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SECULAR RELIGIOUS ESTABLISHMENT:
A FRAMEWORK FOR DISCUSSING THE
COMPATIBILITY OF INSTITUTIONAL RELIGIOUS
ESTABLISHMENT WITH POLITICAL SECULARISM

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Secular Religious Establishment

A Framework For Discussing The Compatibility of Institutional Religious Establishment with Political Secularism

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Abstract. Secularism as a political doctrine claims that religion and politics should be separated. The compatibility question is whether secularism can accept some forms of religious establishment in the form of institutional linkages between state and organised religion. I argue that the answer to the compatibility question is not obvious and requires a systematic analysis of secularism. Based on a distinction between a general concept and specific conceptions of secularism I offer a general structure for conceptions of secularism that incorporates both a) basic values, e.g. political equality and freedom of conscience, b) intermediate political principles of separation, e.g. rights to religious liberty, and c) derived normative prescriptions, e.g. that an established church is unacceptable. I illustrate the structure using the conceptions of secularism advocated by Robert Audi and by Charles Taylor and Jocelyn Maclure. Given this general structure, the normative implications of secularism, e.g. for the compatibility question, depend on how the basic values and political principles are specified. Different understandings of the basic values yield different conditions for compatibility. Some conceptions of secularism are therefore compatible with some forms of religious establishment. I illustrate the use of the framework for discussion of particular establishment cases and how the framework provides a structure for the normative discussion about which conception of secularism to accept.

I

Introduction

I will call the question whether secularism is normatively compatible with or rules out religious establishment *the compatibility question*. This question both recalls a classic issue in political philosophy about the relationship between religion and political authority and relates to contemporary political debates of increasing prominence, e.g. due to the rise of internationally enforced human rights norms and increasing religious diversity. The compatibility question is premised on an understanding of secularism as a political doctrine about the separation of religion and politics, and of establishment as an institutional relationship between state and organised religion. While some liberal democratic states, like the US and France, clearly do have an extensive (although not absolute) institutional separation of church and state, many continue to uphold some form of religious establishment, either state churches, as in the UK, Denmark or Norway, corporatist relations between the state and a range of religious communities, as in Germany or the Netherlands, or concordats with the Catholic church, as in many countries in southern Europe.

The compatibility question has become increasingly pressing as religion has been re-politicised during recent decades. This development is partly due to increasing religious diversity in liberal democracies and to the ascendancy of religion as a factor in world politics. But the compatibility question does not only concern majority-minority relations, or relations between “the West” and “the rest”; it is a more general question about the role of religion and whether and, if so, how religion can

legitimately be part of politics.¹ How liberal democracies should accommodate religious minorities or handle religiously infused disagreements *across* borders depends on how the fundamental issue about the relation between politics and religion *within* liberal democracies is understood.² So the compatibility question is not only about the legitimacy of particular institutions in a few countries; it is also, and more fundamentally, about how liberal democracies understand themselves. The broader relevance of the discussion concerns how we should understand secularism more generally. This paper provides a general analysis of the structure of secularism as a political position. The structure has significance for discussions of secularism in relation to a range of political issues, institutional as well as non-institutional.

I consider secularism as a principled and systematic theoretical view and my analysis of it as such is intended to provide a framework for discussing the justifications, implications and plausibility of secularism. Such philosophical discussions of secularism have recently been dismissed by many scholars as naïve or obsolete given the actually existing relations between politics and religion (supposed to show that philosophical notions of “separation” of religion and politics have no foothold in reality and therefore no relevance) or the alleged “post-secular society” where religion is increasing in social and political prominence. My analysis of secularism shows how

¹ Charles Taylor, “Western Secularity,” in C. Calhoun, M. Juergensmeyer, and J. Van Antwerpen (eds), *Rethinking Secularism* (Oxford: Oxford University Press, 2011): 31-53.

² On politics and religion in international relations, see e.g. Erin K. Wilson, *After Secularism: Rethinking Religion in Global Politics* (Basingstoke: Palgrave Macmillan, 2012).

secularism need not be committed to an empirically untenable idea of separation and need not be incompatible with the social and political prominence of religion.

The case of religious establishment is especially relevant for the understanding of secularism, both because it presents a fundamental question about the meaning and implications of secularism, and because it is not directly concerned with other, currently more controversial, issues debated under the headings of multiculturalism or the “clash of civilisations”. It might therefore serve better as a test case for discussing the self-identification of liberal democracies as secular before these other controversies are entered.

The compatibility question is not merely terminological. Secularism is a substantial normative view, so compatibility is not merely a question about the applicability of a linguistic label. Since, as will be apparent below, prominent conceptions of secularism are interpretations of the values central to liberal democracy, the compatibility of secularism and establishment is important for the normative justifiability of specific policies. This is also crucial for how debates are framed: If a specific understanding of how “we” liberal democrats are secular is assumed, this will affect what is seen as politically acceptable, and whether specific groups are represented as legitimate political claims makers or as “foreign” influences. In the absence of a critical discussion of secularism, it might play an ideological role in the negative sense of an idea that distorts public debates about religion and politics.

The structure of the paper is as follows: Section II discusses an immediate reply to the compatibility question and sketches some desiderata for a theoretical discussion of

secularism. Section III provides a working definition of “establishment”. Section IV discusses the structure of conceptions of secularism and illustrates this with two prominent conceptions of secularism, namely those of Robert Audi³ and of Charles Taylor and Jocelyn Maclure⁴. Section V examines Audi’s and Taylor and Maclure’s remarks about establishment. Section VI sets out a general framework for discussions of secularism based on the structure of conceptions of secularism. Section VII illustrates the applicability of the framework in practice by using it to interpret the *Lautsi* case about mandatory crucifixes in Italian public schools. Sections VIII and IX concern how the framework facilitates normative discussion of religious freedom and religious equality, respectively. Section X concludes.

II

The (Too) Easy Answer To The Compatibility Question

One immediate response to the compatibility question might be that establishment obviously is inadmissible according to secularism. Some might consider the idea that religious establishment is compatible with secularism outright oxymoronic, i.e. as conceptually confused. But this immediate response rests on a simplistic and uninteresting

³ Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 2000) and *Democratic Authority and the Separation of Church and State* (Oxford: Oxford University Press, 2011).

⁴ Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience* (Cambridge, Ma.: Harvard University Press, 2011).

understanding of secularism. As a reply to the compatibility question, the claim that secularism obviously rules out establishment can be reconstructed as an argument: establishment is incompatible with secularism because secularism *means* that church and state should be separated. But this argument begs the question; secularism is then *defined* as a requirement of separation of church and state, i.e. as the rejection of establishment. Secularism then does not provide a philosophically interesting *justification* for the conclusion, since the premise simply consists in an affirmation of it. To make the claim interesting, secularism has to be explicated, not merely as an affirmation of the conclusion that church and state should be separated, but as an *independent* claim that can function as a justification for this conclusion.

So it is *not* obvious whether, when and why establishment is incompatible with secularism. Whatever problems there might be with establishment are not explicable on purely conceptual grounds. It is theoretically unsatisfactory to reject institutional links between church and state on the basis that secularism simply *means* separation of church and state, not only because it does *not* necessarily mean this at all, but also because we want to know *why* it should mean this, if it does. There is therefore need for a closer examination of 1) what secularism can mean if it does not simply mean that church and state should be separated, 2) what the value commitments underlying secularism thus understood might be, and 3) what requirements of separation actually follow from these justifications.

III

Establishment

To discuss the compatibility question we also need to know the meaning of “establishment”. Here a working definition will suffice, namely that religious establishment denotes an *institutional* relationship between *religious organisations* such as churches and the *state*.⁵ An institution is a public system of rules regularly complied with.⁶ Both the state and religious organisations are institutions in this sense. But since this idea of an institution is very general and potentially covers much more, further specifications are needed if we are to capture only the institutional links I am interested in here. The institutional links in question are those pertaining to the specific features of states and churches that distinguish them from other institutions. These features are mainly the political authority and coercive enforcement of laws by the state and the specific religious aspects of religious organisations (i.e. not the features of churches that they share with other private associations). Compatibility concerns institutional links that connect the political authority and coercive power of the state to the specifically religious aspects of religious organisations.⁷

⁵ Cf. R. Audi, *Religious Commitment and Secular Reason*, 32; Matteo Bonotti, “Beyond Establishment and Separation: Political Liberalism, Religion and Democracy,” *Res Publica* 18 (2012): 333-349.

⁶ John Rawls, *A Theory of Justice*, revised edition (Cambridge: Harvard University Press, 1999), 47-48.

⁷ It might be objected that the focus on state authority and coercive power is blind to the more informal aspects of establishment, e.g. the symbolic priority and broader cultural privileges an established religion will enjoy in a society. I acknowledge the importance of this. But note two things: First, even if the relevant institutional links are defined in

There are so many differences between institutional links between state and church in various countries that further specification will immediately exclude some of these from consideration. In some countries establishment is expressed in the constitution, but not in others. In some it involves economic subsidies of the church, whereas other established churches are self-sustained. In some it involves representation of the church in public functions whereas in others it does not.

The discussion can proceed on the basis of the working definition and paradigm cases such as the kinds of institutional links that exist between church(es) and state in most European countries. These are sometimes described as “moderate”, “weak” or “modest” forms of establishment,⁸ due to the fact that there is a significant degree of autonomy between state and church, which distinguish these forms of establishment from full blooded forms of theocracy or religiously based political orders.

formal ways, this does not in itself mean that the normative assessment of these links cannot or should not take more informal (cultural, symbolic) effects into account. The choice of a specific *object* of assessment is in itself silent on the *standards* of assessment. Secondly, as I argue below, the conditions of compatibility depend on how the particular conception of secularism is specified and justified. So the objection might simply show that a plausible conception of secularism should be specified in a way sensitive to informal aspects of establishment.

⁸ Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford: Oxford University Press, 2005); M. Bonotti, “Beyond Establishment and Separation: Political Liberalism, Religion and Democracy”; Daniel Brudney, “On noncoercive establishment,” *Political Theory* 33 (2005): 812–39; Tariq Modood, *Multiculturalism: A Civic Idea* (Cambridge: Polity, 2007); Cécile Laborde, “Political Liberalism and Religion: On Separation and Establishment,” *Journal of Political Philosophy* 21 (2013): 67–86.

Whereas theocracy (where state and religion are not separated at all) is incompatible with any recognisable form of secularism, the moderate forms of European establishment are exactly the kinds of cases where the answer to the compatibility question is not obvious. Here we need a further examination of secularism.

IV

Conceptions of Secularism

Secularism is a) a *political* view, b) requiring *separation*, c) of *politics* and *religion*. This is the type of view that might figure in philosophically interesting arguments for specific answers to the compatibility question. I thus propose that the general *concept* of secularism has the noted features (a, b and c). In keeping with John Rawls' classic concept/conception distinction,⁹ there can then be different *conceptions* of secularism. Such conceptions diverge as to what "separation", "politics" and "religion" mean and as to their justification for the claim.¹⁰ It is these specific conceptions that might figure in more detailed arguments about the compatibility of secularism and establishment.

I propose that conceptions of secularism can be represented as having a specific *structure* incorporating: a)

⁹ J. Rawls, *A Theory of Justice*, 5.

¹⁰ The general concept does not settle what "separation" means and what degree of separation is required. This is what differentiates specific conceptions. There might be limits beyond which an understanding of separation would no longer match our conceptual intuitions. But since I here discuss a theoretical understanding rather than a lexical definition of secularism, I will not address this issue.

basic values, e.g. liberal democratic values of freedom and equality; b) intermediate political principles of separation, e.g. religious freedom, religious equality and state neutrality; and c) derived normative prescriptions, e.g. that (specific forms of) establishment are not acceptable. This differentiation is needed if secularism is to function as a *theoretical justification* for claims about the relationship between politics and religion, since we then need not just *claims* about whether establishment is acceptable or not, but worked out *explanations* for these claims. So this structure seems required by the *function* that conceptions of secularism are supposed to play. But the structure is furthermore descriptively and interpretatively helpful in capturing and comparing conceptions and secularism controversies. I will illustrate and support this by examining two conceptions of secularism, namely those proposed by Audi and by Taylor and Maclure (this and the following section) and a particular controversy (section VII).

Robert Audi does not explicitly formulate a conception of secularism. In fact, elsewhere he characterises secularism as “a position calling for a strong separation of church and state and implying opposition to religious world-views as, for instance, not rational or politically divisive.”¹¹ He explicitly distinguishes his own view from secularism in this stronger sense, which he apparently does not endorse.¹² But this strong characterisation of secularism is a particular conception of secularism. It is furthermore a controversial conception that is philosophically uninteresting for present purposes in the way I described in the introduction, since it merely consists in an affirmation of the conclusion that I

¹¹ R. Audi, *Democratic Authority and the Separation of Church and State*, 73.

¹² *Ibid.*, 77.

want to discuss possible justifications for. Since Audi is concerned with the relationship between politics and religion and takes the relevant principles in this respect to be principles of separation, I will categorise his view as a conception of secularism.

Audi discusses the principles of separation as components of liberal democracy, which he takes to be a political ideal “above all committed to preserving basic liberty and basic equality of political power for all individual citizens”.¹³ So the principles of separation are on the one hand more general than the particular claim that an established church should be separated from the state; the principles of separation are supposed to provide justifications for particular claims like this. But on the other hand the principles of separation are themselves justified with reference to more basic values. While Audi is deliberately vague regarding the precise meaning of the basic values, his characteristic clearly exemplifies how the principles of separation are *intermediate* between general political values and specific policy recommendations.

Audi’s conception of secularism furthermore includes *several* intermediate principles of separation: the *libertarian* principle that “The state must permit the practice of any religion, though within certain limits”; the *equalitarian* principle that “the state may not give preference to any religion over another”; and the *neutrality* principle that “the state should neither favour or disfavour religion (or the religious) as such, that is, give positive or negative

¹³ R. Audi, *Religious Commitment and Secular Reason*, 31; cf. R. Audi, *Democratic Authority and the Separation of Church and State*, 37.

preference to institutions or persons simply because they are religious.”¹⁴

Charles Taylor also characterises secularism as a complex view. He formulates secularism in terms of the French revolutionary trinity of freedom, equality and fraternity: Religious liberty means that “No one must be forced in the domain of religion, or basic belief”; religious equality means that “There must be equality between people of different faiths or basic belief; no religious outlook or (religious or areligious) Weltanschauung can enjoy a privileged status, let alone be adopted as the official view of the state”; and religious fraternity means that “all spiritual families must be heard, included in the ongoing process of determining what the society is about (its political identity), and how it is going to realize these goals (the exact regime of rights and privileges).”¹⁵ According to Taylor, these goals can conflict and there is no single or timeless way of realising them. Secularism is accordingly not merely complex; it is in fact a value pluralist position in the sense that it incorporates several distinct and mutually irreducible normative considerations that can come into conflict with each other.¹⁶

Taylor elaborates and further develops his pluralist understanding of secularism in his collaboration with Jocelyn Maclure, where they propose to understand

¹⁴ R. Audi, *Religious Commitment and Secular Reason*, 32-33; cf. R. Audi, *Democratic Authority and the Separation of Church and State*, 40-47.

¹⁵ Charles Taylor, “What Does Secularism Mean?” in his *Dilemmas and Connections: Selected Essays* (Cambridge, Mass.: Harvard University Press, 2011): 303-325, at 309.

¹⁶ J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, 24.

secularism as a view composed both of a set of *values* and of a set of *political means*:

secularism rests on two major principles, namely, equality of respect and freedom of conscience, and two operative modes that make the realization of these principles possible: to wit, the separation of church and state and the neutrality of the state towards religions.¹⁷

The interpretation of separation and neutrality as “operative modes” is crucial; they are the institutional mechanisms usually relied on to achieve the values, but they are only part of secularism in the sense and to the extent required by the values. Separation and neutrality are “indispensable institutional arrangements”.¹⁸ But they are not definitive of secularism in the same way as freedom and equality; they are not ends in themselves, but derived institutional mechanisms that can be interpreted in more or less permissive or restrictive ways depending on what serves the values. This generates different “regimes of secularism” that prioritise the values differently and consequently interpret the operative modes differently.¹⁹

V

Secularism and Establishment

The question now is what these conceptions of secularism have to say about the compatibility question. The concern with freedom, equality and the indispensable

¹⁷ Ibid., 20.

¹⁸ Ibid., 20, 23.

¹⁹ Ibid., 27-35.

reference to separation might seem sufficient to rule out establishment. But this is not necessarily so. Taylor and Maclure write of modern liberal democracies that

[s]uch democracies, even those that continue to recognize an official church – live under what can be called a “regime of secularism.”²⁰

To say that state recognition of an official church is a regime of secularism means that it may be an institutional way of implementing the values at the basis of secularism:

[t]he few Western countries that continue to recognize an official church (the United Kingdom and Denmark, for example) are very mitigated systems of “establishment” and seek to respect the principles of equal respect and freedom of conscience.²¹

So according to Taylor and Maclure, a state can be secular even though it does not conform to American ideas of separation of church and state or French notions of *laïcité*.

This compatibility view might merely show that Taylor and Maclure’s conception of secularism is more lax than that held by Audi, who initially states that the equalitarian principle “rules out an established church – whose existence might be plausibly argued to be compatible with the libertarian principle”.²² But Audi immediately adds that:

There are, to be sure, kinds and degrees of establishment, and some kinds may have minimal impact or may be accompanied by

²⁰ Ibid., 9.

²¹ Ibid., 26.

²² R. Audi, *Religious Commitment and Secular Reason*, 33, cf. R. Audi, *Democratic Authority and the Separation of Church and State*, 43.

compensations for the privileges they extend to the established church. Still, other things equal, the greater degree of establishment in a society, the less it counts as a liberal democracy.²³

He also presupposes that democracies are secular “even if, as a matter of historical precedent [[...] they have an established church”,²⁴ which only makes sense if there is a way in which a democracy can both uphold an established church and still count as secular.

These remarks by Audi suggest that establishment is not necessarily incompatible with religious equality or neutrality. One possible reason for this might be that each of the three separation principles should not be understood as necessary conditions for liberal democracy that have to be fulfilled to a maximal degree, but as desiderata that can be fulfilled to a greater or lesser extent. This reading is corroborated by Audi’s further remark that:

Great Britain is an interesting case here, and it surely shows that some degree of establishment is compatible with a high (though by no means maximal) degree of liberal democracy.²⁵

Another reason why establishment might be compatible with secularism is that there are different kinds and degrees of establishment in different respects. Audi claims that:

[t]he equality principle implies non-establishment as ordinarily understood: minimally as requiring that no religion has official state endorsement and a statutory role in legislation or in determining public policy.²⁶

²³ R. Audi, *Religious Commitment and Secular Reason*, 33.

²⁴ R. Audi, *Democratic Authority and the Separation of Church and State*, 38.

²⁵ R. Audi, *Religious Commitment and Secular Reason*, 221.

²⁶ R. Audi, *Democratic Authority and the Separation of Church and State*, 43.

He further distinguishes between “formal” and “doctrinal” establishment, where the former only consists in “a statutory or broadly constitutional governmental role of a particular religion”, e.g. representation in some governmental institutions, but where “no governmental powers are conferred”. Doctrinal establishment, on the other hand, “occurs when certain substantive religious doctrines [...] are given a specific role in law or public policy.”²⁷

If *some* kinds of establishment are compatible with the separation principles and the liberal democratic values underlying them, the question is *which* forms? This is a question about what more specific conditions for compatibility follow from a given conception of secularism.

VI

A Framework For Discussing Secularism

Audi’s and Taylor and Maclure’s few explicit remarks about establishment suggest that the answer to the compatibility question might be positive in some cases. But the remarks are only made in passing and are not justified in any explicit or systematic way. Given the structure of secularism outlined in section IV, the normative implications of secularism, e.g. regarding the acceptability of religious establishment, depend on the prescriptive content of the separation principles, which in turn is justified with reference to the basic values.

²⁷ Ibid.

Given this structure, further discussion of secularism must take the form of a (re)construction of secularism as a *theoretically integrated* view, i.e. one where the claims about specific normative implications in fact cohere with the separation principles and basic values. Coherence here means, not only that the different levels must be consistent, but also that the normative claims should be explained and supported by the principles and basic values. Only then are the normative claims theoretically grounded, rather than pre-theoretical passing remarks.²⁸

So the proposed framework has three elements: a) the general concept of secularism as a political position on the relationship between politics and religion requiring some form of separation, b) the distinction between values, principles and implications, where there might be complexity at each level, and b) the requirement of theoretical integration, which follows from the understanding of secularism as a theoretical view. Only when a position on the relationship between politics and religion lives up to both of the latter conditions is it a *theoretical* view in the philosophically interesting sense. If there are several basic values or political principles, as in Audi's or in Taylor and Maclure's conceptions, the

²⁸ Note that this is not a foundationalist requirement. That the political principles and normative implications “derive from” and “depend on” basic values does not imply that these values have epistemic priority. Theoretical integration is rather a coherentist requirement needed to make sense of secularism as theoretical view with the indicated structure. Coherence is here a matter of internal fit between the different components of secularism. In a broader justificatory perspective, coherence should also be a matter of equilibrium with other normative commitments we might have. Here I will only focus on the former aspect of coherence between derivative claims and basic values.

requirement of theoretical integration becomes even more important, since it then requires a weighing, prioritisation or systematic specification of different values and principles.²⁹

VII

The Framework In Practice

Interpreting *Lautsi*

The point of the framework is to be able to represent different views *as* conceptions of secularism (as views about the relation between politics and religion), to be able to show in *which* ways they differ (which basic values, intermediate principles and derived implications), and to facilitate discussion of them on this basis (the requirement of coherence across the three levels).

To illustrate the use of the framework for the first two purposes, I will now apply it to a well-known secularism

²⁹ J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, 24, understand the complexity as a form of value pluralism, i.e. that the different values can come into conflict and are incommensurable. This is a phenomenologically plausible characterisation of the normative dilemmas that often face us. But as a characterisation of secularism as a *theoretical* position, this is unsatisfactory for much the same reason that Rawls objected to “intuitionism” in *A Theory of Justice*, namely that it leaves the normative implications indeterminate. To avoid this, strict priority rules are not necessary; a weighing of competing values can sometimes generate reasonably clear implications, but this requires that values are to some extent commensurable.

controversy, namely the case *Lautsi versus Italy*.³⁰ The case concerned the permissibility of mandatory crucifixes in all classrooms of Italian state schools. It went to the Second Chamber of the European Court of Human Rights in 2009 and then to the Grand Chamber in 2011.³¹ *Lautsi* exemplified the compatibility question; it concerned establishment insofar as public schools are state institutions and crucifixes are religious symbols.³² The Second Chamber and the Grand Chamber sharply disagreed on whether crucifixes could be permitted; the Second Chamber said no, the Grand Chamber said yes. The actual explanation for this divergence is probably first of all a matter of real politics (much pressure was brought to bear on the court following the Second Chamber ruling, which would have drastic implications not easily acceptable for many countries). But if one focuses on the principled arguments in play, the divergent views articulated about *Lautsi* can be represented as different conceptions of secularism.

Initially, the case concerned a number of different considerations, including freedom of religion, non-discrimination, and state neutrality. The legal rules appealed

³⁰ *Lautsi v Italy*, European Court of Human Rights, Grand Chamber, App No 30814/06, March 18, 2011.

³¹ Rex Ahdar, “Is Secularism Neutral?”, *Ratio Juris* 26 (2013): 404–29, and Ian Leigh, “The European Court of Human Rights and religious neutrality”, in G. D’Costa, M. Evans, T. Modood and J. Rivers (eds), *Religion in a Liberal State* (Cambridge: Cambridge University Press, 2013): 38–66.

³² In Italian courts it had been claimed that crucifixes were not religious symbols. This claim was rejected by the Second Chamber. Although the Grand Chamber disagreed with the Second Chamber in other respects, it too held that crucifixes were religious symbols. Mandatory crucifixes in public schools therefore are a case of an institutional link between state and Christianity, *in casu* as represented by the Catholic Church.

to (the Italian Constitution and the European Convention of Human Rights) do not themselves mention “secularism”. The concept nevertheless played a prominent role in the Court; the Second Chamber justified its ruling on the basis that the Italian state was under a requirement of neutrality, whereas the Grand Chamber rejected this ruling on the basis that the Second Chamber had conflated neutrality and secularism. The Grand Chamber furthermore rejected ideas of state secularism on the basis that secularism is a partisan ideology.

My claim is that the positions of both the Second and the Grand Chambers articulate conceptions of secularism and that the framework can show how and in what ways they differ as such. Given the shared premise that crucifixes are religious symbols, both rulings concerned the relationship between politics and religion. Even when the *word* “secularism” is not mentioned, the discussions of neutrality, freedom of religion and non-discrimination all imply that there are respects in which states should not support or endorse religious views; even the Grand Chamber agrees that under some circumstances mandatory religious symbols would be ruled out – it just argued that, in the specific case, the crucifixes did not infringe on religious freedom (because they were deemed “passive” non-proselytising symbols) or constituted illegitimate non-neutrality (because pupils could wear non-Christian religious symbols and schools sometimes celebrated Ramadan). Because even the Grand Chamber thinks that the applicable principles of religious freedom, non-discrimination and neutrality sometimes would rule out religious symbols or other forms of establishment, the Grand Chamber itself subscribes to a conception of secularism.

The Second Chamber's conception of secularism is based on political values of freedom and equality, resulting in a principle of neutrality requiring state institutions to abstain from aligning themselves with any particular religious view. This requires separation in the sense of removal of religious symbols from public institutions. The Grand Chamber's explicitly understand secularism as "an ideology" based on substantial claims (e.g. about religion as false, oppressive or dangerous) resulting in a principle of state hostility to religion. This would then imply removal of religious symbols as a way of limiting and subjugating religion. The Grand Chamber rejects secularism thus understood, but it actually accepts another conception of secularism. As argued above, it accepts principles similar to those appealed to by the Second Chamber; it merely disagrees regarding the extent to which they require separation.

All of these views are genuine *conceptions* of secularism. The tragedy of *Lautsi*, however, is that the Italian state and the Grand Chamber (as well as many commentators) failed to engage in a real discussion of the Second Chamber's conception. Instead, they equivocated over the first and second conceptions of secularism (i.e. the Second Chamber's and the view of secularism as a substantial religion-hostile ideology rejected by the Grand Chamber) and used the non-neutrality of the second sense to reject the Second Chamber's ruling, without seriously considering whether the kind of neutrality required of a liberal democratic state justifies the claim for removal.

Within the framework, the Grand Chamber decision can be seen as fixed exclusively on the level of political *implications*, i.e. the demand for removal of crucifixes from

classrooms. This leads to the equivocation over the first and second sense of secularism, because the Grand Chamber fails to consider that different underlying *principles* might support the claim for removal. This is even more disappointing, since the Grand Chamber itself invokes notions of neutrality, freedom and equality as justifications for the permissibility of crucifixes. The question to ask is which interpretations of religious freedom, non-discrimination and state neutrality are most plausible and whether a plausible reading of these values might warrant the demand for removal. Such a discussion presupposes the distinction between principles (e.g. the right to freedom of religion) and underlying *values* that can account for divergent interpretations of a given principle.

The simple device of distinguishing between the three levels of values, principles and implications provides a much needed structure to the discussion that can help focus on the real disagreements. Furthermore, the framework can capture both the Second Chamber's actual view, as well as the substantial religion-hostile view erroneously ascribed to the Second Chamber by the Grand Chamber, and the Grand Chamber's own view *as* conceptions of secularism. So rather than understanding secularism in an artificially narrow way, e.g. as only denoting institutional regimes such as the French one, or as a term of abuse, e.g. the Grand Chamber's idea of secularism as a religion-hostile ideology, the framework offers a theoretical and systematic way of understanding secularism, which can encompass a broad range of views.

VIII

A Framework For Normative Discussion Religious Freedom

Answers to compatibility questions turn on the values and principles inserted into the structure. The framework itself does not say anything about which values to insert. Rather, it provides a structure within which different claims, arguments and justifications can be represented *as* conceptions of secularism, thereby making the real differences between them as such clearer. The compatibility question therefore has to be posed in relation to particular conceptions of secularism, and answers to it accordingly require specification of the values, e.g. what kinds of equality and liberty are required by a particular conception.³³

The next question is *which* claims and conceptions to accept – when it comes to the compatibility question, we want to know whether a particular form of establishment is compatible with secularism. The framework facilitates this discussion in virtue of the distinction between the three levels and the requirements of theoretical integration. In this section I will illustrate this, using religious freedom as an example. This is an apt example, both because it was one of the things at stake in the *Lautsi* case, and because it is explicitly a central part of both Audi’s and Taylor and Maclure’s conceptions of secularism. I will briefly discuss the meaning of religious freedom in their conceptions. Then I will show how the requirement of theoretical integration sets the stage for normative discussion.

³³ Sune Lægaard, “Moderate Secularism and Multicultural Equality,” *Politics* 28 (2008): 160-168.

One implication of the framework is that terms like “freedom” (or “liberty”) and “equality” can refer to different elements of conceptions of secularism at different levels and with different functions. The most important difference is between freedom or equality as fundamental (“basic”) values, which are supposed to justify principles, and freedom or equality as intermediate political principles supposed to regulate a specific area. The meaning of “freedom” and “equality” is most easily ascertained in the latter case, but it is on the other hand the claims about what freedom and equality mean at this derivative political level that are in need of justification.

Both Audi and Taylor and Maclure understand the relevant political principles of freedom in line with formulations about freedom of belief, conscience and religion as they figure in prominent human rights documents.³⁴ As political principles, they require the state not to interfere with citizens’ beliefs, worship or observance of religious prescriptions.³⁵ The meaning of “freedom” involved in the political principles is a notion of negative liberty, i.e. absence of interference or coercion.³⁶ What is controversial is not the core meaning of the principle, or the sense of freedom it involves, but the exact extent of the protection (what activities are protected and which kinds of actions count as infringements of the protected freedom) and where to draw the limits (what might justify limiting the protected freedom).

³⁴ J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, 65.

³⁵ R. Audi, *Religious Commitment and Secular Reason*, 34.

³⁶ *Ibid.*, 27; R. Audi, *Democratic Authority and the Separation of Church and State*, 40.

The substantive normative questions arise when it comes to the extent of this protection. For present purposes, the question is whether the protection of freedom rules out religious establishment because establishment constitutes interference with religious liberty. One of the questions at stake in *Lautsi* was whether mandatory crucifixes in public schools violated the religious freedom of pupils.³⁷ The Second Chamber thought this constituted a violation of religious freedom because crucifixes are religious symbols and were mandatory. The Grand Chamber took the opposite view on the basis that crucifixes were “passive symbols”, i.e. not proselytising in the sense ruled out by the Convention. But the question is why it is the “active” or “passive” nature of the crucifixes that matters. The Grand Chamber ruling implies that religious freedom is not violated if a symbol is “passive” (and that it would be if “active”). But we need to know why this is the relevant form of freedom?

This is precisely where we need the guidance of political principles. The mere appeal to religious freedom is not sufficient, since the two Chambers agree on the importance of this. So in order to make progress, the principle of religious freedom has to be further specified. And in order to justify one specification over others, we need to be able to show how it fits with more basic values supposed to underlie secularism in general and principles of religious freedom in particular. This is the requirement of theoretical integration. Rather than ascribing underlying justifications to the Court (which would be second-guessing), I will

³⁷ R. Ahdar, “Is Secularism Neutral?” 422-25; I. Leigh, “The European Court of Human Rights and religious neutrality”, 60.

illustrate how this might work in the case of Audi's and Taylor and Maclure's conceptions of secularism.

Taylor and Maclure are explicitly concerned with freedom of conscience understood as a matter of protecting individuals' "moral integrity", which is understood as their ability to live in accordance with their "core or meaning-giving convictions and commitments".³⁸ What is non-instrumentally valuable is not negative liberty as such, e.g. that one is not interfered with when praying or observing religious prescriptions, but that it allows one to live in accordance with one's core convictions. If rules or regulations prevent me from living in accordance with my core convictions, I am alienated – there is a mismatch between my convictions and actions.

Audi also seems to understand the basic value of freedom as linked to integrity³⁹ and he also refers to the avoidance of alienation as a reason why a liberal democracy should not coerce citizens on the basis of religious reasons they do not share.⁴⁰ This suggests that freedom is not, at the most fundamental level, about negative liberty. This interpretation is corroborated by Audi's claim that coercion of citizens that infringes negative liberty is justifiable if they would accept it were they sufficiently rational.⁴¹ Audi's fundamental concern therefore also seems to be with a form of moral integrity. This is further supported by his justification for requiring citizens to provide secular reasons when they support policies that might restrict other citizens' freedom because religious reasons would not pass

³⁸ J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, 76-77.

³⁹ R. Audi, *Religious Commitment and Secular Reason*, 5-6.

⁴⁰ *Ibid.*, 67-68, 87.

⁴¹ *Ibid.*, 67.

this test of hypothetical consent by those coerced by the policies in question. Secular reasons are required here because all citizens are supposed to be able to “identify” with the justifications for coercive laws and policies.⁴² This is most clearly expressed when Audi explains the basis for protections of religious liberty with reference to “the protection of identity principle”, which states that:

The 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.⁴³

If one interprets the basic value of freedom as a concern with integrity, we have a justification for the political principles protecting freedom of conscience and religion. If what is at stake is each individual’s ability to live their own life in accordance with their own conscientious convictions, this provides guidance for setting the limits of that protection and for judging what counts as infringements.

The distinction between principles and basic values helps articulate integrity as the *value* justifying *principles* of religious freedom. The requirement of theoretical integration can now kick in, turning the interpretative and analytical exercise into a normative discussion: if the value of moral integrity is what underlies the principle of religious freedom, this affects the extent of religious freedom, and thereby what the implications of this way of grounding religious freedom are. We can thereby assess the plausibility of the grounding of religious freedom in moral integrity as well as claims that religious freedom has specific

⁴² Ibid., 123.

⁴³ R. Audi, *Democratic Authority and the Separation of Church and State*, 42.

implications, e.g. for the removal of crucifixes. Assessments of plausibility hinge on two parameters: a) the fit in terms of explanatory power between the three levels, and b) the fit between the implications and independent considered judgements about cases covered by a given principle.⁴⁴ We should therefore ask what the grounding of religious freedom in moral integrity implies, and whether these implications are plausible.

While moral integrity clearly provides a possible justification for religious freedom, there are several problems with it. The value of moral integrity has to be qualified, e.g. by saying that the relevant core convictions only concern duties that are self-regarding (in a sense to be specified and defended), in order to avoid conflicts with the rights of others. Even then some might think an integrity justification over-inclusive, since it also requires protection of non-religious conscientious claims.⁴⁵ More problematically, the integrity justification seems under-

⁴⁴ As the term “considered judgments” suggests, I understand the second point as part of a reflective equilibrium methodology, cf. J. Rawls, *A Theory of Justice*. What the framework adds to traditional reflective equilibrium methodology is the idea that secularism should be understood as a *complex* of values, principles and implications with an internal coherence requirement, which should be assessed as a whole in relation to considered judgements and other theories. But the framework is not dependent on acceptance of reflective equilibrium methodology: theorists who subscribe, say, to some form of epistemic foundationalism, e.g. a version of ethical intuitionism, could still accept the framework. Its contribution would then be to spell out the implications of independently justified basic values for the issue of the relationship between politics and religion.

⁴⁵ J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, 90, acknowledge this and see it as a positive feature, but others might object to the elision of any distinction between religious freedom and freedom of conscience.

inclusive since it primarily justifies protection of individual conscientious acts, but not a broad range of other activities usually also associated with religious freedom, which might not be plausibly understood in terms of “core convictions” such as individual duties of observance.⁴⁶ Furthermore, not only does the moral integrity justification suggest either that any claim for protection should be followed or that courts would have to assess the conscientiousness of claimants in cases over religious freedom, both of which seem *prima facie* problematic; conscientious exemptions along these lines also involve a moral problem of shifting burdens of compliance onto other citizens.⁴⁷

My point in listing these objections here is that the articulation of secularism within the proposed framework forces proponents of any specific justification to consider how it affects the content of the political principles and defend the plausibility of its implications. Proponents of a moral integrity justification for religious freedom would have to accept and defend the plausibility of the noted implications, or explain why other components of their conception of secularism might change otherwise implausible implications. This goes for any claim about the implications of a given principle as well, e.g. the Grand Chamber’s assumption that what matters for pupils’ religious freedom is that they are not subjected to proselytisation. The insistence that the “passive” nature of crucifixes settles the issue is tantamount to a condition of compatibility: if a form of establishment is not

⁴⁶ Daniel Weinstock, “Beyond Objective and Subjective: Assessing the Legitimacy of Religious Claims to Accommodation”, *Les ateliers de l'éthique / The Ethics Forum*, 6 (2011): 155-175.

⁴⁷ Brian Leiter, *Why Tolerate Religion?* (Princeton: Princeton University Press, 2013).

proselytising, it is compatible with the Grand Chamber's conception of secularism. But this is doubly problematic. Proselytisation is arguably not always a problem in terms of religious freedom (some forms of proselytisation seem compatible with religious freedom, e.g. spreading the word in public spaces). And one cannot infer from the fact that crucifixes are not proselytising that they do not violate religious freedom (there are clear examples of violations of religious freedom that are not cases of proselytisation but rather, e.g., simple persecution). So non-proselytisation as a condition of compatibility is both over- and under-inclusive.

A more fully worked out conception of secularism might provide the answers that the Court's legal ruling leaves open. Consider Audi's view that basic freedom is a matter of whether citizens can "identify" with the reasons justifying laws and policies. One might think that mandatory crucifixes in public schools still violate basic freedom even if they do not infringe citizens' negative freedom, e.g. because the state alienates citizens by preferring a specific religion. Non-Christian citizens probably cannot "identify" with crucifixes, at least not given that crucifixes are indeed religious symbols. Therefore it might be claimed that establishment alienates these citizens from the state and thereby violates their basic freedom in the sense of moral integrity. If so, removal of crucifixes might be a requirement of Audi's equalitarian principle even if they do not infringe his libertarian

principle,⁴⁸ and the justification for this would be that removal is necessary for protecting citizens' moral integrity.

But this argument for incompatibility faces the difficulty that, at least as formulated by Audi, moral integrity is only violated when people are coerced. If the institutional link between state and church does not involve coercion of individual citizens, as would be the case if they were forced to adhere to a particular religion or follow its prescriptions, then their moral integrity is not violated. In Taylor and Maclure's terms, *moral* integrity is a matter of a correspondence between individuals' core convictions and their own actions. If establishment does not interfere with citizens' (in some sense only self-regarding) actions, it cannot alienate them in the relevant moral sense. They might of course be alienated in other ways, e.g. *feel* that they cannot identify with public schools as long as they display crucifixes. But this is then a *psychological* sense of estrangement that need not be a sign of *moral* alienation in the relevant sense. So even though perhaps not a desirable arrangement, a religious establishment that alienates some citizens psychologically but does not infringe their negative freedom or coerce them in ways that violate their moral integrity could be compatible with basic freedom.

So the integrity understanding of basic freedom might support the Grand Chamber's ruling, given that pupils are not coerced in a relevant sense. In that case it could provide a worked-out theoretical replacement of the insufficient compatibility condition suggested by the Grand Chamber. Of course, the mere fact that a possible reading of moral

⁴⁸ Which is possible according to R. Audi, *Religious Commitment and Secular Reason*, 33, and *Democratic Authority and the Separation of Church and State*, 44.

integrity gives the same implication as the Grand Chamber's ruling does shows neither that the Grand Chamber adheres to the value of moral integrity nor that this is the most plausible basic value. This merely illustrates the kind of support for claims like that of the Grand Chamber called for by the requirement of theoretical integration. But theoretical integration at the same time implies that, if one relies on the understanding of basic freedom as moral integrity, then one also has to accept the noted implications of such an understanding in other respects.

Other interpretations of religious freedom than that in terms of moral integrity are of course possible – and in light of the problems noted above, some of these might furthermore be more plausible. The point of the foregoing discussion was not to settle this normative issue, but to illustrate how the framework can contribute to the analysis and critical discussion of both claims in actual cases and theoretical attempts to provide justifications for principles that could support such claims.

IX

A Framework For Normative Discussion

Religious Equality

The framework understands secularism as a complex position incorporating several basic values and political principles, e.g. the objections to crucifixes in *Lautsi* which concerned non-discrimination and neutrality as well as religious freedom. This complexity might account for the

difficulties of capturing the debate or providing plausible justifications solely in terms of religious freedom. The problem was that the two chambers also disagreed on the understanding of equality.

The framework again provides a model for handling this disagreement. The distinction between the three levels means that “equality” can both refer to a principle of equal treatment and to different ideals of equality underlying such principles. If the disagreements are to be seen as expressions of systematic theoretical conceptions of secularism, we need to explain them as following from different specifications of equal treatment principles, which in turn must be justified on the basis of fundamental values.

Audi’s equalitarian principle simply states that the state may not give preference to one religion over another.⁴⁹ The question then is what “governmental preference” means, which depends on the justification for the principle. Audi’s justification for the principle mainly appeals to considerations of basic freedom: governmental preference for one religion puts pressure on the free exercise of other religions⁵⁰ and it makes it more likely that laws will reflect a specific religion, which might threaten religious freedom.⁵¹ Audi’s main reason for requiring separation of church and state is that “where church and state are not separate, religious liberty is threatened” since religious minorities may then reasonably fear discrimination and domination.⁵²

But these justifications are mainly slippery slope arguments that hinge crucially on contingent empirical

⁴⁹ R. Audi, *Religious Commitment and Secular Reason*, 33.

⁵⁰ R. Audi, *Religious Commitment and Secular Reason*, 35-36.

⁵¹ *Ibid.*, 36.

⁵² R. Audi, *Democratic Authority and the Separation of Church and State*, 39.

effects of governmental preference. It is neither a necessary nor always a likely consequence of establishment that minority religions will find their religious freedom under pressure or suffer discrimination. In *Lautsi* it was precisely claimed that crucifixes did not lead to limits on the religious freedom of pupils in other respects.

So if concerns with religious freedom were the only grounds for the equalitarian principle, the justification for that principle would be weak and would not provide substantive normative substance to the notion of “governmental preference” and “equal treatment”.

But the equalitarian principle is also based on a concern that “citizens should have equal opportunities to exercise political power on a fair basis.”⁵³ But again it is not clear why this requires a ban on governmental preference in a way that rules out establishment. As *Lautsi* exemplifies, establishment is not necessarily about assigning political power to the established church.

Audi in fact seems to address this question in his distinction between “formal” and “doctrinal” establishment. The way he draws this distinction is somewhat unclear; it arguably incorporates several distinctions each picking out an aspect relevant for equality.

One question is whether a religion has a statutory or broadly constitutional role. Another question is whether a specific religion is assigned governmental powers. A religion might be written into the constitution or other legislation without being assigned governmental powers. If this is the case, one might talk about “formal” establishment (e.g. *Lautsi*). Although this might be

⁵³ R. Audi, *Religious Commitment and Secular Reason*, 36.

problematic in other respects, it is unclear why it should be problematic from the point of view of a concern with equal political power.

If the underlying concern is with equal political power, we need to specify the form of “governmental power” in question. This is so because establishment might involve delegation of some forms of executive governmental power to churches, e.g. the power to conduct legally binding marriages.⁵⁴ While this is a form of assignment of governmental powers to organised religions, it is not necessarily one that is problematic from the point of view of political equality.

A third question concerns whether a specific religion receives official state endorsement. Endorsement could for instance be expressed in a written constitution or in other prominent documents, e.g. an official pledge of allegiance. Endorsement would be incompatible with basic equality if this is understood as a requirement of neutrality regarding citizens’ conceptions of the good.⁵⁵ But *reference* to a religion is not equivalent to *endorsement*; so even if a specific religion has a statutory or constitutional *role*, this need not take the form of an endorsement of the *doctrinal content* of that religion.⁵⁶ *Lautsi* precisely concerns a case where doctrinal content is absent or unclear; even if the crucifixes are religious symbols, their precise content is unclear. So if the incompatibility claim is to be justified on the basis of

⁵⁴ Sune Lægaard, “Unequal recognition, misrecognition and injustice: The case of religious minorities in Denmark,” *Ethnicities* 12 (2012): 197-214.

⁵⁵ E.g. J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, 9-10.

⁵⁶ S. Lægaard, “Unequal recognition, misrecognition and injustice: The case of religious minorities in Denmark.”

equality, it has to be shown that equality not only rules out endorsement of specific doctrines, but also more vague religious gestures.

A fourth question concerns whether a religion is given a role in law or public policy. If a religion were given influence in determining policy, this would be assignment of governmental power that might be problematic from the point of view of political equality. But special representation of religions in political decision making is not the only way in which religion might influence policy making or legislation. The legislature might pass laws enforcing religious rules, or there might be religiously based criteria for eligibility to certain benefits, without the religion in question having had any direct representation or governmental power in the decision making process. So it is not enough to rule out assignment of governmental power to a religion; requirements of justificatory neutrality and equal treatment of citizens are also needed.

Audi's distinction between formal and doctrinal establishment can be interpreted as incorporating at least these four concerns. The concerns are independent and hence do not necessarily go together. The basic idea behind the distinction thus understood is that a form of establishment might be compatible with equality even if the established church has a statutory or broadly constitutional role *if* it does not involve a) assignment of governmental powers to the religion in a way violating political equality; b) state endorsement of the doctrinal content of the religion in question; or c) policies or legislation that either can only be justified on religious grounds or directly enforce religious rules. A lot remains to be specified here (e.g. what exactly counts as endorsement and when a law or

policy is religiously based). But the main point for present purposes is that there are forms of establishment, e.g. *Lautsi*, that arguably do not violate these conditions and therefore could be compatible with secularism.

X

Conclusion

I have in this paper taken my point of departure in the conceptions of secularism advocated by Audi and by Taylor and Maclure to illustrate a general structure of secularism as a normative view. This provides a general framework for discussions of conceptions of secularism and questions involving secularism. The discussion of what forms of establishment are compatible with these conceptions thus interpreted illustrates a general point, namely that the implications of secularism depend on how the basic values and principles are fleshed out. Any given way of cashing these out will generate compatibility conditions that religious establishment can be evaluated against.

For many (but not necessarily all) conceptions of secularism, there will be forms of establishment that are compatible with it. This theoretical point squares well with the empirical fact that even French *laïcité*, American separationism and Turkish Kemalism allow certain institutional links to organised religion, e.g. state support for certain religious schools, chaplains in prisons and military facilities, and state control of mosques. It is also reflected in the typologies proposed in many recent works on secularism and establishment. Such typologies often

distinguish between “coercive” and “non-coercive” establishment,⁵⁷ “moderate” and “radical” secularism,⁵⁸ or “militant separation”, “modest separation”, “modest establishment” and “militant establishment”.⁵⁹ Such typologies articulate that there are many degrees and kinds of establishment. But once we inquire into how the different types are delineated, it also becomes clear that the distinguishing characteristics concern compatibility with normative criteria. The typologies are not descriptive but moralised in the sense that the reference of terms like “modest establishment” depends on which institutional arrangements actually live up to specific normative requirements. So secularism is “a normatively dependent concept”.⁶⁰ This supports my claim that in order to answer the compatibility question, we need to pick out specific conceptions of secularism and determine, through application of the requirement of theoretical integration, what compatibility conditions follow from their normative content.

I have used the conceptions advocated by Audi and by Taylor and Maclure to exemplify how certain conditions of compatibility follow from how we specify the basic values. I have shown how the substance of the basic values affect the conditions for compatibility and that even quite demanding specifications, e.g. of freedom as moral integrity, do not necessarily rule out establishment. I have

⁵⁷ D. Brudney, “On noncoercive establishment.”

⁵⁸ T. Modood, *Multiculturalism: A Civic Idea*, cf. S. Lægaard, “Moderate Secularism and Multicultural Equality.”

⁵⁹ C. Laborde, “Political Liberalism and Religion: On Separation and Establishment.”

⁶⁰ As Rainer Forst, *Toleration in conflict* (Cambridge: Cambridge University Press, 2013), has argued for toleration.

also shown how the requirement of theoretical integration not only calls for a reconstruction of the internal coherence of conceptions, but also sets the stage for a normative discussion of the plausibility of both derived claims and proposed justifications.

That a conception *permits* a form of religious establishment does not mean that there is a good positive justification for having this kind of religious establishment. I have discussed secularism as a position that *rules out* certain things; that establishment is compatible with secularism merely means that it is not ruled out. One might demand more than this in terms of justification. Even if a form of establishment is not ruled out by secularism, there might not be sufficiently good positive reasons for upholding it – or there might be good positive reasons of other kinds for not accepting establishment.⁶¹

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