

The Right to Difference, the Duty to Protect: Rethinking State Neutrality toward Religious Minorities in Indonesia

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Abstract

State neutrality is frequently invoked as a foundational principle in regulating religious diversity, yet neutrality may become problematic when dominant social groups possess greater institutional and political power. This article reexamines the meaning of state neutrality in relation to religious minorities in Indonesia. The study asks whether the state can legitimately remain passive when minority communities experience discrimination, intimidation, or unequal access to religious freedom. Employing a normative constitutional approach, the research analyzes constitutional provisions, human rights principles, legislation, and selected judicial decisions concerning freedom of religion and minority protection. The article distinguishes between formal neutrality, which requires equal treatment regardless of religious identity, and substantive neutrality, which may require positive state intervention to correct unequal conditions. The analysis argues that a purely passive conception of neutrality can reproduce existing inequalities because majority practices may already shape institutional norms and public policy. Consequently, equal protection may require the state to take affirmative measures against discrimination while maintaining impartiality among competing religious doctrines. The study proposes a duty-to-protect framework grounded in equality, proportionality, and positive human rights obligations. It concludes that genuine neutrality should not be equated with governmental inaction. Rather, the state must ensure conditions under which minorities can exercise religious freedom on substantially equal terms. This approach reframes neutrality as an active constitutional commitment to pluralism rather than a justification for institutional passivity.

[Netralitas negara seringkali dijadikan prinsip dasar dalam mengatur keragaman agama, namun netralitas dapat menjadi problematis ketika kelompok sosial dominan memiliki kekuatan institusional dan politik yang lebih besar. Artikel ini mengkaji ulang makna netralitas negara dalam

kaitannya dengan minoritas agama di Indonesia. Studi ini mempertanyakan apakah negara dapat secara sah tetap pasif ketika komunitas minoritas mengalami diskriminasi, intimidasi, atau akses yang tidak setara terhadap kebebasan beragama. Dengan menggunakan pendekatan konstitusional normatif, penelitian ini menganalisis ketentuan konstitusional, prinsip-prinsip hak asasi manusia, legislasi, dan beberapa keputusan pengadilan mengenai kebebasan beragama dan perlindungan minoritas. Artikel ini membedakan antara netralitas formal, yang mensyaratkan perlakuan yang sama tanpa memandang identitas agama, dan netralitas substantif, yang mungkin memerlukan intervensi positif negara untuk memperbaiki kondisi yang tidak setara. Analisis ini berpendapat bahwa konsepsi netralitas yang sepenuhnya pasif dapat mereproduksi ketidaksetaraan yang ada karena praktik mayoritas mungkin telah membentuk norma-norma institusional dan kebijakan publik. Akibatnya, perlindungan yang setara mungkin mengharuskan negara untuk mengambil tindakan afirmatif terhadap diskriminasi sambil tetap menjaga imparialitas di antara doktrin-doktrin agama yang bersaing. Studi ini mengusulkan kerangka kerja kewajiban untuk melindungi yang berlandaskan pada kesetaraan, proporsionalitas, dan kewajiban hak asasi manusia yang positif. Kesimpulannya, netralitas sejati tidak boleh disamakan dengan ketidakaktifan pemerintah. Sebaliknya, negara harus memastikan kondisi di mana minoritas dapat menjalankan kebebasan beragama dengan syarat yang pada dasarnya setara. Pendekatan ini membingkai ulang netralitas sebagai komitmen konstitusional aktif terhadap pluralisme, bukan sebagai pembenaran atas pasivitas kelembagaan.]

Keywords: state neutrality, religious minorities, positive obligations, constitutional law, religious freedom

Introduction

Indonesia's constitutional order formally protects religious freedom while simultaneously operating within a social environment characterized by substantial religious diversity and unequal distributions of political, demographic, and institutional power. The 1945 Constitution guarantees freedom of religion and worship through Articles 28E and 29(2), while Article 28I affirms freedom from discriminatory treatment as a fundamental constitutional guarantee. These provisions suggest that the constitutional state must protect both individual freedom and religious diversity. Nevertheless, the formal existence of constitutional guarantees does not resolve the institutional question of how the state should respond when minority communities encounter discrimination, intimidation, restrictions on worship, or unequal access to public institutions. The central constitutional problem is therefore not simply whether the state recognizes religious freedom, but whether the state understands neutrality as a duty to refrain from

religious preference or as a broader obligation to create conditions under which all persons can exercise religious freedom meaningfully.

The concept of state neutrality is often presented as a safeguard against governmental involvement in religious affairs. Under this formal conception, the state should neither endorse nor discriminate against particular religious doctrines and should apply the law equally to all citizens. Such an approach has considerable constitutional value because governments can themselves become sources of religious persecution when public authority is used to privilege official orthodoxy. However, neutrality becomes more complicated when social relations are already unequal. A government that refuses to intervene when a minority community is threatened may appear institutionally impartial while allowing the stronger social group to determine the actual boundaries of religious freedom. In such circumstances, governmental passivity may preserve formal equality while producing substantive inequality.

This distinction is particularly important in Indonesia, where religious minorities have experienced diverse forms of exclusion involving restrictions on houses of worship, administrative discrimination, intimidation, social hostility, and unequal institutional protection. Research concerning Indonesian religious freedom has repeatedly demonstrated that legal and administrative restrictions can interact with local majoritarianism and produce unequal consequences for minority groups (Crouch 2014; Lindsey and Pausacker 2016; Wardana et al. 2025). The constitutional question therefore extends beyond explicit discrimination. A formally neutral policy may become unequal when authorities ignore the fact that one community can exercise its rights without assistance while another cannot do so safely without state protection.

International human rights law supports this broader understanding of state responsibility. Article 18 of the International Covenant on Civil and Political Rights protects freedom of thought, conscience, religion, and belief. General Comment No. 22 emphasizes that this protection extends beyond traditional religions and includes theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief (Human Rights Committee 1993). The broader principle of state responsibility also recognizes that human rights obligations may require positive measures to protect individuals against interference by private actors (Human Rights Committee 2004). In the context of religious minorities, this means that violations can arise not only from direct state action but also from state failure to prevent or respond effectively to foreseeable private discrimination, intimidation, or violence.

Previous scholarship on state neutrality has developed largely through debates concerning secularism, liberal constitutionalism, multiculturalism, and equality. Rawls (1993) emphasizes political principles capable of being justified without dependence on comprehensive religious doctrines, whereas Dworkin (2011) connects political equality with equal concern and respect. Modood (2019) and other multicultural theorists criticize simplistic models of neutrality that ignore

unequal social conditions and argue that equal citizenship may require differentiated institutional responses. Laborde (2017) similarly demonstrates that liberal neutrality cannot be reduced to the complete absence of interaction between religion and public institutions. These theoretical debates provide a useful basis for examining Indonesia, where constitutional protection of religious freedom must coexist with a political order that does not follow a strict separationist model.

Indonesian scholarship has frequently focused on the legal status of recognized religions, blasphemy regulation, local restrictions, houses of worship, and the protection of minority communities. Butt (2016) demonstrates how Indonesian constitutional and political institutions have often struggled to reconcile liberal rights principles with majoritarian and religious pressures. Crouch (2014) analyzes how state institutions have regulated religious diversity through complex interactions between law, politics, and social authority. More recent research continues to identify constitutional ambiguity between the guarantee of religious liberty and broader state commitments to religious order, social harmony, and belief in God (Wardana et al. 2025). These studies demonstrate that Indonesian religious freedom cannot be understood solely as a question of individual liberty; it is also a question of institutional design and state responsibility.

Despite these contributions, existing debates have not always sufficiently distinguished doctrinal neutrality from protective neutrality. Doctrinal neutrality requires the state not to determine the theological truth of competing religious beliefs. Protective neutrality, by contrast, requires the state to ensure that unequal social power does not prevent some groups from exercising rights that others enjoy in practice. The distinction is essential because affirmative protection does not necessarily constitute religious favoritism. Providing police protection to a threatened minority congregation, ensuring equal access to administrative services, or investigating religiously motivated violence does not endorse a minority doctrine. Rather, it protects the equal citizenship of persons whose ability to exercise constitutional rights is impaired by unequal vulnerability.

The principal contribution of this article is therefore to reconceptualize neutrality through the formula “asymmetric vulnerability, symmetric citizenship.” The framework argues that the state should respond to unequal vulnerability with differentiated protective measures while maintaining equal legal status among religious and belief communities. The greater need for protection does not create greater theological status. Instead, differentiated intervention serves the purpose of restoring substantially equal conditions for the exercise of constitutional rights. This distinction allows the state to reject both religious favoritism and passive indifference.

The novelty of the article lies in integrating constitutional equality, positive obligations, proportionality, and minority protection into a unified theory of protective neutrality. Existing accounts often treat neutrality and affirmative state action as opposing principles: neutrality requires inaction, while protection requires preference. This article challenges that dichotomy. It argues that a state may remain

neutral between doctrines while acting decisively against unequal conditions. The proposed framework therefore assesses neutrality according to its constitutional effects rather than merely according to the absence of governmental intervention.

Methodologically, the study employs normative constitutional analysis. It examines the 1945 Constitution, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2005 ratifying the ICCPR, Law No. 40 of 2008 on the Elimination of Racial and Ethnic Discrimination, relevant administrative and criminal legislation, international human rights standards, and selected judicial decisions. The analysis also engages comparative constitutional and human rights scholarship concerning neutrality, positive obligations, pluralism, and proportionality. The discussion is organized into five substantive dimensions: the conceptual limits of passive neutrality, the constitutional foundations of the duty to protect, the relationship between majority power and unequal religious freedom, the proposed model of protective neutrality, and institutional mechanisms for implementation.

Results and Discussion

1. The Limits of Formal and Passive Neutrality

The first finding is that formal neutrality is insufficient when the exercise of religious freedom is affected by unequal social power. Formal neutrality requires government institutions to apply legal standards without explicitly distinguishing among religious identities. This principle is important because direct state favoritism can transform constitutional government into an instrument of religious domination. However, equal legal language does not necessarily produce equal social conditions. A regulation that applies formally to every community may burden a minority more severely when the majority possesses greater access to political influence, public support, security, or institutional representation.

This problem can be illustrated through the distinction between equal rules and equal freedom. Suppose the state adopts a formally neutral policy requiring all religious communities to obtain local approval before establishing a house of worship. Communities belonging to a demographic majority may obtain such approval relatively easily because they possess social networks and political influence, whereas minority communities may face organized opposition. If authorities treat the resulting inequality as a private social problem and refuse to intervene, the state may claim neutrality while allowing majority preferences to determine the practical availability of constitutional rights. The law becomes formally equal but substantively exclusionary.

The same logic applies to religious intimidation. A state that does not formally prohibit a minority religion may still fail to protect its members when they are threatened by private actors. Passive neutrality would treat intervention as favoritism, arguing that the state should not become involved in conflicts between religious communities. Yet this reasoning misunderstands the constitutional function of public authority. Police protection against violence is not an endorsement of the victim's religion; it is an exercise of the state's duty to protect

security and legal equality. The refusal to provide protection can therefore amount to unequal treatment when the state knows that a particular group faces distinctive risks.

International human rights principles reinforce this distinction. The Human Rights Committee has emphasized that state obligations under the ICCPR include positive duties in areas where private actors may interfere with protected rights (Human Rights Committee 2004). The United Nations Special Rapporteur on freedom of religion or belief has further explained that effective protection of religious minorities may require positive measures because violations frequently occur through combinations of state and non-state conduct (Bielefeldt 2013). A human-rights system that protects only against direct government interference would therefore leave substantial gaps where private majoritarian pressure becomes the primary mechanism of exclusion.

Formal neutrality may also obscure the institutionalization of majority norms. Schools, administrative systems, public ceremonies, land-use policies, and local governance structures may be organized around assumptions that correspond more closely to dominant religious practices. A government may defend these arrangements as cultural normality rather than intentional discrimination. However, the effect may still be unequal when minorities must request special accommodation merely to exercise rights that majorities can exercise without explanation. The constitutional problem is not solved simply because no official statement declares that minorities are inferior.

For this reason, neutrality should be evaluated according to institutional consequences. The relevant inquiry is not merely whether the government has acted differently but whether governmental action or inaction has contributed to unequal access to constitutional rights. This approach does not require the state to eliminate every social difference. Rather, it requires public institutions to prevent predictable inequalities from becoming legally entrenched. Neutrality should therefore mean impartiality toward religious truth claims combined with active responsibility for equal rights conditions.

2. Constitutional Freedom of Religion and the State's Positive Duty to Protect

The second finding is that Indonesia's constitutional framework supports a positive duty to protect religious freedom. Article 29(2) provides that the state guarantees the freedom of each resident to embrace a religion and to worship according to that religion or belief. The constitutional term "guarantees" is significant because a guarantee ordinarily requires more than passive noninterference. A right cannot be meaningfully guaranteed when the state remains indifferent to foreseeable conditions that systematically prevent its exercise.

Articles 28E and 28I reinforce this interpretation. Article 28E protects freedom to embrace religion, worship, and express belief, while Article 28I identifies freedom from discriminatory treatment as a human right. Article 28G protects personal security, and Article 28D requires recognition, protection, legal certainty,

and equal treatment before the law. Read together, these provisions suggest that religious freedom is embedded within a broader constitutional architecture of equality and protection. The state cannot plausibly claim to guarantee religious freedom while allowing individuals to lose practical access to worship because authorities decline to address intimidation or discrimination.

The international framework provides further support. Indonesia ratified the ICCPR through Law No. 12 of 2005. Article 18 protects freedom of thought, conscience, religion, and belief, while Article 26 guarantees equality before the law and equal protection without discrimination. General Comment No. 22 emphasizes the broad scope of freedom of religion or belief and rejects the notion that protection is confined to traditional or officially favored religions (Human Rights Committee 1993). General Comment No. 31 further clarifies that Covenant obligations may require positive measures where private persons or entities threaten protected rights (Human Rights Committee 2004).

Positive obligations are particularly important in the context of minorities because equality may require differentiated protective responses. The United Nations framework on religious minorities emphasizes that states should protect individuals belonging to minorities from discrimination, hostility, intimidation, and violence and should take necessary measures to ensure effective enjoyment of freedom of religion or belief (Bielefeldt 2013; United Nations Human Rights Council 2013). These measures do not transform minority communities into privileged legal subjects. Their purpose is corrective: they address obstacles that prevent minorities from enjoying rights on substantially equal terms.

The duty to protect should nevertheless remain subject to constitutional limits. Positive obligations cannot authorize the state to control religious doctrine or regulate belief beyond what is necessary to protect rights and public order. The state should not decide which theological interpretation is correct merely because one group requests protection against another. This is where neutrality retains its essential function. Public institutions must protect persons and rights without adjudicating religious truth. The state may investigate violence, enforce equality, and protect worship while remaining impartial regarding the doctrinal content of the communities involved.

A useful distinction therefore exists between protection of persons and endorsement of doctrines. The former is constitutionally required; the latter threatens neutrality. A minority congregation may receive police protection against an unlawful attack without the state endorsing its theology. A belief community may obtain equal administrative recognition without the government declaring its beliefs to be theologically valid. This distinction enables constitutional institutions to act against discrimination without transforming protection into preference.

3. Majoritarian Power and the Transformation of Neutrality into Inequality

The third finding is that neutrality becomes constitutionally problematic when majority power is treated as a natural background condition rather than a source of

rights inequality. Majorities possess structural advantages that may arise from demographic size, historical dominance, institutional representation, political networks, and cultural familiarity. These advantages are not necessarily the result of unlawful conduct, but they can influence how legal rules operate in practice. When public institutions ignore these asymmetries, formal neutrality may preserve the unequal distribution of power.

Majoritarianism is particularly dangerous when public officials treat social opposition as a reason to restrict minority rights. If a minority community faces threats because a majority group rejects its presence, authorities may respond by restricting the minority in the name of public order. Such a response effectively rewards those who create the threat and converts social hostility into a veto over constitutional rights. The state thereby becomes formally neutral between groups while substantively protecting the preferences of the more powerful side.

This dynamic can be described as a hostility paradox. The greater the hostility directed against a minority, the more difficult it becomes for the minority to exercise its rights. If authorities respond by limiting the minority's activities rather than controlling unlawful hostility, the aggressors acquire indirect regulatory power. Constitutional rights become contingent on the willingness of majorities to tolerate their exercise. Such an arrangement is inconsistent with the idea of rights as guarantees against political and social domination.

The principle of proportionality provides a mechanism for addressing this problem. Restrictions on religious manifestation should be assessed according to legality, legitimate purpose, necessity, and proportionality. International human rights standards require limitations on the manifestation of religion or belief to be prescribed by law and necessary for specific legitimate purposes; social disagreement alone does not justify a restriction (Human Rights Committee 1993). A state should therefore distinguish genuine public-order threats from disorder intentionally created by private actors seeking to suppress minority rights.

The constitutional implications are significant. Where the state possesses the capacity to protect a peaceful religious activity through ordinary law enforcement, it should not automatically restrict the activity merely because others threaten disruption. Restricting the minority may be constitutionally legitimate only where protection is genuinely incapable of preventing serious harm and where any restriction satisfies strict requirements of necessity and proportionality. Even then, temporary protective measures should not become a permanent substitute for enforcement against those responsible for intimidation.

Recent Indonesian constitutional scholarship has identified the continuing tension between religious liberty and broader constitutional concepts of religious order. Wardana et al. (2025) argue that the constitutional guarantee of religious freedom remains affected by interpretive ambiguity surrounding belief in God, individual liberty, and permissible restrictions under Article 28J. This ambiguity increases the importance of a clear theory of state neutrality. Without such a theory,

concepts such as social harmony and public order can become vehicles through which majority preferences influence constitutional interpretation.

4. From Passive Neutrality to Protective Neutrality

The fourth finding is that Indonesia requires a transition from passive neutrality to protective neutrality. Passive neutrality defines state impartiality primarily through governmental restraint. Protective neutrality defines impartiality through equal legal concern. Under the latter model, the state must remain neutral regarding competing theological claims while taking necessary measures to prevent unequal social power from determining who can exercise constitutional rights.

The proposed framework rests on the principle of asymmetric vulnerability, symmetric citizenship. Citizens and communities do not face identical risks, but they possess equal constitutional status. When one group faces greater vulnerability to intimidation or exclusion, equal citizenship may require stronger protective measures. This does not mean that the state values the protected group's religion more highly. It means that the state responds to unequal conditions in order to maintain equal access to constitutional rights.

Protective neutrality can therefore be distinguished from religious favoritism through four criteria. First, intervention must pursue a constitutionally legitimate objective, such as protecting freedom of religion, equality, personal security, or access to justice. Second, measures must be based on objective evidence of vulnerability or interference rather than theological approval. Third, interventions must be proportionate and limited to what is necessary to protect rights. Fourth, equivalent protection must be available to any religious or belief community facing comparable threats.

These criteria establish a principle of equal protection through context-sensitive intervention. The state does not provide identical measures in every situation because identical conditions do not always exist. Instead, the state provides protection according to the nature and seriousness of the rights threat. A community facing no credible danger does not require the same protective resources as a community facing organized intimidation. Equal citizenship is therefore preserved not by identical governmental behavior but by equal commitment to protecting constitutional rights.

This model also clarifies the difference between affirmative protection and positive discrimination. Positive discrimination would allocate benefits based on governmental preference for a particular identity. Protective neutrality instead responds to rights interference. The relevant trigger is not membership in a favored religion but the existence of a constitutional vulnerability. A majority religious community that faces genuine unlawful violence should receive equivalent protection. The principle is therefore generalizable across identities.

The approach has implications for administrative law. Licensing authorities should not treat local hostility as a neutral fact that automatically weighs against minority applicants. Administrative decisions should examine whether opposition

reflects legally relevant considerations or merely majoritarian disagreement with the applicant's religious identity. Where opposition is discriminatory, public authorities should not convert it into an administrative barrier. Instead, authorities should consider what protective measures are required to ensure that the minority community can exercise its rights safely.

Protective neutrality also requires transparency. Public institutions should provide reasons when religious activities are restricted, explain the legal basis of the decision, identify the evidence supporting necessity, and ensure access to review. Vague references to harmony or community sensitivity are insufficient when fundamental rights are affected. Reason-giving is essential because it exposes whether authorities are genuinely applying constitutional standards or simply translating majoritarian pressure into legal language.

5. The Duty-to-Protect Framework and Institutional Implementation

The fifth finding is that a duty-to-protect model requires coordinated institutional mechanisms rather than abstract constitutional commitments. Religious freedom is affected by police institutions, local governments, licensing authorities, courts, schools, and national human rights bodies. Fragmented responsibilities can create protection gaps because each institution may claim that another authority is responsible. An effective constitutional framework must therefore identify who has the duty to act when minority rights are threatened.

First, law-enforcement institutions should distinguish between legitimate public-order protection and the suppression of peaceful minority activities. Police authorities should protect all communities against threats, violence, intimidation, and coercion. Where religious hostility is foreseeable, preventive measures may be required. Failure to act should not be excused merely because the immediate perpetrators are private actors. The constitutional question is whether public authorities exercised reasonable measures to protect persons within their jurisdiction.

Second, administrative authorities should apply a rights-sensitive approach to licensing and public services. Decisions concerning houses of worship, public gatherings, civil registration, education, and other services should be assessed according to equality and proportionality. Requirements that appear neutral should be reviewed for discriminatory effects. Where a procedural requirement systematically exposes minorities to majoritarian vetoes, the state should reconsider whether the procedure remains constitutionally justified.

Third, courts should adopt substantive rather than purely formal equality analysis. Judicial review should examine the actual effects of governmental action and inaction on religious freedom. A decision may appear neutral on its face while creating disproportionate barriers for a minority community. Courts should therefore consider institutional context, patterns of vulnerability, available alternatives, and the state's capacity to provide protection.

Fourth, national human rights institutions should play a stronger monitoring role. Documentation of repeated incidents can reveal patterns that isolated legal proceedings may fail to identify. A single case may appear to involve a local administrative dispute, whereas multiple cases may demonstrate a structural failure of protection. Monitoring bodies can therefore assist courts and policymakers by identifying recurring forms of exclusion and evaluating whether existing remedies are effective.

Fifth, the state should develop measurable standards for positive protection. These standards may include timely police responses, non-discriminatory licensing procedures, transparent administrative reasoning, accessible complaint mechanisms, and effective sanctions for officials who fail to perform legally required duties. The objective is not to create a special legal regime for minorities but to ensure that general constitutional guarantees are capable of functioning under unequal social conditions.

The proposed framework should also include institutional accountability for unjustified inaction. Public officials often face clearer legal consequences for taking an unlawful action than for failing to act. Yet a constitutional duty to protect requires attention to omission. Where authorities possess a legal duty and practical capacity to prevent foreseeable rights violations, deliberate or unreasonable inaction should be reviewable. Administrative law should therefore recognize that the failure to exercise protective authority can itself affect fundamental rights.

Finally, protective neutrality requires a broader constitutional culture of pluralism. Legal rules alone cannot eliminate religious prejudice, but public institutions can avoid reinforcing it. Education, official communication, civil-service training, and rights-based administrative procedures can reduce the tendency to treat minority presence as a source of disorder. The constitutional objective should be to ensure that diversity is governed as a normal condition of citizenship rather than as an administrative problem created by minorities themselves.

Conclusion

This article has argued that state neutrality toward religious minorities should not be equated with governmental passivity. Formal neutrality is constitutionally important because the state should not determine the theological truth of competing religions or use public power to privilege one doctrine over another. However, doctrinal impartiality does not justify indifference when unequal social power prevents minorities from exercising religious freedom on substantially equal terms. Where discrimination, intimidation, or institutional exclusion creates predictable barriers, constitutional guarantees may generate positive obligations to protect.

The proposed model of protective neutrality rests on the principle of asymmetric vulnerability, symmetric citizenship. Religious communities may face unequal risks, but they possess equal constitutional status. Consequently, differentiated protective measures may be necessary to restore equal conditions

without creating theological preference. The framework requires that state intervention pursue a legitimate rights-based objective, rely on objective evidence of vulnerability, satisfy proportionality, and remain available to all communities facing comparable threats. Under this approach, affirmative protection is not the opposite of neutrality; it can be a necessary condition of meaningful neutrality.

The constitutional transformation proposed in this article is therefore from passive restraint to active impartiality. The state must refrain from endorsing religious doctrines, but it must not permit majority power to determine who can safely exercise constitutional rights. Future research should examine how protective neutrality can be operationalized across policing, administrative licensing, local governance, education, and judicial review. Empirical research is particularly needed to measure institutional responses to religiously motivated threats and to evaluate whether positive obligations produce more equal conditions of citizenship. Comparative studies should also examine how plural constitutional systems reconcile religious neutrality with affirmative protection. Ultimately, the legitimacy of neutrality should be measured not by how little the state does, but by whether all persons retain a genuinely equal opportunity to live according to their religion or belief.

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