34</sup>

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<sup>30</sup> cf. Weiland 2003

<sup>31</sup> cf. Bittner 2003

<sup>32</sup> cf. Şen 2004

<sup>33</sup> cf. Bitter 2003

<sup>34</sup> cf. Gaschke 2003

Apparently, adverse social conditions and the competition with labourers from former East-Germany have forced many Turks to shift from Germany to neighbouring countries like Belgium.<sup>35</sup> Nevertheless, the Muslim community in Germany appears to be growing through births and immigration. With an estimated 3 million adherents, Islam has become the 3<sup>rd</sup> most commonly practiced religion in the country. Several branches of Islam are represented, with a vast Sunni majority (2.2 millions), large groups of Allevite (600,000) and a sizable population of Shiites and Ahmadis (185,000).<sup>36</sup> The Allevites are generally not regarded as Muslims by the Sunni majority. Here again the question arises as to how the state with its obligation to be neutral is to position itself over such inner-religious controversies.

In 2000, the German government published a comprehensive report on Islam in Germany<sup>37</sup> that examined issues concerning the Muslim minority in response to an inquiry from Parliament. The report acknowledges that Germany is still far from giving Islam its due place as the third largest religion as required by the constitution.<sup>38</sup> The ‘Grundgesetz’ (German constitution) guarantees religious education in public schools to every sizable religious group,<sup>39</sup> a provision whose implementation in the case of Islam is still not satisfactory. The main controversy concerns who should be authorised to exercise this right. Since education is the prerogative of the federal states, the various states of the German federation have experimented with different models.

In 2000 the Federal Administrative Court upheld previous court rulings that the ‘Islamic Federation’ of Berlin qualified as a religious community and as a result must be given the opportunity to provide religious instruction in Berlin schools. The decision drew criticism from many other Islamic

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<sup>35</sup> cf. Geary 2003, 5

<sup>36</sup> All numbers are rough estimates, cf. Weiland 2003.

<sup>37</sup> Bund 2000

<sup>38</sup> Grundgesetz Art. 4 Abs. 1 & 2

organisations not represented by the Islamic Federation, and the Berlin State Government expressed its concerns about the Islamic Federation's alleged links to Milli Görüş, a Turkish group classified as extremist by the Federal Office for the Protection of the Constitution (Verfassungsschutz). However, after another court decision in favour of the Islamic Federation in August 2001, Berlin school authorities decided to allow it to begin teaching Islamic religious classes in several Berlin schools starting in September 2001.

In many federal states, the teachers for Islamic education at public schools are recruited either from Islamic organisations in Germany or by the Turkish government. North Rhine Westphalia is the only state with its own public teachers training programme for Islamic education. The programme has been worked out in collaboration with Muslim representatives in the state. The teachers are trained in Germany and the teaching medium is German as well. In a model experiment since 1999/2000, North Rhine Westphalia offers Muslim pupils a school subject called 'Islamic instruction in German' (Islamische Unterweisung auf Deutsch). The syllabus contains an introduction to Islam, and it also takes up problems that immigrant children face in the German host society.<sup>40</sup>

In other federal states, Muslim parents face a tough choice. They can either opt for the religious instruction provided by the Turkish consulate which would like to shape the children of Turkish immigrants into Turkish nationalists; they can opt for the religious education offered by Islamic Organisations which are often accused of being influenced by the Islamic fundamentalist organisation Milli Görüş; or they can send their children to the afternoon schools run by Mosques which are also not known for fostering a pro-German or pro-European Islamic identity.<sup>41</sup>

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<sup>39</sup> Art. 7 Abs. 3

<sup>40</sup> Goddar 2002b

<sup>41</sup> Goddar 2002b

A second controversial issue regards the right of female Muslim pupils and teachers to wear headscarves in public schools. Unlike in France and England where female Muslim pupils are often barred from wearing headscarves at school, the same is accepted in German schools where no uniform dress code exists. The right of teachers to wear headscarves, however, is granted only in some of the federal states (i.e. in North-Rhine Westphalia and Hamburg) but prohibited in others (i.e. in Lower Saxony and Baden Württemberg<sup>42</sup>).

The most noted case in this connection is that of the teacher Fereshta Ludin, a German citizen of Afghan origin whose right to wear a headscarf in front of her class was turned down by the regional board of education (Oberschulamt) in 1998 after the School where she had completed her training had denied her tenure. Subsequently, several courts have turned down her appeals i.e. the Stuttgart Administrative Court of Baden Württemberg in 2000, the State Administrative Court in 2001 and the Federal Administrative Court in 2002. Now (24 September 2003), the Federal Constitutional Court (Bundesverfassungsgericht) has struck down the decision of the Federal Administrative Court on the ground that it lacked a legal basis. It has thereby referred the matter back to the state parliaments who are to enact a law which would regulate the dispute once and for all within the jurisdiction of the respective federal state.<sup>43</sup>

A third controversy discussed in the report surrounds the question as to how Muslims should be allowed to practice their religion in public. At times the presence of Muslims leads to societal discord, such as local resistance to the construction of mosques or disagreements over whether Muslims may use loudspeakers in residential neighbourhoods to call to prayer. The reasons behind such discord may in part stem from a widespread mistrust of Islam as a force with a tenden-

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<sup>42</sup> cf. Weiland 2003

<sup>43</sup> cf. Klingst 2003; Schmoll 2003; Müller 2003a&b

cy to disregard the constitutional set-up of the Federal Republic. The report, while acknowledging the danger of some Islamic organisations engaging in unconstitutional activities, however states that such a generalised mistrust is unwarranted. The degree of organisation among Muslims in Germany is comparatively low: The three major Muslim organisations<sup>44</sup> taken together represent at most 15% of the total Muslim population<sup>45</sup> and only from an even smaller percentage of this faction could potential danger emanate.<sup>46</sup>

In Germany and elsewhere in Europe, the concept of Euro-Islam is gaining wider currency. The idea has been popularised by the German International Relations scholar Bassam Tibi<sup>47</sup> and has recently been taken up by the German Commissioner for Foreign Nationals (Ausländerbeauftragte) Marie-luise Beck<sup>48</sup> and by the president of the German parliament (Bundestagspräsident) Wolfgang Thierse.<sup>49</sup> Tibi makes the simple observation, that historically there has never been a

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<sup>44</sup> I. e. Turkish Islamic Union ('Türkisch-islamische Union der Anstalt für Religion'), the Association of Islamic Culture Centres ('Verband der islamischen Kulturzentren') and the Islamic Community Milli Görüş ('Islamische Gemeinschaft Milli Görüş').

<sup>45</sup> cf. Weiland 2003

<sup>46</sup> Further controversies are over the Muslims' right to provide religious chaplaincies in the military, in hospitals and in prisons. This is not dependent on the public law corporation status of a religious community. The Ministry of Defence is looking into the possibility of Islamic clergymen providing religious services in the military, although none of the many Islamic communities has the status of a corporation under public law.

The right of Muslims to halal slaughtering procedures without the stunning required by the federal animal protection law was the subject of a court case that concluded in January 2002. In November 2000, the Federal Administrative Court ruled that the Islamic Community of Hessen was not a 'religious community' as defined in the animal protection law, which allows religious communities to apply for waivers of animal slaughtering regulations. As a result, Muslims could not apply for a waiver; however, the Jewish Community was granted a waiver shortly after the animal protection law first went into effect in order to slaughter animals by kosher procedures. The Muslim Community appealed the ruling, and in January 2002, the Federal Constitutional Court ruled that Muslim butchers could apply for waivers (cf. BVerfG 2002).

<sup>47</sup> Tibi 1998; 2000 325ff.

<sup>48</sup> cf. Goddar 2002a

<sup>49</sup> cf. Lücke & Wöhlert 2002

single unified Islam.<sup>50</sup> Islam has taken different shapes in Morocco and in Indonesia, in Africa and in India. It is thus to be expected, that Islam in Europe will also mean a different thing than Islam in Turkey or in the Arab world. In the same way, the liberal Imam of the Mosque of Paris, Dalil Boubakir, embraced the concept of Euro-Islam declaring that Islam would have no future in Europe without the recognition of the principle of the separation of religion and politics (ibid, 331). Tibi (ibid.) demands that religious education in public schools be placed in the hands of the state to prevent radical Islamist organisation from indoctrinating Muslim youth in a way that hampers their integration into German society by turning them hostile towards European civilisation and constitutional principles.

## **Conclusion**

In conclusion, I would like to come back to the two questions that were raised at the outset of this paper. We have seen that the most interesting questions regarding the relationship between the state and various communities sharing a common world view are raised by religious communities that somehow do not quite fit into the traditional scheme of Church state relations. We have seen that this is partly due to the fact that these communities lack the authoritative structures that traditional Churches have.

Here, an elite decided theological as well as political matters and the faithful were expected to follow suit. This model, having evolved in pre-democratic times, is seen as obsolete today even by many within the Churches. Outside the Christian sphere, the model becomes completely untenable since in many non-Christian religious communities religious authority has always been diffuse and decentralised. Such a decentralised form of religious practice, however, seems more suitable for a democratic society than the authoritarian structures of

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<sup>50</sup> cf. Tibi 2000, 330f.

the traditional Churches. To force such religious communities into the unified framework of a Church-like structure would do harm to this diversity and its inherent democratic spirit. It would necessarily lead to privileging some parts of the community over others. Such attempts have been made in France with respect to the Muslim community there and they are being discussed in Germany as well. So far, they have not proved feasible.

It seems that the lack of authoritative structures in other religious communities poses a new challenge to the liberal democratic state to redefine its relations with the growing number of religions claiming recognition in Germany. Herein, the state faces the following principal difficulty. The model of the State-Church-Law in combination with the concept of a unified religious community leads to the creation of a religious collective body with quasi-public functions. For the administration of church-tax revenues, the religious public body as the sole representative of the religious community has to decide whom it wants to count as its member. Thereby it can happen that the religious public body excludes a part of the religious community who, from their own perspective, belong to the same faith. Seemingly, here, the state abdicates its obligation to benefit all citizens of a particular faith in favour of a corporation under public law that is granted a right to differentiate between members and non-members of that particular faith.

If this decision is left to the religious organisation, the liberal democratic state abdicates its obligation *vis-à-vis* the individual to protect its religious autonomy, for if an individual calls itself a Christian, a Muslim or a Jew without being recognised as such by the respective unitary organisation, it should not be for the state or any other public body to decide whether this individual is justified in doing so. The decision can not rest with the state lest it get entangled in theological controversies, nor can any public body be allowed to decide



such matters on behalf of the state without the state sanctioning it. By sanctioning it, however, the state does take a stand in matters beyond its competence.

The only alternative left is to either abstain from creating or sanctioning such unified public bodies or to prohibit them from deciding on behalf of the state whether any individual should be counted as member of a particular religious community or not. Since the latter is no viable option for any religious community that wants to – and has a right to – define whom to count as its members, the concept of the unified public body is no viable option for a liberal democratic state. There is an obvious way out. Abandoning the concept of a unified religious organisation for religious communities, the faithful have the option of creating as many religious organisations as they need. Each can claim the same recognition and furtherance through the state provided it abides by the constitution and the European Human Rights law. Whether these organisations have to be bodies of public or private law is another matter. In any case, however, the same treatment has to be granted to organisations of all religions.

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