

Working session 2: Freedom of thought, conscience, religion or belief.

A VINDICATION OF THE BLANK WALL

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Since we last met, the European Court of Human Rights has performed its 180 degree turn in the Lautsi case and in one of its worst argued and most unconvincing judgements for years has vindicated Italy's law that forces every classroom in the land to display a Christian crucifix.

I want to focus this morning on just one aspect of the arguments over the case - the dangerous contention that a blank wall cannot be neutral.

For if this is accepted it undermines not just the whole concept of secularism, even in the weak sense of state equidistance from all religions or beliefs, but also all law about equality and non-discrimination. Even the possibility of teaching that is not indoctrination is called into question.

This cannot be acceptable!

But of course the idea that a blank wall is not neutral is surely farcical. It is advanced to justify a grotesquely unequal status quo. The submission coordinated by the Becket Fund and signed by a string of law professors argued:

An empty wall in an Italian classroom is no more neutral—indeed, it is far less so—than is a wall with a crucifix upon it . . . Neutrality is not achieved by removing religion from public debate, because the very act of removal sends a message of hostility towards religious belief.

The same argument was put bluntly in a recent lecture in London by Professor Joseph Weiler, who was counsel for the ten countries that intervened on Italy's side in the Lautsi case. He said "It is a binary position - no neutrality is possible - there either is or is not a crucifix on the wall".

The argument is obviously without foundation, and it is sad that intelligent and eminent professors should for the sake of religion so demean themselves by endorsing this sort of special pleading.

It illegitimately compares a continuing state of affairs with a transitional act. It tries to defend a grossly unfair status quo by seeing any move towards fairness as an act of aggression against the unfairly privileged position.

If it were valid, the argument would rule out any correction of any unbalanced situation because the “very act” of correcting it would “send a message of hostility” to the favoured position.

So, supposing the Italian state was broadcasting Christian sermons on all TV and radio channels in a way that was clearly not neutral and represented a serious curtailment of the freedom of expression of non-Christians, we are asked to believe that any move to break this monopoly, to reduce this preponderance of one side would be unacceptable because it would be seen as hostile to Christianity!

Suppose that schools were indoctrinating all children with one confessional religion - whether it was Christianity, Islam, Scientology, or whatever - no correction would be possible because it would be hostile to the favoured religion.

The idea that neutrality is impossible, that a secular state in fact imposes liberal, secular values on everyone is mere playing with words. Laws, government and institutions that do not impose or assume any religion or belief on the part of any individual citizen leave the individual free to hold any religion or belief or none. Is it dictatorial to remove chains from contented prisoners? They need not leave their cells if they prefer to stay. By contrast, those who reject secularism seek to fit everyone with their own style of shackles. This is not an enhancement of the freedom of the dominant religious group but a curtailment of that of all the minorities. By contrast, secularism is the best possible guarantor of freedom of religion or belief for everyone.

In religion or belief there can be no human certainty except in the psychological conviction of individual persons. The state, the courts have no way of judging between rival contentions. Even if they could call Jesus, Mohamed, the Buddha and Joseph Smith to give evidence, they could not find a valid way to rule for one or another.

In this context, neutrality is a vital and desirable condition for state institutions. What is the alternative? Necessarily, to take sides for one group of citizens against another - to deny the freedom of religion or belief of all but those who hold the favoured beliefs.

Neutrality is the minimum condition for a secular state. The argument made in defence of Italy - though not adopted in its badly argued judgement by the European Court of Human Rights - is based on a dangerous and fallacious idea. It needs to be discredited and ruled out of any serious argument about the place of religion or belief in law.

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