
The multicultural state and the religiously neutral state: A rejoinder to Phil Ryan

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1. Introduction

In his reaction to my article “State and Religion Against the Backdrop of Religious Radicalism”, Philip Ryan makes two interrelated claims. First, he states that the multicultural state is a more attractive ideal to strive for than the religiously neutral state in the way I have developed this model. Second, the total submission of bureaucrats to the democratically legitimized politicians can have adverse effects. It can lead to a sort of dictatorship (in Ryan’s words: “religiously neutral electoral tyranny”¹).

Despite our differences, there is still some common ground. Ryan and I see the contemporary debate as focusing on the two models of multiculturalism and secularism, or the multicultural state and the secular state (or religiously neutral state). The clash between these two models is an important political conflict of our time.² The difference between us is that Ryan chooses the multicultural state, while I think that the secular state is a better alternative. In my view, France is more just than Canada or Great Britain. Multiculturalism—despite having good press in some circles—is unjust and untenable in the long run, in a situation where people have to live together under general laws in societies with religious and ideological diversity. Multiculturalism is now being abandoned in Europe and—so I have learned from Ryan—also in Canada. This, in my view, is a good development. But it is also inevitable.

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¹ Phil Ryan, *The Multicultural State and the Religiously Neutral State: A Reply to Paul Cliteur*, 12(2) INT’L J. CONST. L. 457, 457–463 (2014).

² The other three models, namely political atheism, state church, and theocracy (see Paul Cliteur, *State and Religion Against the Backdrop of Religious Radicalism*, 10(1) INT’L J. CONST. L. 127 (2012)) are obsolete, although, unfortunately, the European Court of Human Rights in Strasbourg has voted for the placement of the crucifix in public schools under the pretext that this has become a national symbol, considered to be more or less “religiously neutral.” See *Lautsi and others v. Italy*, Eur. Ct. Hum. Rts., 18 March 2011. With this verdict, the European Court has violated the rights of nonbelievers and non-Christian believers.

But there is another thing that Ryan and I have in common. He understands the logic of my view perfectly. My preference for the model of the religiously neutral state logically leads to the rejection of civil servants making religious, political, and ideological statements. Civil servants functioning in a democracy have to support the basis of the system, which is: subservience to the democratic forces (and thereby, ultimately, to the citizens; to us).³

The two points are connected, of course: a choice of the religiously neutral state (or the secular state) leads to the subservience of the civil service and the bureaucracy to political powers. The secular state and the democratic state are intimately linked. Let me now try to elaborate on the two points where Ryan and I part ways.

2. Which state is more just: the secular or the multicultural state?

First, let me address the question of which model is superior: (i) the multicultural or (ii) the secular state. Ryan tries to adduce some areas in which the multicultural state seems to have some advantages over the secular state. He makes the argument that giving financial support to religions (to churches or social organizations linked to churches) makes it easier to control the content of what is being preached from the pulpit. This would be handy in the case of the sort of religious extremism that is supported by Saudi petro-dollars.⁴ If hundreds of American mosques are under the control of Saudi Arabian money, why not make them less dependent on this dubious source of income by having the state finance these mosques? And, consequently, have a say in the content of the sermons? My answer would be that we do not have to pay in order to exert influence. Those mosques can be controlled by all kinds of means. In the Netherlands, the secret service monitors, and if necessary controls, what is preached in the mosques; journalists make critical TV programs about so-called “hate imams”; and the general public (including people with a Muslim background) pay attention to this matter as well. There is no need to pay to exert influence.⁵ Besides, paying for the mosques (and subsequently for all religions, one may presume) will drag the state into an endless debate about which religions deserve state support and which do not. Should we finance only the “dangerous religions” (religions with a tendency towards extremism), as would be the implication of Ryan’s suggestion?⁶ Or also pagan rites, witchcraft, and moderate churches? The problem is: it’s simply *unfair* (a violation of the principle of equal treatment) to pay only for religions that cause problems. Besides,

³ Fortunately, this system is confirmed in European case law in, e.g., *Ahmed v. United Kingdom*, App. No. 8160/78, Eur. Ct. Hum. Rts., Mar. 12, 1998.

⁴ Which is certainly a matter of grave concern. Apart from the sources that Ryan mentions, see KAREN ELLIOTT HOUSE, *ON SAUDI ARABIA: ITS PEOPLE, PAST, RELIGION, FAULT LINES—AND FUTURE* (2013).

⁵ In 2010, the Norwegian Foreign Minister Jonas Gahr Støre indicated he would not allow Saudi Arabia to finance or build any mosques in Norway because of the laws in Saudi Arabia that deny basic religious freedoms.

⁶ Ryan, *supra* note 1, 458.

would that not put a premium on being extreme (terrorism pays, so to speak)?⁷ So, public funding—although meant as a contribution to get us out of the quagmire—may prove to be counterproductive.

Ryan also says that it is unlikely that policies that block foreign religious influence would ever be applied in a religiously neutral way. Why? I don't see why this is necessarily the case. It is perfectly possible (and morally legitimate) to block foreign religious indoctrination and influence if it undermines the security of the state or the security of the citizens. And, of course, Salafists will try to intimidate the state with the argument that the state frustrates their freedom of religion. But in my view, we should not be impressed. Of course, the choice of national security over religious liberty for Salafists is a political and moral choice. In that sense, it is not “neutral” in the political or moral sense, but it is *religiously* neutral (which was the promise of the religiously neutral state to begin with). Let me remind the reader: the religiously neutral state is *not* against moral and political choices. The religiously neutral state is a political choice itself. The first amendment to the American constitution is a *political* choice, but that does not undermine its *religious* neutrality (and the same is true of the French *laïcité*).⁸

3. The subservience of bureaucracy to democracy

The second major point where Ryan and I differ is the political subservience of the civil service to the state. I support it. Ryan thinks he can adduce arguments that make that ideal obsolete or even dangerous.

Here Ryan refers to the example of Creon and Antigone. I think Ryan mixes up two discussions: the discussion on civil disobedience and the debate on the subservience of the civil service. Of course, there are things no political leader may do. Even if Hitler had been democratically elected, his policies towards the Jews would remain crimes against humanity. Whether Creon's command to Antigone not to bury her brother is sufficiently dictatorial to legitimate her disobeying his commands is difficult to ascertain. But, anyhow, this is *not* the relationship between a democratic state and its civil servants. So Ryan's quote from Sophocles' *The Theban Plays* misses the point. A better example to undermine the idea of bureaucratic subservience would be Adolf Eichmann. In fact *it was* the Eichmann case and the Milgram experiment that stimulated a widespread distrust towards bureaucratic subservience to the elected officials in democracies (in Ryan's words, subservience is “profoundly dangerous . . . for all of us”⁹). It has led to a postmodern anarchism of Foucault, dismissing all “control” or, as he says, “discipline,” and discrediting all kinds of government (whatever its nature).¹⁰

⁷ ALAN DERSHOWITZ, *WHY TERRORISM WORKS: UNDERSTANDING THE THREAT, RESPONDING TO THE CHALLENGE* (2002).

⁸ A concise introduction is COMMISSION STASI, *LAÏCITÉ ET RÉPUBLIQUE, RAPPORT AU PRÉSIDENT DE LA RÉPUBLIQUE* (2004). In publications on *laïcité*, it is stressed again and again that *laïcité* does not pretend to be politically neutral, but only religiously neutral. And yet critics keep arguing against “neutrality” as such.

⁹ Ryan, *supra* note 1, at 461.

¹⁰ Ryan refers to Michel Foucault in a laudatory sense (see *id.* at 458). I would not do that, of course.

This led to the misguided idea that: “Bureaucrats must resist . . . pressure from elected officials to direct decisions in favor of political allies and funders,” as Ryan writes.¹¹ Of course, everyone has to act morally in this world. Bureaucrats and elected officials are no exception. But it would certainly be wrong to think that the primary danger lies with the elected officials. If power corrupts, and absolute power corrupts absolutely, the danger of abuse of power also looms with the bureaucrats. *They* have to be controlled as well. And I do not think it is a sensible approach to think that they are the guardians of democratic probity. It is also wrong to think that bureaucrats have the primary responsibility of controlling the elected officials (and thereby “us,” “we the people”). The task of controlling the elected officials is in the hands of the representative. Bureaucratic subordination is not “extreme,” as Ryan writes,¹² but it is the ordinary logic of the democratic process. It is not Weber or Finer who are “extreme,” but Foucault. It is an “extreme” idea to reject *all* discipline. Discipline (and punishment, Foucault’s other *bête noire*) has to be checked, but democracy is the most viable procedure mankind has developed to effectuate this. It is not perfect—as nothing is under the sun. But it is better than the postmodern rejection of all discipline. This makes us ripe for anarchy and totalitarian experiments, such as the Iranian revolution—of which Foucault was such an adamant supporter.¹³

¹¹ *Id.* at 461.

¹² *Id.* at 462.

¹³ JANET AEARY & KEVIN B. ANDERSON, *FOUCAULT AND THE IRANIAN REVOLUTION: GENDER AND THE SEDUCTIONS OF ISLAMISM* (2005).