

Religion, Law and the State: Toleration, Non-preferentialism, and Equidistance

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This Article traces the progress of the constitutional and normative doctrine of religious toleration. Following on the thought of the English jurist and philosopher John Locke, this Article traces that idea in its contemporary expressions in the United States legal and political thought. It takes a position against what may be termed the “liberal neutralist” position in favor of the constitutional and jurisprudential notion of nonpreferentialism.

Drawing together several diverse strands of thought and argument supportive of nonpreferentialism, including the Indian constitutional concept of equidistance, this Article seeks to go beyond legal or normative theory to sketch in preliminary fashion how non-preferentialism could be understood and applied in a variety of societies and under specific societal conditions.