Cécile Laborde, *Liberalism's Religion*
(Cambridge, Mass., Harvard University Press 2017)

Can the wearing of headscarves be denied to public school teachers or private sector employees? Can a liberal state prohibit the face veil in all public places? Is it an impermissible violation of secularism and state neutrality if schools and other public buildings exhibit crucifixes? Can a business association claim religious liberty rights to deny services to gay customers or to withhold federally mandated contraceptives from their female employees? More generally, can religious minorities get a fair deal in a Christian majority society? Is liberalism not skewed to a concept of "religion" that is narrowly Christian and Protestant? Does secularism require the separation of state and religion, and is it exportable to non-Western societies? These are only some of the intractable religion questions, both narrow and broad, that have recently preoccupied courts, governments, and academia. The power of Cécile Laborde's *Liberalism's Religion* is to take on the full array of state-religion questions, and to provide convincing answers to all of them, within a clearly formulated (if difficult and complex) political theory framework that is inspired by Rawlsian liberalism. Yes, it can: Liberalism can accommodate religion in fair and equitable ways, including the non-Christian minority variants, but with a twist: by throwing out the concept of religion.

Indeed, the original and provocative demarche of this impressive work is that we don't need the concept of religion to deal with the whole range of state-religion questions. "Liberalism's Religion," to invoke the title of the book, is "internally complex" [239], and in the end no religion at all, because what is accommodated is the more general values, practices, and commitments that religion shares with other forms of human expression. In Laborde's well-chosen words, "religion is not uniquely special." Rather than chase for the best definition of religion, which has proved to be a futile endeavor, Laborde argues, we have to start with an "interpretive" (not descriptive or "semantic") approach to the category of religion, which "articulate(s) the multiple values that particular dimensions of religion realize" [2] but that we also find in other (secular) forms of human expression. Indeed, common sense already suggests that religion is

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not one thing but many things: obligation, identity, truth claim, way of life, ritual, collective association, to name just the most obvious. In Laborde's "interpretive" approach (borrowed from Ronald Dworkin's interpretive approach to law), we need to figure out which aspect of religion engages which liberal value to find plausible, liberal solutions to concrete controversies. But hers is no naïve celebration of liberalism. A further strength of this work is to take seriously the claim of a motley bunch of "critical religion" studies, from Talal Asad and Saba Mahmood to Winnifred Sullivan and Stanley Fish, that the liberal state and the liberal tradition at large are incapable of living up to their constitutive neutrality principle and giving a fair deal to religion, in particular non-Christian immigrant religions that do not easily meet the Protestant standard of private religion. In fact, to dispense with the concept of religion, which indeed is a "distinctively modern and Western notion" [19], has the further advantage of answering the critical charge that liberalism's (favored) religion is provincially Christian and Protestant.

The classic liberal assumption has been that "religion is special." This is most famously expressed in the US First Amendment's Religion Clauses, stipulating that "Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof." The constitutional Religion Clauses flag the dual and often contradictory directions that state-religion relations have taken in the liberal state from the beginning: on the one side, to protect religion from the state ("Free Exercise"), but on the other side to protect the state from religion ("Nonestablishment"). Different types of controversy have evolved around both paths of protection: on the one side, whether and how believers could be "exempted" from general laws that conflict with their religious precepts; and, on the other side, whether and how state "neutrality" could be reconciled with the fact that the state cannot but be partial and decisionist in setting the boundary between state and religion, in the process creating "religion" as a legal fact. In the US debate, the view that "religion is special" was long shared on both sides of the main fault-line in state-religion conflicts: between progressive "separationists," dominant until the late 1970s, who insisted that the state, for the sake of maintaining the Jeffersonian Wall of Separation, had to *disadvantage* religion in important respects; and religion-friendly "accommodationists," who became dominant from the 1980s on, not least due to an increasingly conservative US Supreme Court packed by Republican presidents, and who argued, on the contrary, that religious freedom was the "first

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freedom" (Michael McConnell) in the American state that required to *prioritize* religious expression over all other forms of human expression and legal-political considerations (prior even to the Establishment Clause that by nature restricts religion) [252, fn. 57].

However, as Laborde shows, liberal theory at least has in the meantime moved away from the underlying assumption that "religion is special," subsuming religion under a broader category of the ethical good, thus potentially showing a way out of the sterile American religion wars (though Laborde does not go down the empirical road; more on this later). "Liberal egalitarianism," which is the Rawls-inspired mainstream of liberal political philosophy that Laborde situates herself within, has conceived of religion as merely an instance of a broader ethical "good" that the liberal state must protect on the part of its citizens but also must protect itself from qua neutral state. If it were otherwise, religious and non-religious citizens could not be treated equally. The upshot of religion not being "uniquely special" is that "whatever treatment it receives from the law, it receives by virtue of features that it shares with nonreligious beliefs, conceptions, and identities" [2].

By way of an immanent critique of a wealth of philosophical writings, which betrays an immensely high level of learning and intellect, Laborde shows how various liberal theorists, all of a broadly Rawlsian persuasion, have already shown the way of "analogizing" and "disaggregating" religion, though in one-sided ways that lock them into certain contradictions and dilemmas. Ronald Dworkin "dissolves" religion in making the freedom of religion an "instantiation of a more general right of ethical independence" [46]. But in the process it "becomes impossible to carve out a specific area of protection" [*ibid*.], and he consequently rejects the possibility of religious exemptions. Christopher Eisgruber and Lawrence Sager, in their widely acclaimed "equal liberty" approach, "mainstream" religion as analogous to other vulnerable identities, like race, which the state must not discriminate against. Religion here is not first-person "belief" but third-person "identity," mainly a matter of classification by others. But this casts the net too wide, in one well-known court case (that implicitly relied on this approach) validating a religious exemption claim only because a prior exemption on the basis of physical disability already existed [56]. The problem with "equal liberty" is its reliance on the empty concept of equality, which denies any free-standing weight of an ethical-religious claim. Finally, Charles Taylor and Jocelyn Maclure have "narrowed" religion as analogous with

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conscientious duties, thus conceiving of religion not as "identity" (as did Eisgruber and Sager) but as "obligation." However, this would imply that religion qua "ritual" or qua "culture" could not be legally protected—which, incidentally, is a curious outcome for Taylor, who is known for his philosophical defense of multiculturalism. One sees: the "interpretive, disaggregative approach (to religion) is discernible, in embryonic form, in existing liberal theories" [4], but in one-sided ways that catch only one aspect of religion, and not certain other aspects that are equally worthy of protection on the part of the individual or from which the state has to protect itself.

Having laid out the various but one-sided ways in which other liberal theorists have analogized and disaggregated religion in the first part of her book (which is rather more complex and multi-layered than could be reported here), in the second part Laborde presents her own synthetic "theory of exemptions and state neutrality" [8], obviously always following the demarche of generalizing the dual prong of the US Religion Clauses. With respect to its neutrality mandate (generalized "Nonestablishment"), the liberal state has to be "justifiable," providing for its laws and policies only reasons that are accessible to all citizens; it has to be "inclusive," honoring the equal citizenship status of all and not privileging or excluding one class of religious citizens; and it has to be "limited," respecting individuals' self-determination in private matters. These three liberal values protected by the state's neutrality mandate precisely match three aspects of religion in which the latter signals danger: religion as "nonaccessible," religion as "divisive," and religion as "comprehensive." However, the state equally has to avoid or shield itself from non-religious analogues on these dimensions (dubbed "personal experience," "divisive identities," and "comprehensive worldviews," respectively). Importantly, where religion does *not* exhibit any of these three dangers, there is no reason for the liberal state *not* to associate with it. "(T)his is not a bullet that (liberal egalitarians) have willingly bitten" [115], but Laborde bites it. Accordingly, she defends a "minimal secularism," which is equally honored in progressive *Secularia* as in conservative *Divinitia*—her fictitious names for a radically secular and a mildly religious state, respectively [151f]. One of her important messages is that there is "more variation in legitimate state-religion relationships than liberal egalitarians have recognized" [116].

The same exercise of systematically matching liberal values with specific dimensions of religion, as well as identifying nonreligious analogues, is applied to the principle of religious freedom, the

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equivalent of the "Free Exercise" prong of the US Religion Clauses, and to the question of when religious freedom should trump the general laws of the state [see the summary table: 241]. This part of the story is more complex still because religion stands to be protected as individual *and* as collective practice. With respect to religion as collective practice, Laborde leaves no doubt that the state, and no other instance in society, has the "Kompetenz-Kompetenz" to decide the areas within which religious associations may act autonomously—the church (to mention only the Christian variant) is no parallel sovereign. Only groups (religious or not) that are "voluntary" and "identificatory" have pro tanto rights to discriminate against their own members, whereby the two aspects of religion or the ethical good that are protected via exemptions from general laws are so-called "coherence interests" and "competence interests." On these conceptual grounds she arrives at a compelling critique of the US Supreme Court's controversial *Hobby Lobby* decision (2014), which attributed religious freedom rights to a business association: while owned by a religious family, this worldly chain of "crafts and hobbies" stores clearly did not meet the "identificatory association" threshold, which requires "coherence or alignment among (these associations') purpose, structure, membership, and public" [184].

With respect to individually practiced religion, Laborde refutes the standard objection to religious exemptions proffered by liberal egalitarians (like Dworkin), which is to argue that state neutrality prohibits all judgments of "ethical salience" and the state therefore could not possibly grant religious exemptions (which require such judgments). She follows Alan Patten's [2014: ch.4][1] view of neutrality as "downstream value," which is premised on a substantial (if thin) liberal commitment to ethical independence. In reality, therefore, the liberal state "grants special protection to a class of ethically salient interests," and thus is not "neutral" in this respect [Laborde: 200]. But that leads to the question of how to determine the content of "ethical salience" that the state is held to respect on the part of the individual. What the state is not allowed to infringe on she dubs "integrity-protecting commitments" (IPCs), which require congruence between an individual's standards of the good life and her actions. IPCs, again, are of two kinds: strong and free-standing "obligation-IPCs," the disregard of which would constitute "disproportionate burdens" for the individual; and weaker, only comparatively evaluable "identity-IPCs,"

[1] Alan Patten, 2014, *Equal Recognition* (Princeton, NJ, Princeton University Press).

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in which case exemptions redress "majority bias" that arises from "precedence of a historically dominant religion" [229]. This mirrors the dual aspect of religion as "obligation" and "identity." In allowing for identity protections, Laborde builds a bridge to liberal multiculturalism theories, which hitherto had not received much notice by liberal students of accommodating religion. But unlike Will Kymlicka, liberal multiculturalism's main theorist, who assumes that the liberal state can separate itself from religion but not from culture [Kymlicka 1995: 111],[2] she assumes that no sharp line between religion and culture can be drawn, even though the protection of religion as culture must be weaker than that of religion as ethical obligation. This throws a critical light on some current attempts by European and American high courts to "culturalize" majority religions in order to secure them a privileged place in the public domain: "national and cultural identities can be just as exclusive as religious identities" [Laborde: 138].

Liberalism's Religion is a dauntingly difficult book. Even having read it twice, in addition to sixteen (!) pages of handwritten excerpt, this reviewer cannot claim to have fully grasped all of its nuances and lines of argument. This is not meant as a critique (except of my own shortcomings), because Laborde writes and reasons with utmost clarity. This is not a book for beginners, or for eclectic poachers (like myself). It is a book whose full value will only be accessible for readers in firm command of the two literatures that are fruitfully but demandingly brought together here: Anglo-Saxon analytical political philosophy and the medley of legal, anthropological, and sociological writings summarized as "critical religion." While Laborde clearly sits in the analytical camp, what impressed me is the equal measure of fairness and accept-no-nonsense that she brings to the "critical religion" scholars, for whom "liberalism" is the problem, not the solution. This is just as one should treat one's intellectual opponents—make their case in the strongest possible way, but also pull no punches. Yes, the critical religionists are right in pointing out that there is an "ethical salience" and a "jurisdictional boundary" problem in the liberalness of the liberal state, which is not as ethically neutral as it has sometimes been claimed to be and which rests on the blind spot of having first to decide where the boundary lies between the religious and the nonreligious, the public and the private, the right and the good. This critique, in fact, is the whole point of departure for

[2] Will Kymlicka, 1995, *Multicultural Citizenship* (Oxford, Oxford University Press).

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Liberalism's Religion. Yet the critical religion scholars are wrong in confounding genesis and validity, and denouncing liberalism as "irremediably Christian" is "as absurd as discrediting mathematics because it was a great achievement of Greek civilization" [17]. And it is wrong to judge liberal theory mainly through the lens of liberal practice, particularly if the critical critique unwittingly relies on the same liberal principles that are debunked as "mission impossible" [S. Fish]—freedom, equality, pluralism [*ibid*.].

By the same token, what I found missing in this book is a closer and more systematic attention to liberal practice, especially legal practice, in which religion conflicts are increasingly played out today, not only in the West. To what degree have courts embraced her favored liberal "disaggregation" approach, or are they still mired in essentialist and ethnocentric understandings of "religion" that the critical religion scholars (rightly or wrongly) denounce? Are, as critical religion scholars claim, Western courts just as crude and discriminatory as courts in Islamic countries in the "privileging of the majority religious sensibilities and traditions" [Mahmood and Danchin 2014: 153]?[3] One would like to know. Of course, Laborde is in full command of case law and the legal literature, but this knowledge appears more in the footnotes than in the main text. Liberalism's religion requires equal attention to the liberal *state*'s religion. To home in on liberal *practice* is the nominal strength of the critical religion scholars, and not really entering this domain and willingly limiting oneself to normative political theory (as Laborde in the end does) means ceding too much undisputed ground to them too fast. In one place, Laborde lauds Saba Mahmood and Peter Danchin [2014], two prominent critical religion scholars, for drawing out "unexpected similarities" between Egyptian and European high courts' usage of the concept of public order to "police the boundaries of acceptable religiosity" [Laborde: 17]. But doubts are allowed as to whether these "similarities" really outweigh the differences, considering that in one case a minority religion is outright prohibited, whereas in the other it is mildly restricted (see my discussion of Mahmood's comparative treatment of the legal "public order" concept in her *Religious Difference in a Secular Age*).[4] A more sustained empirical and comparative analysis is needed to figure out whether and when liberalism's religion is or can become the liberal

[3] Saba Mahmood and Peter Danchin, 2014, "Immunity or Regulation? Antinomies of Religious Freedom", *South Atlantic Quarterly*, 113(1): 129-159.

[4] Christian Joppke, 2017, "Blaming Secularism" (review of Saba Mahmood, *Religious Difference in a Secular Age*, *European Journal of Sociology*, 58(3): 577-589).

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state's religion too, and whether other parts of the world are ready or not to follow up on this.

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