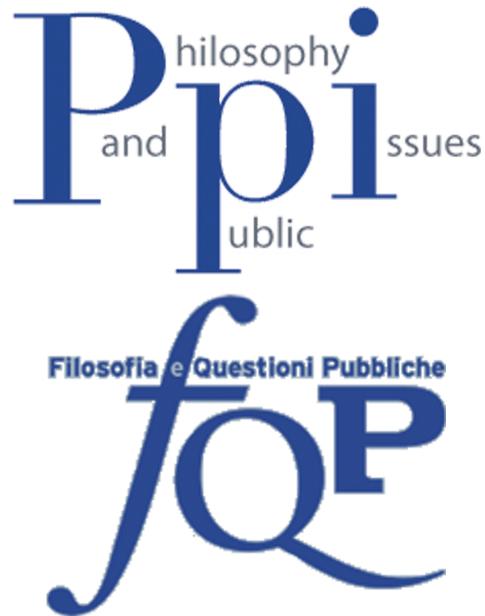


SYMPOSIUM
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POLITICAL SECULARISM AND PUBLIC
REASON. THREE REMARKS ON AUDI'S
*DEMOCRATIC AUTHORITY AND THE
SEPARATION OF CHURCH AND STATE*

BY JOCELYN MACLURE

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Political Secularism and Public Reason. Three Remarks on Audi's *Democratic Authority and the Separation of Church and State*

Jocelyn Maclure

I enjoyed reading *Democratic Authority and the Separation of Church and State*. The relationship between state and religion, the place of religion in the public sphere, and the accommodation claims made by religious minorities are fiercely debated in most democratic countries. No matter whether secularism is enshrined in the constitution or if a regime of weak establishment prevails, pluralist democracies are now facing a net set of challenges related to the management of moral and religious diversity. The wide ranging ethical pluralism of contemporary societies, the diversification of immigration, and the growing commitment to human rights and to, more controversially, “multiculturalism” or the “recognition” of minority groups are for the most part responsible for this new phase of the debate on religion and politics. As political philosophy often finds its vital impulsion from the conflicts that strain social cooperation, a growing number of normative

theories of secularism, toleration, and religious freedom are now being developed.¹ Audi's recent book is a highly valuable contribution to this field.²

For the sake of the continuing critical discussion on secularism and religious freedom, I will comment on three issues that are central to both Audi's book and current scholarship. I will first interrogate Audi's conceptual analysis of the separation of church and state principle, and then comment on his answer to the much discussed question of what authorizes us, if anything, to single out religion. Finally, I will suggest that it is probably time to move beyond the debate on the proper place of religious convictions within public reason.

¹ See Rajeev Bhargava, "Political secularism : why it is needed and what can be learnt from its Indian version," *Secularism, Religion and Multicultural Citizenship* (New York: Cambridge University Press, 2008), 82-109; Cécile Laborde, "Political Liberalism and Religion: On Separation and Establishment," *Journal of Political Philosophy* 21 (2013): 67-86; Sune Læggaard, "Moderate Secularism and Multicultural Equality," *Politics* 28 (2008): 160-168; Brian Leiter, *Why Tolerate Religion* (Princeton: Princeton University Press, 2013); Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience* (Cambridge: Harvard University Press, 2011); Tariq Modood, "Moderate Secularism, Religion as Identity and Respect for Religion," *The Political Quarterly* 81 (2010): 4-14; Martha Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York: Basic Books, 2007).

² All parenthetical page references in the main text refer to Robert Audi, *Democratic Authority and the Separation of Church and State*, Oxford: Oxford University Press, 2011. All other references are in the footnotes.

I

Political secularism

I first want to question the way Audi conceives the conceptual structure of the secular state. My understanding is that he sees the separation of church and state as the core principle of the secular state. The separation principle involves, he believes, “a protection of both religious liberty and governmental autonomy” (p. 39). This, he adds, requires some unpacking. In terms of “governmental regulation and structure,” the separation of church and state involves three principles: 1-Religious liberty; 2-Equality, understood as the equal treatment of all religions; 3-Governmental neutrality toward religion.

Audi, it seems to me, reproduces an error made in most attempts to lay out the conceptual architecture of the secular state or *laïcité*. If he is undoubtedly right to think that political secularism is underpinned by a plurality of distinct, and potentially conflicting, principles, I want to suggest that he also needs to distinguish between what Charles Taylor and I called the *moral ends* and the *modus operandi* of the secular state.³ I cannot make the argument fully explicit here, but the basic idea is that a liberal and democratic state needs to be secular in order to grant equal respect to all citizens—notwithstanding their worldview and conception of the good—and to protect their freedom of conscience and religion. The “separation” and “neutrality” principles are better seen as the institutional means to bring about the two ends of the secular state, as it is hard to see how the state can recognize all citizens as

³ Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience*, 2011.

equals and protect their religious liberty if it is organically linked to, or if it favours a religion (in a significant way). Separation and neutrality are part of the institutional design of the secular state; their value is derivative, whereas the value equal respect and freedom of conscience and religion is intrinsic.⁴ Accordingly, I fail to grasp why Audi affirms that the “[...] neutrality principle, which calls for governmental neutrality toward religion and the religious, is not entailed by even the other two principles together [religious liberty and equality]” (p. 45).

As a normative tool, a theory that makes the distinction between moral and institutional principles is more useful than a theory that doesn't. It directs our attention on the impact of a given norm or policy on the principles of equal respect and freedom of conscience, and it shows us that there is something wrong when priority is given to institutional principles such as “non-establishment,” “separation” or “neutrality” over the moral ends of political secularism. It also allows us to understand why it makes sense to see as secular democratic regimes that have an official church and those that recognize religions in differentiated ways. Finally, since empirical scholars demonstrated in a myriad of ways how even the most secular states are never fully neutral with regards to the religious affiliations of its citizens, it makes more sense to see them as institutional principles that can be designed and applied in different and contextually sensitive ways.

⁴ A proposition that is compatible with, but that does not require, Audi's moral realism/intuitionism (see *Democratic Authority and the Separation of Church and State*, “The Autonomy of Ethics and the Moral Authority of Religion”, 9-36).

II

The Protection of Identity Principle

As just mentioned, Audi sees religious liberty as one of the core principles of the secular state. But why is it that religious convictions carry more moral and legal weight than other kinds of beliefs and commitments? Why should we single out religion? In line with the bulk of recent scholarship, Audi answers that religion generally plays a special role in the identity of the believer. According to the “protection of identity” principle: “[t]he deeper a set of commitments is in a person, and the closer it comes to determining that person’s sense of identity, the stronger the case for protecting the expression of those commitments tends to be” (p. 42).

It is because religious beliefs tend to be both deep and identity-conferring that they should have a special legal status; a status that vindicates, under specific circumstances, exemptions from generally applicable laws or other forms of what is called “reasonable accommodation” in the Canadian jurisprudence (p. 46). Against theorists like Brian Barry and Brian Leiter, I also believe that meaning-giving beliefs and commitments should be distinguished from the other subjective preferences that contribute to wellbeing but that are not crucial to one’s moral identity.⁵

That being said, I found that Audi didn’t do enough to provide an answer to those who argue that there is no normatively satisfying way, under conditions of reasonable moral pluralism, to give more weight to religious beliefs

⁵ Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience*, “Freedom of Conscience”, 61-104.

and commitments. Is religious freedom compatible with the required axiological neutrality of the state? If so, how?

My own answer is that religious freedom ought to be seen, for normative purposes, as a subcategory of a broader class, i.e. freedom of conscience. There is no good reason to give priority to religious convictions over secular meaning-giving beliefs. I think that Audi agrees, but stills want to isolate religious beliefs on the basis of a psychological argument:

Other kinds of commitments can be comparably deep; this principle does not discriminate against those. But few if any non-religious kinds of commitments combine the depth and contribution to the sense of identity that go with many (though not all) of the kinds of religious commitments. (pp. 42-43)

The meaning and implications of this qualification are not, to my knowledge, spelled out in the book. One way to understand Audi's position is to say, like for instance Andrew Koppelman, that religious commitments are uniquely special and should not be analogized with other types of commitments.⁶ I don't know if Audi's argument about the unique combination of depth and contribution to one's self-identity that is provided by religious doctrines is supposed to be empirical, phenomenological, or otherwise, but we know that pacifists and vegetarians whose moral outlooks were thoroughly secular felt compelled to mount (in the end successful) exemption or accommodation claims. Why should, for instance, a vegetarian Hindu be accommodated in prison or in the army and not an utilitarian? The only acceptable answer, I think, is to see

⁶ Andrew Koppelman, "Is it fair to give religion special treatment?" *University of Chicago Law Review* (2006): 571-604.

religious liberty as nested within freedom of conscience.⁷ The relevant distinction is not between secular and religious meaning-giving beliefs and commitments, but between meaning-giving convictions and more peripheral subjective preferences.

III

Religious Convictions and Secular Reason: An Overlapping Consensus?

The role and status of religious convictions in political debates and in the justification of public norms is the issue that has arguably excited political philosophers the most since the publication of John Rawl’s *Political Liberalism* and the rise of deliberative democracy theories in the 1990s. Rawls defined “public reason” as the “reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and amending their constitution.”⁸ He argued that citizens, when “discussing and voting on the most fundamental political questions” should “honour the limits of public reason” and “appeal only to a public conception of justice and not to the whole truth as they see it.”⁹ Since public

⁷ Ronald Dworkin, *Is Democracy Possible Here? Principles for a New Political Debate* (Princeton: Princeton University Press, 2008), 61; Martha Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality* (New York: Basic Books, 2007); Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience* (Cambridge: Harvard University Press, 2011).

⁸ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 214.

⁹ *Ibid.*, 216.

reason's main function is to supply proper or warranted justification for basic public norms, the arguments put forward by citizens and public officials need to be derived from the principles of a shared political conception of justice rather than from one's comprehensive doctrine. Other influential philosophers such as Jürgen Habermas and Audi himself were thought to defend broadly congruent normative positions.¹⁰

Several critics asked whether the discipline of public reason imposed upon citizens was itself justified.¹¹ Is it reasonable to ask citizens committed to a secular or religious comprehensive doctrines to restrain from justifying their political positions on the basis of their most deeply-held beliefs? Is it always possible to draw the line between public and non-public reasons? Can't there be "reasonable disagreements" over that frontier?¹² Wouldn't all citizens benefit from a deeper understanding of the reasons, secular or not, that motivate citizens to endorse their preferred positions?

The debate on "public" or "secular" reason was fruitful. An overlapping consensus arguably emerged from that debate. It is not clear to me who still defends a dichotomy

¹⁰ Jürgen Habermas, *Justification and Application: Remarks on Discourse Ethics* (C. Cronin, transl. Cambridge: The MIT Press, 1993); Robert Audi, *Religious Commitments and Secular Reason* (Cambridge: Cambridge University Press, 2000).

¹¹ Paul Weithman, *Religion and the Obligations of Citizenship* (Cambridge: Cambridge University Press, 2002); Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002).

¹² Jocelyn Maclure, "On the Public Use of Practical Reason: Loosening the Grip of Neo-Kantianism", *Philosophy & Social Criticism* 32 (2006): 37-63.

between public and non-public reasons, although, to borrow from Hilary Putnam, a distinction might still be useful. Rawls clarified his position in “The Idea of Public Reason Revisited” with his famous “proviso” argument:

[the public reason] requirement still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support.¹³

Reason of all sorts can be uttered, but public justifications ought “in due course” to be provided.¹⁴

In a similar spirit, Habermas went out of his way in his recent work on religion in the public sphere to show how his vision of a sound “post-secular” deliberative democracy ought to be hospitable to the moral input of religiously committed citizens.¹⁵ And without going in the specifics, Audi specifies in *Democratic Authority* that his “principle of secular rationale” requires only, if I got it right, that religiously committed citizens have secular reasons in addition to their religious reasons for supporting coercive laws and policies, and the public expression of these religious reasons is not precluded. The principle of secular rationale is “non-exclusive” (p. 68). Furthermore, it is a *pro*

¹³ John Rawls, *The Law of Peoples and The Idea of Public Reason Revisited*, (Cambridge: Harvard University Press, 1999), 152.

¹⁴ Prof. Audi suggests that the ‘in due course’ requirement is ‘indeterminate’ (p. 63). My (perhaps too charitable) interpretation of the proviso is that a public justification ought to be provided ‘before a legislature or a court make a decision’.

¹⁵ Jürgen Habermas, *Between Naturalism and Religion*, “Religion in the Public Sphere: Cognitive Presuppositions for the ‘Public Use of Reason’ by Religious and Secular Citizens” (C. Cronin, transl. Cambridge: Polity Press, 2008).

tanto obligation; it can be, under appropriate circumstances, overturned.

It does appear, then, that a rough agreement emerged on the status of religious convictions within public reason among several of the most influential participants to the discussion. It is a “rough,” overlapping, agreement because nuances and rather minor disagreements remain, but few are arguing that religious beliefs should be kept in the antechamber of public deliberation. I myself think that political secularism requires that public norms and institutions be grounded upon public reasons—reasons drawn or derived from a political conception of justice—and that public deliberation should be open to comprehensive doctrines. Siding with Habermas and Charles Taylor, I do not think that the *proviso* is necessary. I do think that the habit of supplementing one’s comprehensive reasons with public ones is a civic virtue, but I do not think that a normative theory of public reasoning should include an obligation to supply secular reasons. I hasten to add that a citizen who remains solely in the convictional space of his comprehensive doctrine should not expect to be able to rally fellow citizens to his position, but that’s his own business.

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