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P. Lo Iacono, A. Vincenzo

*Religious symbols and the principle of 'laicità' in Italy and France**

GERMANA CAROBENE

The recent debate over 'laicità'¹ has given rise to strong disputes both in doctrine and in jurisprudence especially as refers to problems arising from the exhibitions of religious symbols in private and in public spaces. All the problems are related to different ways to configure symbol in multicultural systems such as the concept of "identity" (cultural, ethnic, ethic, religious).

All the polemics spurred in France by the famous law banning the wearing of the Islamic veil in schools² – that have promoted jurisprudence contributions in Germany³, Turkey, England and at the European Court of Human Rights⁴ – or relating to the 'crucifix case' in Italy⁵, make all the more urgent

* Paper presentato al Convegno *Religion in the 21st Century. Transformations, significance and challenges* (Copenaghen, 19-23 sept. 2007).

¹ "Laicità" is a term which is impossible to translate in English: 'laicism', in fact, has a different, and negative, meaning in the Italian language. Also the term 'secularism' has a different meaning in our language.

² Loi 2004-228 del 15 marzo 2004 *Sur le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées public*, www.legifrance.gouv.fr.

³ The Constitutional federal Court of Germany has recently tried a case regarding a teacher fired because of her will to wear a veil in class. The Bverf G has solved the question considering that there is not a legislation about it and calling in the Lander to regulate the matter according to the different communities composition: cfr. ALESSANDRA DI MARTINO, *La "decisione sul velo" del Bundesverfassungsgericht*, on web site www.associazionedeicostituzionalisti.it/redazione.html. The article shows the text of the judgement and the sentence of BverfG, 30 lugl 2003 which considered illegal the dismissal of an employee who wanted to wear a veil. In this case the Court had denied the right any other kind of clothes excluding uniform since that also muslim girls had to wear it. Cfr. anche *House of Lord. Opinions of Appeal for judgment in the case R (on the application of Begun (by her litigation friend, Rabman)) (Respondent) v. Headteacher and Governors of Denbigh High School*, 22 mar. 2006, in olir/jiab.htm. Also in this case muslim girls had no right to wear veil instead of uniform.

⁴ European Court of Human Rights, *Leyla Sabın c. Turquie*, 10 novembre 2005, req.n. 44774/98, www.coe.int. Cfr. GERMANA CAROBENE, *La libertà di religione, di manifestazione del credo religioso e il rispetto dell'ordine pubblico. Riflessioni in margine all'affaire Leyla Sabın davanti alla Corte Europea dei diritti dell'uomo*, in *Diritto e Religioni*, 1/2, 2006, pp. 621- 633.

⁵ Italian Constitutional Court: sentt. 203/1989; 259/1990; 13/1991; 195/1993; 421/1993; 149/1995;

a rethinking of the new dynamics of 'laïcité', at least at European level⁶.

Laicism is, indeed, not only a *principle*⁷, an objective ideal, but a *method*, a path designed for a pacific and constructive living of the social structure and it is in this sense that the conceptualization related to the religious identification should be correctly set⁸.

It is interesting to start from an evolutionary analysis of the so called 'laïcité à la French' that, at least partially, has been parallel to the Italian one. From a *laïcité éclairée*, derived from the ideology of the *lumières* and of the desacralisation of the civil power, they have moved, at the beginning of the 20th century, to a period of *laïcité radicalisée* that centres on the independence from Churches, in a very hostile manner to clericalism⁹. In Italy this period, typical of the liberal legislation of the second half of the 19th century, led to, even in presence of a Constitutional Charter clearly confessional, to a strongly anticlerical legislation, that brought to the *debellatio* of the Papal State.

440/1995; 178/1996; 334/1996; 235/1997; 329/1997; 508/2000; 327/2002; 389/2004; 168/2005, and ord. 127/2006. Jurisprudence: Cons. di Stato, Adunanza II Sez., parere 27/04/1988, n. 63; Corte di Cass., III Sez. Pen., 13/10/1998, n. 10; Corte di Cass., IV Sez. Pen., 01-03-2000, n. 439 (est. Colaianni); Avv. Stato di Bologna, parere del 16/07/2002; Trib. dell'Aquila, ord. 23-10-2003 (est. M. Montanaro); Trib. dell'Aquila, 19/11/2003 (pres. est. Villani); TAR Veneto, I sez., Ord. Rimess., 14-11-2003 (relat. Gabricci); TAR Veneto, III Sez., 17/03/05, n. 1110; Trib. Civ. di Bologna, I Sez. Civ., ord. 24-03-2005 (est. Palombi); Trib. Civ. Napoli, X Sez. Civ., ord. 26/03/2005 (est. Pignata); Trib. Civ. dell'Aquila, 31/03/2005 (est. Villani); Trib. Civ. dell'Aquila, ord. 26-05-2005 (su reclamo dell'ord. 31/03/2005), (Pres. Rel. Tatozzi); TAR Lombardia, Sez. Brescia, sent. 22/05/2006, n. 603; Cons. di Stato, VI Sez., 13/02/2006, n.556; Cons. di Stato, Adun. Sez. II, 15/02/2006 (est. Pozzi); ed anche Corte. App. Perugia, ord.10/04/2006 and sentences about judge of Camerino: Trib. dell'Aquila, 15-12-2005, n. 622 e TAR Marche, 22/03/2006, n. 94. Cfr. EDUARDO DIENI-ALESSANDRO FERRARI-VINCENZO PACILLO, *Symbolon/diabolon. Simboli, religioni, diritti nell'Europa multiculturale*, Il Mulino, Bologna, 2005.

⁶ Cfr. ALESSANDRO FERRARI, *Libertà scolastica e laicità dello Stato in Italia e Francia*, Torino, 2002; PAOLO CAVANA, *Interpretazioni della laicità. Esperienza francese ed esperienza italiana a confronto*, Roma, 1998 e ID., *I segni della discordia. Laicità e simboli religiosi in Francia*, Torino, 2004; JEAN BAUBEROT, *Laicità e pluralismo in Francia*, in *Coscienza e libertà*, 1997, pp. 73-85; GIUSEPPE CAPUTO, *La questione del velo islamico*, in *Quad. dir.pol.eccl.*, 1990, I, pp. 507-509; GAETANO CATALANO, *Libertà religiosa e diritti fondamentali nelle società pluraliste*, in *Dir.Eccl.*, 1997, III, pp. 597-616; FRANCESCO ONIDA, *Nuove problematiche religiose per gli ordinamenti laici contemporanei*, in *Quad. dir.pol.eccl.*, 1998, I, pp. 279-293; MARIO TEDESCHI, *I problemi attuali della libertà religiosa*, in *Studi di diritto ecclesiastico*, Napoli, 2002, pp. 1-22; PAOLO STEFANI, *La laicità dello Stato come problema giuridico*, Bari, Cacucci, 2000. EMILE POULAT, *Liberté, laïcité. La guerre des deux France et le principe de modernité*, Paris, 1987, and, *La solution laïque et ses problèmes*, Paris, 1997.

⁷ HENRI PENA RUIZ, *Qu'est-ce que la laïcité?*, Gallimard, Mesnil-sur-l'Estrée, 2003, p. 10.

⁸ Cfr. AA.VV., *Il principio di laicità nello Stato democratico*, a cura di MARIO TEDESCHI, Soveria Mannelli (CZ), 1996; AA. VV., *Ripensare la laicità. Il problema della laicità nell'esperienza giuridica contemporanea*, a cura di GIUSEPPE DALLA TORRE, Torino, 1993; RICCARDO ACCIAI, *La necessità di una ridefinizione del concetto di laicità*, in *Dir.Eccl.*, 1991, I, pp. 507- 511; PIERO BELLINI, *Riflessioni sull'idea di laicità*, in AA.VV., *La questione della tolleranza e le confessioni religiose*, Napoli, 1991, pp. 29-50.

⁹ RENÉ REMOND, *L'anticoncléralisme en France del 1815 à nos jours*, Paris, 1999.

The before – the last-period is, instead, different because in France there is a recognition of *laïcité*, with the ultimate inclusion in Republican Constitutional Charters¹⁰, whereas in Italy the stipulation of the ‘Patti Lateranensi’, recalled in art. 7 of our 1948 Constitution, have represented a limit to a definition as of ‘laicità’ of our laws.

The principle of ‘*laïcité*’, set out in art.1 of the current French Constitution, centres on values such as respect, dialogue, tolerance, pillars of the Republic democratic identity. In Italy, instead, notwithstanding the formulation of art. 8 cost., that clearly declares the ‘equal freedom for every religious confession’, motivations of political opportunity have determined a situation of legislative *favor* for the Catholic Church not yet overcome, notwithstanding the revision of the *Concordato* and the beginning of the stipulation of pacts with a-catholic confessions. The affirmation of ‘laicità’, as supreme principle of our legal order, is due to the involvement of the higher jurisprudential organ, the Constitutional Court that, in a famous ruling of 1989, has declared it as structural base of our democratic State. The Court has also qualified ‘laicità’ as constitutional implicit super-principle, and the definition of its content as equal respect – from public powers – of the different spiritual options that live together in a pluralistic mature democracy.

The ‘laicità’ evolutionary path seems, however, to be making dangerous steps back especially in France where, beginning in 2001, we can see a progressive intrusion of political power in the management of religious oriented sectors that, in the past, were left to private autonomy. The starting point can be traced back to legislation on religious sects, then to the famous ruling on the exhibition of religious symbols in 2004 up to the adoption of the recent ruling on *laïcité* in public services. It is a sort of *defensive ‘laïcité’*.

Against the pressure of centripetal forces inside the society the political-legislative involvement is directed, in the name of the supreme principle of ‘*laïcité*’, to affirm its own essential values by intervening in sectors that are, and should be, private. This kind of “laicità” seems not to be able to solve social conflicts anymore. It seems that the current ecclesiastic law politic is oriented towards anachronistic approaches that, in order to affirm the dogma of the State supremacy and of the neutrality of public space, are focussed on stronger and stronger forms of involvement and compression of the individual private sphere.

The 2004 law, in the authors’ intentions would tend to consolidate, in school structures, the French republican model of cultural integration

¹⁰ EMILE POULAT, *Liberté, laïcité...cit.*, pp. 199-200.

based essentially on the '*laïcité*' ideal, on the project of reformulating and re-establishing the unity of the national community by respecting diversities and religious pluralism. The aim is that of creating a neutral space – school – inside which favouring reciprocal respect and cohesion on the basis of common values. The legislative document seems, instead, to be focussed on the ban of the Islamic veil even because it is considered not a simple religious symbol but the expression of an evident gender discrimination, extremely anachronistic.

The debate over the Islamic veil has also spurred an intervention of the European Court of Human Rights in two cases, one regarding Switzerland and the other Turkey that, even with different perspectives, brought to similar conclusions. The first hypothesis was relative to a primary school teacher, converted to Islam, and confirmed the country authorities' decision that, on the basis of the principle of neutrality of public teaching, denied the option of wearing the veil during classes, given the strongly symbolic value of the veil and the age of the students, too young and easy to manipulate¹¹. In the second hypothesis a university student had been asked not to go to classes as she would wear the veil. In this case too the request has been judged legitimate as the European Court, despite the acknowledgement that the ruling banning the veil represent an intrusion in the right of expressing religious freedom has nevertheless declared that it can be a 'necessary measure in a democratic society'. This decision is not, however, sharable given that the use of the veil did not impact on other people's own sphere, but that it could have, more correctly, be seen as a form of expression of own belief that does not interfere with social nor political order. The recalling of rulings on laicism in school structures cannot be justified – they could affect teachers but are not supposed to limit students' rights. The school role, in fact, is undoubtedly linked to education, not only from a cultural point of view but also to help creating the personal identity of the student that can and should respect diversities of the individual and of groups. The main goal should be a policy able to allow an ethnic integration in order to contain the differences without assimilating and changes¹².

¹¹ European Court of Human Rights, *Dablab c. Suisse*, 15 fev. 2001, www.echr.coe.int.

¹² Cfr. FRANCES RADNAY, *Culture, Religion and Gender*, in *International Journal of Constitutional Law*, 1, 2003, underlines that "genuine individual consent to a discriminatory practice or dissent from it may not be feasible where these girls are not yet adult. The question is whether patriarchal family control should be allowed to result in girls being socialised according to the implications of veiling while still attending public educational institutions... A mandatory policy that rejects veiling in state educational institutions may provide a crucial opportunity for girls to choose the feminist freedom of state education over the patriarchal dominance of their families... a prohibition of veiling risks violating the liberal principle of respect for individual autonomy and cultural diversity for parents

It's interesting to point out the opinion of High Court of Justice, Administrative Court in Great Britain – case about a girl who has been turned away from the school because of her willness to wear the veil in the place of uniform –: “if the jilbab were to be introduced as a part of the school uniform there is a risk of creating two classes of pupil”. In a sense “on the desirability for the school retaining a uniform are not only those set out in the Governor’s decision but include the need to support inclusion and social cohesion. If the school were to allow pupils to wear a variety of different form of groups and cliques who would be identified by the clothes that they wear”¹³.

In the Italian context the debate on ‘laicità’, that seemed to have been set in the rulings by the Constitutional Court, has been reopened during the judicial case regarding the exhibition of the crucifix in schools and public places¹⁴. The case has spurred a lot of judicial, and also doctrine, involvement in open dichotomy up to a ruling of 2006¹⁵ that, with an awkward interpretation, declares the crucifix a symbol of tolerance and civil values, thus concluding that the exposition in classrooms is compatible with the principle of ‘laicità’ thus stressing the objective change of the cultural sphere.

The model of ‘laicità’, deriving from the Italian jurisprudence, extremely inhomogeneous and non-linear, seems to be founded on plans that cross each other in the attempt of excluding any possible conflict with the social structure, with a marked catholic nature; in the configuration of a general and aseptic freedom of individual conscience and equal freedom of religious confessions with respect with public powers but, overall, of marked privilege with respect to Catholicism and of its underpinning values.

as well as students” (p. 663). Cfr. also FAEGHEH SHIRAZI, *The Veil Unveiled. The Hijab in Modern Culture*, Gainesville, University Press of Florida, 2001, a work over the origins of religious veil.

¹³ Sentence may 27, 2004, *Shabina Begum c. the Headteacher and Governors of Denbigh High School*, edited by www.unimi.giurisprudenza.olir.it, nn.41-42 where the Court comes to the conclusion that “to change the school uniform in the way the claimant suggest would lead to divisiveness within the school and would threaten the cohesion within the school.... The current school uniform has served the school well promoting a positive ethos and sense of community identity” (n.84). Cfr. MARIA PAGANO, *Il divieto di indossare il foulard islamico: due sentenze a confronto*, in *Diritto e Religioni*, 3/2007, pp. 540- 552.

¹⁴ Ord. Tribunale de L'Aquila, rg 1383/2003; T.A.R. del Lazio, sent. 4558/2002/t/n; Corte Costituzionale, ord. 389, 2004; Consiglio di Stato, VI sez., n. 556/2006; Corte Costituzionale, ord. 127, 2006. Parere Consiglio di Stato, n. 63, 27.04. 1988: whether Italian Constitution guarantees equal rights to all religious communities, it's allowed to place religious symbols in public spaces such as the Crucifix that belongs to the the inheritance of a country. On the other side it doesn't seem that the Crucifix placed in class can interfere with individual freedom to express religious identity, cfr. *Quaderni diritto e politica ecclesiastica*, 1989/I, pp. 197-199.

¹⁵ Sentence n. 556/2006 of VI section Consiglio di Stato, cit.

The Italian supreme jurisprudence¹⁶ has associated 'laicità', as a supreme principle of our legal order, to a regime of 'cultural and confessional pluralism', and putting, in so doing, at the same level every option unless it implies a violation of the equality principle that would hinder the coexistence of the different options¹⁷, by underlining the need of jointly and dialectically elaborating the rules of a shared ethic and values.

There is a strong discrepancy between the sentence of Constitutional Court and the recent decisions of administrative courts whose opinion seems to step back a pace.

It's due to remember a sentence of Constitutional Court dated 1991 where the Court has underlined that human conscience has to be considered as the deepest part of human dignity which needs to be granted as much as Constitution determines fundamental values according to the priority they have in Constitution¹⁸. In the same year the court confirms her opinion regarding the importance that *favor* to religious phenomenon and right of conscience's freedom have to work together¹⁹; in this sentence the court points out the need to grant at the same time catholic religion teaching in public school as display of laicità, and right of people who don't want to follow this optional lesson. All depends on the personal choice about this teaching. It's important to underline that the Court does not figure catholic religion teaching as expression of laicità but as allowed in public school by the principle of "laicità". "The Crucified" will be considered as a symbol of "laicità" only fifteen years later by the administrative court.

The analysis of Italian jurisprudence helps us to survey all the problems: pluralism; no question about number of people; no question about sociological aspects; no different subjects based on religion; equidistance and impartiality; rule of distinction between orders; religious minority's rights; legitimacy, within certain limits, of legislation promoting religion freedom's rights²⁰.

¹⁶ Sentence n. 203/89 della Constitutional Court.

¹⁷ In this sense also Constitutional Court, sentence 18 ott. 1955, n. 440 in *Il Foro It.*, 1996, I, c. 30, but also SARA DOMIANELLO, *Sulla laicità nella Costituzione*, Milano, Giuffrè, 1979, p. 58 ss.

¹⁸ Sentence Constitutional Court n. 467/1991, *Giur. Cost.*, 1991, p. 3805 ss., p. 3813 ss., point 4 in law.

¹⁹ Sentence Constitutional Court n. 13/1991.

²⁰ GIUSEPPE CASUSCELLI, *L'evoluzione della giurisprudenza costituzionale in materia di vilipendio della religione*, in *Quaderni della Scuola di Specializzazione in Diritto ecclesiastico e canonico*, 7, Napoli, 2002, 79 segg., especially p. 86; also in *Quad. Dir. Pol. Eccl.*, 2001/3, 1119 segg. According to this point of view: the Italian State can be considered less "laico" than a nineteenth-century cultural liberal State and than France State starting from the third Republic. The Italian State is "laico" in so far as, although it's not neutral, it's not confessional (it's "independent" and leader in its own

We notice the importance of relation between the principle of “laicità” and the right of conscience as a fundamental freedom, related to the protection of religious sentiment²¹ which not only the State but the community has to be interested in. It’s better defined the area of protection of religious sentiment which is connected to the constitutional right of religion freedom. The principle of “laicità”, doesn’t mean unconcern about all religious phenomena but involves legislation which has to be ‘equidistant and fair to all religious communities’²². The relationship between symbol and “laicità” is instead matter of recent decisions. In detail, considering the Crucified as a “non symbol” – and especially a passive figure – shows a different way to see “laicità” and religious freedom that intend to express the idea of no pression to religious practices.

The analysis of sentences shows how italian courts consider the Crucified both an important symbol and a passive sign or at least a “no symbol”. According to their opinion infact, the principle of laicità must be made of a *favor religionis*, evaluating the relations between religion, social context, and historical inheritance. In order to grant religious freedom, the State does not allow religious intolerance and discrimination and religious pluralism does not limit “negative freedom” to not have any religious belief. We discuss the faults of the theory which relates laicità to the “Crucified” as a value of tolerance, if not even a symbol of “laicità”. The Crucified is linked to hold values born in a secular laical society.

sphere and can’t interfere with religious communities (it has to come to an arrangement with them). Considering legislation about religion unimportant for the pluralist State, or that it has to be based on equidistance and impartiality it’s really far from Constitution and from a plural society: MARCO OLIVETTI, *Incostituzionalità del vilipendio alla religione di Stato, uguaglianza senza distinzioni di religione e laicità dello Stato*, in *Giur. Cost.*, 2000, p. 3972 ss., especially p. 3977; *contra* FRANCESCO RIMOLI, *Laicità (diritto costituzionale)*, in *Enc. Giur. Treccani*, XIX, Roma, 1996, 8. The Court says that equal rights to religion freedom of single people lead to equal right of a community: Sentence n. 346/2002 (Onida). ALESSANDRO ODDI, *Il principio di «laicità» nella giurisprudenza costituzionale*, in ROBERTO BIN - GIUDITTA BRUNELLI - ANDREA PUGIOTTO - PAOLO VERONESI, *La laicità crocifissa? Il nodo costituzionale dei simboli religiosi nei luoghi pubblici*, Torino, Giappichelli, 2004, 240 segg., and pp. 247-248, according to this opinion the Court seems to show a favour for the religious community.

²¹ The conscience is granted on two levels: at first the art. 2 of Constitution; on second level art. 19, for religious “conscience”; and art. 21 for “conscience laica”. In case of political discrimination we can act the equality principle which is able to cancel legislation against the freedom of the conscience. We can enforce the balancing action of equality principle by the principle of laicità when there is an interference between civil order and religious order: GIOVANNI DI COSIMO, *La Corte, il giuramento e gli obiettori*, note at the sentence n. 334/1996, in *Giur. Cost.*, 1996, 2935 segg., especially p. 2948.

²² Sentence of Constitutional Court n. 329/1997 (Zagrebelsky). See a recent statement of the Constitutional Court, n.168/2005 (Neppi Modona) where the Court note that the protection of religious sentiment is based on one side on equality principle set in art. 3 Cost., on principle of laicità o non-confessional State...which means, equidistance and impartiality to all religions, according to what is sanctioned by art. 8 Cost., which refers to equal freedom to all religious communities.

The principle of *laicità* should involve public space able to be neutral during the conflicts between systems also for a long time”²³ so that the State can act in favour of religious factor with a positive attitude.

According to some authors the placement of the Crucified, inferred from the article n. 9 of the “Accordo”, is based on the the new configuration of catholic religion which has moved from the concept of religion State to the idea of a cultural and social factor.. Nevertheless we notice that there are no more juridical reasons for considering the “Crucified” placement conformyng with religious freedom, since that Italy has been going through a cultural change and because of contitutional principles which command respect for people and a neutral State.

A recent decision of an administrative court has to be censured because if on one side underlines the importance of the principle of ‘*laicità*’, on the other side, considers the Crucifix as a historical, cultural and religious sign. On the second part the sentence, going through an historical religious rebuilding, affirms that the Crucifix is a symbol of ‘*laicità*’ that can teach what ‘*laicità*’ is for people who are not Christian²⁴.

The Council of the State on 2006 has thus emphasized the inadequacy of a universal vision of ‘*laicità*’ that does not depend on belief and/or religious context, underscoring that the symbol, represented by the exhibition

²³ Sentence Court of Cassazione, IV sez. pen., 1 marzo 2000, n. 439 (Colaianni).

²⁴ According to this opinion the “*laicità*” of the State is the expression of tolerance contained in the kerigma of christian belief so that there is a relationship between christian belief and freedom which bring us through the crociates and the antisemitism to tolerance and to the basis of “*laicità*”. The sentence underlines that in christian faith the method of charity is more important than the same belief that is the message of all religions. It’ for this reason that the “Crucifix” has to be considered as symbol both of historical evolution, identity, and values system such as freedom, equality, human dignty, religious tolerance and “*laicità*”. The “Crucifix” meant to be the symbol of a typical history,national identity can be placed in public school because of the importance to remark the principle of ‘*laicità*’.

Sentence VI Section, 13-02-2006, n. 556, confirms TAR Veneto: it’s clear that in Italy, the “Crucifix” is able to express the origin of tolerance, respect., human importance, human rights, human freedom, the autonomy if human coscience againt authority, national solidarity, refusing discrimination, which represent italian civilization. In Adunanza II Section, of 15-02-2006 we read that the concept of *laicità* is not on the opposite side of religiousness, causing only that a democratic State ha to be neutral to all different faiths. Nevertheless the Consiglio di Stato points out that the principle of *laicità* does not run the risk by the presence of the “Crucifix” in school. It represents also an historical, symbol and a national identity sign., the Christianity is first a sociological phenomenon; and we remember the references in Concordato to the historical inheritance of Italy relating to the social aspect of religion. This sentence is very similar to the opinion of Consiglio di Stato dated 1988. And still: we can also say that actually that the “Crucifix” ha to be considered as the symbol of both historical cultural evolution and our national identità, and expresses a value’s system such as freedom, equality, human dignity and religious tolerance and also ‘*laicità*’ in the manner provided for by our Constitution.

in public places of the Crucifix – does no longer carry a religious value but embodies ‘civilly – relevant values’. The link of the symbol with the real essence of laicism cannot, however, be shared just like the equation crucifix – universal symbol.

On an Italian perspective, the principle ‘laicità’ should be brought to religious values despite of the importance of a cultural support.

A serious theory of the concept should point out that it represents the basic value of a new citizenship dimension. However, it cannot translate in a real approach of neutrality and progressive indifference towards the invasive affirmation of religious oriented instances and the analysis of our legislation leads to a definition of subtle ‘*confessionismo*’ that affects the evolution of legislation and the impossibility of making the normative and social structure of our country neutral.

The elimination *tout court* of symbols in the name of ‘laicità’ cannot be valued in a totally positive way given that the State ‘*laico*’ should not be oriented towards a negative approach, of denial, but positive, directed to a full valorisation of values of ‘laicità’ that western culture has produced, and difficultly affirmed over the centuries, as unique conditions to contrast potentially destabilizing activities. It is then necessary ask on the real concept of ‘laicità’ that, correctly understood, should imply the separation of civil from the religious society, beginning of a real neutrality of public spaces. The evolution of the legal order shows timid attempts towards the search of a compromise, geared to an *inclusive* ‘laicità’, and emblematic are the formulas of the swearing thought of in the most extensive way.

The phase towards which modern democratic structures need be directed to should be founded on an *indispensable* ‘laicità’. New ‘laicità’ needs to be based on a juridical valorisation of diversities, letting going the neutrality principle so as to include, instead, that of pluralism, not as an a critic acceptance of the different instances of acknowledgment but it should be based on cultural opening and on dialogue. The positive function of ‘laicità’, up to date and correctly intended, must then be oriented towards the creation of an open public space to be enjoyed by all citizens, not influenced by any religious form, and capable of permitting an equal treatment, at both individual and collective level, in all sectors of private and public life, related to the sacred. The problem of affirming the ideal of ‘laicità’ in a socio-political context characterised by the recognition and protection instances of cultural diversities implies then the option, given to groups, of developing and exerting autonomously their own freedom spaces. The protection of their rights requires a corresponding task, by the political power, of fully granting this exercise, of course in respect of the limits foreseen by the Constitution or by the penal code.

However, and this represents the most relevant question, if these pretensions affect the common ethic sphere should the State accept those influences or should it, on the contrary, impose limits so as to grant its own *status quo*? Think of the veil case, as an example where doctrine and jurisprudential disputes have been focussed on the gender implications of the veil besides the nature of visible religious symbol. If not imposed to very young people but freely worn, there would not be room for public powers involvement in an intimate and private sphere such as clothes chosen or the style of family education, more or less rigid and conservative. But religious exhibition should be limited in spaces meant to be neutral. At the same time the recalling of historical traditions is not valid if not in the case of goods, with a cultural relevance, whose displacement in other places cannot be realised without damage to the work of art.

It is obvious that the coexistence of cultural diversities represents the new, difficult *equilibrium* around which the national and international geopolitical future will evolve. The suppression of cultural identities, heritage of an historical period that is now anachronistic, must be conclusively overcome towards the development of 'politics of identities'. The new aim must be the conciliation and the balancing of different needs: the respect for traditions, that of human rights and of the basic values of the individual. The basic task of the legislator and of those bodies, like the European ones, that should identify guidelines directed to the creation of a common idea of Europe, is in fact to avoid the implosion of the social structure, by helping coexist the various cultural and confessional instances. An open society cannot simply defend its own cultural roots, thus limiting the minorities' rights, as this approach could be tipped over in a different, and future, structure of the balance majorities/minorities²⁵.

²⁵ Cfr. ALESSANDRO PIZZORUSSO, *Minoranze e maggioranze*, Torino, 1993 who says that recognizing that minorities have right to exist, to express their point of view and evaluate their own identity is based on the acceptance of the idea of relativism. Many verities to examine and a solutions can come out just from comparing different opinions (p. 44).