

# Faithfully Secular: Secularism and South African Political Life<sup>1</sup>

Annie Leatt  
University of the Witwatersrand

## Abstract

One of the most dramatic changes in the governance of South Africa since 1994 has been the move away from the Christian political theology of apartheid to an explicitly secular legal and political regime. This process of secularisation has brought South Africa into line with the majority of national polities in the world. But there has been very little attention to date to the form of secularism emerging here; its framing of the presence of religion in public and political life, and its forms of governmentality. This paper develops a basic model of state secularism that can assist in examining its post-apartheid forms in comparative and global context, and points to some of its emerging limits.

## What is Secularism?

Secularism as a concept is both complex and ambiguous. It has multiple historical and intellectual genealogies, and its literature is often characterized by the intermingling of normative and descriptive registers. As a political philosophy, secularism denotes religion and politics divided in order to remove absolute truth claims and their defenders from coming into conflict within the polity. Secularism requires not only the institutional differentiation of religion and state, but also the establishment of a regime of political rationality. The public realm and the citizen under secularism are to be ruled through law and policy untainted by the realms of the unseen.

It is by now a truism that the loss of faith predicted by early secularisation

theories has not taken place. But while personal faith has endured into the 20<sup>th</sup> and 21<sup>st</sup> centuries, even if in quite altered forms, secularisation as a theory of state is hardly challenged. It is certainly the formal and legislated system of relation between states and their national religious communities across the globe. There are very few exceptions. The Vatican and Iran are perhaps the only surviving theodicies. And Israel and Ghana are interesting cases because of the political investments of Jewish ethnic nationalism and Pentecostalism respectively.

But aside from this handful of countries, the contemporary world is comprised of secular constitutional democracies and a few secular socialist states. South Africa joined this majority when it became a secular democracy in 1994. However, recent trends within secular states towards “the return of religion”—including the rise of neo-conservative religious right in the USA as well as political Islam—have called into question the public or political status of religion under conditions of secularism.

This is the ambiguity of secularism as a political philosophy: At its most basic level, secularism separates out and distinguishes domains of religion and politics. This differentiation, at the same time establishes them in relationship. It thereby generates zones of contestation and mutual appropriation. Some of the confusion in both academic and popular debate about secularism stems from the nature of this relationship, the forms of which differ widely. In this article I suggest that a distinction between two models of secularism—two historical and ideal types—can contribute to clarification. These models are presented briefly here.

## **The French Model: Secularism as the Appropriation of Religion’s Powers to the State**

The first model, what I will be calling the “French” model, developed in the turmoil of the Reformation. The Enlightenment launched an attack against the powerful institution of the Roman Catholic Church in Europe from the 17<sup>th</sup> to the 19<sup>th</sup> centuries. Its critique was wide ranging and covered domains as diverse as epistemology and hermeneutics as well as theories of state and peace and progress.

Many of the European academics currently debating the “return of religion” and the status of secularism as a political philosophy are working in this historical and geographical context. Despite their quite different approaches, Hans Blumenberg ([1966] 1983), Talal Asad (1999; 2003; 2006), and Claude Lefort (1988; 2006) for example, share the perspective that the separation of sacred and secular, politics and religion is an effect of secularism resulting from the rising might of the state under modernity.

Their scholarship returns to secularism’s origin in order to show that it involved the often violent appropriation of the powers of religion to the state. Its historical roots are coterminous with the emergence of the modern nation-state, coming into being in the Peace of Westphalia in 1648. This treatise, signed by the warring states

of Europe and the Pope, put an end to the religious wars between Protestants and Catholics after the Reformation. Blumenberg suggests that this peace was only possible because founded on a massive appropriation of Church goods to the state, including land, property and the right to educate and collect tax (Blumenberg [1966] 1983). As the power of the Roman Catholic Church was diminished by the Reformation and the splitting of religious allegiance across Europe, the emerging modern nation-states took on much of the privilege and obligation that had previously belonged to the all-powerful church. This led to the nationalisation of religious property during the French Revolution. The violence of anti-religious fervour during the Revolution included a riotous desecration of Catholicism (Burleigh 2006). This fervour was not only limited to France. Anticlerical laws were passed in one Catholic state after another including in Mexico in 1905, banning religious orders, religious education, the wearing of clerical robes, and the clergy from either voting or criticizing government officials (Burleigh 2006: 124).

In extreme manifestations of this attack on religion inspired by the Marxist critique of religion as false consciousness, Jacobins and Maoists conceived of the possibility of the total eradication of religion and a reliance on the state for the creation of ideal society and individual happiness. Socialist utopias, while themselves mimicking some of the structures of religious language and imagination, promised a future free from religion, in which human development could be entirely self-motivated.

This anti-religious sentiment has continued, albeit in much milder forms since the Church lost much of its power, into contemporary versions of secularism in France and certain parts of Europe. This critique of religion has continued in the context of non-Christian immigrants to Europe. In this model, there is a strong disavowal of overt religious symbols in the public space. The most recent case of this is the French banning of Muslim girls wearing head covering in schools (Asad 2006). While the individual's right to religion is established in law, it is severely curtailed by visions of the common good and fears about the powers of religion to spread dissent. In this "French" form, state secularism holds religiosity at a critical distance.

In France and Mexico the dominant religion was Roman Catholicism. Other examples are to be found in the context of a strong Muslim Ulama.<sup>2</sup> Turkey is a well-known example of dramatic secularisation in this "French model". Keddie writes that the main forces for the adoption of secularising policies were nationalism, modernisation, and the centralisation of control over politics, economic life, and society (Keddie 1997). The sustained attack against religion that took place in this "French" model has in fact led to somewhat reduced levels of personal religiosity, certainly in institutionalized forms. Western Europe is downright anomalous in terms of personal religiosity, and Keddie shows that religiosity in Turkey declined quite significantly in the aftermath of Turkey's radical political secularisation.

Gill and Keshavarzian (1999) examine the history of state-building in Iran. This

is an important case exactly because the Iranian Revolution indicated a faltering in the confidence in the idea of progressive secularisation. They found that between the mid 1920s and the mid 1930s, the Iranian prime minister went from complete support for Islam to ordering the mandatory unveiling of women, and firing on protestors “in Iran’s most holy mosque” (Gill and Keshavarzian 1999: 433). The explanation for this dramatic shift, they say, lies in the institutional interests of the various parties in the early years of state formation and consolidation, each attempting to control resources for institutional survival and growth. They argue that the subsequent Iranian revolution was the result of the failure of the state to effectively centralise and control the political and economic resources that would have allowed for the overpowering of the Ulama. Thus the distinction between religion and politics collapsed.

The emerging strong and central state had to promise to deliver a secular salvation—the common good, a “good life”, public policy that secures the best interests of citizens and, in democratic polities, to listen and respond to the needs and wishes of its citizenry. Where the state fails to provide these things—good education and health care and the possibility of meaningful lives and deaths—it is possible that religion will re-emerge to overturn this historical process of the state’s increasing power under modernity, not merely in the social domain, but as an explicitly political force. There is a strong argument that state sovereignty, which is increasingly under threat under the conditions of globalism, particularly in the global south, points to a “return” of religion that is not limited to, but strongly marked in relation to Islam (Comaroff and Comaroff 1999).

Clearly, not all modern states were created under conditions of a single totalizing religious institution. A second model, let us call it the American one, is to be found in conditions of significant religious pluralism.

### **The American Model: Pluralism and the Protection of Religion from the Incursions of the State**

Historically, the American colonies, established by Protestant exiles from Europe’s religious wars, sought to protect the freedom of religious conscience and retain church independence in relation to the state. This protection was formalised during the American Revolution and subsequent Constitution in the establishment of a radical wall of separation between church and state, one that, through the First Amendment in the USA, refused the government any forms of establishment of religion.

In this model we find high levels of individual religiosity, and very strong legal protections for the right to religion and conscience. Consequently, there are few grounds for the critique or curtailment of religions by the state. Unlike in the French model, religion is not denigrated but understood to be a positive or potentially

positive social characteristic. A political and legal framework for the flourishing of religion—albeit of a limited type—is supported.

Secular arguments in favour of religion call upon social cohesion, ethics, trust, and social capital and as means for the reduction of social ills through a moral agenda closely tied with religious affiliation and personal faith.<sup>3</sup> Religion, in this model, is a potentially positive social force that can undergird patriotism and peace. It is perhaps not incidental that ideologies of self-reliance and minimalist state intervention are congruent with this form, in opposition to the more interventionist and welfarist European state.

Because of the enabling framework for religious organisations in this American model, the appearance of “bad” religion is very threatening—whether it be Jim Jones or the Branch Davidians or political Islam. State and society have few means other than violence to limit the scope of religious activities.

Perhaps the closest country to this “American” model is India with its pluralistic religious communities, high levels of religiosity, and strong legal protections for the right to religion. As is increasingly obvious in both countries however, this arrangement has allowed powerful formations of political religion—conservative Protestantism in the USA and Hindutva in India—to re-appropriate powers of the modern state in a neo-conservative coalition.

### **The Role of Religion in Secular Society**

In both models, secular politics does not completely exclude religious participation from public life. Nor does it prevent the capturing of some of the powers of religious language and imaginaries as political tools for secular ends. These models do however shape some of the conditions of interaction between the religious and political domains, whose division and relationship must be constantly negotiated. Churches and religious groupings have to develop theologies of the political, whether engaged or pietistic, and the political domain requires the state and its organs to interact with religious groupings as members of civil society. In democratic states, dominant populist religiosity can be captured through discourses of representation and affect and identity.

The influential idea of nationalism as a civil religion was first theorised in the work of Robert Bellah (1982). The literature on civil religion developed out of the American experiment in secularism, and is most appropriate to the “American model” pointed to above. By exercising the passions of political life rather than attempting to exorcise them, by providing content to the political imagination, civil religion is said to secure and constitute public life so that public deliberation is made possible (Rorty 2003). But in the USA and India, a seemingly neutral but deeply privileging civil religion creates political space for conservative religiosity in the public realm. Because religion is understood to have a positive value in this

“American” model, civil religion can contain only lightly moderated references to deities, faith claims, and ethical codes.<sup>4</sup>

A second approach to the place of religion as a symbolic or ritual structure within secular polities has been developed by political philosophers, many within the tradition of continental philosophy and working in the context of this “French” model. Claude Lefort, for example, writes about the symbolic dimensions of “the political” that are subsumed within democracies as their “empty centres of power”. The idea of being “subsumed” stems from the extent of the negation of the obviously religious under the conditions of the “French” model. Under secularism, the seeming disappearance of religion only masks the continuing presence of what he calls “the religious” (Lefort 2006). Yet, the symbolic dimension re-emerges in new and sometimes explicitly religious forms whenever there are cracks in the state (Lefort 2006).

## Religion and “The Religious”

Like all attempts to develop ideal types, these two models can at best only offer some conceptual clarity, and not a representation of the variety of forms of division and relationship within secular states. But my hope is that the distinction can provide some tools for the beginning of analysis of South Africa’s state secularism.

Before we use them though, we have to add one other element in the case of South Africa and many other ex-colonies of Africa and Asia. South Africa is marked in its attempts to institute a political and legal secularism in the context not only of the “world religions” of Christianity, Islam, and Judaism but also in the context of the realm of the customary and traditional in one admittedly awkward constitutional and political form.

Historically and normatively, secularisation developed in a Christian world and drew heavily on Christian theology in its development. (Derrida 2002; Gauchet 1997) The church of late medieval and early modern Europe provided a template for the definition of religion in the emerging social sciences (Masuzawa 2005).<sup>5</sup> Religion was monotheistic, revelatory, transcendent, institutionalised, with theologians (to interpret the texts), contemplatives (to experience the reality to which the texts point) and rituals of sacrament. Chidester’s (1996) history of comparative religion in South Africa charts the lengths that missionaries, administrators and soldiers of fortune went during the colonial past to try to make analogies between the cultural practices of black South Africans and members of “world religions” that were more easily recognisable to the emerging European theories of religion.

From this “world religion” template comes the endless debate in studies of religion about whether Buddhism is a religion or a philosophy. Or Confucianism? And what about all the local cultic and ancestor practices that gained “isms” and capitalisation in the social scientific study of religion: Taoism and Shintoism, or Animism or Totemism. What about a Traditional African Religion?

These other varied forms of human religiosity beg the question of how we are to understand the genealogy and effects and forms of secularism outside of the monotheistic or world religions. What about those places where the Enlightenment project was mediated through colonialism in places without autochthonous religious specialists or written religious texts? Where the export of Christianity by mission was taking place at the same time as its European fragmentation and weakening.

These questions point to the problematic that the term “religion” covers two broad areas of meaning, making a single definition notoriously impossible. The first denotes religion in this template; something like Christianity or at least one of the monotheisms. The second is a more general designation, quoting Lefort here, “by virtue of which the realm of the visible can acquire death, and by virtue of which the living can name themselves with reference to the dead, [in] which the human world can be guaranteed by a primal act, and whereas rights and duties can be formulated with reference to a primal law” (Lefort 2006: 156).

This second meaning suggests that the theologico-political<sup>6</sup> is a primary datum of human life out of which “religion” and “politics” can be carved as separate entities. Indeed, were there no such datum, secularism would be impossible. The considerable contestations over the limits and meeting points of the religious and the political would have no basis.

In South Africa, it is tempting to keep to the simpler taxonomy that is implied in the first meaning of religion. This would point our enquiry towards institutions that are unambiguously marked as religious, and their differentiation from and relation to the state. The dominance of Christianity politically under apartheid, as well as socially in terms of the approximately 80% of people who report themselves as Christian, would argue for that approach (Census 2001).

But, if we keep only to this limited meaning of religion, we find it almost impossible to think about secularism in South Africa today in terms of elements that are only diffusely institutionalised, or institutionalised within Christianity in forms that are sometimes called syncretic. To work with the second and more expansive term—“the religious” rather than “religion”—allows us to explore common domains of practice, language and relationship out of which the analytical and political separation between politics and religion is possible.

## **Faith in the New Nation: Notes on Secularism, the Religious and Rule**

It is beyond the scope of a paper of this length to characterise with any fullness the extent and limits of the forms of post-apartheid secularity.<sup>7</sup> What follows has the much more limited intention of pointing towards areas for further investigation. What is quite apparent, however, is that the form of secularism in post-apartheid South Africa is something of a mix between the “French” and “American” models outlined above. It

also contains, ambiguously, some of the domains of traditional authority and customary law in a somewhat surprising continuity with apartheid rule.

Apartheid South Africa was not very secular. While there were some distinct areas of practice, Church and state overlapped sociologically in the National Party (NP) and the *Nederlandse Gereformeerde Kerk* (NGK). In its political-theology, Afrikaners were the chosen people of God, bonded in covenant over the slaughter of their enemies in pursuit of the Promised Land. State resources were used as a foundation for religious education and the creation of racialised Christian subjects through Christian National Education.

Indirect rule with its reification of ethnicity and the administrative control of the “homelands” via traditional authorities and customary law complemented Apartheid’s Christian statecraft. Law and leadership were taken by the South African government as the political of the theologico-political datum of pre-colonial life in Southern Africa. Its religious was galvanised and formed by missionary Christianity and then African Independent Churches that largely disavowed politics. The various institutionalisations of religiosity within Christianity nevertheless left large areas of cultural practice officially or partially un-institutionalised and not un-systematised; customary marriage, circumcision and virginity testing, lobola, healing and divination, and ancestral practices among them.

The use of the religious as an aspect of governmentality<sup>8</sup> made the religious a site of struggle, and gave to churches and traditional leadership some grounds for critique. Dutch Reformed theology became an object of intense public and political theological debate, culminating in its being declared a heresy. Having given political authority to the Bible, political critique was also often theological (Klaaren 1997). A vision of social equality grounded in individuals all made in God’s image was used to declare the idea of God’s creation of divinely ranked “peoples” illegitimate and immoral. Having banned political organisation, some churches became nodes of racial solidarity and political mobilisation.

Having given political authority to customary law and traditional authority in the “homeland states”, the question of tradition functioned as a site of political contestation. The IFP and some “homeland” leaders re-asserted a virile traditional empowerment. The Black Consciousness Movement and African Nationalists critiqued the ethnic nationalism employed by National Party rule, and posited instead a modernist black or Africanist empowerment in opposition to the traditional.

Some of the features of apartheid’s use of religion have framed the forms of secularity in post-apartheid South Africa. Secularism is an overt political and legal stance in the post 1994 political dispensation. The Constitution has excluded all but nominal references to God, given equal recognition to the variety of faith traditions and cultural practices in South Africa, and deinstitutionalised Christianity in schools (Chidester et al. 1994).



## Post-Apartheid Secularity

In terms of both pluralism and positive regard for religious membership, South Africa displays significant similarities with the American model. South Africa is a religiously plural country, not only in the presence of many faiths, but also within the wide variety of forms of Christianity. There is state support for the presence of religion in social life, and increasing attempts to mobilise social cohesion associated with religion for social reconstruction. This includes partnerships between Faith Based Organisations and statutory welfare and health services. While more marked in the Western Cape, policies founded on ideas of social capital and moral regeneration are increasingly employed.

There has of course been a huge project of nation-building in South Africa that has instituted a form of civil religion that is also congruent with the American model. Philippe Salazar has shown, for example, that many of the contents of post-apartheid political discourse have been shaped by religious oratory from the struggle. He traces the roots of terms of nation-building, such as reconciliation and transformation, to the theology of Karl Barth as used by Desmond Tutu (Salazar 2002).

One of the most interesting questions arising in South Africa's secularisation is the relationship between social and political domains, in which there are clear disjunctions. The recently published South African Social Attitudes Survey investigates a range of "national", "identity" and "moral" issues. Notwithstanding the problems of measuring such things, their results pose interesting questions for the South African state (Pillay, Roberts et al. 2006). One of its strongest findings is that the opinions of the vast majority of South Africans contradict the values and entitlements of the Constitution. "South Africans still come across as deeply conservative—racist, homophobic, sexist, xenophobic, and hypocritical in terms of sexual beliefs and practices. Seventy-five percent of respondents were in favour of capital punishment, 74% consider abortion wrong under almost all circumstances, and 78% thought gay sex was "always wrong" (Pillay, Roberts et al. 2006). In fact, the average set of opinions on "moral" issues in South Africa closely resembles the electoral platform of the African Christian Democratic Party (ACDP), despite its miniscule, and mostly white, following.

This disjuncture between the social and the political reveals itself within the ANC. In fact, the ANC leadership were, at least in the process of political transition in the early 1990's, overrepresented in terms of the proportion and importance of socialist and secular progressive Muslims, non-observant Jews and Atheists in senior leadership. The ANC's practices in relation to religion are important because of its electoral dominance as well as the ways in which it understands the party as both the vehicle for and embodiment of progress. The ANC is a highly modernist party, particularly under the leaderships of Mandela and Mbeki, and in its politically and

theoretically dominant exile wing (Comaroff and Comaroff 1999). The socialist dynamic tends much more towards the French model's critique of religion. But it is not a uniform.

The events of recent ANC politics in the run-up to the Polokwane conference included the rise of the visibility of Christianity and tradition as elements of public political rhetoric in Zuma's successful bid for the ANC presidency. A Zulu traditionalist, polygamist, and a sometime pastor who has compared himself to Jesus, Zuma can be said to represent many of the disavowed elements of ANC politics returning.

### **Appropriation and Decline: The Soft Voice of Prophetic Christianity**

One lesson to be drawn from the French model is that the state can appropriate various domains from religion in its processes of centralisation and consolidation. One of the marked changes since the days of apartheid is the decline in the public voice of the churches, particularly their "prophetic voice". This is to be expected now that Christianity is not politicised by the government in office. But there is also evidence of competition between the ANC government and once-powerful church groupings and an appropriation by the government of some of the space opened up by that weakening.

Let us take the case of the South African Council of Churches (SACC). While not representing Christianity in South Africa as a whole, missing as it is the African Independent and most Pentecostal churches, its 26 members nonetheless speak on behalf of the ecumenically orientated, mostly mainline Christian denominations, and have included both the NGK and the Rhema Church since the early 1990s (Balcomb 2004).

In 1995 when the SACC debated its relationship to the new ANC government at its Triennial national conference, it chose to use the term *critical solidarity*. The SACC quite explicitly characterised itself as a partner in the South African nation building project, whose biggest public activity was the Truth and Reconciliation Commission (TRC). At the same time, the ANC established an Interfaith Commission for Religious Affairs, with a "spiritual function, including a chaplaincy" to ANC members.

It hardly needs saying that the TRC was a state-sponsored, government-funded, quasi-judicial, and legislated body drew heavily on religious personnel, a theology of forgiveness and reconciliation, and significant moral authority. The TRC initiated a new kind of secular political theology focussed on the nation under the umbrella of "unity in diversity", "the rainbow nation" and *ubuntu*. At the same time as this religious investment in nation-building, other elements of government policy were causing religious representatives, at least for a while, to recoil from such a close

partnership. One of the first responses of the SACC to the introduction of GEAR in 1996 was the establishment of formal channels for communication around public policy through a Parliamentary Office. The following year the Catholic Bishops Conference decided to set up its own version.

In 1997, Mandela met with religious leaders to discuss “a partnership to bring about transformation” which resulted in the formation of the National Religious Leaders Forum, an attempt to draw religious communities into a “common project of care and public morality”. Mandela, then President, stated that political and religious objectives could not be reached independently, and that “partnership” is essential in transformation and nation building.

Shortly thereafter, this Forum convened a Moral Summit, which spawned the ill-defined Moral Regeneration Movement launched at the Waterkloof Airforce Base in 2002. While it may have been convened under the auspices of the National Religious Leaders Forum, very few ministers of religion were present and much of the rhetoric in the workshop was about how churches had failed to provide moral guidance, leading the state to engage in its own programme of moral regeneration.

Dr. Tsele’s opening speech at the 2001 SACC conference offers some insight into the organisation’s crisis by that point in time (Tsele 2001). He denounced the government which “consorts with their new-found comrades in the World Bank and IMF.” He said: “we should refuse to be turned into praise singers of the state.” and “it is clear that what South Africa needs at this juncture is not a weak or domesticated SACC, but an SACC that has a clear vision of its role as an agent of transformation” (Tsele 2001). The disquiet with the situation of “critical solidarity” was such that the Conference resolved to “adopt an attitude of *critical engagement* in its dealings with the state and other organs of civil society.” Gone was the concept of solidarity.

Just after the 2004 elections, President Mbeki was invited to open the SACC Triennial Conference. In a sharply worded speech, he referred to the millions of SACC members as “the same millions who, only two and a half months ago, voted us into government” (Mbeki 2004). Keith Vermeulen (pers.com.), director of the SACC Parliamentary Office, referred to Mbeki’s intervention as fundamentally undermining the legitimacy of the churches, delivering the message that the churches had no mandate for political work. Later that same year, Archbishop Emeritus Tutu delivered his Nelson Mandela Memorial Lecture, sparking criticisms from the President’s office that he too had no mandate to speak on matters of national rule, not being a member of the ANC.

This 2004 conference opened by Mbeki later returned to the nature of the SACC’s relationship with the state, and once again re-framed it, this time in much less political terms and in the “technical” language of “development”. The new relationship was to be characterised by “*Church-State Development Cooperation*.” This conference mandated its NEC to “research and define models of cooperation

between Churches and Governments” and to “negotiate a new partnership for community development.” The conference resolutions go on to declare that “such a model of cooperation shall seek in combining the resources of the Government with the networks and capacities of the Churches, to establish equity, good governance and the realisation of the Millennium Development Goals (MDGs) in order to benefit the poorest and alleviate poverty” (South African Council of Churches 2004).

This is not the place to go into the range of factors that have weakened the SACC as a body, and resulted in their having an increasingly uncritical relationship to the state. Certainly, such a story would need to include a decade of appointment of key religious figures into state posts, including the Reverend Frank Chikane, Father Smangaliso Mkhathshwa and Dr. Tsele himself. It would also need to include the story of the establishment of an ANC religious working group in 2001 which had the purpose of “drawing critical clerics away from rebellious ANC allies and closer to the Mbeki camp” (Gumede 2005).

This decline of an openly political religious voice is characteristic of South Africa’s contemporary secularism. As we will see, it has been counterbalanced by a rise in the politicization of social concerns. For now, let us turn from the fading of a prophetic Christian voice to the new domain on which claims about the content of religious freedom are negotiated: the Constitution.

### **The Constitution as a Framework for Competing Claims**

The various apartheid constitutions all referenced God. The 1961 preamble began “In humble submission to mighty God” and declared “our responsibilities towards God and man” (Republic of South Africa 1961). The 1983 Tricameral constitution included the statement that it was a national goal to “uphold Christian values and civilized norms” (Republic of South Africa 1983). Under apartheid, sovereignty was to be found in parliament, which regularly changed the constitution by legislation. The predominance of Afrikaner political theology and tight NG Church membership in parliament goes a long way to explaining the non-secular elements of Apartheid rule.

One dramatic shift in the transition from apartheid was the establishment of a form of state, in which sovereignty shifted from parliament to the constitution. South Africa has all the features of modern constitutionalism, with judicial review and a justiciable bill of rights (Klug 2000). All legislation and court cases must be consistent with the constitution, even as it encapsulates and perpetuates potentially contradictory principles and rights. Because the constitution is the framework and therefore locus of much of the political power, it is also a new place of contestations around religion and secularity.

The 1996 constitution is a mix with respect to religion and “the religious” and

institutes elements of both American and French models (Republic of South Africa 1996). It includes a strong articulation of rights in a Bill of Rights, which includes the right to freedom of conscience, religion, belief, and opinion (Section 15.1). This provides a constitutional framework for religious pluralism.

We saw that the American model also provided for very strong controls against state intervention in the religious domain through the disestablishment clause in the US Constitution. The South African constitution does not have this provision. It also does not follow the French route of demanding the exclusion of markers of religion in state and state-funded institutions, including schools. Instead, it explicitly provides for religious observances to be “conducted at state or state-aided institutions” under certain conditions; conditions which are able to guarantee equal treatment for religious denomination (15.2a-c).

An unusual provision in the South African constitution, granted in negotiations around Muslim Personal Law provides that the “Freedom of religion, belief and opinion” section also at least potentially provides for legislation recognising marriages under religious tradition and systems of family law or tradition (Spitz and Chaskalson 2000). In addition, a separate chapter of the Constitution recognises traditional leadership as an institution, particularly in the framework of local and provincial government.

The Bill of Rights goes on to provide the right for members of cultural, religious or linguistic communities to “enjoy their culture, practice their religion and use their language” and create the necessary associations and “organs of civil society” to exercise that enjoyment, again provided it is not inconsistent with other rights (section 31.1.a; 31.1.b; 31.2).

The repeated use of the term “provided it is not inconsistent with other rights” is central to the history of contestations over religious and cultural rights in South Africa since 1996. Under intense lobbying from the ANC and women’s organisation, the constitution enshrines gender and race equality as the highest principle.

But what exactly does the right to religion, belief and conscience mean in practice and in particular cases? As laws have developed to make provision for termination of pregnancy, customary marriages and civil unions, the right to freedom of religion and conscience have been given form. New legislation that seeks to institutionalise traditional healing<sup>9</sup>, and discipline virginity testing<sup>10</sup> has brought more and more of the customary domain under the state’s purview. Court cases that have decided on the rights of succession to women and girls under customary law, Muslim marriage contracts, and the wearing of religious adornment at schools have shaped the content and limits of religious and customary freedom, and the rights of the state to intervene between claims of competing rights.

While explicitly political mobilisation of the kind favoured by the South African Council of Churches has all but disappeared, new alliances of Christian and other religious groups have been mobilised on a social agenda. In particular, the issue of

gay marriage in the Civil Union Bill as well as abortion brought together a strong coalition of Christian right churches to mobilise against this legislation. It appears that the emerging politicization of evolution in school curricula is building on this earlier coalition. New religiously based networks appear to be extending their activism to those areas in which the government has been weak in securing the happiness of its citizenship, particularly in relation to the extent of crime, HIV/AIDS and sexual violence.

## Conclusion

I have argued that it is possible to think about secularism both in terms of the forms of relationship between religion and the state, and also with respect to the space in which public discourse and institutional practice meet over the ideas of politics and religion.

I have also suggested two models of state secularism, with strong similarities between South Africa and the American model. However, some elements that were enshrined in the Constitution and the post 1994 leadership of the ANC were shown to more closely resemble the critical and anti-religious statist perspective of the French model. In addition, the continued presence of areas of customary law and traditional authority are included in post-apartheid political life in ways that are increasingly legislated.

The visibility and politicisation of the religious in a public domain can sometimes point to failures by the state in its secular promises to secure the happiness of the citizenry. The recent sea-change in the ANC and the fading of the sense of South African will open up new spaces that are relevant to the question of secularism. How will ANC President Zuma's claims of faith and tradition change ANC political rhetoric? How will the political mobilisation of conservative Christian claims attempt to reformulate the rights to religion? How will the promise of unity in diversity and *ubuntu* as everyone's humanity hold through rough times?

## Notes

- <sup>1</sup> An earlier version of this paper was presented at the Paradoxes of the Postcolonial Public Sphere Conference held at the University of the Witwatersrand in January 2008. Thanks to Deborah Posel for her helpful comments on that earlier version.
- <sup>2</sup> Or a strong Buddhist Sangha, as was the case in Vietnam, Cambodia and Japan.
- <sup>3</sup> And it is this tradition of thinking about religion that is currently being re-invoked in a range of post-socialist “development” projects that seek to instrumentalise religion for economic advancement and social stability in the developing world.
- <sup>4</sup> See Madan 1987 and Nandy 1988 for examples.
- <sup>5</sup> Their emergence is itself a consequence of the secularisation of knowledge, both scientific and social scientific.
- <sup>6</sup> And still the use of the term theology denotes something problematically Abrahamic.
- <sup>7</sup> This paper is part of a larger doctoral project that seeks to do just that.
- <sup>8</sup> Along with pass laws, and group areas and states of emergency and other forms of rule.
- <sup>9</sup> Republic of South Africa. 2007. Traditional Health Practitioners Act, Act 22 of 2007.
- <sup>10</sup> Particularly through the Children’s Bill still before Parliament.

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