

## Justifying Limits on Teachers' Freedom of Expression

Josh Corngold

*University of Tulsa*

Against the backdrop of a controversial proposed bill in the Canadian province of Quebec, Kevin McDonough, Bruce Maxwell, and David Waddington examine whether the secular liberal state is justified in prohibiting teachers from wearing “ostentatious” religious symbols at school. They begin by rebutting two of what they consider to be the more compelling arguments made by proponents of prohibition — arguments based upon the principles of state neutrality and state autonomy. They then suggest that, even though a state-enforced ban on ostentatious religious symbols is unwarranted, there are circumstances in which teachers who otherwise would wear such symbols should refrain from doing so in the name of professional ethics. On the whole, the authors are to be applauded for their thought-provoking and nuanced analysis. Their essay is a welcome addition to the growing philosophical literature on the place of religious symbols and clothing in public schools in liberal pluralistic societies.

In my critique, I am going to focus on one particular line of argument in the article that I found to be unconvincing: the authors' response to the charge that the government acts unfairly and inconsistently when it bans certain expressions of non-religious conscience and political affiliation, while at the same time permitting expressions of religious commitment and affiliation among teachers and other public sector employees. Now, I want to be clear at the outset: I am not saying that the charge of inconsistency and unfairness here is irrefutable. I just don't think that the particular refutation the authors provide carries the day. In the course of explaining why, I will raise additional considerations related to personal autonomy that may prove more telling against the unfairness charge, and that, in any event, ought to figure prominently in analyses of the place of religious symbols in public schools.

So how do the authors respond to the charge that the state is being unfair when it prohibits teachers from, for example, wearing pins that express their support for U.S. troop withdrawals from Afghanistan or for the Tea Party, while at the same time permitting them to wear the *hijab* and other emblems of religious identity or devotion? In essence, they do so by asserting that the principle of state neutrality applies narrowly to religious convictions, and not to non-religious convictions. “The paramount goal of state neutrality,” they write, “is to establish guidelines about state conduct precisely with respect to *religious* belief and practice” (emphasis in the original). A couple of reasons are offered in support of this claim. First, this is the understanding of state neutrality that is most faithful to the historical roots of the concept in the early modern period. And second, this is the understanding of state neutrality that is most sensitive to the particular epistemological status of religious belief. (As the authors state: “Unlike matters of personal conscience, disagreements having to do with religious conscience cannot be adjudicated using a common secular or public language.”)

But these are, to say the least, controversial claims about the appropriate scope of and justification for state neutrality in contemporary liberal pluralistic societies. It is certainly true that the emergence of the concept of state neutrality can be traced to the fierce sectarian conflict that gripped Europe in the wake of the Protestant Reformation. And it is also true that religious differences continue to be offered (by many contemporary political philosophers) as a paradigmatic example of why some form of state neutrality is warranted. But acknowledging these points does not compel acceptance of the more dubious claim that, nowadays, the principle of state neutrality should be understood to apply narrowly to religious beliefs and practices. Over the centuries, this principle has been “generalized” and “extended” to non-religious beliefs and convictions.<sup>1</sup> Thus, contemporary proponents of the principle generally understand it to apply more broadly to “any particular conception of the good life, or of what gives value to life.”<sup>2</sup> Now, admittedly, “conception of the good” is a nebulous phrase. But by standard accounts, it encompasses individuals’ religious as well as *non-religious* views about what is valuable in life and the world. In brief, “religious doctrines, ideals of character and virtue, aesthetic and cultural values, and norms of sexual behavior” are all things to which the principle of state neutrality is said to apply by contemporary proponents of the principle.<sup>3</sup>

The second reason the authors offer for why the principle of state neutrality applies narrowly to *religious* beliefs and practices — namely that, unlike matters of “personal conscience,” disagreements pertaining to “religious conscience” are rationally irresolvable — also seems unsatisfactory. It is not immediately evident that non-religious disputes about the good life — for example, about norms of sexual conduct — are any more rationally resolvable than differences with respect to religious doctrine. The authors need to provide a more substantial justification for why we should accept this particular distinction between matters of “personal conscience” and matters of “religious conscience.”

My sense is that, as long as we examine the issue of permissible expressions of conscience in the classroom from the standpoint of state neutrality, we will be hard pressed to respond adequately to the aforementioned unfairness charge. But there are other ways of responding to the charge that may prove more promising. With the little space that remains here, I would like to suggest (in broad outline) one possible response, which is grounded in the liberal state’s obligation to respect and promote citizens’ personal autonomy, rather than in its ostensible obligation to remain neutral with regard to differing worldviews and conceptions of the good.

According to the autonomy-based argument that I have in mind here, the liberal state should exercise considerable restraint in interfering with citizen’s expressions of conscience, out of respect for their personal autonomy. But there are conditions to such restraint. In certain contexts (the public school being one key example), the state is justified in restricting adult citizens’ expressions of conscience when doing so is necessary to promote future citizens’ personal autonomy. As Rob Reich writes, “nurturing the capacity for and exercise of autonomy must come *before* we respect it. The state should violate respect for autonomy in efforts to foster its exercise.”<sup>4</sup>

These considerations help to explain why the liberal state has warrant to prohibit teachers from wearing buttons declaring their support for the Tea Party or for an independent Quebec in K–12 classrooms. Teachers wield great influence over their students, and they have an important role to play in enabling and encouraging their students to reflect critically and independently on competing conceptions of the good life and the good society. But teachers effectively abdicate this role when they persuade their students to embrace partisan views without subjecting those views to critical scrutiny. In the case of the button-wearing teacher, the risk is very real that students will unreflectively adopt the ideological position being advertised by the teacher.

But don't these autonomy-related concerns also give the liberal state warrant to prohibit public school teachers from wearing "ostentatious" religious symbols in the classroom? Here, I would submit, the case is less straightforward. In public schools in liberal pluralistic societies, the message that is liable to be conveyed to students by teachers who wear headscarves, skullcaps, and turbans is that the teachers in question identify with a particular religious tradition or community. It is not evident that the students, in such a scenario, will feel in any way pressured to adopt a Muslim, Jewish, or Sikh worldview. In other words, the symbols are not apt to have a proselytizing effect on students. In situations where they clearly do have such an effect, the liberal state has grounds to prohibit them. But the burden of proof should lie with the proponents of prohibition.

As noted above, the considerations of autonomy that I raise here are merely suggestive. I do not claim to have provided a definitive answer to the unfairness charge depicted in McDonough, Maxwell, and Waddington's thought-provoking article. My central argument has been more modest: that in order to respond adequately to this charge, we must do so without relying on dubious claims about the scope of and justification for state neutrality.

---

1. András Sajó, "Concepts of Neutrality and the State," in *From Liberal Values to Democratic Transition: Essays in Honor of János Kis*, ed. Ronald Dworkin (Budapest: Central European University Press, 2004), 107–144.

2. Ronald Dworkin, "Liberalism," in *A Matter of Principle* (Cambridge, MA: Harvard University Press 1985), 127. See also, Will Kymlicka, "Liberal Individualism and Liberal Neutrality," *Ethics* 99, no. 4 (1989): 883–905; Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987); and John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971).

3. George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press, 1997), 38.

4. Rob Reich, *Bridging Liberalism and Multiculturalism in American Education* (Chicago: University of Chicago Press, 2002), 108 (emphasis in the original).