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Western Europe and Australia: negotiating freedoms of religion

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ABSTRACT

Newly established religious minorities in Western European countries and Australia have sparked fresh questions about the public place of religion. The current situation in the region reflects a certain agonism over the place of public religion and its relation to liberal secular order. This has especially been the case for the region's Muslims in a context marked by fears of radicalisation and extremism. This contribution considers these responses in relation to Belgium, France, Germany, and the UK; and Australia. The contribution explores the norm of freedom of religion that forms the region's core similarity but also the ground on which divergences in norms of state-religion connections can be found. It identifies key norms that operate in the region in order to draw out similarities as well as important differences between the countries. Exploring how the governance of religious diversity comes to reflect diversity-enhancing or diversity-limiting features, it assesses the ways and extent to which the region can be characterised under 'moderate secularism'.

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Religious diversity; moderate secularism; *laïcité*; freedom of religion; secularism; Western Europe

Introduction

Western Europe, it has been said, has been undergoing a significant challenge, or even crisis, of secularism and multiculturalism in its struggles to include religious minorities that have arrived since the mid-twentieth century (Bhargava 1998, 2009, 2016, 2017; Mahajan 2007; Roy 2007). While this may be something of an overstatement (Modood 2012), the meaning and parameters of secularism have become the focus of renewed attention provoked by contemporary extra-Christian religious diversity.

Some of the key political and public debates have revolved around the presence and accommodation of religious signs and symbols, issues of free speech, particularly those prompted by books (the Rushdie Affair), cartoons (the Danish cartoon affair; Charlie Hebdo) and their reproduction or use, and debates over the place and content of Islamic (Sharia) law in relation to civil law. In this vein, it is the prominence of and focus on Muslims and Islam that has been at the forefront of debates and controversies, and which have been seen to do most to challenge the region's liberal secular states (see for example, Joppke 2015; Modood 2019).

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This contribution considers what can be said about Western Europe as a region when it comes to the governance of religious diversity; is there something we can call a Western European approach? To do so we apply a new framework for the comparative analysis of the governance of religious diversity (see Modood and Sealy, this collection) to the cases of the UK, France, Germany, and Belgium (see Figure 1). We also include Australia in this group given its historical outgrowth from the UK. The analysis presented is based on extensive research of secondary literature, and legal and policy measures. We look at similarities and differences between these countries, and how these relate to issues of secularism and freedom of religion. The contribution begins with an historical overview before going on to assess two simultaneous trends: on the one hand, a more accommodationist, multicultural response; on the other hand, a more secularist, ‘muscular’ liberalism, more intolerant of visible and audible religion in the public sphere. We therefore further ask: what mode(s) and norms of governance of religious diversity operate in the region? How do these modes bear on the responses of our country cases to issues and controversies of accommodating religious diversity? And, conversely, how do these issues and controversies bear on the mode(s) of governance? We also address the idea of freedom of religion in the region, how this has come to differ between our country cases, and how this forms a particularly significant fault line between them.

Historical overview to contemporary relevance

The Westphalian settlement (1648), in retrospect, set in motion a trajectory that would pass through ideas of religious tolerance, state neutrality, and privatised religion. Along with developments resulting from the growth of modern capitalism and the early modern

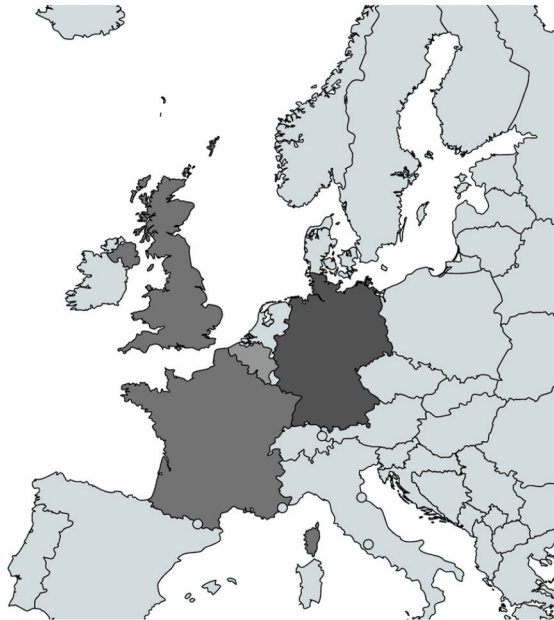


Figure 1. Western European countries covered in this contribution: Belgium, France, Germany, and the UK.

scientific revolution, religion came to be gradually and increasingly circumscribed from politics through the nineteenth century; notable incidents including the German *Kulturkampf* (1872–1878) (Großbölting 2017; Hatfield 1981; Henkel 2006), Belgian ‘school wars’ (1879–1884) (Dobbelaere and Voyé 1990), and secularisation laws under the Third Republic (1875–1905) in France culminating in the law of 1905 on church-state separation (Gunn 2004). In England also, various functions such as education and welfare began to be taken over by the state and direct financial ties between state and established Church of England were cut (such as tithes and grants). Australia was initially occupied as a penal colony by the British before it became a colonial settler society, and a long shadow of systematic dispossession, displacement, and denial of the continent’s indigenous Aboriginal and Torres Strait Islander peoples hangs over its historical development. Prior to federalisation (1901), relations were marked by Protestant-Catholic sectarianism.

Nevertheless, state-religion connections across the region persisted, albeit in revised forms recontoured by a norm of political secularism in which political authority was separated from religious authority and the latter made subordinate to the former. Reformed arrangements and connections began to settle as the twentieth century progressed. In Germany, principles from the earlier Weimar Constitution (1919) were enshrined in the new (1949) German Basic Law (*Grundgesetz*), adopting the principle of separation between church and state as well as protecting religious freedoms, retaining subsidies and privileges for the Protestant and Catholic churches, and codifying cooperation between church and state, especially on matters of education and welfare, through the status of ‘corporation under public law’ (*Körperschaft des öffentlichen Rechts*). The number of groups granted public corporation status has grown since, although as the granting of this status is devolved to each *Land* (federated state), and conditions of size and permanency are important determining factors, there is variation in this process. To take a few examples, in Bavaria/Berlin: Methodists (1922/1973), Jews (1947/1951), Greek Orthodox (1975/1976), Baptists (1982/1974), Romanian Orthodox (2006/[no date given]), and Jehovah’s Witnesses (2009/2006) have, amongst others, all been granted public corporation status (Hofhansel 2013); in Bavaria, humanist organisations were also granted this status in 1947 and 2012; and in Hesse a Bahá’í and a Muslim group are also recognised (Körs 2017).¹ The takeover of social functions by the state in the UK continued but some ties, such as reserved seats in the House of Lords, were preserved and the Church of England also gained greater autonomy in its own affairs (as they became). State-religion connections with the diversity of minority religions have also been extended. In Belgium, the system of pillarisation brought about as a result of the school wars, which had separated Catholic, Liberal, and Socialist social institutions and organisations, loosened but strong connections between state and religion remain, notably in education and the role the Catholic Church plays in public life (Franken 2016a, 2016b), and further religious groups gained official state recognition. Since the 1970s, and the repeal of its ‘White Australia’ policy, Australia has cultivated a multiculturalism that builds on earlier state support and accommodation of religious groups (Levey 2017). In France, historical connections persisted in the form of recognised representative organisations for Catholics, Protestants, and Jews, and funding for faith (principally Catholic) schools and places of worship.

The historical legacy has meant that religions in the region continue to play important public roles, and that the state-religion connections facilitate, support, encourage, and also

colour many of those roles. Accommodations and exemptions for certain aspects of dress, funeral practices, religious buildings, ritual slaughter, and educational provision, for instance, have been claimed, debated, sometimes made, and sometimes refused or revoked.

Since the late 1980s, the region has seen a re-emergence of public religion. So-called New Religious Movements (NRMs) have been extremely controversial (going back to the 1960s), perhaps especially in France and Germany, and subject to state control (see Richardson 2004). There have also been more recent high-profile legal cases involving Christians, particularly related to sexuality, such as the gay cake row in Northern Ireland (*Lee v Ashers Baking Company Ltd and others*), which went to the European Court of Human Rights (ECtHR), and Christian hotel owners in England who refused to allow a gay couple a double room in England (*Bull vs Hall*) (for discussion on both cases, see Velasco Ibarra 2020). The issue of public religion in Western Europe has, nevertheless, largely focused on religious minorities, and especially Muslims.

There are two sets of arguments we are interested in here. One sees the current state-religion connections extant across Western Europe as a problem for the inclusion of minority religions; even arguing that the modes of secularism in the region are 'irretrievably flawed' (Bhargava 2014, 2017) in their ability to accommodate religious minorities, in part because of the region's Christian inheritance. Laborde (2013, 2017) has made a related argument in so far as she sees church-state connections, particularly those with a dominant church, as necessarily alienating for minorities.

We argue that these positions are mistaken. These state-religion connections can help the accommodation and inclusion of minority religions, and in fact religious minorities do not seem to protest the position of, for example, the established Church of England, instead appreciating these arrangements as a recognition by the state of the public and national significance of religion (Modood and Thompson 2021; also see Modood 1997; Perez, Fox and McClure 2017; Fetzer and Soper 2005). Moreover, recent research on populism strongly indicates that recognised religions can dilute or neutralise far-right backlashes against religious minorities (Cremer 2021). We seek to show that state-religion connections recognise the public good of religion and that this can be positively accommodative of minority religions, notwithstanding certain constraints.

The other type of argument we are concerned with characterises the understanding and mode of secularism in the region. Some have seen French *laïcité* as representing 'mainstream western secularism' (Bhargava 2009) or as a European and not just a French value (Willaime 2009). Others see French *laïcité* as neutral towards religion (Joppke 2007; cf Jansen 2013). It is important to note that this is not a consensus view (see for example Kuru 2008; Modood and Sealy in this collection). One key contrast is that between the 'moderate' secularism of most of Western Europe and Australia, and the 'radical' secularism of France (Modood 2010; Levey 2017). It is this latter characterisation that we elaborate on, where our modes of moderate secularism and secularist statism develop from Modood's earlier distinction.

We can first note what is held in common across our country cases and so forms the norms of the region,² and we can state this quite briefly and uncontroversially. Underpinned by a political secularism (see above), Western European and Australian norms rest on a foundation of freedom of religion based in freedom of conscience and moral individualism, and these rights are found enshrined in constitutions or primary legislation.

Yet there are two religious freedoms here: freedom of conscience and freedom of practice. Both are guaranteed in each country and while one's private religious convictions are not really at issue, the latter becomes the key point of normative divergence between our country cases. We seek to show how and why, despite this common baseline of political secularism and freedom of religion, the modes and their constitutive norms vary within our region. What orients our study is not structures of governance *per se*, although these are extremely important, but the norms that underpin them and how they operate (see Modood and Sealy in this collection). That is, it is not the fact of state-religion connections or even necessarily – and certainly not only – their form, but rather the extent, character, and quality of these connections and relations that we are concerned with foremost (cf Modood 2010).

Our analysis is organised into two main sections. The first splits our cases into two groups to elaborate on the modes and norms that characterise and differentiate them (represented in Table 1) in relation to diversity-enhancing norms. The second turns to more diversity-restricting norms and focuses especially on recent trends and challenges to religious diversity that have emerged in relation to countries' Muslim populations. In both cases, it identifies which norms are operative, and distinguishes between *dominant operative norms* (DONs), which are those norms most dominant in how religion is governed in a particular case, and *qualifying operative norms* (QONs), which are equally important and serve to limit, adjust, or modify how DONs function (for further discussion of this distinction see Modood and Sealy, this collection).

Accommodation of religious diversity

Moderate secularism: religion as a public good

Four of our countries represent a mode of moderate secularism: the UK, Belgium, Germany, and to a lesser extent Australia, yet all have state-religion connections of different sorts. The UK is the only case here with a formally established church. The Church of England remains (weakly) established and certain privileges, such as reserved seats for bishops in the upper chamber of parliament, remain. The German Basic Law, by contrast, establishes a formal separation between church and state (Article 137 (1)), whilst in Belgium it is not a formal constitutional separation. An immediate point to make,

Table 1. Modes and norms for the governance of religious diversity.

Secularist Statism	<ul style="list-style-type: none"> ● State control of religion ● The state excludes religion from the political and the civic, confining religious freedom largely to the private sphere ● May include some support of some religions, but religion mainly seen as belonging to the private sphere
Moderate Secularism	<ul style="list-style-type: none"> ● Moral individualism – freedom of conscience ● Religions may enjoy equal or unequal status but all are officially and socially tolerated ● Religion seen as a public good in need of support (funding of faith schools) ● Religion might also be seen as in need of regulation (to match some prevailing values e.g. issues of women bishops/single sex marriage) e.g. social attitudes that undermine tolerance and respect for religion and religious diversity (in interfaith relations and beyond religion) ● Mutual autonomy but restricted neutrality, including 'weak' establishment and unequal recognition ● Generally accessible/dialogical reasons

therefore, is that these countries being examples of moderate secularism is not based on a point of sameness of constitutional recognition between church and state. Rather, it is the political secularism of the state along with the normative provision of positive connections, allowing for variety in the exact form of these connections, that forms the common ground between them.

Despite these differences in ‘establishment’, state-religion connections are constitutionally guaranteed in both Belgium and Germany, and in both countries religions can gain formal recognition status; in Germany, for example, through gaining public corporation status. In the UK, which lacks a formal written constitution, the position of religion is secured through other legislation. In England, the ‘advancement of religion’ is recognised as a charitable purpose under the Charities Act 2011, for instance, and it is from gaining charitable status that financial benefits in terms of tax relief are open to religious bodies. Cooperation between state and religion is secured in areas such as education and social welfare, chaplains in public institutions such as schools, hospitals, prisons and the armed forces, as well as a number of other areas.

When it comes to newer religious minorities more specifically, routes to formal recognition have also been available under these legal provisions and their terms, and a number of religions, as well as humanist groups, are recognised. Also, institutional connections have been expanded through, for instance, the German Islam Conferences (*Deutsche Islam Konferenz*) or ‘democratic constellation’ of Muslim organisations (Modood 2013 [2007]) in the UK. As well as these formal mechanisms, measures that are pragmatic or ad hoc have also filled gaps.

Through this kind of cooperation, the norms in these states go beyond a privatised view of religion in society as merely a matter of individual conscience. Religion is seen as a public good, providing significant public services, and is supported, in no small part as a result of the historical importance of churches in these areas. Two main areas in which religion is seen as a public good are education and welfare service provision. In terms of welfare service provision, it is perhaps not too much of an exaggeration to say that state welfare would be severely disabled, if not collapse, without the roles of and partnerships with churches and faith-based organisations (see for example Dinham 2015, 109; 2009 on the UK; and on Germany, Barker 2000; Lewicki 2014; Franken 2016b, 2017; and on Belgium, Franken 2015, 2016b; Adam and Torrekens 2015).

Religions also play a central role in education, where they operate in the public school system with government funding as well as run private schools, and might take the form of involvement in setting or providing the curriculum for religious education, worship, or running what are loosely referred to as faith schools (Bribosia et al. 2011; Franken 2017; Brems 2020; Long and Danechi 2019). These, moreover, have generally increased in the last couple of decades even if Christian-based schools predominate. Here the characteristic of pragmatic accommodation is evident in some German *Länder* (federated states), where, for instance, religious groups without public corporation status have informal arrangements to teach religious education, including Muslim and Buddhist groups (Körs 2017, 2019).

As well as these types of connections, a large degree of mutual autonomy is assured. There are, for instance, some exemptions from equalities legislation (particularly on gender and sexuality) as applied to the labour market for some positions where doctrinal specifications are in conflict. State control of and interference in religion are also limited,

such as in matters of doctrine. In Belgium, for example, the Constitution prohibits the state from 'interven[ing] either in the appointment or in the installation of ministers of any religion whatsoever' (Article 21), and in the UK, government interference in Church of England affairs has receded gradually, and since 2007 the prime minister no longer plays an active role in Church appointments.

Through these kinds of norms and connections between state and religion, we can also see some features of a different mode of governance playing a qualifying role, that of pluralistic nationalism (see Modood and Sealy in this collection), and this is perhaps strongest in the UK; namely, through aspects of difference-sensitive recognition, institutional accommodation, and areas of policy cooperation. Yet, moderate secularism differs from pluralistic nationalism in the depth and extent of these features, and the basic principles of moral individualism and political secularism mentioned above as the common regional norms are fundamental to why these are qualifying rather than dominant norms. In this way, despite the positive public presence and role of religion, this is very much within parameters contoured by political secularism.

Turning to Australia, overall, the way in which the Australian Constitution treats religious freedom has for many decades operated on the principle that religious beliefs and practices are voluntary and private matters for its citizens, with weaker positive protection and connections for religious rights and freedoms in comparison to similar countries (Meyerson 2009, 529) such as our three European cases of moderate secularism (the UK, Belgium, and Germany). Constitutionally, this forms a key point of difference here, and has elsewhere been characterised as liberal separationism (Chavura, Gascoigne, and Tregenza 2019).

Nevertheless, as we saw above, accommodation of religious groups was foundational to Australian multiculturalism. Although connections and provisions are not part of the Constitution, Australia maintains a list of Registered Religious Institutions through the Australian Tax Office, which may be eligible for a range of tax benefits and concessions. The most significant recent developments at national level to trends within state-religion connections in Australia have arisen as a result of the 2018 Religious Freedoms Review (see Grossman et al. 2021). In its response the Australian government has stated that freedom of religion is not subordinate to other freedoms and 'accepts [. . .] that there is an opportunity to further protect, and better promote and balance, the right to freedom of religion under Australian law and in the public sphere' (Australian Government 2018, 4). The debate over this legislation both points to a strong current of moderate secularism (perhaps even with some weaker elements of pluralistic nationalism), but which can be hotly contested on more liberal neutralist grounds. Emerging from the Review, a new Religious Discrimination Act has stalled; having passed the lower house, at the time of writing it is yet to pass through the Senate and come into law owing to tensions with sex and sexuality discrimination rights.³

At State and Territory levels, we find a more pronounced moderate secularism. Australia's federated system has left States and Territories free to legislate on various religious matters and the status of religions is unevenly distributed as a result (for further discussion see Grossman et al. 2021). There are a range of Commonwealth agency-based funding programmes for religious and cultural groups and some Australian States and Territories specifically make funds available to minority ethno-religious groups, including expansion of the provision for Special Religious Instruction in government schools to

reflect more recent religious diversity in some states although not others. This can be uneven between States and Territories, however; and new legislation in Victoria is set to restrict religious organisations and schools' ability to discriminate on the basis of sexuality, gender, and marital status in staff recruitment,⁴ something which may bring it into tension with the Religious Discrimination Act should that pass into law.

Secularist statism: religion privatised

France forms somewhat of an exception from the moderate secularism of the region (cf Willaime 2009; Jansen 2011), and more closely reflects a mode of secularist statism.⁵ France is, for instance, the only EU state to explicitly define itself as secular in its constitution. This variance is grounded in a form of civic nationhood antithetical to recognising group difference and a form of republican egalitarian individualism which the granting of group rights is seen to undermine. Religious difference is therefore restricted to the private sphere more fully than is the case in the UK, Germany, and Belgium, and state control is much more prominent.

It is important to appreciate that the precise meaning and parameters of *laïcité* have always been disputed. One strand was historically clerical and monarchist, but today is characterised by being more pluralistic and open (Baubérot 2010; Jansen 2013). Yet it is the other, more combative, version of *laïcité*, which came to connote a particular anti-clerical attitude and policies (Gunn 2004), that has become increasingly prominent, and which for some has come to represent a distortion of the 1905 law (Baubérot 2014). This approach emphasises freedom *from* rather than *of* religion, with the state's role one of protecting citizens in this regard. This is also reflected in the 'cultural layers of laicism' (Jansen 2013, 198) or 'narrative secularism' (Ferrari 2009), with a hardening of a cultural discourse of *laïcité* underlain by presuppositions of assimilationism and the disappearance of public religion. We might say, then, that France is distinct in having stronger ties between nation and secularism, where public identity and how the state relates to citizens is more strongly secularist in identity terms. This is not just a feature of the French state but regarded as central to the country; for some it is what it means to live in France and to be French.

This does not preclude some connections and support and there is a degree to which religions are supported through institutional connections with the state. Legal institutional status has been granted to representative bodies for Catholics, Protestants, and Jews, and a representative body for Muslims was created. This comes with tax exemptions and assistance in access to public spaces and building places of worship. There are state-paid chaplains who operate in public schools, prisons, hospitals, and the military. There are also faith-based private schools and hospitals that receive government funding, providing they meet appropriate criteria.

Nevertheless, there is a normative difference between these types of state-religion connections under our modes of moderate secularism (discussed above) and secularist statism. Key to understanding this difference is not the fact of state-religion connections, but that these connections are based in operating principles qualitatively different enough to warrant their distinction. Moderate secularism is significantly oriented around religion seen as a public good and state-religion connections that support a public role for religion. Secularist statism, by contrast, seeks to restrict religion to the private sphere to

a greater degree, religion is seen as a problem, and state-religion connections are characterised by greater state interference and control. In France, public religion is more restricted and tightly controlled by the state, with autonomy more one-way than elsewhere in the region. In France, obtaining the status of 'religion' rather than just 'association' is difficult and requires the State Council to undertake 'a substantive review' of its purposes and practices (Gunn 2009, 978). Moreover, the state maintains a high degree of interference, in majority as well as minority religions. Before the pope appoints new bishops, for example, the minister of the interior checks that the values of the nominees are not incompatible with those of the Republic (Troper 2016, 327). It is also heavily involved in making decisions about employees and the curriculum in the religious schools it funds. Moreover, debates around public funding for a Grand Mosque in Marseille have revolved around it acting as a cultural rather than religious centre, and offering classes open to all (Maussen and Talbi 2017). Churches built before 1905 are state owned and largely state maintained (in a quirk of the arrangement under which the state pays significant subsidies towards the maintenance of the religious buildings it previously appropriated and now allows the religions to use), and religious bodies cannot operate in public schools.

An objection might be raised here with reference to the region of Alsace-Moselle, which gives public recognition to four faiths (Catholicism, Calvinism, Lutheranism, and Judaism). These receive greater financial support than prevails in the rest of France and are taught in state schools for one hour a week. This represents, however, an historical exception that does not disprove the rule. This exception is a result of the region having been part of Germany at the time of the 1905 law, and it was agreed when the region became part of France after the First World War that the 1905 law would not apply (see Troper 2016).

France's exceptionalism here serves to highlight both the common basis in freedom of religion and moral individualism in the region, but also how this can be understood and put into practice quite differently. This is a result of how a different set of norms, from a mode of secularist statism, characterises the governance of religion and religious diversity in the country, and what it can mean in political and policy terms for the relationship between state and religion (see also Champion and Ghouri 2021).

The discussion in this section has mainly oriented around elaborating the public good aspect of moderate secularism contrasted with the secularist statism of France. This sought to establish that, beyond the basic norms of freedom of religion and moral individualism, the character and qualities of structures of governance and their rationales diverged. The following section now goes on to a similar assessment, yet this time oriented around religion seen as a public danger or harm.

The limits and lines in the sand of freedom of religion

If in the previous section we have argued that, despite a shared basis, there is a normative difference between the two modes of moderate secularism and secularist statism on the grounds of how religions are positively, or not, included in the public sphere, a further way of articulating France's non-exceptionalism has been in relation to diversity-restricting measures, particularly those involving the regions' Muslim populations (for example, Jansen 2011). While the aspect of control is a feature of France's approach in

a more general sense, the kinds of norms and policies that this emphasis gives rise to can also be seen reflected in countries more characterised by moderate secularism. This section turns to explore this issue in relation to our five country cases and modes of governance. It argues that despite some similarities, France's exceptionalism remains. Two significant aspects of governance relevant here are increased regulation and interference through institutionalisation and increasing restrictions on the public visibility and presence of religious signs and symbols. These two are taken in turn in the rest of this section.

Institutionalisation and regulation

Just as institutionalisation can be the way in which minority religions gain a foothold in a country's political environment and the structures of governance, so too it can be the form through which greater government interference, regulation or control, and restrictions or conditions on diversity occur. This much we have already begun to see in the previous section.

In terms of more diversity-restricting measures, we can begin by noting how in relation to our countries of moderate secularism, despite the positive forms of accommodation discussed above, in practice newer religious minorities have often struggled to fully enjoy statuses of recognition, and where they do, they might be incomplete.

Pre-existing arrangements between state and church have often proven unwieldy when applied to non-Christian religious traditions, especially in relation to their Muslim populations, which have struggled to institutionalise Islam through national representative bodies seen as legitimate by both the state and the communities they were supposed to represent. In part this is to do with the diversity of Muslims (ethnically, nationally, and doctrinally) along with the lack of a centralised authority in Islam comparable to those found in Protestantism or Catholicism. In this sense the demands from the state in terms of the infrastructure of governance can be their own barriers, and might even be aggravated by transnational influences (see, for example, Çitak 2010).

But perhaps more importantly for our concerns is that as well as religion seen as a public good, religion can also be seen as posing a public danger or harm. In this sense, institutional arrangements and conditions might be conducted and formed in such ways as to regulate or control religion. In a context marked by concerns over aligned social and political values, especially those around gender and sexuality, as well as by security concerns and state responses to (violent) radicalisation, Islam and Muslims have come under greater scrutiny, suspicion and, as a result, have had more conditions imposed upon their accommodation and presence in Western European polities. States have had larger roles and exercised more interference in appointing members in Muslim representative organisations,⁶ and as a result Muslim organisations and mosques have had erratic and politically contingent relationships with governments.

In contexts marked by fears over Islamist extremism, mosques have also come under greater scrutiny and surveillance than other religious places of worship, and foreign influence has become a particular concern. For instance, in a recent move the Belgian government terminated Saudi Arabia's lease on the Grand Mosque of Brussels over concerns it was promoting radicalism,⁷ and in Flanders, in order to be recognised, mosques must have written documents stating and proving their commitment to their use of Dutch as their *lingua operandi* (with the exception of the *khutba* or sermon), their

respect for the Constitution and basic rights and liberties, and their not being involved in terrorist activities (Adam and Torreken 2015).

One might then reason that the situations between our modes of secularist statism and moderate secularism look somewhat similar. Nevertheless, we maintain that there is a normative qualitative difference operating here. We should first note that the notion of religion (or a particular religion as the case may be) as a public danger/harm is compatible with moderate secularism, and so this fact alone does not determine the choice of mode. Importantly, in our countries of moderate secularism, what we see is the regulative aspects becoming enhanced but without actually calling into question the public good function of religion or state-religion connections on this basis. Rather the tension between the two becomes prominent. In France, by contrast, the exertion of state control becomes emphasised such that it becomes increasingly extended and intolerant, crowding out more moderate forces.

We can see this in recent moves by the French state. Following the 2020 terrorist incidents, the beheading of Samuel Paty in Paris and murder of three people in a church in Nice, French President Emmanuel Macron asked Muslim leaders to accept a 'charter of republican values' (although this is not without precedent, see Cesari 2002), and a new anti-separatism bill, passed in August 2021, has been extremely controversial for expanding state powers, restricting religious freedoms, and implicitly targeting Muslims. A number of mosques and Muslim organisations, some engaged in anti-racism work, have been shut down, and greater controls have been placed on religious and cultural organisations in the name of combatting 'political' and 'separatist' Islam. The French state has also announced the creation of an inter-ministerial committee on *laïcité* to ensure 'the respect and promotion of *laïcité* by all public institutions'.⁸ These measures all serve to highlight France's secularist statist DONs against those that appear more accommodative and closer to those of moderate secularism, again suggesting France's exceptionalism in this regard in Western Europe.

Signs and symbols

A further area relevant here is in relation to religious signs and symbols, especially the *hijab*, *niqab*, and *burqa*. France's well-known headscarf affairs, beginning in 1989, were both provoked by and aimed at Muslim women's clothing. Ostentatious religious signs and symbols were banned in public schools in 2004, and this was followed by the banning of full-face coverings in public in 2011 (see Bowen 2009; Jansen 2011, 2013). Moreover, the French ban in schools, although provoked by the desire to regulate Muslims, applied in general (it would be illegal for it to do so otherwise). It therefore had more indiscriminate effects for people of other faiths and wider effects for the public visibility of religious diversity as such; Sikh students wearing turbans, Jewish students wearing yarmulkes, and Christians wearing 'big' crosses were also expelled under the 2004 law (see for example Howard 2012).

In relation to our other country cases, we should begin by noting that the UK and Australia have not brought in such bans, and in the UK bans of this kind have never really garnered serious political attention. Bans have appeared in Germany and Belgium, but with qualitative differences in extent, how these have occurred, and the principles underlying them reflecting the distinction between moderate secularism and secularist statism.

While Belgium has introduced a criminal ban on face-covering in the public sphere, a general ban on headscarves has not been brought in (unlike in French public schools). Headscarf bans have appeared but in more ad hoc and inconsistent ways (Brems 2020; Adam and Torrekens 2015) and there can be considerable pressure and discrimination. Public schools run by the Flemish community have prohibited the wearing of religious signs for both teachers and pupils, teachers of religious education classes excepted. For Flemish private schools, as for both public and private schools in Francophone Belgium, the decision is left to the discretion of the individual school authorities. Bans have also been introduced for employees of the French Community Parliament when in contact with the public, as also in some local municipalities, although a general public sector ban has not been brought in. A recent Constitutional Court ruling stipulated that it is not unconstitutional for universities to bring in bans, although this is a decision for each institution. Many universities have stated that they will not be introducing a ban on headscarves, and some existing bans in Wallonia have in fact been revoked following the ruling.⁹

In Germany, there are two important points to note. The first is that a blanket ban on religious symbols (focused on a case where the headscarf was the issue) was ruled unconstitutional by the Federal Constitutional Court, stipulating individual *Länder* would need to introduce separate legislation to institute such bans, and bans have appeared unevenly as a result. The subsequent variation follows political lines of the *Länder* governments, with those on the left favouring general bans of religious symbols, and those on the right selectively targeting the Islamic headscarf, distinguishing it from Christian symbols on the basis of the former's supposed political content and the latter being more cultural and historical (Joppke 2007; see also Jones and Braun 2017). Bans and their rationales then are variable and ad hoc rather than being centralised points of normative principle.

A further important feature of the bans in Germany is that the legal debate, prompted by the case of teacher Fereshta Ludin, revolved around freedom of religion on the one hand, and an understanding of neutrality in schools where a teacher is seen as a *Beamter* (public servant), on the other (Schiffauer 2006). The bans and the initial case itself were focused on teachers and their roles as neutral public servants. A recent law has also been passed to regulate the appearance of civil servants over concerns about their neutrality, prompted by far-right tattoos and including ideological symbols in general, such as political and religious signs.¹⁰ This draws a sharp contrast with France, where there was something much stronger going on. The French state was, on its own understanding, protecting the positive liberty and autonomy of the girls (Tourkochoriti 2012, 825–826). Schools, according to this vision, are a place of 'emancipation' and *mise à distance* where community identities and ties are left at the door (Kuru 2009, 125; Jansen 2013; Joppke 2007; Bowen 2009). Nevertheless, it has been argued that the ban has had a negative effect on socioeconomic integration in the long run, affecting the educational attainment and labour market trajectories of French Muslim women (Abdelgadir and Fouka 2020).

On the one hand then, France exhibits some connections that appear similar to those of moderate secularism, while on the other hand, countries of moderate secularism have also adopted some measures that appear similar to those of France. It is for these reasons that for some the difference, and France's exceptionalism, can seem overwrought.

Nevertheless, there are important differences here in the extent and quality of the connections and of the restrictions that bear on our modes and norms.

Conclusion

The current situation in the region reflects a certain agonism over the place of public religion and its relation to liberal secular order in general. The presence of Muslims in particular has stretched the existing arrangements and forced, in some instances, renewed thinking and attention to how accommodation and inclusion might be achieved, or in other instances, a contraction in pro-diversity arrangements and policies.

Western Europe's regional foundations can properly be said to be freedom of conscience based in moral individualism and toleration; these are the dominant operative norms. However, the region is also characterised by qualifying norms of state-religion institutional connections. Whether or not, however, this results in recognition of religion as a public good or the emphasis is rather religion as a public danger remains politically contingent and often applied in unsystematic ways. Religion can be positively encouraged and may lead to further pro-diversity qualifying norms and policies such as difference-sensitive recognition and institutional accommodations. Yet, religion and its connections to the state might also be an aspect of its management by the state. This can be seen in France's general approach with its secularist statist rendering of *laïcité*, where state control and privatisation are dominant norms. It is also particularly evident in relation to Muslims throughout the region through aspects such as security measures, restrictions on public visibility, or institutional conditions, although these are better seen as qualifying norms in countries of moderate secularism.

The basic underlying principles and the steering provided by the state produce different outcomes for public religion and diversity. Across the discussions above, in terms of freedom of religion as practice or manifestation, we find significant variance between our modes and the reasoning of the norms, resulting in different outcomes both institutionally as well as in terms of public visibility. One notable contrast is that in countries characterised by moderate secularism, aspects of interference and regulation are not only less severe than those under secularist statism, but are also less systematic and less likely to impact religious diversity and religion as a public good *as such*. The structures of governance of religious diversity in the region, although underpinned by common norms of political secularism and freedom of religion based in freedom of conscience and moral individualism, vary in significant ways when it comes to public religion, religion's role as a public good and state-religion connections, and freedom to practise or manifest religion in the public sphere.

Although we maintain the distinction of France's exceptionalism in the region, this contrast is not to say that these trends in countries characterised by moderate secularism are not concerning, and they certainly point to some of the limits of recognition under moderate secularism. Rather it is to suggest that they do not constitute a change of mode sufficient such that all these country cases can be considered indistinguishable from each other in their basic norms of governance. This itself is also not to suggest that such a situation could not occur, that countries currently characterised by moderate secularism couldn't move to an alternative mode, for instance. Rather, it is to point to

the much wider shifts that would be necessary for this to be the case. Here, alternative configurations in some other European countries (see Magazzini, Triandafyllidou and Yakova, and Vekony, Iliyassov and Račius in this collection), which also have DONs of moderate secularism but these are qualified in different ways, might make interesting comparisons.

A question that therefore lingers over the issue of the governance of religious diversity in Western Europe, and is relevant for Australia also, is whether and when, and in relation to whom, such governance will come to reflect to a greater degree a more multicultural accommodationist approach or lean more heavily on ‘muscular’ forms of liberal neutralism or even secularist statism. This shows that moderate secularism itself should perhaps be thought of as a project, ongoing and never quite fully settled or achieved, but whose parameters are to some extent under constant negotiation.

Notes

1. Lists of recognised groups by region can be found on: <https://www.personenstandsrecht.de/Webs/PERS/DE/informationen/religionsgemeinschaften/religionsgemeinschaften-node.html>.
2. Our use of region indicates our five country cases rather than Australia and Western Europe *in toto*, although we suggest some general relevance of the arguments we present.
3. For reporting of the Bill, see, for example, Josh Butler (2022), ‘What’s happened to the religious discrimination bill – and where to next?’ *The Guardian*, 10 February. Online at <https://www.theguardian.com/australia-news/2022/feb/10/whats-happened-to-the-religious-discrimination-bill-and-where-to-next>; Jake Evans (2022), ‘Government shelves religious freedom bill indefinitely, leaving election promise hanging in uncertainty’. *ABC News*, 9 February. Online at <https://www.abc.net.au/news/2022-02-10/government-consults-religious-groups-discrimination-bill/100818568>.
4. See Royce Millar and Ben Schneiders (2021), ‘Religious schools in Victoria to lose the right to sack LGBTQ staff’. *The Age*, 16 September. Online at <https://www.theage.com.au/national/victoria/religious-schools-in-victoria-to-lose-the-right-to-sack-lgbtq-staff-20210915-p58rx5.html>.
5. We might note that on different indices, France scores lower on freedom of religion and higher in state interference than its European neighbours and Australia. See, for instance, the World Bank’s index (2018 figures) and Pew’s government restrictions index.
6. For example, on France see Kastoryano (2004, 2006); Bowen (2009); Cesari (2002); on Belgium, Çitak (2010); Franken (2016b); on Germany see Körs (2017, 2019); Lewicki (2014); on the UK see Modood (2010, 2013[2007]).
7. See (no name) (2018), ‘Muslims and politicians react to Belgium’s decision to take back Grand Mosque’. *Euro-Islam*, March 29. Online at <http://www.euro-islam.info/2018/03/29/muslims-politicians-react-belgiums-decision-take-back-grand-mosque/>.
8. See <https://www.gouvernement.fr/partage/12316-creation-du-comite-interministeriel-de-la-laicite>.
9. See Maithé Chini (2021), ‘Belgian universities stress that they will not ban headscarves’. *The Brussels Times*, 16 June. Online at <https://www.brusselstimes.com/117067/belgian-universities-stress-that-they-will-not-ban-headscarves-in-class>; (no name) (2021), ‘Lifting of hijab ban in southern Belgium offers hope for Muslim women’. *TRT World*, 18 January. Online at <https://www.trtworld.com/magazine/lifting-of-hijab-ban-in-southern-belgium-offers-hope-for-muslim-women-43365>.
10. See <https://www.beamtenbesoldung.org/>. Full face veils are banned in some regions for pupils, although there is no general ban of this type in public spaces.

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