

The state setting boundaries regarding the right to freedom of religion in education

Can this tendency be justified in principle and practice?

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Abstract

Recent socio-political developments across the globe have compelled governments to reconsider the extent and the means of setting boundaries between what can be regarded as the private and public domains of their citizens' lives. Such boundary-setting has so far taken various forms, one of which concerns freedom of religion and the right to religious instruction in public schools. Based on several boundary-setting case studies, we conclude that boundary-setting in the public education sector has become an inescapable and justifiable reality.

Keywords religion, religious freedom, education, public schools, private schools, religious instruction, confessional education.

1. Introductory remarks

One often hears complaints that the state is infringing on citizens' fundamental rights as human beings. The complainers are particularly vocal with regard to the right to freely practise one's religion and to acquaint one's children with the parents' religious views, including the right to do so in public-school settings (cf. OGOD 2017).

This dilemma can be illustrated with reference to the situation of Christians in South Africa. The third question that parents belonging to Reformed churches in South Africa are expected to answer in the affirmative when they have a child

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baptized is as follows: “Do you undertake, to the best of your ability, to instruct or to see that this child is instructed in [Reformed] doctrine?” The question implies that parents should seek to have their child instructed in this doctrine at all the educational institutions the child might in future attend or be exposed to, including schools, public or otherwise.

Ideally, according to this view, the parental home, religious institution (church) and school form a triangular partnership jointly devoted to the child’s religious upbringing (De Jong 1969:127-128). A state ruling that confessional education may not be offered in public schools can therefore be construed as conflicting with the parents’ and the learners’ fundamental right to freedom of religion.³ On the other hand, a state ruling that endorses the right of all citizens to freedom of religion in the public-school context will no doubt lead to chaos and disorder in schools. Governments have responded to this challenge in a variety of ways.

2. Problem statement

The term *religious education* refers, according to Miedema (2006:113), to that part of identity or personal development and the formation of children and youngsters that focuses on the systematic, intentional as well as unintentional process of religious meaning-making, religious relationships and religious practices. Miedema (2006:112, 113) adds that the key questions today are where religious education should be offered and how it should be done. A concomitant question is: Where and to what extent should parents and religious communities be allowed to exercise their freedom to practise religious education? Experience teaches that, on one hand, citizens desire and need the freedom to practise all their fundamental human rights but that, on the other hand, the state tends to limit this freedom continually and in numerous ways (Sumption 2021:76-77). Grayling (2010:216) concurs, indicating that there is a constant muddle between state legislators and the citizenry about the degree to which a state may interfere in the lives and practices of individuals and groups before it crosses the boundary into an unjustifiable diminution of individual freedom. The question then becomes how to find universally

³ This remains a controversial issue. Even in a country such as the Netherlands in which clear boundaries between schools with a confessional identity and other (general secular) schools have been in place for several decades, the Dutch *Onderwijsraad* (Education Council) (2021) recently felt the need to compile a report entitled *Grenzen stellen, ruimte laten* (Setting Boundaries, Leaving Space). The publication of this report resulted in an in-depth discussion amongst members of Verus, the Dutch *Vereniging voor katholiek en christelijk onderwijs* (Association for Catholic and Christian Education) on 3 December 2021. The report’s key recommendation was that since the Netherlands is a democracy under the rule of law, clear boundaries must be set between what is permissible at religious and secular schools, respectively (Onderwijsraad 2021:6), and what the term “freedom of education” has come to mean in a country that has become “super-diversified” (Verus 2021).

valid rules to resolve this conflict. Ideally, there must be a point at which the state's obligations and individual or communal freedom converge and coincide (Verburg 2015:20-21).

As explained in the case studies below (section 4), the point of convergence seems to lie where the government draws a line or sets a boundary between what is regarded as the private and the public domains, respectively, in the lives of its citizens. The question then becomes whether this boundary-setting is justified in practice and in principle.

3. Method of investigation, clarification of key concepts, demarcation, and structure of the article

Section 4 below contains our analyses of the steps taken by a number of countries. The analysis entailed a series of case studies of specific instances that illustrate the practice of boundary-setting by the state (Cohen, Manion and Morrison 2011:289); they are not intended for comparison purposes. The discussion in the subsequent sections is the result of critical and principled reflection, a process consisting of an interpretive and a constructivist phase. In the interpretive phase, we interpreted and evaluated the facts relating to the issue under discussion in terms of our own norm system, our assumptions and our presuppositions as Christian educationists. We followed a process of meaning-giving, a hermeneutical process based on our assumed values. In this phase, we regarded all facts as "interpreted bits of knowledge" (Frame 2015:531). In the constructivist phase, we arrived at a tentative answer to the research question mentioned in the previous section, an answer that would do justice to the complexity (Sardar 2021:50) of and represent a plausible solution to the issue under investigation (Plotnitsky 2006:45).

Our investigations revealed that the problems discussed in this article have many theoretical ramifications, some of which are discussed below. Each of these issues could fill an entire article. Among these are such matters and controversies as how to deal with religious diversity in a society; the tension between order and freedom; unity versus diversity; the growing tendency towards a lack of national consensus about religion; the impact of postmodernity on religious choice; the language of tolerance; the impact of power networks; state domination and centrism; the role of the state in managing religious diversity; parental preference with regard to religious education; the place of religion in society; the relationship between religion and education; the idea that neutrality and secularism also represent a religious choice; the shortcomings of a "one size fits all" policy; and the overall situation in many other countries besides those mentioned in this article.

In the discussion below, we employ the terms "religious" and "secular," or "public" and "private" spaces as theoretical categories. Religion refers to a belief

in the existence of a god or gods and all the activities connected with worshipping them, whereas “secular” refers to activities not connected with religious or spiritual matters. The distinction between these two terms can be blurred in some instances, as we will see when we examine the situation in North Korea below (see also Schilbrack 2012 for a discussion of the issues surrounding “religion” and the construction thereof).

The term “public” refers to matters concerning all people in general, whereas “private” refers to matters belonging to or for the use of a particular person in his or her own time and place, not for public use, scrutiny or state regulation.

The remainder of this article is structured as follows. The next section illustrates the practice of boundary-setting between the private and public domains of civic life by presenting four typical approaches to this conundrum. After that, we discuss whether this tendency of government boundary-setting can be justified in principle and in practice. The article ends by assessing the justifiability of this practice.

4. Case studies: Four typical approaches in boundary-setting between the public and the private domains

We originally did ten (10) case studies, but because of length restrictions we present here the results of four studies that are representative of the four boundary-setting approaches we have identified.

4.1 Religiously homogeneous populations and religious favouritism: the Netherlands in the 17th century

Examples of supposedly homogeneous populations that enable the setting of a boundary predominantly in favour of religion, that is, the private domain of its citizens’ lives, include ancient Israel, 17th-century Holland, pre-1994 South Africa, and some modern Muslim countries.⁴ Due to space restrictions, we will focus on the Netherlands.

The *Dutch Confession of Faith* was given its final form during the Synod of Dordrecht (1618-1619). The population at this time was relatively homogeneous: all citizens spoke a form of Dutch and shared much the same culture, and virtually all were Christians belonging to a Reformed church denomination (Van Bijsterveld 2019:409). The *Confession* dealt specifically with a state mandate. The Synod

⁴ At the turn of this century, Germany, Austria and Switzerland also provided examples of this approach. The Christian churches in those countries still had a considerable grip on religious education, which was also to be provided in public schools; they had “substantial control” of religious education in schools (Hull 2007:6, 7). Hull (2007:10) speaks of this situation as “the ecclesiastical captivity of German religious education,” and Schreiner (2005:3) of a “confessionally oriented approach” in public schools.

adopted Article 36 of the *Confession*, proclaiming that the state had been instituted by God for the purpose of governing his people (Rom 13), punishing those who transgressed and protecting all believers. The Synod furthermore proclaimed that the state (government) was obligated not only to attend to the needs of society but also to “protect the holy church service,” to eradicate all idolatry and false religion, to destroy the kingdom of the anti-Christ, and to promote the gospel by having it preached all over the country for the purpose of encouraging everyone to honour and serve God in the manner prescribed in the Bible (Hayes 2021:19).

It is clear from this brief outline that at that time, the Dutch “claim(ed) a more or less exclusive approach to the ultimate truth” (Hull 2007:7) in the form of the Christian-Protestant religion. This doctrine was also applied in the education sector.

4.2 Homogeneously secular populations and an absolute boundary against freedom of mainstream religion in the public domain: North Korea

The opposite tendency can be detected in the case of the People’s Democratic Republic of Korea (North Korea), which is regarded as a “full autocracy” (Pinker 2021:269). In this education system, government prohibits any form of traditional or mainstream religion, religious commitment or religious observance in the lives of citizens and in all schools. Education seems to be dominated by what Hull (2007:15) refers to as the “secular point of view” and what Schreiner (2005:3) calls the “non-confessional” approach.⁵

Education is based on socialistic ideals and an efficiency-oriented school system with emphasis on the Korean language, mathematics, literature and knowledge about the ruling Kim family. All schools are public or state institutions⁶ under tight administrative control. Students are immersed in a political education comprising of the “Juche Doctrine,” which outlines the previous ruler Kim Il-Sung’s ideology and revolutionary strategies, illustrating the importance of collectivistic activities in the nation. Putting these theories into practice forms the basis of the school system. The curriculum for the education system centres on “Kim Il-Sungism and science” and “the Ten Great Principles of Monolithic Ideology” (Oh 2020:277).

Education is thus completely secular in nature. According to a study by the Korea Institute for Curriculum Evaluation, students learn more about the Kims and their history than about any other subject (Borgen Project 2021). Socialist-communist

⁵ We are indebted to a reviewer of this paper for observing that although education in North Korea is presented as secular, the fact that it is based on this political doctrine makes it “sound a lot like religion and confession.” The term “religion” can indeed refer to adherence to the teachings of a spiritual leader. In such a case, according to Barnes (2022:12), one could speak of religious education as a non-confessional subject in the curriculum, a subject with moral and social rather than religious aims.

⁶ The system does not allow the institution of private schools, religious or otherwise.

uniformity is the most common characteristic of schools in the country, which conform to strict state ordinances. Diversity and creativity are rarely nurtured. The approach known as *kyoyang* (indoctrination) is used to shape citizens into reliable communists. According to Oh (2020:258), North Korea does not respect the notion of individual human rights, including the right to freedom of religion.

4.3 A relatively rigid wall of separation between state and religion: France

Most governments tend to set a boundary between what is regarded as religious (private) and secular (public). Although Wales and England provide good examples of this “secular,” “neutral” or “objective” approach⁷ (Hull 2007:7, 9, 10), where religion in public schools is allowed only in the form of instruction *about* religion (e.g., comparative religion, phenomenology of religion, or historical study of world religions), we will illustrate this approach with a brief examination of modern-day France. In this approach, according to Hull (2007:9), religious diversity necessitates “the essentially secular nature of the subject” in public schools.

Based on France’s 1789 *Declaration of Man and the Citizen*,⁸ religious freedom has been a core statutory value in the country’s institutional documents. During the 1800s and early 1900s, under the sustained influence of the Catholic Church, the right to freedom of religion had a strong impact on the country’s religious, political and economic life (Adrian 2015:372). For centuries, the church was responsible for education and played an important role in administering schooling and maintaining public order in the country. Secularism (*laïcité*) gradually developed in an effort to set public services and public schools free from the grip of the Catholic Church and its clergy (Jones 2021:24; Bowen 2007:25). Adrian (2015:372) contends that this was one of the acts that paved the way towards establishing freedom *of* religion in the private sphere and also freedom *from* religion in the public sphere.

The promulgation of the Separation Law in 1905 became incontrovertibly linked with secularism in France. This law established “the separation of two worlds, the civil world and the religious world” (Jones 2021:237). The preamble to the 1946 French Constitution (incorporated in the current 1958 Constitution) reaffirmed this principle: “The provision of free, public and secular education at all levels is a

⁷ Secularism, as Van der Walt (2007:234) convincingly argued, can also be seen as an ideology, a religious stance or a worldview. According to the secularist worldview, the God of the Bible does not exist, or if he does exist, he and his laws are irrelevant to public life. Hull (2007:14) seems to concur with this notion by referring to “secularism” as “the ideological form of secularity.”

⁸ The *Declaration* assures freedom of conscience; it guarantees freedom of worship, with restrictions in the interest of public order.

duty of the State” (Jones 2021:225). Legislation in 2011 banned the wearing of a face veil (*burqa*) by women in public.

4.4 A relatively flexible boundary between the public and private domains: Post-apartheid South Africa

The socio-political situation in South Africa changed drastically with the advent of full democracy in 1994 and the adoption of a new Constitution (1996), and particularly after the promulgation of the *Religion in Education Policy* in 2003. Under this Constitution, a variety of fundamental civil rights that most citizens could not enjoy during the apartheid era became firmly entrenched in chapter 2 of the 1996 Constitution. From 1994 to 2003, the right to freedom of religion in schools was practised as under apartheid. The 2003 policy was not intended to turn South Africa into a secular state, but rather to promote cooperation between the state and all religious institutions (Smit 2013:158). However, even though the new policy was not prescriptive, many public schools in practice began restricting the right to freedom of religion in education by terminating the subject of “Religion Instruction” that had provided teaching, in a confessional sense, on the basic tenets of the Christian religion. Most of the historically more privileged (so-called Model C) schools persisted in styling themselves as based on Christian principles, much to the chagrin of those who insisted that all public schools should be religiously “neutral.”⁹

The de facto banning of religion instruction in public schools amounted to a restriction of parents’, teachers’ and learners’ right to confessional religious education.¹⁰ Comparative religious studies and religious observances continued to be offered in public schools on an equitable basis. From that point on, learners could learn *about* and *from* religion, but they could not be immersed confessionally in the religion of their choice in public schools. This type of instruction became the duty of families and faith institutions such as churches, mosques and synagogues (Schreiner 2005:11).

5. Can boundary-setting as outlined above be justified in principle?

Our examination of the relevant literature and evaluation of the case studies leads us to conclude that there are at least three fundamental reasons why boundary-

⁹ Some of these schools were taken to court by a party named OGOD that insisted that the Religion in Education Policy should be interpreted as enforcing secularism, and hence religious neutrality, in public schools. In this matter, later referred to as the Randhart Schools case, the High Court ruled that regular religious observances in schools may be permitted but that public schools were not to promote themselves as a single-religion institution (Roos, Oosthuizen, Smit and Rossouw 2020:36). The Court reiterated that the policy was not prescriptive with respect to the religious and worldview character of a school; it merely served as a guideline and was not obligatory (OGOD 2017).

¹⁰ Confessional education continues to be offered in private schools.

setting with respect to religion in education can be justified or even regarded as unavoidable:

5.1 The task and duty of the state

Most of those who write about the role of the state wish to achieve a balance between law and order, on one hand, and individual freedom on the other. Governments are construed as seeking what is best for their subjects. In a sense, they negotiate balances between restrictions of government authority and limits on personal liberty, the latter including limits on freedom of religion and belief (Frame 2008:48). A core dimension of the evolution of democratic political systems up to the present day has been the attempt to reduce the dangers of abuses of power that would otherwise occur within a totally unregulated or undifferentiated society (Strauss 2014:20). The key duty of the state is to institute measures to ensure stability, peace and order in its territory (Pinker 2019:12).

The state is a public collectivity that regulates societal relationships, qualified by the jural aspect of reality. Its calling is to bind together (integrate) the multiplicity of legal interests in its territory within one public legal order (Strauss 2014:19). It is essentially guided by a concern for its citizens' legal interests, since intrinsically it is a *res publica* (a "public thing"). The state is a societal relationship tacitly agreed to in a social contract, designed to promote the welfare of all citizens by coordinating their behaviour and discouraging selfish acts that may leave everyone worse off (Pinker 2019:12). Hence, it is of vital importance to have effective accountability within whatever government structures are in place (Lloyd 2021:2). The more responsible individual citizens and groups are in their behaviour towards one another, the fewer formal state regulative processes will be required (Lloyd 2021:3). The measures taken by government and the processes that it institutes should be trusted by the population (Lal 2021:56). Both the indicators and the processes underlying the development and application of measures should be viewed as deserving public trust (Lloyd 2021:3).

Another important principle for the state to adhere to is the perceived sense of fairness exuded by the processes instituted. The greater the sense of fairness in these measures and processes, the more likely it is that the policies will be sustainable (Lloyd 2021:2). To instil trust, politicians and public servants should be driven by ethical values, especially by a genuine concern for others, rather than being self-serving. This concern should find expression in the establishment of appropriate governance structures (Lloyd 2021:4).

The more differentiated and the more pluralistic and diverse a society is, the greater the responsibility of the state to organise the interactions among its individual citizens, on one hand, and the various societal relationships or collectivities

within its boundaries on the other hand (Strauss 2009:771). One task of government in such a differentiated society is to balance the different rights to freedom that both individual citizens and groups or societal relationships / collectivities enjoy in principle. One of these civil rights is the right to freedom of religion, belief and opinion (Smit and Oosthuizen 2011:78), which exists in the realm of education as it does elsewhere. It might be necessary, however, for governments to restrict this right under particular circumstances (see 5.2).

The state should do its utmost to reconcile the intervention of boundary-setting with a minimalist enabling role on the part of government (Lloyd 2021:3). In the process, the state should refrain from transgressing into the sovereign spheres of other social organizations such as religious institutions (Strauss 2014:19). The state should restrict itself to a form of boundary-setting that can clearly be seen as an expression of “state competencies, responsibilities and duties” (Strauss, 2014:20). The population should see and understand the need for the intervention – in this case, the setting of a boundary between what is deemed as private or public so as to facilitate and promote peace, law and order in society (Lloyd 2021:3).

5.2 Increasingly diverse and pluralistic populations necessitate the setting of boundaries

From our personal standpoint as Christian educators, the ideal situation would require no boundary-setting by the government because all of society would be permeated by the Christian religion and worldview. Biblically rooted education in all schools, including public schools, is considered beneficial for all learners and in their best interest (Smit and Oosthuizen 2011:244). Therefore, the most desirable situation would be the one that has prevailed in monotheistic and theocratic societies where children not only learn *about* religion but are also confessionally immersed *in* the tenets of the religion taught at home by their parents and in religious settings. In this way, confessional or denominational teaching is extended to religious education in public schools (cf. Hull 2007:11). However, many practical circumstances make boundary-setting between the private and the public domains unavoidable. Even in a homogeneous Muslim country, the authorities must reckon with “both consensus and dissensus [that arise as a consequence of] independent critical judgement” (Davids 2018:674).

In its *Testimony on Human Rights*, the Reformed Ecumenical Synod (1983) recognised the fact that “as a result of (humanity’s) fall into sin ... we now live in a religiously divided world¹¹ with various faith communities (Prot-

¹¹ The phrase “religiously divided” should not be construed to mean “religiously diverse”. The latter is an ontic feature of reality, whereas religious dividedness and animosity among adherents of different religions is – in principle – morally unjustifiable.

estant, Catholic, Jewish, Islamic, humanist, Buddhist, etc.) (Strauss 2014:18). In line with this insight, Hull concluded that “the central problem facing religious education is plurality, and the character of the subject depends upon the way it conceives of and responds to plurality.” He continued, “The very nature of modernity and post-modernity is plurality, and it is not possible to go back to a period before this. ... These kinds of plurality must ... be set against the growing diversity of society itself, and the many ways religions relate to their secular contexts” (Hull 2007:6). In this regard, Hull (2007:7) speaks of “the inescapable conditions of plurality,” and Pinker (2019:11) of cosmopolitanism as “accepting our citizenship of the world”. In all democratic countries, governments are confronted with the task of grappling with “secular and religious diversity in order to justify religious education in the state schools of a plural democracy” (Hull 2007:9).

We live in a world of growing religious diversity and contact between religious groups within a country, and this increasingly close contact does not always proceed peacefully. The current globalisation process results in people coming into contact with religions about which they formerly only read in books. Previously foreign religions have today become “neighbour” religions. As this intermingling and contact increase, the potential for conflict also increases (Van der Walt 2007:150, 154). The need to set boundaries between what is regarded as the private and public domains, and where to set such a boundary, depends, in theory and in practice, on the degree of religious homogeneity (or diversity) within the state. The more homogeneous the population is in terms of religious affiliation, the less the need to set boundaries in order to maintain peace and order and to avoid conflict among religious groups. In a totally religiously homogeneous society, the role of the state in setting boundaries between the private and the public domains “would wither away” (Lloyd 2021:2). The degree of plurality or religious homogeneity that prevails in a country determines the need for boundary-setting, as well as precisely where the boundary needs to be set. Boundary-setting is determined, as Hull (2007:6) concluded, by the degree of religious diversity that a government has to manage in the educational context in its territory, and, as Smit and Oosthuizen (2011:245) suggested, it should be employed in such a manner that the legal consequences thereof remain negligible.

5.3 The need to protect the right to religious freedom necessitates the setting of boundaries

The need to provide as much personal and group liberty to the citizenry is also a consideration in the boundary-setting process. Isaiah Berlin’s distinc-

tion (as quoted by Grayling 2010:217) between positive and negative liberty is helpful in this regard. Berlin defined positive liberty as the freedom of citizens and groups to seek and realise various goals that they deem to be important, and negative freedom as freedom from external compulsion. Berlin favoured the latter because he thought the idea of the former could tempt the state to enforce behaviour that it deemed to be in the interest of its citizenry, whether they agreed with it or not. He argues that negative liberty, as propounded by John Stuart Mill (1859/2020:14-15), is preferable in that it defines the area within which citizens should be left to their own choices and preferences without interference from other parties such as the state. Boundary-setting by the state is helpful in defining that personal space where particular freedoms can be enjoyed and practised. To do so is particularly important in a democracy governed by the rule of law (Pinker, 2019:28; 441).

6. Conclusion

Boundary-setting is becoming increasingly unavoidable as societies are steadily becoming more pluralistic and diverse due to globalisation and cosmopolitanism, which in turn are facilitated by modern communication media and transport capacities and by increased migration (Dill 2012:541).

Peter Schreiner (2005:3) summarises the current range of boundaries as follows:

The range of approaches to (religion/religious education) goes from no religious education in public schools (mainly in France, also in Montenegro, Slovenia and in Albania for different reasons) to models with exclusive responsibility of the state¹² to cooperative models where state and religious communities share responsibility for religious education,¹³ to confessional or denominational approaches where RE in school is the responsibility of religious communities.

It should be no surprise that there is, in practice, such a wide range of approaches to boundary-setting by governments. After all, as Keller (2015:69) reminds us, there is no neutral standard basis for boundary-setting. How and where a government sets a boundary between the private and the public domains depends on its conception of the right to religious freedom as such, religious freedom in education, the proper relationship between individual and national society, and a virtuous human, community and national life.

¹² Iran, Iraq, ancient Israel, the Netherlands in the 16th century, apartheid South Africa (remark by the present authors)

¹³ Post-apartheid South Africa (remark added by the present authors).

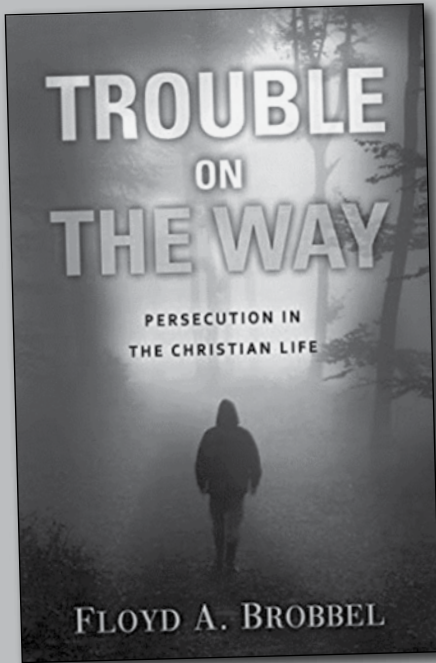
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***Remember Those
Who Are Bound
As Bound With Them.
Hebrews 13:3***

Trouble on the Way: Persecution in the Christian Life

While most of us have heard about Christians suffering for their faith, we tend to think “persecution” mainly impacts believers in times past or in hostile nations today, far removed from our daily lives.

Trouble on the Way describes the various stages of persecution, revealing that persecution is something all followers of the Way can expect to face in this fallen world.

The book does not promote a “doormat” Christianity but rather asserts quite the opposite—a victorious, resilient faith that not only survives but thrives as it encounters the very gates of hell.



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