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Silvio Ferrari

Secular politico-legal regimes in religiously homogenous and diverse societies

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Part 3

Law, religion, state and society
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Secular politico-legal regimes in religiously homogenous and diverse societies

Rajeev Bhargava

What should the relationship between religion and the State (and its legal systems) be? Answers to this question would vary with the fundamental values that guide a society and its polity. For instance, if the whole polity is geared towards the domination or hegemony of the religious over the secular or of one religion over other religions, then its legal and political structure is bound to be different from a polity that is driven by a desire to undermine institutionalized religious domination and to build an inclusive society with maximum freedom.

In what follows two fundamentally different ideal typical politico-legal regimes are distinguished: one called religion-centred and the other secular. Both religion-centred and secular states are then further differentiated. After the construction of this typological schema, the chapter undertakes an evaluation of these different politico-legal regimes. How do religion-centred states fare on an index of freedom, equality and solidarity? Do secular states fare better than religion-centred states when judged by standards generated by these values? What difference obtains when religious and philosophical diversity is introduced in our evaluative scheme as fact, value or both? Do different secular states fare differently? The principal point underlying the chapter is to identify how the most defensible political system helps us to face challenges posed by deep religious diversity and greater public visibility of religions.

Religious-centred and secular states

To understand the distinction between religion-centred and secular states, a further set of distinctions need to be introduced. States may be strongly connected to religion or disconnected from it. Such connection or disconnection may exist at three distinct levels: (1) at the level of ends; (2) at the level of institutions and personnel; and (3) at the level of public policy and, even more relevantly, law. A state that has union with a particular religious order is a theocratic state, governed by divine laws directly administered by a priestly order claiming divine commission.\footnote{The Catholic Encyclopedia defines theocracy as a form of political government in which the deity directly rules the people or the rule of priestly caste. The rule of Brahmin in India is in accordance with the Dharma Shastras would be theocratic. See volume 14, p. 13.}
A theocratic state is strongly connected to religion at each of the three levels. Hence the use of the term ‘Union’. Historical examples of theocracies are ancient Israel, some Buddhist regimes of Japan and China, the Geneva of John Calvin and the Papal states. The Islamic republic of Iran as Khomeni aspired to run it is an obvious example. A theocratic state must be distinguished from a state that establishes religion. Here religion is granted official, legal recognition by the state and while both benefit from a formal alliance with one another, the sacerdotal order does not govern a state where religion is established.

Because they do not unify church and state but install only an alliance between them, states with an established church are in some ways disconnected from it. They do so in different ways. For a start, these are political orders where there is a sufficient degree of institutional differentiation between the two. Both the church and the state have distinct identities. This difference in identity may be due partly to role differentiation. Each is to perform a role different from the other. The function of one is to maintain peace and order, a primarily temporal matter. The function of the other is to secure salvation, primarily a spiritual concern. In a theocracy, both roles are performed by the same personnel. In states with established religions, there may even be personnel differentiation. State functionaries and church functionaries are largely different from one another. Thus, disconnection between church and state at level 2 can go sufficiently deep. Yet, there is a more significant sense in which the state and the church are connected to one another: they share a common end largely defined by religion. By virtue of a more primary connection of ends, the two share a special relationship with each other. The states grant privileged recognition to religion. Religion even partially defines the identity of the state. The state declares that the source of its fundamental law lies in religion. It derives partial legitimacy from religion. Thus both benefit from this mutual alliance. There is finally another level of connection between church and state at the level of policy and law. Such policies and laws flow from and are justified in terms of the union or alliance that exists between the state and the church. The institutional disconnection of church and state – at the level of roles, functions and powers – goes hand in hand with the first- and third-level connection of ends and policies/laws. So this is what differentiates a state with established church-based religion from a theocracy: the second-level disconnection of church and state. Table 15.1 clarifies these distinctions.

Just as a theocracy is not always distinguished from the establishment of religion, just so a distinction is not always drawn between the establishment of religion and the establishment of the church of a religion (a religious institution with its own distinct rules, function and social roles, personnel, jurisdiction, power, hierarchy (ecclesiastical levels) and a distinct and authoritative interpretation of a religion). But clearly not all religions have churches. Yet, a state may establish

<table>
<thead>
<tr>
<th>Levels of connection (C) or disconnection (D)</th>
<th>Theocracy</th>
<th>State with established religion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ends:</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Institutions and personnel:</td>
<td>C</td>
<td>D</td>
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<tr>
<td>Law and public policy:</td>
<td>C</td>
<td>C</td>
</tr>
</tbody>
</table>

2 The whole question of church–state separation, I would claim, emerges forcefully in what are predominantly church-based, single-religion societies. The issue of religion–state separation arises, however, in societies without churches or/and with multiple religions or when the hold of religion in societies has considerably declined, when religion is considered by the majority to be largely insignificant.
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such a church-free religion, i.e. grant it formal, legal recognition and privilege. Put differently, the establishment of a church is always the establishment of a particular religion, but the converse is not always true. The establishment of a particular religion does not always mean the establishment of a church. Some Hindu nationalists in India may wish to establish Hinduism as state religion but they have no church to establish. Such an establishment may be expressed in the symbols of the state as well as in the form of state policies that support a particular religion. Many US Protestants may have wanted to disestablish the Church at the federal level without wishing the state to derecognize Christianity as the favoured religion. Alternatively, they tried to maintain the establishment of their preferred religion by the establishment of not one but two or even more churches. The establishment of a single religion is consistent therefore with the disestablishment or non-establishment of the Church, with the establishment of a single church or with the establishment of multiple churches. This issue is obscured because in church-based religions the establishment of religion is the establishment of the church and the establishment of Christianity is so much a part of background understanding of several Western societies that this fact does not even need to be foregrounded and discussed.

Finally, it is possible that there is establishment of multiple religions, with or without church. Arguably, the emperor Ashoka and Akbar in India came closest to it. Perhaps another example is the fourteenth-century Vijayanagar kingdom that granted official recognition not only to Shaivites and the Vaishnavites but even the Jains.

We can see then that there are five types of regimes in which a close relationship exists between state and religion. First, a theocracy where no institutional separation exists between church and state and the priestly order is also the direct political ruler. Second, states with the establishment of single religion. These are of three types: (a) without the establishment of a church; (b) with the establishment of a single church; and (c) with the establishment of multiple churches. Third, states with establishment of multiple religions.

Secular states

Secular states are different from each of these five kinds of states. To further understand this issue and distinguish different forms of secular states, allow me to unfold the structure of the secular state. For a start, we must recognize that a secular state is to be distinguished not only from a theocracy (feature-a) but also from a state where religion is established. But a non-theocratic state is not automatically secular because it is entirely consistent for a state neither to be inspired by divine laws nor run by a priestly order, but instead have a formal alliance with one religion. Second, because it is also a feature of states with established churches, the mere institutional separation of the two is not and cannot be the distinguishing mark of secular states. This second-level disconnection should not be conflated with the separation embedded in secular states, because though necessary, it is not a sufficient condition for their individuation. A secular state goes beyond church–state separation, refusing to establish religion or if religion is already established, disestablishing it. It withdraws privileges that established religion had previously taken for granted. Therefore, a secular state follows what can be called the principle

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3 It is frequently said that secularism cannot exist in India because Hinduism lacks a church and therefore that there is no church to separate from the state. The hidden assumption underlying this assertion is that secularism means church–state separation. This is both false and misleading.

4 The reader must be reminded that the three type of state–church regimes discussed above are all ideal–typical.
of non-establishment. Religion has no privileged recognition (feature-b). Furthermore, the non-establishment of religion means that the state is separated not merely from one but from all religions. Thus, in a secular state, a formal legal union or alliance at level 1 between state and religion is impermissible. No privileged status is given to religion. No religious community in such a state can say that the state belongs exclusively to it. Nor can all of them together say that it belongs collectively to them and them alone. The identity of the state is defined independently of religion.

To grasp this point at a more general theoretical level, let me distinguish three levels of disconnection to correspond with the already identified three levels of connection. A state may be disconnected from religion at the level of ends (first-level), at the level of institutions (second-level) and the level of law and public policy (third-level). A secular state is distinguished from theocracies and states with established religions by a primary, first-level disconnection. A secular state has free-standing ends, substantially, if not always completely, disconnected from the ends of religion or conceivable without a connection with them. At the second level, disconnection ensues so that there is no mandatory or presumed presence of religious personnel in the structures of state. No part of state power is automatically available to members of religious institutions. Finally, a secular state may be disconnected from religion even at the level of law and public policy. Table 15.2 clarifies these distinctions.

### Amoral and value-based secular states

I return to this third level disconnection below. At this stage, it is particularly important to emphasize that the disconnection at each of the three levels may serve different ends. At the very least such ends are of two kinds. The first kind are amoral. Amoral secular states are so called because their entire purpose is to maximize power, wealth or both. They may have moral pretensions but really no commitment to values such as peace, liberty or equality. Usually, they are imperial and autocratic. A good example of such a predominantly secular state, despite the not infrequent allegation of its biased, Christian character, is the British colonial state in India that, motivated almost exclusively by power, wealth and social order, had a policy of tolerance and neutrality towards different religious communities. This is not surprising, given that empires are interested in the labour or tribute of their subjects, not in their religion. Such self-aggrandizing, amoral states may or may not disconnect with religion at the third level, i.e. at the level of law and policy. They may have a hands-off approach to all religions, purely for instrumental reasons. However, if it serves their instrumental purpose, they may also connect with religion.

<table>
<thead>
<tr>
<th>Levels of connection (C) or disconnection (D)</th>
<th>Theocracy</th>
<th>State with established religion</th>
<th>Secular</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ends:</td>
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<td>Law and public policy:</td>
<td>C</td>
<td>C</td>
<td>C or D</td>
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</tbody>
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As we shall see, this would also open up the possibility of distinguishing forms of secular states.
More on value-based secular states

Distinct from amoral states are value-based secular states. A fuller discussion of such states requires a better articulation of their connection with several important and substantive values. The first of these is peace or rather the prevention of a society from its regression into barbarism, not an uncommon tendency where there exist two or more sects, religions or incompatible visions of the good life (feature-c). The second is toleration, i.e. the state does not persecute or allow the persecution of anyone on grounds of religion (feature-d). This value may be seen by some to be superseded by the discourse of rights but in certain contexts it has continuing relevance. Why so? Because there are areas of society that remain beyond the reach of the legal regime of rights. For example, we know that courts are ineffective when overburdened with claims. To check this rot, out of court settlements are encouraged. In the same way, it is sometimes better to waive one’s rights and rely instead on a policy of live and let live. A secular state must have room for this. Third, a secular state is constitutively tied to religious liberty, a value with at least three dimensions. The first refers to the liberty of members of any one religious group (feature-e). It is a brute fact that in most religious communities, one or two interpretations of its core beliefs and practices come to dominate. Given this dominance, it is important that every individual or sect within the group be given the right to criticize, revise or challenge these dominant interpretations. The second aspect of this important liberty (feature-f), is that it be granted non-preferentially to all members of every religious communities. The third dimension of religion-related liberty (feature-g), is that individuals be free not only to criticize the religion into which they are born, but to reject it and further, given ideal conditions of deliberation, to freely embrace another religion or to remain without one.

Religious liberty, when understood broadly, is one important value of a secular state. To understand another crucial ingredient, it is necessary to grasp the point that liberty and equality in the religious sphere are all of a piece with liberty and equality in other spheres. It is not a coincidence that the disestablishment clause in the first amendment to the US constitution institutes not only religious freedom but also the more general freedom of speech, of peaceful assembly and political dissent. It is entirely possible that a state permits religious liberty and equality but forbids other forms of freedom and equality. For instance, a person may challenge the authority of the religious head of his own denomination but not be free to challenge the authority of the state. This is impossible in a secular state which is committed to a more general freedom and equality. Thus, another critical value to which a secular state is constitutively linked is the equality of free citizenship.

The value of equal citizenship has two dimensions: one active, the other passive. To be a passive citizen is to be entitled to physical security, a minimum of material well-being and a sphere of one’s own in which others ought not to interfere. The benefits of citizenship – resources that enable a dignified ordinary life – must be available to everyone and there is no room here for discrimination on grounds of religion. The state neither discriminates positively, in favour of a religion nor discriminates negatively against it (feature-h). This equal treatment is entailed by equal (passive) citizenship. State agencies and the entire system of law must not work in favour of one religious group. If the state works to protect the security and well-being of some individuals or groups but fails to secure these meagre but important benefits to others then the principle of equal (passive) citizenship is violated. Likewise, no one must be denied admission to educational institutions, solely on grounds of religion (feature-i).

The active dimension of citizenship involves the recognition of citizens as equal participants in the public domain (feature-j). Active participation does not only mean the mere possession of the right to vote but also a right to participate in public deliberation and to stand for public
I have claimed above that disconnection of religion from state at levels 1 and 2 serves different ends. It now needs to be stressed that value-based secular states may also differ from one another in their respective understandings of the relationship with religion at level 3. At this stage I introduce three different ways of understanding this relationship. First, total disconnection or mutual exclusion. Such a state maintains a policy of strict or absolute separation. Here religion is excluded from the affairs of the state but the state too is excluded from the affairs of the religion. The state has neither a positive relationship with religion, for example there is no policy of granting aid to religious institutions nor a negative relationship with it; it is not within the scope of state activity to interfere in religious matters even when the values professed by the state are violated.

In the second type, disconnection is partial and is conceived at the third level in a wholly one-sided manner. Here to disconnect is to exclude religion from the affairs of the state but to have no limits on the state’s interventionist powers in the affairs of religion. Such intervention may mean help or hindrance but in either case the motive is to control, regulate and even to destroy religion. Such secular states are decidedly anti-religious.

Partial disconnection is also the form of state–religion relationship in the third type. However, here the state connects with one religion, usually the dominant one, in order to support it. Thus the state may tax its citizens to support the church, grant subsidies to schools run by the church, maintain church buildings and so on.

Thus far it has been claimed in this chapter that a state is secular if it separates itself from religion for some ends. However, the metaphor of separation can be unpacked in multiple ways. Furthermore, the ends for which separation is sought can also be different and so may the weights assigned to them. Given this, I outline three ideal-typical secular states or politico-legal regimes:

(a) Model 1 that advocates mutual exclusion of state and religion primarily for the sake of religious liberty and sectarian or denominational pluralism, though all other values listed

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**Table 15.3**

<table>
<thead>
<tr>
<th>Features of a secular state (mainstream)</th>
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<tbody>
<tr>
<td>(a) Non-theocratic – disconnection at level 2.</td>
</tr>
<tr>
<td>(b) The principle of non-establishment of religion – disconnection at level 1.</td>
</tr>
<tr>
<td>(c) Peace between different sects and denominations of a religious group.</td>
</tr>
<tr>
<td>(d) Toleration for all sects and denominations of a religious group.</td>
</tr>
<tr>
<td>(e) Religious liberty to every individual within a religious group.</td>
</tr>
<tr>
<td>(f) Religious liberty granted non-preferentially to members of every sect or denomination of a religious group.</td>
</tr>
<tr>
<td>(g) The liberty to embrace the beliefs and practices of any sect or denomination of a religion and therefore to move easily from one sect to another and to reject religion all together.</td>
</tr>
<tr>
<td>(h) No discrimination by the state on sectarian grounds or on ground of religion to entitlements provided by the state. These entitlements are available equally to everyone regardless of his beliefs, religious or non religious.</td>
</tr>
<tr>
<td>(i) No discrimination in admission to educational institutions on sectarian grounds or on grounds of religion.</td>
</tr>
<tr>
<td>(j) Equality of active citizenship: no discrimination on sectarian grounds or on grounds of religion in the right to vote, to deliberate on public matters and to stand for public office.</td>
</tr>
</tbody>
</table>
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above are also promoted or protected. Though always contested and not the only one available in the United States, this might also be called, the idealized American model.

(b) Model 2 that advocates one-sided exclusion primarily for the sake of a narrowly conceived, stringently guarded common public culture that gives a uniform and equal identity to citizens. Once again, though contested, this might be called, the idealized French model. Extreme versions of this model are found in Kemalist Turkey and Soviet Russia and its satellite countries.

(c) Model 3 that partially disconnects from religion for the sake of freedom and equality but also provides partial support to one religion on the ground that it is part of cultural inheritance and historical legacy of its citizens and therefore a significant public good. This might be called the idealized West European model because it is practiced in large parts of Western Europe excluding France.

Theocracy, states with establishment and secular states: a normative comparison

We can now ask one of the key questions raised in the chapter: which of the two, religion-centred or secular politico-legal regimes can better protect freedom and build an inclusive society and polity on fair and equal terms. A cursory evaluation of these states shows that all religion-centred states are deeply troublesome. Take first historical instances of states that establish a single church, the established Protestant Churches of England, Scotland and Germany, and the Catholic Churches in Italy and Spain. The state recognized a particular version of the religion enunciated by that church as the official religion, compelled individuals to congregate for only one church, punished them for failing to profess a particular set of religious beliefs, levied taxes in support of one particular church, paid the salaries of its clergy, made instruction of the favored interpretation of the religion mandatory in educational institutions (Levy 1994: 5). In such cases, not only was there inequality among religions (for example between Christians and Jews) but also among the churches of the same religion, and while members of the established church may have enjoyed a modicum of religious liberty, those belonging to other churches or religions did not enjoy any of the same degree of liberty. When members of other church or religious groups possessed strength or number, then such a multi-religious or multiple-denominational society was invariably wrecked by inter-religious or inter-denominational wars. If they did not, then religious minorities were not even tolerated and faced persistent religious persecution (as in the case of Jews in several European countries till the nineteenth century).

States with substantive establishments have not changed colour with time. Wherever one religion is not only formally but substantively established, the persecution of minorities and internal dissenters continues today. One has only to cite the example of Saudi Arabia to prove this point (Ruthven 2002: 172–81). It is important to dwell on this because in so many recent critiques of secularism, a strongly accommodative stance towards religion is recommended with

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6 One exception to this, however, was the Millet system of the Ottoman Empire which had Islam as the established religion but three other religious communities – Greek Orthodox, Armenian Orthodox and Jewish – were treated as equals and given a respectable degree of autonomy.

7 The distinction between formal and substantive establishment is important. In Saudi Arabia, Islam is both formally and substantively established. England and Scotland have a formally established church (the Church of England and the Church of Scotland) but few exceptions apart, only a secular state grants liberty and equality to all.
an alarming neglect of some very elementary facts about what such an alliance might entail. Consider the situation in Pakistan where the virtual establishment of the dominant Sunni sect has proved to be disastrous to minorities, including to Muslim minorities. For example, under Article 260 of the constitution Ahmedis have been deemed as a non-Muslim minority and forbidden from using Islamic nomenclature in their religious and social lives (Malik 2002: 10; Bhargava 2004: 30). A whole community has thereby been formally excluded by the state, both symbolically and materially, from its own religion. For over three decades, citizenship in Pakistan is defined with reference to majoritarian and exclusionary Islamic parameters. Therefore, political exclusion is built into the basic law of the land. By making adherence to Islam mandatory for anyone aspiring to the two highest offices in the country, that of the President and the Prime Minister, the Constitution ensures the exclusion of religious minorities from high political office (Malik 2002: 16).

I have taken Pakistan only as an illustration. Many people in India believe that the establishment of a Hindu State would be disastrous, particularly for Muslim minorities. Or consider the democratic state of Israel. Can anyone reasonably claim that Christian and Muslim minorities in this Jewish state enjoy the same rights as Jews themselves? It is therefore astonishing to read the claim that ‘in modern democratic politics, there is not much reason to fear a religious majority more than a secular majority’ (van der Veer 2001: 20). Charles Taylor’s arguments about the exclusionary tendencies in modern democratic states with religious or ethnic majorities point clearly towards the inherent possibilities in these states towards de facto singular establishment and the wide range of exclusions and injustices that make them what they are (Taylor 1999). To say, at this point, that religious majorities are no worse than secular majorities because different religious communities have lived in the past without coming into violent conflict is both ambiguous and misses the point. It is ambiguous because it is hard to understand what a secular majority means. If by this is meant a group of hard-nosed secular absolutists who are deeply anti-religious, then the statement is true. But if by this is meant, a majority that wishes not to politicize religion in all kinds of unprincipled ways, then this statement is deeply wrong. The statement misses the point because peace between communities is entirely compatible with all kinds of exclusions from the domain of freedom and equality. A fearful minority is willing to buy peace at any cost – something that Indians painfully learnt again after the anti-Muslim Bombay riots in 1992–93.

What of states with multiple establishments of churches? Historically, states of New York or the colonies of Massachusetts in the middle of the seventeenth century officially respected more than one denomination (Levy 1994: 12). These states levied a religious tax on everyone and yet gave individuals the choice to remit the tax money to their preferred Church. They financially aided schools run by religious institutions but on a non-discriminatory basis. They may have punished people for disavowing or disrespecting the established religion, but did not compel them to profess the beliefs of a particular denomination.

States with substantive establishment of multiple churches are better in some ways than states with singular establishment. For example, such states are likely to be relatively peaceful. Members of different denominations are likely to tolerate one another. The state grants each denomination considerable autonomy in its own affairs. But states with establishment of multiple churches have their limitations. For a start, they may continue to persecute members of other religions and atheists. Second, they are indifferent to the liberty of individuals within each denomination or religious group. They do little to foster a more general climate of toleration that prevents the persecution of dissenters. Closed and oppressive communities can thrive in such contexts. Third, they may not have legal provisions that allow an individual to exit from his religious community and embrace another religion or to remain unattached to any religion whatsoever. Fourth, such
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states give privileged recognition to particular religious identities but fail to recognize what may be called non-particularized identities, i.e. identities that simultaneously refer to several particular identities or transcend all of them. Fifth, such states are unconcerned with the non-religious liberties of individuals or groups. Finally, such states are entirely indifferent to citizenship rights. States, which establish multiple religions, face similar problems but are better than states with multiple church establishments in one important respect. There is peace and toleration and perhaps equality between all religious communities.

So are secular states better, from an ethical point of view, than theocracies and states with establishment? It would be hasty, indeed wrong, to answer this question in the affirmative. As we have seen, from a moral point of view, some secular states are deeply problematic. Amoral secular states have no commitment to any values. Anti-religious secular states (model 2) also have a poor record in promoting or even protecting religious freedoms. Indeed, states that fail to protect religious freedom usually trample upon other freedoms also. Over time they also develop a hierarchy between the secular and the religious. Thus, such states are also likely to fare badly on the index of freedom and equality.

Critics who wish to rehabilitate religion in political life usually contrast states more hospitable to religions with self-aggrandizing amoral or mindlessly anti-religious secular states. This is not a fair comparison. An attempt is made here to antecedently shift judgement in favour of states closely aligned with religions by deliberately pitting them against the worst forms of secular states. Little is to be gained from damning secularism, by citing the atrocities of Hitler and Stalin or crimes committed by ‘secularists’ such as Saddam Hussain or Ali Hyder (Asad 2003: 10). Nonetheless, this comparison serves a point: there is not much to choose between theocracies or states with established religions on the one hand and amoral or absolutist secular states on the other. Their deep formal structure is identical. Both fare miserably on any index of freedom or equality.

But what about models 1 and 3 that in one way or another separate religion and state for the sake of religious liberty and equality of citizenship? How do they fare in comparison with ideal-typical theocracies and states with established religions? From a liberal and egalitarian standpoint, pretty favourably. For example, they grant the right to criticize, revise or challenge the dominant interpretations of the core beliefs of their religion to every member of all religions. In such states individuals are free not only to criticize the religion into which they are born, but at the very extreme, to reject it. Such states also grant equality of citizenship. All citizens are entitled to the same basic benefits. They have a right to vote and also a right to participate in public deliberation and to stand for public office.

Thus, when evaluating the relative merits of religious and secular states, it is these value-based liberal democratic states which must be kept in mind for comparison and not the routinely debunked, severely anti-religious or self-aggrandizing secular states. The moot question is whether these liberal-democratic secular states are themselves ridden with serious problems.

They are. The main problem with the two, indeed with all three models is that their origins lie in predominantly single-religion societies but are now confronted and struggling with issues generated by deep religious diversity. All three models were born after a great deal of religious homogenization had taken place in societies that at their helm had what are called ‘confessional states’. Each state had declared allegiance to one or the other sect or sub-sect of Christianity dominant in society. The secularization of these societies and states began when the politically meddlesome and socially oppressive character of national churches was challenged by social and political groups. Secular states in these societies were born in a context where there was not much (deep) religious diversity to manage. This has changed particularly in the second half of the twentieth century. Consider European States. With the migration of workers from former
colonies and the intensification of globalization, pre-Christian (Hindu, Buddhist, Jain) and post-Christian faiths (Islam, Sikhism) have been thrown together for the first time in modern Europe creating an unprecedented diversity the like of which has not been witnessed in Europe under conditions of modernity. This has destabilized existing European secular states and the conception of secularism that underpins them.

How would the character of secular states change if they seriously began to deal with deep religious diversity? Allow me to first explain what I mean by deep religious diversity. To begin with, by religious diversity I mean diversity of religion. Diversity of religion exists in a society when it has a populace professing faith in say Christian, Jewish or Islamic ideals. A society has deep diversity of religion when its people adhere to faiths with very diverse ethos, origins and civilizational backgrounds. This happens, for example, when a society has Hindus and Muslims or Hindus and Jews or Buddhists and Muslims and so on. The second kind of diversity is within religion. This second diversity may be of two kinds. The first might be called horizontal diversity. Horizontal diversity exists when a religion is internally differentiated. For example, Christianity may have different confessions, denominations and sects. Likewise Muslims may be divided into Shias and Sunnis or into Shias, Sunnis, Ismailis and Ahmedis. Likewise Hindus may be differentiated into Vaishnavites and Shaivites and so on. Religions are characterized, however, by another kind of diversity which can be called vertical diversity. Here, people of the same religion may engage in diverse practices that are hierarchically arranged. A religion might mandate that only some may engage in certain kind of practices and others be excluded from them. For example, caste-ridden Hinduism makes a distinction between pure and impure practices. Practices performed by certain castes are pure and members of other castes are excluded from them. For example, women or dalits may not be allowed entry into the inner sanctum of temples and in many cases into the precincts of an upper caste temple. This example already brings home a point that I ought to have made at the very outset of this discussion. Every form of diversity, including religious diversity, is enmeshed in power relations. If so endemic to every religiously diverse society is an illegitimate use of power whereby the basic interest of one group are threatened by the actions of another. It further follows that inherent in religiously diverse societies is the possibility of both inter-religious and intra-religious domination. (Two other forms of domination are also possible. One, the domination by the religious of the non-religious and second, the domination of the religious by the non-religious.) This enables me to identify the main problem with mainstream liberal-democratic secular states (models 1 and 3, and partly 2). They are equipped either to deal with the domination of the secular by the religious (model 2) or to confront aspects of intra-religious domination (for example, model 1 is sensitive to denominational pluralism and to the domination of individuals by congealed religious communities and their leaders) but they are not equipped to deal with inter-religious domination. In order to deal with the latter, other models of secular states need to be developed that respond to structural inequalities among religions and institutional biases in favour of one religion by explicitly granting public recognition and therefore active respect to non-dominant religions. This value has to be added to the list of values enumerated above. Other values that may be added to the list include not only the more minimalist variety such as peace and toleration between different communities (and not just sects of one religious community), but also the active encouragement on the part of the state of inter-faith civility, if not solidarity, what Gandhi called ‘communal harmony’. In line with what is stated above, we may interpret the relationship between religion and state at the third level to mean active respect and support for all religions, an idea that is found in the public discourse in India as well as in Senegal and Indonesia, countries where the majority of its citizens are Muslims (see Stepan 2011: 127).
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The best model then would be one that not only reduces inter-religious domination by giving public recognition to non-dominant religions entrenched in community-specific rights but also reduces intra-religious domination in all its forms. In short, unlike the idealized French state that is hostile to religion and the idealized US state that once was excessively friendly to one religion but now appears to be excessively friendly to all in all kinds of illegitimate ways* and quite unlike the idealized West European state that is moderately friendly to only one religion, we need a model that combines active respect for some practices of all religious groups with some degree of active disrespect for some practices also of all religious groups. In short, we need a model that embodies critical respect for all religions, possible only when it engages with all religions or disengages from them, engages positively by giving them recognition or state subsidies or negatively by lawfully and democratically intervening in religious communities whenever any of its members, especially internal minorities and women, face exclusion or discrimination. In other words, the state adopts a policy of principled distance for the sake of reducing, if not altogether eliminating, all forms of institutionalized religious domination. This fourth model can be called the principled distance model.

Seven features of this model, found in the Indian Constitution read appropriately, make it distinctive. First, its multi-value character. Indian secularism more explicitly registers its ties with values forgotten by Western conceptions – for example, peace between communities – and interprets liberty and equality both individualistically and non-individualistically. It has a place not only for rights of individuals to profess their religious beliefs but also for the rights of religious communities to establish and maintain educational institutions crucial for the survival and sustenance of their religious traditions. Second, because it was born in a deeply multi-religious society, it is concerned as much with inter-religious domination as it is with intra-religious domination. Thus it recognizes community-specific socio-cultural rights. Although community-specific political rights (special representation rights for religious minorities such as Muslims) were withheld in India for contextual reasons, the conceptual space for it is present within the model. Third, it is committed to the idea of principled distance, poles apart from one-sided exclusion, mutual exclusion and strict neutrality or equidistance.

In addition to these features, there are others that further distinguish it from models 1–3. Fourth, it admits a distinction between de/publicization and depoliticization of religion as well between different kinds of depoliticization. Because it is not hostile to the public presence of religion, it does aim to de/publicize it. It accepts the importance of one form of depoliticization of religion, namely the first and second-level disconnection of state from religion but the third-level depoliticization of religion is permitted purely on contextual grounds. Fifth, it is marked by a unique combination of active hostility to some aspects of religion (a ban on unsociability and a commitment to make religiously grounded personal laws more gender-just) with active respect for its other dimensions (religious groups are officially recognized, state aid is available non-preferentially to educational institutions run by religious communities, no blanket exclusion of

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8 The United States finds it politically and to some extent even constitutionally difficult to control some of the demands of assertive fundamentalist groups of all religions. For example, at least 40 US-based Christian evangelical and Jewish religious groups violate the US tax code, international law and the formal goals of US policy by funding the growth of illegal settlements in the West Bank (they also get a tax break for doing so). Alfred Stepan tells us that one reason for the inability of the US government to prosecute offenders is that obsession with negative religious liberty discourages detailed inquiry into the sources and uses of religious funds. See Stepan 2011: 119. Also see Rutenberg, McIntyre and Bronner 2010.

9 See below, following section.
Principled distance

Let me further elucidate two of these features: its contextual character and the idea of principled distance. As seen above, for mainstream Western secularism, separation means mutual exclusion. The idea of principled distance unpacks the metaphor of separation differently. It accepts a disconnection between state and religion at the level of ends and institutions but does not make a fetish of it at the third level of policy and law. (This distinguishes it from all other models of secularism, moral and amoral, that disconnect state and religion at this third level.) How else can it be in a society where religion frames some of its deepest interests? Recall that political secularism is an ethic whose concerns relating to religion are similar to theories that oppose unjust restrictions on freedom, morally indefensible inequalities, inter-communal domination and exploitation. Yet a secularism based on principled distance is not committed to the mainstream Enlightenment idea of religion. It accepts that humans have an interest in relating to something beyond themselves including God and that this manifests itself as individual belief and feeling as well as social practice in the public domain. It also accepts that religion is a cumulative tradition (Smith 1991: 154–69) as well as a source of people’s identities. But it insists that even if it turned out that God exists and that one religion is true and others false, then this does not give the ‘true’ doctrine or religion the right to force it down the throats of others who do not believe it. Nor does it give a ground for discrimination in the equal distribution of liberties and other valuable resources. Similarly, a secularism based on principle distance accepts that religion may not have special public significance antecedently written into and defining the very character of the state or the nation but it does not follow from this that it has no public significance at all. Sometimes, in some versions of it, the wall of separation thesis assumes precisely that.

But what precisely is principled distance? The policy of principled distance entails a flexible approach on the question of inclusion/exclusion of religion and the engagement/disengagement of the state, which at the third level of law and policy depends on the context, nature or current state of relevant religions. This engagement must be governed by principles undergirding a secular state, i.e. principles that flow from a commitment to the values mentioned above. This means that religion may intervene in the affairs of the state if such intervention promotes freedom, equality or any other value integral to secularism. For example, citizens may support a coercive law of the state grounded purely in a religious rationale if this law is compatible with freedom or equality. Equally, the state may engage with religion or disengage from it, engage

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10 Principled distance rejects the standard liberal idea that the principle of equal respect is best realized only when people come into the public domain by leaving their religious reasons behind. Principled
distance does not discourage public justification. Indeed, it encourages people to pursue public justification. However, if the attempt at public justification fails, it enjoins religiously minded citizens to abandon restraint and support coercive laws that are consistent with freedom and equality based purely on religious reasons. See Eberle 2002.
Table 15.4
Revised features of a secular state (alternative model)

(a) Non-theocratic.
(b) Affirmation of the principle of non-establishment of religion.
(c) Peace and toleration between communities.
(d) Religious liberty to all members of any religious group.
(e) Religious liberty granted non-preferentially to members of every religious group and not only to the sects and denominations of the dominant religion.
(f) The liberty to embrace a religion other than the one into which a person is born and to reject all religions.
(g) No discrimination by the state on grounds of religion to entitlements provided by the state.
(h) No discrimination in admission to educational institutions on grounds of religion.
(i) Equality of active citizenship: no discrimination on grounds of religion.
(j) Given structural inequalities and institutional biases, public recognition to non-dominant religions.
(k) Promoting inter-faith civility and active respect for all religions.
(l) Retaining the ability to lawfully and democratically intervene in religious communities whose members suffer exclusion, discrimination, marginalization etc.

Conclusion

It has been argued here that states that are geared towards the domination or hegemony of the religious over the secular or of one religion over other religions are bound to be religion-centred. On the other hand, a polity driven by a desire to undermine institutionalized religious domination and to build an inclusive society with maximum freedom would be secular. But all forms of secular states do not fare equally when judged by the best standards of secularism. After distinguishing four models of secular states, an attempt was made to identify a political system that best helps us to face challenges posed by deep religious diversity and greater public visibility of religions. The first type of secular state grounded in the one-sided exclusion model may build an inclusive society but by sacrificing religious and religious based freedoms. The second type, based on the mutual exclusion model, extols religious freedom but may be unable to build a maximally inclusive society, one that is freed from religion-based exclusion. A third type of secular state is also not inclusive enough both because it has an inbuilt insensitivity to non-dominant religions and by virtue of its friendliness towards the dominant religion: it may leave unacknowledged the not so visible un-freedoms and inequalities within it. Finally there is a fourth type of secular state that keeps a principled distance from all religions and is able to both help and hinder their institutions and practices depending entirely on which of these strategies undermines intra and inter-religious domination. It neither actively disrespects religion nor passively over-respects it. It embodies a stance of critical respect. Under conditions of religious diversity such a state has the potential to protect defensible religious freedoms and build a maximally inclusive society.

Bibliography

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