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Inclusión estratificada: de la gestión tecnocrática a la gobernanza en red en el régimen español de diversidad religiosa

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# Stratified inclusion: from technocratic management to networked governance in Spain's religious diversity regime

Inclusión estratificada: de la gestión tecnocrática a la gobernanza en red en el régimen español de diversidad religiosa

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**Summary:** Introduction: From institutional asymmetry to networked governance. 1. Diagnosing the governance gap: paradigms, norms, and territorial asymmetries. 1.1. The paradigm problem: from diversity management to governance. 1.2. The normative problem: selective secularism. 1.3. The spatial-political problem: territorial inequality and the myth of national homogeneity. 2. Spain as a legal and political laboratory for diversity governance. 2.1. Legal pluralism and institutional asymmetry in Spain. 2.2. Interpreting the fractures: judicial cases as lenses into Spain's diversity governance. 2.2.1. From management to governance: revisiting the paradigm divide. 2.2.2. From neutrality to stratification: mapping the normative problem of selective secularism. 2.2.3. From homogeneity to territorial inequality: The spatial problem of religious governance. Conclusion: From governance pathologies to democratic pluralism. References.

**Abstract:** Spain's regime of religious diversity is marked by a gap between formal commitments to pluralism and systemic exclusions produced through legal, normative, and spatial asymmetries. This article argues that technocratic "diversity management" depoliticizes diversity, marginalizes minority agency, and sustains "selective secularism", whereby majority Catholicism is

culturalized while minority expressions, especially those read as Muslim or associated with Muslim communities, are religionized. Linking paradigm conflict, normative hierarchies, and territorial fragmentation, the article conceptualizes this configuration as stratified inclusion: minorities are symbolically recognized yet largely excluded from shaping the norms that govern them. Drawing on case law, Spain's legal architecture, and local governance practices, it identifies administrative discretion, culturalization, religionization, and spatial inequality as governance pathologies that undermine freedom of religion or belief, equality before the law, and related human rights. It advances "networked governance" as a multiscalar, co-productive corrective capable of embedding minority agency in institutional design and democratic pluralism.

**Keywords:** Religious diversity governance, selective secularism, stratified inclusion, networked governance, freedom of religion or belief, territorial inequality, Spain.

**Resumen:** El régimen español de diversidad religiosa presenta una brecha entre los compromisos formales con el pluralismo y exclusiones sistémicas producidas por asimetrías jurídicas, normativas y espaciales. Este artículo sostiene que la "gestión de la diversidad" de corte tecnocrático despolitiza la diversidad, margina la agencia de las minorías y sostiene un "secularismo selectivo", mediante el cual el catolicismo mayoritario se culturaliza mientras que expresiones minoritarias, especialmente aquellas leídas como musulmanas o asociadas con comunidades musulmanas, se religionizan. Al articular conflicto de paradigmas, jerarquías normativas y fragmentación territorial, conceptualiza esta configuración como inclusión estratificada. A partir del análisis de jurisprudencia, arquitectura jurídica española y prácticas de gobernanza local, identifica la discrecionalidad administrativa, la culturalización, la religionización y la desigualdad espacial como patologías que socavan la libertad de religión o de creencias, la igualdad ante la ley y los derechos humanos conexos. Propone la "gobernanza en red" como correctivo multiescalar y coproducido.

**Palabras clave:** Gobernanza de la diversidad religiosa, secularismo selectivo, inclusión estratificada, gobernanza en red, libertad de religión o de creencias, desigualdad territorial, España.

## Introduction: From institutional asymmetry to networked governance<sup>1</sup>

Spain's regime of religious diversity affirms legal equality in principle, yet undermines it in practice. Rather than being governed by neutral principles, it operates through what I term an architecture of institutionalized asymmetry: a system that symbolically includes minorities while structurally excluding them from shaping the civic and legal frameworks that govern them. Spain is not an outlier but an exemplary case. Its decentralized institutional structure, post-authoritarian secularism, and enduring Catholic entrenchment make it a revealing site for exploring the contradictions of diversity governance in contemporary Europe. Compared with other Western European states, this dissonance is sharpened by the conjunction of three features: a recent transition from an explicitly confessional authoritarian regime, a constitutional and concordatary framework that continues to privilege Catholic actors, and a rapid trajectory of social secularization and religious and non-religious pluralization. The result is an unusually wide gap between a formally liberal regulatory architecture and a symbolic and institutional order that still treats Catholicism as normative culture while positioning minority religious and non-religious actors as contingent and often securitized and problematized in policy discourse. As genealogical work on cultural backlash in Spain has shown, this misalignment between fast-moving socio-religious change and slow-moving institutional hierarchies makes Spain a particularly sensitive laboratory for observing how diversity governance falters in practice (Ruiz Andrés and Sajir 2026).

This asymmetry is not the result of isolated failures or exceptional deviations. It emerges from the convergence of three governance pathologies: a paradigmatic failure, which frames religious pluralism as a managerial challenge rather than a democratic governance imperative; a normative failure, in which majority religion is rebranded as national culture while minority cultural expressions, particularly Muslim ones, are religionized, securitized, and rendered civically

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<sup>1</sup> This article contributes to the Special Issue "Religions, Diversities and Human Rights: Public Policies for Democratic Coexistence," and draws on insights first developed during the seminar on religious diversity governance held in Bilbao in March 2025 as part of the DIVERPOMU Project, "Religious Diversity and Democratic Coexistence: Analysis and Proposals for Municipal Policies" (PID2023-149877NB-I00), funded by the Spanish Ministry of Science, Innovation and Universities. The research also forms part of the European project RETO (Grant Agreement 101192439).

suspect; and a territorial failure, wherein Spain's multilevel system fragments implementation and erodes the coherence of rights. These pathologies do not merely generate inconsistency. They converge to form a governance regime in which minority actors are denied a meaningful role in shaping the institutional norms that affect them. What appears as formal equality often masks a deeper exclusion from meaningful involvement in the governance of diversity, understood as the capacity to influence the definition, negotiation, and application of legal and civic norms, not as passive recipients of accommodation but as agents embedded in the design of truly pluralist governance models.

This regime of institutionalized asymmetry is not a recent invention but draws on deeper ideological continuities. In the Spanish case, the legacy of *nacionalcatolicismo*, the fusion of national identity with Catholicism during the Francoist period, continues to shape symbolic hierarchies and institutional arrangements. Although formal Church-State ties were reconfigured during the democratic transition, the underlying grammar of Catholic normativity persists through mechanisms of "banal religion" and "religion-as-culture", which naturalize Christian references in the public sphere (Griera et al. 2021). As I have argued elsewhere (Ruiz Andrés and Sajir 2026), this persistence also feeds a broader cultural backlash that recodes pluralism as threat and reasserts monocultural imaginaries through new forms of culturalized exclusion. *Nacionalcatolicismo* thus survives as a symbolic and institutional sediment that continues to structure the uneven grammar of religious recognition in contemporary Spain.

This dynamic of formal recognition without institutional participation is what I term stratified inclusion: a condition in which inclusion is extended in principle but conditioned in practice by entrenched paradigmatic, normative, and territorial asymmetries. In such regimes, minority groups are acknowledged as objects of governance but excluded as active contributors to the design of the civic and legal infrastructures that shape their presence. Rather than outright exclusion, what persists is a layered system of differential incorporation, where the symbolic grammar of pluralism coexists with an uneven architecture of rights, recognition, and representation. This concept anchors the article's central claim: that democratic legitimacy requires not just the recognition of diversity, but its structured integration into the mechanisms of governance.

This article analyzes these failures not as bureaucratic oversights but as structurally reproduced effects of Spain's diversity governance model. Drawing on national legal texts, historical agreements, and judicial rulings, principally from the Strasbourg Consortium on Freedom

of Conscience and Religion and the Religare database, it traces how symbolic recognition, legal formalism, and territorial fragmentation combine across Spain's multilevel governance landscape to sustain a regime in which pluralism is affirmed rhetorically yet undermined in practice.

Through doctrinal analysis and case law, the article shows how these governance failures materialize not only in legislation and administrative discretion but also in judicial reasoning. The empirical foundation includes landmark rulings from national and regional courts as well as decisions by the European Court of Human Rights. These cases, ranging from disputes over religious dress in the workplace to municipal bans on minority practices, are analyzed not simply as legal determinations but as diagnostic arenas in which symbolic hierarchies, governance logics, and contestations over inclusion are actively negotiated. They reveal how structural exclusions are not only codified in law but also performed and reinforced through institutional practice, while also highlighting moments of resistance.

To address these structurally embedded failures, the article advances networked governance not as a utopian fix but as both a diagnostic framework and a normative counter-model. Building on policy and organizational scholarship (Huppé et al. 2012) and extending my own work (Sajir 2023, 2025), it conceptualizes networked governance as a co-productive architecture grounded in epistemic parity and distributed agency. In this model, religious minorities are not relegated to the role of tolerated outsiders or consulted stakeholders; they are recognized as agents embedded in the processes that shape the normative and legal grammars of inclusion.

Although still rare and fragmented, these practices expose fissures in the dominant governance regime and offer embryonic alternatives to symbolic inclusion. They do not yet amount to systemic transformation, but they illuminate the fragile and contested institutional conditions under which more participatory and horizontally structured forms of governance can emerge. Rather than anomalous deviations, they are early signals of a broader struggle over the future architecture of pluralism and underscore the urgency of moving beyond top-down diversity management toward more horizontal, co-productive models of governance.

Ultimately, the article challenges the view that diversity governance can be repaired through procedural tweaks or doctrinal clarification alone. It argues that institutional legitimacy must be co-produced, not granted from above, and that democratic pluralism demands shared

authorship of the civic and legal orders through which inclusion is structured. While networked governance remains underdeveloped in the Spanish context, it provides both a conceptual and normative horizon. It is already glimpsed in select court rulings and local initiatives that resist the dominant logic of symbolic control and administrative closure. These incipient practices, though limited, offer insight into how diversity governance might be reimagined from the ground up.

## 1. Diagnosing the governance gap: paradigms, norms, and territorial asymmetries

In contemporary European societies, the governance of religious diversity is marked by structural tensions that undermine both legal principles and democratic inclusion. Spain is no exception. While its constitutional framework affirms religious freedom, institutional practices often reproduce asymmetries in recognition, access, and legitimacy. This section identifies three foundational problems that continue to limit the effective protection of Freedom of Religion or Belief, as enshrined in Article 18 of the Universal Declaration of Human Rights, Article 9 of the European Convention on Human Rights (ECHR), and Article 16 of the Spanish Constitution. These problems are not merely technical failures or policy gaps; they are structurally embedded in political paradigms, normative frameworks, and spatial configurations of authority and agency. These governance failures translate directly into uneven enjoyment of core human rights: freedom of thought, conscience and religion, equality before the law, and effective access to remedies when rights are violated. The article therefore treats religious diversity governance not as a niche policy field, but as a diagnostic terrain where the gap between formal human rights commitments and their territorialized implementation becomes particularly visible. Addressing them requires moving beyond the language of “managing” diversity and engaging instead with the complex, multi-actor dynamics of diversity governance.

### 1.1. *The paradigm problem: from diversity management to governance*

The first foundational problem concerns the dominant paradigm shaping religious and cultural pluralism in Spain: “diversity management.” Originating in the corporate world, this approach was

developed as a human resources tool in multinational firms, aimed at optimizing productivity, mitigating interpersonal conflicts, and leveraging cultural difference as a resource for innovation. Such framing, as Marko (2019) argues, must be significantly rethought and expanded into a comprehensive political and legal theory capable of reconciling the need for political unity with legal equality and cultural pluralism under conditions of globalization.

This article advances a necessary paradigmatic shift: from diversity management to diversity governance. This shift is not merely semantic; it recenters agency, reframes inclusion as a process of participatory and multilevel governance, and rejects the view of diversity as a challenge to be “handled” by neutral administrators. It involves moving from a technocratic and top-down paradigm to a governance-based approach that is participatory, multi-actor, and multi-scalar. Governance, in this sense, recognizes that the regulation of diversity is not the exclusive domain of the nation-state but is shaped through complex interactions between institutional actors, civil society, religious communities, and minority groups themselves. This includes not only top-down governance (by state institutions), but also bottom-up governance (by grassroots and minority actors), and network governance involving public-private-civic partnerships in decision-making. Such a framework restores agency to minority groups and acknowledges their legitimate role in shaping the terms of inclusion.

Within this reframing, networked governance becomes a useful concept. Developed across policy studies and organizational sociology (Huppé et al. 2012), it refers to governing through dynamic, multi-level configurations of state and non-state actors, where decision-making is collaborative and authority is relational rather than hierarchical. It is particularly suited to complex governance environments, such as religious pluralism, where no single institution possesses full legitimacy or control.

What makes this model distinctive is not the inclusion of multiple stakeholders *per se*, but the logic of co-production: policies are not merely implemented in consultation with affected communities; they are developed through iterative engagement and shared decision-making structures. In this framework, agency is distributed not just across levels (national, regional, municipal) but also across roles (legal, cultural, civic). Transcultural capital is one of the resources minority actors bring into this architecture: the capacity to translate between normative and cultural fields, inject situated knowledge, and challenge technocratic scripts from below (Sajir 2025; Triandafyllidou 2009).

In contrast to stakeholder consultation, which often reinforces power asymmetries, networked governance centers reflexivity, shared

norm-setting, and mutual accountability. It does not dissolve the role of the state but repositions it as one node within a more horizontal and adaptive architecture. This approach is not a panacea, but it provides a conceptual and practical alternative to the rigid verticalism of traditional models.

Beyond its analytical utility, networked governance also carries a normative ambition: it gestures toward a more democratic architecture of pluralism, one where legitimacy is not imposed from above but co-produced through situated participation and epistemic parity. Crucially, this does not entail a rights-blind accommodation of any claim advanced in the name of religion or culture. As work on cultural autonomy and networked forms of diversity governance has underlined, devolved and networked arrangements must be constrained by human rights standards, including gender equality, bodily integrity and the protection of minorities within minorities, if they are not to reproduce domination within groups as well as between them (Topidi 2024; OSCE 1999). In the perspective adopted here, what distinguishes networked governance from technocratic diversity management is not the absence of limits, but the way limits are defined and enforced, through transparent, contestable and co-produced criteria rather than through opaque majoritarian or civilizational hierarchies.

Spain offers partial empirical resonance with this framework. While national policy often defaults to symbolic accommodation and legal formalism, some local contexts exhibit embryonic practices of networked governance, particularly in contested urban spaces where municipal actors collaborate with civil society to co-design diversity infrastructure. Crucially, this also invites a reconceptualization of “the local” not as a mere jurisdictional level but as a relational site where symbolic hierarchies, institutional norms, and civic claims intersect. These cases, explored in Section 2, underscore the inadequacy of managerial models and the potential of co-productive governance arrangements grounded in proximity, participation, and institutional permeability.

## 1.2. *The normative problem: selective secularism*

Selective secularism, a term I use to describe the second foundational problem in the governance of religious diversity (Sajir 2025), refers to the uneven application of secular principles across European public institutions. Majority religious traditions, especially

Christianity, are reframed as national culture, while minority expressions, particularly Islam-coded practices and identities, are cast as religion in a narrower, politicized sense and treated as potential threats to the secular civic order. Building on Brubaker (2016, 2017), Casanova (2007), and Cesari (2021), I conceptualize selective secularism as a governance mechanism that simultaneously culturalizes Christianity and religionizes minority cultural expressions. This dual movement reproduces symbolic hierarchy and institutionalizes differential treatment under the guise of neutrality.

Brubaker's notion of the culturalization of religion captures how Christianity in Europe is detached from theological content and reclassified as heritage, civilization, tradition or national identity. This move grants majority religion interpretive flexibility and a privileged place in public space. By contrast, minority practices and identities, especially those associated with Muslim communities, are subjected to a process of religionization (Sajir 2023, 2025), whereby cultural expressions are reductively read as religious and then regulated as problematic. Put differently, majority religion is treated as layered, historical, and culturally embedded, whereas minority expressions are rendered hyper-visible, narrowly religious, and civically contentious. What results is not neutrality, but a selective grammar of recognition.

Recent debates in France over banning abayas in public schools offer a telling illustration of selective secularism in practice. Garments widely understood by many Muslim-origin women as cultural, aesthetic, or situational are reclassified by public authorities as religious symbols and thereby deemed incompatible with secular norms, activating legal restrictions and reinforcing the narrative of Islam as inherently politicized and threatening (Schofield et al. 2023). By contrast, the Lautsi v. Italy litigation, concerning the display of crucifixes in public school classrooms, shows how majority religion can be granted symbolic elasticity through judicial reasoning: while the European Court of Human Rights initially held that mandatory crucifixes violated state neutrality, the Grand Chamber reversed that judgment and reframed the crucifix as a cultural artifact and emblem of national heritage. Taken together, these cases exemplify how selective secularism is codified through legal and judicial argumentation: majority symbols are endowed with interpretive flexibility and normalized within public space, whereas minority expressions are read through a narrower religious lens and excluded on that basis. This is not merely discursive asymmetry; it is a structural hierarchy presented as neutral regulation.

A growing body of scholarship has exposed this asymmetry from different angles. Casanova (2007) highlights how liberal-secular orders privatize religion selectively, applying this pressure with particular intensity to Islam. Brubaker (2016, 2017) shows how assertive secularism coexists with the symbolic reabsorption of Christianity into civilizational identity. Cesari (2021) demonstrates that secularism often works less as a doctrine of neutrality than as an instrument of nation-building, one that encodes Islam as a political and civilizational challenge to cohesion. Despite their differences, these perspectives converge on a common point: secularism in contemporary Europe frequently operates as a normative technology of boundary-making that defines legitimate religion, regulates visibility, and recodes pluralism as disruption. In Spain, where accelerated secularization coexists with the persistence of culturalized Catholicism, this produces a particularly revealing governance paradox. Neutrality is formally affirmed while symbolic asymmetries remain deeply entrenched (Ruiz Andrés and Sajir 2026).

From this perspective, selective secularism is not simply a failure of implementation but a mechanism of stratification. It preserves the symbolic centrality of Christian traditions while policing the visibility, intelligibility, and legitimacy of minority religions. Diversity is not treated as constitutive of democratic life but as a potential disturbance to national cohesion. Minority communities, especially those of Muslim background, are thus permitted presence yet denied a substantive role in shaping the national narrative and the civic terms of recognition that govern them (Sajir and Molinero-Gerbeau 2025). This has direct human-rights implications: selective secularism distorts equality and non-discrimination, narrows effective freedom of religion or belief, and weakens the conditions for equal civic inclusion.

This logic operates across administrative scales. At supranational and national levels, legal and political discourses invoke neutrality, universality, and civilization to justify differential treatment. At the local level, these hierarchies are translated into the spatial and symbolic fabric of everyday governance through discretionary administrative practices. Local authorities are therefore not mere implementers; they are key sites where selective secularism is enacted, negotiated, and at times resisted. As the cases examined later in the article show, the regulation of religious diversity often turns on who is granted interpretive elasticity, who is reduced to a problem category, and who is allowed to appear in public space without being recoded as a challenge to civic order.

At stake here is not whether democratic polities may draw boundaries. They must, and no serious account of pluralism can avoid that question. A strand of normative political theory, exemplified by Spektorowski and Elfersy's (2020) defense of "democratic discrimination" and "conditional inclusion," argues that democracies may legitimately differentiate among groups and practices in order to protect a liberal civic ethos, particularly around gender equality and LGBTQ+ rights. The argument developed here does not deny the need for limits. It challenges the way such limits are currently articulated in Spain: through opaque, historically sedimented hierarchies that elevate some traditions into culture while casting others, especially Islam, as permanently misaligned with the civic order. The problem, then, is not boundary-drawing as such, but boundary-drawing that is selective, civilizational, and territorially inconsistent.

A more reflexive approach to diversity governance would therefore require more than juridical adjustment. It would require dismantling the double standard through which majority religious expressions pass as heritage while minority practices are recoded as intrusive religiosity. It would also require making the criteria for legitimate limitation more transparent, contestable, and institutionally coherent. While Muslim communities are disproportionately targeted through securitization and cultural exclusion, the same grammar also marginalizes other non-majority groups, including Evangelicals, Jehovah's Witnesses, and Buddhists, who remain outside the hegemonic Catholic-secular continuum that structures national identity. What is needed is not an *ad hoc* politics of accommodation that brackets underlying rights hierarchies, but a more demanding governance architecture in which pluralism is treated as a constitutive feature of democratic life rather than a deviation to be contained, and in which the limits to it are defined through transparent, contestable and co-produced criteria rather than through inherited civilizational defaults. Section 2 turns to how these normative asymmetries are embedded in Spain's legal architecture and judicial practice.

### 1.3. *The spatial-political problem: territorial inequality and the myth of national homogeneity*

The third foundational problem concerns a widespread but flawed assumption: that the nation-state is a coherent, homogeneous container for diversity governance. This assumption is not only analytically misleading but also politically consequential. It reflects what

has been called methodological nationalism: the tendency in scholarly and policy discourse to treat the nation-state as the natural unit of analysis or as the primary arena in which social processes unfold. This orientation obscures the heterogeneity within nation-states and misrepresents the multi-level, often fragmented, complex reality of diversity governance.

National and supranational institutions may craft the legal and political frameworks for religious and cultural diversity, but these frameworks are implemented, negotiated and contested at the subnational level. Municipalities and autonomous communities wield significant discretion over how pluralism is regulated in practice, especially through control of urban planning, zoning, funding allocations, education, symbolic recognition, and access to public space. The result is not coherence, but territorial inequality: formally inclusive norms applied unevenly depending on geography, institutional capacity, and political will and ideologies.

What emerges is a structurally schizophrenic governance regime. On one hand, national and European institutions project narratives of neutrality, equality, and secularism. On the other, they delegate execution to local authorities who interpret these principles through their own structure of opportunities, and in response to their own institutional logics and territorial constraints. The result is a fragmented diversity governance framework in which formally inclusive principles coexist with localized practices of exclusion, exceptionalism, or inaction. This fragmentation also produces *de facto* legal pluralism, understood not as the coexistence of multiple normative orders, but as the uneven application and interpretation of a single constitutional framework by territorially differentiated actors. As Section 2 will show, these asymmetries materialize in zoning rules, funding decisions, and symbolic exclusions at the local level.

This is not merely a problem of failed implementation but a systemic design feature that enables stratified access to rights and recognition while maintaining the illusion of legal and ideological consistency and homogeneity at the national and supranational level. Municipalities and autonomous communities are not just policy executors; they are the actual battlegrounds where diversity governance is concretely enacted, resisted, or reshaped.

The local level is where the paradigm problem of management versus governance and the normative problem of selective secularism become most visible. It is here that religious and cultural diversity cannot be merely “managed”, but instead requires a multi-scalar networked governance framework composed of state and non-state

agents. It is also here that selective secularism takes concrete form, as inclusion and exclusion are spatialized through discretionary decision-making. Municipalities and autonomous communities thus function as frontline arenas in which national-level narratives of neutrality are translated into local practices, normalizing asymmetries while the fiction of national uniformity conceals the uneven, often discriminatory enforcement that follows.

This spatial-political problem has dual implications. Analytically, it flattens internal diversity and ignores the differentiated demands and constraints faced by subnational actors. Politically, it permits local authorities to act as *de facto* gatekeepers of inclusion, with minimal oversight and unequal resources. Addressing this requires more than refining national policy; it demands rethinking the unit of analysis and the ground of diversity governance itself.

Recognizing the subnational level, encompassing both municipalities and autonomous communities, as the primary terrain of negotiation is essential for two reasons. First, it shifts our attention to where pluralism is practiced, resisted, or redefined. Second, it dismantles the myth of national homogeneity by exposing how top-down narratives of neutrality conceal uneven, localized enforcement. The problem is not just that the system fails to live up to its ideals; it is that the system is designed to allow those failures to persist.

These three interrelated problems jointly constitute what I define as an architecture of institutionalized asymmetry in the governance of religious diversity. Section 2 turns to Spain as an empirical case, tracing how these dynamics materialize through its national legal framework and local institutional practices, where the symbolic, legal, and political contestations of pluralism become most visible.

## 2. Spain as a legal and political laboratory for diversity governance

The governance pathologies outlined in Section 1 (paradigm conflict, selective secularism, and territorial inequality) do not remain abstract. They materialize in institutional design, legal architecture, and administrative discretion. Spain offers a particularly sharp lens through which to observe this translation from conceptual failure to structural formation.

What makes Spain analytically generative is not its exceptionality but its condensation of broader European tensions: symbolic affirmation coexists with structural asymmetry; legal recognition masks

institutional gatekeeping; decentralization produces fragmentation rather than pluralist co-governance. This section traces how these dynamics are embedded in the legal and judicial infrastructure of religious diversity governance. A growing body of empirical research on Spain has traced how these structural tensions materialize in urban and funerary settings. Work on Muslim cemeteries conceptualizes the “Islamic funerary question” as part of a broader right to the city showing how municipal and regional authorities negotiate burial spaces through planning rules, mortuary regulations, *ad hoc* agreements with Muslim organizations, and the legacy of a “catholicocentric” spatial order that produces territorially uneven access to Islamic burial (Salguero 2023; Gil-Benumea and Salguero 2024). Complementing this governance focus, Arana (2025) reads the changing fate of Muslim cemeteries from the Civil War to the present as a politics of death linking spatial erasure, selective memorialization and the casting of Muslims as persistent outsiders in the Spanish national imaginary. In parallel, research on local religious governance in Madrid and Barcelona shows how municipal actors oscillate between hands-off pragmatism and selective interventions, often subsuming religion under immigration or culture policy while reproducing a Catholic “religion as ambience” in public space (Astor et al. 2019; Cornejo 2021). In dialogue with this literature, the aim of this article is not to add new case studies of cemeteries, public rituals, or neighborhood conflicts, but to shift the level of analysis back to the national legal and jurisprudential framework and to use Spain as a legal and political laboratory for theorizing how these dispersed urban practices are anchored in a stratified regime of recognition and cooperation.

### 2.1. *Legal pluralism and institutional asymmetry in Spain*

Spain’s constitutional framework proclaims religious freedom and institutional neutrality. Article 16 of the 1978 Constitution enshrines *aconfesionalidad* (non-confessionality) and the right to Freedom of Religion or Belief, alongside Articles 10.1 and 9.2, which affirm dignity and participatory rights. However, the actual governance of religious diversity remains marked by a stratified and discretionary system of recognition. As Ruiz Andrés and Sajir (2026) argue, Spain’s legal architecture emerged from a negotiated post-authoritarian settlement that formalized Catholic exceptionalism while nominally endorsing religious pluralism.

At the core of this framework is the 1980 Organic Law on Religious Freedom, which regulates registration and state cooperation. While registration confers legal personality, access to bilateral Cooperation Agreements, governed by Article 7, requires both the formation of a representative body and the contested status of *notorio arraigo* (well-established presence). This threshold, opaque and inconsistently applied, functions more as a selective filter than a gateway. Judicial and administrative adjustments, including the 2001 Constitutional Court decision (STC 46/2001) and the 2015 reform of the Religious Entities Register, attempted to pluralize recognition criteria but did not alter the underlying architecture of asymmetry. Although the Evangelical, Muslim, and Jewish federations secured agreements in 1992, other groups such as Jehovah's Witnesses, Buddhists, and Orthodox Christians remain excluded from this level of bilateral cooperation despite formal recognition.

This legal hierarchy is reinforced by the enduring privilege of the Catholic Church, protected through Concordats signed in 1976 and 1979, international treaties that grant the Church advantages in education, taxation, and institutional access. The result is a tripartite structure: at the top, the Catholic Church with treaty-level protections; in the middle, minority groups with Cooperation Agreements; and at the bottom, communities governed only by association law. Far from embodying a neutral framework, this system encodes selective secularism and institutional asymmetry.

These symbolic asymmetries are further entrenched through legal engagements with historical memory. A striking example is the 2015 law granting Spanish nationality to descendants of Sephardic Jews expelled in 1492 (Ley 12/2015), framed as a gesture of reconciliation with Sefarad and a recognition of the Jewish past as integral to the national heritage. Yet no equivalent measure has been proposed for the descendants of Andalusī Muslims, who were also expelled, forcibly converted, and erased from official memory between the 15th and 17th centuries. This omission is all the more revealing given that both communities are signatories of the 1992 Cooperation Agreements, highlighting a hierarchy within the very category of "recognized" minorities. What appears as a pluralist gesture toward one group simultaneously reinforces exclusion toward another. This selective memorialization does not merely reflect historical contingencies; it codifies a normative order in which Judeo-Christian heritage is elevated, while Islam is actively erased from the national narrative. In a hurried alignment with dominant European postures that frame Islam as an external threat rather than a constitutive presence, Spain disavows its own Andalusī past, rendering

Muslim minorities more readily imagined as exogenous to the nation's historical arc and marginal to its present and future *demos*. This selective memory regime stabilizes national identity through strategic amnesia, elevating Judeo-Christian heritage as foundational while positioning Islam and Muslim minorities as the functional Other in Spain's legal and symbolic order (Ruiz Andrés and Sajir 2026).

The decentralization of the Spanish state amplifies these disparities. Although the Law on Religious Freedom is a national law, its omission of subnational actors has produced implementation gaps in education, zoning, and cultural affairs, domains in which autonomous communities and municipalities wield increasing regulatory power. In the absence of binding national standards, freedom of religion or belief is not uniformly protected, but territorially reinterpreted. What formally appears as a universal right becomes, in practice, a discretionary outcome. This structural indeterminacy is not theoretical: as the next subsection will show, it manifests in judicial rulings that both reflect and reinforce Spain's fragmented geography of religious recognition.

These patterns expose a structural flaw. Spain's legal framework does not merely suffer from institutional inertia; it is a juridified expression of broader governance pathologies outlined in Section 1: a vertical, technocratic model of diversity management that privileges symbolic order over participatory pluralism. Despite the progressive aims of its constitutional text, the state remains a gatekeeper, legally empowered to define which religious actors qualify for visibility, legitimacy, and cooperation.

In response to these limitations, soft governance mechanisms have emerged as corrective instruments that attempt to fill the normative vacuum left by a legally fragmented and hierarchized system. Initiatives such as the *Fundación Pluralismo y Convivencia* and the *Observatorio del Pluralismo Religioso* provide guidance and support for minority communities and local administrations. Yet these mechanisms remain consultative rather than constitutive, supplementing rather than transforming the legal architecture. The core framework, with its symbolic hierarchies, procedural exclusions, and structural silences, remains intact.

These dynamics are not merely passive outcomes but are actively interpreted, reinforced, or challenged through judicial reasoning. Judges do not simply apply the law; they play a constitutive role in shaping the lived boundaries of inclusion and exclusion. Supranational, national, and local courts function as arenas where the fragmented logic of religious governance is either contested or entrenched, often through uneven and locally contingent interpretations of freedom of

religion or belief and related equality provisions. As the next subsection will illustrate, case law becomes a diagnostic terrain where symbolic hierarchies, paradigm conflicts, and governance asymmetries are materially negotiated.

What emerges, then, is a legal framework that formally affirms pluralism while structurally enacting a selective model of inclusion. The stratified system of recognition, the opaque threshold of *notorio arraigo*, and the territorial variability in implementation collectively produce a regime of conditional equality: religious rights exist in law, but not uniformly in practice. The empirical cases examined in Subsection 2.2. must be analyzed as downstream effects of this architecture: not the result of a coherent exclusionary design, but of a structurally embedded, *laissez-faire* approach to religious governance that delegates implementation to subnational actors without ensuring normative coherence. The result is a fragmented geography of freedom of religion or belief in which inclusion depends less on legal entitlement than on local discretion, administrative capacity, and political will.

## 2.2. *Interpreting the fractures: judicial cases as lenses into Spain's diversity governance*

This subsection analyzes judicial case law as a diagnostic lens into Spain's religious diversity regime. Drawing from the Strasbourg Consortium and Religare databases, it examines how courts at supranational, national, and subnational levels interpret, reproduce, or resist structural asymmetries. These rulings do not merely resolve disputes; they enact the state's ambivalence over who belongs, who decides, and under what conditions. Through the lenses of paradigm conflict, selective secularism, and territorial inequality, the cases reveal how legal reasoning often reinforces, rather than redresses, the governance pathologies already identified. We begin with the foundational tension between diversity management and diversity governance.

### 2.2.1. FROM MANAGEMENT TO GOVERNANCE: REVISITING THE PARADIGM DIVIDE

As outlined in Section 1.1., Spain's religious diversity regime is shaped by a foundational tension between two paradigms: a technocratic model of diversity management, which casts minorities as passive recipients of accommodation, and an emergent model of diversity governance, which recognizes them as active agents co-determining how religious diversity is

represented, regulated, and negotiated in the public space. This tension is not abstract; it is embedded in legal frameworks, political discourse, and administrative routines that shape how freedom of religion or belief is enacted and contested.

Positioned along a spectrum that runs from the technocratic model of diversity management to an emergent model of inclusive diversity governance, the three cases analyzed here (Barik Edidi, Manzananas Martín, and the anonymous Jewish municipal bus driver) were selected for their diagnostic value in exposing how this paradigm divide plays out in judicial reasoning. Each exemplifies a distinct institutional mode: exclusion through discretion, legal compromise without structural reform, and incipient inclusive governance through contextual accommodation. Together, these rulings do more than resolve legal disputes: they illuminate how judicial decisions reflect, reproduce, or resist deeper tensions over who contributes to defining the terms of visibility, recognition, and inclusion of religious diversity across public and institutional domains.

Taken as a whole, they expose the limits of Spain's current regime and underscore a central claim of this article: that bridging the governance gap requires more than doctrinal correction; it demands a reconfiguration of institutional authority, minority agency, and legal pluralism. Judicial decisions in this context do not merely resolve disputes; they perform the state's ambivalence over who is granted the authority to define the normative parameters of inclusion. As Spain oscillates between technocratic control and participatory pluralism, courts at the supranational, national, and regional levels become key arenas where competing governance logics crystallize, collide, or fracture, revealing not just legal inconsistencies but deeper struggles over democratic legitimacy in a pluralist society.

a) Exclusion through discretion: The case of Barik Edidi v. Spain (ECtHR, 2016)<sup>2</sup>

Barik Edidi, a Spanish Muslim lawyer, was denied access to the courtroom for wearing a hijab, despite the absence of any explicit legal prohibition. The presiding judge invoked decorum to justify her exclusion, treating religious visibility as incompatible with institutional

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<sup>2</sup> *Barik Edidi v. Spain*, App. No. 21780/13, European Court of Human Rights, decision of 14 June 2016. See: <https://www.strasbourgconsortium.org/portal.case.php?pageld=10#caseld=985>

norms. Edidi's appeals were dismissed on procedural grounds by the European Court of Human Rights, without substantive engagement. The case encapsulates the logic of diversity management: inclusion filtered through opaque norms, with minority actors framed as anomalies to be regulated rather than institutional contributors. Her professional capital, as a legal practitioner contesting exclusion from within the system, was rendered institutionally unintelligible, exposing a governance architecture allergic to bottom-up agency. The courtroom became a microcosm of the broader governance deficit, where symbolic exclusion was cloaked in procedural formalism.

b) Formal parity, substantive disparity: The case of Manzanas Martín v. Spain (ECtHR, 2012)<sup>3</sup>

Francisco Manzanas Martín, an Evangelical pastor, was denied pension rights afforded to Catholic clergy, despite performing comparable spiritual and social functions. Only the Catholic Church had secured retroactive legal instruments to count clergy service toward pension eligibility. The European Court of Human Rights ruled in his favor, recognizing the unequal treatment as unjustified discrimination. While less symbolically exclusionary than the Edidi case, this decision exposed a subtler asymmetry: bureaucratic architectures that proclaim equality while withholding parity. Unlike Edidi, Manzanas succeeded judicially; however, the Court's ruling did not prompt systemic reform. His recognition remained an exception carved from a discriminatory norm, not a transformative moment in governance design. Thus, the case illustrates a mode of legal correction without institutional co-production.

c) Fragmented governance, embryonic inclusion: the case of Anonymous v. Palma Municipal Transport Company (STSJ Balearic Islands 457/2002, 9 September)<sup>4</sup>

A Jewish municipal bus driver in Palma de Mallorca was permitted by a regional court to wear a religious cap at work, despite employer

<sup>3</sup> *Manzanas Martín v. Spain*, App. No. 17966/10, European Court of Human Rights, judgment of 3 April 2012. See: <https://www.strasbourgconsortium.org/portal.case.php?pageld=10#caseld=684>

<sup>4</sup> *Anonymous v. Palma Municipal Transport Company*, STSJIB 457/2002, Superior Court of Justice of the Balearic Islands, judgment of 9 September 2002. See: <https://religaredatabase.cnrs.fr/spip.php?article228>

objections based on uniform policy. Applying the principle of proportionality, the court ruled that the attire posed no operational or symbolic disruption. Unlike the previous two cases, this decision treated visibility of religious expression in public space as compatible with public service, not a disruption to be excluded or a right to be tolerated under strict conditions. It marked a tentative shift toward networked governance, where minority claims are integrated into institutional norms through case-sensitive adjudication. Yet crucially, this ruling was not the product of national-level institutional reform but of discretionary local adjudication, underscoring the pivotal yet uneven role of municipal and regional actors in shaping Spain's religious diversity regime.

### 2.2.2. FROM NEUTRALITY TO STRATIFICATION: MAPPING THE NORMATIVE PROBLEM OF SELECTIVE SECULARISM

As elaborated in Section 1.2., selective secularism does not reflect a failure of neutrality but operates as a governance mechanism that asymmetrically regulates religious and cultural expressions. It does so through a dual logic: it culturalizes majority religion, reclassifying Catholic symbols as elements of national heritage, while religionizing minority cultural practices, especially those coded as Muslim, by framing them as disruptive intrusions into the civic order. This asymmetry is neither incidental nor centrally orchestrated but selectively institutionalized through legal, political, and administrative practices that draw symbolic boundaries around civic legitimacy. Rather than excluding religion from public space, selective secularism stratifies it, normalizing ambient Catholicism while hyper-regulating minority expressions under the guise of neutrality.

The cases examined in this section show how this governance logic is enacted through judicial reasoning. Each ruling reflects a distinct juridical mode of selective secularism: the Cordovilla Cuevas case demonstrates culturalization via legal normalization; the Zaragoza crucifix case illustrates culturalization through institutional inertia; and the Watani Association v. Lleida City Council ruling embodies religionization-as-exclusion, justified as a civilizational defense. Taken together, these decisions reveal that courts do not simply arbitrate between freedom of religion and public order; they actively perform symbolic governance, differentiating which religious expressions are deemed civically legitimate.

These cases do not merely resolve legal disputes; they reproduce the symbolic hierarchies of the civic order. Through judicial rationales

that reclassify Catholicism as culture and frame minority expressions as religious excess, Spanish selective secularism functions not through neutral subtraction but through the governance of public presence. Law becomes an instrument of selective visibility, where only certain modes of religious and cultural expression are rendered compatible with civic space, while others are marked as deviant. This logic disciplines difference, reasserts the symbolic primacy of majority religion, and disguises exclusion as neutrality, weaponizing a civilizational vision of universal human rights to paternalistically manage minority presence under the guise of liberal inclusion.

a) Culturalization of majority religious expressions through normalization and inertia

Spain's legal system deploys two complementary strategies to culturally insulate Catholic symbols from secular scrutiny. The first is active culturalization, in which religious rituals are rebranded as civic heritage, rendering them immune to the regulatory standards applied to minority practices. The second is culturalization by inertia, where longstanding religious symbols are passively maintained through procedural silence and institutional default. Both strategies function to normalize majority religion while structurally exceptionalizing pluralist claims. What emerges is not neutral secularism but a selective symbolic regime, where age, tradition, and heritage operate as proxies for legitimacy.

b) Symbolic dominance, culturalization through normalization: The case of Antonio Cordovilla Cuevas v. Dirección General de la Policía (STC 101/2004, 2 June)<sup>5</sup>

Mr. Antonio Cordovilla Cuevas, a deputy inspector of the National Police in Malaga, challenged his assignment to participate in a Holy Week procession organized by the *Hermandad de Nuestro Padre Jesús el Rico*, arguing it violated his negative religious freedom under Article 16.1 CE. The Constitutional Court partially upheld his claim, ruling that mandatory participation in religious acts exceeded the scope of his official duties, but declined to scrutinize the deeper institutional ties

<sup>5</sup> Antonio Cordovilla Cuevas v. Dirección General de la Policía, STC 101/2004, Constitutional Court of Spain, judgment of 2 June 2004. See: <https://religaredatabase.cnrs.fr/spip.php?article227>

between the police force and the Catholic Brotherhood. Instead, it reinterpreted the event as civic tradition, reframing the procession as cultural heritage rather than religious imposition.

This ruling exemplifies the logic of culturalization through legal recoding: majority religious practices are normalized by reclassifying them as expressions of national identity. In doing so, the Court shielded Catholic ritual from the secular scrutiny routinely applied to minoritized practices. The decision reflects a broader civilizational turn in European identity politics, which Brubaker (2017) terms "civilizationism", where Christianity is treated not as a regulable faith tradition but as an ambient civilizational norm. Symbolic asymmetry is thus reproduced not through overt privileging, but through the recoding of religion as culture, a juridical move that entrenches majority dominance under the guise of secular neutrality.

This case illustrates the active variant of culturalization: legal normalization. The Court's reframing of Catholic ritual as culture performs symbolic boundary-work that institutionalizes asymmetry without naming it.

c) Symbolic endurance, culturalization through inertia: The case of *Movimiento hacia un Estado Laico v. Ayuntamiento de Zaragoza* (Judgment 156/2010)<sup>6</sup>

Unlike the active recoding seen in STC 101/2004, this case, decided by the Court of Administrative Litigation of Zaragoza, illustrates culturalization by inertia. A secularist group, *Movimiento hacia un Estado Laico*, challenged the continued display of a 17th-century crucifix in Zaragoza's City Hall, arguing it violated the principle of state neutrality. The court rejected the appeal, citing the absence of a legal prohibition and reinterpreting the crucifix as an artifact of historical and artistic value. The municipal council's decision to retain the symbol, endorsed by a majority vote, was framed as a matter of local discretion rather than constitutional significance.

Here, the culturalization of majority religion expressions operates not through active reclassification, but through legal silence. Catholic symbolism is not explicitly privileged; it is simply left untouched, allowed to persist as ambient décor. The court's avoidance of substantive

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<sup>6</sup> *Movimiento hacia un Estado Laico v. City council of Zaragoza*, Judgment 156/2010, Court of Administrative Litigation of Zaragoza, judgment of 30 April 2010. See: <https://religaredatabase.cnrs.fr/spip.php?article19>

scrutiny, by anchoring legitimacy in tradition and proceduralism, transforms a religious emblem into presumed civic normality.

This ruling exemplifies the passive variant of culturalization: symbolic asymmetry maintained through institutional inertia. No national legal standard was applied; the mere longevity of the religious symbol served as its justification. What is old becomes normal, and what is normal escapes regulation. By treating longstanding Catholic presence as self-justifying, the ruling entrenches a hierarchy of religious visibility in public space, where majority expressions endure by default and minority claims remain structurally exceptional.

d) Symbolic exclusion, religionization through civic incompatibility: The case *Asociación Watani por la Libertad y la Justicia v. City council of Lleida* (2011)<sup>7</sup>

Having illustrated how majority religious expressions are normalized through culturalization, either via active recoding or passive endurance, we now turn to the other face of selective secularism: the religionization of minority expressions. Here, cultural practices of minoritized groups are reinterpreted as rigidly religious, making them hyper-visible, ideologically suspect, and ultimately incompatible with the dominant civic order.

The 2011 decision by the Superior Court of Justice of Catalonia (TSJC), which upheld the municipal ordinance banning full-face coverings in municipal spaces of Lleida, exemplifies this logic. Garments like the niqab and burqa, whose meanings and uses vary across regional, familial, and individual contexts, were treated reductively as an Islamic sign incompatible with Western secular values. The TSJC justified the municipal ban by invoking the language of public order, civic interaction (*convivencia*), and gender equality, framing full-face veiling as inherently at odds with democratic expectations of transparency and mutual recognizability. While formally grounded in administrative competence, the ruling functioned as a juridical boundary-setting mechanism, effectively casting symbolic nonconformity as a civic threat.

Interrogating the full veil ban is not about defending the practice *per se*, but about exposing how democratic governance collapses into

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<sup>7</sup> *Asociación Watani por la Libertad y la Justicia v. City council of Lleida*, Judgment 394/2010, Superior Court of Justice of Catalonia, judgment of 7 June 2011. See: <https://religaredatabase.cnrs.fr/spip.php?article247>

exclusion when cultural difference is resignified as religious and acted upon in civilizational terms. Framed as neutral, the ruling operates less as a regulatory intervention and more as a lesson in civilizational discipline, using the language of public order and gender equality to perform symbolic correction. It disciplines minority expressions through aesthetic norms miscast as universal civic standards, enacting a paternalistic logic of moral tutelage disguised as democratic principle.

At the core of the TSJC's reasoning was a repurposing of gender equality discourse, not to enhance women's autonomy, but to discipline non-conforming Muslim femininities within a secular liberal grammar of visibility and selfhood. This juridical logic did not stand. In 2013, the Spanish Supreme Court overturned the TSJC's position, ruling that such restrictions on fundamental rights, particularly religious freedom, require statutory legislation and cannot be imposed via municipal ordinance.<sup>8</sup> The Court emphasized that the ordinance lacked sufficient legal and factual justification, risked violating religious freedom, and could perversely exclude from municipal public space the very women it purported to emancipate. In doing so, the Court reaffirmed a constitutional pluralism grounded not in aesthetic assimilation, but in the accommodation of divergent modes of presence within a civic space that remains symbolically contested. The Court curtailed the effectiveness of this symbolic logic in municipal governance, marking its deployment in this case as legally untenable and normatively problematic.

### 2.2.3. FROM HOMOGENEITY TO TERRITORIAL INEQUALITY: THE SPATIAL PROBLEM OF RELIGIOUS GOVERNANCE

As discussed in Section 1.3., Spain's governance of religious diversity is compromised not only by paradigm and normative contradictions but also by deep structural asymmetries in how these contradictions materialize across territorial jurisdictions. The assumption that the nation-state constitutes a homogeneous container for diversity governance is not only analytically flawed but also institutionally misleading. Diversity is not enacted in national legal texts but in local policy spaces. Municipalities and autonomous communities

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<sup>8</sup> See Spanish Supreme Court, *Recurso de Casación* 4118/2011 (2013), annulling the Lleida City Council ordinance on full-face coverings. The Court held that restrictions affecting religious freedom required statutory authority and that the municipal measure lacked sufficient legal justification.

are the true battlegrounds of religious pluralism, where inclusion, exclusion, and accommodation are decided in practice, often with minimal oversight and maximal discretion.

To illustrate the real-world implications of this spatial-political problem, this subsection examines two judicial cases that, despite surface similarities, reveal starkly divergent legal responses to minority religious claims in the workplace. The first involves a Muslim woman in Madrid, denied the right to wear attire compatible with her beliefs; the second, a Jewish man in Palma de Mallorca, permitted to wear religious headgear while working as a municipal bus driver. Both cases involve members of minority communities with official cooperation agreements under Spanish law. Both concern dress code disputes. Both occurred within a five-year window, negating any narrative of progressive legal refinement. Yet their outcomes could not be more different.

a) Territorial stratification, exclusion through preemptive conformity: the case of anonymous v. Aldeasa (STSJ Madrid 3751/1997, 27 October)<sup>9</sup>

In 1997, a Muslim cashier employed by Aldeasa at Madrid-Barajas Airport requested to modify her uniform to wear a long skirt, consistent with her religious convictions. Company policy mandated above-the-knee skirts for summer months, and management refused her request on grounds of uniformity and internal regulation. The Superior Court of Justice of Madrid upheld the decision, not by weighing religious accommodation against operational necessity, but by reframing the issue as one of procedural propriety. According to the court, the employee's failure to disclose her religious dress requirements during the hiring process invalidated her claim.

This ruling instantiated a logic of preemptive conformity, where the burden to ensure compatibility between religious identity and institutional policy was placed entirely on the individual. Rather than recognizing religious accommodation as a right to be balanced and protected, the court treated it as an optional variable, contingent upon prior disclosure and subject to managerial discretion. This rationale operated under a thin concept of "good faith," weaponized not to

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<sup>9</sup> *Anonymous v. Aldeasa*, Judgment 3751/1997, The Superior Court of Justice of Madrid, judgment of 27 October 1997. See: <https://religaredatabase.cnrs.fr/spip.php?article229>

foster mutual understanding but to demand anticipatory self-regulation from minoritized actors. The burden placed on the claimant, racialized, gendered, and visibly minoritized, illustrates how legal discretion often converges and reproduces unspoken norms of professional femininity: visibly non-religious, culturally legible, and administratively compliant.

What the ruling left intact, indeed legitimized, was a model of governance in which institutional norms are presumed neutral and minority claims are admissible only if they do not disrupt administrative convenience. In doing so, the court recast inclusion not as a structural obligation of employers but as a conditional privilege earned through invisibilization and advance negotiation. The decision revealed how legal formalism can serve as a proxy for exclusion, shielding organizational prerogatives from constitutional scrutiny and transforming diversity into a matter of individual compliance rather than institutional adaptation. It did so within a regional court system whose reasoning remains insulated from national coherence.

b) Territorial stratification, inclusion through proportionality: the case of *Anonymous v. Palma Municipal Transport Company (STSJ Balears 457/2002, 9 September)*

This is the same case analyzed in Section 2.2.1, where the court's use of proportionality was presented as a threshold for conditional recognition. Here it is revisited not to affirm its individual outcome, but to contrast it with the 1997 *Aldeasa* ruling and reveal the territorial incoherence of Spain's diversity governance.

In this case, a Jewish bus driver employed by the municipal transport company of Palma de Mallorca began wearing a religious cap at work. The company objected, citing uniform policy. The Superior Court of Justice of the Balearic Islands rejected the restriction, ruling that religious expression may only be limited if it demonstrably harms the interests of the employer; no such harm was proven. The court upheld the driver's freedom of religion, placing the burden of justification on the institution, not the individual.

This sharply diverges from the *Aldeasa* case, where the STSJ Madrid demanded anticipatory conformity from the claimant and treated religious accommodation as contingent on self-disclosure. Both claimants were employees in uniformed roles, both cited religious obligations, and belonged to religious communities recognized under the 1992 Cooperation Agreements. Yet the legal responses were

fundamentally opposed, not because the law evolved between 1997 and 2002, but because the cases were heard in different regions, by different courts, applying distinct legal reasoning frameworks. The same constitutional right produced opposite outcomes, determined by where and by whom it was adjudicated and which judicial logic prevailed in the courtroom.

The deeper irony is that both plaintiffs belonged to religious communities recognized by the state under the 1992 Cooperation Agreements, as noted in Section 2.1. Yet the 1997 ruling did not trigger a corrective institutional response; instead, it helped shape a more restrictive one. Following the case, the Spanish Council of State used its reasoning to recommend changes to Article 12 of the Agreements, reinforcing employer discretion and weakening employees' right to religious accommodation. These recommendations were adopted, codifying judicial exclusion upward into national frameworks rather than closing governance gaps.

This dual trajectory confirms the core claim of this subsection: territorial inequality is not incidental but embedded in the governance structure. The same constitutional right to freedom of religion can be protected or denied depending on where and by whom the case is heard, to which minority it is applied, and which judicial logic prevails in the courtroom. Spain's system of diversity governance does not enforce legal uniformity; it enables fragmented application masked by the language of neutrality and procedural autonomy.

## **Conclusion: From governance pathologies to democratic pluralism**

Spain's governance of religious diversity is not merely fragmented. It is structured by three interlocking pathologies: a paradigmatic reliance on technocratic management, a normative regime of selective secularism, and a spatial architecture of territorial inequality. Together, these dynamics produce stratified inclusion, a regime in which diversity is formally recognized yet unevenly governed, and in which minority actors remain only partially incorporated into the institutional processes that shape the terms of their inclusion. From a human rights perspective, each pathology maps onto a distinct democratic deficit. The paradigm problem limits equal participation in defining the norms of coexistence. Selective secularism distorts equality and non-discrimination by recoding some traditions as culture while marking others, especially those associated with Muslims, as problematic

religion. Territorial inequality weakens equal protection by making freedom of religion or belief and related rights contingent on geography, administrative discretion, and local political will.

The cases examined here show that these dynamics are not abstract tensions but institutionalized patterns. Judicial reasoning often does not simply correct asymmetry. It reproduces it, even when it occasionally opens space for redress. The contrast traced across the case law, from the procedural exclusion of minority claims to more limited and locally contingent accommodations, reveals the central contradiction of Spain's current regime. Formal recognition can coexist with institutional exclusion, and rights can be affirmed without granting minorities meaningful influence over the frameworks that govern them. The central challenge, then, is not how to manage diversity more efficiently, but how to govern pluralism more democratically.

That requires moving beyond a vertical model in which institutions define the limits of pluralism from above and toward networked governance as a multiscalar and co-produced alternative. The point is not to romanticize participation, nor to deny the need for limits. It is to insist that the terms of inclusion, and the criteria through which limits are justified, should be more transparent, contestable, and less captive to inherited civilizational hierarchies. In this respect, the local is not merely a site of implementation. It is a decisive arena where symbolic exclusion is reproduced, negotiated, or contested, and where institutional redesign is therefore most urgent. Yet local innovation is insufficient on its own. Democratic coexistence requires governance and public policy arrangements that are territorially more coherent in the protection of rights while embedding minority actors as participants in the production and revision of the civic order.

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# Stratified inclusion: from technocratic management to networked governance in Spain's religious diversity regime

Inclusión estratificada: de la gestión tecnocrática a la gobernanza en red en el régimen español de diversidad religiosa

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**Summary:** Introduction: From institutional asymmetry to networked governance. 1. Diagnosing the governance gap: paradigms, norms, and territorial asymmetries. 1.1. The paradigm problem: from diversity management to governance. 1.2. The normative problem: selective secularism. 1.3. The spatial-political problem: territorial inequality and the myth of national homogeneity. 2. Spain as a legal and political laboratory for diversity governance. 2.1. Legal pluralism and institutional asymmetry in Spain. 2.2. Interpreting the fractures: judicial cases as lenses into Spain's diversity governance. 2.2.1. From management to governance: revisiting the paradigm divide. 2.2.2. From neutrality to stratification: mapping the normative problem of selective secularism. 2.2.3. From homogeneity to territorial inequality: The spatial problem of religious governance. Conclusion: From governance pathologies to democratic pluralism. References.

**Abstract:** Spain's regime of religious diversity is marked by a gap between formal commitments to pluralism and systemic exclusions produced through legal, normative, and spatial asymmetries. This article argues that technocratic "diversity management" depoliticizes diversity, marginalizes minority agency, and sustains "selective secularism", whereby majority Catholicism is

culturalized while minority expressions, especially those read as Muslim or associated with Muslim communities, are religionized. Linking paradigm conflict, normative hierarchies, and territorial fragmentation, the article conceptualizes this configuration as stratified inclusion: minorities are symbolically recognized yet largely excluded from shaping the norms that govern them. Drawing on case law, Spain's legal architecture, and local governance practices, it identifies administrative discretion, culturalization, religionization, and spatial inequality as governance pathologies that undermine freedom of religion or belief, equality before the law, and related human rights. It advances "networked governance" as a multiscalar, co-productive corrective capable of embedding minority agency in institutional design and democratic pluralism.

**Keywords:** Religious diversity governance, selective secularism, stratified inclusion, networked governance, freedom of religion or belief, territorial inequality, Spain.

**Resumen:** El régimen español de diversidad religiosa presenta una brecha entre los compromisos formales con el pluralismo y exclusiones sistémicas producidas por asimetrías jurídicas, normativas y espaciales. Este artículo sostiene que la "gestión de la diversidad" de corte tecnocrático despolitiza la diversidad, margina la agencia de las minorías y sostiene un "secularismo selectivo", mediante el cual el catolicismo mayoritario se culturaliza mientras que expresiones minoritarias, especialmente aquellas leídas como musulmanas o asociadas con comunidades musulmanas, se religionizan. Al articular conflicto de paradigmas, jerarquías normativas y fragmentación territorial, conceptualiza esta configuración como inclusión estratificada. A partir del análisis de jurisprudencia, arquitectura jurídica española y prácticas de gobernanza local, identifica la discrecionalidad administrativa, la culturalización, la religionización y la desigualdad espacial como patologías que socavan la libertad de religión o de creencias, la igualdad ante la ley y los derechos humanos conexos. Propone la "gobernanza en red" como correctivo multiescalar y coproducido.

**Palabras clave:** Gobernanza de la diversidad religiosa, secularismo selectivo, inclusión estratificada, gobernanza en red, libertad de religión o de creencias, desigualdad territorial, España.

## Introduction: From institutional asymmetry to networked governance<sup>1</sup>

Spain's regime of religious diversity affirms legal equality in principle, yet undermines it in practice. Rather than being governed by neutral principles, it operates through what I term an architecture of institutionalized asymmetry: a system that symbolically includes minorities while structurally excluding them from shaping the civic and legal frameworks that govern them. Spain is not an outlier but an exemplary case. Its decentralized institutional structure, post-authoritarian secularism, and enduring Catholic entrenchment make it a revealing site for exploring the contradictions of diversity governance in contemporary Europe. Compared with other Western European states, this dissonance is sharpened by the conjunction of three features: a recent transition from an explicitly confessional authoritarian regime, a constitutional and concordatary framework that continues to privilege Catholic actors, and a rapid trajectory of social secularization and religious and non-religious pluralization. The result is an unusually wide gap between a formally liberal regulatory architecture and a symbolic and institutional order that still treats Catholicism as normative culture while positioning minority religious and non-religious actors as contingent and often securitized and problematized in policy discourse. As genealogical work on cultural backlash in Spain has shown, this misalignment between fast-moving socio-religious change and slow-moving institutional hierarchies makes Spain a particularly sensitive laboratory for observing how diversity governance falters in practice (Ruiz Andrés and Sajir 2026).

This asymmetry is not the result of isolated failures or exceptional deviations. It emerges from the convergence of three governance pathologies: a paradigmatic failure, which frames religious pluralism as a managerial challenge rather than a democratic governance imperative; a normative failure, in which majority religion is rebranded as national culture while minority cultural expressions, particularly Muslim ones, are religionized, securitized, and rendered civically

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suspect; and a territorial failure, wherein Spain's multilevel system fragments implementation and erodes the coherence of rights. These pathologies do not merely generate inconsistency. They converge to form a governance regime in which minority actors are denied a meaningful role in shaping the institutional norms that affect them. What appears as formal equality often masks a deeper exclusion from meaningful involvement in the governance of diversity, understood as the capacity to influence the definition, negotiation, and application of legal and civic norms, not as passive recipients of accommodation but as agents embedded in the design of truly pluralist governance models.

This regime of institutionalized asymmetry is not a recent invention but draws on deeper ideological continuities. In the Spanish case, the legacy of *nacionalcatolicismo*, the fusion of national identity with Catholicism during the Francoist period, continues to shape symbolic hierarchies and institutional arrangements. Although formal Church-State ties were reconfigured during the democratic transition, the underlying grammar of Catholic normativity persists through mechanisms of "banal religion" and "religion-as-culture", which naturalize Christian references in the public sphere (Griera et al. 2021). As I have argued elsewhere (Ruiz Andrés and Sajir 2026), this persistence also feeds a broader cultural backlash that recodes pluralism as threat and reasserts monocultural imaginaries through new forms of culturalized exclusion. *Nacionalcatolicismo* thus survives as a symbolic and institutional sediment that continues to structure the uneven grammar of religious recognition in contemporary Spain.

This dynamic of formal recognition without institutional participation is what I term stratified inclusion: a condition in which inclusion is extended in principle but conditioned in practice by entrenched paradigmatic, normative, and territorial asymmetries. In such regimes, minority groups are acknowledged as objects of governance but excluded as active contributors to the design of the civic and legal infrastructures that shape their presence. Rather than outright exclusion, what persists is a layered system of differential incorporation, where the symbolic grammar of pluralism coexists with an uneven architecture of rights, recognition, and representation. This concept anchors the article's central claim: that democratic legitimacy requires not just the recognition of diversity, but its structured integration into the mechanisms of governance.

This article analyzes these failures not as bureaucratic oversights but as structurally reproduced effects of Spain's diversity governance model. Drawing on national legal texts, historical agreements, and judicial rulings, principally from the Strasbourg Consortium on Freedom

of Conscience and Religion and the Religare database, it traces how symbolic recognition, legal formalism, and territorial fragmentation combine across Spain's multilevel governance landscape to sustain a regime in which pluralism is affirmed rhetorically yet undermined in practice.

Through doctrinal analysis and case law, the article shows how these governance failures materialize not only in legislation and administrative discretion but also in judicial reasoning. The empirical foundation includes landmark rulings from national and regional courts as well as decisions by the European Court of Human Rights. These cases, ranging from disputes over religious dress in the workplace to municipal bans on minority practices, are analyzed not simply as legal determinations but as diagnostic arenas in which symbolic hierarchies, governance logics, and contestations over inclusion are actively negotiated. They reveal how structural exclusions are not only codified in law but also performed and reinforced through institutional practice, while also highlighting moments of resistance.

To address these structurally embedded failures, the article advances networked governance not as a utopian fix but as both a diagnostic framework and a normative counter-model. Building on policy and organizational scholarship (Huppé et al. 2012) and extending my own work (Sajir 2023, 2025), it conceptualizes networked governance as a co-productive architecture grounded in epistemic parity and distributed agency. In this model, religious minorities are not relegated to the role of tolerated outsiders or consulted stakeholders; they are recognized as agents embedded in the processes that shape the normative and legal grammars of inclusion.

Although still rare and fragmented, these practices expose fissures in the dominant governance regime and offer embryonic alternatives to symbolic inclusion. They do not yet amount to systemic transformation, but they illuminate the fragile and contested institutional conditions under which more participatory and horizontally structured forms of governance can emerge. Rather than anomalous deviations, they are early signals of a broader struggle over the future architecture of pluralism and underscore the urgency of moving beyond top-down diversity management toward more horizontal, co-productive models of governance.

Ultimately, the article challenges the view that diversity governance can be repaired through procedural tweaks or doctrinal clarification alone. It argues that institutional legitimacy must be co-produced, not granted from above, and that democratic pluralism demands shared

authorship of the civic and legal orders through which inclusion is structured. While networked governance remains underdeveloped in the Spanish context, it provides both a conceptual and normative horizon. It is already glimpsed in select court rulings and local initiatives that resist the dominant logic of symbolic control and administrative closure. These incipient practices, though limited, offer insight into how diversity governance might be reimagined from the ground up.

## 1. Diagnosing the governance gap: paradigms, norms, and territorial asymmetries

In contemporary European societies, the governance of religious diversity is marked by structural tensions that undermine both legal principles and democratic inclusion. Spain is no exception. While its constitutional framework affirms religious freedom, institutional practices often reproduce asymmetries in recognition, access, and legitimacy. This section identifies three foundational problems that continue to limit the effective protection of Freedom of Religion or Belief, as enshrined in Article 18 of the Universal Declaration of Human Rights, Article 9 of the European Convention on Human Rights (ECHR), and Article 16 of the Spanish Constitution. These problems are not merely technical failures or policy gaps; they are structurally embedded in political paradigms, normative frameworks, and spatial configurations of authority and agency. These governance failures translate directly into uneven enjoyment of core human rights: freedom of thought, conscience and religion, equality before the law, and effective access to remedies when rights are violated. The article therefore treats religious diversity governance not as a niche policy field, but as a diagnostic terrain where the gap between formal human rights commitments and their territorialized implementation becomes particularly visible. Addressing them requires moving beyond the language of “managing” diversity and engaging instead with the complex, multi-actor dynamics of diversity governance.

### 1.1. *The paradigm problem: from diversity management to governance*

The first foundational problem concerns the dominant paradigm shaping religious and cultural pluralism in Spain: “diversity management.” Originating in the corporate world, this approach was

developed as a human resources tool in multinational firms, aimed at optimizing productivity, mitigating interpersonal conflicts, and leveraging cultural difference as a resource for innovation. Such framing, as Marko (2019) argues, must be significantly rethought and expanded into a comprehensive political and legal theory capable of reconciling the need for political unity with legal equality and cultural pluralism under conditions of globalization.

This article advances a necessary paradigmatic shift: from diversity management to diversity governance. This shift is not merely semantic; it recenters agency, reframes inclusion as a process of participatory and multilevel governance, and rejects the view of diversity as a challenge to be “handled” by neutral administrators. It involves moving from a technocratic and top-down paradigm to a governance-based approach that is participatory, multi-actor, and multi-scalar. Governance, in this sense, recognizes that the regulation of diversity is not the exclusive domain of the nation-state but is shaped through complex interactions between institutional actors, civil society, religious communities, and minority groups themselves. This includes not only top-down governance (by state institutions), but also bottom-up governance (by grassroots and minority actors), and network governance involving public-private-civic partnerships in decision-making. Such a framework restores agency to minority groups and acknowledges their legitimate role in shaping the terms of inclusion.

Within this reframing, networked governance becomes a useful concept. Developed across policy studies and organizational sociology (Huppé et al. 2012), it refers to governing through dynamic, multi-level configurations of state and non-state actors, where decision-making is collaborative and authority is relational rather than hierarchical. It is particularly suited to complex governance environments, such as religious pluralism, where no single institution possesses full legitimacy or control.

What makes this model distinctive is not the inclusion of multiple stakeholders *per se*, but the logic of co-production: policies are not merely implemented in consultation with affected communities; they are developed through iterative engagement and shared decision-making structures. In this framework, agency is distributed not just across levels (national, regional, municipal) but also across roles (legal, cultural, civic). Transcultural capital is one of the resources minority actors bring into this architecture: the capacity to translate between normative and cultural fields, inject situated knowledge, and challenge technocratic scripts from below (Sajir 2025; Triandafyllidou 2009).

In contrast to stakeholder consultation, which often reinforces power asymmetries, networked governance centers reflexivity, shared

norm-setting, and mutual accountability. It does not dissolve the role of the state but repositions it as one node within a more horizontal and adaptive architecture. This approach is not a panacea, but it provides a conceptual and practical alternative to the rigid verticalism of traditional models.

Beyond its analytical utility, networked governance also carries a normative ambition: it gestures toward a more democratic architecture of pluralism, one where legitimacy is not imposed from above but co-produced through situated participation and epistemic parity. Crucially, this does not entail a rights-blind accommodation of any claim advanced in the name of religion or culture. As work on cultural autonomy and networked forms of diversity governance has underlined, devolved and networked arrangements must be constrained by human rights standards, including gender equality, bodily integrity and the protection of minorities within minorities, if they are not to reproduce domination within groups as well as between them (Topidi 2024; OSCE 1999). In the perspective adopted here, what distinguishes networked governance from technocratic diversity management is not the absence of limits, but the way limits are defined and enforced, through transparent, contestable and co-produced criteria rather than through opaque majoritarian or civilizational hierarchies.

Spain offers partial empirical resonance with this framework. While national policy often defaults to symbolic accommodation and legal formalism, some local contexts exhibit embryonic practices of networked governance, particularly in contested urban spaces where municipal actors collaborate with civil society to co-design diversity infrastructure. Crucially, this also invites a reconceptualization of “the local” not as a mere jurisdictional level but as a relational site where symbolic hierarchies, institutional norms, and civic claims intersect. These cases, explored in Section 2, underscore the inadequacy of managerial models and the potential of co-productive governance arrangements grounded in proximity, participation, and institutional permeability.

## 1.2. *The normative problem: selective secularism*

Selective secularism, a term I use to describe the second foundational problem in the governance of religious diversity (Sajir 2025), refers to the uneven application of secular principles across European public institutions. Majority religious traditions, especially

Christianity, are reframed as national culture, while minority expressions, particularly Islam-coded practices and identities, are cast as religion in a narrower, politicized sense and treated as potential threats to the secular civic order. Building on Brubaker (2016, 2017), Casanova (2007), and Cesari (2021), I conceptualize selective secularism as a governance mechanism that simultaneously culturalizes Christianity and religionizes minority cultural expressions. This dual movement reproduces symbolic hierarchy and institutionalizes differential treatment under the guise of neutrality.

Brubaker's notion of the culturalization of religion captures how Christianity in Europe is detached from theological content and reclassified as heritage, civilization, tradition or national identity. This move grants majority religion interpretive flexibility and a privileged place in public space. By contrast, minority practices and identities, especially those associated with Muslim communities, are subjected to a process of religionization (Sajir 2023, 2025), whereby cultural expressions are reductively read as religious and then regulated as problematic. Put differently, majority religion is treated as layered, historical, and culturally embedded, whereas minority expressions are rendered hyper-visible, narrowly religious, and civically contentious. What results is not neutrality, but a selective grammar of recognition.

Recent debates in France over banning abayas in public schools offer a telling illustration of selective secularism in practice. Garments widely understood by many Muslim-origin women as cultural, aesthetic, or situational are reclassified by public authorities as religious symbols and thereby deemed incompatible with secular norms, activating legal restrictions and reinforcing the narrative of Islam as inherently politicized and threatening (Schofield et al. 2023). By contrast, the Lautsi v. Italy litigation, concerning the display of crucifixes in public school classrooms, shows how majority religion can be granted symbolic elasticity through judicial reasoning: while the European Court of Human Rights initially held that mandatory crucifixes violated state neutrality, the Grand Chamber reversed that judgment and reframed the crucifix as a cultural artifact and emblem of national heritage. Taken together, these cases exemplify how selective secularism is codified through legal and judicial argumentation: majority symbols are endowed with interpretive flexibility and normalized within public space, whereas minority expressions are read through a narrower religious lens and excluded on that basis. This is not merely discursive asymmetry; it is a structural hierarchy presented as neutral regulation.

A growing body of scholarship has exposed this asymmetry from different angles. Casanova (2007) highlights how liberal-secular orders privatize religion selectively, applying this pressure with particular intensity to Islam. Brubaker (2016, 2017) shows how assertive secularism coexists with the symbolic reabsorption of Christianity into civilizational identity. Cesari (2021) demonstrates that secularism often works less as a doctrine of neutrality than as an instrument of nation-building, one that encodes Islam as a political and civilizational challenge to cohesion. Despite their differences, these perspectives converge on a common point: secularism in contemporary Europe frequently operates as a normative technology of boundary-making that defines legitimate religion, regulates visibility, and recodes pluralism as disruption. In Spain, where accelerated secularization coexists with the persistence of culturalized Catholicism, this produces a particularly revealing governance paradox. Neutrality is formally affirmed while symbolic asymmetries remain deeply entrenched (Ruiz Andrés and Sajir 2026).

From this perspective, selective secularism is not simply a failure of implementation but a mechanism of stratification. It preserves the symbolic centrality of Christian traditions while policing the visibility, intelligibility, and legitimacy of minority religions. Diversity is not treated as constitutive of democratic life but as a potential disturbance to national cohesion. Minority communities, especially those of Muslim background, are thus permitted presence yet denied a substantive role in shaping the national narrative and the civic terms of recognition that govern them (Sajir and Molinero-Gerbeau 2025). This has direct human-rights implications: selective secularism distorts equality and non-discrimination, narrows effective freedom of religion or belief, and weakens the conditions for equal civic inclusion.

This logic operates across administrative scales. At supranational and national levels, legal and political discourses invoke neutrality, universality, and civilization to justify differential treatment. At the local level, these hierarchies are translated into the spatial and symbolic fabric of everyday governance through discretionary administrative practices. Local authorities are therefore not mere implementers; they are key sites where selective secularism is enacted, negotiated, and at times resisted. As the cases examined later in the article show, the regulation of religious diversity often turns on who is granted interpretive elasticity, who is reduced to a problem category, and who is allowed to appear in public space without being recoded as a challenge to civic order.

At stake here is not whether democratic polities may draw boundaries. They must, and no serious account of pluralism can avoid that question. A strand of normative political theory, exemplified by Spektorowski and Elfersy's (2020) defense of "democratic discrimination" and "conditional inclusion," argues that democracies may legitimately differentiate among groups and practices in order to protect a liberal civic ethos, particularly around gender equality and LGBTQ+ rights. The argument developed here does not deny the need for limits. It challenges the way such limits are currently articulated in Spain: through opaque, historically sedimented hierarchies that elevate some traditions into culture while casting others, especially Islam, as permanently misaligned with the civic order. The problem, then, is not boundary-drawing as such, but boundary-drawing that is selective, civilizational, and territorially inconsistent.

A more reflexive approach to diversity governance would therefore require more than juridical adjustment. It would require dismantling the double standard through which majority religious expressions pass as heritage while minority practices are recoded as intrusive religiosity. It would also require making the criteria for legitimate limitation more transparent, contestable, and institutionally coherent. While Muslim communities are disproportionately targeted through securitization and cultural exclusion, the same grammar also marginalizes other non-majority groups, including Evangelicals, Jehovah's Witnesses, and Buddhists, who remain outside the hegemonic Catholic-secular continuum that structures national identity. What is needed is not an *ad hoc* politics of accommodation that brackets underlying rights hierarchies, but a more demanding governance architecture in which pluralism is treated as a constitutive feature of democratic life rather than a deviation to be contained, and in which the limits to it are defined through transparent, contestable and co-produced criteria rather than through inherited civilizational defaults. Section 2 turns to how these normative asymmetries are embedded in Spain's legal architecture and judicial practice.

### 1.3. *The spatial-political problem: territorial inequality and the myth of national homogeneity*

The third foundational problem concerns a widespread but flawed assumption: that the nation-state is a coherent, homogeneous container for diversity governance. This assumption is not only analytically misleading but also politically consequential. It reflects what

has been called methodological nationalism: the tendency in scholarly and policy discourse to treat the nation-state as the natural unit of analysis or as the primary arena in which social processes unfold. This orientation obscures the heterogeneity within nation-states and misrepresents the multi-level, often fragmented, complex reality of diversity governance.

National and supranational institutions may craft the legal and political frameworks for religious and cultural diversity, but these frameworks are implemented, negotiated and contested at the subnational level. Municipalities and autonomous communities wield significant discretion over how pluralism is regulated in practice, especially through control of urban planning, zoning, funding allocations, education, symbolic recognition, and access to public space. The result is not coherence, but territorial inequality: formally inclusive norms applied unevenly depending on geography, institutional capacity, and political will and ideologies.

What emerges is a structurally schizophrenic governance regime. On one hand, national and European institutions project narratives of neutrality, equality, and secularism. On the other, they delegate execution to local authorities who interpret these principles through their own structure of opportunities, and in response to their own institutional logics and territorial constraints. The result is a fragmented diversity governance framework in which formally inclusive principles coexist with localized practices of exclusion, exceptionalism, or inaction. This fragmentation also produces *de facto* legal pluralism, understood not as the coexistence of multiple normative orders, but as the uneven application and interpretation of a single constitutional framework by territorially differentiated actors. As Section 2 will show, these asymmetries materialize in zoning rules, funding decisions, and symbolic exclusions at the local level.

This is not merely a problem of failed implementation but a systemic design feature that enables stratified access to rights and recognition while maintaining the illusion of legal and ideological consistency and homogeneity at the national and supranational level. Municipalities and autonomous communities are not just policy executors; they are the actual battlegrounds where diversity governance is concretely enacted, resisted, or reshaped.

The local level is where the paradigm problem of management versus governance and the normative problem of selective secularism become most visible. It is here that religious and cultural diversity cannot be merely “managed”, but instead requires a multi-scalar networked governance framework composed of state and non-state

agents. It is also here that selective secularism takes concrete form, as inclusion and exclusion are spatialized through discretionary decision-making. Municipalities and autonomous communities thus function as frontline arenas in which national-level narratives of neutrality are translated into local practices, normalizing asymmetries while the fiction of national uniformity conceals the uneven, often discriminatory enforcement that follows.

This spatial-political problem has dual implications. Analytically, it flattens internal diversity and ignores the differentiated demands and constraints faced by subnational actors. Politically, it permits local authorities to act as *de facto* gatekeepers of inclusion, with minimal oversight and unequal resources. Addressing this requires more than refining national policy; it demands rethinking the unit of analysis and the ground of diversity governance itself.

Recognizing the subnational level, encompassing both municipalities and autonomous communities, as the primary terrain of negotiation is essential for two reasons. First, it shifts our attention to where pluralism is practiced, resisted, or redefined. Second, it dismantles the myth of national homogeneity by exposing how top-down narratives of neutrality conceal uneven, localized enforcement. The problem is not just that the system fails to live up to its ideals; it is that the system is designed to allow those failures to persist.

These three interrelated problems jointly constitute what I define as an architecture of institutionalized asymmetry in the governance of religious diversity. Section 2 turns to Spain as an empirical case, tracing how these dynamics materialize through its national legal framework and local institutional practices, where the symbolic, legal, and political contestations of pluralism become most visible.

## 2. Spain as a legal and political laboratory for diversity governance

The governance pathologies outlined in Section 1 (paradigm conflict, selective secularism, and territorial inequality) do not remain abstract. They materialize in institutional design, legal architecture, and administrative discretion. Spain offers a particularly sharp lens through which to observe this translation from conceptual failure to structural formation.

What makes Spain analytically generative is not its exceptionality but its condensation of broader European tensions: symbolic affirmation coexists with structural asymmetry; legal recognition masks

institutional gatekeeping; decentralization produces fragmentation rather than pluralist co-governance. This section traces how these dynamics are embedded in the legal and judicial infrastructure of religious diversity governance. A growing body of empirical research on Spain has traced how these structural tensions materialize in urban and funerary settings. Work on Muslim cemeteries conceptualizes the “Islamic funerary question” as part of a broader right to the city showing how municipal and regional authorities negotiate burial spaces through planning rules, mortuary regulations, *ad hoc* agreements with Muslim organizations, and the legacy of a “catholicocentric” spatial order that produces territorially uneven access to Islamic burial (Salguero 2023; Gil-Benumea and Salguero 2024). Complementing this governance focus, Arana (2025) reads the changing fate of Muslim cemeteries from the Civil War to the present as a politics of death linking spatial erasure, selective memorialization and the casting of Muslims as persistent outsiders in the Spanish national imaginary. In parallel, research on local religious governance in Madrid and Barcelona shows how municipal actors oscillate between hands-off pragmatism and selective interventions, often subsuming religion under immigration or culture policy while reproducing a Catholic “religion as ambience” in public space (Astor et al. 2019; Cornejo 2021). In dialogue with this literature, the aim of this article is not to add new case studies of cemeteries, public rituals, or neighborhood conflicts, but to shift the level of analysis back to the national legal and jurisprudential framework and to use Spain as a legal and political laboratory for theorizing how these dispersed urban practices are anchored in a stratified regime of recognition and cooperation.

### 2.1. *Legal pluralism and institutional asymmetry in Spain*

Spain’s constitutional framework proclaims religious freedom and institutional neutrality. Article 16 of the 1978 Constitution enshrines *aconfesionalidad* (non-confessionality) and the right to Freedom of Religion or Belief, alongside Articles 10.1 and 9.2, which affirm dignity and participatory rights. However, the actual governance of religious diversity remains marked by a stratified and discretionary system of recognition. As Ruiz Andrés and Sajir (2026) argue, Spain’s legal architecture emerged from a negotiated post-authoritarian settlement that formalized Catholic exceptionalism while nominally endorsing religious pluralism.

At the core of this framework is the 1980 Organic Law on Religious Freedom, which regulates registration and state cooperation. While registration confers legal personality, access to bilateral Cooperation Agreements, governed by Article 7, requires both the formation of a representative body and the contested status of *notorio arraigo* (well-established presence). This threshold, opaque and inconsistently applied, functions more as a selective filter than a gateway. Judicial and administrative adjustments, including the 2001 Constitutional Court decision (STC 46/2001) and the 2015 reform of the Religious Entities Register, attempted to pluralize recognition criteria but did not alter the underlying architecture of asymmetry. Although the Evangelical, Muslim, and Jewish federations secured agreements in 1992, other groups such as Jehovah's Witnesses, Buddhists, and Orthodox Christians remain excluded from this level of bilateral cooperation despite formal recognition.

This legal hierarchy is reinforced by the enduring privilege of the Catholic Church, protected through Concordats signed in 1976 and 1979, international treaties that grant the Church advantages in education, taxation, and institutional access. The result is a tripartite structure: at the top, the Catholic Church with treaty-level protections; in the middle, minority groups with Cooperation Agreements; and at the bottom, communities governed only by association law. Far from embodying a neutral framework, this system encodes selective secularism and institutional asymmetry.

These symbolic asymmetries are further entrenched through legal engagements with historical memory. A striking example is the 2015 law granting Spanish nationality to descendants of Sephardic Jews expelled in 1492 (Ley 12/2015), framed as a gesture of reconciliation with Sefarad and a recognition of the Jewish past as integral to the national heritage. Yet no equivalent measure has been proposed for the descendants of Andalusī Muslims, who were also expelled, forcibly converted, and erased from official memory between the 15th and 17th centuries. This omission is all the more revealing given that both communities are signatories of the 1992 Cooperation Agreements, highlighting a hierarchy within the very category of "recognized" minorities. What appears as a pluralist gesture toward one group simultaneously reinforces exclusion toward another. This selective memorialization does not merely reflect historical contingencies; it codifies a normative order in which Judeo-Christian heritage is elevated, while Islam is actively erased from the national narrative. In a hurried alignment with dominant European postures that frame Islam as an external threat rather than a constitutive presence, Spain disavows its own Andalusī past, rendering

Muslim minorities more readily imagined as exogenous to the nation's historical arc and marginal to its present and future *demos*. This selective memory regime stabilizes national identity through strategic amnesia, elevating Judeo-Christian heritage as foundational while positioning Islam and Muslim minorities as the functional Other in Spain's legal and symbolic order (Ruiz Andrés and Sajir 2026).

The decentralization of the Spanish state amplifies these disparities. Although the Law on Religious Freedom is a national law, its omission of subnational actors has produced implementation gaps in education, zoning, and cultural affairs, domains in which autonomous communities and municipalities wield increasing regulatory power. In the absence of binding national standards, freedom of religion or belief is not uniformly protected, but territorially reinterpreted. What formally appears as a universal right becomes, in practice, a discretionary outcome. This structural indeterminacy is not theoretical: as the next subsection will show, it manifests in judicial rulings that both reflect and reinforce Spain's fragmented geography of religious recognition.

These patterns expose a structural flaw. Spain's legal framework does not merely suffer from institutional inertia; it is a juridified expression of broader governance pathologies outlined in Section 1: a vertical, technocratic model of diversity management that privileges symbolic order over participatory pluralism. Despite the progressive aims of its constitutional text, the state remains a gatekeeper, legally empowered to define which religious actors qualify for visibility, legitimacy, and cooperation.

In response to these limitations, soft governance mechanisms have emerged as corrective instruments that attempt to fill the normative vacuum left by a legally fragmented and hierarchized system. Initiatives such as the *Fundación Pluralismo y Convivencia* and the *Observatorio del Pluralismo Religioso* provide guidance and support for minority communities and local administrations. Yet these mechanisms remain consultative rather than constitutive, supplementing rather than transforming the legal architecture. The core framework, with its symbolic hierarchies, procedural exclusions, and structural silences, remains intact.

These dynamics are not merely passive outcomes but are actively interpreted, reinforced, or challenged through judicial reasoning. Judges do not simply apply the law; they play a constitutive role in shaping the lived boundaries of inclusion and exclusion. Supranational, national, and local courts function as arenas where the fragmented logic of religious governance is either contested or entrenched, often through uneven and locally contingent interpretations of freedom of

religion or belief and related equality provisions. As the next subsection will illustrate, case law becomes a diagnostic terrain where symbolic hierarchies, paradigm conflicts, and governance asymmetries are materially negotiated.

What emerges, then, is a legal framework that formally affirms pluralism while structurally enacting a selective model of inclusion. The stratified system of recognition, the opaque threshold of *notorio arraigo*, and the territorial variability in implementation collectively produce a regime of conditional equality: religious rights exist in law, but not uniformly in practice. The empirical cases examined in Subsection 2.2. must be analyzed as downstream effects of this architecture: not the result of a coherent exclusionary design, but of a structurally embedded, *laissez-faire* approach to religious governance that delegates implementation to subnational actors without ensuring normative coherence. The result is a fragmented geography of freedom of religion or belief in which inclusion depends less on legal entitlement than on local discretion, administrative capacity, and political will.

## 2.2. *Interpreting the fractures: judicial cases as lenses into Spain's diversity governance*

This subsection analyzes judicial case law as a diagnostic lens into Spain's religious diversity regime. Drawing from the Strasbourg Consortium and Religare databases, it examines how courts at supranational, national, and subnational levels interpret, reproduce, or resist structural asymmetries. These rulings do not merely resolve disputes; they enact the state's ambivalence over who belongs, who decides, and under what conditions. Through the lenses of paradigm conflict, selective secularism, and territorial inequality, the cases reveal how legal reasoning often reinforces, rather than redresses, the governance pathologies already identified. We begin with the foundational tension between diversity management and diversity governance.

### 2.2.1. FROM MANAGEMENT TO GOVERNANCE: REVISITING THE PARADIGM DIVIDE

As outlined in Section 1.1., Spain's religious diversity regime is shaped by a foundational tension between two paradigms: a technocratic model of diversity management, which casts minorities as passive recipients of accommodation, and an emergent model of diversity governance, which recognizes them as active agents co-determining how religious diversity is

represented, regulated, and negotiated in the public space. This tension is not abstract; it is embedded in legal frameworks, political discourse, and administrative routines that shape how freedom of religion or belief is enacted and contested.

Positioned along a spectrum that runs from the technocratic model of diversity management to an emergent model of inclusive diversity governance, the three cases analyzed here (Barik Edidi, Manzananas Martín, and the anonymous Jewish municipal bus driver) were selected for their diagnostic value in exposing how this paradigm divide plays out in judicial reasoning. Each exemplifies a distinct institutional mode: exclusion through discretion, legal compromise without structural reform, and incipient inclusive governance through contextual accommodation. Together, these rulings do more than resolve legal disputes: they illuminate how judicial decisions reflect, reproduce, or resist deeper tensions over who contributes to defining the terms of visibility, recognition, and inclusion of religious diversity across public and institutional domains.

Taken as a whole, they expose the limits of Spain's current regime and underscore a central claim of this article: that bridging the governance gap requires more than doctrinal correction; it demands a reconfiguration of institutional authority, minority agency, and legal pluralism. Judicial decisions in this context do not merely resolve disputes; they perform the state's ambivalence over who is granted the authority to define the normative parameters of inclusion. As Spain oscillates between technocratic control and participatory pluralism, courts at the supranational, national, and regional levels become key arenas where competing governance logics crystallize, collide, or fracture, revealing not just legal inconsistencies but deeper struggles over democratic legitimacy in a pluralist society.

a) Exclusion through discretion: The case of Barik Edidi v. Spain (ECtHR, 2016)<sup>2</sup>

Barik Edidi, a Spanish Muslim lawyer, was denied access to the courtroom for wearing a hijab, despite the absence of any explicit legal prohibition. The presiding judge invoked decorum to justify her exclusion, treating religious visibility as incompatible with institutional

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<sup>2</sup> *Barik Edidi v. Spain*, App. No. 21780/13, European Court of Human Rights, decision of 14 June 2016. See: <https://www.strasbourgconsortium.org/portal.case.php?pageld=10#caseld=985>

norms. Edidi's appeals were dismissed on procedural grounds by the European Court of Human Rights, without substantive engagement. The case encapsulates the logic of diversity management: inclusion filtered through opaque norms, with minority actors framed as anomalies to be regulated rather than institutional contributors. Her professional capital, as a legal practitioner contesting exclusion from within the system, was rendered institutionally unintelligible, exposing a governance architecture allergic to bottom-up agency. The courtroom became a microcosm of the broader governance deficit, where symbolic exclusion was cloaked in procedural formalism.

b) Formal parity, substantive disparity: The case of Manzanas Martín v. Spain (ECtHR, 2012)<sup>3</sup>

Francisco Manzanas Martín, an Evangelical pastor, was denied pension rights afforded to Catholic clergy, despite performing comparable spiritual and social functions. Only the Catholic Church had secured retroactive legal instruments to count clergy service toward pension eligibility. The European Court of Human Rights ruled in his favor, recognizing the unequal treatment as unjustified discrimination. While less symbolically exclusionary than the Edidi case, this decision exposed a subtler asymmetry: bureaucratic architectures that proclaim equality while withholding parity. Unlike Edidi, Manzanas succeeded judicially; however, the Court's ruling did not prompt systemic reform. His recognition remained an exception carved from a discriminatory norm, not a transformative moment in governance design. Thus, the case illustrates a mode of legal correction without institutional co-production.

c) Fragmented governance, embryonic inclusion: the case of Anonymous v. Palma Municipal Transport Company (STSJ Balearic Islands 457/2002, 9 September)<sup>4</sup>

A Jewish municipal bus driver in Palma de Mallorca was permitted by a regional court to wear a religious cap at work, despite employer

<sup>3</sup> *Manzanas Martín v. Spain*, App. No. 17966/10, European Court of Human Rights, judgment of 3 April 2012. See: <https://www.strasbourgconsortium.org/portal.case.php?pageld=10#caseld=684>

<sup>4</sup> *Anonymous v. Palma Municipal Transport Company*, STSJIB 457/2002, Superior Court of Justice of the Balearic Islands, judgment of 9 September 2002. See: <https://religaredatabase.cnrs.fr/spip.php?article228>

objections based on uniform policy. Applying the principle of proportionality, the court ruled that the attire posed no operational or symbolic disruption. Unlike the previous two cases, this decision treated visibility of religious expression in public space as compatible with public service, not a disruption to be excluded or a right to be tolerated under strict conditions. It marked a tentative shift toward networked governance, where minority claims are integrated into institutional norms through case-sensitive adjudication. Yet crucially, this ruling was not the product of national-level institutional reform but of discretionary local adjudication, underscoring the pivotal yet uneven role of municipal and regional actors in shaping Spain's religious diversity regime.

### 2.2.2. FROM NEUTRALITY TO STRATIFICATION: MAPPING THE NORMATIVE PROBLEM OF SELECTIVE SECULARISM

As elaborated in Section 1.2., selective secularism does not reflect a failure of neutrality but operates as a governance mechanism that asymmetrically regulates religious and cultural expressions. It does so through a dual logic: it culturalizes majority religion, reclassifying Catholic symbols as elements of national heritage, while religionizing minority cultural practices, especially those coded as Muslim, by framing them as disruptive intrusions into the civic order. This asymmetry is neither incidental nor centrally orchestrated but selectively institutionalized through legal, political, and administrative practices that draw symbolic boundaries around civic legitimacy. Rather than excluding religion from public space, selective secularism stratifies it, normalizing ambient Catholicism while hyper-regulating minority expressions under the guise of neutrality.

The cases examined in this section show how this governance logic is enacted through judicial reasoning. Each ruling reflects a distinct juridical mode of selective secularism: the Cordovilla Cuevas case demonstrates culturalization via legal normalization; the Zaragoza crucifix case illustrates culturalization through institutional inertia; and the Watani Association v. Lleida City Council ruling embodies religionization-as-exclusion, justified as a civilizational defense. Taken together, these decisions reveal that courts do not simply arbitrate between freedom of religion and public order; they actively perform symbolic governance, differentiating which religious expressions are deemed civically legitimate.

These cases do not merely resolve legal disputes; they reproduce the symbolic hierarchies of the civic order. Through judicial rationales

that reclassify Catholicism as culture and frame minority expressions as religious excess, Spanish selective secularism functions not through neutral subtraction but through the governance of public presence. Law becomes an instrument of selective visibility, where only certain modes of religious and cultural expression are rendered compatible with civic space, while others are marked as deviant. This logic disciplines difference, reasserts the symbolic primacy of majority religion, and disguises exclusion as neutrality, weaponizing a civilizational vision of universal human rights to paternalistically manage minority presence under the guise of liberal inclusion.

a) Culturalization of majority religious expressions through normalization and inertia

Spain's legal system deploys two complementary strategies to culturally insulate Catholic symbols from secular scrutiny. The first is active culturalization, in which religious rituals are rebranded as civic heritage, rendering them immune to the regulatory standards applied to minority practices. The second is culturalization by inertia, where longstanding religious symbols are passively maintained through procedural silence and institutional default. Both strategies function to normalize majority religion while structurally exceptionalizing pluralist claims. What emerges is not neutral secularism but a selective symbolic regime, where age, tradition, and heritage operate as proxies for legitimacy.

b) Symbolic dominance, culturalization through normalization: The case of Antonio Cordovilla Cuevas v. Dirección General de la Policía (STC 101/2004, 2 June)<sup>5</sup>

Mr. Antonio Cordovilla Cuevas, a deputy inspector of the National Police in Malaga, challenged his assignment to participate in a Holy Week procession organized by the *Hermandad de Nuestro Padre Jesús el Rico*, arguing it violated his negative religious freedom under Article 16.1 CE. The Constitutional Court partially upheld his claim, ruling that mandatory participation in religious acts exceeded the scope of his official duties, but declined to scrutinize the deeper institutional ties

<sup>5</sup> Antonio Cordovilla Cuevas v. Dirección General de la Policía, STC 101/2004, Constitutional Court of Spain, judgment of 2 June 2004. See: <https://religaredatabase.cnrs.fr/spip.php?article227>

between the police force and the Catholic Brotherhood. Instead, it reinterpreted the event as civic tradition, reframing the procession as cultural heritage rather than religious imposition.

This ruling exemplifies the logic of culturalization through legal recoding: majority religious practices are normalized by reclassifying them as expressions of national identity. In doing so, the Court shielded Catholic ritual from the secular scrutiny routinely applied to minoritized practices. The decision reflects a broader civilizational turn in European identity politics, which Brubaker (2017) terms "civilizationism", where Christianity is treated not as a regulable faith tradition but as an ambient civilizational norm. Symbolic asymmetry is thus reproduced not through overt privileging, but through the recoding of religion as culture, a juridical move that entrenches majority dominance under the guise of secular neutrality.

This case illustrates the active variant of culturalization: legal normalization. The Court's reframing of Catholic ritual as culture performs symbolic boundary-work that institutionalizes asymmetry without naming it.

c) Symbolic endurance, culturalization through inertia: The case of *Movimiento hacia un Estado Laico v. Ayuntamiento de Zaragoza* (Judgment 156/2010)<sup>6</sup>

Unlike the active recoding seen in STC 101/2004, this case, decided by the Court of Administrative Litigation of Zaragoza, illustrates culturalization by inertia. A secularist group, *Movimiento hacia un Estado Laico*, challenged the continued display of a 17th-century crucifix in Zaragoza's City Hall, arguing it violated the principle of state neutrality. The court rejected the appeal, citing the absence of a legal prohibition and reinterpreting the crucifix as an artifact of historical and artistic value. The municipal council's decision to retain the symbol, endorsed by a majority vote, was framed as a matter of local discretion rather than constitutional significance.

Here, the culturalization of majority religion expressions operates not through active reclassification, but through legal silence. Catholic symbolism is not explicitly privileged; it is simply left untouched, allowed to persist as ambient décor. The court's avoidance of substantive

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<sup>6</sup> *Movimiento hacia un Estado Laico v. City council of Zaragoza*, Judgment 156/2010, Court of Administrative Litigation of Zaragoza, judgment of 30 April 2010. See: <https://religaredatabase.cnrs.fr/spip.php?article19>

scrutiny, by anchoring legitimacy in tradition and proceduralism, transforms a religious emblem into presumed civic normality.

This ruling exemplifies the passive variant of culturalization: symbolic asymmetry maintained through institutional inertia. No national legal standard was applied; the mere longevity of the religious symbol served as its justification. What is old becomes normal, and what is normal escapes regulation. By treating longstanding Catholic presence as self-justifying, the ruling entrenches a hierarchy of religious visibility in public space, where majority expressions endure by default and minority claims remain structurally exceptional.

d) Symbolic exclusion, religionization through civic incompatibility: The case *Asociación Watani por la Libertad y la Justicia v. City council of Lleida* (2011)<sup>7</sup>

Having illustrated how majority religious expressions are normalized through culturalization, either via active recoding or passive endurance, we now turn to the other face of selective secularism: the religionization of minority expressions. Here, cultural practices of minoritized groups are reinterpreted as rigidly religious, making them hyper-visible, ideologically suspect, and ultimately incompatible with the dominant civic order.

The 2011 decision by the Superior Court of Justice of Catalonia (TSJC), which upheld the municipal ordinance banning full-face coverings in municipal spaces of Lleida, exemplifies this logic. Garments like the niqab and burqa, whose meanings and uses vary across regional, familial, and individual contexts, were treated reductively as an Islamic sign incompatible with Western secular values. The TSJC justified the municipal ban by invoking the language of public order, civic interaction (*convivencia*), and gender equality, framing full-face veiling as inherently at odds with democratic expectations of transparency and mutual recognizability. While formally grounded in administrative competence, the ruling functioned as a juridical boundary-setting mechanism, effectively casting symbolic nonconformity as a civic threat.

Interrogating the full veil ban is not about defending the practice *per se*, but about exposing how democratic governance collapses into

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<sup>7</sup> *Asociación Watani por la Libertad y la Justicia v. City council of Lleida*, Judgment 394/2010, Superior Court of Justice of Catalonia, judgment of 7 June 2011. See: <https://religaredatabase.cnrs.fr/spip.php?article247>

exclusion when cultural difference is resignified as religious and acted upon in civilizational terms. Framed as neutral, the ruling operates less as a regulatory intervention and more as a lesson in civilizational discipline, using the language of public order and gender equality to perform symbolic correction. It disciplines minority expressions through aesthetic norms miscast as universal civic standards, enacting a paternalistic logic of moral tutelage disguised as democratic principle.

At the core of the TSJC's reasoning was a repurposing of gender equality discourse, not to enhance women's autonomy, but to discipline non-conforming Muslim femininities within a secular liberal grammar of visibility and selfhood. This juridical logic did not stand. In 2013, the Spanish Supreme Court overturned the TSJC's position, ruling that such restrictions on fundamental rights, particularly religious freedom, require statutory legislation and cannot be imposed via municipal ordinance.<sup>8</sup> The Court emphasized that the ordinance lacked sufficient legal and factual justification, risked violating religious freedom, and could perversely exclude from municipal public space the very women it purported to emancipate. In doing so, the Court reaffirmed a constitutional pluralism grounded not in aesthetic assimilation, but in the accommodation of divergent modes of presence within a civic space that remains symbolically contested. The Court curtailed the effectiveness of this symbolic logic in municipal governance, marking its deployment in this case as legally untenable and normatively problematic.

### 2.2.3. FROM HOMOGENEITY TO TERRITORIAL INEQUALITY: THE SPATIAL PROBLEM OF RELIGIOUS GOVERNANCE

As discussed in Section 1.3., Spain's governance of religious diversity is compromised not only by paradigm and normative contradictions but also by deep structural asymmetries in how these contradictions materialize across territorial jurisdictions. The assumption that the nation-state constitutes a homogeneous container for diversity governance is not only analytically flawed but also institutionally misleading. Diversity is not enacted in national legal texts but in local policy spaces. Municipalities and autonomous communities

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<sup>8</sup> See Spanish Supreme Court, *Recurso de Casación* 4118/2011 (2013), annulling the Lleida City Council ordinance on full-face coverings. The Court held that restrictions affecting religious freedom required statutory authority and that the municipal measure lacked sufficient legal justification.

are the true battlegrounds of religious pluralism, where inclusion, exclusion, and accommodation are decided in practice, often with minimal oversight and maximal discretion.

To illustrate the real-world implications of this spatial-political problem, this subsection examines two judicial cases that, despite surface similarities, reveal starkly divergent legal responses to minority religious claims in the workplace. The first involves a Muslim woman in Madrid, denied the right to wear attire compatible with her beliefs; the second, a Jewish man in Palma de Mallorca, permitted to wear religious headgear while working as a municipal bus driver. Both cases involve members of minority communities with official cooperation agreements under Spanish law. Both concern dress code disputes. Both occurred within a five-year window, negating any narrative of progressive legal refinement. Yet their outcomes could not be more different.

a) Territorial stratification, exclusion through preemptive conformity: the case of anonymous v. Aldeasa (STSJ Madrid 3751/1997, 27 October)<sup>9</sup>

In 1997, a Muslim cashier employed by Aldeasa at Madrid-Barajas Airport requested to modify her uniform to wear a long skirt, consistent with her religious convictions. Company policy mandated above-the-knee skirts for summer months, and management refused her request on grounds of uniformity and internal regulation. The Superior Court of Justice of Madrid upheld the decision, not by weighing religious accommodation against operational necessity, but by reframing the issue as one of procedural propriety. According to the court, the employee's failure to disclose her religious dress requirements during the hiring process invalidated her claim.

This ruling instantiated a logic of preemptive conformity, where the burden to ensure compatibility between religious identity and institutional policy was placed entirely on the individual. Rather than recognizing religious accommodation as a right to be balanced and protected, the court treated it as an optional variable, contingent upon prior disclosure and subject to managerial discretion. This rationale operated under a thin concept of "good faith," weaponized not to

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<sup>9</sup> *Anonymous v. Aldeasa*, Judgment 3751/1997, The Superior Court of Justice of Madrid, judgment of 27 October 1997. See: <https://religaredatabase.cnrs.fr/spip.php?article229>

foster mutual understanding but to demand anticipatory self-regulation from minoritized actors. The burden placed on the claimant, racialized, gendered, and visibly minoritized, illustrates how legal discretion often converges and reproduces unspoken norms of professional femininity: visibly non-religious, culturally legible, and administratively compliant.

What the ruling left intact, indeed legitimized, was a model of governance in which institutional norms are presumed neutral and minority claims are admissible only if they do not disrupt administrative convenience. In doing so, the court recast inclusion not as a structural obligation of employers but as a conditional privilege earned through invisibilization and advance negotiation. The decision revealed how legal formalism can serve as a proxy for exclusion, shielding organizational prerogatives from constitutional scrutiny and transforming diversity into a matter of individual compliance rather than institutional adaptation. It did so within a regional court system whose reasoning remains insulated from national coherence.

b) Territorial stratification, inclusion through proportionality: the case of *Anonymous v. Palma Municipal Transport Company (STSJ Balears 457/2002, 9 September)*

This is the same case analyzed in Section 2.2.1, where the court's use of proportionality was presented as a threshold for conditional recognition. Here it is revisited not to affirm its individual outcome, but to contrast it with the 1997 *Aldeasa* ruling and reveal the territorial incoherence of Spain's diversity governance.

In this case, a Jewish bus driver employed by the municipal transport company of Palma de Mallorca began wearing a religious cap at work. The company objected, citing uniform policy. The Superior Court of Justice of the Balearic Islands rejected the restriction, ruling that religious expression may only be limited if it demonstrably harms the interests of the employer; no such harm was proven. The court upheld the driver's freedom of religion, placing the burden of justification on the institution, not the individual.

This sharply diverges from the *Aldeasa* case, where the STSJ Madrid demanded anticipatory conformity from the claimant and treated religious accommodation as contingent on self-disclosure. Both claimants were employees in uniformed roles, both cited religious obligations, and belonged to religious communities recognized under the 1992 Cooperation Agreements. Yet the legal responses were

fundamentally opposed, not because the law evolved between 1997 and 2002, but because the cases were heard in different regions, by different courts, applying distinct legal reasoning frameworks. The same constitutional right produced opposite outcomes, determined by where and by whom it was adjudicated and which judicial logic prevailed in the courtroom.

The deeper irony is that both plaintiffs belonged to religious communities recognized by the state under the 1992 Cooperation Agreements, as noted in Section 2.1. Yet the 1997 ruling did not trigger a corrective institutional response; instead, it helped shape a more restrictive one. Following the case, the Spanish Council of State used its reasoning to recommend changes to Article 12 of the Agreements, reinforcing employer discretion and weakening employees' right to religious accommodation. These recommendations were adopted, codifying judicial exclusion upward into national frameworks rather than closing governance gaps.

This dual trajectory confirms the core claim of this subsection: territorial inequality is not incidental but embedded in the governance structure. The same constitutional right to freedom of religion can be protected or denied depending on where and by whom the case is heard, to which minority it is applied, and which judicial logic prevails in the courtroom. Spain's system of diversity governance does not enforce legal uniformity; it enables fragmented application masked by the language of neutrality and procedural autonomy.

## **Conclusion: From governance pathologies to democratic pluralism**

Spain's governance of religious diversity is not merely fragmented. It is structured by three interlocking pathologies: a paradigmatic reliance on technocratic management, a normative regime of selective secularism, and a spatial architecture of territorial inequality. Together, these dynamics produce stratified inclusion, a regime in which diversity is formally recognized yet unevenly governed, and in which minority actors remain only partially incorporated into the institutional processes that shape the terms of their inclusion. From a human rights perspective, each pathology maps onto a distinct democratic deficit. The paradigm problem limits equal participation in defining the norms of coexistence. Selective secularism distorts equality and non-discrimination by recoding some traditions as culture while marking others, especially those associated with Muslims, as problematic

religion. Territorial inequality weakens equal protection by making freedom of religion or belief and related rights contingent on geography, administrative discretion, and local political will.

The cases examined here show that these dynamics are not abstract tensions but institutionalized patterns. Judicial reasoning often does not simply correct asymmetry. It reproduces it, even when it occasionally opens space for redress. The contrast traced across the case law, from the procedural exclusion of minority claims to more limited and locally contingent accommodations, reveals the central contradiction of Spain's current regime. Formal recognition can coexist with institutional exclusion, and rights can be affirmed without granting minorities meaningful influence over the frameworks that govern them. The central challenge, then, is not how to manage diversity more efficiently, but how to govern pluralism more democratically.

That requires moving beyond a vertical model in which institutions define the limits of pluralism from above and toward networked governance as a multiscale and co-produced alternative. The point is not to romanticize participation, nor to deny the need for limits. It is to insist that the terms of inclusion, and the criteria through which limits are justified, should be more transparent, contestable, and less captive to inherited civilizational hierarchies. In this respect, the local is not merely a site of implementation. It is a decisive arena where symbolic exclusion is reproduced, negotiated, or contested, and where institutional redesign is therefore most urgent. Yet local innovation is insufficient on its own. Democratic coexistence requires governance and public policy arrangements that are territorially more coherent in the protection of rights while embedding minority actors as participants in the production and revision of the civic order.

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