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ARTICLE

The regulation of religion in public spaces*

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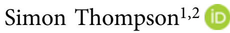

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Abstract

A number of controversial aspects of the relationship between religion and the state are located in public space. Although burqa bans, the Swiss minaret ban, and duties to display crucifixes on public buildings are different in various ways, it is significant that they all take place in this particular type of location. However, when normative political theorists have addressed these issues, they have rarely paid sufficient attention to their spatial location, and, as a result, their analyses are lacking a vital dimension. This article shows what can go wrong when these normative analyses do not refer to an account of public space. It then indicates what part of a suitable account would look like by sketching four of its essential elements, referred to as the definition, distinctiveness, differentiation, and dynamism of public space. It is argued that normative political theorists should draw on aspects of such an account in order to achieve a more sophisticated understanding of issues concerning religion in public spaces, as well as to reach more securely grounded normative conclusions about them.

Keywords: Burqa ban; crucifix duty; minaret ban; public space; religion

1. Introduction

In contemporary democratic societies, the relationship between religion and the state is highly complex, and there are a number of aspects of this relationship which have attracted considerable controversy. A subset of issues about the relationship between religion and the state shares an important characteristic. Controversies like those concerning burqa bans in France and elsewhere, the Swiss minaret ban, and the display of crucifixes on public buildings all take place in public space. While these three issues are different in various ways, it is significant that they are all located in this particular type of zone. The first issue concerns individuals' appearance in public space, the second concerns the sort of religious buildings which occupy such space, and the third concerns the religious symbols with which this space is marked.

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In recent years, normative political theorists have addressed these three issues and others of a similar character, bringing considerable theoretical subtlety and normative sophistication to bear on them. They have suggested, for example, that "living together" is too vague an idea to justify bans on burqas (Lægaard, 2015), that the Swiss minaret ban is illegitimate since it undermines Muslims' civic standing (Laborde, forthcoming), and that the Bavarian *Kreuzpflict* ("crucifix duty") is impermissible since it "symbolically excludes many citizens from the political community" (Bardon, 2021, 11). However, these theorists have rarely taken the location of these issues sufficiently into account. In the worst cases, location is not mentioned at all. Some of the better cases mention public space but often wrongly conflate it with other notions such as the public sphere. In the best cases, although normative political theorists do have insightful remarks to make about the significance of location, such remarks never amount to a completely satisfactory account of public space.

In this article, I shall argue that this failure is a significant problem. While the work of these normative political theorists on various aspects of the relationship between religion and the state is valuable in many ways, the fact that they do not take spatial location adequately into account means that their analyses are lacking a vital dimension. To put it positively, I think that, if contemporary normative political theorists were to refer to relevant elements of an account of public space, then their analyses of particular aspects of the relationship between religion and the state would be more robust, and their normative evaluations would be more securely grounded. This, at least, is the conclusion which the argument presented here is intended to support.

Before outlining the various stages of my argument, it may be worth pointing out that my analysis would also apply, *mutatis mutandis*, to a range of other controversies concerning the character of public space. These would include, for example, the placement of national symbols on public buildings and the presence of controversial monuments in public squares.[1] This notwithstanding, I focus here exclusively on religious cases. This is not because I think religion is somehow "special" since it engages, say, more fundamental interests than other aspects of social identities. More simply, it is because religion is a particularly important political battleground in contemporary societies, partly as a result of increasing religious pluralization and consequent anxieties about social cohesion and public order. In addition, in virtue of the wide variety of religious cases, the lessons we learn from them can be applied to many non-religious cases too.

I shall further explain and justify the various claims just adumbrated in the following sections. Section 2 introduces the three particular cases of religious regulation in public space to which I give special attention. Then, in Sections 3–6, four key elements of an account of public space are introduced. For convenience, I refer to each by a single word: namely, the *definition*, *distinctiveness*, *differentiation*, and *dynamism* of public space. In each of these four sections, I do two things. First, I critically review the work of several normative political theorists, suggesting that they do not adequately theorize the relevant elements of an account of public space. Second, I give some indication of what a satisfactory account of this element would look like. To make the scale of my ambition clear, I make no attempt here to develop a complete account of public space. What I do instead is to sketch four of the most important

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features which I believe that such an account needs to possess. A brief conclusion underlines the principal thesis of this article—namely, that, when evaluating cases of religious regulation in public space, normative political theorists must draw on relevant elements of an account of the character of such space. In this way, these theorists would be able to develop a more sophisticated understanding of these cases, as well as to reach more securely grounded normative conclusions about them.

2. Three cases

In this article, I focus on three particular cases of religious regulation in public space, namely burqa bans, the Swiss minaret ban, and the regulation of crucifix display. So far as the first case is concerned, a significant number of bans on the wearing of the burqa in public spaces have been introduced over the last decade or so. In Europe. France and Belgium were the first to introduce burqa bans in 2011 (République Française, 2010; Royaume de Belgique, 2011). Since then, such bans have been introduced elsewhere in Europe, including Austria (Republik Österreich, 2017), and in the rest of the world, including the Canadian province of Quebec (Government of Quebec, 2021). The wearing of other sorts of religious clothing, and the display of religious symbols on a person, have also been the objects of regulation, including in the form of restrictions on Muslim headscarves and on crucifix wearing by employees in particular workplaces.[2] Although I shall mention these other cases at various points below, burqa bans will be treated as the central example of the range of restrictions on individuals' appearance in public space.[3]

The second case to be examined is the ban on the construction of minarets which took the form of an amendment to the Swiss constitution in 2009.[4] This restriction does not affect individuals' interest in manifesting their religious identity in public, but rather a religious community's interest in constructing a particular type of building. Again, there are other cases in which restrictions are imposed on the construction of places of worship, including mosques (Allievi, 2010, 2013). There are also cases which concern funding for the construction and maintenance of religious buildings. For instance, a change of planning law in the Lombardy region of northern Italy in 2015 has been widely interpreted as an "anti-mosque" law (Chiodelli and Moroni, 2017). Again, although these other cases will be mentioned at appropriate points below, I shall keep returning to the Swiss minaret ban as the key example of the broader class of issues concerning places of worship.[5]

The third case to which attention will be directed is the display of crucifixes in public places, including on the facades of public buildings or inside or outside those same buildings. Such displays do not engage with religious individuals' interest in appearing in public space in a particular way or with religious communities' interest in constructing a particular type of building. With these interests out of the picture, this type of case appears to turn instead purely on the meaning of religious symbols when located in public space. The Bavarian crucifix duty is a well-known example of this sort of regulation in practice.[6] There is quite a diverse range of other cases of the controversial placement—and funding—of objects in public places. These objects include, for example, nativity scenes in city squares, and Ten Commandments monuments in courts of law.[7] Once again, while these

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other cases will be discussed further below, crucifix display will be treated as the key instance of the larger class of cases of religious symbols in public space.[8]

Thus burqa bans, the Swiss minaret ban, and crucifix regulation (where, as we shall see, regulation can include both duties to display and restrictions on display) are three cases concerning the presence of religion in the public spaces of contemporary democratic societies. Giving most attention to these cases will enable me to show what the key elements of an account of public space adequate for the purposes of normative political theory would look like.

3. The definition of public space

Any satisfactory account of public space must begin from an adequate *definition* of that space. Such a definition may be regarded as a model drastically reduced to a single phrase or sentence. Of course, as a result of this brevity, such a definition is only a starting point; but it nevertheless serves a vital purpose by directing our attention toward one particular class of objects rather than to another.[9]

Given its importance, it is perhaps surprising that some normative political theorists offer no definition of public space when discussing issues concerning the public regulation of religion. For example, writing about the Swiss minaret ban, Douglas Pratt does on one occasion mention the "public sphere," asking the question: "What is the place of religious symbols in the public sphere" (Pratt, 2013, 201)? However, his other reference to such a sphere strongly suggests he understands it as a discursive arena rather than a physical environment (Pratt, 2013, 205).[10] In commentaries like this, then, one of the three cases I have identified is analyzed and evaluated—say, in terms of normative concepts of freedom, equality or community—but public space is undefined and spatiality plays no part in the discussion.

Other political theorists may refer explicitly to public space as the setting of religious regulation, but still offer no definition of that space. For example, Nahshon Perez identifies a number of cases of religion in public space (Perez, 2020, 1). However, despite numerous explicit references to such space, he gives no attention to its particular character. In fact he explicitly justifies this lack of attention in a footnote. Perez's argument there is that public space cases are a subset of all cases concerning "state support of religion," and that his focus is on all such cases "as long as they follow the 4 features of the RMA" (Perez, 2020, 2n6).[11] The assumption underlying this argument is that it is possible to adequately analyze public space cases without any specific analysis of public space itself so long as they are relevantly similar to other cases of state support for religion.

Other political theorists do better, and offer definitions of public space of some kind, but these are often incomplete or inconsistent and are therefore inadequate for purpose. One possibility here is to offer what I shall call an *ostensive* definition which works by pointing to an example or examples of public space. For example, Cécile Laborde cites the French burqa ban's reference to "public places" (Laborde, 2012, 406), and she mentions a couple of examples of such places, including "the street" (Laborde, 2012, 407) and "the public square" (Laborde, 2012, 409).[12] Although these references may indicate that Laborde is attentive to at least some differences between distinct types of public spaces, nevertheless her reliance on an

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ostensive definition of this kind means that the extension of the concept is unlikely to be clear. Does a particular regulation apply in "third places" such as cafés? Or on publicly owned transport systems such as buses? Or in privately owned business premises which some members of the public need to access?[13]

In order to overcome the limitations of ostensive definition, it would be better to offer what I shall call an *analytical* definition of public space, which identifies certain characteristics which are common to all such spaces.[14] In the sorts of case with which I am concerned in this article, some normative political theorists do provide definitions of this kind. I shall refer to what are arguably the three most common, in what I think is descending order of frequency, as *accessibility*, *ownership*, and *provision*. According to the first, public spaces are areas that ordinary members of the public may freely enter.[15] According to the second, a space is public if it is publicly owned.[16] According to the third, public spaces are places where public services are provided.[17] Clearly, these are not three different ways of describing the same set of locations. For example, certain areas open to the public may be privately owned (including cafés and shopping malls), some publicly owned spaces may have tightly restricted access (including schools and military bases), and some places where public services are provided may nevertheless not be open to the general public (including law courts and welfare offices). With regard to these characteristics, it could be argued that two of them are jointly necessary. For example, a public space could be defined as a location that has open access *and* is publicly owned. Alternatively, two characteristics could be regarded as alternative features. Thus public space could be defined as one that *either* has open access *or* is where public provision takes place.

The best way to see that these different definitions make important differences in practice is to look briefly at a couple of examples. One in which ownership plays an important role is the U.S. Supreme Court case of *American Legion v. American Humanist Association* (2019). This concerns a dispute between these two named organizations about the location of a Latin cross at a traffic intersection in Bladensburg, MD. In part, this controversy concerned the ownership of the land on which the cross is sited. Part of the American Humanist Association's objection to the Bladensburg Cross was that it is located on public land. One of their demands, therefore, was that monument should be "moved to private property or modified to appropriately honor all veterans" (American Humanist Association, no date). To put the Association's objection in the terms I have introduced here, a public space is one that is publicly owned, and in such spaces the relevant public authority has a duty to treat all citizens equally. Hence its suggestion that the Cross could only be displayed in its present form—in which not all citizens are treated equally—if it was relocated to privately owned land.

A second example concerns the provision of public services. When Quebec's Bill 62—entitled "An Act to foster adherence to State religious neutrality"—passed into law in 2017 (Government of Quebec, 2021), there was considerable controversy about its scope. At first, it was widely understood that the Bill would prevent women wearing a burqa whilst traveling on public transport since whilst doing so they were in receipt of a public service. The Justice Minister Stéphanie Vallée later had to clarify that women would only need to unveil to the driver if a photo ID was required, but could then replace their veil for the rest of their journey

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(Shingler, 2017). In this case, then, the Quebec government's assumption was that public spaces include those in which a public service is provided. If, by contrast, it had specified that such spaces were characterized only by their open accessibility, then this particular part of the debate would not have occurred since it would have been clear that the ban did not apply on public transport.

The complications that these two examples introduce do not change my view that an analytical definition of public space is better than an ostensive definition or no definition at all. But they do make it clear that various analytical definitions are possible, and that the choice between them is of considerable importance. In closing this part of my discussion, my point is that the absence of a satisfactory definition of public space means that there is no stable foundation on which the rest of the account can be built. In this section, I have suggested that, without an explicit and coherent definition, one problem is that the extension of the concept is unclear. In the following three sections, I shall show that several other problems arise. To be specific, it is difficult or impossible to make a clear distinction between public space and other public zones, to show that there are different kinds of public space, and to appreciate the dynamic character of such space.

4. The distinctiveness of public space

I have just argued that an adequate account of public space should start from an analytical definition which specifies which characteristic—or which combination or variety of characteristics—that space possesses. One virtue of this approach, I would suggest, is that it makes it possible to draw distinctions between public space and other zones, all of which feature "public" as an adjective, including the "public sphere" (e.g., Habermas, 1962), the "public square" (e.g., Neuhaus, 1984), and the "public realm" (e.g., Arendt, 1958). By making it clear how public space differs from these other zones, its *distinctiveness* becomes apparent.

To be clear about the nature of my claim, it would make no sense for me to stipulate that each of these terms must be used to refer to one and only one specific domain. Within certain semantic limits, political theorists, and indeed political actors in general, can choose to use a particular concept in the way they wish. If a theorist stipulates that they will employ the term "public sphere" to refer to all openly accessible and publicly owned parts of the physical environment, or if they use "public sphere" and "public space" as synonyms for such locations, they do not necessarily err by doing so.

My claim, rather, is that the normative political theorists whose work I am investigating *do* go wrong if they use these terms in ways that elide differences between different zones which are important in particular cases. I shall make this argument by focusing in particular on the way in which some of them use the terms "public space" and "public sphere." My claim will be that too often these theorists ignore significant differences between these two zones in a way that undermines their analyses. To put the point positively, I shall suggest that it would be desirable to maintain a distinction between certain physical locations in the built environment and the realm of public discourse. To be clear, although I shall refer to these domains as "public space" and the "public sphere" respectively, the exact terminology does not matter so long as the conceptual distinction is made clear in some way or another.[18]

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To begin with, let me give a couple of examples of work which conflates these two zones. In her critical reflections on the Swiss minaret ban, Alexa Zellentin refers twice to public space. On one of these occasions, she is clearly referring to the character of the built environment: the aim of laws on limiting noise disturbance "is to balance the freedom of expression (in terms of speaking, singing, music in public spaces) of some with the right to some peace and quiet of others" (Zellentin, 2014, 59). Zellentin also refers to the public sphere on a number of occasions. In one instance, she seems to use the phrase to refer to the realm of public discourse: "if it is impossible for citizens to develop the shared sense of community in the face of public concessions to cultural difference then we cannot blame them for not being too troubled if cultural minorities get less than their fair value of formally equal political rights and therefore are less prominent in the public sphere" (Zellentin, 2014, 55). In a couple of other instances, however, Zellentin seems to conflate the public sphere with public space. For example: "The majority of Swiss voters sent a clear message to the Muslim minority: in their view, Muslims do not have an equal right to display openly and proudly their religion in the public sphere" (Zellentin, 2014, 48; see also 58). In my terms, a religion can be displayed "openly and proudly" in public space but not in the public sphere.

To take another example, Nilufer Göle analyzes debates about minarets and mosques in Europe by regarding such structures as manifestations of the "public visibility of Islam" (Göle, 2011). In her article, she makes a number of references to public space. For instance, "a mosque is … a public space open to all pious citizens" (Göle, 2011, 384; and see 386). She consistently uses this term to refer to material spaces in which individuals and buildings are visible to others. By contrast, Göle's use of the term "public sphere" is not clear and consistent. At some points, she appears to use it—like Zellentin—as a synonym for public space. Hence a mosque is described as "a religious public sphere" (Göle, 2011, 384). At other points, she seems to understand the public sphere as a space in which public deliberation takes place. Thus she remarks: "The use of reason and the distinction between opinion and truth have been historically established and considered as a democratic feature of European public spheres" (Göle, 2011, 389).

My claim is that both of these analyses, and others like them, fail to make clear the distinct characters of public space and the public sphere. I have already offered a sketch of public spaces as physical locations in the built environment. They are very likely to include streets, squares, parks, and beaches; they may include third places such as cafés, pubs, gyms, and hair salons; and they could include government offices in which particular services are provided to the public.

In contemporary academic work on the public sphere, the locus classicus is Jürgen Habermas's book *The Structural Transformation of the Public Sphere*, first published in 1962. Here he says that the public sphere is "made up of private people gathered together as a public and articulating the needs of society with the state" (Habermas, 1962, 176). Thus the public sphere is a zone in which a group of individuals come together to form a public, and as that public they discuss matters of common concern together. There are a variety of public spheres in which different sorts of common concerns may be discussed. Of particular relevance here is what Habermas calls the "political public sphere." This is where "public discussion deals with objects

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connected to the activity of the state" (Habermas, 1974, 49; see also 2006, 3, 9–10).[19] It has been argued that Habermas idealizes the public sphere, regarding it as a sphere of rational deliberation in which public opinion is formed and then effectively transmitted into the formal political system.[20] Whether idealized or not, we can at least say that it is a zone in which public deliberation takes place.

With these two brief sketches in mind, I think it is clear that public space and the public sphere are very distinct zones—although, as I shall now suggest, they are not entirely unconnected. To make this clear, let us consider the following characterization of the public sphere by the World Bank's Communication for Governance and Accountability Program:

> The public sphere is the arena where citizens come together, exchange opinions regarding public affairs, discuss, deliberate, and eventually form public opinion. This arena can be a specific place where citizens gather (for example, a town hall meeting), but it can also be a communication infrastructure through which citizens send and receive information and opinions (no date, 1).

At certain specific moments, particular public spaces may serve as locations for parts of the public sphere. The quotation mentions a town hall meeting; other public spaces serving as settings for the public sphere could include a public square in which a political rally is taking place or a public building when it is occupied by political protestors. It is crucial to understand, however, that the public sphere cannot be reduced to a public space or set of such spaces. As the quotation continues, it is a "communication infrastructure." Thus the letters columns of newspapers, radio phone-in programs, televised political debates, and social media such as Facebook and Twitter are all elements of the infrastructure of the public sphere in contemporary societies.[21]

To underline the remark with which I began this discussion, there is nothing necessarily wrong with using the terms "public space" and "public sphere" as synonyms for the same zone of society if this is done clearly and consistently. Too often in the normative political theory with which I am concerned, however, the use of these terms is at best ambiguous and at worst seriously misleading. If analyses of the regulation of religion in public spaces do not clearly distinguish between the physical locations of such regulation and the deliberative arenas in which these regulations may be discussed, then this marks a failure to appreciate the distinct characters of these two zones, as well as a failure to appreciate how they can at times be contingently connected, as particular public spaces may serve at particular moments as settings for the public sphere.

5. The differentiation of public space

Up to this point, I have talked about public space simpliciter, as if there is just one homogenous kind. In this section, I want to add further complexity to the account outlined thus far by emphasizing what I shall call the *differentiation* of public space. I shall argue that there are different sorts of public space, and that the differences between them have important implications for the normative evaluation of religious regulation.

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If this is right, then it follows that some normative political theorists can go wrong if they assume that all public spaces are alike so that what goes for one goes for all others. Some theorists focus exclusively on one particular kind of public space, and then assume—implicitly or explicitly—that their conclusions about this space can be generalized across all public spaces without alteration. For example, Ronald Pierik's commentary on the Lautsi judgment focuses almost exclusively on the case on crucifixes on the walls of state schools' classrooms. At one point, however, he shows a willingness to generalize his argument beyond these particular spaces: "if citizens are to identify with the state as their state, it is important that the public domain in general and public symbols such as oaths, courtrooms and public ceremonies, are organized in such a way that all citizens can identify with them" (Pierik, 2012, 211). Here Pierik makes the assumption that, so far as his analysis is concerned, there are no significant differences between school classrooms and the other places to which he refers, so that what goes for the school classroom goes for all other parts of what he calls "the public domain" too.

Other theorists discuss cases which are located in various kinds of public space, but then assume—again implicitly or explicitly—that the differences between these spaces make no difference to their overall analysis and evaluation of these cases. For example, Mark Tunick sets up the problem he wishes to discuss by suggesting that the "requirement of state neutrality can … come into tension with the demands of individuals to exercise or express their religion in public spaces" (Tunick, 2021, 3). He refers to a range of such spaces in which such tensions may arise, including a "public university's campus," a "prominent public meeting area within a state institution," "the Grand Staircase of the [Allegheny] county courthouse," "outside a city-county building," and a "busy public intersection" (Tunick, 2021, 4, 5, 8, 9). In the case with which he is most concerned, a tree is placed in "the atrium of the main building" of a liberal arts college. As a consequence of this location, this tree "could be taken to express a message about the college and its members." If, by contrast, the tree was located in "private" area, such as "a faculty member's office," that message would not have been conveyed (Tunick, 2021, 5).

With this final remark, Tunick appreciates that location helps to determine the meaning of the object in question. He does not, however, develop that insight any further to suggest that the other locations to which he refers might also have important differences in character which help to determine the significance of the religious signs and objects placed there. For instance, if it makes a difference whether a tree is placed in an atrium or an office, then it seems likely that it will also make a difference if a particular religious symbol or object is located inside or outside of different kinds of public institutions. However, rather than extending his analysis to suggest that the special character of particular places makes a difference, the burden of Tunick's argument is to suggest that a single normative principle—what he calls Jeremy Waldron's "adequacy principle" (Tunick, 2021, 13)—can be applied, not just to the display of religious symbols in public spaces, but to all aspects of people's conduct.

If I am right to argue that these theorists—and others like them—err by not taking the differentiation of public space into account, then what is needed is a typology of such spaces highlighting the differences between them which are relevant in particular cases. At this point, it is necessary to look beyond the work of normative political

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theorists to the accounts of public space offered by those from other academic disciplines. From these other perspectives, there is a variety of ways in which public spaces may be differentiated.[22] For the purposes of the current argument, I shall draw on Francesco Chiodelli's and Stefano Moroni's typology of spaces since I believe that it highlights differences between public spaces which are pertinent to the normative evaluation of religious regulation. Their typology is motivated by a commitment to toleration which, they suggest, "can be defined as the principle of peaceful coexistence of individuals and groups with conflicting, incompatible, and irreducible differences in cultural identities, ways of life, practices, and habits" (Chiodelli and Moroni, 2014, 167). Given this commitment, Chiodelli and Moroni say that they "will focus … on what the public actor must do to guarantee and ensure toleration (as regards both his actions and the restrictions imposed on private actions)" (Chiodelli and Moroni, 2014, 167). The argument that they then make is that the achievement of this objective will require identifying different kinds of urban space,[23] since different systems of regulation are appropriate in each kind.

Chiodelli's and Moroni's typology is constructed by reference to property regimes and, in particular, to "the decision-making prerogatives" that owners of specific spaces enjoy (Chiodelli and Moroni, 2014, 170). To put this in the terms I introduced in my discussion of definitions of public space, this typology focuses first on ownership, and then consequently on accessibility and provision. Three of the six types of urban space that they identify are of particular relevance to my argument:

> (i) *Stricto sensu public spaces*: that is, public spaces for general use. These are typically spaces of the connective and open type: public squares and plazas, streets, pedestrian areas.
> (ii) *Special public spaces*: that is, public spaces assigned to special functions. These are spaces in which more specific public activities take place, such as public schools, hospitals, libraries, playgrounds, cemeteries, and parks …
> (iii) *Privately owned collective spaces*: that is, private spaces that have relevance for the public, such as bars, restaurants, hotels, shopping centers, and cinemas (Chiodelli and Moroni, 2014, 169).[24]

In stricto sensu public spaces, Chiodelli and Moroni suggest, restrictions on access and behavior "are usually minimal, and concern only the protection of the space's publicness" (Chiodelli and Moroni, 2014, 173). For example, access to some such spaces may be rationed in order to prevent congestion. In special public spaces, by contrast, "both access and behavior-related restrictions are customary," where these "are usually linked to the specific function performed in the space in question" (Chiodelli and Moroni, 2014, 173). For example, only patients (and, at particular times, their family and friends) are permitted access to hospitals. Finally, in privately owned collective spaces, "the state allows certain activities to be performed provided access is granted without explicit discrimination" (Chiodelli and Moroni, 2014, 173). By way of illustration, consider the case of a German restaurant owner who expelled a customer wearing a burqa. The BBC News report on this incident points out that in Germany "a restaurant or bar manager can legally refuse entry to a guest, but not if it is an arbitrary act of discrimination" (BBC News, 2016).

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The best way to appreciate the implications of this analysis for the regulation of religion is to focus on one particular religious symbol which can be found in the three types of urban space that I have just described. Crucifixes have attracted controversy when placed in what Chiodelli and Moroni would classify as stricto sensu public spaces. For instance, in a case already mentioned, the Bladensburg Cross is a 12 meter high Latin cross located at a busy traffic intersection on land now owned and controlled by a public body, the Maryland-National Capital Park and Planning Commission. Turning to special public spaces, the European Court of Human Rights case of *Lautsi v. Italy* (2011) concerned an objection to the placement of crucifixes on the walls of classrooms in state schools. So far as privately owned collective spaces go, another European Court of Human Rights case—that of *Eweida v. United Kingdom* (2013)—concerned the wearing of a crucifix by an employee of British Airways whilst she was working on the check-in desk at an airport owned and run by Heathrow Airport Holdings Limited.

With reference to these three particular cases, then, the point I want to make is that the meaning and significance of a crucifix, and therefore the assessment of how its display should be regulated, will depend to some significant extent on its location. As Silvio Ferrari puts it, “the place where a religious symbol is displayed is not irrelevant. A crucifix hung on the wall of a courtroom is one thing; a crucifix that stands in the corner of a square is another” (2013, 19). As I argued earlier, the Bladensburg Cross controversy would change its character if the cross was located on privately owned land (or, arguably, if it was not visible to the general public). The Lautsi case would look significantly different if the crucifix in question was displayed on the external wall of a public building or the interior wall of a parliamentary assembly.[25] Finally, Nadia Eweida would never have had to challenge restrictions on her wearing of a crucifix if she only wore it in her capacity as a private citizen in stricto sensu public spaces.

Much more could be said about the character of specific types of public spaces and specific examples of each type. For instance, it would be useful to discuss Aurélia Bardon’s “important distinction between political and nonpolitical public spaces” (Bardon, 2021, 8). It would also be worth discussing the idea of “sacred places,” defined simply by Jonathan Seglow as “sites of special meaning and significance” (Seglow, 2021, 48). Without going into these additional complexities, the discussion of different types of public space which I have presented here has shown that an account of public space capable of guiding the normative assessment of religious regulation must, amongst other things, take the differentiation of that space into account.

6. The dynamism of public space

In the preceding discussion of typologies of public space, I moved to some extent beyond the extant body of work which normative political theory has produced on the regulation of religion in such space.[26] In this section, I need to move further beyond it in order to show that an account of public space must, whenever necessary, include an element to which normative political theorists rarely if ever refer. I shall refer to this as the *dynamism* of space.

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To introduce this further element, let me begin by suggesting that nearly all of the accounts of public space provided by political theorists of religious regulation are static in the sense that they offer a snapshot of the public space—or set of public spaces—which exists at a particular point in time. It might even be argued that these theorists naturalize or essentialize public space, assuming that it possesses certain necessary properties which do not change over time, so that the spaces in existence at a particular moment have always been there and always will be. I think that this would be overstating the case somewhat since some theorists commenting on the three principal cases of concern to me here do at least hint at a dynamic dimension to public space.

Let me return to the case of the Swiss minaret ban. Several political theorists commenting on this case make explicit reference to the processes by which decisions are made about what can and cannot be built in a particular location. Thus David Miller discusses the suggestion that the state "should regulate public space only through the application of neutral building regulations, zoning laws, etc." (Miller, 2016, 447). In a similar vein, Laborde refers to a variety of mechanisms for deciding how public space is controlled and by whom, including "planning commissions," "zoning laws," and "existing planning regulations" (Laborde, forthcoming, 2, 11, 17). Finally, Vincenzo Pacillo discusses in some detail the role of "town-planning standards" (2012, 341).

The implication which I draw from these remarks about the processes shaping public spaces is that it is necessary to offer a dynamic model which is capable of capturing the way in which public spaces can change in various ways over time. For example, the character of existing public spaces may change as access and behavior rules are altered. In the most extreme cases, public spaces may cease to exist as a result of processes of privatization (Kohn, 2004). In addition, private spaces may temporarily acquire public functions, such as when churches—and other private buildings—become polling stations or wedding venues. For the purposes of the current argument, I shall focus on the part of the dynamic model which shows how public spaces—and places of worship in particular—come into being.

It is doubtless the case that ordinary planning regimes can have significant effects on the set of places of worship which exist in a particular locale at a particular time. They often do so by bringing entirely mundane considerations into the planning process. For example, the proposal for a new mosque may be approved or rejected depending on whether there would be adequate car parking or whether the inhabitants of neighboring buildings would be adversely affected by, for example, a loss of natural daylight. For example, in 2019, an application to build in mosque in the Bearwood area of Birmingham in the UK was rejected by the local council's planning committee on the grounds that there was insufficient space for parking at the site and that traffic congestion in the area would increase (Makin, 2019).

It has been argued that some planning decisions of this kind may invoke reasons to do with parking space, traffic congestion, and so on as a cover for other reasons which cannot be openly expressed. In the US context, the American Civil Liberties Union stated in January 2022 that:

> While mosque opponents frequently claim their objections are based on practical considerations such as traffic, parking, and noise levels, those asserted

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> concerns are often pretexts masking anti-Muslim sentiment. Government officials in some areas of the country have yielded to this religious bigotry, treating mosques and Islamic centers differently than other proposed houses of worship and/or denying zoning permits without the compelling interest that is required by the Religious Land Use and Institutionalized Persons Act of 2000 (American Civil Liberties Union, 2022).

Although in no way wishing to diminish the significance of this problem, I do not want to rule out the possibility that denial of planning permission for particular places of worship may be sincerely based on considerations which have nothing to do with the nature of the religion in question.

This notwithstanding, there are good number of policies and laws to be found in various jurisdictions which are noteworthy since they are deliberately designed to have impacts—some positive and some negative—on the construction of places of worship. Here are three examples. First, the amendment to the Swiss constitution in 2009, adding an article declaring that "the construction of minarets is forbidden," is a very clear illustration of a rule shaping the content and appearance of public space. Second, in Section 2 I mentioned the "anti-mosque" law which came into effect in Lombardy in 2015. As Chiodelli and Moroni argue, "this regional law includes certain clauses that raise severe obstacles to religious minorities—and particularly Islam—in terms of their access to the benefits envisaged by the law itself; but it also hampers the chances of constructing a house of prayer even without any public benefit" (Chiodelli and Moroni, 2017, 64). To give a more positive example, in Catalonia, Law 16/2009 creates a right to establish places of worship which is guaranteed by the local administration. In Avi Astor's translation, the preamble to the law states that it "aims to strengthen the values that already characterize the common space of our society: coexistence, respect for plurality, equality of democratic rights, and the responsibility of the citizenry, without any kind of discrimination, [to participate] in the national construction of Catalonia" (Astor, 2021, 6). All of these laws concerning the construction of places of worship shape the set of public spaces which exist in a particular area; if these laws did not exist, or if they were repealed, then the set of public spaces in existence would change.

With these examples in mind, my point is that one element of an account of public space which may be relevant to a range of normative issues concerning religion will be an explanation of how such space comes into existence. I would suggest that this in turn puts new normative questions on the agenda for the political theory of religious regulation. To put it rather schematically, there is what might be called a first-order question of justice: In general, what sorts of public spaces should there be? And, more specifically, which places of worship should be permitted to occupy such spaces?[27] There is also what might be called a second-order question of democracy: What processes should be used, and which actors involved, in making decisions about what sort of spaces and places there should be?[28] To echo remarks I have made in earlier sections, I have not tried to answer these general questions here, nor to engage in the critical assessment of particular laws and regulations which prompt these questions. My more limited aim has been to show that these questions suggest that a dynamic element will often be an important part of an account of

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public space. To be specific, any adequate normative political theory of religious regulation in public spaces must be able to appreciate the way in which new spaces may come into existence over time.

7. Conclusion

I began this article with the suggestion that a number of controversies about the place of religion in contemporary political life are distinct from others since they are located in public space. I then argued that, when normative political theorists discuss such controversies, their efforts are often hampered by the lack of an adequate account of such space. In response to this problem, I have sketched four features which I believe any adequate account must possess: a clear and coherent definition of public space, an understanding of how such space differs from other zones such as the public sphere, an appreciation of the various types of public spaces, and an account of the dynamism of such spaces.

To be clear, not every normative controversy about religion in public will require political theorists to refer to all four of these elements of an account of public space. Rather, particular controversies will prompt political theorists to draw on particular elements of their general account. First, although there is no single correct definition of public space, political theorists must be prepared to offer *their* definitions. This will often be important in determining whether, on their accounts, a particular controversy is located in public space or not. Second, although the terms used may vary, I have insisted that it is vital to distinguish between a deliberative public sphere, on the one hand, and public spaces, some of which may serve as locations for that sphere, on the other. Failure to make this distinction clear renders political theorists unable to appreciate the ways in which the public sphere is partially located in, but always transcends, particular physical locations. Third, I have argued that public space should not be regarded as a single homogenous zone. It is possible to identify different sorts of public spaces, where such identification matters because different rules of regulation are likely to apply in different sorts of spaces. The presence of crucifix in the corner of public square is very different to the presence of the same symbol in a parliamentary chamber. Finally, I have insisted that the dynamic character of public space will often be relevant to the analysis of particular normative controversies. The fact that new spaces can emerge, existing spaces change, and some spaces cease to exist, is often key to understanding issues concerning the public presence of religion.

Of course, I have not tried to present a complete account of public space here. I have not even offered a fully fleshed out account of each of the four elements which I have identified. Instead, my more modest aim has been to lightly sketch these necessary elements and to give some indication of the choices that need to be made when the account in which they are located is fully developed. For instance, should the definition of public space include locations where public services are provided? How is public space related to other notions such as the public sphere? What typology of public spaces is needed? How are changes to the character of such spaces to be evaluated?

I would suggest that a complete account of public space is likely to include other elements too. For instance, it is likely to make explicit reference to rules of regulation for public spaces. With regard to this further element, it may be that familiar

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normative principles—say justice, equality, or freedom—can be applied in an unmodified form to questions about public space. Alternatively, they may need to be altered to some extent in order to be fit for this purpose. Thus a concept of justice may give rise to a conception of "spatial justice" (e.g., Soja, 2010). Or the notion of a right may lead to the idea of "the right to the city" (e.g., Harvey, 2008). Determining which of these routes to follow, as well as describing other elements of an account of public space, will have to wait for another occasion.

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Notes

1. For the situation in the United Kingdom regarding flags, see Department for Digital, Culture, Media and Sport (2013). For an interesting commentary on confederate monuments in the United States, see Levinson (1998).
2. See, for example, two European Court of Human Rights cases: *Ebrahimian v. France* (2015) and *Eweida and Others v. the United Kingdom* (2013). For a case concerning Sikh turbans, see *Jasvir Singh v. France* (2009).
3. This sentence refers specifically to individuals' *appearance* in public space; their *behavior* raises different issues. See, for example, legal cases concern proselytism, such as the European Court of Human Rights case of *Nasirov and Others v. Azerbaijan* (2010).
4. See Article 72.3 of the Swiss constitution (Swiss Confederation, 2021).
5. For a U.S. example of a case concerning the construction of a Sikh temple, see Guru Gobind Singh Sikh Center v. Town of Oyster Bay, N.Y. (2016).
6. See Article 28 of the *Allgemeine Geschäftsordnung für die Behörden des Freistaates* (Bayerische Staatskanzlei, 2020).
7. For examples from the United States of the first and second cases, see the U.S. Supreme Court cases of Lynch v. Donnelly, 465 U.S. 668 (1984) and McCreary County v. ACLU of Kentucky, 545 U.S. 844 (2005). For the case of a tree, understood by some to be a Christmas tree, "displayed in the atrium of the main building" of a U.S. liberal arts college, see Tunick (2021, 5).
8. For a very different sort of case, see the controversy about the proposed statue of the devil in Segovia (BBC News, 2019).
9. Just as the definition of a pet as a "domesticated animal companion" points us toward cats and dogs rather than elephants and whales.
10. On one occasion, Pratt also refers to the "public arena" (2013, 203), but appears to use this as a synonym for the public sphere. I shall say more about the conflation of public space and the public sphere in the next section.
11. In Perez's article, the acronym "RMA" stands for "religious majoritarian approach."
12. Laborde also offers this gloss on the second article of the law: "Article 2 … defines public place in the broadest way possible, as referring to any space outside the home" (Laborde, 2012, 406). The French original reads: "Pour l'application de l'article 1er, l'espace public est constitué des voies publiques ainsi que des lieux ouverts au public ou affectés à un service public," so a more literal translation would be something like: "For the application of Article 1, public space is made up of public roads as well as places open to the public or assigned to a public service."
13. For examples of these three scenarios, see Bulman (2016), Krishnan and Shingler (2017), and BBC News (2013).
14. It should be noted that, in making the claim that it is possible to identify characteristics common to all public spaces, I am rejecting alternative approaches, such as one which suggests that all such spaces are only united by family resemblance. For an insightful contrast between these two approaches with reference to religion, see Astor (2022).
15. According to Parkinson, "the idea of open accessibility is fundamental to many definitions of public space" (2012, 54).
16. As we shall see later, Chiodelli and Moroni (2014) develop a typology of urban spaces based on property regimes.

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17. According to the explanatory notes to Quebec's *Act to foster adherence to State religious neutrality*, "persons who request a service from … personnel members of public bodies and certain other bodies … must have their face uncovered when the service is provided" (Government of Quebec, 2017; word order changed).
18. I thank Varun Uberoi for insisting that I make this clear.
19. As Silvio Ferrari puts it, the public political sphere "is the space of debate and discussion where the public discourse takes shape" (Ferrari, 2013, 17).
20. See the discussion in Kellner (2014).
21. As Low, McCleave-Maharawal, and Dalakoglou put it, public space comprises "the physical and virtual places where the public sphere is located" (Low, McCleave-Maharawal and Dalakoglou, 2014, 24).
22. For example, in an investigation of the role of religion in the public sphere, Ferrari distinguishes between common, political, and institutional public spaces (2012). Carmona, a professor of planning and urban design, offers a much more general account, distinguishing no less than 20 types of urban space (2010, 169–70).
23. Here I follow Chiodelli's and Moroni's use of the term "urban space" to encompass both public and private spaces.
24. I have put aside "iii. *Privately run public spaces*," "iv. *Simple private spaces*," and "v. *Complex private spaces*" (Chiodelli and Moroni, 2014, 169).
25. One case of the first kind would be the Bavarian *Kreuzpflict*; one of the second kind would be the controversy concerning the cross in the Blue Room of Québec's National Assembly (CBC News, 2019). Note that this contrast also suggests that not all special public spaces are alike: schools are where future citizens are educated, whilst parliamentary assemblies are places of special symbolic significance in the lives of their nations. It follows that a complete account of special public spaces would need to make this and other relevant differentiations *within* the category of special public spaces.
26. I thank Varun Uberoi for insisting that I make this clear.
27. For an interesting answer to this question, see Ceva and Zuolo on the right to a mosque: "Muslims have a collective … claim right to space for building mosques, grounded in their collective interest in collective prayer" (Ceva and Zuolo, 2016, 115).
28. As one example of a fair procedure, with regard to the "display of the crucifix in the classrooms of public schools," Ferrari suggests that "all the persons who, in different capacities, attend the school must be involved in the decision-making process" regarding such display (Ferrari, 2013, 21).

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