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Reconciling Secular and Islamic Law

Under the headline “Sharia in the West” the relationship between secular and Islamic law has been the subject of intense polemic and hyperbole. The debate reached fever pitch when the Archbishop of Canterbury, in a rather measured and academic speech in 2010, found the adoption of sharia rules in England “unavoidable”. While the British prime minister at the time, Gordon Brown, predictably rejected the bishop`s proposal, what he and other opponents of sharia law overlooked was the large degree to which minority religious norms already *are* accommodated by secular law, short of any explicit act of recognition or official multiculturalism policy. I highlight three legal avenues of secular law accommodating Islamic law, even in states (like Germany) that never had official multiculturalism policies: constitutional law, private international law, and “optional” civil law (within the latter, some countries, like England, have explicit arbitration laws that provide space for private dispute resolution mechanisms, in our case “sharia councils”). In other words, Islamic law has long been a reality in secular states. However, I argue that secular law is not unambiguously a source of religious minority accommodation; if the liberal underpinnings of secular law (equality and individual freedom) are contradicted by certain religious norms (like those that prescribe gender inequality or free speech restrictions), secular law moves from resource to constraint.

Parallel to the secular law proving elastic to accommodate religious minority claims, there has also been a movement among Muslim religious actors to adjust and bend religious norms to secular requirements. This movement has become known as “minority fiqh”. Anthropologist John Bowen, in an ethnographic study of French banlieue Islam, has referred to it as “social pragmatism”. I close by highlighting its workings and limitations.