In ‘Why Tolerate Religion,’ militant secular rationalist Brian Leiter calls on governments to annul religion’s special claim on toleration

• GLENN C. ALTSCHULER

Six years ago, in Multani vs Commission Scolaire Marguerite-Bourgeoys, the Supreme Court of Canada exempted Sikh students from a general weapons ban in schools and affirmed their right to bring kirpans (“ceremonial knives”) to classrooms. The justices decreed that this practice was important to “sincere” believers (for whom a plastic or wooden kirpan was unacceptable), while the risk of harm was slight (in contrast, they indicated, to weapons possession on airplanes, where it is more difficult to control “the different types of situations that arise”).

The decision was consistent as well with the special pride of place accorded to religious toleration in the Charter of Canada and, for that matter, in the constitutions of virtually all of the major Western democracies.

In Why Tolerate Religion?, Brian Leiter, director of the Center for Law, Philosophy and Human Rights, offers a radical alternative to the consensus view of religious freedom. Exemptions from rules and regulations should be granted by the government, he argues, to all claims of conscience, secular as well as religious, and they should be limited to activities that do not “impede realization of the general welfare by permitting some to opt out of societal burdens.”

A slim volume, deeply conversant with the literature in law and philosophy, and by turns bold, bracing and bruising, Why Tolerate Religion? should command the attention of anyone interested in the place of faith in the public arena.

A militant secular rationalist, Leiter grants that religion has often been responsible for praiseworthy behavior, including resistance to slavery, Nazism and Apartheid. And he acknowledges that it provides “existential consolation” to millions of people. In the 14th century, before the Enlightenment and the Scientific Revolution, Leiter insists, religious belief was “quite plainly neither irrational nor unwarranted.” But these days, the distinctive character of religion – which to him means categorical demands on believers joined to insulation from evidence – and its embrace of perniciously and culpably false beliefs, constitute a compelling case for refusing to single religion out for special protection.

Although he recognizes the challenges involved in defining and applying his recommendations, the author advocates limits on government toleration of all burden-shifting or harm-producing claims of conscience, including religious beliefs that have many adherents and are “deeply integrated into the cultural and normative practices of society.” Even John Stuart Mill, the great liberal theorist, he points out, agreed that anyone who proclaimed that private property was robbery in front of an excited mob assembled at the house of a capitalist might well deserve punishment – and he found no reason for the state to make room for a faith-based geometry.

Far from neutral, Leiter adds, every government endorses and has a right to enact a “Vision of the Good.” Subject in a democracy, of course, to the will of the voters, this vision can – and, he thinks, should – include the principle of liberty and equality for all; the use of public moneys to fund stem-cell research; and putting the imprimatur of the state on science. It is the most reliable authority on the natural world, by requiring children in public schools to learn Darwin’s theory of evolution and barring “creationism” from the curriculum in government-funded institutions.

Leiter also applies his philosophical framework to a few controversies involving religious toleration. Surprisingly, perhaps, he does not support the French ban on displays of ostentatious religious symbols – including Muslim head scarves, Jewish skullcaps and large Christian crosses – in public schools. Although the policy was justified as necessary to preserve an egalitarian public sphere in which interactions occur without reference to sectarian or ethnic identities, Leiter labels assertions that the disfavored practices are harmful “speculative.” He declares that permitting students to wear burkas or skullcaps is not tantamount to a state endorsement of religion, and concludes that the law is an unjustified burden on claims of conscience.

At the same time, he seems sympathetic to legal restrictions that several European countries have imposed on wearing Nazi regalia in public schools. They infringe on matters of conscience, he indicates, “albeit matters of depraved conscience.” But blanket bans on Nazi speech and symbols rest on reasonable judgments about the risk of harm emanating from these expressions and on the conviction that Nazism makes no positive contribution to the marketplace of ideas. These controversial cases remind us that assessing harm to the “Vision of the Good” and to individual claims of conscience necessitates case-by-case evaluations of the prevailing norms in the affected communities, and requires the subjective judgment of government officials.

Therein lies the problem. Although it may make sense to annul religion’s special claim on toleration, history teaches us, as Leiter knows, that the majority of citizens and the politicians they choose to represent them cannot always be counted on to exercise their power in the best ways.

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