

Abstract

This paper addresses the following questions:

- What is religious liberty and what are the limits of religious liberty?
- What is the link between religious liberty and the separation of state and religion?
- Is the separation of state and religion identical to the separation of politics and religion?
- What is the place of religious liberty in a free, plural and democratic society?
- What is the place of religion in a free, plural and democratic society?
- What kind of religion is compatible with a free, plural and democratic society?

What is Religious Liberty?

Religious liberty or the freedom of belief is a human right. It is the right to be protected against coercion in matters of religion, to be free to practice and profess a religion of your choice, in private as well as in public, to change your religion, or to practice no religion at all. Religious liberty is an important value because it protects diversity and plurality and hence counteracts religious persecution and coercion. It makes a monopoly of one religion impossible - except when culture and demography are such that there is a *de facto* monopoly which is not contested - and it guarantees the coexistence of different and publicly competing beliefs. In this way, it also guarantees debate and diversity in general. If there is debate and diversity on the level of religion, then why not on other levels? On top of that, religious liberty guarantees tolerance: if people can be tolerant - or are forced to be tolerant - in the field of religion, then they will probably be tolerant in other fields as well. This shows that religious liberty can be of interest to non-religious persons, not only because it protects them from the imposition of a religious belief, but also because it allows them to live in a public world and a world of tolerance and diversity. Religious liberty is therefore an integral part of a democratic society and a system of human rights.

However, there is a downside to the concept of religious liberty. Anyone can call their personal insanity a religion in order to try to get government protection. There is no easy answer to the question of what is or is not a religion in the proper sense of the word, but it is obvious that any belief or practice which is part of a religion or claimed to be part of a religion, and which provokes violations of human rights, should not be protected under the right to freedom of religion. Every human right is limited and has to be balanced with other rights. Freedom of religion is no exception. In particular, the right to absence of discrimination, although closely connected to religious liberty (one should not be treated badly as a consequence of one's religion), can be a problem if everything can be labeled a religion and if every imaginable theological ideology can enjoy an absolute level of protection granted by the freedom of religion. The equal rights of women should be balanced with the right to practice a religion which provokes discrimination of women. Limiting one right for the sake of another is a normal practice in the field of human rights.

Limiting and Separating the State and the Church

Religious liberty implies that the state (but not only the state) should not interfere with the religion of its citizens, should not favor or discriminate a particular religion or religions, and

should not attach benefits or penalties to any religious affiliation or lack thereof. Religious liberty therefore limits the power of the state and creates a difference between state and society by granting some measure of religious independence to society.

However, religious liberty not only means that the state should avoid interfering in religious matters. It also means that the state should be absolutely neutral as regards religion. There has to be a separation between state and religion (but not necessarily between politics and religion, see later) in the sense that there can be no official state religion. The state should not link itself to a particular religion but should stand above the plurality of different religions. One and the same person cannot be both head of state and head of a church (or an important functionary of a church). Without this kind of neutrality, certain religions as well as atheists and agnostics will be worse off compared to the adherents of the official religion, if they are allowed to exist at all. Religious liberty means religious equality and the equal treatment of all religions. This equal treatment is impossible if there is some kind of link between the state and a particular religion. If adherence to one religion brings more advantages than adherence to another - and this can be the case when the former is an official state religion or is in any way favored by the state - then there is no real religious liberty. The choice for one religion rather than another will not be a free choice. Even if non-official religions are not actively persecuted or discriminated against, they are worse off when there is no separation between the state and religion because they have less means to influence the public as the official state religion. They are not as free as the official religion.

Another reason why religious liberty implies the separation between state and religion is the need for an impartial judge to mediate between different religions. If different religions are allowed to exist together, we need a non-religious law which regulates their coexistence. It is very unlikely that people adhering to one religion will accept laws which are inspired by another religion. The fact that a religiously neutral state with its religiously neutral laws allows many different religions to exist and to coexist, makes it acceptable to many people. A state which only allows one religion or favors one religion, will only be accepted by the adherents of that particular religion. The historical fact that religious communities tend to become more and more intertwined within the borders of states, will enhance the attractiveness of this kind of state. A democracy is by definition such a neutral state, because a democracy respects human rights. Once you respect human rights, you also respect religious liberty, and religious liberty leads to religious neutrality on the part of the state.

Just as the state is kept out of religion, religion is kept out of the state. The claims of religion are restricted. A particular religion cannot claim to be the religion of the country in order to take possession of the state or the law and thereby achieve more power than other religions and impose itself on individuals. The state, for its part, is not allowed to prohibit, persecute, discriminate or impose a religion, and it should also avoid using a religion as a means to enhance its authority, as a kind of transcendent confirmation. If you stand close to something glorious, you may hope that something of the glory shines on you as well. You may even hope to become godly, which, historically, has been an enormous advantage to states in pre-modern times. The representative of God on earth is godly as well, and he who is godly is eternal and escapes contestation, which is of course anti-democratic. It is equally unacceptable for a state to use certain religious texts to justify or enforce authoritarian measures.

The state should not interfere with religion, and religion should not interfere with the state (*'Give to Cesar what belongs to Cesar and to God what belongs to God'*). Power does not

come from God and does not have to follow God or render an account to God. Power comes from the people and has to render account to the people. State and religion are mutually independent. '*[R]eligiously wrong - a motive of legislation which can never be too earnestly protested against. Deorum injuriae Diis curae. Injustices to the gods are the concern of the gods. It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence which is not also a wrong to our fellow creatures. The notion that it is one man's duty that another should be religious was the foundation of all the religious persecutions ever perpetrated, and, if admitted, would fully justify them. (...) a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested*'.¹

Separating state and religion may cause some problems. It will for example make it more difficult to universalize human rights. Many cultures, for example Muslim cultures, see this separation not as an advantage but as a problem because religion - unified religion, not the freedom of religion - is still very important in their societies and is considered to be the foundation of politics. However, state neutrality in religious matters does not imply that democratic politics is necessarily a-religious or atheistic. A democracy executes the will of the people and not the will of God, but if the people believe that their will equals the will of God, then this does not pose a problem as long as the religious rights of the minority are respected and as long as the religion of the majority does not acquire unjustified privileges and does not become the official state religion. The problem is rather that the majority does not always execute the will of God as everyone understands it. A religious person must always follow his religious opinions, no matter what the majority decides, and can therefore not always respect the will of the majority. God does not accept to be in the minority or to be overruled by the majority. A religious person can only accept democracy when he or she happens to agree with the majority. I will come back to this and I will argue that such a person can have other reasons to accept democracy, even if this democracy does not always execute the will of God as he or she understands it.

This already indicates that the separation of state and religion is not identical to the separation of politics and religion. Religion does not have to remain silent when it comes to politics. It can be a source of inspiration for politicians and it can enhance ethical consciousness and behavior. Therefore, it should not be excluded from politics. It is important to make the distinction between politics and the state. The fact that freedom of religion and the separation of state and religion do not imply the separation of religion and politics can make it easier to impose religious liberty and state neutrality. Religious people obviously and justifiably fear the separation of religion and politics.

Different Sub-Communities With Different Identities Living Together

The religious neutrality of the state does not necessarily lead to a religious neutrality of politics. A religion is not allowed to infiltrate the institutions of the state, otherwise it would acquire more power than other religions and therefore destroy religious liberty (a choice for a religion is not free if one religion has more power of persuasion than another). But a religion is allowed to try to convince a majority, at least as long as it respects human rights and the liberty of other religions. The religiously neutral state organizes and legitimizes the coexistence of different autonomous sub-communities each with its own identity, values

¹ Mill, J.S. (1977), *On Liberty, Classics of Western Philosophy*, Hackett, Indianapolis/ Cambridge, p. 1162.

and norms, because it institutes religious freedom and protection for different religions, and because it treats all religions equally. Non-religious sub-communities are also protected in this way. After all, if diversity is possible for religion, why should it not be possible for other kinds of group identity as well? The freedom of religion and the freedom of association are therefore closely linked.

However, it would be erroneous to postulate this neutrality of the state as some kind of absolute principle. Underneath the plurality of individuals and sub-communities there must be a basic overlapping consensus. Human rights such as the freedom of religion must be part of this consensus. These rights have to be general values and norms, overarching the different sub-communities because without them plurality and identity are impossible. Without freedom of religion, there will be religious coercion and some identities will suffer. It is in the interest of the different sub-communities to adopt these general values because communities need diversity for their own protection. The whole is more than the sum of the parts; it is a collective rather than a collection. Diversity manifests itself within an overall or overarching community - a community of communities - that has human rights as its shared values, and state neutrality stops at these human rights. A state should not be neutral as regards human rights. Individuals who represent sub-communities and who violate human rights should be punished because they place themselves outside the general community of diversity, and cannot invoke diversity or human rights - such as the freedom of religion - for their protection.

The general norms regulating and guaranteeing diversity can indeed clash with the particular norms that constitute the (religious) identity of groups or individuals. At first sight, it is not in the interest of Catholicism to accept religious liberty. It would seem to be more in its interest to try to expand the number of Catholics as far as possible. There has to be as much freedom as possible, and as much consensus as necessary. Sometimes freedom has to be limited. The values and norms that apply in the sub-communities cannot be chosen at random. They have to conform to a certain overarching consensus. They cannot contradict the basic overarching norms of the whole community, at least as long as they have an effect on the rights of other sub-communities.

Sub-communities that do not respect this rule cut off the branch they are sitting on. After all, the basic norms make it possible for different communities with different norms and values to exist and coexist. Groups that violate these rules endanger their own existence, unless they are large and strong enough to dominate other groups. A neutral, democratic state which respects human rights governs a community characterized by a minimum number of common basic norms and excludes those who do not respect these norms. A fundamentalist religious group oppressing its female members or using force to convert other groups is prosecuted for violations of human rights, and may lose the protection of the freedom of religion and the freedom of association. Another sub-community, however, which respects human rights, knows that it contributes to the protection of those norms of the wider community which promote diversity. Hence, it knows that it protects its own interests as a group with a particular identity, living in a world of diversity.

Even though some sub-communities may believe that their values and norms are universally valid, they should not try to impose these values and norms on other sub-communities or on the community at large, not only for the sake of human rights, but also for the sake of their own existence as separate groups. The larger community, however, can impose its overarching values and norms on the different sub-communities, because the main function of these overarching values and norms is to facilitate plurality. Since it is

often difficult and undesirable to impose values, the values of the whole should be to a large degree acceptable to the parts, and they are acceptable because they facilitate plurality. The parts accept them as a guarantee for their own survival, at least to the extent that:

- The parts need plurality and diversity; in other words, they are not strong enough to impose themselves and to suppress other groups;
- The parts have a clear view of what is or is not in their interest because they think in a more or less rational way (and not in an emotional way).

It is perhaps useful to make the difference between inclusive and exclusive norms. Contrary to a widely shared opinion, the reason why we have inclusive norms - such as religious liberty, tolerance, and freedom of association - is not to replace or to soften the undesirable consequences of an insufficient sense of common values or community. In fact they are the heart of a community, a community above the different sub-communities, and people can feel just as attached to these inclusive norms as they feel attached to any other, so-called substantive norms or values.

Exclusive norms are norms which do not try to protect plurality or hold together people with different views, but try to win a competitive struggle with other norms. These exclusive norms can threaten the wider community, at least to the extent that they are considered to be universal and applicable to people who are not members of the sub-community that follows these norms (or to people who want to leave the group). A sub-community that feels attached to certain exclusive norms or norms that exclude difference - for example the belief that homosexuals are sinners - may try to impose its norms on the rest of the larger community, even if this means violating human rights and being intolerant. Human rights and tolerance are, in their eyes, lesser values or of no value at all, compared to their own exclusive norms (which are often understood as God's commandments). In this case, the inclusive norms of the wider community should take precedence over the exclusive norms of the sub-community, whereas normally inclusive norms are there to protect exclusive norms.

The norms of the larger community should be as inclusive as possible, and should allow for as much plurality as is possible and desirable (plurality of exclusive, inclusive and other norms or practices). Suppression and judicial action are not the only solution to the problem posed by certain exclusive norms of sub-communities. Sub-communities should consider adopting as much inclusive norms as possible. They should value the state as facilitator of plurality, because they benefit from plurality.

Of course, this is not always easy. It may require a certain denial of your group-identity for the purpose of protecting your group-identity. Your identity can be based on universal exclusive norms, and therefore on the elimination of difference, but your identity also requires the protection of the state and of the inclusive norms that regulate and protect difference. The state that protects the other groups from the claims of your own group also protects your own group. Other groups may also have exclusive norms and may be stronger than your group.

You can try to use force to change other people's identities into your own universal and exclusive identity - which means that you also have to attack the state, because the state protects difference against you. You might end up destroying the very institutions that protect you. Or you do not try this, and you accept certain inclusive norms and the existence of other identities. If you choose the latter option, you are more certain of your survival, but you lose a part of your identity, namely your claim to universality. Adopting

inclusive norms and supporting the state as facilitator of plurality is in everybody's interest, on the condition that everybody or most people adopt these norms and support such a state.

The question is: what do groups consider to be more important, their own survival, which implies giving up certain aspects of their identity (or giving up the universal application of certain norms which constitute their identity); or their identity, which implies putting their existence and therefore their identity at risk in a possibly violent struggle with other identities? An identity often requires imposing certain values on the rest of the community, which is likely to be self-destructive because other groups can resist or can follow your example. You have to share the world with others. Any other mentality will probably cause your own demise in the long term. This kind of risk promotes the acceptance of inclusive norms such as human rights and religious liberty, and promotes the acceptance of difference. It is, therefore, part of the justification of human rights. It can even justify human rights to people who, *a priori*, do not sympathize with human rights or who have adopted values and norms which are incompatible with human rights.

Inclusive norms have an exclusive side: one should not be too neutral or too tolerant. Not everything is allowed. Those who attack the inclusive norms are excluded. Everything else should be accepted. The consensus of the community as a whole should be as small as possible and plurality as large as possible, except if the community is united enough to wish otherwise.

Only the attempts to diminish plurality by force should be excluded, even if this means using force in order to diminish plurality. We may have to suppress a group - and hence diminish plurality - if this group wants to diminish plurality. The different exclusive norms of the different sub-communities must be able to compete with one another and to strive towards universal acceptance, but only by way of debate protected by human rights and religious liberty, without coercion or forced conversion. This debate may lead to new universally accepted exclusive or inclusive norms. Some groups may be able to increase their membership and to come a bit closer to universality, but others may not. The fact that human rights make it possible to debate, and that debate makes it possible to achieve universal acceptance of certain exclusive norms, is another reason why groups may decide to accept human rights.

Debate of course implies the existence of certain common norms and values, e.g. human rights. The conflicts caused by the coexistence of a plurality of groups - each with their incompatible claims on the other - must be solved by conversation, and not by force. But conversation implies the acceptance of inclusive norms such as human rights. This means that every group identity must contain the acceptance of the importance of human rights, at least regarding the relationships with other groups (groups are allowed to reject human rights for themselves on the condition that they allow people to quit). However, some parts of some groups' identities do not imply this acceptance. As a rule, one should not ask somebody to give up part of his or her identity, except when this identity makes the acceptance of difference impossible and entails the suppression of other identities. In some cases, asking a group to refrain from imposing its identity and its norms and opinions on others means asking the group to give up (part of) its identity, and this is necessary but regrettable. In other cases, this limitation will not harm the identity of the group.

The problem of inclusive norms versus exclusive norms often appears in religious matters. Most religions claim to have universal validity. Their values are said to be revealed by God, the only God and the God of all human beings. These values should therefore be

the values of all human beings. This, together with the fact that values coming from God cannot be contested, makes it imperative that other groups, as well as the state which is the guardian of diversity, disappear. Other religions are not accepted on an equal basis, and everything contrary to the norms of the religion is something that has to be changed, even if this means changing the lives, habits and convictions of people who do not belong to the religious group in question. Fundamentalist Muslims or Christians try to regulate every aspect of life according to the norms given by their religious belief. This is no problem as long as they limit themselves to their own lives and as long as they allow people to leave their group. However, most of the time, they want to regulate other people's lives as well, and in order to achieve this, they try to take over the state and its instruments of power. If freedom means anything, then we need to stop these people and insulate the state against them.

The Historical Role of the Reformation

In the West, religious liberty is the product of the struggle between Catholicism and the Reformation. The Reformation proclaimed the right of everyone to interpret the Bible in his or her own way (mostly his own way). It rejected the subjection of the individual Christian to the authority of the church, the pope, the priest or other official and wise interpreters of the Bible. In the Protestant view, a just society is not constructed from above. It starts from the individual, conscience per conscience. It flows from the direct relationship between the individual and God and this alone is sufficient.

In Protestantism, there is no need for a separate class of priests because religion is mainly a matter between the individual believer and God. This point of view led to a decreased importance of hierarchy in general and therefore also of hierarchy in politics. The Catholic Church, with its authoritarian and hierarchical structure, has always been a force in the opposite direction. In Protestantism, church and hierarchy, to the extent that they exist, are of secondary importance. Salvation is achieved individually.

This has contributed to the separation of church and state. A church without a well-developed hierarchy or elaborate institutions cannot have a tight grip on the state, and a state that is confronted with a religion in which priests are not very important, cannot use priests to influence the citizens. When the institutions of the church become less important, the power of the church to interfere with the lives of individuals also becomes less important. By loosening the link between the individual and the institution, the individual becomes master of his own fate. To a certain degree, society and politics become independent of the church, at least as long as the norms of the church are respected.

Of course, the Reformation also had its negative sides, especially in the initial phase. Most Protestants were less tolerant or more authoritarian than their Catholic competitors. On top of that, the plurality of religions caused by the Reformation triggered religious wars. However, the European religious wars not only caused harm and tyranny (tyranny because it led to the creation of absolutism by the European monarchies trying to restore peace and tranquility). It also led to the institution of religious liberty. After all, the state had no choice but to put itself above the factions. Only by loosening its ties with a favored religion and guaranteeing a free and equal space for every religion, was it able to channel the struggle away from violence. As religion had become a dangerous and dividing power, it became clear that the state had to separate itself from the church, not only to keep the peace, but also to maintain itself.

The duty of the state to support one particular religion was replaced by the duty to protect the plurality of religions. Religious freedom gave citizens who belonged to a religious minority the power to claim protection from the state. In this way, the state not only liberated the people from the horrors of religious wars, but also from the pressure of religious conformity.

The fact that, in our day and age, global mobility and globalization encourage competition between and coexistence of different religions, makes it likely that the local historical events which resulted from the struggle between Catholicism and Protestantism in Europe - which have been events limited to the history of the West - will be reproduced elsewhere in the world. Different states in different parts of the world will feel the same need to pacify competing parties by putting themselves above these parties. They can only put themselves above competing religious communities if they separate themselves from religion and if they grant religious liberty. Only religious liberty can produce peaceful coexistence in a plural society. The option of suppressing one or all of the competing parties (as is attempted in China for instance) will only produce revolt and will lead us away from rather than towards peace and security. These contemporary historical developments justify and promote the universality of the right to religious liberty.

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