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2012

# Secularism, Atheism and Democracy

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## Recommended Citation

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## Secularism, Atheism and Democracy<sup>1</sup> (Draft)

Marcelo Alegre (UBA)

**1. Introduction.** In this paper I examine the positive effects atheism would have in a constitutional democracy and defend a secular view of the State. Such view will partly differ both from the American model and the French *laïcité* (at least the version expressed in discussions surrounding the prohibition of headscarves and burkas).<sup>2</sup>

**2. Three Senses of Atheism. Atheism and Respect.** I will begin with a description of a possible atheistic position that is both liberal and respectful. This perspective will combine three different views corresponding with three different meanings of the word “atheism”, each of which is rooted in a particular historical tradition.<sup>3</sup> These three versions illuminate a complex position, one that cannot simply be reduced to the negation of God. The first sense is atheism as “indifference to God”: an atheist in this sense is

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<sup>1</sup> I am greatly thankful to Pablo Ignacio Cattáneo, an advanced JD student at UBA-Law School, who did a superb research and provided me with very useful comments. He worked under the new Program of Accredited Research Assistantships of the University of Buenos Aires Law School. Juan González Bertomeu and Tamara Tenenbaum translated parts of this draft. Bradley Hayes generously made very helpful syntactic and substantive suggestions. I also thank Mauro Benente, Paola Bergallo, Emiliano Buis, Nahuel Maisley, for very useful extensive comments and observations. I am grateful to Fernando Atria, Roberto Gargarella, Julio Montero, Eduardo Rivera López, Hugo Seleme, etc...

<sup>2</sup> An even more extreme case would be the model favored by Querétaro’s Mexican Constitution of 1917.

<sup>3</sup> *The Cambridge Companion to Atheism*, Michael Martin (Ed.), Boston University, 2007, p. I.

someone who is not concerned with the idea of God and has no religious interests.<sup>4</sup> The second sense is the most popular one and consists in the conscious denial of the existence of God. Moreover, this sense admits two versions, a weak one and a strong one. The weak version is compatible with religiosity: its best examples are religions that do not positively state the existence of a god (Buddhism, under some interpretations). The strong version takes a critical position against religions in general, whether they postulate a god or not. Most generally, I will be referring to this strong sense in the rest of the paper. An atheist in the strong version denies the existence and normativity of supernatural entities, but she also questions religiosity, religious practices and religious institutions.

There is a third sense of atheism, much less frequent, but of certain relevance. It has been used to refer to those people who rejected the religious ideas or practices that were dominant in their time. This is obviously a very wide sense, synonymous with religious dissidence. For example, Christians, before Christianity became the official religion of the Roman Empire, were called atheists.<sup>5</sup> This third sense of atheism has its logic: if there is no god or gods but the officials, those who worship different gods are looking at false, non-existent gods, and thus are atheists. I believe this third sense can also be applied to the position known as “militant atheism”, an actively critical attitude towards religions (exemplified by the works and public appearances of Hitchens,

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This position can be seen as converging, though not completely, with agnosticism. It is not to be simply attributed to shallow, uneducated or unsophisticated people who just ignore the deepest dimensions of life. On the contrary, it could be argued that atheism as indifference is the sensible position if it is true that there are no gods. It does not sound unreasonable to abstain from reflecting on non-existent entities (like, for example, someone who has never reflected on unicorns or the tooth fairy).

<sup>5</sup>

*The Cambridge Companion to Atheism*, (Cambridge, 2007), General Introduction, p. I.

Dawkins, Dennett, Russell and Mencken), and a position that also overlaps with the second sense of atheism discussed. What I find interesting about this third sense is its contingent character: in different societies, atheism in this sense implies different positions.<sup>6</sup> This sense of atheism rightly illuminates the very strong anti-clericalism intertwined in Latin American atheism. When Latin American atheists think of religion, what comes to their minds is Catholicism, and their atheism is moved by their discontent with the conservative positions advocated in general by the Catholic Church hierarchy in Latin America.<sup>7</sup> The condemnation of modern sexual mores, the campaigns against the use of condoms, contraception, abortion, divorce or same-sex marriage, the child abuse scandals and their cover-up are just some examples of the Church's systematic immoral behavior that is the target of poignant atheistic criticism. In sum, as any political movement, atheism takes a particular form in each country.

I would like to argue that atheism, in all of its versions, represents an important contribution to a constitutional democracy. Atheism as indifference is likely the most

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<sup>6</sup> Atheism in this sense would, for example, focus on the Catholic Church in those places where that is the dominant creed, but would not do it in countries where it is just another marginalized minority. An atheist might be making a contribution to public debate and pluralism satirizing the Church in Latin America, but might be reinforcing oppressive patterns in places where they are not the “oppressive” majority but a vexed minority (a situation described by Martha Nussbaum in reference to the Catholics in the US in the middle of the 20<sup>th</sup> century). See Nussbaum, *Liberty of Conscience*, pages...

<sup>7</sup> As an extreme example, Horacio Verbitsky tells in his book *El Silencio*, Sudamericana, Buenos Aires, 2010, that in 1979, when the Inter-American Commission of Human Rights visited Argentina, the few remaining prisoners of the dictatorship were hidden in an island belonging to the Church in Tigre. The Church’s complicity with Latin American military rulers had exceptions, like Chile. For a study of the probable causes leading to divergent attitudes of the Church in different Latin American countries, see Anthony Gill, *Rendering Unto Caesar: The Catholic Church and the State in Latin America*, Chicago University Press, 1998.

appropriate position for a State that respects its citizen's equality. In other words, a genuine democracy requires that we cannot ascribe to the State, looking carefully at its functioning, any position but religious indifference.

The second sense of atheism is a view that enriches democratic culture, providing plausible alternatives to religious lifestyles. Lastly, militant atheism resulting from the combination of strong atheism in the second sense and the third sense's dissident tone, with its emphasis in a radical criticism of the dominant religious ideas and practices, provides a specially important counterweight to the risks posed by an excessive religiosity, which could limit the growth of scientific knowledge, overload the public sphere with fanaticism or favor the marginalization of other people or groups.

Nowadays, atheism is marginalized in a much more subtle way than it used to be. Atheists do not face the danger of being imprisoned or burned at the stake, but they do encounter deeply rooted social attitudes meant to silence or ridicule them. Official discourses take theism as the norm, promoting the idea that atheism is a radical, extreme view, worthy of tolerance but not genuine respect.<sup>8</sup> Atheists are expected to be reserved, “discrete”. The respect that is demanded, actually, is complete silence or, if they just cannot help it, a quiet comment under their breath. If an atheist expresses her ideas at the top of her voice, she will hardly escape the accusation of disrespect, arrogance and elitism.

The anti-atheist backlash is understandable, since atheism comes to defend undoubtedly corrosive, “uncomfortable” opinions. It is this opinions' content, not its

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<sup>8</sup> See, for example, Steven. G. Gey's analysis in “Atheism and the Freedom of Religion” in Michael Martin (ed.) *The Cambridge Companion to Atheism* (Cambridge, 2007), pp. 250-67.

form, that is found repellent. First, surely, atheism claims that there is no God. If the core of a disrespectful action is treating someone as less worthy or valuable than it is, then the atheist cannot help being disrespectful when saying that that entity which is (supposedly) supremely good and powerful does not even exist. Furthermore, atheism asserts that God is morally irrelevant, since there is no need to base our moral convictions in a supreme being. Atheists, additionally, put forward the claim that religion is not the best answer to the deepest questions about the meaning of life and death.<sup>9</sup> Moreover, atheists call attention on the atrocities allegedly committed by the Bible's God<sup>10</sup> (the peoples slaughtered, the sacrifices only an extreme egomaniac could ask for, the disqualification of women, the defense of slavery, etc.), and of course the destruction and vexations committed in His Name. Even worse, a frequent topic in atheistic discourse is the supposed hypocrisy of many believers<sup>11</sup>. Atheists doubt the faith of those who grieve for their loved ones but claim to believe in the afterlife, and call attention to the fact that more religious communities do not register lower divorce or adultery rates, less consumption of drugs or pornography, etc.

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<sup>9</sup> From an evolutionist perspective it is conjectured that religion is a byproduct of useful impulse in ancient times: the impulse to distinct, among the multiplicity of events that surround us, those that are intentional. This human ability allows us to differentiate, for example, the sound of the wind and the sound of an approximating tiger. The detrimental byproduct consists in attributing intentions to “too many” events (the rain, the sun, etc.). Daniel Dennett, *Breaking the Spell*, Penguin, 2007.

<sup>10</sup> See Elizabeth Anderson, “If God is Dead, is Everything Permitted”? in Louise M. Anthony (ed.), *Philosophers without Gods. Meditations on Atheism and the Secular Life*, (Oxford, 2007), pp. 215-230.

<sup>11</sup> For example, Georges Rey, “Meta-Atheism: Religious Avowal as Self-Deception”, in Louise M. Anthony (ed.) *Philosophers without Gods. Meditations on Atheism and the Secular Life*, (Oxford, 2007), pp. 243-265

**3. The Core of the Critique of Religion. Atheistic Religions?** Religions have been studied as operating in three different levels, often called in English “the three Bs”: believing, behaving and belonging.<sup>12</sup> Being religious, then, is: i) to have certain beliefs, for example, a belief in a certain notion of transcendence, divine entities, a sacred dimension, ii) to act in a certain way (including both rituals and the upholding of certain standards of behavior), iii) to belong to a certain community, the one of the co-believers, who share the believer's beliefs, her rituals, maybe some form of voluntary work, similar social-life perspectives, etc.

I estimate that part of the dominant disconformity with the atheistic critique of religiosity is due to the fact that atheism has focused almost exclusively in the level of beliefs, as if religions were some sort of epistemic devices and as such were to be evaluated on the veracity of their assertions about the world, and particularly in comparison to the kind of assertions that modern science makes. Truth is most people that adhere to a religion probably do it for reasons other than having an access to true beliefs on the afterlife, the origin of the universe or the existence of hell and heaven. For most religious people religion is, rather than a means to know the world, a sphere of social gathering, an opportunity for reflecting on one's values and oneself, or to bring about useful projects in collaboration with others with whom one shares a view of society

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<sup>12</sup> I am following here R. Putnam and D. Campbell, *American Grace*, New York, Simon and Schuster, 2010.

(Putnam and Campbell's book registers some of the many good effects of religious life in America, in terms of happiness and participation).<sup>13</sup>

These three dimensions (the three Bs) are important to us inasmuch as they force us to study religiosity in an interdisciplinary fashion, including an adequate knowledge of, for example, how religion operates in the conformation of ethical convictions (behavior) and sociability (belonging). Therefore, a critique of religiosity will have to pay attention to these three levels. Otherwise, it will be an incomplete analysis, and worse, an irrelevant one for most religious people.

Tentatively, if I had to summarize a critique of religiosity that covered the three dimensions (beliefs, behavior and belonging), I would say that the following aspects are among the most potentially harmful effects of religion: superstition (beliefs), authoritarian morality (behavior) and segregation (belonging).

i) Superstition: inasmuch as religiosity implied the adherence to superstitious beliefs, there would be a risk of adopting dangerously wrong courses of action (not taking medicines or transfusions, selling one's house and giving the money away to the pastor, discouraging the advance and teaching of biology, astronomy, etc.).

ii) Authoritarian Morality: inasmuch as religiosity implied the adherence to ethical norms (moral or political) in virtue of the authority that enunciates them and not of its content, there would be a violation of people's moral independence and a demeaning of the very idea of the moral responsibility of individuals, conceived as the special and nontransferable faculty of thinking and deciding on moral problems within our own minds.

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<sup>13</sup> Putnam and Campbell, op. cit., specially Chapter 13.



iii) Segregation: inasmuch as religiosity contributed to divide people between the believers and non believers of a particular religion, ascribing moral relevance to the distinction (those who will be saved and those who will not, those who have been chosen and those who have not, those who are tolerated and those who are not, those who are subsidized and those who are not, etc.) there would be a transgression of basic egalitarian convictions that condemn the disadvantaging of some in absence of reasons equally acceptable for all.

The “inasmuch as” clause at the beginning of all the above criticisms intends to address an obvious difficulty that any critical analysis of religiosity will face: there are many different religions and it is extremely complicated to find invariant aspects (such that are present in all and each one of them). The most obvious case is the criticism of religiosity based on the non-existence of God, which does not apply to a religion as important as Buddhism (according at least to a very respectful tradition of interpretation) that does not postulate the existence of a God. This problem is avoided with a disclaimer stating that the criticism is directed to certain elements that are present in many religions or at least very strongly in some of them. The critique of religiosity is not dependent on a definition of the “essence” of religiosity but in the identification of relevant aspects that are sufficiently present in the most prevalent religions or in a high enough number of them. Naturally, this rejection of the notion of a religious essence could lead us to identify a religion to which none of our listed potential harms (superstition, moral

authoritarianism and segregation) apply. In principle, I believe that the atheistic critique of religiosity would have nothing to say on these religions.<sup>14</sup>

Other atheistic religions include academic proposals of charitable reconstructions of religiosity, relating it to a sense of respect for the mysteries of the universe or the rejection of a physicalist conception of the human mind, consciousness and morality. The atheistic critique of religiosity has no objections to these religions.<sup>15</sup> However, this conceptual and normative reconstruction of religion might be leaving something important out in its characterization; it might be banalizing some negative aspects that have been strongly linked to religiosity as well.

Lastly, the atheistic critique of religions does not need to subscribe to the Secularization Thesis.<sup>16</sup> With that name we are referring to a series of mostly empirical statements on religion: that religiosity tends to decrease, that a difficult childhood favors the settling of religious beliefs or that religiosity is connected with psychopathology. The atheistic critique neither contradicts nor endorses this Thesis, as its objective is purely normative. However, it has to deny (or at least strongly restrict) a fundamental normative assumption behind the Thesis: the idea of the irrationality of religion. Liberal atheism

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I have already mentioned the case of Buddhism, which can be understood as an atheistic religion, as well as a non superstitious one, not opposed to the idea of the predominance of the individual moral conscience neither establishing morally relevant divisions among people. An atheist may prefer to think of Buddhism as a philosophy more than as a religion: this is a terminological, not interesting, discussion.

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For example, Dworkin's atheistic religion, depicted in a manuscript presented in his Colloquium and several conferences in 2011.

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I follow here the convincing critique of Stark, R. & Finke, R. (2000). *Acts of Faith: Explaining the Human Side of Religion*. Berkeley, University of California Press.

does not say that religion is irrational: it simply emphasizes that there may be better or at least more plausible alternatives. It restricts the irrationality accusation to particular beliefs or practices, instead of applying it against religiosity in general. In that way, it preserves a common set for discussion (rationality), and shows the debate as a confrontation between diverse conceptions of rationality. The rejection of the cliché “religion=irrationality” is a basic component of a respectful atheism.

**4. From Atheism to Secularism.** Up to here I have been discussing the atheistic critique of religiosity. Now I want to delineate the kind of secular State that could be defended from an atheistic perspective. It is important that the proposals advanced be acceptable from a religious point of view too, including among those the reduction of the negative influences of religiosity and, particularly, an active position regarding the religious practices that affect the interests of women and children. It might be too unrealistic a thought, but I believe that a religious person could perfectly share with the atheist the view that religiosity (at least over a certain threshold of intensity and diffusion) is an element potentially conflicting with values such as autonomy and equality.

I have organized my exposition around the atheistic view. But why focus on this perspective when, after all, what is interesting about it is what it shares with other reasonable doctrines? The atheistic point of view can be understood as one advocated by a disadvantaged group in a religious society. In a religious State, religious people can be either favored or damaged, but atheists will always end up worst off. Many secularizing reforms can be defended as the legitimate consequence of taking the moral and political symmetry between religiosity and atheism seriously; this symmetry entails that every

view *on religion* deserves to be equally respected, including atheism. Consequently, any institutional arrangement of religious matters must be justified giving the atheist's interests a certain priority. Hence my interest in exposing the possible key aspects of an atheistic take on the State, politics and the Constitution.

**5. From a Secular Ethics to a Secular Constitution.** What are the political aims of new secularism? How can these aims be grounded? How are these aims to be pursued? How could secularists avoid becoming part of the problem (contributing their grain of sand to the eternal cycle of religious confrontations)? Could a new secularism be constitutionally entrenched? Or, alternatively, could it be constitutionally permitted? To answer these questions I propose a journey through five different yet connected domains. It starts in ethics, continues to moral philosophy, then political philosophy, then reaches to the political sphere, and finally arrives at the constitutional domain. Throughout this analysis I will describe diverse criticisms of religiosity, derived one way or another from the three mentioned fundamental objections to religiosity (superstition, authoritarian morality and discrimination).

How does religion relate to the ethical domain? (I take ethics as the inquiry into how to live well, as distinguished from morals, which focus on “what we owe to each other”). Humans face anxieties and fears. We sometimes ask ourselves grand questions about our connection to the universe, about our place in the cosmos, about the existence or not of a higher narrative, design or plan above our human narratives, designs and

plans.<sup>17</sup> In particular, we are concerned about our finiteness in the face of the infinite. Reason both puts us in contact with the infinite (for example when we discover the infinity of the sequence of natural numbers) and reminds us of our own finitude.

Religion provides answers to these questions and anxieties through an idea of transcendence. Charles Taylor describes three connected thoughts which make use of the notion of transcendence: “That there is some good higher than, beyond human flourishing”, belief in “a higher power, the transcendent God of faith...”, and reliance on some version of an after-life, or on seeing “life as going beyond the “bounds” of its natural scope between birth and death...”<sup>18</sup>

A secular ethics does not dismiss the grand questions as nonsensical. Instead, it proposes different answers to those questions, answers that do not appeal to the described notions of transcendence. Secular ethics, in particular, denies the existence of any god. From the ethical perspective, one problem of the religious answers is that they conclude the search too easily, closing the mind to alternative responses. Another problem is that they provide a basis for living our lives that is not easily shareable with others. Secularism tries to respond to the anxieties that lead people to religion in different ways, through philosophical arguments, or a call for social and political participation, through psychoanalytic search, etc. If Evil is related to a flight from death,<sup>19</sup> religion could also

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<sup>17</sup> See, for example, Thomas Nagel’s analysis of religious temperament in *Secular Philosophy and the Religious Temperament*, Oxford, 2010.

<sup>18</sup> Charles Taylor, *A Secular Age*, Harvard U. Press, 2007, p. 20.

<sup>19</sup> Paul Kahn, *Out of Eden: Adam and Eve and the problem of evil*, Princeton U. Press, 2007.

be seen by secularism as an attempt to evade death, in other words, as the wrong approach (though not necessarily irrational) to the grand problems of life and death.

The atheistic ethical alternative is extended to the spheres of moral and political philosophy and constitutional thinking. The enquiry over religion's role in our individual lives cannot avoid an impartial and objective perspective. It would be odd to claim that the religious answer is inadequate for us without also (or perhaps without first) believing it is inadequate for anybody or, put differently, inadequate *tout court*. Secondly, our ethical convictions about what is good for us must include a set of preferences about the social contexts where our lives are to develop in.

The rejection of the religious solution comes hand in hand with the recognition of the importance for the individual of having time and space for reflecting on these issues of life and death. Equally crucial is that this activity should be un-coerced and autonomous. A good life involves an effort to integrate our views, values and convictions in a consistent way. The fact that, from a secular perspective, the religious answer is not adequate, does not count as a reason against the importance of the reflexive examination of our deepest doubts and anxieties. And it does not count as a reason to restrict in any way the freedom of individuals and groups to determine the answers to these questions themselves.

**6. Morality and Religion.** Religion connects in different ways with our duties to others. A purely private religion would naturally demand a full protection against interference by others. But generally religions are not purely private. They are a source of moral claims,

claims about what *everyone* has reason to do.<sup>20</sup> Also, religions generally mandate some set of practices, be they rituals, institutions, hierarchies, etc, some of which, in turn, may affect important human interests, thus triggering moral concerns.

An important part of the core of religion (its beliefs, consensual and harmless rituals, etc) must be protected by any morality recognizing the value of autonomy and equality. The ethical importance of a free and un-coerced reflection on the profound questions about our place in the universe provides a firm ground for respecting the different forms in which people confront this need. This protection, obviously, covers the practice of religion. Yet the public expression of religion may pose significant moral challenges. First, there is the problem of grounding moral claims on non-shared basis. When people coincide in their moral claims, the problem of the grounds may be only an academic one. But people disagree on many moral issues, and in the discussions around them the religious reasoning may constitute an obstacle to dialogue (religious justifications for the subordination of women take this form). Any morality that places value on dialogue should be concerned with religious claims, because they may operate as conversation-enders (although an important point stressed by Jeremy Waldron is that they usually do not play that role, hence the underlining).<sup>21</sup>

Religious practices sometimes violate significant interests of individuals. Some religions divide the world between believers and unbelievers, and they attach morally

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Some problematic moral claims of Catholicism regarding women and sexual minorities are studied by Julieta Lemaitre, "Anti-clericales de nuevo: La Iglesia Católica como un actor político ilegítimo en materia de sexualidad y reproducción en América Latina", SELA 2009.

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J. Waldron, "Two-Way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberation" draft available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1708113](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708113)

important consequences to this distinction. These distinctions are, morally speaking, dangerous, in cases where they factor into arguments denying benefits or imposing costs of different kinds to the infidels (from integration to social circles, to access to marriage with certain category of people, from attacks on the free expression of their ideas to outright extermination)

Religious rituals may impose unacceptable moral costs—as exemplified by sacrificial killings, female mutilation, and (for some) male circumcision. Because the religious character of a behavior does not necessarily add value to it, these practices are unjustifiable in that they impose harm for no reason. The institutional aspect of some religions may be problematic, too, in the case, for example, of women being excluded from the higher strata of religious authority. Any institution that excludes or disadvantages some internal group on morally irrelevant grounds is subject to moral questioning.

The ethical and moral secularist needs to confront, next, the relationship between religion and a legitimate state, with the aim of producing a secular political philosophy.

**7. A Secular Political Philosophy: Political Theology and Atheology.** A religious political philosophy has at its core a political theology. Theoretically, new secularism is a forceful reaction against classic political theology, particularly in its Christian versions. Classical political theology ties the legitimacy of the state with religious claims, be it the plan of God, God’s mandates, the following of sacred texts, etc.<sup>22</sup> Mark Lilla provides an

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<sup>22</sup> According to Mark Lilla, we are in the domain of political theology whenever we appeal to God to answer political questions. Mark Lilla, *The Stillborn God*, Vintage, 2007, p. 3.



account on the specific risks of Christian political theology.<sup>23</sup> According to Lilla, there is a deep conceptual problem in the Christian theology, which infuses its political theology with tensions and instabilities. The Christian god does not fit easily into any of the three types of god Lilla describes (“immanent,” “remote,” and “transcendent”). Each of these conceptions of god carries its own political implications. But the Christian god oscillates between these three different conceptions, favoring strongly divergent interpretations. This conceptual ambiguity is at the root of the sectarianism and religious wars that fill the history of Christendom.<sup>24</sup> Lilla presents Hobbes as the hero who “changed the subject,” substituting a human centered conception of politics for the Christian political theology that tied legitimacy with revelation (the “divine nexus”). This is the beginning of the Great Separation, later deepened by Hume and Locke. Rousseau and Kant, says Lilla, represent a step back in this secularizing process. Both helped to recreate a different political theology, more centered in human needs, more tolerant and rational.<sup>25</sup> Yet both pre and post-Hobbesian political theology, says Lilla, represent a dangerous business: Post-Hobbesian human-centered theology understood Christian theology as “the highest expression of human sentiment (Rousseau,...), ” “the highest development of human morality (Kant...), or the highest manifestation of human culture (Hegel, ...)<sup>26</sup> ” but it

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<sup>23</sup> Mark Lilla, *The Stillborn God*, Vintage, 2007.

<sup>24</sup> The question remains: had the Christian conception of God been less contradictory, would it have been any better?

<sup>25</sup> But even this humanized theology created its own dilemmas, for example through the ambiguous idea of reconciliation. Lilla, p. 164.

<sup>26</sup> Lilla, p. 261.

underestimated an important lesson—“that religion can also express darker fears and desires, that it can destroy community by dividing its members, that it can inflame the mind with destructive apocalyptic fantasies of immediate redemption.”<sup>27</sup>

Following this approach, a secular view of the state could be viewed as representing the third step of an evolution. The first one is the pre-Hobbesian political theology which appealed directly to revelation or sacred scriptures to provide a picture of the legitimate state. The second step posited a disconnection between the theory of the state and God’s will, but not with religion. Religion was deemed, in this second moment of the history of ideas, as a positive instrument for realizing the aims of a legitimate state. The next step would be denying that religion adds any value to democracy. We may call this stance a “political atheology”.<sup>28</sup>

Political atheology is the translation into politics of the ethical conviction about the inadequacy of the religious response to the deep uncertainties of life. To that ethical distaste for religion as a “flight from death,” secular political theory adds all we know about the social dangers of religion: intolerance, sectarianism, violence, repression, conservatism regarding science and changes in social practices, etc. Accordingly, it rejects the religious approach to the issue of the legitimacy of the state. In giving shape to the idea of a legitimate state, secularism does not ask about God’s will, plans, or desires.

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<sup>27</sup>  
Lilla, p. 260.

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A good example would be the fascinating *Historical and Critical Dictionary*, by Pierre Bayle (1696), quoted by Lilla. There, Bayle sustains that “a nation of atheists could exist without falling into chaos”, Lilla, p. 125. Apparently, the book was one of the most successful philosophical works in the 18<sup>th</sup> century: Lennon, Thomas M. and Hickson, Michael, “Pierre Bayle”, *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), available at <http://plato.stanford.edu/archives/fall2008/entries/bayle/>

Neither does it support employing religion as a crutch to support noble sentiments, right values, rich public culture, social cohesion or national allegiance.

What political priorities does this perspective carry?

**8. 1. Politics: The New Secular State. The Principles.** In the context of democratic politics, anti-religious arguments must be curtailed. The superstitious, authoritarian or discriminatory aspects of religion can only be regulated by the State when their realization redounds in practices or behavior that hurt other people. Superstition is dangerous when it threatens tangible goods, like the progress and teaching of science. Authoritarian morality (based on divine commandments or sacred texts) will be the target of criticism only when it produces unreasonable judgments (those supporting extreme kinds of rituals, or pretending to be a sufficient argument to restrict some people's rights, etc.). Discriminatory inclinations in some religions will be denounced by the secular liberal State only when they exceed mere speech level and are materialized in actions that intend to exclude or subordinate others.

The secular State is indifferent regarding religious matters. In other words, considering the State's norms and practices, we should not be able to attribute to it any particular religious perspective. How would religious liberty be protected by this secular state? A possible answer would be: as a result of other liberties, for example, freedom of expression, freedom of association, the protection of privacy and intimacy. An alternative response could be that religion deserves a *special* protection. Inasmuch as this special protection presupposes that religion is valuable per se, secularism cannot promote it, because it would imply going against the critics of religiosity. However, I think we can

keep the idea of a special protection for religious liberty starting from a different set of premises. In the first place, a practice can deserve a special protection even though it could be covered by other existing protections. Religion could be a prominent case of a convergence of practices protected by diverse liberties. Religion could also be special, precisely, for putting at stake as no other practice a combination of the value of freedom of expression, freedom of association, privacy, etc. The prominence of religion allows us to make focus on religious liberty as a set of practices where diverse goods protected by different practices converge. Thus, religious liberty deserves to be specially mentioned, even if it could technically be covered by other classical liberties.

A second alternative premise could say that a practice can be constitutionally special for reasons independent of its value. Music is not specially protected in most constitutions, though it is, for many people might be much more valuable than religion: that does not, surely, demean music. Inversely, religion could be considered special because of some of its questionable traits, for example, for its potential to raise violent divisions. This could justify including specific dispositions in order to protect an important aspect of religious liberty (the separation of religion and the State).

A simple consequence derived from the idea of the indifferent State is the prohibition of religious symbols (including altars, virgins, and portraits of the Commandments) in State dependencies (tribunals, legislatures, public schools). This symbols are offensive, in some cases, to believers of other religions, and always, to atheists. However, more complex problems arise, and the following are some of the criteria I propose to deal with them:

i. Secularism, not a crusade. A secular political program strongly affirms both freedom of religion and the value of diversity. The secularism I defend is careful to avoid any hint of authoritarianism or intolerance. It could not be otherwise, for one of its core motivations is the abhorrence of religious persecutions. The force of secularism, what moves secularists in the public sphere, is explainable in historic terms as a reaction against religious rule, with its inherent atrocities. The secular reaction adopts the form of an over sensitivity against repression of beliefs and believers, civic divisions and confrontations, and state intrusion in private lives. Hence, it would be a mistake to believe that secularism entails a policy of repression of religiosity, using force against people's religious freedoms, and so on. On the contrary, new secularism follows a politics of persuasion,<sup>29</sup> favoring discussion over repression, education over imposition, autonomy over prohibition. The classical religious freedoms are not seen as an inconvenience for new secular policies, but as a non-negotiable framework. (Of course, they are to be understood as including also the right of atheists to profess, defend and publicize their views about religion.) Secularism is not a modern crusade, but an honest contribution to improve the quality of constitutional democracy. The devices that "intervene" in the "religion market" are not repressive but emancipatory, and operate mainly through education and debate.

ii. Regulatory caution: It would be irresponsible to translate philosophical convictions into public policies without the mediation of empirical studies of different kinds. The different actions described in a moment should be read with that caveat in

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On the politics of persuasion in the feminist domain, see J.J. Mansbridge and S. M. Okin, "Feminism", en R. Goodin y P. Pettit, *A Companion to Contemporary Political Philosophy*, Blackwell, 1998, p. 277.

mind. Secular policies must be analyzed paying attention to foreseeable consequences, particularly keeping in mind the possibility that restrictions on certain religious activities might trigger unwanted reactions, such as hostility and violent social divisions.

iii. The value of religious diversity: along with religious freedom, new secularism values religious diversity. Given a certain amount of religiosity, my version of secularism is not indifferent whether all the religiosity being expressed by a single religion and its taking the form of different religions. Secularism holds the Madisonian hope that religions might control each other, for example, because for each, a secular state is preferred over a state committed to a different religion. There is a deeper reason for the secularist taste for religious diversity. Any religion destabilizes all the others in a very profound way, and maybe with the same corrosive force of atheism. Recall Mackie's famous argument "from relativity" against the objectivity of values.<sup>30</sup> It claims that the diversity of moral codes speaks against the objectivity of values, not in a direct way, but indirectly—the objectivist explanation for such diversity seems less plausible than the subjectivist account which, for example, holds that: ...people approve of monogamy because they participate in a monogamous way of life rather than they participate in a monogamous way of life because they approve of monogamy.<sup>31</sup>

Similarly the coexistence of different religions is a daily reminder to the religious believer that it is just a matter of circumstantial luck<sup>32</sup> that he or she is a believer of one particular religion rather than another, or of none. Also, when he or she acknowledges

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<sup>30</sup> John L. Mackie, *Ethics. Inventing Right and Wrong*, Penguin, 1977, pp. 36-42.

<sup>31</sup> Mackie, p. 36.

<sup>32</sup> Thomas Nagel, "Moral Luck", in *Mortal Questions*, Cambridge U. Press, 1979, pp. 33-4.

that many of the believers of other religions are nice, respectful people who live enjoyable lives, he or she must recognize that his or her particular religious views are not necessary conditions for living well on fair terms with others.

**8.2. A New Secular State. Public Policies.** The following would be some possible courses of action of a secular State.

i. A Secular Politics of Persuasion: this secular state confronts religious arguments in public discourse, respectfully but firmly. For example it confronts religious opposition to sex education, sexual and reproductive rights, the use of condoms, gay and lesbian rights, etc, etc. A secular state does not remain passive in front of massive campaigns promoting disobedience to democratic legislation, like the Catholic Church's call to disobey legal permissions for abortion and to obstruct access to sexual and reproductive rights.

ii. Zero Subsidies for Religions: A new secularism denies any form of subsidy for religions, including tax exemptions, as forms of disrespect for non-believers, and because they create dependent relations between religions and the state. The guiding notion is that citizens should internalize the true cost of their religious activities. Tax subsidies of any kind violate this principle. In fact, they offend both believers and unbelievers, by putting believers in the uncomfortable position of seeing their religious lives being financed by other people, thus endangering the autonomy that is essential for the value of a reflective life, and by forcing unbelievers to contribute to the subsistence of an activity they do not value at all. This zero subsidies principle is incompatible with the existence of military ministries and the public funding of religious institutions.

iii. Children's Interests: a) *Religious indoctrination*. New secularism opposes infusing minors with religious ideas<sup>33</sup> or, more weakly – as defended by Daniel Dennett, at least not by exploiting fear or hatred.<sup>34</sup> The discouragement of the infusion of children with religious beliefs and rituals plays a prominent role in new secularism. This does not mean a lack of respect for the autonomy of the family. What it refuses to accept is a version of family autonomy that denies a proper role for the autonomy of the children. Here, we may piggyback on feminist arguments for opening the life of families to the scrutiny of justice to get at the root of gender inequalities. The autonomy of children provides another compelling reason for state intervention in the institution of the family. One possible way to protect children against religious indoctrination is to include the atheistic point of view as a subject taught in schools, in connection with the sociological, descriptive study of the main religions. Notice that, in those countries where - unfortunately - religious education is allowed in public schools, the principle of symmetry among positions on religion demands that children are also exposed, in those same classes, to atheistic arguments.

b) *Ritual Mutilations*.<sup>35</sup> Female mutilation is, of course, a gross violation of human rights that should be universally banned. This abhorrent practice constitutes an

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<sup>33</sup> Richard Dawkins, *The God Delusion*, First Mariner Books, 2008.

<sup>34</sup> Daniel C. Dennett, *Breaking the Spell*, Penguin, London, 2007, p. 327-8.

<sup>35</sup> For two volumes devoted to critically discuss the issue, see George C. Denniston, Marilyn Fayre Milos, Franco Viviani, Frederick M. Hodges (Eds.), *Bodily Integrity and the Politics of Circumcision. Culture, Controversy, and Change*, Springer, New York, 2007 (Denniston provides in Chapter 17 a case based on human and constitutional rights against allowing male



extreme case of ritual mutilation. Another (much less severe) case is male circumcision, which is practiced within the three main western religions (widely among Jews and Muslims and in some smaller Christian communities). Yet male circumcision is under attack from people who denounce it as an infringement on personal or bodily integrity. If it were the case that male circumcision was a form of mutilation with no benefits or only negligible ones,<sup>36</sup> then secularism would favor a revision of this practice. My aim is not so much finding the correct answer on this issue, but getting the terms of the discussion right. A defense of circumcision could argue that the harm to the families deprived of an important religious ritual is greater than the harm to the baby: not only greater, but immensely greater, as it would imply the transgression of a sacred law, which lies over an above ordinary utility calculus. Besides, an advocate for circumcision could put forward the claim that a restriction of this kind puts some religions in clear disadvantage, hence violating religious equality. The secularist might reply that the value of physical integrity should take precedence over the symbolic harm of frustrating a religious ritual.

Insistence on including this discussion in the public agenda could trivialize the urgency and gravity of the topic of female genital mutilation. Nevertheless, a

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circumcision); and Denniston, George C., Frederick Mansfield Hodges, and Marilyn Fayre Milos (Eds.) *Circumcision and human rights*, New York: Springer, 2009.

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For example, Bailey RC, Moses S, Parker CB, et al., “Male circumcision for HIV prevention in young men in Kisumu, Kenya: a randomized controlled trial”, *Lancet* 2007;369:643–56. (“Circumcision reduced the risk of contracting HIV infection in young sexually active Kenyan men”). This does not show the medical need to circumcise people at birth. P J van Diest and H Holzel claim that “male circumcision protects the wives of husbands who have been circumcised from cervical cancer”, in “Cervical cancer” *J Clin Pathol* 2002 55: 241-242. Regarding circumcision as an effective therapy against phimosis, Robert S. Van Howe argued for a negative answer, “Cost-effective Treatment of Phimosis” *Pediatrics* 1998;102.

commitment against *any form* of mutilation could hardly get in the way of the pressing need to eradicate female mutilation; on the contrary, it would foster its development.

iv. Deliberative equality:<sup>37</sup> a secular state should not give religions any privileged institutional voice. For example, it offends deliberative equality to have representatives of religions in advisory organs (as is the case in Argentina in the official organ in charge of rating movies).<sup>38</sup> The Colombian Constitutional Court has ruled that a similar norm was unconstitutional. It said that: “The rule does not satisfactorily resist the question as to the end sought by the obligatory inclusion of a member of the Catholic Church in the Committee of Film Classification, because... the answer is none other than to attempt to privilege the particular Catholic vision of the social and moral order, which is unacceptable in light of the principles behind the Colombian State as a secular state.”<sup>39</sup>

A more difficult case is found in the appeal to religious considerations in the public sphere. Though the Rawlsian disqualification of such arguments for being in tension with the requirements of public reason is music to new secularists’ ears, even from a strongly secular perspective there are other values too at stake here. First, there is the value of authenticity, which rewards people who are outspoken and honest in the

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My view of this topic is influenced by Julieta Lemaitre’s article “Anti-clericales de nuevo: La Iglesia Católica como un actor político ilegítimo en materia de sexualidad y reproducción en América Latina”, SELA 2009.

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Law 23052, approved in 1984, abolished the censorship organ, and created a system for rating movies. The regulatory decree created an Advisory Commission, which included, among other members, “...d) a member proposed by the Episcopal Team for Communication Media, of the Catholic Church; e) a member of the Jewish worship; f) a member of the Christian non-Catholic Confessions.”

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C-1175/04 (corrected by decision 019/05)

exposition of their views. Second, there is the value of freedom of expression, which puts a limit on the acceptable costs to be imposed for sinning against public reason—I don't think that the person presenting religious considerations deserves more than a firm admonishment and a request to choose a language that allows her to be comprehensible to a wider audience. Third, there is the value of civility,<sup>40</sup> which requires us to make our best effort to listen and understand other citizens. This duty demands an honest intent to translate religious arguments to secular ones before disqualifying them. A remaining problem is that this translation could distort the meaning of the originally expressed religious idea, to the eyes of those who view religion as dimension of life that cannot be reduced to any other. For them, translation is impossible.

From my preferred secular perspective, what is acceptable for regular citizens might not be admissible for people holding public office. For example, the very frequent religious remarks in presidential speeches can be deeply offensive to some non believers.<sup>41</sup> These kinds of comments alienate non believers from the deliberative arena,

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<sup>40</sup> Jeremy Waldron, "Two-Way Translation: The Ethics of Engaging with Religious Contributions in Public Deliberation," draft available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1708113](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708113)

<sup>41</sup> "We remain a young nation, but in the words of Scripture, the time has come to set aside childish things. The time has come to... carry forward that precious gift, that noble idea, passed on from generation to generation: the God-given promise that all are equal, all are free, and all deserve a chance to pursue their full measure of happiness... For as much as government can do and must do, it is ultimately the faith and determination of the American people upon which this nation relies... This is the source of our confidence: the knowledge that God calls on us to shape an uncertain destiny... [L]et it be said by our children's children that when we were tested we refused to let this journey end, that we did not turn back nor did we falter; and with eyes fixed on the horizon and God's grace upon us, we carried forth that great gift of freedom and delivered it safely to future generations... Thank you. God bless you. And God bless the United States of America." New York Times, "Barack Obama's Inaugural Address", 1/20/2009.

telling them that they are foreign to the political culture of their own society. In a secular State, these manifestations would be seen as shortcomings to the fulfillment of public officers' ethical duties.

iv. Expansion of the Space for Religion: a radical process of secularization of the public sphere will be encompassed with an expansion of the space for people to practice their religion with all the intensity and depth they want to. A way to implement this view would be to broaden the notion of accommodation, as it is discussed in the conscious objection cases. However, how is it possible that secularism broadens the space for religiosity and provides to conscious objectors more flexibility than they enjoy now? First, according to the economical analysis of religions, it is likely that less State intervention in religion provokes a more vibrant religious activity, fostering a more fair competence between congregations. Secondly, the bigger tolerance an atheistic State would generally show to infrequent, unpopular or transgressing behaviors is in agreement with some basic atheistic convictions. The demand of evidence to justify courses of action or beliefs, which is at the foundation of the critique of religiosity, allows us to reject two related attitudes: first, the idea that no infringement of the law should be tolerated; second, the notion that actions that are not harmful to others can still be legally forbidden. This sort of mentality would favor an extensive right to conscious objection, limited only when other people's basic rights are at stake. Third, atheism comes to end an inequality that structures all conscious-related rights in states that are not radically secular, in the following way: the majority's religion sets (more or less officially) the normality standards, and the remaining cults adjust to them *as best as they can*. (For example, Prohibition rules allowed the sacramental use of wine, but in Smith the USA

Court validates prohibiting the ritual use of peyote). Atheism, in turn, does not take any religion as a default standard. There are no second rate religions, so the demand that every cult is to satisfy is stronger than a mere accommodation.

This might sound paradoxical, but in any case it would not be a novel phenomenon. For example, Charles Taylor recognized that secularization has been beneficial (and not just detrimental) to Christianity:

“Where does this leave us? Well, it's a humbling experience, but also a liberating one. The humbling side is that we are reminded by our more aggressive secularist colleagues: "It's lucky that the show is no longer being run by you card-carrying Christians, or we'd be back with the Inquisition." The liberating side comes when we recognize the truth in this (however exaggerated the formulation) and draw the appropriate conclusions. This kind of freedom, so much the fruit of the gospel, we have only when nobody (that is, no particular outlook) is running the show. So a vote of thanks to Voltaire and others for (not necessarily wittingly) showing us this and for allowing us to live the gospel in a purer way, free of that continual and often bloody forcing of conscience which was the sin and blight of all those "Christian" centuries. The gospel was always meant to stand out, unencumbered by arms. We have now been able to return a little closer to this ideal—with a little help from our enemies.”<sup>42</sup>

People should be entitled not to work on religious holidays (provided a roughly similar amount of holidays are granted to all, including those who profess no religion). They should be allowed to consume substances that play important roles in their religious

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<sup>42</sup> James L. Heft (ed.), *A Catholic Modernity?*

rituals.<sup>43</sup> This is harmless behavior and its criminalization is unreasonable. Likewise, people should have the right to exhibit their religious symbols in public places (Christmas trees, mangers, etc.), since in the secular State I am envisioning there would be no risk of public coercion being used to impose religious views or values. Religion would become an inoffensive practice, and given its importance for people, a culture of open discussion needs to guarantee the greatest freedom for religious activities.

The key to understanding this secularism I am advancing is its rejection of any attempt to “idolize” a particular lifestyle, then call it secular, and after that try to freeze it and preserve it in coercive ways. A continuous resistance against the temptation to regard some specific ways of life as sacred drives the radical toleration of the secularism I defend. Therefore, secularists should refuse to act as modern inquisitors, battling against other people’s clothes and symbols.

v. A Brief Note on the Headscarf/Burka Issue: if religious diversity and toleration play an important role in the secularist view of society, then the French conception of *laïcité* as expressed in the veil and the burka debates seems problematic. (France prohibited girls from wearing headscarves in public schools in 2005, and recently banned the use of burkas in public). These prohibitions are interpreted (and experimented) as a direct attack on the Muslim community, an affirmation of a national culture against an invading one. I am not informed enough to provide a conclusive opinion, but both the preference for persuasion over repression and for diversity over unanimity are reasons to oppose the veil and headscarf prohibitions. Although I think secularism recognizes a pro tanto reason to disincentive the use of scarves at schools it would be silly to impose a

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<sup>43</sup> *Against Employment Division vs. Smith*, 494 U.S. 872 (1990).

prohibition if it was likely to deepen the isolation of a religious minority, alienate children from public schools and cause more violence and anger. As put by Frederick Mark Gedicks:

Women, even well-educated women who have financial resources and who are fully informed of their rights and options, do not always freely choose the life of the model republican citizen, or any other life that might be promoted by the state. Liberty includes the right to choose for oneself what to make of oneself. For women and others who find meaning, identity, and purpose in culturally conservative religions, the insistence of the state that they assimilate to the secular, republican values of *laïcité* forces them to make the cruel choice between religious fidelity and national loyalty. Those who cannot or will not abandon the bonds of faith withdraw from public life and discourse into greater cultural isolation, resentful, angry, and isolated, and are thus at greater risk of becoming true enemies of the Republic. Indeed, the estrangement of so many Muslims from the public life of France is commonly cited as a principal cause of the 2005 Muslim riots in the Paris suburbs.<sup>44</sup>

The French conception of *laïcité* faces the danger of distorting the secularist view, transforming it into a communitarian defense of a particular culture against “alien” elements. A truly secular view should resist the temptation of becoming a new type of

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Frederick Mark Gedicks, “Religious Exemptions, Formal Neutrality, and Laïcité”, *Indiana Journal of Global Legal Studies*, Vol. 13, No. 2 (Summer 2006), pp. 473-492, at p. 492. For a critique of the prohibition of the burqa, see Martha Nussbaum, “Veiled Threats?” *NYT*, July 7, 2010, Available at <http://opinionator.blogs.nytimes.com/2010/07/11/veiled-threats/>, and her response to comments are available at <http://opinionator.blogs.nytimes.com/2010/07/15/beyond-the-veil-a-response/>

religion. If, following Joan Wallach Scott, US secularism protects religions from the state, and French *laïcité* protects people from religion,<sup>45</sup> new secularism serves both aims.

vi. A Brief Note on the American Model: what are the common grounds between the secular perspective advanced in the present paper and the relationship between the religion and the State as it is regulated in the US? Certainly, the very description of the American model depends on an interpretative task, as it will always be possible to say that this or that specific practice, regardless how accepted and culturally routed, does not actually belong in the model *according to its best interpretation*. For example, it would be difficult to question the American model from a secular point of view if one interpreted the former in the way Martha Nussbaum does in her extraordinary book *Liberty of Conscience*.<sup>46</sup> There, Nussbaum presents the First Amendment as the embodiment of the principle of equal religious liberty, forbidding any type of subordination of a religion to another (like the kind that is presupposed when the State prefers a religion over others). This attractive reconstruction of the constitutional bases of religious liberty and equality allows Nussbaum to reject some decisions of the Supreme Court, such as *Smith*, as alien to this tradition for not getting right the balance between the general duty to obey the Law and religious liberty, in detriment of the latter. However, there is at least one clashing point between the new secularism I am proposing and the American model, even in its best light (as interpreted by Nussbaum). Nussbaum takes as

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Joan Wallach Scott, *Politics of the Veil*, Princeton, 2007, p. 15: “Laïcité means the separation of church and state through the state’s protection of individuals from the claims of religion. (In the United States, in contrast, secularism connotes the protection of religions from interference by the state.)”

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Martha Nussbaum, *Liberty of Conscience*, New York, Basic Books, 2008.



a feature of the American system that the accommodation to conscientious objection is greater in the case of religious objectors than in those not involving religious reasons. She sustains this in spite of, first, her rejection of non-preferentialism (the - deceptively named - idea that the State must not discriminate among religions but should nevertheless promote and protect religiosity in general), and, second, her notion that the special status granted to religion in the Constitution is based on the recognition of the value of the human capability to look for a meaning in life, a capability she specially acknowledges to non believers too. How is this privilege to be defended without offending those who do not adhere to any particular religion?<sup>47</sup> In my opinion, it is not acceptable to limit the protection to religious objectors. This implies penalizing those who make an effort to present their arguments against the Law in a language that is understandable for all, as it is the case with people who object for ethical, not religious reasons.

Furthermore, there are many elements present in the American practice that would raise the eyebrow of any secularist. It is not obvious that these practices are *implied* by the American Law, but they are definitely tolerated and protected far beyond what an equality principle would recommend. To exemplify we can mention the existence of military ministries sustained by the taxpayers, the recurrent religious allusion in public officer's speeches that contribute to the marginalization of non believers and the almost total lack of control over the discriminatory actions of religious organization offering public services. In addition, there is vast anecdotal evidence supporting the stigmatization

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A second critical observation relates to her approach to atheism. In my opinion, Nussbaum makes an excessive focus on "disrespectful" atheism, without sufficiently addressing the valid criticism atheism raises on religiosity or the reasons that could explain or mitigate the charges of disrespect.

of atheists in the most conservative regions of the country. The State should take a more determined and active stance against this kind of actions.

**9. Constitutional Secularism.** So far I have sketched the ethical, moral, and political grounds for a secular project from an atheistic perspective. I believe this project may have a legitimate space in a constitutional democracy, allowing its advocates to influence legislation and public policy in a strongly secular direction. These policies, in other words, are not unconstitutional. But, could this type of secularism be incorporated to the Constitution?

There are two ways in which it could gain a place in a Constitution. The first one is through the political culture of a society. If secularism achieves a deep social acceptance, its principles could become embodied in the Constitution. The comparatively more ambitious argument favoring a State that is indifferent regarding religious matters is supported by the right to religious equality. Ultimately, it can be argued that any State that abandoned indifference would offend some of its citizens. This is the longer path, and because it depends on atheism becoming the predominant view, we should not expect a constitutional new secular State to emerge any time soon.

Human rights constitute the second (and shorter) path to a constitutional new secular state. If some of the interests protected by the secular political project are shown to be basic, special and important, then a case for new secularism based on human rights could be made. In other words, an ideal constitutional democracy should place new secularist restrictions on the state. The two main rights-based arguments for

constitutionalizing some new secular policies which I have in mind are connected with children rights, on one hand, and rights of women and sexual minorities, on the other.

Protection for children against religious practices (such as religious education or circumcision) in terms of human rights could rely, for example, in the Convention of the Rights of the Child.<sup>48</sup> The Convention shields every child against distinctions based on the child's or his/her parents' religion (Article 2.1); establishes (Article 3.1) that "in all actions concerning children" "the best interests of the child shall be a primary consideration" and that (Article 3.2) "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being." According to Article 12.1 "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." Article 14 provides that: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 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." Article 16 states that "1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy" and "2. The child has the right to the protection of the law against such interference or attacks." Inasmuch as some religious practices could be seen as

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<sup>48</sup> Argentinian Constitution, art.75.22.

threatening children's best interests, well-being, freedom of expression, or privacy, a decent constitutional democracy should be concerned with these practices.

Article 19 of the Convention provides that: "1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, ... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for ...other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement." Article 24 provides that: "1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health... 3... shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children". Inasmuch as some religious practices descend into violence, maltreatment or exploitation, the law should protect the child against such attacks. Accordingly, traditional religious practices that harm the health of children offend constitutional values and should eventually be abolished.

The rights of women and sexual minorities also provide a constitutional ground for secularism.<sup>49</sup> Religious institutions that uphold the subordination of women or denigrate gays and lesbians offend constitutional values and call for public policies that counteract those anti-egalitarian claims. Religious institutions organized in a way that exclude women from its higher echelons may be seen as violating constitutional

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<sup>49</sup> I follow here Lemaitre's article quoted above.

standards of equality.<sup>50</sup> Religious entities which call for a generalized disobedience of democratic norms, such as those granting sexual and reproductive rights, are threatening constitutional values and may be subject to official criticism and questioning. If and when religiosity means the prevalence of a discourse against the equality of women and/or sexual minorities, a constitutional democracy has every reason to pursue policies aiming at reducing the weight of religion in social life.

**10. Conclusions. The Celebration of Atheism.** I have sketched a secular view of the State. This perspective diverges from some of the most well-known models (the American, the French and 19th century Latin American anti-clericalism, for example). It is concerned with religious education for children and with the anti-women tone of much religious discourse. I have summarily discussed this approach with reference to five different domains. First, I considered the ethical case against religion. The ethical atheist advocates for non religious answers to the grand questions on the infinite, life and death, etc. Second, I referred to some of the moral problems that religion presents, such as its potential opaqueness to dialogue, the harms of some of its rituals and the discriminatory fashion of different religious institutions and practices. Third, I sketched some outlines for a new secular political philosophy based on the need to protect democracy from religion's dangerous aspects, but strongly committed to respect religious freedom and diversity as well. Fourth, I listed some of the main areas and types of secular intervention in the religious domain. The strongest case for a new secular treatment of religious

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See Cass Sunstein "Sex equality versus Religion" in *Designing Democracy*, Oxford, 2001, pp.209-19.

activities is provided by the interests of children, women and sexual minorities. Fifth, if these interests amounted to be considered fundamental rights, they would also provide grounds for a constitutional secularism. In other words, this version of secularism would not only be a plausible, admissible political option, but it would also be constitutionally required.

In order to be convincing, the political proposals drafted above should be sharable by any citizen, regardless her religious beliefs. Notwithstanding, its most passionate champions would still very likely be the atheists. That is why constitutional democracies should celebrate atheism. In a constitutional democracy, the atheistic point of view enriches our culture, raising an at the very least plausible critique of religiosity. This critique could be a reasonable counterweight to religious fanaticism, a menace that hardly seems a ghost invented by college professors. Our children have the right to listen to the atheistic perspective at the very moment when they are considered able to be exposed to religious teaching. Public officers need to think about the atheists' dignity before they make religious references in their speeches or fill State offices with religious imagery. Religious majorities have to understand that in a democracy no one holds a right to keep their beliefs uncontested. They should also abandon the idea that the only respectful atheist is the silent one. Atheistic opinions are disruptive, dissonant and can occasionally sound disrespectful. But if every group deserves accommodation, so do atheists. And to accommodate atheism implies including atheists in public conversations, not ostracizing them and listening to what they have to say.

Atheism could be celebrated by establishing an annual date (for example, February 15th, Galileo's birthday) to commemorate the victims of religious intolerance. It

would be an ecumenical holiday, as it would include also the memory of the religious victims. The novelty would be the inclusion of those persecuted for not practicing any religion.

I may be wrong, but I believe that reflecting on the risks of religiosity (as on those of any human activity or phenomenon) can do us no harm. This was my intention in this paper.