

A CONCEPTUAL
ANALYSIS OF
SECULARISM AND ITS
LEGITIMACY IN THE
CONSTITUTIONAL
DEMOCRATIC STATE

Adil Usturali

OVERVIEW

The last few decades witnessed the rise of religion in public sphere across the globe, including Christian fundamentalist groups in the United States, orthodox fundamentalists in Israel, and Islamism since the 1980s in Turkey, Egypt and elsewhere in the middle east. This phenomenon has taken shape through both peaceful means through elections, but also, at times, as illustrated during the “Arab Spring” by violence and unrest.

Furthermore, some scholars find that migration has exacerbated these trends in Western Europe, as what were once relatively homogenous secular nations have become multi-cultural, multi-religious societies.

Taken together, some scholars argue that these phenomena represent a major challenge to the “secularization thesis” – which holds that religion would gradually lose its authority over the public sphere and withdraw into its own sphere.

Instead, owing to these trends, a growing literature proclaims that we are living in a ‘post-secular age’ where it is accepted that religion will remain an influential force in society. These scholars posit that decline of secularism also constitutes a challenge to very legitimacy from which constitutional democratic states derive their authority. As a result, many voices are suggesting that the secular approach be revised, or even discarded, and replaced with a new defining principle of the relationship of religion and state.

In this context, my research aims to analyze the ways in which, given the rise of religion, secularism can still help reinforce the legitimacy the constitutional democratic state. In order to do this, I conduct a conceptual analysis that defines, and traces, the historical development and implementation of the idea of secularism. I argue that any attempt to revise or replace the principle of secularism understood in this way would lead to either a breach of basic rights of citizens or a deficiency in the democratic legitimacy of the state. Hence, my question is how we can come up with a conception of secularism that is responsive to these new challenges.

WHAT IS SECULARISM?

Secularism is the constitutional principle according to which political and religious institutions are separated into different realms, the political authority is neutral toward all

religions and faiths as well as non-religion, and the constitutional principles, laws, and policies of the state are justified not with reference to any specific religion, but with reference to secular reasons. In short, secularism refers to the 'worldliness' of the political authority, in accordance with the origin of the word 'secular'. Since the state affairs are by definition worldly and mundane, interfering in the sacred or religious affairs or making religion a point of reference or a source of justification, as well as interferences by religious authorities into the political would conflict with the principle of secularism and in turn decrease the legitimacy of the state.

Secularism is manifest in unique ways. Some constitutions, like that of France, adopt the 'separation' as the main definition of secularism. Constitution of the United States, on the other hand, adopts a 'non-establishment' clause in its First Amendment, which forbids the Congress from making laws "respecting an establishment of religion". Many constitutions emphasize the 'neutrality' aspect of secularism, and again many polities refer to 'freedom of conscience' alongside with a principle of secularism. In fact, all these different principles come 'as a package' and can be included in the principle of secularism.

Secularism is not always adopted in accordance with the definition above. The most obvious example can be theocracy, a system of government which is based on a specific interpretation of a specific religion. Iran and Saudi Arabia can be given as examples of theocracy. However, not all systems that are not secular are theocracies. The state itself may not be based on religion, but it may involve direct control or subordination of one or more religions in the country by the political authority. State control of religion is simply known as erastianism, and Turkey, with its ministry of religious affairs, can be an example for this category. Another category would be caesaropapism, which is simply the unity of the head of state and head of the church (religion) in one person. This was most typically the case with the Byzantine Empire, yet it is a good example to contrast with the separation principle of secularism. Finally, a state may not be controlling, or justifying its authority with reference to any religion, but it may adopt a secularist agenda, actively seeking to reduce the influence of religion in the country or the religiosity of its citizens. Communist Albania is one of the more extreme cases in which this category applies. All these examples of non-secular states contradict with one or more tenets of secularism described above.

HOW DID SECULARISM EMERGE AS AN IDEA AND PRACTICE?

There are mainly two approaches to tracing the history of secularism which are not necessarily mutually exclusive. The first can be called a ‘historically contingent’ approach to secularism which basically assumes that it emerged out of specific historical conditions, namely religious wars and the rise of absolutism in early modern Europe. According to this approach, secularism serves as a *modus vivendi* in European societies which were torn by centuries of religious conflict, followed by the rise of absolutism that established the authority of the state throughout its territory, followed by the emergence of the nation-state. Since this approach is based on specific historical events, taking one element out of the equation, such as the French Revolution or Reformation would mean that there would not be a principle of secularism as we know it today.

The second approach can be named the ‘Enlightenment approach’, and it is concerned more with the normative basis of the modern state and traces it to the Enlightenment, which, in very simple terms, is based on the supremacy of reason. The supremacy of reason implies that human beings have the capacity to reason and decide for themselves, which is called autonomy. The modern state is only legitimate in so far as it respects the autonomy of its citizens. In this regard, the principle of secularism can be explained as a tool for the modern state to respect and protect this autonomy.

As it is argued above, these two approaches are not mutually exclusive. While the proponents of these two approaches may disagree and engage in debate about their understandings of secularism, the approaches essentially focus on different aspects of it. While the historically contingent approach aims to explain how secularism emerged in a specific context, the Enlightenment approach seeks to establish the criteria of its legitimacy. A proponent of the historically contingent approach may argue that due to the contingent nature of secularism, it is not universally valid, or a proponent of the Enlightenment approach may reject certain aspects of historical explanations or its particularism, it is also possible that these two approaches may be adopted simultaneously.

WHAT ARE THE CHALLENGES TO SECULARISM?

The modern constitutional democratic state is based on the promise of protection of basic rights of individuals coupled with popular sovereignty. Therefore, the challenges to the legitimacy of the modern constitutional democratic state depends on the fulfilment of

this promise. Secularism, in this regard, is one of the vehicles of the modern state in fulfilling this promise and the challenges it faces directly puts into question the legitimacy of the constitutional democratic state.

The main contemporary challenges to secularism stem from the so-called 'post-secular world' that we live in, a term that is used to explain the revival of religion in the public sphere in the last few decades. Most modern states now do not have a religiously homogenous population or only one religious authority or church to deal with. The differences between religious and secular citizens, as well as citizens of different faiths have become a part of the political spectrum and several issues such as same sex marriage, abortion, or circumcision of male children have become contested issues and disagreements about them are usually along religious lines. In this context, secularism only as a constitutional principle may be insufficient because it is not always clear to what extent religious reasons can be taken into consideration in deciding about specific policies. This requires a careful focus on specific cases and how to implement the principle in each case without diverging from its premises.

A larger challenge exists in the meta-level, that is, the level at which secularism as a principle described above is found legitimate and accepted by the public. In the first instance, it may be paradoxical for especially a religious population to accept secularism without reservations. Religious belief is profound, and most religious people would rather not make concessions from their religious practices and goals for profane reasons, however compelling they may be. Yet the reason to accept secularism is exactly to make sure that all religious and non-religious citizens coexist in a society. The possible alternatives, such as some accommodationist policies would result in sub-optimal outcomes by opening the door to inequality or too much government entanglement with religion.

SOURCE OF LEGITIMACY IN CONSTITUTIONAL DEMOCRACIES: AUTONOMY

State theorists posit that the main source of legitimacy for a constitutional democratic state is the recognized autonomy of the wills of its citizens. This idea goes back to the Enlightenment philosopher Immanuel Kant, and assumes that every rational being is able to decide for itself. When applied to the democratic theory, autonomy can be understood in both as public autonomy and private autonomy. While private autonomy is related to the basic individual rights of citizens, public autonomy is the ability of a society to govern itself. Modern democracies derive their legitimacy by recognizing both

private and public autonomies and thus protecting basic rights, as well as the political rights of their citizens. The principle of secularism as analyzed here is based on two assumptions: since the autonomy of the citizens is recognized, they cannot be discriminated against or privileged simply for belonging to a religious group, and that private autonomy of a citizen gives her also freedom of conscience which cannot be violated.

Built upon this dual understanding of autonomy, modern constitutional democratic state has a claim to legitimacy that is much more powerful than premodern conceptions of legitimacy. While premodern, or 'narrow' understanding of legitimacy is merely about a silent consent, a legitimacy based on autonomy is about self-rule. Since this modern constitutional democratic state derives its legitimacy from its ability to make it possible for its citizens to give rules to themselves and at the same time be protected by basic rights, any other source of legitimacy that the state may invoke – such as a common religious doctrine, a nationalistic or epic narrative – would in fact defeat the purpose, because all such archaic sources of legitimacy would essentially be exclusivist and thus would create outsiders, unlike a constitutional democratic state intends to do. Also, their function would be to achieve merely silent consent as a result of identification, but they would undermine the self-rule aspect of legitimacy. Simply put, autonomy is suggested in this study as a key concept in understanding both the constitutional democratic state in general, and secularism in specific. Because a state that derives its legitimacy from the autonomy of its citizens would have to recognize secularism both as a procedural principle and a substantive principle.

POLICY RECOMMENDATIONS

The implications of the study on secularism has some concrete implications for policymaking. As long as the priority of the policymakers is the long-term legitimacy of the political system, keeping the rationale behind the principle of secularism in mind would contribute to positive outcomes.

Most generally, this research advises against accommodationist policies which aim to meet the demands of religious citizens by going against the principle of separation between religion and state and by giving the state more power to interfere in religion by funding, or actively supporting religious organizations or practices. Such policies can find support for various reasons. Policymakers usually argue for religious accommodationism in order to find support from a religious majority. Though they can also be suggested in favor of minority religions with hopes to encourage the integration

of concerned minorities. While some accommodationist policies may be residues of an earlier period where a more religiously homogenous majority existed (such as a state church, funding of religious schools), others can be introduced as a response to more recent demands (such as religious arbitration courts, teaching of 'creationism' in public schools, etc.).

It is recommended here that accommodationist policies should be abandoned since they are prone to create more injustices than they aim to eliminate and they can result in 'excessive entanglement' of religion and state. At the same time, such policies undermine the principle of secularism, which, as this research shows, is an indispensable aspect of modern constitutional democratic state. Accommodationist policies, whether they are in favor of the majority religion or a minority religion, always create outsiders. Accommodationist policies in favor of majority religions create outsiders for obvious reasons: those who do not believe in the majority religion (or its official interpretation) would be effectively discriminated against by the said policy. An accommodationist policy which aims to eliminate such discrimination by supporting a minority religion, on the other hand, can very easily create outsiders within that religion, especially already marginalized groups such as women, children, LGBTI people, or those who adopt a more heterodox understanding of that religion.

It should be kept in mind that the understanding of secularism proposed here does not advocate banning or suppressing a religion or its exercise. Secularism by definition includes freedom of conscience and all exercise of religion is free within the bounds of the law, as with any exercise.

This research has implications not only for specific policies, but also for constitution-writing in new states or post-conflict societies. Especially in some post-conflict societies, consociationalism has been introduced as a tool to preserve relatively peaceful coexistence of previously conflicting parties (examples include Lebanon, Cyprus, Bosnia and Herzegovina). However, consociationalism also preserves the dividedness of the society and recognizes its citizens primarily as members of a religious or ethnic community, rather than individual citizens who may have their own consciences. While specific conditions of each society can be different and should be considered in constitution-writing, the implications of this research concerning the long-term legitimacy of a constitutional democratic state should not be ignored. It is suggested here that constitution drafters should not attempt to include articles that contradict with secularism as proposed here, in order to appease the religious population in a given country. Regardless of the religious beliefs and devoutness of citizens, the primary function of a constitution is to make sure that the organs of the state function efficiently and laws are

made legitimately. Recent examples of non-secular constitutions include the post-war constitutions of Iraq and Afghanistan. While the drafters of these constitutions successfully envisaged new democratic institutions, the adoption of official religions and its status above the law was more than symbolic. Not only this reduces the legitimacy of those states which desperately need it, but also decreases the chances of any future change towards a secular state.