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Minimal Secularism: Lessons for, and from, India

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Does liberal democracy require a strict separation between state and religion? In Anglophone liberal political theory, the separationist model of the First Amendment of the US Constitution has provided the basic template for the rightful relationship between state and religion. Yet this model is ill-suited to the evaluation of the secular achievements of most states, including India. This article sets out a new framework, minimal secularism, as a transnational framework of normative comparison. Minimal secularism does not single out religion as special, and it appeals to abstract liberal democratic ideals such as equal inclusion and personal liberty. Actual debates about secularism in India are shown to revolve around these ideals. The study of recent Indian controversies—about the Uniform Civil Code, the status of Muslims, and the rise of BJP nationalism—also sheds light on some blind spots of Western secularism and the conception of sovereignty and religion it relies on.

How universal is secularism? Should all liberal democracies be secular, and in what sense? Secularism here refers to a political principle of state management of religion rather than a comprehensive atheistic or anti-religious worldview. It is uncontroversial that liberal democracies are characterized by a basic institutional differentiation between the state and religious authorities such that political sovereignty does not rest on religious authority. Yet beyond that, it remains unclear what the idea of secularism can tell us about justifiable modes of political governance. Specifically, does liberal democracy require strict separation between state and religion?

In Anglophone liberal political theory, from John Rawls to Martha Nussbaum, the separationist model of the First Amendment of the US Constitution has provided the basic template for thinking about the rightful relationship between state and religion. According to First Amendment separationism, equality between religions as well as free religious exercise are best protected when the state abstains from endorsing any religion and from interfering in the religious sphere. To be sure, few constitutional scholars today would refer to the "wall of separation" as the best metaphor to describe the complex, fine-grained settlement of religious governance in the USA. Yet, on a coarse-grained, all-things-considered judgment, separationism still accurately captures the broad contours of Religion Clause jurisprudence.

The distinctiveness of the US experience becomes starkly visible when set against the diversity of models of political governance of religion globally. The great majority of people in the world live under regimes that are either constitutional theocracies (where religion is formally enshrined in the state), where religious affiliation is a pillar of collective political identity, or where governments actively recognize and support, or hinder and control, religious institutions. In countries otherwise as different as Ireland, Poland, Germany, England, Egypt, Israel, Turkey, Indonesia, Senegal, India, and many others, politics and religion are interconnected in ways that belie any US-style separationism. Recognition of this deep diversity has spurred a new field of scholarly enquiry, that of comparative secularism, which over the last 30 years or so, has immensely enriched our understanding of the historical, contextual factors that have presided over the emergence of distinctive national settlements (Berg-Sørensen 2013; Calhoun, Juergensmeyer, and VanAntwerpen 2011; Hurd and Cady 2010; Warner, VanAntwerpen, and Calhoun 2010).

However, this shift towards thickly descriptive interpretations of "multiple secularisms" has its own blind spot. We have lost sight of the original question. What kind of secularism is required for liberal democracy? The study of comparative secularism has put pressure on the facile assumption that the liberal democratic credentials of states should be a function of their proximity to US separationism. Yet it has not offered any alternative evaluative criteria by which one should assess the legitimacy of existing religion-state arrangements. This article attempts to do just that. It draws on recent work in political philosophy, which defends a normative theory of minimal secularism, one rooted in abstract liberal democratic ideals rather than in any specific institutional variant such as First Amendment separationism (Laborde 2017). It then tests the robustness of this theory by reference to the most prominent non-Western secular state: India.

This article contributes to the field of comparative secularism in several, interconnected ways. First, it illustrates the need to move away from a descriptive to a deliberately *evaluative* or *normative* framework of

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comparison. Scholars of comparative secularism have brilliantly illustrated how most modern states, even self-declared secular ones, actively intervene in, and regulate the sphere of, religion. In particular, they have deployed critical, postcolonial methodologies to debunk the Western liberal commitment to secular separationism (Agrama 2012; Dressler and Mandair 2011; Mahmood 2016; Mahmood and Danchin 2014).

Yet this assumes both that liberal democratic theorists are committed to separation as *sine qua non* and that existing self-declared secular governments are impeccably faithful to liberal democratic ideals. Both assumptions are problematic. There is an urgent need, therefore, to clarify the relationship between secularism, liberalism, and separationism. Second, this article puts forward minimal secularism as a comparative, evaluative, transnational criterion of liberal democratic legitimacy. Because it is rooted in abstract liberal democratic commitments, does not rely on any particular conception of religion, does not assume separationism as the default position, and resonates with local political debates, minimal secularism avoids ethnocentrism. Yet it also avoids uncritical deference to non-Western traditions and practices. The study of Indian secularism offered here shows how India falls short of its *own standards* of minimal secularism. Third, the study of Indian secularism sheds new light on some blind spots in Western conceptions of secularism, notably concerning the lingering influence of First Amendment separationism on Western liberal conceptions both of religion and of sovereignty. This article, therefore, feeds into a broader set of reflections about the "normative dialogue" that comparative political theory can foster, and how it can do so (Amine 2016; Dallmayr 2004; Jenco 2007; March 2009; Parel 1992; Vacano 2015).

The argument proceeds as follows. The first section provides a diagnostic interpretation of existing political theory literature on Indian secularism. The second section introduces minimal secularism as a broad liberal democratic framework that does not single out religion, or any conception of religion, as special. The third section shows how the framework of minimal secularism illuminates controversies around secularism in Indian debates. The fourth and final section draws out two lessons from India for Western secularism. As will become clear, the article's contribution is mostly conceptual and structural: it does not attempt to develop first-order substantive answers to specific politico-religious controversies. Rather, it seeks to provide a compelling (and quite radical) framework to conceptualize what is at stake in them. I shall argue that First Amendment separationism is not a suitable framework for comparative secularism, and that the twin concepts of the secular and the religious can obscure rather than illuminate these controversies. At best, what we need is a minimal secularism, itself connected to a plural, disaggregated conception of religion.

DIAGNOSTIC

India is the largest secular democracy in the world. The great majority of the population identify as Hindu, and 14% of the population are Muslim—which makes India the third most populated Muslim country in the world. Following the end of British rule and the trauma of Partition, the Founders of the newly independent nation sought to reassure Muslims that India would not be a Hindu state. They converged on a rejection of what was pejoratively called "communalism," championing instead a secular national identity that both recognized and transcended religious identities. Thus India's constitutional identity oscillated between Nehru's professed "religious neutrality" (*dharma nirapeksata*) and Gandhi's commitment to "equal respect for all religions" (*sarva dharma samabhava*) (Sen 2016, 902). In practice, Indian secularism does not formally establish any religion but respects them all. Formal disestablishment—US separationism—was rejected so as not to stand in the way of reform of the most illiberal practices associated with Hinduism—notably around the status of women and the lower castes. In parallel, rights of religious collective autonomy were granted to minorities such as Muslims—in particular the preservation of Islamic personal law (*Sharia).*

This complex secular settlement has been constitutionally resilient, albeit politically fraught and fragile. It has, notoriously, been exploited by the political class to foster electoral clientelism along religious lines, and sometimes to tolerate (or even encourage) communal violence. Over the last twenty years or so, the secularism championed by the Congress Party has been attacked by the Hindu nationalists of the *Bharatiya Janata Party* (BJP), who denounce what they see as "pseudo-secularism": in fact, a politics of communalist pandering to minorities. Although positive references to secularism remain ubiquitous in Indian political discourse, what the concept refers to has become increasingly nebulous—and secularism is routinely described as being in a state of crisis in contemporary India (Needham and Sunder Rajan 2007).

So how secular is India? How does it relate to Western—particularly US—secularism? The USA-India comparison is promising, not only because of the paradigmatic status of US separationism but also because both states combine a secular constitution and government with a highly religious society. Roughly, we can identify three different normative or evaluative assessments of Indian secularism. The first is that India's is an *imperfect* secularism. In his seminal 1963 book *India as a Secular State*, the distinguished scholar Donald Eugene Smith praised India for its unique constitutional experiment in combining religious freedom with cultural diversity. Ultimately, however, he judged it to fall short of the more mature US model, as it tolerates flagrant breaches of state-religion separation: it authorizes intrusive interference in religious institutions as well as state direct aid to religion. Thus Indian secularism falls short of both First Amendment clauses: the establishment clause ("Congress shall make no law respecting an establishment of religion … ") and the free exercise clause (" … or prohibiting the free exercise thereof") (Smith 1963).

A second, more positive assessment is that India offers an *alternative* secularism. Its most sustained

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advocate has been Rajeev Bhargava who, over a number of important works, has sought to secure the credentials of Indian secularism as a religion-friendly model of governance of diversity, respectful both of individual and collective rights (Bhargava 1998; 2007). A third, radically skeptical position casts secularism as *inappropriate* for India. It is a European colonial import that is rooted in an ethnocentric, ultimately Christian set of distinctions between the religious and the secular and associated contrasts between politics, culture, and spirituality. The Protestant categories of belief and conscience are at odds with the communal complexities of Indian society and the structuring role of religion in everyday life. Secularism in India has empowered acculturated political and judicial elites to deploy the arbitrary power of the state in ways that have only fueled communal divisions and distracted attention from indigenous traditions of toleration (Madan 1998; Nandy 1995; 1998; 2007). The cultural migration of the statist category of "secularism" has produced incoherence and confusion in India (Roover 2016; Roover, Claerhout, and Balagangadhara 2011).

I have hastily sketched three common interpretations of Indian secularism—as an imperfect, alternative, or inappropriate secularism. Let me now suggest how, despite their differences, they intriguingly suffer from not dissimilar infirmities. A Smithian diagnostic of imperfect secularism makes sense only if the normative credentials of the model of reference have been established. Yet as political theorists have shown, separation of state and religion is, in and by itself, normatively underdetermined: it is only valuable as a means towards other political ends. It therefore cannot serve as the benchmark against which non-US secular states are assessed.[1]

Bhargava's elaboration of an "alternative secularism" is more promising, insofar as it is deliberately and consciously value-based. According to what he calls principled distance, "the state intervenes or refrains from interfering, depending on which of the two better promotes religious liberty and equality of citizenship" (1998, 515). The problem is that Bhargava presents principled distance, not as a regulative ideal but as an actual *description* of what the Indian state does. Therefore, we cannot know which policies and laws are in fact principled (or at least compatible with the principles). Much like Smith, then, Bhargava assumes a felicitous congruence between the ideals that secularism is supposed to foster, on one hand, and the specific national model that he favors on the other. As a result, his account of secularism lacks critical distance: it cannot explain when and why Indian law and policies fall short of secularism. The problem of idealization also mars the inappropriate secularism account, but in an opposite way. Its *Realpolitik*, root-and-branch critique of the actual functioning of secular power—and its constant reconfiguration of "religion"—is invaluable. But what is unclear is the normative standpoint of the critique. Secular power might be oppressive, but how about nonsecular power? Some critics' strident rejection of all liberal democratic ideals, and their implicit romanticization of a precolonial, presecular India, uncomfortably plays into the hands of illiberal Hindu nationalism.

Our first brief excursus into Indian secularism, then, has confused more than it has enlightened us. The concept of secularism, either in its US or in its Indian version, seems to mix descriptive and normative levels of analysis such that we lack normative criteria of evaluation to assess whether this or that policy or law—be it one of separation or one of interference—is congruent with liberal democratic principles.

PROPOSAL

In what follows, I suggest that we change the question. Instead of asking, "Does this state respect separation between state and religion?" we should instead ask, "Does this state adequately protect liberal democratic ideals?" This may sound like a subtle, indeed anodyne, change, but it carries profound implications. While the metaphor of separation invites us to think about how the state should relate to an integrated, self-contained sphere called "religion," the proposal begins by articulating fairly abstract liberal democratic ideals. It then asks how state policy and laws can protect or promote them in relation to the different aspects that have historically been associated with what we call religion. We can then *disaggregate* the concept of religion into a plurality of different dimensions. We identify the different liberal democratic values that minimal secularism helps to sustain and show that each relates to one specific dimension of religion, not to "religion" as such. The aim is to identify a universal minimal secularism, one not tied to a particular Western history of secularization or Protestantized views of conscience, yet one that meets basic liberal democratic desiderata—and therefore can be used as a transnational framework of normative comparison.

Here is a brief presentation of the proposal (Laborde 2017). When we reflect on the normative values that underpin and justify our secular practices of state-religion separation, we can identify three distinct ideals: *public justification, equal inclusion*, and *personal liberty*. Each ideal specifically targets a discrete feature of religion, yet these features are not exclusive to religion. So we need to be clear about how to apply liberal democratic ideals to the various aspects that make up what we call religion—and that also apply to other institutions, beliefs, and identities. The basic thought behind minimal secularism is that entanglement of state and religion is problematic for liberal democratic legitimacy because of three features that are typically (though not necessarily or exclusively) associated with religion. The first is the *inaccessibility* of religious commitments in public reason: state officials should not appeal to religious doctrines to justify laws and policies, as this would compromise justification in public reason. Here, what is wrong with a Christian or a Muslim or a

[1] On the distinction between the ends and the means of secularism, see Beaubérot and Milot (2011), Laborde (2013a; 2013b), Maclure (2017), and Maclure and Taylor (2011).

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Hindu state is that it is incompatible with what Joshua Cohen has called a "democratic space of reasons" (2011). The second dimension of religion that is relevant to normative secularism is its *exclusive* and *divisive* dimension as a salient social identity: the state should not endorse one social identity when this undermines the equal civic status of non-members of the recognized group. Here, what is wrong with a Christian or a Muslim or a Hindu state is that it entrenches majoritarian domination. The third relevant dimension is the *comprehensive* scope of religious conceptions of the good: the state should not coercively impose a religious way of life (which covers relationships, sexuality, education, family, eating codes, dress) onto its citizens as it would intrusively regulate the most intimate part of individuals' lives. Here, what is wrong with a Christian or a Muslim or a Hindu state is that it infringes on personal liberty.

Instead of asking, "Is this state secular?" we should ask, "How well does this state fare with respect to the principles of *equal inclusion*, *personal liberty*, *public justification*?" This disaggregated principle of minimal secularism—and its denial that religion is uniquely special for purposes of liberal democratic legitimacy—has a number of advantages. It covers all the ideals that secularism protects, but remains agnostic as to whether a "wall of separation" is, in practice, the best way to achieve them. Because it does not make a fetish of Western-style separation between state and religion, it allows a variety of permissible institutional arrangements. It is abstract enough not to idealize any particular national model, yet concrete enough to offer a framework for the evaluation of existing practices of political governance of religion. It does not rely on any particular conception of religion: it is not biased towards individualistic, Protestant notions of religion and is sensitive to religion's cultural, customary, but also identitarian and national dimensions. And it does not apply only to religion: the principle of public justification applies to secular beliefs too; the principle of equal inclusion applies to other social identities, and the principle of personal liberty applies to other comprehensive systems of personal ethics. Non-religious philosophies, cultures, and ideologies often exhibit exactly those features that make religion unsuitable for state endorsement. One strand of French *laïcité*, rooted in a comprehensive secularist and individualist worldview, considers Islamic veiling to be incompatible with national identity. This comprehensive secularism is contestable on exactly the same grounds as forms of illiberal religious establishments (Laborde 2008).

Finally, the disaggregation approach explains why religion is *not always* unsuitable for state endorsement, if (contingently) it is not inaccessible, comprehensive, or divisive. In these cases, recognition of the majority religion by the state is permissible. And while the framework does not make religion a special case, it still explains the particularly egregious wrongs of political theocracy or illiberal religious establishment. Religion *is* often inaccessible, comprehensive, and divisive: this is why most instances of state religious establishment, including what have been called constitutional theocracies (Hirschl 2010), are illiberal because they infringe on public justification, personal liberty, and equal inclusion. So while the framework makes sense of the notion of comparative secularism, it does not collapse into a relativist celebration of diversity. And because it does not take separationist policies as the chief indicium of liberal democratic secularism, it avoids the fallacy—pervasive within the critical secularism literature—of denouncing every state interference with religion as a damning indictment of secularism itself.

INDIAN SECULARISM, REVISITED

With this framework in mind, let us return to India. Many people in the West are surprised to hear that there is secularism in India. Popular perceptions of India conjure up a bewilderingly diverse, pervasively religious society, marred by chaotic democratic politics and distorted by religious lobbying and clientelism, regular episodes of politically orchestrated communal violence (as in Gujarat in 2002), and the persisting religious oppression of disadvantaged groups such as *dalits* (lower-caste) and women. Yet India also has a resilient secular constitution, with a measure of judicial protection of fundamental rights, and the ideals of the secular state are widely shared, fixed reference points in Indian public debate. We should resist what could be called the ethnocentrism of comparison, which judges our own societies by their *ideals* (religious freedom, gender equality, secularism, human rights) and other societies by their *practices.* The ethnocentrism of comparison has the double effect of erasing our own deficiencies in practice (the self-congratulatory US celebration of *religious* tolerance has hidden from view its long history of intolerance and its appalling record of *racial* integration) as well as underestimating the importance of ideals in other societies too. The ideals of Indian secularism might have been frustratingly under-realized, but this does not mean that they have no purchase on lived reality.[2]

The study of Indian secularism, however, raises its own distinctive challenge. It is this. Indian political and judicial actors invoke "secularism" to defend what appear to be diametrically opposed policies and ideals: a noncommunal civic national identity as well as cultural Hindu nationalism (*Hindutva*), the protection of minority personal laws as well as their abolition, the promotion as well as the dismantling of affirmative action programs, the toleration as well as the exclusion of religious speech in politics, women's rights as well as rights of collective religious autonomy. Secularism seems to have become what Ernesto Laclau called a "floating signifier": an ideologically valued label that attaches to no stable meaning.

This would be a depressing conclusion but, fortunately, it is not quite accurate. Debates about

[2] For an inspired study of Indian constitutionalism as a lived experience for ordinary citizens, see Rohit De (2018).

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secularism in India, I shall suggest, are in fact recognizable debates about the best interpretation of the ideals of equal inclusion, personal liberty, and public justification. I make good on this general claim by focusing on equal inclusion and personal liberty. (In this article, I leave aside public justification, although there is much to be said about that dimension too. There is a robust tradition of both democratic and judicial public reasoning in India, as well as vibrant controversies over the legitimacy of certain types of religious speech in the public sphere). Yet in India, secularism is crucially about the interpretation of, and the relations between, equal inclusion and personal liberty.[3]

Equal Inclusion

The core controversies of Indian secularism have revolved around the status of religious minorities, mostly Muslim (and to a lesser extent Christian and Sikh). India was one of the first countries to give constitutional recognition to the rights of minority communities in its 1950 constitution. In truth, the newly formed Constituent Assembly operated a marked retrenchment from the colonial policy of systematic group representation along religious, caste and racial lines (Khosla 2020). The British had instituted separate electorates, reserved seats, and group quotas in government employment for a variety of enumerated categories such as Muslims, Sikhs, Anglo-Indians, Depressed Classes (Untouchables), and Backward Classes (tribal groups). The Indian Congress Party was suspicious of this cynical "divide and rule" policy, unsuited to the inclusive nationalism of the newly independent state. Yet, at the same time, it did not want a Hindu-dominated state, especially after the bloody and traumatic episode of Partition and the creation of Pakistan. As a result, what was called during the colonial era the "minority question" persisted after Independence and beyond (Bajpai 2016, 68).

The minority question involved a wide-ranging exploration of how to promote the equal inclusion of minority groups variously defined along caste, religion, or tribe. It is against this background that the place of Muslims in India was debated—a far cry, as should be obvious, from Western discussions about church-state separation and religious freedom. The question of the integration of Muslims raised foundational questions about the identity of the Indian nation and the content of citizenship (Devji 1992), as well as the structural similarities between different forms of disadvantage and exclusion. Muslims, like the Depressed Class, formed a *salient social group*—one structurally vulnerable to underrepresentation and marginalization. For both groups, the minority question was one of "safeguards" against Hindu or upper-caste dominance (Mahajan 2002; Tejani 2007).

Crucially, two visions of equality were in play in debates in the Constituent Assembly (and were later to resurface during the reassertion of identity politics and the rise of Hindu nationalism in the 1980s and 1990s). The first was hostile to the recognition of religion, caste, and tribe in the political domain and interpreted secularism as equal citizenship rights for all individuals. The term "secular" did not pertain to religion alone but to all group affiliations: it was contrasted, not with "religious" but with the pejorative term "communal," which was opposed to both "secular" and "national" in nationalist discourse. Tellingly, Nehru had proclaimed that "a caste-ridden society is not properly secular" (Smith 1963, 292). Much as in republican France, secularism in India is tightly bound up with conceptions of national identity and equal citizenship. As prominent Indianist Christophe Jaffrelot has noted, there is an objective convergence between secular nationalists and Hindu nationalists in their rejection of special rights and differentiated citizenship for Muslims, one very similar to the alliance between Jacobin republicans and cultural nationalists in France in the name of an assimilationist conception of *laïcité* (Jaffrelot 2011a).

However, an alternative notion of equal inclusion was influential in parallel. This emphasized the ideal of unity in diversity and the recognition of the diverse components of the Indian nation. Instead of formal equality and the strict separation between the state and cultural and religious identities, it promoted more substantive notions of equality. In relation to religions, the ideal was that of equidistance of the state vis-à-vis all religious identities and an equally positive attitude towards them. The nonsectarianism of the state was deemed compatible with policies of differentiated support for minorities (Bhargava 1998; Cossman and Kapur 1996).

In practice, the 1950 Constitution trod a narrow path between these two conceptions of equality. Both, of course, converged on the rejection of a state-endorsed official religion. The constitution affirmed the neutrality of the state against the aspirations of Hindu traditionalists for a "Hinduization" of the Republic. Yet its treatment of the minority question was complex. It maintained political safeguards and positive discrimination policies for the Scheduled Castes and Scheduled tribes. (As a result, India has the most elaborate and longest running affirmative action programs for alleviating structured inequalities [Galanter 1984]). By contrast, colonial-era political safeguards were taken away from religious minorities. Instead, they were recognized through extensive cultural and religious rights (Article 25 and 30). A key concession to minorities was the decision not to force the imposition of a uniform civil code in matters of family law. Article 44 states a directive: "the state shall endeavor to secure for the

[3] On the endurance and diversity of liberal traditions in India, see Bajpai (2012). Readers might wonder whether it makes sense to talk of liberalism in India at all and whether the substitution of "liberal democratic ideals" for "secularism" does not merely replace one contested term with another. It is important to stress that I merely use liberalism as a placeholder, however—a short cut to designate the ideals of liberal democracy, a broad umbrella concept for normative ideals of individual rights, equality, and democratic citizenship. In my argument, not much hinges on the semantics of the umbrella concept. My claim is simply that as a normative ideal, minimal secularism must honor the aforementioned principles.

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citizens a uniform civil code throughout the territory of India." The colonial practice of granting collective recognition to groups such as Muslims and Christians via the incorporation into state law of their "personal laws" (governing matters such as marriage and divorce) was continued (Agnes 2016).

In sum, debates about equality in India eschew the simple First Amendment formula of non-establishment and separation of church and state. Rather, they aim at equal inclusion under multicultural conditions, where religion is one of the salient social identities, along with caste, race, and socioeconomic status. The pursuit of equality was sought through moderate forms of differentiated multicultural citizenship rather than the subjection of all religious groups to a regime of uniform general laws. I now turn to the ideal of liberty to show that Indian thinking here is also more complex than the First Amendment formula of free religious exercise.

Personal Liberty

To be sure, freedom of religion is a cornerstone of Indian secularism. The state has no official religion and is prohibited from extracting taxes for the promotion of religion and from dispensing religious instruction in state-maintained schools. However, unlike the United States, the Indian constitution combines freedom-of-religion clauses with a mandate of the state to *intervene* in religious affairs. Personal liberty is not simply about freedom *of* religion, but also freedom *in* religion. Article 25 of the Constitution allows the state to regulate or restrict any "economic, financial, political or other secular activity which may be associated with religious practice." It also provides for "social welfare and reform" of Hindu religious institutions. Articles 152 and 173 prohibit untouchability and practices associated with caste inequality. As a result, the constitution has been described as a "Charter for the reform of Hinduism" (Galanter 1997b, 247; 1998), and Indian secularism has been characterized by comparativist experts as an "ameliorative secularism" (Jacobsohn 2003, 49–50).

The Indian experience brings to light the historical connections between secularism and a distinctively modernist project of individual emancipation from the oppressive dimensions of religion. (Again, there are striking parallels here between the "transformative liberalism" of both Indian and French nation-building). The struggles for the emancipation of women occupy a central chapter in the history of Indian nationalism and Hindu social reform—witness campaigns against *suttee*, *pardah*, child marriages, polygamy, unequal laws of inheritance, prevention of intercaste marriages, and dedication of girls to caste. To be sure, the commitment of secularists to gender reform should not be retrospectively exaggerated or idealized. Feminist historians have shown how the secular project of individual emancipation from religion applied mainly to men, and it often consolidated the patriarchal structures of the private sphere of family and domesticity (Scott 2018). In India, the British carved out "personal laws" from the comprehensive systems of indigenous religious law in line with Victorian prejudices (which were sometimes more regressive than local laws—for example, in relation to the economic and property rights of women) (Agnes 2016; Stephens 2018; van der Veer 2001). Still, in the twentieth century, Indian secularism became associated with internal reform of Hindu religion—the protection of a minimal standard of liberty as the non-oppression of those most disadvantaged within religious structures: women and lower-caste. Untouchability was constitutionally prohibited, and the practice of plural marriage was outlawed in the Hindu Marriage Act of 1955. Another significant area of state-promoted religious reform has concerned temple entry (*dalit*s and women were forbidden to enter many temples and other religious places) (Galanter 1997a).

Two features of Indian religion—more specifically of the historically amorphous, colonially half-codified Hindu religion—made possible the implementation of this reformist agenda by the state. The first is the absence of centralized theological authorities appealing to scriptural orthodoxy and able to implement religious reform internally. The second is the fact that Hinduism is a way of life more than a set of discrete beliefs and rituals. As comparative constitutionalist, Jacobson puts it, "In India, where faith and piety are more directly inscribed in routine social patterns, judges cannot avoid the perilous jurisprudential vortex of theological controversy as conveniently as their American counterparts" (Jacobsohn 2003, xiii).

As a result, Indian courts have engaged in both *external* and *internal* interventions in religion. *External* inventions invoke a compelling state interest to justify the prohibition or regulation of religious practices. The constitutional goal of liberty-promoting social reform sometimes requires that *even essential* religious practices and customs be legally challenged. When a minimal standard of personal liberty is at stake, it turns out that not much hinges on the definitional question of whether something is classified as being religious. Experts summarized the legal situation in 1997 thusly: "Judges are now endowed with a three-step inquiry to determine whether a claim was religious at all, whether it was essential for the faith and, *perforce, whether, even if essential, it complied with the public interest and reformist requirements of the Constitution*" (Sen 2009, 95) (emphasis added). If caste-related exclusions are objectionable, they are so regardless of whether they are essential to Hinduism or not (that is a debate which it is generally unwise for Courts to engage in).[4] Here freedom of religion is trumped by basic constitutional rights.

Internal interventions, by contrast, define religion in such a way that state intervention does not limit freedom of religion, because the contested practice is pronounced by the courts not to be essential to the religion (even though its practitioners deem it so essential). This

[4] On the colonial invention of "Hinduism," see Balagangadhara (1994); Bloch, Keppens, and Hegde (2010); Dubuisson and Sayers (2003); Fitzgerald (2000); and King (1999). On Hinduism and caste, see Dirks (2001) and Nadkarni (2006).

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is a more radical departure from the First Amendment insistence that courts should stay away from theological controversies as much as possible, and strictly avoid reinterpreting or reforming religion from the inside. To be sure, the US Supreme Court has occasionally intervened in the illiberal practices of some religious groups. In a landmark (Mormon) polygamy case in 1899, it drew a distinction between inviolable "beliefs" and legally challengeable "practices"—and suggested that only the former were central to religion. While the Indian Supreme Court eschewed this Protestant distinction between belief and practice, it has sought to legitimize state intervention by drawing its own distinctions: between "essential" and "nonessential" practices, "high" and "popular" spirituality, or "pure" religion and "superstitious accretions" (Jacobsohn 2003; Sen 2009). Such judicial activism would violate both the Free Exercise and the Establishment clauses of the First Amendment.

In sum, Indian courts have limited religious freedom when it conflicts with basic norms of non-oppression and, more controversially, they have played a crucial role in determining what is and is not essentially religious. As Pratap Mehta puts it, "they tell us not only what public purposes ought to be authoritative constraints on behavior, but also which interpretation of religious doctrine should be considered authoritative" (Mehta 2009b, 330). The Supreme Court's extensive and messy jurisprudence has been controversial in this regard. It is not the role of secular authorities, it has been claimed, to participate actively in the internal reinterpretation of Hinduism (Dhavan 1987; Galanter 1997b; Jacobsohn 2003; Sen 2009; 2016).

I have shown how the stated ideal of India's constitutional secularism is to secure equal inclusion and personal liberty—to confront both interreligious and intrareligious domination, in Bhargava's felicitous expression (2016, 171; 2007)—including through state interference with, and regulation of, religion. First Amendment separationism, insofar as it pursues equality *via* non-establishment and formal equality, and personal liberty *via* negative rights of religious freedom, obscures rather than illuminates the logic of Indian secularism.[5]

Shah Bano and the Tensions of Indian Secularism

One problem with the twin combat against both interreligious and intrareligious domination is that the two objectives can conflict. Group-based special rights often legitimize practices that infringe on the personal liberty of their members—raising tricky issues concerning the treatment of "minorities within minorities" within multicultural jurisdictions (Eisenberg and Spinner-Halev 2005).

Consider the well-known *Shah Bano* case. Shah Bano was a divorced elderly Muslim woman who filed for maintenance under Section 125 of the Criminal Procedure Claim. Her husband petitioned the Supreme Court arguing that, under Muslim personal law, he was only bound to repay the *mahr* (bridewealth) and a limited period of maintenance. In a landmark decision, the Supreme Court sided with Shah Bano and awarded maintenance of 180 rupees per month. The judges undertook to interpret Islamic personal law to bolster their position, quoting the Quran to the effect that God-fearing people should treat their wives fairly, while also judging that the "fatal point in Islam is the degradation of women" and regretting that a Uniform Civil Code (UCC) had not been adopted. The judgement triggered large-scale protests by Muslims, who rejected both the substance of the decision and the court's claim to speak authoritatively about the Quran. In 1986, under pressure from self-appointed conservative Ulemas, the government of Rajiv Gandhi introduced a law, the Muslim Women (Protection after Divorce) Act—a tragic misnomer, as it ensured that Muslim women are now the only women denied divorce maintenance under the Indian Criminal Code (although courts have since offered valuable protection, see Agnes 2007). For Hindu nationalists, the government's cowardly response to the *Shah Bano* ruling became a rallying cry that led, seven years later, to the destruction of the Babri Masjid mosque by Hindu militants in the city of Ayodhya, and to the rise of right-wing Hindu nationalism.

Shah Bano is a highly instructive case for comparative secularism, for several reasons. First, it illustrates the normative relevance of the multivalue framework of minimal secularism. Many Western political theorists, when they write about *Shah Bano* and gender and communal conflict in India, make little reference to the ideals of secularism—presumably, because such conflicts are difficult to interpret *via* First Amendment separationism.[6] Yet to most Indians, it is obvious that the controversies of *Shah Bano* are paradigmatically about secularism. Furthermore, they shed light on the conflicting values of secularism—the way in which its various commitments can clash. Again, this improves on a simple separationist framework, which judges laws

[5] The qualifier "in so far as" in this sentence is crucial. I do not mean to deny the complexity and subtlety of First Amendment jurisprudence. For example, there is an intricate system of (limited) religious accommodation under RFRA and indirect funding of religion (e.g., via school vouchers) is permitted. Yet my general points stand. The default position for most US policies and law remains separationist, in the sense that the burden of proof lies with those who would support or regulate religion. As I suggested in the Introduction, if we "zoom out" to adopt a globally comparative perspective, the contrast between the US separationist consensus and most other countries in the world is striking. No doubt, this is partly due to the conception of religion on which the First Amendment is based. Religion in the US is seen as private and voluntary belief, not as collective social identity or a source of disadvantage, by contrast to race, gender, or class. The separation between state and religion is paradigmatic of the liberal commitment to the distinction between public and private, and state intervention in the domain of religion is *prima facie* suspect. This is not to say that the separationist paradigm has not been challenged in the USA. For a congenial theory that suggests that both separationism and departure thereof are best explained by reference to broader liberal ideals, see (Eisgruber and Sager 2010) and other authors discussed in (Laborde 2017).

[6] See, e.g., Martha Nussbaum (2007). Nusbaum's discussion of personal laws is at pages 141–151.

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and policies on a more binary scale.[7] If India falls short of minimal secularism, it is not because it fails to maintain separation between state and religion but, rather, because state efforts towards equal inclusion and personal liberty have been ineffective or mistargeted. We can say that India falls short *of its own ideals*, which are recognizably those of minimal secularism. The analysis proposed here, therefore, is not vulnerable to the critique that the exercise of comparative secularism merely involves the measuring of non-Western societies against a purported model of Western secularism.

The second lesson of *Shah Bano*, in hindsight, is that toleration of personal laws was not the best way to secure the equal inclusion of Muslims within the Indian nation.[8] A key directive of constitutionally mandated social reform was to replace the diversity of personal laws codified under colonial rule with a Uniform Civil Code (UCC). Muslims were exempted from it on the ground that the coercive imposition of what they perceived as a "Hindu Code" would have sent a signal of inferior status to the Muslim community. The exemption, however, only empowered the more conservative and patriarchal elements of the Muslim community. When the measure of the social status of a group is the power its men have over "their" women, minority fears of assimilation and marginalization can have disastrous effects on the status of women.

Nor was the status of Muslims as a whole improved in Indian society (Jaffrelot 2019). Most Muslim grievances are secular, not religious: they relate to discrimination in employment, discrimination against the use of the Urdu language, destruction of Muslim property and killings of Muslims by the police in riots, and political and judicial representation. In recent years, there have been moves to extend to Muslims some of the benefits of the reservation protection, but this would imply a departure from the long-standing Indian practice of using caste as a proxy for social disadvantage, and therefore reserving affirmative action politics to Hindus (Alam 2016; Brass 1998, 497). In sum, personal laws "religionized" what was, from the start, a problem of social status and political standing.

Two further features of the *Shah Bano* controversies shed light on the tensions of Indian secularism. The first concerns the legitimacy of secular courts in interpreting religious doctrine. We saw that the Indian Supreme Court had arrogated the power of redefining (Hindu) religion for purposes of reform: this could—at a stretch—be interpreted as a majoritarian (Hindu) mandate to use political institutions to manage religious reform (Mehta 2009a, 21–22).[9] Courts had—mostly—declined to use the same power in relation to *Sharia*, out of respect for the system of personal laws. Yet in contrast to *millet* systems where governance is delegated to religious leadership, under personal law systems, secular courts are, *in fine*, entrusted with the application and interpretation of religious law (Ahmed 2016, 4). The legitimacy of a secular court perceived as predominantly Hindu, and which made few efforts to consult with Islamic authorities, was highly suspect. The *Shah Bano* ruling was experienced as the perpetuation of the practices of colonial governance of Muslims (Stephens 2018). It was problematic not mainly for *what* it decided (many Muslims would have welcomed the possibility of civil judicial redress) but for *who* decided it.

Second, the *Shah Bano* ruling precipitated the emergence of a self-proclaimed "secular" Hindu nationalist movement. The ruling was politicized by the Hindu Right, which claimed the mantle of "real secularism" to deploy its brand of illiberal, populist, majoritarian nationalism against the "pseudo-secularism" of the Congress Party. The BJP claimed to stand for the rights of Muslim women, for a uniform civil code, for formal equality before the law, and against minorities' special rights. It cast Muslims as illiberal and intolerant, and argued that Hinduism was uniquely tolerant. It drew support from a string of Supreme Court decisions that declared *Hindutva* not to be a religion but a way of life.[10] The BJP deployed the rhetoric of secularism to justify its exclusive nationalist ideology, rooted in a majoritarian cultural identity. For Hindu nationalists, the Muslim constituted an excluded difference, a sign around which the national was imagined as uniform and united, "leaving Muslims to bear the burden of the communal" (Devji 1992, 7). Drawing forces with the US "war on terror," the BJP cleverly presented itself as a nationalist movement locked in a battle against Islamists at home and abroad and grounded its global reputation on discourses of Hindu pluralism, tolerance, and the soft power of yoga and meditation (Chatterji, Hansen, and Jaffrelot 2019; Cossman and Kapur 1996; Jaffrelot 2011b; 2017; Prakash 2007).

The Hindu right's obsession with the denunciation of Muslim practices has hidden from sight the ordinary patriarchy of Hindu society. The UCC debate—as well as more recent controversies about arbitrary divorce ("triple *talaq*")(Agnes 2019)—is confined to abolishing the "barbaric" Muslim culture of polygamy and liberating the "Shah Banos" but turning a blind eye on the sexual promiscuity and women's oppression in the majority community.[11] Even more worryingly,

[7] Admittedly, the Establishment clause and the Free Exercise clause can also conflict. But the assumption is that they are generally mutually supportive.

[8] For an argument that personal law systems do not promote religious freedom, see Farrah Ahmed (2016). For feminist objections, see, e.g., Amali Philips (2011, 275) and Ayelet Shashar (1998).

[9] For stimulating reflections on authority in the legal codification and reform of Hinduism, see also his article on Hinduism and self-rule (Mehta 2004).

[10] Hindutva, translated as "Hindu-ness," refers to the ideology of Hindu nationalists, stressing the common culture of the inhabitants of the Indian subcontinent—including Buddhists, Sikhs, and Jains. In the 1990s, Supreme Court judges "have argued that there is nothing wrong in canvassing on the theme of Hindutva (Hindu-ness) since this notion refers to 'a way of life', not to a religion, and therefore can be invoked by politicians without falling foul of the ban on religious political speech" (Jacobsohn 2003, 12–4, 189–226).

[11] The rates of bigamous marriages among Hindus and Muslim are roughly the same. The proof that a second Hindu marriage is bigamous, instead of a simply adulterous relationship, is difficult (Agnes 2007). According to the 2011 Census, the number of deserted Hindu women who live in deplorable conditions (2 million) far exceeds the number of Muslim divorcees and deserted women (280,000) (Agnes 2019, 337).

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incendiary talk denouncing "minority appeasement" provoked backlash in the form of retaliatory violence. The way in which anti-Muslim acts of violence are regime-tolerated, when not openly regime-supported, is now well documented.[12]

On a First Amendment separationist reading of secularism, the BJP's ideology is hard to fault. The BJP is committed to the rule of law and to the secular constitution, and it is not hostile to separation between state and religion. On the contrary, it actively defends a uniform civil code, is hostile to special rights on grounds of religion, and critical of intrusive state interference with temple governance. Nor is it a religious party in the sense implied by separationism: at best, it promotes what has been called a "thin" religion: a broad marker of identity (*Hindutva*) rather than one characterized by theological commitments to particular tenets of faith and particular practices. In what sense, then, is the BJP not validly secular? Minimal secularism provides the most plausible answer. Despite its appeals to the rhetoric of formal equality, Hindu nationalism makes no pretense to promote equal inclusion. Its branch of nationalism explicitly excludes from its midst those who do not belong to the Hindu majority—Muslims and Christians primarily. Today India is fast becoming an ethno-democracy, given the impact of Hindu majoritarianism, which has reduced religious minorities to the status of second-class citizens (Jaffrelot 2019).

TWO LESSONS FOR COMPARATIVE SECULARISM

In this concluding section, I generalize the lessons from India. I suggest that the study of Indian secularism lays bare the connections between secularism, majoritarian nationalism, and state sovereignty. Those connections were, to be sure, always evident in other jurisdictions (such as France). Yet within Anglophone liberalism, they have been obscured by the metaphor of separationism.

Nationalism and Thin Religion

We saw that the BJP has championed Hindutva as a cultural, rather than religious, national identity, and a secular bulwark against religious Islamism. Hindutva has been called a "thin" religion because it does not demand conformity with any particular belief, and is indifferent towards practices and rituals. Traditional Hindu religion was "thick" in the sense that it was bound up with comprehensive ways of life, modes of social conduct, and ethical life, integrated within concrete local communities, intensely localist, and broadly indifferent towards other beliefs. Contemporary Hindu nationalist politics do not involve a return of religion in this thick sense. Thin religion is instead attached to large and abstract communities (*Hindu-ness*, Indian-ness); is indifferent to the sectarian practices of everyday worship; and has little bearing on the secular worlds of economic, social, and ethical interactions. Its "entire purpose is to harden and inflame the boundary between this expansive Hinduism and its selected adversaries" (Kaviraj 2010, 348). It is not religion as we imagine it, but it is very much nationalism as we know it.

What Hindutva does is to *draw boundaries*—to designate those who belong and those who do not. Most of the Hindu Right's campaigns aim at vilifying Muslims as foreign threats to the Indian nation—*via* nasty campaigns about so-called *love jihad* or polemics about *triple talaq*. Even seemingly religious causes such as those for cow protection are pursued, not in the name of the religious sensibilities of Hindus, but rather as deliberately anti-Muslim campaigns casting doubt on the real place of beef slaughter within Islam (Dhavan 1987, 222). In this discourse, if there is a problematic religion, it is not the religion of the majority—which becomes invisible *qua* religion—but that of minorities.

Separationist secularism has blinded Western liberals to the dangers of collusion between nationalism and religion, when the latter is not recognizably rooted in comprehensive, other-worldly beliefs and practices (Mehta 2009a). To be sure, India is unique in the level of communal violence this exclusive nationalism has encouraged. Yet we witness the exclusionary power of secularized and cultural "thin religion" elsewhere. Consider what has been called symbolic religious establishment in Europe (Laborde and Laegaard 2020). Contested practices have ranged from the display of crucifixes in Italian schools and German public buildings to the preservation of the Christian character of the national landscape through a ban on Islamic minarets in Switzerland. They connote practices associated with "Christianist secularism" (Brubaker 2016), whereby the symbols of a traditional, culturalized Christianity are mobilized to underpin a sense of collective identity and social cohesion, at a time of popular anxiety about globalization, migration, and cultural dislocation. Culturalized religion, because it is not entangled with a sectarian, comprehensive set of beliefs and doctrines, is thin enough to serve as one element of the "societal culture" or "common culture" spoken of by advocates of liberal nationalism (Kymlicka 2001; Miller 2016; Modood 1994).

Yet a thin identity can be very exclusive indeed, if it is explicitly constructed in opposition to another identity. Sociologists have studied how "symbolic boundary work" is central to the construction of national identities (Bail 2008; Goldberg 2006; Zolberg and Woon 1999). Religious "belonging without believing" does not necessarily denote a benignly tolerant, vestigial attachment to age-old traditions. Feelings of *ethnic religion* (Hervieu-Léger 2000, 157) have, on the contrary, been reactivated, mostly in the aftermath of 9/11 and fears around globalization and migration. Studies have shown that people who define themselves as culturally (as opposed to religiously) Christian in Europe are *more* likely to harbor anti-immigrant, anti-Muslim sentiments than their practicing, religious

[12] See the most recent survey of the evidence in Chatterji, Hansen, and Jaffrelot (2019).

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counterparts (who are minded to see foreigners, immigrants, and refugees as brothers) (Scheepers, Gijsberts, and Hello 2002). In Britain, many of the nominal Christians identify with the Anglican Church or with Christianity in order to signal their identity as "white British" and to distance themselves from minority groups (Storm 2011, 837).

The upshot is that cultural or secularized thin religion is not necessarily more tolerant or inclusive than belief-based religion. With Christian crosses as with Hindu cows, the value of majority symbols is presented in cultural terms, as indicia of the historical dimension of national identity, while minority symbols are charged with dangerous religiosity—expressions of values at odds with liberal democracy (Mancini 2009). In the contemporary globalized world, religion functions as much—if not more—as an identity marker than as a faith or a way of life. This is inadequately captured by First Amendment separationism (partly because in the highly religious USA, Christianity functions simultaneously as faith and as culture, so the possibility of bifurcation of these two dimensions is less noticeable). This bifurcation, however, is fully accounted for by minimal secularism, which singles out the specific logic of the identity-based dimensions of religion.

Legal Sovereignty and Political Legitimacy

Another theme that has emerged from our study of India is the contested legitimacy of secular courts, which are expected to define what is properly religious. First Amendment separationism is premised on the Lockean assumption that the state should respect the "just bounds" between the two spheres of politics and religion. On a more Hobbesian view, however, the sphere of religion is not a natural or social fact, but a legal-political construct through and through (Mehta 2009a, 8–9; 2009b). As we saw, the Indian Supreme Court has played a key role in defining the essential practices of Hinduism. Contests over the legitimacy of secular definitions of religion were only heightened in the case of Islam. Again, India might be an extreme case of this, because of the colonial legacy, the nature of Hindu religion, and the form of its nationalist project.

Yet the state's claim to sovereignty is also at the heart of Western secularism. It has long been obscured by the Christian two-sword theory, which assumed two parallel sources of authority, those of church and state. Over time, Western states established and consolidated their sovereignty and claimed *kompetenz-kompetenz* (the power to define their own competence as well as those of sub-state groupings). In practice, secular courts routinely deferred to the authority of traditional religious institutions in identifying and protecting their core doctrine and religious purposes and activities. For example, matters pertaining to the internal organization of churches—paradigmatically, the selection of their ministers—were left to the discretion of churches.

Today, the stability of the distinction between the spheres of the secular and the religious is coming under sustained pressure. This is due to a range of complex factors: the individualization of religious belief, the undertaking by churches of social functions now seen as state-provided public services, and the concomitant erosion both of traditional religious hierarchies and of the sovereignty of national states, under conditions of globalization. In such circumstances, secular courts are increasingly drawn into contested areas of theological controversy. European courts have had to decide whether wearing a Muslim hijab or a necklace with a Christian cross are obligatory religious practices. US courts have had to decide which teachers in religious schools count as "ministers" and whether a business's refusal to provide contraceptive coverage to its employers qualifies as a claim of conscience. Canadian courts have had to decide whether an Orthodox Jew's personal interpretation of the rules of *sukkah* was admissible. These are *internal* interventions within religion. In the process of *externally* setting the bounds and limits of religious freedom, courts have had to identify what counts as a religious claim in the first place. First Amendment separationism is intensely vulnerable to these problems because it hinges on courts correctly determining what is and is not properly religious. By getting entangled in substantive questions of theological interpretation in this way, secular courts face complex and hitherto unnoticed challenges to their legitimacy.

An approach rooted in minimal secularism is preferable. Minimal secularism, to recall, does not single out religion as a uniquely special object of state solicitude. When religious beliefs and practices are protected, it is not by virtue of their being religious. It is because they exhibit a salient feature that is also shared by secular beliefs, practices, and identities: conscience, integrity, vulnerable identity, associational coherence, and so forth. Minimal secularism does not postulate that what secular courts should protect is a specific sphere called "religion"—let alone the correct interpretation of religious doctrines. State intervention under minimal secularism is primarily *external*: it does not claim to identify what is or is not properly religious. Generally, minimal secularism is more capacious in the range and type of claims that are *prima facie* worthy of solicitude. Yet it robustly declines to accommodate those practices—whether religious or not—that are incompatible with the liberal democratic aims of the state (Laborde 2017).

That said, minimal secularism does not entirely solve the legitimacy gap. It entrusts secular authorities with the task of determining which claims are *prima facie* expressive of weighty values such as individual integrity, collective coherence, or social vulnerability. Yet for the translation of religious claims into such secular values to be politically acceptable, it must resonate with the lived experience of believers. Secular authorities have to work harder to understand the significance of specific practices, the way they are internally reinterpreted and contested, and to give voice to a range of social actors. Just as in India's *Shah Bano* case, the deployment of legal sovereignty raises complex questions about the political legitimacy of secular authorities and the representation of minority communities within them. In sum, minimal secularism may circumvent the crisis of traditional religious authority, but its

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prospects remain deeply entangled with those of state legal sovereignty.

CONCLUSION

Donald Smith wrote about India's secularism, "India is a few paces behind the Western world in the evolution of its laws, but it is on the same path which the West itself has trodden" (1963, 269). Our study of Indian secularism has departed from this teleological view of secularism in liberal political theory—which I called First Amendment separationism. It has helped make a case for an alternative framework of minimal secularism, which provides the appropriate benchmark for comparative assessment of different national state-religion arrangements. Comparative secularism, I have argued, must be explicitly normative and rooted in liberal democratic values, lest it compare different societies on a simple, inadequate, separationist scale.

Minimal secularism refers to the application of liberal democratic standards to the variegated beliefs, practices, and identities that are usually grouped under the term "religion." On this view, secularism is a derivative, self-effacing principle: what it stands for can be expressed without placing the contested categories of secular versus religious at the center of analysis. Yet the term is still useful in tracking a historically salient and politically evocative ideal. As the Indian and European cases have revealed, it is urgent to argue for the best meaning of the term secularism—as a normative *and* critical notion—lest secularism be monopolized by those—right-wing Hindus, secular nationalists or European xenophobes—who harness secularism to anti-liberal and anti-democratic agendas.

The arguments developed in this article can, I hope, persuade two different academic audiences. First, they show to Western secular political theorists that the non-separationist practices of many non-Western states can be compatible with liberal democratic standards. Resisting what I called the ethnocentrism of comparison (the tendency to judge foreign states by their practices, and ours by their ideals), I have further suggested there are different legitimate ways in which states can in practice live up to secular ideas. Second, the arguments of this article show to academic critiques of secularism that secularism is not necessarily an ethnocentric Western concept grounded in a Christian conception of religion. Around the world, religious belonging functions more as a socially constructed identity than as an individual faith of belief—and secularism demands attention to the complex dynamics of multicultural and multiracial equality (Modood 2019). The standard academic distinction between the study of religion and politics, on one hand, and that of nationalism, race, and discrimination, on the other, needs to be reconsidered.

There are two final lessons from Indian secularism: about the role of thin religion as identity marker for national majorities and about the problematic legitimacy of the sovereign claims of secular state law. These are here to stay. All too often, the study of non-Western societies serves as a retrospective study of the Western *past*: it illustrates the difficulties encountered by "not-yet" liberalized or "not-yet" secularized societies on the path trodden by the West, to use Smith's phrase. Yet under conditions of globalization, and the concomitant erosion both of religious and of state legitimacy, the tensions of Indian secularism may well be indicative, not of our past, but of our future.

REFERENCES

Agnes, Flavia. 2007. "The Supreme Court, the Media, and the Uniform Civil Code Debate." In *The Crisis of Secularism in India*, eds. Anuradha Dingwaney Needham and Rajeswari Sunder Rajan, 294–315. Durham, NC: Duke University Press.

Agnes, Flavia. 2016. "Personal Laws." In *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta, 903–20. Oxford: Oxford University Press.

Agnes, Flavia. 2019. "Aggressive Hindu Nationalism: Contextualising the Triple Talaq Controversy." In *Majoritarian State: How Hindu Nationalism Is Changing India*, eds. Angana P. Chatterji, Thomas Blom Hansen, and Christophe Jaffrelot, 335–51. London: Hurst & Company.

Agrama, Hussein Ali. 2012. *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt*. Chicago: University of Chicago Press.

Ahmed, Farrah. 2016. *Religious Freedom under the Personal Law System*. New Delhi: Oxford University Press.

Alam, Sanjeer Mohd. 2016. "Affirmative Action for Minorities in India: Constraints and Possibilities." *Social Education History* 5 (3): 246–72.

Amine, Louba El. 2016. "Beyond East and West: A Reorientation of Political Theory through the Prism of Modernity." *Perspectives on Politics* 14 (1): 102–20.

Bail, Christopher A. 2008. "The Configuration of Symbolic Boundaries against Immigrants in Europe." *American Sociological Review* 73 (1): 37–59.

Bajpai, Rochana. 2012. "Liberalisms in India: A Sketch." In *Liberalism as Ideology: Essays in Honour of Michael Freeden*, eds. Ben Jackson and Marc Stears, 53–76. Oxford: Oxford University Press.

Bajpai, Rochana. 2016. *Debating Difference: Group Rights and Liberal Democracy in India*. Oxford: Oxford University Press.

Balagangadhara, S. N. 1994. *"The Heathen in His Blindness …": Asia, the West and the Dynamic of Religion*. Leiden: Brill.

Beaubérot, Jean, and Micheline Milot. 2011. *Laïcités sans frontières*. Paris: Seuil.

Berg-Sørensen, Anders. 2013. *Contesting Secularism: Comparative Perspectives*. Farnham: Ashgate.

Bhargava, Rajeev. 1998. "What is Secularism for?" In *Secularism and Its Critics*, ed. Rajeev Bhargava, 486–542. Oxford: Oxford University Press.

Bhargava, Rajeev. 2007. "The Distinctiveness of Indian Secularism." In *The Future of Secularism*, ed. T. N. Srinivasan, 20–53. Oxford: Oxford University Press.

Bhargava, Rajeev. 2016. "Is European Secularism Secular Enough?" In *Religion, Secularism, and Constitutional Democracy*, eds. Jean L. Cohen and Cécile Laborde, 157–81. New York: Columbia University Press.

Bloch, Esther, Marianne Keppens, and Rajaram Hegde. 2010. *Rethinking Religion in India: The Colonial Construction of Hinduism*. London: Routledge.

Brass, Paul R. 1998. "Secularism Out of Its Place." *Contributions to Indian Sociology* 32 (2): 485–505.

Brubaker, Rogers 2016. "A New 'Christianist' Secularism in Europe." https://tif.ssrc.org/2016/10/11/a-new-christianist-secularism-in-europe/. Accessed October 18, 2019.

Calhoun, Craig J., Mark Juergensmeyer, and Jonathan VanAntwerpen. 2011. *Rethinking Secularism*. Oxford: Oxford University Press.

Chatterji, A. P., Thomas Blom Hansen, and Christophe Jaffrelot, eds. 2019. *Majoritarian State: How Hindu Nationalism Is Changing India*. London: Hurst & Company.

https://doi.org/10.1017/S0003055420000775 Published online by Cambridge University Press

Cohen, Joshua. 2011. "Establishment, Exclusion, and Democracy's Public Reason." In *Reasons and Recognition: Essays on the Philosophy of T. M. Scanlon*, eds. R. Jay Wallace, Rahul Kumar, and Samuel Richard Freeman, 256–75. Oxford: Oxford University Press.
Cossman, Brenda, and Ratna Kapur. 1996. "Secularism: Bench-Marked by Hindu Right." *Economic and Political Weekly* 31 (38): 2613–30.
Dallmayr, Fred R. 2004. "Beyond Monologue: For a Comparative Political Theory." *Perspectives on Politics* 2 (2): 249–57.
De, Rohit. 2018. *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Princeton, NJ: Princeton University Press.
Devji, Faisal. 1992. "Hindu/Muslim/Indian." *Public Culture* 5 (1): 1–18.
Dhavan, Rajeev. 1987. "Religious Freedom in India." *The American Journal of Comparative Law* 35 (1): 209–54.
Dirks, Nicholas B. 2001. *Castes of Mind: Colonialism and the Making of Modern India*. Princeton, NJ: Princeton University Press.
Dressler, Markus, and Arvind-pal Singh Mandair. 2011. *Secularism and Religion-Making*. New York: Oxford University Press.
Dubuisson, Daniel, and William Sayers. 2003. *The Western Construction of Religion: Myths, Knowledge, and Ideology*. Baltimore, MD: Johns Hopkins University Press.
Eisenberg, Avigail, and Jeff Spinner-Halev. 2005. *Minorities within Minorities: Equalities, Rights and Diversity*. Cambridge: Cambridge University Press.
Eisgruber, Christopher L., and Lawrence G. Sager. 2010. *Religious Freedom and the Constitution*. Cambridge, MA: Harvard University Press.
Fitzgerald, Timothy. 2000. *The Ideology of Religious Studies*. Oxford: Oxford University Press.
Galanter, Marc. 1984. *Competing Equalities: Law and the Backward Classes in India*. Berkeley: University of California Press.
Galanter, Marc. 1997a. "Hinduism, Secularism and the Indian Judiciary." In *Law and Society in Modern India*, ed. Marc Galanter, 237–58. Oxford: Oxford University Press.
Galanter, Marc. 1997b. *Law and Society in Modern India*. Delhi: Oxford University Press.
Galanter, Marc. 1998. "Secularism, East and West." In *Secularism and Its Critics*, ed. Rajeev Bhargava, 234–67. Oxford: Oxford University Press.
Goldberg, David Theo. 2006. "Racial Europeanization." *Ethnic and Racial Studies* 29 (2): 331–64.
Hervieu-Léger, Danièle. 2000. *Religion as a Chain of Memory*. Cambridge: Polity Press.
Hirschl, Ran. 2010. *Constitutional Theocracy*. Cambridge, MA: Harvard University Press.
Hurd, Elizabeth Shakman, and Linell Cady. 2010. *Comparative Secularism in a Global Age*. Basingtoke: Palgrave.
Jacobsohn, Gary J. 2003. *The Wheel of Law: India's Secularism in Comparative Constitutional Context*. Princeton, NJ: Princeton University Press.
Jaffrelot, Christophe. 2011a. "Composite Culture Is Not Multiculturalism: A Study of the Indian Constituent Assembly Debates." In *Religion, Caste and Politics in India*, ed. Christophe Jaffrelot, 3–21. London: Hurst.
Jaffrelot, Christophe. 2011b. *Religion, Caste and Politics in India*. London: Hurst.
Jaffrelot, Christophe. 2017. "India's Democracy at 70: Toward a Hindu State?" *Journal of Democracy* 28 (3): 52–63.
Jaffrelot, Christophe. 2019 "A De Facto Ethnic Democracy? Obliterating and Targeting the Other, Hindu Vigilantes, and the Ethno-State." In *Majoritarian State: How Hindu Nationalism Is Changing India*, eds. Angana P. Chatterji, Thomas Blom Hansen, and Christophe Jaffrelot, 41–67. London: Hurst & Company.
Jenco, Leigh Kathryn. 2007. "'What Does Heaven Ever Say?': A Methods-Centered Approach To Cross-Cultural Engagement." *American Political Science Review* 101 (4): 741–55.
Kaviraj, Sudipta. 2010. "On Thick and Thin Religion: Some Critical Reflections on Secularisation Theory." *Religion and Political Imagination*, ed. Ira Katznelson, 336–55. Cambridge: Cambridge University Press.
King, Richard. 1999. *Orientalism and Religion: Postcolonial Theory, India and the Mystic East*. London: Routledge.
Khosla, Madhav. 2020. *India's Founding Moment. The Constitution of a Most Surprising Democracy*. Cambridge, MA: Harvard University Press.
Kymlicka, Will. 2001. *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*. Oxford: Oxford University Press.
Laborde, Cécile. 2008. *Critical Republicanism: The Hijab Controversy and Political Philosophy*. Oxford: Oxford University Press.
Laborde, Cécile. 2013a. "Laïcité, Séparation, Neutralité." In *Ethique et déontologie dans l'Education Nationale*, eds. Jean-François Dupeyron and Christophe Miqueu, 171–83. Paris: Armand Colin.
Laborde, Cécile. 2013b. "Political Liberalism and Religion: On Separation and Establishment." *Journal of Political Philosophy* 21 (1): 67–86.
Laborde, Cécile. 2017. *Liberalism's Religion*. Cambridge, MA: Harvard University Press.
Laborde, Cécile, and Sune Laegaard. 2020. "Liberal Nationalism and Symbolic Religious Establishment." In *Liberal Nationalism and Its Critics: Normative and Empirical Questions*, eds. Gina Gustavsson and David Miller, 172–87. Oxford: Oxford University Press.
Maclure, Jocelyn. 2017. "Towards a Political Theory of Secularism." In *The Sources of Secularism: Enlightenment and Beyond*, eds. Anna Tomaszewska and Hasse Hämäläinen, 21–33. Basingstoke, Hampshire: Palgrave Macmillan.
Maclure, Jocelyn, and Charles Taylor. 2011. *Secularism and Freedom of Conscience*. Cambridge, MA: Harvard University Press.
Madan, T. N. 1998. "Secularism in Its Place." In *Secularism and Its Critics*, ed. Rajeev Bhargava, 297–320. Oxford: Oxford University Press.
Mahajan, Gurpreet. 2002. "Secularism as Religious Non-Discrimination: The Universal and the Particular in the Indian Context." *India Review* 1 (1): 33–51.
Mahmood, Saba. 2016. *Religious Difference in a Secular Age: A Minority Report*. Princeton, NJ: Princeton University Press.
Mahmood, Saba, and Peter Danchin. 2014. "Immunity or Regulation? Antinomies of Religious Freedom." *The South Atlantic Quarterly* 113 (1): 129–58.
Mancini, Susanna. 2009. "Secularism and Religion as Guarantors of Cultural Convergence." *Cardozo Law Review* 30 (6): 2629–68.
March, Andrew. 2009. "What Is Comparative Political Theory?" *The Review of Politics* 71 (4): 531–65.
Mehta, Pratap Bhanu. 2004. "World Religions and Democracy: Hinduism and Self-Rule." *Journal of Democracy* 15 (3): 108–21.
Mehta, Pratap Bhanu. 2009a. "On the Possibility of Religious Pluralism." In *Religious Pluralism, Globalization, and World Politics*, ed. Thomas F. Banchoff, 1–25. Oxford: Oxford University Press.
Mehta, Pratap Bhanu. 2009b. "Passion and Constraint: Courts and the Regulation of Religious Meaning." In *Politics and Ethics of the Indian Constitution*, ed. Rajeev Bhargava, 331–8. Oxford: Oxford University Press.
Miller, David. 2016. "Majorities and Minarets: Religious Freedom and Public Space." *British Journal of Political Science* 46 (2): 437–56.
Modood, Tariq. 1994. "Establishment, Multiculturalism and British Citizenship." *The Political Quarterly* 65 (1): 53–73.
Modood, Tariq. 2019. *Essays on Secularism and Multiculturalism*. London: ECPR Press/Rowman & Littlefield International.
Nadkarni, M. V. 2006. *Hinduism: A Gandhian Perspective*. New Delhi: Ane Books.
Nandy, Ashis. 1995. "An Anti-secularist Manifesto." *India International Centre Quarterly* 22 (1): 35–64.
Nandy, Ashis. 1998. "The Politics of Secularism and the Recovery of Religious Tolerance." In *Secularism and Its Critics*, ed. Rajeev Bhargava, 321–44. Oxford: Oxford University Press.
Nandy, Ashis. 2007. "Closing the Debate on Secularism: A Personal Statement." In *The Crisis of Secularism in India*, eds. Anuradha Dingwaney Needham and Rajeswari Sunder Rajan, 107–17. Durham, NC: Duke University Press.
Needham, Anuradha Dingwaney, and Rajeswari Sunder Rajan. 2007. *The Crisis of Secularism in India*. Durham, NC: Duke University Press.
Nussbaum, Martha Craven. 2007. *The Clash Within: Democracy, Religious Violence, and India's Future*. London: Belknap.
Parel, Anthony. 1992. "The Comparative Study of Political Philosophy." In *Comparative Political Philosophy: Studies under the*

https://doi.org/10.1017/S0003055420000775 Published online by Cambridge University Press

Upas Tree, eds. Anthony Parel and Ronald C. Keith, 11–28. London: Sage.
Philips, Amali. 2011. "Sharia and Shah Bano: Multiculturalism and Women's Rights." *Anthropologica* 53 (2): 275–90.
Prakash, Gyan. 2007. "Secular Nationalism, Hindutva and the Minority." In *The Crisis of Secularism in India*, eds. Anuradha Dingwaney Needham and Rajeswari Sunder Rajan, 177–89. Durham, NC: Duke University Press.
Roover, Jakob De. 2016. *Europe, India, and the Limits of Secularism*. Oxford: Oxford University Press.
Roover, Jakob De, Sarah Claerhout, and S. N. Balagangadhara. 2011. "Liberal Political Theory and the Cultural Migration of Ideas: The Case of Secularism in India." *Political Theory* 39 (5): 571–99.
Scheepers, Peer, Mèrove Gijsberts, and Evelyn Hello. 2002. "Religiosity and Prejudice against Ethnic Minorities in Europe: Cross-National Tests on a Controversial Relationship." *Review of Religious Research* 43 (3): 242–65.
Scott, Joan Wallach. 2018. *Sex and Secularism*. Princeton, NJ: Princeton University Press.
Sen, Ronojoy. 2009. "The Indian Supreme Court and the Quest for a 'Rational' Hinduism." *South Asian History and Culture* 1 (1): 86–104.
Sen, Ronojoy. 2016. "Secularism and Religious Freedom." In *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta, 885–902. Oxford: Oxford University Press.
Shachar, Ayelet. 1998. "Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation." *Journal of Political Philosophy* 6 (3): 285–305.
Smith, Donald Eugene. 1963. *India as a Secular State*. Princeton, NJ: Princeton University Press.
Stephens, Julia Anne. 2018. *Governing Islam: Law, Empire, and Secularism in Modern South Asia*. Cambridge: Cambridge University Press.
Storm, Ingrid. 2011. "Ethnic Nominalism and Civic Religiosity: Christianity and National Identity in Britain." *The Sociological Review* 59 (4): 828–46.
Tejani, Shabnum. 2007. "Reflections on the Category of Secularism in India: Gandhi, Ambedkar, and the Ethics of Communal Representation, c. 1931." In *The Crisis of Secularism in India*, eds. Anuradha Dingwaney Needham and Rajeswari Sunder Rajan, 45–65. Durham, NC: Duke University Press.
van der Veer, Peter. 2001. *Imperial Encounters: Religion and Modernity in India and Britain*. Princeton, NJ: Princeton University Press.
von Vacano, Diego. 2015. "The Scope of Comparative Political Theory." *Annual Review of Political Science* 18 (1): 465–80.
Warner, Michael, Jonathan VanAntwerpen, and Craig J. Calhoun. 2010. *Varieties of Secularism in a Secular Age*. Cambridge, MA: Harvard University Press.
Zolberg, Aristide R., and Long Litt Woon. 1999. "Why Islam Is Like Spanish: Cultural Incorporation in Europe and the United States." *Politics and Society* 21 (1): 5–38.

https://doi.org/10.1017/S0003055420000775 Published online by Cambridge University Press