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Chapter 6

A State Goddess in the New Secular Nepal: Reflections on the Kumari Case at the Supreme Court

Chiara Letizia

Introduction

In the last few years, Nepal has faced dramatic political change, putting an end to a two-century-old Hindu kingdom and establishing a secular republic under the leadership of a Maoist party.¹ In 2006 the Nepali Parliament proclaimed the country a secular state (*dharma nirapeksha rajya*)² and the Interim Constitution of 2007 reiterated Nepal's secular status. Following elections in 2008, the Constituent Assembly declared Nepal a secular federal, democratic republic, thanks to the political weight of the Maoist party (UCPN-Maoist) which won over 40 per cent of the electoral votes and formed a coalition government.

Challenges for secularism in Nepal appear manifold: the country, which still hosts a strong Hindu majority,³ has seen an enduring symbiotic relationship between Hinduism and the monarchy (Sharma 2002). Since the eighteenth century, Nepali rulers have styled themselves and their culturally and ethnically diverse

1. This chapter presents findings from fieldwork research on secularism conducted in Nepal between September 2009 and April 2010, made possible by the generous support of the Post-doctoral Newton Fellowship of the British Academy. It is also part of a larger project to study the shaping of Nepali secularism through court cases, undertaken for the ARII Joint Programme on Justice and Governance in India and South Asia, directed by Gilles Trubout and Daniela Berti. I am grateful to David Gellner for his comments on an earlier version of this chapter and to Philippe Gagnon for his kind help in editing it. This chapter also benefitted of the stimulating comments by the members of the Centre for the Study and Documentation of Religions and Political Institutions in Post-Secular Society (CSPS), University of Rome Tor Vergata.

2. The expression *dharma nirapeksha* (autonomous from/indifferent, impartial to *dharma*, i.e. 'religion'), was first used to render the English word 'secular' in the 42nd amendment to the preamble of the Indian Constitution. I have discussed elsewhere the uncomfortable feelings raised by this expression in Nepal (Letizia forthcoming).

3. Nepal Census of 2001 affirms that 80.6 per cent of Nepalese are Hindu, even if these figures are contested by minorities and are likely to change dramatically with the results of the 2011 census.

subjects as Hindu, and made Hinduism an essential component of national identity through a process of Hinduization.

Despite the declaration of a secular state, government interactions with religion have not diminished (CCD 2009: 1): the State is still involved in the management of trusts associated with Hindu gods and temples; government funds are still spent on Hindu religious festivals; slaughtering cows and 'causing religious conversion' (proselytizing) are still both outlawed;⁴ many laws are based on Hindu norms and values; Hindu temples are found in government buildings, schools, military camps and courts; public holidays in the State calendar are mostly Hindu festivals; and the new President of the Republic has in many instances replaced the former Hindu king at public religious functions.

One such instance is the national festival of Kumari Jatra, which plays out publicly the long-lasting relation between the living goddess Kumari and the head of state. The Kumari is a child who lives a ritual life until puberty; during her annual festival, she is brought in a chariot in a three day procession around the city of Kathmandu. On this occasion, as a royal goddess, she formerly blessed the king by marking his forehead with a red *tika*, thus legitimizing his rule for one more year. With the advent of the republic, the Kumari now blesses the President instead. The continued role of the goddess may appear inconsistent with a secular republic, and has been perceived by some Nepali activists as a failure of the President in the exercise of his secular office. Nevertheless, for many others, it seems only natural that the head of the state should maintain this relationship with the goddess.⁵

If we consider the Kumari's presence in the public space as an inconsistency of Nepali secularism, a relic of a pre-modern past, we are implying that there is a model of secularism against which the secularity of that (or any) country should be judged. We are also taking for granted the postulated inevitability of secularization in the modernization process. More generally, considerations about the many challenges for secularism in Nepal assume and reify secularism as a part of a 'modernity package' that is challenging the deeply religious and traditional Nepali society.

4 While ethnic and religious minorities are still being indicted for the crime of cow slaughter (now justified on the basis that the cow is the national animal), the number of prosecutions against proselytization ('causing religious conversion', *dharma parivartan* gataune) has dwindled since 1990 and none have been found to have taken place since 2002. Resistance to the removal of these bans is strong, and they remained – even if the punishment were reduced – in the concept papers of the Constituent Assembly and the new draft Criminal Code presented to Parliament in 2011.

5 Chanda Bajracarya, a professor of Newar culture and one of the parties involved in the case studied in this chapter, explained: 'Kumari and the head of the State, whoever is the head of the state, are intimately connected. Now instead of the King we have the President. I think that the King should not be going to the Kumari: people have to feel that things have changed and that the political changes have occurred. The political change should change also the culture' (Interview, March 2010).

However, a recent debate in the social sciences has historicized the very notions of secularism and secularization and questioned their intrinsic association with modernization.⁶ A review of the main arguments in this debate will be useful before returning to the Nepali case.

Secularism in the Social Sciences' Recent Debate

The three processes described by Casanova (1994) – a decline of religious beliefs and practices correlating with increasing modernization; the privatization of religion; and the differentiation of secular spheres (State, economy, science), understood as their emancipation from religious norms and institutions – are all interrelated in European history. Therefore, there is a general assumption that as 'components of a single general teleological process of secularization and modernization' (Casanova 2011a: 60), they constitute inevitable parts of the global modernization process. However, secularization is a contingent European dynamic and it relates only to the particular historical transformation of Western European Christianity; its generalization as a universal process correlated with modernization and transferred to other world religions and other cultural areas is highly problematic (Casanova 2009).

As early as the 1980s, the anthropologist T.N. Madan (1987) questioned the thesis that the historical process of secularization, which separated the two domains of 'the religious' and 'the secular' in Western society, with the former being confined to individuals' privacy, was a precondition of modernity everywhere. The debate has recently shifted to the religious and historical context in which secularism evolved, and has led to 'an unpacking of secularity as a religious-free neutral and universal development of European modernity' (Göle 2010: 43).

The work of Talal Asad (1993, 2003) and his anthropology of secularism have strongly contributed to deconstructing secularism, considering it as historically contingent and challenging the inevitability of the secular in the modern. Asad argues that the religious and the secular are neither immutable essences nor opposed ideologies, and that their mutual construction as interdependent concepts gain salience with the emergence of the modern State. While secular rationality was defining law, economic relations, and statecraft in the modern world, it was simultaneously transforming the conceptions, practices and institutions of religious life. Thus, secularism 'has historically entailed the regulation and reformation of religious beliefs, doctrine and practices to yield a

6 This debate started with Casanova (1994), Asad (2003) and Martin (2005), and has been well summarized by Cannell (2010). For a thorough multidisciplinary reflection and critique of secularism, see Calhoun, Jørgensen and Van Antwerpen (2011).

particular normative conception of religion (that is largely protestant Christian in its contours)' (Mahmood 2009: 836, 858).⁷

However, to acknowledge that secularism is a product of Western history specific to Latin Christendom does not imply that it is not suitable for non-Western civilizations. Rather, what needs to be considered is how the Christian Western European dynamic of secularization has been globalized and how religious traditions respond and are being reinterpreted, producing multiple formations of the secular in different historical and political contexts. These multiple secularisms should not be approached as replicas or 'deficient copies' of the Western original, but as distinctive formations, and the study of these distinctive formations can help relativize and challenge unreflexive notions of both religion and secularism.

Casanova (2010) suggests that secularism, a 'western essentialism', should first be deconstructed by emphasizing the various patterns of secularization *within* the West (Protestant/Catholic, European/American, etc.) to open up the way to a less Eurocentric and more comparative analysis of patterns of secularization in other secular modernities. In the same way, Bhargava suggests that scholars should attend to the histories of secularism and examine the transnational and historical development of the secular idea:

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

The call to explore variations and different formations of secularism in multiple contexts is voiced in many recent publications (Jakobsen and Pellegrini 2008, Cady and Shakman Hurd 2010, Bubandt and Van Beek 2011). The aim is not merely to catalogue the variety of secularisms in the world, but to develop new concepts and identify practices at work outside the secular/religious opposition (Cady and Shakman Hurd 2010: 8) and to ethnographically test the secular/religious opposition.

The term 'post-secular', used in recent years by a number of influential theorists like Casanova, Taylor and Habermas, expresses this need for a new thinking that transcends these terms, to coin new concepts and to find ways of accommodating religious claims in liberal institutions (Habermas 2008, Casanova 2009, Molendijk et al. 2010). Scholars are calling for a 'de-secularization' of our

7 The normative impetus internal to secularism reorganizes religious subjectivities in accordance with a liberal political rule that is retrospectively called 'a religiously neutral political ethic' (Mahmood 2006: 328). This is why secular consciousness cannot meet the challenges of increasingly plural societies where *different* forms of religious subjectivity need to be recognized and legally acknowledged.

secularist and modernist categories (Casanova 2009) to describe contemporary religious developments. Indeed, the categories that have been used until now, such as the 'de-secularization of the world', the 'return of religion' or the 'deprivatization of religion', all point to a simple reversal of a postulated previous process of secularization, and remain therefore within the same paradigm.

For Rosati, the postsecular encompasses two basic dimensions: the reflectivity of modernity and the reflectivity of religious traditions. The former points to an awareness of the limits of orthodox theories of secularization, while the latter represents 'their awareness to live in that common environment that is modernity (not only Western modernity)' (Rosati 2011: 247–8). The crucial point according to Rosati is that the reflectivity of religions should not be understood as a homogeneous process of individualization and spiritualization, and does not necessarily mean that religions must leave the public sphere. The model of secularity as a public space free from religious arguments, religious symbols and religious groups needs to be rethought (Casanova 2011b).⁸

The Nepali Case

Despite social scientists' deconstructions, secularism arrived in Nepal as a part of a modernizing project towards a 'New Nepal', with all the many features and assumptions that the recent debate would like to get rid of. The package, so to speak, has been delivered and is producing local responses, even though scholars may debate whether it should have been sent in the first place. While many researchers are questioning the use of the term 'secularism', the fact that local actors have been adopting and using this term compels us to study its local meanings and the strategies deployed in connection with it, taking into account the cultural, historical and political context of this use and adoption.

Rather than judging the secularity of Nepal on the basis of an abstract model of secularism, my research aims to study the ethnographic meaning of Nepali secularism, as I believe that empirically and ethnographically testing the western secular/religious opposition may contribute to its relativization and deconstruction. The ethnography of a non-Western context is particularly suited to helping us think beyond the secular/religious opposition, exactly because the local notion of 'religion' exceeds the western one constructed and regulated in opposition to the 'secular'.

Therefore, my research considers Nepali secularism's local history, its multiple understandings, and its recent shaping process. As will be shown below, these do not involve the separation of state and religion or the disappearance of religion from the public sphere. Does this simply mean that Nepal has not achieved a full

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

secularism in its trajectory towards modernity? As there is not a single model of modernity (Eisenstadt 2000), nor a single model of secularism, such a question cannot be usefully answered. I suggest that we can instead turn our attention to discerning the development of a distinctive form of secularism with a distinctive way of defining relations between its multiple religious traditions and the state.

My fieldwork was concerned with the concept of secularism mainly in two ways: first, with an enquiry into the multiple understandings of secularism through interviews conducted mainly in the Southern plains (Tarai) districts,⁹ and secondly, with the study of District and Supreme Court cases concerning the reform of religious traditions, to see if and how they contribute to shaping the fluid notion of secularism.

Secularism and Minority Rights: The Campaign of 1990

Even if secularism won the day in Nepal thanks to the political power of the Maoist party,¹⁰ the declaration of secularism had also been a goal of the religious minorities and ethnic groups. The constitution of the Panchayat regime (1960–1990) defined Nepal as a Hindu kingdom. This regime denied ethnic, linguistic and religious diversity and used Hinduism as the cement of a nationalist and homogenizing project. In 1990, the People's Movement overthrew the Panchayat regime, providing the context for the rise of ethnic-based political identities. Organisations claiming to represent Nepal's diverse populations (who started to be collectively called as *janajati*) demanded that the new constitution officially recognize and protect ethnic, religious, and linguistic minority rights.

Buddhist leaders and ethnic activists formed a movement to demand a secular state. Abolishing the Hindu state, which maintained social and economic inequalities in favour of high-caste Hindus, was perceived as a way to achieve an inclusive society. For the activists, secularism would not banish religion from public life but would recognize religious diversity and bring an end to Hindu high caste domination. Far from a retreat from or rejection of religion, secularism was redefined as 'the institutional instantiation of freedom of religion and religious equality' (Leve 2007: 94).¹¹ This bid for secularism failed (the 1990 Constitution still declared the state Hindu), but it contributed to shaping the particular

9 I sought to catch glimpses of secularism from politicians, the legal community, the police, social activists, intellectuals and leaders of the religious communities: Hindus, Buddhists, Muslims and Christians.

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

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

understanding of secularism in present-day Nepal as the principle whereby all religions are to enjoy equal rights and opportunities, leading to the abolition of the state-sponsored primacy given to Hinduism (Gellner 2001).

For example, it is telling that the first governmental step greeted as secular by the media and the public in 2007 consisted in the declaration of a number of Buddhist, Muslim, Christian Madhesi, Tharu and Kirant festivals as national holidays, in a calendar dominated by Hindu festivals.

A Multivocal and Sensitive Notion

Secularism emerged from my fieldwork as a multivocal and often sensitive concept, showing a potential for conflict in the way it was differently understood by different groups, religious minorities, and political parties.

Maoists welcomed secularism as a step towards the elimination of a deep-rooted feudalism based on Hinduism. For many Hindus, however, it was a despicable and uncalled-for measure leading to communal violence, encouraging Muslims to kill cows and Christians to convert everyone, thereby weakening Hinduism and the national identity. Muslims, in turn, saw it as a good opportunity to get the *shari'a* enacted as their community's own personal law and to receive more state support for their community's schools (*madrasahs*), while Christians, (mostly evangelical Churches) understood secularism as implicit permission to proselytize, despite the letter of the law.

Echoing the 1990s' vision, people belonging to religious minorities, *janajatis* and civil society understood secularism as the opportunity for all religious groups to receive equal recognition and as the freedom to choose and change their religion.

In fact, very few intellectuals outside Kathmandu legal circles understand it as the wall of separation between Church and State.

The Role of Judiciary in Shaping Secularism

The Interim Constitution of Nepal 2007 provided no model of secularism for the state to espouse, and the government conducted no information campaign after the declaration. Kattel (2010) notes that the political parties which put secularism in their manifestos for the CA elections did not explain the word either.¹²

With its place as yet unsecured in the still undrafted constitution, secularism has been taking shape beyond the Constitutional Assembly, through campaigns, demonstrations and incidents that result from the sudden disconnection between political power and Hinduism brought about by the Maoist government. These events have provided opportunities to launch a public debate reflecting on the

12 My interviews revealed that many politicians accepted secularism as a part of the Maoist agenda, and as a way to remove the religious basis of the monarchy, but did not give much thought to secularism *per se*, nor were they – belonging to the dominating Hindu high castes – at ease with this concept.

relationship between religion and politics. Some of these incidents ended up before the Supreme Court as Public Interest Litigation, a procedure enshrined in the constitution which has encouraged a growing judicial activism to challenge laws and practices inconsistent with human rights and the constitution. This has given judges the opportunity to rule on the relation between the government and religious traditions. My interest in such court cases stems from the realization that the judiciary may play a crucial role in defining the fluid notion of secularism.

In this chapter I present a court case that challenged the Kumari tradition in the name of child rights.¹³ I will briefly go over the petition, the arguments of the parties and the court's verdict. This case allowed the judges and the public to reflect on the relationship between religion and the state, and provided some space and opportunity for a dialogue and debate among stakeholders to occur.

From the court papers and from my interviews there emerges a notion of secularism which started taking shape in 1990s and which acknowledges the importance of religion in the public space, recognizes the rights of religious groups, and involves the state in supporting and reforming religion. To describe it, I will draw on the notion of 'principled distance' proposed by Bhargava for India, and then read the court case from this perspective.

Before turning to the examination of the case, let me present briefly the Kumari goddess and her role for the Nepalese kings.

The Kumari and the Kings

Worshipping virgin girls as the Kumari is a very old Hindu practice. In Nepal, this cult had long been central to the Hindu-Buddhist culture of the Newars, the indigenous population of the Kathmandu valley.¹⁴

There are many Kumaris in the Kathmandu valley (at least 11, strictly connected with the Newar Buddhist monasteries) and their cult is not necessarily linked to kingship; but since the Malla period (fourteenth to eighteenth century), the cult of Kumari has served to legitimize Hindu kings: each of the three Malla kingdoms of Kathmandu, Lalitpur and Bhaktapur had its own royal Kumari. For Buddhist devotees, these Kumaris were a manifestation of Vajradevi, while for Hindus they were a manifestation of Durga-Taleju, the tutelary deity of the ancient Malla kings.¹⁵ With the unification of Nepal, the Kumari of Basantapur in Kathmandu became prominent as the sole royal – and now national – Kumari. What follows concerns mainly this national Kumari, but many of the rules apply, with some

13 This case was first studied by Axel Michaels (2009), who kindly gave me his manuscript.

14 On Kumari, see Moaven 1974; Allen 1976 and 1996; Toffin 1993; Letizia 2003; Shakya and Berry 2005.

15 For the stories relating the origin of Kumari (mainly in connection with the goddess Taleju), see among others Hasrat 1970: 59; Mohaven 1974: 171; Lienhard 1978: 239–70; Slusser 1982: 311; Toffin 1993: 235.

variations, for the former royal Kumaris of Lalitpur and Bhaktapur. However, only the Basantapur Kumari must live apart from her parents in the 'Kumari House' near the ancient palace of the Malla Kings.

The Kumari is chosen from the Vajracharya-Shakya caste of Newar Buddhist priests. Starting as early as the age of two and until her first period, she is considered as a living goddess and conducts a life of ritual always dressed in red clothes. She does not attend a school but she is taught at home from a private preceptor. Newars and all Nepalis, Buddhist and Hindu alike, come to worship her regularly in the Kumari House,¹⁶ and on the occasion of religious celebrations when she leaves her house on a chariot.



Figure 6.1 Kathmandu Durbar Square, September 2009. Kumari Jatra Festival.

Note: The living goddess Kumari is taken out on a chariot amidst the crowds for the first of three days of procession around the city.

Source: Photograph by the author 2009.

16 Kumari worship generally is particularly important for Newars, since no major ritual can be completed without it (Gellner 1992: 152–3).



Figure 6.2 Kathmandu Durbar Square, September 2009. Kumari Jatra Festival.

Note: A crowd of women stands on the stairs of Maju Deval temple, while awaiting the chariot of the Kumari.

Source: Photograph by the author 2009.

On the last day of the Kumari chariot festival, as I have already mentioned, the Kumari traditionally used to put a red mark – *tika* – on the king's forehead and legitimated his right to rule for one more year. This tradition, started by King Jaya Prakash Malla in the eighteenth century, was appropriated by the following dynasty: when Prithvi Narayan Shah took control of Kathmandu in 1768 on this festival day, he went straight into the Kumari House, he sat on the throne prepared for Jaya Prakash Malla who had fled and took the *tika* blessing from the Kumari in his stead. She thus legitimated the new king and the new dynasty.

The legitimating function of the *tika* was confirmed by stories about subsequent kings of the Shah dynasty: it is said that King Tribhuvan in 1955 went to take the *tika* accompanied by his son, the prince Mahendra. Even a goddess can make mistakes, and the Kumari put the *tika* on Mahendra's forehead, instead of blessing the king. The incident was considered inauspicious for the king: Tribhuvan died six months later and Mahendra succeeded him (Anderson 1971: 135; Allen 1996: 12).

In 2006, King Gyanendra Shah presided over the Kumari festival for the last time; in 2007, since the king had been stripped of his 'cultural rights', the first

prime minister and head of state under the Interim Constitution, Girija Prasad Koirala, took the king's place.¹⁷ In 2008, Ram Baran Yadav was elected as the first president. Shortly after the election, he went to Kumari House to take the goddess's blessings. That year a new Kumari, Matina Shakya, was selected as the first republican Kumari. Since then she has blessed the president.

Despite the ten years of Maoist insurgency (1996–2006) and despite the People's Movement that overthrew the Hindu Kingdom, the space in front of the Kumari continues to serve as a legitimating space for every head of state, since the eighteenth century. Her role appears to have remained unquestioned. Indeed, Michaels (2009) affirms that when the Maoist leader Prachanda became prime minister, a flag was raised for some time on the Kumari house, on which one could read: 'the communist party salutes Kumari'.¹⁸

But some things have changed: the strong connection that linked the Kumari and the king has been severed. The Kumari selecting committee no longer verifies whether the Kumari's horoscope matches the king's,¹⁹ and the royal priest (*rajpurohita*) is no longer involved in selecting a new Kumari. Instead, a committee of priests connected to the Taleju temple and the Kumari House has chosen the new incumbent. Their selection was not approved by the king, but by the president in the presence of a representative of the Guthi Samsthan – a state-controlled national trust funding Hindu religious institutions.

Moreover, in the last decade, a new legitimating source started challenging the authority and legitimating power of the living goddess, namely fundamental human rights. Already in September 2002, a member of parliament, Bidya Bhandari, asked for the abolishment of the Kumari tradition, arguing that it violated children's and women's rights. In 2004 the Committee for the Convention on the Elimination of Discrimination Against Women (CEDAW) made the same recommendation in a report to the UN General Assembly, lumping the Kumari tradition with other discriminatory practices and asking for its abolishment:

17 Nevertheless, the king also went to take the *tika* for the very last time, underscoring with this gesture the importance of the Kumari as a symbol of legitimization.

18 The Maoists adopted inconsistent attitudes towards religion during the 'People's War' (1996–2006) and beyond. They occasionally prohibited 'superstitious cults' and sometimes deliberately violated religious taboos, but also summoned shamans, worshipped deities, visited pilgrimage places, etc. Anthropologists have also showed how Maoists built their movement around symbols reinterpreting Hindu notions (Ramirez 1997, de Sales 2003, Lecomte 2006). The Maoist government after 2008 generally adopted an attitude of respect towards the religious beliefs of the masses (despite a few incidents such as the infamous decision of the then Maoist Prime Minister Dahal 'Prachanda' to break the tradition of appointing South Indian priests at the Pashupatinath temple). To the disbelief of Maoist cadres, in 2010 Prachanda worshipped a buffalo at a religious camp in Sunsari district, to appease the bad influence of Saturn.

19 But for Dr Chunda Bajracarya, the planets still are influential and will decide who is going to be president: only a president matching the Kumari would be elected, and only a Kumari fitting a president's horoscope will be chosen (Interview, March 2010).

The institution of dowry, *denki* (dedicating girls to a god and goddess), *jhuma* (second sisters remain unmarried and spend their life in monasteries) *kumari pratha* (having a girl child as living goddess) and *badli* (practice of prostitution among young girls) (...) are contrary to the Convention and constitute discrimination against women. (CEDAW 2004)

The 'Kumari Case' at the Supreme Court

In 2005, a Newar human rights lawyer, Pun Devi Maharjan, filed a Public Interest Litigation (PIL) asking the Supreme Court to intervene to protect the fundamental rights of Kumaris (Maharjan 2005). The very fact that the powerful goddess legitimating the Kings of Nepal could thus be scrutinized in court as a human being deprived of human rights mirrors the political and symbolic transformation of the last years. The petition was filed under the 1990 constitution while Nepal was still a Hindu Kingdom, but the verdict was rendered in 2008, when the country had become a secular state. No explicit reference to secularism was made in this judgment; and yet this case allowed the judges to reflect on the relation between religion and the state and, as I will explain below, this judgement can be seen as a landmark case, setting a precedent for (a local definition of) secularism.

Petition and Arguments

Pun Devi sought a court order (*mandamus*) asking the government to stop unconstitutional activities carried out in the name of the Kumari tradition; to attend to the social security of ex-Kumaris; and to engage the Human Rights commission and the experts of the Newar community in the reform of the Kumari tradition (Bhattarai 2010: 112). The petition argues that the tradition of Kumari violated numerous legal provisions, including: Article 26(8) of the Constitution of Nepal, 1990, which prescribed the state's duty to safeguard the rights and interests of children; Section 14 of the Children Act, 1992, prohibiting that young girls be offered in the name of gods and goddesses for fulfilling a religious purpose; and the Convention on the Rights of the Child of 1989, to which Nepal is a signatory.

In her presentation of the facts, Pun Devi examines the various Kumari traditions, concluding that the young girls have been victims of exploitation and that many of their rights are being infringed (including their rights to personal liberty and freedom of movement and residence, freedom to go to school like other children, freedom to wear clothes of their choice, and so on). She claims that this has affected their physical and mental development, and that the institution of Kumari is a form of child labour. She observes that the state has made no provision to compensate the ex-Kumaris. As a result, says the petitioner, the life of Kumaris and ex-Kumaris is miserable.

Pun Devi did not seek to abolish this cult, but to reform it so that it may conform to human rights standards. Pun Devi's most effective argument during the

hearings was that the restrictions on the rights of children becoming Kumari and the scarcity of funds they faced have already brought about the discontinuation of the custom in some places. She argued that unless the Kumari's human rights are fully guaranteed, the tradition could eventually die out. She suggests that for the tradition to earn more respect, it needs to be made more respectable through timely reforms and improvements.

International Western Supporters

Pun Devi Maharjan's petition received the support of the Center for Reproductive Rights (CRR), a non-profit legal advocacy organization based in New York and dedicated to defending and promoting women's reproductive rights worldwide. The CRR joined the pleadings in October 2006 and filed a report. But it went even further, calling for the elimination of the Kumari practice as 'an institutionalized form of discrimination against girl children' which 'results in violations of several basic human rights'. In her report, the legal advisor of the Center for Asia, Melissa Upreti, explained the Center's interest in the case:

This case presents a unique opportunity for the Supreme Court of Nepal to determine whether in fact the right to freedom of religion and culture can prevail over the rights which are protected by international law and the Constitution of Nepal and, recognizing the important role of culture and religion in peoples' lives, to establish the scope of the state's positive obligations to protect these rights through a balanced approach that is consistent with constitutional principles and Nepal's obligations under international law. (Upreti 2006: 1)

Clearly, this report sought to pressure the Supreme Court to remind the government of its duties under international treaties.

The Reaction of the Newar Community

This case witnessed a public debate involving a petitioner who had placed religious freedom in the context of a (secular) set of fundamental rights versus the Newar community for which the tradition was a matter of identity. Newar community representatives invoked the right of religion, affirming that the Kumari tradition was its exclusive domain and should not suffer any 'outside' intervention.²¹

A group of Newar women also intervened in Court against Pun Devi's petition, contradicting her presentation of the facts. They argued that the petition failed to acknowledge the 'glorious prestige and honour of the Kumari culture (*kumari samskriti*)'.

20 As Gellner (2008: 90) noticed, 'many Newar activists responded that this is a Brahman-inspired attack on a key part of the Newars' heritage, an attack inspired less by genuine concern for child rights than by envy of the Newars' rich history and culture'.

In our interviews, Pun Devi refers to the criticism she received from her community, including Newari newspapers. According to some Newari journalists, her isolation has persisted.²¹

A strong opponent of Pun Devi, both in court and in publications, was Chunda Vajracharya, professor at Tribhuvan University and expert on Newari culture. In the book she edited, Chunda wrote that Kumari culture had been attacked by women's rights activists who didn't care for the dignity of religion and culture. She opposed her vision that Kumari is not a form of violence against women or children, but an ancient Newari tradition and culture, stating that every group has the right to protect its traditions (Vajracharya 2009: 4). Her main argument is that 'Kumari is our culture (in English); only we can change it, and nobody else can judge it' (Interview, March 2010). In November 2006, Chunda told the BBC that being Kumari does not affect the child's individual rights, arguing on the contrary that it elevates her status in society as 'someone divine, someone who's above the rest'.²²

Her arguments were echoed by the father of present Kumari, Pratap Man Shakya, who also defended the traditional practices as privileges rather than exploitation:

Kumari is a Goddess, not just an ordinary child and she owns the power of our state. Since she's a goddess, she gets special treatment. It's true, she is not going to school, but the school is coming to her. It's true, she does not live at home; but if she was going to a boarding school, she would not live at home either: are the boarding schools against human rights? (Interview, April 2010)

Newari activist Pabitra Vajracharya also justified the restrictions on Kumaris as the price of a high status:

Let's take the example of President Obama. His case does not fit with human rights either. He cannot go wherever he wants, or go to cinema: if he goes, he has to go with security guards! Kumari is like a princess, and her status involves limitations to her life, exactly like a President, she cannot go wherever she wants. (Interview, September 2009)

²¹ But Pun Devi told me that while at first everybody was criticizing her, they eventually came round after she explained the reasons for her petition. This included Kumari and ex-Kumari families, who complained to her off-record about the plight of Kumaris, though none of them wanted to speak openly against the tradition or to support her endeavour.

²² She nonetheless agreed that 'some reform measures need to be put in place to ensure their right to education, sports and all-round social development as a child' (BBC 2010).

A Shakya-Vajracharya Tradition 'Attacked' by an Outsider

The respondents argued in court that Kumari is not only a Newari tradition, but in fact a tradition concerning only the high Buddhist Newari castes, the Shakyas and Vajracharyas from among whom the Kumari is chosen. This cast Pun Devi, a Maharjan (the caste of Newari farmers), as an outsider, something she refuted. Her first interview in 2009 started with these words: 'First of all, I'm of the same community as the Kumari and I worship her.' And she later added: 'Kumari tradition is not only their culture, it is *our* culture; Kumari tradition does not belong to only one community, because it receives our government's funds: it's a Nepalese tradition, of every Nepalese citizen. That's why we have to protect it.'

Pun Devi is actually somehow an outsider: as a lawyer trained to identify issues from the perspective of international human rights standards, she looks to her own community traditions with the critical 'external' outlook she gains from her Western-influenced, professional training. Like many Nepali lawyers engaged in judicial activism, she is a mediator and translator of the language of human rights.

The Committee's Report

After the hearing in October 2006, the court ordered the constitution of a committee of experts to study the issue and to submit a report within three months. This committee included the petitioner herself, Dr. Chunda Vajracharya as representative of the stakeholders, and Jal Krishna Shrestha as a coordinator. The coordinator presented the report of the committee to the Supreme Court in 2007 (Shrestha 2009), but both Pun Devi and Chunda Vajracharya felt that it was a 'one-side report' that did not take into account their vision, so they filed their own dissenting reports (later published in Vajracharya 2009).

The committee's report stated that though the Kumari parts with some freedoms, she gains some 'incomparable rights' and she leads a 'superior life' compared to other girls, characterized by pride, honour and divine power. The report did not admit to any human rights violations against Kumaris, and yet agreed that reforms in tune with the times were necessary and made recommendations to guarantee the right of education, freedom of movement and medical care.

Pun Devi disagreed with the report and presented her detailed research findings (based on her visits to many Kumaris and on the interviews with their families) citing several human rights issues in connection with education, freedom of movement, family environment, diet, dress, medical assistance, entertainment and marriage.

*Decision*²³

The judgment strikes a delicate balance between the claims of Newars to their traditional religious rights, the position of the Hindu majority (to whom almost all judges belong and for whom the Kumari is a revered tradition), the importance of the Kumari as a national deity, and the claim that the state has a national and international legal duty to uphold human rights. A key aspect of this decision is the court's general conclusion about the primacy of social reforms based on human rights over traditional religious practices:

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

The existence of state values that are independent from and prevailing over those of the religious tradition is an essential prerequisite of the notion of secularism. Without referring to the principle of secularism, the court thus established one of its cornerstones and helped to secularize the newly declared secular state, by distinguishing the domain of the religious (practised by communities) and the domain of human rights (protected by the state).

The court did not, however, find that a violation of human rights was inherent to this Kumari tradition. Clearly sympathetic, the court noted that no written documents existed for imposing the rules applied to Kumaris. Those rules are applied only on the basis of 'oral traditions and beliefs', and so they were held not to be inherent to the Kumari tradition: any member of the Newar community could become an agent of change in traditional practices (and for example send Kumari to school). The court also refuted the allegation of child labour and took great pains to distinguish 'child labour' from 'Kumari work' (that is, sitting on her throne to be worshipped) and to identify the latter as an essential part of a particular Hindu and Buddhist devotion.

The judges rejected the findings of the CEDAW committee and underscored the value of the Kumari tradition for Newars and for the country, pointing out that the practice is deeply connected with the religious rights of the majority who follow the Hindu and Buddhist religions, and that 'without the presence and participation

23 The verdict was rendered on 16 August 2008 (2 Bhadra, 2065 B.S.) by Justices Bala Ram K.C. and Tapa Bahadur Magar, and published on the Supreme Court journal (Maharjan 2008); it has been republished by the National Judicial Academy in both English and Nepali, in a collection of landmark decisions of the Supreme Court on gender justice (Bhattarai 2010).

of Kumari, it would be impossible to hold certain festivals, worships and cultural activities of the followers of the Hindu and Buddhist religions of Kathmandu, Lalitpur and Bhaktapur' (Bhattarai 2010: 132).

The court acknowledged that *past* Kumaris, due to confusion and backwardness, may have been deprived of their fundamental rights and held that the state must help and support them. In the judge's view, it is the duty of the State to promote its religious and cultural customs and the state should appreciate the Kumaris' contributions to the cultural and religious life of the nation, and thus make arrangements for their social security.

With these fine distinctions, the judgment avoids the labelling of the Kumari tradition as a discriminatory practice and as an infringement of child rights, while leaving space for change and reform. Moreover, the court recognized the need to support and promote the Kumari cult.

Finally, the court ordered that a new expert committee be formed, to render its report within one year, with a view to conducting an extensive study of how Kumari rights can be promoted in compliance with the Constitution and international human rights. The court also issued a *mandamus* to the government, ordering it to implement the report of the committee once it is submitted.

The Role of the Committees

The committees appointed to study the tradition constitute a very interesting aspect of this and other cases. In the committee, the Newar community representatives, at first fiercely opposed to any intervention in their custom, were co-opted by the court to study and reflect on their own tradition. This has given members of the Newar community an opportunity to examine their own tradition with 'secular eyes', and compare it with secular human rights values. In their decision, the judges affirm that the members of the community can be the agents of change in their traditional practices. Such committees offer an example of the potentially constructive role played by the court in shaping new understandings of the religious tradition, as a powerful forum for raising awareness and negotiating reform.

Pun Devi noted that in the end, the court didn't decide, but passed the responsibility to a committee and the government, postponing the whole thing by a year.²⁴

It is also true that in this way, the court used a strategic detour, on one side denying that the Kumari tradition conflicted with human rights, and on the other admitting a need for reforms and delegating to a committee the sensitive determination of the nature and extent of such reforms. A decision ordering the

24 Moreover, court-appointed committees often fail to produce their reports, or reports are just not implemented: the committee report of this case has yet to be submitted and it seems unlikely to be forthcoming unless a petition is filed to seek the enforcement of the court decision.

constitution of a team of experts is quite a common feature of cases dealing with sensitive issues opposing powerful and conflicting interests. Such committees with members representing all stakeholders were also formed in the cases concerning the Pashupatinath temple, in order to decide how its managing trust would be severed from the state's control (Letizia forthcoming), and in the conflict raised around Christian and Kirant burials in the Slesmantak forest, contested by the Hindus (Mulmi 2011). These committees give parties a precious opportunity to negotiate, identify pragmatic solutions, and practice (post-)secularism.

Religion and Culture

A court case involving religious traditions and confronting them with human rights, inevitably entails defining what is of the religious domain and what is not, what can be changed and what cannot be questioned. This can lead to a 'religionization' of the state and of the courts called to decide in matter of tradition, ritual details, and so on.

The debates inside and outside the court give rise to a question that exceeds the ambit of this case: the distinction between religion (pure, not involving any discrimination *per se*) and culture or tradition (which may have been affected by some social evils and can be modified according to the modern times).

The petitioner offers a clear view of this distinction. She draws a line close to the core Kumari practices, considering them 'religion', that cannot be touched, and considering the rest 'culture', which must be changed to enable the custom to survive. She distinguishes between the belief in the Kumari (this is *dharma*, 'religion'), and whatever is done in the Kumari tradition (which is *sanskriti* 'culture' or *parampara*, *ritirivaj* 'custom, tradition'). For her, the state cannot interfere in matters of religion, but can interfere in cultural practices that infringe upon human rights. According to the petitioner, the core part of tradition and its very existence cannot be questioned, is unchangeable and so to speak out of history. But the surrounding traditions and practices are cultural products and can be modified according to historical changes.

This duality seems to apply to the very nature of Kumari, who as a living goddess is both divine and human, and her human part requires human rights. In her report, Pun Devi quotes the opinion of a Newar scholar who affirms that the Kumari tradition seeks to protect a divine power (*daivi shakti*), and this divine power must not be affected; but the divine power is not present in the child for 24 hours, so that when Kumari is in her human condition, she should enjoy human rights, and tradition should be modified accordingly (Maharjan 2009: 50).

It seems to me that the court judgement echoes the same mindset. The court did not find fault within the Kumari tradition *per se*. Instead, it ascribed the past problematic situations to confusion and backwardness. The court adopted the view that social ills allegedly emerging from the religious tradition were in fact, upon closer inspection, to be distinguished from true religion. In the end, the opposition

between (true) religion – which does no wrong – and (undesirable) cultural elements – wrongly identified with religion – is very close to Pun Devi's views.

The Role of the State

The lack of concern on the part of the government in this case is particularly telling. The government attorney simply dismissed the whole thing, saying that 'the government has no direct involvement or participation in the matters relating to the custom of Kumari'. One could take this to mean that the state is maintaining its secular distance, but even without considering the annual ritual involving the president, it is an incredible statement, considering that the state does finance the Kumari cult: it provides monthly allowances to Kumaris and ex-Kumaris through the Guthi Samsthan, and additional allowances for maintenance and education through the Kaushi Tosha Khana, an office of the finance ministry that manages the pensions of civil servants in Nepal. The Kumari of Kathmandu is also supported by Kathmandu municipality.

The verdict calls the state into play to improve the financial support to Kumaris. The fact that the state provides financial support to this religious custom is never made an issue. Actually, no one involved in the court hearings paused to consider whether secularism precluded the continued financing of the Kumari tradition by the state. State involvement here was not only assumed as normal by all the parties involved, but much of the case was about the existence of a state duty to support Kumaris in order to 'appreciate their contributions to the cultural and religious life of the nation'.

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

To sum up, the court:

- recognized the Kumari tradition as an integral part of the Newar culture, and explicitly considered Newars as 'agents of change in their traditional custom and practices in tune with times';
- affirmed the principle that the state retains a duty to support and promote a religious tradition considered valuable for the 'social, cultural and religious life of the nation';
- assumed that a court can engage with religion to enact social reform and to ensure compliance with constitutionally recognized human rights;
- established the primacy of human rights over religious tradition, and yet this primacy does not mean religion should shrink away from the public sphere.

From this case emerges a rather unusual form of secularism that ascribes to the state an active role in both supporting and reforming religious traditions. Thus a conclusion from this case could indicate that Nepali secularism is developing in a direction quite different from the neutral stance and no-relation policy which is generally seen as a mark of secularism in the west.

A Distinctive Form of Secularism?

The case and fieldwork data discussed in this chapter point to a distinctive form of secularism in the making, which (a) is understood as religious freedom and religious equality (as in the 1990s campaign) of both individuals and groups; (b) gives importance to religious groups in the public sphere (e.g. the recognition of minorities' festivals in the calendar was saluted as a secular step, or the Muslim understanding of secularism as an opportunity to apply their personal laws); and (c) ascribes to the state an active role in both enhancing and reforming religious traditions, as has been evidenced in the Kumari case.

I suggest that the normative reflections of Bhargava on an (idealized) Indian form of secularism and his notion of 'principled distance' (2010: 63–105) could be relevant as conceptual framework to describe this form of secularism.

'Principled Distance' and 'Contextual Secularism'

Bhargava argues that Indian secularism has to differ from the classical liberal model, which dictates strict separation between religious and political institutions, and recognizes individuals and beliefs but not groups and practices (Bhargava 2010: 25–6). The circumstances of India (and the same can be said for Nepal) – which include an enormous diversity of religious communities, social practices emphasized over individual beliefs, and many discriminatory religious practices in need of reform – dictate that religious freedom must also include the right of religious communities to carry out their own practices, and that equality of citizenship applies also to the religious groups to which citizens belong. In the absence of a unified religious organization, reform within Hinduism can hardly be initiated without the help of the state.

Bhargava introduces the notion of 'principled distance', which entails a flexible approach to the matter of state intervention in the religious domain or its abstention from it. The state has secular ends and is institutionally separate from religion, but it can engage with religious issues at the level of law and social policy. Whether the state intervenes or not depends on what strengthens religious liberty and equality of citizenship (Bhargava 1998: 536; 2010: 87–96). This form of secularism accepts religion as a resource that 'manifests itself as individual belief and feeling as well as social practice in the public domain' (Bhargava 2010: 88).

Bhargava's reflections shed light on possible ways in which secularism might be shaped in Nepal through a contextual moral and legal reasoning freed

from the rigid application of a Western concept, thus reducing the potential for fundamentalist reactions and mistrust between communities. Such secularism could both accommodate potentially conflicting and competing religious diversity, and allow for collective and individual religious rights which occupy both the private sphere and the public scene. It could also allow the state to intervene in religiously sanctioned discriminatory practices. The Kumari case indicates a blueprint as to how religious traditions can be analysed, questioned, reinterpreted, and yet also upheld by the judiciary as a response to the challenges of state secularization.

I suggest that this distinctive form of secularism could find more acceptance in Nepal 'by embodying the idea of respectful transformation of religions'. This would be in keeping with 'a venerable tradition of religious reformers, who tried to change their religions precisely because they meant so much to them' (Bhargava 2010: 91). As shown in the Kumari case, the notion that religious traditions must accept the challenge of modern times is widely accepted and allows for substantial reforms to take place without hurting the 'religious feelings of the people' that are recurrently invoked by fundamentalists.

The Kumari case seems to fit with Bhargava's model. It constitutes a precedent to qualify the principle that would separate the state from the religious sphere, authorizing 'interference' in an ancient and respected tradition in order to promote social reforms and compliance with constitutionally recognized human rights, and also affirming the state's duty to support religion.

The Supreme Court recognized the Kumari tradition as an integral part of Newar culture, and acknowledged the religious right of Newar community, asking representatives of that community to research whether reforms should be undertaken, and to advise the court accordingly.

This case does not blur the institutional limits of state and religion: both the court and the government have secular ends, and yet they are not simply establishing the primacy of human rights over religious tradition: they engage with religion to promote social reforms and human rights compliance. Moreover, this primacy does not involve a shrinking of religion's presence in the public sphere. The petition was filed not to abolish the tradition, but to ensure its survival, as it is considered valuable both for the Newar community and the 'social, cultural and religious life of the nation'. It ended in a rather peaceful acknowledgement by the community of the necessity of such reform.

The limits of this emerging secularism, however, have only just begun to be outlined and tested, and they will certainly be tested further if real inclusivity is implemented. The Kumari case deals with the Hindu-Buddhist religious traditions of the majority of the population, and is associated with national pride: court cases involving the relationships between religious minorities and the state will certainly modify and shape the notion further. The Kumari case has been debated among the high-caste Hindus who dominate the legal and political fields, but a truly inclusive policy which allowed a significant number of persons belonging to religious and ethnic minorities to occupy positions of authority at the Court and

in the government would naturally lead to a more effective separation between Hinduism and the state.

Finally, the Kumari case did not extend to any consideration of whether the president's receiving a *tika* from the Kumari might amount to a failure to exercise his secular office, a situation that will be certainly questioned when a Muslim president celebrates the festival of Eid in his capacity as Head of State.

Conclusions

A Human being Deprived of Rights or Still a Sacred Source for Political Power?

Through the petition of Pun Devi, new agents such as lawyers and judges enter the Kumari tradition, a space previously managed by priests and devotees. The Kumari's religious power is partly reduced to 'tradition and cultural values', and the devotion and worship she receives is translated by the petitioner as a social problem to be examined and corrected on the basis of legal norms (she reads the Kumari *pūja* as child labour). This leads to what Axel Michaels (2009) calls the 'politische Ohnmacht', or political impotence of the Kumari: under the scrutiny of the judges and the committees, she loses the power based on the belief that she is a goddess and that, as such, she is above all rules and norms.

In the legal language of the petition, the Kumari is transformed from a powerful goddess, legitimizing Nepalese kings, into a human child deprived of human rights. And this is what moved Pun Devi to file the case. In her words: 'I filed a case to protect her right, arguing that before being a Kumari she is a human being.' On the face of it, a stark contrast is being presented between medieval mysticism and modern rights-based rationalism. However, as with the claim of Pun Devi herself to belong to the community of worshippers of the Kumari, and the identification of particular cultural practices as being distinct from eternal religious verities, we are shown here a strong case of the South Asian penchant for versions of modernity that do not exclude the cosmological and religious genealogies of the past (see Bubandt and Van Beek 2011).

The source of legitimation of political power in present Nepal is not the Goddess's blessing but elections and democratic appointments based on constitutional provisions. In theory, there is no need for political leaders to take the Kumari's blessing, attend the worship of Gods (*pūjas*), visit temples or pay their respects to Hindu *babas*. But just as in the past, religious events, religious leaders and religious institutions are being courted not only because they enjoy wide public trust and can exert a great deal of influence, but also because many politicians are religious – Maoists included. The symbolic appeal of the Kumari is such that, in the end, the judges fully recognized the Kumari's national importance as a legitimate, state-sponsored institution.

After the massacre of the royal family in 2001, King Gyanendra faced a serious popularity crisis, having been crowned just after the massacre and, at the same

time, having been held responsible for it by many Nepalis. A key legitimating moment for Gyanendra came during the festival of Kumari Jatra, and the media underscored the powerful meeting of the 'new Kumari and the new king'.²⁵ Thus, Gyanendra followed the example of King Jaya Prakash Malla, who founded the Kumari Jatra in a critical time of his reign and Pritvi Narayan Shah, who marked the beginning of his dynasty with the *tika* of the Kumari.

Hausner (2007) and Gellner (2010) have shown how Gyanendra tried to rule as a Hindu king connecting with the Gods, and that his five-year reign (2002–2006) was a time when Hinduism was consciously promoted by the regime to gain legitimation. In 2007, citizens and the media were watching attentively whether and how King Gyanendra visited and was received by the Kumari, 'to assess whether the monarchy would be invested with ritual power' (Hausner 2007: 137). The space in front of the Kumari is still present and powerful, and cannot be left empty; as Nepali anthropologist Mukta Tamang once put it, 'it is important that the President go there, and does not leave the place to the king'.²⁶

In the last two years, the former king participated in a considerable number of religious festivals, temple inaugurations, and fire sacrifices, while around him many supporters chanted slogans calling for the return of the monarchy. This has been taking place mostly in the South, where the Hindu right wing from both Nepal and India support him most. Anti-secular voices increased in the wake of a weakening of the constitution drafting process, and conservative forces became more active through religious and political action, asking that secularism and monarchy be put to a referendum.

The symbolic challenge that the king poses for the president appeared clearly in March 2010, when President Yadav and former king Gyanendra both visited Janaki Mandir in Janakpur for the celebration of Ram Nawami. To avoid a clash, the President's visit was hastily rescheduled. Only two hours apart, they entered the temple for the *pūja*, and were treated pretty much in the same way: both covered by the same honorific parasol and accompanied by the temple's Mahanta.

That Kumaris are still dangerously able to mark the 'wrong forehead' and legitimate someone who was not supposed to be, seems to be suggested by a move on the part of the government in 2010, requesting the former king not to leave his residence to participate to a function celebrating ex-Kumaris in Basantapur. *The Nepali Times* reports that Gyanendra was forced to cancel his

25 Writes a (definitely pro-king) journalist in the Kathmandu Post: 'The people heaved a sigh of relief when the Kumari offered her blessing to the King without hesitating, indicating a prosperous future.' (...) 'Those who know the tradition believe that this annual meeting between the King and the Goddess will only consolidate the monarchical system in the country. They have the verdict: when the new Monarch meets the new Living Goddess, the country prospers' (Bishwakarma 2001).

26 This remark was made by Dr Tamang following his lecture Identity and Capability: the current debate on constitution making in Nepal, held at SOAS, London on 10 November 2010.

visit to the Kumari Ghar at the eleventh hour, apparently due to security reasons (The Nepali Times 2010).

The Nepali Times suggests that the government's move to prevent former king Gyanendra from attending this function shows that he is not a commoner just yet. I would say that it is the Kumari's symbolic and political importance that has not yet ended. The programme had been organized by the World Youth Hindu Federation (WYHF) and the event was an opportunity to associate Kumaris, Hindu religion and the monarchy, as made clear by welcome banners that read 'His Majesty King Gyanendra', with his portrait on either side of the function's gate.

It may be that the legitimizing role of the Kumari is only transitional, for a secular government that has yet to find its stability and is still waiting for a constitution; but even at the cost of becoming a child capable of being deprived of her rights, the child goddess remains a significant state-sponsored practice, acknowledged under the officially secular legal regime.

The analysis of this case and of the processes shaping secularism in Nepal supports the view that a model of secularity as a public space free from religious arguments, religious symbols and religious groups is unlikely to be implemented, and that Nepal is following its own alternative pathway to modernity, which involves building a 'post-secularism' through dialogue and debates of a pragmatic nature.

I see Nepal as a postsecular laboratory, where western notions of secularism and modernity are but one factor among many, and where the state's policy and the judiciary must walk a tightrope, upholding secular values and yet balancing the Hindu majority traditions and the claims of minorities for social, political and religious recognition.

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