

Article

The *Lautsi* Legacy: A New Judgment on the Crucifix in Classrooms and the Multiculturalist Turn on Freedom of/from Religion in Italy

Olga Breskaya ^{1,*} , Paolo De Stefani ² and Giuseppe Giordan ¹

¹ Department of Philosophy, Sociology, Education and Applied Psychology, University of Padova, 35123 Padova, Italy; giuseppe.giordan@unipd.it

² Department of Political Science, Law, and International Studies, University of Padova, 35123 Padova, Italy; paolo.destefani@unipd.it

* Correspondence: olga.breskaya@unipd.it

Abstract: The article offers a socio-legal analysis of the recent case on freedom of/from religion in Italy, the *Coppoli* judgment of the Italian Supreme Court, which grants public schools the autonomy to manage religious symbols. The new ruling is discussed in the shadow of the *Lautsi* case, examining the shift from the discourse of “passive religious symbol” to the framework of “respect of different sensibilities” in pluralistic classrooms. In doing that, first, we provide a sociological framework for the study of “passive religious symbols” from a multiculturalist and religious freedom perspective. Second, the *Coppoli* case is contextualized within political, normative and judicial Italian contexts following the *Lautsi* jurisprudence. Third, we revise the model of “secularism as a method of dialogue” considered by the judges as important in claiming individual freedoms of/from religion in the multicultural classroom. The final part of the article provides a discussion and critical considerations about the *Coppoli* case, problematizing the future challenges of managing religious diversity in Italian public schools. We argue that the dynamic of freedom of/from religion’s jurisprudence in the *Coppoli* case endorses an additive model of accommodating diverse cultural and religious identities in public schools.

Keywords: freedom from religion; passive religious symbol; *Coppoli* case; *Lautsi* case; dialogue; autonomy; public schools; Italy



Citation: Breskaya, Olga, Paolo De Stefani, and Giuseppe Giordan. 2022. The *Lautsi* Legacy: A New Judgment on the Crucifix in Classrooms and the Multiculturalist Turn on Freedom of/from Religion in Italy. *Religions* 13: 666. <https://doi.org/10.3390/rel13070666>

Academic Editor: Roberto Cipriani

Received: 23 May 2022

Accepted: 14 July 2022

Published: 20 July 2022

Publisher’s Note: MDPI stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



Copyright: © 2022 by the authors. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

1. Introduction. Ten Years after the *Lautsi* Case

During the last decade, starting from the second ruling of the European Court of Human Rights (ECtHR) on *Lautsi and Others v. Italy* (2011), the scholarly and broader public debate about the “passive” character of religious symbols¹ in public places has not subsided in Italy and other countries. Controversies have surrounded the meanings of freedom of/from religion in various socio-religious and political contexts, questioning the general viability of the idea of passive religious symbols, namely in countries with a dominant religion and where religious rites are carried out in public schools (*Perovy v. Russia* 2020),² and commenting on the impact of *Lautsi* on the adjudication of similar cases in Italy (Croce 2019). Effie Fokas (2018) argued that “*Lautsi* is rather exceptional in garnering cross-country attention”, pointing out that “the governance of religious diversity is a national concern” (Fokas 2018, p. 36). Meanwhile, close international attention to that case contributed to a broader discussion among states about the limits of religious freedom, paths to pluralism, and meanings of the margin of appreciation doctrine (Fokas 2018).

The dynamics produced by the two contrasting decisions of the ECtHR in the *Lautsi* case (in 2009 and 2011) regarding individual religious freedom claims and the cultural role of religious symbols, while contextualized within the constitutional and civic values of a society with a single dominant religion, left unanswered many tensions around the

cultural and religious significances of the crucifix in multicultural classrooms. In fact, in 2011, the ECtHR's Grand Chamber only "froze" the controversy, leaving room for more skirmishes between the opposing camps, mostly centred on the same issues, namely: the cross as a "passive symbol", the borders of secularism, and the gap between the mainstream perception of religious facts and the particular sensitivities of some individuals and minorities. The judicial dynamic between the two *Lautsi* rulings showed the necessity of finding more sensible legal and political responses to socio-legal requirements of religious freedom—involving issues such as non-discrimination, equality, and legitimation of religious diversity (Modood 2007; Trigg 2012; Beckford 2014; Giordan 2014; Giordan and Pace 2014; Beaman 2015, 2017). In terms of religious freedoms, the *Lautsi* jurisprudence raises the issue of the equal enjoyment of rights by religious minorities, religious majorities, atheist groups and individuals, and the secular society.

In the Italian context, while legal analyses suggested that *Lautsi and others. Italy* did not set a particularly authoritative precedent in the national case law (Croce 2019, p. 8), the case became a milestone in the socio-political discussion on "broader issues within Italian society, such as multiculturalism and religious pluralism (particularly in relation to the growing Muslim community), and the boundaries of Italian political secularism" (Ozzano and Giorgi 2013, p. 2). In these debates, the crucifix was simultaneously a symbol of national culture, religious tradition, and universal norms and values supporting pluralism and individual rights.

On 9 September 2021, ten years after the final *Lautsi* judgment, a ruling of the Italian Supreme Court of Cassation in the *Coppoli* case suggested a new approach to freedom of and from religion in Italian public schools.³

The case originated from a teacher's claim lamenting the violation of his freedom from religion.⁴ In the *Coppoli* case, which comes to the centre of this article, the Italian Supreme Court adjudicates that "the mandatory posting of the religious symbol of the crucifix is . . . not permitted in public school classrooms" (*Coppoli* 2021, para. 30). The Court stated that the principle of reasonable accommodation should be applied by the school community and discussed at length the principle of secularism as enshrined in the Italian Constitution. For the Italian Supreme court in *Coppoli*, the *Lautsi and others v. Italy* decisions of the ECtHR created a judicial and socio-religious context for the juridification of religion in a multicultural society with a dominant religious culture; a context, however, that needs to be rediscussed and redefined. This new ruling articulates the internal dynamism of freedom of and from religion and stresses the importance of more diversity-friendly and contextually sensitive approaches (Modood 2019) in managing religious and non-religious identities in public spaces.

Against this background, this article aims to examine the *Coppoli* case in the shadow of the *Lautsi* case from a socio-legal perspective. We are interested in exploring the discourse shift from the "passive religious symbol" argument to the new framework of "respect for different sensibilities", emphasizing the importance of creating cultural awareness about the meaning of displaying the crucifix in schools. In doing that, we highlight that the dynamic of freedom of/from religion's jurisprudence in the *Coppoli* case proposes a normative framework which comes in line with the socio-political perspective of multicultural accommodation of minorities (Modood 2014). In examining the recent case, we first provide a sociological framework for the analysis of "passive religious symbols" in the context of a dominant culture by integrating the multicultural perspective with the one on the study of the conflicting nature of religious freedom dynamic within a human rights discourse (see Bielefeldt 2013; Modood 2014, 2019). Second, we situate the *Coppoli* case within the socio-political, normative, and judicial Italian contexts that followed the *Lautsi* jurisprudence, as they are relevant for interpreting the socio-legal potential of the new judgment. Third, we revise the conception of "secularism as a method of dialogue" (Domianello 1999; Pugliese 2010; Consorti 2020) proposed for examining the tensions caused by religious freedom's dynamics in multicultural classrooms in Italy. The final part offers a discussion and some critical considerations about the *Coppoli* case, problematizing the possible future

challenge of managing religious diversity in the Italian public schools, to which the Italian State grants autonomy in this field. Applying the multiculturalist perspective, we highlight that the dynamic of freedom of/from religion in the *Coppoli* case proposes an additive model for accommodating diverse cultural and religious identities in public schools.

2. Sociological Approaches toward “Passive” Religious Symbols in a Multicultural Context

The dynamics around religious freedom in the *Lautsi* rulings highlighted the multiple meanings of the Christian symbol within public and religious contexts. The crucifix was considered as “properly and exclusively” religious if displayed in a place of worship, while in a “non-religious context” it was seen to have a “non-discriminatory meaning”, as necessarily perceived through the “values which underpin and inspire [the Italian] constitutional order, the foundation of our civil life”.⁵

This dynamic was not only about the freedom of and from religion considered as a guarantee protecting individual claims or safeguarding national cultural heritage and values. In fact, it implies the sociological analysis of a variety of “techniques of displacement or transition from religion to culture” (Beaman 2012, p. 80), which can be considered in terms of denying a religious symbol its meaning, emphasizing its passive nature, placing it among other symbols, and transforming it into a carrier of secular or national values (Beaman 2012) in judicial and social contexts. According to Beaman, such transit “also open[s] possibilities for resistance by allowing religious minorities to draw on the rhetoric of culture to shift the discourse away from religion” (Beaman 2012, p. 68), altering the meanings of religious symbols and the models of governing religious diversity.

The protection accorded to religious symbols by “sheltering them within ‘heritage’” (Beaman 2012, p. 80) shows the importance of the symbolic capital intrinsic to religious systems of meanings, due to their authority in legitimizing and codifying individual and collective actions and processes of identity formation. The passive character of a religious symbol, according to Beaman, reflects the fact that “its power to mobilize or effect is denied” or that the religious meaning “is softened by its cultural affiliation” (Beaman 2012, p. 84). As we will see, in the *Coppoli* case, the “passive” nature of the Christian symbol in the Italian classrooms was challenged with arguments that intersected freedom from religion with freedom of teaching in the public school.

Following this logic, one can question whether the variety of transition techniques bestowing cultural meanings on religious symbols emphasizes the concept of “religion as culture” and “religion as power” (see Woodhead 2011), supporting it with new evidence and indicating the importance of considering religious phenomena as “constructed, negotiated and contested” and varying “in meaning across time and place” (Beckford 2003, p. 7), namely, in juridical, political, and cultural domains. Since social scientists in defining religion are taking into account issues such as “moral suasion, legal determination, political imposition, philosophical argument, historical reconstruction and, in some cases casual violence and deadly force” (Beckford 2003, p. 215), they continue developing this definitional framework and contextualizing religion within new social processes and realities. At this backdrop, the conceptualization of religion within the human rights discourse, articulated in forms such as religious freedom, equal citizenship, juridification and judicialization of religion (Brettschneider 2010; Witte and Green 2012; Sandberg 2014; Richardson 2015; Årsheim and Slotte 2017; Breskaya et al. 2018; Breskaya and Giordan 2019), brings about new challenges for the definition of “religion” (Consorti 2020; Ricca 2013).

The conceptual shift highlighted by Beaman, however, did not eliminate the tensions around the concept of religion once the latter is perceived as culture. On the contrary, the transition amplifies the discourse on secularization, linking it to the issue of multiculturalism and the power struggles around cultural differences and equality in contemporary societies (Benhabib 2002). The shift from religion to culture highlights the imponderable balance between the liberal democratic normative framework “that run[s] the risk of freezing existing group differences” and the “autonomous logic” of culture (Benhabib 2002, pp. ix–3).

Therefore, it is crucial to understand the dynamic nature of culture from a democratic perspective as “complex human practices of signification and representation, of organization and attribution, which are internally riven by conflicting narratives” (Benhabib 2002, p. ix), together with the critical approach toward neglecting cultural differences, both crucial to defining religion as culture in religious freedom analyses.

Moreover, the internal and conflicting dynamics of freedom of and from religion (Bielefeldt 2013; Shaheed 2017) reflect the changing socio-religious reality, with a growing number of religious minorities and “non-religious diversity” (Beyer and Beaman 2019). By introducing the cultural connotation of religion into these dynamics, we face a process of “cultural experimentation with new legal and institutional designs that accommodate cultural pluralism” (Benhabib 2002, p. x). The dialectic perspective toward religious freedom analysis and understanding of cultural systems via complex and variegated dialogues between and within them (Beckford 2014) indicates the only possible way of reconciling the individual rights perspective with the processes of collective cultural self-expression (Benhabib 2002). In the same way, regulation of religious symbols in the public space is contested in a pluralistic society, and the recognition of cultural differences raises the issues of the liberal understanding of inclusion, human dignity, and equality. According to Benhabib, “the task of *democratic equality* is to create impartial institutions in the public sphere and civil society where this struggle for the recognition of cultural differences and the contestation for cultural narratives can take place without domination” (Benhabib 2002, p. 8). Similarly, Modood (2014) suggests that while mutual respect and dialogue between minorities and the majority comes to the centre of multicultural/intercultural policies, we have to ensure that the dominant national culture is tolerant and inclusive toward minority cultures. He writes:

In this way the national identity and its component parts, including key aspects of the majority culture, has to be made consistent with democratic values such as liberty, equality and fraternity, and can therefore in principle also be consistent with multicultural citizenship. In this formation the majority culture again does not enjoy a unique position. . . . This is best done through dialogue or multilogue in which conceptions of citizenship and corresponding national identities are contested and reworked. (Modood 2014, pp. 310–11)

In this context, the role of the majority culture is seen as “useful and necessary” for the processes of identity preservation, but not only. Its function extends over the formation of national citizenship. It is oriented toward shaping the values of a more democratic and pluralistic society. Modood argues that not only “the past is central” for one’s understanding of his/her national belonging, but it is also important to “appreciate the country we are becoming” (Modood 2014, p. 311). He proposes an *additive* conception of multiculturalism, explaining that it refers both to the majority and minorities in a way they include and respect each other in the process of national identity building in democratic societies. He notes “The challenge is not how to de-Christianise western states, but how to appropriately add the new faiths alongside the older ones in ways that are faithful to national cultures, but also adapting them so they are inclusive in this additive sense” (Modood 2014, p. 13).

In terms of religious instruction (RI as a confessional approach) and education (RE as a comparative study of religions), Modood (2014) suggests that neither religious minorities, nor majority religions should decide regarding the formation of cultural/religious identity and knowledge for the other part. He states that:

Minorities do not have the right to stop the majority from including the instruction of their own religion. We should not, for example, ask schools to cease Christian RI, or worship, or celebrating Christmas because of the presence of Muslims or Hindus. Rather, we should extend, for example, the celebrations to include Eid and Diwali. Muslims and other religious minorities in Europe are seeking

accommodation within something resembling the status quo, not a dispossession of Christian churches. (Modood 2014, p. 311)

This is a two-way process which requires both sides—the dominant cultural/religious majority and minority—not to consider each other in terms of *subtractive* inclusivity. In opposing the *additive* to *subtractive* models of inclusivity, the multiculturalist perspective designates concepts of the culture of the majority (in terms of cultural heritage) and civic culture that is oriented to the principles of equality, inclusivity, and freedom. In achieving a balance and integrating these two types of culture, it is important to find solutions which do not exclude either minorities or the majority but consider the interplay of cultural/religious identities and civic principles and norms simultaneously.

More specifically, Modood (2019) highlights the importance of achieving a compromise between multicultural and moderate secularist perspectives while he explains the necessity of problematizing and finding practical and “feasible, contextually sensitive solutions” (Modood 2019, p. 18). According to him, the link between two concepts—multiculturalism and moderate secularism—refers to a particular historical and political European context, namely of “emergence of Muslim identity politics in Britain” (Modood 2019, p. 17). By considering how empirical reality engages with normative issues, Modood emphasizes the importance of contextualizing normative concepts, specifically referring to the various meanings of the idea of “liberty” across national traditions and histories. He notes that “every engagement with a context, every time the concept of liberty is taken on an outing, it will have to undergo some change to reflect the cross-contextual variety” (Modood 2019, p. 18). Thus, social scientists have to understand the differences produced by these contexts and perceive the variances in understating the concept and its contextual richness. Modood suggests to “take contexts seriously as the network of norms, practices and institutions that constitute a context” (Modood 2019, p. 20), understanding its limits and critical points. Finally, he underlines the “possibility of reform and deliberate change” (Modood 2019, p. 20), indicating the necessary and possible changes within a given political and legal context indicating its dynamic character. Therefore, contextualising religious freedom within the national legal tradition and diverse cultural and religious systems (Ferrari et al. 2021) is an important exercise toward a mutual accommodation of cultural claims, democratic values, equality, and religious freedom.

3. Socio-Political and Case Law Developments after the *Lautsi* Jurisprudence

The most recent episode in the Italian crucifix saga occurred in September 2021, almost exactly ten years after the decision of the ECtHR Grand Chamber that had apparently settled the dispute. The *Coppoli* decision of the Joint Civil Sections of the Italian Supreme Court of 9 September 2021, n. 24414, closed the judicial procedure initiated by Mr Coppoli in 2009. It clarifies some controversial points raised in the *Lautsi* ruling concerning religious freedom and secularism in Italy and opens the door to new questions for society, lawyers, and school communities.

3.1. Political Follow-Ups 2011–2021

In the ten years since the *Lautsi* Grand Chamber judgment, the divide between supporters and opponents of the crucifix display in public spaces and, more precisely, in classrooms has often materialized in the Italian public debate and the media. Still, it found its way into courts only in a few cases. The authoritative precedent of the 2011 Strasbourg dictum was probably recent and unambiguous enough to discourage any challenge to the status quo from students and families. Indeed, the non-violation ruling of the Grand Chamber that repealed the 2009 Chamber decision prompted initiatives that overplayed the pro-crucifix judgment. For example, in 2018, the Trieste town council imposed the crucifix in all the rooms of the communal kindergartens, and the Veneto Region government in 2018 financed an award for the best Christmas crèche made in a school. These and other similar measures were not opposed to court actions and only sparked polemics between political parties, some articles in newspapers or discussions on social media (sometimes completely

groundless) (Santarpia 2018; Visetti 2018). The same can be said about bills or interviews in which political parties or government members proposed detaching altogether crosses from the school walls (Buzzi 2019; TG24 2019). Sometimes, as will be mentioned *infra*, town councils mandated the display of the crucifix in the rooms of all public buildings within the communal territory, an issue that Italian courts have addressed with contrasting views.

In 2018, in what appears to be a propagandist effort, parliamentarians of the Lega-Salvini Premier group submitted a bill reporting “Dispositions on the exposition of the Crucifix in schools and offices of public administration”, aimed at making it mandatory to hang crosses in all public premises, including schools, polling centres, hospitals, airports, courts, etc., while any removal carried out “with hate” would be punished with an administrative sanction of up to 1000 euros (Baldassarre 2019). A similar bill was systematically submitted at the beginning of each legislature after the crucifix-in-classroom issue emerged in the public debate in the early 1990s by right-wing parties. At the time, a few years after the new Concordat with the Holy See was adopted and the main issue, that is, the optional teaching of the Catholic religion in public schools was settled, atheist activists and groups launched as a corollary some litigations concerning the crucifix. The prospect of removing the crucifix from the Italian schools was opposed not only by the Catholic Church but also by non-Catholic politicians and intellectuals. Natalia Ginzburg famously captured the rationale of the large toleration with which non-religious thinkers looked at the issue in a column entitled “Non togliete quel crocifisso: è il segno del dolore umano” [Don’t remove that crucifix: it is the emblem of human suffering] (Luzzatto 2011, pp. 11–16). As noted above, denoting and perceiving religious symbols via neutral, passive, universal, and even secular meanings intends that the “religious symbols of the majority are able to be more fully integrated and retained in the fabric of the society” (Beaman 2012, p. 90), thus designating them as markers of Italian civic identity.

3.2. (Lack of) Legislative Reforms

Indeed, no action has been taken to reform—necessarily with an act of the Parliament—Royal Decrees No. 965 of 25 June 1924 and No. 1297 of 26 April 1928, the two preconstitutional executive regulations that made it mandatory to expose the crucifix in all secondary and primary Italian public schools respectively. The regulations implemented Art. 1 of the Albertine Statute (the supreme law of the Italian Kingdom), according to which “The Catholic, Apostolic, and Roman religion is the sole religion of the state”.

Art. 118 of RD 965/1924 expressly states that, for secondary schools (*scuole medie*), “any school shall have the national flag; every classroom shall have the image of the Crucifix and the portrait of the King”. The 1928 decree, covering primary schools and adopted in the aftermath of the first Concordat between the Holy See and the Italian government (headed by Benito Mussolini), is even more straightforward: the cross features among the furniture items that local administrations must grant in all classrooms (RD 1297/1928, Annex C).

The two Decrees of the Royal Ministry of Education are still in force. Art. 24 of Decree-Law 25 June 2008, No. 112, enacted in one of the recurrent crusades to “chop off” the innumerable laws and regulations that overload the Italian legal system, abrogated the 965/1924 Royal Decree. However, the abrogation was only temporary, as the Decree-Law of 22 December 2008, No. 200, Art. 3.1-*bis*, issued by the same government, resuscitated, unabridged, the whole Royal Decree (Arcopinto 2014, p. 187). Not only are both decrees still in force, but the obligation to expose the Christian symbol in state-owned premises where public functions and services are delivered has been reiterated and even expanded in some recent legislation, although the Republican Constitution clearly embraces a secularist regime and Art. 1 of the Supplement Protocol to the 1984 Concordat stipulates that “[t]he principle, originally stated in Lateran treaties, that the Catholic religion is the sole religion of the Italian state is no longer in force”.

For instance, arguably echoing the *Lautsi* Grand Chamber ruling, the Lombardy Regional Council adopted a law (Regional law 21 November 2011, No. 18, published in Gazzetta Ufficiale 25 November 2011) to make it mandatory to hang the crucifix in public

rooms and at the entrance of all premises belonging to the Region. A similar bill was submitted to the regional legislative bodies of Emilia-Romagna in 2011 and Campania in 2012, but never voted ([Esposizione del Crocifisso 2011, 2012](#)). As regards more specifically schools, the Ministry of Education on several occasions reaffirmed the obligation for school heads to abide by the Royal Decrees, most recently with Directive 3 October 2002, n. 2667 ([MIUR 2006](#)).

The reason given to legitimize the uninterrupted effectiveness of these provisions (that clearly belong to another constitutional era) is that the doctrine of “open secularism” prevalent in the Italian legal and political system allows a wide interpretation of the semantics of the crucifix. The cross is a religious symbol but also a non-religious icon of civic and moral values that Italians of all provenances have cheered over the centuries. Against this background, it can be seen that the *Lautsi* case indirectly influenced Italian public opinion and shaped “social actors’ understanding of changes in legal and political opportunities at their disposal for pursuing their rights” ([Fokas 2018](#), p. 27), affecting the strategies of those who either support or oppose the perspectives of moderate secularism and multiculturalism in the “shadow of law” ([Fokas 2018](#)).

3.3. Approaches of the Italian Administrative Courts to the Crucifix Issue

The Italian administrative courts (Regional Administrative Tribunals—TARs—and the Council of State) have systematically rejected all applications that challenged the legitimacy of the contentious decrees in the light of state secularism. Administrative courts and not civil tribunals have jurisdiction in matters related to the presence of religious symbols in public premises, including schools, for the simple reason that, to challenge the display of a cross in classrooms, plaintiffs necessarily impugn for annulment acts issued by school authorities to re-establish the status quo, as most of the times, crosses *were already* hanging in classrooms. Although the interests at stake are indeed constitutional principles (state secularism) and fundamental rights (freedom of religion, Art. 8 Cost., and freedom of teaching, art. 33.1 Cost.), what is directly attacked is an administrative measure. The relevant subjective juridical position is the plaintiff’s “legitimate interest” in annulling an act of the concerned school administration. Both the Council of State (*Lautsi (CdS) 2006*, § 2) and the Civil Joint Sections of the Cassation Court (*Smith (order) 2006*) share this position.

In the *querelle* about the crucifix in classrooms, the Italian TARs have been seized by parents, such as in the procedures that culminated in the *Lautsi* judgment of the ECtHR, but also by teachers. It can be noted that, despite some exceptions (the *Smith* jurisprudence for schools and the *Torti* jurisprudence for court halls—see *infra*), challenges were brought by atheist and agnostic persons (and activists: a special role has been played by the Union of Atheists, Agnostics and Rationalists—UAAR); non-Catholic religious individuals and groups have not been particularly vocal in contesting the crucifix.

The response of the judiciary administrative branch, as anticipated, has been consistently conservative, although with some fluctuations. In particular, in the cases submitted by parents, the argument opposed to the alleged incompatibility of the mandatory display of the crucifix in classrooms with the principle of secularism and non-confessionalism of the Italian state (as derived from Arts. 2, 3, 7, 8, 19, and 20 of the Republican Constitution: see Const. Court, judgment 12 April 1989, n. 203 (*Moroni 1989*) was that the cross is not a religious symbol; “rather, it should be seen as a symbol capable of reflecting the remarkable sources of the civic values [i.e., tolerance, mutual respect, valorization of the person, affirmation of one’s rights, consideration for one’s freedom, the autonomy of one’s moral conscience *vis-à-vis* authority, human solidarity and the refusal of any form of discrimination] which define secularism in the State’s present legal order” (*Lautsi (CdS) 2006*, as reproduced in *Lautsi and Others v. Italy 2011*, para. 16)).

In the few cases where the plaintiff was a teacher, the administrative courts justified the hanging of the cross in classrooms by considering it as part of the national “historical heritage”, “independent of a specific religious denomination” (*Migliano (advisory opinion) 1988*) rather than as a religious symbol. In the *Lazzarini* case, the TAR argued that the

school authorities were implementing the resolution of a representative body of the school community (namely the class or interclass council where all parents and teachers of a class meet), which voted for the maintenance of the crucifix against the single position expressed by the petitioner. However, also in the latter instance, the judges endorsed the majoritarian resolution based on the “deeply rooted custom” of exposing the cross in public spaces, including schools, a practice that transcends the provisions in the two Royal Decrees of the 1920s, whose legal effects were superseded by the 1984 Concordat between Italy and the Holy See (Lazzarini 2003).

It may be noticed that in their case law, administrative courts not only seem to stick to the longstanding position that quite paradoxically interprets the cross as a symbol of secularism (despite the fact that the ECtHR and the Italian Court of Cassation—as will be shown below—have repeatedly affirmed its status as a Christian religious symbol); they also take the ECtHR dictum of the Grand Chamber in *Lautsi* as an uncontroversial precedent and flatly apply it wherever religious symbols and acts of a public authority are involved. For example, with a decision adopted in simplified form (that is, with a very brief justification), the Cagliari TAR dismissed as unfounded a petition filed by the UAAR seeking to annul an order adopted in 2009 by the mayor of the Sardinian town of Mandas, imposing the duty, assorted with an administrative sanction of 500 euros, to hang a cross in any public building within the town’s territory (the order was revoked a few months later). The judge apparently argued that the notion of “passive symbol” elaborated by the ECtHR in connection with (primary) schools applied to any other public premises and that the flexible yardstick of the “national margin of appreciation” could be used without any context-specific assessment (UAAR 2003; Croce 2019, pp. 76–80). This argument sounds different from that taken by Modood (2019) regarding “contextually sensitive solutions” and institutional accommodation of cultural and religious minorities indicating the move to the multicultural/intercultural approach. Instead, by privileging the Christian religious symbol in all public spaces, the democratic mechanisms of contestation, debate, and achieving consensus in accordance with the principles of equality and inclusion are in practice displaced.

3.4. *The Path to Coppoli: The Case-Law of Ordinary Civil and Penal Jurisdictions*

The positions expressed by administrative judges are not fully shared by ordinary courts. In particular, in the *Montagnana* jurisprudence, the Court of Cassation, both civil and penal divisions, assumes that the crucifix is undoubtedly a Christian religious symbol, although admittedly a “passive” one, that is, incapable in most cases of producing an indoctrination effect of impeding the exercise of the freedom of thought or religion in those exposed to its view. Thus, any obligation to expose such a symbol must be carefully scrutinized against the principle of secularism as embedded in the Constitution. The result is that the poll clerks (at the time of facts, they were not voluntary but chosen by lot and tasked under the law to carry out their function) who refuse to perform their duties until religious symbols, namely the crucifix, are removed from the places (including classrooms) used as polling stations do not commit any penal offence, as their refusal is justified under the principle of secularism and as an expression of freedom of conscience (*Montagnana* 2000).

Similar considerations have been applied in the *Torti* jurisprudence, a controversy regarding the presence of crosses in courtrooms. A legal obligation to have them in courtrooms would violate the principle of secularism; indeed, such an obligation does not exist under Italian law and is only foreseen in a ministerial directive dated 1926, a provision that many tribunals silently disapply. Accordingly, the claim of the honorary judge Mr. Torti to have crucifixes removed from *all* Italian courtrooms as a condition to resume his functions in the tribunal of Camerino was deemed unfounded and incapable of constituting discrimination based on religious convictions, and the expulsion of the magistrate from the judiciary was thus legal. In fact, rooms without any crucifix were made available for his hearings. His self-help measure of suspending every hearing for several months was not

excused as a necessary means to obtain the implementation of the principle of secularism but sanctioned as a grave disciplinary contravention (*Torti* 2011). However, in parallel procedures concerning the characterization of facts as criminal offences, the judge was cleared because “there [was] no case to answer”.

However, a novelty emerged when teachers (and pro-secularist activists) contesting the lawfulness of exposing a cross in state schools succeeded in seizing the ordinary courts. This allowed the Court of Cassation to extend the reasoning it had developed with reference to courtrooms and polling stations to the domain of the crucifix in classrooms. To avoid the jurisdiction of administrative courts, two avenues were tested.

The first avenue was pursued in the *Smith* jurisprudence: the plaintiff submitted a case in tort. In *Smith*, Muslim parents of children attending the Italian kindergarten and primary school alleged that the presence of the Christian symbol in the school was detrimental to the psychological development of the children. Therefore, the state (the Ministry of Education) had to repair the damage in kind, that is, by removing the cross from the wall of the classrooms. This was proposed as the only viable option, as the school authorities had not accepted the suggestion to hang next to the crucifix a symbol of Islam and a legislative reform in the domain was not in sight. The right to receive compensation for damages (*ex Art. 2043* civil code) established the competence of the civil judge, superseding that of the administrative courts. The competence point, however, was challenged by the state. The Supreme Court’s decision on the jurisdiction dispute proved that this avenue was flawed. The Court of Cassation, as mentioned previously, did not accept the argument that detaching the crucifix from the wall was required as a form of damage reparation; instead, it was the actual object of the petition. This consideration moved the Court to confirm the exclusive jurisdiction of the administrative courts (*Smith (order)* 2006), whose conclusions would have most likely followed the previous rulings: the cross symbolizes the historical and cultural heritage of the Italian nation, and there is no reason why it should be removed.

This decision, along with the responses given by Italian politicians and judges illustrated above, highlights a well-established understanding of the role of religion in society, underpinning homogeneous cultural attributes for national identity and citizenship. However, by forcing courts to rethink the role of religious symbols, i.e., questioning the passive nature of religion and the principles of equality and non-discrimination, and intersecting religion with civil rights, the rulings paved the way to an innovative stance, that turned the “passive” crucifix into a symbol of multiculturalism.

4. The Coppoli Judgment, Part 1: The Crucifix Does Not Hamper Freedom from Religion

The second avenue proved to be more suitable to create a *prima facie* link with the judge of the rights. Namely, the competence of ordinary (civil) courts can be established if the plaintiff frames the petition as a case of discrimination at the workplace, as provided in Arts. 1–3 of Dlgs (Legislative Decree) 9 July 2003, No. 216 (that transposes EU Directive 200/78/CE of the Council, 27 November 2000) (*Licastro* 2021, pp. 18–20). In fact, the *Coppoli* judgment is the result of a petition originally submitted to seek a remedy for a case of religious-based labour discrimination. This has generated a completely new scenario, even a “revolutionary” one (*Ceffa* 2021, p. 59).

A short reconstruction of the facts is needed. In 2008, Mr. Coppoli, a teacher of Italian Literature, at that time working in a public high school in Terni (central Italy), was sanctioned with a 30-day suspension by the regional office of the Ministry of Education because he refused to abide by a service order issued by the head school requiring teachers not to remove the cross from the wall of a specific classroom. The order was meant to stigmatize the behaviour of Prof. Coppoli, who systematically used to detach the crucifix from the wall while lecturing in that class and put it back in its place when leaving. His conduct also continued after the large majority of the class students voted to keep the crucifix on the wall behind the teacher, a decision not contested by Prof. Coppoli’s colleagues. Notice that for some reason, the wall in the classroom happened to be empty at the beginning of the school year and the crucifix was positioned later on the initiative

of two students. Mr. Coppoli challenged both the disciplinary sanction (before the labour judge) and the principal's service order. The latter was impugned on the basis of its alleged indirect discriminatory content. According to the then-in-force provision of Art. 4 of Dlgs. 216/2003, the petition was submitted to the single judge of the Terni tribunal, following the procedure set forth in Art. 44, Dlgs. 286/1998 (the procedure is currently regulated by Dlgs. 1 September 2011, n. 150, Art. 28).

The applicant maintained that the events culminating in the sanction of suspending him from work illustrated a case of "an apparently neutral provision, criterion, practice, act, agreement, or behaviour [that] put persons having a particular religion or belief [...] at a particular disadvantage compared to other persons" (Dlgs 216/2003, Art. 2.1.b). In particular, the plaintiff lamented that the discrimination took the form of harassment, defined in Art. 2.3, Dlgs. 216/2003, as any unwanted conduct related to the religious conviction of a person taking place "with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment" (notice that in so providing the Italian law reproduces almost verbatim the language of EU directive 2000/78).

The claims of Mr. Coppoli were rejected in the first instance, and the appeal was dismissed. This opened the way for the Cassation Court. The labour section decided to relinquish its jurisdiction to the joint civil sections (*Coppoli (order)* 2020) for an articulated analysis and a more authoritative standard-setting decision, likely to influence the case law of the territorial judges, including administrative tribunals, on this thorny issue.

The joint sections did not find that the reported facts supported a case of discrimination at work based on religion and belief. Indeed, the allegation of religious-based discrimination, which was the first point in the relinquishment order, is tackled by the judges in the last paragraphs of the judgment as though to deemphasize its relevance. The Court endorses the Prosecutor's conclusion that "there are no reasonable grounds to maintain that the exercise of the freedom of the teacher in question and his didactic autonomy were hampered or inhibited by the symbol" (*Coppoli* 2021, para. 28.1). In other words, the judges assume that in Italian schools, including the class where the plaintiff was teaching, the crucifix is a "passive symbol" that does not hinder the spirit of pluralism and tolerance that characterizes the learning environment. Moreover, examining the students' decision to keep the crucifix in the class despite the open criticism of the professor, nothing allows one to believe that students considered the education function carried out by the public servants in their school as associated with a religious creed. Even stronger—the judgment notices—such awareness must be in an adult person endowed with higher cultural competencies and intellectual skills like the petitioner. The subjective perception of the plaintiff who felt disadvantaged while teaching under the shadow of the cross does not constitute discrimination based on religion in the sense of Art. 2, Dlgs. 216/2003 (*Coppoli* 2021, para. 28.2). The order of abstaining from removing the crucifix addressed by the school principal to all teachers was not ostensibly motivated by a religious bias (although someone could have interpreted some other utterances of the school head in this vein). Rather, the intention was to align the school community with the decision autonomously adopted by the class students and only contested by Mr. Coppoli.

The Court's conclusions seem to echo on one hand, what the Supreme Court already argued in *Tosti*, as it rejects entering into an ideological discussion on the reason why the cross should hang on the walls of state buildings and confines itself to determining, perhaps a little hastily, that the crucifix did not cause significant effects on students and even less on the teacher. On the other hand, in linking the legal and teleological grounds of the contested order issued by the school head and disobeyed by the plaintiff to the resolution adopted by the student class assembly, the Supreme Court evokes an argument already used in the *Lazzarini* case commented on above. By inhibiting any removal of the crucifix, the school head was not "defending" the religious symbol and, hence, harassing a notoriously atheist colleague, but rather endorsing an autonomous decision of the student body that the teacher was stubbornly and vigorously opposed to.

The case shows that the school head did not seek any “reasonable compromise” between the majority (class students, including individuals of Catholic, Muslim, and other Christian backgrounds, and arguably the entire faculty) and the minority (a single teacher). The Cassation considered the absence of dialogue and the lack of mechanisms to accommodate claims of religious freedom as evidence of flawed multiculturalism, namely in comparison with the Canadian approach explicitly mentioned in the judgment (*Coppoli* 2021, para. 24).

Some Critical Views on the Verdict on Religious Discrimination

It is not possible to speculate on the factual circumstances of the case. However, it seems that the judgment downgrades the controversy from a case of freedom of religion to an ordinary problem of student-teacher miscommunication and human resources management. In fact, one can depict the situation as that of an atheist teacher being negatively affected, in carrying out his work according to his conscience (*forum internum*), by a school environment so deeply conditioned by religion that it cannot even realize how religion has shaped its habits. In fact, almost no living Italian has ever experienced a no-crucifix classroom scenario; this obviously generates a phenomenon of “preference adaptation” (Perez 2015) that may explain why a large majority in school supports the display of a crucifix.

However, you can frame the same events as a case about conflictual relationships between a newly arrived—and possibly arrogant and unpopular (Cavana 2021)—teacher and a class, with the principal taking the side of the students. This second scenario is the one the judgement seems to endorse. In other words, the judgment avoids framing the situation as a conscientious objection case, that is, a situation in which the freedom from the religion of the individual is confronted with a decision taken by a majority (but in a body, the student assembly, that does not include the objector) on a religiously sensitive issue.

How to handle a crucifix is certainly a religious issue, unless the nature of the artefact as a “passive symbol” makes it also a generic carrier of cultural values, as in the approach of the Council of State. On a matter that impinges on fundamental rights, not only a student class assembly but no other body is entitled to enforce the majority will against the dissenter’s freedom of conscience, especially if no legally binding provisions regulate the matter. “In matter of religion—the Constitutional Court affirmed in judgment 18 October 1995, n. 440, mentioned in *Coppoli (order)* 2020, para. 12.5—since numbers do not count, it is imperative to equally protect the conscience of all professing a faith”. In this perspective, the self-defence response of the teacher to the students’ deliberation to make it permanent (admittedly, following a deeply rooted “tradition”) the display of the cross, that is, the temporary removal of the crucifix, may be considered proportionate and therefore legitimate.

The opposite conclusion can be reached if one reconstructs the entire episode as the teacher’s abuse of his prerogatives (including his freedom of teaching) to the detriment of the students’ right to live in an environment that implements Arts. 1 and 2 of the Italian school single act (Dlgs. 16 April 1994, n. 297). The two articles read as follows: “1. In full respect of the Constitution and of the school statutes [...], teachers are granted the freedom to teach, that is, didactic autonomy and free expression of their cultural positions. 2. The exercise of this freedom is intended to promote, through an open debate among cultural positions, the complete formation of the personalities of the students. [...].” (Art. 1); “1. The actions referred to in Art. 1 are carried out respecting the moral and civic conscience of the students” (Art. 2).

It may be argued that, in these paragraphs, the judgment reshuffles arguments that the ECtHR and the Italian jurisprudence have already handled in the past. The fundamental question of whether the rule on displaying the crucifix in classes (or the practice thereof) is compatible with the freedom from religion is eluded by saying that there is no rule, or that there is no religious symbol, or by denying that freedom from religion is at stake.

The claim of discrimination was eventually dismissed on the usual grounds: the cross is an inclusive symbol (but if so, why do we have such applications?), the symbol

is “passive”, students consented to keep it in class, the “disadvantage” it can cause to an atheist teacher is not “particular” and can be managed within a pluralistic educational context (Licastro 2021, pp. 23–25). Having found no discrimination, there is no space for any reparation to be paid to the applicant for non-pecuniary damage associated with the violation of a constitutional right.

5. The Coppoli Judgment, Part 2: Secularism as a Method of Dialogue

The paragraphs elaborating on a constitutionally oriented interpretation of the provisions about the display of the crucifix in schools are certainly the most innovative part of the *Coppoli* judgment. In these pages, the Court further develops the notion of “positive secularism” and shapes the concept of “secularism as a method”, recommending the recourse to “reasonable accommodations” as a means of navigating religious pluralism in schools (Consorti 2020).

First of all, the judgment (para. 11) affirms unambiguously that the regulatory provisions that made it mandatory to display the crucifix in classes, namely Art. 118, RD 965/1924, still in force, are no longer applicable in accordance with their original purpose, as the current constitutional and concordatary regime cannot admit an obligation to display a Christian religious symbol in a public school (here the active or passive character of such symbol is not relevant). “The display of the crucifix is no longer a due act, as it is not constitutionally permitted to impose its presence” (*Coppoli* 2021, para. 12).

This clarification is welcome, as it offsets the coward, “Pontius Pilatus style” (Pugiotto 2005) 2004 order of the Constitutional Court that, requested in the *Lautsi* procedure to rule over the constitutionality of the Royal Decrees and therefore on the potential contrast of the mandatory display of the crucifix in the classroom with the constitutional principles on the secular state, chose to dismiss the case as inadmissible because it was not concerning an act of law (*Lautsi (Const.)* 2004).

Therefore, there is no duty to display the crucifix, and Royal Decree 965/1924 is *de facto* disapplied. However, according to the Court, this does not entail that displaying the religious symbol in a classroom is prohibited and that the thousands of crucifixes hanging on the walls of Italian schools must be removed. In fact, the judges propose an “evolutive interpretation” of the rule, in line with the principle of state secularity as enshrined in the Italian Constitution.

The following step in the reasoning of the Court is the elaboration of what it labels “secularism as a method” (*Coppoli* 2021, para. 19). The Court finds that the (public) school is the best-suited environment where “positive secularism” as protection of religious and cultural pluralism (Moroni 1989, para. 4) can be played and practiced. “Positive secularism” far from being a form of state neutrality between religions or a secular, non-religious creed (as in a “negative secularism” approach), can be considered as an ethical and juridical precondition for the free expression of any religious and non-religious thoughts. The state must guarantee secularism on the basis of the normative assumption that diversity is better than homogeneity (Zucca 2016). The school environment is conceived of as “an institutional space, but also a shared public space where the presence of religious symbols, when it stems from a bottom-up choice and is not the effect of a unilateral determination of the public powers, does not represent the general views of the state-institution, but represents and recognizes faiths, cultures and traditions of the state-community, namely the community of persons living within that space” (*Coppoli* 2021, para. 13.2). Furthermore, “secularism as a method” is interpreted by the Court as a “method capable of uniting believers and nonbelievers and making different faiths and convictions coexist and dialogue with each other through the rejection of opposing dogmatic closures” (*Coppoli* 2021, para. 19).

The emphasis on dialogue, including interreligious and intercultural dialogue, is noticeable in the judgment; it promotes “broader consensus” inviting not to follow only the “majority logic”. On the contrary, a “welcoming” logic of “synthesis” and “mediation” is endorsed, likely to accommodate various identities and “cultural proposals” (*Coppoli* 2021, para. 13.3).

What is precluded to the state *qua* apparatus, that is, associating itself with any religious symbol, is allowed to the state *qua* community, to the school community in this case. In a speech published in 1950 and quoted with approval by the Cassation Court, Pietro Calamandrei (a lawyer, politician and member of the Constituent Assembly) famously qualified the state schools (as different from schools run by private institutions) as “a vital organ for democracy [corresponding] to those organs that in the human body have the function of making blood” (Calamandrei 2008, p. 49, our translation). This is arguably the difference between schools and tribunals or polling stations, places where the state *qua* apparatus displays itself. In these contexts, the state secularity imposes or allows the removal of any religious symbol; in schools, this decision is remitted to an autonomous determination of the concerned citizens. Therefore, each school institution, as part of the autonomy granted by Art. 117.3 Const. and regulated by the 1994 single act, shall design its own path to regulate, if necessary, the display of the crucifix or other religious symbols in class (Coppoli 2021, para. 14). Within the school, the student body is the best-placed community component to start a conversation on this matter. Indeed, each class has the competence to discuss the issue and provide a response to it, even though, as the Court reckons, a common position should ideally connote all classes in any single school.

The Court seems to condition the internal debate over the crucifix to three requirements. First, a procedure must be established allowing the participation of all components of the school community (students, families, teachers and the management, as represented in the participatory bodies articulating the school autonomy), so that all stakeholders, including those with a special interest in freedom of and from religion, are involved.

Second, the debate must seek a “reasonable accommodation”, that is, “a midway, mild solution, capable of meeting the different positions as concretely as possible, where everyone concedes something and takes a step towards the other” (Coppoli 2021, para. 19). The judgment devotes several pages to define what is a “reasonable accommodation” in matters of religion, also evoking non-Italian doctrine and jurisprudence, namely the *Multani* case in Canada (*Multani v. Commission scolaire Marguerite-Bourgeoys* 2006) and the German 1995 Federal Constitutional Court “crucifix decision” (*Kruzifix-Urteil* 1995). In general, “facing a structural tension between positive and negative religious freedom, neither aspect is due to prevail in absolute terms over the other, but a duty exists to guarantee the respective liberties of conscience and the different sensibilities” (Coppoli 2021, para. 16).

Third, if the solution proposed by the students and met with no major opposition from the rest of the school community consists of hanging a crucifix in the classroom (that is, to confirm the current situation), the presumption is that it does not infringe the principle of state secularity. This has been ruled by the Grand Chamber of the ECtHR in *Lautsi* and endorsed by the Court of Cassation. Any other solution (a white wall, a display of religious symbols belonging to a number of religions or evoking religious and non-religious convictions or only non-religious beliefs, a variable configuration of the display of religious and non-religious symbols according to the subjects taught or to the teaching professors, etc.) constituting a reasonable balancing between the represented interests can be tested and the proponents have the burden to prove it has the support of all components of the school community. Once a “reasonable accommodation” is reached, it remains within the competence of the school’s governing bodies (and the school management) to implement it and revise it, if a change is proposed.

6. Discussion: Dynamics of Freedom from and Freedom of Religion and Future of School Governance of Religious Diversity

A controversial aspect of the commented judgment can be briefly addressed, before delving into the most substantial issue of how the Cassation has handled the topic of religious freedom. As noticed above, the Court has framed its *de facto* disapplication of the Royal Decrees on an evolutive, constitution-friendly interpretation of the latter. However, it is not clear what is the object of such an evolutive interpretation. Apparently, this is

Art. 118 RD 965/1924. However, it seems hard to qualify as evolutive interpretation a reading that transforms the provision “every classroom shall have the image of the Crucifix” into something like “every classroom may have the image of the Crucifix or any other religious symbol, or no religious symbols whatsoever, if so, they wish within the school community in compliance with the constitutional principle of state secularism”. In this interpretation, the normative content of the original text seems to evaporate rather than evolve, given the open content of the norm thus identified. Perhaps, the object of such evolutive, constitutionally oriented interpretation is the customary norm that has supported over the years the display of the crucifix not as a state-imposed obligation but as a bottom-up crystallization of exactly that “positive” and “inclusive”, “non-neutralising” secularism that the Court of Cassation now endorses and that was illustrated in Constitutional Court judgment 203/1989. However, one cannot resist seeing here a case of judicial law-making (Toscano 2021, pp. 47–53).

Besides these considerations and moving now to the core of the ruling concerning secularism and religious freedom, the conclusion of the Court can be summarized by saying that, despite the disciplinary sanction issued against the applicant not amounting to religious discrimination, the order imposed on all professors to respect the student’s decision to hold the crucifix in that particular class, and whose infringement caused the disciplinary sanction, was unlawful. In fact, the school head issued that order without duly observing a participatory and inclusive procedure seeking to achieve a reasonable accommodation taking into account all convictions and worldviews actually present in the class context. In particular, the freedom from religion of Prof. Coppoli remained unheard. Since the school head did not implement the procedural criteria of a method aimed at striking an equitable balance of rights and interests and seeking a reasonable accommodation among competing claims, the legal basis of the disciplinary sanction is flawed, and so is the sanction. It remains to be seen whether the disciplinary sanction was at least partially justified by other reasons, namely, the teacher’s verbal excesses in attacking the principal in public meetings. For this reason, the Cassation Court overturned the previous judgment of the territorial courts and reinstated the case before another panel of the Perugia Appeals Court to decide on the reduced disciplinary sanction.

6.1. Practical Implications of the Ruling—Involving the State-Community

The Court judgment has been received with mixed reactions in the specialized Italian scholarship. Its overall echo in the media and public debate has been limited, though. Education institutions were and still are at the moment of writing busy with other urgent issues, namely the coronavirus pandemic and its wide-ranging implications. Yet, the follow-up of this ruling for the school environment, and therefore also in local communities and families, is potentially huge.

Theoretically, the next months and years may witness the spread of students’ and parents’ initiatives challenging the cross display at the level of single classes and schools or aimed at ensuring to have them hanging at the classroom in the (few) cases where local administrations failed to include them with the furniture. The outcome can be a patchwork landscape, with no-crucifix spots in a backdrop of schools that follow the traditional mode, or vice-versa. The risk is high of exacerbating religious and cultural cleavages and reintroducing what the formula “reasonable accommodations” intends to prevent, namely, majorities to rule in a matter where individual and minority rights must be honoured.

In addition, school heads and staff will have the task of defining, implementing and periodically adjusting the procedural path to achieve “accommodations”. The issue of religious convictions and freedom of thought is particularly hard to handle also in the light of privacy rights, in the constant absence of a law regulating the matter. To start a conversation on whether to hang any religious symbols on the classroom wall or to remove them, it seems unavoidable to collect information about the religious opinions of students and families, for example, in the form of reporting the outcome of a vote held in class. These are sensitive personal data that should be treated only for purposes indicated in a

law. For instance, they can be collected to allow students to avail themselves of the teaching of the Catholic religion and handled with care. Possible discrimination based on religious or non-religious affiliation may affect individuals associated with a particular entity (a class, a school) identified as supporting or not the display of a certain religious symbol. The risk of discrimination is not entirely unrealistic, as demonstrated by a case (Tribunal of Modena, Civil division, order 26 December 2016—but the facts occurred in 2008) whereby the presiding officer at a polling station claimed to be a victim of defamation and seized the court for damages because he was (falsely) accused by an elector of removing the crucifix in the classroom used as a polling place. The tribunal had to reiterate that a polling station must not display any religious symbol and that, therefore, to blame someone for removing the cross cannot have any criminal connotation (Croce 2019, pp. 80–83). The case may be indicative of the perceived inviolability of the crucifix as a religious artefact, regardless of the location where it is placed (and perhaps casts some doubts about its “passive” nature as a religious symbol).

More generally, what is striking in the Court decision is the smart operation of displacing the *locus* of decision-making in these delicate matters from the “state *qua* apparatus” to the school, called to epitomize the “state *qua* community” (Cartabia 2003, pp. 310–12). Institutions endowed with the powers of political mediation and of balancing between competing and arguably incompressible rights—the Parliament, with its monopoly of law-making in matters affecting fundamental rights, and the judiciary, namely the Constitutional Court, as the interpreter of the juridical prerogatives and boundaries of the secular state—seem to abdicate from their responsibility in this delicate matter and relinquish the task to the “state-community”.

In fact, a one-line rule imposing on all schools the hang of a “state crucifix”, a norm utterly incompatible with the Constitution of a non-confessional state and yet easy to implement and probably still supported by the majority of the population, is replaced by an articulated set of substantial and procedural principles, which the joint sections of the Cassation Court elucidate in roughly 15,000 words. The state-*qua*-community is requested to generate a new “rule” on religious symbols in the classroom on a case-by-case basis and “on demand”, drawn from the *Coppoli* jurisprudence. Moreover, the collective actor assumed to embody the state-community is the school system, that is the 8054 autonomous school institutions operating in Italy and, more properly, the dozens of thousands of classes where the presence or the absence of a religious symbol may be challenged. Indeed, it is a very generous devolution of powers.

The widely argued reasoning of the Court should be summarised in some legally framed operational instructions that school governance may realistically implement. Without a constitutionally sound and operationally workable legal framework fixing some standards (Toscano 2021, p. 67) (from which in case schools or classes may choose to depart) there is the risk that the crucifix debate, a topic that incarnates freedom from and of religion, is either left in the limbo of endless, parcelled out and occasionally heated negotiations (on non-negotiable values), or brushed under the carpet of a standardized bureaucratic response.

A balanced approach, in our opinion, should involve both the school administrations, namely their principals as the legal representatives of the school community, and the respective communities, namely students and teachers, as the main users of the school premises. Any single school institution, individually or jointly with others, should establish a conversation platform on religious diversities, tasked to adopt specific policies (including on the crucifix, if the issue emerges in some classes) supported by the necessary implementing measures, or to create some mediation facilities, for instance by providing the school delegate or commission on cultural diversity and inclusion with an explicit mandate on interreligious issues, or appointing an ad hoc facilitator.

6.2. Is the Crucifix Case Pioneering an Era of Multicultural Policies in Italy?

A socio-legal analysis of the *Coppoli* case suggests some important observations regarding the interpretation of religious symbols in public schools linked to the dynamic of freedom from and of religion claims.

First, the passive role of the crucifix has been contested by intersecting freedom from religion and freedom of teaching, leading to the conclusion that religious symbols are no more mandatory in Italian public-school classrooms. According to the *Coppoli* ruling, the Italian state grants public schools the authority to autonomously manage the display of religious symbols, thus establishing a mechanism of positive accommodation at the level of social institutions.

Second, the ruling is introduced within “the multicultural horizon” of the Italian society (*Coppoli* 2021, para. 6), at the crossroads of secularism, religious freedom, and principles of democratic citizenship. In this design, schools have a double task: to “promote cross-cultural understanding and nurture inclusivity so all can develop a common sense of belonging” and to constructively handle diversity: “the presence of minority identities should be accommodated on an *additive*, not a *subtractive*, basis” (Modood 2019, p. 15). The *Coppoli* ruling seems to unfold consistently along these two lines. The Italian Supreme Court acknowledges the reality of multiple religious and secular identities and suggests that the development of mechanisms for their democratic governance can produce sensible policies and regulations capable of supporting religious freedom, pluralism, and identity-building.

Third, the Court, while recognizing that the school administration “failed to find a compromise solution that is sustainable and respectful of different sensitivities” (*Coppoli* 2021, para. 22), emphasizes the importance of avoiding imposing dogmatic and fundamentalist visions regarding religious symbols. Instead, the school context is regarded as a place where religious identities are expressed as “cultural proposals” leading to “spiritual enrichment”, not as “imposed prohibitions that are lived integralistically by their followers” (*Coppoli* 2021, para. 13.3).

The judgment inaugurates an important socio-legal perspective in Italy. By confronting the freedom from religion of the individual and a collective claim for freedom of religion, it calls quite radically for a liberal and democratic approach to norms and values, empowering the school community to be laboratories of multicultural policies and intercultural practices.

Author Contributions: Writing—original draft, O.B., P.D.S. and G.G.; Writing—review and editing, O.B., P.D.S. and G.G. The article was jointly conceived in dialogue between three authors. O.B. and G.G. took the lead in writing the sections: “1. Introduction. Ten Years after the *Lautsi* Case”, “2. Sociological Approaches toward “passive” religious symbols in a Multicultural Context” and “6. Discussion: Dynamics of Freedom from and Freedom of Religion and Future of School Governance of Religious Diversity”, while P.D.S. took the lead in writing: “3. Socio-Political and Case Law Developments after the *Lautsi* Jurisprudence”, “4. The *Coppoli* Judgment, Part 1: The Crucifix Does Not Hamper Freedom from Religion” and “5. The *Coppoli* Judgment, Part 2: Secularism as a Method of Dialogue”. All authors have read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Conflicts of Interest: The authors declare no conflict of interest.

Notes

¹ See *Lautsi and others v. Italy*, Merits, App. No. 30814/06, IHRL 3688 (ECtHR 2011), 18 March 2011, European Court of Human Rights [ECHR]; Grand Chamber. Internet access: <https://hudoc.echr.coe.int/eng?i=001-104040> (accessed on 17 May 2022). In this case, the Italian Government emphasized the significance of “passive” symbol in the classroom, explaining that in a non-religious context (public schools) religious symbols can gain cultural significance and carry universal values. According to the European Court’s jurisprudence, a religious symbol or practice can be qualified as “passive” if it is incapable of producing any chilling effect on the freedom of religion and belief of those exposed to it.

² ECtHR, *Perovy v. Russia*, App. No. 47429/09, 20 October 2020, Internet access: <http://hudoc.echr.coe.int/eng?i=001-205133> (accessed on 20 May 2022). This case considered the Orthodox rite of blessing of a classroom. The applicants highlighted the active character of the rite referring to the actions performed by the Orthodox priest. They noted that their case was the opposite

to the rationale applied in *Lautsi v. Italy*, since the religious practice of blessing the classroom cannot be compared with the passive presence of “a crucifix on the wall” (para. 45).

- 3 The *Coppoli* judgment provides the designation of positive and negative religious freedom considering its positive/negative valences similar to the dichotomy of “freedom of/from religion”. For instance, it states that “The authoritative affixing of the symbol is not an expression of positive religious freedom and, at the same time, by imposing homogeneity through the implicit exclusion of those who do not recognize themselves in it or in any case do not wish to be exposed to it, it compresses religious freedom, in its negative value (valence), of the non-believer. Negative religious freedom deserves the same protection and the same protection of positive religious freedom” (our translation—*Coppoli* 2021, para. 11.6). Thus, we use the dichotomy of freedom of/from religion in the same way as the judgement applies positive/negative freedom of religion.
- 4 See judgment n. 24414, 9 September 2021 of the Italian Supreme Court of Cassation, https://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/24414_09_2021_no-index.pdf (accessed on 19 May 2022). If not otherwise indicated, all translations from the original text of the Italian court’s decisions into English are made by the authors.
- 5 See for details *Lautsi and others v. Italy*, para. 16, quoting the Italian Concil of State judgment of 16 February 2006.

References

Primary Sources

- Coppoli (order), No. 19618 (C. Cass. Civ. 18 September 2020).
- Coppoli, No. 24414 (C. Cass. Civ. 9 September 2021).
- Kruzifix-Urteil, No. 1 BvR 1087/91 (Bundesverfassungsgericht 16 May 1995). Available online: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1995/05/rs19950516_1bvr108791.html (accessed on 12 May 2022).
- Lautsi (Const.), No. 389 (C. Cost. 15 December 2004).
- Lautsi (CdS), No. 566 (CdS 13 February 2006).
- Lautsi and Others v. Italy [GC], No. 30814/06 (ECtHR 18 March 2011).
- Lazzarini, No. 603 (TAR Lombardia 22 May 2003).
- Migliano (advisory opinion), No. 63 (CdS 26 April 1988).
- Montagnana, No. 4273 (C. Cass. Pen. 1 March 2000).
- Moroni, No. 203 (C. Cost. 12 April 1989).
- Multani v. Commission scolaire Marguerite-Bourgeoys, No. 30322 (Supreme Court of Canada 2 March 2006). Available online: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/15/1/document.do> (accessed on 12 May 2022).
- Perovy v. Russia, No. 47429/09 (ECtHR 20 October 2020). Available online: <https://hudoc.echr.coe.int/eng?i=001-205133> (accessed on 20 May 2022).
- Smith (order), No. 15614 (C. Cass. Civ. 10 July 2006).
- Torti, No. 5924 (C. Cass. Civ. 14 March 2011).
- UAAR, No. 383 (TAR Sardegna 31 May 2003).

Secondary Sources

- Årsheim, Helge, and Pamela Slotte. 2017. *The Juridification of Religion*. Leiden: Brill.
- Arcopinto, Antonella. 2014. I simboli religiosi nel diritto vivente. In *Esercizi di laicità interculturale e pluralismo religioso*. Edited by Antonio Fucillo. Torino: Giappichelli, pp. 179–219.
- Baldassarre, Silvia. 2019. Brevi considerazioni a margine della proposta di legge n. 387 del 2018 “Disposizioni concernenti l’esposizione del Crocifisso nelle scuole e nelle pubbliche amministrazioni.”. *Stato, Chiesa e Pluralismo Confessionale, Rivista Telematica* 12: 1–29. Available online: https://www.statoe-chiese.it/images/uploads/articoli_pdf/Baldassarre.M_Brevi.pdf?pdf=brevi-considerazioni-a-margine-della-proposta-di-legge-n.-387-del-2018-disp (accessed on 18 May 2022).
- Beaman, Lori G. 2012. Battles over symbols: The “religion” of the minority versus the “culture” of the majority. *Journal of Law and Religion* 28: 67–104. [CrossRef]
- Beaman, Lori G. 2015. Freedom of and Freedom from Religion: Atheist Involvement in Legal Cases. In *Atheist Identities—Spaces and Social Contexts*. Edited by Lori G. Beaman and Steven Tomlins. Cham: Springer, pp. 39–52.
- Beaman, Lori G. 2017. *Deep Equality in an Era of Religious Diversity*. Oxford: Oxford University Press.
- Beckford, James A. 2003. *Social Theory and Religion*. Cambridge: Cambridge University Press.
- Beckford, James A. 2014. Re-Thinking Religious Pluralism. In *Religious Pluralism. Framing Religious Diversity in the Contemporary World*. Edited by Giuseppe Giordan and Enzo Pace. Cham: Springer, pp. 15–29.
- Benhabib, Seyla. 2002. *The Claims of Culture. Equality and Diversity in the Global Age*. Princeton: Princeton University Press.
- Beyer, Peter, and Lori G. Beaman. 2019. Dimensions of diversity: Toward a more complex conceptualization. *Religions* 10: 559. [CrossRef]
- Bielefeldt, Heiner. 2013. Misperceptions of freedom of religion or belief. *Human Rights Quarterly* 35: 33–68. [CrossRef]
- Breskaya, Olga, and Giuseppe Giordan. 2019. Measuring the social perception of religious freedom: A sociological perspective. *Religions* 10: 274. [CrossRef]

- Breskaya, Olga, Giuseppe Giordan, and James T. Richardson. 2018. Human rights and religion: A sociological perspective. *Journal for the Scientific Study of Religion* 57: 419–31. [CrossRef]
- Brettschneider, Corey L. 2010. A transformative theory of religious freedom: Promoting the reasons for rights. *Political Theory* 38: 187–213. [CrossRef]
- Buzzi, Emanuele. 2019. Crocefisso, Fioramonti isolato. *Gelo del M5S e la Cei lo attacca. Corriere della Sera*. October 1. Available online: https://www.corriere.it/politica/19_ottobre_01/crocefisso-fioramonti-isolatogelo-m5s-cei-attacca-e5c0d300-e47e-11e9-ae1a-c38fc044b2b3.shtml (accessed on 17 May 2022).
- Calamandrei, Piero. 2008. *Per la scuola, Introduzione di Tullio De Mauro, Nota Storico-Bibliografica di Silvia Calamandrei*. Palermo: Sellerio Editore.
- Cartabia, Marta. 2003. The Legacy of Sovereignty in Italian Constitutional Debate. In *Sovereignty in Transition*. Edited by Neil Walker. London: Bloomsbury Publishing, pp. 305–26.
- Cavana, Paolo. 2021. Il crocefisso davanti alle Sezioni Unite della Cassazione: Difesa di diritti o accanimento iconoclasta? *Stato, Chiese e Pluralismo Confessionale, Rivista Telematica* 14: 61–67. Available online: <https://riviste.unimi.it/index.php/statochiese/article/view/16034> (accessed on 17 May 2022).
- Ceffa, Claudia Bianca. 2021. Il crocefisso nella scuola di Stato: Atto IV. *Forum di Quaderni Costituzionali* 4: 55–73. Available online: www.forumcostituzionale.it (accessed on 12 May 2022).
- Consorti, Pierluigi. 2020. *Diritto e Religione: Basi e Prospettive*. Bari-Roma: Laterza.
- Croce, Marco. 2019. La decisione CEDU Lautsi c. Italia e la sua influenza come precedente nelle decisioni interne successive. *Stato, Chiese e Pluralismo Confessionale, Rivista Telematica* 3: 70–84. Available online: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3302515 (accessed on 18 May 2022).
- Domianello, Sara. 1999. *Giurisprudenza costituzionale e fattore religioso: Le pronunzie della Corte Costituzionale in materia ecclesiastica*. Milano: A. Giuffrè.
- Esposizione del Crocefisso Negli Edifici e Nei Locali Degli Immobili Regionali, No. 1286, Consiglio Regionale Dell’Emilia-Romagna. 2011. Available online: <https://demetra.regione.emilia-romagna.it/al/articolo?urn=er:assemblealegislativa:verbale:20110427> (accessed on 18 May 2022).
- Esposizione del Crocefisso Negli Edifici e Nei Locali Degli Immobili Regionali ad Iniziativa del Consigliere Maisto, Consiglio regionale della Campania. 2012. (Proponent: Giuseppe Maisto). Available online: <https://www.cr.campania.it/leggi-progetti/proposte/dettaglio-documento?id=647> (accessed on 17 May 2022).
- Ferrari, Silvio, Mark Hill, Arif A. Jamal, and Rossella Bottoni, eds. 2021. *Routledge Handbook of Freedom of Religion or Belief*. London and New York: Routledge.
- Fokas, Effie. 2018. The legal status of religious minorities: Exploring the impact of the European Court of Human Rights. *Social Compass* 65: 25–42. [CrossRef]
- Giordan, Giuseppe. 2014. Introduction: Pluralism as Legitimization of Diversity. In *Religious Pluralism. Framing Religious Diversity in the Contemporary World*. Edited by Giuseppe Giordan and Enzo Pace. Cham: Springer, pp. 1–12.
- Giordan, Giuseppe, and Enzo Pace, eds. 2014. *Religious Pluralism. Framing Religious Diversity in Contemporary World*. Cham: Springer.
- Licastro, Angelo. 2021. Crocefisso “per scelta”. Dall’obbligatorietà alla facoltatività dell’esposizione del crocefisso nelle aule scolastiche (in margine a Cass. Civ., sez. Un., ord. 9 settembre 2021, n. 24414). *Stato, Chiese e Pluralismo Confessionale, Rivista Telematica* 21: 17–44. Available online: <https://riviste.unimi.it/index.php/statochiese/article/view/16842> (accessed on 11 May 2022). [CrossRef]
- Luzzatto, Sergio. 2011. *Il Crocefisso di Stato*. Torino: Einaudi.
- MIUR (Ministry of Education). 2006. Esposizione del Crocefisso nelle Aule Scolastiche. Nota 3 Ottobre 2002, No. 2667. *Archivio Normativo*. Available online: <https://archivio.pubblica.istruzione.it/normativa/2002/dir31002.shtml> (accessed on 19 May 2022).
- Modood, Tariq. 2007. *Multiculturalism: A Civic Idea*. Cambridge: Polity Press.
- Modood, Tariq. 2014. Multiculturalism, interculturalism, and the majority. *Journal of Moral Education* 43: 302–15. [CrossRef]
- Modood, Tariq. 2019. *Essays on Secularism and Multiculturalism*. London: Rowman & Littlefield International.
- Ozzano, Luca, and Alberta Giorgi. 2013. The debate on the crucifix in public spaces in twenty-first century Italy. *Mediterranean Politics* 18: 259–75. [CrossRef]
- Perez, Nahshon. 2015. Lautsi vs. Italy: Questioning the majoritarian premise. *Politics and Religion* 8: 565–87. [CrossRef]
- Pugiotto, Andrea. 2005. Verdetto pilatesco sul crocefisso in aula—Dopo l’ordinanza si naviga a vista. *Diritto e Giustizia* 3: 80–84.
- Pugliese, Vincenzo. 2010. *Il principio di laicità nella giurisprudenza costituzionale*. Bari-Roma: Laterza.
- Ricca, Mario. 2013. *Culture interdette: Modernità, migrazioni, diritto interculturale*. Torino: Bollati Boringhieri.
- Richardson, James T. 2015. Managing religion and the judicialization of religious freedom. *Journal for the Scientific Study of Religion* 54: 1–19. [CrossRef]
- Sandberg, Russell. 2014. *Religion, Law and Society*. Cambridge: Cambridge University Press.
- Santarpia, Valentina. 2018. Salvini e la polemica sulle aule senza crocifissi: “Non ci sono i soldi per comprarli”. *Corriere della Sera*. November 19. Available online: https://www.corriere.it/scuola/primaria/18_novembre_19/crocefisso-tolto-dall-aula-fiumicino-scoppia-caso-politico-preside-non-ci-sono-soldi-comprarli-18ebb14e-ec11-11e8-a70c-410ca07c6063.shtml (accessed on 19 May 2022).

- Shaheed, Ahmed. 2017. *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*. Report of the Special Rapporteur on Freedom of Religion and Belief. A/HRC/34/50. New York: Human Rights Council.
- TG24, Sky. 2019. Fioramonti: 'Sul Crocifisso in Aula Sollevato un Vespaio Mediatico' [Television Broadcast]. October 2. Available online: <https://tg24.sky.it/politica/2019/10/02/fioramonti-crocifisso-scuola> (accessed on 17 May 2022).
- Toscano, Marcello. 2021. Il crocifisso 'accomodato'. Considerazioni a prima lettura di Corte cass., Sezioni Unite civili, n. 24414 del 2021. *Stato, Chiese e Pluralismo Confessionale, Rivista Telematica* 18: 45–68. Available online: <https://riviste.unimi.it/index.php/statoechiese/article/view/16649> (accessed on 18 May 2022). [CrossRef]
- Trigg, Roger. 2012. *Equality, Freedom, and Religion*. Oxford: Oxford University Press.
- Visetti, Giampaolo. 2018. Crocifisso e presepio nelle scuole, la crociata del Nordest leghista che fa infuriare anche la Chiesa. *La Repubblica*. November 28. Available online: https://www.repubblica.it/cronaca/2018/11/28/news/crocifisso_e_presepio_nelle_scuole_la_crociata_del_nordest_leghista_che_fa_infuriare_la_chiesa-300978315 (accessed on 19 May 2022).
- Witte, John, Jr., and Christian M. Green. 2012. *Religion and Human Rights: An Introduction*. Oxford: Oxford University Press.
- Woodhead, Linda. 2011. Five concepts of religion. *International Review of Sociology* 21: 121–43. [CrossRef]
- Zucca, Lorenzo. 2016. A secular manifesto for Europe. *The Law & Ethics of Human Rights* 10: 157–83. [CrossRef]