

Secularism in the Indian Context

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Indian constitutional framers sought to tie their new state to ideas of modernity and liberalism by creating a government that would ensure citizens' rights while also creating the conditions for democratic citizenship. Balancing these two goals has been particularly challenging with regard to religion, as exemplified by the emergence of a peculiarly Indian understanding of secularism which requires the nonestablishment of religion but not the separation of religion and state. Supporters argue that this brand of secularism is best suited to the particular social and historical circumstances of independent India. This article suggests that the desire to separate religion and state is integral to any understanding of secularism and that, consequently, the Indian state neither is nor was meant to be secular. However, Indian secularists correctly identify the Indian state's distinctive approach to religion-state relations as appropriate to the Indian context and in keeping with India's constitutional goals.

INTRODUCTION

The institutions of the Indian state, and the courts in particular, came to be the agency through which not only were public purposes articulated, internal religious reforms were also carried out. . . . [T]he Indian state acquires authority over Hinduism, not because of its undoubtedly secular character, but because it has been *authorized by Hindus* to do so.

Mehta 2005, 57

The words are vivid and suggestive—in a few short lines we see a state determined to promote religious change, a secularism that encompasses state reformation of religion, and a religious community capable of authorizing a state to exercise such authority.¹ For readers unfamiliar with the intricacies of state-religion relations in India, Pratap Mehta's imagery may seem fantastic, but to scholars of Indian law and politics it is widely acceptable, if nevertheless not uncontentious. Indeed, Mehta's work represents a dominant trend in Indian legal and constitutional scholarship, according to which secularism has multiple meanings as well as multiple ways of being put into practice.

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1. The word *state* is particularly difficult to translate from its Indian usage. Despite the presence of three distinct branches of government (executive, legislative, and judicial), the judiciary is sometimes viewed as being above the other two branches, in both its ultimate interpretative authority over the Constitution and its moral standing. Similarly, statutory bodies like temple boards—in some cases appointed by state cabinets and supervised by a cabinet minister—are commonly not considered part of the state.

Thus Rajeev Bhargava (2005, 105–33) has argued that secularism in India takes the form of a “principled distance” that includes nonestablishment but avoids strict separation between religion and state, while Seval Yildirim has described “Indian secularism” as “a discourse to reconstruct the political space so that religion and the state can co-exist” (2004, 903; see also Bhargava 2005, 105–33). Although scholars differ on *why* state involvement with religion is legitimate in India—Mehta’s claim of collective authorization is relatively unique—most espouse something like Rajeev Dhavan’s tripartite vision of religious freedom, celebratory neutrality, and reformatory justice as foundational to a specifically Indian understanding of secularism (Dhavan 2001).

The goals of this article are similarly threefold. First, I will argue that regardless of the various ways secularism can be implemented at the levels of constitutional decree or daily practice, there is only one way we can make sense of the term itself, and that is to understand it as referencing *both* the nonestablishment of a state religion and the desire to keep religion and state separate.² While I acknowledge that secularism in practice will perforce look different everywhere, in this first section I hope to establish that secularism in principle must remain a constant if we are to retain conceptual clarity for the term. The second section of the article asks whether, in light of this conceptual precision, India is a secular state—and answers that, increasingly, it is not. The third and final section proposes that (Constituent Assembly debates and the Forty-Second Amendment notwithstanding) India *was never meant to be a strictly secular state*, for which choice there were *good and reasonable grounds*.

Some of the arguments that I will present in this article have been employed, in other incarnations, by individuals associated with the “Hindu Right,” and for that reason alone have become distasteful to those who do not share their political agenda. There is now nothing to be done about this association, and less still to be gained by refusing to consider positions merely because of distaste for the individuals who first or most vocally espoused them. I cannot feel that the Rashtriya Swayamsevak Sangh (RSS) or Bharatiya Janata Party’s (BJP) views on separation-model secularism are so authoritative that the rest of us must forever abandon the concept. Nevertheless, in the interests of full disclosure, I will note now that I am not arguing from within a Hindu nationalist perspective. Rather, in arguing for a more specific understanding of the term “secularism,” I am interested only in advocating a concern for intellectual precision, and in arguing that the Indian Constitution does not envision a secular state I am not suggesting that it should have done so. The fact that I personally prefer separation-model secularism does not alter my belief that intellectual precision is valuable for its own sake, or that separation-model secularism is not a telos to which all liberal democracies must aspire. In other words, it is not the goal of this article to argue that because secularism is a particular good, it is a universal good.

2. This is similar, although not identical to Donald E. Smith’s (1963) definition of secularism, which focused on a set of three relationships: between religion and the individual, between the state and the individual, and between the state and religions. Smith’s claim that governance in India had not yet become truly secular has been widely criticized by supporters of multiple secularisms, including Marc Galanter (1965). To apply Smith’s typology, my understanding of secularism prioritizes the state-religions relationship, which is determined by the relationships between religion and the individual and between the state and the individual.

DEFINING SECULARISM

When scholars such as Dhavan, Mehta, and Yildirim argue that secularism can have multiple meanings, what they are really suggesting is that the very substance of secularism can be plural. It can be expected that secularism in actual practice will take very different forms according to local conditions; indeed, we can observe vast differences between the two most commonly cited examples of secular governance, the United States and France. In contrast, however, the contextualist view put forth by these scholars maintains that secularism *in principle* can mean something other than the nonestablishment of a state religion and the desire to keep religion and state separate.

Practice versus Principle

The crux of the contextualist argument is that secularism is a situated term rather than an independent abstraction and that, consequently, it can be assigned different, contextually desirable meanings (see Frankel 2002, 4; Kaviraj 2002). That is, while at first glance secularism may appear to have a static meaning that can be applied equally everywhere, according to contextualists the concept of secular governance has radically different connotations depending on the context in which it is situated. "Secularism," Yildirim states, "should be approached as a discourse to reconstruct the political space so that religion and the state can co-exist" (Yildirim 2004, 903). Nor is Yildirim alone in suggesting that the word "coexistence" may plausibly substitute for "noninterference" or "separation" in describing the kind of power-sharing arrangement that a secular government should aspire to have with religion. Mehta's publicly authorized state, Bhargava's "principled distance," and Dhavan's trio of religious freedom, celebratory neutrality and reformatory justice all emphasize discourse as the means to determine jurisdictional authority and permeability as the defining characteristic of those jurisdictions once they have been established.

In practice, and especially in the realm of the courts, secularism is often a discourse whose goal is to reconcile the competing authority of religion and state within the political space of the nation. However, such discourse is the ground-level working out of some prior principle, and the content of that principle—not the particular manner of its working-out—is precisely what is at issue here. "Coexistence" as an animating principle offers relatively little guidance on how to deal with contestations between religion and state over their relative jurisdictions. An illustration of this conceptual vagueness is Yildirim's citing of both the United States (where government aspires, with varying degrees of success, to noninterference) and Turkey (where government sought to centralize and reform religious institutions) as successfully secular states. Note the difference in intent, in view of which we can only be sure that *nonsecular* government exists in cases where either religion seeks to completely usurp political authority or the state seeks to be a source of religious authority.

The idea that secularism can have different substantive meanings is attractive for at least two reasons. First, it enables defenders of "Indian secularism" to go beyond the critique of Benedict Anderson and other scholars of nationalism presented by Partha Chatterjee in *The Nation and its Fragments*. Instead of arguing that India constructs itself

by appropriating and altering “certain ‘modular’ forms already made available to [it] by Europe and the Americas” (1993, 5), contextualists can insist that India advances its own, thoroughly indigenous understanding of the secular. More significantly, however, the idea that secularism can *in principle* be based on coexistence de-emphasizes the overwhelming power of the state in religious life. As I will discuss in the next section, the desire to shift authority away from the state—especially in matters of religion—follows from a long history of colonial governance. However, the effect of emphasizing coexistence over noninterference is an increase in governmental influence in religion, which (as I will suggest in my conclusion) frequently carries unsalutary results.

In contrast, retaining noninterference as an integral, animating principle of secularism acknowledges the state’s inevitable power over the religious communities and institutions that it circumscribes (through definition) and controls (through legal sanction). However, contextualists should not be discouraged by this admission of state authority, since in practice the principle of noninterference limits that authority in a way that should appeal to them. As I argue in the last part of the second section, secularism has often sought to separate religion and state not to diminish religion, but in order to protect and promote the ability of citizens to practice a variety of faiths.³ Thus while the state’s circumscribing of some political spaces as nonreligious does limit faith, such circumscription can be—and in the United States, has been—desirable for believers as well as nonbelievers. Moreover, since the demarcation of zones of authority is an inescapably national task, contextualists should rest assured that such categories reflect values and aspirations relevant to Indians.

Admittedly, the state must still construct some minimal definition of religion or religious practice in order to determine when it will avoid the religious domain (e.g., US unwillingness to ban Santeria ritual slaughter) and when it will override religion for state purposes (e.g., French prohibition of religious symbols in schools). But the conceptual integrity of separation-model secularism does not lie in the particular spaces in which religion or state is dominant. Thus, US secularists can view a ban on wearing veils as unnecessary or objectionable because, in the United States, the state’s supremacy in the public domain is not considered to be threatened by the wearing of religiously significant clothing. In contrast, US secularism is held to be threatened by public displays that endorse only one religion and, consequently, these are prohibited.⁴ In other words, the United States and France exemplify secularism not because they agree precisely on the political spaces in which either governmental or religious authority should take precedence, but because both systems have decided on an allocation of domains of precedence and do not desire to make either the state or religion fully authoritative over the other. The French veil ban, for instance, is unconcerned with the religious validity of veiling. Needless to say, such domains are not in practice isolated

3. On the difficulties in constructing such definitions, see Sullivan (2005).

4. Thus, in part, the divided opinion in *County of Allegheny v. ACLU*, 492 U.S. 573 (1989). In this case, a majority of Supreme Court members ruled that a Christmas nativity scene placed on the grand staircase of the Allegheny County Courthouse violated the Establishment Clause, while a different majority ruled that a menorah and Christmas tree outside Allegheny’s City-County Building were constitutional. Specifically, Justices Blackmun and O’Connor held that the religious plurality represented by the menorah-tree combination placed it within the boundaries of Article 1 of the US Constitution.

from one another even if in principle—and, indeed, in judicial discourse—they are treated as such.⁵

What's in a Name?

Having said all this, one might very well wonder why it is important to establish what secularism is in principle. Conceptual clarity is well and good but especially when deeply significant issues like religion and governance are up for consideration, semantic precision seems to be poor grounds on which to throw out a term that has inspired so many and become taken for granted by even more as part of their national identity. It is no small matter to suggest that secularism is *some one thing* (which I have attempted to do in this section), particularly when this is followed by the claim a country—now for thirty-five years a “sovereign socialist secular” republic—does not exemplify that thing (which I will address in the next section). Why, then, all this definitional fuss?

Ashis Nandy, T. N. Madan, and other intellectuals collectively dubbed “antimodernists” have given us some insights as to why it may be worthwhile to commit ourselves to particular meanings of words.⁶ While antimodernists are most famous among scholars of India for their frequently, often intentionally provocative ideas—in the late 1980s Nandy famously drew feminist ire when he argued that widow immolation was not always the misogynistic practice it is now—they are also eager to articulate the conventionally unsaid. In a well-known essay titled “Secularism in Its Place,” Madan posited not only that India is not and never will be a secular state, but that Indian secularism (his terminology) “really fails to provide guidance for viable political action, for it is not a rooted, full-blooded, and well-thought-out weltanschauung, it is only a strategem” (Madan 1987, 750).

Madan means this in two senses. On one hand, Indian secularists are unable to govern effectively because religion is too significant for most Indians and because the secularists themselves do not have a gut-level inclination toward noninterference, since secularism is an inherently Western concept. On the other hand, the weakness of Indian secularism, which Madan says is “at best . . . an inadequately defined ‘attitude,’” actually exposes the state to manipulation by fundamentalists (Madan 1987, 750). This is because fundamentalists are provoked into violent reaction by secularism’s trivialization of religion’s place in daily life (see also Mitra 1991). Indian secularists are, by virtue of their desire to engage with faith while remaining neutral toward all religions, thoroughly unequipped to deal with this fundamentalist backlash. Thus secularism (regardless of whether it is in a peculiarly Indian form) is actively dangerous for the nation.⁷

5. The criticism that the term *secularism* is itself “vacuous” because it is “based on an arbitrary and unstable distinction between the religious and the secular” (De Roover 2002, 4047) mistakes the matter: it is not the fact of separation but the desire to separate religious and governmental spheres that defines secular governance.

6. Though diverse in their views, antimodernist scholars generally critique modernist technologies and ideals as being impersonal or illusive.

7. On the differing nature of Western secularism or secularism per se, see Madan (1987, 753), where he described secularism as “very much a late Christian idea.”

There are several points at which I diverge from Madan's analysis, but I appreciate his suggestion that persistent attachment to a specific term can have real and undesirable consequences. This appreciation is *not*—and I cannot emphasize this enough—because I agree with his suggestion that the secularization of everyday Indian life is directly responsible for the rise of fundamentalist politics. Rather, I find valuable Madan's implied suggestion that secularism, “understood as interreligious understanding,” may after all find success in South Asia (Madan 1987, 758). Given Madan's own understanding of Western secularism as resulting in the privatization of belief and practice, this is little short of suggesting that another type of secularism, one quite different from that which predominates in the West, as well as potentially distinct from the type of secularism advocated by contextualists, should be understood as the religion-state dynamic best suited to South Asia.

Although rather more pessimistic about the place of secularism in India, Ashis Nandy echoes Madan's disenchantment with labels, asking: “If secularism only means the traditional tolerance of South Asia, why do we need an imported idea to talk about that local tolerance?” (Nandy 2004). Nandy also accused the Indian Left of “obsequiously aping, in the name of secularism[,]” actions that have little to do with the supposed humanism of secular politics (Nandy 2004). Even if we do not accept the argument that support for secularism is indirect support for fundamentalist violence—and I certainly do not accept this—Nandy and Madan require us to rethink the singular value of the term *secularism*. The visions of interreligious and religion-state understanding they offer are strikingly similar to Dhavan's, Bhargava's, and Yildirim's ideas about coexistence: all emphasize the great importance of religion to most Indians, the ability of religious traditions to foster social harmony, and the need to search for contextually appropriate ways of handling religious plurality. For example, Nandy (2004) jabs at proponents of secularism by sarcastically remarking that it is “the inferior, inadequate concepts . . . of neighbourliness, the principles of hospitality encrypted in the various religious traditions, and the persistence of community ties” that are responsible for protecting Indian religious minorities—concepts that are decidedly integral to notions of “Indian secularism” as well.

Yet despite the similarities between themselves and contextualists, antimodernist antipathy to the word “secularism” is marked due to their displeasure with the perceived consequences of secular politics and their desire to defend religious believers.⁸ But there are other undesirable consequences of retaining “secularism” as a way to describe state-religion relations in India. Perhaps least compelling politically (but most convincing to me personally) is that the task of retaining a label for the sake of possessing that label—or for lack of an equally attractive replacement—is dispiriting.

More significantly, retaining the appellation “secularism” and forcibly extending it to include the range of state-religion relations obtaining in India implies that India's chosen route requires the mantle of a familiar term. The ideals informing Indian

8. Nandy (2002), for example, wrote: “By retrospectively and glibly calling all these forms of resistance to communalism secular we have not only shown contempt toward their theoretical apparatus—and toward their theology of tolerance—we have also tried to distance these social activists and thinkers from ordinary Indians and have brought them close to our world—in order to make them acceptable and respectable in our circles.”

responses to religious pluralism—freedom, neutrality, and, especially, reform, as per Dhavan—are quite capable of standing on their own.⁹ Moreover, as Gary Jeffrey Jacobsohn suggests, this vision of a society revolutionized by government distinguishes the “militant constitutionalism” of India’s founding text from the “constitutional acquiescence” of its US counterpart (Jacobsohn 2009). In this dichotomy, constitutional acquiescence describes an approach whereby “the constitution itself is not the direct source of major [social and political] revisions,” while militant constitutionalism is its opposite (Jacobsohn 2009, 131).

Jacobsohn has argued at length that the choice to construct the Indian Constitution as a confrontational document was hardly convenient or comfortable, while others have elaborated on the care and deliberation with which the Constituent Assembly drew from a variety of sources to construct a text especially suited to the Indian context.¹⁰ Indications of India’s original—and, in many ways, continuing—choice to pursue a “third-way” approach to state-religion relations are numerous, and they provide ample reason to avoid riding roughshod over those aspects of the Constitution that constitute very real breaks with Western democratic experience. This is not to advocate a kind of originalism from respect, but to suggest that the unique qualities of the Constitution, which are still largely valued by contextualist supporters of Indian secularism, would do well without terminological camouflage.

A last and more controversial reason to forego “secularism” as a descriptor has to do with that perennial concern of Indian secularists, Hindu nationalism. As the following section will show, if we assume that secularism in principle entails both nonestablishment and separation, India is certainly not a secular state. The fact that it claims to be so while involving itself in the regulation and reformation of religion—mostly though not exclusively of Hinduism—is problematic, as frequent agitations over “pseudo-secular” governance by the RSS, BJP, and their affiliates have made clear. But first let me distinguish between the Hindu nationalist position and my own.

Hindu nationalist support for “true” secularism as opposed to prevailing “pseudo-secular” attitudes toward religion is premised on the idea that India unfairly treats its majority Hindu population. In this view, Hindus are disadvantaged because their religious institutions and practices are subject to a far higher level of state control than those of minority religions. Hindus are also disadvantaged because, as a majority population, they do not constitute a targetable voting bloc that can be wooed with political compromises and monetary support—unless, of course, they are divided along caste lines, which Hindu nationalists by and large oppose on the grounds that it weakens Hindu solidarity. Finally, Hindu discontent, as manifested in acts like the destruction of the Babri Masjid, the Godhra massacre, and even the slaying of Australian missionary Graham Staines, is the understandable if regrettable result of pseudo-secular policies. Indeed, on the eve of the BJP’s electoral victory in 1998, BJP member (and soon-to-be Minister) Arun Shourie exclaimed that “secularists are the ones who have prepared the ground for the turnaround. In the name of secularism, in the name of ‘keeping the

9. Thus, unlike Nandy, I am for the most part including official as well as unofficial responses to religious plurality in the category of things not needing apologists.

10. On the efforts of Constituent Assembly members, see Austin (2008), Bajpai (2002), and Nigam (2008).

communal monster at bay,' they legitimized the ganging up of all sorts—with what face can they denounce the BJP today as it does the same thing?" (Shourie 1997). The Hindu nationalist solution to all this, in its mildest form, is to implement "true" secularism that will make no exceptions for the institutions, family law, or voting blocs of any religion. Critics argue that doing so would actually introduce a kind of radical majoritarianism to India, since Hindus would then constitute the largest voting group and legislation (such as a Uniform Civil Code) would likely have a broadly Hindu character.

Unlike Hindu nationalists, I do not perceive a direct correlation between "Indian secularism" and religious violence, and I do not feel that the majoritarianism implicit in uniform legislation is viable in contemporary India. I do, however, feel that the obvious gap between separation-model secularism and the Indian approach to religion-state relations means that employing the term "secularism" to describe these relations is unnecessary, and not without negative repercussions. In my own research in Kerala—arguably one of the most progressive states in India and one with a long, if somewhat faltering, history of interreligious harmony—I have repeatedly encountered sheepish complaints about lopsided government involvement in Hindu temples, even as those making the complaint reaffirm their commitment to religious plurality and the compromises that it may require. Kerala is not typical of India, due to not only its progressiveness but also because of the degree of control that its government (along with those of other southern states) exerts over Hindu temples, which is unusually high even by Indian standards. It is nevertheless noteworthy that, even there, lawyers, temple leaders, and social organizers who on the whole support the government's desire to reform and administer Hindu institutions find it difficult to reconcile this mission with the claim of secular governance.

This observation brings us back to two points with which I wish to conclude this section. First, unlike both antimodernists and Hindu nationalists, I am objecting not so much to the principles underlying religion-state relations in India as to the name attributed to those principles—namely, secularism. Second, that even though this is a semantic distinction—and one that I do not think carries any apocalyptic implications—it is nevertheless worth consideration for intellectual and political reasons. Ultimately, the definitional fuss surrounding the term "secularism" in India exists primarily due to the difficulty of imagining a nonsecular democracy. Although I allude to the connections between secularism and liberal democracy in the final section of this article, a proper exploration of this issue lies beyond its scope.

In the next section, I will consider several reasons why governance in India is not secular in principle, even if it frequently gives evidence of commitment to nonestablishment and, in some cases, noninterference.

RELIGION AND STATE IN INDIA

Earlier, I suggested that secularism in practice must necessarily take different forms according to contextual needs and limitations. To better ground the claim that religion-state dynamics in India are something more than evidence of such diversity, this section will consider examples that highlight the breadth and depth of the government's

involvement with religion. Again, my goal is to show that the Indian state is not secular in principle, not to express an opinion as to whether it should be secular.

Administering Religious Institutions

One of the most significant ways in which the Indian state is involved in the religious lives of its citizens is through its control of Hindu religious institutions. The government does also engage with other religions; perhaps the most prominent example of such engagement is the Central Wakf Council, a statutory body that oversees state wakf boards and through them administers movable and immovable properties designated for Muslim religious purposes. Nevertheless, the government has no day-to-day control over the wakfs or over Christian institutions, and overall it does not relate to Muslims and Christians in any way that could be considered parallel or analogous to the depth of government involvement with Hindu temples, mutts (i.e., monasteries), and charitable institutions. Since such oversight is conducted at the state level (and is far more extensive in the southern states than in the north, though it does appear throughout the country), the central government's involvement is minimal. Nevertheless, arguments that "Indian secularism" is a kind of secularism despite such institutional regulation frequently expand on regional conventions to claim that, in India, ruling authorities have traditionally patronized religious institutions. I will return to this point later in this section.

State government regulation of religious institutions goes well beyond the establishment of tax exemptions or annual support and the work of ensuring that institutions do not violate core constitutional principles. Hindu temples are classified as either public (subject to government control and open, with some restrictions, to all Hindus) or private (owned and operated by private families or trusts and serving limited constituencies). In the four southern states (Tamil Nadu, Kerala, Andhra Pradesh, and Karnataka), temple boards or committees operate with differing levels of authority. In Andhra Pradesh, the Tirumala Tirupati Devasthanams govern the Vaishnavite temple at Tirupati, until recently India's richest religious institution,¹¹ while Tamil Nadu and Kerala each have departments in their state governments devoted to the management of public Hindu religious institutions, which number thousands in each state. The specific scope and duties of such administrative bodies vary, but generally they administer temple lands and finances, appoint middle- and lower-level employees (and sometimes priests), and act as legal custodians of the temple. Temples and religious institutions elsewhere in India are usually administered by committees as well, but these are more often tied to families, sects, or trusts than in southern India, where temples are also generally larger, older, and more orthodox in ritual.

By way of illustration,¹² in Kerala, five regionally demarcated boards administer all public temples in the state. The boards have between three and nine members

11. Investigations in June and July 2011 at the Padmanabhaswamy temple in Thiruvananthapuram, Kerala, revealed a treasure provisionally valued at 1 trillion rupees, which would make the Keralite temple richer than Tirupati (Anonymous 2011).

12. The following information is drawn from conversations with advocates Krishnakumar Mangot, Unnikrishnan, and Vijayaghavan in Cochin, Kerala, from January to April 2011.

each, appointed by the Hindu members in the Council of Ministers (state cabinet) and the Hindu members of the state Legislative Assembly for a period of two to four years. Collectively, the boards are the richest statutory body in Kerala, making board members extremely powerful in their interactions with the state government. Although some positions, like those of priests and special temple musicians, are hereditary, the vast majority of employees attached to any given temple are appointed by the relevant temple board; in addition, hereditary positions, if left vacant, revert to the board's discretion. The boards also issue contracts to vendors for the provision of ritual materials, operation of temple canteens, and repairs to temple properties.

The boards are far from autonomous, however. On the contrary, they must apply to the Kerala High Court for approval for even the smallest of these actions, thanks to judicial efforts since the 1980s that extended the Court's audit powers as a means of minimizing corruption in the boards. Now any work costing more than 100,000 rupees (approximately US\$2,200) must gain approval from a court-appointed ombudsman, whereas requests for higher amounts require further inspection. For two days every week, a special bench of the High Court hears only temple-related matters, most of which involve requests for budgetary approval (in one memorable case, regarding a substitute chauffeur for a board president) but many of which involve petitions from devotees, religious associations, and (nonauthoritative) temple advisory committees. The Court also frequently issues *suo motu* (i.e., on its own initiative) opinions on matters that it deems important and forms special commissions to produce detailed reports on particular aspects of temple management.

Again, relative to other regions of India, government involvement with religious administration is far more extensive in the south. More specifically, I do not by any means intend to suggest that all temple administration in India is subject to the same executive influence and judicial control as in Kerala; nevertheless, across India, the administration of religious institutions in the absence of any pan-Hindu ecclesiastical structure is a complex and challenging affair. It is worth noting, though, that the complexity of governing large, free-standing institutions is not the only factor motivating state control of temples. In addition, public temples are increasingly powerful and dependable sources of income for state governments and for the officials appointed to positions of authority. Moreover, regulation enables the redistribution of funds among all the temples within a given region, thus supporting smaller or less frequently visited temples that would otherwise have to close.

The support of minor temples and the proper administration of religious institutions are both goals consonant with the state's mission to protect and reform religion. Ronojoy Sen (in his gloss on Dhavan) writes, for example, that: "Celebratory neutrality entails a state that assists, both financially and otherwise, in the celebration of all faiths. Reformatory justice involves regulating and reforming religious institutions and practices, setting aside some core elements that are beyond regulation" (Sen 2007, viii). More cautiously, Jacobsohn observes:

In India social reform must always be balanced against the demands of multiple cultures, whose resistance to changes threatening to their ways of life finds support in constitutional provisions that explicitly endorse cultural preservation. Such

provisions are as much an expression of political reality as they are a measure of constitutional acquiescence. (Jacobsohn 2009, 155)

But if the management and patronage of religious institutions are both an essential aspect of the Indian Constitution and a practical necessity, then the resulting system is not secular, as it strongly violates the principle of noninterference.

It is true that the establishment of temple boards and ministries, along with court oversight of these bodies, does not constitute the establishment of religion and that both the central government and courts have gone to considerable lengths to ensure that nonestablishment remains a central tenet of the Indian polity. Jacobsohn, for instance, has written extensively on *S. R. Bommai v. Union of India* (AIR 1994 SC 1918), in which the Supreme Court affirmed secularism as part of the indestructible “basic structure” of the Constitution. In *Bommai*, several states that had elected BJP governments in the immediate aftermath of the destruction of the Babri Masjid were subjected to Article 356, commonly called President’s Rule, whereby existing governments could be dismissed and states placed under direct rule by the central government. The argument of the dismissed governments, that invocations of Article 356 were legitimate only insofar as the governments in question failed to preserve the workings of the democratic process, was emphatically rejected by the Court. Instead, the Court reasoned that “the inability to fulfill a mandate is ultimately less problematic than the fulfillment of one that was anathema to the animating principles of the regime” (Jacobsohn 2008, 52). *Bommai* is thus widely perceived as reaffirming judicial commitment to secularism—that is, the nonestablishment of religion—as an integral part of India’s political and legal identity.

But even if a case like *Bommai* represents a substantive commitment to nonestablishment (and I agree that it does), it does not constitute a similar commitment to the broader concept of secular governance because separation and nonestablishment are not coextensive. Nonestablishment represents a certain kind of separation of religion and state—that is, a refusal to tie the benefits of citizenship to a particular religion. However, there are other kinds of separation that may be absent in a state with no established religion. Despite its commitment to nonestablishment as demonstrated in *Bommai*, the Indian state engages in the reformation of religious law, the articulation of who constitutes a true believer, and the administration of religious institutions.

Likewise, evidence of strong antiestablishment sentiment does not negate the clear involvement of India’s executive and judiciary branches in the administration of religious institutions, although contextualists seem to imply that it does when they claim that such administration is inescapable in India and should therefore be excused in light of the state’s refusal to promote any one religion. In what follows, I will consider an element of this claim, namely, that the government of independent India is like governments in colonial and precolonial India in that it *cannot escape* regulating Hindu religious institutions because of the complexity and expense involved in doing so.

Historical Trajectories

There are two prominent iterations of this claim, both of which hinge on the idea that rulers in India have never been able to avoid acting as patrons of religious

institutions, especially Hindu temples and mutts. The first of these iterations looks back to pre-Islamic Hindu rulers and finds that they were responsible for the protection of religion, whether this role involved patronizing temples or upholding *dharma* by preventing behaviors (such as the mixing of castes) that endangered the people's spiritual well-being (Derrett 1968; Fuller 2003, 156). The literature on South Indian politics has especially stressed this connection of religion to state power, although Derrett has made the argument with regard to India more generally (Derrett 1968; Good 2004; Appadurai 2008, ch. 2). Indeed, as Derrett (1968, 512) himself stated, "neither Indian history in general nor Hinduism itself denies the validity of the state's jurisdiction."¹³

Granville Austin has made a similar argument in his discussion of positive rights and the Directive Principles. In his first work on the Indian Constitution, Austin characterized the heavy involvement of the state in social matters, especially as it is articulated through the Directive Principles, as a legacy of prenationalist Indian history. In India, Austin stated, government—whether "a petty ruler, a Mogul emperor, or the British Raj"—had always been responsible for conceptualizing and implementing the means of social reform in India. The Constituent Assembly's revolutionary aspirations and its choice to vest the power (however hobbled) to fulfill those aspirations with the state was in keeping with Indian experience that "[w]hat the government did not do, or see done, usually was not done" (Austin 2008, 76). However, Austin also—and more frequently—argued that the positive rights of the Directive Principles represented the Assembly's response to the economic aspects of colonial domination, just as the negative rights of Section III of the Constitution addressed the lack of civil liberty under the colonial regime (Austin 2008, 60).

Although contemporary Indian governments perform many of the same duties as their precolonial counterparts—most significantly the redistribution of temple wealth and the arbitration of disputes that cannot be resolved locally—there are important distinctions between the two, as can be grasped by turning to one of the scholars most frequently cited in support of their similarity. Arjun Appadurai, in *Worship and Conflict* (2008, 63), presented four propositions regarding relationships between kings, religious sects, and temples in Tamil Nadu between 1350 and 1700.

1. Temples were ritually essential to the maintenance of kingship.
2. Dynamic sectarian leaders provided the links between kings and temples.
3. Although the day-to-day management of temples was left in the hands of local (generally sectarian) groups, the responsibility for solving temple conflicts that resisted local resolutions was vested clearly in the human sovereign.
4. In a particular ethnosociological sense, kingly action regarding temple conflict was not *legislative*, but *administrative*.

Note especially that "the day-to-day management of temples" was not the prerogative of the state and that "kingly action regarding temple conflict was not *legislative* but *administrative*." By this last statement, Appadurai meant that kings were not deemed

13. Though he generally agreed with the validity of the modern Indian state's involvement in the religious domain, Franklin Presler distinguished between the "operative ideal" of the Hindu Religious and Charitable Endowments (HRCE) Department in Tamil Nadu and the courts, saying: "The court's approach is more congruent with the traditional temple. The court is more responsive to local customs and traditions, and less committed to separating the temple from society and politics" (Presler 1987, 158).

“constitutionally competent” (2008, 69) to issue pronouncements with general and permanent applicability in cases of temple conflict.¹⁴ That is, kings’ “orders were context specific and context bound,” unlike the later legal systems of colonial and independent India in which case law applied rules formed in one instance to another situation.

It is worth noticing also that Appadurai acknowledges the ritual importance of temples in the maintenance of kingship. Because the modern Indian state considers its decrees binding, not contextually limited, and because the state does not claim to be authoritative on the basis of its involvement in religion, the analogy between it and pre-Islamic Hindu rulers seems decidedly weaker than at first glance. Precolonial kings were not and did not claim to be the heads of secular governments.

Other scholars attempt to bridge many of the chronological and cosmological gaps in this first version of the historical trajectories claim by proposing a second version that finds precedents in the structurally more familiar colonial state. In “Reason, Tradition, Authority,” Mehta (2005, 73) asserts that in the postcolonial context it “turned out to be obvious” that the authority to reform Hinduism would lie with the state, due in large part to the historical precedent set in this regard by colonial practice. Mehta is not the only scholar to have suggested that the state’s interest in determining authentic religious practice and in reforming religion has its most significant precursor in the colonial era. Frykenberg (2000) showed that even during the strictly noninterference-oriented days of the East India Company, British governance in India actually involved substantial active support for native religions, often in the face of evangelical criticism back home. When the Company could no longer hide its involvement in native religion under the cloak of commercial necessity or liberal politics, it created a divide between ritual and administrative matters and claimed that the latter was a legitimate function of government. This step laid the groundwork for the various incarnations of the Hindu Religious and Charitable Endowments Department that would begin appearing toward the end of the colonial era, while the addition of Section 599 to the Madras Code of Civil Procedure enabled the courts to prescribe increasingly specific remedies for temple issues, thereby fostering the judicial regulation of religion. From the mid-nineteenth century onward, nationalists increasingly claimed that this ability to regulate religion was in fact a right, though they argued that it should belong to the nation rather than to the state bureaucracy.

This exposition of colonial practices is then used to affirm the modern Indian state’s right to analyze and reinterpret religious doctrine via its judicial arm. Such a claim is intensely problematic, however, since it involves justifying contemporary governmental activity on the basis that similar actions were undertaken by the colonial government. Moreover, claiming a colonial activity as precedent becomes obviously untenable position if, as nationalists claimed, the right to reform religion lay with the nation and *not* with the colonial state. Mehta himself demonstrates the implausibility of this line of reasoning in his discussion of the Age of Consent Act. “The predominant motif in the opposition” to the Act, he says, “was not the substance of the reform itself but the fact that *the British* were enacting and initiating it” (Mehta 2005, 72, emphasis

14. Appadurai obtained the idea of constitutional competence from Robert Lingat (1973, 224).

added). That is, in the latter half of the nineteenth century, nationalist support for the legal authority of the colonial state waned in favor of the moral authority of the national community—a shift with profound effects on the development of public discourse, sectarian affiliations, and the relations between the two.¹⁵

Internal versus External Regulation

Another important way in which religion-state relations in India depart from the secular norms of nonestablishment and separation is through the government's—primarily the judiciary's—internal regulation of religion. By “internal regulation” I mean rules, laws, judicial decisions, or other authoritative governmental pronouncements that measure the validity of religious beliefs or practices by religious rather than by secular or civil standards. For example, in the case of the Sati Regulation XVII of 1829, which first banned the immolation of widows, one of the stated reasons for prohibition was that

The practice of suttee, or of burning or burying alive the widows of Hindus . . . is nowhere enjoined by the religion of the Hindus as an imperative duty; on the contrary a life of purity and retirement on the part of the widow is more especially and preferably inculcated.¹⁶

Governor Bentinck certainly had other reasons for banning sati besides a desire to purify Hinduism. Still, the determination of—and, more importantly, the *authority to determine*—authentic cultural tradition was, as Lata Mani has argued, far more at issue in the debate on sati than was the actual burning of women (Mani 1998). Thus the 1829 document emphasized the appropriateness of the ban on sati in terms internal to Hinduism, even as it used the horrific violence of the act as another justification for colonial interference.

This approach to regulation has remained an important element of judicial decision making in independent India, as judges have frequently elaborated on everything from the nature of religion and the core principles of Hinduism to, more recently, what makes for a valid mosque. While it is true that US judges—indeed, judges adjudicating a right to freedom of religion anywhere—also have to construct minimal conceptions of religion, such forays into religious philosophy and scriptural exegesis are far less controversial in India than they would be in the United States. Moreover, the Indian judiciary is unusual in the specificity of its constructions. In this respect, Marc Galanter noted that Indian judges must go farther in defining religion than their US counterparts

15. See, for example, Partha Chatterjee (1995, 16) and Vasudha Dalmia's (2005) discussion of the nineteenth-century writer, publisher, and reformer Harischandra. Harischandra's journals provided space for “the subtle and complex processes of thinking, feeling and opinion-making with regard to what came increasingly to be viewed as the national religion of the people, which was seeking to amalgamate manifold streams even while negotiating the criteria which were to provide the necessary coherence” (Dalmia 2005, 339).

16. The text of this regulation is available at <http://chnm.gmu.edu/wwh/p/103.html> (accessed February 5, 2011).

because so many branches of India law—including family, trust, penal, and electoral law—take seriously the religious identities of the parties involved (Galanter 1971, 468–69).

Among the half-dozen cases that inevitably come to mind as examples of Indian internal judicial regulation, perhaps the most significant is *Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, Shirur* (AIR 1954 SC 282), commonly referred to as the *Shirur mutt* case. In *Shirur mutt*, the Supreme Court decided that the freedom of religion guaranteed by Part III (Fundamental Rights) of the Constitution applied to freedom of both religious belief *and* practice. Even more importantly, the Court, speaking through Justice Mukherjea, stated that “what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself,” thus requiring (since all ascertaining is done by the court) considerable internal regulation (434). This “essential practices test” articulated in the *Shirur mutt* decision would become a cornerstone of Indian judicial thinking on religion, and not only with regard to Hinduism. In *Mohd. Hanif Quareshi v. State of Bihar* (AIR 1958 SC 731), a group of Muslims argued that a Bihar law prohibiting cow slaughter (consonant with the Directive Principles of the Constitution)¹⁷ violated their freedom of religion, as Muslims were compelled by their religion to sacrifice cows at Bakr-Id. The plaintiffs lost the case, in part because the court determined that the sacrificing of cows at Bakr-Id (as opposed to other animals) was not an essential practice for Muslims. Of course, had the court’s investigation of Islamic belief and practice determined that Islam required the sacrificing of cows, the plaintiffs would have prevailed.

As C. J. Fuller (1988) has noted, the courts’ reliance on religious texts such as the Bhagavad Gita, the Bible, the Vedas, and the Quran for the purposes of determining what are essential practices means that judges are likely to uphold beliefs and practices in keeping with authoritative scripture and commentary. Conversely, in situations where decisions are *not* consonant with such texts, the courts have reinterpreted the texts in order to close the gap. “This they will do so as to show that they are actually not contradicting the prescription, but are in reality upholding religious beliefs and practices for which there is textual authority” (Fuller 1988, 234). In *Sri Venkataramana Devaru v. State of Mysore* (1958 AIR 255), the court encountered a South Indian temple that had been ordered to permit the entry of dalits (untouchables) as per Article 17 of the Constitution. Trustees of the temple, which was administered on behalf of a community of Brahmins, claimed (1) that the temple was private and therefore beyond the scope of the constitutional injunction, and (2) that even if it was a public temple, the obligation to admit all Hindus violated the community’s freedom to manage its own religious affairs under Article 26 of the Constitution.

The court quickly dispensed with the first argument, but based its extremely careful response to the Article 26 claim on an innovative reading of the Agamas, texts considered authoritative with respect to South Indian temple ritual. Specifically, the court ruled that the temple entry legislation was in fact only eliminating a discrepancy between Agamic injunctions and customary practice. Whereas the Agamas indicated that temple worship was for the good of all Hindus, the court stated, custom forbade

17. Specifically, Article 48 of the Indian Constitution states that the state shall take steps for “prohibiting the slaughter of cows and calves, and other milch and draught cattle.”

dalits from entering the very temples whose rituals were ostensibly also for their benefit. In fact, as Fuller notes, the wording of the text was that the “actual participation [of dalits] in the worship was insignificant.” Although the Agamic text had customarily been interpreted to justify the exclusion of dalits from temple worship, the court in conducting its exegetical analysis subtly redefined dalit presence from being one of “exclusion” to being one of “insignificant participation,” thus paving the way for the dalits’ entry into the physical space of the temple (Fuller 1988, 233). Ultimately, the decision in *Devaru* upheld the status of the Agamas as authoritative determinants of correct religious practice while indicating that, properly interpreted, they did not exclude dalits.

There have been many similar cases. For example, *Shastri Yagnapurushdasji v. Muldas Bhundardas Vaishya* (AIR 1966 SC 1119) and the “Hindutva cases” of 1995 sought to outline the defining characteristics of Hinduism and Hindutva, while *Kalyan Dass v. State of Tamil Nadu* (AIR 1973 Mad 264) affirmed that the constitutional provision opening Hindu temples to all Hindus created no grounds to open them to non-Hindus. The issue of identifying who is and is not a Hindu, especially in cases of conversion, constitutes another area in which judges have engaged in significant internal regulation. In *Michael v. Venkateswaran* (AIR 1952 Mad 474) and *In re M. Thomas* (AIR 1953 Mad 21), the court held that Scheduled Caste (low caste) converts to Christianity or from Christianity to Hinduism do not qualify for reservations (or affirmative action quotas) because “conversion operates as an expulsion from the caste”—notwithstanding the beliefs of the plaintiff’s fellow caste members (Stephens 2005, 422).

The most prominent instance in which Muslim personal law has been assessed in terms internal to Islam is the *Shah Bano* divorce case,¹⁸ although in that instance the executive branch, not the judiciary, was responsible (Narain 2001, 23). Other instances include the long-awaited *Babri Masjid* case, decided in 2010 by the Allahabad High Court, in which Justice Sharma determined that the building destroyed by Hindu nationalists “was constructed by Babar, the year is not certain but it was built against the tenets of Islam. Thus it cannot have the character of a mosque” (Sharma, J. 2010, 2).

As the above examples show, although the majority of cases involving internal regulation have centered on Hinduism, it is by no means true that the judiciary exclusively interprets and reforms Hindu beliefs and practices. Indeed, when contextualists seek to explain this judicial willingness to engage with religious doctrine, they do so by referring to the intensity of religious feeling among all Indians. It is also not true that the Court has, over the years, been uniformly in support of internal regulation—

18. *Mohd. Ahmed Khan v Shah Bano Begum & Others*, AIR 1985 SC 945. In this case, a divorced woman, Shah Bano, refused to accept the return of her mehr or marriage settlement upon being divorced by her husband. She sued for maintenance under the Criminal Procedure Code of India and was granted a very small alimony payment, but her husband appealed the decision, arguing that as a Muslim he was only required to obey Shariat law. The Madhya Pradesh High Court and the Supreme Court both upheld the alimony grant, but in the process (due largely to the inclusion of disparaging comments on Islamic law, the interpretation of Shariat law, and demands for a Uniform Civil Code in the Supreme Court decision) the issue exploded. Prime Minister Rajiv Gandhi’s government stepped in to reverse the decision and passed the Muslim Women (Protection of Rights on Divorce) Bill, which reaffirmed Islamic settlement practices as definitive for Muslims (Khory 2005).

see, for example, Sen's discussion of *Saifuddin Saheb v. State of Bombay* (AIR 1962 SC 853)(Sen 2007, 21–22). However, as Sen himself argues, a series of decisions in the early 1960s “firmly established the principle that it was the Court’s task to ascertain what constituted religious doctrine and practice” (2007, 22). In the final part of this section I will consider arguments explaining why the Indian government cannot avoid undertaking this internal regulation of religion.

Religious Indians, Indian Religions

Since its framers understood “deeply and intensely the religious psyche of the people of India,” the Constitution “follows the traditional approach in assuming that all citizens of India practice religion” (Bhagwati 2005, 38; Coward 2005, 65). Decades after securing independence, the Indian population still “seethes with . . . expressions of vibrant religiosity” because for it “religion is not something that is part of life, but that which gives meaning to all of life” (Madan 1987, 750; Baird 2005, 3). Consequently, in their efforts to free public spaces from this spiritual onslaught, “both the Indian state, and by implication Indian courts do not have the luxury of imposing external regulation on religions” (Mehta 2005, 66).

India, according to this varied group of experts, is intrinsically, almost uncontrollably religious. Crucially, however, Indians’ religious fervor is only *almost* uncontrollable: with enough effort, the state can perform the “historic function of confining religion to its essential sphere” (Bhagwati 2005, 43). Moreover, the idea that “the social consequences of not intervening in religion can be monumental” (Mehta 2005, 66) is widely held, most prominently (though not exclusively) with respect to caste, as I will address in the last section of this article. For example, the framers of the Constitution

knew that, left to itself, religion could permit orthodox men to burn widows alive on the piers [sic] of their deceased husbands. It could encourage and in its own subtle ways, even coerce indulgence in social evils like child marriage or even crimes like human sacrifice or it could consign women to the perpetual fate of devadasis or relegate large sections of humanity to the sub-human status of untouchability and inferiority. (Bhagwati 2005, 43)¹⁹

If this kind of religiously inspired cruelty was to be eradicated instead of being merely criminalized, top-down enforcement would prove insufficient. Thus it is argued that the Indian state was *forced* to intervene and cleanse religion from the inside out, rather than outlaw it altogether—to cut off an arm to save a life, so to speak.

Although there can be no argument against the desire to eradicate inhumane and discriminatory practices, the idea that this can only or even best be done through the state’s internal regulation of religion is problematic. When the state seeks to reform religion from within—to exert its precedence in both civil and religious

19. *Devadasi* (servant of God) describes a woman who has been dedicated, via marriage, to a temple deity. Once dedicated, such women served as dancers or musicians; they also frequently maintained sexual relationships with wealthy patrons. The devadasi system was outlawed in 1988 by the Jogini Abolition Act.

jurisdictions—it (1) implicitly assumes that it will always be more progressive than the religious communities it seeks to shape and (2) implies that *no* aspect of citizens' lives lies outside the rightful purview of the state. However, due to the fundamentally different objectives undergirding the Indian Constitution, these two assumptions possessed, and perhaps continue to possess today, a reasonableness that they could not have in the US context.

This is not to say that the Indian state's approach to regulating religion is unproblematic within its own context. Assuming the state's superior progressive credentials at the time of framing is one thing; encoding this assumption within the very framework of the Constitution is another matter entirely because it presumes that religious communities will *always* be insufficiently progressive. Such a stance portrays religion in a dispiritingly poor light (something that the framers were at pains to avoid doing) and rides roughshod over those elements of religious practice, like *marumakkathayam*, that do accord with reformist goals.²⁰ Moreover, by enshrining the state as the paramount agent of religious reform, the framers of the Constitution in effect assumed the inevitable failure of their social goals, in that citizen-believers are presumed incapable of functioning effectively as autonomous moral beings without the state's direction.

A more important caveat regarding the argument that religion is too dear to Indians for them to accept secular governance is that it seems to significantly underrate the prior influence of religion in places now governed by secular norms.²¹ That is, secularism is accepted as growing out of a uniquely Euro-American, Christian historical trajectory that includes (among other things) the aftermath of the Wars of Religion, the development of Enlightenment rationalism, and the US and French revolutions.²² According to this reasoning, though the Indian subcontinent also produced rationalist philosophies, wars of religion, and political revolutions, subcontinental history is fundamentally not Western history and therefore Indians cannot be governed like Americans or the French. But this reasoning glosses over the fact that the Euro-American development of secular government was by no means predicated on the kind of widespread religious apathy that now appears to characterize many Western nations. As philosopher Brian Barry noted, this model of secular liberal citizenship "was developed

20. *Marumakkathayam* describes the now legally unrecognized system of inheritance through the female line that prevailed among some Nair communities in Kerala. It was protected by Section 17 of the Hindu Succession Act of 1956 but later abolished by the Kerala (Hindu Joint Family System Abolition) Act of 1975. Writing on the Kerala Act, Werner Menski (2001, 323) stated: "First, it damages the property rights of women and their dependents and strengthens the already superior rights of men. . . . [This] cannot be constitutionally sound, nor socially acceptable in many families of South India."

21. Dipankar Gupta made essentially this argument, claiming that secularism's destabilization of traditional, locally defined identity forms in favor of a new universalist citizenship creates problems when such destabilization is disconnected from the process of secularization. He wrote: "It needs to be clarified at the outset that secularization allows for, and indeed even promotes, a variety of ideologies. . . . There is no denying the fact that the ideology of secularism did not make its appearance before secularization had occurred" (Gupta 1995, 2203).

22. See, for example, Asad (2003, especially ch. 6) and Madan (2006). Madan stated that "the confrontation between religion and modern science began [in the West]" and cited the Wars of Religion, Enlightenment thinkers such as Kant and Voltaire, and the French Revolution as constituting the "West's own specific form of modernity" (Madan 2006, 4).

in response to the wars of religion that made much of Europe a living hell in the sixteenth and seventeenth centuries”—that is, as a result of religious fervor (Barry 2001, 21).

In the United States, meanwhile, secularism did not spring fully formed from the minds of the constitutional framers. Indeed, the erstwhile colonies of Connecticut and Massachusetts maintained established state churches even as they ratified the First Amendment of the US Constitution, and did not legislate disestablishment until 1818 and 1833, respectively (Amar 1998, 32–33). The intensity of religious belief in the United States, as in India, has also frequently been expressed in terms of violence, intimidation, and discrimination.²³ Indeed, the pursuit of church-state separation in the United States, including the eventual development of the incorporation doctrine, has in great part been influenced by the pursuit of Catholics, Baptists, Jehovah's Witnesses, and other religious minorities to *practice their religion* in the face of intimidation or violence. Nor is the current US understanding of separation of such antiquity, as evidenced by the fact that a majority of the cases that are most influential in matters of public funding of religion,²⁴ public religious displays,²⁵ and school prayer²⁶ have been decided since 1947. Admittedly, these recent cases have largely been brought forward by nonbelievers, but this does not alter the fact that in the United States, separation has historically appealed to both believers and nonbelievers.

My point is that the development of a jurisprudence that favored separation was made possible not because Americans or Europeans of the time were apathetic toward religion, but *because they were religious*. Separation was also not made possible because Americans specifically implemented strict separation beginning in 1787, but because for a number of reasons, religious communities in the United States found that the best way to ensure their ability to practice freely was to push for governmental noninterference in religious affairs.²⁷

It is also difficult to wholly concede that similar political arrangements require similar historical trajectories, so that the populations in question may have been similarly prepared for new modes of governance. Liberal democratic governance has emerged with varying speed and success in parts of the world, including some areas that do not share Euro-American political histories and that were coping with the additional implications of colonial pasts. In addition, although most contextualists discuss the greater religiosity of Indians in the sense of how Indians *are*, the rationales they employ regarding Indian religiosity sometimes have more of the flavor of suggesting how Indians *can be*. However unintentionally, such arguments can be reminiscent of the colonial reasoning according to which naturally feudal and uncivilized natives were being prepared for the imported concept of self-government.

23. Examples of exclusion and aggression based on religious difference are plentiful, but specific incidents might include the Philadelphia “Bible riots” of 1844 and the lynching of Leo Frank in 1915.

24. For example, *Everson v. Board of Educ.*, 330 U.S. 1 (1947), *McCullum v. Board of Educ.*, 333 U.S. 203 (1948), and *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

25. *Lynch v. Donnelly*, 465 U.S. 668 (1984); *County of Allegheny v. ACLU*, 492 U.S. 573 (1989).

26. *Zorach v. Clauson*, 343 U.S. 306 (1952); *Engel v. Vitale*, 370 U.S. 421 (1962); *Abington Twp. Sch. Dist. v. Schempp*, 374 U.S. 203 (1963).

27. See Gordon (2010), who argued that, increasingly, believers are turning to the courts as a way of realizing their religious commitments.

A second version of the argument that India's government must take responsibility to implement religious reforms and must do so internally to the religions involved (i.e., from within the tenets of religion itself) focuses on the issue of interreligious relations. For example, Bhargava states: "As [religious] practices are intrinsically social, any significance placed on them brings about a concomitant valorization of communities. Together these two features entail inter-community conflicts which are further exacerbated if fueled by competing conceptions of democracy and nationalism" (Bhargava 2005, 124). Because religion in India is public and practice oriented, in order to deal with interreligious conflict the state has had to find coping mechanisms that avoid both disaggregating (Bhargava's term) religious communities into individuals and de-legitimizing communitarian identities.²⁸ Consequently, the Indian state responded to the potential of interreligious conflict by "somehow making [religions] more liberal and egalitarian" (Bhargava 2005, 125).

In this regard, although the Indian state has occasionally engaged in the internal regulation of other religions, its primary endeavor has been the ongoing reformation of Hinduism. The state is therefore not making all religions "more liberal and egalitarian"; on the contrary, in the rare cases where it has interfered with Islam or Christianity, it has tended to contribute to the further reification of these religions. There is both political sense and political opportunism behind this lopsidedness: on one hand, only Hinduism poses a real threat to the nonestablishment of religion, while, on the other hand, interfering with minority practices is detrimental to the political fortunes of anyone who undertakes to do so.

Bhargava anticipated criticism of this unequal involvement by arguing that his notion of "principled distance" allows for a state to "interfere in one religion more than in others, depending once again on the historical and social condition of all relevant religions" (Bhargava 2005, 117).²⁹ He gives as examples of such community-specific reforms child marriage, *devadasi* dedication, and introduction of the right to divorce, all of which focused on the cultural practices of Hindus. "Similar laws for Muslims," he says, "were simply redundant" (Bhargava 2005, 117). Though at first this logic might seem reasonable, it is nevertheless flawed in that it claims that this lack of shared practices *actually accounts* for the community-specific nature of most religious reforms. Practices otherwise deemed unacceptable (such as polygamy or women's inability to initiate divorce) are permitted among minority groups because doing so is politically expedient, even when the same practices have been prohibited for Hindus. When he elaborates by stating that "an act passed by the legislature cannot be attacked merely because it tackles only some of the evils in society and does not tackle other evils of the same or worse kind" (2005, 117), Bhargava begins to sound like nothing so much as an apologist for the Indian state. In his argument, reasons of expediency (community-

28. See Dhavan (1987, 221–22), who wrote that "confronted with these problems and aware that some litigation is inspired by social quarrels rather than deeply felt sentiment . . . they have often sought to diffuse such situations by mediating acceptable compromises through judicial pronouncements."

29. Principled distance has two components: (1) distinguishing and alternating between procedural and substantive equality, and (2) that the state will or will not interfere in religion depending on whether or not doing so advances certain core values. Bhargava (2005) specifically named liberty and equality as two such core values worthy of advancement.

specific practices) are piled on other reasons of expediency (the state need not tackle all social issues at once) in order to claim for the state a particular, nonexpedient good, secularism.

It is also worth noting that both defenses of internal regulation (greater religiosity and interreligious relations) presuppose the efficacy of this kind of engagement with religion. I cannot speak to the truth of this assumption; I do not know whether, when the courts declare that X is not a valid religious practice, X actually loses validity among believers at all and with what speed. Importantly, neither Fuller, Mehta, nor Bhargava has offered any means of confirming the reforming powers of internal regulation, even though all three have developed arguments that depend on its efficacy.

Conversely, Ronojoy Sen believes that internal regulation has in fact been counterproductive, saying that notwithstanding the “high modernist and rationalist thrust of the court” and especially of individual judges like the notably reformist Justice Gajendragadkar, efforts to systematize and rationalize Hinduism have only made it more vulnerable to Hindu nationalists (Sen 2010, 198). Sen attributes this slippage to the preoccupation of Nehruvians like Gajendragadkar with nation building, since the construction of a Hinduism in keeping with democratic ideals and transcending regional and sectarian divisions made Hinduism unitary and monotheistic in a way that was not necessarily progressive. Moreover, Sen argues that the Supreme Court has frequently acted in a way that undermined its own liberal-Nehruvian impulses—Gajendragadkar’s “essential practices” doctrine, for example, violently clashed with Nehru’s assumption that the public importance of religion would gradually disappear, since it instead obliged the state to continuously identify and reform Hindu practices (Sen 2010, 199–200).

Throughout this section I have examined two broad categories of action showing that the Indian state is not secular: the administration of religious institutions and the internal regulation of religion. I have also reviewed arguments that seek to explain these actions, concluding that such claims are usually problematic because they involve faulty analogies or questionable historical analysis. To some extent this was perhaps unnecessary, as many of these claims neglect to conclusively prove that secularism can have multiple meanings before they employ contextual information to argue that it *should* have any particular alternative meaning. In the final section of this article, I will consider two reasons why it is reasonable for the Indian state to administer and perhaps regulate religion.

THE CASE FOR NONSECULAR GOVERNANCE

In the introduction to this article, I suggested that secularism should be understood as entailing both the nonestablishment of a state religion and the desire to keep religion and state separate. There, the emphasis was on the importance of retaining *both* aspects of the term and in the second section I demonstrated that this is not done by the Indian state. In this portion of the article, I wish to underscore the importance of the *desire* to separate religion and state. No state achieves complete separation of government and religion because every state is conceived, administered, and inhabited by individuals having strong views about religion and its rightful place in society and governance.

Moreover, states protecting freedom of religion must necessarily, in order to provide this protection, construct some idea of what religion is. Understanding that the separation aspect of secularism signifies a desire or aspiration rather than a fully achieved fact can clarify why the difference between India and conventionally secular nations is one of kind, not one of degree.

The idea that India and other countries (particularly the United States) are simply situated at different points along a single continuum with no extremities is fairly popular among scholars of Indian law. For example, Galanter has suggested that “American law is not neutral among religions except in a purely formal sense” because the First Amendment favors religions that emphasize private over public observance, social and spiritual over official sanctions, and religions whose adherents are not exclusive in their claims to know what constitutes “the good” (Galanter 1971, 479). Thus the differing values of “Indian secularism,” which necessitate different levels of involvement in religion, simply offer one of many “possible modes in which the law can relate to various ‘lesser’ traditions” (485).

The problem with this reasoning is not unlike the problem underlying many multiculturalist critiques of liberal statehood: it does not take seriously the moral framework of a doctrine that aspires to allow a variety of other moral frameworks limited freedom within its domain. Liberal statehood, for example, is portrayed by critics such as Charles Taylor (1989, 1994, 2008) as claiming to permit the fullest realization of all kinds of selves and the fullest freedom for all kinds of cultures. Thus, when liberal states fail to condone a specific behavior or institution, they are found to have fallen short of the universalism that they promised. But, as Barry has pointed out, liberal statehood is not founded on an unlimited universalism; rather, the very nonexclusiveness that gives it its liberal quality is premised on a particular, if nevertheless generous, range of permissible and impermissible actions. Like any other kind of state, liberal states favor actions and worldviews that further liberal statehood, and they characterize liberal statehood as the ultimate good.

Similarly, secularism is portrayed as permitting the fullest range of religious freedoms for believers from various religious backgrounds—freedom from each other as well as from the state. But in actuality, secularism is no more neutral among religions than the liberal state is neutral among worldviews or cultures. Galanter is correct that secularism favors the kinds of religious beliefs and practices that further specific (secular) types of freedoms, such as the freedom to designate broad and important aspects of one’s life as private or the freedom to thoroughly deny any religious affiliation.³⁰ Some people might prefer other freedoms, such as the freedom to live in a state that recognizes religious systems of law, or the freedom to practice religion in a situation where practice necessitates state support. Nevertheless, these are not the freedoms desired by a secular state.

This analysis indicates why I suggested *desire* as a way to understand why India is not secular—and, moreover, why it need not be. The Indian state has had, virtually

30. I say “thoroughly” because it is not entirely easy to avoid classification and adjudication on the basis of religion or caste, factors that are taken into consideration in cases of divorce, inheritance, adoption, and educational or employment quotas, among others. Indians may avoid some of this religious-based adjudication by marrying in civil ceremonies, but this is not a very popular option, and in court the burden of proof is on the party wishing to be judged by civil law.

from its inception, two strong *nonsecular* desires: the desire to support, protect, and encourage religion³¹ and the desire to reform Indian society, especially with regard to caste practices. Neither of these goods is in keeping with the kinds of freedoms valued by a system of secular governance—the first for obvious reasons, and the second because such reform involves an active attempt to rehabilitate religion from within, curtailing its undemocratic implications and making religion itself more liberal. Clearly, however, both goods are valuable within the Indian context. It is worth noting that although the goods I have described bear strong similarities to Dhavan's tripartite definition of "Indian secularism," unlike Dhavan, I have argued that the state is not neutral with respect to religions and that the Indian state is not secular. Nevertheless, like Dhavan, Mehta, Bhargava, and others, I recognize that the goods desired by the Indian Constitution and state are highly and perhaps appropriately contextual.

The complexity and expense involved in maintaining Hindu religious institutions, for example, does not self-evidently oblige the government to administer them via state departments or statutory bodies. Official administration is not necessarily less corrupt than private management even if it is usually somewhat more transparent, and in any case many medium and all major temples might survive without a government-coordinated redistribution of funds. True, such wealthier temples would be unlikely to voluntarily share their income with smaller temples outside their immediate influence. Without the income that states collect from major institutions and redistribute, a host of temples—from small urban temples and temples in rural areas to the tiny fridge-sized altars found on roadsides everywhere in India—would likely perish. But while some might think that temples unable to support themselves should be allowed to close, doing so would contradict the Indian state's commitment to supporting and encouraging religion.

The Constituent Assembly's vacillation between strict separation, Hindu majoritarianism, and various intermediate alternatives is widely held to have settled on the notions of *sarva dharma sambhava* (goodwill toward all faiths) and *dharma nirpekshata* (religious neutrality), to which duo a third, the Gandhian *vasudeva kudumbakam* (universal brotherhood), is frequently added. But such formulations greatly understate—and to some extent misstate—the importance accorded to religion by the Constitution. According to Gurpreet Mahajan:

the policy of non-separation was not simply a reluctant concession made for the sake of peaceful coexistence or tolerance; rather it was based on the claim that religion is not simply a private or a personal matter: it has a public dimension and the state needs to take cognizance of that . . . to facilitate the observance of these practices. (Mahajan 2008, 304)

Facilitating religious practice can take many forms. In many parts of Europe, relatively porous religion-state relations have permitted the state to directly subsidize or

31. Encouraging religion is not necessarily the same as establishing religion, in the way US constitutional scholars understand the latter, since India does not make any kind of religious observation compulsory for full citizenship.

assist the financial administration of religious institutions.³² The lack of organizational structure within Hinduism, coupled with the need to show sensitivity to religious minorities, has meant that the Indian government has had to involve itself significantly in temple governance, and that Hindu temples are the only religious institutions over which it has exercised this level of control.

The goal of reforming Indian society to eliminate discrimination on the basis of gender or caste may not immediately seem to require the kind of internal regulation that I have described. Article 17 itself is a flatly uncompromising declaration that makes no attempt to determine whether or not untouchability is a legitimate part of Hinduism; it states simply: “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law.” Likewise, Article 25(2) briskly announces the state’s ability to make any law “(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.” Both articles seem to indicate the Indian state’s willingness to impose purely external regulations on the practice of untouchability, and yet untouchability is one of the greatest motivations—along with gender inequity and interreligious conflict—behind the internal regulation of religion.

In response we might argue that untouchability has been so pervasive and so powerfully embedded in Indian society that external regulation could not alone eradicate its damaging effects—a kind of spin on the religiosity claim explored earlier. That is, even though the goal of the Constitution is to dismantle caste as a basis for social relations, this cannot be effectively done without acknowledging and altering the way caste determines interactions between citizens (as in *Venkatramana Devaru*). India is, after all, the land of Dumont’s (1980) “homo hierarchicus”; in such a context, merely prohibiting caste discrimination in public contexts and providing subsidies for economically disadvantaged communities would be insufficient to effect the kind of social change needed to give credence to claims that India is now a liberal-democratic state.³³ Aditya Nigam has stated that after the 1996 elections, as a result of which the BJP dominated a hung Parliament, the very act of appealing “in the name of a larger, universalistic, abstract identity was inevitably oppressive, as it always concealed and fortified age-old non-secular inequities” (Nigam 1996, 1164).

32. Sen (2010, xviii–xix) noted that until recently Italy’s government paid the salaries of Catholic priests, while Swedish tax authorities have continued to collect annual fees from members of the Church of Sweden even after ceding formal control of that body.

33. The view that external regulation was an adequate means of combating caste discrimination was widely and vehemently opposed by diverse individuals, including liberal secularists and Hindu nationalists, in the wake of the 1990 implementation of the Mandal Commission reforms. Three of the most prominent critiques were that (1) recognizing caste as the basis for amelioratory reforms entrenches rather than dismantles caste identities, (2) implementing sizable caste-based quotas in educational institutions and government jobs would place meritorious but higher-caste students or applicants at an unfair disadvantage, and (3) the people most likely to avail themselves of the new benefits were economically advanced members of the target communities who were less in need of such assistance to begin with. For a comparatively moderate exploration of these critiques, see Desai (1984), written between publication of the Commission Report and initial implementation of the findings.

But, given the challenges in determining the efficacy of internal regulation, I think that a stronger way to make sense of efforts to internally reform religion, especially with regard to caste discrimination, is to turn once again to the notion of desire. The great potential of caste to undermine the liberal-democratic ethos of the new nation meant that only a state wishing to limit its intrusions into the social domain would approach the problem of caste discrimination with a cautious and minimalistic reliance on external regulation alone. But the lengthy yet often ambiguous text of the Constitution is not squeamish about changing the status quo, and it contains no definition of caste that might be used to limit the terms of governmental interference. Both the Constitution and more than sixty years of legislative, executive, and judicial history have shown that, to the contrary, the Indian state is straightforward in its desire to reform its citizenry. Among other things, the state intends—according to Articles 38(2), 46, 47, and 48 of the Constitution—to:

strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities, and opportunities;

promote with special care the educational and economic interests of the weaker sections of the people;

regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties;

bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health; and

endeavour to organise agriculture and animal husbandry on modern and scientific lines.

And for their part, citizens, according to Article 51A, are expected to:

promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities;

renounce practices derogatory to the dignity of women;

value and preserve the rich heritage of our composite culture;

develop the scientific temper, humanism and the spirit of inquiry and reform; and

strive toward excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

In other words, the goods sought by the Indian state are emphatically different from the goods desired by a state that seeks to limit its involvement in citizens' lives. Government in India enthusiastically engages with everything from income inequality to animal husbandry to, of course, religion. Small wonder, then, that the state administers and supports religious institutions and sometimes attempts internal regulation of religion, even in instances where doing so may not be absolutely necessary.

CONCLUSION

If, as this article has argued, what lies at the heart of secular governance is the desire to separate religion and state rather than the fact or manner of separation, it is

clear that the Indian state is not secular. Nevertheless, I have also tried to suggest that the nonsecular actions of the Indian state are reasonable, though not for the reasons most commonly cited. My argument requires us to acknowledge that a liberal-democratic state may still have reasonable nonsecular aims.

This perspective is in vivid contrast to the conclusions drawn by other critics of secularism in India who are also neither Hindu nationalists nor antimodernists. Subrata Mitra has argued that the Nehruvian desire to oust dharma and introduce legal rationalism as the governing principle of Indian society undermined religion and eventually led to a struggle for authority between politicized religion and the secular state (Mitra 1991). To some extent like myself, Mitra holds that the state enlarged its jurisdiction at the expense of religion while simultaneously seeking to establish itself as paramount even within the religious sphere. However, I do not agree with Mitra's conclusion that trying to establish a state with no formal role for religion within a deeply religious society is paradoxical. As I showed in the last part of the second section of this article, nonestablishment and separation frequently come about precisely because of religion's influence in a society. Nor do I feel that this supposed paradox can be easily identified as the determining factor behind rising communal conflicts in India.

Pritam Singh (2005) has taken a very different perspective, declaring not only that the Indian state is not secular, but that the Indian Constitution has a strong and persistent bias *toward Hinduism*. Singh's position is in one respect unusual, given the common Hindu nationalist assertion that India *disadvantages* Hindus and Hinduism. In another sense, Singh is right on the mark—but to arguably unremarkable effect. Just as predominantly Christian nations, regardless of their desires, can be expected to enact constitutions and governments based on values in keeping with the qualities of Christianity, it stands to reason that the Constitution of India will reflect a broadly Hindu ethos. While this tendency need not in itself constitute a bias, it must be said that several aspects of the Constitution represent policy stances clearly grounded in Hinduism—Article 48 discouraging cow slaughter, for example. But even if Singh's points on the Constitution's approaches to language (Sanskritized Hindi in Devanagari script), political framework (center/Hindu-dominated "union" instead of more culturally autonomous "federation"), and religious reform (only for Hinduism) are valid, these observations are nevertheless decidedly unnuanced, while other criticisms regarding Article 48 and the name "Bharat" seem simply overstated.³⁴

Although their views are unusual in several respects, Mitra and Singh share with a diverse array of other critics common concerns about the constitutional vision for religion in India, as well as about the ways successive governments have sought to execute that vision. Since the late 1980s, such worries have grown more common, and understandably so in view of such developments as the Mandal riots, the Shah Bano controversy, the destruction of Babri Masjid, the Bombay riots, and the Godhra massacres.³⁵ But although religion-state relations in India might quite plausibly have taken

34. Singh contended that use of the name "Bharat" in Article 1, which states that "India, that is Bharat, shall be a Union of States," is a direct slight to non-Hindus because of the name's association with explicitly Hindu mythology and culture (Singh 2005, 911).

35. See Galanter (1984), who suggested that "Mandalisation" brought caste and religion to the forefront of politics, especially within the courts, which had previously been more concerned with caste and class.

other forms, I have tried to show that there were adequate grounds for the form they did take—namely, construction of a state committed to reforming religion and supporting religious practice. Along the way I have also contended that neither these aims nor the forms of governance to which they give rise can be credibly termed secular. But I would suggest that debates over the term “secularism” reflect a more foundational concern about the compatibility of diverse social goals within the broad framework of liberal-democratic governance. This, however, is a matter for further discussion.

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