

The Veil at School in Italy and in France

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Abstract

This article focuses on the freedom for female students from the Islamic tradition to attend public schools wearing a veil in Italy and in France. Moreover, it addresses the various aspects in which the presence of religious signs and symbols can be manifested at school, including in particular the possibility for teachers to wear a veil and the lawfulness of displaying a crucifix in classrooms. Italy and France have come up with contrasting solutions in this regard. This article highlights that underlying these solutions are two different legal-official interpretations of the meaning of the veil and in general of religious signs and symbols in the school environment in connection with the adoption or otherwise of an intercultural pedagogy.

I. Introduction

In Italy as in France the issue of the presence in public schools of religious signs and symbols has arisen and the similarities between the two contexts are evident. Italy and France are two countries of a Catholic tradition, where however for centuries there have also been many people of other faiths and where both atheism and anticlericalism have a certain following. Moreover, in recent decades, initially in France – in connection with the colonial and postcolonial experience – and later in Italy, Islam has rapidly increased due to immigration,¹ causing some tension. Furthermore, if the legal context is also taken into account, the similarities between Italy and France are so evident and well known that they do not require particular underlining. Not only in general are constitutional law and administrative law similar, but in Italy as in France human rights are recognised at constitutional level and in particular religious freedom is guaranteed in both

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¹ According to estimates made by the *Pew Research Center* Muslims in France numbered about three million six hundred thousand in 2010 and five million seven hundred thousand in 2016 whereas in Italy the corresponding figures were one million five hundred thousand in 2010 and almost three million in 2016. However, it would be a mistake to suppose that all those people fit the mainstream image of being devout. Moreover, not all women somehow linked to Islam actually wear a veil. For example, in France before the enactment of the 2004 law about which more will be said later, 'the Ministry of the Interior had reported only 1,254 girls wearing headscarves in French schools in 2003 – a fraction of 1 percent of all Muslim girls': J. Laurence and J. Vaisse, *Integrating Islam: Political and Religious Challenges in Contemporary France* (Washington: Brookings Institution Press, 2006), 165.

countries, endorsed also by Art 9, para 1, of the European Convention on Human Rights (ECHR). Moreover, they are two secular states² and the role played by public schools in both countries is essentially the same.

It is therefore striking that Italy and France have come up with contrasting solutions regarding the presence of religious signs and symbols in public schools.

This article proposes a reflection on that issue.

Indeed, a topic like this could be addressed through an analysis of how the secular state is a value common to Italy and France but has developed historically in a significantly different way in the two countries. But here we will pursue an approach more in tune with a reflection that is short and to the point, simply highlighting the different solutions employed in relation to the presence of religious signs and symbols in public schools while at the same time also seeking to explain the rationale for the solutions that have been adopted.

This article will focus on the issue of the freedom or not for female students from the Islamic tradition to attend schools wearing a veil, also because, at least in France, in recent years this has emerged as the most hotly debated topic and even beyond France has become an important component of the conflict that is going on in Europe about the place to be given to religions in public space in connection with immigration.

Moreover, this article will seek to engage in a systematic reflection that methodically considers the various aspects in which the presence of religious signs and symbols can be manifested at school, including in particular the possibility for teachers to wear religious signs and the lawfulness of displaying a crucifix in classrooms, an issue that has been debated at length in Italy. In fact, scholars have mostly considered the issue of female students' freedom to wear the veil separately from other issues but by contrast this article will seek to join up the dots, so to speak, between the various solutions adopted in the field of religious signs and symbols in the search for a common thread.³ Moreover, also the European Court of Human Rights (ECtHR), in the famous *Lautsi v Italy* case of 2011⁴ (more about which below), when assessing the lawfulness of displaying a crucifix in the classroom, took account among other things of the

² Art 2 of the French Constitution defines France as an *indivisible, secular, democratic and social Republic*. In Italy, after the 1984-1985 revision of the Lateran Pact between the State and the Catholic Church, all reference to Catholicism as the official religion were removed and the Constitutional Court would later rule that '*secularism is one of the supreme principles of the Constitutional order*' (Corte Costituzionale 12 April 1989 no 203, *Foro italiano*, I, 1333 (1989)).

³ There are studies that in one way or another have sought to establish a link between the different topics. See amongst others S. Ferrari, 'The Strasbourg Court and Article 9 of the European Convention of Human Rights: A Quantitative Analysis of the Case Law', in J. Temperman ed, *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom* (Leiden-Boston: Martinus Nijhoff, 2012), 13-34; C. Joppke, 'Double Standards? Veils and Crucifixes in the European Legal Order' 54(1) *European Journal of Sociology*, 97-123 (2013).

⁴ Eur. Court H. R., *Lautsi v Italy* App no 20814/06, Judgment of 18 March 2011, available at www.hudoc.echr.coe.it.

possibility for female students to attend lessons wearing a veil.

Without prejudice to the differences, above all that consisting of the fact that ‘the veil is always an attribute of the person wearing it, while the crucifix (is) part of an institutional environment’,⁵ the use of the veil concerns individual freedom and may possibly conflict with collective interests while displaying a crucifix concerns collective interests, and may possibly conflict with individual liberty. Furthermore, it is arguable that

‘a religious symbol worn by a student does not have the same political and legal importance that a religious symbol displayed by law in all the schools of a State’.⁶

Reference to female students wearing a veil is to the use of *hijab*, a type of veil that covers the hair and the neck leaving the face uncovered, which is the most common, or the use of the *chador*, similar to the *hijab* for the purposes of this article. This will allow us to leave aside all the issues that can be specifically raised about the *niqab* and even more so the *burqa* in terms of recognizability, safety, and compatibility between the physical limitations that such garments entail and normal school interaction and activities.⁷

II. A Divergent Evolution

Generally in both Italy and France nowadays public schools do not require uniforms to be worn (so the issue typical of many Anglo-Saxon contexts of the relationship between the obligation to wear a uniform and religious freedom does not arise).⁸ Students and teachers are free to wear whatever they like although in both countries many schools have regulations that set limits in the interests of maintaining a certain *decorum* as it were.

It is in that context, where there is general freedom but prohibitions are allowed on the basis of specific needs, that the issue of female students wearing a veil must be addressed.

⁵ C. Joppke, n 3 above.

⁶ S. Ferrari, n 3 above.

⁷ In this regard in general in Europe the issue (at least at the level of formal justification for restrictive policies) becomes above all one of security and the limitations introduced, if any, tend not to target the school specifically but public spaces in general (see A. Piatti-Crocker and L. Tasch, ‘Veil Bans in Western Europe: Interpreting Policy Diffusion’ 16(2) *Journal of International Women’s Studies*, 15-29 (2015)). And the issue of their lawfulness, considering as a whole the values at stake, is viewed in very different terms because specifically linked to the fact that one’s face is covered (see R. McCrea, ‘The Ban on The Veil and European Law’ 13(1) *Human Rights Law Review*, 57-97 (2013)). Just as the issue of their impact on the lives of women is viewed in different terms (see E. Brems ed, *The Experience of Face Veil Wearers in Europe and the Law* (Cambridge: Cambridge University Press, 2014)).

⁸ See the House of Lords Judgment of 22 March 2006 holding that it was lawful to require students to wear a uniform if such accommodated various religious dictates.

Indeed, as the ECtHR has also recognised, what is involved is not only in general the freedom to dress as one wishes but also religious freedom since the latter also includes the right to manifest one's faith through a sign like the veil. This, it should be noted, allows one in principle not to address the many questions related to the obligation to wear the veil and the different specific meanings of the veil in the Islamic tradition⁹ when discussing the connection between the veil and religious freedom.

But this certainly does not imply, either in Italy or in France, that limits cannot be placed to protect other interests: limitations 'necessary in a democratic society' according to the provisions of Art 9.2 of the ECHR. For example, in the *Dogru v France* case decided in 2008¹⁰ the ECtHR observed that it may be lawful 'to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected'.

In France in 1989, following the case of three female students expelled from school because they wore a veil (*les foulards de Creil*), at the request of the Minister of Education the *Conseil d'État*¹¹ gave an opinion (*avis*), not merely with reference to the veil in particular but with reference to religious signs in general, partly because in France as in Italy the principle of equality induced the authorities to avoid *ad hoc* provisions for this or that faith (even though the dispute that the opinion originated from concerned a veil). The opinion states that students must generally be free even in public schools to wear signs expressing their religious identity. Not so teachers: for them there is instead a ban for the sake of the secularity-neutrality of the school, an interest in whose name freedom can be limited.

More specifically, as regards students the *Conseil d'État* opinion stated that they should be allowed to wear 'signs by which they manifest their affiliation to a particular religion', as an exercise of the 'freedom of expression and manifestation of religious beliefs', except where that proves to be provocative in the eyes of classmates who do not share the same faith, or in any case such as to interfere with the normal functioning of the public service. So in relation to students, there is a conflicting interest that can lead to restrictions on freedom but it is assumed that such interest is a mere eventuality and hence any limitation must be viewed as being an exception to the rule.

Consistent with the above, in subsequent years the *Conseil d'État* struck

⁹ Topics that have been the subject matter of many studies including G. Vercellin, *Tra veli e turbanti: rituali sociali e vita privata nei mondi dell'Islam* (Padova: Marsilio, 2002) and R. Pepicelli, *Il velo nell'Islam: storia, politica, estetica* (Roma: Carocci, 2012). As regards in particular the issue of obligatoriness, for an overview see D. McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe* (Oxford: Hart Publishing, 2006), 8-12.

¹⁰ Eur. Court H.R., *Dogru v France* App no 27058/05, Judgment of 4 December 2008, available at www.hudoc.echr.coe.it.

¹¹ *Conseil d'État, Section de l'intérieur*, 27 November 1989, no 346893, available at www.conseil-etat.fr.

down regulations of individual schools that by contrast introduced a general ban.¹²

The opinion of the *Conseil d'État* represented a break with the more intransigent interpretations of the French tradition of *laïcité-séparation* according to which religion must be confined to the private sphere and therefore necessarily outside school, a public sphere *par excellence* given its educational goals for the citizenry and thus also students are obliged to leave their religious convictions *à la porte de l'école* (at the school door). Rather what was established was a *laïcité-neutralité* that afforded priority to religious freedom over the logic of separation-exclusion.¹³ Consistent with this break is the approach that can be found in the Debray Report of 2002 on the teaching of *fait religieux* (religious facts) in secular schools,¹⁴ where it is hoped there would be a move from a *laïcité d'incompétence*, whereby the latter by definition must be foreign to the institution, to a *laïcité d'intelligence* whereby the institution must instead consider and understand it.¹⁵

The approach mandated by the *Conseil d'État*¹⁶ would be short-lived as a change was triggered by the Stasi Commission.¹⁷ In its final report of 2003¹⁸ it took the view that the presence *per se* of female students wearing a veil was a serious obstacle to the mission of the school, because the presence at school of one or more students wearing some conspicuous sign of religious affiliation, which could be a *kippah* or indeed a veil, 'is sufficient in itself to disturb the quiet of school life'.¹⁹ Hence the Commission's proposal to prohibit such forms of attire in general. Shortly before that, another report on secularism commissioned by the government, the Baroin Report,²⁰ had expressly criticised the approach of the *Conseil d'État* by talking about an error committed in 1989:

'that of believing that the Islamic veil was a (mere) sign of religious affiliation when in fact it is a characteristic trait of fundamentalists that adhere to a model of society founded on the logic of the ghetto and hostile to democracy'.²¹

¹² See the decision in the *Kherouaa* case (*Conseil d'État*, 2 November 1992, no 130394, available at www.legifrance.gouv.fr) and in the *Yilmaz* case (*Conseil d'État*, 14 March 1994, no 145656, available at www.conseil-etat.fr).

¹³ That is how the development was seen by B. Massignon, 'Laïcité et Gestion de la Diversité Religieuse à l'École Publique en France' 47(3) *Social Compass*, 353-366 (2000); for his juxtaposition referring back to M. Barbier, *Laïcité* (Paris: L'Harmattan, 1995).

¹⁴ Rapport à Monsieur le Ministre de l'Éducation Nationale: *L'Enseignement du Fait Religieux Dans l'École Laïque*, February 2002.

¹⁵ Debray Report (Ministère de l'Éducation Nationale, 2002), 22.

¹⁶ See N. Deffains, 'Le Principe de Laïcité de l'Enseignement Public à l'Épreuve du Foulard Islamique' 34 *Revue Trimestrielle des Droit de l'Homme*, 203-250 (1998).

¹⁷ *Commission de Reflexion sur l'Application du Principe de Laïcité Dans la République*.

¹⁸ *Rapport au Président de la République* submitted on 11 December 2003.

¹⁹ Debray Report (Ministère de l'Éducation Nationale, 2002), 42.

²⁰ F. Baroin, *Pour Une Nouvelle Laïcité*, Report for the Prime Minister of France submitted in Spring 2003.

²¹ That viewpoint has since become characteristic of French society and underpins support

There then followed loi 15 March 2004 no 228, which – taking its cue from what had been recommended by the Stasi Commission, whose report is expressly cited in the report accompanying the legislation²² – amended the Education Code by introducing a provision (still in force today) that prohibits students in public schools from using signs through which they ‘*overtly (ostensiblement) manifest religious affiliation*’.

In 1998 Italy also tackled not specifically the issue of religious signs at school but more in general the issue of cultural differences, which naturally encompass religion in this context. However, the approach differs not only from that espoused in the *Conseil d’État* opinion but the philosophy that would soon inform French legislation. Art 38 of decreto legislativo 25 July 1998 no 286 (Immigration Code), still in force, provides that ‘the school community embraces cultural (...) differences as a value’. And right from the beginning it was assumed that religion was a cultural difference to be accepted as a value in general and without exception, including where expressed through one’s attire and hence also through wearing a veil.

Significantly in the guidelines periodically published in these years by the Ministry of Public Education in order to better manage the acceptance of foreign students, the issue of veils is not even mentioned because it is taken for granted that female students are free to attend school wearing a veil.²³ Indeed, in the *Charter of Values, Citizenship and Integration* – approved by decreto ministeriale 23 April 2007 and which since 2009 has been legally binding in as much as incorporated into the integration agreement which, like the French *contrat d’intégration*, binds the State and new immigrants – the section on secularism and religious freedom peremptorily states that as long as one’s face is not covered, ‘in Italy there are no restrictions on people’s attire’. And in note 39 to the official text of the Charter it is expressly stated that ‘Italy does not ban the wearing of a veil’ if it does not hinder the identification of the person, and specifically makes the point that in this regard Italy ‘does not follow the path adopted by other European countries, in particular by France’.

The story of a school principal²⁴ who tried in Italy to follow the model

for the ban under the 2004 law (see J.R. Bowen, *Why the French Don’t Like Headscarves. Islam, the State, and Public Space* (Princeton: Princeton University Press, 2007)), a ban that would receive quite a lot of criticism also in academic circles (see C. Laborde, *Critical Republicanism* (Oxford/New York: Oxford University Press, 2008)).

²² The close connection between the 2004 law and the Stasi Commission’s report is widely known: ‘*The law implements one of the recommendations of a special commission on religion in France, appointed by the government and headed by Bernard Stasi*’ (J. Laurence and J. Vaisse, n 1 above).

²³ See the most recent *Guidelines for the Acceptance and Integration of Foreign Students* of February 2014 (Ministero della Pubblica Istruzione, 2014). Likewise in a ministerial document from October 2007 called *The Italian Way for Intercultural Schooling and the Integration of Foreign Students* (Ministero della Pubblica Istruzione, 2007) that specifically refers to cultural differences, the issue of the veil is not mentioned in the slightest.

²⁴ ‘*Preside vieta il velo in classe, tolleranza zero verso comportamenti razzisti*’, available at

enshrined in the 2004 French law made the headlines a few years ago. A directive dated 11 February 2015 issued by the principal of a high school in Friuli stated that the school would

‘not accept (...) a display (...) of the outward signs of one’s own religious beliefs (...) for example, the scarf or veil’ because ‘it can be perceived as a provocation and cause a reaction’.

Regarding veils, female students are ‘free to wear them outside of school but not in the classroom’. A few days later a circular issued by the regional education authority criticised that directive maintaining that in general in Italian schools ‘there are no reasons (...) to oppose (...) the use of signs of expression of one’s cultural and religious affiliation’, in the wake of which the school principal promptly withdrew the directive. The episode confirms that in Italy female students are in general and without exception free to wear a veil.

The same can also be said for teachers. In general, it can be concluded that as long as one’s face is not concealed, in Italy ‘the use of the Islamic veil (...) in schools (...) is not banned by the legal system’.²⁵

The picture of the divergence between Italy and France as regards the possible presence of religious signs and symbols in public schools is completed, so to speak, by a diametrically opposite solution adopted as regards the presence of the crucifix in classrooms.

Banned for well over a century now in France (further to a provision contained in a law dating back to 9 December 1905 on the separation of church and state),²⁶ it is traditional for crucifixes to be displayed in Italian schools, in connection with a different history of the secular state and presence of Catholicism in the public space. There is no actual law as such on the matter, it is simply the case that crucifixes are envisioned by regulations on school furnishings.

From the above it transpires that there is a sharp difference between the two countries in relation to the presence of religious signs and symbols in public schools: in France female students are not allowed to wear a veil let alone teachers but in Italy both may do so. Furthermore, in Italy a crucifix can be displayed in the classroom but not so in France. One can speak of a general openness in Italian schools to the presence of religious signs and symbols compared to a general reluctance in French schools.

<https://tinyurl.com/yyxqd8ts> (last visited 28 May 2019).

²⁵ S. Carmignani Caridi, ‘Libertà di abbigliamento e velo islamico’, in S. Ferrari ed, *Musulmani in Italia* (Bologna: il Mulino, 2000), 223-234. Although dating back to 2000 that conclusion is still valid today. News reports mention just one case to the contrary, in 2004 (in Samone, a town near Ivrea), concerning a trainee teacher who was denied the opportunity for an internship at a nursery school due to her veil; however the relevant authorities immediately intervened and the woman was able to complete her internship (although at another location for reasons of expediency).

²⁶ Loi 9 December 1905, Art 28: ‘It is prohibited to affix religious signs or symbols in public places except for places of worship, cemeteries, funeral monuments and museums’.

III. Rationale for the Divergence

The ECtHR considers the French model to be legal. That the law can prohibit teachers from wearing a veil in schools has been affirmed by the Court ever since the *Dahlab v Switzerland* case decided in 2001.²⁷ More recently, in its decision in the *Ebrahimian v France*²⁸ case, the Court held that laws can prohibit any public official from displaying religious signs. The Court also ruled that loi 15 March 2004 no 228 was valid. At the start of the 2004-05 school year some Muslim girls went to school wearing headscarves to cover their hair and refused to remove them, following which the schools' disciplinary bodies finally expelled the pupils. This gave rise to several appeals before the French courts and then, when they were rejected, to applications filed with the ECtHR. However, the latter declared all of the applications to be inadmissible²⁹ stating that, without a doubt, the ban is part of the margin of appreciation left to the national authorities in this area because it pursued the legitimate aim of protecting the rights of others and the functioning of the school.

The liberal approach towards the wearing of the veil exhibited by the Italian legal system has never been assessed by the ECtHR, as could well happen if some members of the school were considered injured in their rights by an 'ostentation' of religious affiliation. However, in light of the decision in the aforementioned *Lautsi v Italy* case where the presence of a crucifix in the classroom was held to be lawful, there are no reasons why the wearing of a veil by female students and even teachers at school would be considered unlawful.

Even apart from the very fact of the divergence between the two models, it is striking that the French solution to the issue of the veil and the various judgments in the matter place an emphasis on balancing religious freedom with other values that can legitimately lead to a sacrifice of the religious interest if the opposing one is of high rank, which is how the ECtHR considers those related to the operation of public services.³⁰

That is not the case for the Italian model, due to the different meaning

²⁷ Eur. Court H.R., *Dahlab v Switzerland* App no 42393/98, Judgment of 15 February 2001, available at www.hudoc.echr.coe.it.

²⁸ Eur. Court H.R., *Ebrahimian v France* App no 64846/11, Judgment of 26 November 2015, available at www.hudoc.echr.coe.it.

²⁹ See Eur. Court H.R., *Aktas v France* App no 43563/08, Judgment of 30 June 2009, available at www.hudoc.echr.coe.it, the first of a number of similar judgments.

³⁰ A different view was expressed by the ECtHR regarding private business enterprises that wish to protect their image. In this regard see the opposing conclusions of two cases as always concerning the possibility for a female employee to wear a veil, one working in the public sector and the other in the private sector (see *Ebrahimian v France*, n 28 above and Eur. Court H.R., *Eweida and Others v United Kingdom* App no 48420/10, Judgment of 15 January 2013, available at www.hudoc.echr.coe.it). As regards striking a balance in these cases see C. Ruet's comment on the decision in the *Ebrahimian* case: C. Ruet, 'Actualités Droits-Libertés: Interdiction du Port de Signes Religieux par les Agents du Service Public: La Combinatoire Subtile de l'Arrêt Ebrahimian' *Revue des Droits de l'Homme*, 1-14 (2016).

attributed to ‘religious’. And the very lawfulness of both models according to the caselaw of the ECtHR depends precisely on the position taken by the Court in relation to the meaning of religious signs and symbols which, among other things, has led it to recognise a wide margin of appreciation and therefore the possibility that national models can be markedly different and at the same time valid.³¹

Therefore, the meaning given to the signs and symbols strongly conditions the rational structure and lawfulness of the different models. For example: if the meaning of the female student’s veil is provocation then it is forbidden in the interests of the good functioning of school and the restriction is legitimate. If, on the other hand, the veil is considered as a manifestation of a value then it is permissible without any need to strike a balance.

In the caselaw of the ECtHR and in general in that of the highest national courts, the States are free within the limits of what is reasonable to decide on the meaning to be given to signs and symbols. A striking example can be found in the judgments issued on the subject of displaying crucifixes in Italian schools.

In recent decades there has been strong pressure in Italy to remove crucifixes from classrooms, and in particular on a number of occasions it has been the parents of foreign students who have sued before the courts to demand removal. However, apart from occasional favourable rulings by lower court,³² such demands have not been held to be well founded by higher courts, in particular by the Council of State (*Consiglio di Stato*) in 2006.³³ Neither, as mentioned before, was such a claim upheld by the ECtHR in the *Lautsi v Italy* case.³⁴

The Council of State held that displaying a crucifix in a public school can be justified and is not discriminatory

³¹ As pointed out, amongst others, by C. Ruet in the above mentioned comment on the *Ebrahimian* case.

³² One of the most well known is that of the Tribunale di L’Aquila 23 October 2003, *Foro italiano*, I, 1262 (2004).

³³ Consiglio di Stato 13 February 2006 no 556, *Foro italiano*, II, 181 (2006).

³⁴ The litigation, which dragged on for many years, gave rise to much debate among scholars. Without any pretence as to completeness, the following contributions are worthy of mention: those contained in the volume R. Bin et al eds, *La laicità crocifissa? Il nodo costituzionale dei simboli religiosi nei luoghi pubblici* (Torino: Giappichelli, 2004); N. Fiorita, ‘Se il crocifisso afferma la laicità dello Stato’ *Rivista OLIR – Osservatorio delle libertà ed istituzioni religiose*, 1-7 (2005); A. Morelli, ‘Simboli, religioni e valori nelle democrazie costituzionali contemporanee’ *Forum di Quaderni Costituzionali*, 1-22 (2005); Id, ‘Un ossimoro costituzionale: il crocifisso come simbolo di laicità’ *Forum di Quaderni Costituzionali*, 1-3 (2006); those contained in the volume E. Dieni ed, *I simboli religiosi tra diritto e culture* (Milano: Giuffrè, 2006); P. Cavana, ‘Laicità e simboli religiosi’ *Stato, Chiese e pluralismo confessionale*, 1-12 (2007); L.P. Vanoni, ‘I Simboli religiosi e la libertà di educare in Europa: uniti nella diversità o uniti dalla neutralità?’ *Rivista AIC*, 4 (2010); M. Bignami, ‘Il crocifisso nelle aule scolastiche dopo Strasburgo: una questione ancora aperta’ *Rivista AIC*, 2 (2011); S. Luzzatto, *Il crocifisso di Stato* (Torino: Einaudi, 2011); G. Brunelli, ‘La laicità italiana tra affermazioni di principio e contraddizioni della prassi’ *Rivista AIC*, 1 (2013); N. Colaianni, ‘Simboli religiosi e processo di mediazione’ *Stato, Chiese e pluralismo confessionale*, 1-16 (2014); and F. Ferrari, ‘Another brick in the wall? Il difficile dialogo costituzionale con l’immagine del Cristo crocifisso’ *Rivista AIC*, 1 (2018).

‘if it is able to represent (...) civically relevant values’. In fact, in that case ‘even from a secular standpoint it can serve, other than its innate religious function, a highly educational symbolic purpose regardless of the religion professed by the students’.

Moreover, the Council of State observed that

‘in Italy the crucifix is capable of expressing (...) values of tolerance, mutual respect, personal improvement, affirmation of one’s rights, regard for one’s freedom, independence of moral conscience towards authority, human solidarity and rejection of discrimination, which denote Italian civilisation’.

The ECtHR for its part maintained that

‘the presence of the crucifix is not associated with compulsory teaching about Christianity’ and ‘Italy opens up the school environment in parallel to other religions’.

It noted that, for example,

‘it was not forbidden for pupils to wear Islamic headscarves’. So ‘in deciding to keep crucifixes in the classrooms (...) the authorities acted within the limits of the margin of appreciation left to the (...) State’.

According to those judgments the legally relevant meaning of the crucifix is not necessarily something that is embedded in the artifact, definable by looking to those who created or first used the symbol, meaning that the crucifix would be plainly religious in nature.³⁵ Nor is it necessarily what has prevailed in history or what this or that member of the school community today recognises or could recognise like, for example, the Spanish administrative court of Valladolid held in a famous judgment of 2008³⁶ in which the removal of a crucifix was ordered because its display ‘could create (in the students) the impression that the State is closer to (the associated) religious confession (...) than to others’. Nor is the legally relevant meaning in the school where the crucifix hangs necessarily that which emerges at the level of interpretive community based on the idea that is presented in Pierce’s theory of signs and has been robustly articulated and defended by Stanley Fish.³⁷

³⁵ To quote the words of the US Supreme Court in connection with the display in a public school of the Ten Commandments in the 1980 case of *Stone v Graham*: ‘The pre-eminent purpose for posting the Ten Commandments on schoolroom walls is plainly religious in nature. The Ten Commandments are undeniably a sacred text (...) and no legislative recitation of a supposed secular purpose can blind us to that fact’.

³⁶ Juzgado de lo Contencioso Administrativo no 2, Valladolid, 14 November 2008, 28, available at www.poderjudicial.es.

³⁷ S. Fish, *Is There a Text in This Class? The Authority of Interpretive Communities*

Instead, so the Courts say, the legally relevant meaning is the one chosen by the authority that governs the school, provided that this choice is in itself reasonable and fits into an overall ethos of the school coherent with it. In concrete, it can be reasonable to view the crucifix as an indicator of a specific religious orientation of the institution but also for example as a symbol of values that are religious but secularised. And it is in connection with the reasonable meaning chosen by and placed in a coherent context by the authority that one must judge the lawfulness of displaying the crucifix in classrooms.

This not only explains why two contrasting solutions can be legitimate but also explains why Italy and France have arrived at opposite solutions, not only as regards the crucifix but also with regard to the possibility for female students and teachers to wear a veil.

If we look back at the opinion of the *Conseil d'État* in 1989, it is clear that the underlying assumption is that the wearing of a veil by female students does not usually constitute a provocation and, therefore, does not interfere with the normal functioning of the school, thereby meaning that such behaviour is normally acceptable. If, however, in particular circumstances there is provocation, the *Conseil d'État* permits school authorities to forbid wearing the veil even if that entails a partial sacrifice of freedom. By contrast and as mentioned before, in its report the Stasi Commission maintained that the presence at school of one or more male or female students wearing some manifest (*ostensible*) sign of religious affiliation, which could be a *kippah* or indeed a veil, constituted *per se* provocation or, to use the already quoted words of the Baroin Report, an expression of a logic of the *ghetto* hostile to democracy. Accordingly, wearing that attire was considered in itself apt to 'disturb the quiet of school life', leading to a proposal to introduce a general ban that would then materialise with the above mentioned law of 2004, because on the basis of such an interpretation it is reasonable in general to partially sacrifice religious freedom by forbidding the veil.

In Italy, on the other hand, as we have seen, banning the veil in public schools is not permitted. Without doubt, while in France there is

'a militant secular culture of numerous teachers who, on the basis of a particular interpretation of the legal and ideological work of the Third Republic, advocate the exclusion of religion from school',³⁸

in Italy teachers appear on the whole more 'open' to the presence of religious signs and symbols. That is not to say however that the presence in Italian schools of such signs and symbols is not a ground for conflict. In particular, the veil appears in the eyes of many to be a sign to be tackled with bans because linked to an integralism judged to be dangerous from a security standpoint or because

(Cambridge MA: Harvard University Press, 1980).

³⁸ B. Massignon, n 13 above.

emblematic of a rejection of secularity and equality between men and women³⁹ while many see the display of the crucifix as an imposition. Otherwise, how does one explain a directive like the one mentioned above issued by the principal of a high school in Friuli and the lawsuits demanding the removal of crucifixes from the classroom? The difference stems from the different meaning attributed by law to signs and symbols.

The previously mentioned Charter of Values reads: ‘No one can feel offended by the signs and symbols of religions other than their own’ (§ 25). It is added that at school the young should be educated not to see religious convictions and manifestations of others as *divisive factors*. Rather, they are *values* according to the intercultural approach expressly adopted as its own by the Ministry⁴⁰ – and by no coincidence difficult to introduce in France.⁴¹ It should be noted, precisely in relation to Italian schools,⁴² that

‘the main aim of an intercultural model is to promote real interaction between different cultures’, everybody must ‘open up to equal dialogue with the other, recognizing and accepting their diversity as an element to be appreciated since it enriches their own identity’.

If at this point we also consider the previously mentioned Art 38 of decreto legislativo 25 July 1998 no 286 mandating in categorical terms that the school community embrace cultural differences as a value, what becomes clear is a regulatory stance that – amongst other things as far as we are concerned here – requires everyone to interpret religious signs and symbols consistent with that approach. A veil, borrowing the words of the *Conseil d’État*, can certainly constitute a ‘provocation’ but nobody in an Italian school must act on the basis of such an interpretation whether it be a female student or even a teacher who is wearing a veil.

Once adopted, an intercultural approach has its implications for the meaning of religious signs and symbols. Those implications could well be similar to those of the multicultural approach which, for example, led to Canada permitting a pupil to wear the *kirpan* in a public school, as established in 2006 by the Supreme Court in the *Multani v Commission Scolaire Marguerite-Bourgeoys* case, observing that

‘the argument that the wearing of kirpans should be prohibited because

³⁹ As pointed out by S. Regasto, ‘Il velo (islamico) fra pregiudizi e realtà’ *Forum Quaderni costituzionali*, 11 (2017).

⁴⁰ See *The Italian Way for Intercultural Schooling* n 23 above.

⁴¹ See H. Zilliacus and G. Holm, ‘Multicultural Education and Intercultural Education: Is There a Difference?’, in G. Holm et al eds, *Dialogues on Diversity and Global Education* (Bern: Peter Lang, 2009), 11-28.

⁴² G. Pasquale, ‘Toward a New Model of Intercultural Education into Italian School’ 191 *Procedia – Social and Behavioral Sciences*, 2674-2677 (2015).

the kirpan is a symbol of violence’ must give way to ‘Canadian values based on multiculturalism’.⁴³

Without, however, neglecting that what in a multicultural approach is above all protection (if not actually promotion) of the right to diversity, in an intercultural approach takes on a different and more dynamic meaning, enriching the relationship.⁴⁴

It is here that we can understand the underlying difference between the two divergent approaches adopted in relation to the presence of female students and even teachers wearing a veil. In France, even from the viewpoint of the most open stance embodied in the opinion of the *Conseil d’État* of 1989, there is the notion that signs even by their nature or in any case due to their ostentatious (*ostensible*) or demanding character constitute ‘an act of pressure, provocation, proselytism or propaganda’ that would be such as to ‘undermine the dignity’ of the other members of the school community and to disrupt its regular functioning. In the Italian legal system, in reverse, this does not happen because in the context of an intercultural approach any negative reactions are never justified, because the wearing of a veil is by law to be considered by others not as provocation but as enrichment, even apart from any difficulties;⁴⁵ on that basis, experience in interpretation and dialogue must also constantly develop, including as regards the meaning of the veil, in line with an intercultural approach.⁴⁶ Thus, in Italy,

⁴³ On which see D. Koussens, ‘Neutrality of the State and Regulation of Religious Symbols in Schools in Quebec and France’ 56(2) *Social Compass*, 202-213 (2009).

⁴⁴ See H. Zilliacus and G. Holm, n 41 above.

⁴⁵ Difficulties that must not be underestimated not only because they actually exist in many contexts but also because the ECtHR has held that they can be a ground for restricting liberty. As in the above mentioned case of *Dahlab v Switzerland*, where the Court ruled that a ban on teachers wearing a veil was lawful because the Islamic headscarf ‘appears difficult to reconcile (...) with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils’.

⁴⁶ The issue of the various meanings of the veil – originally, then over the course of time in different locations and now in concrete today in the eyes of the wearer or those of external observers as the case may be – thus assumes relevance or not depending on the level concerned. As highlighted above, according to the ECtHR the issue is not relevant in linking the freedom to wear the veil to religious freedom and neither is it relevant in Italy in permitting the wearing of the veil at school because in this regard all that suffices is the link with religious diversity accepted by law as a value. On the other hand, the issue of the various meanings of the veil becomes relevant when it comes to developing in schools the relationships typical of an intercultural approach. At this level one, to use the French expression *laïcité d’intelligence* (regarding whose possible meaning at school at teaching level see P. Gaudin, *Vers une Laïcité d’Intelligence?* (Aix-en-Provence: P.U.A.M., 2014)) it is required, which implies first of all the ability to interpret the sign starting from what studies say about it (see G. Vercellin, *Tra veli e turbanti*, and R. Pepicelli, n 9 above), with particular attention to the fact that in the current context the veil does not have a *single* meaning, for example, since it could be associated with subordination but also viewed as a means of identity affirmation (see I. Acocella, ‘Il velo islamico e la pluralità dei suoi significati’ *Studi di sociologia*, 51-66 (2011)), or it could well be linked to marginalisation but also by contrast to a path towards integration-emancipation (see O. Aksoy and D. Gambetta, ‘Behind the Veil: The Strategic Use of Religious Garb’ 32(6) *European Sociological Review*, 792-

without the need for any balancing, a sort of inclusive neutrality is achieved, where freedom of religion is ensured through the public presence of symbols and manifestations of different religions.

The Italian approach reaches a point that is, so to speak, extreme but coherent as regards the crucifix. The religious significance of this object cannot be denied, but members of the school community are duty bound to act by considering the crucifix as a symbol of values linked to Christianity certainly but also secular in nature (ie, appreciable also separately from religion). Therefore, displaying a crucifix cannot conflict with individual rights and likewise in this case there are no grounds for striking a balance, and the greater importance of the crucifix in context compared to an individual sign like the veil of a female student does not change the conclusion in favour of lawfulness. Without prejudice to the fact that with regard to this symbol and all other religious signs and symbols present in a school context, the legally relevant meaning deriving from the intercultural approach does not negate in any way freedom of interpretation: society should be allowed to develop multiple conceptions of what symbols mean because alternative interpretations and conceptions can co-exist, overlap, and even compete.⁴⁷ However, in their deeds people in Italy must adhere to the meaning consistent with the intercultural approach adopted in that country: a person can certainly see, for example, in the crucifix and in the veil two different forms of obscurantism that threaten freedom but in concrete must behave at school in line with the prescribed interpretation.

This legislative interpretation of signs and symbols may appear to be a bit stretched – and this has appeared so to many Italian scholars in particular with regard to the crucifix⁴⁸ – but it cannot be denied that it is reasonably incorporated into a project – schools premised on intercultural pedagogy – that as aforesaid exhibits a strong link with the wider plan of citizenship education – one of the

806 (2016)). The interpretation of the sign in the various contexts will obviously have to take into account what in concrete can have value according to the intercultural approach. In principle alien to this approach is the view – although relevant in other respects – that it is *better* for Muslim women to wear a veil (see, in critical terms, M. Lazreg, *Questioning the Veil. Open Letters to Muslim Women* (Princeton: Princeton University Press, 2011)).

⁴⁷ Consequently, there are no grounds for concern by those (B.G. Scharffs, ‘The Role of Judges in Determining the Meaning of Religious Symbols’, in J. Temperman ed, n 3 above, 35-57) who fear that the authorities may ‘impose’ on society a meaning to be attributed to this or that sign.

⁴⁸ This is the belief of almost all of the authors cited in footnote 33, where as regards the meaning of the crucifix opinions range from, on the one hand, the view that the meaning is – to employ an expression used before – embedded in the artifact, definable looking to those who created or first used the symbol such that the symbol is plainly religious in nature to, on the other hand, the view that the meaning is tied to history and there is an element of religious imposition. At times it is argued that the individual viewpoint should take precedence, such that the interpretation of the crucifix ‘*as an expression of repudiation of all exclusion cannot be imposed when on the contrary the symbol is perceived by some as the representation of a particular concept*’ (E. Dieni, ‘Simboli, religioni, regole e paradossi’ *Rivista OLIR – Osservatorio delle libertà ed istituzioni religiose*, 1-10 (2005)).

missions of schooling in Italy like in France – in a context marked by current and potential conflicts linked to cultural and religious differences.

IV. Conclusions

This article has shown the extent to which in recent years Italy and France have adopted contrasting solutions regarding the presence of religious symbols and signs in schools and has reflected on this.

In doing so the article has touched upon issues that are problematic today not only in Italy and France but also in many other countries with similar situations and legal principles. In May 2018, for example, much debate surrounded the ruling of a labour court in Berlin, which rejected the appeal of a teacher dismissed from a public primary school for wearing the *hijab* by applying the law of that *Land* that prohibits all public employees from wearing signs that refer to their religious beliefs. It is the latest episode in a series of similar disputes in that country where the laws of some *Länder* impose a general ban while others do not. In 2015 the *Bundesverfassungsgericht* adopted a stance in some ways similar to that taken by the *Conseil d'État* in the aforementioned opinion of 1989, ie, in favour of a general freedom save for the possibility to impose bans in situations marked by specific tension, but at the same time extending the freedom to teachers.⁴⁹

In Spain, like in Italy, crucifixes are displayed in classrooms and again in that country positions to the contrary have been expressed, for example, in the previously mentioned judgment of the Court of Valladolid.

In Austria, the crucifix is by law displayed in classrooms and in April 2018 the government took the first steps towards introducing legislation seeking to deny access to schools to female students who wear a veil. On the other hand, in Switzerland in 1990 the Federal Court banned the display of crucifixes in schools and in September 2018 declared a referendum aimed at banning the veil at school to be inadmissible because it contrasted with a constitutionally guaranteed right. Even in the comparison between Austria and Switzerland, therefore, we see two countries with a similar culture that have adopted an opposite position in relation to religious signs and symbols at school. If we consider also the prohibition for teachers to wear the veil (often disputed but upheld by the Federal Court in 1988 and again in 1997), Switzerland has adopted an approach similar to the pre-2004 French position whereas Austria seems to favour a peculiar combination of allowing crucifixes but not veils.

Reflecting on the Italian and French cases enables one to highlight the fact

⁴⁹ The judgment concerned a 2006 law in Nordrhein-Westfalen forbidding teachers from conveying 'any outward signs of a political or religious nature or in any event pertaining to a particular conception of the world' that would call into question the neutrality of the State (§ 57.4 *SchulG NW*).

that underlying these solutions are two different legal-official interpretations of the meaning of the veil at school and in general religious signs and symbols. In Italy they are considered elements of value: viewed through an intercultural lens they are considered as an element of relationships in the case of the veil or as a basis for relationships in the case of the crucifix. Whereas in France they are considered partisan and, therefore, a provocation in the case of the veil or an imposition in the case of the crucifix, within an overall conception of the school rooted in the idea that the religion should, as much as possible, play no part in relationships.

Both models are, as we have seen, considered lawful by national courts and the ECtHR. The fact that the State is afforded such wide power to establish meanings in a given context may not sit well with those who perceive different meanings. Indeed, it was mentioned before that some Italian legal scholars are puzzled by the secular meaning of the crucifix and similarly misgivings could also be voiced about legislation that can define the veil as either provocation or a value that promotes dialogue. However, as this article has sought to highlight, the attributed meaning cannot be arbitrary because it must be intrinsically reasonable and above all consistent with the context as well as the way in which schools are conceived and actually structured.

It is at this level in essence that lawfulness must be assessed. It is the school as it is structured overall that must, as regards all of its traits taken together, be respectful of freedom and operate in a manner consistent with its mission in civil society.

Although the French model appears to be valid from that standpoint, the Italian one is certainly more attractive, especially from the perspective of civic education due to its ambition to include everything without fear of tensions.