

## **Between Crucifixes and Veils: Secularism and Religion as Guarantors of Cultural Convergence**

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The conflicts that arise in relation to the “the place” of religious symbols in the public sphere, do not only reflect most of the dilemmas that liberal democracies face in the attempt to reconcile constitutionalism and religion through adherence to secularism in the public place. They actually challenge the very legitimacy of the dominant conception of constitutionalism and its nexus to the principle of secularism.

Religious symbols in the public schools typically raise two sets of conflicts. The first set of conflicts arises over the extent to which the right to wear religious symbols and clothes can be limited in the name of other rights and principles of equal constitutional value. In principle, this type of conflict may arise both in relation to the denomination of the majority as well to those of religious minorities. The French Law of March 17, 2004, which prohibits “the wearing of symbols or clothing by which students conspicuously manifest a religious appearance” in all State schools, is neutrally worded and therefore applicable to all symbols, including Christian ones. In practice, however, controversies have arisen exclusively in relation to the right of pupils belonging to religious minorities to wear *their* symbols and have almost exclusively concerned Islamic schoolgirls.

The second type of conflict arises when a religious symbol, such as the crucifix, or the crèche, is used as a “public language” of identity by State authorities. In this case, unlike in the first type of conflict, the contested symbol represents the dominant religion and not that of minority groups.

Most academic works on religious symbols address either the first or the second set of conflict. Many works have focused on the *hijab* cases in different contexts (*e.g.*, in France), while many others have addressed the polemic over the display of the crucifix in the public schools (*e.g.*, in Germany, Italy, and Switzerland) or that of the Ten Commandments and the crèche (*e.g.*, in the United States). I propose to jointly address the two different sets of conflicts, as they both have to do with the relationship between religion and constitutional identity as well as with the different understandings, uses and driving principles of secularism as a constitutive element of constitutionalism.

In the first place, in a pluralistic society, both for majorities as well as for minorities, religious symbols play a peculiar role in identity-related dynamics. Their role cannot be compared with that of official State symbols, such as the national flag, which do not represent

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any “official truth”, but rather, testify to the existence of a political community that shares a (limited) set of common political values. The consequences of globalization and large scale migration, and the aftermath of September 11, have dramatically increased the demand for social cohesion and for strong collective identities, which are better expressed by religious symbols, thanks to their capacity to evoke absolute, and therefore reassuring, truths. Religious symbols, however, can easily turn into aggressiveness catalyzers, because they express and generate a primitive intellectual and relational level of human development, the level of blind fixations and belongings. Religious symbols unite, but, at the same time, strengthen division and support the building of barriers between the self and the other. Majorities and minorities seek shelter in religious symbols, as a reflex of the increasing difficulty they experience in finding a common core of shared civic values.

Moreover, conflicts over majority and minority symbols reveal an increasing blurring of the line between secularism and religion. On the one hand, religions have become “deprivatized,” and seek a wider role in the public sphere as well as in the political arena. On the other hand, the neutral character of secularism and its ability to solve religious conflicts in pluralistic societies is increasingly contested.

Conflicts over religious symbols arise as a consequence of the *de facto* pluralistic character of European societies. However, a comparative analysis of the reactions of courts and legislators confronted with such conflicts shows a tendency to counter or minimize pluralism, rather than to seek a reasonable accommodation for the different religious components of the polity. In both conflicts over majority as well as over minority symbols, courts and legislators tend to secularize the meaning of religious symbols and interpret it according to the sensitiveness, the prejudices and the claims of the majority. On the one hand, the religious significance of majority (Christian) symbols is watered-down and interpreted in “cultural” terms, not as the symbols of a given religion, but rather as inditia of the historical and cultural dimensions of national identity. On the other hand, minority, and, particularly, Islamic symbols are interpreted as expressions of cultural and political values and practices which are ad odds with liberal and democratic ones. The wearing of traditional female Islamic clothing, for example, is often prohibited or limited because it supposedly clashes with gender equality. The practical results of this attitude is that crucifixes may be displayed in the public schools because secularized Christianity represents a structural element of the western constitutional identity, while the wearing of Islamic symbols is either banned or restricted, because they represent values and practices which are cast as illiberal and undemocratic.

I have analyzed cases decided and laws adopted in various jurisdictions, with sharply different models for managing the relationship between the state and religion: Italy, Germany, France and the United Kingdom. I have also consider the case-law of the European Court of Human Rights, which is invested with the task of striking a balance between unity and diversity in 47 states with deeply divergent constitutional traditions. Despite the differences among all of these systems, all cases rely, more or less explicitly, on a dichotomous construction of the relationship between Christianity and Islam, according to which the first, to be sure in a secularized form, is projected as a central component of Western civilization, while the latter is

cast as a threatening "other". Both the imposition of Christian symbols in the public schools as cultural mainstays, as well as the as the restrictions on the right to wear Islamic symbols in the name of secularism correspond to this logic. Secularized religion and secularism are used in order to exclude the other and protect the culturally homogeneous character of European societies that is perceived - and even explicitly described - as threatened by pluralism and globalization.

In some cases, secularism is watered down. In the Italian and Bavarian crucifix cases, the courts legitimize the mandatory display of the cross in public schools because its significance depends on the place where it is displayed. In a Church, it has a religious significance, but in other contexts, such as a school, it also embodies social and cultural values which are shared also by non-believers. This is also the case of the laws adopted in the most conservative German Länder, which prohibit teachers from wearing Islamic but not Christian symbols (including Nun's habits), openly relying on the dichotomy between Islam and Christianity and assuming that, while the latter constitutes a structural element of democracy, the former is at odds with it. In other cases, it is simply assumed that there is something intrinsically illiberal in Islamic outfits, and that their display must therefore be restricted. For example, the ECtHR in the *Dahab* case explicitly states that the veil is "a powerful religious symbol" which cannot be reconciled with principles such as equal respect for all and equality between men and women. The House of Lords in the *Begum* case refers to the necessity to protect female pupils from the undue pressure by their families and communities, by forcing them not to wear clothes that are somehow "too obviously Islamic," and it thus authorizes a school to choose which Islamic clothes are compatible with the school's (democratic) mission and which are not.

The French case seems different at first sight, but upon closer scrutiny it falls within the same pattern. In France it is not secularized Christianity, but militant secularism that is used to incorporate the forcibly shared, democratic values. Consistent with the tendency to blurring the line between religion and secularism, French secularism assumes all of the characteristics of a majority denomination. The French State does not confine itself to the role of ensuring the peaceful co-existence of different religions and conceptions but it becomes a party in the conflicts between them. The State identifies itself with one (the secular, majoritarian) conception and forcibly extends it to all groups and individuals: the secular republic requires a secular attitude from its citizens. This ideological use of secularism seems to suggest the existence of a community of destiny, unified not by a common ethnic origin, but rather by the will of the founding fathers, which finds its natural expression in a secular State culture. Secularism, however, corresponds to a Christian outlook, being the product of the historical process of separation between European States and Christian churches. Even in its French militant version, therefore, it ends up preferring the (secularized) Christian majority. The law of 2004 which bans conspicuous religious symbols in all State schools is the perfect example of this preference: good Christians do not need to wear conspicuous symbols of their religion in the public sphere, whereas practicing Islamic women, orthodox Jews and Sikh do, as headscarves, kippas and turbans are by nature conspicuous.

In sum, both the imposition to learn "under the cross" and that to learn bareheaded indicate the existence of a homogeneous collective identity and of outsiders, who have the

choice between accepting to share, even symbolically, the values of the majority, or to be excluded from the public sphere. Conflicts over religious symbols in the public sphere therefore question the model of citizenship which is offered to those belonging to cultural and religious minorities. This constitutes a major challenge for European states and for Europe as a whole. The tendency to the marginalization of religious minorities and to the hierarchization of cultures and religions which emerges from the managing of such conflicts is not a good sign. And this is certainly not compatible with the open, inclusive and participatory model of democracy that Europe pretends to pursue.