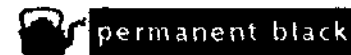


The Crisis of Secularism in India

edited by

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CONTENTS

vii Preface

xi Acknowledgments

1 Introduction Rajeswari Sunder Rajan and Anuradha Dingwaney Needham

I. Secularism's Historical Background

45 Reflections on the Category of Secularism in India: Gandhi, Ambedkar,
 and the Ethics of Communal Representation, c. 1931 Shabnum Tejani

66 A View from the South: Ramasami's Public Critique of Religion
 Paula Richman and V. Geetha

89 Nehru's Faith Sunil Khilnani

II. Secularism and Democracy

107 Closing the Debate on Secularism: A Personal Statement Ashis Nandy

118 Living with Secularism Nivedita Menon

141 The Contradictions of Secularism Partha Chatterjee

157 The Secular State and the Limits of Dialogue Gyanendra Pandey

177 Secular Nationalism, Hindutva, and the Minority Gyan Prakash

III. Sites of Secularism: Education, Media, and Cinema

191 Secularism, History, and Contemporary Politics in India Romila Thapar

Akeel Bilgrami



Secularism and the Very Concept of Law

A central concern in the study of secularism in India has been the question of Muslim Personal Laws—their unreformed status and their existence as exemptions to the secular ideal of a civil code that applies across the board. In this brief essay, I will approach the subject by situating it in a much more general theme, of which it is a particular, and particularly important, instance. The more general theme, with no specific focus on India, is the question: Can culture and religion provide grounds for exemptions from a secular liberal nation's laws? This question arises just as much for Western nations with large immigrant populations as it does for India. I adopt this oblique approach in order to lay bare some of the conceptual and philosophical issues at stake in the general debate between secularists and multiculturalists.¹ They are not issues which we can think through in depth without thinking of the nature of legislation, constitutions, and the very point of the law. And it would be complacent to refuse to see how philosophical and methodological understanding of the law drives intellectuals in India to both their advocacy and their criticisms of modern India's secularism. "Secularism" is a subject in India's intellectual life whose relevance and importance seem never to go away. When a subject abides for a whole century with such urgency, it is no longer a mere luxury to look behind it for these philosophical issues at stake, it is an intellectual imperative.

Let me begin by getting two preliminary and elementary points of terminology and clarification out of the way.

First, since the general debate I will focus on is about secularism in the face of multiculturalism, "culture" in "multicultural" will be restricted to religious cultures and communities. But many (though perhaps not all) of the points made here will be applicable to other sources of culture, having to do with nationality, ethnicity, indigenous native populations, and so forth. That is all to the good, since in explanation more generality is to be preferred to less, where it is plausible, that is, where it does not trample over good distinctions.

Second, the debate coincides to a considerable extent with the debates about minorities, that is, the place of (religious) minorities in a secular liberal democracy, whether it be in India or European countries such as Britain or France. Though this coincidence is considerable, it is not complete because not all issues about secularism are engagements with multiculturalism, with the diverse cultures of various religious minorities. The question of the status of secularism can arise in countries with a high degree of religious homogeneity, where the pressures on secularism do not come from a diversity of religious cultures but from pressures of a religious politics quite generally, as, for example, in Iran. Even in countries where there are cultural and religious minorities, the pressures on secularism may not necessarily come from these sources but from the demands of a dominant majority culture or community. Of course, it would be unusual if in these latter cases the demands did not relate to the majority culture's responses in some way or other to the existence of minority cultures (as in India), but there is no necessity that they should do so. All the same, I will be focusing on cases where there is a broad coincidence of the debate about multiculturalism with the one about minorities.

To repeat, my question, at its highest level of generality, is about whether religion gives ground for exemption from liberal laws. Sometimes the laws in question can be about relatively marginal issues, such as how to dress, as in the demands of Sikhs in Britain that they be allowed to wear their turbans while riding their motorcycles—despite safety laws requiring helmets—because their religion requires it. Or it can be about somewhat more important matters, such as the Sikh demand that they be exempt from laws about carrying dangerous weapons in public, so as to allow them to wear their kirpans in public religious ceremonies. Or it can be about even larger issues having to do with laws of divorce and alimony, as in the (successful) Muslim demand during the Constituent Assembly debates in India that Muslims be

allowed to live by the personal laws prescribed in the shari'a. Finally, they can also be about the most fundamental of issues in liberal doctrine, such as the Muslim demand in both Britain and India that constitutional rights to free speech be put aside when it comes to blasphemy, as for instance, in the case of Salman Rushdie's book *The Satanic Verses*.² Though the law in each of these may differ in weight and importance, the basic structure of the arguments and issues is the same in all the cases.

What I want to look at is the extent to which the issues at stake in this debate between the secularist and the multiculturalist might be over something as deep and philosophical as how to understand the nature of law itself.

The traditional and classical secular position has tended to be that the very notion of law, law by its very nature, seems to be the sort of thing that demands equality in its application. A law is not a law unless it holds for everyone. Yet the multiculturalists, with their sympathy for the religious demands for exemptions, seem to be questioning precisely this claim. Do they, then, understand the nature of the law differently? If so, because it seems so natural to think that the law should apply to everyone equally, the multiculturalist is, at least *prima facie*, stuck with the task of showing that what seems so natural here might not in the end be justified.

Why, then, does it seem so natural that a law, by the very kind of thing it is, applies equally to everyone? It is shallow to simply say in a very general and unilluminating way that equality is a fundamental value and it applies to the law as to other things. What is natural about the claim we are considering has to do much more specifically with how we think legislation proceeds or should proceed.

Let's look at a prominent recent secularist position on the law. Brian Barry, in his book *Culture and Equality*, takes a clear and unambiguous position on the matter: "If there are good reasons to formulate the law, then those very reasons repudiate the demand for exemptions. And if, on the other hand, there are good reasons to grant exemptions to the law, that puts into doubt that there should be such a law in the first place" (39)

This is a very tidy view. And it is a view shared by a lot of secular liberals. By "good reasons," Barry presumably means reasons which, on reflection, are decisive. Why is Barry so convinced that if there are decisive reasons to support a law, then it should not allow for exemptions? His answer is clear—because if there was something decisive to be said on the part of granting the exemptions, then there are no decisive reasons in favor of the law.

What seems too tidy is just this assumption that if there is something to be said in favor of the exemptions, then that puts into doubt the decisive reasons for favoring the law. But one should be careful that in calling this too tidy, one is not misunderstanding Barry's position. He does allow that one could go on to grant exemptions if one wishes, but when one does so, it is on purely "pragmatic" grounds, grounds which have nothing to do with the law except insofar as how people will respond to it. So, for instance, a state might grant exemptions to a law in order to keep the peace, knowing that there will be great dissatisfaction, even perhaps violence, if one insisted on applying it across the board. But these are all pragmatic considerations that the state might invoke—for statist reasons, like keeping the peace. In these cases the exemptions are not principled exceptions; they are merely a bit of special pleading on grounds quite irrelevant to whether the law—*qua* law—is a just and good law. (A case of a principled exception would presumably be something like the escape clause for self-defense in a homicide law. There is nothing pragmatic about having this exception; it is not a result of taking into account, once the law is formulated with exceptions and already in place, how people are responding to it. It has nothing at all to do with people's feelings and responses, religious or otherwise. It is dictated entirely by considerations internal to the law. It is therefore an exception built into the law, and not a pragmatic afterthought.)

What Barry rightly and shrewdly sees is that the multiculturalist is not going to grant that only and purely pragmatic reasons justify exceptions to a law about traffic safety, public order, and so on. He (or she) is going to insist that there are principled reasons that religious considerations might provide for the exceptions. And Barry is anxious that this insistence really questions something rather basic about the nature of law itself. So he himself has nothing *per se* against granting exceptions to the law. So long as they are always seen as being granted on pragmatic grounds after the event of legislation, he is prepared to tolerate exceptions. What he will not tolerate philosophically is the multiculturalist way of claiming the exceptions. And, if I am correct, the reason for this seems to be that that way of claiming the exception threatens the very conception of law which the secularist assumes.

So one must ask: What is this conception of law that the secularist assumes? What is philosophically and jurisprudentially at stake in saying that there are no principled but merely pragmatic reasons underlying the granting of exceptions on religious grounds?

This is what seems to be at stake. According to the secular liberal, when making a law, legislators look only to the subject matter of what the law is about—safety on the road, as it might be, or the threat to public order by the carrying of dangerous weapons. If they find, when considering that subject matter, that there are good reasons to formulate a law regarding helmets or the ban on carrying dangerous weapons in public, then those reasons rule out any principled exceptions based on people's religious feelings and sentiments. So the answer to the question—why is it so natural to think that the law applies equally to all citizens?—is that laws are formulated with a view to addressing issues (subject matters), consideration of which dictates what is just and right, quite independently of what this or that group of citizens' response to the law will be. Quite possibly people will hate wearing helmets, paying taxes, and so forth, but if considerations of safety and political economy, the subject matters addressed by those laws, dictate that it is right that people should wear helmets and pay taxes, then that is that.

To multiculturalists, that is precisely the underlying view of law, the underlying view of the task of legislation, that is bound to appear too tidy. It leaves out of legislation, and the considerations that go into it, any sensitivity to the deepest human commitments and sentiments of people. It may be, they will grant, that when thinking only of safety (the subject—or one subject—of traffic laws), one should not be bothered by religious considerations of the male Sikh's religious obligation to wear a turban instead. But the context of legislation is always part of a much larger human and social context. Laws are for people, even if they are about subject matters, and when the commitments and sentiments of people go as deep as they sometimes do over questions of religion, one cannot restrict one's perspective to just the subject matter of the law in question and what is right for that subject matter. One has to think of how the law will affect the people who live under it in ways that may have nothing to do with safety in traffic.

Here, then, is one way I would propose of formulating the alternative picture of legislation that the multiculturalist is assuming. (There could be other models proposed to capture the multiculturalist assumptions about legislation, but this seems to me the one that is clearest and least conceptually cluttered.) When legislators devise laws they confront a vast decision problem. As with any decision problem, we must proceed via a governing constraint, which is often called "the total evidence requirement." And if legislators look at the total evidence, when considering a law on motorcyclists' safety, whether

in Bombay or Bradford, they would inevitably have to ask themselves, among other things, how to weigh the gain in safety against the loss in offence caused to a sizable minority of citizens. Now, it is possible that here, as with any decision procedure, the weights we attach in these considerations lead us to quite uncertain deliberative outcomes; and when that happens we may well think that the best solution is to have both the law of safety and the exemptions for the relevant religious community. The uncertainty dictates this ecumenical decision, the very ecumenism which Barry repudiates when he says disjunctively that either the law had good reasons for it or it is a bad law because there are good reasons for the exceptions. It's only if the deliberative procedure weighing the total evidence yielded a more certain outcome one way or another that we would disallow exceptions and have the law, or see the point of the exceptions and conclude that there was no need for the law. But in the deliberative weighing of total evidence on matters in which considerations of safety are vital and religious sentiments run strong, it is quite likely that the deliberation will often not produce outcomes with any certainty. If so, the ecumenical or conjunctive legislation of law and exception will prevail over Barry's disjunctive view.

This conception of legislation is alternative to the one that Barry is presupposing because it is no longer possible to dismiss the granting of exceptions as merely "pragmatic" afterthoughts. It is true that we did not want to offend the relevant minority of citizens' feelings, but that consideration was at the outset one of the things to be weighed in solving the decision problem about what sort of law to adopt under the total evidence requirement. It was not as if we first arrived at the law, on some independent and more principled grounds, and then, on subsequent more pragmatic considerations of not offending the minority, granted the exceptions. Not offending minorities was, as I said, weighing in right at the outset of deliberation.

It won't do to object on behalf of the secularist by saying that this way of thinking about legislation as a vast decision problem, taking in the total evidence in reaching a decision, does not allow for the fact that some people might find it unfair for the sentiments of a religious minority to be seen as relevant evidence in the decision. Thus, for instance, this objection might invoke the fact that teenagers also want exemption from wearing helmets because it is uncool to do so, and they might say, "We too have strong sentiments about this, why are you paying more attention to the Sikhs?" There is a simple failure on the part of this objection to see that the whole point of

taking the view of legislation as a vast decision problem is that the protest made by the teenagers can also be thrown in as one more consideration into the total pot of evidence and weighed in the deliberation about the decision. And it may turn out that even after throwing that in as a bit of evidence, our deliberation tells us that the Sikh case is more urgent than the teenagers' and therefore the same uncertain outcome which dictated both the law and the exemption granted to the Sikhs from the law is the best decision. So protests about what is and is not fair, and therefore what is and is not the relevant evidence in the total evidence, are just more evidence in the total evidence on which the decision is made by legislators.

Exactly the same thing can be said in response to other sorts of objections to this decision-problem format for thinking about legislation. So, for instance, secularists might object that there will be something too unstable about laws if they are arrived at on the basis of taking into account what people's sentiments are regarding the law. Well, here, too, let the threat of this instability also be thrown into the pot of total evidence, for the legislators to weigh. They may still come to the conclusion, after weighing it along with everything else, that we should after all have both the law with the exception rather than Barry's tidier disjunctive view of the matter.

It simply misses the point to say that once we throw the point about unfairness to other groups who want exemptions and the point about instability of laws into the total evidence, legislators are very unlikely to find themselves adopting the ecumenical law-plus-exemption outcome. Even if that is in fact the case, the point is it need not be so. Let us even grant that because of throwing in the considerations of unfairness and instability into the total evidence, legislators—proceeding as if they were undertaking a decision problem of the kind I outlined—came up with laws which were exemptionless, that is, with laws which were co-extensive with the laws that legislators working with the model underlying Barry's view—who consider only the subject matter of the law and what it dictates—came up with. That does nothing really to show that the models are not radically different. For it is quite possible that even if you allow considerations of unfairness and instability to be weighed along with considerations of the strong sentiments of minorities and how they will respond to the laws, the latter might trump the former in our deliberations, and in that case we will adopt the law-cum-exemption outcome. This demonstrates that even if in fact the two models come up with the same laws, they are only co-extensive; they are not co-intensive.

The point is that those wedded to the legislative model assumed by Barry are going to cry foul at the very idea that consideration of religious sentiments at the outset of legislative deliberation is being allowed. No amount of co-extensiveness of this with their own model will soothe them. That is to say, no amount of reassurance that the same laws are likely to be devised by the decision-problem model will soothe them. And that is only right. Given their view of legislation, this should seem to them to constitute a wholly different and unacceptable legislative model. Even if it happens to yield the same laws, it might not do so if decision-making deliberative outcomes turned out to be different.

I have been trying to contrast two different models of legislation as underlying the debate between the secularist and the multiculturalist. Whichever one we prefer in the end, there is nothing obviously wrong or incoherent with either model. But we must ask a deeper question at this point. So far we have only asked what conception of legislation underlies the secularist finding it so natural to think that the law applies equally and without exception to everyone, and what conception of legislation underlies the multiculturalist way of questioning what seems so natural to the secularist. We must now ask, whether something deeper underlies these different models of legislation themselves. Whichever side we take on the dispute between the two underlying model of legislation, it would be premature to take it without noticing a deeper layer of what is at stake.

There is something rather more abstract and methodologically significant that lies behind what the secularist is aspiring to, and it is worth a brief exploration. Barry himself does not explore it and one feels therefore that he has not really dug as deep as he might into the foundations of his own position.

A good way to begin is by diagnosing why his position seems to him so obviously to have the moral and philosophical high ground. And I do not doubt that Barry (whose book—thick though it is with rigorous arguments—is filled with a pervasive indignation against any sympathy shown toward multiculturalism) will be brought to new heights of indignation by the very idea of the notion of legislation I am presenting on behalf of the multiculturalist. One can hear it: "This is no way to go about devising laws! It is not a decision problem taking in as considerations all those messy details of people's feelings toward prospective laws right at the outset! It is to misunderstand the very nature of laws to conceive of their devising in these terms! It may be

that some subject matter regarding which a law is sought will be a difficult one on which to decide what will be a just law. But if that is so, that is because of the intrinsic difficulty of resolving the legal aspects of the subject matter; it should not be because we have an eye out for how this or that group will respond to it. We would never get any laws without exceptions if we proceeded along the lines of the proposed method!"

While reading and thinking about his position, I tried hard to diagnose this impatience he is bound to show toward the multiculturalist assumptions about the law. What deeper methodological assumption is he implicitly adopting which makes it seem so obvious to him that his way of thinking of law is the only right one? At first I thought it was simply this: Barry, in his own mind, has started with a paradigm of what a law is by looking to cases in which we are not prepared to countenance any accommodations and exceptions (at any rate, not because of considerations coming from the sentiments of groups affected by prospective laws), laws of homicide, for example.³ And then he extrapolates and elevates this into the very concept of law. That is to say, he extrapolates it to cover all laws. But I then abandoned this diagnosis because it was too uncharitable to him. It is uncharitable because the extrapolation from the one sort of law to all others is too obviously illicit. Multiculturalists and every other sensible person would be happy to concede that homicide laws and a few other such laws are very different in that one should not countenance the sort of exemptions on religious grounds which are being claimed for other laws. But they will certainly find it an extraordinary and unacceptable inference to go from this concession to saying that all laws are like homicide laws in this respect.

But what other diagnosis is there, if this one is uncharitable? What other deeper underlying methodological assumption motivates the secularist notion of law and legislation?

Let me say something on Barry's behalf now. Someone who finds the decision-problem approach to devising a law (as I have spelt it out briefly) to be missing the very point of law may be thinking in the terms I want to consider now.

I will begin with a crude, very abstract, and almost sentimentally philosophical statement of the idea. The idea of a law derives from something more basic than law itself, something like the idea of a principle, something of greater generality, greater abstraction, something which is more transparent to us, whose point and rationale shines forth from the very kind of thing it is.

There is a greater self-evidence about it. That notion of principle underlies our most basic understanding of laws. So understood, laws do not try to cope right at the outset with the messy details that may lead to accommodations and exceptions. They stand above those messy details, and in fact it is the point of laws to bring clarity to the messy details and put them in their place.

The point becomes less crude if we point to an analogy that might exist with the basic laws, say, of Newtonian science, and their relations to particular engineering applications, or (a better analogy) their relations to the details and highly qualified (by *ceteris paribus* clauses) generalizations of some of the special sciences such as psychology or meteorology or even biology where much messier details have to be dealt with. We do not spoil or give up on the idea of the most general explanatory laws of fundamental physics just because of the messy details of the engineering applications or because the special sciences throw up recalcitrant details for them. On the contrary. It is part of the prestige of the fundamental sciences that we try constantly to subsume the particulars at the lower levels of the special sciences under their higher-level laws. We may not always succeed, but that is the aspiration, and the prestige of the laws is reflected in the aspiration and is unaffected by the occasional failure to fulfill it.

Why should morals and the law be any different from science? Here too we might seek an analogy with the distinction between basic physical laws versus engineering detail or the laws of the basic sciences and the messy phenomena and highly hedged generalizations of the special sciences. I believe that secularists like Barry presuppose something like the analogy in the background when they relegate the messy details of people's sentiments to pragmatic afterthoughts following on what is decided at a higher plane of the law itself.

Someone might protest: Practical life is too messy to hold this stratified view of higher laws under which lower level messy details are always sought to be subsumed, and that is why the decision-procedure approach better suits the situation of the devising of laws. But I think we can try to do better, on the secularists' behalf, to explain why things might not be that dissimilar in morals and the law, and this finally is the crucial point which should remove some of the initial impression of crudeness and of an overly remote and abstract philosophical diagnosis.

In law and morals too we often find that some of our lower-level, much more contested and controversial and messier questions can be decided, or come closer to being decided, if we can find similar subsumptions under higher

order principles. This happens often. Thus, for instance, we may often find ourselves uncertain about how to think of pornography. We may worry about the effect of shops in our neighborhood selling pornographic materials, we may think of our children having easy access to them, and so on. These messy and controversial points about the matter are given a clarification and put in their place as soon as we notice, however, that questions regarding pornography are to be subsumed under the much more general principle of free speech. Similar messy questions may be raised about the health and safety issues surrounding abortion, which may leave legislators uncertain about its legality, and again the same clarity and decisiveness is brought to the matter if we see that it can perhaps be subsumed under a higher level principle of privacy. Both these subsumptions have indeed occurred, as any basic survey of the history and sociology of these legal issues will tell us. Someone who was undecided while looking at the controversial details about abortion or pornography might find that the subsumption to these more general and basic principles adds just the clarity that will help him or her decide. The process is parallel to the one I described as a certain sort of aspiration in science.⁴

In fact there occurred a somewhat farcical episode in my university, which provides a gorgeous illustration of the point I am making. Some years ago it was reported in the newspapers that my colleague Edward Said had thrown a stone, on a recently liberated site in Lebanon, in the direction of a building housing some Israeli guards. He was with his son, and he did so in order to let off steam and express some satisfaction at the liberation of an area, which the occupying Israeli forces had evacuated. Some professors and students at Columbia University demanded that action be taken against Said for a violent act, suggesting that he even be asked to leave the university. There was a lot of discussion and much controversy was exchanged in the student newspaper. Now, even if one thinks as I do that the demand was preposterous and farcical (though I am sure it did not seem particularly farcical to poor Edward Said who was harassed—as he so often was—by the most disagreeably malicious and false propaganda about it), it was interesting to see the degree of calmness and clarity that obtained, even among those making the preposterous demand, when the provost wrote in the newspaper that Said's throwing the stone was to be subsumed under the principle of free speech.

On this diagnosis, then, the secularist is impatient with other models of law and legislation than his own because those models cannot keep faith with this essential underlying feature of the law, a feature which sees

their point and rationale to be one of clarifying (or being capable of clarifying) what before the subsumption under them seem like messy and controversial details.

Now of course, we may not always succeed in these subsumptions, and when we do not, though we will not give up on the aspiration to subsume them eventually, we will still in the meantime have to acknowledge the messier details as having to be dealt with in some way. But now, with this understanding of the underlying point and rationale of law in place, there will be a perfectly good justification for dealing with them pragmatically, just as the pure sciences deal with the details of engineering or the basic sciences deal with the seemingly recalcitrant phenomena of some of the special sciences. It is clear on this view that in neither the legal nor the scientific case does acknowledging the messy details cancel the fact that we do still aspire to the subsumption of the low level to the high, and it is the presuppositions of this aspiration (of the clarity and transparency imparted by the more abstract notion of principle) which I think underlies Barry's and other secularists' refusal to countenance the decision-problem approach to legislation, as I presented it. That approach falls afoul of precisely these stratified presuppositions about subsumption of the lower level to the higher and tries to deal with the mess right from the start without this stratified picture.

Having said that on behalf of the secularist, we must also be clear that it is this very underlying stratified picture of laws which is much disputed not only by multiculturalists who might adopt the decision-problem approach as I presented it, but by those who think (to take just one example) "virtue" theoretically that such a higher notion or level of principles does not underlie the moral life in this way, that the entire aspiration to subsume is misguided, that the notion of moral perception and moral judgment in the sense of *phronesis* should be brought to center stage instead, and that talk of principles and subsuming the particular judgment under more general principles is the wrong underlying paradigm in the practical domain of morals and the law.⁵ This virtue-theoretic view going back to Aristotle, and flourishing under a recent philosophical revival, is of course very different from the decision-problem approach as I am presenting it. Decision-theoretic reasoning is, after all, also anathema to virtue-theorists, who stress a sort of moral perception instead of the codifications and constraints of decision theory. For them codification of reasoning in the realm of value is just as bad as the idea of moral principles. In fact these two approaches have little in common other than opposing the

subsumptionist picture, which I am claiming underlies the secularist conception of law.

Although I have strong views on the subject, I am not interested here in taking a stand on which of these conceptions of the law is the right one. As I said, in this essay I am only raising some of the deeper issues at stake in the general debate between the secularists and the multiculturalists. What I am sure of is that at some point these broad underlying methodological issues about the nature of law itself will have to be addressed before we can conclusively decide which side to take in the debate. Until we address them, the multiculturalist will always seem to the secularist to be conflating and confusing questions of justice and the law with cultural politics; and the secularist will always seem to the multiculturalist to be tendentiously and coercively obscuring people's religious sentiments and presenting them as afterthought considerations relevant only pragmatically, and relevant only to governments' having to face the problem of keeping the peace, once the lawmakers' more pristine job is essentially done.

On the question of Muslim Personal Laws in India, with which I began, the interesting interpretative constitutional question will now be whether to read that exemption from the civil code granted to Muslims as something best understood in terms of the pragmatic reasons which the secularist allows or in terms of the principled reasons of the kind the multiculturalist insists on but which the secularist opposes.

Notes

1. I am using the term "secularism" in this context without much attention to the diverse interpretations one may give to the term, such as, to mention just two: (a) separation of religion and state, and (b) equal treatment of all religions by the state. My reason for invoking the term "secularism" and the term "multiculturalism" at all in the context of this essay is simply this: I am interested in the demands made by groups (religious minorities in particular) in a multicultural society that they be exempted from certain laws of a liberal democratic polity because they conflict with their religious practices and customs and convictions. These demands for exemption, though they are likely to clash with secularism understood as (a) above, need not at all clash with secularism as defined as (b) or with various other definitions of secularism that may be of interest to others. As it turns out, in the context of India, because Muslims (unlike the Hindus) were allowed to be exempted from a reform of their (personal) laws in a secular direction, both (a) and (b) have relevance to the issue of exemptions from the law. But in the context of this essay, where I am not going to be discussing the Indian case at all but only the general philosophical issues underlying such demands for exemptions, the

relevance of (b) is not salient. The focus is not so much on "why exempt some and not others?" (though that will come up briefly) as it is on how religious demands for exemption may be an intrusion of considerations of religion in the realm of polity and law, from which they are supposed to be separate. So the reader is urged not to read all the meanings of secularism that occur to him or her into my use of the term. I am grateful to Amartya Sen for urging me to make this clear at the outset, and in general, for reading my essay with great care and making shrewd and helpful comments.

2. In Britain, free speech is put aside in the case of blasphemy and in fact there have been cases fought and won in favor of censorship against blasphemy. But they are restricted to blasphemy against the Christian faith.
3. See my remarks above on the reason for putting aside considerations such as self-defence as not issuing from people's sentiments but from the subject matter itself.
4. In a conversation, Jon Elster suggested that what I am proposing is a mere analogy between subsumption in the one case and the other and suggested that analogies only get us so far. It is true that earlier in this essay I used the word "analogy" to make the point. But in fact it is much more than an analogy. I am actually claiming that there is a genus—the aspiration to illuminate via a subsumption of detail under a general principle. And I am claiming that it contains two different species: (a) illumination gained by the subsumptions of the messier details studied by the special sciences to the general laws and principles of the more basic sciences, and (b) illumination and clarification gained about what is at stake in particular moral, religious, or legal issues and their attendant controversial details, when they are, once again, seen as instances of more general laws and fundamental constitutional principles. It would miss the point, then, to think that I am trading on the superficial similarity of the use of the word "law" or "general laws" in the two cases to say that what legislators and scientists are concerned with must be thought of as analogous when they are not. That is not the point at all. Of course, the "laws" of science and the laws adopted by a society's legal system are very different animals. One's point is to explain, the other's to provide normative constraints backed by sanctions. Nobody sensible would fail to see that distinction. The claim I am making despite these differences is that inquiry in general is often governed by a theoretical urge, which is gratified when we find something to be a special instance of something more general. This happens in both science and the law in ways that I have been specifying. That in the one case the laws are explanatory and the other the laws are rules to live by does nothing to spoil the point since the point is not to say that the laws are the same at all. It is rather to say that in both forms of inquiry, scientific and moral, the theoretical gratification which comes from subsumption is pervasive and motivating. It may turn out on reflection that we ought to discard this theoretical urge (see the next footnote) and cease to find it gratifying if it suppresses the acknowledgment of other forms of illumination than this one. I take no stand on that issue here, though I have views about it. But whatever we say about that issue, it would be wrong to claim on its basis that the tendency to find subsumption illuminating is not in fact a very strong and pervasive tendency among inquirers, whether in scientific or practical inquiry. It is this tendency, I am saying, which helps to explain why the decision-problem approach

to legislation underlying the multiculturalist view seems so unappealing to many secularists. One does not even have to be convinced by the particular examples of subsumption I cited (of pornography and abortion being assimilated respectively to more general laws and principles about free speech and privacy) in order to grasp that this tendency to find subsumption illuminating goes very deep in inquiry in the moral and legal sphere just as it does in the scientific sphere.

5. It is of course also familiarly disputed as being a worthy aspiration in the realm of science, especially by those who think that psychology and even biology are not to be thought of as being so highly integrated or subsumable into such a hierarchical conception of science.

V. Conversion