

Inclusive Neutrality in the Classroom

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Introduction

Both in law and in political philosophy, the idea of a neutral state is an important principle. It is rarely noticed, however, that there are important differences in how the principle is interpreted in each of the two disciplines.² Most (though certainly not all) liberal philosophers consider state neutrality to be a foundational principle, whereas most lawyers see it as merely an interstitial principle, derived from principles like non-discrimination, freedom of religion and separation of state and church. For most philosophers, neutrality is a criterion for the justification for laws and policies, whereas in law, the focus is usually on the content of those laws and policies themselves. In law, neutrality is often a criterion for the treatment of religious groups and institutionalized religions, whereas in philosophy, the focus is usually on individuals. In particular, philosophers have used neutrality as an explicit, clearly formulated, foundational principle upon which substantive elements of a liberal political philosophy rest, whereas in law it is usually a largely implicit, highly contextual and variable principle with an unclear and contested meaning. Finally, in law, neutrality's domain of application is usually restricted to religion and similar philosophical doctrines such as humanism, whereas philosophers also apply the principle to cultures, lifestyles and other views of the good life. Consequently, appeals to neutrality have also been made in philosophical debates about issues that arise in a multicultural society and about the legal enforcement of morals.

In this light, we may wonder whether philosophers and lawyers may have a fruitful discussion on neutrality at all. Indeed, one might reasonably ask oneself: are they not talking about completely different ideas under the same name? Before jumping to that conclusion, we should first try to explore their different positions more thoroughly. Perhaps, in some respects,

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² I have elaborated those in Van der Burg 2010.

legal doctrines on neutrality can be clarified and improved with the help of philosophical insights (and vice versa). In my view, there are good arguments for why legal doctrines of neutrality are, in general, to be preferred to philosophical doctrines, especially because of their contextual, variable and interstitial character. Nevertheless, philosophical analysis might assist lawyers in better understanding and improving the doctrine of neutrality, as it is understood in law, in some respects. In this paper I will make three interrelated points, first about the domain of application of neutrality, second about the various versions of neutrality and finally about the implications for public education.³ I have structured my contribution around the following theses.

1. State neutrality should be broadly interpreted to refer not only to religion and belief, but to views of the good life, which also includes culture- and identity-connected lifestyles.

In legal doctrine, neutrality is usually only applied to religion and beliefs that are very similar to religion, such as humanism. Philosophers such as Robert Nozick, John Rawls, Ronald Dworkin and Will Kymlicka, however, apply neutrality not merely to religion, but to ‘conceptions of the good life’ or to so-called ‘comprehensive doctrines’.⁴ Initially in the philosophical debates, the focus was also narrowly on religion, but soon they broadened to include all controversial views of the good life and practices associated with those views. This broader interpretation makes neutrality relevant to many issues that arise in a multicultural society and to debates on the legal enforcement of morals. From my perspective, law might profit from philosophy here, as there are good reasons for this wider application.

The main argument is based on the equality principle. In a neutral and secular state, the law can and should give special protection or respect to religion but there must be a good argument for it to do so. This cannot be the argument that the state believes that religion as such is of value, nor can it be that it holds that one specific religion is the true one. This kind of reasoning is simply not available in a liberal democratic state because it would violate religious

³ Another point which would merit a separate article is that the collectivist interpretation of legal doctrine and of some multiculturalist philosophers leading to forms of group rights and consociational democracy may no longer do justice to hybrid identifications among modern citizens; it may even artificially keep alive and reinforce outdated group identities. For a criticism along those lines, see Phillips 2007. One of the major challenges of systems characterized by consociational democracy, pluralist cooperation and inclusive neutrality is to deal with this problem.

⁴ Cf. Nozick 1974; Rawls 1971 and 1993; Dworkin 1985; Kymlicka 1989.

freedom (including the freedom of citizens not to believe in a religion) and equality. The state, therefore, must treat religion as worthy of protection or respect because of the value of religion for some of its citizens. The argument should be, then, that in order to respect those citizens as equals, the state must sometimes take their religion into account. This argument is based on two presuppositions.⁵ First, that religion is, for some citizens, a special aspect of their life because of the strong commitments associated with it that are closely connected with an individual's deep personal identity. Second, that these strong commitments may often be the grounds for persecution, discrimination or unfair treatment by the state or by other citizens and that, therefore, we need special institutional safeguards to protect citizens in their religious identity. Examples of these special institutional safeguards are, of course, the freedom of religion, and the prohibition of discrimination on the basis of religion.

If this is the argument for providing special protection to religion, then this same argument should be applied to all dimensions of human life that are sufficiently similar to religion in those two respects. This holds true, therefore, for personal beliefs that directly resemble religion, such as humanism. Nowadays, this idea is familiar in most liberal democracies – although often not fully implemented.⁶ However, the implications of the equality principle do not stop there. We should also treat other deep commitments similar to those of religion in the same way. These deep commitments may also include dimensions of personal identity other than a person's beliefs. Other important aspects of personal identity are cultural identities, such as language and clothing customs, and sexual identities, such as a bi- or homosexual orientation. Moreover, for both of these categories, it is true that they often give rise to persecution, discrimination and unfair treatment, both by the state and by other citizens.⁷

⁵ My argument here is inspired by the justification Ronald Dworkin provides for fundamental rights in his article 'Liberalism', in Dworkin 1985.

⁶ Jeroen Temperman's overview of state-religion relations (Temperman 2010a) shows that most countries violate the principle of neutrality at least in some minor respects. One of the issues on which many countries are negligent, is equal recognition of humanist and atheist citizens and organizations.

⁷ We might also be tempted to include gender here, as it is also central to personal identities and often gives rise to discrimination and unfair treatment. However, it seems to me that legal and political theory can better deal with gender discrimination directly on the basis of the equality principle and non-discrimination, rather than indirectly through the neutrality principle. Usually, gender discrimination is primarily an issue of unequal status of women as persons, whereas with the other categories considered, such as sexual orientation and religion, the focus of discrimination is more on lifestyles, practices and beliefs. In discussions of how the state should deal with lifestyles, practices and beliefs, neutrality is a more productive concept, whereas discrimination is a more adequate concept with regard to guaranteeing equal status. The two concepts are related, of course, and many discussions in the context of non-discrimination law may have parallels in the context of neutrality.

A second, auxiliary argument is that there is often no clear boundary between religion, culture, and other deep commitments. Not only are these commitments frequently seen as connected in the eyes of the believer, for the state it is often impossible to distinguish objectively whether something is a cultural or a religious practice, or both. A good example of this phenomenon is the use of the headscarf with its mixture of religious, cultural, moral and political meanings.⁸

2. There are two basic versions of state neutrality: inclusive and exclusive. Inclusive neutrality can be subdivided into proportional and compensatory neutrality.

We may distinguish between two main versions of neutrality.⁹ On the one hand, there is *exclusive neutrality*, which contends that the state should be completely blind to religious and cultural differences, and every religious or cultural expression, both in terms of arguments, organizations and symbols, should be excluded from the public sphere. *Inclusive neutrality*, on the other hand, maintains that, both in political discussions and in laws and government policies, there is room to take account of religious and cultural differences. Citizens are free to express and organize themselves in the public sphere on a religious or cultural basis and the state supports some religious and cultural activities.

We may find this distinction between inclusive and exclusive neutrality under many different labels in the literature. Joe Carens uses the term evenhandedness in contrast with neutrality of grounds.¹⁰ Monsma and Soper distinguish the structurally pluralist model from strict separation of state and church.¹¹ We may also discern exclusive neutrality in the currently dominant interpretation of the French *laïcité*, and inclusive neutrality in a more moderate

⁸ An interesting example is also the South African case of a Tamil girl wearing a nose stud. The Constitutional Court decided it was an expression of both religion and culture; it held that in that matter “culture and religion sing with the same voice”. Cf. MEC for Education: Kwazulu-Natal and Others v Pillay (CCT 51/06) [2007] ZACC 21; 2008 (1) SA 474 (CC); 2008 (2) BCLR 99 (CC) (5 October 2007), at 60.

⁹ Van der Burg 2007 and 2009. In those publications, I regarded exclusive, inclusive (proportional) and compensatory neutrality as three separate versions. In light of discussions with Roland Pierik, I have revised my original division and now present compensatory neutrality as a subcategory of inclusive neutrality as it is merely one of the two defensible neutral ways to take views of the good life into account. See Pierik and Van der Burg (forthcoming).

¹⁰ Carens 2000.

¹¹ Monsma and Soper 2009.

interpretation.¹² I choose the broader distinction between inclusive and exclusive neutrality which I have introduced here, because these other formula usually only describe some aspects of the relation between state and religion and are restricted to religious and similar world views.

Inclusive neutrality may be further subdivided into proportional neutrality and compensatory neutrality. *Proportional neutrality* takes account of different comprehensive views by making representation of minority groups or state support for their culture proportional to their size. It requires that every group get representation in advisory councils and policy boards or funding for schools, broadcasting unions, and so on, in accordance with its share of the population. *Compensatory neutrality* requires that a smaller group get more than its proportional share in order to ensure that the members of the group have equal chances to participate in society and enjoy the good life they prefer. It aims to level the playing field and accommodate special needs. Examples of compensatory neutrality are additional financial subsidies for minority cultures, for example, for books in Frisian, quality seats for minorities in advisory boards or local parliaments, support for gay and lesbian organizations, and a temporary subsidy for building mosques and Hindu temples in order to compensate new religious minorities for their disadvantaged starting position.¹³ As the latter examples shows, even though compensatory neutrality may sometimes be theoretically justified, it may often be highly controversial politically.

Debates on church-state relations are often presented as wholesale choices between one of Soper and Monsma's three models: the established church, structural pluralism or strict separation of church and state (usually identified with the French *laïcité*).¹⁴ The underlying idea is that a state can only follow one model, and the question is which model is best. I believe that this is a very unproductive way of structuring the debate. What we need, instead, is a more contextual approach, which is open to variation.

The distinction between the various versions of neutrality offers such a context-sensitive framework. With this neutrality framework, the state need not make a general choice between the various versions of neutrality, nor would it be required to make a declaration as to which one it

¹² See Bauberot 1998, 131 who refers to the idea of a *laïcité ouverte*, which has various similarities with the idea of inclusive neutrality.

¹³ Another example might be the permission to wear a kirpan in school, where other knives are prohibited. See the Supreme Court of Canada in *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256 [*Multani*].

¹⁴ Monsma and Soper 2009.

considers best or universally valid. Instead, for each specific issue the state would be required to carefully weigh which version provides the most adequate answer to the issue confronting it.

A theory of neutrality should be context-sensitive in various ways. First, it should be sensitive with regard to the national and local context. In situations with an almost homogeneous majority belonging to one dominant religion (such as France or Turkey in the early twentieth century), we may need another approach than in contexts with a plurality of minorities (such as in the Netherlands). In the first context, there may be stronger arguments for exclusive neutrality than in the latter context. Second, it should be sensitive with regard to the specific issue at hand. For example, it makes perfect sense to prefer exclusive neutrality with regard to religious symbols in the classroom and the courtroom, because it is usually almost impossible to construct inclusive religious symbols. Furthermore, it is perfectly legitimate to combine this position with inclusive neutrality with regard to the content of education, and with regard to dress codes for students and (depending on the circumstances) with inclusive or exclusive neutrality with regard to dress codes for teachers. Each specific issue should be judged on its merits in light of an ideal of reasonable accommodation. That may mean that a state has good grounds for choosing different versions of neutrality when making decisions regarding different issues.

3. There are good reasons why, in general, public education should be inclusive.

In various publications, I have argued that inclusive neutrality is, in general, to be regarded as the philosophical and legal default position.¹⁵ Ronald Dworkin's justification of neutrality provides a good starting point. Dworkin starts with the basic principle that the government should treat its citizens with equal concern and respect.¹⁶ In a liberal interpretation, this ideal implies that autonomous citizens should have equal opportunities to live their lives according to their own views of life and in line with their deep felt commitments and identities.¹⁷ Equal concern and

¹⁵ Van der Burg 2007 and 2009, Pierik and Van der Burg (forthcoming)

¹⁶ Dworkin 1985. The Constitutional Court of South Africa has accepted the norm of equal concern and equal respect as a requirement of both the Constitution and the Equality Act. Cf. *MEC for Education: Kwazulu-Natal and Others v Pillay* at 103.

¹⁷ This means that I regard equality rather than freedom (of religion or otherwise) to be the primary basis for state neutrality. In most legal discussions, a strong emphasis is on religious freedom as the justification for state neutrality. In my view, this is a legitimate additional argument, which may be indirectly based on the principle of equal concern and respect, as religious freedom may be derived from this principle.

respect for autonomous citizens means that the state – especially in its modern form, the welfare state – should not only refrain from interfering with the exercise of this freedom, but it should also equally protect and, if necessary, support it. Requiring a citizen to leave her religious, cultural or sexual identity at home when entering the public sphere is, *prima facie*, not consistent with this ideal.¹⁸

Democracy provides a second argument for preferring inclusive neutrality: citizens should not be asked to completely ignore their religious views when participating in public debates as their religious views are often intrinsically interwoven with their political views and, as such, a separation of the two can only be artificial. A third argument is based on social cohesion: it is plausible that citizens who can fully participate in the public sphere and whose cultural, religious and sexual identity is officially recognized will feel more respected as full members of society and, therefore, will more easily remain or become integrated members of society. Moreover, if specific identities are not excluded and privatized but, instead, open to public debate and reciprocal criticism, this may also allow for possibilities of critical revision of views and practices. Thus, instead of declaring these views and practices as out of order, which, in effect, may mean that they become immune to criticism, such views and practices can be opened up to substantive criticism in debates by fellow-citizens.

The Toledo guidelines provide an additional argument with regard to education. According to these guidelines, inclusive education on religions and beliefs is an essential part of a quality education. It will “foster democratic citizenship, promote understanding of societal diversity and, at the same time, enhance social cohesion.”¹⁹ We might even consider inclusive neutrality in the sphere of education to be a human rights requirement in line with the argument made by Jeroen Temperman.²⁰ Temperman argues that as children “should be prepared for a responsible life in a free and tolerant society where human rights are respected,” neutral education on the issue of religious and non-religious beliefs is a duty of the state.

Even if inclusive neutrality is the default position, it is not always possible. A good example here is a school prayer. We could envision a school prayer that is inclusive. The teacher might pray to God, to Allah, to the Eternal, and to a plurality of Hindu gods, and then might add

¹⁸ Cf. The Canadian Supreme Court in the *Chamberlain* case: “Religion is an integral aspect of people’s lives, and cannot be left at the boardroom door.” McLachlin, C.J. in *Chamberlain v. Surrey School Board District 36* (2002), 221 D.L.R. (4th) 156 (SCC) at para 19.

¹⁹ *Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools*, p. 76, Conclusion 1.

²⁰ Temperman 2010b.

that those who do not believe in any gods at all might be simply silent for a moment. That might be an inclusive formula, but it would hardly constitute an acceptable prayer for most of the students. The same holds true with respect to religious symbols. We might think of a classroom where both a crucifix and a simple cross (for many Protestants, a crucifix is certainly not a symbol of their religion) hang alongside religious symbols of other religions and with cultural symbols. Yet, this would likely be neither acceptable for many orthodox believers, nor would it be for many non-believers. Indeed, they would still be required to learn in the presence of religious symbols that might offend their sensibilities.

In situations like the foregoing, the only truly neutral alternative is exclusive neutrality: no religious prayers, symbols or rituals at all. A crucifix in the classroom or a common school prayer are, therefore, clear violations of neutrality.²¹ Both for Protestants, Jews and Muslims, as well as for atheists, they can be offensive signs that their views are not included in the supposedly shared values that these symbols or rituals are supposed to embody. Exclusive neutrality is then the only approach that reasonably accommodates all students. Therefore, we may conclude that public education should be based solely on exclusive neutrality with regard to issues for which inclusive neutrality is not possible.

4. The Dutch ideal of active pluralism for public education should be interpreted more broadly than including merely religion and belief; active pluralism should also include cultural diversity and diversity with regard to sexual orientation.

This idea of inclusive neutrality in the classroom corresponds with the ideal of active pluralism of the Dutch public school system. Active pluralism, as it is commonly understood in Dutch policy documents, is the idea that public schools should pay attention to diversity in religious and ethical views. An active dialogue rather than confrontation should be the leading principle. Therefore, we must educate students about the various religions and fundamental views of life and teach them how to understand religious differences and deal with them in a democratic, respectful way.

²¹ Cf. Van der Burg and Brom 1999 for a philosophical analysis with regard to the older debate on crucifixes in Germany.

Similar arguments as arise with respect to religious diversity in the classroom can be made in support of paying attention in a neutral way to cultural diversity and diversity in sexual orientation. Indeed, in my view, active pluralism should address all major dimensions of neutrality with regard to deep personal commitments. We should educate students adequately and this means also preparing them for a society which is diverse in both religious and cultural respects, as well as with regard to lifestyles, sexual orientation and gender. Therefore, active pluralism includes in its purview not only religion, but also cultural diversity and diversity with regard to sexual orientation and gender.

Is this inclusive neutrality only proportional or is there a place for compensatory neutrality in the classroom as well? In order to answer that question, we must understand the justification for the latter: it is required to level the playing field for minorities who are strongly disadvantaged or to accommodate their special needs. One important disadvantage minorities can confront is the existence of strong prejudices and discrimination against them; and it is especially with regard to fighting this kind of prejudice that education can and should play an important role. Therefore, in order to decide whether there is a place for compensatory neutrality in a given classroom, it will be necessary to analyze whether there are strong prejudices and patterns of discrimination in that society with regard to the specific minority group. In most European societies, there are at least three or four groups that stand out in this respect: the religious minorities of Jews and Muslims, the cultural minority of the Roma, and the sexual minorities of gays, lesbians and bisexuals. This means that in education programs aiming to realize active pluralism, special attention should be given to promoting knowledge about and attitudes of tolerance and acceptance towards these minorities.

If we take the arguments of Ronald Dworkin and Jeroen Temperman seriously, there is a public duty as well as a right of children to be taught in line with the ideal of active pluralism. This is a requirement both because of equal concern and respect and because of the right to an adequate education. We should also take seriously the philosophical insight that active pluralism must be applied not only to religious and similar convictions, but also to cultures, and to other deeply held commitments connected with personal identity. Therefore, we may conclude that the implementation of active pluralism should also pay attention to cultural diversity and to diversity in gender and sexual orientation, and that this attention should be guided by the ideal of neutrality.

If active pluralism is the standard of good quality education in a pluralist society, this standard does not only apply to public schools, but to all schools. After all, children in private schools also need to be prepared for living in a pluralist society, and for them it is also necessary to “foster democratic citizenship, promote understanding of societal diversity and, at the same time, enhance social cohesion,” as the Toledo Guidelines phrase it. Therefore, we should, at least *prima facie*, accept active pluralism as a guiding ideal for all forms of education.

Of course, this claim may conflict with competing claims to freedom of religion and freedom of education. However, we should not overemphasize the potential for conflict. At least in the Netherlands, most publicly financed private schools are either non-denominational (they are, e.g., based on the ideas of Rudolf Steiner and Maria Montessori) or belong to mainstream Protestantism or Catholicism. Most of these schools already practice something like active pluralism; they provide information about various religions and cultures in a respectful, open way and pay attention to various religious festivals. Some schools also implement an open confessional identity through school prayers and religious education in the tradition of their school, but usually they practice it in an inclusive way, in which humanist, Jewish, and Muslim children need not feel excluded. For those schools, there may be a tension between the educational ideal of active pluralism and their confessional identity, but for practical purposes, it seems that most of the implications of active pluralism can be largely integrated into their open confessional identity.

A real conflict may exist with regard to some 5 or 10 % of Dutch schools – those with a more orthodox identity. Most of these schools are orthodox Protestant; a tiny minority is orthodox Muslim or Jewish. In the case of these schools, the idea of a neutral education oriented towards the ideal of active pluralism clearly conflicts with the doctrinal beliefs central to these schools. For example, a neutral presentation of homosexual lifestyles as equal to traditional different-sex marriage would conflict with various religious orthodoxies.

At this stage, we should discern two aspects of active pluralism. On the one hand, the ideal requires the preparation of children for a pluralist society, by providing fair information about various cultures, religions and lifestyles, by promoting democratic virtues such as mutual respect and tolerance, and by combating prejudice. This part of the ideal can and should be made obligatory for all publicly financed schools, as it is simply a standard for good education. Freedom of education is not a license to spread hatred of other minorities or to withhold

knowledge and capacities from pupils which are essential for living in a pluralist society. On the other hand, the ideal requires a neutral presentation of all cultures, religions and lifestyles. The line between neutral and fair may be thin, but there is a difference here. A fair presentation of alternative religious views need not conflict with a strong confessional identity. Confessional schools may still teach in light of their own religious beliefs, but they too have an obligation to provide their students with adequate information about the pluralist society and to prepare them for life in such a society. Moreover, each of the religions that are associated with religious schools also includes principles of respect and tolerance towards those who do not belong to the religion.

In the end, a conflict may, nevertheless, remain between the standard of active pluralism and the confessional identity of a school. There are no easy solutions for this conflict. However, in order to address the conflict adequately, we must first formulate it explicitly. In order to do this, the first step is to accept that active pluralism is a sound educational ideal not only for public schools but also for private schools, including schools with a religious identity. The next step is then to see how a reasonable accommodation of this ideal is possible within the context of the religious identity of the school.

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