Symposium on *Liberalism's Religion*

Introduction

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The State of the Debate

Liberal states, in order to be truly liberal, must protect religious freedom. This means not only that citizens should be free to hold whatever religious beliefs they want, and to worship in whatever way they see fit, but also that they should be free to change religion whenever they want, or decide to have no religion at all. This commitment to religious freedom, including freedom from religion, is one of the few things that liberal political philosophers agree on. But, when it comes to religion, this might be the only thing that liberal political philosophers agree on.

Religion has recently become the object of a significant and growing literature in legal and political philosophy: What does it mean to guarantee religious freedom? When the religious freedom of some citizens appears in conflict with the religious freedom of others, what should be done? When the religious convictions of some individuals clash with generally applicable laws, should the state grant exemptions? Does freedom of religion require some kind of separation between church and state, or are religious freedom and religious establishment wholly compatible? What, if anything, should be the role of religion in the public life of a liberal society? May religious reasons be legitimately invoked to justify political decisions, or should they be excluded from public deliberation? Two main debates have emerged that organize this surfeit of questions. One focuses on the question of religious freedom, and in particular on whether religious commitments and practices merit special protection under law in virtue of their religious character. The other focuses on the question of separation and secularism, and in particular on whether religious commitments and practices should be contained by law, also in virtue of their religious character.

In the recent literature, the dominant liberal response to these questions is based on an egalitarian theory of religion, according to which "religion need not be singled out in the liberal state" (Laborde 2017: 13; see also Laborde 2014). The roots of the liberal egalitarian view on religion can be found in the work of John Rawls (1971 and 1993), as well as Ronald Dworkin (2013), Christopher Eisgruber and Lawrence Sager (2007), Jocelyn Maclure and Charles Taylor (2011). The core claim of this egalitarian view is that religion, for legal and political purposes, is not special.[1] To the extent that religion should be protected by the state, it is because it is the subcategory of something larger that deserves protection. To the extent that religion should not be recognized or endorsed by a state, that it should be kept at a certain distance, or perhaps that it should be excluded from the public sphere, it is also because it is the

[1] It should be noted that one could distinguish between two different understandings of *special*. Egalitarians claim that religion should not be *singled out for special treatment*. However, some of them believe that religion, to the extent that it belongs to a category of particularly important commitments, *deserves special protection*. On the distinction between the two understandings, see Patten (2017: 212-213) and Bardon & Ceva (forthcoming).

subcategory of something larger that should be the object of state neutrality. On this view, religion should not be singled out for special treatment, because it should be treated in exactly the same way as similar non-religious commitments are: the state should protect equally religious and non-religious conceptions of the good; it should be neutral towards religion because it should be more generally neutral towards the good; it should not promote any particular religion, and it should not promote religion over non-religion, because the liberal state should not promote any particular controversial comprehensive doctrine; and it should eschew sectarian religious arguments in public justification simply because it should eschew sectarian arguments generally.

What, exactly, is religion supposedly a subcategory of? If religion *qua* religion is not a relevant category for the liberal state, what is the relevant category that religion belongs to? How is this relevant category defined, identified and delimited? Egalitarian theorists identify this larger relevant category as that of "the good," or "conceptions of the good." Liberal egalitarianism is then better understood through its fundamental commitment to neutrality toward *that*. There are two ways in which the egalitarian state is neutral in contrast to a state that would single out religion for special treatment. First, singling-out religion would require a justification: what makes religion a special kind of good? What is especially valuable about religion? Identifying some intrinsic religious good would explain why religion should be protected in a way that no non-religious commitment should be protected, because religion is intrinsically difference from non-religious activities (Laycock 1990: 16; McConnell 1985: 18). However, any attempt to justify the special good of religion would be fundamentally non-neutral: the liberal state cannot neutrally maintain that religion in itself matters and is, more than anything else, protection-worthy. Because egalitarian theorists deny that religion should be singled out, they successfully avoid this problem: they do not have to justify why religion is uniquely valuable. Second, singling-out of religion would require a particular definition of religion: what counts as religious, and therefore what kinds of practices or commitments should be singled out for special treatment? Distinguishing between what is religious and what is not religious is only possible based on some particular conception of religion, but any particular conception of religion will be necessarily controversial and non-neutral (Sullivan 2007). This second issue is also avoided by egalitarian theorists: since religion is not singled out for special treatment, the distinction between religious and non-religious commitments or practices is not relevant, and therefore no particular definition of religion is needed.

Liberal egalitarianism, then, does not require either a justification of the protection-worthiness of religion, or a particular definition of religion. It can refrain from answering both challenges. Or so, anyway, it would seem.

Reconceiving the Debate

In her major new work, *Liberalism's Religion*, Cécile Laborde argues that the prevailing liberal-egalitarian approach toward religion is misguided and in need of crucial revision. It is false, she believes, that egalitarianism can avoid the twin aforementioned challenges; it only displaces them, forcing them reappear at a more fundamental level in the theory. The first main section of the book, Chapters 1-3, establishes this argument through exhaustive critical engagement with the existing scholarly literature. First, Laborde argues that egalitarianism faces what she terms *the*

problem of ethical salience. Even if the category of protection-worthy commitments is not limited to religious ones—thereby alleviating the need to explain why religion in particular is protection-worthy—egalitarians still need to explain why the general category in question is protection-worthy. "[L]iberalism, for all its claims to neutrality," she writes, "cannot dispense with an ethical evaluation of the salience of different conceptions, beliefs, and commitments" (Laborde 2017: 5). Without such an ethical evaluation, one cannot explain why, for instance, conscientious commitments are more valuable than mere preferences, and why exemptions might be required to accommodate the former but not the latter.

Second, egalitarians insist that they can avoid the question of what qualifies as "religious", they cannot avoid a deeper question, what Laborde terms *the jurisdictional boundary problem*. This problem concerns the way in which the liberal sovereign state distinguishes between public and private—what is the focus of the state's legitimate business, and what falls outside it. Laborde contends that there is no non-neutral way for the state to identify the boundaries of what belongs to the private sphere, and of what falls under the scope of political authority: "even assuming that liberals can justify that the state should concern itself with interpersonal justice, they need to justify the state's prerogative to set the boundaries of where interpersonal justice lies in the first place, in the context of foundational disagreement about the boundary of justice itself" (Laborde 2017: 107). In other words, the commitment to neutrality challenge is far more difficult to maintain than egalitarian theorists have usually assumed.

By demonstrating how these two problems afflict existing liberal-egalitarian views, the first three chapters of *Liberalism's Religion* reveal that the common analogy between *religion* and *the good* is seriously problematic. That is why, Laborde argues, this analogy should be replaced by what she terms a *disaggregative approach*. There is not one single value in religion; there is a plurality of values, and none of them can be uniquely associated with religion. Religion is sometimes a conception of the good, but it can also be many other things, including a conscientious obligation, a feature of identity, a mode of human association, a vulnerability class, a totalizing institution, or an inaccessible doctrine (Laborde 2015: 594-595).

The second main part of this book directly applies Laborde's original framework to the pressing questions about religion in contemporary political and legal philosophy. Harnessing her disaggregative approach, Laborde identifies the connection between secularism and liberalism (Chapter 4), and she responds to the jurisdictional boundary problem (Chapter 5) and to the ethical salience problem (Chapter 6).

In Chapter 4, Laborde argues that the liberal state has to be a minimally secular state, which means it has to be a *justifiable* state, an *inclusive* state, and a *limited* state. Each of these three components of secularism singles out a particular dimension of religion, but none of them exclusively concerns religion. First, the justifiable state is a state that provides public justification for coercive state action. What it singles out is the non-accessible dimension of religion. But non-religious reasons can be non-accessible in exactly the same way as religious reasons can be non-accessible. Non-accessible reasons, whether they are religious are not, are impermissible sources of public justification (Laborde 2017: 117-132). Second, the inclusive state is a state that treats all of its citizens as equals. What it singles out is the divisive dimension of religion. But non-religious identities can be just as divisive as religious ones. The inclusive state requires that civic identity is not associated with any divisive feature of identity,

whether it is religious or not (Laborde 2017: 132-143). Finally, the limited state is a state that respects the sovereignty of individuals over their private sphere. What it singles out is the comprehensive dimension of religion. But comprehensive doctrines need not be religious. In a limited state, comprehensive conceptions of the good should not be enforced on individuals, whether they are religious or not (Laborde 2017: 143-150). None of the three dimensions of secularism, then, uniquely concerns religion. The defense of minimal secularism, in other words, is fundamentally egalitarian. Whenever it is justified or required to have a separation between religion and politics, it applies equally to those reasons, identities and conceptions of the good that have the same features of non-accessibility, divisiveness and comprehensiveness.

In Chapter 5, Laborde confronts the jurisdictional boundary problem. She shows that controversies about the proper scope of religious autonomy are themselves political controversies that must be resolved by the state. In this way, the state does not and must not share final decision-making sovereignty with non-state institutions; "the authoritative and stable resolution of conflicts about justice"—including conflicts about the scope religious freedom and the legitimate prerogatives of religious associations—"requires a final, ultimate source of sovereignty" (m/s p. 155). This, Laborde insists, is a central component of secularism, which "locates the source of [state] sovereignty in a social contract" (p. 158). Those who insist that God has sovereignty over a particular domain, and that the liberal state must be constricted accordingly, must be opposed—a difficult position for egalitarians who mistakenly believe they can remain neutral on such questions. Notwithstanding this defence of state sovereignty, Laborde argues that such sovereignty must be exercised in accordance with liberal principles, which she believes demand broad rights to free association—for religious and non-religious groups alike. This sometimes justifies religious groups' exemption from generally applicable legislation, such as concerning non-discrimination. To be entitled to exemptions, Laborde argues that associations must be *voluntary* (i.e., exit is not unreasonably costly) and *identificatory* (i.e., individuals join the groups to pursue their conception of the good (p. 168). She also holds that such groups must pass a test of *coherence*, such that they have the "ability to live by their own standards, purposes and commitments" (p. 169), and a test of *competence,* such that they possess expertise in how to "interpret their own standards, purposes, and commitments" (p. 169). Laborde demonstrates how this framework is superior to the prevailing "ministerial exception" doctrine at explaining why, for example, the Catholic Church may enjoy a legal permission to hire only male clergy, and she applies the framework to a variety of pressing political and legal controversies about the proper scope of religious associational autonomy.

In Chapter 6, Laborde confronts the problem of ethical salience to determine the conditions under which individuals should be granted exemptions from generally applicable laws. Liberal egalitarians, she thinks, are mistaken to suppose that exemptions cannot be morally justified. That mistake traces to the common view that the state must not make judgments about the comparative ethical salience of different interests—a view, Laborde argues, that is false. How else, she asks, is the state to decide which liberties are basic, or which rights are most important? Laborde develops a "two-pronged test"; a candidate exemption claim must pass both to succeed. The first prong inquires into whether the practice embodies "specific normative values that the law has reason to protect" (195)" This occurs, in Laborde's view, if the practice implicates participants' *integrity*—"an ideal of congruence between one's ethical commitments and one's actions" (p. 196). When it does,

commitment to engaging in the practice is an *identity-protecting commitment* (IPC). Integrity requires what Laborde terms *thick sincerity*; the citizen must genuinely believe that her ethical convictions demand the IPC in question. However, while integrity is necessary to pass the first stage, it is not sufficient. The IPC must also meet what Laborde terms *thin acceptability*; the practice in question must be compatible with the most minimal moral standards. If the commitment is morally abhorrent—as in the case of someone demanding an exemption from laws banning murder in order to practice infant sacrifice—it has no *pro tanto* moral value, and so is disqualified *ab initio*. But provided the IPC is at least morally ambivalent (p. 203), it passes the first stage and is considered at the second stage, which addresses the costs that the exemption would impose on others to determine whether it would be fair all-things-considered. At this stage, Laborde fruitfully distinguishes between *Obligation-IPCs*—which implicate citizens' conscience—and *Identity-IPCs*—which implicate their identity. She defends the moral imperative of protecting citizens' *obligation-IPCs* from disproportionate burdens that can be alleviated without excessive cost. And she defends the importance of protecting citizens' *identity-IPCs* from majority status quo bias, which makes it difficult for citizens from minority cultures and religions to pursue socially valuable opportunities while maintaining their identity (pp. 208ff).

The Road Ahead

The original contributions of Laborde's new treatise are manifold, and it would be impossible to summarize them all here. But two are especially worthy of noticing here. First, central to Laborde's accomplishment is her insistence that liberal egalitarians cease to regard religion as a monolithic category that poses special problems for political theory. Instead we must disaggregate religion into its constituent elements, and thereby illuminate the various general categories to which these elements respectively belong—some of which require protection, others containment. Second, we must realize that the vexed controversies about the place of religion in a liberal society are not to be resolved by simply insisting that we can be neutral toward such controversies. Nor can they be resolved by insisting that our religious authorities command a dominion over us that the state must regard as outside its ambit of sovereign concern. The continuing battles over religion in public life are political controversies, admitting of intense but reasonable disagreements that can only be settled through respectful democratic deliberation and decision-making. We view this symposium, intended to subject Laborde's powerful new theory to analytic scrutiny, as a contribution to that deliberation.

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