The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom
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Review by Myriam Hunter-Henin (UCL, Laws)

At the heart of this edited collection lies one affair: the *Lautsi* case and one symbol: the crucifix. In sixteen different chapters, the book offers multiple analysis of the challenge raised against the mandatory presence of crucifixes in Italian state schools. From a variety of perspectives, the chapters all address the fundamental underlying question of the place of religion in public education. Testimony to the complex questions left open by the European Court of Human Rights in its two dramatically opposite decisions[1] and to the rich and in-depth analysis of the contributors' chapters, the book offers a fascinating read.

The contributors, lawyers for most, come from a diversity of sub-disciplines and jurisdictions, ranging from legal theory, human rights, constitutional law; comparative law, law & religion and legal philosophy. They are spread across the UK, the Netherlands, Romania; Belgium, Canada, Italy, Hungary and the US. The book will be of interest to a large audience: public lawyers, human rights experts, educationalists, philosophers; sociologists, political scientists, scholars of religion.

The book gives a balanced assessment of the Grand Chamber decision in which the obligatory presence of crucifixes on Italian state school wall classrooms was held not to infringe convention rights. Seven chapters against nine approve this final outcome but interestingly the reliance placed by the Grand Chamber on the

[1] ECtHR 3 November 2009 [Second Section Chamber]; ECtHR 18 March [Grand Chamber], 2011 *Lautsi and Others v. Italy*, App. 30814/06.

concept of margin of appreciation to support its conclusion is met with far greater caution.[2]

A few of the authors support the judicial restraint that the concept of the margin of appreciation carries. Jean-Marc Piret (chapter 3) thus underlines that the European Court of Human Rights does not have the standing of a Constitutional Court for Europe.[3] "What is important here is the question: *who* is competent?"[4]. This tension between the universality and the national/local enforcement of human rights is a recurring theme, studied in other worthwhile chapters such as Silvio Ferrari's (chapter 1). Both Silvio Ferrari (Chapter 1) and Brett G. Scharffs (Chapter 2) in different ways emphasize the importance of dialogue. The Grand Chamber's outcome in that sense may be praised for allowing the dialogue to continue. By contrast, others regret the lack of audacity of the Court: Roland Pierik (Chapter 8); Carla M. Zoethout, (Chapter 16).

Unsurprisingly, the question of the "who" is intimately linked to the substantive question of meaning. *What* does the symbol of the crucifix mean and is this meaning enough to amount to a violation under the Convention? Again, the answer to the question will depend largely on how the question is phrased. If the question focuses on the particular audience (children of impressionable age in hierarchical relationships) the answer is likely to be that the crucifix will have a coercive impact (Alison Mawhinney, Chapter 4). The same conclusion will follow if one focuses on the particular position of the crucifix as the emblem of the majority

[2] According to Lorenzo Zucca, the concept is mentioned 27 times in the whole decision and 8 times in the 20 paragraphs summarizing the court's assessment. L. Zucca, "*Lautsi*: A Commentary on a decision by the ECtHR Grand Chamber", *International Journal of Constitutional Law* 2013 vol. 11, n.1, pp 218-229. on the concept of margin of appreciation itself in *Lautsi*, see Giulio Itzcovich, "One, None and One Hundred Thousands Margins of Appreciations: The *Lautsi* case", Human Rights Law Review 2012 vol. 12, n. 4.

[3] See also Joseph Weiler. For example JHH Weiler, Lautsi: A Reply, International *Journal of Constitutional Law* 2012, vol. 10, n. 4, pp. 230-233.

[4] Chapter 3, p.75 (italics added).

religion (Stijn Smet, Chapter 5) or as a sign imposed by the power of the State (Jeoren Temperman, Chapter 6). But as very convincingly argued by Malcolm Evans (Chapter 13), the rights involved ensure that public education be delivered in a manner respectful of diversity. The convention does not require that an *appearance* of strict neutrality be enforced but demands that the educational experience is – in its *substance* – compliant with the plurality of convictions.

Should one argue for the opposite position, public schools and by extension, possibly, the public sphere should then need to be stripped of all religious symbols. Conceptually a strict version of neutrality would follow. The collection reflects this debate about neutrality, intrinsic to the case. Some chapters support a strict version of the notion (chapter 8). Others offer middle ground solutions where preference for majority religion and neutrality become compatible (Wouter de Ben; Liviu and Gabriel Andreescu; Hana van Ooijen, in Chapters 7, 9 and 11 respectively).

The Italian context – certainly – may easily welcome a strict version of neutrality (Carlo Panara, chapter 12) and arguments can be made in favour of such move for the sake of multiculturalism (as illustrated interestingly by the Canadian context by Richard Moon, Chapter 10). However, transferred to a European context, one may query whether the European Court is to decide for a particular form of Church/State arrangement across Europe[5] - which leads us back to the question of the "who".

This overlap between the questions is reflected in the book. The concept of neutrality, highlighted as the overarching theme of part III of the book is actually one of the recurring themes in many chapters. One may also wonder in what way chapters 4 to 12 are really less specifically about *Lautsi* than the last four, put together under

[5] See Ian Leigh and Rex Ahdar, "Post-Secularism and the European Court of Human Rights: Or How God Never Really Went Away", (2012) 75(6) *Modern Law Review* 1064–1098.

the title of "*Lautsi*-specific comments". The comparative perspective developed in part IV is interesting but limited. A chapter comparing the concept of secularism in France and Italy would have shed further light on the case as would have a detailed analysis of the German position. But these minor queries about the overall structure and scope of the book take none of the value of the collection away.

As the dialogue on the place of religion in the public sphere continues, this particular collection, edited by Jeroen Temperman, will offer a rich and fascinating contribution to the debate.

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