

Shaping Secularism in Nepal

Chiara Letizia

Introduction

On May 18 2006, Nepal's House of Representatives declared Nepal a secular state and suspended the political powers of the king, thus putting an end to the two-centuries-old Hindu kingdom. Nepal's secular status was reiterated in the Interim Constitution of 2007, without specifying which model of secularism should be established, and finally the Constituent Assembly declared Nepal a secular federal, democratic, republic on 28 May 2008.

How is secularism understood and how can it be implemented in a country with a large Hindu majority, where Hinduism and the state have, until very recently, preserved a symbiotic relationship through the institution of Hindu kingship (Sharma 2002; Toffin 2006)? This article presents some preliminary findings from research conducted in the districts of Banke, Dhanusha, and Morang, and in the Kathmandu Valley, between 2009 and 2011.¹

Since the second half of the 18th century, Nepali rulers have styled themselves and their culturally and ethnically diverse subjects as Hindu, making Hinduism an essential component of national identity. Even today, Hindu influence remains a reality in the legal system and everyday institutional practices, and there has been little attempt to reform the numerous legal provisions that are inconsistent with (what the West thinks of as) secularism or to minimise the government's interactions with religion (CCD 2009:1). The state is still involved in the management of trusts associated with Hindu gods and temples; government funds are spent on Hindu religious festivals; cow slaughter and conversion are still outlawed;²

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2 Despite its secular framework, the 2007 interim constitution still bans conversion through proselytisation and affirms a right for people to profess and practise their religion only 'as handed down to them from ancient times having due regards to traditional practices'.

Plate 1. On the day of Ram Nawami (24 March 2010), President Yadav and former king Gyanendra Shah both visited the Janaki temple within the space of only two hours. Each of them entered the temple for the puja shaded by the same honorific parasol (source: Republica, 26 March 2010).



**Mr President !...
Ex-King wants the
umbrella back.**

many laws are based on Hindu norms and values; Hindu temples are found in government buildings, schools, military camps and courts; public holidays are mostly Hindu festivals; and the President of the Republic has in many instances replaced the former Hindu king at public religious functions. In short, secularism seems to face many challenges.

Questions about the future of secularism in Nepal assume and reify secularism as a part of a modernity package that is challenging the deeply

Thus, the right does not extend to the convert. Previous constitutions contained the same provisions, all the way back to the Rana and Panchayat periods, during which they were used to exile Buddhist monks and put Christians in jail. While people are still being indicted for the crime of cow slaughter (now justified on the basis that the cow is the national animal), the number of prosecutions against proselytisation (*dharma parivartan garaune*) has dwindled since 1990 (especially after criminal sanctions against the converted were removed), and none were found to have taken place since 2002. Resistance to the removal of these bans is strong, and they remained in the concept papers of the Constituent Assembly and the new draft Criminal Code presented to Parliament in 2011.

religious and traditional Nepali society. However, a recent debate in the social sciences has historicised the very notions of secularism and secularisation and questioned their intrinsic association with modernisation (Cannell 2010). A review of the main arguments in this debate will be useful before returning to the Nepali case.

Secularism in the social sciences' recent debate

The main characteristics of secularisation—a decline of religious beliefs and practices correlating with increasing modernisation; the privatisation of religion; and the differentiation of secular spheres (state, economy, science), understood as their emancipation from religious norms and institutions (Casanova 1994)—are all interrelated in European history. Therefore, there is a general assumption that they are part of the global modernisation process. However, the debate has recently shifted to the religious and historical context in which secularism evolved, and has led to ‘an unpacking of secularity as a religious-free neutral and universal development of European modernity’ (Göle 2010: 43). So it has been acknowledged that secularisation makes sense only within the context of a particular historical transformation of Western European Christianity: the generalisation of secularisation as a universal process correlated with modernisation and transferred to other world religions and other cultural areas is highly problematic (Casanova 2009). As early as the 1980s, the anthropologist T.N. Madan (1984) questioned the thesis that the historical *process* of secularisation, which separated the two domains of ‘the religious’ and ‘the secular’ in Western society, with the former being confined to individuals’ privacy, was a precondition of modernity everywhere.

However, to acknowledge that secularism is a product of Western history specific to Latin Christendom does not imply that it is not suitable for non-Western civilisations. Rather, what needs to be considered is how the Christian Western European dynamic of secularisation has been globalised and how religious traditions respond and are reinterpreted, producing multiple formations of the secular in different historical and political contexts. These multiple secularisms should not be approached as replicas or ‘deficient copies’ of the Western original, but as distinctive formations. José Casanova suggested recently that secularism, a ‘western essentialism’, should first be deconstructed by emphasising the various patterns of secularisation *within* the West: protestant/catholic, European/

American, etc. This should open up the way to a less Eurocentric and more comparative analysis of patterns of secularisation in other secular modernities (Casanova 2010). In the same way, as Rajeev Bhargava writes, we should attend to the histories of secularism and examine the transnational and historical development of the secular idea:

Secularism too has a history made at one time largely by Europeans, then a little later by North Americans, and much later by non-western countries. Non-western societies inherited from their western counterparts specific versions of secularism but they did not always preserve them in the form in which they were received. They often added something of enduring value to them and, therefore, developed the idea further (Bhargava 2010: 65).

The task is not to catalogue the variety of secularisms in the world, but to develop new concepts and identify practices at work outside the secular/religious opposition (Cady and Shakman Hurd 2010: 8).

Scholars are calling for a 'de-secularisation' of our secularist and modernist categories (Casanova 2009) to describe contemporary religious developments. Indeed, the categories that have been used until now, such as the 'de-secularisation of the world', the 'return of religion' or the 'deprivatisation of religion', all point to a simple reversal of a postulated previous process of secularisation, and remain therefore within the same paradigm. The notion of the post-secular expresses the need to coin new concepts and to find ways of accommodating religious claims in liberal institutions (Habermas 2008, Casanova 2009, Molendijk *et al.* 2010, Rosati 2011). The post-secular debate shows that modernity does not necessarily mean the disappearance of religions from the public sphere, and invites us to abandon the model of secularity as a public space free from religious arguments, religious symbols and religious groups (Casanova 2011).³

Talal Asad (2003) has argued that the religious and the secular are neither immutable essences nor opposed ideologies and that their mutual construction as interdependent concepts gain salience with the emergence of the modern state. While secular rationality was defining law, economic

3 Casanova proposed that pluralist societies 'need to create neutral civic and political secular spaces in which all religious and non religious people can not only coexist peacefully but also partake in the same equal rights and freedoms' (2011).

relations, and statecraft in the modern world, it was simultaneously transforming the conceptions, practices and institutions of religious life (Mahmood 2009: 836). Through state and civic institutions, secularism 'has historically entailed the regulation and reformation of religious beliefs, doctrine and practices to yield a particular normative conception of religion (that is largely protestant Christian in its contours)' (Mahmood 2009: 858). The normative impetus internal to secularism reorganises religious subjectivities in accordance with a liberal political rule that is retrospectively called 'a religiously neutral political ethic' (Mahmood 2006: 328). This is why secular consciousness cannot meet the challenges of increasingly plural societies where *different* forms of religious subjectivity need to be recognised and legally acknowledged. Mahmood's reflections are relevant to the case of Nepal, as we shall see that the notion of *dharma* exceeds the notion of 'religious' constructed and regulated in opposition to the 'secular'.

Approaches to the Nepali case

Despite social scientists' deconstructions, 'secularism', translated by the expression *dharma nirapeksata* ('autonomous from/ indifferent, impartial to *dharma*'), was introduced as a contribution to the modernisation of 'New Nepal'. The concept is now embedded in public speech, at least in urban centres.⁴ If the 'package' has been delivered, it has also produced local responses that need to be examined with a view to empirically testing the western secular/religious opposition.

Fieldwork concerned with the concept of secularism itself was conducted in Nepalgunj, Janakpur and Biratnagar and to a lesser extent in Dang.⁵ The aim was to collect the views of various social agents: politicians who either launched or opposed secularist campaigns; the legal community and the police who interpret, wield or impede what they perceive as the coercive power of secularism; the religious communities that are most concerned about secularism; social activists who may link secularism and their action

4 The expression *dharma nirapeksata* was unfamiliar to many people: sometimes, while chatting about my research in the streets, I was asked if it was a new religious sect, or a new party.

5 Nepalgunj, Janakpur and Biratnagar were selected as important urban centres, each exhibiting a different population mix and reflecting the complexity of Tarai dynamics. In Nepalgunj, militant pro-Hindu and anti-Muslim organisations follow an antiseccular agenda, while the large Muslim community differentiates itself from the larger Madhesi movement.

on the ground; and lastly intellectuals who help to shape the meaning of secularism in the public sphere. I also attended District and Supreme Court cases concerning the reform of religious traditions, and followed the public debates they generated, in order to observe how they contribute to shaping the fluid notion of secularism.

It is not yet clear to which type of secularism the state is committed, and the concept is obviously still in the making. A recurring sentence in the interviews was *sambidhan lekheko chaina*, ‘the constitution is not written’, to indicate the insecure place occupied by secularism in the still undrafted constitution. However, secularism was taking shape beyond the Constitutional Assembly, through incidents between the Maoist government and religious devotees, through court cases, and also through antiseccular campaigns and demonstrations. These various events provide opportunities for a public debate to take place on the matter of secularism and relations between the state and religion. Indeed, the ethnographic enquiry into these practices and events is able to grasp the processes through which secularism is taking shape in all its complexity.

In this paper, I will focus on the meaning of secularism shaped by the campaign of 1990; on the understandings of secularism that emerge from interviews conducted in the Tarai, focusing on anti-secular discourses; and finally on two court cases concerning Pashupatinath temple and the goddess Kumari, which are respectively the first case to judicially invoke secularism, and a landmark case for secularism. The aim here is to offer a perspective from which to begin to analyse the formation of Nepali secularism, and to provide some data on local understandings of secularism and the forces which are presently shaping it.

The shaping of secularism in the 1990s

The declaration of Nepal as a secular state has been a cherished goal of the religious minorities and ethnic groups since 1990, when the People’s Movement overthrew the Panchayat regime, and provided the context for the rise of ethnic-based political identities. Nepal’s diverse populations (collectively defined with the neologism *janajati*) appeared on the public stage, demanding that the new constitution guarantee ethnic, religious and linguistic minority rights. Nepali citizens began to openly criticise Hinduism’s political role in maintaining social and economic inequalities in favour of high-caste Hindus. In this context, Theravada Buddhist monks

and laymen began a movement which demanded that the forthcoming constitution should abolish the Hindu state and declare the country secular. This was perceived as a way to achieve a multicultural, inclusive, democratic society (Leve 2007: 84). For the activists, secularism would not banish religion from public life but would recognise religious diversity and bring an end to Hindu high caste domination. Secularism was redefined as ‘the institutional instantiation of freedom of religion and religious equality’ (Leve 2007: 94).⁶

Religious activism and the movement for secularism were thus tightly linked. The same Newar intellectuals, both laypeople and monks, who introduced a reform of Newar Buddhism through Theravada-inspired modernist and rationalist ideals, also campaigned for this kind of secularism. They were soon joined by *janajati* activists in search of their ethnic identity (Letizia forthcoming, Krauskopff 2009). They even united in a common project of awareness camps to spread Buddhism among the *janajatis* and increase the number of Buddhists in the National Census of 2001 (LeVine and Gellner 2005: 234; Letizia 2006).⁷ In short, the activists who were working to promote secularism were Buddhists, who also had a modernising project of reform of their own traditional religion and a political programme to spread Buddhism throughout the country.⁸

Although the 1990 constitution officially recognised ethnic minorities, it continued to declare the state to be Hindu. The campaign had thus failed to achieve its objective, but had contributed to the shaping of Nepali secularism none the less. The state and religion were not separated; instead, the democratic state had the duty to recognise and be the patron of all religions equally.

Towards a multi-religious Nepal?

The strength of this vision of secularism as ‘equal respect and opportunities for all religions’ was sustained in the period of transition towards the

6 For example, the Theravada monk Aswagosh wrote: ‘Secularism means that the state must be unbiased towards all religions. It does not mean that religion must be stopped’ (Aswagosh 1994 quoted in Leve 2007:94).

7 The same type of activism can be observed today for the 2011 Census. It seems to remain captive to the logic of pro-Hindu state activists, who argue that Nepal should be a Hindu state because 80% of Nepalis are Hindus.

8 Their activism led some activists and intellectuals belonging to Magar and Tharu communities to adhere to Buddhism and rewrite their groups’ history, affirming a Buddhist past (Letizia 2006 and forthcoming).

republican regime and its first governments. The first step considered 'secular' by media and the public was the declaration by the Nepal government in late 2007 of a number of Buddhist, Muslim, Christian, Madhesi, Tharu and Kirant festivals as national holidays in a calendar hitherto permeated by Hindu festivals.⁹ Although this was considered as a minor gesture by activists who expected the government to take bolder moves towards implementing secularism, it was nevertheless welcomed by the religious minorities, who felt that they had been heard, and newspapers contributed to this positive appraisal. As Deepak Thapa notes, 'Even that little has certainly helped religious minorities feel greater ownership of the state, and that can only be considered a progressive step' (Thapa 2010).

However, the reaction of the majority of the population has not always been equally positive. A Hindu Newar lawyer based in Nepalgunj commented that secularism brought only more holidays for obscure festivals:

When I arrive at the Court, sometimes I find it closed because of a holiday, but nobody knows which kind of festival it is. What is this, a multi-religious or a secular country? When I was young, there was no need for these national holidays: we were adjusting. In Kirtipur the majority of students were Newar, so at the time of Sithi Nakha the school was almost empty; and when another community was having a *mela*, the students belonging to it were not coming to school, saying: *yo hamro sithi nakha ho* ('this is our Sithi Nakha'). Everything was accommodated locally, but now everybody wants to be recognised nationally.

Even the Maoists, the strongest advocates of secularism,¹⁰ did not take radical steps to implement it in the period during which they led a government coalition under Prime Minister Pushpa Kamal Dahal.¹¹ Despite

9 The National Council of Churches reports the announcement of the national holidays of Christmas, Lhosar, Chhath, Eid Bakr, Maghi (Tharu) and Ubhauri Udhauri (Kirant) on 28 December 2007: http://nccnepal.org/news/news_details.php?newsID=14bfa6bb14875e45bba028a21ed38046f5e41

10 Secularism has been part of the Maoist agenda since the 40-point demand was submitted to Prime Minister Sher Bahadur Deuba on 4 February 1996 by Baburam Bhattarai on behalf of the United People's Front Nepal, before the launch of the 'People's War'.

11 However, there were some significant events, labelled by detractors as the beginning of a Cultural Revolution, such as the 'incident' during Indra Jatra in 2008, when Finance Minister Baburam Bhattarai announced a cut in government funding for religious

their own atheist views and ideological opposition to religion, which they see as a means of exploitation of the poor,¹² in this domain they adopted a gradual path to change and adhered mostly to the mainstream vision of secularism. For example, a Maoist leader in Dhanusa District considered the respect for all religions and the inclusion of other religious minorities in Nepal as ‘an initial step toward real secularism’:

We understand that people don't know our ideology of historic materialism and that if we impose it, breaking temples, the people will escape; so we try to educate them: on one hand we honour their religious faith and on the other we discuss with them. (...) Here in Nepal, rulers control people through religion. The state should be kept away from any religion. It is difficult to do this in a short time and is a difficult task because people are attached to religion: if we start showing secularism directly to them, we will become very unpopular. But we can bring the topic to a big debate. For now the state should respect people's faith. As a first step, it is better to start to give equal treatment to all religious followers. Nepal has been under Hindu religious influence, but there are so many other dharmas: Islam, Jaina, Christians and ‘natural religion’ (*prakritik dharma*). It is our duty to bring awareness to these people, to tell them that this country is theirs too. With the development of modernity, I think that there will be a gradual disappearance of strong religious beliefs. (Interview, February 2010)

From 2008 onwards, public spaces such as Khula Manch or Tundikhel in

festivals, and the infamous events surrounding priest appointments at Pashupatinath temple, which are discussed below.

- 12 More than religion itself, the Maoists condemned its manipulation by ‘reactionaries’ who they said oppress people under the mask of Hinduism. They sought to abolish all forms of exploitation in the name of religion. During the ‘People’s War’ (1996-2006), the Maoists adopted inconsistent attitudes towards religion. They declared that religion was ‘the opium of the people’, occasionally prohibited ‘superstitious cults’ and sometimes deliberately violated religious taboos. But they also summoned shamans, worshipped deities, visited pilgrimage places, etc. Anthropologists have showed how Maoists communicated and built their movement around symbols reinterpreting Hindu notions of place and sacrifice (Ramirez 1997; de Sales 2003, Lecomte 2004, 2006). In 2006, the Maoist leader Prachanda declared: ‘We respect all the religious beliefs of the masses, even if our party teaches its officials and cadres a more scientific and secular point of view’ (<http://espresso.repubblica.it/dettaglio/Prachanda:%20Our%20Revolution%20Won/1431107>).

Kathmandu were at times taken over by Muslims, Christians, Tamangs, Gurungs, and Madhesis for national meetings and ceremonies: as a result of secularism, the capital city is becoming visibly multi-religious. In many interviews, the notion of *space* for religious minorities emerged as an important theme associated with secularism. In the words of a Dalit Maoist cadre in Janakpur in 2010:

In Janakpur there is a majority of Hindus, but there are minority groups like Buddhists and Christians: they are kept in a small corner and oppressed. Here there is Janaki Mandir but not a Christian church, even if people want it. For a true secularism, we need also a church and a Buddhist temple. (...) In Lumbini, one can feel to belong to Buddhism and feel authorised to adopt Buddhism, while here it's a big stage for Hindus only. Here is the Janaki city, the land of Hinduism; we don't get the environment to feel that there are other religions. People should be given the possibility to practice secularism, that is first of all to give them a *place for worship*. There should be an *environment* for secularism.

The theme of space—for all the communities to prosper peacefully, without any of them suffering as a result of the growth and strength of the others—is also evoked in the metaphor shared by a Nepali Congress leader in Janakpur:

A *dharmasapeksa*¹³ state is like a small pot overcrowded with many plants; a *dharmanirapeksa* state is a big piece of land where you transplant all those small plants from the little pots, to give them all more space to grow and prosper.

In the Tarai the presence and visibility of religious communities is not only measured in space (religious sites, processions, etc) and time (festivals in the calendar) but it is also a matter of sound, as loudspeakers playing Kirtan Bhajan and the Muslim call to prayers compete in the soundscape of many cities.

13 The term *dharmasapeksa* (*sa+apeksa*) = 'dependent on/ related to dharma', 'dharma-oriented', is used to qualify the Hindu state.

A brittle and contested secularism

The ethnic and religious minorities who pushed through secularism, supported by the Maoist insurgents, have been largely unrepresented on the political scene, which remains dominated by high-caste Hindus. Even among the politicians who supported the inclusion of secularism in the Interim Constitution, there was no strong commitment towards it and many did not really want it, nor were they clear about its implications.¹⁴ For them, secularism was above all else a move against the king, in the hope of removing the religious basis of his power, rather than a more specific project of society.¹⁵ Thus, it was not uncommon to hear ‘pro-secular’ politicians state unofficially that they disagreed with secularism or were not sure that it was appropriate for Nepal. A leader of the Madhes Janadikari Forum (MJF) told me during an interview in Biratnagar that the MJF was a secular party, but off the record he admitted:

We are not really convinced about secularism; my feeling is that secularism has been declared because there was no choice: the political discourse was taken over by the Maoists, and became so popular, that if someone opposed secularism, he automatically came across like a royalist.

Many politicians and some members of civil society who had supported secularism felt that it had been hastily declared, ‘in a dictatorial way’. They seemed to have forgotten the 1990 popular movement and the members of the Nepal Federation of Indigenous Nationalities asking for secularism in a mass demonstration in front of parliament in 2006.

By the beginning of 2010, it was evident that the May 28 deadline for completing the Constitution would be missed: as the larger peace process and constitution drafting process stalled, anti-secular voices progressively rose. ‘Right-wing’ forces became active in many ways: in religious rituals and campaigns in favour of the restoration of a Hindu state; in the discourses

14 Subash Kattel (2010) remarks that while big political parties expressed their commitment to secularism in their manifestos for the CA elections, no party explained or defined the word.

15 My interviews confirm Sudhindra Sharma’s opinion that politicians accepted secularism as a part of the Maoist agenda and as a way of weakening the Hindu monarchy, but did not give much thought to secularism *per se* (interview, October 2009).

of Indian Shankaracharyas and BJP leaders; in the attendance of the former king at religious festivals to gather support; in the campaign of the Rastriya Prajatantra Party for a referendum on secularism and monarchy, etc. (see Appendix).

These actions, actively supported by some members of the government, were simply dismissed as royalist and reactionary, and left unaddressed by politicians and intellectuals, with a few exceptions (Acharya 2010; Thapa 2010). As Deepak Thapa argues, these voices for a Hindu Nepal were silencing any effort

to start reflecting on how to build a secular Nepal that was inclusive and respectful of religious minorities. However, I would add that a debate on building a secular state cannot simply ignore or dismiss these Hindu fears, but has to take them into account in order to show clearly what secularism is not. Labelling these voices as 'reactionary' will not remove their power, because they are built around widespread arguments, fears and slogans, which the Hindu Right can develop into extreme political positions.

Fieldwork in the Tarai: Understandings of Secularism

Secularism in the Tarai: a fluid and multivocal notion

My research in the Tarai focused on local perceptions of and reactions to secularism. The Tarai is a place where, hypothetically, the impact of secularism might be more keenly felt, because of the simultaneous presence of deeply religious Hindu communities, a significant number of Muslims (15%), an increasing number of Christians, and groups linked to the Bihar and Uttar Pradesh-based Hindu Right. Generally, *dharma nirapeksata* appeared to be a sensitive, uncomfortable concept, sometimes generating

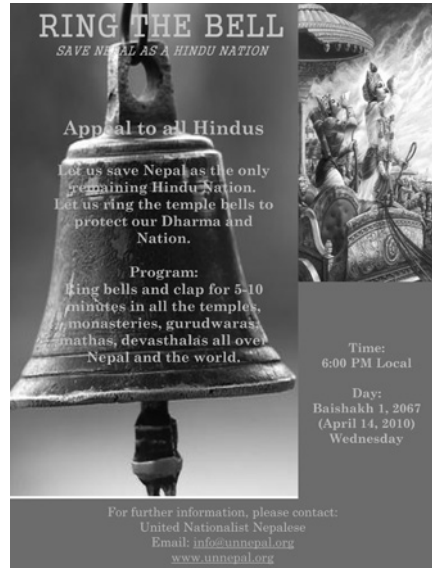


Plate 2. One of the many campaigns for a Hindu state launched in the Spring of 2010

strong feelings. Thus, one of the enriching (if sometimes demanding) features of fieldwork there was that one-to-one interviews often turned into collective debates, attracting passers-by. Secularism also appeared as a fluid and multivocal notion, differently understood according to the religious, political, social and geographical situation of the individuals, with a potential for conflict.

Few of the intellectuals whom I met outside Kathmandu legal circles understood secularism as a wall of separation between Church and state. Echoing the 1990s vision, people belonging to religious minorities, *janajatis* and civil society understood secularism as the abolition of Hindu primacy, the opportunity for all religious groups to receive equal recognition and a step towards inclusiveness. Maoists welcomed secularism as a step towards the elimination of a deep-rooted feudalism based on Hinduism; for the Hindu fundamentalists, it was a despicable and uncalled-for measure attacking the identity of the country and leading to communal violence; Muslims saw it as a good opportunity to get the *shari'a* enacted as their community's own personal law and to receive more state support for their community's schools (*madrasahs*); Christians, (mostly evangelical Churches) understood secularism as implicit permission to proselytise, despite the letter of the law.

Many of the people interviewed (opponents and supporters alike) associated secularism with a sense of freedom (feared or welcomed), and saw it as a step towards the religious freedom of groups and individuals. Many explained secularism as the freedom to select and change one's religion (although the current constitutional right of religion is restricted to following one's ancestral religion). The conflict between this sentiment of freedom and the letter of the law was often expressed, even by police and public prosecutors, who felt uneasy about the enforcement of old laws in a changing environment.

The Muslim Perspective

When Muslims started pressing for the recognition of their separate identity, disentangling themselves from the Madhesi' voices, religion entered the scene of Tarai politics. The Muslim vote was one of the reasons for the Madhesi parties, often dominated by Yadav or Maithili high castes, to include secularism in their manifesto. A MJF politician in Biratnagar stressed that he had to back secularism, realising how fundamental the support of the large Muslim community was to his party. However, I was

told by a Tarai Madesh Loktantric party leader in Janakpur:

Secularism in Madhes means the relation between Hindus and Muslims. Leaders of Madhesi parties do not trust Muslim voters as they do not vote on the basis of party loyalty, but instead follow their religious leaders. So, many [political] leaders will not go for secularism, because the political behaviour of Muslims can't be counted on and these leaders prefer to have the stable support of strong and dominant Hindus.

In both cases, the Muslim community's vote is understood as a factor that must be taken into account when deciding whether to be for or against secularism.

Among Muslim leaders and activists, the understanding of secularism as the equality of all religions serves the minority rights agenda of providing special treatment to marginalised religious groups. Thus, the citizens of a secular state must have the freedom to practise their own religion and follow their own way of life, and different personal laws (in this case *shari'a* law) should be applied to different communities. Muslim leaders in Biratnagar are sure that secularism, if it is well implemented, is a promise to different religious communities that they will be free to expand and affirm their rights. Never the less, they emphasised that after the declaration of secularism their situation had worsened. Fear and insecurity had grown in the community, as 'Hindus started attacking Muslims as if Muslims had asked for secularism', which they had not done. In their view, secularism has brought to Nepal the kind of communal hatred which can be witnessed just over the Indian border. It prompted a strong reaction from Hindu fundamentalist groups, which feared that secularism would make Muslims stronger and Hindus weaker.

The Hindu Activists' Perspective

During my research I met many people whose views were opposed to secularism.¹⁶ Since there had been no systematic information campaign

16 The choice of fieldwork locations and the people met influenced the research outcomes deeply. A different view of secularism would surely have emerged had the fieldwork taken place in Thabang in Rolpa, or among Buddhist Newar activists in Lalitpur. The anti-secular voices encountered here speak neither for Nepal as a whole nor for all Tarai districts.

after the declaration of the secular state, the task of explaining secularism to the masses was carried out by the Hindu Right activists.¹⁷ Paradoxically, those who tried the hardest to define secularism and who gave it the most space and importance in their discourses and actions were its opponents and not its advocates. This allowed them to capitalise on fears that secularism would empower other communities and weaken Hindus.

However, anti-secular Hindu voices should not all be lumped together. In my interviews with Hindu activists, a third line emerged, somewhere between pro-secular state republicans and pro-Hindu state royalists. The promotion of a Hindu state was clearly disentangled from its former association with the monarchy.¹⁸ Apart from royalist associations and parties like the World Hindu Federation and the Rastriya Prajatantra Party Nepal, there are other organisations and parties promoting a Hindu republic, such as the Nepal Janata party¹⁹ and the Hindu Swayamsevak Sangh (HSS).²⁰

The views reproduced below were expressed not only by royalist and republican Hindu groups, but also by Hindu progressive and democratic intellectuals involved in social activism and the reform of their communities (e.g. human rights lawyers fighting the tradition of menstrual seclusion and social workers leading programmes for women's empowerment). The assumption that activists who challenge religiously-sanctioned discriminatory practices must also be supporters of secularism proved to be wrong. For example, a progressive Hindu lawyer in Biratnagar who fights against dowry practices was strongly anti-secular. Her fight was not motivated by secularist convictions but rather by a wish to reform Hinduism and remove the bad aspect of this tradition that she attributed to a degeneration of original Hindu practices, due to lack of education.

17 By 'Hindu Right' I mean the Nepali associations and political parties connected with the Indian RSS, the Shiva Sena, the BJP and the VHP, which share an anti-secular discourse. Among them, I interviewed Nepali members of the Vishwa Hindu Mahasangh, of the Shiva Sena Nepal, of the Janata Party (a branch of the Indian BJP founded in 2006,) and of the Hindu Swayamsevak Sangh (founded in 1990 and affiliated with the RSS).

18 The journalist Amish Raj Mulmi (2010) asks: 'Can Hindutva be a political ideology without the monarchy, traditionally seen to be the 'Protector of the Hindus'? Or is it compatible with the current strain of left-wing fervour, which remains committed to a secular, republican state?' (See also Mulmi 2011).

19 The Nepal Janata Party also proposes its own form of federalism.

20 The HSS is an umbrella organisation for many associations. In the Tarai, its hostels (*Janajati Kalyan Ashram*) are widespread. Food, shelter and education are provided there to poor young *janajatis* in order to educate them in their 'real culture', i.e. the Hindu religion.

This research confirmed that legal prohibitions against conversion and cow slaughter are the focal points around which the opposition to secularism is based. ‘Secularism’, for my Hindu interviewees, meant allowing proselytisation and cow slaughter, the former understood as the unfair conversion of illiterate people who would be lured by economic advantages (fuelled by a ‘Christian conspiracy’) and the latter as non-Hindus asserting their right to eat cows. The most recurrent argument was that secularism, because it gives religious minorities these rights, leads to disrespect and communal violence.²¹

In theory secularism is a good thing, but in practice it is an insult to religion, as it is the freedom for any religious community to not respect others’ religious sensibilities and this can bring only violence and disrespect. People will be free to eat cows in front of Hindus and offend them.

Secularism will give free way to cow slaughter, hurting the feelings of Hindus: people will kill cows as the Maoists do in their banquets; Muslims, in the name of secularism, think that they have the right to slaughter cows: in Nepalgunj you can see cow meat in the market, before it would have been unimaginable!

Secularism allows conversion, attracting poor and illiterate people through money to another religion: in this way the non-proselytising Hindu religion will disappear.

I fear that behind secularism there is an evil design. I am afraid that outer forces will be luring poor families and make them inclined to become Christians.

This is often connected with the argument that secularism (and the conversions to other religions that will be its result) will cause Nepal to lose its identity and culture:

Christians are converting our indigenous people. In this way, they are taking away by force our Nepaliness (*nepalitva*), our dignity as Nepali; and they are so rich and active! Mr Lama will become Christian, Mr

21 Christian or Muslim leaders, when questioned about secularism, would indeed summarise it as the freedom to proselytise and to select the religion of one’s choice.

Mandal will be Muslim, our identity will be lost and will become an historical memory.

In the world there are so many Muslim and Christian countries: why can't Nepal, where the majority is Hindu, be a Hindu country?²² There are many countries for Islam and Christianity, but only one for Hindus, our holy land of Gods and Goddesses. Secularism is the loss of the last Hindu holy land.²³

Another frequent criticism is that secularism was decided upon without consulting the population, by only a few politicians. Moreover, the critics say, it is a foreign concept imposed by countries which do not implement true secularism within their own borders:

It is a politically imposed decision that is not supported by the population, which is in majority Hindu and should have the right to decide by referendum.

No country in the world has a real secularism, as it is a contradiction in itself. In the US they have secularism in the constitution, but it is not a real one: why do you want us to be secular if the American president makes his oath with his hand on the Bible, and the Queen of England is the chief of the Anglican Church? So why do Western countries want to impose in Nepal what they did not achieve for themselves?

Interviewees tend to equate secularism with religious tolerance. They observe that secularism is not necessary because religious harmony has always prevailed in Nepal and that Hinduism itself is a secular religion, all encompassing, tolerant and respectful of all religions, neither dogmatic nor proselytising. Proselytising religions are therefore considered as a disrespectful disruption of toleration and harmony:

When the state was Hindu, 16 lakhs Muslims and many other minorities lived peacefully in Nepal. The only result of secularism has been the

22 The percentages quoted in the interviews vary from 85% to 92%, ignoring the data of the Nepal Census of 2001, according to which 80.6 % of Nepalese are Hindu).

23 I was also told that global Hinduism, referring here to Hindu communities in Canada and the United States, envisions Nepal as the 'Hindu Vatican' (Daman Nath Dhungana, personal communication).

loss of this religious harmony and the opening to violence. Hindus are scared of Muslims and are reorganising to defend themselves.

In Hinduism there is no dogma, no Pope; you are free to believe or not, to practise or not, and you can follow different rules and sects; nobody can excommunicate you; Hinduism is freedom and toleration. Secularism means to be free to practise and respect the freedom of others. And we Hindus live and let others to live.

Part of the anti-secular rhetoric is built on the argument that the term 'secularism' (*dharma nirapeksata*) is unthinkable for Hindus, since it literally means 'keeping away from *dharma*'.

What is the *dharma* of the sun? To give light. What is the *dharma* of humans? Humanity, to do good to others. *Dharma nirapeksa* means to keep away from *dharma*; just hearing this word, I feel sick. I am not ready to digest it. If we humans don't follow humanity, our *dharma*, we become like beasts.

This understanding of the expression *dharma nirapeksa*, and the conviction that Hinduism is a tolerant 'secular religion', need to be analysed further.

The unpalatable meanings of dharma nirapeksa

The expression *dharma nirapeksa* is problematic for many Hindus, as it can be understood either to diminish Hinduism so that it becomes merely one of many religions, or as an invitation to live without *dharma*. The common understanding of *dharma nirapeksa*, as the separation of the state from a particular religion and as the equal treatment of all religions, has both required and crystallised an important conceptual shift in the meaning of *dharma*: the word can now apply to *any* religion practised in the country. However, for many Hindus, *dharma* still refers *only* to Hinduism (and all religions included in the 'Omkar family'). In the 1935 and 1963 Muluki Ain, only Hinduism was defined as *dharma*; non-Hindu religions like Islam and Christianity were called *mat* 'beliefs', which must not 'ruin *dharma*' through proselytisation (Gaborieau 1994: 63).

According to Angur Baba Joshi (2006: 78-82), *dharma* 'sustains the individual, the family, the society, the nation and the world', and touches every aspect of human conduct from birth to death and beyond death.

The author distinguishes Religion, defined as ‘customs based on faith and systems of worship’ with communities distributed into different religious pigeonholes, from Dharma, which spiritually unifies the whole world. The latter is referred to as the ‘eternal and original dharma’ (*sanatana dharma*) which precedes all other religions in a temporal and hierarchical sense. *Dharma* is the ever-present order of the universe which, strictly speaking, cannot be called ‘Hindu *dharma*’, for it is everyone’s order, Hindu and non-Hindu alike (Burghart 1996: 283).

One of the ‘undesirable’ effects of *dharma nirapeksa* is the reduction of this multi-level notion of *sanatan dharma* to the narrow western sense of ‘religion’ as one of the many religious paths (considered equal by a neutral state) that an individual can select and follow.²⁴ This ‘diminishment’ is also mirrored by the revolutionary change proposed by the Fundamental Rights Committee of Nepal’s Constitutional Assembly in 2009, which added the ‘right to not believe’ to the classical definition of ‘right of religion’.²⁵ This may explain the strong image used by a Hindu lawyer from Janakpur to illustrate *dharma nirapeksata*: ‘Secularism is like sons strangling their own father’. *Sanatan dharma*, as the father of all religions, is being supplanted by its offspring (Christianity and Islam) because of the freedom and legitimacy that secularism has given them.

As observed above, one of the interviewees stressed that he could not ‘digest’ the expression *dharma nirapeksa*, which he saw as an invitation to people to live without *dharma*, the very thing that makes them human. The meaning of secular as ‘not being related to religion’ here shifts from a characterisation of a non-religious state and comes to designate a non-religious individual. In order to address the indigestible nature of this expression, it may be useful to come back to Angur Baba Joshi’s definition

24 This Hindu diminishment of post-secular Nepal sharply contrasts with the Hindu encompassment noticed by Sondra Hausner (2007) during the five years of Gyanendra’s rule (2001-2006).

25 The Right of Religion in the Interim Constitution of Nepal 2007 reads as follows: ‘Every person shall have the right to profess, practise and preserve his/her own religion as handed down to him/her from ancient times (*parapurba dekhi caliaeko*) having due regards to the social and cultural traditional practices (*pracalit samajik evam samskritik paramparako mayarda rakhi*)’. In the Preliminary Draft of the CA Committee for Fundamental Rights and Directive Principles of 2066 the sentence was changed in this way: ‘Every person shall have the freedom to profess, practice and preserve his or her own religion in accordance with his or her faith (*aphno astha anusar*), or to refrain from any religion (*kunei dharmabata alag rahane*)’.

of *dharma*. There is a basic *dharma* common to all human beings (*manava dharma*) and a special *dharma*, according to the social position of the individual (mother's *dharma*, daughter's *dharma*, Guru *dharma*, disciple's *dharma*):

The attributes of Dharma (...): patience, forgiveness, self control, non-stealing, purity, wisdom, knowledge, truthfulness, not getting angry etc. (...) are inborn positive basic human qualities which are eternal and universal and which uplift and qualify human beings to be the crown of creation. (...) Manifestation of humanity is proportional to the demonstration of these attributes in daily life. *Otherwise, one is reduced to no more than a beast in human form* (Joshi 2006: 79; emphasis added).

In the same way as there is a King's *dharma*, there is also a subject's *dharma*. The late king Birendra once said: 'In Nepal, the monarch and his subjects have been governed by Dharma, a system drawn from the Hindu religion. The King cannot change this value system' (Shaha 1975: 7 quoted in Hachhethu 2003: 57). The religious identities of the state and of the individual are connected. Hinduism is not a private matter; it needs the state's laws if it is to be sustained. So it is understood that a *dharma nirapeksa* state will not be governed by the religious ideals that support the order of things and that people will live without the spiritual development that defines their true human nature (and their place in society).

Not surprisingly, the debate on secularism has focused on the expression itself (Kattel 2010). Activists in both India and Nepal have rejected the notion of *dharma nirapeksa* and campaigned for alternatives, including *sarva dharma sapeksa* 'in relation to all the dharmas' (Rayamajhi 2010), *sarva dharma sambhava* 'equal regard to all religions' (Shrestha 2006) and *pantha nirapeksa* 'denominationally neutral' (Srinivas 2009).²⁶

Rayamajhi (2010) affirms that the meaning of *dharma nirapeksa* is 'state without religion', something that cannot exist anywhere in the world, as no political power can eradicate values, beliefs and traditions. He admits that the word 'Hindu' has come to be associated with caste discrimination, which

26 *Pantha* can be translated as 'sect', i.e. a way of life chosen by a religious group to which one chooses to belong, such a group being termed *sampradaya*. *Pantha nirapeksa* means that the state is not biased toward any sectarian viewpoint, but that all the differences will be included in an encompassing vision of *dharma*.

results from a misunderstanding of Dharma. Therefore, as an alternative to both a Hindu state and a *dharma nirapeksa* state, the author suggests ‘the new republican state of Nepal respectful to all *dharmas*’ (*sarva dharma sapeksha lok ganatantra rajya naya Nepal*). The alternative to *dharma nirapekshata* is ‘a state built on the moral basis of the *sanatan arya vedic dharma*, which teaches friendship, love, equality, justice, tolerance’ (*sahishnuta*).

This is what the BJP wants for India and hopes to apply in Nepal as the only remaining land of Hinduism. The BJP’s position is ‘that Hinduism be given a special status and be recognized as a cultural identity equivalent to Indian-ness, so that one could be a Muslim Hindu, a Christian Hindu or a Buddhist Hindu’ (Gellner 2001: 338). This was the logic of the words of Kamal Thapa, the chairman of Rastriya Prajatantra Party Nepal :

When we talk of a Hindu state, we are not only talking about a Hindu nation: our emphasis is on the Hindu identity of the state. We are not in favour of the state protecting one particular religion. What we would like to have is a Hindu state with total religious freedom (...) Hinduism has become a part of Nepali culture. Thus, by retaining a Hindu state, we are trying to promote a unique national identity (Thapa 2010).

While tolerance is a positive value in society, able to reach social spaces and practices that cannot be legalised, the Hindu Right’s usage of notions of tolerance and equality between all religions, in an attempt to appropriate secularism and incorporate it within its political rhetoric, is a different thing altogether (Cossman and Kapur 1997). If secularism simply means respect for all faiths, then there is no need for it, because Hindu religion already wholeheartedly welcomes all religions. Actually, it is the only religion that expresses true tolerance: proselytising religions do not, because they claim to be superior. Therefore, the right to propagate one’s religion—an integral part of religious liberty—is deemed by the Hindu Right to be a violation of tolerance and religious freedom (Cossman and Kapur 1997: 147). In this logic, only a country based on Hinduism can be truly secular, and the notion of toleration ends up meaning the supremacy of Hinduism.

Nepal’s steps toward religious pluralism are often read by the Hindu majority through a language of religious tolerance. However, the notion of *sarva dharma sambhava* ‘equal regard to all religions’ and the notion of *dharma nirapekshata* requested by Nepali civil society from 1990 onwards

need to be unpacked and disassociated from one another. The former is based on religious tolerance while the latter is based on social inclusiveness and participation; the former's equality is formulated on a spiritual level and does not necessarily get rid of hierarchy, while the latter's equality is based on the notion of equal citizenship. As Richard Burghart writes:

Harmonious religious relations are not a matter of mutual respect by private practitioners of different religions of equal value; rather religious harmony derives from the acceptance of one's place in a system of unequal value. In other words, the basis for religious tolerance does not lie outside the system of religious ideas itself (1996: 291-292).

The language of religious tolerance (mostly used by the Hindu majority) operates within the Hindu religious system while the language of religious pluralism (mostly used by *janajatis* and religious minorities in their call for *dharmanirapeksata*) exits this system and operates at the level of minority rights, invoking respect between religions of equal value.²⁷

The shaping of secularism by the judiciary: two court cases

In the absence of any constitutional or governmental guidance as to the meaning of secularism, the concept has so far been shaped through public debates and incidents. Some of these gave rise to petitions before the Supreme Court, giving the judges the opportunity to rule on various aspects of the relation between state and religion, and thus to play a crucial role in defining the fluid notion of secularism. A growing judicial activism in Nepal has challenged many laws and practices as being unconstitutional and inconsistent with human rights through the system of Public Interest Litigation (PIL).²⁸ These petitions also dealt with questions involving religious traditions, as in the two cases briefly analysed here, referred to as the 'Pashupatinath case' and the 'Kumari case'.²⁹

27 For instance, the following exchange took place in the Biratnagar jail between a Hindu serving a sentence for a crime connected to anti-secular activism (A) and a Muslim co-prisoner (B). A: 'Secularism is about equality of religions and religious harmony, but we already had this: there was no need for secularism to get that'. B: 'Yes, in the past there was harmony, but it was under your control, while now there is freedom'.

28 See article 107 of the Interim Constitution of Nepal 2063.

29 These cases are mentioned only briefly here, but detailed articles by the present author are in preparation (Letizia (forthcoming) a, Letizia (forthcoming) b).

The ‘Pashupatinath Case’ is a collection of six PILs concerning events that took place between the end of 2008 and September 2009, around Nepal’s foremost Hindu temple.³⁰ Here only one of these events will be recalled, together with the petition on which the Supreme Court focused for its detailed judgement. At the end of December 2008, the Pashupati Area Development Trust (PADT) governing board, headed by Nepal’s then Prime Minister, the Maoist leader Pushpa Kamal Dahal, appointed new Nepali priests in Pashupatinath temple, breaking with the old tradition of appointing Bhatta priests from South India. This occurred in the context of a double campaign by the UCPN (Maoist) which was asserting the sovereignty of the Nepali nation against the old tradition and demanding transparency and accountability with respect to the rich donations received by the priests and their assistants in the course of their ritual performances.³¹ The appointments provoked massive protests, both at home and in India, where they were supported by the BJP. Three PILs were almost immediately filed asking the Supreme Court to invalidate this action, and the court promptly issued an interim order to revert to the *status quo*. Faced with this, the Prime Minister revoked his decision and the Indian Bhatta priests were allowed to resume their regular duties at the temple.

One of the PILs, filed by lawyers Lokdhoj Thapa and Binod Phunyal, argued the principle of secularism.³² The petition did not limit itself to the particular appointment of the Nepali priests; more importantly, it attacked the whole structure of Pashupatinath, pleading that the law which created the PADT violated the principle of ‘separation of Church and state’ and was unconstitutional. The Trust itself, not just the appointment of the priests, was the problem and a new organisation instead of the present state-controlled PADT should be established so that the temple could operate free from state intervention, in compliance with the concept of secularism. This petition, to the best of my knowledge, gave rise to the first Supreme Court

30 On Pashupatinath temple and the complex dynamics of belonging around it, see Michaels (2008, 2011).

31 A settlement of these issues was recently announced, whereby donations will now be handled by the Ministry of Culture and priests will be paid by the state (Ankit Adhikari, It’s official: Priests to get salary, www.ekantipur.com/the-kathmandu-post/2012/01/23/nation/its-official-priests-to-get-salary/230746.html)

32 Lok Dhoj Thapa and Binod Phunyal vs. Prime Minister and Patron of Pashupati Area Development Trust, Office of the Prime Minister and Council of Ministers *et al.* Writ Petition no. 0366 filed on 16 Poush, 2065 B.S (31st December, 2008).

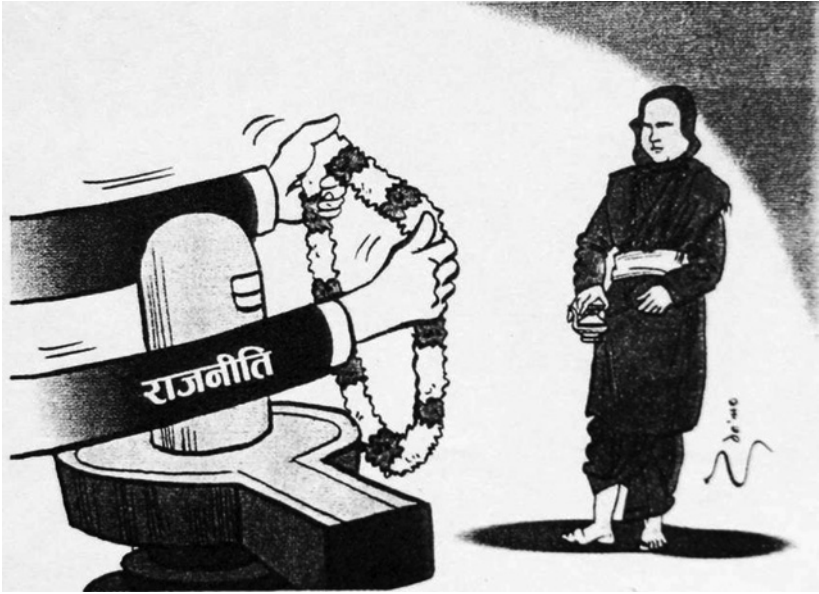


Plate 3. The events at Pashupatinath and the relationship between politics and religion were commented upon in many articles and cartoons

(Source: *Nagarik*, 8 September 2009.)

decision explicitly dealing with the newly declared secularism. In defending the right of religion, the petition introduced the idea of ‘freedom from state interference’, which was inconceivable under a Hindu state. The petition articulated secularism as a principle whereby the state may not intervene in the activities of religious institutions or in the exercise of the citizen’s right to religion, the focus here being that it is the religious institution which needs protection. The petitioners also pointed out the absurdity of appointing (Maoist) non-believers as the patron, the president and the secretary of the Trust, and charging them with the maintenance of Hindu institutions. This line of argument owed much to the confrontational actions of the Maoist government, which marked the end of the symbiotic relationship between the state and Hinduism. This government challenged the system and awoke protest against what was perceived as a ‘cultural revolution’, thus prompting a reflection on the need to separate state and religion.

It is somewhat paradoxical that the first petitioners to judicially invoke secularism after its declaration did so in order to protect a time-honoured Hindu tradition from the new secular state led by Maoists, using the notion of

secularism against the very same party which had so strenuously militated in favour of a secular republic. These incidents and the debate that followed led to a shift in the meaning of secularism, to incorporate the principle of non-interference of the state in religious matters.³³ In the judgement rendered on 11th January 2010, the court agreed with this principle, though it did not take this opportunity to make a more robust analysis of secularism. It also agreed that the management of Pashupatinath should be reformed and made accountable for the large amount of donations made by devotees. The court held that an overall reform of the Pashupati area was necessary and that a detailed master plan dealing with the worship, the priests and the *guthi* of Pashupatinath, should be immediately made in 'accordance with the values of a secular state'. The court recommended turning to India as a proper model for Nepal to study, as a secular state with a large number of Hindus. As things now stand, the Court has ordered the formation of an expert committee to study this complex situation and make recommendations.

Far from being only a Kathmandu-based incident, this case inspired similar discourses in other temples. For example, at the Janaki temple in Janakpur meetings were held of traditional stakeholders to confront the fact that they could no longer rely on a government led by a king, the protector of religion, but had to deal with a government led by Maoist 'atheists'. Thus, the language of secularism was used to secure the autonomy of the religious domain, which should be given rights to administer itself, and be subjected to as little state control as possible.³⁴

The second case studied, regarding the tradition of the 'living goddess' Kumari, originated from the concerns of human rights activists. In 2005, Pun Devi Maharjan, a Newar human rights lawyer, brought the tradition

33 Nilambar Acharya, chairman of the Constitutional Committee said: 'We want to free religion from the state: why should religion be burdened by the wrongdoings of the state? Rulers do good and bad. If religion is not separated, all the bad doings of rulers will be directed towards religion. The state is an instrument of coercion, with the military, the courts, prisons, laws; but religion is an institution of love, it is so different, why should religion be linked to these institution? This is why we are making Nepal secular. We want to free religion from the state, otherwise what the state does, Hindus will be blamed for' (Interview, 21st April 2010).

34 The idea of 'independence from the state' pleased the Mahanta of Janaki Mandir, despite his prior anti-secular convictions. It could be called 'a second line of defence of the tradition', an eventual space for compromise.



Plate 4. Nepal's President, Ram Baran Yadav, receives a blessing from the Kumari of Lalitpur (source: Basanta Maharjan 2010).

of Kumari under the scrutiny of the court in the name of child rights.³⁵ The case did not concern only the famous (national) Basantapur Kumari, who traditionally blessed the king and now blesses the President during her annual chariot festival, but concerned all the children worshipped as Kumaris in the Kathmandu valley.³⁶ The PIL was filed while the state was still a Hindu kingdom, and the verdict was rendered in 2008, when the state had become a secular republic. No explicit reference to secularism was made in this case, and yet it allowed the judges to reflect on the relation between religion and the state, and their judgement can be seen as a landmark case for secularism. The very fact that the goddess was scrutinised in a court as a human being capable of being deprived of human rights mirrors the political and symbolic transformation of that period.

The petitioner surveyed the conditions of the Kumaris and the restrictions imposed upon them by their ritual life (which are stricter for the national Kumari), and argued that the Kumari tradition violated numerous legal provisions, including the Constitution of Nepal, the

35 This case has been first studied by Axel Michaels (2009).

36 On the cult of Kumari, see, among others, Allen (1996), Shakya and Berry (2005).

Children Act, and the Convention on the Rights of the Child 1989, to which Nepal is a signatory. The petitioner did not seek to abolish this cult, but to reform it so that it would conform to human rights standards. She argued that unless the human rights of these children were fully guaranteed, the tradition could eventually die out. During the case, representatives of the Newar community invoked the right of religion, affirming that the Kumari tradition was its exclusive domain and should not suffer any ‘outside’ intervention. They were refusing the reduction of the living goddess, whose status is above mundane rules, to that of an ordinary child. They also denied any wrongdoing.

The 2008 judgment³⁷ strikes a delicate balance between the claims of Newars to their traditional religious rights, the position of the Hindu majority (to whom almost all judges belong and for whom the Kumari is a revered tradition), the importance of the Kumari as a national deity, and the claim that the state has a national and international legal duty to uphold human rights. The court established human rights as the primary set of values of the state and pronounced the primacy of social reforms based on human rights over traditional religious practices:

If any custom or tradition has caused any infringement to the fundamental rights [...] this Court is competent to enforce the enjoyment of rights thus infringed. This court may also issue an order prohibiting such custom or tradition by law. In case of conflict [...] religion must yield to provide space for social reforms. Religious practices cannot be an impediment to social reforms. [...] The State may prohibit such practices and dogmas if they tend to create impediments to any human rights (Bhattarai 2010: 130).

The existence of state values that are independent from and prevailing over those of the religious tradition are an essential requirement of the notion of secularism. Without referring to the principle of secularism, the court thus established one of its cornerstones and helped to secularise the newly declared secular state, by distinguishing the domain of the religious

37 Pun Devi Maharjan vs. Govt. of Nepal, office of Prime Minister and Council of Ministers and Others. NKP 2065 B.S. (2008) vol. 50 n. 6: 751-776. The verdict has been republished by the National Judicial Academy in both Nepali and English in a collection of landmark decisions of the Supreme Court on gender justice (Bhattarai 2010).

(practised by communities) and the domain of human rights (protected by the state).

However, the court determined that the Kumari tradition itself did not infringe the human rights of the Kumaris, using the argument that the rules applied to them are not based on written tradition but on ‘oral traditions and beliefs’ and thus are not inherent to this tradition: any Newar could modify these rules. The court recognised the Kumari tradition as an integral part of Newar culture and explicitly considered Newars as ‘agents of change in their traditional custom and practices in tune with the times’. Indeed, the court provided a forum for this to happen: after the main hearing in October 2006, the court ordered the constitution of a committee of experts, all Newar (including the petitioner herself), to study this issue and to submit a report within three months.³⁸ This gave members of the Newar community an opportunity to look at their own tradition with ‘secular eyes’ or at least to compare it with secular human rights values. Such a committee offers an example of the constructive role played by the court in shaping new understandings of the religious tradition, as a powerful forum for raising awareness and negotiating reform.³⁹ The court refuted allegations of child labour and took great pains to distinguish ‘child labour’ from ‘Kumari work’ (that is, sitting on her throne to receive worship) and to identify the latter as an essential part of a particular Hindu and Buddhist devotional practice.

However, in the end, the court acknowledged that *past* Kumaris, due to confusion and backwardness, may have been deprived of their fundamental rights and held that the state must help and support them, as it is ‘the duty of the state to work for the promotion and improvement of its religious and cultural customs’. In the judges’ view, the state should appreciate the Kumaris’ contributions to the cultural and religious life of the nation, and should make arrangements for their social security. The judges finally ordered the creation of a new committee to conduct a study on how the Kumaris’ rights can be promoted, and also issued an order to the

38 The report of the committee was presented to the Supreme Court in 2007, but both the petitioner and the representative of the stakeholders felt that it did not take into account their vision. They therefore filed their own dissenting reports, later published in Vajracharya (2009).

39 The composition and terms of reference of the committee outlined by the Court in the Pashupati case also indicates that it will serve not only as a think-tank, but also as a discussion forum for stakeholders from all sides.

government to implement the report of the committee once it is submitted.

With these fine distinctions, the judgment avoided labelling the Kumari tradition as a discriminatory practice, while leaving space for change and reform. The judgment assumed a distinction between religion and the state: the court and the other branches of the state have secular ends, and yet they engage with religion to enact social reform and to ensure compliance with constitutionally-recognised human rights.⁴⁰ However, this primacy of human rights does not involve any intention to diminish the presence of religion in the public sphere. Instead, the state has a duty to promote and support this religious custom, which is considered valuable for the social, cultural and religious life of the nation. Actually, no one involved in the court hearings paused to consider whether secularism precluded the continued financing of the Kumari tradition by the state.⁴¹

The Pashupatinath case and the Kumari case both illustrate a rather unusual form of secularism. This ascribes an active role to the state in both supporting and reforming religious traditions, in clear contrast with the neutral stance and no-relation policy that is generally seen as a mark of secularism in the West. These cases are contributing to the evolution of the notion of secularism in a Nepali context. However, the limits of this emerging notion have only just begun to be outlined and tested and they will certainly be tested further if real inclusivity is implemented. Both cases deal with the Hindu-Buddhist religious traditions of the majority of the population, and are associated with national pride. They also have been debated among the high-caste Hindus who dominate the legal and political fields. The Pashupati case already shows the necessity of at least amending the state-religion institutional links. The Kumari case did not extend to any consideration of whether the President receiving a *tika* from the Kumari might amount to a failure to exercise his secular office. However, what would happen if a Muslim president was to celebrate the festival of Eid in his capacity as Head of State? Court cases involving the relationships

40 This engagement with religion is also a prominent feature of the Pashupatinath case, to the extent that while the judgment acknowledges that the state should not interfere, it also orders a thorough review of the temple's institutions and practices.

41 That secularism could not possibly mean the removal of state funding was clearly manifested in the outrage of the Newar community during Indra Jatra in 2008, when the Maoist Finance Minister announced a reduction of government funding for religious festivals in his budget speech. His decision was quickly revoked after intense popular protests.

between religious minorities and the state will certainly modify and shape the notion further; and a truly inclusive policy which allowed a significant number of persons other than high-caste Hindus to occupy positions of authority at the Court and in the government would naturally lead to (and be a reflection of) a more effective separation between Hinduism and the state. This is something that is difficult to imagine in the current situation.

Conclusion

The data discussed in this paper point to a distinctive form of secularism in the making. This recognises religious communities and their festivals and gives them a space in the public sphere (e.g. the inclusion of minorities' festivals in the national calendar, or the Muslim request for their own personal laws). So far, secularism has not prevented the state from financing Hindu religious institutions, but has instead been seen as an opportunity for religious minorities to claim equal support. The state is given the active duty to enhance and reform religious traditions, as both the Kumari and the Pashupatinath cases showed.⁴² So far, the notion of separation between state and religion has been legally invoked only to protect a Hindu religious institution from (non-Hindu) state control. The analysis of the processes shaping secularism in Nepal suggests that a model of secularity as a public space free from religious arguments, religious symbols and religious groups is untenable in practice. What conceptual framework could be used to describe this form of secularism? And how might this model assuage the fears expressed by Hindus? The normative reflections of Rajeev Bhargava on an (idealised) Indian form of secularism and his notion of 'principled distance' (2010: 63-105) may be of some help here.

Bhargava argues that Indian secularism has to differ from the classical liberal model, which dictates strict separation between religious and political institutions and recognises individuals and beliefs but not groups and practices (Bhargava 2010: 25-26). The circumstances of India (and the same could be said for Nepal)—an enormous diversity of religious communities; social practices emphasised over individual beliefs; many discriminatory religious practices in need of reform—dictate that religious freedom must also include the right of religious communities to carry out

42 The Court assumed it had full jurisdiction to guide and oversee the disentanglement between state and religion, and to define the contours of the future relationship between them in the light of Indian experience.

their own practices, and that equality of citizenship applies also to the religious groups to which citizens belong. In the absence of a unified religious organisation, reform within Hinduism can hardly be initiated without the help of the state. Bhargava introduces the notion of ‘principled distance’, which entails a flexible approach to the matter of state intervention in the religious domain or its abstention from it. The state has secular ends and is institutionally separate from religion, but it can engage with religious issues at the level of law and social policy; whether the state intervenes or not depends on what strengthens religious liberty and equality of citizenship (Bhargava 1998: 536; 2010: 87-96). This form of secularism accepts religion as a resource that ‘manifests itself as individual belief and feeling as well as social practice in the public domain’ (Bhargava 2010: 88).

Bhargava’s reflections throw light on possible ways in which secularism might be shaped in Nepal through a contextual moral and legal reasoning freed from the rigid application of a Western concept, thus reducing the potential for fundamentalist reactions and mistrust between communities. The Kumari case is an example of how religious traditions in Nepal can be analysed, questioned, reinterpreted and yet also upheld by the judiciary as a response to the challenges of state secularisation. The Pashupatinath case also seems to be going in a similar direction, and to address the issue of the boundaries between state and religion. This could lead to a ‘religionisation’ of the courts, which are being called upon to decide what religion is and what it is not. However, I suggest that this distinctive form of secularism could find more acceptance in Nepal ‘by embodying the idea of respectful transformation of religions’. This would be in the line of ‘a venerable tradition of religious reformers, who tried to change their religions precisely because they meant so much to them’ (Bhargava 2010: 91). As shown in the Kumari case, the notion that religious traditions must accept the challenge of modern times is widely accepted and allows for substantial reforms to take place without hurting the ‘religious feelings of the people’ that are recurrently invoked by fundamentalists.

While I have suggested in this article that secularism in Nepal should not be appraised with reference to a normative western model, I have also attempted to demonstrate that the redefinition of secularism as a local version of ‘religious harmony’ cannot satisfy the claims for equality and inclusion for which *dharmā nirapekshata* has been a rallying call since the 1990s. I have proposed that *dharmā nirapekshata* should be distinguished from

the notion of religious tolerance, through which the Hindu Right tries to encompass minorities, presenting Hindu *dharma* as neutral, so that attempts by religious minorities to assert their rules, their needs or their religious subjectivity appear to be deviant and threatening. As Brenda Cossman and Ratna Kapur have remarked, 'the formal equality of the Hindu Right means that the dominant community becomes the norm against which all other communities are to be judged' (Cossman and Kapur 1997: 147). The state seems to be acting neutrally only when it reinforces the practices of the Hindu majority. So, if Hindus do not need special rights (to the extent that legal rights are based on Hindu cultural norms and practices) why should minorities ask for them?

It could be argued that secularism in Western countries (which is a product of a particular religious history, producing a particular concept of religion) also presents itself as a neutral space and considers diverging religious subjectivities as exceptional. Both Hindu tolerance and Western secularism imply the norm of a majority offering a neutral space for religious minorities, provided that they do not deviate from the norm (like, for instance, Muslims in France or Christians in Nepal). A way out of these normative models can be found only through the identification of pragmatic solutions in a process of continuous, respectful and self-reflexive compromise and experimentation.

The elite of Nepali social activists, lawyers and politicians, Western-educated or working with Western advising bodies,⁴³ and brokers of Western notions of secularism, will have to negotiate the coexistence of different understandings of and oppositions to secularism in Nepal, and in the Tarai in particular. Nepal is a post-secular laboratory, where the state's policy must walk a tightrope, upholding 'absolute' secular values such as equal citizenship, and yet balancing the Hindu majority tradition, Hindu fears, and the claims of minorities for social, political *and* religious recognition. The emerging form of Nepali secularism may not merely contribute to a rethinking of the Western categories of the secular; its continuing evolution may also be most instructive for European countries whose multiculturalist model is in crisis as they come under pressure to accommodate religious diversity.

43 Among them, an important role is played by the Centre for Constitutional Dialogue, an initiative of the UNDP project 'Support to Participatory Constitution Building in Nepal'.

Appendix

The dark months of Nepalese secularism, February-March 2010

12 February

At the inauguration of Siva Mandir in Janakpur, Nischalanand Saraswati Shankaracharya gives a speech in favour of monarchy and the Hindu Kingdom. He affirms that it is necessary to have the rule of the King to have a Hindu state and to save Nepal's 'Hinduness' (*hindutva*), as Hindu religion is disappearing from the world.

On the same occasion, the Mahant of Janaki Mandir says that the 601 members of the Constituent Assembly cannot impose secularism in a country where there is a majority of Hindus.

To the disbelief of Maoist cadres, the Maoist leader Prachanda worships a buffalo in a religious camp in Chatara, Sunsari district, to appease the



Plate 5. A cartoon mocking political leaders, including from the UML and UCPN (Maoist), who along with thousands of other people attended Swami Ramdev's yoga camp in Kathmandu in March 2010

(source: *The Kathmandu Post*, 1 April 2010).

bad influence of Saturn (no party, Maoist included, wants to alienate Hindu voters).

22 February

The Rastriya Prajatantra Party-Nepal calls a strike in the Kathmandu Valley demanding a referendum on secularism, federalism and republic.

Deputy Prime Minister Sujata Koirala attends a religious ceremony, where she declares that the demand for a Hindu state cannot be ignored and must be incorporated in the Constitution. She says that Hindus form 85% of the population and that ignoring the feelings of the majority in the Constitution will trigger a catastrophe in the country. She states: 'A Constitution framed without encompassing the grievances and agenda of Hindus would be futile and meaningless'.

The Free Student Union in Valmiki Campus issues a press statement demanding that Nepal be declared a Hindu state and that 'ancient religions, norms and values of the Nepali Society be preserved'. They add: 'We will not be able to accept a secular State' (...) Hindu religion is the backbone of the country and it is the identity of the country and it should be protected at any cost'. They demand that a decision on this issue be taken by a referendum.

1 to 9 March

Kalidas Baba conducts a 9 days fire-sacrifice (*Rudracandi Akanda Mahayagya*) for the restoration of a Hindu state, attended by the ex-king. Many politicians attend to express their support, including NC leaders Krishna Prasad Bhattarai, Khum Bahadur Khadka, and Vice-President Paramanand Jha, all of whom make pro-Hindu, pro-monarchy speeches. According to Kalidas Baba, even Maoist leaders attend during the night.

13 March

Back from Haridwar, Vice-President Paramanda Jha openly supports the restoration of a Hindu state and holds meetings with pro-Hindu organisations in Kathmandu.

22 March

Former president of Indian Bharatiya Janata Party (BJP) Rajnath Singh, attending GP Koirala's funeral in Kathmandu, declares that he would be

very happy if a Hindu state was restored in Nepal and that his party will always support this agenda.

An underground group called Bhisma Ekata Parishad enforces a violent strike in Kailali and Dadeldhura districts, in support of a Hindu state and the cow as national animal. Nepal Shiva Sena chairman Manoj Shrestha issues a statement expressing solidarity with the strike.

24 March

President Yadav and former King Gyanendra visit Janaki Mandir in Janakpur in order to celebrate Ram Nawami. With only two hours difference, they enter the temple for the *puja*, both covered by the honorific parasol and accompanied by the temple's Mahanta. Gyanendra gives a TV interview, where he says: 'I do not think that monarchy has ended, this is an hypothetical question (...) If we turn the pages of history monarchy has faced ups and downs, exits and entries are common.. Let the people decide what they want'.

28 March

Former Prime Minister and founding leader of NC Krishna Prasad Bhattarai declares that the 'excellent' 1990 constitution must be revived (as the promulgation of a new statute for May 28 is not possible) and that federalism, republic and secularism were 'hurriedly imported concepts'. The fact that political parties in the Constituent Assembly are divided on these concepts, he says, shows that they work against Nepal's genuine identity and needs.

29 March

Kamal Thapa, chairman of the Rastriya Prajatantra Party Nepal (in the vanguard of the pro-monarchy and pro-Hindu state movement) gives a interview in *Republica* national daily, titled 'Girija Babu was completely in favour of monarchy', where he explains that a Hindu state is compatible with total religious freedom.

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