

Moderate Secularism in Europe in the Face of Integration Challenges: The Debate about Legal Pluralism and Multiculturalism

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Public authorities in Europe are faced with increasing demands to accommodate religious diversity. This article traces some key issues concerning the limits of the secular State in Europe to accept and accommodate those ethno-religious minorities that are perceived to be partially different entities and claim some jurisdiction, without thereby rejecting guarantees from the receiving legal system. This multicultural challenge that minorities pose to institutionalized secularism is amongst the most complex political and long-term issues European states have to face. Such a challenge has not only to do with socio-economic disadvantage and discrimination in the labour markets but also with the constitutional status or corporate relationship with the State. On the other hand, European anxieties question whether or not Muslims can be and are willing to be integrated into European society and its political values; in particular, values of freedom, tolerance, democracy, sexual equality and secularism. Across Europe, multiculturalism seems to be in retreat and ‘integration’ is once again the watchword.

At a time when European societies are marked by a sense of crisis, it is essential to put our values into action. Nowhere is this discussion more relevant than with regard to migration and integration. Values cannot be imposed, they must be passed on and embraced across generation and communities, and we need to find concrete ways to achieve this. Because of their engagement in their respective communities, non-confessional organisations are among those who can provide concrete ideas to move this discussion forward. (Timmermans 2016).

It is well known that religious beliefs and the affiliation to religious groups and communities have historically been the driving force behind social relationships in Europe. Acknowledging the rich tradition of the coexistence of different religions in Europe, the *Charter of Fundamental Rights of the European Union* includes the

right to freedom of thought, conscience and religion. The commitment to religious freedom in Europe does not eliminate the religious tensions that exist in many European societies, on occasion exacerbated by extremists who instrumentalize religion for political purposes or by populist politicians whose desire to reassert national identity has involved renewed hostility toward ethnic and religious minorities, especially Jews and Muslims. Thus, we need to better understand the new scenario of religions, secularism and fundamental European values. This contribution is a starting point about the importance of contextualizing religious coexistence – from a historical, legal and sociological perspective – as a way of promoting a European public and cultural space, from where diversity can be approached with inclusive practices.

Along these lines, I would like to point out that one of the main problems we face today between the secular State and religious denominations arises when the legal framework of the former attempts to integrate the sociocultural diversity demanded by the latter under the argument of the recognition of rights. The problem is even more complex when relationships with some religious minorities become difficult due to discriminatory perceptions of an ethnic-religious nature.

Within the European context, statements on religious and ethnic diversity are a consequence of the needs of affected people for said diversity to be recognized by the authorities. These people, from different cultures, demand that their specific religious or cultural features, most of which are part of their personal statute, be not only respected, but also recognized. However, these claims, understood as rights, occasionally fragment general legislation, and the State itself is therefore obliged to reconsider the application of its own rules for the sake of maintaining coexistence.

The exercise of sovereignty is an essential attribute of the liberal State and it is exercised with its complement of rights and duties over the undifferentiated citizens; undifferentiated in terms of their specific ethnic, cultural or religious status. For this purpose, the liberal, secularized State wields the paradigm of neutrality. However, difference is persistent in its resistance since it argues that if it is not legally recognized, the next step will be to deprive people of their freedom. In view of this accusation, the secularized State lends itself to consider the difference, even if it means assuming uncalculated risks. Lying at the root of the problem is the fact that after the dialectic debate between religions and secularity, the former do not renounce the right to express the cultural legitimacy of their values and their right to exercise and express them.

At this point, the cultural sociology of religions makes its appearance with arguments that are stronger than those of the State itself. Religious denominations are taking advantage of a certain control of moral relativism and an evident relaxation of ethical consciousness and are extracting specific identifying elements from the ‘shelf of memories’, which can put together a cultural-religious structure that these denominations are defending in their particular values. In societies classified as modern, the dominant secularized culture is inclined to accept the recognition of policies and manifestations of minority religious denominations, which contrast with rules of general use; all for the sake of facilitating social cohesion, even if, from a radicalized

point of view, it could be claimed that they confront the rights of the majority (Contreras and Martínez de Codes 2013, 214).

The migratory process that we are currently experiencing in Europe shows a change of direction from south to north, which is beginning to influence the legal systems of the European countries that receive said migration in different ways. Although the strength of legal monism has prevented the phenomenon from becoming immediately apparent, migration subjects the law to new interpretations and enables the development of emergent hybrid structures and complementary systems that bring to light complex ways of cultural transposition.

A noteworthy example in this regard is the demand made by British Islamic communities to control their community and private life, defend their traditional practices, and apply their own family codes. Since at least the 1970s, British Muslims as a group and alongside other minorities have been involved in a struggle for rights, for political representation and for recognition (Poulter 2001, 456). What might these struggles look like in the future? The change that can be foreseen shows that said groups want their rules, cultural or religious practices to be ‘recognized’ or ‘accommodated’. This does not necessarily mean that the requests of the cultural group to have a ‘law’ or ‘legal system’ of their own imply an ideological affirmation or a claim to political power; in some circumstances, the intention is not to compete or displace State law, but to interact with it (Malik 2012, 1–29).

It seems that the contemporary liberal paradigm has changed the analytical framework, and the assessment of said minority legal systems focuses on how they may strengthen individual autonomy and whether or not they provide their members with equal protection to that provided by the State order. The classic example of this approach is the issue of whether or not said system will be able to comply with the constitutional guarantee of equality for women. About Muslim women in Europe, the case is obvious and the internal inequalities of authority within Islamic communities can lead to disproportionate costs for women when the State attempts to accommodate their cultural or religious practices. Said costs include getting married without the right to divorce, inadequate financial compensation in the case of divorce, the abandonment of the right to the custody of minors and restricted rights to education, employment or participation in the public sphere, etc. (Bano 2017, 304).

It should not be forgotten that the versions of multiculturalism prone to unconditionally welcoming minority groups are also subject to constitutional laws – those of the democratic State – which safeguard the individual rights of all citizens and protect them from harm, even if they choose to belong to non-liberal cultures or religious communities. As a result, whenever there is a risk of significant harm, the State should intervene to protect vulnerable people, regardless of their voluntary affiliation to a cultural or religious community, or their consent to a minority legal order.

In recent years, the debate on the topic of multicultural society and its chances of success within the liberal democracies in Europe has remained open (Grillo 2017;

Meer *et al.* 2016). Opinions vary widely though, which makes the debate even more complex, and explains the growing diversity. On the one hand we notice internal social dynamics such as growing secularization and growing individualization of lifestyles – two developments that are closely related to the expansion of human rights. On the other hand there is the growing ethnic, cultural and religious diversity of European societies linked to migration from outside the European Union.

It is this link to migration that has made the discussion about the future of our multicultural society even more sensitive. Three decades of migratory waves have caused a drastic response in public opinion: immigrants are a threat to the achievements of the active welfare State. Thus, respecting this new diversity represents a hard challenge for European citizenship. As a matter of fact, increased attention to individual self-determination within one's own society together with migration from outside – for which we do not have a common response in Europe – has led to an increasingly visible gap between those that see diversity not only as a challenge but as a true enrichment, and those that on the contrary emphasize the many social risks that uncontrolled demographic changes imply (Modood and Bovenkerk 2017, 4–5).

Across Europe, multiculturalism seems to be in retreat and integration is again the watchword, although it is the symbolic framework of integration (identity, religion, perception of the 'Other', collective memory and so on) that is failing (Bouchard and Taylor 2008). National policies should be engaged at this macro-symbolic level and devote more research and resources to such issues, for example to explore how a minority is perceived by the rest of the country and how members of a minority perceive their relationship to society.

As far as the majority culture already has recognition of some sort – many states support a certain language(s), a particular religious calendar concerning national holidays, the teaching of religion(s) in schools and/or the funding of faith schools and so on – we must admit that the liberal State is not culturally neutral. However, 'appeals to majority cultural heritage cannot be described as illegitimate *per se*,' Tarik Modood says. 'The multiculturalist point is that the predominance that the cultural majority enjoys in the shaping of the national culture, symbols and institutions should not be exercised in a non-minority accommodating way' (Modood and Bovenkerk 2017, 16–19).

The question is whether or not the secularisms of Western Europe – despite their distinctive histories and institutional diversity with reference to ethno-religious identities – may appropriately include newly-arriving faiths alongside older faiths. Modood's suggestion is that 'moderate secularism' offers a flexible framework for including ethno-religious identities, and specifically for the multiculturalist accommodation of said minorities with reference to equal respect. Recognition or accommodation for ethno-religious minorities implies that the social dimensions important to these groups become more politically meaningful.

Nowadays, most religions require the observance of rules of piety and Western Europe is experiencing such practice-based religions re-entering the public space. Adaptations of codes of dress, dietary requirements, places for worship, and so

on are relevant issues of religious praxis to which institutions such as schools, hospitals and prisons, and even workplaces are being asked to adjust.

This praxis-based accommodation is a significant multiculturalist challenge because it is not just a symbolic recognition that is being requested, as substantive institutional changes are sometimes necessary. The resurgence of interest in 'pathways to citizenship' and integration testing in Europe demand new legislative developments. Europe's response can be integrative of institutions based on culture, rules and the values of said minorities, and it can also set out to find creative legal procedures within state law to reconcile divergent positions.

Moving forward will imply understanding and articulating how different configurations of legal pluralism interplay with the legal and the social life of human rights (Corradi *et al.* 2017, 272). Fifty years ago, drawing on experiences from Western Europe, we responded to the post-immigration populations with discourses and policy frameworks of race (Britain), ethnicity (the Netherlands), and guest workers (Germany), which were unmindful of the long-term religion-secular dimensions. Today, we need to improve our understanding of how human rights law and practice influence interactions that are subject to regulation by more than one normative regime in matters of family law.

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