

SECULARISM WITHOUT LIBERALISM: RELIGIOUS FREEDOM AND SECULARISM IN A NON-LIBERAL STATE

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ABSTRACT

It is sometimes thought that non-liberal regimes are inimical to religious freedom, even if secular. This Article argues against this view. It holds that a non-liberal order that does not fully commit to state neutrality, but permits the regulation of and interference with religion, can nonetheless be protective of religious freedom if the secularism that it practices has the following four characteristics: (1) a rejection of political dominance by any one religious group; (2) citizenship should not be conditioned on a person's religious identity; (3) the recognition of an individual right to religious freedom, even if such a right is not regarded as fundamental; and (4) a commitment to protect religious freedom as part of the public good. One such important public good is the peaceful coexistence of religious groups. This Article, then, examines how a commitment to peaceful coexistence could provide some protection to religious freedom and employs Singapore as a key case study to draw out the potential and the limitations of such a secular but non-liberal approach.

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INTRODUCTION

Imagine this scenario: A religiously pluralistic society consisting of Christians, Muslims, Buddhists, Hindus, and others. The Muslims, by way of convention, use the loudspeaker for their muezzin calls at their mosques. Non-Muslim residents around the area tolerate it as part of society’s existing culture. A group of Christians decide that they too would like to broadcast their religious services, especially their hymns. There are perhaps more Christians than Muslims in that particular society; thus, broadcasting Christian hymns would benefit more people than the Muslims’ muezzin calls.¹

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How should a state manage such a request from the Christians to broadcast their religious services? Can it, and should it? Would granting the request to one group lead to requests from other groups, and consequently a competition among the different religious groups? If so, would that undermine social peace?

A liberal state's response is constrained by two foundational doctrines. First, the strictly liberal state cannot make choices that would amount to preferring one vision of the public good over another. Secondly, the liberal state protects the right to religious freedom as a matter of its commitment to the prioritization of individual autonomy.² In this regard, the liberal state is likely to respond to the conundrum posed above by enacting or referring to facially neutral laws, such as noise pollution restrictions, that would apply equally to all religious groups.³ Such a law could also be justified on the basis of non-coercion of individual choices. This could have the effect of preventing all religious groups, including the Muslims, from being able to broadcast their religious prayers. Whereas Muslims may have had the liberty to do so in the past, the enactment of facially neutral laws would restrict that liberty unless

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1. I sketched this from a real-life example that the Singapore government encountered in the 1960s when it became a newly independent state, although the request there was made by the Buddhists and not by the Christians.

2. Of course, liberalism is an internally diverse tradition and as Rawls notes, "there are many liberalisms," JOHN RAWLS, *POLITICAL LIBERALISM* 223 (1993), such that some have claimed that liberalism is an essentially contested concept. See Ruth Abbey, *Is Liberalism Now an Essentially Contested Concept?*, 27 *NEW POL. SCI.* 461, 462 (2005); Larry Alexander, *Liberalism, Religion, and the Unity of Epistemology*, 30 *SAN DIEGO L. REV.* 763, 765 (1993). Essentially contested concepts are defined as "concepts the proper use of which inevitably involves endless disputes about their proper uses on the part of their users." W. B. Gallie, *Essentially Contested Concepts*, 56 *PROC. ARISTOTELIAN SOC'Y* 167, 169 (1956). Here, I have merely identified two central tenets of liberalism that have been relevant for secularism.

3. See Udi Shaham, *Cabinet Advances 'Muezzin Bill'*, *JERUSALEM POST* (Feb. 12, 2017, 9:32 PM), <http://www.jpost.com/Israel-News/Cabinet-advances-muezzin-bill-481351> [<https://perma.cc/BJ69-E7VM>]. Such a law could be crafted in facially neutral terms, but have a clearly discriminatory impact. For example, see the discussion and revisions to the proposal in Israel to ban religious institutions from using outdoor loudspeakers at night on the basis that this is to prevent disrupting the sleep of the population. *Id.* Whether Israel could be considered a liberal state is a matter up for debate, but the purpose of referring to the discussion on this bill is to highlight the sometimes discriminatory impact of laws that are portrayed in 'secular' neutral terms. *Id.*

they can obtain an exemption on account of religious freedom. However, that is unlikely since the ability to broadcast is a group right rather than an individual right. Since the liberal state recognizes and protects religious freedom as part of individual autonomy, it tends to undervalue group rights.

But what happens to religious freedom in a secular but non-liberal state? This Article posits that a secular but non-liberal state could, in some circumstances, be in a better position to manage the expectations of different religious groups and produce settlements that are more acceptable to these groups. Furthermore, such a polity is able to provide a robust measure of protection for religious freedom, despite its non-liberal commitment. To be clear, by “non-liberal but secular,” I mean a state that does not claim to be religiously neutral and does not recognize and protect religious freedom as part of its prioritization of individual autonomy. I propose that two implications follow from this decoupling of secularism from liberalism. The first is that religious freedom is not recognized and protected as a matter of individual autonomy, which could mean greater recognition of the group aspects of religious profession and practice. Secondly, a non-liberal government has greater liberty to directly intervene in matters concerning religion and in regulating relationships among the different religious groups.

Moreover, by a secular state, I mean a state where political authority does not depend on religious legitimation or authority, and religious authority does not dominate political authority.⁴ This is a minimalist understanding of secularism and is compatible with many types of political systems, including communitarian, authoritarian, and socialist systems, all of which could fall within the category of “non-liberal.” I propose, however, that this basic conception of a secular state does not necessarily result in a positive protection of religious freedom. One could conceive of such a state where political authority is separated from religious authority as nonetheless not protecting religious freedom as a matter of neglect or, worse, as a result of perceiving religion as hostile to state ideology. Indeed, Professor Durham has argued that a negative identification between the state and religion correlate with low levels of individual religious

4. Several scholars adopt this minimalist understanding of the requirement of secularism. See, e.g., Tariq Modood, *State-Religion Connections and Multicultural Citizenship*, in RELIGION, SECULARISM & CONSTITUTIONAL DEMOCRACY 182, 183 (Jean L. Cohen & Cécile Laborde eds., 2016); Alfred C. Stepan, *Religion, Democracy, and the “Twin Tolerations”*, 11 J. DEMOCRACY 37, 39-40 (2000).

freedom.⁵ Identification here “refers to the degree and type of interrelation between the state, as the governmental expression of society, and the church, as the institutional manifestations of society’s religious expression.”⁶

This however does not mean that a secular but non-liberal state could not robustly protect religious freedom. It merely means that outside of liberal constraints, the content of secularism becomes even more crucial in imbuing constitutional law with the necessary conditions for protecting religious freedom. Here, I argue that, at a minimum, secularism in a non-liberal state needs commitment to four characteristics in order to protect religious freedom. First, the secular state must entail a rejection of permanent political dominance by any religion. Secondly, in such a secular state, citizenship should not be conditioned on a person’s religious identity. Thirdly, such a secular state must recognize the availability of an individual right to religious freedom, even if such a right may not be prioritized as a fundamental right. Lastly, religious freedom must be protected as a function of the public good. One such example of the public good that this Article will discuss is social peace, or more specifically, the peaceful coexistence of diverse religious groups.

As I will explain below, these characteristics are necessary but not sufficient conditions for a secular state to be conducive for the protection of the right to religious freedom. Furthermore, there are limits to this; since protection of religious freedom is an instrumental and not an intrinsic value, restrictions are viewed as legitimate when the exercise of certain religious beliefs and/or practices may undermine peaceful coexistence. Nonetheless, this contribution to the special issue serves to interrogate the relationship between liberalism and secularism. This Article argues that the question, whether secularism is a non-negotiable part of liberalism, is an important and legitimate one, it is sometimes the wrong question to ask in jurisdictions that lack a commitment to liberalism. Instead, this contribution argues that secularism can perform a crucial function in constraining state power even under non-liberal conditions.

5. W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 1, 15, 18 (Johan D. van der Vyver & John Witte, Jr. eds., 1996). According to Durham, other than negative identification, positive identification also correlates with low levels of religious freedom. *Id.*

6. George R. Ryskamp, Comment, *The Spanish Experience in Church-State Relations: A Comparative Study of the Interrelationship Between Church-State Identification and Religious Liberty*, 1980 BYU L. REV. 616, 617 (1980).

Consequently, insofar as the theme of this special issue is aimed at determining the value and importance of secularism, this Article proposes that secularism remains an important concept in constitutionalism.

This Article thus examines the potential and the limits of secularism outside the constraints of liberalism to protect religious freedom. In Part I, I discuss briefly the concepts of secularism, liberalism, and religious freedom, and the relationship among them. Part II sketches out my minimalist conception of secularism that could provide the necessary, though not necessarily sufficient, conditions for the protection of religious freedom in non-liberal regimes. In Part III, I examine the experience of Singapore to show how the presence of this minimalist secularism has led to fairly high levels of religious freedom. This case study shows the limitations of this non-liberal secular approach in ensuring robust protection of religious freedom.

I. SECULARISM IN A NON-LIBERAL STATE

There are many varieties of non-liberal constitutions, ranging from anti-liberal constitutions to constitutions that are ambivalent about liberalism to constitutions that are semi-liberal. Historically, this variety could also refer to pre-liberal constitutions.⁷ As Graham Walker points out, the alternatives to liberalism are “varied and competing,” since they are united as a category only by their negation of the principal liberal affirmations prioritizing individual rights and endorsing state neutrality.⁸ Consequently, non-liberal states privilege a substantive vision of the public good, and this could be based on ethnicity, religion, or communal morality.⁹

Furthermore, there are many understandings of secularism.¹⁰ The word “secular” has its etymology in Latin where *saeculum* refers

7. In her discussion about illiberal polities, Professor Thio uses the term illiberal in a more generic fashion, positing that illiberal polities could encompass illiberal, pre-liberal, non-liberal, or semi-liberal societies. Thio Li-ann, *Constitutionalism in Illiberal Polities*, in THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 133, 134 (Michel Rosenfeld & András Sajó eds., 2012).

8. Graham Walker, *The New Mixed Constitution: A Response to Liberal Debility & Constitutional Deadlock in Eastern Europe*, 26 POLITY 503, 506 (1994).

9. Graham Walker, *The Mixed Constitution After Liberalism*, 4 CARDOZO J. INT'L & COMP. L. 311, 315, 319 (1996).

10. See, e.g., Rajeev Bhargava, *Multiple Secularisms and Multiple Secular States*, in CONTESTING SECULARISM: COMPARATIVE PERSPECTIVES 17, 17 (Anders Berg-Sørensen ed., 2013); Veit Bader, *Constitutionalizing Secularism, Alternative*

to “age,” “century,” or “profane time, [i.e.] the time of ordinary historical succession,” which is in contradistinction to higher times or eternity, defined as “the time of the Ideas, or of the Origin, or of God.”¹¹ “The notion was used in contrast not to religion but to eternity.”¹² While much has been done to distinguish secularism from closely related concepts like the secular,¹³ secularity,¹⁴ and secularization,¹⁵ I do not attempt to do so here, although, I acknowledge the importance of this discussion. Instead, for the purposes of this Article, I find useful Professor Adhar’s conceptualization of secularism as denoting a political philosophy that “denies the existence or relevance of a transcendental or divine dimension to public affairs,”¹⁶ while acknowledging that there can be other conceptualizations which merely deny religion’s

Secularisms or Liberal-Democratic Constitutionalism?: A Critical Reading of Some Turkish, ECtHR and Indian Supreme Court Cases on ‘Secularism’, 6 UTRECHT L. REV. 8, 9 (2010) (calling secularism a “very complex,” “polysemic,” “essentially contested concept,” even “fuzzy,” “chameleonic,” “highly misleading,” or “cacophonous”).

11. Charles Taylor, *Modes of Secularism, in* SECULARISM AND ITS CRITICS 31, 31-32 (Rajeev Bhargava ed., 1998).

12. Rex J. Ahdar, *Is Secularism Neutral?*, 26 RATIO JURIS 404, 405 (2013). Furthermore, note Professor Asad’s powerful critique that the secular cannot be understood apart from religion, nor can it be seen as a successor to religion. TALAL ASAD, FORMATIONS OF THE SECULAR: CHRISTIANITY, ISLAM, MODERNITY 2 (2003).

13. See, e.g., José Casanova, *The Secular and Secularisms*, 76 SOC. RES. 1049, 1049 (2009) (explaining that the author sees “secular” as a central modern epistemic category and “secularism” as a worldview).

14. See CHARLES TAYLOR, A SECULAR AGE 2-3 (2007). Professor Taylor refers to “secularity” as the condition of being secular. *Id.* He further identifies three senses of secularity: first, the separation of religion from common political institutions and practices; secondly, the decline of religious belief and practice in society; and lastly, the change in the conditions of belief from one where belief in God is unchallenged to one where it is understood to be one option among others. *Id.* at 1-3. This last sense of secularity is Taylor’s key insight to this area of scholarship. *Id.* at 3. Furthermore, Professor Brett G. Scharffs uses the terms “secularity” and “secularism” as respectively referring to an approach to state-religion relations and “an ideological position that is committed to promoting a secular order.” Brett G. Scharffs, *Four Views of the Citadel: The Consequential Distinction Between Secularity and Secularism*, 6 RELIGION & HUM. RTS. 109, 110-11 (2011).

15. See JOSÉ CASANOVA, PUBLIC RELIGIONS IN THE MODERN WORLD 7 (1994). Professor Casanova uses “secularization” to refer to an analytical conceptualization of modern world historical processes, which he defines as entailing at least three propositions: the decline of belief, the differentiation of public and private spheres (with religion being assigned to the latter), and the marginalization of religion. *Id.*

16. Ahdar, *supra* note 12, at 408.

predominance.¹⁷ This basic understanding of secularism allows for a range of political and institutional arrangements. This contrasts with an alternative understanding of secularism as requiring state neutrality¹⁸ with regard to religion, which I argue stems from a liberal underpinning that is not often carefully delineated from secularism.¹⁹

Consequently, one should be able to conceptualize secularism apart from liberalism and identify a form of secularism that could operate within non-liberal conditions. There is nothing inherent within secularism that entails liberal ideas or religious freedom, especially religious freedom understood as individual autonomy. Indeed, secularism's significance could be magnified in the non-liberal context since it becomes a basis for rejecting religious hegemony in the political system and for recognizing religious freedom. Thus, a non-liberal state could privilege a substantive vision of the good based on religion, but a commitment to secularism would serve to guard against the state becoming fully theocratic, which would usually entail a rejection of an individual right to profess and practice one's religion.²⁰

The importance of secularism is manifold. For instance, Professor Bhargava argues that the point of political secularism in a constitutional democracy is to ensure that the social and political order is free of *institutionalized religious domination, hegemony,*

17. I am grateful to Arif Jamal specifically for this point.

18. This emphasis on neutrality is associated with the liberal ideal of the neutral state as prioritizing the right over the good. *See, e.g.*, BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 10-12 (1980); Ronald Dworkin, *Liberalism*, in PUBLIC AND PRIVATE MORALITY 113, 113 (Stuart Hampshire ed., 1978); Peter Jones, *The Ideal of the Neutral State*, in LIBERAL NEUTRALITY 9, 9 (Robert E. Goodin & Andrew Reeve eds., 1989); Michael J. Sandel, *Freedom of Conscience or Freedom of Choice?*, in ARTICLES OF FAITH, ARTICLES OF PEACE 74, 75 (James Davison Hunter & Os Guinness eds., 1990). Neutrality has been seriously contested and can refer to a great range of different ideas, although many scholars still defend it. *See, e.g.*, Bruce Ackerman, *Neuralities*, in LIBERALISM AND THE GOOD 29, 29 (R. Bruce Douglass, Gerald M. Mara & Henry S. Richardson eds., 1990); Gerald F. Gaus, *Liberal Neutrality: A Compelling and Radical Principle*, in PERFECTIONISM AND NEUTRALITY 137, 160-61 (Steven Wall & George Klosko eds., 2003).

19. The failure to identify liberal assumptions is not unique to discussions on secularism. As Professor Walker argues, this failure often carries over to discussions about constitutionalism, such as where it is said that the protection of fundamental rights is a distinct feature of constitutionalism. Graham Walker, *The Idea of Nonliberal Constitutionalism*, in ETHNICITY AND GROUP RIGHTS 154, 169 (Ian Shapiro & Will Kymlicka eds., 1997).

20. One could even see this as the result of mixed constitutionalism at work, whereby liberal and non-liberal principles moderate the absolutism of either side. Walker, *supra* note 9.

tyranny, oppression, religious-based exclusions, and violations of equal citizenship.²¹ One could further distill one very important idea often associated with the aim of secularism, which is the protection of religious freedom. Religious freedom has also come to encompass a wide range of ideas and practices, though the freedom to choose, to worship, and to practice one's religion is part of its normative core.²² While religious freedom in liberal states is justified on the basis of a commitment to personal autonomy,²³ religious freedom in a non-liberal state needs a different account than in a liberal state.²⁴ In the liberal state, the right to freedom of religion is valued for "its importance to the human condition" and not because of any "utility to social organization."²⁵ The dominant settlement in the liberal state, therefore, is one built upon a public-private divide where religion becomes privatized as a guarantee for religious liberty.²⁶ This arrangement is consistent with the liberal state's claim for neutrality.

21. Rajeev Bhargava, *Is European Secularism Secular Enough?*, in RELIGION, SECULARISM & CONSTITUTIONAL DEMOCRACY, *supra* note 4, at 157, 158-59 (emphasis added).

22. Lindholm identifies eight components to the normative core of religious freedom, as elicited from existing international human rights instruments. Tore Lindholm, *Freedom of Religion or Belief from a Human Rights Perspective*, in FREEDOM OF BELIEF AND CHRISTIAN MISSION 3, 9-10 (Hans Aage Gravaas et al. eds., 2015); see also FACILITATING FREEDOM OF RELIGION OR BELIEF xxxvii-ix (Tore Lindholm et al. eds., 2004).

23. REX AHDAR & IAN LEIGH, RELIGIOUS FREEDOM IN THE LIBERAL STATE 76 (2d ed. 2013).

24. Furthermore, Professor Brownstein describes the free exercise of religion as a "right of self-determination and fulfillment," and as a "dignitary right," which is "part of that basic *autonomy* of identity and self-creation which we preserve from state manipulation." Alan E. Brownstein, *Harmonizing the Heavenly and Earthly Spheres: The Fragmentation and Synthesis of Religion, Equality, and Speech in the Constitution*, 51 OHIO ST. L.J. 89, 95 (1990) (emphasis added). One important critique of this understanding of religious freedom is that it takes away the special character of religion under the law since it is simply one of the choices that one can make in exercising one's individual autonomy. Michael J. Sandel, *Religious Liberty—Freedom of Conscience or Freedom of Choice?*, 1989 UTAH L. REV. 597, 608 (1989).

25. See Brownstein, *supra* note 24, at 95.

26. RICHARD RORTY, PHILOSOPHY AND SOCIAL HOPE 170-71 (1999). But Professor Fish criticizes the liberal principle of religious freedom for prioritizing individualistic choices, privatization of religion, and appealing only to "squeamish" religions. See Stanley Fish, *Mission Impossible: Settling the Just Bounds Between Church and State*, 97 COLUM. L. REV. 2255, 2272, 2280 (1997). Fish borrows the term "squeamish" religions from Jeremy Waldron, *Locke: Toleration and the Rationality of Persecution*, in JUSTIFYING TOLERATION 61, 63 (Susan Mendus ed., 1988).

In a non-liberal state, the political settlement is not premised on this public-private divide or on a strong claim of neutrality. It would, however, be a mistake to think that a non-liberal state cannot provide high levels of protection for religious freedom. In the non-liberal state, religious freedom needs to be justified on different grounds, but the form of secularism it practices could provide the necessary conditions for a high level of protection. In this regard, I posit four characteristics that secularism in a non-liberal state must have to protect religious freedom.

II. RELIGIOUS FREEDOM IN A SECULAR BUT NON-LIBERAL STATE: FOUR NECESSARY CHARACTERISTICS

A. First Characteristic: Rejection of Political Dominance by Any Religion

The first characteristic is that the secular principle(s) adopted must entail the rejection of permanent political dominance by any religion. While this may appear to be self-evident from the fact of secularism itself, that is not the case. Some have suggested that secularism is compatible with the dominance of one religion over others, even in claimed liberal regimes.²⁷ For instance, it is argued that countries with a state church, like England, Sweden, and previously Norway, are nonetheless secular because these are “vestigial and largely symbolic”²⁸ arrangements. Indeed, it has been argued that such “mild” state entanglement in religious matters does not breach the liberal requirements of neutrality provided it is non-coercive.²⁹ I will here attempt to identify what secularism requires in relation to political power and it is this: the *rejection of permanent and effective* (as opposed to formal) *political dominance*, which I define as a monopoly on political power.³⁰ To be clear, this does not mean that other forms of dominance are not important. Dominance can be defined in political,³¹ social,³² demographic, cultural,³³

27. Charles Taylor, *The Meaning of Secularism*, 12 HEDGEHOG REV. 23, 25 (2010). Taylor talks about a secular regime involving some kind of separation of church and state where “[t]he state can’t be officially linked to some religious confession, except in a vestigial and largely symbolic sense.” *Id.* at 23.

28. *Id.* at 23.

29. AHDAR & LEIGH, *supra* note 23, at 61.

30. See, e.g., Richard Posner, *Theories of Economic Regulation*, 5 BELL J. ECON. & MGMT. SCI. 335, 335-36 (1974).

31. See, e.g., PHILIP PETTIT, *REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT* (1997) (discussing political liberty as non-domination).

symbolic,³⁴ and economic³⁵ terms. Moreover, other forms of dominance can be crucial factors in maintaining political dominance.³⁶

Consequently, if a constitutional system restricts or gives priority regarding political representation or participation only to persons from particular religious background(s), that constitutes permanent and effective (as well as formal) political dominance, as it gives one religious group a monopoly on political power. In other words, if the constitution stipulates that only persons who are from religion Z can be the prime minister or president, and/or if only persons from religion Z can vote, then this would not comply with even the first characteristic of this minimal secularism. Admittedly, most constitutional systems are not so stark in restricting political representation and participation to a particular religious group. Furthermore, even if certain positions are reserved for certain religious groups, this does not *ipso facto* result in permanent political dominance if other important political positions are open to persons from other backgrounds. Thus, a consociational democracy,³⁷ like in

32. See, e.g., FRANK LOVETT, *A GENERAL THEORY OF DOMINATION AND JUSTICE* (2010) (discussing domination as a condition experienced due to dependence on a social relationship).

33. For example, Tomlinson uses “cultural imperialism” to refer to the “exercise of domination in cultural relationships in which the values, practices, and meanings of a powerful foreign culture are imposed upon one or more native cultures.” John Tomlinson, *Cultural Imperialism*, in *THE WILEY-BLACKWELL ENCYCLOPEDIA OF GLOBALIZATION* (2012).

34. See, for example, Anthony Smith’s work on “dominant ethnic” as providing legitimating myths, symbols, and conceptions of territory. ANTHONY D. SMITH, *THE ETHNIC ORIGINS OF NATIONS* 138-41 (1986); see also Eric P. Kaufmann, *Dominant Ethnic*, in *THE COMPANION GUIDE TO NATIONALISM* 12-13 (2000).

35. For instance, Subramanian has created an index of economic dominance based on a combination of each country’s share of world GDP, trade, and foreign investment. ARVIND SUBRAMANIAN, *ECLIPSE: LIVING IN THE SHADOW OF CHINA’S ECONOMIC DOMINANCE* (2011).

36. For instance, minorities can gain dominance through economic power. See AMY CHUA, *WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY* (2003); see also R. A. SCHERMERHORN, *COMPARATIVE ETHNIC RELATIONS: A FRAMEWORK FOR THEORY AND RESEARCH* (1970), discussing the concept of an “elite minority” and Ashley Doane using politico-economic hegemony as the measure of dominant ethnicity. Ashley W. Doane, Jr., *Dominant Group Ethnic Identity in the United States: The Role of “Hidden” Ethnicity in Intergroup Relations*, 38 *SOCIOLOGICAL Q.* 375 (1997).

37. Consociationalism is a form of democracy that institutionalizes power-sharing in a state comprising diverse groups. According to Lijphart’s classic theory, it is defined by four characteristics:

Lebanon, where different positions are reserved for persons from different religious backgrounds³⁸ would not result in permanent political dominance, since different religious groups are represented in different positions of power in government. As such, such a consociational system would still comply with this requirement of secularism.

The key motivation behind the first requirement is that the constitutional system should not permanently exclude religious groups that are most likely to be in the minority from the possibility of obtaining political power. This, however, is a minimal requirement as the demographics and economic power that some groups have could lead to them having a continuous hold over political power. Nonetheless, so long as the political philosophy conceptualizes political power as not being permanently tied to one particular religious group, this would likely comply with the proposed non-dominance requirement of minimal secularism.

B. Second Characteristic: Citizenship Not Conditioned by Religious Identity

The second requirement of minimalist secularism is that citizenship should not be conditioned on religious identity. There should be no discrimination on religious grounds for anyone to become citizen of a state. There may be other grounds for excluding a person from becoming a citizen, such as residency, birth, or descent, but these grounds should have no relation with a person's religious identity.³⁹ Citizenship is an important status in that it gives

[(1) G]overnment by a grand coalition of the political leaders of all significant segments of the plural society . . . [(2) mutual veto or "concurrent majority" rule, . . . [(3) proportionality as the principal standard of political representation, civil service appointments, and allocation of public funds, and [(4) a high degree of autonomy for each segment to run its own internal affairs.

ARENDE LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION* 25 (1977).

38. In Lebanon, "The consociational system allocated the presidency to a Christian Maronite, the premiership to a Muslim Sunni, and the Speakership to a Muslim Shi'ite." Imad Salamey, *Failing Consociationalism in Lebanon and Integrative Options*, 14 INT'L J. PEACE STUD. 83, 83-85 (2009). In addition, public offices and elected seats of the National Assembly are apportioned according to religious/sectarian affiliations. See discussion on Lebanon's consociational system and critique that it is conducive to conflict and national fragmentation. *Id.*

39. Of course, there are other issues with regard to allocating citizenship on the basis of birth or descent, which could be considered arbitrary criteria: "One is

persons membership in a political community and with it certain rights and privileges.⁴⁰ Familiar elements associated with citizenship include “equal legal status, rights and obligations, political voice and participation, the freedom to enter and exit one’s home country, and the less tangible notions of identity, belonging, and a sense of home.”⁴¹ This requirement does not rise to the liberal ideal that the state should treat its citizens with equal concern and respect.⁴² In a liberal context, equal respect would mean that citizens are to be treated according to how they wish to be treated and not according to a particular conception of the good life.⁴³ Admittedly, this basic form of equality in citizenship does not fully address potential conflicts between religious freedom and equality, such as where religious groups defend discriminatory practices against women, homosexuals, or unorthodox groups. Furthermore, religious identity may still play a part in allocating citizenship where religious groups, particularly oppressed minorities, are not recognized as citizens in the first place and therefore are not able to pass down citizenship to their children by descent. In this regard, *jus sanguinis* could operate in more discriminatory fashion than *jus soli*. Religious identity could also play a part in allocating citizenship through naturalization, which is the only legal method for acquiring citizenship other than through birthright (i.e., *jus soli* and *jus sanguinis*).⁴⁴

The rise of citizenship tests in recent times, which congregate around substantive requirements showing commitment to “shared values,”⁴⁵ including knowledge of the new country’s language, political system, and forms of government, have not been limited to non-liberal entities. Some citizenship tests examine an applicant’s personal beliefs and moral judgments, and these may include their views on “gender equality, religion, conversion, politics, marital relations, promiscuity, and culture.”⁴⁶ Thus, while there is no religious test strictly speaking since citizenship tests do not

based on the accident of birth within particular geographical borders while the other is based on the sheer luck of descent.” See AYELET SHACHAR, *THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY* 7 (2009).

40. Ayelet Shachar, *Citizenship*, in *THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW*, *supra* note 7, at 1002-03.

41. *Id.* at 1004-05.

42. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 272-73 (1977).

43. RONALD DWORKIN, *A MATTER OF PRINCIPLE* 191 (1985).

44. See Shachar, *supra* note 40, at 1012.

45. *Id.* at 1013.

46. Liav Orgad, *Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe*, 58 *AM. J. COMP. L.* 53, 67 (2010).

automatically qualify persons from some religious backgrounds and disqualify others from other religious backgrounds, requirements that the applicants' personal beliefs be compatible with the new country's national culture may amount to indirect discrimination against some religious groups. For instance, one could see the religious factor in play in the well-publicized case of burqa-wearing Faiza Silmi who was denied French citizenship despite being married to a French citizen, mothering three French children, and speaking French. The *le Conseil d'Etat* (France's highest administrative court) rejected her appeal, ruling that Silmi observes a "radical religious practice" that was not compatible with the "values essential to the French *communauté*, notably the principle of gender equality."⁴⁷ This case took place in France and suggests that the liberal prioritization of individual autonomy may sometimes result in denying persons the right to religious freedom.

A non-liberal entity, on the other hand, may not see a rejection of citizenship on the basis of insufficient assimilation arising from one's religious convictions as necessarily problematic. However, the secularism that it subscribes to should entail a minimal commitment not to limit access to citizenship on explicit grounds of religion.⁴⁸ This is important because this will ensure that the non-liberal entity will remain or will become religiously pluralistic. If citizenship is available only to persons from specific religion, there is a likelihood that citizenship may be allocated so as to artificially preserve religious homogeneity, and thereby religious hegemony.⁴⁹ A secularism that encompasses this second principled commitment ensures that religious minorities are not permanently excluded from membership in the polity and, therefore, ensures the possibility and continuation of religious plurality.

47. *See id.* at 64.

48. For example, the Constitution of Maldives restricts citizenship to Muslims. Section 9(d) states that a non-Muslim may not become a citizen of Maldives. *See* Dheena Hussain, *Functional Translation of the Constitution of the Republic of Maldives 2008*, <http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf> [perma.cc/7SHC-AHV9].

49. Religious homogeneity is, of course, often a social myth as differences in opinion and practice will exist even within a seemingly religiously homogenous society.

C. Third Characteristic: Recognizing an Individual Right to Religious Freedom

The third characteristic is that the state must recognize an individual right to religious freedom. A state that does not even recognize that individuals have a right to religious freedom cannot in any sense of the word protect religious freedom.

There are many stages in the evolution of religious freedom protection and a key historical event affecting this evolution is the resolution of religious wars in Europe in the sixteenth and seventeenth centuries.⁵⁰ The 1555 Peace of Augsburg established the right of rulers to determine the religion of his realm under the principle of *cuius regio eius religio* (“whose realm—his religion”).⁵¹ This was later extended in the Peace of Westphalia, which established that persons could practice, in private, religions that are not the established religion of their countries of residence. It made it possible for individuals to privately confess and practice a religion that is not the established religion of the king or prince.⁵² Article XXVIII states:

[A]ll others of the said Confession of Augsburg, who shall demand it, shall have the free Exercise of their Religion, as well in publick Churches at the appointed Hours, as in private in their own Houses, or in others chosen for this purpose by their Ministers, or by those of their Neighbours, preaching the Word of God.⁵³

The scope of this freedom was, in reality, rather narrow. In practice, it only extended to the freedom of Protestants to exercise their religion freely in Catholic states and vice versa. Notably, this being a treaty signed between states, the concession to individual freedom was made as an inter-state commitment, rather than one providing direct rights to the individual. Indeed, the individual only obtained rights independent of states after the rise of human rights, which sought to pierce the veil of state sovereignty in favor of the

50. W. COLE DURHAM, JR. & BRETT G. SCHARFFS, *LAW AND RELIGION: NATIONAL, INTERNATIONAL, AND COMPARATIVE PERSPECTIVES* 78 (2010).

51. While broadly stated, the scope in practice is rather narrow; it meant that the princes within the Holy Roman Empire would have the right to choose Lutheran Protestantism as the sole religion of his principality. See HAROLD J. BERMAN, *LAW AND REVOLUTION*, II 50-51 (2003).

52. See DURHAM & SCHARFFS, *supra* note 50, at 78.

53. See Treaty of Westphalia art. XXVIII, Oct. 24, 1648, AVALON PROJECT: YALE L. SCH., http://avalon.law.yale.edu/17th_century/westphal.asp [<https://perma.cc/5ZMP-HLJS>] (last visited May 1, 2017).

protection of individuals directly by the world community.⁵⁴ Nonetheless, what secularism in a non-liberal state requires is this basic recognition that a person's religious affiliation is not dictated by the state and that there is a right to self-identify with a religion.⁵⁵

D. Fourth Characteristic: Religious Freedom as a Public Good

Whereas religious freedom or free exercise of religion is protected in the liberal state as part of the basic autonomy of the individual, religious freedom in a non-liberal state is justified on different grounds and thus may entail different features. Professors Sajó and Uitz suggest that “outside of liberal constitutionalism, freedom of religion [is] a matter of group protection in the form of group rights.”⁵⁶ If this is a claim that non-liberal constitutions do not recognize an individual right to religious freedom, this may be putting the case a little too far. While a non-liberal constitution may value individual rights less than liberal constitutions, it does not necessarily reject the possibility of individual rights. Under such a constitution, individual rights are more likely to be viewed as being embedded within a community. Therefore, this requires greater attention to the balancing of individual rights against the rights of the group in light of broader social considerations. Under a non-liberal constitution, rights are not viewed as fundamental or trumps over group or public interests, and thus some may not view them as rights, strictly speaking.⁵⁷ But the fact that “rights” could be considered important factors to be weighed against group/public interests should be taken into account in valuing their relevance and significance. Nonetheless, insofar as religious freedom is justified on the basis of its value to broader community interests, this is a plausible and likely argument within non-liberal entities.

One important justification for religious freedom on non-liberal grounds is the need for peaceful coexistence of different religious

54. DURHAM & SCHARFFS, *supra* note 50, at 79.

55. One critique for which I am grateful is the interrelationship and overlap among at least the first three characteristics. Specifically, one might see the second and/or third characteristics as manifestations of non-domination, rather than separate characteristics. I take this critique seriously and will endeavor to provide greater conceptual clarity in my next article developing this idea of secularism.

56. András Sajó & Renáta Uitz, *Freedom of Religion*, THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW, *supra* note 7, at 909, 911.

57. Dworkin, of course, is famous for conceptualizing rights as “trumps.” See DWORKIN, *supra* note 42, at 272.

groups under conditions of religious plurality. Protecting religious freedom would promote peaceful coexistence because when religious individuals and groups have relatively high levels of autonomy to profess and practice their religion, they are less likely to be dissatisfied and will find it in their interest to preserve social peace. This understanding of religious freedom gives religion a contingent value, since religion is valued as part of a common good. This is non-liberal since freedom of religion is not valued for its “importance to the human condition” but because of its “utility to social organization.”⁵⁸

E. Limitations

There are limits to peaceful coexistence as a basis for religious freedom since it is a pragmatic⁵⁹ form of toleration. Here, I identify two of them. Firstly, protecting religious freedom as a function of ensuring peaceful coexistence gives religious freedom instrumental, rather than intrinsic, value, and this means that protecting religious beliefs and practice are not valued for its own sake. The non-liberal state is therefore more likely to regulate religion where such regulations are deemed necessary or conducive for peaceful coexistence.

There are two areas of religious activity that are most likely to be subject to such regulation: first, offensive speech directed at other religious groups; and second, aggressive proselytization. On the first, offensive speech could include speech that directly undermines the religious tenets of another group or that directly attacks another religious group. The latter would be considered hate speech in some jurisdictions. On the second, aggressive proselytization could be regarded as inimical to peaceful coexistence because groups may feel threatened and see such activities as deliberate incursions undermining their religious community.

Secondly, protecting religious freedom in service of the public interest in peaceful coexistence means that religious freedom is subordinated to broader public interests, especially public order. Consequently, critics argue that religious persecution is not incompatible with and may serve the preservation of peace.⁶⁰

58. Brownstein, *supra* note 24, at 95.

59. See Sajó & Uitz, *supra* note 56, at 913.

60. See Waldron, *supra* note 26, at 61; see also Sajó & Uitz, *supra* note 56, at 913-14.

However, I argue that religious persecution represents a form of social disorder and would, in any case, not constitute peaceful coexistence.

III. THE CASE STUDY OF SINGAPORE

To tease out the implications of the above argument, I will now examine the experience of Singapore as an example of a country that complies with the three requirements and which conceptualizes religious freedom as necessary for peaceful coexistence of different religious groups. The purpose of discussing Singapore is also to illustrate some of the limitations of this non-liberal approach in protecting religious freedom.

A. Social and Constitutional Background on State and Religion in Singapore

Singapore is a non-liberal constitutional order that proclaims to be secular but whose Constitution permits state entanglement with religion. A Pew Research Report ranked Singapore as the most religiously diverse country of the 232 countries studied.⁶¹ Singapore's high score reflects the spread of various religions across its population. About a third of Singapore's population is Buddhist (34%), while 18% is Christian, 16% is religiously unaffiliated, 14% is Muslim, 5% is Hindu, less than 1% is Jewish, with the remainder belonging to folk or traditional religions (2%) or to other religions (making up 10% as a group).⁶² There is widespread assumption, reflected in state policy, that there is a strong correlation between

61. See *Global Religious Diversity: Half of the Most Religiously Diverse Countries Are in Asia-Pacific Region*, PEW RES. CTR. (Apr. 4, 2014), <http://www.pewforum.org/2014/04/04/global-religious-diversity/#fn-20155-2> [<https://perma.cc/R5ET-W2FF>]. The study scores countries per the percentage of each country's population that belongs to the eight major religious groups as of 2010. The closer a country comes to having equal shares of the eight groups, the higher its religious diversity score. See *id.*

62. See *id.* This tracks closely, though not identically, with the breakdown in the 2010 Population Census, which records the following statistics: Buddhism (33.3%), Christianity (18.3%), no religion (17.0%), Islam (14.7%), Taoism (10.9%), Hinduism (5.1%), and other religions (0.7%). See *Census of Population 2010 Statistical Release 1: Demographic Characteristics, Education, Language and Religion*, SING. DEP'T STAT. (2010), http://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/cop2010/census_2010_release1/findings.pdf [<https://perma.cc/NZ3D-K944>].

race and religion. However, while nearly all among the ethnic minority Malays are Muslims, the other ethnic groups are, in fact, more religiously diverse. For instance, in its most recent International Religious Freedom Report, the U.S. government estimates that 74.2% of Singapore's population is ethnic Chinese, 13.3% ethnic Malay, 9.2% ethnic Indian, and 3.3% other, including Eurasians.⁶³ However, among the ethnic Indians, 59% are Hindu, 22% are Muslim, and 13% are Christian.⁶⁴ The ethnic Chinese population includes Buddhists (43%), Taoists (14.4%), and Christians (20.1%).⁶⁵

Despite apparently liberal roots in its constitutional design,⁶⁶ Singapore has never sought to present itself as a liberal democracy in practice. In fact, it expressly adopts a national ideology that subordinates individual autonomy to community and social goods. For instance, one of the five governments initiated Shared Values, which serves as a national ideology and states the following: "Nation before community and society above self."⁶⁷ It has been variously described as authoritarian,⁶⁸ "fundamentally undemocratic,"⁶⁹ and

63. See *International Religious Freedom Report for 2015: Singapore*, U.S. DEP'T OF STATE, <https://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper> [<https://perma.cc/DU4T-6YJZ>] (last visited May 1, 2017).

64. See *id.*

65. See *id.*

66. For instance, the Singapore Constitution contains a bill of rights (Part IV, Fundamental Liberties) that traces its genealogical roots to the American Constitution. It was "derived, with modifications, from Part II of the Federal Constitution of Malaysia (1957)," which in turn was based on the Indian Constitution that was heavily influenced by the American Constitution. See Thio Li-ann, *A Bill of Rights Without a "Rights Culture"? Fundamental Liberties and Constitutional Adjudication in Singapore*, in *COMPARATIVE CONSTITUTIONAL LAW: Festschrift in Honour of Professor P.K. Tripathi* 303, 308 (Mahendra P. Singh ed., 2d ed. 2006); see also Anthony Lester QC, *The Overseas Trade in the American Bill of Rights*, 88 COLUM. L. REV. 537, 544 (1988).

67. Singapore adopted a statement of five Shared Values in 1991. The other four Shared Values are 1) family as a basic unit of society; 2) community support and respect for the individual; 3) consensus, not conflict; and 4) racial and religious harmony. See Tin Seng Lim, *Shared Values*, NAT'L LIBR. BOARD, http://eresources.nlb.gov.sg/infopedia/articles/SIP_542_2004-12-18.html [<https://perma.cc/25YQ-TE3U>].

68. See STEVEN LEVITSKY & LUCAN A. WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR* 34 (2010).

69. Sebastian Reyes, *Singapore's Stubborn Authoritarianism*, HARV. POL. REV. (Sept. 29, 2015, 11:09 AM), <http://harvardpolitics.com/world/singapore-s-stubborn-authoritarianism/> [<https://perma.cc/8RLP-3CJV>].

more recently “competitively authoritarian[.]”⁷⁰ In 2015, it ranked 74th on the Democracy Index, categorized as a flawed democracy.⁷¹ Indeed, most recently, Mark Tushnet studied Singapore as a prime case study of “authoritarian constitutionalism,” which he describes as a regime where “liberal freedoms are protected at an intermediate level, and elections are reasonably free and fair.”⁷²

While it does not claim to be liberal, Singapore does self-identify as a secular state, even though the Constitution does not contain any explicit statements to this effect.⁷³ The state often proclaims that it practices “neutrality” under the terms of its secularism.⁷⁴ However, Singapore is not neutral, strictly speaking. While it does not take any truth-position with regard to religion, it nonetheless regulates religion and expresses preferences for particular theological positions (see below). Singapore’s highest court, the Court of Appeal, affirmed in 1994 that Singapore’s Constitution does not prohibit the establishment of religion, and thus, the government could validly regulate religion.⁷⁵ Furthermore, the Constitution, at Article 152(1), asserts that “[i]t shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore.”⁷⁶ This presumably could be used to justify regulation of religion as *caring* for the interests of religious minorities. The Constitution is even more specific with regard to Muslims/Islam. Article 152(2) explicitly

70. Steven Levitsky & Lucan A. Way, *The Rise of Competitive Authoritarianism*, 13 J. DEMOCRACY 51, 52 (2002).

71. The Economist Intelligence Unit, *Democracy Index 2015: Democracy in an Age of Anxiety* 1, 6 (2016) http://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2015 [<https://perma.cc/ENE9-XSB9>].

72. Mark Tushnet, *Authoritarian Constitutionalism*, 100 CORNELL L. REV. 391, 396 (2015).

73. See Jaelyn L. Neo, *Secular Constitutionalism in Singapore: Between Equality and Hierarchy*, 5 OXFORD J.L. & RELIGION 431, 431 (2016) (showing that I have argued in an earlier article that Singapore nonetheless defies a clear secular constitutionalist characterization, because it does not conform to the secular constitutionalism as separation paradigm since the state directly regulates religion).

74. For example, in 1992, then Minister for Information and the Arts George Yeo stated that “Singapore’s government is secular, but it is certainly not atheistic. It is neutral.” BG Yeo, *Government Is Secular, Not Atheistic*, STRAITS TIMES (Sing.), Oct. 8, 1989, at 2; see also Thio Li-ann, *Religion in the Public Sphere of Singapore: Wall of Division or Public Square?*, in RELIGIOUS PLURALISM AND CIVIL SOCIETY: A COMPARATIVE ANALYSIS 77 (Bryan S. Turner ed., 2007).

75. See *Chan Hiang Leng Colin v. Pub. Prosecutor*, [1994] 3 SLR 662 (Sing.).

76. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Dec. 22, 1965, part XIII, art. 152(1).

requires the government to “recognise the special position of the Malays, who are the indigenous people of Singapore,” and “to protect, safeguard, support, foster and promote their political, educational, *religious*, economic, social and cultural interests and the Malay language.”⁷⁷ In addition, Article 153 of the Constitution could be read as obligating the legislature, using the language of “shall,” to “by law make provision for regulating Muslim religious affairs and for constituting a Council to advise the President in matters relating to the Muslim religion.”⁷⁸ This “law” took the form of the Administration of Muslim Law Act (AMLA), which the Legislature passed in 1966 establishing the Majlis Ugama Islam Singapura (the Islamic Religious Council of Singapore or MUIS, for short) and Syariah courts for Muslims.⁷⁹

Nonetheless, the secularism that Singapore practices complies with the requirements that I have identified earlier. First, it rejects political dominance by any religion. For instance, Singapore’s founding Prime Minister Lee Kuan Yew stressed at the inaugural session of Singapore’s first Parliament that Singapore has “a vested interest in multi-racialism and a *secular State*.”⁸⁰ By this, he means a rejection of the idea that one group can “assert its dominance over the other on the basis of one race, one language, *one religion*.”⁸¹

Secondly, citizenship is not conditioned by religious identity. The Constitution prescribes a religion-neutral basis for attaining citizenship, which is by one of the four routes of birth, descent, registration, and naturalization.⁸² While the ability to speak the national language is required for naturalization and the ability to speak one of the official languages is required for registration, there

77. *Id.* art. 152(2); see also *Report of the Constitutional Commission 1966*, reprinted in TAN, YEO, LEE, *CONSTITUTIONAL LAW IN MALAYSIA & SINGAPORE*, app. D, para. 34 (Kevin YL Tan & Thio Li-ann eds., 2d ed. 1997) (emphasis added) (showing that the provision was preserved in almost identical terms from the preamble to the Singapore (Constitution) Order in Council 1958 under which Singapore attained full internal self-government and thereafter as part of the state Constitution as part of the Federation of Malaysia. The Wee Commission recommended the retention of article 89(2) (now article 152(2)), which obligates the government to protect and promote the religious interests of the Malays).

78. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Dec. 22, 1965, part XIII, art. 153.

79. Administration of Muslim Law Act (Act No 27/1966) (Sing.).

80. 24 Parl. Deb. col. 89, 114 (emphasis added) (statement of Lee Kuan Yew, Prime Minister of Singapore).

81. *Id.* (emphasis added).

82. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Dec. 22, 1965, part X, art. 120.

are no further substantive requirements for either mode of attaining citizenship. Furthermore, since citizenship was available to persons of all religious backgrounds when Singapore became independent, citizenship is passed by birth and descent to children of all families from all religious groups. This is not just an implicit commitment to allocating citizenship on non-religious grounds. There is, in fact, an explicit commitment, as reflected in Singapore's national pledge. The Pledge, recited daily by schoolchildren, asserts an idea of citizenship as "one united people, regardless of race, language or religion."⁸³

Thirdly, the Constitution formally recognizes and guarantees religious freedom to profess and practice one's religion. Article 15(1) of the Singapore Constitution guarantees that "[e]very person has the right to profess and practise his religion and to propagate it."⁸⁴ It is an expressly qualified right as Article 15(4) serves as a limitation clause stating, "This Article does not authorise any act contrary to any general law relating to *public order, public health or morality*."⁸⁵ While this provision is included in the chapter in the Constitution titled "Fundamental Liberties,"⁸⁶ judicial and political interpretation of this provision has tended to treat it not as a fundamental, as in trumping, right. Using the categories identified by the Singapore Court of Appeal of four types of rights—fundamental, preferential, coequal, and subsidiary⁸⁷—it should be noted that some earlier cases have portrayed religious freedom as *subsidiary* to certain fundamental state interests.⁸⁸ A recent case has been less definitive and could be interpreted as viewing religious freedom as a *co-equal* right, where there is no presumption in favor of either rights

83. *National Pledge*, SING. NAT'L HERITAGE BOARD (emphasis added), <http://www.nhb.gov.sg/resources/national-symbols/national-pledge> [<https://perma.cc/V353-S6GJ>] (last visited May 1, 2017).

84. CONSTITUTION OF THE REPUBLIC OF SINGAPORE Dec. 22, 1965, part IV, art. 15(1).

85. *Id.* art. 15(4) (emphasis added).

86. *Id.* part IV.

87. *Review Publ'g Co. Ltd. v. Lee Hsien Loong* [2010] 1 SLR 52 (Sing.), paras. 286-89.

88. *See Chan Hiang Leng Colin v. Pub. Prosecutor*, [1994] 3 SLR 662, 684 (Sing.) where the High Court stated that "[t]he sovereignty, integrity and unity of Singapore are undoubtedly the paramount mandate of the Constitution and anything, including religious beliefs and practices, which tend to run counter to these objectives must be restrained."

or interests.⁸⁹ By treating religious freedom as a co-equal right, the laws and governmental actions restricting it would be subject to an “ultimate balancing test.”⁹⁰

B. Regulating Religion for Peaceful Coexistence: Religious Harmony

Fourthly, religious freedom is intertwined with the public good of peaceful coexistence among different religious groups in Singapore. The proposed requirements of minimalist secularism ensure that there is space for religious freedom by diverse religious groups. To be clear, what accounts for the relatively positive levels of religious freedom in Singapore is a complex question. Here, I want to emphasize that one crucial factor is that religious freedom is conceptualized as part of the common good. More specifically, it is seen as necessary for peaceful coexistence of religious groups. In Singapore’s political discourse, this is denoted by the term “religious harmony.” This religious harmony is sometimes referred to as racial and religious harmony due to the asserted strong correlation between race and religion; although as the demographic breakdown mentioned above suggests that the correlation between race and religion is not present for most ethnic groups. Nonetheless, “racial and religious harmony” is entrenched as one of the five Shared Values the government proposed in 1988 as part of the national state ideology and could be considered to have been elevated to a quasi-constitutional doctrine.⁹¹ Religious harmony often justifies state control of religion; however, it is not *ipso facto* inimical to religious freedom. Indeed, the range of state regulations that exist in Singapore to maintain religious harmony has been used with some circumspection. These are the Maintenance of Religious Harmony Act,⁹² the Sedition Act,⁹³ and the Penal Code.⁹⁴ Instead, the government prefers to employ informal channels to directly and

89. See *Vijaya Kumar s/o Rajendran & Ors v Attorney-General* [2015] SGHC 244.

90. *Review Publ’g Co. Ltd. v. Lee Hsien Loong* [2010] 1 SLR 52 (Sing.), para 289. Coequal rights differs from preferential rights in that in the latter, preference is given to the right such that the balances are tilted in its favor but could be outweighed under certain conditions. *Id.* para. 287.

91. Lim, *supra* note 67.

92. Ch. 167A (2001).

93. Ch. 290 § 3 (2013).

94. Ch. 224, ch. XV (2008).

actively manage inter-religious relations. I will briefly describe these laws and how they have been used.

1. *Maintenance of Religious Harmony Act (“MRHA”)*

The MRHA was passed in 1990 in response to the perceived risk of government critics exploiting organized religion to advance their political aims.⁹⁵ The stated purpose of the law is to prevent the mixing of religion and politics.⁹⁶ The law seeks to proscribe attempts by leaders, members, and teachers of religious *groups* from supposedly employing organized religion to cause hostility among religious groups as well as to challenge the government. Under the law, the Minister for Home Affairs is empowered to issue an order to restrain a religious leader or a member of a religious institution for up to two years from addressing a particular topic or theme that promotes a political cause, is subversive, excites disaffection against the state, and/or causes hostility among religious groups under the guise of religious speech. If this restraining order were flouted, the person against whom the order was made would be subject to criminal sanctions. Notably, this law imposes additional burdens on religious leaders (as well as those in positions of authority/influence within religious organizations), and not on persons in general. The MRHA is highly intrusive since it is specifically aimed at restraining speech made from the pulpit, i.e., within the confines of religious institutions and places of worship. This is especially since the MRHA grants the Minister wide discretionary powers to define what would constitute an act falling within the prohibited sphere of action. The government justifies this intrusion by arguing that singling out persons of influence within religious organizations for further regulatory control is legitimate because of their special position. This is, it is contended, analogous to how judges and civil servants are restrained from active politics.⁹⁷

The MRHA is not anti-religion and, despite its disapproval of mixing religion with politics, the state has been careful to state that this does not delegitimize all forms of political participation by

95. *Singapore Parliamentary Reports*, col. 636 (Oct. 6, 1989).

96. See Thio Li-ann, *The Elected President and the Legal Control of Government*, in *MANAGING POLITICAL CHANGE IN SINGAPORE: THE ELECTED PRESIDENCY* 129 (Kevin Tan & Lam Peng Er eds., 1997).

97. PRESIDENT OF THE REPUBLIC OF SINGAPORE, *WHITE PAPER: MAINTENANCE OF RELIGIOUS HARMONY*, 1989, Cmd. 21, at 6 [hereinafter *MRHA White Paper*].

religion.⁹⁸ There are two areas that are considered legitimate forms of political participation by religious individuals and groups. First, the law does not prohibit persons with religious beliefs from participating in the democratic process as *individual citizens*.⁹⁹ In the White Paper accompanying the law,¹⁰⁰ the government explicitly recognized that it is not possible or desirable to completely compartmentalize the minds of voters into secular and religious halves and ensure that only the secular mind influences political behavior.¹⁰¹ This contrasts with a common assumption in liberal thought that a person's religious beliefs and views could be bracketed from their participation in democratic politics as citizens. Secondly, even for religious groups and institutions, the law does not prohibit them from expressing their opinions publicly on government policy *qua* group. In response to a criticism by the Archbishop of the Catholic Church that religion has a legitimate place in political discourse in Singapore and that religious citizens must be able to voice their concerns about government policies when there are moral or religious implications on society, the government conceded that such participation would not be prohibited under the MRHA.¹⁰² Thus, while religions and religious groups are not viewed as inherently hostile to politics or society, their value is contingent on their contribution to society. This is evident even in the MRHA White Paper, which stresses that religion is a "positive factor" in society and that religious groups have made, and will continue to make, major contributions to the nation in a variety of educational, community, and social functions.¹⁰³

98. JOSEPH B. TAMNEY, *THE STRUGGLE OVER SINGAPORE'S SOUL: WESTERN MODERNIZATION AND ASIAN CULTURE* 32-33 (1996).

99. See MRHA White Paper, *supra* note 97, at 6.

100. A White Paper is a "policy document issued by the Government to explain or discuss matters" and is "often presented for debate in Parliament." *Parliamentary Glossary*, PARLIAMENT SING., <https://www.parliament.gov.sg/publications/w> [<https://perma.cc/E3LM-UKU5>] (last visited May 1, 2017). Note that Thio regards the White Paper as containing "soft constitutional law," which are non-binding rules. See Thio Li-ann, *Soft Constitutional Law in Nonliberal Asian Constitutional Democracies*, 8 INT'L J. CONST. L. 766, 793 (2010).

101. See MRHA White Paper, *supra* note 97, at 6.

102. *Archbishop and Mufti Call for Clearer Definition of 'Politics'*, STRAITS TIMES (Sing.), Jan. 11, 1990, at 20.

103. See MRHA White Paper, *supra* note 97, at 6.

2. Sedition Act

Besides the MRHA, another law that has been employed to regulate religious activity to preserve religious harmony is the Sedition Act.¹⁰⁴ This law is not, strictly speaking, targeted at religion or religious groups. However, because “seditious tendency” is defined as including a tendency to “promote feelings of ill-will and hostility between different races or classes of the population of Singapore,” it has been used to proscribe religious speech and conduct in some instances.¹⁰⁵ In addition, where individuals use religious platforms to oppose the government, their conduct could also fall within one of the other definitions of seditious tendency such as bringing the government into hatred or contempt or exciting disaffection against it.¹⁰⁶ The Sedition Act has been used against online speech inciting hatred against Malay-Muslims¹⁰⁷ as well as against zealous Christian proselytizers who targeted Malay-Muslims for evangelism. For instance, in the 2009 case of *PP v. Ong Kian Cheong*, a Christian couple had mailed Chick Publications tracts calling Islam a false religion to recipients whom they identified as Malay-Muslims.¹⁰⁸ According to the couple, their actions were

104. Ch. 290 § 3(1)(e) (2013).

105. *Id.* This is despite the fact that religion is not mentioned in the Sedition Act; instead, it is implied into the reference to race whereby race is conflated with religion. *Id.* § 3(2)(d).

106. Section 3 states:

(1) A seditious tendency is a tendency—

(a) to bring into hatred or contempt or to excite disaffection against the Government;

(b) to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established;

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore;

(d) to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore;

(e) to promote feelings of ill-will and hostility between different races or classes of the population of Singapore.

Id. § 3.

107. *Pub. Prosecutor v. Koh Song Huat Benjamin and Another* [2005] SGDC 272 (Sing.).

108. *Pub. Prosecutor v. Ong Kian Cheong and Another* [2009] SGDC 163 (Sing.). The tracts also targeted Roman Catholics. Those mentioned include “Who is Allah,” “The Pilgrimage,” “Allah Had no Son,” “The Sky Lighter,” “Man in Black,” “Are Roman Catholics Christians,” “Back from the Dead,” “The Beast,” “Why is

motivated by a desire “to evangelize so that people will come to realize the saving grace of Jesus Christ.”¹⁰⁹ They were charged for contravening the Sedition Act,¹¹⁰ convicted, and received a custodial sentence of sixteen weeks each.¹¹¹ The District Court concluded that “Christian publications or tracts denigrating Islam, its followers or the Catholic Church and other religions will undoubtedly promote feelings of ill-will or hostility between Muslims, Malays, Roman Catholics and people of other religions.”¹¹²

This case shows clearly the outer limits of religious freedom under non-liberal constraints. As mentioned above, one area in which religious freedom is likely to be restrained in a non-liberal setting is where religious activity is likely to affect other religious groups. Religious proselytization is one such area.¹¹³ While there is no legal restrictions on religious proselytization, proselytizing efforts may run the risk of offending other religious communities and be considered seditious, creating ill-will and hostility between different religious groups. Nonetheless, proselytization still occurs within these constraints and there is no legal restriction against the right to choose one’s religion or to change one’s religion in Singapore.

3. *Direct Non-Legal Regulation*

The government’s direct and judicious regulations of inter-religious and state-religious relations are more impactful and important than the MRHA and Sedition Act. Singapore’s government engages in active bilateral or multilateral monitoring and mediation. This non-legal approach tries to be accommodative insofar as it allows for the consideration of various non-universalizable considerations and encourages mutually acceptable resolutions. This accommodative regulatory technique is one that has been used by the Singapore government since independence and to

Mary Crying,” “Squatters,” and “The Little Bride.” The focus in this case however was on the tracts targeting Islam. *Id.* para. 4.

109. *Id.* para. 41.

110. *Id.* para. 1, 6. They were also charged and convicted under the Undesirable Publications Act (Ch. 338). *Id.*

111. *Id.* para. 85-86. They each served eight weeks of imprisonment because two of the sentences run concurrently. *Id.*

112. *Id.* para. 77.

113. For a critical analysis on issues of religious freedom and religious propagation that the case of *Ong Kian Cheong* raises, see Thio Li-ann, *Contentious Liberty: Regulating Religious Propagation in a Multi-Religious Secular Democracy*, 2010 SING. J. LEGAL STUD. 484, 499-501 (2010).

great effect. When an issue arises that has the propensity to affect the relationship between religious groups or between religious groups and the state, the government will intervene. What is interesting, as was noted earlier, is that the first line of intervention is usually a form of mediation. Thio explains this in terms of relational constitutionalism. She argues that this approach views law as “inappropriate where the objective is not to vindicate rights or punish a wrongdoer, which has alienating effects, but to *manage social tensions in a reconciliatory fashion*.”¹¹⁴

Direct non-legal regulation is further reflected in the promulgation of the Declaration of Religious Harmony, issued in 2003, which closely involved the national corporate bodies of the dominant religions in Singapore.¹¹⁵ The Declaration is a “non-legislative document.”¹¹⁶ It was the result of a government initiative but was developed by various religious leaders.¹¹⁷ The intention behind the document was to lay down ground rules for religious conduct. Tan points out that this was “in essence an attempt to exert moral suasion on the leaders and believers of the various faiths to practice moderation in exercising their beliefs.”¹¹⁸ Consequently, while the Declaration does not contain binding legal rules, its main

114. Thio Li-ann, *Relational Constitutionalism and the Management of Religious Disputes: The Singapore ‘Secularism with a Soul’ Model*, 1 OXFORD J.L. & RELIGION 446, 448 (2012) (emphasis added).

115. The range of consultation was comprehensive and fairly representative, with those involved including the Hindu Endowments Board, the Inter-Religious Organisation, MUIS, the National Council of Churches of Singapore, the Roman Catholic Church, the Sikh Advisory Board, the Singapore Buddhist Federation, the Singapore Council of Christian Churches, the Taoist Federation Singapore, the Thye Hua Kwan Moral Society, and the Red Swastika Society. The Declaration is portrayed as the product of a consensus among these national bodies, with the government’s approval, as this presumably serves to legitimize the document. See, e.g., *Declaration of Religious Harmony*, INTER-RELIGIOUS ORG., SING., <http://iro.sg/about/declaration/> [<https://perma.cc/QR8C-9CA6>] (last visited May 1, 2017).

116. Kelly Ng, *S’poreans ‘Risk Taking Religious, Racial Harmony for Granted’*, TODAY, SING. (May 1, 2015), <http://www.todayonline.com/singapore/sporeans-risk-taking-religious-racial-harmony-granted?singlepage=true> [<https://perma.cc/L6UF-U792>].

117. *Id.*; see also *Explanation on the Declaration by the Religious Harmony Working Committee*, INTERNATIONAL COUNCIL OF CHRISTIAN CHURCHES <http://www.iccc.org.sg/rhwcommittee.html> (last visited May 14, 2017) [<https://perma.cc/47L2-QPGD>].

118. Eugene K.B. Tan, *Keeping God in Place*, in LAI AH ENG, RELIGIOUS DIVERSITY IN SINGAPORE, 55, 73 (2008); see also Lai Ah Eng, *The Inter-Religious Organization of Singapore*, in LAI AH ENG, RELIGIOUS DIVERSITY IN SINGAPORE, 605, 625 (2008).

purpose is to impose a framework for self-regulation among religious groups.

C. Religious Freedom in Singapore

Despite the range of legal control, there is evidence of fairly high levels of religious freedom in Singapore. For instance, for several consecutive years, the United States State Department determined that the Singapore “constitution and laws and policies provide for religious freedom, subject to restrictions,”¹¹⁹ and that “the [Singapore] government generally respected the freedom of most religious groups in practice.”¹²⁰ The main issues flagged in the reports are the prosecution of Jehovah’s Witnesses for refusing to perform compulsory military service, legal restrictions on actions perceived to be detrimental to religious harmony, and the prohibition of the wearing of hijabs by certain public sector professionals and in public schools.¹²¹

Furthermore, despite Professors Grim and Finke arguing that data shows that “government restriction of religious freedom holds a powerful and robust relationship with violent religious persecution” and classified Singapore as a country that views religion as a threat, they scored Singapore low on religious persecution while recording high levels of government regulations.¹²² They note that there are fairly high average levels of government restriction of religion (7.5

119. *International Religious Freedom Report for 2015: Singapore*, U.S. DEP’T OF STATE, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2015&dclid=256139> [https://perma.cc/DU4T-6YJZ] (last visited May 1, 2017).

120. *International Religious Freedom Report for 2013: Singapore*, U.S. DEP’T OF STATE, <https://www.state.gov/j/drl/rls/irf/2013religiousfreedom/#wrapper> [https://perma.cc/GM5J-PHA8] (last visited May 1, 2017). The reports for at least 2011 to 2013 used these terms “generally respected.” The language changed to more ambivalent terms in 2014 and 2015, though without necessarily reflecting any change in governmental practice. See *International Religious Freedom Report for 2015*, *supra* note 119.

121. See *International Religious Freedom Report for 2015*, *supra* note 119; *International Religious Freedom Report for 2013*, *supra* note 120. I must here clarify that I do not want to undervalue the significance of these restrictions on religious practice. What I am merely trying to point out is that in spite of some of these restrictions, one can and does enjoy fairly high levels of religious freedom in the country.

122. See BRIAN J. GRIM & ROGER FINKE, *THE PRICE OF FREEDOM DENIED* 79 (2011). In a wide-ranging study, Grim and Finke argue that “religious restrictions—composed of *social* and *government* restrictions—help explain violent *religious persecution*, which is a specific form of *social and civil conflict*.” *Id.* at 74.

on a scale of 0-10 with 10 being the highest) in Singapore, but the average level of persecution they recorded is quite low (3.0 on a scale of 0-10 with 10 being the highest).¹²³ Interestingly, Grim and Finke's study also shows extremely low levels of average social restriction of religion (1.3 on a scale of 0-10 with 10 being the highest).¹²⁴ This contrasts with China, which served as a prime case study of a country with high levels of religious persecution (10) correlating with high levels of government restriction of religion (8.3) and fairly high levels of social restrictions (4.6) of persecution.¹²⁵

In addition, in a recent analysis by Professor Jonathan Fox on freedom of religion in Southeast Asia, Singapore scored relatively better on his religious freedom measure than the average scores in Southeast Asia on religious discrimination, religious regulation, and support for religion.¹²⁶ To be sure, Professor Fox did point out that Singapore is "not more religiously free than Western democracies," but he also observes that Singapore shows promise in terms of its religious freedom record.¹²⁷

D. Limitations of a Social Peace Approach to Religious Freedom

The key to understanding the seeming contradiction between fairly high levels of religious freedom with high levels of formal and informal regulation of religion lies in the conceptualization of religious freedom as a function of racial-religious harmony in Singapore. The state recognizes that allowing religious individuals and groups to profess and practice their religion is important to maintaining social peace and order. The state practices a form of secularism that is committed to the requirements that I have identified above. The rejection of political dominance by any religion means that the state must show that it treats all religions even-handedly. Where some religions are given preferential treatment over others, these must be carefully justified.

Indeed, the presence of government restrictions does not necessarily correlate with low levels of religious freedom since these restrictions may not be commonly enforced. For instance, while the

123. *Id.* at 122.

124. *Id.*

125. *Id.*

126. Jonathan Fox, *Freedom of Religion in Southeast Asia: An Empirical Analysis*, 14 REV. FAITH & INT'L AFFAIRS 28, 33-35 (Winter 2016).

127. *Id.* at 36, 38-39.

MRHA gives the government wide discretion to restrict religious speech, it has never been formally invoked.¹²⁸ Its impact lies in its legal potential rather than its actual use. Warnings that it would be used have been adequate.¹²⁹ This could be seen as a chilling effect since religious leaders are likely to self-censor so as not to transgress the limits placed by the MRHA with respect to religious speech. Such a chilling effect, however, may not necessarily be undesirable since some forms of religious speech could be highly offensive to other religious groups and could undermine peaceful coexistence.

As such, there are explicit limits to religious speech and religious activity in a non-liberal state. It bears noting that speech can be restricted even in self-avowedly liberal states whether by law (e.g., hate speech legislation) or through societal norms. Under non-liberal conditions, religious freedom is protected as having instrumental, rather than intrinsic, value and is more likely to be balanced (and subjected) to public order considerations. These limits manifest themselves in two ways in the Singapore context.

1. *Prioritization of (Secular) Public Interests over Religious Freedom*

First, the balance between religious freedom and competing public interests are almost always resolved in favor of the latter. The cases involving conscientious objection claims by Jehovah's Witnesses against compulsory military service illustrate this principle.¹³⁰ For example, in the 1994 case of *Chan Hiang Leng Colin v. PP*, the High Court established the parameters of religious freedom protection under the Constitution. The case affirms the distinction between beliefs and practice. While confirming that constitutionally, "[R]eligious beliefs ought to have proper protection," the Court nonetheless held that "actions undertaken or flowing from such beliefs *must conform* with the general law relating

128. See Thio, *supra* note 96, at 129.

129. Examples include the following: instances where religious leaders have been warned include where an Islamic leader urged Muslims to vote for Muslim candidates during the 1991 General Elections, where a Christian pastor criticized other faiths including Buddhism, Taoism, and Catholicism in 1992, and when an Islamic leader called a widespread Hindu belief that statues of their deity, Ganesha, could drink milk offerings the work of the devil in 1994. M. Nirmala, *Govt Reins in Religious Leaders*, STRAITS TIMES (Sing.), May 12, 2001, at 1.

130. The Enlistment Act 1970 (Ch. 93 § 12 (2001)) required all male Singaporean citizens and permanent residents of age to perform compulsory military service.

to public order and social protection.”¹³¹ This distinction between the forum internum and forum externum is not unique to Singapore. What is distinctive and instructive of the Singapore approach is that the Court went on to subject both religious beliefs and practices to the “sovereignty, integrity, and unity of Singapore.”¹³² It declared that these “are undoubtedly the paramount mandate of the Constitution and anything, including *religious beliefs and practices*, which tend to run counter to these objectives must be restrained.”¹³³ In *Chan*, some Jehovah’s Witnesses were charged for carrying out activities as a part of a deregistered society, which is a punishable offense.¹³⁴ The government had deregistered the society of Jehovah’s Witnesses in 1972 (two years after compulsory military service was instituted) and banned all their publications.¹³⁵ The High Court rejected their claim that the basis for deregistration was unconstitutional because it infringed upon their right to religious freedom, essentially holding that the administrative action was within constitutionally permissible limits.¹³⁶

More recently, the outcome of a case involving an employment dispute between an employee and a church illustrates the prioritization of secular public interests over religious freedom in the form of church autonomy. In *Faith Community Baptist Church v. Attorney-General*,¹³⁷ an employment tribunal ordered a church to compensate a former employee for dismissing her “without sufficient cause” during her pregnancy. The compensation amount of \$7,000 in salary and maternity benefits was not very large, but the church objected on the basis that they were justified in dismissing the employee who had become pregnant through an adulterous affair.

131. *Chan Hiang Leng Colin v. Pub. Prosecutor* [1994] 3 SLR 209 (Sing.), paras. 64-66 (emphasis added). The High Court affirmed the executive’s position on this, which is that national/military service is a secular issue, and that permitting conscientious objection to compulsory service would cause the “whole system of universal National Service [to] come unstuck.” *Id.*

132. *Id.*

133. *Id.* at 662, 684 (emphasis added).

134. *Id.*

135. This was by way of a gazette notification under the Undesirable Publications Act, which listed “All publications” which are “published or printed by Watch Tower Bible and Tract Society.” *Gazette No. 123/72* (Jan. 14, 1972).

136. The constitutionality of the publication ban was also challenged (unsuccessfully) when Jehovah’s Witness members were prosecuted for being in possession of banned materials in *Chan Hiang Leng Colin v. Pub. Prosecutor* [1994] 3 SLR 662 (Sing.); *Liong Kok Keng v. Pub. Prosecutor* [1996] 3 SLR 263 (Sing.); *Ang Cheng Hai & Ors v. Pub. Prosecutor* [1995] SGHC 97 (Sing.).

137. *Originating Summons*, CA88/2014, SUM3016/2014 (Sing. Ct. App.).

While the employee was not part of the pastoral team, she assisted in the administration of the church's marriage counseling course. She was initially counseled to end the adulterous affair but later refused. The church then dismissed her when she was seven months pregnant. This would contravene the Employment Act, which protects women from dismissals from the fourth month of pregnancy onwards unless it is made with sufficient cause.¹³⁸

In contrast to the church's position, the employment tribunal did not consider adultery to be a sufficient cause for termination. The Ministry of Manpower, which oversees the employment tribunal, took the position that employment law is a secular matter and that no religious considerations should be taken into account. It issued the following statement: "While each of us will have space to practise our religion, we have to preserve a common secular space for people with other beliefs, and employment is one of these secular spaces. Therefore, our employment legislation has to be secular."¹³⁹

This indicates that the secular public interest underlying the Employment Act—i.e., protection of women against pregnancy discrimination—trumps religious autonomy. Interestingly, the case was abandoned before it was fully litigated and therefore the Singapore courts have not yet had to adjudicate such a matter.

2. Endorsement of Religious Views Conducive to Religious Harmony

A second manifestation of the limits of protecting religious freedom as a function of maintaining peaceful coexistence among different religious groups is that the government's regulatory control would inevitably be directed towards interpretation of religious doctrines that are most conducive to the state's interests. Thus, the state would exercise its regulatory powers to prefer and endorse religious doctrines that are tolerant of difference. This requirement for religions to adopt doctrines that are most appropriate for the public good is reflected in the Declaration of Religious Harmony. A close juxtaposition of it against some religious doctrines, especially those concerning proselytization and salvational exclusivity, would show that the Declaration, in fact, demands religious groups to

138. See Section 84 of the Employment Act (Cap 91, Rev Ed. 2009).

139. Toh Yong Chuan, *Workplaces, Labour Laws Must Be Kept Secular: MOM*, STRAITS TIMES (Sing.) (Aug. 28, 2013, 6:56 AM), <http://www.straitstimes.com/singapore/workplaces-labour-laws-must-be-kept-secular-mom> [https://perma.cc/FPJ2-223C].

abandon parts of their doctrine which could be considered by some to be integral or essential. Specifically, the demand that religious groups “*always* [r]ecognise the secular nature of our State,” *always* “respect each other’s freedom of religion,” and “ensure that *religion will not be abused* to create conflict and disharmony in Singapore”¹⁴⁰ could conflict with certain religious doctrines. This is especially since the injunction is to *always* prioritize state goals over contrary religious doctrines and beliefs.

Furthermore, the state endorses religious interpretations that do not overtly challenge those state policies that seek to ensure common spaces or that are more affirming of secular public interests. It does so by coopting religious associations. For instance, in the 2015 case of *Madan Mohan Singh v. Attorney-General*,¹⁴¹ the High Court relied on affidavits from two prominent members of the Sikh community that were filed in support of the government to reject a constitutional challenge to the Singapore prison services’ policy of only allowing Sikh inmates who had unshorn hair and beard at the point of admission to prison to keep them during the period of incarceration. Sikh inmates who had shorn hair and beard at the point of admission were generally not allowed to grow their hair and beard during the period of incarceration. On this basis, the Sikh inmates were later distinguished as “practising Sikhs” versus “non-practising Sikhs.”¹⁴²

The applicant, a volunteer Sikh religious counsellor, sought a quashing order against the labelling of Sikh prisoners as being either “practising” and/or “non-practising” and a declaration that his constitutional right to propagate his religion had been violated when the prison services did not renew his expired volunteer pass. The High Court struck out the claim on the basis that the applicant did not have locus standi to challenge the prison’s policy since he was not personally affected by the policy. But what was interesting is that a former chairman of the Singapore Anti-Narcotics Association Sikh Aftercare (Counseling) (“SANA”) Services testified that SANA Services were “satisfied” with the manner in which the prison services handled matters relating to its hair grooming policy for Sikh inmates and that he was of the view that the prison services had “acted fairly and reasonably towards Sikh inmates.”¹⁴³ The other deponent was the chairman of the Sikh Welfare Council’s Inmate

140. *Declaration of Religious Harmony*, *supra* note 115.

141. [2015] SGHC 48 (Sing.).

142. *Id.*

143. *Id.* para. 56.

Counselling Subcommittee, who accepted that the hair grooming policy was “essential to maintaining safety, security and good order and discipline in prisons.”¹⁴⁴ Furthermore, he testified that volunteer counsellors were “encouraged to focus more on strengthening the substance of Sikh inmates’ character and personality and less on strict adherence to the full requirements of the outward form required of a Sikh.”¹⁴⁵ The government’s view of religion is further reflected in the deposition by a representative of the prison services who stated that the prison “recognises the potential of religious faith in facilitating and contributing to the rehabilitation of inmates” in his affidavit.¹⁴⁶

Another example where religious constituents were encouraged to prefer doctrines that best suit state goals has to do with a well-publicized disagreement between parents of four Muslim girls and public school authorities on wearing *tudung* (headscarves) in school. Singapore’s public schools prescribe standard uniforms for all students, and the Ministry of Education has a policy that requires students to refrain from wearing anything not forming part of the official school uniform. In January 2002, when four Muslim girls turned up at their primary schools wearing a *tudung*, they were suspended for contravening school policy.¹⁴⁷ The parents threatened to sue, arguing violation of their freedom of religion. They received support from a significant segment of the Malay-Muslim community.¹⁴⁸ Then Prime Minister Goh Chok Tong intervened, publicly urging the parents not to alienate themselves by filing suit, which he characterized as a radical step.¹⁴⁹ The matter was eventually

144. *Id.*

145. *Id.*

146. *Id.* para. 57.

147. Shahida Ariff, *Third Tudung Girl Suspended*, STRAITS TIMES (Sing.), Feb. 12, 2002, at H3; see also KAMALUDEEN MOHAMED NASIR, ALEXIUS A. PEREIRA & BRYAN S. TURNER, *MUSLIMS IN SINGAPORE: PIETY, POLITICS AND POLICIES* (2010); Thio Li-ann, *Recent Constitutional Developments: Of Shadows and Whips, Race, Rifts and Rights, Terror and Tudungs, Women and Wrongs*, SING. J. LEGAL STUD. 328, 355-56 (2002); Sharon Siddique, *Islamic Dress Put in Perspective*, STRAITS TIMES (Sing.), Feb. 20, 2002, at 15 (discussing the history of the *tudung*).

148. Seah Chiang Nee, *Fears Rise as PAS Butts in*, STAR (Malay.) (June 16, 2002), <http://www.singapore-window.org/sw02/020616st.htm> [<https://perma.cc/YX8Z-EYXK>].

149. *Singapore Bars Headscarf Row Lawyer*, BBC NEWS (Sept. 13, 2002), <http://news.bbc.co.uk/2/hi/asia-pacific/2255234.stm> [<https://perma.cc/RH47-TAWU>]; see also *Echoes of French Muslim Headscarf Debate Heard in Singapore*, WORLD-WIDE RELIGIOUS NEWS (Feb. 15, 2004), <https://wwrn.org/articles/7507/> [<https://perma.cc/HC9C-RCBU>].

resolved through mediation involving MUIS and the Mufti. The President of the Islamic Religious Council of Singapore (MUIS), Maarof Salleh, publicly urged the parents to send their children back to school without wearing the *tudung*. This was after consulting Mufti Syed Isa Semait, the highest Islamic authority in Singapore, whose position was that education was of a higher priority for Muslims.¹⁵⁰ The matter was resolved primarily in favor of state interests. Some degree of accommodation however was provided as the students could opt to attend *madrasah* (religious schools).¹⁵¹ It is significant that MUIS and the Chief Mufti appealed to internal reasons, arguing that Islam regarded education as more important than for children to wear the *tudung*, thereby urging the parents not to jeopardize their daughters' education.¹⁵² In the words of the Chief Mufti, "The no-*tudung* rule lasts only for a few hours when the pupils are in school. Education is more important."¹⁵³

Similarly, when Faith Baptist Community Church filed suit against the government in the employment dispute case discussed above, the National Council of Churches Singapore intervened and took the position that the issue should not be framed as a state-church matter and sided with the government's position that the case concerned the employer-employee relationship as regulated by the Employment Act and common law. It is not clear why the case was aborted, though the applicant Church issued a statement that it had come to understand the rationale for the Minister's decision and that as "a responsible religious body/corporate citizen of this nation," it accepted that "every decision of the Minister would depend on the unique facts of each case."¹⁵⁴ It did leave the door open for future

150. See Ahmad Osman, *Mufti Puts School First*, STRAITS TIMES (Sing.), Feb. 6, 2002, 4:25 PM, at 1; Zackaria Abdul Rahim, *Mufti's Choice: The Clash of Obligations Between Tudung and Education*, TODAY (Sing.) (Feb. 6, 2002), at 2; see also account in Kevin Y.L. Tan, *Law Religion, and the State in Singapore*, 14 REV. FAITH & INT'L AFFAIRS 65, 72 (Winter 2016).

151. These schools, and a primary school run by the Seventh Day Adventist Church, are the only private schools that have not been absorbed into the national education system. There are six *madrasah* in Singapore offering primary and secondary Islamic education in Singapore, in addition to other *madrasah* attached to mosques and offering part-time or night classes. See Rose Ismail, *Reforming Singapore's Madrasah*, NEW STRAITS TIMES (Malay.), May 19, 2000, at 12.

152. See *Mufti Puts School over Scarves*, BBC NEWS (Feb. 6, 2002), <http://news.bbc.co.uk/2/hi/world/asia-pacific/1804470.stm> [<https://perma.cc/49AY-JZT2>].

153. *Id.* (emphasis added).

154. *Official Statement on MOM Judicial Review*, FAITH COMMUNITY BAPTIST CHURCH (May 18, 2015), <http://www.fcbc.org.sg/about/news/official-statement-mom-judicial-review> [<https://perma.cc/JQ9T-RPHP>].

conflicts by asserting that “moral conduct can in appropriate circumstances be governed by the terms of employment, where such conduct would affect the moral authority required in the performance of a job.”¹⁵⁵

CONCLUSION

In a 2013 article in *The Economist* discussing the desirability of blasphemy laws, the article aptly observed that: “It’s true that punishing blasphemy won’t secure social peace, but rescinding all blasphemy laws, and robustly defending everyone’s right to insult, sneer and abuse, won’t necessarily get you social peace either.”¹⁵⁶ This is a position that rightly rejects the assumption that values and methods commonly advocated under liberal-secularism are not always the best way to ensure religious freedom and social peace. The type of secular but non-liberal state that I proposed above could provide rather robust protection of religious freedom in guaranteeing peaceful coexistence among different groups.

In the example that I presented in the Introduction concerning the use of loudspeakers to broadcast religious services, the liberal-secular state’s commitment to neutrality would not allow it to directly intervene. It must therefore either impose facially neutral laws, despite any discriminatory intent or impact.¹⁵⁷ A secular but non-liberal state’s commitment to religious harmony, like in Singapore may, however, open the door for an alternative regulatory approach. Indeed, when this matter came up, albeit with respect to Buddhists seeking permission to use loudspeakers to broadcast their religious services, the regulatory response was a non-legal one. Concerned that granting the request might lead to other requests from churches, synagogues, and Buddhist/Taoist temples and that this would result in unnecessary competition among different religious groups, the government convened a multilateral meeting among all the major religious groups. The result was an agreement that all groups would refrain from using loudspeakers except within their premises. This of course required Muslims to abandon their

155. *Id.*

156. B.C., *The Effect of Laws, or Their Absence*, THE ECONOMIST: ERASMUS (May 22, 2013), <http://www.economist.com/blogs/erasmus/2013/05/religion-freedom-and-social-peace> [<https://perma.cc/5VHB-6MBP>].

157. This issue was addressed in the Israel context and the solution was to impose facially neutral laws, which nonetheless has disparate impact on religious groups.

then current practice to use loudspeakers, while requiring the other religious groups to refrain from making such requests in the future.¹⁵⁸ A compromise was forged without the use of laws or litigation, and peaceful coexistence ensued.

The same article in *The Economist* rightly observed that “social peace depends on more than the presence or absence of laws.”¹⁵⁹ Indeed, other preconditions should be in place for social harmony to exist such as a commitment among the different groups to coexist peaceably.¹⁶⁰ However, the presence of laws can encourage such a commitment. Indeed, the minimally secular but non-liberal state may in some circumstances, such as where there is a strong commitment to peaceful coexistence among different groups, be in a better position than is often assumed to ensure religious tolerance. This Article rejects the assumption that is often made that the liberal understanding of secularism is normatively desirable under all circumstances. The non-liberal secular approach is not perfect, but it is defensible and could even be said to be appropriate under certain conditions. Secularism, as a political philosophy, can play different functions in different contexts. Consequently, in response to the theme of this special issue—whether secularism is a non-negotiable part of liberal constitutionalism—the answer to this is: Maybe, but that’s the wrong question to ask.

158. I accept Seval Yilidrim’s point made during the AALS panel that the government’s actions in convening the meeting are an exercise of dominance. However, I do not think that all forms of dominance are necessarily undesirable.

159. B.C., *supra* note 156.

160. *See id.*