

Secularism

Cécile Laborde

A basic idea of church-state separation seems central to the tradition of liberal democratic constitutionalism. At the very least, a liberal democratic state does not rest its political sovereignty on religious authority. Beyond this basic separation, however, it is unclear whether, and which secularism is required by liberal-democratic ideals.

This chapter puts forward the view that liberal democratic states must meet the standards of *minimal secularism*. The three (jointly necessary and sufficient) standards of minimal secularism are: personal liberty, equal inclusion and public justification. Each targets one discrete feature of religion; and there is no need further to separate state and religion, once the standards are met.

Minimal secularism is a distinctive theory of liberal legitimacy, in two ways. First, it is compatible with a plurality of permissible models of state-religion relationships, beyond US- or French-style separation. Second, it does not single out religion as uniquely special, but instead connects liberal legitimacy to discrete features of religion (that are shared with non-religious beliefs and practices). The plural standards of liberal legitimacy require that religion be *disaggregated*.

Minimal secularism fares well in relation to two critiques of, or alternatives to, secularism. First, it is not vulnerable to the claim that secularism is hostile to religion, marked by an ethnocentric legacy of church-state separation, or committed to a Christian, and specifically Protestant conception of religion. Second, it is more structured and precise than theories of state neutrality towards the good. Or so I shall argue.

The chapter is organised as follows. The first section introduces some challenges to secularism; the second develops the neutralist response to them; and the third introduces minimal secularism as a more robust and fuller response.

I SECULARISM AND ITS CRITICS

Preliminary Definition

This chapter focuses on political, not ethical secularism. Ethical secularism denotes a comprehensive worldview, typically an atheistic or anti-religious outlook that

defines the goods of human life and flourishing without reference to divine or otherworldly values. Political secularism merely refers to the idea that a principled distance should be maintained between the state and religion (Bhargava 1998).

We find an early intimation of this idea in John Locke. Religion, Locke thought, is about the aspirations to salvation of the individual soul. The state has no authority to shape or control such aspirations: it cannot effectively compel inward belief, nor does it have the competence and wisdom to distinguish true from false belief. The state should, therefore, adopt a policy of toleration of religious beliefs. Its role is limited to the care and protection of ‘outward things, such as money, land, houses, furniture, and the like’. In such domains, churches are in turn incompetent, and should not meddle with the business of government. What is ‘above all things necessary’, Locke famously wrote, is ‘to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other’ (Locke 1991, p. 17. Cf Forst 2017c).

Roughly speaking, the state is a temporal authority, concerned with the provision of temporal goods; and it should leave the management of spiritual affairs to religious institutions, or individuals themselves. Such differentiation is one of the defining features of the secular age (Taylor 2017). In contemporary liberalism, this basic intuition has evolved into what has been called ‘two-way protection’: protection of religion from the state, and protection of the state from religion (Gutmann 2000, 2003). These two ideas are paradigmatically expressed by the two Religion Clauses of the US First Amendment: the Free Exercise clause, and the Establishment clause.

Empirically, political secularism does not presuppose or require social secularisation. Pervasively religious societies, such as the United States and India, have secular states. Philosophically, political secularism does not take a stance about the truth of religion: it is an answer to the distinctively political question of how to live together in societies marked by a reasonable pluralism of beliefs and worldviews. Political secularism bears affinities to what John Rawls called ‘political’ liberalism as opposed to ‘comprehensive’ liberalism (Rawls 1993; Waldron 2004).

Criticisms

Political secularism, briefly sketched here, has been subjected to three chief criticisms.

1 Dogmatic Separation

According to this first charge, advocates of two-way protection often end up advocating strict separation between state and religion. Yet this is a dogmatic view. Two main (mostly empirical) arguments have been presented. First, many existing liberal states have regimes of religious establishment. Institutional separation is an exception rather than the norm worldwide. The First Amendment to the Constitution of the United States, as well as the French *laïcité* laws of 1905, stipulate that the state must neither

establish any particular religion nor publicly endorse or support any particular faith. By this definition, however, many liberal democracies would not qualify as secular, since regimes of ‘weak’ or ‘moderate’ establishment’ remain common, and their liberal credentials are not contestable, including by contrast to openly secular, separationist regimes (Modood 2016). Second, legal and political separation is also the exception rather than the norm. All states are in fact actively involved in defining, regulating and controlling religion. Critics have shown that secular states such as the United States, France and Turkey ride roughshod over any principle of separationism and tightly control or manage religion, often in the name of public order and security (Sullivan 2005; Agrama 2012; Asad 2012; Shakman-Hurd 2015). The very project of separating the temporal authority of the state and the spiritual authority of religious institutions has proved to be, in Stanley Fish’s memorable words, ‘mission impossible’ (Fish 2000).

2 Arbitrary Singling Out

According to the second charge, secularism arbitrarily singles out religion. It subjects religion to a uniquely special, exorbitant system of both protections (religious exemptions from laws) and restraints (ban on state endorsement of religion). Yet it is difficult to see what justifies such an exorbitant regime in contemporary pluralistic societies. First, the uniquely special protection of religion is not warranted. There is nothing special about religious beliefs, such that they deserve special exemptions from general laws (Barry 2001; Nickel 2005; Leiter 2013; Dworkin 2013). Whatever feature is singled out as protection-worthy (conscience, depth of commitment, cultural tradition) can be found in other identities, beliefs and commitments. Furthermore, whatever feature is singled out, it is not clear why it deserves special protection under conditions of ethical pluralism. Second, the uniquely special containment of religion is not warranted either. While anti-religion sceptics worry about the special protection of religion under free exercise, pro-religion advocates worry about the special containment of religion under the establishment clause (and similar provisions in western constitutions). Why single out religion as particularly problematic, while making no special provision against state endorsement of secular ideologies such as atheism, libertarianism, or nationalism?

3 Protestantised Religion

This critique shifts attention to the conception of religion that secularism relies upon. First, it conceives religion mostly as an expression of belief. The problem here is that, as a result, secular law is biased towards individualistic, belief-based religions. Religious rituals and practices were seen by Locke to require merely bodily acts, and therefore, as not essential to religion. Religion is supposed to be about mind, belief and thought, rather than constituting an activity in the world. Religion, on this modern Protestant reading, is private, voluntary, individual, textual, about obligation, and about belief (Sandel 1998; Asad 2012; Mahmood 2005, 2009; Shakman Hurd 2015;

Spinner-Halev 2005; Sullivan 2005; Sullivan, Hurd, Mahmood, & Danchin, 2015; White 1998). As Saba Mahmood and others have shown, however, a great deal of religious practice – ritual observance, dietary habits, dress and bodily behaviour – are not best described through the Protestant categories of belief, sincerity, or choice (Mahmood 2005). In Judaism, Islam, Hinduism, aboriginal religions, as well as many forms of Christianity, practices and community are more important than belief and individuality. Second, secularism construes religion as its dangerous, absolutist, violent ‘Other’. Theorists tend to describe the ‘problem’ of religion as one of deep, intractable conflict rooted in doctrinal dogmatism. This is a clear legacy of the European wars of religion, which connected fanaticism and violence (Cavanaugh 2009). Yet this obscures the militancy of secularism itself: authoritarian and totalitarian regimes in the twentieth century have mostly been secular states. It also erases the fact that lived religion is not typically about doctrine and belief: religion is more often experienced as a mode of social identity, one similar to culture, ethnicity, or nationality.

II NEUTRALIST SECULARISM

Our first response to this set of challenges is to point out that separationism holds a more limited place in political liberal philosophy than critics assume. This is because most liberal philosophers, in the broadly Rawlsian tradition, are committed to a version of what can be called neutralist secularism. Neutralist secularism is not committed to separation as a normative ideal. Nor does it hold that religion is uniquely special. As a result, it is not vulnerable to the criticisms of secularism canvassed in the previous section.

Liberal Justice and Neutrality

We first need to clarify the relationship between liberalism and the contested term of neutrality. A liberal state is not neutral towards liberal moral principles such as human rights and non-discrimination. It is not neutral about liberal justice. As a result, there is no paradox of state interference with religion. Religion is not a naturalised sphere of human activity that is immune from political regulation. Liberal states should only protect justice-respecting conceptions of the good, not conceptions of the good *simpliciter*. In addition, neutrality requires that the state not side with or favour *any* (justice-respecting) conception of the good, whether religious or not. This conception of liberal neutrality provides a preliminary answer to the three challenges set out above.

1 Dogmatic Separation

Neutralist secularism is not vulnerable to the first charge, because separation is at most a derivative, not an intrinsic, requirement of neutrality. Critics mistakenly equate practices of church-state separation with political secularism. Yet practices of

separation between state and religion are only valuable as *means* to specifically liberal *ends*: they are not ends in themselves. Metaphors and slogans about ‘walls’ and ‘separation’ do not provide a sensible conceptual apparatus for the analysis of religious liberty (Eisgruber & Sager 2007). Plainly, not all secular regimes or policies are liberal, as the example of communist atheist states demonstrates. Nor should the separation doctrine be zealously defended at the expense of freedom of conscience, as the Islamic veiling controversies in France and Quebec illustrate (Laborde 2008; Maclure & Taylor 2011). In practice, state regulation of religion can be justified by good reasons (protection of basic rights) as well as bad reasons (majoritarian conceptions of public order, religious animus). Neutralist secularism provides critical tools to assess practices of existing states: critics exaggerate the gap between ideal and critical approaches to secularism.

The ideal of separation, then, has a limited place in neutralist secularism. As a downstream principle, neutrality can demand either even-handed impartiality (similar level of support) or hands-off abstention (separation proper). State abstention from religious and cultural affairs is only one possible instantiation of liberal neutrality (Patten 2014). Generally, it is a mistake to take separationist policies as the litmus test for secularism (Bhargava 1998; Modood 2016; Maclure & Taylor 2011; Laborde 2013).

2 Arbitrary Singling Out

Liberal neutrality does not single out religion as uniquely special: it demands equal respect for religious and non-religious conceptions of the good. (Dworkin 2013; Eisgruber & Sager 2007; Taylor & Maclure 2011; Schwartzman 2012). Religion is only one of the conceptions of the good life that make up the reasonable pluralism of contemporary societies. What is called neutrality in contemporary liberal philosophy is a generalisation of the classical ideal of disestablishment and religious toleration. The liberal state is required to be neutral between religions; and also between all aspects of its citizens’ conceptions of the good, whether these are religious or non-religious. Liberal neutrality seeks to extend and generalise the protections (and burdens) traditionally associated with religion to a broader category of what Rawls called ‘conceptions of the good’ (Rawls 1971, 1993).

The upshot is that the liberal state does not single out religious views and conceptions as uniquely problematic. It does not separate itself uniquely from religion but, rather, refrains from endorsing or promoting any controversial or comprehensive conception of the good. Neutralist liberalism, therefore, has been called an *egalitarian* theory of religious freedom (Schwartzman 2012; Laborde 2014). Religious freedom is only one instantiation of a more basic right: a right to personal freedom or ethical independence, which is also at stake in other controversies around conscience, sexuality and abortion. There is nothing special about religion that would warrant that religious citizens should receive uniquely privileged treatment in the law – say, in the form of exclusive exemptions on the ground of religious belief.

As philosophers such as Rawls and Ronald Dworkin have argued, it is the human capacity for moral or spiritual agency, not for leading good lives with a determinate, perhaps religious, content, which should ground the respect that the state owes to persons *qua* persons. In their book, *Religious Freedom and the Constitution*, US constitutionalists Christopher Eisgruber and Lawrence Sager argue that religion should be treated as no worse, but also no better, than other forms of human experience (Eisgruber & Sager 2007). For example, the doctrine of humanist atheism should not be ‘established’ by the state. However, secular conscience – for example, mandating objection to military service – deserves as much respect as religious conscience.

3 Protestantised Belief

Liberal egalitarians have generalised the notion of ‘religion’ to a broader, vaguer, and therefore, less ethnocentric and biased category. Religion is morally and politically salient as one of the conceptions of the good, ethical worldviews and ways of life that make up the pluralism of contemporary societies. The state is not secular but rather *neutral* about the good. As a result, religious believers and groups neither enjoy nor suffer exclusively special legal treatment; they are treated under a broader regime of equality. The upshot is that neutralists are not guilty of working with the wrong conception of religion. They need not take a stance on whether ‘real’ religion is belief-based/Protestant.

Neutralist secularism is a plausible first answer to the criticisms of secularism. Yet it suffers from a disabling ambiguity. In brief: what it means to treat religion and ‘non-religion’ equally is unclear. Theorists should ask deeper questions about which relevant feature religious and non-religious conceptions share, such that they should be treated equally. The much-used Rawlsian phrase, ‘conception of the good’, is too vague to do the work that egalitarian liberals intend. Consider how the slogans of neutrality and equality fail to provide much guidance in many of the most salient controversies about the public role of religion. Are state-sponsored religious symbols analogous to cultural symbols? Should fashion hats as well as Muslim hijabs be exempted from regulations about workplace uniforms? Should Intelligent Design theories be taught on a par with Darwinism in schools? Is criticising a religion the same thing as criticising a race? Should disadvantaged religious minorities benefit from positive discrimination policies? Should the state offer equal support to leisure, educational, and religious activities?

In all these (and related) controversies, the idea of a simple analogy between religion and non-religion is of limited use, and neutrality plays a diminishing, almost evanescent role (Laborde 2017b). As critics of secularism have pointed out, the term ‘religion’ has a multiplicity of meanings and referents, and it resists the simple ‘analogising’ strategy of neutralist theorists. In practice neutralist theorists have singled out specific features of ‘religion’ or ‘conceptions of the good’, depending on which normative question they ask. They have intimated – yet not developed – the crucial

insight that the concepts of religion and the good should be analytically disaggregated (Laborde 2017a). Furthermore, the boundary between justice and the good is often precisely what is at issue in controversies about the public place of religion, and therefore, the domain of neutrality (where neutrality applies) remains unclear. The idea of secularism-as-neutrality is inconclusive or indeterminate about what justice demands in key controversies about justice. We need to provide a more fine-grained, but also a more modest, account of the proper relationship between secularism and liberalism.

III MINIMAL SECULARISM

Minimal secularism is a deliberately incomplete theory, because secularism is a theory of liberal legitimacy, not of full liberal justice. It does not deliver conclusive solutions to all controversies about the place of religion in the constitution and laws of liberal states. Yet it identifies the minimum standards that have to be met for states to achieve liberal legitimacy. In particular, it is able to explain the sense in which most states that have been called ‘constitutional theocracies’ (Hirschl 2010) are straightforwardly in violation of liberalism. Another crucial contribution of minimal secularism is that it disaggregates religion to bring out different modes of ethical salience of religion. It does not assume that religion is simply a Rawlsian conception of the good. Instead, it picks out a plurality of relevantly salient dimensions of religion, which are shared by non-religious conceptions, identities and beliefs. On the theory I defend, a state holds liberal legitimacy if it meets the three standards of minimal secularism, which each pick out a different feature of disaggregated religion: personal liberty, equal inclusion and public justification (Laborde 2017a). Let us analyse them in turn.

The State must Protect and Promote Personal Liberty

Historically, the disestablishment of religion disentangled state law from traditional religious moralities, so as to open a sphere of individual self-determination in ethical matters. The first principle of minimal secularism is that the state should not enforce matters of comprehensive ethics, which include, among others, sexuality, family arrangements, eating codes, work, and dress, on its citizens (as long as they do not infringe the rights of others). The liberal state should not enforce matters of comprehensive ethics because they often go to the core of people’s sense of *integrity*, of living up to their own ethical commitments and projects. Since most religions have clear codes governing these matters, this is an ethically significant feature of religions that determines how religious beliefs and practices must be treated by the liberal state.

Here the ethical *salience* of religion is that it is a personal conception of comprehensive ethics. A secular state is a state that does not enforce a religious ethical code: it does not limit personal liberty by enforcing its own code of ethics. This first principle of minimal secularism generates mostly negative duties (respect of freedom

of conscience and religion). It explains why the state should secure basic integrity-based liberties (such as religious freedom) over non-basic liberties (freedoms that are less connected to people's integrity, such as the freedom to wear a fashion hat or – in Charles Taylor's famous example – to move unimpeded by traffic lights) (Taylor 2006). It also generates positive duties (e.g., special exemptions from general laws; substantive rights of exit from all-encompassing, comprehensive institutions such as traditionalist religious communities).

Religion is not uniquely special. The first principle protects *not only* religion (there are secular systems of comprehensive ethics, such as veganism or humanist pacifism) and *not always* religion (religion is not always a system of comprehensive ethics: some of its prescriptions and precepts have been both thinned out and culturalised, such that they are not objectionable impositions of comprehensive, integrated ethical systems – cf. the institution of marriage; Sunday laws; *halal* and *kosher* meat).

The State must Guarantee the Equal Inclusion of all Citizens

Historically, the disestablishment of religion from the state helped secure equal status of vulnerable and marginalised religious minorities. The second principle of minimal secularism is that a secular state must be *inclusive*. It must grant its members equal status or standing, and avoid communicating the message that some citizens have greater civic standing than others. Here, the ethical salience of religion is that religious affiliation often works as a marker for either vulnerable or divisive (or both) social identities. A secular state is a state that guarantees the equal inclusion of all citizens, either through equal individual rights (e.g., Jews in revolutionary France) or through forms of differentiated citizenship (e.g., personal law systems in South Africa or India). And crucially, it is a state that does not equate citizenship with membership of any one religion: it is a state that eschews religious nationalism.

Religion, again, is not uniquely special. The second principle of minimal secularism applies *not only* to religion (ethnic nationalism and religious nationalism are problematic for the same reason) and *not always* to religion (in contexts where religious affiliation is not divisive or subordinating – when it is more like sporting allegiance – some forms of benign and symbolic official religious recognition are permissible).

The State must Offer Public Justifications

Historically, the disestablishment of religion from the state coincided with the gradual substitution of secular reasons for religious argument in public discourse. The third principle of minimal secularism is that a liberal state must be justifiable to those over whom it exercises its authority. In contemporary political philosophy, this principle is defended as a principle of liberal public reason (Eberle & Cuneo, 2015;

Quong 2017). Minimal secularism proposes a permissive principle of public reason as *accessible* reason. A state is secular, on this view, when its officials justify laws and policies by reference to reasons whose force can be understood and democratically debated by citizens: accessible reasons.

Here, the ethical salience of religion is that religious worldviews are partly epistemically closed, such that they rely on beliefs (concerning, for example, the existence of God) that may be intelligible but are not accessible in public reason. The third principle of minimal secularism, then, is that the liberal state must eschew appeals to inaccessible reasons when justifying laws and policies. By contrast, individuals and civil society groups can bring up any argument they think relevant to public debate. In a minimally secular state, it is the state, not the citizens, that is expected to be secular. This principle explains the widely shared intuition that the state cannot coerce all citizens in the name of inaccessible reasons, such as the will of god or scriptures of a sacred text.

Religion, here again, is not uniquely special. The third principle applies *not only* to religion (there are inaccessible secular beliefs and references, such as appeal to purely personal experiences) and *not always* to religion (some religious references are accessible, when they are factual or ethical instead of openly metaphysical). Of course, the principle of accessible public justification is only a necessary, not a sufficient, criterion of liberal permissibility. For an institution, law or policy to be compatible with minimal secularism, it must, in addition, meet the two principles of personal liberty and equal inclusiveness mentioned above.

In sum, there is no single property of religion that justifies the complex set of policies a legitimate liberal state must adopt towards religious beliefs and practices. There are a number of different features of religion (integrity-related beliefs and practices, vulnerable social identities, inaccessibility of reasons) that become ethically salient in different political contexts and call for forms of *restricted* state neutrality, and sometimes, legal protections and exemptions. The upshot is that states can associate themselves with religious institutions, ideas and symbols *when these are not comprehensive, divisive or inaccessible*. Minimal secularism is more determinate than neutralist secularism because it specifies when – and why – religious establishment is – or is not – problematic at the bar of liberal legitimacy. As a result, it allows us to offer a better answer to the three challenges posed by critics of secularism, as follows:

Dogmatic separation: Unlike neutralists, minimal secularists can explain *when* state official recognition and endorsement of religion is permissible. A state may be non-neutral but still respect personal liberty, equal status, and public justification.

Arbitrary singling out: Unlike neutralists, minimal secularists do not deploy a vague category of ‘conception of the good’, but explore the multiple currencies of equality that are relevant to liberal legitimacy.

Protestantised religion: Unlike neutralists, minimal secularists take seriously the plurality of religious experiences beyond ‘belief-based’ and ‘doctrinal’ paradigms.

To conclude, minimal secularism offers a trans-national standard of liberal legitimacy, relevant to countries with non-Christian religions and no tradition of church-state separation. It offers a framework for a normative comparative secularism. The upshot is that US- or French-style separationism is not the golden standard of liberal constitutionalism. Constitutions that give a greater place to religion, either through formal yet vestigial establishment (England) or through the positive recognition of minority religious identities (India) might do as well at the bar of minimal secularism. Yet most states which Ran Hirshl has called ‘constitutional theocracies’ (Hirschl 2010) will fail to meet the criteria of minimal secularism (and therefore liberal legitimacy), because they typically do not achieve sufficient standards of personal liberty, equal inclusion and public justification.

Minimal secularism does not only provide a general test of the all-things-considered liberal permissibility of particular *constitutions*, however. Its multi-criterial theory, and its sensitivity to different meanings and salience of religion in different contexts, also offers fine-grained evaluations of the permissibility of particular *laws and policies*. It is important to be clear, however, about the limits of the normative ambition of minimal secularism. It is not designed to provide conclusive solutions to all controversies about the place of religion in liberal states. It only delivers minimal standards, leaving more substantive resolutions to the interplay of political, legal, and constitutional mechanisms in particular societies. There is no single secular solution to all the debates about the relationship between religion and state.

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