

Public Schools and Religious Plurality in Europe



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A few years ago, the European Court of Human Rights (ECHR, or "the Court") gave its final word over a controversy that had lasted nearly a decade. The *Lautsi and others v Italy* (or "Lautsi") case had attracted increasing attention first in Italy and eventually at a European scale and beyond. The issue in contention: if crucifixes should be taken down from classroom walls in Italian public schools.

The applicant, Ms Soile Lautsi, a Finn married to an Italian (Mr Massimo Albertin), found it unacceptable that her two children (Dataico and Sami) should see every day a crucifix hanging from the classroom walls in the public school they attended. She argued that the presence of crucifixes on the walls infringed her parental right to educate her children according to her philosophical convictions; her right to freedom of thought, conscience, and religion; and her right to manifest her own beliefs (alluding to Article 2, Protocol 1, and Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms). Together with her husband, Ms Lautsi belongs to the Italian Union of Atheists, Agnostics and Rationalists

(organisation member of the European Humanist Federation, and of the International Humanist Ethical Union).

The defendant, the Government of Italy, argued that the crucifix was a passive symbol; part of the Italian national identity; a summary of Italian and Western values such as non-violence, equal dignity of all human beings, justice and sharing, forgiveness to one's enemies, separation of politics and religion, and freedom of choice. The Italian Government argued as well that there was no consensus on how to interpret the principle of secularism among the member countries of the Council of Europe.

The ECHR's first ruling (2009) went in favour of Ms Lautsi. Keeping the crucifixes on public school classroom walls, the State was, even if perhaps indirectly, imposing religious beliefs on young minds. Negative freedom of religion (for instance atheism), continued the Court's judgement, deserved especial protection. The display of religious symbols could not be justified even by the desire of the majority of parents (as was the case in the public school Ms Lautsi's children attended) to have them there. The State should take religion from this public space, in order to educate the children in "pluralism" and "critical thinking", and to preserve a democratic society.

In past cases related to religious symbols the Court had ruled in favour of banning women who wore Islamic headscarves from attending university (*Leyla Sahin v Turkey*), teaching in public school classrooms (*Dahlab v Switzerland*), or entering their schools (*Dogru v*, and *Kevanci v France*). Therefore, the 2009 decision of the Court on Lautsi was consistent with the application of the principle of secularity (separation of religion and politics) understood in a particular way: religion should be out of the public sphere, and remain private. But is that what the principle ought to mean?

A group of 20 states (mostly from Central and Eastern Europe) sided with Italy appealing to the ECHR's Grand Chamber (its ultimate instance) to review the ruling. Eight of those countries asked Joseph H H Weiler, Professor of Law at New York University, to present arguments on their behalf. He accepted. During a 15 minute intervention before the 17 Judges forming the Grand Chamber, Weiler--wearing a yarmulke--dug deep into the principle of secularity's meaning, and its practical consequences for democratic polities in Europe and beyond.

Weiler pointed out that many public symbols have a religious origin. In Europe, the Cross was the most visible example, appearing on flags, crests, buildings, and other places. The Cross was neither a purely national nor a solely religious symbol. It was both. One logical extension of the 2009 ECHR ruling would be that photos of the Queen be removed from public spaces in the UK, because she is both Head of the State and of the Church of England. Using a similar rationale (not mentioned by Weiler there) British children should be preserved from listening (even less, learning) the

national Anthem (God Save the Queen). For Weiler, mandating a “naked wall”, especially when a religious symbol had been there for centuries, was not “neutral”, but rather an endorsement of a worldview (Secular Humanism) over another (Christianity) in the Lautsi case.

In Weiler’s view plurality implies a public sphere in which different worldviews (e.g. Secular Humanist, Christian, Jewish, Muslim and others) coexist respecting each other. Banning the presence of one or several of them from the public sphere is questionable in principle, and divisive in practice. Weiler, a practising Jew, did not have a special interest in favouring either of those two worldviews different to his own. In one of his writings he mentions that a pluralist education might require the school precinct to reflect the pluralism in society--some rooms with naked walls, some with the crucifixes, some with Stars of David, some with Stars and Crescents. This task, though, is for every country--not for the ECHR--to decide (e.g. France has a model of “laicism”; Denmark or Finland have state religions).

The Court’s final word came in March this year. By an overwhelming majority of judges the Court reversed its 2009 ruling. The decision whether crucifixes should be present in State-school classrooms fell under the margin of appreciation of the Italian State. The fact that there was no European consensus regarding the presence of religious symbols in State schools spoke in favour of that approach. The crucifix, though clearly a religious symbol, was also a passive one, and did not, in the case of Italian public schools, imply obligation for any student to receive religious instruction or participate in related rites or activities. Ms Lautsi, the Court commented, had possessed the right to inculcate on her children her own worldview without interference. Children were allowed to attend the school wearing symbols associated with their worldviews, for instance Islamic headscarves. The Court’s Grand Chamber considered the principle of secularity as meaning that the State should ensure, impartially, the exercise of various religions, faiths and beliefs, in order to promote public order and tolerance in a democratic society. “Critical thinking” was not mentioned as absent or not from any worldview.

The Lautsi case will no doubt continue to be studied and discussed for years to come. It hits sensitive cords, and arouses passionate debates in European and other societies. Rather than settling the numerous questions that arise from Lautsi, this article only pretends to introduce the topic to those less familiar with it. The following “conclusions” are, therefore, only preliminary thoughts. If they motivate further and deeper reflection they will have fulfilled their purpose.

First, “philosophies of life”, or worldviews based on philosophical beliefs (Secular Humanism, Christianity, Islam, Judaism and others), religious or

not, are present in today's Europe, and matter--sometimes significantly---to citizens. It is perhaps understandable: philosophies of life help people find sense and meaning to their ordinary lives and even to their whole existence.

Second, philosophies of life often have a social dimension to them. The democratic state can either pretend that it does not exist (and that philosophies of life are only a question of the private realm), or recognise that dimension of theirs, incorporate it to the public sphere, and when necessary rein in its possible excesses. This is undoubtedly a difficult task. Still, it appears to need attention for the achievement of a harmonious coexistence between all citizens under today's culturally diverse societies.

Third, since philosophies of life can be religious or not, a truly neutral state will maintain and foster a public sphere where the worldviews of all citizens can find expression. As Habermas has pointed out, in order to be "neutral" the state must be agnostic, which is not the same as secularist. An exclusively Secular Humanist public sphere would be no more impartial than, say, an exclusively Christian or Muslim one.

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