OPEN SECULARISM AND
THE NEW RELIGIOUS PLURALISM

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Abstract

Although we have developed modes of governance of religious diversity to accommodate the weak level of religious pluralism which characterized Western societies until recently, it is not clear that these modes of governance can meet the challenges raised by the new and deeper form of religious diversity characterized by a growing gap between the self-understandings of religious and secular citizens as well as by an increasing number of religious groups due to contemporary patterns of immigration.

Freedom of conscience and equality between the adherents of different churches have historically been secured by a separation between state and religion. However, contemporary political theorists disagree about the shape that this separation should take. Some defend a model of institutional pluralism which requires the state to equally support and recognize different religious groups by providing them with the means to set up their own pervasively religious social institutions. Others put forth a restrictive secularist model according to which religion should be privatized. There should be a strict separation between the public and the religious spheres to ensure that no religion is privileged or disadvantaged by the state.

However, I argue that both approaches fail to meet the challenges raised by the arrival of new religious minorities within Western societies. Accommodation of religious diversity through separate institutions is not required by equality and freedom of conscience. Moreover, since it favours institutional segmentation along religious lines, it fails to provide favourable conditions for the integration of new immigrant groups. Strict secularism requires that religious expressions be severely restricted in the public sphere and thus heavily limit freedom of conscience. Moreover, since the public sphere is never fully neutral, strict secularism fails to equally protect the freedom of new religious groups.
How can we then achieve the two apparently irreconcilable goals of integrating new minorities and of protecting their freedom and equal status? The thesis that I defend is that these goals can be reconciled by an approach of open secularism based on the reasonable accommodation of religious diversity within shared public institutions.
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# Table of contents

## CHAPTER 1: INTRODUCTION

**Part 1 What Secularism is Not**

1. Religion in the Public Arena and the Alleged Crisis of Secularism ........................................... 17
2. Secularism: a French Exception? ........................................................................................................ 22
3. Is Secularism Hostile to Religion? ....................................................................................................... 28
   3.1 Ethical Secularism and Political Secularism ................................................................................. 29
   3.2 Perfectionist and Non-Perfectionist Secularism .......................................................................... 32
   3.3 Secularization and Secularism .................................................................................................... 35

**Part 2 Political Secularism as a Doctrine of Separation** ................................................................. 38

4. Institutional Separation I: Secularism and Religious Toleration .................................................... 39
5. Institutional Separation II: Secularism and the Non-Establishment of Religion .............................. 44
   5.1 Equality and the Establishment of Religion ..................................................................................... 45
   5.2 Strict Institutional Separation and Neutrality: the Abstentionist Conception of Neutrality .................................................. 55
6. Secularism and the Demands of Citizenship: Religious Expressions in the Public Sphere ....................................................................................................................................................... 62
   6.1 Public Justification and the Duty of Civility .................................................................................... 64
   6.2 The Duty of Neutral Appearance in the Public Realm ................................................................. 69
Conclusion ................................................................................................................................................. 76

## CHAPTER 3: RELIGIOUS INSTITUTIONAL PLURALISM

1. Religion and Institutional Pluralism .................................................................................................... 81
2. A Contextualist Argument for Institutional Pluralism ......................................................................... 84
3. Antidisestablishmentarianism and Positive Support for Religion ..................................................... 90
   3.1 Recognition and the Political Relevance of Religious Identity .................................................... 90
   3.2 Religion as a Public Good............................................................................................................. 95
      3.2.1 Do Churches Belong to the People? ....................................................................................... 96
      3.2.2 Religion and Social Capital ................................................................................................... 97
   3. 2. 3 Valuable Contributions of Religion to Political Debate ....................................................... 100
   3.2.4 Religious Providers of Social Services ..................................................................................... 103
3.3 The Secularist Bias of Governmental Institutions ............................................ 107
3.4 Educational Choice.......................................................................................... 116
Conclusion .............................................................................................................. 123

CHAPTER 4: OPEN SECULARISM ........................................................................... 126
1. Open Secularism: Accommodation within Common Institutions ......................... 129
   1.1 The Emergence of the Notion of Open Secularism in Quebec: .......................... 130
      Deconfessionalization and Reasonable Accommodation .................................. 130
   1.2 Neutrality, Institutions and Persons ................................................................. 132
   1.3 Separation, Secular Justification and Non-Discrimination ......................... 141
2. Social Integration and Civic Virtue: On the Relative Proximity of Open secularism and  
   Republican Secularism ...................................................................................... 145
   2.1 Social Integration: Republican, Liberal and Multicultural Conceptions ............ 146
   2.2 Open Secularism and Education ................................................................... 154
4. Open Secularism and the Duty of Civility .......................................................... 167
Conclusion .............................................................................................................. 182

CHAPTER 5: THE RIGHT TO FREEDOM OF CONSCIENCE ................................... 187
1. Perfectionist Secularism and Freedom as Rational Self-Determination ................. 190
2. Some Remarks on Freedom of Conscience ......................................................... 202
3. The Freedom to Hold Beliefs of One’s Choice .................................................. 211
   3.1 Locke and the Sovereignty of Conscience ..................................................... 211
   3.2 The Endorsement Constraint ...................................................................... 215
   3.3 The Proastian Objection to the Sovereignty of Conscience .......................... 220
   3.4 Authenticity, Respect and Freedom of Conscience ....................................... 225
4. The Principle of the Vulnerability of Conscience ................................................. 234
   4.1 Limited Toleration and the Conflicting Authorities of Conscience and the State  
       ..................................................................................................................... 235
   4.2 The Vulnerability of Conscience ................................................................... 239
   4.3 Libertarian Toleration ................................................................................... 241
   4.4 Freedom of Conscience and the Obligation of Accommodation .................... 244
Conclusion .................................................................................................................................................. 259

CHAPTER 6: EQUALITY AND REASONABLE ACCOMMODATION .............................................. 262

1. Religious Convictions: Choice or Circumstances? ................................................................. 268
2. Changing the Terms of the Debate ......................................................................................... 273
3. Convictions of Conscience and Moral Integrity ........................................................................ 280
4. Preferences and Convictions of Conscience ........................................................................... 284
5. Religious Exemptions and Neutrality of Impact ................................................................. 288
Conclusion ........................................................................................................................................... 291

CONCLUSION ......................................................................................................................................... 294
CHAPTER 1: INTRODUCTION

Since the publication of John Rawls’s (1971) *A Theory of Justice*, most political philosophy has focused on issues of distributive justice. However, for the last two decades many political philosophers and theorists have increasingly been concerned with the issue of ethnocultural diversity. They have argued that liberalism has neglected the importance of culture and ethnicity in politics. The difference-blind model of unitary citizenship that had been favoured by liberals was thus challenged by the emergence, both in theory and practice, of the recognition of minority rights and of a model of differentiated, or multicultural, citizenship (Kymlicka 1989; Taylor 1992; Tully 1995; Young 1990). Hence, culture and ethnicity have come to occupy a central place in political theory.

Although the culturalist turn in political theory has led philosophers to explore several crucial questions that were previously ignored (such as the claims to self-determination of indigenous peoples and national minorities), the focus on culture and ethnicity seems nevertheless to miss an important dimension of several diversity-related contemporary political issues. Religion is at stake in many hard cases of accommodation of diversity. These conflicts involve groups seeking greater public recognition of and support for their religious convictions and trying to make policies more sensitive to their religious views. One could argue that most demands for accommodation made by immigrant groups in western societies are demands for the recognition of their religious differences. The paradigmatic cases are demands for exemptions from the national calendar which often reflect the religious heritage of the host society, exemptions from certain core elements of the school curriculum, and demands for the wearing of religious signs or for the provision of kosher or halal food in public institutions or the workplace,
and so on. These kinds of demands have generated heated and polarized debates in several countries; since 1989, France does not cease to revisit the Islamic scarf affair, *l'affaire du foulard*, it is now debating the general ban on the *nigab* and the *burqa* (the law forbidding the wearing of these cloths is effective since April 2011), Canada has had polemics around the Islamic tribunals in family law in Ontario, the reasonable accommodation affair in Quebec and the controversy over the publication of the caricatures of the prophet Muhammad, just to name a few recent episodes.

In a sense, liberal philosophers have good reasons to be surprised that religious diversity still poses a problem for western democracies. If culture and ethnicity have been, at least before the 1990s, a blind-spot in liberal theory, this cannot be the case of religion. Liberals have been preoccupied with religious diversity since John Locke’s (1669) *A Letter Concerning Toleration*, Pierre Bayle’s *Philosophical Commentary* (1688) and Voltaire’s (1763) *Treatise on Toleration*. These thinkers argued that the recognition of freedom of conscience and tolerance were necessary to put an end to the violence of the 17th and 18th centuries’ religious wars. They thus sought to answer a question that is at the very core of one of the currently dominant variants of liberalism, the political liberalism defended by Rawls, Nagel and Larmore amongst others: “How is society even possible between those of different faiths?” (Rawls 1993, xxiv.; Cf Larmore 1990; Nagel 1987) It is therefore not surprising that Rawls affirms that the historical origin of political liberalism is the controversy over religious toleration during the Reformation and its aftermath (*Ibid.; Cf Shklar 1989*). Political liberalism starts from the idea of religious toleration elaborated in the 17th and 18th centuries and extends this idea to all philosophical and moral comprehensive views about the ultimate meaning and value of human life. In doing so, liberalism applies “the principle of toleration to philosophy itself” as Rawls famously said (Rawls 1993, 10). A legitimate constitution is reasonably acceptable to all citizens and in a pluralist society this
requires that the state leaves “citizens themselves to settle the questions of religion, philosophy, and morals in accordance with views they freely affirm” (Ibid., 154).

If liberalism has since long developed a way to solve the conflicts arising from religious pluralism and if liberalism places so much confidence in this solution that it even uses it as a model to address conflicts arising from all forms of value pluralism (it ‘applies the principle of toleration to philosophy itself’), why is it that so many diversity-related conflicts are now based on religious differences? Why is religious pluralism still such a source of controversy and tension in the Western societies that inherited the ideas of toleration and freedom of conscience?

To understand this situation, we have to see how the mode of governance of religious pluralism developed in western liberal democracies is now challenged by the emergence of a new dynamics of religious pluralism. Freedom of conscience and toleration are abstract principles, but they have come to be embodied in a certain institutional form or, as we might call it, a certain mode of governance of religious pluralism called secularism. This story is well known: the earlier defenders of tolerance and freedom of religion successfully advocated for the separation between the state and the church. In a plural society, citizens enjoy freedom of religion and the various religious groups are treated fairly when the state refrains from enforcing religious orthodoxy and is neutral with regard to religion. This condition is met when the state avoids promoting a certain religion over the others and avoids penalizing the religious practices and beliefs of members of dissenting sects (Nussbaum 2008). This does not mean that any form of public recognition and support of religion is a threat to freedom of religion and fairness between the adherents of various faiths. No liberal democracy has achieved a full separation between state and religion (Bader 2007, 56). For instance, all western states finance faith-based care and social services organizations either directly (through subsidies) or indirectly (mostly through tax-exemptions and vouchers) (Ibid., 60-61). Even France, which is the most strongly committed western country to
the ideal of strict separation (*laïcité*), supports religious services in closed institutions (like prisons, the army, hospital, etc.) (Stasi 2004). It is hard to see why supporting all religious groups in an even-handed fashion (when the number justifies it) in those areas would violate religious freedom and equality.

The main goal of this model of governance of religious diversity is to make the exercise of political power justifiable from the point of view of the adherents of any religious group. The basic rules that shape the organization of societies should be neutral with regard to religion. This, in turn, is understood as requiring that the influence of religions in the public sphere be minimized: in their public role of citizens, people should behave in accordance with the civic principles of justice affirmed by an ideal of public reason rather than according to non-public ideas of salvation, sin and so on. On the other hand, the state’s influence over the private life of citizens should also be minimized in order to leave people free to adopt the religious beliefs and practices they wish in the private sphere. In other words, a proper separation between state and religion should establish the reciprocal autonomy of the public and private spheres. The model of governance of religious diversity that we inherited from the aftermath of the religious wars is thus based on the privatization of religious differences. It is important to note that what is meant here by ‘privatization’ is not the complete withdrawal of religion from the public sphere understood broadly as what is visible or accessible to all (in this broad conception, the public sphere includes everything that is outside one’s home: streets, parks and other ‘public places’, the workplace, civil associations, and so on). ‘Privatization’ rather means the depoliticization of religion, that is, the deflation of both the political influence of religion and of the political control of religion.

Although there are important variations between the ways in which different western countries manage religious diversity (the level of public funding for religious schools is perhaps the most important), the distinction between the public and the private has come to occupy a
central place in the self-understanding of the conditions for freedom of religion and equality of all western democracies. For instance, French republicans rely on the notion of a neutral “public space” to oppose the wearing of ostensible religious signs in public institutions (Pena-Ruiz 2003; Kintzler 2007) and some American liberals rely on the ideal of public reason to criticize the political affirmation of religious movements (Audi 1989; 2011). Religious pluralism is once again at the center of an important public debate throughout western societies because the dominant conception of the institutional conditions of freedom of religion and fairness between believers of different sects is challenged by the main political actors of the new dynamics of religious diversity.

This new dynamics of religious pluralism is characterized by the increasing and deepening of religious diversity. In the second half of the XXth century, Western democracies have lifted certain barriers on immigration and have come to accept migrants from all countries. Previous waves of immigration increased the level of ethnic diversity within a predominantly Christian population. Before the Second World War, North America received immigrants coming mostly from European and Christian countries: Irishmen, Scots, Germans, Ukrainians, and so on. Although this pattern of migration changed the ethnic composition of North American societies, it did not challenge Christian hegemony. However, global patterns of migration have changed in recent decades; the sources of immigration have diversified so that Muslims, Sikhs, and Hindus, for instance, are now significant (and growing) parts of European and North-American population.¹ There is an “explosion of religious pluralism”, as Nancy Rosenblum puts it, so that we can no longer assume that laws and policies apply to a predominantly Christian population (Rosenblum 2000a, 11-12). The increasing number of religions increases the potential for conflict

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¹ On the impact of global migration pattern on religious diversity in western societies, see Banchoff 2007, 5 and Bramadat 2009, 3.
between the demands of faith and of citizenship simply because it is harder to have rules that apply generally without placing a particular burden on the members of religious minorities whose beliefs and practices are at odds with Christian norms (think of the issues raised by the public calendar, heavily influenced by the Christian tradition).

Moreover, the new religious pluralism, as it results in great part from the process of immigration, is connected to the challenge of integrating newcomers to the host society. Whereas the first settlements of religious toleration in Europe where made to appease the tension between groups of Catholics and Protestants who shared a common political or ethnic identity, religious pluralism today is no longer contained within the boundaries of communities of citizens sharing a common sense of national identity, ethnicity and language. This changes the political meaning of the problem of religious pluralism as the accommodation of religious diversity now has to be thought in light of the goal to ensure the social integration of immigrant groups while respecting their religious freedoms. Solutions to the old religious pluralism are not likely to be adapted to meet the challenges of the new religious pluralism (Kymlicka 2009).

Religious pluralism does not pose a challenge to western democracies simply because of the increasing number of religious sects. If all believers were to accept the secular privatization of religion, we would probably not face so many controversial demands for religious accommodation. Something deeper than the mere number of religious sects characterizes the actual condition of religious pluralism. What is significant about this condition is the divergence between the modes of belief of different groups within society. The role that religious convictions play in the life of an orthodox Hassidic Jew in Montreal is not the same as the role they play in the life of a non-practicing Catholic neighbour. For the latter, religious convictions are only a matter of personal belief about the existence of a supra-natural being, perhaps also about the afterlife, etc. These convictions do not directly generate specific obligations in everyday life,
especially not when the individual acts in the workplace or other public settings. However, the faith of the orthodox believer generates several religious obligations to be respected on a daily basis (such as a specific diet and a religious calendar to follow).

The new religious pluralism is thus marked by a clash between two modes of religiosity: between people for whom faith is only, or mostly, a matter of private belief that does not immediately translate into specific actions and people for whom faith is not only about believing in the intimacy of their conscience, but also about doing certain things, conforming to certain religious obligations in the daily life. Whereas for the former faith is an almost entirely an ‘inward’ experience, for the latter, faith has a strong ‘outward’ dimension and has to be translated in specific actions (Rosenblum 2000a). Because of this outward dimension of faith, the modern separation between the public and private dimensions of life is more difficult to respect for the latter kind of believers, the orthodox believers. For them, the demands of citizenship are much more likely to conflict with those of faith. Many such orthodox religious groups are now challenging the established boundaries between the public and the private by demanding measures of accommodation in order to be able to comply with their religious obligations in public settings—e.g. Sikhs demanding to wear the turban in the workplace or the Kirpa at school, Muslims demanding to wear the veil in schools, to apply religious law in issues of family law, and so on. This orthodox mode of belief is not a new element brought by the latest immigration wave; it is also a feature of certain Christian and Jewish groups. Immigration has however contributed to increasing the number of groups that endorse this orthodox self-understanding of religion and which are likely to challenge established norms and practices in the host society.

The deepening of religious pluralism is not only based on this clash between orthodox and privatized (or ‘protestantized’) modes of belief, it is also based on a clash between believers and non-believers. As Taylor explains, what distinguishes the new condition of religious pluralism in
western societies is that atheism is now a real option; a non-religious life is now considered as a perfectly respectable and worthy option by many of us (Taylor 2007, 1-22). Not only is atheism a possible option, anti-clericalism is also publicly and sometimes furiously expressed by detractors of religion, as exemplified by recent works by Daniel Dennett, Richard Dawkins, Christopher Hitchens, for whom religion amounts to a source of obscurantism and oppression (Dennett 2006; Dawkins 2006; Hitchens 2008). In France, the goal of expelling religion from the public sphere is sometimes justified by the appeal to the emancipatory mission of the state, that is, the state’s mission to liberate individuals from the backwardness of religious identities (Pena-Ruiz 2003; 2005).

Believers are thus placed in a situation where the continuation of their way of life is unsure; many of them now feel threatened by the forces of secularization of society.² This threat is not only felt by religious minorities, but also, and perhaps to a greater extent, by the religious majority in certain Western countries. The fear of secularization has fuelled a political reaction from old established religious groups who try to gain a greater control over the public sphere in order to increase their capacity to maintain their religious way of life. As Dworkin explains, these groups assert the right of a political majority to create and maintain the culture it wants to live in and raise its children in (Dworkin 2006, 74). This kind of reaction by the religious majority is strong in the United States with the Christian right’s opposition to same-sex marriage, abortion and the teaching of evolution, but it is not exclusive to that country—just witness the 2009 Swiss referendum prohibiting the construction of Minarets or the mobilization of Catholic parents in Quebec who oppose the teaching of the course *Ethics and Religious Culture* on the basis that the exposure of their children to facts about non-Christian religions would prevent them from

² We have to distinguish ‘secularism’, which refers to the institutional doctrine of the separation between church and state, and ‘secularization’, which refers to the decline of religious belief among the population. (Taylor 2007). I explain this distinction in more detail in Chapter 2.
transmitting their religious beliefs to their children (S.L. v. Commission scolaire des Chênes 2012).

In brief, the new religious pluralism is characterized by an increasing number of religions, by the overlap between immigrant groups and religious minorities, by the cohabitation of different modes of religiosity and by a deepening antagonistic divide between secular and religious worldviews. All these elements are challenging because they calls into question the mode of governance of religious pluralism based on tolerance and freedom of conscience that has been developed by western democracies since the aftermath of the religious wars. As Paul Bramadat puts it: the new religious pluralism “disturbs the liberal ‘consensus’ around the privatization of religion” (Bramadat 2009, 5; Cf Rosenblum 2000a). This challenge is important and serious, but it is not a fully radical one. Many controversial political demands by religious groups do not reject the fundamental principles of tolerance, freedom of religion and fairness between religions. Indeed, several demands by religious minorities for accommodation are based on freedom of religion and anti-discrimination rights inscribed in liberal constitutions³ and so is the political affirmation of old religious majorities reacting to the secularization of society.⁴

Obviously, not all demands for religious accommodation are compatible with the basic principles of liberal democracy. Some demands are inconsistent with gender equality: think of demands for religious arbitration based on the most conservative interpretations of religious law, for toleration of female genital mutilations, arranged marriage, and so on. However, within western countries there is a certain widespread feeling that the very foundations of liberal democracy are threatened by the rise of a new religious fundamentalism, whether it be an Islamic

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⁴ For instance, S.L v. Commission scolaire des Chênes 2012.
one (as in Europe) or a Christian one (as in the US). This diffuse feeling is sometimes expressed in such a passionate and alarmist fashion that it eclipses the potential compatibility of certain orthodox ways of believing with liberal justice and shortcuts the rational examination of the issues raised by the new religious pluralism. I will thus be interested in showing how certain demands made by reasonable orthodox religious groups challenge establishing modes of governance of religious diversity without jeopardizing the basic values of liberal democracy.

What these demands call into question is the particular institutional form through which western societies have tried to achieve the fundamental ideals of equality and freedom of conscience and religion. The new religious pluralism opposes the form taken by the privatization of religious differences and the corresponding demands of citizenship. This challenge as lead preeminent contemporary thinkers of religious diversity to claim that there is currently a “crisis of secularism” (Bhargava 2010; see Modood 2011 for a critical response) or that there is a need for “rethinking secularism” (Calhoun 2010). What is at stake in this debate is therefore the correct interpretation and drawing of practical implications of the principles of freedom of conscience and equal treatment of people adhering to different faiths in a context marked by deep religious pluralism. What is the exact scope of freedom of religion and conscience? Does it legitimize measures of accommodation consisting of exemptions to general rules? Does it allow for the recognition of other legal orders (religious ones) than the state’s legal structure? Does it require the public funding of religious organizations, especially those of minority groups? What counts as discrimination on religious grounds? Is the incapacity of orthodox religious groups to follow their religious prescriptions in certain public settings a form of unequal treatment or is it a cost they have to assume if they are willing to participate in society? What are the demands that common citizenship places on us with regard to our religious convictions? Do we have a duty to

5 See for instance Caldwell 2009.
put our religion aside in our role of citizens? These are the questions raised by the new religious pluralism and I shall address them in my dissertation.

There is already a huge literature dealing with the contemporary problem of the place of religion in the public sphere. However, at a normative level, there seems to be a polarization between two approaches to the new challenge of religious pluralism. The first approach advocates for strict secularism: it simply reasserts the doctrine of the privatization of religious differences in a radical way (Kintzler 2007, Pena-Ruiz 2003, 2005). Strict secularism is the view that freedom of conscience, equality and social cohesion require that the state refrains from recognizing and supporting any religion. Citizens are free to believe what they want in their private life and they are free to associate with co-believers and to organize their religious life in community with them. Citizens are treated in a fair way by a state that remains at an equal distance from each religion. By ignoring the religious affiliations of citizens, the state creates the conditions under which citizens are the free and equal members of a common public space. This view obviously finds its clearest and strongest expression in the French republican ideal of laïcité and in the non-establishment clause of the First Amendment of the American Constitution. However, the idea that the neutrality of the public sphere requires the state to be indifferent or blind to religion finds echoes in most western democracies and is still popular among liberal theorists. According to this view, most of the demands by religious minorities that I have briefly described above are not legitimate. The claims for accommodation in the form of special exemptions from general rules are not required by freedom of conscience and equality. In fact, according to several proponents of strict secularism, these measures of accommodations run contrary to the ideal of equal treatment which requires that the members of different religious groups be treated in a uniform way: all should have the same rights and the same rules should apply to all. Moreover, public order and social cohesion is said by proponents of strict secularism
to require that citizens show a certain degree of restraint in expressing their religious convictions in the public sphere and that they refrain from making political claims on religious grounds. I discuss strict secularism in Chapter 2.

The second approach to religious pluralism rejects strict secularism and proposes a model of institutional pluralism in which the state recognizes and supports all religions in an evenhanded fashion (Bader 2007). According to this view, by relegating religion to the private sphere, strict secularism affirms a conception of freedom of religion which is too narrow and which makes it too difficult for religious groups to maintain their religion. The proponents of institutional pluralism favour a more substantive, or positive, conception of religious freedom (Ibid., 205) according to which religious groups should receive state support to create their own pervasively religious social institution. This positive conception of freedom of religion includes the right to benefit from the state’s support for the establishment of one’s religion; it includes, for instance, the right to benefit from public financing of religious organizations (through tax-exemptions, subsidizes for the construction of religious infrastructures, etc.) of religious education, of faith-based social services and so on. The defenders of institutional pluralism also maintain that strict secularism offers poor protection for religious minorities and tends to reproduce historical inequalities. They point out that a strict secularist viewpoint neglects the fact that the old religions of western societies (the Protestant and Catholic churches as well as the Jewish religion) already benefit from state support in various ways. Institutional pluralism argues that these privileges should be extended to all religious groups. I discuss institutional pluralism and reject the main arguments supporting it in Chapter 3.

I shall argue that both approaches to religious pluralism are misleading. I will explain why strict secularism is based on a too restrictive conception of freedom of conscience and religion and is insensitive to certain forms of indirect discrimination that disadvantage members of
religious minorities. However, I will not endorse the positive conception of religious freedom and the substantive conception of equality between religions as even-handedness defended by proponents of institutional pluralism such as Veit Bader. I will claim that equality does not require accommodation through separation religious institutions and that this mode of governance of religious diversity fails to provide an adequate answer to the challenge of integrating immigrant religious minorities.

In Chapter 4, rather than defending either of these approaches, I elaborate an alternative to them. I will thus seek to formulate an approach to contemporary religious pluralism which avoids the pitfalls of both strict secularism and institutional pluralism. The approach that I wish to explore tries to reconcile the dual goals of promoting social cohesion in a pluralist society and respecting citizens’ freedom of conscience and equality. It is centered on the idea of reasonable accommodation of religious diversity within shared public institutions and common citizenship. Open secularism promotes equality and freedom of conscience of adherents of different faiths by adopting practices of accommodation of religious diversity allowing individuals to participate in shared public institutions while maintaining their religious identities (Maclure and Taylor 2011; Bouchard and Taylor 2008). These practices of accommodation within common institutions also serve the goal of social integration as individuals are more likely to identify to society if their rights and equal status are respected and as they are more likely to develop ties of solidarity cutting across religious divides while sharing common institution.

In Chapter 5, I develop the normative foundations of the right to freedom of conscience. I claim that freedom of conscience is distinct from rational autonomy and independently valuable from it. I claim that the right to freedom of conscience is composed of two rights each based on a distinct principle of freedom of conscience. First, the right to have or adopt religion or belief of one’s choice is based on the principle of the sovereignty of conscience. Second, the right to
manifest one’s belief is based on the principle of the vulnerability of conscience. I draw on Locke’s account of toleration to discuss the principle of the sovereignty of conscience, a principle which claims that people should not be coerced into adopting others’ beliefs, and I address the main objection to this principle. I discuss the principle of the vulnerability of conscience which asserts that people suffer a distinctive harm when they are forced to act against the grain of their conscience. I claim that this principle requires is that the state should observe an obligation to accommodate individual consciences when pursuing legitimate public goals.

In chapter 6, I assess the egalitarian merits of practices of religious accommodation by examining the debate over the normative grounds of cultural or religious exemptions. I try to provide an answer to an objection to cultural or religious exemptions which claims that people should not benefit from such exemptions because they have a responsibility to adjust their religious practices and beliefs to conform to existing laws, just as people have the responsibility to adjust their normal preferences to existing laws. I claim that religious exemptions are required by justice when the uniform application of laws has the effect of imposing on some citizens the special burden of not being able to act according to their reasonable convictions of conscience.
CHAPTER 2: SECULARISM AS STRICT SEPARATION

The notion of secularism is associated with the idea of a separation between two spheres of human activity. The word “secularism” finds its etymological roots in the Latin word *saeculum* which refer to a certain unit of time: a century, a generation or an age (Calhoun 2010; Casanova 1994, 12; Taylor 1998, 31-32; 2007, 54). However, it is not so much the precise duration of a *saeculum* which is interesting, it is rather what was measured by this unit of time, namely: “the succession of *seacula* counted the time until Christ’s return and the end of history” (Calhoun 2010). The *seaculum* was a measure of the time spent in the ordinary world, of time as the natural historical succession of events, as opposed to the eternal order of God’s Kingdom. The *saeculum* was used to designate ‘ordinary as against higher times’ (Taylor 2007, 55). *Seaculum* did not merely have a temporal connotation, it also had a spatial one: it referred to this physical world as opposed to the eternal and supernatural realm of God (Casanova, 1994, 12-13; Monod 2007, 76-77). The meaning of the term was thus shaped by an implicit contrast between “earthly existence and eternal life with God” (Calhoun 2010).

The etymological root *seaculum* did not only mark a contrast between this world and a transcendent spiritual reality, but also gave rise to expressions marking a contrast within human society between those activities, places and functions related to the eternal world and those based on more earthly and non-spiritual concerns. Thus, in Canon Law, secularization refers to a process by which someone religious leaves the cloister to return to the ordinary world and its earthly preoccupations and temptations (Casanova 1994, 13). Secularization was also used in the aftermath of the Reformation to refer to the appropriation by the state of landholdings, buildings and wealth that belonged to ecclesiastic authorities (Monod 2007, 80). Long before it became a central concept in sociology, secularization referred to an act of passage, a transfer of things and
persons from the sphere of religion and the sacred to the profane or secular sphere. This passage took place against the background of a society organized around two authorities, or “two swords”: the temporal and the spiritual. This differentiation between the temporal or profane aspects of existence and its spiritual or sacred aspects is the source of the term “secularism”.

Secularism is generally understood to require the separation between state and religion; it is based on the view that public authority should not be exercised in the name of religion and that it should not interfere in religious affairs. Secularism postulates that religion is a private matter both in the sense that religious questions are not the state’s business and that religious interests should not dictate matters of public policy. Western societies understand themselves as being secular: they view the separation of church and state as the institutional solution that solved the dividing and violent religious conflicts of the 16\textsuperscript{th} and 17\textsuperscript{th} centuries and brought the possibility of peaceful coexistence of people embracing different religious beliefs. However, the terms of this separation are now being questioned by a new dynamic of religious pluralism.

In this chapter, I explore a reaction to this new dynamic which reasserts the separation between religion and the state and presents the strict exclusion of religion from the public sphere as the best way to ensure social cohesion, equality and liberty under conditions of deep religious pluralism. I start in Part 1 by explaining what secularism is not (at least, what it needs not be). Secularism is often depicted by its detractors as an intrinsically anti-religious fighting creed and sometimes its proponents feed this perception with their exalted discourse presenting secularism as a foundational value of society and as an ideal of emancipation of individual conscience. Before I sketch a more attractive and plausible conception of political secularism I distinguish it from various misconceptions about secularism as intrinsic value (section 1), as a French exception (section 2), as a particular substantive ethical worldview (section 3.1), as a
perfectionist political conception (section 3.2), and I clarify its ambivalent relation with the sociological notion of secularization (section 3.3).

While eliminating these misperceptions helps to clarify the nature of secularism, there remains more than one version of secularism that is worth exploring. In Part 2 of this chapter, I will focus on one such version, which I will call “strict secularism”: it emphasizes the need for a complete institutional separation between state and organized religions (section 5.2) and for the separation between the public and private identities of citizens (sections 6.1 and 6.2). In the following chapters, I will explore and criticize an alternative to secularism, called “institutional pluralism”, and I will explore and defend an alternative conception of secularism, which I will call “open secularism”.

Part 1 What Secularism is Not

1. Religion in the Public Arena and the Alleged Crisis of Secularism

The various debates generated by the new religious pluralism in Western societies have brought a lot of attention to the notion of secularism understood as a separation between state and religion or between the public sphere and the religious. The modern world is undoubtedly marked by the emergence of a secular public sphere in which state institutions are not directly governed by religious authorities or religious norms and in which religious worldviews are no longer all-encompassing. However, the secularization of society has neither led to the marginalization of religion nor to its complete privatization. As José Casanova puts it, today we are witnessing the
‘deprivatization’ of religion, that is, “the fact that religious traditions throughout the world are refusing to accept the marginal and privatized role which theories of modernity as well as theories of secularization had reserved for them” (Casanova 1994, 5, 66).

The perception of this return of the religious to the public realm has led members of Western societies to wonder how the state should relate to religion and especially whether the core values of liberal democracies require the complete exclusion of religion from the public sphere. Many proponents of secularism reassert the claim that there should be an impermeable ‘wall of separation’ between the state and religions and that this, in turn, does require the expulsion of the religious (of religious signs, religious practices and religious norms) from the public sphere.

Sometimes the argument for the expulsion of religion from the public realm is quite straightforward: public manifestations of religion violate the value of secularism. One of the most repeated arguments in the public discussion about the demands for accommodation made by new religious minorities is that these demands are illegitimate because they necessarily violate the value, so important for liberal democracies, of separation between church and state (for instance Baril 2011, Mouvement laïque québécois 2010). It is said that the secular character of our society is threatened by the return of the religious in the public sphere since the manifestation of one’s religious beliefs and practices in the public sphere is considered to be incompatible with secularism; those who wish to manifest their religious allegiance in public institutions are “contesting secularism” (Mailloux 2011; Le monde de l’éducation 2004). As Sam Haroun puts it: “the turban within the Royal Mounted Police, the Islamic scarf and the Kirpa in public schools would only be fashion accessories if they did not reveal a certain state of mind, that of individuals or of groups of individuals impermeable to one of the essential values of liberal democracies: the secular character of public institutions” (Haroun 2008, 7, 165). The presence of
these religious signs in public institutions thus “goes against the spirit of secularism” (ibid, Cf Mouvement laïque québécois, 2007a; 2007b; Rocher 2011; Baril 2011). Secularism is therefore used as a “conversation stopper” (Connolly 1999) in disputes about the public expression of religious convictions. People make direct appeal to it to oppose any manifestation of religious signs in public institutions and of religiously based arguments in political debates. This line of argument presents secularism as something that is intrinsically valuable, as an almost sacred value, like human dignity, that citizens have a duty to respect even at the cost of restricting their personal conduct.

The threat to secularism is also depicted as a threat to national identity. Secularism is here presented as a core component of a national identity based on shared values, as an essential ingredient of the cement that holds society together. Religious citizens—especially the religious members of immigrant communities—who publicly express their beliefs are accused of refusing to integrate into society since they do not recognize that secularism and the separation of church and state is an “official value” of society (Rocher 2011, 27). Again, secularism is presented as a value that defines the character of society.

What should we make of all this? Is secularism really threatened by the public expression of faith? Why should this be viewed as a problem? Why would a strict separation between the public and the private spheres give an appropriate answer to the new religious pluralism? It goes without saying that, from a philosophical point of view, we cannot be satisfied with the claim that religion should be excluded from the public realm because the public expression of religion goes against secularism or violates the separation between church and state. As Veit Bader puts it, “secularism is not a self-explanatory value” (Bader 2007, 94); it is not a value that can be invoked to limit individual liberties (Kahn 2007, 109). Consider a demand from a state employee for a permission to wear a religious garment at work. If we ask why secularism requires that this
particular demand for accommodation of a religious practice in a public institution should be denied, and we are told that the demand must be denied because this accommodation goes against the value of secularism, then we are faced with a circular answer. We are thus told that public manifestations of religiosity threaten secularism and this is a problem because secularism requires the expulsion of religion from the public realm. We are never provided a reason why secularism has any value.

Appealing to the idea of separation between the public and the religious spheres does not aid in this search. The separation of church and state is just a maxim; it has no normative force in itself and it is not an end in itself (Nussbaum 2008, 265-266, Baubérot and Milot 2011, 90). Moreover, it is a very vague maxim based on a no less vague metaphor. Does this separation only mean that the state cannot directly support religion? Or should the state be completely indifferent to religion? Can the state provide positive support for the exercise of religious freedom when it is threatened (for instance by making religious services accessible in closed institutions like hospitals, the army and prisons)? How broadly should the public sphere be conceived when we state that public manifestations of religiosity threaten the secular character of society? Does the public sphere include only the formal political forum (parliaments and courts) and spaces of political advocacy or does it include all public services (public schools and hospitals, public transportation, administrative services, etc.). Is the public sphere more widely construed to encompass all spaces that people can freely access and are open to all? Does the separation requirement only apply to state institutions? Does it apply to individuals as well? Should individuals separate their public identity from their private identity and observe religious restraint in their public roles? If so, when? Only when they act as citizens in the political forum? Does religious restraint apply to both users of public services and agents of the states or just to the latter?
Secularism defined as or justified by the separation of church and state has no intrinsic value, no normative or justificatory force in itself. We need a principled defence of secularism to correctly know how to apply the idea of a separation between the religious and the public spheres. To clearly know what secularism is and requires, we need to ask “what secularism is for?” (Bhargava, 1998) In this chapter, I intend to offer these needed clarifications regarding the notion of secularism. I define secularism as a distinct political organisation for the governance of religious diversity aiming at realizing the values of freedom of conscience, equality between citizens and social cohesion by observing neutrality in religious affairs and by operating an institutional separation between state and religion (Cf Laborde 2008, 31; Maclure and Taylor 2011, 19-23; Baubérot et Milot 2011, 76-80). This definition presents separation of church and state, not as an end desirable in itself, but as a means—as a juridical and political device—to achieve the moral ends of equality, freedom and peaceful coexistence. Hence, allegations that secularism is threatened by the increased presence of religion in the public realm have to be examined, not by referring to some prior notion of church and state separation, but in light of these goals.

This is a generic definition of secularism encompassing a variety of secularisms. However, my main goal in this chapter is to present one particular form of secularism which occupies a central position in discussions about the treatment of religious diversity in Western societies. This type of secularism has come to be called rigid (or strict, or republican, or separationist) secularism (Maclure and Taylor 2011, 27-38; Baubérot and Milot 2011, 90) because, although it is based on the ideals of freedom of conscience and equality, it is tied to a particularly strong notion of institutional separation and to a demanding conception of republican citizenship which requires putting certain limitations on the freedom to manifest one’s religious convictions in the name of the “primacy of citizenship over devotion” (Calhoun 2010). I will
suggest that this form of secularism is characterized by a commitment to an “abstentionist” conception of the state’s religious neutrality and to the view that citizens should observe certain duties of religious restraint in the public. Strict secularism thus relies on a notion of separation that has implications for institutional design as well as for the obligations of citizenship; as Robert Audi puts it, the separation of church and state implies both a doctrine of institutional separation and a doctrine of conscience (Audi 1989, Cf Laborde 2008). The separation required by this form of secularism is strict or rigid in the sense that, at an institutional level, it is interpreted in light of a conception of neutrality forbidding the state to aid or support religion in any circumstances and that, at the individual level, it imposes a significant burden on religious freedom.

2. Secularism: a French Exception?

One may object that by starting with a discussion of secularism as a doctrine of strict separation I am building a straw man from which to distinguish my preferred conception of secularism. Baubérot and Milot note that it is has now become a routine in academia to start from a caricatured and extremely inhospitable to religion conception of secularism in order to present a radical critique of it and then propose a more moderate conception of secularism or to reject secularism altogether (Baubérot and Milot 2011, 14). Strict secularism can be viewed as a straw man position for three reasons.

First, strict secularism is associated with the French historical self-understanding of secularism, or laïcité. At least, it is associated with a particular interpretation of secularism that

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6 I will use “secularism” as a translation of laïcité. Various commentators claim that the term laïcité is untranslatable in English due to the particular connotations it is has in the French context. For instance, instead of using ‘secularism’ in his book on the headscarf controversy, John Bowen keeps the French expression laïcité (Bowen 2007). Others have preferred to create the neologism “laicity” to preserve the meaning of laïcité (Shiose and
supposedly dominates French public and academic discourse and which implies an attitude of conflict vis-à-vis religion and the complete retreat of religion into the private sphere. The prevalence of this strict form of secularism is explained by the particularly tense relationship between the state and the Catholic Church in French history. As the Catholic Church was a close ally of the monarchy during the Ancien Régime, the construction of a democratic state and civil society has gone hand in hand with an active struggle against the power and influence of the Church (Baubérot, Baubérot and Milot 2011, Milot 2008 Calhoun 2010; Monod, 2007, Reanaut et Touraine 2005; Weil 2005). Thus, the specific form that secularism has taken in France is “informed by a specific history of anti-clericalism, itself shaped not just by a long history of priestly involvement in politics, education, and other dimensions of social life but also by a strong reactionary effort to intensify that involvement during the nineteenth and early twentieth centuries” (Calhoun 2010, 37). Some commentators even claim that secularism only exists in France because its meaning is too rooted in France’s political history (Zylberg 1995; Fairgrieve 2002, 15). Thus, it would be a mistake to consider strict secularism to be a universally valid response to religious pluralism since it is in fact a parochial doctrine that reflects the history of a particular society (Keane 2000, 17-18; Asad 2003). Strict secularism is blatantly insensitive to context; it represents more a French exception than the norm within Western societies (Modood, Bhargava, Bader 2007).

Zylberberg 2000, Conseil des relations interculturelles 2005; Joppke 2009). The main reasons to resist the translation of laïcité to “secularism” have to do with the connotation of laïcité as an anticlerical doctrine in French history and to the risk of conflating, in English, “secularism” with “secularization”. However, as I will explain it, it is a mistake to reduce laïcité to an antclerical doctrine. There are various conceptions of laïcité, anticlericalism is only one among many conceptions (Baubérot et Milot 2011, 99; Milot 2008). It is possible to abstract the political principles and values which underpin laïcité from the particular historical context of France in order to extract a generic notion of laïcité that can be declined in different ways in different historical contexts. Moreover, it is possible, as I will show, to distinguish the political concept of secularism from the sociological notion of secularization. Finally, in choosing to use the term “secularism” as an equivalent of laïcité, I follow an already well-established practice in the English-speaking academic world (Bhargava 1998, 2006; Bader 2007;).
Second, strict secularism is not only accused of being too closely linked to the French context, it is also accused of being an idealization that completely misrepresents the actual relation between the French government and religion (Bader 2007). Although France adopted the law of separation of church and State in 1905 (forbidding the state to recognize or subsidize any cult), it has gradually significantly departed from this approach in the second half of the twentieth century (Gauchet 1998; Portier 2005). For instance, although it used to deny any public subsidies for religious private schools, France started to grant public dollars to such schools in 1959 and in the 1990s it started to fund the training of catholic teachers (Portier, 2005 43). In addition, even the 1905 law authorized state funding for maintenance of places of worship built before 1905. It is therefore not hard to appeal to these facts to claim that to describe strict secularism as an exclusively French approach to state-religion relations that is so implausible that it is not even respected in France.

Third, because of the aforementioned French history of anticlericalism and tension between religion and the democratic state, it is tempting to exaggerate to the extent to which strict secularism is inevitably motivated by hostility to religion. Certain detractors view proponents of strict secularism as rationalist writers with an anti-religious bias (Connolly 1999). Hence, certain critics of secularism proceed by assuming that secularism is intrinsically an anticlerical and antireligious fighting creed pursuing the decline of the influence of religion. For instance, before criticizing secularism, Jeffrey Stout claims that what all forms of secularism have in common is “the aim of minimizing the role of religion as such” (Stout 2008, 534). Strict secularism is all too often assimilated to the view that religion is in itself a bad thing or to the promotion of a particular humanist worldview that requires some form of anti-religious state perfectionism.

In sum, the concept of strict secularism is accused of being too influenced by the French context to be useful in other contexts, of being an idealization that fails to correctly describe the
actual practice of the French government and of being a sectarian worldview hostile to religion. I believe that although each of these complaints contains a certain truth, it does not follow that we should immediately abandon the idea of a strict secularism and consider it to be an implausible and useless concept in a normative enquiry about the proper relation between church and state and the place of religion on the public square. While I will go on to criticize the strict secularist position, and defend instead a more open secularism in a subsequent chapter, I believe that strict secularism is a serious position that deserves to be carefully analyzed and evaluated, and that we can learn important lessons by taking it seriously as a philosophical model.

First, it is true that certain philosophers defend a strict separation between the religious and the public by appealing to the goals of promoting a secular humanist worldview and of liberating people from oppressive religious superstition. Many claim that one of the goals that a secular state should pursue is the emancipation of individuals from religious obscurantism. However, we should not assume too quickly that this is the only or the best way to support secularism as a strict separation between state and religion. It is possible, and in fact more common, to defend strict secularism on a much more plausible neutral ground that does not assume that it is in principle always a good thing to disadvantage or exclude or marginalize religion. In Section 3.2, I will address the main arguments of those who put forth a militant and ideological conception of secularism which amounts to a sort of political perfectionism based on a secular humanist ethical doctrine. As it will become clear later in this chapter (sections 5.2, 6.1 and 6.2) these arguments for a perfectionist form of secularism are distinct from the typical arguments put forth by strict secularists which do not necessarily assume that religion is an evil force that should be fought and defeated.

Second, it is misleading to claim that strict secularism (laïcité) is a French exception. No one in France questions the idea that the separation of religion and state is absolutely central to
the theory and practice of strict secularism. As such, the key legal text to which commentators refer to explain the core principles of the allegedly exceptionally French idea of strict secularism is the aforementioned 1905 law of separation of church and state. Paradoxically, the author of this law, Aristide Briand, says that the law is inspired by the legal regimes of other countries. After drawing the picture of other European states as either quasi-theocratic or half-secular, Briand claims that secularism, as the legal separation between church and state, is “widely accepted in the New World; Canada, the United-States and Mexico know of no other principle” (Brian, Rapport à l’Assemblée nationale, quoted in Baubérot 2006, 176). The idea that laïcité is a French exception is based on the belief that nowhere else is the separation between church and state as complete as it is in France. This view assumes separation has been more forcefully affirmed in France given the perceived risk of clericalism—of the influence of the Catholic Church in politics—and given the contentious relationship between the republican progressist elite and Catholic authorities during the 19th century. This is misleading in at least two ways. First, the institutional separation that has emerged from this conflict is not radical, it is a compromise reached between the Catholic Church and the republican state in which the former retains some privileges. As I have mentioned, French government does directly subsidize religious practices (public funding for private religious schools, religious teachers and some religious buildings). Second, there are other historical paths leading to the separation between religion and the state. For instance we can talk of an American secularism (laïcité américaine, see Zoller 2005) which has resulted, not from a struggle to emancipate the state from a single dominating church, but from an agreement between a plurality of churches in which each group sees separation as the best safeguard against persecution. For instance, although religious discourse pervades the American public sphere and although certain religious symbols are attached to the state (“In God we trust”, the pledge of allegiance), the United States has interpreted the establishment clause of
the First Amendment as erecting a wall of separation between church and state which forbids funding, supporting and officially recognizing religion. From the point of view of the institutional separation between organized religions and the state, the wall of separation is stronger in the American context than in the French one, since in the former, it is seen to rule out, for instance, any direct funding for religious schools and organizations.

Finally, it is also true the discourse on laïcité in France does not square well with many of the actual practices of the government, which does, to a certain extent, support and recognize religions. But many of France’s actual policies concerning the place of religion in the public are clear, and perhaps extreme, instantiations of the idea that there should a sharp boundary between religion and the public sphere. Recall the law of March 2004 interdicting the wearing of ostentatious religious signs in public schools and the more recent law forbidding the niqab and burqa in all public places (conceived broadly as including commercial centers, the street, parks, etc.). Although France has a relaxed institutional separation between state and organized religions, it still imposes a burdening duty of religious restraint in the public sphere to all individuals. There is an even more important reason why the actual discrepancies between the ideal of laïcité and its practice should not be bothering for the purpose of our discussion. My goal is not to construct strict secularism as a descriptive or sociological concept. It is to establish its meaning and its merits (or lack thereof) as a normative conception that can offer some guidance in answering the question: “how should the State react to the (newly increased) presence of the religious in the public sphere?” If we are genuinely concerned with a normative question, with what we should do with regard to religious diversity, it simply won’t help us to point to what we actually do or have being doing in the last ten, twenty or two hundred years—unless, of course, we have already established that our current practices are desirable. In the case of secularism and
religious diversity, however, the desirability of our current practices is precisely what is being called into question.

Moreover, as a normative conception, strict secularism still has a huge resonance in debates about the accommodation of religious minorities and the public place of religion. It still enjoys an important place in public and academic discourse, not only in France (intellectuals Weil, Taguieff, Pena-Ruiz, Kintzler, Schnapper, Debray) but also abroad. For instance, it occupies a central place in the debate on secularism in Quebec in the aftermath of the reasonable accommodation controversy and the publication of the Bouchard-Taylor Report (Bouchard-Taylor 2008). Several academics claim that religious signs need to be completely expelled from the public sphere in order to preserve the neutrality of public institutions and the cohesion of society (Haroun 2008; Beauchamp 2011; Baril 2011; Mailloux 2011); many feminists revisit the anti-religious state perfectionism mentioned above in light of the claim that women, especially Muslims, need to be emancipated from religious ideologies and religious practices (Geadah 2007) or claim that several forms of religious expressions need to be expelled from the public since they are inconsistent with gender equality (Conseil du statut de la femme 2007; 2010); and the Mouvement laïque québécois has repeated many times that the State must secure a “civic space exempt from any religious expression and deny any exemption from the application of the law in the name of religious convictions” (Mouvement laïque québécois 2010, 2007a, 2007b).

3. Is Secularism Hostile to Religion?

In this section, I intend to show that political secularism is not necessarily an anti-religious point of view. I start by distinguishing between secularism as an ethical doctrine applying to personal conduct and secularism as a political arrangement regarding the relation between religion and the
state as well as the place of religion in the public sphere. Then I distinguish between two kinds of political secularism: perfectionist secularism and non-perfectionist secularism. Finally, I address the link between political secularism and the notion of secularization.

3.1 Ethical Secularism and Political Secularism

When reading about secularism, we are often faced with an ambiguity regarding the subject of secularism: secularism is sometimes presented as a distinctive ethical worldview and other times as a political conception. As I mentioned, secularism is often criticized for being intrinsically hostile to religion. Underlying this objection is the notion that secularism is a sectarian worldview that claims superiority over religious conceptions. For instance, Connolly claims that secularism is intolerant because it excludes other voices from public discourse; it should instead strive to exist alongside religious and conservative perspectives and cease to try to “represent authoritatively the single source from which all others must draw in public life” (Connolly 1999, 92). I emphasize not that the objection points to the exclusiveness or the sectarian character of secularism but rather that it presents secularism as a metaphysical perspective or a particular moral creed that should coexist with religious options. Yet Connolly also presents secularism as an ethic of public discourse, as a political arrangement which aims at securing religious liberty and toleration among people adhering to different metaphysical perspectives. Secularism is presented simultaneously as one voice among the many metaphysical perspectives and ethical creeds that constitute the pluralism of modern societies and as a political tool for managing that pluralism.
I suggest that we should carefully distinguish ethical secularism from political secularism (Cf. Haarscher 2009, 2798-2799). Ethical secularism is an irreligious (agnostic or atheist) conception, or family of conceptions, of what makes human life meaningful and valuable. Its subject is individual conduct and the values that should guide it. It is the same as secular humanism, an umbrella that covers the conceptions of the good life which do not ground the meaning of life and the basis of morality in the existence of God and its commandments. It is committed to the ideas that beliefs and moral values must be thoroughly examined by individuals rather than being accepted or rejected on faith. Such an examination should be based on rational thinking human problems and fundamental questions have to be solved by the recourse of critical reason, factual evidence and the scientific method. Human fulfilment consists in pursuing goods that can be achieved in this life (as opposed to the afterlife) through artistic creativity, the advancement of science and helping other human beings.\footnote{We can find a list of the typical values of ethical secularism in the Secular Humanist Declaration (Council for Secular Humanism 1980).}

Ethical secularism can be virulently anti-religious. It is sometimes based on a contemporary version of the Enlightenment critique of religion which presents religion as a noxious obscurantist worldview based on prescientific form of thought that nurtures irrationality and superstition as well as a morally flawed perspective incompatible with individual liberty and free inquiry which leads to intolerance and violence. Ethical secularism in this form has been popularized in best-sellers by the “new atheists” like Sam Harris, for instance, who go as far as viewing religious belief as a form of mental illness or Richard Dawkins, who asserts that teaching religion to children at school is a form of mental abuse and that all form of religiosity, even moderate religion, is socially dangerous since it demands people to accept anything in the name of blind faith (Dawkins 2007; Harris 2005).
However, ethical secularism is not necessarily anti-religious; it is sometimes presented as being merely an areligious ethic for agnostics, sceptics and atheists which simply does not refer to God. Such is the conception of secularism that George Holyoake put forth when he introduced the term secularism in the English language at the end of the 19th century:

Secularism is a code of duty pertaining to this life founded on considerations purely human, and intended mainly for those who find theology indefinite or inadequate, unreliable or unbelievable. Its essential principles are three: (1) The improvement of this life by material means. (2) That science is the available Providence of man. (3) That it is good to do good. Whether there be other good or not, the good of the present life is good, and it is good to seek that good. (Holyoake 1896, 60, quoted in Dacey 2008, 31).

Ethical secularism is thus what Rawls calls a comprehensive doctrine (Rawls 1993) which offers answers to a broad range of fundamental questions about the nature of the universe and about how one should lead his life. As a comprehensive worldview, ethical secularism should be clearly distinguished from secularism as a political conception. Political secularism appeals to strictly political ideals such as freedom of conscience, equal treatment of all individuals and the goal of promoting social cohesion and peaceful coexistence between the adherents of different faiths. The subject of political secularism is not individual conduct and the meaning of human life but rather the relation between the state and religion and the place of religion in the public square. Political secularism is the view that there should be a separation between religion and politics. It offers no particular answer to ultimate questions regarding the meaning of life and nature of the universe, only answers to questions regarding the coexistence between individuals embracing different religious and non-religious worldviews.
3.2 Perfectionist and Non-Perfectionist Secularism

Of course, distinguishing ethical from political secularism does not yet fully address the complaint that secularism is a sectarian comprehensive worldview that excludes religion. After all, political secularism might itself be based on ethical secularism: perhaps people endorse secularism as a conception about the organization of state institutions because they believe this will help advance ethical secularism. We can call this a “perfectionist” defense of political secularism.

Political perfectionism is the view that the state can, and should, justify its policies by appealing to a particular conception of the human good and aim at promoting this conception of the good even when some citizens do not embrace it. For many, political secularism, as a doctrine about the proper role of the state towards religion and the proper place of religion in the public square, is a form of perfectionism based on the state promotion of ethical secularism. This strand of political secularism can thus be depicted as sectarian because it is a perfectionist doctrine in which the state should adopt the perspective of secular humanism, make a negative assessment of religion as a source of bigotry and obscurantism, and promote the substantive values of critical reason, freedom from the burden of religious tradition and community and so on. Thus, for Joan Wallach Scott the French ban on headscarf in public schools is based on a conception of secularism in which “the state becomes modern, in this view, by suppressing or privatizing religion because it is taken to represent the irrationality of tradition, an obstacle to open debate and discussion” and whose “effect can be intolerance and discrimination” (Scott 2007, 15). As I will argue below, it is a mistake to assume that political secularism can only be defended on these sorts of perfectionist secular humanist grounds. However, there is no question that political secularism has sometimes been defended in this way.
Perfectionist and militant secularism is a reality, both in the history of the practice of secularism by certain states and in the theories proposed in academic publications and mainstream books or pamphlets on secularism. For instance, in the early time of the Third Republic (1870-1940), the French government embraced a form of perfectionist secularism which called for the decline of the influence of Catholicism in society. As the Pope Pius IX had deemed the “reconciliation of the roman pontiff with the progress of liberty” to be impossible in his 1864 Syllabus, the Catholic Church was seen as a retrograde force despising rationality, science and progress (Portier 2005, 37). To counter this reactionary social force, the government made it its mission to create enlightened and autonomous citizens by promoting “an age of positivism in which men will be able, after so much obscurantism, to at last accede to the knowledge that will allow them to form a true judgment about the laws of physics and society” (ibid, 37). One measure taken to achieve this goal was to forbid any religious teaching in public school (1886) and to take legislative action to suffocate the private network of religious schools. Also, starting in the 1880s, French authorities explicitly aimed at promoting a secular ethic (morale laïque), what Taylor calls an “independent ethic” (1998, 32-33), through the public school system. This independent ethic was to be the common ethic of the citizens. It was based on ideas completely detached from religions and entirely rooted in universal features of the human condition, such as reason and conscience. Although the goal of the promotion of a secular position was to “encompass all religions without doing violence to them from a superior viewpoint” (Gauchet 1998, 51), the independent ethic was in fact associated with the secular ethical substantive values that were genuinely and fully embraced by atheists and sceptics. There may be no incompatibility in principle between the independent ethic and religious worldview, but in practice, the first educational programs teaching the independent ethic were imbued with a scientist view aimed at pulling the individual out of the irrationality of faith; hence the famous
declaration of Jule Ferry, the Minister of Public Instruction in the 1880s who created the French public schools system, that “women must not belong to the Church, but to science” (Kahn 2005, 36). Catholics quickly denounced this biased conception of morality embodied in the supposedly independent ethic (Laborde 2008, 45; Taylor 1998, 36).

More recently, a more direct form of perfectionist secularism arose in discussions about the Islamic veil. In France, many supporters of the 2004 law forbidding the presence of the headscarf in public schools invoked the state’s mission to liberate young girls from religious norms and traditions (Stasi 2004; Pena-Ruiz, 2005, 2003; Kintzler 2007; Zarka 2004). Perfectionist secularism also resurfaced recently as an argument for the prohibition of the burqa and the niqab in public space in October 2010.⁸

Perfectionist secularism is of course unattractive because it is not neutral towards reasonable conceptions of the good. It proposes to use political coercive power to promote a single anti-religious conception of good through mandatory education and regulation of religious practices. Yet, as I noted earlier, political secularism need not rest on such a perfectionist understanding of the role of the state vis-à-vis religion. In fact, even in France, with which perfectionist secularism is historically associated, it does not currently enjoy a central position in the narrative and self-understanding of secularism. In the French language, there is a well-established terminology (in both academia and mainstream public discourse) which recognizes the distinction between perfectionist and non-perfectionist strands of secularism. The former is called laïcisme, a pejorative label almost everyone wants to avoid being identified with⁹, and it is distinct from secularism (laïcité), which does not connote an anti-religious militant attitude characterized by the view that religious belief is inherently incompatible with individual

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⁸ See Hennette-Vauchez (2010) for a survey and analysis of this argument.
⁹ Zelensky and Vigerie (2003) are a rare example of self-ascribed laïcardes or laïcistes.
autonomy (Laborde 2008, Weil 2009). Even in the works of contemporary philosophers which contain significant traces of laïcisme (i.e. mostly Kintzler and Pena-Ruiz), the main arguments for secularism as a strict separation between state and religion rest on the neutral political ideals of equality between citizens, the protection of freedom of religion and conscience, civic virtue and social integration.\(^{10}\) This non-perfectionist case for political secularism is independent from the laïciste argument; it is misleading to reject political secularism (even strict secularism) under the pretext that it is necessarily hostile to religion. In the next sections, I will present a non-perfectionist case for strict secularism based on neutral concerns.

### 3.3 Secularization and Secularism

To recap, the view that secularism necessarily has an anti-religious bias is based on the confusion between political secularism and ethical secularism or perfectionist secularism. However, the perception of secularism as a biased conception also owes a great deal to the ambivalent relation between secularism and secularization. The term “secularization” often refers to the sociological process of decline of the role of religion in modern society. Secularization theory in sociology has been associated by many with the idea that the rise of a rational and anthropocentric worldview (the disenchantment of the world), the process of functional differentiation of social systems and the improvement of existential security would bring the shrinkage and even the disappearance of religion. If political secularism is too closely associated with the idea of secularization it can legitimately be seen as being hostile to religion. For instance, one could decry the perfectionist strand of political secularism for embracing the thesis that the state should be the agent of secularization: it should actively pursue a particular project of modernization by promoting the decline of the importance of religious beliefs hold on people’s lives. On the other

\(^{10}\) The same could be said about the Stasi report (Stasi 2004).
hand, an overly close association between secularism and secularization may also expose secularism to the objection that it is an obsolete political arrangement given the widespread view that secularization theory was entirely wrong, as proved, we are told, by the religious revival around the globe.

So what exactly is the relation between secularization and secularism? First, we have to notice the distinction between the two. Secularization theory aims at conceptualizing a sociological process associated with modernity which encompasses almost all spheres of human activity. It is the process by which science, the economy, and state bureaucracy, for instance, come to function as autonomous spheres free from religious views and authorities and become organized around their own norms. These spheres thus proceed as if God and the supernatural do not exist. Hence the rise of a disenchanted representation of the world and the progressive decline of the importance granted to religious belief. Secularization is thus a descriptive concept with a very broad extension that covers almost all aspect of modern societies. Secularism, on the other hand, is a normative conception with a much narrower domain of application. As I have stressed, secularism is a political concept; it is a mode of political organization concerning the proper relation between church and state as well as the demands of citizenship.¹¹ We can thus distinguish secularization, a theory aimed at describing a socio-cultural process, from secularism, a normative political conception prescribing certain institutional arrangements.

Nevertheless, it would be misleading to claim that there is no link between secularization and secularism. However, this link is hard to pin down because secularization refers to a multifaceted phenomenon (or to a cluster to phenomena): the autonomisation of different spheres of activity in modern societies, the rise of the disenchantment of the world and of a rationalist

¹¹ This distinction between secularization and secularism is often presented as a distinction between two meanings of secularism: political secularism and social secularism (Ferrara 2009, 78-79; Taylor 2007).
worldview, the decline of the influence of religion, and the individualization of religious practice and belief. In order to conceptualize the link between political secularism and the process of secularization, it is useful to break the concept of secularization down into different subparts. Thus, I will follow an illuminating suggestion made by José Casanova who claims that we should split the theory of secularization into one core thesis and two sub theses. According to him, the core thesis of secularization is the functional differentiation of modern societies and the emancipation of secular spheres from the religious sphere. The first sub-thesis of secularization is the decline of religion, which postulates the progressive shrinkage and eventually the disappearance of religion. The second sub-thesis is the privatization of religious beliefs; it asserts that religion in the modern era becomes a personal affair and assumes a marginalized place in the public square (Casanova 1994, 19-39). Casanova’s point is that those three theses are analytically independent from one another; they should be empirically verified separately. Should we observe that religious belief is not declining, we would not be able to conclude that secularization does not happen at the level of functional differentiation and privatization. Should we observe the privatization of religious belief, we would not be able to conclude the decline of religious beliefs in people’s lives. And so on.

We can better understand the relation between secularism and secularization from this fragmentation of secularization theory into three theses. All forms of political secularism require the functional differentiation of state and religious institutions: a secular state is not governed by a religious order and it leaves religious groups free to follow their own beliefs. As I will explain in the next section, proponents of political secularism assert that this differentiation is a necessary

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12 We can thus say that political secularism presents one part of the core thesis of secularization as a norm to be respected, namely the functional differentiation of the state and the religious sphere, although it is indifferent to the larger extension of this core thesis (the functional differentiation of the spheres of science, economy, art and so on). French sociologists call this aspect of secularization laïcisation (Baubérot et Milot 2011; Monod 2007).
means to the achievement of the fundamental values and principles of political secularism (equality and freedom of conscience and religion). But as Casanova points out, this functional differentiation of the political and religious spheres neither entails the privatization of religion or the decline of religion nor is it threatened by the deprivatization of religion or the revival of religion (Casanova 1994). Consequently, political secularism as such neither requires the privatization or the decline of religion, although some versions or conceptions of political secularism do require one or both of these two additional elements of secularization. As we have seen, perfectionist secularism militates for the decline of religion in the name of the diffusion of the substantive ideals of the enlightenment and as we shall see, strict or republican secularism requires a high degree of privatization of religion.

**Part 2 Political Secularism as a Doctrine of Separation**

So far, I have argued that secularism is best understood as a political doctrine, focused on the institutional relationship between state and church, rather than an ethical doctrine. I’ve also argued that while political secularism has sometimes been defended by a perfectionist appeal to a “secular humanist” conception of the good life, this sort of perfectionism is neither necessary nor

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13 This statement is true only under one interpretation of “privatization” and “deprivatization”. As we know, the public/private distinction is ambiguous and can mean many things. This ambiguity affects the privatization/deprivatization distinction. What is public can refer to what is generally visible and accessible to all members of society as opposed to what belong the privacy and intimacy of people’s personal life. Here, the public sphere encompasses both civil society and the state. In a closely related sense, the public can also refer to the common good of the citizens, to what concerns all members of a political community, as when we speak of the “interest of the public” or of “public affairs”. But the public can also exclusively refer to the legal and administrative framework of the state, as when we talk about “public institutions” and the “public sector”. Here, the public excludes civil society. Privatization and deprivatization do not rest on this third sense of the public/private distinction when I say that the functional differentiation of state and religion does not entail the privatization of religion and is not threatened by the deprivatization of religion. The deprivatization at stake here is not the infiltration of religious norms and doctrines in the legal and administrative framework of the state, but the visible presence and the intervention of religion in the public sphere of civil society (Casanova 1994, 66, 217).
appropriate. Instead, I have suggested that political secularism can and should be defended on a non-perfectionist basis, by appeal to the neutral political principles of freedom and equality. I will now begin my exploration of this non-perfectionist defense of political secularism. I will argue that political secularism can best be understood as drawing upon (a) the idea of toleration, itself rooted in the value of freedom of conscience; and (b) the idea of neutrality, itself rooted in the value of the equality of citizens. I will also argue that, in addition to a requirement of institutional separation, strict secularism implies that individuals respect certain obligations of citizenship when entering the public sphere. I will raise an objection to the requirement of “strict” institutional separation and highlight how strict secularism implies a restrictive view of individuals’ freedom to express and manifest their religious convictions in public.

4. Institutional Separation I: Secularism and Religious Toleration

Secularism is based on a doctrine of institutional separation between church and state. We can however distinguish two senses in which a state can be said to be secular corresponding to two degrees of institutional separation. There is a broad sense in which any state that is not a theocracy is a secular one; such states are secular since they are not engaged in the business of dictating what people should believe and their legitimacy does not take its source in divine law. These states can be said to be secular since they recognize a basic separation between religion and the exercise of public authority: “the sacerdotal order does not govern the state” (Bhargava 2006, 639). They meet a first threshold of secularization (Baubérot 1998, Bader 2007, 46-47) since they operate a functional differentiation between organized religions and the state: matters of religion are not under the jurisdiction of the state; state coercion cannot be used to make
citizens adopt the ‘true religion’. Secularism in this broad sense is secularism as religious toleration.14

As I will explain, this does not prevent the state from forming certain alliances or unions with religion and to have an established church or multiple established churches. Many commentators use “secularism” in this broad way to refer to a wide variety of political regimes of religious toleration where the state has undergone a process of secularization (a functional differentiation of the spheres of religion and the state): such an array of secularisms includes state with (weakly) established religions (see for instance Modood 2011). Thus, Baubérot and Milot start by defining secularism very broadly as a mode of political organization which aims at respecting freedom of conscience and equality (Baubérot and Milot 2011, 80; Milot 2008). They then proceed to disaggregate the broad concept of secularism into six different ideal-types of secularism, one of which they call collaborative secularism (laïcité de collaboration), a form of secularism based on the legal recognition of religious organizations and the granting of public resources, administrative powers and privileges to the legally recognized cults (Baubérot et Milot 2011, 113-116, 140-158).

Secularism is also quite often used in a much narrower way to refer to political organizations which refuse to establish ties with religions such as those involved in the aforementioned collaborative secularism. Secularism is this narrow sense requires more than religious toleration conceived as the refusal to turn to state coercion in religious matters. It requires a higher degree of secularization of state institutions and of disconnection between religion and public authority. Secularism in this sense is completely incompatible with

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14 Here I adopt a minimalist conception of toleration which only requires the state to abstain from forcing individual to adhere to the “good” or “true” religion or ethical comprehensive doctrine and from preventing them to adhere to the “wrong” ones. One could however understand toleration to be more demanding and requiring that those who take the “wrong” path should be treated as equals and suffer no disadvantage in the distribution of benefits and privileges (see for instance Scanlon 2003, 189).
established religion (Bhargava, 2006, 641; this is also how Kintzler views the difference between toleration and secularism, Kintzler 2007, 18-19). What defines this narrow conception of secularism is not merely the aim of respecting equality and freedom of conscience; it is the means by which this aim is achieved, namely, the complete institutional separation of church and state understood as a requiring the non-establishment of religion. Proponents of secularism as non-establishment claim that this mode of political organization does a better job at promoting freedom and equality than regimes of toleration with established religion.

As I highlighted, secularism as religious toleration implies a certain level of separation between state and organized religion but secularism in the narrower sense takes this principle of separation farther and expands it. Bhargava suggests that what I identified as the broad notion of secularism requires a separation at the level of institutions (there is a functional differentiation between state and church institutions in the sense that the state does not enforce religious norms and is not controlled by religious authorities) and secularism in the narrow sense also requires separation at the level of ends (the state may not pursue religious goals) and at the level of policies (the state does not enact laws which support, financially or symbolically, any religious organization: it completely refuses to establish any religion) (Bhargava 2006, 641). Thus, secularism in the narrow sense meets a second threshold of secularization of state institutions in which a greater degree of disconnection between state and religion obtains.

For the sake of clarity, I will consider that secularism proper is secularism as non-establishment; it accepts toleration but goes beyond it and embraces a view of separation of religion and politics that requires the non-establishment of religion. In choosing this typology, I follow Veit Bader who refers to non-theocratic regimes with religious establishment as regimes of “religious institutional pluralism” (2007, 201-203). Those who prefer this mode of political

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15 This is just a working definition; I will provide more details on the idea of non-establishment in section 4.
organization to cope with religious diversity do not merely attempt at reworking secularism and at formulating an alternate conception of secularism (as the proponents of open secularism do), they seek an alternative to secularism.\textsuperscript{16} From this point of view, we can view toleration and non-establishment as two distinct logical moments in the elaboration of a political concept of secularism. In rest of this section, I will deepen the account of toleration as a first threshold of separation; in the next section (5), I will clarify the idea that the separation of church and state requires the non-establishment of religion.

One of the fundamental goals of political secularism is to protect the freedom of conscience and religion of all citizens. As such, it implies a political principle of toleration which forbids the enforcement of religious orthodoxy by the state. This principle postulates that it is not under the jurisdiction or competency of the state to determine truth in religious matters and compel citizens to recognize such a truth. Toleration requires that the state refrain from dictating which religious beliefs people should embrace. It thus delineates the boundaries of a private sphere in which the individual can freely believe any religious or metaphysical doctrine without having to fear the coercive power of the state. The adherence to religious belief and the membership in a religious association becomes a matter of personal and private choice which cannot be subjected to state compulsion. This implies a threefold principle of toleration which requires 1) that no one be forced to have one particular religion rather than another, 2) that no one be forced to have no religion as opposed to a religion, and 3) that no one be forced to have a religion rather than no religion (Kintzler 2007, 18).

Toleration is achieved when the political power is limited to the protection of what Locke calls the civil interests, namely the preservation of “liberty, health, and indolency of body; and

\textsuperscript{16} As announced in the introduction, I will examine varieties of and arguments for religious institutional pluralism in the next chapter.
the possession of outward things, such as money, lands, houses, furniture, and the like”, and when the power of the state does not extend to the “the salvation of souls” (Locke 1669, 7).17 The respect of this separation between the temporal (civil) and spiritual jurisdictions removes the sphere of freely embraced convictions of conscience from the reach of the state. Freedom of conscience minimally requires the protection of such a sphere of liberty in which individuals are neither forced to adopt certain beliefs or to practice certain rituals nor punished for adopting certain beliefs or performing other (justice-respecting) rituals. The respect of freedom of conscience and religion includes both the freedom of belief and the freedom to practice one’s religion, to observe its rituals and religious duties. Although toleration requires that the state leaves untouched the content of people’s religious convictions, it cannot be indifferent to the consequences of religious practices for the civil interests of other citizens. Toleration and respect for freedom of conscience are not incompatible with putting limitations on religiously motivated behaviour that threatens the preservation of the fundamental interests of other individuals.18

Political regimes of toleration achieve this first level of separation by separating the authority of the church from the authority of the state and confining each to their respective functions such than neither the church nor the state has authority over the other (Laycok 1997, 46). Organized religions, but not states, can proclaim the truth of a religious doctrine and decide what religious obligations follow; they can dictate what rituals and practice should be observed

17 I examine Locke’s main argument for the removal of the power to decide spiritual matters from the hands of the state in Chapter 5. Note however, for the moment, that Locke did not extend toleration to atheists and would thus reject the third proposition. His argument for the restricted scope of toleration is rather weak since it is based on the idea that “promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist” (Ibid., 43). This simply ignores that individuals can have non-religious motivations to respect promises, oaths and covenants of at least two kinds: moral motivations based on non-theistic conceptions of ethics (conceptions in which the source of moral authority is located in reason or emotions) or prudential motivations based on the fear of the adverse consequences of a broken promises (loss of others’ trust and damage to one’s reputation) and the advantages of keeping one’s promises.

18 In Chapter 5 I will closely examine what conditions should be met for limitations on freedom to practice religion to be legitimate.
by their members. They cannot force anyone to respect these religious precepts but they can exclude persons who refuse to abide to this religious creed from their associative activities. States, but not organized religions, can edict laws regarding civil, but not spiritual, concerns that are binding to all and enforce them by administering punishment for their violations. This separation of authorities forbids religions to use the government as a secular arm to achieve their spiritual ends and it forbids the state to compel adherence to any particular religious option so that “no religion can invoke government’s coercive power and no government can coerce any religious act or belief” (Laycock 1996, 319). Many formula are proposed to capture the separation of spiritual and temporal authority; this separation creates “twin tolerations” (Stephen 2000), it achieves the “reciprocal autonomy” (Bhargava 1998; Baubérot and Milot) or the “mutual independence” (Laycock 1996) of state and religions, or it secures a “two-way protection”, that is, a protection of the state from religion and of religion from the state (Gutmann 2000).

5. Institutional Separation II: Secularism and the Non-Establishment of Religion

The recognition of freedom of conscience and the respect of a private sphere in which individuals’ beliefs are removed from the reach of the state’s coercive power is required by the political principle of toleration. The implementation of this principle leads to a first threshold of institutional separation between state and religion. This first threshold of separation is not really controversial. All liberal democracies recognize the right to freedom of conscience and refrain from forcing citizens to embrace one particular religion, to adopt no religion or to have a religion rather than none. However, the rejection of the coercive enforcement of religious orthodoxy is just a minimal requirement of institutional separation between state and religion which is not
incompatible with various kinds of collaboration and organic links between state and religion (Bader 2007). It is often remarked that various forms of “weak establishment” of religion are not incompatible with freedom of conscience understood as a right not to be forced to embrace any religious belief or to perform any religious practice (Monod and Kastoryano 2006; Audi 1989, 263). These forms of establishment consist in granting privileges to certain religious groups without forcing anyone to embrace this or that religion and without forbidding anyone to believe in the religion he prefers and to observe its rituals and obligations (within the limits of permitted by the respect of the rights of other persons). Political secularism aims at achieving a second threshold of separation between state and religion, one that rules out establishment of religion. The main rationale for doing so, as I will explain, is the defence of equality between believers of different faiths as well as between believers and non-believers.

5.1 Equality and the Establishment of Religion

Several definitions of the establishment of religion can be found in the literature. Veit Bader assumes that establishment of a religion requires an explicit recognition of this religion in the constitution (2007, 54-55). Norway, Denmark and United Kingdom are the few examples of Western states with constitutional recognition of an official state religion. I will here adopt a broader understanding of establishment, one which does not require *de jure* recognition of an official religion in the constitution, but merely requires that there is some *de facto* collaboration or alliance between the state and religion (Bhargava 2006). This is how the term is understood in debates over the relation between state and religion in the United States. Yet, the meaning of the

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19 Bader (2003, 269) distinguishes strong establishment, which aims at creating religious homogeneity within society (a “religio-national cultural monism”) and requires the suppression of the religious liberty of dissenters, from weak establishment, which grants privileges and official recognition to a national religion without requiring the suppression of the liberties of other religions. However, note that although weak establishment regimes do not imply a gross violation of religious freedoms, they can arguably be seen as being unable to maximize those freedoms since they force those who are outside the official church to contribute to the upkeep of a religion they do not embrace, thereby violating their religious conscience (Greenawalt 2008, 5).
First Amendment’s Establishment Clause (“Congress shall make no law respecting an establishment of religion”) and of what counts as an establishment of religion is very controversial among Justices of the Supreme Court. For some, it is only coercive support to one or many religions (mandatory prayers in schools, funding of churches through coercive taxation of all citizens) that constitutes establishment, not symbolical endorsement of religion. For others, the Establishment Clause does not rule out favouring monotheism over polytheism, nontheistic religions and nonreligion (Nussbaum 2008, 232, 267-268). For the so-called “accommodationists” the non-establishment requirement is met if the government refrains from making one church the official church of the state but it does not forbid favouring Christianity or religion over irreligion by declaring that America is a Christian nation, nor does it forbid promoting a civil American religion based on the belief in a Supreme Being (Jones 1986, 196-197).

For the purpose of my discussion of political secularism, I will follow a broad view of establishment. I shall consider that the establishment of religion obtains when the state, through its policies and laws, officially recognizes, supports and privileges a religion or a group of religions. Accordingly, there is an establishment of religion when “the government has put its stamp of approval on some particular religion or group of religions, creating an official orthodoxy” (Nussbaum 2008, 20) or when a religion or several religions have official state endorsement (Audi 2011, 43). The state establishes religion when citizens’ adherence to a religion affects their opportunities and their standing in the political community.20 The establishment of religion can consist of the establishment of a single church, as in the United Kingdom with the establishment of the Anglican Church as the official national church, in the establishment of several churches, as in Finland with the established Lutheran and Orthodox

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20 See the American Justice O’Connor in Lynch v. Donnelly: “The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person’s standing in the community” quoted in Nussbaum (2008, 224).
Finland Churches, or it can consist in the establishment of one or many religions without establishing any particular church or sect (for instance, someone who thinks that the symbols of the American government should reflect the view that America is a Christian nation favours the establishment of religion without necessarily wanting to establish any particular Church) (Bhargava 2006, 639). We may also note that a state can establish non-religion over religion by making some form of anti-religious secular humanism its official doctrine as suggested by the proponents of perfectionist secularism.

The establishment of religion occurs when the state shows some preference for one or many particular spiritual options. As McConnell puts it, establishment of religion “is government action designed to promote, channel, or direct religious exercise in socially-preferred ways (...) the hallmark of establishment is that the government uses its authority and resources to support one religion over another, or religion over nonreligion” (McConnell 1992, 688). Such preference can be expressed by giving privileges at three levels: at the level of political representation, in the public allocation of resources and at the symbolic level.

One form of establishment consists in recognizing certain religious organizations as privileged official interlocutors for policy making (this is what Audi calls formal establishment, 2011, 43-44). This can be done by reserving seats in the parliament for representatives of the recognized religious organizations. In the United Kingdom, twenty-six seats in the House of Lords are reserved for bishops and archbishops of the Anglican Church. Input in policy making can also be given to religious groups when the state creates official consultative bodies which have the mission of representing the members of a religion in discussions with the government regarding issues of concern for that group. For example, the French Council of the Muslim Faith was created by the French government in 2003 to “serve as an official interlocutor with the state in the regulation of Islamic worship and public ritual practices like the mass slaughtering of
sheep during Aïd el Kebir, the allocation of public cemetery space facing Mecca, the garnering of municipal permits to construct mosques and the accreditation of imams.” (Fernando 2005, 12).

For Catholics, Protestants and Jews, the Council of Bishops, the Protestant Federation and the Central Consistor, respectively, serve as similar privileged and official interlocutors of the French government with equivalent functions. What constitute establishment here is not merely the fact that the state allows religious citizens to form associations and voice their concerns to government. Establishment occurs when the state interfere in religious affairs by designating an association to serve as the official voice of a religious group.

Government can also show preference for certain religious groups by directly funding their activities. There are many channels through which religions can receive state subsidies. The direct funding of sectarian religious private schools with tax dollars is perhaps the main example of state support for religious activities. Many European states finance at least in part the activities of sectarian religious schools (Belgium, Netherlands, France, Spain and Germany). State funded religious education can also take the form of religious education inside the public schools by teachers who receive approbation from the religious group (as it was the case in Quebec until 2000). Some states pay direct salaries for the clerks of the recognized religious organizations (Belgium and Denmark) or levy a special tax from all citizens on the behalf of recognized religions (Germany, Finland and Sweden). Financial establishment may also come from the granting of a religion-specific tax exemption to recognized religious organizations.21 Finally, the funding of religious activities can be channelled through state-funded maintenance of religious buildings (for instance, France pays for the maintenance cost of Catholic, Protestant and Jewish religious buildings built before 1905).

21 Tax exemptions to churches and religious organizations are not a form of establishment if they are available to other kinds of non-profit organizations and if they are granted on the basis that churches are members of a broader class of organization providing beneficial services to the population (Greenawalt 2008, 291-292).
The state may also show a preference for certain religions (or for religion over non-religion) by endorsing some religious views in displaying certain religious symbols in public institutions, buildings and ceremonies. The paradigmatic case of symbolical association between the state and religion concerns prayers either at the beginning of a parliamentary session, of a city-council meeting or in public schools. Public monuments and buildings may also be the vehicles for the religious symbols of a particular sect: in Quebec, for instance, there are many crucifixes on the outside walls of public schools and there is still a crucifix above the chair of the president of the National Assembly. Public displays, like nativity scenes inside or just outside public buildings during the holiday season, may also convey the symbols of a particular religion. Public monuments, buildings and displays show preference for a religion when they exhibit its symbols because, as Nussbaum remarks: “a display put up by the government is like a message. It says, “This is what we like and think important. This is what we have arranged for you to look at with our sponsorship” (Nussbaum 2008, 252).

All those forms of establishment are compatible with the first threshold of separation of state and religious authority which is required by religious toleration since they do not imply forcing anyone to abandon their religious beliefs and practices or to embrace those of the majority. However, political secularism claims that justice in religiously diverse societies requires more than respecting the freedom to believe and to practice the religion one chooses to. It also requires that each individual be given equal consideration and be treated as an equal. Proponents of political secularism assert that this principle of equality can only be achieved if the state practices religious neutrality; this requires that the state neither favours nor hinders any spiritual option (Monod 2007, 117-118; Laborde 2008, 32; Maclure and Taylor 2011, 13-18, 22

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22 This is not true of school prayers however since this obviously coerces members of nontheistic religions and nonbelievers into the practices of a faith which is alien to them.
Baubérot and Milot 2011, 77-80). Religious neutrality requires that the state refrain from privileging one or many religions over other religions and from privileging religion over non-religion or latter over the former. It calls for policies that are consistent with people enjoying equal chances to carry on their religious or secular life plan. What is distinctive about political secularism is the view that the commitment to neutrality leads us to go beyond separation as religious toleration (Pena-Ruiz, 2003, 68-69; Kintzler 2007, 18-19) to embrace a second threshold of separation that forbids any establishment of religion. All non-perfectionist accounts of political secularism – whether they are “strict” or “open” – insist that some form of religious neutrality is required to fulfill this core principle of the equality of citizens, and hence that neutrality as well as tolerance is a requirement of secularism. However, theorists of secularism differ in how precisely they connect neutrality to equality, and also in what sorts of state actions contravene neutrality. In particular, we can distinguish what I will call an “abstentionist” conception of neutrality from a “non-discrimination” conception of neutrality. Defenders of strict secularism have embraced the abstentionist conception of neutrality, whereas defenders of open secularism have embraced the non-discrimination conception.

In order to adequately evaluate the choice between strict and open secularism, therefore, we need to dig deeper into this link between neutrality and equality. For the proponents of all types of political secularism, the main reason to uphold separation as non-establishment is that establishment is a threat to the equality between citizens (Nussbaum 2008; Audi 1989; 2011). Financial establishment creates a situation of unequal liberty of religion by giving some citizens

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23 Kintzler and Pena-Ruiz both recognize that secularism requires religious neutrality and that this element distinguishes secularism from mere toleration. However, they also had another distinctive element to secularism: “the exclusion of communities from the formation of the law” (Kintzler 2007, 19). This principle excludes the legal recognition of religious (and cultural) groups as well as any form of associational democracy in which communities (for instance religious organization) have an input in decision-making processes. This is where a distinctive French republican conception of laïcité emerges. This conception is based on a Rousseauist conception of democracy and citizenship in which intermediary groups are divisive factions so that only individuals qua equal and undifferentiated citizens should participate and be represented in the deliberative process of law-making.
more material resources to pursue their religious ends. Religious liberty is not equal when only the members of some religions receive funds to build and maintain places of worship or when only certain groups can benefit from religious teaching in the public school or receive funding for private religious schools. Nearly all European states publicly fund religious schools either partly (Scandinavian states, Germany, Hungary, France, Spain) or completely (Belgium, Netherland, England and Wales) (Bader 2007, 59). Yet this pattern of public finding of religious educational institutions works to the advantage of traditional religious groups whereas the schools of new religious minorities, especially Muslims, often encounter obstacles when they apply for funding. As a result, in 2009, for instance, out of 8000 publicly subsidized religious schools in France, only two were Muslim and yet, Islam is the second largest religion in France (Nixey 2009). In 2008, in the UK, only seven Muslim schools, two Sikh schools and one Hindu school received public funds whereas around 7000 Christian schools were publicly financed (Modood 2009, 170; BBC News 2008). Although new religious groups can set up their own schools and apply for state funding, their applications are routinely turned down by state administrations on the grounds that they are not in the best interest of ethno-religious minorities and their children, that they raise sectarian threats, and would lead to racial segregation and to national disintegration (Bader 2007, 161).

But surely this unjust situation can be overcome. It is not impossible to imagine that biases against religious minorities can be eliminated so that public funding can be available to all religious groups equally. Does secularism as a doctrine of state and church separation prohibit even-handed support to all religious groups? This is a divisive question for proponents of secularism as separation. Some strict separationists claim that the state should never aid religion, even in an even-handed fashion (Kintzler 2007, Pena-Ruiz, 2003, 133-134, 171). Other strict separationists (sometimes called “strong separationsists” in contrast with “absolute
separationists”) embrace a slightly more relaxed view and claim that the state can support the neutral (non-religious) activities of religious organizations, but only in an even-handed way (aid must be granted to all religions and to non-religious organizations as well), and cannot legitimately support the non-neutral activities of religious organizations (Swaine, 1996). Yet others, “accomodationsits” or open secularists, claim that in certain circumstances the state can financially aid religious organizations to pursue religious activities if this is to remove a governmental obstacle to free exercise of religion: they claim that the state should, for instance, pay for chaplains in the military and in prisons and that halal and kosher menus ought to be made available in those public places (Boutchard and Taylor 2008; Maclure and Taylor 2011; Eisgruber and Sager 2007, McConnell 1992). Despite this diversity of opinion, all separationists claim, at least, that equality does not require the state to respect a positive duty to support all religious activities in an even-handed manner. For open secularists, all that equality requires is the removal of state imposed obstacles to the free exercise of religion, not a general duty to promote the flourishing of all religions equally. Strict separationists, on the other hand, oppose even-handed financial aid for the non-neutral activities of religious organizations on the ground that all forms of state-based positive aid to the pursuit of religious goals by religious organization is a special treatment made at the expense of nonbelievers; such a treatment privileges religion over nonreligion (Swaine 1996; Kintzler 2007).

The secularist commitment to state neutrality is not only motivated by equality in the distribution of resources and privileges, it also based on a conception of equality of respect. When the state gives financial privileges to certain religions (or religion over nonreligion) or

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24 The neutral activities of religious organizations are which consist in pursuing secular purpose such as providing health care, elderly care, care to the needy and the homeless, and so on. Non-neutral (specifically religious activities) of religious organizations are those with an intrinsically religious purpose: worship, proselytism, religious preaching, etc.
when it endorses religion, through the display of symbols, it does not pay an equal respect to all the members of society (Nussbaum 2008, 227; Laborde 2011). The idea of equality of respect is based on the view that all members of a democratic society have an equal dignity. A democratic society repudiates hierarchy: it rejects the notion that some citizens have a higher social rank or status. Every citizen is an equal member of the political society, and no one should feel or be told he or she is a second class member by virtue of his or her identity, class, appearance or convictions. All forms of religious establishment (not just public monuments and displays) have a symbolic dimension which affects the standing of members of different religious groups and nonbelievers. When the state maintains organic links with certain religions, grants them privileges and openly endorses the beliefs and symbols of these religions it sends the message to citizens who do not adhere to these religions that they are not on an equal footing with all members of the political society and, moreover, that they belong to a lesser degree to this society. The establishment of religion therefore affects the standing of citizens, giving a lesser standing to people who do not embrace the officially supported religion(s) and makes these individuals feel like “outsiders” (Greenawalt 2008, 12). Establishment may thus create the kind of official hierarchy that makes individuals feel they have less than equal worth. As Nussbaum claims: “a failure of respect in the symbolic domain is like an insult, a slap in the face, and, moreover, it is the sort of slap in the face that a noble gives to a vassal, one that both expresses and constitutes a hierarchy of ranks” (Nussbaum, 2008, 227). This failure of respect occurs both when one or a few religions are privileged over other religions and when religion in general is preferred to non-religion.

Although the link between equality and neutrality is central in secularists’ defense of institutional separation, other considerations are often invoked to justify separation. Many strict separationists claim that any form of cooperation between state and religion is undesirable since
government entanglement in religious affairs necessarily corrupts religion. When public subsidies are available for religions, religious organizations may be led to please the current government by altering their dogmas and practices, or by providing favours to government officials in exchange for benefits. Establishment also corrupts politics: when one or many religions are established, they can become powerful enough so that political leaders will feel pressured to cater to their will. Cooperation between church and state will most likely lead to loss of religious autonomy since government subsidies come with ‘strings attached’; there are regulations for registration and application as well as conditions to respect in order to receive state benefits. Some also claim that any aid to religion is socially divisive since it leads to competition between groups to obtain resources and power. State aid to religion is also divisive because it generates resentment from those who have to pay taxes to support religious practices they abhor. As American Justice Stevens claimed, opposing the use of educational vouchers for religious schooling, "whenever we remove a brick from the wall that was designed to separate religion and government, we increase the risk of religious strife and weaken the foundation of our democracy" (Justice Stevens, dissenting, in Zelman v. Simmons-Harris, quoted in Huscroft 2002-2003, 507). This set of typical separationist arguments also militate against the aforementioned top-down forms of political representation where governments designate official representation for some or all religious groups.25

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25 These anti-establishment arguments are common amongst American separationists (Nussbaum 2008, 225; Greenawalt 2008, 9-13). As I highlighted in a previous footnote, French strict secularists tend to oppose political representation of religions by appealing to a Rousseauist conception of citizenship and democracy in which the public recognition of intermediary groups (religions, ethnic and cultural subcommunities) is intrinsically suspect since they represent the sectorial interests of factions. Intermediary groups thus cannot represent the common good (la volonté générale) and raise the threat of communalist divisions. According to this view, only the abstract individual citizens (which are deprived of their particularistic identities) can appear in the political process since only they can promote “universal” interests and the common good.
5.2 Strict Institutional Separation and Neutrality: the Abstentionist Conception of Neutrality

For a variety of reasons, therefore, respect for the equal dignity of citizens requires neutrality towards religion. For many theorists, the obvious conclusion from these arguments is strict institutional separation, or what I will call the “abstentionist” interpretation of neutrality.

Political secularism seeks to achieve equality between believers of all faiths and nonbelievers by remaining neutral towards religion. Religious neutrality is taken to require a separation of state and religion which takes the form of the non-establishment of religion and the refusal to maintain collaborative links between state and religion. However, it is often remarked that there is a tension between neutrality and this sort of separation (Esbeck 1998; Monod 2007, 119; Maclure and Taylor 2011, 24; Nussbaum 2008, 282-291). Separation requires that the state refrain from actively supporting religious activities. Neutrality requires that no one suffers a prejudice because of his religious convictions and that no law favours or disadvantages some citizens compared to others in their capacity to pursue a religious or non-religious conception of the good. However, ensuring equal liberty to pursue religious and secular life plans can sometimes require the state to intervene by supporting or even subsidizing religious practices. For instance, equal liberty of religion has been taken to require that the state provides (i.e. pays for) chaplains in hospitals, prisons and in the army.

In the United States, many debates over the meaning of the establishment clause turned on this predicament. In *Everson*, defenders of the separation between Church and state maintained that students of religious private schools should not benefit from a New Jersey program that provided bus transportation to all students.26 They claimed that since this state-sponsored

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26 The ruling upheld the New Jersey program by a 5-4 majority. Dissenting justices appealed to the principle of church and state separation to oppose the busing program.
transportation program was paid through tax money, its extension to students of religious schools would amount to subsidizing religious activities. In *Agostini* and *Aguilar*, the same logic was applied for opposing the extension of state programs of remedial education to religious schools.\(^{27}\)

These programs aimed to improve the quality of education in low income areas by sending teachers paid by the government into underprivileged schools. Again, the claim was that using public funds to pay for remedial education in religious schools would constitute the kind of state support of religion that breaches the indispensable wall of separation. School vouchers have also been very controversial for similar reasons. The vouchers system allows parents to receive state subsidies for sending their children to a private school of their choice (equivalent to the cost of sending their children into a public school). Since many parents choose to send their children to religious schools, some have claimed that the voucher system violates the separation of church and state and constitute an illegitimate form of establishment (dissenters in *Zelman*). Finally, state aid to so-called faith-based initiatives has also proven to be very controversial on the ground that it violates the separation between church and state. Faith-based initiatives include a variety of religious organizations providing social services and charity such as care for children, the elderly, the physically or mentally sick or handicapped, the homeless, the poor and rehabilitation for drug addict and criminals.

In all the above debates, the principle of separation of state and religion appears to be in tension with some idea of neutrality. The goals pursued by the government in having programs of remedial education, of transposition for school pupils, or of educational vouchers, is not to promote particular religions but to promote social justice by improving access to quality education for children of underprivileged families. Similarly, state support for faith-based

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\(^{27}\) In *Aguilar* the court ruled that a New York program of remedial education sending public teachers to sectarian schools violated the establishment clause. *Agostini* overruled *Aguilar*, but the four dissenting Justices appealed to the principle of separation to opposed remedial education in religious schools.
initiatives is justified not by the goal of promoting certain religious views but to help organizations delivering valued public services that the government would otherwise have to provide. Some claim that although the goal of these governmental programs is not religious, the effect is to transfer public funds to religious organizations, which amounts to a violation of the separation between state and church. Critics of separation in these cases have appealed to the idea of neutrality (Laycock 1997; Lupu 1994; Nussbaum 2008, Audi, 2011). Since benefits are also offered to non-religious alternatives (vouchers can be used for non-religious schools, non-religious charities can receive government support, remedial education is offered to non-religious schools, etc.), denying them to religious organizations would amount to denying welfare benefits to some on the basis of their religion.

Issues of this kind do not necessarily exemplify a dilemma between separation and neutrality. They rather portray a disagreement between a strict conception of separation based on an “abstentionist” conception of neutrality\(^\text{28}\) and a more flexible conception of separation based on a conception of neutrality as non-discrimination. Political secularism takes the form of a strict, inflexible and complete institutional separation between church and state when neutrality is interpreted as requiring that the state consistently abstains from supporting, recognizing and endorsing any religion. It must never aid or facilitate the pursuit of a religious conception. Strict separationists therefore embrace a “no-aid theory” (Laycock 1997; Eisgruber and Sager 2007, 24) of the proper separation of church and state. The practice of neutrality consists in rigorously observing abstention of state support for religious practices.

This view has some resonance in both France and the United States. The second article of the 1905 French law on the separation of churches and state affirms that “The Republic does not recognize, pay a salary to, or subsidize any cult”. Some commentators have read the law as

\(^{28}\) I take the expression from Laborde (2008, 34) and Kahn (2005, 29).
embodying the no-aid principle and have appealed to it to reject demands for state funding to build mosques, even though these demands were made in the name of equality and neutrality on the basis that Catholics, Jews and Protestants receive public funding for their religious buildings (Pena Ruiz 2003, 164, 171; Kaltenbach and Tribalat, 2002). In the United States, the idea that the state should avoid any support to religious activities has been inspired by the metaphor of the “wall of separation”. In one of the most quoted passages on the establishment clause, Justice Black affirms:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious belief or disbelief in any religion. No tax in any amount, large or small, can be levied in support of any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State." (...) The First Amendment has erected a wall between church and state. The wall must be kept high and impregnable. We could not approve the slightest breach.29

29 Everson v. Board of Education, 1947. Black was in the majority who voted to upheld state subsidies for buses transporting children to religious schools. Yet he recognizes the importance of maintaining a very strong form of
The view that the wall of separation between state and church “must be kept high and impregnable” has been interpreted as requiring the abstention of state support to religious activities in the aforementioned cases of publicly funded bus transportation to religious schools, school vouchers used to enter religious schools, remedial education on sectarian school premises and state support to faith-based social services.

One may view the strict separationist position as a circular one. It may seem that strict separation is justified by an appeal to the no-aid principle and that this principle is itself justified by an appeal to the need to maintain a wall of separation. Separation seems in this case to be presented as an end in itself and has having a self-explanatory value (for such an objection, see Nussbaum 2008, 265). However, there is a more plausible way to justify the abstentionist conception of neutrality (the no-aid principle) in religious affairs. The force of the no-aid principle of neutrality and the following requirement of strict separation derives from the inequalities that any state support to religion will necessarily create. When one religious citizen benefits from state subsidies to practice his religion, perhaps by receiving a voucher paying a portion of a child’s tuition fees for a religious school, there necessarily are (provided society is not religiously homogeneous) taxpayers who are obliged to support the upkeep of a religion they do not adhere to. Some may be indifferent to this, but many may feel that being forced to support alien religious practices is a violation of their conscience (Esbeck 1998, 18; Greenawalt 2008, 5). As Thomas Jefferson claimed: “To compel a man to furnish funds for the propagation of ideas he disbelieves and abhors is sinful and tyrannical” (Jefferson, “Memorial and Remonstrance” quoted in Brahm Levey 2009, 13). Adopting the no-aid position can thus prevent the state from imposing

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separation. Black thought that the New Jersey policy of paying for transportation to all children, including those going to religious school, was barely acceptable and very close to an illegitimate form of establishment of religion (Greenawalt, 2008, 42). Indeed, the dissenting minority based its argumentation on Black’s very notion of a high and impregnable wall of separation.
an unequal burden on the conscience of both nonbelievers and believers who have to support faiths with which they profoundly disagree.

However, the idea of a strict and complete separation based on the abstentionist conception of neutrality, if taken seriously, leads to some very undesirable practical implications. Applying the neutrality principle of no-aid at all to religious organizations in a consistent way is simply too harsh and unfair to religious organization and citizens.

To put this briefly, the abstentionist conception of religious neutrality has discriminatory effects since it requires denying religious citizens and organizations public benefits that should be provided to all regardless of their religious convictions. For instance, refusing, in the name of the no-aid principle of separation, to grant funding and tax-exemptions to religiously-based charity organizations, like popular soup kitchens and drug rehabilitation programs, while similar secular organizations receive those benefits amounts to an unfair exclusion on the basis of religion. This seems to be the result when we stick too closely to the metaphor of a high and impregnable wall of separation which should not suffer any breach.

There is no doubt that any principle of neutrality opposes direct funding for sectarian activities involving indoctrination into a particular faith or worshiping, hence the opposition to direct funding of sectarian schools. Such direct funding favours some religious groups in their capacity to pursue their sectarian goals and does indeed amount to using public funds directly for the pursuit of religious aims. However, the no-aid principle is also used to oppose measures that only indirectly support religious activities. For instance, the use of education vouchers to send one’s children to a religious school as well as programs paying for the transportation of kids to sectarian schools is said to amount to indirectly subsidizing the parents’ religious choices. The policies of remedial education consisting in sending publicly paid teachers to religious schools is said to indirectly relieve those schools of a financial burden thereby liberating resources that can
be dedicated to sectarian activities. All these measures are designed to give better access to quality education to low-income families, but since they are also available to those who choose religious schools, they are accused of indirectly redirecting tax-money coming out of the pockets of non-believers (or of believers of different faith) to subsidize religious activities.

It thus appears that the no-aid principle means that the separation between church and state has to be so complete that illegitimate forms of state support to religion not only includes direct funding of religious activities (like when the state directly pays a salary to clerics or funds religious schools) but also indirect support which consists in any state-funded measures that alleviate the fiscal burden of religious citizens and organizations so that additional resources can be used to pursue religious goals. If that is the case, then religious citizens should not be allowed to receive welfare payments or any kind of tax exemption, since they could use this money to buy Bibles and Korans or pay for religious services—or perhaps, in a less drastic way, their expenses should be monitored by the government to make sure they are not used for religious purposes. Of course, this is an equally unattractive consequence since it makes access to public benefits conditional on the abandonment of religious beliefs and practices. In the same way, religious buildings should be denied fire protection and access to publicly funded sewage systems, and the cost of these services should be entirely assumed by religious organizations.

The no-aid principle prevents the state from pursuing valid secular purposes if this somehow inadvertently benefits religion. Eisgruber and Sager denounce the absurdity of the no-aid principle: “the modern state seeks to accommodate the needs of handicapped persons; many handicapped persons are religious, and hence they may want to use state aid for religious purposes. If the state allows handicapped persons to do so, the state will, in effect, benefit religion” (Eisgruber and Sager 2007, 38); yet, it would be absurd to deny assistance to handicapped people who happen to be religious in order to avoid favouring a particular religion.
The only way to apply the no-aid principle of neutrality, if indirect aid counts as aid, is to completely deny religious citizens any access to publicly funded services, and this clearly is a form of secular bias denying equal opportunities to some on the basis of their religious choices. The view that there should be an absolute separation of state and religion is untenable.

Political secularists are committed to the view that there should be a separation of church and state to avoid the establishment of religion. However, this does not mean that they should embrace the strict separationist stance based on the abstentionist conception of neutrality. In fact, one can challenge that the no-aid principle is a principle of neutrality since in practice, it disfavours religion and privileges the non-religious. In Chapter 4, I will provide an alternative conception of separation and neutrality. I will claim that neutrality should be understood in terms of abstention from supporting religion, but in terms of non-discrimination. I will also claim that separation should not be approach through the no-aid principle but through a principle of public justification which claims that it is legitimate for the state enact laws which have the effect of supporting some religions if the goal is to pursue a valid secular goal (such as promoting non-discrimination). I will explain why this principle better reflects political secularism’s commitment to the ideal of equality of treatment and will spell out the practical implications of this more plausible understanding of neutrality and separation of church and state.

6. Secularism and the Demands of Citizenship: Religious Expressions in the Public Sphere
As we have seen, political secularism is a doctrine of institutional separation, rooted in either a strict or open conception of neutrality. But before turning in Chapter 4 to my exploration and defense of the open secularist option, and its alternative interpretation of neutrality as non-
discrimination, it is necessary to consider another aspect of political secularism on which strict
and open secularists often disagree.

I have claimed that one of the distinctive aspects of strict secularism is the strong
conception of institutional separation it puts forth by invoking the no-aid principle and the
abstentionist conception of neutrality. The other distinctive aspect of strict secularism rests on its
restrictive conception of the place of religious expressions in the public sphere. This strand of
secularism is inspired by the republican idea that a just society is only possible if citizens display
certain civic virtues and respect certain civic duties by privileging their role of citizens seeking
the common good over their religious allegiances. Strict secularism is thus also characterized by
the affirmation of demanding individual duties of religious restraint.

Here, strict secularism is associated with the view that the public sphere should remain
neutral and that religious expressions in the public sphere should be limited. To achieve this
neutrality, people should observe a duty of religious restraint and detach their public identity
from their private religious beliefs (Laborde 2008; Milot 2008). This does not necessarily mean
that religious expressions should be entirely concealed into the domestic sphere. First, proponents
of religious restraint in the public arena acknowledge that the freedom of expressing one’s
religious beliefs is important, and so try to limit the duty of restraint by suggesting we should
understand the notion of ‘public’ narrowly in the sense of what belongs to the state (as opposed
to places that are open and visible to all, like the street and commercial centers). Second,
obligations of religious restraint only apply to certain public functions, like the public roles of
citizen or of public servant, and only apply to the occupants of these roles when they perform
these roles. I will argue, however, that the obligations of religious restraint imposed by strict
secularists do seriously limit the freedom to express one’s religious beliefs. Moreover, I will
show that the arguments given by strict secularists to support duties of religious restraint, taken to
their logical conclusion, would impose burdens far beyond the narrow sphere of government officials and public servants.

In what follows, I present two kinds of obligations of religious restraint in the public sphere. I will first consider what Rawls calls the “duty of civility” (Rawls 1993, 217) and what Audi calls the principle of secular rationale (1989, 279; 2000, 86-87; 2011, 65-66). The duty of civility is the cornerstone of an ethics of citizenship which specify the “deliberative obligations of citizens” (Lafont 2009) and requires them to justify the political positions they advocate by reasons acceptable to all, hence not by religious reasons. Second, I will explain the case for a duty of neutral appearance which requires that public agents, and sometimes ordinary citizens, display no sign of their religious allegiance when entering the public sphere.

6.1 Public Justification and the Duty of Civility

In Political Liberalism, Rawls tackles the difficult problem of political legitimacy in pluralist societies where free and equal citizens embrace different religious, philosophical and metaphysical comprehensive worldviews. He claims that since political power is coercive in nature and the membership in political society is involuntary, political power is only legitimate if it can be justified by reasons that all free and equal citizens can reasonably accept. These reasons must be public in the sense that they are shared by all and understandable to all. Public reasons must thus draw on a strictly political conception of justice, one that is not formulated in the terms or justified by the truth of a particular worldview or conception of the good. A political

30 More precisely, as Rawls puts it, the liberal principle of legitimacy stipulates that “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.” Rawls, 1993, 137. See also Larmore, 1990, 349 who claims that the norm of equal respect implies that “to respect another person as an end is to insist that coercive or political principles be as justifiable to that person as they are to us”.

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conception of justice is based on the widely shared public culture of a democracy, the content of constitution and its traditional interpretations, not on the substantive values and metaphysical views on which people profoundly disagree – like the existence and nature of God, the meaning of life, and so on. Public reason is based on political values that are shared by nearly all citizens and excludes substantive ethical ideals and metaphysical notions over which there are disagreements.

In a democracy, political power is collectively exercised by free and equal citizens over one another. Therefore, when they advocate political positions and vote, citizens must support their views by offering other citizens proper political reasons that they can accept. Citizens of a democracy owe each other public justifications, that is “not simply valid reasoning, but argument addressed to others” (Rawls, 1997, 786). They must not simply appeal to the comprehensive worldview they personally adhere to but to considerations that others, who espouse different views about the meaning and value of life, can agree to. As Rawls puts it, citizens have a “duty of civility”, that is, a moral, not legal, duty to explain “how the principles and policies they advocate and vote for can be supported by the political values of public reason” (Rawls 1993, 217).

Rawls’s solution to the problem of legitimacy in pluralist societies is subtractive: in our public deliberation, we should exclude ideas and values on which we disagree and focus on what we share. Since religion is the locus of the most profound disagreement between citizens, public reasons are likely to be secular reasons, in the sense that they are not presented in religious terms and that their validity does not rest on the truth of a religious doctrine.31 Hence, the duty of civility is a duty of religious restraint in public deliberation which requires that citizens cannot

31 Public reasons are not coextensive with secular reasons if by “secular” we refer to doctrines that are non-religious but comprehensive like ethical secularism, atheism and secular humanism (Lafont 2007, 254) Here I use “secular” in the minimalist sense of what is areligious and free from references to any particular religion and therefore purely political.
justify their vote and political advocacy by appealing to controversial religious beliefs. Robert Audi proposes a similar duty of restraint in public deliberation. He puts a principle of secular rationale asserting that “one should not advocate or support any law or public policy that restricts human conduct unless one has, and is willing to offer, adequate secular reason for his advocacy or support” (Audi 1989, 279; 2000, 86). In addition, Audi proposes a principle of secular motivation, requiring that citizens must not only be able to offer a secular reason justifying the policies they support but that they also be genuinely motivated by this reason (Audi 1989, 284; 2000, 96). This second principle is necessary, according to Audi, to avoid situations in which religious citizens could instrumentalize secular reasons which they do not sincerely endorse to serve their religiously motivated political advocacy, thereby being dishonest and manipulating others.

The duty of civility seems to be quite restrictive given that for many believers, certain religious convictions have crucial political implications. Many religious citizens have strong political positions regarding abortion, assisted suicide, stem cell research, same-sex marriage and the teaching of the theory of evolution that are motivated by religious beliefs. Should their voice be completely silenced in order to comply with the demands of democratic citizenship? Neither Rawls nor Audi think so. Proponents of the duty of civility offer two reasons explaining why this duty is not too burdening for religious citizens engaged in political advocacy.

The first is that the requirement of legitimacy is consistent with letting citizens make religious arguments in support of policies under the condition that the same policies can be justified by public reason. In this way, “religious reasons are not excluded though their use is constrained by need for secular companions” (Audi 2011, 70). When he re-examined his view about the relation between public reason and religious beliefs, Rawls claimed that public reasoning “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” (Rawls 1997, 776). Thus, religious views can be voiced in public discussions, but they can only lead to effective legislation if they are followed by secular reasons with equivalent policy implications.

Second, the forum where strict observance of the duty of civility is required is limited and does not encompass all political conversations between citizens. Although he claimed that the duty of civility applied to every ordinary citizen “when they engage in political advocacy in the public forum” (Rawls 1993, 215), in “The idea of Public Reason Revisited”, Rawls proposed narrowing the forum in which the restrictions of the duty of civility apply to discussions in the ‘public political forum”, by which he means the discourse of judges in their decisions, of government officials and of candidates for public office (Rawls 1997, 768-769). In the same spirit, Habermas suggests that religious reasons may be introduced in political advocacy in the “informal public sphere”—newspapers, political talk shows, street demonstrations, town meetings, etc.—but that they should be translated into public reasons if they are to pass the institutional threshold of the formal public sphere including “parliaments, courts, ministries and administrations” (Habermas 2006, 9). Thus what Habermas calls the “institutional translation proviso” combines both the first and second strategies to open the door of public discourse to religious arguments: religious arguments supporting legal reforms can be made by ordinary citizens within the informal public forum provided they are translated into secular public reasons when entering the formal public sphere of state institutions.

The duty of civility therefore does not exclude religious voices from public deliberation, it only requires that religious arguments be accompanied by secular ones if they are to lead to political decisions and that they be excluded from the narrowly construed formal public sphere of government institutions. Yet this view still imposes a heavy burden on religious citizens. First,
they have to accept that the only reasons that have the justificatory force to translate a proposal into a legislative action are public secular reasons. Although it is permitted to introduce one’s religious beliefs in political deliberations is almost useless since the only effective political advocacy is secular political advocacy.\textsuperscript{32}

Second, in a representative democracy, the informal public sphere in which ordinary citizens deliberate and the formal public sphere of government officials’ deliberations and discourses are not impermeable and it is misleading to claim that the duty of civility can be kept within the boundaries of the latter. The strict requirement of public reason only applies above the institutional threshold of the formal public sphere because this is the level at which coercive political decisions are taken; beneath that threshold religious and other non-public considerations can be introduced in deliberation since they do not directly translate into effective legislation. However, ordinary citizens are sometimes directly involved in the decision-making process: this is the case when they vote in elections or referenda. Thus, even in “The Idea of Public Reason Revisited”, where he tries to lessen the grip of the duty of civility on ordinary citizens, Rawls claims that when voting, citizens must consider themselves as legislators to which the constraints of public reason apply (Rawls 1997, 769). Moreover, it is doubtful that elected officials can keep up with the requirement of the duty of civility if ordinary citizens do not when they deliberate in the public sphere and advocate for policy reform on the exclusive basis of religious reasons. My claim is that an ethos of civility—an environment in which it is both desirable and reasonably feasible to respect the duty of civility—is unlikely to exist within the parliament, inside the formal public sphere, if no such ethos of civility also exists outside, in the informal public sphere. It is not in the interest of elected officials, or of candidate for office, to ignore the demands and

\textsuperscript{32} Rawls nonetheless notes that one virtue of introducing religious beliefs in public discussions is that it can foster transparency and dismiss suspicions that one’s comprehensive doctrine is in fact at odds with the laws and policies advocated.
concerns of their constituency; they have to give in to at least some demands of their voters and they have to convince their constituents that they represent their interests if they do not want to be removed from office. Representative democracy puts incentives on elected officials to satisfy the demands of their constituency. Thus, when large numbers of ordinary citizens make religious arguments in the informal public sphere, elected officials inside the formal public sphere are under heavy pressure to make religiously inspired arguments and to vote for policy reform even if they do not have adequate public reasons to do so. Observance of the duty of civility inside the formal public sphere seems to depend on its observance in the informal public sphere. Defending the duty in the former forum commits us to defending its application in the latter.  

Many commentators claim that the duty of civility unduly limits the freedom of conscience of religious citizens and excludes valuable and legitimate religious contributions to public discourse (Weithman 2002; Wolstertorff 1997). In Chapter 4 I will assess this critique and claim that open conception of secularism should not abandon the duty of civility.

6.2 The Duty of Neutral Appearance in the Public Realm

Discussions about the place of religious arguments in public life have mainly generated debate in the American context. In Europe, especially in France, and since 2007 in Quebec, opposition to religious expressions in the public sphere have been mainly directed not at religious arguments but at the visibility of certain religious signs in the public sphere (construed either narrowly as public institutions or broadly as spaces open to all). I am inclined to believe that in the American context, the duty of civility is a secularist reaction to the risks posed by the influence on government of a majoritarian religious group (evangelical Christians), whereas reactions to the

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33 Boettcher puts forth a similar argument (2009, 225-226).
presence of religious signs in the public realm is mainly a secularist reaction to the arrival of new religious groups with practices which seem foreign and at odds with the ways of the historical ethnic and religious majority. This shapes the debate in a significant way; as we will see, the visibility of new religious signs such as headscarves and minarets have raised concerns about the integration of religious minorities formed by immigrant populations. In this section, I present two arguments for the imposition of a legal (not merely moral) duty of neutral appearance which places limits on visible expressions of religious beliefs (mainly in the form of clothing).

The first argument is grounded in the secularist requirement of state neutrality towards religion. As we have seen, secularism’s commitment to equality requires that the state show no preference for particular religions. Among the many practical implications of this commitment is the view that the state should be symbolically neutral: the state should refrain from sending the message that it approves of certain religions in order to avoid giving a higher symbolic status to members of these religions. Any public institution providing a public service must show an equal respect to the users of public services. This requires public services not only to make no discrimination on the basis of religion “but public services must also display outwards signs of neutrality: they must be seen to be neutral” (Laborde 2008, 48, Cf Bennett 1999, 686). For public services to display their neutrality, public agents must respect a duty of restraint (devoir de réserve) in the exercise of their official functions in order to remain impartial towards religion. This duty takes the form of a duty of neutral appearance requiring all public agents to refrain from manifesting any sign of religious allegiance (Baril 2011, 45-46; Rocher 2011, 26; Guérard 2005, 59-60; Picard 2002, 6; Pena-Ruiz 2003, 101).

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34 Certain strict secularists claim that the duty of neutral appearance should only be observed by those who enter in contact with the public, but Rocher goes as far as suggesting that even public functionaries who work in offices and do not enter with the public (government accountants, secretaries and so on) should respect the duty of neutral appearances (2011, 27-28).
Religious clothes are particularly problematic from this point of view, as they can be considered a means of communication which expresses religious values and allegiances: they amount to a non-verbal religious discourse (Baril 2011, 47). In addition, religious symbols can be interpreted in different ways by different people. In the eyes of nonbelievers or of adherents of different faiths, the religious symbolism of a piece of clothing worn by a state agent can be interpreted as a bias. For instance, as Fred Bennett remarks, “would a feminist demonstrating in support of the right to free choice in abortion have the impression of impartial justice if the police officer sent to protect such a demonstration from a counter-demonstration from anti-choice advocates were wearing a visible symbol of the Roman Catholic Church?” The duty of neutral appearance does not extend to users of public services, as this would overly restrict their freedom of religion (Guérard 2005, 58). However, for proponents, the goal of displaying religious neutrality overrides the religious freedom of public agents so that each employee in public schools, post offices, public transportation and so forth, must respect the duty of neutral appearance because they embody and represent the state in front of ordinary citizens (Picard 2002, 6). Just as public buildings must show no sign of allegiance to a religion, so must public functionaries be neutral in their appearance (Rocher 2011, 26).

Many proponents of strict secularism embrace the view that state agents are not the only recipients of the duty of neutral appearance. They claim that users of public services may also have to observe religious restraint. Thus, for many French secularists, school pupils also have to respect a duty of religious restraint in order to maintain the neutral character of the public school and this duty is a legal one since the adoption of the 2004 ban of ostentatious religious signs in public schools. But school pupils do not represent the state as teachers do, so why should they submit to the same duty of neutral appearance that public agents have to respect? Why do other public service users not have the same legal obligation of neutral appearance when entering post
offices and hospitals? As we have seen, the public school is conceived by French republican thinkers as a special sanctuary, a “republican sanctuary” to take the words of President Jacques Chirac (quoted in Bowen 2007, 158), which must provide a neutral common space absolutely exempt from religious signs for two reasons. Public schools have the mission to develop the critical judgment of individuals whose rational autonomy is not yet fully constituted. This requires that pupils not be exposed to conspicuous religious signs. Religious signs displayed by both teachers and other students are undue religious pressures, and are viewed by strict secularists as non-verbal means of proselytism (Kintzler 2007, 55; Pena-Ruiz 2003, 105-106; Baril 2011, 47). Thus, within public schools, everyone must respect the duty of neutral appearance so that the school may fulfil its function. Moreover, since attendance at school is mandatory, exposure to religious signs within the school is viewed as forced exposure. As Kintzler explains, the neutrality of the public school requires that “no parents must be in position to complain that their children have been forced to be exposed to a religious manifestation of which they disapprove” (2007, 55).

However, this reasoning hardly justifies that school pupils should be the only users of public services to observe a duty of restraint. The argument for the unique character of public schools is based on the fact that its users are vulnerable to religious pressures (their critical judgment is not fully developed yet) and that contact with others who might display religious signs is unchosen: it can’t be avoided since attendance is mandatory. But infants and teenagers do use other public services than public schools. They go to hospitals, postal offices, city halls, use public transportation, go to public libraries and sometimes to passport offices and other public administration offices with their parents. Moreover, the state exercises a monopoly (at least in several countries) in those areas so that it is impossible for parents who would like to isolate their children from religious manifestations they disapprove of to associate with like-minded families.
for the delivery of those services. In all these public places, children are subjected to ostentatious religious manifestations on the part of other public services users. If ostentatious religious signs do indeed exercise an overly proselytizing pressure on children and if children should indeed not be subjected to those pressures, it is hard to maintain that the public school is the only place where users should observe the duty of neutral appearance. Strict secularists’ defence of the limited scope of application of the duty of neutral appearance is unstable.

A second reason put forth by strict secularists to defend the duty of neutral appearance in the public sphere is based on the fear of communalism (*communautarisme*). Communalism “is the closing in of ethnically [or religiously] defined communities on themselves (...) and the refusal of integration” (Bowen 2007, 156). Many strict secularists view the manifestation of religious signs in the public sphere as an affirmation of the primacy of religious devotion over a civic allegiance to common citizenship. These affirmations are socially divisive since they focus on what separates distinct communities within society to the detriment of the expression of a common civic identity and they express the interests of factions rather than a commitment to the common good. They raise the threat of the fragmentation of a common space in which every citizen can recognize one another as members of a society based on a shared civic identity and shared civic values (Pena-Ruiz 2003, 71; Schnapper, 2004). To avoid fragmentation between different religious groups, strict secularists maintain that the public sphere should be neutral. Yet, the neutrality of the public sphere is sometimes associated with something more demanding than the respect by the state and its agents of a duty of symbolical neutrality. The notion of a neutral public sphere is at times associated with the idea of a common space in which everyone enters as a bare citizen and gets rid of any particularistic marker of identity (Kintzler, Pena-Ruiz). Integration to public life is a process of abstraction; individuals are recognized qua citizens by the state and by other citizens. Manifesting one’s religious allegiance undermines this process.
However, the practical implications of this argument are often not spelled out clearly by strict secularists. For instance, Pena-Ruiz repeats many times that one of the goals of secularism is to create a “common public space” that should not be “pluriconfessional” and should remain neutral (Pena-Ruiz 2005, 2003, 151), but he remains vague when comes the time to explain what this means in practice. On one hand, he claims that religious and cultural manifestations that do not violate human rights should be tolerated in the public sphere (2003, 178), but on the other hand he claims that expressions of religious beliefs in the public sphere undermine social integration by causing its fragmentation (morcellement) (2003, 79,129) and that social integration requires a public space from which differences are as much as possible removed (ibid, 193).

Thus, strict secularism’s defence of the duty of neutral appearance plays on a back-and-forth between two ideas of neutrality. One the one hand, state neutrality is affirmed as a principle requiring that the state show no favour to particular religions or to religion over non-religion, hence the need for state agents to respect a duty of neutral appearance. On the other hand, strict secularists sometimes invoke the risk of social fragmentation to jump from this view of neutrality, in which the subject of neutrality is government, to a view requiring that the public space itself be the subject of neutrality. Hence the claim that the state should create “a common civic space exempt from all religious expressions and refuse any religious exception to the application of laws, this is an essential condition of the reinforcement of social cohesion and democratic life” (Mouvement laïque québécois 2010). Pena-Ruiz claims that state neutrality is a foundational principle of secularism (alongside freedom of conscience and equality), but sometimes, when enumerating those foundational principles, he replaces state neutrality with the creation of a “universal public sphere”, which is French republican code for “a public space in
which differences have been removed”.\textsuperscript{35} Although state neutrality might require a limited duty of neutral appearance (only to public agents), the notion of a neutral public sphere implies a far-reaching duty of neutral appearance to anyone entering the public space.

Strict secularists often raise the threat of social fragmentation and the need for common public spaces in which everyone displays, in attitude and appearance, the primacy of civic allegiance over particularistic allegiances. Yet, they do not specify which public spaces should be protected against communalist fragmentation. Surely, they do not mean that religious expressions should be entirely banned from parks, streets and the subway system. But should they be banned from all public services (hospitals, post offices and administrative buildings) or only in properly political public spaces where citizens express themselves qua citizens and engage in political advocacy?

Nonetheless, one thing is certain, the argument of the risk of fragmentation is used to justify the application of the duty of neutral appearance to school pupils. But it is again not clear why the scope of application of this duty should be limited to this context if we accept the premise. Public schools are presented as miniature communities of citizens in which pupils learn the virtues of citizenship; as such it should be a space where pupils learn to be dedicated to the common good (Kintzler 1990; Pena-Ruiz 2005, 285; 2003). The right to express one’s religious beliefs in a visible manner (through one’s clothing for instance) is denied to pupils on the ground that such religious manifestations are detrimental to the exercise of virtuous citizenship since they are socially divisive and express the primacy of an allegiance to a particular religious group over the research of the common good. But if expressions of religious beliefs have to be restricted because they raise the danger of communalism in the miniature community of citizens of a

\textsuperscript{35} The “universal” for French republicans refers to the “abstraction” of the citizen. All citizens are equal \textit{qua} citizens, there are equals in what they all have in common, their status of citizen, trating each other as equals requires that we abstract from what distinguishes us from one another (Kintzler).
school, why shouldn’t they also be restricted in the larger community of citizens, in all the places where citizens gather to discuss the common good such as political demonstrations, town meetings, public consultations of citizens and so on? Once again, the restriction of the duty of neutral appearance to the pupils of public schools is unstable.

**Conclusion**

In this chapter I have tried to give a general account of secularism as a normative model of governance of religious diversity and to present a particular version of secularism, that is, strict secularism. I have first made a number of preliminary distinctions. I have argued that secularism is not in itself an intrinsic value to which we can appeal to justify restrictions of religious expressions in the public sphere. Secularism is rather an institutional device to achieve freedom of conscience, equality and peaceful coexistence in pluralist societies. Moreover, secularism is not a model of governance of religious pluralism which only exists in France. I have also claimed that we must carefully distinguish ethical secularism from political secularism and that among the varieties of political secularism, we should distinguish perfectionist from non-perfectionist forms of secularism. My discussion has focussed on non-perfectionist forms of secularism.

In the second part, I have claimed that what distinguishes secularism from other modes of governance of religious diversity is that secularism pursues the goals of promoting freedom of conscience and equality by affirming the institutional separation between state and religion. Not only do secular states refrain from enforcing religious orthodoxy and to respect their citizens’ freedom of conscience (first threshold of separation), they also refrain from establishing religion (second threshold). I have claimed that strict secularism is characterized by a strong and very demanding conception of separation between state and religion. For proponents of strict
secularism, separation has two dimensions. First strict secularism affirms that there must be a sharp institutional separation between state and religion; the state must observe a no-aid principle of separation and abstain from supporting any religious group. Second, separation requires keeping religion out of the public sphere (it requires the privatization of religious expressions) and this in turn entails that individuals must observe two duties of religious restraint. They must observe a restrictive duty of civility and refrain from proposing exclusively religious arguments when entering political debates and they must observe a duty of neutral appearance when using public services or when occupying an official public function. I have raised doubts regarding the plausibility of the no-aid principle and have argued that duties of religious restraint put forth by strict secularists are in fact more demanding than strict secularists would like to admit they are. In the next chapters, I provide additional grounds for rejecting strict secularism.
CHAPTER 3: RELIGIOUS INSTITUTIONAL PLURALISM

The reaffirmation of secularism as a strict and rigid separation between the religious and the public sphere is one of the main responses to the new predicament of religious pluralism. However, in light of the new dynamics of religious pluralism Western democracies in the 21st century, many are now questioning the relevance of secularism as a mode of governance of religious diversity and its capacity to promote equality, freedom of religion and social unity. As we discussed in the introduction, religious diversity has been boosted in the last few decades by the arrival of immigrants with new religious identities that fall outside the scope of the traditional Catholic/Protestant/Jewish divide that has more traditionally characterized religious diversity in the West. Proponents of religious institutional pluralism claim that the discourse on secularism blocks the accommodation of new forms of religious diversity emerging from the process of immigration and that the institutional separation of state and religion is not adapted to the new circumstances of religious pluralism.

Western democracies have been relatively successful at implementing multiculturalist policies to protect immigrant groups against discrimination based on race and ethnicity and to accommodate the public identities of ethnocultural groups in order to promote their integration to the host society.36 However, demands for the recognition of the religious identities of immigrant groups have been met with a far greater hostility from large segments of host societies (Modood 2010, 4; Modood and Kastoryano 2006). The public character of immigrants’ claims based on

36 This claim is controversial. Several commentators assert that multiculturalism has failed and that we are witnessing, for approximately the last decade, the “retreat of multiculturalism” and the “return to assimilation” (Joppke 2004; Brubaker 2001; Scheffer 2011). For a critical analysis of those assertion of the “failure of multiculturalism” and for a more optimistic assessment of both the success and endurance of policies of multiculturalism, see Banting and Kymlicka 2010; Kymlicka 2010.
religion is said to violate the separation between the public and the private at the heart of secularism. This resistance to the public recognition of immigrants’ religious identities are based on one or more of the meanings of secularism discussed in the previous chapter (secularism as an intrinsic value, as a component of national identity, perfectionist secularism, secularism as strict institutional separation and with a duty of restraint in the public sphere). According to this answer to religious pluralism, the equality between adherents to different faiths requires the state to abstain from recognizing religious identities and requires that citizens refrain from expressing their religious views in the public sphere.

In this chapter, I examine an alternative approach to the new religious diversity which is based on a complete rejection of separationist secularism. Although this approach affirms that the state should be secular in a broad sense (it should meet the first threshold of secularization of state institution by which freedom of conscience is guaranteed and state coercion is removed from religious affairs), it denies that the state should refrain from recognizing and supporting religion and claims that it should instead recognize and support them all equally, in an even-handed manner. In a sense, this view advocates for an inclusive plural “establishment” of all faiths and for greater cooperation between state institutions and organized religions. Tariq Modood and Veit Bader are the most prominent proponents of this alternative to strict secularism. Modood calls this approach to religious diversity “pluralistic institutional integration” and Bader calls it “religious institutional pluralism” (Modood 2007, 78; 2010; 2009a, 180, Modood and Kastoryano 2006; Bader 2007, 186; 2003). Religious institutional pluralism is a mode of governance of religious diversity in which the state seeks to achieve equality and freedom of religion by officially recognizing, supporting and collaborating with all religions constituted as corporate bodies which take part different public tasks such as political representation and the provision of social services.
In this chapter, I assess the main arguments in support of religious institutional pluralism. In the first section I briefly sketch the general features of institutional pluralism. I do not provide detailed examples of the various political arrangements that count as institutional pluralism, focusing instead on the normative arguments for preferring this approach over separatist secularism. The second section presents the main argument which Bader and Modood advance for supporting institutional pluralism and rejecting secularism, an argument I will call the contextualist argument. It consists of affirming that the strict secularist insistence on the privatization of religion is unfair to new religious minorities since in practice Western states give many privileges to longer-established religious groups. The ideological discourse of secularism masks this reality and prevents states from treating new religious minorities on a par with established Judeo-Christian religious groups, and the contextualist argument contends that the privileges of those groups should be extended to new religious groups. However, it is not clear why we should multiply the privileges granted to religious groups instead of simply opting for disestablishing longer-established religious groups. Proponents of institutional pluralism have raised some arguments in favour of antidisestablishmentarianism but they have not been subjected to a thorough critical examination, which I propose to do in third section of this chapter, where I examine various arguments proposed to explain why official recognition and support of religious organizations is either desirable or required by justice. These arguments are built on the political relevance of religious identities, the recognition of religion as a public good, the secularist bias towards nonreligious public institutions and the right to educational choice of parents.

37 Bader distinguishes (i) weak constitutional establishment with administrative and political pluralism, (ii) plural constitutional establishment with legal, administrative and political pluralism, and (iii) non-constitutional institutional pluralism with legal, political and administrative pluralism; he claims that this latter category can be the form of structural pluralism or associative democracy (which he favours over other forms of institutional pluralism) (Bader 2003b, 269-272; 2007, 203, 208-209).
1. Religion and Institutional Pluralism

Strict secularism requires the privatization of religion. It allows for religious pluralism to flourish in civil society; religious groups are free to associate and worship together, to build churches, mosques and synagogues, to set up private parochial schools where religion is taught and to manifest their convictions everywhere outside public institutions. But strict secularism maintains that this religious pluralism in civil society should not spill over into government institutions; alongside civil society, there should be a public sphere which does not reflect religious cleavages. Institutional pluralism challenges this claim. Its central idea is that *religious pluralism should be entrenched within public institutions*. It is a form of corporatist governance of religious diversity in which specific bodies or organizations are officially recognized as the corporate representatives of religious groups and play key roles in the process of political representation and in the delivery of social services.

According to Bader, religious institutional pluralism is based on two core elements. First, religious groups are formally recognized and their representatives are integrated into the “political process of problem definition, deliberation, decision-alternatives and decision-making, implementation and control” (Bader 2007, 186, 2003b 69). To properly give a voice to the plurality of religious groups, institutional pluralism goes beyond the process of mobilization, influence and lobbying of religious groups within civil society and seeks to establish official channels to give religious groups a more direct input into decision-making. Second, institutional pluralism requires a fair amount of decentralization and devaluation to religious organization. Religious associations are to form partnerships with the government to achieve social goals. In a scheme of institutional pluralism, the state grants religious organizations various powers to administer and run facilities providing social services in the areas of education, healthcare and other kinds of care. Religious organizations can thus receive public funds to set up their own
institutions and provide religiously oriented schools but also to organize religiously oriented
social programs such as drug treatment and criminal rehabilitation, care for the elderly, housing
and nutrition for low-income people, daycare for infants. Social services are thus provided by
self-governing religious organizations so that different contents and styles of social services are
delivered in accordance with the sensibilities and inclinations of adherents of a broad variety of
conceptions of the good life (Bader 2007, 189). Of course, institutional pluralists assert that the
funding of faith-based social services providers is only legitimate provided that secular
alternatives for those services is available alongside religious (Bader 2007, Tomasi 2004, 323).
Institutional pluralism aims at establishing a society which treats all citizens equally, both the
religious and the nonbeliever, not at establishing a multi-faith theocracy.

In this sense, the core elements of the “compassionate conservativism” advocated (and
partially implemented) by George W. Bush during his presidency are consistent with institutional
pluralism since the basic idea was to redirect tax dollars to charities and religious institutions so
that people could received services through religious (and secular) non-governmental
organizations rather than directly through governmental institutions (Olasky 1992, Tomasi 2004).
But the main real-world examples from which institutional pluralism draws institutionalize
pluralism on much larger scale. It is the system of “pillarization” adopted by the Netherlands (and
to a lesser extent by Belgium) from the last quarter of 19th century until its decline during the
1970s. Pillarization emerged as a solution to diffuse the tensions between different religious

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38 People on the left may object to this proposal of institutional pluralism in the delivery of social services by
claiming that it is a form of privatization of social services which applies the neoliberal logic of dismantling the
welfare state and shrinking the size of government. This is however misleading, the proposal only shifts the
production of public goods and services from governmental organizations to private providers, but the financing of
social services is not privatized and remains public. Services are financed through collective taxation not through
individuals’ decisions to purchase goods and services (Moore 2003, 1214; Cf Donahue 1989, 131). This form of
“contracting out” may reduce the size of the government in the sense that the number of government employees
decreases, but it does not shrink the size of public expenditures; the requirement to offer both secular and religious
alternatives (from all denominations) may even increase government spending (Tomasi 2004).
groups and emancipate religious minorities (in Netherlands, the Catholics) from domination by a religious majority. It consists of the vertical fragmentation of society according to religious or ideological lines. Such fragmentation allows each group, each pillar of society, to have its own institutions reflecting its own ideological convictions and affiliations.

In Netherlands, Catholics, Protestants and secular liberals or socialists, formed the three pillars. Pillarization grants different social groups a form of collective autonomy distinct from the territorial autonomy granted through self-government rights to national minorities in a multinational federation. Pillars form ideological groups which are not geographically based and do not exercise self-government, but they retain the power to create their own organizations and maintain parallel institutions in a way that enables each of them to fashion their own social world. Stability is maintained by a consociational arrangement in which the leaders of each pillar cooperate at the political level and seek to achieve consensus (Lijphart 1977). In a pillarized society, there is an entanglement of religious or ideological worldviews and far-reaching social organizations, so that each citizen can live in an environment shaped by his own worldview despite the presence of a multiplicity of competing worldviews in society. For instance, in the Netherlands, before the decline of the pillar system, “each pillar not only had its own ideologically sensitive organizations (e.g. a political party, a youth movement, schools, a newspaper, libraries and a broadcasting company), they also established many organizations and institutions with purely secular functions (e.g. hospitals, sports clubs, housing associations, insurance companies and even animal protection societies and associations of stamp collectors)” (Spiecker and Steutel 2001, 294-295). Some of those organizations were fully state-funded (schools, hospitals), others only partly (broadcasting corporations).

Bader claims that the pillarization system is a more radical form of institutional pluralism than the one he supports. However, the only noticeable difference is that Bader claims that his
model of associative democracy allows not only the leaders of religious communities to sit at the negotiation table (as in the consociational democratic arrangement of the pillarized Netherlands), but it also institutionalizes the representation of minorities within religious communities (Bader 2007, 220). He also claims that official representation for religious groups will lessen the demand for religious communal political parties (*Ibid.* 252). But he still argues for a form of corporate representation of religious groups and he argues that publicly funded social services and associative life are better if vertically segmented along religious and communal lines. Institutional pluralism follows the logic of creating a distinct pillar for each ethnoreligious group in society. Modood is not inspired by the Dutch pillarization model; he is more concerned with pluralizing the current religious establishment existing in the United Kingdom which favours Christians over other religious groups. Yet, his proposals go far in the direction of institutional pluralism as he strongly defends the idea that the state should support and cooperate with religious organizations so that they can fulfill tasks related to corporate political representation and the delivery of religiously based social services (Modood 2010).

2. A Contextualist Argument for Institutional Pluralism

Proponents of institutional pluralism such as Bader and Modood base their case on a trenchant critique of secularism as strict separation. Both Bader and Modood reject militant perfectionist secularism as being ideological: it promotes a sectarian conception of the good. But they also claim that non-perfectionist political strict secularism is ideological, but in a different sense. The strict doctrine of institutional separation (the prohibition of aiding or discouraging religion) might be neutral to all religious groups in the abstract; in theory, a state that neither support nor officially endorse any single religion cannot be accused of privileging certain religious groups
over the others. However, in practice all Western states give some privileges and support to old established religious groups (mainly Christian, but also to some Jewish groups), yet they quite often deny the same privileges to new religious minorities such as Hindus, Muslims and Sikhs on the very basis that there should be a separation between state and religion (Bader, 1999; 2003c; 2007, 135; Modood 2007; 2010).

According to Bader and Modood, we can find some form of cooperation between state and religion which characterizes institutional pluralism in all Western states. England established the Anglican Church as its official church and reserves seats for its representatives in the House of Lords; many states consider some religious organizations as official interlocutors and consult them on various issues (e.g. Germany, Belgium); almost all Western countries subsidize completely (as in the Netherlands for instance) or partly (e.g. France, Britain and certain Canadian provinces39) the religious schools of some religions; certain countries have adopted blasphemy laws which protect certain religious groups from hate speech and offensive speech (e.g. Australia; Britain abandoned its blasphemy law in 2008 to replace it with a law against racially or religiously based hate speech); nearly all states give tax exemptions to some churches; and, in all countries, faith-based organizations providing social services receive various benefits (tax exemptions, direct funding) (Bader 2007, 54-62; Modood 2007, 73-77; Modood and Kastoryano 2006, 164-166). Bader says we should consequently assert that strict secularism as complete separation is a myth (Bader 1999, 693-604).

Western states are, according to Bader and Modood, only secular in the broad sense I identified in the first chapter: they meet a first threshold of separation by respecting negative religious freedoms and removing political power from the hands of religious authorities, but they

39 Five provinces finance private schools, including religious schools: Quebec, Saskatchewan, Alberta, Manitoba and British-Columbia (Landry 2009, 24).
do not avoid cooperating with religious groups and they sometimes actively support them. Those states are only “moderately” secular in the words of Modood (2007, 73; 2009a; 2010).

The actual patterns of governance of religious diversity have been shaped over the centuries by various institutional compromises by which secular states have granted privileges to the religious groups dominant at the time in order to achieve stability and avoid conflicts between church and state or between different churches. This reading of the genealogy of the actual practices of real world political secularism, as being driven more by pragmatic compromises and negotiations with religious groups than by the application of an ideal of neutrality as separation, is quite plausible. For instance, the provision included in the French law of separation of 1905 which requires the state to pay for the maintenance of religious buildings built before 1905 was adopted in order to appease the Roman Catholic Church, who initially opposed the 1905 law, and to end years of antagonism between the “two Frances”, between anticlericalist republican elites inspired by the enlightenment ideals of 1789 and reactionary church authorities. The pillarization system was adopted in both Belgium and Netherlands as a pragmatic solution to end the destructive conflicts between Catholics, Protestants and secular liberals which plagued these societies in the late 19th century.

There are several forms of state-church cooperation in Western countries and these result from the diverse histories of institutional compromises specific to each national context. The problem that Modood and Bader acutely highlight is that those compromises have been granted to old religious groups and are not extended to new religious minorities. Now that the religious diversity landscape has deeply changed due to immigration (and new religious movements) Western states are paralysed by a widespread secularist ideology which is blind to the reality of the state-church relationship and prevents, in the name of separation between state and religion, any flexibility or initiative to accommodate new religious minorities. This creates an unfair
situation in which old minorities are recognized and supported in several ways while new groups are denied equivalent privileges. We cannot take a difference-blind or hands-off approach to the new religious pluralism since we do not respect hands-offness in the case of Christian groups. Fairness requires us to take an even-handed approach and to extend the institutional compromises enjoyed by longer-established religious groups to new religious minorities (Modood 2007, 78, 2009a, 170, 180; 2009b; Bader 2007, 134-135, 153-173, 2003b). For instance, in the context of Britain, Modood argues that Muslims should be given the same privileges that the Christian majority enjoys. He maintains that Muslims should receive funding for their religious schools on an equal footing with Catholics and Protestants (2009a), and he embraces the recommendation of the Royal Commission on the Reformation of the House of Lords, according to which religious representation in the upper chamber should be maintained but extended to non-Anglicans and non-Christians (Modood 2010, 7; Cf Royal Commission on the Reformation of the House of Lords 2000). Before the laws protecting Christianity against blasphemy were repealed, he claimed that they should be interpreted to also protect Muslims against blasphemy and hate speech (2005, 148).

What the contextualist argument for institutional pluralism shows is that there is a lack of “relational neutrality” (Bader 2007, 82-83) between old and new religious groups. New religious minorities are unequal vis-à-vis older religious groups: they don’t enjoy the same level of state support and endorsement as Christian groups. Yet this relational conception of equality does not automatically support the extension of existing privileges to newer groups rather than eliminating state support to religion altogether (as secularists would have it) (Laegaard 2008, 165). Secularists can surely point out that the empirical description of current modes of governance of religious pluralism provided by Bader and Modood is just a blatant illustration of the injustices created by the establishment of religion. Starting with Modood and Bader’s own premises (de
facto non-complete separation and normative relational neutrality), they could as well claim that although weak establishment may have been benign in predominantly Judeo-Christian societies, under the new religious pluralism, this status quo is untenable and we should disestablish religion once and for all. After all, what Modood and Bader condemn is the use of ideological secularism to justify the (unjust) statu quo in which weak establishment of old religious groups is maintained while demands for accommodation and recognition of newer minorities are turned down in the name of the secular character of society. The contextualist argument in itself provides no grounds to reject the potential use of normative political secularism to oppose the privileges of old religious groups.

One may reject the disestablishment option on the ground that we face a path-dependency issue: our current options are limited by our past decisions in the sense that it would be politically impossible to remove already acquired establishment privileges of the religious majority given the potential resistance that would presumably oppose such a proposal. But I don’t think we should embrace antidisestablishmentarianism so quickly on the sole ground of this feasibility concern. First, there is, especially since September 11 2001, a strong nativist and islamophobic opposition in every Western country to the pluralisation of religious establishment and the accommodation of the new Muslim religious minorities. Pluralist integration might well be as controversial as disestablishment, especially in strongly secularized societies like those of northern Europe (where disestablishment may in fact please a large population of atheists and

40 This is in fact what certain secularists claim. In Britain, for instance, the National Secular Society advocates for the complete disestablishment of the Anglican Church and of religion in general. Their main goal is disestablishment and they claim that “it is now time for the Bishops to be completely removed from the House of Lords. It is also vitally important that the reformed Second Chamber should not have any specific religious representation whether ex-officio or appointed, whether of Christian denominations or any other faiths. The presence of religious leaders amounts to double representation of religious interests as many temporal peers already identify themselves as being religiously motivated”. They also advocate for the complete withdrawal of public funding to faith schools. http://www.secularism.org.uk/campaigns.html, see also in Canada the position of the Mouvement laïque québécois http://www.mlq.qc.ca/cite-laique/numero-4/abolition-financement/.
agnostics) or in societies where the level of establishment of religious groups is fairly low (as in the United States where it is mostly symbolic). Secondly, disestablishment and secularization of public institutions has occurred in many places without being met by fierce opposition by long-established religious groups. For instance, in the Netherlands the de-pillarization of society which occurred during the 1970s wasn’t and hasn’t been met with opposition by the Dutch population. In fact, de-pillarization occurred rather smoothly as the differences between the ways of life and values of each pillar faded away and as different denominational organizations like unions, newspapers and social clubs merged into ideologically neutral associations or disappeared due to declining membership (Spiecker and Steutel 2001, 295).

This was a rather bottom-up process, but disestablishment can occur smoothly even when it is mandated by public authorities in a top-down manner. The recent secularization of Quebec’s public school system is a good example. Quebec schools provided either Catholic or Protestant teaching (or a course on secular ethics) in public schools until the government decided to stop religious teaching in public schools in 1999 and replace religious courses with a course on deliberative ethics, education to citizenship and religious diversity which was implemented in 2008 (Bégin 2008, Leroux 2007). The new course generates harsh criticism: it is opposed by radical perfectionist secularists who claim it still offers too much religion in public schools (it teaches the religious phenomenon as a social fact) and also by conservative Catholics who claim that the course promotes relativism by exposing pupils to various spiritual traditions (Quérin 2009). However, no one argues for the return of confessional teaching within the public school: hardcore secularists want total expulsion of religious references from the curriculum and conservative Catholics want their children exempted from the new course of citizenship education. Disestablishment is, at least in certain circumstances, possible. It is therefore
necessary to explore why positive recognition and support of religious organizations is more desirable than disestablishment.

3. Antidisestablishmentarianism and Positive Support for Religion

In this section, I examine various arguments which propose that disestablishment is mistaken from a normative point of view. These arguments try to demonstrate that positive recognition of religion or support for religious organizations is either beneficial to society as a whole or required by justice considerations. I start by examining the political relevance of religious identity argument which claims that the hands-off approach to religion proposed by strict secularists is blind to the many harms that can result from the misrecognition of religious identities. I then turn to an argument based on the view that religion is a public good that the state should assist in achieving. Third, I examine the claim that the state has a positive duty to support religious communities in their efforts to create parallel institutions for the delivery of public services in order to avoid the discrimination members of these communities face in receiving services from public institutions which display a secularist bias. Finally, I evaluate the idea that the right to educational choice entails a positive duty for the government to sponsor religious schools.

3.1 Recognition and the Political Relevance of Religious Identity

One powerful reason to reject the option of a religion-blind state is that religion is an important aspect of people’s identity, alongside race, ethnicity and gender (Modood 2010, 9; 2007). People represent themselves as members of organized religions: they value this allegiance and take pride in it; moreover, their sense of who they are as well as their self-esteem is at least partly based on such identification with a larger community. Furthermore, people are viewed by others as
members of religious groups; others’ attitudes toward them are guided by various assumptions regarding the values, traits, habits, beliefs and dispositions they presumably share with the larger religious group to which they belong. Religion is as politically relevant as ethnicity, race or gender simply because it is the locus of valued collective identities, just as ethnicity, race and gender.

We can especially appreciate the political relevance of religious identity in relation to religious minorities. As theorists of the politics of identity have shown, people can be harmed if they are misrecognized (Taylor, 1992, 36; Young 1990; Honneth, 1995, 131-139). People can suffer identity-related prejudices if others propagate an image of them which is demeaning and represents them as inferior or intrinsically vile. The internalization of such an image can result in an individual’s loss of self-esteem and cause the adoption of a disappointing and disempowering self-representation. This kind of prejudice can also be caused indirectly when one’s identity group is stigmatized by others: “individual dignity and self-respect require that groups, membership of which contributes to one’s sense of identity, be generally respected and not be made a subject of ridicule, hatred, discrimination, or persecution” (Margalit and Raz 1990, 449). Equality of respect requires that we fight these patterns of misrecognition. Most religious minorities are vulnerable to misrecognition and stigmatization of their identity by majority groups. They are viewed from an orientalist viewpoint as having strange, premodern and obscurantist convictions and practices; they are the target of suspicion regarding their loyalty to the larger society and their endorsement of core values of liberal democracy, and they are seen as being as more fundamentalist and radical than religious majorities (Helly 2010).

Muslims are particularly the target of such stereotypes, especially in the last decade. For instance, a recent Pew survey shows that more than 40% of the non-muslims in Britain, the United States, France, Germany and Spain view Muslims as fanatical (it reaches 68% and 80% in
Germany and Spain respectively) and a slightly lower number consider Muslims as violent (Pew Global Attitude Project 2011, 26); other surveys in the last five years also showed that between 30% and 50% of the non-Muslims in those countries display hostility towards Muslims (Pew Global Attitude Survey 2008).

In light of the principle of equality of respect, the fact that religious minorities are vulnerable to stigmatization requires that government take religious identity into account. But does it require us to adopt the full range of measures proposed by institutional pluralism? As Modood claims, it certainly requires strong anti-discrimination laws in relation to religion and the extension of provisions against hate speech to cover not only racially-based hatreds but also religiously-based hate speech. It also requires that the protection offered by these laws do not merely cover older and longer-established religions (Modood 2009a). The problem of the stigmatization of the identity of religious minorities also suggests that we should embrace a whole set of initiatives design to attack the disrespectful and damaging stereotypes which proliferate in the ambient culture. These measures may include, for instance, the reworking of the mandatory school curriculum to include works from the members of religious minorities, education about the traditions, beliefs and practices of religious minorities and sensitisation to the issue of stigmatization of religious identities. They may also include efforts to increase the visibility of minority religions in the national media with the addition of shows more representative of the actual religious diversity of society (Modood 2007, 84). But these measures alone, despite the political relevance of religious identity, do not require that we embrace the core elements of institutional pluralism. Rather, they suggest that we make common institutions more proactive in the promotion of respect for religious diversity in much the same way that traditional policies of liberal multiculturalism targeted at immigrant groups promoted the respect of racial, ethnic and cultural diversity in order to remove barriers to their full participation in society.
(Kymlicka 2007b; Banting and Kymlicka 2010). These policies aim primarily at the integration of immigrant groups to common institutions rather than at aiding groups in setting up their own separate institutions.

Nonetheless, the claim that religious identities matter and should not be ignored by government can be connected to the core elements of religious institutional pluralism. This claim gives legitimacy to governments’ efforts to find a way to enhance the political representation of religious minorities. Vulnerable minorities need to have channels to voice their concerns regarding demeaning attitudes and stigmatization propagated by the larger society and to, at least, be consulted regarding anti-stigmatization strategies. Opposing government’s collaboration with religious organizations in the agenda-setting and decision-making processes in the name of strict separation seems to be counterproductive if we are concerned with remedying a lack of respect towards religious minorities.\(^{41}\) However, the argument of the political relevance of religious identity tells us almost nothing regarding the form that political representation of religions should take. For example, it does not justify Modood’s claim that reserved seats in legislatures for religious authorities solve the issues more fully than would establishing partnerships with various civil society associations for consultative purposes (2010, 7). The latter form of political representation can perhaps do an even better job of channelling dissenting voices within religious communities and thus contribute to a better representation for all the members of religious groups.

It seems that religious identity is much more politically relevant for vulnerable groups who are stigmatized than for well-established religious majorities. The political relevance of religious identity thus offers an argument for the creation of new channels of representation for

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\(^{41}\) Hence, strict secularist Catherine Kintzler’s proposal that the second principle characterizing political secularism is the non-recognition of “intermediary bodies” is particularly insensitive to the need of religious minorities for special representation on issues that specifically affects them (2007, 18).
new and vulnerable religious minorities, independent of the existence of such channels for old religious groups, rather than an argument for the extension of the privileges of secured and confident religious majorities to newly arrived religious groups. As such, the argument from the political relevance of religious identity sits quite well with the dismantling of privileges of old religious groups which do not seem to require special protection or assistance to maintain a viable identity.

In brief, the argument based on political relevance of religious identity does not necessarily support the view that older religious minorities’ privileges should be extended to new religious minorities. The argument allows for a differential treatment of newly arrived and vulnerable groups. Modood would certainly agree with this. He indeed claims that his model of pluralistic institutional integration is based on a “variable geometry”, meaning that equal treatment requires differentiated policies of accommodation for different groups according to the specific needs and situation of each group (2007, 45, 83). However, this idea runs counter to his claim that equality systematically requires the extension of existing privileges to newly arrived groups. This second claim seems indeed to presuppose a conception of equality which requires that different groups enjoy the same institutional privileges regardless of their specific needs and situation. It might well be that the differential treatment approach would lead us in most cases in different directions than the relational conception of neutrality and equality (equalize upwards to extend privileges of old and well-established groups to newly settled ones). This certainly seems to be the case with our argument above regarding the political relevance of (minority) religious identity which justifies special protection for minorities which are not required for other groups.

Finally, although it is of great relevance for the pluralisation of political representation, arguing the relevance of religious identity tells us nothing about the conclusion that should be drawn from the contextualist argument regarding the funding and provision of social services by
religious organizations. Respecting people’s religious identity does not require the state to positively support religious groups’ efforts to create their own institutions for the provision of social services in the realms of care and education. Nor does it strictly forbid a state to do so.

3.2 Religion as a Public Good

The writings of Modood contain a second argument that can be invoked to justify pluralizing state support for religion rather than disestablishment. Modood claims that religion should be viewed as a public good. More precisely, he claims that moderate secularism “has developed a historical practice in which, explicitly or implicitly, organized religion is treated as a public good or national resource (not just a private benefit), which the state can in some circumstances assist to realize” (Modood 2010, 6; Cf 2009b, 72). At first sight, the claim that religion is a public good may seem very odd. A public good is a good which availability to others is not diminished by its consumption by one individual (non-rivalry); it is also a good that is enjoyed by all once it is provided to one person: no one in society can be effectively excluded from enjoying a public good (non-excludability). National security, clean air, roads, and public health are public goods. It is surprising to claim that religion is a public good since organized religions can, and often do, exclude people who do not embrace their views and don’t conform to their creed from participation in their activities. Religious organizations can legitimately exclude non-believers; they are not open to all. Their esoteric doctrines are obscure for outsiders, and the spiritual and psychological benefits a religion confers to its adherents are inaccessible to non adherents.

Nonetheless, there is a sense in which religion may be a public good which is worth exploring. Although religious worship is exclusive in its nature, organized religions engage in other activities which benefit the larger society, including non-believers. Hence, for Modood, our
treatment of religion as a public good “can take the form of [1] an input into legislative forum, such as the House of Lords, on moral and welfare issues; [2] of being a social partner to the state in the delivery of education, health and care services; [3] of building social capital; or [4] of churches belonging to ‘the people’” (Modood 2009b, 72). I suggest that we should read this claim as saying that although religion itself is not a public good, religions produce public goods. This suggests that the state can, or should, actively support religions in generating goods which are non-rival and non-excludable in the loose sense that even people who do not attend church or who are non-believers do benefit from these goods (social capital, insightful input into political process, delivery of social services, etc.). The intuition behind this claim seems to be that certain aspects of religion and certain activities of religious organizations benefit everyone in society so that the secularists’ obsession with denying any state support to religion is counter-productive. This intuition deserves attention and in what follows I examine whether or not each of the four dimensions of contemporary religions mentioned by Modood justify considering religion as a public good and, if so the policy implications which follow from this.

3.2.1 Do Churches Belong to the People?

First, Modood claims that churches are public goods in the sense that they belong to the people because everyone can use them, for instance for “weddings and funerals”, even if they don’t attend them or embrace their doctrines (Modood 2010, 6). However, this claim strongly exaggerates the extent to which churches are open to and belong to all. Of course, everyone can enter churches, regardless of their personal convictions to enjoy weddings, attend funerals or

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42 In the rest of this section, I will use “public goods” not in the technical sense economists use it to refer to non-rival and non-excludable goods, but in a more loose sense of goods which are “open to all”, even to non-believers, and benefit society in general. This seems to be closer to Modood’s use of the term. Moreover, I will use the expression “religion is a public good” as an equivalent of “religions produces public goods”.

96
simply to visit. However, the services they offer are not accessible to all. This limitation is perfectly legitimate; part of freedom of religion and of the first threshold of separation between church and state is that states should not be able to control the internal regulation of churches (so long as they are peaceful and respect basic rights of their members and of outsiders). Church autonomy means they can legitimately exclude heretics and infidels and refuse to worship with them. For instance, there are limitations regarding who can get married in the Catholic Church. Unions between Catholics whom are not practicing or defend heretical doctrines and “mixed marriages” (marriages between one Catholic and one person baptized in another Christian denomination) are allowed. However, marriages between a Catholic and a non-Christian (believers from other religions or atheists) are forbidden. Priests have the power to dispense people from this requirement, but non-Christian parties must commit themselves to profess their belief in the four pillars of the Catholic marriage (liberty, indissolubility, fidelity and fecundity) and to get their children baptized (Schouppe 1991, 155-156). And, of course, nearly all organized religions deny same-sex couples the right to get married. It is therefore hard to maintain that churches belong to the people and that they should receive state subsidies because anyone can use them for his own purposes.

3.2.2 Religion and Social Capital

The second basis for treating religion as a public good advanced by Modood is that religion can build social capital. Social capital “refers to connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them” (Putnam 2000, 19). It is surely true that churches create social capital. There is no doubt that churches connect people and create dense social networks. Churches can “bond” people from a small community together and they can also sometimes “bridge” the differences between people of different class, ethnicity and race
under the same faith and forge connections between large segments of the population.\textsuperscript{43} Church-based social capital can be viewed as a public good since it has widely diffused positive externalities. Church engagement often consists in participation to community activities and voluntary work which benefit the larger society. In addition, as Paul Weithman showed, through their political activities, churches can become important venues for the civic engagement of excluded groups and minorities; they can provide them with information, civil networks, opportunities to develop civic skills (public speaking, organization, management, etc.) and foster their identification with their role of citizens (Weithman 2002, 36-66). This argument is central in Bader’s defense of a form of religious institutional pluralism based on associative democracy; he indeed insists that participation in voluntary religious and communal associations (instead of common institutions shared with members of all groups of society) increases civic engagement and teaches important civic virtues such as those mentioned above (Bader 2007, 214-219, 247-258, 263-289).

However, we should be careful not to overstate the benefits that spill over from church-based social capital to the larger society. In the last thirty years, in North America at least, a significant part of religiously motivated civic engagement has been directed inward at the recovery of faith, piety and conformity within religious communities (Putnam 2000) while a large part of outward religiously motivated civic engagement has been directed against secular citizens and has amounted to an attempt to enforce religious conformity in the larger culture (the pro-life movement, campaign against same-sex marriage, etc.). We thus can only be at best mildly enthusiastic regarding the benefits of religiously based social capital. Some of this social capital consists of nothing more than reinforcement of narrow religious communal ties which, however beneficial for insiders of religious communities, hardly spill over the larger society, and another

\textsuperscript{43} On the bonding and bridging aspects of social capital, see Putnam 2000, 22-23.
significant part of religious-based social capital consists of illiberal civic engagement. If this view is right, then the affirmation that religion is a public good since it creates social capital should only merit a meek endorsement since it is not clear that society in general benefit from all forms of religiously based community engagement.

Given this assessment of the benefits of religiously built social capital, it is not obvious that the state should aid religious organizations in producing social capital and it is not easy to visualize what form such assistance could take. Should government directly subsidize all churches? Or should it only subsidize those who actively encourage their members to engage in civic activities? If it does so, should government subsidize churches in proportion to the level of civic engagement of their members? Should it assist only (or to a greater degree) churches which generate bridging social capital and not merely bonding within the religious community? Should it also subsidize church whose members engage in illiberal civic activism? If government chooses any other model of support for the creation of social capital than equal subsidies for every church, churches will most likely object that the government violates church autonomy by forcing churches to fit a certain mould in order to receive benefits. If, on the other hand, all churches are supported equally, secular citizens may rightly object that several churches receive subsidies they entirely use for worshiping purposes without generating any benefit for the larger society, or worse, that the state directly finances illiberal advocacy.

44 On the possible tension between bonding and bridging social capital, see Putnam 2000, 360-363.
45 Perhaps we should give less weight to the claim that some forms of religiously based civic engagement are illiberal and intolerant. In fact, Putnam assert that various studies show that high-levels of community engagement and social participation are positively correlated with tolerance (2000, 355-357). The more people are connected and interact with each other, the more people are tolerant and accept disagreement and differences. I assume that the explanation behind the civic participation/tolerance link is tied to the idea that when one cooperates with people from a different race or gender, ties of friendship and trust are created and this results in overcoming an initial negative attitude towards members of the race or gender in question. But what happens when social interaction is adversarial rather than cooperative? What happens when one militates against members of a different group, as when, for instance, illiberal religious zealots militate against sinners of all sorts? Does their civic engagement lead them to be more tolerant of sinners? The question thus remains of whether civic engagement whose purpose is illiberal and intolerant is likely to foster tolerance in the long run.
Moreover, even if we set aside the downside of religiously based civic engagement or deem them negligible in comparison to the benefits of religious civic engagement, it is still not clear that the state should somehow intervene in religious affairs and collaborate with churches to create social capital. Modood’s argument seems to be that state should assist religions and collaborate with them in order to maximize the production of certain public goods, in this case social capital. But it seems that the country where religion contributes the most to the production of social capital, namely the United States, is also the country where institutional separation between state and religion is the greatest. In the United States a very great deal of associative life and civic engagement is based on participation in religious organizations (Casanova 2007, 73; Weithman 2002, 36-66; Putnam 2000). However, in contrast with the European system of institutionalization of religion from above, where we observe various forms of state regulation and recognition of religion and of state aid to religious organizations, the American system of denominationalism minimizes state entanglement with religion and allows for competition between religious organizations in a relatively free and voluntaristic religious market (Casanova 2007, 61, 68). If the goal is to maximize religiously based social capital, a pattern of state recognition and support of religion associated with religious institutional pluralism may not be the best means to adopt.

3. 2. 3 Valuable Contributions of Religion to Political Debate

Modood offers a third reason to view religion as a public good. He claims that religion “is treated as a public good” and that this “takes the form of religion having an input in legislative forum.” Is the input of religion in legislative forums itself a public good or do we give religion an input into legislative forum because some other aspect of religion is a public good that needs or can be promoted by giving religion an input into legislative forum? The second view seems to make
more sense. The idea then would be that we give religion an input into legislative forum because religion makes valuable contributions to the public debate.

There are good reasons to affirm that religion is a public good in the sense that religions make valuable contributions to the public debate. Religious authorities often take position on various political issues; in doing so they can provide deep moral insights which can be appealing for both believers and non-believers and guide them in their deliberation on political questions (Habermas 2006). For instance, as Dworkin suggests, the idea of the sacred character of human life can provide insight for thinking about issues of abortion and assisted-suicide to religious citizens (here, the sacredness of life means that it is a gift from God) as well as to non-believers (here, sacredness means that human life has intrinsic value) (Dworkin 1993). We can thus view religion as a public good in the sense that religious traditions are the depositary of a large stock of moral ideas from which every citizen, even the non-believer, can draw to nurture his moral deliberations. Everyone benefits from having access to conceptual resources that enable one to address political issues (but also issues of personal ethics) from various perspectives and religious traditions contribute to the maintenance of such a rich diversity of viewpoints.

Moreover, by taking position in political debates, religious authorities often generate discussions on neglected issues. They thereby positively contribute to setting the political agenda in a democratic way and bring the interests of excluded minorities or segment of the population to the forefront of public debates. For instance, Weithman and Waldron both support this claim by highlighting the impact of the 1986 U. S. Catholics Bishops’ letter *Economic Justice for All* (Waldron 1993; Weithman 2002, 50-54; Cf United States Catholic Bishops 1986). The letter denounced economic inequalities within the United States and abroad at a time of increasing economic prosperity when a complacent majority of citizens tended to forget about this issue. It offered religious arguments alongside secular ones and stimulated a national debate about
economic inequalities and social justice. From this point of view, religion can be seen as a public good since every citizen of a democracy benefits from having various actors of the civil society scrutinizing the government, criticizing it from various perspectives and contributing democratically to the setting of the political agenda. In addition, as Rawls remarked by citing the examples of the religiously driven abolitionists and civil rights movements, religion can provide the very great moral motivation needed to oppose well-established unjust social structures, and can help strengthen the political conception of justice in societies which are not well organized (1993, 249-250).

We can perhaps view religion as a public good because of its valuable contribution to political debate; the institutional implications of that claim are far from clear. As in the case of religiously based social capital, it seems that religion is entirely able to make valuable contributions to political debate, in the forms of providing moral insights and initiating debates on the behalf of excluded groups, even if it is completely separated from official political institutions and left alone in civil society. As the examples taken from the American context presented above show, there is no need for official recognition and collaboration with religious authorities for religions to make valuable contributions to political debates. Viewing religion as a public good because of their potentially valuable contributions does not seem to require that we recognize a few religious authorities as the official religious voices of a society nor that we financially support the activities of organized religions. In brief, the arguments from social capital and from the valuable contributions to political debates are perhaps useful to temper anticlerical secularism and the hyperbolic suspicions towards the presence of religion in the public sphere of radical secularists who want to impose an exclusive conception of public reason. Nevertheless, they do not tell us much about the appropriate institutional relationships between state and religious groups.
3.2.4 Religious Providers of Social Services

Finally, the most plausible sense in which the state can assist religion in producing a public good is by aiding religious organizations in providing social services to the larger population, mainly in the realms of care and education. Several religious organizations run hospitals, schools, shelters for homeless people, soup kitchens, rehabilitation centers, and so on. One could argue that as social service providers, these religious organizations should be viewed as partners of the state and should be entitled to receive state subsidies to deliver those services (Bader 2007, 189; Modood 2010, 9).

Whether we can view religious providers of services as public goods is complicated by the fact that there are two types of religious provider of social services. Some religious organizations provide valuable social services in a way that is open to all, providing “neutral” (nonreligious or a-religious) public services. To be a recipient of these services, one does not need to adhere to the creed of the provider and to engage in any religious activity. For instance, soup kitchens deliver meals to anyone who needs it, without questioning their faith and without requiring the recipients of the meal to engage in religious activities.

In Canada many hospitals are run by religious boards: there are two Jewish hospitals, some hospitals are run by the Salvation Army and dozens are run by Catholic organizations. Although such hospitals are dedicated to preserve their religious identity, they offer services to individuals from any religious group as well as to nonbelievers. Their religious mission mainly means that they are committed to provide a more “human” and “compassionate” environment and that they embrace a more holistic understanding of health in which attention is not only focused on the body but also on the soul (Martin 1993, 66). The religious character of those facilities does not make them closed to nonbelievers; humanity and compassion are values which nonbelievers
can embrace. Moreover, the holistic approach to health is more an optional complement to standard medical practice than integral to it. It mainly means that those hospitals ensure that religious services (for adherents of all faiths) are available for those who request it. In addition these organizations are committed to respect all patients regardless of their beliefs and to not pressure them into praying or receiving religious counselling (Catholic Health Association of Canada, 2000). It is completely plausible to claim that these religiously-based social services are open to all, benefit the whole society and can thus be viewed as public goods. It is should not be seen as problematic for a government to form a partnership with those religious organization which provide purely neutral services and to finance the activities of those services. If everyone can have access to the benefits provided by a religious organization without being pressured into adopting the religious views of the provider then it is not really controversial to say that the state can collaborate with such a religious organization to deliver the service in question without compromising its public mission.\footnote{It is still important however to note that religious healthcare facilities are usually not completely neutral. They may be open to all and refrain from proselytizing, but they don’t offer the full gamut of healthcare services normally included in public healthcare. For instance, the hospitals of the Catholic Health Association of Canada can refuse to perform abortions, sterilizations or in vitro fecundation (Guyapong 2012). Government may fund such healthcare institutions but only if nonreligious alternatives offering the full gamut of healthcare services are available in a region.}

However, some religious organizations provide social services but in a way that is not neutral. The services they offer to recipients is so closely tied to religious activities that it becomes impossible for those who do not adhere to the service provider’s religion to receive those services unless they accept conversion. Two examples of faith-based social services illustrate this.

First, much as public schools, religious schools offer their students basic instruction in mathematics, science, history, geography and so on. But if in addition to basic instruction they make religious education and participation in religious activities (prayers, observance of rituals
and ceremony) mandatory. It is thus hard to claim that they provide basic instruction in a way that is neutral and open to all. The secular goal of providing basic instruction may be pursued independently (for instance, in different classes) from the goal of providing religious education, but for the recipient of the service they are inseparable since the latter is a mandatory complement to the former.

Second, some faith-based organizations offering assistance to the poor and rehabilitation for criminals, drug addicts and alcoholics work on the assumption that the only effective means by which one can be “saved” from poverty, criminality and addiction is to engage in a process of personal transformation in which one comes to develop a relationship with God (Greenawalt 2008, 366-369; Tomasi 2004, 332-333). Here, the secular and neutral goal of assisting the needy is inseparable from the religious and sectarian goal of self-transformation since the latter is presented as the necessary means to the former.

In these two cases, religious providers have such extensive and mandatory religious components to their programs that they can be said to be “faith-saturated providers” (Greenawalt 2008, 381). They promote a particular religion either as a means to provide a secular good or as a mandatory complement to the provision of secular goods; recipients of services cannot avoid being exposed to a very high level of proselytizing and participation to religious activities. It is implausible to assert that the activities of faith-saturated providers benefit all members of the society regardless of their religious affiliation since their services are only available for those who embrace the beliefs of the service provider or are willing to convert.

Is it nonetheless permissible for the state to support those faith saturated providers? Certain commentators view this as an unfair privilege given to religious believers. Although everyone can benefit from the neutral activities of religious organizations, as shown by the examples of religiously-based soup kitchens and hospitals, only co-believers can benefit from the
non-neutral religious activities of faith-saturated providers, as we see with the examples of religious schools and programs focused on religious self-transformation. Swaine argues that the state may only support the neutral activities of religious organizations. It should never support the religious activities of faith-saturated providers because this would necessarily be made at the expense of nonbelievers who cannot profit in return from these providers’ pursuit of religious goals and exclusion of non-believers (1996, 613-614). However, state support for faith-saturated providers only creates unequal treatment for nonbelievers if equivalent support is denied to explicitly irreligious (not merely a-religious) organizations. But there is no reason to oppose support for faith-saturated providers on egalitarian grounds if irreligious organizations can receive similar support for providing services while pursuing sectarian goals such as the promotion of atheism or secular humanism. Public aid for religious schools, for instance, is not made at the expense of nonbelievers if the state also supports irreligious schools whose curriculum evacuates religion and promote strong forms of scientism, philosophical naturalism and secular humanism.

In brief, government can legitimately collaborate with religious service providers. It can support religious organizations providing neutral services and faith-saturated providers if irreligious organizations receive equivalent support. In implementing programs to increase access to social services, governments can legitimately subsidize existing neutral religious providers, as this may be more efficient and less costly than creating new governmental nonreligious agencies. However, that the pursuit of the collective goal of providing accessible social services might give us reasons to support religious providers does not mean that religious providers are entitled as a matter of justice to such support. I have only affirmed that religious organizations can provide certain common goods and briefly sketched the conditions under which partnerships between the state and religious organizations to deliver these goods are permissible. Nothing in this implies
that the state has a positive duty to aid religious organizations to provide services. In the next two sections I examine and reject two arguments which try to establish that there is a positive duty to aid religious providers of social services.

**3.3 The Secularist Bias of Governmental Institutions**

The idea that religion is a public good suggests that it can be desirable to assist religious organizations to pursue the collective goal of providing various social services to citizens. Now I turn to a much stronger position which asserts that state support for religious providers of services is not merely desirable and permissible but required by justice. Drawing on an argument for compassionate conservatism made by John Tomasi and Michael McConnell, Bader claims that we should embrace an expansive conception of religious liberty which, combined with egalitarianism, entails that the state has a positive duty to support religious providers of social services of all kinds (Bader 2007, 134, *Cf* Tomasi 2004; McConnell 1992). In a nutshell, this argument claims that governmental services, like the provision of daycare for infants, of housing and nutrition for the very poor, of healthcare by public hospitals and clinics or of education by public schools, all have a secularist bias which unduly burdens religious believers by preventing them from pursuing their religious life plan. To remedy this unfair situation, the government must finance religious-based social services in addition to secular governmental services. We will call this the “secularist bias argument”. This argument seeks to establish that state support for religious-oriented social services is a case of accommodation of religious liberty: it is based on the idea that when government impeaches religious liberty by its operation, it should seek ways to remove or minimize that impeachment; this often takes the form of an exemption from compliance with general laws (negative accommodation) or, as in the current case, of the
provision by the state of religious services (positive accommodation) (McConnell 1992; 1999; 2001). 47

As the welfare state expanded during the second half of the twentieth century, it became the main actor for delivering services in domains which had traditionally been occupied almost entirely by religious organizations. Governmental organizations became the primary providers of education, healthcare and care to the very poor, the elderly and the homeless. As McConnell points out, this expansion of the reach of government institutions in the life of individuals is correlated with increasing tensions between religions and the state (2000, 91). When government was small, there was less risk that the state would trespass in the province of religion.

Why is there a tension between religious liberty and the state provision of services like healthcare, basic education and assistance to the poor, which have in appearance nothing to do with religious worship? Religious critics of governmental services claim that these have a secularist bias because they evacuate the religious perspective. In a pluralist society, government-run programs cannot promote a moral or religious perspective over other viewpoints. Therefore, the delivery of social services must take a non-religious form. Contrary to faith-saturated programs, public schools and poverty relief programs cannot proselytize while providing services to all members of society. Religious critics claim that non-religious services are in effect not value-neutral. For instance, Marvin Olasky compares governmental programs of poverty relief like soup kitchens and homeless shelters with charity programs based on religious values. He claims that the later emphasize that affiliation with members of the religious community and family as well as bonding between the volunteers and the recipients of aid are crucial in struggle against poverty. Olasky believes that the only way out of poverty is to undergo a process of

47 For the distinction between negative and positive accommodation, see Swaine 2006, 81. Other cases of positive accommodation include the provision of chaplains in the military and in prison, in public hospitals and other closed governmental institutions.
religious self-transformation (1992). Thus, for him, in religiously based organizations, volunteers proactively seek to draw recipients of aid into bonding with their family, community and ultimately with God. He accuses non-religious governmental programs of promoting individualism because they limit themselves to the delivery of bread or shelter without promoting affiliation and bonding; these organizations accept “the notion that neither marriage nor reliance or on family, church or traditional voluntary organizations—because they might be dominated by ‘patriarchal values’—should or could be encouraged” (Olasky 1992, 201).

McConnell raises a similar charge against all kinds of nonreligious governmental programs. He claims that public institutions which pretend to be neutral because they do not promote any sectarian (religious) position are in fact based on “secular, relativist Enlightenment values” and have “a deeply embedded preference for some modes of reasoning and ways of life over others—rationalism and choice over tradition and conscience” (McConnell 2000a, 104). According to him, without publicly funded religious alternatives to nonreligious governmental programs, the government becomes a “relentless agent of secularization” (McConnell 2001, 21). Focusing on non-religious public schools, he puts forth the “ideological argument” for the public funding of religious schools. The ideological argument asserts that public schools transmit a particular worldview, they propagate an ideology which suits well the tastes of secular liberals through a “Rainbow Curriculum” based on a “vaguely leftist stew of environmentalism, moral relativism and race and gender egalitarianism” (McConnell 1999, 850-851). According to him, given the secularist bias of public institutions and given that the government should “enable people of all religious persuasions to be citizens of the commonwealth with the least possible violence to their religious convictions”, the government should fund faith-saturated social services in order to “allow a range of choice so that those who wish to educate their children,
receive their medical care, or participate in public programs in a manner consistent with their faith can do so” (McConnell 2000a, 103, 105).

Critics of nonreligious public services argue that this secularist bias undermines the neutrality of public services because it imposes a special burden on the liberty of religious citizens. In a society where the state plays an extensive role in the delivery of social services, the *worth* of the liberty of religious citizens is diminished (Tomasi 2004, 341-344). Although their formal liberty of religion is recognized, their capacity to advance their religious ends is unequal compared to nonbelievers’ capacity to advance their secular ends. To remedy this situation of unequal worth of basic liberties, government should seek to minimize the extent to which it prevents religious citizens from advancing their religious ends by funding their own organizations providing religiously oriented social services (McConnell 2000a, 105; Bader 134-135; Tomasi, 2004). This is the only way in which the provision of social services by government can be neutral, as Tomasi puts it: “neutrality (...) is a property that can only be discerned by examining the system as a whole. In a social world committed to treating citizens of faith and secular nonbelievers as full political equals, a public system that mandates that none of its delivery sites may include religious perspectives would fail this test of neutrality” (Tomasi 2004, 339). Neutrality cannot be achieved by subtraction, only by multiplication: governmental organizations which attempt to be stripped of any religious influence end up being pro-secular in a sectarian way, so that the only solution is to pluralize the public system by allocating public resources to organizations delivering services from a religious perspective (McConnell 2000a, 105; Bader 2007). Only this system of religious institutional pluralism can prevent discrimination.

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48 Rawls defends the worth of liberty as the capacity one has to pursue its conception of the good: liberty and the worth of liberty are distinguished as follows: liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines” (Rawls 1971, 204).
against religion perpetrated by a system where secular organizations have a monopoly on public funding (Tomasi 2004). Note that this is not merely a call for the public funding of religious providers of neutral services but mainly for the public funding of faith-saturated providers.

The secularist bias argument for the publicly funded provision of religious social services is misleading because it is caught in an inescapable dilemma. Its proponents must either embrace an implausible interpretation of the meaning of the secular character of governmental institutions or a very problematic conception of neutrality.

Secular public services would be biased in a way that is unfair to religious citizens if they were directly promoting irreligion and if they were aiming at convincing users to abandon their religious beliefs. But the claim that there is a link of necessity between secularism and this attitude towards religion is based on confusion of the secular understood as areligious or nonreligious with the secular understood as antireligious, as based on a sectarian doctrine inspired by atheist, scientist, naturalist or humanist worldview which denigrates faith as an obscurantist relic from the past that individuals need to be emancipated from in order to be rational and lead a good life. The former sense of secular does not entail the secular in the second sense; it rather is incompatible with it. The secular character of public institutions simply means that they do not promote any metaphysical worldview, are open to users embracing any

49 This confusion also appears when people argue that when the government subsidizes secular (nonreligious) private organizations, for example nonreligious private school or rehabilitation centers for alcoholics, but refuses to fund faith-saturated providers of similar services it discriminates against religious organizations (Bader 2007, 135). But there would only be discrimination against religious organizations if the state funded secularist (anti-religious) organizations, such as schools which strongly discourage religious beliefs and promote atheism for instance. Moreover, there is no discrimination against religious citizens if only nonreligious organizations receive state support since these are open to all in the sense that no commitment to any worldview is a requirement to receive services from them and they are willing to accommodate users embracing different religious creeds. There would be discrimination against religious citizens if the state supported only antireligious organizations (and not religious ones) since these are not really open to believers given that they actively fight religious beliefs. How the state treats secular (nonreligious) organizations cannot be the baseline of comparison for determining whether faith-saturated providers are treated equally. They are just not the same kind of organizations since in the case of faith-saturated providers, services delivery activities are inseparable from practices of promoting a single comprehensive doctrine; nonreligious organizations are simply not engaged in such practices.
reasonable worldview and do not make judgments about the truth and merit of these worldviews. Secular public institutions are thus open to all because they are not exclusively identified with particular doctrines that are not shared by all citizens. They do not promote irreligion over religion any more than they promote one religion over others.

Yet many have highlighted that although they do not directly promote any single comprehensive doctrine, public institutions can have specific features, practices and rules, which unfairly burden religious minorities and make it harder for them to access public institutions since certain rules of these institutions conflict with certain religious duties. Public services would be biased against religion if they prohibited the expressions of religion and religious practices of their users for no valid reason linked to the provision of those services. However, as I will explain in subsequent chapters, it is usually relatively easy and not very costly to accommodate religious citizens within common institutions so that they can access them without abandoning their religious practices. For instance, schools and hospitals must provide kosher and halal alternative meals for Jews and Muslims who interpret their religion as requiring them to observe such alimentary restrictions. This practice of religious accommodation within common institutions should be distinguished from the more demanding notion of accommodation put forth by religious institutional pluralism and which claims that the only way to avoid the alleged general secularist bias of public institutions is to assist religious communities in setting up their own parallel religiously-saturated institutions. The argument presented by Bader and McConnell thus entails a much stronger form of accommodation than the idea of “reasonable accommodation”. The goal of this strong form of accommodation is not merely to find ways to diminish the burden placed on religious users of public services in order to make it possible for them to access those services without forfeiting religious obligations, it is to create parallel
institutions which are pervasively religious in character so that religious persons can maximally feel “at home” within those institutions.

Any plausible understanding of the secular character of public institutions must recognize that these institutions are not actively engaged in the promotion of irreligion and are committed to accommodate a wide range of religious practices in order to remain open to all members of society. But if these two conditions are met (reasonable accommodation and non-endorsement of ethical secularism), in which sense can public institutions be said to be biased or non-neutral toward religion? This is the point where proponents of the secularist bias argument fall back on a problematic conception of neutrality.

This conception is based on the view that public institutions are not neutral because they do not maximize the worth of religious liberty since they do not actively promote a religious worldview. Under this conception, religious citizens are burdened in comparison with the hypothetical baseline in which they have access to publicly funded faith-saturated service providers. This is problematic because the relevant baseline to assess the fairness of the burden borne by religious citizens using public services should instead be a situation of equal access to public services. The question should be whether religious citizens have lesser opportunities to benefit from public services than nonbelievers. They suffer discrimination in public services (i.e. have lesser access to them) if they are obliged to forfeit their religious obligations in order to receive those services. But they don’t suffer discrimination simply because nonreligious services are not pervasively religious and do not actively promote their preferred religious doctrine. Let’s see how the dilemma unfolds with particular examples.

Tomasi and Olasky claim that nonreligious providers of social services place an unfair burden on religious citizens because they “promote an approach to life that many politically reasonable citizens reject: a life in which individualism, rather than piety, is valorized as the
highest personal value” (Tomasi 2004, 338). It is rather surprising to claim that organizations which are sometimes run and operated by volunteers and which provide help to the most needy and sick of their community promote individualism. These organizations rather seem to give expression to strong sentiments of solidarity. Besides, nothing prevents volunteers and workers of those secular organizations from bonding with recipients of their aid, to engage in serious discussion with them and profoundly care for their wellbeing. The only kind of bond that the secular character of those publicly funded organization forbids is the provider pressuring the recipients of aid to accept God in their lives and to present this alternative as the only or best means to recover or get out of poverty, homelessness, drug addiction and so on. If this is what makes government-run programs the promoters of an individualist lifestyle biased against religious worldviews, then the claim that these programs are not neutral towards religion is semantically coextensive with the claim that they do not directly promote religion. The argument does not show that religious users of these programs cannot access them unless they forfeit their religious obligations, nor does it show that these programs actively try to change the religious beliefs of their users; it only shows that they simply do not try to encourage their users to be more fervently religious. But neither do public services actively promote atheism, hedonism or secular humanism; they are not biased against religious comprehensive doctrines any more than they are against all the nonreligious comprehensive doctrines they refrain from promoting.

In brief, it is misleading to claim that the state has a positive duty to assist religious groups in creating their own institutions to provide a wide gamut of social services from a religious perspective in order to remedy the discrimination that religious citizens face in participating in non-religious public institutions. If public services do not promote anti-religious views and observe an obligation to accommodate religious users so that they do not have to forfeit their religious obligations to receive public services, then the only way to affirm religious
citizens face an unfair burden or disadvantage in receiving services from secular (non-religious) organizations is to rely on a comparison with the hypothetical situation in which they are the most advantaged and receive the most state support to advance their religious ends. Such comparison does not indicate an antireligious bias imposing an unfair burden on believers; it simply indicates that believers are not currently as well off as they would be if the state granted more resources to their religious organizations. Anyone can claim he would be better off than he currently is if the state were to allocate more resources to him or if it were to fully promote his preferred conception of the good. That does not in itself make the status quo unfair.

The secularist bias argument in some sense treats religion as something that has intrinsic value and should be maximized. The monopoly of public funding granted to secular nonreligious institutions may not unfairly disadvantage religious citizens, yet it is unjust since there is a presumably feasible alternative (state sponsorship of faith saturated service providers) that would maximize the flourishing of religious communities. This arrangement would enable co-believers to receive and produce common goods in ways that fully reflect their religious views. Believers would be able to always be in contact with the sacred even when they go see the doctor or benefit from welfare programs; religious organizations would be fully able to promote their doctrines while delivering many goods and services to their members. The argument of the secularist bias of public institutions thus perhaps rests on a view that asserts that religion is intrinsically good and should be promoted (maximized) by the state. Some readers accuse McConnell’s version of the secularist bias argument of being based on such a view. They claim that he treats religion as special (compared to non-religious worldviews) and posits that the state should be committed to design institutions which best help the flourishing of religions (Rosenblum 2000b, 180). If this is the case, then institutional pluralism rests on a form of religious teleological perfectionism which
simply cannot be publicly justified to nonbelievers and blatantly favours religious comprehensive doctrines over nonreligious ones.

Nevertheless, perhaps the opportunity to receive religiously orientated social services is somehow connected to the protection of certain fundamental interests so that the secular character of public institutions does after all impose an unfair burden to believers. Although I do not believe this is case for public services in general (especially given their commitment to reasonable accommodation), this idea plays an important role in discussion regarding the special problem of public funding of religious schools. I turn to this problem in the next section.

3.4 Educational Choice

Even if they were convinced that public institutions which do not promote ethical secularism and which are committed to an obligation of reasonable accommodation do not have a secularist bias, proponents of religious institutional pluralism may still maintain that government has a positive duty to sponsor faith-saturated providers of social service, at least in the case of religious schools.

They could point, and would be right to do so, that although religious citizens are not burdened in a discriminatory way just because public schools do not promote their favourite religious creed, the desire to have one’s kids attend an educational environment which promotes one’s religious views is a legitimate one. Building on this idea, they could invoke a common twofold liberal argument for the public funding of separate religious schools. Contrary to the secularist bias argument for public funding of faith-saturated providers, this argument does not draw on the duty to correct a discrimination against religion, it is premised on the basic rights of religious parents and the positive duties that are, supposedly, derived from these rights.
This rights-based argument first asserts that individuals have a fundamental interest in having the capacity to form, pursue and revise, if they want to, a reasonable conception of the good life. Among the things which often figure at the core of individuals’ reasonable plan of life is the desire to form a family, have children and to raise them so that they can become morally good and successful persons. Providing care and proper education to one’s children is thus part of many people’s conception of the good life. Moreover, part of parents’ aims in educating their children is to transmit them their culture and values so that they can maintain close ties and relationships with them during their whole life. Individuals thus have a fundamental interest in being able to choose how to educate their children in ways they see fit for their moral and personal development (Mcleoad 1997; Burt 1997). Since, in the modern world, a great part of children’s education is done at school, people have an interest in school choice deriving from their fundamental interest in being able to pursue a reasonable conception of the good.

Second, drawing on an interest-based theory of rights (Raz, 1986, 180-183), the argument asserts that the importance of this interest in their childrens’ upbringing is great enough to generate a right to educational choice. This right to educational choice imposes a negative duty on the government to abstain from forbidding the creation of separate private schools. Religious people denied the right to create their own schools in which children receive religious education alongside the mandatory minimal requirements of basic instruction are simply oppressed (Bader, 2007; Callan 1997). A state monopoly over the consciences of all children simply fails to respect people’s fundamental interest in the education of their children.

In addition, the right to educational choice imposes a positive duty to the government to sponsor religious private schools. Since private schools are much less affordable than public schools, were the state not to honour this positive duty, a large number of parents would be left with no real educational options other than public schools. For them, this situation would be
almost as oppressive as a governmental interdiction on private schools and it is unfair that they cannot exercise choice in the crucial domain of schooling when more fortunate parents can (Garnett 2002).

In what follows, I will claim that this argument can at best only justify a very restricted positive duty to support sectarian schools but not the kind of extensive support desired by religious institutional pluralists like Bader (2007). First, in any liberal approach to educational choice, the parents’ interests in choosing their children’s education must be balanced against the children’s prospective interests in having the capacity to choose autonomously and pursue a fulfilling life plan (Brighouse 2001, 65-66). Children should not be viewed as mere extensions of their parents, as tools to satisfy the life plan of their parents. They must develop the capacities to choose more than the way of life their parents prescribe them in case this alternative proves not to be fulfilling; their future opportunities must not be closed by the educational choices of their parents (Feinberg, 1980). This can mean that they have to acquire the technical skills to have a meaningful right of exit (Galston 2002, 123), or more demandingly that they are exposed to ethical diversity and develop the capacity of critical reflection needed to eschew ethical servility (Callan 1997, 152-154, 190).50

Moreover, parental educational choices should be balanced against the public interest in inculcating minimal civic virtues to school pupils. Every liberal and democratic society has a legitimate interest in creating citizens who have a sense of justice, are law-abiding, are able to form critical judgments about politics, are willing to participate in, civic associational life and politics (at least by voting and getting informed about parties, candidates and their proposals, etc.) and can display the political virtue of reasonableness. Thus, parental choices for sectarian

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50 Ethically servile children are “under permanent control of their parents since they moulded the child’s character to transmit a disposition of ignorant antipathy toward any other way of life beyond the parents’ preferred option” (Callan 1997, 153).
schools promoting racism or homophobia can be discouraged (no funding for such schools, mandatory curriculum including minimal civic education classes, etc.).

Nonetheless, the children’s prospective interests and the goal of promoting civic virtues do not rule out all forms of sectarian religious schooling. It only rules out the kind of schooling which tries to shelter the children from exposure to alternative worldviews and completely ignores the demands of democratic citizenship (for instance by teaching deeply intolerant doctrines). Those schools are “all encompassing”: their curriculum is not diverse enough to provoke students to think about a variety of issues and lifestyles (Spinner 2000, 118); they constitute a “radical” form of separate schooling (Callan 1997). But the requirements of respect for children’s rights and for the goal of promoting good citizenship still leaves the door open for non-all-encompassing or moderate religious schools which may, for example, prioritize the teaching of the parents’ favoured way of life in the earlier years of schooling and only introduce pupils to ethical diversity and civic education at a later stage (Spinner 2000, 113-118; Callan; 1997)\(^51\), or for religious schools which teach ethical diversity and civic education but from the point of view of the parents’ favoured religious comprehensive doctrine.\(^52\)

What room is left for the positive duty to fund sectarian schools once we take into account these two sets of limitations on parental rights to educational choice? Building on the distinction between moderate and radical separate sectarian schools as well as on the reasonable restrictions normally applying to the capacity of interests to generate positive duties, Callan argues that parents have no right to receive public subsidies for sectarian schools. He claims that proponents of the positive duty to sponsor separate schools are faced with a dilemma: on the one hand, the

\(^51\) This fits nicely with Mcleod proposal that parents be given the “the prerogative of provisionally privileging the conception of the good they favour” while not giving them the right to prevent their children to scrutinize this conception as they grow up and to eventually revise it (1997, 129-130).

\(^52\) For instance *Loyola High School v. Courchesne* 2010.
more the parents’ educational aspirations are in harmony with the public culture of a pluralistic society, the less plausible it is to say that these aspirations are frustrated by common public schools; on the other hand, the less parents’ educational aspirations are at odds with a pluralistic culture, the more it is plausible to say that these aspirations cannot be respected in public schools, but then it is also less plausible that the forms of separate schooling which can meet these educational aspirations will be compatible with respecting children’s prospective interests (Callan 1997, 188).

He illustrates this dilemma with the sectarian schools of two hypothetical religious communities. On one hand, The True Believers want their own schools to be sectarian separate schools in a radical way. True Believers “abhor the ecumenical teachings of other churches and insist that nothing of merit can be found in religious creed other than their own (...) they are also taught that the world beyond their faith is thoroughly corrupt and those who inhabit that world are to be treated with grudging tolerance at best” (Ibid. 187). On the other hand, members of the New Age sect only want moderate sectarian separate schools: “the sect has strong ecumenical leanings, fosters an appreciation of the value to be found in other religious traditions and viewpoints, and encourages its members to show respect and extend fellowship to all infidels” (Ibid. 186). The interest of the True Believer parents in choosing the education of their children according to their values are substantially violated by common schools. But since the parents’ educational aspirations are severely at odds with children’s rights, we have no positive duty to sponsor True Believers schools. On the other hand, New Age schools do not violate the educational rights of children, but since these schools foster exposure to ethical diversity, they are not very much different from common schools. Therefore, the violation of New Age parents’ interests by common schools is small, since their conception of proper education does not repudiate high levels of exposure to diverse ways of life. This still offers a ground for positive
duties to fund New Age schools, but only a very weak ground. However, people’s fundamental interests generate many different rights and these in turn generate many potentially competing positive duties. Governments have limited quantities of resources to allocate for the fulfillment of this proliferation of positive duties; they must therefore weight positive duties against each other and the weight of duties is given by the importance of the interests they protect. Since the parental interest of New Age sect members in sending their children to religious schools is relatively weak (there is no large difference between their schools and public schools), we may very well often have reasons to direct public resources to the fulfilment of positive duties which are based on weightier interests (we perhaps are better to direct these resources at the improvement of the healthcare system or of public schools in poor areas). Therefore, New Age parents do not in practice have a right to government subsidies for their parochial schools.

This argument is convincing in the cases of New Age and True Believers schools, but does it rule out public funding for any kind of sectarian schools? This actually depends on the size of the gap separating True Believers-like radical schools and New Age-like moderate schools. The potential problem with Callan’s objection to publicly sponsored school choice is that although it is quite reasonable to suppose that it holds for both extremes (religious schools which are very open to pluralism and religious schools which are very much closed to pluralism), it is plausible to affirm that there is an intermediary zone between the extremes for which it does not hold. This zone is located just above the threshold under which a school fails to respect children’s rights and minimal requirements of civic education and below the point at which a private school becomes open enough to pluralism that pupils are almost as exposed to ethical diversity as they would be in a public school. Sectarian schools located in that zone may be designed to retain the identity of an ethnoreligious minority community and thus be mainly composed of teachers and pupils from the same community, yet the community may want its
children to be able to make autonomous choice and to be good citizens (Spinner 2000, 115). Or they may want to make sure pupils collectively practice religious rituals at school and are taught every, or nearly all, subjects (history, music, literature, etc.) from a religious perspective, but in a way that is compatible with well-informed critical discussions about other religions, worldviews and cultures.

Let’s call such schools decent sectarian schools; they are the favourite schooling choice of decent religious conservative parents. Parents whose educational aspirations for their child lean toward this kind of school respect the fundamental interest of their children yet these aspirations are sufficiently at odds with the environment provided by common schools to claim that the legitimate interests of parents are significantly affected by common schooling (much more than the parents of the New Age sect for instance). Of course, we should carefully allocate positive duties in light of the most pressing needs and interest of the population. It can thus still appear to be legitimate to let well-off parents pay the full price for decent sectarian schools. But it may as well appear to be unfair to let worst-off decent religious conservative families who cannot afford private schools with no other choice than sending their children to common schools. If this is the case, then we should be open to recognizing that there is after all some support for restricted separate school funding. This should perhaps not take the form of direct funding but rather of measures, such as vouchers, tax-deductions or tuition refunds in decent sectarian schools, which target the worst-off who could not otherwise choose religious schools. This does not mean that it should be as easy for families to send their kids to decent religious schools as it is to send them to public schools; the choice of religious schools could still be much more burdensome than common schools, yet it must be a realistically possible option for all those parents who have legitimate (compatible with respect for child’s rights) educational preferences and whose (parental) educational interests would be severely infringed by non-optional common schools.
Conclusion

In this chapter I have sketched the main features of religious institutional pluralism, which presents itself as a coherent alternative to strict secularism. Contrary to strict secularism, institutional pluralism fully embraces several forms of cooperation between state and religions and several forms of state support for organized religions. Proponents of institutional pluralism confront secularists with a dilemma. While Western societies resist demands for recognition and state support for new immigrant religious minorities by invoking the normative ideal of secularism as full institutional separation, they fail to live up to this ideal in practice since they already grant older religious groups many privileges. The new religious pluralism thus seems to confront contemporary societies with a choice: either disestablish or pluralize existing establishments. Although the feasibility of disestablishment is at first sight dubious, it is not in principle impossible to move smoothly in this direction (as the example of Quebec and the Netherlands show). Moreover, the pluralizing of existing establishments may be as hard to achieve as disestablishment given resistance by native populations. Proponents of institutional pluralism opt for the former solution but although they have offered arguments in favour of pluralization, they have neglected to thoroughly scrutinize why official recognition and state aid to religious groups is desirable in the first place. I thus turned, in Section 3, to an investigation of potential reasons against disestablishment.

Overall, I only found that there is a weak case for some limited forms of collaboration between state and religion. The most solid case for such collaboration concerns the measures needed to protect stigmatized religious minorities from damaging forms of misrecognition. But these include measures which are not tied to religious institutional pluralism and which are oriented at making common institutions dominated by old religious majorities and native populations more sensitive and welcoming to new religious identities (greater representation of
religious diversity in the media and in the common curriculum of schools). The vulnerability of stigmatized religious minorities also calls for some better form of political representation of religious minorities; this at least means collaboration between the government and civil society, but it does not necessarily entail the kind of official corporate representation proposed by institutional pluralists and does not justify representation for secure and well-established older religious groups.

The argument that religion is a public good is at best inconclusive. The idea that churches belong to the people is simply false, but there is certainly merit in the claim that religion is a public good because it makes valuable contributions to political debates and builds social capital. However, this claim has to be nuanced, as while history is full of examples where religious ideals have been the locomotive of progressive reforms and of civic engagement, religious views are still often used to justify illiberal policies and churches sometimes only produce social capital which increases the divide between ultraconservative and fundamentalist factions and society at large. Even if we deem this effect negligible and are greatly enthusiastic regarding the civic benefits of religion, it seems that, as the American example illustrates, religion can do the job of providing useful moral insights, motivation and venues for civic engagement when pluralism is allowed to freely flourish in the civil society without too much interference from the state. The view that the state should assist religious organizations in the delivery of certain services which can count as public goods (education, healthcare, care for the needy, etc.) is also inconclusive. It is perhaps not impermissible to fund religious organizations which provide neutral public goods without promoting their religious ideals at the same time, but this does not entail that there is a positive obligation for the state to do so. Similarly, it is not impermissible to support faith-saturated providers provided nonreligious alternatives are available and provided we also support antireligious providers; but this does not entail that government has an obligation to do so.
The argument that is usually mobilized to defend the idea that the government has a positive obligation to support religious providers of social services, namely the secularist bias argument, fails since it does not establish that nonreligious public institutions are less open to religious citizens. It merely shows that public institutions fail to maximally satisfy some religious citizens’ preference for service providers who actively promote their own religious views or provide services from a religious perspective. This does not imply that such a failure is unfair to religious groups. The argument for religious school funding based on educational choice does leave the door open to a limited form of support for lower income decent religious conservative parents who wish to send their children to decent sectarian schools.

In the discussion on the secularist bias argument, I have highlighted a distinction between the strong form of accommodation of religious groups, consisting in assisting them for the creation of separate religiously-saturated institutions, and a weaker form of accommodation based on the removal of obstacles to the full participation of religious citizens to common institutions. In the next chapters, I develop the framework for an approach to religious pluralism based on this later form of religious accommodation within common institutions. This approach can be characterized as a form of “open secularism”. In the next chapter, I sketch the main features of this approach to religious diversity. I open the chapter with a discussion of two issues which are often said to plague regimes of institutional pluralism (the challenges of creating virtuous citizens and of maintaining social cohesion under the condition of the new religious pluralism) and suggest that open secularism is better equipped to overcome these challenges.
CHAPTER 4: OPEN SECULARISM

In this chapter, I will present open secularism as an attractive alternative to both strict secularism and religious institutional pluralism. The notion of open secularism emerged as a response to strict secularism, which is too restrictive of religious freedom and creates inequalities between citizens. Open secularism affirms that public institutions should open up to expressions of religious diversity, and even sometimes to positively support religious practices, without requiring that organic links be established between organized religions and the state as is the case with the model of religious institutional pluralism. On the one hand, strict secularism asserts that government should always refrain from aiding religion and that citizens should observe negative duties of religious restraint when entering the public sphere. On the other hand, institutional pluralism puts forth a strong conception of religious accommodation requiring the state to observe positive duties to help religious communities build their own parallel pervasively religious institutions. Between these two options, open secularism is based on the idea of accommodation of religious diversity within common institutions. Open secularism opposes the strict separationist principle of no-aid, which absolutely forbids the state to support religious activities. Instead it proposes, or so I suggest, that the state can aid religious citizens, even financially in some cases, in the practice of their religion if avoiding aid results in discrimination and unequal opportunities to access public services and job markets. More generally, open secularism claims that aid can be provided for the religious activities of some if the goal of aid is to pursue a neutral and secular public purpose, or in other words, if the justification for aid is framed in terms of a political conception of justice. Moreover, open secularism opposes the duty of neutral appearance that strict secularists impose on individuals and claims that neutrality is a
principle applying to institutions, not individuals. Against institutional pluralism, open secularism maintains that equality and freedom of conscience do not entail a positive duty to support religious communities’ attempts to create their own sectarian social institutions and that the legitimate goal of ensuring social cohesion and social integration is best served by promoting participation in common institutions and the building of bridging social capital through interactions between adherents of different faiths and worldviews.

Considerable attention has been given to the notion of open secularism (laïcité ouverte) in Quebec over the past decade. I will examine the idea of open secularism as it has emerged in this context by drawing mainly on writings from Quebec scholars and official governmental sources (Proulx 1999; Conseil des relations interculturelles 2005; Ministère de l’Éducation, du Loisir et du Sport 2006; Comité des affaires religieuses 2006; Bouchard and Taylor 2008). Open secularism is also sometimes named inclusive secularism or liberal secularism or liberal-pluralist secularism (Maclure and Taylor 2011) or intercultural secularism (Baubérot 2008). I chose to use the term “open secularism” mainly because it is the term used in the official documents of the government of Quebec in which the notion originated (Proulx 1999; Bouchard and Taylor 2008). But I also prefer “open secularism” over these alternatives because of the contrast the alternative names are intended to highlight.

Inclusive secularism is sometimes used to mark a contrast with a secularism based on the affirmation of a strict duty of civility requiring citizens to justify to one another the laws they advocate and vote for by invoking reasons that are acceptable and shared by all. It is hence exclusive in the sense that it bans appeals to religious arguments in public life. I do not believe that open secularism entails a maximally inclusive view of public justification which welcomes unbridled appeals to religion in political advocacy. Quite to the contrary, in the last section of this
chapter I suggest that open secularism contains interesting resources that might indicate how the state can foster the requirement of civility without infringing religious freedoms.

The term “liberal secularism” is used to mark a contrast with republican secularism, which is the French conception of strict secularism requiring the construction of a public sphere free from religious expression. Open secularism is resolutely liberal because of its defense of freedom of conscience against strict secularists’ claims for the complete privatization of religion. However, there is a distinct moderately republican twist in open secularism through its commitments to the promotion of social integration through the participation into common institutions open to all and to the promotion of civic virtues. This republican twist is so central that it is in fact what distinguishes open secularism from institutional pluralism.

In the first section of this chapter, I trace the origin of the notion of open secularism in the Proulx report on the deconfessionalization of public schools and in the Bouchard-Taylor report on reasonable accommodation of religious diversity. I argue that open secularism distinguishes itself from strict secularism by affirming the priority of the moral ends of secularism (equality and freedom of conscience) over its operational modes (separation and neutrality). This priority has two main implications: first, it rules out the duty of neutral appearance and second, it rules out the no-aid principle of separation and supports a secular justification principle of separation.

In the second section, I argue that two central features of open secularism bring it closer to strict republican secularism than is initially apparent. First, open secularism relies on a multicultural conception of social integration which requires the creation of horizontal ties of solidarity between members of different communities through the intercultural exchanges and interactions made possible by participation in common institutions. I argue that this feature of open secularism is central since it is what distinguishes it from and makes it more attractive than religious institutional pluralism. Second, I show that open secularism is inspired by the
republican emphasis on the importance of the role of the citizens in preserving just institutions. This is reflected in the importance open secularism gives to the religion-sensitive conception of citizenship education it promotes.

In the third and fourth sections, I argue that these two key elements of open secularism offer attractive answers to two problems posed by the new religious pluralism. In the third section, I argue that open secularism provides a better framework for the integration of immigrant religious minorities than institutional pluralism, which consists of a set of policies adopted to deal with groups who already share a national identity, language and history. In the fourth section, I agree that religion-sensitive citizenship education and multicultural integration provide interesting tools to cope with the dilemma of democratic legitimacy and inclusion of religious arguments in political debates.

1. Open Secularism: Accommodation within Common Institutions

In this section, I argue that the first defining feature of open secularism is priority of the moral ends of secularism, namely freedom of conscience and equality, over the operational principles of secularism, namely separation of church and state and neutrality. I show that this element implies that we should reject strict secularism’s duty of neutral appearance in all its forms and that we should embrace a principle of separation which should only apply to the justifications of policies and not to the policies themselves instead of the no-aid principle which claims that state policies should never support the religious activities of some citizens.
1.1 The Emergence of the Notion of Open Secularism in Quebec: Deconfessionalization and Reasonable Accommodation

Although we find uses of the idea of open secularism in French debates on secularism (Baubérot 2008; Pena-Ruiz 2003; Kanh 2005, 105 Portier 2005), this notion appeared in Quebec in the context of a debate about the deconfessionalization of public schools. In 1999, the Proulx report, *Religion in Secular Schools: A New Perspective for Quebec*, recommended that Catholic and Protestant education be removed from the public school curriculum (Proulx 1999), claiming that publicly funded religious education was an unfair privilege since it was only granted to the Christian majority. Such privilege could no longer be continued given the new circumstances of diversity in which many non-Christian groups formed full members of Quebec’s society (*Ibid.*, 170-171). The report specified that the secularization of public schools does not entail the complete removal of religion from the school. The secular character of schools is based on an open conception of secularism, we are told, because it allows for the presence of religion at schools which takes the form of a “cultural approach” to the teaching of religious diversity. This approach is designed to promote in each child openness, tolerance and knowledge of different religious traditions (*Ibid.*, 140-141, *Cf Comité des affaires religieuses* 2006, 44-45) as well as the recognition of the “spiritual dimension of the person.” The “cultural approach” also requires the correlative commitment to offer the space and resources needed for extra-curricular pastoral and religious activities open to all and rooms for religious services, for any religious denomination, outside the teaching schedule (Proulx 1999, 221). The underlying idea is to make the public school open to all citizens. The school is not an institution which promotes only the religious views of the majority religion; it promotes no particular religious creed, yet it provides resources so that members of all religions can perform religious activities if they wish to. It is thus not a place to which only nonbelievers fully belong since while religious practice is not
privileged and encouraged by the school, neither is it banned or discouraged. Moreover, in this view, the secular school is not only open to all, it adopts the mission of making society in general more open to all by actively promoting mutual respect and recognition between adherents of different religious creeds and spiritual worldviews. It is interesting to note that open secularism has emerged, in the context of schools, in a movement towards disestablishment and was preferred to the two alternatives of “secular schools devoid of religious dimension or that (...) altogether take religion out of the school” (Ibid., 185) and of denominational schools for all religions (Ibid., 181-185; Cf. Bégin 2008; Leroux 2007).

The notion of open secularism was given a broader meaning transcending the context of public schools, was “popularized” and was systematically defined in 2008 in the report co-presided by Charles Taylor and Gérard Bouchard on the practices of reasonable accommodation of religious diversity (Bouchard and Taylor 2008, Cf Maclure and Taylor 2011). The main idea of open secularism, as it appears in this document, is that a proper understanding of secularism should recognize that secularism aims at achieving four political principles and, more importantly, that these principles stand in relation to one another as ends and means. Some principles of secularism are ends in themselves; they are moral ends that liberal democracies posit as having intrinsic value. Other principles of secularism have a derivative value; they are valuable as means to achieve ends which are considered as having intrinsic value. In light of this, open secularism asserts that respecting freedom of conscience and giving equal consideration to all citizens are the two fundamental principles of secularism: they define the moral ends of secularism. The neutrality of the state and the separation between state and religion are seen as operational principles: they are means to achieve the moral ends of secularism (Bouchard and Taylor 2008; Maclure and Taylor 2011, 19; Baubérot and Milot 2011).
This point is relatively simple, but it is not trivial. It means that the principles of freedom of conscience and equality have a definitional priority over separation and neutrality as the latter are means that need to be adjusted to effectively serve the achievement of the former principles, not ends in and of themselves. At a conceptual level, this priority of the moral ends of secularism is what distinguishes open secularism from strict secularism which tends to allow the principles of neutrality and separation to limit freedom of religious expression and to restrain state support of religion aimed at removing unequal burdens placed on certain religious citizens accessing public institutions. The priority of the moral ends of secularism rules out strict secularists’ claims according to which public spaces and institutions should remain stripped of religious expressions even if the cost of this restriction is that some citizens’ freedom of conscience is curtailed as they are not able to comply with their perceived justice-respecting religious obligations (such as wearing the hijab, yarmulke or kirpa). It also rules out strict secularists’ claim that separation logically requires that the state consistently abstain from aiding religion. Indeed, ensuring equality of access to public institutions in a way that respects freedom of religion may require diverse forms of aid such as the removal of obstacles to freedom of conscience (reasonable exemptions from general laws) or the provisions of the means necessary for free exercise of religion (for instance, the provision of rooms for prayers or other religious services and of chaplains in public institutions).

1.2 Neutrality, Institutions and Persons

The priority of the moral ends of open secularism over operational principles of secularism helps in debunking three misconceptions about neutrality put forth by strict secularists. All three
misconceptions relate to the idea that the requirement of neutrality applies to both persons and institutions.

The first misconception is the view that since public institutions must remain neutral toward religions, users of public services and institutions must observe a duty of neutral appearance and refrain from manifesting their religious beliefs, from worshipping and from practicing their religions while they attend those public institutions. Few scholars of strict secularism endorse a generalized duty of neutral appearance applying to users of all public institutions; they usually restrict the application of such duty to public schools (Mailloux 2011; Haroun 2008; Beauchamp 2011). Yet from time to time one hears appeals to a generalized duty of religious restraint in public debates about secularism on the television or in newspapers. In addition, as I have shown earlier, strict secularists are at pains to justify why the duty of neutral appearance for users of public services should be contained within the walls of the public school.

However, if we take into account the priority of the moral ends of secularism, it is hard to justify that neutrality entails an obligation of neutral appearance for individuals. Neutrality requires no such thing as a generalized, or a school-targeted, duty of neutral appearance for users of public services. Such a duty simply undermines both moral ends of secularism. It violates the freedom of conscience of those who interpret their religious duties as requiring public displays of religion, such as the wearing of visible religious signs all day long (or when entering a public space), or as requiring the practice of certain rituals, such as prayers, at precise moments of the day which may overlap with the schedule for attending public services. In addition, the duty of neutral appearance entails that participation in public institutions imposes an unequal burden on religious citizens whose perceived religious obligations are incompatible with neutral appearance. These citizens can only access public services at the cost of forfeiting their religious commitment. Therefore, since neutrality is supposed to serve the ends of freedom and equality, the claim that
users of public services should themselves observe neutrality in their expressive acts is based on confusion. For open secularists, neutrality simply requires that public institutions refrain from officially ranking the value of reasonable worldviews and to consequently privilege the point of view of adherents to the “right” conceptions of the good while making participation harder and a greater burden for others. Neutrality thus forbids organic links of cooperation between the state and the favoured religious organizations (a paradigmatic example would be to subsidize the religious activities and infrastructures of certain, but not all, religious groups) but it does not forbid individuals from manifesting their religious beliefs while they participate in public life and attend public services.

The second misconception regarding religious neutrality concerns the neutrality of state agents. The case for a duty of neutral appearance for state agents, as it is put forth by strict secularists, is intuitively more appealing than the case for a users’ duty of neutrality. After all, if state institutions must observe religious neutrality, shouldn’t those representing the state (policemen, judges, ministers, and so on) and, to a larger extent, all state employees offering services to the population (school teachers, nurses, doctors and the administrative staff in public facilities, etc.) also embody the symbolical neutrality of the state? If governmental buildings should not display religious symbols, why would those who work in these buildings be allowed to display religious symbols (Rocher 2011)? However, once we affirm the priority of equality and freedom of conscience, the answer is quite obvious. Buildings and institutions are not persons: they do not have religious convictions and have no fundamental interest in pursuing their own plan of life.

Displaying the neutrality of state institutions has a great value: that of respecting every citizen as equal. Yet it is hard to see why this value is threatened by state agents’ personal manifestation of religion. When a person performing an official governmental function expresses
her religious affiliation, for instance by the way she dresses, presumably everyone can understand that this is part of her personal identity and not an expression of a religious preference made by the government itself. The same cannot be said when a building displays religious signs or when a public institution promotes one religion (for instance when Christian religious education is offered in public schools while there is no such equivalent provision for other religions). These arrangements follow from a political decision to endorse and support religion; decisions to allow state agents to display religious signs follow from a commitment to respect each citizen’s freedom to practice religion. Moreover, the duty of neutral appearance simply does not serve the goals of freedom of conscience and equality. That state agents are allowed to express their religious preferences does not result in unequal access to public services and does not limit the freedom of conscience of users. However, denying the right of state agents to display religious signs while performing their function does create unequal opportunity of employment in government for religious citizens.53

Although equality and freedom of conscience do not support the application of a duty of neutral appearance to all public agents, some religious signs may be incompatible with the fulfilment of certain functions because they impede movements or forms of communication intrinsically linked to those functions. For instance, full-face covering headscarves may severely impede non-verbal communication which could perhaps be viewed as crucial to the role of teacher (Bouchard and Taylor 2008). It is important to note that in such cases, the limitation of religious expression is not derived from a requirement of neutral appearance, but from other requirements of professional roles. These limitations of religious expressions are likely to be rare since the duty of neutral appearance is not itself an integral part of the role obligations of state agents.

53 I pursue this line of argument in chapter 6.
This is, however, controversial for two reasons. First, one may highlight that a duty of religious neutrality is in fact integral to the role of certain state agents: these roles imply an obligation to refrain from proselytizing and to avoid making partial judgments and discrimination on the basis of religion (Picard 2002). This is surely true, but wearing religious signs is not an act of proselytizing (which implies an attempt to convert others, to convince others about the truth of one’s religious opinions), it is an act of self-expression which follows from either a desire to fulfill a perceived religious obligation or a desire to identify oneself with a religious group. Moreover, displaying a religious sign is not necessarily connected to a tendency to make professional decisions in favour of members of one’s religious group or to make professional decisions on the basis of one’s religious beliefs. As Weinstock highlights, we can surely infer the religious affiliation of one person by looking at the religious signs she displays; yet this does not mean that we can infer the moral and political values of that person. For instance, amongst the Jews who wear the kippah “some lean toward the left, others towards the right and others towards the center of the political spectrum; some have decided, at different moments of their life, to wear the kippah. Some did it to mark their Jewish identity, others by deference to tradition, and others did it after anti-Semitic acts of violence have been committed in order to signal their solidarity with the victims” (Weinstock 2011, 38). People can display the same religious sign for a multiplicity of reasons and can do so by adhering to different political and moral values. It is thus impossible to infer the values and reasons embraced by an individual from the way she dresses. It is therefore also impossible to infer how a person’s judgment is biased from the religious signs she displays because we cannot infer from this which values are likely to impair her impartial judgment. One may reply that what matters is not necessarily the objective proof that state agents are biased, but the subjective feeling or belief of citizens who are suspicious of the impartiality of state agents expressing their religious affiliations (Bennett 1999). Yet it seems to me that
although religious freedom and freedom of expression, and other fundamental freedoms, can legitimately be limited for important reasons (protecting other freedoms, pursuing valid collective goals of a liberal and democratic society), individuals’ unwarranted suspicions and beliefs regarding the intentions of others are not part of those reasons. In brief, the duty of impartial judgment does not entail neutral appearance.

Second, one may claim that some official public roles are in fact partly defined by the duty of neutral appearance: some public roles, like those of judge and police, are supposed to “incarnate the state”. If one is supposed to incarnate the state in its professional functions and if the state should be religion-neutral, then it seems that incarnating the state can only be achieved by respecting the duty of neutral appearance (Bouchar Taylor 2008). Yet when we say that judges and policemen incarnate the state, we mean that they exercise judiciary power, not that they are themselves symbols of the state. But again, if values and motives cannot be inferred from the practice of wearing religious signs, we cannot presume that the impartial professional judgment of state officials is compromised by their wearing of religious signs. Hence, the requirement of

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54 One may claim that what is at stake here is the possibility of trust between citizens and public agents. Allowing state agents to display religious affiliations threatens to undermine the trust that citizens place in them. Building trust is certainly important, but building it by masking the religious affiliation of state agents is a strange way to achieve this. It basically claims that the basis of social trust relies on the capacity of state agents to hide who they truly are. This is an implausible conception of the preconditions of trust. If some citizens distrust public agents because of their allegiance to certain religious organizations, then asking public agents not to display their affiliation does not solve the root of the problem. This measure does not change the fact that some do not trust the believers of certain faiths when they occupy public roles. Hence, trust is still jeopardized because citizens may know about the religion of a public agent from hearsay (one may come in this way to know that her child’s teacher is a Catholic or a Buddhist, etc.) or they may infer the religion of a public agent from his ethnicity. Such an inference does not rest on solid objective grounds (for instance not all Arabs are Muslims), but the objection under scrutiny asks us to take subjective feelings and beliefs for granted. Therefore, if what is at stake is the trust in public agents, trying to cover the religious affiliation of public agents is unstable. A better approach would address the root of the problem by seeking ways to build interfaith trust. I will not address this question directly, but some of the elements of open secularism that I will present later may offer ways to build such trust. For instance, open secularism’s multicultural conception of integration tries to increase ties of solidarity and common identification across religious lines and the religion-sensitive conception of citizenship education tries to foster mutual recognition and mutual recognition between believers of different religions.
religious neutrality that ought to be observed by agents who incarnate the state is a neutrality of judgment, which should be impartial, not one of appearance.\textsuperscript{55}

The third misconception about neutrality put forth by strict secularists concerns the notion of “common spaces”. As I have explained in Chapter 2, strict secularists claim that neutrality requires that public institutions create common spaces which are stripped of religious manifestations so that they equally belong to each citizen regardless of her religious affiliations. Equality requires a welfare state which provides many services to the population, but to be equally accessible to all, these services must be void of explicit religious presence. This requires both symbolically neutral institutions and individuals as well as strict institutional separation as commanded by the no-aid principle. On the contrary, institutional pluralism is based on the view that public institutions cannot create such neutral common space, since the non-religious character of public institutions constitutes a secular bias. Equality thus requires the creation of pervasively religious parallel institutions for the delivery of social services in a way that respects the integrity of each religious community.

Open secularism embraces the view that public institutions should create spaces and deliver services that are open to all, regardless of religious adherence. However, it also embraces institutional pluralists’ concerns regarding the possible biases of common public institutions. \textit{Pace} strict secularists, a public sphere which bans all manifestations of religion is not open to all; it imposes a significant burden on those believers for whom religion is not simply a matter of beliefs but is also a matter of practices (Bouchard and Taylor 2008; Maclure and Taylor 2011). For such believers, religion cannot be fully privatized, it necessarily has a public dimension.

\textsuperscript{55} This is not to say that uniforms should be abolished; there are valid reasons to keep uniforms beside the alleged duty of neutral appearance. For instance, police forces have a standard uniform in order to be identifiable by the population, to strengthen their group identity and loyalty, to protect them, and so on. Various forms of exemptions to uniform requirements (such as permission to wear the yarmulke or the turban) can be granted to religious citizens who believe they have religious obligations concerning the way they dress without undermining the pursuit of the aforementioned goals of uniforms.
Those religious citizens who embrace the view that piety entails certain alimentary restrictions, certain dress codes, or the practicing of rituals at precise moments of the day or of the year can only access the religion-free common spaces called for by strict secularists at the cost of forfeiting compliance with their perceived religious obligations. This burden is more likely to fall on new religious minorities. As liberal multiculturalists have shown, the general rules structuring the public life only appear neutral to the cultural majority because they in fact reflect a Christian tradition (Kymlicka 1995; Carens 2000). Dress codes mandating particular headgear do not appear neutral from the perspective of orthodox Sikhs, Muslims and Jews; having only pork on the menu at the hospital, in the army or at school is neutral from the perspective of Christians, but not from the perspective of Jews, Muslims, vegetarian Hindus and so on. Those apparently neutral rules, when they are enforced in public institutions, constitute barriers to religious minorities’ participation in public life. Since they prevent religious minorities from complying with their perceived religious duties, the uncompromised enforcement of those rules violates the freedom of conscience of these minorities and thus creates an important burden tied to participation in public life. When nothing is done about these barriers, the effect is to create patterns of indirect discrimination (Bosset 2007, 3). Therefore, open secularism asserts that absence of religion from public institutions is in no way a warranty of equality of access.

Creating common public spaces which are genuinely open to all is possible if, in addition to abandoning the duty of neutral appearance, the state is committed to actively work at the removal of obstacles to full participation of religious citizens in public institutions. This requires that we recognize that the state has a duty to accommodate religious practices within public institutions in order to minimize the burden of participation placed on religious citizens whose practices were initially not taken into account when the rules, laws and standards structuring public life were adopted. The goal of religious accommodation is therefore the removal of indirect discrimination.
This can take the form of negative accommodations which exempt believers from certain general rules which prevent them from partaking in public life while maintaining their reasonable religious commitments (exemptions to dress codes, to the official calendar, etc.) or it can also take the form of positive accommodations which provide users of public services and their employees the means necessary to practice their religion while they attend public institutions (religion-respecting menus in public institutions’ cafeteria, provisions of rooms for prayers and religious services, etc.) (Swaine 2006, 83).

In brief, for strict secularism, neutrality requires that institutions refrain from supporting religion and that they actively works at the expulsion of all religious manifestations from the public sphere in order to create a public space that is common to all since abstracted from particular religious affiliations. Institutional pluralists and open secularists agree that this is a pure fiction and that a government has to take remedial measures to remove disadvantages suffered by religious citizens within public institutions. Institutional pluralists believe that the only way to do so is to aid religious communities in creating faith-saturated institutions. Open secularism, in my understanding, is premised on the idea of making public institutions genuinely open to all. This requires abandoning the duty of neutral appearance as well as the no-aid principle and embracing an obligation of reasonable accommodation. I have just outlined the goal and form of such an obligation. I will pursue the examination of the notion of reasonable accommodation later, in Chapter 6.56

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56 So far, I have been mainly concerned with accommodation within public institutions. In chapter 6, I will explain that in conformity with the goal of fighting indirect indiscrimination and favouring equality of opportunity, the obligation of reasonable accommodation also applies to the working place. Yet, for reasons of space, I will focus of the negative obligation of reasonable accommodation.
1.3 Separation, Secular Justification and Non-Discrimination

I believe that what surfaces from this discussion of neutrality is that open secularism is committed to a distinctive way of understanding the institutional separation of state and religion. The modern state as we now know it seeks to provide an equal allocation of various goods (like health and education) and opportunities (for careers and jobs) by establishing public services and fair background conditions of cooperation. This requires that public services and job markets be open to all in the sense that no one is discriminated against for morally arbitrary reasons such as ethnicity, race, sexual orientation, gender and religious belief. But as I have just explained, non-discrimination with regard to religion can only be achieved if we drop the no-aid principle of separation and if we embrace a principle of separation that authorizes the state to offer various forms of support to religious practices aiming at removing unfair disadvantages affecting certain religious citizens.

Thus, for open secularism, not only does separation apply to institutions and not to individuals; it applies to institutions in only one specific sense. Separation does not apply to the links between public institutions and religious practices; it applies to the justification of the policies adopted by public institutions. I suggest that open secularism’s underlying conception of separation does not mean that institutions cannot in any way recognize or take measures which would have the effect aiding the religious activities of some citizens. What separation means for institutions is that they should not adopt policies which are justified in religious terms or justified by religious goals. The state can adopt policies which aid religious practice but only if the goal pursued is a secular goal acceptable to all reasonable citizens. Hence, practices of accommodation designed to remove obstacles to the full participation of religious citizens in public life are permissible since their goal is not to promote religion as something intrinsically good, but to remedy some forms of indirect discrimination.
As Bhargava suggests, secularism should be conceived as a separation at the level of justifications of state policies, not at the level of policies themselves (Bhargava 2006, 641). These can be connected to religion in at least two ways without being problematic. First, it can be that a policy justified by secular public reasons directly targets a religious citizens or group of religious citizens. This is the case with practices of religious accommodations which aim at correcting indirect discrimination within common institutions. Second, it can also be that a policy justified by a secular reason aimed at providing a benefit to all citizens ends up aiding religious activities even though these were not directly targeted by the policy. Educational vouchers for low-income families may be used to go to religious schools, publicly funded fire protection benefits churches, welfare cheques can be used to make donations to religious organizations, etc. As we have seen, one of the problems of the no-aid principle is that it had the absurd and undesirable consequence of making all policies indirectly aiding religious activities illegitimate. A notion of separation based on the justification of policies rather than their effect avoids this pitfall.

Yet, supporters of the no-aid principle may object that their view of complete separation is based on the idea that policies which have the effect of aiding religious practices are not acceptable to non-believers and believers of other religions. As we have seen, they based their claim on Madison and Jefferson’s assertion that paying taxes for supporting religious activities one abhors violates one’s conscience. This may reasonably work if one is opposing a religious tax which is collected by the state and redirected to an established church (as it is the case in Germany for instance). In that case the goal of the policy is clearly to further a religious end and some non-believers are being coerced by the state into pursuing that end. The situation is quite different in a case where the state coerces individuals into paying taxes that are later used to pursue policies justified by secular goals that either have the indirect effect of helping religion or are directly targeted at accommodating religious citizens.
Imagine that Rick is a radical ethical secularist who feels that his conscience is violated whenever his tax money is somehow used in a way that supports religious practice. For instance, he opposes an educational voucher program that alleviates the fiscal burden of poor families who want to send their kids to private schools, some of which are religious schools. Rick is not forced to directly subsidy the religious activities of a church; he is forced into subsidizing a program justified by social justice considerations which aims at making certain benefits open to all (in this case, school choice), even to those individuals who would choose to use these benefits to pursue their own religious reasonable conception of the good. It is unreasonable for Rick to reject this justification on the ground that the program will have the effect of supporting a religious practice because this amounts in him saying that the only ones who should receive welfare benefits are those who share his conception of the good and will use them in ways he approves of. This makes the achievement of egalitarian justice only possible in a society in which all citizens share the same conception of the good. In Rawlsian terms, Rick’s position is unreasonable because he does not recognize the burdens of judgment, because he does not recognize that free and rational persons can end up endorsing different conceptions of the good and because he is not willing to propose fair terms of cooperation to those who do not share his conception of the good. He is only willing to deal fairly with persons embracing his conception of the good.

Similarly, suppose that Rick opposes a policy directly targeted at aiding certain religious citizens. For instance, he opposes a policy ensuring that halal and kosher food is on the menu in hospitals or that chaplains are available in hospitals. Suppose that once again his opposition is based on the ground that he does not want to subsidize religious practices he abhors. Besides the fact that the additional cost involved in these measures is very low, his opposition is still unreasonable because he does not recognize the importance of the secular goal of providing
public institutions open to all. It seems that Rick is once again unwilling to propose fair terms of social cooperation to those who do not share his conception of the good.

Swaine proposes a principle of separation which does not command an impossible complete separation between church and state. He claims that although the state can support the non-religious activities of religious organization, it cannot support (either directly or indirectly) the religious activities of religious organizations (1996). However, in light of what I have just said, this seems to be a too strong notion of separation since it prevents the state from aiding or facilitating certain religious activities in order to achieve valid secular goals that citizens could not reasonably reject. It thus prevents the state from taking measures aimed at making public institutions genuinely open to all if the effect of these measures if to provide aid and support for the religious practices of those who feel compelled to meet their religious obligations while attending public institutions. It is one thing to oppose state policies supporting religion in general or a limited number of established religions when these policies are justified by views affirming that religion is intrinsically good for human flourishing or that religion or some organized religions are central components of national identity. It is quite another thing to support policies which have the effect of aiding religious activities but are justified by secular reasons such as the removal of obstacles to full participation in public life, the struggle against indirect discrimination, and the goal of ensuring equality of opportunity. The former kind of support is incompatible with showing equal respect to all citizens in a pluralist society since it is based on justifications nonbelievers cannot accept; the latter kind of support is on the other the hand based

57 An important objection to the egalitarian defense of religious accommodation is that it is not required by justice to aid religious citizens to practice their religion while attending public services or accessing the employment market because religious preferences are just like expensive tastes. According to this view, saying that you suffer a form of indirect discrimination or unfair burden of attaining public services because there is no halal food served where you are hospitalized is like complaining that you are not served caviar at the hospital. I refute this objection in chapter 6.
on a justification nonbelievers cannot refuse unless they are unwilling to propose fair terms of cooperation to co-citizens who do not share their worldview.

Nonetheless, the secular justification principle of separation does not command the kind of strong support for religious organizations called for by religious institutional pluralism. As I have argued, if public institutions do not militantly promote irreligion and are committed to accommodate religious diversity in order to make it possible for all to attend public services without forfeiting their religious engagements, then it is not the case that separate pervasively religious institutions are the only possible way to correct unfair biases perpetrated by common secular institutions. The only “disadvantage” imposed by accommodating secular common institutions which institutional pluralists are able to demonstrate is that secular institutions do not actively promote the preferred religious worldviews of citizens. It thus seems that the only way to make the point that parallel religious institutions are required by justice is to claim that religion is an intrinsic value that the state ought to pursue and maximize. That is however something that nonbelievers can reasonably reject since it demands much more than what is required by the fair treatment of religious citizens

2. Social Integration and Civic Virtue: On the Relative Proximity of Open secularism and Republican Secularism

Open secularism is often defined in opposition to republican secularism (another way of naming strict secularism). Republican secularism is secularism defined by the “official” version of French republicanism (Laborde 2008) which requires the creation of common public spaces devoid of religion. In this model, the privatization of religion is a precondition of the achievement of the goals of social integration and social cohesion; these goals require that individuals appear in the public as undifferentiated citizens abstracted from their private affiliations. In this section, I
suggest that the contrast between institutional pluralism and open secularism highlights the proximity between republicanism and open secularism. Two elements of open secularism point in this direction: the goal of promoting social integration and the role of common schools as tools for creating virtuous and responsible citizens.

2.1 Social Integration: Republican, Liberal and Multicultural Conceptions

As I just explained, the principle of separation as secular justification does not support the idea that religious institutional pluralism is required for the fair treatment of religious groups. Yet, it does not proscribe institutional pluralism. Accommodative common institutions and even-handed pillarization extended to all religious and spiritual groups (including nonbelievers) are two ways of respecting freedom and equality (Laborde 2011). What freedom and equality repudiate are strict secularism and establishment of some but not all spiritual options (single establishment, dual establishment, establishment of religion over non-religion, etc.). This raises an obvious question: are there any reasons to prefer open secularism over institutional pluralism, or vice versa? In this section, I argue that what distinguishes open secularism from institutional pluralism is a certain conception of social integration which requires that citizens of different cultural, ethnic or religious groups interact with each other within a common civic framework of shared public institutions. Without a commitment to this conception of social integration, open secularists cannot explain why they favour accommodation within common institutions over accommodation through the creation of parallel pervasively religious institutions.

It seems to me that this point is recognized in some passages in the main official documents which elaborate the notion of open secularism. Yet its importance is not fully recognized and articulated in the main academic book on open secularism. In Secularism and
Freedom of Conscience, Jocelyn Maclure and Charles Taylor claim that open secularism, or liberal and pluralist secularism, serves two moral ends, respecting equality and freedom of conscience, whereas strict or republican secularism also serves an additional end: that of achieving civic integration (Maclure and Taylor 2011, 28-32). Moreover, strict secularists claim that the collective goal of civic integration can legitimately limit the expression of religious pluralism. Civic or social integration is understood as a precondition of social cohesion: it requires common allegiance to a shared civic identity as well as a shared sense of belonging to society. For strict secularists, such a common identity can only emerge if differences (including religious ones) are removed from the public sphere. Republican integration requires the deletion of all ethnic, religious, and cultural identity markers (Schnapper 2004, 181-182; Fleury 117-127, 153-161). Maclure and Taylor reject the idea that civic integration is an additional fundamental end of secularism because it could conflict with its two moral ends and hence require that these be compromised in the name of integration.

Yet they maintain that it is misleading to accuse liberal pluralist secularism of undermining integration and social cohesion. They claim that in fact, policies of open secularism may actually serve integration better than strict secularism since a feeling of belonging and of identification with the larger society is more likely to arise in a diverse society if the distinct identities of citizens are recognized and accommodated (Maclure and Taylor 2011, 31-32). They thus embrace an alternative conception of civic integration not premised on the republican conception of integration. They instead embrace a liberal conception of integration based on what may be called the “liberal hope”, namely the idea that the liberal state wins the loyalty and allegiance of immigrants having a different cultural, religious and ethnic background than longer-established members of the host society by recognizing their differences and allowing them to partake in social cooperation while conserving elements of their distinct identities and cultural or
religious heritage (Kymlicka 2007, 30-31). Institutions which offer fair terms of cooperation to newcomers exercise a gravitational pull and generate identification in newcomers’ identification with them. Thus, as Maclure and Taylor claim, civic integration is not a fundamental goal of open secularism, but the recognition that the two moral ends contribute, subsidiarily, to civic integration much better than strict secularists’ attempts at stifling expressions of difference (Maclure and Taylor 2011, 32).

The objection to the republican conception of integration implicit in the liberal and subsidiary conception of integration is that the former is counter-productive. If, for the sake of social cohesion, differences are not recognized and individuals are prohibited from expressing their religious affiliations and complying with their reasonable religious obligations (those which do not imply infringements of the rights of others, do not impose substantial costs to the rest of society and do not undermine the functioning of public institutions), these individuals will presumably resent, and rightly so, that their freedom is unduly restricted and will feel alienated from the polity rather than developing feelings of allegiance and identification. This is likely to disproportionately affect immigrant groups whose religious practices are more likely, as I explained, to be at odds with the norms and rules structuring the public life. Immigrant religious minorities thus face an unequal burden under a republican policy of integration and this burden is likely to undermine the creation of a sense of belonging. Yet these groups are the ones for which social integration is the most pressing.

The conception of integration associated with strict secularism is unattractive. Yet, one might fully accept the superiority of the liberal and subsidiary conception of social integration and support religious institutional pluralism, rather than open secularism, precisely on this ground. Institutional pluralism respects religious freedom and equality by supporting faith-saturated institutions alongside secular institutions for delivering the whole gamut of social
services normally provided by the modern welfare state. It is fully legitimate for the proponent of this model of governance of religious diversity to invoke the liberal and subsidiary conception of integration to claim that formerly excluded, stigmatized and disestablished religious minorities would respond positively and develop an allegiance to the polity if they were given the means to establish flourishing religious communities through state subsidies for creating their own separate and pervasively religious social institutions. The liberal and subsidiary conception of integration is thus indifferent between open secularism and institutional pluralism. What determines the choice of the option of accommodation within shared institutions over the alternative of accommodation through separate institutions are neither the values of freedom and equality nor the liberal conception of integration. Maclure and Taylor are right to reject strict secularism because of its conception of integration, but they leave unexplained why accommodative common institutions are more desirable than even-handed pillarization. To explain the superiority of this aspect of open secularism, we need to articulate open secularism's distinctive vision of integration.

I believe that the case for open secularism rests on a “thicker” conception of social integration than merely liberal integration. In my understanding, open secularism is based on the assumption that social cohesion requires more than vertical bonds between the state and separate communities, which is what would presumably result from the pursuit of liberal and subsidiary integration through religious institutional pluralism. It also requires the creation of horizontal bonds of mutual respect and recognition between members of different religious (or ethnic, or cultural) groups. Open secularism is thus based on a liberal and multicultural conception of social integration. This conception asserts that in addition to respecting expressions of cultural, ethnic and religious diversity, integration requires participation in common institutions and public life as well as interactions and exchanges between members of different communities. Thus, in addition
to the liberal hope, one can say that this conception of integration adds a multicultural, or intercultural hope: by interacting with one another in institutions which treat them as equals, members of different communities will build intercommunal ties of solidarity and friendship and through this exchange they will create a new multicultural heritage, reflecting the cultural achievements and histories of both majority and minority groups, as well as a corresponding new sense of national identity. It is through contact with longer date members of the host society that immigrants can learn the official language, develop social networks which facilitate their access to employment, learn about the cultural and historical heritage of the host society and develop a feeling of belonging to and identification with the host society. It is also through contact with immigrant groups that established members of the host society can learn about the histories and cultural contributions of the immigrants, come to recognize them as equal members of society and develop ties of solidarity with them. The idea behind this conception is that social cohesion requires that members from different communities learn to live together while recognizing their differences and identify with each other. They must not only develop a feeling of allegiance to state institutions but also build bridging social capital that cuts across ethnic and religious lines. The antithesis of this conception of integration is thus a system of vertical societal fragmentation, such as a pillarized society, in which individuals’ social interactions occur almost exclusively between co-religionists.

The liberal multiculturalist conception of social integration underlies many policy orientations adopted in Canada at various levels of government. First, it is central in the official Canadian policy of liberal multiculturalism and immigrant integration whose four goals are 1) the recognition and accommodation of cultural diversity; 2) the removing of barriers to full participation in Canadian society; 3) the promotion of creative encounters and interexchange between different cultural groups; and 4) the acquisition of one of the official languages of
Canada (Banting and Kymlicka 2010, 49-50; Kymlicka 2007b, 44). Second, it is also central to Quebec’s interculturalist model of immigrant integration which three building blocks are the promotion of French as the common language of public life, the promotion of participation in Quebec’s collective life and the promotion of intercommunal exchanges (Ministère des Communautés Culturelles et de l’Immigration 1990). Interculturalism struggles against the isolation of communities and seeks ways to promote intercommunal interactions and participation in common institutions precisely on the grounds that it is through such exchanges that newcomers can learn the common language, learn about the history and heritage of the host society and develop ties of solidarity with members of the cultural majority and on the grounds that it is through interaction with immigrants that longer date members of society learn about the cultural contribution of newcomers, bond with them and come to view them as fully equal members of society (Ibid., 69, 85).

As it has emerged in Quebec, the notion of open secularism is closely tied to this conception of social integration. The Bouchard-Taylor report reaffirms this model of integration in which common institutions are the privileged loci of participation and interexchange (2008, 117). It is also claimed that fostering participation in common institutions by removing obstacles to equal access diminishes the risk of social fragmentation and is an important aspect of open secularism. Open secularism seeks to accommodate religious practices and to favour intercommunal interactions within common civic spaces in order to lower the risk of withdrawal into a minority group identity and anomie (Conseil des relations interculturelles 2005).

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58 Thus, as both Taylor and Maclure have played a central role in the writing of the report (the former as a copresident and the latter as a consultant), they are well aware of the merits of the liberal and multiculturalist conception of social integration. My only reproach to them is that Secularism and Freedom of Conscience does not mobilize this notion to distinguish open secularism from religious institutional pluralism and to assess the advantages of the former over the latter mode of governance of religious diversity.
Moreover, in Quebec, the decision not to extend the privileges granted to Catholics and Protestants in the educational system and to move towards open secularism in schools was mostly driven by this conception of multicultural integration. The commitment to the multicultural conception of social integration is indeed crucial in the Proulx report’s argument for the superiority of common secular schools, nonetheless open to religious expressions within their walls, over separate denominational schools for all religions. This argument is premised on the multicultural hope of integration. The report affirms that schools “in which students are grouped together on an ethnic or religious basis, can actually slow down the social integration of new arrivals and their involvement in the active life of their new community” (Proulx 1999, 121-122, Cf. Bégin 2008, 144-145; Leroux 2007, 23). Admitting that even-handed funding for sectarian schools to all religions is consistent with the principle of equality, it rejects this option on the basis of multicultural integration:

The communitarian scenario [i.e. public funding for religious schools] is not compatible with the goal of an education system where students learn to live together regardless of their differences and where they prepare for their future lives as citizens in a society characterized by shared values and a common heritage. Instead, from kindergarten on, children would be divided on the basis of their religious affiliation or their secular upbringing. Rather than learning to live together and sharing in the richness and challenges of their diversity, they would go to school with students with the same religious or secular background as their own and not have the opportunity to interact with students whose background differs from their own. This would be a contradiction in a society which has been striving for more than 20 years to promote social cohesion based on common values and openness to diversity (Proulx 1999, 183).
I would like to suggest that the case for open secularism rests in large part on the plausibility and desirability of the multicultural conception of social integration. If multicultural integration does not work or is not necessary for social cohesion, then there is no reason to prefer open secularism over institutional pluralism. If promoting participation in and interaction within common institutions is not in itself desirable and if fears related to the fragmentation of society are exaggerated, then it might well be better to seek to accommodate religious diversity through the creation of parallel pervasively religious institutions alongside secular ones. This indicates that social integration is a central goal of open secularism, not merely a subsidiary effect of respecting religious diversity. The commitment to multicultural integration is rather a parameter which frames how respect for religious diversity is to be achieved. This commitment explains why open secularism seeks to protect equality within common institutions rather than through parallel and pervasively religious institutions.

Open secularism thus appears to be closer to republican secularism than it initially appears. Of course, open secularism does not embrace the republican conception of integration which requires the suppression of differences. It shares with institutional pluralism an aversion for difference-blind policies which in fact mask false neutrality and leave barriers to the full participation of minorities in place. Yet, open secularism shares with republican secularism an aversion to vertical societal fragmentation along religious lines and seeks to achieve social integration through the promotion of participation and interactions within common institutions open to all. Critics of open secularism from the republican side tend to ignore this. It is indeed not unusual to hear the complaint that policies of accommodation of religious diversity in public institutions lead to the ghettoization of society and threatens social cohesion (Haroun 2008, 43, 52, 83-84). However, once we take into account the multicultural conception of social integration that sets open secularism apart from religious institutional pluralism, this objection appears to be
utterly mistaken. It is hard to grasp the logic of the argument claiming that a policy of open secularism which refuses to publicly fund separate sectarian institutions and instead chooses to actively work at the removal of barriers to participation in common institutions in order to favour intercommunal exchanges and interactions effectively leads to a fragmented society. When it comes to struggling against the compartmentalization of society into religious blocks, open secularism is more proactive than both institutional pluralism (because it refuses to support parallel institutions) and strict secularism (because it removes the barriers to participation in common institutions which incite religious citizens to turn to separate faith-saturated private organizations).

2.2 Open Secularism and Education

Schools are at the center of discussions about religious diversity, playing a crucial role in arguments for both strict secularism and institutional pluralism. This is not surprising since the school is the meeting point of sometimes divergent moral interests: parents want to use schools as vector of transmission for their moral and religious values; children have a prospective interest in having an open future and in having the means to resist indoctrination; states view schools as tools for the pursuit of various societal goals such as the diffusion of the national language, the creation of a competitive workforce, and, most relevant for our purpose, the instilment of a sense of attachment and solidarity as well as civic virtues into future citizens. In the last chapter I argued that the legitimate interests of parents (those that do not conflict with the prospective interests of children) do not give us strong enough reasons to justify full-fledged public funding of sectarian separate schools—at best it justifies measures to make it possible for low-income families to send their kids to decent religious conservative schools.
Open secularism is compatible with this position. However, it supports a preference for common public schools mostly because of an adherence to a moderately republican conception of education that emphasizes the state’s interest in the education of children.\footnote{This does not mean that open secularism ignores the prospective interests of children, but only that the conception of public education that has come to be related to open secularism has been predominantly justified by the need to privilege state’s interests over parental autonomy—as we saw with the Proulx report preference for secular common schools over denominational schools for all religious groups. In fact, as we will see later in this section, it appears that state’s interests are aligned with the prospective interests of children since the means proposed to pursue the former through the educational system are very similar to the means by which the latter are usually pursued. Namely, the state’s interests in promoting social integration and civic virtue is pursued through favouring common school and mandatory teaching of the fact of religious and ethical diversity as well as the promotion of certain minimal skills relating to practical reasoning and ethical deliberation. Although the justification for this form of education is primarily based on state’s interests in social integration and virtuous citizenship, the result is a school system in which pupils become aware of the options open to them and develop abilities needed to make autonomous and responsible choices. One may question whether this is conception of education is compatible with neutrality and whether this in fact amounts to promoting a version of ethical secularism based on the celebration of rational autonomy. This objection is misleading. As we have seen, ethical secularism relies on the view that the good life necessarily requires complete independence from traditions and religious customs. Giving children the cognitive abilities to engage in practical deliberation and to be aware of ethical diversity is not incompatible with them nonetheless choosing to lead ways of life strongly influenced by traditions and religious beliefs (\textit{Cf.} Weinstock 2008, 42).} For instance, the commitment to multicultural integration entails favouring participation in common schools. The promotion of choice for common schools can take the form of creating incentives for parents to send their kids to common public schools by restricting funding to private sectarian schools as well as removing, as much as possible without jeopardizing the public mission of secular education of public schools, obstacles to the full inclusion of religious pupils in common schools by allowing religious accommodation.\footnote{Following the Proulx report, Quebec’s government stopped teaching religion in public schools, but it did continue to fund private religious schools. The government contributes up to 44\% of the total revenues of private schools (including religious ones) and grants private schools a per-student subvention covering 60\% of the cost of the formation of one student in the public sector (Landry 2009, 15).} But the republican view of education espoused by open secularism is not only expressed in its commitment to use schools as tools of socialization and integration, it is also manifest in open secularism’s commitment to actively promote openness to diversity and tolerance (Proulx 1999; Bouchard-Taylor 2008; Comité des affaires religieuses 2006).
This commitment directly follows from the republican idea that the stability of a just society depends not only on the justice of its institutions, but also depends on the practices, attitudes and dispositions of its citizens. For a just and democratic society to exist and remain stable, it is not enough that institutions respect the rights of individuals and that individuals exercise their voting rights. Individuals also need to have certain dispositions and skills; the functioning of democracy requires that they must cultivate certain key civic virtues. For instance, beyond acquiring very basic skills of literacy and proficiency in a common language, citizens must be at least moderately law-abiding and have a disposition to discern and respect the rights of others. In a representative democracy they must also have the capacity and willingness to discern and evaluate the talent and performance of candidates for office and of elected officials. Citizens must also cultivate certain deliberative virtues, with a willingness to listen seriously to the views and arguments of others and an ability to explain their own views intelligibly so as to persuade others rather than to manipulate them. Finally, they must also agree to cooperate with others and accept majority decisions even when they are in the minority (Galston 1991, 222-227; Macedo 1991, 265-277; Gutman 1999).

The new religious pluralism puts great stress on the exercise and development of these civic virtues. The disposition and capacity to discern and respect the rights of others is at risk when stereotypes about the ways of life and religious conception of immigrants and other religious minorities are widespread among members of the cultural majority. Nativist reactions to immigrant presence often imbue members of the majority with a greater sense of entitlement which delegitimizes (in the eyes of those nativists) most rights-based demands for accommodation and equal respect. The disposition to discern and respect the rights of others in a context of pluralism rests on tolerance and mutual recognition, both of which can be undermined by stereotypes, debasing representations of minorities and nativist feelings.
In addition, deliberative virtues are also more difficult to practice in a context of deep pluralism since individuals’ ethical starting points in deliberation are often greatly incompatible with one another or almost unintelligible to one another. People are less willing to seriously listen to each other when their interlocutor’s point of view seems very strange or even obnoxious; and even if the willingness to listen is there, individuals may lack the cognitive resources to critically appreciate viewpoints which are radically at odds with their own. This can result, for instance, in situations where secular citizens cannot understand why maintaining certain religious practices is not merely a whim but rather something crucial for another’s self-respect and sense of identity. It can also result in situations in which religious citizens fail to appreciate the value of individual moral commitments which are independent from divine authority. This type of inter-perspectival misunderstanding seems to me to have played a central role in the Islamic scarf debate, where non-Muslims have tended to ignore or fail to appreciate the voices of Muslim women and have assumed that there was but a single objective meaning that could be associated with the practice of wearing the headscarf. In the context of the new religious pluralism, deliberative virtues rest on the demanding cognitive ability of mutual understanding, which relies both on factual knowledge about others’ conception of the good and on an imaginative capacity to appreciate a multiplicity of perspectives from the inside.

Democratic states are not weaponless in the face of challenges raised by the new religious pluralism. Schools can be more than tools of socialization and integration: they can also be used as tools for the creation of democratic citizens. Thus, citizenship education involves teaching about the rights and responsibilities of citizens, about the democratic process and main political institutions of society, about the political history of society, and about the main past and current social issues and political debates. It also fosters deliberative virtues by developing critical thinking, enquiry and the ability to express one’s opinions and arguments. What I want to
highlight, however, is that citizenship education can be designed to cope with the specific
difficulties raised by the new religious pluralism. To achieve this purpose, citizenship education
should be religion-sensitive rather than ignore or avoid discussion on religious topics by teachers
and between students. This view of citizenship education has been central in the development of
the notion of open secularism in Quebec. In fact, the Proulx report opposed teaching of religion
in public schools for the purpose of inculcating (or unsettling) religious beliefs, yet it called for a
cultural teaching of religion: it recommended that all students be introduced to the fact of
religious diversity and be taught about the content and history of the all major spiritual traditions
(including atheism and other non-theistic worldviews), with a special emphasis on the Catholic
and Protestant heritage of Quebec society (Proulx 1999). This recommendation resulted in the
élaboration of a program called “Ethics and religious culture” (Éthique et culture religieuse)
which was implemented in 2008.

The program aims at developing three sets of skills. The first target is general ethical
skills such as the abilities to understand the origin of the norms and values adopted by societies,
to identify the moral considerations at stake in a given situation and to think about different
solutions and their impact on other people. Second, it develops an ability in “religious culture” in
which students are supposed to gain knowledge about major religious traditions (Christianity,
Judaism, Islam, Hinduism, Buddhism, Indigenous spiritualities, etc.) and about secular thought,
including learning about each religious and spiritual movements’ principal characteristics
(beliefs, symbolism, history, mode of organizations, etc.) (Ministère de l’éducation, du loisir et
du sport 2005, 7-8). The aim of this element of the program is to bring students an awareness and
understanding of the contemporary diversity of expressions of religion and spirituality. Third, the
program also makes students experience discussion and argumentative exchange of ideas in order
to develop a skill in “practicing dialogue”. This skill is based on the capacity to organize one’s
thought in order to present coherent and relevant arguments regarding ethical issues, to express one’s viewpoint and support it by reason, to be sensitive to others’ objections and to exchange ideas with others in a respectful way (Bégin 2008, 146-147). This program is viewed as a fundamental element of open secularism as a mode of governance of religious diversity (Comité des affaires religieuses 2006, 44-45; Bouchard-Taylor 2008).

The whole idea behind the program is that citizenship education should not be blind or indifferent to religious diversity. The focus cannot be solely on knowledge of rights and political institutions in the abstract and on an attempt to foster critical thinking in a vacuum, ignoring ethical diversity and without requiring students to engage into respectful confrontation and dialogue between their respective viewpoints. Instead, the program, especially with its second and third elements, is sensitive to religion. It does not ignore or avoid religious diversity; it immerses students in it by promoting knowledge about the content of different worldviews present in society, by sensitizing students to other perspectives than their own and by making them learn to listen, respect and recognize those who have different values and convictions (Lucier 2008, 159). Therefore, if it is successful in achieving its objectives, the program has the potential to significantly mitigate the aforementioned obstacles to mutual recognition and mutual understanding which weaken deliberative virtues and dispositions to discern and respect others’ rights. It can therefore act as a safeguard against the stress that the situation of the new religious pluralism places on crucial civic virtues. Different programs of citizenship education can perform this function: the specific tripartite division of skills in the “Ethics and religious culture” program is not important, but rather the emphasis on substantive knowledge about the content and
meaning of the various viewpoints existing in society as well as experience in respectful dialogue with others despite profound differences.⁶¹

In brief, open secularism embraces a liberal and multicultural conception of civic integration based on the accommodation of religious citizens within common civic spaces in which individuals from different segments of the population interact and exchange ideas. In this view, both respecting minority rights and interaction between members of different communities are crucial to the development of a shared sense of belonging and a common identification with society. Hence, open secularism shares with republican secularism a suspicion vis-à-vis vertical societal fragmentation along religious lines. Moreover, open secularism, at least as the notion as been developed in Quebec, is closely tied to a republican conception of education in which the school takes on the mission of creating democratic citizens adapted to the new circumstances of pluralism. Far from requiring the complete removal of religion from the school, open secularism views the republican commitment to creating citizens as requiring a cultural teaching of the religious phenomenon as well as the active engagement of students in cross-cultural and cross-religious dialogues on ethical questions. It takes a religious-sensitive approach to citizenship education. In the next two sections, I suggest that both features of open secularism (the liberal and multicultural conception of integration and the religion-sensitive conception of civic

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⁶¹ Although the multicultural conception of social integration strongly supports common schools where children from all religion and ethnic background meet, the civic mission of schools only mildly supports common schools. Many commentators point that in European countries which extensively fund religious schools, children coming out of separate schools tend to be tolerant, responsible citizens willing and well-equipped to partake in civic life (Bader 2007). One should not neglect the fact that in all these countries where separate schools are successful, funding to religious schools comes with regulation and control of the curriculum and citizenship education is usually part of the mandatory national curriculum (Macedo and Wolf 2004; Speecker and Steutel 2001; Leeman 2008). However, arguments supporting the civic contribution of separate religious schools tend to highlight high levels of participation in civic life and the organizational skills of former sectarian schools pupils (Bader 2007, 263-289). Yet, even if citizenship education in schools segregated along religious and ethnic lines can promote certain core democratic virtues, we could question whether such schools fare equally well as mixed schools at fostering the deliberative aptitudes requires by a pluralist democracy, as they cannot provide students with the experience of real dialogue across different segments of the population (Callan 1997, 177).
education) are attractive as they offer potential solutions to two dilemmas posed by the new religious pluralism.


The first dilemma posed by the new religious pluralism concerns the asymmetry between old and new religious groups. We can get a good grasp on this dilemma if we look closely at the main objection that is usually presented against religious institutional pluralism. As we have seen, religious institutional pluralism claims that strict secularism is a myth, it is an ideology, which does not exist in practice. When we look at the actual governance of religious diversity in Western states, especially in Europe, we see a variety of institutional compromises which are the result of long processes of negotiation between factions of Christianity which fell apart after the Reformation. These compromises were primarily made to achieve peaceful coexistence between Protestants, Catholics and secular liberals. Our actual regimes of governance of religious diversity come mostly from the sedimentation of the compromises achieved between the post-Reform period and the emergence of the modern national-state between the mid-nineteenth century and the early twentieth century. The result is a system recognizing a basic right to freedom of conscience (no one is forced to have one religion rather than another or to have a religion rather than no religion) and granting various privileges to organized Christian churches. Proponents of institutional pluralism suggest that the accommodation of the new religious pluralism now encompassing various non-Christian groups must follow the same path. We should proceed by extending existing privileges to new groups so that all organized religions are equally recognized and can benefit from corporate representation inside political institutions and from funding for creating their own social institutions.
However, many object to the project of religious institutional pluralism by claiming that it would undermine social cohesion by preventing the social integration of religious minorities. For instance, it is often said that the continuation and extension of public funding for religious schools leads to the fragmentation of society and diverts resources from common public schools which foster a civic identity that cuts across religious divides (Judge 2001; Barry 2001; Scheffler 2011; Underkuffler 2001). Responding to Ontario’s announcement that tax credits would be given to cover tuition fees for private (including religious) schools, Ontario’s Human Rights Commissioner declared that the policy had the “potential to result in racial, ethnic and religious apartheid in our educational system, as well as intolerance and ignorance” (quoted in Campbell 2004, 187). In the same vein of criticism, one of the tenets of the version of strict secularism proposed by French republicans is that corporate political representation of religious groups and official recognition of intermediary religious bodies which mediate that relation of individuals to the rest of society are intrinsically divisive, pulling society apart into factions concerned only with pursuing narrow sectarian interests (Kintzler 2007, 19; Pena-Ruiz 2003).

Institutional pluralists are likely to answer that this objection is purely ideological and ignores the fact that historically, allowing and helping religious groups set up their own institutions and granting them official recognition has prevented religious strife and allowed for peaceful coexistence, even after decades or centuries of violent antagonism. Facts do not support the claim that institutional pluralism is detrimental to social cohesion (Bader 2007; 2003b). Moreover, many claim that separate institutions, like religious schools, can act as seedbeds of civic virtues and social integration as well as, and perhaps better than, common public schools (Bader 2007; Brighouse 2010). When we look closely at the experiments in separate schools in countries like Netherlands, which fully funds Protestant and Catholic separate schools, or at Catholic and Protestant schools in the United Kingdom and Canada, we cannot say that religious
schools create individuals who are intolerant, who do not participate in civic life, who do not share a common civic identity with the rest of society, nor that funding religious schools undermines social integration and social cohesion (Campbell 2004; Gorard 2004; Vermulen 2004). In the Netherlands, corporate political representation and official recognition did not undermine social cohesion and stability, but rather resulted in cooperation between liberal, Protestant and Catholics elites. In addition, allowing the Catholic minority to have its own social institutions (its own “pillar”), ensured the emancipation of this group which is now fully integrated in terms of the economic success of its members, their participation in civic life and their identification with the Netherlands. If, in the past, letting each religious groups organize its life around its own pillar has proven to be a successful way to ensure peaceful coexistence and emancipation of religious minorities, why not support the creation of such pillars for new immigrant religious groups?

In light of the historical successes of corporate forms of governance of religious diversity and of policies allowing religious groups to receive state funding to create their own social institutions, it seems that fears of fragmentation of society and threats to social integration posed by the even-handed extension of privileges to new religious groups are exaggerated. But perhaps this is too quick a rebuttal of the social integration objection to institutional pluralism. It assumes a too great a symmetry between the “old” (post-Reform) religious pluralism (at the time corporate regime of governance of religious diversity sedimented) and the new context of religious diversity boosted by immigration. In the Dutch case, for instance, the pillarization system was designed to accommodate different groups who were profoundly divided along ideological lines (Catholics, Protestants, secular liberals) but who all shared a common Dutch ethno-national identity, a common historical experience and a common language; in other words:
“metaphorically speaking, one could say that the pillars, however different their group cultures, shared the same roof” (Spiecker and Steutel 2001, 296-297; Cf Scheffer 2011).

Regimes of institutional pluralism were thus designed for circumstances that differ substantially from the contemporary context of religious diversity; they were simply not designed to cope with the challenge of immigrant integration. Integrating immigrants requires that we adopt policies which, while respecting immigrants’ right to maintain and take pride in aspects of their distinct identities, are designed to foster learning of the language of the host society, to favour fair integration to the economy and employment market, to struggle against discrimination and stereotypes against immigrants, to aid immigrants in building bridging social capital with other groups in society by encouraging their participation in civic life and common public institutions, and to generate feelings of belonging and allegiance to the host society. Policies of accommodation of old religious diversity which inspire religious institutional pluralists were not designed to achieve these ends and we can doubt that the degree of segregation granted to old religious groups—which had cohabited for long period of time and shared the same language, ethnicity and national identity—would have the same emancipating and integrating effect with immigrant groups. As Kymlicka puts it:

it would be a serious mistake to conclude from the historic success of pillarization in accommodating religious and ideological diversity among Dutch nationals that pillarization is a good way to integrate immigrants. Muslims immigrants to Holland have very different needs in relations to public institutions, including schools, than Dutch Catholics. The former are predominantly recent arrivals from Turkey and Morocco with little or no knowledge of the Dutch language and culture; the latter have been living in Holland for centuries and share the same language and ethnicity as the majority. The challenges of integration and inclusion
are simply very different in the two cases, and so there is no reason to assume that what works well for the latter would work for the former (Kymlicka 2009, 328).

It therefore seems that the new religious pluralism upsets old patterns of governance of religious diversity by bringing in new variables that were absent from the initial equation. In addition to the question of how we are to organize society so that people embracing different beliefs can cohabit as free and equal citizens, it raises the question of integrating groups who do not yet share the common national identity and language. This raises the first dilemma of the new religious pluralism: if the means we have historically taken to deal with the first challenge of religious diversity are not adapted to cope with the challenges posed by the new religious pluralism, what should we do? Extending existing institutional privileges granted to old religious groups to new minorities may be equivalent to making a blind bet, as the social integration of newcomers cannot be taken for granted. Should we then adopt different sets of policies for dealing with old and new minorities, allowing for segregation in the case of the former but not in the case of the latter? As Modood and Bader have stressed, this sort of unequal treatment for new minorities is obviously unjust. Moreover, the perception of this injustice by immigrants can only fuel the kind of resentment that curtails identification with the larger society.

Two elements of our discussion on religious institutional pluralism and on open secularism point to a solution to this dilemma.

First, open secularism puts forth a conception of social integration which is precisely designed to build a common sense of identification between groups who do not already share a common national identity. By favouring participation in a common civic framework as well as interactions between members of different communities, it aims at creating horizontal ties of solidarity that cut across ethnic, racial and religious differences. The link between social integration and proposed policies is better articulated at a theoretical level in the case of open
secularism than it is in the case of institutional pluralism, which unwarrantedly infers the potential success of pillarization policies for new religious minorities from the substantially different situation of the old religious minorities. More importantly, the validity of the liberal and multicultural conception of social integration enjoys significant empirical support. Indeed, it seems that countries which have resisted funding for separate schools (for both old and new religious groups) have done better in integrating new religious groups. This is what Casanova concludes from comparing the situation of Muslims in European countries with the situation of Muslims in the United States (Casanova 2007). Moreover, there is strong evidence, despite what the critics of multiculturalism say, that immigrants develop a stronger sense of belonging to the host society in countries, such as Canada and Australia, which have adopted the liberal and multicultural conception of integration, have worked to remove obstacles to participation in common institutions and have favoured cross-cultural interactions and exchanges (Banting and Kymlicka 2010).

Second, as we have seen in the last chapter, respecting equality and religious freedom does not require state support for parallel sectarian institutions if public institutions have a secular character and have adopted policies of accommodation of religious diversity. This means that disestablishment, the withdrawal of institutional privileges granted to certain religious groups, is not morally impermissible. It is thus not impermissible to move from a model of accommodation of religious diversity through separate institutions to a model of accommodation within shared institutions. The latter seems much more promising for the integration of new religious minorities, and it does not achieve this at the cost of trespassing on the legitimate claims of old religious minorities to freedom of religion and equality. This is the path that Quebec has explored since 1999. It thus seems that we do not have to choose between making a blind bet by extending older religious privileges and adopting dual standards of policy for old and new religious groups.
4. Open Secularism and the Duty of Civility

The second dilemma of the new religious pluralism concerns democratic legitimacy and the place of religious justifications for the exercise of political coercion. In this section, I want to show open secularism provides interesting resources to approach this dilemma. I start by summarizing the view which links democratic legitimacy to the duty of civility and I explain the standard objections to the duty of civility leading some to embrace an agonistic conception of the democratic process which fully includes religious arguments in political debates. It will then appear that we face the choice of either preserving democratic legitimacy by refusing religious arguments (and other non-public arguments) to be decisive in political debates or allow for the full inclusion of religious views by allowing political decisions to be taken for exclusively religious justifications. I then examine several attempts to explain how legitimacy can be preserved under the inclusion of religious arguments, showing that all such attempts reaffirm a duty of religious self-restraint forbidding political decisions solely for reasons pertaining exclusively to citizens’ religious conceptions. However, I suggest that this is the right stance to adopt and that fostering civility as religious restraint need not to be vulnerable to the standard objections to the duty of civility. This point surfaces when look closely at the means and strategies that are at the disposal of the state to promote observance of civility in non-ideal contexts. I illustrate this point by suggesting that open secularism contains several elements which can be seen as tools to foster civility without disrespecting or excluding religious citizens disposed to base their political advocacy exclusively on religious grounds.

Political liberals claim that democratic legitimacy entails that the coercive exercise of political power must be justified by reasons which are acceptable to all reasonable citizens. If
citizens are to be treated as free and equal, then the coercion to which the state subjects them must be justified to them from a perspective they cannot reasonably reject. People are reasonable when they are disposed to propose and accept fair terms of cooperation and when they recognize that under free institutions reasonable persons can legitimately embrace different comprehensive doctrines given their own experience, given the difficulty to assess evidence supporting the validity of ideals of the good life and given other factors normally burdening their judgment regarding the question of the good life (Rawls 1993, 56-57). Reasonable citizens do not expect the state to exclusively promote their own conception of the good or force others to comply with its terms and they accept that other citizens should have fair opportunities to pursue their own reasonable conception of the good. Correlatively, citizens can reasonably reject coercive laws which deny them the opportunity to freely pursue their own reasonable comprehensive doctrine. Thus, as equal citizens who collectively exercise power through democratic institutions, we owe each other justifications based on proper political reasons and not on particular and idiosyncratic comprehensive doctrines which are not embraced by all. In other words, citizens must observe a duty of civility which is essentially a duty of restraint: when engaging in political advocacy, citizens must refrain from supporting their positions with reasons pertaining exclusively to comprehensive doctrines and must instead appeal to reasons belonging to a political conception of justice, that is, a conception which is independent from comprehensive doctrines, which draws from the public culture of the society, and which only applies to the organization of the basic structure of society (not to ethical questions regarding the meaning of life and the ranking of substantive ideals of personal conduct) (Rawls 1993, 11-14).

This duty of civility faces two main objections which both relate to the burden the duty places on religious citizens given the totalizing role that religion has in the life of certain very pious citizens. First, for some citizens, faith should play an integral role in a human life. Such
persons sincerely believe that wholeness and devotion imply that all aspects of everyday life ought to be religiously inspired. This includes political and social aspects of one’s existence. It thus belongs to the religious convictions of those citizens that “they ought to base their decisions concerning fundamental issues of justice on their religious convictions. They do not view it as an option whether or not to do it. It is their religious conviction that they ought to strive for wholeness, integrity, integration in their lives: that they ought to allow the Word of God, the teachings of the Torah, the command and example of Jesus, or whatever, to shape their existence as a whole, including then, their social and political existence” (Wolstertoff 1997, 105). From this point of view, requiring compliance with the duty of civility prevents the religiously pious from fulfilling their religious obligations, forcing the devout believer to act in a way that violates his conscientious beliefs. The duty of civility thus infringes freedom of conscience of devout citizens and “jeopardizes their existence as pious persons” (Habermas 2006, 8).

Second, demanding that devout citizens recognize the priority of non-religious secular considerations in political debates imposes an asymmetrical epistemic burden on them. As it may be very difficult, if not impossible, for devout persons to separate their religious convictions from their political convictions and to recognize the “pull” of secular public reasons, observing the duty of civility means they must support their political advocacy using considerations they do not sincerely believe, thus forcing them to be disingenuous. Religious citizens therefore face permanent cognitive dissonance when they enter the public deliberative sphere if they ought to comply with the duty of civility (Lafont 2007; 2009). This burden is asymmetrical because it is far less difficult for a nonbeliever to accept the primacy of secular considerations in public deliberations (Habermas 2006). In addition to the objections based on the violation of devout citizens’ conscience and on the asymmetrical cognitive burden, some have opposed the duty of civility on the grounds that religious self-restraint in political advocacy would cut us off from the
valuable contributions of religion to public debate and undermine church-based civic engagement, which would be a significant loss given that churches have proven to be important channels for incorporating excluded voices into public deliberation (Weithman 2002; see my Chapter 3, section 3.2.2 and 3.2.3).

For some commentators, these considerations completely defeat the case for the duty of civility. They claim that citizens should be allowed to offer arguments in public political debates which depend upon reasons drawn from comprehensive moral doctrines, without making them good by appealing to public reasons and they should be allowed to base their votes on reasons drawn from comprehensive doctrines without having accompanying public reasons which are sufficient to justify their votes, provided they sincerely believe that government would be justified in adopting the measures they advocate and vote for (Weithman 2002, 121). However, the cost of this relinquishment of the duty of civility is quite high. If citizens can vote and lobby their government for passing legislative measures which are exclusively justified by reasons belonging to a comprehensive doctrine, then there is a serious risk of tyranny of the majority. Majorities formed around a particular conception of the good, or around a narrow family of such conceptions, can limit the freedom of minorities in a way that denies them equal consideration, namely by coercing them for reasons they can reasonably reject. Therefore, abandoning the duty of civility jeopardizes democratic legitimacy.

62 This implies a rather “substantive” conception of democratic legitimacy in which the constraints of public reason apply directly to the justification of democratic decisions. Some claim that we should embrace a proceduralist conception of democratic legitimacy in which the constraints of public reason only apply to the justification of the principles governing the process of democratic decision-making and not to democratic decisions themselves (Peter 2007). I cannot fully develop this argument here, but it seems to me that the distinction between substantive and proceduralist conceptions of legitimacy collapses. If second order rules governing democratic decision-making procedures are to be justified by reasons acceptable to all reasonable citizens, then it is likely that one feature of the democratic procedure will be that first order democratic decisions should be justified by reasons acceptable to all. The idea behind this is that it is reasonable for one person to not want to gamble with her fundamental freedom. A democratic procedure of decision-making which allows for decisions to be taken for non-public reasons implies the possibility that the freedom of those embracing unpopular comprehensive doctrines will consistently be limited in the name of reasons belonging to the majority’s conception of the good. To demand to members of unpopular minorities
One the other hand, there have been attempts to explain why the duty of civility neither unduly burdens devout religious citizens nor closes the door to valuable religious contributions to public debates. However, all attempts to include religious reasons in political debates which also try to preserve democratic legitimacy end up by reasserting or logically implying that citizens should observe a civic duty of restraint. One may argue that the duty of civility is not too burdensome to devout religious citizens by pointing to Rawls’s proviso—namely, arguments based on comprehensive doctrines in support of a particular position can be introduced at any moment during the democratic deliberative process provided that proper political reasons supporting the same position are provided in due course (presumably before a binding political decision is taken) (Rawls 1997, 776). However, this implies that if no translation has occurred, if no proper political reason has been given in support of a measure initially justified on religious grounds, at the time of decision-taking, citizens and government officials must observe restraint and abstain from supporting the religiously justified proposal. The proviso is still quite burdensome because it implies that the only relevant reasons for democratic decision making are public reasons and comprehensive reasons which are recognized as compatible with certain already identified equivalent public reasons.

One may instead claim that the duty of civility is not too burdensome because, as Rawls and Habermas both suggest, it only has to be observed in the formal political forum (in governmental settings such as the parliament, courts and public administration) (Rawls 1997, 767; Habermas 2006, 9). But this also means that the only reasons that can lead to effective political decisions are those which are public or compatible with particular public reasons. If they accept a second-order procedural rule of decision-making which allows for democratic decisions to be justified by comprehensive reasons, is the same as asking them to accept that their freedom to pursue their conception of the good depends on the benevolent decisions of the majority. This is just too risky and it is not reasonable to expect members of a minority worldview to gamble with their freedom in such a way.

171
religious citizens want their voices to be heard they have to relinquish their commitment to lead religiously integrated lives, at least in the political aspect of their existence. Moreover, as I explained earlier, it is unlikely that the duty of civility will be observed above the institutional threshold of the formal political forum if it does not also apply below this threshold since elected officials have to be accountable to their constituencies and have an interest in efficiently carrying the voices of their voters inside the formal political forum (see my chapter 2, section 6.1).

Others have tried to reconcile the demands of democratic legitimacy with the inclusion of religious views in political debates by opposing the duty of civility and by adopting a presumably less demanding conception of the deliberative obligations of citizenship. Thus, one proposed way to reconcile democratic legitimacy and the inclusion of religious perspective in political debates consists in saying that citizens do not owe each other justification in the terms of public reason but rather “mutual accountability”. This view claims that “citizens who participate in political advocacy in the informal public sphere can appeal to any reasons they sincerely believe in, which support the coercive policies they favour, provided that they are prepared to address any objections based on reasons generally acceptable to democratic citizens that other participants may advance against such policies” (Lafont 2009, 132; Cf. Lafont 2007; Bohman and Richardson 2009). This view attempts to shift the source of legitimacy from the content of the views put forth in political advocacy to the attitudes of participants in public deliberation. Civility does not require avoiding controversial arguments but “forthright engagement” with others’ substantive points of view. Citizens must carefully listen to one another, be willing to change their minds if others’ arguments are stronger after due scrutiny, they must engage in internal criticism of others’ arguments and try to occupy others’ perspectives from the inside (Bohman and Richardson 2009, 271-272).
Forthright engagement is surely beneficial for bringing parties in disagreement towards a potential agreement. But if such agreement never occurs what should deliberating parties in disagreement do when comes the time to vote or decide on matter of fundamental justice? What happens if a democratic majority supports a certain political position involving coercion (say, opposition to same-sex marriage or to physician assisted suicide) for religious reasons, listens to the objections of other citizens based on generally acceptable considerations (such as the value of equal treatment or non-discrimination), replies to these objections but does not succeed in convincing the dissenting minority? Should we affirm that they are allowed to vote on the basis of their comprehensive reasons and declare the issue of the vote legitimate because they have taken the time to reply to their opponents’ objections? This is not convincing. After all, what does an additional round of deliberation change if the outcome is still that a group has imposed its conception of the good on others who had a reasonable objection to being treated in such a way?

Lafont goes the other way around and claims that citizens must refrain from imposing coercive policy “until objections based on generally acceptable reasons have been successfully defeated (Lafont 2009, 132). But what does it mean for a person advocating for a coercive policy for non-public reasons to “successfully defeat others’ objections based on generally acceptable reasons”? If it means providing a counter-objection that only herself (and others adherents to her comprehensive doctrine) could find convincing but not those who put forth the objection, then it seems that citizens are entitled to impose their comprehensive doctrines on others when comes the time of deciding political questions. But if it means providing a counter objection which can effectively convince reasonable objectors, then it seem that no coercive policy should be adopted if they are not supported by reasons acceptable to all. If this second meaning of “successfully addressing objections” is the right one, then democratic legitimacy is preserved. Yet, if citizens can only vote for a coercive policy they initially supported for comprehensive reasons when they
have successfully addressed objections by providing counter-objections that all reasonable objectors could accept, then they should never vote for policies which cannot be justified by reasons acceptable to all, and they can only vote for coercive policies they support for reasons belonging to their comprehensive doctrine provided proper political reasons have been given in due course. Mutual accountability in public deliberation is consistent with legitimacy only when it falls back on the Rawlsian duty of civility.

Another attempt to make political debates on fundamental questions of justice more open to religious reasons without jeopardizing the commitment to legitimacy consists in abandoning the view that citizens should attain a consensus on reasons all can accept in order to justify coercive policies and embracing the idea that citizens’ political positions can converge towards specific laws even if there is no consensus at the level of their reasons and justifications. For instance, Weinstock suggests that when there is deep disagreement about coercive policies, citizens do not have to seek consensual political reasons acceptable to all. Instead, they should engage in negotiation processes in which they make compromises in order to reach pragmatic solutions acceptable to all, not because a consensus of justifying reasons has been attained, but because each party has made concessions to meet others’ demands so that the resulting negotiated policy allows each party to realize or preserve at least some of its values, which is more desirable than “to hold out for total victory, the risk of this latter course being of course that she will suffer total defeat” (Weinstock 2006, 244). In this view, compromise can arise as an attractive path to decision-making when disagreeing parties make reciprocal concessions regarding aspects of their conceptions of good which are peripheral or secondary and leave aspects which are fundamental to their integrity out of the negotiation process (Ibid. 245). This implies that citizens can base their political proposition on reasons belonging to comprehensive doctrines; they do not have to
provide public reasons to justify which elements of their conception of the good are non-negotiable.

Yet, as the compromise model of deliberation is not a sheer balance of power (as determined by the numbers in a vote for instance), the corollary to the idea of reciprocal concessions is that citizens should not advocate or vote for laws which would force others to abandon fundamental elements of their conception of the good even if their comprehensive doctrines incline them to do so and even if they have the power to do so (as, for instance, when they know they form a majority). Although this model of deliberation does not require citizens to exercise restraint with regard to the reasons they put forth in their political advocacy, it still requires citizens to observe an important duty of restraint: they should abstain from supporting, through their vote and advocacy, laws that would undermine other citizens’ comprehensive doctrines’ essential elements. The object of civility has shifted from reasons to particular policies, yet the burden of restraint is still there.

All this indicates that the tension between democratic legitimacy and the inclusion of religious voices is a genuine one. There is no way we can get both democratic legitimacy and the inclusion of any religious (or comprehensive secular) reasons which cannot be translated into reasons acceptable to all or which do not support laws everyone can reasonably accept. There is no middle ground position in which legitimacy can be achieved without citizens observing a robust duty of self-restraint. Moreover, the problem of legitimacy and the inclusion of non-public reasons is exacerbated by the circumstances of the new religious pluralism in which both the divide between secular liberals and religious citizens and the divide between long term residents and immigrant religious minorities (especially Muslims) are growing. In national public spheres in which unbridled appeal to non-political reasons are allowed it is not rare to see coalitions of secular and religious citizens from the majority supporting laws limiting the freedoms of
minorities by arguments based on non-public reasons (“Islam is intrinsically incompatible with
the sexual emancipation of women”, “this country is a Christian one”, and so on). This certainly
played a part in episodes such as the French law against the hijab and the Swiss referendum
against Minarets. On the other hand, it is not rare to witness religious coalitions advocating
coercive policies (such as a ban on same-sex marriage or on physically assisted suicide) that are
opposed by secular liberals for reasons acceptable to all reasonable citizens. The result in both
situations is often that majorities are able to impose their controversial conception of the good on
others although the latter reasonably oppose such imposition. Unlimited inclusion of all religious
arguments in public debate is thus too detrimental to democratic legitimacy and to the
preservation of the conditions of equality and liberty for minority groups to be acceptable.

Yet, critics of the duty of civility such as Weithman and Wolterstorff are not likely to be
convinced by this. They may still claim that imposing a duty of civility requiring citizens not to
vote or seek legislative actions according to their deepest moral convictions regarding what they
view as pressing political issues if they cannot frame their position in the terms of public reason
is unjust as it forces them to act against their conscientious beliefs and impose an unequal
cognitive burden on them.

I want to suggest two avenues to reply to this view. First, not all restrictions of freedom
are unjust and not all unequally distributed burdens are unjust. There is no value in preserving
people’s freedom to be unreasonable (unwilling to accept fair terms of cooperation). This is why
limiting murderers and thieves’ freedom through the enforcement of criminal law is not
unfair. Similarly, although the comparison is hyperbolic, there is no unfairness in asking citizens
who are disposed to vote for coercive laws for exclusively non-public reasons to exercise self-
restraint. The consequence of such voting patterns may well be that majorities are able to limit
the freedom of others by imposing on them their conception of the good. In the same vein, it is no
problem that unreasonable citizens are more heavily burdened than reasonable ones. The duty of civility does put a heavy burden on citizens willing to vote for policies on exclusively non-public grounds. However, why should we view this burden as an unfair one? The unfairness of a differential burden depends on whether the baseline from which difference is measured is itself fair. Otherwise, thieves and murderers may well claim that criminal law is unfair since it impose on them a greater burden than the state of nature. Thus, the objection from the unequal burden imposed by the duty of civility simply assumes that political deliberation unconstrained by public reason is an appropriate baseline for assessing the burdens of deliberative obligations (Lister 2008, 285). Yet, proponents of this objection do not explain why this baseline situation is fair, they simply assert that in comparison to it, people willing to make political decisions on the basis of exclusively religious grounds would be burdened. However, it is far from obvious that such a baseline is fair, since fully unconstrained political deliberation is likely to produce majorities which are simply able to impose their conception of the good on the rest of society via coercive laws.

Second, critics of the duty of civility must pay more attention to the means used to foster compliance with the duty of civility. Critics of the duty of civility cannot object that this duty violates devout citizens’ conscience or that it imposes an unequal burden on them independently from the way in which the state seeks to bring about observance of civility and self-restraint. I will claim that the best means available to the state for fostering civility do not violate citizens’ conscience and could even diminish the cognitive burdens of public justification.

Before I explain this, I have to make two preliminary remarks. First, civility, or restraint, should not be understood as abstaining from providing arguments based on religious or other comprehensive views. Consistent with Rawls’s proviso, it should be understood as abstaining to vote or to influence political decisions when one’s political proposals for coercive policies
initially supported by non-public reasons are not also supported by equivalent political reasons acceptable to all reasonable citizens or when the process of reciprocal concessions in negotiation has not led to a compromise acceptable to all parties given the fundamentals of their reasonable conception of the good.

Second, restraint should be thought of not as a duty that should be observed but as a virtue or a disposition that should be cultivated. This point may seem trivial but it is far from it. The means at the disposal of the state to ensure the observance of a duty are fairly limited. Besides coercion and legal sanctions, there is not much that the state can do to enforce a duty. Of course, no one suggested that the duty of civility could be legally enforced: this would obviously be impossible to achieve (it would be too intrusive to ensure that citizens vote for proper political reasons and it would probably generate a great deal of resentment in the population, if not uprising, if parliamentary representatives who openly vote for religious reasons were somehow sanctioned). Even if enforcement were feasible, it would violate the conscience of devout religious citizens and fully validate Wolterstorff’s objection based on freedom of conscience. On the other hand, if the duty of civility is a moral and not a legal duty, then there is by definition nothing the state can do to secure its enforcement. In the non-ideal context in which citizens do not observe civility and restraint, there is nothing the state can do to secure the basis of democratic citizenship and legitimacy. However, if civility is conceived as a virtue, as an internalized disposition to act in certain ways, there is a whole repertoire of practical strategies which are available to a state willing to promote civility in the non-ideal situation of unbridled comprehensive doctrinal warfare on the public square.

All agree that non-public arguments that can be translated into terms of public reason do not pose a problem for legitimacy. Yet, attempts to include exclusive reliance on non-public arguments in political debates while preserving some standard of legitimacy all end up
reaffirming the need for citizens to observe restraint when non-public claims prove to be untranslatable in terms of public reasons or do not converge on laws acceptable to all. However, it does not solve the problem to simply reaffirm the duty of religious restraint in cases when no translation or convergence occurs. Critics of civility are likely to maintain that restraint still violates the devout’s conscience and imposes unequal cognitive burdens. We need to identify the tools or strategies which the state can use to promote the internalization of a disposition to civility or to defuse propensities to uncivility in ways consistent with treating citizens as free and equal. In other words, we need to think about the strategies and conditions that can bring greater congruence between reasonableness and the religiously based motivations for political advocacy of citizens. In what follows, I exemplify this by pointing to three such strategies.

First, as I explained, citizenship education can promote mutual recognition and mutual understanding between individuals embracing different faiths and conceptions of the good. It can best achieve these goals especially if it does not ignore religious diversity but directly aims at familiarizing students with the phenomenon of religious diversity and takes a dialogical approach akin to Richardson and Bohman’s notion of “forthright engagement”. Religion-sensitive citizenship education promotes mutual recognition by making a link between, on the one hand, teachings about the basic freedoms, issues of social justice and ethical reasoning and, on the other hand, teachings about the religiously diverse composition of modern societies. It also promotes mutual recognition by making students gain experience in respectful dialogue with different spiritual traditions. By fostering mutual recognition, this form of education favours the development of the cognitive aptitude to discern and respect the rights of others despite their differences and to recognize them as equals. In addition, by familiarizing them with the content of different religious and secular worldviews as well as by developing skills in cross-cultural dialogue (such as the ability to “put oneself in others’ shoes” and appreciate the multiplicity of
secular and religious perspectives), religion-sensitive citizenship education promotes the cognitive ability of mutual understanding across religious and ideological divides; it helps secular citizens to understand to point of view of believers, believers to understand secular worldviews and members of the majority to understand minority religions. Mutual recognition and mutual understanding are not the same as reasonableness and civility. However, they are preconditions to it, or at least they are catalyst factors of reasonableness, and they are aptitudes which facilitate the emergence of reasonableness. It is easier to appreciate the value of civility and restraint when one fully views others who object to being coerced for reasons pertaining to one’s comprehensive doctrine as equals and when one is able to appreciate others’ conceptions of the good from the inside and understand which fundamental part of their identity is threatened by the proposed coercive policies backed exclusively by one’s non-public reasons.

Second, the state can also help defusing propensities to uncivility by promoting multicultural integration through intercommunal interactions within common institutions. When individuals develop horizontal ties of solidarity and friendship which cut across many religious and ethical divides, they are more likely to pay attention to how the political proposals they support for non-public reasons may affect the lives of those who do not share their conception of the good. These intercommunal ties and common identifications help mutual recognition across religious divides. They can also improve mutual understanding as one may learn about the centrality of certain religious practices or secular values to others’ conception of the good through friendly encounter and exchanges within common civic framework. Of course, common mixed schools are probably the institutions most likely to produce these effects as contact between users of different background is more sustained and more intense than in other public spaces (one rarely makes new friends during a short stay at the hospital, for example). Moreover, mixed schools maximize the efficiency of difference-sensitive citizenship education since such
environment allows pupils to actually practice reasonableness in “dialogical contexts that straddle our social cleavages” (Callan 1997, 177).

Third, we may plausibly believe that the symbols of national identity have an impact on individuals’ dispositions which are at play in political contexts. If national symbols give rise to or legitimate a narrative in which people represent their country as being a religious one, or a Christian one, religious citizens are going to feel entitled to support coercive policies justified exclusively on religious grounds even though they have not offered justifications acceptable to nonbelievers or alternative policies towards which nonbelievers may converge. Similarly, if the national narrative is taken to mean that the country is the champion of Universal Reason and secular Enlightenment, it may lead ethical secularists to feel entitled to support policies restricting religious freedom on no other ground than anti-religious perfectionist arguments. Thus a third measure to defuse propensities to uncivility may be to adopt national symbols which are secular in the sense of being neither pro-religious nor anti-religious.

Are these measures for fostering civility vulnerable to the standard objections against the duty of civility? It seems not. First, valuable religious contributions to political debates are not excluded since restraint does not require silencing religious arguments but merely that these be not decisive if they cannot find accompanying proper political reasons. Second, they do not impose unequal cognitive burdens on citizens. Quite to the contrary, seeking ways to develop mutual understanding can be viewed as a remedy to the asymmetrical epistemic burden of public justification. Citizenship education aimed at mutual understanding provides cognitive tools for secular citizens to better understand religious viewpoints, therefore making them more able to partake in the process of translating religious arguments in the terms of public reason, and it provides cognitive resources for religious citizens to better understand secular viewpoints, therefore making them better equipped to relate their religiously motivated political positions to
secular public justifications. Finally, these measures do not violate the conscience of the devout citizens who believe they ought to follow their religious motivations in politics even when these motivations cannot be backed by convergent public reasons. Indeed, these measures do not force such citizens to act against their conscientious beliefs (to not vote or advocate for laws they conscientiously believe they should support). They are designed at instilling cognitive dispositions (mutual understanding and mutual recognition) which are likely to alter their belief that religious concerns should always trump civic ones. However, as I argue in the next chapter, while freedom of conscience protects against being forced to act against one’s conscientious beliefs, it does not provide citizens immunity against exposures to sources of information or points of view which may lead one to change his beliefs.

I offer these three suggestions to defuse propensities to uncivility as a hypothesis for discussion. Each of them relies on assumptions regarding the links between knowledge, the capacity to immerse oneself in another’s perspective, affective ties, common identification, collective identity and people’s motivations to act in political settings. These are empirical assumptions about human moral psychology which should be verified and tested more thoroughly than I can do here. Yet, I believe they are theoretically plausible and worth exploring. I presented them to illustrate that we can find ways to foster civility without unduly restricting the freedom of devout believers and without imposing a heavy cognitive burden of them.

**Conclusion**

In this chapter, I have presented the main features of open secularism as it has been developed in Quebec since the Proulx report and I have argued that these components of open secularism provide attractive answers to certain challenges raised by the new religious pluralism. In the first
section I argued that open secularism rests on the idea that equality and freedom are the moral ends of secularism and that separation and neutrality are operational principles designed to serve these moral ends. This relation between the ends and means of secularism provide a strong argument against the strict secularist’s endorsement of a duty of neutral appearance imposed on both users of public services and public agents. Drawing on the priority of the moral ends of secularism I also argued for a principle of separation of state and religion according to which it is permissible for state policies to support religious practices in the name of secular goals acceptable to all reasonable citizens such as the removal of indirect forms of discrimination and obstacles to full participation in public life. This principle avoids the pitfalls of the no-aid principle.

In the second section, I highlighted a point that is often disregarded in discussions on open secularism (both by proponents and critics). Namely, open secularism is closer to republican secularism than it seems. First, as does republican secularism, open secularism repudiates vertical societal fragmentation through separate institutions for different religious communities in the name of a conception of social integration (although a liberal and multicultural conception of integration which is very different from republican integration). This element is so central to open secularism that its case against religious institutional pluralism rests mostly on the validity and desirability of the liberal and multicultural conception of social integration. Second, open secularism is tied to a moderately republican conception of religion-sensitive citizenship education which aims at fostering the cognitive abilities of mutual understanding and mutual recognition crucial for the development of civic virtues in a context of pluralism.

In the third and fourth sections, I have argued that the two above-mentioned moderately republican elements of open secularism offer attractive answers to two crucial dilemmas related to the new religious pluralism. In Section 3, I argued that open secularism is better equipped than
institutional pluralism to reconcile the accommodation of older and newer religious groups since the framework of accommodation within common public institutions is consistent with treating all religious citizens as free and equal (so that disestablishment is not morally impermissible) and provides a better prospect for the social integration of new immigrant religious minorities (as it is based on the multicultural conception of integration). In the fourth section, I claimed that the conception of citizenship education embraced by open secularism offers an interesting way to foster civility while respecting religious citizens.

It is imperative to be clear about the nature of the argument provided for open secularism in this chapter. The claim that open secularism is a better mode of governance of religious diversity than strict separationist secularism rests on a moral argument, namely an argument from justice and fairness asserting that strict secularism cannot respect the equality of citizens and their religious freedoms.

However, the claim that open secularism is a better mode of governance of religious diversity than institutional pluralism does not rest on a moral or a justice-based argument. It rests on the claim that the form of social integration promoted by open secularism is more desirable, more beneficial to society as a whole, than that put forth by institutional pluralism. I do not mean that the liberal and multicultural conception of integration underpinning the logic of accommodation within shared public institutions is intrinsically desirable. It is rather instrumentally desirable in the sense that it allows to achieve important societal goals (more so than institutional pluralism). I already mentioned that open secularism is more likely to produce cross-cutting horizontal ties of solidarity as well as mutual understanding and respect between individuals adhering to different, if not antagonistic, worldviews. Moreover, I also believe that open secularism is the only mode of governance of religious diversity examined in this dissertation likely to be the object of an overlapping consensus between secular citizens repulsed
by the idea that religion or religiosity is a public good that should be actively promoted by the state and believers who cannot accept that they have to abandon reasonable religious practices in order to have an equal access to public services and to the workplace.

Of course, this non-justice-based argument for the desirability of open secularism needs to be nuanced. First, the claims that horizontal ties of solidarity between adherents to diverging worldviews are 1) significantly more conducive to mutual understanding and mutual respect than vertical relationships of loyalty and identification to the state; and 2) likely to be produced by interactions within common public institutions are both empirical claims which still need to be empirically verified. Providing such a verification obviously goes far beyond the scope of this dissertation. Nonetheless, I believe I have provided enough material to consider those claims as research hypothesis worthy of being examined.

Second, many societies are more or less attached to one of modes of governance of religious diversity explored here for historical reasons. For instance, important segments of modern France and of post-Quiet-revolution Québec consider that (strict) secularism is an essential component of national identity for obvious reasons (both emerged from a struggle to free public life from the pervasive and perverse political influence of the Catholic Church). That being said, history and national identity cannot vindicate unjust societal choices. The fact of a majority of citizens considering slavery as an essential component of the distinctive identity of Confederate States of America could never have been considered as a valid argument against abolition.

Third, open secularism may require that we engage into a process of disestablishment of religion. In other words, it may require that we remove certain privileges granted only to certain religious groups. Since those privileges are usually granted to members of the majority or of dominant religious groups, open secularists can be faced with a kind of political inertia: it is
usually politically difficult and sometimes just unfeasible for a government to ask the majority of citizens to renounce, in the name of justice or of the common good, to certain privileges with which they are used to live, especially if they perceive that the benefits of change are more like to be enjoyed by groups of newcomers they still view as strangers or by adherents to worldviews which they don't quite understand or simply despise. Yet, as I explain the deconfessionalization of the public schools system in Québec shows that the strategy of disestablishment is not always impossible to achieve from a purely "realpolitik" point of view.

It has been a recurrent theme in this chapter that the case for open secularism rests on the claim that our commitments to equality and freedom of conscience discard strict secularism and do not require policies of religious institutional pluralism. I defend these claims in the next two chapters. In Chapter 5, I claim that freedom of conscience does entail an obligation of reasonable accommodation, thus repudiating strict secularism’s emphasis on the privatization of religion, but does not forbid the state to pursue valid collective goals (such as social integration and civic education) in ways that may affect citizens’ beliefs. As I have already defended the claim that equal treatment does not require institutional pluralism, in Chapter 6 I defend the view that religious accommodation within shared institution promotes equality against an egalitarian objection often put forth by proponents of strict secularism.
CHAPTER 5: THE RIGHT TO FREEDOM OF CONSCIENCE

As I argued in the last chapter, freedom of conscience is one of the two moral ends that open secularism aims at protecting. I have claimed at various points that many policies put forth by strict secularism, such as the duty of neutral appearance, are incompatible with respecting freedom of conscience. I also have claimed that respecting freedom of conscience does not necessarily entail adopting a regime of religious institutional pluralism since this goal can be achieved by accommodating religious diversity within shared institutions. Finally, I have claimed that respecting freedom of conscience is not incompatible with pursuing certain collective goals dear to open secularism, such as multicultural social integration and promoting civic virtue through religion-sensitive citizenship education. My main goal in this chapter is to examine the justification and scope of the right to freedom of conscience. What kind of treatment of individuals does this fundamental right forbid and what can individuals legitimately claim in the name of this right?

Freedom of conscience is recognized in all modern democracies. Article 18 of the International Covenant on Civil and Political Rights affirms the right to freedom of conscience, thought and religion and stipulates its content:

1. Everyone shall have the right to freedom of thought, conscience and religion.

This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

However, many of the statements in this affirmation can be interpreted in very different ways giving rise to different theories of freedom of conscience which assert a more or less extended scope for the right. For instance, it is affirmed that an individual should be free “to have or adopt a religion or belief of his choice” and should not be “subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”. But under which conditions does one have a religion or belief of his choice? Does choice simply require mere uncritical endorsement of one’s beliefs or does it imply a prior process of rational examination of one’s beliefs? If choice means the latter, then does freedom of conscience protect against coercion that impairs one’s freedom to act according to beliefs which are uniquely the result of upbringing, sheer indoctrination or unquestioned faith? Article 18 also asserts that freedom to manifest one’s beliefs can be subject to limitations necessary to protect public order and safety, but how far can a state go in protecting these values? How great a threat to these values needs to be in order to justify limitations? Should distant potential threats to security justify limitation? Can the goal of preserving morals alone be enough to justify limiting religious liberty? Does the conception of morals embraced by a majority of citizens justify limiting minority religious practices which are judged offensive by the majority?
Addressing the issue of the justification and scope of the right to freedom of conscience inevitably forces us to think about the link between individual freedom, conscientious beliefs and the authority of the state. It requires us to think about the authority of the state to shape individuals’ beliefs as well as its authority to force individuals to act in ways their conscience views as morally repugnant if this is required to pursue important collective goals. It also requires us to think about the link between freedom and beliefs. Is there value in being able to maintain and act upon beliefs which merely result from upbringing and habitu de or does the value of freedom rest in the capacity to revise and rationally examine one’s beliefs?

In the first section of this chapter, I discuss perfectionist secularism’s views about the relationships between freedom, belief and the authority of state to shape individuals’ beliefs based on the ideal of freedom as rational self-determination. In the second section, I contrast freedom of conscience from this view and make some general comments about the nature of freedom of conscience. In the third and fourth sections, I examine two principles of freedom of conscience: the principle of the sovereignty of conscience, governing the right to have or adopt religion or belief of one’s choice; and the principle of the vulnerability of conscience which governs the right to manifest one’s belief. In the third section, I draw on Locke’s account of toleration and discuss what I call the principle of the sovereignty of conscience, a principle which claims that people should not be coerced into adopting others’ beliefs, and I address the main objection to this principle. I defend a principle of sovereignty of conscience which, contrary to Locke’s, is not based solely on the constraints of instrumental rationality but on an idea of respecting persons as ends in themselves. In the fourth section, I discuss the principle of the vulnerability of conscience which asserts that people suffer a distinctive harm when they are forced to act against the grain of their conscience. I claim that this principle condemns limited toleration, the view that the state has the legitimate authority to restrict religious practices
whenever religion stands in the way of achieving a genuine public goal. Yet the principle of the vulnerability of conscience does not entail that the state has no authority over religious practices and that we should always defer to the demands of conscience. What it requires is that the state should observe an obligation to accommodate individual consciences when pursuing legitimate public goals.

1. Perfectionist Secularism and Freedom as Rational Self-Determination

Secularism in all its forms is based on the view that one of the main goals of the state is to protect the freedom of individuals who disagree over issues of faith and religion. Secularism thus recognizes that individuals have a fundamental interest in being free to determine for themselves matters of religion and to act according to their own beliefs. Consequently, the authority of the state over individuals’ consciences should be limited. By operating a separation between the state and religions, secularism allows members of religiously diverse societies to freely embrace and practice the religion of their choice or to not embrace any religion at all. Much of the contemporary disagreement over the terms of the separation between state and religion can be traced back to different understandings of the kind of freedom that the secular state ought to protect. In this section, I examine the view of freedom and authority underpinning perfectionist secularism.

In a nutshell, perfectionist secularism is based on a commitment to the value of rational autonomy which is interpreted as a positive freedom of thought, an ideal which requires individuals to “independently re-examine beliefs received from family, social groups, and society as a whole; it implies rational self-determination, and points out to the emancipation of the human mind religious beliefs and prejudices” (Laborde 2008, 104). This understanding of
individual autonomy draws on the anti-religious stand of secular humanism which views religious belief as an uncritical acceptance of the dogmas proclaimed by religious authorities and therefore as inherently incompatible with the capacity for rational self-determination (Willaime 2005, 61). Moreover, perfectionist secularism asserts the state’s legitimate authority to free individuals from the yoke of irrational religious beliefs and practices.

This conception of secularism has gained in popularity in recent years and has come to occupy a central role mostly in discussions about the Islamic veil. In France, many supporters of the 2004 law forbidding the presence of the headscarf in public schools invoked the perfectionist idea that the state has the mission to liberate young girls from oppressive religious norms and traditions (Stasi 2004; Pena-Ruiz, 2005, 2003; Kintzler 2007; Zarka 2004).63 Perfectionist secularism resurfaced recently as an argument for the prohibition of the burqa and the niqab in the public debates that preceded the adoption of the law prohibiting concealment of the face in public space in October 2010.64 This strand of perfectionist secularism is based on three premises.

First, proponents of perfectionist secularism embrace a substantive conception of freedom as rational self-determination. At first sight, this may appear to be benign and uncontroversial, yet under closer scrutiny, perfectionist secularists’ conception of freedom is a rather peculiar and demanding one. As I said, all variants of secularism are based on the moral end of protecting individuals’ freedom in matters of religion. Freedom of conscience and religion implies that people are not coerced in ways which would impair their freedom to have or to adopt a belief or religion of their choice. In general, being free means leading an autonomous life, a life one as

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63 As I explained in chapter 2, the perfectionist argument for secularism was not the only basis upon which the ban on ostentatious religious signs was defended. More important was the commitment to a certain republican conception of citizenship and a belief in the need to maintain a sharp distinction between the public and the private sphere in the name of equality and neutrality.

64 See Hennette-Vauchez (2010) for a survey and analysis of this argument.
chosen to live. Individual autonomy requires that people have alternative options among which to choose, are aware of the existence of these options and have the reflective capacity to deliberate in order to make choices among the options open to them. Accordingly, I am free “to the extent that I reflectively endorse my way of life, as well as the values that underpin that way of life, and I am able to embark upon a new course if I come for whatever reason to reject my previous values and activities” (Weinstock, 2005, 228). This conception of autonomy is of course widespread amongst contemporary political philosophers. But, this is however a rather procedural conception, one which only focuses on the internal independent process of individual deliberation and which does not make the autonomous character of one’s life dependent on the outcome of deliberation (Dworkin 1988, 18-20).

Perfectionist secularists, on the other hand, embrace a substantive conception of individual autonomy. For the proponents of substantive autonomy, certain ways of life which involve constrained situations are intrinsically incompatible with autonomy even if they have chosen autonomously. Thus, proponents of substantive autonomy reject the idea that “there is no specific content to a decision an autonomous person takes” (Ibid., 21). Only certain life choices are consistent with an autonomous life and are worthy of respect. What is distinctive about perfectionist secularism’s conception of freedom and autonomy is that it is not merely procedural, but substantial in the sense that it assumes that several religious ways of life are too constraining to be compatible with autonomy.

Defenders of perfectionist secularism draw on ethical secularism (Chapter 1, Section 3.1), a view asserting that many elements of orthodox religious lifestyles, such as religious practices involving deference to tradition and customs, faith in revealed truth and trust in religious authorities, are intrinsically incompatible with autonomy since they involve too great constraints on individual behaviour and cannot stand the test of rational scrutiny. From the point of view of
ethical secularism, the life of the devout and pious religious persons aiming at living according to revealed divine precepts is incompatible with autonomy, since it implies surrendering one’s capacity to deliberate and make autonomous decisions to God’s word to those who can legitimately interpret it:

To be a moral agent is to be an autonomous self-directed agent (...) To deliver oneself over a moral authority for directions about what to do is simply incompatible with being a moral agent (...) [There is] a conflict between the role of the worshipper, which by its very nature commits one to total subservience to God, and the role of moral agent, which necessarily involves autonomous decision-making (James Rachels 1971, “God and Human Attitudes”, Religious Studies, 7, 334, quoted in Dworkin 1988, 22).

Many French philosophers who have put forth perfectionist arguments for secularism, such as Alain Finkelkraut, Régis Debray, Henri Pena-Ruiz and Cahtrine Kintzler have interpreted “the contemporary revival of cultural and religious identities and claims for the recognition of difference as a regression to an anti-liberal, counter-Enlightenment, communitarian social philosophy which postulates that individuals are primarily defined through their group membership”(Laborde, 2008, 108). The claim here of course is that orthodox forms of religiosity ask believers to follow tradition and religious authorities without questioning them. They ask believers to simply accept that they have a religious obligation to wear a particular piece of clothing, to not work on certain days of the week, and so on. As Dawkins puts it: “Christianity, just as much as Islam, teaches children that unquestioned faith is a virtue” (Dawkins, 2006, 346). Thus, for proponents of perfectionist secularism, religious belief, by its very nature, requires believers to renounce to the exercise of the human capacity for rational autonomous self-determination. It thus seems that the substantive conception of autonomy nurturing perfectionist
secularism’s aversion for religiosity asserts that two aspects of religious are incompatible with an autonomous life. First, they are often the result of unreflective and non-rational endorsement through processes of upbringing, socialization or through sheer deference for tradition or through a strong sense of faith. Second, religious beliefs place one’s actions and decision under an external source of authority, be it God, divine scriptures or religious leaders. Being pious means you accept to be guided by those sources of authority rather than by reason alone.

The second premise of perfectionist secularism asserts that in order to promote rational self-determination and substantive individual autonomy, the state has the duty to emancipate individuals from unexamined beliefs and identities they inherit from upbringing and from any system of thought or tradition which limits the critical judgment of citizens and alienates their liberty (Kaltenbach and Tribalat 2002, 122; Kintzler, 2007; Pena-Ruiz, 2003; 2005). This requires the liberal state to actively work for the decline of the influence of custom and religious authorities in people’s lives. As Pena-Ruiz says: “the raison d’être of the secularist ideal is to foster in the public sphere the necessary conditions for the exercise of our ‘enlightened’ judgment. It is not enough to cut the state off from religious control. We must also free citizens from all the self-appointed religious and moral authorities who impose their views both in the civil society and in political debates” (Pena-Ruiz, 2005, 225). In other words, perfectionist secularism implies that the state should become the agent of the process of secularization, understood as the decline of the influence of religion, of every aspects of social and public life.

The Stasi report contains significant traces of perfectionist secularism, even though it contains several different arguments for the ban of religious signs at school which do not rely solely on perfectionist secular grounds. For instance, the report asserts the “emancipatory mission of the secular state” which consists in “protecting individuals from any physical or moral pressure exercised in the name of spiritual or religious prescription” (Stasi 2004, 33). Embracing
Condorcet’s views that the state should pursue through education the goal of removing “all dependence, either forced or voluntary”, the public school is conceived as the main tool for the liberation of individual consciences from the yoke of tradition, superstition and narrow-mindedness. Many French secularists follow the same line and argue that public instruction aims at “the institution of freedom within each and everyone” (Pena-Ruiz, 2003, 41). It should lead individuals to adopt a position of critical distance towards their attachments and the values promoted by pressure groups around themselves (Kintzler 2007, 55-63; Pena-Ruiz, 2003, 41; 2005, 209-225).

In connection to the Islamic veil in public places, perfectionist secularism is based on a third premise. It asserts either that the practice of wearing the veil is not chosen, but rather forced on women and young girls by male members of their community, or that it is intrinsically a sign of the domination of women. For instance, Patrick Weil affirms that many Muslim teenager girls wear the headscarf against their will, under the pressures of insults and violence if they don’t wear it, and defends the ban mainly on the ground that it maximises the capacity of young girls to choose not to wear it (Weil 2009). Once there is a general ban in all public schools, it is pointless for boys to pressure girls into wearing the headscarf and easy for girls to respond that even if they wanted to, they could not wear it. Perfectionist secularism embraces the feminist critique of monotheist religions according to which all religions have been manipulated by patriarchal power and have contributed to the domination of women. Traditionally, women have carried the burden

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65 Perfectionist political secularism is usually associated with the French context, but we can find traces of it in the United States. Some legal scholars claim that the American constitution is based on a rationalist epistemology which justifies the state’s promotion of a secularism of Enlightenment. For instance, Sherry asserts that “our [american] constitution as a matter of history—and ought to—as a matter of policy—privilege reason over faith (...) it is historically uncontroversial that the Enlightenment, with its emphasis on rationalism and empiricism and its rejection of religious faith and mysticism, was the primary epistemology of the founding generation. Most scholars consider the Constitution itself to be a product of the Enlightenment” (Sherry 1996, 477, 483).

66 It is however hard to understand why this argument is supposed to only lead to the conclusion that the headscarf should only be banned in public schools, not in private schools and everywhere else.
of ensuring the continuity and transmission of family and community values through various social forms of regulation of procreation. Their sexuality has been seen by males as a potential threat to this continuity as well as to the preservation of men’s honour. Hence, males have controlled the bodies and the sexuality of women by imposing modes of physical appearance in public and have presented the respect of dressing codes and proper behaviour as religious obligations or as expression of women’s required allegiance to God (Laborde 2008; 2006). Many contemporary feminists involved in discussions about the wearing of the veil by school pupils have interpreted the veil in light of this critique. The veil has been depicted as a patriarchal tool designed to police the appearance of women’s bodies in public, and as an instrument of oppression of women imposed on Muslim girls and women by their male relatives.

The opposition to the headscarf can thus be seen as driven by neutral concerns for women’s freedom from oppression by men. These concerns follow from a procedural conception of autonomy: women do not deliberatively choose among many options to wear the veil, they are forced to do so by their male relatives. These concerns do not justify opposition to the veil when it is said to be freely chosen. Yet, when Muslim girls and women claim they have deliberately chosen to wear the veil, feminists reply by claiming that the only meaning of the veil, as a religious symbol, is the submission of women (to God, but also, and especially, to men). During the first episode of the scarf affair, in 1989, Yvette Roudy (a then leading French feminist) claimed that “the foulard is the sign of subservience whether consensual or imposed” (quoted in Bowen 2007, 209). Empirical researches have demonstrated the complex and multiple meanings of the veil: it is often worn out of a sense of modesty or of piety, as a personal affirmation of identity, as a sign of teenager rebellion, as a sign of resistance to assimilation or as a strategy to participate in modern social life while coping with the traditionalist demands of the parents; (Khosrokhavar and Gaspard 1995; Roy 2004). Ignoring this research, many feminists claim that
the voluntariness of the headscarf doesn’t matter. It has an objective meaning no matter what its wearers think of it. Wearing the veil “symbolizes the place of women in Islam as Islamism understands it. That place is in the shadow, in confinement and in submission to men. The fact that women demand it does not change anything about its meaning. We don’t have to prove anymore that dominated people are the most fervent supporters of their domination. There is no greater oppression than self-oppression” (Zelensky and Vigerie 2003). It thus seems that the assertion that the headscarf has an objective meaning oppresses all its alternative significations (Joppke 2009, 49; Laborde 2008, Bowen 2007). This argument involves a shift from neutral concerns for procedural autonomy to perfectionist concerns about the substantive autonomy of women and girls wearing the headscarf. While women claim they freely choose to wear the headscarf, they are told they are in fact victims of a sort of false consciousness, they believe they exercise their liberty by choosing to wear the veil, but in reality they show that they are indoctrinated into an ideology of subservience and they abdicate their capacities for autonomous decision-making and critical judgment and leave them in the hands of God and male religious authorities. This is a non-neutral perfectionist concern as it implies a public judgment about the truth and worth of a reasonable conception of the good.

The commitment to individual autonomy, the emancipatory responsibility of the state and the negative interpretation of the meaning of the practice of wearing the veil have been combined to produce a paternalistic justification of the ban on full face covering garments. The argument is quite simple and straightforward. Given its commitment to autonomy, the state has the obligation to emancipate individuals from oppressive traditions and social practices which harm themselves. The wearing of oppressive religious signs such as the full-face veil harms women since it is a sign of their inferiority and submission to men. Therefore the state should forbid the wearing of the *niqab* or of the *burqa* in order to prevent women from engaging a in a practice that is
detrimental to their own interests.\textsuperscript{67} Hence, the ban has been described by Jean-François Copé, the secretary general of the UMP who submitted the bill to the parliament, as a “law of liberation not of interdiction”.

In the case of the 2004 law forbidding the headscarf in public schools, the secular perfectionist argument was less straightforward. The 2004 law does not ban the wearing of ostentatious religious signs (i.e. the \textit{hijab} and not just full-face covering garments) in all places considered “public”; it only bans those signs from public schools. The direct application of the simple paternalistic argument presented above would have required a general ban, as with the anti-\textit{burqa} law of 2010; it does not justify banning headscarves only in public schools (Laborde 2008, 117). Further premises need to be added to the perfectionist case for the ban targeted solely at school pupils. First, school pupils are not yet fully autonomous rational persons; they are persons whose capacity for autonomy is still under construction. Second, perfectionist secularists view the school as a special public place, unlike hospitals and public parks, within which the presence of religious signs is particularly problematic (Kintzler 2007, Zarka 2004). They build on the above-mentioned emancipatory conception of public instruction inspired by Condorcet and “argue that schools must provide a place where young Muslim girls can experiment with alternative constructions of female, Muslim, and personal identity” (Laborde 2008, 127, 2006). The school must serve as an alternative mode of socialization, one that allows pupils to take their distance from the socialization they experience in their families and in their communities. To choose a way of life autonomously, Muslim girls need to make the experiment of being respected and treated as equal although their head is uncovered; they need to be in contact with the option of living decently without wearing the headscarf. It is the school’s duty, given its emancipatory

\textsuperscript{67} This paternalistic argument for the ban was not the only concern which motivated supporters of the ban. The ban has been supported in the name of concerns for national identity, national security and the values of secularism, gender equality and dignity (Hennette-Vauchez 2010)
mission, to provide this experience. In addition, to offer an alternative to socialization within the family, the school must provide an environment free from religious pressures and from exposure to signs which send the message that to be respected they need to conform to certain practices (Kintzler 2007; Pena-Ruiz 2003; Bowen 2007, 229). The school is presented as a microcosm that must be shielded from the influences of the family and the community to which the pupil belongs in order to achieve its autonomy-promoting function.

The core of perfectionist secularism is a conception of educational paternalism centered on the value of rational autonomy. However, the form this conception takes in secular perfectionism is very problematic from a liberal point of view. Liberals are profoundly divided on the question of the goals of state-sponsored education for children between those favouring the respect of the right of parents to choose how to raise their children and those favouring the development of children’s autonomy (Spinner 2000, 111). All forms of liberalism recognize the value of autonomy (comprehensive or political) and the importance being able to make choices but they interpret the implication of this commitment for education in different ways.

On one hand, choosing how to raise one’s children is one of life’s most crucial choices. Some claim that parental authority, the right of the parents to choose how to raise their children, should be the guiding principle in deciding matters of public education (Galston 1991; Burtt 1996). From this point of view, it is clear that the conception of education put forth by perfectionist secularism is problematic; it does not simply ignore the choices of the pupils’ parents, it explicitly treats those choices as obstacles to the development of the child. This strand of liberalism raises serious concerns about the legitimacy of the goal of promoting autonomy by fighting religious traditions, as this goal may seem oppressive and alienating from the point of view of citizens embracing traditional religious and moral worldviews (Callan 1997, 43).
On the other hand, many liberals do embrace state-sponsored education to autonomy (for instance, Levinson 1999; Weinstock 2008, 42-43). In this liberal conception of education, the school has to develop the children’s capacity to determine for themselves a conception of the good that they can pursue. The development of this capacity should not be impeded by the parents’ wish to transmit their culture and tradition to the next generation; in Joel Feinberg’s words, children have a “right to an open future” (Feinberg, 1980). This requires that they are introduced to various possible life options among which they can choose. However, this liberal case for educational paternalism does not go so far as forcing the children to abandon any specific practices they acquired from their community (which is, presumably, the case with the wearing of the headscarf). Moreover, liberals supporting the promotion of autonomy by the school system make the distinction between the substantive conception of autonomy, according to which only lives that are lived independently from traditions and community of belonging are valuable, and the procedural conception of individual autonomy, which simply requires that the individual be equipped to make choices among a wide array of options (Weinstock 2008, 42; Cf Laborde 2008, 122). They claim that the state should be concerned with the promotion of the procedural, not the substantive, conception of autonomy. The substantive conception of autonomy is not neutral enough since it singles out certain conceptions of the good as being more worthy of respect than others on the basis of the critical distance from traditions they require. The promotion of substantial autonomy at school does not consist in merely developing a capacity for choice; it limits the range of possible choice and favours certain forms of the good. Perfectionist secularism clearly embraces a substantive conception of autonomy, a strong one, moreover, since it implies that all forms of attachment to religious communities and traditions are incompatible with autonomy and not worthy of respect.
Perfectionist secularism is thus problematic from the point of view of both liberal conceptions of the role of the value of autonomy in public education, either impinging on a parents’ rights to choose how to raise their children, or promoting a paternalistic preference favouring certain forms of the good.

Moreover, perfectionist secularism goes far beyond its core educational paternalism. As exemplified by the case for the ban on full-face coverings, it also justifies some measures of legal paternalism, that is, the use of coercion to prevent harm to the person by prohibiting her from acting in a certain way (Dworkin 2005, 305). Again, from a liberal point of view, this feature of perfectionist secularism is deeply problematic.

I do not claim that all forms of legal paternalism are morally problematic. For instance, mandatory use of seatbelts in cars is not a problematic example of legal paternalism because: 1) the goal of paternalistic coercion (protecting the health and security of individuals) is not especially controversial and can be considered to be generally shared among citizens—any well-informed person would not deny the good of being protected against injuries in a potential car accident; 2) the paternalistic measure proposed (the obligation to wear a fastened seatbelt when driving or sitting in a car in motion) can be reasonably expected to achieve the goal it was designed for; and 3) the freedom that the paternalistic measure restricts (the freedom to drive without a fastened seatbelt) is by no way of a crucial importance for the capacity of individuals to pursue a reasonable conception of the good.

However, the paternalistic restriction of religious practices advocated by perfectionist secularism (as it is amplified in the Belgian, French and Italian ban on full-face veils) is questionable on each of these three criteria. First, although the goal of promoting autonomy, or the non-domination of Muslim women, can be seen as a legitimate one (in the sense that no one wants to be oppressed), the characterization of the veil as an inherently oppressive symbol is
much more controversial. As with the *hijab*, many women claim they wear the full-face veil voluntarily on the basis of a desire to be pious and of a certain sense of hygiene. Second, it is doubtful that the proposed measure (a general ban on the full-face veil) will have the expected outcome of liberating women from patriarchal religious and traditional oppressive customs. The ban might well confine these women to their home, which is, supposedly, the locus of their oppression. If *burqa* or *niqab* wearing women are truly dominated in the sense that they have internalized patriarchal norms of women subservience and inferiority, self-emancipation is not likely to simply come out of forced compliance with norms of external behaviour. Third, the general ban does not merely restrict a trivial freedom (as in the seatbelt case), it restricts a fundamental freedom, one which is closely related to one’s sense of identity.

2. Some Remarks on Freedom of Conscience

Many commentators have rejected perfectionist secularism and tried to formulate alternate conceptions of secularism which are more consistent with the goal of giving equal respect to believers. One of the main grounds to oppose perfectionist secularism is to highlight that freedom as rational self-determination relies on a sectarian doctrine, the promotion of which is incompatible with the idea that the state should remain neutral with regard to the different reasonable conceptions of the good life espoused by its citizens (Laborde 2008). Such a breach of neutrality is incompatible with the principle of treating all reasonable citizens as equals. I have leaned towards this objection in the last section when I claimed that the perfectionist secularists’ conception of educational paternalism based on a substantive view of autonomy was not neutral. One may even go farther and claim that substantive autonomy, since it requires that individuals never place themselves in situations in which factors external to their will are in a position to
limit their actions and decisions, is inconsistent with many values we hold dear such as loyalty, objectivity, benevolence, commitment and love (Dworkin 1988, 21-33). Another ground for opposing perfectionist secularism is to attack its reliance on the view that religion is intrinsically incompatible with rational autonomy. One may argue that this view is based on a mistaken and unattractive orientalist conception which essentializes religious identities and present these as being intrinsically anti-liberal, pre-modern, completely homogeneous and incapable of change (e.g Baubérot, 2006, 45-47). In the same vein, one may point that deference to religious authority and revealed truth are not the only reasons one may adopt a religious practice; as I mentioned many claimed to wear the headscarf to express a personal identity, to express one’s solidarity with Muslims, or because of a sense of modesty.

Although I think those objections are very important, I think that the main reason why perfectionist secularism is erroneous is that it is based on a conception of the relation between freedom and belief which completely and mistakenly ignores the value of freedom of conscience. Perfectionist secularism assumes that only those beliefs which have been reflectively endorsed after due rational deliberation and those beliefs which do not place one under external sources of authority are worthy of being respected by public powers. Recognizing freedom of conscience, however, means that there are in fact important reasons to protect all reasonable conscientious beliefs (those which do not command their bearers to violate others’ rights) even those which seem inconsistent with substantive autonomy and full-fledged rational self-determination. Perfectionist secularism (and, arguably, strict secularism) simply does not take freedom of conscience seriously because it does not recognize that freedom of conscience, the freedom to have beliefs of one’s choice and to manifest them, has value independently from the exercise of rational self-determination.
What exactly is freedom of conscience? Conscience, as Martha Nussbaum notes in her book *Liberty of Conscience*, is “the faculty in human beings with which they search for life’s ultimate meaning” (2008, 20; *CF* Swaine, 2006, 47). It is the source of the deep ethical convictions that define our practical identity as persons. It is through those convictions that a person tries to “identify the value and point of human life and the relationships, achievements and experiences that would realize that value in her own life” (Nussbaum, 2008). An individual enjoys freedom of conscience to the extent that he is able to have or to adopt his own convictions of conscience and that he is able to act in accordance with them. Convictions of conscience are “meaning-giving beliefs and commitments” (Maclure and Taylor 2011, 75-76). As Maclure and Taylor explain, these convictions play an important and very deep role in one’s life. Convictions of conscience give a moral orientation to people’s life, they are the fundamental beliefs and commitments that make it possible for persons to have a moral identity and to make moral judgments (*Ibid.*, 77). They allow people to situate the particular actions they choose to perform within the larger framework of their personal identity and of their conception of the good in a way that gives a certain moral coherence to their lives. Convictions of conscience are thus what Taylor earlier called “strong evaluations”: that is, evaluations about right or wrong, better or worse, higher or lower which are not reducible to mere preferences, desires and inclinations but are rather the standards by which desires, preferences and inclinations can be judged (Taylor 1989, 4; *Cf. Taylor* 1985, 16).

The right to freedom of conscience does not only protect religious convictions. There are secular and areligious convictions of conscience or secular strong evaluations which have a structuring role in the moral life of nonbelievers. As the United States Supreme Court recognized when it granted the status of conscientious objectors to conscription for persons embracing non-religious pacifist convictions, it is possible that “a given belief that is sincere and meaningful
occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God” (United States v. Seeger 1965). Singling out religious convictions as a special kind commitment unlike any other strong evaluations is unfair to nonbelievers who also have deep ethical commitments (Eisgruber and Sager 1994; Koppelman 2006; Maclure and Taylor 2011).

McConnell, however, argues that religious convictions have a special status and so deserve special treatment. He claims that religious convictions of conscience are special because they involve a duty to God; they thus are the grounds of stronger, more absolute, obligations than ethical convictions not based on divine authority (McConnell 2000b, 30). But it is hardly plausible that only religious obligations are perceived as absolute commands by their recipients. Non-religious pacifist convictions based on universal compassion can be felt as absolute without being backed by divine prescriptions. Kantians consider the categorical imperative to make unconditional demands even when they also happen to be atheists. Moreover, McConnell’s criterion rules out giving protection to convictions for non-theistic religions. But then it means the state must engage into the business of deciding the truth of religious beliefs as it must tell the Buddhist vegetarian that only theistic convictions are actually absolutely binding (Cf. Audi 1989, 268). Yet McConnell reiterates at many places his commitment to the principle that the state should not settle the truth of religious claims (2000a; 2011).

In fact, elsewhere McConnell claims that the lack of competence of the state in arbitrating conflicts about the truth of religious propositions is precisely what makes religion worthy of special protection in comparison to secular convictions of conscience (McConnell 2011). Legislatures and courts have no business in deciding the truth of religious doctrines, yet they are fully competent judges of secular convictions regarding right and wrong. McConnell is concerned with special protection for religious convictions which take the form of legal exemptions. He asserts that when legal norms conflict with practices dictated by religious beliefs,
believers should be exempted from compliance with those legal norms (1992; 2000a; 2011). The reason why those exemptions should be granted, he argues, is that it is not the state’s competence to judge whether or not religious beliefs conflicting with laws are true or false. If we were to accord similar protection to non-religious beliefs, it would entail that the state lacks competency in many domains we actually think it has the legitimate authority to decide truth and falsity. For instance, he claims that we could not grant exemptions for environmentalist convictions because this would mean that the state cannot determine truth about environmental issues and hence could not pursue policies of environmental protection, policies encouraging recycling, and funding for school programs aimed at raising awareness of environmental issues.

However, it is misleading to say that legal exemptions are granted to religious individuals because the state cannot determine the truth or falsity of religious beliefs. If this were the case, then the state would have the obligation to exempt a sect believing in the divine obligation to perform ritualistic human sacrifice from murder laws because it cannot assert the falsity of this belief. The lack of competence of the state in deciding religious questions is not itself grounds for determining whether or not some religious citizens should be exempted from the law. As such, it cannot be the determining factor for singling out religion as special. Moreover, the lack of competence of the state is not based on some epistemic limitations of the state; it is based on a moral constraint. Like separation of church and state and neutrality, it is an operational mode of secularism whose sole purpose is the achievement of the moral ends of secularism: freedom and equality. States lack competence over religious questions because doctrinal establishment, which occurs when the state decides which religious dogmas are the true ones, potentially violates both freedom and equality. Yet, the same moral ends also require that the state lacks competence to
determine the truth and falsity of any comprehensive doctrine, religious or not.\textsuperscript{68} There is no reason to single out religious convictions as special among the broader set of convictions of conscience.

Finally, freedom of conscience is not the same thing as individual autonomy. In fact, freedom of conscience is different from both procedural and substantive autonomy. As we have seen, procedural autonomy requires that individuals be able to make independent choices between different life options, which implies an awareness of the possibilities open to one and some minimal capacity of rational deliberation. Substantive autonomy requires, in addition to rational deliberation and awareness of open alternatives, that one never chooses options that would place one in a situation in which her choices are constrained by an external source of authority, be it deference to tradition and religious authorities or loyalty and allegiance to a group. Freedom of conscience is less demanding than both kinds of individual autonomy. Enjoying the right to freedom of conscience is not coextensive with exercising the capacity to critically examine one’s conception of the good and to revise it. Neither is it coextensive with being fully independent from deep religious or cultural commitments or deference to tradition.

Individuals are autonomous when their ethical convictions and ways of life are chosen after a careful process of reflection; these should be evaluated in the light of all the relevant facts and values and after a proper examination of the relevant alternatives. But for freedom of conscience to be honoured, it is enough that one person be able to act in accordance with her deepest convictions even though these convictions have remained unquestioned and haven’t been chosen after a thorough process of rational deliberation. For example, imagine the members of a religious group “who have never really considered living outside the tradition that they inherited,\textsuperscript{68} However, this does not means that the state lacks the competence to determine whether or not religious practices are reasonable, that is, if they violate other citizens’ fundamental rights and are consistent with fair terms of cooperation.
and who may indeed have been raised so has to make it unlikely that they would ever quit their community but who are not really prevented from doing so” (Weinstock, 2005, 232). Likely, members of groups such as the Older Order Amish community fit this description. They want to preserve their traditional lifestyle and try to avoid any contact with modern society; this is why, just to give one example, they cannot watch television or listen to the radio. This is mainly because they want to shield their members, especially the children, from what they see as the perverse influences of the modern way of life (Spinner 1994; 2000; Macedo 1995). Members of such isolationist and “all encompassing” groups lack the proper awareness of the options open to them. They surely are aware that other ways of life are embraced outside the community, but these are systematically presented to children as being unworthy and there are few interactions with individuals embracing different lifestyles. As these groups insist on preserving a communal religious lifestyle, their members tend to allow their life to be guided by external sources of authority to too great an extent to satisfy the very demanding notion of substantive autonomy. Such groups do not meet the conditions for living a fully autonomous life. Yet, they enjoy freedom of conscience if they are left alone by the government and are able to maintain and practice the restrictive lifestyle they believe is the right or the most virtuous one.

Freedom of conscience and autonomy are not merely distinct, they can also conflict with one another. As we have seen, perfectionist secularists are quite willing to restrict religious practices when they judge that these are incompatible with their understanding of substantive autonomy. They also embrace the view that the state should actively try to prevent individuals

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69 Certain orthodox religious groups, such as Hassidic Jews in Montreal, live within strongly pluralist cities and live side by side with people embracing radically different lifestyle than theirs. As such they can be said to be more vividly aware of ethical diversity and of the options than are open to them than many people who do not see any alternative to their liberal way of life. This is tangential to my argument, but still, to better grasp the contrast between autonomy and freedom of conscience, let’s focus on groups, such as the Amish or the Hutterite, who are more likely to live in relative isolation from the modern, capitalist, pluralist and liberal mainstream society and try to actively be shielded from its influence.
from having or adopting religions and beliefs incompatible with substantive autonomy. Moreover, even milder attempts to promote procedural autonomy are resisted by religious groups in the name of freedom of conscience. It is, for instance, a recurrent claim of religious groups that liberal education violates parents’ freedom of conscience since exposure to ethical diversity prevents them from passing on to their children their religious views. In Quebec, this is the main argument of Catholic parents opposing the teaching of *Ethics and religious culture*, which aims at exposing students to the fact of religious and ethical pluralism (*S.L. v. Commission scolaire des Chênes*, 2012 CSC 7; Quérin 2009). These tensions between autonomy and freedom of conscience force us to ask whether freedom of conscience is important even when it is not accompanied by autonomy. Sandel claims it is; as he says: “what makes a religious belief worthy of respect is not its mode of acquisition—whether by choice, revelation, persuasion, or habituation—but its place in a good life” (Sandel 1998, 87). Are convictions of conscience really worthy of respect independently from the way in which people have come to endorse them?

Freedom of conscience also conflicts with collective goals other than the promotion of autonomy: it can conflict with laws designed to protect health, security, or public order. For instance, the Native American Church has claimed that laws prohibiting the uses of drugs prevented them from practicing religious rituals involving the use of peyote. Sikhs have claimed that security laws requiring motorcycling helmets or helmets for all construction workers violate their conscientious conviction that they ought to wear a turban. If there are good grounds to believe that it is valuable to protect freedom of conscience, what should we do when the demands

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70 Sandel adds: “or, from a political point of view, its tendency to promote the habits and dispositions that make good citizens” (Sandel 1998, 87).
of demands of conscience clash with laws established in the name of legitimate collective concerns?

In the next two sections, I try to answer those questions by examining two principles offered in support of the right of freedom of conscience. I examine objections to each principle as well as the practical implications of each principle in order to identify what constitutes a violation of freedom of conscience. Freedom of conscience has two main dimensions. The Article 18 of the *International Covenant on Civil and Political Right* seeks to protect individuals’ conscience from two potential threats. First, it protects individuals from coercion which impairs individuals’ freedom to have or adopt belief or religion of their choice. Second, it asserts that people should not be prevented from manifesting their belief or religion in worship, practice, observance and teaching; provided that limiting manifestations of beliefs is not necessary to achieve goals of great social importance such as public order, security and health. The right to freedom of conscience thus distinguishes between the right to hold beliefs, which is unconditional and cannot be subject to any limitations, and the right to manifest beliefs or to practice one’s religion, which may be subject to certain limitations (United Nations High Commissioner for Human Rights 1993, 3-4). Each of the principles of freedom of conscience I shall discuss concerns one of these two aspects of freedom of conscience. The first principle, which I call the sovereignty of conscience, draws on Locke’s classical argument for toleration based the irrationality of persecution and addresses the right to hold beliefs. The second principle, which I call the

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71 These two dimensions are not mutually exclusive; there may be significant overlap between the two. For instance, one form of coercion impairing one’s freedom to hold beliefs would be to force a person into practicing another religion than hers and to impeach her of practicing the religion of her choice, so that in being immersed into another way of life, she may come to appreciate its truth and worthiness. Perfectionist secularists may offer such an argument to support the ban of the headscarf. Here, one’s freedom to manifest her beliefs is curtailed by an attempt to deny her freedom to hold the beliefs of her choice. Another form of coercion impairing the freedom to hold beliefs of one’s choice would be to force a person to receive religious instruction in another religion than hers and to outlaw the teaching of her own religion. Here, an attempt to restrict one’s freedom to hold beliefs of her choice results in limiting another’s freedom to manifest religious beliefs of his choice through teaching.
vulnerability of conscience, draws on the idea that people suffer a distinctive harm when they are prevented from acting according to their conscience; it addresses the right to manifest one’s belief and to practice one’s religion.

3. The Freedom to Hold Beliefs of One’s Choice

In this section, I argue that the right to hold beliefs of one’s choice is based on the principle of the sovereignty of conscience. I start by explaining that this principle has its roots in one of Locke’s most famous arguments for toleration, the argument asserting that persecution is irrational since it is self-defeating to use coercion to induce sincere belief. I then argue that a secular version of the principle of sovereignty of conscience has emerged in contemporary discussions surrounding political perfectionism. The sovereignty of conscience here takes the form of the “endorsement constraint”, which offers an important argument against coercive forms of perfectionism. I argue that a commitment to respecting persons as ends in themselves underlies the endorsement constraint. Third, I discuss the main objection, that is, the Proastian objection, to the principle of the sovereignty of conscience and I explain why the standard reply to this objection fails. Finally, I argue that the commitment to respecting persons as ends in themselves underlying the endorsement constraint provides a better answer to the Proastian objection and provides an attractive ground to understand the right to hold beliefs of one’s choice.

3.1 Locke and the Sovereignty of Conscience

In his Letter Concerning Toleration, John Locke famously claimed that it is not the proper function or role of the state to interfere in people’s lives in order to induce them to change their beliefs regarding matters of religion. The government should only focus on pursuing civil
interests: that is “life, liberty, health, and indolency of body; and the possession of outward things such as money, lands, houses, furnitures, and the like” (Locke 1669, 7). The care of the soul and the promotion of the spiritual interests of men, namely, the search for salvation, should be left to churches. Locke offers many arguments to support this position, but I want to focus on the most famous one.72

This argument claims that it is not the business of the state to foster the salvation of men’s souls, and therefore to enforce the “true” religion, because the means that are at the disposal of the state are not fit to produce this end. The main means that the state can employ to pursue its objectives is the use of coercion. Laws are effective because they are backed by the threat that the state will punish those who refuse to comply. But coercion has no impact on what people really believe. This is because coercion works by affecting people’s will: the threat of punishment plays on people’s decision-making processes by giving them a motive to act in compliance with the laws. However, as Locke maintains, beliefs are independent from the will (Waldron, 1988, 67). You cannot simply choose to believe that something that you think is false is true or vice-versa. In the cold winter one cannot help but feel the cold and cannot believe it is warm weather no matter how hard one wishes to feel warmth. Even under the most awful torture techniques practiced in room 101, Winston, the main character of Orwell’s 1984, no matter how much he wishes to believe that he sees five fingers, as O’Brien demands, but he can’t help seeing only four fingers. Beliefs respond to evidence, not to people’s will. It is therefore, according to Locke,

72 Other arguments include the idea that the care of soul is not under jurisdiction of the civil magistrate since God never authorized men to decide how others should believe and worship and since no man can consent to have another dictating to him how he should care for his soul (Locke 1669, 8). Locke also points that since Princes are as much divided as ordinary men on religious questions, granting Princes the right to decide which deity their subjects should worship and how they should worship it would lead to the absurd consequence that only the subjects of one or a few countries would worship the right deity rightly so that “men would owe their eternal happiness or misery to the places of their nativity” (Ibid., 10).
impossible to try to change someone’s religious convictions by using state coercion. As Locke says in the *Letter*:

> For laws are of no force at all without penalties, and penalties in this case are absolutely impertinent, because they are not proper to convince the mind. Neither the profession of any articles of faith, nor the conformity to any outward form of worship (as has been already said), can be available to the salvation of souls, unless the truth of the one and the acceptableness of the other unto God be thoroughly believed by those that so profess and practise. But penalties are no way capable to produce such belief. It is only light and evidence that can work a change in men’s opinions; which light can in no manner proceed from corporal sufferings, or any other outward penalties (Locke 1669, 9).

In affirming the *de facto* impossibility of forcing sincere belief and faith with the coercive apparatus of the state, Locke affirms the *de facto* sovereignty of conscience. Just as a state can exercise *de facto* sovereignty when it is actually the supreme authority over a given territory in the sense that no other state or internal dissenting faction exercises such authority on this territory, the conscience, for Locke, is *de facto* sovereign vis-à-vis the state since the state does not exercise dominion over convictions of conscience, and so the state cannot command religious belief and faith from its citizens. Accordingly, conscience is sovereign in the sense that it is beyond the reach of the state apparatus; the threats of the state cannot change what one truly believes in the depth of one’s conscience.

Locke does not doubt that government can coerce people into professing their faith in the “true” religion and that external compliance of persons’ outward acts with the rituals of the preferred religion can be obtained by force. However, the goal of the persecutor is, to take a more contemporary jargon, a perfectionist or paternalist one: it is to do good to the heretic against his
mistaken will, to save the soul of the heretic by forcing him on the right path. This requires more that than external conformity in actions, it also requires sincere endorsement of these actions and belief in the right doctrine: “the power of using force to bring men to believe in faith and opinions and uniformity in worship could not serve to secure men’s salvation (...) because no compulsion can make a man believe against his present light and persuasion, be it what it will, though it may make him profess indeed. But profession without sincerity will not set a man forwards in his way to any place” (Locke 1679, 276). Locke’s point is that since faith is ‘inward’ (it has to be lived from the inside, in the intimacy of one’s conscience) we cannot help another person to attain salvation by forcing her to profess her faith in the true God and to worship him. As he explains: “no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consist in the inward and full persuasion of the mind; and faith is not faith without believing” (Locke 1669, 8). It is thus self-defeating to coerce someone in order to save his soul.

There are thus two sub-theses in the original religious version of the principle of the sovereignty of conscience. First, coercion cannot be employed to instil religious beliefs. Second, external conformity in action unaccompanied with sincere belief is insufficient for one’s salvation.

This argument has powerful potential. If it holds, then it offers religious devotees and would-be theocrats reasons, coming from inside their religious perspective, to be tolerant, to respect freedom of conscience (the freedom to hold beliefs) and to support the first threshold of institutional separation essential to secularism. The sovereignty of conscience argument is directly addressed at religious individuals who are not disposed to accept arguments for toleration based on scepticism and to question the value of their faith and piety. The argument claims that toleration best serves the cause of promoting true faith, as An Na’Im argues:
In order to be a Muslim by conviction and free choice, which is the only way one can be a Muslim, I need a secular state. By secular state I mean one that is neutral regarding religious doctrine, one that does not claim or pretend to enforce Shari`a—the religious law of Islam—simply because compliance with Shari`a cannot be coerced by fear of state institutions or faked to appease their officials. This is what I mean by secularism in this book, namely, a secular state that facilitates the possibility of religious piety out of honest conviction. (An Na’im 2008, 1).

3.2 The Endorsement Constraint

The Lockean principle of sovereignty of conscience is addressed to religious persecutors motivated by a concern to promote religious goals such as piety, true faith and preventing people from erring by embracing heretic doctrines. It presents itself as an internal refutation of religious perfectionism. But the idea that coercion is self-defeating in bringing dissenters to embrace a way of life that is more worthy of being lived from a religious perspective can be generalized and applied to all coercive forms of perfectionism. There is thus a secularized version of the sovereignty of conscience which not only asserts the irrationality of religious coercive perfectionism but of all forms of coercive perfectionism aiming at shaping people’s convictions of conscience for their own good.\footnote{What I say in this paragraph does not apply to weak forms of paternalism such as those discussed in section 1. Paternalistic measures such as road security regulations (mandatory seatbelts and motorcycle helmet, etc.) or drug prohibition do not aim to change people’s convictions of conscience but to protect certain very basic interests which can be recognized from a variety of ethical perspectives. Moreover, they do not usually imply restrictions preventing people from holding or manifesting their deepest religious or ethical commitments and when they do so (for instance, mandatory motorcycle helmets limit Sikhs practice of wearing the turban and drug prohibitions forbid ceremonial uses of drugs) governments have been open in exempting religious citizens from compliance.} From this point of view, it is also self-defeating for perfectionist secularists to coerce certain orthodox believers not to engage into practices, such as
wearing a *burqa* or a simple *hijab*, they judge incompatible with substantive autonomy in order to “emancipate” them from the insanities and perfidies of faith.\(^{74}\)

In this general form, the principle of the sovereignty of conscience rests on the “endorsement constraint”, namely the idea that, just as we cannot save someone’s soul by forcing him to practice and profess a religion he does not believe in, we cannot make a person’s life better by forcing her to live according to a conception of the good life she does not endorse, that she does not understand or finds morally repugnant. This is so because the good of a human life can only be appreciated from within; as Kymlicka puts it, “no life goes better by being led from the outside” (Kymlicka, 2002, 216). Or to borrow some words from Dworkin: “it is implausible to think that someone can live a better life against the grain of his most profound ethical convictions than at peace with them” (Dworkin, 2000, 217). Pursuing one’s own good is a matter of “conviction from within, not compulsion from without” (Dworkin, 2006, 66). Just as one’s salvation cannot be achieved by orthodox practices without sincere faith, one cannot live a good life, one that is worth being lived, merely by acting as prescribed by a worthwhile conception of the good, one must also sincerely embrace the conception shaping his action.

So far I have given an account of the classical principle of the sovereignty of conscience and of its secularized extension to the endorsement constraint. As it stands, in this account, the principle of the sovereignty of conscience is not strictly speaking a moral principle; it is a principle of instrumental rationality. It claims that it is impossible, and therefore irrational to try, to convert someone or to make him live a life worth being lived by using sheer coercion. It does not claim that there is anything morally wrong in paternalistic coercion motivated by the will to

\(^{74}\) As we have seen, not all reasons invoked to ban such practices have been based on strictly perfectionist concerns for the emancipation of individuals’ presumed false consciousness disguised as pious religious beliefs and deference to traditions. Some have pointed to more neutral grounds such as the protection from violence and intimidation (Weil 2009). Obviously, the charge against the self-defeating character of coercive perfectionism does not offer grounds to reject those arguments; it only targets coercion for perfectionist reasons.
shape people’s religious or secular convictions of conscience; it simply argues the idea’s impracticality. However, I want to argue that the principle of sovereignty of conscience is more than a principle of instrumental rationality and that a deep and very important moral intuition underlies it. I want to show this by examining what happens when we attempt to justify perfectionist coercion by denying the second sub-thesis of the principle of the sovereignty of conscience, that is, the sincerity and endorsement element of this principle.

In Dworkin’s account, the endorsement constraint is based on a distinction between two views about the relationship between the components of individuals’ lives—that is, the actions they undertake and the activities they engage in—and their attitudes towards these components—namely whether or not they endorse these components and believe they make their life better and more valuable (Dworkin 2000, 217-218). Under the additive view, components and endorsements are separate elements of value; components are valuable independently from endorsements so that one’s life may have value even if the person in question does not endorse the components of her life. If certain components are objectively valuable, then they are valuable regardless of people’s endorsement of them. The endorsement constraint rejects this and asserts the constitutive view according to which no component contributes to the value of a life without

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One may even argue that in its purely religious form the de facto sovereignty of conscience may imply that it is impossible for religious persecution to harm the believer. If what matters for one’s salvation is sincere belief in true religion, forcing someone into professing and practicing a false religion while she believes in the true religion in the depth of her heart does not affect her prospect for a blissful afterlife. Also, forcing someone into practicing and professing the true religion while he sincerely believes in a false religion cannot do wrong to that person even if coercion does not bring sincere belief in the true religion since that person’s soul is already lost. Persecution cannot do wrong because it only affects outward actions and not inward convictions. However, few believers would accept the claim that only intimate conviction matters for leading a righteous life and redeeming one’s soul. It is just a fact that religious people sincerely believe they have religious obligations to carry out certain actions; one gains her place in heaven with good works, not merely with good will. Inward convictions matter because sincere endorsement of one’s actions and worship is necessary for salvation, but this by no means implies that it is sufficient. Locke does not explicitly say that sincere faith is both necessary and sufficient for salvation; he merely asserts that it is necessary. Viewing sincere faith as necessary but not sufficient is thus fully compatible with his account and makes more sense of the way religious people understand the relation between the value of their actions and their deepest convictions.
endorsement: “if a misanthrope is much loved but disdains the love as worthless, his life is not much more valuable for the affection of others” (Ibid., 217).

Thomas Hurka embraces the additive view and consequently denies the second element of the principle of the sovereignty of conscience. He indeed claims that it is implausible to claim that no good at all can result from forcing someone to behave according to a valuable conception of the good which she does not endorse. Imagine that Mozart was forced into music and never endorsed the view that composing music is a valuable activity. It does not make sense, according to Hurka, to say that because Mozart never endorsed his life from the inside it is completely devoid of value (Hurka 1993, 149). As Hurka puts it: “surely forced creativity, even if less good than free creativity, retains some value as an instance of creativity” (Hurka 1995, 43). Since forced good activities have some value, it might sometimes be the case that forcing people into a good activity will produce more good on the balance than to let them do the worthless activities that they happen to freely endorse. Components of one’s life are valuable independently from one’s evaluative attitudes towards them.

What is troubling with this argument for coercion based on the additive view is that it is incompatible with treating persons as independent sources of moral value; it is incompatible with respecting persons as ends in themselves. Claiming that forcing people to engage in activities they deem worthless or worst debasing is justified if it produces more good on the balance amounts to saying that people can legitimately be used as means to pursue ethical ends and values which are not theirs or which they do not recognize. But even if it is true that forcing Mozart to engage in activities of artistic creativity against his will produces states of affairs which are valuable intrinsically and independently from Mozart’s judgement, it does not follow that it is morally permissible to do it. In fact, coercion, in this case, instrumentalizes Mozart’s life; his life is used to produce states of affairs which are objectively valuable according to the coercers’
conception of the good. Mozart is used as a mere means in the achievement of another’s conception of the good, he is not respected as an independent person who has the capacity to carry on his own plan of life.

Dworkin does not directly appeal to this argument to reject the additive view. He claims that the additive view “cannot explain why a good life is distinctively valuable for or to the person whose life it is” (Dworkin 2000, 217; my emphasis). But why does it matter that the additive view cannot explain this point? Dworkin makes this claim about the additive view in the context of a discussion of political theory about paternalism. Yet, to say that it is a defect for a political theory not to be able to account for the distinctive self-value of a life implies that the proper subjects of concern of political theories are persons taken as ends in themselves, or, as Rawls puts it, as “self-originating sources of valid claims”, rather than objective states of affairs taken to be themselves bearers of value independently from other individuals’ evaluative attitudes. Otherwise, it is not particularly problematic for a theory not to be able to explain why a life is valuable for the possessor of that life. Accepting this premise is necessary in order to claim that coercive paternalism is self-defeating. If this premise is rejected, one may claim, following Hurka, that coercive paternalism is not self-defeating since it can be the case, as in the Mozart example, that forcing people into a good activity that they do not endorse will produce more good on the balance than to let them do the worthless activities they endorse. The endorsement constraint assumes, and rightly so, that persons and not states of affairs in themselves are the source of the kind of value that political theory is concerned with. This is not a normatively neutral position: it assumes that persons should be respected as independent ends in themselves and not used as means to produce states of affairs which are not valuable from the perspective of the conception of the good they adhere to.
The principle of the sovereignty of conscience thus has an inherent moral dimension. Coercing people into ways of life they do not embrace when it is unlikely that coercion will cause them to view their own lives as being more valuable as a result is in fact assumed to be a failure to respect them as independent persons carrying on their own rational plan of life: it is a failure to treat them as ends in themselves.

3.3 The Proastian Objection to the Sovereignty of Conscience

Hurka’s objection to the sovereignty of conscience is targeted at the second sub-thesis of the principle, that is, its endorsement component. Because it denies this element, Hurka’s perfectionism fails to treat persons with the respect they are due as ends in themselves. However, the most important argument against the principle of the sovereignty of conscience targets the first sub-thesis of the principle, that is, it attacks the view that coercion is always ineffective in inducing beliefs. This objection does not reject the sincerity and endorsement element of the second sub-thesis of the principle; it fully embraces it. The objection claims that coercive forms of paternalism and of religious persecution can lead people to fully endorse a way of life that is imposed upon them and come to view their life as being more valuable than it was before being coerced into this new way of life. As such, this objection seems to be consistent with treating people as ends in themselves since it is based on a concern for how people evaluate their own life from the inside and not at using them to perform activities which are viewed by the state as valuable in themselves regardless of people evaluative attitudes.

Jonas Proast formulated this objection in response to Locke’s *Letter* when he claimed that although direct coercion cannot instil beliefs, indirect forms of coercion can do so:
if Force be used, not instead of Reason and Arguments, i.e. not to convince by its own proper Efficacy (which it cannot do,) but onely to bring men to consider those Reasons and Arguments which are proper and sufficient to convince them, but which, without being forced, they would not consider: who can deny, but that indirectly and at a distance, it does some service toward the bringing of men to embrace the Truth, which otherwise, either through Carelessness and Negligence they would never aquaint themselves with, or through Prejudice they would reject and condemn unheard, under the notion of Errour (Proast 1690, 5).

This objection has been revisited by contemporary political theorists (Waldron 1988, 80-83; Newey 2011, 53-54; Schwartzman 2005, 687-693). It recognizes that it is true that no one can sincerely be convinced of the truth of some beliefs at the point of a sword, such threats have effects on one’s will not on one’s beliefs, which respond to evidence and sound argument. One cannot directly will another to simply change his belief. However, one can choose to direct his attention to or away from evidence that can change one’s beliefs. Since one’s attention or focus is under one’s will, coercion and threats can influence how one directs his attention to particular pieces of evidence. Thus, persecution can be effective if it takes the indirect form of forcing people to consider material supporting true religion. According to this view, a state could effectively promote religious orthodoxy by compelling people to learn a catechism on pain of punishment, to read the gospels every day, to read theological treatises or to attend church. Moreover, indirect persecution need not to be aimed at making people embrace beliefs, it can be aim to prevent them from acquiring beliefs. Thus, a state could also promote orthodoxy by forcibly preventing people from turning their attention to evidence and arguments supporting ‘heretical’ views. A government could be quite effective in enforcing uniformity of belief by forbidding or burning heretical publications, forbidding dissenters to assemble, jailing dissident
writers, banning associations promoting free thought, etc. (Waldron 1988, 81; Bou-Habib 2003, 618). Finally, it also has been claimed that forcing dissenters into practicing the official religion may in the long-run lead them to sincerely embrace it although they do not initially endorse it. By practicing its rituals, attending church, interacting with sincere believers, dissenters could come to see the point and value of the official religion.

There are perhaps good reasons to doubt the success of indirect persecution aimed at making people embrace religious beliefs. Forcing someone to embrace beliefs by compelling him to consider evidence is undoubtedly effective if those beliefs can secured by simple observational evidence. For instance, a person who believes that grass is not green can be forced to change her mind by being compelled to look at actual grass. However, religious beliefs, and to a larger extent all beliefs at the core of conceptions of the good, are much more complex than beliefs about the properties of empirically observable realities. They rely on arguments and evidence which are much less univocal than direct empirical observations; in Rawls’s terms these arguments and evidence are subject to the burdens of judgment, that is, the normal sources of disagreement between fully rational and reasonable persons (Rawls 1993, 56-57). Arguments about the good life, whether they are secular or theological in nature, require weighting different kinds of considerations, assessing contradicting complex empirical evidence, interpreting concepts which are vague and indeterminate. Moreover, all these operations (assessing conflicting evidence, interpreting concepts, weighting different kinds of considerations) are to a certain extent shaped by our total experience, which differs from one person to another. Given the complexity of the matter, those who already hold strong beliefs different from those of the persecutors are likely to view evidence coercively presented as univocal and decisive by the persecutors as being fabricated, biased and dismissing of the arguments unsupportive of the persecutors’ beliefs (Bou-Habib 2003, 617).
But let’s ignore those considerations and grant the point to the objection that it is both possible for persecutors to bombard dissenters with so much evidence and so many arguments that they come to embrace orthodox beliefs and to prevent them from considering evidence for unorthodox beliefs to the point of certainty that they will not embrace such beliefs. Note also that the objection that coercion may be used to secure orthodox beliefs indirectly or in the long-run can also be addressed at the secularized version of the sovereignty of conscience. Non-religious paternalism need not to be self-defeating; it can use indirect coercion to force people to consider evidence that certain ways of life are objectively better and others valueless. Or it can be the case that by forcing someone into a way of life she may come in the long run to see the point and superior value of this lifestyle. As Arneson argues, “by itself, the endorsement constraint does not rule out any paternalism that coerces one to attain something for one’s own life that one now finds valueless provided the coercion brings it about that one comes to value the imposed good” (Arneson 2003, 201; Cf. Sher 1997, 67).

What gives force to this objection is that it does not deny the element of sincerity and endorsement of the second sub-thesis of the principle of the sovereignty of conscience; it accepts the view that persecution is vain and cannot make people’s existence more valuable, from a religious point of view, if it can only secure outward compliance without inward belief.

However, some have claimed that the Proastian objection is misleading since it rests on too thin a notion of endorsement. Thus, although indirect coercion may secure beliefs in the official religion or conception of the good, for instance by banning all dissident literature and speech, it cannot produce ‘genuine’ or ‘sincere’ beliefs (Bou-Habib 2003, 622-623; Mendus 1991, 154; Cf Dworkin 2000, 218). To be genuine or authentic, beliefs must be held in the right kind of way, they have to be held out of the right motives. Thus Bou-Habib distinguishes two ways of being sincere. First, one can be sincere in the weak sense of being truthful. Here sincerity
is an expressive quality of actions: one is sincere when his actions accurately express or reflect his actual state of mind or feelings (Bou-Habib 2003, 618). He concedes that those who have been converted following policies of indirect persecution may be sincere in a weak sense. They may have come to truly believe in the official doctrine promoted by the state after having been forced to consider evidence so that when they practice and profess the official cult they are sincere and truthful. Yet, they cannot be sincere in a strong sense. Here, sincerity is akin to ‘purity’ and refers to the fact that one has come to hold beliefs for the right motives. To be sincere in the strong sense, religious beliefs must have been embraced out of the desire of the individual to find the truth about God’s plan for himself (Ibid., 619, 622). People who have been converted out of persecution do not hold beliefs for the proper motives since it is out of fear, not out of the motive to find truth, that they have decided to consider the arguments and evidence for the supposedly true religion. According to Bou-Habib persecution is irrational because salvation requires sincerity in the strong sense (Bou-Habib 2003, 622).

This counter objection is not convincing. First, why would the particular causal process leading one to embrace a belief affect the epistemic quality of this belief; why would it prevent the belief from performing the same functions it normally performs in others who have come to the same belief but from different causal paths? As Waldron puts it: “if I am forced at the point of bayonet to look at the colour of snow, is my consequent belief that snow is white likely to function differently from the corresponding belief of someone who did not need to be forced to take notice of this fact?” (Waldron 1988, 83) Second, if only religious beliefs which have come to be embraced after a deliberate resolution to embark into a quest for the truth about God are sincere, then most believers are not sincere in the relevant sense. Many have presumably been exposed to theological arguments for contingent reasons having nothing to do with their motivation to find truth about religion: they simply have been born and raised in religious
families, brought to church since their infancy and attended religious schools according to their parents’ choice. Yet, if this vast majority of believers is normally considered to be sincere enough to attain salvation there is nothing irrational in persecuting dissenters (Ibid., 83).

3.4 Authenticity, Respect and Freedom of Conscience

Nonetheless, I believe that the counter-objection to the Proastian argument is right to be concerned with the link between the causal process by which beliefs are instilled by coercive means and sincerity or authenticity. However, the problem with persecution and coercive paternalism does not rest on the epistemic quality of belief obtained via coercive means but on the moral quality of the process by which beliefs are infused into people’s minds. Recall that I have argued that the distinction between the additive and the constitutive underpinning the endorsement constraint is based on a moral concern for respecting people as ends in themselves. I shall now argue that this same concern provides a solid ground for rejecting coercive paternalism.

Proponents of the Proastian objection may immediately stop me there by claiming that they too are concerned with respecting persons as ends in themselves, they are concerned with furthering people’s interests in leading an objectively good life that they value from the inside or with making sure that people sincerely embrace true religion and attain salvation. However, the paternalist view of people’s fundamental interest in living a good life is based on too thin or too weak an understanding of the endorsement constraint. The concept of endorsement that underlies the Proastian objection is that of ex post endorsement: we do not fail to give proper concern to one’s fundamental interest by forcing him to adopt a way of life if the coercion is such that he can come to believe that this way of life is superior to his current one at some later point in the future. This conception of endorsement is too weak because it justifies too much; it allows forms of
treatment that we clearly do not consider consistent with equal respect. Indeed, if mere *ex post* endorsement is enough to make one’s life valuable to himself and to justify coercion, then it is justified to engage into the most extreme forms of manipulation (brainwashing, hypnotizing, etc.) in order to make that person adopt and endorse a lifestyle which is officially seen as valuable.

Such a manipulative treatment of individuals is morally wrong because although it might make people lead lives they value from the inside, it makes people’s character and deepest convictions of conscience entirely the product of someone else’s will. It makes it impossible to view the manipulated persons as the authors of their own lives or as authentic selves. Were these people to discover that their deepest commitments which give meaning and direction to their life have been produced by such manipulative techniques, they would presumably feel a terrible sense of alienation and loss of identity. As moral agents, we do not merely value the capacity to endorse our actions from the perspective of our deep convictions of conscience, we also view these convictions as our own; we identify with them and hold them to be the locus of our character and moral identity. We take credit for the virtues which define our character and take responsibility for our vices. All this is turned to ridicule when we find out that our entire moral personality has been deliberately chosen by another person and placed in us through some insidious means. Manipulating individuals to shape their deepest convictions of conscience thus fails to recognize them as moral agents who have the capacity to take responsibility for their characters. It denies them the capacity to form an authentic personality and makes the very core of their personal identity the mere product of someone else’s will. As such it is incompatible with respecting persons as ends in themselves and as moral agents. Of course, brainwashed or hypnotized people may never come to be aware of these manipulations and thus may never experience the slightest sense of alienation. But lack of respect comes not from the experience of alienation resulting from the discovery of manipulation, it rather comes from the denial of
individual’s capacity to take responsibility for who they are and from the fact that people’s identity has been reduced to something fully determined by other agents.

The examples of brainwashing and hypnosis are extreme forms of manipulation. It is particularly disrespectful when people are thus manipulated is that some agents exercise a great deal of influence over others’ convictions of conscience without allowing them any possibility of exercising their critical judgment. We cannot view brainwashed persons as authors of their own lives because they have not had the opportunity to deliberate and judge by themselves whether or not the way of life that has been imposed on them has value for them. Their adoption of this way of life is not the result of their own deliberation but of others’ manipulative techniques.

We must therefore distinguish acceptable and non acceptable forms of endorsement. I suggest that acceptable endorsement is endorsement consistent with the agent’s capacity to take responsibility for his character and to identify with the convictions that defines him as a moral agent given the actual causal process which lead to his endorsement. This is stronger than mere ex post endorsement since it minimally requires that the agent has had the opportunity to critically examine and deliberate about the values and convictions he now endorses. Thus, authentic endorsement requires that one agent’s process of deliberation about the good life be not subordinated to and determined by another’s will, whether or not the agent is aware of such subordination. Respecting this criterion of endorsement makes it the case that people could retroactively look at the actual chain of events, reasons, arguments, and experiences which lead them to embrace the way of life they currently embrace without feeling alienated because this process was unduly influenced by another’s will. Attempts to shape people’s character by distorting, blocking or manipulating their rational deliberations and enquiries about the good life are ruled out by this criterion although they are allowed by the weaker notion of ex post endorsement.
Proponents of the Proastian objection may recognise that extreme forms of manipulations such as brainwashing fail to meet this criterion of endorsement, but they could reply that the forms of indirect coercion they suggested meet this criterion since they are more transparent and considerably less manipulative so that they allow individuals to critically examine the conception of the good which is imposed on them. Indeed, the coercive measures available to a government for fostering its favourite conception of the good or religious doctrine appeal to people’s reason and do not aim to bypass their capacity for deliberation. In a sense, forcing people to consider evidence or forcing people to practice a certain way of life so that they come to see its point and value aims to make people embrace orthodox conceptions of the good by their own light.

This is however misleading. Forcing people to be bombarded with propaganda and coercively preventing them from examining evidence and argument for unorthodox ways of life or to experiment with those lifestyles severely impair people’s capacity to deliberate by themselves about the good life. These attempts make the outcome of individuals’ deliberations almost determined in advance by the actions of the paternalist or persecutor government. In fact, securing the ‘right’ outcome for individuals’ deliberation, or placing individuals in such circumstances that they will necessarily converge towards the orthodox answer, is precisely the goal of such governments. If people are only able to deliberate about officially approved opinions and only on the basis of officially approved material, then deliberation does not meet the requirements essential to sustaining the kind of endorsement consistent with respecting a persons’ capacity to take responsibility for their moral character and personality. Deliberation in this case is too restricted and too controlled by an external agency for viewing people as the authors of their own life; indirect persecution and paternalism still make people’s character almost entirely the product of others’ will. It fails to respect persons as independent moral agents and make it impossible for them to be authentic selves. Similarly, when people are forced by governments,
for perfectionist reasons, into practicing a religion or way of life they abhor in the hope that they will come to endorse it in the long run, their capacity to engage in genuine enquiries about the good life is illegitimately distorted as they cannot experience certain lifestyles which they judge worthy of attention. General bans on religious practices such as wearing the *hijab* or the *niqab* motivated by perfectionist concerns are thus inconsistent with respecting believers as independent moral agents since the effect of such a ban is to prevent them from exploring certain religious ways of life.

But isn’t the requirement of authorship or authenticity implausible since it is completely impossible to see ourselves as the sole product of our own rational deliberation? We do not build our character from scratch. There are multiple external sources of influence that contribute to making us who we are and shape our deep convictions of conscience. We have all been raised in a particular culture and have received a particular education from our parents, teachers, religious leaders, the books that we have read, and so on. However, being immersed in a culture is not like being coerced, manipulated or deceived into adopting a particular way of life. Culture and education offer individuals various options among which they can choose and the mere fact of having one’s beliefs and values shaped by an ambient culture and education does not prevent one from examining and experimenting with ways of life and beliefs which are alien to that culture or outside the official curriculum. Moreover, the diffuse influence of culture is a rather contingent and agentless process. No one has placed me in a particular environment so that my personality would be deterministically shaped to produced a certain character in conformity with his plan. The influence of culture lacks the purposiveness and agency that makes deliberate coercive efforts to shape others’ character such an affront to respecting persons as ends in themselves. Perhaps, however, cultures can be so tightly controlled that the narratives and scripts they offer to their members are, as the result of deliberate efforts by elites and governments, too narrow for
citizens to have the ability to conceive of different lifestyles. This is however very unlikely to be the case in pluralist societies in a globalized world in which cultures interact with one another.\(^76\)

Education however is always purposive and consists of a deliberate attempt by some to shape the character of others. Moreover, in modern societies, schooling is mandatory. Does this mean education is necessarily incompatible with treating persons as independent moral agents? Not at all. As I have discussed previously, in liberal societies education aims at developing certain minimal abilities for deliberation and critical enquiry as well as at making children aware of ethical diversity and the diverse options open to them. This liberal form of education obviously has some impact on how people come to define themselves, but it does not influence people’s characters in ways that prevent people from developing authentic personalities since it does not manipulate and select information given to students in order to make them adopt the one religious or secular conception of good favoured by official authorities. As I have argued, this type of education concerned with the prospective interest of students in having an open future is precisely desirable because it prevents children from being the “ethical servants” of their parents as can occur when their their moral character is entirely subordinated to the will of their parents (Callan 1997, 153). Parents sometimes want to block their children’s exposure to alternative ways of life and the development of critical abilities in order to make sure they will adopt their preferred conception of the good. Thus, it is precisely to respect children as independent moral agents and to avoid treating them as mere means for the continuation of the way of life of their parents that minimal liberal education must limit parental autonomy.

\(^{76}\) Consequently, it would be misleading to claim that respecting people as ends in themselves rules out efforts by national minorities to support and protect their societal culture against assimilationist pressures (for instance by protecting a language). Societal cultures give their members several life options amongst which to choose (Kymlicka 1995) so that protecting a societal culture, for instance by coercive measures designed at ensuring the transmission of a language, is not like manipulating individuals into embracing one narrow way of life.
Consequently, parental objections to minimal liberal schooling requirements based on freedom of conscience and religion appear to miss the target. Such objections assert that liberal education is a form of antireligious propaganda moulding children’s minds into a liberal secular conformist way of life (McConnell 1999). If the complaint is that liberal schools shape children’s deepest convictions in a way akin to brainwashing and propaganda so that it does not respect them as ends in themselves but as mere tools to instantiate an ideology, then it is misleading. For such schools do not use manipulative techniques to prevent children from embarking on their own independent inquiries about the good life or to predetermine the outcome of any ethical reflection the children may have.

Perhaps however, it is the civic mission of public schools which is the most problematic. Citizenship education directly aims to shape parts of the character of students. Indeed, as I have argued in the last Chapter, besides learning about political institutions, citizens’ rights and obligations, citizenship education also implies the cultivation of certain virtues such as tolerance, mutual recognition and mutual recognition. It thus implies the coercive exposition to material designed to make people embrace certain traits of character. Should we view this as an equivalent to Proast’s suggestion that government could force citizens to consider arguments supporting the official religion—a suggestion I have ruled out in the name of the strong notion of endorsement? I do not believe so. First, promoting a more or less short list of particular civic virtues is not the same as promoting an integral religious or a secular way of life. Moreover, civic virtues are justified instrumentally by appeals to the neutral political goods they help to secure. Because of these two points, civic virtues can be compatible with a very wide variety of conceptions of the good, secular and religious. Only strongly racist and intolerant people should resent citizenship education as a serious threat to the continuation of their lifestyle and it is hard to see why their dissatisfaction should be viewed as a problem. Second, the means to pursue citizenship education
greatly overlaps with the means taken by schools to protect the prospective interests of children in having an open future. Indeed, fostering certain abilities in critical thinking and practical reasoning as well as raising awareness of ethical diversity are core elements of programs of citizenship education (Callan 1997; Milot 2010). Yet, we have already established that these pose no threat to respecting children as independent moral agents.

I suggested that in light of the Article 18 of the International Covenant on Civil and Political Rights we view the right to freedom of conscience as having two core components: the right to hold beliefs of one’s choice and the right to manifest one’s beliefs. To conclude this section, I would like to suggest that the strong version of the endorsement constraint that I defended provides an appropriate framework to understand the first aspect of freedom of conscience. The weak understanding of endorsement underlying the Proastian objection is hardly compatible with the idea that no one should be subject to coercion that would impair his freedom to hold or adopt a religion or belief of his choice. This concept of simple ex post notion of endorsement is indeed consistent with various forms of manipulative treatment of individuals which lead them to sincerely (in Bou-Habib’s weak notion of sincerity) hold beliefs chosen for them by others. This conception of endorsement allows for governments to coercively interfere in individuals’ deliberations about the good life in ways that make individuals’ convictions of conscience the mere products of governmental wishes. However, the stronger notion of authentic endorsement helps in singling out why it matters that people be free to hold or adopt beliefs which are genuinely beliefs of their own choice. Under the strong notion of endorsement, people should be free from manipulative and coercive attempts by governments to shape their convictions of conscience by distorting people’s deliberation about the good life. Not letting individuals having this freedom is a failure to respect them as ends in themselves and as
independent moral agents whose sense of identity is deeply rooted in their convictions of conscience.

I want to make one final remark about this account of the right to hold beliefs of one’s choice. In the previous section I mentioned that freedom of conscience was distinct from both substantive and procedural autonomy. Looking at the account of the freedom to hold belief of one’s choice that I have just proposed, one may however claim that freedom of conscience collapses into procedural autonomy since authentic endorsement requires that people have the real option to openly deliberate about the good life and to explore different ethical alternatives. To take advantage of those options, people need minimal abilities of critical thinking and awareness of ethical diversity and of the options open to them. There is nonetheless a very slight distinction between the two notions. Freedom of conscience is essentially negative in character. Contrary to procedural autonomy, it does not require one to actively exercise his faculty of rational deliberation and to actively engage into scrutinizing different modes of life, merely to have the option available. Thus, one may just be too intellectually lazy to meet the requirement of procedural autonomy, he may refrain from engaging in critical reflection on the good life, and yet enjoy freedom of conscience if no external agency exercises power so as to block his potential attempts to get information about certain ways of life or to force him to consider officially-declared-knock-down-arguments in support of the officially favoured conception of the good. Freedom of conscience merely requires that one’s convictions of conscience are not the result of another’s will and that the process that led one to embrace such convictions be not subject to deliberate external coercive influences, not that one continually exercise his faculty of autonomous judgement. Ethical inertia, the mere tendency to stick to conformist lifestyles without critically scrutinizing them and without displaying curiosity for alternatives, is not a threat to freedom of conscience.
4. The Principle of the Vulnerability of Conscience

In this section, I discuss the moral foundations of the right to manifest one’s beliefs as well as the practical implications of the recognition of this right. In the first part, I discuss the view of limited toleration which claims people should only manifest their beliefs when these manifestations do not conflict with the pursuit of legitimate public interests by the state. I argue that this view does not take freedom of conscience seriously enough. In the second, I explain this point by putting forth the principle of the vulnerability of conscience which claims that people can suffer a distinctive harm when they are prevented from acting in accordance with their conscience. In the third part, I explore the view of libertarian toleration, which affirms the principle of the vulnerability of conscience but ranks it as an absolute value requiring that government’s pursuit of legitimate public goals must always be trumped by the demands of conscience. In the last section, I argue that neither limited toleration nor libertarian toleration capture adequately the relationship between freedom, the importance of manifesting one’s religious beliefs and state authority. I argue that we should reject both limited toleration and libertarian toleration since both ignore the flexibility of law and religious identities which allows us to view practices of religious accommodations as reciprocal adjustments aimed at finding ways to ensure that both the purposes of laws and of religious practices can be simultaneously achieved. The principle of the vulnerability of conscience does not commit us to completely and unquestioningly defer to the authority of individual consciences but to recognizing an obligation of accommodation understood as such a two-way process of mutual adjustments.
4.1 Limited Toleration and the Conflicting Authorities of Conscience and the State

The principle of the sovereignty of conscience examined in the last section offers a justification of the right to hold or adopt a religion or belief of one’s choice. However, it does not really offer grounds to justify a right to manifest one’s belief—other than asserting that restricting one’s religious practices in order to make him embrace an officially established religion or conception of the good is unjustified. As Locke claimed, the limitation on state authority placed by the sovereignty of conscience only forbids the state to pursue spiritual goals; it does not prevent the government from restricting religious practices in order to pursue valid public goals which fall within the scope of legitimate temporal authority:

For the private judgement of any person concerning a law enacted in political matters, for the public good, does not take away the obligation of that law, nor deserve a dispensation. But if the law, indeed, be concerning things that lie not within the verge of the magistrate’s authority (as, for example, that the people, or any party amongst them, should be compelled to embrace a strange religion, and join in the worship and ceremonies of another Church), men are not in these cases obliged by that law, against their consciences (Locke 1669, 39).

Locke believed that such conflict between private conscience and legal obligation would be very rare if temporal and spiritual authorities were properly separated, namely if government abandoned the goal of ensuring the salvation of citizens’ souls and focused on protecting their civil interests. However, most demands based on freedom of conscience are based on the right to manifest one’s beliefs and they are not made against restrictions of religious practices aimed at making people embrace an official religious orthodoxy. They are made against laws and policies aimed at achieving other societal goals than promoting orthodoxy such as the goals of ensuring security, promoting national unity, promoting health, enabling the smooth functioning of public
institutions and so on. Religious citizens making those demands have claimed that such laws have either prevented them from performing religious duties or forced them to act in violation of their convictions of conscience. Those tensions can only increase as the government’s role in people’s lives increases. Claims of freedom of conscience thus arise from a conflict between temporal and spiritual authority which, pace Locke, is inevitable even when government abandons the task of promoting the spiritual interests of its citizens. As McConnell puts it, “the essential problem is that religious believers have an allegiance outside the commonwealth (...) believers inevitably face two sets of loyalties and two sets of obligations. In this respect, they resemble resident aliens, or at best, persons with dual citizenship” (McConnell, 2000a, 91).

Cases of conflict between the demands of individual conscience and the pursuit of public purposes are legion in pluralist democracies and they encompass tensions between freedom of conscience and the pursuit of several collective goals by all levels of government.

They may involve a conflict between religious belief and the promotion of national identity and patriotism. For instance, in the United States in the 1940s, two famous cases regarding religious freedom and the salute to the flag generated heated polemics and were taken to the Supreme Court (Minersville School District v. Gobitis, 1940 and West Virginia State Board of Education v. Barnette, 1943). During the war several schools made it compulsory for all children to salute the American flag and to recite the pledge of allegiance. Many Jehovah’s Witnesses complained that these practices were incompatible with their faith since they believed that their only allegiance was to God (this was the given reason in 1943 in Barnette).

Tensions can arise between the goal of protecting the security of citizens and allowing certain religious practices. Thus, in Canada, in the Multani case brought to the Supreme Court in 2006, a school board wanted to prohibit a Sikh student from wearing the Sikh Kirpa on the
grounds that this religious symbol could be seen and used as a dangerous weapon (Multani v. Commission scolaire Marguerite-Bourgeoys, 2006).

Concerns for citizens’ security have also clashed with religious practices where Sikh and Amish individuals demanded to be exempted from laws requiring hard-hats on construction sites since they sincerely believed that they had a religious obligation to wear particular headgear.

Concerns for health and security can also conflict with certain religious practices. For instance, the Native American Church claimed that drug prohibition laws prevented them from practicing important religious rituals (Employment Division, Department of Human Resources of Oregon v. Smith, 1990).

Compulsory requirements of education bring several tensions between the public goal of ensuring minimal instruction to all children and religious parents who believe certain textbooks are offensive to their religious beliefs (Mozert v. Hawkins County Board of Education, 1987) or that certain courses introducing students to ethical diversity threaten their capacity to pass on their religious beliefs to their children (Wisconsin v. Yoder, 1971; S.L. v. Commission scolaire des Chênes, 2012).

Finally, many conflicts arise between religious norms and rules adopted to secure the smooth functioning of public institutions. For instance, rules defining the schedule of public schools can conflict with the prayer requirements of Muslim students or with the religious holydays of minority groups. Rules requiring procedures for the identification of citizens and users of services can conflict with Muslims women’s religious obligation to not unveil their visage to male individuals or with believers who interpret their faith as requiring that they be not photographed (Alberta v. Hutterian Brethren of Wilson Colony, 2009).

This is of course an incomplete list of the kind of tensions which can arise between religious norms and public goals (for a more exhaustive treatment, see Greenawalt 2006).
Taking those examples into account should raise an obvious question: if laws conflicting with religious practices serve valid public purposes such as protecting the security of citizens, why should we see it as a problem that certain religious practices are limited by those laws? It is certainly not a problem that people who would like to bring a gun to a school or who like to take hallucinogenic drugs be prevented from doing so. Why should we make a difference for practices based on religious beliefs and obligations?

Perhaps freedom of conscience and religion only protects against state-orchestrated religious persecution. According to this view, it would be wrong to limit religious manifestations for the sake of ensuring orthodoxy (as commanded by the principle of the sovereignty of conscience) but not to limit manifestations of beliefs for achieving valid public concerns just as it would be wrong to forbid people from wearing baseball caps in the name of some strange public conception of the good but justified to required people to wear helmet instead of caps when riding a motorcycle or when entering a construction site. According to this view, the right to manifest one’s beliefs stop when beliefs contradict the pursuit of legitimate collective goals.

Let’s call this approach limited toleration since it is based on deference to the state authority at the detriment of the demands of conscience. Limited toleration affirms that we should defer to the demands of citizenship in all cases of conflict between religious norms and laws aimed at realizing legitimate civil interests. Locke leans towards this view in certain passages of the Letter (1689, 39). This position claims that “freedom of conscience and religion is freedom within the limit of laws that serve public purposes and that are not intended to limit religious freedom. Legitimate laws may have the effect of limiting religious freedom as an unintended byproduct” (Gutmann 2000, 131). This approach seems, at first sight, to be in line with Section 3 of the Article 18 of the International Covenant on Civil and Political Rights: “Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law.
and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. Under this reading of the right to freedom of conscience and religion, state’s legitimate interests should always trump the demands of conscience when there is a conflict.

4.2 The Vulnerability of Conscience

Limited toleration would be sound if the principle of the sovereignty of conscience exhausted the values that the right to freedom of conscience is made to protect. However, I argue that the freedom to manifest one’s belief is connected to the distinctive value of being able to act according to one’s convictions of conscience and not to be forced to act against the dictates of one’s conscience. Since convictions of conscience are akin to “strong evaluations”, this means that there is a distinctive value in not being forced to act in ways one considers to be wrong, unworthy, or debased. According to this view, we should be concerned with laws and rules which conflict with religious practices because people suffer a very painful harm when they are prevented from acting according to their convictions of conscience. As Chadran Kukathas argues, individuals have a basic human interest “in living in accordance with the demands of conscience. For among the worst fates that a person might have to endure is that he be unable to avoid acting against conscience—that he be unable to do what he thinks is right” (Kukathas 2003, 55).

We must therefore recognize a second principle underlying the right to freedom of conscience alongside the principle of the sovereignty of conscience. This second principle, the principle of the vulnerability of conscience, explains the value of the right to manifest one’s belief. It is based on the idea that conscience is vulnerable; it can be wounded. (Nussbaum, 2008; 19-20, 53-54; Maclure and Taylor 2011; Kukathas, 2003; Cf Bou-Habib, 2006). The point here is that when people are forced to act against the grain of their ethical convictions, when they are
forced to do things that they believe to be wrong or unworthy, they endure a particular kind of harm: a moral harm, a harm that affects their sense of moral integrity (Maclure and Taylor, 2011, 76-77). For Rogers Williams, the enforcement of religious orthodoxy was a form of ‘soul rape’ or ‘imprisonment’ for religious dissenters, something that caused a certain spiritual or moral damage to the person (Nussbaum, 2008, 51-54). Convictions of conscience are deeply rooted in people’s sense of what is right or wrong, noble or debased; these convictions define who they are, what goals they want to achieve in their lives and want kind of virtues and attitudes they seek to display. These convictions are intimately linked to individuals’ identity as moral agents. When people are forced to act against these convictions, they experience a loss of personal integrity, a feeling of self-alienation, a sense that their own actions violate the moral principles that define who they are. As Bhikhu Parekh explains, certain cultural and religious norms are constitutive of the individual’s sense of identity and self-respect so that acting against those norms is accompanied by a ‘deep sense of moral loss’ (Parekh, 2000, 241).

Such loss is of the same nature as the loss of personal integrity that a pacifist would experience if she were forced to enter the military forces and go to combat or as the one that would be felt by a vegetarian if she were forced to kill and eat an animal. We can appreciate how personal integrity is an important value by considering the risks people are willing to take in order to preserve it. Think about whistle blowers, for example, who are ready to risk their jobs in order to avoid perpetrating actions that violate their deepest ethical convictions and sense of what is right and wrong. For Kukathas, there is no doubt that humans are moved by the desire to avoid death and suffering; yet, the desire to act rightly, in accordance to the dictate of one’s conscience, is so powerful that it is often pursued at the expense of avoiding pain and death (we can think of Socrates, the early Christian martyrs, etc.) (Kukathas 2003, 50-52). In brief, people give a great deal of importance to their ability to act in ways that allow them to see their actions as the
expression of their moral identity (which is defined by their convictions of conscience). Thus, they experience some kind of loss or harm when others prevent them from acting in this way. Therefore, the principle of the vulnerability of conscience states that forcing someone to act against the dictates of his convictions of conscience imposes a distinctive moral harm on that person.

4.3 Libertarian Toleration

At this point, I believe that many, especially amongst the supporters of strict secularism, would be worried that the principle of the vulnerability of conscience is too strong since it may allow for the individual conscience to encroach legitimate state authority. The principle of the sovereignty of conscience established a separation between spiritual interests and civil interests; it claimed that legitimate government restricts itself to pursuing civil interests and refrains from trespassing the boundaries of private spiritual interests. Now with the principle of the vulnerability of conscience, it seems that spiritual authority reaches out of the private sphere to restrict the state’s ability to pursue legitimate civil interests. Indeed, the vulnerability of conscience could be interpreted as saying that the state should never force someone to act against his conscience so that the demands of conscience always trump state authority. The principle, according to this view, requires that we recognize the individual conscience as a source of authority placed above that of the state. It seems that if we recognize the principle of the vulnerability of conscience, nearly all efforts from the government to promote the common good will be nullified by unlimited deference to the authority of the individual conscience.

This is all the more troubling in conjunction with the claim that conscience is subjective, since it is not the business of the state to decide the truth or falsity of religious convictions and
other convictions of conscience. The court simply cannot tell Jehovah’s Witnesses that they are wrong to believe that their religion requires them not to pledge allegiance or tell Jews that they mistakenly believe they should eat kosher. Thus, if we recognize that convictions of conscience can impose limits on the exercise of state power and if we also recognize that the state has no authority to dictate what one should believe, then it seems that we should accept any demand for accommodation on religious grounds without question. According to this view, religious beliefs act as a very powerful silencer of rational deliberation: “you don’t have to make the case for what you believe. If somebody announces that it is faith, the rest of society, whether of the same faith, or another, or of none, is obliged, by ingrained custom, to ‘respect’ it without question” (Dawkins, 2006, 346). So a strong affirmation of the principle of the vulnerability of conscience naturally spurs fears that the claims of conscience would always trump state authority and that there is nothing that we can legitimately do to question the validity of those claims.

Because human beings have the faculty of conscience, which allows them to identify right and wrong for themselves, and because they are members of political societies, they inevitably face two sets of potentially conflicting obligations, two sets of loyalties: the demands of conscience and the demands of citizenship. There are obviously two simple answers to conflicts between spiritual and temporal authority. Limited toleration claims that we should defer to state authority systematically. Yet this solution is overly insensitive to the painful harms suffered by individuals forced to act against the demands of their conscience. The other simple solution is to defer to the authority of individual conscience. For instance, McConnell claims that when the demands of faith and of citizenship clash, public authority must retreat to make room for unhindered religious practice. We should recognize a general right of exemption so that believers never have to obey the law when it conflicts with the demands of their religious conscience (McConnell 2000a). This would surely entail respect of the principle of the vulnerability of
conscience, but does this principle require something as strong as a general right to religious exemption in which individual conscience can always trump state authority?

Kukathas argues it does. Drawing on the basic human interest to be able to act according to the dictates of one’s conscience, Kukathas puts forth a libertarian conception of toleration in which the claims of conscience override the authority of the state so that government may not intervene with practices commanded by people’s deep conscientious convictions (Kukathas 1997; 2003). For him, the central problem of political philosophy is the problem of diversity and difference. The fundamental question of political philosophy is “what a social order would amount to in a world of ethical and cultural diversity, and in which that diversity was not suppressed but the freedom of people to live by their own lights was recognized or honoured” (Kukathas 2003, 259). Freedom of conscience is thus the fundamental principle on which Kukathas’s theory of the free society is built. In Kukathas’s model of a free and tolerant society recognizes that people have different deep convictions of conscience and asserts they are free to live in accordance with those convictions. Consequently, individuals should be free to associate and live in community with other people who share those convictions. These associations are voluntary, which means that people can enter or leave them whenever they want; they have a right of exit. Society is thus made of multiple associations, but since individuals’ freedom to associate derives from their freedom to live according to the dictates of their conscience, government must refrain from interfering inside associative life otherwise it would violate individual freedom of conscience.

There is therefore no authority above free associations, no umpire which can decide whether or not the practices of a community of free persons can be legitimately restricted in the name of the common good, as there is no higher standpoint or value to which the state can appeal to in order to justify intervention in groups’ internal affairs. To quote Kukathas: “there is no
reason to begin by assuming that there is an established “we” in the form of the state which possesses the authority to determine how far to tolerate dissenting groups within its midst” (1997, 94). For Kukathas, in a free society which respects freedom of conscience, there will be “communities which bring up children unschooled and illiterate; which enforce arranged marriages; which deny conventional medical care to their members (including children); and which inflict cruel and unusual punishment. All of this is possible in the name of toleration” (Kukathas 1997, 87). Since people have the right to exit these groups, those who stay in are considered to do so voluntarily in the light of their deepest convictions of conscience. Therefore, when the state intervenes in the affairs of these groups to change their practices, it violates the freedom of their members. In this libertarian view of toleration, the demands of individual conscience are absolute and state authority must retreat in front of it.

4.4 Freedom of Conscience and the Obligation of Accommodation

Kukathas’s strong and libertarian conception of toleration offers a solution to the tension between the demands of conscience and the demands of citizenship: it is possible to respect the demands of conscience if state authority is reduced to its minimum, always trumped by the claims of conscience, and if the autonomy of free associations is maximized. However, Kukathas’s conception of toleration suffers from the opposite problem than limited toleration. While the latter does not take freedom of conscience seriously, the former exaggerates it and does not take legitimate state authority seriously. I want to argue for this point by making two remarks. First, even if we strongly value freedom of conscience, as Kukathas does, there are in fact legitimate grounds to recognize that state authority should not always capitulate to the claims of conscience.
Second, it is possible to recognize the legitimate authority of the state without suppressive legitimate expressions of diversity and individual conscience.

First, I do not believe that we should view the protection of individuals’ freedom of conscience as the one and only value the state ought to protect. A liberal state also ought to pursue other goods than freedom of conscience, such as equality, social cohesion, security and so on. There are several other public goals other than respecting freedom of conscience and there is no reason to assume that respect for the demands of conscience must systematically trump the pursuit of other public concerns. Even if we accept Kukathas’s claims that respecting freedom of conscience is the first priority in a good society, we have many reasons to maintain that the state has the legitimate authority to pursue various public goals which may conflict with the conscience of certain citizens.

Kukathas embraces a strong notion of toleration in which the authority of the state must always capitulate in face of the demands of conscience, a result of the fact that his whole theory is premised on the duty to respect individuals’ fundamental interest in living a life according to their own understanding of right and wrong (Kukathas 2003, 23, 25). We can certainly agree that political philosophy’s task is to determine which social order best serves the fundamental interests of persons. Yet it is hardly plausible that the interest in living according to one’s conscience is the only basic human interest that a social order should protect. Other basic interests include at least an interest in having basic means of subsistence such as food, shelter and health, as well as an interest in security. These basic interests may be independent from the interest in living according to one’s conscience. Nonetheless, even if we embrace the position that the interest in living according to one’s conscience is the sole fundamental interest that a good social order must achieve, we must still recognize the value of those other basic interests as derivative interests.
Those interests may be derivative in the sense that they need to be secured in order to make it possible for people to be able to live according to their convictions of conscience; they are preconditions to live according to one’s conscience. If people’s physical integrity is permanently threatened, it is unlikely that people will be able to pursue their conception of the good life; if they lack access to basic means of subsistence they may not be able to live according to their conscience (or they may be obliged to go against their conscience, such as resorting to killing and robbing, to protect themselves and survive). Presumably, people will need both material resources to pursue their conception of the good and cultural and cognitive resources to develop and formulate their own convictions of conscience. In modern societies this requires that they acquire at least proficiency in language, literacy and other basic skills so that they are able to access the employment market as well as to decipher and understand the different scripts and options made available to them by existing cultures. So, individuals do also have a basic interest in education. There are thus, alongside the interest in living according to one’s conscience, several basic interests that the state must protect. To secure those interests the state has the legitimate authority to enact laws and these may sometimes have the unintended effect of limiting the capacity of certain individuals to act in accordance with their conscience.

Moreover, if we recognize the fundamental importance of freedom of conscience, we must, as I have argued in the previous section, be committed to the principle that people should be able to freely develop their own convictions of conscience. Many sincerely believe that their conscience dictates them to shape the conscience of other persons. Many religious parents, for instance, believe they have duty to transmit their own religious convictions to their children. Although this desire is legitimate in itself, certain means to pursue this end are simply inconsistent with respecting their children’s freedom to have or adopt their own beliefs or religion. For instance, preventing children from acquiring any sense of critical thinking and from
having any exposure to ethical diversity is inconsistent with respecting their capacity to have their own convictions. This makes children ethically servile to their parents and makes them mere recipients for the convictions of their parents rather than persons capable of genuinely embracing a conception of the good of their own. If freedom of conscience is of such a paramount importance, the state can legitimately take measures, such as imposing certain minimal educational requirements, to limit certain people’s capacity to coercively shape others’ deepest convictions even if those people’s conscientious convictions tell them to ought to do so.

Finally, Kukathas asserts that respecting freedom of conscience entails respecting people’s freedom to associate even when associations promote illiberal values. This is consistent with individual freedom provided that people are free to exit any association they have joined in the past (Kukathas 2003, 96-97). Consequently, Kukathas asserts that in a free society, associations do not have the right to coerce individuals into remaining permanent members against their will (Ibid., 97). However, to be free to exit associations, people must have real exit options. Yet, the “no-right” of associations to coerce their members into staying is unlikely to be enough to warrant real exit options since exit is difficult and costly.

Exit requires “knowledge, capacity, psychological and fitness conditions” (Galston 2002, 123). People cannot exit if they are unaware of life outside their community, if they are unable to assess alternate lifestyles, if they cannot speak a language used outside, if they are psychologically manipulated by others to stay in, if they are financially dependent on other members of the group or if they do not have the ability to participate in other ways of life than the one they wish to leave. Moreover, exit has high identity costs (loss of sense of identity), social costs (risk of ostracism or solitude) and material costs (loss of care, shelter, employment or social security specifically related to the community).
Therefore, to make exit a real option, the state must take measures to lower the cost of exit and to ensure that each individual has the capacity to exit. Even some strong supporters of pluralism accept this point. For instance, Bader claims that although it is difficult to alleviate identity and social cost, much can and should be done to reduce material costs of exit and give to people the means to exit their community of belonging. This requires that minimal social security be guaranteed for all, that everyone has access to public or semi-public services providers alongside services offered in one’s groups and that membership multiple overlapping associations be encouraged (Bader 2007, 213). One may even add that the knowledge, capacity, psychological and fitness conditions require the enforcement of minimal standards of education for all children. So, even if we accept, following Kukathas, that freedom of association should be protected against state interference, ensuring the voluntariness of membership in associations implies that we recognize that the state has the legitimate authority to pursue a long list of civil interests or public goals defined by the conditions for securing a real exit right. Moreover, in pursuing those interests, the state may interfere with and override associations’ authority since the protection of those interests is a precondition of the voluntariness of associations.

Thus, state’s authority should not to systematically defer to the demands of conscience, it can legitimately impose its authority in the pursuit of various public goals such as securing the pre-conditions for real exit options, ensuring that everyone is free to have or adopt her own convictions of conscience and promoting various basic human interests. In doing so, the state will necessarily interfere with religious practices and place demands on believers whose practices are at odds with the promotion of those public goals.

The second point I want to make is that although the state has the authority to regulate religious practices in order to pursue legitimate public goals, this does not mean that the freedom to manifest one’s beliefs should be reduced to the freedom to manifest one’s beliefs provided
they do not conflict with laws as they are currently defined. This complete deference to civil authority would render freedom of conscience impotent. The principle of the vulnerability of conscience does not require complete and unquestioned deference to the demands of individual conscience. What it does require, however, is that limits be placed on how the state can pursue legitimate societal goals. It requires that the state observes an obligation to accommodate the demands of individual conscience: that is, an obligation to try to minimize the harms done to individual consciences by its laws and policies.

Accommodation, I suggest, is a two-way process. It requires that both religious citizens and public authorities be willing to modify their starting position. This implies that, in cases of conflict with religious practices, public authorities must make efforts to imagine different ways to pursue the same legitimate goal and select the one which least restricts free exercise of religion. Governments should alter the measures they take to pursue legitimate goals so as to adopt those which place the lesser burden on individual consciences. This also implies that believers can be asked to seek to alter certain elements of their religious practices in ways that do not hinder the fundamental demands of their conscience, in order to make these practices compatible with the pursuit of civic goals. The notion of accommodation thus rests on the view that both laws and religious practices have a certain level of flexibility: similar purposes (promoting civic interests or acting in accordance with one’s conscience) through different practices. The goal of accommodation is to find which combination of laws and religious practices maximises the achievement of both public goals and individuals’ capacity to act according to their conscience. Limited toleration and libertarian toleration ignore this potential for flexibility and accommodation by suggesting that the only solution to conflicts between spiritual authority and temporal authority is to give one of them absolute priority over the other.
The state can pursue goals which apparently conflict with certain demands of faith without violating individuals’ conscience because both law and religious practices have the potential flexibility required for one to adjust to the other. There is nothing sacred, special or unique which links a public goal and the particular measure adopted by a government to achieve this goal. There is no constitutive link between a policy and the goal it serves; there is just a link of instrumental rationality: policies are means to pursue certain civic goals. As such, government must be open to pursue a given civic goals through any means which can reasonably achieve it. Sometimes, when the pursuit of civic goals and the demands of conscience enter into conflict, freedom of conscience can be preserved by adapting the means with which the goal is pursued.

For instance, in 2008 Quebec required that all schools, public and private, include in their curriculum a course of citizenship education and ethics, Ethic and religious culture, which transmits knowledge about the fact of religious diversity and skills in ethics and deliberation. Certain Catholic schools viewed the course as promoting a certain form of relativism since, according to them, in teaching about the fact of religious pluralism it puts all religious and secular ethical viewpoints on equal footing. Therefore, the Board of one private school in Montreal, Loyola High School, claimed the mandatory course violated both the conscience of parents who wished their children to have a Catholic education and the conscience of teachers who were forced to teach matter of ethics from an “impartial” viewpoint (Loyola High School v. Courchesne 2010, 7). In this case, accommodation can easily be achieved by adapting the means through which government pursues a given civic purpose. In this case, the course was designed to promote civic virtue in the context of a pluralist society by aiming at promoting toleration, ethical reasoning, mutual understating and mutual recognition between persons of different faith. The Board of the school proposed a reasonable solution to the apparent conflict between the demands of their faith and the public goal of promoting certain civic virtues. Consistent with their desire to
preserve the religious character of the school, the board suggested offering a course equivalent to *Ethics and religious culture* but from a Catholic perspective rather than from a secular and impartial perspective.\(^{77}\) In this alternative course, skills in ethics and practical reasoning are taught, but they are explicated within the framework of what the school calls a “catholic ethics”: toleration is promoted on the basis that God as created all humans equal, and students are fully familiarized with the fact of religious and ethical diversity since the curriculum covers the fundamental beliefs of various spiritual traditions. Allowing schools to teach the course from a religious perspective thus makes it possible for the state to pursue the goal of promoting civic virtue through mandatory educational requirements and for religious parents to have access to private schools with a religious character if the state allows for courses of citizenship education to be offered from a religious perspective.\(^{78}\)

Not only can measures pursuing valid public goals prove to be flexible, religious practices also have a certain degree of flexibility which gives the state some room to regulate religious practices in ways which do not limit too harshly freedom of conscience. One may be pessimistic about the possibility of religious citizens showing flexibility with regards to the practices they view as part of their religious identities. After all, these practices follow from divine command which ordinary human beings are unable to modify. Many fear that that the claims of faith are absolute and are not subject to negotiation (Dawkins 2006; Pena-Ruiz 2003).

\(^{77}\) The ministry of education never accepted that the Loyola High School program was equivalent to the secular version of *Ethics and religious culture*. Yet, the school’s right to offer its equivalent version of the course from a religious perspective was recognized by the Superior Court of Quebec (*Loyola High School v. Courchesne* 2010).

\(^{78}\) Perhaps the religious homogeneity of the school and the insistence on teaching ethics within the framework of Catholicism limit the extent to which the school can promote the development of practical reasoning, mutual understanding and deliberation between persons of different religious backgrounds. But the program offered by the school meets at least minimal threshold of citizenship education by promoting the same goals of toleration, knowledge of different spiritual traditions and ethical reasoning as the state version of the course *Ethics and religious culture*. We must be careful not to reject specific accommodations of religious diversity because the alternative means to pursue valid public concerns to not fully maximize the achievement of the value sought by the initial means. We should tolerate variation in the efficacy of means to pursues public goals provided alternative means pass a certain reasonable threshold of efficacy.
How could it then be possible for the state to regulate religious affairs and place demands on the religious practices of citizens without necessarily violating the vulnerability of conscience? We can explain how this is possible by taking into account two observations about religious beliefs and practices. First, religious prescriptions can be interpreted in many ways. Second, religious practices often have many dimensions. Given those two facts, it is possible for the state to regulate certain religious practices in order to achieve a given societal end without burdening in unacceptable ways the ability of individuals to act according to the dictate of their conscience.

Religious norms and prescriptions are not fixed once and for all and are not beyond reinterpretations aimed at achieving greater consistence with civic laws. For instance, many scholars studying Islamic law have claimed that there is much room for reinterpreting Sharia law in order to achieve congruence with secular norms of human rights while respecting the authority of sacred texts. For instance, An-Na’im suggests that Muslims can make a distinction between two kinds of texts in the Sharia and the Sunna. According to him, there is a distinction to be made between the first and the second message of the prophet of Islam. The first message is based on divine revelation; it was rendered in the Mecca by the Prophet and was egalitarian and tolerant in essence. The second message was rendered after the Prophet and his followers had to flee from persecution to Medina; it is not based on divine revelation, but on adaptation of the first message to the socioeconomic and cultural realities of the time and place. The first message was in a too great dissonance with the cultural and social norms of the time and had to be revised to be realistic and practical. It is this second message which contains elements of discrimination against women and non-Muslims which are harder to accommodate under secular law in liberal societies. Yet, since the circumstances of believers have greatly changed since the Prophet had to flee to Medina, the first message of Islam should be reinterpreted in light of the new
circumstances of Muslims so that many discriminatory elements of second message can be abandoned (An-Na’im 1990a; 1990b).

Drawing on the works of several Islamic legal scholars, Andrew March proposes a different method for reinterpreting Islamic norms in light of sacred texts. He suggests that Sharia law “should not be understood solely as embodied in specific rules (e.g. inheritance must be divided in this way) nor in terms of painstaking, thorough extraction of those rules from the revelatory texts according to the methods of classical legal theory (usul-al-fiqh), but rather defined in terms of the overall “purposes” (maqasid) [namely, life, religion, property, lineage, and reason] for which God revealed the Law” (March 2011a, 35; Cf 2011b). This approach is based on the “purposive flexibility” of religious legal prescription, that is, the idea that the importance for the believer is not to correctly apply very precise and clear first order religious rules, but to act in ways consistent with the deeper ends of divine laws which the believer can appreciate through the reading of divine texts and religious legal precedents.

Purposive flexibility thus opens a space for the liberal state to engage with believers eager to respect religious law. Of course, the state cannot dictate which purposes religious law should serve; neither can it dictate whether or not a given religious norm serves this or that religious purpose. Nonetheless, in initiating a deliberative process of negotiation over the terms of accommodation (instead of simply deferring to the initial position of the believer or of unilaterally imposing its authority to pursue legitimate secular and public goals), the liberal state can initiate a process of critical reflection on the part of the believer regarding the deeper purposes of religious law. Given the purposes March attributes to Islamic law (life, religion, property, lineage and reason), we can hope that believers will sometimes find grounds to support reinterpretation of their practices consistent with sincere endorsement of the state’s legitimate claim to pursue various public goals.
The flexibility of religious practices also rests on the fact that religious practices and symbols have many dimensions. Some of these dimensions are essential to the believers’ deep understanding of their religious obligations and virtues; others are more contingent and unrelated to their sense of right and wrong. It might be the case that conflicts between religious prescriptions and secular laws could vanish if believers were to simply abandon elements of their practices which are not essential to their sense of acting in the right way and according to God’s will.

Discussing conflicts between cultural norms and liberal justice, Ayelet Sachar has highlighted the great potential of the multidimensionality of cultural practices for accommodating cultural minorities in ways which allows for both respecting the cultural commitments of certain groups and upholding standards of liberal justice. She builds on the view that cultural practices have plural dimensions and are always open to reinterpretation and claims that customary family laws have both ‘identity-demarcating’ and ‘distributing’ aspects (Sachar, 1998, 300-303). For instance, under the Santa Clara Pueblo Indians family laws, the child of a women who marries outside the tribe is denied membership in the tribe (but this is not the case for the children of men who get married outside the tribe); this performs an identity demarcating function that establishes the identity boundaries of the community. But since resources are communally owned by the tribe, women who are married with outsiders are denied any material support to raise their (non-member) children; this performs the distributive function of family laws. Since the Pueblo Indians family laws strongly disadvantage women who decide to get married with an outsider, respecting the Pueblo Indians cultural traditions is often seen as necessarily entering in conflict with the promotion of gender equality. For Sachar however, this is not the case precisely because we can separate the demarcating and distributing aspects of those traditions. The state can thus refrain from interfering with the Pueblo Indians’ identity-demarcating practices (by respecting
their right to exclude children of women married with outsiders) while it regulates the
distributing aspect of their tradition (by asking that some distributive remedy be available for
women married with outsiders and their children—e.g. they can establish an educational or loan
fund for those children without having to grant them membership in the tribe) (Sachar, 1998,
303).

The multidimensional aspect of religious practices leaves similar room for the state to
regulate religious conduct as Sachar identifies in the case of cultural practices. Not all aspects of
a given religious practice are essential to fulfill a religious prescription: that is, an action
commanded by a perceived religious obligation. It might be the case that the state is able to
further an end that apparently inevitably conflicts with someone’s religious freedom simply by
asking her to change aspects of her religious practice that are not essential for the fulfilment of a
religious obligation. For instance, this is how the *Multani* case was decided by the Supreme Court
of Canada (*Multani v. Commision scolaire Marguerite-Bourgeoys* 2006). The case involved a
conflict between the Board of a public school which demanded that a Sikh student stopped
wearing his Kirpa at school. The student refused on the ground that wearing this religious symbol
is a central obligation of Sikhism. The Board claimed that its demand was justified since it aimed
at preserving security and safety at school, the Kirpa being a ceremonial dagger that could be
used as a weapon by the bearer or by another student stealing the object. The decision which was
reached by the court is that the student has the right to wear the Kirpa provided it was worn in a
sealed case placed under his clothes. This involved asking the Sikhs to reinterpret their practice
and to drop certain of its aspects. The original practice was to wear the Kirpa in an unsealed case,
outside the clothes. But, after deliberating with the court, it appeared to the Sikh student and his
family that he could both fulfill his obligation to wear a Kirpa by changing these aspects of this
practice and meeting the schools demands regarding security.
These examples of teaching civic education from a religious perspective and of displaying religious signs so as to meet safety requirements show two things. On the one hand, religious practices and identities have a certain level of flexibility so that it is possible for the state to intervene in religious affairs without violating the vulnerability of the conscience. On the other end, there are multiple ways in which public institutions can achieve their objectives; the means that can be taken to pursue various legitimate ends of a liberal and democratic state are also flexible. Therefore, the view that we either have to accept that the state has an unrestricted right to regulate religious practices whenever they conflict with its policies or that conscience always trumps state authority presents us with a false dilemma. The state can demand that citizens revise aspects of their religious or cultural practices in ways that do not require them to abandon what is of fundamental importance in these practices.

Yet these are fortunate situations in which it turns out that conflicts between spiritual and temporal authority can vanish with good faith and willingness from each party to compromise and modify initial practices. Of course, laws and religious practices cannot always be reciprocally modified so that harmonious accommodative solutions be found. In several cases, the conflict may persist. I do not think that taking the vulnerability of conscience and the legitimate authority of the state seriously is consistent with deciding these conflicts by proclaiming that we should systematically defer to either the demands of conscience or to public authority. Instead, when conflict persists, two things should be considered to find a just resolution.

First, we should carefully ask whether the state imposed measure which restricts citizens’ religious practices does really have the effect of promoting the public goal it is expected to achieve. As the Canadian Supreme Court maintains since Big M Drug Mart and Oakes, rights are not absolute and can be limited by measures aiming at pursuing collective goals of fundamental importance if there is a rational connection between the goal pursued and the measure limiting
individual freedom (R v. Oakes 1986; R. v. Big M Drug Mart Ltd 1985).\(^7^9\) Sometimes measures which initially seem to unquestioningly serve a given goal appear to be problematic when we take into account the point of view of diverse groups. For instance, mandatory salutes to the American flag was thought to promote patriotism and feelings of belonging to the United States. Although we can recognize the importance of the goal of promoting patriotism, it is very doubtful that a state-imposed measure forcing individuals to do something against their conscience can be of any help in generating feelings of patriotism and identification to the state. Similarly, as I explained in the last Chapter, although we can agree that ensuring the neutrality of public institutions is a valid goal, we can raise legitimate doubts that imposing a duty of neutral appearance to users of public services or to state agents is really a measure promoting neutrality. It is more likely to result in unfair discrimination against minorities. Therefore, when it is not clear that a measure really serves the promotion of the public goal it is supposed to promote and when it is clear that it will restrict freedom of conscience, we have good reasons to abandon the measure and let the claims of conscience prevail.

When a measure really does have the effect of promoting the goal it is intended to and when neither the religious practice nor the measure can be modified so as to make it possible to pursue the public goal aimed by the law without infringing fundamental elements of the religious practice, we have a true conflict and we have to make a tragic choice between fully respecting freedom of conscience and pursuing the public goal in question.

A principle of proportionality can guide us in making just choices in those cases. Restrictions of religious liberty must be proportionate to the benefits incurred by the restricting

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\(^7^9\) In the “Oakes test”, or “test of proportionality”, other conditions to be observed for the limitations of fundamental freedoms by the state’s pursuit of collective to be justified also include that the means taken to achieve the objective must impair as little as possible individuals’ freedom and that there must be proportionality in the effect of the means, that is, the loss of freedom for some must generate substantial benefits to society.
measure; benefits must clearly outweigh the harms done by restriction. Sometimes, although restricting religious practices does really serve a valid public purpose, the benefits society gets are just too small to justify restricting a fundamental freedom. For instance, forbidding exemptions to the obligation to wear a hard-hat on motorcycle or at construction sites will genuinely promote safety on roads and construction sites and will lower the number of injuries. Yet the breaches of safety related to allowing a very small number of individuals to derogate to this rule are relatively small, to the point that it does not justify restricting a fundamental freedom. A similar reasoning applies to the use of illegal drugs for ceremonies.

Yet there are cases in which the benefits of restriction are important enough to justify it. For instance, denying exemptions to minimal education requirements can be justified by the benefits of education to the children and society in general. More recently, a decision of the Canadian Supreme Court upheld that the province of Alberta was justified in requiring members of a Hutterite community be photographed in order to receive a driving license despite the Hutterite objection that this violates their conscience since they sincerely believe that the second commandment forbids them from being photographed (Alberta v. Hutterian Brethren of Wilson Colony 2010). The court judged that this limitation of freedom of conscience was proportionate to the benefit of protecting citizens against identity theft. Yet, given the fact that the Hutterites form a relatively small community, it is not clear that exempting them from being photographed in order to receive a driving license would seriously jeopardize the capacity of Alberta to protect its citizens against identity-related frauds. We should be suspicious of the view that small gains in terms of security outweigh the value of protecting the vulnerability of individuals’ conscience.

In brief, the principle of the vulnerability of conscience requires that we resist limited toleration which asserts that we should automatically defer to civil authority in case of a conflict between religious practices and the pursuit by the state of legitimate public goals. Yet the
vulnerability of conscience does not require that we systematically defer to the authority of the individual conscience in cases of conflict with secular laws. Asserting the principle of the vulnerability of conscience does not commit us to abandoning the view that the state has the legitimate authority to pursue valid public goals. However, it does entail that the state has an obligation of accommodating individual consciences when it puts forth policies aimed at achieving legitimate collective goals. The government has to choose laws and take measures which impair the fewest people’s religious practices, yet they can also attempt to accommodate regulate religious practices by asking citizens to abandon those elements of their practices which they view as non-essential to their religious obligations. Limited toleration and libertarian toleration ought to be resisted because they ignore the potential flexibility of both laws and religious practices.

**Conclusion**

In this chapter I have explored the relationships between freedom, belief and state authority, and I have raised several objections to the way perfectionist secularism understands these relationships. I have argued that perfectionist secularism does not take the value of freedom of conscience seriously and have tried to formulate an account of what it means to take freedom of conscience seriously. This account asserts that freedom of conscience is a distinctive value which cannot be reduced to autonomy. It is based on two principles of freedom of conscience. The principle of the sovereignty of conscience provides a framework to understand the right to hold or adopt beliefs of one’s choice. This principle draws on Locke’s classical account of toleration based on the irrationality of persecution. I have argued that this principle can answer the main objection addressed to it if we recognize that the endorsement constraint is based on the value of respecting
people as ends in themselves. The principle of the vulnerability of conscience provides a framework to understand the right to manifest one’s beliefs. I have argued that this principle imposes an obligation of accommodation to a state when it engages in the pursuit of goals which conflict with the free exercise of religion.

As I explained, freedom of conscience is one of the two moral ends pursued by open secularism. Yet, open secularism faces two sets of objections based on freedom of conscience. On the one hand, proponents of strong religious pluralism are likely to view open secularism’s reliance on religion sensitive citizenship education as an illegitimate attempt to mould citizens’ conscience according to an official ideology of toleration (McConnell 1999). Religious activists such as Quebec’s *Coalition pour la liberté en éducation* have raised similar worries. In this chapter however, I have claimed that the principle of the sovereignty of conscience underpinning the right to adopt or hold religious beliefs of one’s choice only rules out educational programs which block students’ opportunity to examine different lifestyles and to make up their own mind about the good life. Respecting people as ends in themselves does not require that religious citizens be protected against any influences which may lead them to change their beliefs, it requires that the process by which they come to endorse a conception of the good not be manipulated in ways would make it impossible to view their convictions of conscience as anything else but the result of other agents’ will. On the other hand, the idea that freedom of conscience requires that some believers be accommodated so as to be able to pursue their religious lifestyle while participating in public life is resisted by proponents of strict secularism. I believe that strict secularists are reluctant to concede this point either because they reduce freedom of conscience to freedom as rational self-determination (Kintzler 2007; Pena-Ruiz 2003; 41) or because they fear recognizing the vulnerability of conscience would lead to unlimited

80 See the Coalition’s website: [http://coalition-cle.org/index.php](http://coalition-cle.org/index.php)
deference to the authority of individual conscience (Pena-Ruiz 2003, 79, 215). I have claimed that both views are misleading. The first fails to capture the distinctive value of freedom of conscience and the latter fails to appreciate the flexibility of religious identities and correlative the potential for the state to regulate religious practices in ways that respect the conscience of individuals. In the next chapter, I further develop the notion of religious accommodation by drawing the implication of the principle of the vulnerability of conscience for an egalitarian defense of the practice of accommodation so central to open secularism.

81 As I explain in the next chapter, the latter view also fails to recognize that official practices of religious accommodation are restricted by the idea of excessive constraint which entails that the only practices that can be accommodated are those which respect the rights of others do not impose substantial costs to institutions and do not hinder the well-functioning of institutions.
CHAPTER 6: EQUALITY AND REASONABLE ACCOMMODATION

In previous chapters, I have argued that open secularism offers an attractive alternative to both strict secularism, which calls for the privatization of religious expressions, and institutional pluralism, which calls for the creation of separate social institutions for different religious groups. Moreover, I have claimed that open secularism is characterized by the practice of accommodation within shared institutions. In this chapter, I want to assess the egalitarian merits of practices of religious accommodation by examining the debate over the normative grounds of cultural or religious exemptions. I will try to provide an answer to an objection to cultural or religious exemptions which claims that people should not benefit from such exemptions because they have a responsibility to adjust their religious practices and beliefs to conform to existing laws, just as people have the responsibility to adjust their normal preferences to existing laws.

Many proponents of multiculturalism have defended the view that members of minority groups should, in certain cases, benefit from exemptions to generally applicable rules (Kymlicka 1995; Parekh 2000; Modood 2007). Religious or cultural exemptions are “individually exercised negative liberties granted to members of a religious or cultural group whose practices are such that a generally and ostensibly neutral law would be a distinctive burden” (Levy 2000, 128). In Canada, exemptions for religious motives have received the name of reasonable accommodations. Courts have stipulated that these accommodations are in some cases mandatory. They have thus recognized the existence of an obligation of accommodation which requires public institutions and corporations to “adapt their norms and policies to the religious practices and beliefs with which they conflict unless the adaptation generates excessive constraints” (Woerhling 1998, 325). As I explain towards the end of this chapter, the excessive
constraints limitation entails that accommodations must be reasonable: they must respect the rights of other citizens, not generate substantial monetary costs and not hinder the smooth functioning of the corporation or institution. Practices of reasonable accommodation include, for instance, exemptions from animal slaughter laws for Jews and Muslims to allow them to have kosher or halal aliments; exempting Muslims and other religious minorities from taking examinations on days of religious importance such as Eid al-fitr, exempting Sikhs from laws requiring individuals to wear hardhats so as to let them wear the turban, adapting employees’ work schedule so that they can attend prayers occurring at precise moments of the week or day, and so on.

Two types of arguments are usually provided to justify religious exemptions. The first is a pragmatic argument highlighting the benefits of a flexible government that shows openness towards demands made by minority groups. This argument claims that accepting demands for accommodation made by those groups can contribute to lower intercommunal tensions by diminishing the resentment of minority groups, lessening feelings of exclusion and mitigating fears that they are incapable of influencing the norms governing public institutions and the workplace. If individuals and groups feel their demands are taken seriously and are being met by government, they are more likely to develop feelings of identification with political institutions and feelings of belonging to society. So, a pragmatic argument for religious accommodation claims that religious exemptions can be justified not because they are required from the point of view of justice, but because those practices promote stability in societies marked by the fact of pluralism (Barry 2001, 50-54).

The second type of argument is, contrary to the first type, based on justice. This type of argument for practices of accommodation starts from notion of equality and fairness and claims that religious exemptions are necessary to correct various forms of unequal treatment of religious
citizens. For instance, in Canadian jurisprudence, the obligation of reasonable accommodation is justified on the ground that in certain cases, exemptions are the appropriate means to rectify patterns of indirect discrimination which result from the uniform application of a law or policy which, although realizing a valid public objective, nonetheless disadvantages individuals because of particular personal characteristics they have. Adherence to a religion, alongside other characteristics such as mental or physical handicap, is one such personal characteristic which can give rise to forms of indirect discrimination that should be rectified through practices of accommodation. Since it is aimed at correcting patterns of indirect discrimination, the obligation of reasonable accommodation is considered by courts, at least in Canada, as Bosset and Eid highlight, as a “natural consequence of the recognition of the right to equality” (Bosset ans Eid 2006, 3).

In this chapter, I will focus my attention on this second line of argument for religious accommodation and I will examine the philosophical justification of the thesis affirming that equality requires that in some circumstances believers be exempted from the uniform application of certain laws or rules. This thesis is based on the observation that rules structuring public institutions as well as work in private corporations often reflect the preferences of the cultural majority and can thus have unintended effects on individuals belonging to minority groups adhering to conceptions of the good which are not very widespread or newly introduced into society. By being insensitive to minority religious practices, these rules which appear to be neutral in the eyes of members of the cultural majority can have discriminatory effects. They indirectly have the effect of diminishing the chances of members of minority groups to fully partake in public life and to integrate with the labour market while pursuing their reasonable

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82 Discrimination is direct when it proceeds from an explicit intention or conscious willingness to exercise discrimination. Indirect discrimination results from the unintended or unexpected exclusionary effects of laws and policies which did not deliberately aimed at discriminating (Bosset 2007, 3).
conception of the good (Kymlicka 1995, 114-115; Maclure 2007, 79-81; Quong 2006, 62-64). In Western societies, several public norms and rules which have been perceived as neutral for decades are now viewed as being problematic because of the diversification of ways of life and religious beliefs generated in great part, but not exclusively, by contemporary patterns of immigration. This especially affects rules governing dressing codes, alimentary practices and schedules in schools, universities, hospitals, police forces, public administration facilities and various private firms. Thus, rules reflecting the religious or cultural heritage of the majority may make full participation in society harder for individuals embracing minority religious beliefs prescribing a specific diet, dress code or schedule for praying or performing important rituals. These persons suffer a disadvantage regarding access to public services and the job market which does not affect members of the majority whose religious norms and beliefs are reflected in the rules structuring the functioning of public life and the workplace. It is to correct this type of inequality and indirect discrimination that firms and public institutions have an obligation of reasonable accommodation (Bosset and Eid 2006; Maclure 2009).

It is relatively uncontroversial to make the observation that members of immigrant religious minorities have more difficulty following religious prescriptions while participating in public life. However, it is far more controversial to claim that this difficulty constitutes an unfair disadvantage. Indeed, the idea that exemptions to rules which are supposed to be generally observed must be granted in the name of equality of opportunity raises important questions regarding the relation between fairness and religious beliefs. It may seem counter-intuitive for some that a principle of equality requires that we depart from identical treatment of all citizens and that we grant the members of some groups permissions which are not given to members of other groups. As Waldron explains, our initial reticence to legal exemptions comes from the view that these measures contradict, at least at first sight, the very important ideal of the rule of law.
which expresses the equality of citizens in democratic society. Indeed, the notion of the rule of law commits us to the view that the law must be the same for all citizens (Waldron 2002, 3). Equality between citizens is compromised if political leaders are above the law or if there is one law for the rich and another for the poor, one law for Catholics and one law for Jews. The rule of law requires that there be one law for all and no exception. In light of this, one may view religious exemptions as unfair preferential treatments incompatible with genuine equality (Pena-Ruiz 2003, 129, 186-187, 210, 243).

Which conception of equality can lead one to claim that such differential treatments are required by equalitarian justice? If there exists such a conception, is it a sound one? Why should we accommodate someone wishing to display a religious symbol in contravention of uniform requirements while we deny accommodation for someone wishing to wear a cap or a shirt in order to express his support for his favourite basketball or football team? Can a principle of equality tolerate that a special status be given to religious beliefs and attachment while no similar status is given to other kinds of preferences, attachment and beliefs?

As I will explain, some commentators argue that luck egalitarianism provides a framework for explaining why religious and cultural exemptions are required by justice. According to this view, religious commitments and beliefs are not a matter of choice for individuals; they rather belong to unchosen circumstances for which individuals cannot be held responsible. Consequently, when laws or rules diminish the chances of success of certain citizens because of their religious beliefs or practices, these citizens are owed compensation to rectify such an unequal burden (either by being exempted from such laws or by modifying or abandoning the laws in question). However, as I will show, this argument is far from being uncontroversial. Some commentators reject the idea that luck egalitarianism provides support for practices of religious accommodations in the form of exemptions to the law. This is the case of
Brian Barry, a well known opponent to multiculturalism, who objects to what he calls the “rule and exemption” strategy in his book *Culture and Equality* (Barry 2001). Barry argues that disadvantages burdening members of certain minorities because of their adherence to distinct religious or cultural commitments are not unfair because these commitments should not be seen as matters of unchosen circumstance and that people can legitimately be asked to take responsibility for them. According to this view, equality of opportunity does not commit us to defend measures of exemptions for religious motives.

Thus, a first reading of the debate on the egalitarian credentials of practices of religious accommodation indicates that the outcome of this debate depends on the status of religious commitments and beliefs. The crucial questions seems indeed to be: do religious beliefs belong to the choices individuals make or do they rather belong to unchosen circumstances affecting them and for which they cannot be held responsible (Mendus 2002, 33)? I will however suggest that it is misleading to frame this debate purely in the terms of luck egalitarianism. Although the distinction between choices and circumstances is relevant for egalitarian theories of justice, its application to the religious identities of citizens is problematic and does not lead to clear conclusions. Drawing on the literature on cultural exemptions, I will maintain that the terms of the debate need to be changed. Instead of asking whether religious convictions belong to choices or to circumstances, we should seek to identify the costs and burdens of full participation in society which befall citizens whose religious commitments are at odds with laws and rules reflecting majority preferences.

I will first briefly explain the core principle of luck egalitarianism and explain how this conception of equality has been invoked in the debate about the normative foundations of religious exemptions. Secondly, I will argue that this approach to religious accommodation is problematic and I will sketch an approach which is more promising. I will argue that the
unfairness of the special burdens of participation in public life which measures of accommodation are intended to rectify can best be understood in relation with the principle of the vulnerability of conscience, that is, with the fundamental human interest in being able to act according to one’s convictions of conscience. The unfairness of indirect discrimination based on religion in public institutions and the workplace is not due to religious commitments being unchosen but rather that demands to abandon religious practices in order to be able to partake in public life affect an interest of fundamental importance. Finally, I will attempt to overcome two difficulties attached to this position. The first concerns the difficulty of distinguishing mere preferences from convictions of conscience, and the second relates to the allegedly unattractive conception of neutrality of impact, or neutrality of effects, which seems to underpin the egalitarian defense of practices of religious accommodation.

1. Religious Convictions: Choice or Circumstances?

Luck egalitarianism has been defended by egalitarian philosophers such as Ronald Dworkin, Richard Arneson and G. A. Cohen (Dworkin 2000, chap. 2; Arneson 1989; Cohen 1989). This position is based on a twofold moral principle of liberal egalitarianism. On the one hand, this principle affirms that it is unjust that individuals are disadvantaged by personal characteristics which proceed from circumstances which they have not chosen and which are not under their control (such as race, ethnicity, gender, sexual orientation, handicap, social class, and endowment with natural talents). On the other hand, the correlative of this idea is that people should be held responsible for the ends and the conceptions of the good that they freely adopt: they must assume the burdens and costs associated with the ways of life they deliberately choose. As Dworkin puts it, the distribution of resources in an egalitarian society must be sensitive to individuals’
ambitions but insensitive to their endowment (Dworkin 2000, 89). Proponents of luck egalitarianism thus assert that a just state seeks to neutralize the effects of bad brute luck affecting people’s circumstances while holding individuals responsible for the lifestyle they voluntarily adopt (Cohen 1989, 931). Luck egalitarianism claims that it is the aim of a just state to “compensate individuals for misfortune (...) it is the responsibility of society—all of us regarded collectively—to alter the distribution of goods and evils that arises from the jumble of lotteries that constitutes human life as we know it” (Arnesson 1999, 289-290).

According to this conception of equality, a person suffering from a physical or mental handicap which limits her chances of success, on the employment market for instance, is entitled to receive compensation from the state since this characteristic is not a chosen aspect of her personality but rather an unfortunate circumstance for which she should not be responsible. However, a person developing a preference for travels around the world in luxurious hotels is not entitled to receive support from the state under the pretext that it is more costly for her to achieve her life plan than it is for persons giving less expensive tastes. Since individuals are responsible for the ends they choose to pursue, they have to face the choice of either assuming themselves the high costs of their way of life or of revising their expensive tastes or preferences. Luck egalitarianism does not entail that people should receive compensation for the onerous ways of life they deliberately embrace.

The principle of luck egalitarianism seems at first sight to provide a clear, simple and convincing argument justifying practices of religious accommodation from a moral point of view. For instance, Bhikhu Parekh affirms that a person’s convictions relating to his religious duties are not something which falls under his control (Parekh 2000, 240-242). These beliefs, since they are constitutive of the person’s moral identity and self-respect, could only be abandoned by the individual at the cost of suffering a deep sense of moral loss. Thus, by virtue of their involuntary
character, religious convictions can act as incapacities preventing people from taking advantage of opportunities when the rules structuring the public sphere conflict these religious convictions.

As he claims:

A Sikh is in principle free to send his son to a school that bans turbans, but for all purposes, it is closed to him. The same is true when an orthodox Jew is required to give up his yarmulke, or the Muslim woman to wear a skirt, or the vegetarian Hindu to eat beef as precondition for certain kinds of jobs. Although the inability involved is cultural not physical in nature and hence subject to human control, the degree of control varies greatly. In some cases a cultural inability can be overcome with relative ease by suitably re-interpreting the relevant cultural norm or practice; in others it is constitutive of the individual’s sense of identity and self-respect and cannot be overcome without a deep sense of moral loss (Ibid. 241).

Religious identities are not absolutely unchangeable, yet they are sufficiently beyond the reach of individuals’ control to be viewed as incapacities preventing their bearers from taking advantage of opportunities which require them to act in ways inconsistent with religious precepts. To ensure equal opportunities for those citizens, there must be some room for accommodation and exemption from the rules which conflict with their religious beliefs and practices. Thus for Parekh, public schools must authorize members of religious minorities to derogate from dress codes and alimentary practices influenced by majority norms so that they can access these public institutions without having to forfeit the religious obligations they recognize. Similarly, although he asserts that drug laws are legitimate, Parekh claims that they should be applied in manner which is sensible to cultural and religious differences. The uniform application of those laws operates an indirect discrimination against individuals such as members of the Native American
Church for whom the use of peyote is central to certain rituals. An exemption to the law is, for Parekh, the appropriate remedy to such unequal treatment.

Similarly, G. A. Cohen maintains that religious or cultural engagements are not chosen by individuals and belong to the circumstances which affect them (Cohen 1999; see also 1989, 935-941). The reason he puts forth to support this view is that individuals inherit from those commitments through upbringing and through the influence they receive in their family and social environment in the early stage of their life. Consequently, minority groups who find it difficult to maintain their religious or cultural identity because of majority group practices are entitled to obtain support from the state in order to ensure the preservation of their identity. Cohen’s argument does not exactly aim at justifying exemptions to laws for religious motives; it is rather used to justify the granting of subventions to minority groups so that they can maintain and enjoy their culture. The goal of these subventions is nonetheless the same as that of exemptions; it is to rectify disadvantages affecting members of minority groups due to factors which are beyond the reach of individuals’ control. Although Cohen’s argument is not intended to justify negative practices of accommodation (exemptions from the law); it is well suited to defend positive measures of accommodation, that is, practices which consist of providing religious citizens with the means necessary to practice their religion while attending public institutions (arrangements to ensure hospital patients have access to chaplains, provision of rooms for prayers, etc.) (for the distinction between positive and negative accommodation, see Swaine 2006, 81).

Thus, according to luck egalitarianism, it is a pure matter of bad luck that some live in a society in which it is harder for them to find a job or access public services than it is for other citizens and in which they have to forfeit their religious or cultural commitments to avail themselves of economic and civic opportunities. An equal society should not let arbitrariness play
such a determinant role in people’s chances of success and should therefore take measures, such as religious exemptions, to compensate those misfortunate citizens.

That luck egalitarianism provides a convincing argument supporting practices of religious accommodation is however a very controversial point. In fact, certain critics of multiculturalism claim that if we are committed to the principle of luck egalitarianism, we must arrive at precisely the opposite conclusion. Barry objects to the view that religious and cultural commitments ought to be conceived as involuntary factors beyond the reach of individuals’ control for which individuals are owed compensation when these commitments limit their ability to avail themselves of certain civic opportunity, for jobs, education and access to public services. He recognizes that we cannot change our beliefs by an act of will. Yet, religious convictions and commitments are more akin to choices than to circumstances since people adopt and maintain such convictions freely and voluntarily. One sign of the free and voluntary character of religious convictions is that individuals identify themselves with those convictions and do not regret adhesion to such convictions even when it leads to hardships or when they are victims of discrimination on the basis of religion. Sincere believers consider that their life would have less value if they did not embrace the convictions they actually embrace (Barry 1991, 156-158). According to this position, religious convictions are characteristics for which individuals may be held responsible. Thus, Barry rejects Parekh’s argument by claiming that religious convictions are not involuntary aspects of individuals’ personality for which individuals do not have to take responsibility as are physical handicaps or the natural talents persons are endowed with (Barry 2001, 36-37). Since religious convictions and identities are voluntary, individuals must live with the disadvantages linked to these convictions or be willing to revise them. Thus, Sikhs and Muslim women must either abandon wearing the turban or the headscarf or accept that they may
be unable to fulfill functions associated with particular dress codes regarding headgear which are incompatible with the turban or the headscarf (Ibid., 32-40).

For Barry, the idea that we should rectify forms of indirect discrimination related to laws disadvantaging members of religious and cultural minorities is based on a misleading conception of neutrality, that of neutrality of effect (Barry 2001, 34). This conception of neutrality asserts that laws must have an equal impact on every citizen. But this conception is problematic since it would require the law to have an equal impact on people having unreasonably expensive preferences and thus to compensate them for the greater difficulty they have in satisfying their preferences. People with expensive tastes must accept to bear the costs of their preferences. Similarly, the state has no reason to compensate or accommodate citizens with religious beliefs contradicting existing laws. They must bear the cost of their religious beliefs just as much as they must bear the costs of expensive tastes as both are elements belonging to voluntary aspects of people’s existence. A Sikh willing to wear the turban at all time must assume the burden related to such practice, that is, he must accept he will not be able to ride a motorcycle or work on construction sites unless he abandons this religious practice.

2. Changing the Terms of the Debate

After having examined the debate between Parekh and Barry, it seems normal to think that the compatibility of practices of religious accommodation with the ideal of equality of opportunity depends on which side of the distinction between choices and circumstances religious convictions should be placed. The opposition between their respective positions is based on different answers to the question: are religious convictions involuntary or voluntary aspects of people? According to this framework, the only way to justify practices of religious accommodation would be to
affirm the unchosen, fixed and primordialist character of religious identities. This is what leads Sonu Bedi to claim that proponents of religious exemptions face an inescapable dilemma: either religious convictions are involuntary or religious exemptions are unjustified (Bedi 2007).

However, recently many commentators have repudiated this framework of analysis and have maintained that the terms of the debate over cultural and religious exemptions were misleading (Courtois 2010; Ferreti 2009; Maclure 2009, 335-336; Mendus 2002, 39; Miller 2002; Song 2007, 50-51; Quong 2006, 57). The thesis these authors put forth is that the legitimacy of the practices of religious accommodation do not depend on the chosen or involuntary character of religious convictions and commitments. In this section, I explore this line of argument and claim that we must approach the issue of religious exemptions from a different angle. Regardless of where we place religious convictions, on the side on what is chosen or of what is akin to uncontrollable circumstances, we face important problems. I argue that, on the one hand, luck egalitarianism proves unable to generate a determinate conclusion regarding practices of accommodation. On the other hand, reducing the question of the justification of religious exemptions to that of the voluntary or involuntary character of religious identities takes us away from what is really at stake in demands for religious accommodations.

Firstly, it seems a bit exaggerated to assimilate adhesion to religious convictions to unchosen personal characteristics such as ethnicity or the presence of physical or mental handicap for which individuals cannot exercise any degree of control. Although Cohen is surely right to point out that adhesion to religious beliefs more often than not results from upbringing and immersion in a social environment, it is still the case that people have the capacity to revise their religious beliefs in light of rational scrutiny or of new experiences they acquire with time. Conversion from one religion to another is possible, especially in contemporary pluralist societies in which a phenomenon of individualization of belief takes place. In addition, more frequent than
full conversion, many believers come to change their relation to the religious during their life: their faith can radicalize, pass from a more liberal and subjective interpretation of the dogmas to a more orthodox interpretation. The reverse process is also possible. The same thing does not apply to personal characteristics we usually place on the side of unchosen circumstances such as race, gender, the social class of one’s parents and one’s endowment with natural talents. These traits are simply irrevocable and this is not the case with religious convictions. There are thus reasons to doubt whether we should place religious beliefs on the side of unchosen circumstances.

On the other hand, it would perhaps be too hasty to conclude from the revocability of beliefs that these are a matter of choice. The content of a belief (religious or not) refers to the objective world, a world which is external to my subjective will and independent of it. For this reason, I simply cannot decide to believe this or that following a personal choice. As we have discussed while examining Locke’s argument for tolerance, beliefs respond to evidence and sound argument, not to the will. The belief that displaying a particular religious symbol is necessary to conform to God’s will is thus no more based on a choice than the belief that the Earth is round and not flat. It thus seems that there are also good reasons to doubt that religious beliefs should be seen as voluntary aspects of persons.

In brief, the revocability of beliefs leads us to view them as voluntary aspects, whereas the intentionality of beliefs (the fact that they are about an external world whose existence is independent of our will) leads us to view beliefs as unchosen aspects of persons’ existence. Because of the tension between those two aspects of religious beliefs, the application of luck egalitarianism to demands of accommodation for religious motives is left indeterminate.

Perhaps, recalling the discussion on Locke’s argument on toleration and Proast’s objection to it, we can attempt a synthesis of the two aspects of beliefs as follows. People’s beliefs can indeed change, and thus they are revocable. Yet changes in beliefs do not proceed
from individuals’ wishes but from their assessment of the relevant evidence and arguments available to them at a certain moment. However, although beliefs are not subject to will, one’s direction of his attention and focus towards certain pieces of evidence certainly is. People’s choice can thus indirectly affect their beliefs. Individuals may even choose to turn their attention to certain arguments and evidence in order to steer their beliefs in certain precise directions. For instance, they can perhaps decide to steer their religious beliefs towards more orthodox understanding of religion by deciding to read orthodox theological treatises and to frequent more often certain eloquent conservative co-religionists. Yet if the relation between individuals’ will and their beliefs is characterized by such indirectness, it means that although they can steer their beliefs in some directions by deliberately choosing to focus on certain sources of evidence and arguments, they cannot know or choose in advance whether or not these sources will be able to convince them and change their beliefs in expected ways. What is the implication of the indirectness of the relation between beliefs and the will for the luck egalitarian approach to religious exemptions? Should people only benefit from exemptions after they have proven they have unsuccessfully tried to change their beliefs? We are still left with indeterminacy.

Secondly, approaching the debate on the egalitarian credentials of practices of religious exemptions from the angle of the voluntary or involuntary character of religious convictions masks what is at stake in this debate. This analysis indeed ignores a crucial dimension of the problem posed by the new religious diversity. As Kymlicka as argued, rules structuring the public life and the workplace in contemporary societies are seldom fully neutral: the choice of an official calendar, of a public language, of dress codes, for instance, can all reflect the particular historical cultural and religious heritage of a particular society (Kymlicka 1995; 110-115). As I have highlighted in the introduction of this chapter, this lack of full neutrality makes it harder for members of religious minorities to fully participate in public life and the economy while
maintaining their identity than it is for members of the cultural and religious majority. In such circumstances, members of religious minorities must make a choice between fully participating in public life and maintaining their identity; this is not a choice with which members of the majority are confronted. Thus, as Jonathan Quong argues, measures of exemptions granted to minorities are required by justice when “the effect of a law or rule is such that it denies a minority of citizens the same opportunity as enjoyed by the majority of citizens to combine their (reasonable) cultural or religious pursuits with basic civic opportunities like employment or education” (Quong 2006, 62).

It thus appears that what is absent from Barry’s objection to Parekh’s account of exemptions is an assessment of the repartition of the costs and burdens linked to the full participation in public life and the economy. By approaching the issue of religious exemptions from the angle of luck egalitarianism and applying the choices/circumstances distinction to religious convictions, we ignore this fundamental dimension of the problem posed by the new religious pluralism. To properly answer the question of the fairness of policies of religious accommodation, we should not seek to determine whether religious convictions belong to choices or to circumstances. We should rather ask if it is reasonable to demand members of religious minorities to put aside their perceived religious obligations in order to be able to access public services (Mendus 2002, 39; Miller 2002, 51; Shorten 2010, 110).

Can this requirement, this burden, imposed on members of certain minority groups be justified from a moral point of view? Are there any reasons to view it as an unreasonable and unjustifiable burden? To provide an affirmative answer to the last question, one must demonstrate that interests of fundamental importance, or higher order interests, are violated by the uniform application of laws or rules requiring that some citizens must forfeit compliance with their religious obligations in order to conform to these laws or rules (Song 2007, 62; Caney 2002, 90).
It is thus not the distinction between what is a matter of choice and what belongs to involuntary circumstances that allows us to demarcate justified demands for accommodation from illegitimate ones. As Song affirms, “cultural accommodation is owed only where state action imposes burdens on interests of fundamental importance” (Song 2007, 62). According to this view, an egalitarian defense of practices of religious exemptions is based on the claim that in certain circumstances, the uniform application of a law has the undesirable effect of imposing an excessive burden on certain citizens, a burden which impedes individuals’ pursuit of their fundamental interests; moreover, this burden is not imposed on others. In the next section, I argue that religious exemptions’ goal is to protect individuals’ interest in preserving their moral integrity and in being able to live according to their deepest convictions of conscience.

There are thus two conditions to be met for an exemption to be required by justice. First, a law or rule must impose a special burden to certain individuals or members of a particular group which is not imposed to other individuals or members of other groups. Exemptions are justified when some are specially burdened compared to others in the sense that they have lesser opportunities to combine the pursuit of their life plan and to take advantage of civic opportunity to participate in civic life. Second, this special burden must affect people’s fundamental interests and not merely their ability to satisfy mere preferences.

Before moving to the next section, I want to stress that while it rejects the relevance of luck egalitarianism for the debate on religious exemptions, the argument that I just presented nonetheless relies on the paradigm of distributive equality: what is at stake is equalizing the burdens of participation in social cooperation and opportunities to combine participation in public life and the pursuit of reasonable religious commitments.

However, some commentators claim that in order to approach the issue of religious exemptions in an adequate way, we have to abandon this paradigm and start from the ideal of
democratic equality. By contrast with luck egalitarianism, the ideal of democratic equality stipulates that the goal of the equalitarian society should not be to neutralize the effects of hazard but rather to put an end to oppressive relationships in order to achieve the creation of a society in which citizens recognize one another as having an equal status and show mutual respect to one another (Anderson 1999, 288-289). Embracing this conception of equality, Courtois claims that practices of religious accommodation should be understood as measures to rectify inequalities of status and not distributive inequalities (Courtois 2010). Similarly, Shorten claims that laws which impose a special burden on some groups threaten the social bases of self-respect as they prevent members of these groups from conceiving of themselves as equal members of society (Shorten 2010, 114-117). Cultural and religious exemptions are thus required, according to this view, because they are sometimes necessary to allow members of minority groups to be able to conceive of themselves as fully equal members of society. As Shorten claims: “if requiring a Sikh to wear a motorcycle helmet is unfair, this is not because such a law treats Sikhs unequally, either in terms of opportunities or recognition (however these hypotheses are filled out). Rather, if it is unfair then it is because it induces alienation and undermines the cultivation of self-respect” (Ibid., 121).

I believe it is right to affirm that one virtue of cultural exemptions is to promote the creation of a community of citizens sharing an equal status in the context of a pluralist society. These measures do indeed contribute to favouring the participation of members of minorities to public life and send the message to these individuals that they are viewed by the rest of society as equals. Yet, the notion of democratic equality alone does not offer a criterion enabling us to properly distinguish which demands for accommodation are legitimate from those which are not. In fact, the idea of democratic equality makes the justification of religious exemptions depend on the oppressed status of the group of belonging of the demanders of accommodation. However, it
is not in principle impossible that members of well-established groups which are already seen as equal members of society and which are well-off in terms of wealth and political representation have legitimate claims for being exempted from certain laws. It is also not in principle inconceivable that some members of majority groups have good reasons to be exempted from certain laws. For instance, many Christian groups have demanded exemptions from mandatory educational requirements such as biology classes teaching evolution or from citizenship education. Their demands are based on the idea that these educational requirements violate the conscience of both parents and their children. In previous chapters, I have raised doubts about the legitimacy of these demands by claiming that parents’ freedom of religion does not entitle them to full control over the education of their children and that the freedom of conscience of children is not threatened by such educational requirements. But the mere fact that these groups are not oppressed members of society which lack equal status is not a sufficient reason to deny them accommodation. It is not in principle impossible that members of economically or politically privileged groups be exempted from certain rules in order to allow them to freely exercise their religion.

3. Convictions of Conscience and Moral Integrity

Which interests are threatened by uniform application of laws limiting people’s freedom to fulfil their perceived religious obligations? In a text in which he criticizes Barry’s position regarding cultural and religious exemptions, David Miller tries to identify unreasonable costs imposed by rules insensitive to diversity. According to him, the burden borne by people who must forfeit their religious or cultural commitments in order to access the workplace or public institutions is based on the risk that these persons be ostracised within their community because they have
abandoned important components of the group’s identity (Miller 2002, 52). Miller claims that when the uniform application of laws would have such effect on members of cultural minorities, these must benefit from measures of exemption in order to be protected from the risk of ostracism.

However, although these risks certainly place a heavy burden on the shoulders of cultural minorities, there may be cases where exemptions are required even if such risks are absent. For instance, Muslims who are hospitalized or imprisoned have not chosen to be in such closed public institutions. Yet even if these do not provide halal food, it is unlikely that members of their community will resent that they have derogated to strict compliance with religious duties since they had no real choice about violating alimentary restrictions. I thus wish to suggest that there is a human interest which is more directly threatened by the denial of exemptions to uniform application of laws having the effect of creating indirect discrimination. Drawing on Maclure and Taylor’s recent book *Secularism and Freedom of Conscience* (2011) as well as on Paul Bou-Habib’s “A Theory of Religious Accommodation” (2006), I will suggest that the fundamental interest threatened by religion insensitive uniform application of laws is the interest in living according to one’s conscience. In the last chapter, I suggested that this interest provides grounds for affirming the right to manifest one’s beliefs.

Maclure, Taylor and Bou-Habib suggest that practices of religious accommodation are required by justice because they are crucial in preserving people’s sense of moral integrity. Moral integrity rests on a relation of congruence between individuals’ actions and their deepest moral convictions. As Bou-Habib puts it, integrity is “what is maintained when a person acts in accordance with his perceived duties” (Bou-Habib 2006, 117). This definition of integrity in deontological terms is perhaps however too narrow as integrity also encompasses situations when a person acts in accordance with her sense of what is virtuous, noble and not debased. Integrity is
maintained when a person is capable of acting according to her convictions of conscience that is, those convictions which define people as moral agents and allow them to act morally and to exercise moral judgements about what is right or wrong, good or bad, virtuous or wicked (Maclure and Taylor 2011, 76-77).

Moral integrity does not rest on the congruence between a persons’ action and any of her desire or simple preferences. It only rests on congruence between actions and people’s convictions of conscience, or “meaning-giving beliefs and commitments” (Maclure and Taylor 2011, 75-76). As Maclure and Taylor explain, these convictions play a more important and deeper role in one’s life than mere preferences. Convictions of conscience give a moral orientation to people’s lives: they are the fundamental beliefs and commitments that make it possible for persons have a moral identity and to make moral judgments (Ibid., 77). They allow people to situate the particular actions they choose to perform within the larger frame or horizon of their personal identity and of their conception of the good in a way that gives a certain moral coherence to their lives. Simple preferences do not play such a guiding role in one’s life, no matter how intense they are felt by their bearer. Although the frustration of a preference or of a desire can be very unpleasant, it does not affect people’s sense of who they are, and it does not prevent people from being the kind of person they want to be (which is what happens when people are forced to act against the grain of their convictions of conscience). As I explained, convictions of conscience are what Taylor earlier called “strong evaluations”, namely “discriminations of right or wrong, better or worse, higher or lower, which are not rendered valid by our own desires, inclinations, or choices, but rather stand independent of these and offer standards by which they can be judged” (Taylor 1989, 4; Cf. Taylor 1985, 16).

As we have seen while discussing the principle of the vulnerability of conscience, when a person is forced to act in ways that go against her conscience, she suffers a distinctive moral
harm as her moral integrity is violated. Such a person is alienated from her actions because the link between her actions and their sources in moral convictions is severed (Williams 1972, 116-117). In such situations, persons are prevented from viewing their actions as expressions of their personality, and at worst they are forced to act in ways they find morally repugnant and feel they betray their deepest moral commitments. For instance, when believers are forced to ignore religious prescriptions, they can feel they are forced to sin, to act in ways which are unworthy and debasing. Not only does forcing people to act against their convictions of conscience generate profoundly disturbing and unpleasant subjective experiences (feelings of guilt and of impotence) but it also prevents people from achieving their conception of the good and fails to respect them as moral agents capable of acting according to their own light.

When public institutions refuse to accommodate persons in order to allow them to fulfil their religious obligations, these persons can only have access to those institutions if they are ready to pay a very high cost: acting against their convictions of conscience, often experienced as a violation of their moral integrity. Not only is this burden a very heavy one, as it is a threat to the pursuit of people’s fundamental interests in being to act according to their conscience, but this burden is distributed among citizens in a very unequal way. Indeed, this kind of burden rarely incommodes members of the cultural or religious majority whose norms and practices are usually reflected by rules governing public life (although it is not in principle impossible that certain individual members of dominant groups have distinctive moral commitments making them vulnerable to be forced to act against their conscience).

In order to ensure genuine equal opportunities for all citizens, the state must seek to minimize the costs related to full participation in civic life for those whose convictions of conscience are at odds with rules structuring public life. Thus, Parekh’s claim that cultural and religious identities can act as incapacities preventing people from availing themselves of
opportunities should not be understood as a claim about the misfortune or bad luck of having certain religious beliefs, but as a claim about the unfairness of demanding individuals to abandon their cultural and religious commitments in order to obtain a job or access public service. The costs related to compliance with such demands are just too great as they generate a “deep sense of moral loss” (Parekh 2000, 241). The notion of moral integrity and its relation to the principle of the vulnerability of conscience allows us to identify the important costs or burdens which affect citizens who are prevented from acting according to their conscience by the uniform application of certain laws and rules structuring public life. The obligation of reasonable accommodation is thus a legal tool which can be used to allow these citizens to fully participate in society while maintaining the fundamentals of their moral identity. It is thus, pace Barry, a genuine mechanism ensuring equality of opportunity in pluralist societies.

4. Preferences and Convictions of Conscience

I would like to examine two objections addressed to the argument that I have put forth so far in this chapter. The first relates to the distinction between simple preferences and convictions of conscience and the second concerns the conception of neutrality which is allegedly implied by the view that society must try to equalize the burdens of full participation in public life.

To start with, the argument I presented for supporting practices of religious exemptions rests on a distinction between desires or simple preferences (for apples over oranges, for blue rather than red clothes, etc.) and convictions of conscience. It affirms that there is something special about the latter which makes it the case that we should treat them differently from the
Obviously one objection to this argument asserts that the distinction between mere preferences and convictions of conscience is invalid and that we should put the two on equal footing. Barry questions the idea that we should give a special status to religious beliefs (and to a larger extent to all convictions of conscience) and claims that these beliefs are no different from mere preferences. He claims that it is as difficult to abandon and revise our preferences as it is to abandon our deepest convictions: “beliefs and preferences are in the same boat: we cannot change our beliefs by an act of will, but the same can be said equally well about our preferences. It is false that the changeability of preferences is what makes it not unfair for them to give rise to unequal impact. It is therefore not true that the unchangeability of beliefs makes it unfair for them to give rise to unequal impacts” (Barry 2001, 36). Since preferences are as unchangeable as beliefs are and since it is not unfair that some citizens are unable to satisfy desires following from mere preferences because of laws fulfilling valid public purposes it is not unfair that some are unable to fully live according to their religious beliefs.

This objection however assumes that the only possible justification for exemptions based on religious motives and other convictions of conscience is to maintain that they are somehow akin to unchosen and involuntary circumstances for which people do not have any degree of control. What this objection denies is that religious convictions have a special status by virtue of their alleged irrevocability and non-chosen character. However, the fact that it is equally difficult to change our convictions and simple preferences constitutes a valid objection against practices of accommodation of people’s convictions of conscience only if the justification of those practices is based solely on the luck egalitarian view that the disadvantages suffered by believers due to the

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83 That convictions of conscience deserve special treatment in the form of exemptions and to the law, and positive accommodation, does not mean that religion is owed special treatment. Indeed, as I have claimed in the last chapter, there are also secular and areligious convictions of conscience. These can give rise to legitimate claims for positive accommodations (provision of vegetarian and vegan food in hospitals, prisons, and so on for those who support these alimentary modes for secular reasons) or exemptions (status of conscientious objector for secular pacifists in time of conscription).
uniform application of laws are unfair because they proceed from personal characteristics which are unchosen.

However, as I have previously claimed, it is misleading to affirm, following Bedi, that the only way to justify religious exemptions is to maintain a primordialist conception of religious identities according to which these identities are unchosen and that this justification collapses when we recognize the open, changing and freely embraced character of religious beliefs and affiliations (Bedi 2007, 240). The injustice that practices of religious accommodation aim to correct does not rest on the involuntary character of religious identities and on the misfortune of being stuck with religious beliefs which are at odds with existing rules. It rather rests on the special burden imposed on those who have to forfeit their religious and conscientious commitments to partake in public and economic life. There is no point in asking whether convictions of conscience are voluntary or involuntary, what matters is the nature of the impact the state has when it sanctions laws having the effect of preventing people from combining participation in public life with maintaining their moral integrity. As I claimed, this impact is unfair because it causes a significant moral harm to individuals whose reasonable convictions are at odds with dominant rules structuring public life and the workplace and because this burden is far from being equally distributed within society.

One could however reply to that this view only preserves the justification of practices of accommodation at the cost of justifying unlimited exemptions to the law for people’s whose mere preferences are frustrated by laws having unequal impact. The state does indeed have a great (unequal) impact in people’s life when it prevents them from satisfying their most intense preferences even if those have nothing to do with convictions of conscience. If what matters is the impact the state has in people’s life and the unequal burden it imposes on them, why
shouldn’t we compensate people who are frustrated by the impact the state has on their capacity to realize their simple preferences?

This is misleading. Indeed, the distinction between preferences and convictions of conscience is not based on the intensity with which they are felt or on the intensity of the dissatisfaction felt when they are not satisfied. It is based on the role that convictions of conscience play in people’s moral life (Maclure and Taylor 2011, 76). Simple preferences and desires (such as a preference for ketchup over mayonnaise with French fries), although they provide opportunities for enjoyment, do not really contribute to provide moral orientation and meaning in the life of persons. The frustration of a simple desire or preference can be greatly unpleasant, but it has nothing to do with the feeling of loss of integrity generated by the incapacity to act according to one’s conscience. When one’s desires are frustrated, one does not usually believe or feel that he is doing something morally wrong or debased. For instance the experience of dissatisfaction of one student compelled to take off his baseball cap is very different from the experience of a Muslim girl who, being compelled to take off her hijab in class, has the feeling of acting against her conception of modesty or piety. The former may well feel frustrated, yet one cannot affirm that his conscience is violated as if he was forced to act against a conception of right and wrong to which he adheres to. As Canadian Justice Charron claimed in Multani, “to equate a religious obligation such as wearing the chador with the desire of certain students to wear caps is indicative of a simplistic view of freedom of religion” (Multani v. Commission scolaire marguerite-Bourgeoys 2006).
5. Religious Exemptions and Neutrality of Impact

The egalitarian justification of practices of religious accommodation faces another, more important, difficulty. By suggesting that exemptions are sometimes needed in order to equalize the burdens of full participation in society, it seems that this justification is indeed based on the idea of neutrality of impact which requires that “political agents and members of parliament take no decisions which would have the effect of advantaging or disadvantaging any particular conception of the good” (Merrill 2007, 45). However, this notion of neutrality faces important problems.

In brief, the argument I have presented so far claims that there are two conditions to be met for a measure of exemption to be required by the law. First, a law or rule must impose a special burden to certain individuals or members of a particular group which is not imposed to other individuals or members of other groups. Second, this special burden must affect people’s fundamental interests and not merely their ability to satisfy mere preferences. The first condition implies that it is sometimes (when the second condition is met) unfair that laws have differential impacts on citizens. Barry asserts that this type of argument for exemption is invalid because it is misleading to assume that the fact that some are differentially affected by the same laws is a sign of injustice (Barry 2001, 33-34). Neutrality of impact is just an implausible conception of neutrality.

This objection is related to the Rawlsian idea that citizens have the responsibility to adjust their ends and conception of the good so that these can made compatible with the principle of justice (Rawls 1982, 168). In other words, the state has no obligation to accommodate individuals to allow them to satisfy preferences or achieve conceptions of the good which are unreasonable. As we have seen, for Rawls, citizens are reasonable when they are disposed to propose fair terms of social cooperation and abide by those terms (Rawls 1993, 49). Laws aiming at achieving
principles of egalitarian justice will necessarily disadvantage those individuals embracing unreasonable conceptions of the good and this is perfectly just. For instance, these laws will disadvantage thieves and murderers as well as all those individuals embracing conceptions of the good incompatible with respecting others’ basic rights. In addition, even if some individuals are only satisfied when they eat caviar and drink champagne, it does not follow that an equalitarian scheme of taxation and redistribution should compensate them so as to make it as easy for them to be satisfied as it is for those who are perfectly happy with water and bread. Those two kinds of modes of life are too unreasonable to be accommodated; they are inconsistent with accepting fair terms of cooperation as the first entails disregard for others’ rights and the latter entails imposing very high costs to the rest of society. People embracing such ways of life are necessarily and rightly so unequally impacted in an egalitarian society. Thus the main reason why neutrality of impact is unattractive is that it would commit us to accommodate unreasonable preferences.

For Barry, once we accept that people with unreasonable preferences and ways of life are unequally impacted, it follows that the ideal of neutrality of impact underpinning the defense of religious exemptions is completely flawed (Barry 2001, 34). Barry is certainly right to maintain that it is not unjust that people embracing unreasonable lifestyles are denied compensation or accommodation to correct the unequal burden imposed on them by the uniform application of laws. However, this does not directly imply that it is not unfair that members of certain religious groups are differentially impacted or that it is not unfair to deny all demands of accommodation aimed at reducing burdens of participation in society imposed by the uniform application of laws. To draw this conclusion, one must affirm that all claims for religious accommodation are claims to accommodate practices which are unreasonable or that it is necessarily unfair to demand a measure of accommodation for religious motives. But this is completely misleading, as the
obligation of religious accommodation has explicitly been conceived to only answer reasonable
claims.

The obligation of reasonable accommodation does not seek to answer demands of
exemption to the application of the fundamental principles of a liberal and egalitarian conception
of justice. It rather answers demands for exemptions to specific rules, norms or laws governing
the functioning of public institutions and the workplace. Thus, the legitimate cases of
accommodation that I have mentioned so far (demands for wearing the Kirpan or the headscarf in
public schools, for access to halal or kosher food in closed public spaces, permission to wear the
turban on construction sites and when driving a motorcycle or permission to consume illegal
drugs in religious rituals, etc.) are demands that the application of various laws or rules be
modified so as to enable people to freely practice their religion. One cannot assume that these
demands are necessarily incompatible with egalitarian principles of justice; these demands are
not aimed at receiving permissions to violate others’ basic rights or to receive exorbitant
subventions to pursue expensive rituals.

Moreover, the obligation of reasonable accommodation contains a disposition indicating
that only demands which do not impose excessive constraints are receivable. Demands for
accommodation which do not impose excessive constraints meet three conditions: they do not
lead to violations of the rights of other citizens, they do not impose high financial costs to public
institutions or private firms and they do not hinder the well-functioning of the firm or public
service in question (Woerhling 1998, 347-357). For instance, permission for Sikhs to wear the
turban in the police forces does not generate an excessive constraint since this measure does not
violate the rights of others, does not impose any substantial financial costs to the police services
and does not impair the police services in achieving their public mission. The religious beliefs
and practices which can give rise to accommodations, those that do not impose excessive constraint, can thus hardly be described as unreasonable.

It is thus misleading to claim that the egalitarian argument for religious exemptions that I have presented here commits us to an ideal of neutrality of impact which would require accommodating individuals with unreasonable preferences. Admittedly, this argument commits us to a certain conception of neutrality of impact. Yet this conception is not the notion of full neutrality of impact which would require us to exempt individuals with homicidal preferences from the application of criminal laws or to sponsor expensive lifestyles. The argument for reasonable accommodation draws on a moderate conception of neutrality of impact which only requires that the state make efforts to equalize the burden it places on people’s reasonable convictions of conscience.

**Conclusion**

In this chapter, I have argued that we should not approach the issue of religious exemptions from the angle of luck egalitarianism and make the outcome of this debate rest on the voluntary or involuntary character of religious convictions. Instead, I have proposed an alternative framework to approach this debate. According to this framework, religious exemptions are required by justice when the uniform application of laws has the effect of imposing on some citizens the special burden of not being able to act according to their reasonable convictions of conscience. The objection that this framework relies on an implausible distinction between preferences and convictions of conscience is misleading since it ignores the special role played by those convictions in people’s moral life. The objection that this framework implies an unattractive
conception of neutrality of impact is also misleading as it is false that defending practices of reasonable religious accommodation commits us to full-fledged consequential neutrality.

I want to conclude with a remark on the relation between institutional pluralism, open secularism and equality. I have claimed that it is misleading to claim that equality in the context of the new religious pluralism requires the adoption of a framework of religious institutional pluralism. This view implies that the only alternative to institutional pluralism is strict secularism and the imposition of privatization of religious expressions. As I have argued in Chapter 4, open secularism is based on the idea of accommodation within shared institutions. Religious citizens’ legitimate claims to be treated as equals can be met by a regime of open secularism which removes obstacles to access to participation in public services and to participation in the economy by being open to various forms of accommodation (positive and negative) in public institutions and in the workplace.

However, the notion of excessive constraints, defining the limits of reasonable accommodation within shared institutions, creates some doubts as to whether open secularism can fulfil the demands of equality to the same extent as religious institutional pluralism. To be sure, equality only requires that reasonable convictions of conscience, those respecting others’ rights and not imposing high costs on the rest of society, should be accommodated. Thus, the first two elements of the notion of excessive constraint (accommodations must be compatible with respecting others’ rights and must not impose substantial costs to the institution of firm) do not limit the capacity of practices of reasonable accommodation within shared institutions to promote equality as a regime of institutional pluralism would also have to respect those constraints to be compatible with egalitarianism. The third element of the notion of excessive constraint (that accommodations must not hinder the well-functioning of the institution or firm within which accommodation takes place) is more problematic. Indeed this condition is likely to be more
restrictive in common public institutions open to all than in separate pervasively religious institutions. For instance, given the limited amount of space in a public school or a hospital, it may sometimes be impossible to give certain religious groups a room to pray or perform some other religious activity unless we disrupt the essential activities of those institutions. These kinds of demands are more likely to be met in pervasively religious institutions whose first mission is to promote a religion and are thus likely to have made provisions to meet such demands. This means that if open secularism is to provide an attractive alternative to institutional pluralism we must interpret the notion of excessive constraint in a somewhat loose manner so as to ensure that the slightest degrees of hindrance to the well-functioning of institutions or that the slightest financial cost do not justify the denial of exemption. We have to tolerate some costs and some degree of hindrance to optimal functioning. For instance, the mere fact that it is very complicated and time-consuming (and thus costly) to rearrange examination schedules in a school so as to respect the holy days and praying schedules of all cannot be a reason to deny accommodation. Moreover, the fact that open secularism must restrict accommodation for practical reasons of efficiency and good functioning of common public institutions and that such limitations are less likely to be absent in a regime of institutional pluralism, makes it clear, once again, that the case of open secularism rests on the plausibility and the desirability of its liberal and multicultural conception of social integration.
CONCLUSION

The new religious pluralism poses a distinctive challenge to contemporary societies as pluralism is no longer contained within the boundaries of Christianity and ethnically homogeneous nations. The new dynamics of religious pluralism is marked by an increasing number of religious and spiritual groups due the phenomena of the individualization of belief and contemporary patterns of immigration and it is also marked by an increasing tension between secular and religious worldviews. It poses the challenges of reconciling the secular/religious divide as well as of promoting the integration of new immigrant minorities while respecting their freedom of conscience and treating them with equal concern.

I have argued that neither strict secularism nor institutional pluralism propose an attractive alternative to meet the challenges posed by the new religious pluralism. Strict secularism fails to respect the values of equality and freedom of conscience because the duty of neutral appearance it proposes is too restrictive of people’s freedom to manifest their religious beliefs and affiliations, because the no-aid principle of separation it puts forth prevents the state from taking measures to rectify indirect patterns of discrimination against religious minorities, and because an ideological commitment to complete separation blinds its proponent to the empirical reality in which most states continue to privilege long-date established religious groups while failing to treat newly arrived religious groups equally. On the other hand, proponents of religious institutional pluralism have failed to adequately support the thesis that equal treatment for all religious groups requires the state to support each and every religious groups in creating its own pervasively religious social institutions. Moreover, religious institutional pluralism fails to provide adequate channels for the social integration of immigrant religious minorities as it
reproduces patterns of governance of religious diversity designed to accommodate groups which are divide along religious lines but who share a common language and a common national identity.

Strict secularism proposes a framework for the integration of immigrant religious groups, yet the republican conception of integration on which it is based (which requires the withdrawal of religion from the public sphere) is incompatible with respecting freedom and equality. Institutional pluralism offers a framework respecting equality and freedom of conscience under the new religious pluralism, yet it does not offer an answer to the challenge of the social integration of newly arrived religious groups. Hence, I have proposed that we should seek alternatives to both state-imposed privatization of religion and accommodation through separate pervasively religious institutions.

I have argued that open secularism provides an adequate framework to achieve the apparently irreconcilable goals of promoting social integration while respecting freedom of conscience and equality by relying on the notion of reasonable accommodation within shared institutions. Open secularism affirms a principle of separation of state and religion according to which it is permissible for state policies to support religious practices in the name of secular goals acceptable to all reasonable citizens such as the removal of indirect forms of discrimination and obstacles to full participation in public life. Thus, open secularism promotes equality and freedom of conscience of adherents of different faiths by adopting practices of (positive and negative) accommodation of religious diversity allowing individuals to participate in shared public institutions while maintaining their religious identities. These practices of accommodation within common institutions also serve the goal of social integration as individuals are more likely to identify with society if their rights and equal status are respected and as they are more likely to develop ties of solidarity cutting across religious divides while sharing common institutions.
Yet, it might seem that open secularism is caught between Charybdis and Scylla as it unrealistically tries to get the best of both institutional pluralism and strict secularism without reproducing their inconveniences. Institutional pluralists may well claim that open secularism, by promoting participation to common secular institutions, fails to treat religious citizens equally—since secular institutions are biased against religion—and fails to respect their freedom of conscience and religion—since these must be interpreted as positive freedoms the exercise of which the state must assist. Strict secularists, on their part, are likely to claim that open secularism is an absurdity. Thus, Pena-Ruiz claims that “opening” the notion of secularism will necessary lead to abandoning the pursuit of its fundamental goals (equality, freedom of conscience, social integration and cohesion) (2003, 191, 248). Similarly, Baril claims that open secularism is a chimera because it opens up the doors of public institutions to religious manifestations (Baril 2011, 43). These authors claim that open secularism threatens the capacity of the secular state to promote freedom and equality. They also claim that it is detrimental to social integration because allowing everyone to manifest its particular religion in the public sphere leads to communalism and the “fragmentation of society” (Pena-Ruiz 2003, 79; Kintzler 2007, 35).

It is my hope that I have exposed the main features of open secularism in a way that lays down the main elements to reply to the objections mentioned above. First, I have claimed that it is misleading to claim that secular common public institutions are necessarily biased against religious citizens. No unfair discrimination against religious citizens remains if secular public institutions do not aggressively promote anti-religious forms of ethical secularism and if they are made open to all through practices of accommodations aimed at rectifying indirect patterns of discrimination.
It is also misleading to claim that open secularism necessarily violates freedom of conscience because it refrains from actively supporting pervasively religious institutions. As I have argued, freedom of conscience is respected if individuals are free to have or adopt their own belief or religion and if they are free to manifest their belief within reasonable limitations. This is entirely consistent with preference for common accommodative institutions over separate pervasively religious institutions. If common public institutions are committed to the principle of reasonable accommodation, then it is not necessary to ensure the existence of separate religious institutions to secure conditions required to respect the vulnerability of conscience (that is, the conditions in which individuals are not compelled to act against their convictions of conscience). Moreover, even the deliberate attempt by a state to promote through mandatory education, as open secularism suggests, substantive civic virtues such as toleration, mutual recognition and mutual understanding does not violate the legitimate claims of freedom of conscience of parents and children. Parents do not have the right to completely control the educational environment of their children so as to make it impossible for them to adopt another conception of the good as theirs (that would violate children’s freedom to have their own beliefs since the conditions for authentic endorsement would not be met in such a situation). Children’s right to have and adopt their own beliefs is not violated by such educational program since it does not violate the conditions for authentic endorsement underlying the principle of the sovereignty of conscience.

Second, strict secularists’ worries that open secularism’s emphasis on accommodation and tolerance of religious manifestations in the public sphere threatens the basic values of secularism are confused. First, strict secularists are too eager to claim that practices of reasonable accommodation are unfair privileges granted to some groups but not to all citizens. Strict secularists seem to conflate open secularism with forms of plural establishment of religion; yet, I have made clear that these models are completely different. Strict secularists’ complaints that
accommodations designed at rectifying unequal burdens of social cooperation and removing obstacles to participation in public life are a threat to the value of equality are simply left undefended (except in the works of Barry, yet the main goal of Barry is not to put forth a conception of strict or republican secularism and his arguments are unconvincing).

To maintain that the practice of open secularism is detrimental to freedom, strict secularists are often tempted to take the route of perfectionist secularism and to assert that only practices compatible with full-fledged substantive autonomy are worth being respected and accommodated. I have explained that such approach is unattractive since it completely ignores the distinctive value of freedom of conscience and oversteps, by far, the boundaries of justified liberal state paternalism.

Finally, the view that open secularism leads to the fragmentation of society seems also to be based on a confusion between institutional pluralism (which does indeed promote vertical societal fragmentation) and open secularism. The latter does in fact propose a more robust conception of integration than strict secularism as it proposes concrete measures to favour participation in common institutions, such as policies of religious accommodation to make public institutions genuinely open to all, whereas strict secularism, by restricting freedom to express one’s religious beliefs in public institutions, only provides incentives for orthodox and minority believers to retreat into separate institutions where they can freely practice their religion.

I want to conclude by noting one important problem for open secularism. As we have seen, unlike religious institutional pluralism which claims we should extend the privileges of establishment to new religious minorities, open secularism calls for disestablishment. Disestablishment may occur more or less smoothly, as I claimed it did in the case of the deconfessionalization of Quebec’s public school system. However, the strategy of disestablishment is risky and limited for at least two reasons.
First, I have claimed that disestablishment is linked to a liberal and multicultural conception of social integration based on the creation of horizontal ties of solidarity between members of different groups through participation to a common civic framework of shared institutions. Disestablishment may work pretty well for a society composed of different long-term resident religious groups sharing the same national identity and newly arrived religious groups. However, across the board disestablishment in societies containing national minorities may be problematic. Indeed, there is some overlap between the categories of national minorities and religious minorities (think of Canadian francophone communities outside Quebec, which are also Catholic minorities). Therefore, some policies designed to respect the distinct character of national minorities consist of religious privileges (again, think of the funding of Catholic schools for francophone communities outside Quebec). We must be careful to distinguish multinational diversity (the coexistence of different national groups within the same state) from religious diversity within national communities. Open secularism provides framework to deal with the later kind of diversity. It gives useful tools to integrate newly arrived religious groups to the host society but this should not provide any excuse to infringe the right to self-government of national minorities who may wish to maintain a distinctively religious character.

That being said, the integration of immigrants to their distinct society is sometimes crucial for the flourishing of national minorities. In light of this, it might be beneficial for national minorities to choose for themselves to adopt an approach of open secularism and, say, have secular schools opened to all instead of religious schools. Take the example of outside of Quebec francophone communities. It might in this case better serve the goal of attracting and integrating French-speaking immigrant groups from non-Catholic countries to the francophone communities of Ontario, Manitoba and New Brunswick to favour secular and common French-speaking
schools. Nonetheless, this choice should not be forced on national minorities by central governments in the name of promoting open secularism.

Second, we must not allow the case for open secularism and disestablishment to be turned into an instrument of stigmatizing minorities. For instance, in the current context of islamophobia and popular backlash against multiculturalism, disestablishment may be supported merely because it is interpreted as a way of “getting tough on Muslims”. A good example of this is the decision in Ontario to end religious arbitration in family law disputes after Muslims demanded the same privilege which had historically been practiced by both Jewish and Christian groups. If citizens are happy to keep institutional privileges for old religious groups and to extend it to new religious groups until Muslims demand the same privileges, then we should pause and wonder whether disestablishment in practice condones intolerant attitudes, although justified in the abstract by liberal principles and the value of integration. We should thus view popular support for disestablishment with great suspicion when no disposition to disestablish has been shown prior to the arrival of (or to demands for institutional privileges by) a stigmatized group, and when disestablishment is part of a larger pattern of measures targeted at the group. Liberal multiculturalist justifications and intolerant attitudes can be, given certain circumstances, strange bedfellows in their joint support to disestablishment. However, it might be the case that liberal multiculturalism should endure a period of uncomfortable travel alongside its sworn enemy, as the creation of common institutions open to all regardless of religion could be the very nemesis of religious intolerance. Integration through interaction and exchange between members of different communities is a two-way process, implying that members of the majority will encounter members of minority groups, bond with them and get to know them. This process of exchange with real members of religious minorities could perhaps help undo the caricatured and demeaning representations of minority groups, resulting in the sweet irony of the very disestablishment
demanded by intolerant individuals mediating their intolerance (or more likely, that of their children).
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312


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