THE LEGITIMACY OF SECULARISM: A CONCEPTUAL ANALYSIS

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DECLARATION OF ORIGINALITY

I, Adil Usturalı, certify that

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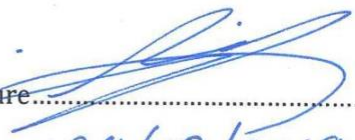

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ABSTRACT

The Legitimacy of Secularism: A Conceptual Analysis

The purpose of this study is to provide a conceptual analysis of secularism as a constitutional principle specifically in the context of constitutional democracies. For these purposes, the critique of the concept is reviewed and various conceptions of the concept that are widely accepted in the literature are scrutinized. As an alternative to the existing conceptions, this study proposes *secularism as autonomy* as a new conception of secularism which better reflects the constitutional legitimacy and purpose of the concept. Based on this conception, it is argued that secularism in constitutional democracies is a constitutional principle that is adopted directly as a consequence of the legitimacy claim of a constitutional democracy: the claim to recognize and ensure individual autonomy of its citizens. The constitutional state, therefore, by nature a secular state that is legitimated through secular procedures. After this conception is proposed, the argument is deepened by an analysis of the relationship between secularism, autonomy, and legitimacy. It is demonstrated that autonomy plays a central role in constitutional democracies both historically and conceptually and secularism as a constitutional principle is adopted in order to reflect this relationship. Finally, secularism as autonomy is analyzed in three levels of analysis it exists and/or affects: the constitutional level, the legal/political level, and the informal public sphere.

ÖZET

Sekülarizmin Meşruiyeti: Bir Kavramsal Analiz

Bu çalışmanın amacı, özellikle anayasal demokrasiler bağlamında bir anayasal ilke olarak sekülarizmin kavramsal analizini ortaya koymaktır. Bu amaca yönelik olarak, kavramın eleştirileri incelenmiş ve kavramın literatürde genel kabul gören çeşitli tanımları tetkik edilmiştir. Mevcut tanımlara alternatif olarak bu çalışma, kavramın anayasal meşruiyetini ve amacını daha iyi yansıtan yeni bir tanım olarak 'özerklik olarak sekülarizm'i önermektedir. Bu tanıma göre, anayasal demokrasilerde sekülarizmin doğrudan bir anayasal demokrasinin meşruiyet iddiasının – yani vatandaşlarının bireysel özerkliğini tanıma ve sağlamanın – sonucu olarak kabul edildiği öne sürülür. Dolayısıyla anayasal devlet, doğası gereği seküler usuller yoluyla meşru kılınan seküler bir devlettir. Bu tanım önerildikten sonra bu sav, sekülarizm, özerklik ve meşruiyet arasındaki ilişkinin bir analizi ile derinleştirilir. Özerkliğin, anayasal demokrasilerde hem tarihsel hem de kavramsal olarak merkezi bir rol oynadığı ve bir anayasal ilke olarak sekülarizmin bu ilişkiyi yansıtmak amacıyla kabul edildiği ortaya konur. Son olarak özerklik olarak sekülarizm, bulunduğu ve/veya etki ettiği üç analiz düzeyinde analiz edilir: anayasal düzey, yasal/siyasi düzey ve gayrıresmi kamusal alan.

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To Güneş

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CHAPTER 1

INTRODUCTION AND METHOD

Thoughts without content are empty; intuitions without concepts are blind.
- Immanuel Kant (1996, p. 107)

1.1 Introduction

1.1.1 The purpose

How can secularism be defined in constitutional democracies? Is it simply an institutional preference or a policy choice, or is there an inherent connection between the legitimacy claim of a constitutional democracy and legitimacy of secularism as a constitutional principle it adopts? In this study, it is argued that the source of legitimacy of the constitutional democracy and the constitutional principle of secularism is the same: autonomy. The constitutional democracy adopts a form of constitutional secularism not as a contingent policy preference, but rather as a necessary result of its legitimacy claim. In order to demonstrate this point, a conceptual analysis of secularism is provided and a new conception of secularism is proposed, which is then analyzed with regard to different levels of analysis it applies to.

Contemporary normative political theory, according to one definition, deals with "the values and principles by which a particular community and its state governs its life, in abstraction from matters of power and interest" (Bhargava, 2013, pp. 25–26).[1] Based

[1] It should be made clear that this specific definition of contemporary normative political theory does not suggest that the role of power and interest in the society should be ignored or underestimated. Yet, Bhargava distinguishes between different conceptions of political theory, specifically between the one quoted above and one that is more concerned with exposing the power and interest embedded in social institutions. He does not take a stance as to which conception of political theory is more preferable. Instead, he suggests that this variety of conceptions demonstrate a division of labor among political theorists.

on this conception, constitutional principles that are adopted by constitutional democracies are within the scope of normative political theory. Secularism is one such constitutional principle. A work of normative political theory on secularism, then, should be able to provide a clear definition of the concept, and explain its normative power.

This is the main task that is undertaken by this study. I aim to provide a comprehensive analysis of secularism as a concept, specifically its role as a constitutional principle of democratic state, and its close relation with the idea of legitimacy on which such a state is based. This analysis includes an inquiry into the meaning of secularism, therefore it is an attempt to define and delineate secularism to the extent that such an overarching definition is possible, and it also traces its origins in the history of political thought, in order to demonstrate how it has become a significant characteristic of a modern constitutional state. The major implication of this analysis is the idea that secularism is closely linked with the concept of legitimacy as understood in a modern constitutional state which is based on the recognition of autonomy of its citizens, and which claims to provide the rights and institutions that ensures its citizens to be able to pursue autonomous lives. Consequently, this study argues for a conception of secularism as autonomy, in which secularism is the necessary requirement of the task of realizing the principle of individual autonomy in the form of a constitutional principle.

Starting from its inception, the term secularism has been used in various ways. While it is normal for a word to have more than one meaning, the misrepresentations of secularism beyond its core definitions make it very difficult to convey the desired meaning when the word is used. These misrepresentations and distortions of secularism

mostly have political as well as historical aspects to them, or sometimes they are invoked rather to make a more comprehensive point. In any case, misrepresentations and distortions of the term can be found not only in the academic literature but throughout the whole public sphere. In this regard, secularism is very similar to the term democracy, which has been used in so many various ways that it has often found itself a place in the names of even the most authoritarian states. Yet no one seriously suggests that we abandon democracy as a word because it was wrongly used. The concept still has an essential meaning that is being referred to, and although there are varieties of democracy, such as 'liberal democracy' or 'deliberative democracy', the word democracy represents this core meaning in most of these cases. In the same way, the main idea in this study is that secularism has such a core meaning and therefore any proposed change or abandonment of that meaning would have serious consequences for the modern constitutional democratic state because of its close relation with the legitimacy of that state.

Here I argue not only against those who misuse secularism as a concept but also those who argue for its abandonment. It is true that in some contexts the word secularism may have a negative connotation which leads critics to believe that coming up with a new concept might have more practical advantage. However, I prefer the method of clarification and 'demystification' of the concept rather than its abandonment, which would simply mean throwing the baby out with the bathwater. Therefore, in order to overcome this conceptual hurdle, in this study I engage with a representative sample of the literature on secularism, briefly look at its historical use, and compare it with other concepts which have contrasting or conflicting meanings with secularism in order to reach a simpler, more acceptable and more feasible definition of secularism as a

constitutional principle. Accordingly, secularism is defined as a constitutional principle from which several sub-principles can be derived: a secular state essentially has secular (as opposed to religious) source of law and does not have an 'official' or a favored religion, or an established church. In a secular state which is also a constitutional democracy, guarantee of the freedom of conscience and neutrality toward citizens of different religions and faiths are also derived from the principle of secularism.

Proposing and analyzing this definition of secularism is one, but not the only objective of this study. For the proposed definition of secularism to have a complete meaning, its implications have to be addressed and several surrounding questions need to be asked, if not sufficiently answered. These questions mainly include the relationship of the concept of secularism with other 'neighboring' or related concepts. What is the difference, if there is one, between secularism and toleration, separation of church and state, or multiculturalism? Is secularism an essentially liberal concept? How does secularism draw the limits of religious freedom or freedom of conscience? How is a secular state different from a secularist state, or a caesaropapistic state? What is the relationship of secularism with history, or how deeply is it attached to a specific history? Last but not least, what is the relationship between secularism and democracy, in other words, how would citizens of a democratic polity would find secularism as a constitutional principle legitimate? This study does not claim to answer all these questions conclusively, each of which can be covered by several volumes. However, it is argued here that a great deal of work that is needed to address these questions will have been accomplished if the implications of the proposed definition are laid out.

Since the study is concerned with secularism in a specific context, namely a constitutional democracy (or liberal democracy), its legitimacy as a democratic principle

as well as its history that often led to the revision of the concept of secularism and its guarantees are complementary parts of its definition. The legitimacy question, which is deeply embedded in the conception of secularism as a constitutional principle in a democratic state, is itself a multi-layered and multi-dimensional subject. It is multi-layered in the sense that the legitimation of secularism as a principle has different aspects depending on at which level of a polity (i.e. constitutional, legislative, public sphere) secularism is in question. The multi-dimensionality is about the two essential functions of secularism which is analyzed in detail in the later sections of this study. First of these two functions is the function of secularism simply as a constitutional principle. In this regard, it is similar to any other constitutional principle, such as the doctrine of separation of powers that applies to the institutional structure of the state, or principle of equality that can be claimed by citizens directly. On the other hand, secularism has a procedural function. This means that the procedures that govern a democratic polity are themselves assumed to be secular (i.e., that does not refer to values inaccessible to the parties of the procedure; the conception of 'secular' used in this study will be further elaborated below), including the procedure of legitimation of a principle. In consequence, in this procedural function, secularism is self-referential which makes the question of legitimation more crucial. This brief introduction to the legitimation aspect of the concept of secularism aims to show that it is not a separate subject independent of the definition of secularism, but indeed closely related to an essential characteristic of secularism.

Secularism, as in the secular state, emerged very recently into the political realm compared to the history of human political organizations. The United States, and soon after it, post-revolutionary France, were the first modern secular states. More states

followed them in the 19th and 20th century by reorganizing their relationship with religion. Yet the term secular implies an earlier period in which the state was not secular. From this point of view, the secular state is a novelty of European politics after the Enlightenment. If political entities were always secular, or at least secularism was the norm, there would be no need to call them secular. In this regard, the term secularism has become relevant only within a certain historical context, namely in a period that followed one that is dominated by religion in all aspects of life, and naturally, political life. Yet, this contextual emergence of secularism along with the modern state became the norm and turned into something universalizable rather than contextual.

Taking the historically sensitive character of secularism would lead to the question whether secularism has any essential characteristics. One position that may be adopted in response to this question is the particularistic or relativistic one, which simply suggests that the definition of secularism varies depending on the context it is applied in. The opposite position would be an absolute universalistic approach to the definition of secularism that argues for a universalistic and free-standing conception that is not context-sensitive. It is argued here that neither position would provide a satisfactory conceptual analysis of secularism. A good conceptual analysis, as it will be discussed further below, should find a balance between generalizability and context-sensitivity. Within the context of this study, secularism is analyzed only within the context of constitutional democracy. By doing this, it is hoped that the analysis will not be mired into the particularistic details of a specific case, but at the same time the concept will not be stretched too thin in pursuit of finding a universally applicable definition. At the same time, secularism within the constitutional democratic state is essentially different from the conventional use of the term when it is applied to non-democratic or illiberal states

that are deemed to be secular. Looking at how secularism can be defined and how it works within constitutional democracies can provide both generalizable characteristics and normatively useful implications for democratic theory.

1.1.2 The debate

The recent debates on secularism constitute a significant inspiration for this study. The reexamination of the secularization thesis that assumed religiosity would inevitably decline with time also led to a rethinking of the relationship between religion and political authority. In the majority of 20th century, secularism was the norm, and religion was mostly acknowledged as a private matter. Yet, the latter decades of the century witnessed a rise of public religions (Casanova, 1994). In fact, according to Leo Strauss, the debate on secularism and secularization cannot be resolved. The theologico-political problem, a term coined by Strauss as influenced by Spinoza, represents a perpetual battle between Athens and Jerusalem, namely the secular and religious sources of legitimacy (Strauss, 1967). The fact of religion as a public phenomenon and its gradually stronger influence in politics was coupled with the challenges of multiculturalism that secular Western nation-states were facing. The responses to these new conditions were diverse. One concept that was born out of the debates was post-secularism. The idea was that since the conditions of the secular world was no longer valid, we are now living in a post-secular age, where secular and religious would coexist and a number of challenges arise due to this coexistence (Habermas, 2008). There were also critics of not only the secularization thesis but also secularism as a political principle, from various positions. The liberal position on secularism was put under strain by either multiculturalist or accommodationist challenges, as well as the postcolonial literature. Since the present

study is attempted as a critical reaffirmation of the liberal position in the literature, such challenges have to be recognized and engaged with.

To be clearer, this study follows a particular strand of secularism found within the liberal democratic tradition, the framework of which was drawn mainly by Rawls and Habermas. This strand can be identified as the 'public reason' school. Rather than approaching secularism from simply a descriptive concept and a typological category, according to which states are categorized as either secular or not, this study, following this public reason school, aims to trace and delineate the place of secularism within the normative values and conceptual requirements of institutionalizing a constitutional democracy. One of the main purposes of that tradition is to develop a response to the Böckenförde dilemma, namely whether "the liberal, secularized state is nourished by presuppositions that it cannot itself guarantee" (Böckenförde, 1991, p. 45). Here, Böckenförde asks whether the secular *Rechtstaat* can claim and maintain political legitimacy without a supporting source of legitimacy that would provide a sense of homogeneity to the society, such as religion[2]. The answer this study gives to this question from within the public reason school is positive, because the conception of secularism proposed here is essentially linked with the value that acts as the source of legitimacy of constitutional democracy: autonomy.

[2] As it will be clarified further below, Böckenförde does not advocate reintroduction of religion or any similar value as a supporting source of legitimacy by the liberal state as a response to the dilemma he identified. On the contrary, he emphasizes that the liberal democratic state, by definition, should avoid imposing such norms in the society and the social capital that would instead reinforce the liberal democracy should come from the society itself.

1.1.3 The argument

As an intervention to the recent debate and a response to common criticisms, this study presents a series of arguments that offer secularism as autonomy as the most inclusive conception of secularism as a principle of constitutional democracies. According to this conception, secularism did not only originate and evolve from the Enlightenment idea of individual moral autonomy, but it is also the constitutional implementation of that idea, which is, in turn, the source of legitimacy of modern liberal democracies. This does not imply that I am offering a definition of secularism that is counterintuitive. Secularism in fact defines a state as secular in the commonly understood sense of the word: non-religious. What I am arguing is not against that, but that a conceptual analysis of secularism in liberal democratic constitutional states would reveal a great deal on the origin and nature of that meaning. Because, simply defining secular as non-religious is not really defining it when it applies to a political entity. What does it mean when a state is non-religious? Since states are not persons who worship or hold beliefs, the object of religiosity or non-religiosity should be something more specific.

This is where most of the disagreement on the definition of secularism begins. Does secularism apply only to explicit self-definition of a state as secular? Or does it apply to how it works in practice: i.e. its laws, policies, and their implementations? Would it be sufficient to qualify for secularism if a state derives its source of authority from secular sources, or would secular outcomes be also required? To answer these questions, the levels of analysis should be laid out clearly. It is a major source of confusion that secularism applies to more than one level of political analysis. To put it simply, three levels of analysis are relevant to secularism. These are; constitutional level,

formal public sphere, and the informal public sphere.[3] Although secularism is defined here as a constitutional principle, its implications are relevant to the other two levels, which are defined by Habermas (Habermas, 1996).

To reiterate, the conception of secularism that is argued in this study implies that secularism is more than merely definition of a state as one that derives its legal sources and sources of authority from non-religious sources. It is an expression of individual autonomy that is turned into a principle and became institutionalized by the state. In order to comprehend this conception of secularism, both critics of secularism and other, more widespread conceptions of it should be analyzed. Critics of secularism do not directly position themselves against such a conception, however most of the literature that is critical of the concept is relevant in order to clarify the proposed conception as opposed to the ones that are widely used in the literature. Here, contemporary critics of secularism are categorized as multiculturalist, postcolonial, and accommodationist ones. In order to cover as much ground as possible, five conceptions of secularism that are quite common will be analyzed: secularism as toleration, secularism as freedom of conscience, secularism as separation of church and state, secularism as neutrality, and secularism as secular source of law. It should be noted that these are not inaccurate conceptions of secularism (hence the term conception), but rather less fundamental and incomplete ones compared to secularism as autonomy. These conceptions cover either one aspect of secularism or approach it from only one level of analysis, therefore lacking an essential or complete core.

[3] A similar distinction of levels at which the relationship between state and religion can be identified is made by Bhargava. Accordingly, state and religion can be connected or disconnected at the level of ends, institutions and personnel, and law and public policy (Bhargava, 2015). Bhargava's point will be elaborated further below.

For instance, separation of church or state, or separation of religious and secular authorities, when stipulated by law or constitution, is deemed as an indicator that the state in question is a secular state. Does this mean that separation principle is a requirement for secularism? Do we not categorize those states that do not explicitly have a law or constitutional principle of separation as secular? Or is separation an adequate institutional arrangement for calling a state secular? These hard-to-answer questions arise when secularism as a constitutional principle is reduced only to separation. Therefore, a more fundamental conception of secularism is required instead of secularism as separation. The same goes for other conceptions of secularism that are analyzed here.

Secularism understood as the expression of autonomy through political institutions covers the above-mentioned conceptions of secularism as well. The modern constitutional state is built on the promise to respect the individual and collective autonomy of its citizens simultaneously (Habermas, 1996). Autonomy here is understood in the simple sense, meaning one's ability to make the rules that one will be bound by, both individually and collectively. Ideally, the institutions of such a state are expected to reflect this. Therefore, recognition of freedom of conscience, separation between church and state, and neutrality and toleration toward different religions and faiths are consequences of this understanding of autonomy as the source of legitimacy. Since the source of legitimacy is recognition of individual and collective autonomy of citizens and not any other value that is beyond it, the legal sources of the state are by definition secular. Secularism as autonomy also responds to contemporary critics of secularism since assumptions held by multiculturalist, accommodationist, and postcolonial critics are based on inaccurate conceptions of secularism.

So, how did autonomy come to be the source of legitimacy for constitutional democracies, and thus secularism as autonomy emerged? As the question itself suggests, the historical process that transformed the foundations of political legitimacy has to be addressed. Here, employing a comparative method in analyzing different theories of political legitimacy, it is argued that the concept of autonomy is the main source of difference between descriptive and normative, pre-modern and modern, and democratic and non-democratic theories of legitimacy. This conceptual and theoretical difference emerged as a result of a historical process called the Enlightenment. What can be named as the Autonomy Revolution occurred during the Enlightenment. It transformed human self-understanding and consequently the reason of existence of political authority. The states that emerged following this revolution had to find new ways to justify their authority, and as the modern state first became the constitutional state (*Rechtsstaat*) and finally the liberal democratic state, it tacitly assumed that its citizens have the capacity to rule themselves both as individuals and as a society. Regardless of how effectively states respect it in practice, individual autonomy is the foundation of modern liberal democratic state. The main argument in this study, then, is that this legitimating foundation is institutionalized and implemented by the state as secularism.

In order to substantiate this argument, it should be clarified how and at which levels secularism is implemented by the liberal democratic state. I argue here that secularism defined as such works both as a principle and a procedure. This means that first, in the more straightforward sense of the word; secularism is a constitutional principle that determines the nature of the state. In the second sense, it is also embedded in the procedures of the democratic state. One of the core assumptions of this study is that the clarification of the concept and its definition, and consequently both its

procedural and external implications on different realms that it applies, would help establish a conception according to which one can test the different implementations and consequences that the principle of secularism might have in different states, which would consequently improve its legitimacy in the eyes of the public. Rawls asked "How is it possible for there to exist over time a just and stable society of free and equal citizens who still remain profoundly divided by reasonable religious, philosophical, and moral doctrines?", Habermas furthered the question and asked where the line that separates religion and politics be drawn, and how religious reasons be translated into an accessible language accordingly (Habermas, 2006b; Rawls, 1996, p. 4). These two questions respectively address the legitimacy of secularism both as a principle and a procedure.

This implies that adopting secular procedures is a definitive quality of a constitutional, liberal democratic state. Moreover, as argued above, the principle and procedure of secularism apply to three different levels of analysis. This point is crucial; because most of the recent disagreement and challenges that arise regarding secularism can be resolved more easily if the related level to which they apply is assessed accurately. To put it more clearly, a disagreement on the institutional separation of church and the state is a matter that should be resolved in the constitutional level, while a disagreement on whether to allow headscarves in public schools can be resolved in the legal/political level without necessarily affecting the constitutional one. In a liberal democratic state, the public sphere level is equally important because that is the level which feeds the legal/political one and where citizens recognize and acknowledge each other’s individual autonomy.

1.1.4 Outline

An outline of the study that includes main arguments in each chapter and section will be provided here both as a summary and a guideline for ease of following the main theses. Since this is a multi-layered work of political theory that aims to make multiple main points, I hope that such a Baedeker would be useful. The study is divided into five chapters and each chapter is divided into several sections, and sometimes subsections.

The first chapter includes an introduction section that describes the problem that this study aims to deal with, briefly introduces the current debate on the topic, and summarizes main arguments. It also includes the current section, the outline. The following section (1.2.) is on methodology. Although works of political theory do not require intensive methodology chapters such as, say, empirical studies, and the methodology of political theory or philosophy is usually implicit in the work itself, I chose to provide such a section in order to contribute to the clarity of the rest of the study. The methodology section is divided into three subsections: (1) conceptual analysis, which reflects upon the method of analyzing the concept that is the central thesis presented here, (2) textual analysis, interpretation and philosophical method, which concerns the way in which premises supporting the conceptual analysis as well as the elaborations on the proposed conception are developed and involves both analytical and historical methods, and (3) conceptual clarifications which provides working definitions for some key but essentially contested concepts.

The methodology section ends the first chapter and the following, second chapter is titled “Three Levels of Secularism: Constitutional, Legal/Political and Public”, and it provides a multi-level analysis of the conception ‘secularism as autonomy’. In this chapter, this conception of secularism is analyzed with reference to three levels of

analysis it is relevant to. Since the subject matter is secularism as a constitutional principle, the first level of analysis is naturally the constitutional level. This is followed by the legal/political level which is subject to limitations by constitutional principles. And finally, secularism is analyzed in relation to the informal public sphere, where, in constitutional democracies, opinion formation takes place and which informs the political and constitutional superstructures. This three-level structure also stipulates different legitimation procedures for each level. This is explained in the last section of Chapter 2.

The third chapter, "A Conceptual Analysis of Secularism" is next. This is the chapter in which the main contribution of the study is developed. It includes, following an overview, a section on critique of secularism that reviews the recent literature for significant critiques of secularism as a constitutional principle. This both situates the study within the literature by stating against which critics it aims to provide a reply to, and at the same time provides a starting point for exploring the concept by focusing at its alleged shortcomings. The critique section is followed by 'Conceptions of Secularism' that provides a mapping of conceptions of constitutional secularism and an overview of those conceptions one by one: secularism as toleration, secularism as freedom of conscience, secularism as separation, secularism as neutrality, and secularism as secular source of law. The analysis of these conceptions is expected to explain why a more encompassing conception of secularism is needed. That conception is offered in the following section: "What is Secularism? – Secularism as Autonomy".

In Chapter 4, "Secularism and Legitimacy", the thesis that secularism as autonomy is the accurate conception of secularism as a constitutional principle is further developed. It begins, following an introductory section, a section on "Autonomy and

Legitimacy" that explores the relationship between these two concepts. This is done by, first, a review of theories of political legitimacy with a focus on the transformation of the understanding of the concept that occurred during the Enlightenment. This transformation is named "The Autonomy Revolution" and analyzed in a subsection of its own. Then, under "Legitimacy of the Constitutional State", it is argued how the concept of autonomy has been adopted as the core source of constitutional regimes. The chapter is finalized by the section on "Secularism and Legitimacy of the Constitutional State", where the conception of legitimacy that is based on autonomy and the conception of secularism that is also based on autonomy are overlapped. In this section, it is argued that secularism as a constitutional principle both acts as the source of political legitimacy and determines the nature of democratic procedures.

Finally, the study is concluded with a concluding chapter (Chapter 5) that includes a recap of the main arguments set forth, a review of research goals and their implications, and limitations of the study and the opportunities it creates for further research.

1.2 Methodology

In works of political theory, methodology that is used is rarely emphasized because of the assumption that this discipline is less method-driven than those such as comparative politics or international relations. However, providing details on methodological inspirations and clarifying specific methods that are used would help the reader follow the line of thought that the author pursues. For the present work that aims to combine a method of conceptual analysis with conventional textual interpretation method used in political philosophy, I believe it is even more crucial to have some words on

methodology. In this chapter, I will provide details on how I pursue a conceptual analysis and from which sources I get my methodological inspirations. Moreover, I aim to clarify some concepts that are of critical importance and key to understanding the study in general.

1.2.1 Conceptual analysis

In her seminal work *The Concept of Representation*, Hanna F. Pitkin provided a great example for any future conceptual studies. Her study of the concept of representation included not only a linguistic examination of the subject matter, but also historical evolution of the concept through the works of major political thinkers (Pitkin, 1967, p. 7). I follow a very similar methodology in performing the conceptual analysis of secularism.

Political concepts such as representation and secularism have dual character. On the one hand they are merely words that have originated from certain languages and that have very specific meanings. On the other hand, they are *political* concepts, which makes it impossible for them to retain the exact same meaning in every political context. This duality makes it essential for the conceptual analyst to find a way to combine both the essential meaning and the contextual meaning of the concept that is the subject matter of the study. The original, lexical meaning of the word by itself does not provide much insight about the challenges the concept faces or the problems it is supposed to solve. A merely contextual understanding of the concept, on the other hand, would equally be useless, especially in those cases where there is great discrepancy between the contextual and lexical meanings.

Representation, democracy, and secularism provide great examples for this tension between the lexical or literal meaning and the contextual meaning.[4] Pitkin's conceptual analysis of representation is aware of this tension and it is structured in such a way to address it. Similarly, while democracy is in its most basic lexical sense, rule by the people, what is acceptably called democracy has transformed dramatically since ancient Athens. Accordingly, the term 'people' in 'rule by the people' has a much wider sense than what it meant in ancient Athens, which excluded slaves, women, and the poor. The term 'rule' underwent through a similar transformation in terms of scope and method. Yet what we call democracy today does in some sense reflect the lexical meaning, 'rule by the people'. Oppenheim also provides an account of conceptual analysis that is built upon the distinction between a word and a concept. While a word refers to the lexical meaning, the concept is more than that, and it can be analyzed through a process of reconstruction that takes into account the relational and contextual aspects of it (Oppenheim, 1981).

My purpose, following a similar methodology, is to understand both the lexical and contextual meaning of secularism. Secularism as a political principle defines the state as secular. Secular state, in its most minimal understanding, is a non-religious state. Yet, especially within the literature that is critical of secularism, many states that have in one way or another controlled, promoted, or entangled with religion were identified as secular, and their involvement with religion was argued to be symptoms, rather than exceptions, of secularism. This stretch of meaning indicates that both contextual and

[4] For a further discussion on this tension between lexical and contextual (everyday use) meaning and conceptual analysis, see (Grice, 1993, pp. 171–180).

lexical meanings of secularism should be understood and the disparity between the two should be addressed.

The possible disparity between the lexical and contextual meanings of a concept implies that its conceptual analysis should be rethought with clear criteria in mind. Gerring (1999) provides 8 such criteria of conceptual goodness. These are; familiarity, resonance, parsimony, coherence, differentiation, depth, theoretical utility, and field utility. To briefly explain these criteria; familiarity is simply the degree to which a concept or its definition sounds familiar in the everyday language, resonance is about how effective the term sounds, parsimony is the capacity of the concept to have a clear and brief meaning, coherence is not having internal contradictions in meaning, differentiation is about the extent to which a given concept has distinguishing characteristics, depth is about the number of possible cases to which the concept may apply, theoretical utility is a measure of the concept's capacity to contribute to theoretical knowledge, and finally field utility is the extent to which the concept is useful in the field it is relevant to.

Gerring argues that it is usually impossible to fulfill all of these criteria in concept formation. As opposed to what he calls the "rulebook" approach of Sartori, he advocates that the process of concept formation is one of a tradeoff between the 8 criteria he provides (Gerring, 1999, pp. 388–392). In the context of this study, a specific conception of secularism will be provided as an alternative to other conceptions of the concept. Gerring's criteria will be taken into consideration in this process in order to engage in a tradeoff that is as effective as possible. Since a tradeoff among these conceptions may be necessary, for the purposes of this study, the emphasis will be on

providing a conception that fulfils coherence, differentiation, depth, and theoretical utility criteria better than alternative conceptions.

List and Valentini (2016) engage in a work of delineation in order to define the scope and limits of political theory, as well as areas that overlap with other, neighboring fields of study. Later, they elaborate on the methodology of conceptual analysis as one of the main activities in political theory. Although only engaging in conceptual analysis is usually identified with pre-Rawlsian, therefore rather descriptive period of political theory, it is accepted today that conceptual analysis of 'normatively loaded' concepts is a common element of normative political theory. The distinction between concepts and conceptions is also mentioned by List and Valentini, who go on to list a number of 'desiderata' on conceptual analysis. The requirements of conceptual analysis, according to this desiderata are "respecting our intuitions", "playing the right normative, evaluative, or descriptive role", "standing in the right relationship to other concepts", "having defining conditions that are neither too 'thick' nor too 'thin', and "having defining conditions that are epistemically accessible" (List & Valentini, 2016, pp. 530–534). For instance, regarding the second desideratum, political secularism as a constitutional principle, which is the subject matter of this study, has both descriptive and normative roles. On the one hand it describes the state as secular, on the other hand it puts some normative burdens on the state due to its status as a constitutional principle. This study also aims to remain within these criteria of good conceptual analysis in the following sections.

1.2.2 Textual analysis, interpretation and philosophical method

In this study, textual analysis and interpretation are used as auxiliary methodologies. While the main method that the study follows is conceptual analysis, this analysis is expanded and deepened by its further justification and surrounding concepts. In Chapter 2, where the proposed conception of secularism as autonomy is demonstrated to be working in three levels of analysis, and in Chapter 4, where the relationship between secularism and legitimacy within the context of liberal democratic state is analyzed, references to literature is common, especially where historical development of concepts is provided. Also, even within the process of direct conceptual analysis, especially in the parts where current literature is examined, textual interpretation is necessary. Yet it should be noted that, since the main purpose of this study does not involve deep reading or examination of a specific text or an author, methodology of textual interpretation will not be central.

Despite being used as an auxiliary method, how texts are read and interpreted matters. The interpreter might have certain biases and unconscious ways of reading and interpreting even if she does not strictly follow a certain methodology. The literature that is being interpreted here is academic, addressed to the academic audience with the purpose of being understood clearly, rather than literary or religious texts with often obscure meaning that require hermeneutic interpretation. Still, even when reading and interpreting academic literature certain methodological elements should be kept in mind. As a matter of fact, Gadamer warns against presumptions of objectivity and "overhastiness" as well as accrediting texts with undue authority (2004).

Terence Ball provides an overview of common schools of reading and interpreting texts (2004). These are Marxian, totalitarian, psychoanalytic, feminist, Straussian,

postmodernist, and Cambridge 'new history' schools of interpretation. Eventually, Ball provides an account of "pluralistic and problem-driven interpretation" as his own approach to the issue (2004, p. 28). The problem-driven approach accurately covers the method I hope to follow in this study. Since the academic literature read and interpreted here are not read for the sake of texts themselves but rather as solutions to specific problems, what matters about the interpretation is the way they engage with and contribute to the solution of those problems. In addition to this problem-driven approach, this study benefits from what was titled as 'new history' approach by Ball and also called "Collingwoodian approach" (Skinner, 2001). This approach focuses on the historicity of texts and aims at deriving an interpretation considering the historical conditions in which it was written and the purposes for which they were written. The new history approach may be more useful in those parts of this study where the historical development of concepts is examined.

Finally, this study falls within the scope of normative political theory, because although the primary work engaged in is a conceptual analysis, the concept of secularism and the proposed conception of it cannot be stripped from its normative implications. McDermott writes about how normative political theories are built within the framework of analytical political philosophy methodology. In this perspective, theory is defined as "an intellectual tool that enables us to gain understanding that goes beyond observation and intuition alone" (McDermott, 2008, p. 22). Yet, despite being systematic and aiming to be generalizable, normative political theory is still more controversial than natural sciences because they aim for moral truths, and intuitions are the most basic building blocks of moral theories. This study does not aspire to be a complete theory of secularism, but a proposed conceptual analysis of it. Yet it aims to

approach the normative truth regarding secularism as a constitutional principle using an analytical method and thus cover all possibly relevant aspects of the concept.

1.2.3 Conceptual clarifications

By its nature, this study deals with several concepts in addition to the object of analysis, secularism, and other primary concepts of this study, legitimacy and autonomy. What is meant here by secularism, legitimacy, and autonomy will be clarified in detail in corresponding chapters. Other auxiliary concepts such as toleration, freedom of conscience, separation, etc. will also be clarified in subsections dedicated to them. Yet, other concepts that are central to the topic, and often used throughout the text such as religion, constitutional state, secular state, and constitutional principle should be explained in advance, in order to avoid confusion and provide clarity. Especially religion is an "essentially contested concept" (Gallie, 1955), which is very hard to define, and very context-dependent. But in order to talk about secularism, one needs a clear concept of religion, because the term secularism carries an inherent reference to religion.

Religion: In fact, religion as a category has been criticized since it mostly carried a Western understanding of the term, and therefore non-Western societies with non-Abrahamic religions would not fit well into the categories that are imposed by Western powers, colonial or otherwise (Madan, 1987; Nandy, 1988). This kind of criticism can be valid if one adopts a very narrow understanding of religion. The mistake of misrepresenting secularism because it has been, in some contexts, implemented mainly with the Abrahamic, or European understanding of religion in mind, leads one to think that this is an unchangeable characteristic of secularism. However, when the definition of religion is substantiated in a more inclusive way, it is possible to have a

universalizable approach to both religion and secularism. For this purpose, I suggest to turn the method of definition around, and rather than to define secularism with reference to religion, to define religion with reference to secularism.

Yet can one think of secularism without referring to religion? As stated above, secularism involves an inherent reference to religion since the term secular is usually understood as non-religious. Though, that aspect of the term may not be relevant at all times. Secular, in the 'worldly' sense of the term, does not necessarily refer only to religion as its antonym. It involves an exclusion of the non-worldly, including, but not limited to, religion. Therefore, the relationship between the terms secular and religious may vary depending on the emphasis and context that the terms are used. If one starts the argument from the understanding of secular as worldly, then the term religion would be clearer to grasp: it refers to those traditions, reasons, or beliefs that have an allegedly non-worldly, supernatural, sacred source or point of reference (Taylor, 2007).

Constitutional principle: This study defines secularism as a constitutional principle. Therefore, it should also be made clear what is exactly meant by this. A constitutional principle can be briefly defined as a principle that is explicitly or implicitly adopted by a constitutional regime and therefore followed in all aspects of government. Constitutions include specific guidelines and procedures that govern the functioning of a regime, yet they also include a set of principles and values that, in turn, guide those. Therefore, constitutional principles are at the top of the hierarchy of norms, or legal sources of a state. For instance, the US constitution is usually assumed to have seven basic principles, including popular sovereignty, republicanism, federalism, and separation of powers. These principles can be derived from the text of the constitution, yet there is no specific article that enumerates the principles of the constitution

explicitly. Similarly, secularism can be either explicitly adopted as a principle in a specific article of the constitution, such as the constitutions of India or France, or it can be implicit in either the general text of the constitution, or the institutions, practices and procedures of the constitutional regime.

Secularism and the secular state: Since an analysis of the concept of secularism is one of the main tasks of this study, the definition provided here will count as a working definition: it will be the definition of secularism as it is primarily understood throughout the rest of the text until an authoritative definition is provided as a result of the analysis. A simple but important distinction has to be made from the start: secularism may refer both to a social and a political phenomenon. Here, only political secularism is meant by the term, not secularization of society or the idea of secularism that advocates it (Bhargava, 1994). Yet, social secularism is not completely irrelevant to this study. Since secularization thesis and its critics, as well as the relationship between religiosity of the society and the political secularism are themes that should be considered, social secularism, or rather secularity will be discussed, only not by the term secularism. It is hinted already that political secularism is analyzed here as a constitutional principle. Secularism, then, is a constitutional principle that defines the state as a secular state. By definition, it is expected from a secular state to recognize only secular sources of law and legitimacy, separate religious authority institutionally from political authority, and respect and protect freedom of conscience of its citizens. It is also expected from a secular state not to favor a certain religion against others or non-religion, or give a certain religion or church official status. Surely, this is an ideal-type definition and not all deviations from these conditions necessarily deprive a state from secular status. Norway has, and Sweden until recently had a national church which obviously

contradicts the separation and non-establishment principles. The same goes for the United Kingdom whose symbolic head of state is also the head of Church of England. Yet it would be unfair to call these non-secular states. The discussion as to why certain symbolic deviations from the ideal-type secularism may be allowed will be made below in detail. The conception of secularism as autonomy as proposed by this study aims to resolve such issues of category based on apparent or symbolic deviations and to propose instead a test which considers whether secularism in practice coincides with the principle of autonomy.

Constitutional state: Since the subject matter of the study is secularism in a specific setting, namely the constitutional state, it should be made clear what is meant by the term. It should be acknowledged that what is meant by constitutional state is varied both at theoretical and empirical levels. It is beyond the scope of this study to provide a full-fledged analysis of the concept, however in the broadest sense, constitutional state is the one that combines elements of democracy and constitutionalism to a certain extent. Moreover, in the constitutional state, democracy and constitutionalism are assumed to be "equiprimordial" (Bellamy, 2014, p. 713). Here, the terms constitutional state, constitutional democracy, constitutional regime, liberal democracy, liberal state, *Rechtsstaat,* liberal democratic constitutionalism are all used interchangeably and refer to the type of state in which rule of law is the norm, which allows its citizens to exercise their sovereignty via established democratic procedures and at the same time limits and checks the government in order to protect the rights of individuals and that of minorities, as well as the democratic procedures. Based on this definition, it is also assumed in this study that the constitutional state claims to be legitimate because only a constitutional

state has those mechanisms that allow it to recognize and enable the individual and collective autonomy of its citizens.

CHAPTER 2

THREE LEVELS OF SECULARISM:

CONSTITUTIONAL, LEGAL/POLITICAL, AND PUBLIC

The Byzantine state was the real religious state, for in it dogmas were questions of state, but the Byzantine state was the worst of states.
- Karl Marx (1842)

2.1 Introduction

Before engaging in the analysis of the concept of secularism and its relation with the concepts of autonomy and legitimacy, I begin with an analysis of the different levels in which secularism operates. Secularism will be analyzed as a constitutional principle, or an essential constitutional and definitive character of a liberal democratic state. Since a constitutional liberal democratic state is identified by its responsiveness to public opinion and its commitment to a certain procedural standard of fairness, the forms that secularism as a principle takes in different levels of governance matters. These levels of governance are identified as the constitutional level, legal/political level, and the public sphere. The purpose of this three-level analysis is to lay the groundwork for the conception of secularism that this study proposes: secularism as autonomy.[5]

This three-fold analytical distinction serves as a guideline for the conceptual analysis of secularism. However, these three levels should not be seen as ontologically independent of each other. Although the focus of this study is the conception of secularism as a constitutional principle, a conceptual principle cannot be conceived without any reference to the political and social spheres. An analogy for these three

[5] A detailed account of 'secularism as autonomy' is given in 3.4.

levels can be three gears that move at different speeds while interacting with each other. Or to use the Habermasian language, formal political system and informal public sphere are two tracks that follow their own, yet parallel routes. The public sphere operates in accordance with shared social norms and provides both justification and feedback for the legal/political sphere. In constitutive moments, constitutions are also expected to reflect the norms and rights according to which the political sphere operates, and the political sphere that acts in accordance with the constitution can make binding decisions on the society as a whole. This analytical framework aims to situate the conception of secularism as autonomy within the institutional structure of a constitutional democracy and demonstrate its functioning with references to specific cases.

2.2 Secularism in the constitutional sphere

The main argument in this study is that secularism as a constitutional principle is in close relation to the concept of autonomy that is the basis of legitimacy in a constitutional democracy. But what does it really mean for a constitutional democracy to be constitutionally secular? There are some states which have obvious references to secularism or the separation of church and the state in their written constitutions. Yet, taking written constitutions the only basis of secularism is a weak criterion. According to the conception of secularism as autonomy that is proposed in this study, secularism exists in the constitutional sphere if individual autonomy is recognized in the institutions and principles provided in the constitution. This conception, as I will try to demonstrate, will be helpful in determining whether the cases with obvious non-secular elements in their constitutions or symbolic practices can still be classified as constitutionally secular.

In order to delineate what constitutes a secular constitution in accordance with the secularism as autonomy conception, I will first engage with specific examples of

constitutions with respect to how they deal with the matter of secularism, or their principles regarding the relationship between religion and politics. Then, I will review some prominent typologies that have been proposed with regard to constitutional stances on secularism, or religion and politics. In the light of the proposed conception, I will attempt to propose an alternative test of constitutional secularism than the ones in the literature.

Some countries constitute critical cases for the subject of secularism due to their specific way of arranging the relationship between religion and politics in the constitutional level. It can even be said that these countries constitute models, or ideal types. Major examples include the United States, France, and India with their unique approaches to secularism in the constitutional level. The United States and France are usually contrasted with regard to the role they stipulate for religion in the public sphere (Kuru, 2009). India, on the other hand, represents an interesting case with a pluralistic and at the same time highly religious society, with a constitution that defines the state as secular. A fourth case, Turkey may be added to the list as a country which is often examined with its varying stance toward religion in public sphere despite its clear secularism clause in its constitution. And there are those countries, such as the UK and Norway, which have official religions, but which are in practice secular states. The diversity of attitudes toward the relationship between religion and politics, or secularism even among so few cases undeniably demonstrates that constitutional clauses rarely matter alone. Then what should one look at in order to determine a benchmark of constitutional secularism? As I have been trying to demonstrate, constitutional principles are not only words, or clauses. Secularism as a constitutional principle exists not only in the words of the constitution, but also the way in which it has been interpreted and

implemented. Therefore, a closer look at the cases is necessary in order to be able to say anything about the existence constitutional secularism. Specifically, first three of the cases mentioned above, the United States, France, and India will be briefly examined with regard to their interpretation of constitutional secularism and its relation to secularism as autonomy.

2.2.1 The United States

The United States is probably the first secular state in the modern sense. In the constitutional level, secularism of the state is stipulated by the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances". The first thing that one notices is that religious freedom and freedom of speech are stipulated in the same amendment. The second important point, which is more closely related to the definition of secularism, is that the state-religion relationship is determined in two clauses: (a) the establishment clause, which prevents the lawmaker from making a religion established one (also called the separation clause), and (b) the free exercise clause. Although there are scholars who disagree (Hamburger, 2004), the establishment clause is the main grounds for the separation of church and state, and the free exercise clause both complements it and gives it a purpose. This means that the purpose of separation between the church and the state is to ensure the free exercise of religion.

The Supreme Court of the United States (SCOTUS) has had several landmark decisions throughout its history regarding the First Amendment. These decisions provide

the contextual basis in order to evaluate secularism in the US. Although most relevant SCOTUS cases regarding the First Amendment are from the 20th century, one earlier case is worth mentioning: Reynolds v. United States (*Reynolds v. U.S.*, 1878). In this case, George Reynolds, a member of The Church of Jesus Christ of Latter-day Saints (Mormon Church) was charged with bigamy and disputed the constitutionality of the charge because his practice of bigamy was based on his religious beliefs. The court, however, unanimously rejected his claim and upheld his conviction arguing that the free exercise clause does not cover those actions which are against the law. The implication of this case is that despite the free exercise of religious beliefs is guaranteed, the secular law has the final say as to where to draw the limits of this liberty.

Another interesting SCOTUS case on the free exercise clause is Cantwell v. Connecticut (*Cantwell v. Connecticut*, 1940). This case expanded the scope of the free exercise clause by overturning the charge against a family of Jehovah's Witnesses who played a phonograph which described one of the books they were distributing in a mostly Catholic neighborhood. The Cantwells were charged with breach of the peace, although they asked for permission before playing the phonograph. While the primary implication of this case was the extension of the guarantee of free exercise and freedom of conscience, a subtle but equally important implication of the decision was that the court asserted that the government cannot decide on matters regarding what constitutes 'true religion' or 'blasphemy'. In this regard, this also emphasizes the establishment clause and the secularism of the state. Two decades later, another landmark case was decided by the SCOTUS: Torcaso v. Watkins (*Torcaso v. Watkins,* 1961). Roy Torcaso, who applied to become a Maryland notary public, rejected to take the required oath which included a declaration of belief in God. The Supreme Court again unanimously

decided that the First Amendment rights of the defendant were violated and it banned the states from requiring any religious tests for public office or public services. This decision is important because of its equal emphasis on both clauses of the First Amendment. On the one hand, it emphasizes establishment by banning the states from requiring religious tests, on the other hand it emphasizes free exercise clause by protecting the free exercise rights of the citizens by allowing them to participate in the public life regardless of their religion or non-religion, as well as allowing them the choice not to declare their conscientious beliefs.

In 1963, the Sherbert v. Verner decision of the Supreme Court marked the beginning of a period in which the position of the court went back and forth between enlarging and narrowing the free exercise clause. In Sherbert v. Verner, the court decided that the free exercise rights of the defendant, who was a Seventh-day Adventist and refused to work on Saturdays and thus fired and denied unemployment compensation, were violated. For this decision, the court created what is known as the 'Sherbert test' (*Sherbert v. Verner*, 1963). Briefly, the Sherbert test investigates whether the free exercise of religion is burdened by the government without compelling state interest. The burdening of the citizen is also not acceptable if it is possible to avoid it through an alternative regulation that serves the same purpose. With this test, the court shifted the balance to the advantage of the free exercise right. However, in 1990, the court narrowed down the scope of the Sherbert test with its Employment Division v. Smith decision. In this case, the defendant was denied unemployment benefits after being fired due to his use of peyote, a psychoactive drug, for religious purposes. The Supreme Court agreed with this decision and argued that the state had compelling interest prohibiting the use of such drugs. In response to this decision, the congress

passed a law in 1993, called Religious Freedom Restoration Act (RFRA), attempting to prohibit the government from burdening free exercise even from generally applicable laws, and thus reinstated, or expanded the scope of the Sherbert test. Yet, four years later, in 1997, the court responded by overturning the act partially in City of Boerne v. Flores, arguing that the congress exceeded its power by passing the RFRA. This decision, however, did not mean the death of RFRA. Courts of most states continued to cite RFRA in their decisions and eventually the Supreme Court also cited RFRA in its controversial Burwell v. Hobby Lobby decision which recognized religious beliefs of 'closely held' for-profit organizations.

In 1963, the same year when the Court introduced the Sherbert test, it also decided on another important First Amendment case: School District of Abington Township, Pennsylvania v. Schempp. In a 8-1 majority, the court argued that the requirement of Pennsylvania law that bible be read at school opening every day is unconstitutional because it required a specific religious exercise and therefore clearly contradicted with the free exercise clause (*School District of Abington Township, Pennsylvania v. Schempp*, 1963). In 1968, the Court reinforced the Establishment clause in Epperson v. Arkansas by deeming the ban on teaching of evolution unconstitutional because rejection of evolution was a religious idea held by fundamentalist Christians (*Epperson v. Arkansas*, 1968). This context laid the groundwork for the Lemon test which the Court would introduce in 1971 in order to set the precedent for the separation of state and religion. Lemon test was introduced in Lemon v. Kurtzman, which challenged the funding of non-public schools, which were mostly religious, by the state, even for purposes of secular education. According to the three-pronged test, for a statute not to violate the Establishment clause, it should (1) have a secular purpose, (2) neither

inhibit nor promote religion, and (3) not result in 'excessive entanglement' with religion (*Lemon v. Kurtzman*, 1971). The court ruled that although the purpose of the statute was secular (the religious schools received funding only for secular courses), it resulted in an excessive entanglement of the state with religion. With this decision, and the introduction of the Lemon test, the Court interpreted the Establishment clause as a strict wall of separation between religion and the state. Excessive entanglement prong further meant that this wall of separation would not allow dealings between religious and public institutions as a result of which it could be difficult to distinguish between religious and secular purposes of such dealings. The introduction of the Lemon test could be interpreted as a secularist turn in the jurisprudence of the Supreme Court. However, this would imply that it would result in a 'thick' conception of secularism that aims to drive out religion from the public space altogether. What Lemon test ensured instead is that the government should respect the separation of religious and public authority.

Just one year after Lemon v. Kurtzman, the Court decided on a controversial landmark case on the First Amendment, which, at first sight seemed to contradict the precedent it set with the Lemon test. In Wisconsin v. Yoder, the Court found that the free exercise rights of Amish parents who were found guilty of refusing to send their children to school past the 8th grade were violated. The Court weighed the state's interests in compelling the children to go to school two more years against the interests of the parents who took the decision of taking their children off the school based on their deeply held religious views (*Wisconsin v. Yoder*, 1972). Consequently, they decided that the burden this situation placed on the Amish due to their religious convictions were greater than the two more years of compulsory schooling. However, in order to understand the significance of this case, it is important to take into consideration the

partial dissent of Justice William O. Douglas. Although Douglas agreed with the rest of the Court that the free exercise rights of the parents were violated, he stressed that the children in question were also parties whose interests are at stake. Douglas wrote:

> On this important and vital matter of education, I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition. (*Wisconsin v. Yoder*, 1972)

In fact, one of the three children that are within the scope of the case were interviewed and declared that she did not wish to continue her formal education due to her religious beliefs. Therefore, Justice Douglas did not dissent specifically in her case, but two other children who did not declare their opinions. Yoder case, along with Douglas's dissent, is interpreted by Patrick Weil as an indicator of Court's acceptance of individual conscience as the guiding value in interpreting the First Amendment (Weil, 2017). Moreover, I would argue that especially Douglas's dissent shows that respect for individual autonomy is the guiding principle, and Court's respect for individual conscience is in fact derived from that.

This perspective also clarifies the apparent conflict between the secularism of the Lemon test and extensive religious freedom of the Yoder case. While these two cases are primarily concerned with different clauses of the First Amendment, Court's decisions in both cases can be interpreted as upholding the individual autonomy of citizens. According to the jurisprudence created through these cases, involvement of the government either for or against religion may inhibit the ability of the citizens to live by the rules that they set for themselves.

Weil wrote: “Since the Court, despite the polysemy of the concept, has applied one interpretation of freedom of conscience, not only as a strong guiding principle in all its decisions since 1943 but as an almost absolute right, I suggest in conclusion that the Court could posit this right — in both a negative and a positive sense — as a privilege and immunity of the American citizen” (Weil, 2017, p. 318). While, as I suggested, this guiding principle can be extended to the individual autonomy of the citizens, the point here is that secularism as a constitutional principle can be demonstrated in action throughout the jurisprudence of the Court.

The brief history of the Supreme Court positions on religion cases demonstrates that while there are differences in emphasis and leanings, there are at least some values that the Supreme Court aims to upheld throughout the decades. In deciding on cases that are either concerned with the establishment clause or the free exercise clause, the Court almost always interprets the First Amendment from the perspective of freedom of the citizen. In so doing, the Court makes it possible for us to trace the principles that lay at the foundation of the constitution. As I have been arguing throughout this study, autonomy as a legitimating value is also the value that unites both clauses of the First Amendment. The establishment clause aims to respect the autonomy of citizens by prohibiting the state, a heteronomous agent, from intervening in the religious or conscientious wills of the citizens, while the free exercise clause more directly guarantees the freedom of the citizen that is assumed to be based in their autonomous judgement.

Moreover, the US example shows that secularism as a constitutional principle can be interpreted as manifestations of various conceptions of secularism that are commonly accepted, depending on the context. The Court interprets the principle as

toleration, freedom of conscience, separation of state and religion, neutrality of the state, and secularism as secular source of law.[6] The point made in Chapter 2 was that neither of these conceptions were wrong, yet neither of them were sufficient enough to cover the whole concept of secularism as a constitutional principle, either.

2.2.2 France

As mentioned above, the constitutional secularism in France is usually contrasted with the American secularism. For this reason, a brief overlook of French secularism would be useful in comprehending how a constitutional principle of secularism is employed and interpreted in two oldest secular republics in the modern world. The first article of the French constitution defines France as "an indivisible, secular, democratic and social Republic" which "shall ensure the equality of all citizens before the law, without distinction of origin, race or religion" and "shall respect all beliefs" (Constitution of France, n.d.). Therefore, the main position that the French Republic takes on the issue of secularism, at least as understood from the constitution, is neutrality. Yet, in order to understand the nuances and interpretation of French secularism and to grasp to what extent it differs with the American one, its historical development and the 1905 French Law on the Separation of the Churches and the State, which has the role of a guide with which the principle of secularism can be interpreted, should be mentioned.

French secularism, especially in contrast to the American one, is built upon a legacy of anticlericalism of the French Revolution. This has been sometimes interpreted as an evidence of exclusionary and illiberal nature of French secularism as opposed to inclusive and religion-friendly American secularism (Kuru, 2009). However, the

[6] For a discussion of these common conceptions of secularism, see: section 3.3.

contents of the 1905 Law cannot be argued to have the strict anticlericalism of the Revolution. More than a century of entanglement of the state with the Catholic Church and gradual increase in the public support for separation of church and state followed the radical sentiments of the revolutionary period. By the turn of the century, events such as the Dreyfus Affair fueled the need for separation between church and the state and official recognition of freedom of conscience of other faiths than Catholicism. Eventually, the 1905 Law passed marking the beginning of current French secularism. In fact, the emphasis of the law, as its first article suggests, is the guarantee of freedom of conscience.

The main difference between French and American versions of secularism is about the visibility of religion or religious symbols in public life as well as matters of religious expression. However, examining both cases reveals that they are much more similar than they appear. The visibility and symbolism issues gain much more publicity due to the media coverage of debates surrounding these issues. Yet, at the core of both American and French secularism are same policies of strict separation and neutrality, as well as respect for freedom of conscience. These values and policies, as argued here, emanate from the respect for individual autonomy that exists in constitutional democracies and therefore in line with the suggested conception of secularism as autonomy.

It has been demonstrated in the American case that the Supreme Court plays a significant role in interpreting the First Amendment and therefore the scope and content of secularism in the United States. Although it might sometimes oscillate between liberal and conservative leanings, the SCOTUS has a more or less consistent jurisprudence that guides their First Amendment decisions. France, unlike the United States (or some other

judicially active states such as Germany or Italy), does not have a tradition of judicial review. What can be identified as the French counterpart of the SCOTUS is the Constitutional Council, which is not technically a court and does not have the powers that its counterparts in other countries might have, despite having its powers expanded recently (Dyevre, 2017). Still, the power of the Constitutional Council is also less relevant from the perspective of interpretation of secularism, because there is also a much larger consensus regarding the interpretation in French public, as opposed to the American public in which the liberal and conservative interpretations of the First Amendment often clash. Most French citizens view secularism as one of the founding principles of the republic and therefore hold it in high esteem (Chelini-Pont, 2013).

Still, French secularism is not completely undisputed. Specifically, the strict interpretation of neutrality by the French secularism has been challenged seriously with reference to Muslim women's public use of hijab. According to French secularism, the religious neutrality of the state extends to all public offices and schools, and any obvious manifestation of religion is prohibited. This was not a primary concern for Christian citizens, because there was no widely accepted religious obligation that required them to carry a specific symbol or dress in a specific way that would set them apart from the crowd. With the increase of the Muslim population in France, this interpretation of public neutrality became disputed again because a significant number of Muslim women believed that covering their hair, usually by wearing a hijab, is a religious obligation. The controversy peaked especially in 1990s, and eventually a commission (which would be called the Stasi Commission after its chairman, Bernard Stasi) was established by the president Jacques Chirac in 2003 with the purpose of reinterpreting French secularism in the context of the hijab debates. The Stasi Commission wrote a report on secularism in

France, emphasizing its primary values of state neutrality and freedom of conscience. The Commission also recommended that ostensible display of religious symbols in public schools contradicts with the principle of secularism. Based on this recommendation in 2004 France explicitly prohibited wearing of ostensible religious symbols by students of public schools with a large parliamentary majority.

The ban sparked great amount of debate, both in the general public and the academia. Some commentators argued that the ban was an example of the illiberal character of French secularism (Bowen, 2010). Patrick Weil, who was a member of the Stasi Commission argued otherwise. According to Weil, not only was it wrong to identify French laicité as illiberal, but also the ban was passed with liberal purposes in mind (Weil, 2008). Attributing illiberalism to French secularism due to its anticlerical and revolutionary heritage is wrong, simply because the 1905 Law was not passed with these sentiments in mind. In fact, the authors of the 1905 Law were mostly sympathetic to religion and included socialists such as Aristide Briand, unlike some radicals who took a more anti-religious stance. Moreover, as a member of the EU and the European Council, therefore bound by the European Court of Human Rights, France developed a more liberal precedent of secularism throughout the decades. Finally, regarding the ban of religious symbols in public schools, Weil makes the crucial point that the purpose in mind was to protect the rights of female students of public schools, mostly minors, who can often be pressured or even bullied to wear the hijab by their communities and peers (Weil, 2008, p. 2707). From this perspective, the law aimed at the protection of freedom of conscience of these students and thus could be read as a liberal law.

Not everyone was as positive about the law as Patrick Weil. One critic was Jean Baubérot, who himself was a member of the Stasi Commission, and the only one who

abstained from the vote regarding the said law. While he acknowledged that the law was recommended by the Commission with good intentions, he did not support it because if the girls affected by law would be forced to leave public schools, it could hurt them more than it could benefit them (Baubérot, 2004, pp. 139–140). Murat Akan took an even more critical stance toward the law, and identifies it as a break from the universalist values of the French republic and a part of a larger picture in which the legislators have constructed a multiculturalist, identity-based policy of religion (Akan, 2009). He is concerned that the students who reject to remove their scarves would have to attend private religious schools and this would lead to compartmentalization of society based on religious identity, by blocking young people of especially immigrant origins one of the primary ways of integration: public schooling (Akan, 2009, pp. 246–247).

The controversy surrounding French secularism continued well after the 2004 Law, as more restrictive policies have been adopted by the authorities. The primary example of such policies is what is known as the *burqa* ban passed in 2010, which banned face veils in all public spaces in the country. The ban, of course, did not only apply to those veils worn with religious motivations, but all types of attire that cover one's face. Yet, as intended, it was primarily seen as a ban against the veil worn by a small minority of Muslim women. The ban has been criticized, again, as an illiberal turn in the interpretation of French secularism, because the neutrality principle which could be invoked to support the 2004 ban cannot apply to the extension of the religiously neutral spaces to all public spaces (Hennette Vauchez, 2017). Although the law was upheld by the ECHR on the grounds that it aimed to guarantee the conditions for "living together" (*S.A.S. v. France*, 2014), Weil, who supported the 2004 headscarf ban,

strongly criticized the burqa ban due to its illiberal scope and populistic motivations (Weil, 2014).

Where is the place of autonomy in these debates? Interestingly, the context of 2004 ban on headscarves in public schools in France is comparable to the Wisconsin v. Yoder case mentioned above. In both cases, the debate was centered around minors' right to education, religious freedom, and freedom of conscience. In the Yoder case, the SCOTUS ruled in favor of the families but at the same time tried to make sure that the children in question were not pressured or heavily disadvantaged. In the French law, the lawmakers, following the recommendation of the Stasi Commission, aimed to protect the freedom of conscience of the directly affected students as well as others by invoking the principle of neutrality. What is common in these cases is that both in Wisconsin v. Yoder and the 2004 French law, both sides of the debate can consistently argue from the perspective of autonomy. Both the right to free exercise of religion and conscience as well as the right of the teenagers to be the authors of their own lives are valid points from the viewpoint of secularism as autonomy. The interpreters of constitutional secularism sometimes need to make difficult decisions on a case-by-case basis, especially in cases where there may be losers in each decision. However, secularism as autonomy requires that the justification for these decisions should be provided with both procedural openness and accessibility and on the basis of individual autonomy.

2.2.3 India

A third case of constitutional secularism is India, which is a radically different case from the two above, considering its history, sheer size, diversity, and religiosity of its public. The preamble of the Indian constitution defines India as a "sovereign, socialist, secular,

democratic republic". The term 'secular' was added only in the emergency period between 1975 and 1977, but the Indian state could be identified as secular also before, at least regarding some of its practices, since the Nehru period.

The understanding of secularism in India was shaped mostly by its 'founding fathers', specifically Mahatma Gandhi, Jawaharlal Nehru, and B. R. Ambedkar (Verma, 2016). While Nehruvian approach to secularism was based on a secularist and modernist understanding that is hostile to religion, it was also reinforced by the assumption that it is a necessary instrument for the prevention of conflict in the nation-building process of a very religiously diverse country as India. On the other hand, Gandhi's approach to religion was quite different from that of Nehru. He had a very positive view of religion as an inseparable part of human life, and similarly he saw religion also inseparable from politics. Yet, he also strictly opposed supremacy of one religion over another and advocated an equidistant approach to religion. Finally, Ambedkar, the architect of the Indian constitution, had a powerful social justice perspective on his political outlook and therefore his approach to secularism. He was especially concerned with the social hierarchies that are reinforced with religion, such as the Caste system. He also had a more liberal viewpoint compared to Nehru and Gandhi, and viewed individual emancipation as the ultimate goal of politics.

Based on the secularism conceptions of these three founding fathers, India developed its own specific interpretation of the concept that is different from the Western versions, especially American and French ones which are built around separation of religion and the state. Indian secularism does not adopt a strict separation policy; however, it does not have a legacy of a 'state church' or an established religion like many European nations either. The implications of not having a strict policy of

separation for India are mostly about engaging in a protective and supportive relationship toward religious minorities. Despite having strong modernist and secularist trends in its intellectual history, most of the Indian society is deeply religious and religion has a very important place in Indian life. Intercommunal violence that has at times taken place (especially the demolition of the Babri Masjid in 1992) also exacerbated the challenges faced by the state that needs to implement its own conception of secularism.

Discussions of secularism within the Indian context was briefly discussed earlier. Scholars such as Madan and Nandy are critical of secularism, and they argued that it made more harm than good for the Indian society. The Western origins of the concept and the colonial heritage of India required an approach to religion that should transcend the concept of secularism (Madan, 1987; Nandy, 1988). On the other hand, Rajeev Bhargava thought otherwise and argued that a certain conception of secularism would be perfectly applicable for India. Bhargava's 'principled distance' downplayed the importance of separation while advocating a 'neutral but not indifferent' attitude for the state (Bhargava, 1994). Bhargava's approach has been especially influential in the academic discussions regarding Indian secularism.

From a judicial review perspective, however, implementation of a principled distance type of secularism, or a model of secularism that is often in engagement with religions, leads to problems. What has been attempted to be avoided in most cases by the US Supreme Court, 'excessive entanglement with religion', could not be avoided in Indian context and especially the Supreme Court of India often found itself in a position that requires making decisions regarding the content of religion. In a review of Supreme Court decisions regarding secularism, Sen writes that the "high modernist"

understanding of the court often engaged in the role of interpreting religion and even imposing its own version of religion on the communities. This attitude of the court, according to Sen, made it possible for right-wing Hindu nationalism (as represented by BJP) to justify itself on the basis of equating Hinduism and Indian nationalism (Sen, 2007, pp. 37–38). Similarly, Verma also takes a critical stance toward the judicial activism of the Supreme Court of India regarding secularism:

> The history of court decisions about what constitutes a legally protected religious practice reveals considerable variation and arbitrariness, leaving difficult questions about group rights in a liberal polity, the limits of cultural accommodation, and the conceptions of difference left behind in the realms of family and civil society. (Verma, 2016, pp. 214–215)

Alongside with the preference of the Supreme Court to excessively entangle with religion in the name of secularism, the problems of Indian secularism are based in its communitarian approach to religious communities as opposed to individual right to freedom of conscience. Most significant indicator of this is the fact that there is no unified personal law in India and religious minorities are allowed to impose their religious personal laws on their members. One controversial example of this is known as the Shah Bano case, in which a Muslim woman demanded from the court that she should be paid alimony from her divorced husband, despite the fact that Muslim personal law required the divorced husbands to pay alimony only for three months following divorce. The Supreme Court of India ruled in favor of the woman, yet the lawmakers later reversed the situation by passing a law that would empower the Sharia courts in similar cases and again limit the term of alimony with three months. Although in this case the Supreme Court attempted to decide in favor of a secular approach to personal law, already existing communitarian nature of Indian personal law prevented this to become a precedent and the later legislation reinforced this communitarianism.

In sum, Indian secularism can be identified as a *modus vivendi* in a religiously diverse country with a Hindu majority and a history of intercommunal violence and tensions. The main purpose of this specific type of secularism is to keep religious minorities content in the group level while at the same time keep the majority religion from being abused by the right-wing nationalists. The extent to which this is an effective strategy can be debated and beyond the scope of this study. From the perspective of secularism as autonomy, Indian secularism has certain characteristics that makes it incompatible with this conception. Although it has been powerfully argued by Kymlicka (2003) that group interests and minorities can be protected within a liberal democratic framework, the Indian case does not aim to strike a balance between individual rights and group rights, favoring the latter in expense of the former. Although Indian secularism can to some extent stick to the principle of nondiscrimination (Verma, 2016, p. 226), it does not endorse other principles that can emanate from the respect for individual autonomy.

An overview of American, French, and Indian versions of constitutional secularism provides, at least to some extent, the comparative perspective through which secularism as autonomy can be assessed with regard to constitutional interpretations. Secularism as autonomy is an ideal-type conception. It is not argued here that any existing conception of secularism as a constitutional principle perfectly represents it. Instead, secularism as autonomy provides a normative benchmark against which those specific cases are tested. Yet, secularism as autonomy is not an unattainable ideal either. In fact, it can be seen from the above examples that in many cases interpretations or decisions that are in line with it can be produced. Despite some exceptions, the relative consistency of the jurisprudence created by the SCOTUS throughout the decades can be

identified as an approach that is in agreement with secularism as autonomy. Again, it can be argued that secularism in France was established with the value of autonomy in mind. Throughout the 20th century, individual freedom of conscience was attempted to be protected with a strong principle of separation and state neutrality, although recent debates surrounding French secularism can also be criticized from the same perspective. India, on the other hand, represents a unique case where secularism has a weak relationship with individual autonomy.

2.3 Secularism in the legal/political sphere: political procedure and legislation

The separation between the constitutional and legal/political spheres is inherent in the public reason tradition represented by Rawls and Habermas. The legal/political sphere roughly corresponds to what Habermas called the "formal public sphere". This sphere refers to the legislative and executive power of the state and thus binds the laws and policies enacted by it. Legislations also require legitimation and claim to be legitimate simply by nature of being made by a legitimate body using legitimate procedures and respecting constitutional norms. However, this understanding of legitimation is different from that of constitutional principles. As mentioned above, constitutional principles require much more profound normative value and agreeability. Although perfect consensus and therefore collective authorship is unattainable, constitutions gain their legitimacy through the potential acceptability of its principles and inclusiveness of their procedures. In a constitutional democracy, legislation also derives its legitimacy from being a product of such procedures and its extent is also limited by the constitution.

Rawls also distinguishes between the constitution that lays out the procedures of legislation and basic liberties and principles on the one hand, and the legislative stage

that simply works within the bounds determined by the constitution on the other (Rawls, 1996, pp. 334–340). For a democratic legislative procedure, the constitution should guarantee some specific basic rights such as the freedom of speech, freedom of association, and freedom of conscience. It is argued here that secularism constitutes one of the fundamental constitutional principles that not only work as a fundamental principle as such, but also one that determines the form of democratic procedures.

Secularism in the constitutional sphere is examined above with reference to specific cases and it has been demonstrated that secularism as autonomy can be a useful benchmark in interpreting the constitutional principle of secularism that exist in those cases. Here, it will be examined to what extent secularism as autonomy can fulfil this function in the legal/political sphere. In fact, this sphere is the main area of contestation in matters regarding secularism and secularism is one of the concepts that is most debated in this realm. This contestation has mainly two aspects. One is about the conformity of laws and policies to the constitutional principle of secularism in terms of their content, and the other is about the limits that secularism imposes on the types of discourse and procedures that is involved in the legislative process, namely the procedural aspect.

Unlike the debate on constitutional meaning of secularism, the debate on legislative matters is open to the corruptive impact of day-to-day politics. Although laws and policies should be bound by constitutions, they may usually be legislated or applied with a strategic and political interest in mind. While the state may be found to conform secularism as autonomy as a result of an analysis of its constitutional interpretation, it might occasionally violate it with regard to specific policies or laws. Therefore, the point made here is that the secularism of a state should not be hastily identified with reference

to one specific law or policy, but an overall constitutional interpretation of the principle. On the other hand, the laws and policies that violate the principle may act as symptoms of a constitutional principle of secularism that does not conform to the conception of secularism as autonomy if such violations are found within a certain degree of consistency and frequency.

In the following, some specific cases within the legislative sphere will be analyzed with reference to the conception of secularism as autonomy, yet, this conception does not only apply to the procedures, but also the content of laws and public policies. In fact, this has also been done to some extent in the previous subsection regarding the constitutional sphere, however, the purpose there was to reveal the possible consistency in the constitutional interpretation in given cases. The line between the constitutional and legislative spheres can sometimes be difficult to draw especially in cases where the constitutional principles are put under strain by the legislative demands. Yet, as it was expressed before, the main difference between legislative and constitutional spheres is about their different sources of legitimation. It has been assumed that constitutions and constitutional principles claim legitimacy through their supposed realization of individual and collective autonomy through protection of basic rights and establishing democratic procedures. The legislative sphere bases its legitimacy on those procedures that is assumed to reflect the political will of the public. Therefore, when that political will may enter into conflict with the basic rights and principles that are supposed to be protected by the constitutional democracy, the constitution is put under strain. The purpose of suggesting an analytical separation of these two levels is to help alleviate this tension by more accurately depicting how the constitutional principle acts differently in different levels and thus to assess to which

level a given debate applies to. The argument here is that many controversial issues can be resolved within the legislative sphere without any need to spark a constitutional debate.

Especially in the recent decades, one of the most contested issues that are relevant to the principle of secularism is regarding the visibility of religion in public places, specifically the use of headscarves by Muslim women in several Western European countries and the responses of the states to that. The headscarf debate that took place in France was briefly mentioned above. When the legislators, following the recommendation of the Stasi Commission, decided to ban wearing of ostensible religious symbols in public schools, the law could both be defended and criticized with reference to the same constitutional and liberal values. This indicates that such cases which are subject to intense debate, yet are not necessarily contradictory to the constitutional principle of secularism, can be left to the initiative of the legislative sphere without moving the debate one level above, to the constitutional level.

In a slightly different but relevant fashion, Bhargava provides an analytical separation between different levels that secularism operates (Bhargava, 2015). In order to provide a clearer concept of secularism against which European regimes of relationship between religion and politics can be tested, Bhargava first distinguishes between theocracies and states with established religions. In theocracies (such as Iran), religion and state are interconnected in all three levels: ends, institutions and personnel, and law and public policy. States with established religions, instead, may have connections in levels of ends and law and public policy, while they have non-religious personnel and institutions. Secular states are different from both because they are separated from religion in the first two levels, namely ends and institutions and

personnel. However, Bhargava leaves a room of flexibility in the third level, namely the law and public policy when it comes to secular states. In his model, secular states may be either connected or disconnected with regard to the legal/public policy level, and Bhargava argues that this flexibility is preferable because "a constitutional democracy based on equal citizenship may require intrusive regulation of religion and indeed of some religions more than others as in the Indian case that made suttee and penalties attached to untouchables illegal" (Bhargava, 2015, pp. 116–117). This flexibility is the reason why there are several regimes of political secularism in practice. While in France and the US there is disconnection also in this level, but while in French case the disconnection emanates from the state side, in the US, both religion and politics mutually agree to exclude each other. Many Western European cases, however, allow for some sort of connection between religion and politics with regard to legislation and public policy. While some of them (The UK, Denmark, Norway) have established churches, others might support or fund religious institutions or schools in other ways.

How does secularism as autonomy fit in this typology? Does it have a definitive answer as to whether separation is necessary in this level? As it will be analyzed further below, according to the autonomy conception of secularism, the constitutional principle of secularism has both substantial and procedural aspects. The democratic procedures as well as the substance of laws and policies should be secular. Yet, this secularity is not an end in itself, but a device in order to ensure autonomy of citizens. Therefore, as it was done above with the interpretation of constitutional principles, the criterion for secularism according to the autonomy conception is whether a specific law of policy serves the purpose of ensuring autonomy, both in its content and procedures in adopting it.

Andras Sajo warns against the risks posed by what he calls 'strong religion' against constitutional democracies (Sajo, 2008). Accordingly, strong religion may attempt to impose their own religious rules upon the rest of the society using legislative procedures. Exactly for these reasons, it is imperative to reflect upon the legitimacy of secular procedures in legislation:

> People with a strong-religion agenda attack the legitimacy of the requirement of public reason giving in law and legislation. Modern constitutionalism has accepted the presence of religion and religiously inspired politics in the public space only where they have been translated, or are at least translatable, into "public reasons"—that is, where the reasons for their presence were accessible to all citizens. (It is immaterial to public reason giving what motives may underlie a public policy or constitutional position.) Strong religion denies the necessity or legitimacy of such translation. (Sajo, 2008, p. 607)

The point made by Sajo here is that merely conforming to constitutionally determined legislative procedures is not adequate for legitimacy of legislation, even it also conforms to the constitution in form. "Public reason" principle, or what may be called the "institutional translation proviso" is necessary for accessibility of reasons to all the affected parties (Habermas, 2006b). This proviso is not proposed only to provide inclusiveness to the secular or non-religious citizens, but also religious citizens who may disagree with their fellow religious citizens who aim for a religious legislation or policy. As Sajo observes, in the controversy surrounding the legality of abortion there is great disagreement even within the Catholic community, one of the most centralized and hierarchical religions in the world.

Blasphemy laws that exist in several countries are good examples that provide an understanding of application of secularism as autonomy in the legal/political sphere. As of 2014, 26% of the countries in the world have blasphemy laws in the books (Theodorou, 2016). While a significant number of these countries have these laws from

pre-modern times and no longer apply them, there is a new debate surrounding such laws, fueled especially by the fact of multiculturalism. Blasphemy laws can be simply defined as those laws and policies that are aimed at protecting certain religious or sacred things or values from insult or inflammatory speech. From this perspective, there can be two different types of justification for such laws. One justification is derived from actual recognition of sanctity or supremacy of certain religions and/or their symbols. This is the basis for most blasphemy laws that predate the modern times and were enacted in a pre-secular society in which religion was dominant. The second justification is derived from practical reasons, such as protection of social peace and harmony, public safety, minorities, etc. In fact, oftentimes blasphemy laws which were put in place a long time ago using the former justification are revived recently using the latter justification.

In a recent judgment, ECHR followed a similar reasoning. In E.S. v. Austria, the court found that the conviction of the applicant due to calling Prophet Muhammad a "pedophile" did not violate Article 10 of the European Convention of Human Rights which regulates freedom of expression. The court reasoned that the "domestic courts carefully balanced the applicant's right to freedom of expression with the rights of others to have their religious feelings protected, and to have religious peace preserved in Austrian society" (*E.S. v. Austria*, 2014). The premodern justification for blasphemy laws mentioned above obviously does not qualify as in conformity with the constitutional principle of secularism either procedurally or substantially. However, the latter justification as used by the Austrian lawmakers, courts as well as the ECHR seems to conform to secular procedures and purposes. The legislators do not need to adopt or impose a religious doctrine in order to pass a law that is aimed at protecting social peace. Yet, evaluated from a secularism as autonomy perspective, the purpose of protecting

individual autonomy should be sought. Such legislations may fulfil the procedural criterion by implementing an open process of dialogue and reasoning, yet restricting freedom of expression of the individuals for the sake of not disturbing public order is a matter of emphasis that should be carefully weighed. Similarly, as evident in the ECHR reasoning, group rights can be preferred at the expense of individual rights.

There are other laws and policies that are relics of the past, but differently from blasphemy laws, they are more clearly in contradiction with secularism as autonomy. Blanket abortion bans and divorce bans that were imposed by certain Catholic majority countries such as Ireland and Malta are within this category. In fact, proponents of abortion ban usually translate their points of view into a secular language, calling themselves "pro-life" and emphasizing fetus' right to (potential) life rather than simply trying to impose their own religious doctrine on the rest of the society. Divorce bans, on the other hand, although by now mostly abolished, clearly demonstrate the religious purposes behind such legislations which are also evident in debates regarding same sex marriage in several countries. Regulations about marriage, which was within the jurisdiction of religious authorities in pre-modern times, continue to have religious content in some countries. From a secularism as autonomy perspective, imposition of religious norms or doctrines regarding marriage on the general population is clearly a violation of secularism.

Just like being only justified by religious doctrines, insensitivity of certain laws and policies toward religious convictions of people can also impair their secularity from the viewpoint of secularism as autonomy. Two examples from Italy can be given, both of which were also subject to ECHR cases. The first is known as *Lautsi v. Italy*, in which the existence of crucifixes in Italian public school classrooms were found not to violate

the rights of the applicant. Although initially the Second Section of the Court found a violation, the Grand Chamber overturned this decision by arguing that a crucifix is merely a "passive symbol" and did not constitute "indoctrination". In the second case, known as *Francesco Sessa v. Italy*, the applicant is a Jewish lawyer, whose request that the dates determined for an adjourned hearing be changed because it corresponded to Jewish holidays and therefore he could not attend it, was denied. In this case, the ECHR also found no violation although dissenting opinions demonstrate that reasonable accommodation could have been made. Taken together, these two cases reveal the contradictory approach of a specific country, Italy, toward its citizens that belong to minority religions or those who are irreligious. The ECHR has a tradition of leaving a large discretionary power to the member states in such cases, however this does not mean such policies do not constitute a violation of secularism understood as autonomy. Just like it could be argued that wearing a headscarf in a public school as a "passive symbol" of religious belonging could be coercive or discriminatory to other students, a crucifix on the wall can also be argued to do the same. Moreover, in the former, a weighing between individual autonomy of two different kinds of students, namely those who wear the headscarf and those who do not, has to be made. In the crucifix case, there is no party whose autonomy is infringed in the case that crucifix is removed from the wall. Only thing that would be jeopardized is the traditionalist, 'metasocial' claim of the Italian state to legitimacy.

More examples of legislations and policies which could be subject to the question of secularism can be provided, each of which can lead to lengthy debates on their procedural and substantial justification, as well as their constitutional conformity. However, the point regarding the conception of secularism as autonomy is made.

Secularism as autonomy treats secularism as a constitutional principle which applies to both procedures and substance of laws and policies. The above examples demonstrate that only procedural secularism is not an adequate measure of conformity to such a constitutional principle. It should be also possible to argue that the law or policy that is proposed improves, protects, or at least does not hurt the capacity of individuals to be masters of their own lives as autonomous agents.

2.4 Secularism and the informal public sphere: the intersections between the law and public life

This study borrows several tenets of political and social theory of Habermas, and this includes his understanding of the public sphere. Starting from his early work, Structural Transformation of the Public Sphere (Habermas, 1999), this concept has been central to his theory. The 18th century salons that Habermas examined in that work drew a picture of what would later become the "ideal speech situation", an inclusive and deliberative medium which could provide input to the political sphere. Habermas defines public sphere as follows:

> By 'the public sphere' we mean first of all a realm of our social life in which something approaching public opinion can be formed. Access is guaranteed to all citizens. A portion of the public sphere comes into being in every conversation in which private individuals assemble to form a public body. They then behave neither like business or professional people transacting private affairs, nor like members of a constitutional order subject to the legal constraints of a state bureaucracy. Citizens behave as a public body when they conger in an unrestricted fashion - that is, with the guarantee of freedom of assembly and association and the freedom to express and publish their opinions - about matters of general interest. In a large public body this kind of communication requires specific means for transmitting information and influencing those who receive it. Today newspapers and magazines, radio and television are the media of the public sphere. We speak of the political public sphere in contrast, for instance, to the literary one, when public discussion deals with objects connected to the activity of the state. Although state authority is so to speak

> the executor of the political public sphere, it is not a part of it. (Habermas, 1974, p. 49)

This definition and description have mainly two implications. First, the public sphere ideally exists within the protection and jurisdiction of a constitutional liberal democracy. Second, it is the main medium within which the public opinion that feeds this polity is formed. To be clear, the public sphere includes the media, trade unions, universities, NGOs, religious organizations, other non-state organizations and every civil society mechanism imaginable that shape the public discourse. With this conception of the public sphere in mind, this section aims to investigate the relationship between the public sphere and secularism as autonomy. This relationship has several dimensions. On the one hand, the constitutional principle of secularism has a way of organizing and regulating the public sphere. On the other hand, the opinion formation that occurs in the public sphere rethinks, re-evaluates, and re-contextualizes the principle of secularism and its practical implications. This process can be described as what Benhabib calls "democratic iterations" (Benhabib, 2006). Moreover, a more intensive interaction occurs between the public sphere and the legal/political sphere, due to the latter being more directly influenced by the former.

In a constitutional democracy, public sphere is independent from the state. Therefore, "organizing and regulating" the public sphere should not mean control over it. Instead, constitutionalism is, by definition, limitation of state power and through this limitation it can be possible for independent spheres to exist. Yet, as Habermas's definition also shows, the existence of a constitutional regime that acts as an "executor" of the political opinion formation that takes place in the public sphere directly influences the nature of the public sphere itself. Considering that secularism as autonomy is defined

as the ultimate source of legitimacy of a constitutional regime, what is the nature of the relationship between this constitutional principle and the informal public sphere? The relationship is more obvious in the constitutional and legal/political spheres because court decisions and legal outcomes are binding and official. Yet, if it is assumed that the constitutional democracy legitimates itself through a promise of allowing their citizens to flourish as autonomous individuals, it can be argued that the state can indirectly encourage (but of course, not impose) a civic ethic that citizens should follow in the public sphere.

This ethic of citizenship is closely related with the difference and the relationship between social and political secularism. One of the main motives behind this study has been to clarify the difference between secularism as a constitutional principle (may also be called political secularism) and secularism as an ideology that aims for either marginalization, privatization, or total extinction of religion from society. In fact, the relationship between these two meanings of the word can be relevant in this context and therefore further clarify the contrast between them. While political secularism, conceived as secularism as autonomy, needs to adopt a certain level of impartiality and neutrality in terms of ethical worldviews, social secularism is in fact one such ethical worldview. Therefore, it is impossible for a secular state to be at the same time secularist. While a proselytizing religious community and a secularist movement – whose interests are at odds with each other – can coexist in a democratic society, their participation in the public sphere with the purpose of opinion formation and articulation would require at least basic respect for and recognition towards each other.

Another difference that needs to be stressed is the one between political secularism and secularization. Habermas started a debate regarding the difference, but also close

relationship between these two with the concept of postsecular. By postsecular, Habermas identified postindustrial societies which at one point were secularized, but in which religion has recently gained public visibility and significance (Habermas, 2008). A postsecular society is of course different from the pre-secular one, which was dominated by religion in all aspects of life. But it is also different from the secular society in which privatization of religion is assumed. Postsecular societies reflect the challenges of diversity, not only religious but also cultural, ethnic, and philosophical. In the decades in which secularization thesis was the norm, the place of religion in politics was not a salient issue, and it is possible that this led to trivialization of the discussion on the inclusion of different ethical worldviews in the public sphere. John Rawls's *Political Liberalism* was one of the major signs that the challenge of diversity has to be rethought by democratic theory due to "the fact of pluralism". Habermas's reflection on the postsecular can be thought as a continuation of this shift in democratic theory. As a consequence of this shift, Habermas starts a conversation on what kind of an ethics of citizenship can be conceived taking the fact of postsecularity in consideration. He asks how "the constitutional separation of state and church influence[s] the role which religious traditions, communities and organizations are allowed to play in civil society and the political public sphere" (Habermas, 2006b, p. 3). His proposal is what he calls a "complementary learning process" that should take place between religious and secular people.

It is not a coincidence that the public reason tradition represented by Rawls and Habermas does not limit itself with the political superstructure but also feels obliged to propose an ethic of citizenship for the informal public sphere. This is because by definition, for the public reason approach the informal and formal public spheres are

interrelated. The constitutional principles and the legislative activity of the constitutional state cannot be thought of as separate from the day-to-day public activity of the citizens. Public reason assumes public activity as an intersubjective activity, and procedural democracy is dependent on the justifications provided by the interested parties. A certain conception of secularism is implicit in this perspective, and this study aims to reveal this conception. Recognizing the "fact of pluralism" means that one acknowledges that citizens can be religious or secular, they can be from a variety of backgrounds, they can hold a variety of comprehensive doctrines (Rawls, 1987, p. 1). For this reason, separation of "substantive questions about the good life from procedural questions about just ways of ordering common life" becomes necessary (Calhoun, 2011). And through these procedures, the constitutional principles as well as legislations become re-legitimated.

2.5 Levels of legitimacy

So far, this section as attempted to provide a picture of the how secularism as a constitutional principle functions in three different levels of analysis. Secularism in the constitutional sphere is examined with reference to the interpretation of constitutional norms in some countries. Secularism in the legal/political sphere demonstrates the effect of secularism in the procedures of law and policy-making. Finally, the relationship between secularism and the informal public sphere reveals how citizens that are bound by a constitution interact with each other and provide democratic feedback to the formal spheres. One of the main arguments that are adopted here is that there is a strong relationship between the legitimacy of the constitutional state *per se*, and the legitimacy of the constitutional principle of secularism. In the following, this relationship will be

examined in each of the mentioned levels. It is argued here that the legitimation of secularism varies in each level.

Implementation of secularism varies from one state to another, and this is usually the main source of controversy surrounding the concept. Specific cases of religious freedom or certain exceptions to it, as well as alleged contradictions are brought forward as arguments against secularism as a principle. The overall task of this study is to clarify certain points regarding the legitimacy of secularism as a constitutional principle in order to help alleviate misunderstandings, at least to some extent. It has been shown above that although secularism has been defined as a constitutional principle, its function and implications are spread to three analytical levels. The main difference between the constitutional, legal/political, and public spheres of society is that each of these levels has different processes of legitimation of norms. The legitimation process that is involved in creating and accepting a constitutional principle is different from a procedure of legislation, and these two are fundamentally different from public legitimation, which is much more complex and multi-faceted.

Examining various levels of legitimacy is crucial to the conception of secularism as autonomy that is proposed in this study. Since secularism as autonomy aims to go beyond the merely institutional or other narrow conceptions of secularism and tie it to a higher-order principle, it functions at all these levels. The assumption is that recognition of autonomy is a political value that is adopted by constitutional democracies and thus integrated into their system in the constitutional level. Once it is a part of the constitution either directly or indirectly, recognition of autonomy is also adopted by the legal/political sphere and thus the end of all legislative activity. Finally, recognition of autonomy has to have implications for the public sphere, simply because it is the

immediate sphere where citizens become autonomous individuals and exercise their functions as public beings. In fact, this is the sphere that separates secularism as autonomy from other conceptions of secularism. While other conceptions mainly refer to the institutional design or at least only the state-level adoption of a given principle, secularism as autonomy functions in all of these three levels and at the same time is involved in different processes of legitimation in these levels.

As indicated above, Kantian constructivism as elaborated by Rawls provides a useful framework for the legitimation of a constitutional principle such as secularism. Legitimation of constitutional principles takes place more subtly and citizens are rather assumed to agree upon such principles as long as they have inherent normative value (Barnett, 2003). In actual constitutional regimes mentioned above, there have been several different approaches to implementing such principles in practice. Determining the constitutional principles of a regime requires more effort than simply looking at the written constitution. For this reason, the practice of implementing constitutional principles have been examined. Later, within the bounds set by the constitution, the legitimacy of secularism in the legislative sphere is explored. This is the level at which procedural secularism is in effect. Here, secularism requires secular procedures (that are open, accessible, and worldly) which enable the individuals to become autonomous citizens. Finally, in the informal public sphere, citizens engage in what is termed as "democratic iterations" with regard to secularism. In this level, the public activity of citizens is made possible by the secular constitutional regime, yet at the same time those citizens continuously reinterpret and redefine the constitutional principles. In all of these three levels in which secularism is in practice, it is being both implemented and

legitimated at the same time. This is why secularism is a unique constitutional principle with both a substantive and procedural aspect.

CHAPTER 3

A CONCEPTUAL ANALYSIS OF SECULARISM

Tolerance should really only be a passing attitude: it should lead to appreciation. To tolerate is to offend.
- Johann Wolfgang von Goethe (1998, p. 116)

3.1 Overview

In the previous chapter, an overview of the functioning of secularism as a constitutional principle is analyzed in three interrelated levels of analysis with reference to existing practices and experiences. This provides a background picture as to the following conceptual analysis of secularism. In the following, the conceptual analysis will begin by a review of the common understanding of the word, followed by the review of the literature that is critical of secularism and an analysis of commonly held conceptions of secularism. Finally, the proposed conception, secularism as anatomy will be detailed at the end of the chapter.

Looking at the etymology of a word is not always the best way for a conceptual analysis since the actual use of the concept that is being analyzed does not necessarily have anything to do with its etymological origins. Yet in the case of secularism, etymology is a perfect place to start the conceptual analysis, because secularism as I analyze it can be understood much better when its etymological origins are kept in mind. The word secularism is, not surprisingly, derived from the word secular, which has its origins in the Latin word *saeculum* and its derivative *saecularis*. Saeculum primarily refers to the time period that consists of the lifetime of all people who are alive in a given point in time. From this primary meaning, its 'temporal' and 'worldly' meaning was

derived. Medieval church used the word in this sense, to separate 'secular' clerics who are on worldly duties from those who devote their lives to monastic life (Taylor, 2007, 2009). Consequently, the word 'secular' is most often used in its 'worldly' or 'temporal' meaning, but it is used in this sense to emphasize its contrast with the heavenly, religious, spiritual. The -ism suffix which was added to the word secular appears for the first time in the 19th century. Secularism as a term coined by George Holyoake, primarily stood for a movement and a doctrine alternative to, if not against, religion (Holyoake, 1871).

While this remained as the first dictionary meaning of secularism, it of course differs greatly from the subject matter of this study, which is secularism as a principle adopted by a state. I am not arguing that these two meanings of secularism are completely unrelated, in fact, there is a strong semantic connection between them: they both refer to the 'worldliness' represented by the term secular. Through this semantic connection, they both emphasize primarily the ‘non-religiosity’ of the realm they address. However, the most fundamental difference between these two meanings is the subject of secularism in each case. Secularism as a movement or a philosophy refers to individuals who are proponents of this movement or philosophy. Secularism as a constitutional principle refers to the state that adopts it. While this seems to be a very simple point to make, it constitutes one of the core confusions about secularism that is the subject matter of this study. When the secularism as philosophy is referred to, but the subject matter is the state, then we are talking about a completely different thing from secularism as principle.

These two meanings of secularism can also be distinguished by referring to them as ‘social secularism’ and ‘political secularism’ respectively, as mentioned above (Bhargava, 1994). While the proponents of social secularism aim to diminish or eliminate the influence of religion from the whole society, political secularism aims to minimize or eliminate the influence of religion only in the political sphere, or simply that the state not endorse any religion (Fox, 2013, p. 33).

A working definition of secularism was already briefly given above. Accordingly, secularism defines the character of the state as secular, in the 'worldly' sense of the word. While the state is by definition concerned with worldly affairs, it does not always base its claimed authority on worldly affairs on worldly grounds. Secularism means that a secular state derives the legitimacy and reasoning of its existence, as well as its laws and policies, only from secular sources. As a constitutional principle, this understanding of secularism requires that the state has to be neutral toward religions and faiths and political and religious authorities have to be separated. Modern political and legal thought has usually dealt with secularism in terms of its more specific implications such as the neutrality principle, separation of church and state, non-establishment principle, freedom of conscience and freedom of religious exercise. Despite the complexity and depth of each of these elements, I argue that secularism is the guiding principle from which all these sub-principles or implications can be derived. It should not be inferred from this that all modern examples of secular states fully implement neutrality, separation, or non-establishment principles. On the contrary, the contemporary typology of states and their relationship with religion is varied and there are many contradictory cases. These include the UK, which has a 'state church', thus in contradiction with the non-establishment principle, yet at the same time its laws do not

need legitimation from the religious authorities and its citizens, regardless of their faith, are equals before the law. Yet there is also the case of Turkey, which is officially secular (*laik*), while at the same time having a ministry of religious affairs controlled by the political authority, serving exclusively to citizens of Sunni Muslim faith, effectively making it the state religion. Such contradictions do not mean that the term secularism is meaningless. In fact, examining what secularism really means or what it is based on would be helpful in pointing out such contradictory cases and their consequences on the legitimacy they claim.

The first distinction concerning the definition of secularism appears here. While secularism is firstly defined as the source of legitimacy for the laws of the state, it is also defined as a 'constitutional principle' that governs the relationship of the state with religion. Not only I am aware of these two aspects of secularism, but I also see this as one of the key problems regarding secularism that this study is dealing with. On the other hand, I also argue in this study that the constitutional principle of secularism is derived from the understanding of secularism as the secular source of legitimacy of the state. Therefore, both the distinctions between these two aspects of secularism (namely, as a source of legitimacy on the one hand and a constitutional principle on the other) and their consequences and the reasoning and causality between them will have to be demonstrated. Several attempts at defining secularism have been made, and it is argued here that most of those attempts, either critical of secularism or defending it, fail to grasp either one aspect of it or another. What is attempted here is to provide a thorough account of secularism which looks at both the conceptual limits and historical evolution of the concept.

In accordance with this purpose, the concept of secularism will be analyzed first by reviewing its recent critique, and then by looking at several conceptions of secularism including toleration, freedom of conscience, separation of religion and the state, neutrality, and secular source of law. Consequently, the commonalities among those different perspectives of secularism will be traced and central characteristics of secularism will be outlined.

3.2 Critique of secularism

Criticism of secularism has been diverse. It includes those who oppose secularism as a whole, as well as those who only want to reform it. It also varies geographically. American legal and political scholars focus mainly on the respective roles of religion and politics in the US constitution, while in India, France, or Turkey, criticism of secularism takes dramatically different forms. This diversity of intensity, context, and content of criticism contributes to the fact that a conceptual analysis of secularism is indeed necessary.

Since I assume that despite the diversity of the context, there is a core meaning of secularism that is shared in all contexts and misnaming of regimes or policies as 'secularism' that clearly do not fit even a minimal definition of secularism, is at the root of most of the dispute, I aim to provide a conceptual analysis that addresses these challenges. However, before proceeding with this task, the main forms of criticisms directed toward secularism in general will be mapped and outlined. This is necessary because these criticisms represent a substantial portion of what is understood by secularism in the literature. Also, the patterns that appear in the current critique of secularism indicate why a conceptual analysis of secularism is needed. The common

misconceptions and misrepresentations of secularism that can be found in the criticisms are indicative of the need for a conception that leaves less room for such critique.

I treat the critics of secularism in three categories. These are; multiculturalists, postcolonial critics, and accommodationists. Multiculturalist criticism is probably the one that is closest to the conception of secularism I am trying to reveal here. Yet, most multiculturalist critics position themselves as advocates of a profound modification of the concept of secularism or proponents of different implementation of policies than those they perceive as secular policies. I aim to outline the points of criticism of those critics I categorize as multiculturalist and try to understand whether they are wrong about secularism, or how their purposes of criticism are in fact shared by the conception of secularism I put forward. The second category, postcolonial criticism is a rather contextual type of criticism rather than a philosophical or conceptual one. Postcolonial critics are not homogenous, yet they share the general idea that secularism is a concept that is imposed by colonial powers on Middle Eastern or South Asian nations, and it turns out to yield more negative outcomes than positive ones, and fails to keep its promises. Finally, accommodationist critique is based on the assumption that religion has a value in itself, and therefore it is worthy of protection by the state. Accommodationism advocates policies that 'accommodate' either a certain religion or religions in general within the political realm and criticize the existence of a strong wall of separation between religion and politics.

Not all critics easily fit into one of these three categories, especially when they aim for a multi-faceted and multi-layered criticism. It is quite possible that a critic would base their criticism on a postcolonial background and argue for a kind of accommodationism that also aims to respect a multicultural society. T. N. Madan, for

instance, is one such critic (Madan, 1987). His ideas include elements of postcolonialism and to a lesser extent, accommodationism. But eventually I decided to mention him under the multiculturalist heading, because his criticism is closer to the rather constructive criticism that I aim to engage with under that category. Tariq Modood (2015) constitutes a similar case in which a rather multiculturalist approach ends up providing accommodationist recommendations as a critique of secularism. In that case, I decided to mention his contribution within the context of accommodationist criticism.

3.2.1 Multiculturalist criticism

Multiculturalism as a political theory has a very close relationship with both secularism and liberalism, so much so that these three concepts usually converge and sometimes may even be used interchangeably. Yet, those points of convergence are usually incidental and multiculturalism has developed itself as a distinct theoretical answer to the challenges posed by the increasing diversity in many modern societies. Also, within the multiculturalist camp, one can observe a kind of theoretical diversity especially in terms of the positions taken vis a vis liberalism and secularism. For instance, while John Rawls (1996) recognizes multiculturalism as a fact and builds his secular theory of political liberalism on that premise, theorists who are multiculturalists in a normative sense, such as Veit Bader (2007), strongly criticizes secularism.

In essence, multiculturalism is about coexistence of multiple cultures within a given geography, likely under the jurisdiction of one polity. The literature on multiculturalism, more specifically the normative literature on multiculturalism is about the conditions under which the fact of multiculturalism can be recognized and the challenges it poses are overcome. Will Kymlicka, the prominent theorist on

multiculturalism, argues for a kind of liberal multiculturalism, based on the assumption that liberalism does not contradict with group-specific rights given to either ethnic, indigenous, or religious minorities (2003). His understanding of liberalism is firmly based in the concept of individual autonomy. He goes so far in defending individual autonomy in his account of multiculturalism that he criticizes Rawls for adopting a too narrow view of autonomy that does not ensure individual liberty within groups (Kymlicka, 2003, pp. 155–163). All things considered, despite being a multiculturalist, Kymlicka cannot be classified as a critic of secularism as it is understood here.

Unlike Kymlicka, Veit Bader, in *Secularism or Democracy?* constructs a critique of secularism and proposes his multiculturalist alternative to it. After discussing definitional problems of concepts such as religion and secularization, Bader rightly argues that "from the perspective of liberal-democratic politics and normative theory, the important question is not whether society and state are fully secularized or secular and completely separated from religions" (Bader, 2007, p. 49). Instead, he emphasizes the two autonomies: autonomy of the state from the church and autonomy of the church from the state, a mutual agreement that is termed as "twin tolerations" by Stepan (2000).

To further this introductory point, Bader details his opposition to secularism. His critique of secularism is based on three premises. First premise is that unlike the postcolonial critique that views secularism as an unchanging and externally imposed regime, he emphasizes its constant need for contextualization. Since secularism has to be contextualized both historically and culturally every time it is invoked, it does not have an essential meaning beyond its simple lexical meaning, and it often erodes the two autonomies that Bader sees as necessary for any decent state (Bader, 2007, p. 102). Second and third premises are Bader's opposition to both the first-order and second-

order justifications of secularism. By first-order justifications, he means the ethical justifications of secularism that he views as perfectionist, and by second-order justifications he means the political justifications that he views as inadequate (Bader, 2007, pp. 102–109).

As an alternative to secularism, Bader proposes associative democracy (AD) as a normative model of religious governance. Bader's associative democracy is a model which aims to secure the two autonomies of the church and the state that he sees as essential for any decent state. As its name suggests, it's a system that emphasizes associations, with strong checks on entry and exit conditions. Bader argues that associative democracy burdens the citizens much less than the demands of the liberal democratic models, which, as he argues, imposes thick ethical and political requirements on them.

I argue that this is the point where Bader's theory bases itself on a misconception and misrepresentation of both liberal democracy and secularism. Bader writes: "AD resists the temptation to legally impose demanding liberal and democratic standards on all associations and proposes the toleration of non-liberal and non-democratic minorities", and goes on to defend AD by saying that it "is not only compatible with meaningful individual autonomy but that it actually enhances without imposing it" (Bader, 2007, p. 210). With these arguments, Bader effectively puts an end to the idea that religion is, or at least, could be a private matter, or a matter of conscience. On the one hand, he argues against liberal democracy since it imposes a thick ethical doctrine on citizens, and on the other hand he suggests that AD is supposed to prevent religious associations from imposing illiberal sanctions in terms of entry and exit. If the primary agent in AD is the association, on what basis do we protect the citizen from illiberal or

authoritarian actions of the association she is a member of? If AD is supposed to be compatible with 'meaningful individual autonomy' and Bader believes that this is something that is worthy of protection against the associational imposition, what makes AD less ethically demanding than liberal democracy? After all, individual autonomy is the basis on which liberal democracy is built.

I believe that the problem with Bader's theory is rooted in his understanding of the concept of autonomy. In fact, he puts forward a detailed analysis of the various conceptions of autonomy and distinguishes them based on how demanding or burdening they are (Bader, 2007, p. 74). The problem with this analysis is that he distinguishes Kantian moral autonomy from personal moral autonomy as self-determination, and even distinguishes that from Rawlsian political autonomy. This distinction is based on a scale of maximalism and minimalism. However, Kantian moral autonomy, self-determination, and political autonomy are not different from each other or are different levels of autonomy. The belief that humans have the capacity to reason and therefore are self-ruling beings is the common tenet in all these conceptions of autonomy. It might be true that Kantian autonomy is the basis for a comprehensive moral doctrine, but as the basis of a political system it should only be taken into consideration to the extent that it recognizes the human capacity to self-rule.

Bader's work is crucial in understanding the connection between secularism, liberal democracy, and autonomy. While Bader demonstrates this connection, his misrepresentation of the kind of autonomy that constitutes the basis for liberal democracy and secularism leads him towards the normative model he defends. Bader is well aware of the risks involved in conceding power to associations that may be

authoritarian or illiberal, but I do not believe that being aware helps him provide convincing solutions to those possible problems associated with AD.

Another representative of multiculturalist critique of secularism is Charles Taylor. Taylor is by no means a critic of secularism in the same fashion as Bader, and his criticism is much subtler, but his call for the redefinition of secularism in favor of what can simply be called multiculturalism is the reason why he should be considered in this category.

The main point that Taylor makes is that secularism, in the form that is adopted in most Western democracies is flawed, mainly because it treats religion as a special case. Taylor argues that the state should be neutral toward not only religions, but also different comprehensive doctrines, such as philosophical ideas. This idea is based on his definition of secularism with three principles, with reference to liberty, equality, and fraternity. Taylor's principles of secularism are simply religious liberty, neutrality of the state toward different religions and *Weltanschauungs*, and maximum possible inclusion of those religions and world views (Taylor, 2011, pp. 34–35). Taylor goes on to say that "[t]he state can be neither Christian nor Muslim nor Jewish, but, by the same token, it should also be neither Marxist, nor Kantian, nor utilitarian" (Taylor, 2011, p. 50).

The main problem with Taylor's redefinition of secularism is evident in this quotation. Taylor is right to claim that a state that is based on liberty, equality, and fraternity should not overburden its citizens by imposing thick doctrines on them, religious or secular. However, redefining secularism in such a way that it loses its original meaning that refers to the relationship between the state and religion is too much of a stretch. It may even follow that what Taylor suggests is not to redefine secularism, but rather to replace it with some kind of multiculturalism that prescribes

equidistance of the state toward different worldviews, regardless of them being religious or not. Yet using the word secularism implies that there is a difference in kind between religious and secular worldviews, as well as a kind of institutional separation between religion and the state. Therefore, Taylor's suggestion does not constitute a definition of secularism, but merely reiteration of basic liberal democratic principle of neutrality.

A proponent of – not exactly multiculturalism, but – pluralism, William E. Connolly is another critic of secularism from a position that is relatively close to Taylor. In his work, *Why I am not a Secularist*, he outlines the shortcomings of secularism from a pluralist/multiculturalist point of view. His main concern with secularism as a social movement is that following an honorable period of struggle against religious dogmatism, secularism ended up being limited by its own dogmatism. Connolly argues for a public sphere that is fed by multiple moral sources rather than a singular one, either secular or religious (Connolly, 1999, p. 6). This argument is based on the assumption that the contemporary understanding of secularism is influenced by the modernity that elevated it to a dominant position as opposed to religious or other world views. The implications of this criticism on political theory primarily concerns liberal secularists, such as John Rawls. In his book, Connolly criticizes Rawlsian secularism specifically for being based on static conceptions of person and Rawls's conviction that religion and politics are easily separable.

Connolly's critique of secularism within the Rawlsian brand of liberal democracy is backed up by his critique of Kant, whose tradition is followed by Rawls. According to Connolly, Kantian philosophy influenced the mainstream conception of secularism that is adopted by Rawls and Habermas, among others. Connolly argues that Kant established a philosophy that replaced ecclesiastical thinking, but it simply became

as singular and rigid as its predecessor. It follows from this that neither Rawls, nor Habermas can come up with a political theory that is adequately pluralistic and epistemologically open.

Connolly's criticism, then, goes much deeper than simply a critique of secularism and constitutes a part of his larger project of pluralism and agonistic democracy that advocates a political sphere that includes much more radical form of contestation and plurality. Agonistic democracy has especially been critical of Rawlsian and Habermasian brands of liberal democracy that are within the Kantian camp (Honig, 1993; Mouffe, 1999). Therefore, Connolly's criticism is also much more radical than that of Taylor, or even Bader, and in opposition to not only secularism itself but a whole set of values that can be traced back to Enlightenment and Kantian philosophy.

As also indicated above, multiculturalism encompasses a wide variety of stances toward the challenges of coexistence, and in itself is not an antithesis or critique of secularism. A multiculturalist critique of secularism, on the other hand, either involves the attempt to enlarge the scope of secularism as a regime that governs diversity to include not only differences about faith, but any ethical, ideological, or cultural difference whatsoever, or to do away with secularism altogether and replace it with an ethos that is much more radically inclusive of plurality. Yet, the point that critics miss is that secularism is not only about governing diversity, but also an indicator about the nature of the state.

It is evident in the works of multiculturalist critics that the fact that secularism is based in autonomy is either ignored or underplayed. Secularism is usually depicted as a rigid and exclusive regime of religion and politics that is not flexible enough for the pluralistic society that we live in. However, this depiction is based on either a partial

representation of secularism or misrepresentation of its premises. In fact, expression of plurality of cultures and identities are only possible through recognition of autonomy, and secularism is the method in which the liberal democratic state recognizes and allows the expression of autonomy.

3.2.2 Postcolonial criticism

Postcolonial criticism is the umbrella term I use for those critiques of secularism that arise from specific postcolonial contexts, especially Middle East and South Asia. While they may employ various methodologies, the overarching premise of postcolonial critics of secularism is that it is part of the colonialist or imperialist legacy. Unlike multiculturalist or accommodationist critics, postcolonial critics focus more on taking a critical approach on secularism and deconstructing it as a part of colonial legacy in general, rather than aiming to modify or replace it with another regime of relationship between political authority and religion. Some prominent postcolonial critics of secularism will be mentioned here in order to contribute to the general point that a new conception of secularism is necessary. This brief section may not do justice to the whole postcolonial school, but hopefully it will provide some representative elements of its critique.

Talal Asad has established a critical postcolonial school of cultural anthropology that aims to deconstruct secular, Western assumptions about religion and secularism (Hirschkind & Scott, 2006). In *Formations of the Secular*, he engages in a critique of secularism as a "political doctrine" (Asad, 2003). Asad aims to strip secularism of any essence and traces a genealogy of secularism as a concept that developed in opposition to religion. The implications of this in the political theory realm is that secularism is in

no way capable of solving problems of contemporary pluralistic societies. The criticism that is built upon the assumption that the values of modernity, which are essentially values of the West and which includes reason and secularism, are sources of a false sense of supremacy against non-Western cultures. Therefore, in an attempt to de-essentialize certain values, Asad eventually essentializes cultures and takes their adversity as given. Also, by cherry-picking bits and pieces of evidence to support his argument, he never really takes up the challenge of criticizing the Enlightenment's claim of supremacy of reason without making it about The West vs. the rest of the World.

A recent work from Asad's school of anthropology, Saba Mahmood's *Religious Difference in a Secular Age* constitutes one of the most powerful criticisms directed toward secularism from a postcolonialist point of view (Mahmood, 2016). Her anthropological account of the Egyptian case of religious difference demonstrates how the conditions of religious minorities can worsen and the tensions between different religious communities might increase under so-called secular governments, because secularism both regulates and controls religious life and intensifies pre-existing inequalities in favor of the majority. Mahmood writes: "Following Talal Asad, I conceptualize political secularism as the modern state's sovereign power to reorganize substantive features of religious life, stipulating what religion is or ought to be, assigning its proper content, and disseminating concomitant subjectivities, ethical frameworks, and quotidian practices" (Mahmood, 2016, p. 3).

Mahmood convincingly argues that the 'multiple secularisms' idea which proposes that secularism in non-European contexts such as the Middle East and India is fundamentally different from that in Europe, does not hold water. Mechanisms of the modern state is not too different in European and non-European contexts. Also,

secularism should mean more or less the same thing in these contexts, and merely contextual differences should not lead one to conclude that a concept such as secularism can be implemented so differently that it ends up being meaningless. Yet the argument that secularism consists of practices that control religion and intensify existing inequalities would not accurately reflect the nature of any commonplace definition of secularism. State control of religion is a regime that is in direct contradiction with the separation principle which is one of the core tenets of secularism. Support for any kind of hierarchy between different religious communities in the society by the state is also a direct violation of the promise of neutrality that secularism makes.

Saba Mahmood is surely aware of this obvious contradiction. Yet she assumes that it is inevitable for any secular state to pursue these anti-separationist and non-neutral policies. I believe, on the other hand, that the distinctions I will make here within the analysis of the concept of secularism will be helpful in understanding and resolving these contradictions. As I argued above, I do not make a distinction between a Western and non-Western, or a European and non-European form of secularism. But several other distinctions have to be made. First, a distinction has to be made between liberal democracies and others, be it illiberal democracies, autocracies, authoritarian states, etc. An assumption that is held throughout this study is that liberal democracies are secular states by nature. Another distinction can be made between secular states and secularist states. While the secular state claims to be neutral in matters of religion, secularist states have the thick ethical purpose of secularizing the society. Similarly, states that control religious institutions or those that prefer a hierarchy between different religious groups within the society also do not have a claim to neutrality or separation. From this perspective, the oppressive or unequal character of the Egyptian state is not the result of

its secularism or the Middle Eastern context, but the result of the fact that it is not a liberal democracy that claims to uphold neutrality and equality.

This does not mean that modern liberal democracies are immune to those problems. In fact, both Asad's and Mahmood's works show that Western liberal democracies can at times be as oppressive as dictatorships or religious states. However, their argument that this oppressive character is essential to liberal democracy is indefensible. In this narrative, state is seen as an essentially oppressive agent, and its gradual increase in authority is at the expense of the communal or individual liberties or autonomies of its subjects. The Hobbesian revolution that took place from 17th century onward indeed witnessed the emergence of the absolutist state that ended up being defined by the Weberian monopoly on violence. Yet, this narrative ignores or undermines the democratization process that gradually recognized the moral autonomy of the individual and promised people the right to rule themselves. Asad and Mahmood are right to argue that different religious communities enjoyed a greater level of autonomy in some of their affairs in the pre-Hobbesian state. Yet members of those communities were in no way recognized as autonomous citizens with inalienable basic individual and political rights.

The democratization process is far from complete, and even those polities which have achieved the greatest extent of democratization sometimes fail to respect the equal autonomy of its citizens. In fact, the democratization process can be identified as an ongoing history of promises that are yet to be fulfilled. Pre-Civil War democracy in the United States had slavery, but it would be unthinkable to argue that slavery is an inevitable consequence of democracy. Or to give another example, only some democracies have recently recognized marriage equality, but this does not mean that

liberal democracy is built on the institution of heterosexual marriage. Such examples of the focus on the unkept promises of democracy and secularism stem from the specific school of thought that Asad and Mahmood work within which aims at exposing the power and interest relations embedded within social institutions and norms. For this reason, it belongs to a different category than this study which aims to provide a conceptual analysis of secularism using methods of normative political theory.

Another major source of postcolonialist criticism of secularism is India. As one of the most multicultural countries in the world and with a colonial background, India is home to some of the most serious debates on secularism. In these debates, the colonial heritage of Indian secularism is often brought to the forefront of discussion. In this context, a postcolonialist criticism of secularism from an Indian point of view is based on the argument that secularism is an import from the West, it emerged from its specific history, and it cannot be applied to the Indian context. It follows from this argument that India would be better off if secularism as a constitutional principle were abandoned.

Partha Chatterjee makes similar points by pointing out what secularism has failed to do, rather than what it has achieved. The primary example he uses is the apparent compatibility of the Hindu Right with the principle of secularism. According to Chatterjee, secularism fails because it cannot resolve the challenge posed by Hindu Right, and therefore is unable to protect minorities as it should (Chatterjee, 2010). Chatterjee goes on to criticize secularism by providing an account of British rule in India and how it adopted secularism. He points out the ethical principles of the secular state as liberty, equality, and neutrality, and shows how the secular state in India failed to fulfill these principles. In practice, Indian context caused several anomalies and contradictions for these principles to be fulfilled. In a relatively simplistic logic, Chatterjee concludes

that "cultural and historical realities of the Indian situation" prevents a liberal-democratic understanding of a secular state to become successful, as in, meet the criteria it sets for itself.

In the Indian context, secularism is discussed not with reference to its ideals, but with reference to those who defend or criticize it. In Chatterjee's criticism, it is evident that the so-called adoption of secularism by the Hindu Right discourages many progressive or liberal intellectuals from defending it with no strings attached. The Hindu Right usually brings forward secularism as a way to suppress minority religions and to preserve Hindu domination. This, of course, is not consistent with the genuine understanding of secularism which is supposed to treat all religions (or the lack thereof) equally.

This context-bound and selective type of criticism is typical of postcolonial critique of secularism. Most postcolonial critics point out real and urgent problems that require real solutions, yet contextuality and fluidity of contextual apparatuses result in inconclusive analyses. Secularism as a constitutional principle that would require respect toward the individual moral autonomy of citizens would not, for instance, let the state become entangled with religious lives of its citizens. Values that secularism ought to protect, such as freedom of conscience, freedom of worship, and toleration are values that are adopted also by most postcolonial critics that are progressive. Proposing to abandon secularism because contextually it is made part of a right-wing discourse would also mean to abandon these values.

As indicated above, the categories of critique of secularism is not exclusive. The multiculturalist, postcolonial and accommodationist critique are neither the only types of critique of secularism, nor does it mean that a critique may not belong to more than one

of these categories. Specifically, some postcolonial authors (such as T. N. Madan and Ashis Nandy) who are critics of secularism are not categorized here, but under the accommodationist category below.

3.2.3 Accommodationist criticism

The use of the concept 'accommodationist' as opposed to 'separationist' in the context of the relationship between the state and religion goes back to the early constitutional debates in the United States. Essentially a debate on the extent of the First Amendment that bans the Congress from making any laws "respecting an establishment of religion", the accommodationist and separationist positions are shaped based on their assumptions about the nature of religion and the state. While separationists believe that this amendment builds a wall between religion and the state, accommodationists assume not only that the constitutional separation is not as clear-cut as separationists suggest, but also that religion has an inherent value that is worth preserving, as well as that the state has a duty to do so. For instance, late Supreme Court justice Antonin Scalia often argued that the American constitution did not require separation in the sense that the government is banned from favoring religion over nonreligion (Richardson, 2014). In contrast, justice Ruth Bader Ginsburg interprets the establishment clause as separation, as evidenced by her dissenting opinion in Burwell v. Hobby Lobby case (*Burwell v. Hobby Lobby*, 2014).

Although the terminology initially appeared in the American context, accommodationism became one of the primary positions from which criticism of secularism is directed. Outside that context, accommodationism also covers any kind of compromise as opposed to strict separation between religious and political authorities.

This includes not only a position on the government policies or institutions, but also the relationship between the public sphere and religion. Viewed from that point of view, accommodation of religion is a common practice for even most secular states.

Especially when contrasted with multiculturalism, accommodationism is based on a disagreement about the nature of the problem that is aimed to be solved. The question is not about the way in which religion and politics will be assigned to their own realms in the society, but whether there should be such different realms in the first place. From this perspective, accommodationism assumes that no such clear-cut distinction can be made between religion and politics; therefore, religion should sometimes, or often, be accommodated by the political authority. Accommodationism became relevant again in the recent debates on secularism as it has been defended in various forms by those such as Nicholas Wolterstorff, Philip Hamburger, Martha Nussbaum, and others. Their arguments in support of accommodationism will be briefly analyzed here and their main points of criticism towards secularism and possible relevancy of their definition of secularism will be outlined.

A moderate defense of accommodationism, or rather, interpretation of the First Amendment of the Constitution of the US as accommodationist, is put forward by Martha Nussbaum (Nussbaum, 2008). Although the American Constitution is one of the primary examples of separation between politics and religion, Nussbaum's interpretation allows one to read it as a possible coexistence between non-establishment and accommodationism. She emphasizes that the constitution gives religion (as opposed to conscience in general) a special status and thus it can be argued that the exemptions should be given to religion in order to ensure free exercise as long as there is no compelling reason not to do so. Yet, Nussbaum does not interpret this as a privilege

given to religion or religious institutions. On the contrary, she argues that the state should adopt accommodation in order to treat its citizens fairly, especially when it is applied to minority religions. However, the problem with Nussbaum's defense of accommodationism emerges when she does not extend the same type of accommodation in the name of fairness to the non-religious. At that point, a justification for the special status given to religious reasons for example in rejection of military conscription as opposed to secular reasons is insufficient. Overall, Nussbaum's defense of accommodationism that is applicable to free exercise of religion with the purpose of fair treatment toward religious minorities falls short of becoming a generalizable principle.

Tariq Modood is known for his theory of multiculturalism, but the reason why he is mentioned under the heading of accommodationist critique of secularism is that his main point against secularism is a critique of the idea of separation and a defense of some sort of accommodation (Modood, 2015). Although he is working within the paradigm of the liberal democratic state (what he calls liberal democratic constitutionalism, LDC), Modood argues that a certain kind of accommodation, in the form of privileging religion by the state is permissible and compatible with LDC. Modood not only argues that accommodation is within the limits of LDC, but it is also a part of many European regimes in which there is no strict separation between religion and the state, which he calls 'moderate secularism'.

Although Modood calls his proposed system 'moderate secularism', it is debatable to what extent it can be considered as secularism if separation between religion and the state, one of the core tenets of the term is done away with. In fact, Modood adopts a thin conception of secularism (which will be mentioned below as the 'secular source of law'), the conditions of which is met as long as the state does not

derive its authority from religion. Doing this, he openly rejects the separation conception of secularism (Modood, 2015, p. 183). While it might be acceptable according to some interpretations (Laborde, 2013b; Nussbaum, 2008) to allow some level of accommodationism of religion within a liberal democratic state, an absolute rejection of separation engenders a whole set of problems including but not limited to excessive entanglement with religion as well as other possible consequences which are irreconcilable with basic tenets of liberal democracy.

One such problem with Modood's account is the primacy of group or collective rights against individual rights when it comes to religious communities. Modood's accommodationism allows, for instance, representation of Muslims as Muslims primarily, instead of individuals. This group primacy over the individual is reinforced by accommodating religions 'as religions' within the state structure, or state support of religious minorities 'as groups' undermines one of the most essential characteristics that the liberal democratic state depends on, that is, treating its citizens as free and equal individuals. While liberal democracy does not necessarily rule out group rights (Kymlicka, 2003), Modood's model envisages a situation in which the state does not take a neutral stance toward religion but rather favors it, and this directly or indirectly disadvantages those outside the favored religion or those who belong to a minority within that specific religion.

One final point about Modood is that he is skeptical about the point that Bhargava makes on "weak establishment" states, namely those that have symbolically retained official churches or official religions, yet, in practice are secular. According to Modood, this distinction is not theoretically clear (Modood, 2015, pp. 185–186). Clarification of this problem is one of the central aims of this work. If one assumes that

those "weak establishment" states are somehow secular, then one needs to look beyond the apparent institutional settings and symbols, and instead observe practices and the values that guide those practices.

While Nussbaum and Modood represent a moderate position on the defense of accommodationism as opposed to separation (or sometimes neutrality), there are also proponents of a more comprehensive accommodationism. Philip Hamburger (2004), writing again in the American context, takes a much more critical stance toward the interpretation of the First Amendment as separation of church and state. Hamburger attempts to develop a genealogy of the separation account that resulted in a restriction of religious freedom of especially Catholics and other minorities. From the same perspective, he suggests that separation argument has historically been used by anti-Catholics, nativists and racists (including the Ku Klux Klan) that aimed to preserve their dominance in the society. Hamburger's account may be read as a genealogical critique of separation doctrine rather than a defense of accommodationism and such a reading could place him in a similar position to that of Nussbaum, merely pointing out unfair treatment of minorities in the name of separation. However, Hamburger makes the normative implications of his work clearer especially in the conclusion. Rather than being aware of the abuse of the separation doctrine and aiming for a more comprehensive and fairer protection of individual rights, Hamburger calls for more active church engagement in politics and more religious reasons in the public life. From this point of view, he ends up being not only critical of the right-wing interpretation of separation between church and the state, but also of liberal and secular advocates of the policy.

Accommodationism does not only represent a stance towards institutional arrangements regarding the relationship between the state and religion. In the case of Wolterstorff, a critique of the Rawlsian idea of public reason, a distinction between the institutions of liberal democracy and the ethics of citizenship which determines the kind of reasons that are allowed in the public sphere. Wolterstorff attempts to provide a defense of accommodation of religious reasons in the public sphere from the standpoint of liberal democracy (Audi & Wolterstorff, 2000). In order to do this, he makes a distinction between liberal democracy and what he calls "the liberal position" of John Rawls, namely the position that citizens should put a restraint on religious reasons (Audi & Wolterstorff, 2000, p. 81). Arguing that the liberal position requires unfair burdens on religious citizens, Wolterstorff instead defends his "consocial position" which envisages an impartial state that does not endorse separation and does not impose any requirements on the type of reasons that could be allowed in the public sphere.

A similar, but more subtle critique of the Rawlsian-Habermasian "liberal position" on the neutrality of reasons in the public sphere comes from Maeve Cooke. Cooke's idea is built upon the assumption that there is a disjuncture between the postsecular society that is defined by Habermas and the secular state that has developed historically. For this reason, Habermas's requirement that religious reasons should only be included in the public sphere if they can be translated to an all-accessible, secular language is too demanding according to her. Instead, Cooke offers a test of authoritarianism to the reasons brought in the public sphere and only those reasons that are authoritarian would be left outside the debates that form the basis for binding decisions (Cooke, 2007). In this proposal, there would be no restrictions that would leave religious reasons outside the debate in the public sphere. For this reason, Cooke's

position can be identified as a moderate form of accommodationism although she does not propose any institutional accommodation of religious authority or religious group representation within the state.

Accommodationism has powerful proponents also in India, which implements a unique form of constitutional secularism in a very religious and multicultural subcontinent. Although Madan and Nandy, two representatives of Indian accommodationism, write from a postcolonial Indian context, their emphasis is more on what their alternative to secularism would be, rather than merely a critique of colonial secularism. Postcolonial criticism is more interested in demonstrating the internal and external inconsistencies of the systems and regimes established by colonial powers, rather than providing a better alternative. Accommodationism, on the other hand, is a position in itself. It has its own premises about religion, society, and the state. Madan and Nandy's work surely contains elements from both, and it would not be wrong to put them under the postcolonial heading either, but I eventually chose to discuss their work as representatives of accommodationist criticism.

T. N. Madan engages in a critique of secularism, especially in the Indian context, which amounts to a defense of a type of accommodationism (Madan, 1987). Rather than a principle of separation between the state and religion, Madan defines secularism as a position that is antithetical to religion and therefore in a very religious society it is bound to fail. Of course, he acknowledges that Indian secularism is focused more on the neutrality principle rather than separation, however he insists that it was an ideology imported from the West and despite all the efforts of Nehru and a small, westernized elite, secularism could not be accepted in the Indian society. Although Madan says he does not advocate the establishment of a Hindu state in India, his proposal is to "take

religion seriously" (Madan, 1987, p. 758). It is unclear what is meant specifically by taking religion seriously, however it can be understood from Madan's writings that since he assumes that secularism is "an alien cultural ideology" instead of a constitutional principle that guides certain institutional arrangements within the state, his expectations from secularism as well as his critique of it are built upon a misrepresentation (Madan, 1987, p. 757).

Like Madan, Ashis Nandy's position can also be categorized under both postcolonial and accommodationist criticism of secularism (Nandy, 1988). In fact, Madan and Nandy's stances toward secularism is genuinely postcolonial because they represent secularism as an ideology that is born within the specific historical conditions of early modern Europe, that cannot be implemented elsewhere, especially where European colonization has imposed it. Also, Nandy also subscribes to the idea that secularism is not simply a constitutional principle, but an anti-religious manifesto that could only be adopted by the small, Westernized elite of India, or other colonies. Therefore, Nandy's argument for accommodation is built upon this representation of secularism. Nandy calls this form of accommodation an anti-secularist form of religious tolerance that is inspired by Gandhi. The problem with this conception of tolerance, however, rests within the fact that its source is a religious belief, specifically Gandhi's interpretation of Hinduism that allows him to adopt various religious identities simultaneously and therefore preach an ethic of religious tolerance. The problem here is not the ethic of religious tolerance that Gandhi (and Madan and Nandy following him) adopts, but the fact that it is based on a specific interpretation of religious doctrine and that in this form could not be expected to be adopted intersubjectively in a multi-

religious society. Such ethical doctrines are bound to fail as soon as the modus vivendi is disrupted as long as their affiliation with a specific religious community remains strong.

Accomodationism, as it can be seen from the above examples, is the broadest category of criticism directed toward secularism. Since it is named based on a specific policy preference rather than a theoretical perspective, some overlap is possible among different perspectives that defend religious accommodationism. Regardless, accommodationism is essentially a demand for a privileged status for religion before the law. The main argument that most accommodationists put forward is that a strict separation between religion and politics (or public life) is a breach of freedom of religion. However, a separation between religion and politics in principle would never become a "strict separation" in practice in constitutional regimes, because this separation would have to be regulated by law, and rights of each institution and citizen are supposed to be respected. In fact, (as it will be further explained below) separation is only one institutional aspect of secularism. Accommodationist politics usually aim for the disruption of this rule of law regime in favor of privilege for religion (Cohen, 2015).

3.3 Conceptions of secularism

In a conceptual analysis of secularism, it is essential to distinguish the concept itself and its various conceptions. In *Theory of Justice*, John Rawls emphasizes the distinction between the concept of justice and different conceptions of justice, which are different interpretations of the concept, and then goes on to describe his own conception of justice, which is justice as fairness (Rawls, 1971, p. 9). The same methodology was adopted by Richard Lindley in his analysis of the concept of autonomy. He writes: "An adequate conception must fall within the scope of the basic concept. Any conception of

autonomy which entailed that people are autonomous if and only if they are never able to make any decisions about how to live their lives, would clearly be inadequate to the concept" (Lindley, 1986, p. 3). Following this perspective, it can be said that concept has some essential tenets that have to be shared by all of its conceptions. The extent of disagreement between conceptions is limited by the concept. It also follows that any two conceptions of a concept cannot contradict each other radically, being two interpretations of the same concept, they should ideally be complementary to each other.

Within the context of secularism, the conceptions of the concept should also be distinguished from its misrepresentations. In the critique section, I tried to demonstrate that most critiques of secularism are usually based on such misrepresentations of the concept. In what follows, I aim to touch upon different conceptions of secularism, which are definitely not misrepresentations of the concept, but still are unable to grasp the concept in its entirety. In other words, I argue that a more fundamental conception that would naturally agree with other conceptions is possible. For this reason, after examining those conceptions, I introduce my own conception of secularism: secularism as autonomy. My argument in this section, therefore, is not to reject the conceptions I discuss here, but rather investigate the origins of these conceptions in order to find out what secularism really means, and come up with a more encompassing conceptual tool.

The conceptions of secularism that will be analyzed in this section are secularism as toleration, secularism as freedom of conscience, secularism as separation, secularism as neutrality, and secularism as secular source of law. This is not a comprehensive list by any means, but they represent most of the understandings of secularism as a constitutional principle that are in circulation. Surely, the meaning of secularism that refers to the social phenomenon of secularization is excluded from this analysis, as well

as the conceptions that will be analyzed. Therefore, only those conceptions of secularism that define the state as secular are included. For each of these conceptions, a brief definition will be given, and their historical development will be traced. It will also be explained why each conception falls short of encompassing the whole idea of secularism and a new conception, secularism as autonomy, should be introduced in order to overcome this gap.

There are also more obvious and intuitive understandings of secularism that can be classified as conceptions of secularism. The example for this can be the definition of a secular state as simply a "non-religious state". I do not consider this as one of the conceptions that will be analyzed here because it is not much more than a simple dictionary definition of secularism. In fact, I already acknowledge this definition (with some modifications) as a working definition of secularism in the conceptual clarifications section above. Therefore, secularism as a principle that defines the state as non-religious is simply assumed to be an agreed-upon definition and the conceptions that will be analyzed here are confined to more comprehensive and rather disputed ones.

3.3.1 Secularism as toleration

Toleration is not exclusively a conception of secularism. It can as well be understood as a virtue that is crucial for coexistence in multicultural or multi-faith societies, that should be followed by either the members of such societies, or by the state. When the subject of toleration is the state, it might indeed qualify as a conception of secularism. In fact, compared to other conceptions of secularism that are mentioned here, toleration is less directly related with secularism. However, their shared historical origins as well as

the problems that they aim to solve caused a convergence and affinity between toleration and secularism at the conceptual level.

As a consequence, secularism is usually conflated with toleration. It is indeed true that toleration is one of the primary ideas that secularism was developed from. Therefore, it is important to trace the idea of toleration historically in order to understand its influence on the idea of secularism, but also in order to understand how it is different from secularism. To be clear, toleration is a wider term than secularism as a constitutional principle. It may refer to a kind of relationship between a number of actors, such as the one between different groups, or the one between the state and a group of citizens, while secularism as a constitutional principle specifically refers to the relationship between the state and religion. So, the conception of secularism as toleration refers specifically to the kind of secularism that bases itself on the premise of toleration.

Again, it is a good idea to start with the very obvious semantic content of the word toleration. By definition, toleration implies a hierarchy. The object of toleration is inferior to, or undesirable for the subject that tolerates it. Historically used in a religious context, toleration usually involves laws and regulations that order members of a majority religion to tolerate, or allow the existence of a minority religion. Thus, toleration takes form of a kind of protection of a minority, as long as the majority remains committed to the promise of toleration.

History of toleration can be traced back to as early as antiquity. Toleration of the Jews by Cyrus the Great and the multireligious and tolerant empire of Ashoka are usually given as the early examples of toleration. Yet, toleration as an idea existed almost everywhere with a diverse ethnic or religious population, since the preservation of the status quo of diversity is usually a preferred option as opposed to a constant

persecution of minorities. A relatively modern idea of toleration, which can be linked to the modern idea of secularism, emerged only after the Protestant Reformation which definitively transformed the religious outlook of Europe. The religious wars in Europe after the Reformation have urged the rulers of Europe to agree on new arrangements in the new kind of societies in which religious diversity is an inevitable fact.

One of the earliest examples of such arrangements was the Religious Peace of Augsburg in 1555. With the introduction of the principle *cuius regio, eius religio*, the freedom to choose one's religion (between Roman Catholicism and Lutheranism) was given to the rulers of German states. The subjects living in these states, however, did not have such freedom, yet they could emigrate to another state whose ruler is of their religion as long as they paid compensation to their lords for freedom. This is a very limited conception of toleration as opposed to any modern meaning of the term. Also, the 'freedom' it provided was only limited to two confessions of Christianity. All non-Lutheran Protestant faiths (Anabaptists, Calvinists, etc.) were excluded from the arrangement. Yet the principle of cuius regio, eius religio constitutes an important step toward the idea of the state as the source of authority within a clearly defined territory, while at the same time marking a departure from the medieval idea of 'two swords', that at least to some extent separated the temporal and religious authorities (Gorski, 2000).

In the same century, other treaties of toleration followed a similar pattern in the sense that they regulated religious freedom in societies with Catholic and Protestant subjects, yet at the same time the idea that individuals may have the ability to choose their own religion began to be relatively more accepted. The Union of Utrecht, signed in 1579, also settled the matter of religion at the state level by also referring to the religious freedom of the individual. Edict of Nantes of 1598, on the other hand, recognized more

explicitly that freedom of religion is an individual freedom, and thus paved the way for the idea of freedom of conscience, while at the same time keeping Catholicism superior to Protestantism.

All of these examples constitute some sort of *modus vivendi* that is reached following long and bloody violent conflicts and in the presence of an outside threat against which peace among different religious groups in the society seemed crucial. In that sense, they are not directly related to the modern idea of secular state. But there are two important conclusions to draw from this 'age of toleration'. First, as mentioned above, the sovereign state which would culminate in the Peace of Westphalia in 1648, began to emerge as the final authority which had the power to regulate the relationship between religion, society, and the individual. Second, religion began to be understood more as an individual choice rather than an all-encompassing group identity.

Seventeenth Century Enlightenment thinkers, more specifically John Locke and Baruch Spinoza developed more comprehensive ideas on the concept of toleration. Both born in 1632, Locke and Spinoza respectively wrote *A Letter Concerning Toleration* and *Tractatus Theologico-Politicus* on the subject. Yet, despite some minimal commonalities due to the Enlightenment context of their thought and their common sources of influence (especially their contemporary Pierre Bayle), their approach to the idea of toleration is very different from each other both methodologically and in terms of its content.

John Locke's *Letter*, rather than a comprehensive philosophical work, reads as a series of arguments aimed at convincing a sovereign to adopt religious toleration. For this reason, it mainly consists of practical reasons to adopt such a policy rather than a universalistic moral foundation, and this makes it a very limited and specific defense of toleration among members of various Protestant Christian churches. Yet, reading

between the lines, one can reveal John Locke's more profound views on toleration and the relationship between religion and the state. Going beyond mere toleration, he calls for the separation between secular and religious authorities:

> It is the duty of the civil magistrate, by the impartial execution of equal laws, to secure unto all the people in general, and to every one of his subjects in particular, the just possession of these things belonging to this life." … "Now that the whole jurisdiction of the magistrate reaches only to these civil concernments; and that all civil power, right, and dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the salvation of souls…" (Locke, 2008, p. 218)

By saying that "the care of souls is not committed to the civil magistrate" (Locke, 2008, p. 218), he aims to prevent persecution of not only the members of minority religions but also those that do not conform with the majority religion. Locke's reasoning for arguing against the policing of religion by the state is as follows:

> The care of souls cannot belong to the civil magistrate, because his power consists only in outward force: but true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. And such is the nature of the understanding, that it cannot be compelled to the belief of any thing by outward force. (Locke, 2008, p. 219)

Here, one can observe that the separation between religion and secular authority goes beyond mere realms of influence of religious and secular authorities, but is based in a fundamental difference between worldly and inner-worldly. Lockean toleration can be better understood if his *Two Treatises of Government* are also kept in mind while reading *the Letter*. As a contract theorist, he is one of the earliest thinkers that recognize individual capability to decide for oneself, and freedom of conscience is an essential part of this capability.

As it can be seen from these certain arguments, John Locke is an advocate of separation between secular and religious authorities, and therefore argues that the

secular authority cannot legitimately make judgments in the name of religion. Moreover, this separation is also supported by his recognition that religion is a matter of free and uncoerced faith of the individual and is concerned with 'inner persuasion of the mind'. Locke's conception of toleration is based on these ideas of separation and freedom of conscience. In practice, this is reflected as the practice of toleration by the state towards the minority religions.

Israel contrasts two conceptions of toleration: a moderate one that is represented by Locke and a radical one that is represented by Spinoza (J. I. Israel, 2003, pp. 265–270). Unlike my generous reading of Locke above, Israel emphasizes those exclusive sections of Locke's Letter which see atheists as unworthy of toleration and his theological arguments for toleration. Spinoza, in contrast to Locke, does not base his argument for toleration on theological arguments but rather a call for individual freedom of belief and expression. Although Spinoza adopted most of Hobbes's contractarianism, Israel argues that they stand on very different grounds when it comes to freedom of expression. While Hobbes's sovereign can limit that freedom at will, for Spinoza it is the core element of toleration. With this emphasis on freedom to publish or express views regardless of their possibly provocative content, Spinoza definitely takes the concept of toleration ahead of those that only see it as a virtue of coexistence of different faiths.

How have the contemporary scholars dealt with the Enlightenment heritage of toleration? In *Toleration in Conflict*, Rainer Forst provides a comprehensive account of the concept of toleration and demonstrates both its contemporary relevance and limitations. He sets out by providing four conceptions of toleration which include the permission conception in which the majority or the authority tolerates the minority, the coexistence conception where relatively equal parties tolerate each other, the respect

conception in which toleration is based on the mutual respect shown to each other by individuals, and finally esteem conception that goes even beyond respect and involves valuing the convictions of others (Forst, 2016, pp. 26–32). Rather than dismissing or adopting any conception immediately, Forst argues that the existence of these four essentially different conceptions indicate that toleration is a "normatively dependent concept", which means that it requires other normative principles to support it and determine which conception is meant (2016, pp. 32–35).

In his historical analysis, Forst also draws attention to the realpolitik aspect of the rise of toleration in the Early Modern Era. Accordingly, rationalization of power of the state was accompanied with rationalization of morality, which resulted in the rise of a civic virtue of toleration (Forst, 2016, p. 136). From this perspective, Forst distinguishes between state toleration and intersubjective toleration and associates state toleration – which is the focus here – with the permission conception of toleration. This is in line with the above statements concerning the concept which imply a sort of asymmetry. Toleration by the state, by definition, falls into this category because by the simple fact that it tolerates a certain minority implies that it also has the right and liberty not to do so. As argued also elsewhere by Forst, this conception is in direct contrast with the 'democratic' and reciprocal respect conception of toleration (Laborde & Bardon, 2017, pp. 249–260).

Joseph Raz provides a good reasoning for the inadequacy of toleration as a regime that governs difference. Doing this, he also assumes that toleration by definition requires a majority and minority, an unequal state of affairs. Accordingly, toleration works as long as the tolerated minority does not interfere with the majority culture (Raz, 2009). According to Raz, this kind of arrangement does not comply with liberal ideals of

individual autonomy and constitutional democracy in general. Autonomy in the sense that means to make one's own choices about one's own life is in contradiction with the heteronomous institution that predetermines certain characteristics and practices of life, namely culture, religion, or any other minority or majority group. In a similar fashion with Kymlicka (2003), Raz argues that exit options from groups for individuals should be a requirement for any multicultural regime, and toleration is inadequate for such arrangements.

An overview of the history of toleration as well as an analysis of its semantic content demonstrates that it can, in some instances, be invoked as a constitutional principle that can be conceived of as a conception of secularism. Yet for this, a specific perspective on toleration should be assumed. First, a separation between toleration among different groups and toleration of the state toward different groups should be made. What is of concern here is the latter. Again, another separation should be made between toleration as a temporary arrangement that is born out of contextual necessity – modus vivendi – and a type of toleration that is based on principles. Only a principled understanding of toleration which guarantees both individual and group rights of minorities can qualify as a conception of secularism. In fact, such an understanding of toleration would tend less to be called toleration but rather neutrality. As some critics argue, toleration has an inherent meaning of asymmetry of power and it can be valuable only to the extent that it can be applied universally and neutrally to all beliefs, identities, comprehensive doctrines, etc. (Leiter, 2013).

The historical review of the idea of toleration reveals the fact that most of the thinkers that see toleration more than mere modus vivendi base their understanding of toleration on what can be retrospectively termed as recognition of individual autonomy.

Even if the idea of individual autonomy was not a fully developed concept until Kant, recognition of freedom of conscience suggests that it is acknowledged that an individual is capable of choosing one's faith and living in accordance with it. For the purposes of this study, this is the punchline of the conception of secularism as toleration. While under some conditions toleration can be identified as a conception of secularism, a more robust conception would be one that is based on the recognition of individual autonomy.

3.3.2 Secularism as freedom of conscience

Freedom of conscience is a wider version of the term religious freedom that includes not only matters of worship but also matters of faith, and not only religious belief but also any conscientious or philosophical position or worldview. It confers the individual full agency in pursuing a religion or any other deeply held worldview. Therefore, historically it can be accepted as one of the first instances where autonomy of the individual is recognized in relation to religion and politics. Also, conceptually, freedom of conscience is a direct and logical consequence of recognition of individual autonomy. Yet freedom of conscience in itself does not cover the whole concept of secularism as a constitutional principle. In the following, I will first trace the historical development of freedom of conscience as well as its contemporary conceptual understanding. I will then conclude by arguing how freedom of conscience, despite being a requirement of it, does not qualify as a conception of secularism as a constitutional principle.

Marking the definitive beginning of the concept of freedom of conscience is difficult, yet Roger Williams is a name worthy of first mention. The importance of Roger Williams for freedom of conscience stems from his influence on both the American tradition of religious freedom that is also reflected in its constitution as well as

the European constellation of ideas via John Locke. Martha Nussbaum provides a narrative of how Williams laid the ground for a universal understanding of liberty of conscience (Nussbaum, 2008).

Although the first settlers of colonial America were mostly Puritans fleeing from persecution in England, it did not take them long to establish their own religious rule. In communities such as Massachusetts and Connecticut, a strictly orthodox doctrine of Puritanism was accepted as the law of the land. Roger Williams, at least as religious as those who established theocratic rule in Massachusetts and Connecticut communities, advocated a strict separation between religion and the state, based on the idea of liberty of conscience. Williams first came into prominence in Massachusetts because of his advocacy of rights of natives. Forced to flee due to both his belief in individual conscience and rights of Native Americans, he founded a new settlement, Providence, which eventually became the center of the state of Rhode Island, and guaranteed religious liberty in its charter.

Nussbaum (2008, p. 51) draws attention to the fact that Williams emphasizes the universality of the concept of conscience. According to Williams, conscience is a faculty "found in all mankinde", and it deserves respect no matter what the specific persuasions of consciences of specific persons are. The value that Williams attributes to the liberty of conscience is so great that any harm or injury to it is a serious offense. Nussbaum goes even further by likening Williams to Kant in his universalistic defense of liberty of conscience. In this regard, Williams's defense of liberty of conscience is similar to Kant's argument for the categorical imperative, at least to some extent. Nussbaum argues that Williams's argument passes the test of universalizability and treating humanity as an end rather than means. Yet, Nussbaum also points out that Williams,

unlike Kant, does not build his argument around the idea of autonomy. The idea of self-rule, or considering whether we can give the categorical imperative as a law upon ourselves is not yet developed by Williams (Nussbaum, 2008, p. 56).

Nussbaum goes even further by arguing that some parallels can be drawn between Williams and John Rawls's work. This perspective is supported by looking at the main ideas behind Rawls's two major works: Theory of Justice and Political Liberalism. In Theory of Justice, the ideas of veil of ignorance and the original position enable citizens to conceive of what Rawls calls justice as fairness. Nussbaum argues that this is similar to Williams's idea of impartiality, which also disregards one's own interest and would take into consideration what is fair for all. Moreover, traces of Roger Williams can be found even more in Political Liberalism, which is directly related to the 'fact of pluralism' in the society. There, Rawls aims to construct a theory that allows citizens of various 'comprehensive doctrines' to come up with political principles that would make it possible for them to coexist as a political society while at the same time remaining loyal to one's own comprehensive doctrine. Nussbaum also concedes that Rawls never directly refers to Williams in his work (Nussbaum, 2008, p. 58). Yet she still argues that it is essentially Williams's idea of freedom of conscience that is being articulated in Rawls. At this point it is possible to accuse Nussbaum of anachronism. On the other hand, her point that emphasizes Williams's direct and indirect influence especially when it comes to the idea of freedom of conscience still stands.

While Kant and Rawls may not be directly influenced by Williams, we know that Locke was. Yet, also according to Nussbaum, Locke has several points of difference with Williams which makes him rather less progressive on the issue of freedom of conscience than Williams (Nussbaum, 2008, pp. 68–70). Possibly because he wished to

convince the legislators to take him seriously, Locke had to make some concessions from either separation of church and the state or the idea of liberty of conscience. Whatever his motivation was, these differences between him and Williams caused his ideas to be mentioned mainly under the heading of secularism as toleration above, while Williams, as opposed to Locke, is a much more central figure within the history of the concept of freedom of conscience.

Still, Williams's direct influence on Locke had another, possibly greater impact on the idea of freedom of conscience: Locke acted as an intermediary of the idea and put it into circulation in Europe. As mentioned above, in the 17th century, Europe was only recently recovering from years of sectarian violence and policies of toleration was at least partly came into being due to this conjectural necessity. Yet soon, this relative realm of toleration made it possible for several, more progressive ideas on the idea of freedom of individual conscience to circulate.

Although Roger Williams in America and 17th century European thinkers can be identified as the most prominent theorists of freedom of conscience as we know it today, there were attempts to promote some sort of freedom of conscience in Europe even earlier. Indeed, immediately following the Reformation, such ideas entered into circulation throughout Europe. In 1926, Luigi Luzzatti, ex-premier of Italy, wrote *God in Freedom*, which includes an extensive history of freedom of conscience. Interestingly, Luzzatti treats freedom of conscience, or the separation of church and state, primarily as a constitutional principle and engages in the history from this perspective (Luzzatti, 1930). Earlier examples of freedom of conscience are from India, either from king Asoka's or Akbar's rule. Here, such contextual applications of relative religious freedom, or 'enlightened despot'-specific policies are categorized as toleration. Yet in

the European context, in the early modern, pre-Enlightenment period, one can find the traces of freedom of conscience as an idea that is based on an individual's capacity to choose one's own belief system.

Roughly a century before Spinoza, in the period which can be defined as a period of toleration in parts of Europe, yet a period of bloodshed in others, Sebastian Castellio and Dirck Coornhert were proponents of toleration in the form of freedom of conscience. This period in the mid-to-late 16th century can be identified also as a period of transition in thought from a *modus vivendi* arrangement of toleration aimed at managing the fact of pluralism to one that is based on the recognition of the individual as an agent capable of having a conception of the good and pursuing it. This recognition focused on the idea of conscience, a human faculty that is worthy of respect and beyond the jurisdiction of the state.

The gradual recognition of freedom of conscience also implied that religion is less of a matter of community and more a matter of the individual. Before then, belonging to a religion meant belonging to a community, or a group, and therefore being subject to everything that came with it. Now, the idea that the individual is capable of choosing, or at least, believing in a religion by following his conscience was becoming acceptable, which was fueled also by the Reformation. Although not yet fully matured, this is a crucially great step toward the recognition of individual autonomy; so much so that the faculty of conscience can be likened to what Kant called the feeling that urges us to act out of respect for the moral law. Still, it should be kept in mind that in this specific historical period, arguments for freedom of conscience were more guided by practical needs than philosophically elaborate premises.

Although Spinoza was briefly mentioned above under "Secularism as Toleration", he should be treated more as a philosopher of freedom of conscience than that of toleration. As also mentioned above, while the political implications of his theory can be the adoption of a policy of toleration, such implications are strictly based on his arguments for freedom of conscience, and by consequence, speech and expression. Following Hobbes's *Leviathan* both in method and partly, in content, in *Tractatus Theologico-Politicus (Theological-Political Treatise)*, Spinoza takes a huge step toward the goal of separating philosophy from theology and thus grounding political philosophy with no reference to religion. In order to do this, he provides an extensive critique of the Bible and religion in general, finally asserting that reason and theology belong to separate realms and are not subordinate to each other. By thus demonstrating the autonomy of philosophy, he then argues for freedom to philosophize for everyone, and a political philosophy which calls for a state that guarantees such freedom (Spinoza, 2007).

Spinoza's state of nature is nearly identical to that of Hobbes, but the eventual state that would arise from that state of nature is dramatically different from that. Both philosophers have based their political philosophies independent of religion, and thus conceived of a state of nature that consists of power-maximizing atomistic individuals with absolute freedom and subject to nothing but the law of nature (as opposed to natural law). Yet in the phase where individuals in the state of nature agree upon a social contract and establish a state, Spinoza disagrees with Hobbes. Instead of transferring all their rights absolutely and indefinitely to the sovereign, individuals publicize their rights and therefore their sovereignty, thus forming a democracy. This, according to Spinoza, gives the motive to citizens to protect each other's rights.

On this foundation of democratic, rather than absolutist political theory, Spinoza argues for freedom of conscience, and more importantly, freedom of expression. He builds his case for freedom expression on mainly practical purposes such as the inevitability to prevent freedom of thought and expression and lack of benefit for the sovereign to limit such freedoms. Yet following his line of thought reveals that he recognizes the capacity of individuals both to reason and to believe, and act accordingly. Spinoza's political theory also confirms that by envisaging a democratic state that is built upon the 'public autonomy' of citizens.

Is Spinoza the first philosopher of individual autonomy? The answer to that question varies depending on the definition of autonomy that is accepted. While some scholars argued that to apply autonomy to Spinoza's philosophy would be anachronistic because the idea of autonomy was fully developed at least a century later, by Kant (Den Uyl, 1983), others proposed that Spinoza's political philosophy is genuinely built upon the recognition of individual autonomy (Kisner, 2011). This will be discussed more in detail below. However, regardless of his idea of autonomy, his defense of freedom of conscience is built on firm grounds of individual freedom and a capacity to self-rule.

Freedom of conscience is another important legacy of the Enlightenment that is still upheld; so much so that the concept has become one of the most fundamental human rights as recognized by both the Universal Declaration of Human Rights and the European Convention on Human Rights. Yet the conception of secularism as freedom of conscience is a different matter. One can talk about a conception of secularism as freedom of conscience if it is offered not in support of, but rather instead of other basic principles understood by secularism, such as the separation of religion and politics. Nussbaum is one of the primary representatives of this line of thought. She suggests that

freedom of conscience should replace separation, which might involve unfair intervention in the religious sphere (Nussbaum, 2008, p. 11). However, her definition of conscience, "the faculty in human beings with which they search for life's ultimate meaning", does not contradict with the idea of separation as I interpret it (Nussbaum, 2008, p. 19). This understanding of conscience, and therefore the argument for its freedom, requires protection by the government which is only possible through a separation between the private and public reasons and an autonomy-based understanding of secularism.

Freedom of conscience, by definition, recognizes individual autonomy because conscience itself is the human faculty that makes it possible to distinguish right from wrong. Recognition of the freedom of conscience and acting upon that conscience, then, entitles one to make decisions that are binding upon oneself. In this regard, secularism as freedom of conscience is conceptually very close to secularism as autonomy. Therefore from the perspective of negative liberty, there is overlap between these two conceptions of autonomy. On the other hand, I argue that there is more to autonomy and its realization in the constitutional state than mere freedom of conscience. Autonomy, from this perspective, is not only freedom from heteronomy, but also a legislative capacity. Habermas conceptualizes this as 'public autonomy' as opposed to 'private autonomy' and it thus constitutes the basis of legitimacy of a liberal democratic constitutional state.

3.3.3 Secularism as separation

The conception of secularism as separation is the one that defines separation between religious and secular authorities as the distinguishing feature of secularism. In this regard, secularism as separation is a minimalistic conception of secularism that is

concerned only with the institutional separation of authorities and does not take into consideration any specific principles that the state is bound by, such as toleration or freedom of conscience as examined above. This conception is the one that is distinctively about institutional arrangements, but that institutional separation also depends on the ability as well as principles to judge where to mark the line of separation. Separation is also a historical event that took place in a specific time period and determined one of the primary characteristics of the secular state. It is discussed here whether this characteristic is a necessary and/or sufficient one regarding secularism, or the secular state.

The term 'wall of separation between church and the state' became part of the popular parlance thanks to US president Thomas Jefferson's Letter to Danbury Baptists in 1802, which reflected his interpretation of the establishment clause of the US Constitution. There, Jefferson clearly suggests that the establishment clause builds a wall of separation and this interpretation was also adopted by the decision makers of the following generations, especially the Supreme Court of the US. However, Jefferson was not the inventor of the phrase or the first to use it in the American context. As in the case with early notable political thought on freedom of conscience, Roger Williams was also one of the earliest figures that contemplated on separation (Nussbaum, 2008). Just like his account of freedom of conscience, Williams's argument for separation between the church and the state was not based on an argument for good governance. Neither was it a suggestion of political theory which aimed at political fairness. Instead, his case for separation was based in his religious beliefs. Still, his ideas of freedom of conscience and separation could be realized in the colony he founded, Rhode Island.

Nussbaum suggests that Williams's emphasis is not on the idea of separation but rather freedom of conscience, as indicated in the previous subsection. Regardless of his emphasis, however, his idea of separation became well-established first in his colony of Rhode Island and later in the United States in general, thus constituted some of the first modern examples of separation between church and the state. Today, the interpretation of the establishment clause as a "wall of separation" is disputed by some scholars including Nussbaum and Hamburger who was mentioned above within the accommodationist criticism of secularism. Still, it acts as a rule of thumb when it comes to judicial review by the SCOTUS (*Everson v. Board of Education*, 1947).

Moreover, separation is not relevant only in the US context, but many other secular states that adopted the separation doctrine afterwards, especially France. After the short-lived period of separation (and anti-clericalism) following the French Revolution, the Catholic Church became partially intertwined with the state again as a result of Napoleon's Concordat of 1801. Finally, in 1905, French law on the Separation of the Churches and State was passed, marking the beginning of secular France that still exists today. Consequently, the United States and France became the most significant examples of states adopting secularism as separation.

However, although the term separation has significance in both countries, interpreting secularism only as separation, even within the context of these two countries can be mistaken. In the American context, separation refers to only one clause of the First Amendment, while the other clause focuses on free exercise. Again, in the French context, the law of separation is not only about institutional separation of the Catholic Church from the state, but freedom of conscience and free exercise of religion. This can be interpreted as follows: separation between church and the state is not required for the

sake of separation itself, but in order to serve another purpose, usually freedom of conscience or freedom of worship of citizens. Therefore, it has instrumental value for constitutional secularism and cannot be considered as the defining conception of secularism.

Another example that supports this point regarding separation is the existence of secular states that do not have institutional separation between the church and the state. The United Kingdom and Norway both have state churches, yet both states recognize freedom of conscience of its citizens and both guarantee their right to free exercise of religion. Both of these states are also committed to guarantee equality of their citizens before the law, regardless of their religious beliefs. Similarly, mere existence of separation or disestablishment in a state does not guarantee either freedom of conscience or neutrality of the state.

This does not mean that separation is a trivial matter that remains outside the conceptual extent of secularism as a constitutional principle. It should be noted that even in the above-mentioned examples such as the UK and Norway, the established (state) church is symbolic, and does not have any significant authority on either the political sphere or people's lives. Thus, even though some states that have symbolic state churches may qualify as secular states, some degree of separation is needed in practice in order to guarantee rights, freedoms, and equality of the citizens. For instance, if a state church is funded by the state, through the taxes of both members and non-members of that church alike, this would constitute a case of obvious injustice. Again, if the state religion enjoys some advantages and privileges with the support of the state that other religions or non-religious people do not, this would also contradict the neutrality claim

of the state. If this is the case, which guiding principles can inform us with regard to the extent and scope of separation?

It cannot be denied that, from a comparative politics perspective, secularism as separation serves as a simple criterion in categorizing states as either secular or non-secular. Alfred Stepan, in his influential typology of "Twin Tolerations", also made the distinction between secular and non-secular states based on separation criterion (2000). Stepan's category of "nonsecular, but friendly to democracy" states include those democracies with ceremonial established churches such as the UK, Norway and Denmark. These states, despite having a state church, guarantee to compensate for any disadvantage the citizens that are not members of the state church may suffer. People can choose not to pay church tax, opt their children out of the religion courses, publicly worship any other religion they like, or live their lives as non-religious people or atheists. Similarly, what Stepan calls "unfriendly secularisms" may (and they often do) restrict freedom of conscience and contradict the principles of neutrality. This typology also demonstrates the limits of separation conception.

Another significant approach in the literature is from Robert Audi, who has one of the most comprehensive accounts of secularism as separation (2000). Yet, his approach involves a wide interpretation of the term separation. Audi's interpretation of secularism as separation is important especially in the context of this study, because Audi also narrows down his interpretation so that it applies only to liberal democracies. In Religious Commitment and Secular Reason, he provides three principles on which church-state separation stands. These are; (1) libertarian principle which is about tolerating and permitting religious practices to the greatest extent possible in a liberal democracy, (2) equalitarian principle that is about non-preference of a specific religion

over others, and (3) neutrality principle that emphasizes lack of either favoring or disfavoring religions, non-religion, religious or non-religious citizens.

Audi's account also shows that separation is not a principle in itself, but rather a specific (but mostly required) policy in order to achieve other principles, or promises, of liberal democracy. According to Audi, these are tolerance, equality and neutrality. As I aim to demonstrate here, rather than treating these promises of liberal democracy separately, it is possible to talk about an even higher order principle, that is, autonomy. Assuming that the ultimate promise of liberal democracies which gives them legitimacy is to create such conditions in which citizens can live autonomously, then, values such as tolerance, equality and neutrality can all be argued to be justified by the promise of autonomy. Along with such values, secularism can also be defined as a constitutional principle which embodies the promise of autonomy. Within this framework, separation would be a useful institutional arrangement to the extent that it serves the purpose of secularism, rather than the definition of it.

Other than the fact that secularism as separation is not comprehensive enough to be adopted as the all-encompassing conception of secularism, there are other problems with it. For instance, separation by itself is an inherently deficient conception of secularism because it implies that state and religion are equals recognizing each other's independent spheres. Historically, the actual extent of religious and secular authorities has been a subject of great conflict. However, in the modern, Weberian conception of the state which has monopoly of violence or coercion, conceiving of religious and secular authorities as ontological equals would be mistaken. Even in a case where there are extensive religious freedoms the final say on what constitutes religious freedom belongs to the state, since it is the ultimate guarantor of those freedoms.

Another problem with separation is that it assumes the existence of a hierarchical and authoritative church structure or a comprehensive religious authority. By definition, in order to have separation, there has to be at least two entities to separate. In societies with Christian background, this is usually the case. The state could, either unilaterally or with mutual agreement, define its boundaries with the dominant church in its country, or churches in general. In other societies, such as those where the dominant religion is Islam, there is no church to separate from the state. Surely there are other institutions that represent religion, such as the Caliphate, or the Ministry of Religious Affairs in Turkey, yet they do not correspond to the all-encompassing authority of Christian churches. As a contrary example, in the United States, separation applies not to a single church, but "church" in general: an established institution which is authoritative in the doctrine of its specific interpretation of religion. Yet, even in those cases where separation is used in a general way as much as possible, the word itself bears the historical and specific legacy.

Jean Cohen, who provides a powerful critique of the debate in the American context between strict separationism and accommodationism makes it clear that separation is only a second-order principle that is derived from the principle of political secularism (Cohen, 2015). Nevertheless, it should be emphasized that Cohen opposes abandonment of separation for the sake of religious accommodation. The point made here is that while in certain contexts it can be an indispensable institutional consequence of political secularism, separation cannot be equated with secularism. If one agrees that it is a second-order principle, the first-order should be reached in order to discover a conception of secularism that is more complete.

In the final analysis, separation can be defined both as one of the most commonly accepted conceptions of secularism and more specifically an institutional arrangement between religious and secular authorities that occurred as a result of historical contingencies. It is argued here that the specific institutional arrangement of separation cannot be adopted as the only criterion of determining whether a state is secular or not. Consequently, a more encompassing conception of secularism should be found that does not limit it only to separation. On the other hand, it should be kept in mind that while separation is a deficient conception of secularism, it is still an important element of it. While absolute separation may not be always necessary, some aspects of it, such as jurisdictional separation, is inevitable in secular states. As it will be elaborated further below, secularism as autonomy would be able to overcome the shortcomings of this conception and at the same time will make it possible to assess the legitimate extent and content of separation in secular democracies.

3.3.4 Secularism as neutrality

Secularism as neutrality is the conception of secularism that defines it as the principle of state neutrality toward different religions, or lack thereof. To put it more clearly, the state should neither advantage nor disadvantage a specific religion, religion in general, or non-religion. In this regard, the state is indifferent toward any possible benefit or harm that would result from privileging either of the above. In essence, secularism as neutrality is closely related to secularism as separation. The difference between them can usually be seen as a matter of emphasis. As also indicated above, the accommodationist criticism of secularism mainly targets both separation and neutrality principles. However, here they are taken as separate conceptions of secularism because while

separation refers specifically to an institutional design, neutrality is a guiding principle that informs the state in its affairs regarding its citizens and religions. In fact, it can even be argued that these two conceptions of secularism do not necessarily overlap and cases of neutrality without separation or separation without neutrality are indeed possible.

The postulate that the state should be neutral toward religion implies that the state also should not take any stances in terms of theological assumptions or metaphysical truth claims. This idea is rooted in a more general conception of state neutrality that is one of the core concepts of liberalism. The liberal democratic state is assumed to be neutral and is not supposed to adopt, encourage or impose any specific conception of the good life upon its citizens, as opposed to a "perfectionist" state which would explicitly adopt, promote, or even enforce a specific good. The liberal principle of neutrality is famously theorized by Rawls, who suggested that the state should not adopt a "comprehensive doctrine", or the citizens should not be able to impose one particular comprehensive doctrine upon others if they wish to live as free and equal members of a society (1996). Charles Larmore emphasizes that the neutrality of the liberal state should be procedural, rather than aiming at neutral outcomes (Larmore, 1987, p. 44). This procedural neutrality is built upon the distinction between the private and the public, and it applies only to the public realm. Accordingly, the liberal state neutrality necessitates that only those policies which are "neutrally justifiable" can be enforced. From this perspective, while an economic policy or a welfare policy of redistribution would not contradict the neutrality principle although they may produce non-neutral outcomes, establishment of a state religion or mandatory practice of a specific religion would contradict it, because the justification for such a policy is only possible through self-reference, not neutrally.

The extent of neutrality, or the normative position to be taken on the spectrum between absolute neutrality and absolute perfectionism is still disputed within liberal democratic theory (Ackerman, 1983; Hurka, 1995; Klosko & Wall, 2003; Kymlicka, 2007; Mill, 1869; Raz, 1986; Rowland, 2000). This is because drawing the line as to what counts as neutrality and what does not is difficult. Yet, as the above example shows, this difficulty does not apply to cases regarding religion. For instance, some may argue that state promotion of a healthy life through taxation of foods high in sugar or fat and sponsorship of sports contradicts state neutrality because it disadvantages those who deliberately prefer to care less about their diet and physical activity. Hence, the state supports a specific conception of the good life while rejecting another. However, in such examples, Larmore's criterion of "neutral justifiability" applies. It can be reasonably argued that state promotion of healthy life is a good that would be reasonably accepted by all. This is not the case when the state actively establishes a state religion or imposes a policy (such as ban on abortion, divorce, alcoholic beverages, pork, beef, etc.) justifiable only to a religious community.[7] Regardless of what the true extent of neutrality may be, a non-secular policy is not within that extent.

In one way or another, neutrality is adopted universally by constitutional democracies. In the widest sense of the term, neutrality has been simply adopted as a principle of non-discrimination and equality before the law, and incorporated into the constitutions through such phrases as: "No person shall be favored or disfavored because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions" as in the Basic Law of Germany, or "shall ensure the equality of all citizens

[7] Although some of these policies may be justifiable to non-religious ethical standpoints, groups advocating such standpoints rarely, if ever, cooperate or act in solidarity with the religious advocates of such policies.

before the law, without distinction of origin, race or religion", as in the Constitution of France. At least, this bare minimum conception of neutrality as equality before the law can be argued to be widely accepted.

Although the link between the principle of neutrality and secularism is simple to demonstrate, conception of secularism as neutrality should be examined further. Rajeev Bhargava's model of principled distance falls within the conception of secularism as neutrality. Conceived of as a response to the critics of secularism in India, principled distance is not built upon the idea of separation between religion and the state, but rather as an alternative to the separation conception. Bhargava argues that separation is a conception of secularism that is historically contingent and specific to the West. Instead, in countries such as India where there has not been a single, historical and national church, but rather a diversity of religious beliefs which are important parts of people's lives, the state should position itself in equal distance from all religions. Bhargava's principled distance involves both neutrality, meaning remaining equally distant to all religions, and mutual respect between the state and religion regarding their respective spheres of activity (1994, p. 1786). Bhargava calls this conception political, as opposed to ethical secularism.

Maclure and Taylor propose a more direct conception of secularism as neutrality. Through Rawls, they build their argument on the liberal case for neutrality, namely the priority of right over the good. Accordingly, the state cannot adopt any specific conception of the good life. However, even when they propose neutrality as a conception of secularism, they do not restrict it to neutrality toward religious beliefs. The neutrality principle, according to the authors, should apply also to other conceptions of the good life (Maclure & Taylor, 2011). Maclure and Taylor also emphasize that neutrality

principle is limited by the liberal state's claim to protect the autonomy of its citizens, therefore it does not mean neutrality in terms of burdens or outcomes. Again, secularism as neutrality is interpreted as not absolute neutrality but neutrality in procedures and conceptions of the good life (Maclure & Taylor, 2011, pp. 16–17).

This point was also elaborated by Mason, who argued that liberal state's adoption of autonomy "may require the state to favour particular conceptions of the good" (1990). In this case, the state cannot be identified as an absolutely neutral one. This uneasy relationship between neutrality and autonomy reveals a paradox. On the one hand, the neutrality principle is built upon the claim of the state to respect the autonomy of its citizens and for this purpose not to impose a specific conception of the good life upon them. On the other hand, state's active promotion of autonomy leaves it in a less than absolute neutral position. Existence of this paradox is one of the main disadvantages of adopting neutrality as the ideal conception of secularism. One way to ease this paradox is of course to engage in a conceptual analysis of neutrality as some scholars mentioned here did, and adopt a selective conception of neutrality that works along with the principle of autonomy as well as secularism. Roland Pierik attempts to make such a move on the case of Lautsi v. Italy, a case brought before the ECHR against the existence of crucifix symbols in classrooms of Italian public schools (Pierik, 2012). Although initially a chamber of the Second Section of the court found that the rights of the applicant was violated, the Grand Chamber eventually overruled this decision on the basis that the crucifix is a "passive symbol" and also had a secular meaning. Pierik makes a distinction between exclusive and inclusive conceptions of neutrality and disagrees with the decision arguing that it cannot be supported by either of these conceptions. While exclusive neutrality means that the state "completely disregards

religious and cultural differences" as exemplified by the French *laicité*, inclusive neutrality "does not seek to eliminate controversial views of the good life from the political sphere" (Pierik, 2012, pp. 209–210). Pierik prefers the latter as opposed to the former, arguing that it is a better fit for the pluralistic contemporary societies. However, as it was the case with other attempts to delineate neutrality, there may be cases where the line between inclusive and exclusive versions of neutrality is open to dispute. Similarly, Meckled-Garcia attempts to define the "scope and object" of neutrality, again based on the value of autonomy, or as he calls it, "self-sovereignty" (2017). This time, the extent that the principle of neutrality applies includes only theories of justice, but not policies and outcomes. Meckled-Garcia's approach also demonstrates that neutrality of the state is possible regarding more abstract principles, values, theories, or "comprehensive doctrines", and it becomes less and less justifiable when it is attempted to be applied to more specific levels.

Another way out of this paradox could be to abandon, or transcend the conception of secularism as neutrality and aim for a conception of secularism that is directly based on autonomy. This would be also in agreement with those scholars mentioned above who emphasize autonomy as the basis of neutrality, as well as the level at which it noncontroversially applies. Surely, this would not definitively end all the disagreement regarding the permissible extent of state intervention. However, it would both move the emphasis away from the concept of neutrality which implies strict non-intervention, and at the same time provide a criterion for the conditions of intervention. In the brief overview of separation, it was demonstrated that secularism as separation had some shortcomings as a conception because it was simply an instrument aiming at secularism, and it did not have universal application. It has been shown here that

neutrality is also an instrumental principle and it is invoked in order to serve a higher order principle that the liberal democratic state upholds: autonomy.

Neutrality within the context of secularism is not completely irrelevant. In fact, neutrality is an indispensable principle of liberal democratic states, especially when it is understood as equality before the law, non-discrimination, and equal (and principled) distance toward different conceptions of life that the citizens may aim to pursue. A secular liberal democratic state cannot remain as it is if it abandons this conception of neutrality. However, it is also evident that the legitimacy of such a state does not depend solely on neutrality, but recognition of autonomy of its citizens. Neutrality allows citizens to pursue their lives autonomously and prevents them from being discriminated based on their conceptions of the good life. However just like separation, some shortcomings of the conception necessitate the search for a better conception of secularism. To remember Gerring's criteria of conceptual goodness (Gerring, 1999), neutrality suffers from parsimony and coherence problems because it is difficult to pin down the exact definition and scope of it when it applies to secularism. It is also deficient in terms of depth if it can be shown that a deeper conception of secularism is possible.

3.3.5 Secularism as secular source of law

"Secularism as secular source of law" (the secular source conception, SSC) is a minimalistic conception of secularism that defines a state as secular when its laws are derived from secular sources. Unlike separation, which is another minimalistic conception of secularism, it does not take into consideration whether religious authority is separated from the secular one but is concerned with the sources of law that the state

makes. According to SSC, a state is a secular state as long as the law is based in secular sources as opposed to, for example, religious sources. SSC is widely used in order to differentiate secular states from those which are based on a religious legal source, such as the Islamic sharia law.

In the constitutional level, some states openly refer to religious sources as the ultimate source of legislation or legal authority. For example, Iraqi constitution of 2005 recognizes Islam as the basic source of legislation and requires all laws to comply with the "undisputed rules of Islam" (Constitution of Iraq, n.d.). Similar constitutional provisions exist in Egyptian constitution and sharia law is much more prominent and all-encompassing in openly Islamic states such as Iran and Saudi Arabia. Yet religious sources of law do not necessarily have to apply only at the constitutional level. Some states use it selectively, by implementing, for instance religious family law for different religious communities while having secular sources for penal or commercial laws. Israel and Syria use religious sources for family laws. With these examples in mind, SSC refers to a condition in which such practices are abandoned and all sources of law are ultimately secular.

Turkish sociologist Niyazi Berkes emphasizes a similar conception of secularism in his treatment of secularism in Turkey. Rejecting the conception of separation, he generally adopts a wider understanding of the term that is similar to modernity in general, as opposed to tradition. However, within a political context, Berkes views secularism as the adoption of secular sources of law as opposed to a system in which all laws and policies should conform to a religious jurisprudence in order to become legitimized (2013). From the viewpoint of the modernist perspective that Berkes adopts, SSC emphasizes a transformation, a consequence of modernity which involves the

abandonment of supremacy of religious law and adoption of secular law. In this regard, SSC is different from the above-mentioned conceptions which either base their definitions on institutional design or certain values that the state adopts. Unlike those conceptions, SSC is a modernist conception that marks a historical point at which secular law is adopted.

In political theory, Hobbes is the figurehead of secularization of the source of legitimacy of the state. His approach that treated politics as science, coupled with his contractarian theory based on his understanding of the state of nature provided a coherent theory of legitimacy for the state that did not base itself on religion for the first time in modern history. To put it briefly, Hobbes conceived of a source of legitimacy for the state in roughly secular terms, because individuals in the state of nature would consciously and autonomously opt for an all-powerful sovereign that would take over all the rights that the individuals might have upon themselves and each other indefinitely (Hobbes, 1968). The individuals handing over their rights do this for purely secular and rationalist grounds, namely, security. The hypothetical point at which the individuals in the state of nature deliberately choose to be governed by the sovereign instead of remaining in the state of nature can be defined as a purely secular source of political legitimacy in every sense of the word. It does not refer to an otherworldly authority, neither does it consist of inaccessible or unreasonable (in the sense that it is not completely improbable that it would be accepted by reasonable parties given the conditions of state of nature as Hobbes describes them) arguments.

However, Hobbesian source of legitimacy does not fully correspond to the conception that is described here as “secularism as secular source of law”. Although the transfer of powers to the sovereign is explained by secular arguments, there is no limit as

to how the sovereign would actually rule. Secularism in this conception would require that positive law which would be enacted by the sovereign should, at least in theory, be legitimated by secular reasons. In Hobbes, not only is there no legitimacy (or secularity) test for the laws that the sovereign makes, but there is even recommendation to the sovereign to use religion as a tool to legitimize his rule and reduce the risk of strife. In this regard, Hobbesian account of legitimacy is obviously not an example of SSC. Yet, it is important to mention Hobbes as the first modern theory of secular political legitimacy, because SSC requires that the state itself should be legitimated by secular reasons before one can talk about its laws and legislation.

A recent reinterpretation of SSC is provided by Akeel Bilgrami. Bilgrami offers a definition of secularism as a principle that determines the condition of any possible exception from free exercise of religion in a religiously plural society. Accordingly, "when a religion's practices are inconsistent with the ideals that a polity seeks to achieve", then "a lexicographical ordering in which the political ideals are placed first" should apply (Bilgrami, 2014, p. 12).

It should be noted that Bilgrami's conception of secularism is not based on an ordering of legal sources, but rather political ends. It does not say anything about the sources where the law is derived from. Therefore, it might seem misplaced to mention Bilgrami's secularism within SSC category. However, the ordering component of Bilgrami's definition is closely related with the SSC conception. Essentially, the point of SSC is also a lexicological ordering; one between the secular and non-secular sources of law. In fact, secular source of law is prerequisite for the conception of secularism that Bilgrami has in mind.

In jurisprudence, Lon L. Fuller represented a strain of thought which reflected the supremacy of secular moral law over that of the natural law theorists who assumed that the moral grounds of law were based in religious revelations. According to Thomas Aquinas, the most prominent representative of the natural law theory, laws have to conform to the law of nature, which is in harmony with the divine law, and can be discovered by rational humans through reason. Fuller, instead broke the natural law theory from its theistic grounds and instead argued for the "internal morality of law". According to this theory, law has some qualities by its nature ("principles of legality" such as generality, publicity, etc.) that give it a source of morality (Fuller, 1978). The implication of this on the SSC is that an understanding of law that did not require religious or non-material sources to derive legitimacy could be conceived. If, as Fuller argues, secular law has inner morality, then it can stand on its own grounds both morally and practically.

Yet moral source of law, in other words, the normative force that provides a sense of duty to obey the law is not the only point of consideration with regard to the source of law. The preference of secular sources for laws can be understood better if the alternative, as in religious law enforced by the government is considered. In order to enforce religious law, the government has to be deeply involved in religion and be in a position of religious expertise to implement and enforce it. The difficulty of maintaining such an expertise and entanglement surely contributed to abandoning religious law to its own private realm as a consequence of modernization. As mentioned above in the section on secularism as toleration, Locke's practical argument against enforcement of religious law by secular rulers also demonstrates this perspective: "Neither the right nor the art of ruling does necessarily carry along with it the certain knowledge of other

things, and least of all of true religion" (Locke, 2008, p. 230). Locke can rightly be accepted as the founder of liberal constitutionalism, yet historically he stands in the threshold between the premodern and the modern state, and this argument gradually became much stronger because of the vast increase in the duties and the tasks of the modern state as opposed to the premodern one. The modern state can no longer afford to base itself on a religious legal system, or even to adopt some elements of religious law.

The "Lemon Test", established by the decision of the Supreme Court of the United States on Lemon v. Kurtzman case also expresses this impossibility. According to the Lemon Test which determines the conditions of separation between the religion and the state, legislations that are related to religion should (1) have secular legislative purpose, (2) should neither advance nor inhibit religion, and (3) should not result in 'excessive government entanglement' with religion (*Lemon v. Kurtzman*, 1971). The third prong, also called the "entanglement prong" aims to protect the government (and possibly religion and the citizens) from the consequences of such an entanglement. If the government finds itself in a position of entanglement with religion, then it would have implications such as the requirement of being an authority on religious matters, also, indirectly, would have to abandon its neutrality by promoting or inhibiting a specific religion or denomination.

SSC is, in the final analysis, a conception of secularism from a legal perspective. It refers to the changing sources of law both historically and normatively. In this regard, SSC is built upon the secularization theory, especially Weberian differentiation thesis. According to Weber, secularization is a process of differentiation in which several spheres of life (politics, economics, law, etc.) differentiate themselves from the dominating role of religion (Weber, 2005, pp. 362–363). In this process, religion also

retreats to its own, private sphere. Accordingly, law is separated from religion and bases itself on secular, rational sources. This also constitutes the basis of Weber's approach to political legitimacy, specifically rational-legal legitimacy.

SSC is an insufficient conception of secularism because of a similar reason as secularism as separation: it's a too broad conception. By stipulating a legal source condition, it requires states to pass only one test in order to be categorized as secular. It does not imply any institutional design requirements, neither does it base itself on a value or a virtue such as toleration or freedom of conscience. However, it has one big advantage over other conceptions: it is concerned with what secularism is really about and provides a minimalistic but at the same time substantive definition. Source of law is by definition related to legitimacy of the state. Grounding secularity on the source of law implies that secular states have, by definition, secular claims to legitimacy. Unlike religious states that claim to derive their legitimacy from scripture, SSC defines the secular state as one that derives its legitimacy from immanent sources. This immanence means that those sources may be disputed, redefined, and re-legitimized through procedures that are also secular.

As mentioned above, the origins of SSC can be traced back to early social contract theorists such as Hobbes and Locke. It would be absurd to argue that secular legal sources did not exist until the 17th century. However, social contract theory represents a break in the understanding of political legitimacy that emphasized legitimacy of the state that is based on secular reasons as opposed to religious or metaphysical ones. Therefore, I argue here that the secular arguments for the legitimacy of the state is interlinked with the arguments for secular sources of legitimacy that the laws that the state makes.

Why, then, is SSC a too broad conception of secularism? In the form that is explained here, SSC is a too broad conception for the scope of this study because it fails to explain how secularism is linked with the legitimacy of constitutional democracies. SSC may be applied to democratic, non-democratic, constitutional, or non-constitutional states. As long as the laws of the given state are not based on the 'beyond', it would qualify as secular. As such, it constitutes a parsimonious and theoretically useful concept to categorize secular and non-secular types of states. However, the usefulness of the conception ends there as such a categorization would mean little more than stating the obvious. As the purpose of this study is to explore the relationship between the source of legitimacy of constitutional democracies and secularism, SSC would not be able to serve this purpose.

Veit Bader, who comes up with 11 conceptions of secularism puts what I call SSC under the first conception, namely the "secularity of the state", in which the state law replaces an "all-encompassing 'religious law" (2017, p. 342). He also emphasizes the insufficiency of this conception because it applies to both liberal democratic states and autocratic or authoritarian states alike. For the same reason, this also strips this conception of any normative weight.

In that vein, SSC does not put any emphasis on the modern constitutional state and how the notion of legitimacy has transformed. A conceptual approach to secularism without any regard to the concept of individual autonomy that has become the source of legitimacy for constitutional democracies would be incomplete. For this reason, SSC is a good conception of secularism in a purely descriptive sense, yet it does not touch upon the normative foundations of secularism and legitimacy. It is a necessary, but not sufficient condition of secularism, rather than a conception of it.

3.4 What is secularism? – secularism as autonomy

Above is a review of most common conceptions of secularism. When one refers to secularism in the meaning of the term that refers to the state rather than the society, usually one of the above conceptions is assumed to be its definition. Secularism is either perceived as the toleration of the state toward minority faiths and religions, or recognition of freedom of conscience of individuals by the state, or the institutional separation of the state and the church, or the neutrality of the state toward different faiths, religions, as well as non-religion, or simply the recognition of only secular, non-religious sources as the source of law. Neither of these conceptions is outright wrong. They do, indeed, define secularism from certain perspectives. On the other hand, they do not refer to the concept that links the legitimacy claim of the state to these specific institutional or principal arrangements that are recognizable as secularism. A secular state is expected to be tolerant of minorities, respect freedom of conscience, while some exceptions may be allowed, it should implement at least practical, if not formal, separation of religious and political authorities, it should act neutral toward all its citizens regardless of their faith, and its laws should be derived from secular, rather than religious sources. The fact that all these conceptions can be correct at the same time proves that there are two shortcomings with them. First, these conceptions only define secularism from one aspect, ignoring other, equally important aspects. Second, for the same reason, it can be derived that a conception of secularism from a higher level of abstraction can be conceived, and the above-mentioned conceptions would be the consequences of that conception.

Secularism as autonomy is proposed in order to overcome the shortcomings of these common conceptions by establishing the link between legitimacy and secularism as expressed above. Rather than focusing only on institutional design or narrow interpretations of the term, secularism as autonomy aims at bringing in a higher order approach to the definition of secularism. Thus, it aims at clarifying why an institutional separation is necessary in the first place or why freedom of conscience or toleration should be adopted as central values, or why only secular sources of law can be deemed legitimate. As will be analyzed further below, the promise of enabling individual autonomy is the fundamental source of legitimacy for constitutional democracies; therefore, secularism as autonomy as a constitutional principle, embodies the legitimacy of the state.

Before further exploration of the conception of secularism as autonomy, the term secular should be delineated irrespective of the conception of secularism that is adopted. This is because conceptions of secularism all attribute the concept a rather thick understanding, while the term secular should be understood in simpler terms. For this purpose, a simpler definition of the secular should be made. As mentioned elsewhere, I attempt to treat secularism as a term not necessarily connected to religion. It is true that the term secular began to be used in order to refer to things and ideas not related to religion and thus became a 'polar concept' (Grant, 1955). Yet I argue that it is possible to conceive of secularism as a non-polar concept by emphasizing its essential meaning of worldliness. Surely, this worldliness is also often used as the opposite of heavenly, or religious. However, within the realm of political theory, a conception of secularism as autonomy can bear a meaning of worldliness that can stand on its own. With this purpose in mind, the notion of worldliness should be reinforced with the notion of

accessibility. Within the conceptual background of political theory, then, political reasons should satisfy two conditions in order to be called secular reasons: (a) accessibility, and (b) worldliness. These reasons then can be used in order to support policies or legislation, as well as constitutional principles in secular states.

What is meant by accessibility above is that citizens of average intelligence should be able to understand, know, and if applicable, act upon such reasons. By worldliness, it is meant that secular reasons should not refer to metaphysical sources or any source that is 'beyond'. Secularism, then, means that these two characteristics that define the term apply to the justification of two things: (1) the content of laws and policies implemented by the state, and (2) the procedures that are involved in making decisions on such laws and policies. Therefore, secularism is both substantive and procedural. Yet this test of substantive and procedural secularity does not cover my conception of secularism in constitutional democracies fully because these policies and procedures are secular for instrumental reasons. The purpose they serve ultimately is the recognition and realization of individual autonomy understood simply as self-rule, or being bound by the laws made by oneself. Secular policies and procedures are the only way that autonomy can be reasonably realized and secularism therefore is understood as autonomy in practice.

Autonomy, which is the key concept in this context, has been the subject of intense debate and examination throughout the history of political thought since the Enlightenment. The fact that autonomy is such a loaded concept may be argued to be a shortcoming of the conception of secularism as autonomy. However, rather than invoking a loaded and comprehensive conception of autonomy, a more commonsensical and intuitive meaning of the word is preferred here. One of the points made in this study

is, in fact, that even those conceptions of autonomy that are deemed to be comprehensive and loaded (and therefore may not be compatible with a liberal state) are not really too distant from the common meaning of the word. Autonomy understood in the context of this study is, as stated above, capability of individuals to rule over themselves, or put in beautiful simplicity by Ackerman: "capacity to form a rational plan of life" (1980, p. 367). This simple definition is not only the ultimate source of legitimacy of liberal democratic states, but also compatible with the most of the genealogy of the word beginning from Rousseau and Kant, and following a trajectory all the way to Habermas. The argument here is that autonomy has indeed been a revolutionary concept in the history of political thought and transformed the understanding of legitimacy irreversibly. This process is explained further below in the following chapter and especially under "The Autonomy Revolution".

Based on this definition, secularism as autonomy is the conception of secularism that requires the state to treat its citizens as morally autonomous subjects, meaning, individuals with capacity to rule over their own and follow a rational plan of life. For this purpose, that state does not treat religion as a source of law, in which case this principle would be breached, and employs secular procedures in legislation at the same time. This constitutes the substantive and procedural aspects of secularism as autonomy.

Secularism as autonomy should be distinguished from secularism that is based in autonomy. The argument is stronger here. Secularism is understood not as a concept that is derived from, or justified by referring to another concept, that is, autonomy, but instead as the practical implementation of the idea of autonomy within both the foundations and procedures of the constitutional democracy. This point should be clarified further. If secularism were simply a principle which could be justified by the

idea of individual moral autonomy, it could as well be justified by other reasons, such as practical reasons. This is one of the primary sources of confusion about the concept of secularism, especially when rather authoritarian policies in secularist states are concerned. By asserting the conception of secularism as autonomy, I aim to rule out those specific policies or implementations as versions of secularism. Secularism as autonomy means that the idea of preservation of individual moral autonomy by the state that emerged as the most valid source of legitimacy for the modern state not only necessitates that state to adopt secularism as a principle, but also implement that idea of autonomy as a procedure, that is secularism.

I have stated above that what I mean by secularism as autonomy is not merely that the principle of secularism is derived from the idea of individual autonomy, but it is the constitutional principle that directly functions as that idea. If 'secularism as autonomy', not 'secularism derived from autonomy', is proposed as the valid conception of secularism, then it may be suggested that here secularism is equalized with autonomy and all implications of this equation would have to be explained. Two major objections can be conceived of immediately. First, if secularism as autonomy means that secularism is the principle through which the ideal of recognition of autonomy is implemented in the constitutional state, then there is no other principle through which that ideal is implemented or realized. However, it can reasonably be argued that much more obvious principles of the constitutional state, such as the rule of law and respect for human rights are also implementations of the ideal of recognition of autonomy as the basis of legitimacy of the constitutional state. Second, if autonomy is equalized with secularism, then it should follow that by heteronomy only religious authority is implied. This would

disregard other possible sources of heteronomy, such as desires in Kant's understanding, and unnecessarily narrow down the concept.

Both objections are valid ones, yet they should be resolved by clarifying what is meant by secularism as autonomy. As a reply to both objections, it should be emphasized that secularism as autonomy does not mean secularism equals autonomy. Secularism is simply defined as that principle which functions as the recognition of individual autonomy, which is source of legitimacy of the constitutional state. Therefore, secularism in this conception is a 'function' of autonomy, not its equal. Simply existing as a constitutional principle narrows down its definition. If we were talking about autonomy in all aspects of life, there would have been no need to come up with this specific conception and the term autonomy would already be sufficient. Yet, constitutional principles are by definition political, to borrow Rawls's term, "political, not metaphysical", by which he meant: "worked out for a specific kind of subject, namely, for political, social, and economic institutions" (1996, p. 224).

Keeping this clarification in mind, I now turn to the first objection. Why is it necessarily secularism through which the ideal of autonomy is realized? Secularism is not the only principle through which the ideal of autonomy is realized (or expected to be realized), but it is the lexically prior principle. This is because I regard autonomy both as a principle that informs rules lower in the hierarchy of norms, and also a procedural principle that regulates the procedures of deliberation and lawmaking. It follows from this that other basic principles of constitutional democracies that are based on the idea of autonomy would only be practical on the condition that secularism also exists as a principle. My argument is based on the assumption that only via recognition of private and public autonomy citizens of constitutional democracies recognize both themselves

and each other as autonomous subjects, and giving each other basic rights follows from that (Habermas, 1996, p. 121). This is a secular procedure.

Moreover, other principles of the constitutional democracy such as the rule of law and human rights can be defined as values rather than principles. In this regard too, rather than stating certain values that the state needs to uphold, secularism implies practical and institutional implications that are necessary to uphold those values.

Now to the second objection. If secularism is defined with reference to autonomy, does it not limit heteronomy to only religious forces on the will? According to the explanation above, which reminds that constitutional principles are political, and that secularism is a function rather than equal of autonomy, secularism as autonomy disregards sources of autonomy such as desires (it is disputed whether Kant even recognizes desires as heteronomous) (Packer, 1989). Moreover, I have been trying to avoid defining secularism simply as an antonym of religious state throughout this work. Instead, I am arguing that a definition of secularism can be made without referring to religion specifically. This is one of the reasons for developing the conception of secularism as autonomy. While this conception is open to above objections, I maintain that secularism keeps its primary and etymological meaning of worldliness within this conception. What is heteronomous within the context of secularism as autonomy which is a constitutional principle that is political can best be described with reference to what Habermas calls ‘metasocial guarantees’ of the state (1996). Metasocial guarantees refer to the legitimation of political authority through “the kind that once was provided by a shared religious framework” (Bogdandy & Habermas, 2013). I believe that within the limits of the political, defining heteronomy as ‘metasocial’ sources of legitimation and thus defining autonomy as the opposite of it would not be wrong. Therefore, secularism

as autonomy can be understood without necessarily referring to religious authority as its anti-thesis. Conceived in this way, the definition of secularism would not be a too broad one that defeats the purpose of defining.

Although they do not direct their criticism toward secularism as autonomy, two critiques of liberal secularism can be argued to apply to this conception. The first is from Veit Bader, whose criticism of secularism was examined more in detail above. Elsewhere, Bader provides a number of conceptions of secularism, and aims to demonstrate that there is no conception of secularism that is normatively stronger or preferable than liberal democratic constitutionalism (LDC) (2017, pp. 342–347). According to him, an LDC would be able to fulfil all the normative aspirations that secularism may have. I agree with Bader that some conceptions of secularism are redundant in LDCs. For example, the minimalistic definition of secularism that was mentioned under "secularism as secular source of law" has little explanatory value in LDCs. Also, conceptions of secularism which refer to it as a comprehensive view (or a meta-narrative as Bader calls it), may even contradict with LDC. Yet, among the conceptions of secularism he provides, there are some which can be combined under secularism as autonomy. These are namely "political secularism" and "exclusivist secularism" (Bader, 2017, p. 343). By political secularism, Bader refers to the conception of secularism that essentially links secularism with democracy: "one can call any democracy that does not discriminate on religious grounds a 'secular democracy'. Modern democracy is thus secular by definition, indicating 'popular sovereignty': the condition that all defenders of absolute truth claims, religious as well as secular or 'scientistic', have to accept their mutual situation that their 'truths' are treated as 'opinions' when it comes to democratic decision-making" (Bader, 2017, p. 343). This

definition lays out the essential link between the source of legitimacy of democracy and secularism which is identified here as secularism as autonomy. Bader, whose task was to demonstrate the irreconcilability of all conceptions of secularism with LDC, fails to argue against this definition directly and instead criticizes it with reference to illiberal conceptions of secularism. This, at least to some extent, proves the strength of this conception against criticism. The second conception that is relevant here, namely exclusivist secularism, unlike its name suggests, does not refer to an illiberal version of secularism that aims to exclude religion from society altogether. Instead, by exclusivist secularism Bader refers to the Rawlsian-Habermasian ethics of public reason in which religious reasons are allowed in the public sphere conditionally, in order to ensure fair discourse conditions for all affected parties. This conception also follows from secularism as autonomy, which envisages procedures that make sure the capacity of citizens to pursue their life plans and self-rule is enabled. Bader mistakenly criticizes this aspect of secularism as 'exclusivist', as if it involved coercive or unfair exclusion of religious or other comprehensive opinions. Through the expression of these two conceptions of secularism, Bader unintendedly demonstrates two aspects of secularism as autonomy: substantive and procedural.

The second critique that may apply to secularism as autonomy comes from Michael Sandel, in the form of a critique of neutrality. Sandel rightly argues that "[w]hat counts as neutrality depends partly on what justifies neutrality", thus seeking a higher-order principle for neutrality (1998b, p. 80). Along with the argument that secularism understood as separation serves the interests of the government as well as religion, neutrality is justified with reference to individual freedom. Individual freedom in this regard is based on the "liberal conception of the person" according to Sandel, and

therefore encourages respect for freedom of conscience (1998b, p. 82). This conception can therefore be closely associated with secularism as autonomy as Sandel also acknowledges: "the case for religious liberty derives not from the moral importance of religion but from the need to protect individual autonomy" (1998b, p. 87). Sandel is critical of this position because he argues that it assumes religion is simply another 'life style' or a choice, despite the fact that religious people often claim to be bound by rules that is beyond their own will. Accordingly, possible exemptions from generally applicable laws are only justifiable if it can be shown that religious beliefs are not simply free choices but rather deeply held convictions. Sandel argues that this liberal conception of the person disregards some rightful claims of religious exemption.

Sandel's critique is based on a juxtaposition of two conceptions of the person. He argues that the liberal conception of the person as a choosing and autonomous individual is mistaken, because he views persons as encumbered by social attachments, including religious beliefs (Sandel, 1998a). It is beyond the scope of this study to engage in this wider liberal-communitarian debate here, but the implications of Sandel's account for secularism can briefly be examined. To begin with, Sandel's emphasis on justification of exemptions moves the focus of the topic toward a relatively trivial area since exemption, by definition, should rarely be justified. Therefore, presumption of choice is still a useful method from the point of view of the neutral state. Moreover, the fact that Sandel belittles, or attributes less value to freedom of choice is also mistaken, because choice, or autonomy includes choice to follow a comprehensive way of life that can include deeply-held convictions such as religion. In other words, for the religious person, the dictates of religion may not be matters of choice, however following that religion, including its dictates, should be assumed to be a life choice. SCOTUS, as well as other

national or international courts considering conscientious objection, tend to interpret "imperatives of conscience" broadly, including not only religious but also secular comprehensive doctrines. According to Sandel, this is inconsistent with court decisions that sometimes deny legal exemptions to religious practices. Courts may apply a number of reasonings to justify such decisions, yet one obvious reason, in case of conscientious objection, is that a secular conscientious imperative rejecting military service is reasonably justifiable to all. When this is considered, the burden of proof is not on the secular justification for conscientious objection, but the religious one. In that case, courts accept conscientious objections based on religious convictions not because the truth of religion is assumed, but because the sincerity and conviction of the objector is assumed.

The problem with Sandel's critique, therefore, lies on the one hand in the inapplicability of his conception of the person to the institutional mechanisms of a constitutional state, and on the other, in his misrepresentation of autonomy as simply choice. A constitutional state with just institutions cannot abandon treating its citizens as equal individuals with capacity to pursue autonomous lives, and in this context autonomous life is not limited to simple choices or preferences, but also deeply-held convictions, worldviews, life goals, or comprehensive doctrines.

Both Bader's and Sandel's critiques of secularism apply to what is defined as secularism as autonomy from different perspectives. I briefly aimed to demonstrate that their critiques are not satisfactory, or at least compared to the criticism other conceptions of secularism receive, secularism as autonomy remains strong against their critiques. Yet, taken together, their critiques unintendedly describe and define secularism as autonomy. Bader's criticism of two different conceptions of secularism actually apply to two different aspects of secularism as autonomy. Also, what Sandel criticizes as the

liberal position on neutrality helps reveal the autonomy-based justification of the liberal state which is manifested as secularism.

In this section, five common conceptions of secularism have been briefly analyzed and evaluated with respect to conceptual goodness, especially the extent to which they have the explanatory power about the way secularism as a constitutional principle exists in constitutional liberal democracies. It has also been demonstrated that all these conceptions, despite being partially accurate and contextually useful, are unable to describe the full extent and scope of secularism as a constitutional principle. Instead, an alternative conception, secularism as autonomy, has been proposed. Secularism as autonomy, as argued here, aims to overcome the deficiencies of other conceptions because it strives for a higher-order understanding of secularism. On the other hand, the conception is limited to constitutional liberal democracies only. This limitation is necessary in order to improve its normative capability as well as to prevent overstretching of the concept. For this reason, secularism as autonomy is not a universal conception that may apply to illiberal states, nevertheless it has also been shown that conceptions of secularism that may apply to liberal and illiberal states alike (such as SSC) are very minimalistic and therefore have weak explanatory value. Secularism as autonomy has been explained briefly above, because the following chapters will provide a full account of it with reference to legitimacy and autonomy, how these two are related with secularism, as well as how it applies to various levels of analysis.

CHAPTER 4

SECULARISM AND LEGITIMACY

What could be better for a person than his own development of a plan of life that seems to him good? Of course, if God had set down a contrary law in clear and unambiguous terms, His view would be entitled to respectful attention. But has He done so? How do you know this?
- Bruce Ackerman (1980, p. 368)

4.1 Introduction

The conception of secularism as autonomy is based on the idea that secularism is a principle of constitutional democracies that expresses the recognition of autonomy of individuals. At the same time, the promise to preserve individual autonomy that is mentioned here is the root source of legitimacy for constitutional democracies. In this chapter, it is argued that a threshold has been passed in the history of the modern state after which individual autonomy has become the main source of political legitimacy. The constitutional state, as the guarantor of individual autonomy, bases its normative legitimacy upon this guarantee. And if it is also accepted that secularism, both as a constitutional principle and a democratic procedural norm, is based on the same source, then it can be understood that the connection between secularism and legitimacy is deeper than it has been emphasized. It can be inferred from this connection that secularism is at the core of the legitimacy claim of the modern constitutional state.

Within this background, it would not be wrong to say that I approach secularism as a matter of legitimacy. As it is analyzed here, secularism is both a source of legitimacy and at the same time, being a constitutional principle, it itself requires legitimization. This 'circular' understanding of secularism is what it ties it with the

concept of legitimacy. In order to grasp this complex relationship between secularism, autonomy, and legitimacy, the said autonomy threshold in the history of political legitimacy should be analyzed. The understanding of legitimacy has transformed throughout history, consequently a conception of legitimacy based on the idea of autonomy was adopted by the constitutional democratic state. My main argument is also based on this assumption: secularism, both as a principle and procedure, is a function of an autonomy-based conception of legitimacy.

Political legitimacy is a concept that transcends history. It has been needed in every form of rule, regardless of how authoritarian or tyrannical that form of rule is. In the simplest sense, political legitimacy is the doctrine that justifies existence and exercise of political authority. This justification does not necessarily have to have external consistency or even substantive value. But it has to have at least some degree of acceptance among the elites and the population. Yet the definition of legitimacy changes depending on the object of inquiry. Legitimacy can be defined in a purely descriptive sense: it can simply be described as how a political authority claims legitimacy in practice or can be measured by the level of acceptance of that claim. Or, legitimacy can be defined based on a substantive quality, as normative political philosophers do by trying to delineate normative standards of legitimacy, regardless of actual level of acceptance.

As one of the key early modern political theorists, Locke defines legitimacy as the consent of the governed, and it has been contrasted with the divine right of kings from which the pre-modern rulers derived their legitimacy (2008). This moved the subject of legitimacy from the source of authority, or the ruling elite to the people, or citizens. Yet, from a descriptive point of view, the consent of the governed would still be

required in a case where legitimacy is based on a kind of 'divine right': divine right of kings would have to be accepted by those governed as a valid source of legitimacy. In this case, the Lockean definition of legitimacy applies to the pre-modern understanding of legitimacy as well, simply as a descriptive definition of it.

However, Lockean legitimacy can also be interpreted differently from its pre-modern versions if it is taken as a self-referential definition of legitimacy. If the consent of the governed is what makes the authority legitimate, authority that exists only for the sake of the consent of the governed - unlike the one which exists for the sake of a divine right, etc. - is doubly legitimate. It can be argued that this kind of legitimacy combines in itself both the descriptive and normative accounts of legitimacy.

This is the core characteristic that makes the modern state different from its premodern versions. In modern political theory, legitimacy is closely tied to a conception of citizen who can give laws upon herself. In this regard, modern understanding of legitimacy is both individualistic and public at the same time. It recognizes the citizen as an individual who has inalienable basic rights and who can decide for herself. By extension, the public role of citizen is to decide for herself collectively, to legislate and legitimize rules, laws and policies that would be binding in coordination with other citizens.

In what follows, I aim to delineate theories of legitimacy in both descriptive and normative accounts and the emergence of the concept of autonomy as the main source of legitimacy in the modern constitutional state. Theories of legitimacy go back in history as long as the history of political entities do, yet the focus here will be on the modern theories of legitimacy in order to emphasize the emergence of the concept of autonomy

as a source of legitimacy. Then, the role of secularism in the legitimacy of the constitutional state that is based on autonomy will be analyzed.

4.2 Autonomy and legitimacy

4.2.1 Theories of legitimacy in relation to autonomy

In this section, an overview of the theories of legitimacy will be given in order to provide an understanding of how autonomy plays a central role in the contemporary conception of legitimacy. Theories of legitimacy can be categorized in different ways. One, as mentioned above, is to make a distinction between descriptive and normative theories of legitimacy. The other is to make a historical periodization and treat pre-modern and modern theories of legitimacy as different categories. Last but not least, theories of political legitimacy can be categorized as those which apply to democracies or constitutional states, and other forms of rule that are not based on popular sovereignty. Here, a comprehensive treatment of theories of political legitimacy will not be given, but the concept of autonomy will be traced within different accounts of legitimacy.

Looking at the theories of political legitimacy historically reveals that the idea of autonomy as the source of autonomy marks the division between all these above-mentioned distinctions. Emergence of the idea of autonomy not only marks the beginning of the modern period, but also provides a much more powerful source of normativity for political legitimacy. Although modern political theorists also often aimed at providing descriptive accounts of legitimacy, a coherent and complete external benchmark of legitimacy, irrespective of the actual acceptance of the legitimacy of

political authority by the people subject to it, is made possible thanks to the normative accounts that base themselves on the idea of autonomy.

A comparison and contrast between pre-modern and modern theories of legitimacy by definition suggests that the nature of legitimacy transformed with the advent of modernity. What is meant by modernity, in this account, is the period that started with early Enlightenment mainly in Western Europe, but is not only limited to an intellectual transformation. The Enlightenment is accompanied by dramatic transformations in social and political structures that have been perennial throughout the Middle Ages and the consequences of these transformations constitute modernity.

In the Early Modern period, a radically transformed outlook in intellectual, social, and political spheres contributed to a radically transformed understanding of political legitimacy. The earliest modern theories of political legitimacy are those of Thomas Hobbes and John Locke, both of whom are state of nature theorists. They construct their respective ideas of legitimate government from the groundwork of state of nature, which is a hypothetical condition that existed before the development of any political authority. Although Hobbes and Locke differ greatly on the conditions of state of nature, they share the assumption that legitimate political authority originated at the individual level, and it did not exist until it was constructed deliberately by people themselves.

Being the first proper contract theorist, Hobbes's sovereign is established by a covenant that transfers all rights that citizens have by nature, to the sovereign. Though, this does not mean that a sovereign requires a covenant to be legitimately established. Hobbesian covenant should be understood as an *ex post facto* legitimation of an authority that already exists. Therefore, the legitimacy of absolute authority of the

sovereign is not derived from the transfer of authority from the individuals, but the fact that it serves the common good. According to Hobbes, lack of a sovereign is worse than even the worst kind of sovereign, and this is the only test of legitimacy the sovereign has to pass.

Despite its recognition of the concept of rights, and the idea of transfer of those rights, Hobbesian contractarianism does not recognize autonomous individuals in the modern sense. Any sort of autonomy that individuals may have does not amount to political legitimacy, since it was already surrendered to the sovereign in the state of nature. In this regard, what Hobbes appears to confer to the individual is the agency and rational capacity, but not moral autonomy.

Still, Hobbes started a line of thought that led the way to the autonomy revolution by assuming that individuals had absolute freedom at their own disposal until they decided by themselves to transfer that right to the sovereign. In Locke's account of the state of nature, individuals were also free, yet unlike the absolute freedom in the physical sense of Hobbes, freedom in Lockean state of nature was "within the bounds of the law of nature" (Locke, 2008). For this reason, he is closer to the modern idea of individual autonomy. Locke's understanding of legitimacy of political authority is based on the idea of consent (Locke, 2008). Unlike Hobbes, this conception of consent is not a one-time approval of political authority, but a continuous test of political legitimacy (Hobbes, 1968, p. 268).

Lockean government, which has the mission of protecting life, liberty, and property of its citizens, constantly seeks their consent for legitimacy. Yet, it does not mean that any action or legislation performed by the sovereign can be overturned by a simple opposition from citizens. Locke's government is a limited one; it cannot exceed

the limits placed by laws and the purpose of its existence. Arbitrary use of power by the sovereign is not legitimate, because citizens would not leave the state of nature, a state where they can protect their own property, for a sovereign that exercises arbitrary power. While Lockean conception of legitimacy is usually defined as "consent of the governed" and therefore seems descriptive rather than being tied to an external criterion, that consent depends on the fulfilment of the sovereign's duty. In this regard, it is a normative conception of legitimacy.

Early modern political theorists, Hobbes and Locke laid the foundation for the contemporary understanding of political legitimacy. Both introduced individual as a rational being that transfers its natural rights to a sovereign who would either protect its life or the property it creates. There are also origins of the idea of autonomy in the sense of self-rule in both Hobbes's and Locke's thought, but it is neither an idea of its own, nor an idea that can be considered as the ultimate source of political legitimacy.

A clear formulation of legitimacy of political power that depends on the idea of autonomy is developed by another contractarian theorist, Jean-Jacques Rousseau. Through social contract, Rousseau puts autonomy into the center of democratic legitimacy. The following passage illustrates his conception of liberty as autonomy: "To the acquisition of moral status could be added, on the basis of what has just been said, the acquisition of moral liberty, this being the only thing that makes man truly the master of himself; for to be driven by our appetites alone is slavery, while to obey a law that we have imposed on ourselves is freedom" (Rousseau, 1999, p. 59). With this move, Rousseau starts a tradition in which the legitimacy of the state is bound to certain normative principles which is justified through recognition of individual autonomy.

In the modern era, the idea of legitimacy as consent mostly found general acceptance in some form or another. However, the content and scope of consent is disputed and critics have argued that consent may be inadequate as a source of legitimacy for the modern state. Descriptive theories of legitimacy are those accounts which aim to describe political legitimacy without reference to external judgments or without looking into the validity of the substance of claimed legitimacy. Therefore, descriptive theories aim to explain legitimacy by describing what resources are actually employed to legitimize political authority in any sense.

Max Weber provides the most descriptive account of political legitimacy in *The Types of Legitimate Domination*. Like early modern theorists of legitimacy, Weber also bases consent to domination on a kind of perceived interest. People consent to being dominated by a sovereign simply because they believe that it is in their best interest. Weber goes on to differentiate between ideal types of different sources of legitimacy based on consent. These are "claims to legitimacy" based on respectively "rational grounds", "traditional grounds", and "charismatic grounds" (Weber, 1978, p. 215). Among these, the first is a better representative of the constitutional or at least bureaucratic state that dominated Western Europe in the 19th century. Weber defines it as "resting on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority)" (1978, p. 215). Weber thus separates legislative and the executive, and argues that executive only has legitimacy provided that it is bound by law. Though what gives legal authority legitimacy is not something inherent in the idea of legal authority itself, but rather the belief that it is legitimate (Habermas, 1986).

At least in this regard, legitimate domination on rational grounds is no different than either traditional or charismatic grounds. Both of these forms of non-rational political legitimacy are also based on belief in the final instance. Weber, in his almost purely descriptive style, does not say that either one of these forms of legitimacy is superior to others, or is a more profound source of legitimacy. Yet, a detailed reading of his account on the types of legitimate domination reveals the fact that legal authority, or legitimacy based on rational grounds is more responsive to both change and economic or material demands of society compared to other authorities, thus it can be argued that it has a better claim to reinforcing its legitimacy in case it needs to do so.

Mattei Dogan argues that Weberian typology of legitimacy that is based on the distinction between traditional, charismatic, and legal-rational types of legitimacy has become obsolete as the first two types are now almost non-existent in the modern world. Instead, most countries are now either democratic or authoritarian. Based on this distinction, he aims to operationalize legitimacy by making it measurable through linking it with variables such as effectiveness or trust (Dogan, 2009). Yet this criticism of Weberian conception of legitimacy does not problematize its almost purely descriptive nature.

Normative theories of political legitimacy, on the other hand, comprise of most of normative political theory from Plato and Aristotle until today. Normative theories assume that the distinction between legitimate and illegitimate forms of authority exist independently of the opinions of the subjects of said authority. Thus, they put any existing form of government into a test of external validity. From this perspective, a dictatorship with loyal citizens may not be a legitimate form of authority while a

democracy with a significant number of citizens that are critical of its institutions can, as long as it conforms with the external requirements of legitimacy of a given theory.

Modern normative theories of legitimacy focus on the potential justifiability of political power that is exercised. Joseph Raz developed a theory of legitimate authority that rejects the legitimacy of *de facto* held power. As an analytically meticulous work, *The Morality of Freedom* includes this theory that is built on the idea of authority that replaces the reason of the subject to act with its own reason. There, Raz argued that sovereignty meant 'surrender of one's judgement', and the claim to legitimate authority has to be profound enough to justify this surrender. Should the said authority be legitimate, "in subjecting himself to it a person is more likely to act successfully for the reasons which apply to him than if he does not subject himself to its authority" (Raz, 1986, pp. 70–71). The fundamental criterion here is the competence of authority. This is different from mere consent, because consent may be based in other reasons than competence or success of authority, such as fear or coercion. Raz's conception of legitimate authority is very generalizable, therefore it seems to even apply to some non-democratic forms of political authority. However, Raz concludes his book with an argument for the ideal of personal autonomy. For him, personal autonomy has a value that requires a political authority to provide political freedom to its citizens. Also, legitimate authority already depends on the assumption that citizens are autonomous actors and they have the capacity to weigh their reasons against that of the authority, thus providing it with legitimacy. In conclusion, Joseph Raz has a theory of legitimacy that is closely related to the idea of personal autonomy and political freedom.

In *Political Liberalism*, John Rawls provides the condition for legitimacy as political power being exercised "in accordance with a constitution the essentials of

which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason", and calls it the "liberal principle of legitimacy" (Rawls, 1996, p. 137). This principle is different from mere consenting to political power, because it excludes some forms of it which may be consented for some reason but still emanate from imposition of an unreasonable doctrine on citizens. Rawls elaborates on this by emphasizing that due to the fact of pluralism, reasonable persons unavoidably have irreconcilable doctrines. Yet in that case, using state power to impose one such doctrine on those who disagree with it would be unreasonable, therefore illegitimate.

Rawls's idea of reasonable citizens emanates from a conception of political autonomy. Rawls distinguishes political autonomy from moral autonomy: while moral autonomy is the basis for an individual to have certain comprehensive doctrines, be it religious, philosophical, or political; political autonomy is simply the idea of free and equal citizens (Rawls, 1996, pp. xliv–xlv). Rawls elaborates on this point by distinguishing his political liberalism from Kantian comprehensive moral doctrine in which "the ideal of autonomy has a regulative role for all of life" (Rawls, 1996, p. 99). What Rawlsian political liberalism depends on is simply a value-free and a mutually recognized conception of autonomy that requires a political equality and would generate reasonable attitudes towards fellow citizens.

The tradition that goes back to as early as Locke and follows Rousseau, Kant and Rawls aims to go beyond the purely descriptive accounts of legitimacy and tie the concept to a specific quality. In fact, the concept of legitimacy itself is a normative one, therefore reducing it to a descriptive conception would be counterintuitive. The normative definition of legitimacy that is based on autonomy is widely accepted not only

in the scholarly realm but also in actually existing liberal democracies. Especially Rawls's formulation of this argument for legitimacy is considered as the ultimate source of justification for any claim for rights: "the view that we have a fundamental interest in our moral power of forming and revising a plan of life" (Kymlicka, 1992, p. 140).

In order to move beyond the consent-based theory of legitimacy and envisage a democratic theory of legitimacy, the content of consent, or in other words, reasons for which people consent, should be analyzed. There are a number of reasons why people may consent to authority, and not all of them are democratic, namely, emanate from self-rule. Some possible reasons of consent are as follows:

> 1 There is no choice in the matter (*following orders, or coercion*).
> 2 No thought has ever been given to it and we do it as it has always been done (*tradition*).
> 3 We cannot be bothered one way or another (*apathy*).
> 4 Although we do not like the situation – it is not satisfactory and far from ideal – we cannot imagine things being really different and so we 'shrug our shoulders' and accept what seems like fate (*pragmatic acquiescence*).
> 5 We are dissatisfied with things as they are but nevertheless go along with them in order to secure an end; we acquiesce because it is in the long-run to our advantage (*instrumental acceptance or conditional agreement/consent*).
> 6 In the circumstances before us, and with the information available to us at the moment, we conclude it is 'right', 'correct', 'proper' for us as an individual or member of a collectivity: it is what we genuinely should or ought to do (*normative agreement*).
> 7 It is what in ideal circumstances – with, for instance, all the knowledge we would like, all the opportunity to discover the circumstances and requirements of others – we would have agreed to do (*ideal normative agreement*). (Held, 2000, p. 101)

According to this typology proposed by David Held, the reasons for consent are based on a continuum of increasing legitimacy. In fact, Held argues that only 6 and 7 (normative agreement and ideal normative agreement) can qualify as legitimate forms of consent, while 5 (instrumental consent) would only be weakly legitimate. The types of consent from 1 to 4 cannot be considered legitimate from a normative point of view. Of

course, consent is never purely in one of the categories and various reasons can have an effect on why an individual consents to authority. Yet, this categorization demonstrates that normatively legitimate authority rests more on the capacity of the citizens to act autonomously in their decisions and judgments than coercion, fear, tradition, or apathy.

As the post-WWII environment set the ground for the liberal democracy to be the dominant form of government in most of the world, its legitimacy has been studied more rigorously than ever by political theorists. In his discussion of democratic legitimacy, Held refers to Almond and Verba's account of legitimacy in the post-war Western world (1963; 2000). That account heavily depends on the post-war increase in people's acceptance of democratic government and therefore an all-time increase in political legitimacy. However, this thesis linking democracy and legitimacy began to be questioned as the democratic world entered a legitimacy crisis in the late 1960s and early 1970s. Held's discussion of the accounts explaining this crisis compare the 'overloaded government' theory and 'legitimation crisis' theory. While the former assumes that the crisis of democracy is simply a problem of efficient government, the latter identified the source of the crisis as the drifting away from democracy due to economic crises and therefore adopting a more authoritarian mode of governance. Both Held's discussion and unfolding of the events in the 1980s demonstrate that the legitimation crisis theorists were right and legitimacy is directly linked with democracy.

John Rawls, who reintroduced the normative approach to political philosophy marked a break from the descriptive account that was represented by Weber above. As discussed also above, he proposes a clear principle of liberal legitimacy: "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to

endorse in the light of principles and ideals acceptable to their common human reason" (Rawls, 1996, p. 137). After Rawls, the assumption that democracy is an essential criterion of political legitimacy became more widely accepted. The question instead became not whether democracy is required for political legitimacy, but what kind of democracy can fulfil the normative requirements of legitimate governance.

Although he does not restrict the concept of legitimacy (or legitimation, as he uses it)[8], to democracies, Habermas argues that any political government that is based on law requires legitimacy, namely "more than mere acceptance" of law (1998a, p. 157). If it is desirable to go beyond "religiously or metaphysically grounded natural law", positive law should have moral legitimacy, and this legitimacy can be established by striking a balance between popular sovereignty on the one hand, and human rights on the other (Habermas, 1998, p. 159). While the history of political thought is characterized by the debate between two sides, namely republican and liberal traditions, each emphasizing the supremacy of one over the other, Habermas aims to bridge this debate through the concept of autonomy. Separating the concept into two as private and public autonomy, Habermas argues that self-rule exercised over private life and self-rule exercised publicly as a society are inseparable aspects of citizenship.

It can be observed that Habermas makes the distinction between descriptive and normative, as well as democratic and non-democratic forms of legitimate rule clear. On the one hand, he is aware of the descriptive, Weberian conception of legitimacy, or legitimacy in the broad sense of the term, on the other hand he emphasizes throughout his work that such a broad conception of legitimacy is not sustainable and prone to

[8] *Legitimacy* and *legitimation* are different in that while the former aims to describe what is legitimate, the latter refers to the act of providing legitimacy or becoming legitimate. In the referred works, Habermas elaborates on legitimation, yet his account of legitimacy can be derived from that.

legitimation crises (1975, 1996, 1998a). Therefore, these distinctions of conceptions of legitimacy (descriptive and normative, democratic and non-democratic) are not only distinctions that apply to different types of analysis, but a preference should be made for the normative and democratic conceptions of legitimacy. This point is supported by Beetham in his critique of Weberian legitimacy based on belief. He makes a distinction between legitimacy as belief in legitimacy and legitimacy as justification in terms of beliefs. Accordingly, "tacit consent" is also an inadequate conception of legitimacy because it disregards the actions through which citizens demonstrate their consent to political authority (Beetham, 2003, pp. 11–13).

In both the historical transition from pre-modern and modern theories of legitimacy and the distinction from descriptive and normative theories of legitimacy, it can be observed that the basis of political legitimacy is established on the grounds of democracy. The question then becomes how and why democracy is the legitimate form of collectively binding authority and what higher-order principles are there to justify democratic form of governance. Another observation from the brief overview of theories of legitimacy is the answer to this question usually be found through the concept of autonomy, as evidenced by the works of Rawls, Habermas, Held, and others, within a tradition started by Rousseau and Kant. As a final account of autonomy-based legitimacy, the work of Rainer Forst should be mentioned, as he clarifies the centrality of autonomy in both democratic theory and legitimacy theory. Forst defines five conceptions of autonomy, namely moral, ethical, legal, political, and social, which are not irreconcilable interpretations of the term, but rather how the same concept of autonomy interacts with different realms. All these conceptions are based on the same concept which is the basis of "right to justification" which can be claimed by all moral

persons (Forst, 2012, pp. 129–130). The right to justification means that persons owe each other the reasons which justify their actions that have effects on each other. This right, which can be argued to be the basis of both human rights and political rights, can be valid only if persons recognize each other as autonomous persons. When the right to justification is applied to the legal and political levels, the legal and political autonomy of persons are invoked, and again, the concept of autonomy is interpreted as "collective self-rule" (Forst, 2012, p. 135).

As Forst demonstrated along with others, the centrality of autonomy in normative justification of political authority is evident. It is also evident that this has not always been the case. In the vast majority of political history, political authority was not justified with reference to the capacity of persons to rule themselves, either individually or collectively. This indicates that at a certain point in the history of political thought, idea of autonomy has emerged and gradually replaced the old understanding of legitimacy.

4.2.2 The autonomy revolution

What is summarized above as a history of the idea of legitimacy comes to a revolutionary point after which legitimacy is understood in a different way than before. As opposed to the descriptive account of legitimacy laid out by Weber, Habermas makes the case that procedural justification of constitutional democracies depend on a source of legitimacy that is "more than mere acceptance" (Habermas, 1998). I argue that this profound change can be termed as the autonomy revolution after which the criteria for determining the legitimacy of political authority have changed irreversibly. Below is a brief but closer look at this historical transformation in ideas. Surely, social, political,

and economic events that laid the foundation for the Enlightenment have a huge role to play in this autonomy revolution; however, those events are outside the scope of this study. The point that is made here is that the autonomy revolution is primarily a revolution in ideas, specifically in the understanding of political legitimacy. I use the term 'revolution', because the said change is profound, has wide-ranging implications, and occurred in a relatively short period of history.

Autonomy, more specifically, individual moral autonomy, is the notion that individuals with a capacity to reason are capable of coming up with rules that govern their own lives. As a reference, it would be useful to mention David Held's definition of autonomy as a principle of democracy to place this definition within the context of political theory:

> Persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others. (Held, 1996, p. 324)

This conception of autonomy which can be understood as equality in freedom to rule over oneself has been the commonly accepted conception of autonomy in the 20th century. Robert A. Dahl, in his book *Democracy and its Critics*, which has become the bible of Post-WWII Western democracies also recognized autonomy as the primary source of justification for democracy:

> To live under laws of one's own choosing, and thus to participate in the process of choosing those laws, facilitates the personal development of citizens as moral and social beings and enables citizens to protect and advance their most fundamental rights, interests, and concerns. There is, however, a deeper reason for valuing the freedom to govern oneself, a reason having less to do than these with its usefulness as an instrument to other ends. This is the value of moral autonomy itself. By a morally autonomous person I mean one who decides on his moral principles, and the decisions that significantly depend on them, following a process of reflection, deliberation, scrutiny, and consideration. To be morally

> autonomous is to be self-governing in the domain of morally relevant choices. (Dahl, 1991, p. 91)

Yet the idea of autonomy originated in the Enlightenment, which means that the revolution in question occurred during the Enlightenment, or maybe it was even synonymous with it. It can even be argued that individual autonomy is the most important heritage of the Enlightenment era, still finding acceptance both philosophically and politically. The idea of individuals as morally autonomous beings goes back to Rousseau, who argued that individuals have moral liberty and are masters of themselves. Immanuel Kant is primarily credited as the originator of the term and the idea of autonomy (Schneewind, 2014; Sensen, 2013), yet it is also central to other philosophers such as Hume and Mill. In fact, Richard Lindley argues that Kantian, Humean, and Millian conceptions are three main strands of that shaped the concept as it is widely accepted in the liberal democracies today (Lindley, 1986). It is beyond the scope of this study to elaborate on Humean and Millian strands of autonomy in detail, however it should be noted that instead of either treating every human being as ends rather than means, or as self-legislating wills, both Humean[9] and Millian[10] understandings of autonomy can be summarized as the ability to act independently as an individual (Hume, 2012; Mill, 1869). This does not disqualify them from being

[9] Hume defines liberty as "a power of acting or not acting, according to the determinations of the will; that is, if we choose to remain at rest, we may; if we choose to move, we also may" (Hume, 2012, p. 648). And later he goes on to argue that liberty "is also essential to morality, and that no human actions, where it is wanting, are susceptible of any moral qualities, or can be the objects either of approbation or dislike" (Hume, 2012, p. 651). In these arguments, one can follow the idea of a rational being that can decide for itself, as well as decide on what is moral or not moral. Yet another perspective in which Humean autonomy is different from the Kantian one is that it is much less dependent on reason. Hume emphasizes the importance of passions, so much so that he argues that they are even antecedent to reason.

[10] For J. S. Mill, autonomy is expressed with the word 'individuality'. As a follower of the utilitarian tradition, Mill treats individuality as a means for self-development, which, in turn, contributes to the welfare of the society in general, and vice versa (Mill, 1869). Here, the perspective that Mill puts autonomy in is against either state or social intervention into the lives or actions of individuals. In this sense, Mill's account resembles that of Hume.

philosophers of autonomy, yet Kantian account of autonomy is more suitable for taking into consideration as an integral source of legitimacy for the modern state. This point can be further asserted by looking at the tradition which elaborated on Kantian idea of autonomy and examined the legitimacy of constitutional liberal democracies from the perspective of moral autonomy of citizens.

For Kant, autonomy is one of the founding stones in the wider understanding of ethics. Autonomy as elaborated by Kant in the Groundwork can be argued as the beginning of the autonomy revolution in question, because it is the first instance in which the idea of morality and ethics is brought down from heavens and it is argued that it originated from within the limits of human thought. Kantian autonomy is "the idea of the will of every rational being as a universally legislating will", which is based on conceiving of every rational being as ends in themselves (Kant, Gregor, & Timmermann, 2012, pp. 43–45). The end result would be the "kingdom of ends", thus building the link between the individual and the society in general.

The idea of autonomy brought along the tension between liberty and autonomy. This tension was identified especially by Isaiah Berlin in his *Two Concepts of Liberty*. In this work, the distinction Berlin made between positive and negative liberty roughly corresponds to the positive and negative conceptions of autonomy. While the negative liberty refers to the extent to which the humans are allowed to act freely, Berlin asserts that "the 'positive' sense of the word 'liberty' derives from the wish on the part of the individual to be his own master" (Berlin, 2002, p. 52). He goes on to elaborate: "I wish my life and decisions to depend on myself, not on external forces of whatever kind. […] I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside" (Berlin,

2002, p. 178). The self-rule and self-realization aspect of autonomy is emphasized here in a similar fashion as Kant. However, Berlin was critical of what he categorized as positive liberty. In many cases, he argued, this kind of liberty is not true liberty and can even lead to authoritarianism or totalitarianism. Therefore, only true liberty, negative liberty has to be adopted.

Berlin's approach perhaps unfairly lumps Kant together with a very thick conception of autonomy. He does indeed acknowledge the individualistic strand in Kant, yet still argues that his philosophy might lead to what he calls rule by experts. In any case, the understanding of autonomy that Berlin adopts is very different (if not mistaken) from the one that is adopted in this study. Autonomy understood as the capacity to be bound only by self-imposed rules and norms would in no conceivable scenario lead to an imposition of external authority such as totalitarianism. In fact, this conception of autonomy is inherently antithetical to such outcomes.

In order to understand whether Kant really meant what Berlin argued he did, and consequently establish the link between the positive understanding of autonomy and the legitimacy of the constitutional state, a further step had to be taken in the analysis of the concept of autonomy. This step was taken by Habermas, in the distinction he makes between public autonomy and private autonomy. By separating autonomy into private and public, he aims to retain the private/public distinction that one can identify with the republican idea of positive freedom as well as the liberal idea of individual autonomy. Habermas argues that private and public autonomy are "co-original", meaning that one is not superior or prior to the other. Both private and public autonomy reinforce and guarantee one another (Habermas, 1996, p. 120). With this idea, Habermas aims to bridge the gap between the freedom of the ancients and freedom of the moderns, which

almost correspond to the tension between the two conceptions of autonomy I have outlined above. While the freedom of the ancients represents a more republican trend in the history of political thought, it identifies itself with the positive conception of autonomy, and in Habermas's terms, public autonomy; freedom of the moderns represents the liberal trend, that corresponds to the negative, or private autonomy, or negative liberty, as Berlin named it. Habermas's critique of Berlin is further expanded by Forst, who rejects Berlin's distinction and argues that both "concepts" of liberty can be shown to be rooted in the concept of autonomy:

> The concept of political liberty comprises those conceptions of autonomy that persons as citizens of a law-governed political community must reciprocally and generally grant and guarantee one another, which means that political liberty includes all those liberties that citizens as autonomous freedom-grantors and freedom-users can jus-tifiably claim from one another (or, negatively, that they cannot reasonably deny one another) and for whose realization they are mutually responsible. (Forst, 2012, p. 128)

The co-originality thesis builds the strongest link between the autonomy revolution that is best represented by Kant and the legitimacy of the modern constitutional state. Following Kant, Habermas writes: "[…] the principle of law requires not just the right to liberties in general but the right of each person to equal liberties. The liberty of *each* is supposed to be compatible with equal liberty for *all* in accordance with a universal law" (Habermas, 1996, p. 120). With this reasoning, the positive law that the citizens would give to themselves as a result of their public autonomy would in turn be compatible with the Categorical Imperative that is based on their private autonomy. Habermas argues that the requirement of the idea of self-legislation cannot be met "simply by conceiving the right to equal liberties as a morally grounded right that the political legislator merely has to enact" (Habermas, 1996, p. 120). Equal liberties and the idea of self-legislation have to be in a circular process of validating each other.

In order to implement the idea of autonomy as a source of legitimacy, the state has to adopt it in forms of both a principle and the procedure in which citizens, recognized as morally autonomous agents, engage in a self-legislation process. In this study, it is argued that secularism is this tool of implementation itself.

The 'autonomy revolution' has, as mentioned above, occurred during the Enlightenment. Therefore, it is also directly related with other radical transformations that took place in the same period, especially secularization. It is beyond the scope of this study to discuss the relationship between secularism and secularization, yet secularization has to be mentioned at least with reference to the autonomy revolution. Hans Blumenberg's *The Legitimacy of the Modern Age,* or more generally, the Löwith-Blumenberg debate is built around the concepts of 'secular' and 'legitimacy', terms which are central to this study, yet employed with reference to quite different notions. Despite the fact that these concepts are used differently there, the debate is relevant to the argument here. By legitimacy, Blumenberg refers to the legitimacy of the whole project of modernity, rather than legitimacy of political authority specifically (Blumenberg, 1983). And within the context of this debate, secular, or more specifically secularization, refers to Löwith's thesis that modernity is merely a secularized version of Christian eschatology (Löwith, 1949). The implications of this debate on the concepts of secular and legitimacy used within the context of this study are about whether it is possible to conceive of a radically new and secular mode of political legitimacy that emerged with modernity.

A more recent debate on secularization can be identified as a parallel to Löwith-Blumenberg debate on modernity. Two books, Mark Lilla's *The Stillborn God* and Charles Taylor's *A Secular Age,* can be selected as representatives of two sides of this

more recent debate. Taylor's account of secularization in *A Secular Age*, does not aim to discredit the whole project of modernity as illegitimate, however he does situate himself in opposition to what he calls subtraction accounts of secularization. In an attempt to answer the question of how religion became only an option among many within the last 500 years, after enjoying domination over all aspects of human life for many centuries, Taylor provides a genealogy of the secularity.

Taylor writes that there are mainly three conceptions of secularity. According to "Secularity 1", religion, which was a dominant factor in most aspects of life several centuries ago, has mostly withdrawn from these spaces. Therefore Secularity 1 refers to simply the lack of any reference to religion in public spaces. Their points of reference instead move to their own respective rationalities. This conception broadly coincides with the Weberian differentiation thesis. Taylor's "Secularity 2" is also a popular definition: it simply refers to the decrease in religiosity in a given society. However, what Taylor is concerned in *A Secular Age* is different from these two. The first two conceptions of secularity are identified as "subtraction" accounts by Taylor because they are based, to some extent, on a subtraction of religion from society. Instead of subtraction accounts, he aims to provide a genealogy of what he calls "Secularity 3", which is about conditions of belief: "a move from a society where belief in God is unchallenged and indeed, unproblematic, to one in which it is understood to be one option among others, and frequently not the easiest one to embrace" (Taylor, 2007, p. 3).

The focus on secularity 3 puts Taylor's focus on a transformation of experience, or the self, and away from political philosophy. However, as Taylor himself acknowledges, his attempt to answer the question of secularity 3 is closely related to the reasons for secularity 1 and 2, and consequently the relationship between religion and

politics. By putting the emphasis on the transformation of the self and the experience, rather than a societal transformation based on an epistemological revolution, Taylor downplays the conflict between the domination of religion over society and the forces that disentangled it.

This is the point where Mark Lilla's *The Stillborn God* is placed in the opposite side of the debate than Taylor's *A Secular Age*. Lilla stresses that what we call secularization takes place as a result of a "great separation" in which the figures of the Enlightenment thought openly opposed the political theology that dominated Europe up until that period (Lilla, 2008). Since religion and politics were intertwined, and especially the legitimacy of political authority was grounded in the religious, Enlightenment thinkers and political philosophers had no choice but dismantle the theologico-political structure altogether. Accordingly, secularization was more than simply a transformation of the self, or the experience, as Taylor said, or a translation of religious vocabulary into the secular, but a total and definite social and political transformation that took place in a relatively brief period of human history.

Especially from the perspective of normative political theory which investigates how political authority is grounded, these debates regarding the nature of secularization are important. For the same reason, the position of a normative political theorist is more likely to be on the side of the debate that emphasizes a break and separation rather than continuity. What I have called the autonomy revolution took place within this period and autonomy-based grounding of political authority has since been the dominant source of legitimacy, especially in democratic politics. As Christine M. Korsgaard observed, "[…] during the transition from the ancient to the modern world a revolution has taken place — in the full sense of that resonant word" (Korsgaard, 2014, p. 2). By this, Korsgaard

refers to the source of value, which was up until then assumed to be beyond this world. It was the Enlightenment, and especially Kant, that finally decided to abandon Platonic idealism and completed the said revolution. It would not be wrong to call this an autonomy revolution, because as Korsgaard also wrote, "[t]he ethics of autonomy is the only one consistent with the metaphysics of the modern world" (Korsgaard, 2014, p. 5).

It has been discussed above why Kant can be identified as the originator (or by some, inventor) of the idea of autonomy. It should be noted that here I treat Kantian autonomy not as a specific conception of autonomy, but a comprehensive elaboration of the idea of autonomy that mostly emerged in Enlightenment thought. Therefore, unlike concepts of secularism and legitimacy, I assume that autonomy is a less contested concept, and its simple definition as self-rule can be accepted as a working definition. Instead of comparing and contrasting different conceptions of autonomy, what I aim to do here is to reflect on its depth, and for that purpose to refer to leading philosophers that have most comprehensively dealt with the issue. Moreover, it is not argued that the constitutional regimes or liberal democracies in the contemporary world directly adopt Kantian conception of autonomy. Such an argument would be untenable because a liberal democratic state could not adopt a comprehensive conception of autonomy. Exactly for this reason, this study approaches to the concept of autonomy from the public reason perspective. In this perspective, as also elaborated by Rawls and Habermas, autonomy has been reinterpreted as the separation between the right and the good (and the priority of the former over the other) and the co-originality of private and public aspects of autonomy of citizens.

What are the consequences of the Autonomy Revolution? It transformed not only how political authority justifies itself, but also how it organizes itself around this new

claim to legitimacy. Moreover, the content of political authority itself also changed, as the public is recognized as the source of that authority. Simply put, political authority became synonymous with public authority. This transformation required new institutional arrangements that govern the extent and the limits of political authority, as well as procedures that allow the public to govern itself, at the same time making it possible for the individuals that constitute the public exercise their freedoms, both derived from the claim to the recognition of individual autonomy by the state.

4.2.3 Legitimacy of the constitutional state

The constitutional state that is the subject here emerged as the dominant form of governance in the Western world after the Second World War. Although the roots of modern liberalism and constitutionalism go back to as early as the Enlightenment and the French Revolution, an ideal type of democracy in the form of the constitutional state only took shape after this specific time. The dominance of constitutional state was accompanied by the increasing amount of literature in social and political philosophy which engaged with the modern state, mostly from a critical perspective. Yet, this form of government has a richer literature that justifies it than any other form of government in history. In any case, it can be argued that the autonomy revolution outlined above gave birth to the form of government it is the justification of.

The 19th century revolutions introduced popular sovereignty not only as a source of legitimate government, but also a real possibility. In many Western nations, suffrage began to expand gradually to the general population. At this point, while conservatives were trying to preserve the old order and old privileges, liberals were trying to warn against the dangers of a ‘tyranny of the majority’ that could emerge as a result of

universal suffrage. While the 'popular sovereignty' was a liberal ideal, simply counting the votes and deciding on a majoritarian basis had the potential to undermine the individuals or the minorities, an illiberal outcome. The struggles between conservatives, liberals, and radicals continued in both ideological and political arenas throughout the most of the 19th and almost half of the 20th century. The dominant political regime that emerged after the Second World War, although based on a universal suffrage-based understanding of popular sovereignty, also had a strong liberal and individualistic aspect, primarily due to the atrocities of the war, primarily the Holocaust. The Universal Declaration of Human Rights, adopted in 1948, meant that absolute sovereignty, either of the people or any other kind of sovereign, was no more legitimate, unless it adhered to human rights.

The political reality that emerged as a result of this process was probably the closest point that reality reached the ideal of democratic political legitimacy. This helped, at least to some extent, the political theorists to once again look closer into the problems regarding legitimate government. Ironically, political philosophy was pronounced dead by Peter Laslett as late as 1956. This was probably due to the perception of politics not as a field of moral and practical philosophy, but science and strategy throughout the two World Wars and the interwar period. Yet, a rich literature was at the same time growing under the name critical theory, which would influence a new strand of political theorists in the coming decades. Also, liberal political philosophy was not completely dead, and it eventually gave birth to John Rawls, who revived the field with *A Theory of Justice* in 1971.

This brief background introduction is necessary in order to understand the relationship between the current state of political philosophy and its subject matter.

Although there is a gap between the actual conditions of political institutions and the claimed ideal of political legitimacy, this relative closeness between the two helped thinkers identify more specific problems that concern political philosophy. In a way, self-critique of the society became a part of the political process itself and contributed to it.

The autonomy revolution outlined above was finally in power. The revolution was in itself an idea, and it took place in the philosophical realm. In the second half of the twentieth century, the revolution was embodied in the lip service paid by the democratic states as the source of their legitimacy. Consequently, autonomy revolution which became embodied in the real world had to have a physical body, in other words, procedures, rules, and principles that realize the idea in the political realm. Therefore, the constitutions and institutions created by those constitutions derived their legitimacy from the same source: the assumption that individuals have moral autonomy and therefore the right to decide for themselves.

The overview of theories of legitimacy mentioned above demonstrates the way in which the conceptions of legitimacy evolved throughout the history of political thought. At one point of this evolution, however, the autonomy revolution occurred. In the earlier part of the 20th century in which normative political philosophy was in decline, the old, descriptive and consent-based conception of political legitimacy was still the dominant one. Only in the post-war era could the autonomy revolution which occurred in the Enlightenment period find acceptance in actual politics.

One of the greatest monographs of democracy in this period is from Giovanni Sartori. His *Democratic Theory* is a conceptual, historical, but also normative and comprehensive account of democracy. Sartori leaves no question about democracy

unanswered, exploring the concept thoroughly by analyzing its neighbor concepts and defining it both positively and negatively. In the normative sections of his work, Sartori also refers to the idea of autonomy and provides a critique of the concept in the Rousseauian sense (Sartori, 1973, pp. 298–304). He argues that Rousseau's idea of autonomy as liberty is not wholly compatible with modern democracy, because of its totalistic understanding of autonomy. He further argues that autonomy as we know it today should be traced back not to Rousseau but Kant, who distinguished between external and internal autonomy, similar to the distinction made above between morality and ethics.

Sartori's account of autonomy seems very critical of the concept as a justification for democracy. Autonomy in this regard could be misinterpreted even as a justification for totalitarian ideologies. Yet a closer look would reveal that Sartori's criticism is directed towards the romantic and populist misinterpretation of the concept that ends up being a tool of domination. Instead, Sartori defends the idea of political freedom against the idea of autonomy.

Sartori's criticism of autonomy is meaningful when a certain interpretation of Rousseau is taken into account. However, without the acknowledgment of moral autonomy of the individual, political freedom remains with no justification. Also, after touching upon Kant and his distinction of autonomy briefly, Sartori continues his critique with the misinterpreted Rousseauian definition of the term and does not argue for an interpretation of Kantian autonomy as a justification for modern democracy. This task, as I will try to demonstrate, is assumed by other scholars. Along with legitimation of constitutional principles such as secularism and the relationship between secularism

and political legitimacy, autonomy and legitimacy of the constitutional state will be further analyzed below.

4.3 Secularism and legitimacy of the constitutional state

This section focuses on three roles of secularism within the context of the constitutional state. These are (1) its legitimacy as a constitutional principle, (2) its role as the source of political legitimacy of constitutional democracies, and (3) the concept of procedural secularism that is an inherent part of the proposed conception, secularism as autonomy. Legitimacy of secularism as a constitutional principle refers to the normative standards against which the legitimacy of a constitution as well as the principle of secularism that is an inherent part of it is judged. Secularism as the source of political legitimacy focuses on a specific role of secularism, that is, as an enabler of individual autonomy that is at the root of the legitimacy claim of the constitutional democracy. Finally, procedural secularism focuses on the secular character of procedures that are inherent in constitutional democracies.

4.3.1 Legitimacy of secularism as a constitutional principle

In order to elaborate on the issue of legitimacy of a constitutional principle, legitimacy of the constitution as a whole should be analyzed. Legitimacy of a constitution can also be referred to as political legitimacy in the meta level, meaning that it determines limits and powers of a political authority. In order to call a constitution legitimate, then, the procedures that it sets out and possible outcomes of those procedures, as well as the principles it adopts should pass a test of legitimacy that refers to certain normative values. Is ‘consent of the governed’ an adequate response to this test? As analyzed

above, it is not. Barnett also argues that the consent-based understanding of constitutional legitimacy is inadequate because unanimous consent can never effectively be reached for constitutions (2003). Therefore, a constitution should have inherent normative value through which it can be assumed that it involves just procedures and substance for all citizens.

Above, I tried to demonstrate that legitimacy of the constitutional state itself is rooted in what I have called the Autonomy Revolution in the Enlightenment. The constitutional state that emerged after it became the dominant form of government not only in the West, but in most of the world. Yet, simply having a constitution does not make a state constitutional, since constitutionalism is about limiting the power of political authority with law and separation of powers. A constitutional state that is also democratic makes a claim to the institutional realization of the Enlightenment ideal of recognition of human autonomy. This is done by both recognizing individual freedom, and capacity of the individual to make laws that will bind him.

In a liberal democratic state, secularism as a constitutional principle does two things. First, it defines a category for the state. The state is defined as a secular state, as opposed to either a theocracy, a religious state, or, any other kind of state that is in some ways associated with religion. Second, it acts as a principle for the laws and regulations that will be bound by the constitution so that they will be secular. For these purposes, secularism as a constitutional principle does not have to be literally written in the constitution of a state. While some constitution writers may decide to state it explicitly, others would write a constitution that would implicitly adopt secularism as a principle. In fact, a state does not even need to have a written constitution in order for it to have secularism as a constitutional principle. Yet, as the main argument we have followed

here suggests, existence of secularism as a constitutional principle is a necessary condition for the concerned state to be a constitutional liberal democracy.

The assumptions given above, then, suggest a specific case for secularism. While the contents of a constitution are open to the process of legitimation by the citizens, does its special status make secularism exempt from this legitimation process? I will try to answer this question with reference to theories of legitimation of constitutional principles. In the light of these theories it will be investigated how secularism as a constitutional principle can be deemed legitimate as a result of a hypothetical legitimation process.

After what has been called the *Autonomy Revolution* above, the generally accepted conception of political legitimacy gradually gained a normative weight, and the burden of this weight is put on the constitutions of constitutional democracies. In other words, the legitimacy of the political authority of a constitutional democracy can be found, by definition, in its constitution. Yet the constitutions, unlike premodern or metasocial sources of legitimacy, do not exist externally, or to be more specific, are not assumed to be prior to the citizenry. They are in fact proclaimed in the name of the people, as if it was drafted by the people directly. As expressed by Thomas Paine; "A constitution is a thing *antecedent* to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting its government" (Paine, 1976, p. 93). Therefore, constitutions are subject to a legitimation process that is undertaken by the citizens that it claims sovereignty on. The tradition that is known as the social contract theory aims to represent this process as a hypothetical contract that took place not only in the moment

of initial drafting of the constitution but also joined by citizens that are born into it as long as the terms of the contract are reasonable.

Rawls's *Political Liberalism* is one of the latest representatives of the social contract tradition. It provides a normative theory of constitutional legitimation and it can be read as a theory of legitimation of a secular constitution through secular procedures. As mentioned above, Rawls's liberal principle of legitimacy is as follows: "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason" (Rawls, 1996, p. 137). For this principle to work, Rawls asserts that only political values should be employed in order to settle disputes about constitutional principles (Rawls, 1996, pp. 137–138). The term political is contrasted with the term comprehensive, where political represents a thinner conception of values that is translated into a form that is reasonably acceptable by all the parties, and comprehensive is a much more deeply held conviction that one holds, such as religious or philosophical, and cannot be reasonably imposed on other citizens that do not share it.

As evident also in his earlier work, *A Theory of Justice*, for Rawls, justice is the basic structure of society (Rawls, 1971). This requires that in order to agree on constitutional principles, citizens first need to agree upon a conception of justice that would enable such an agreement. In *A Theory of Justice*, Rawls proposes his conception of justice: justice as fairness. Justice as fairness is composed of two principles. The first principle, the principle of equal liberty guarantees equal rights to the greatest extent of liberties to all. The second principle, on the other hand, is the difference principle and it is concerned with the redistributive aspect of justice. While in *Political Liberalism*

Rawls admits that justice as fairness, is itself a comprehensive doctrine and is not the only and necessary option that the society would adopt as their conception of justice, this indeed applies to the second, distributive part of this conception, namely the difference principle. So even though a hypothetical society might adopt a utilitarian principle, rather than the difference principle as their conception of distributive justice, they cannot disregard the principle of equal liberty, or adopt an alternative to it, because any alternative of the principle of equal liberty would not be reasonably acceptable to citizens.

This point is elaborated in detail by Rawls from the perspective of comprehensive vs. political conceptions. According to Rawls, principle of equal liberty is not a comprehensive doctrine, but a political one (Rawls, 1987, pp. 7–8). It does not impose or make assumptions about any moral truth or metaphysical phenomena, it only establishes the political grounds on which citizens may build a more detailed list of basic political rights, principles, and institutions. Rawls calls this political grounds 'overlapping consensus' and defines it as "a consensus in which it is affirmed by opposing religious, philosophical and moral doctrines likely to thrive over generations in a more or less just constitutional democracy, where the criterion of justice is that political conception itself" (Rawls, 1987, p. 1).

The method that Rawls adopts in this process of constitutional legitimation is Kantian constructivism (Rawls, 1980). Cass Sunstein provides an approach similar to Kantian constructivism that is proposed by Rawls. He offers the term 'conceptual descent', through which people deliberate through a lower level of abstraction. Sunstein writes: "people can often agree on constitutional practices, and even on constitutional rights, when they cannot agree on constitutional theories" (Sunstein, 2001, p. 50). Like

Rawls, Sunstein also demonstrates that unanimity or agreement on comprehensive philosophical or metaphysical assumptions is not necessary in order to conceive of a democratically legitimate constitution. Sunstein also argues that people can agree on same principles for different reasons, which is again the idea of overlapping consensus rearticulated.

Here I argue that citizens that agree upon a political conception of justice as the basic structure of their society and build an overlapping consensus on it is in fact the situation in which the conception of secularism as autonomy is adopted. The following paragraph is the evidence that Rawls would agree:

> […] a political conception of justice completes and extends the movement of thought that began three centuries ago with the gradual acceptance of the principle of toleration and led to the **non-confessional state and equal liberty of conscience**. This extension is required for an agreement on a political conception of justice given the historical and social circumstances of a democratic society. In this way the **full autonomy of democratic citizens** connects with a conception of political philosophy as itself autonomous and independent of general and comprehensive doctrines. In applying the principles of toleration to philosophy itself it is left to citizens individually to resolve for themselves the questions of religion, philosophy and morals in accordance with the views they freely affirm [emphasis added]. (Rawls, 1987, p. 15)

Here, Rawls demonstrates the relationship between the secular state that emerged as a result of a historical process and the normative idea that citizens should be assumed to be autonomous agents. As the historical, non-democratic secular state became democratized and became subject to democratic legitimation, secularism itself had to be legitimized through this process. If it is assumed that secularism as autonomy is the constitutional principle through which the value of autonomy which constitutes the basis of modern constitutional democracy is institutionalized, then Rawlsian idea of overlapping consensus is a very appropriate theoretical tool which demonstrates how

such a constitutional principle can be legitimized by the same citizens that are subject to that constitution.

However, another problem arises when the concept of individual autonomy is invoked as the source of legitimacy for constitutional principles. The problem is the ambiguity of whether autonomy should be understood as the source of popular sovereignty, and thus, democratic procedures, or conception of an autonomous individual who is a bearer of rights which cannot be breached even by popular sovereignty. The most effective solution to this problem is proposed by Habermas by separating autonomy into two as private and public autonomy (Habermas, 1996). This distinction was mentioned above in other contexts, yet when it comes to legitimation of constitutional principles, it has to be reemphasized because constitutional principles are essentially tied to, or usually overlapping with, basic rights. Autonomy, in this regard, is the common ground where both popular sovereignty and inviolable basic rights meet. Basic rights are inviolable because individuals who have them are autonomous. Popular sovereignty is the only legitimate form of governance because, again, people who govern themselves are autonomous, self-ruling agents. In his attempt to provide a autonomy-based account of constitutional legitimation, Habermas specifically refer to the Kantian conception of autonomy as follows:

> • First, only those outcomes can count as legitimate upon which equally entitled participants in the deliberation can freely agree—that is, outcomes that meet with the justified consent of all under conditions of rational discourse.
> • Second, given the specific way of framing the question, the participants commit themselves to modern law as the medium for regulating their common life. The mode of legitimation through a general consent under discursive conditions realizes the Kantian concept of political autonomy only in connection with the idea of coercive laws that grant equal individual liberties. For according to the Kantian concept of autonomy, no one is truly free until all citizens enjoy equal liberties under laws that they have given themselves after a reasonable deliberation. (Habermas, 2001, p. 772)

Co-originality of private and public autonomy, as Habermas puts it, indicates that autonomy as a democratic procedural norm and as a constitutional principle that is agreed upon by the people with reference to the same democratic procedure, do not have supremacy over one another. In this regard, secularism as autonomy is also legitimated through the same procedure. It should be kept in mind that this is a hypothetical procedure of legitimation, which acts as a test of whether constitutional principles are legitimately agreeable by reasonable citizens or not. The secularity of this legitimation also comes from the distinction between the secular and non-secular. For instance, some interpretations of Rawlsian overlapping consensus that treat religious and secular comprehensive doctrines in the same category (Taylor, 2011) are mistaken, because there is a qualitative distinction between the two types of doctrines. Accordingly, religious reasons, unlike secular reasons, address a specific audience (primarily the religious community) and uses a specific language and specific references (to the beyond). Implications of this qualitative difference between religious and secular reasons are mainly procedural, namely what kind of reasons can or should be included in the public sphere or the legislative sphere. These questions will be further discussed below.

Habermas is therefore clear on what makes a constitutional principle legitimate. He writes that "[d]emocratic legitimation is supposed to rest on reasons that an explain, if necessary, why the constitution *deserves* recognition from its citizens", and therefore constitutional principles are also subject to intersubjective recognition (Habermas, 2003, p. 188)". The implication of this is that constitutional principles, being higher level principles that are assumed to be legitimated intersubjectively, provide the direct source

of legitimation also for the positive law. This means that legislative procedures and consequently legislation are also legitimate to the extent that constitutional principles are legitimate.

Let us go back to the specific principle of secularism. It has been argued here that secularism as a constitutional principle is subject to the same legitimation process as other constitutional principles and therefore it is legitimate as a result of intersubjective agreement by the citizens. Does it follow from this that constitutions without direct reference to secularism are not legitimate? Should symbolically religious states such as the UK or Norway be categorized as illegitimate regimes? Of course, one cannot reasonably argue so. However, what is meant by constitutional principle in this context is not the articles of a written constitution but how the state bases its legitimacy on certain principles in practice. The conception of secularism as autonomy has indeed been proposed in order to overcome this confusion. The existence of secularism as a constitutional principle does not depend on an explicit reference to secularism or the secular, but rather actual practice of autonomy recognition. This test of constitutional secularism has been detailed above in the Chapter 2.

The main point made in this section is that secularism is a necessary principle of a constitutional liberal democratic state, and for the same reason it is subject to the legitimation process of any other constitutional principle in a constitutional state. This process is ideally assumed to be a result of intersubjective recognition through the use of public reason. The claim here, of course, is not a historical claim and I do not argue that actually existing liberal democracies have all gone through this process of constitutional legitimation. However, the point is not the historical accuracy of such a legitimation process but whether it can reasonably be argued that any given constitutional principle

can pass such a test of intersubjective legitimation through public reason. It is argued here that secularism passes this test of legitimacy. Moreover, since secularism as autonomy has a procedural aspect (more on this below, under 'procedural secularism'), adoption of secular procedures that recognize individual autonomy of the parties is a necessary condition that precedes any constitutional legitimation process.

4.3.2 Secularism as the source of political legitimacy

The purpose of this study has so far been to propose a conception of secularism that acts as a function of one of the main sources of democratic legitimacy. That conception, secularism as autonomy, is based on the conception of individual autonomy that recognizes individuals as self-ruling subjects. Recognition of individuals as self-ruling subjects, as shown above, is also the main source of legitimacy for modern constitutional democracies. Here, I suggest that secularism, when understood in accordance with the conception of secularism as autonomy, also constitutes the source of political legitimacy for constitutional democracies. The proposition made here seems straightforward, yet it has to be substantialized further in order to convey a greater understanding of the relationship between secularism and legitimacy.

The first point that should be asserted here is the argument that secularism, as treated here, is a constitutional principle. Constitutional principle is briefly defined in 1.3.3. as principles or values that are adopted by a constitutional regime in a constitutional level, meaning, at the top of the hierarchy of norms. The implications of treating secularism as a constitutional principle are (1) it is assumed as a principle or a value rather than a specific policy or an institutional arrangement, and (2) it is assumed to exist in a specific level of analysis, that is the constitutional level, as opposed to the political or societal

levels. This point is emphasized because a good conceptual analysis of secularism requires parsimony and coherence. An all-encompassing conception of secularism would be theoretically useless.

In the conceptual analysis above that treated secularism as a constitutional principle, the conception of secularism as autonomy was proposed as an alternative to other conceptions of secularism as a constitutional principle that are currently in circulation (secularism as toleration, as freedom of conscience, as separation, as neutrality, as secular source of law). It is argued that secularism as autonomy is conceptually better than these conceptions because it has more conceptual depth as well as theoretical utility. It has conceptual depth because secularism as autonomy encompasses the concept more wholly while other conceptions that are considered approach the concept only from a specific perspective. And it has theoretical utility because secularism as autonomy is useful in explaining the relationship between secularism and the legitimacy of the constitutional democracy.

As all entities of public authority, constitutional democracies also have a claim to legitimacy. Yet, this is a more specific and more profound claim to legitimacy as opposed to, say, that of the premodern states. The legitimacy claim that constitutional democracies make is as follows: "I have legitimate authority to use coercive power because I use that power only to the extent that is allowed by the public autonomy of my citizens and I promise not to use that power to violate the private autonomy of my citizens". In formulating this legitimacy claim of the constitutional democracy, I borrow the distinction between private and public autonomy made by Habermas. Habermas makes this distinction "in order to introduce a system of rights that gives *equal weight* to both the private and the public autonomy" which would "contain precisely the basic

rights that citizens must mutually grant one another if they want to legitimately regulate their life in common by means of positive law" (Habermas, 1996, p. 118).

The distinction made between private and public autonomy may seem to be a thick normative requirement that is imposed on the constitutional democracy. However, in essence, it is simply the reformulation of the legitimacy claim that constitutional democracies already make. As shown above, the autonomy revolution that marks the shift between descriptive and normative, pre-modern and modern, and democratic and non-democratic conceptions of legitimacy, culminated in the recognition of individual moral autonomy of moral citizens by the states as sources of legitimacy. The formulation of Habermas is useful in understanding how constitutional democracies claim legitimacy by protecting individual basic rights of citizens and at the same time giving them the procedural opportunities to express their will. The distinction between private and public autonomy shows that both of these functions of the constitutional democracy are rooted in the recognition of autonomy.

Secularism as a constitutional principle, and specifically the conception of secularism as autonomy enters the scene at this point. The constitutional democracy, in order to fulfill its claim to legitimacy, perform the functions that are required by its essential source of legitimacy, which is the recognition of autonomy. The state can only perform these functions if it is guided by constitutional principles that determine the norms according to which institutional arrangements and policies will be adopted. Secularism as autonomy, as argued here, is the constitutional principle through which the constitutional democracy puts autonomy in practice in order to keep its promise that gives it the legitimacy it requires. In fact, adopting secularism as a constitutional principle is the only way for constitutional democracies to back up their legitimacy

claim. The reason for this is that (1) secularism by definition requires treating the will of every individual as autonomous, (2) secular procedures (procedures that fulfill the criteria of accessibility and worldliness, and that allow the expression of autonomous will) allow participation of citizens in "opinion- and will-formation" and thus exercise their "political autonomy" (Habermas, 1996, p. 123), and (3) secularism excludes sources of legitimacy that are not secular, or metasocial.

The claim that adoption of secularism as a constitutional principle as the only way that a constitutional democracy can fulfil its promise of legitimacy may seem to be a bold claim and may be reasonably criticized from some perspectives. The first point of criticism can be that secularism is a 'thick' normative principle or a 'comprehensive doctrine' therefore cannot be offered as a source of political legitimacy, or a basic principle of a constitutional democracy that has a claim to ethical neutrality. This criticism has been directed toward secularism mostly from the multiculturalist perspective and has been mentioned in the respective sections. Specifically, criticizing Habermasian proviso of exclusion of untranslated religious discourse from the formal institutions of constitutional democracy, Charles Taylor and Maeve Cooke, among others, argue that if a constitutional democracy cannot impose an ethical doctrine upon its citizens, neither can it impose secularism upon them (Cooke, 2007; Taylor, 2011). More specifically, any principle of a constitutional democracy that does not apply the same criteria on ethically thick religious doctrines and ethically thick secular doctrines fails its promise of ethical neutrality according to this criticism. This criticism therefore assumes that secular and religious comprehensive doctrines are equals, or should be treated as equals by the state, when it comes to public discourse or inclusion in formal institutions.

I respond to this criticism by adopting the Rawlsian-Habermasian position on secularism. This position can be summarized as follows: Rawls, in *Political Liberalism*, excludes comprehensive doctrines from commonly agreed principles of cooperation. This exclusion takes place in what can be identified as the constitutional level, which means that citizens do not impose their ethical doctrines on each other at this level (Rawls, 1996). Although Rawls does not call his principle secularism, secularism by definition involves impartiality toward comprehensive doctrines. Habermas's proviso of exclusion takes place at the doorstep of the institutional or formal level of society. According to Habermas's two-track model of constitutional democracy, citizens are free to engage in public debate in what can be termed as the informal sphere and put forward arguments based on their religious or other comprehensive views in that sphere, as long as those arguments are translated into a language that is accessible to all until the point at which it crosses the institutional threshold (Habermas, 2006b).

The Rawlsian-Habermasian position on secularism is supported by the test of secularism proposed here: in order to be secular, reasons should be both accessible to reasonable persons and worldly in their content and scope. Some comprehensive doctrines do not fulfill the criterion of accessibility and especially religious doctrines fulfill neither the criterion of accessibility nor the criterion of worldliness. In that regard, secularism cannot be criticized from the point that it is a comprehensive doctrine itself. On the contrary, secularism is the principle that would guarantee no comprehensive doctrines would dominate the public life or be adopted and imposed by the state.

Another argument against secularism as the source of political legitimacy is more fundamental and outside the liberal paradigm. This criticism is based on the assumption that political legitimacy cannot be established solely with reference to secularism.

Accordingly, secular governments are prone to a legitimacy deficit and therefore their political legitimacy should be reinforced with norms that are essentially non-secular, such as religion (this may range from officially adopting a state religion to merely supporting or accommodating religion in general, or giving symbolic reference to religious heritage, etc.) or national myths. This argument was indeed taken into account in the 'Theories of Legitimacy' subsection above. According to the classification of theories of legitimacy made there, while it possesses a normative quality, the position from which this argument is made contains elements from pre-modern and non-democratic theories of legitimacy. Although early modern theorists such as Hobbes argue for manipulation of non-secular values such as religion in order to achieve a higher level of consent, thus legitimacy, from the subjects, what distinguishes modern theories of legitimacy from pre-modern ones is that the former establishes the idea of legitimacy upon the idea of the people and citizenship, while the former depended on something beyond these.

Yet, the problem of legitimacy of a secular state is acknowledged and taken up as a challenge by contemporary political theorists. Leo Strauss identified the "theologico-political problem" as an ongoing and irresolvable tension between religious and secular authorities (Strauss, 1967). Therefore, for Strauss, the legitimacy of the secular authority was by no means absolute. Later on, German legal scholar Ernst Wolfgang Böckenförde identified what would later be named as the "Böckenförde dilemma" (or, 'Böckenförde-Dictum') with the following proposition: "the liberal, secularized state is nourished by presuppositions that it cannot itself guarantee" (Böckenförde, 1991, p. 45). Böckenförde comes to this conclusion after providing the historical origins of the modern state that arose in the west (and which later became universalized), and its secularization.

According to Böckenförde, secularization, or the supremacy of the political authority over the religious one, paved the way for emancipation and human rights. However, as culminated in the Dictum quoted above, secularized state seems to suffer a legitimacy and stability deficit because it had to abandon imposing or encouraging homogenizing values such as religion and nationalism. Any state that would impose or adopt such ethically thick doctrines cannot be liberal and secular, however, at the same time according to Böckenförde, a relatively homogenous society is necessary for its democratic self-regulation, which, in turn, is the ultimate guarantee of liberty.

In the face of this challenge, how can it be claimed that secularism is the source of political legitimacy? Habermas takes up the challenge to provide a solution for Böckenförde dilemma. He reads the dilemma as a question about how a plural society can be stabilized and at the same time have a sense of solidarity that would reinforce the legitimacy of the secular liberal state. In order to overcome the above-mentioned disadvantage of secularization, Habermas argues that the society should engage in a learning process in which the limits of both Enlightenment values and religious values are tested (Habermas, 2006a, pp. 251–252).

However, he also emphasizes that Böckenförde dilemma has been usually misunderstood and misrepresented as if it constitutes a premise for the argument that the state requires religion or any other metaphysical ethical source in order to generate political legitimacy. In Habermas's understanding, the secular liberal state does not need such a 'metasocial' source because by definition it is self-sufficient in terms of legitimacy. Habermas attributes this misunderstanding to the German legal positivist and Schmittian traditions which referred to a "nonlegal ethical substance" of the state. According to that tradition, there was a gap that needed to be filled after the foundation

of the secular-liberal state, and this gap could be filled by religious or other mythical sources. Unlike this position, Habermas argues from a Kantian point of view that constitutional principles of the secular liberal state have an autonomous foundation and do not require such a gap-filling set of values or norms. He assumes "that the constitution of the liberal state is self-sufficient with regard to its need for legitimation that is, that it can draw upon the resources of a set of arguments that are independent of religious and metaphysical traditions" (Habermas, 2006a, p. 253).

Then, what is the source of the bond that unites the citizens in a solidaristic manner and reinforces the legitimacy of the state, if not religion or other metasocial or prepolitical norms? Habermas's answer is that the constitutional democracy is capable of generating that bond by enabling its citizens to engage in the democratic process:

> The democratically constituted Rechtsstaat not only safeguards negative freedoms for citizens of society [Gesellschaftsbürger] concerned with their own welfare; by relaxing controls on communicative freedoms, the state also mobilizes its citizens to participate in the public debate on issues that pertain to all of them. The missed "common bond" is a democratic process in which the correct understanding of the constitution is ultimately under discussion. (Habermas, 2006a, p. 254)

This perspective of Habermas that is demonstrated above is rooted in his earlier work of political theory that is based on his theory of communicative action. In *Between Facts and Norms*, he contrasts traditional societies in which "even the law" required the legitimating force of religion with modern societies which "must be maintained without metasocial guarantees" (Habermas, 1996, p. 26). In the traditional society, the supremacy of religion above secular law constituted a primary source of legitimacy, which means that it claimed to be the origin of legitimacy. In modern societies which are self-governed by a constitutional democratic polity in which both individual rights and political participation are maintained, this mode of governance by itself constitutes a

primary source of legitimacy. Therefore, the source of legitimacy is rooted in the secularism of the constitutional democracy itself: the fact that it does not require metasocial guarantees is the reason it can claim to be legitimate.

This point is the essence of the argument that secularism at the same time constitutes a source of political legitimacy of the constitutional state. In the previous subsection, it was explained how secularism is a legitimate constitutional principle in liberal democracies and how it is assumed to be legitimated by citizens. Here, the argument goes one step further: it is also one of the sources of legitimacy in such states. The idea of secularism as a source of legitimacy comes from the idea of moral autonomy explained above. According to the conception of secularism as autonomy, secular state is the one that guarantees the autonomy of its citizens both as individuals and as citizens. Morally autonomous citizens are the ones that can give law upon themselves and are also bound by it. If it is, at least to a certain extent, constitutional principle of secularism that enables popular sovereignty, then it is also one of the major sources of political legitimacy. It also follows from this that policies, legislations, or any other acts by the state that do not conform to the principle of secularism will decrease its legitimacy because secularism is so closely tied to the main source of political legitimacy: individual moral autonomy.

4.3.3 Procedural secularism

The third pillar regarding the relationship between secularism and legitimacy of the constitutional state is the concept of procedural secularism. In section 2.3. above, the meaning of secularism as autonomy as it applies to legislative procedures was discussed, and the theoretical justifications for a procedurally secular democracy were briefly

reviewed. It has been argued so far that constitutional secularism in constitutional democracies is the implementation of the recognition of individual autonomy, the fundamental source of legitimacy of the constitutional democracy. The implications of this is that secularism is not only a principle that sets a limitation on the laws and policies adopted, but also one that determines the nature of procedures through which individuals who are recognized as autonomous take collectively binding decisions. These procedures are also commonly called democratic procedures, because democracy in the modern sense of the word is the way in which a society performs self-rule, or autonomy. This subsection will elaborate on the secular nature of such procedures, their function in constituting the legitimacy of the state by putting autonomy in practice, and how procedural secularism is different from secularism as principle only.

Interestingly, Rowan Williams, former Archbishop of Canterbury suggested the term 'procedural secularism' in contrast to 'programmatic secularism'. As opposed to the latter, which is an ideology aiming at exclusion and marginalization of religion from all aspects of society altogether, procedural secularism provides a neutral and inclusive public sphere for all kinds of voices, religious and non-religious alike (Williams, 2006). Specifics of what Williams had in mind in terms of political theory will not be discussed at this point, but his framing of the concept is appropriate for the purposes aimed at here.

It has been shown above that the liberal and republican traditions which emphasize respectively individual autonomy and public autonomy can be reconciled following the Habermasian theory of co-originality of private and public autonomy. In fact, this co-originality serves as the justificatory basis of modern constitutional democracies which promise to fulfil both private autonomy by respecting basic rights and public autonomy by providing democratic procedures. By the same token, the conception of secularism as

autonomy suggests the secularity of not only substance or institutions, but also those democratic procedures. Public autonomy is simply about being subject to the law that one makes as a society, that is, taking public decisions that would be collectively binding.

What, then, does secular procedures mean? Secular has been defined earlier as having two qualities: accessibility and worldliness. Following the same line of thought, secular procedures are those that are (at least in principle) accessible to all, and at the same time worldly, meaning, with no referents outside the society that it binds. As elaborated above, secular procedures are those that exclude 'metasocial' referents. Such referents may include religion, myths, ethno-symbolism, etc. which may have been introduced at some point as pre-modern sources of legitimacy. Such elements make the procedures exclusive and heteronomous, and therefore non-secular. Any 'sacred' authority that is considered immune from rational criticism, that is 'beyond' or 'inaccessible', is by the same token, outside the scope of procedural secularism.

Following the co-originality thesis of basic individual rights and democratic rights, Habermas's approach to democratic procedures is based on the discourse principle: "Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses" (1996, p. 107). This principle aims to establish a normative criterion for procedures of lawmaking. More specifically, "the democratic principle states that only those statutes may claim legitimacy that can meet with the assent (*Zustimmung*) of all citizens in a discursive process of legislation that in turn has been legally constituted" (Habermas, 1996, p. 110). This is the core of what Habermas calls his deliberative approach to procedural democracy. Although it puts a heavy normative requirement on the procedures, especially considering the actually existing

forms of constitutional democracy and lawmaking, Habermas's approach demonstrates that the justification for validity of law is derived not from metasocial or external, inaccessible norms, but the procedures themselves. In other words, intersubjectivity as a procedure is a more legitimate form of democratic decision-making than any non-secular procedure.

Again, neutrality is a core element of constitutional democratic procedures. However, when the promise of actualizing the conditions of autonomy is considered, the extent of neutrality is disputed (this was briefly discussed above, under 'Secularism as Neutrality'). Neutrality of procedures are not, by definition, concerned with neutrality of outcomes. In this regard, the 'neutral justifiability' criterion of Larmore agrees with the definition of procedural secularism as autonomy as well. Accordingly, the arguments should be neutrally justifiable, even if they are not neutrally agreeable.

Coming from a similar, proceduralist tradition, Cécile Laborde comes up with a minimalist conception of secularism. In her words; "state officials and political representatives should not justify their actions, laws and policies by appeal to conceptions of religious truth" (Laborde, 2013a, p. 165). Laborde calls this conception "justificatory secularism". According to this position, secularism is "a meta-theoretical position about modes of political justification, rather than a normative, substantive position about the particular ends and values that citizens should pursue" (Laborde, 2013a, p. 167). Therefore, in a secular state in accordance with Laborde's conception, political justification should be made using secular (reasonably accessible and worldly) reasoning. Laborde provides four reasons that make religion a special case, as opposed to, for instance, secular worldviews or comprehensive doctrines. First, the state cannot claim competency in matters regarding religion and therefore should avoid excessive

entanglement with religion. Second, for historical reasons, religion has been a source of conflict and it is better to avoid the possibility of inciting such conflict. Third, profoundness of religion for religious citizens makes it difficult to compromise or compete with other (especially non-religious) reasons in the public sphere. Fourth, and for my purposes, the most important point is that religion marks insiders and outsiders, and therefore a religious justification cannot reach beyond its own community and may exclude affected parties that do not belong to the same religious community (Laborde, 2013a, p. 168). Laborde argues that none of these reasons alone make religion a special case, but taken together they provide convincing reasons for the exclusion of religious reasons from public justification. Also following Habermas in his distinction between the formal and the informal public spheres, Laborde contends that the criterion of justificatory secularism applies only to the former, because the latter does not have the coercive and binding force that the former does.

Laborde's conception of justificatory secularism is in line with the conception of secularism as autonomy, but only partially. Secularism as autonomy conceives of secularism not only as a procedure, but also a constitutional principle that might restrict the outcome of legislative process as well. Laborde's conception fits well with the procedural aspect of secularism, but not with the remaining part of secularism as autonomy. To demonstrate this, the example that Laborde herself gives can be mentioned. In order to demonstrate her version of secularism, Laborde mentions two hypothetical societies. In Society A, religion has little influence in the public sphere and it has liberal abortion and homosexuality laws. In Society B, there is a very influential dominant religion, and it has restrictive laws regarding abortion and homosexuality. For Laborde, as long as these laws are justified with no reference to religion, both societies

pass the test of justificatory secularism. For instance, Society B may restrict abortion and homosexual acts with reference to right to life and protection of traditional family, instead of religious norms, thus would still qualify as a procedurally secular polity (Laborde, 2013a, p. 172). For Laborde's purposes, there is no problem with this because she aims for a "metaphysically thin" conception of secularism as much as possible. However, according to secularism as autonomy, a metaphysically thin conception of secularism is possible without being indifferent to laws and policies which restrict (arguably arbitrarily) individual autonomy of persons. For instance, a law banning the adoption of children by homosexual couples justified with reference to "traditional family" would be in contradiction with the constitutional democracy's promise of protection of individual autonomy. The reference to "traditional family" in this context would be identified as a "metasocial norm", and the restrictions placed with reference to these norms would seriously curtail the autonomy of affected persons. For this reason, secularism as autonomy is divided into two components as substantial and procedural aspects, and only a procedural requirement would be insufficient.

Procedural secularism inspired by the Habermasian discourse principle also has several critics. As mentioned briefly above under "Accommodationist Criticism", Maeve Cooke aims to replace Habermas's requirement for accessible, or secular reasons in the formal sphere with a requirement for non-authoritarian reasoning, allowing religious, "otherworldly" sources of validity (Cooke, 2007). Cooke's critique is built upon an attempt to find a middle way between another critic of secularism, Wolterstorff, and Habermas's ideas regarding "post-secular society". By juxtaposing these two ideas with Rawls's accessibility criteria (the requirement that religious reasons should be replaced by reasons accessible to all when it passes the legislative threshold), she argues that

religious citizens are burdened unfairly and such requirements are therefore unacceptable for many religious citizens. Cooke argues that this is the case even if one adopts Habermas's requirement of translation of religious reasons into secular language. However, her more compelling argument is interestingly built upon the autonomy principle. According to Cooke, political autonomy is a core principle and when citizens are not allowed to put forward their arguments in the form that they prefer, they have to sacrifice their autonomy to some extent because they would not feel as the authors of the law that they are subject to. Habermas proposes postmetaphysical thinking as a way to overcome disagreements based on religious or other metaphysical claims to validity. For this reason, it leaves the 'otherworldly' arguments beyond the parentheses of public reasoning, and as also identified by Cooke, postmetaphysical can be equated with secular. However, Cooke goes one step forward and argues that Habermas's proposal is not only secular, but secularist. This secularist tendency, according to Cooke, is the reason why Habermas's political theory contradicts with the autonomy principle.

Cooke recognizes that revoking the principle of secular state might lead to an authoritarian religious state (2007, p. 234). Her precaution for this is to replace the secular procedures requirement with a non-authoritarianism test. Moreover, unlike Habermas, Cooke does not distinguish between informal and formal public spheres, or 'weak publics' and legislative processes. The non-authoritarianism requirement applies to all uses of public reason. Similarly, the secularism requirement is lifted in all these realms. Cooke's suggestion is compelling because it stands on the ground of ethical and political autonomy. However, it can also be shown that her suggestion does not satisfy the requirement of autonomy and doing away with secular procedures is a bad idea for several reasons. First, risk of an authoritarian religious regime is not the only reason why

religious arguments should be left outside legislative procedures. As indicated by Habermas, Laborde, and Audi, religious reasons have certain characteristics that may create exclusion in a space that needs to be inclusive. Also, even though it is argued that the demand for secular reasons or accessible translations from religious citizens places a heavy burden on them, this does not have to be the case because the subject matter of politics is, by nature, 'worldly'. The assumption that religious citizens need to engage in a constant effort of translation of their religious viewpoints into the all-accessible language is an exaggeration, because few political issues are matters are relevant to justification through religious reasons. This does not mean that the remaining issues are negligible or insignificant. However, the normative power of democratic procedures lies in their capability of being accessible and comprehensible for all affected parties. For this reason, articulation of reasons for positions in public debate and legislation in an all-accessible and 'innerworldly' language is the only way such accessibility and comprehensibility can be achieved universally.

The legitimacy of the principle of secularism is therefore based on the procedure itself. The norm, namely the secular character of the procedure is immanent in the procedure. This is, as explained above, accessibility of the procedures to all the affected parties and therefore not being exclusive to a specific community, and their worldliness, with no transcendental referents. The main idea behind procedural secularism is that secularism is not only a principle about outcomes or policies of the legislative process, but also the democratic procedures themselves.

CHAPTER 5

CONCLUSION

One must not exalt one's creed discrediting all others, nor must one degrade these others without legitimate reasons. One must, on the contrary, render to other creeds the honor befitting them.
- King Asoka (Luzzatti, 1930, p. 50)

5.1 Recap

This study has attempted to provide a conceptual analysis of secularism as a constitutional principle. The term "secularism as a constitutional principle" is used in order to refer specifically to those states that are constitutional. Simply an analysis of secularism would have to cover all polities that can be defined as secular states. This was deliberately avoided because such an analysis would be too broad and therefore fruitless. Instead, secularism was analyzed in constitutional democracies, which, in turn, resulted in the conclusion that secularism has a much deeper connection with this specific type of state than previously assumed. This connection is as follows: when one adopts a specific conception of secularism, it becomes obvious that the main source of legitimacy of constitutional democracies, namely autonomy, is exercised through secularism as a constitutional principle. This is why this conception is called "secularism as autonomy".

Secularism as autonomy is defined as "the conception of secularism that requires the state to treat its citizens as morally autonomous subjects, meaning, individuals with capacity to rule over their own and follow a rational plan of life". The implication here is that merely by treating its citizens as morally autonomous subjects in an institutionalized manner, the state can be identified as secular. Because, the only way that this promise

can be fulfilled is through the adoption of constitutional principle of secularism and secular procedures. In this context, secular is defined with respect to two criteria: accessibility and worldliness. In accordance with the principle of secularism defined as such, the procedures should be accessible to all that are concerned and should not depend on any reference to "the beyond". Secular procedures and consequently secular legislation function as the instruments that fulfill the recognition of citizens as autonomous subjects.

This conception briefly defined above is contrasted with other, commonly held conceptions of secularism. These include secularism as toleration, secularism as freedom of conscience, secularism as separation, secularism as neutrality, and secularism as secular source of law. These are treated as 'conceptions' in the sense that neither of them is outright contrary to the concept itself. The problem with these conceptions is not the fact that they are mistaken, but rather that they are incomplete. Each of these conceptions focus on one single aspect of secularism, thus missing the bigger picture that provides the raison d'être of secularism and an explanation as to why those institutional arrangements were adopted in the first place.

Secularism as autonomy also aims to provide a reply to the commonly held criticisms of secularism in general. In this study, those criticisms are reviewed under multiculturalist, postcolonial, and accommodationist headings, since these are the most common perspectives that are critical of secularism as a constitutional principle or a government policy. Taken together with the conceptions of secularism, it can be understood that most such criticism is demonstrably inconsistent or invalid because they are also based on incomplete or inaccurate representations of the concept. The conceptions of secularism such as separation, neutrality, or merely secular source of law

makes secularism prone to the criticism that is directed from the above-mentioned perspectives. The reason for this is that when secularism is represented merely for instance as separation, or merely the fact that the legal sources of the state are secular without any reference to the underlying reason for such constitutional preferences, the points put forward by the critics can achieve validity. For example, some critics (such as Asad, Mahmood, or Hamburger) attribute illiberal practices to secularism itself, when secularism is defined within a narrow conception. If one adopts the secularism as autonomy conception, such illiberal practices would be fundamentally antithetical to secularism because any illiberal practice would by definition be a breach of autonomy of individuals.

Deviating from the mainstream conceptions of secularism and proposing a conception that in the first impression seems counterintuitive, requires further explanation. This is why before the conception of secularism as autonomy is proposed, Chapter 2 was devoted to this task. In that chapter, the purpose has been to describe secularism as autonomy as it is implemented in three spheres of society: constitutional, legal/political and informal public spheres. This separation of levels inspired in part by Habermasian separation between the formal and informal public spheres aims to provide an understanding as to how secularism as autonomy has different implications and functions in each of these spheres and moreover, its legitimacy is affirmed through different procedures in each level. This chapter has been crucial in explaining not only what is really meant by secularism as autonomy, but also its significance for the current debates surrounding the concept of secularism. Here it is emphasized that secularism, being a constitutional principle, is subject to the same legitimation process as other constitutional principles. Citizens who are assumed to agree upon core political

principles by which they will be bound could reach an "overlapping consensus" on the constitutional principle of secularism as well. Due to the hierarch of norms, by definition, the legislative level works within the limits set out by the constitutional principles. Therefore, the constitutional principles have implications also in the legal/political level. However, in this study, the purpose of separating these two levels, namely the constitutional and the legal/political ones is not only to express this fact, but rather provide an analytical tool with the help of which the so-called "hot topics" of secularism could be better understood, or even resolved. Many challenges or debates surrounding the concept of secularism, can be dealt with in the lower level instead of constantly opening the constitutional principles to debate. Constitutional secularism is aimed at protecting freedom of conscience, religious freedom, and at the same time neutrality of democratic procedures. Different, and sometimes conflicting policy preferences can be made with the purpose of upholding these principles without being in conflict with the constitutional principle of secularism.

The third level, namely the informal public sphere is an indispensable part of a democratic society. Although it seems less directly relevant to the constitutional principle of secularism, it is especially important for the specific conception of secularism adopted in this study. Since the role of secularism is to enable autonomous citizens, it can only be understood whether it fulfils this duty by looking at the informal public sphere. Informal public sphere is not only the level at which citizens perform their public roles, it is also a sphere created and maintained by the constitutional democratic system itself. In this regard, constitutional principle of secularism is part of the system through which a healthy informal public sphere can exist.

The main body of Chapter 2 eventually ends with an overview of how legitimacy works in these three levels. One of the main ideas on which this study rests is that secularism and legitimacy are more closely related than usually assumed and this relationship has, at least from one perspective, a circular nature. On the one hand, as to the main perspective that has been followed thus far, constitutional principle of secularism is an expression of the main claim of legitimacy of the constitutional democracy, autonomy. On the other hand, since it enables the institutional arrangements that make it possible for the constitutional democracy to fulfil its promise of autonomy, it also becomes subject to legitimation by publicly (and also privately) autonomous citizens. Therefore, secularism as autonomy is both the source of political legitimacy and at the same time a subject of legitimacy.

Following the conceptual analysis of secularism in Chapter 3, Chapter 4 mainly provides the reasoning behind secularism as autonomy and the assumption behind it, namely that the constitutional democratic state bases its legitimacy on the recognition of autonomy. A brief review of theories of legitimacy and the emergence of the concept of autonomy aims to demonstrate this point. Based on this foundation, legitimacy of secularism as a constitutional principle and its role as the source of political legitimacy of constitutional democracies is examined, consequently providing a treatment of the concept of procedural secularism that is an inherent part of secularism as autonomy. This is because secularism as autonomy is not only a constitutional principle, but at the same time it determines the democratic procedures as secular.

The potential paradox that might have emerged as a result of this argument is resolved by Habermas's co-originality thesis which suggests that private and public autonomy, and therefore basic rights and popular sovereignty are co-original. Co-

originality suggests that neither side of these dualities have supremacy over the other, and when applied to the case at hand, secularism as a constitutional principle and secularism as a procedural norm (secular procedures) are two sides of the same coin and mutually complement each other.

5.2 Research goals and implications

As exemplified by the above-mentioned point, this study mainly follows the public reason tradition within normative political theory and aims to provide a contribution to that tradition by developing a conception of secularism that is in line with its assumptions. Such assumptions are essential to the main arguments put forward in this study. It is not possible to provide a complete account of the public reason tradition here, yet the main idea behind this tradition is the justificatory power of citizens based on the presumption of autonomy. This is the reason why legitimacy of the liberal democratic state is closely linked with this concept. Based on these assumptions, this study had a number of goals that it tried to achieve. It will be briefly discussed below whether these goals were achieved, and if yes, to what extent. The research goals can be listed as follows:

1- Main goal: to develop a conception of secularism as a constitutional principle through a conceptual analysis.

2- Secondary goal: based on the proposed conception of secularism, to develop a framework through which it is possible to understand how constitutional democracies can legitimately regulate the relationship between religion and politics.

3- Theoretical goal: to develop a response to the Böckenförde dilemma.

4- Policy goal: to intervene in the contemporary debates surrounding secularism based on the theoretical framework developed and pave the way for possible solutions.

The main goal (1) is the biggest challenge that this study has undertaken and the most difficult to resolve, simply because coming up with a new conception in opposition to widely accepted ones require convincing arguments and valid reasons. Yet, I believe this task has been accomplished successfully because it has always been thought in conjunction with the secondary goal (2). The power of the conception of secularism as autonomy rests not only in its definition but also the possibility to demonstrate its place in the multi-level analytical framework of a constitutional state. Although in the first impression the conception may sound counterintuitive, in the context of a liberal democratic (or constitutional) state secularism as a constitutional principle is inseparable from the idea of autonomy. In fact, trying to detach secularism from the idea of autonomy would result in abandonment of either liberal democracy or secularity.

This point is directly linked to the theoretical goal (3) of the study regarding the Böckenförde dilemma. In fact, Habermas attempted to provide a response to Böckenförde dilemma suggesting that the dilemma can only be resolved by the idea that the source of social capital that the liberal state requires is the democratic procedures themselves. In fact, as also argued here, this is the implicit suggestion that is also made by Böckenförde while he formulates this dilemma. This study builds its own solution to the Böckenförde dilemma by accepting this thesis and going one step further: secularism as autonomy is the conception of secularism which sets forth the idea that the secular, constitutional, liberal democracies stand on the legitimating force of procedures and

principles that safeguard individual autonomy of its citizens and these procedures and principles are enabled by the constitutional principle of secularism.

Finally, it is hoped that the theoretical work that is conducted in this study has some policy implications. Since secularism and the relationship between religion and politics is a popular subject of debate in contemporary politics throughout the world, any theoretical work on secularism is expected to have implications for policymaking. Although no direct policy recommendations have been given in this study, the policy goal (4) can be deemed to be achieved at least to some extent especially in Chapter 4. It can be argued that there are mainly two policy implications of the study. One that is directly related to the conception of secularism as autonomy that is proposed, the other is related to the separation of different levels it applies. The conception is relevant to the actual policy because of its direct relationship with the constitutional state. Proposed as an alternative to the commonly held conceptions of secularism, secularism as autonomy can be hopefully influential in the constitution-making process of democracies. While it is argued that secularism is an inherent quality of a constitutional regime, it is also implied by this study that no direct references to secularism is needed for a state to be secular. What is required is the existence of institutional and procedural safeguards of autonomy of citizens. The separation of different levels at which secularism applies is more directly relevant for day-to-day politics and controversies of secularism. Recognition of different levels of legitimation for secularism would make it possible to understand that one does not need to open constitutional principles up for discussion simply because of issues that can be dealt with in the legislative level. It is demonstrated that different policy standpoints can be adopted without being in contradiction to the constitutional principle. It is also important to recognize that the informal public sphere

has a critical role in the reiteration of democratic values and constitutional principles that guarantee autonomy of citizens as both private and public persons.

5.3 Limitations and further research

I believe that the study meets the research goals it has set for itself to a considerable extent. However, due to the very broad subject matter, it has probably left more questions unanswered than it has answered. While it is not possible to reasonably cover all relevant aspects of the subject matter in a study of this format, being aware of such limitations is useful not only for the coherence of the study at hand but also for further research.

At least three major limitations are worth mentioning here. The first is the limitation regarding the coverage of critics of secularism. Under 3.2., at least some major representatives of critique of secularism have been mentioned. These representatives were respectively categorized under multiculturalist, postcolonial, and accommodationist strands of criticism. However, due to the limitations of this study, this section had to be kept rather brief. It is likely that many respectable critics of secularism as a political principle had to be left out. Moreover, it can also be argued that these three categories of criticism can be misleading or incomplete. I would agree that an indefinite number of critics as well as categories of critics could have been mentioned under the mentioned subsection. However, I have especially chosen to limit the critique subsection because I methodologically preferred to concentrate more on conceptual analysis and conception-building rather than an intervention into a debate by directly engaging with critics, which would have been a different methodological preference. Yet I hope that

the conception of secularism proposed in this study can be employed in further research that may engage more directly with a wider range of critics.

A second limitation worth mentioning is concerned with the concept of autonomy. Although it is one of the key concepts that is of concern of this study, so much so that the proposed conception of secularism is called 'secularism as autonomy', no single manuscript is broad enough to cover the concept wholly and do it justice. I have tried to deal with the concept of autonomy to the extent that it is of use to my conception, and I have tried to trace its genealogy in relation to the legitimacy of the constitutional state. I am aware that the idea of "autonomy revolution" and the debates surrounding the Kantian conception of autonomy are worthy of dissertations of their own. Yet I also believe that the amount that is covered in this study is sufficient to sustain the main ideas that have been proposed here.

A third and final limitation is concerned with the empirical aspect of the conception of secularism that is proposed. Although the Chapter 2 partly ventures into specific cases and their experiences with secularism, this study had to be kept within theoretical limits. However, further research in the field of comparative constitutional law with reference to secularism presents itself as an exciting opportunity. A newly proposed conception of secularism has to be tested against the real-world experiences in order to pass the test of field utility.

There are possibly more limitations of this study than the three mentioned above. Yet, I believe that these are the most serious ones and also the ones that provide the best opportunities for further research. Notwithstanding any other limitation or deficiency in this study, I believe to have proposed an internally and externally consistent thesis which has sufficiently met its research objectives.

REFERENCES

Ackerman, B. A. (1980). *Social justice in the liberal state*. New Haven, CT: Yale University Press.

Ackerman, B. A. (1983). What is neutral about neutrality? *Ethics*, *93*(2), 372–390.

Akan, M. (2009). Laïcité and multiculturalism: The Stasi Report in context. *The British Journal of Sociology, 60*(2), 237–256.

Almond, G. A., & Verba, S. (1963). *The civic culture: Political attitudes and democracy in five nations*. Princeton, NJ: Princeton University Press.

Asad, T. (2003). *Formations of the secular: Christianity, Islam, modernity*. Stanford, CA: Stanford University Press.

Audi, R. (2000). *Religious commitment and secular reason*. Cambridge, UK ; New York: Cambridge University Press.

Audi, R., & Wolterstorff, N. (2000). *Religion in the public square: the Place of Religious Convictions in Political Debate.* Lanham, MD: Rowman & Littlefield Publishers.

Bader, V. (2007). *Secularism or democracy? Associational governance of religious diversity*. Amsterdam: Amsterdam University Press.

Bader, V. (2017). Secularisms or liberal-democratic constitutionalism? (Vol. 1; P. Zuckerman & J. R. Shook, Eds.), *The Oxford Handbook of Secularism*. Oxford: Oxford University Press.

Ball, T. (2004). History and the interpretation of texts. In G. F. Gaus & C. Kukathas (Eds.), *Handbook of Political Theory* (pp. 18–30). London: Sage.

Barnett, R. E. (2003). Constitutional legitimacy. *Georgetown Law Faculty Publications and Other Works*, (43), 111–148.

Baubérot, J. (2004). La Commission Stasi vue par l'un de ses membres. *French Politics, Culture & Society*, *22*(3).

Beetham, D. (2003). *The legitimation of power*. Houndsmills, Basingstoke, Hampshire; New York: Palgrave.

Bellamy, R. (2014). Constitutional democracy. In M. T. Gibbons (Ed.), *The Encyclopedia of Political Thought* (pp. 713–728). Hoboken, NJ: Wiley-Blackwell.

Benhabib, S. (2006). Democratic iterations: the local, the national, and the global. In R. Post (Ed.), *Another cosmopolitanism* (pp. 45–74). Oxford: Oxford University Press.

Berkes, N. (2013). *The development of secularism in turkey*. New York: Routledge.

Berlin, I. (2002). *Liberty: Incorporating four essays on liberty* (H. Hardy & I. Harris, Eds.). Oxford: Oxford University Press.

Bhargava, R. (1994). Giving secularism its due. *Economic and Political Weekly*, *29*(28), 1784–1791.

Bhargava, R. (2013). *What is political theory and why do we need it?* New Delhi: Oxford University Press.

Bhargava, R. (2015). 6. Is European secularism secular enough? In J. L. Cohen & C. Laborde (Eds.), *Religion, secularism, and constitutional democracy*. New York: Columbia University Press.

Bilgrami, A. (2014). *Secularism, identity, and enchantment*. Cambridge, MA: Harvard University Press.

Blumenberg, H. (1983). *The legitimacy of the modern age*. Cambridge, MA: The MIT Press.

Böckenförde, E. W. (1991). *State, society, and liberty: studies in political theory and constitutional law*. New York: Berg.

Bogdandy, A. von, & Habermas, J. (2013). Discourse theory and international law: an interview with Jürgen Habermas. Retrieved January 7, 2019, from Verfassungsblog website: https://verfassungsblog.de/discourse-theory-and-international-law-an-interview-with-jurgen-habermas/

Bowen, J. R. (2010). *Why the french don't like headscarves: Islam, the state, and public space.* Princeton, NJ: Princeton University Press.

Burwell v. Hobby Lobby, (United States Supreme Court 2014).

Calhoun, C. (2011). Secularism, citizenship, and the public sphere. In C. Calhoun, M. Juergensmeyer, & J. VanAntwerpen (Eds.), *Rethinking secularism* (pp. 75–91). New York: Oxford University Press.

Cantwell v. Connecticut, No. 632 (United States Supreme Court 1940).

Casanova, J. (1994). *Public religions in the modern world*. Chicago, IL: University of Chicago Press.

Chatterjee, P. (2010). Secularism and tolerance. In R. Bhargava (Ed.), *Secularism and its critics* (pp. 345–379). New Delhi: Oxford University Press.

Chelini-Pont, B. (2013). Legal secularism in france today: between two paths. In J. Contreras & R. M. De Codes (Eds.), *Trends of secularism in a pluralistic world* (pp. 281–296). Madrid: Iberoamericana Vervuert.

Cohen, J. L. (2015). 5. Rethinking political secularism and the American model of constitutional dualism. In J. L. Cohen & C. Laborde (Eds.), *Religion, secularism, and constitutional democracy*. New York: Columbia University Press.

Connolly, W. E. (1999). *Why I am not a secularist*. Minneapolis: University of Minnesota Press.

Constitution of France.

Constitution of Iraq.

Cooke, M. (2007). A secular state for a postsecular society? Postmetaphysical political theory and the place of religion. *Constellations*, *14*(2), 224–238.

Dahl, R. A. (1991). *Democracy and its critics* (12. print). New Haven: Yale University Press.

Den Uyl, D. J. (1983). *Power, state, and freedom: an interpretation of Spinoza's political philosophy*. Assen, The Netherlands: Van Gorcum.

Dogan, M. (2009). Political legitimacy: new criteria and anachronistic theories. *International Social Science Journal*, *60*(196), 195–210.

Dyevre, A. (2017). The French Constitutional Council. In A. Jakab, A. Dyevre, & G. Itzcovich (Eds.), *Comparative Constitutional Reasoning* (pp. 323–355).

Epperson v. Arkansas, No. 7 (United States Supreme Court 1968).

E.S. v. Austria, (European Court of Human Rights July 1, 2014).

Everson v. Board of Education, No. 52 (United States Supreme Court 1947).

Forst, R. (2012). *The right to justification: elements of a constructivist theory of justice* (J. Flynn, Trans.). New York: Columbia University Press.

Forst, R. (2016). *Toleration in conflict: past and present* (C. Cronin, Trans.). New York: Cambridge University Press.

Fox, J. (2013). *An introduction to religion and politics: theory and practice*. New York: Routledge.

Fuller, L. L. (1978). *The morality of law*. New Haven: Yale University Press.

Gadamer, H.-G. (2004). *Truth and method* (2nd, rev. ed ed.). London; New York: Continuum.

Gallie, W. B. (1955). Essentially contested concepts. *Proceedings of the Aristotelian Society*, *56*, 167–198.

Gerring, J. (1999). What makes a concept good? A criterial framework for understanding concept formation in the social sciences. *Polity*, *31*(3), 357–393.

Goethe, J. W. von. (1998). *Maxims and reflections* (P. Hutchinson, Ed.; E. Stopp, Trans.). London; New York: Penguin Books.

Gorski, P. S. (2000). Historicizing the secularization debate: church, state, and society in late medieval and early modern Europe, ca. 1300 to 1700. *American Sociological Review*, *65*(1), 138–167.

Grant, C. K. (1955). Polar concepts and metaphysical arguments. *Proceedings of the Aristotelian Society*, *56*, 83–108.

Grice, P. (1993). *Studies in the way of words* (3. print). Cambridge, MA: Harvard University Press.

Habermas, J. (1974). The public sphere: an encyclopedia article (1964). *New German Critique*, (3), 49.

Habermas, J. (1975). *Legitimation crisis*. Boston: Beacon Press.

Habermas, J. (1986). Law and morality. In *The Tanner Lectures on Human Values*. Salt Lake City: University of Utah Press.

Habermas, J. (1996). *Between facts and norms: contributions to a discourse theory of law and democracy*. MIT Press.

Habermas, J. (1998). Remarks on legitimation through human rights (W. Rehg, Trans.). *Philosophy & Social Criticism*, *24*(2–3), 157–171.

Habermas, J. (1999). *The Structural transformation of the public sphere: an inquiry into a category of bourgeois society* (10. print). Cambridge, MA: MIT Press.

Habermas, J. (2001). Constitutional democracy: a paradoxical union of contradictory principles? (W. Rehg, Trans.). *Political Theory*, *29*(6), 766–781.

Habermas, J. (2003). On law and disagreement. Some comments on "interpretative pluralism." *Ratio Juris*, *16*(2), 187–194.

Habermas, J. (2006a). On the relations between the secular liberal state and religion. In H. de Vries & L. E. Sullivan (Eds.), *Political theologies: public religions in a post-secular world*. New York: Fordham University Press.

Habermas, J. (2006b). Religion in the public sphere. *European Journal of Philosophy*, *14*(1), 1–25.

Habermas, J. (2008). Notes on post-secular society. *New Perspectives Quarterly*, *25*(4), 17–29.

Hamburger, P. (2004). *Separation of church and state* (Revised edition). Cambridge, MA: Harvard University Press.

Held, D. (1996). *Models of democracy*. Cambridge, UK: Polity Press.

Held, D. (2000). *Political theory and the modern state: essays on state, power and democracy*. Cambridge, UK: Polity Press.

Hennette Vauchez, S. (2017). Is French laïcité still liberal? the republican project under pressure (2004–15). *Human Rights Law Review*, *17*(2), 285–312.

Hirschkind, C., & Scott, D. (2006). *Powers of the secular modern: Talal Asad and his interlocutors*. Retrieved from http://public.eblib.com/choice/publicfullrecord.aspx?p=3037525

Hobbes, T., C. B. (1968). *Leviathan*. London: Penguin Classics.

Holyoake, G. J. (1871). *The principles of secularism illustrated...* Retrieved from https://www.google.com/books?hl=en&lr=&id=w6v5glczzmEC&oi=fnd&pg=PA2&dq=holyoake+principles+of+secularism&ots=x6YioyuZtx&sig=sMEQ0EpTKmy3ZrGNoUhO5ipDqLs

Honig, B. (1993). *Political theory and the displacement of politics*. Cornell University Press.

Hume, D. (2012). *The essential philosophical works* (T. Griffith, Ed.). Retrieved from http://public.eblib.com/choice/publicfullrecord.aspx?p=1623256

Hurka, T. (1995). Indirect perfectionism: Kymlicka on liberal neutrality. *Journal of Political Philosophy*, *3*(1), 36–57.

Israel, J. I. (2003). *Radical enlightenment: Philosophy and the making of modernity 1650-1750*. Oxford: Oxford University Press.

Kant, I. (1996). *Critique of pure reason* (P. Kitcher, Ed.; W. S. Pluhar, Trans.). Indianapolis, IN: Hackett Publication Company.

Kant, I., Gregor, M. J., & Timmermann, J. (2012). *Groundwork of the metaphysics of morals* (Revised edition). Cambridge: Cambridge University Press.

Kisner, M. J. (2011). *Spinoza on human freedom: reason, autonomy and the good life*. Cambridge: Cambridge University Press.

Klosko, G., & Wall, S. (2003). *Perfectionism and neutrality: essays in liberal theory*. Lanham, MD: Rowman & Littlefield Publishers.

Korsgaard, C. M. (2014). *The sources of normativity* (O. O'Neill, Ed.). Cambridge: Cambridge University Press.

Kuru, A. T. (2009). *Secularism and state policies toward religion: The United States, France, and Turkey* (1 edition). Cambridge; New York: Cambridge University Press.

Kymlicka, W. (1992). The rights of minority cultures: reply to Kukathas. *Political Theory*, *20*(1), 140–146.

Kymlicka, W. (2003). *Multicultural citizenship: a liberal theory of minority rights*. Oxford: Clarendon Press.

Kymlicka, W. (2007). *Contemporary political philosophy: an introduction*. Oxford: Oxford University Press.

Laborde, C. (2013a). Justificatory secularism. In G. D'Costa, M. Evans, T. Modood, & J. Rivers (Eds.), *Religion in a Liberal State* (pp. 164–186). Cambridge; New York: Cambridge University Press.

Laborde, C. (2013b). Political liberalism and religion: On separation and establishment. *Journal of Political Philosophy*, *21*(1), 67–86.

Laborde, C., & Bardon, A. (Eds.). (2017). *Religion in liberal political philosophy*. Oxford: Oxford University Press.

Larmore, C. E. (1987). *Patterns of moral complexity*. Cambridge ; New York: Cambridge University Press.

Leiter, B. (2013). *Why tolerate religion?* Princeton, NJ: Princeton University Press.

Lemon v. Kurtzman, No. 89 (United States Supreme Court 1971).

Lilla, M. (2008). *The stillborn God: religion, politics, and the modern West*. New York: Knopf Doubleday Publishing Group.

Lindley, R. (1986). *Autonomy*. Atlantic Highlands, NJ: Humanities Press International.

List, C., & Valentini, L. (2016). *The methodology of political theory* (Vol. 1; H. Cappelen, T. S. Gendler, & J. Hawthorne, Eds.). Oxford: Oxford University Press.

Locke, J. (2008). *Two treatises of government and a letter concerning toleration*. New Haven: Yale University Press.

Löwith, K. (1949). *Meaning in history*. Chicago: University of Chicago Press.

Luzzatti, L. (1930). *God in freedom: studies in the relations between church and state* (M. J. Kohler, Ed.; A. Arbib-Costa & D. Askowith, Trans.). New York: The Macmillan Company.

Maclure, J., & Taylor, C. (2011). *Secularism and freedom of conscience*. Cambridge, MA: Harvard University Press.

Madan, T. N. (1987). Secularism in its place. *The Journal of Asian Studies*, *46*(4), 747.

Mahmood, S. (2016). *Religious difference in a secular age: A Minority Report*. Princeton, NJ: Princeton University Press.

Marx, K. (1842). The leading article in no. 179 of the Kölnische Zeitung. *MECW*, *2*, 184.

Mason, A. D. (1990). Autonomy, liberalism and state neutrality. *The Philosophical Quarterly*, *40*(161), 433.

McDermott, D. (2008). Analytical political philosophy. In D. Leopold & M. Stears (Eds.), *Political Theory: Methods and Approaches*. Oxford: Oxford University Press.

Meckled-Garcia, S. (2017). On the object and scope of neutrality: policies, principles, and 'burdens of conscience'. In: Laborde, C and Bardon, A, (eds.) *Religion in Liberal Political Philosophy*. Oxford: Oxford University Press.

Mill, J. S. (1869). *On liberty*. London: Longman, Roberts, & Green Company. Retrieved from http://www.econlib.org/library/Mill/mlLbty5.html

Modood, T. (2015). 7. State-religion connections and multicultural citizenship. In J. L. Cohen & C. Laborde (Eds.), *Religion, Secularism, and Constitutional Democracy*. New York: Columbia University Press.

Mouffe, C. (1999). Deliberative democracy or agonistic pluralism? *Social Research, 66*.

Nandy, A. (1988). The politics of secularism and the recovery of religious tolerance. *Alternatives: Global, Local, Political*, *13*(2), 177–194.

Nussbaum, M. C. (2008). *Liberty of conscience: in defense of America's tradition of religious equality*. New York: Basic Books.

Oppenheim, F. E. (1981). *Political concepts*. Oxford: Blackwell.

Packer, M. (1989). Kant on desire and moral pleasure. *Journal of the History of Ideas*, *50*(3), 429.

Paine, T. (1976). *Rights of man*. Harmondsworth: Penguin.

Pierik, R. (2012). State neutrality and the limits of religious symbolism. In J. Temperman (Ed.), *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (pp. 201–218). Leiden: Martinus Nijhoff Publishers.

Pitkin, H. F. (1967). *The concept of representation*. Berkeley, CA: University of California Press.

Rawls, J. (1971). *A theory of justice*. Cambridge, MA: Belknap Press.

Rawls, J. (1980). Kantian constructivism in moral theory. *The Journal of Philosophy*, *77*(9), 515.

Rawls, J. (1987). The idea of an overlapping consensus. *Oxford Journal of Legal Studies*, *7*(1), 1–25.

Rawls, J. (1996). *Political Liberalism*. New York: Columbia University Press.

Raz, J. (1986). *The morality of freedom*. Oxford: Clarendon Press.

Raz, J. (2009). Autonomy, toleration, and the harm principle. In S. Mendus (Ed.), *Justifying toleration conceptual and historical perspectives* (pp. 155–175). Cambridge: Cambridge University Press.

Reynolds v. U.S., No. 180 (United States Supreme Court 1878).

Richardson, V. (2014, October 1). Justice Antonin Scalia defends keeping God, religion in public square. Retrieved June 6, 2018, from The Washington Times website: https://www.washingtontimes.com/news/2014/oct/1/justice-antonin-scalia-defends-keeping-god-religio/

Rousseau, J.-J. (1999). *Discourse on political economy ; and, the social contract*. (C. Betts, Trans.). New York: Oxford University Press.

Rowland, T. (2000). The liberal doctrine of state neutrality: a taxonomy. *University of Notre Dame Australia Law Review*, *2*, 53.

Sajo, A. (2008). Preliminaries to a concept of constitutional secularism. *International Journal of Constitutional Law*, *6*(3–4), 605–629.

Sandel, M. J. (1998a). *Liberalism and the limits of justice*. Cambridge: University of Cambridge Press.

Sandel, M. J. (1998b). Religious liberty: freedom of choice or freedom of conscience. In R. Bhargava (Ed.), *Secularism and its critics* (pp. 73–93). Delhi; New York: Oxford University Press.

Sartori, G. (1973). *Democratic theory*. Westport, CT: Greenwood Press.

S.A.S. v. France, (European Court of Human Rights July 1, 2014).

Schneewind, J. B. (2014). *The invention of autonomy: a history of modern moral philosophy*. Cambridge: Cambridge University Press.

School District of Abington Township, Pennsylvania v. Schempp. , No. 142 (United States Supreme Court 1963).

Sen, R. (2007). *Legalizing religion: the Indian Supreme Court and secularism*. Washington, DC: East-West Center Washington.

Sensen, O. (2013). *Kant on moral autonomy*. Cambridge: Cambridge University Press.

Sherbert v. Verner, No. 526 (United States Supreme Court 1963).

Skinner, Q. (2001). The rise of, challenge to and prospects for a Collingwoodian approach to the history of political thought. In D. Castiglione & I. Hampsher-Monk (Eds.), *The History of Political Thought in National Context* (pp. 175–188). Cambridge: Cambridge University Press.

Spinoza, B. (2007). *Theological-political treatise* (J. Israel & M. Silverthorne, Trans.). Leiden: Cambridge University Press.

Stepan, A. C. (2000). Religion, democracy, and the "twin tolerations." *Journal of Democracy*, *11*(4), 37–57.

Strauss, L. (1967). Jerusalem and Athens: some introductory reflections. *Commentary*, *43*(6), 45–57.

Sunstein, C. R. (2001). *Designing democracy: what constitutions do*. New York: Oxford University Press.

Taylor, C. (2007). *A secular age*. Cambridge, Mass: Belknap Press of Harvard University Press.

Taylor, C. (2009). The polysemy of the secular. *Social Research: An International Quarterly*, *76*(4), 1143–1166.

Taylor, C. (2011). Why we need a radical redefinition of secularism. In J. VanAntwerpen & E. Mendieta (Eds.), *the power of religion in the public sphere*. New York: Columbia University Press.

Theodorou, A. E. (2016). Which countries still outlaw apostasy and blasphemy? Retrieved January 25, 2019, from Pew Research Center website: http://www.pewresearch.org/fact-tank/2016/07/29/which-countries-still-outlaw-apostasy-and-blasphemy/

Torcaso v. Watkins, No. 373 (United States Supreme Court 1961).

Verma, V. (2016). Secularism in India. In J. Shook & P. R. Zukerman (Eds.), *The Handbook of Secularism* (pp. 214–230). London: Oxford University Press.

Weber, M. (1978). *Economy and society: an outline of interpretive sociology*. Berkeley, CA: University of California Press.

Weber, M. (2005). *Weber: political writings* (P. Lassman & R. Speirs, Eds.). Cambridge; New York: Cambridge University Press.

Weil, P. (2008). Why the French laicité is liberal. *Cardozo Law Review*, *30*, 2699.

Weil, P. (2014). Headscarf versus burqa. In S. Mancini & M. Rosenfeld (Eds.), *Constitutional Secularism in an Age of Religious Revival* (pp. 195–215). Oxford: Oxford University Press.

Weil, P. (2017). Freedom of conscience, but which one? In search of coherence in the U.S. Supreme Court's religion jurisprudence. *University of Pennsylvania Journal of Constitutional Law*, *20*(2), 313.

Williams, R. (2006). Secularism, faith and freedom. *Lecture Delivered at the Pontifical Academy of Social Sciences, Rome*, *23*.

Wisconsin v. Yoder, No. 70–110 (United States Supreme Court 1972).