

Religious Symbols in Public Spaces: Ethical and Legal Arguments¹

Symbols are not simply another object of law; law itself is symbolic. Law does not use language as an instrument; law itself is a language that articulates a particular type of meaning. The neutrality of the public space as such is asserted, without first determining if this is to be achieved by agreement among the plurality of believers or between believers and non-believers. A further problem in this regard is to establish whether or not a given symbol is religious, and when it may become an object of law on juridical grounds. Finally, given that the true meaning of a symbol may be called into question, an authoritative definition of such meaning may also be required.

Keywords: Religious symbols; Neutrality; Positive secularism; Public order; Islamic veil; Crucifixes; Justice and tolerance.

Given that it is shaped by the principle of legality, European legal culture has come to equate law as such with a more or less (less rather than more) compatible set of legal texts. Surprisingly, this crude conception of legal reality draws a remarkable degree of support in theoretical terms. However, since it lacks a significant sense of critical reflection, such support cannot be described as philosophical.

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1. From the principle of legality to the meaning of rules

This perspective has been subject to serious critique since the 1970s, when the criteria of existential hermeneutics, which relativize the role of method in the search for truth², first began to have a bearing on the field of law. As a result, an understanding of the meaning of rules was seen as the center of legal reality, a fundamental shift that assumes that such understanding is less obvious than the established view of juridical dynamics in classical legal positivism, which focused on the merely logical mechanism of applying the legal text, may have envisioned. Application of this kind presupposed the existence of an unequivocal language of law, capable of rendering in clear terms the fundamental concern for legal certainty, and regarded the emergence of any form of hermeneutic activity as deficient (*in claris non fit interpretatio*).

By contrast, however, the new critical perspectives frame the interpretation of rules (and the judgment of facts and events) as an enabling requirement, inextricable from the legal dynamic as such. Law does not draw in an instrumental way on a formalized mode of technical language; rather, law itself is a form of language. Its pragmatic implications relativize the notion of unequivocal description by evoking the idea of judgment, which consists of tracing a comparison or analogical correspondence³ between the presumptions encoded in the legal text and the actual facts of social reality. A more nuanced account of heretofore unquestioned precepts of legal theory may also be prompted in this regard, such as the exclusion of any appeal to analogy in the criminal code out of deference to the principle of legality.

Although it may appear unwarranted, the purpose of the argument set out here is vital because it leads to re-consideration of the symbolic import that every legal proceeding may involve. A legal text does not simply comprise a neat description of certain facts, thus enabling the formulation of a syllogism that may be applied to reality;

2 Gadamer (1960). This issue was addressed previously in Ollero (1973), which appeared subsequently in German in Ollero (1978).

3 Kaufmann (1982).

rather, it frames a fulcrum, which is clearly symbolic, around which a range of value judgments may turn. There is a need to move from clarification to understanding, which, precisely because it has an evaluative function, must be especially considered. Legal interpretation is not the whimsical outcome of a form of judicial activism that fails to take the principle of legality into adequate account. There is no real division between judges who are faithful to the law and activist judges, who are determined to interpret the law in whatever way they see fit. The real distinction lies between judges who interpret the law, aware that they have to do so (whether they want to or not), and judges who interpret the law in a non-reflexive way, acting on the belief that their role is to put a purely technical process into effect. Whereas the former may defer to a sense of prudence, reflecting on their prejudices so as to reach judgment(s), the conclusions drawn by the latter are inextricably bound up with prejudice.

The critique of positivist methodology calls into question any claim to *Wertfreiheit* in the administration of the law - not only because descriptive clarification has been replaced with interpretative understanding, but also because at no point can knowledge be regarded as disinterested. Any interpreter of a rule is situated in a world that gives rise to an unavoidable pre-understanding⁴ of its meaning, the starting-point of every hermeneutic endeavor. Therefore, the elements that foster this initial immature and pre-reflexive form of understanding are to be identified so as to curb the scope of the evaluative function, which the application of the legal text has failed to prevent.

2. The legal meaning of religious symbols

The legal meaning of religious symbols may be seen more clearly in light of the symbolic dimension of legal texts - that is, the value judgments that underlie particular legal decisions or interpretative positions are more clearly disclosed.

4 Esser (1970).

The first matter of dispute to be resolved is whether or not there is a public dimension to religious experience. This issue connotes the questions of the secular nature of the State, an issue that cannot be addressed without taking into consideration an adequate account of the distinction between secularity and secularism⁵, which is not widely acknowledged⁶. In line with the post-revolutionary tradition in French republicanism, secularism tends to set out a radical separation between public powers and religious phenomena, leading to a strict definition of the latter as private. The logical conclusion of this position is an iconoclastic expulsion of all religious symbols from public spaces. By contrast, so-called positive secularity is defined in terms of the cooperation⁷ between public powers and the religious confessions in which people may exercise their fundamental right to freedom of religion. This scenario involves a paradigm shift; hence, when the word secular is used, instead of the word secularist, society will have entered a post-secular phase⁸.

The cornerstone of the secular approach is its ability to ensure the neutrality of public powers in relation to religious institutions, which tend to be regarded as more or less disruptive in social terms. If such neutrality is read as a synonym of impartiality, it is undoubtedly required; to be neutral is to be non-confessional, so there can be no established religion in the state. The relationship between public powers and political parties and trade unions should be likewise impartial, just as state should not opt exclusively for a particular sport or form of cultural expression; however, this need not mean that the state be wholly indifferent to or divorced from such organizations and phe-

5 A number of papers on this topic have been collected in a volume entitled *Laicidad y laicismo*, Ollero (2010).

6 In light of his own stated positions, it is somewhat surprising that M. J. Parejo (2010) seems to see secularity and secularism as interchangeable by regarding secular and religious positions as wholly opposed, perhaps in light of Italian rather than French issues.

7 This was highlighted in Ollero (2009).

8 Habermas (2006).

nomena, nor that it should be obliged to “neutralize” its presence in their regard⁹.

Jurisprudence in the US has devised the threefold Lemon test to probe such impartiality: the purpose of the law must be secular; its primary effect should be neither to advance nor to inhibit religion; nor should it lead to excessive interplay between government and religion.¹⁰

3. Neutrality: between whom?

Neutrality is assured and discrimination prevented when the interest of public powers in religious confessions arises from the free choice of citizens¹¹. Problems arise in practice, however, when there is a failure to establish impartial relationships with specific religious confessions and, in a more or less obvious way, a *tertium comparationis* is established. In reality, this involves assuming a neutral attitude between believers (of one religious persuasion or another) and agnostics or atheists, who choose to exercise their religious freedom by rejecting religion as such. Framed in those terms, however, any impartiality is impossible. There is no middle ground between a transcendent and an immanent vision of existence. Whereas impartial cooperation would permit the presence of religious symbols (crucifixes, Christmas cribs, Islamic veils, etc.), in line with social demand, so-called neutrality opts dogmatically for immanence and would deny all believing citi-

9 J. Rawls (1996) holds that public powers are required to be neutral in principle, thus preventing them from promoting any given creed; however, he also holds that neutrality in terms of effects or influences cannot be guaranteed.

10 Cañamares (2005).

11 Article 16.3 of the Spanish Constitution is relatively explicit in this regard: “No religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions”.

zens the presence of such symbols in social spaces¹². In practice, such an endeavor is impossible because it would involve a complete strip-ping-away of cultural meaning, tearing down ancient monuments, flags, town names, urban spaces, public buildings, festivals, etc.

Apparent contradictions inherent in this model, adopted by self-proclaimed liberal states, have frequently been pointed out. First, it would be absurd “to demand that believers [do anything] incompatible with a life lived authentically from a faith perspective”¹³. However, a further step is also required. It is not enough simply to tolerate the exoticism of religious practice, in parallel with rational public discourse. The dogmatic attribution of irrationality to any argument of a religious hue would involve a repressive rejection of minority (and even majority) identities. The liberal state must expect agnostics “as citizens of the state, not to regard religious symbols as merely irrational”, despite the “spread of a credulous naturalism in relation to science, this proposition is not a given”¹⁴. Following a learning curve that has already been experienced by some believers¹⁵, a change in mindset among agnostics and atheists might be required, so as to enable them to live in the presence of religious symbols without resorting to hysterical reactions.

The excluded middle (*tertium non datur*) between transcendence and immanence is clearly pointed up by the controversy surrounding religious symbols. From a secularist perspective, the argument is that impartiality would be a merely formal construct if there were a hegemonic religious confession, because popular support among citizens would lead to a form of sociological confessionalism. For the sake of neutrality, therefore, the people’s choice would have to

12 In relation to the first sentence handed down by the European Court of Human Rights in relation to the Lautsi vs. Italy case (hereafter ECHR), which adopts this position, S. Cañameres (2009) describes “the conception of pluralism used by the Court [as remarkable], defined as the absence of any religious or philosophical approach in the public sphere”.

13 Habermas (2009). The word “believers” is used in the translation here, rather than the original “religious”.

14 “All citizens may be asked not to exclude the possible rational content of these contributions” Habermas (2009, cit. n. 13, 74) and Habermas (2006, cit. n. 8, 147).

15 Habermas (2009, cit. n. 8, 148). He sees this in the case of such “strictly agnostic” figures as Karl Jaspers and John.

be ignored and the religious rendered invisible in public¹⁶. As discussed in greater detail below, the final paradox is that such a situation might ultimately give rise to the establishment of a peculiar type of civil religion, in which observance is obligatory. Only this may explain why, in the name of secularism disguised as secularity, the same Court could uphold a Turkish law designed to ban the use of the Islamic veil on the grounds that it is a religious symbol, to be applied to all students irrespective of their religious beliefs, so as to rule out any resistance¹⁷.

4. Positive secularity

Positive secularity emphasizes the cultural dimension of the social imbrication of religious symbols and festivals. The status of Sunday as the weekly day of rest from work was addressed in the legal-constitutional context in Spain on that basis. To anyone seeking an injunction in this regard on the grounds that establishing Sunday as a day of rest reflects the demands of the majority religion, the Constitutional Court in Spain would rule that although “the weekly day of rest in Spain, as for other peoples shaped by Christian civilization, is Sunday” this does not involve “upholding an institution whose only causal origin is religious” since it has become a “secular, work institution” linked to a day of the week that is “sacred by tradition”¹⁸. This phenomenon has spread to the very foundations of the democratic State, and

16 The unanimous ECHR decision (3 November 2009) in the case *Lautsi vs. Italy* was overruled in a plenary decision handed down on 18 March 2011, which justified in relative terms the impact of the presence of crucifixes in schools, although “it is true that by prescribing the presence of crucifixes in State-school classrooms (...) the regulations confer on the country’s majority religion preponderant visibility in the school environment” (71).

17 R. Navarro-Valls & J. Martínez-Torrón (2011), the authority of Martínez-Torrón at this point and as cited in another passage below is acknowledged here.

18 Constitutional Court sentence (hereafter STC) 19/1985, 13 February 1985, Foundation (hereafter F.) 4.

may be verified by reference to the fact that nowadays “part of Christian heritage is transferred to a discourse of *groundwork*, which is no longer measured in relation to the authority of a lived faith, but according to valid patterns of social knowledge”¹⁹.

The problematic neutrality of the public space may give rise to a troubling failure to distinguish between two classical terms: moral *auctoritas* and political *potestas*. From an immanentist perspective, relations of preeminence or social influence are commonly interpreted in political terms as an assertion of power. Such an approach prompts a conclusion that is more totalitarian than liberal: those who have won the trust of citizens by political means automatically have the right, and perhaps even the duty, to impose their authority on the moral code, which is also to receive the obligatory support of the people. The problem here is that moral authority is not imposed in a democratic system; rather, it is freely recognized by the people. An “enlightened” despotism could be advanced at the behest of governors who regard themselves as confirmed in their endeavor to liberate premodern citizens from crippling backwardness and irrational obscurantism. In this regard, religious confessions - and, in particular, a potentially hegemonic religious confession - might be regarded as an invading power that has not been corroborated by the electoral process. Hence, political legitimacy would seem to suggest that its symbols be erased.

Thus, a replacement civil religion may come into being, made sacred by a false form of transcendence that considers that presence of any religious symbol in the public space as an act of sacrilege. At considerable cost in terms of time and effort, all festivals, titles, spaces and iconography would have to be replaced, irrespective of what the people (treated as though they were minors in need of protection) might actually think. Not even their cultural significance over the course of centuries could save such symbols from being burned at the stake by so modern an inquisition.

19 This would include “philosophical concepts such as person, freedom, individualization, history, emancipation, community and solidarity” (Habermas 2009, cit. n. 15, 236-237). The word “groundwork” is used here, rather than the less expressive term “foundation”.

An emblematic example in this regard was the removal of the Marian effigy “*Sedes sapientiae*” from the coat-of-arms of the University of Valencia. Secularist attempts to justify this removal were rejected by the Spanish Constitutional Court, which upheld the move only as an expression of the university’s right to autonomy, legitimizing the institution’s right to decide on its own symbols as it saw fit²⁰ without prejudice from the people’s view of what that undertaking might deserve.

5. Reflections on the religious nature of symbols and public order

A significant number of legal problems may be caused by underlying conflicts between value judgments. The first problem of this type stems from the recognition of a given symbol as religious. Should the Islamic veil and a sports cap, for example, be treated as equivalent in the regulation of appropriate clothing to be worn by students at school? If the symbol is regarded as religious, and in light of a certain regard for fundamental rights (which is not always a given among certain generations of people in Spain), then respect for its use is to be accepted as a matter of course. However, if the item is regarded merely as a cultural token, without the identifying power of religion, the general attitude towards its use may be very different. The issue becomes even more complex when the discussion moves from the Islamic veil to the burqa²¹. Is the burqa really a religious symbol? The same sense of doubt may also be extended to similarly questionable, albeit deeply-rooted, cultural traditions such as female genital mutilation.

There is an apparent paradox in this regard. Irrespective of the precise definition of secularity, it is difficult to justify the absolute appropriation on the part of public powers of the prerogative to define the religious nature of an act, item of clothing or symbol; such a claim

20 STC 130/1991 6 June, F.5.

21 In this regard, see Navarro-Valls & Martínez-Torrón (2011: 358-363).

would appear to lead into cultural *cul-de-sac*, leading to the prevalence of a clear *favor libertatis*, whereby the burden of proof will be transferred (as a kind of *probatio diabolica*) to those whose purpose is to restrict the presence of religious symbols. This dynamic may account in large part for the considerable number of “religious bodies” that have been added to the register held by the Spanish Department of Justice and the problematic outcomes of any attempt to deny such registration²².

If a commitment is made to apparently secular neutrality, the use of Islamic veils by civil servants, and especially by those working in the education sector, takes on particular significance. The radical distinction between the sacred and public spheres such a commitment involves would require teachers to function as a kind of priesthood of immanence, avoiding any reference to transcendent meaning. This position led the European Court of Human Rights to rule categorically against an appeal taken by a Turkish university professor in relation to the wearing of the Islamic veil. The sentence in this case (*Kurtulmus vs. Turkey*) has led some commentators to argue that the Court has failed to be scrupulous as regards proof and strict with respect to principles. The criticism is that “its notion of the secularity of the State and its consequences is - from the *Dahlab* case²³ onwards - too deferential to a definition of secularity not as State neutrality in relation to religious or ideological phenomena, but as the invisibility of religion as such; in other words, as an artificial construct enabling the existence of “religion-free spaces”, although they may not be free, by contrast, of other non-religious ideas of equivalent ethical import²⁴”.

The problem does not end here because neither the right to religious freedom nor the use of symbols linked to religious practice may be regarded as unlimited. Such is the case in Spain, albeit with a clearly exceptional additional inflection: as regards freedom of ideol-

22 For instance, an attempt to deny registration to the Unification Church (commonly known as the Moonies) failed, despite the hard-hitting statement issued by the European Parliament; STC 46/2001, 15 February.

23 Correcting the description of a “strong external sign” which appeared in the first sentence, the Court took a stricter view of the Islamic veil the teacher felt she had a right to wear than the presence of crucifixes in schools, without regard to claimants: *STDEH Lautsi vs. Italia*, 73.

24 Navarro-Valls & Martínez-Torrón (2011: 373).

ogy, religion or worship, there is “no other restriction on their expression than may be necessary to maintain public order as protected by law”²⁵. Public order is not defined as the absence of any activity that might disrupt peaceful social coexistence; rather, it is read as a fixed set of rights and freedoms that are not open to any form of negotiation. The potentially religious nature of a symbol, therefore, may also be seen at the same time as embodying a meaning that compromises this well-defined set of legal protections. As a result, the problem lies not in considering whether a practice involving human sacrifice, for instance, is to be regarded as religious, but in acknowledging that any prohibition of such a practice would be an overwhelming limitation on a constitutional provision.

6. The Islamic veil controversy

To return to the controversy surrounding the wearing of the Islamic veil (a controversy which becomes more complex still if the debate shifts to the use of the burqa): if the veil is recognized as a religious symbol, the prohibition on its use cannot be compared with a ban on the symbols worn by street gangs. However, if the veil is regarded as a cultural token of the oppression of women, the legal protection of public order ought to be taken into account. The interpretative import of the issue is beyond question. The legal scope of Article 9 of the European Convention on Human Rights, the clause by which any limitation on freedom of thought, conscience or religion may be justified on the grounds of “imperative social need” may be neutralized by another (that the Article referred to affords no protection for any kind of act inspired by any religion or form of belief), until it becomes a stock phrase used to legitimize every restriction on any form of religious or moral expression that is regarded as “inopportune”²⁶.

25 Spanish Constitution, Article 16.1.

26 Martínez-Torrón (2009: 99) makes this point in relation to the European Court of Human Rights sentence in *Kose vs. Turquía*, clearly influenced by what would be established by this legal trend: the *Sahin Law vs. Turkey*.

There is no easy solution to this dilemma. Hence, perhaps, the path taken on more than one occasion in Spain has been as misguided as it may be expedient. Without engaging in a discussion regarding whether the veil is a symbol of religious identity or a sign of female oppression, legal judgments defer to school regulations and the requirement that all be equal before the provisions of school rules. The outcome of such decisions is absurd because no school regulations can be used to justify any limitation on the exercise of a fundamental right and their provisions would be absolutely null and void should they compromise public order in any way; on the other hand, interpreted within the framework of the Constitution (as they should be) such regulations need not even be modified to encompass the viability of exhibiting religious symbols. In fact, what is being imposed in such cases is an authoritarian imperative, which may be more characteristic of militarized societies. Moreover, the politician in charge, whose concern may be the crisis of authority in schools and consequent instances of violence, is often more inclined to support the school management board rather than worry too much about rights or other such considerations.

In the legal context, therefore, the definition of the scope of rights must move beyond a strictly normative perspective, which proves as remote from reality as it may be functional as a model of practical application. Legal principles must play a preeminent role in the required process of deliberation. As a result, the debate about the Islamic veil should not be framed as an either/or dilemma; rather, its use ought to be debated in terms of how it may be worn and in what circumstances. For instance, its use might be banned in PE classes, not because of a strict claim to conformity, but on the grounds that the pins used to hold the veil in place may pose a risk to another right (the right to health) or for reasons of hygiene²⁷.

27 The European Court of Human Rights sentence in *Kervanci vs. Francia* is relevant in this regard.

7. Crucifixes in schools: justice or tolerance

Without ceding ground to any form of relativism, it may be said that this process of deliberation is profoundly marked by historical contexts. Hence, in a Europe that asserts its plural identity, the principle of subsidiarity is reflected in the European Court's commitment to safeguarding the Rome Convention on Human Rights without in any way compromising the margin of appreciation that is the prerogative of the EU's member states. On the basis of the belief that "no single conception of the meaning of religion may be discerned across Europe"²⁸, member states may avail of a certain prudential power in the definition of the rights involved and, as a consequence, of public order in Europe.

This approach was sorely lacking in the first version of the controversial sentence handed down in relation to the display of crucifixes in Italian schools. That "the role of the authorities in this case is not to suppress the cause of any conflicts by eliminating pluralism itself"²⁹, would appear to have been overlooked; rather, the objective is to ensure that opposed groups show the capacity to co-exist peacefully. This led some commentators to decry the "paradox whereby to educate [students] for life in a pluralist society required that they be taught in a space from which all plurality had been stripped"; the phenomenon of bare walls in Italian schools is itself an ideological choice", since "militant atheism is also coercive in religious terms"³⁰. In the end, the European Court was to conclude that "the crucifix mounted on the wall is an essentially passive symbol", and therefore, as regards the principle of neutrality, "[it] cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities"³¹. The acknowledged margin of appreciation of member states played a key part in the change in attitude

28 See the European Court of Human Rights sentence in *Otto-Preminger Institut vs. Austria*.

29 See the European Court of Human Rights sentence in *Sahin vs. Turkey*.

30 Parejo (2010: 60 and 62).

31 *STDEH Lautsi vs. Italy*, 72.

from the first to the second sentence, in light of the absence of a firm European consensus regarding the matter at hand³².

Underlying this situation is a lack of respect for rights, which stems from a demagogic ignorance of the distinction between justice and tolerance. Many politicians have tended to define tolerance as comprising a broad range of rights. Hence, rights are framed as concessions granted by power, rather than as resources by which power itself must be brought and kept under control. Rights are linked to justice, which requires each individual to respect what is his own; rights are not related to tolerance, which mistakenly or falsely grants the individual something that cannot be regarded as his own, and thus cannot serve as the ground of any right as such.

Whether or not certain rights are at issue takes on special significance in this regard. A peculiar distinction has been drawn between static and dynamic religious symbols³³. Dynamic symbols are those worn by individuals, whereas static symbols are those on display in one way or another in public spaces. An analysis of whether or not certain rights are involved may shed enabling light on this situation. Every citizen has the right to wear religious symbol(s) as they see fit, on condition that they do not disrupt “public order”, which is not a function of stated orders or commands. This right may be affected by the claims of other rights, although respect for positive secularity may grant it a certain *favor libertatis*, thus assigning it to a privileged position in this context.

The situation may seem somewhat alarming if the debate concerns walls or other spaces, rather than individual citizens. No one has the right to display a crucifix, nor does anyone have the right to remove one³⁴. Moreover, putting up a crucifix is not the same as taking one down:

32 Having been cited by the Romanian government in its support for the Italian appeal, as well as by thirty-three members of the European parliament, (ECHR *Lautsi vs. Italy*, 49 and 56), the Court made reference to the margin of appreciation in sections 61, 69, 70, 76 and other parts.

33 See Cañamares (2010: 2 and 7).

34 Parejo (2010) agrees: “public order across Europe would not appear to permit the imposition of the display of crucifixes or other religious symbols against the wishes of students and/or their parents, although neither does it seem to require that they be removed” (cit. n. 6, 82).

installing a religious symbol *ex novo* for the purpose of publicly supporting a particular religious confession is not the same as retaining certain signs of identity with religious content that are part of the historical development of a society and an institution (Navarro-Valls & Martínez-Torrón 2011: 392).

The final legal sentence on the display of crucifixes in Italian schools attends to that view, which in principle defers to “the margin of appreciation of the respondent State” in “the decision whether or not to perpetuate a tradition”³⁵.

8. The contested meaning of symbols

The elimination of symbols could only be justified via the confessional institution of a civil religion. The terms of this debate concern tolerance, rather than justice. No school management board has the authority to deny any student the right to wear the veil; but it does have the power to decide whether or not a Christmas crib is to be set up. A reasonable agreement remains to be found, because neither the former nor the latter position is really at issue.

The situation is radically different if the terms of discussion concern the deliberation of rights, rather than tolerance. The difficulty relating to the role of public powers in annulling the religious nature of symbols, or otherwise, might be resolved by referring the case to a higher authority. Taking the appreciation a symbol may deserve in a specific social context into account might be expected to yield a positive outcome in this regard. However, this move may merely lead to a further problem: Who is to decide the authentic meaning of the symbol in legal terms? What one society may regard as an unquestionable sign of the oppression of women may be regarded by the very wearers of such a symbol as an indispensable display of their cultural identity. Who may lay claim to the right to define the meaning of others' symbols? Significant complications arise from the tension between the desire for social integration, on the one hand, and an uncompromising

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ECHR *Lautsi vs. Italy*, 68.

approach to assimilation, on the other. Moreover, the situation is rendered even more complex when the relative perspectives are taken into account: how can a veil-wearing schoolgirl be denied access to a school run by nuns who themselves wear a veil as a sign of the identity of their congregation?

Freedom of expression would be compromised as a matter of course were the power to define the authentic meaning of others' symbols or to determine how they are to be interpreted were to be claimed unilaterally. This situation is little different from that of a theocratic (as opposed to confessional) state, where the display of the symbols of another religion is regarded as blasphemy, to be punished with harsh sentences. Unquestionably, this phenomenon has become an emblematic instance of the denial of religious freedom, not merely as a form of intolerance³⁶.

Such a dramatic lack of sensitivity generally prompts the description of such societies as culturally backward. However, considered reflection of whether or not the positions articulated by a number of courts in Europe, which have declared the mere expression of moral code (more often than not linked to religious or at least ideological freedom) to be a form of discriminating phobia, may be worthwhile. The dogmatism of political correctness seems all the more shocking when nobody appears to regard as discriminatory the public description of adultery or polygamy as immoral, without prejudicing the personal respect due to the presumed offender, whereas the expression of any moral reservations regarding homosexual relationships, for instance, is regarded as a serious civil sin, and even that the protection of legal minors requires that they be indoctrinated correctly in this regard³⁷. There is not always a vast difference between civil religion and fundamentalism; hence, society must be alert to any loss of his-

36 The European Court of Human Rights decision in the case of *Guzel vs. Turkey* is an illustrative example in this regard.

37 Pertinent at this juncture was the High Court decision in London on 28 February 2008, denying a Christian couple the right to foster children as they had done in the past, because they regarded the homosexual lifestyle as unacceptable. Similarly, as a result of the 2007 Equality Act, a number of Catholic adoption agencies were forced to close because they refused to assign children to homosexual couples.

torical memory, whose effect might be to figure the European Court as an accomplice to acts of “cultural vandalism”³⁸.

References

- CAÑAMARES, S. (2005): “Simbología religiosa y separación en los Estados Unidos de América. La doctrina del Tribunal Supremo en la sentencia Van Orden vs. Perry”, *Persona y Derecho*, 53, 356
- CAÑAMARES, S. (2009): “Símbolos religiosos en un estado democrático y plural”, *Revista de Estudios Jurídicos*, 10, <<http://revistaselectronicas.ujaen.es/index.php/rej/article/view/538>>.
- CAÑAMARES, S. (2010): “Nuevos desarrollos en materia de simbología religiosa”, *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 24, 119.
- ESSER, J. (1970): *Vorverständnis und Methodenwahl in der Rechtsfindung*, Frankfurt am Main: Atheneum.
- GADAMER, H. G. (1960): *Wahrheit und Methode*, Tübingen: Mohr.
- HABERMAS, J. (2006): “La religión en la esfera pública. Los presupuestos cognitivos para el ‘uso público de la razón’ de los ciudadanos religiosos y seculares”, *Entre naturalismo y religión*, Barcelona: Paidós.
- HABERMAS, J. (2009): *Carta al Papa. Consideraciones sobre la fe*, Barcelona: Paidós.
- KAUFMANN, A. (1982): *Analogie und Natur der Sache*, Karlsruhe: CF Müller, 2nd edition.
- MARTÍNEZ-TORRÓN, J. (2000): “La cuestión del velo islámico en la jurisprudencia de Estrasburgo”, *Derecho y Religión*, 4, 87-109.
- NAVARRO-VALLS & MARTÍNEZ-TORRÓN (2011): *Conflictos entre conciencia y ley. Las objeciones de conciencia*, Madrid: Iustel.
- OLLERO, A. (1973): *Derecho y sociedad. Dos reflexiones sobre la filosofía jurídica alemana actual*, Madrid: Editora Nacional.
- OLLERO, A. (1978): *Rechtswissenschaft und Philosophie. Grundlegendiskussion in Deutschland*, Ebelsbach: Rolf Gremer Verlag.
- OLLERO, A. (2010): *Laicidad y laicismo*, Mexico: Universidad Nacional Autónoma de México <<http://info5.juridicas.unam.mx/libros/libro.htm?l=2844>>
- OLLERO, A. (2009): *Un Estado laico. Libertad religiosa en perspectiva constitucional*, Cizur Menor: Aranzadi-Thomson-Reuters.

38 In his assenting judgment in ECHR *Lautsi vs. Italy*, Judge Bonello could not hide his surprise at the fact that the same Court which had banned the Turkish publication of Guillaume Apollinaire’s *Les onze mille verges*, because of its “nauseous obscenity on the ground of its distinctly faint ‘European heritage’ merit” had been unable to accord similar respect to the crucifix (sections 1.1, 1.4 and 4.1).

PAREJO, M. J. (2010): “La controversia sobre la exposición de símbolos religiosos en el orden público europeo”, *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 24, 1-36.

RAWLS J. (1996): El liberalismo político, *Barcelona: Crítica*.

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