

Chapter 9

The Case of Secularism in Italian Classrooms

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Abstract

Mrs. Lautsi challenged the board of her children's school and consequently the Italian Republic for the legally obligatory presence of a crucifix in the school's classroom. She argued that this violated the principle of secularism. After unsuccessful attempts in regional and national courts she appealed to the European Court of Human Rights in 2006 which initially ruled in favor, but after an appeal of the Italian Government to the High Chamber, ruled against her. The Lautsi case provoked significant societal debate concerning the role of religion in public space. One of the key players in this debate is Professor Joseph Weiler, who intervened in the case on behalf of several third party states. Weiler's argumentation will be subject to Analytical Discourse Evaluation in this paper. The goal of Weiler's argument is to prove that the Chamber's initial ruling, before Italy's appeal, was based on a conceptual error of what can be regarded as 'state neutrality'. Professor Weiler argues that secularism is mistaken to be defined as neutral and Italy should be allowed to prescribe crucifixes in classrooms. The analysis shows that Professor Weiler's argumentation is flawed and this paper will present a more viable, alternative argument.

1 Introduction

Today, the principal social cleavage in our State with regards to religion is not among, say Catholics and Protestants, but among the religious and the 'secular'. (...) The [secular], whilst fully respecting freedom of and from religion, embrace some form of public religion as I have already noted. [Secularism] advocates a naked public square, a classroom wall bereft of any religious symbol. It is legally

disingenuous to adopt a political position which splits our society, and to claim that it is somehow neutral.¹

These seemingly unambiguous words come from Joseph Weiler, the Joseph Straus Professor of Law at New York University. Professor Weiler summarized his position on behalf of several third party intervening states in the Lautsi case before the European Court of Human Rights (ECHR) on June 30th, 2010. The case originated in Italy where Mrs. Lautsi challenged the board of her children's school and consequently the Italian Republic for the legally obligatory presence of a crucifix in the school's classroom.² After unsuccessful attempts she appealed to the ECHR in 2006, which initially ruled in favor of her complaint on November 3rd, 2009, but after an appeal of the Italian Government to the High Chamber, ruled against her on the 1st of March 2010.

The Lautsi case is an example of the general discussion of the interaction between state and religion in Europe. With many different constitutions, cultures and national histories, each country deals with this topic in separate ways. This being the case, the member states of the Council of Europe each signed the European Convention of Human Rights, paving the path for a more unified way of dealing with Human Rights issues such as religion in the public space. The European Convention on Human Rights, signed by all 47 Member States of the Council of Europe, is one of the documents that expresses common values across Europe. Is there a common approach to religion based on this document? The many different ways of dealing with religious matters in the public space in Europe and two different rulings of the ECHR prove that this is not the case. In Switzerland, Germany, Romania, Poland, and Spain, courts have ruled concerning the presence of crucifixes in classroom, often in favor of a secularist approach. This paper provides an overview and analysis of the present pan-European Lautsi case, which ultimately resulted differently from those national cases. The submission of Professor Weiler as briefly quoted above will be used as the principal source to this goal. Weiler's submission is particularly useful; third parties may only address the general principles underlying the case, as opposed to

1 Joseph Weiler, *Oral Intervention by Professor Weiler on Behalf of Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Russia, and San Marino - States Who Intervene as Third Parties in the Lautsi Case Before the Grand Chamber of the European Court of Human Rights*, accessed June 26, 2011, <http://www.ilsussidiario.net/News/Politics-Society/2010/7/1/EXCLUSIVE-Oral-Submission-by-Professor-Joseph-Weiler-before-the-Grand-Chamber-of-the-European-Court-of-Human-Rights/96909/>. Also available via the ECHR website as a webcast, accessed July 29, 2013, http://www.echr.coe.int/Pages/home.aspx?p=hearings&w=3081406_30062010&language=en&c=.

2 European Court of Human Rights, Grand Chamber. *Lautsi and others v. Italy*, Application no. 30814/06, 2010.

the applicant and the defendant, who will also address the particulars. A method often employed in analytical philosophy, the Toulmin Method will be used to form a structured overview of the arguments. The main argument of Professor Weiler, which is dubbed 'The Secularism Is Not Neutral Argument', will be described and analyzed per premise. Whenever an analysis of part of this monologue concludes that the argumentation is flawed or could be improved, a separate subsection will contain suggestions. After analyzing the particulars of the argument that has been used in the Lautsi case, a general critique will be given followed by an alternative argument based on the complete discourse. Finally, the conclusion will summarize and list the main points of weakness of Weiler's argument and will link the improvements to them.

2 Reconstructing the Secularism is Not Neutral Argument

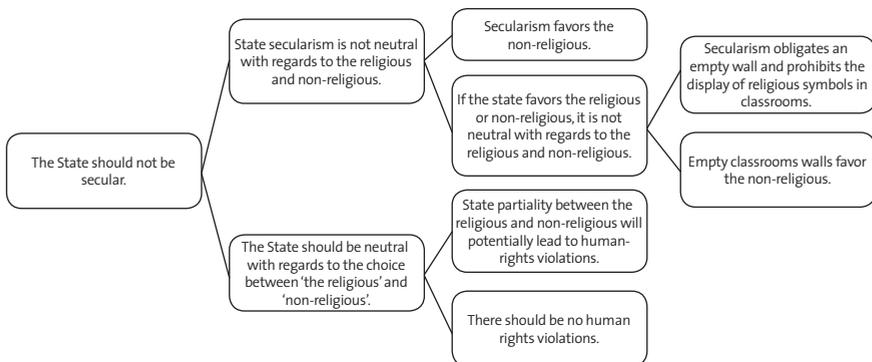
The goal of Weiler's argument is to prove that the Chamber's ruling on the Lautsi case was based on a conceptual error of what can be regarded as 'neutrality': secularism was mistaken to be defined as neutral. The ECHR articulated that the State should not express any beliefs and hence should remain neutral, particularly in education. If the ECHR had indeed used a wrong definition of neutrality, its judgment would be based on a logical error and therefore the High Chamber of the ECHR should judge differently.

The single source of analysis is Professor Weiler's submission before the court. Whenever Weiler specifically mentions a Claim or other logical connector in his submission, it is incorporated as a premise in the Toulmin framework. Clearly, if it is mentioned in the limited time available for an oral submission it must be relevant towards the overall argument. Perhaps as a consequence of this time-limitation, Weiler does not specifically mention every premise that is necessary for a thorough argumentative analysis. The procedure of filling these premises will be explicitly mentioned and extra time will be spent on the rationale behind their inclusion. Whenever possible, citations of Weiler's words that inexplicitly support the inclusion of the added premise will be provided. For simplicity's sake, all premises in the argument have been numbered and can be found in Figure 9.1. The core of the argument revolves around premises 5, 8 and 9. These three premises form the fundament of Weiler's point on neutrality that has been briefly described above; the state should be neutral, a secular state is not neutral, hence it should not be secular. The Datum, premise 5, is supported by the preceding argument described

in premises 1, 2, 3 and 4 which describe why secularism should not be considered a neutral way of organizing a state. The Warrant of the core argument, premise 8, is backed up by two other premises, 6 and 7 which also form an argument by itself that aims at proving that it is imperative for a state to be neutral in order to prevent Human Rights violations. All this builds up to the Claim, premise 9. Whenever a flaw has been found in one premise, this mistake will not be corrected in future premises as to keep the original argument intact. Figure 9.1 presents the structure of the reconstructed argument.

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|---|---------------------|--|
| 1 | [Data\Data\Data] | Secularism obligates an empty wall and prohibits the display of religious symbols in classrooms. |
| 2 | [Data\Data\Warrant] | Empty classroom walls favor the non-religious. |
| 3 | [Data\Data\Claim] | Secularism favors the non-religious. |
| 4 | [Data\Warrant] | If the state favors the religious or non-religious, it is not neutral with regards to the religious and non-religious. |
| 5 | [Data] | State secularism is not neutral with regards to the religious and non-religious. |
| 6 | [Warrant\Data] | State partiality between the religious and non-religious will potentially lead to human-rights violations. |
| 7 | [Warrant\Warrant] | There should be no human rights violations. |
| 8 | [Warrant] | The State should be neutral with regards to the choice between 'the religious' and 'non-religious'. |
| 9 | [Claim] | The State should not be secular. |

Figure 9.1 The Secularism is Not Neutral Argument



Premise 1: Secularism Obligates an Empty Wall and Prohibits the Display of Religious Symbols in Classrooms

This Datum is primarily focused at defining what secularism is. In particular, Weiler mentions France as an example where 'state-secularism' prohibits the display of crucifixes on state schools and, symmetrically, obliges the presence of a naked-wall:

...such as France and which, indeed, there can be no State endorsed or sponsored religious symbol in a public space.

...

A State-mandated naked wall, as in France ...³

The Encyclopedia Britannica has a different definition of secularism. It describes secularism as a wider social movement 'directed away from otherworldliness to life on earth'⁴, the secularism described by Professor Weiler can indeed be better defined as state-secularism: *laïcité* as used in France; Weiler's preferred country to reference. It becomes clear from his oral submission that Weiler, speaking on behalf of third-party intervening states, defines *laïcité*, or the English laicity, as the separation of church and state:

Secularity, laïcité, is not an empty category which signifies absence of faith. It is to many a rich world view which holds, inter alia, the political conviction that religion only has a legitimate place in the private sphere and that there may not be any entanglement of public authority and religion.

In other words, this means that secularism excludes the presence of religious topics in the public space, in this case in education. As secularism is certainly the most accepted and most mentioned word in the debate of this topic, it will be used as a main reference to the definition as described by Weiler.

Premise 2: Empty Classroom Walls Favor the Non-religious

Weiler does not explicitly mention this Warrant in his argument. However, since his main goal is to prove that secularism is itself not neutral, it is essential to include at least

³ Weiler, *Oral Intervention*.

⁴ Encyclopedia Britannica Online, s.v. "Secularism," accessed July 29, 2013, <http://www.britannica.com/EBchecked/topic/532006/secularism>.

some form of support for this assertion in a logically consistent framework.⁵ Indeed this Warrant is important when speaking of state neutrality; it provides support for the Claim (3) that state secularism favors the non-religious and from 4 and 5 that it is for that reason not neutral. Here, it applies specifically to the discussion with regards to the state making a choice between the religious and non-religious. Weiler does not mention the word 'to favor', yet it is included in this reconstructed premise because it expresses a more active, abusive meaning compared to the phrase 'choose a side', which may not necessarily mean harm. Undeniably, if the State would favor one group over the other, it cannot be described as neutral towards these groups. In the quote mentioned in the introduction of this paper, Weiler exerts that secularism 'splits our society'. This provides additional support for the use of the word 'to favor' as it points to an active stance of the State towards one of both sides. In another part of his oral submission, Weiler uses an analogy to describe this situation.

"If the social pallet of society were only composed of blue, yellow and red groups, then black⁶ – the absence of color – would be the neutral color⁷. But once one of the social forces in society has appropriated black as its color, then that choice is no longer neutral. Secularism does not favor a wall deprived of all State symbols. It is religious symbols which are anathema."

Having explained the logic behind neutrality, the question remains whether the obligatory naked-wall favors whom. Weiler continuously pivots his argument around the 'non-religious' and the 'religious'. A 'non-religious' person could refer to anyone who does not adhere to a particular religion (Christianity, Islam, Judaism, etc) and denounces the existence of a god or is simply an agnostic and does not put weight on religious matters. Also, Weiler uses the terms 'non-religious' and 'secularists' interchangeably. It will be noted in the following analysis that this is a problem in the entire argument.

Premise 3: Secularism Favors the Non-religious

If both premise 1 and 2 are considered to be acceptable, this Claim follows inevitably from the Warrant 2 and datum 1.

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- 5 Weiler might have identified this premise in his preparation but failed to mention it in his oral submission before the High Chamber. He has done so perhaps knowingly, as this premise forms the main weakness of the argument.
 - 6 As black absorbs all colors, secularism could perhaps be better described as white, deflecting all colors.
 - 7 If black is not a color, it can by definition not be described as 'the neutral color', it is after all not a color to begin with. However, black, achromatic, can be neutral towards color, not having any specific mixture of colors in its blend that could hint towards a preference, like orange has to red and yellow.

Premise 4: If the State Favors the Religious or Non-religious, it is Not Neutral with Regards to the Religious and Non-religious

At first sight this Warrant is similar to the one described in premise 2, but it is different by adding neutrality to the argument. Weiler defines neutrality on the playing field of religious versus non-religious people. In the general case, when a party favors one side over the other, it is by definition not neutral concerning those two sides. Note that the aim of this premise is merely to provide a definition of a neutral state. In other words, every state that has these characteristics (of favoring the religious or non-religious) is not neutral.

Premise 5: State Secularism is Not Neutral with Regards to the Religious and Non-religious

This Claim follows inevitably from datum 3 and Warrant 4. In premise 4 a definition of a neutral state has been brought forward. Given the information in the Datum (3) and the equivalence relationship described in Warrant (4), Weiler concludes that secularism does not fit this definition and hence secularism is not neutral. We know however, that premise 3 is not acceptable because it relies on Warrant (2).

Premise 6: State Partiality Between the Religious and Non-religious will Potentially Lead to Human-rights Violations

Weiler does not explicitly mention that state partiality will lead to Human Rights violations. However, he begins his oral submission by stating that the initial Court ruling was based on a conceptual error of what neutrality should be. He then continues to define what definition of neutrality it should have used instead. It is clear from this information that Weiler accepts the Claim that the state should be neutral in the first place since he does not continue his plea by stating that neutrality is not important.

Although Weiler does not specifically mention the words 'Human Rights violations', the hearing took place at the European Court of Human Rights and his entire speech revolves around the right of parents to educate their children according to their own beliefs.⁸ What this Datum does is alleviate the words 'to favor' as described in premise 2 to a more relevant level; Human Rights. With the addition of Human Rights, 'to favor' becomes a heavier statement. The State does not simply agree with a certain taste, it actively

8 This is expressed in Article 2 of Protocol No. 1: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions."

confirms some religious belief and denies the legitimacy of others. Indeed the sides could be better described as ‘those who deem a crucifix on a classroom wall necessary because of their philosophical or religious convictions’ and those who do not. The line ‘because of philosophical convictions’ is needed because it allows for the applicability of the of the Articles of the Convention referring to freedom of thought, conscience and religion.

Premise 7: There Should be no Human Rights Violations

This Warrant follows from the adoption of the European Convention on Human Rights has been adopted by all members of the Council of Europe.

Premise 8: The State Should be Neutral with Regards to the Choice Between ‘the Religious’ and ‘Non-religious’

Concluded from 6 and 7.

Premise 9: The State Should not be Secular

This Claim is concluded from the two different arguments supporting the Warrant (8) and the Datum (5).

3 Evaluating the Secularism is Not Neutral Argument

Premise 1, 2 and 3: Weasel Words

At first sight it seems clear who is to be favored by a secular state; the non-religious. They are the ones who see no harm in an empty wall. However, the description of this group is far from unambiguous and while it is clear that others might be disfavored, it remains questionable why ‘non-religious people’ would be favored by an empty wall. It is therefore important to recognize different groups that can be identified as ‘non-religious’. A non-religious person could be someone who feels ‘favored’ by the state (prescribing an empty wall) and someone who is indifferent on whatever the state prescribes. Someone who would feel favored this way has to first recognize religion as important and express her thoughts by means of an empty wall. Only then would a state which legally prohibits ‘filled-walls’ and obliges ‘empty-walls’ favor those ‘empty wall worshippers’ over the ‘filled-wall worshippers’. There are thus three groups: people who are ‘disfavored’ by the empty wall, people who are ‘favored’ by the empty wall and people who do not mind any type of wall and hence do not feel any type of favor done to them. The latter two groups can both generally be identified as ‘non-religious’. According to Weiler’s definition and his hints towards premise

2, an atheist who has philosophical convictions with regards to the existence of God could feel favored by the state. On the other hand, an agnostic simply does not have any beliefs or convictions with regards to the existence of a God and can therefore not be favored in any way regarding religious matters. It is for this reason not true that 'non-religious' people will automatically feel favored by the State. It could be true that they simply do not care. According to Weiler's definition, this premise should be rephrased 'Empty classroom walls favor atheists'. A perhaps more logically correct but less practically useful adaptation could be 'Empty classroom walls favor those who feel favored by it'. There is considerable critique about whether atheists would be favored by an empty wall and it will be discussed in the following section.

Premise 2

It comes as a surprise that one of the main goals of the Christian parties supporting Italy in the Lautsi case was to diminish the Christian meaning of the crucifix. The Italian Government and Professor Weiler argued that the crucifix is merely a passive symbol and exerted a cultural and national message rather than a religious one. Why do they make such a bold statement? There is a connection between this seemingly strange exertion and premise 2. The following analysis will be dedicated to this observation.

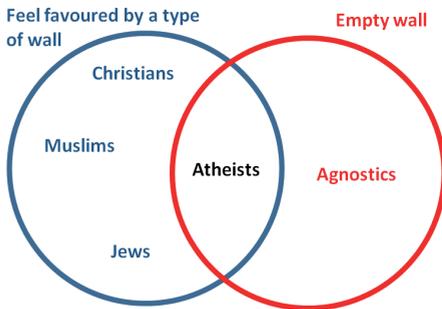
To support an assertion that secularism favors the non-religious, it is necessary to say that the empty wall is a symbol for non-religiousness and by that the state exerts its preference towards non-religiousness. The Backing behind premise 2 would go as follows:

If an entity is not religious, this entity expresses this through an empty wall
The State mandates an empty wall.

Therefore, the State is not religious.

The first premise is a one-way logical connector. It is not a biconditional connector, an equivalence relationship, and hence the argument suffers from the fallacy 'affirming the consequent'. The conclusion from the analysis on this point is that there are multiple possibilities when someone is confronted with an empty wall (see Venn Diagram). While it is possible for an atheist to prefer an empty wall, it does not mean that anyone with an empty wall is an atheist. Indeed it is the secular State's goal to not express a preference for anything related to religion. It has no choice but to mandate an empty wall. But are there also multiple possibilities when seeing a crucifix on a wall? This argument follows a similar path:

Figure 9.2 Venn Diagram of Premise 2: Atheists Employ an Empty Wall



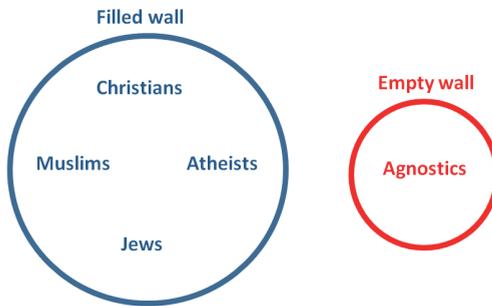
If an entity is Christian, the entity expresses this through a crucifix on the wall
The State mandates and crucifix.

Therefore, the State is Christian.

Although strictly spoken this argument is also logically incorrect, it is to a far greater extent acceptable. For example, wearing a crucifix as a piece of jewelry is far more explicit than not wearing any items. People who observe a woman's crucifix necklace, ring or other item will likely conclude that she is Christian. It is however not so likely that they will conclude that she is atheist whenever she is not wearing any decorative items. Concluding from this, the symbol, because it is a symbol, becomes more explicit than no symbol. The acceptability of these arguments rely on the explicitness of the crucifix.

The motives of the groups supporting Italy become clearer: they try to diminish this effect and thereby the partiality that the state might have. However, they cannot escape the conclusion that a symbol is meant to exert something. Particularly schoolchildren are taught to know that symbols have meaning and that they are there to bring a message across. The vast amount of churches in Italy with their many crucifixes will make sure that the children are conditioned to attach the symbol of the crucifix to Christianity. On the other side of the argument, it is unrealistic to expect that young schoolchildren will infer from an empty wall that the State or their school denies the existence of god. It is unlikely that they would perceive a 'no symbol' empty wall as a symbol for atheism. Even if so, they would be incorrect to make this conclusion. The secular State does not endorse any form of discussion about religion to any of the sides of the argument. To be safe on either side, the children should then be taught about the secularist nature of the State to prevent them from the slightest possibility of misinterpreting an empty wall.

Figure 9.3 Venn Diagram of Premise: Atheists Do Not Favor the Empty Wall



There is another reason why it would be wrong to conclude that the State is atheist whenever it prescribes an empty wall. Atheists do not favor the empty wall; they prefer a crucifix with a cross through it. Atheists have an opinion with regards to religion: God does not exist. For that reason they employ a symbol, as opposed to agnostics, who have the no-symbol empty wall. While in the previous Venn-Diagram, it was accepted that atheists employ an empty wall, the more realistic observation mentioned here is outlined in the Venn-Diagram above.

One can avoid accepting premise 2 by realizing that secularism bans any form of religious display in the public space. That is, it also bans those symbols which express an opinion against religion, such as the reversed crucifix or the crucifix with a cross through it. In essence, secularism takes away the entire debate concerning religion. This means that secularism is neutral towards the importance of any particular religion and religious matters in general, be it anti-religious or religions amongst themselves. Graphically, the diagram on the previous page outlines what secularism tries to do: it seeks to be neutral to those groups in the 'Filled wall' group by adopting an 'Empty wall' policy. Since agnostics have no opinion about religion, they are automatically neutral towards those who have. Knowing this, it becomes more apparent why a child would be wrong to conclude that the State is atheist when it sees an empty wall. First of all because it is not the secular State's intention to exert a preference towards atheism had atheism been expressed by an empty wall. Lastly, atheism is not expressed by an empty-wall. Secularism is neutral towards those groups who speak about religion and the empty wall is a manifestation of that neutrality.

Premise 4: Neutral Towards What?

To make the argument more viable, the words 'neutral with regards to the religious and non-religious' have been included despite them not being mentioned in the discourse.

When one speaks of neutrality, it has to be clear towards what the neutrality is defined. Similar to the unacceptability of premise 2, Weiler's argument includes agnostics in the 'non-religious' group, while in fact agnostics simply do not have an opinion about religion. This point has been made before, but it becomes clear that it is the primary problem with this argument and therefore becomes apparent in different premises.

Premise 5: 'The Italian Stance' is Not Neutral Either

Ignoring the fact that premise 2 is not acceptable, and furthermore accepting 3 and 4, premise 5 is a valid Claim to make. Using the logic of the argument and accepting premise 2, one comes to an inevitable conclusion that jeopardizes the entire goal of defending Italy in this case. Weiler framed his entire argument such that it would conclude that the Chamber's judgment about the neutrality of secularism is false; secularism is not neutral. However, anyone using this strategy has to accept the fact that the position they are trying to defend, Italy's right to prescribe crucifixes, is not neutral either. If the 'naked wall' is a message that tells pupils that the State endorses "non-religiousness", they would certainly be influenced by a crucifix and think that the State endorses Christianity. Considering that the effect of a crucifix is even greater than that of an empty wall, the Italian stance is beating neutrality in an even greater extent than secularism.

Premise 6: A Pivotal Premise with Potential

At first sight, the usage of Human Rights in Weiler's argument seems to be relevant and necessary. A person's Human Rights will be violated whenever the State favors non-religiousness whenever that person is religious. Therefore the State should not be secular as this would favor 'the non-religious' and hurt 'the religious'. However, as has been concluded from 'The 'Italian Stance' is not neutral either', the same would hold true for a State that favors 'the religious'. For this reason, it could be a potentially fruitful strategy for anyone on Italy's side to say that no Human Rights would be violated whenever the State is partial – or whenever a State mandates anything on classroom walls. This position also lies in line with the Italian Government, Weiler and others' Claim of diminishing the effect of crucifixes on schoolchildren – it is then not only a limited-effect symbol, it simply does not violate anyone's Human Rights regardless of its effect.

While this may be a sensible alternative argument to employ, it kills the entire argument that seeks to prove that secularism is not neutral; State neutrality, secularism or the 'Italian Stance' would simply not matter. Whatever the conclusions may be, arguing that Human Rights are not violated whenever the State is partial is a direct approach that reaches the goal of allowing Italy to continue to prescribe crucifixes on classroom walls.

The parties involved could argue for the inadmissibility of the Lautsi case to the ECHR as it does not refer to Human Rights to begin with.

If a State is partial towards the religious or non-religious, it does not violate Human Rights (on this particular issue)

The State is partial towards the religious.

Therefore, the State does not violate Human Rights (on this particular issue)

Those parties who seek to deny the expressive effects of crucifix, seem to employ an implicit assumption that they could bypass by saying that partiality does not violate Human Rights. Their assumption is that had the crucifixes been significantly expressive, it had made the State partial and had violated Human Rights. In other words, the assessment of the State's partiality depends on one's assessment of how expressive the crucifix is. This is a weakness considering that this assessment has to be done by an external party, the ECHR. Arguing that State partiality is irrelevant is a more direct approach and does not depend on the seemingly vague assessment of how explicit a crucifix is. In fact, one may accept that the crucifix is a highly visible, highly expressive symbol. But when it does not violate Human Rights, it is neither here nor there. Part of the argument might be that a State could exert its preference towards one religion or philosophical conviction, but as long as it maintains the negative freedom of those who belong to a different group, it does not violate Human Rights. In other words, the State exerts a preference but does not act actively according to its preference. To uphold equality before the law, a careful definition to 'treatment' has to be made: showing a crucifix should not be considered a treatment.

A similar, less far-reaching and perhaps more feasible position to hold would be to say that symbols do not violate partiality. It may be important for a State to remain neutral, but as long as it does not actively try to persuade anyone to join any of the religious sides, it is still neutral. While this may be a useful argument for the Italian Government, it is not so for Weiler. His main point is to say that secularism is not neutral because it lets schoolchildren to believe that the State supports non-religiousness. The 'symbol' of the naked wall violates the neutrality as described in premise 2. Saying that symbols do not violate this neutrality is a contradiction to this Claim.

Irrelevant Argument

Weiler's argument is mainly focused on attacking the initial judgment of the Court by proving that it was based on a wrong conception of what can be regarded as neutrality. The Court expressed that the "State's duty of neutrality and impartiality is incompatible with any kind of power on its part to assess the legitimacy of religious convictions or the ways of expressing those convictions". Having a crucifix on the wall would express a legitimacy of Christianity and hence violate impartiality. However, the mistake is that the argument goes around the primary point of whether or not a State should be allowed to oblige a crucifix in classrooms. Instead, it focuses on an alternative to 'the Italian stance', secularism, and argues that it is itself not a good position to hold. Yet, even when it is true that an alternative to the Italian stance is not a good option, this does not say anything about the Italian stance itself. In other words, if banning crucifixes would violate Human Rights, it is wrong to conclude from this that obliging their presence does not violate Human Rights. It is a form of red herring, which presents a conclusion that may or may not be valid, but it does not address the original issue. In some way, this argument seems to be aimed at dragging the attention away from the Italian Stance and towards the negative effects of secularism. While perhaps a smart strategy, it is strictly speaking not a logically correct argument.

Incompatible Claims

Weiler makes two incompatible Claims. Firstly, he uses the parable of 'the color pallet of society', to say that whenever the state adopts a neutral position, it ceases to be neutral as others adopt this position. Secondly, he exerts that it is important for a State to be neutral. Going back to the color-parable, as people join the 'black', neutral position, it is no longer neutral. Concluding from this, Weiler considers neutrality in itself a position to hold. However, as long as anyone who deems state neutrality important automatically joins the neutral State in its position. This means that the State will have to redefine its position infinitely and avoid anyone from adopting its position. The resulting situation entails that state neutrality is an impossible right. However, if opinions about religion are the colors in society, secularism is not a color. The naked wall does not mean atheism. Secularism does not mean atheism and is not a 'color'. The point that needs to be made here is that neutrality of the state should be defined as neutrality towards a particular group of opinions. 'Neutrality' or secularism is not part of this group. However, to anyone who is not convinced by this observation and accepts premise 2, a more viable alternative argument to the 'secularism is not neutral'-argument used in the Lautsi case is outlined in the following section.

4 Alternative Argument: The Neutral Towards Neutrality Argument

Secularism was invented to create neutrality of the state among religions and between the religious and anti-religious and to prevent state partiality. Disregarding the analysis above that points to the flaws in his arguments, Weiler apparently feels that nowadays this is no longer relevant. He regards secularism as a “public religion” that “splits our society”. The point can be made that today’s debate is not between religious and non-religious, but between secularists and non-secularists. If this is indeed the case, and taken into consideration that neutrality is important plus the fact secularism nor the Italian Stance are neutral, a solution to the problem will be to adopt a political order that is neutral towards secularists and non-secularists. Where classical secularism bans all discussion about religion in the public space, secularism-secularism would ban all discussions about discussing about religion. In other words, it is illegal to talk about talking about religion. This suggestion is in line with Weiler’s ‘color analysis’: The State adopts black as its color to ensure neutrality towards the yellow and blue groups in society. Indeed as soon as any group adopts ‘black’, it is no longer neutral. The solution to this problem would be that the State should not ban any religious symbols, nor prescribe them. This way the state does not have to define what is religious or anti-religious symbols are and leaves the entire topic out of discussion and up to the parents and schools themselves. This way the ‘higher’ authority that could favor one group over the other will be bypassed; state partiality is impossible.

Anyone who first of all accepts Weiler’s point based on his evidence that secularism is not neutral, secondly that the Italian Stance is not neutral and lastly accepts premise 2 as reasonably acceptable, will find comfort in this alternative argument as it seeks to find a third way that still upholds the neutrality of the State. It has to be mentioned that this argument still contains a rephrased version of premise 2, but for people accepting it, this is not an issue. The argument can be found in Figure 9.4

Premise 1: Secularism Bans the Presence of Crucifixes, the Italian Stance Prescribes their Presence

As discussed previously

Premise 2: Whenever the State Bans or Prescribes Crucifixes in Classroom Walls, it Favors Atheists and Christians Respectively

This premise is now phrased in such a way that it avoids ambiguous words such as ‘non-

religious' and 'religious'. The two groups are now explicitly defined and it is now clear who would be favored by secularism and the Italian Stance. Strictly speaking, this premise is still not acceptable as the secular State does not prescribe the naked wall in order to express the legitimacy of atheism towards its citizens. Additionally, atheism is not represented by an empty wall, rather by a wall with a crossed-out crucifix. While it may indeed not be acceptable on these strict logical terms, in reality it is however still possible for schoolchildren to make wrong conclusions.

Premise 3: Secularism Favors Atheists, the Italian Stance Favors Christians

Follows from premise 1 and 2 after accepting them.

Premise 4: Whenever the State Favors any Group that has an Opinion about what Should be on Classroom Walls, the State is Not Neutral with Regards to these Groups

Similar as described in the original argument.

Premise 5: Secularism and the Italian Stance are Not Neutral with Regards to Atheists and Christians

The implicit premise in this argument is that atheists favor an empty wall and that Christians favor a crucifix.

Premise 6: State Partiality between Atheists and Christians will Potentially Lead to Human Rights Violations

Similar as described in the original argument.

Premise 7: There Should be no Human Rights Violations

Similar as described in the original argument.

Premise 8: The State Should be Neutral with Regards to the Choice Between Atheism and Christianity

Similar as described in the original argument, only now rephrased to exclude ambiguous terms.

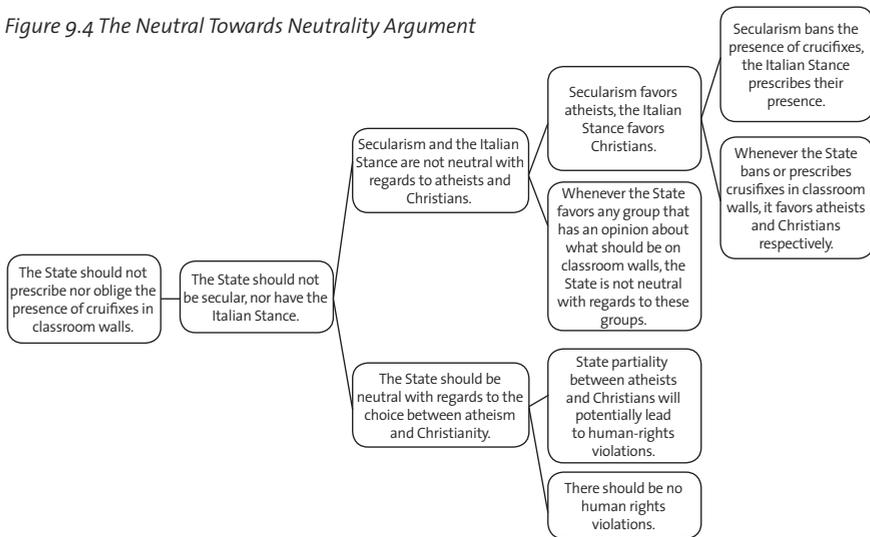
Premise 9: The State Should Not be Secular, nor have the Italian Stance

This Claim concludes that while neutrality is important, secularism and the Italian Stance are both not neutral. The inevitable conclusion is then: the State should therefore not adopt neither of these two political orders.

Premise 10: The State Should Not Prescribe nor Oblige the Presence of Crucifixes in Classroom Walls

Premise 10 is a rephrased conclusion that the state should not be secular nor have the Italian Stance. This Claim would certainly ensure that the State does not impose any beliefs; it does not impose anything. However, people are now more vulnerable to their fellow citizens who would want to impose beliefs on them. The State does no longer ban the presence of religion in the public place and therefore does not hinder anyone who would try to impose her beliefs on others. Additionally, as parents of similar philosophical convictions gather together to enroll their children in the same schools, schools of different denominations would emerge, as in the ‘Pillarization’ of Dutch society. Ironically, Weiler describes ‘secularism’ as an ideology that splits society, but not adopting secularism and endorsing a religious free-for-all could theoretically have a similar effect. The ‘split’, however, is not the cause of State partiality, rather through the actions of citizens themselves. While these observations may be good reason not to adopt this position, it is an inevitable logical conclusion from Weiler’s own argument. To diminish these unwanted effects, the state should mandate that children be educated about other religious beliefs to ensure understanding among the different groups in society. Even further, dialogue between the different groups in society should be fostered to make sure that stereotypes will not emerge. However, laws should prevent radical and aggressive behavior when it comes to imposing beliefs on others. Anyone who does not want to be involved in this discussion should have the right not to be disturbed. This way, the discussion about religion will be respectful, calm and held in good faith.

Figure 9.4 The Neutral Towards Neutrality Argument



5 Conclusion

The unacceptability of premise 2 is a recurrent problem in the argument 'Secularism is not neutral'. It is unacceptable for several reasons. The argument of premise 1, 2 and 3 suffers from 'affirming the consequent'. It overlooks alternative possibilities to the meaning of an empty wall. It is wrong to conclude that the state is atheist because it bans religious expression. Even if one accepts the premise that the state endorsed empty wall could be a symbol for non-religiousness, the secular state has no intention for it to express atheism. If a state would hypothetically endorse atheism, it would do so by prescribing a crossed out crucifix on classroom walls. This is an additional reason why it is wrong to conclude that a naked wall somehow expresses an opinion against religion. Secularism is neutral when it comes to issues of faith because it does not endorse any such position, the crucifix nor the crossed out crucifix.

Furthermore, if one seeks to defend the Italian Stance, it is irrelevant to argue that secularism is not neutral. Rather, an argument aimed at defending the Italian Stance will be better suited for this goal. A potential strategy to employ would be to argue that it is unimportant for a state to be neutral since it does not violate Human Rights. A state would be allowed to express its preference towards one religion, but as long as it upholds the negative freedom of those who do not support that religion, no Human Rights need to be violated. In other words, the state may exert a form of light, passive partiality while at the same time not violate its active duties such as the rule of law.

If someone does not accept the conclusion that secularism is neutral and for some reason conversely accepts that secularism expresses its support for the legitimacy of atheism, then that person also has to conclude that the Italian Stance is not neutral either. To strike a compromise between these two arguments an alternative to both can be designed. If one deems state neutrality as important, but considers secularism and the Italian Stance both not neutral, then the State should not be either of the two. Rather, it should not interfere with religious matters whatsoever and leave the decisions about education and religion to the parents and schools. While this solution and secularism itself can both be considered neutral, they both create two different societies with different downsides. A secular state, banning religion from the public space, may harm cross-cultural understanding as its citizens could become alienated from groups who have different beliefs. In a 'secular-secular' state however, the public's own discussion concerning religion may escalate to hostile levels as it is the State's goal not to interfere in this topic. Which of both solutions is best will depend on the people's own ability to be considerate of others and respect diverse opinions.

The lesson learned from this research is therefore one about the balance between reason and reasonableness. Whenever one pushes the boundaries of reason, an argument may seem acceptable in some areas, but problems will emerge elsewhere. A premise may be unacceptable, but changing it such that it will be acceptable will necessarily endanger the originally envisioned Claim. For this reason it is worthwhile to try to find Claims that are acceptable for all the different parties involved. Although it may seem that the strict rules of logic will always play disagreeing parties apart, mankind's ability to compromise is a strong feature that can prevail even under these strong rules of nature.