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Constructing a genuine religious character: the impact of the asylum court on the Ahmadiyya community in Germany

1 Introduction

In late November 2014, German investigative reporters for *Der Spiegel*, in collaboration with the televised magazine *Report Mainz*, published a feature about the Ahmadiyya community, alleging that mosque-based organisations in charge of membership registries demanded disproportionately high fees from their newcomers in exchange for certificates needed in court hearings. Such certificates, aside from verifying membership in good standing, are also used to attest the holder's involvement in religious practices. Ahmadi asylum seekers who initially rely on state support, it was claimed in the report, were exposed to an 'extraction scheme' that increased the vulnerability of refugees in an already volatile situation. Although community representatives vigorously rejected the claim that there was any such systematic abuse of asylum seekers, and indeed the reporters made little effort to dig deeper and understand the organisational structures of the group, the state agency for refugees and asylum claims (*Bundesamt für Migration und Flüchtlinge* (BAMF) launched an official investigation, questioning the legitimacy of the documents in asylum hearings.

It appears that judges in the administrative courts were already sceptical about the credibility of the certificates. In one of my interviews with asylum adjudicators that accompanied my ethnographic work with Sikh and Ahmadiyya communities in Frankfurt and Toronto between 2003–2013 (Nijhawan 2016), a

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judge alerted me to this issue, mentioning that the courts explicitly require claimants to document a 'genuine religious character' or *religiöse Prägung*. What lurks in the background is the status of Ahmadis as a precarious minority being subjected to religious persecution, a category that has been recognised in the legal system as constituting a reasonable ground for admission. Meanwhile, it appears that the files have become more of a negotiating piece within a larger communicative context between lawmakers, individuals, and religious organisations. Ruminating about the various implications of the certificates, the possibility that demands are made in exchange for a good report, the gendered inequalities that come to the fore, and the role of lawyers who sometimes argue for and other times against the recognition of religious membership through the certificates, the judge described the situation as truly paradoxical: 'It is simply not enough that a person is in some way persecuted; he must be persecuted on the basis of his Ahmadic religion (*er muss ja wegen seiner ahmadischen Religion verfolgt worden sein*) and the Ahmadic religion has to be of personal importance. He has to be, like they say it, a person with a religious personality. [...] And this is why, besides verifying what had really happened, we always need to check how it is with his religiosity, is he at all devoted? To begin with, is he a member at all? That's why we have the certificate; but then we have to ask, is he an active member, is he actively engaged? It is a huge problem; of course you cannot look right into his heart (*sie können ihm ja nicht ins Herz rein gucken*)'.

We can already gather from this opening statement that legal processes through which particular categorisations of religious character are validated during asylum adjudications are not only based on the credibility of individual claims. Rather, they also rely on the inquisitive methods of bureaucratic and judicial fact-finding, which in turn are grounded on problematic assumptions about inner states of religiosity and normative religious practices, as well as specific cultural assumptions about what constitutes a credible narrative of persecution. Deliberations between different social actors on these issues have significant ramifications that point beyond the immediate issue of granting someone asylum.

The requirement of an authentic narrative for establishing religious character is neither innocent nor accidental to the system of refugee adjudication which, viewed from a comparative perspective, can take the form of 'religious trials' (Kagan 2010, Good 2013).[1] Bearing in mind that there is a broader context for such interrogations of migrants' religious sincerity and individuality, I want to examine the processes through which religious subjects and categories of

1 See Kagan 2010, who suggests this terminology in his assessment of refugee boards in international contexts.

religious difference are governed in liberal democracies. To be more specific, I argue that assumptions about the inner sphere of personally held religious faith as encountered above, point directly to how judicial authority, and the law more generally speaking, informs concepts of individual religious choice, interpretation, practice, and understandings of religious character as they circulate in the public realm. The implications of refugee adjudication are manifold in this respect and have long-term effects on the relationship between governments, courts, and society.

The processes through which methods of inquiry, interpretive languages and normative schemes are negotiated and translated between the legal, political and social fields are never static. In fact, the practices constituting these fields undergo rapid changes themselves, with each influx of refugees posing new challenges to the system and creating political pressure on the judiciary accompanying intense social contestations, processes we can witness all over Europe in recent years. Dagmar Soennecken (2009) argues that, certainly when one considers the post-Second World War history of German asylum law, the balance between political and judicial power has shifted over time, with the lower courts gradually taking on the role of silent lawmakers.[2] It is particularly important to consider the role of the administrative courts, because the large bulk of refugee determinations occur here through the appeal process. Even though scholars have singled out the higher level and constitutional courts as having the most decisive impact on legislative reform in the context of immigration (and religion), the role of the asylum courts is relevant due to the fact that in these courtrooms adjudicators, claimants, and various experts and community members gather routinely to negotiate aspects of social and cultural citizenship. Moreover, the asylum courts provide us with more in-depth perspectives into how norm-setting procedures around legitimate claims to protection from religious persecution work on a day-to-day basis. It is sociologically imperative here to examine how political, judicial, and social fields are framed and become regulative of conduct and practice over time.

Marc Galanter (1983, 120) argues that surrounding even the most authoritative norms there is a great deal of indeterminacy and ambiguity as to how they impact different levels of social practice. Courts can convey 'regulatory endowments' through the modes of rationality that the court rulings establish (thinking about specific 'norms, procedures, structures, rationalizations') and simultaneously by means of 'explicit authorizations and immunities conferred by the

2 Whereas most authors are concerned with the growth of judicial power with regard to the realm of political decision-making and legislative change, Soennecken is instead placing the emphasis on 'judicialization from within', which relates to how decision-makers adopt court-like procedures and rationalisations within e.g. bureaucratic structures.

courts (and the law) on an immense variety of regulatory settings' (ibid., 122). If regulatory endowments work in direct as well as indirect ways, it can surely be asked how normative ideas on religious belief and practice that are certified or invested with authorised truth claims in the courts impact on other areas of social action. When judges deliberate on religious practices in the court room, draw on legal guidelines from higher order rulings, hear witness experts, and use their own cultural reasoning to demarcate lines between people's behaviour, they not only produce legal texts that legitimate status issues but they also communicate norms and expectations that are heard and responded to by the community. Not every individual will be affected by it, yet 'religious individualisation' as a process is certainly at stake in a context in which modern law, and more precisely those occupying positions of judicial authority, make decisions that impinge on the normative rendering of individual representations of religious behaviour.

It would perhaps be exaggerated to claim that the law leads to the 'neo-traditionalisation of religion', a topic with which we have framed this section of the publication. Yet what should surface from my discussion below is an answer to the question of how terms such as 'deviance', 'tradition', and 'religious character' are rendered meaningful and become reified within particular constellations of modern judicial power. While difficult to show, these are vital issues when attempting to understand the specific effects that refugee determination processes have had on the Ahmadiyya community in Frankfurt. We can observe here how, over a period of three decades, the assessment of being a genuine refugee (of being genuinely injured in the way defined by asylum law) has become intricately linked to the question of how to be a genuine Ahmadi, that is, of being recognised in one's religious character so that the former becomes intelligible to adjudicators, who have to decide whether or not a higher risk of being persecuted is incurred.

I have organised my discussion under four rubrics. I begin with a brief normative history of the asylum court and clarify the particular role Ahmadiyya cases have had on legal clarifications of religious persecution. I then consider the problem of credibility in asylum claims and elaborate on how judges 'as final arbiters of credibility' (Good 2009) approach the ambiguity of validation (Habermas 1992). Credibility is probably the most commonly referenced topic in recent anthropological studies, which can be consulted for comparative insights. I am specifically interested in the role of intuitive knowledge (or 'gut feeling') and the use of 'imagined identifications' (Kelly 2012, 764) that characterise credibility assessments that are informed by attitudes of either scepticism or benevolence. A third section discusses the role of the judge as cultural arbiter. Here, we encounter a profound translation problem, for it is through specific rationalisations of religious and cultural difference that those seeking refuge are assessed. The tendency

is to make individual motivations transparent, yet claimants are also exposed as cultural others in this process, allegedly lacking certain traits that would make them fall in line with secular values. As the normative underwriting of judicial power is now widely debated in the literature with regard to the religion/secularism binary, the fourth and major section of the chapter examines how, within refugee legislation in international and domestic realms, a particular interpretation of Ahmadi religious character is beginning to surface. Judges not only put credibility on trial and establish narratives as legal fact, they also continuously write the meanings of religion and religiosity into legal texts. I am interested here in how to understand this process from two specific angles. First, as Didier Fassin (2013, 48) recognises in contexts of trauma assessments in the courts, we have recently witnessed a 'reconfiguration of the perimeter of persecution to include the intimate', which is most obvious in the importance given to psychiatric documents certifying PTSD and the role played by expert witnesses, such as anthropologists, speaking about atrocities in war-torn countries (see also Good 2009). I argue that a parallel resignification of religiosity occurs, which is recognised as a fluid zone stretching across a 'core area' of privately held belief and 'peripheral regions' of outwardly expressed behaviour. The courts are in need of certainty and clarity so that the legal process of granting Ahmadis asylum can make sense. Hence, in order to validate acts of religious persecution, it becomes imperative for the courts to establish a relationship between subjectively expressed belief and observed practice based on cultural assumptions of what counts as reasonable or normal expressions of religiosity. The consequences of such assumptions are particularly drastic when collectives such as the Ahmadiyya community bear the mark of either too little or too much religion in current immigration discourses. It is this contemporary constellation of religious individualisation and/or de-individualisation that this chapter interrogates.

2 Ahmadi refugees and the role of the activist court in the light of art. 16 GG

In Germany, asylum law carries a specific historical legacy. Art.16 GG (*Grundgesetz*, 'constitutional law') which values generosity over scepticism in the enactment of asylum rights was once a pillar of German post-war democratisation, and one of the foundational constitutional principles upon which part of the moral legitimacy of the new federal republic was seen to rest. Tellingly, it was not the result of a law imposed by Allied Forces but the consequence of a will for atonement that the drafters of the constitution saw as reintroducing dignity into

the law (Soennecken 2009, 121).[3] Soennecken observes that the growth of judicial power in the field of asylum did not flow directly from this constitutional principle itself. In fact, it was first ignored when Germany dealt with millions of displaced ethnic Germans – the so-called *Vertriebenen-Deutsche* – in the post-War period. In reality, it only became operative decades later, in the early 1980s, when the then prevalent ethnonational concept of German citizenship was challenged by postcolonial migrations and new refugee movements. It was during this period that new administrative procedures to fully implement Art.16 GG enabled lower courts to acquire the role of silent lawmakers (ibid., 114). The emerging significance of asylum courts was directly related to (1) the lack of political vision with regard to de-facto immigration under a then-dominant guestworker paradigm and (2) the conspicuous 'legislative silence' (ibid., 104) on Germany's asylum policy, which until the major constitutional amendment of Art.16 GG in 1996, left it to the judicial system to shape policy surrounding the refugee question. Post-1980 Ahmadi refugees arrived in precisely this period during which administrative courts acquired the role of activist courts. Ahmadis also feature in the two landmark cases ruled on by the Federal Constitutional Court (*Bundesverfassungsgericht* hence BVerfG) in the 1980s, at a time when the government began to dejudicialise the refugee assessment procedure through enhanced bureaucratisation (ibid., 128).[4] Arguably, the BVerfG ruling to recognise Ahmadis as a persecuted group in need of state protection played a major role. This legal recognition did not imply, however, that asylum status would be granted automatically. Rather, the higher courts specified procedures for establishing the critical threshold of persecution. Much of the 'fine print' of the ruling was concerned with risk assessments of inner and outer forums of religious practice. The gradual growth of judicial power in the asylum courts was partly a consequence of the newly required fact-finding missions, a scenario for which the Ahmadiyya continued to provide an important point of reference as time went on.[5]

Ahmadis continue to be systematically marginalised in much of the Muslim world. The founder of the Ahmadiyya Muslim Jamat, Mirza Ghulam Ahmad (1835–1908), entered the public sphere claiming prophetic qualities, a claim that is still largely rejected by dominant Sunni groups. Discrimination of Ahmadis must also be read within the specific historical context of state-formation in Pakistan, that is, in a context in which Ahmadis, some of whom were politically influential

3 For a more detailed discussion of this issue, see Joppke 1999.

4 Reference here is to BVerfG 54, 341 (1980) and BVerfG 76, 143 (1987), the two rulings that clarified the recognition of religious persecution under art. 16GG (see also Soennecken 2009, 130).

5 The administrative courts have been required to produce detailed evidence to evaluate group persecution status and to assess the risk for individuals to be subject to human rights violations.

leaders and members of the judiciary, became scapegoats in a political power struggle that shifted the country away from its secular constitution. Discrimination against the Ahmadiyya community, pejoratively labelled the 'Qadiani sect' after the place where the movement began, was historically motivated by contentions between political factions and religious organisations that date back to the pre-Partition period and the then central political role of the Ahmadiyya movement (van der Linden 2008). It was under Mirza Mahmud Ahmad and during the Kashmir crisis in the 1930s, argues Adil Khan (2015, 126), that the movement gradually shifted its emphasis from the 'otherworldliness of Ghulam Ahmad's Sufi metaphysics' to a broader 'populist approach that offered this-worldly gains for average Indian Muslims'. Political scientists argue that the volatile institutions and political mobilisations of the post-Partition years created the peculiar conditions for Ahmadis to assume the role of the nation's enemy (Iqtidar 2012). In addition to Islamist parties, which had as their rationale the rejection of 'continuous prophecy' in Ahmadiyya doctrine (Friedmann 1989), parties far removed from Islamism adopted the idea of Ahmadis as deviant others or delegitimised Muslims. In the period between 1974 and 1984, the 'Ahmadiyya question' gained political ascendancy, with the consequence, argues Sadia Saeed (2007, 146), that Ahmadis were disciplined into denouncing Islamic affiliation and in that sense served as the decisive figures in a process of redefining the relationship between state and religion. Boundaries 'between the centre and the periphery, public and private, lawful and unlawful [...] were debated, re-drawn, and re-inscribed in the nationalist narrative' (ibid., 146). These processes of sanctioning Ahmadis were also supported by the socialist government under Zulfikar Ali Bhutto until it was overthrown by Zia al-Haq's regime, which authored the 1984 anti-Ahmadiyya ordinance. Since then, it has become de facto illegal for Ahmadis to claim official status as belonging to a Muslim religious organisation and to practice ordinary religious lives in Pakistan. 'Posing' as Muslims, as the constitutional amendment reads, is sanctioned with up to three years in prison. Due to the widespread violence and everyday forms of social discrimination, the community decided to move its headquarters to London.[6] The exiling of the spiritual successor or khalifa furthered the transnationalisation of a religious movement that was initially limited to the proselytising activities of its missionaries. As I demonstrate elsewhere (Nijhawan 2016, 233–74), this transnationalisation resulted in a profound organisational restructuring and institutionalisation of mosque-based

6 As Adil Hussain Khan (2005, 165) points out, 'Ahmadis often compare the story of [the khalifa's] escape from Pakistan [in 1984] to the *hijra* (emigration) of the Prophet Mohammad from Mecca to Medina'.

membership groups from the youth to the elderly, and further accelerated the movement of Ahmadi refugees to the UK, Germany, Canada, the United States and other countries. Although I could not acquire the exact figures, there is no doubt that the demographic of the community or Jamat in the Frankfurt region is disproportionally high in refugees admitted from Pakistan. This has forged a negative public image and social stigma that the community is still fighting to shake off.

In the autumn of 2008, I conducted a number of in-depth interviews with legal adjudicators in the Rhein-Main metropolitan area, among them senior judges of an administrative court who had served there for several decades. The two judges I reference in this section were self-declared liberal humanists and openly critical of revisionist political tendencies in the field of refugee rights. As a result, they called for an activist role for the judiciary. Judge A remembered vividly that when he joined the asylum chamber in 1983, five years after the state decentralised the asylum system by appointing decision makers and a state representative to defend the governments' interest in the administrative courts, they were 'suddenly faced' with 500 to 600 cases of Sikh and Ahmadi asylum seekers per year. This volume would rise in subsequent years before subsiding to 'less conspicuous' numbers during the mid-1990s. In procedural terms, the administrative courts now consisted of specific chambers in which judges presided over asylum cases from a particular country.[7] They heard appeal cases which, because of the frequent use of the 'manifestly unfounded' category used in first hearings, essentially meant they were adjudicating the large majority of actual refugee claims. When Judge A began his work on Ahmadi cases, it took him almost two years to complete the 'necessary background research', a fact, he admits, which gradually led to 'an intense preoccupation with Ahmadis and Ahmadiyyat' beyond his work in the courtroom. In our conversation, he mentioned the largely dismissive attitude within society and the judiciary and described how in his own chamber the judges felt like protectors of constitutional rights in a political climate that rendered human rights vulnerable to opportunistic projects aimed at gaining electoral votes by calls to curb immigration. Seen from the perspective of the judiciary, their role was to be affirmative

7 It was assumed that in the process of gradually acquiring the necessary (legal, contextual and cultural) 'background knowledge', the judges would be in a better position to function as a legal bulwark against fraudulent claims of persecution whilst identifying those who deserved admission.

of the substance of asylum as historically manifest in specific institutionalised forms and practices.[8]

The judges' role is, of course, not adequately addressed by mere reference to the court's defiant stance in a context of rising anti-immigrant sentiments, a situation that we face once more today. Since I have just indicated that administrative courts have been exclusively focused on specific cases, the question of judicial power more generally must be looked at in relation to this country-specific preoccupation. We have a courtroom here that over more than three decades has functioned as a meeting ground for community, government and judiciary; and so the issue, I think, points beyond case law and the intricacies of asylum legislation. As the subsequent discussion demonstrates, discourses on individual and human rights and cultural and religious difference emerge in this scenario as socially ambiguous and politically consequential. Adjudicating Ahmadis who were subjected to religious persecution necessarily invokes assessments and cultural translations of the inherent religious character of the entire community claiming protection. This is where I want to shift the attention: we can see that over a longer period of time, the court's centrifugal impact is felt in the arena of institutional religion and in public discourses on social integration and religious otherness.

3 The threshold of credibility: semantic indeterminacy and judicial authority

There is little doubt among those working on asylum law that credibility assessments have formed the core of the judicial process of refugee determination. The language of credibility has become pervasive in the court room and among the public at large, be it in response to representations of mass migration and boat refugees or to accounts of forged narratives of persecution that, as Fassin (2013, 50–2) demonstrates, have elicited a generalised sense of deep suspicion that intersects with an already present inherent culture of suspicion in the state bureaucracy.[9] In asylum hearings in which trauma narratives are the essential focus, the judges' problem of dealing with the 'known unknowns' has acquired

8 Fassin (2013, 43) speaks of a 'dual historiographical and semantic legacy' in reference to the marginal space occupied by asylum law and 'the ambivalence of hospitality, [as] always in danger of hostility'.

9 See Suketu Mehta's 'The Asylum Seeker' in the New Yorker, which suggests the 'banality of deception' in asylum claims as a common trope (cited in Fassin 2013, 51f.).

some attention (Kelly 2012, 765) and anthropologists have looked at the broader implications of the certification and narrativisation of endured suffering (Fassin and d'Halluin 2007; McKinney 2007; Fassin and Rechtman 2009). In international contexts of adjudicating refugee claims, the reference to such credibility assessments (also known as 'refugee status determination' or RSD) is particularly contentious. Kagan (2010) shows that in scenarios of religious persecution, refugee boards and local courts engage in refugee status determination to make categorical distinctions between legitimate refugees and so-called religious impostors. As he notes, 'when asylum adjudicators set out to decide whether to accept such refugee claims, they can quickly find themselves administering a process akin to a religious trial' (ibid., 1181).[10] Even if such trials find a claimant's account trustworthy with regard to the reported external facts, credibility still matters as remaining doubts over the 'internal coherence', a category often used in asylum hearings, can lead to dismissal. Once established as legal facts in court hearings, credibility assessments are unlikely to be questioned and are usually 'not subject to rigorous appellative review' (ibid., 1184). In Germany, the first hearings are administered by the *Bundesamt für Migration und Flüchtlinge* (BAMF). Considering the many factors that constrain the reliability of admission processes, those involved in asylum hearings are faced with a high degree of arbitrariness and with contradictory decisions insofar as favourable outcomes are not only contingent on the inquisitive strategies deployed by the adjudicators but also on the systematic flaws and errors in the bureaucracies themselves. As Bohmer and Shuman (2007, 603) aptly put it, 'contradiction is at the root of the production of ignorance' in asylum hearings, which they consider to be built not on actual fact-finding procedures but on interrogation techniques that have the sole intention of deterring 'unworthy applicants' (ibid., 604). Factoring in the broader institutional parameters that structure these assessments and the amount of discretion given to first decision makers, it seems inevitable that assessments of credibility and sincerity form epistemologically and morally vexed grounds of decision making.[11]

10 Kagan (ibid. 1185f.) refers to several court decisions in the United States where similar issues came to the fore.

11 Kagan points out: 'In real life, credibility assessment involves many more factors, including not just the answers but also the questions, the way the questions are asked, and the environment in which they are asked. Even vague and incoherent testimony may not definitively indicate fraud, because cultural barriers, language and interpretation problems, mental health issues, and the general limitations of human memory and communication can produce honest testimony that nevertheless appears superficially incredible' (ibid., 1185).

The judges I interviewed recognised credibility as a major problem.[12] Judge B rationalised the judges' dilemma by highlighting the uncertainties faced in making a judgment. Responding to my question about how he would defend the exceptionally generous handling of asylum cases in his own chamber, he pointed to the matter of credibility and how he and his colleagues, after detailed interviewing and fact checking, would often 'give the claimant the benefit of doubt'. Though he admitted a degree of naïveté in some such instances of credibility checks, he felt his generosity to be morally justified to prevent unjust deportations. The difficulty is in establishing the exact threshold at which 'an asylum-relevant level' of persecution is reached, which can vary greatly depending on how the judiciary defines the critical threshold. He further discussed what in the German legal jargon are referred to as exaggerated accounts (*gesteigertes Hervorbringen*) and noted how such assessments become contingent on the judges' own predispositions. One judge might recognise cumulative acts of discrimination as fulfilling the criteria of human rights violations, whereas another would consider the same circumstances as *indirect* persecution and thus an unsubstantiated claim. To counter legal ambiguity, both judges reemphasised their normative interpretation of Art. 16 GG and the moral obligation to uphold the right to asylum, which required adaptation to changing legal and political guidelines. For instance, interview techniques were adapted to fit the new rulings by upper level courts, especially the BVerfG 1994 decision to withdraw the status of group persecution for Ahmadis. As Judge B explained, they therefore avoided granting or withholding group persecution status and instead consistently assessed the risk potential in individual cases, even if that slowed down the process considerably.[13]

Credibility assessments depend on interview and protocol technique as well as on the judges' willingness and capacity to grant an appellant the opportunity to provide as much contextual detail as they can (through follow-up questions when deemed necessary) to bolster a claim. Much of this process depends on the willingness of the judge to interpret the adequacy of descriptions and to identify discrepancies in linguistic competency as cultural barriers and educational deficits rather than inconsistencies in internal credibility. Language matters profoundly in such circumstances of semantic indeterminacy. Linguistic anthropologists have long

12 Judge K traces the history of credibility issues to the situation German courts faced when having to assess conscientious objectors to military service in the past.

13 Political pressure by the government to dissuade courts from implementing such statutes of group persecution was undeniably also a factor. Judge A points out that the state representative (*Bundesbeauftragte*) was routinely appealing the chamber's decisions. This is notwithstanding the fact that according to the UN human rights conventions, Ahmadis clearly fulfill several criteria that would justify group-based claims.

recognised this fact and looked at asylum hearings as spaces of meaning-making, which Jacquemet (2013, 203) appropriately terms 'transidiomatic environments' designed to deal with 'deterritorialized speakers and their multiple languages'. There are a wide range of denotational and indexical practices through which speaking subjects are rendered credible and culturally intelligible in asylum courts. Jan Blommaert (2009) shows in a case study of Rwandan refugees how qualities such as multilingual competency that attests to a social biography of multiple migrations across fluid borders spaces is, in the courtroom, judged from a standard of normed nation-ness. An individual's heterodox articulation of identity here becomes 'indexical of certain political and historical positions, defined from within the synchronic universe of meanings, social categories, and attributive patterns in which his interlocutors operated' (ibid., 416). We need to pay attention to these legal categorisations of subjects seeking refugee status as either 'in or outside normalcy' (ibid., 421), as they attest to the way in which cultural differences, language ideologies, and religious practices are evaluated, and in the context of which we find that judges sometimes express a profound sense of unease when having to make calls based on a high degree of intuition.

How should we read this sense of unease when intuition or gut feeling has to be admitted? The semantic and pragmatic features of asylum adjudication do clash here with an evidence-based understanding of the law and ideal-type form of justice. Getting access to objective facts is notoriously difficult. The inherent instability of the process seems to also result from the tension between legal norms and what Judge B refers to as ideological persuasion.[14] This emphasis on persuasion points beyond ideological differences in the judiciary and speaks directly to the structure of judgments in asylum courts. Werner Hamacher (2006, 678) sees such dilemmas around how to grant human rights claims as a foundational crisis in law. A crisis of judgment becomes manifest with each realisation that the specific remoteness of life-worlds that judges have to grapple with in their reasoning (and which implicitly they have to translate into codified rights when making credibility assessments) produces doubts about the kind of justice being served. It further undermines confidence in the authority exercised and emerges as a nagging doubt for the judge arguing from a value-rational position. They find themselves in a conundrum – perhaps not a moral conundrum per se (as they can preserve moral integrity by granting the claimant the benefit of doubt)

14 Good (2009, 53) also pays attention to gut feelings in suggesting that 'many credibility decisions rested on "gut feelings", the application of common sense, or recourse to personal experience'.

but a conundrum that throws into question the very premises (possibilities and impossibilities) of adjudicating (asylum) law under present political conditions.

The conundrum the judges encounter is not entirely remedied by expanding the zone of indecision to maintain moral integrity. Hamacher (ibid., 686) carves out the idea of an simultaneous activation and inactivation in the process of granting rights (such as human rights) that, when (partially) suspended, could restore something of the humanity of those *having to* call upon such rights under particular circumstances – which for him of course becomes an aporia for modern law itself.[15] Yet, in the asylum courts it is still required that those seeking protection under changing legal frameworks must prove that they have been affected by severe or cumulative effects of state-condoned violence as a consequence of the way in which their religious identity as Ahmadi is publicly conveyed.

This is a key point. It is because of this crucial issue of enacted religious character that the courts have had to set new guidelines for courtroom interviewing. In the five cases of Ahmadi appellants reviewed by a ruling of the UK Upper Tribunal in 2012, it was affirmed that in order to establish indisputable credibility, asylums seekers have to demonstrate the personal threats they faced beyond proof of identity as Ahmadis. So the burden to prove the seriousness of the violation of the right to expressing oneself as a religious persona always remains on the claimant and, implicitly, on the judges' 'inquisitorial methods' (Soennecken 2009, 106) and wilful decisions.[16] For example, when Judge A spoke about the role of 'justification patterns' in Ahmadi cases, he was quick to differentiate between the recurrent patterns of an older generation ('they say we won't leave our home country unless we are under extreme threats') and those of the younger generation ('they say they are being prevented from educational success and produce documents that indeed demonstrate that they couldn't take an exam or were denied admission'). Despite the fact that these accounts assume the form of narrative patterns (thus not individually specific texts), for the judge it does

15 Hamacher suggests that 'political, anthropological, and theological authorities who claim to be the advocates of human rights would serve the justice, freedom and dignity of man best by expanding the zones of their indecision and by bringing about the circumstances in which none of their rights need ever be appealed to – circumstances in which the right not to need and not to use rights could be exercised without any limits' (ibid., 690).

16 Soennecken (2009, 106) argues that historically, judges in administrative courts were rather deferential to the state bureaucracy. In the post-World War II period we witnessed a fundamental change to this attitude. Judges at this level used an 'inquisitorial principle, which encouraged them to be more investigative than their North American counterparts. [...] German administrative law judges who adjudicate refugee claims are required by law to apply inquisitorial principles, in contradiction to assumptions about deference'.

not altogether undermine their credibility.[17] Even under current legal guidelines, judges are being asked to put themselves in the shoes of an ideal-type social actor who is always also imagined as a particular kind of culturally shaped *individual*. Tobias Kelly argues that, 'judges walk a line between accepting that you may not know many things about a claimant and assuming that they may be hiding something from you' and that the problem here is not only the difficulty of reading motivation but also of imaginary identification that stipulates 'an image of the "rational man"' (Kelly 2013, 765). But I argue that it is not just the assumption of rationality that matters, it is also how a particular political and cultural context is read as capable of instigating forms of affect. While there are precautions in the legal tradition against taking imaginative leaps that might betray a class bias, it is still prudent to ask how cultural contexts are accounted for, especially if the situation is politically volatile and culturally complex.

4 The judge as cultural arbiter

In a context in which judges deliberate on the credibility of asylum claims from a single group over a period that spans a generation, it is worthwhile considering what broader cultural implications such an engagement has. The Rhein-Main metropolitan area as the local context for the social interactions between state, courts, and communities was not arbitrarily chosen for this study. The administrative court in question played a leading role in documenting the situation of Ahmadis and provided extensive reference material for other courts in the country as well as bureaucrats making decisions about safe third-country regulations. Moreover, we find here the largest concentration of Ahmadiyya institutions and mosques in Germany, including the national headquarters, missionary schools, media and press outlets, and a locally established network of institutional links between community representatives and municipalities that operate on multiple levels of social and educational engagement. Notably, the first mosque-disputes unfolded in this region too, with segments of the local population aggressively mobilizing against the founding of new Ahmadiyya mosques in cities such as Schlüchtern or

17 Kagan (2010, 1183) notes, 'the most challenging cases are those that rely extensively on affording asylum seekers the benefit of the doubt because of the lack of corroborating or contradictory evidence. In these cases, adjudicators assess credibility mainly by analyzing the applicant's testimony in reference only to itself, looking for consistency, detail, vagueness, and contradictions, among other factors. This process is sometimes referred to as internal credibility assessment'.

Wiesbaden.[18] The judges interviewed for this research are social actors within this broader social field and, importantly, are also active participants in civil society where they have supported social integration efforts and even initiated cultural exchange groups. Their discourse on the religious minority of Ahmadiyyat is accordingly shaped by these experiences and reflects local events that relate to the social integration of the community combined with all the associated debates over cultural assimilation that have taken place over the years in the public.

In the judges' discourse there are many explicit references to social and cultural features that carve out a distinct representation of Ahmadis as religious subjects. Judge A emphasised more than the others the degree of his background knowledge about the community, based on his efforts to gain a first-hand experience of the political situation in Pakistan. In order to acquire this experience, he travelled together with Ahmadi acquaintances to the country and did not shy away from participating in the Jamat's community events and activities in his own city. Using the language of participant observation, he told me how his social engagements and actions as a decision-maker were always 'guided by an interpretive approach' (*von einem Verstehensansatz her geleitet*). In longer narratives in which he described various situations in which he personally witnessed threats against Ahmadis, he gestured towards his development of an 'intuitive feeling' for their situation which served him in better evaluating the truth-claims made in the court room. In the judges' accounts, which I can only briefly sketch here, an important distinction was made, however, between being a witness to the religious persecution of Ahmadis and becoming a 'cultural sympathiser'. Whereas personal engagement with the community was seen as supporting the role of the activist judge, opinions about existing cultural cleavages between liberal law and the religious normative order remained quite profound. Remarks on the cultural and religious otherness of Ahmadis went beyond the repertoire of integration problems that one often encounters in the public realm. They specifically concerned the 'fatalistic attitude' displayed by Ahmadis, specifically the idea that Ahmadis have a desire and duty to missionize (*sie haben ein Sendungsbewusstsein*) and that they would passively accept their own victimisation. Concepts evoked in the judges' comments, such as the 'lack of critical self-inspection', 'fatalism', 'obedience to religious authority', 'proselytising consciousness' or 'living in the enclave society' (*in Parallelstrukturen leben*) are all pervasive tropes in the wider public debate about the community and talking points for critics of Islam. The judges' accounts – despite unambiguously rejecting any form of right-wing populism – often dovetail

18 A detailed discussion of these contexts and the issue of mosque opposition can be found in Nijhawan (2016, 153–90)

with this discourse, such as when Judge A separates the cultural and political conditions that subject Ahmadis to violence (Pakistan persecuting a minority) and the cultural responses by Ahmadis (their 'fatalistic outlook' as an incomprehensible facet of religious difference). Incomprehension with regard to the 'absolute faith' of Ahmadis (*aber die meinen es ernst*) is an idea I came across frequently among adjudicators, even though not everyone would provide similar explicit rationales. But what is reiterated here is a civilisational discourse of the law (*zivilisatorisches Rechtsverständnis*) as the guiding normative principle, which outweighs whatever debates there might be in regard to credibility assessments, on the one hand, and Ahmadis' displayed religious belief, on the other.

Judge A's interpretation of this norm aligned itself with Hannah Arendt's terminology of the banality of evil. The context for bringing up the banality of evil was explicit, as he defended the generous interpretation of narratives of persecution that judges in other courts deemed too banal and not credible. The rejection of such a 'banality of deception' in claimants' narratives of persecution (see also Fassin 2013, 52) was further clarified in his acknowledgement of various social and economic motifs that bring people here (*I am not stupid! I know that they come to be married here*). And yet, the affirmation that there indeed was a 'banality of evil' ('today they will call you bad names, the next day you are caught praying [i.e. posing as Muslim]') remains a core issue for these judges. Perhaps because this generosity nourishes nagging doubts or because judges feel at risk of losing their neutrality in the eyes of others in the profession, they also made it very clear that the court room had a pedagogical function of reasserting secular constitutional norms in distinction from an alleged cultural incomprehensibility on the part of the other. There was a telling moment in our conversation when Judge A described how he lectured Ahmadi women on German democratic principles. All judges were rather explicit in their critique of the patriarchal structures that they saw as characteristic of this religious group. Hence, performative utterances such as lecturing claimants on the differences between verses in the Quran and principles in the constitution helped reassert judicial authority in a secular legal context. Ahmadi women, in particular, were seen as lacking autonomy and in need of intervention. The tacit assumption that the community would have the organisational and ideological characteristics of a sect or ethnic enclave never fully vanished from this discourse and was further infused by each new incident in the courtroom or public debate. Such examples illustrate the broader discursive effect of discourses on Islam in Germany. Ironically, the very effort to identify a genuine religious character that the Ahmadis needed to establish credibility simultaneously cements representations of religious difference and cultural assimilability. During court practice, the judges often had the impression that what unfolded before them in the form of collective processes of religion-making must not undermine key principles of liberal autonomy

and freedom. Thus, legal adjudicators inadvertently enter a terrain of normative complexity that stipulates a relationship between languages of the law and of religion, which is anything but transparent.

5 Genuine religious character in legal discourse

In order to fully grasp the impact of the court system on a normative view of religion and religious character, we need to finally consider the implications higher court rulings have had for asylum adjudication. We have observed on a small scale how, within the contexts of asylum adjudication, specific regulatory endowments such as the membership certificates and routine techniques of credibility assessments implicitly affirm the regularity in patterns of religious behaviour and ways of representing core beliefs associated with Ahmadiyyat. However, it is not too far-fetched to argue that asylum adjudication of the sort discussed in this chapter has even broader repercussions for the legal and public discourse about religion. There is nothing new, of course, about noting that law renders religion 'in terms that are compatible with its own structural assumptions' (Berger 2007, 281) and so the legal processes as specified in this chapter fit within a scholarly discourse on the governance of religion in late-modern times. This can be observed in different areas of legislation at the level of the international courts (Fokas 2015), when we consider, for example, how subsidiary principles concerning national jurisdictions become entangled with unfolding controversies on religious difference and pluralism.[19] The asylum court does have an important place in this discussion. Through their continuous interactions with the community, and the meticulous procedures by which narratives of persecution and endured suffering become legal protocol, the courts are routinely engaged with these questions, which directly affect social citizenship and belonging.

To further illustrate this point, I want to turn to the 2012 ruling of the European High Court of Justice (EHCJ) which, in conjunction with Ahmadi asylum appeals before the German Federal Administrative Court (BVerwG) and the Upper Tribunal in the United Kingdom (UppTr), helped revisit prior legal criteria for assessing Ahmadiyya religious practice in relation to the legal category of religious persecution. According to the new guidelines set by the EHCJ it cannot be expected anymore that Ahmadis would withhold their rights to call

19 Effie Fokas (2015, 55) argues that the European Court for Human Rights 'case law has centrally contributed to shaping the terms of such controversies. The latter to the extent that the Court may be considered to be in the process of developing a "theory" on the proper place of religion in the public sphere'.

themselves Muslim just to appease the majority in the countries of origin, to be discreet about their religion, and to seek the option of internal refuge in order to prevent themselves becoming the target of the violence of non-state actors (UppTr point 117, 50). The assumption of such internal refuge has been the cause for many rejections in asylum courts in the past. During the UK tribunal, the government representative had the audacity to claim that the anti-Ahmadi legislation would be upheld to keep public order and not to discriminate against the religious minority. Yet the judges' response (which is referenced by the EHCJ was abundantly clear in rejecting such flawed argumentation, as 'all the evidence shows that it is the violent aggression of sections of the majority population that needs to be curbed' (UppTr, 49). With regard to state persecution, the court further clarified that the likelihood of unfair trials and prolonged imprisonment in Pakistan (in conjunction with the complex political dynamics concerning non-state actors hurting Ahmadis) form a context in which 'these factors are capable of amounting to a state-approved or state-condoned act of persecution within the meaning of the Qualification Directive and under the [Geneva] Refugee Convention' (point 116, 50).

The cautious tone in such statements nonetheless demonstrates that decision-makers are granted a space of discretion to determine whether or not these factors are fully operative in each individual case. Hence, in reference to Pakistan's penal code, the European High Court of Justice refrained from naming the ordinances as sufficient evidence for religious persecution, as it would be 'unhelpful to talk about laws per se being persecutory'. Instead, the focus of the detailed, thesis-length legal text is really on the assessment of the specific conditions of violence that could curb religious freedom. It deserves particular attention in this context that the EHCJ has declared invalid the distinction between a core area of religiosity and public display of a religious way of life, which in legal jargon is known as the difference between the *forum internum* and *externum*. Previously, the judges were asked to verify 'beyond reasonable doubt' if an individual's right to religious freedom in the core area was actually violated, which in Germany would fall under Art. 4 GG. Despite different argumentation in the past, the German federal administrative court readily accepted the new EHCJ directive to do away with this problematic distinction, which, to remind the reader, the judges also mentioned when referring to the intense probing of the *forum internum* as akin to taking the confession of a claimant (*den Antragssteller einer Gewissensprüfung unterziehen*).[20]

20 See BVerwG 2.3.2, where the court affirms the extended definition of religion and the decision not to link the assessment of the level of incurred harm to the specific (private or public) aspect of religiosity.

Peter Danchin (2015) argues that the modern conception of the *forum internum* as category of inner belief has produced key dilemmas for the legal framing of religious freedom in terms of the individual's right to religious self-expression. On the one hand, he identifies a dilemma in that the *forum internum* engenders ideas of autonomous choice (based on freedom from coercion) in contrast to other operative assumptions that convey the idea of a right to 'maintain a certain category of inner belief such as "conscience" or "faith" understood as in some sense un-chosen' (ibid., 243). We have seen above that this tension between choice and coercion played a significant role in the judges' scepticism about Ahmadi claims, particularly when individuals appeared to the judges as 'obedient' and 'fatalistic selves' who precisely 'could not' or 'were not allowed to' make individual choices after paying spiritual allegiance to the khalifa. This relates to the second point Danchin mentions, namely that in recognising the manifestations or limitations of the freedom of religious self-expression (*forum externum*), judicial authorities take it on themselves to differentiate and determine the extent to which the *forum internum* could be expanded into the public realm. In other words, as soon as religious self-expression is understood as relational and not solely anchored in the individual anymore, the question of how others' rights and sensibilities are affected becomes a guiding principle for jurisprudence (ibid., 244). According to Danchin we can observe a 'dramatic shift in spatialization' (ibid., 246) in the European and North American case law on religious symbols in the public sphere (such as wearing the hijab, the crucifix cases, etc.) where interpretations of the right to wear a hijab or Sikh turban have been used to de-facto limit the individual choices of those being addressed. For Danchin the consequence is that, 'once religion is understood in terms of the three features (1) Enlightenment rationality posits (2) a conception of individual belief that is (3) autonomously chosen in the forum internum, then most of what was formerly internal and private is transformed into an external manifestation of religion now subject either to recognition or limitation by the state in the new, vastly expanded forum externum' (ibid., 246).

If such changes of what constitute the *fora internum* and *externum* in the juridical field matter in deliberations about different forms of religious practice and how they are brought into accordance with secular values, it is significant to see that the EHCJ has suspended this dichotomy of private and public religion. However, Danchin demonstrates how other jurisdictions clung onto this distinction in order to effectively limit claims to religious freedom that seem to deviate from what states define as the boundaries of religious accommodation.

It is yet speculative to suggest that the EHCJ decision would undermine such efforts or in other ways impinge on the religious freedom case law. For a

discussion of religious individualisation, it might appear to be a point of scholarly hair-splitting. Perhaps we can say that in both scenarios the key point is that political and legal institutions have retained the power to redefine the boundaries by which religion is allowed to enter the public realm, as well as the extent to which collective rights matter when it comes to religious freedom. When seen from the perspective of the daily workings of asylum courtrooms we find that new directives further problematise questions of individual choice and representations of religion, for there is a certain tendency to read a traditional, if not dogmatic, view of religious practice into legal reasoning.

To illustrate this, let me briefly summarise one of the asylum hearings that I observed in which deliberations around the sincerity of religious conduct came to the fore. This particular hearing occurred in 2012, shortly after the EHCJ ruling, and consisted of a two-hour investigation of the claimant's religious conduct. Much of the judge's interview comprised questions about the regularity of the claimant's participation in the local community, what specific positions the person held, or what other activities he was engaged in. There was only passing mention of the membership certificate that the court had filed. The asylum seeker, who I shall call Mr Naveed here, did his best to account for his volunteer work and community engagement, which from what I could tell was not satisfactory to the judge. Many questions ensued about his participation in the annual gathering of the Jalsa Salana, going into detailed questioning about activities there. For instance, she wanted to know what personal relationship Mr. Naveed had with the spiritual leader of Ahmadiyyat, which Mr Naveed affirmed, claiming that he sends weekly letters and even received personal responses. At this point, the lawyer presented various letters and other materials such as local newspapers in which we see Mr Naveed helping out with street cleaning activities after New Year's Celebrations. But this was still not enough. The judge then continued with questions around prayers and practices of reading and the study of the Qur'an. She wanted to hear details about specific prayers and what relevance they held in weekly sermons. She went on to ask about his close relatives and their status in the Jamat. Mr Naveed was divorced, so the main line of question revolved around the religious education of his child, who happened to live with the mother. Confirming that the child is educated through the missionary system (*waqf-e nau* scheme) gave some additional support. In this manner, an hour and more was spent by the court in evaluating aspects of public religious conduct and details about the claimant's knowledge of the Ahmadiyya faith. It was interesting to see how even minor, everyday aspects of providing social service and religious conduct were recorded in the court protocol. The judge continued to ask in more detail about Mr Naveed's social and personal background in Pakistan: How would he describe his living situation and relationships with the community in the village where he

lived? When exactly was he confronted with enmity and aggression? What did these acts consist of? She also asked what function he held and how that made him visible as an Ahmadi. How many other Ahmadi families were in the village? What exactly did 'the Mullahs' hold against him?

There is clearly a horizon of expectations that need to be met and failure to do so undermines the idea that privately held belief and publicly expressed behaviour are meaningfully related. Even if a claimant is capable of creating a relatively coherent self-image of religious service in diaspora contexts, the burden of proof still requires continuity between these more readily documented and verified practices and the social and political contexts of exercising religion in different regions of the country of origin, where it is of course notoriously difficult to come up with evidence.

From the vantage point of such court hearings, the legal coding of religious sincerity and credibility can be seen to work in tandem with normative expectations of community service and participation in organised religious activity. As indicated above, adjudicators view the community almost solely as a patriarchal social hierarchy that puts strong conformity pressures on its members. Paradoxically, however, the courts' interview techniques contravene the judicial discourse on individuality, for despite the scepticism levelled against the collective framework of religion, it is that same framework with which an individual's account needs to conform. Failing to meet expected standards of expressed belief and community engagement would logically lower admission chances. Any inconsistency that claimants show in the court protocol when, for example, aligning themselves with the organisational and doctrinal structures or providing an interpretation of Islamic tenets that fall out of a narrow interpretive grid of questioning used in the court interviews, would lead to what we already encountered as the problem of credibility. Significantly, the revision of asylum law has made establishing religious truth claims the major focus of such credibility. Is a person who seems unclear on certain tenets of the faith or expected religious routines still an Ahmadi? Will they need specific protection? These paradoxes are clearly enhanced as the courts are required to continuously assess the credibility of narratives of religious persecution on a case-by-case basis.

The tendency of more intimate and intimidating credibility assessments in asylum courts that is spurred by this process runs parallel to what Didier Fassin (2013) discusses in relation to the case of trauma narratives in refugee hearings. In France, he observed a similar shift to more and more intimate questioning and increasing doubts levelled against the authority of medical and psychiatric experts. Despite all the rhetoric of individual rights and the uniqueness of each individual's testimony, the fact-finding procedures in courts appear to be guided by a court culture of paternalism and suspicion, putting ever higher

demands on individuals to articulate intimate details of religious self-making that must fall in line with what amounts to an orthodox framework of religious norm-setting. In its 2012 country guidance on Pakistan, the Upper Tribunal already demanded several obligatory steps be taken by the decision-maker when faced with the task of determining the identity of an Ahmadi, including the official documentation provided by the religious organisations of the Ahmadiyya community and an interview process through which genuinely held beliefs could be validated. Note how directive 122 demands judges 'to include an enquiry whether the claimant was registered with an Ahmadi community in Pakistan and worshipped and engaged there on a regular basis', whereas directive 123 specifies the need of 'enquiry into the claimant's intentions or wishes as to his or her faith, if returned to Pakistan'. Furthermore the document reads: 'The burden is on the claimant to demonstrate that any intention or wish to practice and manifest aspects of the faith openly that are not permitted by the Pakistan Penal Code (PPC) is genuinely held and of particular importance to the claimant to preserve his or her religious identity' (Pakistan CG [2012] UKUT 00389 (IAC), 51).

It is important to remember here that leading religious specialists have appeared before these courts to outline the set of core beliefs and practices through which Ahmadiyyat can be set apart from other Muslim traditions. Key in such representations is, for example, the reference to *tabligh* as the personal engagement in meaningful debate and the propagation or proselytisation of Islamic ways of life. As I have discovered in my research over the last few years, the emphasis on *tabligh* has been framed as the major objective of the Jamat by the current khalifa. The religious leadership expects all auxiliaries to commit a certain amount of time to complement the work of trained missionaries and new educational programs have been developed to reach such goals. During the UK Upper Tribunal for example, witness evidence explicitly linked spiritual authority, faith propagation, and individual duty, leading to the normative claim that ordinary Ahmadis would all be 'keen and desirous to preach and those who cannot do it feel they are unable to discharge their duties as a Ahmadi. When living under a law that prevents that they feel sorry about that. Ahmadis are expected to respect the law of the country, but this does not mean they do not have the desire of doing tabligh. A display of high moral standard by Ahmadis which might attract others does not really discharge the entirety of the obligation of preaching required of all Ahmadis'. What is cited here by the court as an Ahmadi's desire and duty to preach amounts to a strong normative claim about how to interpret 'genuine religious character' in matters of refugee determination. And it is precisely because the court took notice here of a norm that establishes a relationship of continuity between internal and external forums (of internal desires

and spiritual claims and external constraints on fulfilling such desires) that adjudicators will feel motivated to continue the intense probing of credibility.

6 Conclusion

The sociological inquiry that I have presented in this chapter can contribute to a better understanding of the cultural specificities, conceptual tensions, and political implications of processes of religious individualisation as they unfold in late-modern contexts of state power and migration. I have argued that the emerging processes of self-other interdependencies in contexts of global migration require a thorough rethinking of the specific meanings of religious individualisation, for as we saw in the legal discourses discussed above, the ostensibly secular understanding of religious freedom seems to clash with the pervasive effort to establish narrow definitions of religion that are mapped upon entire groups. Religious individualisation is a contingent process of cultural articulation embedded within broader historical dimensions that have produced various forms and imaginaries for social relations, degrees of religious agency, and challenges to traditionalism (Fuchs 2015). However, I think there are still many open questions to be answered. What do we mean by the relationship between individual agency and attributions of religious subjectivity or character in each context? In what specific ways are self-other relations embedded within practices of state power and the bureaucratisation of societies? Does a notion such as individualisation prioritise forms of agency and autonomy that appear intelligible to us, whereas other modalities of the "self" continue to elude Western audiences? Who defines the "us" and "them" in such debates and how do categorisations of such difference matter in practical terms?

Referencing the religious individualisation matrix, Bernd-Christian Otto (2017) lucidly remarks that not only have scholars associated religious individualisation with analytically distinct processes of 'individuation' and 'individualisation' (see also Rüpke 2015) but the intelligibility of each concept depends on very different levels of abstraction and cogency. We can study broader secularising trends or more intimate processes of inner experience and creativity, which each, when taken on their own, constitute significant analytical conundrums. Admittedly, I have not said much in this chapter about how such inner experience is constituted and how the cultivation of religious selves is to be understood through the lens of the practitioner. Such questions guide my second inquiry on migrant precarity and religious subjectivity in this publication. In the context of the

debate on state power, traditionalisation, deviance, and religion that frames the contributions in this section of the publication, my aim was instead to demonstrate how, within modern institutions associated with state sovereignty and liberal democracy, we can identify deeply ambivalent social processes that directly impact categorisations of religion and religious character. I have focused on asylum courts and the adjudication of refugees because this is a key site of social and political change. The current public debate on refugees is just one aspect of this process that has already caused major controversies in Europe around right-wing populism and its challenges to European values. I have shown this by contextualising the role of the courts within such evolving forms of social and political change, along with the far-reaching changes to immigration policy and the unfolding debate on religion and violence that has affected the public image of Muslim minorities. My second point was then to complicate the debate on 'deviance' and 'traditionalisation' by demonstrating how state and the law assume a normative role when defining the parameters of such categories.

Among other things, I have shown how in legal discourse individual acts and choices are measured against a standard of religiosity that has become the standard of determining risk-assessments of religious persecution. Let me reemphasise that my point was not to propose linear transactions between the legal and social fields, or to make a strong case for altered modes of everyday conduct and practice. Nonetheless, as several scholars working in the area of law and religion have thoroughly examined (e.g. Sullivan 2005; Mahmood 2006; Sullivan et al. 2011; König et al. 2012), the formative role of jurisprudence over religious minority rights and the governing of religion as a category of difference does have far-reaching consequences for social practice. 'Courts, legislatures and other governmental agencies judge the activities of persons as religious or not, as protected or not, based on models of religion', writes Winifred Sullivan, 'that often make a poor fit with religion as it is lived'. The 'poor fit' of which Sullivan speaks matters in terms of how languages of the law and religion relate to each other. The asylum courts that I have studied routinely perform such rationalisations of religious character as evidenced in standardised repertoires of religious conduct and problematic assumptions about what kind of social commitment should be expected of Ahmadi Muslims. Judges and lawyers are now keenly aware that they act as interpreters of theological facts – as one lawyer phrased it sardonically in a conversation: 'We are now also experts in theology' – and their perception of secular law and guiding normative concepts has thus been lastingly affected.[21]

21 For a discussion of how experts in the legal sphere have assumed the role of theologians, see also Mahmood 2006.

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