State Legitimacy and Religious Accommodation:

The Case of Sacred Places

Janosch Prinz
Maastricht University

Enzo Rossi
University of Amsterdam

Abstract: In this paper we put forward a realist account of the problem of the accommodation of conflicting claims over sacred places. Our argument takes its cue from the empirical finding that modern, Western-style states necessarily mould religion into shapes that are compatible with state rule. So, at least in the context of modern states there is no pre-political morality of religious freedom that states ought to follow when adjudicating claims over sacred spaces. In which case most liberal normative theory on religious accommodation turns out to be wrong headed. As an alternative, we suggest the question of contested sacred places should be settled with reference to the state's purposes—at least as long as one is committed to the existence of modern states. If one finds the state's treatment of religion unsatisfactory, then our argument provides a pro tanto reason for seeking alternative forms of political organisation.

Key words: Holy Places; Political Realism; Religious accommodation; Religious Conflict; State Legitimacy.

Introduction

In this paper we use the debate over state treatment of sacred places as a starting point to show that any answer to normative questions of religious accommodation by states—liberal or

otherwise, though we will focus primarily on liberal states—must be subordinated to the question of state legitimacy, namely the question of the purposes for which the state may carry out its core activities. That is to say, there is no pre-political morality of religious freedom that the state ought to comply with, because the very idea of the political salience of religion cannot be separated from the question of state legitimacy. Consider, for instance, how actor constellations differ in the state formation e.g. after the fall of the Ottoman Empire and in early modern Europe. Or think of the vastly different models of so-called state-religion relation within contemporary EU states, ranging from established churches to purported state neutrality (Cesari 2016) The issue of religious freedom or religious accommodation is internal to what it means for a state to be a state in its respective context.

Our argument for that conclusion will rely on an empirical claim. We will use historical and anthropological literature to show that, at least in the case of the modern (Western) state, shaping religion into a legible and governable phenomenon is essential to the proper functioning of the state. (Indeed, even the accompanying notion of equal citizenship should be understood within those constraints.) In a sense, this is a debunking genealogy of liberal discourse on religious freedom and freedom of conscience: the liberal illusion of a politics guided by morality leads those theorists to overlook the constraints posed by the nature of their primary tool for implementing that morality, namely the state. The guiding insight here, to quote Raymond Geuss, is that "ethics is usually dead politics: the hand of a victor in some past conflict reaching out to try to extend its grip to the present and the future." (Geuss 2010: 42) And the victor in the relevant past conflicts has overwhelmingly been the state.

So, concretely, in the case of sacred places we must reconcile ourselves to the fact that, so long as the modern state is our primary vehicle for the solution to political problems—problems of non-optional co-existence—religious practices broadly speaking ought to be subordinated to the proper functioning of state institutions. Whether a certain road ought to be kept open on the Sabbath, then, is not a matter of figuring out whether doing so is compatible with allowing some religious citizens to act according to conscience, or whether it hurts their religious feelings. Rather, it is a matter of whether the account of religious freedom that counsels closing the road

as opposed to keeping it open is the optimal way of fostering the state's purposes, which in turn ought to be specified by a theory of state legitimacy, in turn constrained by a realistic understanding of the capabilities and limitation of the state as a political structure.

The upshot of our argument is an exclusive disjunction. One can either accept the subordination of religious freedom to statist priorities or, should one find that conclusion normatively unpalatable, one can question the very suitability of the state as a social technology for solving political problems.

The argument proceeds as follows. We begin with a schematic picture of the standard way of framing the issue of state-religion relations in Anglophone liberal political philosophy. We then offer a general critique of that approach, drawing primarily on and bringing together two empirically-oriented bodies of scholarship, on religion and on the state. On the basis of that general critique, in the last section we move on to discussing the specific question of sacred places.

The problem

How should the liberal state accommodate religious demands concerning the status of sacred places? The standard way to think about that question—indeed that very way of posing it, which is prevalent in contemporary Anglophone political philosophy—is to try and work out whether granting those demands is compatible with the state's commitment to equality for all of its citizens. Much of the debate, then, rests on the question of whether it is possible to grant religion a special form of protection while relying on non-religious reasons appropriate to a liberal state (e.g. Schwartzman 2012 vs Koppelman 2014a, 2014b) or, on another end of the spectrum of positions, whether religious freedom even needs to be a right, or can rather be 'disaggregated' across a bundle of other rights (Laborde 2015, 2018).[1] One way to understand the question of whether religion is special is to consider the status of religious freedom vis-a-vis other rights:, if freedom of religion is a basic liberty for liberal states, what should we do when it clashes with other basic liberties? Should, for example, blasphemy be prohibited, even against a backdrop of general

[1] For a synoptic view of this debate see Batznizky & Dagan 2017.

freedom of speech? (see Cesari 2015, 2016). On what grounds—if any—can we say that religious freedom should take priority over other basic liberties? We will not take sides in that debate. We will however query one of its presuppositions, namely the idea that there is pre-political sphere of religious belief and practice that the state ought to accommodate. To see what that means, let us begin by considering this utterly simplified version of the standard liberal argument for special religious accommodation.

1. The state ought to respect religious freedom.
2. The state ought to treat all citizens equally.
3. Respect for religious freedom sometimes requires sacrificing other liberties.
4. Sacrificing some liberties for the sake of religious freedom does not violate the equal treatment of all citizens.
5. Therefore, sometimes the state ought to sacrifice some liberties for the sake of religious freedom.

Most of the debate on whether religion is special turns on the soundness of (unpacked versions of) that argument, or of its mirror version that yields a negative conclusion. Typically the focus is on the third and/or fourth premise, and the prevalent question concerns whether and how the special status of religion implied by those premises can be supported from a non-religious standpoint. Here, however, we wish to focus on the first and second premises. We will not contest their truth, as that would be a non-starter in a liberal context. Rather, we want to try and see from what premises they may themselves follow, in order to show that this way of approaching the issue misunderstands the relationship between the state and religion—not in a normative but in a descriptive sense, in terms of the constraints posed by the nature of the state, as we shall see.

As the schematic argument above shows, the debate is typically framed as an exercise in finding policies that are respectful both of religious practice and/or belief, and of equality between citizens. This in turn presupposes that there is a social phenomenon—religion—whose nature is determined independently of the state's political agency. Ditto for equality among citizens: the second premise suggests that there is a pre-

politically determined notion of equality, and that the state ought to protect it or promote it.

Indeed, as one would expect, there is a flourishing debate on what liberal equal citizenship is and what it entails, and on whether liberal states employ a descriptively correct account of religion. It would probably be unwise to try and offer even a cursory overview of the debate on equality. Suffice it to note that it is typically couched as a matter of first determining the sense in which citizens are equal, and then working out how this equality may be brought about, through the state and other means. What we have in mind, for instance, is the debate on "equality of what" (Arneson 1999, Cohen 1993, Sen 1980) and the related one on "recognition vs redistribution" (Fraser/Honneth 2003; Honneth 1995; Young 1990). To simplify, in both cases (but especially in the former) theorists try to work out what the currency of egalitarian justice is *before* they proceed to ask what one may do to bring it about, including through the agency of the state. This tendency is even more explicit in the more recent debate on respect and the basis of equality (Carter 2011), which concerns the features of human beings that ground the commitment to equal treatment, both in private morality and on the part of the (liberal) state. In a nutshell, the standard way of grounding the second premise in the above argument is to posit that there is a *pre-political and so state-independent2* notion of equality that the state ought to honour. At any rate, given the purposes of this paper, we will not discuss the genealogy of liberal equality.

The debate on the nature of religion and its consequences for liberalism, on the other hand, is both more self-contained and better suited to introduce the general argument we want to put forward here. The debate takes its starting point from the contribution of scholars of religion, and puts forward a critique of the standard liberal discourse of religious accommodation. The general idea is that liberal states claim to be inclusive towards all forms of religion, but improved descriptions of religious belief and practice show us that that is not the case and even, arguably, that it couldn't be the case. Elsewhere one of us called this the descriptive challenge.3

2 The 'so' in this sentence is an entailment, not a biconditional. It is not as if politics and the state are co-extensive.
3 To illustrate this challenge and critique it we reproduce, with some modifications, parts of the argument from Rossi (2017).

The challenge makes a claim against liberalism's self-attributed inclusiveness towards all manner of religions. A descriptively inaccurate account of religion precludes fair treatment of religion. In order to know what to do about religion we need to use our best available understanding of what religion is. The liberal treatment of religion is normatively deficient because it is descriptively flawed (Fish 2000, Mahmood 2005, Spinner-Halev 2005, and others). While the critique takes various forms as well—not all compatible with each other—the most common descriptive critique is that liberal religious freedom is unfair to some non-Western religions because it is modelled on post-Reformation Christianity, particularly Protestantism. The idea is that Protestant religion is belief-based, whereas many non-Western religions are practice-based (Spinner-Halev 2005). To be sure, the view that the liberal posture towards religion is a product of the Protestant Reformation is hardly novel in historical research (De Ruggiero 1927 [1925], Macpherson 1962, Cavanaugh 2009, Gregory 2012), or even in contemporary liberal theory (Rawls 1994). What is relatively novel (in political philosophy), however, is the thought that this particular genealogy of liberal religious freedom generates normative difficulties, perhaps more so once the range of religions present in liberal polities expands beyond the various branches of the Judaeo-Christian tradition. To capture that thought a general account of the bare structure of the descriptive challenge to traditional liberal religious freedom will suffice. The challenge can be schematically presented as follows:

i. Liberal accommodation of religion is modelled on Christianity/Protestantism (belief- and/or obligation-based, private religion).
ii. Many non-Western religions are not belief- and/or obligation-based and/or they are not private.
iii. In order to be fair, religious accommodation policy must be modelled on the salient characteristics of all affected religions.
iv. Thus, liberal accommodation of religion is unfair to many non-Western religions.

Cécile Laborde (2015) recently put forward a reformulation of this criticism which is more conversant with Anglophone politico-philosophical treatments of the issue, rather than with

the praxis of liberal states: while traditional liberal law on religious accommodation is ultimately capable of correctly capturing what is valuable in beliefs as well as expressive practices, it is too narrowly focused on matters of obligation and conscience. Now this way of putting the point begins to show what is not quite right with the standard version of the descriptive challenge, namely that it is not obvious that its descriptive claims have the advertised normative implications. This is because, as Laborde can help us see, premise (iii) above is false:

> The political theorists' approach is normative ... It seeks to identify the core values that should be protected by the law. As a result, it eschews purely descriptive or semantic approaches to legal terms. When it considers freedom of religion, it is not concerned with defining what religion is – an elusive project at best, as critical scholars of religion have amply shown. Rather, it rejects any essentialist or semantic approach; and is concerned with identifying the core values that the law can properly express. ... we would not want the law to capture the whole of the value of religion. At best, the law will put forward an interpretive notion of marriage, or of religion. That a particular law or theory does not capture what religion really is, therefore, is not, in itself, a sufficient objection to it. What matters is that the law, or the theory, *expresses and protects the correct underlying values*. It is at this more fundamental level that interpretive approaches must be assessed and evaluated. (2015: 593, emphasis added)

In other words, even if producing a satisfactory and relatively uncontroversial description of religion were possible, that would not by itself generate an account of religious freedom suited to the purposes of liberal law. States are not academic institutions. They are not in the business of describing reality for the sake of knowledge, nor could they be, if they are to remain states. A key feature that makes states states is their way of channelling social phenomena so as to fit within their pre-constituted aims—chiefly the aim of securing order and stability, and achieving legitimacy in doing so.[4] As we will see in

4 While these are generally descriptive claims, they become normative for us (in Williams' (2005) sense) when considering

some detail below, this resonates both with realist approaches to political theory (Rossi & Sleat 2014), and with James C. Scott's (2005) theory of 'state simplification', i.e. his analysis of states' tendency to reinterpret and, importantly, transform social phenomena to make them legible, and thus amenable to the specific kind of rule that comes with the state form.

For now though, let us focus on Laborde's response to the descriptive challenge:

> ... it is not enough simply to say 'religion is X and Y'. What is required is to identify the specific normative values which makes X or Y legally relevant. Just saying that a practice or institution is multi- faceted and internally complex, and irreducible to anything else (as is surely the case with religion) does not mean that it must be recognized as such in the law. ... So we need to know what kind of good is being protected in every case, and the good cannot be assumed to follow from the mere description of the empirical dimension of religion. (Ibid.: 595)

In which case (iii) needs to be modified:

> ...the claim should not be that the existing law does not protect all that is religious, according to some ordinary- meaning, semantic understanding of the term. Rather, the claim is that the law fails to protect practices which exhibit those normative values – still to be specified – which are valuable in religion. (Ibid.: 584)

The salient values, then, will have to be specified "against the implicit or explicit background of a theory of fairness as inclusiveness." (Ibid.: 583)

However, while Laborde is right to point out those shortcomings of the descriptive challenge, we would like to identify a sense in which it does not do justice to our best empirical understanding of what states are, and so does not yield a viable way of framing questions of religious accommodation. In a nutshell, our worry is that Laborde's call for determining the place of religion within the liberal state by appeal to normative considerations fails to appreciate the degree to which those considerations are intertwined with the

the legitimacy of our respective state(s).

state itself. In other words, her normativity is pre-political, and that is not the kind of normativity suited to political theorising. The values that she seeks to specify are moral values. We argue that we need to consider what about governing religions, and sacred places in particular, is most conducive to the state meeting its purposes—purposes which in turn cannot be specified simply from one's moral wish-list, but must be understood in light of a correct account of how states may or may not deal with religious phenomena. Before asking what the state ought to do, we should ask what the state is, and so what it may do (which isn't just a point about feasibility; we will return to this issue below). Realists will already be sympathetic to this critique. To try and win over those who do not share that methodological perspective, we hope to be able to show empirically why pre-political normativity won't do.

We can come to see what that means by considering the empirical case for the falsity of (i). Liberal religious accommodation is not *modelled* on Christianity or Protestantism. By its very nature the state gets to pick out the features of reality that suit its purposes. What is more, in so doing the state actually transforms the object of its rule (à la "When you are a hammer, everything looks like a nail"). Crudely, the (proto-liberal) state made Protestantism into what it is so it could govern it.5 We wish to substantiate that claim by combining two sets of observations by empirical scholars from disparate fields. First, we will draw on a general account of the operation of state simplification and reshaping of reality. Second, we will leverage recent research on the historical origins of the liberal notion of religion and of its place in politics.

5 Brown, Butler and Mahmood (2013: ix-x) recognize how states shape religion when claiming that "secularism does not merely organize the place of religion in nation-states…but also stipulates what religion is and ought to be". Their claim is that religion becomes "Prostestantized" is separate from the claim that Liberal religious accommodation is not *modelled* on Protestantism. Given that many of the people who were in favor of state centralization also felt oppressed by the pre-Reformation order, it is not surprising that it would seem that the state's reshaping of religion contains more elements of Protestantism (albeit of the less radical forms). However, the people who were pushing for state centralization were not necessarily Protestant (e.g. Richelieu in France) (Koyama 2017).

The first point has been made most eloquently by James C. Scott:

> No administrative system is capable of representing any existing social community except through a heroic and greatly schematised process of abstraction and simplification. It is not simply a question of capacity ... It is also a question of purpose. State agents have no interest—nor should they—in describing an entire social reality, any more than the scientific forester has an interest in describing the ecology of a forest in detail. Their abstractions and simplifications are disciplined by a small number of objectives, and until the nineteenth century the most prominent of these were typically taxation, political control, and conscriptions. They needed only the techniques and understandings that were adequate to these tasks. (2005: 22-23)

Scott draws on a variety of case studies—from state-sanctioned scientific forestry to land tenure schemes, from urban planning to the creation of surnames—to illustrate and substantiate this general claim. More precisely, as anticipated, there are two claims here:

> These state simplifications, the basic givens of modern statecraft ... did not successfully represent the actual activity of the society they depicted, nor were they intended to; they represented only that slice of it that interested the official observer. They were, moreover, not just maps. Rather, they were maps that, when allied with state power, would enable much of the reality they depicted to be remade. (Ibid: 3)

So, state simplifications both describe selectively, and reshape by describing. Recent historical research on the place of religion in Western political discourse and practice bears this out. Again crudely, historians (and theologians) have shown how the very category of religion is a product of the (liberal or proto-liberal) state.[6] William Cavanaugh summarises his and other historians' findings in this way:

[6] This does not mean, of course, that matters of faith and worship did not play an important role in the early modern struggles that are often called "Wars of Religion" and which also

What counts as religion and what does not in any given context is contestable and depends on who has the power and authority to define religion at any given time and place. ... the concept of religion ... is a development of the modern liberal state; the religious-secular distinction accompanies the invention of private-public, religion-politics, and church-state dichotomies. The religious-secular distinction also accompanies the state's monopoly over internal violence and its colonial expansion.

... what counts as religious or secular depends on what practices are being authorized. The fact that Christianity is construed as a religion, whereas nationalism is not, helps to ensure that the Christian's public and lethal loyalty belongs to the nation-state. (2009: 59-60)[7]

Now, taken in isolation, the point about state simplifications and the point about the particular history of the Western liberal conception of religion may seem to leave the argument untouched. But their conjunction illuminates an important point, of realist flavour: the reason why Western states have historically tended to treat religion as a belief- and obligation-centric and univocal practice, or rather to sculpt it into one, is that this shape (as it were) is most amenable to the exercise of state power. In fact empirical work shows how many states that do not fit the Western mould lack the technology and power to exert this kind of influence (Daechsel 2011). One might further posit that it is for that reason that religions from those societies do not take forms that are easily governed by Western states. Indeed, some may even argue that it is the only amenable shape: the history of progressive enlargement of religious freedom, after all, coincided with an increasing standardisation of the forms the tolerated religions were supposed to take. In fact the notion of religion at stake here crystallised just as the early-modern, sovereign state won its evolutionary struggle against other forms of political organisation, from the Italian city-states to the Hanseatic League, to name just the main defeated contenders (see Spruyt 1994). Before the victory of the Western modern state over its competitors religion was, in

were the conflicts that led to Western state formation (see Diefendorf 2014; Cavanaugh 2014; Murphy 2014).
[7] Also see Gregory (2012) and Van Creveld (2009).

a sense, closer to being an alternative though coopted form of social organization rather than a subset of social practices at least under central state government.

The point here is precisely that success in regimenting religion, in making it legible and so governable, was one important factor in the state's success.[8] Or, conversely put, the state's success at making social practices legible from an administrative point of view and at expanding its enforcement capacity paved the way for moving from identity-based rules to general rules which in turn provided support for freedom of religion, as Johnson and Koyama (2019: 250-253) have argued. The extension of state capacity, e.g. taxation and abolition of internal tariffs, correlated with a stronger identification with the nation and with "general rules", as they show by comparing grievance books from places just inside and just outside the Cinq Grosses Fermes customs union[9] in 1788.

The state's royal road (as it were) is to mould religion into a manageable shape, and the most manageable shape is the belief- and obligation-centric one in this case, given the desideratum of legal consistency and the technologies of legibility and social control made available by the rise of the modern European state (Asad 2005). In a nutshell, those states made religion relatively toothless by reducing it to a single, private practice rather than a public, political contender. This sort of simplification is what the state does to make the social world legible, itself a precondition for the effective use of its power. The process of normative selection is constrained by the sorts of things that states are. It is not as if the state—or the theorist laying down norms for the state—can discover a correct account of what is important or morally relevant about religion, and then proceed to devise policies compatible with that discovery. States must find ways to coexist with their social environment. They do this by making social phenomena legible, and in so doing they alter those phenomena. How exactly they go about this, depends on the social phenomena and the actor constellation in question.[10] This process is constitutive of states,

[8] As borne out by Spruyt's (1994) influential reconstruction of the rise of the modern state in Europe.
[9] A customs union initiated in 1664 which eliminated internal customs and included about half of French provinces at the time.
[10] Note here that when Western forms of statehood were later "exported" to contexts that had a more diverse religious

at least so long as we are concerned with modern, Western-style states. And that is especially important for liberalism, since the modern Western state is the very state form within which liberalism developed, and to which—as we know from standard Weberian analyses of the bureaucratic rationality of statecraft—it is arguably tied by more than mere historical contingency.

The state and sacred places

So far we have looked at the state-religion nexus in general. We can now restrict our focus to the issue of sacred places, and in particular to *contested* sacred places[11]—the hardest cases, in light of which it should also be possible to deal with the easier ones.[12] In what way does the (liberal) state make the issue of contested sacred places legible? And what room for normative theorising does answering that question leave us?

It will be useful to begin with the observation that, while debates on sacred places are commonplace and the political-philosophical literature tends to take claims about such spaces at face value, if only because that is how they present themselves as political problems, there is little agreement as to what should count as a sacred place (Greiner 2015; Coomans et al. 2012; Coster and Spicer 2005 for the early modern period). Deep disagreements across time and place about what constitutes a sacred place are rather a key factor for making conflicts over contested sacred places so seemingly intractable (see comparison between the choreographies of the sacred in the context of the different successor states to Ottoman Empire, see Barkan and Barkey 2015). Some scholars even question whether 'sacred place' is a useful analytical category,

landscape, the position that states took toward religion was not typically one of toleration and freedom (think of the change from the relative religious freedom within the Ottoman Empire to the deterioration in the successor states (Cesari 2016).

[11] Our understanding of contested sacred places includes conflicting claims advanced by several religious groups as well as disputes about whether a place is sacred, e.g. between land developers and a religious or tribal community.

[12] We remain neutral on the more abstract issue of whether contestation is a necessary feature of politics. If it is, then the cases we do discuss are the only relevant ones anyhow.

e.g. as opposed to the more accurate and less contentious—though arguably less politically expedient—'ritual space' (Williams 2002). That is telling, insofar as it is a way to begin to see how sacred places are not part of the fabric of the world, but rather the result of social processes of recognition. However, that is far too general a claim, and not even a particularly controversial one. What we really need to consider is the form taken by that process of recognition under the hegemony of the state.

A bird's eye view of historical, anthropological, and archaeological evidence—from the early states of antiquity to, more importantly, the modern Western state—shows us a tendency towards covariation between political structures and ways of recognising the status of sacred places. But summarising the evidence for such a long period would neither be possible nor necessary here. What is most relevant for our purposes is the relationship between the modern state and religion. In a number of influential works, Talal Asad has demonstrated how religion is not a universal category, nor a "given" that states simply have to deal with. Rather, it is a "modern historical object" (Asad 1993: 4), shaped by the same ideology that accompanied the rise of the modern European state:

> …what appears to anthropologists today to be self-evident, namely that religion is essentially a matter of symbolic meaning linked to ideas of general order … is in fact a view that has a specific Christian history. … religion has come to be abstracted and universalized. In this movement we have not merely an increase in religious toleration, certainly not merely a new scientific discovery, but the mutation of a concept and a range of social practices which is itself part of a wider change in the modern landscape of power and knowledge. That change included *a new kind of state*, a new kind of science, a new kind of legal and moral subject. (Ibid.: 42-3, emphasis added)

That general attitude translates to the more particular issue of the state's handing of issues of spatial conflict. To crudely simplify, the state's simplification strategy always played a role in determining what was to count as a sacred space, and what such recognition entailed. There is no such thing as sacred

space—at least in a politically salient sense of the term—that isn't the product of state agency, at least to a significant extent.13 One important consequence of that fact is that we cannot make epistemically reliable moral judgments as to why the state treats claims for or against special status for certain spaces with fairness, since the very notion of sacred space in play is typically itself the product of the state.14 The way that the category of religion is shaped by state simplifications might lead one to expect sacred places to have decreased in importance proportional to the increase in state capacity, given the preferences state have for belief centered understanding of religion. In as far as sacred places stand in for a rival, ritual and practice centered understanding of religion, sacred places are reminders of the still ongoing struggle between state simplification and alternative forms of social organization. That the governance of sacred spaces is one of the areas in which contemporary states take recourse to identity-based rules, the replacement of which with general rules was one of the hallmarks of the advent of the modern state form, attests to this challenge. There is then a remaining tension in the state's making sacred places legible: Through seeking to make the social power of the sacred subservient to its purposes through applying state simplifications, the state still gives the concept of the sacred just enough continued social recognition for it to challenge the state form later.

Where do those broadly descriptive considerations leave us in terms of normative options to direct political agency? In their seminal paper on sacred places, Gideon Sapir and Daniel Statman helpfully classify and review the most common philosophical rationales for special accommodations of claims on sacred places. We are inclined to agree with their conclusion that "the theoretical basis for the special protection granted to holy places is not entirely clear and is rather unstable" (2016: 153), so we will not take issue with any of their critiques of the various positions they discuss. Indeed, we will shortly argue

13 While not dissimilar, struggles for being recognized as a state and struggles for being recognized as a sacred space do not take place on the same level. The outcomes of the former have a much stronger effect on the latter than vice versa.

14 By analogy, this is as if an author were asked to referee her own paper. There are good epistemic reasons against that practice. We develop this method of realist ideology critique in (Prinz & Rossi 2017, Rossi & Argenton 2016).

that one should be even more sceptical of standard liberal political philosophy on this issue. Sapir and Statman also note that they find it "rather upsetting to be reminded that social and legal arrangements are often much more a result of power relations than of moral principles." (ibid.: 154) We lack the resources to determine the extent to which reality is upsetting. However, the preceding discussion should help establishing two points with regard to Sapir and Statman's conclusions and, more generally, with what a realist approach to political philosophy would recommend regarding the state's choices with regard to sacred places.

First, we would like to sketch an extension of Sapir and Statman's scepticism about extant philosophical accounts of the special status of sacred places (be they based on freedom of conscience, on cultural rights, or on other accounts of the sui generis status of religion). If our argument succeeds, it shows that it is not as if the correct way of squaring the religious freedom-equality circle has not yet been found. Rather, it cannot be found because trying to regiment state agency with pre-political moral principles is only possible if one misunderstands what sort of entities states are. For states are not as pliable to one's normative wishes as political philosophers often assume they are, though that is not to say that there is a universal logic of statecraft—contextualism remains key in a realist framework. And the often contradictory rationales for religious accommodation found in academic and public discourse are, more likely than not, simply the ideological residue of different ways of negotiating the task of state simplification, to return to Scott's terminology. For instance, as some liberal states simplify through neutrality and some through laïcité while claiming adherence to broadly similar or overlapping sets of constitutional commitments, it is not surprising that ostensible justificatory tensions should emerge. All of these simplification strategies are imperfect and leave residue, i.e. cases that don't quite fit the mold.

Here one may wonder whether we haven't lapsed into the descriptive fallacy Laborde aptly diagnoses in parts of 'critical religion' scholarship. To address that objection we need to appreciate why our point about the state is not merely one about feasibility constraints, though it may at first sight appear so. The objection is this. The fact that states mould social practices such as religion to suit their purposes says nothing about whether they have (moral, prudential, etc.) reason to do

that, unless one can also show that such state simplification is also the only feasible option. But that objection fails to appreciate the import of Scott's point about state simplifications: it's not as if states chose to behave as they do. If they didn't behave that way, they wouldn't be states. Besides, the realist argument we put forward does explain why states mould religious phenomena into easily governed shapes: the issue is that states need to solve what Bernard Williams (2005) has called the "first political question", namely the provision of legitimate order. Or, in Sapir and Statman's parlance, "the fear of violence and public disorder" (ibid: 153-4).[15] And, as we have seen, modern states on the European model have quite specific ways of achieving those aims. To be sure, the priority of answering the first political question still leaves many normative questions open as to how the state may best pursue that goal. How the purposes of the state are specified in a particular context is not something for political philosophers to determine.[16] It should be left to the rough and tumble of politics which wins the day.

The important point, though, is that this realist approach opens a new way of thinking about the justification of religious accommodation, at least in political theory. Indeed the approach we have in mind is familiar to constitutional scholars, according to whom religious accommodation is a matter of balancing state priorities and the requests of religious groups (Eisgruber & Sager 2007). Now, political theorists are typically dismissive of that approach[17]: crudely, if there are obligations to respect religious commitments, balancing just won't do. But here we have shown that this type of moralistic reasoning requires, inter alia, the false premise that religion is independent of the state and therefore must be treated fairly

[15] After all, the links between liberal realism and the 'liberalism of fear' championed by Judith Shklar are well understood by now (Forrester 2012).

[16] At the very least in democracies, there should be limits to what can count as politics rather than raw domination (see Prinz and Rossi forthcoming).

[17] Jobani and Perez (2018) capture the hard nature of those choices in their insightful outline of the advantages and disadvantages of a range of approaches to the governance of contested sacred sites. However, they do not consider how the state has shaped the category of religion and hence their outline is of limited use for our purposes.

by it. The realist lesson is that there is no pre-political morality of religious freedom. So, in a way, the realist approach we propose can afford a vindication of the relatively hard-nosed, gritty reasoning found in constitutional theory and practice.

We would then argue for an approach according to which the recognition and regulation of sacred sites depends on the state's judgment of what would minimize the chance of failing to provide a legitimate order. That is not to say, however, that might makes right. As Bernard Williams argued (2005), and as much realist literature has shown, the establishment of order does not count as a proper political relationship—as opposed to mere suspended warfare—if the order does not in some way make sense to those subjected to it (Ceva & Rossi 2012, Sleat 2014).[18]

Such an approach would not involve compromise between "state" and "religion". Governing contested sacred places should on our account be guided by prudential reasoning by states about the effect on the legitimacy of the political order rather than by trying to determine which religion has the most objective claims to "holiness" or "sacredness" of a place.[19] Compromise between state and religion could not play a central role, because the religious arguments, according to our arguments above, are not—now and around here—state-independent artefacts. Such an approach would divide conflicts over contested sacred spaces into two main categories (the separation of which is not neat) and recommend responses accordingly.

On the one hand, there is conflict over contested sacred places as *power struggle over social and political control (of the purposes) of the state* (e.g. which religion, if any, the state

[18] Importantly, this is not a moral commitment but a point following from a conceptual claim about the distinction between politics and war (Hall 2015). On the normative status of this claim there is an ongoing debate (see e.g. Jubb and Rossi 2015a, 2015b, Erman and Moller 2015, Prinz 2019).

[19] Here one may reasonably worry that such an approach may give some groups a threat incentive: are groups more likely to have their demands met the more they menace public order? To avoid a straightforward affirmative answer, it seems that those in charge will have to make complex cost-benefit calculations. It is not in the spirit of realist political theory to provide detailed blueprints or algorithms for how those calculations should be conducted (Rossi 2019).

favours)*. If conflicts over the governance of sacred places boil down to such power struggles, according the latter special status would distract from what these conflicts are about.[20] In as far as claims regarding sacred places are instrumental to gaining control of state power, without seeking to transform the state form, no special governance provisions would seem necessary on our approach, though there may well be borderline cases.[21] An example of this could be the dispute over the newly funded settlement of Rajneeshpuram in Oregon in the early 1980s: a minority religious group started settling an area adjacent to a pre-existing city (Antelope), and subsequently obtained incorporation as a new city whose local government, including education and security, it completely controlled (Richardson 2004). The ensuing—successful—legal challenge by the Oregon State Attorney was ostensibly centred on the US Constitution's Establishment Clause. Our political realist reading, however, is in line with what jurisprudence scholars of the American legal realist school would say: judicial decisions of this kind are always determined by extra-legal factors (moral and political convictions, interests, etc. – see Leiter 2010). In particular, we think that a realist approach counsels giving priority to extra-legal considerations pertaining to the successful answering of the first political question.

On the other hand, there is conflict over contested sacred places which involves a *challenge to the state as the main form of social organization*. Here the task of the state would be to provide arguments for why it provides a superior form of social organization for all considered. Such a challenge comes to the fore when the understanding of the sacred presented in the contestation is incompatible not only with the state's particular policies, but with state simplification of religion altogether, e.g. because they cannot capture the sacredness at issue. Consider the recent protests over e.g. the Dakota Access pipeline. The

[20] To be sure, there are important differences if one of the groups involved has been discriminated against or is at the weaker end of a historical power differential relating to state capture. As we have suggested above, in liberal democracies there should be limits to how far the rough and tumble of politics may cater to the interests of a very limited segment of the population. We cannot, however, do justice to this issue here.

[21] Our schema does not, however, cover international conflicts over sacred places.

Native American Standing Rock Sioux Nation claims that the construction of the pipeline would disturb their sacred land. Existing legislation for the protection of freedom of religion, however, has not served Native American religions, despite the "American Indian Religious Freedom Restoration Act" of 1978. Arguably due to the divergence of their land-based understanding of religion from state simplified religion, Native American groups' understanding of the sacred is not protected within the US state (Wenger 2017). If conflict over sacred space involves a claim to self-determination/sovereignty, it is a direct challenge to the state order (Wenger 2018). If conflict over contested Native American sacred land is a case of mobilizing interpretations of a concept (the sacred) which are less compatible with the (current form of the) state than the established interpretations (that have been shaped by state simplifications) in order to change the state from within, then it is a hybrid between the first and second category. Importantly, the example is further complicated by the fact that a group that was forcibly integrated into the state society, can only achieve recognition for its claims through the organs of that state—a state that disregarded its prior claims to self-governance. Dealing with such challenges is less a question of adjudicating between competing claims than a question of finding out whether state-based politics can satisfactorily incorporate the claims of groups that have historically been marginalized, in many ways precisely through state simplification and other, even more brutal forms of state-building.

Building on that last point, we want to point out how we are left with an exclusive disjunction (which may or may not exhaust the available options — at any rate, the two we mention strike us as the most appealing ones. We will not try to adjudicate between them). On the one hand, one may embrace the hard-nosed priority of the first political question. On the other hand, even if one is reconciled to abandoning the moralist search for pre-political moral principles to guide state agency, one may still be disappointed with the limitations imposed by the ontology of states[22]. And so the issue of sacred places may become a gateway to the radical conclusion that the very existence of states is normatively problematic: perhaps there are commitments and social practices (such as religion,

[22] On the compatibility between realism and anti-statism, see Raekstad (2018).

whatever that may be) which we have reason to value more than we value the goods provided by states.[23]

That is not to say that if one is unhappy with statism one can then retreat into moralistic pre-political commitments. One must still reckon with the need for political institutions, at least as long as humans have no choice but to coexist in non-optional associations, as seems to be inevitable for creatures such as ourselves[24]. And also for that reason prospects for a pre-political morality of religious freedom seem dim. The question for radically-minded realists, then, is whether there are non-state frameworks and institutions that can enact more satisfactory ways of making sense of the politics of religion.[25]

References

Anderson, E., 1999, "What Is the Point of Equality?" *Ethics*, 109: 287-337.

Asad, T. 1993. *Genalogies of Religion.* Baltimore: Johns Hopkins University Press.

Asad, T., 2003. *Formations of the Secular: Christianity, Islam, Modernity*. Stanford, CA: Stanford University Press.

Barkan and Barkey (eds.), 2015. Choreographies of Shared Sacred Sites, New York: Colmbia University Press.

[23] However, if the state has shaped the category of religion, then making such a choice against the state order may be practically difficult, because it would require unearthing some alternative form of religion unaffected by state influence first. Such a form of religion might, after centuries of state rule, be difficult to unearth.

[24] In forthcoming work, Enzo Rossi defends a form of realist political naturalism that substantiates this claim.

Batznitzky, L. & Dagan, E., eds, 2017. *Institutionalizing Rights and Religion*. Cambridge: Cambridge University Press.

Brown, W., Butler,J. and Mahmood, S., 2013. 'Preface' in Ibid. (eds), Is Critique Secular? Blasphemy, Injury, and Free Speech (New York: Fordham University Press, 2013)

Brunn, S. D., ed., 2015. *The Changing World Religion Map*. Dordrecht: Springer.

Carter, I., 2011. Respect and the Basis of Equality. *Ethics* 121 (3): 538-571.

Cavanaugh, W. T. 1995. "'A Fire Strong Enough to Consume the House": The Wars of Religion and the Rise of the State'. *Modern Theology*, 11 (4).

Cavanaugh, W.T., 2009. *The Myth of Religious Violence*, Oxford: Oxford University Press.

Cavanaugh, W. T. 2014. "Religious Violence as Modern Myth". *Political Theology*, 15 (6), 486-502.

Cesari, J. 2015 'Religion and Politics: What Does God Have To Do with It?'. *Religions*, 6 (4), 1330-1344.

Cesari, J.2016, 'Disciplining Religion: The Role of the State and Its Consequences on Democracy'. *Journal of Religious and Political Practice*, 2 (2), 135-154.

Ceva, E. & Rossi, E., eds, 2012. *Justice, Legitimacy, and Diversity: Political Authority Between Realism and Moralism*. London: Routledge.

Cohen, G.A., 1993, "Equality of What? On Welfare, Goods, and Capabilities," in: M. Nussbaum & A. Sen (eds.), *The Quality of Life*, Oxford: Oxford University Press, pp. 9–29.

Coomans, T., De Dijn, H., De Maeyer, J. & B. Verschaffel (2012). *Loci Sacri. Understanding Sacred Places*. Leuven: Leuven University Press.

Coster and Spicer, eds, 2005. *Sacred Space in Early Modern Europe*. Cambridge: Cambridge University Press.

Daechsel, M., 2011. Seeing Like an Expert, Failing Like a State? Interpreting the Fate of a Satellite Town in Early Post-Colonial Pakistan. In: V. Bader, M. Maussen, and A. Moors, eds, *Colonial and Post-Colonial Governance of Islam.* Amsterdam University Press: 155-174.

De Ruggiero, G., 1927 [1025]. *The History of European Liberalism*. Oxford: Oxford University Press.

Diefendorf, B. (2014) Were the Wars of Religion about Religion?, *Political Theology*, 15 (6), 552-563.

Eisgruber, C.L. & L. Sager, 2007. *Religious Freedom and the Constitution.* Cambridge, MA: Harvard University Press.

Erman, E. & Moeller, N., 2015. Why Realists Should Not be Afraid of Moral Values. *Journal of Philosophical Research*, 40, pp.459-464.

Fish, S., 2000. Mission Impossible: Setting the Just Bound between Church and State, in Stephen M. Feldman (ed.) *Law & Religion. A Critical Anthology* (New York: New York University Press): 383-410.

Forrester, K., 2012. Judith Shklar, Bernard Williams and Political Realism. *European Journal of Political Theory*, 11 (3): 247-72.

Fraser, N. & A. Honneth, 2003, *Redistribution or Recognition? A Political-Philosophical Exchange*, New York: Verso.

Geuss, R., 2010. *Politics and the Imagination.* Princeton, NJ: Princeton University Press.

Gregory, B., 2012. *The Unintended Reformation*. Cambridge, MA: Harvard University Press.

Greiner, A.L., 2015. Sacred Space and Globalization. Brunn, S. D., ed., *The Changing World Religion Map*. Dordrecht: Springer.

Hall, E., 2015. Bernard Williams and the Basic Legitimation Demand: A Defence. *Political Studies*, 63(2), pp.

Honneth, A., *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, Cambridge, MA: MIT Press 1995.

Jobani, Y. & Perez, N. 2018. Governing the Sacred: A Critical Typology of Models of Political Toleration in Contested Sacred Sites. *Oxford Journal of Law and Religion* 7, 250–273.

Johnson, N. & Koyama, M. 2019. *Persecution and Toleration: The Long Road to Religious Freedom. Cambridge: Cambridge University Press.*

Jubb, R & Rossi, E. 2015a. Political Norms and Moral Values. *Journal of Philosophical Research*, 40, 455-458.

-----, 2015b. Why Moralists Should Be Afraid of Political Values. *Journal of Philosophical Research*, 40, 465-468.

Koppelman, A., 2014a. Neutrality and the Religion Analogy. *Northwestern Public Law Research Paper No. 14*.

Koppelman, A., 2014b. Religions as a Bundle of Legal Proxies: Response to Micah Schwartzman. *San Diego Law Review* 51.

Koyama, M. 2017, Ideas were not enough. Locke, Spinoza and Voltaire were all brilliant, but religious freedom in Europe was driven by statecraft not philosophy. In: AEON, 17 August 2017, available at: https://aeon.co/essays/the-modern-state-not-ideas-brought-about-religious-freedom.

Laborde, C., 2015. Religion in the Law: The Disaggregation Approach. *Law and Philosophy* 34: 581-600.

Laborde, C., 2018. *Liberalism's Religion*. Cambridge, MA: Harvard University Press.

Leiter, B., 2010. American Legal Realism. In M.P. Golding & W.A. Edmundson, eds, *The Blackwell Guide to the Philosophy of Law and Legal Theory.* Oxford: Blackwell.

Macpherson, C.B., 1962. *The Political Theory of Possessive Individualism*, Oxford: Oxford University Press.

Mahmood, S., 2005. *Politics of Piety. The Islamic Revival and the Feminist Subjec*t. Princeton, NJ: Princeton University Press.

May, S., Wilson, E. K., Baumgart-Ochse, C. & Sheikh, Faiz, 2014. The Religious as Political and the Political as Religious: Globalisation, Post-Secularism and the Shifting Boundaries of the Sacred. *Politics, Religion & Ideology*, 15 (3), 331-346.

Murphy, J. 2014. Religious Violence. *Political Theology* 15 (6), 479-485.

Prinz, J. & Rossi, E., 2017. Political Realism as Ideology Critique. *Critical Review of International Social and Political Philosophy*, 20(3).

Prinz, J. & Rossi, E. Forthcoming. Financial Power and Democratic Legitimacy: How To Think Realistically About Public Debt. *Social Theory and Practice.*

Prinz, J., 2019. Principles, practices and disciplinary power struggles in political theory. *European Journal of Political Theory.* URL: https://journals.sagepub.com/doi/full/10.1177/1474885119857588

Raekstad, P., 2018. Realism, Utopianism, and Radical Values. *European Journal of Philosophy*, 26(1), 145-168.

Rawls, J., 1994. *Political Liberalism. Second Edition*, New York, NY: Columbia University Press.

Richardson, J.T., 2004, *Regulating Religion: Case Studies from Around the Globe*, New York, NY: Luwer Academic/Plenum.

Rossi, E. & Sleat, M., 2014. Realism in Normative Political Theory. *Philosophy Compass* 9(10): 689-701.

Rossi, E., 2013. Can Tolerance Be Grounded in Equal Respect? *European Journal of Political Theory* 12 (3), 240-252.

Rossi, E., 2017. Understanding Religion, Governing Religion: A Realist Perspective', in C. Laborde & A. Bardon, eds, *Religion in Liberal Political Philosophy* (Oxford: Oxford University Press).

Rossi, E., 2019. Being Realistic and Demanding the Impossible. *Constellations*. **https://doi.org/10.1111/1467-8675.12446**

Sapir, G. & Statman, D., 2016. The Protection of Holy Places. *The Law & Ethics of Human Rights*, 10(1), pp.1–21.

Schwartzman, M., 2012. What If Religion Is Not Special? *University of Chicago Law Review* 79.

Sleat, M., 2014. Legitimacy in Realist Thought: Between Moralism and *Realpolitik. Political Theory*, 43(2), pp. 314-337.

Scott, J.C., 2005. *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. New Haven: Yale University Press.

Sen, A. 1980, "Equality of What?", in: *The Tanner Lecture on Human Values*, vol. I, Cambridge: Cambridge University Press, pp. 197-220

Spinner-Halev, J., 2005. Hinduism, Christianity, and Liberal Religious Toleration. *Political Theory*, 33(1), pp.28–57.

Spruyt, H., 1994. *The Sovereign State and Its Competitors*. Princeton, NJ: Princeton University Press.

Statman, D., 2019. Hurting Religious Feelings. *Democratic Culture*, 3, pp.199–214.

Statman, D., and & Sapir, G., 2019. State and Religion in Israel, New York: Cambridge University Press.

Wenger, T. 2017. Religious Freedom. The Contested History of an American Ideal. Chapel Hill, NC: University of North Carolina Press.

Wenger, Tisa. 2018. Why Religious Freedom Won't Protect Native American Sacred Lands, https://berkleycenter.georgetown.edu/responses/why-religious-freedom-won-t-protect-native-american-sacred-lands, 20 February 2018.

Williams, P. W., 2002. Sacred Space in North America. *Journal of the American Academy of Religion*, 70(3), 593–609.

Young, I. M., 1990, *Justice and the Politics of Difference*, Princeton: Princeton University Press.