

**RESEARCH ARTICLE**

# Reframing Secularist Premises: Divorce among Traditionalist Muslim and Jewish Women within the Secular State

Pascale Fournier\* and Jacques Berlinerblau†

Recent decades have witnessed a significant increase in scholarly attention to the subject of secularism. This body of work, theoretical and normative in nature, rarely addresses ethnographic data and the lived experiences of situated agents. Starting with a review of three major theoretical approaches to the study of secularism (i.e., the writings of the 19<sup>th</sup> century Freethinker George Jacob Holyoake, the research of scholars who work in post-Foucauldian traditions, and those beholden to more traditional liberal political assumptions), we ask how each of these theories interfaces with our own ethnographic discoveries. Our interviews with traditionalist Jewish and Muslim women seeking divorces in Canada, France, Germany, and the United Kingdom, challenge and complexify many of the assumptions that undergird each of the aforementioned theoretical schools. Our ethnography reveals interesting and unexpected patterns of women's agency, religious critique, and navigation of parallel civil and religious structures.

**Introduction**

The bibliography devoted to “secular studies” (Mahmood 2013: 47) is large and growing rapidly. Its many contributors emanate from a wide variety of scholarly disciplines. Sociologists, anthropologists, scholars of gender, theology, literature, and, most recently, theorists of race (Kahn and Lloyd 2016) have all interrogated this subject. This body of literature features many attempts to *theorize* secularism. This presents students of the topic with formidable and varied resources for thinking in the abstract about this complex and multivalent concept.

What we possess in theoretical analysis, however, we lack in ethnographic observation. Few and far between are the studies that bring theories of secularism into dialogue with what we might call the “lived experiences” of real citizens of flesh and blood—especially citizens who are women. The scholarly materials devoted to theory do not afford us many glimpses of how women engage with the gendered policies of the secular states in which they live.

Even more so for a subgroup of women: those who belong to faith communities that exist *within* secular states. No research presently interrogates how female religious subjects navigate the often conflicting demands of state secular policies *and* communal religious law. Using in-depth interviews conducted with traditionalist women seeking religiously-sanctioned divorce, it is our goal to explore this intriguing “dual navigation” problem.

That is, these subjects must negotiate both the demands of secular state law and the demands of their faith communities in their efforts to dissolve their marriages. Prior to analyzing our ethnographic data, it may be useful to familiarize ourselves with the aforementioned theoretical resources at our disposal. By the end of this contribution, we will bring the latter into conversation with the former.

One can identify, at the very least, three broad theoretical orientations in secular studies. The first, oldest, and least immediately useful to contemporary scholarship construes secularism as a system of this-worldly ethics predicated on rational scientific inquiry. This conception was advanced by the 19<sup>th</sup> century British Freethinker, George Jacob Holyoake. This “Victorian Infidel,” (Royle 1974) brought the term “secularism” into broad usage in 1851, though it had appeared earlier (Zuckerman and Shook 2017: 2).

What Holyoake's neologism actually meant is somewhat difficult to discern with precision—one researcher notes at least twelve different connotations that he associated with the term “secularism” (Berlinerblau 2012: 56). Be that as it may, it is possible to identify the broad contours of his thought. Later in his life, Holyoake opined that secularism's task was “to educate the conscience in the service of man” (1896: 73; also see 34). The observation is consistent with his tendency to construe secularism as an *ethical* system, neither Christian (1896: 1), nor atheistic (1896: 60–61, 37; Holyoake and Bradlaugh 1870: iii; Schwartz 2013: 9). Secularism, he explained, “adopts no methods but those of science and philosophy” (1896: 76; also see 1845; also see Schwartz 2013: 8). Indeed, one of Holyoake's most quoted maxims was “Science is the available Providence of man” (1871: 145). A pronounced

\* University of Ottawa, CA

† Georgetown University, US

Corresponding author: Jacques Berlinerblau  
(jdb75@georgetown.edu)

Protestant-inflected anti-clerical strain is also evident in Holyoake's writing. In this sense, Holyoake is the heir of a long line of pious, but anti-priestly, proto-secular thinkers, including Martin Luther, John Locke, Voltaire, and Thomas Paine, among many others.

The nascent secular movement spawned by Holyoake devoted attention to women's issues of the day and was "uncommonly open to female participation" (Schwartz 2010: 778). As Laura Schwartz phrases it, the secularists of this era "saw religion as the root of women's oppression, and viewed the Judeo-Christian Scriptures as the founding text of female subordination ... Thus support for women's emancipation ... lay right at the heart of the Secularist critique of Christianity" (780; also see 2013: 1).

Holyoake and his cohort make for a fascinating chapter in the history of secularism and researchers are increasingly drawing attention to his work (Berman 1988; Grugel 1976; Royle 1974; Rectenwald 2013; Rectenwald 2016). However, the explicitly *engagé* nature of Holyoake's *œuvre* makes it hard to draw normative theoretical assumptions about secularism from his writings. His writings had more of an activist bent than a scholarly focus.

For most of the 19<sup>th</sup> and 20<sup>th</sup> centuries what little that was written about secularism in academic circles was published in scholarly encyclopedias and dictionaries. Those explications added little that was new and often, but not always, simply reiterated Holyoake's assertions (Cross and Livingstone 1997: 1478; Glasner 2003: 584; McBrien 1995: 1180; *The New Encyclopædia Britannica* 1976, vol. IX: 19; Richardson 1969: 311; Sheldon 2001: 273–274; Smith 1995: 970–971; Wilson 1983: 533–534).

It was only in the final decades of the twentieth century that the question of secularism was intensively pursued by a critical mass of scholars. From the 1990s forward, theoretical work on secularism was conducted predominantly, though not exclusively, within intellectual frameworks influenced by Michel Foucault. In his copious writings, the French philosopher rarely alluded to the secular (*laïque*). On those few occasions when he did, his comments were somewhat offhanded (e.g., Foucault 1988: 22, 1990: 42, 116, 159, 1995: 215, 2004: 222).

This is not surprising insofar as his treatment of the larger (and imbricated) subject of religion was more "fragmented" than "systematic" (Carrette 1999: 32). For purposes of orienting Foucault's work toward secular studies, there is much to recommend in Jeremy Carrette's observation that Foucault sought to "collaps[e] the division between religion and politics in an ethics of the self" (1999: 33).

These assumptions reverberate throughout post-Foucauldian engagements with the subject of secularism. They also place Foucauldians on a collision course with their subject matter. Many, *though not all*, secular policies of state aim to bring about a separation of religion from politics, and/or a separation of the public from the private spheres (Berlinerblau 2014: 8). Foucauldians—who are deeply suspicious of the motivations informing this disarticulation—tend to be highly critical of the secularisms they scrutinize.

Talal Asad, the most influential theorist in this school, is skeptical of what he sees as secularism's core conceit that

"religious practice and belief be confined to a space where they cannot threaten political stability or the liberties of 'free-thinking' citizens" (2003: 191; also see Scott and Hirschkind 2006). In his *Why I Am Not A Secularist*, William Connolly questions the endeavor to lodge the "Christian sacred" in the private sphere, while associating secularism with "public authority, common sense, rational argument, justice, tolerance," and so forth (1999: 21). Important studies in this tradition have problematized the idea of separation of church and state (Scherer 2013) and secularism's role in international affairs (Hurd 2008: 13–14). Others have questioned the neutrality of liberal/secular values in recent controversies about the secular precept of free speech (Mahmood 2009).

Also distinct about this paradigm is its engagement with Foucault's notion of the "ethics of self." Researchers examine how the secular "imaginary" and its attendant "discursive formations" impact situated agents. These scholars, then, evince a theoretical interest in "unconscious bodily dispositions, practices and affects, which are difficult to recognize...because of their embodied nature" (Amir-Moazami 2013: 93). Charles Hirschkind, who has pondered the complexities of "the secular body," acknowledges that workers in this tradition exhibit a "reticence to speak about the embodied capacities and dispositions of a secular subject" (2011: 641). We possess, therefore, many studies of how religious formations impact subjects, yet we lack concrete studies of *secular* embodiment (however, see Amir-Moazami 2013; Gökariksel 2009: 666).

Scholars who work in this tradition have also looked at how allegedly emancipatory secular "discourses" constrain and reduce the options available to women (Aune, Sonya, Giselle 2008; Woodhead 2008a; Scott 2013; Mahmood 2013; Karam 2013; *contra* Burns 2013). Moreover, others have challenged the view according to which minority cultures are innately more patriarchal than Western/secular culture (Phillips 2007; Song 2007; also see Laborde 2008) and have expressed the need for the state to respect cultural differences whilst also assuring that the rights of vulnerable group members such as women are protected (Shachar 2001).

While accounting for most of the theoretical work performed on secularism, the school is not without its shortcomings. For starters, Foucauldians *intentionally* resist defining secularism—a practice that can create considerable confusion (Brown 2009: 14; Cady and Hurd 2010: 12; Modern 2011: 10, 21; Wilson 2006: 199; however, see Hurd 2012: 36). Further, these scholars are more likely to *theorize* the relation of selves with the secular state than to concentrate on actual selves. In the words of one critic, their interventions leave us "with a conceptualization of secularism as an agent in the mode of a *deus ex machina* rather than as something produced by real people acting in real ways upon the world and as agents of and in history" (Bangstad 2011; also see Philpott and Shah 2016).

Researchers in a third, rather amorphous, catch-all category, eschew Foucauldian nomenclature and its attendant epistemological assumptions altogether. They tend to view secularism, more narrowly, as a *political* construct. These works concentrate on laws, policy prescriptions,

and specific historical events and show little interest in matters like “discursivity” or “embodied practices.”

Cognizant of the truism that there is not one specific, or “pure” type of secularism (Taylor and Maclure 2011: 53), and many types of secular liberalisms (Burns 2013: 80), investigators in the political mode have tried to situate secularisms upon a spectrum. Some theorists parse secularism into opposed forms such as “negative” and “positive” (McClay 2003), “hard” and “soft” (Kosmin 2014), “assertive” and “passive” (Kuru 2007: 571), and “strong” and “legal” (Feldman 2005). Charles Taylor contrasted a secularism characterized by a “common ground strategy” versus an “independent political ethic” (1998: 33). Also rejecting the idea of a “pure” form of secularism is Cécile Laborde in her *Critical Republicanism: The Hijab Controversy and Political Philosophy*. She identifies “a general pattern of Western secularism” characterized by the “non-confessional nature of the state and recognition of religious freedom”, and considers the French republican philosophy of *laïcité* as “one parochial version of it” (2008: 67).

Some have employed the term “political secularism” (Bhargava 1994, 2006; Berlinerblau 2017)—a usage that has the advantage of distinguishing secularism from other concepts with which it is often confused (i.e., “secularization,” “secular humanism,” “secularity,” “atheism”). Other theorists have adopted definitions geared to particular historical iterations of secularism including “progressive secularism” (Cimino and Smith 2007); “moderate secularism” (Modood 2010); “late secularism” (Baird 2008); “colonial secularism” (Khair 2013: 104–105), and so forth.

The political conception of secularism, with its proclivity for abstraction, lacks the dexterity to grapple with the micro-dimension of selves and lived experience—one of the potential strengths of the Foucauldian model. One advantage it does offer, however, is a willingness to proffer crystal clear—though obviously debatable and correctable—definitions of the term “secularism.” Those who opt for the political approach to secularism tend to reject Foucault’s premise about the collapsing of church and state, private and public, domains. As such, these theorists incline to be less categorically critical of secularisms than their Foucauldian counterparts.

Some who work within the more political approach to this subject view secularism as potentially liberating and emancipatory for female citizens. In this understanding, religious orthodoxy (or, in some cases, religion itself) serves to diminish the agency and, by association, the civil rights of female believers and women in general. Ariela Keysar’s study of women in the United States, France, and Israel notes a “correlation between religiosity and the low socioeconomic status of women” (Keysar 2014: 214). Keysar lauds “secular values such as tolerance, pluralism, and egalitarianism” as essential to the advancement of women (Keysar 2014: 215). Frances Raday questions whether religious women can exhibit “genuine consent” to religious authority (Raday 2012: 226). “Individuals who consent,” writes Raday, “to the perpetuation of their inequality within the religious/cultural community to which they belong often have little real choice but to accept their oppression” (Raday 2012: 226; also see Okin et al. 1999;

Chambers 2008). This equation between secularism and women’s emancipation, however, has not gone uncontested. As Kristin Aune observes, “the assumption that secularism is *the* superior feminist position is being called into question as women exercise agency through religion” (Aune 2015: 124; also see Woodhead 2008a: 190).

The Holyoakian, Foucauldian, and narrowly political conceptions all have their various merits. One drawback, especially of the latter two schools is their odd refusal to engage one another’s substantive arguments; bibliographically, at least, they seem not to acknowledge one another’s existence. Another drawback common to each school, as noted above, is its lack of engagement with ethnographic data as it pertains to secularism. Very little research looks at how actual persons consciously “live” secular arrangements in their everyday lives. Very little research interrogates the gendered dimensions of the encounters between a secular state and its subjects. Moreover, very little research goes one step further and asks how religious women might navigate *two* sets of relations: one with the secular state, and another simultaneously occurring with their own religious authorities. This question of dual navigation—or what some have referred to as “multiple publics” (Moors and Salih 2009)—demands far greater scrutiny.

This contribution attempts to take a very modest step in the direction of understanding the lived experience of religious women as they negotiate with secular policies of state and the demands of their faith. It is our hope that by bringing the theoretical assumptions above into dialogue with ethnographic research we will be able to deepen our understanding, and sharpen our critique, of prevailing paradigms in the burgeoning field of secular studies. In the process we will interrogate notions of agency, the deeper significance of religious self-critique, and the manner in which the interplay of secular and religious law create unexpected possibilities for situated actors.

### Three Dimensions of Traditionalist Women’s Religiosity

The body of empirical data we will use to probe these questions about secularism consists of in-depth interviews conducted with traditionalist Muslim and Jewish women.<sup>1</sup> Our study took place in Canada, France, Germany, and the UK between 2009 and 2013 with 8 to 10 Muslim and Jewish women in each country who had gone through a religious and a civil divorce. The interviews were conducted on a voluntary and consensual basis. In fact, although we advertised for volunteers through a website, through e-mails to academic groups, and through public posters, the majority of participants came to us by word of mouth and contacts within the Jewish and Muslim communities in each respective country. For example, participating women were contacted through religious leaders, non-governmental organizations and outreach workers in religious communities. The interviews took place at the homes of the participants, in community centers, in public places (such as cafés and markets), or via telephone.

The objective of the fieldwork was to better understand the strategies used by women to navigate between

the religious and the secular spheres as they sought their divorces. We also wanted to scrutinize their judicial encounters and experiences with secular courts, Imams and Rabbis, as well as their interactions with family members and civil society throughout this complex process of negotiation. Our project was especially interested in capturing the multiple facets of the religious family, as well as the complexity of this structure that is enshrined in secular society (Silbey and Ewick, 1998; Quraishi and Syeed-Miller, 2004; Hirsch, 1998; Korteweg, 2008).

All of our subjects shared a common dilemma in that each was seeking a religiously-sanctioned divorce which was at first refused to them by their husband. According to Jewish and Islamic family law, only the husband can grant the *get* (Jewish divorce) or the *talaq* (Islamic repudiation). Our interviews were geared toward learning about how these women construed their attempt to alter their marital status. A qualitative analysis of the results of the interviews was used to describe the relationship between women and family law and to identify the circumstances in which they use either civil or religious tribunals. This methodology, drawing on a variety of interpretative analytical strategies and classic legal research methods, permitted a comparative analysis of the social, religious and legal rules impacting Jewish and Muslim women navigating divorce. In this way, it allowed us to stress the bargaining power and the legal effectiveness of women, while addressing the impact of law on the distribution of economic and political power between men and women (Fournier, 2015, 2016). We then scrutinized our data in order to gain insight into three questions relevant to our attempt to bring theoretical and empirical studies of secularism into conversation.

First, we were interested in questions of agency. As they endeavored to finalize their divorces, these women all encountered challenges in procuring the approval of their religious communities. Some theorists, as we saw above, suggest that religion deprives women of the ability to act in their own interests. A corollary of this assumption is that these women are passive subjects in their interactions within both the private religious and public secular sphere. The belief that women remain confined to the private sphere where they exercise little or no control on the definition of their citizenship or communal belonging, we will suggest, is too simple to accommodate the complexity of our findings.

Second, classic presuppositions about these women, especially among the political theorists discussed above, lead some to conclude that they are uncritical of their own religious traditions. We shall adduce data that suggest otherwise. Their discontent with clerical authorities comes into especially clear relief as a result of these women's negative and disillusioning experiences with religious divorce procedures. Their discontent also impels them to creatively re-interpret received religious wisdom—yet another avenue for cognitive and practical agency. These considerations are germane to theorists who ponder the relationship between secularism and the human capacity for critique (Asad et al. 2009; Berlinerblau 2005; Deveaux 2007).

Finally, our ethnographic analysis permits us to explore a complex set of relations. It helps us conceptualize what we are calling the “dual navigation” dilemma. Insofar as the state's secular laws regarding divorce override, in theory, those of the religious authorities, an intriguing tension confronts these subjects. Our informants are often trapped between two competing realms. On the one hand, they perform their private religious duties and are bound to particular faith convictions. On the other, they are citizens of a secular state with its own set of civic duties and convictions. The existence of the latter structure, we shall see, provides agents with all sorts of leverage and possibilities. This state of affairs poses challenges for those who work in the post-Foucauldian tradition.

#### **Agency: “I will show you how a real spiritual person will act”**

Our data suggest that religious women make *active* choices as to which traditions they embrace or reject, and why. Their decisions clearly take place within relatively codified settings in which available choices may be constricted (Thiessen 2015, 2016). Yet, the moves they make show a form of agency that is assumed to be absent in policy-oriented conversations.

For instance, Jewish participants in England depicted religious norms as contestable and open to negotiation and recourse. They used the words “business contract” and “legalistic” to describe the prevailing system of rules, leaving space for negotiation and bargaining with God. The Jewish women we interviewed also described religious law as mottled by legal “loopholes” which allow for strategizing and litigating of the *get* (a Jewish religious divorce, which according to Jewish family law, can only be voluntarily granted by the man and is pronounced in front of a Jewish religious court).

One participant (referred to as #2) observes, “Judaism has quite a strong legalistic side to it, this thing called *Halakhah*, the Jewish law.” Participant #1 also emphasizes this point when she notes: “The *ketubah* [a marriage agreement, which lists the duties of each spouse] is a contract. It's about how the bride will bring to the marriage various household goods. [...] It is a business contract!” Notice how Participants #1 and #2 call attention to the binding legalistic nature of the agreements into which they have entered. For these women, however, these agreements are amenable to creative legal interpretation and intervention.

One interviewee reflects on the “loopholes” she endeavored to exploit, albeit unsuccessfully, as she tried to procure her divorce:

“The discussions with the London beth din [Jewish religious court] through the Agunot Campaign left me with the strongest impression. There was quite a lot of interaction between the London beth din and me and my husband when we were trying to resolve my agunah [a woman entitled to the *get*, but who has been denied by her husband; literally “a chained woman”] status. We explored various loopholes in rabbinical law and tried to accom-

moderate each suggestion put forward by the *bet din*. Ultimately, each loophole was discounted, and I was disillusioned by the whole process. One example of a proposed loophole was whether my ex-husband actually bought the ring he gave me. If he hadn't, there was a chance the marriage could be annulled as rabbinical law states a man must buy the ring himself and not delegate this responsibility. I was in touch with my ex-father-in-law, and he was willing to support me by providing in writing or in person his testimony that he gave my ex-husband the money to buy the ring so we could pursue this loophole. However, the rabbis changed their minds at the last moment and said this loophole option was not sufficient." (Participant #3, England, Jewish)

The case of Islamic divorce also exemplifies the phenomenon of women exhibiting agency. Under classical Islamic law, a woman cannot obtain divorce by her own will alone. The one exception is the *faskh* divorce, which is decreed by an Islamic court on certain specific grounds such as *inter alia* mental or physical abuse, lack of piety, or impotence (Abdal-Rahim 1996). The only other possibilities are *khul* and *talaq* divorces, for which the consent of the husband is required (El Alami and Hinchcliffe 1996). In spite of this, two Muslim participants were able to secure a pronouncement of divorce from imams against their respective husband's will, absent the grounds required for a *faskh* divorce:

"[If the man refuses the divorce], you can go back to the person [...] who married you, and the woman exposes her problem. And the imam who married them has the right to divorce her from this man. Even if [the man] doesn't want to, he [the imam] says, 'I divorce you from him' and she is divorced. [...] And I didn't know that at the time." (Participant #4, France, Muslim)

"At first he refused [to give the religious divorce], and it was the imam who told him [...]: 'You are wrong to treat her that way,' and so on. 'Now she wants a divorce.' At first he did not accept, and then he said: 'I have many wives, I am not holding on to her. If she hands me back the keys to my apartment, I give her the divorce.' [...] So I gave the keys to the imam [...]. When [the imam] gave him the keys, he told him: 'Sign a paper that says you have received the keys.' He refused to sign, and the imam did not let him keep the keys. So he went and filed a complaint that I had given the keys to others and that I wanted to steal from him. And the imam saw that he was a dangerous person, so he gave me the divorce." (Participant #1, France, Muslim)

For these participants, religion cannot be reduced to gendered passivity, but is instead ripe with contractual recourse and avenues for private ordering and negotiation. Each of these subjects found within existing legal

structures options and possibilities that permitted them to achieve their desired ends.

Some participants described their relationship to religious law by emphasizing an ethos of self-reliance, agency, and individualism often associated with civil contract law. These women all exhibited a cognizance of the flexibility of religious law:

*Participant:* I don't see major differences in the way marriage is treated by religion and the way marriage is treated by civil society [la société civile].

*Researcher:* And if your husband had refused the get....

*Participant:* You can get your divorce nowadays; there is no refusal that will hold. It takes a little longer that's all. After I don't know how many years [...], he is obliged to give it to you, and that's it. (Participant #7, France, Jewish)

"You have to know your religion. You have to know your rights. You have to know what this religion is, what you must do in it. [...] And if there are problems, what are the avenues ... It's like in a contract, like when you take up a new job: 'Okay, what are my schedules, what if I have a problem?' There are articles and all that; you have to look into it." (Participant #4, France, Muslim)

In accordance with the idea of a wholly *legal* contractual regime, participants highlighted the existence of religious recourse, procedures, and rules, and not merely revealed and imposed religious norms. Indeed, these participants illustrated the fact that both Islamic marriage and Jewish marriage have a deeply contractual nature and are, in fact, structured around negotiation, bargaining, and enforcement mechanisms. That the civil law provided these women with leverage—leverage that they adeptly exploited—is a crucial fact that we will investigate momentarily.

A comprehensive conception of agency should, in the words of Lois McNay, "attest to the capacity for autonomous action in the face of often overwhelming cultural sanctions and structural inequalities" (2000: 10). It seems clear that the women in this study encounter these types of sanctions and structural inequalities. Yet it is crucial to distinguish between the motives informing their choices and the distributive outcomes of those choices. Too often, what is in fact agency is misinterpreted as submission because it leads to unfavorable results. Our findings suggest that viewing these outcomes as a form of submission oversimplifies a complex reality, rife with conscious albeit pained choices.

"Cheap-settling" is a term used to describe the act through which women in litigious divorces will settle for less than what they are entitled. Although not specific to religious law, (the impact of adjudication and mediation on women has been studied in the context of general family law; see Boyd 2003; Chowdhury 2012; Goundry et al. 1998; Wilkinson-Ryan and Small 2008; Brinig 1995), "cheap-settling" is an example of a behavior that is perceived as submissive. This may stigmatize religious

women as acting foremost in accordance with a faith that supposedly, by its very nature, demands their passivity. In fact, as the following excerpts reveal, these decisions evince agency.

Several participants revealed that they knowingly renounced financial entitlements through their divorce. This was done in order to protect preferred interests. These might include gaining full custody of their children, closure on a painful period, or peace of mind that had become invaluable amidst an acrimonious process. The following subjects, both Muslim and Jewish, discuss their *voluntary* abnegation of civil and/or religious rights:

“I didn’t talk to him directly. It was my father and I asked him ‘Dad, please tell him that it is me who is asking for the divorce; I want to exempt my ex from all alimony, I want nothing to do with him. Even the alimony which I have a right to I don’t want, and I want nothing to do with my dowry.’” (Participant #1, Canada, Muslim)

“I signed that [an agreement that she would not go after any of her husband’s money following the divorce] in that moment, even though, I mean, I am not an idiot. I mean I knew what I was signing. I said ‘I will show you how a real spiritual person will act. And I trust you (...) From that time I was really convinced that he should think ‘look, that is how someone behaves who is believing in spiritual values, and not like that.’” (Participant #5, Germany, Jewish)

It should be noted that these women’s willingness to settle does not imply that they ignore the injustice they suffered. On the contrary, many evinced an almost world-weary cognizance of their predicament. Notice how this informant reflects on the trade-offs she had to make in order to secure a better, though certainly not ideal, outcome:

“I co-operated fully because I was so happy to, you know, finally get rid of him without having to be the one who initiates it and, yeah, we just filed, it went really quickly (...) we were divorced and he got married again straight away and that was good and there was no settlement; he never paid, but I was so glad—still am—just to get rid of him, that it didn’t bother me so much. It bothered me sometimes, because I could have given the kids more, had he paid, but then again, I can stand on my own two feet, so, that was fine.” (Participant #1, Germany, Muslim)

In our fieldwork we encountered several women who had prioritized their children over financial endowments, maneuvering within spaces that seemed otherwise restrictive based on religion or patriarchal norms.

The misfortune of these women may be reasonably attributed to religious patriarchy. Yet to leave it at that fails to grasp their resiliency and ability to ‘bargain’ with the rules and to make the best of their options. This constant navigation of patriarchal structures, and the bargaining

within its confines is obviously not limited to just these women (Kandiyoti 1988). A challenge facing non-traditionalist majorities (and theorists who work in the tradition of political secularism) is the need to resist perceiving agency only where it conforms to secular or irreligious standards and to majority cultural codes (Korteweg 2008).

***Critique: “Every person is her own religious authority”***

In Western societies, traditionalist women are often expected to either embrace or reject religion as a whole, a standard which does not systematically apply to men. This often stems from the belief that none of their choices are free from the insidious oppression of religion (MacKinnon 1983). As Woodhead reminds us, however, the antinomy between the secular and religious spheres, largely alimanted by western liberalism, has the effect of perpetuating religion as intrinsically disadvantageous for women (Woodhead 2008b). According to her, this opposition should be rejected in order to fully grasp the complexity of the interactions between both spheres. Instead of portraying religion as an obstacle to feminism, which marginalizes religious women and labels them as victims of oppression (Aune 2015), it is worth examining how women exercise agency through their religious practice.

In that sense, our ethnographic data reveals a more nuanced picture. It points to criticism *by* traditionalist women *of* religion. It must be stressed that their dissatisfaction does not imply apostasy, or full-scale rejection of their faith. They do not focus on the failings of the religion itself, or of God. Rather, they concentrate on the shortcomings of their religion’s practitioners, be it their husbands or the authorities adjudicating their divorce procedures. As shall become apparent shortly, these women offer a critique of patriarchy, with hints of that aforementioned anti-clerical strain, which has long been part of the secular tradition.

The following Muslim woman, when criticizing the conservative ways of her ex-husband, made the connection to his failure to engage intellectually with religious teachings. While she was in a profound state of questioning, he would simply expect obedience and submission from her and refuse to discuss her religious position on the issue:

*Participant:* They weren’t really things that interested him. He was more the type to be content with what he was: “There, I’m religious, that’s about it.”

*Researcher:* And for you, on the other hand, it was more like a self-questioning...?

*Participant:* Yes, I was in a deep questioning, I needed these ... I don’t know, I think it’s ... it doesn’t add up. You say a prayer. You get up, you pray, you fast. No, there has to be more, why do we pray, what is praying, in front of whom do you do it, for whom, what does fasting represent, what are we supposed to feel, what are we supposed to experience? And if there are problems, what resorts do we have ... you have to do research. (Participant #4, France, Muslim)

Another Muslim interviewee, questions the very role of religious authority in Islam:

“In Islam, there shouldn’t be any religious authorities. Every person is her own religious authority. Then, there are people who know more than others and who teach others and that’s all very good. But the people who teach others should be those who are seeking knowledge, not those who manipulate.” (Participant #6, France, Muslim)

One Jewish participant in England described her ordeal trying to procure a divorce as “the most degrading ceremony ever” (Participant #4 England). As with many of our subjects, she detailed her negative experience throughout the “*get*” ceremony, a ceremony in which the husband agrees to free his wife from her “chains.” It is an officialization of the religious divorce without which the woman will never be able to remarry religiously. Another Jewish woman from England described the process this way:

“And I found the whole procedure of the *get* totally demeaning. (...) You have no say. It’s not your document, you’re not allowed to see the document, it’s kept by the Beth Din in their records, you’re not allowed a copy of it... and I wanted, I really wanted to see it and know that I had it.” (Participant #6, England, Jewish)

The resentment of our subjects usually had anticlerical—as opposed to anti-religious—undertones. Subjects frequently complained of their treatment at the hands of rabbis and imams. Historically, anticlericalist feelings, when shared by masses, conveyed a will to secularize. In their most radical expression, or when they failed to inspire satisfactory reforms, they rapidly grew into antireligious sentiment (Baubérot and Milot 2011: 99–102). In the case of the traditionalist Jewish and Muslim women we interviewed, however, their negative exchanges with religious authorities occurred in private settings, which are not conducive to inflaming communal passions. Their resentment did not result in antireligious conclusions, but did add nuance to the common perception that they are submissive and unquestioningly accepting of their faith:

“Anyhow, he [the Rabbi] invented a ceremony for me. (...) So after he finished insulting me he told me ‘Go to the wall, come back, go to the wall, come back.’ And then he told me to take this paper and put it here. ‘No it must be deeper, deeper on your breast.’ I was sure that was something special for me because I couldn’t imagine that that was part of the ceremony. (...) And at the end, before I went, he insulted me, an insult from the Talmud, something very bad, very bad.” (Participant #4, Germany, Jewish)

Some of our subjects exhibited cognizance of the deeply patriarchal nature of the system they were confronting. They lambasted the unilateral access to divorce that benefits men in Judaism and the cultural perception of divorce in Islam. Even though some suggested that liberal rabbis were willing to go around this requirement and allow women to ask for a religious divorce under specific circumstances, the

women overwhelmingly denounced the fact that the possibility was not available to them in the first place. The following string of quotes calls attention to how these women identify double standards, patriarchy, and thinly veiled sexism in the formal religious procedures for addressing divorce as well as in accepted communal standards.

“I felt very much like this is a man’s club and I’m not welcome. It really felt so anti-woman! Like where is my cheering team, you know, everybody here is supporting him. All men all together and here’s me, the woman, who is allowed to come in for a little bit and then has to go out while they write the whole damn thing.” (Participant #6, Canada, Jewish)

*Researcher:* What would you change about the religious divorce process?

*Participant:* Well I don’t know... It should be more egalitarian.

*Researcher:* In what way?

*Participant:* That also women can sue for a divorce. And that all these ceremonies with these papers, all these old things, it must be renewed, it must be made to, according to, today’s life. (Participant #4, Germany, Jewish)

“It all depends on the men. It’s the men that say: ‘Yes, I give you the *get*’ or ‘No, I am not giving you the *get*’ (...) At this very moment, we are like objects ... I have never studied that specifically in the Jewish religion, but you know, you really wonder why, why is it the decision for the man to make?” (Participant #9, France, Jewish)

For the Muslim participants, the biggest barrier was not access to divorce *per se*, but the cultural perception that divorce brings in the form of shame on families:

“I just wanted out. [...] I didn’t even have a contract, I didn’t even know where this guy is that conducted my *nikah*. The institutional Islam—the mosque—that exists, I don’t agree with it and I just didn’t know where to begin. I couldn’t go to my family because to be honest, they weren’t very supportive. [...] They would just push me back to my in-laws. I was on my own.” (Participant #6, England, Muslim)

“Ninety percent of the time, it is considered to be the woman’s fault. Even when people know the details, there is an expectation that the woman should have given in, done more, conformed, changed herself. I find that to be very cruel to women. [...] There is no acceptance of divorced women. They are perceived as pariahs, outcasts, or social deviants.” (Participant #8, England, Muslim)

Such protests belie the assertion that traditionalist religious women are mere dupes of patriarchy, and incapable of questioning their own faith traditions. Their critique of religious patriarchy takes place within the context of the secular societies to which they belong. Not surprisingly, it is to secular civil law that these women often turn.

**Dual Navigation: “I would want to be divorced religiously and civilly”**

The agency and critical self-questioning explored above did not occur in a sociological vacuum. The religious communities to which these women belong are ensconced within countries where civil law regarding divorce is, in theory and usually in practice, the law of the land. The presence of parallel secular institutions regulating marriage and divorce provided these women with a variety of options, tactical alternatives, and points of comparison.

One interesting pattern that emerged in our interviews was that many of the women strove for a religious marriage *as well as a civil one*. Participants indicated that even though these forms carried different meanings both were essential to them. The honest need to have one union validated by mosque/synagogue *and* state testifies to these women's validation of a dual identity. Aware of the contradictions and tensions inherent in these two matrimonial forms, women nevertheless viewed them as complementary:

*Participant:* Religious marriage was very important for me, because it's in front of God and ... it was very important and I didn't think about divorce then. (laughs)

*Researcher:* You explained why you wanted the religious marriage, but was there a reason why you wanted a civil marriage as well, or was it just because that was what everyone did?

*Participant:* [Civil marriage] was, for me ... also important because, when you are also in front of the German law, you are also married. (Participant #8, Germany, Muslim)

“[Religious marriage means a lot to me], because I am a Muslim, so it's normal you know. [...] It's like any religious person who marries. [It was important to get the civil marriage as well], because we are obligated to do it.” (Participant #3, France, Muslim)

Consequently, participants also sometimes employed the strategy of giving religious norms the form of a civil contract. Put differently, prior to their marriages they would request the signing of binding agreements through which religious law could be *civilly* enforced. These obliged the husband to perform certain religious duties such as the giving of the Jewish *get* or the payment of *mahr*, meaning “reward” (*ajr*) or “nuptial gift” (*sadaqa*), used in Islamic family law to describe the “payment that the wife is entitled to receive from the husband in consideration of the marriage” (Esposito and DeLong-Bas 2001: 23) and again upon divorce.

Through this process, religion acquires an even more official, “public” nature. For these participants, religious law did not necessarily need to be enforced by the civil courts, though the possibility, or even *threat*, of that course of action was real; secular law provided these women with leverage. Mere formalization in a contract seemed to suffice to gain bargaining power and translate religion as a socio-legal entitlement for these French participants:

*Participant:* You get a religious marriage as soon as you sign a contract [...]. So I did a contract and signed [...]. [The imam was present.] [...]. There were witnesses, my father was there, and he also had to sign the contract. [...] I remember [my husband] gave [me] money.

*Researcher:* Was that the mahr?

*Participant:* Yes. [...] With that money, I can organize a marriage or buy whatever I want, you know. (Participant #3, France, Muslim)

A similar attempt to tincture religious obligations with civil norms is witnessed in the attempt of the following woman to contractualize her divorce:

“It was something we had written between us, a contract, before going to the notary, [...] because we had each taken our own lawyer. We weren't on good terms at that point. [...] So we did a little negotiation. And in this negotiation, we wrote a document [...] that bound us morally. It was mostly to not forget things. [...] In that paper we had put, you know: ‘I will not oppose the obtaining of the get.’” (Participant #5, France, Jewish)

In another example of the curious interpenetration of religious and secular spheres, French civil law recognizes both the Islamic *mahr* and the Jewish *get* as giving rise to civil obligations. French courts have enforced *mahr* by virtue of the doctrine of “contractual condition of marriage” (Fournier 2010) and have held that the refusal to give the *get* can constitute *une faute*, a tort that generates civil liability for damages (Atlan 2003).

For Jewish participants from England, strategies included the use of *The Divorce (Religious Marriages) Act 2002* to pressure the husband into granting the *get*. This law enables the civil courts to “order that a decree of divorce is not to be made absolute until a declaration made by both parties that they have taken such steps as are required to dissolve the marriage in accordance with “(i) the usages of the Jews, or (ii) any other prescribed religious usages” is produced to the court.” (Matrimonial Causes Act 1973, Section 10 A(2)). The *Act* specifically refers to religious divorce and was meant to counter the *agunah* problem by providing civil courts with means to pressure the husband to give the *get* by suspending the civil divorce procedure (Douglas et al. 2012).<sup>2</sup> These types of secular interventions would appear to provide advantages for these women.

Jewish participants interviewed in England confirmed that this is an efficient bargaining tool for women:

“I drew up a ten-point thing, an agreement, which made it absolutely categorically clear: I wanted the get. [...] When we had the hearing at the High Court, the judge asked him why he hadn't granted me the get. The judge made it a condition of the Decree Absolute. [...] The judge told him he'd better address that agreement quickly, and in fact, he did.” (Participant #1, England, Jewish)

Thus, religious law was legitimated by civil law. This legal interplay was quite advantageous for the participants. The same might be said about the socio-legal contractualization of religion deployed in the shadow of the civil law.

Many women, however, went further than just insisting on private contracts, or using civil law to demand fair enactment of religious law. They availed themselves of both civil and religious divorce procedures:

“I wanted both [civil and religious divorce], obviously, on paper. But the most important is religious marriage. Now I am free. [...] Civil divorce was more... to see it on the paperwork that I am really divorced; if I want to marry after I have the right to do it. But what counted the most was religious divorce.” (Participant #1, France, Muslim)

“For me what’s important anyway is the civil divorce, as I said. [...] Well, it’s true that [not divorcing religiously] would have been bad. [...] The fact that he [pronounced the talaq divorce] relieved me because it’s still very important in religion that a man says, you know, ‘I don’t want you anymore.’ That way, in my head, I’ll be happy. I would want to be divorced religiously and civilly.” (Participant #2, France, Muslim)

It is of great significance that many of these women compared the lack of access to divorce in their religion, to the easy access afforded by the civil system. Where religious law is still used to adjudicate divorce, a push to transfer this particular competence to state law has been made—precisely to expand access to divorce (Weiss and Gross-Horowitz 2012). This points to the potentially unique way secular institutions provide leverage for these women.

Although the interviews do not lend themselves to systemizing the ways in which religious women perpetually navigate parallel avenues in secular societies, nor to outlining particular choice patterns, they do confirm that these choices represent active behaviors rather than passive compliance. This form of agency translates into a willingness to use the support of religious authorities and civil law as a bargaining chip. In a more cynical reading we might say these women play off one system against the other in order to achieve their desired goals. Women’s desire to maintain a dual identity amidst paradoxical outcomes is an expression of a particular agency that might only exist in secular societies (also see Feldman 2011). It is within the gap produced between the two that opportunities for reform or compromise can be found (Fournier 2012; Fournier 2014; Alwani and Lizzio 2013).

Indeed, these women often navigate both the religious and the secular avenues to maximize gains for themselves and their children (Woodhead 2008a; Fournier 2012). This normative overlapping might be especially able to trigger reforms from within since it permits comparative outlooks that empower religious women and inspire significant changes.

## Conclusion

The objective of this paper was not to present an exhaustive account of religious women’s complex and shifting relationship with religious and civil laws pertaining to divorce. Indeed, our sample size was small and drawing normative conclusions from it about this subject was not our intention. While our analysis shed light on how these women handle the secular/religious contradictions in their daily lives (Brems 2014; Bowen 2013; Macfarlane 2012), its main thrust was to question and probe, through the medium of ethnography, prevailing theoretical orientations in the academic study of secularism. The evidence adduced above leads us to a variety of provisional conclusions that will hopefully motivate theorists to interrogate core assumptions within the conceptual frameworks they employ.

First, we saw time and again that secular law played a significant, even determinative, role in helping our interview subjects attain the divorce status they desired. Some women, as we saw, contractualized religious norms by drawing up binding agreements outside of religious jurisdiction. Others used stipulations *within* secular law *about* religious law to assure the rights they were guaranteed by the latter (e.g., *The Divorce (Religious Marriages) Act 2002*). Still others fully embraced secular forms of jurisprudence and sought out civil divorce procedures, which trumped the strictures of religious tradition.

Judging by the results, the process of dually navigating religious and civil law endows these women with a wide set of resources for achieving desired outcomes. What must be stressed is that the mere *existence* of civil law often gave our interviewees opportunities and possibilities that they normally would not have possessed. While these women would likely not refer to themselves as “secularists,” they benefitted from state policies commonly parsed as secular.

These considerations are relevant as we assess the strong criticisms of secular states and policies advanced by proponents of post-Foucauldian traditions. Whereas these theorists are wont to construe secularism as a veiled form of majoritarian domination, one that severely disadvantages minority religious groups—all in the name of toleration, freedom of speech, and equality, no less—the data adduced above force us to question these assumptions. Codified, explicit, legally binding secular marriage and divorce laws clearly expanded the range of levers and options available to these women.

The women in question were traditionalist in their faith orientation, and this too is theoretically intriguing. Post-Foucauldian interventions often identify precisely these actors as the ones most mistreated and excluded by the discursive machinations of the Western secular state. In the cases we looked at, the presence of a secular system would appear to provide benefits to those religious women with the wherewithal and volition to seek out and exploit its provisions. That secular law played a beneficial role in these women’s lives does not necessarily negate post-Foucauldian theory in its entirety; it simply recommends a more prudent overall evaluation of the merits and demerits of secular projects, especially in the realm of

gender (see Burns 2013). Last, we'd note that our study did not demonstrate secularism's ability to exert "unconscious bodily dispositions, practices and affects" (Amir-Moazami 2013: 93). A secular formation might very well do that. Our findings, however, simply pointed to secularism's ability to impact the conscious and legalistic thought-processes of our subjects.

This leads us to a second conclusion to be gleaned from our analysis. The women in our study, far from being docile victims of patriarchal interpretations of tradition, actively sought to contest these traditions. They were clearly capable of forming a critique, not of their religions per se, but of what they viewed as incorrect and unjust *interpretations* of their faith. Many deployed considerable cunning and intellect to not only re-interpret religious law, but to devise ways of circumventing what they construed as illegitimate albeit traditional applications of its precepts.

Our participants engaged in doctrinal reinterpretation and reappropriation of religious rules. This is significant because it points to a possible avenue for reform, a suggestion that echoes the important work of numerous scholars who have contributed in significant ways to feminist reinterpretation of Muslim (Hammer 2013; Ahmed An-Na'im 2010; Farzana 2006; Wadud 1999; Mernissi 1991), as well as Jewish (Sassoon 2014; Hartman 2007; Goldstein 2001; Adler 1998; Plaskow 1991) laws and doctrine. Other theorists have contemplated potential mechanisms for creative contractual negotiation (Bordat and Kouzzi 2012; Broyde 2012; Foblets 2007) and legal innovations (Fournier and McDougall 2013; Fournier 2010).

Our data, then, suggest that proponents of the political reading of secularism may need to reassess their presuppositions about religious women's agency. The interviews demonstrated that women do make complex decisions that stand in great tension with traditional norms. They do not passively accept brute patriarchy. Rather they use the religious and secular tools at their disposal to advance their own interests. Admittedly, the question is raised as to whether these women possess agency and "genuine consent" akin to less traditionalist women who are not constrained by such rigid and codified systems. This query deserves to be taken up in future research. For now, we simply observe that secular theorists who work within the political tradition ought not assume that agency is the unique purview of women who turn their backs on their religions.

Last, it might be mentioned that our observations mesh with components of Holyoake's somewhat unsystematic reflections on the relation between women and secularism. In his "Hints to the Advocates of Women" Holyoake made much of women's agency, even commenting on famous divorce cases of his era (Holyoake 1847: 436; also see Schwartz 2010: 783). Ever a proponent of women's self-determination, he urged women to "take their own affairs into their own hands" (1847: 434). Holyoake advised them to achieve "self-dependence and a practical business-like knowledge of the world" (436). One wonders what Holyoake—considered by some to be the founder of modern secularism—would make of the type of women discussed above; religious women who, in their own subtle

way, demonstrate the "self-dependence and a practical business-like knowledge of the world" that he endorsed.

## Notes

<sup>1</sup> In order to assure that safeguards were in place for the safety and well-being of the participants, the format of the interviews as well as the questionnaire used during the interviews were reviewed by the Office of Research Ethics and Integrity of the University of Ottawa. Therefore, the data collected was anonymized in order to protect the identity of the participants and pseudonyms were used in the publications. The interview transcripts were entered into a computer file (N Vivo) for coding, management, and search. The participants were aged 28 to 72 years old with a diverse range of personal, economic, and family backgrounds. Most of the participants were working but a few were retired, studying or taking care of the education of their children. The participants from the UK were living in the Greater London area. The ones from Germany were mostly living in Berlin. The ones from France were coming from various cities and villages. Those from Canada lived in Montreal, Ottawa and Toronto. Some were born in the host community, while others had immigrated at various stages in their lives. Cultural diversity and identity varied greatly, encompassing a number of cultural and religious observance practices. Jewish participants belonged or used to belong to the Conservative or Orthodox sects and were from the Ashkenazi and Sephardic communities. Muslim participants belonged to the Sunni and Shi'a sects and were of a wide range of descent and/or origin (Algeria, Morocco, Tunisia, Lebanon, Bangladesh, Pakistan, Afghanistan, Iran, Senegal and Turkey). Some were Christians who had converted to Islam or Judaism. The research project was funded by the Social Sciences and Humanities Research Council of Canada.

<sup>2</sup> Though the *2002 Act* is open to other religions seeking inclusion within the terms of the provision, Jews have been the exclusive users so far. Muslim abstention from the use of the 2002 Act may also be explained by the fact that the Act addresses divorce refusal, a problem that seems less widespread in Muslim communities. Indeed, while a husband may refuse the *talaq* divorce, Muslim women may have recourse to the *khul* or fault-based *faskh* divorce, not to mention the fact that imams in Western Europe have been known to tend towards reforming divorce laws in the direction of granting women the right to obtain divorce unilaterally (Fournier 2004; Fournier and McDougall 2013).

## Competing Interests

The authors have no competing interests to declare.

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