

vehemently against the use of political power by secularists to impose norms and practices upon religious communities that conflict with their faiths. He cites the case a Catholic school that was compelled by the Canadian courts to allow a homosexual student to take his gay lover to the schools' prom as an example of the kind of external intrusion that is the principal contemporary threat to religious liberty. The right to religious liberty violated by that intrusion is not only anterior to the authority of the state but also he claims, rather implausibly, the only right that enjoys that ontologically prior status. In another chapter he argues that state provision for same-sex marriage is an assault upon religious liberty, since it obliges churches and other religious communities either to participate in a contaminated matrimonial system or to withdraw from the institution of civil marriage altogether.

Even from this brief summary of Novak's argument, it will be evident that, from its premises to its conclusions, it contains little that is not open to dispute and also that he is unlikely to persuade any who do not already share his cast of mind. He is also sometimes given to sweeping assertions that will make the analytical philosopher wince; eg 'the concept of human rights is endemic to democracy'. But his philosophical incaution is a price worth paying for the robustness with which he presents his case. There is no temporising or embarrassed obfuscation here; Novak delivers straight from the shoulder. Even those who stand opposed to his position have reason to welcome such a clear, forceful and uncompromising statement of the case for grounding politics, including secular democratic politics, in religion.

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## **Manual on the Wearing of Religious Symbols in Public Areas**

MALCOLM D EVANS

Martin Nijhoff and Council of Europe, Netherlands, 2009, vii and 126 pp (paperback £25) ISBN 978-90-04-17276-0

## **Manuel Sur le Discours de la Haine**

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Martin Nijhoff and Council of Europe, Netherlands, 2009, vi and 97 pp (paperback £19) ISBN 978-90-04-17275-3

The re-emergence of religion in the public sphere, expressed through the wearing of religious symbols such as the veil, the turban or the cross, has elicited

great political, legal and media debates. In breaking free from the shackles of the individual private domain the manifestation of one's religious beliefs is a contentious issue, for this individual externalisation of religion can be seen as inappropriate or even undesirable in a Europe seemingly attached to a (nevertheless increasingly contested) secularist theory sweeping over its states and institutions.

More recently, this is illustrated by the French government's adoption of a bill which imposes a *general* prohibition of the burqa and niqab in *all* public places everywhere in France, making it, after Belgium, the second country in the European Union to take such a radical step. Although neither the Belgian law nor the French bill expressly mention the niqab or burqa, both specifically refer to 'the prohibition to wear a garment which aims to hide or mask, either partially or wholly, one's face' so as to render it impossible to ascertain the individual's identity. In both countries, ministers, deputies and other supporters of these legislative texts describe the latter as 'protective measures'. Indeed, as the integral veiling of a Muslim woman is deemed oppressive, submissive and symbolic of her unequal status as an individual, in contrast the prohibition laws are branded as liberating and protective not only of her dignity and liberty, but also of the fundamental principles which form the bedrock of a democratic society against radicalism. Consequently, a breach of the prohibition in Belgium would incur a fine or a prison sentence of up to seven days; whereas in France failure to obey the law would result in a fine of no more than 150 euros and/or a 'citizenship' course emphasising the French Republic's values for the offending veiled woman. The French measure goes further by stipulating that a person/man who imposes the full veil on a woman would be imprisoned and fined 150,000 euros. At the date of writing this review, the Belgium parliament adopted their prohibitive measure in April 2010, whilst the French parliament is scheduled to discuss their bill in July 2010. Nevertheless, for opponents of the ban on the full veil *in all public places*, even in the streets, such an uncompromising legislative stance towards restricting the visible manifestation of one's religious beliefs is deemed open to challenges both at the national/constitutional level and ultimately before the European Court of Human Rights (the Court).

The *Manual* by Evans, which deals specifically with the issue of visibility of religious symbols, highlights the complexity of the topic and offers a critical insight into the approach of the Court in negotiating the rights and interests of individuals and the state with regards to the application of Article 9 of the European Convention on Human Rights (ECHR). Evans provides the reader with a succinct yet fairly detailed map of the essence of Article 9 and guidance on the extent to which its legal framework applies to the right to wear religious symbols in public areas. Understanding the scope of application of Article 9 requires careful consideration of the Court's jurisprudence, as the interpretation of the freedom to manifest one's religious faith or beliefs is not a straightforward

exercise. However, the *Manual* manages to bring clarity to such a complex issue by presenting an effective structure and clear writing style, consistently using case law for analytical and illustrative purposes in a manner which reflects the relevance, expansion and vibrancy of the topic to date. The *Manual*, which comes across as a critical and reflective aide-mémoire, would be a useful and valuable addition to both one's personal collection and as a library purchase.

The *Manual* is divided into eight sections. Following on from the introduction, section II provides a clear overview of the Article 9 legal framework and considers the Court's jurisprudence in determining the meaning of its constitutive elements. Section III further examines the restrictions under article 9(2) in practice and focuses on the Court's liberal approach in the negotiation of the rights and interests of both the individual and the state by developing key principles which denote 'the "spirit" rather than the letter of article 9'(p 25), thus broadening the scope of application of the provision to encompass a wider pool of situations, including cases relating to the visibility of religious symbols. Sections IV and V of the *Manual* further cover the practical applications of these key principles and demonstrate that the Court's approach is not merely to determine whether a (justifiable) interference occurred, but also to remind the state, individuals and religious communities that the freedom (and its potential limitation) generates responsibilities inherent to promoting a pluralistic, democratic, tolerant and mutually respectful society.

Through these initial sections, Evans equips the reader with the basic essentials of Article 9 in order to better apprehend the question at the heart of the *Manual* that is the wearing of religious symbols in public areas. In addressing the definitional issues in section VI, Evans adroitly highlights the interpretative difficulties in establishing what amounts to 'wearing a religious symbol' and discusses the Court's approach to place the debate in its broader context by focusing on the significance of a symbol as a manifestation of religious belief rather than on a restricted emphasis on the wording itself. He further expounds on the Court's jurisprudential method to define 'public areas' from a purposive stance so as to encompass any 'areas of public engagement which fall to be conducted or regulated by the state' (p 75). Whilst section VII attempts to articulate these judicial principles into pragmatic questions which policy-makers may consider in formulating measures to regulate the enjoyment of the freedom to wear religious symbols in public areas, section VIII provides tangible examples of the Court's resolution of litigious situations arising from such regulations, for instance where restrictions were imposed in the public or private sector education and employment setting; for the protection of public order or safety; and in the criminal justice system. In conclusion, the *Manual* is an instructive and informative guidebook of relevance to both academics and policy-makers.

In a similar vein to Evans' *Manual*, which focuses on one aspect of Article 9, Weber's *Manuel* centres its discussion on a specific aspect of the freedom

of expression, as enshrined in Article 10 ECHR, namely the concept of hate speech and whether and to what extent the latter is protected by the Convention. Weber draws attention to two main problematic issues pertaining to the protection of hate speech: firstly, the Court must often negotiate conflicting and concurrent interests and freedoms, thus effectively having to restrict, for instance, one's person's freedom of expression in order to ensure the protection of another's freedom of thought, conscience and religion; secondly, 'hate speech' has no universally recognised definition. In addressing these two issues, the *Manuel's* aim is to identify definitional criteria to establish what constitutes 'hate speech', which Weber argues has the function to determine which type of hate speech falls within the ambit of the Convention and its safeguarding mantle, and which falls outside and is therefore devoid of protection. The first half of the *Manuel* presents an overview of the international agreements (eg ECHR, Universal Declaration of Human Rights) which may help in extracting some elements of definition. However, it is the second and most substantial part of the *Manuel* which provides the main discussion by examining the principles developed by the Court's jurisprudence in resolving cases where the enjoyment of Article 10 conflicts with another Convention right. In particular, Weber points to the Court's two choices: either to negate freedom of expression to the benefit of another freedom, or to conciliate the two freedoms. The discussion is often contextualised with the use of *cas pratiques* (case studies) which explore the practical application of the debate through factual examples. Although the *Manuel* offers a welcome addition to the literature on 'hate speech', an overall conclusion of the various circumstances within which 'hate speech' is to be envisaged and managed would have been welcomed. As it stands, the *Manuel* is not a pragmatic and clear guidebook on the concept of 'hate speech', but rather an overview of the relevant legislative texts and case law pertaining to the subject matter, from which the reader should draw their own conclusions.

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## Muslims in the West after 9/11: Religion, Politics and Law

EDITED BY JOCELYNE CESARI

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Marketed as 'the first systematic attempt to study the situation of European and American Muslims after 9/11' (p i) this slender volume of ten essays, two of