

Liberalism, Political Theology, and the Impossibility of Hunter-Henin's Third Way

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Introduction

In my view Dr Hunter-Henin is correct to argue that religious freedom matters for democratic pluralism. However, as I will go on to argue in brief, she is correct for the wrong reasons. To show this I will first summarise how she positions herself within the existing literature. I will then show that had she engaged with the genealogy of religion and religious freedom within the liberal tradition, she would have reached the same conclusion but for different reasons. The genealogy reveals that religious freedom enhances pluralism only as a side effect. Its main character is being a management tool to ensure that liberalism successfully contains its arch-nemesis: political theology. Political theology wants politics to be devoted to carrying out the will of gods. Liberalism wants politics to be devoted to maximising individual freedom. Liberalism, as I will explain, uses religion and religious freedom to keep theology separate from politics. This is good for liberals. But it is bad for adherents of political theology.

In Search of a Third Path: between Accommodationists and Secularists

In her ambitious book Dr Hunter-Henin tries to set an alternative to two existing approaches in the political and legal theory literature. One, which she calls the accommodationist model, says that religious freedom matters so much that democratic law should defer, in as much as possible, to religiosity: Whenever religious duties clash with legal duties – say wearing an Islamic veil in French schools which prohibit them – the former should generally prevail. This is because, according to accommodationists, religion is about maintaining a relationship with the divine (often understood in Christian terms). Religious freedom therefore is a means to preserve that relationship which is more valuable than ordinary democratic law. The other approach in the political and legal theory literature is what Dr Hunter-Henin calls the analogous-to-secular view. This view says that religious freedom matters for liberal democracy only because freedom more broadly matters. The more radical strand of this view would in fact say that religion does not exist. What exists is a diversity of dimensions of value (such as deep personal commitments, beliefs and group identity) which some theistic traditions have been able to exemplify. It follows that there is nothing distinctive or especially valuable about religiosity. On this view theistic traditions should be accommodated in law only if there are liberty-based reasons which are available to theistic and non-theistic traditions alike. Accordingly, school pupils that wear the Islamic veil and black pupils that wear an Afro should equally be accommodated from restrictive school uniform policies.

Dr Hunter-Henin wants to set a third view. She argues that the accommodationists are too deferential to orthodox understandings of religiosity. In particular, on her own democratic version, it is not just pluralism within the general political body that matters. Religious communities themselves ought to give space to pluralism. If they do, no automatic prioritisation can be given to religious claims for accommodations from democratic law. This is because some religious traditions will support and others will object to democratic law. Plural religious voices will be added to the cacophony of claims in democratic politics with no straightforward prioritisation possible. Accordingly, because some Muslims are in favour and others are against the French ban of religious symbols in schools, no automatic accommodation should be given.

Dr Hunter-Henin also argues against the analogous-to-secular view because she believes that there is something distinctive about the religious sense of identity and the contribution this identity can make to political discourse. However, and here lies the stumbling block to Dr Hunter-Henin's approach, she is not able to identify what is indeed distinctive about religiosity. How is a school pupil that wears the Islamic veil categorically different from the black pupil wearing an Afro? Dr Hunter-Henin does not want to say, like the accommodationists, that wearing the veil is fundamentally about maintaining a relationship with the divine. She courts, instead, with the idea that religiosity is an important component of individual, group and

political identity. That is indeed true. But the same can be said for wearing an Afro: it can be an important component of individual, group, and political identity; think of the iconic Afro of Angela Davis in the black liberation movement.

Dr Hunter-Henin cannot create a third path without specifying the distinct contribution that religiosity makes to democratic pluralism. Appeals to identity cannot do that distinguishing work. Accordingly, as the analogous-to-secular view would have it, in the context of accommodations from democratic law, it is freedom, rather than *religious* freedom, which really matters. Yet, the secularists are misguided in thinking that religion does not exist or is not distinctive. As I now go on to discuss, religion is an artefact of liberalism created to assert liberalism's own identity. Religious freedom is another artefact created by liberals to keep theology, as much as possible, out of politics. So religiosity is really distinctive and religious freedom does make a distinctive contribution to politics.

A Genealogy of Religion and Religious Freedom

There is now some consensus in religious studies scholarship that the concept of religion emerged with the dawn of liberalism in the early-modern period. To be sure, traditions that we now identify as religious, e.g. Christianity, Islam, Judaism etc., have existed for centuries long before the concept of religiosity. However, prior to the early-modern period, the concept of religion was associated with various ideas such as piety or group membership. It wasn't until the Christian schism brought about by Martin Luther, and Protestantism more generally, that religion came to be associated with its familiar meaning of theological tradition. Importantly, in the 1600s, only a selection of theological traditions and sub-traditions – those known to Europeans as the Abrahamic Faiths (Christianity, Judaism and Islam) – were initially dignified with being religions. Other traditions, such as Buddhism, Hinduism, Daoism, and Confucianism, were only later 'discovered' in the nineteenth century by Western scholars, missionaries, and colonialists. These discoveries took place irrespective of the centrality of theism in these traditions. Think, for example of some Buddhist or Confucian traditions which are unconcerned with divinities or are even atheistic.

Western law has had a similar trajectory of finding that the Abrahamic faiths were the only traditions which were truly religious and then, over time, expanding that to other non-Western traditions, irrespective of the centrality of theism to those traditions. Accordingly, in US law, for example, religion was first defined by the US Supreme Court in *Reynolds v. United States* (1879) 98 US 145 as 'a matter which lies solely between man and his God'. It was later updated in *Davis v. Beason* (1890) 133 US 333 to be 'one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will'. The (il)logic of discovering religiosity in atheistic traditions was started by the Supreme Court in 1961 in *Torcaso v. Watkins* (1961) 367 US 488 which elevated Buddhism, Taoism, and Secular Humanism to religions entitled to the free exercise of religion. It continued in the finding in *Welsh v. United States* (1970) 398 US 333 that a conscientious objector to military service who declared himself to be non-religious was nonetheless to be considered a religious objector. This was because his moral beliefs 'certainly occupy in [his life] "a place parallel to that filled by God" in traditionally religious persons'.

Why was religion, understood as theistic tradition, discovered in the 1600s? Why are traditions which are unconcerned with theism or even atheistic now classified by law as religious? The answer to the first question is that religion was invented by the creators of liberalism (e.g. Hobbes (1588-1679), Locke (1632-1704) and reinforced by JS Mill (1806-1873)) to contain political theology. Liberalism was birthed as an ideology that prizes individual freedom as the chief value of political governance. Individual freedom is achieved first by prioritising the individual's ability to define for themselves what is right and good; then by granting legal rights to the individual vis a vis the state to pursue their own conception of what is right and good. Liberalism was born out of a contrast with political theology, then the dominant Western ideology. Political theology is the ideology which prizes the divine's conception of what is right and good for humans as the chief value of political governance. In this ideology, the state is

dominated by the divine's conception of the right and good and there is no sphere where the individual's conception can ever trump the state-backed divine's conception. Theocracies (e.g. Iran or the Vatican) are specimens of political theology.

The creators of liberalism, in order to give space to individual freedom in politics, needed a way to cast out theology out of politics. They did so by inventing religion as a category separable from politics. In the work of Locke, the magistrate should have jurisdiction only over life, liberty, health and property. The magistrate had no jurisdiction over matters of the salvation of the soul. Thus political theology was out of politics. Theology was now only a matter of individual salvation, the merits of which was left to the individual to pursue. The different paths to salvation provided by different theological traditions were now another optional choice among others. The individual was free to choose their religion. On this narrative, religious freedom – understood as the protected individual choice to select one theological tradition over others – was the mechanism to seal the fate of political theology: If the omnipotent state is barred from enforcing the divine's conception of what is right and good, then, as a side-effect, religious, ethical and moral pluralism are the consequence. Even if one particular theological tradition becomes the magistrate – say by having the English Monarch as the head of the Anglican Church – religious freedom severely limits the power of the state over the individual choice over which theological tradition, if any, to pursue.

This narrative shows that religion and religious freedom were not created to celebrate religious identity. The genealogy reveals that religion and religious freedom are merely tools of liberalism to fight against political theology. Of course, some critics of liberalism have long complained that liberalism's chief aim is to get gods out of politics. The Catholic Church, for example, condemned liberalism for this reason in its Syllabus of Errors (1864). Liberals ought to be aware of this and not be quick to celebrate religion and religious freedom. It is true that the result of recognising religious freedom is more pluralism (individuals now have the option to choose between different theological traditions or none). However, this is only a side-effect of the primary aim of exorcising gods from politics. Because religion and religious freedom are simply liberal tools, they can be wielded however liberalism desires.

It is because religion and freedom of religion are liberal tools that traditions which are unconcerned with theism or are even atheistic can now be classified by law as religious. Western liberal law (e.g. US, French and UK law) can define religion however is convenient. In US federal law, for example, because there is no constitutional category of 'secular conscience' (which exists in UK and French law), US courts have used 'religion' to encompass that missing legal category (that explains *Welsh*). Similarly, because there is no distinct category of 'political, moral and ethical philosophy with non-naturalistic but non-theistic metaphysical foundations', some atheistic or agnostic Buddhist or Confucian traditions get to be labelled as religious for categorising ease. Finally, and most importantly, because religious freedom was originally created to fight against an ideology that threatened liberalism (i.e. political theology), it can be withheld from theological traditions which appear to threaten it today. Accordingly, given the apparent threat that Islam poses to Western liberalism, certain religious freedoms can be withheld from Muslim women (e.g. a Muslim teacher wearing a headscarf can be banned from the classroom because of the risk of proselytism) while comparable Christian practices are protected by religious freedom (e.g. displaying the Christian cross in classrooms is compatible with religious freedom).

Conclusion

Dr Hunter-Henin is right to argue in her new book that religious freedom matters for democratic pluralism. However, she is right for the wrong reasons. Religious freedom enhances pluralism only as a side effect. A genealogy of religion and religious freedom shows that they were created as tools to get gods out of politics. Because religious freedom is simply a tool in liberalism's arsenal, it can easily be mishandled in ways which non-liberals routinely lament. Liberals should resist conceding to these complaints: the instrumentalisation of religion and religious freedom enabled the creation of liberalism in the first place.