

Public space

Religare introduction⁹: *Following a preliminary reflection on the scope of the public space, the research within this theme concentrates on religious and other symbols in the public space and on the fundamental questions of ownership of and access to the public space. It will consider places of worship and sacred sites, religious dress codes, and private (religious) schools. It aims at providing inputs about how to rethink and restructure the public space in order to cope with the increasing religious and cultural plurality of European societies.*

We wish to examine first the question of religion in the public space and to do so perhaps more widely than is suggested by the above formulation. In so doing we anticipate some of the other themes of your investigation.

Secularism

The European Humanist Federation is committed to freedom of religion or belief (including freedom of non-belief and non-religious beliefs) and to the principles of equality and non-discrimination. Our wish is that the constraints on freedom should be the minimum compatible with the survival of a liberal, open society - tolerant, democratic, with guarantees of human rights.

From this it appears to follow necessarily that the state, the law and the public institutions we all share must be neutral as between different religions and beliefs.¹⁰ On questions of profound disagreement and deep sensitivity where there is no agreed way to establish the truth or falsehood of the claims made variously by Christians, Muslims, atheists and everyone else, it is quite wrong that the state should throw its weight behind any one particular religion or belief. This neutrality is what we mean by secularism.¹¹ Be it noted that we refer here to a secular state, not a secular society: a secular state may be supported by religious believers and be the home of widespread religious belief, whereas the phrase “a secular society” suggests one that has distanced itself from religion.

Now there is a common riposte to this: that neutrality is impossible, that a secular state in fact imposes liberal, secular values on everyone¹². But this is playing with words. Laws,

⁹ Taken from Religare newsletter no.1 at http://www.religareproject.eu/system/files/ReligareNewsletter_sept2010_0.pdf, accessed 6 April 2013.

¹⁰ This neutrality may not apply when - quite exceptionally - a religion or belief is seen by the government as fundamentally inimical to public safety, public order, health or morals, or the rights and freedoms of others.

¹¹ The implications of secularism in this sense (and we agree that others may use the word differently) are not the same as those of the words ‘secular’ or ‘secularisation’, which typically have to do with the extent to which society is or becomes ‘less religious’. Support for secularism, by contrast, is entirely compatible with religious belief - indeed, it has its origins in the late mediaeval church’s assertion of their independence from ‘secular’ government.

¹² As, for example, in the submission in the case of *Lautsi v Italy* to the European Court of Human Rights of a group of law professors organised by the Becket Fund: “An empty wall in an Italian classroom is no more neutral—indeed, it is far less so—than is a wall with a crucifix upon it.” - see <http://www.iclrs.org/content/blurbs/files/writtencomments.pdf>

government and institutions that do not impose or assume any religion or belief on the part of any individual citizen leave the individual free to hold any religion or belief or none. Is it dictatorial to remove chains from contented prisoners? They need not leave their cells if they prefer to stay. By contrast, those who reject secularism seek to fit everyone with their own style of shackles. This is not an enhancement of the freedom of the dominant religious group but a curtailment of that of all the minorities. By contrast, secularism is the best possible guarantor of freedom of religion or belief for everyone.

Objectors often allege that secularists wish to drive the religious from the public square. Not so. How could we, when atheism or Humanism are no less 'religions or beliefs' than Islam or Christianity? If Christians were banned from the public square, so would be Humanists and atheists.

What, rather, secularists do say is that in debates on public policy purely religious arguments should carry no weight. In a Voltaire-like defence of freedom of expression, we absolutely do not wish to suppress or forbid such arguments being voiced - but we do say that it would be better if they were not, and that if voiced then by convention they should count for nothing in the minds of politicians and decision-makers. By all means let the religious argue (say) against assisted dying with warnings of a slippery slope - an argument we can all understand and assess - but if they argue that life is the gift of God and that it is not for us to take it away, then in the process of public decision-making their words should be ignored. Such arguments cannot be legitimately admitted in a society where there are so many competing beliefs that reject its very premises. Let the religious draw their motivation from their religion, let them encourage each other by citing its doctrines, but let them in the public square speak in a language everyone can understand. Similarly, no atheist should expect any attention to arguments premised on the non-existence of God.

The religious complain that this amounts to a privatisation of religion. In a sense it does - but not in a sense about which they can legitimately complain. It requires that religious injunctions about the governance of society¹³ are addressed only to those who share their premises. But it does *not* demand that believers should cease manifesting their religion in public, nor that they should deny their motivation in their public-spirited work, still less that they should cease from engagement in public life.

Types of Public Space

We wish, however, at this point to take a step back so as to make some necessary distinctions between different types of public space. Only then can we sensibly examine questions of religious clothes and symbols and how they may be affected by the principles of religious freedom in a secular state.

Spaces - public and otherwise - can be categorised in many ways, but the distinctions that

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¹³ But not, of course, legitimate proselytisation - something outside the scope of this paper but plainly a manifestation of religion or belief guaranteed by human rights laws.

we believe are relevant are those between:

- (a) one's own private space - typically one's home;
- (b) other people's private space visited at one's free will - e.g., other people's homes, premises of organisations (including religious bodies);
- (c) other people's private space visited under some compulsion - such as places of employment or commercial premises;
- (d) public space in the sense of the street, public parks and squares & other such spaces; and
- (e) the public space of official institutions - courts, schools, Parliament, etc - and the figurative public space in which statutory public services are delivered.¹⁴

We believe that the considerations relating to each of these are different.

Religious Symbols

Wearing a religious symbol is akin to advocacy, and just as humanists and secularists are strong defenders of freedom of speech, so we are generally hostile to state laws and rules about what people wear. Our view is that this is a matter of personal freedom. So there should be no controls on what one wears or says in the street or similar public spaces (always excepting justified restrictions on hate speech etc). Even France's strongly secularist Fédération Nationale de la Libre Pensée was vigorously opposed to the ban on public wearing of the burka¹⁵. While "religious" clothing (rarely actually mandated by the religion rather than by custom in particular traditional communities) is sometimes imposed on (especially) women by patriarchal compulsion, at other times it is freely adopted. It is not for the state to dictate in such matters – any liberal advance should depend on education and campaigning leading people to change their own minds. Besides, laws are likely to be counterproductive.

On the other hand, there are circumstances in which rules are appropriate and justified. Broadly, these fall into three categories:

- (i) where there are considerations of safety or efficiency,
- (ii) where a uniform is reasonably required, and
- (iii) where there is a risk of a role (especially an authoritative role as, for example, a public official or a representative of an employer) being appropriated to make a private statement, which might be about religion or belief or perhaps about politics.

¹⁴ A special case of this figurative public space is public service broadcasting, where a policy either of neutrality or of balance should be adopted.

¹⁵ "Dès que la mission parlementaire Gérin/Raoult a été annoncée, la Fédération nationale de la Libre Pensée a émis les plus extrêmes réserves sur la possibilité et la nécessité de légiférer pour interdire le port d'un vêtement particulier dans la rue et hors de la sphère publique. En effet, il n'appartient pas aux pouvoirs publics de s'ingérer dans une affaire qui relève du libre choix de chacun dans la vie privée." - statement, 27 January 2010: <http://librepensee04.over-blog.com/article-interdiction-de-la-burqa-et-du-niqab-les-masques-tombent--43806748.html>, accessed 6 April 2013.

As to the first, safety (with machines etc) speaks for itself: jewellery or clothing likely to prove a hazard to their wearer or to others can properly be forbidden. A case could be made out for not allowing women to wear veils that limited their vision when driving motor vehicles. If the safety of others is not in question and the possible cost to others (including the public purse) is not likely to be substantial, exceptions may be made - for example, permitting turban-wearing Sikhs not to wear crash helmets when riding motorcycles. Efficiency comes into cases like that of a teacher in Britain who was not allowed to wear a veil over her face in class because her young pupils needed to be able to see her mouth and face when learning how to speak new words.

As to the second, uniforms are rarely if ever required outside employment, and the requirement will almost always be apparent before someone applies for a relevant post. Nevertheless, some accommodation of religious duties may be possible and should be welcomed - Sikh turbans again being a case in point.

As to the third, it is reasonable that employees appearing in public and in some sense representing their employer should not be allowed to take advantage of their position to advance a religion or belief. Employers are not required to impose restrictions but it should be legitimate for them to do so if they wish: for example, banning wearing religious symbols or political badges, or forbidding religious speech while in one's representative role. That said, a tolerant attitude is to be encouraged so long as individuals do not abuse their positions, and any resulting ban must be equally applied to all.

However, with public officials representing public authorities or institutions the case for controls is stronger: as representatives of the secular state they should not be allowed to infringe its neutrality. There is the added risk that members of the public may experience the symbols or speech as religious harassment or discrimination. A statutory ban on the harassment or discrimination that results may indeed be justified (as in the UK).

Similar considerations apply to the display of religious symbols other than on one's person. Broadly, there should be no restrictions (other than ordinary planning controls etc) on what anyone does in their private space, including displays outside churches that are visible from public spaces such as the street. However, public space (public open spaces, buildings etc) should be expected to observe the conventions of a secular state and not display religious symbols or messages. (Exceptions are justified for historic buildings and symbols only religious in origin, such as crosses on flags, and of course for processions, exhibitions and the like.)

In particular, statutory and general public services to which everyone is (or is conditionally) entitled should not be delivered in a way identified with any religion or belief. For example, public schools, court buildings and the like should not display religious symbols, nor should (say) employment or health services be delivered in premises marked by religious symbolism - even if they are delivered by a religious institution under contract to a public authority.

The case of *Lautsi v Italy*, currently before the European Court of Human Rights, is in our view unambiguous even on the limited grounds on which it is being argued (principally

under Article 2 of the First Protocol to the European Convention on Human Rights), and we attach at Annex II a memorandum we submitted to the Court on the case, which regrettably they did not entertain. In this paper, however, we argue that on principle symbols identified with any religion or belief should not appear on or in any public building, with the necessary stated exceptions.

For the avoidance of doubt, in relation to places of worship and sacred sites, we see no requirement for any special consideration to apply to these in their character as religious. We deplore restrictions on (for example) the building of minarets, as in the recent Swiss referendum, and we see no need for registration of religious premises - or indeed of religions and religious organisations as such. Such registration is intrusive and liable to be experienced as a threat to freedom of religion or belief.

Summary

These requirements can be summarised in a maybe over-simplified form as in the table overleaf. (A fuller treatment of employment is given in the section on the Workplace, below.)

	Personal behaviour - including wearing religious symbols and religious speech	Displays of religious symbols on buildings or in open air*
One's own private space	No restrictions	No restrictions - and may of course include displays visible from the public space - e.g., wayside pulpits.
Other people's / organisations' private space visited at your free will.	The obligations to follow their requests or rules and/or to behave with courtesy.	
Other people's / organisations' private space visited under some compulsion - especially for employment or to obtain a service.	<i>Members of the public:</i> No restrictions. <i>Employees:</i> Symbols: an employer may make rules especially for employees who in some sense represent the employer. Speech: ditto, but in addition the employer may - and may be obliged to - curtail religious harassment - e.g., inappropriate preaching.	Up to the employer / service provider save that he must stop short of and/or prevent religious discrimination or harassment.
Public space in the sense of the street or literal public squares & other spaces	The only definite obligation is to obey the law.	The presumption should be against displays of religious symbols, subject to historical considerations (market crosses etc).
The public space of official institutions - courts, schools, Parliament, etc - and the figurative public space in which (statutory) public services are delivered.	No restrictions on members of the public. (<i>Employees of the institutions: as above</i>)	The presumption should be against displays of religious symbols, even when public services are delivered under contract by a religious organisation.

* leaving aside questions of planning permission etc.

Education

We turn now to what your note refers to as “private (religious) schools”. However, it seems to us that the assumptions behind this terminology are too specific to particular national arrangements, suggesting as it does that there are public schools that are not religious and private schools that may be religious.

This is a quite inadequate taxonomy. Instead, we draw attention to the analysis at Annex III, which is extracted from our own website. The number of ways that these alternative

treatments of particular factors can be combined is legion and very many of them are to be found in real life in different countries.

Against this very complex background, the European Humanist Federation has adopted a clear policy on education and in particular on religion in schools, which we commend to you:

General principles

Education should fit the individual for life as a full participant in society, and teach self-respect and respect for the dignity of others.

Education should promote intellectual honesty. It should foster a love of learning and an appreciation of the supremacy of reason and the scientific method in the search for knowledge.

Education for citizenship should be based on a framework of human rights and responsibilities and should impart the knowledge, cultivate the understanding, and foster the critical skills essential for individual engagement with society and politics.

It should fit children and young people for life in a democratic society underpinned by empathy, human rights and the rule of law.

Lifestance education

Education should ensure that children are informed about a range of religious and nonreligious lifestances and have autonomy in their choice of their own lifestance.

The school should bring an academic discipline to bear in presenting the beliefs, practices and values of different lifestances as well as assisting pupils to develop their own responses to them.

Publicly funded schools should not promote one particular religious or non-religious lifestance as the only correct one but teach about the various lifestances (including Humanism) factually and in an objective way. Where parents or young people are offered an option of education into a particular lifestance, Humanism must be one option alongside the religions.

Education directed at fostering inter-cultural understanding that includes religious viewpoints should also include Humanism as a non-religious lifestance and include the perspectives and culture of non-religious people.

We recognise that in rejecting confessional schools we are questioning a pillar of educational systems in many countries. We wish to point out, therefore:

- (a) that we do not question the right of parents to bring up their children in their own religion or belief, as guaranteed by Article 2 of the first protocol to the European Convention on Human Rights - only the role of the public education system in doing it on their behalf;
- (b) that we base our policy on the desire to foster the autonomy of the individual child on the basis that the ability to think independently for oneself is an essential condition for adult life as a responsible citizen.

Parents should, in other words, be entitled, with the assistance if they wish of the churches or other religious institutions, to exercise their right to bring up their children within a particular religious or other tradition (the ECHR protocol is, if nothing else, a valuable defence against an overpowerful state) but they should *not* have the assistance of the public education system in doing it for them. The public education system should not promote any religion or belief but should adopt an educational approach so that children are not left in ignorance of the variety of beliefs they will encounter as adults in society and of the fact that their own beliefs are not shared by others. In our view, for the state to promote a particular religion or belief in schools is to infringe the autonomy of children and young people, making it difficult for them to come to their own conclusions on these "ultimate questions", which is almost certainly contrary to Article 14 of the Convention on the Rights of the Child¹⁶.

We draw your particular attention to the fact that this sort of approach is emerging as a European consensus. We refer in particular to:

- (a) the OSCE's "Toledo Guiding Principles on Teaching about Religion and Beliefs in Public Schools" (OSCE, 2007: ISBN 83-60190-48-8)¹⁷, which were prepared by a panel of experts on freedom of religion or belief;
- (b) the Council of Europe publication, "Religious diversity and intercultural education: a reference book for schools" (Council of Europe, 2007: ISBN 978-92-871-6223-6)
- (c) the Council of Europe recommendation CM/Rec(2008)12 to member states on the dimension of religions and non-religious convictions within intercultural education, adopted by the Committee of Ministers on 10 December 2008.

Although these documents do not venture into questions of ownership or management of schools, they are significant in calling for an educational rather than a confessional approach and in treating non-religious beliefs equally with religions. This is indeed

¹⁶ Article 14 reads:

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

¹⁷ The entire publication is available at <http://www.osce.org/odihr/29154> - accessed 6 April 2013.

necessary for the approach to be educational, since the full range of lifestyles about which the subject has to deal must, if it is not to be partial and biased, encompass non-religious as well as religious beliefs.

In our view, therefore, (to return to the narrower question that your project seems to address), while it may be permissible for states to finance and incorporate within the public education system schools owned by third parties including religious bodies, they should not do so if such schools provide confessional religious instruction rather than a broad religious education as part of their curriculum.¹⁸

¹⁸ Religious instruction as an optional extra outside the main school day may be permitted, but the option should be jointly exercisable by parents and children, moving from the former to the latter as they reach maturity. Likewise, if the churches wish to run their own schools without public finance, that is of course their right, as it is the right of parents to send their children to such schools.