STATE NEUTRALITY AND THE LIMITS OF RELIGIOUS SYMBOLISM

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I. Introduction

The European Court of Human Rights (ECtHR) has concluded that the mandatory display of crucifixes in public school classrooms does not violate the European Convention.¹ Many have questioned whether a supra-national court like the ECtHR is entitled to interfere in issues that are so intimately linked to the national identity of state parties. However, even if one agrees that the Court’s Grand Chamber was in the end correct not to interfere (by employing the margin of appreciation), one can still question whether a constitutional democracy like Italy is justified in enforcing an explicit Christian symbol in public schools.

In this chapter, I analyze the Lautsi case from the perspective of state neutrality. It is generally acknowledged in legal and political philosophy that contemporary constitutional democracies cannot be formally linked to some religious confession, except in a vestigial and largely symbolic sense.² Of course, modern states can never be perfectly secular and neutral toward the plurality of religions and philosophies of life. Still, as Rajeev Bhargava argues, the idea of neutrality requires a “principled distance” between religion and the state, two entities that should be seen as distinct spheres with their own respective areas.³ In this chapter, I analyze whether the wish to hold on to such a religiously inspired tradition is consistent with the idea of state neutrality, a central value of contemporary constitutional democratic states.⁴

Thus, the question in this chapter is whether the obligatory display of crucifixes should be considered merely to be a symbolic utterance of a ‘national particularity’ or whether the display actually breaches the principled distance

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¹ Lautsi and Others v. Italy, 18 March 2011, European Court of Human Rights (GC), No. 30814/06 (referred to as the Grand Chamber decision or Lautsi II).
⁴ It should be noted that the Catholic crucifix—a more or less detailed representation of the crucified Jesus—is a much more pronounced symbol than the more abstract simple cross as it is commonly used by Protestants.
between state institutions and religion, because the crucifix is an expression of the state's preference for a particular religion in an environment that should be devoid of such religious utterances.

In the first part of the chapter (sections II–III), I analyze the arguments that were employed when the case was before the ECtHR. In the second part (sections IV–VIII), I analyze the obligatory crucifix in terms of state neutrality. I argue that the Italian insistence on holding on to the obligatory display of the crucifix is an example of what I will call the European constitutional deficit: the unwillingness or inability of European states to justify government institutions in a way that does justice to the pluralistic nature of European societies.

II. The Italian Defence of the Obligatory Crucifix

Which arguments did the Italian government employ to justify the obligatory presence of crucifixes in public schools? Before the ECtHR, the Italian government followed various argumentative strategies in order to show the obligatory display of the crucifix in classrooms had nothing to do with (infringements of) state neutrality. In this section, I reconstruct the two major arguments. The first is constitutional: the government sees the display of the crucifix in state schools as ‘natural’ because it is the banner of the Catholic Church, the only church mentioned in the constitution.5 Article 7 of the Italian Constitution does indeed mention Catholicism, but it is a non sequitur to conclude that this reference provides any justification for the crucifix in state schools. Article 7 reads as follows:

The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are regulated by the Lateran pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments.

Indeed, the emphasis on the independence and sovereignty of the Italian state implies quite the opposite. In addition, the connection between the Italian state and the Catholic Church has been broken officially, when Catholicism lost its status as the state religion in 1985.

The second argument, employed by the Italian government, downplays the association of the crucifix with Catholicism. Although the government acknowledges that the crucifix is primarily a religious symbol, it nevertheless emphasizes that in the context of the classroom the crucifix should primarily be understood as a secular symbol:

5 Lautsi v. Italy, 3 November 2009, European Court of Human Rights, No. 30814/06 (Chamber decision or Lautsi I), para. 11.