The Failure of Secularism to Protect Minority Rights

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"There was concern in the early years of our nation and certainly today that religion could be used to pressure citizens who held different views or had no religious conviction to conform to the beliefs and practices of a particular religion" - Dr. Michael Kryzanek, 2023

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Abstract

How does a country's type of secularism affect its citizens' fundamental rights? This question can expose factors affecting the fundamental rights of citizens in secular states that have previously been overlooked due to their invisibility. To answer it, I begin by examining the relevant literature on this topic, including the conceptualization of fundamental rights, the various relationships between religion and state, as well as between religion and democracy. I then justify my case selection of the United States and France by noting that they are both Western democracies with Christian majorities and a majority of white men in their highest forms of government; by holding these factors constant, I was able to isolate the types of secularism that the United States and France practice: passive and assertive secularism, respectively. I gathered 672 (161 for the United States 511 for France) court decisions in order to analyze how and to what extent each country discriminates against religious minorities and marginalized groups. I found that in both cases, the secular state systematically discriminated against religious minorities and marginalized groups, the difference being the way in which each system discriminated. The United States discriminates in a bottom-up, covert manner, allowing for religious political mobilization to affect the policy process in favor of the religious majority. France, in contrast, discriminates in a top-down manner, eliminating religion from the public sphere, infringing upon the freedom of expression of its religious citizens. I conclude by arguing that because both major forms of secularism fail to protect the fundamental rights of its citizens, secularism must stop being recommended as a policy.

Introduction

"Religious institutions that use government power in support of themselves and force their views on persons of other faiths, or of no faith, undermine our civil rights." -Thomas Jefferson. This quote by Thomas Jefferson is the epitome of what is commonly referred to as the "wall of separation" between church and state in the United States (U.S.). Thomas Jefferson, along with the other founding fathers, no doubt intended for the U.S. to be a place of religious freedom. However, juxtaposing this quote with today's reality is nothing less than a disappointment. The founding fathers' intention of a secular state that protects its citizens from religious persecution has been undermined by the institutions that favor the cultural majority.

Current scholarship defines state secularism as the state having no established religion nor atheism, as well as the state's legislature and judiciary not being influenced by religion (Kuru, 2007, 569). Additionally, scholars have split secularism into two main categories: passive, which aims to allow peaceful religious practice without government interference, and assertive, which aims to constrain religion to the private sphere to protect the non-religious from religion and proselytism (Kuru, 2007, 569). Current scholarship, moreover, classifies the U.S. as the model for complete separation between religion and state: the ideal secularist society.

In contrast, my research demonstrates that both passive and assertive secularism systematically violate fundamental rights of citizens, though in distinct ways. Thus, I argue that no major model of secularism, at least in its implementation, does a sufficient job of protecting fundamental rights.

My thesis investigates how a country's type of secularism affects its citizens fundamental rights, focusing on those who belong to a religious minority. This question is significant because it can show us patterns of whether a country having a majority religion in any sort of control or

having an upper-hand affects people of other (minority) religions in that country in a negative way. Carrying out this research question could help citizens whose rights are violated due to religious influence on legislation by realizing that the problem may begin with covert, overlooked forms of discrimination against the minorities and/or preferential treatment to the majority religion. Diving into this question about the relationship between the state and religion can expose factors affecting fundamental rights that have previously been overlooked due to their invisibility. This could stem from the government discriminating against minority religions, or the government prohibiting religious displays in public, restricting freedom of expression. Below I discuss the ways in which these covert connections between religion and state can lead to the violation of citizens' fundamental rights. This research can show us what we should be aiming for in terms of separation between religion and state, and, more importantly, what we must stop aiming for.

The purpose of this research is to investigate the relationship between a state's type of secularism and its religious influence on fundamental rights, especially focusing on the covert ways in which separation between religion and state can be undermined, resulting in the violation of fundamental rights of religious minorities and marginalized groups. A prime example of this blurred line of separation between religion and state is the United States; some scholars use it as the model for complete separation between religion and state; however, as discussed below, it is more complex than one might think at first glance, and can instead act as a model of the covert ways in which religious influence can potentially infringe upon fundamental rights**.**

I argue that no country has full separation between religion and state; the U.S. *does* indeed allow for religious influence over legislation, just not in explicit ways. I aim to investigate

whether religious minorities, along with other marginalized groups, do better or worse under different types of secularism. I argue that passive secularism, as practiced in the U.S, leads to an increase in religious political mobilization, and thus, political influence, which leads to decreased protection of fundamental rights of most marginalized groups. I argue, moreover, that assertive secularism, as practiced in France, leads to an overcorrection of enforced freedom from religion, which leads to decreased protection of fundamental rights of religious minorities in particular. Furthermore, I argue that passive secularism prioritizes individual rights while assertive secularism prioritizes group rights.

Diving into this question about the effects of different types of secularism on fundamental rights can help prevent these cases of covert discrimination in the future. Many scholars use the U.S. as the model for complete separation between religion and state; however it is more complex than one might think at first glance, and can instead act as a model of the covert ways in which religious influence can infringe upon fundamental rights. If we use the U.S. as a model, then we are aiming for the problem itself. We need to recognize that the U.S. does not practice true separation between religion and state in order to understand what secular states should truly be striving for. If the U.S. is violating its own Constitution by prioritizing some fundamental rights over others, we must stop using it as a model for secular states.

In order to investigate the relationship between a country's type of secularism and its citizens' fundamental rights, I have selected two countries as cases to compare on this topic: the United States and France. Both of these countries are Western democracies with Christian majorities, and they both have a majority of white men in their highest form of government. By holding these factors constant, I am able to isolate the type of secularism that each country implements (passive and assertive, respectively) and investigate how that, and that alone, affects

citizens' fundamental rights. The timeline for this research is 1958 to the present. The Fifth Republic of France was established in 1958, so by using this timeline I look at the newest regime in France, and I can also look at important periods in U.S. history relevant to this topic, such as the rise of the Moral Majority in the late 1970s, as well as important court decisions such as *Lemon v. Kurtzman* (1971) and *Roe v. Wade* (1973).

Case Selection

To investigate the relationship between a country's type of secularism and its citizens' fundamental rights, I conducted a case study where I compared two countries that practice different types of secularism: the United States, which practices passive secularism, and France, which practices assertive secularism. I chose these two countries for a few reasons.

First of all, they are both Western democracies. By choosing two countries that have the same regime-type, I did not have to worry about confounding variables that may have caused my findings to be attributed to the type of the regime rather than the type of secularism each country practices. Furthermore, by choosing Western democracies, I did not have to worry about resentment toward the West influencing the way the government treats different religions, for they are both Western countries.

The second reason I chose these two countries to compare is that they are both Christian-majority countries. From this, I can conclude that my findings were not dependent on the different majority-religions that a secular country may have. It is important to note that even though the majority-religions in the United States and France are Protestantism and Catholicism, respectively, the sect of Christianity that each country practiced did not prove significant in the type of data I gathered. Thus, by choosing countries with Christian majorities, I was able to

eliminate the possibility of my findings being attributed to an explanation related to the majority-religion of the country in question.

Finally, I chose to compare these two countries because they both have a majority of white men in their highest form of government. By holding government characteristics constant, I was able to ensure that the discrimination against marginalized groups and religious minorities that I found was not due to the white male privilege that the majority of the government in each country holds and its potential ability to discriminate against minorities and marginalized groups.

By holding regime-type, majority-religion, and government characteristics constant, I was able to isolate the type of secularism that each country practices, to look at how that, and that alone, affects citizens' fundamental rights.

Overview

Chapter 1 provides an overview of fundamental rights in the context of the relationship between religion and the state. I begin by conceptualizing fundamental rights by encompassing definitions from the current literature and clarifying how I defined fundamental rights when conducting research. Furthermore, this chapter outlines why freedom of religion is a fundamental right and the ways in which governments can violate this right. Finally, this chapter distinguishes between freedom *of* religion and freedom *from* religion, and explains why the distinction between these two related concepts is crucial. Chapter 2 discusses various relationships between religion and state and the relationship between religion and democracy. Looking at the relationship between religion and state focuses on a state's attitude toward religion and the different types of relationships a state can have with religion, whereas the relationship between religion and democracy, on the other hand, focuses on whether a state can overlap government

and religion and still be compatible with democracy. Chapter 3 provides an overview of secularism in the United States and France. I discuss how each country became secular and, specifically, how each country adopted the type of secularism it practices: passive secularism in the United States and assertive secularism in France. Chapter 4 outlines my argument. I examine four hypotheses and the mechanisms that make each one plausible and applicable to the general concepts of passive and assertive secularism. I then explain the methods I used to gather and analyze data in order to investigate these hypotheses. Chapter 5 presents my findings. It begins by discussing the data I collected, then addresses the presence of systemic discrimination in each country, as well as the different types and levels of discrimination I found in each country. It then moves to a discussion on the findings, outlining which and to what extent my hypotheses were supported. The chapter concludes by considering the limitations of the research conducted, and considers potential alternative explanations for the results. I conclude by examining the implications of the research and what needs to be done in the future.

Chapter 1: Fundamental Rights

This chapter provides an overview of fundamental rights in the context of the relationship between religion and the state. I begin by conceptualizing fundamental rights by encompassing definitions from the current literature and clarifying how I defined fundamental rights when conducting research. Furthermore, this chapter outlines why freedom of religion is a fundamental right and the ways in which governments can violate this right. Finally, this chapter distinguishes between freedom *of* religion and freedom *from* religion, and explains why the distinction between these two related concepts is crucial.

What are Fundamental Rights?

There is a wide variety of ways to define fundamental rights. One scholar discusses fundamental rights both through the Supreme Court of the United States and his own personal classification. Goodpaster (1973, 482-483) characterizes fundamental rights into four main classes: (1) First Amendment rights, (2) political participation rights, (3) the right to due process, and (4) the right to equal protection under the law. Moreover, he articulates trends that the Supreme Court has displayed over time: classifying freedom of speech as the "paradigm of fundamental rights," and that additional rights that the Courts has established to be fundamental include the right to privacy and the right of access to the courts (Goodpaster, 1973, 482-483).

In the sociological analysis of Niklas Luhmann, fundamental rights can be further defined as not simply individual freedoms, but also a guarantee that separate "spheres" of society be able to act autonomously of each other (Ladeur and Augsberg, 2007, 146). More specifically, regarding the fundamental right of freedom of religion (which will be a focus in this particular research), this guaranteed right should not impact "the activities of other social spheres," (Ladeur and Augsberg, 2007, 146), and will only be guaranteed protection up to a certain degree. Mariam Abdulla takes this discussion of fundamental rights a step further in her examination of human rights, and their relationship with religion and culture, specifically, freedom of religion. Abdulla (2018, 102) points out that not only do religion, culture, and human rights "affect and influence each other," but "Freedom of religion is often invoked to defend human rights violations," especially in the areas of gender equality and reproductive rights. She further explains that culture being cited as a way to infringe upon human rights tends to distract from the real "political causes behind these problems" (Abdulla, 2018, 110-111).

For the purpose of this research, I define fundamental rights as a combination of the scholars' interpretations above, including: First Amendment rights (most importantly, freedom of religion and freedom of expression), the right to privacy, political participation rights, the right to due process, and the right to equal protection under the law.

Freedom of Religion as a Fundamental Right

A central pillar of the discussion of scholars today regarding freedom of religion as a fundamental right deals with the concept of one's conscience. Scholars have defined freedom of religion, specifically, as follows: the freedom to listen to one's own conscience (Sapir and Statman, 2005, 472), the protection of "freedom of thought and conscience," (Abdulla, 2018, 103), as well as "an internalization by one's own conscience" (Ladeur and Augsberg, 2007, 144).

In addition to freedom of conscience, some scholars articulate freedom of religion as securing a religion's freedom of development: "The idea of freedom of religion, guaranteed as a fundamental right, obliges western democratic states to respect the religious activities of their citizens and to secure their free development" (Ladeur and Augsberg, 2007, 143). Furthermore, a reading adopted by the German Federal Constitutional Court professes that "religion is conceived of as a merely irrational, private, extra-societal phenomenon. Therefore, it principally requires equal treatment of all religious groups" (Ladeur and Augsberg, 2007, 149).

Other scholars claim that freedom of religion only applies to aspects of religion that its members are obligated to do, rather than permitted to do. For instance, these scholars say it is not a violation of freedom of religion for the Supreme Court of the United States to ban polygamy, because Latter-day Saint men are not obligated to have more than one wife, but rather, are permitted to do so (Sapir and Statman, 2005, 500). They argue that this law would not be

violating their conscience because their religion does not tell them they have to do it, but rather that they can; therefore, they argue, it does not infringe upon their religious freedom because it does not take away their right to do something that their religion requires them to do.

However, one group of scholars in particular makes this definition a little more complicated in their analysis. Sapir and Statman supply the example of opting out of United States military service by citing one's religious beliefs. In the midst of this discussion on the right to listen to one's own conscience, and thus, the freedom to adhere to one's own religious obligations, Sapir and Statman introduce the crucial question of, "If the basis for exemption on religious grounds is protection of freedom of conscience, why should it be limited only to those who hold religious beliefs?" (Sapir and Statman, 2005, 477). In other words, why should freedom of conscience be limited to religious beliefs, as opposed to protecting the conscience of someone who practices no religion at all?

Sapir and Statman supply a parallel example of someone having to violate their conscience in order to perform a religious act: a secular person being forced to get married in a church and recite a blessing (Sapir and Statman, 2005, 495). This is an instance of someone being forced to act contrary to their conscience, but not because they are forbidden from carrying out a religious obligation, but the opposite: someone being compelled to carry out a religious act that they do not believe in.

This leads to a fundamental inquiry in this discussion of freedom of religion: acting in the name of freedom *of* religion, and acting in the name of freedom *from* religion.

Freedom of Religion vs. Freedom From Religion

Another central aspect of the conversation among scholars regarding fundamental rights deals with two distinct yet related ideas: freedom of religion and freedom from religion. Liberal governments tend to define freedom of religion as the right "to carry out their religious practices without interference" (Sapir and Statman, 2005, 467). On the contrary, freedom from religion is the idea of protecting non-religious people in their attempt to live a non-religious lifestyle (Sapir and Statman, 2005, 468).

These scholars provide an example of protecting the non-religious in their pursuit of a secular lifestyle: if a road in an Orthodox Jewish neighborhood were to be closed to all traffic on the Jewish Sabbath (Friday at sundown to Saturday at sundown), then, in theory, this would be an hindrance to people trying to live life without effects from religion (Sapir and Statman, 2005, 468). This would, according to some, violate the secular residents' freedom from religion, for a religion they do not observe actively affects their lives.

However, these scholars do *not* classify this example as violating freedom from religion. As long as non-observant people are not forced into participating in something religious, it is still freedom from religion. These scholars further point out that realistically, religious minorities that act to such extremes in their day-to-day lives that they might affect the lives of others (not in their religious in-group) tend to separate themselves from the rest of society anyway, geographically and educationally; examples of these groups include ultra-Orthodox Jews and the Christian Amish (Sapir and Statman, 2005, 484).

These scholars clarify their definition of freedom from religion as the protection from coercion to participate in religious ceremonies (Sapir and Statman, 2005, 468). They go on to support another scholar's claim that "...it is unclear why basing an action or a law upon religious

arguments is worse than basing them upon secular arguments, for, in both cases, people may strongly oppose them" (Sapir and Statman, 2005, 503).

Sapir and Statman argue that freedom of religion only includes freedom from religion "when secular people are coerced to participate actively in religious ceremonies" (Sapir and Statman, 2005, 508). While this statement is accurate, it is only part of a larger and more encompassing definition. In this research, I define freedom from religion as freedom from state coercion to comply with a religion one does not believe in and/or practice, whether that be through a religious ceremony, or in any other manner of being forced to comply with something one does not believe in. This would include any legislation or court decision decided on the basis of a religious belief, especially if government leaders and legislators have strong religious beliefs that could influence their policy-making decisions.

Freedom of religion, moreover, does indeed *include* freedom from religion; however, the place to draw the boundary is when freedom from religion becomes enforced by the government (such as in France–more on this below). When freedom from religion becomes enforced by the government, it infringes upon freedom of religion and freedom of expression. This leads to a discussion of a state's relationship with religion, specifically, state neutrality and state secularism.

With all of this in mind, I define fundamental rights using the list provided by the Office of the High Commissioner for Human Rights (OHCHR) of the United Nations, including the following: freedom from discrimination, the right to privacy, freedom of religion and belief, freedom of expression, and freedom of parents to choose schooling for their children. Additionally, I expand the definition of fundamental rights to include First Amendment rights, namely freedom of speech and expression, freedom of assembly, and freedom of religion.

Freedom of religion includes both the Free Exercise Clause and the Establishment Clause of the U.S. Constitution.

The chapter above conceptualized fundamental rights in the context of the current literature, described how the fundamental right of freedom of religion can be violated by governments and laws, and differentiated between two distinct yet related concepts, freedom of religion and freedom from religion.

Chapter 2: Religion, State, and Democracy

The chapter below discusses the relationship between religion and state and the relationship between religion and democracy. State and democracy are two distinct yet related concepts, and one must look at each one separately in relation to religion. Looking at the relationship between religion and state focuses on a state's attitude toward religion. For instance, is the state neutral toward religion? Is the state hostile toward religion? Is this the case regarding religion in general, or certain religions more than others?

The relationship between religion and democracy, on the other hand, focuses on whether a state's government can overlap with religion and still be compatible with democracy. Specifically, this chapter will discuss why countries with certain majority religions are not associated with democratic regimes. For example, I discuss Muslim-majority countries and their lack of democracy, but that the reason for the lack of democracy in this country cannot be explained simply by Islam, for Islam and democracy are not inherently incompatible whatsoever, in contrast to what certain essentialist scholars in the West (Samuel Huntington, Bernard Lewis, etc.) believe.

Relationships Between Religion and State

The sections below describe various relationships between the state and religion. I define the types of secularism a country may practice, how these types of secularism function in practice, and how these systems affect the citizens of different religions.

Neutrality vs. Secularism

Neutrality and secularism are two very different approaches states take when they claim to have separation between religion and state. State neutrality can be defined as a state being "principally neither allowed to favor nor to discriminate against certain professions of faith" (Ladeur and Augsberg, 2007, 143). In other words, the state must withdraw from religious issues. This can and has become a problem when courts use this neutrality as an excuse to opt-out from addressing complex problems. This avoidance leads to a lack of conflict-resolution (Ladeur and Augsberg, 2007, 144), essentially neutralizing the authority and responsibility of the court to provide decisions in the face of complex problems.

Additionally, this group of scholars argues that neutrality is not enough anymore because society continues to develop more and more complex issues. This issue has arisen with the Supreme Court of the United States, but also with issues such as displaying religious symbols in public spaces. For example, the neutrality principle is blurred for the controversy over wearing a religious headscarf in public in France, because the "neutrality principle cannot depend on approval from specific people involved" (Ladeur and Augsberg, 2007, 148), such as parents and teachers.

Therefore, these scholars propose, "it is the state's duty to protect its citizens against excessive demands of individual religious groups" (Ladeur and Augsberg, 2007, 148). In order

for the state to do this, and to do this successfully, they must incorporate not just neutrality, but secularism.

However, it is not this simple. In order for a state to integrate secularism into its government, and thus, its society, the state must make a choice of what type of secularism it wants to carry out. The choice between two main types of state secularism, passive and assertive, makes all the difference in a country in terms of freedom of religion. This is a critical decision, for there is a large difference between passive secularism, which incorporates optional freedom from religion into its definition of freedom of religion, and assertive secularism, which enforces freedom from religion, eliminating religion from the public sphere completely, resulting in an infringement on religious expression.

Passive vs. Assertive Secularism

John Locke describes state secularism as a state not being allowed to "guide the inner beliefs of citizens through force when it comes to matters of religion" (Ladeur and Augsberg, 2007, 145). This statement is the embodiment of the type of secularism that Thomas Jefferson intended: citizens being able to practice religion "peacefully without government interference" (Kuru, 2007, 568). This is in contrast to assertive secularism, which is actively enforced, especially in public places and educational institutions.

One scholar defines secular states by having two main criteria: "(1) their legal and judicial processes are out of institutional religious control, and (2) they establish neither an official religion nor atheism" (Kuru, 2007, 569). The most prominent exemplifications of each of these types of secularism are the United States, France, and Turkey. The U.S., he claims, implements passive secularism, while the other two impose assertive secularism.

The key issue to illustrate the distinction between these two types of secularism is religious garb and/or symbols in public spaces. The United States, practicing passive secularism, allows religious symbols to be displayed in public, with the idea in mind that the country does not have a singular established religion, nor atheism. France, on the other hand, prohibits religious symbols in public spaces, most notably public schools. Even further, Turkey forbids religious garb in all educational institutions, public, private, or otherwise (Kuru, 2007, 569). Where passive secularism uses a more hands-off approach to religion, assertive secularism attempts to restrict religion to the private sphere.

Another example of this differentiation between passive and assertive secularism is prayer in schools. In the United States, people are allowed to recite the Pledge of Allegiance, which contains the phrase "one nation, under God" (Kuru, 2007, 570). In contrast, in France and Turkey, students and teachers are not permitted to discuss God whatsoever because this would contradict their notion and practice of assertive secularism, which attempts to eliminate religion from the public sphere altogether.

When thinking about the Pledge of Allegiance in the United States, some may argue that there is a "cultural aspect" to having God's name in it. However, one must not ignore the fact that the word "God" was not even added to the pledge of allegiance until 1954 during the Eisenhower administration, 62 years after its creation in 1892. Therefore, one must think about the fact that perhaps, even though people in public schools are allowed to say the name "God" in these institutions, having God's name in an expression of loyalty to the United States is inherently an act of religion (not secularism). If the United States is not associated with any one religion, why would God's name be in a nationwide recitation about the country at all? Another instance of this is how God's name (in "In God We Trust") is on American currency (Kuru,

2007, 571). If the United States was truly secular and had true separation between religion and state, then God's name would not appear on something as national as its currency. The fact that people cite this as a cultural expression of the U.S. even further demonstrates that the government subtly allows for incorporation of religion into aspects of everyday life.

Religious education in each of these countries is another way to display the types of secularism carried out. The United States permits and does not intervene in private religious institutions. In contrast, France allows and funds religious educational institutions, conditional on the school signing a contract yielding control over it to the state (Kuru, 2007, 570). Religious education is banned in Turkey altogether (Kuru, 2007, 570). This is a result of the United States and its passive secularism having a positive attitude toward religion, in distinction to France and Turkey's and their assertive secularism having negative attitudes toward religion (Kuru, 2007, 570).

Nevertheless, one should still keep in mind that the United States' positive attitude toward religion could be the very factor deteriorating its separation between religion and state. For instance, there are lots of successful lobbyists who integrate their religious beliefs into policies, major and minor. Therefore, even though this might not be a direct form of government intervention in religious freedoms (such as in France and Turkey), it is the same problem but in reverse: ideas and beliefs of a singular religion, from the bottom-up, affecting (through political mobilization and subsequent legislation) citizens who do not practice that religion, consequently violating their freedom of religion.

To clarify, passive secularism aims to protect freedom of religion, including the right of non-religious individuals to be free from religion. Contrastingly, assertive secularism aims to protect non-religious citizens from religion by actively enforcing freedom from religion on the

whole of French society, which infringes upon the freedom of religion and expression of individual citizens.

Compatibility Between Religion and Democracy

One would expect democracies to prioritize the protection of fundamental rights more than other types of regimes. For this reason, it is important to discuss the idea of a government being able to have a connection to religion while also sustaining democratic values, especially the protection of fundamental rights. One scholar believes that assertive secularism opposes the concept of democracy itself: "Individual conscience, the freedom to believe and express that belief in public, is considered as fundamental to the preservation of democracy" (Abdulla, 2018, 104). Others argue that there is "No agreement about the link between religion and democracy" (Fox and Sandler, 2005, 318). The latter scholars argue that there is not enough evidence for either side of the debate about whether democracy and state religion are compatible. They point out that states who engaged in modernization now tend to include less religion in politics (Fox and Sandler, 2005, 318), but this does not solidify a causal relationship in either direction.

An example of gray area in this relationship between state religion and democracy is the question of Muslim-majority states (Fox and Sandler, 2005, 319). Because so many regimes of Muslim-majority countries are authoritarian, it is a popular perception that the entanglement of Islam and politics leads to an authoritarian regime. A prominent example of the assumption of incompatibility between Islam and democracy is Samuel Huntington's Clash of Civilizations. Huntington outlines a negative relationship between Western democracy and democracy in Arab Muslim countries: "In the Arab world, in short, Western democracy strengthens anti-Western political forces" (Huntington, 1996, 32). Here, Huntington argues that democracy

existing in the West only strengthens Arab resentment toward the West, and in doing so, strengthens Arab resentment toward democracy in general. This, however, is far too oversimplified.

One group of scholars point out that Islam (with the exception of extremists, as is in all cases), "accepts differences in religious beliefs and recognizes that religious minorities have a right to live by their own laws" showing that an "Islamic democracy is possible" (Fox and Sandler, 2005, 319). Moreover, in a discussion of studies designed to examine this specific relationship, "One found that Islam neither undermines nor supports democracy and human rights" (Fox and Sandler, 2005, 319). However, there have been other studies that found other results, so the relationship is, again, not rigid in either direction. These scholars pose that a reason that Muslim states tend to be associated with authoritarian regimes is that religion is a very belligerent issue in the Middle East (where most Muslim-majority states are); therefore, it is not the lack of separation (between religion and state) that leads to authoritarianism, but the contention of the issue itself (Fox and Sandler, 2005, 329), and the government's feeling of need to keep the issue under control.

Another scholar also argues that there is potential for compatibility between Islam and democracy. He attributes the lack of democracy in Muslim-majority countries, instead of an inherent incompatibility, to the status (namely, the subordination) of women in these countries (Fish, 2002, 24): "Treatment and station of women may be conditioned by regime type, with more democratic regimes providing the basis for better treatment of and higher status for women and girls" (Fish, 2002, 29). Fish attributes the lack of democracy in these countries, in part, to the status of women rather than to Islam itself.

A Comparison of Western Democracies

Since there is no clear relationship between Islam and authoritarianism, one cannot make the assumption that all secular Western democratic states are better (or worse) at protecting fundamental rights. Another important factor to keep in mind is whether these Western democratic states are even completely secular. In fact, "the majority of western democracies do not have anything near full separation of religion and state" (Fox and Sandler, 2005, 329). In defining and measuring separation between religion and state, these scholars use similar criteria to my own criteria. Specifically, these scholars state that "80.8 percent [of western democracies] support some religions over others either officially or practically; half restrict at least one minority religion or give benefits to some religions and not others; 61.5 percent engage in some form of religious discrimination" (Fox and Sandler, 2005, 323). This displays that one cannot make the assumption that religion and liberal democracies are antithetical. These authors finish their argument with the statement that "Every western democracy except the U.S. legislates at least some aspect of religion" (Fox and Sandler, 2005, 327). This last claim is the focus of my research: I argue that the claim of U.S. exceptionalism to this trend is false.

Scholars on this topic tend to claim that the United States is the model country for having complete separation between religion and state: the ultimate secular country (Fox and Sandler, 2005, 327). With the intention of bringing to light the ways in which formal separation between religion and state can be undermined, below I discuss the covert ways in which the United States does not have complete disconnection between religion and state, and how this religious influence over policies and legislation leads to violations of fundamental rights of religious minorities and marginalized groups.

In this chapter, I discussed the types of relationships a state may have with religion, including neutrality, passive secularism, and assertive secularism. I discussed, moreover, that a state having overlap between religion and the state can, in fact, be compatible with democracy. Specifically, I discussed how, in contrast to what an essentialist group of scholars believe, Islam is not inherently incompatible with democracy. Even further, I discussed how current scholarship argues that the United States is the model state for separation between religion and state; however, the United States, despite its secularist outlook, does in fact entangle religion and state in covert ways, and in doing so, violates the fundamental rights of marginalized groups and religious minorities.

Chapter 3: Secularism in The United States vs. France

This chapter provides an overview of secularism in the United States and France. I discuss how each country became secular and, specifically, how each country adopted the type of secularism it practices: passive secularism in the United States and assertive secularism in France. Additionally, I point out how the protection of certain fundamental freedoms can be undermined in each of these secularist systems. For example, in the United States, I discuss how reproductive freedom is infringed upon by the religious majority, and in France, how an individual's right to freedom of expression is infringed upon by France's elimination of religion from the public sphere.

<u>How the United States Became Secular</u>

To investigate the passive secularism in the United States, we must go back to where it all began. One scholar claims that four broad factors affected the West's decision to secularize:

"(1) the rise of modern capitalism; (2) the rise of modern nation-states and nationalism; (3) the Scientific Revolution; and, most importantly, (4) the Protestant Reformation and the wars of religion during the 16th and 17th centuries" (Hashemi, 2010, 331). After the Protestant Reformation, people began talking about the new possibilities of religious toleration, "not only between Catholics and Protestants, but critically among the various Protestant sects" (Hashemi, 2010, 331). John Locke, in *A Letter Concerning Toleration*, advocated for the inclusion of religious sects, specifically additional Christian sects, since he, himself, was a Calvinist. Specifically, he advocated for religious pluralism, and believed that "religious pluralism in the public sphere and political stability were indeed compatible" (Hashemi, 2010, 331), on the condition that there are strict boundaries set up between government and religion (Hashemi, 2010, 331). He believed, thus, that a form of "soft secularism" was needed, which led to the concept of passive secularism. All of these factors in conjunction paved the way to America adopting Anglo-American secularism, a kind of secularism more friendly to religion in the public sphere (Hashemi, 2010, 328).

The principle of secularism has existed in the United States since the founding fathers declared its independence in 1776. Thomas Jefferson wrote his famous letter to the Danbury Baptists containing the phrase, "wall of separation between church and state." Ironically, Jefferson, among other founding fathers, was concerned that entanglement between religion and government would polarize American society, leading to a divisive leadership and a contentious policy process (Kryzanek, 2023). When the founding fathers first committed to the idea of a "secular state," their definition of secularism was inherently passive. Their commitment was to a state, "in which citizens can openly hold religious beliefs and participate in religious services, but not seek to influence the direction of the state on matters of national policy" (Kryzanek,

2023). As evidence that this was what the founding fathers truly wanted, scholars point to the fact that "the words, God, Jesus and Christianity are not mentioned in the Constitution as evidence that the writers of this basic governing document wanted to put up a strong wall of separation" (Kryzanek, 2023). The founding fathers attempted to erect this wall of separation between church and state, just as they warned against party conflict and polarization. Despite the reality of today's America as we know it, polarized and lacking a concrete wall of separation the founding fathers hoped for, they nonetheless attempted to keep these two aspects (religion and state) in separate spheres, creating the passive secularist state we know today. Unfortunately, the attempt on the part of the founding fathers to create a state in which religion does not influence the government is not necessarily the reality.

Types of Passive Secularists

When thinking about the passive secularism of the United States in particular, this category can be broken down into two main categories: accommodationists and separationists (Kuru, 2007, 579-580).

Accommodationists tend to affiliate with a conservative ideology and/or the Republican Party (Kuru, 2007, 579-580). As Kuru states, "The accommodationists regard close state-religion interactions as compatible with secularism, since that does not mean an establishment of a particular religion" (Kuru, 2007, 580). For instance, they support government vouchers for private schools, including religious schools (Kuru, 2007, 580). In this sense, accommodationists believe in governmental support of religious institutions, so long as the institutions of all religions are funded equally.

While this accommodationist notion of all religions receiving the same government

funding is a nice idea, it is not a reality in the United States. In practice, these accommodationists are really in favor of funding Christian-based aspects of education, as shown by their success in implementing Christian clubs and Bible studies into schools, and succeeding in keeping the word "God" in the Pledge of Allegiance (Kuru, 2007, 581)

On the other hand, separationists tend to affiliate with a liberal ideology and the Democratic Party. They believe that connection between religion and state opposes the First Amendment altogether as well Thomas Jefferson's concept of a "wall of separation" between religion and state (Kuru, 2007, 580). For instance, they find any government funding for religious schools whatsoever unconstitutional.

The "Perfect" Secularist System: A Different Perspective

The scholars above claim that the United States, as a liberal democracy, carries out complete separation between religion and state. Not only do they claim this, but they claim that it is the only Western liberal democracy to have complete separation: the "U.S. democracy's strict adherence to separation of religion and state is the exception, not the rule" (Fox and Sandler, 2005, 328). A fair point to mention is that all Western democratic states other than the United States provide funding for religious education, especially "funding includ[ing] religious education in public schools" (Fox and Sandler, 2005, 317). While this may be true, we saw above in the discussion of accommodationists and separationists that there are plenty of Americans, and American legislators, who support government vouchers to religious schools, and have succeeded in funding Christian clubs and Bible studies in public schools.

Furthermore, one should be skeptical about the argument that the United States practices complete separation between religion and state because of aspects discussed above such as the

inclusion of "God" in the Pledge of Allegiance as well as on American currency, among other aspects I will discuss in the section that follows, such as abortion and school holidays.

While the United States may look secular on the outside, externally preaching about its "wall of separation" between religion and state, it is not this simple. Though it may look to be the model country for separation between religion and state on the surface, it does break this wall in multiple ways, in covert manners, so as to stay under the radar.

The two examples below provide an insight into the ways in which fundamental freedoms of marginalized groups and religious minorities can be infringed upon by a state that practices passive secularism. These two examples, moreover, display how fundamental freedoms of marginalized groups and religious minorities are violated because the majority religion in the country is favored, thereby discriminating against the rights of those not belonging to the religious majority.

Reproductive Freedom

As discussed, many scholars involved in this discussion define freedom of religion as the freedom to listen to one's own conscience, and thus, one's own religious beliefs. A major way that the United States allows its governmental institutions to infringe upon this right is through its restrictions on a woman's right to choose to terminate a pregnancy.

From 1973 to 2022, the United States protected this right under the Supreme Court decision of *Roe v. Wade* (1973), stating that it is unconstitutional to restrict a woman from having an abortion. However, as predicted when I proposed this research, the three newest appointees to the Supreme Court carried significant influence in overturning the 1973 decision of *Roe v. Wade*. Since *Dobbs v. Jackson Women's Health Organization* was decided in 2022, which granted the right to the states to decide on abortion's legality, the right to choose is no

longer federally protected. This is a prime example of religion influencing the political process from the bottom-up, allowing the majority religion's beliefs to affect not just those who are not members of the majority religion, but an entire marginalized group: women (predominantly women of color).

This would not be any sort of concern if the United States truly had separation between religion and state. As Ladeur and Augsberg state, "The secular judicial system has to ignore any kind of theological argument" (Ladeur and Augsberg, 2007, 149). If the United States truly protected fundamental rights through its secularism, religious arguments would not be able to influence the Court's decision, thus eliminating the problem. However, the less obvious reason the U.S. does not have complete separation between religion and state in this case is because these justices can incorporate their religious values into their decision on a case as crucial as *Roe v. Wade*, which they did in fact overturn. The justices may not state that their reasoning had religious motivations, but this does not prevent their decisions from being carried out. They may have claimed that this decision belongs with the states, but they overturned this decision very well knowing that dozens of states would completely ban abortion. This is an essential aspect in understanding that not only does the United States have ways to carry out religious legislation, but it can infringe upon a fundamental right that affects every citizen, not just those who are members of the Christian faith. This is also an example of Sapir and Statman's question of "When can laws arising from religious considerations violate the conscience of a secular person in such a way as to correspond to the violation of the conscience of a religious person when forced to act contrary to religious dictates?" (Sapir and Statman, 2005, 494). Because different religions have opposing views on a woman's right to choose to terminate a pregnancy, effecting a law about this issue based in Christian belief (eliminating a woman's right to choose for herself

what to do in this situation) infringes upon a person's right to follow their own conscience, enumerated in their religious beliefs. For example, Judaism's take on abortion prioritizes the health of the mother: if the pregnant woman is not able to carry the pregnancy to term for reasons of physical or *mental* health, not only is the woman allowed to terminate the pregnancy, but she is *obligated* to do so. Therefore, in line with Sapir and Statman's argument, legislation by a secular state cannot prohibit aspects of religion that its members are obligated to do. Thus, the government, even that of individual states, restricting the right to an abortion restricts not only a woman's right to privacy, but her freedom of religion.

Moreover, scholars define freedom from religion as freedom from state coercion to partake in religious ceremonies. By expanding this definition to freedom from state coercion to comply with a religion one does not believe in, including through legislation, the United States would also be violating this aspect of freedom of religion because it would be coercing its citizen to carry the child to term as opposed to allowing them to choose to terminate their pregnancy.

The overturning of *Roe* and its consequential decision in *Dobbs* stands as a crucial example of the United States allowing religion to be involved in policy-making decisions. Since *Roe v. Wade* was overturned, a plethora of states (as of February 2024, 14 states) have decided to ban abortion, which infringes on people's fundamental rights of freedom of religion (and thus, freedom of conscience), as well as their fundamental right to privacy.

<u>School Holidays</u>

Another example of how the United States lacks separation between religion and state in terms of the educational system (in addition to the Pledge of Allegiance as discussed above) has to do with holidays. Sapir and Statman make the point that under the conditions of being a

secular state, the majority culture, and thus, the majority religion, should not be given special treatment over minority religions: “The right to culture is extended only to minorities and not to members of the majority culture, because the latter have no need for special consideration in order to develop and to pass on their message to the next generation” (Sapir and Statman, 2005, 478). Moreover, they say, “Like any minority culture, religion needs special protection in order not to be swallowed up by the majority culture…” (Sapir and Statman, 2005, 479). An example in which the United States does indeed give priority to the majority religion, and thus, further closes its gap between religion and state, is public school holidays. Most public schools in the United States exclusively give days off for Christian holidays. Here I do not refer to Christmas, for most schools refer to this as “winter vacation,” maintaining its secular rhetoric. However, the fact that most American public schools give students the day off for Good Friday, and not for important holidays for other religions such as *Yom Kippur* and *Eid* shows that these public schools prioritize Christian holidays over those of minority religions. While this may not seem like a big deal, these are holidays of minority religions during which the students are not able to attend school without breaking religious obligations. Because the government-funded public schools only give days off that Christian students would have to miss, they put students of religious minorities at a disadvantage, and thus, give preferential treatment to the majority religion, deteriorating the wall of separation.

How France Became Secular

The four factors stated above also played a role in influencing France’s secularism, but resulted in a very different reality from the one John Locke envisioned. In contrast to the U.S.’s passive secularism, France’s practice of assertive secularism comes from its principle of

"laïcité" (secularism). After the Protestant Reformation in the 16th century, France experienced a plethora of religious controversies. Its official religion was Catholicism through the French Revolution in 1789, but the Enlightenment era's (1685-1815) promotion of using reason as a means of determining whether something is legitimate led people to begin to question the Catholic Church and its control and influence (Betros, 2010). France's extremely weak economy (bordering on bankruptcy) at the end of the French Revolution and the Church's wealth led to both the nationalization of Church property and the discovery of the corruption of the Church (Betros, 2010). The French Revolution and the events in Europe led French society to reconsider the role of the Catholic Church, paving the way for *laïcité* to become the norm in France.

Laïcité was a very new concept in France, for not only was much of society influenced by the institution of the Church, but Catholicism itself was a unifying force in French society (Chadwick, 1997, 48). An accelerated campaign for *laïcité* came underway in response to the Falloux Law of 1850 in which the Church was, once again, granted control over public schooling (Brickman, 1981, 4). In 1871, Léon Gambetta, a prominent French lawyer and politician, called for the "urgent separation of education from the Catholic Church," stating that its monopoly over mass education granted it the opportunity to shape children in France how it saw fit (Chadwick, 1997, 49). The call for the separation between religion and public education, along with the principle of *moral laïque* (secular morality) constituted the beginnings of a formalized version of *laïcité* in France, and led the leaders of the movement to search for a new unifying force for France's citizens as a replacement for Catholicism (Chadwick, 1997, 49). By 1886, "the Catholic Church no longer had any access to the State education system or any hold over its teachers" (Chadwick, 1997, 50-51).

Taking *laïcité* even further, in 1905, the French government enacted the Law of Separation, which extended secularism from the educational sphere to the entirety of public life in France, thereby "freeing religion from State control" but also constricting religion to the private sphere (Chadwick, 1997, 51). When the law was enacted, the Church saw only negative consequences such as exclusion of religion and government refusal to subsidize religious activities or institutions. However, in 1945, the Church accepted the new Fourth Republic of France, and along with it, accepted that *laïcité* would be the new Republic's guiding principle (Chadwick, 1997, 52). This forced the Catholic Church to realize that it would no longer share power with the State. This principle of *laïcité* was also included in the Fifth Republic constitution in 1958 (Chadwick, 1997, 47-48), which is still in effect today.

France's enforcement of *laïcité* today, however, has shifted away from the protection of citizens from the influence of the Catholic Church, and has evolved in response to two main factors. First, demographic changes in France, constituting a demand for more private education; second, the religious identities of immigrants to France, specifically Muslim communities (Chadwick, 1997, 53-54). This second factor in particular has led to a lot of contention around *laïcité*, for the government's elimination of religion from the public sphere, particularly in the education system, has led to widespread debate on whether the Islamic headscarf defies *laïcité* and makes the secular education vulnerable to "fundamentalist ideas" (Chadwick, 1997, 55). Where the principles of *laïcité* remain admirable, attempting to protect citizens from the influence of the Church, the application of such principles are questionable as a result of the complications of the 21st century: "its practical application and exploitation over the years reveal that it is limiting, inaccurate even, to define it purely in terms of the clear-cut separation of churches and State" (Chadwick, 1997, 48). These complications have led the

government to use *laïcité* as a guide to protect non-religious citizens from exposure to any religion, consequently leading to a governmental attempt to eliminate religion from the public sphere completely.

Secularism in France: An Overcorrection

France's practice of assertive secularism, stemming from its principle of *laïcité*, strives to completely separate religion from the state by constraining religion to the private sphere, eliminating it from the public eye completely: "The State neither recognizes nor subsidizes any religion, thereby underlining its religious neutrality and its non-involvement in religious matters, although it does guarantee individual freedom of religious belief and expression, provided that both are confined to the private domain and in no way impinge on public life or intervene in affairs of State" (Chadwick, 1997, 47). This last claim is crucial to highlight: *laïcité* guarantees individuals freedom of religious belief and expression so long as it is confined to the private sphere.

These scholars claim that France's assertive secularism protects freedom of expression, so long as this expression takes place in the private sphere. However, freedom of expression exclusively in the private sphere is not freedom of expression. France fails to protect freedom of expression in general, for one cannot even quietly express their religion in public (for example, through the wearing of religious garb), thus violating a crucial fundamental right of its citizens.

Religious Symbols

As a result of *laïcité*, conspicuous religious symbols are not allowed in France's public sphere. It is crucial to emphasize the word "conspicuous." The law banning religious symbols in

France was enacted on March 15, 2004, stating that in schools, "'the wearing of symbols or clothes through which pupils clearly show a religious affiliation is prohibited'" (Audureau, 2023). This law, applying to "ostentatious" religious symbols, further states that teachers and students are prohibited from attending public schools if wearing any of these symbols (Human Rights Watch, 2010). Ostentatious religious symbols include "the [Muslim] headscarf, the Sikh turban, and the Jewish headcovering (kippah)," and large crucifixes. (Human Rights Watch, 2010). Crucial to highlight is the fact that French authorities have applied this ban on religious symbols to "large" crucifixes, but "the ban has not been applied to 'normal' sized crucifixes worn around the neck" (Human Rights Watch, 2010). Thus, there appears to be an inherent discriminatory aspect of this law, for non-large crucifixes are acceptable due to their inconspicuous nature, whereas there is no inconspicuous version of a Muslim headscarf.

In addition to the original ban in 2004, in September 2010, "the French parliament adopted a law prohibiting the concealment of one's face in public, with the declared intention to prevent the wearing of Muslim veils that cover the face in public places" (Human Rights Watch, 2010). Upon approval by the French Constitutional Council a month later, this law made it a crime to "coerce women to wear such veils, punishable by a year in prison and a 30,000 Euro fine" (Human Rights Watch, 2010). At first glance, our Western biases may make us admire the fact that this law prevents coercion of women to do something; however, this bias has us ignore the fact that many of these women wear these headcoverings by choice of their own, with no coercion whatsoever. Thus, in an attempt to expand the freedom of women from coercion, this law instead restricts their religious freedom in preventing them from freely expressing their religion in wearing the veil.

Furthermore, France announced an additional ban in August 2023 on Abayas, khamis,

and djellabas, in response to an occurrence where “298 girls arrived to school wearing abayas on the first day of school, although most removed them at the behest of teachers and staff” (Jonas, 2024).

By prohibiting religious individuals from wearing religious symbols in public, this infringes upon their ability to express their religion freely. Additionally, there is a clear discrepancy in the enforcement of this law between religions, for a Christian individual is permitted to wear a “normal-size” crucifix, but Muslims, Jews, and other minority religions in France are not allowed to wear their own religious symbols in the public sphere.

In this chapter, I discussed how the United States and France became secular and, subsequently, came to practice passive and assertive secularism, respectively. Additionally, I discussed how each type of secularism can violate the fundamental rights of marginalized groups and religious minorities. In the case of the United States, examples include a woman’s right to choose and discriminating against religious minorities in deciding school holidays, and in the case of France, not being able to freely express one’s religion in the public sphere.

Chapter 4: Theorizing the Effects of Secularism on Fundamental Rights

The chapter below discusses my argument. I propose a theory with four hypotheses that specify the mechanisms linking passive and assertive secularism to the violation of fundamental rights. I then explain the methods I used to gather and analyze data in order to investigate these hypotheses.

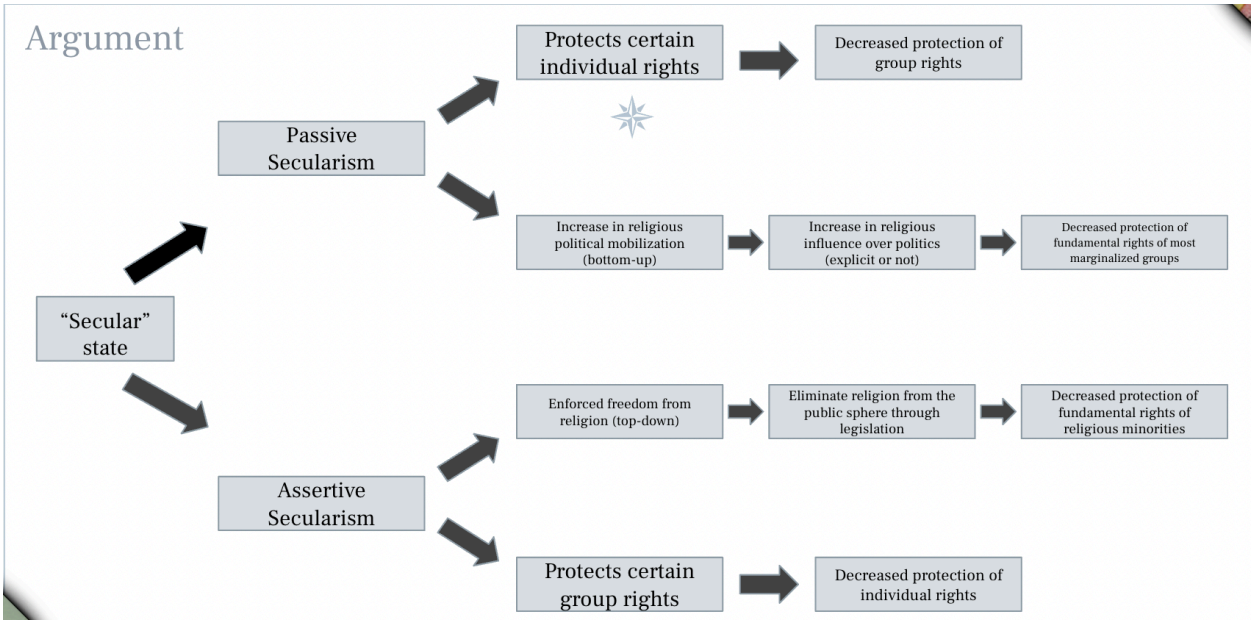
In a passive secularist state, the government is supposed to remain neutral toward religion, and it is not supposed to have an established religion. I argue that passive secularism allows for the violation of fundamental rights of marginalized groups (including religious

minorities, women, and the LGBTQ+ community) by allowing for more religious political mobilization, and thus more influence over the policy process itself, allowing for discrimination from the bottom-up.

In contrast to passive secularism, assertive secularism is a system in which the freedom from religion is actively enforced, especially in public spaces. This is the characterization of France's principle of *laïcité*, the secularization of French society to guarantee public institutions' freedom from influence from the Church. I argue that assertive secularism allows for the violation of fundamental rights of religious minorities by allowing the state to make legislative decisions having to do with religion in an attempt to eliminate religion from the public sphere through legislation, allowing for discrimination from the top-down.

The Argument: Question, Claim, Hypotheses

The central question of this research is: how does a country's type of secularism affect its citizens' fundamental rights? The independent variable I investigate is a country's type of secularism, namely, passive or assertive. As stated above, passive secularism is defined as citizens being able to practice their religion peacefully, without government interference. This means that the government would remain neutral toward religion, and it would have no established religion. In contrast, assertive secularism can be defined as a state's elimination of religion from the public sphere by using legislation in order to constrain it to the private sphere. The dependent variable I investigate is protection of fundamental rights as defined in Chapter 1. Below is a diagram depicting my argument:



The secularism that a country claims to practice can be split into two main types: passive and assertive. The U.S. practices passive secularism while France practices assertive secularism. My hypotheses are as follows:

H1: Passive secularism leads to a decreased protection of fundamental rights of marginalized groups through a bottom-up process of religious political mobilization and its subsequent effect on the political process.

I argue that passive secularism leads to an increase in religious political mobilization, in an attempt to influence the political process from the bottom-up. Cultural norms are at the roots of a society. These cultural norms lead to institutional processes that are set in place by the people whom the cultural norms benefit the most. In a society in which the governmental institutions take a more hands-off approach toward religion (passive secularism), the institutions allow for a greater amount of influence from external factors. Because these institutions are the product of the cultural norms established before them, the institutions favor the cultural majority

who hold the upper-hand. These institutional advantages, though not necessarily apparent at first glance, contribute to the favoritism toward the majority and the subsequent discrimination against minorities and marginalized groups.

Examples of this include the rise of the Moral Majority in the late 1970s, evangelical Christian groups, among other impactful lobby groups. This increase in religious political mobilization, I argue, leads to an increase in religious influence over politics, whether the influence is explicit or not. Examples of this religious influence over politics coming to fruition include the insertion of God's name into the Pledge of Allegiance during the Eisenhower Administration, 62 years after its creation, state bans on abortion due to the Court's decision to strike down *Roe v. Wade*, and a lack of accommodation of religious minorities in public schools for missing school for important religious holidays. This religious influence over politics, in the form of legislation or court decisions, leads to a decreased protection of marginalized groups, including religious minorities, women, and the LGBTQ+ community.

H2: Assertive secularism leads to a decreased protection of fundamental rights of religious minorities through a top-down process of the state enforcing freedom from religion by eliminating religion from the public sphere.

I argue, moreover, that assertive secularism leads to an enforcement of freedom from religion from the top-down. This leads to an attempt by the State to eliminate religion from the public sphere through legislation. Elimination of all religion from the public sphere disproportionately affects certain religions because they carry an obligation or practice for public display of their religion. Because I discuss cases applicable to majority-Christian countries, the

majority religion (Christianity) will not be majorly affected by the elimination of religion from the public sphere because the symbols that they wear in public tend to be inconspicuous. This poses an inherent advantage toward the freedoms of the majority religion, discriminating against religious minorities who are not able to carry out their religion as freely as the majority religion. While the assertive secular law applies to all religions, it does not affect all religions the same.

An example of this is France's ban on wearing religious symbols in public in 2004. This leads to a decreased protection of fundamental rights of religious minorities, most notably freedom of expression.

H3: Passive secularism protects certain rights of individuals, and in doing so decreases its protection of group rights.

Furthermore, I argue that passive secularism protects certain individual rights, but in doing so, fails to protect group rights. As stated above, the system of passive secularism favors the cultural majority. Consequently, this system favors an individual in the majority over a marginalized group of people. Thus, one individual, in protection of their own religious rights, can discriminate against the rights of these marginalized groups or a group of people in a religious minority.

An example of this is demonstrated in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018), in which the Court decided to protect a store owner's individual right of freedom of religion, where he refused service to a same-sex couple because his religion does not believe in homosexuality. Consequently, in protecting this individual's freedom of religion,

the Court failed to set a precedent to protect all same-sex couples from discrimination, infringing upon the group rights of the LGBTQ+ community.

H4: Assertive secularism protects group rights, and in doing so decreases its protection of certain individual rights.

Finally, I argue that assertive secularism leads to the protection of certain group rights, but in doing so, violates the fundamental rights of individuals. Out of fear of religious domination, an assertive secularist system overcorrects and prioritizes the rights of non-religious people in the public sphere over the rights of religious individuals in the private sphere. As a result, the non-religious rights of the majority are protected more than the freedom of religion of individuals. In doing so, this system undermines the religious freedom of individuals by emphasizing its protection of nonreligious people in the majority.

France's ban on wearing conspicuous religious symbols in public sought to protect the rights of the French nation from being subject to religion and proselytism, but in doing so, consistently violates the freedom of expression of those who wish to wear a Muslim headscarf to school.

To clarify, I do not argue that the United States is a Christian theocracy, nor do I argue that France's assertive secularism is better than the U.S.'s passive secularism or vice versa. I argue that there is a systemic issue in both of these societies in which the rights of the religious majority are protected more than those of marginalized groups and religious minorities, and that one must be skeptical when claiming that we should be striving to be more like the U.S. or more like France.

Methods

My approach to investigating the question of how different types of secularism affect fundamental rights of marginalized groups and religious minorities is as follows. I selected two countries as cases: the United States and France. I chose these two countries because they are both Western democracies, they are both Christian-majority countries, and they both have a majority of white men in their highest forms of government. Therefore, by holding these factors constant, I was able to isolate the type of secularism that each country holds in order to assess its effects on citizens' fundamental rights.

After selecting France and the U.S. as cases, I gathered the universe of cases of each country. This included 161 court cases from the Supreme Court and appellate courts, and between 511 court cases from both high courts in France, the Cour de cassation (the criminal and civil court) and the Conseil de d'Etat (the administrative court). The reason for the larger universe of cases for France is due to my inability to gather the court cases at the circuit and district court level in the United States due to the time constraints of this research. However, using the entire universe of U.S. cases, including the circuit and district courts, may have favored the data toward my hypothesis because there would likely be a greater volume of U.S. cases that constituted discrimination. Therefore, the smaller universe of U.S. court cases I used in this research did not favor my hypothesis.

I gathered the universe of cases from two types of court cases in each country: direct and indirect. Direct cases included those that directly have to do with religion. These were cases where religion was at the center of the case, and religion was the key issue in debate. For example, cases in which a person's ability to practice their religion in public was in question, or

cases in which religion in public schooling was in question. Indirect cases are those that do not directly involve religion but nonetheless incorporate religion through use of religious morals or ideas. These were cases where religion surrounded the issue in question but was not the key issue in debate. For example, cases in which a person was prohibited from working on Sunday or a business was prohibited from being open on Sunday, or cases in which an employer refused to allow access to contraception as part of their employees' health benefits. It was crucial to include both direct and indirect cases because the indirect cases are the prime instances in which there is covert entanglement between the state and religion, and must still be recognized as favoring the majority religion.

After gathering the universe of court cases in each country, I assessed whether and to what extent each court decision discriminated against marginalized groups and/or religious minorities. To measure this discrimination, I created an index based on the three dimensions of religiosity identified in relevant literature on measuring religion: belief, behavior, or belonging (Smidt, 2019, 2), and then I coded each court decision based on the type of discrimination.

Religious belief relates to the substance of one's faith (Smidt, 2019, 2), or lack of faith. I define discrimination on the basis of belief as a court decision that encourages someone to believe in something in which they do not believe. An example of this would be a public school implementing a period allocated to Bible study. Whether a student belongs to a religious minority or no religion at all, Bible study could foster children in a public school to adopt beliefs found in the Bible. This would encourage them to conform to a religious text to which they could have had no prior exposure or to which they do not subscribe because they believe in a completely different religious text.

Religious behavior relates to religious tradition and practice (Smidt, 2019, 4), and, subsequently, the traditions and practices one chooses or is obligated to carry out. I define discrimination on the basis of behavior as a court decision that encourages someone to perform a practice they do not believe in, or restricts someone from pursuing a practice they believe in. An example of this would be wearing a religious symbol in public.

Religious belonging relates to affiliation and level of attachment to a certain religion or denomination of that religion (Smidt, 2019, 7). Specifically, religious belonging in the context of this research focuses on an individual's ability, or lack thereof, to affiliate with a specific group. Additionally, religious belonging focuses on the ability of a religious group to form and practice in a public and/or federally-funded context. With this definition in mind, I define discrimination on the basis of belonging as a court decision allowing or prohibiting a religious group to be included in a federally-funded organization or resource distribution. An example of this would be the ability to form a religious group on a public campus.

In addition to the type of discrimination, I coded each court decision based on the extent of discrimination against marginalized groups or religious minorities according to a scale of high, medium, and low. A court decision that both showed favoritism of the majority religion and made a practice mandatory constituted a high level of discrimination. A court decision that favored the majority religion and made a practice voluntary was considered a medium level of discrimination; making a religious practice voluntary still constitutes religious discrimination because it still constitutes encouragement of religious practice by the government, discriminating against those who practice no religion. Finally, a court decision that did not show favoritism of the majority religion and instilled a religious practice as voluntary constituted a low level of discrimination. While the low-level discrimination cases did not favor the majority religion, they

still favored government connection to religion, and thus, discriminated against those who practice no religion. Cases in which all aspects of freedom of religion were protected and no marginalized groups experienced discrimination were placed into a separate category of "no discrimination."

		Type of Discrimination		
		Belief	Behavior	Belonging
Level of Discrimination	High			
	Medium			
	Low			

It is important to note that the systems by which cases reach the high courts in the United States and France are different; it is easier for a case to reach the high court in France than it is to reach the Supreme Court of the United States. For this reason, I included relevant court decisions from appellate courts in the U.S. in addition to the Supreme Court to ensure that I did not miss any important decisions that were simply not heard by the Supreme Court. It was more important in this research to include as many court decisions as possible even if they were on different levels than to hold the court levels constant between the countries, especially since the paths to each country's highest court varies.

In this chapter, I outlined my central argument surrounding the relationship between a country's type of secularism and the protection (or violation) of its citizens' fundamental rights. I discussed each of my four hypotheses in turn and the mechanisms that make them plausible and

generally applicable to secular states with Christian majorities. Finally, I discussed the methods I used to gather and analyze the data.

Chapter 5: Results

The chapter below presents my findings. It begins by discussing the data I collected, then addresses the presence of systemic discrimination in each country, as well as the different types and levels of discrimination I found in each country. It then moves to a discussion on the findings, outlining which and to what extent my hypotheses were supported. The chapter concludes by considering the limitations of the research conducted, and considers potential alternative explanations for the results.

Data Collection

I gathered and analyzed a total of 672 court cases, 511 from the high courts in France and 161 from the Supreme Court and appellate courts of the United States.[1] I searched for every case in each country that related to religion, by searching in each country's databases of court decisions for key words such as "religion," "education," "expression," and others. I gathered the universe of cases from France's highest courts, the Cour de cassation (Court of Cassation) and the Conseil d'etat (Council of State) using their respective virtual databases. For the U.S., I looked at every Supreme Court decision pertaining to these topics as well as Courts of Appeal. I found these court decisions from the "SCOTUS Religion Cases" database, the U.S. Appellate Court database from the U.S. Department of Justice website, as well as Oyez.

[1] Note: I used an artificial intelligence database, ChatGPT, in order to translate and organize the information presented in each of the 511 French court decisions. The use of artificial intelligence did not inhibit the integrity of the data, for it was only necessary to aid in translation of information from French to English. Artificial intelligence played no role in deciding whether a court case constituted discrimination.

There is a notable difference in the size of the universe of cases for France and the U.S.; the reason for this is because the true, all-encompassing universe of cases for the U.S. would include circuit and district court decisions, for these cases are the first judicial level to which citizens have access. Due to the limited time period for this research, I was not able to go through the thousands of cases that these district and circuit courts heard. Therefore, I used the Supreme Court and Courts of Appeal as the universe of U.S. cases, and the expansion of this research to include circuit and district courts is something I hope to carry out in the future. This limitation on the universe of cases for the U.S. however, would, if anything, provide results against my hypothesis, for the decisions in the Courts of Appeal and the Supreme Court are only those who made it past the circuit and district court levels, so my findings do not even include the potential countless cases of discriminatory nature that did not even make it past that first level of the judiciary. Therefore, while the universe for the U.S. is limited for this research, I expected it to go against my hypothesis rather than providing bias toward it.

An important aspect regarding the universe of cases for France is that it included a number of cases that were not directly relevant to this research, for they used the term "religion" to refer to an instance where someone "deceived the religion of the court," for example. This is simply a legal term used by the high courts in France. Consequently, a number of cases ended up in the universe that included the word "religion," but not for relevant reasons.

Analysis of Findings

Secularism and Discrimination

Figures 1 and 2 (pictured below) present the descriptive statistics of the discrimination in The United States and France. Specifically, each table shows the mean amount of discrimination

present in the country, the proportion of each type of discrimination relative to the total amount of discrimination, as well as the proportion of each level of discrimination relative to the total amount of discrimination. These data provide insight into how much of each type and level of discrimination was present in each country.

Figure 1: United States Descriptive Statistics

	Presence of Discrimination			
Mean	0.3580247			
Type of Discrimination	Belief	Behavior	Belonging	Total
Proportion of Total Discrimination	0.20689655	0.34482759	0.44827586	1
Level of Discrimination	High	Medium	Low	Total
Proportion of Total Discrimination	0.22413793	0.48275862	0.29310345	1

Figure 2: France Descriptive Statistics

	Presence of Discrimination			
Mean	0.09607843			
Type of Discrimination	Belief	Behavior	Belonging	Total
Proportion of Total Discrimination	0.04081633	0.67346939	0.28571429	1

Level of Discrimination	High	Medium	Low	Total
Proportion of Total Discrimination	0.46938776	0.34693878	0.18367347	1

After collecting and analyzing the court cases and sorting each case into its appropriate place in the typology described above, I ran multiple tests to look at relevant relationships between each country's type of secularism and the type and level of discrimination in each country, both within each country and comparatively.

Figure 3: t-Test Results

Variable	Country	t-Test	Confidence Interval (95%)	Mean (X)	Mean (Y)	**p-value**
Presence of Discrimination	United States	one-sample	0.2834094, 0.4326399	0.3580247	0	**2.20E-16**
Presence of Discrimination	France	one-sample	0.07041579, 0.12174108	0.09607843	0	**7.67E-13**
Type of Discrimination (Behavior)	United States and France	two-sample	-0.5119849, -0.1452987	0.3448276	0.6734694	**0.0005732**
Favoritism of Majority Religion	United States	one-sample	0.5861663, 0.8276268	0.7068966	0.5	**0.001123**
Favoritism of Majority Religion	France	one-sample	0.703952, 0.928701	0.81633265	0.5	**8.26E-07**
Favoritism of	United	two-sample	-0.0535798,	0.7068966	0.81633265	**0.186**

Majority Religion	States and France		0.27243975			

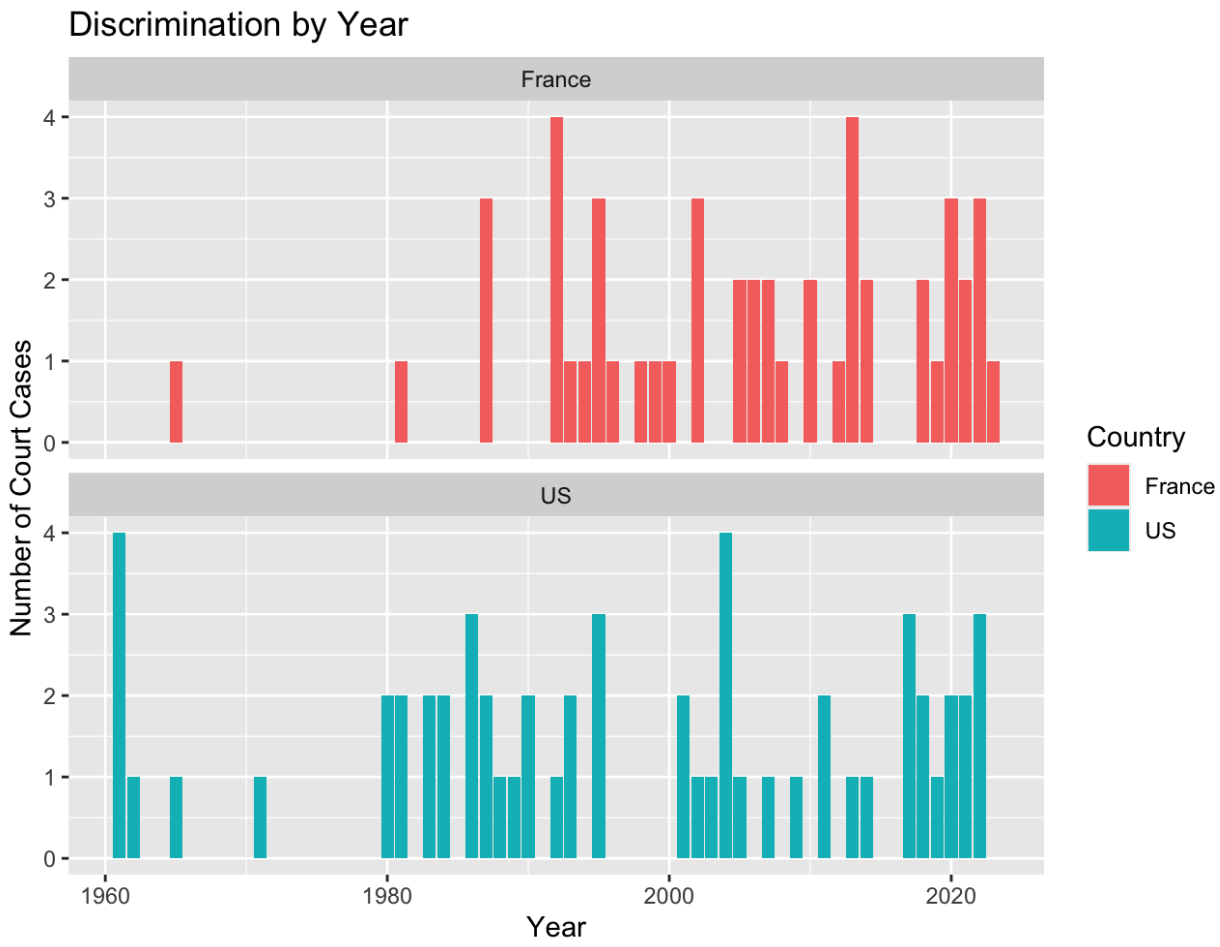
The first thing I needed to figure out was if there was a significant proportion of discrimination in general in each country. To this end, I ran a one-sample t-Test for each country where I created a "Discrimination" variable where the cases that constituted discrimination were assigned a "1" and the cases that did not were assigned a "0." From there, I took the mean of each country's amount of discrimination (averaging all of the ones and zeros). I then conducted a one-sample t-Test to compare this mean to a theoretically derived mean. When considering the theoretical mean to compare it to, I had two options. The first option was to use the mean of 0.5, for this would indicate that a court decision had an equal chance of constituting discrimination as not constituting discrimination. However, when thinking about this comparative mean in more depth, I remembered that each of these court systems claim that they are non-discriminatory. They claim that their separation between religion and state, and their type of secularism, protects citizens from discrimination. This would be especially true for the United States, considering scholars claim that the U.S.'s type of secularism is what every country should aim for, because, according to them, it is the only country that does not legislate some sort of religion. Consequently, I realized that my comparative mean had to be 0, for we would expect the court decisions, based on these country's claims, to be as little discriminatory as possible, and thus, protect as many fundamental rights as they can. Thus, the theoretical mean I used for these first t-Tests was 0 (mu = 0). The results of the one-sample t-Tests for the U.S. and France are pictured in Figure 3 above as the first and second t-Tests in the table.

In both of these t-Tests, the p-value is extremely small, indicating that the chance of this amount of court cases constituting discrimination in each country happening by chance is extremely unlikely. From this, we can conclude that there is, in fact, evidence of some sort of systemic discrimination happening on a government level in each country. With significant evidence of the presence of discrimination in each country, we can now dive into the findings by year, type, and level of discrimination in each country.

Discrimination by Year

Figure 4 (pictured below) displays the amount of court cases in each country that constituted discrimination by year, from 1958-present. We can see from this that there has been persistent discrimination throughout this time period. While conducting this research, I expected there to be a surge in discrimination in certain years where notable events relating to this issue occurred. For example, I expected to see a higher number of court cases discriminating against Muslims in particular in the immediate aftermath of 9/11. However, as we can see, there does not appear to be a significant increase in discrimination around 2001 and the years immediately following. In fact, some of the highest points of discrimination happened in years prior to 9/11 and in many years following. Something interesting to note here is the high level of court cases constituting discrimination in the U.S. around 1960. This large amount was mainly due to Sunday laws, which restricted certain businesses from being open on Sundays, for this was the Christian Sabbath, even though the owners or employees of these businesses were not Christian.

Figure 4: Discrimination by Year



A key example of this is *Two Guys from Harrison Allentown, Inc. v. McGinley* (1961), in which a discount department store from Pennsylvania filed suit against a 1939 Pennsylvania "Sunday Laws" statute and a supplementary 1959 statute for violating the Establishment Clause of the First Amendment of the Constitution ("Two Guys from Harrison Allentown, Inc. v. McGinley"). The Sunday Law statute prohibited businesses from being open, having their employees work, and retail on Sundays, punishable by a fine and imprisonment. The Supreme Court held that these statutes did not violate the Establishment Clause, nor did they violate the Equal Protection clause under the Fourteenth Amendment. The Supreme Court rejected the appeals of the department store owners.

Another key example of this is *Gallagher v. Crown Kosher Super Market of Massachusetts, Inc.* (1961). When the Massachusetts legislature enacted a law forbidding businesses from being open on Sundays, the Crown Kosher Super Market filed suit against the statute. Because this was a Kosher grocery store, it was forbidden to be open on the Jewish Sabbath, Friday at sundown to Saturday at sundown. As a result, Sundays were a prime day for business for this supermarket; specifically, it conducted one-third of its businesses on Sundays ("Gallagher v. Crown Kosher Super Market of Massachusetts, Inc."). The Court ruled that the statute did not violate the Equal Protection Clause of the Fourteenth Amendment. Thus, the store had to remain closed on Sundays, a sabbath which Orthodox Jews, the primary customers of this supermarket, do not observe. They had to be closed on Sundays simply because the state legislature was permitted to pass a statute exclusively in line with the Christian faith.

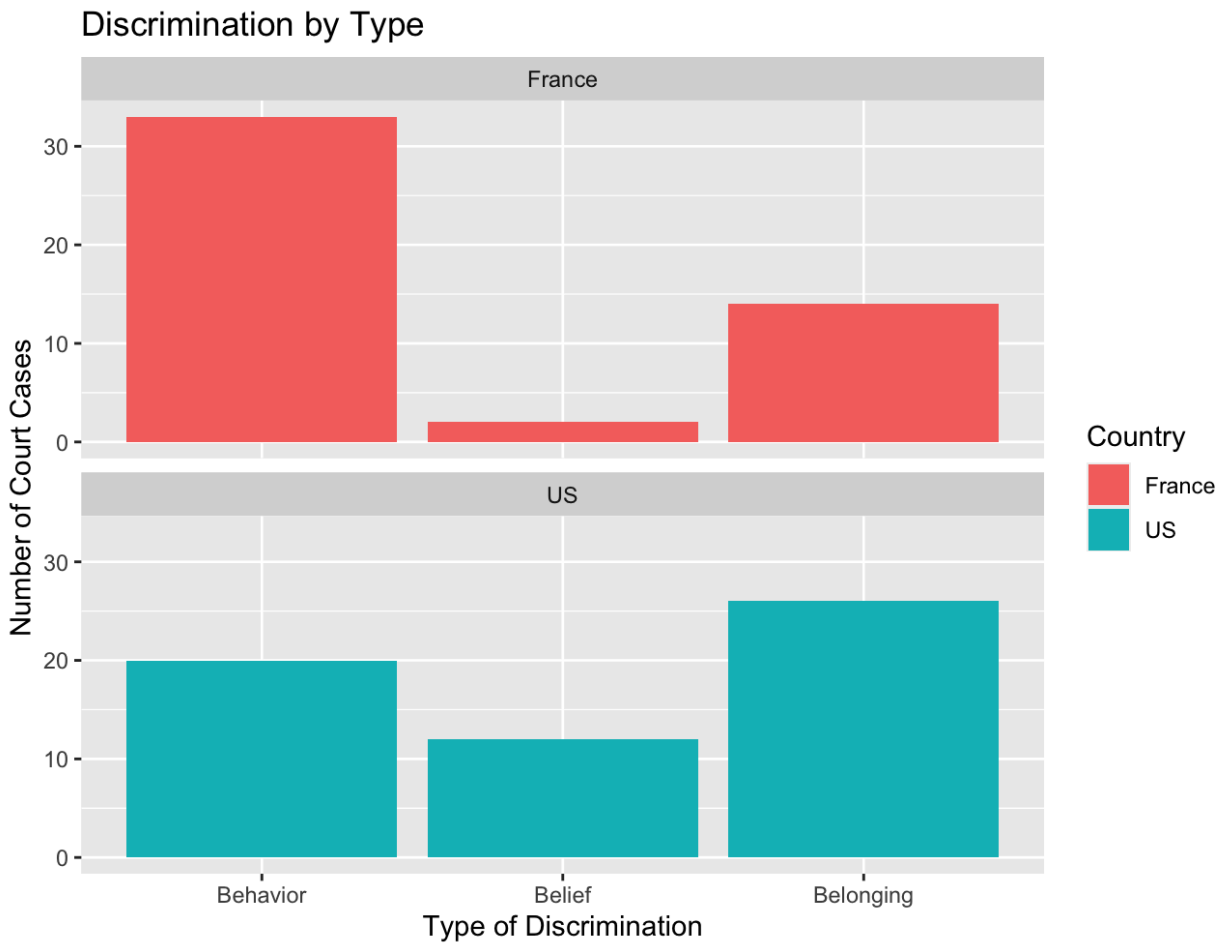
These cases, among many others, such as *Braunfeld v. Brown*, are prime examples of the U.S. discriminating against individuals and corporations by holding that the tradition of the country's majority religion takes priority over citizens' freedom to have their store open when they deem appropriate and necessary.

Discrimination by Type

Figure 5 (pictured below) is a bar chart displaying the amount of court cases that constituted discrimination in each country by type. We can see that the amount of court cases in France constituting a type of discrimination relating to behavior is not only much larger than the other two types of discrimination within France, but also much larger than the amount of behavior-type discrimination in the U.S. To look into this relationship even further, I ran a two-sample t-Test to find out if there is a significant difference between the amount of behavioral

discrimination in France and the U.S. The results of the two-sample t-Test are pictured in Figure 3 above as the third t-Test in the table. The p-value displayed above is smaller than 0.05, indicating that the chance of that large of a difference between the amount of behavioral discrimination in France and the U.S. is very small, demonstrating that this is a statistically significant finding. From this, we can conclude that there is evidence that something else in France is infringing upon the religious behavior of its citizens, rather than just chance. This evidence provides support for my second hypothesis (H2) that France's assertive secularism infringes the most on religious behavior-related issues such as freedom of expression because the legislation for this comes from the top-down.

Figure 5: Discrimination by Type

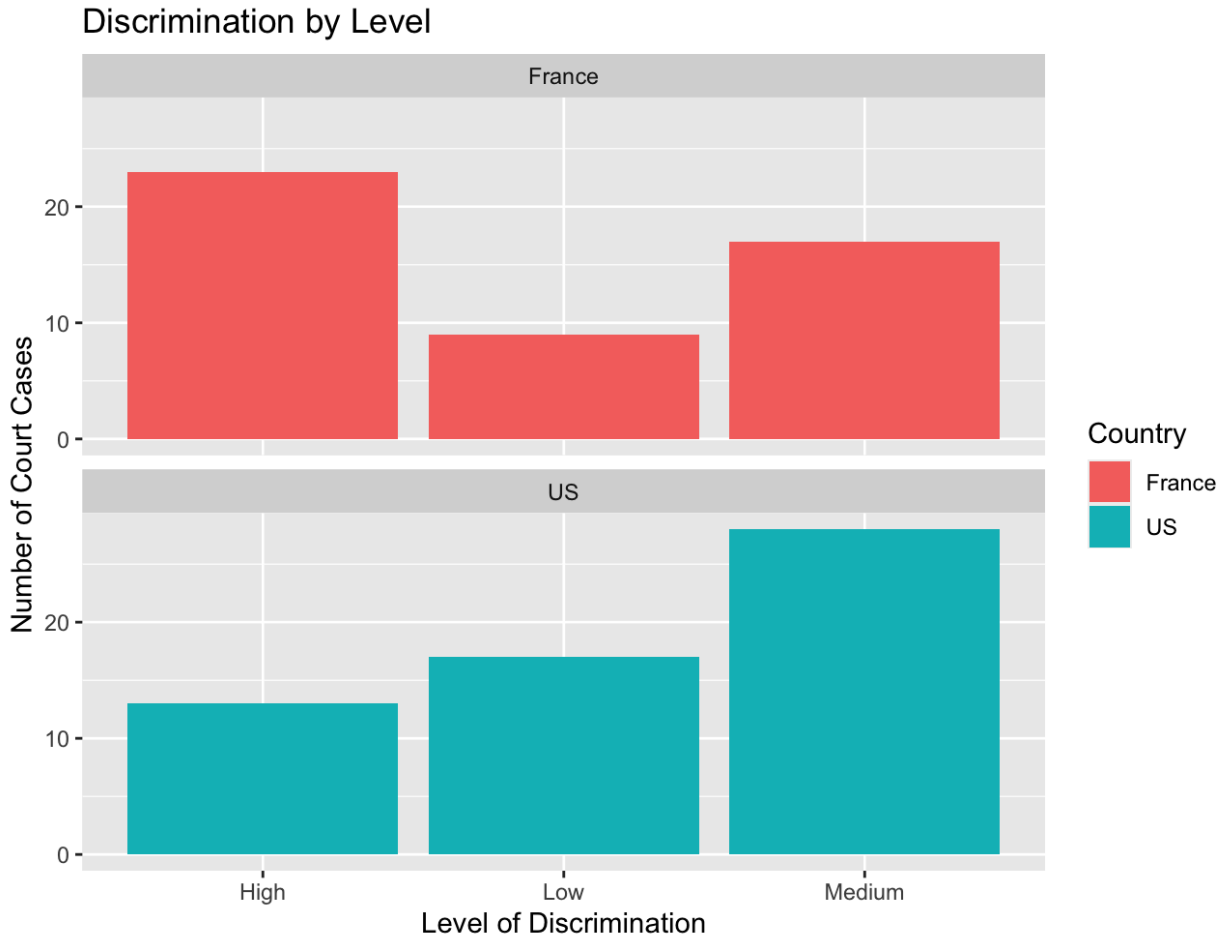


A key example of this is the case of November 2, 1992 in France's Council of State, in which the Council ruled that two girls were prohibited from attending their physical education class while wearing a head-covering, on the grounds that "the wearing by students of signs by which they intend to demonstrate their belonging to a religion is not in itself incompatible with the principle of secularism" (Council of State, 4/1 SSR, of November 2, 1992, 130394). This case, along with many others (as demonstrated by the results of the t-Test above), clearly indicate support for H2, that assertive secularism allows the government to eliminate religion from public sphere through a top-down process, and thus, infringe upon crucial fundamental rights of religious minorities, such as freedom of expression.

Discrimination by Level

Figure 6 (pictured below) displays the amount of court cases that constituted discrimination in each country by level. We can see that in France, the highest proportion of cases constituted a high level of discrimination, meaning it favored the majority religion and made a practice mandatory, closely followed by the proportion of medium-level discrimination, meaning it favored the majority religion and made a practice voluntary. We can also see that in the U.S., the highest proportion of court cases that constituted discrimination is medium. For the U.S., this is consistent with my first hypothesis (H1), for a large number of cases with a medium-level of discrimination makes sense in the U.S., because this discrimination, in a sense, stays under the radar because it favors the majority religion without making something mandatory. Thus, some scholars might not realize that this is discriminatory.

Figure 6: Discrimination by Level



A key example of this is *The American Legion v. American Humanist Association* (2019), in which non-Christian residents of Prince George's County, Maryland partnered with the American Humanist Association (AHA), an organization which advocates for the separation of church and state, to contest the city in displaying a 40-foot tall Cross in a memorial park honoring veterans. The Court ruled that the display of the Cross did not violate the establishment clause of the Constitution. This is an example of how the Supreme Court of the U.S. can favor the majority religion without it seeming like discrimination, where it does indeed violate the Establishment Clause by entangling religion and state by displaying a gigantic Christian symbol on a federally funded piece of land, to which religious minorities took offense. They could have

chosen a different symbol to honor veterans in the park, but they instead chose a very conspicuous and very Chrsitian symbol.

To look further into the relationship between each country and its favoritism toward its respective majority religion, I ran a one-sample t-Test for each country where I compared the proportion of discriminatory cases that constituted a high or medium level of discrimination (thus, the discriminatory cases that favored the majority religion) to the proportion of cases that constituted a low level of discrimination, not favoring the majority religion.

In order to conduct these t-Tests, I created a "Level" variable, and assigned a "1" to court cases that constituted a high or medium level of discrimination (because these are the cases that favor a majority religion) and a "0" to those that constitute a low level of discrimination. For these t-Tests, I used a theoretical mean of 0.5, for this would indicate that a court case that constituted discrimination had an equal chance of favoring the majority religion as not favoring the majority religion. The results of the one sample t-Test for the U.S. are displayed in Figure 3 as the fourth t-Test in the table.

The p-value displayed is smaller than 0.05, indicating that the chance of a difference that large between the theoretical mean of 0.5 and the actual calculated mean of 0.7068966 is significantly small. This provides evidence that the U.S. favors majority religion a significant amount of the time when discrimination is present. These findings support my first hypothesis (H1) because it is typically the majority religion who has the ability to mobilize and influence the political process from the bottom-up.

A key example of this is *Dobbs v. Jackson Women's Health Organization* (2022). The Moral Majority, despite its abandonment in 1989, set the stage for the religious-right to mobilize and influence American politics. We see this in *Dobbs* because the state of Mississippi, through

Thomas Dobbs, was able to use trigger laws such as Mississippi's Gestational Age Act of 2018 ("Dobbs v. Jackson Women's Health Organization") as a way to try to push their Christian agenda onto others. As a result, when the Jackson Women's Health Organization filed suit and the case made it up to the Supreme Court, the justices of the Court allowed their own religious beliefs to make a decision that ultimately took away the right to choose from others. The justices may claim that they simply wanted to give the right to decide whether abortion is constitutional back to the states, but they did this knowing that certain states would eliminate the right to choose immediately. Thus, we can see how the force of the Christian right was able to pass a law on the ground that was against *Roe v. Wade* as it stood, and got up to the Supreme Court to have the religious right influence it right up until the bitter end, impeding the fundamental rights of women, a marginalized group in the United States.

Another example of the favoritism of the majority religion when discrimination is present is *Bowen v. Kendrick* (1988). In this case, the question at hand regarded the Adolescent Family Life Act (AFLA), which provided federal funding to organizations and the research of premarital teenage sexuality ("Bowen v. Kendrick"). One notable requirement of the AFLA was that those organizations and research institutions receiving this federal funding "had to involve religious and governmental agencies in dealing with the problems they faced" ("Bowen v. Kendrick"). The Supreme Court ruled that the requirement of AFLA beneficiaries involving religious agencies in their research and action did not violate the Establishment Clause of the Constitution. This demonstrates that the legislation behind the AFLA, along with this Supreme Court decision, had a background of a religious agenda. For beneficiaries to be required to involve religious agencies is questionable at the very least, let alone to have taxpayer dollars going toward this advancement of the religious agenda relating to premarital sexuality. This further demonstrates

how on the legislative level, along with within the Court, the religious-right of the majority religion has the ability to consistently influence the political process.

The results of the one sample t-Test for France, looking at the proportion of high and medium-level discriminatory cases, is displayed in Figure 3 as the fifth t-Test listed. Similar to that of the U.S., this t-Test shows that France, in accordance with its small p-value, also tends to favor the majority religion when there is discrimination present. A key example of this is Appeal No. 12-80.891 in the Court of Cassation from March 5, 2013. In this case, the Court of Cassation upheld a law that prohibited complete concealment of one's face in public. Citing reasons of public security, this law actively favors the majority religion because it restricts the religious expression of one significant minority religion in particular: Islam. This court ruling deliberately prohibited the religious garb of one specific religion.

In addition to carrying out one-sample t-Tests for each country to look into the relationship between the majority religion and the court decisions within each country, I also carried out a two-sample t-Test to see if there is a significant difference between the amount of high and medium-level discriminatory cases (and thus, a significant difference between the amount of favoritism toward their respective majority religions) between the U.S. and France. The results of the two sample t-Test are as displayed in Figure 3 as the final t-Test in the table.

In this t-Test, the p-value is not smaller than 0.05, indicating that there is not a significant difference between the proportion of discriminatory cases that favor the majority religion (high and medium-level) between the two countries. This finding, however, is not particularly surprising. I would be more surprised if the difference was statistically significant, for the lack of statistical significance shows that both countries have a tendency to favor the majority religion

when discrimination is present, indicating that on this front, one type of secularism is not better than the other at preventing favoritism toward the majority religion.

Discussion

The table below displays the extent to which my hypotheses were supported. My first two hypotheses were supported, and my latter two hypotheses were not sufficiently supported.

Summary Table

Hypothesis #1	Passive secularism leads to a decreased protection of fundamental rights of marginalized groups and religious minorities through a bottom-up process of religious political mobilization and its subsequent effect on the political process.	Supported
Hypothesis #2	Assertive secularism leads to a decreased protection of fundamental rights of religious minorities through a top-down process of the state enforcing freedom from religion by eliminating religion from the public sphere.	Supported
Hypothesis #3	Passive secularism protects certain rights of individuals, and in doing so decreases its protection of group rights.	Not sufficiently supported
Hypothesis #4	Assertive secularism protects group rights, and in doing so	Not sufficiently supported

	decreases its protection of certain individual rights.	

My first hypothesis predicted that a country's passive secularism would lead to a decreased protection of fundamental rights of marginalized groups due to a bottom-up process of religious political mobilization and this mobilization's effects on the political process. Through data analysis, there is evidence that discrimination exists in a significant manner in the passive secularist state, and that when discrimination is present, the discrimination favors the majority religion. This provides significant evidence for H1, for it is the groups representing the majority religion in the United States (Christianity, specifically Protestantism) who have proven successful in the influence over the political process, as described in the court cases above. Additionally, in looking into what type of discrimination is most common in the U.S., there is a wide variety; this provides an explanation as to why scholars have overlooked this discrimination in the past: because the discrimination was so widespread, it was more difficult to identify. This discrimination, moreover, commonly included instances where the majority religion was favored, but a practice was made voluntary, not mandatory. As a result, we can see that while these scholars in the past were merely identifying discrimination as "high-level" discrimination (where a practice is made mandatory), they overlooked the possibility that there was more discrimination present, at the medium and low levels, being carried out in a covert manner.

My second hypothesis predicted that a country's assertive secularism would lead to a decreased protection of fundamental rights of religious minorities as a result of a top-down process where the government attempts to eliminate religion from the public sphere. Through data analysis, there is sufficient evidence that not only is discrimination present in an assertive secularist state, but that the behavior-type discrimination very common. Not only is this type of

discrimination common, but there is a significant difference between this type of discrimination in an assertive secularist society and a passive secularist society. This supports H2 in that France's assertive secularism, most commonly discriminating on the basis of religious behavior, infringes upon the freedom of expression of religious minorities in their attempt to restrict visible religion to the private sphere.

Both H1 and H2 are further supported through the finding that in either dominant type of secularism (passive and assertive), the majority religion was consistently favored and minorities were consistently discriminated against; the difference between these types of secularism are the different *ways* in which minorities are discriminated against, depending on the type of secularism. Religious minorities in an assertive secularist state are mainly targeted for religious garb and, as a result, have restricted freedom of expression, whereas in a passive secularist state, religious minorities and marginalized groups are discriminated against in a variety of ways, but consistently favoring the religious minority. The latter may allow something as seemingly hidden as federal tax dollars going toward mandatory integration of religious perspectives on premarital sex such as in *Bowen v. Kendrick* (1988), or something as mandatory as restricting a woman's right to choose such as in *Dobbs v. Jackson Women's Health Organization* (2022) or not allowing an Orthodox Jewish grocery store to be open on Sundays such as in *Gallagher v. Crown Kosher Super Market of Massachusetts, Inc.* (1961).

My third hypothesis predicted that passive secularism protects certain individual rights at the expense of certain group rights. There was not a sufficient number of cases that exhibited this trend to provide significant evidence for this hypothesis. However, we must not forget cases in the U.S. such as *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* (2018) in which the individual freedom of religion of a store owner was protected by the Supreme Court at

the expense of all same-sex couples who fell victim to discrimination in this court decision. In future research, I would like to look into this issue of individual and group rights in the United States; while I did not have a high enough number of cases to investigate this issue in this research, it will nonetheless be important to investigate in the future.

My fourth hypothesis predicted a mirror-image of the previous hypothesis: assertive secularism protects group rights, and in doing so sacrifices certain individual rights. There was not a sufficient number of cases to provide significant evidence for this hypothesis. One case in particular even provides a counterexample to this hypothesis: a decision by the Court of Cassation on January 23, 2018, ruled to protect the freedom of expression of LGBTQ+ protestors who were protesting the Church's attitude toward same-sex couples. This provides evidence that France's assertive secularism leaves room to protect the rights of marginalized groups at the expense of the majority religion. While this one case does provide us with counter evidence to H4, we must also keep in mind that each time the Court ruled against the individual right to freedom of expression of religious minorities with the goal of protecting the group rights of the French public to be free from exposure to religion. Thus, while we do have a case to provide counter evidence to this hypothesis, this hypothesis is also one to be investigated in further detail in future research.

Limitations

There are three main weaknesses of the approach I took in collecting and analyzing the data in this research. The first limitation is the lack of inclusion of the lowest courts in the U.S., namely, district and circuit courts. The district and circuit courts are the first level of courts to which citizens have access; as a result, in not including these court decisions in my research, I

may have missed many instances of discrimination that did not even make it to the appellate level. This is especially a concern for many southern states, particularly the same states that had abortion trigger-laws in place before *Dobbs*, for these are the states in which religion would most predictably dominate the political process on a state-level.

The second limitation of my approach is the difference in processes for a case to get to the highest court in the U.S. and to get to the highest court in France. The process for a case to get to the Supreme Court in the U.S. is much more difficult for a case to get to the Court of Cassation or the Council of State in France. This explains why the number of cases I gathered for France (511) was significantly higher than the amount of cases I gathered for the U.S. (161). While the process for a case to get to the high court in each country differs, this is not detrimental to the research whatsoever. The goal of the research was to look at court decisions to see how the decisions reflected the country's attitudes toward religious minorities and marginalized groups. Thus, the only weakness within this limitation is the fact that fewer cases made it to the highest court of the U.S. (the Supreme Court), which is why the lowest level court cases should be investigated in future research.

The final limitation in this research relates to the process through which I sorted court decisions into the typology of types and levels of discrimination. Upon reading a court case and its decision, I was the one, and the only one, deciding whether a case constituted discrimination or not. While I trust my ability to read, comprehend, and form an opinion on a court case, I still must note that others may have had opinions differing from my own. To this end, it is also important to mention that when I did in fact come across a few cases that I was unsure about, I made sure to gather a second or even multiple opinions on whether the court case constituted discrimination, what type, and what level.

Alternative Explanations

The most prominent alternative explanation for these results is that the United States and France have different cultures, and that is why they discriminate against marginalized groups and religious minorities differently from one another. Different cultural practices and norms lead to different outcomes, and these differences cannot be attributed to one specific variable, such as the type of secularism each country practices. However, this explanation is far too simplistic. Cultural explanations in general too often fall victim to the slippery slope of making essentialist assumptions about different cultures. Additionally, if both the United States and France are Western democracies, have Christian-majorities, and have a majority of white men in their highest forms of government, I do not see what part of the culture would result in such drastically different ways of religious discrimination.

Furthermore, even if the difference in how religious minorities and marginalized groups are discriminated against could be attributed to cultural differences, it does not change the fact that both countries, despite their differences, both had a statistically significant amount of discrimination in their court systems. Therefore, each type of secularism still allows for a substantial amount of discrimination no matter what type of secularism it carries out or what type of cultural practices it has.

This chapter presented my findings on the presence of discrimination in the United States and France, as well as the type and level of discrimination present in each country. My first two hypotheses were supported, and there was not a high enough number of relevant cases for my latter two hypotheses to be supported.

My first hypothesis, that passive secularism leads to the violation of fundamental rights of marginalized groups and religious minorities through a bottom-up process of religious political mobilization, was supported through evidence of a statistically significant presence of discrimination, and where that discrimination is present, the discrimination favors the majority religion.

My second hypothesis, that assertive secularism leads to the violation of fundamental rights of religious minorities through a top-down process of elimination of religion from the public sphere, was supported through evidence of a statistically significant presence of discrimination, and where this discrimination is present, there is a significant amount of behavior-type discrimination in France's assertive secularist society, due to the infringement of the fundamental right of freedom of expression of religious minorities.

I also discussed the limitations of the research I conducted, as well as addressed the alternative explanations that could have provided these results.

Conclusion

I claim that no state is truly secular. No state has true separation between religion and state, in contrast to what current scholarship claims. This research provides significant evidence that both the United States and France systematically discriminate against marginalized groups and religious minorities, yet in distinct ways depending on the type of secularism they practice, passive or assertive. I found significant evidence for the claim that the United States' passive secularism violates the fundamental rights of marginalized groups and religious minorities by allowing for religious political mobilization and its subsequent favoring of the majority religion in the policy process. Additionally, I found significant evidence for the claim that France's

assertive secularism infringes upon the fundamental rights of religious minorities by eliminating religion from the public sphere, and as a result, restricts the freedom of expression of religious individuals.

The most notable finding of this research is that both the passive secular and assertive secular states systematically discriminated against marginalized groups and religious minorities to a statistically significant extent; the difference between the countries is the way in which they discriminate. This demonstrates that neither of these types of secularism is the ideal way to protect citizens' fundamental rights.

The findings of this research should be generalizable to any secular state that is a Western democracy with a Chirstian majority and has a majority of white men in their highest form of government. In expanding this research to other countries that meet these criteria, it would also be necessary to use court decisions as the means of evaluating discrimination against marginalized groups and religious minorities in order to ensure the uniformity of the research.

In the gathering of court decisions from the United States, I no doubt found many more decisions in which religious freedoms were protected, and the separation between religion and state was upheld. This is a relief, for the United States is still a place in which freedom of religion is protected. However, the fact that I still found many cases in which discrimination was upheld by the Court is the main point of concern. This research is not meant to show that the United States is a Christian theocracy; rather, it is meant to show that the United States is not as perfect as it appears on the topic of separation between religion and state. It should not be discussed by scholars as the "model" for secular states.

In the future, I hope to be able to carry out an extended version of this research to include the circuit and district court cases in the United States in order to evaluate the lowest level

citizens are able to utilize when facing discrimination. Additionally, in the future I hope to carry out research on a solution to the systemic discrimination against religious minorities and marginalized groups in the courts of secular states.

I do not argue that one type of secularism is better than the other; rather, I found that both types of secularism are problematic, and that secularism, therefore, should not be recommended as the ideal strategy to protect the fundamental rights of citizens.

What Now?

As shown by the data, analysis, and discussion above, it is clear that we have a problem. If secularism is not the answer to protecting fundamental rights, then what is? Though a policy prescription is outside of the scope of this research, I feel obliged to provide an insight to a potential solution to the systemic discrimination present in the states that carry out the dominant types of secularism.

Scholars seem to be under the impression that entanglement between religion and state and secularism are mutually exclusive and jointly exhaustive; thus, if a country wants to protect the rights of its minorities who are not members of the majority religion, it must be secular. We see that this is not the case: in both passive and assertive secular states, the majority religion is favored and minorities and marginalized groups are discriminated against. Therefore, we must stop pushing secularism as a policy solution. We do not need to improve the type of secularism a country carries out; rather, governments must simply think of a different policy solution altogether. We can see from this research that true separation between religion and state is not secularism, for even in secularist systems the majority religion is favored. Therefore, if true separation between religion and state is not secularism, perhaps it is something completely

different. There must be a way to protect freedom of religion and expression without infringing upon fundamental rights of religious minorities and other marginalized groups. While I do not have the solution to systemic discrimination in secular states, I do know that secularism is not the way to protect fundamental rights.

The main issue is not protecting religion, but it is forcing one religion onto others. If freedom of religion for all religions was truly protected in secular states, then this discrimination would not be present. Thus, we must consider a new policy in which religion and rights can be protected without the risk of other rights being restricted. The main necessary change is as follows: people must be willing to accept when others practice their respective religion without thinking that everyone must practice the religion that they themselves practice. The answer is not secularism, but allowing everyone to express their religion (or lack thereof) freely without the majority religion wanting everyone to follow the rules of their religion. People must learn that choice is individual, and that what they believe is not necessarily what everyone else believes. It is these differences that foster democracy, not the coercion for everyone to believe the same thing.

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