

## **RELIGIOUS SYMBOLS IN STATE INSTITUTIONS**

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**I**N RECENT MONTHS, THERE HAVE BEEN SHARP CONFLICTS in several European countries about the use of religious symbols in public settings. Should the Muslim headscarf (*hijab*) or the Jewish skullcap (*kippah*) be worn by staff in public institutions? Should it be permitted for the crucifix to be displayed in schools? A major social issue is at stake here: the proper public expression of religion in modern democratic societies. In this article, I shall begin by outlining how the controversies have been developing, principally in Germany and France, with some reference to Britain and the USA. Then I shall try to bring out the different visions of religion and the state that underlie the different policies that people advocate. Finally, I shall suggest some ways in which the discussion might move forward.

### **Current Conflicts**

#### *Germany*

In Germany, a major focus of the conflict has been the wearing of the Islamic headscarf in schools. The federal *Grundgesetz* (Basic Law) holds at once that the state is to be neutral in matters of religious confession, and that citizens should have an undisturbed right to practise and express their own religion freely.<sup>1</sup> Current court disputes at both federal and regional state levels are exploring the tension between these two principles. On 24 September 2003, the Federal Constitutional Court, the highest legal authority in Germany, declared in favour of Fereshta Ludin, an Afghan-born German citizen who had

<sup>1</sup> See Article 4 of the German Basic Law (*Das Grundgesetz*). This can be found in both English and German on the German Government website at [www.bundesregierung.de](http://www.bundesregierung.de).

applied for a teaching post in a state school in Stuttgart. It upheld Ludin's claim that the State did not unequivocally prohibit the wearing of formal religious symbols such as the Islamic headscarf in schools. The federal court declared that each regional state could impose such a restriction, but only if it formulated a correspondingly explicit law.

This situation has caused a great deal of anxiety among Germany's Muslim population, who fear that their rights to religious freedom are being interfered with. They point to the situation in the southern state of Bavaria, which is predominantly Catholic; there schools often have large crucifixes on the walls as a matter of course. The fact that much of the Muslim population is also economically poorer than other ethnic groups in Germany no doubt also contributes to their resentment.

However, this problem is not confined to the Western secular democracies. In both Turkey and Egypt the issue of the headscarf has been the subject of public debate. In 1996 the Egyptian government refused to enforce legally the wearing of the headscarf, despite the pressure put on it by some sections of society. Indeed, one of the highest theological authorities in Sunni Islam, Mohammed Al-Tantawi, who works at the highly respected Al-Azhar University in Cairo, recently declared his sympathy for the positions of Western democracies such as Germany and France.<sup>2</sup> Much, of course, turns on the meaning of neutrality.

#### *France*

In France the situation is somewhat different. The formation of France as a republic emerged out of a struggle to liberate the country from the power of both the monarch and the Catholic Church. In 1789 the Declaration of the Rights of Humanity proclaimed:

No one shall be disquieted on account of their opinions, including their religious views, provided their manifestation does not disturb the public order established by law.<sup>3</sup>

The tradition of not disturbing the peace has led effectively to the privatisation of religion, and to a more radical separation of church

<sup>2</sup> See *Rheinischer Merkur*, 29 January 2004, 24.

<sup>3</sup> Article 10 of the 1789 Declaration of the Rights of Humanity quoted, in inclusive language, from the Avalon Project of the Yale Law School at [www.yale.edu/lawweb/avalon/rightsof.htm](http://www.yale.edu/lawweb/avalon/rightsof.htm).

and state than we find in Germany.<sup>4</sup> Constitutionalists in France have generally considered this radical separation of church and state, and the consequent freedom of education from religious control, to be central to the identity of the French state. After more than a century of conflict between clerical and anti-clerical factions, the Fifth Republic confirmed this fundamental principle in 1958:

France shall be indivisible, secular, democratic and a social Republic. It shall ensure the equality of all citizens before the law without distinction of origin, race or religion. It shall respect all beliefs.<sup>5</sup>

Political secularity—in French, *laïcité*—is an embodiment of the fundamental values of the French Republic: liberty, equality and fraternity. It expresses the Enlightenment pretension to a universal rationality.

In the 1980s, this secularity was challenged once again. On 4 October 1989, three Muslim schoolgirls were expelled from the Gabriel-Havez Secondary School in Creil, north of Paris, for wearing the headscarf to school. The headmaster considered that such behaviour disturbed the secular nature of the school and thus contravened the principles of state education. The *Conseil d'État*, the advisory council to the French state, declared on 28 November that the headmaster was indeed right in his decision and that the schoolgirls had contravened the principle of *laïcité* by their actions. This was later confirmed by the *Conseil d'État* on 11 March 1995 when a similar expulsion occurred. However, in 2003 the *Conseil d'État* changed its opinion on this matter and declared that schoolchildren could wear the headscarf to school so long as it did not cause conflict in the school.

<sup>4</sup> The French Constitution makes no mention at all of God. In contrast, the members of the Parliamentary Council that formulated the *Grundgesetz* in 1949 stated clearly that they were 'conscious of their responsibility before God and humanity'. After the horrors of World War II, it was felt important to mention God as the ultimate judge of the polity, and to make explicit a belief in a power that transcends democracy and can even redeem it.

<sup>5</sup> 'La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances.' Quoted from [www.conseil-constitutionnel.fr/textes/constit.htm](http://www.conseil-constitutionnel.fr/textes/constit.htm).



*Protests in Paris, 1989*

The tensions over this issue have recently led to a quite new political development in France. In April 2003 the then French Minister of the Interior, Nicolas Sarkozy, invited the Muslim community to form a body called the French Islamic Organisation in order to mediate between the state and the Muslim community in France on such matters.<sup>6</sup> This was a radical move by Sarkozy, since traditionally the French state does not recognise intermediate groups or communities and has considered all citizens to be adequately represented by the state. It was Sarkozy's hope that moderate secular Muslims could foster good relations between the state and the Muslim community. However, when he addressed this new body in April 2003, he was booed as he argued that the photograph on the compulsory French identity card should be taken with an uncovered head.

<sup>6</sup> See Hannah Godfrey, 'Schools' Bid for Headscarf Ban Widens French Divide', *The Observer*, 15 June 2003.

In October 2003 the issue of the headscarf was further exacerbated by the exclusion of two schoolgirls from the Henri-Wallon d'Aubervilliers Secondary School in Seine-Saint Denis, on the outskirts of Paris. The French National Assembly voted overwhelmingly on 10 February 2004 to pass a new law banning 'conspicuous religious symbols' in state institutions. Now that this decision has been ratified by the French Senate, religious symbols such as the headscarf will be illegal in French schools.

It may be worth noting the concern that these developments have aroused in the Roman Catholic Church. Addressing the papal diplomatic corps on Monday 12 January 2004, Pope John Paul II implicitly referred to the issue. Although he considered the state to have a legitimate right to function autonomously and in that sense to be secular, he warned against any tendency towards a dogmatic secularism openly hostile to religious belief.<sup>7</sup>

#### *Britain and the USA*

In Britain too, the wearing of official religious symbols has been a matter of concern. In the summer of 2000, Fareena Alam protested against having been refused a passport on the ground that she was wearing a headscarf on her photograph. Subsequently, the Home Office formulated a clear guideline that represented something of a compromise:

Provided that photographs show the full face ... photographs should not be rejected where a religious head covering is worn.<sup>8</sup>

Among some, these debates meet only with incomprehension. Nevertheless, over 300 Muslims met in London on 25 January 2004 to prepare themselves to address this kind of problem as it might arise in British society. At present, the official position of the British government is that people should be allowed to wear religious symbols in public institutions and when functioning in public roles such as those of a teacher or a police officer. Nevertheless, the discussion on the continent of Europe has had its influence in Britain.

<sup>7</sup> See 'Address to Diplomatic Corps', 12 January 2004, [www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2004/january/documents](http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/january/documents).

<sup>8</sup> Quoted in *Islam for Today*, [www.islamfortoday.com/passport.htm](http://www.islamfortoday.com/passport.htm).

As for the situation in the USA, there have been regular newspaper discussions about such issues as headscarves on driving licence photos, and the right to wear religious symbols in jobs requiring a uniform dress. Perhaps the most significant issue for public debate in the United States has been that of the right to refrain from saying the phrase 'under God' in the Pledge of Allegiance regularly recited in state schools.<sup>9</sup>

The questions raised here go far beyond the wearing of religious symbols; they concern the very nature of modern democratic societies. How are democracies to balance what are at least sometimes the competing claims of tolerance and social cohesion, particularly as they become increasingly multi-religious? It is to these fundamental issues that I now turn.

### ***Liberal Pluralism and Social Cohesion***

The case against the presence of religious symbols in schools seems to be that they will somehow represent an undue influence of the teacher over the pupils. Since teachers are agents of the state, a demonstration in school of their religious commitment undermines the state's neutral, secular character. Teachers should keep their personal beliefs private, and not influence their pupils' freedom to choose their own religion.

What, however, does this neutrality amount to? Is the modern democratic state really neutral? Let us look at two influential political philosophers in different countries. Both are 'liberal', and both argue that only neutrality can ground a tolerant and cohesive society.

In Germany, Jürgen Habermas has argued that religions must translate their claims into the secular language of modern democratic politics if the dangers of religious fundamentalism are to be avoided. Thus religions must renounce any claim to have a total grasp of the truth. They can be dialogue partners in modern democratic debate only if they allow a 'neutral common sense' to decide whether or not religious claims are legitimate. Only if religions commit themselves to the rules of the democratic process will their tendencies to dominate by force rather than by rational argument be kept in check.<sup>10</sup>

<sup>9</sup> See the discussion of this matter by Adam Liptak in *The New York Times*, 1 March 2003.

<sup>10</sup> Habermas elucidated his view in a speech he gave when he received the Peace Prize of the German Book Association in November 2001 and later in an article he wrote in the Summer 2003 edition of



*The Kippah*

In the USA, John Rawls has articulated the principle rather differently.<sup>11</sup> Rawls' groundbreaking work, *A Theory of Justice*, published in 1971, developed a conception of 'justice as fairness'. Rawls was trying to break away from conceptions of justice in terms of metaphysical principle or specific content, and instead to understand justice simply in terms of a social contract. People

living out of 'justice as fairness' make no claims for themselves that they are not prepared also to acknowledge as valid for others. The principles of justice apply equally to all, as citizens with the same rights and responsibilities—but Rawls makes no commitment to any particular account of what these principles will amount to.

Rawls refers to an 'overlapping consensus',<sup>12</sup> and suggests that the mainstream worldviews have enough in common for none of them to threaten the basic democratic values of society. Their values 'overlap', even if they do not exactly coincide. There can be broad agreement on social practice, even if the principles and values motivating that practice arise from very different religious convictions. Thus a secularist, a Muslim and a Catholic can in principle all agree to Rawls' principle of 'justice as fairness', while being motivated in very different ways. The Muslim may consider that such is the will of Allah as revealed in the Qur'an; the Roman Catholic may appeal to the Church's moral and social teaching; the secularist may argue that such a conception of justice forms the rational basis of a just society. Though their arguments are different, they agree regarding a minimal basis for political justice in society.

In a characteristically liberal way both Habermas and Rawls seek to generate consensus by focusing on the pragmatic. If society is to

the *Deutsche Zeitschrift für Philosophie*. For an English version of his Peace Prize speech, see 'Faith and Knowledge', in *The Future of Human Nature* (Oxford: Polity, 2003), 101-115.

<sup>11</sup> See *A Theory of Justice* (Oxford: OUP, 1971), and, most recently and most accessibly, *Law of the Peoples* (Cambridge, Ma: Harvard UP, 1999).

<sup>12</sup> See *Political Liberalism* (New York: Columbia UP, 1993), 133-172.

function, we need to marginalise our substantive religious commitments and focus on points of shared agreement.<sup>13</sup>

Though there are obvious attractions in this way of thinking, the conception of neutrality on which they depend is illusory. As Charles Taylor has noted, this kind of claim about neutrality is inevitably inscribed within an ‘inescapable framework’ that at least implies a particular vision of the good.<sup>14</sup> The liberal position trades on standard Western accounts of what it means to be moral, of what end or good a society exists for, and indeed of what should count as a rational argument. Liberals are being unfair when they presume that only religious positions are situated within a particular moral and substantive horizon.

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illusory***

Liberals consider themselves free of the prejudice of which they accuse their religious counterparts because they are heirs of the Enlightenment. They stand within a tradition that rejected superstition and religion in favour of emancipated reason. Enlightenment reason, in the famous slogan of Kant, was meant to be courageous enough to think for itself and not to have to depend on religious tradition in order to justify its own position.<sup>15</sup>

In political theory, the issue is discussed in terms of a debate between ‘communitarians’ and ‘liberals’. Communitarians, such as Charles Taylor, argue that moral and political positions are always indebted to particular traditions or communities within which they are embedded. Liberals, such as Habermas and Rawls, tend to base their arguments on some form of procedural or neutral reason that tries to avoid appealing to substantive—and hence contested—visions of the good.

<sup>13</sup> Habermas and Rawls consider substantive positions to be views about the good that are embodied in religious traditions. As these views are internal to a particular tradition, those outside such a tradition will not always share them. Rawls and Habermas use different terms: Habermas talks of ‘substantive worldviews’, whereas Rawls speaks of ‘reasonable comprehensive doctrines’. Nevertheless, they have both tended to share the basic liberal position that in the deliberation process of democracy one should stick to pragmatic procedures and leave the substantive questions about the good out of the discussion. For a more nuanced account of Rawls’ position that nevertheless does not substantially affect my argument here, see Patrick Riordan SJ, ‘Permission to Speak: Religious Arguments in Public Reason’, *Heythrop Journal*, 45 (2004), 178–196.

<sup>14</sup> See Taylor’s *Sources of the Self* (Cambridge: Cambridge UP, 1989), 3–24 (a chapter entitled ‘Inescapable Frameworks’).

<sup>15</sup> See Kant’s famous 1784 essay, ‘What is Enlightenment?’



The problem with the liberal position will become clearer if we return to our central example. A liberal theorist finds it problematic that a teacher should wear or display a religious symbol in a state classroom. However, they would have—presumably—no such difficulty were a teacher to wear Nike trainers. But what is the difference supposed to be? Surely the trainers too carry a message which could influence a pupil? If I, as a teacher, express a particular preference for one type of trainer then I am clearly saying that I hold this type of sports shoe to be a good thing, something to be worn, something worth

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spending money on. Then imagine a further case: a teacher wearing a T-shirt bearing the name of a pop group. This action can mean that the teacher subscribes to the pop group's values, in a way that may well influence any young person who sees them. No teacher can avoid transmitting values and indeed convictions to their pupils. We learn by imitating those around us. By imitating various possibilities, we come to judge between what we believe and what we do not believe. No matter what a teacher does, they will influence a young person. The question is not how to avoid that dynamic, but rather how to handle it constructively.

The liberal at this point needs to claim both that religious and moral convictions are clearly distinguishable from other convictions, and that they constitute a special case. Here and here alone, young people should be able to decide for themselves, uncorrupted by outside influence. The liberal thus needs to argue that the wearing of specifically religious symbols is somehow abusive, in a way that wearing Nike trainers is not.

This brings us to the crux of the liberal position. The liberal's problem with religious conviction cannot in the end be simply that it is a conviction, but rather that the conviction in question is somehow questionable or illegitimate, in that its grounding comes from a private support system of family and religious community. The justification for religious conviction comes from sources that, in principle, are not publicly accessible. I really have to belong to this family or this religious community in order to understand the argument. From the outside, I cannot penetrate the hidden matrix of social meanings and bonds that make up a religious tradition. It is for this reason that liberal philosophers such as Habermas and Rawls consider religious discourse beyond political reasonableness. Only if religions translate their discourse into a publicly accessible language can they hope to

make their voice heard in the public domain. Secular political language is neutral; religious language is not.<sup>16</sup> When I wear a religious symbol in a state institution, I am implicitly saying, 'come and join us in our world that only we can justify'. For the liberal, this represents an attempt to proselytize; if it occurs in a classroom between teacher and pupil, it is tantamount to religious kidnapping.

This version of the liberal argument is not to be dismissed too lightly. Anyone with even with a limited experience of the techniques used by the new sects should be concerned about manipulation, especially where young people—who may be very impressionable—are concerned. Nevertheless, as the examples of the trainers and the T-shirt show, this version of liberalism involves the secular state presuming a capacity for itself that it refuses to recognise within religions. It must claim that it alone can justify values, on the basis of reason, and that religions are somehow incapable of exercising proper regulation.

Is this fair? Is it reasonable to presume that religions cannot judge between unfair proselytism and the reasonable acknowledgement of one's faith in the public domain? I think not. Such a presumption is rooted in a dogmatic assertion shaping some secular states such as France and Germany. In many cases, the formation of such democracies was accomplished in the teeth of religious opposition. This opposition still colours their political imaginations, and it has made them unable to deal in a rational and democratic way with some of the public expressions of religion. In the background still lurks the spectre of the wars of religion in the sixteenth and seventeenth centuries. States have a systemic fear that if religions are allowed into the public domain, society will become even more fragmented than it already is, and collective decision-making will become impossible.

The alternative to the liberal position is the so-called 'Anglo-Saxon' model.<sup>17</sup> This model acknowledges the positive insights of

<sup>16</sup> Rawls speaks of political and not metaphysical justice, and Habermas of post-metaphysical thinking. In both cases, the liberal presupposition is that religious views are metaphysical, that is, situated within a substantive worldview, whereas political views are not. See Rawls, *A Theory of Justice*, and Jürgen Habermas, *Postmetaphysical Thinking* (Cambridge, Ma: MIT Press, 1994).

<sup>17</sup> In speaking of models here, I am using a methodological device employed by sociologists known as 'ideal-types', that is to say, a caricature which accentuates certain social aspects in order to facilitate analysis. It is in this spirit that I talk about the Franco-German model and the Anglo-Saxon model. I am not suggesting that the models fit every aspect of these societies, nor indeed that one can simply

communitarianism about how learning and socialisation are accomplished within particular communities with distinctive commitments. Communitarianism privileges the good of a particular tradition over the claims to universal rightness of a neutral reason supposedly independent of tradition and cultural context. It readily accepts a pluralism of cultures within the one society. Continental European societies, however, are concerned that such a model will lead to ever greater fragmentation, a fear that is not, in present late-modern or postmodern societies, without foundation. When, therefore, the French state sees headscarves in the classroom, it fears societal atomization and the weakening of the social bond—*le lien social*. If you let one group do their own thing, the danger is that everyone will simply go their own way. Society will disintegrate, and the result will be nothing other than anarchic tribalism.

### ***Beyond Liberalism and Communitarianism***

We need to move beyond the impasse between these two models. Our first step must be to recognise the strengths and weaknesses of each of them. Liberalism's claim to neutrality is attractive. It purports to offer a basis for social cohesion that avoids divisive questions about the objective good. However, as I have argued, its seemingly neutral, rational principles are in reality neither neutral nor independent of material claims. Liberalism is itself an ideology; it is grounded in a particular vision of the world, one that is all the more powerful because it is not explicitly acknowledged. For its part, communitarianism respects the particularities and the substantive claims of distinct groups. It supports the freedom to live according to one's own moral, religious and cultural convictions. But questions remain about social cohesion, about the solidarity between different communities, and even about the recognition of the other communities' claims besides those of one's own. Liberalism stresses freedom at the cost of ideological blindness and naïveté; communitarianism fosters cohesion at the risk of societal atomization. How can one draw on the strengths of these conflicting positions and avoid the limitations of each of them?

lump these constellations together. However, without some degree of generalisation it is impossible to make any kind of systematic social analysis.

I would like to suggest three basic criteria that help specify constructive ways forward, with special reference to the particular example of teachers wearing headscarves in the classroom.

#### *Acknowledging Commitments*

Firstly, all positions regarding the relationship between religion and society—including the liberal one—should be stated in a way that acknowledges their embeddedness within a particular moral and metaphysical framework. This principle demands healthy self-awareness, and also an openness to communities with different histories. It can be seen as a simple extension of the so-called ‘golden rule’: do unto others as you would have done unto you. Such a procedure will help a tradition remain authentic to itself; it will also, and more importantly, foster a respect for the particularities of the other traditions with which it seeks to live in relationship. Corporate self-awareness will foster a salutary tolerance and mutuality. There seem to me to be two practical consequences of this criterion for teachers in schools. First, they should be allowed to express their religious convictions openly, and not be made to feel that they can hold them only in private. Indeed, I would argue that through doing this children can learn from adults the importance of faithfulness to commitments and the meaning of personal conviction. Second, in acknowledging their own convictions and commitments teachers need to find a way of doing so that exhibits tolerance of others’ religious commitments. A fundamentalist attitude that excludes other traditions *a priori* should not be acceptable from a teacher in a state school.



#### *Citizenship*

Secondly, all members of a society should share a commitment to citizenship. Each tradition needs to be committed to making its own contribution to the wider society; it must be prepared to work for solidarity and justice in the common public domain. It is corrosive of this spirit of solidarity for traditions to live in ghettos with independent

social structures insulating them from the surrounding society and preventing healthy confrontation between different traditions. Confrontation can be a source of creative challenge. Through this, a tradition can present its own riches as a resource for others; it can also learn ideas and practices from other traditions that can complement those it already has. In the classroom situation this means that it is the duty of the teacher to foster an attitude of citizenship by helping the children to see how their religious commitments motivate them to work for the common good of all citizens in society. Moreover, beyond a sense of national solidarity, children can learn from a teacher a concern for a universal solidarity based on the dignity and rights of all people. All major religious traditions have an important contribution to make to the formation of young people today, and they can help states to deepen their own commitments to global justice and solidarity.

*Appropriate Assertiveness*

Thirdly, there needs to be a public respect for the legitimate right of religious believers to live according to their faith—a respect that can surely be maintained without permitting active and inappropriate proselytism. I would suggest that a Muslim teacher should indeed be allowed to wear a headscarf when she is teaching in a state school, if this is important as a sign of her religious integrity. She should be allowed to make the statement that the scarf represents. However, the statement has to be understood carefully: it amounts to the legitimate right of a person to express their belonging to a particular faith community. It would be inappropriate for a person to use the public institution of the school as a forum in which to canvass for new members of the religion. All concerned—management and employees—must be concerned to preserve the legitimate right of teachers to follow their own consciences within the boundaries that are appropriate to a pluralist state. Schools in Britain seem to negotiate this balance with great skill and sensitivity. This is an achievement of which they can be rightly proud. Perhaps our continental neighbours might benefit from their experience.

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The issues about religious symbols in state institutions point to difficult challenges facing democratic societies and their governments today.

There are no easy and universally valid answers; particular historical and religious contexts must always be taken into account. Moreover, legislation alone is unlikely to provide a solution. But maybe my three guidelines can do something to enable various religious traditions to participate in modern pluralist societies without compromising their integrity and neutralising their distinctiveness. No secular tradition has a monopoly on neutrality; no one religious tradition has a right to impose its views in a multi-religious and multi-cultural society. If real mutual understanding and co-operation are to grow, then we must all face the challenge of balancing social integration with religious freedom.

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