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Paper Title:
Rethinking Constitutional Secularization through Turkey and Spain's Religion-State Relationships.

Speaker:
Dr. Ofrit Liviatan

Affiliation:
Department of Government, Harvard University
Tel: 617-312-3009
Email: oliviatan@gov.harvard.edu

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The goal of my paper is to rethink the dominant liberal-secularist approach advocating the separation between religion and state as the optimal constitutional arrangement for an effective democracy. I do so by examining the role and effects of constitutional frameworks in the religion-based conflicts of Turkey and Spain, as case studies exemplifying comparable religio-political circumstances but in a setting different than the traditional western context on which the liberal-secularist paradigm is based.

The paper finds that the liberal secular premise advocating the separation of religion and state as a necessary condition for democratic stability is not supported by either of the case-studies. The Turkish constitutional attempt at secularization had detrimental consequences for its democratic design, whereas the preservation of legal ties between religion and state contributed to strengthening Spain's democratic structure.

Drawing upon these comparative findings the paper theorizes on the conditions for an effective legal response to religion-based crises. It concludes that enduring cultural conflicts require the institutionalization of procedures promoting a cooperative debate over the relationship between religion and state. Otherwise, law becomes one additional political tool to channel the intense power struggle of religion-based conflicts.

This concise presentation will follow the structure of the paper. I will begin with a short overview of the relevant literature, briefly compare the role of constitutional frameworks in each of the states, and lastly explain my theoretical conclusion drawing on the different role law has taken in each of the case-studies.

Contemporary democratic politics is characterized by a growing reliance on law as the preferred vehicle to advance social reform and facilitate social conflicts. This reality bred ongoing debates between liberal constitutionalists and democratic theorists over the value of constitutional structures and the possible tensions between constitutionalism and democracy. Liberal constitutionalists, notably Ronald Dworkin, Cass Sunstein, Walter Murphy and Edward Schneier argue that constitutional frameworks create the preconditions for a genuine democracy, including limitations on the power of governments and the enforcement of basic rights. Democratic theorists, among them Richard Bellamy, Robert Dahl and Jeremy Waldron argue that the democratic process is self-binding, and as such constitutionalism unnecessarily constrains the natural sorting out of majoritarian processes.

Despite these opposing views on the relationship between constitutionalism and democracy both paradigms share a liberal premise that

certain irresolvable disagreements should be removed from the public agenda in the interest of political stability. Religious disagreements have been identified as one such irresolvable tension leading both liberal constitutionalists and democratic theorists to advocate that a well-functioning democracy necessitates an authoritative removal of religion-based disagreements from the public sphere.

This liberal idea of constitutionally separating religion and state affairs as a precondition for peaceful coexistence has been primarily, if not altogether developed based on the experience of the USA and other well-established Western democracies. I argue that theorizing about secular constitutionalism should be based on a larger spectrum of relevant cases, including the states that are less traditionally liberal. Consequently, the second part of my paper is dedicated to examining the implications of secularist liberal ideas in Turkey and Spain as examples of such less traditionally liberal contexts.

Since its establishment, the Turkish Republic has been engaged in an ongoing struggle to reconcile the secularist ambition of its elite with the nation's Islamic soul. Legal instruments continually enshrined an official policy of secularism. However, the political effort to enforce this policy resulted in a democratically-questionable use of political and legal powers.

This included recurring military interventions, frequent dissolution of religiously oriented parties, the banning of religious actors from political activities and severe legal restrictions on religious freedom.

The present constitutional regime is based on a military-sponsored document enacted following the 1980 coup. Reflecting the circumstances of its enactment, the Constitution precludes the possibility for political debate on the relationship between religion and state and offers no procedures to reconcile ethnic and religion-based differences. The principle of secularism is enshrined as a core and irrevocable feature of the Turkish republic. A highly restrictive constitutional rights regime is accompanied by meticulous restrictions on exercising them, including an explicit prohibition to exercise rights in a way that endangers Turkey's secular order.

A welcomed enhancement of some rights was enacted as part of the September 12 referendum. Nevertheless, this package did not change the religious freedom regime. This regime remains highly restrictive by a constitutional framework intended (to borrow the language of the Constitution) "to raise Turkish society above the level of contemporary civilisation and to safeguard the secular character of the Republic."

According to recent reports, Prime-Minister Erdogan intends to advance the enactment of a new constitution once his party wins the

upcoming general elections in 2011. The level of distrust and the depth of political cleavages clearly indicates that Turkey's long-term political stability depends on working a synthesis between its secular and Islamic aspirations.

Moving on to Spain. Modern Spain experienced one of the lengthiest non-democratic regimes in Europe. Its modern history has been shaped by the failed attempt in the 1930s to separate between religion and state, which triggered the ferocious civil war that then led to the Francoist dictatorship.

As Spain transitioned to democracy in the late 1970s, the threat of a renewed religion-based crisis reemerged. Nevertheless, this time around Spaniards consciously prevented this recurrence through a rigorous constitutional process intended to mediate its internal divisions. To facilitate tensions resulting from a historic Catholic hegemony, growing secularism and the increasing religious diversification, Spain rejected what Javier Martinez-Torron termed a "monochrome orientation of either religious or secular." Instead, the constitution institutionalized a religious freedom regime that protects religious liberty and equality individually and collectively, and requires the formal cooperation between religious communities and the state through contractual relationships facilitating the function of religion in the public sphere.

This model is hardly free of problems. Its effective application has been considerably more favorable toward the Catholic Church and the other non-Catholic traditional religions. However, the Spanish model is instructive in recognizing the importance of cultural preservation and diversity, and in its contribution to defusing acute religion-based cleavages.

Naturally, religion-based tensions remain uneasy at times, however an institutionalized search for middle ground has been evident in Spain's political life since democratization. It is hard not to be impressed, particularly when living in the USA that this historically predominant confessional state legalized same-sex marriage, reformed abortion law and institutionalized fast-track divorce, all with comparatively modest socio-political friction.

Drawing on these comparative findings, my paper theorizes on the relationship between law and religion-based tensions. It concludes that the assumption shared by liberal constitutionalists and democratic theorists that secularization necessitates political stability is empirically unsupported beyond the western context. Turkey's constitutional secularization developed into a model where religion is controlled by the state rather than being separated from it. Both the secular hegemony and the Islamist-oriented government have been embroiled in a continual attempt to enforce their

conflicting worldviews using legal measures. As a result, legal actions have become a primary political tool to undermine trust between the major actors in Turkish politics, leaving no room for the law to act as a conflict-management device. In contrast, Spain's consciously attempted to regulate the engagement with and facilitation of religious diversity as an alternative to the strict separation model that failed in the past. Despite its imperfections, this cooperative constitutional model enabled modern Spain to emerge as a relatively strong constitutional democracy.

As such, both case-studies substantiate the crucial role that constitutional structures can and do play in religion-based tensions. Yet, their comparison reveals that law can effectively respond to religion-based conflicts when constitutional structures offer orderly procedures to manage and defuse enduring cultural tensions. Otherwise, law amounts to nothing more than one additional weapon in the perpetual power-struggle characterizing religion-based conflicts.

I will stop here and look forward to your input.