

Towards a Political Theory of Secularism

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DEFINING SECULARISM

Defining secularism is itself a heated issue.¹ “Secularism,” “secular,” “secularization” are polysemic terms.² I will use “secularism” as a *political* concept that is concerned with the relationship between state power and religious beliefs, practices, and institutions.³ I will therefore refer to, following Rajeev Bhargava’s footsteps,⁴ “political secularism.” Political secularism has the same meaning and extension as *laïcité* in

¹I wish to thank Catherine Rioux for her thoughtful comments and careful editorial work.

²C. Taylor, *A Secular Age*, Harvard University Press, Cambridge, MA 2007.

³This, in turn, logically raises the question of the relationship between secular and religious comprehensive doctrines.

⁴R. Bhargava, “Political Secularism: Why It Is Needed and What Can Be Learnt from Its Indian Version,” in G. Brahm Levey and T. Modood (eds.), *Secularism, Religion and Multicultural Citizenship*, Cambridge University Press, Cambridge 2008, pp. 82–109.

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French (properly understood) or as “the secular state.” For my purposes, “political secularism” is understood in the spirit of John Rawls’ political liberalism⁵ for at least three reasons:

- 1) it is primarily concerned with the justification of basic public norms and institutions;
- 2) it *does not* entail a *prima facie* negative disposition towards religious commitments; it acknowledges the fact of reasonable moral pluralism;
- 3) it seeks to make the pursuit of an “overlapping consensus” under conditions of reasonable moral pluralism possible.

Political secularism has predominantly been understood, following the French and American traditions, in terms of the “separation of church and state” (or of “wall of separation”) and of the “neutrality of the state toward religion,” both of which have been seen as entailing a sharp distinction between the public sphere and the private sphere. These definitions did not withstand the repeated and never falsified empirical demonstrations that a strict separation or neutrality is observed under no regime of secularism, including the French and American ones.⁶ We can find different forms of connection (support, association, control, compromises, accommodations, etc.) between state and religion in all secular regimes.

One of the emerging consensuses among scholars is that political secularism is not a simple and monolithic concept that we would just need to apply correctly to determine the proper place of religion in the public sphere. Looking at the paradigmatic cases of political secularism in the West—the American and the French cases—quickly reveals that political secularism is founded on a plurality of principles:

⁵J. Rawls, *Political Liberalism*, Columbia University Press, New York 1993.

⁶See, e.g., J. Baubérot, “Liberté, laïcité, diversité—La France multiculturelle,” in P. Eid, P. Bosset, M. Milot and S. Lebel-Grenier (eds.), *Appartenances religieuses, appartenance citoyenne. Un équilibre en tension*, Presses de l’Université Laval, Québec 2009, pp. 12–28; T. Modood, “Moderate Secularism, Religion as Identity and Respect for Religion,” *The Political Quarterly* 81 (1), 2010, pp. 4–14, and P. Hamburger, *Separation of Church and State*, Harvard University Press, Cambridge, MA 2009.

- The First Amendment of the American constitution stipulates that the Congress cannot pass laws which would have the effect of either establishing a religion or prohibiting the free exercise of religion. The First Amendment asserts two principles, better known as the “non-establishment” and the “free exercise” clauses. An always evolving and not always coherent jurisprudence sprung out of both clauses.⁷ In her thoughtful book *Liberty of Conscience*, Martha Nussbaum, trying to systematize the American tradition of political secularism and freedom of conscience, argues that it is built upon six basic principles: equality, equal respect for all, freedom of conscience, accommodation, non-establishment, and separation.⁸
- In France, the foundational 1905 “Loi sur la séparation” affirms that the French Republic grants freedom of conscience to all citizens *and* that it ought to be separated from, and neutral towards, all religions:
 - “The Republic ensures the liberty of conscience of all citizens.”
 - “The Republic does not recognize, remunerate, or subsidize any religious denomination.”
- In 2003, following another round of the hijab debate, the Stasi Commission on the application of the principle of *laïcité* argued that French *laïcité* is founded upon three distinct principles: freedom of conscience, equal legal status for all religious and spiritual options, and state neutrality with regard to religion.⁹

Moving from a monist to a pluralist conception of political secularism is a step forward. But it is not sufficient. We also need to recognize that political secularism’s constitutive principles belong to different conceptual categories. Distinguishing between the different types of principles and clarifying the relationship between them will provide us with a better

⁷For the former clause, see K. Greenawalt, *Religion and the Constitution* (2 Vols.), Vol. 1: *Free Exercise and Fairness*, Princeton University Press, Princeton 2009. For the latter, see *Ibid.*, Vol. 2: *Establishment and Fairness*.

⁸M. Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality*, Basic Books, New York 2007, pp. 21–22.

⁹Commission de réflexion sur l’application du principe de laïcité dans la République, “Rapport Stasi,” 2003. Retrieved from <http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf> on March 10, 2013.

theory, a theory that can help us in thinking more clearly about the hard cases related to the place of religion in the public sphere.

I want to suggest that one of the problems with the available theories of political secularism is at the level of conceptual analysis: They do not distinguish between the moral ends and the institutional means of the secular state. Nussbaum, for instance, lumps together principles that are properly moral (equality, equality of respect, and freedom of religion) and principles that have to do with institutional and policy design (non-establishment, separation, and accommodation).¹⁰ The same line of criticism also applies to Bhargava's reconstruction of the Indian model of political secularism.¹¹ The consequence of these shortcomings is that normative theory does not help us as much as it could to understand practical dilemmas that all diverse societies are facing and to arbitrate disagreements between citizens.

Building on the work done with Taylor, I want to argue that political secularism, as a normative notion, expresses the interaction between four constitutive principles: freedom of conscience and religion, equal respect, the separation between political power and religion, and the religious

¹⁰There are also other problems with Nussbaum's reconstruction (M. Nussbaum, *Liberty of Conscience...*, op. cit., pp. 21–22): some principles seem to be derived rather than freestanding. What is the relationship between equality and equality of respect? Accommodation is generally thought to be derived from the principles of equality and non-discrimination or of freedom of conscience. Moreover, it is not clear how the principles of "non-establishment" and "separation" differ.

¹¹Among the features that make Indian political secularism an attractive alternative to the mainstream Western models, Bhargava lists its "multi-value character," its concern with both inter- and intra-religious domination, the ideal of a "principled distance" between the state and religious communities, and its commitment to "contextual moral reasoning" (R. Bhargava, "Political Secularism..." op. cit., pp. 101–103). Although we should credit Bhargava for urging us to see secularism as a "multi-value" notion, his conceptualization is of limited use when it comes to applying it to concrete cases. The moral aims of Indian secularism are not distinguished from its institutional arrangements, no priority order between the principles is specified, and properly normative principles (such as non-domination) are lumped together with conceptual or meta-ethical considerations (the multi-value character, the commitment to contextual moral reasoning). Bhargava rightly points out that practical deliberation will always be necessary to sort out disagreements and conflicts, but it seems to me that he is giving up too soon in terms of the contribution that normative theorizing can make to such deliberation (*ibid.*, p. 106). It would be interesting to see what would be the similarities and differences between the Indian and the "mainstream" models after a tidying up of his theoretical reconstruction.

neutrality of the state. Freedom of conscience and religion are the *moral ends* of political secularism, whereas separation and neutrality constitute its *modus operandi*.

FREEDOM OF CONSCIENCE AND EQUAL RESPECT

A secular state seeks to protect the freedom of conscience and religion of all citizens. As John Locke argued, religious belief has an irreducible subjective dimension; the human mind cannot be coerced into believing. True faith cannot be imposed, as it requires assent and sincerity. Moreover, rulers or state officials are just as likely to err as ordinary citizens when it comes down to interpreting the will or wisdom of God. Fallibilism with regard to theological questions has been at the root of the liberal justification of moral autonomy and religious toleration from Locke to Rawls. Since not all forms of religiosity are primarily based on conscience or inner experience, freedom of conscience and religion also entails the right to act (reasonably) on the basis of one's convictions. A liberal regime sees persons as moral agents potentially capable of endorsing and revising a conception of the good life.

Ensuring freedom of conscience and religion is not sufficient. A secular state also has to endorse the principle according to which all citizens deserve equal respect. Given once again the fact of reasonable moral pluralism and what Rawls calls the "burdens of judgement," the state owes *a priori* the same respect or concern to all citizens, regardless of their worldviews or conceptions of the good life.¹² More precisely, the state owes equal respect to all "reasonable" conceptions of the good life.¹³ The principle of equal respect is also derived from our epistemic limitations: We do not have access to an uncontroversial point of view which would allow us to rank the various reasonable conceptions of the good life. A citizen endorses a reasonable view when she is prepared to offer fair terms of social cooperation to others. To put it differently, the political conception of justice which grounds the basic institutional structure of a society cannot entail that a subset of the citizenry will be excluded or treated as second-class citizens.

¹²R. Dworkin, *Sovereign Virtue: The Theory and Practice of Equality*, Cambridge University Press, Cambridge 2002.

¹³J. Rawls, *Political Liberalism*, op. cit.

Although this would require further justification, I want to suggest that no priority order applies to the relationship between the two moral principles of political secularism. They are seen as “equiprimordial” because if, on the one hand, freedom of conscience was seen as the only moral end, the state could end up favoring some citizens over others by granting accommodations, exemptions or other forms of special recognition that maximize freedom of religion for some but that can also be rightly seen as unwarranted privileges.

Conversely, equal respect should not be seen as the master principle of political secularism, although the story is a bit more complicated. The main reason is that there are ways that the state could claim with some plausibility that it meets the demand of equal respect while nonetheless unduly restricting the freedom of conscience or religion of some citizens. The state could treat all citizens equally from a formal point of view by treating them in the same way (“equal treatment” in Dworkin’s terms). But as the multicultural critique of standard liberalism revealed (although this is contentious), equal treatment qua *identical* treatment can make it more difficult for citizens holding minority beliefs to exercise their freedom of religion. It is generally harder for members of minority religions or worldviews to follow their conscience while availing themselves of the opportunities that other citizens have access to (in the workplace, at school or at the hospital, etc). This is why accommodation measures are sometimes necessary.¹⁴

These two ends can clash. Although this needs to be verified empirically, the theory suggests that many of the tensions related to the fact of moral and religious diversity originate from the conflict between the two moral principles of political secularism. And since these two aims are seen as “equiprimordial,” the normative aim of a secular state should be the maximal but joint realization of equal respect and freedom of conscience, or the optimal conciliation of the two principles. This argument was challenged by Domenico Melidoro, who argued that the value pluralist position defended above is misguided. Equal respect and freedom of conscience are not, according to him, two distinct and irreducible moral

¹⁴See W. Kymlicka, *Multicultural Citizenship: A Theory of Minority Rights*, Clarendon Press, Oxford 1995; J. Quong, “Cultural Exemptions, Expensive Tastes, and Equal Opportunities,” *Journal of Applied Philosophy* 23 (1) 2006, pp. 53–71, and J. MacLure and C. Taylor, *Secularism and Freedom of Conscience*, Harvard University Press, Cambridge, MA 2011.

principles. He rather suggests that equal respect logically encompasses freedom of conscience—the state grants equal respect to all citizens by respecting, among other things, their freedom of conscience. Freedom of conscience is seen as derived from equal respect.¹⁵

At a general level, the relationship between equal respect and freedom of conscience should be seen, I think, as a specific instantiation of the relationship between the concepts of equality and liberty. Equal respect is an interpretation of the concept of equality, whereas “freedom of conscience and religion” is one of the freedoms constitutive of liberty. Melidoro’s criticism seems to entail that liberty is derived from equality. His argument requires a refutation, perhaps *à la* Dworkin, of value pluralism at the level of moral ontology. I have yet to see a convincing argument in favor of value monism.¹⁶

But more to the point, I think that there are sound reasons to follow ordinary legal language and practice. Charters of rights and freedoms distinguish between the right to equality (and non-discrimination) and specific freedoms, such as freedom of religion. The main reason why I think that we need that distinction is that tensions between the right to equality and freedom of conscience/religion do emerge in practice, and that we need a vocabulary to express such tensions and to reason about them.

Let us imagine a public school where the majority of the students are Catholic. The parents who are sitting on the school board ask that a prayer be said before class begins, or that a cross is put on the wall. Acquiescing to the parents’ request would undoubtedly bolster their freedom of religion. Few would think, however, that this is a fair policy,¹⁷ as students who come from non-religious families or whose religious faith is different would not be treated with equal respect.¹⁸

¹⁵D. Melidoro, “Laïcité et Liberté de Conscience,” *International Review of Sociology* 22 (1) 2012, pp. 167–169.

¹⁶J. Maclure, “L’avenir contextualiste du constructivisme: le constructivisme humien amendé,” Manuscript under review.

¹⁷However, in a disturbing ruling, the European Court of Human Rights upheld the Italian court’s opinion that a crucifix in class did not violate the rights of people who are not religious or of other religions (EHR Court, 2nd Sect., *Lautsi v. Italie*, Req. no 30814/06, 2011).

¹⁸One could say that the policy also infringes upon the freedom of conscience of non-Catholic students. If the prayer is mandatory, this is true. But I want to argue that even if non-Catholics are exempted, the policy still clashes with the norm of equal respect.

Now, how do we make sense of this conflict? The monistic position seems to entail that we are faced with an internal conflict: showing equal respect to the Catholic parents clashes with showing equal respect to the minority of non-believers and adherents to other religions. But if you then try to figure out what the norm of equal respect for the Catholic parents means, you have to define it in terms of respecting their freedom of religion. The theory thus becomes less precise from an analytical point of view.

A more difficult question is whether the other way around is also true, i.e., whether we can think of cases where the state does show equal respect to all citizens while at the same time restricting the freedom of conscience or religion of some citizens. As mentioned, we can find instances of such a conflict if equal respect is understood as implying identical treatment: Everyone is treated the same, no one is singled out by the law, but no differential or special treatment is allowed. In Dworkin's terms, this amounts to treating all citizens "equally" rather than "as equals." Some egalitarians defend such an interpretation of the concept of equality. Brian Barry, for instance, argues that equal respect entails providing citizens with the same set of meaningful opportunities, and it is then up to them to choose how to use them (and to bear the consequences of their choices).¹⁹ This conception of equality and fairness rules out accommodation measures for members of minority groups.

Although it is not my goal in this chapter to make the moral case for accommodations, if equal respect is meant in a way that excludes differentiated treatment, then it can collide with freedom of conscience or religion.²⁰ Norms that are *prima facie* non-discriminatory can sometimes prevent members of minority groups to avail themselves of the same set of opportunities as the majority. Think, for instance, of a schoolboy who has to decide between following his conscience and wearing a turban or going to a public school that prohibits visible religious signs, or of a Muslim woman who wishes to pass the mandatory practical exam for obtaining her driver's license but who does not want to be in a confined space with a male stranger.

¹⁹B. Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, Harvard University Press, Cambridge, MA 2002.

²⁰See J. Maclure and C. Taylor, *Secularism and Freedom of Conscience*, op. cit., Part II.

Now, if equal respect is understood as compatible with accommodation measures (as I think it should), then it will indeed be more difficult to find cases where granting equal respect will entail encroaching on the freedom of conscience and religion of some citizens. This would leave us with a degree of asymmetry in the theory: Ensuring the free exercise of religion can encroach upon the principle of equal respect, but showing equal respect (properly understood) to all involves *inter alia* respecting their freedom of conscience and religion. This is true. But is perfect symmetry a condition of validity of the theory? I do not see any reason why it would be. What needed to be shown is that occurrences of a genuine conflict between equal respect and freedom of conscience can be found. Until this is proven wrong, we need to hold on to the pluralist position.

SEPARATION AND NEUTRALITY

The claim is thus that equal respect and freedom of conscience and religion are the two moral ends of political secularism. But what about what we normally associate with the secular state, i.e., the separation of church and state and the religious neutrality or impartiality of the state? Separation of state and religion and religious neutrality are better seen as part of the institutional design needed to achieve equal respect and freedom of conscience, as it is hard to see how the state can show equal respect and protect freedom of conscience if it is organically linked to, or if it favors, a given church or religion.

The state must be able to justify its actions to all citizens, which entails that it has to be somehow neutral with regard to basic worldviews and conceptions of the good. The justifications of the public norms of the state must be “secular” or “public,” which means that they ought to be potentially endorsable by all reasonable citizens. This is not likely if the reasons are derived from a religious doctrine or if it privileges the members of a given religious community. As I will explain below, at least some *degree* of separation and neutrality appears to be necessary for achieving equal respect and freedom of religion in a roughly satisfying way.

If this is right, we could say that political secularism is based on four principles: two action-guiding *moral* principles (equal respect and freedom of conscience) and two *institutional* principles (the separation between the state and religion and state neutrality). The value of the former is intrinsic, whereas the value of the latter is derived from their capacity to bring about the ends of a secular regime. This

conceptualization displaces separation and neutrality to the status of valuable institutional means of the secular state.

I therefore disagree with Veit Bader's claim that "[w]hen we, eventually, discuss 'normative ideals'—rights, first-order principles and second-order principles—we will not be helped but instead deeply troubled by the language of secularism."²¹ But for a normative theory of secularism to be helpful, we need to be clear about its constitutive principles. Bader suggests that the language of secularism be replaced by the broader language of "liberal-democratic constitutionalism." Although I think an adequate conception of political secularism needs to cohere with our understanding of liberal-democratic constitutionalism, I see the former as a specification of the latter: We need a conceptual and normative language that enables us to think about the relationship between the state and religions and about the various issues raised by religious diversity and the variety of religious experiences.²²

POLITICAL SECULARISM *VERSUS* MODERATE SECULARISM

But are separation and neutrality *necessarily* part of the *modus operandi* of the secular state? Defenders of the "moderate secularism" position do not think so. Tariq Modood (2010) believes that neither separation nor neutrality is a necessary condition of political secularism. Weaker forms of the establishment, such as in the UK today, are compatible with the aims of the secular state. A state that has an established church can still ensure the freedom of conscience and religion of the non-adherents as well as recognize other religious communities. If severing some ties

²¹V. Bader, "Beyond Secularisms of All Sorts," in *The Immanent Frame: Secularism, Religion, and the Public Sphere*, 2011. Retrieved from <http://blogs.ssrc.org/tif/2011/10/11/beyond-secularisms-of-all-sorts/> on March 10, 2013.

²²This is why I think that political liberalism needs to be supplemented by political secularism. I agree with Cécile Laborde about the relative indeterminacy of Rawls' political liberalism with regard to the state vs. church relationship (C. Laborde, "Political Liberalism and Religion: On Separation and Establishment," *Journal of Political Philosophy* 21 (1), 2013, pp. 67–86). I also concur with Akeel Bilgrami, who writes that "[l]iberalism is a wider notion than secular liberalism, which qualifies liberalism to a restricted domain, just as liberal secularism qualifies secularism to a restricted set of cases of secularism." A. Bilgrami, "Secularism: its Content and Context," an unpublished manuscript, p. 15. [Editorial note: A revised version of the manuscript has been published as: A. Bilgrami, "Secularism: its Content and Context," *Journal of Social Philosophy* 45 (1) 2015, pp. 25–48].

with religion can be necessary under regimes of the strong establishment, pluralizing the modes of engagement of religion with the state can also lead to what Modood calls greater “multicultural equality.” Moreover, Modood is keen to point out that in all societies even those that are officially secular or that have a separation or non-establishment clause in their constitution, separation, and neutrality are never fully realized in practice—we can always find forms of recognition or association between the state and religion. Most European countries are, according to Modood, “moderately secular,” that is involving both some degree of separation and neutrality and some degree of connection and recognition. Moderately secular states are better, according to him, than “ideologically secular” states at recognizing and accommodating minority religious groups.²³

As it should be clear, I share Modood’s belief that separation and neutrality are not the core principles of political secularism. I also think that he is right when he says that states that have retained some form of connection with the dominant church can nonetheless be secular. When you look at it from the standpoint of the moral ends of political secularism, it seems arbitrary to exclude countries such as the UK, Denmark, or Norway from the category of secular states. Regimes that have an established church or that grant a special form of recognition to one or more religious communities can still take actions to move toward equal respect and freedom of religion. “Path-dependency” needs to be factored in non-ideal theory; disestablishment, ending the monarchy, or completely severing the ties with the dominant church might not be a realistic option in countries such as the UK, Denmark, Austria, Italy, and Spain. These countries can nonetheless seek to achieve greater equality among citizens holding diverging conceptions of the good and to better protect freedom of religion.²⁴

There is one problem, however, with “moderate secularism.” Even in non-ideal theory, the purpose of normative theory remains to guide us through our normative inquiries. A normative theory needs to help us think about how the state ought to relate to religion. Among other things, a normative theory provides us with a critical and counterfactual

²³T. Modood, “Moderate Secularism...” op. cit.

²⁴S. Lægaard, “Moderate Secularism and Multicultural Equality,” *Politics* 28 (3), 2008, pp. 160–168.

perspective that allows us to evaluate existing norms, policies, practices, and discourses.²⁵

Modood's position, in its current form, arguably lacks a critical edge with regard to the regimes that grant special recognition to one or more religions. The fact is that a regime of "weak establishment" still confers benefits to the official church.²⁶ The Anglican Church does not have much direct political power in the UK, but it still enjoys a privileged status in terms of political influence, symbolic recognition, and resource allocation. Along the same lines, states such as Austria, Denmark, Spain, and Italy that grant special recognition to several religious groups do so in an *uneven* way, and they have to design criteria for establishing which groups will be recognized and which will not.²⁷ The Austrian state, for example, following a corporatist model of selective cooperation, recognizes fourteen religious groups, but the Catholic Church still enjoys a privileged status.²⁸ Our normative theory needs to tell us when norms and policies fail to meet the demands of justice.

As Bhargava reminds us, this should not lead us to conclude that moderate secularism is not a form of political secularism at all.²⁹ As already pointed out, all secular regimes fail to different degrees to achieve the ends of political secularism. The preamble of the 1982 Canadian Charter of Rights asserts that "Canada is founded upon principles that recognize the supremacy of God and the rule of law," a crucifix still hangs above the head of the president of the legislative assembly in Quebec City, and Ontario still funds Protestant and Catholic public schools but not non-Christian denominational public schools. In France,

²⁵J. Maclure, "La philosophie politique analytique et ses critiques," in D. Giroux and D. Karmis (eds.), *Ceci n'est pas une idée politique: Réflexions sur les approches à l'étude des idées politiques*, Presses de l'Université Laval, Québec 2013.

²⁶S. Lægaard, "Moderate Secularism and Multicultural Equality," op. cit.

²⁷V. Bader, "Beyond Secularisms of All Sorts," op. cit.

²⁸J. Mourão Permoser, S. Rosenberg, "Religious Citizenship Versus Policies of Immigrant Integration: The Case of Austria," in M. Koenig (ed.), *International Migration and the Governance of Religious Diversity*, McGill-Queen's University Press, Montreal and Kingston, CA, pp. 259–289. For the case of Denmark, see S. Lægaard, "Religious Neutrality, Toleration and Recognition in Moderate Secular States: The Case of Denmark," *Les ateliers de l'éthique* 6 (2), 2012, pp. 85–106.

²⁹R. Bhargava, "Beyond moderate secularism," in *The Immanent Frame: Secularism, Religion, and the Public Sphere*, 2011. Retrieved from <http://blogs.ssrc.org/tif/2011/09/16/beyond-moderate-secularism/> on March 10, 2013.

the maintenance of Catholic and Protestant churches and of synagogues built before the 1905 law of separation is funded by the state, a concordat still prevails in Alsace-Moselle, and more Catholic holidays are statutory holidays than in Quebec. All democratic societies have their shortcomings and peculiarities in terms of the management of moral and religious diversities, but political communities that aim to show equal respect to all citizens notwithstanding their worldview and to ensure freedom of conscience and religion can be deemed secular.

CONCLUSION

The heightened attention that secularism has received in political philosophy is a direct response to the challenges that contemporary societies are facing with regard to the management of moral and religious diversity. Political theories of secularism are specifications of broader and more abstract political conceptions of justice. Combined with the move toward non-ideal and contextual normative theory, it creates a rich conceptual space in which different national experiences can be compared and contrasted. Since it remains true that scholars are sometimes blind to the shortcomings of their own political culture—I am no exception—such comparative dialogues are a welcome contribution to contemporary political theory.³⁰

³⁰This chapter is based partially on J. Maclure, “Political Secularism: A Sketch,” RECODE Online Working Paper 16, 2013. Retrieved from <http://www.recode.info/wp-content/uploads/2013/09/Maclure-RECODE-August-2013.pdf> on September 18, 2017.



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