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# ISLAMIC SYMBOLS IN EUROPEAN COURTS

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It is well-known that accommodating Islam in the legal systems of European countries is a daunting task. Anyone who embarks on such a tough yet crucial challenge needs to be aware that Islam seeks to prescribe living according to the precepts of Islamic law, known as Shari'a law, which consists of a comprehensive set of rules that guide Muslims through their everyday life. As a result, since Muslims, a significant minority in Europe, are both compelled and willing to abide by these rules, they ask for freedom to carry out their lives in accordance with Islam. However, these requests are often met with scepticism by the authorities whilst public opinion, which frequently feels threatened by the Muslim community itself, perceives any demand as dangerous. Even though requests regarding the freedom to perform ritual daily prayers or to build places of worship seem quite reasonable, some other requests, particularly those that deal with the freedom to wear certain garments, especially in public places such as schools, could cause problems when analysed in depth. Indeed, when it comes to striking a balance between competing interests, some of which are deemed to represent core values of contemporary Western culture, such as gender equality and public security, granting Muslims what they ask for seems sometimes even trickier and is perceived as dangerous.

This edited book is a useful tool that sheds light on the way Islamic symbols are dealt with by the European Court of Human Rights and the superior judiciary in various European countries, namely the United Kingdom, France, Germany, Austria, Spain and Italy. These studies focus on the approach that each of these countries adopts when coping with requests from Muslim communities. The authors turned their attention to the ways in which these countries have learned to compromise between respecting the fundamental freedom of religion on the one side, and demands of public security and public order on the other.

The book is broadly divided into two sections. The first is mainly theoretical and offers methodological insights on how to understand the subsequent chapters as well as to carry on research and construct arguments. The second one offers a sound analysis of the concrete issues at stake, focussing on case-studies from the abovementioned countries.

The first part has two chapters written by the editors and deals mainly with legal pluralism and its methodology. Menski provides an overview of legal pluralism, critiquing that present-day legal education is often still narrow-minded and treats law as merely the monolithic entity of state law, so that legal practitioners end up believing that law is nothing more than that. All this translates into a sort of 'lawyerly control freakism' (p. 3) which may be avoided through a plurality-conscious approach that takes into account the real nature of law as an internally diverse plurality. Menski then introduces his 'kite of law', a tool to navigate four major competing claims and entities from within the law, basically natural law, socio-legal norms, state law and international law and human rights principles. Through this device, these various components of law can be considered with a view to finding the right balance. No decision should ever neglect the internal plurality of law, among whose sources religion 'cannot be simply outlawed' (p. 17). Readers of this Journal will be familiar with failures to account for socio-religious factors in decision-making.

This is followed by Scarciglia's article on legal comparison which expresses the need to develop a 'model of methodological pluralism' (p. 21) to succeed in comparing different kinds of law. This author, too, suggests

that a plurality of methods is essential to grasp the complex phenomena that characterise a globalised world, stating that we can no longer rely on last-century comparative tools. To highlight why classical comparison does not fit modern-day challenges, Scarciglia brings the example of *angrezi shari'at*, an expression coined by Menski in 1998 for the rules Muslim communities abide by in England, which result from a complex merging of English law and *Shari'a law*. Recalling the ongoing 'transition from the traditional study of nation-states to that of epistemic communities' (p. 29), this article further underlines the crucial importance of teaching comparative methods in comparative law courses and preparing better equipped legal practitioners.

The book's second part opens with an analysis of the approach adopted by the ECtHR regarding the display of religious symbols. The key-contrast between 'value pluralism and other fundamental rights' (p. 58) is accurately pointed out especially by investigating cases on veil-wearing, which involve issues concerning both freedom of religion and gender equality, identifying dangers that arise when religion is utterly ignored. On the one hand, Sara Tonolo stresses that a *laïque* approach is all but neutral; on the other, given that many countries claim to adopt a neutral policy, she underlines that 't's not clear why neutrality requires the banning of the religious symbols' (p. 37).

The following six contributions delve into how some European countries deal with Islamic symbols. These case-based studies, often by a team of two authors, make it clear that there are huge differences among the policies of the countries covered in this book. For instance, in Germany the debate regarding the headscarf in public schools only gravitated, until very recently (when even this was permitted), around whether teachers should be allowed to wear a headscarf or not, as pupils enjoy a freedom of religion that could not hinder their right to wear it. In France, however, even students' right to wear a headscarf is debated, to the point that this is outlawed in public schools. No wonder, then, that we can talk about *laïcité de combat* (fighting secularism) for France's current attitude towards religions, as opposed to *laïcité plurielle* (plural secularism), which seems to be implemented in Germany.

In Austria, the climate towards Islam seems to be even more ‘relaxed’ (p. 177). So far, just one case concerning Islamic symbols has made its way to the Austrian Supreme Court. The reason for such a favourable milieu may be found in history, since issues such as pluralism and tolerance were already dealt with in 1867 in the Basic Law on the General Rights of Nationals, the StGG, while the *Islamic Act* had already taken care of Islamic symbols in 1912. Unfortunately, such open-minded approaches cannot be found everywhere in Europe. Many recent events, such as the debate on the French and the Belgian laws banning the full-face veil in public spaces as well as the rise of movements like *Pegida* (Patriotic Europeans Against the Islamisation of the West) in Germany, call for serious rethinking about the ways Muslims and their demands are perceived in Europe. They too often seem scapegoats for a variety of problems that affect European societies. This book is rich in detail and a very useful tool to understand the contradictions of a state-centric approach to these highly contested issues. It also helps to appreciate the dangers and consequences of accepting only state law as law. Thanks to a variety of contributions that examine both current scholarship and recent case-law, students and scholars, as well as legal practitioners, will benefit from reading this well-produced book.

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