

‘Pluralism and Revisability in Hunter-Henin’s *Why Religious Freedom Matters for Democracy*’

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In *Why Religious Freedom Matters for Democracy: Comparative Reflections from Britain and France for a Democratic “Vivre Ensemble”* (Hart, 2020), Myriam Hunter-Henin rejects recent, and arguably ascendant, strands of liberal egalitarian thought, while still maintaining a fundamentally liberal account of religious liberty. Her book is a welcomed contribution to the on-going debate over the justifications for religious liberty. In this brief response, I want to query whether Hunter-Henin provides a basis for supporting *religious* liberty, rather than a conception of liberty more generally. This is the challenge posed by liberal egalitarian accounts of religious liberty. It raises Hunter-Henin’s understanding of secularism and democracy. I then want to consider her ‘dialogical’ approach to rights adjudication. While Hunter-Henin would provide more generous accommodation than some liberal accounts for religious beliefs and practices in many instances, I suggest that her ‘dialogical’ approach, consistent with other liberal approaches, could be seen as undermining the very pluralism she places at the heart of her account.

Hunter-Henin argues for an inclusive model of secularism. Drawing from Dieter Grimm, she characterises this as secularism that protects religion against state interference (and vice versa) while also promoting religious liberty, and consequently pluralism, as a positive good. Religious liberty should be understood as ‘capable of enriching political debate and contributing to society’. To achieve this, states should engage in three strategies, Hunter-Henin argues: avoidance, inclusion, and revision. Avoidance is a principle of self-restraint, entailing separating religion from the political sphere. It should be adopted strategically by religious persons in order to avoid divisiveness that hinders living together and in order to accept, like the return value in a bargain, inclusion – accommodation of minority interests. Revision is the expectation that citizens as individuals and collectively as the political community will constantly revise their commitments, leaving open the possibility of change, as they engage in the shared project of living together. Religious liberty on this account feeds necessary pluralism, or the material needed for a perpetually unsettled or evolving conversation.

I Religious Liberty as Positive Value?

Hunter-Henin contrasts this approach with recent liberal egalitarian accounts. For liberal egalitarians (like Ronald Dworkin, Cécile Laborde, Christopher Eisgruber, and Lawrence Sager), religious liberty is a signifier for a broader category of liberty or equal concern and respect. To protect *religious* liberty would be to privilege religious identities or else illegitimately admit theological reasons into political and legal justification. Instead, the state must concern itself with personal autonomy, deep commitments, authenticity, or integrity. Often this then entails the state protecting this interest *against* religious groups, especially where those groups dissent from equality norms. However, how different Hunter-Henin’s approach is to these accounts can be debated. I am not sure that the liberal egalitarians (or at least not all) would disagree with her argument for inclusive secularism. Of course, some do characterise religion as a threat rather than integral to pluralism. And, as I note below, Hunter-Henin is generally much more willing to accommodate religious claims, even those contrary to key equality norms. However, most would agree with her on the need for avoidance, inclusion, and revision (perhaps less so the latter). The difference is that Hunter-Henin wants to maintain the importance of *religious* liberty as what she labels a positive, distinct value. Quoting the European Court of Human Rights in *Kokkinakis v Greece* (1994) 17 EHRR 397, she contends that the ‘pluralism indissociable from a democratic society’ depends on religious liberty. But this raises a problem: it is not clear why Hunter-Henin thinks that religion specifically is integral to this vision of pluralism or why religious liberty

then is a positive value. 'Religion' could be entirely removed from the European Court of Human Rights' statement with little loss. It is pluralism that matters and is the end goal for protection in the Court's statement, not religion; pluralism is seen as sustaining a democratic regime. This arguably echoes liberal egalitarian accounts, within which the category of religion becomes aligned with (if not simply characterised as) something more abstract for reasons of equality in a pluralistic society. Similarly here, a concern for religion is arguably easily dissolved, becoming one instance of the general commitment to pluralism. [A contrasting account](#) would consider why religion is important to a political community, such that religious liberty should be protected. However, this most likely veers into theological argument – whether there is a quest for relationship with God, for example. But Hunter-Henin closes off this line of argument; she recapitulates political liberalism's claimed need for public reason.

To be sure, Hunter-Henin does on occasion point to a reason for remaining with a specific account of religious liberty. She plausibly suggests that religious persons are likely to feel disrespected or misunderstood when their claims are re-characterised in the abstract language of 'integrity', for example. And she alludes to the possibility that religion is 'elementary'. Perhaps it is enough – and I take it this is Hunter-Henin's view – that religion remains socially and politically salient, a historical and contemporary reality that shapes the lives of many and should be recognised as such; religion may concern pluralism (ultimately), but is simply, as a given fact, central to that pluralism.

II Pluralism and the Dialogical Account

On Hunter-Henin's account of pluralism, and the centrality to this of religious liberty, what matters is both inclusion and democratic revisability. Her account echoes another often-repeated statement of the European Court of Human Rights: that the exercise of political authority concerns maintaining 'pluralism' or 'the constant evolution of public freedoms' (*Refah Partisi (The Welfare Party) v Turkey* (2003) 37 EHRR 1, [119] (Grand Chamber)). There are, I think, several queries to raise about this account of radical democratic revisability. First, I wondered whether it sits in tension with the claimed need for public reason. If what principally matters is democratic revisability, then arguably all (or most) arguments should be permitted so long as democratic processes remain intact. Second, and perhaps more fundamentally, it can be criticised as perpetual 'evolution' with no end. What matters is revisability, but in aid of what? This appears to amount to saying that a political community is not in fact able to claim to have found something, or represent something, as good and true – it must maintain a perpetual agnosticism or perpetual form of criticism that, without a destination, is potentially directionless. Hunter-Henin does suggest that a political community can engage in minor (and non-coercive) forms of establishment, but presumably it cannot adopt the traditional rationale for this: it best reflects something true about the divine and its relationship to the ends of political community. Third, I think Hunter-Henin's account of revisability could paradoxically undermine a concern for pluralism. This is seen in her dialogical account of specific rights tensions or disputes.

As noted, Hunter-Henin certainly suggests a more generous accommodation of religion beliefs and practices than leading liberal egalitarian accounts. In particular, she is critical of the Court of Appeal's decision in *Ladele v Islington LBC* [2010] 1 WLR 955. Rightly, she argues that the Court adopted an approach that excluded claims of religious liberty from certain spheres. It defined Ms Ladele's workplace as secular, in contrast to her remaining religious sphere of, for example, worship. Hunter-Henin argues that the competing claims should instead be balanced, regardless of the sphere, and that in this case Ms Ladele's objection to officiating over same-sex civil unions could have been accommodated. Most liberal egalitarians would flatly deny this, pointing instead to the paramount importance of the equality interest at stake in a public-facing setting. To that extent, Hunter-Henin poses a welcome response. However, much of her methodology remains the same. She argues that

we must, in all cases, be open to balancing the competing interests or claims. Take the well-known case of Mr Schüth. An organist in a Catholic parish, he had separated from his wife and started a new family. In the Church's eyes, this was bigamy, warranting his removal from a leading role in liturgical worship. The European Court of Human Rights considered that the self-determination of an individual – to private and family life, under Article 8 – must be balanced against any claims of religious group autonomy (*Schüth v Germany* (2011) 52 EHRR 32). In effect, this means that the Church itself must at least consider this interest. Hunter-Henin agrees. In her view, this is necessary less the state protect what she characterises as religious dogma or the group over religious liberty (which, in this way, remains fundamentally rooted in the individual). The difficulty is that this arguably undermines pluralism, which Hunter-Henin argues demands the dialogical (balancing competing interests, allowing for revisability – even of the group's own self-understanding) approach. The Catholic Church in this case can no longer cohere around an ethos. Depending on the outcome of the balancing, it must accept the individual's construal of 'Catholic', an ironic re-definition of the term. Of course, this may simply point to different understandings of pluralism. Hunter-Henin privileges the individual and his or her construal of belief. An alternative is to see groups as at least co-constituting public life, and maintaining the authority to do so.

Hunter-Henin's *Why Religious Freedom Matters for Democracy* is a welcome contribution to these on-going debates. I have attempted to suggest in this response that it both poses a challenge to pre-eminent liberal egalitarian accounts, while remaining fundamentally liberal. In this way, especially for those like me who are sceptical of liberal accounts, it demands attention.